



National Guarantor
for the Rights
of Persons Deprived
of Liberty

Report
to Parliament
2022



Mauro Palma (*President*)

Daniela de Robert (*Member of the Board*)

Emilia Rossi (*Member of the Board*)

National Guarantor
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Credits

The drafting of the Report was done collectively by the different operational units of the Office of the National Guarantor with the coordination of the Board.

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As in previous years, the Report, in addition to providing an overview of data, develops a thematic lines through various contributions: some of these are requested from figures outside the National Guarantor, others represent the shared work of those who collaborating and interacting with our Office. In past years, the writing of these ‘pieces’ has mainly involved people who belong permanently to the Office and a few of those who collaborate as valuable experts. This year we wanted to broaden the range of authors, involving a greater number of experts with whom the National Guarantor has been working with and whose contributions have been and are relevant to the common growth of all of us. For this reasons, we would like to thank them for their contribution to the reflection and action of the National Guarantor over these years and for collaborating on the drafting of the 2022 Report.

In particular, they contributed to the drafting of the paragraphs: **Over the course of a Year:** Antonella Calcaterra, Michele Miravalle, Michele Passione, Ciro Tarantino; **The beginning of time:** Ciro Tarantino; **The Reconfigured Time:** Alberto Di Martino, Anna Lorenzetti; **Time and Duration:** Dario Di Cecca, Aldo Morrone, Daniele Piccione, Daniela Ronco, Silvia Talini; **Horizons:** Anna Maria Alborghetti, Laura Cesaris, Salvatore Fachile, Antonio Marchesi, and Gennaro Santoro.

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Rome, June 2022

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Initial and Acronyms¹

ADIR	L'Altro Diritto	ICMPD	<i>International Centre for Migration Policy Development</i>
AMIF	Asylum Migration and Integration Fund	IOM	<i>International Organization for Migration</i>
ANAC	National Anti-Corruption Authority	IPM	Juvenile Detention Centre
ANFT	National Association of the Treatment Officials	ISS	Istituto Superiore di Sanità (National Institute of Health)
APT	<i>Associazione per la Prevenzione della Tortura</i>	MSNA	Unaccompanied Third-national Minor
CAT	<i>Committee against Torture</i>	NGO	<i>Non-governmental Organisation</i>
CC	(short for <i>Casa Circondariale</i>), District Prison hosting first offenders, persons remanded in custody or close to complete the terms of the sentence	NHRI	<i>National Human Rights Institution</i>
CED	International Convention for the Protection of All Persons from Enforced Disappearance	NPM	<i>National Preventive Mechanism</i>
CeRC	<i>Centre for governmentality and disability studies</i>	ODIHR	<i>Office for Democratic Institutions and Human Rights</i>
CESP	Centre for State Schools Studies	OPCAT	<i>Optional Protocol to the Convention Against Torture</i>
CESPI	Centre for International Policy Studies	OPG	Judicial Psychiatric Hospital
CIDU	Interministerial Committee for Human Rights	OSPDH	<i>Osservatori del Sistema Penale e dei Diritti Umani</i>
CIE	Identification and Expulsion Centre	PCD	People with Disabilities
CNF	The National Bar Council	POS	<i>Place of Safety</i>
CPIA	Provincial Centre for Adult Education	PTPCT	Three-year Plan for Corruption Prevention and Transparency
CPR	Immigration Removal Centre	REMS	Residences for the Execution of Security Measures
CPT	Committee for the Prevention of Torture	RPCT	Transparency and Anti-corruption Officer
CR	(short for <i>Casa di Reclusione</i>) Prison hosting persons convicted for serious offences	RPD	Data Protection Officer
CRI	International Red Cross	RSA	Nursing Home
CRPD	Convention on the Rights of Persons with Disabilities	RSD	Healthcare Residences for the Disabled
DAP	Department of Prison Administration	RSSA	Nursing Home for Non Self-sufficient Elderly
DGMC	Juvenile and Community Justice Department	SAI	Increased Assistance Service
DPCM	Decree of the President of the Council of Ministers	SMOP	Information System for Monitoring the Overcoming of the OPGs
DPO	<i>Data Processing Officer</i>	SPDC	Psychiatric diagnostic and treatment service
DPR	Presidential Decree	SPT	<i>Subcommittee for the Prevention of Torture</i>
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms	SSN	National Health Service
ECHR	European Court of Human Rights	T.U. Imm.	Consolidated Act on Immigration
ECPE	European Code of Police Ethics	TSO	Compulsory Medical Treatment
EU	<i>European Union</i>	TSV	Voluntary Medical Treatment
EuroMed	<i>Euro-Mediterranean Human Rights Network</i>	UDHR	Universal Declaration of Human Rights
FISH	Italian Federation for Overcoming Disability	UIEPE	Inter-district Office for External Criminal Enforcement
FRA	<i>Agency for Fundamental Rights</i>	UN	<i>United Nations Organisation</i>
FREM III	<i>European Forced Return Monitoring III</i>	UNHCR	<i>United Nations High Commissioner for Refugees</i>
Frontex	<i>European Border and Coast Guard Agency</i>	UO	Operational Unit
HRC	<i>Human Rights Council</i>	UOC	Complex Operational Unit
ICAM	Low-custody institute for mother prisoners	WHO	<i>World Health Organisation</i>

1. International and supranational bodies, conventions or agreements etc. are indicated in Italic.

With this Report, the *National Guarantor for the rights of persons deprived of liberty* addresses the Parliament for the sixth time. It is an institutional duty, a condition set by the law establishing the National Guarantor, along with its powers, assignments and obligations, and the aim of providing protection for those experiencing the fragility associated with the deprivation of liberty and the detainees' right to self-determination in organising their time and space. Fragility, in fact, accounts for different situations based on the causes and the development of each deprivation of liberty. But, in any circumstances, all fragility conditions are similar when it comes to deprivation –subject to law and jurisdiction– of that subjective good which our Constitution deems inviolable. Conditions of fragility require, on the other hand, the strengthening of protection so that the rights, defined by our democratic system as subjective assets, can still find application even when they bang against the walls surrounding the deprivation of liberty.

As for all previous Reports to Parliament, figures and situations follow two different criteria of organisation. The first concerns the substance of the events, an updated picture of the “denied liberty” situations - in prison, in an immigration center, in a healthcare facility or any other place providing assistance - along with the criticalities faced both by those subject to this condition and those in charge for managing or organising it on a daily basis. The second criterion is a prospective view that the National Guarantor must show to those institutions in charge of providing for a legal framework to be applied in said specific domains. Our institution's contribute is to provide support to attain an increasingly consistent coexistence between values, which are only apparently in conflict: individual security, collective capacity to tackle difficulties, rehabilitation through forms of reconciliation, also for those who committed mistakes, and closeness -not only symbolic- to those who suffered the consequences of those mistakes. This is what *rendering justice* means and the reason why it should never be confused with *doing justice*.

Nevertheless, these two criteria cannot be separated from an Ariadne's thread that helps to understand what happened and to set the direction of one's pathway to reinsertion. In the past years, this thread covered different aspects characterising the deprivation of liberty: places, persons, words used to measure this universe and laws defining it. This year the thread is “time”. A section of this volume is dedicated to a reflection on time and how it unravels through the perceptual changes of the very same concept in the various phases that unfold from an event to its consequences, to the new reality, to the difficult recovery of liberty.

It is the same time that, developing during the seven-year experience of this Supervisory Authority, has taken on different traits in the last two years: from a suspended, almost arrested time to a recovered one, although with difficulties; it alternates from the time of memory to the time of moving forward, it measures itself through experience, but also through oblivion; it breaks down in short periods subtracted to everyday life, for a hospitalization or to serve a short sentence in prison, it struggles to glue the pieces together and tends to repropose itself as a fractal, reproducing indefinitely on all scales.

For all these reasons, we need to be schematic and critical, also with ourselves, while examining the events accounted for in the Section *Over the Past Year*. Starting from the despicable news that invaded our home during dinner time. If, on the one hand, it is true that nobody can suppose that the images from Santa Maria Capua Vetere represent “normality” in prison, on the other hand, it is equally true that the strenuous path to render justice, considering those images as the inception point, has just started in the year taken in consideration in this Report, while the even more strenuous path of building a different culture strives to get started.

This is just one of the eleven situations took into consideration to describe the past year. Situations that, for prison, range from the debate on how to respond, in the time given to the Legislator, to the ruling of unconstitutionality of the current formulation of preclusive criteria that can be only removed through collaboration, to a series of measures -already identified- that should be implemented during the current year. Alongside, there are the other areas that in the past year assumed a particular physiognomy: from the connotations of the protected life of a very old person that highlight the clash between a formal concept of protection and the subjective idea of living by the protected person, to the approval, at the end of the year, of a binding legislative delegation in the field of disability, up to the complex relationship between the duty to punish crimes and the meaning it assumes decades later. Finally, a specific case can summarise all questions on the role of this institution, and as such -unusual for a Report to Parliament- it is proposed in these pages: a careless eye is implicitly part of the tragedy that led an irregular young man from hope to misery, to the violence suffered, then to the place where only his irregularity seemed to sum up his existence. Until he committed suicide.

A reflection on time is precisely what the National Guarantor itself needs not to stop at the analysis of what happened in the reported year and to move forward, to the years ahead of us. This is where the Section *Horizons* takes us. Looking at what the last months of this Legislature are like to be, and where the horizons of the next one will be heading. In both cases, the National Guarantor will always provide incitement and support. The section covers all matters falling within the scope of action of the National Guarantor. The aim is to recompose that sense of quest for justice that, as iconographically expressed, must move from wisdom towards harmony.

For this reason, we should find the way to ease that sense of insecurity that may lead to “hyper-restrictive” temptations. Security is a value founded on the certainty that our rights are not merely enunciations, but they are real, in every day of our lives: that is why we need controlled and regular accesses to our Country, to protect the lives of those entering it and prevent they become a prey for criminal organisations or victims of lives which are no longer lived in the true meaning of the word; in light of the above, people that by entering this Country have also found cultural, educational and social roots should be recognised as Italian citizens. In other sectors, we should walk resolutely and be aware that taking care of a person means to recognise their right to decide for themselves no matter what the contingent situation might be. For this reason, it is necessary that the principle that wants life in prison more similar to the life outside should be put in practice by providing culture, education, models to rediscover physical and cultural abilities and not the annihilation of both. *Rendering justice* means, above all, to rebuild ties. This is the right path to be followed, and the one that has been recently chosen. The capacity of rebuilding ties gives a more substantial meaning to that sense of restoration that since the Eumenides has given humanity a reason for hope.

To make this path viable, the experience made in these seven years by the new institution of the *National Guarantor for the rights of persons deprived of liberty* should be consolidated under a solid normative framework. This would definitively ensure the establishment of a strong and stable Supervisory Authority, fully dedicated to the democratic construction of this Country.



Over
the course
of a Year



Over the course
of a Year

Over the course of a Year

Maggio

- 2** *Ad hoc* visit to the “Airoldi e Muzzi” nursing home (RSA) in Lecco. Pierpaolo Sileri, Health Undersecretary participates in the visit.
- 3** President Mauro Palma meets with Ludovico Vaccaro, Chief Prosecutor, Foggia.
- 4** Participation in the online Seminar “REMS e misure di sicurezza: i nodi da sciogliere”, organised by the University of Turin and Campania Region.



- 5** **The Murder of Mario Cerciello Rega:** the Court of Assizes sentences to life imprisonment two young Americans for the murder of the Superintendent Cerciello Rega in 2019.

- 6** The National Guarantor participates in the second annual meeting, held online, on “Monitoring during a pandemic/public health crisis (preparing, deployment, monitoring)”, organised by ICMPD under the project FRem III.

Speech of President Mauro Palma at the online Conference “Sistema penale e forme di applicazione: carcere, penitenzialismo e movimenti sociali” organised by the Observatori del Sistema Penal i els Drets Humans (OSPDH) of the University of Barcelona.



- 7** **The Cucchi Case:** more severe sentences for the death of the young Roman citizen. Di Bernardo and D'Alessandro, both in force to Carabinieri, are sentenced to thirteen years for involuntary manslaughter; Roberto Mandolini, Interim Commander of the Appia Carabinieri Station, is sentenced to four years for forgery of administrative documents.

The Board meets Stefano Versari, Head of Department of the education and training system, of the Ministry of Education.

President Mauro Palma intervenes at the online seminar “Il carcere e la pandemia. Situazioni a confronto: diritti e restrizioni”, organised by the Bar Association of Catanzaro.

President Mauro Palma gives a speech on Human Rights at the School of Journalism “Lelio Basso”, Rome.



- 8** **Afghanistan:** At least 55 people dead in the attack to a school in the neighbourhood of Hazara in Kabul, Afghanistan.



- 10** **Israel-Palestine conflict:** High tension between Israel and the Gaza Strip. Rocket attacks from Gaza are answered by Israeli bombardments.



12 President Mauro Palma participates in the online Seminar “The Return Obsession - Forced Returns from Italy and Egypt. Impact on Migrants and Refugees’ Rights”, organised by EuroMed Rights.

President Mauro Palma meets Marta Cartabia, Secretary of State for Justice.

14 President Mauro Palma gives a speech on “La vita delle persone private di libertà” at the: “Diritti Umani vs Pandemia” cycle of lessons organised and held online by CESPI and the Istituto della Enciclopedia Italiana Treccani.

President Mauro Palma gives a speech on Human Rights at the School of Journalism “Lelio Basso”, Rome. The Board participates in the Convention “Diritto alla salute ed esecuzione della pena”, organised by the Criminal Chamber of Piemonte Occidentale and Valle d’Aosta, Turin.



15 **Space:** China lands on Mars. Successful landing for the Zhurong rover. It is the first time an Asian country achieves landing on Mars.



17 **Migrations:** More than six thousand people, including minors, climb over the barriers of the Spanish enclave of Ceuta in Morocco. Madrid deploys its Army.

17-22 President Mauro Palma participates in the Saint Petersburg International Legal Forum, with a speech on “The Modernization of National Prison Estates”. The Forum is exceptionally held in Moscow.

The Board participates in the debate “Il diritto alla salute dei detenuti ai tempi della pandemia”, on occasion of the Festival of the criminal justice of Modena.

20 The FReM III Project’s Steering Group meets online. The meeting is organised by ICMPD.

22 The Board participates online in the Festival of the criminal justice on the topic “Vittime di ieri, vittime di oggi”.



23 **Stresa:** Stresa-Alpino-Mottarone cable car tragic accident. The traction cable of one of the cable cars snaps, the cable car with 15 people on board plunges on the ground. 14 people lose their life in the accident.

24 Participation of the Board in the ceremony commemorating Judge Giovanni Falcone at the Penitentiary Administration School “Giovanni Falcone” in Rome.

26 The National Guarantor signs a memorandum of understanding with the Italian Data Protection Authority, Rome.

President Mauro Palma meets Teo Luzi, Commander General of the Carabinieri, Rome.

The National Guarantor gives a lesson at the II level Master in Penitentiary Law and the Italian Constitution on “Il Garante nazionale come NPM, l’ufficio studi, le relazioni internazionali e i Garanti territoriali”, organised by Roma Tre University, online.



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The National Guarantor gives a speech on “Le visite ispettive nei luoghi di privazione della libertà” on the occasion of the cycle of lessons on “Diritti umani e cooperazione giudiziaria in materia penale nel quadro del corso di diritto internazionale”, organised by the University of Teramo, online.

27 Speech of President Mauro Palma at the seminar “Nuove e vecchie contenzioni”, organised by the Guarantor of the persons deprived of liberty of the Piedmont region, online.

31 Lesson of the National Guarantor on “Le alternative al carcere tra preclusioni normative, ostacoli fattuali e pregiudizi culturali”, organised by the University of Salerno, online.

Speech of President Mauro Palma at the Convention “Teatro in ogni carcere”, organised by the University Federico II of Naples, online.

Giugno



Ilva: The former owners of the steel corporation operating in the steel centre of Taranto are convicted to heavy sentences by the Court.

President Mauro Palma gives a speech at the Conference for the opening of the “International training center for visits to places of deprivation of liberty”, sponsored by the Council of Europe, online.

4 Monitoring of a forced-return chartered flight to Egypt.
5 President Mauro Palma attends the ceremony for the 207th Anniversary of the founding of the Carabinieri Corps, Rome.

6 Meeting with the CIR - Italian Council for the Refugees on the Project “Strengthening guardianship system in Sicily and legal information at the northeast border”, online.

Meeting between the National Guarantor and Michele Di Bari, Head of the Department of Civil Liberties and Immigration at the Ministry of the Interior, Rome.



8 **War Crimes:** Ratko Mladic. Confirmed sentence to life imprisonment. The International Criminal Court seated in the Hague confirms in appeal Mladic’s sentence for genocide and crimes against humanity.

The Presidency of the Council of Ministers launches the National Guarantor’s institutional campaign.

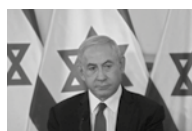


9 **Afghanistan:** Italy’s flag down in Afghanistan. After 20 years, 54 dead and 700 wounded, Italy withdraws from Afghanistan.



Seminar on Principles on Effective Interviewing for Investigations and Information Gathering, sponsored by the Association for the Prevention of Torture, Washington College Law, Norwegian Center for Human Rights.

10 Monitoring of a forced-return chartered flight to Georgia.
The National Guarantor's Board meets Sergio Mattarella, President of the Republic, to hand him out a copy of the Report to Parliament 2021, Quirinal Presidential Palace, Rome.



14 **Israel:** After twelve years in power, Benjamin Netanyahu leaves his position of Prime Minister of Israel. He is replaced by Naftali Bennet, and after two years, upon agreement, by Yair Lapid.

The Board meets Anna Maria Loreto, Chief Prosecutor of the Court of Turin, Turin.

15 The National Guarantor's Board takes part in the Ceremony for the 204th Anniversary of the Foundation of the Corps of Penitentiary Police, Rome.
Speech of the Board members at the meeting "Fratelli tutti: sulla fraternità e l'amicizia sociale" during the Training Course organised by the Centesimus annus - Pro Pontifice Foundation.

16 Training day for the staff of the National Guarantor on restraint measures applied in places of deprivation of liberty, Rome.

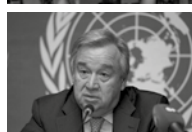
16-17 The National Guarantor participates in the meeting "Monitoring the situation of the elderly deprived of liberty during Covid-19 pandemic", organised by APT and ODIHR, online.

17 Lecture of President Mauro Palma at the 178th Training and Refresher Course for Penitentiary Police cadets, Rome.

The National Guarantor participates at the international consultation on the training perspective of the International training centers for visits to places of deprivation of liberty, online.



18 **Hong Kong:** Some 500 policemen raided the offices of the opposition newspaper "Apple Daily": the editor and four executives are arrested.



UN: Antonio Guterres is re-appointed UN Secretary-General for a second term.



20 **Iran:** Ebrahim Raisi is elected President of the Islamic Republic of Iran, with nearly 18 million votes, equal to 61.95% of voters.

21 The National Guarantor presents its Report to Parliament 2021 to the Italian deputies, at the "Queen Chamber" of the Chamber of Deputies, Rome. Raitre tv channel transmits the event in live streaming.



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22 European Union: the European Commission approves Italy's € 191.5 billion National Recovery and Resilience Plan (NRRP).



Spain: nine separatists in prison since the Secession bid for Catalonia four years ago, are granted pardons. The event had thrown the country in the most profound political crisis in 40 years.

President Mauro Palma takes part in the inauguration ceremony of the “Giardino della solidarietà” at the Palace of justice in Viterbo.

23 The National Guarantor’s Board takes part in the ceremony for the 204th Anniversary of the Corps of Penitentiary Police, at the “Germana Stefanini” women prison, Rome.

President Mauro Palma gives a lesson at the Training Course of the Higher School for Magistrate on “Problemi attuali della magistratura di sorveglianza: tra emergenze e tutela dei diritti fondamentali”, online.

The Board participates in the Convention “Il cibo come strumento di reinserimento sociale. Un progetto di agricoltura sociale in serra”. A social agricultural project in greenhouse environment - Viterbo prison, organised by “SemiLiberi” and Roma Tre University, online.



24 Moscow-London: high tension in the Black Sea waters opposite Crimea. The Russian Minister of Defence reports that a Russian warship fired warning shots in direction of an English military ship.



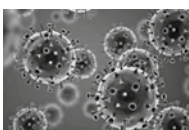
Hungary: seventeen countries of the EU, including Italy, sign a joint declaration, proposed by Belgium, for LGBT rights. The initiative was taken after Hungary passed a law that prohibits treating in public topics concerning homosexuality or trans identities.

25 Second national Conference on Mental Health “Per una salute mentale di comunità”, sponsored by the Ministry of Health, online. President and the work team coordination report on “Azioni preventive e presa in carico nelle popolazioni migranti e nei contesti custodiali”.

Speech of President Mauro Palma at the round table “Esecuzione della pena e il rispetto dei diritti fondamentali dell’uomo”, organised by the Criminal Chamber of Palermo, online.



28 Santa Maria Capua Vetere: the Prosecutor orders 52 precautionary measures for the penitentiary police agents involved in the penitentiary police extraordinary search of 6 April 2020. Campania region's Superintendent is disqualified.



Covid-19: contagion rate drops, Italy is in white zone. Obligation to wear masks in the open air no longer applies.

Domani Santa Maria Capua Vetere: Daily newspaper Domani publishes new videos on the beatings in prison. A frame confirms the retaliation of 6 April 2020 in the Campanian prison.



President Mauro Palma gives a speech on Human Rights at the School of Journalism “Lelio Basso”, Rome.

President Mauro Palma gives a speech at the Training Course for Ordinary Magistrates in training (MOT) of the Higher School for Magistrates, Napoli-Castel Capuano.



29 **G20:** the G20 Foreign Affairs and Development Ministers sign the Matera Declaration, a pact for «Zero Hunger by 2030».



Tigray: the ongoing civil war in Tigray, after nine months, enters a new phase. After the retreat of the Ethiopian forces, Tigrayan troops enter in Macallè.

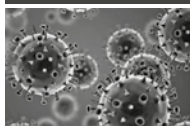
Speech of the Board on occasion of the presentation of the “Libro nero del CPR di Torino”, Rome.

30 Presentation of the monitoring activities of forced return of the National Guarantor to the delegation responsible for evaluating the implementation of the Schengen *acquis* - Sector *Return*, Rome.

Luglio



European Union: Turkey is officially out of the Istanbul Convention. After President Erdoğan's decree, which had caused the uprising of women and the indignation of the international community, Ankara officially exits the treaty against gender violence.



Covid: the European Green Pass comes into operation, it is valid for travelling within the Schengen countries.



Levante Station: all the carabinieri under the abbreviated rite trial for the facts happened in the Levante station, Piacenza, are found guilty. They were charged with different accusations, among which drugs trafficking, abuse of office, corruption and torture. Sentences from 3 to 12 years.

President Mauro Palma is received in Palazzo Chigi by the President of the Council of Ministers Mario Draghi.



2 **China:** the celebrations for the 100th anniversary of the Chinese Communist Party open with an unprecedented military parade, with the exhibition of high-tech weapons.

The Board attends the presentation of the Report to Parliament of the Guarantor for protection of personal data.

Lesson of President Mauro Palma at the Course “Il fenomeno della criminalità organizzata fra storia, economia e sociologia”, sponsored by the Higher School for Magistrates, online.

6 The Board takes part in the workshop “Studio globale delle Nazioni Unite sui bambini privati della libertà nel contesto italiano: Incontro di follow-up con le Autorità garanti indipendenti in Italia”, organised by the Global Campus of Human Rights, online.



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7 **Haiti:** President Jovenel Moise is attacked and killed at his private residence by a group of armed men.

Lesson of the National Guarantor at the 178th Training and Refresher Course for Penitentiary Police cadets, Rome.

Senator Matteo Salvini visits the National Guarantor, Rome.

President Mauro Palma meets Marta Cartabia, Secretary of State for Justice, the Head of Department of the Penitentiary Administration and the Representatives of the Unions of the Penitentiary Police.

8 **Ad hoc visit to the women prison of Pozzuoli (Naples).**



Italian politics: the Parliament passes the law lowering the active vote right for Senate from 21 to 18.

9 **President Mauro Palma attends the Congress of Magistratura Democratica, Florence.**

12 **First meeting of the Control Room for questions regarding subjects restricted pending admission in Residences for the execution of security measures (REMS), organised by the Commission of National Agency for Regional Health Services (AGENAS), online.**

Meeting of the Board with representatives of organisations and institutions on Parental Alienation Syndrome (PAS).

13 **Follow up visit to the Prison of Bologna.**

14 **Ad hoc visit to the Prison and Work House of Castelfranco Emilia. Matteo Zuppi, Bologna's Cardinal, takes part in the visit.**

Prison of Santa Maria Capua Vetere: Mario Draghi, President of the Council and Marta Cartabia, Secretary of State for Justice, with President Mauro Palma visit the prison where, on 6 April 2020, the violent beating happened.

Speech of the Board at the Convention “Riflessioni sull’esecuzione della pena e sulle misure alternative alla detenzione”, organised by the Bar Association of Turin.



Court of Cassation: in the first application of the sentence of the Constitutional Court on temporary licences to persons convicted for mafia crimes and not collaborating with the Justice, it is excluded the full proof of the maintenance of links with organised crime, or the danger of their restoration by the convicted person.



15 Italy-Libya Agreements: The Chamber of Deputies passes the re-financing of the international missions, including support and training to the Libyan Coast Guard.

Meeting organised by the Secretary of State for Justice Marta Cartabia on the Santa Maria Capua Vetere case. President Mauro Palma is also present.

The Senate's Commission for Human Rights hears the National Guarantor on the prisons' state in light of the facts occurred in the prison of Santa Maria Capua Vetere.

16 Meeting with the Control Room for questions regarding subjects restricted pending admission in Residences for the execution of security measures (REMS), organised by the Commission of National Agency for Regional Health Services (AGENAS), online.



17 Genoa G8: the European Court rejects the appeal of the policemen sentenced by the Italian Justice.

Report of President Mauro Palma at the Convention "Pandemia, disabilità e resilienza" organised by the Italian federation for overcoming handicap (FISH), online.

19–26 Regional visit to the Apulian prisons. Two urgent recommendations are sent to the DAP (Penitentiary Police Department) and quickly implemented. During the visit the Guarantor attends different institutional meetings: with the Lidia De Iure, President of the Supervisory Court of Taranto, with Stefano Rossi, Director General of the Health Authority of Taranto, with Piero Rossi the Apulia Guarantor of the Persons Deprived of Liberty, and Loredana Capone, President of the Apulian Regional Council.

20 Monitoring of a forced return chartered flight organised by Frontex from France to Albania.

Speech of President Mauro Palma at the Convention "G8 di Genova, vent'anni dopo", on the topic "La tutela dei diritti inviolabili di chi è sottoposto a restrizione della libertà personale: verità e giustizia per Emanuel Scalabrin", organised by Comunità di San Benedetto al Porto - Antigone, Genoa.



21 Santa Maria Capua Vetere: the Secretary of State for Justice Cartabia reports to Parliament: «An unmeasured and senseless show of strength, those facts mean that something is wrong and requires wider and long-period actions so that it could never happen again».



Voghera: Massimo Adriatici, City Assessor, after an argument, shoots and kills a 39-years-old Moroccan citizen of 39.

President Mauro Palma meets Triantafillos Loukarelis, Director of the National Office against Racial Discrimination (UNAR) of the Presidency of the Council of Ministers, Rome.



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22 President Mauro Palma meets Luciana Lamorgese, Secretary of State for Home Affairs, Rome.

23 **Capital Punishment:** Sierra Leone abolishes capital punishment.

26 The Board meets the Giuseppe Martone, Regional Superintendent of the Penitentiary Administration of Apulia and Basilicata.

27 The President meets Pierluigi Lopalco, Apulia Region Councillor with responsibility for Health, Bari.

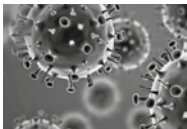
28 President Mauro Palma meets the Head Department of the Penitentiary Administration and Local Guarantors of Latium Region, Rome.

29 President Mauro Palma takes part in the initiative commemorating the anniversary of Sandro Margara's passing five years ago.

Agosto



4 **Lebanon:** tension in Beirut on the day commemorating the death of more than 200 people caused by an explosion at the port. Numerous manifestations take place on the streets of the capital calling for justice for the victims.



5 **Covid:** approved by the Council of Ministers the guide lines for the use of the Green Pass.



13 **Gino Strada dies:** in 1994, the doctor founded the NGO Emergency to provide free medical care and build hospitals in the most disadvantaged areas of the world and in war zones.



15 **Afghanistan:** Talibans enter in Kabul, their advance does not encounter any resistance from the Afghani Army. In the following days foreign workers are evacuated. Thousands try to flee the country.

18 The National Guarantor asks to stop forced returns to Afghanistan indefinitely.



26 Afghanistan: Some days after the proclamation of the Islamic Emirate, at least 90 people die under some kamikaze attacks at Kabul Airport. 13 marines killed among them. Attacks are claimed by the Isis Khorasan.

30 President Mauro Palma participates in the debate “Noi, che abbiamo visto Genova”, at the Festa Nazionale dell’Unità, Bologna.

31 Monitoring of a forced return chartered flight to Egypt.

Settembre

2 The Board meets the Coordination Team of the Penitentiary Educational Area (CAEP), online.

4 The National Guarantor questions the competent Authorities on the circumstances of the death of Fedele Bizzoca in the prison of Trani.



5 **Guinea:** A coup led by Mamady Doumbouya deposes the President of Guinea Alpha Condé. It is the third coup in Guinea after 1984 and 2008.



6 **Rome’s Declaration:** in the conclusive document of the Global Health Summit G20, the Ministers of Health set as main goal the vaccination of 40% of the world population by the end of 2021.

7 Monitoring of a forced return chartered flight to Egypt.

Ad hoc visit to the restricted prison regime ward (ex Art. 41-bis of the Penitentiary Law) of Opera prison, Milan.

8 President Mauro Palma meets Ferruccio Resta, Dean of Milan’s Politecnico, Milan.

The Report on Turin CPR is released. The “Ospedaletti” sector of Turin CPR is closed.

9 The President participates in the Press Conference at the Senate on Immigration Removal Centres (CPR).



Santa Maria Capua Vetere: the investigation on the violence acts in prison is concluded. 120 people, among which penitentiary policemen and DAP officials, are accused of torture, injuries, abuse of authority, falsification of documents and cooperation in the involuntary manslaughter of an Algerian prisoner.



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Humanitarian Protection: a sentence of the Joint Civil Chambers of the Court of Cassation determines that the respect of fundamental human rights is central when comparing the situation experienced by a foreigner in Italy and that in her/his country of return.

- 11 **President Mauro Palma participates in visit of the President of the Republic, Sergio Mattarella, to the juvenile prison of Nisida (Naples).**
- 12 **Speech of President Mauro Palma on “Carcere e umanità” at the Festival della Comunicazione, Camogli (Genoa).**
- 13 **President Mauro Palma meets Alessandra Guidi, Prefect of Florence.**
- 14 **The National Guarantor presents its observations as *amicus curiae* at the European Court of Human Rights on the case *Ciotta v. Italy*.**
- 15 **Internal Training Course on whistleblowing, Rome.**
- 16 **Meeting sponsored by the National Guarantor together with the Local Guarantors, with the participation of the Secretary of State for Justice and the Heads of Departments of the Penitentiary Administration and Juvenile and Community Justice, Rome.**



18 **United Nations:** green light for the 76th Plenary Session of the UN Assembly General. Main themes of the Session are Covid-19, climate and sustainability, and respect of human rights. Considerable space is also given to the Afghan crisis.

President Mauro Palma participates in the Convention “Salute mentale e folli rei. Continua la discussione. Lo stato e la battaglia per la riforma”, online.

The Board participates in the Assembly General of the SEAC – Coordinamento enti e associazioni di volontariato penitenziario.

Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Rome.



19 **Russia:** the pro-Putin “United Russia” party wins country’s parliamentary elections.



Litvinenko Case: the European Court of Human Rights in Strasbourg recognises Russia’s responsibility in the murder of the former KGB spy.



21 A member of the Board of the National Guarantor participates in the works of the first panel discussion of the 6th National Conference on Addiction Disorders.

20-22 The National Guarantor participates in the European NPM Conference on “The Role of NPMs in the Effective Implementation of European Court of Human Rights Judgments and CPT Recommendations” and on “Tackling Police Ill-treatment and Ensuring Effective Investigations into Alleged Ill-treatment”, online.

20 Monitoring of a forced return chartered flight to Tunisia.

21 Ad hoc visit to the “Raffaele Cinotti” prison of Rome-Rebibbia.

6th National Conference on Drugs: The National Guarantor participates in the first panel discussion on criminal justice, alternative measures, and prison health care.



23 **Carles Puigdemont:** former Governor of Catalunya is arrested in Alghero based on a European arrest warrant. He is going to be released the following day.



Island: the newly elected Parliament is composed for 48% by women, nearly achieving the majority. The previous majority expression of a right-green left coalition led by Katrin Jakobsdottir is reconfirmed in the role.

The Commission for reforming the Italian penitentiary system starts its works. Created by the Secretary of State for Justice Cartabia, members of the Commission also include a member of the Board of the National Guarantor.

25 Lesson of President Mauro Palma on “Libertà e il canto I del Purgatorio” at the first edition of the “Lectura Dantis franciscana” under the Franciscan Festival, Bologna.



26 **San Marino:** the republic of San Marino votes in favor of legalising the abortion in a referendum.



27-28 **Germany:** Merkel era comes to an end. Socialdemocrats are the first party, with 25.7% of votes against 24.1% obtained by the opponents, the CDU-CSU conservative coalition.

President Mauro Palma meets Franco Posocco, the *Guardian Grande* of the School of San Rocco of Venice.

Lesson of the Board on the National Guarantor institution at the Carabinieri’s Officers School, Rome.

The Recommendation of the Guarantor to the Secretary of State for Justice on extraordinary searches, along with the implementation letters received by the DAP and the DGMC, is published.



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27 Speech of the Board at the Congress of the Italian Society of Penitentiary Medicine (SIMSPE) on “Il riordino della sanità penitenziaria”, Rome.

29-30 internal training for the local guarantors participating in the AMIF network for monitoring of forced return, Rome.

Ottobre

1 Seminar organised by the National Guarantor on “Rimpatri forzati e tutela dei diritti fondamentali. La rotta del Mediterraneo e le sfide del presente”, under the AMIF Project, Rome.

2 *Lectio Magistralis* of President Mauro Palma on “Diritto alla vita e alla dignità umana”, organised by the Web School of Antigone and the Law Department of the University of Turin on the Deprivation of Liberty and Fundamental Rights, online.

Monitoring of a forced return chartered flight to Nigeria.



3 **Internal politics:** turnout at the administrative elections is 54.69%. Centre-left coalitions are ahead with three mayors elected in the first round (Sala in Milan, Manfredi in Naples and Lepore in Bologna). Rome and Turin also go to the Centre-left coalition, while Trieste confirms its Centre-right vote for m mayor.

President Mauro Palma’s speech at the final day of the Second National Festival of Prison Economy, Rome.

4 Lesson of President Mauro Palma at the Training Course “Etica e Sicurezza: coordinamento e gestione degli eventi critici”, organised by the Higher School of Penitentiary Enforcement “Piersanti Mattarella” of the Department of Penitentiary Administration, Rome.

Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Rome.

5-6 A member of the Board participates in the works of the first panel discussion of the 6th National Conference on Addiction Disorders, Rome - Rebibbia prison.

6 Participation of the National Guarantor in the meeting of the “Nafplion Group” on the monitoring of forced returns of the NPMs, Nafplion (Greece).



7 **EU:** the Polish Constitutional Court denies the primacy of the European Union law over the State law.



Sentence of the Court of Cassation: the relevance of family ties is to be evaluated in the application of sanctions alternative to prison in case of expulsion of a foreign citizen sentenced guilty. It can be considered as an impediment.



The National Guarantor hosts a meeting involving the Regional Guarantors and the Office of Cassa delle Ammende, Rome.



8 EU: twelve European states call for new instruments to protect external borders opposing to migration flows, also through EU financing fences and walls.



Nobel Peace Prize: 2021 Nobel Peace Prize is awarded to journalists Maria Ressa - cofounder of Rappler; a Filipino website which has been investigating for years on the gory anti-drugs campaign of Rodrigo Duterte, and Dmitry Muratov editor-in-chief of the Russian investigative newspaper *Novaya Gazeta*.

President Mauro Palma participates in the Convention “Questione di giustizia”, organised by Magistratura Democratica, online.

Monitoring of a forced return chartered flight to Egypt.



9 No Green Pass: violent brawls at the “Non Green Pass” rally in Rome, activists of Forza Nuova and other neofascist groups also participate in the rally. CGIL trade union’s offices are attacked.

12 Première showing of the film “Aria Ferma” at the “Raffaele Cinotti” prison of Rome - Rebibbia with the participation of the Secretary of State for Justice Marta Cartabia and President Mauro Palma.



14 Norway: during the night, in Kongsberg, a 37-years-old man armed with arch and arrows kills five people and injures two.



Giulio Regeni: no trial for the four Egyptian secret agents accused of kidnapping, torturing and killing Giulio Regeni. The day before, the Presidency of the Council had brought civil action in the trial.

President Mauro Palma participates in the Convention “Osservatorio sulle Diseguaglianze nella salute sui minori stranieri non accompagnati”, on “I diritti all’identità, all’ascolto e alla protezione e tutela delle persone di minore età: i luoghi di privazione della libertà”, organised by ARS Marche under the 2019 AMIF’s Regional Project, online.

Regeni’s Trial: «An important trial for all of us that should go on. A reflection on this point should be made by Egypt authorities, which are instead showing no interest for fundamental rights, symbolically trashed in this case» President Mauro Palma declared.

The Board gives a speech on the round table sponsored by RAI on “Il carcere, la scuola, la Rai. La cultura come fattore di sviluppo ed emancipazione personale e sociale” at Salone Internazionale del Libro, Turin.

15 President Mauro Palma meets Marta Cartabia, Secretary of State for Justice.



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President Mauro Palma participates in the Press Conference presenting the Report on CPRs: “Buchi neri. La detenzione senza reato nei CPR”, organised by the Italian Coalition for Liberties and Civil Rights (CILD), Rome.

18 Meeting with the Head of Department for legal and administrative affairs of the Presidency of the Council of Ministers, Carlo Deodato.



17-18 Administrative elections: the Centre-left coalitions win the administrative elections in main cities; the run-off marks victories in Rome and Turin, after those obtained in Milan, Bologna and Naples on the first run.



18 No Green Pass: tension escalates during protests against green pass in workplaces. Law enforcement officers resort to hydrants and tear gases to disperse people in dock 4, Trieste.

18-21 Internal Training Week for the Office of the National Guarantor at the Italian Institute of Philosophical Studies, Naples. Giovanni Maria Flick, Marcello Flores, Christian Loda, Triantafillos Loukarelis, Massimiliano Marotta, Giuseppe Nese, Rosaria Ponticiello, Marco Apulia, Chiara Scipioni, Carlo Stasolla, Ciro Tarantino and Laura Valli are among the contributors.



23 Turkey: Turkish President, Recep Tayyip Erdoğan, declares ten ambassadors *persona non grata* after they signed an appeal for the release of the philanthropist Osman Kavala. Two days after, he retreats his statement.



25 Sudan: the army besieges the residency of the country's Prime Minister Abdalla Hamdok, and arrest him. The leader of the coup, General Fattah Al Burhan, establishes a military government.

26 The Recommendation of the National Guarantor to the Prison Department is published: change the procurement procedures to ensure healthy food, adapted to nutritional needs.



27 The Zan Bill: Senate votes down the proposed legislation against homotransphobia. The vote is secret, the text had been approved by the Chamber of Deputies a year ago. The House votes in favour of the “Tagliola” procedure (stop to the examination, the review and the discussion of the articles of law) requested by the Parties Lega and Fratelli d'Italia: 154 votes in favour, 131 against and two abstentions.



Poland: EU scolds Warsaw. UE's Court of Justice imposes daily fines to Poland for not having respected the order requiring the government to abolish the disciplinary system for judges in force, considered contrary to the EU law.

The National Guarantor participates in the final Conference of the Fairness Project on the perspectives of the activities contrasting violent extremisms and terrorism in Europe, online.

28 Monitoring of a forced return chartered flight to Tunisia.



Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Catanzaro.



29 **Poland:** Parliament votes in favour of building a wall on the border with Belarus to prevent the access of thousands of desperate people coming from Afghanistan, Syria and Iraq.

Lesson of President Mauro Palma at the II level Master in Law and Criminology of the Penitentiary System on “Il lavoro penitenziario”, Mediterranea University, Reggio Calabria.

Speech of the Board at the Sabir Festival “In attesa di notizie: le sfide dell’informazione nel racconto della migrazione”, online.

Statement of the National Guarantor: we need a reflection on the application of alternative measures for lighter sentences.



30-31 | **G20:** the summit on climate change, with a view on COP26 in Glasgow, takes place at Fuksas' Cloud, Rome EUR.

30 *Ad hoc* visit to the Reggio Calabria-Arghillà prison.



31 | **COP26:** the 26th UN Climate Change Conference begins.

Novembre

2 Lesson of President Mauro Palma at the Training Course “Etica e Sicurezza: coordinamento e gestione degli eventi critici”, organised by the Higher School of Penitentiary Enforcement “Piersanti Mattarella” of the Department of Penitentiary Administration, Rome.

Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Rome.

3 President Mauro Palma participates in the Workshop on the “Principi Méndez sui colloqui investigativi efficaci”, organised by the Association for the Prevention of Torture and addressed to the NPMs of the member States of the Organisation for Security and Cooperation in Europe (OSCE), online.

Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Viterbo.



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4 **Sea Eye:** 800 migrants arrive in Trapani. The German NGO ship docks in the Sicilian city after rescuing at sea the shipwrecked passengers of seven boats.

Monitoring of a forced return chartered flight to Georgia.

8 **Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Milan.**

8-14 **Regional visit in Lombardy.** During the visit, the National Guarantor participates in different institutional meetings: with Letizia Moratti, Regional Assessor of Welfare, Renato Saccone, Prefect of Milan, Giovanna De Rosa, President of the Supervisory Court of Milan, Pietro Buffa, Regional Superintendent of the Penitentiary Administration, Gianalberico de Vecchi, Regional Ombudsman, Francesco Maisto, Guarantor of the Rights of the Persons Deprived of Liberty of the Municipality of Milan.

President Mauro Palma meets Gustavo Nanni, Acting President of the Supervisory Court of Brescia, Brescia.



Greenlight for the third vaccine dose to over-forties: the new anti Covid-19 vaccination cycle starts on December 1st.



13 **Pact for climate in Glasgow:** the agreement reached in 2021 UN Conference on Climate Changes is considered insufficient by many analysts; the President of the Conference in tears for disappointment.

Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Brescia.

15 **Monitoring of a forced return chartered flight to Tunisia.**

President Mauro Palma meets Maurizio Landini, Secretary General of CGIL Trade Union.



16 **Repression against migrants at the border between Poland and Belarus.** Polish Security Forces use hydrants and tear gases against the migrants at the Kuznica-Brzuzgi border crossing, from the Belarus side of the border.

President Mauro Palma meets Francesco Paolo Sisto, Undersecretary of the Secretary of State for Justice.

President Mauro Palma participates in the Convention “Verso servizi liberi da contenzione a 60 anni da ‘mi no firmo’ – La critica alle istituzioni e la città che accoglie”, organised by Department of Mental Health of Trieste and Gorizia, online.



17 President Mauro Palma meets Antonio Decaro, Mayor of Bari.

President Mauro Palma reports on the National Guarantor's activities at the Convention: "La Garanzia dei diritti delle persone private della libertà per motivi sanitari", Apulia Region, Bari.

The Board participates in the seminar *Mediarej, Training in mediation and restorative justice*, sponsored by Erasmus Mediarej Project and Bergamo University.

18 Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Florence.

21-24 Speech of President Mauro Palma on occasion of the 40th Anniversary of the Council for Penological Cooperation (PC-CP), Strasbourg.



23 **Assisted Suicide:** a forty-three-years old man, affected by quadriplegia for 11 years, is granted doctor-assisted suicide procedure by Marche Region's Health Authority.



25 **Migrants:** 27 dead, among which three children and a pregnant woman. It's the death toll of the shipwreck offshore from Calais of a boat sailed from Dunkerque with about fifty people on board.



Super Green Pass required starting from December 6th, as Omicron variant approaches Europe. Government's Decree excludes unvaccinated people from public places, swab is required for bus or ship travel. Omicron variant scares Europe.

Monitoring of a forced return chartered flight to Tunisia.

25-26 National Guarantor participates in the final Conference of the FReM III Project, organised by ICMPD, online.



26 **Quirinal Treaty:** signed the Bilateral Treaty for Enhanced Cooperation between Italy and France.

President Mauro Palma participates in the 6th national Conference on addiction disorders, with a focus on "La realtà penale e penitenziaria della dipendenza: nuove proposte su misure alternative, riduzione del danno e sanzioni", organised by the Presidency of the Council of Ministers - Anti-drugs Policies Department, Genoa.

27 The Board intervenes at SEAS's 53rd Convention "L'esecuzione delle pene nella normativa in itinere", online.



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28 **Death in a CPR:** Abdel Latif, a Tunisian citizen staying at Ponte Galeria CPR dies after being hospitalised at the Psychiatric Care and Treatment Unit (SPDC) of the Hospital San Camillo-Forlanini in Rome.

29 **The National Guarantor takes part in the meeting “Sovraffollamento carcerario e crisi del sistema penitenziario nel prisma costituzionale”, organised by the Catania University, Catania.**

Monitoring of a forced return chartered flight to Tunisia.

29 **President Mauro Palma participates in the Conference on Drugs Addiction, Genoa.**

30 **National Guarantor’s Workshop on “La tutela del diritto alla salute delle persone migranti sottoposte a misure di trattenimento e di rimpatrio forzato”, organised under the AMIF Project, Rome.**

Statement of the National Guarantor: in 2021, less than 50% of the persons transiting through the CPRs were actually send back. For the others, it was an unjustified deprivation of liberty.

Dicembre



The English Channel Crisis: Frontex makes available an aircraft to perustrate the Channel, exchanging information with the French, Belgian and Dutch police forces.

President Mauro Palma participates in the presentation of the 2022 Calendar of the Penitentiary Police, Roma.

The National Guarantor and the National Lawyers’ Council (CNF) sign a Memorandum of Understanding, Rome.

The National Guarantor participates in the meeting for the Italian presidency of the Committee of Ministers of the Council of Europe at the Centre for Politics and International Studies, (CeSPI), Rome.



2 **Italy is the locomotive of Europe:** Italy’s economic growth values 6.3% more than the other countries with an advanced economy.



European Union: the European Commission determines that EU will not provide funding for the building of walls or other types of fences to block access to migrants.

President Mauro Palma meets Giovanni Melillo, Chief Prosecutor of Naples.



The Board participates in the 3rd Edition of the training project “Arianna Il filo del lavoro sociale per una giustizia di comunità”. Inauguration of the basic Training Course for 88 officials of social service of justice, Rome.

3 President Mauro Palma participates in the Convention “Articolo 3 Cedu e situazione penitenziaria italiana: la giurisprudenza europea e le prospettive di riforma”, organised by the Criminal Chamber of the Bar Association of Milan, Milan.

4 Monitoring of a forced return chartered flight to Nigeria.
President Mauro Palma participates in the Convention “Riforma penitenziaria: dove eravamo rimasti?”, organised by the Union of Italian Criminal Chambers, Rome.

6 The Board takes part in the Seminar of the National Observatory Against Discrimination in Sports organised by UISP on the language used by media and discrimination.



7 **Patrick Zaki:** released but not acquitted. The decision is taken by the judges of the trial where the Egyptian student of Bologna University is accused of disseminating false information through press and detained for 22 months.

8 The Board participates in the handing Ceremony for the books donated by the guests of the Festival “Più libri più liberi” to the 17 juvenile prisons.

10 President Mauro Palma gives a speech on “La persona detenuta” at the 70th National Study Convention “Gli ultimi. La tutela giuridica dei soggetti deboli”, organised by the Union of Italian Catholic Jurists, Rome.



Viminale: Prefect Michele Di Bari, Head of Department for civil liberties and immigration, steps down. During the following days Prefect Francesca Ferrandino is appointed.

12 Ravanusa (AG) Disaster: 9 people die in the explosion. Controversies for missing intervention on a gas leak previously communicated.

Ad hoc visit to Turin “Lorusso e Cutugno” prison.

Ad hoc visit to the protected ward of the “Le Molinette” Hospital in Turin.

13 Monitoring of a forced return chartered flight to Tunisia.

13-17 Regional visit in Lombardy.



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14 Lesson of President Mauro Palma at the Training Course “Etica e Sicurezza: coordinamento e gestione degli eventi critici”, organised by the Higher School of Penitentiary Enforcement “Piersanti Mattarella” of the Department of Penitentiary Administration, online.

14-15 Participation of the National Guarantor to the training days on Frontex new FReMS reporting system organised by ICMPD, under the FReM III Project, online.



15 **Italian borders closed to no-vax travellers.** Controversy between the President of the Council Draghi and the EU on the strict rules imposed to travellers to Italy requiring mandatory Covid-19 tests for passengers returning home. The obligation to wear a mask in the open air is reinstated in the following days.

Monitoring of a forced return chartered flight to Egypt.



16 **Prison:** a New Chart of the Rights of the Children of Detained Persons is signed.

Press release of the National Guarantor: «Pavia’s prison seems abandoned to itself».

17 Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Bologna

18 *Ad hoc* visit to the “Airoldi e Muzzi” nursing home (RSA) in Lecco.

President Mauro Palma gives a speech at the 9th Congress of the “Nessuno Tocchi Caino” Association, Milan-Opera.

Ad hoc visit to Milan’s Opera prison.



19 **Chile:** Gabriel Boric is elected president of Chile.



Tragedy on a workplace: a building crane collapses on buildings in Turin. Three dead.

20 **Monitoring of a forced return chartered flight to Tunisia.**

President Mauro Palma participates in the inauguration of the project “Liberiamo la salute: telemedicina negli Istituti penitenziari”, at Rebibbia prison, Rome.

Lesson of the Board on “Governare l’immigrazione e tutela della libertà personale” at Teramo University, Faculty of Law, Course of Immigration Law and Rights of the Migrants.



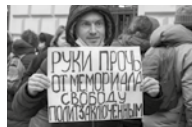
22 Prisons: the Secretary of State for Justice Cartabia presents the conclusive report of the Commission for reforming the Italian penitentiary system.



25 Another Christmas with rescue operations and a shipwreck in the Mediterranean sea. More than 900 migrants wait for a safe port.



26 South Africa: Desmond Tutu, Nobel Peace Prize, dies at 90. He was the conceiver and president of the Truth and Reconciliation Commission.



28 Russia: Russian Supreme Court orders the shut down of Memorial International, the Russian Organisation for Human Rights.

30 Ad hoc visit to the Psychiatric Care and Treatment Unit (SPDC) of the Hospital San Camillo-Forlanini in Rome.

Monitoring of a forced return chartered flight to Tunisia.

2022

Gennaio



5 Kazakhstan: high tension in Kazakhstan, the government led by Prime Minister Aksar Mamin steps down after heavy protests shaking the former soviet republic over the rise in gas and fuel prices.



8 Covid-19: vaccine obligation in force for all over-fifties.

10 Ad hoc visit to the Rebibbia's women prison "Germana Stefanini" in Rome, the visit is joined by the Regional Guarantor of Latium Region and of the Municipal Guarantor of Rome.

Giulio Regeni's Murder: The National Guarantor attends the chamber of council of a preliminary hearing on the murder of the Italian PhD student.



David Sassoli: the President of EU Parliament dies at 65. A life between journalism and politics. Citizens and the EU institutions express their condolences.



Foggia: during the first 11 days of the new year, 8 bombs explode in the Apulian city, they were planted against entrepreneurs and shop keepers. Minister Lamorgese visits the city.



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Ad hoc visit to the “Raffaele Cinotti” prison of Rome-Rebibbia.

12 **Monitoring of a forced return chartered flight to Egypt.**

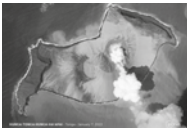


13 **Crimes against humanity:** the German Court of Koblenz finds Anwar Raslan guilty of crimes against humanity. Raslan is a former Syrian Colonel and agent of the secret police of Bashar al-Assad, charged with the accusation of abuses on detainees ten years ago.

Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Padua.

President Mauro Palma meets Maria Milano Franco d’Aragona, regional Superintendent of Penitentiary Administration of Veneto-Friuli-Venezia Giulia and Trentino Alto-Adige, Padua.

14 **President Mauro Palma accompanies the Secretary of State for Justice Marta Cartabia in the visit to the prison of Sollicciano, Florence.**



15 **Tonga:** the eruption of the submarine volcano in the Hunga Tonga - in the Hunga Ha’apai archipelago-provokes a tsunami in a wide area of the Pacific ocean.

Lesson of President Mauro Palma at the Higher Training Course on “Profili teorici e pratici dell’esecuzione delle pene e delle misure di sicurezza” on “Gli strumenti di rigore. Il regime dell’articolo 41-bis o.p.”, organised by the Milano-Bicocca University, online.



18 **European Union:** the Maltese Roberta Metsola elected President of the European Parliament.

President Mauro Palma meets the students of “Giosuè Carducci”, classical high school in Milan.

Lesson of President Mauro Palma at the Training Course “Etica e Sicurezza: coordinamento e gestione degli eventi critici”, organised by the Higher School of Penitentiary Enforcement “Piersanti Mattarella” of the Department of Penitentiary Administration, online.

President Mauro Palma meets Pietro Buffa, Lombardy’s Regional Superintendent of the Penitentiary Administration, Milan.

The Justice Commission of the Chamber of Deputies hears the National Guarantor, as figure of reference, under the review of bill C.2933 (Bruno’s proposal) on matter of promotion and support of the theatre activities in prison, online.



President Mauro Palma participates in the national Conference of volunteering in justice field on “Mettere insieme le forze, le risorse, gli sguardi sull’esecuzione delle pene”, online.

20 Monitoring of a forced return chartered flight to Georgia.

Internal training seminar on the Subcommittee of the United Nations on prevention of torture (SPT), Rome.

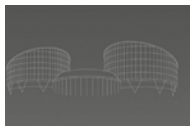
Monitoring of a forced return chartered flight to Georgia.



21 **Workplace accidents:** the eighteen-year old student Lorenzo Parelli dies in a factory, in the city of Udine, on its last day of internship.



23 **Burkina Faso:** President Roch Marc Christian Kaboré is deposed by a coup.



24 **European Court of Human Rights: the ECTHR condemns** Italy for inhuman treatment against a person affected by a severe psychiatric condition in Rebibbia prison.



Constitutional Court: the censorship of correspondence with defence attorney, under the regime 41-bis of the Penitentiary Law, is declared illegitimate. According to the Supreme Court, the presumption of collusion of the defence attorney with the criminal organisation is unsustainable.



School: students protest in Rome against the school internship programmes after the death of Lorenzo Parelli. Police charge student protesters.

Monitoring of a forced return chartered flight to Tunisia.

The Board participates in a meeting with Prison Directors and the Local Guarantors of Apulia Region, organised by the Regional Guarantor, Piero Rossi, online.

25 Monitoring of a forced return chartered flight to Albania.



26 **Poland:** Poland begins the construction of a new 186-kilometre border wall in an attempt to deter migrants entering from Belarus.

27 The Board participates in the meeting of the permanent round table for the Chart of the Rights of the Children of Incarcerated Persons.



2022

Over the course of a Year



29 Presidency of the Republic: Sergio Mattarella is re-elected President of the Republic with 759 votes. President remarks: «I have the duty not to shirk».



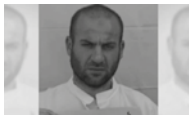
Constitutional Court: Giuliano Amato is the new President of the Constitutional Court.

31 The National Guarantor meets the Georgia's Ombudsman to discuss upon aspects of the international cooperation on forced returns and outline the operational capacities of both the NPMs in the post-handover phase of migrants' forced return flights towards Georgia, online.

Meeting with the Local Guarantors to create a network for the implementation of the right to submit claims for irregularly detained migrants.

Febbraio

2 Monitoring of a forced return chartered flight to Tunisia.



3 Islamic State: Abu Ibrahim al-Hashimi al-Qurayshi, leader of the Islamic State, is killed during a raid by the United States special operations forces in north-western Syria.



Presidency of the Republic: Sergio Mattarella has been sworn into office to serve a second term as President of the Republic in front of the two Chambers convened in a joint plenary sitting. In his inauguration speech, the re-elected President also dedicates a passage to prisons situation: «Dignity means a Country where prisons are not overcrowded and are able to ensure the social reintegration of the detainees. This is also the best guarantee of security».



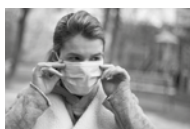
4 Olympic Games: inauguration in Beijing of the Olympic Winter Games.

President participates in a meeting on the situation of the RSA, organised by Amnesty International, online.

Inauguration day for the II level Master in Penitentiary Law and Constitution, IX edition, organised by Rome Tre University. Meeting between President Mauro Palma and Francesco Palazzo on "New rights in Penitentiary Enforcement".

8 Lesson of President Mauro Palma at the Training Course "Etica e Sicurezza: coordinamento e gestione degli eventi critici", organised by the Higher School of Penitentiary Enforcement "Piersanti Mattarella" of the Department of Penitentiary Administration, Rome.

9 Visit to Rebibbia prison special ward for prisoners under Prison Law 41-bis, Rome.



Covid-19: obligation to wear masks in the open air is removed.

The National Guarantor and the National Lawyers' Council (CNF) sign a Memorandum of Collaboration.

“Il Punto”, the first issue of the National Guarantor's newsletter is released.

12 Ad hoc visit to Melfi prison.

14 Lesson of President Mauro Palma at the Master in Penitentiary Law and Constitution of Roma Tre University.

Meeting of the Control Room for questions regarding subjects restricted pending admission in Residences for the execution of security measures (REMS), organised by the Commission of National Agency for Regional Health Services (AGENAS), online.



15 **Constitutional Court:** the referendum proposal on 'homicide of the consenting person' is declared inadmissible. According to the Constitutional Court «human life would not be preserved, in particular among the most fragile and vulnerable persons».

The Guarantor meets Roberto Manuel Carlés, Ambassador of Argentina, and some members of the Association of families of detained persons of the Argentinian Republic (ACIFAD) at the National Guarantor premises in Rome.



16 **Constitutional Court:** the referendum proposals on the decriminalisation of the cultivation of cannabis and civil responsibility of the justices are declared inadmissible. The referendum proposals on the provisions in matter of incandidability in the cases provided for by the Severino Law, limitations of protective measures and use of provisional custody for some criminal offences, separation between functions and careers of justices, and the elimination of the list of the “introducers” for the elections of the justices members of the Supreme Court of the Magistrates (CSM) are admitted.

President Mauro Palma meets Francesca Ferrandino, Head of Department for Civil Liberties and Immigration, Rome.

17 Monitoring of a forced return chartered flight to Tunisia.

21 Monitoring of a forced return chartered flight to Tunisia.



Over the course of a Year

2022



22 **Ukraine:** the Russian President Vladimir Putin recognises the independency of the Ukrainian separatist republics of Donbass; the decree is signed, during a live tv broadcasting, by President Putin and the leaders of Donetsk and Luhansk.

Ad hoc visit to the restricted prison regime wards (ex Art. 41-bis of Penitentiary Law) of Tolmezzo prison.

23 Meeting of the Control Room for questions regarding subjects restricted pending admission in Residences for the Execution of Security Measures (REMS), organised by the Commission of National Agency for Regional Health Services (AGENAS), online.



23 **Ukraine:** Europe and USA announce heavy sanctions against Russia.

President Mauro Palma meets Marta Cartabia, Secretary of State for Justice.

24 Monitoring of a forced return chartered flight to Tunisia.



Ukraine: Russian military invasion of Ukraine begins at dawn.

25 President Mauro Palma participates in the Convention “Il trattamento individualizzato del detenuto”. Art in prison, discussion and proposal by operators and defence attorneys organised by the National Lawyers Association - Venice, online.

28 The Guarantor meets the Head of Department for Information and Publishing of the Presidency of the Council of Ministers.

Marzo

Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the local Units of the Carabinieri Corps, Genoa.



2 **Ukraine:** the Italian Parliament approves the proposal of sending weapons and aids to Ukraine.

Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Turin.



Ad hoc visit to Turin “Lorusso e Cutugno” prison.

3 Ad hoc visit to the restricted prison regime wards (ex Art. 41-bis of Prison Law) of Cuneo’s prison.



4 Anti Covid-19 vaccine obligation enters into force in Italy: pecuniary penalties for unvaccinated over-fifties.

President Mauro Palma gives a speech on “Affettività e diritto alla sessualità negli istituti della pena” in the cycle of meetings “Fragilità e bisogni: le nuove frontiere del diritto”, organised by Bologna University, online.

5 Thematic visit to the restricted prison regime wards (ex Art. 41-bis of Prison Law) of Parma prison.

Meeting of President Mauro Palma with Massimo Macera, Questore (Commissioner) of Parma.

The National Guarantor meets Roberto Cavaliere, Emilia Romagna region Guarantor of the persons deprived of liberty.

7-8 Meetings and exchange of operational information with the Public Defender (Ombudsman) of Georgia to build a programme of international cooperation on the joint monitoring of return flights for Georgian citizens and signing of the Cooperation Agreement.

9 Monitoring of a forced return chartered flight to Egypt.

The National Guarantor meets a EuroMed Rights delegation to talk about the situation in Tunisia and the relations with Italy on the subject of forced returns.

Lesson of the Board of the National Guarantor at the basic Training Course for intercultural mediators of the Higher School of Penitentiary Enforcement “Piersanti Mattarella”, Rome.

10 Monitoring of a forced return chartered flight to Tunisia.

Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Cagliari.

Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Sassari.



Over the course of a Year

2022

Meeting of the delegation with Emmanuele Farris, delegate of the prison university centre of Sassari University.

12-14 *Ad hoc* visit to Sassari prison.



12 **Saudi Arabia:** 81 death sentences are executed in a single day.



14 **Police:** police forces start using tasers in eighteen Italian cities.

Visit to the Macomer CPR.

15 *Ad hoc* visit to Nuoro prison.

President Mauro Palma meets Luca Rotondi, Prefect of Nuoro.

17 Lesson of the Board of the National Guarantor at the basic Training Course for intercultural mediators of the Higher School of Penitentiary Enforcement “Piersanti Mattarella”, Rome.

The Memorandum of Understanding between the Carabinieri Corps and the National Guarantor is renewed, Rome.

The National Guarantor presents its observations as *amicus curiae* at the European Court of Human Rights on the case *Y.A. and Others v. Italy, B.G. and Others v. Italy, M.S. and J.M. v. Italy*.



18 **Secretary of State for Justice:** Guido Renoldi is the new Head of the Department of Penitentiary Administration.

President Mauro Palma participates in the Convention “La vulnerabilità dei diritti nella privazione della libertà”, organised by the Ministry of Culture, Rome.

President Mauro Palma participates in the debate “Il carcere nella società - Il ruolo delle istituzioni pubbliche e della società civile per una pena rispettosa della Costituzione”, organised by the Democratic Party of Piedmont region, online.

21 The National Guarantor on Regional Guarantors’ situation: «Liguria, Basilicata, Sardinia and Calabria should rapidly appoint their Regional Guarantors».



UNAR and National Guarantor sign an intra-institutional Collaboration Agreement.



22 Court of Cassation: a single act harmful to the adverse Party is to be considered torture.



Mario Cerciello Rega Murder: Rome Court of Assizes of Appeal reduces penalties for Finnegan Lee Elder and Gabriel Natale Hjorth, responsible of the murder of the Carabinieri's Superintendent: 24 years to Elder and 22 to Hjorth.

President Mauro Palma participates in the Convention on “Una nuova stagione per i diritti delle persone con disabilità? Le prospettive di riforma alla luce della legge delega n. 227 del 2021”, organised by Milan University, Department of Italian and Supranational Public Law, Milan.

The report on SPDC of San Camillo-Forlanini Hospital in Rome is released. «No to restraint measures applied in the hospital's aisles».

25 President's hearing at the IX Commission of the Supreme Court of the Magistrates on “Recreating the mixed commission for tackling the issues encountered by the Supervisory Judiciary and the Penitentiary Enforcement”, Rome.

The National Guarantor participates in the opening of the judicial year of the National Lawyers' Council (CNF), Rome.

28 Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Chieti.
Visit to the “suitable premises” of Chieti.

The National Guarantor meets the associations of families of the persons detained in RSA.

The National Guarantor meets the Committee for the Prevention of Torture (CPT) of the Council of Europe before its periodical visit to Italy, Rome.

29 President Mauro Palma participates in the Convention “Detenzione senza condanna: la situazione degli stranieri irregolari - Presentazione dell'Osservatorio della Giurisprudenza CEDU”, organised by the Lawyer Union for Protection of Human Rights of Palermo, Online.

Aprile

Visit to the “suitable premises” at Ponte Galeria CPR, Rome.



End of the state of emergency: after two years the state of emergency - declared on January 31st, 2020 for the Covid-19 pandemic - is ended.



Over the course of a Year

2022

4 The Board meets Giovanni Melillo, Chief Prosecutor of Naples.



Cucchi Case: the Court of Cassation sentences two Carabinieri to 12 years for involuntary manslaughter. During the following days they turn themselves in the prison of Santa Maria Capua Vetere. On the 7th of April, other 7 Carabinieri are convicted in the first instance trial for diversion.

6-7 AMIF Training: Study and training day on the monitoring of forced returns for members of the Regional Network of Monitors.

7 The National Guarantor signs the collaboration agreement on the “Procedure for submitting claims for migrants detained in CPRs” with the Guarantors of the persons deprived of liberty of Piedmont and Apulia Regions and of the city of Turin.

8 The Guarantor participates in the meeting of the CPT after the periodical visit to Italy at the Ministry of Foreign Affairs, Rome.

Mr Guido Renoldi, Head of Department of DAP, meets the National Guarantor, Rome.

The Board meets Giovanni Melillo, Chief Prosecutor of Naples.

11 *Ad hoc* visit to Poggioreale prison, Naples.

The National Guarantor presents its observations as *amicus curiae* at the European Court of Human Rights on the case *Matteo Lavorgna v. Italy*.

13 President Mauro Palma gives a speech at the seminar “Studiare rende pericolosi?”, sponsored by the Department of Law of Bologna University, Bologna.

Ad hoc visit to Bologna juvenile prison.

14 *Ad hoc* visit to Ferrara prison.



20 Violence in Turin prison: 22 agents of the Penitentiary Police are sent to trial, after being investigated for alleged torture crimes committed inside the “Lorusso e Cutugno” prison in Turin.

21 Monitoring of a forced return chartered flight to Georgia. First joint monitoring operation with the Public Defender of Georgia, based on the Agreement signed on March 7th, 2022.



Council of Europe: fix a limit for detainees to be strictly respected to avoid overcrowding in prisons. This recommendation is included in the Annual Report of the Committee for the Prevention of Torture.

The National Guarantor meets Fabrizio Petri, Special Rapporteur on Human Rights and LGBTQ+, of the Farnesina.

22 President Mauro Palma and the Board participates in the Spring School of the European Penological Centre on Penalty and new technologies between “trattamento e sicurezza”.



24 **Presidential Elections in France:** Emmanuel Macron wins second term elections for French presidency with over 58% of the votes.



26 **Santa Maria Capua Vetere prison:** 107 suspected are sent to trial for the violence committed in the same prison back in 2020.

Hearing of the National Guarantor before the Work Group created in accordance with the Ministerial Decree 28 October 2021 by the Secretary of State for Justice for the drafting of a legislative decree concerning the creation of a comprehensive framework for restorative justice.

Training day organised by the National Guarantor on the monitoring of forced returns for the Guarantor of the persons deprived of their personal liberties of Campania Region.

President Mauro Palma gives a speech at the presentation of the Report of Campanian Regional Guarantor, Samuele Ciambriello, Naples.

President Mauro Palma takes parts in the presentation of the book “*Il carcere. Aspetti istituzionali e organizzativi*”, organised by the Department of Political Sciences of “Federico II” University of Naples at the juvenile prison of Nisida.

President Mauro Palma meets the Public Prosecutor of Naples.



29 **The Director Executive of Frontex resigns.** After seven years of uninterrupted tenure of office, Fabrice Leggeri leaves the European Agency after the accusations made by OLAF, the European Anti-fraud Office, regarding funds management and the investigations on illegal refoulements in the Mediterranean sea.

Thematic visit to 4 I-bis prison regime wards of the prisons of Terni and Spoleto. During the visit President Mauro Palma meets Donatella Tesei, President of Umbria Region, Grazia Manganaro, Deputy President of the Supervisory Court of Spoleto and Umbria Regional Guarantor, Giuseppe Caforio.



Over the course of a Year

2022

Maggio



Easing of Covid-19 related restrictions: the green Pass is no longer required to access workplaces; masks are not compulsory to enter bars and restaurants.

3 President Mauro Palma gives a speech at the 4th national Convention of the chaplains and the operators of pastoral care in prison on the theme: “La funzione del Garante nella difesa della dignità e dei diritti della persona”, Assisi.



7 **Afghanistan:** Taliban government orders women to wear burqa in public.



8 **Elections in Great Britain:** change in Northern Ireland, the republican Sinn Fein wins the elections.

The National Guarantor takes part in the award ceremony of “Gara nazionale di diritto internazionale umanitario 2022” organised by the Italian Red Cross.

9 President Mauro Palma participates in the celebration of the Remembrance Day dedicated to the victims of terrorism, Palazzo Montecitorio, Rome.

9-14 Regional visit in Tuscany.

11 Lesson of President Mauro Palma at the Training Course for Ordinary Magistrates in training (MOT) at the Higher School for Magistrates, Scandicci.

11-12 The National Guarantor meets the delegation composed by Tunisian independent associations working on human rights under the Trust Project sponsored by the Danish Institute for Human Rights.

Lesson of President Mauro Palma at the Information Seminar on the treatment of the persons deprived of liberty for the Commanders of the Local Units of the Carabinieri Corps, Perugia.

15 President Mauro Palma participates as a speaker at the conclusive lesson of the course “Diritto dell’esecuzione penale e tutela internazionale dei diritti e delle libertà fondamentali” on “Obblighi inderogabili e diritti inalienabili nella privazione della libertà personale” at Pavia University, Pavia.



I. Chronos is Saturn: The Time of Infamy

There is a before and after: they are four hours away from each other. In between, seasons end abruptly, beating the line of time. Even prisons do not escape the cyclic nature of history. Researchers, people living the reality of prisons, monitoring its evolution know how important is to anticipate those ruptures. They know that soon after nothing will look, even remotely, like before. Discerning minds will also anticipate them, as they see all elements in place to make those ruptures happen.

Over the last twenty years, the Italian penitentiary system has gone through, at least, three ruptures, transforming it, marking its history.

On 31 July 2006, Monday, the Pardon Law no. 241 is approved. It is the last provision of law on matter of pardon voted by the Parliament: three weeks after, based on the pardon ruling, more than one in three detainees are set free. Overcrowding drops and the restricted population goes down to 39 thousand, one among the lowest after WWII.

The Pardon effect, however, is not going to last. The trend in presences rises again and, in two years, we are back to square one.

Reduced spaces are back, so is overcrowding; the pre-conditions for a new rupture resurface: Tuesday, 8 January 2013, the European Court of Human Rights issues a historic judgement on the case *Torreggiani and Others v. Italy*. It condemns Italy for the systematic violation of Art. 3 of the Convention (prohibition of torture and cruel or degrading treatment). It is a landmark of infamy that triggers changes, creates a new awareness and reforms paths (although non-structural).

However, even in that situation numbers fall down significantly but in a slower manner: from a restricted population of 70 thousand in 2010-2012 to a little more than 52 thousand at the end of 2015.

Hence, the third rupture: 9 March 2020, Monday, the pandemic forces Italy into lockdown; prison population experiences the biggest riot in decades. Protests scale up among fear and devastation, and reach their tragic peak with the deaths in Modena and Rieti prisons, while other prisoners are transferred to other establishments at night. This time is different, a different level of rupture is evident. Something that does not stop with the appeasement of March's riots. It remains, under the surface, like a crack only apparently repaired, but getting bigger and bigger under the plaster.

6 April 2020, Monday. The first day of the Holy Week. The daily bulletin of Covid-19 contagion and death rates marks the passing of time in our Country and in the entire world. Time is suspended because of the pandemic. Santa Maria Capua Vetere is a town situated in midst of a waste facility, a tangle of streets and a field of 'friarelli'. It is three o'clock in the afternoon, an extraordinary prison search begins in the ward 'Nilo' of the local prison Francesco Uccella. Search is ordered after some

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Over the course of a Year

protests and episodes of «hostile behaviour» happened the day before (text quote from the annotation of the video footages filed with the documents of investigation)¹.

Four hours. That is what separates *before* from *after*. Four hours of violence, tortures, beatings, and abuses. It is not a «reaction to riots, but deliberate violence», this is how the Secretary of State for Justice, Marta Cartabia, defines it in July 2021. Facts will be restored by the criminal trial, and responsibilities will be ascertained. But the laceration remains.

What does it mean? Greek mythology tells us about *Prometheus Bound*, guilty of stealing fire from Gods. Zeus punishes Prometheus by chaining him to a rock at the ends of the world, watched by two guardians: *Kratos* (might, strength) and *Bia* (violence). Hephaestus, God of fire and Zeus's son, is touched by the punishment inflicted to Prometheus and asks to the watchers the reason of such harshness: *Kratos* articulates a complete answer, while *Bia* stays silent, unable to find the words to explain. This silence signs the difference between the legitimate use of force, typical of the Rule of law, and the unjustifiable, hence unspoken, use of violence, typical of barbarity.

Eligio Resta, philosopher of law, writes: «Violence is not a mean like any other to achieve an end, it is a deliberate choice to achieve an end by any possible means; for this reason, it implies nihilism»². Therefore, nihilism, as the force that changes into violence, takes prison out of the perimeter of rights.

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Eligio Resta, philosopher of law, writes: «Violence is not a mean like any other to achieve an end, it is a deliberate choice to achieve an end by any possible means; for this reason, it implies nihilism». Therefore, nihilism, as the force that changes into violence, takes prison out of the perimeter of rights. But, values and rights are exactly the opposite of nihilism.

Among the messages received in the past year, those coming from the CCTV of the prison of Santa Maria Capua Vetere are the worst for those who know little or nothing about prison. They convey the meaning that some public places can live in a dimension where nihilism becomes the rule. For those who know prison and spend every day committing themselves, those who try to understand what a criminal sanction means to a community, for them it is extremely frustrating to see their efforts disappear in four hours. They end up asking if there is any other aim except the annihilation of the bodies of such *humanity in excess*.

Michele Miravalle

1. For a reconstruction of the facts and circumstances, refer to L. Romani (2021), *La Settimana Santa. Potere e Violenza nelle Carceri Italiane*, Edizioni Monitor, Naples.

2. E. Resta (2020), *L'Universo della Violenza* in "Antigone" year XV no. 2, pp. 13-25.



2. Kill Chronos: A Rapid Ascertainment of the Facts.

The facts occurred on that day in Santa Maria Capua Vetere are by now widely reported, when: «In addition to violence, other forms of humiliations took place, such as forcing to drink water from WC and spits. These provoked intense, emotional reactions among the prisoners, such as crying, shaking, fainting, enuresis. After the four-hour slaughtering, physical and psychological sufferings were also perpetrated in the following days [...]».³

It is not our role to ascertain facts and responsibilities, the Judicial Authority is entrusted with the assessment of the case.

What we deem relevant is to point out that time is of the essence in the emersion of episodes of torture: Santa Maria Capua Vetere case proves that only a rapid ascertainment of the facts can infringe the code of silence generally surrounding these situations⁴.

Act rapidly and for the best (the hearing has been scheduled for 23 July 2023 as the case was considered “not urgent”), so that facts can be ascertained and become present and collective memory, as «memory has the task of saving, [but] memory is also memory of the evil»⁵, and the crime of torture cannot be ever forgotten⁶.

Hence, *time*. Time is all we need, to get into that courtroom, in the desolated land of the prison where it all happened, and where the procedure takes place; time for ordinary checks, roll calls, time to discuss on the matter.

What we deem relevant is to point out that time is of the essence in the emersion of episodes of torture: Santa Maria Capua Vetere case proves that only a rapid ascertainment of the facts can infringe the code of silence generally surrounding these situations.

Act rapidly and for the best.

3. Court of Cassation, Sec. V, 09/11/2021 – 16/03/2022, no. 8973, pp. 8/15, in www.giurisprudenzapenale.com, 22 March 2022. The Decision of the Court of Cassation confirmed the precautionary measures taken against the appellant - the Commander of the Penitentiary Police of the “Francesco Uccella” prison. The Court deemed incontestable the ruling of the Criminal Review Court over the «existence of a system [...] for which the facts ascertained cannot be considered random or happened under exceptional circumstances as claimed by the appellant.»

4. D. Di Cesare (2016), *Tortura*, Bollati Boringhieri, Turin. The author observes: «It is understandable why the agent or the official, suspected with violence, tries to dissimulate, to act secretly, as if they were acting in their own name and non in the name of the coercive power vested in them by the State authority. Therefore, the State can only intervene, as a third party, a mediator between its representative and the violated subject, and in so doing risks to cancel its political role».

5. R. Cazzola (2012), *Fra Eclissi di Dio e Supidià del Male*, in G. Forti, C. Mazzucato, A. Visconti (ed.), *Giustizia e Letteratura* I, p. 330 and ff., Edizioni Vita e Pensiero, Milan.

6. P. Gonnella (2013), *La Tortura in Italia. Parole, Luoghi e Pratiche della Violenza Pubblica*, Derive Approdi, Rome. The author points out how «memory and desire for justice in these cases are the sole source of salvation of the tortured person. But ‘render justice’ can not be a mere personal expectation. It is a duty for the entire community to make sure it happens.»



Over the course of a Year

Time is also the slow beat of those living in a prison. Days all look the same to a prisoner, restricted in a motionless dance, whose rhythm can vary from prison to prison⁷, and time is what we need to comprehend the disvalue of a conduct and to imagine a future perspective⁸.

Observation. «We should remember what Bentham said about the *Panopticon*: it is definitely a form of architecture, but it is, above all, a form of government: it is a way for the spirit to exercise power on the spirit. He saw the *Panopticon* as a definition for the exercise of power», said Michel Foucault⁹.

In this case, there is not a centralized “eye”, the dystopia of the Leviathan, the one that captures images and uses them; there are *frames* captured by rickety cameras illuminating dark corners, which for unintended consequences, consign to memory what happened. Now, we can no longer say: «I didn’t know, They didn’t inform me».

Hence, time, observation and memory hold together to bring to everybody’s conscience what the conscience of individuals had lost. As it happened for the cases of San Gimignano and Ferrara prisons, the “truncheons” of Santa Maria Capua Vetere now have names, and the State could finally enter into a courtroom to hold them accountable. It was able to do so thanks to the investigation carried out by a young Supervisory judge, who entered in that prison to discover what had happened. He built and preserved memory, and delivered the evidence of the indecency he saw to competent authorities..

Time is of the essence also in this consignment act: the products of the technological eyes are time-sensitive, have a limited duration, after which they are erased and overlapped by other images.

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William Butler Yeats said: «*In balance with this life, this death*»¹⁰. These words are for Lamine Hakimi¹¹, so that someone could take care of his soul.

Michele Passione

7. R. Musil (2004), *Pensione Nimmermher*, in *Pagine Postume Pubblicate in Vita*, Einaudi, Turin 2004, p. 41; English translation from *Posthumous Papers of a Living Author*, Steerforth Press. «If twenty clocks are hanging on one wall and you suddenly look at them, every pendulum is in a different place; they all tell the same time and yet don’t, and the real time flows somewhere in between».

8. R. De Vito (2017), *L’Orologio della Società e la Clessidra del Carcere. Riflessioni sul Tempo della Pena*, in “Questione Giustizia” no. 1.

9. M. Foucault (2011), *L’emergenza delle Prigioni. Interventi su Carcere, Diritto, Controllo*, La Biblioteca Junior, Florence, p. 130.

10. W. B. Yeats (1919), *An Irish Airman Foresees his Death*, in *The Wild Swans at Coole*.

11. Lamine Hakimi, age 27, Algerian, dead on 4 May 2020 in the isolation ward of Santa Maria Capua Vetere prison. The Prosecutor formulated, for this case, the accusations of torture aggravated by death and manslaughter.



3. . Time as an Operator of the Sentence

Time is in many ways essential for the question posed by “obstructive” life sentence, as provided for by Art. 4-bis of the Prison Act concerning prisoners not cooperating with authorities. Criminals sentenced to “hard-prison regime” lose their right to penitentiary benefits, to restrictive measures other than hard detention, and to conditional release, unless they have been collaborating with the judicial authority¹².

Time is marked by the decisions of the Higher Courts: the European Court of Human Rights first¹³ and, later, by the Constitutional Court¹⁴. During this year, the Constitutional Court marked the time for the Italian Parliament. The highest court asked the Italian Parliament to take action on the law and bring it to parameters of constitutional legality in accordance with its ruling: an entire year has passed from the filing of the order on 11 May 2021 to 10 May 2022.

This was the waiting time for those sentenced for “obstructive” crimes that could have actually benefited from the right to social rehabilitation granted by Art. 27 of the Italian Constitution. They waited for the Constitutional Court to rule in favor of the unconstitutionality of the law and in support and the rehabilitation aim of the sentence. Prerequisites were found on this basis but, in the end, the Court opted for an open-end decision¹⁵.

Lastly, or maybe in the first place, time creates a different sentence from the one provided in the Criminal Code: the time of life becomes time of sentence. In fact, as we know, the usual life sentence, the one marked by «conviction end day: 9999» is compliant with the provisions of the Constitution only in so far as a prisoner can see his life sentence reduced and granted a conditional release¹⁶. From a logical point of view, life sentence stays in our judicial system «just as a mere *nudum nomen*, it justifies itself inasmuch as it is abolished in practice; it is constitutional, inasmuch as it is written off from the

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12. Following the ruling of the Constitutional Court no. 253 of 23 October 2019 (drafted by Nicolò Zanon), permission leaves, of which at Art. 30-ter of the Prison Act, initially being included among those non applicable to hard-prison regime, are also granted to offenders sentenced on the basis of the crimes of Art. 4-bis, para. 1 of the Prison Act only in case there is evidence that the prisoner has cut all connections with the organized crime, and there is no fear for their reactivation.

13. European Court of Human Rights, Sect. 1, sentence *Viola v. Italy no. 2* (7770633/16) of 13 June 2019, effective from 7 October 2019.

14. Ruling 97/2021 of 15 April 2021, drafted by Francesco Viganò, effective from 11 May 2021.

15. On 22 March 2022, 1,280 prisoners over a total of 1,822 convicted to a life sentence fall within the “obstructive” crimes provided for by Art. 4-bis of the Prison Act.

16. Constitutional Court, sentences no. 204 of 4 July 1974, and no. 264 of 22 November 1974.



Over the course of a Year

The “obstructive” life sentence only allows a reduction of the sentence when the prisoner starts collaborating with the judicial authorities; unless so, time becomes the essence of a sentence, which is a sentence to life and until death overtakes. Duration becomes substance, it shapes a new type of sentence which does not deprive a person from having a physical life, but surely deprives it from the very existence.

legality system»¹⁷. On a factual level, people convicted to a life sentence were 663 when the above statement was made; as of today, they are 1,822.

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The dialogue between the two Courts had the characteristics of urgency: judges from the Strasbourg Court pointed out the structural nature of the question with the Italian judicial system. They affirmed that it excessively limits «the prospective of release for the interested party and the opportunity of benefiting from a review of the sentence»¹⁸. In this sense, they referred to a conspicuous number of appeals pending before the European Court and their probable increase over time. The European Court of Human Rights meant that a timely action was due to adequate the norm to the principles fixed in Art. 3 of the European Convention for Human Rights to spare our Country the foreseeable burden of economical sanctions. The answer from the Italian Court came quickly. A few months later, it issued a sentence that took down a piece of the solid structure of the “obstructive” conditions, granting access to “permission leaves”¹⁹.

A year ago, the Constitutional Court ruled in support of the ruling taken by European Court to overcome the automatic “obstructive” system and the realign the norm through a legislative action²⁰.

The one-year time accorded by the Constitutional Court to the Italian Parliament to take action and resume constitutional legality to the “obstructive” system, with the exception of an intervention of the same Constitutional Court, expired.

In consideration of the «progress made in the formation of the law»²¹, the Senate’s Justice Commission is currently examining the proposal of law which is been already approved by the Chamber of Deputies, the Constitutional Court approved the request presented by the Presidency of the Council of Ministers and, on 10 May 2022, ordered the postponement of the treatise of the legitimacy questions to the public hearing of the 8 November.

The text approved by the Chamber of Deputies redefines the criteria for access to penitentiary benefits, to alternative measures and conditional release of those convicted for crimes included -with

17. Salvatore Senese, Report on the draft law containing provisions on the abolition of life sentence (S. 211, 13th Legislature), approved by the Senate on 30 April 1998.

18. Constitutional Court, Judgment no. 264 of 22 November 1974, para. 136.

19. Judgment no. 253 of 22 October 2019, quoted in Note 1, delivered by the Constitutional Court four months after the decision took by the ECHR, and 16 days after the *Grande Chambre* rejected the request of the Italian government for a preliminary ruling.

20. ECHR, quoted judgment, para. 143.

21. Press Release of the Constitutional Court of 10 May 2022.



following integrations over time, based on the social “emergency” perceived by the Legislator- in para. 1 of the Art. 4-bis of the Prison Act. The reform involves people convicted to life sentence, temporary penalties, organized crimes, as well as crimes against public administration or individual liberty, regardless of whether they were committed in associative form or not.

It is frankly difficult to trace back this reform to the principles and modification parameters of the obstructive conditions of the Art. 4-bis of the Prison Act, as marked (the first) and indicated (the second) by the ruling of the Constitutional Court. The new provisions, among other questions, contain negative changes on the relevant discipline. Taking two of them by way of example: the acknowledgement of an impossible or irrelevant collaboration has been cancelled, although it remains in the transitional regulation, on the basis of the single case, for those convicted in prison or restricted in hospital for “obstructive” crimes before the enforcement of the new law; terms are also extended: from 26 to 30 years for access to conditional release of people convicted to “obstructive” life sentence, and from 5 to 10 years for the probation period. Again, time is the core of the question and of the type of sentence.

The most conflicted case with regard to the indications provided by the Constitutional Court is the access to any benefits (including permission leaves) or alternative measures provided for by the law, as well as the conditional release. The reform establishes a wide and complicate range of supporting evidence to be provided. It is almost impossible to meet all the criteria, especially when they refer to the past of a person convicted a long time ago, besides being referred to some kind of forecast based on a sort of “*probatio diabolica*”²².

The rehabilitation -pursued while serving long time in prison- stays in the backdrop; but, most of all, the change happened to the person after spending decades in prison are not taken into account. This reform looks backward.

Parliament will have another six months to complete its works and then the word will pass again to the Constitutional Court which will have to verify the intervention and take the consequent measures. Then, in any case, it will be necessary to verify the concrete fallout of the normative decisions taken in the year and a half of time allowed.

More waiting, while life in prison flows and consume itself. Echoing Henri Bergson and slightly modifying one of the philosopher’s most famous statements, Marco Pannella centered the action of its political battles on the affirmation: «Duration is the shape of things».

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22. This, in particular, refers to the requirement for supporting evidence proving that the convicted person does not carry with him anymore the danger of restoring the former connections with the organized crime.



4. Hinging Back the Time: What We Can Do Today

Time and place in prison -if the purpose of the sentence is correctly interpreted- intrinsically refer to another time and another place: the “end of sentence”. Time is projected towards the future, the afterwards, when the person will re-join society after serving time in prison for the crimes committed. Place is projected towards an ‘elsewhere’, definitely different from the restricted place where the person is serving the sentence.

Time is meaningful in prison only when a new perspective for the prisoner is built; it should entail a “future to live”, it does not matter how close or far in time it is. This principle is key, even though it is not central in the debate on prison, its characteristics and problems or hypothetical reforms.

Time is meaningful in prison only when a new perspective for the prisoner is built; it should entail a “future to live”, it does not matter how close or far in time it is. This principle is key, even though it is not central in the debate on prison, its characteristics and problems or hypothetical reforms. The reform of the Prison Act in 2018, which actually attained little results if compared with the initial hypothesis, was more concerned on “today - in” rather than “tomorrow - out”. It aimed mostly at the organisation of some aspects of the internal life of a prison, rather than looking into the persons moving from the inside to the outside world. This is something that the norm should provide for during the sentence, especially when we deal with measures alternative to detention.

But, *today* is more pressing. A prisoner’s life has an irreversible rhythm, very different from the one took into consideration in comprehensive reform plans. The *Commission for the Innovation of the Penitentiary System*, sponsored by the Secretary of State for Justice Marta Cartabia and chaired by Marco Ruotolo during the last months of 2021, worked on this point. Fourteen people, three months time to set up a comprehensive action strategy, centred on the quality of life, the facilities, the personnel and its training. The outlook was on the daily life in prison, its criticalities and possible solutions, to be implemented in short time. Daily life in prison cannot be considered as the ultimate purpose of the investigation conducted by the Commission. Today cannot be treated as the beginning and the conclusion of the Commission’s work. On the contrary, it should be considered as a necessary premise to build a better tomorrow, including a positive return of the person to life and social community. Our focus should be on *today* to improve the quality of time in accordance with the principles of autonomy and responsibility, in view of the outcome of socialization and integration processes. The aim is to ensure a quality of life which «is not only “decent”, but enabling the individual to “reclaim his/her own life through the activation of a self-determination process»²³.

23. Commission for the innovation of the penitentiary system (Ministerial Decree 13 September 2021 - President Prof. Marco Ruotolo), *Final Report, December 2021*, pp. 6-7.



With this view, the Commission prepared a comprehensive action strategy aimed at simplifying and increasing transparency in the management of the penal execution, starting from six areas: rights, employment and professional training, health, technologies, security, and staff training. Consistent with the constitutional principles concerning the penal execution, it identifies three different lines of intervention, involving different levels of responsibility and timing. The first identifies the possible actions -some thirty-five- which can positively influence prisoners or detainees life. They are also quickly implementable; the second one concerns the updating of the Penitentiary Regulation in some regards after twenty-two years of application; the third line consists of some bills of law. Three lines of action with three different timelines: if the bill of law require the verification of an adequate political space of manoeuvre, reglementary modifications can be implemented faster, as vouched by the Secretary of State for Justice in the set-up of the Commission. On that occasion, she also recommended to proceed swiftly for their definition. Lastly, the above thirty-five actions were conceived to be swiftly implemented by those in charge of the administrative responsibility.

Therefore, the actions proposed are not part of a comprehensive reform of the system, but a corpus of suggestions applicable at different levels of the system and with different times of implementation: from the configuration of the traceability of the requests made by the prisoners and people detained for different reasons to the configuration of instruments of jurisdictional complaints for missed or delayed answers; from the simplification of the authorisation process concerning the hospitalisation to special leaves obtainable not just in case of “very” serious events, but also for events ‘relevantly’ affecting the family life of the prisoner; from the redefinition of particular surveillance systems -also to face prison aggressions- to distance meetings which should not affect the total number of the meetings, from the creation of forms of prisoners representation for certain matters to the creation of a control unit for education in prison valorising, in particular, the integration of digital learning with in-presence learning, to technological innovation projects, such as the use of PC and other technological devices, including apps, connected to Internet through dedicated platforms, to manage different services, e.g., filing petitions, request family meetings etc.

Technological innovation was particularly relevant for the Commission, which included the use of adequate instruments for safety/security reasons. Information and communication technologies can represent a turning point both for prisoners and people working in the prison system, as this Report shows, in contrast with the traditional diffidence of the prison system towards the use of technology in restricted environments, especially prisons. A new perspective that tries to realign the rhythm of time ‘inside’ with the life ‘outside’. Now it is time to take action in this direction.

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5. A Mission for the Next Two Years

After decades of routine maintenance or indefinitely experimental interventions, on 22 December 2021, Law n. 227 delegating to Government matters concerning disability was promulgated. The law confers broad powers to modify and reorganise the current provisions. Its approval gives strength to the implementation of the Constitution, but also enacts the provisions of the Convention of the United Nations on the Rights of the Persons with Disabilities (CRPD), the Strategy for the Rights of the Persons with Disabilities 2021-2030 and the Resolution of the European Parliament of 7 October 2021 on the protection of persons with disabilities. Its origin is recent and can be traced back to the

strong impact -in terms of mortality, morbidity and social restrictions- caused by the Covid-19 emergency on the elderly and the people with disabilities living in «semi-enclosed communities», as defined by the “Istituto Superiore di Sanità” (National Institute of Health)²⁴.

In fact, due to a odd side effect, the crises provoked by Covid-19 acted as a linear particle accelerator of the requests concerning the transfer from residential institutions to community life, which have been around for long time.²⁵

Therefore, just a few months after the beginning of the pandemic, in June 2020, the Report for the President of the Council of Ministers “*Initiatives for relaunching Italy 2020-2022*”, prepared by the Commission of Experts in Economic and Social Matters, recommends: « the construction of alternative to RSA and RSD, supported by the implementation of therapeutical-rehabilitative projects for individuals, aimed at creating an independent life for people with disabilities, minors, elderly, and persons with mental health problems [...]»²⁶.

The proposal finds its realisation, some months later, in the component C2 of the Mission 5 of the National Recovery and Resilience Plan (NRRP), approved by the ECOFIN on 13 July 2021 which, besides providing for the measures aimed at preventing the institutionalisation of the non-self sufficient elderly, also envisages the Investment 1.2. *Autonomy paths for people with disabilities*, «with the aim of accelerating the deinstitutionalisation, providing social and healthcare services in communities and at home to improve the autonomy

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24. Istituto Superiore di Sanità, National Survey on *COVID-19 Infection in Long-stay Residential Care Homes*, in cooperation with the National Guarantor of persons deprived of liberty: <https://www.epicentro.iss.it/en/coronavirus/sars-cov-2-survey-rsa>.

25. The purposes of accelerating the de-institutionalisation and the contrast to segregation are found in the Decree of the President of Republic 4 October 2013 “*Adoption of a two-year programme for the promotion of the rights and integration of people with disabilities*” and in the Decree of the President of Republic 12 October 2017 “*Adoption of the second two-year programme for the promotion of rights and integration of people with disabilities*”.

26. Italian Government, *Initiatives for Relaunching Italy 2020-2022*, p. 40.



of people with disabilities», and the Reform I.I. *Framework Law on Disabilities*, «with the aims of deinstitutionalising and promoting the autonomy of the people with disabilities».

Law 22 December 2021, no. 227 embodies the commitment to reform, while maintaining the purpose of promoting the two dimensions of liberty, strictly connected to one another, in the measures contained in the NRRP: personal liberty and liberty of choice. Two concepts of liberty constituting the main pillars of the CRPD. Among the five interconnected areas covered by the Law, the theme of liberty is unavoidably associated with the «realisation of an individualised, personalised and participated life project». A multi-dimensional evaluation, a material and immaterial budget for the project and a reasonable accommodation are the main assets necessary to ensure the preparation and the implementation of the personalised project.

The life project identified by the law, individualised and participated, is actually «the specific instrument to ensure the «enjoyment of the fundamental rights and liberties», among which, in conformity with Art. 19 of CRPD «the opportunity to choose, for the person interested, without discriminations, his/her own place of residency and an adequate accommodation solution, while promoting a proper healthcare assistance and support at home». In this perspective, a specific guiding criterion contains a clear reference to the question of personal liberty, providing that within the personalised and participated project «can be identified supports and services to live autonomously and models for self-management of the services of personal assistance aimed at supporting independent life for adults with disabilities, favouring their life outside prison or residential homes and preventing life inside the same institutions». To this end, another criterion provides for «finding the necessary extra funding» and «reassigning the resources currently used for assistance in prisons or healthcare institutions to services supporting domicile care and independent life»”.

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The self-determination principle is also widely recognised, underlining that the individual project should not only be «aimed at implementing the objectives of the person with disabilities in syntony with his/her will, his/her expectations and choices [...]», but should also include «the active participation of the persons with disability and of their representatives». In fact, the conjunction “and” has significantly replaced the classic disjunction “or”. In addition, it is necessary «to ensure the adoption of reasonable measures for the positive identification and expression of the will of the interested person and his/her full understanding of the implementable measures and supports, so that the person subject to juridical protection measures or needing high-intensity support can also participate in the multi-dimension evaluation, and in the preparation of his/her personalised and participated life project along with its satisfactory implementation».

Now time has come for the legislative decrees enacting the Delegated Law to ensure the effectiveness of these two concepts of liberty.



6. Procedure and Life

How can it be possible for a fragile person to be excluded from social relations, following a third-party evaluation, because those relations are judged not adequate?

This may happen when the measure is deemed necessary, but it should be an extreme measure, to be adopted only in case other measures are proven to be inadequate to support a fragile person. It is actually necessary 'to try' all possible solutions, keeping in mind the value of self-determination for each person, most of all the value of *support*, which does not mean *substitution* to his/her will for those in charge of guiding and protecting the person.

During the last year attention has grown towards a symbolic case: an affluent elderly professor has been admitted to a residential healthcare facility to be protected from being circumvented by people close to him and for whom he has declared to have affection. It appears that the same persons could have put pressure on him and could keep doing it to take advantage of his wealth.

The case has been making headlines for almost two years: during the last year, traditional and social media uproar worsened the situation, making it difficult to find a good solution for the case. Time, also in these circumstances, is of the essence; it is necessary to find a swiftly implementable solution able to ensure the respect of his will and the needed protection. The age of the person involved, ninety-one, should impose a special consideration for the time. But procedural time clashes with the time of life.

Erving Goffman wrote: «Every institution captures something of the time and interest of its members and provides something of a world for them; in brief, every institution has encompassing tendencies. Their encompassing or total character, typical of some institutions that for this reason are defined "total" is symbolized by the barrier to social intercourse with the outside and to departure from the inside». How can a residential healthcare and assistance institution, founded to protect fragile subjects, incapable of providing for themselves their own needs, become a total institution or being perceived as such?

The protective measure adopted on October 2020 by the Judge of Voluntary Jurisdiction based on the proposal filed by his support administrator ruled that Mr. Carlo Gilardi – this is name of the elderly professor- should stay in a residential healthcare facility. The duration of the stay should be brief, proportioned to the time necessary to prepare the project needed to grant Mr. Gilardi the permission to return home; time was 'finite', presumably short. As it happens, time became 'indefinite'.

This is not the place to contest the decision taken by the judge: other institutions should analyse the case, taking into consideration all the elements, including legal reports and official documents. What we can do here is reflect on the 'distorted' timeline that has determined a prolonged stay in a residential healthcare facility, basically a semi-closed structure. A decision endured by the person, in his last years, without showing any respect for his will.

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from the inside»²⁷. How can a residential healthcare and assistance institution, founded to protect fragile subjects, incapable of providing for themselves their own needs, become a total institution or being perceived as such?

The story of the elderly professor calls for a reflection before answering. A non self-sufficient person is admitted in a residential healthcare facility as a measure that does not necessarily involve health or assistance related issues, but mainly protection from potential profiteers. The admission creates some sort of ‘entrapment’ inside the institution that, in fact, limits his self-determination and secludes the person from the outside and from his former life. Such strong limitations include, by way of example, to receive visits from family or acquaintances, if not in rare cases.

On the other hand, seclusion from or towards the outside can transform residential facilities in secluded places, as the experience of the pandemic -marked by the need to create barriers for avoiding infection- made clear to us. Such places do not provide space for individual choices; time and daily activities are constrained by rules applied to all the residence members: same rhythm, same activities, same internal social relations.

When the circumstances are expressly determined by an order of the court -as for the case of the elderly professor last year which has attracted the attention of the Parliament- people no longer own their time, they cannot decide where to move, where to stay or for how long. Time is only ‘allowed’ to be spent in the available spaces; therefore, a barrier is built between the time flowing inside the facility and outside it. That person cannot be himself anymore and play his role in society: brother, friend or professor. In this specific case, a clear separation between the inside and the outside was created by the proposal submitted by the support administrator. Mr. Giraldi was forced to adapt to the provisions, although they were contrary to his will. The newly set life conditions risk to estrange him from his cultural environment permanently, imposing the role of the assisted ‘guest’, creating the risk of ‘dis-culturation’ which would further impair his ability to manage the typical situations of daily life.

All this for the sake of protection. The question that should be asked then is what it means to *protect* a person when the protection itself ends up taking away the sense -weak, but customary- assigned by the person to his own life. Especially when time flows without a specific perspective because the only perspective announced by a court order is unfolding without a clear and defined path and timing. This indeterminacy deprives time of its experiential meaning and makes the very concept of protection ambiguous.

These are the main reasons why the case, which is still ongoing and has deeply involved the National Guarantor in the last year, poses questions to all of us, even beyond the search for a desirable solution for this specific case which can no longer be postponed.

²⁷. E. Goffman, *Asylums (1968)*, *Le istituzioni totali: i meccanismi dell'esclusione e della violenza*, Turin, Einaudi, pp. 33-34. [Courtesy translation].



7. Echoes from the Past

There are shadows that periodically return and always make the objects on which they rest hardly visible and unclear. This image fits well with the recurring debate on the fear of diversity, behaviour disorders and in particular, on the persons affected by severe mental health issues. The social dimension of such discomfort and the consequent multifaceted approach for a painless composition leaves room for the absoluteness of the disease and the one-way approach centred on safety/security: for the same person and above all for the external community.

When madness and crime are associated, then, the various forms of 'alterity' and separation prevail, even if they take the form, formally protective, of criminal non-liability for the crime committed, but implicitly diminishing the full recognition of the offender as a person. It is no coincidence that the segregation of disturbed offenders in special mental institutions stayed in our legal system for more than thirty years after the approval of the reform abolishing the institutionalization of psychiatric distress for 'not-guilty' offenders.

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Many issues came to light during the past year, mainly because of the scarce implementation level of the above mentioned reform and of the cultural bias existing among justice operators. These issues are well represented by the figures, by the institutionalisation as a 'priority solution' also for misdemeanours, by the unavailability of facilities, by the presence inside prisons of people that should not have ended up there or kept in those facilities waiting for their discharge orders to become effective.

It is undeniable that the reform launched in 2011²⁸ to overcome the OPGs, which culminated, after some postponements, with the approval of the Law 30 May 2014, no. 81, introduced significant cultural and legal innovations in the treatment of perpetrators of crimes suffering from psychiatric disorders and considered socially dangerous. The process, however, was immediately characterised by lights and shadows in terms of overall effectiveness. In particular, its concept, only partially defined, did not abolish the 'double track' contained in our code, which provides for *security measures* and did not take a stance on the epistemological ambiguity of the concept of *social dangerousness*, which lends itself to interpretation of prognostic type, extremely weak from a scientific point of view.

28. The reform started with Article 3-ter of the Law-decree 22 December, no. 211, converted, with amendments, into Law 17 February 2012, no. 9, as amended by Article 1, para. 1 letter a) of the Law-decree 31 March 2014, no. 52, converted, with amendments into Law 30 May 2014, no. 81.



An important reform to uphold and make enforceable as much as possible for its conceptual perspective, although we are aware of the difficulties encountered when applied to a system where criminal law variables remain unchanged and influence the mentality of those in charge for its application.

In the past year, the criticalities regarding the application of the reform were reviewed by the CSM (High Council for the Judiciary) and²⁹, subsequently by the Government³⁰, but they became more evident after Italy was condemned by the ECHR on January 2022 for the case *Sy vs Italy*. In this specific case, a person affected by mental illness, recipient of the security measure in REMS, was detained for long time in prison. This caused, among other things, a damage to his human dignity due to the degrading treatment received.³¹

In 2021, the Constitutional Court also took part in the question concerning the REMS to determine on the congruity of adequate constitutional protections set up in the above mentioned law 81/2014³²; in fact, there was a concrete risk that the reform started in 2011 could be deemed unconstitutional by the Court. With ruling no. 22 of 27 January 2022, the Court, while declaring the issues of constitutionality inadmissible, addressed a formal warning to the legislator to promptly identify structural solutions to the numerous critical issues of a legal and organizational nature, which still characterize the REMS system.

While the global framework of the reform was confirmed for some peculiar aspects, such as the

29. CSM's resolution of 19 April 2017 "Directives regarding the interpretation and application of the law concerning the overcoming of judicial psychiatric hospitals (OPGs) and the establishment of residences for the execution of security measures (REMS)," pursuant to law no. 81 of 2014 and resolution 24 September 2018.

30. In 2017, the Government had tried to address the issue of psychiatric assistance in prison through the preparation of legislative decrees in accordance with the provisions of the Law of 23 June 2017, no. 103. It was an attempt to tackle the questions concerning the psychiatric distress of the detainees, differentiating and strengthening the effectiveness of the interventions for those judged 'not guilty' of criminal offences and benefiting of a psychiatric security measure. Detainees and internees suffering from psychological distress living together within an asylum, and the consequent indeterminacy of possible intervention *was* and still *is* the core of the asylum conception, where everything is indistinct, except for the impossibility of self-determination. However, the reform proposals, during the parliamentary debate were largely disregarded, with the result of determining, among other things, a setback in the question regarding mental protection within prisons.

31. *Case Sy vs Italia* (11791/20), 24 January 2022. The story dates back to July 2018 when the Judge of preliminary investigations of Rome ordered the placement of Mr. Giacomo Seydou Sy in a REMS. Thereafter, he was taken to his home under community control, which he left after some time. For this reason, he was taken to prison, where remained until 27 July 2020, as the REMS had not available places at the time. In the interim provision dated 7 April 2020, ECHR recognised that the situation had violated Articles 3, 5, 6 and 34 of the European Convention on Human Rights. With regards to the violation of Article 3, the Court states «despite Sy's mental health being incompatible with prison, he remained in Rebibbia for two years, in a context characterised by poor prison conditions, so preventing him benefiting from therapeutic provisions to avoid his condition become more severe».

32. The referring court also highlighted that the Ministry of Justice lacked real power, *ex Art. 110* of the Constitution, to enforce the execution of security measures in REMS. In addition, based on the fundamentals of Art. 25 and Art. 32 of the Constitution, the same court envisaged possible unconstitutional profiles of the Law 81/2014 on questions pertaining personal liberties matter and mandatory health treatment.



Over the course of a Year

In 2021, the Constitutional Court also took part in the question concerning the REMS to determine on the congruity of adequate constitutional protections set up in the above mentioned law 81/2014; ; in fact, there was a concrete risk that the reform started in 2011 could be deemed unconstitutional by the Court.

«valorisation and strengthening of therapeutical alternatives for mental health existing at local level that would prevent the custodial provisions in REMS»³³, the overall shortage of places and the territoriality principle applied to the enforcement of security measures in REMS made the provision ineffective in most cases. The Court urged an «adequate involvement of the Ministry of Justice in the coordination and monitoring activities of the existing REMS and other instruments for mental health protection»³⁴. The Court, in fact, observed that the execution of a safety measure, based on its nature, should be immediately enforced³⁵, and envisaged that the Ministry of Justice should assume a functional role in the security measure system, including REMS.

In addition, taking into account the declared objective of eliminating the «gap existing between the number of places available and the number of assignment measures», the Court identified the need for an overall reform of the system, one that «would ensure the realisation on the entire Italian territory of a number of REMS sufficient to meet real needs, in the context of an equally urgent strengthening of the structures on the entire territory. These measures would ensure both the enforcement of adequate alternative care for those in need and for the essential protection of communities». The ruling also specified the total number of REMS needed to meet the actual needs, passing from the current 652 to 740³⁶ «because realisation already started or planned».

As a whole, the ruling prefigures corrective interventions to the system which, if read restrictively, can be interpreted as a step backwards by those who basically did not share the ideal and truly reforming principles of the law closing the OPGs: the past casts its shadows on the present, albeit in forms and material conditions more respectful for the hospitalised persons, but basically re-proposing organisational criteria inspired by custodial measure rather than the need for rehabilitation and social integration of a person.

Therefore, it appears critical to reflect again on what is the meaning of ‘extreme measures’, such as being restricted in a REMS, and specifically, whether 740 places can still be considered residual compared to the 1,282 people hospitalized in OPGs in 2001. A number that after subjective evaluations had been reduced to 988 at the beginning of 2013, and again to 826 on the date the law

33. Constitutional Court, ruling no. 22, 27 January 2022, para. 5.4.

34. Quoted ruling, para. 4.4: «The enforcement of security measures in a REMS can not be only considered as an exclusive health measure», having the same measure a strong therapeutical content», as stated in para 5.3 of the above mentioned ruling.

35. Quoted ruling, para. 5.4: the Court peremptorily compared the need for immediate execution of the precautionary measure to the security measure in REMS. The REMS waiting lists show a «systemic default in the effective enforcement of all fundamental rights».

36. Quoted ruling, para. 5.1. «Taking into account the anticipated remodulation of the regional programmes, already started or realised, the number of places, at full operations, would reach an overall capacity of 740».



was officially adopted.³⁷ An excessive increase in the availability of places, in fact, anticipates the real risk of a widespread and generalised use of the detention measures, favouring those security requests still present today, also in the culture of the judiciary.³⁸ This would give new life to the past cultural paradigm which, by overlapping mental disorder to social dangerousness, legitimised hospitalisation in OPGs. In addition, we cannot ignore the typical phenomenon of totalizing institutions. In fact, a strong increase in the REMS available places would equally fuel a growing demand up to its total absorption.

These reflections maintain their value despite agreeing on the necessity of a partial and well-targeted increase of the REMS places in some areas of the Italian territory. All the more, if we take into account the unsustainable situation of the people restricted in prison without reason waiting to be placed in a REMS. The establishment of new residencies should meet two parameters: the actual need, in some geographical area, for REMS and the cooperation with local social services. It would appear that none of these parameters were taken into consideration in the project regarding the establishment of a REMS in Liguria region.³⁹ The project raises well-founded concern, given the short waiting list of the region⁴⁰ compared to others, which suggests a purpose of extra-territorial hospitality.

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A second consideration, connected with the first, derives from the role the Court assigned to the Prison Department (DAP) and to the Government on matter of execution this type of security measures.

Although the regional health system and the Ministry of Health have limited, until current days, both the phenomenon of overcrowding within the REMS as well as their proliferation, the role of the DAP and the aforementioned substitute powers of the Government, provided for by Art. 120 of the Constitution and anticipated in the above mentioned ruling of the Court, will be decisive for the future path of the reform. In this sense, the new REMS's Consolidated Regulation defining the individual rights of the people welcomed, will constitute a decisive test case. The attempt to bring the management of REMS back to the judiciary, albeit in a reduced form, would

37. Survey of the Prison Department (DAP) as of 12 March 2001 and Survey of the Istituto Superiore di Sanità as of 1 June 2013. Figures at the date when law entered in to force are taken from the Report to Parliament of the Ministry of Health and the Ministry of Justice, December 2014.

38. Provisional security measures in REMS account for 43% of the total security measures. Survey of the National Guarantor as of 15/04/2021.

39. Article 32 of the Law Decree 1 March 2022, no. 17 authorised the expenditure of 2.6 million Euro for the provisional REMS of Genoa-Prà and to facilitate the start-up of the REMS of Calico al Cornoviglio (La Spezia). Funding is provided for 2022, 2023 and 2024. Besides, starting from 2025, the current spending limit may be increased.

40. As of 25/03/2022, according to the data of the Prison Department, in the Liguria Region there are 11 people waiting for a place in the REMS, a waiting list much shorter compared to other regions, such as Sicily, Lazio, Calabria, Puglia, and Lombardy, where are located 78% of the persons placed in a waiting list.



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Until today, this system has been able to ensure a high level of social security, despite spending on mental health has never been adequately sustained over the years. However, some recent choices made by the politics highlight strategies aimed at social control of the psychiatric patient rather than favouring alternative paths.

risk undermining the reform process undertaken in favour of a return to the past, when the treatment of the person hospitalised in the OPCs was entrusted with the healthcare system, subject to the needs mainly associated with the custody.

All this despite the logic behind the reform principles, based on which placement in REMS should be a residual and temporary measure taken when the person is waiting to be taken care by the local social services. The political debate on REMS seems to forget the aim of the reform, revealing the absence of a reflection on the irreconcilability of needs, having different purposes, that had led psychiatrists, in the past, to question themselves on the best methods to treat patients. They developed a different treatment model based on rehabilitation, involving an ongoing relationship with external community services, the family, and the third sector. In this context, the limited number of beds in REMS represented the core of the reform that resulted in Law 81/2014, with a view to favouring patients' care paths in the geographical area where they live.

Until today, this system has been able to ensure a high level of social security, despite spending on mental health⁴¹ has never been adequately sustained⁴² over the years. However, some recent choices made by the politics highlight strategies aimed at social control of the psychiatric patient rather than favouring alternative paths.

Return to “containment measures” is relatively easy, keep the bar steady on the need for individualised rehabilitation care is much more challenging, considering that if we exclude the possibility of empowering the person - every person, even those with psychiatric disorders -, we also exclude the conditions for his/her possible reintegration in society – based on the actual circumstances- and, as a consequence, the much valued pursuit of protection for the entire community.

41. The crime recurrence rate is estimated at 5%.

42. Quoted ruling, para. 5.12: in 2001 the Conference of Regions and of the Autonomous Provinces committed to provide funding for at least 5% of the regional healthcare funds for initiatives aimed at promoting and protecting mental health; an amount, with significant differences in value from region to region, «substantially lower than the commitment made». At national level, in 2019, the expenditure relating to psychiatric assistance amounted to 2.9%, down compared to previous years.



8. The 'Residual' and the Memory

The seventies and the eighties were crucial and tragic years at the same time. The memory of the people killed in that period stays with us, but their narrative has become even tougher than the live experience of those events. It was the time of reforms, but it was also the time when the dialectic in political debate was annihilated, subdued by the 'armed' choice of part of the then-movement.

It was a dense historical period, and surely, we cannot make peace with it without considering that it was not a matter of common crime, but of political choice, although a minority one. But, even beyond the dead, it also meant the end of the reform period.

Today, the necessary memory of that period should be supported by a discussion on whether those events can be *de facto* considered as 'past', not so much for the armed organisations which no longer exist, but rather for the social awareness raised by those events. That period cannot be considered over, in as much as time has been moving at two different paces. On the one hand, today the collective perception and the socio-political reality are very distant from those years; on the other hand, there are about twenty people, sentenced for armed crimes committed at the time, showing little if not any concern for any benefit that could be granted by the State that inflicted the sentence.

At least some of them still live in France, waiting for the outcome of the extradition procedure initiated before the French judicial authority the past year, on the basis of a request formulated by the Italian government: they are guilty of crimes committed between 30 and 40 years ago and they have formally given up armed struggle, as nothing is found in the records of the French judiciary system.

It seems only right to pose the question on how the tools granted by the penitentiary system should be made available to those responsible for crimes committed in that particular historical period, and in a wider sense, for crimes committed decades ago by people who have then changed their lives. These tools should be aimed at implementing a reconciliation process, starting from the admission of responsibility for the crimes committed and the restoration of the victim's value for the suffering caused. Reconciliation should also look favourably at the way these offenders have turned around their life and found new and positive commitments.

The answer so far seems to be limited to prison.

But prison cannot just be walls and containment: it should be the place where a rehabilitation path is shaped, wounds are healed and re-socialisation begins. Prison cannot just be the place where security measures are rightfully applied. Otherwise, a sentence would be just retribution and its aim would be to no avail, so admitting that the supremacy of legality is only guaranteed through coercion.

People detained for crimes committed in those years, and showing no interest in getting access to alternative measures, are assigned to the high-security circuit and placed under the 'AS2' sub-circuit

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Last year, the National Guarantor made a recommendation calling the above practice unacceptable, as it is not related to the possibility of receiving adequate treatment and reiterated that the «construction of a criminal execution path tending to a rehabilitative purpose is an obligation of the Prison Administration»

definition, a neutral acronym found in circulars and including «the subjects accused or condemned for terrorist crimes, also at international level, or for democratic subversion through acts of violence». The above criterion, defined in 2009, concerns all people condemned for crimes related to armed organisations, committed decades ago. Sometimes, these subjects must share their physical space in prison with people condemned for international terrorism in recent years, or with people condemned for other crimes related to contemporary criminal phenomena. The latter is indeed a very different category that would require very different solutions, given the contemporary nature of the phenomenon. Besides, old crimes offenders are often added to people detained for recent episodes of militant antagonism, which is a different sub-set requiring targeted solutions. As it happens, rehabilitation is suspended, with an inevitable compression of the rights of the people and ultimately a loss of the constitutional purpose of the sentence.

The result is the creation of a world apart, characterised by the lack of significant interventions, with the consequent deprivation of any external relational context. Based on the 'AS2' classification, people are moved to specific prisons not based on their family or geographical connections, but on the existence of that specific sub-circuit in the institute.

Last year, the National Guarantor made a recommendation calling the above practice unacceptable, as it is not related to the possibility of receiving adequate treatment and reiterated that the «construction of a criminal execution path tending to a rehabilitative purpose is an obligation of the Prison Administration»⁴³.

It would be right to review upstream the automatism of the classification and the consequent inclusion in the circuit of the former protagonists of the armed struggle in accordance with the scheme provided in the circulars of the Department of Prison Administration. Then, it would be also beneficial to review the cumbersome declassification procedures, making sure that more attention is paid to the factual evaluation of situations. The States General of Criminal Execution had proposed the elimination of the automatism of the circuit linked to the crime title. The rehabilitation paths should be centred on the person and his/her evolution.

For this reason, the recent decisions of non-declassification raise questions, as their consequence implies keeping people detained in in those circuits, without any rehabilitation support, all because of not better defined security needs.

Just as it would be contradictory put behind the bars for a second time people who have led a life path without committing crimes, often trying to compensate for their past crimes with actions aimed at social recovery, even if they were responsible for very serious crimes in the past. To *render*

43. National Guarantor, Thematic Report on High Security Sections 2 (AS2), July - September 2020, published on the institutional website on 8 March 2021, p. 5.



justice certainly requires victims being acknowledged for the wounds and the crimes suffered, the perpetrators being held accountable for them, and a State able to judge these offenders guilty. But this imperative cannot just pass through the negativity of detention or the drastic interruption of lives which have been rebuilt. It requires actions, gestures, obligations aimed at obtaining the good, and not to add negativity to the negative actions committed in the past. It also requires a rehabilitation path for those who have already served many years in prison, also overcoming that sense of identarian toughness shown by some subjective positions on the matter.

9. Melting Clocks

Sometimes there are two particular experiences in the life of migrants. These experiences offer a symbolic representation of what physicists have known for more than a century: space and time are a whole, deforming and expanding in various points of the Universe; time flows differently depending on where we are and which direction we are taking our life to.

Travelling to the much-desired Europe can last months or years when people cross borders without a visa. On the other hand, just a few hours would suffice to carry out a forced return through the same land route. It is impossible to find a uniform or regular flowing of the time in these two opposite dimensions. It is also difficult to define those dimensions unless we think of the melting clocks painted by Dali in the “the Persistency of Memory”. In the painting, clocks sign different times in their melting status, defeated, bent over by the elusiveness of a physical quantity -which is also a subjective experience- and by the impossibility of calculating an absolute and universal value.

In a one-way journey, the clock appears stopped in a continuous present of expectations, entrapping the prospective of a future life. Road is «a rosary of *passseurs* cutting the routes of Africa»⁴⁴. Before undertaking the Mediterranean crossing, people can wait for months or years, under inhumane conditions,

Sometimes there are two particular experiences in the life of migrants. These experiences offer a symbolic representation of what physicists have known for more than a century: space and time are a whole, deforming and expanding in various points of the Universe; time flows differently depending on where we are and which direction we are taking our life to.

44. A. Leogrande (2015), *La Frontiera*, Feltrinelli, Milan, p. 305.



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«subjected to a litany of abuses»⁴⁵ in one of the Libyan detention centres.

It also happens that castaways should wait days before being rescued or forced to cross time in the opposite direction to the one hoped for, if the rescuer does not take the shipwreck to destination, but back to the departing place. According to the ruling of the Court of Cassation 16 December 2021, the right to non-refoulement to an unsafe place constitutes self-defence. The argument was sustained by two migrants accused of resistance to a public officer for the violent conduct enacted against the crew of the tugboat “Vos Thalassa”, which in July 2018, after the rescue operation, was taking them back to Libya. The Cassation acquitted the migrants of the charges⁴⁶. But it does happen.

According to the data of the International Organization for Migration (IOM), in 2021, 1,553 people lost their life in the central Mediterranean and 32,425 were refouled back to Libya by the Libyan Coast Guard. These figures account for one third of the persons sailed from Libyan coasts and three times the number of those sharing the same fate in 2020.

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Despite the full awareness of the continuous shipwrecks and human rights violations taking place in Libya, firmly stigmatised by international organisations⁴⁹, the Mediterranean continues to slide into a black hole facing the obstinacy of the European countries that still recognise an illegitimate

45. UN mission in Libya, established by Resolution 22 June 2020 by the United Nations Human Rights Council, Report - 23 March 2022: «*The evidence gathered by the Mission, which included interviews with 50 migrants, established that from the moment that migrants entered Libya destined for Europe, they were systematically subjected to a litany of abuses*». Also refer to Report - 29 November 2021: <https://www.ohchr.org/en/hr-bodies/hrc/libya/index>.

46. The acquittal sentence by the Court of First Instance of Trapani on 23 May 2019 had been overturned by the Court of Appeal of Palermo, which in the sentence dated 3 May 2020 condemned the defendants for the aggravated crimes of violence or threat to a public official and resistance to public officials, and on the charge of aggravated crime for aiding irregular immigration. Similarly, in Malta, heavy accusations were made against three young migrants who staged a protest on March 2019 convincing the crew of the boat “El Hiblu 1” to reverse the ship course to Libya and take them to Malta.

47. In 2021, 67,040 people arrived in Italy through the same route.

48. *Pushed beyond the limits. Four areas for urgent action to end human rights violations at Europe's borders*, Council of Europe, April 2022 (<https://rm.coe.int/pushed-beyond-the-limits-urgent-action-needed-to-end-human-rights-viol/1680a5a14d>).

49. Recently, the day after one of many shipwrecks, on 12 March 2022, Federico Soda, IOM's Head of Mission in Libya, declared «*I am appalled by the continuing loss of life in the Central Mediterranean and the lack of action to tackle this ongoing tragedy. More than half of this year's deaths have been recorded near the Libyan coast*».



Libyan ‘SAR Area’ under the obligations deriving of Art. 2 and 3 of the ECHR,⁵⁰ and their unwillingness to take on any humanitarian action for the construction of safe corridors⁵¹ or the relaunch of a ‘save and rescue’ mission on the wake of Mare Nostrum, to put an end to this huge tragedy⁵².

Those who finally get to the Italian territory are subject to a lengthy series of police and health checks, in a scenario characterised by a persisting emergency logic, recently accentuated by the onset of the pandemic and the following introduction of quarantine ships. Despite the measure aimed at protecting public health, it had an extremely negative impact on the rights of migrant people; quarantine ships were introduced as an exception, but during the last two years’ health crisis it became an ordinary measure for managing arrivals. In 2021, it determined another “time bubble” in the journey of 35,304 people, confined in quarantine ships and deprived for eleven days of the rights of international protection.

The application for asylum can only be completed upon arrival, when those admitted are separated from the rejected ones and, among the latter, those leaving the premises unaccompanied are separated from those who will be taken to a CPR (Detention and Repatriation Centres) for the execution of a forced return order.

In 2021, 1,221 people were immediately transferred to a CPR and received an order for forced return. Most of them were Tunisian (1049) or Egyptian (170), all refouled through charter flights organised by the State Police. Also considering the number of people expelled, Tunisia and Egypt represent, respectively, the first and second country for the highest number of forced returns carried out last year. The Egypt data raises perplexity and concern. In fact, the country has been the subject of interest of the international community for the critical situation –as reported in many official documents– of

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50. Refer to Report to Parliament 2019, para. 15 pp. 74 and ff.; *Lives Saved. Rights Protected: Bridging the Protection Gap for Refugees and Migrants in the Mediterranean*, Council of Europe, June 2019; *A Distress Call for Human Rights: The Widening Gap in Migrant Protection in the Mediterranean*, Council of Europe, March 2021.

51. Based on the data of the UN Agency for Refugees, as of 1st March 2022, in Libya there were 42,528 refugees and asylum-seekers (42% from Sudan, 34% from Syria, 10% from Eritrea, 5% from the Occupied Palestinian Territories, 3% from Somalia or Ethiopia, others come from Iraq, Yemen and/or other unidentified places), while the internal displaced persons are 168,011.

Source: <https://data2.unhcr.org/en/country/lby>

52. According to IOM data, in 2021, migrants declared missing in the Mediterranean were 2,048, of which 1,553 dead in the Central Mediterranean. From the beginning of this year until 31 March 2022, out of a total of 367 deaths recorded in the Mediterranean, 318 concerned the Central Mediterranean area. Source: <https://missingmigrants.iom.int/>



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At the same time, we must ensure that the migrants under the responsibility of the Italian government, also in consideration of the violations they will suffer in the destination country after their forced return, can be granted full human rights protection as guaranteed by the international mechanisms to which our country is bound to.

the human rights⁵³. The steady growth in asylum applications submitted by Egyptian citizens in 2021, equal to 782% compared to 2020⁵⁴, is a clear expression of this criticality. As stated in the Report to Parliament 2020⁵⁵, an in-dept reflection on the continuation of the forced returns operations to Egypt is needed. The country that has gone through many changes after the signing of the readmission agreement with Italy in 2007, becoming in 2020, among other things, the third country in the world for number of capital executions.⁵⁶

At the same time, we must ensure that the migrants under the responsibility of the Italian government, also in consideration of the violations they will suffer in the destination country after their forced return, can be granted full human rights protection as guaranteed by the international mechanisms to which our country is bound to, including the Enforced or Involuntary Disappearances of the UN Commission on Human Rights, signed in New York in 2006. In 2015, Italy undersigned the above mentioned mechanism, but it did not recognize the competence of the Commission to receive and consider, in particular, communications submitted by, or on behalf of, people complaining to be victims of enforced or involuntary disappearances. It is time to remedy such deficiencies as required by the supranational control bodies of the UN on occasion of two different evaluations our Country was subject to in 2019 and 2020⁵⁷.

53. For updates, refer to the joint declaration on Egypt, signed in March 2021 by Finland on behalf of a group of countries at the Human Rights Council (<https://geneva.usmission.gov/2021/03/12/joint-statement-on-human-rights-in-egypt/>) and the European Parliament Resolution of 18 December 2020 on the deterioration of the human rights situation in Egypt.

Source: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0384_IT.pdf

54. Based on the data of National Commission for Asylum Seekers, the applications for International Protection submitted by Egyptian citizens over the last six years totalled: 2988 in 2021, 382 in 2020, 838 in 2019, 674 in 2018, 829 in 2017, 776 in 2016.

55. Refer to National Guarantor's *Report to Parliament 2020*, para. 27, p. 116

56. Refer to the joint letter written by different European Parliament members on 3 February 2022, in which they urge the set-up of a monitoring mechanism for human rights in Egypt from the UN: 107 executions officially registered in 2020 and 83 those registered in 2021. The letter states that in some cases the proceedings that led to this outcome are unlikely to be considered as responding to the principles of fair trial.

<https://www.jcoetjen.de/artikel/joint-letter-urging-for-the-establishment-of-a-un-human-rights-monitoring-mechanism-on-egypt>

57. Following the first hearing before the UN Committee on Enforced Disappearances (CED), in 2019, the following recommendation was addressed to Italy: «*The Committee encourages the State party to recognize as soon as possible the Committee's competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention respectively, with a view to strengthening the framework for protection from enforced disappearance provided for in the Convention*». A similar recommendation was made also in 2020 during the universal periodical review: 148.4 *Take measures to recognize the competence of the Committee on Enforced Disappearances to examine communications, under articles 31 and 32 of International Convention for the Protection of All Persons from Enforced Disappearance*. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/354/30/PDF/G1935430.pdf?OpenElement>



The need to ensure the widest range of remedies is connected to the general provision of immediate enforceability of the expulsion orders (Article 13, para. 3 of the Immigration Consolidated Law). This, in fact, gives a tight rhythm to the repatriation procedures, causing migrants staying in our Country to live a dramatic experience, being deprived of entire seasons of life, as well as relationships and projects made thinking of a future life in a known country.

The first stroke of the accelerated repatriation clock for many migrants strikes without warning in the very early hours of the morning, when the escort operators enter the detention sector of the CPR while they are still asleep, unaware of the little time they have to prepare for leaving.

During the monitoring of the forced returns, the National Guarantor found that foreign citizens, as a common practice, are not adequately informed in advance on the departure date. This is an ongoing situation, depriving foreign citizens of the right to notify their personal affections or contact the lawyer for updates on their legal status or prepare, materially and emotionally, to face a journey that is not only through space.

The lack of time and clear information to adapt to the news makes the return more tragic and can give rise to opposite reactions, even create conflicts and necessity of coercive intervention, which are exactly the opposite of those *de-escalation techniques* that should always be used during forced returns. Everything happens fast, in a handful of hours, and hits the lives of these foreign citizens with the violence of a tsunami.

We must take into account and assess the power exercised by public bodies and how ‘timing’ affects the coercive action, by increasing or decreasing the impact on the rights, even the fundamental ones, of the interested people.

10. Time Intervals: Twenty-three and a Half Years

«Time intervals or thresholds belong to the topology of *passion*. They are at one time zones of oblivion, loss, death, fear and anguish, but also zones of desire, hope, adventure, promise and waiting. In many ways, an interval can also be a cause for suffering and pain. Memory of past events becomes passion in the fight against oblivion. The *Recherche*, the Proustian novel about time, in this sense, can be regarded as a story of passion. The wait becomes passion when the interval of time separating the present from the future stretches indefinitely, and passion becomes *suffering* when the ‘object’ we have been promised is long in coming or our expectations are delayed. This «intermediate time, separating departure from arrival is the time of uncertainty, when the unpredictable is around the



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.The pilgrim's way, for instance, is not just an empty intermediate space to cover in the fastest way, rather an essential part to our destination. The interval, in this sense, is «a transition towards an elsewhere», during which we need to «make order and prepare» to build new meanings.

corner, but it is also the time of hope and wait, when we prepare for the arrival». In this perspective «the *way*, as the distance separating the departure from the arrival is also an interval. It contains a large semantic repertoire, just like the *place* itself. The pilgrim's way, for instance, is not just an empty intermediate space to cover in the fastest way, rather an essential part to our destination. The interval, in this sense, is «a transition towards an *elsewhere*», during which we need to «make order and prepare» to build new meanings⁵⁸.

The *elsewhere* in point is a circumstance that would have passed almost on the sly if the heterogenesis of ends had not manifested itself: the semester of the Italian Presidency of the Council of Europe. From November 2021 to May 2022 Italy chaired the most important decision organ of the organisation. The *raison d'être*, as widely known, of the Council of Europe is the protection of human rights, democracy and of the rule of law. The Committee of the Ministers is the Council of Europe's decision-making body, composed by the Ministers of Foreign Affairs of the European Member States.

It was the eighth time that Italy chaired it, with intervals increasingly longer, as the number of countries joining the European family expanded. The first Italian presidency, chaired by the then Foreign Minister Carlo Sforza, from May to November 1950, was a historic moment, marked by the signature of the treaty that best embodies the spirit of the Council of Europe: on the 4 November 1950, the thirteen member states (Italy included) signed the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), giving effects to the Universal Declaration of Human Rights approved by UN General Assembly on 10 December 1948. The foundation of the ECHR is the absolute binding nature of the fundamental human rights and liberties: the right to life (Article 2), the prohibition of torture (Article 3); the prohibition of slavery or servitude (Article 4 § 1), the principle of *nulla poena sine lege* (Article 7)⁵⁹. The preventive protection established by the Article 3, we all should know, is based on the network of Independent Organs, including the Council of Europe's CPT, the UN OPCAT, and the National Guarantor.

The following Italian presidencies, gradually rarefied as the member states continued to increase, date back to 1955-56, 1962, 1969, 1977, 1986, 2000, and 2021-22⁶⁰. As of November 2021, at the beginning of the last Presidency semester, the member states were 47; only Belarus and Kosovo were out of the "Great Europe" for different reasons. So, twenty-three and a half years have passed since Italy last chaired the Presidency.

Then, war happened. From the point of view of the Council of Europe, whose founding mission is

58. Byung-Chul Han, *Il profumo del tempo. L'arte di indugiare sulle cose* (2017), Courtesy translation, Vita e Pensiero, Milan, pp. 45 ff.

59. Refer to Article 15 of ECHR, in particular §§ 1 and 2.

60. In accordance with the birth date of the Council of Europe, which took place in London on 5 May 1949, presidencies can start and finish within the same year, from May to November or in different years when taking place from November to May.



to «strengthen unity among its members» and it is rooted in values of human rights, democracy and rule of law,⁶¹ this substantially means that a state member, the Russian Federation, attacked another state member, Ukraine, threatening «unity» and the very same idea of «peace» as an end to be pursued through «justice» and «international cooperation»⁶². On 16 March 2022, the Committee of the Ministers adopted a resolution on the cessation of the membership of the Russian Federation to the Council of Europe⁶³. This is not the first test case in the long history of the Council, nor the first time it experiences high tension with the Russian Federation: there have been many moments of crisis, overcome with difficulty through the cooperative work of diplomacy⁶⁴.

As Antonio Cassese taught, «even a relative and precarious protection of human rights requires [...] a long period of time. International protection of human rights is like those natural phenomena [...] happening without anyone noticing, in periods of time that cannot be measured over the lifespan of individuals, but only over the course of generations». This process is discontinuous, nonlinear, and «continuously interrupted by relapses, barbarities, stagnations, and very long silences»⁶⁵. Now we can better understand the centrality of intervals in economy and chronology of human rights. For these reasons, the Italian presidency of the Council of Europe during the semester unfolding between the end of 2021 and first months of 2022 represents an event to be included in the most important facts happened in our country during the last year.

The Italian presidency, unfolding under this complex international scenario, was marked by three priority objectives: first, a reconfirmed commitment to the values and principles of the common European home, with the purpose of rediscovering our common cultural roots, investing in our heritage as the engine for a common identity, multicultural dialogue and social rights; second, the promotion and strengthening of women and youngsters rights; third, the consolidation of the path towards a future tailored on the person's need.

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The above-mentioned and late Antonio Cassese, at the end of his lessons or conferences on human rights, used to recall the story of the knight and the little sparrow he had heard years before about the civil tragedy of Northern Ireland: «everyone does what they can»⁶⁶. It was with a similar spirit that the National Guarantor, in the troubled semester of the Italian presidency, launched

61. Cf. Article 1 of the *Statute* of the Council of Europe.

62. Refer to the *Preamble of the Statute*.

63. Council of Europe, Committee of the Ministers, *Resolution CM/Res(2022)2 on the Cessation of the Membership of the Russian Federation to the Council of Europe*, 16 March 2022. Under unchanged circumstances the Russian Federation will cease to be part of the ECHR on 16 September 2022.

64. M. Giacomelli (ed.), 2021, *L'Italia e il Consiglio d'Europa*, Arta, Genoa, p. 29 and ff.

65. A. Cassese (2019), *I diritti umani oggi*, Laterza, Rome-Bari, p. 231.

66. A. Cassese, *I diritti umani oggi*, op. cit., p. 237.



Over the course of a Year

new paths of international cooperation, despite the dark clouds above the sky. This attempt led to the signature of the first «Bilateral agreement among independent guarantee organisms to set-up a ‘relay’ team to monitor the respect of human rights during all phases of forced returns», not just *until* the persons are handed over to the returning country (as it was before the signing of the agreement), but also in the *post handover* phase, which would usually take place away from the attention of the Italian NPM due to territorial competency reasons.

The agreement, signed with the *Public Defender* of Georgia, between homologous bodies of two state members of the Council of Europe, can rightfully be considered one of the activities launched during this important Italian semester to strengthen the overall level of protection of human rights in a very difficult situation such as the forced return procedure. We hope for the agreement to be developed and made stronger during the long interval taking us to an *elsewhere* that will revive the profound sense of the European cooperation.

11. How long is forever? Sometimes, just one second

There are two moments, both videotaped, in the story of Musa Balde, the 23-year-old Guinean citizen who committed suicide on 23 May 2021 in Turin’s detention and repatriation centre that induce us to ask questions on what happened that night and if things could have gone differently. These moments define the victim’s entire life.

In the first videotape, recorded in 2017 in Sanremo, the Guinean refugee tells the interviewer, in a somewhat broken Italian, about his wish to stay in Italy, because in this Country he «[...] had a taste of how life can be beautiful [...]».

In the second video, recorded in Ventimiglia on 9 May 2021 by a witness overlooking from a building, we can see a person attacked in the street by three men hitting him, first standing and then on the ground, with objects, punches and kicks. In this video we can hear the voice of the woman who is filming the scene with her mobile phone screaming «they are going to killing him...». Reports say that the scene, or the beating, lasted 42 seconds, a very short time, but endless for the eye in terms of violence and brutality: that man on the ground, that boy, was Musa Balde.

Fourteen days later, Musa (or Moussa as spelled in many reports) decided to put an end to his existence, hanging himself inside one of the three rooms of the health isolation ward, called “Ospedaletti”, in Turin’s CPR. It is the very same place where, in 2019, a Bengali citizen, Hossan Faisal, had died because of a sudden illness: in that case, the lack of an alarm system had prevented him from asking for help.



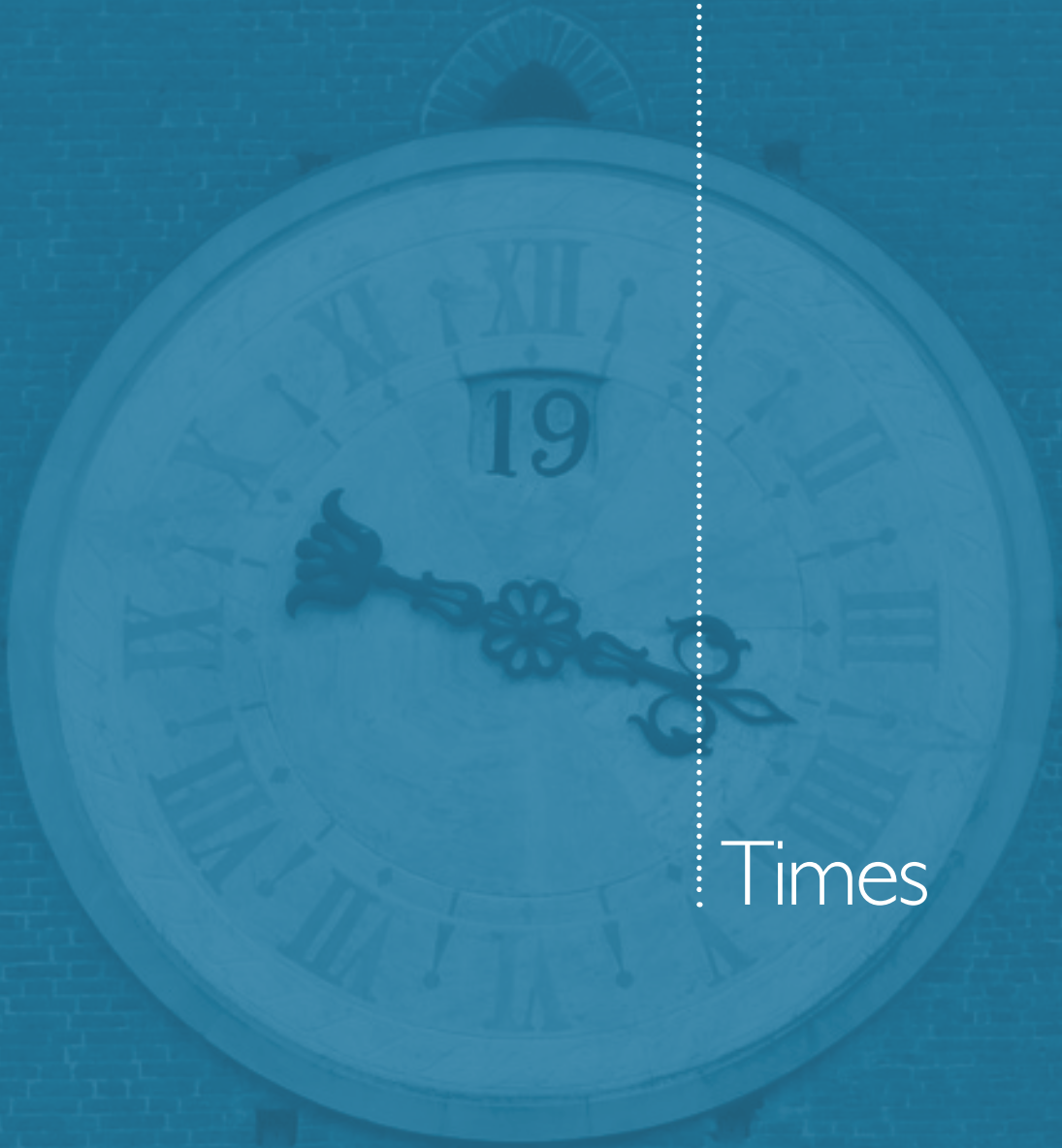
In Musa's case, however, no alarm system could have prevented the death that he had decided for himself. In the days following the beating, his life entered in a sort of acceleration phase that ended up taking him to a tragic epilogue. As reported by his attorney, which has been following his case since he entered in the CPR, Musa could not understand how the victim of a crime, himself, could be detained in a CPR; how was it possible that the Police came to him asking questions and not to his aggressors, and what was the ultimate meaning of all the story.

There! Maybe that is the point of all this story, when we ask ourselves the ultimate meaning of this tragic-end story. Following the aggression, Musa was moved through different public facilities to end up in Turin's CPR. During those fourteen days intervening between the beating and the death, no Authority who had him in charge had actually wondered whether he needed psychological support to overcome the trauma he had suffered, or whether it was really a good idea, a meaningful one, at least, to close him up in a CPR, where Musa was, literally, admitted as «fit for community life and with no symptoms of Covid-19».

It is not an easy bet to establish whether a single episode, lasted some 42 very long seconds, had consequences to his suicidal intentions or it was, in fact, the result of years, from the first to the second videotape, characterised by a series of progressive abandonments and isolations, topped, as often happens in migratory paths, by bureaucratic difficulties, so much so to induce him to think that perhaps it was not true that life in Italy was so beautiful. We are left with the doubt that maybe if the response to his actual needs after the aggression would have been different, if the Authorities who had charge of him would have recognised his rights and his need for care, not only based on his condition of "irregular citizen", probably today we could tell -or we would not need to tell- a different story.

Epilogue: in August 2021, after different recommendations of the National Guarantor Authority, the Ministry of the Interior decided to prohibit the access to the Turin CPR's "Ospedaletti" ward in order to carry out structural improvements or identify alternative solutions; the National Guarantor is committed to closely follow its development.

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Times



This Report to Parliament 2022 unfolds through data, analysis, proposals and recommendations, investigating how the concept of time takes distinctive features in a context of deprivation of personal liberty. These features are not reassured or reassuring: on the contrary, they change depending on the specific case of the person detained in an enclosed environment and deprived of the instruments needed to build knowledge, limited as they are by the contingent situation and the inescapability of the same.

Time, when related to deprivation of liberty, has the features of a face contracted by the tension experienced in the moment the choice was made, one that already contained, maybe invisible to the eye, the seed of its possible negative outcome. The decisive moment when people decide to cross the sea or the border in quest for a better future contains, in fact, all the hardships they will experience in the future, including the possibility that the journey ends in defeat. Nonetheless, once they have taken that decision, there is no going back. Similarly, the moment when a person decides to commit a crime carries consequences for the future; sometimes these are invisible to the eyes of the perpetrator, but they are destined to appear at a later stage, nonetheless.

At a later stage, time reconfigures itself, it is different from before: it is slow, dilated, cyclical, increasingly distant from the time flowing outside the enclosed spaces. Rephrasing the words Rev. Dodgson (Lewis Carroll) puts in White Rabbit's mouth, answering to Alice's question, «sometimes forever lasts just one second». Because that second -being it the moment a person commits a crime, crosses a board, is admitted in a hospital or a shelter home- determines a substantial change of the daily life routine, of the future cataloguing of the events. Also, it changes the subjective perception of time and its impossible coordination with the time of those living in the outside world.

There is a moment when the circumference, which metaphorically summarises the cyclical rhythm of those living in enclosed spaces, and its tangent coincide in the same point; then, the circumference will revolve around its centre, while the tangent will move further and further away. At each meeting with the family, with representatives of the Institution regulating and legitimating the deprivation of liberty, circumference and tangent find themselves together again, in a single point; for a second they seem to mark the same time, then inevitably the first goes back to the logic of internment, while the other follows the direction of the events.

For this reason, it is difficult to measure the time of deprivation of liberty. It is difficult to measure it before, in terms of projection on the future, to predict the amount of time requested to complete the rehabilitation path, just as difficult as any evaluation of the rehabilitation path followed over time, to understand if and when to intervene, if and when to set the person free. Just as difficult as measuring the result of a therapeutic path in reassuring terms as demanded by the outside community, always concerned and anxious about the diversity living in it and, for this reason, unwilling of seeing it. Difficult measures that risk trespassing the non-measurability threshold with indefiniteness. Hence, the risk of adding indeterminacy to the nouns that decline time during the restriction phase: those "never", pronounced for the returns to which segregative institutions -all of them- should instead look at, also



arise from this measure which extends incongruously and limited only by the time of life.

The thematic contributions of this Report to Parliament 2022 develop along these three areas of reflections, briefly outlined here: The Beginning of Time, returning to the moment when the decision is made or suffered, changing forever the flow of time; The Reconfigured Time, the features it takes after the decision has shown its effects; Time and Duration, which refers both to the initial request to find a correspondence between a number -expressing the duration of the deprivation of liberty- and the crime committed or the situation faced by the people in charge of public responsibility, and to the continuous measurement of the stages characterising the following life.

There is no point in denying it: these three areas trace, with due modesty, memory, vision, expectation, in the same sense Augustine recalls them when he differentiates «the present of the past» from «the present of the present» and «the present of the future». But, we are well aware that time can not be an «operator of the sentence» just in the sense attributed to it by Michel Foucault: as the possibility it offers to explicit the peculiar action of the punishment. But time can be an operator of the sentence when it means the time allowed to all other places of deprivation of liberty to implement the institutional strategies for those unable to act autonomously or exercising their own decision-making capacity.

The reflections are preceded by a minimum list of words that when put in relation to time acquire a different meaning and redesign its features: simultaneity, expansion, slowness, measure, mandate. The last is a particular one; it indirectly poses a question to the National Guarantor on what can be done in the limited time of an institutional 'mandate', when faced to old problems that are destined to perpetuate beyond the term of the same mandate. 'Mandate' is the theme developed in the following pages, starting from a mandate which more recent than it would seem: the preservation of the heritage constituting the cultural identity of a Country. As for the previous Reports to Parliament, reflections on these words were entrusted with high-profile figures, external to the National Guarantor, while the National Guarantor's staff and its long-time external experts collaborators cured the other 'items', in a joint attempt to build a choral reflection on the theme.



12. Simultaneity

by Carlo Rovelli

It is not an easy task to write a contribution for the Report to Parliament on the status of deprivation of liberty. My competences in modern physics and my personal experience are both very distant from the difficulties experienced by a person deprived of personal liberty. But, I will not shirk from the attempt to make some reflections, with the hope they would help in alleviating some of the many useless sufferings we inflict on each other.

Carlo Rovelli, theoretical physicist, currently teaches at Aix-Marseille University (France)

The analysis of the concept of simultaneity in contemporary science has made it clear as the passing of time, which we all have directly experienced, is a complex and subtle phenomenon. It cannot be reduced to an objective and universal calculation of seconds, days or years. Time measured by clocks –or by any other physical process– is flexible, as it depends from the place where the clock is situated or on how it moves. Different clocks measure intervals of time between the same events. The concept of universal time, as considered in Newtonian physics has therefore proved to be unable to explain the complexity of temporal phenomena. In contemporary physics, time is not intended as a universal variable, but as a local and particular measure characterizing the process occurring in a particular system. The time associated to a single process is called “proper time” of the process, and it may be different from the “proper time” of other processes, although sharing the same beginning and the same end. There are minuscule effects that do not have practical consequences for the most of us, but they matter from a conceptual point of view.

The study of irreversible processes has also led to distinguish the time characterising these processes from the time of the Newtonian mechanics, measured by a clock. The first distinguishes the past from the future, the second does not. The time of our experiences is obviously an oriented time: we remember the past but not the future, we can decide the future, but non the past, etc. Hence, the time of our experience is something more complex than the Newtonian physics measured by a clock.

I believe that the conceptual importance of both these findings on the true nature of the time is huge, in as much as they both push us to free ourselves from a rigid conception of time. There was certainly no need for the physics of the twentieth and twenty-first centuries to understand that a single day can be perceived as passing in a instant or last forever, but we did like the rationalist illusion of thinking that the flexibility of our perception was just a chimera to smile about at most, and that science offered, beyond the variability of our perception, a unitary, solid and complete description of an elementary phenomenon such as the passing of time and its measurement. It is not so. Science itself warns us against the excessive objectification of the passing of time.

Hence, I venture myself in the obvious cultural translation of this fundamental cultural acquisition, moving towards the ground of this Report to Parliament. When authorities claim the right to deprive some people of their liberty for a certain amount of time, they should not regard these periods of time as they were the same as for anybody else. Because they are not. A day within the walls of a prison is not



like a day spent inside the Parliament. A month in a migrant facility does not pass as a month of lessons at school. A year in a prisoner's life is not the same as for another prisoner. Limitation of liberty *per se* upsets our experience of time, no matter it is of a restrictive, punitive or accidental nature; the modified experience is not an illusion; it is the 'modified' time that truly characterises the experience of the restriction, penalty or accident.

These days, I am studying the theoretical formulation of an experiment that I hope can be implemented in the near future. The purpose of the experiment is to measure the structure of time at a very small scale to find confirmation of the theoretical indications on the fact that time is discrete (granular) at this scale. The experiment is based on the idea of exploiting a very strange quantum phenomenon called 'quantum superposition'. This is the possibility to arrange an object, for instance, a small mass in a certain sense and in two different positions at the same moment. The existence of these two positions cannot be observed directly, but it can be measured indirectly through the observation of the interference effects between the two configurations. Since we already know that masses influence the passing of time (time passes slower closer to the ground than in space), the 'quantum superposition' of two masses also means that in the same place can coexist the 'quantum superposition' of two different durations and it could also be detected by interference phenomena.

If the experience is successful, it will highlight how distant is the real temporal structure of nature from our naive daily intuition: not only we can separate and meet again in a *different* interval of time for the both of us, but also for each of us there is a measurable sense in which pure time flows together at two different speeds.

If the experience is successful, it will highlight how distant is the real temporal structure of nature from our *naive* daily intuition: not only we can separate and meet again in a *different* interval of time for the both of us, but also for each of us there is a measurable sense in which pure time flows together at two different speeds.

I hope that these considerations can help us to understand how the experience of time, in every sense, can not be reduced to a simple counting of minutes.



13. Dilation

by Matteo Maria Zuppi

«Time is greater than space», says one of the key principles contained in the encyclical *Evangelii Gaudium*, the programmatic document of Pope Francis. We all live in a space, a compulsive, entrancing, decisive space, made even more so in the digital era by the multiplication of *Chronos*. Time to be seized, to grasp great and always available opportunities, time to be consumed in the present, so much so that losing an experience is like living less, denying ourselves an opportunity! This is how the algorithm of consumerism -including life reduced to emotions- captures us, so much so that we end up not understanding the meaning of what we do, because it is scattered in a thousand fragments of images and sensations. We think that we always have a lot of time left and also «the luxury of wasting it». When there is no time we do not even know how to live the space: we just consume it, and we end up not understanding it! So, the concrete experience seems to affirm the opposite: space is greater than time, the present matters, while the future is an uncertain dimension, sometimes unattainable, unpredictable, too difficult to determine.

Matteo Maria Zuppi,
Cardinal, Archbishop
of Bologna, President
of the Italian
Bishops' Conference.

When there is only space, losing it means the end, because composing the puzzle of such a fragmented heart is a very difficult endeavour. The risk is to be alone, and above all without time, without future, so indispensable when the concreteness of the emotional bonds is so distant. True bonds, those relationships that make life worth living, need time but also space, and detention life is no longer having space, even physical space. Prison overcrowding, the anonymity of the healthcare structures where space is always the same and there is nothing personal to remind of who “I am” and who “I am for”.

In the state of isolation or objective restriction of liberty, the truest bond and most needed to live the space and understand time, is the one with ourselves, because in reality we tend to escape a serious confrontation, without discounts, with our ‘self’. We look for consultants, taking the risk of medicalizing it; because there is a part of our ‘self’ that is entrusted only to each of us and that each of us must face alone: and, at times, it can be really hard. This process, however, needs support: a space full of stimuli, care, sensitivity and aids. Time, in fact, also requires silence, but we are scared by silence, we cannot stop putting something ‘on’, because it is difficult to stop and look deep down into ourselves, into what the Bible calls the «abyss of the heart»; so difficult to measure that we are scared of it. «Reaching a level of maturity where individuals can make truly free and responsible decisions calls for much time and patience»¹.

This is why space and time in structures of restraint are decisive and it cannot be enough to “let

1. Francesco (2013), *Apostolic exhortation Evangelii Gaudium of the holy father Francis to the bishops, clergy, consecrated persons and the lay faithful on the proclamation of the Gospel in today's world*, 171.



We should have a project for each person, prepare time, that is future, start new positive personal processes for self-awareness, human construction, education, something that makes it worthwhile dealing with space. When we have none of these, like the future for detainees, the hope for care for non self-sufficient people, the value of the person for the elderly, the relationship with the other for the frail ones, then we are condemned to space. And this is unacceptable, as well as burdensome and meaningless. Time is often reduced to a mere countdown... to wait for what, whom? The «No end of punishment» is inhumane, even for the so-called habitual offenders forced into work houses. «To everything there is a season, and a time for every purpose under heaven»

time pass” («may them rot in prison» means taking away space and time, for example), because by doing so, we exclude any perspective, any activity that can anticipate time and give a taste of it.

Spending time in these structure does not depend on our choice; it is imposed and not easy modifiable. Schedules do not depend on personal choices, so much so that they takes power over detainees' life. Therefore, it is the 'space' taken by the detention system, by a sentence that sanctioned it, by the poor offer of activities and prospects in many structures, that must be transformed. We must say that space requires time to restore the wisdom of our heart, that is, being able of counting our days, as the Bible reminds us.

Counting the days means measuring them, and for this reason they need hope. In fact, when we think compulsively, entrapped by our addictions or overwhelmed by the bulimia of things, when superficiality prevails in our reactions, when the contingencies decide for us or when addictions enslave us and make us take decisions which are not the result of our will, time does not count at all. The prison or healthcare system cannot just be containment because they can have an extraordinary function: help recovering time. And the prison should favour it.

Hence, Pope Francis is right: time is greater than space, but space must be guaranteed, to allow us to prepare time, that is, the future². For structures such as prisons or institutes where people end up against their will, this is a decisive affirmation. «We can work in the long run, without the obsession of attaining immediate results. It helps to endure the difficulties and adverse situations with patience, the changes of plans imposed by dynamism of reality. It is a call to take on the tension between fullness and limit, giving priority to time»³. This is why restriction places need decent spaces and time, hope, rehabilitation, the possibility of future, open windows to gives a light to look at, so that the hardness of the space can be easier to deal with. «Giving priority to time means being concerned about initiating processes rather than possessing spaces. Time governs spaces, illumines them and transforms them in links of

a constantly expanding chain, with no possibility of going back. It is about privileging actions that generate new dynamisms in society and involve other people and groups, so that they can make them grow and develop into important historical events. Without anxiety, but with clear convictions and tenacity»⁴.

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2. Francesco, *Evangelii Gaudium*, cit., 223.

3. *Ibidem*, 222.

4. *Ibidem*, 223.



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«A time to plant, and a time to pluck up that which is planted; a time to weep, and a time to laugh; a time to mourn, and a time to dance; a time to cast away stones, and a time to gather stones together; a time to embrace, and a time to refrain from embracing; a time to get, and a time to lose; a time to keep, and a time to cast away; a time to rend, and a time to sew; a time to keep silence, and a time to speak; a time to love, and a time to hate; a time of war, and a time of peace.»⁶ But there is a time.

Don Lorenzo Milani asked not to blaspheme time, that is, not to waste a precious good that does not come back. It is the most precious good that the construction of space can and must teach us, try to live in a different manner. Then, we should perhaps always ensure a *Scholè* time, the time of the encounter, of learning something new, of expressing ourselves for what we are, without hassle, without haste, the time of the school of life, where to prepare between the past and the future – which will include the past, whatever it might be, does not make the present pass meaninglessly, prepare the future.

And for those who have little time left, such as the elderly hosted in the institutes, without space or within a space made insignificant, deprived of relationships, it is necessary to give time, even in the proper sense of presence, care, attention, sensitivity. This is how we can handle a space where we do not recognize ourselves and we can experience an intense dimension of time, full of meaning, perhaps as profound as never before.

Yes, time is greater than space, but space should make it possible to find and experience time. This is the endeavour: ensure a meaningful present. Hence, for the elderly, time joins what we live now, and this helps getting them connected with tomorrow, for the prisoners, it helps to prepare for a future that must always be there. «There is a time to plant, and a time to pluck up that which is planted».

5. *Qoèlet*, 3,1.

6. *Qoèlet*, 3,1-8.



14. Slowness

by Fiorinda Li Vigni

Fiorinda Li Vigni,
philosopher, Secretary General
of the Italian Institute
of Philosophical Studies.

While wandering amidst the forests of the white Russia, two men, considered missing by their respective armies, meet and talk to each other. One of them is a clockmaker –or better- he used to be, before the war began. He tells that in his village there weren't many clocks. Not even the bell ringer had one, and to ring the bells at the right time, he would listen to the time on the radio, or he would judge by the sun and the moon. «For that matter, he didn't ring every hour, only the important ones. Two years before the beginning of the war, the bell rope broke. It snapped near the top, the stairs were rotten, the bell ringer was an old man. [...] So, after that, he announced the time by shooting a hunting rifle into the air, [...] that went on till the Germans came. They took his gun away from him, and the village was left without time.»

This is the beginning of Primo Levi's novel *If Not Now, When?* What these lines suggest, on the one hand, is the qualitative nature of time; the flowing of time is marked by the habits and the needs of men rather than the mechanism of the clock. The most spiritual needs, like the religious services, up to the family rites of dining, according to deeply internalised rhythms - almost circadian rhythms. This story reminds us that our measurement of time is linked to what fills this time, to the *'self'* of our very existence. On the other hand, it also tell us that qualitative time is not an exclusive individual time, but it is the time shared with the community we belong to.

Dino Buzzati's novel, *The Tartar Steppe*, represents the irreparable flight of time in the light of an existential condition which, while emptying life of real experiences and devoting it to waiting for a destined event, perpetuates the illusions of youth until the final check. It is precisely the illusion of youth, the sensation of having an infinite time ahead that seizes Forte Bastiani's army officers, especially Captain Giovanni Drogo, caught prisoner by the dream of an exceptional event, the coming of the Tartars. Only through this event Drogo could prove his value and give a purpose to his existence, renovating for a long, long time, year after year, the abstract idea of a limitless horizon. But, the renounce to fill his own life with real experiences in the name of that dream and illusion produces an existential suspension, an emptiness which makes harder the perception of the flowing of time. The *self* of the existence dissolves in a present which unfolds through the slowness of rhythms that are always the same and deprive of any sense which is not their own perpetuation - not habits or innervated scans of life - a time that is nevertheless destined to a sudden contraction when something force us to look back, to realise that time's slowness and peaceful flow is suddenly crushed in a past forever lost: time has suddenly become hasty, fleeting, close to exhaustion.

Time, says Augustine, is an *extension of the soul*: «Thou hast made my days old, and they pass away,



and how, I know not».⁷ What does it happen when time is devoid of experiences, when its rhythm depends on other people, and not on the almost circadian rhythms of the community a person belongs to? It is no longer an extension of the soul, but a *contraction*, a suspended slowness of unshared time, devoid of the vital connection between the past and the future. What it misses, quoting Ernesto De Martino's own words, is the *transcendence in value*.

For the author of "*Il Mondo Magico*", the presence, that is the capacity to stay in the world as an individual, as a subject able to make self-decisions, is an acquired cultural fact in *itself*. In this sense, the presence can go lost, as it happens in situations of particular suffering. In other words, presence is always exposed to the risk of crisis, to the lack of the vital energy that creates values. In these cases, a conflict raises between "must do something" and "there is nothing to do", meant as an existential collapse. Time is slowed down and emptied, only lived *ex post* -when we suddenly turn back to discover not the time of recollection, memory and interiorisation of experience, but its pulverisation, its annihilation-, it is the time of the hidden danger, which takes the form of disinvestment in the future. Only the *ethos* of the transcendence can be opposed to such a crisis, a redemption only possible through the mending of valuable inter-subjective fabrics. An opportunity that, according to De Martino's idea, is given to the individual, but which stays firm only «to the extent it progresses in the civil living».

The time of slowness is not only the subjective time as opposed to the time of the clocks, or the time measured on what is the *'self'* in the uniqueness of the existential condition. It is also the time of an existence who has lost its fundamental bonds, the objectivity of a self-expression and self-exteriorisation through the work, the feeling of being part of a civil living that only protects, according to De Martino's idea, from the crisis of the presence and the loss of any possibility of redemption.

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7. Augustine of Hippo, *The Confessions*, Book XI, Chapter XXII.



15. Measure

by Davide Petrini

Davide Petrini,
Full Professor
of Criminal Law, University
of Turin.

«What is time then? If nobody asks me, I know; but if I were desirous to explain it to one that should ask me, plainly I do not know».⁸

Questions that are posed to us on the sense of the prison sentence? why can citizens' personal liberty be limited? Under what conditions? Where? But most important: for how long?

Under *what conditions* and *where* should be less subject to differences. Surely enough, there is difference between being detained in a rare, advanced treatment institute or in one that has appeared on the news for episodes of unqualifiable treatment or in a low security mother-and-child prison, the so called ICAM, or in a degraded ward where often difficult people are detained. With all due exceptions (e.g., restricted prison regime ex art. 41-bis P.L., special surveillance, confinement), conditions or places of detention are very much alike, based on the seriousness of the crime or the subjective conditions of the prisoner. In fact, “white collar” prisoners often complain about it. They would prefer to be restricted in environments providing for a treatment adequate to their social *status*, thus marking the difference between them and “common criminals”.

As for the measure of time, that the sentence should consist - almost exclusively, in our penal system - in a limitation of personal freedom *measurable* over time, is the result of the Enlightenment revolution, which marks the transition from infamous or corporal punishments - the death sentence, in the first place - to detention. This is a turning point that tends to mitigate the harshness of the penal answer: the legal system must limit itself to *limiting* only (I apologise for the pun) the personal liberty of the offender, without *raising a hand on him* under any circumstances.

Of course, by limiting *only* his/her personal liberty, the offender is condemned to a series of extraordinary renounces, actually making impossible to have relations of different natures, including family, sex or work relations. But beyond its - questionable, in fact - *meekness*, the prison sentence would have, in any case two other unparalleled advantages. In first place, equality, as a day in prison is equal for all prisoners, rich or poor. Moreover, the scale is almost infinite: one day, a month, a year, 10 years, 30 years, the entire life.

The proportion of the sentence is then the *measure of time*, starting from a minimum to a maximum of the so-called *edictal* range. And to follow: a quantity of months inflicted by the cognizance judge; reduced sentences for choosing a certain type of trial or an early release in executive proceedings (45 days every six months); the years (10) that must pass before a person sentenced to life imprisonment (except for life sentence without parole) can have access to permission leaves (which in turn, can be

8. Augustine of Hippo, *The Confessions*, XI, 4.17.



summed up to 45 days per year; 100 for minors), these adding up to 20 before a lifer can access semi-liberty. Even the amount of time that the prisoner may/must spend outside the cell - the notorious “recreation hour” - is subject to this calculation. An endless calculation of time, which even, in the “balance” between fines and prison sentences, becomes measurable as a consideration for money: 250 Euro for each day of sentence.

In the volume *Condizioni della pena derivanti dal suo limite*, Francesco Carrara claimed that the sentence should be, more than not-excessive and not-unequal, «divisible, that is, fractionable in order to respond to the different degree of an accusation»⁹.

It is exactly at this point that question about the measure of time arises.

The measure of time becomes the measure of punishment, proportioned to the seriousness of the crime committed and by the necessity to prevent more vigorously the most serious crimes: «It is not only in the common interest that crimes are not committed, but that should be less in proportion to the harm they cause to society. Therefore, there should be more obstacles to prevent criminals from re-committing misdeeds which are contrary to the public good, and they should be comparable to the motives that drive people to commit crimes. Therefore, there must be a proportion between crimes and punishments»¹⁰.

Thus, with the same gravity of the fact and the guilt, the same measure of time will correspond, in the mutual support between proportion and equality.

As early as in 1980, the Constitutional Court, although ‘saving’ a type of offence of the old ‘Highway Code’ (1959), which provided for a ‘curt’ sentence, recalled «the need for a legal articulation of the sanctioning system that makes possible the individualised and proportional adjustment of the penalties inflicted, so that the rigid sanctioning provisions would be in harmony with the “constitutional nature” of the penal system, which puts a limit on punitive power in function of individual protection and proportional justice».¹¹

In any case, since prison has (almost) become the only response to crime, the *subtraction of life time* becomes the measure of the sentence - imprisonment -, considered just as equal, proportionate to the gravity, able to prevent more crimes.

Now, it would be all too easy to question these ‘reassuring’ traits of the punishment. I would just remember Massimo Pavarini’s words, written ten years ago: «The same sample of crimes, homogeneous by degree of offensiveness and mode of action, by subjective element and criminal dangerousness of the criminal, is punished differently by the same criminal justice system. Punishment, in substance, is

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9. F. Carrara, *Programme of the course in Criminal law. On Crimes and Punishments*, § 650.

10. C. Beccaria, *Dei delitti e delle pene*, original source www.liberliber.it, p. 12.

11. Constitutional Court, ruling no. 50 of 14 April 1980.



utterly unequal in space and time»¹². But it does occur as necessary to me asking myself what profound, perhaps insurmountable hypocrisies our current conception of the measurement of time conceals.

First of all: in response to the principle of equality and proportion, duration should be fixed; but that is not, and cannot be. And this is correct, because the rehabilitative purpose of the punishment and consequently of the detention period imposes to ponder the flow of time and how it affects the person, which is no longer the person who committed a crime, possibly a long time ago. It is this change that requires the judge responsible for the enforcement of the sentence to intervene not only with alternative measures to prison, but also with reduced sentences. We should never support the idea that a certain sentence (not as Beccaria intended, for which it should necessarily follow after the commission of a crime) should be executed as determined by the judge, no matter what, until the very last day .

Time, as a subjective and intimate reality, risks unhinging any sense of equality and proportion in our claim to measure the time of punishment. Therefore, when we calculate the time of the sufferance to be inflicted to the person that violated the fundamental rules of civil living (this is in fact the only legitimate space of the criminal law, although it is not always so), we should always keep in mind of what time we are talking about.

Moreover, has this concept of *equality and proportion in the measurement of the time* some anthropological or philosophical foundation? Because, thinking that one day, a month or a year (or twenty years) are the same for everyone requires a rigorous Newtonian vision of the time, that is to say an absolute objective reality. But, thanks to Henri Bergson (and before him G. Wilhelm Leibniz), we do know that time, as a duration, is always a subjective reality, ‘measured’ by conscience, and it all the more constitutes the privileged place of freedom of conscience. Time, as a subjective and intimate reality, risks unhinging any sense of equality and proportion in our claim to measure the time of punishment. Therefore, when we calculate the time of the sufferance to be inflicted to the person that violated the fundamental rules of civil living (this is in fact the only legitimate space of the criminal law, although it is not always so), we should always keep in mind of what time we are talking about.

Finally, we should perhaps think that the prison punishment is not time taken from life, but *time consigned to nothingness*. A truly waste of decades, of centuries altogether dedicated to nothingness, for the vast majority of inmates. In fact, when an inmate studies in prison and obtains a degree, all the newspapers publish the news, so big is the exception to the rule of time consigned to nothingness.

Despite -to limit our reflexion on the most recent events- the great lesson coming from the *Stati generali dell'esecuzione penale (The States General of Criminal Enforcement)* in 2015-16, from the Lattanzi Commission works, as well as from the efforts put in the current reform (discussed by different Commissions in charge of drafting the delegated decrees of the Law 27 September 2021 no. 134), we have still not found nothing better and different to the prison system enforcing a sentence. At least, we learn and we preserve awareness of how precarious and contradictory is our claim of measuring the time - just, equal, proportioned - of limitation of liberty. Time, as we are also aware, is not only subtracted to the free life, but also consigned to nothingness.

12. M. Pavarini (2012) *Perché punire*, in “Antigone, Qualcosa di meglio del carcere”, p. 17.



16. The Time of a Mandate

by Massimo Bray

Charles Dickens published in 1844 a short Christmas-themed novel entitled *The Chimes*, less famous than *The Christmas Carol*, but equally effective in tracing the coordinates of the relationship between man and time, of the immeasurable intertwining of past, present and future that constitute our existence, always in the precarious balance between an event that immediately passes, the memory that becomes history, the years to come, foggy until they take shape by asking us to account for our goals and putting us in front of our successes and fears.

Massimo Bray, former Minister of Cultural Heritage, Activities and Tourism (2013-2014), Director General of the Italian Institute of Encyclopaedia founded by Giovanni Treccani.

«The voice of time – wrote Dickens – cries to man, advance. Time is for his advancement and improvement; for his greater worth, his greater happiness, his better life; his progress onward to that goal within its knowledge and view, and set there in the period when Time and He began. [...] Who seeks to turn it back or stay him on his course, arrests a mighty engine which will strike the meddler dead; and be the fiercer and the wilder, ever, for its momentary check!»¹³.

It is no coincidence that Dickens spoke in terms of time and its inexorable passing: these lines condense the exaltation and uncertainty of the Victorian era, while the Industrial Revolution largely accelerated natural-dictated rhythms, which had always guided the human action before.

Today, this anxiety seems familiar, as we run against time, its unstoppable ride and the ongoing sensation that time is not enough. *La tirannia del tempo. L'accelerazione della vita nel capitalismo digitale* is a recent study by Judy Wajcman, Professor of Sociology at the London School of Economics, published in 2015, and in 2020 in Italian by Treccani, in its «Visioni» series. The author accurately portrays contemporary time: the feeling of always living in a hurry, of being hostage of our technological devices, always connected, unable to distinguish between work and leisure time.

«Throughout history – writes Wajcman – men and women had always coordinated their own activities with those of the others, but never as today this need is felt. We take for granted that our days are marked by the passing of hours, measured by the clock. Since we were children, we are thought the value of punctuality, the imperative of being on time, of not wasting time». In fact, as Jeremy Rifkin remarked in 1989, in his *Le guerre del tempo*: «Modern Ages privileges efficiency and velocity as values [...]. The idea of saving and compressing time was impressed in western civilization and now also in the entire world»¹⁴.

13. C. Dickens (2000), *Le campane*, Interlinea, Novara. [Translation, C. Dickens (1845), *The Chimes*, Tauchnitz, Leipzig, Google Books].

14. J. Rifkin (1989), *Le guerre del tempo*, Bompiani, Milan. [Courtesy translation]



«Democracy – he writes – is a function of time. This definition, derived from the finding of a logical impossibility of an immediate democracy, is sociologically founded. The people, as a collective political subject, are in themselves, a figure of time. In essence, they are a story. Therefore, democracy is not only the system that allows people self-government, but also a regime where a common identity is built».

The idea of compressing time to maximize the benefits finds its best application when speaking of a deadline to be met or, more in general, when we think about a limited time, such as the time of a mandate or the tenure of a public office.

The French historian Pierre Rosanvallon, in his 2008 book, *La legittimità democratica*, expressed very clearly how important the time factor is in an advanced democracy. He believes that time is a real and true actor of the functioning of the political and administrative machine.

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To build a common identity, which we summarize in the principles of representativeness and participation, it is necessary, in Rosanvallon's view, to pay attention to the «pluralization of the democratic times. The construction of a story, as the management of the present, involves the articulation of very different relationships with respect to social time. The vigilant time of memory, the long time of the Constitution, the time of a mandate for parliamentary action, the short time of the opinions, should always confront and adapt to each other to substantiate the democratic ideal»¹⁵.

The limited time of a mandate, conferred by election or direct appointment, compels us to pursue those goals which are attainable within its term; we commit with those who were there before us to carry on their work, and possibly improve it. Most of all, we are committed with those who will follow us, those who will take over. In this sense, time is made of a totally different substance with respect to the flowing of time in every day life: plentiful at the beginning but rapidly decreasing, requiring us to make quick decisions.

Italo Calvino, in the second of his *Lezioni Americane*, never actually held, published in 1988, spoke of *quickness* as one of the six memos to orient ourselves in the new millennium, and wrote that «in practical life, time is a form of wealth with which we are stingy. In literature, time is a wealth to spend at leisure and with detachment. We do not have to be the first to past a predetermined finish line. On the contrary, saving time is a good thing because the more time we save, the more time we can afford to lose ».

If we think, based on Rosanvallon's thought, of the time of a mandate as a story (of which we are both the protagonists and the writers), then our primary task is to immerse ourselves in the narration, aware that we could not finish it, but we could honour our assignment for the time it has been entrusted with us. Alternation is, after all, at the heart of the democratic process, but it can only work if accompanied

15. P. Rosanvallon (2015), *La legittimità democratica*, Rosenberg&Sellier, Turin. [Courtesy translation]



by a sense of responsibility and designing skills. It is our responsibility to make a good use of the present, no matter how quick it consumes itself, to prepare the future ahead of our mandate, which will be picked up by those who will follow us: after all, as Giacomo Leopardi wrote in his celebrated *Dialogo di un venditore di almanacchi e un passeggero*, even today it is nice to think that «This life, which is such a fine thing, is not the life we are acquainted with, but that of which we know nothing; it is not the past life, but the future».



The
Beginning
of Time



17. The Beginning of Time. The Moment of Hope

The decision is certainly made after careful consideration because it is the gateway to a life-changing moment or to an adventure doomed to fail. It comes from afar, through the tormented thoughts of countless nights: filled with necessity and hope or obliquely imbued with some ambiguous design. The long reflection always became reality in a moment. The moment of departure, of setting out, of hiding in a vehicle destined to cross the border, of relying on the waves of the sea.

Everyone has the right to leave their country. This affirmation is made in the *Declaration* approved seventy-four years ago, marking a common recognition of the human rights, whose wording, so solemnly undersigned, was destined to be contradicted uncountable times in the following decades¹.

Yet, the decision to migrate is not always the result of a free choice. It is often due to necessity, the result of a 'forced' evaluation of the circumstances that push people to fleeing to other countries. And so, the migrant person, filled with trust and hope, faces a dangerous journey to escape death, war, violence, trying to cross national borders in an attempt to reach salvation, to find better living conditions in a hospital and supportive community. Because everyone has «[...] reason to hope for happiness in the same measure»². Hope is a right: not in the legal sense, but in a human sense, that is, in that tension that responds to the reasonableness of the actions of each person and that hardly can be transposed in a codified norm. Because - it is worth remembering - law always 'follow' life and often fails to even grasp it, but never manages to prefigure its intrinsic needs.

An inviolable right that belongs to everyone, even to those so-called 'economic migrants', whom rigid rules do not recognize as worthy of that attention and support granted to the persons escaping from wars and persecutions. As if the economic difficulties of a country are not the result of implicit or explicit wars, and hunger not a form of persecution. Also, the full development of the personality of the migrant person is to be ensured by removing all obstacles, in the respect of the supreme value of human dignity³.

Limiting ourselves to 2021 data, migrants crossing the Mediterranean sea towards Italy were 67,040. Considering that migrants do not reach European coasts only by sea, we should also be aware that we

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1. *Human Rights Declaration*, Article 13, para. 2.

2. Immanuel Kant (1791-2000-2005), *Critica della ragion pura*, translation by G. Gentile and G. Lombardo-Radicce, Laterza, Rome-Bari, p. 498. [Courtesy translation]

3. Article 4 of the Charter of Fundamental Rights of the European Community.



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cannot rely on the above data, this data does not include those who were sent back to the country they came from; we do know there were many of them, but we are not able to make an accurate estimation⁴.

Most migrants before starting their journey by sea, crossed different territories, and sometimes they were unaware of crossing them. They often suffered violence, perhaps they relied on criminal organisations, perhaps they took the same path several times and failed repeatedly. Everyone faced an uncertain future, many arrived in a country that probably could not be the one where they had thought would settle and live. Many of them were vulnerable because of their age, gender, sexual orientation, health conditions, or they became vulnerable during the long and dangerous journey. But all of them started their journey in a moment of hope, they took a ‘decision of hope’, believing in a ‘different’ life: hopefully better, because no one wants to go for the worse.

Organisations and people working in the context of fundamental rights protection, people living in countries where the Constitution establishes the respect for human dignity and provide instruments to enforce that right, will ever understand the ‘decision of hope’? Would they be able to understand whether necessity or despair was at the basis of such decision and help migrants to transform their choice in a project of life?

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In most cases they can only offer an uncertain future and more sufferance. Only few of them will reach, in the end, the desired destination. Upon arriving in Italy, either by sea or crossing land borders, all migrants enter into the reception system. The first and immediate goal of the system is rescue and identification; migrants find themselves living in ‘non-places’ -defined by the law as “crisis point”⁵ where a path that will determine the outcome of the ‘decision of hope’ begins.

In some (many?) cases they will find a place within the reception system, and with it, support, education projects and work training activities; they will be treated as important resources to start a gradual process of putting down roots in the host society and thus achieve social redemption. The path could lead to a regularisation of their position, to inclusion, to make that hope born of despair come true. But in some cases (many?) that is not what is going to happen. The “points of crises” -also known as *hotspots*- could represent the first step towards the failure of their migratory project; the time for reception, for rescue and identification will inflate with the limits set by practice more than by rules; they will be moved to different places where the hope of that initial moment will turn into despair. Perhaps, then, they will think about that moment that changed their perception of life.

4. Source: Department for civil liberties and immigration of the Ministry of the Interior.

5. Art. 10-ter of the Legislative Decree 25 July 1998, no. 286.



18. The Beginning of Time. The Forever Moment

Can a moment last forever?

A moment, like an instant, indicates a very short, infinitesimal span of time, so short as to be difficult to quantify. But people's lives are a collection of moments, even insignificant ones, that flow one after the other. Then, how can one of these moments turn into stone and last more than that brief span of time that defines it? Still, it can happen. Sometimes, a moment can last forever, in the sense that it can influence the entire life of a person. It happens when it marks a space-time coordinate, creating a *before* and an *after*; when we realise that something happened and it changed everything.

The moment when a person loses his/her personal liberty is one of these moments. It can be the moment when the person is taken into custody, arrested or remanded in custody. The person enters in a new, different, unnatural dimension, which is often perceived as unjust. In that moment, the *before* ends and the *after* begins. A new identity is underway, in the perception of the others and often also in the person's self-perception.

The moment when a person is deprived of his/her own liberty can be more or less invasive, violent, expected or accepted. It can involve coercive interventions or it can happen because the same person surrenders to the police. But regardless of how it happens, that moment will leave an indelible scar in the life of the individual. Being taken into custody by the police, going through the photo-signalling procedures, the detention a custody suite, the closure of the gate, the sense of humiliation, be treated as guilty -if not violently- affect the life of a person. The moment when a person loses his/her liberty can represent the beginning of a succession of similar events. Sometimes, it can also represent the recognition of a 'career' as an outlaw: a sort of inevitable initiation. Other times, however, it can represent the beginning of a descent towards a failure considered as insurmountable, from which it is not possible to recover. In that moment -as Alex Britti sings- *il cielo si fa nero e il sole prigioniero* [the sky gets darker, as does the sun behind the bars]⁶.

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However, that instant is often the only sign of attention shown by the institutions and collectivity. In fact, they were not able to intercept in time the malaise or criticality to prevent people from choosing a criminal path or behaviour: when the school was not able to grasp the negative signals and act accordingly, when

6. Alex Britti, *L'attimo per sempre* [The Forever Moment], 2009: «Nero, il cielo che tradisce il mio pensiero/nell'angolo più livido e più scuro nasconde l'incertezza del futuro/cercando di capire cosa è vero come questo sole prigioniero». [Courtesy translation: Black, the sky that deceives my thoughts/In the most bruised and darkest corner/I hide the uncertainty of the future/Trying to figure out what's true/Like this prisoner sun]



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In order not to make this moment last “forever”, the temporary deprivation of liberty should correspond to the acquisition of other rights, typical of this time: the right to talk to an attorney; the right to contact a close relative or a reference person; the right to a doctor’s visit; the right to be informed one’s own rights.

the territory did not understand or managed to give adequate responses to the malaise, when crime made people feel less alone and less abandoned.

In order not to make this moment last “forever”, the temporary deprivation of liberty should correspond to the acquisition of other rights, typical of this time: the right to talk to an attorney; the right to contact a close relative or a reference person; the right to a doctor’s visit; the right to be informed one’s own rights. These add up to the rights of each person to the respect of his/her own dignity and the protection of the physical and psychical integrity, as well as any other rights deriving from it, which to quote a Master «should be taken seriously»⁷.

The risk is that this time is connected with its intrinsic dullness, with the condition of particular vulnerability that deprivation of liberty involves, with the sense of helplessness of those who suffer it and the intrinsic disparity with respect to those who act. It can also become a moment of transition towards a till then unknown reality: when, due to the lack of custody suites in the territory, people are taken to prison, perhaps to be - as often happens - released the next day. A ‘taste of prison’ that opens up to the risk of seeing that time turned into stone, so becoming *forever*.

19. The Beginning of Time. The Moment of Responsibility

When we enter prisons for a preventive supervision task, we come across personal stories: multiple, jagged, told through legal acts and storytelling narratives, because the constraint often determines the desire for the person who lives it to transpose his experience in words. Thus, we end up knowing the prison not only for its rules, the more or less respected standards, the procedures, but as the fabric of people’s life, which in a moment – the moment of the decision, including the decision to commit a crime - changed its course.

Sometimes, the fragments of these stories are similar because of the frequent young age of the protagonists, of the circumstances of their actions or the moments where personal choices were made, as well as their consequences. These fragments take us to the theme of responsibility. The responsibility of a moment has often a diriment value in the paths of life. Those who reach out to this world characterised by consequences -the deprivation of liberty- cannot avoid wondering what was

7. R. Dworkin (1994), *I diritti presi sul serio*, Il Mulino, Bologna. [Courtesy translation]



that moment that changed the course of their lives. Yet, this is often absent in any following evaluation, especially in court, because the response to a crime is mainly centred on the sanctioning of the perpetrator and not on the laceration produced by it, on its origin or possible recomposition. And that is why that decision-making moment is unavoidable.

We are well aware that the theme of responsibility is largely debated in philosophical, juridical and various social sciences, put in relation with personal liberty, relationship with the otherness, converging from the different perspectives on its essentially dialogic dimension, referable to the conceptual horizon of human relationships. If in the context of the necessary protection of legally protected rights, there is a limit to be fixed, starting from which each person can be called to answer for one's own action⁸, this attribution, from the biological and psychodynamic point of view, undergoes a necessary relativisation for young people, being influenced by time, in this phase of life more than in any other. The time factor makes responsibility a concept "in progress" with respect to its ethical and moral nature, in relation with the personal story and the individual conditions, the culture and the tradition those persons lived in, and the very same responsibility of other people or community around them. In the fragments of their stories, it is always possible to find crimes committed when they were young, with parallel responsibility profiles of the family and social groups, of foster families or political institutions of their country or country of origin.

It is possible to track back the time of responsibility of their own actions, especially when such action affects one's own and others' existence, finding its highest emotional tension and consequentiality from the very moment in which the action or choice is made. But it is desirable to think of a different declination of that time, on the basis of the degree of awareness and personal conditions of the people involved, as well as the origin cultural traditions. This must also account for the many obstacles that can prevent people acting in conformity to social responsibility, such as the stress arising from satisfying basic needs or the lack of opportunity, the same social norms that often emphasize competition over comprehension and collaboration with others. Everything should be done within the framework of a system of rights and protections that must, in any case, be maintained and supervised.

With reference to the legislative initiatives on responsibility, the programmes of restorative justice aimed at rebuilding the connection between the individual and the social system are characterised by a more evident incisiveness. Among the different difficulties identified, they also pose the question of the time when their activation should be more appropriate, in compliance with international and

When we enter prisons for a preventive supervision task, we come across personal stories: multiple, jagged, told through legal acts and storytelling narratives, because the constraint often determines the desire for the person who lives it to transpose his experience in words. Thus, we end up knowing the prison not only for its rules, the more or less respected standards, the procedures, but as the fabric of people's life, which in a moment – the moment of the decision, including the decision to commit a crime - changed its course.

8. Considering the constitutional provision based on which criminal responsibility is personal (Article 27 of the Constitution), the Italian legal system establishes that the minor is held criminally liable from the age of fourteen (Article 97 of the C.C.), after ascertaining the capacity to understand and discern (Articles 98 and 85 of the C.C.). The application of the special legislation was extended for the execution of the sentence to twenty-five years of age for crimes committed by minors, on the basis of scientific findings on the implications of a lack of assimilation of primary socialization processes, of limited experience of life and the prolonged process of brain development.



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supranational reference regulations⁹. A wider application of the restorative justice process, however, seems to find little support and be limited to the sole initiative of the judicial authority, as provided for by the admittedly positive enabling law on the reform of justice¹⁰. Further development on the matter should be monitored, as the debate on the topic seems underdeveloped in certain regards.

This observation, along with the pushes, cyclical re-proposed, for lowering the threshold of imputability based on a hypothetical greater or anticipated empowerment of the minor and, on the other hand, the precarious conditions of people and the very same places in which they are detained or where their personal liberty is limited open to a risk of retreating from the cultural and juridical approaches acquired in our legal system.

Being minors or young adults does not mean be entitled to minor rights. On the contrary, a wider protection is needed. This condition imposes the commitment for the adult people to activate programmes and paths of 'education to responsibility', with the aim of raising the minors' awareness on the importance of respecting the rights and the liberties of others, while encouraging the development of a proactive attitude and behaviour on the sense of belonging to a community.

Being minors or young adults does not mean be entitled to minor rights. On the contrary, a wider protection is needed. This condition imposes the commitment for the adult people to activate programmes and paths of 'education to responsibility', with the aim of raising the minors' awareness on the importance of respecting the rights and the liberties of others, while encouraging the development of a proactive attitude and behaviour on the sense of belonging to a community. In this view, it is time for the Political Institutions to responsibly invest on actions addressed to adolescents and young adults. These must be aimed at accompanying them to the 'adult' age, respecting the right to self-determination recognised to each person in any state or condition which they may be found. The new challenges of the contemporary world¹¹ re-propose the urgency of a wider rethinking of the concept of responsibility, with a view on the future generations.

9. Among others, cf. *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, Resolution n. 12/2002 of the UN General Assembly; Directive 2012/29/EU establishing *Minimum Standards for the Rights, Assistance and Protection of Victims of Crime* of the European Parliament and of the Council; Recommendation CM/Rec (2018)8 on *Restorative Justice in Criminal Matters* of the Committee of Ministers of the Council of Europe.

10. Law 27 September 2021, no. 134 "Delegation to the Government for the Efficiency of the Criminal Proceedings as well as in the Field of Restorative Justice and Provisions for the Rapid Definition of Judicial Proceedings", point 18.

11. Among others, the worsening of the migratory question, the new environmental challenges and the necessity to re-think solidarity between people, and their coexistence with the world they live in.



20. *The Beginning of Time.* Past and Oblivion

Compulsory prosecution and independence of the investigative function from the executive power¹² determine -at least on a theoretical basis- the impossibility of our judiciary system of ignoring any crime, even a minor one. The prosecution of a crime is compulsory; at the same time, it is important to notice how political interference on the cases to be prosecuted is not admitted.

The combination of these two principles, both depending on the Constitution principles¹³, has precise historical origin. After the destruction of the State of law by the Fascist regime in Italy, the founding fathers of our Constitution decided to introduce some elements in the legal system to ensure the independence of the public prosecutor from the Government. On the other hand, these elements would prevent the judiciary's discretionary power to assume an indulgent attitude face to violent crimes of political nature, as it happened under the fascist regime.

However, the 'time' variable represents a limit to compulsory prosecution: the prosecution of crimes, with the exception of those punished with life imprisonment, lapses after a certain number of years. The heated political and juridical debate on the limitation period and relevance of time in the action of justice is known, in which a punitive power of the State without time-limit interferes with the time of the life of the person who is subject to it and with the concrete meaning of the very function of justice. The result of which is also linked to the time when it is rendered.

Hence, the battle between the compulsory memory and the oblivion: between the time when the crime is committed and the time when justice is rendered. In application of the constitutional principle of the reasonable duration of the trial, the battle should result in the correction of the rigidity of a system which, in theory, tends to remember all the crimes and which, in practice, often result in the forgetfulness of the denied justice.

Memory is essential in everyday life, it guides us through a series of activities that we consider automatic, which are, in fact, the result of a learning preserved over time. It is fortunately selective by nature. In fact, remembering all the details of the facts happened to us would submerge our present, probably clouding our ability to distinguish the important aspects of the past from the superfluous ones. In this sense, oblivion assumes a role in our lives that is perhaps as important as memory. One

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12. Refer to G. di Federico on the specific characteristics of the Italian investigative function "Obbligatorietà dell'azione penale e indipendenza del pubblico ministero", in *Giurisprudenza italiana*, February 2009.

13. Respectively, Artt. 112 and 107 of the Constitution.



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Memory, in fact, is influenced by variables which are independent from our personal sphere of interest. Let's think about the role of images of abjection horror in the construction of memory. There are particularly shocking facts that, beyond their specific relevance, tend to be engraved in our memories more than others. Similarly, we tend to forget important facts which are not related to a strong emotional component. This consideration is also applicable to the penal field, where the public debate tends to focus on sensational or morbid aspects, also attaching the mark of shame on a person well before the full ascertainment of his/her responsibility and even less of a definitive sentence; conversely, the public debate does not rehabilitate their names when they are sentenced 'not guilty' or have paid their debt with justice (if sentenced guilty).

of the greatest scholars of memory, states that «According to the clues, one gets the impression that oblivion rather than memory is part of the elementary natural equipment of mankind»¹⁴.

When it comes to crime prosecution and, more generally, to the exercise of justice, memory and oblivion inevitably seem to be alternative aspects. For instance, the prosecution of crimes committed by authoritarian and totalitarian regimes. During the transition to democracy, the oblivion for certain crimes committed under authoritarian regimes is considered a necessary guarantee for stability¹⁵. On the other hand, for the organisations working in the human rights field, “do not forget” is the imperative; they do not just want to preserve the memory of the war crimes or crimes committed against humanity, they want to prosecute those responsible, also outside the country where they were committed¹⁶.

Both the memory and the oblivion are actually necessary to make a ‘healthy’ democratic debate on the penal system. The memory of different communities and subjects often showing diverging opinions on the reconstruction or the missing reconstruction of important penal facts of a country, stimulates society and politics to verify the effectiveness of justice. Oblivion, on the other hand, assumes a fundamental value to preserve the re-educative and, as such, rehabilitative value attributed by our Constitution to the sentence. With the extinction of the sentence, in fact, the offender should be able to count on his/her reintegration into society, a process that would make him/her definitively free from the crime committed.

In the dynamic relation between memory and oblivion, history happens. The latter tends towards objectivity, while memory, even the collective one, necessarily implies the assumption of a particular perspective, hence the unattainability of a ‘shared memory’¹⁷.

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14. J. Assmann (1997), *La memoria culturale. Struttura, ricordo e identità politica nelle grandi civiltà antiche*, Einaudi, Turin, p. 40. [Courtesy translation].

15. On the democratization process and “oblivion” policy, refer to P. Grilli di Cortona (2011), *Il peso del passato nella costruzione della Democrazia*, Il Mulino, Bologna, pp. 294-301.

16. D. Archibugi, A. Pease (2018), *Crime and Global Justice. The Dynamics of International Punishment*, Polity, Cambridge.

17. On collective memory: M. Halbwach (P. Jedlowski and T. Grande ed.) (2007), *La memoria collettiva*, Unicopli, Milan. On the concept of divided memory: A. Contini (1997), *La memoria divisa*, Rizzoli, Milan.



related to a strong emotional component¹⁸. This consideration is also applicable to the penal field, where the public debate tends to focus on sensational or morbid aspects, also attaching the mark of shame on a person well before the full ascertainment of his/her responsibility and even less of a definitive sentence; conversely, the public debate does not rehabilitate their names when they are sentenced ‘not guilty’ or have paid their debt with justice (if sentenced guilty).

In public debate, the approach to criminal enforcement is too often emotional and characterised by tones that remind us of pillory and other torture forms in use in pre-modern times. This can cause the oblivion of the people, but not of the facts: an imperative ‘throw away the key’ from which descends a ‘forget’, which literally means ‘remove from heart’ in Latin language. It is no coincidence that history teaches us that power often seeks an alliance with the «oblivion» to get rid of uncomfortable people, while memory potentially has a «subversive content»¹⁹.

The State must be committed to ‘remember’ to the world of the free men those who live in an enclosed world; some people would like it to be eternally closed, far from eye, far from heart. This is the contribution to avoid the oblivion of lives and events, without perpetuating their inception moment of their occurrence.

21. The Beginning of Time. The Burn of Memory

In the early 1930s, a prisoner of the special criminal house of Turi developed a theory of historical time that has been passed down to us. According to the prisoner no. 7047, the historical process proceeds by irregular rhythmic cadences, in which phases characterised by a slow and rarefied course alternate with denser and more intense phases.

In that cell, right next to the guard post, in the first section, a conception of historical temporality takes shape with a dual structure, in which an empty time is opposed to a full time. This duplicity is expressed through the antithetical use of the expression “duration” and the syntagm “epoch-making”.

The first one is the ordinary time of the life of a social formation, a static time characterised by imperceptible changes, replicating itself in absence of significant

The first one is the ordinary time of the life of a social formation, a static time characterised by imperceptible changes, replicating itself in absence of significant changes. For this reason, duration is an ‘empty’ time, a time that rolls up smoothly and linearly, a pure quantity that accumulates by inertia and that requires to be measured in simply chronological terms.

Sometimes, though, this continuum flow is interrupted, upset by an event or an historical process that alters the rhythm of time, and impresses a new direction to the movement of history.

18. Cf. Pasquini (2014), *Ansia di purezza. Il fascismo e il nazismo nella stampa satirica italiana e tedesca del dopoguerra*, Viella, Rome, p. 22.

19. J. Assmann (1997), *La memoria culturale, op. cit.*, pp. 44 and 57.



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Sometimes, though, this continuum flow is interrupted, upset by an event or an historical process that alters the rhythm of time, and impresses a new direction to the movement of history. In these moments a new historical form bursts through, while the previous crumbles. And time fills up. These are “epoch-making” cultural facts, they mark the beginning of a new phase in history and in the development of new social forms. As such, as the prisoners says, we should non confuse ‘epoch’ with ‘duration’, as «a phenomenon can last for quite long time, but its duration does not make it an epoch-making event»²⁰.

Thus, I believe that the long process of de-institutionalisation that accompanies part of the history of the republican Italy is just one of those fundamental cultural facts that can be defined as “epoch-making”.

Protected by the republican Constitution -which deeply disfavours any custodial and segregationist logic-, our Country progressively suppressed “differential classes” for students with disabilities, abolished the civil asylum system, moved beyond the hospitalisation of minors in institutes and “criminal asylums”, and posed the question on how to prevent and counteract the risk of a *de facto* internment of the elderly and/or disabled people. The Law 13 May 1978, no. 180, soon became the symbol and synecdoche of this broad programme of redefinition of the *status libertatis* of the people that do not fit in the “standard” form.

According to the distinctive features of a “epoch-making” event, the repeated opposition to resort to a total institution signed the beginning of a new historical configuration of the social relationship. This decision, in fact, erased from the list of forms of relationship that a society accepts as thinkable and available the one that included the possibility of locking up one’s neighbor. It redefined the perimeter of the legitimate forms of common life and set a new beginning that shattered the continuity of history marked by lazy and monotonous clocks.

Hence, «It is time there was time»
to keep alive what
Primo Levi called «the burn
of memory».

But, as a couplet attributed to Eugenio Montale reminds us, «The time of the events/is different from ours»²¹. Additionally, societies tend to forget quite easily. For this reason, also epoch-making facts are unstable, impermanent and always reversible. Time erodes more or less aggressively their memory. But the progressive erosion of the memory is full of consequences: on the one hand, it disperses the memory of «this came about»²², exposing to the risk of reliving past experiences again and again with renewed astonishment; on the other hand, it damages the faculty of analogical and comparative judgement -which enables us to grasp the essences beyond the differences-, exposing to the risk of being unable to recognise the new epiphanies of whatsoever total or ‘totalish’ institutions. Hence, «It is time there was time»²³ to keep alive what Primo Levi called «the burn of memory».

20. A. Gramsci (2014), *Quaderni dal Carcere*, quaderno 14(1), para. 76, Einaudi, Turin.

21. E. Montale (1996), *Diario postumo*, Mondadori, Milan, p. 49.

22. P. Levi (2014), *Se questo è un uomo*, «[...] Meditate that this came about: I commend these words to you. [...]» Einaudi, Turin, p. 1. [Translation by Stuart Wolf (2014), Hachette UK.]

23. P. Celan (1998), *Poesie*, “Corona”, Meridiani Mondadori, Milan. [“Love Crown” Poem, Courtesy translation]



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Time



22. The Reconfigured Time. The Deprived Time

A well-known dictionary of the Italian language defines *time* as «the notion that organises the moving continuity of states in which human and natural events are identified, linking it to an idea of succession or evolution, with particular emphasis on the effects produced on things by their own mutation and evolution over time»¹.

The flow of time -as also appears from the abstract definition of a dictionary- is always influenced by environmental factors, since the very beginning the alternation of day and night and of the seasons, and by subjective, psychological factors with respect to which the degree of perception and memory plays an essential role. But it also depends on the context and on the effects that different cultures have on them.

In the legal context, time is associated to elements of procedural sequency, such as remand in custody, penal execution, detention, return to liberty, limitation period, to quote a few. More specifically, there are three typical moments that mark the time of the sentence in the contemporary cultural context: the judgement, which is also preceded by the waiting, where the person is no longer the ‘master’ of his/her own time, the execution of the sanction and the waiting of a final evaluation of the sentence aimed at modifying or concluding the time served in prison.

Penal execution, outlined in the Italian Constitution, is *aimed at* rehabilitating the prisoner, and as such it must take into account time, as the constructor principle of the life of a man. *Aim* means that the attention is not only on the fact - the committed crime- but also on the progressive becoming of the personality of the perpetrator on the existential, social and relation-related levels. The supervisory judge is the judicial figure responsible to observe the ‘becoming’ of the sentence, that is the ‘time passing’ during the penal execution, and make evaluations based on the requests received

Therefore, it happens that a person in a particular moment of his/her life can just be passively subject to the management of his/her own time and future. The persons in charge manage time based on different needs and other logic, often associated to administration or organisational needs. Such situation often reveals a ‘deprived’ time, as the consequence of persistent passivity, delays, wearisome bureaucracies.

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1. G. Devoto; G. C. Oli (1979), *Dizionario della lingua italiana*, voce “tempo”, Le Monnier, Florence. [Dictionary of the Italian Language, entry “time”.]



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To those who observe this connotation of the time in places of deprivation of liberty from the outside, often hurriedly, such remodulation the from fullness of experience to the density of expectations appears as the inevitable consequence of the time of justice, of the important decisions, of the assessments on whether or not to grant spaces of freedom. It is a consequence of a complex system which requires to those 'inside' to have patience, but 'inside' this reconfigured time only consists of a repeated waiting, the emptiness of experience, the sense of uselessness: in prison, space shrinks, while time dilates. Most of all, time is not the 'own' time, not even the perception of it.

The National Guarantor receives many reports and complaints from prisoners. They lament the excessive length of response times to requests made to prison management – for health care support, for an interview with the director, to take out a book from the library, to make a special phone call, or other similar needs structuring their subjective time - or for requests made to the supervisory judiciary. Among the reports received during the past year, some 214 concerned the delays to get medical assistance - among them, 49 were converted into complaints ex Art. 35 of the P.L.- while some 35 concerned the delays for any assignation after the prisoners were admitted into a prison institute. The waiting, sometimes *sine die*, creates a stasis in the flow of time, suspended between uncertainty and hope. So, the vital time turns into a waiting time; the present time becomes infinite, while the future seems unattainable: suspended between the ever present today and the never reached tomorrow.

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23. The Reconfigured Time. The Recluse Time

At the date this Report to Parliament is printed, the adult detained population is 54,599, the official available places in detention institutes add up to 47,689². The same data also indicates that some 59,559 adults are executing alternative measures to detention³, 351 minors and young adults are restricted in juvenile centres, while for some 6,915, the Juvenile Court has sentenced other forms of control, orientation and support.

From an historical point of view, prisons served as a form of guarantee for the person, not as a punishment. Therefore, the detention time was defined as «suspended», in so far as it lacked a specific purpose, other than custody. When the prison was intended as a punishment, it was because it replaced something else: it replaced the dungeons, in particular, for those like women, children and invalids who could not access it.

Prison historically was a substitute sanction, at least until the XVIII century. Over the time, it changed its nature; this is a known fact. Time -intended as duration, in the quantitative sense- represents then the equivalent of the damage provoked by the crime; from the qualitative point of view, it should be filled with meaning: as suffering or work (retribution), an adequate treatment (rehabilitation) or offer of instruments or resources (social re-integration). Time must be a time that is not only flowing, but transforming: by becoming a punitive institution, prison was intended as a place to atone for punishments and also to prevent future crimes from being committed, aiming - in fact - at the transformation of the individual.

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2. The regular capacity of the institute is calculated on the basis of 9 square meters for each person, plus 5 m for any other person restricted in the same room. This calculation adds up to a 'formal' capacity of 50,905, from which 3,216 should be subtracted as they are currently not available due to renovation works or other reasons. The regular capacity indicated by the *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)* is 6 square metres for each person, plus 4 m for any other person restricted in the same room, under the limitation of maximum four people per room. This limitation, not respected by most Italian institutions, reshapes the first optimistic evaluation of the data communicated by the European Control Organ.

3. In particular, at the day this Relation to Parliament 2022 is printed, the figures related to alternative measures can be broken down as follows: 21,464 probation under the supervision of the social services, 11,461 home detentions, and 879 semi-liberty regimes. To which we need to add up 6 semi-detentions (substitute sanction) and 627 public utility works for violations of the Narcotics Act. The figures above include 25,123 'probation' measures, which represent a continuity measure and should not be considered as alternative to detention strictly speaking, as they represent measures of possible non-access to the sentence, on the basis of the path otherwise taken. This paragraph does not include probation services, controlled liberty and public utility works as sanctions for the violation of the Highway Code -although they are included in the overall framework of the "subjects taken in charge by the Office of the execution of the sentence in the community" - as they are not definable as alternative to prison detention.



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Control and transformation of the behaviour are the peculiar characteristics of the prison. The rigorous organisation of the ‘institutional time’ is instrumental to this purpose, as Michel Foucault observed: a space marked by timetables, compulsory movements, regular activities - by discipline. This is a «recoding of the existence»⁴, which the Constitution, in the interpretation handed down for decades did not deny, but that would try to fill with valuable content: the re-educational principle. This, although meant in the secular sense of creating the conditions for the prisoner to return to civil society while respecting - even if only externally - legality, has however ended up being translated mainly, at least until now, within detention structures: this is where the alleged observation of the personality is carried out, the treatment conceived, the transformation evaluated. The ‘time of the institution’ as a determining factor of the time of transformation; and the time of transformation as a driver for the duration of the sentence, which can change as much as the degree of that transformation authorises.

We are long aware that the time of the institution does not create a sense of responsibility, but it depersonalises and infantilises. Prison does not carry out that transformation program at all, precisely because the institution’s disciplinary logic has little to do with education to responsibility. Reintegration into society actually begins only when one leaves the prison.

In fact, the secular version of re-education, based on the acquisition of responsibility, ended up depriving of meaning this operating mechanism from the inside. We are long aware that the time of the institution does not create a sense of responsibility, but it depersonalises and infantilises. Prison does not carry out that transformation program at all, precisely because the institution’s disciplinary logic has little to do with education to responsibility. Reintegration into society actually begins only when one leaves the prison.

If alternatives to prison return at the centre of the political-criminal debate, as indeed the philosophy underlying the so-called “Cartabia reform” seems to be, then we are actually facing a moment of transition to be managed with great sensitivity. Precisely this dissociation of the punishment from prison destroys the criterion of measurement of transformation, namely the ‘internal time’. In the alternatives already provided in the cognition phase, time controlled or disciplined by others disappears, but these also eliminate what until today has been conceived as the only measure of ‘transformation’. It changes the subject of the judgement: until now, it was the individual, from now on it is the type of punishment with respect to the individual. It will not be a question of evaluating the resocialisation of the person, but the ability of the instrument to re-socialise (a non-prison sanction).

This ability will have to be measured over a time that appears, at first glance, to be a *future time*: a perspective that is not current but prospective. It involves that the alternative sanctions will be applied only when the judge considers that they contribute to the re-education and ensure the prevention of a danger. A judgement on the future. But time is measured on a subject judged *here and now*. Therefore, the only time that matters is not only the future time, but also the present time; time is no longer sequential and quantitative, but also qualitative, ‘kairos’ driven: *kairós* intended as the ‘indefinite opportune moment’ during which something very important happens. An investment

4. M. Foucault (2014), *Sorvegliare e punire*, Einaudi, Milan.



on the person happens, a promise of reintegration thanks to a non-custodial sentence.

We should then ask ourselves what knowledge can support this judgment; in this perspective, the expected involvement of the external criminal enforcement offices should not be a purely bureaucratic matter, but it will require the judge to use a non-legal knowledge, and the ability to collaborate and listen, and be educated to see beyond the crime he has just tried, leaving it behind.

It is above all a cultural challenge that goes well beyond the aspects of efficiency and acceleration of justice.

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24. The Reconfigured Time. The Suspended Time

The *suspended* time evokes the image of something put on *stand-by*, on hold, living in the balance between a certain past and an uncertain future, difficult to plan and imagine. In such circumstances there is a risk that the suspension will turn into a time lived passively and without any planning: this is what happens during the detention in an Immigration Removal Centre (CPR), where time is devoid of any form of organisation and activity, even only recreational, and of spaces dedicated to it. Time is reduced to a mere waiting for repatriation.

In this sense, time in CPR is *suspended*, and as such it is different from being *restricted* time in prison or any other place where the measure adopted is final with a clear time limit. On the contrary, in CPRs the formal limit does not coincide with the existential limit, because for most of the people detained there, the stay will end with a provision ordering them to leave the Italian territory; in fact, it will open up to a social indeterminacy destined far too often to result in a new detention period in a CPR.

During the period covered by this Report, 5,147 people spent part of their life in a CPR - among them 5 women - but only 2,520, less than half, were repatriated; for other people, who perhaps subjectively experienced non-repatriation as a new opportunity for hope, the 'suspended' time was simply taken from their lives to become only a reassuring *symbol* for the collectivity.

But the time spent in a CPR, on average a little more than 36 days, is often also an *uninformed* time, because it lacks information on the timing and methods of repatriation, as well as to the rights of the people held there. Even the time to exercise the right of defence, to make conscious choices, shared with the lawyer, can be *suspended* for trivial organisational and bureaucratic reasons

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which may delay the date for the hearing confirming the detention.⁵

The provision granting the opportunity to file a *complaint* to the territorially appointed Guarantors and the possibility of the National Guarantor to formulate Recommendations to the Administration intend to remedy some aspects of this temporal suspension. However, it is not an easy to implement it: six agreements were signed in the past year between the National Guarantor and the Territorial Guarantors precisely to define a procedure to file a complaint in full liberty and protected from any hypothetical fear of retaliation. The procedure also provided a procedure for the management of said complaints. The aim was to reduce the suspension of time and the serious personal psychological distress it could provoke.

But, whenever the extension of a detention is not supported by solid elements or it is confirmed by a non-competent Authority, suspended time is also the time of life subtracted from liberty without any legal basis.

But, whenever the extension of a detention is not supported by solid⁶ elements or it is confirmed by a non-competent Authority, suspended time is also the time of life subtracted from liberty without any legal basis as it frequently happens in cases of illegitimate confirmation of the detention by the Justice of the Peace, despite the appeal determining the competence of the ordinary Court, pursuant to Article 31 of the Immigration Consolidated Act⁷.

In relation to the illegitimacy of a deportation order, it also may happen that the Justice of the Peace is erroneously referred to in cases of minors. In some cases, despite the Justice having no jurisdiction over it, the decision on the appeal concerning the deportation order was postponed pending the decision –pursuant to Article 31 of the Immigration Consolidated Act– of the Juvenile Court, but, at the same time, the Justice did not suspend the enforcement of the same order. As a matter of fact, despite the Juvenile Court had the jurisdiction over the minor's stay on the national territory based on the presence of

5. Article 14, para. 4 of Legislative Decree 25 July 1998 no. 286 “Consolidated text on the provisions concerning the discipline of immigration and rules on the condition of the foreigner” (Immigration Consolidated Act) provides that «the validation hearing (of the detention) takes place in the council chamber with the necessary participation of a defence attorney duly notified of the hearing», that «the foreigner can benefit of legal advice through a special power of attorney», and that «if he does not have a defence attorney, he can be assisted by an attorney appointed by the judge»; Art. 20 of the Presidential Decree 31 August 1999 no. 394 «Regulation containing the implementation rules of the consolidated act on the provisions concerning the immigration discipline and rules on the condition of the foreigner» specifies that “the foreigner is informed of the right to be assisted in the procedure confirming the detention decree by a trusted defence attorney», and that «in the absence of a trusted defence attorney, he will be assisted by an official attorney appointed by the judge».

6. Unlike the confirmation of the detention, Art. 14 para. 5 of the Legislative Decree 25 July 1998 no. 286 provides, for the purpose of granting extensions, for a strict compliance with article 13 of the Constitution. In fact, it is necessary to ascertain the existence of factual evidence confirming the identity of the foreigner, but also that the continuation of detention is necessary to organise forced return operations; refer to Court of Cassation, Civil Ruling, section I, Order 6 October 2021 (deposited on 19 January 2022) no. 1648.

7. This exclusive and derogatory competence to the legislation relating to the confirmation of the detention of the illegal foreign citizen is expressly provided for by Art. 1 para. 2-bis of the Decree-law 14 September 2004 no. 241; refer to Court of Cassation Civil Ruling, Section IV, Order 14 May 2019 (deposited on 14 June 2019), no. 16075.



family ties, the minor was subjected to a forced return⁸. Failure to suspend the enforcement of the deportation order nullified the time legally suspended for the purpose of ruling on the legitimacy of the same⁹. Rather than to ensure family unity over time, time was transformed into a mere waiting for repatriation, with the further paradoxical consequence that the Juvenile Court could order the minor to stay on the national territory when, in fact, the minor was already repatriated.

This is a particularly significant case because it concerns a minor. The *suspended* time of a minor call us for a more serious sense of responsibility because the life in the balance is that of a minor, and our first concern should be how make it more meaningful.

25. The Reconfigured Time. A Different Time

Time flows differently when people are separated from the world and deprived of liberty. So much so that it is difficult to measure it through traditional instruments, such as clocks or calendars, because 'inside' the time flows at a different pace: as impetuous as a mountain river during a phone call, as short as ever for the many emotions to share with the person on the other side of the line.

In fact, the request to increase the number of possible phone calls for persons restricted in criminal detention facilities and to use technological tools, other than the obsolete landline telephone, have been advanced not only by Associations and Guarantors, but also by the Commission officially established by the Secretary of State for Justice and chaired by Professor Marco Ruotolo¹⁰. It would make things easier and quieter inside. Besides, a simple technological equipment would ensure security and

8. Art. 31 para. 3 of the Immigration Consolidated Act provides that the Juvenile Court can authorize the entry or stay of a family member on the national territory, for a fixed time, also in derogation from other provisions of the same Act. The aforementioned article, therefore, introduces an exception to the discipline on border control where the conditions are met to safeguard the primary interest of the minor in the cases in which the removal of a family member could jeopardize the psychophysical integrity of the minor himself.

9. It should be noted that the suspension of the disputed deportation measure, in case of danger of serious and irreparable damage, can also be ordered outside the hearing and that the existence of family ties necessarily implies the existence of the risk of serious and irreparable damage in connection to a possible deportation from the territory that will inevitably affect the family unity and the best interests of the minor (Article 28, para. 3 of the Immigration Consolidated Act). Court of Rome's Order 3 August 2021.

10. Established by ministerial decree of 13 September 2021, the Commission concluded its works on 17 December 2021, presenting a hefty Report to the Secretary of State for Justice, containing suggestions for administrative, regulatory and legislative actions.



The Reconfigured Time

establish whether the person inside just needs to be closer to his/her family or is attempting to give criminal instructions, very different from what happens today where hundreds of phones are sneaked into prisons every day.

But time can pass in a blink of an eye during the meetings with the loved ones, in which people feel the relief of being constraint in a 'where' and a 'when' imposed onto them; a restless and inexhaustible waiting for the days that separate them from freedom, from returning to a normal life, people and affections, possibilities and light, warmth and wide spaces, horizons and perspectives of a new life.

But time can pass in a blink of an eye during the meetings with the loved ones, in which people feel the relief of being constraint in a 'where' and a 'when' imposed onto them; a restless and inexhaustible waiting for the days that separate them from freedom, from returning to a normal life, people and affections, possibilities and light, warmth and wide spaces, horizons and perspectives of a new life. Nights are restless and endless, filled with annoying and unknown noises and smells, full of thoughts that cannot be tamed; endless is the time spent waiting for the answer to a request made to the director, the judge or the educator; so it is the time spent waiting for an answer to a question, a petition or a complaint which, instead, would require an immediate reaction. But answers never arrive and leave the prisoners waiting, suspended. Thus, time reconfigures itself, become a *deprived* time, as previously remarked in this Report¹¹. The time dedicated to building a connection between inside and outside also seems to be endless: receiving a letter would drag the prisoner's imagination beyond walls and barriers, but also writing one to someone on the outside would transform it into a valuable time, one to make peace with oneself and with the others, while sorting some thoughts out.

Being forced to measure time with traditional instruments is also cause for disorientation, because the flowing of time seems different each time; sometimes it expands, sometimes contracts: it is never as one would expect it to be, because it does not belong to those experiencing it: the passing of minutes, hours, days is almost never lived with a sense of lightness or relief. Even when time flows fast.

So, what is the function of time -beyond its flowing- in the different places where deprivation of liberty takes place? Why should we measure it, besides actually doing it? And how should we measure it, without giving space to thoughts and their crowding of the mind, without leaving a way to follow one, without time making us feel useless? Clocks and calendars cannot help, as the time of deprivation of liberty follows other criteria and rules. It is an empty time, one that does not belong to us and that does not seem to have a purpose, beyond its flowing; even just measuring or counting it with ordinary instruments is pointless. It is time broken down into instants, hours, days, years. It does not seem to have an end, close or distant might it be. It is a time without a logic. It is also a shared time, even when the person does not want it to be. And it is a fragmented time. Often suspended, seemingly useless.

It is difficult to measure with traditional instruments. Then, what is the ability to regulate the time of a community of people who cannot do it on their own? How can we measure the expected duration of a meeting in a nursing home with a person hosted there? Or, even more so the duration of a personal visit in prison or a phone call?

11. Cf. Refer to *Report to Parliament 2022*, Chapter 22.



A *different* time, regulator of a community inevitably ends up being a *disciplining* time: it can be extended or reduced based on behaviour. This explains why the prisoners detained in the Maximum security circuit -a total of 9,496 - have less time available for socialising or keeping contact with the family: it is certainly not for safety reasons, since any ‘order’ or any ‘bargaining’ can be defined also in those reduced hours and, on the other hand, these connections could be easily monitored. No, it is because the time subtracted and made different inevitably becomes a disciplining criterion: always.

A *different* time, regulator of a community inevitably ends up being a *disciplining* time: it can be extended or reduced based on behaviour. This explains why the prisoners detained in the Maximum security circuit have less time available for socialising or keeping contact with the family: it is certainly not for safety reasons.

26. The Reconfigured Time. The Time for Healing

There is a time to get sick in prison and a time to heal, but they are very different: you get sick quickly and heal slowly.

Prison produces suffering and sickness with greater severity than the outside world. The penal power leaves its mark on the body and its social image. Today, a debate on the relationship between body, mind and prison is essential. But it would be advisable to focus it on the sick person, or at risk of getting sick or, most important, on the ‘healing time’. In fact, it is not true that in facing sickness we are all equal, because we never were. It is not true that we are all exposed to the same risks and we all have the same opportunities for an early diagnosis and appropriate treatment. Particular social categories, more fragile than others, such as prison workers and prisoners, are more at risk.

In prison, health and sickness appear to be contaminated and ambivalent realities. If, on the one hand, the sentence serves to ‘heal’, on the other hand, it is aimed at subjects who are inevitably in poor health conditions. Besides, the loss of well-being is revealed not only by their antisocial behaviour, but it is connected to the application of the imprisonment itself. In prison, there is a huge difference between taking care of the sick person and providing health services.

There is a time to ‘get sick’ and a time to ‘heal’ in prison or, even better, outside it. Getting sick in prison – physically or psychologically unfortunately happens very frequently, and it is caused by the transition from freedom to imprisonment. Time and space, fundamental realities for the sick person, become irreconcilable with any healing process. In practice, discovering a significant or particularly complex pathology in prison means starting a very jagged “diagnostic-therapeutic assistance path” (PDTA). The need of complex laboratory tests or the request for a second or third diagnostic-therapeutic opinions, requires a complex mobility plan for patient-prisoner. These risks slow down the diagnostic-therapeutic processes, up to the very impossibility of carrying them out, with serious risk for the life of the patient-prisoner.

There is a time to get sick in prison and a time to heal, but they are very different: you get sick quickly and heal slowly. Prison produces suffering and sickness with greater severity than the outside world.



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Sentencing sick people to a prison always involves finding a balance between the prisoner's right to health and the right-duty of the State to ensure the enforcement of the sentence in accordance with the principles established by Articles 27 and 32 of the Constitution. However, our Constitution is still a model, a goal to be pursued and fully realised.

Living conditions in prison can contribute to the onset or aggravation of the most frequent pathologies encountered in the penitentiary context. Could we define prison as a pathogen place or, at least, a social determinant for health?

Time is of the essence to obtain a better prognosis and often the waste of time reduces the chances of improvement or healing from the pathology, which, instead, on a clinical-scientific level would be completely possible.

Unfortunately, weeks or months pass before obtaining a confirmation of the diagnostic hypotheses by a specialised doctor, and as many months pass before performing a CT scan or MRI or, even, to be hospitalised. Time is affected by factors that have nothing to do with clinical evaluations. Healing times are conditioned by the difficulties of the Transport Unit, strongly influencing a timely access to specialist visits or services necessary for the diagnostic-therapeutic continuity of patients in prison.

The Italian law is among the few in the world that, for health reasons, provides for the possibility of postponing the sentence and admission to restrictive measures other than imprisonment, but the *healing time* factor often slows down or denies these possibilities. It happens despite the implementation of the Legislative Decree 2 October 2018 no. 123 which was approved with the aim of enhancing the role and skills of the National Health Service (SSN) within the prison, guaranteeing the prisoners appropriate and timely health services.

Each prisoner retains his or her fundamental rights, also in prison, including the protection of health – as provided for in Article 32 of the Constitution. But this extended time heavily affects the principle of equivalence of health services, whilst it is mentioned in numerous documents on the rights of prisoners. Thus, the healing time is heavily conditioned and ends up affecting the restricted people's lives with their stories, illnesses, fears and hopes.

Each prisoner retains his or her fundamental rights, also in prison, including the protection of health – as provided for in Article 32 of the Constitution. But this *extended time* heavily affects the principle of equivalence of health services, whilst it is mentioned in numerous documents on the rights of prisoners. Thus, the *healing time* is heavily conditioned and ends up affecting the restricted people's lives with their stories, illnesses, fears and hopes. People who will return to the social context at the end of the sentence and need to resume their abilities for a positive social, physical and psychic reintegration. Making the *healing time* quick and effective means restoring their dignity and health.



27. The Reconfigured Time. The Time of the Pandemic

What we usually mean by «duration», affirms Henri Bergson, actually attains to a subjective experience, which has nothing to do with the notion of «time of the clock», physically or spatially, subject of mathematics studies and measurable¹². This is how the philosopher, back in 1907, reworked a particular vision of the notion of time. Some time later, Proust echoed him, saying «An hour is not just an hour, it is a vase full of scents, sounds, projects, climates; what we call reality is a relation between those sensations and those memories which simultaneously surround us»¹³. The time so evoked is a subjective and lived time, which recalls the concept of time as *internal duration*: the perceived time.

The time of the pandemic does not flow on the axis the physical spatiality either. It is distant from science and measurability, despite the fact its different waves were scientifically defined and reported on a daily basis, showing the rate of transmission and hospitalization, death rate, vaccination rate. An essential measurement to control the macro-phenomenon, to establish strategies for protecting the health of the community; not equally useful to understand the non-decomposable flow of the psychological effects experienced by a single person or their duration. These, in fact, depend on a set of factors which are unique for each of us. Psychic states do not follow one another linearly, but coexist simultaneously.

The pandemic *per se* was defined and represented in many ways. Upon its sudden appearance in places of deprivation of liberty, the National Guarantor had metaphorically compared it to the sudden appearance of a sphere in the Federico Fellini's film "Orchestra Rehearsal". After the impact of the pandemic, we wondered how the order of things would be restored in places of deprivation of liberty¹⁴, since these choral and repetitive communities are so much alike the rehearsal narrated by Fellini. As a matter of fact, they are «waiting places», constructive responses to immediate urgencies, but also projection towards the future: the return. They are places awaiting for the realisation of the 'wait' itself: the end of a sentence, a recovery, the exit from a phase of personal crisis that led to non-autonomous results, freedom after a detention in an enclosed space. The expectation of a future that should keep pace with the 'acceleration of processes', typical of the external events.

The pandemic moved, at least in its beginning phase, on an unknown land. It determined a 'time

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12. H. Bergson (1938), *L'evoluzione creatrice*, (translation by P. Serini), Mondadori, Milan. [Courtesy translation]

13. M. Proust (1961), *Alla ricerca del tempo perduto*, Einaudi, Turin. [Courtesy translation]

14. M. Palma, *La direzione dello sguardo*, Presentation of the Relation to Parliament 2021 of the National Guarantor, p. 4.



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of confusion', as everyone was unprepared to face it, unable even to be prudent, but we were also confident, almost certain, that what the media described as the approaching of a 'war' would find no room in our lives. But, it was not so. It took only a moment to bring back «the past of our present» and put¹⁵ in light our fragilities, as well as that of the social system. It quickly became a time of suffering, of death and anger, but also the time of accusation and the time of solidarity and sacrifice.

The pandemic apparently flattened inequalities, but actually made visible other risks. The impact of the pandemic on an enclosed, promiscuous and degraded place, as often the places of detention of the most disparate humanity are, struck twice. It meant the reduction, even the zeroing of the rights of the most vulnerable people, right because they lived together in precarious and anxiogenic contexts. As a consequence, these places and the people within became more detached and isolated, in some cases they were also abandoned. «Pandemic taught us – and keeps on teaching– that we are all significant and insignificant at one time», recently remembered Colum McCann on *La Stampa*¹⁶. But, he did more, he eloquently represented the extent of social inequality, the existence in our cities of sets people living and sleeping on the streets. We certainly could not address the Covid-19 emergence by ordering them not to go outside. The pandemic also showed us the effects of job insecurity – in the past considered as an opportunity for career, freeing workers from the life-time job – which immediately changed its meaning into impossibility of working. But, it also showed the importance of building connections between the enclosed places, where people are hosted, held or detained, and the external contacts with those that every day come in and try to fill time with meaning. Sometimes, these connections are merely considered accessories. In fact, those places, without them, revealed their absolute emptiness.

Something more than two years after its appearance in the technological world, the 'pandemic-accelerator-of-processes' run fast and often shook systems used to slowness. A larger use of the most common technological devices won the confidence of distrustful and enclosed communities and institutions, reducing the separation between the 'internal world' and 'external world'.

Something more than two years after its appearance in the technological world, the 'pandemic-accelerator-of-processes' run fast and often shook systems used to slowness. A larger use of the most common technological devices won the confidence of distrustful and enclosed communities and institutions, reducing the separation between the 'internal world' and 'external world'. The ability of the virus to repropose itself and expand keep surprising us. It can stop and restart, in one breath, reaching unprecedented peaks of growth.

In prison, the latest infection rate went from as low as 97 prisoners infected on 3 October 2021 to 3,771 on 1 February 2022, contemporarily the number of staff infected varied, at the same dates, from 110 to 1,690. Therefore, high and sudden peaks, even in a context in which the fluctuation of the significant presence of

15. Augustine of Hippo in the *Confessions* (XI, 20) distinguishes three different times: «the present of the past, the present of the present and the present of the future», which «exist in some way in our soul» and are fulfilled in the memory (the present of the past), in the vision (the present of the present), and in the wait (the present of the future).

16. C. McCann "Il male della guerra è contagioso, l'antidoto è fidarsi dell'uomo", in *La Stampa*, 14 March 2022.



symptoms has always been reduced, varying between 1 and 25 cases¹⁷. In its ‘hiccup’ pattern, made of stops and starts, the virus maintained its nature as a phenomenon that occurs over time did not change; it reconfigured time as distressing or full of new meanings. Also built on an experience that is the basis for the construction of the self; a source of creativity beyond the constancy of the daily gesture.

For prisons, as for the residences for the elderly and disabled people, «now that we can glimpse the way out from the results of that metaphorical sphere that broke the walls where the orchestra was rehearsing»¹⁸, we believe that the “direction” invoked by the National Guarantor should be taken along with our commitment to implement its proposal. The sense of emptiness created by the pandemic has not been filled yet, and those opportunities of ‘accelerating the process’ struggle to set as added values.

In the prison systems, the question still is how to reintegrate into the restricted community, as of 31 December 2022, the semi-free prisoners who have been on special leave for two years outside the prison (some in their own homes), instead of giving value to the positive experience determined by the pandemic and start an evaluation, for those that have lived positively the special live, on the opportunity of granting them the benefit of alternative measures to detention to be served in the free community.¹⁹ The necessity to always maintain at least 20% of the places available in prison or in other residential facilities for people who are not able or authorised to manage their own space and time, to adequately meet any arising need -made evident by the pandemic- has not yet determined the definition of a set of consistent and systemic measures concretely aimed at decreasing the density of people in such places.

Certainly, even where the systems withstood the impact, the cost was very high and, in many cases, it still takes its toll: in the residences for the elderly, the restrictions imposed on family visits to prevent the infection are still in force, practically unchanged²⁰.

The return to normal is far from being a reality. It stumbles upon obstacles, mostly as the result of ‘defensive’ decisions taken in the name of preventing the spread of the virus. The new perspective of keeping together the protection of health and the integrity of the other rights of the person, among which family ties -essential for the psycho-physical well-being of people-, should guide us to identify new ideas and develop proposals aimed at subverting the traditional conception of the detention places. All of them, whatever the reason they host people may be, because all people need that the «present of the future» had the chance to come true.

Certainly, even where the systems withstood the impact, the cost was very high and, in many cases, it still takes its toll: in the residences for the elderly, the restrictions imposed on family visits to prevent the infection are still in force, practically unchanged.

17. Taking a day - 31 March 2022 - for the “fixed date” survey, the following data shows the situation for the staff in service: 1,243 Penitentiary Police staff infected (out of a total of 36,939 units), of which 11 hospitalised; 130 civilian operators (educators, administrators, managers) infected (out of 4,123), all managed outside the institutes. At the same time, the prisoners infected were 1,233 (out of 53,645 actually present in prison), of which 7 with symptoms (including two hospitalised).

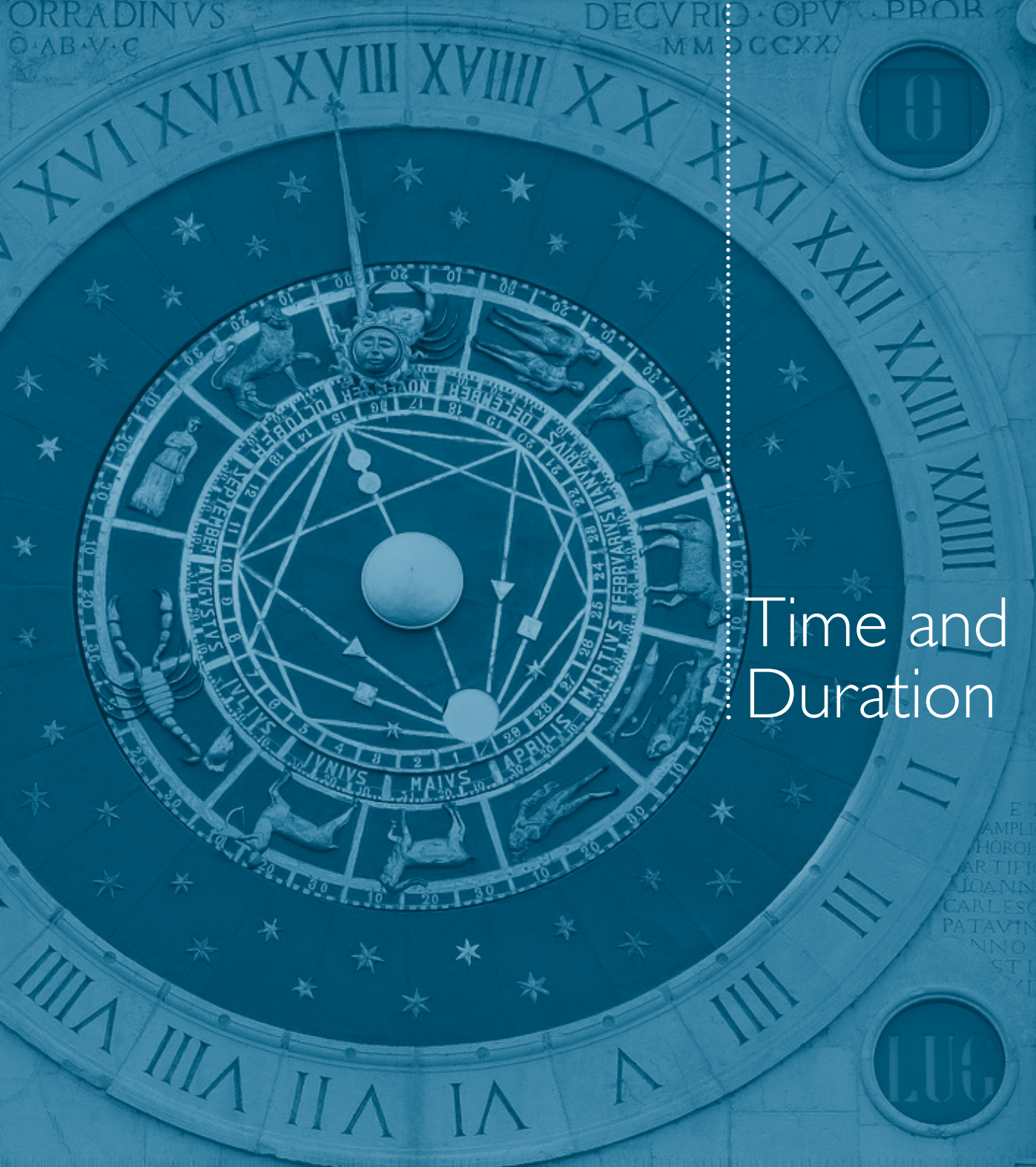
18. M. Palma, op. cit., p. 5.

19. On the contrary, some judicial districts failed to apply the extension of the special leaves at the expiration date of 31 March 2022. Thus, people admitted to semi-liberty regime, who had until that moment enjoyed the benefits of said leave, returned to prison.

20. The situation was reported to the National Guarantor in the meeting with the associations of relatives of patients in the RSAs on 28 March 2022.

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Time and Duration

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28. Time and Duration. The Different Dimensions

The different ‘movement’ of time: *linear*, ideally represented by a straight line that tends towards the future; *circular*, in which past, present and future meet in a single cyclical dimension; *periodic*, graphically described by a sinusoidal curve with a succession - in repetition - of maturation, apogee and decay.

They are very different conceptions, based on different ways of looking at reality and human dynamics on the basis of reflections of a historical, religious, cultural and economic type. However, it is precisely in the moment of deprivation of liberty that the different visions seem to be able to converge by finding a synthesis between them.

Deprivation of liberty interrupts the path of linear time: the fracture arising between the deprived person and the free society determines the start of a sort of ‘circular time’, marked by the loss of the decision-making power on one’s own choices. Decisions are mostly taken by the same authority that regulates the decision-making process, in some cases by restricting it, in others by denying it: the new condition tends to sharpen, in the person’s own perception and in that of the own future, the breadth and frequency of the oscillations of the sinusoidal curve that connotes periodic time.

In this scenario we cannot avoid questioning ourselves on the role that the State, the Institutions and the social network must play, with respect to the intersection of such ‘temporal movements’, in any situation of deprivation of liberty. This situation clearly does not only concern detention in prison or other forms of restrictions imposed by public authorities, but all situations when a person is *de facto* restricted in a system, provoking the lost of the linear sense of the time marked by free decisions.

The answer to this question lies, in the first place, in the constitutional obligations applying to all institutions to ensure the full exercise of the rights corroborating the dignity of the person: an inalienable dimension, in any state of deprivation of liberty, however determined, indispensable to restore the linearity of time that is otherwise lost.

In relation to all the hypotheses of deprivation of liberty, public institutions must develop every policy -economic, social and cultural- aimed at implementing the principle of ‘liberty-dignity’, as combined together by the Articles 2 and 3 of the Constitution. The entire legal system rests on these principles, along with the principle of the “lesser sacrifice” of liberty established by Article 13 of our Constitution. As a consequence, public institutions must intervene also on the duration of deprivation of liberty through an increasing valorisation of the ‘time of the person’. They should act on the content of the deprivation, consistently guaranteeing the dignity of person. Conversely, they should act on ‘time of the rights’, intended as an acknowledgment and protection of an increasing number of rights emerging from historical, social and cultural evolution. Just think, by way of example, of the increasing importance of the principle of flexibility of the sentences in relation to each convict.

But, more articulated answers are requested when the very time of deprivation of liberty is not limited, as in case of an ‘obstructive life sentence’ or the internment in a residential or social-health facility

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An in-depth reflection is then necessary on the legitimacy of the compression of liberty up to the exclusion of the objective and perceived dimension of the person's time. How far the punitive power of the State or the need of protecting a person, either elderly or with serious disabilities, can go without violating the existential need of giving time a projection towards the future, of marking it with choices oriented towards a perspective that is not exclusively based on 'today'?

with no possibility of returning to an ordinary life. Respect for the dignity of the person and, therefore, the protection of its related rights enter into an evident tension with the circular dimension of the time characterising these situations, in which people «usually speak little about past, nothing about the future and much of the present, and, when speaking, they hardly resort to temporal metaphors»¹.

Therefore, the guarantees deriving from the respect of the constitutional obligations are not enough to reassure the fact that where the same judiciary and the same system deprive time of the typical dimension of the life human, this might be recovered at a later stage.

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Only by simultaneously following the dual direction of the 'time of the person' and the 'time of rights', the State can effectively address the three dimensions of time characterising the situations of deprivation of liberty. By doing so, the *circular time* will be no longer conceived as a period of suspension or 'twisting' on oneself but as a rebuilding phase for finding the propulsive force towards the future. The *periodic time* then will be characterised by a progressive decrease in the amplitude and frequency of the oscillations through a support in self-awareness that will enable the person to retake control over his/her own *linear time* when they will return to the social group with new perspectives of life.

1. A. Pugiotto (2016), "Criticità costituzionali dell'ergastolo ostativo", in *Gli ergastolani senza scampo*, Editoriale Scientifica, Naples, p. 145.



29. Time and Duration. From ‘Non-places’ to ‘Non-time’

The sociologist Marc Augé created a lucky neologism by finding a definition for places having no identity and deprived of relations, even historical ones: *non-places*². At the beginning it was applied to different spaces, including places of leisure or other spaces typical of the temporal acceleration characterising our contemporary daily life³. The term eloquently describes the emptiness of certain *places* that should be full of meaning because of the reality they host, instead end up being mere ‘containers’. Like I said, *non-places*.

Life get stuck in *non-places*: spaces where people, for the most part vulnerable and fragile, get lost in a grey limbo, devoid of any space-time logic. *Non-places* are conceived as temporary spaces, but as a matter of fact they expand indefinitely the time of people living inside which becomes progressively perceived as ‘empty’, suspended, pending a new beginning or a change. They are: hotspots, quarantine ships, border spaces, but also often - too often - nursing homes or homes for people with disabilities (respectively, RSAs and RSDs) and, in some cases, also prisons, because of their inability of making meaningful the time spent inside.

The hotspot system was set up in Italy in the early nineties to identify, take fingerprints and distinguish economic migrants from asylum seekers. Over the years, especially since the so-called 2011 North Africa emergency, they have increasingly become places of restraint or effective detention⁴. Places conceived for a brief stay, which were transformed into control places, where the most common emotion is a sense of waiting which unrelentingly becomes anger.

In 2021, 44,242 people entered three (out of four) Italian hotspots: 31,876 men, 3,432 women and 8,934 minors. The majority of which –35,178– entered the Lampedusa hotspot; the average stay of a single person was 7 days in Lampedusa, 10 days in Pozzallo and 20 in Taranto⁵.

In the last two years, the health emergency caused by the still ongoing pandemic and the following measures of separation and confinement taken to avoid the spreading of the infection, made space for the appearance of other *non-places*,

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2. M. Augé (2009), *Nonluoghi. Introduzione a una antropologia della surmodernità*, Elèuthera, Milan.

3. M. Augé (1999), *Disneyland e altri non-luoghi*, Bollati Boringhieri, Turin.

4. Sentence of the European Court of Human Rights of the 1st of September 2015, Case *Khlaifia and Others vs Italy*, Application n. 16483/12.

5. 2021 was the year that recorded the second highest number of total entries during the period 2016 - 2021. In 2016 arrived 65,295 migrants, 40,534 in 2017; then, they dropped to 13,777 in 2018, 7,757 in 2019 and rose again to 24,884 in 2020 and 44,242 last year.



Time and Duration

which *de facto* deprive people of liberty: from *ad hoc* used hotels - and horribly called “Covid hotels” - to the five “quarantine ships”⁶, sat at anchor off the coasts, on which time is spent waiting, without a chance of being moved elsewhere.⁷ It is not easy to measure time in such places -which last year hosted 35,304 persons-, as time replicates itself on the basis of the results of swabs. Time for foreign citizens subject to “immediate refolement” at borders is equally “unmeasurable”⁸. Besides the name indicating the immediacy of the measure to be carried out, those people are restraint at borders’ posts while waiting for the concrete conditions to be met and be brought back to the State of origin. A time without measure, as the law does not provide for it, entrusting the duration of the wait to the availability of the airline that, in the first place, took the inadmissible foreign citizen into the Italian territory⁹.

These are situations in which a symmetry is established between a *non-place* where people are restraint or detained and a *timelessness*, a *non-time*, developing in it, which is never without consequences for those who live it, like an act of omission. The *timelessness* always carries with it a certain degree of suffering, with an intensity proportional to the degree of fragility of the person. These cases present some similarities with the situation of the persons affected by mental disorders and deprived of liberty, recipients of a security measure providing for the hospitalisation in a special residence (REMS), which end up waiting to be taken in charge by the local services, thus experiencing a limitless wait. As of today, there are still 45 people detained in different Italian institutes which besides living a situation without legal foundation, finding themselves in a dysfunctional situation with respect for their prevalent need for care.

Not just that, in the last two years the Residences for the elderly, closed for health prevention measures, lived -and in many cases still live- an experience of time without measure and of place without meaning. The restrictions marked the emptiness of the daily flow of time: the absence of treatment activities and socio-affective relationships with the outside world disproportionately exacerbated the suffering of extremely vulnerable people. Even when the time of life outside returned to be measurable as ordinary sociality, the time inside the RSAs remained, in fact, characterised by deprivation.

The *non-time* always struggles to change back to measurable and meaningful *time*.

6. The cruise ships used for quarantine, chartered by the Ministry of Infrastructure from GNV SPA and Moby SPA, sat at anchor off the coasts of Lampedusa, Porto Empedocle, Palermo, Trapani, Augusta, and Catania. They are engaged in a continuous rotation, depending on the embarkation and disembarkation operations of migrants beginning or ending their quarantine period.

7. Their stay can extend over the 10-day period provided for by the law: the infection risk, the lack of places available in Reception Centres, and the administrative times often influencing the duration of stay.

8. Legs. Decree no. 286/1998, Art. 10, para. 1: «The border police denies entry to the Italian territory to any foreign citizen not in possession of the requirements provided for by this Consolidated Act».

9. In 2021, 305 people were detained at the offices of the Air Border Police for at least 48 hours pending the execution of the immediate refolement order referred to in Article 10 para. 1 of Legislative Decree 286/1998.

In detail, 127 people were detained at Bergamo-Orio al Serio airport, of which 90 for two days, 27 for three days and 10 for four days; 120 people were detained at Rome Fiumicino airport, of which 76 for three days and 35 for four days, 4 for five days, 1 for six days, 3 for 7 days and 1 for eight days; lastly, 58 people were detained at Milan Malpensa airport, of which 50 for two days, 4 for three days, 3 for four days and 1 for five days.



30. Time and Duration. Particular Times

The constitutional system recognises some forms of deprivation of liberty so intense to determine a change in the perceived time. It is definitely a big change, bigger than other consequences arising from a reconfiguration of time, as shown in the relevant Section of this Report. When a person, already within a segregating institution, is forced to an increased limitation of liberty, a peculiar phenomenon occurs: the objectification of the individual's experience with respect to time.

This is what can happen in the services of diagnose and treatment, in solitary confinement situations or during the use of caged beds. The time of life of the individual is marked by the segregating institution. The restricted person spends the day in a concentrationary universe, in which the flow of time is no longer marked by autonomous choices, not even the minimal ones, but determined by the daily routines decided by the institution where the person is restrained. The individual's perception focuses on the change of shift of the doctors, the time to eat the meal, the end of the confinement period, the yard time. The person senses the approaching of the moment when an external factor -and only that- can determine a transformation in his/her existential universe made of deprivation. This phenomenon is generated by the annihilation of self-determination space and the vanishing of any essential degree of liberty.

When a person lives the experience of captivity in such a degree of severity, this happens in a sectional order, and time by marking the different stages, becomes a powerful factor of change. External events, determined by the rules of the institution, become powerful transformative elements of the personal condition. A dissociation factor then intervenes in the life of the prisoner in solitary confinement, of the person subjected to coercive health treatment or to mechanical or pharmacological restraint. The sense of time is hetero-imposed and forces the person to find his/her own form of adaptation to the rule that defines and dictates the time of his/her life. The deprivation of liberty does not have a clear limit of time.

Franco Basaglia, with regard to the civil psychiatric hospital, spoke of «institutional disease»¹⁰. This is the disorder, with its own specific time dimension, added on the psychic suffering of those who are hospitalised, and entirely depending on the type of restriction imposed on the person. The institutional disease therefore is not just the consequence of a place, the so-called total institution, but it also a consequence of the perception of time experienced by restricted person. A life totally

When a person lives the experience of captivity in such a degree of severity, this happens in a sectional order, and time by marking the different stages, becomes a powerful factor of change. External events, determined by the rules of the institution, become powerful transformative elements of the personal condition.

10. F. Basaglia (1968), *L'istituzione negata*, Einaudi, Turin, p. 138. The objectification of time in psychiatric hospitals was incisively summed up in the sentence of the nurse who, approaching the night shift change, noted: «*Locks and patients were all checked before leaving*».



Time and Duration

constrained in particular spaces, exposes the person to experience only the uncertainty of the time marked by the place.

Time dimension in total institutions also teaches us to distrust bio-medical models as the root cause for the hidden limitations of liberties to which are subject patients under treatment or admitted in protected residencies, as in case of old people or patients affected by mental health conditions¹¹. In fact, the bio-medical approach de-historicises the patient's life, tending to separate his health condition from his social environment. In its non-historical being, the rigid medicalising model is responsible for excluding the person from the rehabilitative-therapeutic treatment and, as a consequence, from the social relationships in which the person has lived. By removing the person from the social causes of their malaise, the foundations are laid to make their disorder incomprehensible, incurable and therefore long-lasting.

On the other hand, the need to cope with the disease by recurring to a treatment of a certain duration lies at the basis for the containment of the disorder. But the treatment proposed - that is, forced hospitalisation, mechanical or pharmacological restraint - is de-historicised in itself, as it only focuses on the symptoms. Hence, it does not have a precise duration, a maximum limit.

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The constraints on the duration of the penal coercive measures, paradoxically, arise from the retributive component of the sentence. On the other hand, when the individual is separated from the others within the place of restriction because of his/her health conditions, the peculiar times of the security measure, of the admission to a diagnosis and treatment service, of the long stay in a residential care facility can trigger a change in the perception of time. From the general observations made above, we can infer that a significant portion of the de-institutionalisation paths find reason in guaranteeing the person from the limitations to physical self-determination, the duration of which appearing blurred and ambiguous. These measures often seem paternalistically oriented, in their forms, to the protection of the physical integrity of those who are actually victim of the same integrity.

In fact, these are precisely the most oppressive and violent areas on which the constitutional system must shed light and protect the fundamental rights of the person meant as «organisation rules of social liberty»¹².

11. B. Saraceno (1995), *La fine dell'intrattenimento*, Etaslibri, Milan, p. 113.

12. U.K. Preuss (1979), *Die Internalisierung des Subjekts*, Suhrkamp, Frankfurt a. M., p. 193.



31. Time and Duration. Other Particular Times

A disciplinary report, a transfer from a prison to another for over *crowding*, the closure of a project or the start of renovation works in a part of the facility, can happen in prison. All those living in condition of deprivation of liberty know that. These events interrupt the tiresome ordinariness of the flow of time that a prisoner has acquired over time, becoming inured to it. When entering these places for the first time and pretty much every time entering them, one of the most striking things is the prisoner's eagerness for communication or, better not to miss a rare opportunity for communicating: a request, a state of mind, or just the desire to deal with the 'outside' and savour the *normality* of a social interaction so compromised inside. The spatial and temporal uncertainty of a contingent or lasting condition is a constant trait of situations of deprivation of liberty, even for those who are part of a long-term project or activity; all the more so for those finding themselves restricted in a 'transit' ward or perceiving their situation as a personal 'transit', distant from life which is 'elsewhere'. Communication in these places is an extremely scarce social resource, always characterised by the uncertainty of the times: prisoners wonder when it could materialise, for how long they should wait for the next opportunity to show up.

Also because of it every opportunity to communicate with the outside is an extremely important moment, especially for a prisoner. Sometimes these are structured moments of the detention time: this is the case of interviews, phone calls or video calls with family members, which are scheduled and as such, have to be waited for. Some other times they are unannounced occasions, as in the case of interviews with operators, both working inside or outside the prison. Although these moments are not planned, they are still waited and hoped for. But, they can also be a source of stress or conflicting emotions. The wait can be filled with a sense of abandonment and helplessness, and yet suddenly become a sign of hope to cling to. Then, sometimes, completely unexpected visits occur, such as those of a parliamentarian, an association or a guarantor. Circumstances that break the structure of the time of detention as imposed by the institution.

There are other 'windows' to the outside world that mark the time of detention in an anonymous place; among them, the hospitalisation in a total institution or a detention time to be served in an often neglected and inhospitable place. They also constitute *particular times* in the daily life of a prisoner: rhythm interruptions that do not mean 'absences', because the wait is an implicit presence and is essential to configure the overall course of the day. Something like a musical score where the pauses interact with the parts played to communicate the musical piece and make it understandable. Thus, understanding the expectations, knowing how to read them, is necessary to have a full and clear picture of the unfolding of the state of deprivation of liberty. Especially in places - such as the prison - where the length of stay is often prolonged.

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Time and Duration

The dimension of waiting permeates the entire prison life: the wait for something to happen that can interrupt the routinary coercion of the time dimension. Every opportunity for contact with the outside represents a positive interruption of the ordinary impossibility of communicating –the very essence of the sentence– but, at the same time, it generates anxiety and trepidation as it takes place in an environment which is never completely free. Whether it is the ‘visitors room’, often inadequate to guarantee the cultivation of affections and emotions, or those rooms where meetings with the operators or other figures working inside the prison take place, they are almost always bare of furnishings, lights and colours. Time –limited and predetermined– and space –narrow– intertwine and produce an altered situation in which expressing one’s emotions is certainly tiring and distorted. The time ‘before’ and ‘after’ thus expanding dramatically: the first in the dimension of waiting, the ‘after’ in rethinking and recalling that brief moment of meeting.

As Ermanno Gallo and Vincenzo Ruggiero remind us in their timeless description of the prison time as a condition of transition from material to immaterial status, «the torture of space typical of the traditional, brutally physical prison – while surviving in the very concept of prison, and impregnating it – it is gradually overtaken by the torture of time (by its deformation) and by the compression of communication».

It would take far *more* opportunities and perhaps *better* opportunities. The desirable increase in the number of opportunities for connection with the outside, including with the loved ones, in fact, should also create a different physiognomy of these connections. It should be as equal as possible, able to build continuity with the outside communication feeling, capable of restoring constructive value to meetings, which should not be seen ‘occasional interruptions’. If not so, time, even the particular time of these moments, is doubly subtracted. As Ermanno Gallo and Vincenzo Ruggiero remind us in their timeless description of the prison time as a condition of transition from material to immaterial status, «the torture of space typical of the traditional, brutally physical prison – while surviving in the very concept of prison, and impregnating it – it is gradually overtaken by the torture of time (by its deformation) and by the compression of communication»¹³.

13. E. Gallo and V. Ruggiero (1989), *Il carcere immateriale. La detenzione come fabbrica di handicap*, Edizioni Sonda, Turin.



32. Time and Duration. The Abstract Time

«The law only provides for the future» reads the beginning of Article 1 of the provisions on laws in general. This rule, established to reaffirm the consolidated general principle of non-retroactivity of laws, also reminds us of another essential characteristic of the law itself. The Legislator, in passing a new law, establishes a regulating principle destined to last over time, to produce its effects in the future. In doing so, it inevitably uses the ‘glasses’ of its time, interpreting the sensitivity of the moment and influenced by the cultural, social and political context - what is often called “common consciousness” or “social feeling” - of the present.

However, as the new laws reflect the spirit of the time they were conceived, they can appear outdated or inadequate to face the new challenges imposed by the increasingly rapid changes in society.

When the “reform” of the Prison System was promulgated in 1975, it was hailed by public opinion as a considerable step forward for a larger protection of the rights of prisoners. At last, the “Regulations for Prevention and Punishment Institutes” of 1931, a set of laws deeply imbued with the fascist ideology, were overcome. The reform attempted to implement the new re-educational function of the sentences set forth by the 1948 Constitution. The new set of laws regulating the Prison System reflected the traits of the Italian society of that time. The spread of fixed telephone lines in private homes, by way of example, was a relatively recent achievement, and also the socio-criminal composition of the prisoners was different, as confirmed by the data shown in this *Report*, and in the previous ones. Foreign citizens were a few¹⁴, so were the number of drugs and alcohol addicts¹⁵, while the minors’ ratio was higher than today¹⁶. The backwardness of the structures and the lack of adequate funding also made it

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14. The data presented in this Report indicates the current number of 17,043, down compared to recent years, in particular compared to the ‘peak’ of 24,954 in 2010; however very different from the 5,365 of 1991.

15. 18,942 people were detained as of 31 December 2021 for crimes related to the Narcotics Act (Coordinated text of law no. 309 of 9 October 1990 and subsequent amendments, most recently the Legislative Decree no. 21 of 1st March 2018 and the Ministerial Decree of 29 December 2020).

16. Cf. P. Gonnella (2015), “Le identità e il carcere: donne, stranieri, minorenni”, in *Costituzionalismo.it, I diritti dei detenuti*, Fascicolo 2, [https://www.constituzionalismo.it/download/Costituzionalismo_201502_521.pdf].



Time and Duration

However, in recent years, the outbreak of the pandemic inside the Italian prisons, pointed out once again the inadequacy of our prison laws in the face of the new challenges. In fact, the need for some urgent regulatory interventions suddenly came up just because of the health emergency: on the one hand, to deflate the prison population and contain the risk of an uncontrolled spread of the infection in situation of chronic overcrowding such as that of the Italian prisons; on the other hand, to ensure a minimal level of protection of the rights of the prisoners, to maintain contact with family members, compensating for the severe restrictions on conducting face-to-face interviews.

difficult to fully implement the objectives of the reform¹⁷.

The rapid evolution of the society in recent decades changed the perception on the 1975's reform, which has been increasingly considered as outdated. The affirmation of the phenomenon of immigration in Italy, with the consequent increase in the share of the foreign prison population, the spread of new technologies, also in the field of communications, the pressure for the adaptation of the Prison System to the living law in accordance with some reputable interpretations in constitutional jurisprudence - just to name a few of the factors involved- pressed for a new reform of the Prison System.

The adoption of the 2000 Implementing Regulation (Presidential Decree no. 230 of 30 June 2000) undoubtedly represented a new attempt to modernise the Prison Law, expressly inspired by the *Standard Minimum Rules for the Treatment of Prisoners*¹⁸ adopted by the UN in 1955 and the *European Prison Rules* of the Council of Europe of 1987¹⁹. As it did the most recent reform implemented by the delegated legislative decrees of 2 October 2018 that, despite being considered «a missed opportunity» to some extent, introduced some appreciable updates in the prison legislation, filling, for example, the legislative gap on juvenile criminal enforcement²⁰.

However, in recent years, the outbreak of the pandemic inside the Italian prisons, pointed out once again the inadequacy of our prison laws in the face of the new challenges. In fact, the need for some urgent regulatory interventions suddenly came up just because of the health emergency: on the one hand, to deflate the prison population and contain the risk of an uncontrolled spread of the infection in situation of chronic overcrowding such as that of the Italian prisons; on the other hand, to ensure a minimal level of protection of the rights of the prisoners, to maintain contact with family members, compensating for the severe restrictions on conducting face-to-face interviews.

17. According to a survey conducted among the prisoners, a few years after the reform came into force, «the vast majority observes that -apart from what happens in 'special' prisons- living conditions improved considerably». Nonetheless, they «all believe that it is impossible to implement the contents of the reform due to the inadequate conditions of the environment and structure of prisons. Prison Reform is like a new spare wheel applied to an old and inefficient car», cf. A. Lovati - M. Panetti Lovati, "Cinque anni di riforma carceraria nell'opinione dei detenuti" (1981), in *Aggiornamenti Sociali*, 12,

<https://www.aggiornamentisociali.it/articoli/cinque-anni-di-riforma-carceraria-nell-opinione-dei-detenuti/>.

18. The *UN Standard Minimum Rules for the Treatment of Prisoners* were amended in 2015 and adopted by the United Nations Commission on Crime Prevention and Criminal Justice on 22 May 2015. The new set of rules are symbolically called the *Mandela Rules*.

19. The *European Prison Rules*, adopted by the Committee of Ministers of the Council of Europe in 1987, were revised in 2006 with the Recommendation of 11 January 2006 Rec (2006)2 and updated and amended two years ago with the Recommendation of 1 July 2020 Rec (2006)2rev.

20. M. Ruotolo (2019), Afterword to *La riforma dell'ordinamento penitenziario*, P. Gonnella ed., Giappichelli Editore, Turin, p. 152.



The Parliament, the Government, the Administration were thus pushed to accelerate the introduction or experimentation - albeit, often, only provisionally and limited to their sphere of action- of new instruments or rules. The 'new' technologies were finally allowed inside prisons, including the opportunity to make video-calls with family members, along with a timid attempt to use the Internet.

However, a completely *abstract* conception of time still remains, almost as if the prison time stayed the same, unaffected by the rhythm of the technological and communicative innovations taking place outside, including the definition and configuration of the 'public space' where social processes are transformed into requests, opinions, cultures. On the contrary, the only influence that the 'outside' exercises on political decision-making is a stronger request for penalties, denoting a never satisfied appetite for retribution that goes hand in hand with the extraneousness of the prison system. TA phenomenon that has been defined as *criminal populism*.

The measures, including a set of limitations, adopted with the Law Decree of 17 March 2020 no. 18 (called "Decreto Cura Italia"), which provided for the opportunity of getting access to home detention for prisoners with a residual penalty shorter than eighteen months, were quickly subject to media alarmistic campaigns. A *populism* - here the term is more than ever adequate - which has improperly found a quick response based on reduction and rethinking.

Thus, the measures had a small impact on the decrease in the number of prisoners. In addition, an important number of removals from prison - and no new admissions - was possible thanks to the application, by the Judiciary, of the existing rules of the criminal and prison laws²¹. By way of example, between 18 March 2020 and 31 March 2022, home detention was, in total, applied to 6,875 people detained on the basis of the provision adopted on 17 March 2020, while a further 4,123 measures were adopted on the basis of pre-existing regulations; the calculation relating to the incidence of a lesser recourse to remand in custody is instead more difficult.

On the one hand, the new situation proved that, despite the inactivity of the Legislator, our legal system could be used and interpreted with more flexibility, openness and constitutionally oriented gaze, as it potentially possesses all the tools necessary to face the challenges posed by changing times. On the other hand, it made clear how little we know about time in prison and its unfolding, with the difficulties and anxieties, its need for changes as historical and social contexts change. Time in prison flows within a system that continues to be interpreted as an abstractly defined constant.

The Parliament, the Government, the Administration were thus pushed to accelerate the introduction or experimentation - albeit, often, only provisionally and limited to their sphere of action- of new instruments or rules. The 'new' technologies were finally allowed inside prisons, including the opportunity to make video-calls with family members, along with a timid attempt to use the Internet.

21. In particular, for probation pursuant to Article 47 of the P.L., for home detention pursuant to article 47 ter of the P.L., for deferral of the sentence pursuant to article 147 of the Criminal Code, and for the replacement of the remand in custody with other less afflictive measures.

Maps



Maps

2021

Custody Suites

1343
872 usable



543
221 usable



186
98 usable



44 suitable
premises



equipment
taser

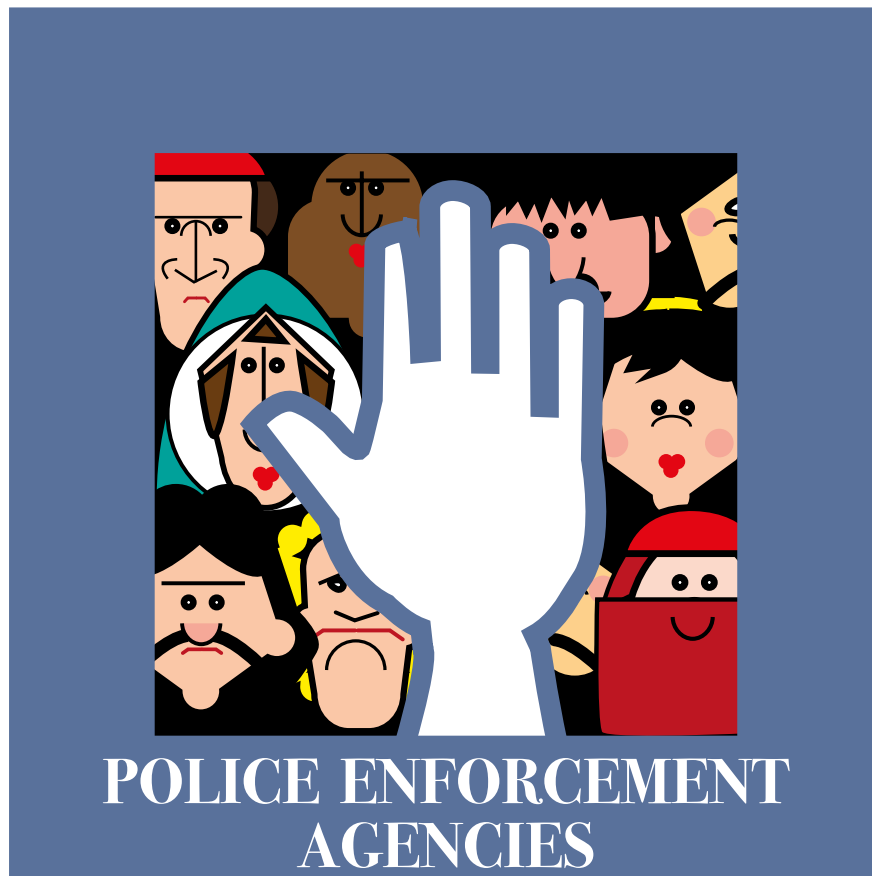
2626



1600



256



7664
transits

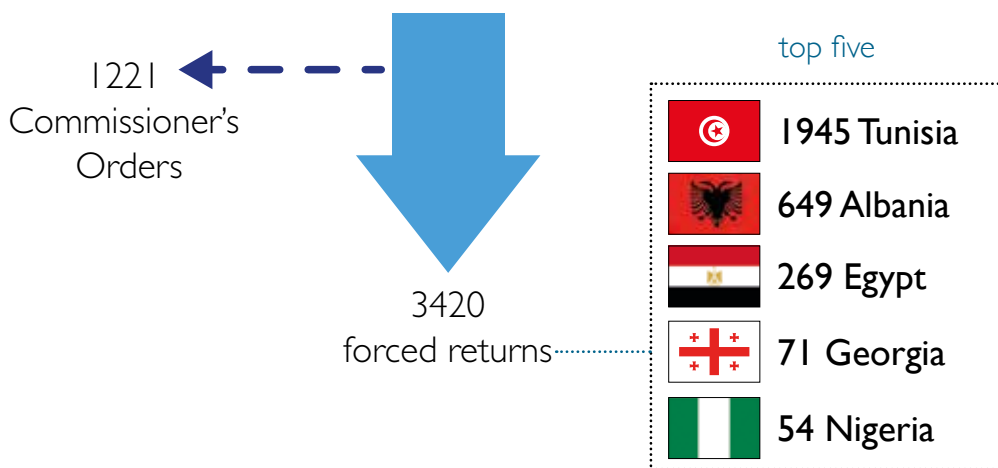
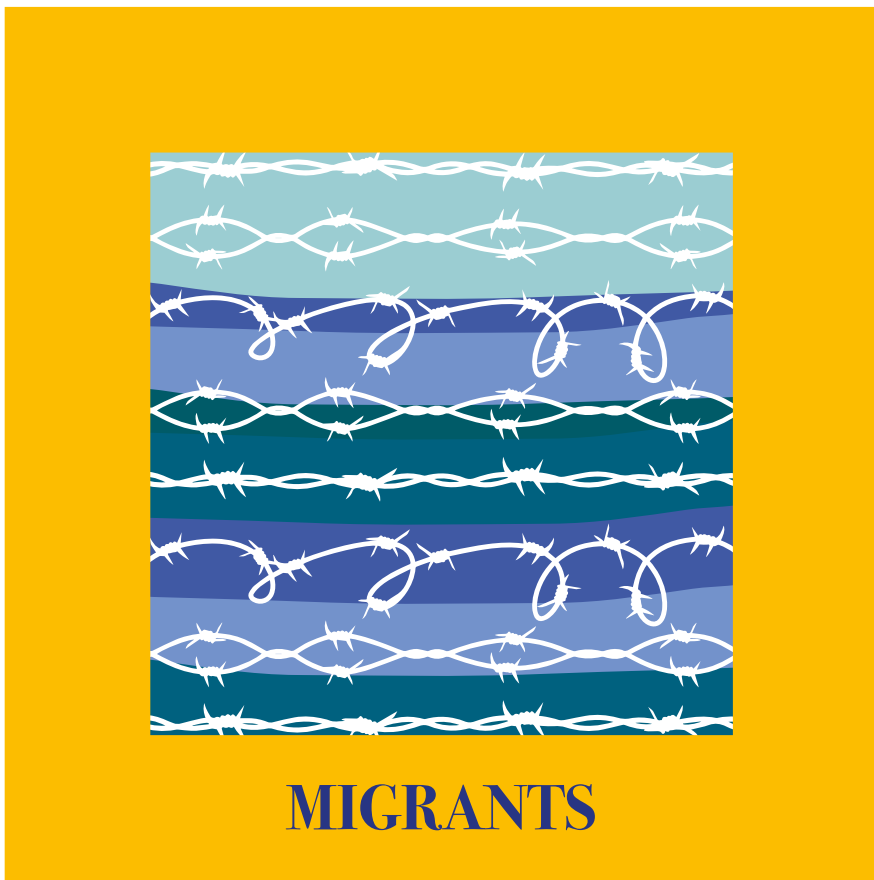
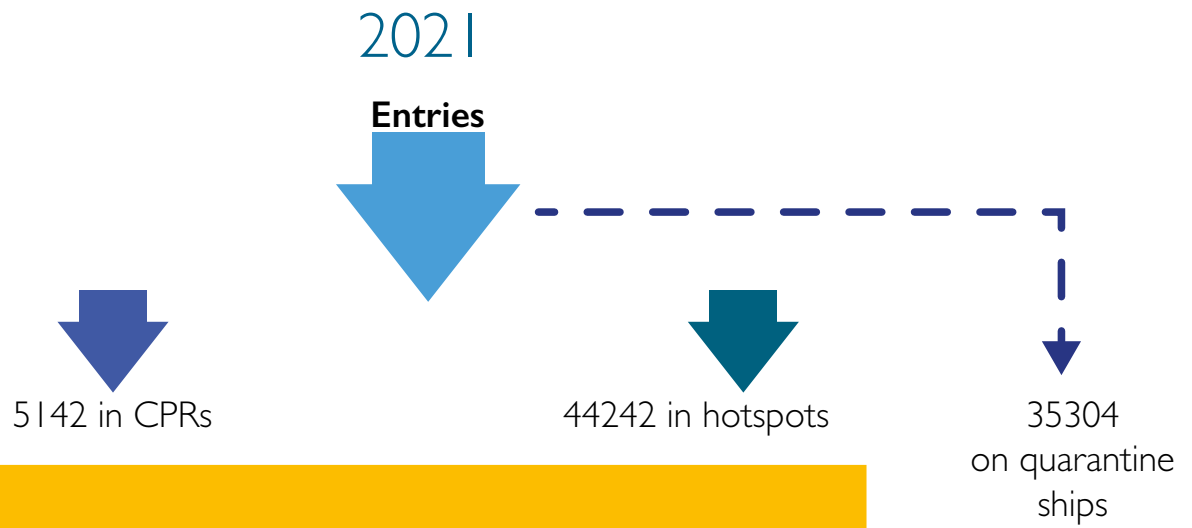


9818
transits



180
transits



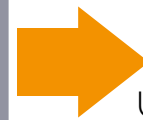
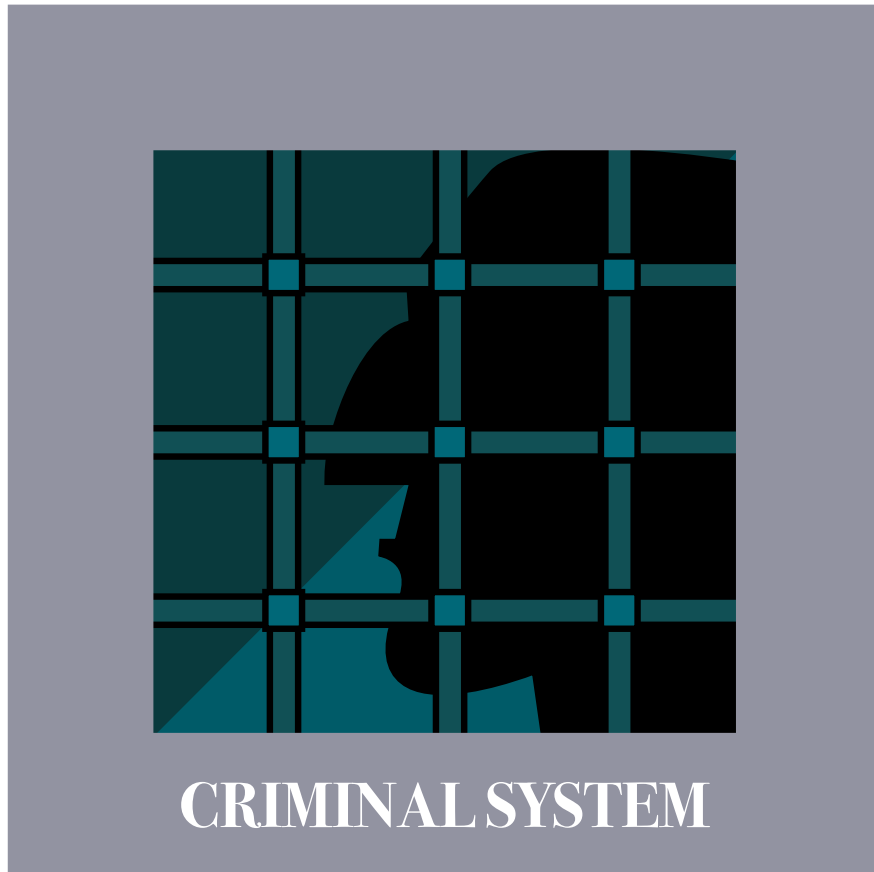


31.12.2021

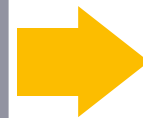
Men



Women



1246
University
students



6545
Outside
compulsory
school age
(54% of the
prison
population)



298 Restricted in
healthcare facilities

45419 Final convictions

8498 Pending final conviction



37091 Italians

17043 Foreigners

31.12.2021

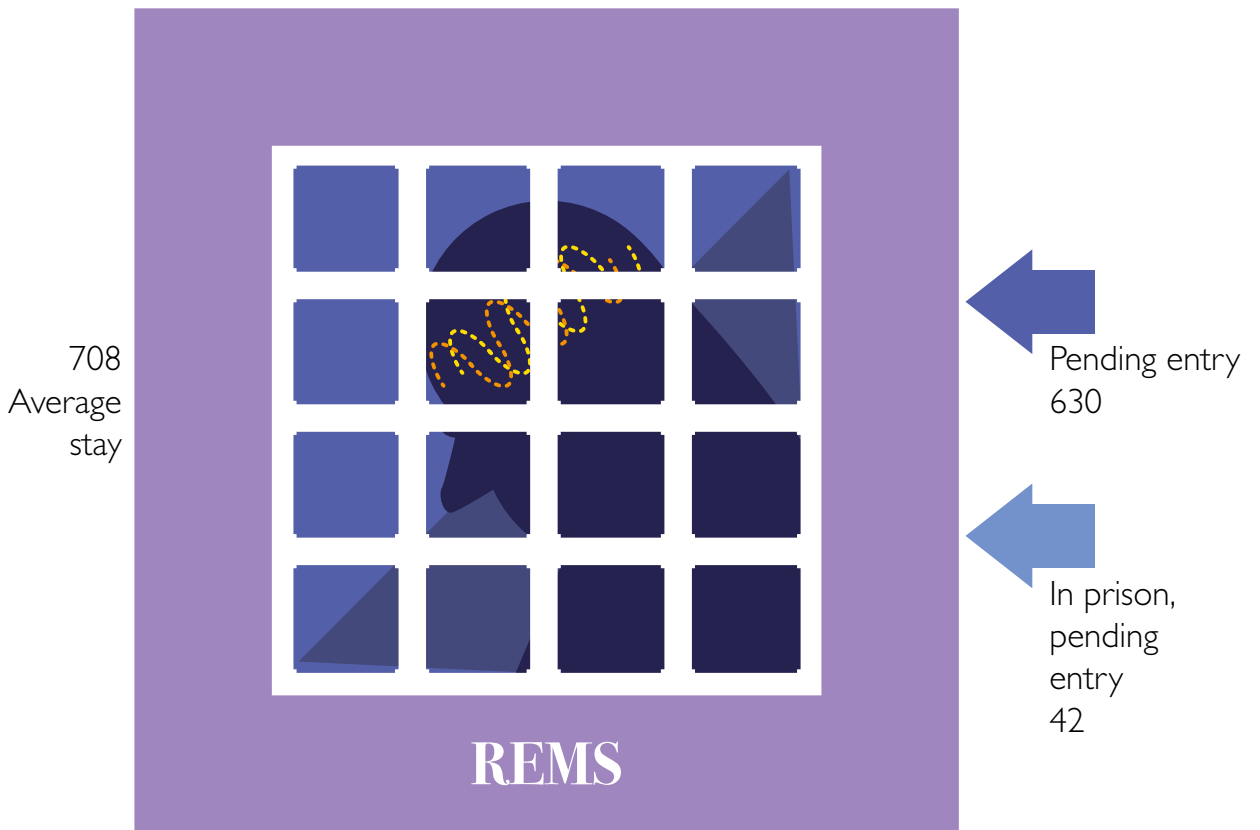


31.12.2021

31 Rems
availability 656



2 on arrival



305 Final convictions



573 Patients



451 Italians

243 Temporary



122 Foreigners

25
following
measure change



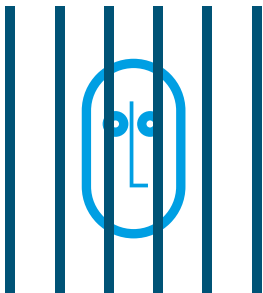
512
Men



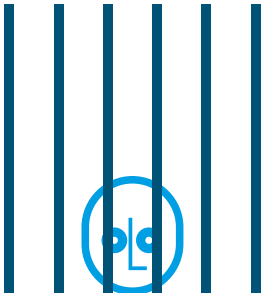
61
Women



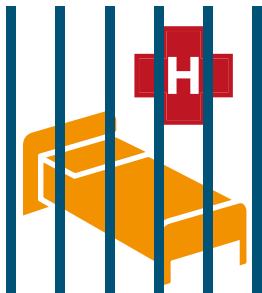
Facilities falling within the mandate of the National Guarantor



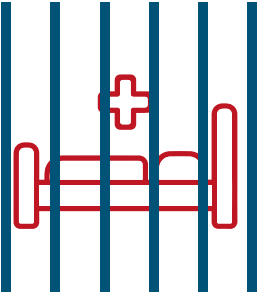
Adult Prisons
190



Juvenile institutions and First reception centres for minors
41



Hospitals' detention wards
10



Hospitals' detention beds
90



Communities
...



Residences for the execution of security measures (REMS)
31

The figures relating to private social communities for adults and minors change by the day, and are constantly updated, public funded communities for minors total 3

**Facilities falling
within the mandate
of the National Guarantor**



Psychiatric facilities
(both public and private)

335



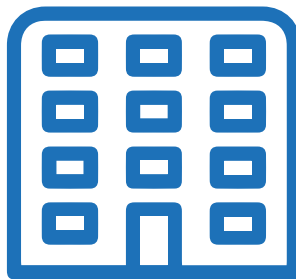
Support centres for the elderly and disabled persons
(among which RSA and RSD)

12.816



Custody suites of the State Police (PS), Carabinieri (CC) and Guardia di Finanza (GdF)

2.072



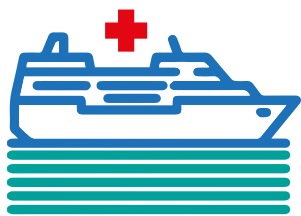
Immigration Removal Centres

10



Hotspot

4



Quarantine ships

5



Police suitable premises

44



Detention rooms at borders' crossing points

50



Facilities officially designated for quarantine (among which, Covid-19 hotels)

...

The figures relates to quarantine designated facilities (not included: quarantine ships; included: Covid-19 hotels) vary depending on the trend of the infection



Forced return flights

520

103 charter flight and 417 commercial flights in 2021

Data for Map 1.1 - Type of facilities visited (01/05/2021-13/05/2022)

Total facilities visited: 106

- PRISONS: 38
- JUVENILE DETENTION CENTRES: 2
- NURSING HOMES (RSA): 14
- RESIDENCES FOR THE EXECUTION OF SECURITY MEASURES (REMS): 6
- PSYCHIATRIC SERVICES OF DIAGNOSIS AND TREATMENT (SPDC): 14
- PSYCHIATRIC REHABILITATION COMMUNITIES: 2
- HOSPITAL DETENTION ROOMS: 2
- IMMIGRATION REMOVAL CENTRES (CPRS): 6
- CUSTODY SUITES: 18
- SUITABLE PREMISES: 4

22

LOMBARDY

- Milan Opera Prison (Ia casa)
- Milan Opera Prison (Ia casa)
- Milan "C. Beccaria" Juvenile Detention Centre
- Bergamo Prison
- Canton Mombello "Nerio Fischione" Prison (BS)
- Verziano Prison (BS)
- Monza Prison
- Pavia Prison
- Vigevano Prison (PV)
- Milan SPDC
- Milan SPDC
- Bergamo "Centro Don Orione" RSA
- Bergamo SPDC
- Pavia SPDC
- Castiglione delle Stiviere REMS (MN)
- "Airoldi e Muzzi" RSA, Lecco
- "Airoldi e Muzzi" RSA, Lecco
- Milan CPR
- Milan Police Headquarters
- Bergamo Police Headquarters
- Sesto San Giovanni Police Station (MI)
- Sesto San Giovanni Group (MI)

4

PIEDMONT

- Turin "Lorusso e Cutugno" Prison
- Cuneo Prison
- Turin "Lorusso e Cutugno" Prison
- Turin CPR

23

TUSCANY

- Prato "La Dogaia" Prison
- Siena Prison
- Porto Azzurro Prison (LI)
- Volterra Prison
- Massa Prison
- Livorno Prison
- Florence "Mario Gozzini" Prison
- Florence SPDC
- Florence SPDC
- Empoli "Chiassatelle" RSA
- Empoli REMS
- Livorno SPDC
- Livorno "Villa Serena" RSA
- Livorno "Pascucci" RSA
- Volterra REMS
- Florence Carabinieri
- Province Command
- Oltrarno Carabinieri Company Station (FI)
- Livorno Carabinieri
- Province Command
- Prato Carabinieri Province Command
- Montemurlo Carabinieri Unit (PO)
- Siena Police Headquarters
- Livorno Police Headquarters
- Florence Police Headquarters

3

SARDINIA

- Nuoro Prison
- Sassari "Giovanni Bacchiddu" Prison
- Macomer CPR (NU)

FRIULI VENEZIA GIULIA

- Tolmezzo Prison (UD)

EMILIA-ROMAGNA (12)

- Bologna Prison
- Castelfranco Emilia Prison (MO)
- Parma Prison
- "Villa Calvi" RSA (Nursing Home), Bologna
- "Virgo Fidelis" RSA, Bologna
- "Centro Servizi Saliceto" RSA, Bologna
- "Casa degli Svizzeri" REMS (...), Bologna
- SPDC, Bologna
- SPDC, Bologna - Port
- Carabinieri Company Station, Copparo (FE)
- Ferrara Police Headquarters
- Bologna Police Headquarters

ABRUZZO

- Chieti Police Headquarters

PUGLIA

29

- Bari "Francesco Rucci" Prison
- Brindisi Prison
- Foggia Prison
- Lecce Prison
- San Severo Prison (FG)
- Taranto "Carmelo Magli" Prison
- Turi Prison (BA)
- Spinazzola REMS (BT)
- Bisceglie Hospital Detention Room (BT)
- Bari SPDC
- Bari Psychiatric Detention Room
- Bari "Villa Giovanna" RSSA
- Putignano SPDC (BA)
- Bari "Villa Marica" RSSA
- Carovigno REMS (BR)
- Lecce SPDC
- Lecce "Villa Sofia" RSA
- Lecce "Villa Libertini" Psychiatric Rehabilitation Community
- Casarano Psychiatric Rehabilitation Community
- Foggia SPDC
- Foggia "Maria Grazia Barone" RSA
- Manfredonia "Stella Maris" RSA (FG)
- Brindisi CPR
- Bari CPR
- Gallipoli Carabinieri Company Station (LE)
- San Severo Carabinieri Company Station (FG)
- Cerignola Carabinieri Company Station (FG)
- Gallipoli Police Station (LE)
- Galatina Police Station (LE)

LAZIO

- 5
- Rome - Rebibbia "Raffaele Cinotti" Prison
 - Rome - Rebibbia "Raffaele Cinotti" Prison
 - Rome - Rebibbia "Raffaele Cinotti" Prison
 - Rome SPDC
 - Rome Police Headquarters

CAMPANIA

- 2
- Cc femminile, Pozzuoli - Napoli
 - Ipm Nisida (NA)

BASILICATA

- 3
- Melfi Prison (PZ)
 - Melfi Prison (PZ)
 - Palazzo San Gervasio CPR (PZ)

CALABRIA

- Arghillà Prison (RC)

Table 1.1 - Facilities Visited (01/05/2021-16/05/2022)

Facility	Region	Unit ¹	Type and date of the visit ²	
Rome - Rebibbia "Raffaele Cinotti" Prison	Lazio		H	30/04/2021
Bologna Prison	Emilia-Romagna		R	12-14/07/2021
Castelfranco Emilia Prison (MO)	Emilia-Romagna		R	12-14/07/2021
Pozzuoli Female Prison (NA)	Campania		H	08/07/2021
Bari "Francesco Rucci" Prison	Puglia		R	19-27/07/2021
Brindisi Prison	Puglia		R	19-27/07/2021
Foggia Prison	Puglia		R	19-27/07/2021
Lecce Prison	Puglia		R	19-27/07/2021
Melfi Prison (PZ)	Basilicata		R	19-27/07/2021
San Severo Prison (FG)	Puglia		R	19-27/07/2021
Taranto "Carmelo Magli" Prison	Puglia		R	19-27/07/2021
Turi Prison (BA)	Puglia		R	19-27/07/2021
Milan Opera Prison, I Casa	Lombardy	41-bis Sections	H	07/09/2021
Nisida Juvenile Detention Centre (NA)	Campania		H	10-11/09/2021
Rome - Rebibbia "Raffaele Cinotti" Prison	Lazio	41-bis Sections	H	21/09/2021
Arghillà Prison (RC)	Calabria		H	30/10/2021
Milan Opera Prison, I Casa	Lombardy		R	08-14/11/2021
Milan "C. Beccaria" Juvenile Detention Centre	Lombardy		R	08-14/11/2021
Bergamo Prison	Lombardy		R	11-17/12/2021
Canton Mombello "Nerio Fischione" Prison (BS)	Lombardy		R	11-17/12/2021
Verziano Prison (BS)	Lombardy		R	11-17/12/2021
Monza Prison	Lombardy		R	11-17/12/2021
Pavia Prison	Lombardy		R	11-17/12/2021
Turin "Lorusso e Cutugno" Prison	Piedmont		H	11-17/12/2021
Vigevano Prison (PV)	Lombardy		R	11-17/12/2021
Rome - Rebibbia "Raffaele Cinotti" Prison	Lazio		H	09/02/2022
Melfi Prison (PZ)	Basilicata		R	12/02/2022
Tolmezzo Prison (UD)	Friuli Venezia Giulia	41-bis Sections	H	21-22/02/2022
Cuneo Prison	Piedmont	41-bis Sections	H	01-05/03/2022
Parma Prison	Emilia-Romagna	41-bis Sections	H	01-05/03/2022
Turin "Lorusso e Cutugno" Prison	Piedmont		H	01-05/03/2022
Nuoro Prison	Sardinia	41-bis Sections	R	11-15/03/2022
Sassari "Giovanni Bacchiddu" Prison	Sardinia	41-bis Sections	R	11-15/03/2022
Prato "La Dogaia" Prison	Tuscany		R	09-13/05/2022

*Following

Facility	Region	Unit ¹	Type and date of the visit ²
Siena Prison	Tuscany		R 09-13/05/2022
Porto Azzurro Prison (LI)	Tuscany		R 09-13/05/2022
Volterra Prison	Tuscany		R 09-13/05/2022
Massa Prison	Tuscany		R 09-13/05/2022
Livorno Prison	Tuscany		R 09-13/05/2022
Florence "Mario Gozzini" Prison	Tuscany		R 09-13/05/2022
"Villa Calvi" RSA (Nursing Home), Bologna	Emilia Romagna		H 23-29/01/2021
"Virgo Fidelis" RSA, Bologna	Emilia Romagna		R 23-29/01/2021
"Centro Servizi Saliceto" RSA, Bologna	Emilia Romagna		R 23-29/01/2021
"Casa degli Svizzeri" REMS, Bologna	Emilia Romagna		R 23-29/01/2021
SPDC, Bologna	Emilia Romagna	"Sant'Orsola" General Hospital - Malpighi	R 23-29/01/2021
SPDC, Bologna - Port	Emilia Romagna	Ospedale Maggiore	R 23-29/01/2021
Spinazzola REMS (BT)	Puglia		R 01-05/03/2021
Bisceglie Hospital's Detention Room (BT)	Puglia	Ospedale Civile	R 01-05/03/2021
Bari SPDC	Puglia	General Hospital	R 01-05/03/2021
Bari Hospital Detention Room	Puglia	General Hospital	R 01-05/03/2021
Bari "Villa Giovanna" Nursing Home (RSSA)	Puglia		R 01-05/03/2021
Putignano SPDC (BA)	Puglia	"Santa Maria degli Angeli" Hospital	R 01-05/03/2021
Bari "Villa Marica" Nursing Home (RSSA)	Puglia		R 01-05/03/2021
Carovigno REMS (BR)	Puglia		R 01-05/03/2021
Lecce SPDC	Puglia	"Vito Fazzi" Hospital	R 01-05/03/2021
Lecce "Villa Sofia" Nursing Home (RSA)	Puglia		R 01-05/03/2021
Lecce "Villa Libertini" Psychiatric Rehabilitation Community (CRAP)	Puglia		R 01-05/03/2021
Casarano Psychiatric Rehabilitation Community (CRAP)	Puglia		R 01-05/03/2021
Foggia SPDC	Puglia	Ospedali Riuniti	R 01-05/03/2021
Foggia "Maria Grazia Barone" Nursing Home (RSA)	Puglia		R 01-05/03/2021
Manfredonia "Stella Maris" Nursing Home (RSA) (FG)	Puglia		R 01-05/03/2021
Milan SPDC	Lombardy	"San Paolo" Hospital	R 08-11/11/2021
Milan SPDC	Lombardy	Niguarda Hospital	R 08-11/11/2021
Bergamo "Centro Don Orione" Nursing Home (RSA)	Lombardy		R 11-17/12/2021
Bergamo SPDC	Lombardy	"Papa Giovanni XXIII" Hospital	R 11-17/12/2021

*Following

Facility	Region	Unit ¹	Type and date of the visit ²	
Pavia SPDC	Lombardy	"San Matteo" General Hospital	R	11-17/12/2021
Castiglione delle Stiviere REMS (MN)	Lombardy		R	11-17/12/2021
Rome SPDC	Lazio	"San Camillo" Hospital	H	30/12/2021
"Airoldi e Muzzi" RSA, Lecco	Lombardy		R	01/05/2021
"Airoldi e Muzzi" RSA, Lecco	Lombardy		R	18/12/2021
Florence SPDC	Tuscany	"Ex Convento delle Oblate" Hospice	R	09-13/05/2022
Florence SPDC	Tuscany	"Santa Maria Nuova" Hospital	R	09-13/05/2022
Empoli "Chiassatelle" RSA	Tuscany		R	09-13/05/2022
Empoli REMS	Tuscany		R	09-13/05/2022
Livorno SPDC	Tuscany		R	09-13/05/2022
Livorno "Villa Serena" RSA	Tuscany		R	09-13/05/2022
Livorno "Pascucci" RSA	Tuscany		R	09-13/05/2022
Volterra REMS	Tuscany		R	09-13/05/2022
Milan CPR	Lombardy		R	13/02/2021
Palazzo San Gervasio CPR (PZ)	Basilicata		H	18/07/2021
Brindisi CPR	Puglia		R	04/03/2021
Bari CPR	Puglia		R	03/03/2021
Turin CPR	Piedmont		R	14/06/2021
Macomer CPR (NU)	Sardinia		R	14/03/2022
Gallipoli Carabinieri Company Station (LE)	Puglia	Police Enforcement Agencies, restriction rooms	R	01-05/03/2021
San Severo Carabinieri Company Station (FG)	Puglia	Police Enforcement Agencies, restriction rooms	R	01-05/03/2021
Cerignola Carabinieri Company Station (FG)	Puglia	Police Enforcement Agencies, restriction rooms	R	01-05/03/2021
Copparo Carabinieri Company Station (FE)	Emilia Romagna	Police Enforcement Agencies, restriction rooms	R	25/01-01/02/2021
Gallipoli Police Station (LE)	Puglia	Police Enforcement Agencies, restriction rooms	R	01-05/03/2021
Galatina Police Station (LE)	Puglia	Police Enforcement Agencies, restriction rooms	R	01-05/03/2021
Ferrara Police Headquarters	Emilia Romagna	Police Enforcement Agencies, restriction rooms	R	25/01-01/02/2021
Bologna Police Headquarters	Emilia Romagna	Police Enforcement Agencies, restriction rooms	R	25/01-01/02/2021
Milan Police Headquarters	Lombardy	Police Enforcement Agencies, restriction rooms	R	08-12/11/2021
Bergamo Police Headquarters	Lombardy	Police Enforcement Agencies, restriction rooms	R	12-16/03/2021
Sesto San Giovanni Police Station (MI)	Lombardy	Police Enforcement Agencies, restriction rooms	R	08-12/11/2021
Sesto San Giovanni Group (MI)	Lombardy	Police Enforcement Agencies, restriction rooms	R	08-12/11/2021
Chieti Police Headquarters	Abruzzo	Other facilities compliant with the Consolidated Act on Immigration, Article 13, para. 5 bis	R	28/03/2022
Florence Carabinieri Province Command	Tuscany	Police Enforcement Agencies, restriction rooms	R	09-14/05/2022

*Following

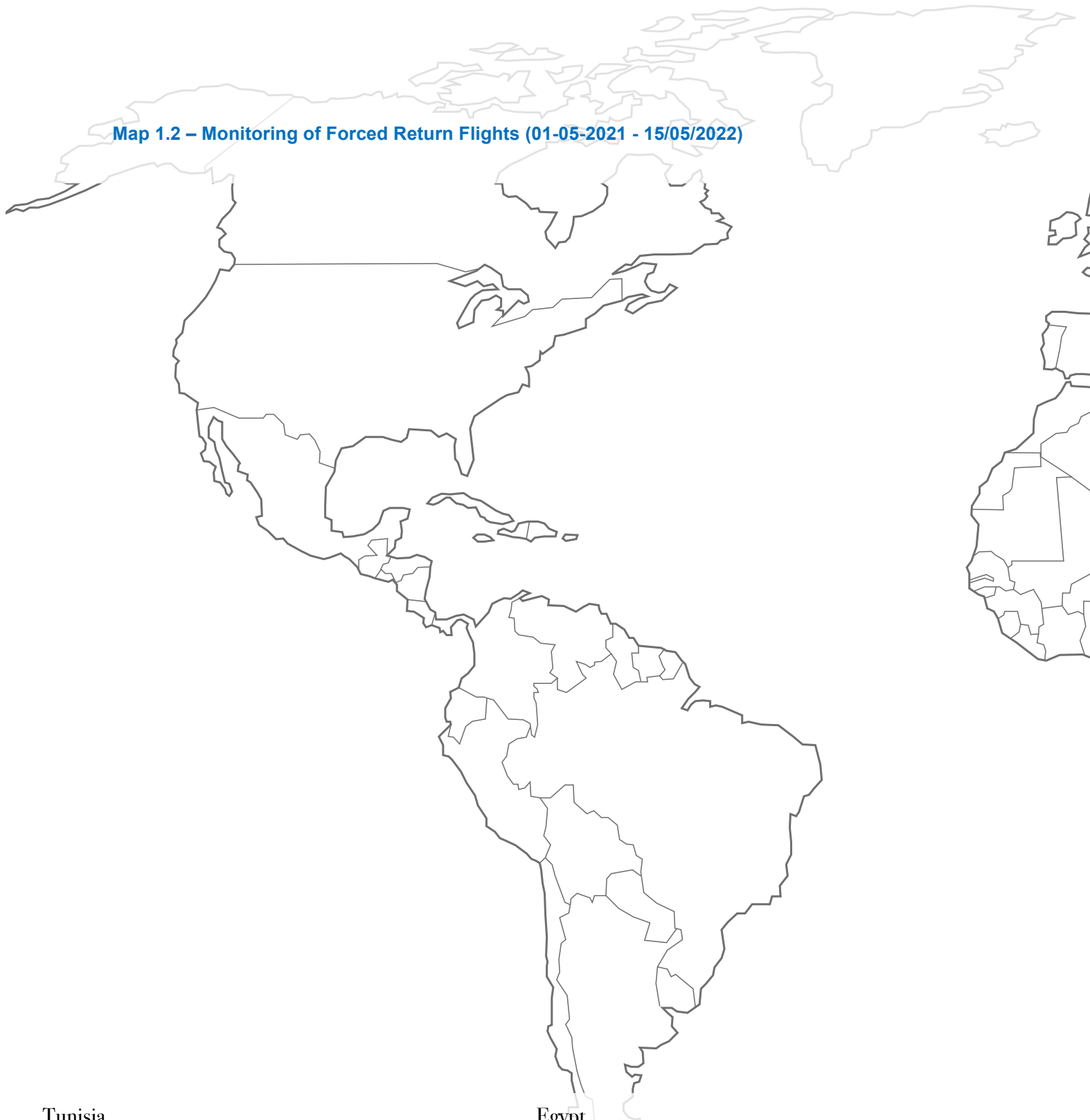
Facility	Region	Unit ¹	Type and date of the visit ²	
Oltrarno Carabinieri Company Station (FI)	Tuscany	Police Enforcement Agencies, restriction rooms	R	09-14/05/2022
Livorno Carabinieri Province Command	Tuscany	Police Enforcement Agencies, restriction rooms	R	09-14/05/2022
Prato Carabinieri Province Command	Tuscany	Police Enforcement Agencies, restriction rooms	R	09-14/05/2022
Montemurlo Carabinieri Unit (PO)	Tuscany	Police Enforcement Agencies, restriction rooms	R	09-14/05/2022
Rome Police Headquarters	Lazio	Other facilities compliant with the Consolidated Act on Immigration, Article 13, para. 5 bis	R	08/04/2021
Siena Police Headquarters	Tuscany	Other facilities compliant with the Consolidated Act on Immigration, Article 13, para. 5 bis	R	09-14/05/2022
Livorno Police Headquarters	Tuscany	Other facilities compliant with the Consolidated Act on Immigration, Article 13, para. 5 bis	R	09-14/05/2022
Florence Police Headquarters	Tuscany	Police Enforcement Agencies, restriction rooms	R	09-14/05/2022

¹ If not otherwise specified, it means the entire facility

² Type: R, Regional visit; H, Ad hoc visit

Source: National Guarantor for the rights of persons deprived of liberty

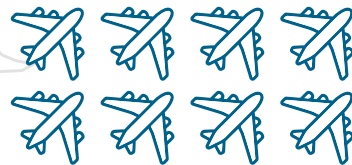
Map 1.2 – Monitoring of Forced Return Flights (01-05-2021 - 15/05/2022)

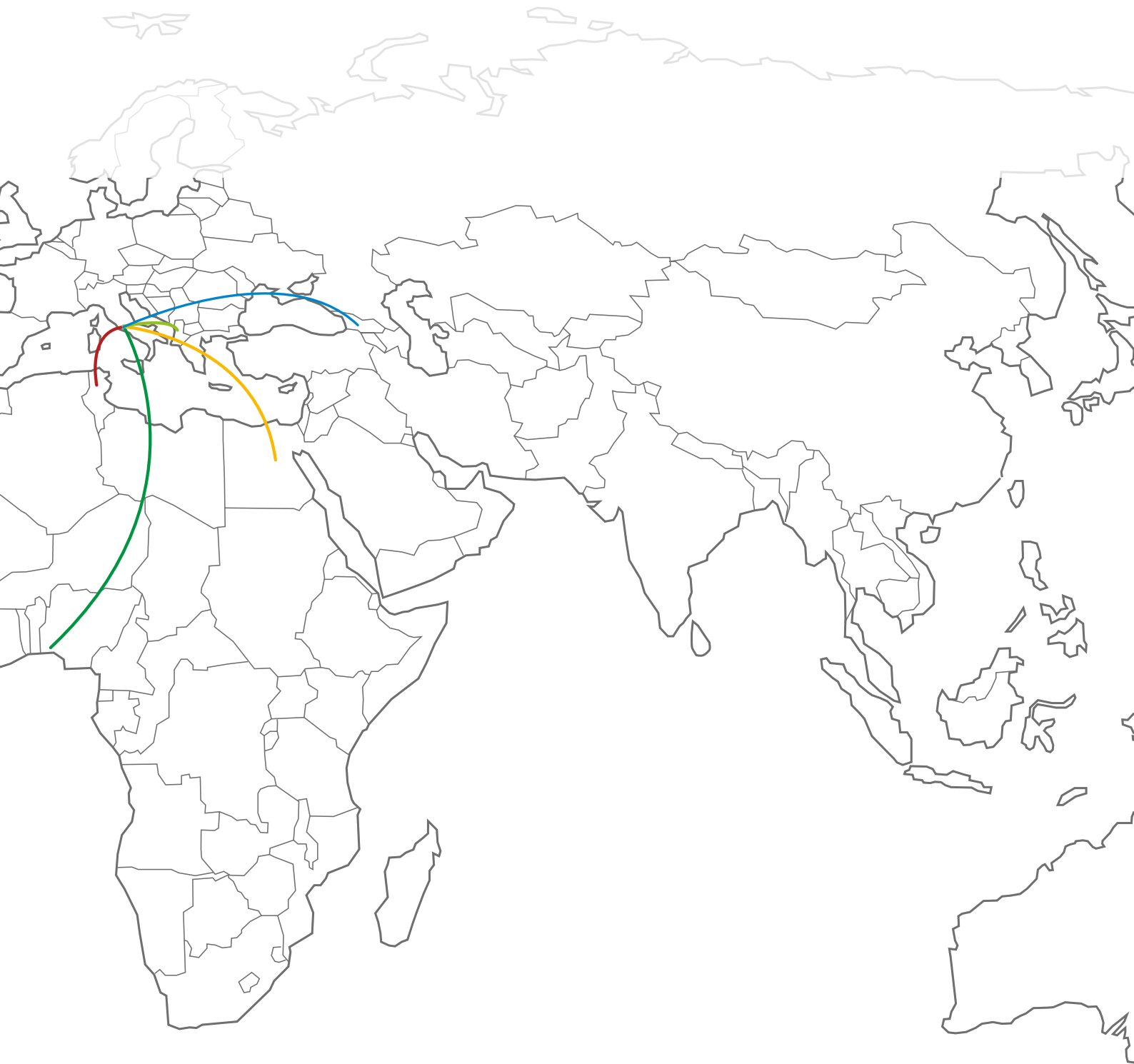


Tunisia



Egypt





Georgia



Nigeria



Albania



Table 1.2 – Monitoring of Forced Return Flights (01-05-2021 - 15/05/2022)

Country of Return	Flight Type	Flight Date
Egypt	Charter	04/06/2021
Georgia	Joint Charter	10/06/2021
Egypt	Charter	31/08/2021
Egypt	Charter	07/09/2021
Tunisia	Charter	20/09/2021
Nigeria	Charter	02/10/2021
Egypt	Charter	09/10/2021
Tunisia	Charter	28/10/2021
Georgia	Joint Charter	04/11/2021
Tunisia	Charter	15/11/2021
Tunisia	Charter	25/11/2021
Tunisia	Charter	29/11/2021
Nigeria	Charter	04/12/2021
Tunisia	Charter	13/12/2021
Egypt	Charter	15/12/2021
Tunisia	Charter	20/12/2021
Tunisia	Charter	30/12/2021
Egypt	Charter	12/01/2022
Georgia	Joint Charter	20/01/2022
Tunisia	Charter	24/01/2022
Albania	Joint Charter	25/01/2022
Tunisia	Charter	31/01/2022
Tunisia	Charter	07/02/2022
Tunisia	Charter	17/02/2022
Tunisia	Charter	21/02/2022
Tunisia	Charter	24/02/2022
Tunisia	Charter	09/03/2022
Egypt	Charter	10/03/2022
Tunisia	Charter	28/03/2022
Georgia	Joint Charter	21/04/2022
Egypt	Charter	29/04/2022
Nigeria	Joint Charter	07/05/2022

Source: National Guarantor for the rights of persons deprived of liberty

Chart 1.3 - European Projects Involving the National Guarantor Year 2021-2022

Subject	Project	Venue
<i>Monitoring during a pandemic/public health crisis (preparation, deployment, monitoring)</i>	<i>Forced-Return Monitoring III (FReM III)</i>	<i>Online</i>
Fifth 'Control Room' Meeting	<i>Forced-Return Monitoring III (FReM III)</i>	<i>Online</i>
"Observatory on the Inequalities suffered by Third-national Unaccompanied Minors in Healthcare"	Regional Project FAMI 2219 - ARS Marche	<i>Online</i>
Final Conference	Fairness Project	<i>Online</i>
Final Conference	<i>Forced-Return Monitoring III (FReM III)</i>	<i>Online</i>
Training sessions on the new Frontex's Reporting System FRMS	<i>Forced-Return Monitoring III (FReM III)</i>	<i>Online</i>

Source: National Guarantor for the rights of persons deprived of liberty

Nationals Events



Campania

- The President of the National Guarantor Mauro Palma participates in the visit to the Prison of Santa Maria Capua Vetere together with the President of the Council, Mario Draghi, and the Secretary of State for Justice, Marta Cartabia
- The President of the NG Mauro Palma participates in visit of the President of the Republic, Sergio Mattarella, to the Juvenile Detention Centre of Nisida, Naples
- The President of the NG Mauro Palma meets with the Prosecutor General of the Court of Naples, Giovanni Melillo, in Naples.
- The President Mauro Palma and Daniela de Robert participates in the meeting at the Prosecutor's Office, Naples
- President Mauro Palma participates in the convention "Diritto - Processo - Esecuzione Penale" of the National Assembly of the Independent Judiciary, Naples



Emilia-Romagna

- Participation of the Board of the Guarantor in the debate on "Il Diritto alla salute dei detenuti ai tempi della pandemia", on occasion of Modena "Festival della Giustizia Penale"
- The President participates in the debate "Noi, che abbiamo visto Genova", at Festa Nazionale dell'Unità, Bologna
- Lesson of the President on "Libertà e il canto I del Purgatorio" at the first edition of the "Lectura Dantis franciscana" in the Franciscan Festival, Bologna
- President Mauro Palma meets Massimo Macera, Questore (Commissioner) of Parma.



Latium

- President Mauro Palma meets Marta Cartabia, Secretary of State for Justice, Rome
- Commemoration ceremony to honour Giovanni Falcone at the Training School of the Penitentiary Administration "Giovanni Falcone" in Rome.
- President Mauro Palma meets with Alfredo Durante Mangoni, minister plenipotentiary and diplomatic adviser to the Ministry of Justice, Alfredo Durante Mangoni, Rome
- President Mauro Palma meets the consultant to the Ministry of Health, Nerina Dirindin, Rome
- President Mauro Palma meets Teo Luzi, Commander General of the Carabinieri, Rome
- President Mauro Palma attends the ceremony for 207th anniversary of the founding of the Carabinieri Corps.
- Meeting between the National Guarantor and Michele Di Bari, Head of Department of the Civil Liberties and Immigration of the Ministry of the Interior, Rome
- The Board of the National Guarantor Authority meets Sergio Mattarella, President of the Republic, to give a copy of the Report to Parliament 2021, palazzo del Quirinale, Rome

- The National Guarantor Board takes part in the ceremony for the 204th Anniversary of the foundation of the Corps of Penitentiary Police, Rome.
- President Mauro Palma takes part in the inauguration ceremony of the "Garden of Solidarity" at the Palace of justice of Viterbo
- President Mauro Palma meets Anna Macina, Undersecretary of the Ministry of Justice
- The National Guarantor Board takes part in the ceremony for the 204th anniversary of the foundation of the Corps of Penitentiary Police, at the women prison "Germana Stefanini", Rome
- President Mauro Palma meets Marta Cartabia, Secretary of State for Justice, and the Head of Department of the Penitentiary Administration
- President Mauro Palma meets Mario Draghi, President of the Council at Palazzo Chigi, Rome
- President Mauro Palma meets the Head of Cabinet of the Ministry of Justice, Rome
- President Mauro Palma meets Marta Cartabia, Secretary of State for Justice
- Matteo Salvini visits the National Guarantor Authority, Rome
- President Mauro Palma meets Marta Cartabia, Secretary of State for Justice, Rome
- The Senate's Commission for Human Rights hears the National Guarantor on the prisons situation in light of the facts occurred in the prison of Santa Maria Capua Vetere
- Meeting of President Mauro Palma with Triantafillos Loukarelis, Director General of the National Office against Racial Discrimination (UNAR) of the Presidency of the Council of Ministers, Rome
- President Mauro Palma meets Luciana Lamorgese, Secretary of State for Home Affairs, Rome
- President Mauro Palma meets the Head Department of the Penitentiary Administration and the Local Guarantors at Latium Region office, Rome
- The National Guarantor Authority organises a meeting with the Regional Guarantors, with the participation of the Secretary of State for Justice Marta Cartabia, Rome
- President Mauro Palma gives a speech at the final day of the Second National Festival of Prison Economy, Rome
- A member of the Board participates in the works of the first panel discussion of the 6th national conference on Addiction Disorders, Rome - Rebibbia prison
- The National Guarantor hosts a meeting involving the Regional Guarantors of Cassa delle Ammende [Fines and Fee Fund], Rome
- Première of the film "Aria Ferma" (Still Air) at the Raffaele Cinotti prison of Rome - Rebibbia with the participation of the Secretary of State for Justice Marta Cartabia and the President of the National Guarantor Mauro Palma
- President Mauro Palma participates in the press conference on CPRs "Buchi Neri. La detenzione senza reato nei CPR", organised by the Italian Coalition for Liberties and Civil Rights (CILD), Rome
- Meeting with Chief Department of Legal and Legislative Affairs of the Presidency of the Council of Ministers
- President Mauro Palma meets Maurizio Landini, Secretary General of the CGIL Trade Union
- President Mauro Palma meets Francesco Paolo Sisto, Undersecretary of the Ministry of Justice
- President Mauro Palma takes parts in the presentation of the 2021 Calendar of the Penitentiary Police, Rome
- The National Guarantor and the National Bar Council (CNF) sign a Cooperation Agreement, Rome
- The National Guarantor participates in the meeting on occasion of the Italian Presidency of the Committee of Ministers of the Council of Europe at the Centre for Politics and International Studies, (CESPI), Rome
- President Mauro Palma participates in the convention "Riforma penitenziaria: dove eravamo rimasti?" organised by the Unione Camere Penali Italiane, Rome
- President Mauro Palma gives a speech on "La Persona Detenuta" at the 70th National study convention "Gli ultimi. La tutela giuridica dei soggetti deboli", organised by the Unione giuristi cattolici italiani, Rome
- President Mauro Palma participates in the modification and updating of the Chart of the Rights of the Children of Incarcerated Persons, alongside with the Secretary of State for Justice, Marta Cartabia, Rome
- President Mauro Palma participates in the inauguration of the project "Liberiamo la salute: telemedicina negli Istituti penitenziari", at Rebibbia prison, Rome
- President Mauro Palma participates in the hearing at the Court of Rome on the Regeni case
- President Mauro Palma participates in the 12th anniversary ceremony of the earthquake of Haiti and of the intervention of the Italian ship Cavour in support of the Haitian population, organised by the Italian Navy and the Foundation Francesca Rava NPH Italy Onlus
- President Mauro Palma participates in a meeting on the status of the RSA organised by Amnesty International, online.
- President Mauro Palma meets Francesca Ferrandino, Prefect of Bologna, at the Ministry of the Interior's headquarters
- President Mauro Palma participates in the convention "La vulnerabilità dei diritti nella privazione della libertà", organised by the Ministry of Culture, Rome
- President Mauro Palma participates in the ceremony awarding the Certificates of attendance at the first edition of the Gardeners course for the detainees of Viterbo Prison

Nationals Events

- President Mauro Palma participates in the workshop "Trauma, violenza intenzionale, tortura". Implementation status of the guide lines and future prospects", organised by ASGI and Medici Senza Frontiere (Doctors without borders), Rome
- President Mauro Palma participates in the National day feast of the State Police, Rome
- The National Guarantor meets the delegation composed by Tunisian independent associations working on human rights under the Trust Project sponsored by the Danish Institute for Human Rights



Liguria

- Speech of President Mauro Palma at the convention "G8 di Genova, vent'anni dopo", on the topic "La tutela dei diritti inviolabili di chi è sottoposto a restrizione della libertà personale: verità e giustizia per Emanuel Scalabrini", organised by Comunità di San Benedetto al Porto - Antigone, Genoa.
- Speech of President Mauro Palma on "Carcere e umanità" at the Festival della Comunicazione, Camogli - Genoa.
- President Mauro Palma participates in the 6th national conference on addiction disorders, with a focus on "La realtà penale e penitenziaria della dipendenza: nuove proposte su misure alternative, riduzione del danno e sanzioni", organised by the Presidency of the Council of Ministers - Anti-drugs Policies Department, Genoa



Lombardia

- President Mauro Palma meets Ferruccio Resta, Dean of Milan Politecnico University, Milan.
- President Mauro Palma meets Giovanna De Rosa, President Milan Supervisory Court, Milan
- President Mauro Palma meets the Municipal Guarantor of the rights of person deprived of liberty, Francesco Maisto, in Milan
- President Mauro Palma meets the Regional Defensor of Lombardy region, Gianalberto de Vecchi, Milan
- President Mauro Palma meets with Milan's Welfare Councillor, Letizia Moratti.
- President Mauro Palma meets Renato Saccone, Prefect of Milan
- The Board of the National Guarantor meets Pietro Buffa, Lombardy's Regional Superintendent of the Penitentiary Administration, Milan
- President Mauro Palma meets Gustavo Nanni, Acting President of the Supervisory Court of Brescia, Brescia
- President Mauro Palma participates in the convention "Articolo 3 Cedu e situazione penitenziaria italiana: la giurisprudenza europea e le prospettive di riforma", organised by the Camera Penale and the Bar Association of Milan, Milan
- President Mauro Palma meets Luisa Ravagnani, Municipal Guarantor of Brescia
- President Mauro Palma gives a speech at the 9th congress of the "Nessuno Tocchi Caino" Association, Milan-

Opera prison

- President Mauro Palma meets the students of the "Giosuè Carducci" classical high school, Milan
- President Mauro Palma meets Pietro Buffa, Lombardy's Regional Superintendent of the Penitentiary Administration, Milan

online

- President Mauro Palma gives a speech at the online seminar "Il carcere e la pandemia Situazioni a confronto: diritti e restrizioni", organised by the Bar Association of Catanzaro, online
- President Mauro Palma gives a speech on "La vita delle persone private di libertà" at the cycle of lessons: "Diritti Umani vs Pandemia", organised by CESPI and the Istituto della Enciclopedia Italiana Treccani, online
- The Board of the Guarantor participates in the Festival of Criminal Justice, on the subject "Vittime di ieri, vittime di oggi", online
- President Mauro Palma gives a speech at the seminar "Nuove e vecchie contenzioni", organised by the Guarantor of the persons deprived of liberty of the region of Piedmont, online
- Coordination of the work team "Preventive actions and custody measures of migrants" on occasion of the second national convention on mental health "Per una salute mentale di comunità", sponsored by the Ministry of Health, online
- Speech of President Mauro Palma at the round table "Esecuzione della pena e il rispetto dei diritti fondamentali dell'uomo", organised by the Criminal Chamber of Palermo, online
- President Mauro Palma participates in the workshop "Studio globale delle Nazioni Unite sui bambini privati della libertà nel contesto italiano: Incontro di follow-up con rilevanti autorità garanti indipendenti in Italia", organised by the Global Campus of Human Rights, online
- President Mauro Palma meets with the Control Room for questions regarding subjects restricted pending admission in Residences for the execution of security measures (REMS), organised by the Commission of National Agency for Regional Health Services (AGENAS), online
- President Mauro Palma gives a speech at the convention "Pandemia, disabilità e resilienza", organised by the Italian Federation for overcoming handicap (FISH), online.
- The National Guarantor Board meets with the President of the Regional Council of Apulia Region, Loredana Capone, online
- President Mauro Palma participates in the initiative in memory of Sandro Margara 5 years after his death, online
- Meeting with the Coordination Team of the Penitentiary Educational Areas (CAEP), online
- President Mauro Palma participates in the convention "Salute Mentale e folli rei Continua la discussione. Lo stato e la battaglia per la riforma", online
- President Mauro Palma participates in the convention "Questione di Giustizia", organised by Magistratura Democratica, online
- President Mauro Palma participates at the convention "Osservatorio sulle disuguaglianze nella salute sui minori stranieri non accompagnati" on "Diritti all'identità, all'ascolto e alla protezione e tutela delle persone di minore età: i luoghi di privazione della libertà", organised by ARS Marche under the 2019 AMIF's Regional Project, online
- President Mauro Palma participates in the SPDC convention "Verso servizi liberi da contenzione a 60 anni da 'mi no firmo' - La critica alle istituzioni e la città che accoglie", organised by Department of Mental Health of Trieste and Gorizia, online.
- President Mauro Palma meets with the control room for questions regarding subjects restricted pending admission in Residences for the execution of security measures (REMS), organised by the Commission of National Agency for Regional Health Services (AGENAS), online
- The Justice Commission of the Chamber of Deputies hears the National Guarantor as point of reference during the review of the bill C2933 Bruno with regard to promotion and support of the theatre activities in prison, online
- Meeting with the Local Guarantors concerning the complaint mechanism for migrants detained in Immigration Removal Centres
- The Board participates in a meeting with Prison Directors and the Local Guarantors of Apulia Region, organised by the Regional Guarantor, Pietro Rossi, online
- Health: President Mauro Palma gives a speech at the seminar "Disabilità e inclusione", organised by LEDHA (League for the Rights of people with disability) and FISH (Italian Federation for Overcoming Handicap), online
- President Mauro Palma participates in the convention "Il trattamento individualizzato del detenuto". Art in prison, discussion and proposal by operators and defence attorneys organised by the National Bar Association - Venice, online
- President Mauro Palma participates in the convention "Detenzione senza condanna: la situazione degli stranieri irregolari - Presentazione dell'Osservatorio della Giurisprudenza Cedu", organised by the Lawyer Union for Protection of Human Rights of Palermo, online
- President Mauro Palma participates in the convention "Young People in Council. 2021-2022" organised by the Regional Council of Apulia region, online



Piedmont

- The Board participates in the convention "Diritto alla salute ed esecuzione della pena", organised by the Criminal Chamber of the Piemonte Occidentale and Valle d'Aosta, Turin
- President Mauro Palma meets Anna Maria Loreto, Chief Prosecutor of the Court of Turin, Turin
- The Board participate in the convention "Riflessioni sull'esecuzione della pena e sulle misure alternative alla detenzione", organised by the Bar Association of Turin



Apulia

- President Mauro Palma meets Ludovico Vaccaro, Foggia's Court Chief Prosecutor, Foggia
- President Mauro Palma meets Lidia De Iure, President of the Supervisory Court of Taranto, Taranto
- The Board meets the Giuseppe Martone, Regional Superintendent of the Penitentiary Administration of Apulia and Basilicata
- President Mauro Palma meets Silvia Maria Dominioni, President of the Supervisory Court of Bari, Bari
- President Mauro Palma meets Pier Luigi Lopalco, Apulia's Regional Councillor for Health, Bari.
- Meeting with the Director General of the Health Authority of Taranto, Stefano Rossi, in Taranto



Sardinia

- President Mauro Palma meets with Emmanuele Farris, delegate of the university penitentiary centre of Sassari University
- President Mauro Palma meets Luca Rotondi, Prefect of Nuoro



Tuscany

- President Mauro Palma attends the Congress of Magistratura Democratica, Florence
- Meeting with Alessandria Guidi, Prefect of Florence
- The President accompanies the Secretary of State for Justice Marta Cartabia in the visit to the prison of Sollicciano, Florence



Umbria

- President Mauro Palma gives a speech at the 4th national convention of the Chaplains and the Operators of pastoral care in prison, Assisi



Vatican

- Pope Francis receives the speakers of the national study convention of the Unione dei giuristi cattolici italiani, Vatican



Veneto

- The Secretary of State for Justice and President Mauro Palma participate in the Conference of the Ministers of Justice of the Member States of the Council of Europe, Venice
 - President Mauro Palma meets Maria Milano Franco d'Aragona, regional Superintendent of Penitentiary Administration of Veneto-Friuli-Venezia Giulia-Trentino Alto-Adige, Padua
- The President Mauro Palma participates in the convention "Etica pubblica e Costituzione. I diritti per una società inclusiva", Mareno di Piave (TV)
- The President Mauro Palma participates in the convention "Etica pubblica e Costituzione. I diritti per una società inclusiva", Mareno di Piave (TV)

Map of the Events and Institutional Meetings (06/05/2021 - 30/04/2022)

International events

- Speech at the seminary "The Return Obsession - Forced Returns from Italy and Egypt. Impact on Migrants and Refugees' Rights", organised by EuroMed Rights, online
- Speech at the Saint Petersburg International Legal Forum on "The Modernisation of National Prison Estates", Saint Petersburg (Russia)
- Speech at the conference for the launch of the "International Training Centre for Visits to Places of Deprivation of Liberty", organised by the Council of Europe, online
- Participation in the meeting "Monitoring the situation of older persons deprived of liberty in the context of the Covid-19 pandemic", organised by APT and ODIHR, online
- Participation in the international consultation on the training perspectives of the International Training Centre for Visits to Places of Deprivation of Liberty, online
- Participation in the workshop "UN Global Study on the Children Deprived of Liberty in the Italian Context: Follow-up Meeting with Independent Guarantor Authorities", online
- Participation in the European NPM conference on "The Role of NPMs in the Effective Implementation of European Court of Human Rights Judgments and CPT Recommendations" and "Tackling Police Ill-treatment and Ensuring Effective Investigations into Alleged Ill-treatment", online
- Participation in the meeting of the "Nafplion Group" on NPMs' monitoring activities in forced returns, Nafplion (Greece)
- Participation in the workshop on the "Méndez Principles for Effective Interviewing" organised by the Association for the Prevention of Torture, online
- Speech of the President on occasion of the 40th Anniversary of the Council for Penological Cooperation (PC-CP), Strasbourg
- The National Guarantor meets the Georgia's Ombudsman to discuss upon aspects of the international cooperation concerning forced returns and outlines the operational capacities of both the NPMs in the post-handover phase of migrants' forced return flights towards Georgia, online
- The National Guarantor meets the Albanian's Ombudsman to discuss upon aspects of the international cooperation concerning forced returns and outlines the operational capacities of both the NPMs in the post-handover phase of migrants' forced return flights towards Albania, online
- The Guarantor meets Roberto Manuel Carlés, Ambassador of Argentina, and some members of the Association of Families of Detained Persons of the Argentinian Republic (ACIFAD) at the National Guarantor seat, Rome
- Meetings and exchange of operational information with Georgia's Public Defender (Ombudsman) to build a programme of international cooperation on the joint monitoring of return flights for Georgian citizens, signature of the Cooperation Agreement
- Meeting with the EuroMed Rights' delegation that reported on the recent political developments in Tunisia and the Italian international relations with Tunisia concerning forced returns

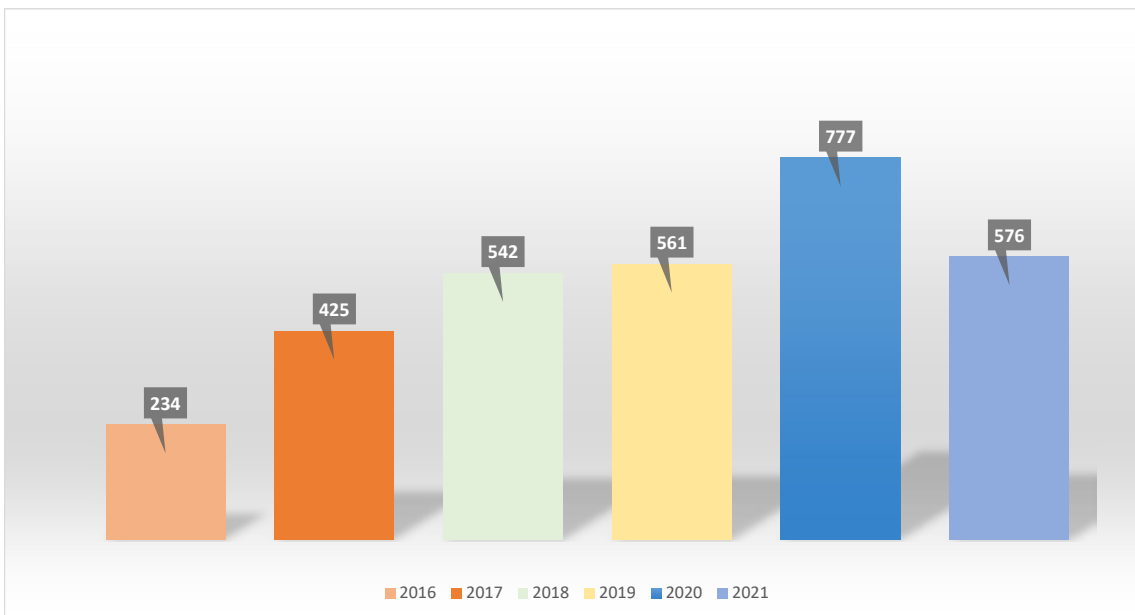
Table 2.1 - Complaints ex Art. 35 PAA - Historical data 2016-2021

Year	No. Complaints and warnings
2016	234
2017	425
2018	542
2019	561
2020	777
2021	576
Total	3.115

Table 2.1 The highest concentration of complaints and reports was recorded in 2020, when Sars-CoV-2 health emergency occurred and exploded. The data finds correspondence in the following table 2.3. In fact, during the following year, it was recorded the highest concentration of criticalities concerning the protection of the rights to health.

Source: National Guarantor for the rights of persons deprived of liberty
Thematic Unit: Deprivation of Liberty in Criminal Justice System

Chart 2.1 - Complaints ex Art. 35 of the PAA - Historical data 2016-2021



Source: National Guarantor for the rights of persons deprived of liberty
Thematic Unit: Deprivation of Liberty in Criminal Justice System

Table 2.2 - Complaints ex Art. 35 PAA or Reports submitted to the National Guarantor, broken down by Penitentiary Institute - Year 2021

Prisons:	Complaints ex Art. 35 PAA and Reports	(of which) Complaints ex Art. 35 PAA of persons detained under 41-bis regime	No. of average presence in the Institution
1. Milan-Opera Prison (I casa) (CR)	26	9	1.165
2. Parma Prison (CR)	17	4	686
3. Sassari "Giovanni Bacchiddu" Prison (CC)	16	9	388
4. Naples-Secondigliano "Pasquale Mandato" Prison (CC)	15	-	1.186
5. Rome-Rebibbia "Raffaele Cinotti" Prison (CC)	14	4	1.301
6. L'Aquila Prison (CC)	13	13	182
7. Palermo-Pagliarelli "Antonio Lorusso" Prison (CC)	11	-	1.202
8. Bologna "Rocco D'Amato" Prison (CC)	10	-	672
9. Livorno Prison (CC)	9	-	264
10. Naples-Poggioreale "Giuseppe Salvia" Prison (CC)	9	-	2.112
11. Rome "Regina Coeli" (CC)	9	-	890
12. Tempio Pausania "Paolo Pittalis" (CR)	9	-	157
13. Augusta Prison (CR)	8	-	435
14. Catanzaro "Ugo Caridi" Prison (CC)	8	-	586
15. Ferrara "Costantino Satta" Prison (CC)	8	-	335
16. Frosinone "Giuseppe Pagliei" Prison (CC)	8	-	517
17. Monza Prison (CC)	8	-	591
18. Saluzzo "Rodolfo Morandi" (CR)	8	-	400
19. Sanremo Prison (CR)	8	-	240
20. Spoleto Prison (CR)	8	1	426
21. Sulmona Prison (CR)	8	-	370
22. Vibo Valentia Prison (CC)	8	-	305
23. Asti Prison (CR)	7	-	298
24. Milano-Bollate Prison (II Casa) (CR)	7	-	1.257
25. Pavia Prison (CC)	7	-	593
26. Porto Azzurro "Pasquale De Santis" Prison (CR)	7	-	270
27. Siracusa Prison (CC)	7	-	593
28. Taranto "Carmelo Magli" Prison (CC)	7	-	637
29. Turin "Lorusso e Cutugno" Prison (CC)	7	-	1.262
30. Agrigento "Pasquale Di Lorenzo" Prison (CC)	6	-	298
31. Bari "Francesco Rucci" Prison (CC)	6	-	432
32. Cosenza "Sergio Cosmai" Prison (CC)	6	-	228
33. Cuneo Prison (CC)	6	3	238
34. Genoa-Marassi Prison (CC)	6	-	663
35. Melfi Prison (CC)	6	-	153
36. Nuoro Prison (CC)	6	1	276
37. Rossano Prison (CR)	6	-	281
38. Tolmezzo Prison (CC)	6	4	197
39. Trapani "Pietro Cerulli" Prison (CC)	6	-	434
40. Velletri Prison (CC)	6	-	446
41. Vicenza "Filippo Del Papa" Prison (CC)	6	-	379
42. Voghera Prison (CC)	6	-	426
43. Alessandria "San Michele" Prison (CR)	5	-	286
44. Ascoli Piceno Prison (CC)	5	-	116
45. Civitavecchia Prison (CC)	5	-	462

*Following

Prisons:	Complaints ex Art. 35 of the PAA and Reports	(of which) Complaints ex Art. 35 PAA of persons detained under 41-bis regime	Average presence in the Institution
46. Lecce Prison (CC)	5	-	1.057
47. Milan-San Vittore "Francesco Di Cataldo" Prison (CC)	5	-	819
48. Oristano "Salvatore Soro" Prison (CR)	5	-	263
49. Padua Prison (CR)	5	-	512
50. Palermo-Ucciardone "Calogero Di Bona" Prison (CR)	5	-	399
51. Reggio Calabria-Arghillà Prison (CC)	5	-	272
52. San Gimignano Prison (CR)	5	-	276
53. Viterbo Prison (CC)	5	3	546
54. Cagliari-Uta "Ettore Scalas" Prison (CC)	4	-	554
55. Carinola "Gian Battista Novelli" Prison (CR) (CE)	4	-	327
56. Crotone Prison (CC)	4	-	134
57. Ivrea Prison (CC)	4	-	242
58. Matera Prison (CC)	4	-	168
59. Novara Prison (CC)	4	3	173
60. Prato Prison (CC)	4	-	547
61. Reggio Calabria "Giuseppe Panzera" Prison (CC)	4	-	183
62. Rome-Rebibbia "Germana Stefanini" Female Prison (CC)	4	-	307
63. Rome-Rebibbia Prison (CR)	4	-	309
64. Teramo Prison (CC)	4	-	353
65. Terni Prison (CC)	4	-	492
66. Vigevano Prison (CR)	4	-	330
67. Bergamo "Don Fausto Resmini" (CC)	3	-	511
68. Brescia-Canton Mombello "Nerio Fischione" Prison (CC)	3	-	362
69. Catania-Bicocca Prison (CC)	3	-	200
70. Forlì Prison (CC)	3	-	151
71. Genoa-Pontedecimo Prison (CC)	3	-	147
72. Reggio Emilia Penitentiary Institutes - "Casa Circondariale" (in short CC, for the exco	3	-	347
73. Santa Maria Capua Vetere "Francesco Uccella" Prison (CC)	3	-	896
74. Vercelli Prison (CC)	3	-	67
75. Bellizzi Irpino "Antimo Graziano" Prison (CC) (AV)	2	-	427
76. Busto Arsizio Prison (CC)	2	-	383
77. Cagliari Juvenile Detention Centre	2	-	9
78. Cassino Prison (CC)	2	-	168
79. Castelfranco Emilia Prison (CR)	2	-	77
80. Foggia Prison (CC)	2	-	527
81. Imperia Prison (CC)	2	-	57
82. Lanciano Prison (CC)	2	-	245
83. Lucera Prison (CC)	2	-	149
84. Messina Prison (CC)	2	-	199
85. Modena Prison (CC)	2	-	326
86. Padua Prison (CC)	2	-	149
87. Palmi "Filippo Salsone" Prison (CC)	2	-	140
88. Pescara Prison (CC)	2	-	291
89. Pisa Prison (CC)	2	-	269
90. Rieti Prison (CC)	2	-	330

*Following

Prisons:	Complaints ex Art. 35 of the PAA and Reports	(of which) Complaints ex Art. 35 PAA of persons detained under 41-bis regime	Average presence in the Institution
91. Salerno "Antonio Caputo" Prison (CC)	2	-	448
92. Treviso Prison (CC)	2	-	190
93. Trieste "Ernesto Mari" Prison (CC)	2	-	179
94. Venice - Giudecca Female Prison (CR)	2	-	67
95. Venice - Santa Maria Maggiore Prison (CC)	2	-	212
96. Vercelli Prison (CC)	2	-	263
97. Verona Montorio Prison (CC)	2	-	426
98. Volterra Prison (CR)	2	-	175
99. Alba "Giuseppe Montalto" Prison (CR)	1	-	38
100. Alghero "Giuseppe Tomasiello" Prison (CR)	1	-	96
101. Ancona - Barcaglione Prison (CR)	1	-	77
102. Aversa "Filippo Saporito" Prison (CR)	1	-	148
103. Benevento Prison (CC)	1	-	357
104. Biella Prison (CC)	1	-	408
105. Bologna Juvenile Detention Centre	1	-	26
106. Bolzano Prison (CC)	1	-	105
107. Caltagirone Prison (CC)	1	-	386
108. Caltanissetta Prison (CC)	1	-	223
109. Castelvetro	1	-	50
110. Como Prison (CC)	1	-	356
111. Florence - Solliciano Prison (CC)	1	-	573
112. Gorizia "Angiolo Bigazzi" Prison (CC)	1	-	62
113. Latina Prison (CC)	1	-	123
114. Lauro Low Security Mother-and-Child Prison	1	-	10
115. La Spezia Prison (CC)	1	-	170
116. Lucca Prison (CC)	1	-	102
117. Mantova Prison (CC)	1	-	125
118. Paola Prison (CC)	1	-	162
119. Pesaro Prison (CC)	1	-	186
120. Pordenone Prison (CC)	1	-	51
121. Potenza "Antonio Santoro" Prison (CC)	1	-	54
122. Ragusa Prison (CC)	1	-	179
123. Rome - Rebibbia Prison (III Casa) (CC)	1	-	75
124. Rovigo Prison (CC)	1	-	196
125. San Severo Prison (CC)	1	-	67
126. Sciacca Prison (CC)	1	-	48
127. Sondrio Prison (CC)	1	-	32
128. Termini Imerese "Antonino Burrafato" Prison (CC)	1	-	89
129. Trento - Spini di Gardolo Prison (CC)	1	-	299
130. Turi Prison (CR)	1	-	116
Total	48	0	6.949

Out of 190 penitentiary institutes present on the national territory, as many as 130 were the subject of complaints pursuant to Art. 35 Penitentiary Administration Act (PAA) and reports addressed to the National Guarantor by the resident inmates (576), corresponding to 1.25% of the total prison population. Given the number of person restricted in each prison, the ratio of complaints and reports, in crescent order, are those filed at Milano - Opera (2.2.% compared to the average presence), followed by Parma (2.5%), Sassari (4%) and L'Aquila (7.5% - in relation to the same average figure). L'Aquila data exclusively refer to prisoners detained under the restricted prison regime ex Art. 41-bis of the PAA. On the other hand, L'Aquila prison has the higher ratio for complaints filed by prisoners detained under restricted prison regime, followed by Milano - Opera and Sassari. It is also worth noting Cagliari Juvenile Detention Centre data. In fact, the complaints and reports ex Art 35 PAA from the centre total 22%, compared to the average presence of minors and young adults recorded for the year under review.

Source and data processing: National Guarantor for the rights of persons deprived of liberty
Organizational Unit: Deprivation of Liberty in Criminal Justice System

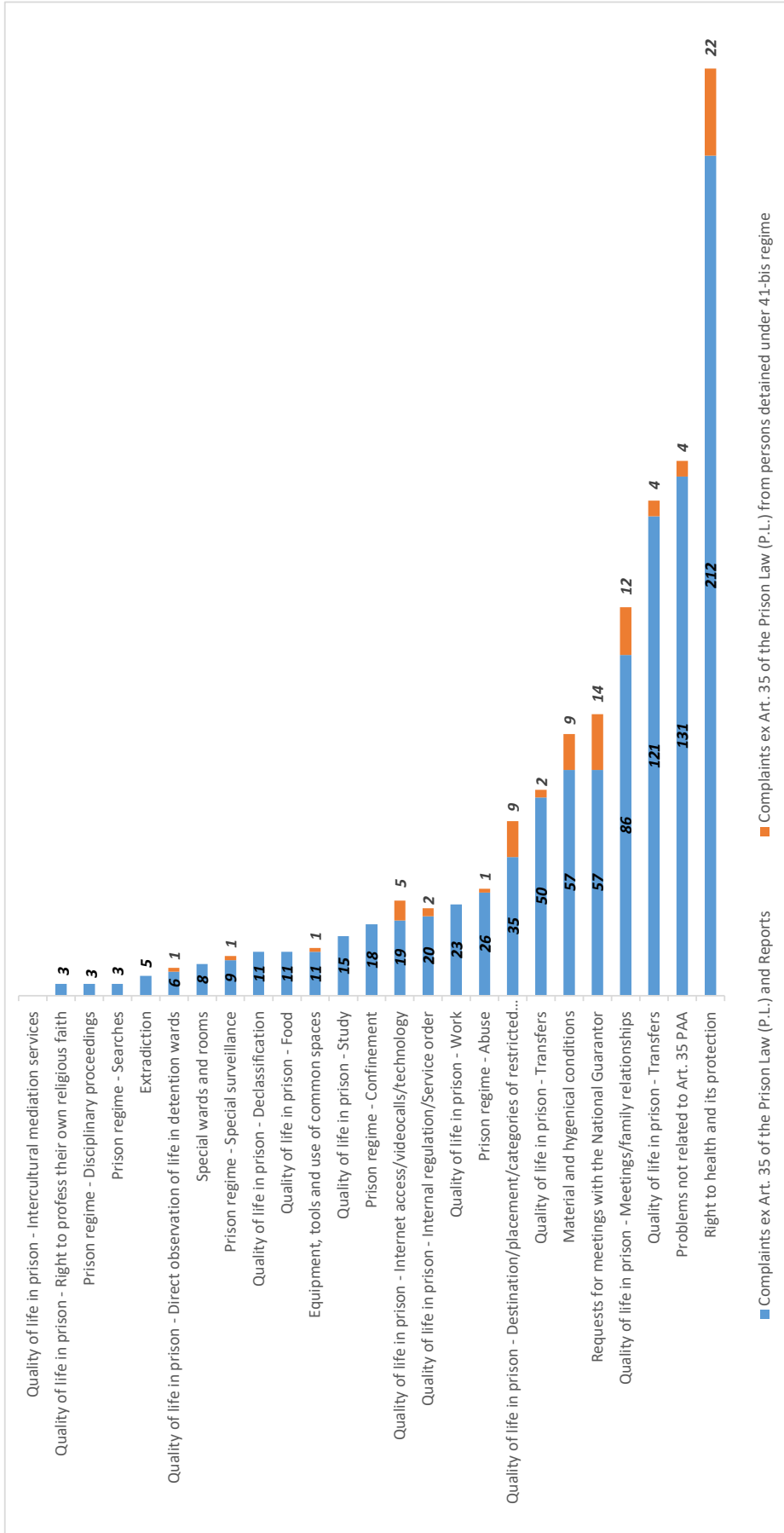
Table 2.3 - Complaints ex Art. 35 PAA and Reports submitted to the National Guarantor broken down by Penitentiary Institute - Year 2021

Critical Area	No. of Complaints ex Art. 35 PAA and Reports	No. of Complaints from persons detained under 41-bis PAA
Right to health and its protection	212	22
Problems not related to Art. 35 PAA	131	4
Quality of life in prison - Transfers	121	4
Quality of life in prison - Meetings/family relationships	86	12
Requests for meetings with the National Guarantor	57	14
Material and hygenical conditions	57	9
Quality of life in prison - Transfers	50	2
Quality of life in prison - Destination/placement/categories of restricted persons	35	9
Prison regime - Abuse	26	1
Quality of life in prison - Work	23	-
Quality of life in prison - Internal regulation/Service order	20	2
Quality of life in prison - Internet access/videocalls/technology	19	5
Prison regime - Confinement	18	-
Quality of life in prison - Study	15	-
Equipment, tools and use of common spaces	11	1
Quality of life in prison - Food	11	-
Quality of life in prison - Declassification	11	-
Prison regime - Special surveillance	9	1
Special wards and rooms	8	-
Quality of life in prison - Direct observation of life in detention wards	6	1
Extradiction	5	-
Prison regime - Searches	3	-
Prison regime - Disciplinary proceedings	3	-
Quality of life in prison - Right to profess their own religious faith	3	-
Quality of life in prison - Intercultural mediation services	-	-
Total	940	87

* N.B.: To each complaint may correspond one or more areas of criticalities

Source: National Guarantor for the rights of persons deprived of liberty - Thematic Unit: Deprivation of Liberty in Criminal Justice System

Graph 2.3 - Complaints ex Art. 35 PAA and Reports submitted to the National Guarantor broken down by Penitentiary Institute - Year 2021



* N.B.: To each complaint may correspond one or more areas of criticalities

Source: National Guarantor for the rights of persons deprived of liberty - Thematic Unit: Deprivation of Liberty in Criminal Justice System

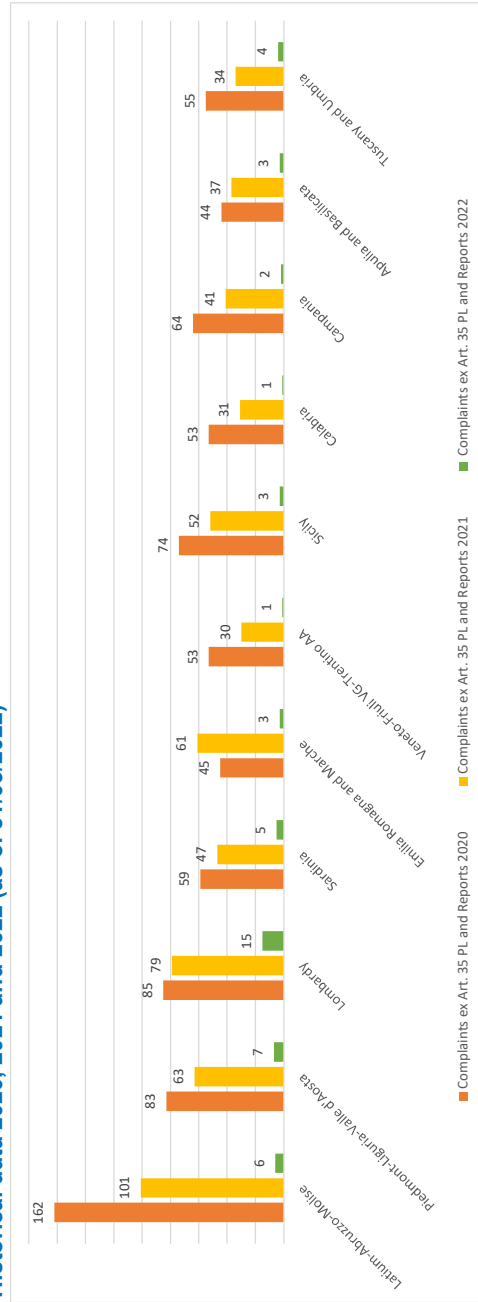
**Table 2.4 - Complaints ex Art. 35 PAA and Reports broken down by place of origin
Historical data 2020, 2021 and 2022 (as of 31/03/2022)**

Geographic area/ Regional and inter-regional authority of the penitentiary administration	No. of Complaints ex Art. 35 PAA and Reports 2020	No. of Complaints ex Art. 35 PAA and Reports 2021	No. of Complaints ex Art. 35 PAA and Reports 2022*	Total
Lazio-Abruzzo-Molise	162	101	6	269
Piedmont-Liguria-Valle d'Aosta	83	63	7	153
Lombardy	85	79	15	179
Sardinia	59	47	5	111
Emilia Romagna and Marche	45	61	3	109
Veneto-Friuli VG-Trentino AA	53	30	1	84
Sicily	74	52	3	129
Calabria	53	31	1	85
Campania	64	41	2	107
Apulia and Basilicata	44	37	3	84
Tuscany and Umbria	55	34	4	93
Total	777	576	50	1.403

*Data for current year as of 31/03/2022

Source: National Guarantor for the rights of persons deprived of liberty - Thematic Unit: Deprivation of Liberty in Criminal Justice System

**Graph 2.4 - Complaints ex Art. 35 PAA and Reports broken down by place of origin
Historical data 2020, 2021 and 2022 (as of 31/03/2022)**



*Data for current year as of 31/03/2022

Source: National Guarantor for the rights of persons deprived of liberty - Thematic Unit: Deprivation of Liberty in Criminal Justice System

Table 2.5 - Reports concerning the right to health and relevant violations or situations of liberty deprivation handled by the National Guarantor from 01/01/2021 to 31/12/2021

Type	Total
Reports received	80
Reports closed	38
Total reports*	61

**Data on reports includes those filed between 2017-2021 and still pending*

*Source: National Guarantor for the rights of persons deprived of liberty
Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities*

Table 2.6 - Reports concerning the right to health and relevant violations or situations of liberty deprivation handled by the National Guarantor from 01/01/2022 to 30/4/2022

Type	Total
Reports received	15
Reports closed	69
Total reports	11

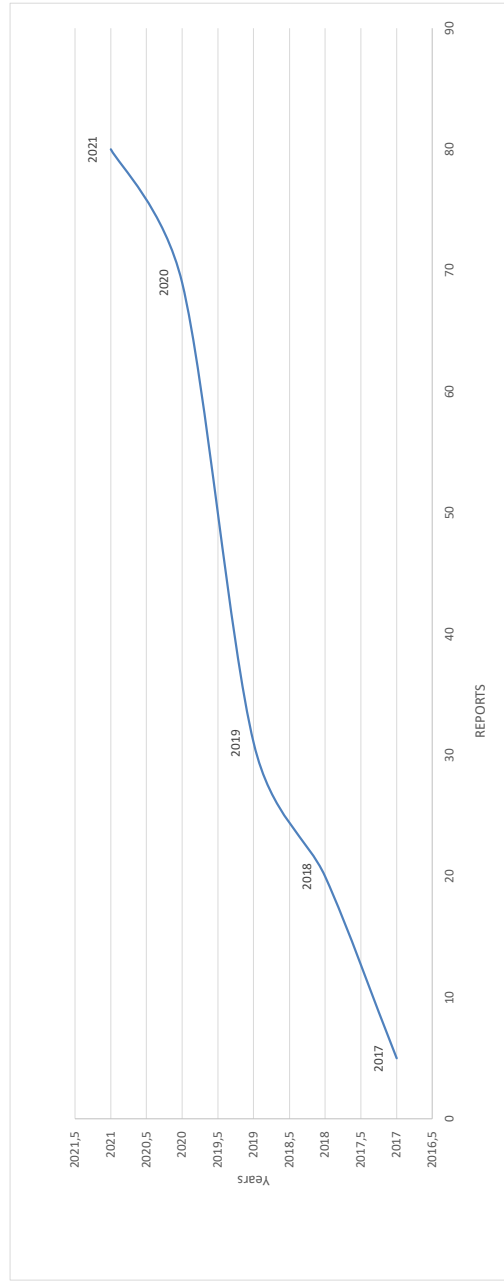
*Source: National Guarantor for the rights of persons deprived of liberty
Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities*

Table 2.7 - Reports concerning violations of the right to health or situations of liberty deprivation sent to the National Guarantor. 2017-2021 Years

Subject	2017	2018	2019	2020	2021
Elderly/disabled persons residential facilities	0	8	15	53	70
SPDC (included IPO)	2	9	11	7	10
REMS	3	3	5	9	0
Total	5	20	31	69	80

Source: National Guarantor for the rights of persons deprived of liberty - Operations Unit: Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities

Graph 2.7 - Reports concerning violations of the right to health or situations of liberty deprivation sent to the National Guarantor. 2017-2021 Years



Source: National Guarantor for the rights of persons deprived of liberty - Operations Unit: Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities

Table 2.8 - Complaints ex Art. 14, para. 2-bis of the Consolidated Law on Immigration and Reports concerning situations of deprivation of liberty among migrants - Years 2021-2022

Type	2021	2022*	Total
Reports based on Jurisdiction	78	7	85
Reports based on knowledge	50	20	70
Complaints	3	2	5

*Survey as of 17/05/2022

Source: National Guarantor for the rights of persons deprived of liberty - Organisation Unit: Deprivation of Liberty and Migrants

Chart 3.1 - Organisation Chart of the Office

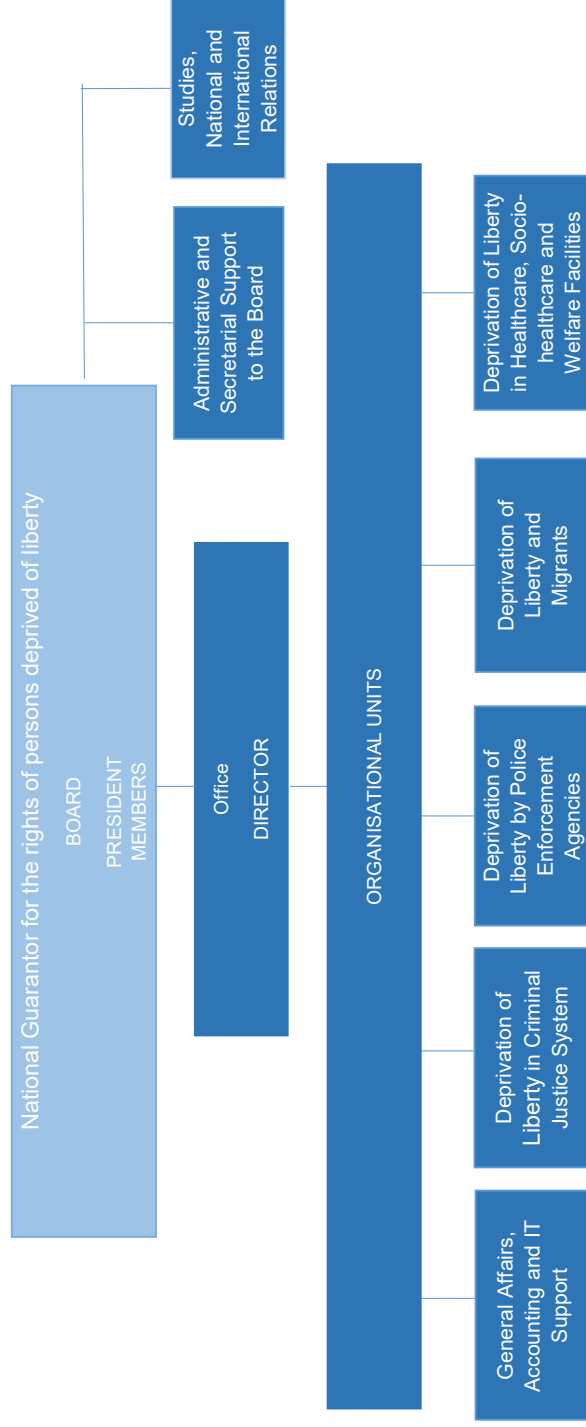


Table 3.1 - Office Composition

Staff by Areas/Roles and Qualifications				
Area/Profile - Role/Qualification	Women	Men	Total	
Department of Justice				
Director General	1		1	
Penitentiary Director*	1		1	
Director of Division		1	1	
Director		1	1	
Central Function - Area 2	4	3	7	
Administrative Assistant		1	1	
IT Assistant	1		1	
Legal Assistant	2	1	3	
Senior Court Officer	1		1	
Operator		1	1	
Central Function - Area 3	5	2	7	
Administrative Director	1		1	
Administrative Officer	1		1	
Accounting Officer	1		1	
Social Service Officer	1		1	
Pedagogical Legal Officer		1	1	
Pedagogical Officer		1	1	
Linguistic Officer	1		1	
Penitentiary Police - Agents and Assistants		6	6	
Assistant		2	2	
Special Agent		4	4	
Department of Home Affairs				
State Police - Direction		1	1	
Police Commissioner		1	1	
State Police - Area 2	1		1	
Administrative Assistant	1		1	
Department of Health				
ASL - Category D	1		1	
Administrative Associate	1		1	
ULSS - Category C	1		1	
Administrative Assistant	1		1	
Total	13	13	26	

*temporary appointment for project implementation

Source: National Guarantor for the rights of persons deprived of liberty

Table 3.2 - AMIF Consultants

Name	Professional activity	Type of collaboration
Silvia Casiraghi	Expert in EU Project Reporting	Professional Consulting
Salvatore Fachile	Lawyer Expert in Immigration Law	Professional Consulting
Luca Faenza	Web/Social Expert	Professional Consulting
Andrea Gandino	Lawyer	Professional Consulting
Marco Gori	IT Expert	Professional Consulting
Maria Donatella Laricchia	Expert in Legal Matters	Professional Consulting
Vito Longo	Senior Auditor	Professional Consulting
Antonio Marchesi	Expert in Human Rights	Professional Consulting
Aldo Morrone	Expert in Forensic Medicine	Professional Consulting
Dario Pasquini	Expert in Communications	Professional Consulting
Pieritalo Maria Pompili	Professor	Professional Consulting

Source: National Guarantor for the rights of persons deprived of liberty

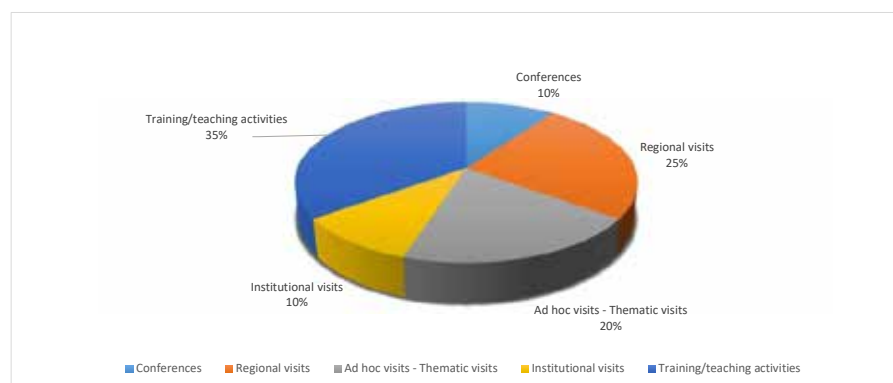
Table 3.3 - Financial Statements as of 31/12/2021

Items	Amount
Wages and salaries	
Remuneration paid to the Guarantor's Board Members (Gross)	135.863,64
of which net	100.176,00
Taxes paid (IRFEF/IRAP)	35.687,64
Remuneration paid to the Guarantor's Office Staff (Gross)	(borne by the Administration bodies of origin)
Collaborators	14.000,00
Operating costs	
Publication of the Annual Report	17.880,00
Print, Publication and Translations	9.950,00
Graphics Service	6.195,00
SW Platform - forced returns monitoring activity	29.055,00
Press Review Service (2022/2023)	19.200,00
Stationary and other operational expenses	17.590,00
VAT paid/Withholding tax	20.207,42
Others (Covid-19 tests (swabs)/PPE)	2.067,00
Total	136.144,42
Missions:	
→ Conferences	10%
→ Regional visits	25%
→ Ad hoc visits - Thematic visits	20%
→ Institutional visits	10%
→ Training/teaching activities	35%
Expenses sustained for mission planning	51.052,00
Reimbursement for staff employed in mission	50.403,00
Travel expenses	
Total	101.455,00
Total expenses	373.463,06

The above financial statements concerns the PG1 of the related budget chapter.

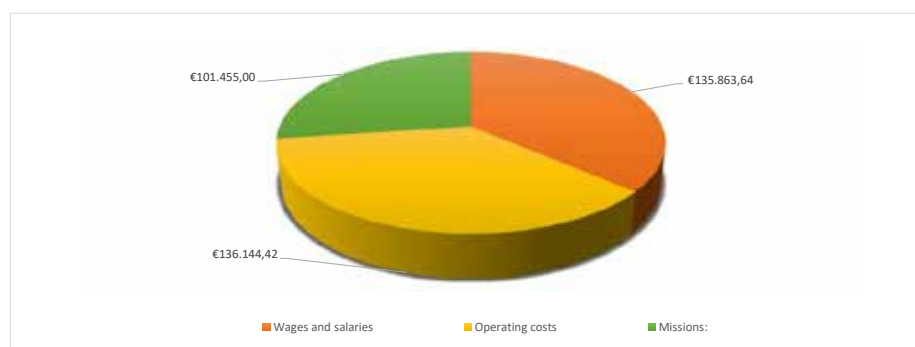
Source: National Guarantor for the rights of persons deprived of liberty

Chart 3.3 - Missions and travel expenses (2021)



Source: National Guarantor for the rights of persons deprived of liberty

Chart 3.3 bis - Operating costs 2021



Source: National Guarantor for the rights of persons deprived of liberty

Table 3.4 - List of the experts working as *pro bono* consultants for monitoring activities in places of deprivation of liberty (last update 11/04/2022)

a) Psychiatric or Support to Disability		
Nadia	Aioub	Rome - Psychologist
Calogero	Anzallo	Trieste – Psychiatrist
Maria Giulia	Bernardini	Ferrara - Researcher in Philosophy of Law
Antonella	Calcaterra	Milan - Lawyer
Angelo	Cerracchio	Salerno - Psychiatrist
Luigi	Colaiani	Milan - Social Worker
Francesca	Columbano	Pisa - Social Services Officer
Carlotta	Craveri	Alessandria - Juridical and Pedagogical Officer
Giovanna	Cuzzola	Pisa - Technical Administrative Officer
Alberto	di Martino	Pisa – Professor of Criminal Law
Giovanna	Fanci	Macerata - Researcher in General Sociology
Anna	Lorenzetti	Bergamo - Researcher in Constitutional Law
Maria Grazia	Marinangeli	L'Aquila - Psychiatrist
Michele Giacomo Carlo	Passione	Florence - Lawyer
Daniele	Piccione	Rome - Professor of Institutions of Public Law and Private Law (advanced module)
Ciro	Pizzo	Naples - Researcher in Juridical and Political Sociology
Paola	Poeta	Rome - Psychologist
Pieritalo Maria	Pompili	Rome - Psychiatrist
Adriano Raffaele	Principe	Benevento - Psychologist
Giovanni	Rossi	Mantova - Psychiatrist
Ciro	Tarantino	Rende (CS) - Professor of Sociology of the Cultural Codes
Giovanni	Torrente	Turin - Researcher in Sociology of the Criminal Law and Deviance
Pier Luca	Zuppi	Rome - Psychiatrist

b) Protection of Health in Prison		
Laura	Baccaro	Padua - Psychologist
Alessandria	Ballerini	Genoa - Lawyer
Antonella	Calcaterra	Milan - Lawyer
Laura	Cesaris	Milan – Professor of Criminal Procedural Law II - Penal Enforcement Act
Maria Lucia	Dell'Anna	Rome - Physician
Ludovico	Grasso	Turin - Psychologist
Sandro	Libianchi	Rome - Physician
Biancastella	Maienza	Florence - Administrative Director
Maria Grazia	Marinangeli	L'Aquila - Psychiatrist
Michele	Miravalle	Turin - Researcher in Philosophy of Law - Sociology of Law
Pieritalo Maria	Pompili	Rome - Psychiatrist
Daniela	Ronco	Turin - Researcher
Ciro	Tarantino	Rende (CS) - Professor of Sociology of the Cultural Codes
Sonia	Viale	Rome - Psychologist

c) Detainment of Irregular Migrants and Enforcement of the Forced Returns Procedures		
Alessandria	Ballerini	Genoa - Lawyer
Ilaria	Boiano	Rome - Lawyer
Francesca	Cancellaro	Bologna - Lawyer
Gabriele	Cinti	Ancona - Sociologist
Ettore	D'Ascoli	Salerno - Researcher in Big Data Management
Elisabetta	de Robertis	Bari - Lawyer
Maria Lucia	Dell'Anna	Rome - Physician
Luca	Faenzi	Siena - Journalist
Chiara	Fusari	Macerata - Lawyer
Carlotta	Giordani	Venice - Legal Advisor

*Following

Sergio	Rossi	Padua - Researcher in Education and Prison
Maria Donatella	Laricchia	Rome - Lawyer
Elisa	Maimone	Rome - Legal Advisor
Alessandro	Pascazio	Bari - University Collaborator
Gennaro	Santoro	Rome - Lawyer
Sonia	Viale	Rome - Psychologist

d) Police Custody

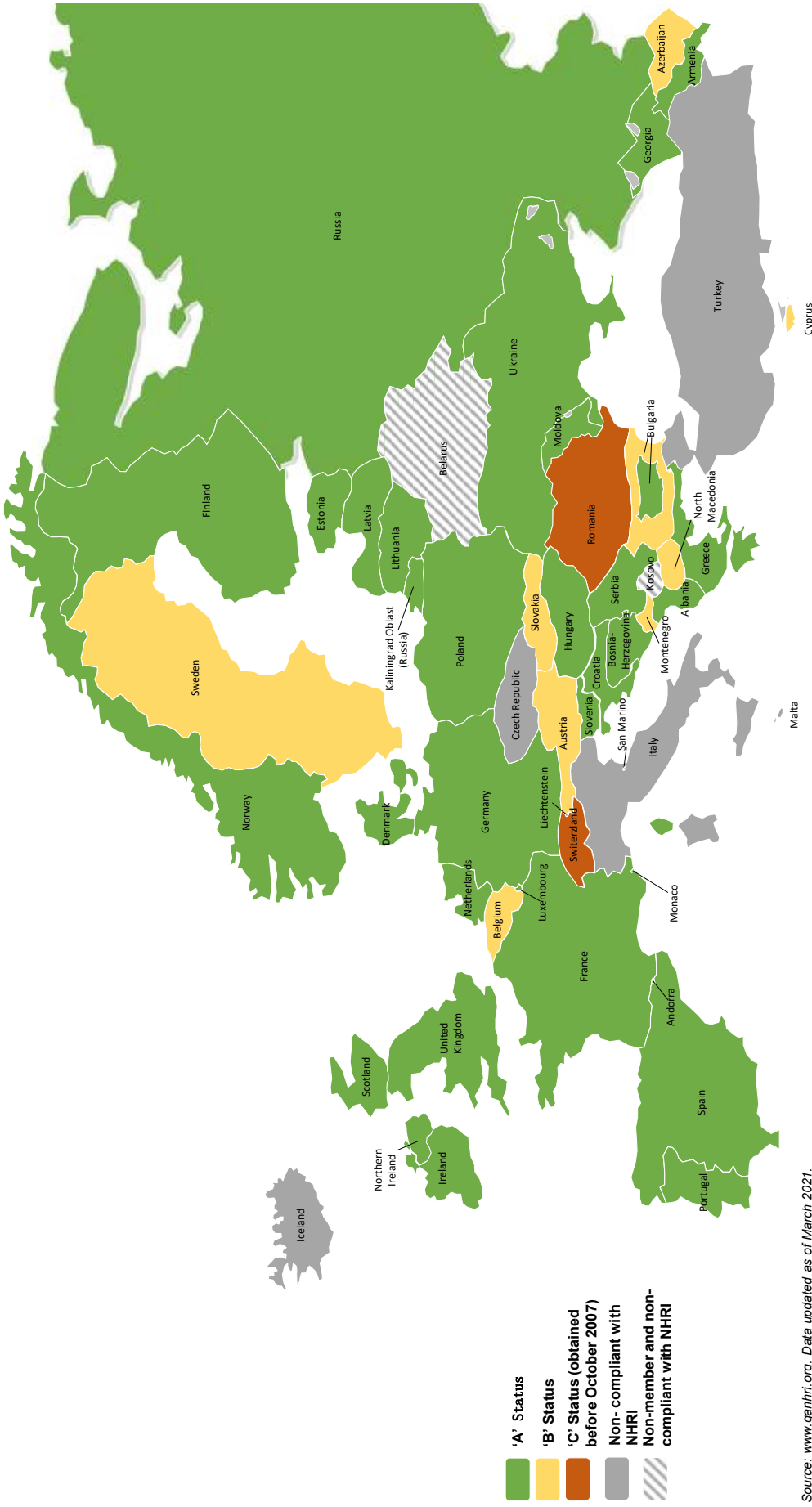
Annamaria	Alborghetti	Padua - Lawyer
Carlotta	Giordani	Venice - Legal Advisor
Antonio	Labianco	Trento - Commander General of Carabinieri on leave
Ferdinando	Lajolo di Cossano	Turin - Lawyer
Sandro	Libianchi	Rome - Physician
Jacopo	Saccomani	Urbino - Professor of Penitentiary Law
Silvia	Talini	Rome - Researcher in Constitutional Law

e) Deprivation of Liberty in Criminal Justice System (Adults and Minors)

Yasmine	Adel Refaat	Savona - Psychologist
Annamaria	Alborghetti	Padua - Lawyer
Calogero	Anzallo	Trieste - Psychiatrist
Laura	Baccaro	Padua - Psychologist
Maria	Brucale	Rome - Lawyer
Laura	Cesaris	Milan - Professor of Criminal Procedural Law II - Penal Execution Law
Gabriele	Cinti	Ancona - Sociologist
Laura	Crescentini	Viterbo - Sociologist
Elisabetta	de Robertis	Bari - Lawyer
Luca	Decembrotto	Bologna - Researcher
Dario	Di Cecca	Rome - Lawyer
Alberto	di Martino	Pisa - Professor of Criminal Law
Giovanna	Fanci	Macerata - Researcher in General Sociology
Giulia	Fiorelli	Rome - Researcher in Criminal Procedural Law
Chiara	Fusari	Macerata - Lawyer
Ludovico	Grasso	Turin - Psychologist
Sergio	Rossi	Padua - Researcher in Education and Prison
Antonio	Labianco	Trento - Commander General of Carabinieri on leave
Maria Donatella	Laricchia	Rome - Lawyer
Anna	Lorenzetti	Bergamo - Researcher in Constitutional Law
Biancastella	Maienza	Florence - Administrative Director
Michele	Miravalle	Turin - Researcher in Philosophy of Law - Sociology of Law
Maria Domenica Liliana	Montereale	Rome - Psychologist
Alessandro	Pascazio	Bari - University Collaborator
Michele Giacomo Carlo	Passione	Florence - Lawyer
Giovanna	Perna	Avellino - Lawyer
Daniele	Piccione	Rome - Professor of Institutions of Public Law and Private Law (advanced module)
Paola	Poeta	Rome - Psychologist
Daniela	Ronco	Turin - Researcher
Nicola	Rossi	Genoa - Lawyer
Jacopo	Saccomani	Urbino - Professor of Penitentiary Law
Gennaro	Santoro	Rome - Lawyer
Silvia	Talini	Rome - Researcher in Constitutional Law
Giovanni	Torrente	Turin - Researcher in Sociology of the Criminal Law and Deviance
Giulio	Vasaturo	Latina - Lawyer

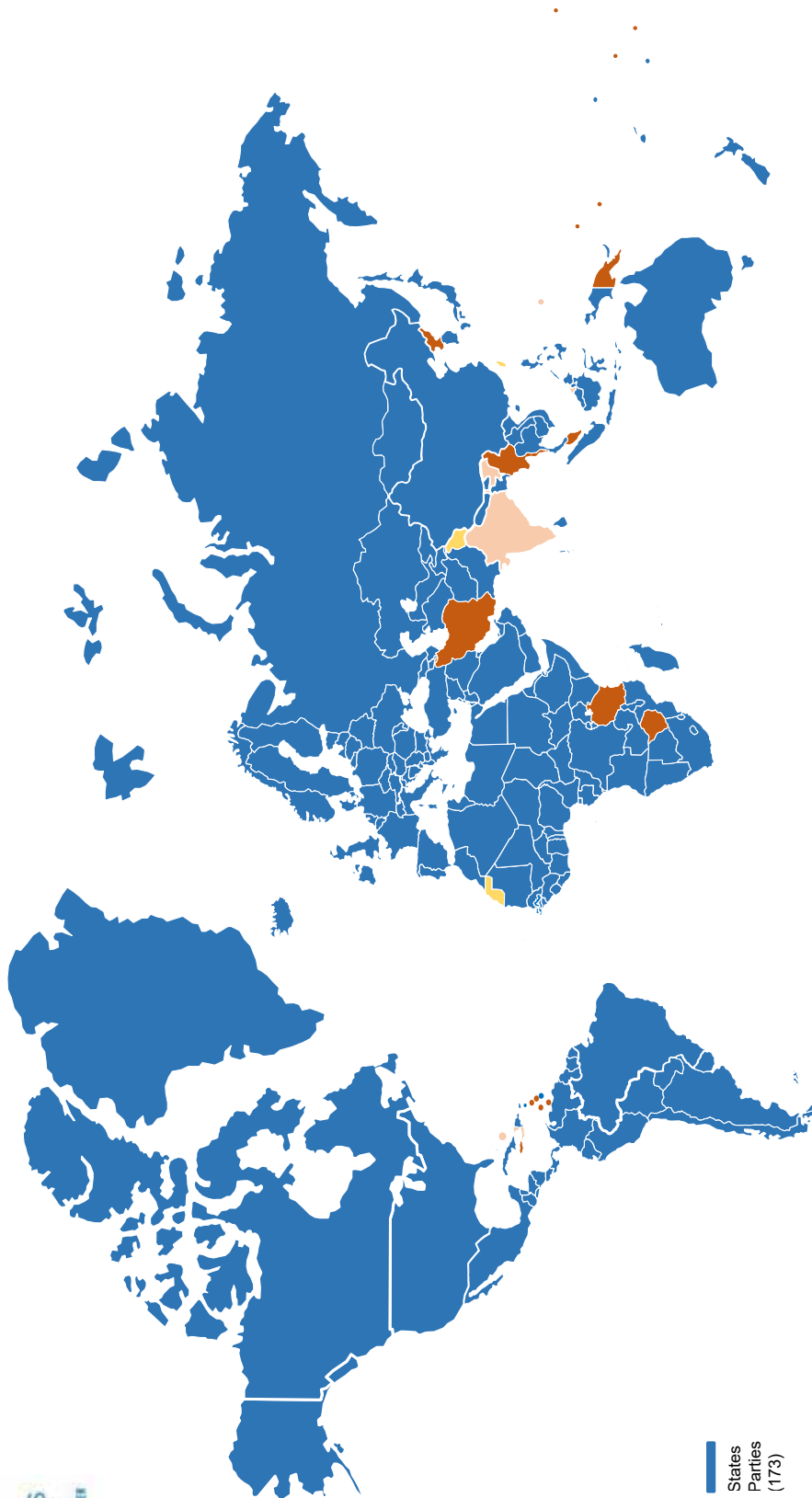
Source: National Guarantor for the rights of persons deprived of liberty

Map 4.1 - NHRI of the Member States of the Council of Europe



section 4. International network

Map 4.2 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)



- States Parties (173)
- Signatory States (4)
- Non-States Parties (20)
- Non-UN Territories/States

Table 4.1 - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

CAT Member States			Signatory
Alghanistan	Congo	Iceland	Brunel
Albania	South Korea	Indonesia	Haiti
Algeria	Costa Rica	Iraq	India
Andorra	Ivory Coast	Ireland	Palau
Angola	Croatia	Comoro Islands	
Antigua and Barbuda	Cuba	Marshall Islands	
Saudi Arabia	Denmark	Israel	
Argentina	Ecuador	Italy	
Armenia	Egypt	Kazakhstan	
Australia	El Salvador	Kenya	
Austria	United Arab Emirates	Kiribati	
Azerbaijan	Eritrea	Kyrgyzstan	
Bahamas	Estonia	Kuwait	
Bahrain	Eswatini	Laos	
Bangladesh	Ethiopia	Latvia	
Belgium	Fiji	Lebanon	
Belize	Philippines	Lesotho	
Benin	Finland	Liberia	
Belarus	France	Libya	
Bolivia	Gabon	Liechtenstein	
Bosnia and Herzegovina	Gambia	Lithuania	
Botswana	Georgia	Luxembourg	
Brazil	Germany	North Macedonia	
Bulgaria	Ghana	Madagascar	
Burkina Faso	Djibouti	Malawi	
Burundi	Japan	Maldives	
Cambodia	Jordan	Mali	
Cameroon	Greece	Malta	
Cape Verde	Grenada	Morocco	
Canada	Guatemala	Mauritania	
Clad	Guinea	Mauritius	
Chile	Guinea-Bissau	Mexico	
China	Equatorial Guinea	Monaco	
Cyprus	Guyana	Mongolia	
Colombia	Honduras	Montenegro	
		Mozambique	
		Nauru	
		Nepal	
		Namibia	
		New Zealand	
		Nicaragua	
		Niger	
		Nigeria	
		Norway	
		Oman	
		Netherlands	
		Pakistan	
		Panama	
		Paraguay	
		Peru	
		Poland	
		Portugal	
		Qatar	
		United Kingdom e Northern Ireland	
		Czech Republic	
		Central African Republic	
		Democratic Republic of Congo	
		Republic of Moldova	
		Dominican Republic	
		Romania	
		Rwanda	
		Russia	
		Saint Kitts and Nevis	
		San Marino	
		Holy See	
		Saint Vincent and Grenadine	
		Samoa	
		São Tomé and Príncipe	
		Senegal	
		Serbia	
		Seychelles	
		Sierra Leone	
		Syria	
		Slovakia	
		Slovenia	
		Somalia	
		Spain	
		Sri Lanka	
		United States of America	
		State of Palestine	
		South Africa	
		Sudan	
		South Sudan	
		Suriname	
		Sweden	
		Switzerland	
		Tajikistan	
		Thailand	
		East Timor	
		Togo	
		Tunisia	
		Turkey	
		Turkmenistan	
		Ukraine	
		Uganda	
		Hungary	
		Uruguay	
		Uzbekistan	
		Vanuatu	
		Venezuela	
		Vietnam	
		Yemen	
		Zambia	

Adopted by the General Assembly on 10 December 1984
Entered into force on 26 June 1987
Italy endorsed CAT on 12 January 1989

Control Mechanism Committee Against Torture. The Convention against torture provides for the institution of the Committee Against Torture, composed by 10 independent experts in charge for monitoring the implementation of the Convention by the Member States. They have the obligation to present periodical reviews to the Committee and to illustrate the methods used to ensure, at national level, the rights established by the Convention.

173

States Parties

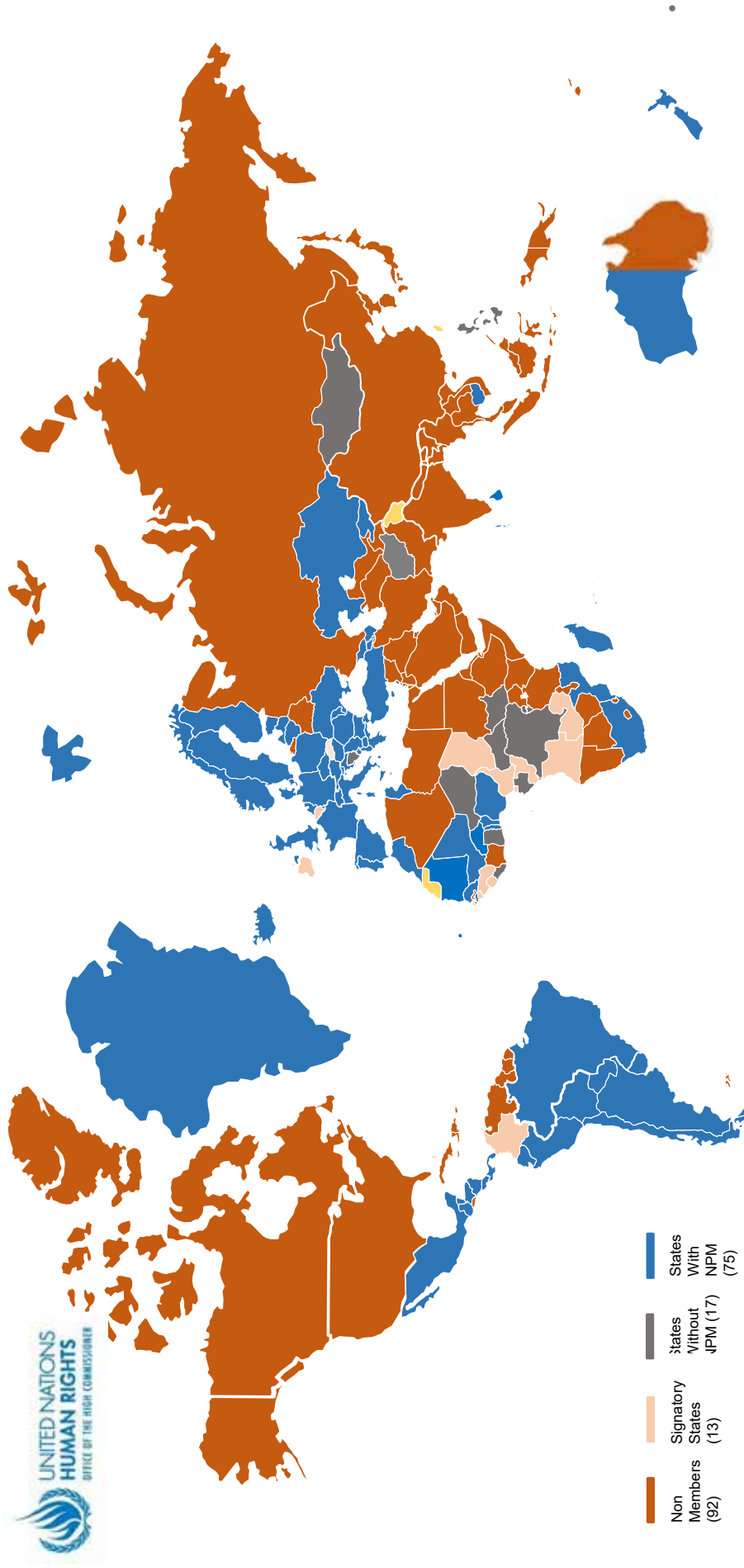
20

Non - States Parties

4

Signatory States

Map 4.3 - Optional Protocol to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and National Preventive Mechanisms (NPM)



Non-UN Territories/States

Table 4.2 - Optional Protocol to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

OPCAT State Parties and National Preventive Mechanisms				Signatory States
Afghanistan	Cape Verde*	Guatemala*	Morocco*	Angola
Albania*	Chile*	Honduras	Mauritania*	Belgium
Argentina*	Cyprus*	Iceland*	Mauritius*	Cameroon
Armenia*	Costa Rica*	Italy*	Mexico*	Ciad
Australia (Western)*	Croatia*	Kazakhstan*	Moldova*	Guinea-Bissau
Austria*	Denmark*	Kyrgyzstan*	Mongolia	Equatorial Guinea
Azerbaijan*	Ecuador*	Latvia*	Montenegro*	Ireland
Belize	Estonia*	Lebanon*	Mozambique*	Congo
Benin	Philippines	Liberia	Nauru	Sierra Leone
Bolivia*	Finland*	Liechtenstein*	Nicaragua*	Slovakia
Bosnia and Herzegovina	France*	Lithuania*	Niger	East Timor
Brazil	Gabon	Luxembourg*	Nigeria*	Venezuela
Bulgaria*	Georgia*	Madagascar*	Norway*	Zambia
Burkina Faso*	Germany*	Maldives*	New Zealand*	
Burundi	Ghana	Malta*	Netherlands*	
Cambodia*	Greece*		Panama*	
			Paraguay*	Sri Lanka*
			Peru*	State of Palestine
			Poland*	South Africa*
			Portugal*	South Sudan
			United Kingdom*	Sweden*
			Czech Republic*	Switzerland*
			Central African Republic	Togo*
			Democratic Republic of Congo	Tunisia
			North Macedonia*	Turkey*
			Romania*	Ukraine*
			Rwanda*	Hungary*
			Saint Kitts and Nevis	Uruguay*
			Senegal*	
			Serbia*	
			Slovenia*	
			Spain*	

*States Parties of OPCAT that have appointed their own NPM Source: www.ohchr.org. Data last update: 17 March 2022.

The **Optional Protocol to the Convention**, adopted by the United Nations General Assembly on 18 December 2002 and entered into force internationally on 22 June 2006, provides for the establishment of a **Subcommittee on the Prevention of Torture (SPT)** and independent national bodies, the **National Preventive Mechanisms (NPM)**, with the task of preventing torture and other cruel, inhuman or degrading treatment or punishment through a system of regular visits to places where people are deprived of personal liberty. Italy ratified the Protocol with Law 195/2012. It entered into force on 3 May 2013.

The **NPM** is an independent national system of monitoring of places of deprivation of personal liberty, compliant with Art. 3 of the OPCAT. The Guarantor is the Italian National Preventive Mechanism and, among the others, it has the task of promoting and fostering collaborative relationships with Local Guarantors and civil society, as well as coordinating the NPM system. It ensures that the enforcement of measures depriving of personal liberty is carried out in accordance with the laws and principles established by the Italian Constitution and international conventions on human rights ratified by Italy, the laws and regulations of the State. It has access, without any restrictions, to places of deprivation of personal liberty, to the persons detained and relevant documents.



Map 4.4 - UN Convention on the Rights of Persons with Disabilities

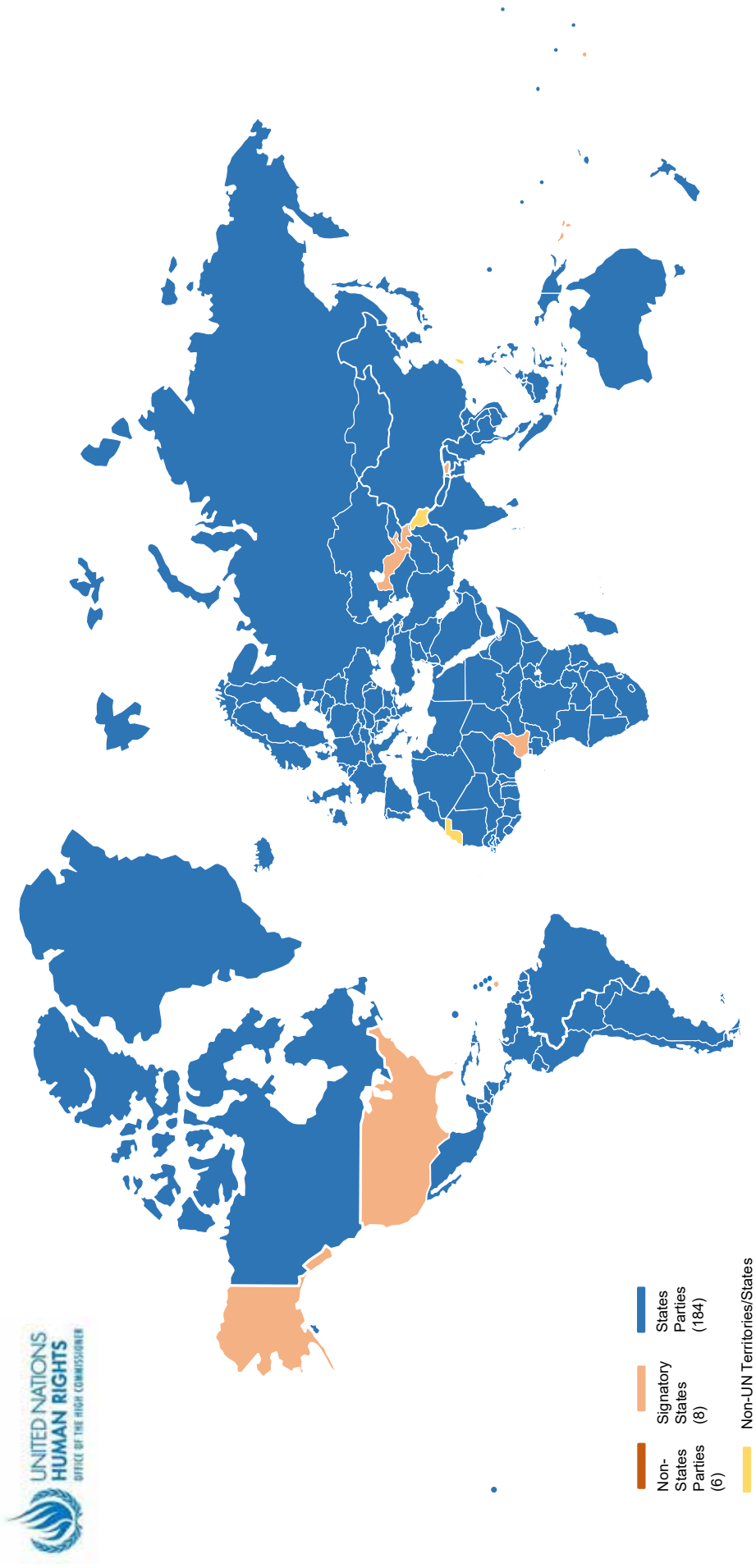
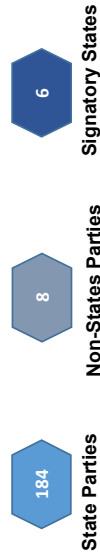


Table 4.3 - UN Convention on the Rights of Persons with Disabilities

State Parties*			Signatory States
Alghanistan	Iran	Namibia	Bhutan
Albania	Iraq	Nauru	Cameroon
Algeria	Ireland	Nepal	Solomon Islands
Andorra	Comoro Islands	New Zealand	Lebanon
Angola	Cook Islands	Nicaragua	Liechtenstein
Antigua and Barbuda	Marshall Islands	Niger	United States of America
Argentina	Israel	Nigeria	Tajikistan
Saudi Arabia	Italy	Norway	Tonga
Armenia	Kazakhstan	Oman	
Australia	Kenya	State of Palestine	
Austria	Kiribati	Netherlands	
Azerbaijan	Kyrgyzstan	Pakistan	
Bahamas	Kuwait	Palau	
Bahrain	Laos	Panama	
Bangladesh	Latvia	Papua New Guinea	
Belgium	Lesotho	Paraguay	
Belize	Liberia	Peru	
Benin	Libya	Poland	
Belarus	Lithuania	Portugal	
Bolivia	Luxembourg	Qatar	Trinidad and Tobago
Bosnia and Herzegovina	North Macedonia	United Kingdom e Northern Ireland	
Brazil	Madagascar	Czech Republic	
Brunei Darussalam	Malawi	Central African Republic	Turkmenistan
Bulgaria	Maldives	Democratic Republic of Congo	Tuvalu
Burkina Faso	Malaysia	Republic of Moldova	Ukraine
Burundi	Mali	Dominican Republic	Uganda
Cambodia	Malta	Romania	Hungary
Cape Verde	Morocco	Rwanda	European Union
Canada	Mauritania	Russia	Uruguay
Ciudad	Mauritius	Saint Kitts and Nevis	Uzbekistan
Chile	Mexico	San Marino	Vanuatu
China	Micronesia	Saint Lucia	Venezuela
Cyprus	Monaco	Saint Vincent and Grenadine	Vietnam
Colombia	Mongolia	Samoa	Yemen
Congo	Montenegro	São Tomé and Príncipe	Zambia
North Korea	Mozambique	Senegal	Zimbabwe
South Korea	Myanmar	Serbia	
		Seychelles	

*Member States that have ratified the Convention. Source: www.ohchr.org. Data last update: 17 March 2022.

Adopted by the General Assembly on 13 December 2006
Entered into force on 3 May 2008
Italy ratified the Convention on 24 February 2009. EU ratified the Convention on 23 December 2010



Map 4.5 - International Convention for the Protection of All Persons from Enforced Disappearance (CED)

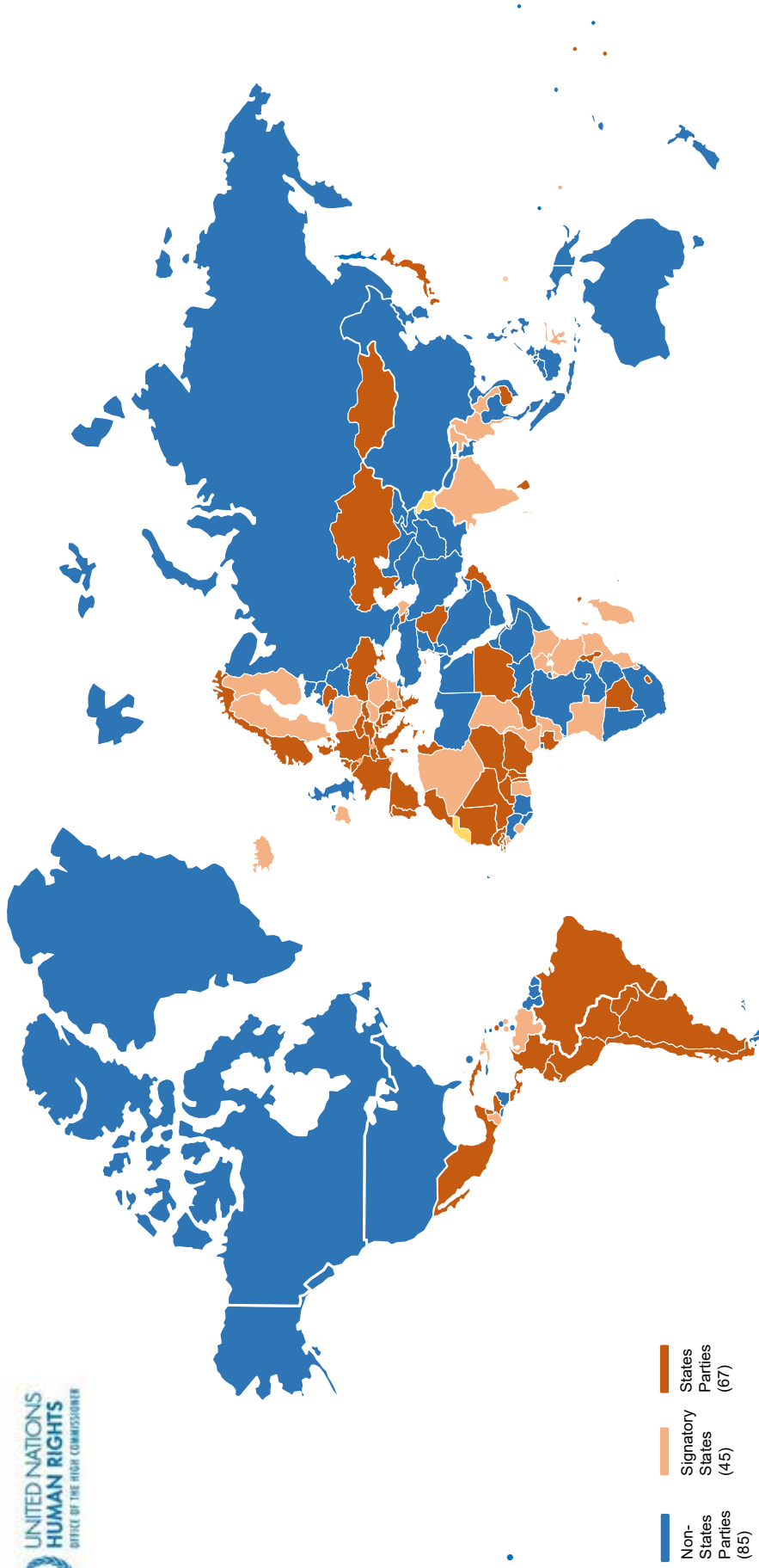


Table 4.4 - International Convention for the Protection of All Persons from Enforced Disappearance (CED)

State Parties*		Signatory States
Albania	Germany	Algeria
Argentina	Japan	Angola
Armenia	Greece	Azerbaijan
Austria	Honduras	Bulgaria
Belgium	Iraq	Burundi
Belize	Italy	Cameroon
Benin	Kazakhstan	Cape Verde
Bolivia	Lesotho	Ciad
Bosnia and Herzegovina	Lithuania	Cyprus
Brazil	Malawi	Congo
Burkina Faso	Mali	Eswatini
Cambodia	Malta	Finland
Chile	Morocco	Ghana
Colombia	Mauritania	Grenada
Costa Rica	Mexico	Guatemala
Croatia	Mongolia	Guinea-Bissau
Cuba	Montenegro	Haiti
Denmark	Niger	India
Dominica	Nigeria	Indonesia
Ecuador	Norway	Ireland
Fiji	Oman	Iceland
France	Netherlands	Comoro Islands
Gabon	Panama	Kenya
Gambia	Paraguay	Laos
	Peru	Lebanon
	Portugal	Liechtenstein
	Czech Republic	Luxembourg
	Central African Republic	North Macedonia
	Samoa	Madagascar
	Senegal	Maldives
	Serbia	Monaco
	Seychelles	Mozambique
	Slovakia	Palau
	Slovenia	Poland
	Spain	Republic of Moldova
	Sri Lanka	Dominican Republic
	Sudan	Romania
	Switzerland	Saint Vincent and the Grenadines
	Togo	Sierra Leone
	Tunisia	Sweden
	Ukraine	Thailand
	Uruguay	Tanzania
	Zambia	Uganda
		Vanuatu
		Venezuela

*Member States that ratified the Convention. Source: www.ohchr.org. Data last update: 17 March 2022.

Adopted by the UN General Assembly on 20 December 2006
Entered into force on 23 December 2010
Italy ratified the Convention on 3 July 2007



Table 5.1 - Local Guarantors Network (last update: 11/04/2022)

Region	Category	City	Guarantor	
Abruzzo	Regional Guarantor		Gianmarco	Cifaldi
Apulia	Regional Guarantor		Piero	Rossi
Apulia	Provincial Guarantor	Brindisi	Fernando	Benigno
Apulia	Municipal Guarantor	Trani	Elisabetta	De Robertis
Apulia	Municipal Guarantor	Lecce	Maria	Mancarella
Apulia	Municipal Guarantor	San Severo	Maria Rosa	Lacerenza
Calabria	Municipal Guarantor	Crotone	Federico	Ferraro
Calabria	Municipal Guarantor	Reggio Calabria	Giovanna Francesca	Russo
Calabria	Metropolitan Guarantor	Reggio Calabria	Paolo	Praticò
Campania	Regional Guarantor		Samuele	Ciambriello
Campania	Provincial Guarantor	Caserta	Emanuela	Belcuore
Campania	Provincial Guarantor	Avellino	Carlo	Mele
Campania	Metropolitan Guarantor	Naples	Pietro	Ioia
Emilia Romagna	Regional Guarantor		Roberto	Cavaliere
Emilia Romagna	Municipal Guarantor	Ferrara	Francesco	Cacciola
Emilia Romagna	Municipal Guarantor	Piacenza	Antonello	Faimali
Emilia Romagna	Municipal Guarantor	Bologna	Antonio	Ianniello
Friuli Venezia Giulia	Regional Guarantor		Paolo	Pittaro
Friuli Venezia Giulia	Municipal Guarantor	Trieste	Elisabetta	Burla
Friuli Venezia Giulia	Municipal Guarantor	Udine	Franco	Corleone
Latium	Regional Guarantor		Stefano	Anastasia
Latium	Metropolitan Guarantor	Rome	Gabriella	Stramaccioni
Lombardy	Regional Guarantor		Gianalberico	DeVecchi
Lombardy	Provincial Guarantor	Pavia	Laura	Cesaris
Lombardy	Municipal Guarantor	Lecco	Marco	Bellotto
Lombardy	Municipal Guarantor	Sondrio	Francesco	Racchetti
Lombardy	Municipal Guarantor	Milan	Franco	Maisto
Lombardy	Municipal Guarantor	Brescia	Luisa	Ravagnani
Lombardy	Municipal Guarantor	Busto Arsizio	Matteo Luigi	Tosi
Lombardy	Municipal Guarantor	Bergamo	Valentina	Lanfranchi
Marche	Regional Guarantor		Giancarlo	Giulianelli
Molise	Regional Guarantor		Leontina	Lanciano
Piedmont	Regional Guarantor		Bruno	Mellano
Piedmont	Municipal Guarantor	Alba	Alessandro	Prandi
Piedmont	Municipal Guarantor	Alessandria	Alice	Bonivardo
Piedmont	Municipal Guarantor	Asti	Paola	Ferlauto
Piedmont	Municipal Guarantor	Cuneo	Alberto	Valmaggia
Piedmont	Municipal Guarantor	Fossano	Michela	Revelli

**Following*

Piedmont	Municipal Guarantor	Biella	Sonia	Caronni
Piedmont	Municipal Guarantor	Turin	Monica Cristina	Gallo
Piedmont	Municipal Guarantor	Vercelli	Emanuela	Leporati
Piedmont	Municipal Guarantor	Novara	Dino	Campiotti
Piedmont	Municipal Guarantor	Saluzzo	Paolo	Allemano
Piedmont	Municipal Guarantor	Ivrea	Raffaele	Orso Giaccone
Piedmont	Municipal Guarantor	Verbania	Silvia	Magistrini
Sardinia	Municipal Guarantor	Oristano	Paolo	Mocci
Sardinia	Municipal Guarantor	Sassari	Gianfranco	Favini
Sardinia	Municipal Guarantor	Nuoro	Giovanna	Serra
Sardinia	Municipal Guarantor	Tempio Pausania	Ornella	Careddu
Sicily	Regional Guarantor		Giovanna	Fiandaca
Sicily	Municipal Guarantor	Siracusa	Giovanni	Villari
Tuscany	Regional Guarantor		Giuseppe	Fanfani
Tuscany	Municipal Guarantor	Siena	Cecilia	Collini
Tuscany	Municipal Guarantor	San Gimignano	Sofia	Ciuffoletti
Tuscany	Municipal Guarantor	Florence	Eros	Cruccolini
Tuscany	Municipal Guarantor	Pisa	Alberto	Marchesi
Tuscany	Municipal Guarantor	Pistoia	Tommaso	Sannini
Tuscany	Municipal Guarantor	Livorno	Marco	Solimano
Tuscany	Municipal Guarantor	Prato	Ione	Toccafondi
Tuscany	Municipal Guarantor	Porto Azzurro	Tommaso	Vezzosi
Tuscany	Municipal Guarantor	Lucca	Alessandria	Severi
Trentino Alto Adige	Guarantor of the Autonomous Province	Trento	Antonia	Menghini
Trentino Alto Adige	Municipal Guarantor	Bolzano	Elena	Dondio
Umbria	Regional Guarantor		Giuseppe	Caforio
Valle d'Aosta	Regional Guarantor		Adele	Squillaci
Veneto	Regional Guarantor		Mario	Caramel
Veneto	Municipal Guarantor	Padova	Antonio	Bincoletto
Veneto	Municipal Guarantor	Belluno	Maria	Losito
Veneto	Municipal Guarantor	Venice	Jacopo	Saccomani
Veneto	Municipal Guarantor	Verona	Carlo	Vinco
Veneto	Municipal Guarantor	Rovigo	Guido	Pietropoli
Veneto	Municipal Guarantor	Vicenza	Mirko	Maule

Source: National Guarantor for the rights of persons deprived of liberty

Map 5.2 - Regional Guarantors and Autonomous Provinces Guarantors - AMIF Network and CPRs Complaints Network (as of 11/04/2022)

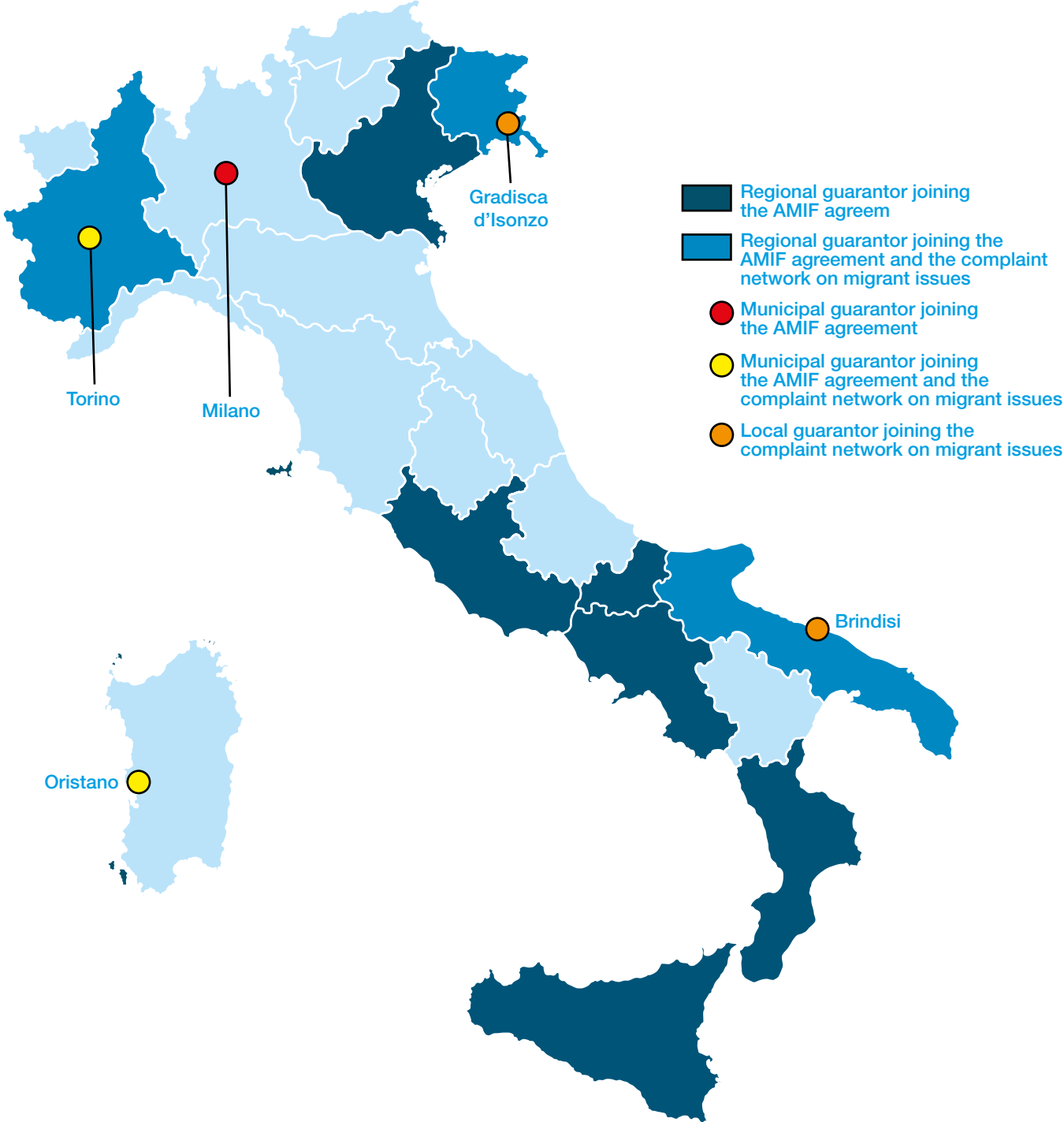


Table 5.2 - Activities developed with the Local Guarantors (2021-2022)

Description	Promoting Authority	Seat
Seminar "Nuove e vecchie contenzioni"	Piedmont Guarantor for persons deprived of liberty	Online
Meeting with the Regional Guarantors, with the participation of the Secretary of State for Justice Marta Cartabia	National Guarantor	Rome
Meeting with Prison Directors and the Local Guarantors of the Apulia Region	Apulia Regional Guarantor for persons deprived of liberty	Online
Meeting with the Regional Guarantors and the Head of the Department of Penitentiary Administration	Latium Regional Guarantor for persons deprived of liberty	Rome
Meeting on "Dignità e reinserimento sociale. Quali carceri dopo l'emergenza?"	Conference of the Local Guarantors and National Conference of the volunteering work in the justice system	Rome
Five operational meetings concerning the AMIF Project "Implementazione di un sistema di monitoraggio dei rimpatri forzati"	National Guarantor	Online

Source: National Guarantor for the rights of persons deprived of liberty



33. From the Regional Guarantors

As for every year the National Guarantor invited the Regional Guarantors to prepare their Report to be included in this Report to Parliament.

These contributions, reported in the following pages, focus on the penal area highlighting the most critical and most positive elements of the penitentiary institutes of the relevant region.



Abruzzo

Gianmarco Cifaldi

Main activities developed:

- Toll free number 800938080 for prisoners' families. The service is available from Mondays to Fridays from 9.00 AM to 6.00 PM;
- "Easter in Prison" 2021. The Abruzzese pasta factory "Rustichella d'Abruzzo" donated pasta products to the prisoners of the 8 prisons of the region.
- A Memorandum of Understanding "Percorsi di lavoro di pubblica utilità nella manutenzione e recupero del patrimonio pubblico ambientale" was signed between the Prisoners' Guarantor, the Municipality of Martinsicuro, Teramo Prison (CC), and the Supervisory Court of L'Aquila.
- "Sbarre Senza Filtri". A docufiction project on the problems faced by Italian prisons. The film is directed by Giacomo Maurizio Franciosa Pettine;
- Promotion of training activities for Penitentiary Police agents and health care, educational and social assistance workers. The passage from detention to liberty can change the life to a person. For this reason, social reintegration should not be undermined by the lack of information, including the administrative ones. This is the idea behind the training/informative project developed together with the Regional Penitentiary Administration. The project is aimed at involving operators of the Penitentiary Administration, Municipalities officers and volunteer workers;
- Sports equipment were donated to all Abruzzese prisons;
- Conference, in-presence and online, accredited by L'Aquila Bar Association, the Abruzzo Journalists' Association, under the patronage of the "G. D'Annunzio" University and the Abruzzo Regional Council on the subject: "Vita nel carcere, funzione rieducativa della pena e dignità umana" at the Sala Ipogea of the Palazzo dell'Emiciclo in L'Aquila. The event was participated by 250 people online and 80 people in presence on 23 September 2021;
- Theatre show for prisoners, with the showman Vincenzo Olivieri at the "San Donato" prison in Pescara, on 6 December 2021;
- Launch of the experimental project concerning the electronic medical record of prisoners, in agreement with the Ministry of Health of the Abruzzo Region;
- The Regional Law no. 10/2021 was approved. Art. 3 provides for: "University tax exemption for prisoners of the Abruzzo Region", which recorded 35 enrolments, a steady increase compared to the 5 of the previous year;

Table of the prisoners attending university and training courses, divided by penitentiary institute:



Institute	Courses	Men	Women	of which foreigners	University	Men	Women	of which foreigners
L'Aquila	12	12		12	10	10		
Avezzano	38	38						
Vasto	13							
Chieti								
Sulmona	180							
Lanciano					4	4		
Pescara	46	46			5	5		
Teramo	113				11			

Major criticalities:

1. Structural and architectural conditions of the buildings hosting the Abruzzese prisons;
2. Need to enhance health services within prison walls;
3. Need to provide internal training of the operators.

Positive aspects and potentialities

1. Electronic clinical record of the prisoner;
2. Exemption from university fees for prisoners detained in Abruzzo prisons.



Apulia

Pietro Rossi

Last year, Apulia registered several outbreaks of contagion from Covid-19. However, the consequences on the health of people (staff and prisoners) was not at all dissimilar from that recorded in the regional and national territory in the same period: few critical situations, with rare hospitalisations and without particular criticalities. During the pandemic period, a social alarm arose, notably in Bari, Taranto and Foggia stirred by a somewhat "hysterical" attitude of news reporters, which unknowingly produced further anxiety, by inappropriately shifting the axis of attention from the problems related to the pandemic to the contrast of the same.

As for this last point, it should be emphasized, once again, that after the first stages characterised by general bewilderment, the national health system, in its regional and territorial articulations, established and implemented guidelines that effectively contrasted the emergency, both on the vaccination campaign side and in the containment of the dangers of infection. If anything, three years after the onset of the coronavirus and its first devastating effects, it is necessary to start -also in Apulia- a reflection on the very concrete risk that the pandemic may have acted as a screen against the chronicisation of the structural difficulties of the system. Today, at the end of the so-called state of national emergency, each employee and expert on the subject wonders to what extent the Prison Administration (but, alongside



it, the national health system) is able to restore “normality”, one which would be able to comply with the constitutional values on the purpose of serving a sentence. Since there is no doubt that the most unacceptable suffering inflicted on the Apulian prisoners (supposedly similar to that experienced by other prisons in the Country) was losing the most significant aspects of serving a sentence. The necessary state of confinement imposed a *quid pluris* of punishment which was not always attenuated by the expected accessibility (only for some) to measures aimed at easing the discomfort (as it happened for prisoners in semi-liberty, authorised not to return to prison) and that, in any case, depleted affective and sentimental relationships. The principle of territoriality suffered a further violent blow. In fact, it was not possible to request a transfer to nearer institutions, not even temporary, even in case of suffering inflicted on minor children, unable to maintain a relationship, although a weak one, with their incarcerated parents, which frequently suffered from clinical or psychological fragility. Any recreational, cultural, sports related or educational activity was suspended or, when possible, dishearteningly reconfigured as “remote” participation, thanks to the tiring purchase of devices which, by the way, were never sufficient to cover the actual need. All this covers up for the structural shortage of personnel, both in the security sector and in the rehabilitation area, which is unable, due to an unsustainable workload, to follow up on the observations necessary to put the Supervisory Judiciary in a position to elaborate judgments regarding the access to alternative measures and legal benefits, in general.

In Apulia, the provision of a satisfactory level of health services in prison is far from being a reality, due to the difficulty of recruiting medical personnel and the substantial shortage of psychiatrists (a figure that the university system is not able to provide for in measure appropriate to the demand for mental health care in the territories). Psychiatric suffering has been debated and continues to be at the centre of the debate also in this region. Except for the commitment of all those concerned in the evaluation of the proper taking charge of persons subjected to security measures (the Regional Observatory on Prison Health, in psychiatry, adopted a document shared with the Penitentiary Administration, the SSN and the Supervisory Judiciary, trying to rationalise the taking in charge of mentally ill offenders, overcoming the problem of their improper “detention” while waiting for a place in a REMS), we still have to face the problem of taking care of the persons in prison experiencing an aggravation of their mental health condition.

A project concerning the implementation of the electronic medical record of prisoners and the opportunity to share them with institutes situated on the entire national territory is far from being realised. It is still struggling to find full application the remote diagnostic model, while the wards dedicated to prisoners’ hospitalisation do not cover the actual need. Fortunately, the qualitative standards of the Operational units in the prisons showed signs of improvement (the SAI complex operational unit in Bari managed, with difficulties, to maintain the levels of efficiency and effectiveness unaltered), also considering the shortage of medical and nurse staff.

The good capitalised during the pandemic crises can be considered more as a good sign for the future than an evidence of facts. This particularly refers to the attempt of mainstreaming the use of the IT tools and connectivity in the Penitentiary System. It will be necessary to rationalise all the cognitive and experiential assets acquired to implement a wider use of tools which are not only intended for videocalls with families.

In this general context of widespread discomfort among the prison population, in the entire penitentiary communities (intended as all the people who reside, work and transit there for family or work reason,



including volunteer workers) and the guarantee and protection system of the rights of prisoners -in different ways and level-, institutional relations are based on sharing, in the largest and deepest way possible, in the common attempt to find remedies and seek solutions. Even if that involves reviving natural dialectical conflict downstream of the institutional relations between actors who legitimately support opposite or, at least, complementary needs and demands.



Campania Samuele Ciambriello

Although with less limitations, 2021 was also marked by the Covid-19 emergency. The activities of the Regional Guarantor, especially those envisaging direct contact with the prisoners, were regular, with a brief slowdown of the projects in the first months of the year. Between January and December 2021, a total of 1,007 interviews were carried out in all the region's prisons.

With reference to the activities, this Office received 696 requests for intervention: despite the difficulties related to compliance with the Covid-19 containment measures, this office visited the prisoners and listened to their complaints several times, as it did with prisoners' family members and legal advisers. Following their reports, various types of interventions were envisaged and respectively communicated to: the directorates, the health management of the institutes, the Department of the Penitentiary Administration, the Regional Superintendency of the Penitentiary Administration, as well as the Supervisory Judiciary. In this regard, we should remember that the cases dealt with concern health issues, relations with the education area, support for requests of transfer within the region and outside it, as well as the collection of information on the legal position of the prisoner with the Supervision office and the Post-release supervision office.

There are several critical issues within the prisons, while positive elements are still few. In 2021, prison overcrowding in Campania represented a major criticality: it has become unsustainable, especially in the Poggioreale prison. In fact, although the total capacity of the prison is 1,571, currently the prison has a population of 2,215. This also applies to the Secondigliano prison, where the prison population exceeds the capacity indicated by the law, the prison currently hosts 1,195 prisoners over a total 1,073 indicated by the law. The case of the women's prison of Pozzuoli is also emblematic. Its capacity is of 101 places; currently, the total population is 131, with cells housing up to 10/12 people each. Last year, on 14 January 2021, the Guarantor met the Campania's Superintendent for public works. During the past years, funding was allocated by the Department of Infrastructure for the renovation of the Poggioreale prison. On 4 March 2022, a follow-up meeting was held to find out about the progress of the works regarding a wing of the Poggioreale prison, expected to start in 2022. We cannot be silent about the delays, which are shameful and add up to those for the water piping connection in the institute of Santa Maria Capua Vetere. In fact, despite funding being approved by the Region four years earlier, the works only started in 2021.

Another criticality that raises deep concern is the situation of people affected by psychiatric disorders. Inmates with psychiatric problems are increasing, but there are few psychiatric units in prisons. In



Campania there are six psychiatric units located in the institutes of Benevento, Salerno, Sant'Angelo dei Lombardi, Santa Maria Capua Vetere, Secondigliano and Pozzuoli. Among them, those of Benevento and Pozzuoli should be closed.

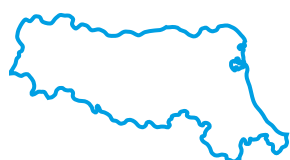
There are only two REMS in Campania. The waiting list is particularly long, with more than 70 people needing hospitalisation in REMS or other facilities alternative to prison.

Other major criticalities concern: educators, penitentiary police officers, language and cultural mediators. Campania's prison staff is short of 29 legal-pedagogical officials: the organisation chart indicates 104, but only 75 are currently in office.

A positive note comes from the volunteering associations. Some data can give an insight of the situation: Poggioreale is the prison with the highest prison population, but it is also the institute where the majority of volunteer workers are present.

A note of merit goes to the University penitentiary centre of the Secondigliano prison. Founded four years ago in agreement with the Prison Management, the University of Naples "Federico II", the Regional Superintendency of the Penitentiary Administration and the Guarantor, it currently has 69 incarcerated university students. Among which, 45 are detained in the Maximum Security Circuit, while other 24 are detained in the Medium Security Circuit. In addition, prisoners from other prisons are also enrolled at the University, for a total of 75 students.

In 2021, Cassa delle Ammende [the Fines Fund] entered into an agreement with the Campania Region. The terms provided for a 250,000 euro funding to host 54 homeless people, including women, in 8 different facilities. Campania's Regional Council also co-financed, through Cassa delle Ammende, 1.3 million Euro for "Support paths, work and social inclusion of people in post-release supervision. Lastly, a protocol was signed between this Guarantor, the Caritas of Aversa (CE) and the Gianbattista Vico Foundation, aimed at offering work grants through regional funding for the prisoners of the Work house of Aversa. It is important to mention two other important agreements aimed at promoting projects of public utility works: the first signed between this Guarantor, the PRAP and the Public Prosecutor Office of the Court of Naples, the second between this Guarantor, the PRAP, the Supervisory Court of Naples and the Southern Operational Forces Command.



Emilia-Romagna

Roberto Cavalieri

The **life conditions of prisoners** are vastly affected by the precarious conditions of the buildings and the scarce availability of spaces for work, cultural and sports activities, and green areas for staying outdoor at least 4 hour a day (Art. 10 P.L.). With the exception of the periodic possibility of accessing the football fields, outdoor time is usually spent in the inner courtyards between the buildings and the surrounding walls. Only the Castelfranco Emilia prison, seat of agricultural activities, regularly offers the opportunity to spend several hours outdoor in large green spaces.



The announcement of the project to build a new detention wing within the perimeter of the Ferrara prison re-proposed the theme of “prison spaces” in our region, recipient of the assignment of a large number of detainees transferred from institutions of other regions.

The occurrence of cases of non-compliance with the principle of territoriality in the execution of the sentence can produce various difficulties, both in the daily life of people removed from their family connections, and for the possibility of social work integration or to get access to health care in residential structures. The Guarantor reported the particular difficult situation encountered by the prison of Parma because of the disproportioned number of prisoners assigned to the institution, which is also seat of a clinical centre and of a wing for paraplegics. The same difficulties are faced by the prison of Reggio Emilia, seat of a mental health unit.

The hygienical services available to the prison population in some institutes are in poor conditions. In most cases, problems concern poor maintenance, in other case WC and shower facilities are not compliant with the relevant regulation. In fact, Art. 7 of the Regulation approved in 2000, provided for hygienical services to be equipped with hot water, showers and bidet.

This office reported on several occasions the poor conditions of building hosting the Reggio Emilia prison due to significant infiltrations of rainwater from the roofs, poor conditions of the walk corridors and common showers. The Regional Superintendency communicated the start of the procedures for the refurbishment of the roofs. The women’s wing of Modena prison was reported for the lack of hot water in the cells and the necessity of refurbishing the first floor showers, currently unusable.

On the second half of March 2021, a large Covid outbreak occurred in the Reggio Emilia prison with a number of infections that in April exceeded 120 cases with 6 hospitalisations. The Guarantor monitored the situation on a daily basis, keeping contact with the Director and the Commander of the institute. The Municipal Council of Reggio Emilia dedicated a fact-finding session on the situation of the epidemic in prison.

The **positive aspects** include the timely vaccination campaign for prisoners and staff in all the institutes in the region.

Castelfranco Emilia prison was particularly proactive in the implementation of work, educational and re-socialisation projects. The Municipal Council is keenly engaged in the promotion of employment projects, actively participates with its services in the assistance and social reintegration of detained and interned persons. The Guarantor’s recommendation for a specific consideration of project activities for people interned with a detention security measure in Castelfranco Emilia was accepted by the Regional Department of Welfare.

The path of qualification and training of the operators of penal execution, started the previous years, was also renewed for 2022. This is joint training project that the Guarantor’s Office has been implementing with UEPE and PRAP for five years. It is addressed to the operators of the relevant Administrations, volunteers and other subjects. The intended trainees are identified from time to time according to their relevance with the topics proposed by the course. This training initiative covered all five years of the Guarantor’s mandate. Some themes were re-proposed several times, each with specific insights or regulatory updates, also requested by the previous year’s participants. The main topics proposed were: residence and registry practices for restricted persons; job search; de-escalation



techniques (management of critical events and high conflict situations in contexts of deprivation of liberty; how to develop assertive communication; verbal and non-verbal techniques; negotiations in emergency situations); parenting and affective continuity in prison.

As part of the agreement stipulated between the Cassa delle Ammende and the Conference of the Regions, a new project was launched: "Territorio per il reinserimento, emergenza Covid-19", intended to accommodate 75 people detained under laws conditions compliant with the access to non-custodial measures, but lacking housing, economic or working resources, with a residual penalty comprised between 6 and 18 months. As of 28 December 2021, a total of 67 people involved in the project.



Friuli Venezia-Giulia

Paolo Pittaro

Criminal detention in FVG include 5 prisons, respectively located in Trieste, Udine, Gorizia, Pordenone and Tolmezzo and an administrative detention centre in the CPR of Gradisca d'Isonzo.

Criticalities

Major criticalities concern 3 areas: staff, overcrowding and buildings.

Staff's most impelling issues involve: management, Penitentiary Police and educators.

- There is only one Director permanently assigned over 5 prisons: that of Tolmezzo. The remaining four are managed by an Acting Directors shared with the prisons of other Italian regions: Gorizia is directed by the Director of Treviso; Udine by the Director of Belluno; Pordenone by Tolmezzo's Director; Trieste, for the whole of 2021, was directed by the Deputy Director of Padua and only starting from 10/01/2022 by a Director coming from Sassari, which we all hope is going to stay. The Acting Directors are usually present in the region's prison maximum 2 days per week, with consequent foreseeable difficulties. Their competences for daily business are exercised by the Commander of the Penitentiary Police.
- The Penitentiary Police is understaffed, especially at the intermediate level (non-commissioned officers). The situation is currently aggravated by the suspension of the unvaccinated personnel (further reduction to the operational staff).
- The serious shortage of educational staff is accentuated by the unreplaced retirements. Some institutions have no educators at all; others are formally covered by hourly assignments given to educators working in other organisations. There is no doubt about their commitment, but we can surely question the effectiveness of part-time activities, contemporarily carried on in several institutions.

The much seen prison overcrowding is very accentuated in Friuli Venezia-Giulia's prisons. Its ratio used to be the highest in the country, with an average above 135%, with occasional peaks above 150-160%.



The evident criticalities of the building structures: all aged (except for Tolmezzo's building) and located in the historic centre of the provincial capitals. The Pordenone prison is located in a fortress dating back to 1200, for decades subject to shutdown procedures, so far never implemented; the Udine prison is going to a planned restructuring phase; Gorizia is under a partial refurbishment; the Trieste prison, built in the early 1900s, requires constant maintenance. All of them have no places suitable for social or sports activities. The pandemic aggravated the need for space, especially for confinement or quarantine. The consequences were obvious on the entire structure.

Opportunities

Internal laboratories, including carpentry, cabinet-making, painting, baking, pastry-making, tailoring, sometimes also valuable for their quality, can be further expanded, improving the quality of the products and enhancing the opportunity of marketing products outside the prisons.

The possibility of audio/visual meetings/interviews through electronic devices and Internet connection, introduced during the lockdown periods, can be considered by now a solid reality and, therefore, they should be maintained, strengthened and further regulated.



Latium Stefano Anastasia

The **major criticalities** found in the penitentiary institutes in 2021, include:

I. Structural conditions of the buildings and the Covid-19 emergency

Overcrowding was significantly aggravated by the laws and regulations aimed at contrasting Covid-19 infection. In autumn, incoming prisoners were frequently sent out of the region, sometimes within the territory of the Superintendency, on other occasions outside it, causing in both circumstances a clear violation of the rules concerning the assignment of prisoners and difficulties in the relationships between prisoners and family members or with their attorneys. In December, the total block of access to the institutes of the Superintendency caused the congestion of the custody suites of the local police forces for a few days.

The structural conditions of the prisons are still dramatic and most of the institutions do not comply with the regulations regarding the hygiene facilities in the prison rooms. In particular, it is useful to report the shortage of hot water in Rome-Rebibbia and in Viterbo prisons, which -together with the inadequate heating of the detention rooms and the lack of social rooms- provoked, in December, a peaceful protest of the prisoners of the Maximum Security Circuit, previously transferred for unknown reasons from the Frosinone prison.

Rehabilitation activities, largely suspended in 2020 due to Covid-19 outbreak, were partially resumed in 2021, but always on an occasional basis, mostly based on the infection trends in each institution.

In September, the Latium's Court of Auditors also sent a courtesy communication to the Regional Guarantor and the National Guarantor informing of the cancellation of the tenders for food service. The offers, in fact, were based on the maximum discount price strategy.

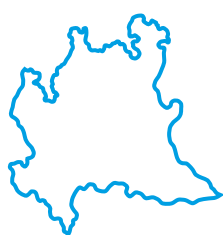


2. Staff shortage in Penitentiary Administration (police agents, educators, accountants), in post-release supervision offices and in the Supervisory Court limits the performance of intramural activities (currently in some institutes the activities can be only carried out only in the morning due to staff shortage), access to benefits, alternative measures to detention and even early release. The last giving rise to frequent grievances from prisoners.

3. Despite some appreciable intervention plans by Mental Health Operational Units already present in some institutes, Latium's penitentiary institutes miss a shared and widespread operational protocol able to ensure proper health care in therapeutic continuity with the territory for prisoners with mental health problems. A new model would also make it easier to be granted alternative measures to detention for health reasons. Some cases of illegitimate detention of persons subject to security measures were recorded, which cannot be solved either with further increases in the capacity of the regional REMS or with the improper assignment to psychiatric hospital diagnosis and treatment services. In fact, they would require a thorough evaluation on the necessity of adopting prison security measures, a decision that should be made in collaboration with the local mental health services.

Areas showing basic or substantial improvements

1. The vaccination campaign quickly and effectively covered large part of the prison population and the staff working inside the prisons. Even in situations of high infection rates, critical clinical situations were minimised. In prospect, it is worth noting the inclusion of the Rebibbia prison in the regional telemedicine project which should provide for a more rapid assistance, in particular for specialist check-ups, currently subject to the long queues of the external visits and to the risk of postponement due to other emergencies meanwhile faced by the Penitentiary Police's transport unit.
2. Also thanks to the commitment of the Municipal Guarantor's office, Roma Capitale promptly ensures the processing of the registration procedures and the relevant services. We hope that the experience will be consolidated and extended to other institutes in the region, together with the guarantee of access to the patronage institutes.



Lombardy
Gianalberico De Vecchi

Major criticalities:

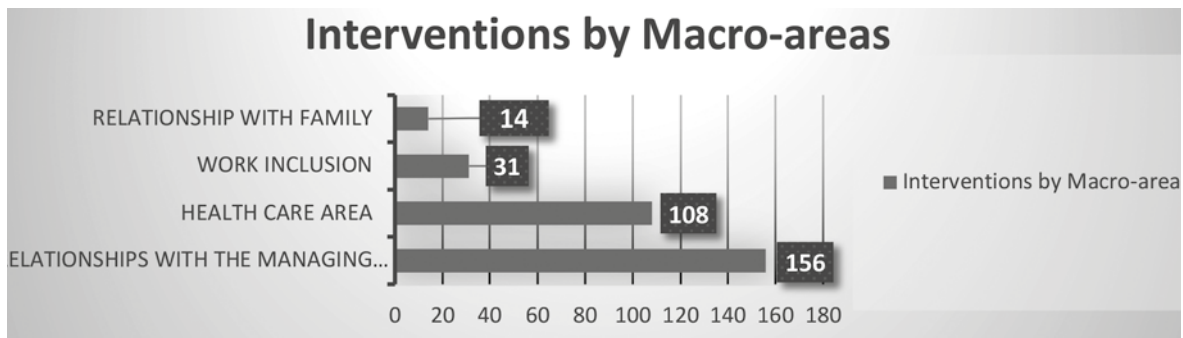
The Regional Guarantor in 2021 received 309 requests for intervention.

1. The health care area received the highest number of requests (108). Prisoners mostly complained for:
 - a) the waiting times for specialist visits, made longer by the pandemic emergency;
 - b) waiting times to be treated by the Health Care Institutions;
 - c) hospitalisation;



2. Most part of the remaining complaints (156) concerns relations with the management body. The requests, specifically, focused on:
- prisoners' detention conditions;
 - rehabilitation paths;
 - transfer requests unanswered due to the limitation provisions imposed to transfer by the progress of the pandemic.

The complaints concerning vocational training and work inclusion were 31, while those concerning the quality of the relationship with family members were 14, almost in line with the previous years.



I. The incidence of the Covid-19 health emergency

Some of the problems related to the spread of the Sars-CoV-2 virus in 2020 also recurred in 2021: the trend of infections and the spread of the virus in its new variants, in fact, led to a renewal of the restrictions and limitations adopted the previous year. However, this year they were softened by the containment of infections both among prisoners and staff, thanks to the vaccination campaign launched in March.

The beginning of 2021 was characterised by the adoption of measures aimed at containing October 2020's second wave: new provisions were provided by the DAP to successfully deal with the spread of the Covid-19 infection. They defined the minimum measures to be adopted in the event that the number of restricted infected people exceeded the thresholds of 2% or 5% of those currently in prison. It is worth noting that the organisative provisions were defined in compliance with the principles of proportionality, gradualness, absolute necessity and temporariness.

The Lombardy Regional Superintendency also contributed to the definition and periodical update of the operational guidelines for the prevention and containment of infection risk, in agreement with the Regional Welfare Department, outlining specific rules of hygiene, prophylaxis and prevention, as well as contact tracing, meetings' management, rehabilitation activities. The guidelines also established the necessary procedures for prisoners admitted to outside work, on probation or on parole, or benefiting of temporary licences.

The anti Covid-19 vaccination campaign, which involved the staff of the penitentiary services and the restricted population among the priority categories, recorded a very high participation rate among the prisoners, allowing a significant containment of the infections: at the beginning of the summer, above 85% of the Lombard restricted population had received the first vaccination dose and more than 75%



had completed the entire cycle of vaccination. This allowed the resumption prisoners' transfers, more contacts with families and in-person prison visits. With the resumption of infections at the end of 2021, however, the restrictive measures aimed at containing the spread of the virus were reintroduced. This caused the submission of new complaints to the Regional Guarantor concerning, in particular, the transfer to other prisons, which were further limited due to the spreading of the Omicron variant. As for the previous year, the Guarantor constantly monitored the trend of infection among prisoners and penitentiary staff of the region through the data sent on daily basis by the PRAP.

Opportunities

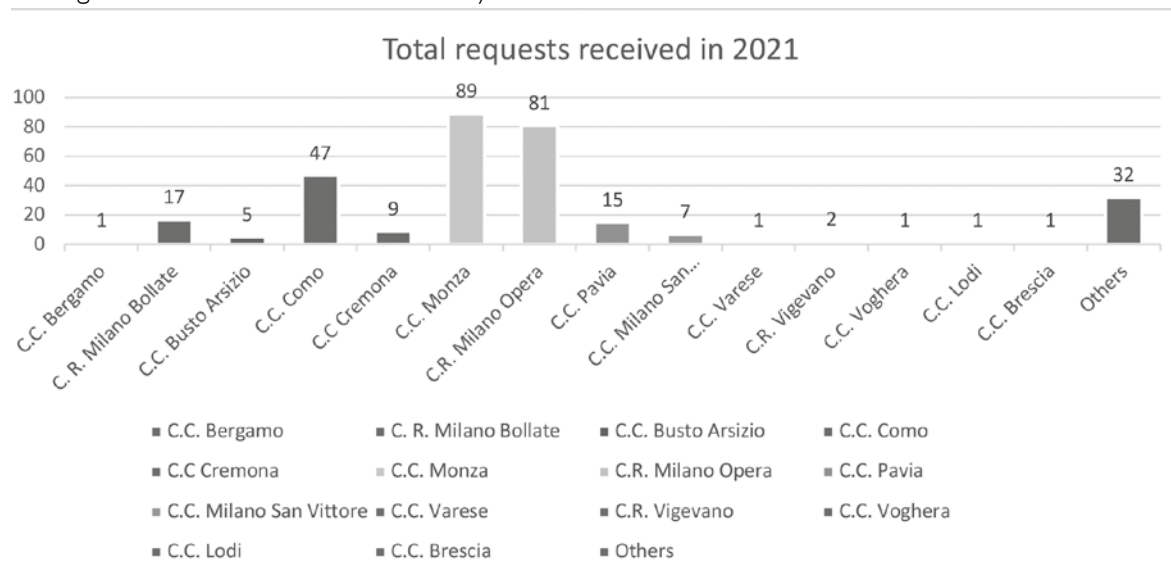
1. Help Desk Project: remote video meeting/interviews.

The "Regional Guarantor Help Desk" project, started in 2018, developed into a IT remote help desk by 2020, due to the criticalities arising from the health emergency. In 2021, it proved once again to be a useful instrument, allowing prisoners to submit their complaints or to require an intervention. A total of 111 meetings took place through the Microsoft Teams platform, a tested and proved method for communication also in/from prison, as defined in the agreement with the Regional Superintendency of the Lombard Prison Administration. These instruments make it possible to reach a considerable number of prisoners in shorter times and with fewer resources, so making it easier to intercept general critical issues and find rapid solutions.

2. Meetings with institutional representatives on the subject of mental health in prison.

The subject of the meetings with the Executives of the Welfare Structure of the Regional Council were the criticalities identified by the Regional Guarantor during the video interviews with the prisoners, in particular the psychological distress showed by prisoners and the importance of the topic "mental health" in prison. Mental distress and substance abuse (alcohol or drugs) are criticalities arising from the abrupt interruption of their intake (caused by arrest and prison detention), which represent a determining factor on the mental health of the restricted person.

In this regard, the problematic cases concerning double diagnosis were discussed, as well as the cases in which the abused substance is not among those recognized and treated by the Ser.D. service, finally noting that the certification is issued only for serious and full-blown cases.





Other criticalities were observed for the migrants and the management of cases of PTSD. The Penitentiary Health Operational Unit ensured the vaccination of the migrants hosted in the CPR located in Via Corelli (Milan) through the STP (Temporary Present Foreigner) Card.

A reflection was made on the role of the Penitentiary Police and the importance of the psychological support for staff employed in penitentiary institutions.

Among the other topics discussed, the identification of the restricted person without valid identification documents and the consequent problem of issuing the certification necessary for assignment to the Ser.D. service. In this regard, it was agreed that the identification through the AFIS Database's matriculation number could be a useful instrument to overcome the impasse.

The organisation of meetings and the drive to work synergically, building networks, proved to be the most effective instruments to face general criticalities and identify shared practical solutions.



Marche

Giancarlo Giulianelli

The overall capacity of the six prisons of the Marche Region is 846 people. Prison population, as of 31 January 2022, amounted to 841. Foreigners citizens detained were 289 (34.36% of the prison population).

The capacity/actual prisoners ratio is distorted by the unavailability of a wing of the Fossombrone prison due to restructuring works in progress. The above figures confirm that the phenomenon of overcrowding also persists in the Marche Region (limited to the Montacuto [+65] and Villa Fastiggi [+49] institutes) causing understandable negative consequences following the pandemic, especially during the spreading of the Delta variant.

Feltria REMS in Macerata has a capacity of 20 places, with a current population of 25 (5 in waiting list). Covid-19 emergency. Between January and April 2021, the spreading of the Delta variant was well managed by the prison system (except for a small outbreak in Villa Fastiggi), while between November 2021 and January-February 2022 there were numerous infections in almost all the Marche institutes, both among the prison population and the Penitentiary Police staff members. Currently, the infections have significantly decreased if not completely disappeared.

The most relevant criticalities observed by the Regional Guarantor during 2021 (took office in February; absent for Covid until May) are the following:

1. Penitentiary Health Care,
 2. Prison buildings,
 3. Staff shortage in the rehabilitation area.
-
1. The pandemic crisis made more evident the shortcomings in the health care sector, mainly due to anachronistic general choices (just think of the admission quotas for Medicine faculties). The consequences of such choices are now more evident: shortage of general practitioners; hourly allowance granted to doctors working in prisons significantly lower than those recognised to doctors working in the USCAs (with consequent migrations to the second ones); the lack of a regional programming (ARS, ASUR and various AAVVs) able to compensate for the many times



highlighted shortcomings.

2. Some institutes need renovation/adaptation works (Montacuto, Ascoli, Villa Fastiggi); others (Fermo) should be definitely closed due to the absence of spaces necessary for rehabilitation activities and for outdoor recreational activities; moreover, the situation of the cells is disastrous (like in Fermo's prison), with strong and significant repercussions on the dignity of the prisoners. The correctional facility should be returned to the city (in the past, it used to be a convent), and a new prison should be built outside the city centre, near the new hospital. The municipal administration already expressed its approval in this regard.
3. The other penitentiary institutes suffer of staff shortage in the rehabilitation area, for which they resort to educators coming from other institutes. This shortage is only partially covered by the valuable contribution of volunteers and "bridge" educators, the latter hired by some municipalities with a fixed-term contract.

Positive experiences include the excellent relationship established between the Guarantor and the voluntary associations operating within the Marche institutes. The periodic meetings with such entities are useful to illustrate problems and develop activities within the prison walls.

The relationship with the PRAP is also fruitful, with the ongoing dialogue aimed at finding shared solutions - especially in the health care area - encountered within the various institutes. For the first time, the Guarantor - at its express request - was called to be part of the Regional Observatory of Penitentiary Health, thus filling an unexplainable regulatory gap and providing its modest contribution to some fundamental issues (including telemedicine). The realisation of training courses aimed at promoting work inclusion, financed by the Guarantor, gave the opportunity to prisoners to obtain work-related qualifications (e.g., safety in the workplace); particularly valued were also the cultural and educational projects (with the University Campus and high school courses awarding diplomas) continuing the positive experience of the past.

From this point of view, it is important to highlight the collaboration with the PRAP, as well as with the Penitentiary Police staff and the Management of the institutes to support - where possible - the projects presented.



Molise

Leontina Lanciano

Current situation of the Molisan penitentiary institutions, with reference to the major criticalities and the potentialities.

Criticalities

1. The prisons of Campobasso, Isernia and Larino suffer from the obsolescence of the buildings. In particular, Campobasso prison was built in 1863. In some places, the surrounding walls are cordoned off to ensure safety. Despite the repair works to which it is subjected from time to time, the building currently needs both routine maintenance and extraordinary renovation works. The open cell blocks have no showers inside the cells (except for the third wing): the showers are located in common areas, often not heated and humid. Adaptation works are underway to increase the number of cells fitted with shower. Spaces are scarcely usable. One of the wings has no lifts or hoists for the transport of food and goods.



Maps

Isernia Prison's building is more recent. The surrounding walls of the prison, built in 1977, necessitate some extensive renovation works. In the past, only ordinary maintenance works were performed to ensure safety. The building does not have a green area for meetings or interviews.

The Larino prison was inaugurated in 1984. Despite being a large and well-lit building, it struggles with constant overcrowding and shortage of staff, educators and social workers.

2. The shortage of staff is a condition common to all Molisan penitentiary institutes. In particular, this concerns the staff of the Penitentiary Police, the staff of the rehabilitation area (social workers, psychologists, educators, etc.).

3. Lastly, shortage of staff is also a concern for the SER.D. service.

Positive aspects and potentialities

1. Among the positive aspects that can be found in the Molise detention facilities, the investment made in new technologies by the Campobasso prison. The building is now equipped with a recently activated video-surveillance system for the monitoring of the entire building, both internally and externally.

2. Another positive element is represented by the implementation of activities and workshops for prisoners. In Larino prison, for example, there are several green spaces cultivated by prisoners with vegetables and fruit. Among the work activities, promoted for several years now, some (carpentry, pastry) benefit from a space for promotion and sale. Tailoring and theatre workshops, suspended during the pandemic, are about to resume. An artisanal dairy factory situated in the area, buying and processing local milk, carries out its activity in collaboration with the hotel and catering school of Termoli.



Piedmont

Bruno Mellano

Centre and Suburbs

In 2021, the Piedmontese penitentiary community was on several occasions the “epicentre” of the criticalities of the penal execution system in our Country. The press commentaries offered to public opinion, but also to institutions, a very critical picture of the situation that has settled over the decades in the 13 prisons of the Piedmont region.

We need to focus our attention on some **critical aspects** that the Piedmontese prisons have in common with other Italian penitentiary institutions. Some of these characteristics make our prisons an emblem: violence within the walls, the organisation of the penitentiary health care and the management of the Covid-19 emergency, structural criticalities and Administration's organisational difficulties.

The conclusion of the investigations - carried out by the Turin Public Prosecutor Office in collaboration with the Regional Investigative Unit of the same Penitentiary Administration - and the consequent



opening of a proceeding with the indictment of 25 operators of the Turin Prison (some for the crime of torture), sparked a particular national attention on the violent dynamics in prison, even before the disturbing images of Santa Maria Capua Vetere, but after the Asti trial and the filing of four specific investigation cases on the Ivrea prison (at end claimed by Turin's Prosecutor General). The request made by the Territorial Guarantors of constituting themselves as civil party and the decision of the Judge for the Preliminary Investigations to admit them in the trial clearly represent an important step forward for the creation of an effective guarantee network, in Piedmont and in our Country.

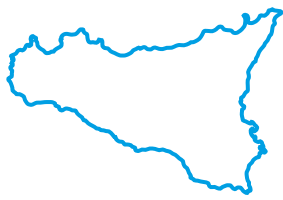
The difficulties faced by penitentiary health care, more than a decade after its reorganisation under the responsibility of the regional council of the national health service, finally came to light, both with reference to its overall situation and specific criticalities: the SAI, the Sestante section, the Filtro section, the Prometeo section and the Arcobaleno section in Turin, built before the reform -to be an experimental excellence over twenty years ago- sunk at different levels, blocked by daily emergencies and by the difficult relationship between administrations and jurisdictions. The Piedmontese regional organisational model, last defined in 2016, far from being duly implemented, demonstrated all its inadequacy: the lack of physicians and specialists further stressed the system, which is excellent and adequate only on paper. The pandemic emergency made evident all existing criticalities, with the impossibility of managing internal prevention measures, monitoring, vaccination campaigns and with the explosion of outbreaks in the most closed and "protected" circuits, such as the maximum security prisons of Asti and Saluzzo or the ward pursuant to article 41-bis P.L. of Cuneo.

The detention facilities in Piedmont where the circuits, formal and informal, settled in - perhaps more than other places and often without a design or a plan - with a chronic overcrowding and the presence of non-EU citizens above the average (with their specific problems) show their tragic inadequacy on a daily basis. Although the presence of detention spaces lengthily awaiting for refurbishment and reactivation (Alba, Cuneo, Alessandria, Turin), only a strong opposition made possible to avoid the construction of a new Medium Security wing inside a Maximum Security prison, a building -among other things- to be built on the area occupied by the football field, increasing the level of the difficulties in the management of the prison without solving the overcrowding problems of the existing wings. In a context characterised by lack of spaces and infrastructural networks (subjected to a laborious and hasty technological reconversion under the pressure of the pandemic emergency) which strongly affected the work of prison operators, a crisis of the top management - in a territory that is intolerably considered a "disadvantaged location"- broke out. The feeling of being considered peripheral in a structure "with a rather low center of gravity" inevitably has repercussions on the Administration's ability to fulfil its mandate: there is a lack - more than elsewhere - of directors, commanders, superintendents, educators, accountants, mediators and penitentiary police agents - who are often and willingly called to paper over the cracks in the organisation. The Supervisory Offices of Piedmont (by way of example, Cuneo and Vercelli) also suffer from serious staff shortages, both among the magistrates and the registrars. Their expectation for response by the organisation in reasonable times are constantly frustrated, indirectly causing tension and jitter.

Despite everything, the effort and personal dedication of the operators and the of external social fabric continue to **highlight points of excellence and hope**: the industrial tailoring laboratory in Biella Prison, for example, where 35 prisoners (...but it could be 60!) produce the uniforms of the Penitentiary Police Corps under the expert guidance of a well-known Made in Italy textile brand from Biella. The Saluzzo prison opened, with the commitment of the Turin University, a second university centre in prison. The Agorà project is about to start in the in "San Michele" Prison, Alessandria, consisting of a shared social living space, with a capacity of about 80/100 prisoners, who will have the opportunity



to enjoy the benefits of an equipped open space, instead of the corridors of a section. The attention showed by Pope Francis in person for two niche activities, although very symbolic, is surely worth noting. Two prisoners of the Verbania Prison, engaged in an embroidery workshop (with the support of the cloistered nuns of the Monastery of Orta San Giulio), produced a large papal banner. Two other prisoners and an internee of the prison/work house of Alba engaged in the internal vineyard project and subsequently in the external production of fine wine and mass wine for religious ceremonies. They were invited on two different occasions to papal audiences and this recognition was appreciated by the entire prison community of the institutions involved. The centre recognised and valued the work coming from the periphery - human, social and territorial - restoring the meaning of a whole complex and complicated organisation.



Sicily Giovanni Fiandaca

As of the end of 2021, the prison population in Sicilian institute amounted to 5,958, of which 107 in semi-liberty regime. As of the end of 2020, the prison population accounted for 5,733, which means that the measures taken to contrast overcrowding during the pandemic, when it hit the most, had a very limited incidence. Luckily enough, despite the continuation of the pandemic, the system did not experience episodes of violence or protest similar to those happened in the previous year. The absence of critical situations in this sense is mainly due to the skills acquired by the penitentiary police staff at different levels. This included providing adequate information and recommendation to ensure the respect of the prevention measures which had a calming effect on prisoners.

The need to prevent Covid-19 related infection in prison represented, as it is understandable, the main concern also for Sicilian prisons. In its globality, the infection rate among the prison population and the prison staff did not arise particular concern throughout the period (peaks reached about 100 cases among penitentiary police staff, while in the most critical period of the year, no more than fifty cases were registered at the same time in one week among the detainees). This was possible thanks to the effective cooperation with the Sicilian Health Care Department, the local ASPs and the penitentiary staff. We experienced some difficulties and misunderstandings which led the Office of the Regional Guarantor to take action against the criticalities reported by the current Regional Superintendent of the Penitentiary Administration (this office wrote to the President of the Region and to the Health Care Department to report the cases in point and to underline the double need to expedite the vaccination campaign in prison, including prisoners in the priority categories respect to other segments of the population). These rare situations were overcome in the process thanks to the good will and the hard work of all the institutional subjects involved.

Apart from the Covid-19 emergency, the health care question, in a broader sense, continued to be the main focus of the work of the Regional Guarantor. In 2021, among the requests of intervention



addressed to the Office of the Guarantor by prisoners, 40% concerned omissions or delays for health care treatment in prison or external clinical check-ups, for which insufficient attention or deficits in the functioning of the internal health areas and/or of the specialised sectors of the relevant ASPs added up (in particular, this office intervened multiple times to report delays for external clinical check-ups in the Siracusa's ASP). Among the causes of the excessive delays in carrying out specialist visits or external clinical check-ups (delays sometimes oscillating between eight months and more than a year), the length of the waiting lists (almost for all institutes) for external medical consultation which also include common citizens; this Office repeatedly proposed to the relevant political authorities to create different waiting lists for the prison population, but this suggestion so far seems fallen on deaf ears.

Major criticalities in the health care area include the shortage of psychiatrists and psychologists. Among the Sicilian prison population there is a high number of prisoners, both remanded in custody and serving a definitive sentence, suffering from serious psychiatric disorders, personality disorders or psychic distress of different nature.

In the second place, this office received requests for intervention concerning prison transfers for family rapprochement, study or work reasons. Unfortunately, the Sicilian Guarantor must report little clarity and transparency as to the criteria governing the assignment of prisoners in the various institutions, together with a frequent underestimation of the need to ensure prison locations as close as possible to the original territorial contexts and places of residence of the prisoners' families. The competent authorities often mention unspecified security reasons in arranging transfers from one prison to another, or the need to avoid overcrowding in prison; but there are cases in which the transfer approval is made based on the difficulty of managing particularly problematic prisoners, who end up rotating continuously and finding themselves badly in every institution. A vicious circle arising from the bad reputation preceding them and their consequent actions which are still relevant from a disciplinary point of view.

With regard to requests for transfer to other regions' institutes, the interested parties often mention response delays or the lack of it, for which this office is often called upon to solicit the DAP's competent office to examine the outstanding requests.

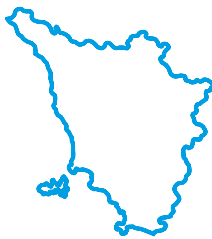
A long awaited **positive result** is the concrete activation of the University Penitentiary Centres also in Sicily, also thanks to the initial impulse and commitment undertaken by this Office. In particular, it should be noted that on 25 February 2021 a Framework Agreement for collaboration was signed between the Sicilian Guarantor, the Sicilian Region, the Regional Superintendency of the Penitentiary Administration for Sicily and the Universities of Palermo, Catania, Messina, and Enna "Kore". The regional stability law no. 9/2021 allocated the sum of € 150,000.00 for the financial year 2021 to support the start-up of the University Centres. It should also be noted that after the conclusion of the start-up phase, in November and December 2021, the individual implementation agreements were signed between the Universities of Palermo, Catania and Messina, the PRAP and the Sicilian Regional Guarantor.

On October 2021 this Office renewed the agreement with the UEPE expired in 2020. The agreement aims at starting and supporting forms of collaboration and promotion, as well as at raising awareness within the local community, to support and facilitate the social reintegration of persons in post-release supervision; the agreement includes the funding, made by the end of the year, of experimental rehabilitation paths, also with research purpose, on parenthood and punishment; the following institutions were involved in the project: the UEPE offices of Messina, Caltanissetta, Agrigento and Palermo, along with the penitentiary institutions of Messina, Enna, Sciacca and Palermo-Ucciardone. The purpose is the setting-



up of appropriately selected listening groups -for each of the aforementioned territorial contexts- involving ten subjects in post-release supervision and ten prisoners. Total investment € 60,000.00.

Lastly, it is worth mentioning that on 7 December 2021 the Guarantor Giovanni Fiandaca gave a talk at the national convention, held in Naples, and organised by the Campanian Guarantor, Samuele Ciambriello, on the theme “Ruolo, funzioni della Magistratura di Sorveglianza – Un confronto a più voci tra garanti, magistrati, avvocatura e associazioni di volontariato”.



Tuscany Giuseppe Fanfani

During 2021, the Guarantor resumed the visits to the penitentiary institutions, which in 2020, were subject to strong limitation due to the pandemic. A total of 18 visits were made to Tuscany prisons. The requests received by the Guarantor during 2021 totalled 154, with an increase compared to previous years. It is

important to report the main reasons behind prisoners' complaints, as they give a picture on how prison's critical issues are perceived by the people directly concerned, and those who support them. In the first place, there is the violation of rights (26% of cases), in the second place, the specific violation of the right to health (18.8%) which was counted separately, given its strong incidence over the total complaints, and in the third place, the requests aimed at obtaining support for alternative measures to detention (17.5%); in the fourth place, the complaints aimed at requesting support from the Guarantor to obtain a transfer (13.6%); other types follow, details of which can be found in the report of the Regional Guarantor.

The Guarantor identified two macro-areas of **major criticalities** within the penitentiary institution: penitentiary life and the rehabilitation paths after the release from prison.

I. Penitentiary Health Care

Daily life in prison, the ordinariness, is defined by a set of rules sharing a common tendency to immobilism. Moving past the pandemic, there are no turning point measures on sight for the recovery and overcoming of the conditions of discomfort already present before and aggravated by the imposed lockdown. Among the many, some particularly critical points can be listed. Firstly, health care in general: medical personnel, already under pressure in the pandemic, was further reduced in the course of 2021 due to the overall shortage of doctors in all the regional health care services, many requests for intervention made by prisoners, in fact, concern the right to health. Mental health in prison is not well organised or managed: alongside the ATSM, present in the Sollicciano prison (Florence), there is a high number of prisoners suffering from mental distress - as of today we don't know exactly how large, as told by the relevant operators-, who do not have access to the ATSM or other territorial community programmes with alternative measures to detention. These prisoners cannot be sent out, as there is no possibility to use the remedies provided for by the Constitutional Court with the sentence 99/2019, i.e., the detention in derogation for humanitarian reasons pursuant to articles 47-ter, paragraph 1-ter P.L.



(on this issue, and more generally on the right to mental health in conditions of deprivation of liberty, the Guarantor is conducting research in collaboration with the University of Florence). The transfers, or rather the lack of it, are a particularly sore point. It is the consequence of a common malpractice consisting of ignoring the needs of prisoners. It is common knowledge that preserving relationships with family would make detention less cumbersome for the prisoners. In some cases, it would also be helpful to overcome situations of great personal suffering, besides facilitating the work of the prison workers; however, on this point we continue to find a merely punitive and rewarding attitude, based on transfer to other prisons is granted, if it is granted at all, only after years. The question of “affectivity” in prison, in a broader sense, needs to be addressed seriously, with a program of concrete interventions aimed at designing “affectivity spaces” as an intimate meeting place; however, even on this point, no initiatives have been taken so far by the Penitentiary Administration. Last but not least, there are no rehabilitation programmes for detained women (in Sollicciano and Pisa). In fact, as the women prison population is scarce, so is the investment in this area.

2. Post-prison paths

In order to make the release from prison a meaningful step to a reshaped life, it is well known that adequate tools for reintegration are needed. But, when the educational staff is reduced to a minimum and empty positions are not filled up (recruitments following the new competition is not going to meet the needs for staff), planning is nearly impossible. Adequate training in view of the release from prison and job placement during imprisonment and on exit are the minimum tools necessary to avoid recidivism, but the achievements on this point so far appear inadequate. On this matter we must point out the great commitment of the Councillor for welfare, who is preparing calls for the social support of the prisoners, which we hope would produce in the coming years an improvement in this delicate phase of passage “towards freedom”.

The Guarantor also identifies two macro-areas of positive potential for the penitentiary institutions in Tuscany region: some work experiences and the university penitentiary centre.

1. Work area

Despite the generally inadequate situation in this area, there are some specific work experiences in Tuscany which deserve our appreciation. Massa prison activated some internal vocational laboratories, specialised in the sectors of weaving and small tailoring, and managed to create a market for their products in the intra-penitentiary and extra-penitentiary circuit. The laboratories engage most of the prison population. In addition, it is worth noting the work experience of the Gorgona and Pianosa island prisons in agriculture, in contact with nature which would deserves a greater recognition. After years of temporary appointment, Tuscany finally has a stable Regional senior executive, Mr. D’Andria. Therefore, it is now possible start programming new interventions and long-term projects for the regional penitentiary institutions.

2. University Penitentiary Centre

The Tuscany university penitentiary centre is aimed at ensuring prisoners' right to academical education, making available the university offer also in prison, along with academic paths as similar as possible to the ordinary paths. The Florence university penitentiary centre, located in Prato prison, was founded in 2000. The academic courses, coordinated by Pisa Universities, started in the academic year 2002-03 at the prisons of Pisa-Don Bosco and Siena-San Gimignano. The collaboration agreements, signed in 2010 and 2014, laid the foundations for a real regional project, and on October 2017, the bodies involved in the project strengthened their collaboration with a new agreement, which was also signed by the



University for Foreigners of Siena, making the right to an academic education in prison more effective. Florence University is directly engaged with the prisons of Prato, Florence Sollicciano and Florence "Mario Gozzini". From 2000 to 2021, the same university enrolled and tutored over 270 incarcerated students, 36 of which obtained the university degree. Pisa University is directly engaged with Pisa, Livorno, Volterra and Porto Azzurro prisons. From 2002 to 2021, the same university enrolled and tutored over 320 incarcerated students, 23 of which obtained the university degree. Siena University is directly engaged with Gimignano, Siena and Arezzo prisons. From 2002 to 2021, the same university enrolled and tutored over 203 incarcerated students, 14 of which obtained the university degree. The University for foreigners of Siena is directly engaged with San Gimignano and Siena prisons. The university activity, together with the different education programmes in the penitentiary institutes, are initiatives to be safeguarded and strengthened. In this regard the Regional Guarantor, in collaboration with the Universities of Tuscany, the Superintendency of the Penitentiary Administration for Tuscany and Umbria, intends to ensure its ongoing support to increase the enrolments at universities (Prato, Pisa and Siena).



Autonomous Province of Trento (Trentino-Alto Adige/Südtirol)

Antonia Menghini

The **most serious question** remains staff shortage. Prison agents and workers show clear signs of distress in all sectors of the Penitentiary Administration.

In particular, the Director manages both the Trento and the Bolzano prisons since November 2019. If during the last two years, the top priority was the contrast to Covid-19 emergency, the lack of an exclusive management – a situation which has not changed since the opening of the Spini prison in 2010 – stopped the long-term planning that would have made it possible to make the most of the peculiarities of a new and modern structure. The Penitentiary Police is also suffering from staff shortage and this unfortunately affects the realisation and the organisation of rehabilitation activities. The organisation chart, established by the Ministerial Decree of 2017, currently provides for a total staff of 227, of which 3 Officials, 27 Inspectors (22 men and 5 women) and 65 Superintendents (58 men and 7 women), and 132 Agents/Assistants (92 men and 40 women). There are actually 2 Officials, 8 Inspectors (7 men and 1 woman), 6 Superintendents and 134 Agents / Assistants (97 men and 37 women).

Lastly, and this is the most painful note, only 3 educators are present since the institute was inaugurated, compared to an organisation chart providing for 6. In fact, on the one hand, the same organisation chart is underestimated as it was defined on the basis of the original capacity - fixed at 240 presences by the Framework Program Agreement concerning "Interventions for the construction of state and provincial offices and structures in the city of Trento", signed on February 8, 2002 by the Government, the Autonomous Province of Trento and the Municipality of Trento and subsequently updated on April 2008 - when, currently, total prison population is about 300, with peaks of 350; on the other hand, the organisation chart still provides for 6 educators, when instead the Trento prison has never had more



than 3 staff units, being the remaining 3 units employed elsewhere due to orders and secondments. The above situation does not include the fact that recently the same educators were also called to take on additional tasks. This forced them to subtract time and energy from what should be their main task, namely the observation during interviews and meetings with the prisoners for the preparation of a tailored rehabilitation programme.

Medical staff also appeared, on several occasions, to be deficient compared to the planned organisation chart. The current situation is attributable to the lack of candidates in the public selection procedures rather than to insufficient funding for the area. The situation considerably worsened during the summer of 2021. It was then decided to resort -for a first phase- to a mixed transitional regime for the coverage till 8 pm for some days of the week (namely Saturday and Sunday) and till 12 am for the other days. Starting from 25 October 2021, night shifts were suspended and restored only by the end of December 2021. However, the situation is not going to improve due to the resignations submitted on March 2022 by two doctors.

The situation of those suffering from a real psychiatric pathology, about 10% of the prison population, also appears to be critical. Without prejudice to the consideration that those who develop a mental illness should not serve their sentence in prison, the only possible option available, as of today, is to make them stay in the prison sickbay, although this should only be a temporary solution. As a consequence, prisoners do not have access to the rehabilitation activities and risks to further compromise their mental and emotional status.

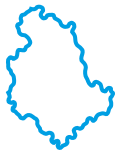
Lastly, this office reports numerous transfers to the Spini prison, often involving problematic people. As a consequence, the prison inevitably risks remaining an institution in which it is very easy to be moved in and very difficult to leave, where the management constantly tries to manage the emergency, without it being possible developing its positive potential.

The **strength point** of the Trentino reality is certainly the qualified contribution of the private social sector: not only by voluntary workers, but also cooperatives and associative realities (APAS, Cinformi, Caritas, ODOS), with more than 100 external operators, working hard to ensure the respect of the rights and needs of prisoners. In addition, school education is also provided, at all different levels, by professionally qualified and highly motivated personnel.

As for the social inclusion, it is worth noting the service, "Seminare oggi per raccogliere domani", launched on 14 July 2021 and financed by the Cassa delle Ammende on a project developed by the Autonomous Province of Trento. The project was assigned to the Kaleidoscopio Cooperative of Trento. It consists of social inclusion internships and specific training activities aimed at supporting social and work inclusion in the maintenance of the green areas, horticulture and fruit growing for those close to the end of their sentence. The project, in detail, is targeted on some specific prisoners' group (women, common and protected prisoners), totalling 26 people, and involves horticulture and fruit growing, besides specific training activities. Similar internships for social inclusion and job training are also provided to 17 people under the UEPE office's responsibility and to some young adults under the responsibility of the USSM office. Until today, the service has recorded a constant presence of prisoners with a shared satisfaction expressed by all subjects involved, including prisoners, educational area operators, Penitentiary Police and the management of the institute. The conclusion of the service/project is scheduled for November 2022. Its possible and desirable continuation depends on the number of Penitentiary Police agents



requested to guarantee security during the activities, as well as on the funds available. Qualified professional training, as well as work, unfortunately still suffer from insufficient resources. It is essential to find economical resources at Department level, but also to ask for a greater commitment of the territory.



Umbria Giuseppe Caforio

Region policies concerning the Guarantor Office:

Initiatives against the spread of the Coronavirus in prison. Since 26 February 2020, following the extraordinary meeting of the Regional Observatory on Prison Health, at the request of the previous Guarantor and the Superintendent of the Prison Administration, Gianfranco De Gesu, the Regional Health and Welfare Directorate, in agreement with the Prison Administration began the implementation of initiatives aimed at preventing the spread of the Covid-19 virus in Umbrian prisons. Upon the recommendation made by the Regional Council, Covid-19 referents were identified among health professionals to organise all activities related to health supervision and the transmission of data to the Region. On 3 July 2020, the Regional Council of Umbria appointed Antonio Onnis as Extraordinary Commissioner for the management of the Covid-19 health emergency with a mandate until 31/12/2020.

During the first phase of the Covid-19 emergency, approximately 130,000 triage checks were carried out, and 140,000 PPE were distributed to the prisoners of the Umbrian prisons. In addition, it was ordered an update of the previously approved regional documents for the containment of the infection from Covid-19 within the prisons. It consisted of new procedures and new methods of proper sanitation and management of internal activities, including the opportunity to preserve in-presence meetings and interviews to create a more relaxed atmosphere, and the enhancement of videoconferencing also for team work.

Following a series of discussions launched after the meeting of the Permanent Observatory on Penitentiary Health on 28 October, the regional Covid-19 Task Force for Prisons was established on 18 November 2020 to verify the health conditions within the Umbrian prisons. The regional Task Force is made up of the Extraordinary Commissioner for the Health Emergency of Umbria, two representatives of the Regional Health and Welfare Directorate and a contact person for each of the Umbrian Local Health Units (USL).

During the meeting of Observatory Table on 28 October - also in light of the situation recorded in the Terni prison, which saw a peak of 75 prisoners tested positive for Covid-19, and in the Perugia prison with 15 people tested positive - it was decided to proceed with a shared update of the procedures and the protocols already activated in the previous phase. The Observatory released the Regional guidelines aimed at guaranteeing uniformity in the interpretation and application of the health supervisory measures. The measures were approved with the Executive Resolution no. 15 of 05/01/2021. On 8 March 2021, Covid-19 vaccination campaign began in Umbrian prisons. The first to be vaccinated were



the prison staff, followed by the prisoners of Orvieto, Spoleto and Terni. The following week, vaccination campaign also started in Perugia prison.

Social and work inclusion policies. During the Covid-19 emergency, the Region was urged to prepare a project for the hospitality of medium-security prisoners, with an end of sentence within 18 months, but without a suitable domicile alternative to prison. Therefore, the “io Ri-esco” project was conceived and implemented, financed through Cassa delle Ammende with a tender procedure published by the Umbria Region in support of the social reintegration of these homeless prisoners. The project, targeted on 30 subjects detained in the four Umbrian institutes to be hosted in a facility of the region’s capital, was entrusted with the social cooperative “Frontiera Lavoro”.

During 2020, training activities were launched for social and work inclusion of 200 people in intramural penal execution. The funding was provided for by the POR-FSE 2014/2020, following the DGR no. 656 of 05/17/2019. During the same year, the PE.T.R.A. (Alternative Rehabilitation Courses) project was also implemented. The project was co-financed by the Umbria Region, following the Agreement signed on 26/07/2018 between the Cassa delle Ammende (Ministry of Justice), the Conference of Regions and Autonomous Provinces. Its aim was the promotion of a shared programming of interventions in favour of people in penal execution. The total funding, 200,000.00 Euro by Cassa delle Ammende and 60,000.00 Euro by Umbria Region, were used for the following activities:

Activation of internships aimed at social inclusion, restoring people autonomy and rehabilitation. These paths were carried out by the SAL, in favour of people (adults and young adults aged 18 or over) with a history of psychoactive substances abuse and/or behavioural or psychiatric disorders, taken in charge by the territorial social and health services of the USLs and subject to alternative measures, community sanctions or restricted in Umbrian prisons and compliant with the project requirements.

Strengthening of cultural mediation activities made available to the Umbrian institutes and UEPE offices. The implementation of a complex project, which in the context of social and work inclusion services, as mentioned, involves different levels of governance and aims at identifying sustainable and possibly exportable organisational models, requires programmatic coherence and operational integration; at the same time, in order to obtain indications for setting up new interventions aimed at supporting the development and innovation of services for social and work integration, it becomes essential to identify and disseminate results and good practices. For these reasons, the project proposal presented by the Umbria Region, in addition to the two Actions described above, contained the provisions for the organisation of two promotional events (at the beginning and at the end of the project) to report the objectives and the results achieved. The first of these events took place 12/11/2020 on the GoToMeeting Platform.

The **major criticalities** found in the penitentiary institutes include:

The right to defence. The continuous deflection of the principle contained in Article 42 P.L., with frequent transfers to prisons far from the residence place, reduces or makes it impossible to set up meetings with family members (particularly prejudicial in relations between parents and children or with elderly parents or sick family members), and often results in a compression of the right to defence, the exercise of which is made difficult when the prisoner’s lawyer has his/her place of business in a place other than the place where the prison is situated, as it often happens.



Further prejudice to the right to defence is created by the ineffective communication of the appointments of trusted lawyers by the prisoners. According to a specific ministerial circular, this communication must also be sent to the bar of lawyers competent for the prison's territory. It often happens that the bar is not the one the prisoner's lawyer belongs to, if originally not resident in the district. Such episodes have been pointed out on several occasions not only by the prisoners, but by the lawyers themselves: this conduct, in fact, constitutes a mortification of the right to speak with one's newly appointed lawyer, which is, on the other hand, unaware of the appointment.

Specific questions concerning foreigners in prison. The high percentage of foreign prisoners also involves a communication problem. In fact, they may experience difficulties in understanding their rights and duties or encounter difficulties in interpersonal relationships with prison workers or other prisoners, or in getting access to rehabilitation opportunities. The question concerning the preservation of family relationships -one of the pillars of rehabilitation paths (Articles 15, 28, 18, 30-ter, 45)- is particularly important, especially when it comes to family visits and phone calls: foreign prisoners experience many difficulties in this sense, only partially and extraordinarily overcome during the pandemic thanks to a wider access to IT devices. Since families live in a foreign country, the impossibility of enjoying visits from family or relatives or receiving phone calls, has further negative consequences, such as being more easily subject to repeated transfers from one prison to another, compromising the rehabilitation paths or making it more difficult staying in contact with the supervisory judge.

Visiting prisoners under the Covid-19 restrictions. Despite the efforts made by the administration to mitigate the distance from the loved ones and the effects caused by the halt to in-presence visits, a problem remains regarding in-presence visits with minor children. In fact, the limitation that provides for the access of one person at a time for in-presence visiting (in order to avoid gatherings) does not work well with the obligation to accompany minor children. This normative loophole puts in evidence the contrast between the need to ensure the prevention of infection in prison and the need for the prisoner and the minor to cultivate their family bond, to the detriment of the latter. However, it should be noted that, in general, there was a certain propensity among prisoners to avoid in-presence visits in order to protect themselves and their families.

Penitentiary Health Care. As anticipated above, the protection of the right to health is the main concern of the prisoners. During 2021, this office noted the difficulty in providing specialist visits and diagnostics when personnel and equipment external to the penitentiaries were required, with delays in carrying out health care interventions. These difficulties arise from the inadequacy of specialist services in prison, from ordinary access to the waiting lists of regional health services, and sometimes from difficulties in translation by prison staff, aggravated - during the pandemic - by the reduced availability of hospitals.

Other problems in health care area concern the access to medicines prescribed following specialist visits and which prisoners are often unable to purchase independently because of their cost. In fact, it should be remembered that the Decree of the President of the Council of Ministers (DPCM) 01/04/2008, in the Annex A, containing "Guidelines for the interventions of the National Health Service to protect the health of prisoners and internees, and of minors subjected to criminal measures" provides that the health facilities present in each penal institution should guarantee the provision of general medicine health services identified by the essential levels of assistance (the so-called LEA), including the presence of specific therapeutic indications, the free provision of the necessary pharmaceutical services, including Group "C" drugs.



In addition, the failure to implement therapeutic continuity has been repeatedly reported to this Office, especially following transfers from one prison to another, which are also affected by the inexistence of computerised medical records.

Mental health in prison. It represents a particularly critical area both for the protection of health in prison and for the situation of the prison system as a whole.

The association of any form of discomfort of emotional, behavioural nature or even as a reaction to intolerable living conditions in prison, to the sphere of psychiatric illness is an increasingly widespread practice. This is in contrast with the articles of association of the World Health Organization, which defines the state of health as the state of complete physical, mental and social well-being and not simply the absence of disease or infirmity. Mental distress, therefore, does not necessarily coincide with the pathology.

This, despite the fact that the protection of health is a human and constitutional right, and as such equally valid “outside” and “within” the walls, under the conditions of equal treatment between the free people and the prisoners.

In Umbria, the rate of prisoners with psychiatric distress is certainly higher than the rate of the general population and the custodial regime itself is the cause for the appearance of latent or supervening mental illness.

The transfer to the National Health Service of the health functions of the penitentiary system, established by the DPCM 01/04/2008, includes among its provisions the access to quality health treatments and prevention medicine, similar to those granted to the general population. The presence of the Mental Health Departments in prisons should therefore allow for diagnostic and therapeutic paths to be activated in a timely manner; constant psychiatric and psychological support with the implementation of rehabilitation programmes. The presence and the quality of the psychiatric services in the penitentiary institutes certainly represents a critical issue because of the failure to adapt the offer of psychiatric service in prison after the suppression of judicial psychiatric hospitals, which instead should have entailed an increase in the offer of services, including taking care of prisoners suffering from psychiatric pathologies and the involvement of other professionals, such as rehabilitation therapists. In the Perugia institute, for example, psychologists are employed by the USL for a total of 30 hours per week, and psychiatrists for 15 hours (data updated on December 2020), compared to over 163 subjects under psychiatric observation/therapy who, in these conditions, can only be treated with containment measures and pharmacological therapies. In the Terni institute the presence of specialists was not guaranteed for at least a year, with further obvious repercussions on the therapeutic continuity of the patients.

These shortcomings also have repercussions from an organisational point of view, especially in the perspective of a synergistic and systematic consideration of the various institutional responses to mental health needs, such as the Observation Departments and the Intramural Mental Health Units, the REMS for the incapacitated person, as well as the community facilities able to accommodate these types of patients.

In this scenario, in fact, the competences of the Department of Mental Health represent an unavoidable element of guarantee, not only in terms of functional integration with the aids established within the prisons by the local Health Authorities, but also with the network above described, for the integration with the territory to ensure adequate treatment paths and shared procedures. In this perspective, there is also a need for an even closer coordination with the intramural health care services dedicated to the treatment of addictions in order to establish effective and shared health practices for the treatment of prisoners with a condition of comorbidity due to psychological or addiction problems, which is very frequently observed in the penitentiary sector. In conclusion, it is essential to highlight the indisputable



link between mental distress and its intramural management.

Critical events in Umbrian prisons require an ongoing high level of attention, especially with regard to the prevention of the risk of suicide and self-harm in each penitentiary institute, as part of the implementation of the guidelines indicated both by the National Plan and the Regional Plan.

Rehabilitation opportunities and prospects for social reintegration. Prisoners frequently complain about the lack of rehabilitation paths and reintegration activities, training courses or work activities and, at the same time, the inadequacy of the resources necessary to guarantee the remuneration of the prisoners who work in the Penitentiary Administration. The reassessment of maintenance costs makes it increasingly difficult for prisoners to meet their own needs (in fact, the inadequacy of food, equipment, the lack of products for personal hygiene, the hygiene of the places or even toilet paper were reported several times to this office) and even more difficult to contribute with their work to the maintenance of minor children.

It should also be noted that for those prisoners who have worked and are in a state of unemployment, as of today, there is no possibility of receiving some form of compensation. The payment of social security contributions is in arrear, following the entry into force of the new anti-fraud legislation, according to which the INPS can only accept payment to nominative bank accounts as a beneficiary for the payment of social contributions, while most penitentiary institutions still use multiple current accounts.

Recently, another critical issue arose after the INPS communication no. 909 of 5 March 2019. It informed that prisoners engaged in paid work at the penitentiary institution in which they are confined cannot be granted the NASPI (New Social Insurance Provision for Employment) during the periods of inactivity. In the context of the Covid-19 health emergency, difficulties emerged for the implementation of distance learning programmes within the Umbrian prisons, among which we report the insufficiency of IT equipment (personal computers, tablets) for education purpose; the lack of Internet connections in classrooms; the presence of IT networks unable to support the data traffic needs (also taking into account the need to guarantee meetings with family members and lawyers via Skype and/or videoconferences).

Finally, it should be noted the lack of adequate institutional support for cultural initiatives (artistic, theatrical, cinematographic, creative writing) within prisons, which are implemented almost exclusively on a voluntary basis in spite of the fact that, in some cases, they have obtained a public recognition that goes well beyond the territory of the Region. This is the case of the theatrical productions of the "Compagnia Sine Nomine", active at the prison of Spoleto and permanently included in the programme of the Festival dei Due Mondi.



Valle d'Aosta

Adele Squillaci

The report was drafted by the former Regional Guarantor Enrico Formento Dojot, in office until January 2022.

Criticalities

The institute. Prison population in the Valle d'Aosta institute is characterised by a high turnover, a considerable presence of foreigners -not homogeneous with each other-, and the presence of Italian collaborators of justice. The main trait of the Brissogne institute is the absence of a precise identity, which has also repercussions on the initiatives promoted in terms of work, training and recreation. In fact, it represents the preferred alternative destination when overcrowding problems arise in neighbouring institutions and, the most problematic prisoners are often transferred to this institute.

The Covid-19 emergency, except for the second autumnal wave, always appeared under control. During 2020 and 2021, the prison did not suffer from overcrowding, as an effect of the measures taken to reduce prison population in order to tackle the spread of Covid-19 infection.

The lack of top management. The Director and the Commander positions are not covered after years of waiting. During 2021, as it was for 2020, the Director's position was covered by an executive cadre sent on purpose. However, this situation does not have a clear end date. Although the presence of an Acting Director is a positive aspect, it cannot be compared with the stable presence of a managerial figure in the institute.

Lack of work and training activities. The main trait of the Brissogne institute is the lack of a defined identity, which also affects work, training and recreation initiatives. The high turnover, the high percentage of foreign prisoners and the absence of top management make it extremely difficult to implement stable projects aimed at reintegrating the prisoner after the sentence has been served.

Opportunities

Low Custody Prison. In a 2017 note addressed to the Piedmont, Liguria and Valle d'Aosta Superintendency and for information to the National Guarantor on occasion of several institutional meetings, the Guarantor made a proposal, a feasible one in its opinion, to get out from the difficult situation of the Valle d'Aosta institute. The proposal, in brief, concerned the opportunity of reviving the potential of the institute converting it into a Low Custody Prison, making it a flagship for the entire national prison system, based on the assumption of a homogeneous prison population, with prospect of remaining in the same institution, in a context able to support work, training and recreational activities. As of today, this office has not received any feedback on its proposal. Besides, the Brissogne prison, built in 1984, starts showing signs of ageing.

Network building. It would be necessary to build a network between the institute, the Region, the local authorities, the local economic and social fabric, in order to implement work and support projects. With regard to the need for a greater participation of the regional territory, repeatedly requested by the Acting Director, this Guarantor underlined the need for the prison to be an active part in strengthening the relationship with the territory, opening up to the population through meetings or other similar initiatives, with the aim of making itself known in the socio-economic fabric of the Valle d'Aosta. A fruitful relationship would, as a matter of fact, be bidirectional and aimed at reciprocal acquaintance.



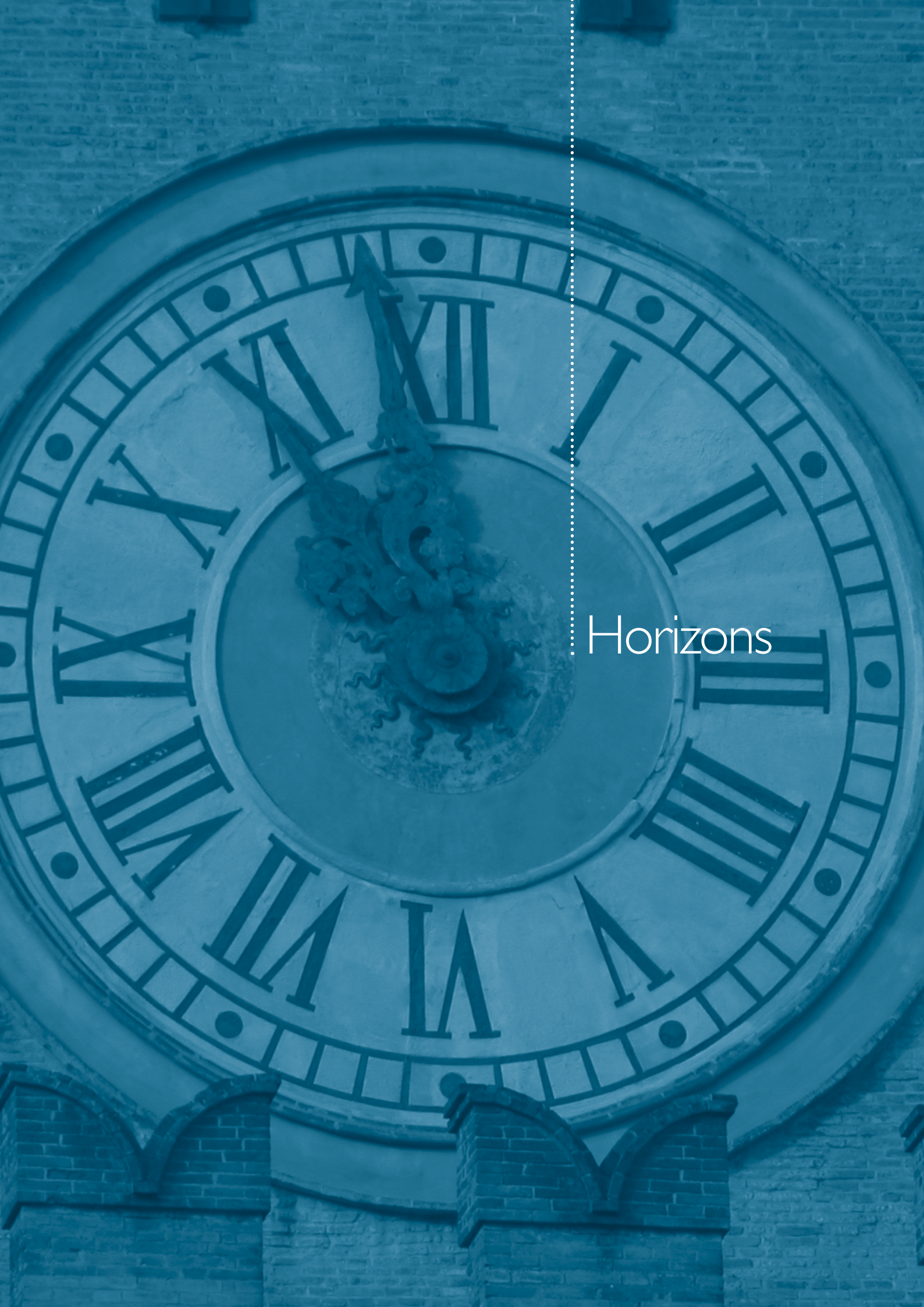
Veneto

Mario Caramel

The new Guarantor took office on 28 July this year, and he has been operating in full continuity and collaboration with the previous Guarantor ever since his first day in office. From August to November, the Guarantor visited the ten prisons of the Veneto region, personally meeting the Directors, the Commanders and, in some cases, the General Managers of the local USLs. During 2021, the Municipal Guarantors of Padua and Venice were appointed, respectively effective from April and June, giving significant support to the Regional Guarantor for meetings with prisoners in the four local prisons. Therefore, the Regional Guarantor could focus on the interviews with those expressly requesting its intervention. The local Guarantors, on the other hand, could also participate in the Veneto Coordination of Guarantors.

Following these meetings **some criticalities** were found, such as the lack of directors and of educators in rehabilitation activities. The lack of Directors in Vicenza, Rovigo and Giudecca prison is covered by Acting Directors causing work overload to the effective Directors in charge (2 or more) with following slowdowns in all the activities of the respective institutes; lack of pedagogical-legal workers causing heavy setbacks in rehabilitation activities; shortage of specialised doctors, especially psychiatrists, as well as other health professionals, deficiencies aggravated by the serious pandemic crisis which did not make it possible to find personnel available to work in prison. The Guarantor also reported, on several occasions, the criticalities related to the structural aspects of the penitentiary buildings and their location. Some are built in places difficult to reach by public transport; some buildings do not have hot water or heating and cooling systems, there are no separation between the hygienical services and the detention rooms, common showers often show mould spots, signs of ageing and serious lack of maintenance works, water and other systems are inefficient. It is also to be noted the serious situation of the juvenile prison of Treviso, hosting minors from all over the Triveneto area. The building lacks internal and external spaces suitable for implementing any essential activity. The relevant Ministry declared that renovation works are underway in the former prison of Rovigo, where, at the latest in a couple of years, the juvenile prison should be moved. Lastly, this office must point out that although the presence in prisons slightly decreased due to the pandemic, the Veneto prisons still suffer from overcrowding. Current prison population accounts for 120% of the official capacity.

Among the **positive aspects and opportunities** for 2021, it is worth mentioning the meetings of the Interinstitutional Observatory for Prison Health, which met several times to update the Guidelines and operational indications for the management of Covid-19 within prisons. The Observatory customarily meets with the PRAP on a regular basis to deal with the health care aspects of all the Veneto institutes. An increase in the use of technologies, including classrooms' internet connection for distance learning, as well as the use of mobile phones to make video calls as a replacement for in-presence meetings/interviews are among the other positive aspects for the year reported.



Horizons



Horizons

The National Guarantor is constantly evolving and its wide remit, entrusted upon it by the Legislator, needs a regular assessment and redefinition of its short- and medium-term goals within the framework of that very remit. Being deprived of liberty is a varied and multifaceted condition. Skills to be used in such a situation are many, and the knowledge of the matter must be constantly improved and updated. However, new horizons are emerging and call upon the Guarantor, by pointing at paths to be followed thanks to the work that has been done so far, the visits paid by the Guarantor, the relations established with the various stakeholders, as well as the changing social, political and institutional conditions and their assessment.

Our next chapter deals with these new horizons and new challenges by explaining the actions that the Guarantor wishes to establish or develop.



34. The Guarantor as Authority

If human beings keep dreaming of killing *Chrònos* to fulfil their wish of stopping time from passing¹, such utopia – or rather such dystopia (it depends on the point of view) – seems to have turned into reality because of the lengthy and slow transformation of the *National Guarantor for the Rights of Persons Deprived of Liberty* into an Authority. On the one hand, significant progress has been made in strengthening the remit of the National Guarantor, but, on the other hand, time seems to have stopped, in the same way as clocks stop in many prisons, where they show the right time only twice a day. Such a well-known situation mirrors what happens to personal time, which is often empty and deprived of meaning, and goes by slowly and in vain.

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In each year of its mandate, the National Guarantor has taken stock of the progress to become an *Authority* by assessing the situation in the chapter of its *Report to Parliament* outlining its future and explaining the prospects for action to the legislative power. The report's title is *Orizzonti (Horizons)*, and it is published on a yearly basis, since 2018, when the second report was published. The state of the art was first outlined in 2018 in the document *Verso una Authority*² (Becoming an Authority), and again in 2019, in a document bearing the same title, *Verso un'Authority*³, and again in 2020 in the report *Il cammino dell'Authority*⁴ (Making our way to becoming an Authority).

The 2021 *Report to Parliament* highlighted the lack of significant progress in terms of legislation. However, this situation changed thanks to a major reform, approved at the end of 2020 by means of the Decree-Law No. 130, of 21 October 2020, and its amendments, transformed into Law No. 173, of 18 December 2020. This was mentioned in the paragraph dedicated to the National Preventive Mechanism, *NPM per legge*⁵ (NPM implemented by law): seven years after the National Guarantor was established and almost five years after it started working, Italy entrusted the mandate of the *National Preventive Mechanism*⁶ to the entity that had implemented it over the past 5 years.

What is still to be solved is the normative issue, which was last outlined in 2020 in the document *Il cammino dell'Authority*. No progress has been made since.

1. G. Tonelli (2021), *Il sogno di uccidere Chrònos* Feltrinelli, Milan, p. 17.

2. *Report to Parliament 2018*, p. 144 and ff.

3. *Report to Parliament 2019*, p. 215 and ff.

4. *Report to Parliament 2020*, p. 286 and ff.

5. *Report to Parliament 2021*, p. 46 and following pages.

6. The National Guarantor implemented the *NPM* on the basis of its appointment by the Permanent Representation of Italy to the International Organisations in Geneva, stated in the Letter of Credence of 25 April 2014.



In the meantime, the Guarantor's mandate became even wider, and a fifth sector related to imprisonment was added to the four traditional ones (Criminal justice, Police, Migrants and Health), i.e. the one related to the pandemic, namely the quarantine areas and, in general, all care homes where nobody could - and in some cases, can - enter. In 2021, we decided to assess the importance of our complex mandates for the first time, albeit roughly. In the *2021 Report*, we (non-exhaustively) assessed how many different facilities are part of the monitoring mandate: 190 prisons for adults, 39 prisons and first reception centres for minors, 10 hospital detention wards, 90 inpatient hospital detention rooms, 31 REMS (residence for the execution of safety measures), 340 (public and private) psychiatric facilities, 12,857 social care facilities for the elderly or disabled people (including RSA, social care homes for the elderly, and RSD, social care homes for disabled people), 2,257 Police, Carabinieri and Revenue Guard Corps security cells, 10 CPRs, 4 first reception centres, 5 quarantine ships, 29 Police suitable premises, 39 border detention centres, 474 forced return flights. In addition to the above, a various number of quarantine communities and centres (e.g. the Covid-19 hotels).

This means a large number of places, where people are imprisoned or detained and which are very different from one another. They also need different kinds of training, observation skills and an open mind. Considering the heavy emotional consequences of such places and situations, what is needed is to protect oneself from what we deem painful, otherwise it could not be possible to fulfil our difficult tasks.

The National Guarantor has also “visited – due to reasons linked to its mandate - those centres dedicated to unaccompanied foreign minors, reception centres for in-transit migrants, formal and informal settlements of agricultural seasonal workers, ships that are not allowed to let rescued migrants to go ashore”⁸.

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7. *Report to Parliament 2021*, quote, p.142 and ff.

8. A. Albano, *Lo sviluppo del paradigma preventivo. L'esperienza del Garante nazionale dei diritti delle persone private della libertà personale (GNPL). Second part, “Studium iuris”*, 2021, no. II, p. 1303 and ff.

9. As a matter of fact, working with the *National Guarantor* means, from an emotional point of view, “bearing the burden of such a reality, which is a painful reality, irrespective of the reasons that caused it. Entering prisons, police stations, CPRs, first reception centres, or social care homes for the elderly and disabled people, means meeting vulnerable and confused people and takes a deep emotional toll”. See *Report to Parliament 2019*, page 218.

10. What working with the National Guarantor actually means, is “working in a ‘thinking’ office. It is not just a technical entity, but an active and integral part of the Italian abuse prevention mechanism. It means long missions (the regional missions). It means travelling all over Italy (the preventive mandate applies to the entire country). Sometimes it means boarding four planes in a day or flying to the equator and back in one day or in the middle of the night (if no problems arise. This is what happens with forced return flights to Africa). It means working around the clock (visits to police station often occur very early in the day)”. See *Report to Parliament 2019*, page 218.



The normative elements which must be taken into consideration to strengthen this entity are known and the National Guarantor mentioned them in its previous *Reports*. Details of the technical solutions have been explained¹¹, but so far there are no concrete results. In a nutshell, what is necessary is streamlining “a number of procedures common to various entities and related to properties and resources; in addition to that, the National Guarantor must be totally independent as for its staff and accounting roles”¹². This must be urgently implemented to ensure a smooth and effective continuity upon the handover that is taking place in Q1 2023.

Besides, we cannot ignore the elephant in the room, i.e. “the change to the staff status, which cannot fall under what is regulated by contracts applied to staff of public bodies. Governing a complex reality can be done only if *mission* and *vision* go hand in hand, as the science of organisation tells us. In the long run, motivation, cooperation and the positive effects due to the new situation fade out if they are not accompanied by actions rewarding individuals and the organisational unit”¹³.

From a chronological point of view, in 2019 we observed that lawmakers did not make any progress, and optimistically acknowledged the short time gone by since the National Guarantor started working (three years), which was compared to “just one morning”, as François de Malherbe said. Today, 8.5 years after the establishment of this entity, this poetic image cannot be used any longer.

From a chronological point of view, in 2019 we observed that lawmakers did not make any progress, and optimistically acknowledged the short time gone by since the National Guarantor started working (three years), which was compared to “just one morning”, as François de Malherbe said. Today, 8.5 years after the establishment of this entity, this poetic image cannot be used any longer.

On the one hand, it is *Chronos*, “time that goes by”, “the time during which the story unfolds”, and this is a very intense story. But, on the other hand, let us look at the normative story: what we are witnessing here is a sort of low quality *Aion*, where “that moment [...] forever frozen in time”, it is not the “perfect” one. What the Guarantor wishes is the lawmakers to turn this suggestion into reality, by understanding “when is the right time, i.e. that very short moment passing between *Chronos* and *Aion*”¹⁴.

11. Please see the *Report to Parliament 2020*, p. 286 and ff.

12. *Report to Parliament 2020*, quote, p. 286 and ff.

13. *Report to Parliament 2020*, quote, p. 286 and ff.

14. G. Tonelli, *Il sogno di uccidere Chronos*, quote, p. 29.



35. Time Is of the Essence

Activities aiming at protecting and defending fundamental rights are multifaceted – i.e. the ethical, cultural, political and legal, as well as the real and specific dimensions are there – and they go through a number of phases. Each phase has its own duration, which must be respected, since it cannot be either shortened or extended too much. These various dimensions and phases interact. The way they interact and their development over time must be taken into account. In addition to that, the interaction must be strengthened as part of an effective strategy, if the goal is to be reached.

The international campaign against the death penalty - in which Italy is indirectly involved, since it can contribute to abolish it or stop its implementation in other countries - highlights how the legal and philosophical cultures need to reject the death penalty and how it must be collectively rejected. This must lead to political decisions and regulatory choices aimed at abolishing it all together. So, those decisions and choices must achieve the real goal of preventing the death penalty from being implemented. It may also be the other way round. The cultural and political leaderships are in favour of abolishing the death penalty, which leads to repealing those laws authorising it, before the general public's sentiment turns in favour of such a choice. Or, when the death penalty is not *de facto* implemented, which precedes its *de jure* abolition.

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That said, if we intend to apply such general ideas to the issues directly concerning Italy, what comes to mind is the long-standing (time again) issue of our law needing to comply (a goal not yet achieved) with the international rules aimed at preventing and punishing abuse and, in the most serious cases, torture. The first phase, focused on rejecting torture and inhumane and degrading treatments, has been concluded. However, a distorted mindset still exists, which deems it right to protect police officers irrespective of their behaviour, even if fundamental rules are broken. What is still open to discussion is whether rejecting such behaviour is fully accepted by our society. We are facing a problem, which has not been fully resolved yet, that is. the development of regulations and rules and their full implementation, which seems to take an intolerable amount of time. As we all know, it took twenty nine years for the first goal to be achieved, that is the recognition by the Italian legal system of a specific offence of torture, when considering the ratification of the UN convention against torture as our starting point. Three events set the change in motion: the very serious crimes committed in Genoa (“I fatti di Genova”), the utterly poor domestic response due to the structural limits of the Italian legal system, and a strong international reaction, which led Italy to be “convicted” four times by the European Court of Human Rights for violating article 3 of the European Convention on Human Rights, both substantially and procedurally, for not having punished the culprits.

No further progress has been made. If those who commit torture are not identified, the recognition by the criminal code of such an offence is useless.



Italy is then taking a very long time to comply with the international obligations. On the contrary, decisions are taken quickly, when restrictive measures are implemented. It takes little time for the various national and local authorities to start using new technological tools, even if the latter – although categorised according to the falsely reassuring label of being “non-lethal” have been studied and such a general label has been challenged by those who have already experienced such tools.

What is needed is an identification system of the members of the police forces, participating in public order operations. This is what the four above-mentioned sentences state. However, Italy has not yet complied with them, as envisaged by article 46 of the European Convention on Human Rights, and this is why the Committee of the Ministers of the Council of Europe has not closed the file concerning Italy yet, in spite of the years that have gone by.

It is time now for the Italian Parliament to act. We think that the same goes for CCTV systems in prisons, which do not need regulatory measures, and which the Government promised to implement, but which will be ready only by the first half of 2024. As for police equipment, which needs to be identified, the Government did not promise anything, not even in the long or medium term.

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Time ends up measuring the different points of view and political priorities, and also ends up showing cultural decline.



36. The Reconstructive Role of Justice

In Italy, the National recovery and resilience plan triggered reforms focused, among others, on the juridical system. Such reforms envisage a number of projects that might be able to deeply modify our system. Among those, it is worth mentioning the introduction of autonomous and organised rules focused on “restorative justice” in our legal system, if such justice – as envisaged by the enabling act¹⁵ – will be used as a new and different way to solve those conflicts caused by illegal actions, when compared to common justice.

While this report is being written, the working group of the Ministry of Justice in charge of drafting the delegated legislation¹⁶ is concluding its work. What comes next might contribute to define the body of laws. However, in the meantime, what must be identified and taken into account are those features characterising the project as a whole.

“Restorative justice” is characterised by founding and innovative values and aims at responding to the suffering of the victims by taking into account the personal and social damage caused by the crime. It also aims at developing a common feeling concerning justice, which is different from the traditional one and may contribute to justice itself. The traditional feeling about justice and its worst characteristics are strengthened by the unwieldy judicial populism and by the increasing demand for safety, which have taken root in the general public in the last few decades. The common sense of justice is not supposed to just punish the culprit, thus providing the State’s response to the offence. In any case, such punishment is limited to the years spent in prison – which are always too few, if seen from the victim’s point of view. This common sense must contribute to heal the personal and social wound caused by the crime.

This is the fundamental idea that caused the National Guarantor to share and support the normative definition of a system based on mediation that may rebuild what has been damaged, as well as to support its inclusion in a wide governmental project to reform justice. It is on the basis of this fundamental idea that the Guarantor believes the provisions of the enabling act must be interpreted. Such act includes all types of crimes, no exclusions, and can be used at any stage of the criminal proceedings, from its very start, and upon enforcing the sentence.

Mediation and reparation activities have a wide reach – this is extremely meaningful for the National Guarantor – and are clearly focused on developing a process that does not interfere with the trial or the main rules of the judicial systems. The wording of letter e), paragraph 18, clearly states the

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15. Law no. 134 of 23 September 2021 – Art. 1, para. 18.

16. Working group V, coordinated by Adolfo Ceretti, established by decree on 28 October 2021 of the Ministry of Justice.



need to prevent such interferences from happening: what is envisaged is that “the favourable outcome of restorative justice programmes can be assessed during the criminal proceedings and upon the execution of the sentence”. This means that restorative justice activities have no automatic effects on criminal proceedings. Moreover, the two systems ought to develop on two different, even if communicating, plans.

In this respect, what must be developed is a way to make mediation and restorative justice programmes available to everyone involved in the offence. They must not be left entirely to the decisions taken by the judicial authority.

Moreover, what must be guaranteed is the confidential nature of the statements of those involved in the activities – these people may be directly involved, or be mediators or civil society representatives. This aims at preventing any criminal consequence from taking place in the framework of any criminal proceedings within which the restorative justice programme is implemented.

Restorative justice activities are focused on each individual crime and this ensures that the mediation and reparation dialogue between the offender and the victim be free from deterring effects or functional reservations in relation to trial and, therefore, aim at fulfilling the purpose of the system: the healing of the wound caused by the crime itself.

The solving of the conflict by implementing the “restorative justice” is based on two prerequisites: the victim may not wish to participate in the mediation and reparation activities as one of the main actors – and this must be respected – and the involvement of the social community in these activities.

The solving of the conflict by implementing the “restorative justice” is based on two prerequisites: the victim may not wish to participate in the mediation and reparation activities as one of the main actors – and this must be respected – and the involvement of the social community in these activities. The first prerequisite means finding mediation opportunities that may be different from an in-person meeting of the people involved. The second prerequisite states that every crime, as such, breaks the “social pact” and, therefore, affects the entire community. Many crimes go against the more general interest, such as crimes breaking the narcotic drugs act. In such cases, what is needed is the involvement of the social community to integrate the different actors in the mediation.

The idea of a “restorative justice” system has been discussed in Italy since the end of the 1990s. Intellectual and legal discussions developed since then and enriched by the proposals of the *General States on the execution of sentences*, which was supposed to be translated into law¹⁷, seem to have reached their goal – as hoped by the National Guarantor - by fully turning into reality the inspiring idea of a different justice. One that rebuilds.

17. Law no. 103 of 23 June 2017 – Art. 1, para. 82, 83, 85, letter f). See, in particular, materials from the *Panel of Discussion 13* (coordinated by Grazia Mannozi) and the *Final document*, part VI, written by the Expert committee of the *General States on the execution of sentences* (Claudio Giostra – coordinator, Luigi Ciotti, Franco Della Casa, Mauro Palma, Luisa Prodi, Marco Ruotolo, Francesca Zuccari).



37. Re-entering society thanks to culture

Experts and inmates alike agree that being imprisoned causes suffering, uncertainty, anxiety, distress and apathy. Such mixture of feelings and states of mind is often fruitless, since people are not free to express themselves, or cannot do it. Being an inmate is then stolen time, empty time, or rather emptied time, because people might lose their skills and abilities – such as reasoning, thinking and communication abilities.

We must value this time and channel it towards goals that might help people to make the most from their imprisonment. A number of elements might contribute to achieve such a result. Among these, we might highlight the importance of cultural and vocational training, which adds value and improves the knowledge of each inmate, their skills (as envisaged by article 13, Prison Administration Act), and makes them aware of the fundamental values of the society to which they will go back at the end of their custodial sentence.

Article 19 of Prison Administration Act entrusts prison administrators with organising training courses. Special training is given to foreign inmates with the aim of integrating them in the social context, particularly by “teaching them Italian and the Italian constitutional principles”. Such knowledge is especially important if they are to become part of our society. Learning society’s shared values, and being able to speak Italian, as well as knowing how to behave in different situations, are – as already stated - a fundamental and preliminary step of a special programme focusing on education and prevention. What article 19 states - although focused on foreign inmates - ought to be applied to programmes intended for Italian inmates as well. It aims at helping them develop their own network of people that might contribute to improve that critical ability intrinsic to the very concept of “citizenship”, to learn society’s rules and to develop self-respect and respect for other people.

Therefore cultural and educational training is one of the most important tools in the process of inclusion and of reviewing past behaviours. The right to education is enshrined in the Italian Constitution and, as per article 15, Prison Administration Act, it is at the top of the list of measures implemented in prisons. It aims at providing people with “cultural and vocational training”, which needs to be developed as part of a lifelong learning approach, as suggested by the Council Recommendation of 22 May 2018 on *promoting common values, inclusive education, and the European dimension of teaching* (2018/C 195/01).

In such a context, which seems to be shared by everyone, it is not easy to understand how difficult it is to provide secondary and university education in prisons. This is due to the unbalanced relation between prisons and the Prison Administration on the one hand, and schools and universities on the other hand. What is difficult is to support and tutor detained students, because of sudden and unannounced transfers that put an end to the educational training. Such difficulties emerge from restrictive rules that are suddenly implemented and were not discussed: this indicates *hospitality* (even a welcome one), rather than being aware of *equality* concerning everyone’s role in providing

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training and education.

What is even more difficult is providing cultural opportunities in addition to official education. Such opportunities ought to provide inmates with the possibility of discovering and showing their expressive and cultural *self* and with tutors that can interpret and steer that display of personality. This is very different from that sort of *entertaining tone* that can often be found in official documents and in many of the activities organised in prisons.

Both formal education and personal expression trainings – as any other form of training – must take into account each person’s dignity and specificities, as well as their origins, their past experience and training, and their needs and ambitions. Offering culture and the acknowledgement of everyone’s ability to express culture, may offer more dignity to detained people.

Training must then involve prison staff as well, so that they are ready to face the difficulties, meet the needs and understand the abilities of inmates and be there to encourage, support and help them to choose what to study next, including what University faculty. Prison staff ought to be trained to face many different situations, even very difficult and critical ones, not just by making imprisonment conditions harsher, or by drafting conventional negative reports, but by following a method focused on acknowledging differences, enhancing different abilities and gradually sharing rules.

This is the commitment we are asking to make for managing prison life in a different way.

Re-entering Society Thanks to Culture

Every inmate has the right to pursue university studies in the framework of the planned educational process. What is even more important, are prison regulations aimed at encouraging course attendance and study. What is worth mentioning are the guidelines developed in 2019 by the *Conferenza nazionale delegati dei Rettori per i poli penitenziari universitari* (Italian Committee of the Rectors’ Representatives for Penitentiary University Centres - CNUPP) and by the *Penitentiary Administration Department (DAP)* aimed at guaranteeing detained university students the right to study (e.g. being allowed to live in “suitable rooms or accommodation”, having access to libraries, and being able to meet teachers and tutors).

What is also needed is the staff working in prisons to be constantly made aware of their situation, be trained and brought up-to-date. In addition to the advice coming from the *Commissione per l’innovazione del sistema penitenziario* (Commission for Innovating the Italian Penitentiary System), established by the Secretary of State for Justice, the guidelines concerning vocational training and retraining of prison staff, which are being written by CNUPP and DAP, are based on the above.



38. For an Ethics of Care

After Italy ratified the *UN Convention on the Rights of Persons with Disabilities* and its *Optional Protocol*, what was supposed to happen, was reassessing social and care services and see them as essential tools for promoting the rights of persons with disabilities on a level playing field with the general population. This has not happened yet.

The *Convention* stated their right to services and responses characterised by a number of formally qualifying features, such as universality, protection of fundamental rights, specific treatments, professional skills. No administrative categorisation – either concerning health, social or support responses - of these services was supposed to keep creating differences between the various services as far as human rights protection is concerned. Each person’s human rights must be protected, irrespective of their diagnosis, or of temporary or permanent physical or psychological damage, or of any other feature that might make them unique.

When the pandemic started, it became clear that we still have a long way to go and that we must develop a new way of thinking, which needs to be closer to the commitment envisaged by the Convention. It is fully understandable that such a serious, sudden and widespread emergency caused these routine-based institutions to feel lost. However, what stood out was the lack of organisation of these services and their inability to meet their beneficiaries’ needs and expectations.

A number of specialised care services were shut down and no alternative was given; PPEs were often inadequate; there was a high number of deaths, caused by the virus, in residential facilities for the elderly and people with disabilities. These are just a few examples of what happened. Such examples clearly show how the services administration did not understand the needs of its beneficiaries and what their families were requesting. The situation was not assessed carefully and the lack of a common service standard hindered them from meeting the individual and real needs of people.

In December 2021, Law no. 227 of 22 December 2021 was approved. The government had then to “adopt, within 20 months as of the entry into force of this law”, and according to the guiding criteria therein stated, one or more legislative decrees to reorganise the existing regulations on disability. This law finally focused on those issues concerning health and social care institutions that the National Guarantor had already mentioned in its *Report to Parliament 2017* and highlighted as critical areas. Such issues concern those limitations enforced because of the pandemic. The critical areas relate to the institutions’ structure and organisation, as well as healthcare and social-health support. In such institutions, people’s self-determination, independence and autonomy

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might be limited, up to unacceptable cases of actual segregation¹⁸. Over the years, the National Guarantor has been performing a number of monitoring visits to care homes, which have been mainly focused on the active participation of the elderly or the persons with disabilities. In their subsequent recommendations, the National Guarantor has highlighted the value of each human being and the unacceptable categorisation of people according to culture, organisation or activity.

The unresolved issues must then be solved, such as limitations to relatives' visits to patients for health reasons; the lack of suitable private areas for meeting one's relatives; limitations to caregivers' visits; the lack of organisational structures allowing physical contact between patients and their families, which might lead to cognitive decline; and, in certain cases, the lack of any social activity to avoid infection, which leads to the meaningless passing of time.

The National Guarantor plays a preventive role and implements a specific approach. However, this does not diminish, nor remove, the role of the support services or care homes for the elderly or the persons with disabilities. On the contrary, it aims at adapting it to people's needs. They may be care homes offering residential or day care, this is not important. What is important is their role and the reason for which they exist and how they are organised. According to the National Guarantor, a "care home" is a place that ethically protects people's psychological and physical well-being and, as a general rule, the lives of its patients, by helping them develop and become independent and by taking into account their complex emotional, cognitive and social development.

As Nel Nodding said – she is one of the many authors, who wrote about care ethics – support services must offer those "[...]care relations that are essential for human life [again] and show care for other people, which has to be characterised by empathy and consideration, as well as a sense of responsibility, for others. [...]"¹⁹. She says that people, who take care of others, act in the interest of others. Therefore, "to take care" means "to act in the interest of others", so support services must act in a specific way based on people's specific needs and the feelings of their beneficiaries. We thus need to re-think these structures. They must be organised again - logically and explanatorily. The general approach must be abandoned since it does not differentiate between subjects and circumstances. We need to implement real, concrete and individual responses to other people's needs. The unbalanced relations between support services and their beneficiaries (users) must be evened up by implementing care relations based on reciprocity and personal needs. In such a way, care relations may be seen as real care by their beneficiaries.

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There is another issue impacting on care and support services. It deals with professionals and caregivers working in residential homes. Care ethics relates

18. *Report to Parliament 2017*, pages 140-141, 149 and ff.

19. S. Tusino (2021), *L'etica della cura. Un altro sguardo sulla filosofia morale*, Franco Angeli, Milan, pages 15-16.



to the protection of caregivers, to the freedom of choosing one's profession because you feel inclined to it – which is a particularly serious problem now in Italy, having seen the situation of the job market and the general attitude considering care jobs as “residual” jobs, i.e. the only jobs offered to people who struggle to enter the job market and are often migrants. Beneficiaries have the right to receive specific care and caregivers have the right to have their profession acknowledged, by means of specific training and protection against occupational diseases, such as burn-out.

In every residential home, workers, nurses, or managers may strictly monitor patients, guests or beneficiaries, according to their levels of responsibility. What must be then highlighted is that care ethics means recognizing the moral value of responsibly meeting the needs of those who depend on others, for support or care reasons, and of those actions aimed at meeting their needs.

The road showed by the National Guarantor must thus be followed – it was already shown in the past and seen as essential – and it needs care and responsibility to be properly developed.

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39. Let's Leave the Time of Abstinence Behind

Not only philosophers and scholars, but also everyone who – for different reasons – is familiar with prisons and their mechanisms, agree that imprisonment, as a “soft” punishment, used in our modern era instead of torture, still includes the punishment of the body. The deprivation of liberty must never limit people’s fundamental rights. However, in Italy, imprisonment still means limitations to emotions and, especially, denies people’s sexuality.

Not only philosophers and scholars, but also everyone who – for different reasons – is familiar with prisons and their mechanisms, agree that imprisonment, as a “soft” punishment, used in our modern era instead of torture, still includes the punishment of the body. The deprivation of liberty must never limit people’s fundamental rights. However, in Italy, imprisonment still means limitations to emotions and, especially, denies people’s sexuality.

From a regulatory point of view, the Penitentiary Administration Act protects family ties. The “territorial principle” applies. It says that convicts should be detained in the prison that is the closest to their families. Such principle is explicitly mentioned by article 42. Special attention is given to family visits: article 37, paragraph 5, and article 61, last paragraph, of the Decree of the President of the Italian Republic no. 230 of 2000 (implementing regulation), seem to envisage more private family visits, if compared to ordinary visits. Such regulations envisage that family visits may take place in a separate room – in exceptional cases – and that wardens may allow people visiting inmates to spend part of the day with them, in special areas or in prison outdoor areas, and to have lunch all together. Both regulations state that these visits must abide by the rules applied to ordinary monitored visits, as per article 18, paragraph 2, of Penitentiary Administration Act.

No unmonitored visits are thus allowed since prison workers are always there. This means that sexual relations are not allowed either. The right to sexuality, as an integral part of one’s own self (of one’s own body) and comprising the right to express one’s own affection, is not taken into account. This aspect is closely connected with the need of guaranteeing people’s self-determination, even in prison, and of always protecting human dignity. It is recognized by the World Health Organisation (WHO) which says: “Sexual health is the integration of the somatic, emotional, intellectual, and social aspects of sexual being, in ways

that are positively enriching and that enhance personality, communication, and love”²⁰.

This regulatory gap was discussed by the supervisory Court of Florence in 2012. The Court raised an issue concerning the constitutional legitimacy of article 18, paragraph 2, because it orders the constant monitoring of family visits and, as such, it prohibits sexual relations. According to the Court, the principles stated by articles 2, 3, 27 and 32 of the Italian Constitution are thus violated, as well

20. World Health Organisation, *Education and treatment in human sexuality: the training of health professionals*, Technical Report Series no. 572, Geneva, 1975.



as the protection of the right to express one's feelings and emotions. With its sentence no. 301 of 19 December 2012, the Constitutional Court stated the inadmissibility of this issue. However, it confirmed the importance and the need of allowing inmates to express their feelings and to have sexual relations. It then drew the attention of the lawmakers to this very issue, "also on the basis of the supranational regulations and comparative experiences". Reference is made to Recommendation no. 1340 (1997) of the General Assembly of the Council of Europe, Recommendation no. 2003/2188 (INI), of 9 March 2004, of the European Parliament, on the rights of prisoners in the European Union²¹ and the European Penitentiary Rules²² of the Committee of Ministers²³. Indications from recommendations and supranational rules have been implemented by more than 80% of the member countries of the Council of Europe. However, Italy, and a few other countries, is still tirelessly opposing them.

Any improvement suggested by the Constitutional Court has to face a number of obstacles – which is what often happens when it comes to punishment and imprisonment – due to the popular, political and even juridical cultures that do not yet fully understand the meaning of punishment according to what the Constitution states, and keep considering it as a kind of penance, characterised by many afflictions, such as sexual abstinence – which also carries a symbolic meaning²⁴.

In 2016, Committee no. 6 of the *General meeting on the enforcement of criminal judgements* attempted to have the right of prisoners to intimacy recognised. This attempt was unsuccessful. Committee no. 6 proposed to amend article 18 of Prison law by allowing visits without in-presence monitoring, unlike what happens with ordinary visits. 2018 legislative decrees included very little of what the General meeting proposed, and they did not accept such suggestion.

It is now time to leave behind the idea that emotional bonds are just a possible reward for prisoners and not one of their fundamental rights. That same belief says that this issue is not of the essence because of the "special authorisations" envisaged by the Italian Penitentiary Act. Let us set aside any theoretical

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21. Article 1, letter c) states the following: «the right to an emotional and sex life, for which suitable arrangements must be made and areas provided».

22. European Penitentiary Rules have been changed and updated in 2020. The Committee of Ministers approved these changes on 1 July 2020, by means of Recommendation Rec(2006)2-rev.

Article 6: «The Assembly recommends that the Committee of Ministers calls on member States (...) to improve the conditions envisaged for family visits, in particular by providing areas where prisoners may meet their families in private».

23. Rule 24.4: «The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible». A remark is added to this rule stating that longer family visits must be authorised since «shorter meetings between the two partners – which have been authorised for this purpose – may have a humiliating effect on both of them».

24. Vulgar and sexophobic comments are often voiced by ordinary citizens and politicians and arise with any bill seeking to regulate this issue (X-rated cells, prison guards seen as brothel-keepers, etc.). In 2015, the Court of Cassation stated that the right to consummate marriage enjoys no constitutional protection. It added that this right is guaranteed by article 30, paragraph 2, Penitentiary Administration Act, thus confirming the traditional attitude towards this issue.



remark on such a comment and focus on the discretionary nature of this special authorisation. Many prisoners will never benefit from it, or it will be extremely difficult for them to do so, since the crimes they committed are an obstacle to it.

Such a stance does not even take into account the social and common benefits stemming from these special authorisations. Prisoners benefit a lot from them, because they can enjoy their relationships, and these benefits are still there when they re-enter society. Evidence of this comes from those countries where sexual relations have been allowed in prison.

Many possibilities are at hand: longer, unmonitored visits – as in Croatia or Romania, among others – or the availability of rooms – as in Spain – or of actual “flats”, which may sometimes be surrounded by vegetation within the monitored area, where prisoners may meet their partners, their children or their friends.

Many possibilities are at hand: longer, unmonitored visits – as in Croatia or Romania, among others – or the availability of rooms – as in Spain – or of actual “flats”, which may sometimes be surrounded by vegetation within the monitored area, where prisoners may meet their partners, their children or their friends. This solution has been adopted in a number of Northern European countries, such as Norway, Denmark and the Netherlands, but also in France where the *Unités de Vie Familiale* are available: small flats, with one or two bedrooms, a bathroom and a kitchen area, located within the prison, but separate from the cells. In Switzerland, the Canton of Ticino envisages an “internal leave”. This means that prisoners may meet their partners, families and friends in a small house, called *Silva*, located in a special area. A “food meeting” is also allowed, which is a meal with relatives and friends.

One common feature of all the above, is that it is not seen as some sort of reward, but as a right of the individual, and these visits do take place under conditions of safety and order. What is important is offering a “private area” and a “moment of relaxation”, during which emotional bonds can develop, by identifying those solutions that do not strongly separate *affectivity* and *sexuality*.



40. For a Free and Safe Exercise of Human Rights

Being able to enjoy your rights is of the essence.

You can enjoy your rights only if the legal system does acknowledge people's fundamental rights. A number of legal systems do not allow everyone to enjoy their fundamental rights. People flee war and persecution and try to reach those countries where these rights are guaranteed, or where constitutional charters are in force and officially ensure their protection.

The European common institutions are based on the above and, in spite of its threatening policies concerning migration, Europe is still a longed-for destination for many people coming from the Southern shores of the Mediterranean sea or the areas east of Europe.

The isle of Lampedusa is one of the most "crowded" European destinations and the place where the "Porta di Lampedusa – Porta d'Europa" (A Door to Lampedusa – A Door to Europe) monument has been built. It is dedicated to all the migrants who died in the Mediterranean sea and was built in 2008 by Mimmo Palladino. Alda Merini, an Italian poetess, wrote a poem for its inauguration. Its title is "*Una volta sognai*" (I had a dream once):

*I had a dream once,
I was a giant tortoise
And my skeleton was made of ivory.
It dragged the little ones and sea weeds
And waste and flowers,
And everyone was holding on to me,
On to my thick skin.
I was a tortoise swaying
under the weight of love,
I was slow to understand
And quick to bless.
So, my dear children,
You were thrown into the water
And then you held on to my shell
And I saved you
Because this sea tortoise
Is the land
That is saving you
From dying in the water.²⁵*

25. Alda Merini, *Una Volta Sognai*, poem written and read for the first time on occasion of the inauguration ceremony for the monument *A Door to Lampedusa* by Mimmo Paladino, 28 June 2008 (courtesy translation).



It is 2022 and that symbolic place is still asking questions that are not easily and properly answered by the rescue and reception systems taking care of migrants following that sea route.

How can the *dream of something* told by Alda Merini be turned into reality? How can everyone be allowed to safely enjoy their rights without putting the lives of those who brave the sea at risk? How can we guarantee the people who cross over into Europe that they will be able to enjoy their *habeas corpus* and their fundamental rights? In the medium term, we need to answer these questions. Especially the last two.

Increasing the number of selective “humanitarian corridors” cannot be the only alternative, because only a very limited number of people benefit from those. They are a humanitarian offering, which is culturally important – and for some people it is also existentially important. However, it does not impact the system as a whole.

Let’s put aside that *dream of something* and the long term. Let’s focus on the short or medium term and the need of finding – or at least outlining – a solution that might reduce the deaths at sea and the dangerous journeys on the deadliest migration route in the world. 23,978 people have died along that route since 2014. 644 people died from January to April 2022, 550 of those died in the Central Mediterranean Sea²⁶. Most migrants following this route are fleeing the Libyan hell²⁷, arbitrary detention for an undetermined length of time, systematic and widespread torture, abuse and violence that have been lately defined as crimes against humanity by the Prosecutor of the International Criminal Court²⁸.

The EU has been outsourcing the control of its external borders and the consequences of this decision cannot be ignored. It also keeps supporting the Libyan authorities without knowing for sure if migrants’ human rights are respected. The EU may thus become an accomplice to very serious events.

What must be done is stopping any kind of refolement to Libya and, after that, we must look further away, as Mario Draghi, the Italian Prime Minister, said at the European Parliament on May 3rd: «In particular, we need to pay more attention to the Mediterranean, given its strategic location as a bridge towards Africa and the Middle East. We can’t see the Mediterranean simply as a border area where we need to put up barriers. Many young countries border the Mediterranean and they are ready to put their enthusiasm into relations with the European Union. We need to build genuine partnerships with these countries, not only economic but also political and social in nature. The Mediterranean needs to be an area of peace, prosperity and progress²⁹».

26. <https://missingmigrants.iom.int/>

27. <https://frontex.europa.eu/we-know/migratory-routes/central-mediterranean-route/>

https://www.migrantes.it/wp-content/uploads/sites/50/2021/12/01_Report_Diritto_asilo_2021_Sintesi.pdf

28. «The Office has taken note of a number of credible reports that migrants in Libya continue to be victims of crimes under the Rome Statute, and that the number of migrants has increased as compared to previous reporting periods» 23rd Report of the Prosecutor of the International Criminal Court to the UN Security Council as per resolution 1970 (2011) of 21 April 2022:

<https://www.icc-cpi.int/sites/default/files/itemsDocuments/2021123-prosecutor-report-unsc-1970-eng.pdf>

29. <https://www.governo.it/it/articolo/il-presidente-draghi-al-parlamento-europeo/19738>



Increasing the number of selective “humanitarian corridors” cannot be the only alternative, because only a very limited number of people benefit from those³⁰. They are a humanitarian offering, which is culturally important – and for some people it is also existentially important. However, it does not impact the system as a whole.

The number of people dying at sea will be reduced only by putting an end to the so-called “decrees on migration flows”, the “waiting systems” and the amnesties – which are no solution to the issue – and by easing legal restrictions to enter the Union, so to really assert the right to migrate and build another life somewhere else. Only by implementing all of the above human traffickers can be defeated.

The freedom of movement must be subject to those prerequisites needed to be allowed to settle later on in the country. This is what applies to EU citizens as well.

Let’s not forget that migrants are vulnerable people upon entering a foreign country: they are not aware of its rules and they often ignore its habits and its culture. Therefore, migrants need the rights, to which they are directly or indirectly entitled, to be strongly protected and they need to be taught those rules that may help them to become an integral part of the local community. They need help in their integration process. The above must be guaranteed so that Europe may keep protecting the rights of the most vulnerable, instead of ignoring them. First, our primary law needs to regulate people’s living conditions and rights in the reception centres (e.g. *hotspots*), where migrants are first welcomed. What might happen in these facilities is people being kept under guard, and thus be subjected to administrative detention, without enjoying those forms of protection envisaged for criminal detention. Enjoying one’s rights must not be devoid of meaning and the future must not mean marginalisation: this must be our goal.

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30. The Fondazione Migrantes, in its 2021 Asylum Report, says: “Since 2016, humanitarian corridors supported by the third sector and the Church, in cooperation with governments, have welcomed more than 4,000 refugees, more than 3,300 of them to Italy. As of 2019, the “university corridors” programmes were also implemented (even though on a much smaller scale) by Italian universities and are dedicated to refugee students. In 2021, the Italian “study corridors” project was established. It is focused on unaccompanied minors living as refugees in Niger”, <https://www.migrantes.it/il-diritto-dasilo-report-2021-gli-ostacoli-verso-un-noi-sempre-piu-grande/>



41. On the New Italians

The legal framework of society does not often resemble society itself. In some cases, it has never reflected it, or it has not kept pace with it, or changed as fast as it did. We could ask Italian citizens what they think: should an individual's fate be determined by their life story or their genealogy? Or by what they have done? Or by their blood relatives? Most of them would answer that no one should be judged on the basis of genetics, because everyone has the right to be the master of their own destiny. If we cannot really choose, we have to be able to see our personal story, who we are, what we have experienced, how we have spent our time. All the more so if children were in the picture, who cannot be seen just as an extension of their parents – according to what the majority thinks.

The Italian law on citizenship focuses on the idea of life as an experience no longer shared. Men and women are not individuals, but they are part of families: their life story belongs to their parents and does not depend on personal choices. In Italy, the so-called *iure sanguinis* is applied. You are Italian, if at least one of your parents is.

However, the Italian law on citizenship focuses on the idea of life as an experience no longer shared. Men and women are not individuals, but they are part of families: their life story belongs to their parents and does not depend on personal choices³¹. In Italy, the so-called *iure sanguinis* is applied. You are Italian, if at least one of your parents is. What happened in one's life is irrelevant, i.e. where they were born or raised, or where they spent the years of their lives. Blood ties prevail over the events of a person's life, including a child's or an infant's.

Being born in Italy is not that important since that does not make you a citizen. Even having lived in Italy is almost irrelevant when defining an individual's *legal status*. You may have been born in Italy and have spent your entire life here, be recognised as Italian, and yet be still “officially” a foreign citizen. As a foreign citizen, you have an inferior legal status – that is, you enjoy fewer rights, your residence permit may be withdrawn at any time and you may be deported. It happens. In addition to the risk of repatriation, young people who were raised in Italy – and sometimes they were even born here – must constantly prove that they meet the socio-economic requirements to have their residence permit confirmed, they cannot participate into public competitions and face difficulties if they wish to travel abroad, and so on. This is due to the fact that they were born to foreign nationals, this is due to their blood relatives.

Let us look at the latest year analysed by ISTAT. In 2020, data concerning the birth rate of the resident population clearly show what we are talking about, especially in the North of Italy. Emilia-Romagna (24.5 %): almost one in four babies is a foreigner, and more or less the same goes for Lombardy (22 %) and Liguria (21.6 %). As for Veneto, Tuscany and Piedmont, 1 in every 5 babies is not an Italian citizen³².

If the law is not changed, 59,792 children born in Italy to foreign parents in 2020 – that is 14.8 % of

31. According to Law no. 91 of 5 February 1992, citizenship can be acquired as follows: a) by residence, b) by marriage, c) from parents, d) by choice if you are a foreigner, but were born in Italy.

32. Data are taken from the ISTAT report on *Birth and fertility rate of the resident population – year 2020*, published on 14 December 2021, <https://www.istat.it/it/files/2021/12/REPORT-NATALITA-2020.pdf>



the total number of births – will be able to elect citizenship only after coming of age and before their turn 19, after having lived all their lives in the country. However, their citizenship might not be automatically recognised, since the public administration often requires registration and, therefore, the person must hold a residence permit – in spite of what the Italian jurisprudence states.

As for children, this depends on their parents' status as immigrants, and so minors are just connected to them. This is somehow linked to the so-called *ius soli*, i.e. the right to acquire the citizenship of the country where you were born, which is what happens in the United States and in many American countries.

People who were not born in Italy – even if they have been living there since they were very young – can acquire the Italian citizenship only from their parents, by marriage or by residence. They have to prove to have lived in Italy for 10 years, have had a certain level of income in the last three, and have never been reported for any crime. On top of that, what is necessary is the Italian government not thinking that they are a danger to the country. And this is a completely discretionary assessment. The average waiting time after submitting the application is four to five years.

According to ISTAT data, most of the 131,803 registrations as citizens in 2020 were based on residence (48.5 %) or on the transfer of citizenship rights from parents (30.3 %)³³.

Other European countries have chosen differently: citizenship is granted to people who are born on their territory, on condition that they live there, even for just a few years. In Italy, a number of bills try to connect – at least partially – the right to citizenship with having studied in an Italian school for a long time. Special attention is given to those who were born in Italy. However, not even these mediation proposals were accepted. The Italian legal system is thus still obsolete, and based on the concepts of time and people's personal life stories. This must be set aside and substituted by a citizenship law based on the concept of *ius soli*, which gives value to everyone's life story and choices.

In October 2015, the Chamber of Deputies had approved a bill to reform the citizenship law. However, that procedure was interrupted because the legislature ended. This bill stated that the Italian citizenship could be acquired by birth (the so-called *ius soli*) or by attending Italian schools or by following educational training (the so-called *ius culturae*).

During the current legislature, several parliamentary groups submitted bills aimed at reforming the citizenship law. At the beginning of 2020, the Commission for Constitutional Affairs concluded the parliamentary hearings. After that, the procedure came to a standstill. It was set in motion again on 9 March 2022, by the so-called *ius scholae* text, submitted by Giuseppe Brescia, rapporteur, and adopted as basic text by the Commission for Constitutional Affairs on that day. According to this bill,

If the law is not changed, 59,792 children born in Italy to foreign parents in 2020 – that is 14.8 % of the total number of births – will be able to elect citizenship only after coming of age and before their turn 19, after having lived all their lives in the country. However, their citizenship might not be automatically recognised, since the public administration often requires registration and, therefore, the person must hold a residence permit – in spite of what the Italian jurisprudence states.

33. Data are taken from the ISTAT report: *Non-EU citizens in Italy – years 2020/2021*, published in October 2021, https://www.istat.it/it/files/2021/10/Cittadini-non-comunitari_2020_2021.pdf



a foreign child may become an Italian citizen if they were born in Italy, have been legal residents of the country without interruptions, have attended Italian schools for at least five years, or have attended three-year or four-year vocational training courses aimed at obtaining a professional qualification.

Foreign minors, who enter Italy before they turn 12³⁴, may enjoy the same possibility.

This could be a very important step forward. If we have a look at the data listed in this document, *Alunni con cittadinanza non italiana (Students not having the Italian citizenship) 2019-2020*, published by the Ministry of Education, we read that “in the years between 2015/2016 and 2019/2020, the number of ‘foreign’ students, who were born in Italy, rose from over 478,000 to almost 574,000, with an increase of more than 95,000 (approximately +20%). In the past year, more than 20,000 ‘foreign’ students (+3.7%) were registered, so the share of ‘foreign’ students, who were born in Italy, increased to 65.4%, which is almost one percentage point higher than in the years 2018/2019 (64.5%)”³⁵.

Unfortunately, just before our *Report to Parliament 2022* is sent for printing, we learn that the discussion of the text will be postponed again, which means that the procedure will still be long and difficult. The National Guarantor hopes that it will be completed. We need to redefine the right to citizenship, so that it keeps pace with the social changes in the country.

34. Citizenship can thus be acquired by declaring one’s wish to become a citizen. This must be done by both parents, who are legally resident in the country, before the child comes of age, or by the child’s legal guardian. This declaration must be given to the superintendent registrar at the register office of the residential municipality of the child and must be recorded in their register. Within two years of coming of age, they are allowed to renounce their Italian nationality if they hold another one. If they do not decide to do so, they could become Italian citizens by submitting their application to the superintendent registrar within two years of coming of age.

35. <https://www.miur.gov.it/-/scuola-disponibili-i-dati-sulle-studentesse-e-gli-studenti-con-cittadinanza-non-italiana-relativi-all-anno-scolastico-2019-2020>



42. (In)security

Despite the fact that more than 40 years have passed since the overcoming of the asylum custody regime, with the passage from the paradigm of the mentally-ill person as the recipient of coercion and segregation measures, bearer of social dangerousness, to that of a sick person to be taken care of, the ethical and legal debate on the legitimacy of restraint practices, in the different forms and contexts in which they occur, is still heated.

The intentional restriction of the freedom of movement and action of a person through specific devices (bands, belts, side rails to the beds), drugs aimed at reducing or inhibiting mobility or interaction capabilities, or blockage systems on doors and windows to avoid break-outs, or bare rooms where any sensorial stimulus is suppressed, represent *per se* a violation of the rights of the person and, as such, must be fixed by rigid criteria of legitimacy based on exceptionality. The decision to resort to such means must be based on the imperative momentary necessity and thus very limited in time. On the other hand, the person should not be left alone, at least for the interval phase, between the application and removal of the restraint devices, this would configure a quasi-therapeutic procedural physiognomy. Because - as the Court of Cassation has also ruled - restraint cannot be considered a therapeutic practice³⁶.

Moreover, it must be remembered that the use of the different types of restraint is generally applied to patients, sometimes even minors, with mental or physical disability problems or elderly people in hospitals or assisted residential facilities: in essence, on particularly fragile and vulnerable subjects for whom the respect of the principle of self-determination is crucial. In such contexts, the effects of physical restraint often make an impact on the physical and psychological stability of the person. Specific literature reports abrasions, vascular damage, ischaemia, neurological and orthopaedic consequences that, in extreme cases, led to death: from 2006 to 2009, four deaths were reported in Italy as a result for the application of physical coercion measures.

In the debate on the approach to the questions posed by the medical and social relationship with the issue of mental health, the National Bioethics Committee expressed itself in favour of the definitive and total overcoming of restraint³⁷, as part of a new standard treatment based on the recognition of the person as such, in the fullness of their rights, before being considered as a sick person or a patient, recognising respect for the autonomy and dignity of the person as a prerequisite for effective therapeutic intervention.

Today, the only legally binding international instrument for the protection of human rights in the

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36. Court of Cassation, Criminal Section V, Ruling No. 50497 of 20 June 2018, Case "F. Mastrogiovanni".

37. Presidency of the Council of Ministers, National Bioethics Committee, *La Contenzione: problemi bioetici*, 23 April 2015. http://bioetica.governo.it/media/1808/p120_2015_la-contenzione-problemi-bioetici_it.pdf.



biomedical field is the Oviedo Convention³⁸, now under review for the approval of a specific additional protocol for adapting the issues of hospitalisation and involuntary treatment to the principles expressed in the United Nations Convention on the Rights of Persons with Disabilities, ratified or signed by 36 of the current 46³⁹ member states of the Council of Europe, including Italy.

The observations of the National Guarantor on restraint were not limited to the treatment environment but cover diverse areas, including forced return operations, detention or arrest operations by the Police Enforcement Agencies: the only justification for restraint is resort to it as an *extrema ratio*, which means in the presence of situations of real necessity and urgency, through measures proportionate to the concrete needs, when less invasive modalities cannot be enforced, and only for the time strictly necessary to overcome the conditions that have required their application in the first place.

The National Guarantor intervened several times and on different occasions on the question⁴⁰, most recently with a note⁴¹ addressed to the Presidency of the Council of Ministers and the competent Secretaries of State. The Guarantor expressed its perplexities regarding some provisions of the draft Protocol, which contains less guarantees than the very Convention under review. In the opinion of the National Guarantor, these changes, if transposed in our legal system, would paradoxically represent a step backwards in the protection of the human rights of persons with psycho-social disabilities. Without specific regulatory provisions on restraint -with the exception of those in the penal system to prevent or stop acts of violence, escape attempts and resistance, as well as those contained in the deontological codes of ethics of the health professions- only the case law outlined the principles and conditions that legitimise the use of means of restraint⁴².

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In this regard, the National Guarantor pointed out that the practice of applying restraining bands indiscriminately to all returnees is unjustified. Some times it

38. International Convention adopted on 4 April 1997 by the Council of Europe. Officially called *Convention on Human Rights and Biomedicine* or *Oviedo Convention*.

39. As we know, on 16 March 2022, the Committee of Ministers of the Council of Europe, after hearing the opinion of the Parliamentary Assembly, decided that the Russian Federation would cease to be a member of the Council of Europe, which it had joined on 28 February 1996.

40. National Guarantor, *Report to Parliament 2020*, pp. 142-184.

41. National Guarantor, *Note to the President of the Council of Ministers, to the Ministry of Health, to the Secretary of State for Disability, to the Undersecretary of State for Foreign Affairs and International Cooperation*, 26 May 2021.

42. In the aforementioned Ruling (2018), the Court of Cassation clarified that restraint is not a medical act, but it is a precautionary measure, so that non-punishability for the use of restraining means, provided they are proportional to the event, is justified only in the hypotheses provided for in Article 54 of the Criminal Code, i.e. in the presence of a current, unavoidable danger of serious harm to the person.



is taken as a precautionary measure, even for the entire duration of the transfer, and it is not based on any individual assessment of the real necessity and urgency, but rather on a generalised indication that sometimes goes beyond pre-set conditions that had been assessed collectively.

In fact, taking charge of a person, be it a patient, an arrestee, a detainee or a returnee, always imposes a legal position of guarantee, aimed at protecting the safety and physical integrity of the person involved: the problem is to identify, within this position, the correct use of any means of restraint, and above all to prevent any abuse or illicit or even dangerous use. There are well-known episodes, also at the international level, regarding police operations, where manual restraint, considered less invasive than the possible implementation of restraint by coercive means, unfortunately led to tragic consequences.

The definitive overcoming of the criticalities connected to the application of *restraint* is undoubtedly desirable, as it is going beyond the paradigm of *containment*: towards an approach that includes relational practices and interaction with the person taken in charge. Some models which do not envisage the use of coercive means have already proven, in their implementing phase, to be very useful in overcoming possible phases of crisis.



Recommendations and outcomes

Migrants and Liberty

SOME RECOMMENDATIONS¹

OUTCOME²

Monitoring forced return operations of third-country nationals

Ensure training programmes involving all Police Force personnel units deployed in a forced return operation from the very beginning of the procedure, from the moment the person to be returned is informed of the start of the operation and taken from the premises where he/she is detained. The Garante found that the escort personnel taking care of the transport from the CPR where the person is detained to the one where the return operation starts often is not adequately trained as it does happen, instead, for international escort operators.

Forced return operators on duty in the CPRs are almost all licensed to carry out escort services. All staff benefit from vocational training days dedicated to the in-depth study of legal topics (including immigration law in its various aspects) and operational techniques.

Employ linguistic professionals at all stages of forced return operations, able to address the interested person in a familiar language.

Escort personnel attending the training course for international escort services take a pre-selection in English. In addition, the Ministry of the Interior states that the foreigner receives extensive information in comprehensible language both at the police headquarters and in the detention facilities.

Ensure the identifiability of the role and functions of operators during forced return operations.

The Public Security Department communicates that during the joint charter flights coordinated and financed by Frontex, all personnel wear 'vests' indicating the role of each escort operator.

Notify the persons concerned in advance of the departure date, so that they can make travel arrangements, check the return of all personal belongings retained when admitted to the Centre, prepare their luggage in a dignified manner, notify family members or trusted persons and/or their lawyer.

The Public Security Department considers that the burden of information on the foreign national to whom a return decision is addressed is amply met at every stage of the procedure, as it is the right of access to legal protection. Therefore, it does not agree that prior notice of return is necessary, as it is contained in the fully translated forced return orders communicated to the interested persons.

Inform foreign nationals subjected to forced return procedure of all the various steps involved, including the stages of the journey, the length of stay at any stopovers, the approximate place and time of arrival in the Country of origin, the carrying out of security checks on both the person and the luggage, the possible use of coercive measures in case of refusal or opposition to return.

1. The Recommendations are those expressed in the 2021 Thematic Report.

2. The Outcomes refer to the answers received from the Administration.



SOME RECOMMENDATIONS	OUTCOME
Monitoring forced return operations of third-country nationals	
<p>Restore in a good state of maintenance and cleanliness the premises used for operations that take place immediately prior to departure at the Palermo airport and at all airports, making them suitable for sheltering from all weather conditions, providing them with a room for sanitary needs, equipping them with chairs and tables in sufficient quantity for the number of people to be returned and the escort operators, as well as providing them with directly accessible WC, and snack and beverage dispensers.</p>	<p>The Public Security Department has informed that the project for the construction of a new facility at Palermo airport is not progressing.</p>
<p>Ensure that the rooms used for security checks are heated, ventilated, equipped with furniture appropriate to ensure the respect of the dignity and privacy of the returnee.</p>	<p>Dividers have been set up to ensure that returnees privacy is respected.</p>
<p>During forced return operations, resort to the use of force and coercive measures in full compliance with European and international standards that allow for their use only as a measure of last resort, in cases of strict necessity against “returnees who refuse or resist removal” (Decision (EC) 573 of 2004) or in cases of serious and immediate risk of escape or damage to the physical integrity of the foreign national himself/herself (self-harm) or of third persons or damage to property, The assessment as to whether or not coercive measures are necessary shall be individual and not general, as indicated by the Frontex Guidelines on joint flights of May 2016.</p>	<p>The Public Security Department ensures compliance with these criteria during forced return operations on commercial flights. It confirms that on charter flights, due to the always very high number of foreign nationals, the risk assessment is always carried out thoroughly. For this reason, during boarding and take-off, given the risk that the returnees may engage in acts of self-harm or resistance to avoid returns, wrist bands are applied to them. They are removed after the take-off phase if the situation on board the flight is calm. The Public Security Department believes that the use of force and coercive means is, therefore, always limited to the cases provided for by European and international standards.</p>
<p>Ensure that restraint interventions involving the intensive use of force are always monitored by medical personnel who constantly check the person’s health condition and whether he/she is able to further withstand the coercive measure implemented against him/her.</p>	<p>The Public Security Department points out that all charter flights include the presence of a medical staff (doctor and nurse) during the entire operation. In addition, during the ground operations carried out at airports and/or CPRs, a so-called ‘airside’ service with ambulance and medical staff is provided. Therefore, the use of coercive means by escort personnel, in any circumstances, must always be carried out under the supervision of medical staff.</p>



SOME RECOMMENDATIONS	OUTCOMES
Monitoraggio delle operazioni di rimpatrio forzato di cittadini stranieri	
<p>Always ensure the continuity of any treatment or therapeutic programmes of the returnee, at least for the duration of the forced return operation.</p>	<p>The Public Security Department ensures that in forced return operations, regardless it being carried out through a commercial or a charter flight, if the third country national is under drug therapy in the CPR, he/she is handed over to the escort staff or to the medical staff, if present, together with the relevant prescription.</p>
<p>Carry out the age assessment in accordance with the discipline established by Article 19-bis of Legislative Decree no. 142 of 18 August 2015 which in case of well-founded doubts, provides for proceedings to be initiated before the judicial authority with specific and punctual guarantees for the protection of the person concerned.</p>	
<p>Inform returnees promptly and, in any case, before their departure, in a language and manner they understand about the possibility of reporting violations of their fundamental rights during a forced return procedure carried out with the support of Frontex.</p>	<p>The officials in charge of the return charter flights were provided with the complaint form for the returnees in case they had to make a complaint about the violation of their rights. Further awareness-raising training is underway so that third-country nationals returned with the support of Frontex be systematically informed of the existence and operation of the relevant protection mechanism.</p>

SOME RECOMMENDATIONS ³	OUTCOMES
CPRs	
<p>Give full and effective implementation to the freedom of making and receiving phone calls as provided for in Article 14, paragraph 2 of the Consolidated Act on Immigration, ensuring that the detained foreigners can communicate without limitations, also with the help of video calling systems, as already experimented in some Centres during the pandemic emergency. In all centres, it should be ensured the possibility of using mobile phones by detainees.</p>	<p>The Prefecture of Nuoro is reviewing the practices in use at the Macomer CPR in this sense, allowing the use of mobile phones by the guests of the Centre.</p>

3. The recommendations are those expressed in the Reports on visits carried out in Immigration Removal Centres (CPRs).



SOME RECOMMENDATIONS	OUTCOMES
CPRs	
<p>The principle of favor minoris is always applied, as defined by the law which states that “pending the outcome of the identification procedures, the reception of the minor is guaranteed by the appropriate first reception facilities for minors provided for by law” (Article 19-bis, paragraph 2 of Legislative Decree no. 142 of 18 August 2015).</p>	<p>The Central Directorate of Civil Services for Immigration and Asylum refers to the Public Security Department.</p>
<p>Ensure that the medical certificate of suitability for entry and stay in a CPR is always made by a doctor of the National Health System preferably from the territory of the CPR and is based on effective and scrupulous evaluation of the person, the destination facility and the services therein ensured.</p>	<p>The Prefecture of Turin has resumed talks with the Region and the local health authority (ASL) to ensure that, in accordance with the provisions of the current Single Regulation, medical examinations before the entry in CPRs be conducted by a doctor from the National Health System.</p>
<p>The Public Security Authority makes sure that all the available health documentation, including the health form drawn up by the detention or care facility of origin - or, in any case, the existence of which is known to the Authority that orders and carries out the removal and detention procedures - and any further information useful to assess the state of health are provided to the doctor called to ascertain that the physical and mental health conditions of the person detained are compatible before entering the CPR.</p>	
<p>Ensure that the responsible administrations always put in place all the necessary measures to guarantee foreign persons placed in state custody, even when being released from the CPR, the necessary care and assistance to protect their physical and psychological integrity.</p>	<p>The Prefecture of Turin has prepared a memo to this effect and is taking steps to promote initiatives with the municipality of Turin aimed at involving local social services in the management of cases of vulnerability.</p>



SOME RECOMMENDATIONS	OUTCOMES
CPRs	
<p>Ensure that health personnel working in any capacity within the CPR:</p> <ol style="list-style-type: none"> 1. Enter in the medical records a detailed report of the examination conducted on the person, the declarations of the person concerned relevant to the medical examination, including any allegations of ill-treatment and beatings suffered, its own observations as to the compatibility of the reported ill-treatment and beatings with the objective findings identified during the medical examination and, in any event, the presence of injuries indicative of possible beatings; 2. strictly respect the obligations of verification and reporting to the Judicial Authorities set forth in the Code of Criminal Procedure for every health professional. 	<p>The Prefecture reminded the managing body that cases found to be consistent with possible beatings should be reported to the centre’s medical staff and Police.</p>
<p>The National Guarantor considers that housing inside the ‘Ospedaletto’ area of Turin CPR, defined as a place of ‘health care confinement’, qualifies as inhuman and degrading treatment, also exposing the country to the risk of censure at supranational level.</p> <p>It is therefore to be immediately and permanently closed as a place for housing people, whatever reasons may have indicated its necessity.</p>	<p>The Prefecture of Turin reports that the premises have been shut down and that the Turin Interregional Superintendency of Public Works has been asked to make structural improvements so the that the are could meet the expected health care requirements, or to identify alternative solutions.</p> <p><i>The local Guarantors, in coordination with the National Guarantor, have carried out and are carrying out follow-up visits to verify the effectiveness of these indications.</i></p>
<p>Provide in each CPR for the preparation of internal regulations defining the structure’s rules.</p>	
<p>Ensure that people be aware of the rules of coexistence in the Centres, including the measures strictly necessary to ensure people’s safety, as well as those necessary to regulate the manner in which the services provided for the basic needs of care, assistance, human and social promotion and the manner in which visits are carried out.</p>	<p>The 2014 CIE Single Regulation is currently being revised by the Ministry of the Interior, as repeatedly requested by the National Guarantor.</p>



SOME RECOMMENDATIONS	OUTCOMES
CPRs	
Inhibit the use of environments for the detention of persons, even for short or very short periods, which does not qualify as such.	
Prepare for all premises where persons are detained a register where enter all the information concerning entry/exit, length of stay, requests made, services guaranteed, special events and any further information relating to transits.	



Penalties and Liberty

SOME RECOMMENDATIONS

OUTCOMES

Following the serious events that have seen the Santa Maria Capua Vetere prison at the centre of institutional and media attention, the National Guarantor recommends that:

- each extraordinary search must be notified in advance to the National Guarantor, to whom the authorisation order issued by the Director of the Institute must be forwarded, containing an indication of the reasons for the search, the procedures to be implemented, with specific indication of the staff in charge and the defence equipment authorised for use;
- it is ensured that within 15 days of the conclusion of the operations, the final report covering all the actions carried out during the search is sent to the National Guarantor;
- in cases where the extraordinary search is carried out as a matter of urgency, only the final report containing all the necessary information indicated above is to be forwarded;

- numerate each instrument or means of defence provided by the prison for use in the cases provided for by the rules, and affix the numerical identifier in a visible manner on each of them;
- establish a register to record the allocation to each operator, for each and every occasion on which such means are used.

The Penitentiary Administration, agreeing with the need for general extraordinary searches to be subject to specific regulations by the Administration itself, has instructed the Directorates of the penitentiary institutes to draw up a reasoned and documented Order of Service for general extraordinary searches to be sent in advance to the National Guarantor, and to draw up and send to the National Guarantor a detailed report on the search carried out.

Likewise, the Juvenile and Community Justice Department has given the same indications to the directors of the Juvenile Penal Institutions and of the First Reception Centres.

These indications were specified in the Memo of the Penitentiary Administration Department of 24 September 2021 prot. 0349544.U and in that of the Juvenile and Community Justice Department of 13 October 2021.

The National Guarantor systematically receives notifications and final reports of searches from both the penitentiary and juvenile penal institutions.

The Penitentiary Administration Department, while agreeing with the measures indicated by the Guarantor as positive elements for the transparency of the Administration's work, considers that this innovation should be "meditated upon and structured within a more general and wider reflection, pointing out the involvement of multiple subjects and areas, their mutual relations, and coordination that must necessarily be ensured with the work of the other Police Enforcement Agencies". It therefore refers back to a regulation "in view of the many delicate profiles - also concerning the issue of the protection of the safety of operators, also rightly referred to by the National Guarantor". The Juvenile and Community Justice Department also expressed itself in similar terms.



SOME RECOMMENDATIONS	OUTCOMES
<p>- notify the National Guarantor of the planning and timetable for the upgrading and improvement of the video-surveillance and recording systems, and of the purchase and installation of the technological equipment for the implementation of the new video-surveillance systems (including the provision of <i>body cams</i>).</p>	<p>The Prison Administration's response sets the deadline for the completion of the video-surveillance systems by July 2024.</p> <p>Concerning mobile video-surveillance systems, the Department has planned to launch a new project, on an experimental basis, in some regional police stations, with a view to extending the project to the whole country.</p> <p>The Juvenile and Community Justice Department reported that video-surveillance systems were already installed and in operation in 12 out of a total of 17 juvenile penal institutions and that installation was being completed in the remaining five institutions.</p>
<p>- video recordings should be stored in servers, located at local or provincial premises, and are kept for a sufficient period of time.</p>	<p>On the retention period of the data acquired through video recordings, the Penitentiary Administration Department indicates that recordings may be retained for 15 days, unless particular critical events occur that may in abstract terms constitute an offence. In this case, as for the other cases where facts do not constitute an offence but are abstractly relevant to order and security, the Department's indications are in line with the Recommendation of the National Guarantor.</p>
<p>Start works to overcome the problem of water shortages in Terni institute and in all institutes.</p>	<p>The management of Terni institute started the works to definitively solve the problem of the water shortage in the section Maximum Security 3, which includes the renovation of the showers with the installation of storage tanks. At the same time, works were started to increase water pressure.</p>
<p>Ensure that sinks for washing are provided in every bathroom of the overnight rooms, ensuring structural and sanitary conditions that respect the dignity of every human being.</p> <p>Ensure that the sleeping rooms in the confinement sections be in decent conditions and that restraint handles be removed from the beds, where present.</p> <p>Ensure the effectiveness of the six-month visits of the territorial health authorities to penal institutions.</p>	<p>The management of Terni institute purchased and installed steel toilets and sinks for all the prison rooms in the solitary confinement section where they were missing.</p> <p><i>During a follow-up visit, the National Guarantor verified the successful start of the works.</i></p>



SOME RECOMMENDATIONS

OUTCOMES

Ensure that the sleeping rooms in the confinement sections be in decent conditions and that restraint handles be removed from the beds, where present.

In Terni institute, the beds equipped with handles in the confinement section were replaced.

In a subsequent follow-up visit, the National Guarantor verified the removal of the beds described above.

Ensure the effectiveness of the six-month visits of the territorial health authorities to penal institutions.

The Regional Superintendent informed the National Guarantor that he had met the Extraordinary Commissioner of the Local Health Authority together with the Director, the major Police Officer and the Prison Health Officer of the Institute, communicating the difficulties faced by health care, also highlighted by the National Guarantor.

Order the immediate deactivation of the so-called 'Sezione Blu' (Blue Section) on the ground floor of Trani prison, which had been scheduled to be closed in 2020, but was subsequently reactivated as a 'Covid-19 monitoring ward' for the preventive quarantine of those entering the prison. The delegation of the National Guarantor had found that this section mainly hosted problematic inmates and - even more importantly - people suffering from mental distress who could not be accommodated in the prison sickbay.

Following the Recommendation and the subsequent interest of the National Guarantor, the 'Sezione Blu' of the Trani prison was closed.

The National Guarantor continues its monitoring.

Ensure the assignment of persons with mental distress to Institutions with a Mental Health protection area and, in any case, to sections integrated with healthcare services.

Close the so-called 'Sezione Filtro' (Filter Section) in the Turin prison or provide, as an alternative and in order of priority:

- 1) the placement of the Section in the health care area and the assignment of management competence to the local health authority;
- 2) the complete renovation of the Section, bringing the rooms and common areas up to international standards and the European Penitentiary Rules (Rec (2006) 2), in particular Rule 18.1, and provide for the presence of a special medical facility.

The management of the penitentiary institute arranged for the purchase of more advanced equipment for collecting and disinfecting the ova than that used in the past.

The Penitentiary Administration Department replied to the National Guarantor that the Turin institute also adopt (as for other institutes) the procedure to verify the possible ingestion of drug balloons/ova and the subsequent recovery procedure in hospital. In 2021, its closure was planned. In April it was still partially active.



SOME RECOMMENDATIONS

OUTCOMES

Close and decommission the overnight stay room No. 150 located in the ‘Psychiatric Ward’, Section VII - of the ‘Sestante’ section of Turin prison and restructure it in accordance with the internationally defined parameters and Rule 18.1 of the European Penitentiary Rules (Rec (2006) 2), in order to be used only for observation and treatment within the Section in which the room is located.

The Penitentiary Administration Department ordered the closure of room No. 150 and subsequently the renovation of the entire ‘Sestante’ section.

The National Guarantor, following monitoring, verified the closure of the room and the subsequent complete renovation of the section.

Remove or modify window screens that appear unnecessary and bothersome, besides not facing any inhabited outdoor areas. This is in line with the indications of the Penitentiary Administration Department’s Memo no. 293504 of 31 August 2015, with Article 6 of the Penitentiary Administration Regulations (Presidential Decree 230/2000) and Rule 18.2 of the European Penitentiary Rules (Rec(2006)2) according to which “windows must be sufficiently wide for inmates to read and work in natural light under normal conditions and to allow fresh air to enter, unless there is an appropriate air-conditioning system”.

In relation to the reported presence of window screens in detention rooms, a project is currently being prepared by the Venice Public Works Superintendency for the removal and simultaneous replacement of those present in the city prison.

Avoid that in the Special Detention Sections, prohibition of purchasing and make available press and publications are such to compromise effective access to information.

The Penitentiary Administration Department, with regard to the limitations in the reception of press with an overall reference to the fight against organised crime or to the socio-cultural context in which it develops, has confirmed to follow the provisions of Article 18-ter letter a) of the Penitentiary Administration Act, adding that where the prisoner is the recipient of a three-month measure of inhibition to receive/buy local press in the territory of origin, it remains within the power of the Supervision Judge to issue an individual detention order under Article 18-ter letter a) where ascertained the existence of the requirements provided for by paragraph 1 of the same article and, in particular, when the circulation of news reported in certain articles may induce crimes through the cognitive enhancement of those who have an interest in sending directives to the outside.



SOME RECOMMENDATIONS

OUTCOMES

Identify spaces reserved for worship for the different religions within penal institutions.
Ensure and facilitate access within the facilities to ministers of different religions and professions.
Ensure every person who wishes to do so the right to express his or her religion, even if he or she does not participate in ceremonies or collective meetings.

Following visits and monitoring, the National Guarantor verified the provision of places of worship and the access of ministers of different religions and professions within some institutions.

Ensure that, in the placement of detainees to the various institutions, situations are not created that implicitly configure an impossibility of connection with the other detainees; in particular, that persons classified as belonging to the Maximum Security 2 sub-circuit be not further placed in other sub-circuits, and their declassification be adequately assessed in the event of other solutions cannot be envisaged.

The Prison Administration reorganised the Sections Maximum Security 2.

However, the National Guarantor noted the persistence of the problem.

Provide real work for persons interned in ‘Casa di Lavoro’ (Work House), with a view to reintegration, in compliance with Article 4 of the Basic Principles of the European Penitentiary Rules according to which a lack of resources cannot justify detention conditions that violate the rights of detained persons.

The Penitentiary Administration Department confirmed the start of the procedure to restore the functionality of the working area of the Tolmezzo prison which was seriously damaged by adverse weather conditions.

Identify new and different ways of organising Maximum security sub-circuits, so that they can respect personal, cultural and religious identities, diversities and needs, and treatment aimed at ensuring punishments in line with the Constitution principles.

Provide open-air access times, compatible with summer weather conditions. Provision must also be made for the opening of the blinds of the overnight rooms during the day, also in view of any incongruous room furnishings. It is recalled that such room arrangements may be subject to complaints by detained persons, pursuant to Article 35-ter P.A.A.

After the follow-up visits, the National Guarantor ascertained that the management of Taranto Institute had provided for open-air access, compatible with summer and winter weather conditions.



SOME RECOMMENDATIONS	OUTCOMES
<p>Recommendation on tenders for the catering and sopravvitto (complementary food that the inmates can purchase inside the prison) services:</p>	<p>On the instructions of the Prison Administration, the new invitations to tender were issued separately for catering service and for sopravvitto.</p>
<ul style="list-style-type: none"> - set up separate award procedures for tenders concerning the catering and sopravvitto services, including - in the latter case - the participation of large-scale retailers who with respect to local shops can ensure a wider range of food supply and the containment of prices. 	<p>It was specified that the qualification criteria for companies do not exclude the participation of 'large retailers'. However, the administration shall explain, in detail, the participation of large retailers in tender procedures.</p> <p>The range of products available sopravvitto is ensured by the prison's internal regulations. Each institute management can promote new internal standards as long as they are compatible with the requirements of order and security. In any case, the extension and variety of the products listed in Model 72 (i.e. the list of products and items included in the sopravvitto) is being evaluated as a possible criterion in the awarding procedure.</p>
<ul style="list-style-type: none"> - consider replacing the monthly total invoice with the issuing of individual tax receipts for each purchase, in order to operate an effective price control. 	<p>The Prison Administration specified that although the monthly invoice is cumulative, individual purchases are broken down for each inmate on the basis of their own orders, thus being able to verify - at any time - the accuracy of what was received and the correspondence of the price paid with the price shown on Form 72.</p>
<ul style="list-style-type: none"> - exclude the use of tenders for food at the lowest bid. 	<p>The Prison Administration confirmed that it already adopts the criterion of the economically most advantageous offer.</p>
<ul style="list-style-type: none"> - provide a realistically adequate food allowance for the nutritional needs of adults. 	<p>The Prison Administration allocated the available resources in order to make the per capita per diem price reasonable, verifying that the amount set as the basis for the tender was able to support the catering service contract without any offsetting with other food procurement contract.</p>
<ul style="list-style-type: none"> - obtain, if necessary, the mandatory and binding opinion of an independent dietologist. 	<p>On the other hand, the Prison Administration specified that the Food Charts are approved by Decree of the Ministry of Justice, in accordance with the opinion of the Council for Agricultural Research and Analysis of Agricultural Economics.</p>



Liberty and Health

SOME RECOMMENDATIONS¹

OUTCOMES

Psychiatric Diagnostic and Treatment Service (SPDC)

Always ensure the presence of socio-medical staff in the workforce according to the Region's regulatory parameters, including replacements in the event of prolonged sickness or leave, to avoid repercussions on the management of patients and their treatment pathways. The organisational-managerial deficiency of the ward cannot justify restraining treatments.

Avoid the admission of frail persons, and most of all their restraint in passageways, such as corridors, as this is disrespectful to themselves and to other patients who may be upset. Supernumerary admissions actually distorts the functionality of the service, all the more so when combined with staff shortages.

Set up registers of compulsory health treatment and the use of restraint in each SPDC, ensuring that they are compiled systematically and accurately, with the correct spelling of patients' names.

Response by the Health Directorate of Roma Tre Local Health Authority to the critical issues pointed out by the National Guarantor during its visit to San Camillo-Forlanini hospital's SPDC:

- during the past year, new staff, both medical and nursing, have been assigned to the ward, in particular the replacement of a social worker (who had been away for years on sick-leave) and four rehabilitation technicians have been requested.

- Latium Region's Determination no. G06331 of 18/03/2018 "Definition of procedures for transport and interventions of urgent primary health care in psychiatric pathology in the Latium Region" requires the facility to accommodate people also in supernumerary. However, in order to avoid the use of beds in the corridor, an alternative use of the storage room is being considered.

- it was ascertained that the restraint register existed and that it was properly maintained, both with regard to signature by health care personnel and with regard to requests for visual monitoring and limb rotation. A training refresh on the subject was also planned. At the same time, the IPO Register for Involuntary Placement Orders was also activated. Based on said considerations, a check was initiated by the UOC and the nursing coordinator on the correct filling in of the patient records and the up-to-date presence of signed clinical diaries, with legible signatures by the doctors. The Recommendations of the National Guarantor led to the organisation of a training course involving all the SPDC's staff on "Cartella clinica psichiatrica e gestione del reparto" (Psychiatric medical records and ward management). The course included three modules and the participation of speakers responsible for SPDC in Rome and its province.

Response received from the health care management of the San Camillo-Forlanini hospital:

¹ The recommendations are expressed in various Reports on the visits carried out and in the notes sent to the different actors who in various capacities are in charge of protecting the health of persons hosted in socio-healthcare and welfare facilities, supplemented by the response received.



SOME RECOMMENDATIONS	OUTCOMES
<p>Avoid exposing patients to artificial light for prolonged periods of time, ensure access to natural light and frequent outdoor access.</p>	<p>- the dehor area is being redeveloped, a new water distribution point will be also available. The space will be redecorated with new furniture, based on evaluations by the Mental Health Care Centre (UOC-CSM) Complex Operational Unit and the hospital management.</p>
<p>Ensure adequate space for rehabilitation therapies, socialisation activities, meetings with families.</p>	<p>- a different use of all spaces will allow for an optimisation of functions, providing additional spaces for family meeting activities and general rehabilitation. Rules on how to access the service will be posted at the entrance. Common rooms will be supplemented with furniture on the basis of evaluations by the Director of the Mental Health Centre.</p>
<p>Provide regular maintenance of the ventilation system in the smoking room.</p>	<p>Following the report of the National Guarantor, the smoking room was upgraded with the installation of a ventilation system.</p> <p><i>Reply received from the Directorate of the Neuroscience and Mental Health Department of the University Hospital - Città della salute e della scienza of Turin:</i></p>
<p>Attempt and document de-escalation procedures and any intervention functional to the management of the patient's acute phase, which should never be detrimental to human dignity. The relevant document should detail the reasons underlying the compulsory treatment.</p>	<p>- "Restraint was necessary for self-directed and hetero-directed aggressive behaviour as no other treatment modality could be envisaged in the best interest of the patient. In fact, Mr. [omissis], also during his previous admissions to this ward [omissis], had engaged in violent behaviour [omissis]."</p>
<p>Prevent violent conduct by the patient during previous hospitalisations from becoming the reason for repeatedly resort to means of restraint.</p>	<p>- The risk of falling from the bed for Mr. [omissis], represented a further reason for restraint in order to protect the patient. In fact, although he had been sedated, engaged in erratic behaviour and could injury himself while attempting to leave the bed".</p>
<p>Ensure that the drug therapy be subject to strict control in order not to transform the treatment plan into incapacitation by means of chemical restraint.</p>	



SOME RECOMMENDATIONS

OUTCOMES

Ensure an accurate procedure that allows the recovery of a dialogical-relational dimension with the patient.

Document in detail the manner and frequency of intermittent restraint and indicate the limbs that are left free. Record in the file of the restrained patient the manner of restraint itself, the date, start and end time of its application, health checks, indications of the intervals of handling times, hydration and nutrition modalities, as well as their temporal frequency, constant checks to measure the change in vital parameters and any events that might have occurred.

Encourage mobility of the restrained limbs for at least ten minutes every two hours except during the night.

Evaluate the behaviour of the restrained patient and the need of restraint measure by direct and continuous observation, or at most every 30 minutes.

Keep a detailed description of the patient's self-directed and hetero-directed aggressive behaviour, if any, that leads to the adoption of the restraining decision.

Avoid the use of restraint, which is always an extreme act, as a clinical practice to collect essential vital parameters or to assess the most appropriate therapy and administer it or to wait for its effect.

Notwithstanding the provision of Article 35 of the Code of Ethics, restraint must be never decided and implemented by the nursing staff alone, it must be the outcome of a medical assessment, exclude resort to restraint as a practice justified on grounds of mere practicality, shortage of staff or as a measure to prevent disturbance in the ward.

Response received from Bergamo Health Authority (ASST):

“There are a large number of patients suffering from severe psychopathological symptoms admitted to E.R. at night. Most of them are not known to the territorial health care services, as they are in transit (including from the nearby airport) or non-residents. In most cases, the psychic pathology is accompanied by intoxication from substance abuse, which is very difficult to manage. In these situations, the use of physical restraint aimed at collecting patient's essential clinical parameters to decide on the most appropriate therapy (often with the assistance of other specialists, such as the resuscitator and the toxicologist), administer it and wait for its effect, represents the alternative with the lowest clinical risk, primarily for the person needing urgent care.”



SOME RECOMMENDATIONS

OUTCOMES

Residences for the Execution of Security Measures (REMS)

Ensure that the individualised therapeutic rehabilitation project (PTRI) highlight the short, medium and long term therapeutic-rehabilitation and social reintegration objectives envisaged for the person, and that the treatment decided on by the REMS team is always associated to an adequate support from the territorial services of the place of residence, in accordance with the principle of taking charge of the person as a whole.

Response received from Sciacca Mental Health Centre:

“As part of the shared definition of paths, projects and taking charge, on 10/03/2021 the PTRI relating to the patient was sent to the REMS, on 19/05/2021 the first joint meeting was held online between the operators of Sciacca CSM and Caltagirone REMS, with the participation of the patient, aimed at verifying the situation and the shared objectives identified; a further meeting was scheduled six months after the first one. With regard to the vocational training for the qualification of socio-medical workers, which had been initiated prior to placement in the REMS, it must be pointed out that the same was interrupted for reasons exclusively related to the particular clinical conditions at that time.”

Ensure the right to worship as enshrined in Article 9 of the European Convention on Human Rights and Article 19 of the Italian Constitution. For this reason, it is necessary to provide a suitable and dedicated environment that guarantees respect for the religious practice of the current Islamic inmates and, more generally, and appropriate spaces for individual reflection and worship where persons of other religions may be accommodated. This to prevent a subjective perception of disregard for the individual’s religious ‘needs’ from fragile people who are also experiencing the difficulty of being deprived of liberty, and could also negatively process this perception with respect to the host community as a whole.

Reply received from the Director General of Mantova ASST:

The ASST has already taken steps to identify a suitable and dedicated room for the practice of Islamic worship, as well as spaces for individual reflection for people of other religions. The above in order to avoid a subjective perception of disregard for the individual’s religious needs of those assisted in the REMS in view of the importance of religious comforts in the phase of rehabilitation and social reintegration. Arrangements will then be made to organise the profession of worship in complete security with dedicated staff.



SOME RECOMMENDATIONS

OUTCOMES

Legal Protection

Always ensure the protection of the constitutionally guaranteed fundamental rights of persons hosted in residential facilities, including the right to communication and social relations with the outside world, aimed at maintaining social relations.

Draw up a housing project as an alternative to residential care facilities, taking into account the person's needs and wishes. The local social services, together with the administration support and/or guardianship and the low-threshold services, must guarantee housing solutions within the person's community of reference.

Prevent admission to residential facilities against the person's will.

Always place at the centre of the mandate of legal protection the individual right of the person to self-determination, in accordance with the general principle expressed in the UN Convention on persons with disabilities and with the provisions of Italian law concerning on the lowest limitation of the capacity to act of the person under guardianship, as the main purpose indicated for the figure of the support administrator. This to ensure that any decision regarding the person's life is made on the basis of personal determination rather than the replacement of the person's will.

Check and ensure that the Therapeutic Rehabilitation Plan identified for the person with disabilities be in line with the treatment offer of the reception structure.

Always provide, in agreement with the legal guardian, a discharge pathway enabling the person to return home to the people close to him/her, even if the person's is manifested at a later stage after entering the residential structure. This to avoid that the entry into residential care coincide with the end of life.



SOME RECOMMENDATIONS

OUTCOMES

Nursing Homes (RSA)

With the onset of the Covid-19 health emergency, the National Guarantor has repeatedly intervened with the various regional actors who, at different levels, are responsible for the management of the health care facilities system. This intervention was necessary in order to point out the constant criticalities in the system of residential care for elderly and disabled people in the country. Criticalities that appeared more evident in some regions, also as a consequence of the higher concentration of residential facilities in their territory. Specifically, the action of the National Guarantor was oriented towards three macro-areas, namely: the separation between the inside/outside of the RSAs with reference to the access of relatives and care-givers, the temporary exits of guests, including returns to the family, the organic shortage of social-healthcare personnel in the residences, and the role of voluntary work.

The National Guarantor initiated a series of positive exchange of opinions with the competent councillors, also through vis-à-vis meetings - in Lombardy, Emilia-Romagna, Umbria and Apulia - in order to make the Authorities aware of the issues and to stimulate an intervention in the direction of a wider accessibility of family/friends to the facilities, with a view to fully respecting and enhancing the self-determination of persons.

Gradual application of the health precautionary measures introduced during the most acute phase of the pandemic to the evolution of the vaccination campaign carried out in residential facilities.

Verify the effective compliance of residential facilities in the territory with the indications of the Ministry of Health's Order of 8 May 2021.

Supervise the effective application of the operational indications contained in the Departmental Memo issued by the Legislative Office of the Ministry of Health on 30 July 2021, in order to ensure uniformity in the criteria for access to residences in the area of competence.

Always discourage the threat of discharge with regard to persons hosted in residential care as a consequence of the demand for compliance with the current parental access guidelines; in fact, the non-compliance of these guidelines is mostly caused by the inadequacy of the organisational solutions adopted by the residential care facilities.



SOME RECOMMENDATIONS

OUTCOMES

Adopt the most appropriate organisational measures to ensure the safe resumption of external visits, monitoring the critical elements that have emerged in the management of the residential system in the Region, highlighting how the persistence of confinement for the RSAs does not correspond to the regulations on the access to the facilities, whose indications are, in fact, largely disregarded by the health directorates operating in the territory (Recommendation made to the Piedmont Region).

Always ensure that family members and care-givers can access the ward to provide additional hygienic and psycho-physical support to the resident in accordance with Article 4-bis of Law no. 126 of 16/09/2021.

Recognise the right of non self-sufficient people hosted in RSA and RSD to affective relations, often the only source of motivation and comfort to their position of disadvantage and fragility, despite the current difficulties. This is in line with the laws and regulations in force, which provided for the facilities to be open seven days a week and visits lasting up to 45 minutes, if possible, allowing relatives and care-givers also to provide day-to-day care in the event that the person being cared for is not self-sufficient.

Remove the restrictions on access to the RSAs, as they cannot be justified by health reasons in the period in question. Beside, if they were confirmed, would constitute a violation of the fundamental right to affectivity and sociality.

Conduct an audit of the health management of residential facilities in the Lombardy region, hoping it could be based on actual facts and experiences, in light of the seriousness of the possible underlying scenario, without limiting itself, therefore, to a survey based on a telephone questionnaire that might not reveal the true facts or extent of the phenomenon. The data provided, in fact, would suggest that the hostile attitude of residential facilities towards the outside is an endemic condition to the current system of management and organisation of the RSAs in Lombardy.

In a reply note, the Director General of the Welfare Directorate of the Lombardy Region states that:

- in application of the regulations concerning the specific subject of the visits, the Managers of the residential social-health facilities have been reminded to adopt [...] a system for scheduling and booking a number of visitors throughout the day, every day of the week including public holidays, possibly lasting up to 45 minutes, in compliance with safety and prevention measures. Besides respecting the common anti-Covid rules, the manager is also required to ensure the possibility of care on the ward for non self-sufficient persons as well as a fair rotation of visits, identifying the persons most in need not only from the health care point of view but also from an affective and relational one.
- The National Agency for Regional Health Services (AGENAS) has activated a regional online monitoring of the implementation of organisational measures for safe access to residential facilities in the territorial network.
- The following requirements are under the competence of the ATSS:



SOME RECOMMENDATIONS	OUTCOMES
	<ul style="list-style-type: none"> - continue with control inspection activities (both on site and remotely), to empirically verify compliance with the regulations in force as well as monitor the correct application of the provisions, with proactive interventions to overcome any criticalities, constantly soliciting changes when there are unjustified or inappropriate misalignments with the regulatory provisions; - carry out a widespread intervention to support residential facilities, so that needs are collected, acknowledged and accepted, personalising the design and the individual care plan; - proceed with the collection of the POGs (Operational Management Plans) of the facilities and subsequent integrations/revisions, with notification of internal epidemiological trends (new cases, recovery, vaccination status, confinements, etc.) and the review of the POGs by the competent ATSS, with specific interventions in the event of any criticalities found.

(Recommendations made to the Welfare Department of the Lombardy Region)

Prepare a general review of the accreditation criteria for socio-healthcare and welfare facilities, which today are essentially based on the number of beds and the availability of common areas. A criterion that showed all its limits during the pandemic, when the persons hosted remained confined to the room and often to the bed alone.

Ensure that the quality of the services offered to the persons hosted in RSAs be always carried out with full respect for human dignity, by adopting all appropriate measures to address, on the one hand, the problem of the shortage of social and healthcare personnel (social and healthcare workers and nurses) within the residential facilities, and on the other hand, the economic decrease in the management profits of these facilities. This to prevent primary care and assistance services from being further penalised.



SOME RECOMMENDATIONS

OUTCOMES

Ensure compliance with the general obligation of responsibility and vigilance by each residential facility management so that no person hosted may be subjected to degrading treatment, also as a result of omissive behaviour, such as to violate human dignity.

Ensure that the person's dignity is respected through appropriate planning of care and treatment interventions, according to the person's specific needs.

Prevent degrading behaviour, including of the omissive type, through the resumption of visits, whose 'external gaze' is always an element of guarantee and of absolute centrality in the prevention of possible disrespectful treatment of the person.

Abrogate the criterion of the maximum time (minutes) allowed for the operator to stay with the person. This method does not take into account the different situations and needs of the persons cared for, but favours a sort of "assembly line" of care, more attentive to the optimisation of resources than to the real needs of frail persons.



Police Enforcement Agencies

SOME RECOMMENDATIONS ¹	OUTCOMES
<p>Increase the inter-institutional collaboration for Police Enforcement Agencies' staff training, respecting the autonomy of the different roles. The training activities should be firstly aimed at preventing situations of practices potentially harmful to fundamental rights, with a view of building a culture based on the constituting values of each Police Force.</p>	<p>The National Guarantor Authority constantly participates in the staff training activities, at different levels, of the Police Enforcement Agencies. <i>The specific Cooperation Agreement with the Carabinieri Corps was renewed.</i> During 2021-22, based on the abovementioned Agreement, the Guarantor participated in the training of 250 cadets at the Penitentiary Police Training School, of 1,500 marshal cadets at the Velletri Carabinieri Training School, and 1,000 Carabinieri agents cadets at the Reggio Calabria Training School (a new session is planned in July 2022 for 1,000 cadets). <i>In addition, the President held 10 seminars for Carabinieri's legion commanders.</i></p>
<p>Carry out an urgent renovation of the custody suites in accordance with the international standards, ensure the passage natural light and air in the room, the presence of a call button inside, directly actionable by the restricted person, and a video-surveillance system for monitoring the restricted person's safety.</p>	
<p>Implement an adaptation plan for the non-operational custody suites in accordance with the international standards. Said spaces must be suitable to host people in safe and dignified conditions.</p>	
<p>Avoid the passage of people arrested or under police custody in the detention system for very short periods and favour, whenever possible, the application of the home detention measures.</p>	
<p>Disseminate more information among local offices about the scope and purpose of the visits of the National Guarantor, the access conditions and the duty to provide the required documents, with the aim of optimising the time of the visits.</p>	

1. Recommendations expressed in different Reports on the visits to the custody suites in use to Police Enforcement Agencies



SOME RECOMMENDATIONS

OUTCOMES

Ensure a better and more transparent record keeping in order to protect persons deprived of liberty and the staff in charge of their surveillance.

Carry out the sanitising of the custody suites and the furniture as planned and, in any case, every time after their use.

SOME RECOMMENDATIONS²

OUTCOMES³

Strutture diverse e idonee utilizzate dall'Autorità di pubblica sicurezza per il trattenimento della persona straniera ai sensi dell'articolo 13 comma 5 bis T.U. Immigrazione

Ensure the preparation of diverse and suitable premises. If these premises have already been organized, verify their adherence to supranational standards concerning available space, natural illumination, ventilation, restroom facilities, bathing amenities including hot water, while simultaneously upholding unrestricted accessibility. Additionally, confirm the presence of an open area within these facilities, enabling temporary detainees to allocate at least one hour each day therein.

Furthermore, it is imperative to establish a functional internal communication system, outfit the area with secure storage units and shelves designated for personal effects and furnish all necessary provisions for an overnight stay—such as beds, mattresses, pillows, and beddings. Additionally, guarantee the provisions catering to the distinct hygiene requirements of female detainees, in accordance with the guidelines stipulated in Rule 7 of the Bangkok Rules.”

Prepare a form, to be handed out upon entry, written in a language understandable to the person detained, outlining their rights and responsibilities, including the right to defense and those related to their legal status, freedom of communication with the outside, the possibility to seek international protection, and access to healthcare services. Additionally, ensure sufficient information dissemination regarding the facility’s rules.

The Department of Public Security has reported that they have transmitted to the Police Headquarters a document detailing the technical specifications of the premises to be established, accompanied by the opinion issued by the National Guarantor of the Rights of Persons Deprived of Liberty regarding the legal, operational, and structural aspects of the said premises.

Certain Police Headquarters have initiated renovation works based on the provided guidelines.

The Department of Public Security confirms that such information is ensured.

2. These recommendations are expressed in the “Rapporto Tematico sulle visite e sulle strutture diverse e idonee utilizzate dall'Autorità di pubblica sicurezza per il trattamento della persona straniera ai sensi dell'articolo 13, comma 5 bis TU Immigrazione (dicembre 2020 - gennaio 2021)” [garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/7bee01431139e97f-902fe931e0fdb355.pdf](https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/7bee01431139e97f-902fe931e0fdb355.pdf)

3. The outcomes refer to the answer of the Minister of the Interior – Department of Public Security of 30 September 2021, refer to [2b34df645bf961e13f9ea030f406a155.pdf](https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/2b34df645bf961e13f9ea030f406a155.pdf) (garantenazionaleprivatiliberta.it)



SOME RECOMMENDATIONS

Always subject the temporary stay of foreign citizens in different and suitable facilities, other than dedicated Centres, to judicial validation, as stipulated by Article 13, Para. 5 bis of the Consolidated Immigration Act.

OUTCOMES

The Department of Public Security replied that since this procedure is stipulated by law, it is always adhered to. A different situation arises when foreigner national remains within the Police Headquarters only for the time necessary for the organization of the escort service to the Foreigner Detention Centre (CPR). This – it is reported- falls within the ordinary context of executing the deportation/expulsion measure, and therefore, it does not require any validation by the Judicial Authority.

Complete in a precise, systematic, and accurate manner the registers in use, keeping separate records for: 1) individuals accompanied for identification purposes, 2) foreign individuals subject to a forced return measure, 3) arrested/detained individuals; ensure that at least one copy of the detention order is always present at the location where the restrictive measure is applied.

Subsequently, prepare a separate and specific registration template for the different and suitable facilities, which includes the recording of all relevant data concerning the foreign national's period of stay, such as: date and time of entry and exit, transfer location, information provided in a language understandable to the person with their signature acknowledging receipt, expression of the intent to seek international protection, meal provisions, exercise of the right to communicate with the outside, notice/meeting with the defender, communications with the Judicial Authority, medical interventions, and overall critical events, any injuries and complaints expressed, including those related to mistreatment (even prior to arrival), general requests and grievances expressed, and a list of confiscated belongings.



Framework



43. Publications

After the experience of the *Bollettino del Garante Nazionale ai Tempi del Covid*, a daily instrument of information on the pandemic development and the relevant measures to control it in the places of deprivation of liberty, released by the National Guarantor both in Italian and English languages in 2020-2021, on February 2022, it started a new publishing initiative: *Il Punto* of the National Guarantor, a monthly newsletter. It is a communication tool addressed to the media world, but also to universities and research studies world, to the third sector and the volunteering sector and, more in general, to all stakeholders and Institutions. An instrument to support the National Guarantor's communication on its website, on social media and on the new WhatsApp channel. The newsletter content is divided into four sections: a first part, *I numeri del Garante*, dedicated to the data, charts, statistics to ensure transparency for those places that very often are perceived as opaque, also with respect to the real dimensions of the phenomena happening inside; *A che punto siamo*, a section dedicated to an in-depth study on specific topic; *Uno sguardo sulla giurisprudenza*, an updating on the news of the case law both at domestic and supranational level, with the most significant sentences issued by the Courts of Cassations, the Constitutional Courts and the Courts of the Human Rights; lastly, a section dedicated to the National Guarantor, to its activity in the four areas of intervention:

As mentioned above, the National Guarantor has also started a channel on WhatsApp and a profile on Instagram, along with the *Il Punto*, a monthly newsletter addressed to the operators of the sector.

Our profile on Twitter is constantly updated and has been operational for a few years.

In 2022, the National Guarantor published the fourth volume of the Collection *Da Dove*. After the publication of the first volume on death penalty (*Lo Stato non uccide*), other volumes were published, respectively, on the abolition of plagiarism as a crime (*Il reato impossibile*), on the spaces of deprivation of liberty (*In gabbia*), and the last one on torture (*Nelle mani altrui*).

During 2022 the Presidency of the Council of Ministers released the second Information Campaign on the National Guarantor including tv and radio adverts.

Among the publications realised by the National Guarantor, it is to be noted the collection *Norme e normalità*: the first volume collects the Recommendations made by the Guarantor in 2016-2017 with respect to adult criminal field (an English version was also realised). The second volume focuses on deprivation of liberty and migrants. Besides the Recommendations made after the visits in the hotspots and CPRs and the monitoring of the operations of forced returns, it also contains the *National standards of the National Guarantor on administrative detention*.

The Reports to Parliament, including their presentation made by President Mauro Palma and by the Board (Relations to Parliament 2017, 2018, 2019, 2020 and 2021) are also published. Copies of the Reports are distributed to central and local Administrations, Non-profit organisations and Universities, which are increasingly turning



their attention on the Institution of the National Guarantor as a subject of research studies, and to the world of media.

All the publications of the National Guarantor can be downloaded from its institutional website, www.garantenazionaleprivatiliberta.it. The Reports on the visits made by the National Guarantor with their relevant Recommendations and the written answers received by the relevant Administrations, the opinions sent to the Parliament on the bills of law concerning deprivation of liberty and the observations sent to the European Court of Human Rights as *amicus curiae*, the information forms and the complaints filed at the public prosecutor offices are also published and made available to the public on the same website.

Among the activities, a significant one is training, implemented both autonomously and in collaboration with the interested Administrations, with Italian and foreign universities, with national and international Institutions and Associations, whose action is specifically addressed to social vulnerabilities and the effectiveness of rights for everyone. In particular, a collaboration with the Law enforcement corps (State police, Carabinieri Corps, Italian Revenue Guard Corps, and Penitentiary Police) has been operating for a long time. It is aimed at increasing knowledge on the national and supranational regulations about the persons deprived of liberty and on the mandate of the National Guarantor, along with its functions and monitoring activities.

In addition, the National Guarantor has also signed a series of Collaboration agreements with the

Italian Data Protection Authority on the ‘privacy degli ultimi’, the National Office against Racial Discrimination (UNAR) of the Presidency of the Council of Ministers, the National Lawyers’ Council (CNF), the Istituto Superiore di Sanità (ISS), the Polytechnic University of Milan and the Superintendency of the Penitentiary Administration of the Lombardy Region, the Directorate General for Execution of Sentences in the Community and Probation, the “Luigi Vanvitelli” University of Caserta, and Messina University.



44. Rules and Obligations of the National Guarantor

Supranational Regulatory Framework

Optional Protocol to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

(United Nations General Assembly, Resolution 57/199 of 18 December 2002)

[...]

Article 3

Each State Party shall set up, designate or maintain at the domestic level, one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the “national preventive mechanism”).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as “places of detention”). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

[...]

Parties IV

National Preventive Mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.



Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
4. When establishing national preventive mechanisms, the States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

- a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

- a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- c) Access to all places of detention and their installations and facilities;
- d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- e) The liberty to choose the places they want to visit and the persons they want to interview;
- f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.



Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organisation for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organisation shall be otherwise prejudiced in any way.
2. Confidential information collected by the national preventive mechanisms shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

[...]

Law 9 November 2012, no. 195

Ratification and execution of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed in New York on 18 December 2002.

Decree-Law 21 October 2020, no. 130, converted with amendments into Law 18 December 2020, no. 173

modifies para 1. of Art. 7 of the Decree-Law 23 December 2013, no. 146, converted with amendments into law 21 February 2014, no. 10.

Article 7

1. The National Guarantor for the rights of persons deprived of liberty, hereinafter referred to as the “National Guarantor”, is established at the Ministry of Justice.

1-bis. The National Guarantor operates as national preventive mechanism in accordance with the provisions of Art. 3 of the Optional Protocol to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted on 18 December 2002 with Resolution A/RES/57/199 of the UN General Assembly and ratified in accordance with the provisions of law 9 November 2012, no. 195. It exercises the powers, enjoys the guarantees and fulfils the obligations referred to in Articles 4 and from 17 to 23 of the aforementioned Protocol.



Comment

The OPCAT, entered into force in June 2006, provides for a 'dual system of action' for the prevention of torture. The first level is that of the United Nations Subcommittee on the Prevention of Torture (SPT) which acts globally. The second one consists of the so-called National Preventive Mechanisms (NPM) that each Member State is required to establish as ad-hoc independent bodies at national level. With Law no. 195/2012, Italy ratified the Protocol and indicated the National Guarantor as its NPM. Both the Subcommittee on the Prevention of Torture and the National Preventive Mechanism have the power to access all places where people are deprived of their liberty - de jure or de facto - as well as to confidential documentation and interviews with restricted persons. In order to improve the protection of the rights of such people and prevent forms of ill-treatment or conditions that disrespect their dignity, they are bound to implement a reporting activity and make Recommendations. In addition, it can express its opinions on the laws in force, on questions under discussion at parliamentary level and propose amendments or hypothesis of reform. The Decree-Law 21 October 2020, no. 130 through a primary legislation designated the National Guarantor as the Italian NPM, following the Verbal Note no. 1105 of 25 April 2014.

Concluding observation on the initial report of Italy by the UN Convention on the Rights of Persons with Disabilities, 6 October 2016

Para. 41 *The Convention is concerned that the remit of the mandate of the National Preventive Mechanism does not extend to psychiatric institutions or other residential facilities for persons with disabilities where they are deprived of their liberty. Para. 42* *The Convention recommends that the National Preventive Mechanism immediately visit and report on the situation in psychiatric institutions or other residential facilities for persons with disabilities, especially those with intellectual and/or psychosocial disabilities.*

Replies of Italy to the list of issues in relation to the initial report of Italy, 2 June 2016

Reply to the issues raised in Paragraph 16 of the list of issues. Para. 33 *The matter is under consideration by the National Guarantor of the Rights of detainees and persons deprived of personal freedom, which has been identified as the national preventative mechanism.*

Comment:

The UN Convention on the Rights of Persons with Disabilities (CRPD) ratified by Italy with law in 2009, taking into account the answer provided by Italy with respect to the list of issues of the same Convention of which at Art. 15, called "Freedom from torture or cruel, inhuman or degrading treatment" (Para. 33 of the Replies of Italy), also considering Art. 14, para. 1 letter b) establishing that the State Parties must ensure that people with disabilities, on an equal basis with others, "are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty", also considering the Concluding observations on the Initial Report of Italy (adopted by the Convention at its 16th Session, 15 August - 2 September 2016) of which at para. 42, the National Guarantor exercises its powers also over the institutions where healthcare freedom is denied.

In other words, the Convention of the United Nations required Italy to start monitoring of the Psychiatric Institutions and the Socio-healthcare and Welfare Facilities hosting people with disabilities, in particular those suffering from mental disorders or cognitive deficiencies. Italy assigned to the National Guarantor as NPM the task of implementing such monitoring.



DIRECTIVE 2008/115/EC

on common standards and procedures in Member States for returning illegally staying third-country nationals

Article 8

Removal

1. Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 7(4) or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 7.

[...]

6. Member States shall provide for an effective forced-return monitoring system.

Comment

Following the initiation of the infringement procedure against Italy for the missing transposition in its legal system of the Directive 2008/115/EC, Art. 8, para. 6, establishing that each Member State shall provide for monitoring system for forced returns and the letter of formal notice of the European Commission, Italy designated the National Guarantor as the Monitoring Body for forced returns. The Commission approved the decision in 2015; in 2016, the National Guarantor became operational, and one year later (14 July 2017), the infringement procedure was closed.

Note 5007-2/A2014-001564/IX, 9 December 2014, Ministry of the Interior

Bureau of Legislative Affairs and Parliamentary Relations sent to:

- Presidency of the Council of Ministers, Ministry for European Affairs,
- Presidency of the Council of Ministers, Department of Legal and Legislative Affairs,
- Ministry of Justice - Legislative Office.

Subject: Infringement Procedure 2014/2235 (formerly EU Pilot Case 6534/14/Home) - Incorrect transposition of the Directive 2008/115/EC on Common rules and procedures applicable in the Member States for returning illegally staying third-country nationals and alleged violation of the Directive 2003/9/EC setting out minimum standards for the reception of asylum seekers in Member States.



DPE note 0002621 P – 4.22.23, 12 March 2015, Presidency of the Council of Ministers

Ministry for European Affairs, Mission structure for infringement procedures sent to:

- Ministry of the Interior, Cabinet Office
- Ministry of the Interior, Legislative Office
- Ministry of Justice, Cabinet Office
- Ministry of Justice, Legislative Office
- Presidency of the Council of Ministers, Department for Legal and Legislative Affairs
- Ministry of Foreign Affairs, Cabinet Office
- Ministry of Foreign Affairs, Legislative Office
- Ministry of Foreign Affairs, Directorate General for the European Union
- Ministry of Labour and Welfare, Cabinet Office
- Ministry of Labour and Welfare, Legislative Office
- Ministry of Health, Cabinet Office
- Ministry of Health, Legislative Office

Subject: Infringement Procedure 2014/2235 - Incorrect transposition of Directive 2008/115/EC on Common rules and procedures applicable in the Member States for returning illegally staying third-country nationals and alleged violation of the Directive 2003/9/EC setting out minimum standards for the reception of asylum seekers in Member States (Reception Conditions Directive).

Letter of formal notice pursuant to Art. 258 TFEU. Response. Follow-up

[...]

I. MONITORING BODY (Article. 8, para. 6, return directive)

With regard to the **independence of the body** designated to monitor forced returns, the Commission considers satisfactory the proposed solution of the **National Guarantor for the rights of persons deprived of liberty**, established by the Decree-Law of 23 December 2013, no. 146.

However, for the full resolution of the issue, **the Commission deems it necessary to have an explicit indication of the duties for forced returns monitoring in the Self-Regulatory Code which the Guarantor will adopt**. To this end, it requested to receive a copy of **draft** and a **timetable** for its adoption.

DPE Note 0007884 P – 4.22.23, 14 July 2017, Presidency of the Council of Ministers

Ministry for European Affairs, Mission structure for infringement procedures sent to:

- Ministry of Justice, Cabinet Office
- Ministry of Justice, Legislative Office
- National Guarantor for the rights of persons deprived of liberty



- Ministry of Foreign Affairs, Directorate General for the European Union
- Italian Permanent Representation to the European Union.

SUBJECT: Infringement Procedure 2014/2235 - Incorrect transposition of Directive 2008/115/EC (return directive) and alleged violation of Directive 2003/9/EC setting out minimum standards for the reception of asylum seekers in the Member States (Reception Conditions Directive). CASE CLOSED.

National regulations

Art. 7, Decree-Law 23 December 2013, no. 146 (Converted into law 21/02/2014 no. 10) and following amendments

1. The National Guarantor for the rights of persons deprived of liberty, hereinafter referred to as the “National Guarantor”, is established at the Ministry of Justice.
- 1-bis. The National Guarantor operates as national preventive mechanism in accordance with the provisions of Art. 3 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted on 18 December 2002 with Resolution A/RES/57/199 of the UN General Assembly and ratified in accordance with the provisions of Law 9 November 2012, no. 195. It exercises the powers, enjoys the guarantees and fulfils the obligations referred to in Articles 4 and from 17 to 23 of the aforementioned Protocol.
2. The National Guarantor is made up of a Board, composed of the President and two members, who shall remain in office for five years and whose term of office shall not be extended. They are chosen from among people who are not employees of public administrations, who can ensure independence and expertise in the disciplines concerning the protection of human rights and are appointed by resolution of the Council of Ministers and by Presidential Decree in consultation with the competent parliamentary committees.
3. The members of the National Guarantor shall not hold government office, including elected office, or positions in political parties. They shall be immediately replaced in the event of resignation, death, incompatibility, verified physical or psychological impairment, serious violation of duties related to the office, or in the event they are convicted of an intentional criminal act. The members of the National Guarantor shall be compensated with an annual lump-sum payment, fixed in an amount equal to 40 percent of the annual parliamentary allowance for the President and 30 percent for the members of the board, without prejudice to the right to the reimbursement of expenses actually incurred for board, lodging and transport for travel undertaken in the performance of their institutional activities.
4. For the National Guarantor, which makes use of the facilities and resources made available by the Secretary of State for Justice, an office is established of no more than 25 staff units, including at least 20 from the same Ministry and, in leadership positions, a maximum of 2 units from the Ministry of the Interior, and a maximum of 3 units from the National Health Service, who shall retain their current salaries, limited to the fixed and continual terms of employment, with the costs for both the basic compensation as well as fixed and ongoing bonuses being borne by the administrations of origin. Other costs for bonus pay shall be borne by the Ministry of Justice. The aforementioned personnel shall be chosen based on their experience and expertise



in the areas of competence of the Guarantor. The structure and composition of the office are determined by decree of the President of the Council of Ministers, in concert with the Ministry of Justice, the Ministry of The Interior and Ministry of Economy and Finance.

5. The National Guarantor, in addition to promoting and encouraging collaborative relationships with the local Guarantors, or with other institutional figures, however named, which have competence in the same fields:

a) monitors to ensure that the custody enforcement of prisoners, inmates, and persons subject to remand in custody or other forms of limitation of liberty are implemented in accordance with the rules and principles established by the Constitution, the international human rights conventions ratified by Italy, the laws and regulations of the State;

b) visits, without any authorisation required, penitentiary institutes, judicial psychiatric hospitals and healthcare facilities that accommodate people subject to security measures, therapeutic and host communities or in any case the public or private facilities where there are people subjected to alternative measures or to the precautionary measures of house arrest, the juvenile prisons and the host communities for minors subject to orders of the judicial authority, as well as, announced and unrestricted visits, without hindering any ongoing investigation, to Police Forces' custody suites, and to any premises used for or otherwise functional to detention needs;

c) examines, also with the consent of the person concerned, the documents in the file of a person detained or deprived of liberty and, in any case, all documents related to the conditions of detention or deprivation of liberty;

d) requests from the administrations of the facilities indicated in letter b) the necessary information and documents; in the event the relevant administration does not respond within thirty days, it shall inform the competent supervisory judge and may request the issuance of an order to produce them;

e) verifies compliance with the obligations related to the rights set out in Articles 20, 21, 22, and 23 of the regulation referred to in Presidential Decree no. 394 of 31 August 1999 and subsequent amendments, at the Centres for Identification and Expulsion provided for by Article 14 of the Consolidated Act as per the Legislative Decree of 25 July 1998, no. 286 and subsequent amendments, as well as at the premises referred to in Article 6, para. 3-bis, first sentence, of Legislative Decree 18 August 2015, no. 142) being granted unrestricted access to any premises;

f) makes specific recommendations to the relevant administration in case of ascertained violations of the relevant laws or the validity of the requests and complaints proposed pursuant to Article 35 of the Law of 26 July 1975, no. 354. In the event of refusal, the administration concerned shall provide notice of the motivated denial within thirty days;

f-bis) makes specific recommendations to the administration concerned in case the validity of the claims or complaints filed by the subjects detained in the facilities of which at letter e) are established. In the event of refusal, the administration concerned shall communicate its motivated denial within thirty days;

g) annually sends a report on the activity carried out to the Presidents of the Senate of the Republic and the Chamber of Deputies, as well as to the Secretary of State for the Interior and the Secretary of State for Justice.

5.1. The National Guarantor may authorise the local Guarantors to perform its functions in matter of health care, socio-healthcare and welfare facilities, as well as therapeutic and host communities for adults and minors, or under special circumstances, any facilities of which at para. 5 letter e). The authorisation is granted for a period not exceeding six months.



5-bis For the operations of the National Guarantor the amount of EUR 200,000 is authorised for each of the years 2016 and 2017, and the amount of EUR 300,000 per year starting from the year 2018. As part of the functions assigned to by Art. 4 of the Regulation referred to in the Decree of the President of the Council of Ministers 10 April 2019, no. 89, and based on the provision therein specified, the National Guarantor shall adopt annual spending plans, consistent with and within the limits of spending set out in this paragraph; the amount of the spending for each item shall be based on objective and functional criteria, consistently with the necessity of the office, under the determinations adopted in accordance with para. 3, 4, and 5 of this Article.

Comment

The National Guarantor for the rights of persons deprived of liberty is established; it is a fundamental element in the context of strengthening the supervisory and monitoring activities of the conditions of deprivation of liberty. The body has the task of supervising, visiting, accessing documents, talking privately with persons deprived of liberty, in order to strengthen the protection of their rights and provide the guidelines for the correct functioning of the institutions. It also has the task of coordinating the local Guarantors.

The law establishing the National Guarantor has been amended several times.

Law 27 December 2017 no. 205, completely replaced para. 4 of Article 7 of the law establishing the National Guarantor. The main change is represented by the possibility of selecting personnel from Administrations other than the Ministry of Justice.

The Decree-Law of 4 October 2018 no. 113 converted into Law on 1 December 2018 no. 132, further amended Article 7 to paragraph 5 letter e), also providing for access to the custody suites referred to in Article 6, paragraph 3-bis, first sentence, of the Legislative Decree of 18 August 2015, no. 142.

The Decree-Law 21 October 2020 no. 130 converted, with amendments, into Law 18 December 2020, no. 173 introduced new elements, among which: the new name of the Guarantor, eliminating the reference to penal detention; the designation of the Guarantor as the sole Italian NPM with the possibility, when it considers it appropriate, of granting temporary specific powers of visiting to local Guarantors; the power of recommendation with respect to the new complaint that foreigners detained for administrative reasons can submit; by way of exception, a two-year extension for the Guarantor in office.

Article 35 of the Law of 26 July 1975, no. 354 and following amendments

Prisoners and internees can make oral or written requests or complaints, also in closed envelopes to:

- 1) The director of the institute, the Regional Senior Executive, the Head of the Penitentiary Administration Ministry and the Secretary of State for Justice;
- 2) The judicial and health authorities visiting the institute;
- 3) The National Guarantor and regional or local Guarantors for the rights of prisoners;
- 4) The President of the Regional Council;
- 5) The Supervisory Judge;
- 6) The Head of State.



Comment

The Decree-Law 23 December 2013 no. 146 (converted into Law 21 February 2014 no. 10) introduced the so-called “jurisdictional complaint”, introducing the new Article 35-bis in the Prison Administration Law. In addition, it strengthened the first level of protection, the extra-judicial protection, reinforcing the prisoners’ right to file a “generic” complaint. Complaints can be submitted to different Authorities which, after the legislative amendment, also includes the Guarantors for the rights of persons deprived of liberty. Therefore, the National Guarantor is called upon to support the judicial protection exercised by the Supervisory Judge with an extra-judicial protection task which, in this context, starts from an individual request.

Art. 14, para. 2-bis of the Legislative Decree 25 July 1998, no. 286

The detained third-country national can address oral or written instances or complaints, also in a closed envelope, to the National Guarantor, regional or local Guarantors for the rights of the persons deprived of liberty.

Comment

Based on the model the generic complaint ex Art. 35 of the Prison Administration Law, it has been introduced the possibility of filing a complaint to the National Guarantor, the Local Guarantors by third-country nationals illegally staying in the Country and detained for administrative reasons.

Decree of the President of the Council of Ministers 10 April 2019, no. 89, Regulation concerning the determination of the structure and composition of the Office placed under the authority of the National Guarantor

[...]

Given the Directive 2008/115/EC of the European Parliament and of the UE Council bearing «Norms and procedures applicable in the Member States for returning illegally staying third-country nationals» and, in particular, Art. 8, paragraph 6;

Given the Law of 9 November 2012 no. 195, containing «Ratification and execution of the optional protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed in New York on 18 December 2002» and, in particular, Art. 3, 4, 17 ff. of the protocol;

[...]

Given the recommendations of the Committee for the Rights of Persons with Disabilities adopted in New York on 13 December 2006, at points 8 and 42 of the concluding remarks on the initial Report of Italy (CRPD/C/ITA/CO/1) of 6 October 2016;

Considering that the National Guarantor for the rights of persons detained or deprived of liberty has been designated as National Preventive Mechanism under the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed in New York on 18 December 2002;



Also considering that the National Guarantor for the rights of persons detained or deprived of personal liberty has been assigned the task of monitoring forced returns pursuant to Directive 2008/115/EC of the European Parliament and of the EU Council as well as the task of supervising the accommodation facilities for people with disabilities referred to in the aforementioned Convention;

[...]

Article 1

Definitions

1. For the purposes of this decree the following definitions shall apply:

- a) «Guarantor»: the National Guarantor for the rights of persons detained or deprived of personal liberty, established pursuant to Art. 7 of the Decree-Law of 23 December 2013 no. 146, converted into Law with amendments on 21 February 2014, no. 10;
- b) «Office»: the office of the National Guarantor for the rights of persons detained or deprived of liberty, established pursuant to Art. 7 of the Decree-Law of 23 December 2013 no. 146, converted into Law with amendments on 21 February 2014, no. 10;
- c) «UN Protocol»: optional protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment, signed in New York on 18 December 2002, ratified by Law 9 November 2012, no. 195.

Article 2

Office Composition

1. This Decree determines, pursuant to Art. 7, para. 4, of the Decree-Law of 23 December 2013 no. 146, converted into Law with amendments on 21 February 2014 no. 10, the structure and composition of the office placed under the authority of the Guarantor.
2. As part of the places available in the quota provided for in the attached table A, which forms an integral part thereof, the staff of the Office belonging to the roles of the administrations referred to in Art. 7, para. 4, of the aforementioned Decree-Law no. 146 of 2013, is chosen with selection procedures, based on the knowledge acquired in the areas of competence of the Guarantor.
3. At the end of the selection procedure provided for in para. 2, the Office requests the assignment of the selected staff to their respective administrations, which are required to provide for the transfer within fifteen days from the request.
4. The staff assigned to the Office works exclusively under the authority of the Guarantor. Upon request of the staff or for organizational needs of the office, the Guarantor may request, with motivated reason, the revocation of the assignment to the competent authorities. The revocation on the initiative of the belonging administration is subordinate to the favourable opinion of the Guarantor.
5. The Guarantor shall make use of the services of consultants and experts with adequate and proven professional skills in accordance with the procedures set forth in Art. 7 of Legislative Decree no. 165 of 30 March 2001, within the limits of the resources referred to in Art. 7, para. 5-bis, of Decree-Law of 23 December 2013 no. 146, converted into Law with amendments on 21 February 2014 no. 10, as well as within the spending limits referred to in Art. 6, para. 7, of Decree-Law no. 78 of 31 May 2010, converted into Law with amendments of 30 July 2010, no. 122.



Article 3

Office Organisation

1. The organisation of the office is based on the principles of efficiency, effectiveness and transparency of the administrative activity.
2. The Guarantor, in compliance with the powers referred to in Art. 7 of Decree-Law no. 146 of 23 December 2013, converted into Law with amendments on February 21, 2014, no. 10:
 - a) with its own resolution, establishes the organisation type and internal articulation of the office, in the respect of the principles contained in the legislative Decree of 30 March 2001, no. 165;
 - b) determines the guidelines and general criteria to which the office activities should be informed and defines the objectives to be achieved, verifying their implementation;
 - c) adopts the internal rules of procedure for the activities of the office, which regulate the functioning of the office, as well as the code of conduct of the office staff and of all persons who, for any reason, cooperate with the Guarantor, in accordance with the principles set out in the UN Protocol.
3. The second-tier Executive cadre referred to in Table A, in charge of office management, is chosen from among the executives of the Ministry of Justice.

Article 4

The Office Director

1. The Office Director:
 - a) takes care of the execution of the provisions of the Guarantor and the implementation of the programs and objectives, coordinating and directing the activity of the Staff;
 - b) exercises the powers referred to in Art. 5 and 17 of Legislative Decree no. 165 of 30 March 2001, providing for the management and evaluation of the staff assigned to the office in compliance with the guidelines and criteria determined by the Guarantor pursuant to Art. 3, para. 2, letter b);
 - c) exercises the tasks delegated by the Guarantor and, in particular, is an officer delegated to the management of resources referred to in Art. 7, paragraph 5-bis, of Decree-Law no. 146 of 23 December 2013, converted into Law with amendments, no. 10 of 21 February 2014; d) provides the Guarantor with complete and timely information on the overall activity of the office.

Article 5

Headquarters and Office Equipment

1. The office is located in Rome in the premises provided by the Ministry of Justice.
2. The Ministry of Justice, without new or increased charges to the public finance, allocates to the office the furniture and the instrumental movable goods, including computers and IT support, necessary to its operation and provides, through the structures and the goods of its own pertinence, to the possible organisational needs and logistical support for the performance of the tasks of the Guarantor on the whole national territory.
3. The resources referred to in Art. 7, para. 5-bis, of Decree-Law no. 146 of 23 December 2013, converted into Law with amendments, no. 10 of 21 February 2014, are recorded in a special chapter of the estimates of the Ministry of Justice for operating expenses and compensation of the Guarantor.



Article 6

Reimbursement of Expenses

1. The members of the Guarantor's Board, the Office staff and the consultants and experts referred to in Article 2, para. 5, shall be entitled to reimbursement of expenses actually incurred and documented for missions in Italy and abroad.
2. The members of the Guarantor's board shall be granted the reimbursement of expenses actually incurred and documented for food, accommodation and transport for travel made for the purpose of institutional activities.

Article 7

Transitional Provisions

1. From the entry into force of this Decree, the Decree of the Ministry of Justice of 11 March 2015, no. 36 is repealed.
2. Within the quota provided for in Table A attached to this decree, the following staff is confirmed in service at the Office on the date of entry into force of the same. This Decree, bearing the seal of the State, shall be included in the Official Collection of regulatory acts of the Italian Republic. The addressees of this decree shall comply with and enforce it.

Comment

Following the entering into force of the above-mentioned Law 27 December 2017 no. 205, the Decree of the President of the Council of Minister has been drawn up, in coordination with the Department of Simplification and Public Administration, which repeals the previous Regulation and defines the new one. The Whereas clauses of said Decree also refer to the ratification of the OPCAT and define the structure and the composition of the Office of the National Guarantor in the context of the powers and obligations granted by the same Protocol to the National Preventive Mechanism.



Self-regulatory Code¹

Article 1 Definitions

1. Hereinafter in the text:

- a) “Guarantor” refers to the Board of the National Guarantor for the rights of persons deprived of liberty², as provided for in the establishing law. It is composed of the President and two Members; it has been designated by the Italian State with Letter of Credence of 25 April 2014 of the Italian Permanent Representation to the UN as NPM in accordance with the UN Protocol, with all powers and privileges that the same Protocol provides for such Mechanisms. The above designation has been transposed into the Decree-Law 21 October 2020, no. 130, converted with modifications into Law 18 December 2020, no. 173. The Guarantor has been also identified by the Italian State, with Note of the Presidency of the Council of Ministers of 12 March 2015 (DPE0002621P-4.22.23) as National Monitoring Body of the Procedures of Forced Return in accordance with Art. 8, para. 6 of the EU Directive 2008/115/EC;
- b) “Office” refers to the Office of the Guarantor, which is the technical body supporting it;
- c) “Components” refers to the components of the Guarantor’s Office;
- d) “UN Protocol” refers to the Optional Protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment, signed in New York on 18 December 2002, ratified by Law 9 November 2012, no. 195;
- e) “Establishing Law” refers to Art. 7 of Decree-Law 23 December 2013 no. 146, converted into Law, with amendments, 21 of February 2014 no. 10, as amended by Art. 1, para. 317 of the Law 28 December 2015 no. 208, by Art. 1, para. 476 of the Law 27 December 2017 no. 205, by Art. 3 of the Decree-Law 4 October 2018 no. 113 converted, with amendments, into Law 1 December 2018 no. 132 and by the Decree-Law 21 October 2020 no. 130 converted, with amendments, into law 18 December 2020 no. 173;
- f) “Regulation” refers to the Regulation of the structure and composition of the Office placed under the Authority of the Guarantor, adopted by the Decree of the President of the Council of Ministers 10 April 2019 no. 89;
- g) “Directive 2008/115/EC” refers to the Directive of the European Parliament and of the Council of 16 December 2008 no. 115, bearing common standards and procedures applicable in Member States for returning illegally staying third-country nationals;
- h) “ECHR” refers to the European Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe and signed in Rome on 4 November 1950;
- i) “UN Subcommittee” refers to the Subcommittee on Prevention of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with the UN Protocol, within the “Committee Against Torture” established by Art. 17 of the UN Convention of 10 December 1984, ratified by Italy with Law 3 November 1988 no. 498, in force since 11 February 1989;

1. The previous Code was approved by the Guarantor resolution of 31 May 2016, updated by the resolutions of 06 December 2017, of 29 August 2019, and 8 January 2021. This new Code was adopted by resolution of 30 May 2021.

2. The name of the Guarantor has been modified by the Decree-Law 21 October 2020, no. 130, converted with modifications into Law 18 December 2020, no. 173.



- j) “CPRs” refers to Immigration Removal Centres, in accordance with Decree-Law 17 February 2017 no. 13, converted with amendments, into Law 13 April 2017, no. 46;
- k) “Code” refers to this Self-regulatory Code;
- l) “Code of Ethics” refers to the Guarantor’s Code of Ethics;
- m) “NPM” refers to the National Preventive Mechanism in accordance with the relevant UN Protocol;
- n) “CRPD” refers to the UN Convention on the Rights of Persons with Disabilities, ratified by Law 3 March 2009 no. 18;
- o) “Prison Administration Act” refers to Law 26 July 1975 no. 354 and following amendments on prison administration and the enforcement of the measures depriving and limiting liberty.

Article 2

Functions of the Guarantor

- 1. The Board of the Guarantor, in accordance with the powers conferred by the establishing law and the regulations, in accordance with the principles and provisions set out in Part I, Art. 3 and 4, and in Part IV, Art. 17 to 23, of the UN Protocol:
 - a) determines the guidelines and general criteria of the Office’s activities and defines the objectives to be achieved by periodically checking the results;
 - b) adopts the Self-regulatory Code establishing the characteristics of its tasks, the activities of the Office, the regulations of its operation, as well as the guiding principles of the members of the Office and of all persons who, in any capacity, collaborate with the Guarantor;
 - c) regularly examines the situation of persons deprived of liberty staying in any places, including temporary settings, referred to in Art. 4 of the UN Protocol, exercising the power granted by the same Protocol;
 - d) actively works to improve the treatment and situation of persons deprived of liberty, being it *de iure* or *de facto*, and to prevent torture and other inhuman or degrading treatment or punishment, encouraging and facilitating collaborations with the local Guarantors and other institutional figures, however named, which have competence in the same fields, as well as with other social actors operating within such scope;
 - e) proposes, if necessary, the strengthening of its preventive action through measures of protection, which can also be defined through the information exchange and mutual collaboration with the UN Subcommittee and the other NPMs;
 - f) establishes an ongoing dialogue with the Bodies of the State which have competence in the matter of its preventive action.

Article 3

Tasks of the Guarantor

- 1. The Guarantor freely carries out its mandate to protect the rights of persons which, in any forms or in absence of a formal order, are deprived of liberty by the Public Authority, or as a consequence of its decisions or omissions.
- 2. Independently and without any interference, the Guarantor visits the places referred to in Art. 4 of the UN Protocol; holds confidential interviews with the persons detained in such places, without witnesses, as well as with any other person who may provide useful information to its preventive function; access any document may be deemed necessary, including the medical records, after obtaining the consent -also verbal- of the interested person. In particular, it visits:
 - a) the penitentiary institutes by getting access to any section, any area, internal or external, to the perimetral



area of the institute; residences for the execution of security measures (REMS), therapeutic and host communities, any public or private facilities hosting people subjected to alternative measures or to the precautionary measures of house arrest; juvenile prisons and host communities for minors subject to orders of the judicial authority; any other structure, also moveable, intended to accommodate people subjected to penal measures involving deprivation of liberty;

b) the custody suites of the Police Forces of any affiliation, by getting access, without restrictions, to any premises used for restrictive purpose;

c) the CPRs, the premises where a foreigner can be detained for whatever reason, including the suitable premises, the so-called *hotspots* and any other premises referred to in Art. 6, para. 3-bis first sentence, of the Legislative Decree 18 August 2015 no. 142, as well as the induction and first-night centres and borders areas used for temporary detention, however short it may be, of persons deprived of liberty;

d) the psychiatric services of diagnosis and care (SPDC), clinics and hospitals in which it is possible to implement any mayor order concerning compulsory health treatment;

e) elderly/disabled persons (adults and minors) residential facilities, also in compliance with the obligations pursuant the CRPD, ratified by Italy to prevent situations where self-determination is limited causing a deprivation of liberty;

f) any place that, because of a contingent situation, hosts people that are not authorised to leave it.

3. The exercise of such powers is aimed at:

a) monitoring that the execution of the custody of persons detained, institutionalised, remanded in custody or subject to any other form of restriction of liberty, the execution of administrative, health security measures or any other measure involving deprivation of liberty, is carried out in accordance with the rules and principles established by the Constitution, the international conventions on the protection of the rights of persons and their dignity ratified by Italy, and by the laws and regulations in force;

b) monitoring the consistency of the regulatory acts with the principles referred to in point a), making recommendations to the relevant Authorities in case of non-compliance with the above-mentioned principles or their implementation;

c) formulating its opinion on the primary and secondary legislation in force or bill, in phase of drafting or approval, which may affect liberty. Its opinion is based on the observation activity performed, on the principles and the national and international standards on human rights;

d) making observations and specific recommendations to the relevant administrations, which have the obligation of consulting with the Guarantor on the measures to be adopted with reference to the criticalities pointed out during its visits, or following the reception of reports, instances and complaints;

4. obtaining information and documents necessary for the performance of its tasks by the relevant administrations. In case the administration involved should not comply with the request within thirty days, the Guarantor can inform the competent authorities so that they can take the necessary action. In case of situation falling within the provision of para. 2 letter a) of this article, it can also inform the relevant Judicial Authority and request the issuance of an order imposing the delivery of the requested documents;

5. Under the circumstances of Art. 4, para. 2, second sentence and Art. 5, para. 1 letter e), the Guarantor participates in the proceedings as offended party, exercising the rights and faculties established by Art. 90 of Code of Criminal Procedure (CPP), and evaluating, case by case, its intervention as a civil party in the proceedings.

6. In exercising its powers, as provided for in para. 2 letter c), d) and e) of this article, under particular circumstances, the Guarantor may authorise a local Guarantor to act on its behalf in the relevant territory for a period of six months (which can be extended).

7. It monitors the procedure implemented during the forced returns operation of illegally staying third country



nationals referred to in Art. 8(6) of Directive 2008/115/EC. Under presidential resolution, the monitoring activity of the operations of forced return can be carried out not only by the components of the office of the Guarantors, but also by the subjects belonging to the national network for monitoring forced returns.

8. If the Guarantor ascertains the violations of the rights and the corresponding obligations of the responsible administrations, it formulates observations and recommendations with the aim of improving the treatment and the situation of the persons involved, and preventing episodes of torture or other cruel, inhuman or degrading treatment or punishment. If necessary, it proposes the strengthening or modification of the protection measures in force.

9. Drafts the Reports of the visits, which are sent to the administrations and made publicly available, without indication of the names of the persons involved, only after the end of time granted to said administrations for providing their observations, which are published along with the Report. Reports are sent, whenever the Guarantor deems it appropriate, to the supranational bodies which supervise the obligations of which at the Guarantor's activities.

10. Sponsors or participates in training activities addressed to people and organisations working in the same field of the Guarantor, to schools and universities. Based on agreements, understandings and protocols of collaboration, such training activities can be also addressed to the staff of Administrations collaborating with the Guarantor.

Article 4

Obligations of the Guarantor

1. The Guarantor, in performing its activities, acts independently, impartially and with professionalism, in accordance with the provisions of Art. 3 and in compliance with the guiding principles of which at Art. 5. To this purpose, it invests in continuing education projects with the aim of strengthening its preparation and professionalism.

2. The Guarantor establishes a cooperative dialogue with all the interested Authorities aimed at finding shared solutions to overcome the criticalities found during its visits to structures and monitoring of the rights of the people hosted and those working in such structures.

If during a visit or the monitoring of a forced return, the Guarantor considers that the situation in process violates Art. 3 of the ECHR, as construed by the European Court of the Human Rights, or the safeguards established by the Constitution on the dignity and intangibility of the person, the Guarantor shall promptly inform the relevant authority so that it can immediately stop the violation in progress, notifying, at the same time, the judicial authority for the relevant interventions.

3. The Guarantor prepares its annual Report on the activity performed. The documents include the description of the objectives and the analysis of the results of its activity. The Report is sent to the President of the Republic, also in its role of President of the High Council for the Judiciary, to the President of the Senate of the Republic, to the President of the Chamber of Deputies, to the President of the Council of Ministers, and to the Secretary of State for Defence, to the Secretary of State for Justice, to the Secretary of State of the Interior and the Secretary of State for Health. The Annual Report is published on the Guarantor's website.

4. The Guarantor defines its strategic objectives in matter of prevention of corruption and transparency, based on which the Responsible for the prevention of corruption and Transparency (RPCT) proposes the Three-Year Plan on prevention of corruption (PTPCT). The Guarantor adopts the PTPCT and provides for any further obligations provided for by Law 190/2012, as amended by the Presidential Decree 97/2016 and by the resolutions of the National Anti-corruption Authority, including any obligations concerning the training and the updating of the staff in service, with particular attention to the staff working in places where there is a high risk of corruption.



Article 5 Guiding Principles

1. The Guarantor, the Office, the members of the Office and all the subjects who in any way collaborate with the Guarantor in institutional activities shall comply with the following guiding principles:

- a) absolute independence of conduct in compliance with the principles of the UN Protocol, in particular Art. 18, and with the rules of the Code of Ethics;
- b) protection of confidential information collected by the Guarantor. In particular, no personal data can be made public without the express consent of the person concerned;
- d) the data and the information collected must be treated in full compliance with the norms regulating the privacy of data and information;
- d) secrecy on preliminary activities, information and documentation acquired during the institutional visits and in the performance of other tasks of the Guarantor;
- e) confidentiality on the results of the visits referred to in Art. 3 of the Code, until their publication on the Guarantor's website;
- e) obligation to communicate to the Guarantor, without delay, any information concerning crimes against persons in custody or deprived of liberty of which they become aware in the performance of their institutional duties, so that the President can promptly inform the relevant judicial authority.

2. The Guarantor actively endeavours to ensure that no authority or public official orders, applies, implements, imposes or tolerates a sanction against a person or organisation for having communicated to the Guarantor any information, whether true or false. The Guarantor shall also ensure that such individual or organisation does not suffer any kind of prejudice.

Article 6 The President

1. The President represents the Guarantor in the various institutional relationships. He or she proposes to the Guarantor, convening in the collegiate session, the approval of the guidelines and general criteria to which the activity of the Office must adhere, defining the objectives to be achieved and the relative priorities.

2. The President convenes, also at the request of a member, the Board meetings of the Guarantor to be held at least once a month to deliberate on the institutional activity. The Board of the Guarantor approves the budget and the final statement of accounts. Resolutions are taken by the Board with the approval of the President and at least one member.

3. With his own determination and with the consent of the interested party, the President may grant specific operational and representative mandates to the members of the Board to be carried out directly or with the help of the members of the Office. The relative results are reported to the President, evaluated in the Board and referred to in the Annual Report on the activities of the Guarantor referred to in Art. 4 of the Code.

4. In case of need, the President may take urgent decisions, communicating them in a timely manner to the members of the Board for collective ratification.

5. The President prepares the Code of Ethics adopted by the Guarantor at the Board.

6. In order to carry out its institutional tasks, the President can appoint highly professional and competent consultants. In addition, he can set up discussion panels, study committees, work or research groups composed by both internal and external experts.

7. The President authorises the missions, without charging the members of the Board, their budget, including the purchase of goods and the provision of services in accordance with the provisions of Art. 10 of the Code.



8. The President determines the modalities, timing and presence of the members of the Office with regard to the visits and other institutional tasks of the Guarantor, as well as the monitoring activities referred to in Art. 3 of the Code.

9. In the event of prolonged absence or temporary impediment, the President may delegate his/her duties to the members of the Board, also separately.

10. The President appoints the Head of Corruption Prevention and Transparency (RPCT) by choosing among the officers in charge of the Organisational Units of the Guarantor's Office. He or she also appoints the medical practitioner competent for the Office, the Security, Prevention and Protection Officer (RSPP), the Data Processing Officer (DPO), resorting at times to external consultants.

Article 7

Composition and management of the staff assigned to the Office

1. Twenty-five staff units are assigned to the Office, of which at least twenty seconded from the Ministry of Justice, including a second-tier Executive cadre, two seconded from the Ministry of the Interior, and a maximum of three staff units from the National Health Service.

2. If needed, the Guarantor may avail itself of additional staff, which will be assigned to the Office through *ad hoc* agreements, signed with other State Administrations involved in the performance of the tasks set forth in Art. 3 of the Code.

3. The above-mentioned staff shall be chosen according to their experience and expertise in the areas of competence of the Guarantor.

4. The Guarantor provides for the management and evaluation of the staff assigned to its Office. The staff works exclusively under the authority of the Guarantor and cannot be assigned to other tasks without its approval.

5. The Guarantor may request the relevant Administrations, by means of a motivated opinion, the revocation of an assignment of a component. The revocation on the initiative of the belonging Administration is subordinate to the favourable opinion of the Guarantor.

Article 8

Organisation and Articulation of the Office

1. The organisation of the Office responds to the principles of transparency, effectiveness, economy and efficiency of the administrative activity, as well as to the flexibility of the employment of staff in operational activities.

2. The second-tier Executive cadre acts as the Director of the Office and the Proxy Officer for the management of the staff assigned to the Guarantor. He or she takes care of the execution of the provisions of the Guarantor and the implementation of the programmes and objectives, while coordinating and directing the activity of the Staff;

3. The following Organisational Units (OU) are established, identified in accordance with investigative requirements for the performance of the functions and duties of the Guarantor and subject to change and adaptation based on the operational needs:

OU I. General Affairs, Accounting and IT Support:

Secretarial area: Assistance and support to staff, administrative management of the staff and accounting reporting to the relevant administrations of origin for the accessory remuneration items; protocol and distribution of files to the Units; filing; organisation of the missions and of the institutional activities assigned



by the Board.

Accounting area: support the Director in the management of the budget chapter regarding the Guarantor; preparation of the budget chapter and the final Statement of accounts; adoption, implementation and verification of the economic management provision; development of the missions.

IT Area: hardware and software configuration of the workstations; helpdesk; LAN management; management of the publications on the website; management, maintenance and updating of the Intranet; relationship with the internal articulations of the Ministry of Justice and with the external bodies providing for the Internet connection and protected data storage; digital management of the documents flows and their related archives.

OU 2. Deprivation of Liberty in Criminal Justice System:

Monitoring and visiting the structures of the Prison Administration and Juvenile and Community Justice. Relations with the relevant Administrations, in particular with the Public Prosecutor Offices and the competent Magistrates, Universities and Research institutes and bodies in a relevant field.

Access to documents, requests for documentation, contacts with the Supervisory Judge.

Review of the reports concerning the places of deprivation of liberty in criminal justice area and the people restricted in such places.

Monitoring of the progress of the criminal proceedings concerning actions committed against people deprived of liberty in criminal area, and the disciplinary consequences for the people involved.

Preparation of periodical reports on the main criticalities observed on the basis of the analysis of critical event, monitoring of the custody suites and the detention paces and figures of the reports and complaints made pursuant Art. 35-bis of the Prison Administration Act.

Analysis of the developments in case-law, with particular reference to the rulings of the Court of Cassation and the Constitutional Court on matter under their jurisdiction.

OU 3. Deprivation of Liberty by Police Forces:

Monitoring of the structures of all the Police Forces, however used in situations of deprivation of liberty.

Relations with the relative Administrations, as well as Universities and Research bodies and institutes within their competences. Access to documents, requests for documentation.

Monitoring of the progress of the criminal proceedings concerning actions committed against people deprived of liberty under the responsibility of Police Forces and the disciplinary consequences for the people involved.

Report to Guarantor on questions concerning the compliance with principles of proportionality and the necessity in the use of force by the Police Forces.

Analysis of the professional training related to new weapons available to Police Forces.

OU 4. Deprivation of Liberty and Migrants:

Monitoring of migrants' detention facilities as CPRs, *Hotspots*, unaccompanied minors centres, first reception governmental centres, suitable premises, induction and first-night centres, borders areas and any facility or space referred to in Art. 3 para. 2 letter c) of the Code.

Relationships with the relative Administrations, as well as Universities and Research bodies and institutes within their competences. Access to documents, requests for documentation.

Review of the complaints and the reports concerning the competence of the OU.

Monitoring of the progress of the criminal proceedings concerning actions committed against people deprived of liberty in administrative detention structures.

Monitoring of forced returns, during the different phases of their implementation. Report to Guarantor on questions concerning the compliance with the principles of proportionality and the necessity in the use of force during such operations.

Coordination of the additional staff units for the projects concerning the Asylum, Migration and Integration (AMIF) Fund.



OU 5. Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities:

Monitoring and visit of the Services of diagnosis and care (SPDC) and of the structures where people under Involuntary Placement Order (IPO) can be detained.

Monitoring and visit of the healthcare, socio-healthcare and welfare structures, in particular, of the residencies for disabled or elderly where forms of deprivation of liberty can actually happen.

Monitoring and visit of the Residences for the execution of security measures (REMS). Review of the reports concerning the places of deprivation of liberty in social, healthcare and socio-healthcare areas and the people hosted in such places.

Relations with the relative Administrations, with the Judicial Authorities, as well as with Universities and Research bodies and institutes within their competences.

Access to documents, requests for documentation.

Monitoring of the progress of the criminal proceedings concerning actions committed against people deprived of liberty in the relevant structures.

4. The following Organisational Units are established under the direct supervision of the Board:

OU 6. Support to the Board:

Institutional relations, relevant ceremonials and institutional participations.

Functions of particular secretariat, management of the agenda of the President and the two Members of the Board.

Management of the dossiers under the President's personal attention: evaluations, in-depth studies, analysis of the questions.

Management of the internal and external information flows concerning the Board, with particular attention to the correspondence addressed to the President.

Preparation and collection of the deliberations and the minutes of the Board meetings.

Definitions of the investigation phase of complaints pursuant to Art. 35 Prison Administration Act and Secretariat of the relative deliberating Commission.

Final coordination before sending the Annual Report, including the collection of the material prepared by the different Organisation Units and organisation of the related event.

OU 7. Studies, National and International Relations:

Study and research activities

Coordination of the publications of the Guarantor on general themes.

Legislative updating and national and international normative processes.

Relationships with Universities, Research bodies and entities working in the same competence area of the Guarantor.

Institutional relations with the local Guarantors, with the reference international Bodies and with other Organisations active in the field of the protection system for the persons deprived of liberty.

Cooperation in the relevant international projects.

Translations and interpreting.

5. By collective resolutions, with the consent of the interested parties and taking into account the staff plant of the Office, the Guarantor assigns the available staff to the various Organisational units, defining their tasks and competences and, if necessary, appointing a deputy head and one or more contact persons.

6. The components can participate in national and international visits and missions relating to the various activities of the Guarantor regardless of the OU to which they belong.



7. Modalities, times and presence of the members of the Office at the visits and monitoring activities of the Guarantor are established by specific determinations of the President, after consultation with the Board.

8. All Organisational Units, coordinated by the Guarantor:

- a) participate in the internal and external training activity with the State and local Administration, Judicial Authorities, Associations, Universities, regional and local Guarantors;
- b) prepare the collaboration agreement for research projects and collaboration with national and international bodies;
- c) prepare thematic reports and opinions on their field of competence;
- d) prepare ad hoc contributions for the Report to Parliament and collect the data related to their field of competence;
- e) prepare the set of recommendations and standards relating to their field of competence.

Article 9

Headquarters and Capital Goods of the Office

1. The Office is located in Rome, in the premises made available by the Ministry of Justice, in Via San Francesco di Sales, no. 34, Cap 00165.

2. The Guarantor avails itself of the resources made available by the State Administrations in accordance with the provisions of the Regulation. In addition, it also makes use of the structures made available by the Ministry of Justice, other State Administrations, EU and international organisations that operate within the scope of the establishing law, and of all structures freely offered by the Bodies that sharing the principles of the UN Protocol.

3. The Ministry of Justice provides the Guarantor's office with the furniture, the movable and capital goods, including the IT equipment and the website, necessary for its functioning, ensuring its full maintenance. The Ministry of Justice, through the structures and the assets of its own pertinence, also provides for any organisational needs and logistical support required for the performance of the tasks of the Guarantor on the whole national territory.

Article 10

Financial Resources, Administration and Expense Accounting

1. The financial resources necessary to carry out the institutional tasks of the Guarantor are administered in accordance with the criteria of economy and transparency. Within the limits of these resources and after having ascertained the financial regularity of the operation, the President, with his own determinations, motivates and authorises the expenditure for missions, the purchase of goods and any other provision of services.

2. The Guarantor prepares the annual budget consistently and within the limits of the resources assigned; spending allocation is based on objective and functional criteria and on the needs of the Office, in compliance with the internal accounting Regulation.

3. The Guarantor's financial resources are assigned by the National Budget Act and flow into a dedicated budget chapter, used in full autonomy and independence by the Guarantor. The expenditure is managed by the Director of the Office, in his capacity of proxy Officer, supported by the staff of General Affairs, Accounting and IT Support, in accordance with the directives provided by the President.

4. The control of the administrative and accounting regularity of the expenses incurred by the Guarantor is carried out by the Ministry of Economy and Finance, the administration responsible for verifying the legitimacy of the public spending.

5. A summary statement of the expenses incurred during the calendar year, included under the chapter



referred to in the above para. 3 of this article, is reported in a specific section of the Annual Report to be presented to Parliament.

6. For the management of those budget chapters, other than the chapter referred to in para. 3, referring to the purposes of expenditure for the Office staff, the specific provisions of the Internal Accounting Regulation apply.

Article II

Validity and Amendment of the Code

The resolution adopting this Code is an integral part thereof. This Code enters into force on the day after the resolution of approval by the Guarantor. The amendment of one or more articles of this Code shall require the unanimous approval of the Guarantor. The procedure followed for its adoption must be repeated in the event of adoption of a new Code.

Rome, 30 March 2021

Mauro Palma, President of the National Guarantor
Daniela de Robert, Board Member of the National Guarantor
Emilia Rossi, Board Member of the National Guarantor



Code of Ethics³

Title I General Provisions

Article 1 Definitions

Hereinafter in the text:

- a) “Guarantor” refers to the Board of the National Guarantor for the rights of persons deprived of liberty⁴ pursuant to the establishing law and composed of the President and two members appointed by the President of the Republic;
- a) “Office” refers to the Guarantor’s Office, that is the technical body supporting the Guarantor, its structure, composition and organisation;
- b) “Self-regulatory Code” refers to the Self-regulatory Code adopted by the meeting of the Guarantor’s Board on 31 May 2016, and its following amendments;
- c) “Code” refers to the Guarantor’s Code of Ethics;
- d) “Establishing Law” refers to Art. 7 of Decree-Law 23 December 2013 no. 14, converted into Law, with amendments, 21 of February 2014 no. 10, as amended by Art. 1, para. 317 of the Law 28 December 2015 no. 208 (Stability Act 2016), by Art. 1, para. 476 of the Law 27 December 2017 no. 205 (Stability Act 2018), by Art. 3 of the Decree-Law 4 October 2018 no. 113 converted, with amendments, into Law 1 December 2018 no. 132 and by the Decree-Law 21 October 2020 no. 130 converted, with amendments, into law 18 December 2020 no. 173;
- e) “Addressees of the Code” refers to the President and the members of the Guarantor, the Staff in an executive role, secondment or in temporary outplacement from the other State Administrations or other public institutions in service at the Office, as well as persons who in any capacity collaborate or attend this Office, including consultants;
- f) “UN Protocol” refers to the Optional Protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment, signed in New York on 18 December 2002, ratified by Law 9 November 2012, no. 195;
- g) “Presidential Decree 62/2013” refers to the Decree of the President of the Republic of 16 April 2013, no. 62, a Regulation containing the Code of Conduct for civil servants, pursuant to Art. 54, para. 5 of Legislative Decree no. 165 of 30 March 2001, as replaced by Art. 1, para. 44 of the Law no. 190/2012;
- h) “ANAC” refers to the National Anti-Corruption Authority, formerly CIVIT;
- i) “RPCT” refers to the person Responsible for Corruption prevention and Transparency;
- j) “PTPCT” refers to the Three-year Plan for Corruption Prevention and Transparency;
- k) “UPD” refers to the Office for Disciplinary Proceedings;

3. The previous Code of Ethics was approved by the President of the Guarantor with resolution of 31 October 2017, and updated with resolution of 29 August 2019. This new Code was adopted with resolution of 30 March 2021.

4. The name of the Guarantor has been modified by the Decree-Law 21 October 2020, no. 130 converted, with amendments, into Law 18 December 2020, no. 173.



- l) “ECHR” refers to the European Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe and signed in Rome on 4 November 1950;
- m) “PNA” refers to the National Anti-corruption Plan.

Article 2

Objectives and Goals

1. This Code aims to define the best conditions to promote the good functioning and reliability of the Guarantor and to protect its public image. To this end, the Code assumes the provisions of Presidential Decree no. 62 of 2013 and Resolution no. 75 of the ANAC of 2013 as minimum principles of ethics and integrity of conduct in the performance of the institutional tasks of the Guarantor.
2. This Code complies with the provisions of the Constitution that requires public functions to be carried out impartially (Art. 97), in the exclusive service of the nation (Art. 98), and with discipline and honour (Art. 54, para. 2).
3. The rules of this Code adapt the provisions of the above paragraph to the regulatory peculiarities of the Guarantor and specify the content the Guiding Principles referred to in Art. 5 the Self-regulatory Code, as well as in the relevant UN Protocol principles with the aim of defining the duties of diligence, integrity, independence, transparency, and good faith that must inform the conduct of the Guarantor, the Office staff and the subjects operating in any capacity within its scope.
4. The Guarantor adopts this Code and the Self-regulatory Code based on the requirements defined by the laws in force, also applying to independent administrative Authorities⁵.
5. This Code represents a fundamental instrument in the prevention of corruption and in the respect to legality, in accordance with the ANAC Guidelines⁶ on the Codes of Conduct for Public Administration⁷.

Article 3

Scope of Application

1. The Code applies to the Guarantor, to the components of the Office, and to all persons that, in any capacity, collaborate or attend its Office, including consultants.
2. The Director of the Office, acting as Proxy officer, ensures that the resources assigned to the Guarantor are exclusively used for institutional purposes. He or she ensures the organisational wellness of the Office, undertakes initiatives aimed at the circulation of information, promotes, on the advice of the Guarantor, the training and updating of the staff, the inclusion and enhancement of gender differences, promotes the dissemination of knowledge of good practices with the aim of strengthening the feeling of confidence in the Guarantor.

Article 4

Publication and Dissemination of the Code

1. The Code is given the widest dissemination with the publication in the *Gazzetta Ufficiale*, on the

⁵ ANAC - National Anti-Corruption Plan 2019, Law 190/2012, Law 33/2013, and Presidential Decree 62/2013.

⁶ ANAC Resolution no. 177 of 19 February 2020.

⁷ Pursuant to Art. 19, para. 5 of the Law 90/2014, the adoption of the PTPCT and the Code of Conduct are mandatory; non-compliance with the provision referred to under this paragraph shall be punished by ANAC with an administrative sanction.



institutional website of the Guarantor and the Ministry of Justice, as well as on the Intranet. A hard copy of the Code is posted in a clearly visible and accessible location, at the entrance and in all the premises of the Guarantor's office.

2. The Guarantor also publishes on its website and Intranet the national Code of Conduct for civil servants⁸, as well as the ANAC Guidelines in matter of codes of conduct of the Public Administrations.

3. The Director of the Office, in collaboration with the RPCT of the Guarantor sends by e-mail the Code of Conduct to the staff in service and to the regular collaborators (including collaborators working pro-bono) which, in turn, are requested to sign it for knowledge and acceptance of obligations and duties, under penalty of nullity of the relevant tasks and contract relationships.

4. Modifications to this Code and to the Self-regulatory Code are subject to public consultation of the stakeholders on the Guarantor's website.

Title II

Conduct obligations in the execution of institutional tasks and work performance

Article 5

General Principles of Good Conduct

1. The behaviour of the Guarantor and the members of its Office are aimed at establishing relationships based on trust and collaboration with the subjects involved, in any capacity, in the institutional activity developed, as well as of mutual respect for the dignity of each person in interpersonal relationships within the Body of guarantee. To this end, they show willingness and courtesy in all communication with the various interlocutors using simple and comprehensible language, giving full reasons for their response to requests for help or clarification of their condition of detention or deprivation of liberty.

2. The members of the Guarantor shall refrain from making public or post on the Internet or social networks, blog or forum, any comments, information and/or photos/videos/audios that could harm the image of the Guarantor, the integrity of colleagues, as well as their dignity and or confidentiality obligations.

3. The members of the Guarantor and the Office of the Guarantor demonstrate the utmost willingness to cooperate with other Public Administrations, ensuring the exchange and transmission of information, data and documents in any form, including electronically, in compliance with the regulations in force, without prejudice to confidentiality obligations.

4. The Guarantor and its members limit their personal use of phones, IT devices and photocopiers supplied to cases of absolute necessity, including cases of mere communications received.

5. Employees are required to inform the Administration of the existence of evidence against them for indictment in criminal proceedings.

8. Art. 17 of the Presidential Decree 62/2013.



Article 6

Independence

1. The addressees of the Code are required to ensure absolute independence of conduct, first and foremost by observing the principles of the UN Protocol, in particular those set out in Art. 18.
2. The addressees of the Code also take care of counteracting any undue interference in the conduct of the Institutional tasks referred to in Art. 3 of the Self-regulatory Code and in other cases provided by the laws in force.
3. The addressees of the Code must refrain from making decisions or carrying out activities relating to their duties under any circumstance of conflict, including a potential one, with personal interest, as well as those concerning their spouse, partner, relatives and relatives-in-law within the second degree. The conflict may concern interests of any nature, including non-pecuniary interests and those connected with the pressure exercised by political, professional, trade union entities or hierarchical superiors at work.
4. With the exception of occasional teaching, study and research assignments, participation in study conferences or specialisation courses to be promptly communicated to the President of the Guarantor for the relevant authorisations, staff on duty are prohibited from taking on any other employment or permanent position, including pro-bono, as well as exercising professional, commercial and entrepreneurial activity of any kind.
5. The addressees of the Code are forbidden to accept, for themselves or others, gifts, benefits, other utilities, discounts, including on the occasion of trips, seminars or conventions, except for those of modest value, provided that they do not exceed the overall value of Eur 150 (Onehundredfifty/00) in the single calendar year and are given as a sign of ordinary courtesy or local customary relations. It is also not permitted to request or solicit gifts or any other utility as consideration for an official act.
6. Notwithstanding the right of association and membership of political parties and trade unions, the Guarantor and the staff of the Office of the Guarantor avoid participating in the activities of associations, organisations, parties and political movements that conflict with the institutional aims of the Guarantor. If the President or the Board members of the Guarantor decide to accept a candidacy for political, European, national or administrative elections, they shall be suspended from their position, and in case they were elected, they shall cease to hold office. After accepting the candidacy and for the entire duration of the election campaign, the member of the Office shall be placed on leave, so he/she shall be in case of election.
7. At the time of termination of service or assignment, the employee undertakes to comply with the prohibition of *pantouflage*. Under the provisions of Art. 1, para. 42, letter l) of Law 190/2012, which introduced to Article 53 of the Legislative Decree 165/2001, para. 16-ter, the employee who, in the previous three years of service, has exercised authoritative or negotiating powers on behalf of the Public Administrations is prohibited to engage in an employment relationship, involving the same powers, for a period of three years after termination, with private entities which are or were recipients of the activities carried out by the employee during the time he/she held office in the Administration.

Article 7

Impartiality

1. The members of the Guarantor and the Guarantor's Office are required to avoid preferential treatment, to reject undue pressure of any kind, to make decisions in the utmost transparency, not to create or benefit from situations of privilege for themselves or others.
2. The members of the Guarantor and the Guarantor Office are required not to make promises, not to make commitments or give assurances regarding matters falling within their institutional competence.
3. The members of the Guarantor and of the Guarantor's Office are required not be involved or take charge of associations, clubs or other bodies, where obligations, constraints or expectations may arise



such as to affect the impartiality of conduct in the performance of their institutional activities or work performance.

Article 8

Protection of Confidential Information

1. The staff assigned to the Guarantor or collaborating with it in any capacity, are required to protect data and information brought to their attention during the performance of their duties or outside the work environment.
2. No personal data shall be disclosed without the express consent of the person concerned.

Article 9

Secrecy on the Investigative Activity

1. The addressees of the Code shall guarantee the utmost secrecy on investigation activities, on the information and the documents accessed during the visits or inspections ordered pursuant to Art. 3 of the Self-regulatory Code and in the performance of other institutional tasks entrusted to the Guarantor by law or by European or international Conventions.

Article 10

Confidentiality on the Results of the Visits

1. The results of the investigation activity referred to in Art. 9 above shall be kept confidential until their disclosure on the institutional website of the Guarantor.

Article 11

Obligation to Report Crimes to the Competent Authority.

1. The Guarantor shall report to the competent judicial authority any crimes committed against persons detained or deprived of liberty of which it becomes aware during the performance of its institutional duties.
2. If during a visit or the monitoring of a forced return, the Guarantor considers that the situation in process violates Art. 3 of the ECHR, as construed by the ECHR, or the safeguards established by the Constitution on the dignity and intangibility of the person, the Guarantor shall promptly inform the relevant authority so that it can immediately stop the violation in progress, notifying, at the same time, the judicial authority for the relevant interventions.

Article 12

Protection of the Whistleblowers

1. The Guarantor and the member of its Office actively endeavour to ensure that no authority or public official orders, applies, implements, imposes or tolerates any sanction against a person or organisation for having reported to the Guarantor any information, whether true or false.
2. The Guarantor also sees to prevent such individual or organisation suffering from any retaliatory or discriminatory acts.
3. The Guarantor releases the procedure for reporting unlawful conducts (whistleblowing) with the aim of protecting the civil servant who has reported the offence⁹.

⁹ Art. 54-bis Law 165/2001, introduced by Law 190/2012 and amended by Law 179/2017.



Article 13

Person in Charge Corruption Prevention and Transparency

1. The RPCT is appointed by the President choosing from among the Heads of the Organisational Units of the Office.
2. In accordance with the strategic objectives defined by the Guarantor in matter of corruption prevention, integrity and transparency, the RPCT prepares the Three-year Corruption Prevention and Transparency Plan (PTPCT).
3. The Guarantor, convened in meeting, adopts the PTPCT and deliberates on any further obligations provided for by Law 190/2012, as amended by the Presidential Decree 97/2016 and by the Resolutions of the National Anti-corruption Authority, including any obligations concerning the training and the updating of the staff in service, with particular attention to the staff working in places where there is a high risk of corruption.
4. The RPCT, together with the UPD (Office for Disciplinary Proceedings) referred to in Art. 15, is the strategic figure of reference for all subjects participating in the preparation and updating of this Code and of the Self-regulatory Code¹⁰.
5. The employees shall comply with any measures necessary for the prevention of offences in the Administration. In particular, they shall comply with the provision of the PTPCT and cooperate with the RPCT. The employees ensure the fulfilment of the transparency obligations incumbent on the Administrations, providing the maximum collaboration in the drafting, retrieval and transmission of the data subject to the disclosure obligations on the institutional website. The Heads of the Organisational Units shall take on any initiative aimed at ensuring the regular and complete communication of information, data and subjects of publication.

Article 14

Responsibilities Resulting from the Violation of the Obligations of the Code

1. Violation of obligations under the Code constitutes conduct contrary to official duties.¹¹
2. Without prejudice to the cases in which a violation of the provisions contained in this Code, or any violation with respect to duties and obligations contained in the PTPCT prepared by the Guarantor pursuant to the ANAC's PNA, entail a criminal, civil, administrative or accountant liability of the civil servants in service as Office staff, such violations also entail a disciplinary action when responsibility is ascertained by the relevant criminal proceedings. Disciplinary measures shall be determined in accordance with the principles of gradualness and proportionality¹².

Article 15

Office for Disciplinary Proceedings (UPD)

1. The Guarantor establishes the Office for Disciplinary Proceedings (UPD) for the exercise of the functions

10. ANAC's PNA 2019, Part III.

11. Civil servants not only have the 'contractual' duty to provide their work services to the employer/public administration, but they also have duties connected with their public functions, both directly (as holder of the function) or indirectly (as a function that contributes to the definition of the public interest, in the exercise of the function). Such duties are not only requested by the Administration they belong to, but are also requested to the civil servants with respect to society and citizens.

12. Art. 16, para. 1, Presidential Decree 62/2013; Art. 54, para 3 Law 165/2001 contained in the Law 190/2012.



provided for in Art. 55-bis, para. 2, of Legislative Decree 165/2001. The UPD is composed of at least 3 members operating free of charge. The members must ensure absolute independence and are chosen preferably from among those who exercise or have exercised the functions of magistrate in higher jurisdictions or full university professor in the faculties of jurisprudence, or lawyers qualified to practice before higher jurisdictions. The oldest member assumes the functions of Head of the Office and avails itself of the General Affairs office of the Guarantor.

2. The violation is assessed case by case by the Office referred to in para. 1, with regard to the seriousness of the conduct and the extent of the prejudice, including moral, inflicted upon the prestige and public image of the Guarantor. The type, extent, and form of implementation of the relevant sanctions are provided for in para. 2 of Art. 16 of Presidential Decree 62/2013.

Article 16

Supervision of Compliance with this Code and the Self-regulatory Code

1. The President of the Board, the Director of the Office and the Heads of each Organisational Unit are primarily responsible for the supervision of compliance with the Code and Self-regulatory Code¹³ in their area of competence, and in relation to the nature of their assignments and related levels of responsibility. The Director, the Heads of the Organisational Units commit to increase awareness on this Code and the Self-regulatory Code, support the Office's collaborators training in matter of integrity and transparency, consistently with the programming of such measures in the PTPCT.

2. The supervision is also implemented with the support of the UPD, which is in charge of reviewing the reports on violation of the Code and the Self-regulatory Code and interviewing the interested employee in accordance with the provisions of Art. 55-bis of the Law 165/2001.

Article 17

Monitoring on the Implementation of this Code and Self-regulatory Code

1. The RPCT is responsible for monitoring the implementation of this Code and the Self-regulatory Code. The RPCT works together with the UPD, which shall collect the cases for which the employee's unlawful conduct is already been ascertained and sanctioned; the UPD shall also make sure that the provisions referred to in Art. 54-bis of the Law 165/2001 on the secrecy of the identity of the person who has reported the facts entailing disciplinary sanctions, is guaranteed and shall be taken into account in the RPCT's annual Report to ANAC¹⁴.

2. The results of the monitoring activity are published on the website of the Guarantor. The cases of ascertained unlawful conduct are relevant for the purposes of updating the RPCT and the Code itself, as well as to overcome the criticalities that caused such conducts¹⁵.

Rome, 30 March 2021.

Mauro Palma

13. Art. 54, para. 6 of the Law 165/2001 and Articles 13 and 15 of the Presidential Decree 62/2013.

14. Art. 1, para. 14, Law 190/2012.

15. Art. 1, para. 10, Law 190/2012.



Resolution no. 20210330_1

Resolution of 30 March 2021

Having regard to Decree-Law 21 October 2020 no. 130, converted with amendments into Law 18 December 2020 no. 173 introducing substantial changes to the establishing law of the National Guarantor referred to in Art. 7 of the Decree-Law 23 December 2013, no. 146, converted, with amendments, into Law 21 February 2014, no. 10;

Having regard to the Resolution of 22 January 2021 establishing the working group for amending the Code of Ethics and the Self-regulatory Code;

Considering the observations made by the stakeholders during the period the draft text of both Codes were shared in the version prepared by the working group;

Considering the guidelines of the National Anti-Corruption Authority in matter of Codes of Conduct for civil servants;

Considering the opinions, the evaluation, and the information shared in the meeting of 29 March 2021 participated by the Board, the Director and the members of the working group, the National Guarantor

approves

the new texts of the Self-regulatory Code and the Code of Ethics as attached to this Resolution.

The Guarantor arranges for the General Affairs to proceed with the publication of this Resolution and the attached Codes on the institutional website, also ensuring maximum dissemination among all staff of the Office and the collaborators, which in any capacity, work with the National Guarantor.

Mauro Palma



Regulation concerning the Start-up Phase of Accounting Autonomy of *National Guarantor for the Rights of Persons Deprived of Liberty*

Approved by the Guarantor with Resolution of 28/06/2021

Definitions

Hereinafter in the text:

- a) “Guarantor” refers to the Board of the National Guarantor for the rights of persons deprived of liberty, pursuant to the Legislative Decree no. 146/2013 converted into Law no. 10/2014 and to Regulation no. 89 of 10 April 2019;
- b) “Office” refers to the Office of the Guarantor, that is the technical body supporting it;
- c) “Components” refers to the components of the Guarantor’s Office;
- d) “Regulation” refers to the Regulation concerning the determination of the structure and composition of the Office placed under the authority of the National Guarantor adopted with Decree of the President of the Council of Ministers (DPCM) 10 April 2019, no. 89;
- e) “Accounting Regulation” refers to the Regulation disciplining the start-up phase of accounting autonomy of the National Guarantor for the rights of persons deprived of liberty.

Article 1 Subject

With the **Accounting Regulation**, disciplining the first phase of accounting autonomy of the National Guarantor for the rights of persons deprived of liberty, the Office of the Guarantor applies the accounting principles set out in the Legislative Decree of 31 May 2011, no. 91 and its following amendments, in the Legislative Decree of 23 June 2011, no. 118 and its following amendments, with organisational characteristics consistent with the provisions set out in the Decree-Law no. 146 of 2013, converted with amendments into Law of 21 February 2014 no. 10 and into the Ministerial Decree of 11 March 2015 no. 36 setting out the regulation of the structure and the composition of the Office, without prejudice to the provisions established by the laws to ensure the unitarity and uniformity of the financial and accounting system.

1. This Regulation applies the accounting principles established by the Legislative Decree 31 May 2011, no. 91 and its following amendments on “Provisions for the implementation of Article 2, Law 31 December 2009, no. 196 in matter of adaptation and harmonisations of the accounting systems. (11G0134) (Gazzetta Ufficiale Serie Generale no. 145 of 24/06/2011) and those contained in the Legislative Decree 23 June 2011, no. 118 “*Provisions in matter of harmonisation of the accounting systems and the models of the financial statements of the Regions, their local entities and bodies pursuant to Articles 1 and 2 of the Law 5 May 2009, no. 42*”.
2. With this Regulation the Guarantor also clarifies the initial phases of accounting autonomy that shall be



implemented through the attribution to the Proxy Officer, established at the National Guarantor's Office, of the function of Secondary Authorising Officer for proxy expenditure relating to the management of the dedicated chapter 1753 and its relevant items, indexed in Table 5 of the Ministry of Justice as "Operating expenditure for the National Guarantor for the rights of detained persons".

3. The structures and the premises where the staff of the National Guarantor works are made available by the State Administrations, in accordance with the provisions of the Regulation. The National Guarantor also avails itself of the premises made available by the Ministry of Justice; the financial and economic-patrimonial management shall remain under the management of the same Administrations.
4. The Ministry of Justice allocates the furniture, the instrumental movable goods and the IT equipment necessary to the National Guarantor to ensure its operations. The maintenance of the above assets is also ensured by the Ministry of Justice, which retains the ownership rights.

Article 2 Purpose and Scope of Application

The **Accounting Regulation** ensures the consolidated knowledge of the global management results of the Office for the exercise of functions and services, disciplining the attributions to the Proxy Officer, the Guarantor and its President, as the latter acts in its capacity of legal representative of the Office, and their connection with respect to the general principles of delegated economic-patrimonial and financial accounting.

The Office unifies its management to the integrated accounting system through the ERP (Enterprise Resource Planning) system, and the software programmes InIt by RGS, and SICOGÉ.

1. The consolidated knowledge of the global management results of the Office is ensured through the different modalities provided for by the accounting principles applied to the consolidated financial statements referred to in the attachment no. 4/4 of the Legislative Decree no. 118/2011. In particular, the Guarantor receives funds for its operations from the State; as such, it prepares its budget in compliance with the principles applied to the State's Budget, taking care that the funds are properly used and compliant with the criteria, among the others, of cost efficiency/effectiveness and transparency.

Article 3 Competences of the Administration's Subjects

The **Accounting Regulation** sets out the rules on the specific competence of the administration's subjects responsible for programming, adopting and implementing the financial and accounting management measures, consistently with the provisions of the laws in force

1. For detailed information on the specific competences of the Administration subjects in charge of programming, adopting and implementing the accounting management measures, refer to the Legislative Decree no. 118/2011, Legislative Decree 91/2011 and to this Regulation.



Article 4 Organisation of the Administrative-accounting and Financial service

The person in charge of this service is the staff unit indicated in this Accounting Regulation.

1. The human resources assigned to the financial service are defined and disciplined by the general laws regulating the Office of the Guarantor.
2. The person in charge of this service is the Responsible of the administrative-accounting and financial service, defined as Proxy Officer. In the event of his/her absence or impediment, he/she shall be replaced by another Officer assigned to the administrative-accounting and financial service.
3. The Legal Representative of the Authority, coinciding with the President or other delegated figure, is authorised to prepare the commitments deed and sign the procurement orders after obtaining the approval on accounting compliance of the expenses.

Article 5 Guidelines for Accounting Compliance

The **Accounting Regulation** disciplines the procedures necessary to obtain the opinions on the accounting compliance of the proposed resolutions and the validation of the aforementioned accounting compliance on the decisions made by authorised subjects. The Responsible of the administrative-accounting and financial service certifies the coverage of the expenditure with respect to the actual availability in the funding allocations and, when necessary, the current state of the pre-assigned funds, in accordance with the provisions of the **Accounting Regulation**.

1. The person in charge for the administrative-accounting and financial service is responsible for:
 - A) Certificating the expenditure funding.

The Responsible of the administrative-accounting and financial service, upon verification of the availability of the funds in the relevant item of the budget and of any corresponding pre-determined fund, validates the accounting compliance of the expenditure. All expenditure authorisations shall bear said validation, in absence of which the authorisation is unenforceable.

- B) Validation of the accounting compliance.

The Responsible of the administrative-accounting and financial service expresses its opinion on the accounting compliance of the expenditure with regard to:

- Bi. any proposal deliberated by the Guarantor, with the exception of plain guidelines, and any resolution of the President bearing direct or indirect consequences on the economical-financial situation of the Guarantor or on its assets.

The following checks are performed before releasing the opinion:

- a. Compliance with the provision of the financial and accounting laws referred to in the Legislative Decree no. 91/2011, Legislative Decree no. 118/2011, as well as in the general accounting principles and their actual implementation;
 - b. Compliance with the provisions referred to in this Regulation;



- c. Proper reference of the expenditure, and of the items in the executive management plan of similar document;
- d. Correct allocation in the chart of accounts, compliant with budget planning;
- e. Appropriate documentation, including fiscal documents, supporting the budget.

If the Responsible of the administrative-accounting and financial Office deems that the provision has no accounting relevance, he/she states the non-compliance of the document, and does not affix the validation seal:

B2. on the expenditure forecast and the amendments proposed, to certify that it is true and consistent with forecast to be included in the balance sheet;

B.3 on the draft of the financial statements before being submitted for approval, to certify the correctness of the accounting records and of any residual amount.

The opinion/validation, if negative, must be motivated.

Article 6 Mandatory Reporting of Facts and Assessments

The **Accounting Regulation** disciplines the mandatory reporting of facts and assessments by the financial officer to the legal representative of the body, to the Guarantor in the person of its President; e.g., when any discrepancy, with regard to the funding or the current expenses, arises which can not be compensated by increased funding or diminished expenses such as to impair the balance of the sums assigned. In any case, the report shall be sent within seven days from the day the fact is ascertained.

1. The Responsible of the Administrative-accounting and financial Office shall promptly report, in writing, the situations negatively affecting the balance between the funds assigned and the final expenses for the purposes of compliance with the public finance objectives and the Guarantor's Office.

Article 7 The Annual Programming Document and the Annual Spending Plan

The Annual Programming Document (DPA) regulates the connection between the objectives of the Guarantor's Office and the Budget Process, formalising its management.

1. The Guarantor prepares and approves the document containing the objectives of the Office for the following financial year, and the Proxy Officer (PO), responsible of the administrative-accounting and financial service, based on the instructions of the Guarantor, prepares the Annual Programming Document (DPA) to be included in the Annual Spending Plan (PAS), and submit it to the Guarantor for approval.
2. DPA and PAS are included in the Accounting Management System, the information system used by the PO to obtain the relevant funding from the Directorate General of Human Resources and of resources of the DAP or through the network of the Proxy Officers. The DPA is sent to the DAP to be included in the Budget of the Ministry of Justice, under Table 5.



3. In the event new objectives are fixed by the Guarantor or new needs arise which require an adjustment of the budget, a new document containing the relevant amendments shall be prepared and approved in accordance with the provisions set out in para. 1 of this article.

Article 8

Inadmissibility and Unenforceability of the Resolutions of the Board and the President

The **Accounting Regulation** also provides for the cases of inadmissibility of the resolutions of the Board which are not consistent with the Annual Programming Document approved and financed through the allocation of funds authorised by the Primary Authorising Officer.

1. Resolutions shall comply with the forecast set out in the Multiannual Programming Document (DP) and with the DPA since their drafting phase. Similarly, President's resolutions shall be consistent with the expenditure forecast approved by the Board and bearing the compliance validation by the PO.
2. In the event such resolutions or decisions are not consistent with the DPA, they are declared inadmissible and unenforceable. Inadmissibility refers to a proposal of resolution or decision already examined and discussed, but not approved. Unenforceability refers to a proposal of resolution or decision that has not yet been examined or discussed.
3. The precondition of inadmissibility and unenforceability of the resolutions can be highlighted by the Responsible of the administrative-accounting service in the opinions referred to in Art. 5 of this Regulation.

Article 9

Reserve Fund

The DPA provides for a reserve fund to be used in case of extraordinary events affecting the current expenditure.

1. The use of the Reserve Fund, equal to 1.5% of the budget annually assigned under the operating expenses chapter, is decided before the end of the September of each financial year. Starting from the October the fund can be used for the ordinary expenses falling within the aforementioned expenditure chapter.

Article 10

Request for Modification of the Endowments Assigned

If following the adoption of all programming documents new needs arise which require a modification in the endowments assigned to the Guarantor, the Responsible of the service can propose the modification in accordance with the provisions of this **Accounting Regulation**.

1. If the Executive cadre, that is the Responsible of the service, after proper evaluation of the request, deems that such modification is required, he/she shall propose and motivate the request to the Guarantor.
2. The Guarantor shall adopt a new resolution and send communication to the DAP's budget office requiring the spending authorisation for future funding. The Guarantor shall sign all commitments deeds



only after obtaining the approval and authorisation by the DAP, in accordance with the provisions set out in this Regulation.

3. Resolutions involving the modification of the forecast contained in the Annual Programming Document are respectively anticipated and accompanied by a redefinition of this programmatic instrument.

Article 11 **Funds Assessments - Communications**

The Responsible of the financial service ascertains the incoming of the funds and communicates to the Guarantor any possible delay or lack of funding with respect to the annual programming.

1. The Responsible of the financial service communicates to the Guarantor the exact amount of the funds assigned, noting any discrepancy with the figures contained in the annual programming, which must be allocated under the relevant chapter.

2. Any delay with respect to ordinary procedures or minor discrepancies are reported to the Department office in charge of funds assignment.

Article 12 **Negotiating Activity**

The negotiating activity of the Guarantor is entrusted with its legal representative, which is the President. He is responsible for all documents to be compliant with this Regulation and the Directives 2014/24/EU, 2014/25/EU and 2014/23/EU, as well as with their transposed and implementing Legislative Decree no. 50/2016 and following amendments and integrations regulating contracts and purchasing, as well as with the applicable rules of the Civil Code, and with Law no. 241/1990 for the consensual exercise of the administrative action.

1 - The President, in his capacity of legal representative of the Guarantor, signs the acts resulting from the negotiating activities, compliant with the Directives 2014/24/EU, 2014/25/EU and 2014/23/EU, transposed in and implemented by the Legislative Decree no. 50/2016 and following amendments and integrations regulating contracts and purchasing, as well as those contracts regulated by the applicable rules of the civil code, and for the exercise of consensual administrative powers, as regulated by Law no. 241/1990.

Article 13 **Approval of Commitment Deeds**

The **Accounting Regulation** regulates the process for the approval of the Commitment Deeds by the Responsible of Services, in compliance with the general accounting principles and the applied principle of the financial accounts referred to in the attachments no. 1 and no. 4/2 of the Legislative Decree no. 118/2011 and its following amendments. These deeds, are defined as “determinations” and shall be classified following a chronological order and office of origin.

1. The Legal Representative of the Guarantor approves the determinations concerning the Commitment Deeds.



2. The Responsible of the financial services releases the favourable opinion/validation for accounting compliance, also validating the relevant funding.

Article 14 Expenditure Order

The Legal Representative of the Guarantor signs the Commitment Deeds, issues the procurement order by signing agreements, contracts, conventions or, in the case of use of the electronic market, in the manner therein provided including the exchange of commercial letters. In such capacity the Legal Representative acts as “Ordering Point” and RUP (Sole Responsible of the Procedure).

1. After obtaining the validation of accounting compliance certifying the funding, the Ordering Point communicates to the interested third party the following information:
 - a) Number, subject, date and amount of the determination;
 - b) Univocal code for electronic invoicing;
 - c) Cig and cup codes;
 - d) Any commission applicable on wire transfers, such as duty stamps or other duties provided for by the tax laws;
 - e) Payment terms, starting from the date when the invoice is received by the protocol office.
2. The above-mentioned communication shall also indicate for the supplier/contractor:
 - a) Any suspension of the payment terms and its relevant motivation;
 - b) The obligation to include in the invoice the dedicated bank account number, the Vat Number, and the Tax Code.

Article 15 Settlement of the Expenditure

The validation of the procurement expenditure is digitally signed by the Proxy Officer by means of a specific function provided for by the SICOGE system or other accounting management software in use.

1. The Payment Order is signed by the Responsible of the financial service with a digital signature affixed on the accounting document through the accounting management system in use (SICOGE and InIT).
2. The liquidation can be arranged upon the execution and/or supply of the goods/service, even partial, if set forth in the contract.

Article 16 Financial Reporting

Management Reporting is electronically prepared by the Proxy Officer via the Accounting Management System in use.



1. The Officer digitally signs the financial report within the deadline fixed by the Departmental Memo of the MEF (Ministry of Economy and Finance) dedicated to the closing entries of the financial year. The Proxy Officer before sending the report to the Accounting Office shall validate the same report and wait for the accounting feedback affixed by the officer in charge; if the file has been already uploaded in the directory the Proxy Officer, the accounting feedback step can be skipped, and the PO can digitally sign the financial report for delivery.

Article 17

Communication of Management Operations, Call for Tenders, Notices, and Appointments

Management operations, call for tenders, notices, and appointments are communicated on Guarantor's website, under the section "Transparency".

1- Pursuant to the Legislative Decree no. 33 of 2013, the Guarantor shall publish all management operations, call for tenders, notices, and appointments on its website under the section "Transparency".

Article 18

Goods Management and Consignee

The management of the goods purchased by the Guarantor is entrusted with the Consignee, whose functions are regulated by the Presidential Decree no. 254/2002.

1 - The Responsible of the administrative-accounting and financial service shall appoint the Consignee, regulating the assignment by means of a service order. The Consignee shall carry out his/her functions in compliance with the Regulation referred to in the Presidential Decree no. 254/2002. The Consignee appointed in the first phase of the Accounting autonomy is entrusted with the management of the goods purchased by the Guarantor starting from the first day of accounting autonomy, and unless otherwise indicated by the relevant legislation, he/she shall not be in charge of the goods referred to in Art. 1 of this Regulation.

Article 19

Presentation of the Judicial Account of the Public Accountants of the Guarantor

The public accountants in charge present the judicial account to the Guarantor in the terms and methods set forth in Article 139 of Legislative Decree No. 174 of 2016.

1- The public accountants under relevant obligations, in charge of the functions provided for in the Art. 18 of this Regulation, shall submit the judicial account to the Guarantor in the terms and methods set forth in Article 139 of Legislative Decree No. 174 of 2016.



Article 20 **Treasury Service - Deferment**

The establishment of a treasury service may be envisaged, along with the appointment of a responsible officer; the service is governed by a specific regulation for the cash management of office expenses of modest amounts. Pursuant to Art. 2, para. 3, of the Presidential Decree no. 254/2002, the duties of Consignee cannot be combined with those of cashier.

1. The Treasury service is established through an *ad hoc* resolution for the cash management of office expenses of modest amounts.
2. It is governed by a specific regulation.
3. The regulation referred to in para. 2 above, unless otherwise established, also governs the appointment of the “Responsible for the Treasury Office”, as well as that of the other public accountants and the Consignees of the goods.

Article 21 **Entry into Force of this Regulation**

This Regulation is applicable to the programming, forecast and management documents, effective from 1st July 2021.



Three-year Corruption Prevention and Transparency Plan 2022-2024 of the National Guarantor for the rights of persons deprived of liberty

Preamble

On 30 January 2018, the first Three-Year (2018-2020) Corruption Prevention and Transparency Plan (hereinafter also PTPCT) of the National Guarantor for the rights of persons deprived of liberty was adopted. Since this is a young institution, still in its consolidation phase, it is considered appropriate to refer again to the broad premise of a legal and regulatory nature reported in the PTPCT 2018-2020 (<http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/95288dda7474520058d4a3c5bd69d315.pdf>).

It is also important to remember that on 6 September 2018, based on the proposal of the Ministry of Justice, the Council of Ministers approved the law introducing new measures to combat crimes against Public Administration, later converted into a law of the State, after the approval of the bill on 18 December 2018, promulgated by the President of Republic on 10 January 2019. In the wake of the Recommendations made by the Group of States against Corruption, in the context of the Council of Europe, the so called GRECO, and by the Organisation for Economic Cooperation and Development (OECD), the legislation provides for more serious sanctions and the extension, to the sector of crimes against Public Administration, of instruments such as “infiltrators” or reward measures in favour of those who, as participants in the crimes, collaborate with the investigations. The UN Convention against Corruption (UNCAC) ratified by Italy with Law 3 August 2009 no. 116, establishes that each State, in accordance with the fundamental principles of its legal system, is required to “develop and implement or maintain effective, coordinated anti-corruption policies aimed at promoting the participation of society and reflect on the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability” (Art. 5)¹⁶.

With specific regard to the anti-corruption system, the European Commission presented its second Rule

16. Law 9 January 2019 no. 3, providing *Measures to combat crimes against Public Administration, as well as on the matter of statute of limitations and on the matter of transparency of political parties and movements*, on the front of strengthening the fight on crimes against the Public Administration provides for a series of measures aimed at tighten the principal and accessory penalties for crimes of corruption, make preliminary investigations more effective and limit the access of convicts to prison benefits. Accessory penalties are increased in the event of conviction for offences against the public administration. Penalties for the crimes of *corruption for the exercise of a function* (Article 318 of the Criminal Code) and *embezzlement* (Article 646 of the C.C.) are increased. *Extortion of credit* (Article 346 of the Criminal Code) is repealed as an autonomous offence, and the relevant conduct is included in the crime of *trafficking in unlawful influence* (Article 346-bis). A ground for non-punishment is introduced for those who cooperate with justice under specific conditions. The crimes of *corruption between private individuals* (Art. 2635 of the Criminal Code) and *incitement to bribery among private individuals* (Article 2635-bis) become punishable *ex officio*. The duration of *disqualification sanctions* against companies and entities liable under Legislative Decree 231/2001 for crimes against the public administration is increased. The possibility of prosecuting Italian or foreign citizens who commit certain crimes against the public administration abroad is facilitated.



of Law Report 2021, analysing the main factors that have a strong impact on the rule of law, including the Anti-corruption Regulatory and Institutional Framework (European Commission, Rule of Law *Report 2021. Chapter on the Situation of the Rule of Law in Italy*, Brussels, 20 July 2021 in <https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:52021SC0716&from=IT>).

In the Transparency International's 2020 Corruption Perceptions Index, Italy received a score of 53/100 and was ranked 15th in the European Union and 52nd worldwide. This perception has increased significantly over the last five years.

The above-mentioned *Report*, however, states that: «Italy continues to strengthen its legislative framework to fight corruption and related crimes. The cooperation, specialisation and resources allocated to investigators and prosecutors in this area are generally considered sufficient for the repression of corruption, including high-level corruption. In contrast, a lack of resources and limited legal experience and expertise penalise the ability of law enforcement authorities to effectively investigate and prosecute foreign bribery. Lengthy proceedings, particularly at appeal level, continue to be an obstacle in the fight against corruption, while comprehensive reforms to streamline criminal procedures are still pending in Parliament. Bills and amendments to existing laws aimed at strengthening anti-corruption prevention measures conflicts of interest, *lobbying* activities *and* the practice best known as 'revolving doors' (i.e., former public officials taking up positions in private entities recipients of public administration activities) are pending. The COVID-19 pandemic has significantly increased the risk of criminality further infiltrating Italy's legal economy through corruption and related crimes.¹⁷

The internal context of the National Guarantor for the rights of persons deprived of liberty

Art. 7 of the Decree-Law 23 December 2013, no. 146 converted into law, with amendment, by Law 21 February 2014 no. 10, established the National Guarantor for the rights of persons deprived of liberty (National Guarantor) and assigned it the task of ensuring that the custody of persons subject to the limitation of personal liberty be implemented in compliance with the national laws and the international Conventions on human rights ratified by Italy. The law was then modified by Law 28 December 2015 no. 208, by Law 27 December 2017 no. 205, and by the Decree-Law 4 October 2018 no. 113 converted, with amendments, into Law 1 December 2018 no. 132 and lastly by the Decree-Law 21 October 2020 no. 130 converted, with

17. This Report, in the paragraph dedicated to anti-corruption, states that the National Anti-Corruption Authority is the main body responsible for preventing corruption within the public administration and for supervising the adoption of three-year anti-corruption plans. Legislative Decree No. 75 of 14 July 2020, entered into force on 30 July 2020, modified many existing regulations, including the Criminal Code and Legislative Decree 231/2001 (on the liability of entities for administrative offences). The amendments made to the Criminal Code include: types of offences such as aggravated embezzlement by profiting from others' error (Article 316), undue receipt of funds to the detriment of the State (Article 316-ter) and undue inducement to give or promise benefits (Article 319-quater of the Criminal Code), in case the offence is committed against the financial interests of the European Union and the damage or profit exceeds EUR 100,000. A maximum sentence of four years' imprisonment (instead of the previously established three years) was introduced for the above-mentioned crimes. Article 322-bis of the Criminal Code has been amended to include, among the persons punishable for international bribery, persons exercising functions or activities corresponding to those of public officials and persons in charge of a public service within non-EU States, in case the offence is committed against the financial interests of the European Union.



amendments, into law 18 December 2020 no. 173.

The National Guarantor is made up by a Board, composed by the President and two members, chosen from among people who are not employees of public administrations; they are appointed by resolution of the Council of Ministers and by Presidential Decree in consultation with the competent parliamentary committees. The President of the Republic's decree of 1 February 2016 appointed the President of the National Guarantor, Prof. Mauro Palma, and one member of the College, the lawyer Emilia Rossi; the other member of the Board, Ms Daniela de Robert, was appointed on 3 March 2016. The aforementioned Decree-Law no. 130 of 21 October 2020, converted, with amendments, into Law no. 173 of 18 December 2020, changed the name of the Authority, deleting the words 'detained or', in order to give also formal relevance to the multiple fields covered by the mandate of the National Guarantor, not only limited to criminal deprivation of liberty. Among the other provisions, the term of office of the current National Guarantor was extended for two years, and the Board was granted the power of delegating the local Guarantors for the exercise of some of its functions.

The National Guarantor is an independent body, indicated by the Italian Authorities as the National Preventive Mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (NPM) as per Art. 3 and ff. of the Optional Protocol to the Convention against torture (OPCAT), adopted by the General Assembly of the United Nations on 18 December 2002, and ratified by Italy with Law 9 November 2012 no. 195. Following the deposit of the instrument of ratification on 3 April 2013, the Protocol entered into force for Italy on 3 May 2013. The Treaty, by establishing the UN Subcommittee (SPT) for the Prevention of Torture (established on 22 June 2006) with global inspection and monitoring tasks, committed all States Parties to a National Prevention Mechanism with powers to visit all places of deprivation of liberty. With the aim of preventing torture and other cruel, inhuman or degrading treatment or punishment, the Protocol provides for a system of regular visits conducted by independent National and International Mechanisms to places where people are deprived of personal liberty. The National Guarantor for the rights of persons deprived of liberty has been identified as the National Preventive Mechanism for Italy. In this capacity, with the powers and guarantees conferred under Articles 4, 17-23 of the Protocol, the National Guarantor is granted access to all places where persons are or may be deprived of liberty, to confidential interviews with persons and to the documentation necessary for its functions.

In 2014, the National Guarantor was also identified by the Ministry of the Interior and by the Ministry of the European Policies as the independent Monitoring Body for forced returns, as per Art. 8, para. 6 of the EU Directive 2008/115/EU on common standards and procedures applicable in Member States for returning illegally staying third-country nationals; In 2015, this designation was recognised by the European Commission, and the National Guarantor was able to start the independent monitoring system of forced returns.

In addition, having regard to the UN Convention on the Rights of Persons with Disabilities, ratified by Italy by Law no. 18 of 3 March 2009, having regard to Italy's response in relation to the Committee on the Rights of Persons with Disabilities' list of questions under Article 15 *'Freedom from torture or cruel, inhuman or degrading treatment'* point 33 which states: *"The matter is under consideration by the National Guarantor of the Rights of detainees and persons deprived of personal freedom, who has been identified as the national preventive mechanism"*; having regard to the *Concluding observations on the initial report of Italy (Adopted by the Committee at its 16th Session (15 August - 2 September 2016))* under point 42 *"The Committee recommends that the national preventive mechanism immediately visit and report on the situation in psychiatric institutions or other residential facilities for persons with disabilities, especially those with intellectual and/or psychosocial disabilities"*, the National Guarantor also exercises its mandate in those facilities involving deprivation of



liberty in socio-health and assistance fields. This includes the mapping of residential facilities for persons with disabilities in the country, the monitoring activity aimed at verifying their living and care conditions, and the prevention of improper forms of restriction of liberty, possible abuse or treatment contrary to the dignity of the person and the sense of humanity. At the same time, the National Guarantor also manages the monitoring of residences for the non-self-sufficient elderly: places where the process of institutionalisation can become a *de facto* segregation following a voluntary entry into the facility itself.

Law 1 December 2018 no. 132 modified Art. 7, para. 5 letter e) of the Decree-Law 23 December 2013 no. 146, which states that the National Guarantor “verifies compliance with the obligations related to the rights set out in Articles 20, 21, 22, and 23 of the regulation referred to in Presidential Decree no. 394 of 31 August 1999 and subsequent amendments, at the Centres for Identification and Expulsion provided for by Article 14 of the Consolidated Act as per the Legislative Decree of 25 July 1998, no. 286 and subsequent amendments, as well as at the premises referred to in Article 6, para. 3-bis, first sentence, of Legislative Decree 18 August 2019.”

The spread of the pandemic has made it clear that the mandate of the National Guarantor, as the National Prevention Mechanism under Article 3 of the OPCAT Protocol, is also extended to formal quarantine places and all those other places from which persons are not allowed to leave for similar reasons, as they *de facto* represent liberty-depriving contexts. In this regard, see the SPT’s opinion, dated 25 March 2020, and addressed to Member States and National Preventive Mechanisms on the Coronavirus pandemic, as well as the previous opinion, also by the same UN Subcommittee, given to the National Preventive Mechanism of the United Kingdom and Northern Ireland regarding the mandatory quarantine for Coronavirus, approved in its 40th session (10-14 February 2020).

Notwithstanding the small size in terms of staff, the National Guarantor Authority was given a very broad remit. Specifically, the National Guarantor has a preventive-cooperative inter-institutional function. In short, its main task is to visit and monitor places of deprivation of liberty; in addition to prisons, it can visit closed communities, police stations, immigrants, and Residences for Psychiatric Security Measures (REMS), set up after the closure of Judicial Psychiatric Hospitals. The purpose of the visits is to identify any critical issues and, in cooperation with the responsible Authorities, to find appropriate solutions. The National Guarantor is also responsible by law, in cooperation with the Supervisory Courts, for dealing with complaints under Article 35 of the Prison Administration Act (P.A.A.). As specified below, Law no. 173 of 18 December 2020 provided that a detained foreigner may also address petitions and complaints to the National Guarantor.

After each visit, the National Guarantor drafts a Report containing observations and Recommendations, if needed, and send it to the competent Authorities. Each Report, normally one month after being delivered, is published on the website of the National Guarantor, together with the replies and comments received from the respective competent authorities. The publication of the Reports can certainly be configured, for the purpose hereof, as a fundamental measure of prevention and transparency.

Each year the National Guarantor sends and gives a presentation of this *Report to Parliament* on the work performed and on the future perspectives in its field of action. The Report, representing the performance of the Guarantee Authority is also published on the institutional website. At the same time, the National Guarantor periodically reports to the respective international Supervisory Bodies on its activities carried out in fulfilment of international conventions in the global or European context.

Law no. 205 of 27 December 2017 (State budget for the financial year 2018 and multi-year budget for the three-year period 2018-2020) through the amendment of Article 1, paragraph 476, Article 7 of Decree-Law no. 146 of 23 December 2013, provided for the Office of the National Guarantor to be composed of a maximum number of 25 staff, including at least 20 from the Ministry of Justice and, maximum 2 staff from the



Ministry of the Interior, and maximum 3 staff from the National Health Service Entities, also increasing the budget allocation for the operation of the National Guarantor. This amendment fulfils a specific request made by the National Guarantor concerning the necessary multi-disciplinarity of the staff, given the multiple and complex competences assigned to this Guarantor Authority.

Decree no. 89 of the President of the Council of Ministers (DPCM) of 10 April 2019 was published in the Gazzetta Ufficiale no. 193 of 19 August 2019, establishing, among the others, the different staff classifications and the modalities for the selection of the missing units, introducing *ex novo* a Second-tier Executive as Director of the Office and Proxy Officer for the management of the expenses fund dedicated to the Guarantor's operations. The relevant ruling procedure was completed in April 2020, and the Director took office on 8 June 2020. Currently, the Office is composed, in addition to the Director, of 20 units from the Ministry of Justice, 2 from the Ministry of the Interior, and 2 from the National Health Service Entities.

The Office of the National Guarantor has been operational since 25 March 2016, and has completed the recruitment of all staff during 2021. As of 31 December 2021, the organisation chart for staff is as follows:

Staff for functional Areas and Police Roles

Areas/Roles	Women	Men	Total
Second-tier Executive Cadre		1	1
Central Functions - Area 2	4	3	7
Central Functions - Area 3	5	2	7
State Police, Inspector		1	1
Central Functions, Ministry of the Interior, Area 2	1		1
Penitentiary Police - Agents and Assistants		6	6
National Health Service Entities, Administrative Collaborator - Cat. D	1		1
National Health Service Entities, Administrative Collaborator - Cat. C	1		1
Total	12	13	25



Staff for Areas/Roles and Qualifications

Area/Profile - Role/Qualification	Women	Men	Total
Second-tier Executive Cadre		1	1
Central Functions - Area 3	5	2	7
Director	1		1
Administrative Officer	1		1
Accounting Officer	1		1
Pedagogical Officer	1	1	2
Pedagogical Legal Officer		1	1
Language Officer	1		1
Central Functions - Area 2	4	3	7
Legal Assistant	3	1	4
Administrative Assistant		2	2
IT Assistant	1		1
Ministry of the Interior - State Police	1	1	2
Inspector		1	1
Central Functions - Area 2	1		1
Penitentiary Police - Agents and Assistants		6	6
Special Agent		5	5
Agent		1	1
National Health Service Entities	2		2
Administrative Collaborator - Cat. D	1		
Administrative Assistant - Cat. C	1		
Total	12	13	25

Starting from 1 July 2021, the National Guarantor had the possibility to avail himself of the regular collaboration of 1 Penitentiary Executive assigned on a temporary basis for 2 semesters, with the aim of reorganising the Organisational Unit 'Deprivation of Liberty in Criminal Justice System' - which has undergone several transformations in its composition over the years - and giving unity to that reactive part of the complex task of the National Guarantor which is take actions following reports and complaints.

Article 2 of DPCM no. 89/2019 and the Self-Regulatory Code currently in force provide that the Guarantor may avail itself of the work of consultants and experts with adequate and proven professional skills, appointed by its own determination, also by entering into special agreements with other State Administrations.



Framework

In order to provide a more transparent procedure for the selection of consultants, the National Guarantor published on its website a call for applications for the function of expert free of charge.

Experts are employed for consultancy, legal advice or monitoring of places of deprivation of liberty in each of the following areas:

- a) psychiatric or support to disability,
- b) protection of health in prison,
- c) detainment of irregular migrants and execution of the forced returns procedures,
- d) police custody,
- e) deprivation of liberty in criminal justice system (adults and minors).

The 60 experts selected to date are included in five lists - one per area - published on the website of the Guarantor.

In relation to the mandate of monitoring forced returns, the National Guarantor was the beneficiary of funds from the Ministry of the Interior's National Fund for Asylum Migration and Integration (AMIF) 2014-2020 for the project 'Implementation of a forced returns monitoring system'. For the functions referred to in the above-mentioned AMIF project, the National Guarantor made use of a pool of experts selected through public procedures. The project was successfully completed on 28 February 2020 with a certified expenditure totalling: EUR 757,742.23. Following the closure of the project, the contracts with external professional, such as consultants/experts, came to an end.

The National Guarantor, on 27 February 2020, submitted a new application for funding under the AMIF 2014-2020, for the project: "Implementation of a forced return monitoring system"; the AMIF Project's Responsible Unit at the Ministry of the Interior communicated the project's admission to funding on 17 September 2020 for a total amount of EUR 943,350.00. The statement on the commencement of operations of the project was communicated to the Fund Authority on 7 October 2020. As of 31 December 2020, no tenders, contracts or selection procedures had been carried out in connection with this project.

In the course of 2020, having assessed the objective impossibility of using Staff available within the Office due to ascertained numerical shortage and/or lack of the required skills, the Guarantor decided to proceed with the selection of three units for the appointment, respectively, of a lawyer expert in the field of immigration and asylum law, of a publicist journalist expert in public communication, and of a professional expert in the management and reporting of European Funds.

Three notices were then published on the Guarantor's website concerning the comparative procedures to identify the aforementioned staff resources, as a result of which three occasional collaboration contracts were concluded, for a period of six months, and maximum gross remuneration of five thousand euro each.

During 2021 (18 February), the AMIF's Responsible Authority made an advance payment on the project amounting to EUR 660,345.00. This made possible the actual start of the project activities, although the *core* activity of the project, the monitoring of forced returns, had never been interrupted since October 2020 (notice of start of activities).

A public call was then made through a comparative selection procedure to identify the pool of experts envisaged by the project to support the monitoring activities. On 4 February 2021, a selection notice was published for the recruitment of 11 experts (reporting on European projects, institutional communication, web and social communication, immigration law, international protection of human rights, legal assistant,



forensic doctor expert in the application of the Istanbul Protocol 2004, computer technician, statistician, forensic auditor and legal expert); in total, the value of the contracts concluded at the end of the public selection procedures was Euro 426,800.00.

The Guarantor also proceeded with the procedure for the selection of a provider in the cultural mediation, translation and interpreting service, the relevant contract being later entrusted with a specialised company, after concluding the selection procedure through RDO MEPA system, for an amount of EUR 16,184.52 (including VAT); a call for expression of interest concerning the selection of travel agency services was also positively concluded with the signature of a contract worth EUR 20,000.00.

In addition, customised equipment and materials for the needs of the project were purchased for EUR 14,219.70 (including VAT) also through RDO MEPA.

On 29 and 30 September 2021, the second training initiative for forced return monitors took place with the involvement of the network of local guarantors. On 1st October, the national conference presenting the project was held in Rome.

On 17 November, the tender for the adaptation of the project's IT platform was published for a value of approximately EUR 69,672.13 excluding VAT; on 19 November, the tender for the assignment of the language training service for an amount of EUR 20,000 (auction base) was published. Both tenders were awarded in December respectively to the company 47 Deck S.r.l. for an amount of EUR 65,500.00 excluding VAT, and to the company Easy Life S.r.l. for an amount of EUR 13,996.00 including VAT.

On 30 November 2021, the first project workshop on the topic of health vulnerabilities during forced return operations was held in Rome.

The Office of the National Guarantor is located in Rome, in the premises made available by the Ministry of Justice, in Via San Francesco di Sales, no. 34. The Ministry of Justice provides the National Guarantor's office, including the furniture, the movable and capital goods, the IT equipment and the website, necessary for its functioning and the related maintenance services (as per Art. 5, para. 2 of the DPCM 19 Aprile 2019 no. 89). The Ministry of Justice, through its structures and assets, also provides for any organisational needs and logistical support required for the performance of the tasks of the Guarantor on the whole national territory. The Guarantor's financial resources are assigned by the National Budget chapter Act and flow into a dedicated budget Chapter, used in full autonomy and independence by the Guarantor. The Proxy Officer established at the Office of the Guarantor acts as Secondary Authorising Officer for expenditure, and managing the resources credited by the Ministry of Justice under the appropriate Chapter 1753.

The control of the administrative and accounting regularity of the expenses sustained by the Guarantor is carried out by the Ministry of Economy and Finance, the administration responsible for verifying the legitimacy of the public spending. Within the limits of the aforementioned resources, the President of the National Guarantor, with its own determinations, authorises the expenditure for missions, the purchase of goods and any provision of services.

In this respect, it is necessary to take into account the provisions of Decree-Law no. 130 of 21 October 2020 converted, with amendments, into Law no. 173 of 18 December 2020, which provides that within the scope of the functions attributed by Article 4 of the regulation referred to in the DPCM No. 89 of 10 April 2019, and in the manner provided therein, the National Guarantor shall adopt annual expenditure plans, consistent with and within the limits of the expenditure authorisation provided, modulating the expenditure items according to objective criteria, functional to the needs of the Office. This change, which was envisaged to be financially neutral, became necessary after the first years of experience since the establishment of the Body, in order to

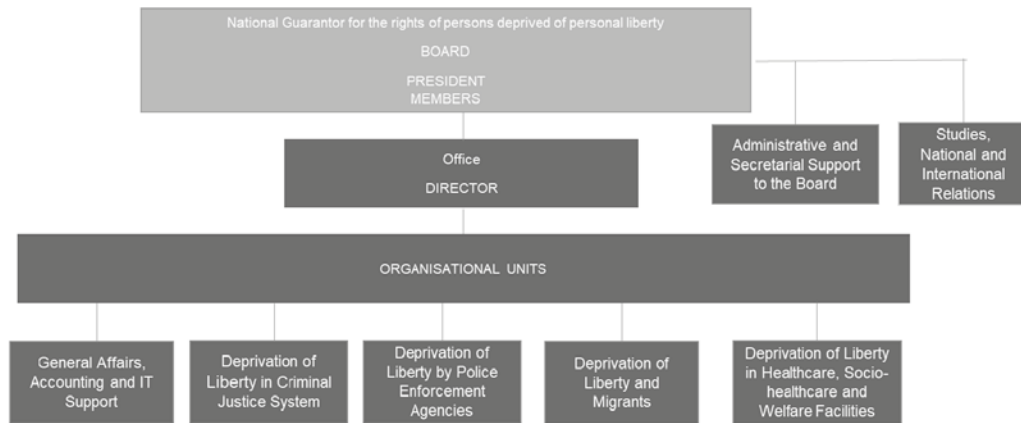


Framework

be able to meet the real needs of the Office also through a better structured allocation and programming of expenses.

The Office is divided into 7 organisational units, 2 of which report directly to the Board.

Below is the organisational chart:



The Stakeholders of the National Guarantor

Before going into the details of the individual organisational units, it is reported a map of the National Guarantor's interlocutors. First and foremost, the persons deprived of liberty or whose liberty is severely restricted in the various areas of competence (the adult detained population alone currently amounts to approximately 54,000 individuals), as well as the Administrations and actors, institutional or otherwise, whose actions are subject to monitoring by the Guarantor itself and with whom the Guarantor establishes dialogue and collaboration:

- The Prison Administration (Prison Administration Department and Juvenile and Community Justice Department) with its 190 penitentiary institutions for adults, 17 for minors, closed community facilities, different branches and more than 40,000 employees;
- The personnel, both from the Police Enforcement Agencies and managing bodies (under the coordination of the Prefectures and the Civil Liberties and Immigration Departments of the Ministry of the Interior), working in the Migrant Centres (4 *hotspots* and 10 Immigration Removal Centres); the personnel working as escorts in forced return operations, under the responsibility of the Ministry;
- Staff working in detention facilities for mentally ill persons under the responsibility of the Ministry of Health (REMS);
- Staff working in the many and widespread residences for elderly or disabled people.

The National Guarantor's other institutional and non-institutional interlocutors include the highest State Authorities, both parliamentary and governmental, the judiciary, international organisations, the press, non-governmental organisations and civil society. The activity of the Guarantor, six years after its establishment, is well known to the public, also because of the increased visibility in the media, the intensification of



institutional relations, and thanks to the training provided to the personnel of the Police Enforcement Agencies, to the staff indicated by the Scuola Superiore della Magistratura, and on the occasion of numerous lectures in university courses.

Cooperation with the Privacy Guarantor is essential for an effective exchange of *know-how* on the protection of the rights of persons deprived of liberty, which can be included, most of the time, within the framework of the *'privacy of the last'*. In this regard, the National Guarantor, through the Data Protection Officer, implemented a training session in October 2020 aimed at identifying certain rights concerning the protection of privacy in persons deprived of liberty. Following several meetings, a Protocol was signed between the two Guarantors in order to bring out, and thus protect, with more precise instruments, these rights that are too often denied due to a lack of fairness.

The cooperation started with the National Authority for Childhood and Adolescents is equally important. Thanks to the active participation in the permanent Table provided for in Article 8 of the 'Charter of Rights of the Children of Incarcerated Parents', in 2021, the National Guarantor Authority gave its support for the renewal of the Collaboration Agreement "Chart of the Rights of the Children of Incarcerated Persons".

The Permanent Table established at the National Guarantor for the drafting of guidelines on administrative detention had a positive outcome, a publication "Norme e Normalità" (Norms and Normality) was in March 2019, which contains the Guarantor's national standards for administrative detention and the collection of Recommendations addressed to various Responsible Authorities following the visits carried out in the CPRs and hotspots during forced return operations and in places of *de facto* deprivation of liberty.

With regard to the initiatives organised by the National Guarantor, such as conferences, workshops, seminars, press conferences, there is considerable participation and interest from the public and experts of the field. The dissemination of publications and other material produced by the National Guarantor is also remarkable; they are distributed both in printed form (distribution at events such as the presentation of the Annual Report in Parliament, conferences, bilateral meetings) and published on the web. A special 'About us - media coverage' section is included on the website in order to increase awareness on the institution.

In December 2020, on occasion of the International Anti-corruption Day, the National Guarantor took part in a cultural 'marathon' participated by several institutional authorities, including the President of ANAC. The National Guarantor became co-promoter with the De Sanctis Foundation of a series of interventions made by institutional figures addressed, in particular, to the public of websites and social media, that is young people, to highlight the close link existing between the Guarantor's preventive function and the rejection of corruption-prone cultures. In presenting the initiative, the Guarantor emphasised the protection of the rights of persons deprived of liberty is first and foremost a preventive task: it is necessary to prevent any compression of the rights of persons, particularly the most vulnerable. In this perspective, the first prevention concerns the fight against all forms of corruption: "the one that leads socially fragile people to become victims of those who falsely present themselves as possible problem-solvers, to discrimination even in those places where equality should be a constitutive element, to defrauding the resources of institutions by reducing their capacity to respond to the needs of the community for the exclusive benefit of those criminal realities that find their own breeding ground in corruption. For this reasons, it is only right to emphasise the commitment that this day against corruption visually expresses".

In October 2021, on occasion of the annual training seminar of the National Guarantor, it was decided to directly involve the ANAC's Board Member, Laura Valli, in the training session on anti-corruption, to create interaction with the RPCT of this Guarantor Authority.



The institutional website of the Guarantors also contains a section displaying the texts of the opinions or other documents sent by the Guarantor to Parliament on the occasion of specific requests for legislative decrees or hearings on measures under examination in the competent Committees. The section also contains opinions sent to the judiciary on ongoing problematic issues within its competence range. In addition, press releases, invitations to initiatives and other documents are regularly issued. These actions are also geared towards a greater dissemination of knowledge of the Institution in order to raise awareness on the fundamental role that the protection of individual rights plays in building a society based on the effective coexistence, as well as on a solid democratic fabric. In this context, it is worth mentioning an important initiative taken during the most critical phases of the Covid-19 pandemic, the release of a daily bulletin containing valuable information on the initiatives taken in the various field of competence to deal with the problems linked to the health situation. There was a great deal of interest and appreciation by the various stakeholders for the transparency of the information provided.

The dialogue with RAI with the aim of realising a joint table within the framework of the activities of the 'Rai per il sociale' Directorate General is in progress. In particular, a joint project to support education in prison (adults and minors) is being worked on.

In October 2020, the National Guarantor was admitted by the European Court of Human Rights as a third intervener pursuant to Rule 44 of the Court's Rules of Procedure in respect of two ongoing proceedings against Italy, submitting written observations as *amicus curiae* in November. One of the two appeals was cancelled from the roll under Article 37(1a) ECHR, so this case is no longer pending.

Furthermore, in September 2021, the National Guarantor was admitted - again as a third intervener - to a further appeal before the ECHR.

As anticipated in the timetable, a consultation 'open' to the Guarantors' stakeholders was carried out concerning the draft PTPCT, published on the institutional website to collect opinions. The communication was accompanied by a special form for comments, proposals, corrections or additions, which were considered and evaluated before drafting the final version of this PTPCT.

Director

The Director, as mentioned before, is a Second-tier Executive cadre of the Ministry of Justice. He took service on 8 June 2020, just before the summer break and in the midst of the health emergency.

In 2021, he managed to complete the following processes:

Definitive acquisition of accounting autonomy as of 1st July 2021. As a result, the administrative and technical-procedural procedures preparatory to the management of Chapter 1753 (Office Operation) of the Ministry of Justice's budget were finalised in collaboration with the economic-financial area of the Cabinet of the Secretary of State for Justice and with the Central Budget Office (UCB) of the Ministry. Having identified the Office of the State Territorial Accountancy System competent for the subsequent control activities of the F/D accounts, the Internal Accounting Regulation was prepared and approved. The Office was accredited with the Accounting Management Information Systems (SICOGE - INIT - GE.CO) and appointed the Consignee.

The appointments of Occupational Physician, Prevention and Protection Security Officer, Data Protection Officer were also finalised. With particular reference to the subject of personal data protection, in view of the growing importance and complexity of the sector, it was decided to outsource the figure of the DPO, in order to obtain the qualified support of an expert on the matter.



This choice reflects the new approach of the above-mentioned European Regulation, according to which the appointment of the DPO must facilitate the implementation of the legislation by the controller and the processor, fulfilling their functions in full autonomy and independence.

The anti COVID-19 protocol was updated as a result of ongoing regulatory developments.

The dialogue with the Independent Evaluation Body of the Ministry of Justice was successfully concluded for the inclusion of the Office in the information system and the evaluation of the adequacy of the website in relation to specific publication obligations of public administrations, in compliance with ANAC'S instructions.

In accordance with the provisions of the law, the personal data concerning the Director of the Office were published in the Transparency section of the National Guarantor's website (income, *curriculum vitae*, obligation of self-certification for managers at the time of appointment regarding the non-existence of causes of incompatibility provided for in Legislative Decree No. 39 of 8 April 2013), undertaking to promptly communicate any changes that might occur.

As planned, in the course of 2021, the members of the Office for Disciplinary Proceedings (UPD), provided for in Article 15 of the Code of Ethics of the National Guarantor, were appointed, resuming an activity that had been interrupted due to the pandemic.

In other respects, it should be noted that at the beginning of 2021, a new Member of the Support Team to the RPCT was appointed to replace its homologous colleague who ceased to hold office during 2020. The new officer was trained by the former RPCT, and took care above all of the aspect relating to the transversal involvement of the Heads of the various organisational units, through direct contact. However, after entering the service as Head of the Organisational Unit, the RPCT's involvement in training activities related to the subject matter and other forms of collaborations were discontinued due to some periods of absence and impediment for personal reasons of the RPCT. Currently, appropriate solutions are being considered.

Before moving on to the description of the individual organisational units, it is confirmed that, as envisaged in the previous Three-Year Plan, the O.U. Information Systems was shut down and its staff assigned to the O.U. General Affairs. In addition to assuming the accounting functions resulting from the appointment of the Director as Proxy Officer of the Office, the General Affairs Unit also performs the tasks of the abolished organisational unit. Among these, it was planned to consolidate the Information Systems used by the Office during 2021, also in light of the need to create a database for complaints and reports related to persons in administrative detention, following Law no. 173 of 18 December 2020, which provided for such opportunity. However, the termination of the collaboration of a strategic resource assigned to the IT Unit, and the wait for the assignment of a new one, impeded the achievement of this objective, although works are still in progress. Similarly, a viable IT solution for the geo-localisation of deprivation of liberty facilities on national territory in the criminal, administrative and police areas has not yet been found, an objective that will be pursued in the coming months.

Organisational Unit 1 - General Affairs, Accounting and IT Support

It constitutes the secretariat of the office, deals with protocol, distribution of files to the other OUs and archiving. It keeps the schedule of reports on monitoring visits carried out and the receipt of replies. It takes care of the administrative management of Staff and Office logistics. It manages the missions and takes care of the tasks related to Chapter 1753 'National Guarantor for the rights of persons deprived of liberty' of the Budget of the Ministry of Justice, in collaboration with the Proxy Officer. It provides technical assistance to



the members of the Board, the Director, and the Staff.

Activities	Structure	Stakeholders
Mission management	General Affairs, Accounting and IT Support	Members of the Board, Director and Staff of the Organisational Units
Procurement procedures	General Affairs, Accounting and IT Support	Board, Director and Organisational Units, suppliers
Registering procedures	General Affairs, Accounting and IT Support	Senders, Members of the Board, Director and Staff of the Organisational Units final recipients of the Notes
Staff attendance management	General Affairs, Accounting and IT Support	Organisational Unit Staff
Technical assistance	General Affairs, Accounting and IT Support	Members of the Board, Director and Staff of the Organisational Units
Acquisition and organisation of the information	General Affairs, Accounting and IT Support	Board, Director of the Office and Organisational Units
Periodic or specific thematic reports	General Affairs, Accounting and IT Support	External recipients, institutional and non-institutional, interested in the areas of intervention of the National Guarantor
Implementation and management of the Intranet portal	General Affairs, Accounting and IT Support	Board, Director of the Office and Organisational Units
Publication of content on the institutional website	General Affairs, Accounting and IT Support	External recipients, institutional and non-institutional, interested in the areas of intervention of the Guarantor

Organisational Unit 2 - Deprivation of Liberty in Criminal Justice System

It carries out the activities related to the monitoring of the facilities of the Prison Administration Department and the Juvenile and Community Justice Department, managing the relations with the relevant Administrations, including the Supervisory Courts, and with the Public Prosecutor's Office in relation to criminal proceedings concerning offences against persons detained in prisons. It prepares the *checklist* models for visiting the various types of facility where deprivation of liberty can take place. It drafts reports on places of deprivation of liberty in criminal area. It participates in training initiatives by taking care of organisation-related activities falling within its area of responsibility. Since September 2021, following a departmental memo issued by the Ministry of Justice requiring the notification of the National Guarantor of extraordinary and general searches, albeit confidentially, the Organisational Unit files for archive the information once the announced search has been carried out and consequently the confidentiality of the information has been lifted.



Activities	Structure	Stakeholders
Monitoring adult prison institutions	Organisational Unit: Deprivation of Liberty in Criminal Justice System	Ministry of Justice, Health Authorities, Civil Society Organisations, regional and local Bodies
Monitoring protected hospital wards	Organisational Unit: Deprivation of Liberty in Criminal Justice System	Ministry of Health, Ministry of Justice, Health Authorities, regional and local Bodies, local and regional Guarantors
Monitoring adult prison institutions	Organisational Unit: Deprivation of Liberty in Criminal Justice System	Ministry of Justice, Health Authorities, Civil Society Organisations, regional and local Bodies, local and regional Guarantors
Monitoring First Reception Centres	Organisational Unit: Deprivation of Liberty in Criminal Justice System	Ministry of Justice, Health Authorities, Civil Society Organisations, regional and local Bodies, local and regional Guarantors
Monitoring juvenile communities	Organisational Unit: Deprivation of Liberty in Criminal Justice System	Ministry of Justice, Health Authorities, Civil Society Organisations, regional and local Bodies, local and regional Guarantors
Monitoring therapeutic and rehabilitation communities	Organisational Unit: Deprivation of Liberty in Criminal Justice System	Ministry of Justice, Health Authorities, Drug Addiction Support Services, Civil Society Organisations, regional and local Bodies
Managing relations with Public Prosecutors' Offices for cases of death and ill treatments	Organisational Unit: Deprivation of Liberty in Criminal Justice System	Public Prosecutor's Offices, Ministry of Justice, regional and local Authorities
Signing protocols with relevant administrations and services, Supervisory Court, Judicial Authorities	Organisational Unit: Deprivation of Liberty in Criminal Justice System	Ministry of Justice, regional and local Guarantors, Supervisory Courts, Judicial Authorities
Training with the Ministry of Justice (Prison Administration and Juvenile and Community Justice Department)	Organisational Unit: Deprivation of Liberty in Criminal Justice System	Ministry of Justice, regional and local Guarantors, Judicial Authorities



Organisational Unit 3 - Deprivation of Liberty by Police Enforcement Agencies

Decree-Law no. 146 of 23 December 2013 converted into Law no. 10 of 21 February 2014 (Article 7, para. 5, letter b) provides that: “the National Guarantor shall visit, without the need for authorisation and without harming ongoing investigative activities, Police Enforcement Agencies’ custody suites, having access, without restriction, to any premises used for or in any way functional to the restriction requirements”. The Organisational Unit is in charge of the activities relating to the monitoring of persons deprived of liberty when detained for investigation purposes at *ad hoc* Police Enforcement Agencies’ facilities, e.g. custody suites or places where judicial police interrogations take place. It prepares the *checklist* models for visiting the various types of facility where deprivation of liberty can take place. It draft reports on places of deprivation of liberty in its area of competence. It participates in training initiatives by taking care of organisation-related activities falling within the unit’s area of responsibility.

Activities	Structure	Stakeholders
Monitoring of custody suites situated at the central and peripheral branches of the State Police, Carabinieri and Guardia di Finanza, as well as provincial and local police forces	Deprivation of Liberty by Police Enforcement Agencies	Ministry of the Interior, Public Security Department, Ministry of Defence, Carabinieri Corps, Ministry of Economy and Finance, Ministry of Justice, Penitentiary Administration Department, municipalities and provinces, provincial and local police forces

Organisational Unit 4 - Deprivation of Liberty and Migrants

The organisational unit is in charge of the activities related to the mandate of the National Guarantor on the protection of the rights of migrants subject to deprivation of liberty. In particular, the establishing law of the National Guarantor, Decree-Law no. 146 of 23 December 2013, converted into Law no. 10 of 21 February 2014, provides for the National Guarantor (Art. 7, para. 5, letter e) to verify compliance with the obligations related to the rights set out in Articles 20, 21, 22, and 23 of the regulation referred to in Presidential Decree no. 394 of 31 August 1999 and subsequent amendments, at the Centres for Identification and Expulsion provided for by Article 14 of the Consolidated Act as per the Legislative Decree of 25 July 1998, no. 286 and subsequent amendments (cf. the above-mentioned Law 132/2018), as well as at the premises referred to in Article 6, para. 3-bis, first sentence, of Legislative Decree 18 August 2015, no. 142, being granted unrestricted access to any premises;

Following the conversion, with amendments, into Law no. 173 of 18 December 2020 of Decree-Law no. 130 of 21 October 2020, the National Guarantor, point f-bis letter e), para. 5, Article 7 of Decree-Law no. 146 of 23 December 2013, “shall make specific recommendations to the administration concerned, if it ascertains the merits of the claims and complaints made by the persons detained in the facilities referred to in point e). In the event of refusal, the administration concerned shall provide notice of the motivated denial within thirty days.”

Reference is made to the possibility for persons detained at Immigration Removal Centres (CPRs), formerly Identification and Expulsion Centres (CIE), to be able to address and/or submit complaints to the National Guarantor pursuant to Article 14 para. 2-bis of Legislative Decree no. 286 of 25 July 1998, a paragraph



introduced by Decree-Law no. 130 of 21 October 2020 converted, with amendments, into Law no. 173 of 18 December 2020: “The detained third-country national can address oral or written instances or complaints, also in a closed envelope, to the National Guarantor, regional or local guarantors for the rights of the persons deprived of liberty.”

Furthermore, the National Guarantor has been identified as the National Authority for monitoring forced returns in execution of the provisions of Article 8(6) of European Commission Directive 115/2008.

The organisational unit also defines checklists, prepares opinions on bills related to its area of competence, and maintains operational relations with the pool of monitors of the National Guarantor for the monitoring of forced return operations.

Activities	Structure	Stakeholders
Monitoring CPR and hotspots, suitable premises	Organisational Unit: Deprivation of Liberty and Migrants	Ministry of the Interior, Civil Liberties and Immigration Department, Public Security Department, Italian Army, managing Authorities, Regions, Health Authorities, Municipalities, civil society organisations, Universities, regional and local Authorities
Monitoring waiting rooms, air stopovers, carriers (air or ship)	Organisational Unit: Deprivation of Liberty and Migrants	Ministry of the Interior, Public Security Department, Frontex, regional and local Authorities
Monitoring forced return operations	Organisational Unit: Deprivation of Liberty and Migrants	Ministry of the Interior, Civil Liberties and Immigration Department, Public Security Department, regional and local Guarantors, civil society organisations, Universities, regional and local Authorities

Organisational Unit 5 - Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities

This unit deals with the monitoring of Psychiatric Services of Diagnosis and Treatment (SPDC) or other structures where are hosted persons subject to Involuntary Treatment Order (TSO); it also deals with the monitoring and the visit to residences for elderly or disabled people, where a risk of a *de facto* deprivation of liberty may arise. For this activity, the O.U. makes use of the Register of the National Guarantor of Social and Welfare Facilities for People with Disabilities and is responsible for the development of checklists and guidelines for monitoring visits. The Organisational Unit for this area handles relations with the relevant Administrations, examines documents and requests documentation also through contacts with Guardianship Judges, support Administrators and Judicial Authorities.

The Organisational Unit also monitors and visits places where custodial security measures are carried out in



psychiatric settings (Residences for the Execution of Security Measures - REMS), handling relations with the relevant administrations and judicial authorities. For all activities performed, it accesses records and requests documentation.

The unit handles the reports received by the National Guarantor on violations concerning the deprivation of liberty in the area of health protection, with particular reference to reports concerning persons subject to security measures at REMS and those concerning disabled persons, adults or minors, and elderly residents in social and health care facilities; it prepares the preliminary investigation of the reports, participates in the meetings of the Board for their assessment and, in agreement with the latter, formulates responses.

Its responsibilities also include the drafting of Collaboration Agreements for research and collaboration projects with national and international bodies and organisations on topics related to its field of action, also taking care for their drafting, coordination and implementation. It organises and participates in public and internal training events for the National Guarantor's Staff. It collaborates in all other activities of the National Guarantor's Office.

Activities	Structure	Stakeholders
Monitoring Psychiatric Diagnosis and Treatment Services (SPDC)	Organisational Unit: Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities	Ministry of Health, Region, Health Authorities, municipalities, regional and local guarantors, Guardianship Judges
Monitoring residential facilities for adults and children with disabilities	Organisational Unit: Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities	Presidency of the Council of Ministers with responsibility for disability, Ministry of Health, Ministry of Labour and Social Policies, National Observatory on the Condition of People with Disabilities, Regions, Health Authorities, Municipalities, civil society bodies, Universities, international bodies, Judicial Authorities, Guardianship Judges, regional and local Guarantors
Monitoring residential facilities for elderly	Organisational Unit: Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities	Presidency of the Council of Ministers with responsibility for disability, Ministry of Health, Ministry of Labour and Social Policies, National Observatory on the Condition of People with Disabilities, Regions, Health Authorities, Municipalities, civil society bodies, Universities, international bodies, Judicial Authorities, Guardianship Judges, regional and local Guarantors
Monitoring REMS	Organisational Unit: Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities	Ministry of Health, Penitentiary Administration Department, Region, Health Authorities, municipalities, local and regional Guarantors, Supervisory Courts, institutional bodies, Judicial Authorities



Coordination for the monitoring of reports concerning deprivation in the area of health protection	Organisational Unit: Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities	External recipients, both institutional and non-institutional, interested in the areas of intervention of the Guarantor; in particular, persons with disabilities, adults and minors, the elderly, family members, operators, associations, public administrations, and civil society organisations.
Establishing protocols with relevant administrations and services, Supervisory Court, Judicial Authorities	Organisational Unit: Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities	Universities and research institutions, public health protection bodies, regional and local Authorities, Supervisory Courts
Internal and external training with the Ministry of Health, Judicial Authorities, regions, health authorities, municipalities, civil society organisations, universities, regional and local authorities	Organisational Unit: Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities	Office of the National Guarantor, Ministry of Health, regions, Health Authorities, municipalities, civil society organisations, professional associations of social workers, Universities, regional and local Guarantors, Prison Administration Department, Supervisory Courts, Guardianship Judges, and Judicial Authorities

Organisational Unit 6 - Support to the Board

This unit reports directly to the Board and takes care of the files managed by the President: evaluations, in-depth studies, analysis of issues. It performs the functions of the particular secretariat, managing the agendas of the President and the two Members of the Board, taking care of institutional relations with the authorities concerned. It manages internal and external information flows, with particular reference to correspondence addressed to the President by protocol or by e-mail. The O.U. is entrusted with the drafting of presidential and board resolutions and the coordination of the minute-taking of plenary meetings. It is also in charge of coordinating the so-called Complaints Service pursuant to Article 35 of the Penitentiary Administration Act, as amended by Decree-Law no 146 of 23 December 2013 converted into Law No 10 of 21 February 2014, which included the National Guarantor among the recipients of generic complaints by prisoners and internees, with the aim of strengthening the protection of their rights. With respect to this activity, it provides training for the Office's internal staff and occasionally provides external training. The O.U. is also in charge of the final coordination for the submission of the National Guarantor's Annual Report, which, as already mentioned, is to be presented to Parliament, after the collection and analysis of the material prepared by the unit, as well as the organisation of the event and relations with the ceremonial of the highest institutional officials. It participates in and organises both public and internal training events for staff. The Head of the Organisational Unit performs the functions of the RPCT and as such takes care of all the tasks related to its role, including the preparation of the PTPCT.



Activities	Structure	Stakeholders
Acts and measures of the President, President's agenda and Members of the Board, relations with Authorities	O.U. - Support to the Board	Presidency of the Republic, Constitutional Court, Chamber of Deputies, Senate, Presidency of the Council of Ministers, Ministry of Justice, Ministry of the Interior, Ministry of Health, Child Protection Authority, lawyers, Universities, local Authorities, associations, Data Protection Authority
Drafting of presidential and collegial resolutions, coordination of plenary meeting minutes	O.U. - Support to the Board	Board, Director, Office staff
Coordination of Article 35 of P.A.A. Complaint Service	Head of O.U. - Support to the Board	Prisoners, internees, lawyers, civil society organisations, Prison Administration Department
Final coordination before sending the Annual Report and organisation of the related event.	O.U. - Support to the Board	Board, Director, Office staff, ceremonial office of the highest institutional officials.
Activities related to the role of RPCT	Head of O.U. - Support to the Board	Board, Director, Office staff, National Anti-Corruption Authority

Organisational Unit 7 - Studies, National and International Relations

There are three main areas of activity in the unit.

Studies: it carries out studies, research and information activities on the promotion and protection of the fundamental rights of persons deprived of liberty. It coordinates the general publications of the National Guarantor Authority and takes care of the legislative update and regulatory processes (national, regional and global). It coordinates the work of the external experts dealing with the Observatory on the case-law of the High Courts (ECHR, EU Court of Justice, Constitutional Court and Court of Cassation) on the rights of persons deprived of liberty, the prevention of torture and serious ill-treatment. In the course of 2021, the activity regarding the interventions of the National Guarantor as *amicus curiae* consolidated, in particular before the ECHR. It oversees the production of documents in foreign languages, including the English edition of the National Guarantor's Annual Report to Parliament.

National Relations: It deals with activities useful to promote and foster cooperation relations with the regional, provincial, metropolitan city and municipal Guarantors of the rights of persons deprived of liberty, i.e. the guarantors competent over portions of the Italian territory - hence territorial, also in the light of the legislative amendments made at the end of 2020, which explicitly indicated the National Preventive Mechanism - pursuant to the Optional Protocol to the 1984 UN Convention against Torture (OPCAT) - as the National Preventive Mechanism, attributing to it, in specific areas, the power to delegate to the local Guarantors. *Networking* with respect to the latter is therefore reconfigured in the sense of the construction of a network of local Guarantors supporting the Italian NPM also in the drafting of specific operational Protocols.

It is also in charge of promoting cooperation with national stakeholders (Institutions, institutional bodies,



Non-governmental associations and so on) involved in the protection of the rights of persons deprived of liberty, by organising and/or participating in initiatives, including training initiatives, in line with the institutional mandate. In particular, it handles relations with research and university bodies and institutions operating in the areas of competence of the National Guarantor.

International relations: it takes care of the consolidation of the position of the National Guarantor within the network of International Mechanisms for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment - such as the CPT and the SPT - and the national mechanisms of other States (NPM). It participates in international meetings - hearings, conferences, expert consultations, forums, etc. - in Italy and abroad and meets with international delegations. It maintains relations and cooperates with: a) international organisations and their bodies and representatives (in particular, UN, Council of Europe and European Union); b) the Interministerial Committee for Human Rights, as the National Mechanism for Reporting and Follow-up and participates in its work; c) the Ombudsmen and National human rights institutions (NHRIs) of other States; d) international NGOs, such as the Association for the Prevention of Torture (APT), the International Organisation for Migration (IOM), the European NPM Forum and so on. As part of the monitoring of forced return operations under Article 8(6) of European Directive 115/2008, the Unit promotes the conclusion of bilateral agreements with the NPMs of Albania, Tunisia and Georgia for the joint monitoring of the post-return phase from Italy of their respective nationals. It prepares the replies - for the parts falling within the competence of the National Guarantor - to the observations and recommendations formulated as a result of visits to Italy carried out by monitoring mechanisms of international organisations competent in the field of the rights of persons deprived of liberty, such as the CPT for the Council of Europe and the SPT for the UN. It prepares the parts within the competence of the National Guarantor of the Periodic Reports to be submitted to the Monitoring Mechanisms of international human rights bodies such as the UN Human Rights Committee (UNHRC). It prepares the information requested from the NPMs by the Monitoring Mechanisms of international human rights organisations.



Framework

Activities	Structure	Stakeholders
National Relations	Organisational Unit: Studies, National and International Relations	Regional, provincial, metropolitan city and municipal Guarantors, Regional Guarantors, State Institutions and national NGOs dealing with the protection of the rights of persons deprived of liberty
International Relations	Organisational Unit: Studies, National and International Relations	UN High Commissioner for Human Rights (OHCHR), UN High Commissioner for Refugees (OHCR), UN Committee against Torture (CAT), UN Subcommittee for the Prevention of Torture (SPT), UN Committee on Enforced Disappearances (CED), UN Human Rights Council (HRC), UN Special Rapporteur on Torture, Council of Europe Committee for the Prevention of Torture (CPT), NPM of other States, Interministerial Committee on Human Rights (CIDU), Ombudsman and National Human Rights Institution (NHRI) of other States, UN Human Rights Committee (HRC), international NGOs
Studies	Organisational Unit: Studies, National and International Relations	National and international research institutes, national and international universities

Pursuant to the law, the National Guarantor annually submits a Report on its activities to the Presidents of the Senate of the Republic and the Chamber of Deputies, as well as to the Ministry of the Interior and the Ministry of Justice; the first Report was presented to the Chamber of Deputies on 21 March 2017; the second was presented to the Senate of the Republic on 15 June 2018; the third was presented to the Chamber of Deputies on 27 March 2019; the fourth was presented to the Senate of the Republic on 26 June 2020; and the fifth was presented to the Chamber of Deputies on 21 June 2021.

Since its establishment, the National Guarantor has adopted a number of specific measures to prevent corruption, aware that it must continue to engage in organisational self-analysis, systematic knowledge of the processes carried out and the administrative procedures within its competence.



The First Corruption Prevention Measures Adopted in 2016-2017

By resolution of 31 May 2016, the Board of the National Guarantor adopted the Self-Regulatory Code setting out *inter alia* the tasks, functions, guiding principles, organisation of the Office, and financial and instrumental resources are specified. Subsequently, in a resolution of 15 June 2017, the Board of the National Guarantor prepared, pursuant to Article 5(5) of the aforementioned Self-Regulatory Code, an outline of the Code of Ethics, opening a phase of consultation with the staff to collect any comments and amendments by 31 July 2017. The drafting of the Code of Ethics responds to the obligations of current legislation that requires adequate regulatory tools for the prevention of corruption and respect of legality, in line with the ANAC's PNA. The Code of Ethics also responds to the need to better specify the guiding principles of the Self-Regulatory Code and to bring them in line with the principles of the UN Protocol and Presidential Decree no. 62 of 16 April 2013, translating them into rules defining the duties of transparency, independence, impartiality, loyalty and good conduct to which the Guarantor and its Office, as well as all those who work with it, are bound. With a subsequent resolution of 31 October 2017, having examined the contributions received during the consultation phase, the National Guarantor adopted the final draft of the Code of Ethics. At the same time, the President of the National Guarantor appointed the Head of the Corruption Prevention and Transparency, identifying the resource from among the Heads of the Organisational Units, since at the time there was no provision for an executive figure in the National Guarantor's establishment plan, nor was it possible to entrust the task of drafting the PTPCT to a person outside the Administration (Article 1, para. 8, Law 190/2012). As envisaged by the ANAC's 2016 PNA, the identified RPCT, although in a position of autonomy and with a role of guarantee on the effectiveness of the corruption prevention system, has adequate knowledge of the functioning of the Administration, carries out his powers effectively, interacting with the Governing Body and with the entire administrative structure. The RPCT has only a directing, coordinating, monitoring role on the effective adoption and application of the PCTPT, which is adopted by the Governing Body. Both the Self-Regulatory Code and the Code of Ethics are published on the website of the National Guarantor, also in the English version.

On 3 November 2017, the President of the National Guarantor sent the Code of Ethics adopted on 31 October 2017 by certified mail to ANAC. The President of the National Guarantor also requested and obtained that the adoption of the Code of Ethics be announced in the *Gazzetta Ufficiale* (see *Gazzetta Ufficiale* no. 272 of 21 November 2017). On 27 November 2017, the RPCT convened the first meeting with the Governing Body, proposing a timetable to complete the drafting of the first PTPCT of the National Guarantor, which was followed by two coordination meetings with the Heads of the Units. The Office was aware of the importance of sharing corruption prevention objectives with the Administration's internal stakeholders, who are familiar with the organisational structure, decision-making processes, and the risk profiles involved. On 29 November 2017, the President of the National Guarantor resolved to appoint the Transparency Contact Person, with the aim of fulfilling the task concerning the publication of data and their updating, civic organisation access, general access, compliance with *Freedom of Information Act*, and keeping record of the accesses. In a resolution of 7 December 2017, the President of the National Guarantor appointed the support officer to the RPCT, taking into account the complexity of the duties assigned to the RPCT for compliance with the application of national and international standards. Among the measures taken, a training course for the RPCT on the 'Implementation of legislation on corruption prevention in public administrations' of the *Scuola Nazionale dell'Amministrazione (SNA)*, held in Caserta on 12 and 13 December 2017. An archive of the acts, provisions, minutes of meetings relating to the subject of prevention of corruption and transparency is kept by the RPCT.



The Corruption Prevention Measures Adopted in 2018-2019

The initiatives envisaged in the PTPCT timeline were launched in 2018 and fully implemented during 2019. This started with the study of the data to be published in the ‘Transparency Section’ of the institutional website and the preparation of the procedural scheme for widespread access and record on file of the same. Decisions were made in plenary meetings for maximum sharing between the Board, the RPCT and the Heads of the Organisational Units. As a result of the process, in the early months of 2018, the Regulation on the modalities of submission, processing, decision on the requests for generalised access was published on the National Guarantor’s website (http://www.garantenazionaleprivatiliberta.it/gnpl/it/accesso_civico.page). Shortly before this publication, a training session was held for the internal Staff of the Office by a lecturer from the of the Scuola Nazionale dell’Amministrazione, in cooperation with the RPCT. Taking into account the importance of continuous training and the need to increase knowledge on the methods of analysis of the Office’s internal organisation processes, the RPCT and the Member of the support team participated in the SNA course ‘La funzione dei Responsabili e Referenti dell’Anticorruzione’ in May 2018. The knowledge acquired was the subject, immediately after the summer break, of a ‘cascade’ training for the Office’s internal staff, in order to raise awareness on the mapping of some Office’s priority processes. On October 2019, the Transparency Contact Person also participated in the SNA’s Course ‘Whistleblowing - la collaborazione con ANAC’.

As envisaged in the timeline, the organisational act for reporting misconduct ‘in the interest of the integrity of the public administration’ (*whistleblowing*) was adopted in June 2018, in line with current legislation, to protect the *whistleblower*’s data, to avoid discrimination against the *whistleblower*, and to remove the complaint from the right of access. Also with regard to this specific topic, the RPCT conducted an internal information/training session on *whistleblowing*, explaining the different parts of the organisational act, which was already available on the institutional website of the National Guarantor.

It is worth recalling that the institute was rewritten by Law no. 179 of 2017 and that following this reform, on 6 February 2018, ANAC announced that the *Whistleblower* computer application would be operational as of 8 February 2018 for the acquisition and management, in compliance with the guarantees of confidentiality provided for by the legislation in force, of reports of wrongdoing by public employees as defined by the new version of Article 54 bis of Legislative Decree no. 165 of 30 March 2001. ANAC specified that “in order to guarantee the protection of confidentiality during the submission of the report, the identity of the reporter is kept anonymous, and the same, thanks to the use of a unique identification code generated by the system, shall be able to communicate with ANAC in a depersonalised manner through the information platform. The above is to emphasise that as of the entry into operation of the aforementioned portal, the utmost confidentiality can only be guaranteed for reports received via the above-mentioned system. Consequently, we recommend that the reports submitted after the entry into force of Law no. 179/2017 through any other channel (telephone, email - both certified and non-certified, general protocol), be re-submitted using only and exclusively the ANAC platform”. It is also worth recall ANAC’s communication of 15 January 2019 on the publication in *open-source* format of the source code and documentation of the platform for sending reports of unlawful acts with protection of the whistleblower’s identity. In view of ANAC’s strict IT procedures, the Head of the Information Systems Unit of the National Guarantor, acting as the Transparency Contact Person at the time, took care of contacts with the Directorate General for Automated Information Systems, which was asked by the RPCT of the Ministry of Justice to set up a suitable system, or to use the systems already in use, or to verify the possibility of using the software specifically designed for ANAC and made available free of charge by the same. As already mentioned, the National Guarantor makes use of the resources of the Ministry of Justice (e.g., the Calliope Protocol). Therefore, it meets the regulatory as well as cost-efficiency criteria take in consideration IT solution proposed by DGSIA for evaluation. In early 2019, several meetings were held



between the National Guarantor and DGSIA to study the feasibility of an *ad hoc* portal in terms of content, and a product was drafted that should have started its operations in early 2020, following a procurement order of the Ministry of Justice; nevertheless, due to the difficulties related to the pandemic emergency, it was not until December 2020 that the aforementioned IT portal became operational. Therefore, as of 2021, the National Guarantor completed its cooperation with DGSIA for the use of the portal by its staff, as planned in the timetable.¹⁸

Until the new portal was available for reporting, the procedure for handling reports was carried out according to the organisational act issued at the time, which still allowed for confidentiality criteria to be met.

In any case, if necessary, the National Guarantors would have followed the instructions reported in the ANAC communication of 5 September 2018 (“Indications for improving the management of reports of offences or irregularities made by public employees in the interest of the integrity of the public administration, pursuant to Article 54-bis, of Legislative Decree No. 165 of 30 March 2001”), in which the President of ANAC had called on the reporting parties and the Administrations to cooperate in a fruitful manner in order to promote the swift and effective application of the legislation on the protection of public employees reporting offences or irregularities committed within the administration to which they belong.

Following the application as of 25 May 2018 of the EU Regulation 2016/679 of the European Parliament and the Council of 27 April 2016 “on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)”, and the entry into force on 19 September 2018 of Legislative Decree no. 101 of 10 August 2018, which adapts the Personal Data Protection Code (Legislative Decree no. 196 of 30 June 2003, the so-called Privacy Code), a presidential resolution was issued on 10 July 2018 for the appointments of the Personal Data Protection Officer (RPD) and Data Protection Officer (DPO), both published on the Transparency Section of the website of the National Guarantor. In accordance with the guidelines indicated by the Data Protection Authority, it was avoided to attribute to the RPCT the functions of the RPD, given the multiplicity of duties incumbent on this figure, in order to avoid the risk of creating an accumulation of commitments that might adversely affect the effectiveness of its performance, it being understood that the RPD, as stated by ANAC in the 2018 update of the PNA, constitutes a reference figure also for the RPCT, although the RPD cannot replace RPCT in the exercise of functions. The update to the 2018 PNA brings along the “case of applications for review of decisions on generalised civic access, which, insofar as they may relate to personal data protection profiles, are decided by the RPCT after obtaining the favourable opinion by the Data Protection Authority pursuant to Article 5, para. 7 of Legislative Decree No. 33 of 14 March 2013. In these cases, the RCP may well avail itself of the support of the RDP, if deemed necessary, within the framework of an internal cooperation relationship between the offices, but limited to profiles of a general nature, bearing in mind that the same law attributes to the RPCT the power to request an opinion from the Data Protection Authority. The above procedure also applies in case the RPD had already been consulted in the first instance by the office that found the civic access under review”.

After a momentary setback in the study of the regulatory processes to be applied to the National Guarantor due to the unavailability of the competent officer, in September 2019, the newly assigned officer gave new impetus to the procedures in progress. It was then possible to start with the identification of the various types

¹⁸. For further important developments in the field of whistleblowing, see below “The corruption prevention measures adopted in 2020-2021”



of data processing by each Organisational Unit; subsequently, it was prepared the Data Processing Register pursuant to Article 30 of Regulation 679/2016, performed the risk and impact assessment on the processing of risks (DPIA), and prepared the instrument for the appointment of the data processors and of the person authorised for processing data and inform employees and collaborators.

Both in 2018 and 2019, following a well-established working method, plenary meetings to be held at least quarterly - in fact almost monthly - were convened for the planning of strategic objectives and the scheduling of monitoring activities, which constitutes the core of this Supervisory Authority. The sharing of information, knowledge of the performance of the various activities - including training, institutional, external communication, international relations - is an effective tool for optimising human and economic resources. In general, coordination, information and internal training meetings are held on a regular basis within the Guarantor's Office; information on initiatives or appointments concerning individual Organisational Units, or the Guarantor as a whole, is gathered on a weekly basis and forwarded to all Office's staff for internal communication purposes, also through the Office's Intranet.

Article 15(3) of Presidential Decree no. 62 of 16 April 2013 provides for the RPCT¹⁹ to verify the effective implementation of the PTPCT and its suitability, and to suggest amendments thereto when significant violations of the requirements are ascertained or when changes occur in the organisation or activity of the Administration. The RPCT also handles the dissemination of knowledge of the codes of conduct in the administration, annual monitoring of their implementation, publication on the institutional website and communication to the ANAC. The legislation provides that training activities on transparency and integrity shall be addressed to the staff of public administrations, enabling employees to achieve full knowledge of the contents of the code of conduct, as well as an annual and systematic update on the measures and provisions applicable in these areas. Similarly, Art. 13, para. 3 of the Code of Ethics adopted by the National Guarantor also provides for training activities of the staff in service. This specific measure was taken in July 2019 during an internal training seminar of the National Guarantor; on the occasion of the arrival of new staff, the RPCT took care of a training session on the subject.

The National Guarantor is aware that among the measures to prevent corruption, codes of conduct play an important role, as they can, better than any other tool, regulate the conduct of officials and direct it towards the best care of the public interest, in close connection with anti-corruption plans. To this end, as envisaged by the measures adopted in 2019, the relations between the Self-Regulatory Code, the Code of Ethics of the National Guarantor and the prevention measures were thoroughly examined, and on 29 August 2019, President of the National Guarantor, approved a Resolution, upon proposal of the RPCT, containing the appropriate amendments to the Self-Regulatory Code and the Code of Ethics, ensuring at the same time their maximum dissemination. The new versions of the Code were published on the institutional website, subsequently it was organised an internal training session by the RPCT, drawing particular attention on the prohibition of *pantouflage*, as governed by Article 1, para. 42, letter l) and the specific duty of cooperation with the RPCT.

The Code of Ethics also regulates the conflict of interest with respect to the hypotheses concerning the staff assigned to the National Guarantor and the related obligations of disclosure and abstention.

19. For a concise overview of the role and functions of the RPCT, see ANAC's National Anti-Corruption Plan 2019, Annex 3



On 7 October 2019, the Working Group Report on the ANAC's Guidelines on Codes of Conduct for Civil Servants was published. It was disseminated to all current staff by the RPCT, with a commitment to hold a special information and training session in 2020 (see below). It should also be recalled that Article 1(9)(c) of Law no. 190 of 6 November 2012 provides for 'obligations of information with respect to the RPCT called upon to supervise the operational aspects and compliance with the Plan', meaning that these information obligations fall on all the persons involved, since the drafting phase of the plan and then in the verification and implementation phases of the measures adopted. Article 8 of Presidential Decree no. 62 of 16 April 2013 also provides for a duty of cooperation of the employees with the RPCT, the violation of which is subject to disciplinary sanctions. Employees are required to have knowledge of and comply with the PTPCT, as well as with the Self-regulatory Code and the Code of Ethics of the National Guarantor. External collaborators, in any capacity, of the National Guarantor are also required to comply with them and to report any unlawful situations of which they become aware.

The Corruption Prevention Measures Adopted in 2020-2021

In spite of the well-known difficulties linked to the health emergency on a global scale and the lockdown periods, the monitoring visits of the National Guarantor did not stop. On the contrary, as already mentioned, it represented a point of reference for the various stakeholders, also thanks to the release of a daily bulletin on the state of the situation in the various areas of competence (criminal and administrative detention, deprivation of liberty in the social, health and welfare spheres), also reporting on the international context. Activities to respond to reports and complaints from the prison world were also implemented.

It should be noted that, although the only Director provided for in the organisation plan had arrived, it was not deemed appropriate to assign him the position of RPCT, since he already held the position of Accounting Officer. At the same time, it was deemed appropriate to value the professional experience and skills gained in this function by the current RPCT.

As already mentioned, relations with the Data Protection Authority were initiated in 2020 with regard to persons deprived of liberty, taking into account, on the one hand, their need for confidentiality and, on the other hand, the necessary transparency of procedures concerning the protection of their rights. In the first half of 2021, a Protocol was signed between the two independent administrative authorities, bringing the collaboration process to completion.

The usual internal training activities of the National Guarantor continued through thematic seminars held in Florence in October 2020, and in Naples in 2021; one session, as usual, focused on corruption prevention, in 2020 with particular reference to the objective and subjective aspects of corruption prevention. The RPCT drew attention on the 'tasks' to be performed by the various actors involved in the National Guarantor Authority, also for the benefit of additional staff assigned to it. In 2021, on the other hand, in connection with one of the members of the ANAC Board, the main general prevention measures were addressed with reference to the drafting of the PTPCT.

In this regard, it should be noted that the high turnover and the consequent arrival of new staff provided an opportunity to improve certain organisational aspects with a view to make the relevant work processes more effective; but it also proved to be a method for introducing staff rotation, making sure it would not jeopardise the continuity of the administrative action, also considering the limited number of staff and the need for highly technical professionals, each with respect to their own area of competence, as provided for by the law establishing the National Guarantor. In addition, alternative measures with a similar effect were envisaged, such as work shadowing for cross-departmental staff units, or forms of periodic internal sharing



of the activities undertaken, being “shared knowledge” one of the missions of this Guarantor Authority. It suffices to say that during the monitoring missions, which constitute the core of the Guarantor’s work, the staff participating is involved in all areas of deprivation of liberty, regardless of their specific sphere of competence in the Office.

In essence, taking into account that ordinary staff rotation is an essential tool for the prevention of corruption, a concrete attempt was made to increase control on the acts also through the separation of duties.

With regard to so-called extraordinary staff rotation, refer to the provisions of Legislative Decree of 30 March 2001, no. 165, the so-called Consolidated Law on Public Employment, in Article 16, paragraph 1, letter l-quater, establishing the obligation for the Administration to order, by due provision, the rotation of personnel in cases of initiation of criminal or disciplinary proceedings based on a suspect of corruption.

With regard to another general preventive measure, the prevention of conflicts of interest, refer to the provisions set out in Code of Ethics in matter of protecting the good performance and impartiality of this Guarantor Authority, in compliance with the principles of economy, effectiveness, impartiality, publicity and transparency of the administrative procedure.

With Resolution No. 469 of 9 June 2021, ANAC released the Guidelines (<https://www.anticorruzione.it/-/delibera-numero-469-del-9-giugno-2021-e-linee-guida>) on the protection of the authors of reports of crimes or irregularities they have become aware of as a result of an employment relationship, pursuant to Article 54-bis of Legislative Decree No. 165/2001. The above-mentioned Guidelines introduced important procedural references on whistleblowing. The National Guarantor based on the aforementioned guidelines drafted the organisational act on the subject: (<https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/458c662e890a5de9dae033de5bc5f5b.pdf>).

This document was prepared with the contribution of the RPCT, following an in-depth study of the ANAC Guidelines and meetings with the relevant offices of the DGSIA for the adoption of the IT portal. Similarly, the RPCT conducted a training session to illustrate the new Organisational Act, which is to be referred to for further details.

It should be noted that, as scheduled, at the beginning of 2021 the working group - with the necessary contribution of the RCPT - set up by the President to study and further update the Code of Ethics and the Self-regulatory Code brought to the approval of version of the Codes, which were published on the website and disseminated to all staff.

As already mentioned, in 2018 and 2019 the first analyses of the activities were made, having considered it appropriate in the first PTPCT 2018-2020 to give an overview, albeit not exhaustive, and to deepen in subsequent years the analysis of individual processes, based also on the knowledge gained on the work procedures to be mapped, and taking into account the gradual consolidation of the institution from an organisational point of view.

The monitoring on the measures envisaged in the previous PTPCT, performed in 2021, is explained below. The activity was carried out by the RPCT, also on the basis of the self-assessment by the persons responsible for implementing the measures and the feedback received on them. The RPCT sought to create a widespread network of responsibility for the implementation of the prevention strategy so that it would become an integral part of the organisation.



Organisational Unit 1 - General Affairs, Accounting and IT Support

In the previous Three-year Plan, it was decided to map the process of personnel attendance management. In fact, following the discontinuation of the old software managing attendance/absence and Wtime clock-in/clock-out, it became necessary to adopt a new management software released by DGSIA, Time Management. The use of this programme required a training course, which was organised at the above-mentioned Directorate General of the Ministry; but, its updating and subsequent management was entrusted with the individual offices. It was therefore necessary for the OU General Affairs to take special care when entering personnel information, especially in case of sensitive, personal or administrative data. To this end, the unit carried out *ad hoc* training courses, while the Head of the Organisational Unit specifically monitored Time Management, thus adopting the treatment measures provided for in the mapped process.

It should be noted that General Affairs had not completed one of the measures still provided for in the earlier arrangements, relating to the recording of outgoing movable consumer goods (stationery and the like) on the adopted domestic computer register, where the materials received from the offices responsible for providing the instrumental resources for the operation of the Office of the National Guarantor are entered.

Moreover, as envisaged in the previous Three-Year Plan, it was deliberated the appointment of a Consignee for the management of the goods purchased by the Guarantor performing the accounting procedures through the computerised management provided by the GE.CO. The relevant resolution, dated 14 July 2021, is published on the institutional website.

Organisational Unit 2 - Deprivation of Liberty in Criminal Justice System

In the previous PTPCT, the process to be monitored was the handling of reports, which involved the implementation of several anti-corruption measures.

The sub-phase ‘taking charge of the reports’ was adopted, but after evaluation it is considered appropriate to strengthen it by introducing a control tool, such as a checklist of the following type:

Control and verification form on the treatment measure related to the reporting sub-phase

Serial No.	Date and Protocol No.	Taking charge date	Date of assignation	Acknowledgement date
1				
2				
n.				

With respect to the sub-phase ‘investigation of the reports’, the planned treatment measure was adopted and reconfirmed.

Finally, in relation to the sub-phase ‘*decision on the activity to be carried out for each report*’, no specific schedule of regular meetings was introduced; however, they were held regularly, especially since the new management system for Complaints and Reports -which also includes a working group- was put on record starting from September 2021.



Organisational Unit 3 - Deprivation of Liberty by Police Enforcement Agencies

The process mapped ‘monitoring visits to places of deprivation of liberty by Police Enforcement Agencies’ provided for the computerised logging of all reports, together with the transmission by e-mail for real time reporting in case remote access was not available. The electronic protocol number was always adopted, the simultaneous transmission by e-mail did not always take place. However, it should be noted that within the organisational unit, it was possible to enable one staff unit to make a remote check of the electronic protocol number, so unaccounted cases were minimised. It should be noted that for the other treatment measure envisaged, ‘drafting of standards’, the intention was to refer to the publication of a collection of Recommendations of the Guarantor on this subject matter, similarly to work done for criminal and administrative detention. However, the timing of this initiative does not depend on the Unit; instead, the identification of the aspects to be monitored was defined by the Guarantor, and it is the subject of external training activities performed by the unit. Finally, with regard to the publication of the Post-Visit Reports, for the part concerning the individual participant in the Unit - i.e. the drafting of notes - the planned measure was adopted. This is a measure that allows a collegial drafting of the final report, based on the objective data found.

Organisational Unit 4 - Deprivation of Liberty and Migrants

The process chosen was the identification of facilities and forced return operations to be monitored. The measures were adopted, but the Organisational Unit deemed appropriate a thorough revision and updating the process also for this year. The measure is reported below.

Organisational Unit 5 - Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities

The process mapped in the previous Three-Year Plan was ‘selection of social and health facilities in the GNPL *national register* of the region visited’.

The following preventive measures were identified and effectively implemented:

Identification of objective criteria to be applied in selecting the socio-healthcare facilities to be visited (reports received by the National Guarantor, subject of news reports, the size of the facilities); identification of the socio-healthcare facilities to be visited according to clear criteria; cross-checks of the sources of information available and obtained from the GNPL’s *national register*; definition of a *time table* shared with the *reports*; supervision of the Head of Unit of the dossier matrix; ratio of number of facilities/time according to objective criteria.

However, in order to refine and enhance the effectiveness of the anti-corruption intervention, the possibility of supplementing the processes described to date with new processes to be mapped, as well as a re-evaluation of what has already been mapped, is being studied.

Organisational Unit 6 - Support to the Board

The measure envisaged for the process mapped out last year ‘drafting of presidential and board resolutions and their collection’ was adopted, by putting an internal protocol number on the document.



Organisational Unit 7 - Studies, National and International Relations

With respect to the mapped process ‘construction of a network of relations and cooperation with the local Guarantors for the rights of persons deprived of liberty’, the treatment measure was partially adopted as the process is still under development and the operational protocol between the regional Guarantors and the Department of Penitentiary Administration (output of the sub-phase) in which the National Guarantor, and specifically the Reference Unit, assumed the role of facilitator has not been definitively completed.

With reference to the process ‘management of information and document flow (IT) not registered in the electronic protocol’, the measure envisaged was adopted by identifying, within the organisational unit, another staff to deal with the management of information and document flows.

Finally, in relation to the process ‘selection for a free consultancy assignment and monitoring of places of deprivation of liberty’, the measure was adopted by carrying out an *ex-post* sample check on the selected candidates.

Processes specifically mapped in 2021 and future prospects

The mapping of certain processes selected by the heads of organisational units according to functional priority criteria is reported below. For each work process, the risk has been identified, understood as the enabling factor; the table then shows the risk assessment and its total value, given by the probability (scale from 1 to 5)²⁰ for the impact (scale from 1 to 5)²¹. Enabling factors are indicated as contextual factors that facilitate the occurrence of corrupt conduct or acts. Preventive measures are then indicated. Finally, for each sub-stage, the person responsible for the processing measure to be taken is identified. These surveys were conducted on the basis of principles of experience, reasonableness and prudence, as was also recommended during the Anti-Corruption Courses attended at SNA. Considering the resources available and the organisational phase that is still being consolidated, as well as the modest organisation of the offices of the National Guarantor, it is neither possible nor foreseeable as of today to formulate more complex measurements based on the *ISO 37000 standard* or on the use of mathematical algorithms, nor would such a choice correspond to the criteria of cost-effectiveness of the system as a whole.

20. 1 extremely unlikely, 2 unlikely, 3 neutral, 4 likely, 5 extremely likely.

21. 1 marginal, 2 minor, 3 threshold, 4 serious, 5 very serious.



Organisational Unit I - General Affairs, Accounting and IT Support

PROCESS: Start-up of Accounting Management

Phase	Sub-phase	Risk identification	Enabling factors	Risk probability	Risk impact	Summary evaluation (p*i)	Treatment measure	Responsible
Accounting autonomy	Initiation of procedures for autonomous management of Chapter 1753 - TENDERS AND PURCHASES	Errors in procurement procedures for the supply of goods and services	Inexperience	2	2	Medium	Specific training and coaching	Head of Unit
Accounting autonomy	Initiation of procedures for autonomous management of Chapter 1753 PAYMENT OF INVOICES	Errors in the procedures for registering invoices, creating accounting documents and paying invoices	Inexperience	2	2	Medium	Specific training and coaching	Head of Unit

Starting in July 2021, as already mentioned, with the start-up of the accounting autonomy of the National Guarantor (management of Chapter 1753), an Accounting Regulation has been prepared and approved, and a special Accounting Area has been established in order to objectify and standardise accounting procedures; for 2022, it is therefore proposed to prepare training sessions, also with the assistance of the officials of the external accounting offices who have managed the accounts up to now.



Organisational Unit 2 - Deprivation of Liberty in Criminal Justice System

PROCESS: Managing relations with Public Prosecutors' Offices for deaths in prison

Phase	Sub-phase	Risk identification	Enabling factors	Risk probability	Risk impact	Summary evaluation (p*i)	Treatment measure	Responsible
Managing relations with Public Prosecutors' Offices for deaths in prison	Taking charge of cases of death in prison	Delay in taking charge, excessive discretion on events to be treated	Potential external pressures for dealing with/ non dealing with the event	1	2	Low	Acquisition via computer application, by chronological order, submission for board evaluation	Head of Unit
	Investigation of deaths	Delay in processing and/ or missing entry/ update	Ineffective work organisation	1	3	Medium	Assignment of tasks according to clear and objective criteria	Head of Unit
	Dealing with death findings	Delay or failure to take acknowledgement	Ineffective work organisation	1	3	Medium	Schedule of regular meetings with a member of the Board, a member of the Office and a secretary who will enter the outcomes into the database	Head of Unit

Organisational Unit 3 - Deprivation of Liberty by Police Enforcement Agencies

Process: Reports processing

Phase	Sub-phase	Risk identification	Enabling factors	Risk probability	Risk impact	Summary evaluation (p*i)	Treatment measure	Responsible
Report Management	Taking charge and preliminary examination	Discretion in the order of dealing	Potential external pressures for dealing with/ non dealing with the event	2	2	Medium	Acquisition via computer application, by chronological order, submission for board evaluation	Head of Unit
	Treatment	Delay	Ineffective work organisation	1	2	Low	Assignment of tasks according to clear and objective criteria	Head of Unit



Organisational Unit 4 - Deprivation of Liberty and Migrants

PROCESS: Identification of the facilities to be monitored

Following on from the previous mapping exercise, in application of the principle of gradualness, it was decided the individual mapping, as part of the monitoring activity, of the processes of identification of forced return facilities and operations, increasing knowledge and updating the treatment measures

Phase	Sub-phase	Risk identification	Enabling factors	Risk probability	Risk impact	Summary evaluation (p * i)	Treatment measure	Responsible
Identification of the facilities to be monitored	Examination of information on structures	Random identification of structures to be monitored	Incomplete information	1	2	Low	Strengthening the flow of information through the implementation of cooperation with the Local Guarantors Network	Head of Unit
	Identification of the structures		Non-collegial criterion	1	2	Low	Collectively shared decisions	Head of Unit

PROCESS: Identification of forced return operations to be monitored

Phase	Sub-phase	Risk identification	Enabling factors	Risk probability	Risk impact	Summary evaluation (p * i)	Treatment measure	Responsible
Identification of forced return operation to be monitored	Analysis of operational telegrams and selection	Inappropriate identification with respect to risk profiles	Lack of objective criteria and insufficient transparency	1	2	Low	Use of IT platform and predetermination of risk profiles	Head of Unit

Organisational Unit 5 - Deprivation of Liberty in Healthcare, Socio-healthcare and Welfare Facilities

PROCESS: Report Management



Phase	Sub-Phase	Risk identification	Enabling factors	Risk probability	Risk impact	Summary evaluation (p * i)	Treatment measure	Responsible
Report Management	Taking charge and preliminary examination	Excessive discretion in identifying alerts to be processed	Potential external pressures for dealing with/ non dealing with the event	2	2	Medium	Acquisition via computerised protocol and observance of chronological order unless justified exceptions are made	Head of Unit
	Investigation of reports	Delay in processing the case	Ineffective work organisation	1	1	Low	Predetermined workload allocation	Head of Unit
	Decision on actions to be taken for each report	Excessive discretion, inconsistency with previous cases	Lack of collegial criteria for shared evaluations	1	3	Medium	Regular submission of cases to the Board	Head of Unit

Organisational Unit 6 - Administrative and Secretarial Support to the Board

PROCESS: Management of Complaints under Article 35 P. A. A.

The Organisational Unit Support to the College manages the Article 35 P.A.A Complaints Coordination Service on the basis of the Board's directives.

The process had already been mapped before, but it was decided to reintroduce it again as it should be placed in the broader context of the management of Reports and was reshaped in the second follow-up of 2021 following several meetings with the Board and the persons in the Office involved.



Phase	Sub-phase	Risk identification	Enabling factors	Risk probability	Risk impact	Summary evaluation (p*i)	Treatment measure	Responsible
Dealing with Article 35 P.A.A. complaints	Taking charge	Omission	Different	1	2	Low	Acquisition only by prior registration	O.U. staff
		Excessive discretion	Lack of predetermined criteria	1	2	Low	Drafting of pre-determined criteria	Head of Unit/Board

Organisational Unit 7 - Studies, National and International Relations

Process: Participation of the National Guarantor in international cooperation projects in the field of human rights protection in places of deprivation of liberty

Phase	Sub-phase	Risk identification	Enabling factors	Risk probability	Risk impact	Summary evaluation (p*i)	Treatment measure	Responsible
Participation of the National Guarantor in international cooperation projects in the field of human rights protection in places of deprivation of liberty	Identification of EU cooperation programmes in the field of protection of the rights of persons deprived of liberty	Discretionary identification of cooperation programmes	Excessive discretion in identifying EU cooperation programmes to exclude/ include certain organisations	1	2	Low	Strengthen the dialogue within the O.U. and between the other O.U.'s by providing for preparatory meetings for the elaboration of the requested interventions and the control by the heads of the O.U.'s involved in the cooperation	Head of Unit
	Communication of identified programmes to the Board and decision		Altering the outcomes of identified projects to favour/ exclude certain organisations	1	2	Low	Provide for control by the O.U. member(s).	Head of Unit

Transparency Section

Although transparency is a key topic, diffusely mentioned in this PTPCT as a transversal measure affecting the entire activity of the Entity, this section is specifically dedicated to the subject; in fact, it refers, as specific measures, to the organisational procedures for information flows, necessary to ensure the identification, processing, transmission and publication of data.

The regulations on publication and transparency obligations set out in Legislative Decree no. 33 of 14 March 2013, as amended by Legislative Decree no. 97 of 25 May 2016 (partly the subject of intervention by the Constitutional Court with its Ruling no. 20/2019, on which lastly intervened Decree-Law no. 162 of 30



December 2019, Art. 1, para. 7 “Urgent provisions on the extension of legislative deadlines, the organisation of public administrations, and technological innovation”) were progressively implemented by the National Guarantor.

Transparency stands out as a fundamental value of the legal system, expressly included by Article 1 of Law no. 241 of 7 August 1990 among the general principles governing administrative activity, and as an irreplaceable measure for corruption prevention, instrumental to the promotion of integrity and the development of a culture of legality in every sphere of public activity, as prescribed by Article 1 of Law no. 190 of 6 November 2012.

Transparency, as a guarantee of individual and collective freedoms, civil, political and social rights, contributes to the implementation of the constitutional principles of equality, impartiality, good conduct, accountability, effectiveness and efficiency in the use of public resources, integrity and loyalty in the service of the Nation.

Transparency enhances accountability in the relationship with citizens, on the one hand through access to documents, civic and generalised access (which has been extensively discussed above), and on the other through the obligation to publish data concerning the organisation and institutional activities of Administrations in the transparency sections of institutional websites²².

The constant and timely publication on the institutional website of information on the activities carried out makes it possible to favour forms of widespread control also by external parties and to carry out an important deterrent action for potential illegal or irregular conduct. In relation to the obligations of publishing and updating data and information incumbent on the Director and the Heads of Organisational Units, after informing the Board, the RPCT and the Transparency Contact Person, pursuant to Article 43(1) of Legislative Decree No. 33 of 14 March 2013, compatibly with their other duties at the National Guarantor, shall monitor compliance with the relevant obligations - by means of one or more periodic partial monitoring drills and an annual overall monitoring drill - in order to ensure the completeness, clarity and updating of the information published.

However, in order to facilitate monitoring by the RPCT and the Transparency Contact Person, the Director and the Heads of Organisational Units shall promptly notify them of the inclusion of information and documents, especially with reference to the “Transparent Administration” section and the data required by law, but also for those that refer to data identified by the Authority on account of their organisational and functional specificities.

The Director and the Heads of the Organisational Units, according to their specific competences, in compliance with the provisions of Article 43, paragraph 3 of Legislative Decree no. 33 of 14 March 2013 and expressly provided for in Article 13, paragraph 4 of the Code of Ethics adopted by the National Guarantor, shall ensure the acquisition as well as the timely and regular flow of the information to be published for the purposes of complying with the obligations to publish and update data and information. To such end in June 2021, a presidential resolution has passed (<https://www.garantenazionaleprivatiliberta.it/gnpl/resources/>

22. See Article 45(1) of Legislative Decree no. 33 of 14 March 2013, as amended by Article 36(1)(a) and (b) of Legislative Decree No. 97 of 25 May 2016, which entrusts ANAC with the task of checking “the exact fulfilment of the publication obligations provided for by the regulations in force, exercising inspection powers by requesting news, information, deeds and documents from the Public Administrations and ordering them to proceed, within a period not exceeding thirty days, to publish data, documents and information pursuant to this Decree, to adopt deeds and measures required by the regulations in force, or to remove conduct or deeds in contrast with the transparency plans and rules.”



[cms/documents/78648b8e758fc9ad4be5d7c5bc0fgaee.pdf](https://www.garante.gov.it/cms/documents/78648b8e758fc9ad4be5d7c5bc0fgaee.pdf)) published on the institutional website of the National Guarantor.

The RPCT, as indicated by ANAC, has a directing, coordinating and monitoring role on the actual publication, it does not replace the offices in the processing, transmission and publication of data.

We also recall the ANAC Resolution of 29 July 2020, which, on occasion of an opinion rendered, makes explicit that the provisions of Article 12(1a) of Legislative Decree 33 of 14 March 2013 also apply to independent authorities.

In case of publication of data other than compulsory data, the National Guarantor shall ensure that any sensitive personal data present are anonymised (e.g., publication of reports following monitoring visits to places of deprivation of liberty).

As envisaged in the timeline below, it is the objective of this Guarantor Authority in the course of 2021 to improve the quality and usability of the institutional website as well as to further training - through the RPCT - staff on the Guidelines provided by ANAC containing indications on the implementation of the obligations of publicity, transparency and dissemination of information contained in Legislative Decree 33/2013 as amended by Legislative Decree 97/2016.

Chronoprogramme of measures for the prevention of corruption and transparency

WHAT	WHO	WHEN
Definition of the tasks and activities of the Office Consignee	Board, Director	By 15/03/2022
Periodic updating of data to be published for transparency (first level monitoring)	Heads of OUs	By 30/04/2022
Organisational implementation for the implementation of Protocols stipulated by the N.G.	Board	By 15/05/2022
Monitoring on regular updating by the OUs of data to be published for transparency (second level monitoring)	RPCT/Reporter for Transparency	By 15/05/2022
Info-training sessions to OUs on the management of information flows to be published and monitored (ANAC Guidelines)	RPCT/U.O.	By 15/07/2022
Meetings with individual O.U. to assist in the mapping of new processes	RPCT/U.O.	By 15/07/2022
Six-monthly audits with the OUs to obtain the information, evidence and documents necessary to improving the second-level monitoring concerning the periodic review of the overall functionality of the risk management system	RPCT/U.O.	By 15/07/2022
Activities related to the improvement of the institutional website of the organisation	Board, Director, Experts, RPCT	By 31/07/2022



WHAT	WHO	WHEN
Periodic updating of data to be published for transparency (first level monitoring)	Heads of OUs	By 31/08/2022
Monitoring on regular updating by the OUs of data to be published for transparency (second level monitoring)	RPCT/Reporter for Transparency	By 15/09/2022
Transmission of the drafts of the new process mapping to the RPCT	O.U.	By 15/09/2022
Meetings with OUs for feedback on drafts of new process mapping	RPCT/U.O.	By 30/09/2022
Contacts with DGSIA to set up the visit counter in the transparency section of the of the National Guarantor's website	RPCT/Reporter for Transparency	By 30/09/2022
Insight into whistleblowing legislation following the possible transposition of EU Directive 2019/1937	RPCT	By 30/10/2022
Planning, as part of the internal training seminar, of a refresher session dedicated to the prevention of corruption and transparency	Board, Director, RPCT	By 30/10/2022
Six-monthly audits with the OUs to obtain the information, evidence and documents necessary to improving the second-level monitoring concerning the periodic review of the overall functionality of the risk management system	RPCT/U.O.	By 30/12/2022
Reconnaissance and study for consolidating the information systems for geo-localisation of the facilities of deprivation of liberty	Board, Director, General Affairs, Heads of Migration, Police Enforcement Agencies, and Criminal Unit	By 30/12/2022
Submission of the draft PTPCT 2023-2025 to the Board	RPCT/Board	By 30/12/2022
Public stakeholder consultation	Board of the National Guarantor, RPCT	By 10/01/2023
Transmission of draft of the PTPCT 2023-2025 containing the stakeholder contributions to the Board	RPCT	By 25/01/2023
Adoption of the PTPCT	Board	By 31/01/2023

The UO General Affairs shall ensure the timely publication of the PTPCT 2022-2024 on the institutional website under the 'Transparent Administration' Section of the National Guarantor's Office, giving it the widest dissemination among the staff of the Office.

Rome, 28 January 2022

Mauro Palma



45. Agreements

Cooperation Agreement for Studies and Projects on the Liberty of Persons with Disabilities

between

the *National Guarantor of the Rights of Persons Detained or Deprived of Liberty* (hereinafter the National Guarantor), with headquarters in Via di San Francesco di Sales 34, 00165 - Rome, represented by the President Prof. Mauro Palma

L'Altro diritto - Centro interuniversitario di ricerca su carcere, devianza, marginalità e governo delle migrazioni (hereinafter ADir), with headquarters in the Department of Legal Sciences of the University of Florence, Via delle Pandette 35, 50127 - Florence, represented by the Director Prof. Emilio Santoro

and

the *Centre for Governmentality and Disability Studies Robert Castel* of the University of Naples "Suor Orsola Benincasa" (hereinafter CeRC), with headquarters in Via Suor Orsola, 10 - 80135 Naples, represented by the Rector Prof. Lucio d'Alessandro;

subjects also jointly referred to as 'Parties'.

Whereas

- Article 7 of Decree-Law no. 146 of 23 December 2013, converted into Law no. 10 of 21 February 2014, and following amendments, established the National Guarantor for the rights of persons detained or deprived of liberty;
- By note of 25 April 2014 from the Permanent Mission of Italy to the International Organisations in Geneva, the National Guarantor was designated as *National Preventive Mechanism* (NPM) under Article 4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT);
- With the powers and obligations set out in Articles 17 to 23 of the above-mentioned Protocol and pursuant to the law establishing it, the National Guarantor visits, monitors and analyses all places where the autonomy and independence of persons can be limited, and therefore *de facto* creating segregation, including in the area of social and health care;
- The national and international laws and regulations confer on the National Guarantor the task of making recommendations to the competent Authorities, on the basis of its own findings in its monitoring of places and access to documentation relating to persons hosted in such facilities, with a view to improving their treatment and conditions of daily life and care, also by means of private interviews with persons suffering of liberty limitations and the staff of said facilities;
- The purposes of the National Guarantor also include the reconnaissance of host structures at national level and their legal forms, the development of quality standards and the definition of guidelines for their monitoring;



- ADir’s purpose is to develop, promote and coordinate studies and projects, including international ones, in the field of the sociology of marginality, the governance of marginality, discriminatory phenomena and related counter strategies, and the rights of persons deprived of liberty;
- The CeRC constitutes a research pole on governmental instruments, which carries out basic and applied research aimed at experimenting with policies to combat forms of inequality, modes of exclusion and discrimination of persons with disabilities.

Whereas

- The National Guarantor, ADir and CeRC intend to establish collaborative relationships for activities of common interest to guarantee the rights of persons with disabilities;
- Disability takes the form of a limitation, or even absence, of independence in the interaction of persons with impairments and behavioural and environmental barriers, which prevents their full and effective participation in society on an equal basis with others.

The following is agreed

Article 1 - Principle of Reciprocity

The National Guarantor, ADir and CeRC intend to cooperate in fields and activities of common interest on the basis of the principle of reciprocity.

Article 2 - Activities

The collaboration will focus on the following activities:

- a) programming and development of studies, research and projects;
- b) programming and implementation of coordinated training activities;
- c) promotion of seminars, conferences and other cultural activities;
- d) collection of documentation and supporting data in aggregate form;
- e) publications, information and awareness-raising initiatives.

Article 3 - Operational Programmes

Specific programmes of collaboration are identified and defined by the Parties through operational Protocols, implementing this Cooperation Agreement.

Article 4 - Scientific and Technical Council

1. The Scientific and Technical Council is responsible for the implementation of this Agreement and defines the scientific guidelines and contents of the operational programmes.
2. The President of the National Guarantor or a member of the Board designated by the President chairs the Scientific and Technical Council.
3. The Scientific and Technical Council consists of one member designated by each Party by its own act.



Article 5- Validity

1. This Agreement is valid for a period of three years from the date of the most recent signature.
1. This Agreement can be extended by sending a duly signed request to the National Guarantor. If no changes to the current text are necessary, the requests shall suffice. The request for renewal shall be sent to the National Guarantor three months before the expiration date.
2. The date indicated in the “seal of approval” shall constitute the beginning of the new effective date.
3. In the event that Operational Protocols are in place on the expiry date of this Agreement, they shall remain in force until the expiry date indicated therein.

Article 6- Withdrawal or termination

1. The Parties may unilaterally withdraw from this Agreement or terminate it by mutual consent; withdrawal shall be exercised by written notification.
2. Withdrawal shall take effect three months from the date of receipt of the written notice.
3. In the event of withdrawal or termination by one of the Parties, the Parties agree to complete the ongoing activities, unless otherwise set forth.

Article 7- Financial Charges

1. This Agreement does not impose any financial burden on the Parties.
2. Operational Protocols may provide for possible enforceable financial burdens.
3. The Parties may find the necessary resources to support the planned actions also through joint participation in funding programmes, both national and international, that do not foresee promoting bodies or actions that could enter into the supervisory exercise of the National Guarantor or that would constitute a conflict of interest with its action.

Article 8- Insurance

Each Party shall provide insurance coverage for its personnel engaged in activities carried out pursuant to this Agreement.

Article 9- Use of data and research results

1. The Operational Protocols shall determine the conditions and modalities for the use of data and research results contained within the scope of this Agreement.
2. ADir and CeRC undertake to ensure that all Parties involved in research projects under this Agreement expressly declare their mutual collaboration in publications. Each Party's contribution shall be given adequate emphasis in all external communications.



Article 10 - Confidentiality

1. The Parties recognise the confidentiality of any information, data or documentation communicated by a Party under this Agreement. As such, the Parties undertake not to disclose such confidential information received by them to any third party and in any form whatsoever, nor to use such information for any purpose other than for the implementation of this Agreement.
2. The Parties undertake to report clearly and promptly any confidential information.
3. The Parties undertake to take all steps to prevent such information, data or documentation from being acquired in any way by third parties.
4. The obligation of confidentiality shall not apply to information that the Parties legitimately receive from third parties not subject to the obligation of confidentiality.

Article 11 - Processing of Personal Data

The Parties undertake to process and keep the personal data and information relating to the performance of activities falling within the scope of this Agreement and its operative appendices in accordance with the provisions of Legislative Decree no. 196 of 30 June 2003.

Article 12 - Disputes

Any dispute arising out of or in connection with the construction, validity, performance and termination of this Agreement shall be submitted to the exclusive jurisdiction of the Court of Rome, any other form of territorial jurisdiction being hereby waived.

Article 13 - Final Clause

1. This Agreement may be amended or supplemented by a new cooperation agreement at any time.
2. Amendments or supplements are an integral part of this Agreement and enter into force upon their signature.
3. For all matters not expressly referred to in this Agreement, the relevant provisions in force, insofar as they are compatible, including the internal legislation of the individual Parties, shall remain in force.

Rome, 1 June 2017

for the *National Guarantor for the rights of persons deprived of liberty*, the President Prof. Mauro Palma

for *L'Altro diritto - Centro interuniversitario di ricerca su carcere, devianza, marginalità e governo delle migrazioni*, the Director Prof. Emilio Santoro

for *Centre for Governmentality and Disability Studies Robert Castel*, the Rector of the University of Naples "Suor Orsola Benincasa", Prof. Lucio d'Alessandro



Operational Research Protocol on Places, Forms and Modes of Segregated Disability

Provision of Extension

Having ascertained the need for continuation and implementation of the activities, depending on the results that have emerged in the course of the work, by unanimous agreement between the Parties, the Operational Research Protocol is extended, without interruption, until 31 May 2020, with the following amendments and integration:

1. The promoting research structures are joined by *Atypicalab for Cultural Disability Studies*, active at the Department of Humanities of the University of Calabria.

As per the Article of the Founding Regulation:

- a. Atypicalab is a transdisciplinary research facility for cultural studies on disability.
 - b. The Laboratory conducts basic research on cultural codes, social practices and governance arrangements of disability.
 - c. The Laboratory carries out applied research for the full and equal enjoyment of fundamental freedoms and for the full and effective social participation of persons with disabilities, through the elaboration and testing of programmes, actions and interventions to combat the ways and forms of discrimination, disaffiliation, social exclusion, dehumanisation and segregation.
2. Paragraph 3 of Article 3 of the Operational Protocol is cancelled.
 3. The objectives set out in Article 1 of the Operational Protocol are supplemented by the following study and research directions identified by the Steering Committee:
 - Analysis of forms and ways of establishing a national observatory on the ‘segregation’ of the elderly and persons with disabilities, with documentation functions; research, organisation and analysis of data; support of the monitoring system;
 - Drafting of the Guidelines on the standards of liberty in the residential structures;
 - Study of forms and means of involving the regions in the collaborative promotion of the inclusion of liberty standards in accreditation systems;
 - Analysis of forms and ways of involvement of local guarantors in the monitoring of facilities for the elderly and persons with disabilities;
 - Design and realisation of a unified model for the monitoring of restraint in the facilities for the elderly and persons with disabilities;
 - Training, conferences, publications and awareness-raising activities;
 - Definition of the Articles of Association and design of the finding visits/missions;
 - Hypotheses for the activation of experimental legal clinics for the protection of the liberties of the persons with disabilities;
 - Activation of systematic relations between the Health Area of the National Guarantor and international bodies working in the field of disability.

The *President of the Technical-Scientific Council* (Article 4 of the Cooperation Agreement for studies and



projects on the subject of liberty of persons with disabilities)

Mauro Palma

Operational Research Protocol on Places, Forms and Modes of Segregated Disability

Pursuant to Article 3 of the Cooperation Agreement between the *National Guarantor for the Rights of Persons Deprived of Liberty* (hereinafter the National Guarantor), *L'Altro diritto - Centro interuniversitario di ricerca su carcere, devianza, marginalità e governo delle migrazioni* (hereinafter ADir) and the *Centre for Governmentality and Disability Studies Robert Castel* (hereinafter CeRC) of the University of Naples “Suor Orsola Benincasa”

Whereas

the United Nations Convention on the Rights of Persons with Disabilities (CRPD) of 13 December 2006, ratified by Italy with Law no. 18 of 3 March 2009:

- Ensures that they (a) enjoy the right to liberty and security for their person and (b) are not deprived of their liberty unlawfully or arbitrarily and that any deprivation of liberty is in accordance with the law and that the existence of a disability does not under any circumstances justify a deprivation of liberty (Article 14);
- Ensures the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, requiring States Parties to take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment (Article 15);
- Ensures the right not to be subjected to exploitation, violence and ill-treatment, requiring States Parties to take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities (Article 16);
- Recognises the right of all persons with disabilities to live in society, with the same freedom of choice as other persons, including by ensuring that:
 - they have the opportunity to choose their place of residence, and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement,
 - they have access to a range of home-based or residential services and other social support services, including the personal assistance needed to enable them to live in society and prevent them from becoming isolated or victims of segregation,
 - community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs (Article 19).

Whereas

- The *Committee on the Right of Persons with Disabilities* recommends at point 8 of the *Concluding observations on the initial report of Italy* of 31 August 2016 the establishment of a permanent body that effectively and meaningfully consults persons with disabilities through their organisations in the



implementation of all laws, policies and programmes; at point 42 of the same document it recommends that the *National Preventive Mechanism* (NPM), referred to in Article 4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) visit psychiatric institutions or other facilities for persons with disabilities, especially those where persons with intellectual or psychosocial disabilities are hosted, and report on their conditions, and at point 48 it recommends that guarantees be put in place to maintain the right to an autonomous and independent life;

- following Italy's ratification of the OPCAT with Law no. 195 of 9 November 2012, the Permanent Mission of Italy to the International Organisations in Geneva designated the National Guarantor as NPM;
- in the *Concluding observations on the initial report of Italy* of 6 October 2016, it is requested that the designated NPM visit as soon as possible the facilities for persons with disabilities existing on the national territory, generically referred to by the National Guarantor in his First Report to Parliament as *'health and social care homes'*.

In implementation of the Cooperation Agreement signed on 1 June 2017, and in accordance with the terms of Article 3 of the said Agreement, the Parties intend to carry out a joint study and research activity, as defined below:

Article 1 - Objectives

1. Identification of practices determining *de facto* segregation and institutionalisation in the *health and social care homes* of persons with care dependency and definition of parameters characterising these practices.
2. Identification of situations and practices at risk of violating the fundamental principle of prohibition of torture or cruel, inhuman or degrading treatment to which persons with disabilities and/or care dependency may be subjected.
3. Drawing up a typological catalogue and a nomenclature of potentially segregating places and facilities, based on national, regional and municipal regulations.
4. Establishment of a national list of places and socio-medical residential facilities that may fall within the scope of the National Guarantor's monitoring action.
5. Drafting and testing guidelines for monitoring *health social/care homes* through the definition of indicators on: (a) structure and organisation, (b) respect for the autonomy and independence of guests, their rights and needs as well as those of their relatives, (c) respect for emotional relations, (d) relationship with the territory, (e) care and assistance provided, (f) informed consent, (g) use of means of restraint, (h) respect for confidentiality, (i) access to information.

Article 2 - Steering Committee

1. The study and research activities under this Operational Protocol are directed by the Steering Committee.
2. The Steering Committee identifies appropriate methods, techniques, protocols and surveying times to achieve the objectives of the activities.



3. The Steering Committee identifies scholars and experts to form the research unit.
4. The Steering Committee is chaired by the President of the National Guarantor, Prof. Mauro Palma, member by right of the same.
5. The Steering Committee consists of Dr. Gilda Losito, as a member of the Office of the National Guarantor, Prof. Emilio Santoro, as director of ADir, and Prof. Ciro Tarantino, as Scientific Director of the CeRC.
6. The members of the Steering Committee may identify collaborators to carry out and support research activities.
7. The Steering Committee establishes possible forms of documentation, information, dissemination and publication of activities in compliance with Article 9 of the Cooperation Agreement mentioned above.

Article 3 - Organisation of Work

1. Activities are organised by thematic working groups.
2. The groups may be supplemented by experts and representatives of national and international bodies, institutions and organisations according to specific needs.
3. The permanent members of the research unit, in addition to the members of the Steering Committee, are Prof. Stefano Anastasia, Prof. Alberto Di Martino, Prof. Mariagrazia Giannichedda, Prof. Marco Pelissero, Prof. Daniele Piccione.

Article 4 - Consultation Table

1. A Consultation Table on the topics, analyses and materials under investigation is established for the duration of the activities.
2. The Table is composed of delegates of organisations for the protection of the rights of persons with disabilities to be defined by the Parties in a subsequent act.

Article 5 - Duration

The activities have a duration of eighteen months.

Article 6 - Confidentiality

The activities are subject to the confidentiality obligations provided for in Article 10 of the Cooperation Agreement.

Rome, 1 June 2017

for the *National Guarantor for the rights of persons deprived of liberty*, the President Prof. Mauro Palma
for *Centro interuniversitario di ricerca su carcere, devianza, marginalità e governo delle migrazioni*, the
Director Prof. Emilio Santoro

for *Centre for Governmentality and Disability Studies Robert Castel*, the Rector of the University of Naples
“Suor Orsola Benincasa”, Prof. Lucio d’Alessandro



Operational Research Protocol on Places, Forms and Modes of Segregated Disability

Provision of Extension

Based on the findings of the work, it was identified the need for continuation and implementation of the activities.

In view of the Covid-19 emergency and its consequences that particularly affected social and health facilities for the disabled and the elderly, given the need to maintain a high level of attention on the monitoring of the different types of residential and semi-residential facilities present on the national territory, also with technical-operational tools based on a scientific methodology,

Without prejudice to the amendments and integrations included in the extension provision expiring on 31 May 2020, upon unanimous agreement of the Parties, this Operational Research Protocol is extended, without interruption, until 31 May 2021.

Rome, 13 March 2020.

The President of the Technical-Scientific Council (Article 4 of the Cooperation Agreement for studies and projects on the subject of the liberty of persons with disabilities) Mauro Palma

Operational Research Protocol on Places, Forms and Modes of Segregated Disability

Provision of Extension

Having ascertained the need for the continuation and implementation of the activities, and in view of the results emerged in the course of the work, the Research Operating Protocol between the *National Guarantor for the rights of persons deprived of liberty*, *L'Altro diritto - Centro interuniversitario di ricerca su carcere, devianza, marginalità e governo delle migrazioni*, *Centre for Governmentality and Disability Studies Robert Castel* of the University of Naples "Suor Orsola Benincasa" and *Atypicalab for Cultural Disability Studies*, established at the Department of Humanities of the University of Calabria is extended, upon unanimous agreement of the Parties and without interruption, until 30 September 2023 with integrations.

The objectives set out in Article 1 of the Operational Protocol are integrated by the following study and research directions identified by the Steering Committee:

1. Analysis of forms of incapacitation and mechanisms for the protection of liberty;
2. Relationships between liberty rights and social rights;
3. Identification, analysis and publication of case studies;
4. Liaising with the activities of the National Observatory on the Rights of Persons with Disabilities - *Presidency of the Council of Ministers*.

The President of the Scientific and Technical Council
(Article 4 of the Cooperation Agreement for studies and projects on the right to liberty of persons with disabilities)

Mauro Palma



Cooperation Agreement between

The National Guarantor for the Rights of Persons Detained or Deprived of Liberty (hereinafter referred to as the National Guarantor) based in Rome, via di San Francesco di Sales 34, in the person of its President Mauro Palma,

and the Public Prosecutor's Office at the Court of Naples (hereinafter referred to as the Public Prosecutor's Office), in the person of the Public Prosecutor Giovanni Melillo.

Having regard to Article 7 of Decree-Law no. 146 of 2013 “Urgent measures on the protection of the fundamental rights of detainees and the controlled reduction of the prison population” converted, with amendments, into Law no. 10 of 21 February 2014, as amended, which established the National Guarantor;

Having regard to Ministerial Decree no. 36 of 11 March 2015 on the “Regulation on the structure and composition of the Office of the National Guarantor for the Rights of Persons Detained or Deprived of their Liberty”, which defined the regulation on the structure and composition of the Office of the National Guarantor for the Rights of Persons Detained or Deprived of Liberty;

Considering that by note of 25 April 2014 from the Permanent Mission of Italy to the International Organisations in Geneva, the National Guarantor was designated as *National Preventive Mechanism* (NPM) pursuant to article 4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted by the United Nations Assembly by resolution No. 57/199 of 18 December 2002 and ratified by Italy on 4 April 2013 by virtue of Law no. 195 of 9 November 2012;

Considering that by Law no. 18 of 3 March 2009 Italy ratified the United Nations Convention on the Rights of Persons with Disabilities, adopted in New York on 13 December 2006, which in Articles 14, 15, 16 and 17 assigns to the *National Preventive Mechanism* the task of monitoring the places of accommodation accommodating persons with disabilities;

Considering that by virtue of the indicated national and supranational regulatory provisions, the National Guarantor exercises its mandate over all places and situations of deprivation of liberty, *de jure* and *de facto*, including, in addition to those indicated in Article 7 of Decree-Law no. 146/2013, places where third-country nationals (whose entry, transit or stay into Italian territory is irregular), social-health facilities for persons with limited autonomy or subject to restrictions on liberty or where persons subject to compulsory health treatment are admitted;

Having regard to Service Order no. 86 of 23 June 2018, containing the current criteria for the organisation of the Naples Public Prosecutor's Office, by which the *specialised intersectional working group for crimes committed in places of custody or detention against persons deprived of liberty* was established in the Public Prosecutor's Office;

Whereas the above-mentioned specialised Group is entrusted with the handling of proceedings relating to the offences referred to in Articles 606, 607, 608, 609, 613-bis, 613-ter of the Criminal Code, to crimes committed in places of detention and custody, including administrative custody, or against persons subject to police checks, to reports of cases of self-harm committed in places of detention and custody, including administrative custody, and to reports relating to living and health conditions in places of detention and custody, including administrative custody;

Whereas the National Guarantor and the Naples Public Prosecutor's Office intend to establish relations of



mutual cooperation with a view to and in the common interest of protecting the fundamental rights of persons subject to deprivation or restriction of their liberty, *de jure* and *de facto*, and of preventing acts of violation of such rights;

the National Guarantor the Public Prosecutor's Office at the Court of Naples

agree the following

Article 1 - Purpose

With this Cooperation Agreement, the National Guarantor and the Public Prosecutor's Office at the Court of Naples, through the Specialised Intersectional Group for crimes committed in places of custody or detention and in any case to the detriment of persons deprived of liberty, undertake, in compliance with their mutual institutional autonomies, to implement joint cooperation actions aimed at protecting the fundamental rights of persons subject to deprivation or restriction of liberty, to prevent and prosecute acts of violation of such rights, to promote and enhance the cultural foundations of the execution of sentences in compliance with the constitutional provisions and of the respect for human rights in any situation of restriction of liberty.

Article 2 - Subject

This Cooperation Agreement identifies as areas of operation all places of detention and custody, including those of an administrative nature, places where third-country nationals whose entry into the national territory is irregular enter, transit or stay, socio-medical facilities where persons with limited autonomy or subject to restrictions on their liberty are hospitalised, including those subject to compulsory health treatment, any place where liberty is *de facto* restricted by public authorities.

The territorial scope of operations is within the competence of the specialised intersectional group set up at the Public Prosecutor's Office in Naples, that is the district of the Court of Naples.

Article 3 - Modalities of Cooperation

The implementation of this Agreement provides for:

- The reciprocal and confidential exchange of information, subject to observance of investigative secrecy, on reports of violations of the rights of persons subject to deprivation or restriction of liberty and on living conditions in penal institutions and other places of deprivation or restriction of liberty as referred to in Article 2;
- The confidential exchange - in observance of investigative secrecy - of information concerning cases examined and processed by the National Guarantor pursuant to Article 35 P.A.A., within the territorial area of competence defined in Article 2;
- The provision of joint information and training programmes on the issues of enforcement of sentences and respect for human rights in any situation of restriction of liberty;
- Informing Public Prosecutor's Office of the Supervisor's Reports, before it is made public, on institutional visits conducted by the latter in places within the territorial area of competence defined in Article 2.

The National Guarantor reserves the right to inform the Public Prosecutor's Office of the dates of unannounced visits to prison establishments within its jurisdiction.



Article 4 - Commitments of the Parties

In order to better and more concretely implement the cooperation covered by this Agreement, the National Guarantor and the Naples Public Prosecutor's Office undertake to hold meetings at least every two months to assess the topics and issues covered by Agreement and to organise operational activities to implement it.

The meetings are attended by at least the Coordinator of the Specialised Intersectional Working Group and the member of the Board of the National Guarantor designated to follow the implementation of this Agreement.

Article 5 - Confidentiality

The Parties signing this Agreement recognise and preserve the confidential nature of the information, data and documentation that they will transmit to each other in performance of the cooperation activity covered by this Agreement.

Article 6 - Duration

This Agreement takes effect from the date of its signature and is valid for three years. It may be renewed, by an appropriate act, subject to the express approval of the Parties signing it.

Naples, 19 November 2018

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

The President

Prof. Mauro Palma

The Public Prosecutor's Office at the Court of
Naples

The Public Prosecutor

Giovanni Melillo



Cooperation Agreement between the National Guarantor for the Rights of Persons Detained or Deprived of Liberty and the Carabinieri Corps

The National Guarantor for the rights of persons detained or deprived of liberty, hereinafter referred to as the “National Guarantor”, with headquarters in Via San Francesco di Sales n. 34, 00165 Rome, in the person of the President of the Guarantor Authority, Prof. Mauro Palma, and the Carabinieri Corps, hereinafter referred to as the “Carabinieri”, with headquarters in Viale Romania n. 45, 00197 Rome, in the person of the Commanding General, Lt. Gen. Giovanni Nistri,

HAVING REGARD TO

- Article 15 of Law no. 241 of 7 August 1990, according to which Public Administrations may, at any time, enter into agreement with each others to regulate the performance, in collaboration, of activities of common interest;
- Article 155 of Legislative Decree no. 66 of 15 March 2010, pursuant to which the Carabinieri Corps is a military police force of general competence and on permanent public security service;
- Law no. 354 of 26 July 1975 concerning the rules of penitentiary administration and the enforcement of measures of deprivation and restriction of liberty;
- Article 7 of Decree-Law no. 146 of 23 December 2013, establishing the figure of the National Guarantor of the rights of persons detained or deprived of liberty, which identifies, among its institutional tasks, the visit, after prior notice and without harming ongoing investigative activities, of the custody suites of the Police Enforcement Agencies, as well as the promotion and strengthening of cooperation with other institutional figures having competence in the same matters;

WHEREAS

- It is a common objective of the Parties to fully respect national laws and international human rights conventions ratified by Italy, with particular reference to persons detained or deprived of liberty;
- The Parties recognise the need to promote moments of reflection and in-depth analysis on issues of common interest, within the framework of their respective institutional aims;
- Within the scope of their institutional duties, the Parties intend to establish a cooperative relationship, pursuant to Article 15 of the above-mentioned Law no. 241 of 1990, for the development of the aforementioned activities;

ALL OF THE ABOVE IS HEREBY AGREED AND UNDERSIGNED AS FOLLOWS

Article 1 - Scope of Collaboration

This Protocol regulates the cooperation activities between the Carabinieri and the National Guarantor, within their specific competences.

The main areas of collaboration include:

- The organisation of seminars/conferences/workshops/roundtables to explore issues of common interest;



- The mutual exchange of lectures, performed by their representatives aimed at sharing experiences for the improvement of their respective capacities of intervention;
- The realisation of joint training projects; also in collaboration with other institutions;

And outside the cases identified in this Agreement, in the presence of converging institutional interests and the possibility of developing further synergies; the Parties undertake to cooperate with each other in order to pursue and realise the interest of the community.

Article 2 - Modalities of Implementation

In relation to the forms of collaboration described above:

- The Carabinieri shall involve, for the activities referred to in this Agreement, the study and analysis components of the General Command Staff, as a center of operational, doctrinal and training reference of the entire organisation structure of the Carabinieri;
- The National Guarantor shall pursue the objectives of the cooperation through the staff of its Office and possible contributions from regional Guarantors specifically delegated from time to time.

Article 3 - Activities for Immediate Implementation

In order to give immediate execution to this Agreement, the Parties undertake to organise a 3-hour seminar by the end of 2018 at the Scuola Allievi Marescialli e Brigadieri in Florence, and in early 2019 at the Scuola Ufficiali dei Carabinieri in Rome.

Similar meetings shall be planned in all the basic training institutes of the Carabinieri.

Article 4 - Charges

This Agreement does not entail any charges, as it is aimed at pursuing the relevant institutional objectives.

Article 5 - Privacy and Information Confidentiality

The methods and purposes on the processing of personal data handled in the context of the activities carried out in this Agreement shall be based on the principles of fairness, lawfulness and transparency, as well as compliance with Legislative Decree no. 196 of 30 June 2003 "*Code on the protection of personal data*" and Legislative Decree no. 101 of 10 August 2018, on "*Provisions for the adaptation of national legislation to the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)*".

The Parties undertake to observe the utmost confidentiality on data, information and results of the activities subject of this Agreement, of which they have become aware in any way.

Article 6 - Duration, Amendments and Integrations

This Cooperation Agreement, signed with digital signature pursuant to Article 15, para. 2 bis, of Law no. 241 of 7 August 1990, has a duration of three years from the signing date, and may be extended by written



instrument to be received before the expiration date.

Either Party may withdraw from this Agreement at any time by giving at least 60 days written notice to the other Party.

This Agreement can be renewed, by mutual agreement between the signatory Parties, even before its expiration, amended on the basis of further aspects that may emerge in the course of the collaboration, or the need of detailing the instruments and modalities of the collaboration.

The National Guarantor of the Rights of Persons Detained or Deprived of Liberty The President <i>Prof. Mauro Palma</i>	The General Commander of the Carabinieri Corps <i>Lt. Gen. Giovanni Nistri</i>
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Cooperation Agreement

between

the Carabinieri Corps

and

National Guarantor for The Rights of Persons Deprived of Liberty

The CARABINIERI Corps, in the person of the General Commander, Lt. Gen. Teo LUZI, and the NATIONAL GUARANTOR FOR THE RIGHTS OF PERSONS DEPRIVED OF LIBERTY, in the person of the President of the Guarantor Authority, Dr. Mauro PALMA,

HAVING REGARD to the Cooperation Agreement concerning the relations of cooperation between the Parties, signed on 10 December 2018;

CONSIDERING the common interest of the Parties to continue this fruitful cooperation to strengthen the full respect of national laws and international conventions on human rights ratified by Italy, with particular reference to persons deprived of liberty, through seminar initiatives, exchange of lectures and experiences and implementation of joint training projects; sign this



COOPERATION AGREEMENT

Article 1

Subject

This document:

- Renews in its entirety the Cooperation Agreement concerning the collaboration between the CARABINIERI CORPS AND the NATIONAL GUARANTOR FOR THE RIGHTS OF PERSONS DEPRIVED OF LIBERTY, referred to in the introduction;
- Has a duration of three years, starting from the date of signature;
- May be further renewed by mutual agreement between the signatory Parties and may also be amended before its expiration, on the basis of further aspects that may emerge in the course of the collaboration, as well as the need to specify the instruments and modalities of the collaboration itself.

Article 2

Information Security and Confidentiality

1. The methods and purposes on the processing of personal data handled in the context of the activities carried out in this Agreement shall be based on the principles of fairness, lawfulness and transparency, as well as in compliance with the EU Regulation 2016/679 of the European Parliament and Council of 27 April 2016, concerning the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), of the Legislative Decree no. 196 of 30 June 2003 “*Code on the protection of personal data*” and the Legislative Decree no. 51 of 18 May 2018 for the “*Implementation of the Directive 2016/280 of the European Parliament and of the Council of 27 April 2016 concerning the protection of natural persons by competent authorities for the purpose of the prevention, investigation, detection and prosecution of criminal offenses or the execution of criminal penalties, as well as on the free movement of such data, and repealing the Council Framework Decision 2008/977/GAP*”.
2. The Parties acknowledge that each Party shall act as autonomous data controllers and undertake to act in full compliance with the data protection legislation applicable to them in relation to the personal data processing activities related to the execution of this Agreement.
3. The Parties undertake to observe the utmost confidentiality on data, information and the results of activities, which are the subject of this Agreement, of which they have become aware in any way.

Rome, 17 March 2022

THE NATIONAL GUARANTOR FOR THE RIGHTS OF PERSONS
DEPRIVED OF LIBERTY
(*Prof. Mauro Palma*)

THE GENERAL COMMANDER
OF THE CARABINIERI CORPS
(*Lt. Gen. Teo Luzi*)



The Ministry of Justice - Juvenile and Community Justice Department - Calabria Inter-district External Criminal Enforcement Office and the National Guarantor of the Rights of Persons Detained or Deprived of their Liberty

COOPERATION AGREEMENT

The year 2019 on the 17th day of January,

the National Guarantor of the Rights of Persons Detained or Deprived of Liberty in the person of its President Mauro Palma and the Juvenile and Community Justice Department - Calabria Inter-district External Criminal Enforcement Office in Catanzaro, in the person of its Director Emilio Molinari

WHEREAS

- The National Guarantor of the rights of persons detained or deprived of liberty was established by Decree-Law no. 146 of 2013, converted, with amendments, into Law no. 10 of 21 February 2014, while the Ministerial Decree no. 36 of 11 March 2015 defined the regulations on the structure and composition of the Office;
- The National Guarantor for the rights of persons detained or deprived of liberty is a collegial and independent, non-judicial Guarantee Authority whose function is to supervise all forms of deprivation of liberty, from penal institutions to custody in police stations, to Immigration Removal Centres, to Residences for the Execution of Psychiatric Security Measures (REMS), to compulsory health treatments;
- At the national level, the National Guarantor of the rights of persons detained or deprived of liberty promotes and fosters collaborative relations with the local guarantors, and at the international level, by coordinating the network of local guarantors, it represents the National Prevention body under the UN Optional Protocol for the Prevention of Torture (OPCAT);
- The organisational system of external criminal enforcement is regulated by the Decree of the President of the Council of Ministers (DPCM) 15 June 2015 no. 84 and the Ministerial Decree (DM) 17 November 2015 concerning the identification at the Juvenile and Community Justice Department (DGMC) of the Offices of non-general executive level, along with the definition of the relevant tasks, and by the DM 23 February 2017 which identifies the Local Offices for External Criminal Enforcement (UEPE) as territorial articulations of the DGMC (no. 11 UIEPE, no. 18 UEPE, no. 43 ULEPE, no. 18 Sub-offices), ensuring at local levels the activities provided for under article 72 P.A.A.;
- The Penitentiary Administration operates in the regional territory's 12 penitentiary institutes (1 low-custody), in accordance with the programmes, guidelines and directives provided for by the Department of Penitentiary Administration (DAP), also to ensure the uniformity of the penitentiary action over the national territory;
- The REMS in Santa Sofia d'Epiro (CS) is located in Calabria region;
- The areas of Treatment and Security and External Criminal Enforcement of the Penitentiary Administration (DAP and DGMC) perform tasks of great social relevance for the convicted and/or detained persons, such as: designing, programming and implementing initiatives and experiences in the field of intramural treatment and alternative measures to detention; activating school, cultural, recreational and sports activities addressed to convicts and internees and ensuring their personal protection and general security;



- Article 35 of the Italian Constitution affirms that the Republic provides for the training and professional advancement of workers, in compliance with the recognition and guarantee for the inviolable rights of individuals and the fulfilment of the binding duties of political, economic and social solidarity, as set out in Article 2 of the Constitution, as well as the principles of formal and substantial equality as set out in Article 3(1) and (2) of the Constitution.
- The fundamental principles in Article 1 of Recommendation R(2006)2 of the Committee of Ministers of the Council of Europe on “European Penitentiary Rules” indicate that “the involvement of civil society in prison life shall be encouraged”, “life in prison shall approximate as closely as possible the positive aspects of life in the community” and that “all detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty”.
- The enhancement of vocational training courses is decisive in the perspective of the re-education of the convicted person, in accordance with Article 27 para. 3 of the Constitution, as well as of his social reintegration as provided for by Article 1 para. 6 of the P.A.A.
- The promotion of an integrated regional system of training opportunities for prison operators working in Penitentiary Institutions or in external penal enforcement in Calabria is fundamental to guarantee the right to training.
- It is essential to disseminate as far as possible, also with a view to reintegration inside the community of the convicted person, the social value of prison life; in this regard the collaboration with the National Guarantor of the Rights of Persons Detained or Deprived of Liberty is a priority; the National Guarantor shall use its expertise in the penal-legal and socio-criminological fields for a close analysis of prison problems and for the implementation of training, research, cooperation and joint cultural initiatives, at the proposal of each of the signatories.
- The National Guarantor of the Rights of Persons Detained or Deprived of Liberty and the Ministry of Justice, Juvenile Justice and Community Department - Calabria Inter-district Office of External Criminal Enforcement Office in Catanzaro have mutually acknowledged their undoubted and considerable experience in this field.
- The National Guarantor of the Rights of Persons Detained or Deprived of Liberty and the Ministry of Justice, Juvenile Justice and Community Department - Calabria Inter-district Office of External Criminal Enforcement Office in Catanzaro are aware of the extremely positive results that can be achieved through mutual cooperation in training, study and research activities and for the full implementation of the principles set out in Articles 2, 3, 13, 27, 33, 34 and 35 of the Italian Constitution, Article 15 of the Penitentiary Administration Act, Articles 41, 42 and 44 of the Penitentiary Regulation referred to in the Presidential Decree no. 230/2000, as well as the European Penitentiary Rules referred to in the Recommendation R(2006)2 adopted by the Council of Ministers on 11 January 2006 and, therefore, consider it appropriate to proceed with the conclusion of a Cooperation Agreement to start training the staff of DGMC and the DAP of Calabria Region.
- For this set of activities, the Signatory Bodies consider it necessary to create an integrated system of coordination, without prejudice to the autonomy of both Parties in the organisation, evaluation, monitoring and management of their training courses.

All the above being stated and considering it as an integral and substantial part of this Agreement, the Ministry of Justice, Juvenile and Community Justice Department - Calabria Inter-district External Criminal Enforcement Office in Catanzaro and the National Guarantor of the Rights of Persons Detained or Deprived



of Liberty, agree and stipulate the following

Article 1 - Purpose

1. The Ministry of Justice, Juvenile and Community Justice Department - Calabria Inter-district External Criminal Enforcement Office in Catanzaro and the National Guarantor of the Rights of Persons Detained or Deprived of Liberty intend to cooperate in order to plan and implement analyses, studies and legal, criminological and sociological research in criminal justice aimed at promoting the training of prison operators in the penitentiary facilities and the External Criminal Enforcement Offices in the region.
2. To this end, the National Guarantor of the Rights of Persons Detained or Deprived of Liberty indicates its Board, which will be supported by Dr. *Giovanni Suriano* and Dr. *Claudia Sisti* of the Operational Unit - Deprivation of Liberty in Criminal Justice Area, and by Dr. Daniela Bonferraro, support to the Board and Head of the Unit, as experts who will perform the training activities.
3. The Calabria Inter-district External Criminal Enforcement Office indicates as referents for the projects and activities provided by this Agreement Dr. *Emilio Molinari*, Inter-district Director of the UIEPE of Catanzaro, Dr. *Maria Letizia Polistena* Head of Area IV - *Inter-district Coordination and Social Professionalism* and Dr. *Maria Domenica Di Giovanni* Area II - *Community Measures and Sanctions*.
4. The group of experts referred to in the previous paragraph shall be coordinated by the Board of National Guarantor for the Rights of Persons Detained or Deprived of Liberty.
5. The Ministry of Justice, Juvenile and Community Justice Department - Calabria Inter-district External Criminal Enforcement Office in Catanzaro shall proceed with the selection of the penitentiary facilities and the five Offices of External Criminal Enforcement in Calabrian territory that, from time to time, will participate in the training activities.
6. The Ministry of Justice, Juvenile and Community Justice Department - Calabria Inter-district External Criminal Enforcement Office in Catanzaro also undertakes to adopt any act aimed at involving, in the activities referred to in this Agreement, the bodies and institutions present on the regional territory, including the third sector (social cooperatives, NGOs and NPOs) and the voluntary sector. In particular, Volunteer Assistants *under* Articles 17 and 78 of the Penitentiary Administration Act shall be involved.

Article 2 - Scope of the Research Activities

1. The training activities under this Agreement shall be carried out with the help of questionnaires and interviews administered to prison staff. The activity shall be performed by the Ministry of Justice - Juvenile and Community Justice Department - Calabria Inter-district External Criminal Enforcement Office in Catanzaro.

Article 3 - Premises of the Research Activities

1. Training activities for which experts and prison staff need to be brought together shall preferably be carried out at the premises of the National Guarantor of the Rights of Persons Detained or Deprived of Liberty, as well as in the prison and external penal enforcement facilities involved.



Article 4 - Regional Steering and Coordination Committee

1. The Ministry of Justice, Juvenile and Community Justice Department - Calabria Inter-district External Criminal Enforcement Office in Catanzaro shall set up a Regional Committee for the guidance and coordination of training activities.
2. The Regional Steering and Coordination Committee shall be composed by:
 - a) Director of the Calabria Inter-district External Criminal Enforcement in Catanzaro -Juvenile and Community Justice Department;
 - b) External Criminal Enforcement Operators in Catanzaro;
 - c) Experts in criminological, penitentiary, juridical-criminal and procedural-criminal disciplines belonging to the Operational Unit - Deprivation of Liberty in Criminal Justice Area of the National Guarantors for the Rights of Persons Detained or Deprived of Liberty;
 - d) Community service experts, psychologists and criminologists pursuant to article 8o of the P.A.A.

The Committee may avail itself of the support of the operators of the penitentiary institutes in Calabria for the promotion, organisation and implementation of initiatives of interest.

3. The Regional Steering and Coordination Committee:
 - a) Promotes the organisation and integration of training activities between the National Guarantor of the Rights of Persons Detained or Deprived of Liberty, the Penitentiary administration and the External Criminal Enforcement Offices in the region.

Article 6 - Training Activities

1. The training activities offered by the National Guarantor of the Rights of Persons Detained or Deprived of Liberty fall within its relevant institutional tasks.
2. The signatory organisations recognise the specific and innovative nature of the training activities in prison and the requirements to be met at technical-professional level and in terms of the relationship between experts and prison staff, for the innovative rehabilitation-treatment programme addressed to persons subject to a sentence.

Article 7 - Commitments of the Signatory Bodies

1. The Ministry of Justice, Juvenile and Community Justice Department - Calabria Inter-district External Criminal Enforcement Office in Catanzaro commits to:
 - Favour by any necessary initiative the consolidation of the training experience and its further development;
 - Identify the Penal Institutes and EPE Offices referred to in this Agreement;
 - Arrange the adequate structures and premises necessary to the experts for the implementation of the activities;
 - Monitor through the evaluations coming from the Directorates of the Penitentiary Institutes and EPE Offices involved, the feedback received from the different training courses, including the innovative



ones, as well as to favour study and research initiatives on the community integration of persons subject to a sentence.

2. The National Guarantor for the Rights of Persons Detained or Deprived of Liberty commits to:
 - Collaborate in the definition of training activities;
 - Promote and collaborate in training initiatives for prison staff and staff of the offices of external criminal enforcement.

Article 8 - Final Provisions

1. This Agreement is effective for five years starting from the date of signing by the signatory bodies.
2. It shall be automatically renewed for a further three-year period unless terminated by means of official withdrawal/termination letter sent to the other Party no later than 90 days before the expiry of the five-year period.
3. The Parties may also withdraw from this Protocol at any time, after sending an official withdrawal letter to the other Parties with at least 90 days' notice, subject to the completion of the activities already started.
4. With the favourable opinion of both signatory bodies, other public institutions or private bodies shall be able to join the agreement, as well as the Third Sector.

The President *Mauro Palma*

National Guarantor of the rights of persons detained or deprived of liberty

The Director *Emilio Molinari*

Ministry of Justice - Juvenile and Community Justice Department

Calabria Inter-district External Criminal Enforcement Office in Catanzaro

The Ministry of Justice - Juvenile and Community Justice Department - Sardinia Inter-district External Criminal Enforcement Office and the National Guarantor of the Rights of Persons Detained or Deprived of Liberty

COOPERATION AGREEMENT

The year 2018 on the 3 day of October,

The National Guarantor of the Rights of Persons Detained or Deprived of Liberty in the person of its President Mauro Palma and the Juvenile and Community Justice Department - Sardinia Inter-district External Criminal Enforcement Office in Cagliari, in the person of its Director Emilio Molinari



WHEREAS

- The National Guarantor of the rights of persons detained or deprived of liberty was established by Decree-Law no. 146 of 2013, converted, with amendments, into Law no. 10 of 21 February 2014, while the Ministerial Decree no. 36 of 11 March 2015 defined the regulations on the structure and composition of the Office;
- The National Guarantor for the rights of persons detained or deprived of liberty is a collegial and independent, non-judicial Guarantee Authority whose function is to supervise all forms of deprivation of liberty, from penal institutions to custody in police stations, to Immigration Removal Centres, to Residences for the Execution of Psychiatric Security Measures (REMS), to compulsory health treatments;
- At the national level, the National Guarantor of the rights of persons detained or deprived of liberty promotes and fosters collaborative relations with the local guarantors, and at the international level, by coordinating the network of local guarantors, it represents the National Prevention body under the UN Optional Protocol for the Prevention of Torture (OPCAT);
- The organisational system of external criminal enforcement is regulated by the Decree of the President of the Council of Ministers (DPCM) 15 June 2015 no. 84 and the Ministerial Decree (DM) 17 November 2015 concerning the identification at the Juvenile and Community Justice Department (DGMC) of the Offices of non-general executive level, along with the definition of the relevant tasks and by the DM 23 February 2017 which identifies the Local Offices for External Criminal Enforcement (UEPE) as territorial articulations of the DGMC (no. 11 UEPE, no. 18 UEPE, no. 43 ULEPE, no. 18 Sub-offices), ensuring at local levels the activities provided for under article 72 P.A.A.;
- The Penitentiary Administration operates in the regional territory on the nine penitentiary institutes, in accordance with the programmes, guidelines and directives provided for by the Department of Penitentiary Administration (DAP), also to ensure the uniformity of the penitentiary action over the national territory;
- The areas of Treatment and Security and External Criminal Enforcement of the Penitentiary Administration (DAP and DGMC) perform tasks of great social relevance for the convicted and/or detained persons, such as: designing, programming and implementing initiatives and experiences in the field of intramural treatment and alternative measures to detention; activating school, cultural, recreational and sports activities addressed to convicts and internees and ensuring their personal protection and general security;
- Article 35 of the Italian Constitution affirms that the Republic provides for the training and professional advancement of workers, in compliance with the recognition and guarantee for the inviolable rights of individuals and the fulfilment of the binding duties of political, economic and social solidarity, as set out in Article 2 of the Constitution, as well as the principles of formal and substantial equality as set out in Article 3(1) and (2) of the Constitution;
- The fundamental principles in Article 1 of Recommendation R(2006)2 of the Committee of Ministers of the Council of Europe on “European Penitentiary Rules” indicate that “the involvement of civil society in prison life shall be encouraged”, “life in prison shall approximate as closely as possible the positive aspects of life in the community” and that “all detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty”;
- The enhancement of vocational training courses is decisive in the perspective of the re-education of the convicted person, in accordance with Article 27 para. 3 of the Constitution, as well as of his social



reintegration as provided for by Article 1 para. 6 of the Penitentiary Administration Act;

- The promotion of an integrated regional system of training opportunities for prison operators working in Penitentiary Institutions or in external penal enforcement in Sardinia is fundamental in ensuring the right to training;
- It is essential to disseminate as far as possible, also with a view to reintegration inside the community of the convicted person, the social value of prison life; in this regard the collaboration with the National Guarantor of the Rights of Persons Detained or Deprived of Liberty is a priority; the National Guarantor shall use its expertise in the penal-legal and socio-criminological fields for a close analysis of prison problems and for the implementation of training, research, cooperation and joint cultural initiatives, at the proposal of each of the signatories;
- The National Guarantor of the Rights of Persons Detained or Deprived of Liberty and the Ministry of Justice, Juvenile Justice and Community Department - Sardinia Inter-district Office of External Criminal Enforcement Office in Cagliari have mutually acknowledged their undoubted and considerable experience in this field;
- The Ministry of Justice, Juvenile Justice and Community Department - Sardinia Inter-district Office of External Criminal Enforcement Office in Cagliari and the National Guarantor of the rights of persons detained or deprived of liberty are aware of the extremely positive results that can be achieved through mutual cooperation in training, study and research activities and for the full implementation of the principles set out in Articles 2, 3, 13, 27, 33, 34 and 35 of the Italian Constitution, Article 15 of the Penitentiary Administration Act, Articles 41, 42 and 44 of the Penitentiary Regulation referred to in the Presidential Decree no. 230/2000, as well as the European Penitentiary Rules referred to in the Recommendation R(2006)2 adopted by the Council of Ministers on 11 January 2006 and, therefore, consider it appropriate to proceed with the conclusion of a Cooperation Agreement to start training the staff of the DGMC and the DAP of Sardinia Region;
- For this set of activities, the Signatory Bodies consider it necessary to create an integrated system of coordination, without prejudice to the autonomy of both Parties in the organisation, evaluation, monitoring and management of their training courses;

All the above being stated and considering it as an integral and substantial part of this Agreement, to be an integral and substantial part, the Ministry of Justice, Juvenile and Community Justice Department - Sardinia Inter-district External Criminal Enforcement Office in Cagliari and the National Guarantor of the Rights of Persons Detained or Deprived of Liberty, agree and stipulate the following

Article 1 - Purpose

1. The Ministry of Justice, Juvenile and Community Justice Department - Sardinia Inter-district External Criminal Enforcement Office in Cagliari and the National Guarantor of the Rights of Persons Detained or Deprived of Liberty intend to cooperate in order to plan and implement analyses, studies and legal, criminological and sociological research in criminal justice aimed at promoting the training of prison operators in the penitentiary facilities and the External Criminal Enforcement Offices in the region.
2. To this end, the National Guarantor of the Rights of Persons Detained or Deprived of Liberty indicates its Board, which will be supported by Dr. *Giovanni Suriano* and Dr. *Claudia Sisti* of the Operational Unit - Deprivation of Liberty in Criminal Justice Area, as experts who will perform the training activities.



3. The Sardinia Inter-district External Criminal Enforcement Office in Cagliari indicates as referents for the projects and the activities referred to in this Agreement Dr. *Emilio Molinari*, the Inter-district Director of the UIEPE of Cagliari, Dr. *Laura Boy*, Head of Area IV - and Dr. *Maria Pina Soriga*, Head of Area II - *Community Measures and Sanctions*.
4. The group of experts referred to in the previous paragraph shall be coordinated by the Board of National Guarantor for the Rights of Persons Detained or Deprived of Liberty.
5. The Ministry of Justice, Juvenile and Community Justice Department - Sardinia Inter-district External Criminal Enforcement Office in Cagliari shall proceed with the selection of the penitentiary facilities and the Offices of External Criminal Enforcement in Sardinian territory that, from time to time, will participate in the training activities.
6. The Ministry of Justice, Juvenile and Community Justice Department - Sardinia Inter-district External Criminal Enforcement Office in Cagliari also undertakes to adopt any act aimed at involving, in the activities referred to in this Agreement, the bodies and institutions present on the regional territory, including the third sector (social cooperatives, NGOs and NPOs) and the voluntary sector. In particular, Volunteer Assistants *under* Articles 17 and 78 of the Penitentiary Administration Act shall be involved.

Article 2 - Scope of the Research Activities

1. The training activities under this Agreement shall be carried out with the help of questionnaires and interviews administered to prison staff. The activity shall be performed by the Ministry of Justice - Department of Juvenile and Community Justice - Sardinia Inter-district External Criminal Enforcement Office in Cagliari

Article 3 - Premises of the Research Activities

1. Training activities for which experts and prison staff need to be brought together will preferably be carried out at the premises of the National Guarantor of the Rights of Persons Detained or Deprived of Liberty, as well as in the prison and external penal enforcement facilities involved.

Article 4 - Regional Steering and Coordination Committee

1. The Ministry of Justice, Juvenile and Community Justice Department - Sardinia Inter-district External Criminal Enforcement Office in Cagliari shall set up a Regional Committee for the guidance and coordination of training activities.
2. The Regional Steering and Coordination Committee shall be composed by:
 - a) Director of Sardinia Inter-district External Criminal Enforcement in Cagliari - Juvenile and Community Justice Department;
 - b) External Criminal Enforcement Operators in Cagliari;
 - c) Experts in criminological, penitentiary, juridical-criminal and procedural-criminal disciplines belonging to the Operational Unit - Deprivation of Liberty in Criminal Justice Area of the National Guarantors for the Rights of Persons Detained or Deprived of Liberty;
 - d) Community service experts, psychologists and criminologists pursuant to article 80 of the P.A.A.

The Committee may avail itself of the support of the operators of the penitentiary institutes in Sardinia for the promotion, organisation and implementation of initiatives of interest.



3. The Regional Steering and Coordination Committee:
 - a. Promotes the organisation and integration of training activities between the National Guarantor of the Rights of Persons Detained or Deprived of Liberty, the Penitentiary Administration and the External Criminal Enforcement Offices in the region.

Article 6 - Training Activities

1. The training activities offered by the National Guarantor of the Rights of Persons Detained or Deprived of Liberty fall within its relevant institutional tasks.
2. The signatory organisations recognise the specific and innovative nature of training activities in the prison environment and the requirements it entails on a technical-professional level, and in terms of the relationship between experts and prison staff, for the innovative rehabilitation -treatment programme addressed to persons subject to a sentence.

Article 7 - Commitments of the Signatory Bodies

1. The Ministry of Justice, Juvenile and Community Justice Department - Sardinia Inter-district External Criminal Enforcement Office in Cagliari commits to:
 - Favour by any necessary initiative the consolidation of the training experience and its further development;
 - Identify the Penal Institutes and EPE Offices referred to in this Agreement;
 - Arrange the adequate structures and premises necessary to the experts for the implementation of the activities;
 - Monitor through the evaluations coming from the Directorates of the Penitentiary Institutes and EPE Offices involved, the feedback received from the different training courses, including the innovative ones, as well as to favour study and research initiatives on the community integration of persons subject to a sentence.
2. The National Guarantor for the Rights of Persons Detained or Deprived of Liberty commits to:
 - Collaborate in the definition of training activities;
 - promote and collaborate in training initiatives for prison staff and staff of the Offices of External Criminal Enforcement;

Article 8 - Final Provisions

1. This Agreement is effective for five years starting from the date of signing by the signatory bodies.
2. It shall be automatically renewed for a further three-year period unless terminated by means of official withdrawal/termination letter sent to the other Parties no later than 90 days before the expiry of the five-year period.
3. The Parties may also withdraw from this Protocol at any time, after sending an official withdrawal letter to the other Parties with at least 90 days' notice, subject to the completion of the activities already started.



4. With the favourable opinion of both signatory bodies, other public institutions or private bodies shall be able to join the agreement, as well as the Third Sector.

The President Mauro Palma, National Guarantor of the Rights of Persons Detained or Deprived of Liberty

The Director Emilio Molinari, Ministry of Justice - Juvenile and Community Justice Department

Sardinia Inter-district External Criminal Enforcement Office in Cagliari

Cooperation Agreement between Istituto Superiore di Sanità, hereinafter referred to as ISS, with headquarters in Rome, 00161 - Viale Regina Elena, 299 - CF 80211730587, legally represented by the President Prof. Silvio Brusaferrò and the National Guarantor for the rights of persons deprived of liberty, hereinafter referred to as the National Guarantor, headquarters in Rome, 00165 - Via San Francesco di Sales, 34, legally represented by its President, Prof. Mauro Palma

Whereas

- The ISS, pursuant to Article 1 of the Ministerial Decree of 24 October 2014 - is a technical-scientific body of the National Health Service and pursues the protection of public health, in particular by carrying out research, control, regulatory consultancy and training functions applied to public health;
- The ISS, pursuant to Article 2 para. 3 of the aforementioned Ministerial Decree of 24 October 2014, may enter into conventions, agreements and contracts with public or private, national and international entities for the performance of its functions and any related activities;
- The ISS is the body in charge of epidemiological and microbiological surveillance throughout the emergency period in the entire national territory as per Order of the President of the Council of Ministers (OPCM) no. 640 of 27 February 2020;
- As part of the strategies to combat and manage the health risk related to the epidemiological emergency caused by SARS-CoV2, the ISS has published the report on the *National Covid-19 infection Survey* concerning nursing homes (RSA);
- The National Guarantor for the rights of persons deprived of liberty is a collegial and independent, non-judicial Guarantor Authority whose function is to supervise all forms of deprivation of liberty, from penal institutions to custody in police stations, Immigration Removal Centres, Residences for the Execution of Psychiatric Security Measures (REMS), compulsory health treatments, residential structures for disabled and the elderly. The National Guarantor was established by Decree-Law no. 146 of 2013, converted with amendments, into Law no. 10 of 21 February 2014, and it has been designated as National Preventive Mechanism under the UN Optional Protocol to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Starting on 24 March, the ISS in collaboration with the National Guarantor launched a specific survey on SARS-CoV2 infection in nursing homes (RSA), with the aim of monitoring the situation and adopting possible strategies to strengthen the programmes and basic principles of prevention and control of care-



related infections (ICA);

- The survey is currently addressed to more than 2,500 facilities surveyed in the on-line map for dementia created by the ISS's dementia observatory, and is based on a questionnaire aimed at acquiring information on the management of any suspected/confirmed cases of Sars-CoV2 infection;
- the Parties, within the scope of their respective institutional tasks and by mutual agreement, intend to implement a collaboration to protect public health and the fundamental rights of the people accommodated in order to monitor the spread of the SARS-CoV2 infection in RSAs, with a view to extending to other types of residential facilities, such as those of a social-assistance, health and social-health nature to verify the state of health and care of people with different levels of psychic and physical disabilities and with impaired functional abilities, as well as their effective access to rights.

That being said, the parties mutually agree and stipulate the following

Article 1 - Subject and Purpose of the Agreement

The purpose of this Cooperation Agreement is to set up a shared pathway for monitoring the spread of SARS-CoV2 infection in residential facilities, combining the Institute's technical-scientific and epidemiological skills with the National Guarantor's knowledge and supervisory skills.

The collaboration shall be implemented by carrying out the following activities:

1. Detailed information on the residential facilities (RSA - RSD - Rest Homes - RSP, etc.) through the interconnection between the ISS and the Authority databases;
2. Employment of the skills and legal knowledge of the National Guarantor for the monitoring and supervision of residential facilities;
3. Observation of the spread of the SARS-CoV2 epidemic in residential facilities, such as nursing homes (RSA), residences for the disabled (RSD), retirement homes, psychiatric care residences;
4. Analysis of data on a regional and national basis for an appropriate assessment of the criticalities encountered in these facilities following the epidemic wave;
5. Adoption of any strategies able to strengthen programmes and core principles for the prevention and control of healthcare-associated infections (ICAs);
6. Drafting of technical documents and reports based on the data collected under points 1, 3, 4, and 5.

The National Guarantor, therefore, undertakes to support the cooperation referred to in this Agreement by making available, in addition to its expertise in the legal and social fields, its national database of the residences in question.

Article 2 - Modalities of Cooperation

The ISS and the National Guarantor shall carry out the aforesaid cooperation by referring to their respective permanent and fixed-term staff units, as well as to any experts designated by the respective Parties, involved in the activities covered by this Agreement, who shall be called upon to collaborate by the Scientific Coordinators and to their own instrumental endowments.



In any case, each of the Parties shall provide, in accordance with the legislation in force, training and information on internal procedures to the staff units that will attend the respective premises, and any specific risks and on confidentiality obligations, while insurance, health and safety obligations at the workplace shall remain the responsibility of the Host Bodies.

Article 3- Duration

This Agreement is valid for the entire duration of the SARS-CoV₂ pandemic emergency and, in any case, for 12 months from the date of signature.

Article 4- Scientific Coordinators

The Scientific Coordinators shall be in charge of the following activities:

for ISS, based on their specific area of competence:

Prof. Graziano Onder - Director of the Department of cardiovascular, dysmetabolic and ageing diseases;

Dr. Nicola Vanacore - Researcher at the National Centre for Disease Prevention and Health Promotion;

Dr. Maria Luisa Scattoni - Researcher of the Research Coordination and Support Service.

for the National Guarantor:

Ms. Gilda Losito, Head of the Organisational Unit - Deprivation of Liberty and Health

Article 5- Scientific Results

“Scientific findings” shall be construed as the body of scientific knowledge resulting from the survey on the spread of the SARS-CoV₂ epidemic in residential facilities as reported in Article 1 in points 1, 3, 4 and 5 and in the report referred to in point 6.

Article 6- Access Rights to the Knowledge Results

Each Party shall remain the owner of the relevant industrial and intellectual property rights concerning:

- Its “background”, this term meaning all knowledge and information independently developed and/or held in any capacity by either Party prior to the conclusion of this Agreement;
- Its “sideground”, meaning all knowledge developed and results achieved by either Party during the course of the activities, but outside and independent of them, even if pertaining to the same scientific field.

Each Party shall have non-exclusive, royalty-free access, without sub-licence rights, to information, pre-existing knowledge and intellectual property rights related thereto, held by the other Party prior to the signature of the Agreement and required for carrying out the activities.

Any access to the background for reasons other than the above shall be negotiated by separate agreement.

Information of a confidential and/or proprietary nature stored on the ISS server relating to data, information and technologies resulting from the collaboration remains the exclusive property of the party that provided it.



Article 7- Confidentiality

The Parties undertake to report clearly and promptly any information considered confidential, and to protect, by any means and in any form, information and data processed within the framework of the collaboration so as not to compromise the character of confidentiality in any way or otherwise cause damage.

The Parties recognise the confidentiality of any information, data or documentation communicated by a Party under this Agreement. As such, the Parties undertake not to disclose such confidential information received by them to any third party and in any form whatsoever, nor to use such information for any purpose other than for the implementation of this Agreement.

The Parties also undertake to take all appropriate precautions and security measures to protect confidential information, data and knowledge and to ensure that the nature of their confidentiality is in no way compromised, undertaking to take all steps to prevent such information, data or knowledge from being acquired by third parties in any way.

The obligation of confidentiality shall not apply to information that the Parties legitimately receive from third parties not subject to the obligation of confidentiality, except for the commitment to ensure the protection of said data during their processing phase.

In view of the contingent emergency situation, and in view of the national leadership role assigned to ISS in this context, as well as the supervisory role played by the National Guarantor, all information and knowledge that is relevant to their respective areas of competence in view of the institutional role pertaining to both remain excluded from this obligation.

Article 8- Publications

The publications and communications of scientific results shall be exclusively in anonymous and aggregate form of the data collected and may only be made to third party bodies and/or organisations in the manner provided for by the emergency regulations; after the emergency phase, only in the manner provided for by the sector regulations and by the national and EU privacy regulations.

However, any publication and/or communication shall take place with the written consent exchanged between the Parties and provided that such publications do not compromise the protection of the results. All information and knowledge relevant for public health in view of the Institute's institutional role or as required by law is excluded from such obligation.

Each publication shall also take into account the public health purpose that the ISS is committed to pursue as the technical-scientific body of the National Health Service in Italy, in conjunction with its functions of research, experimentation, control, consultancy, documentation and training in the field of national public health.

Article 9- Use of the Distinctive Signs of the Parties

The logos of the Parties may be used in the joint activities covered by this Agreement.

This Agreement does not imply any passing on of the name, and/or granting and/or use of the trademark and visual identity of the Parties for commercial and/or advertising purposes.

The use, whether extraordinary or unrelated to institutional action, shall be governed by specific agreements



for consideration, approved by the competent bodies and compatible with the protection of the image of the Parties themselves.

Article 10 - Data Protection

The processing of data shall be carried out legitimately, with fairness and transparency towards the professional of the individual facility that provided the data.

The data of the individual facilities shall be processed within the limits of the purposes set out in this Agreement, or for other related or similar purposes, not in contrast with the purposes defined for collecting data in the residential facilities.

The parties to this Agreement ensure the implementation of the principle of minimisation in the use of data, i.e. data shall be processed that are adequate, relevant and necessary to achieve the purposes of this Agreement. In particular, data shall only be analysed and presented in aggregate form on a national, regional or provincial basis.

The data shall be stored on the ISS's server for the time necessary for the purpose and/or for the eventual re-use of the same in related projects/studies/protocols, similar and, in any case, not in contrast with the reasons for collection.

The data of the individual residential facilities shall be processed in accordance with appropriate measures (Article 32 EU Reg. 2016/679) of protection during both the collection and the use or transmission of the data.

The survey covered by this Agreement does not involve the collection of personal data of either individual residents of the facilities or individual operators.

In this Agreement, ISS and the National Guarantor shall maintain their respective ownership in the processing of the data collected for the purposes of the Epidemiological Surveillance established by Order no. 640 of 27 February 2020, and in the public interest of the public health sector.

The modalities of communication and/or transfer of data between the Parties shall take place in aggregate form for the purposes of drafting reports and any scientific publications to ensure the widest possible information in order to protect the information confidentiality of structures and professionals working therein, who are participating in various capacities in the project and are not bound by law or regulation to professional secrecy.

The data that will be collected and processed shall relate to the questionnaires provided by the residential facilities listed in Article 1.

Both Parties declare and undertake to keep proper records of the processing activities pursuant to Article 30 EU Reg. 2016/679.

For the above-mentioned reasons, the participating parties indicate the appointment of their own Data Protection Officer (DPO):

For the ISS: Scudo Privacy S.r.l., the DPO Dr. Carlo Villanacci, contact details, e-mail: carlo.villanacci@iss.it

For the National Guarantor for the rights of persons deprived of liberty: the Board Member Ms. Daniela de Robert, contact details, e-mail: daniela.derobert@garantenpl.it



Article 11 - Withdrawal

Each of the Parties to this Agreement, pursuant to Article 1373 of the Civil Code, is granted the right to withdraw and this right may be exercised as long as the Agreement itself has not entered into force.

Article 12 - Termination

This Agreement may be terminated at any time if one of the Parties declares it impossible, for reasons beyond its control, to continue the cooperation.

Article 13 - Amendments to the Agreement

Any amendment to the Agreement requires the written form and signature of the legal representatives of the Parties.

Article 14 - Dispute Resolution and Jurisdiction

In the event of a dispute in the construction or execution of this Agreement, the Parties declare the Court of Rome to be the exclusive place of jurisdiction.

Article 15 - Stamp Duty and Registration Tax

This deed, drawn up in two original copies, is subject to registration only in case of use pursuant to Article 4 - Tariff Part II of Presidential Decree no. 131/86. The costs of any registration shall be borne by the Party requesting it.

Stamp duty is paid electronically, under the exclusive responsibility of the Institute (authorisation no. 99718/2016 of the Agenzia delle Entrate - Mr. Lazio).

Article 16 - Deferral Rules

For matters not covered by this Agreement, the provisions of the law apply.

This deed consists of 16 articles and is signed with a digital signature.

for Istituto Superiore di Sanità, President Prof. Silvio Brusaferrò

for the National Guarantor for the rights of persons deprived of liberty, President Prof. Mauro Palma



Supplementary Deed Amending the Cooperation Agreement between the Istituto Superiore di Sanità and the National Guarantor of the Rights of Persons Deprived of Liberty for the Implementation of a Shared Pathway for Monitoring the Spread of SARS-CoV2 Infection in Residential Facilities Signed on 10 June 2020

between

Istituto Superiore di Sanità, hereinafter referred to as ISS, with headquarters in Rome, 00161 - Viale Regina Elena, 299, Tax Code 80211730587, legally represented by the President Prof. Silvio Brusaferrò

and

The National Guarantor for the rights of persons deprived of liberty, hereinafter referred to as the National Guarantor, headquarters in Rome - 00165 Via San Francesco di Sales, 34, legally represented by its President, Prof. Mauro Palma

Whereas

- ISS - pursuant to Article 1 of the Ministerial Decree of 24 October 2014 - is a technical-scientific body of the National Health Service and pursues the protection of public health, in particular by carrying out research, control, advisory, regulatory and training functions applied to public health;
- ISS, pursuant to Art. 2 para. 3 of the aforementioned Ministerial Decree of 24 October 2014 may enter into conventions, agreements and contracts with public or private, national and international entities for the performance of its functions and any related activities;
- The National Guarantor for the rights of persons deprived of liberty is a collegial and independent, non-judicial Guarantor Authority, whose function is to supervise all forms of deprivation of liberty, from penal institutions to custody in police stations, Immigration Removal Centres, Residences for the Execution of Psychiatric Security Measures (REMS), compulsory health treatments, residential structures for disabled and the elderly. The National Guarantor was established by Decree-Law no. 146 of 2013 converted, with amendments, into Law no. 10 of 21 February 2014, and it has been designated as National Preventive Mechanism under the UN Optional Protocol to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- On 10 June 2020, the Parties entered into a one-year cooperation agreement to implement a shared pathway for monitoring the spread of SARS-CoV2 infection in residential facilities;
- In view of the fruitful results of the collaboration in the Survey on Covid-19 infections in nursing homes (RSAs), which made it possible to make an effective and targeted impact in a sector that was particularly exposed to the pandemic;
- The Parties intend to extend the Agreement for a further period of 12 months.

All of the above considered



THE FOLLOWING IS AGREED AND UNDERSIGNED

Article 3

Duration

The duration of the Agreement indicated in the preamble is hereby amended as follows: Article 3 - Duration: “The duration of this Agreement is set for the duration of the pandemic emergency by SARS-CoV2 pandemic and, in any case, for 36 months from the date of signature.”

For all matters not amended, supplemented and/or -replaced by this Supplementary Deed, the provisions of the Cooperation Agreement entered into on 10 June 2020 shall remain in force.

The Parties declare that they have read the articles set forth in this Deed and specifically approve their contents.

This Deed consists of 11 articles and is signed with a digital signature.

for Istituto Superiore di Sanità

The President

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

The President

COOPERATION AGREEMENT

Between

**the Italian Data Protection Guarantor (hereinafter, “GPDP”), legally represented by its President,
Prof. Pasquale Stanzone**

and

**the National Guarantor for the Rights of Persons Deprived of Liberty (hereinafter: “GNPL”), legally
represented by its President Prof. Mauro Palma;**

hereinafter separately referred to as “the Party” and jointly as “the Parties”

Whereas

- the GPDP is the competent Supervisory Authority for the purposes of the application of the legislation on the protection of personal data, pursuant to and for the purposes of Articles 51 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 and 41 of Directive (EU)



2016/680 of the European Parliament and of the Council of 27 April 2016 (Articles 2-bis of Legislative Decree no. 196 of 30 June 2003, and following amendments and integrations; Art. 2, para. 1, letter s) and 37 of Legislative Decree no. 51 of 18 May 2018);

- the GNPL, pursuant to Article 7 of Decree-Law no. 146 of 23 December 2013, converted with amendments into Law no. 10 of 21 February 2014, and Decree-Law no. 130 of 21 October 2020, converted with amendments into Law no. 173 of 18 December 2020, operates as a National Prevention Mechanism pursuant to Article 3 of the UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 by Resolution A/RES/57/199 by the United Nations General Assembly and ratified pursuant to Law no. 195 of 9 November 2012, and exercises the powers, enjoys the guarantees and fulfils the obligations set out in Articles 3 and 4 and 17 to 23 of the said Protocol;
- the Parties exercise mutually complementary functions to protect persons and their dignity, sometimes in contiguous contexts, in ways that suggest the advisability of a further and more structural connection than has been experienced to date;
- the Parties intend to favour moments of joint reflection and in-depth analysis on issues of common interest, within the framework of their respective institutional aims;
- Article 15 of Law no. 241 of 7 August 1990, according to which Public Administrations may, at any time, enter into agreement with each others to regulate the performance, in collaboration, of activities of common interest;
- It is therefore considered appropriate to regulate, in the following terms, the modalities for the realisation of a cooperation useful to guarantee - albeit in the autonomous and independent exercise of their respective functions - greater effectiveness and incisiveness in the action of the Authorities, also in compliance with the principle set forth in the Article 97 of the Constitution;

AGREE AS FOLLOWS

Article 1

Subject and Goals

1. The Parties hereby intend to initiate, within the scope of their respective competences, a cooperation aimed at carrying out activities of common interest, with particular regard to the protection of the confidentiality of persons subject to measures involving deprivation or restriction of liberty, in order to further promote its effectiveness.
2. The cooperation referred to in paragraph 1, within the framework outlined therein, is articulated in:
 - (a) the coordination of institutional interventions;
 - (b) the mutual reporting of possible violations of rules for the enforcement of which the other Party is responsible, observed in the exercise of its functions and, where appropriate, in the activation of coordinated administrative investigations;
 - (c) cooperating in the preparation of reports to Parliament or the Government;
 - (d) collaborating on fact-finding investigations;
 - (e) preparing, also in an intra-procedural capacity, opinions at the request of the other Party;



- (f) organisation of conferences, press conferences or other events of a popular and/or scientific nature, as well as the publication of writings.
3. For the implementation of the cooperation referred to in paragraph 1, the Parties shall use the following instruments:
- (a) mutual exchange, in a manner agreed from time to time, of documents, data and information, in compliance with each Party's confidentiality obligations and the personal data protection regulations set out in the aforementioned Regulation (EU) 2016/679, the aforementioned Directive (EU) 2016/680 and Legislative Decrees No. 196/2003 and No. 51/2018;
 - (b) establishment of working groups, also with a view to reach shared interpretations, on relevant issues of law in the areas of complementary competence;
 - (c) any other collaborative activity, even informal, deemed useful to achieve the objectives of this Agreement.

Article 2

Joint Activities

- 1. The parties may jointly carry out inspections or visits on matters of common interest, subject to the applicable legal provisions, confidentiality constraints and personal data protection obligations and, in particular, the limits set out in Law no. 354 of 26 July 1975, as amended.

Article 3

Training Activities

- 1. The parties can activate the mutual exchange of teaching by their representatives, sharing experiences for the improvement of their respective capacities of intervention; implement joint training projects, also with other institutions.

Article 4

Professional Secrecy and Confidentiality with Respect to Third Parties

- 1. The disclosure or communication to third parties of documents, information and data acquired under this act is subject to the confidentiality in accordance with the legislation in force with respect to the Party disclosing the information, without prejudice to the obligations arising from the legislation on the protection of personal data.

Article 5

Contact Persons and Execution of the Agreement

- 1. Each Party shall designate, by a subsequent act, one or more Contact Persons for the implementation of this Agreement and for the identification of any other need for collaboration.
- 2. The parties may, by subsequent agreements, agree on further modalities for mutual cooperation in the performance of specific functions and activities.



Article 6

Duration, Termination and Modifications

1. This deed shall be effective for two years and shall be deemed tacitly renewed for the same period, unless the Parties give notice to the contrary, or it may be terminated unilaterally, at any time and without the need to state reasons, upon written notice to be sent to the other Party at least thirty days in advance from the date of termination.
2. The Parties shall define in a subsequent act any amendments to the provisions of this Agreement that may be necessary or, in any case, appropriate.

Article 7

Publication

1. This deed shall be published on the websites of the Parties in the manner set forth in their respective regulations.

The President of
the Data Protection Guarantor

Pasquale Stanzone

The President of
the National Guarantor for the Rights of Persons

Deprived of Liberty

Mauro Palma

COOPERATION AGREEMENT

Between

the National Guarantor for the Rights of Persons Deprived of Liberty

and

the National Bar Council

Having regard to Legislative Decree no. 146 of 2013 “Urgent measures on the protection of the fundamental rights of detainees and the controlled reduction of the prison population”, converted, with amendments, into Law no. 10 of 21 February 2014, and following amendments,

Having regard to Ministerial Decree no. 36 of 11 March 2015 “Regulation on the structure and composition of the Office of the National Guarantor for the Rights of Persons Detained or Deprived of their Liberty”, which defined the Regulation on the structure and composition of the Office of the National Guarantor for the Rights of Persons Detained or Deprived of Liberty (hereinafter, the Guarantor);



Having regard to Decree of the President of the Council of Ministers 10 April 2019, no. 89 “Regulation concerning the determination of the structure and composition of the Office placed under the authority of the National Guarantor for the Rights of Persons Deprived of Liberty”;

Having regard to Law no. 173 of 18 December 2020 “Conversion into law, with amendments, of Decree-Law no 130 of 21 October 2020 on urgent provisions on immigration, international protection and complementary matters, amendments to Articles 131-bis, 391-bis, 391-ter and 588 of the Criminal Code, as well as measures on the prohibition of access to public establishments and places of public detention, on combating the distorted use of the web and on the discipline of the National Guarantor for the rights of persons deprived of liberty”;

Having regard to Law No 247 of 31 December 2012 “New regulations governing the legal profession”;

- Art. 35, para. 1, entrusts the Council with the promotion of relations with the competent institutions and public administrations (letter *a*), and the establishment of a permanent Observatory disciplining the exercise of jurisdiction (letter *r*);
- Art. 35, para.1, letter *a*) vests the National Bar Council (hereinafter, the Council) with the exclusive institutional representation of the legal profession at the national level;
- Art. 35, para. 1, letter *q*) calls upon the Council to formulating opinions, at the request of the Ministry of Justice, on proposals and bills that affect, even indirectly, the legal profession and the administration of Justice;

Considering that the Guarantor is an independent, non-jurisdictional and guarantee authority with the function of supervising all forms of deprivation of liberty, from penal institutions, to custody in police stations, detention centres for migrants irregularly present in the territory, residences for the execution of psychiatric security measures (REMS), and compulsory health treatments;

Considering that the Guarantor is, at the international level, an independent monitoring body as referred to in Article 17 and ff. of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and in this context coordinates the local Guarantors;

Considering, that within the framework of the criminal enforcement of adults and minors and with regard to custodial security measures, the Guarantor: (a) *monitors* that the enforcement of the custody of persons detained in prisons and internec complies with national and international principles and standards and (b) *intervenes* on critical issues of a general nature or on matters requiring immediate action;

Considering that the Guarantor:

- a) *visits*, without the need for authorisation, penal institutions, judicial psychiatric hospitals and health facilities intended to host persons subject to custodial security measures, therapeutic and reception communities or, in any event, public and private facilities where persons subject to alternative measures or precautionary measure of house arrest are kept, penal institutions for minors and reception communities for minors subject to orders of the judicial authority;
- b) *visits*, without the need for authorisation, police custody suites, being granted unrestricted access to any premises used or otherwise functional for restrictive measures;
- c) *accesses*, with the consent of the person concerned, the documents contained in the file of persons detained or deprived of their liberty;



- d) *requests* from the administrations of the facilities indicated in letter b) the necessary information and documents; in the event the administration does not respond within thirty days, it shall inform the competent supervisory judge and may request the issuance of an order to produce them;
- e) *assesses* complaints addressed to it pursuant to Article 35 of Law no. 354 of 26 July 1975;

Considering that the Council, as part of its institutional activity, has always maintained that the effective protection of the rights of persons deprived of liberty is achieved with the contribution and assistance of the institutional Bar.

Within the scope of this Cooperation Agreement, the Council:

- a) *collects, monitors and evaluates* data on the treatment of detainees, with a special focus on the relationship between remand in custody and sentence enforcement;
- b) *delves into* regulatory and exegetical developments in probatory standards and the effective compliance of the procedural system with constitutional frameworks on due process and the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- c) *takes care* of the examination of any issue related, also in terms of prospects for reform, to the concrete and effective application of the provisions aimed at ensuring *fair trial* and *certainty of punishment*;

Also **Considering** that the Council, through its internal commissions and the Permanent National Observatory on the Exercise of Jurisdiction, pursues the objective of contributing to a better administration of jurisdiction in order to facilitate citizens' access to an efficient justice system capable of satisfying their rights, as well as protecting those of persons detained or deprived of liberty;

Considering that the best protection of rights, in particular of persons deprived of liberty, for any reason and based on any grounds, depends on the provision of accurate information and constant training, including through the collection of data and scientific analyses. This would contribute to improve the criminal justice service the logistical and organisational conditions under which justice is administered in Italy and in its impact in the enforcement phase, with a view to drawing up objective and complete, transparent and reliable analyses based on which develop and propose new measures and/or remedies;

Considering that the Council and the Guarantor (hereinafter referred to as the Parties) intend to develop an ongoing cooperation with a view to organising joint initiatives for the identification of needs and improvements necessary in the criminal enforcement system, taking into account the actual needs also identified by the National Bar and arising in adult or juvenile detention institutions, or institutions equivalent thereto;

Considering that the Parties intend to promote the culture of legality inside and outside places of detention, as well as in *de facto* custodial facilities, for adults or minors, through the development of competences in the field of execution of penal sanctions aimed at the development and implementation of re-socialising measures;

Considering, furthermore, that the Parties intend to promote, in synergy, the implementation of information and training projects, also through the Regional or Local Authorities and District Associations, aimed at implementing the culture of legality through training courses that combine the study of penal enforcement, both custodial and non-custodial, with forms of practical learning carried out in the professional context of the legal profession in order to enable lawyers to acquire knowledge, skills and competences concerning the role played in the enforcement phase of sentence, both in trial and non-trial activities;



Considering that the Parties intend to pursue:

- a) A qualitative improvement of the enforcement of sentences, both custodial and non-custodial, through specifically identified, agreed and shared training paths, providing for the development of specific modules on the topics of non-custodial sentences, custodial sentences and alternative forms of their enforcement, as well as citizenship education and education to legality;
- b) The realisation of joint training projects; also in collaboration with other institutions (1) identifying the guidelines within which *ad hoc* information meetings are to be held; (2) establishing uniform guidelines also for the preparation of the training offer plans offered by the territorial bars associations pursuant to and for the purposes of article 23 of the regulation of the national bar council of 16 July 2014, no. 6 “*Regulation for continuing education*”;

Considering that the Parties agree on the opportunity to elaborate, develop and share common positions on the issues of the enforcement of penal sanctions, developing synergic actions to favour, in general, the qualitative improvement of the Italian prison system by interacting, where necessary, with the public institutions in charge thereof;

Also **noted** that the programme of the Draghi Government, with respect to the Recovery Plan funds, specifically addresses the situation of prison custodial detention (refer to the proposal in paragraph no. 23 for funding under complementary programming to the NRRP) and, in particular, the chapter related to “*construction and improvement of annexes and spaces in adult and juvenile prison facilities*”, makes explicit reference to investments complementary to the strategy of mission 5 “Inclusion and cohesion relating to social infrastructure, families, communities and the third sector”;

Considering that all past governments and successive legislators have addressed, each in their own way, the issue of the state of detention by adopting measures which, in fact, have not had the desired effects in terms of reducing the use of custodial detention in prisons and, at the same time, implementing alternative measures;

Considering that prison overcrowding, which inevitably and incontrovertibly affects the state and conditions of prison detention, is no longer sustainable;

Considering that the problems concerning detention conditions have been worsened by the ongoing Covid-19 health emergency;

Considering that more and more often the various actors in the judicial system (such as, most recently, the Prosecutor General at the Court of Cassation), in the legal guarantee system (such as the National Guarantor) and in the social system (such as the associative components) are pointing out, stigmatising and denouncing the inhuman conditions of detention and the need for urgent remedy;

Also **noting** that recently events have taken place in different Italian prisons that have caused public opinion and the institutions to intervene and take clear positions;

Considering that there can be no doubt as to the need to address in an organic manner the problem of the state of detention in Italy and the adoption of measures capable, on the one hand, of ensuring that the enforcement of the sentence is carried out consistently with the principle of rehabilitation purpose of punishment (pursuant to Article 27 of the Constitution) and, on the other hand, of ensuring the re-socialisation of prisoners held in a prison regime can no longer be postponed;

Considering that the Parties should pay attention to the issue of the state and conditions of detention in Italy by promoting organic regulatory measures with the aim of: implementing the inclusion of prisoners in the



social fabric, also by increasing the number of restricted institutions with attenuated custody; promoting the rehabilitation and resocialisation of prisoners also through social infrastructures and the Third Sector and reducing the limits on access to alternative measures with a concurrent increase in the number of cases in which the convicted prisoner may benefit from them;

the Parties agree as follows

Article 1

Purpose

- 1.** With this Cooperation Agreement, the Parties undertake:
 - a)** The implementation of joint actions aimed at promoting and encouraging, also through the Council Foundations, the territorial Bar Associations and the regional or local Guarantors, information initiatives on the state of detention in Italy, while highlighting its strengths and weaknesses; events addressed to legal practitioners on the issues of the purpose of punishment, its enforcement, both in the prison circuit or otherwise, in order to raise awareness among the interested public;
 - b)** The implementation of joint actions aimed at fostering the development of training courses - aimed at lawyers of the Bar and at the staff of the offices of the Guarantor, to be implemented also in collaboration with the Foundations of the Council, the territorial Bar Associations, and the network of the regional and local Guarantors, in order to implement the knowledge on specific issues concerning the enforcement of sentences, both custodial and noncustodial, and to achieve a qualitative improvement of the training courses, where already existing, envisaging the development of specific modules on the issues of the constitutional purpose of the sentence, on its enforcement modalities and on the conditions of detention;
 - c)** The promotion of shared regulatory interventions to favour the inclusion of prisoners in the social fabric also through the increase of low-custody penal institutions, the rehabilitation and resocialisation of prisoners, and in collaboration with civil society organisations and the Third Sector, and to reduce the limits to the access to alternative measures for prisoners, while favouring, at the same time, the access to them.
- 2.** The joint actions referred to in the preceding paragraphs shall pursue the following objectives:
 - a)** Develop expertise in the area of enforcement of sentences;
 - b)** Enhance knowledge on enforcement of sentences, conditions of detention, alternative ways of enforcing sentences, protection of human rights, fundamental rights of the individual, jurisprudence of the European Courts;
 - c)** Develop and implement knowledge on the lawyer's role during the enforcement phase of the sentence and of the alternative or substitute measures;
 - d)** Provide guidance for lawyers' professional training in the context of sentence enforcement;
 - e)** Introduce and/or amend the primary legislation aimed at intervening in the current state of detention conditions and the manner in which sentences are served.



Article 2

Subject

1. The Parties, in consultation with each other and for the achievement of the purposes set forth in Article 1, through this Agreement:
 - a) Identify the operational modalities by which the territorial Bar Associations, in the implementation of information and training events, ensure the implementation of said specific events and/or courses held by lawyers or by experts identified by the National Guarantor;
 - b) Set up technical-scientific working groups for the study of issues relating to the enforcement of sentences, in general, by drawing up and/or collecting suitable illustrative and dissemination materials, also for the purpose of proposing the introduction of regulatory measures on the subject and/or the amendment of rules already in force.

Article 3

Commitments of the Parties

1. The Parties mutually commit to:
 - Disseminate the agreed and implemented initiatives as widely as possible, both on a national and regional basis, through their respective institutional and communication channels;
 - Set up a scientific group, composed of lawyers with proven experience and qualified legal operators, to support the institutional activities carried out by the Guarantor.
2. The Council commits to:
 - Promote an awareness-raising action on issues concerning the enforcement of criminal penalties and deprivation of liberty, also *de facto*, within the framework of relations with international, European, national and regional institutions, as well as in relations with the territorial Bar Associations and with the sector-specific bar associations;
 - Promote the establishment of a national network of referent lawyers identified on a local basis by the territorial Bar Associations to provide legal advice to the Guarantor in criminal proceedings and in civil or administrative proceedings in which it is interested as a party;
 - Disseminate, if specifically requested by the National Guarantor, to the territorial Bar Associations the reports, opinions, and any other act and/or document of the National Guarantor.
3. The National Guarantor commits to:
 - Contribute to the scientific implementation of the information events and training courses referred to in Article 1(i) of this Agreement;
 - Make available the data (where possible) processed and, for whatever reason, received in the course of its institutional activities;
 - Promote, in the manner and terms it deems useful for the purpose, the involvement of the territorial Bar Associations in the identification and choice of provincial and municipal Guarantors.



Article 4

Project “Tutela dei diritti delle persone detenute e delle persone private della libertà personale”

1. The Parties propose, also by favouring the participation of other Institutions and/or public bodies as well as private bodies, to develop and implement a national project for the dissemination of a culture of “*protection of the rights of prisoners and persons of liberty*” through study and learning paths, also of a multidisciplinary and multimedia nature, aimed at getting detailed information on the instruments available to prisoners or persons deprived of liberty for the protection of their rights;
2. In particular, the Project proposes to remind civil society, as well as legal practitioners and health professionals, of the value of legality and respect for fundamental human rights, including those of detained or, in any case, restricted persons, by fostering a civic sense and promoting the knowledge and awareness of human rights, also by illustrating the instruments made available by the legal system for their protection.

Article 5

Implementation Modalities and Contact Persons

1. For the implementation of the objectives and purposes of this Agreement and for the activities of verification and monitoring of the initiatives undertaken, the Parties shall make use of their own offices and structures;
2. Within thirty days from the date of signature of this Agreement, each Party shall communicate the name of its national Contact Person for activities thereto. Each Party can replace its Contact Person, giving timely notice to the other Party.

Article 6

Signature, Duration and Amendments

1. This Agreement is signed by the current President of the National Bar Council and the current President of the National Guarantor;
2. This Agreement takes effect from the date of its signature and is valid for three years, and may be amended only by prior agreement between the Parties.

Rome, 10 January 2022

The National Bar Council

The President

Lvy. Maria Masi

The National Guarantor of The
Rights of Persons Detained or
Deprived of Liberty

The President

Prof. Mauro Palma



Training, Guidance and Internship Agreement

(Article 4, para. 5 of Decree of the Secretary of State for Labour and Social Security No. 142 - 25/03/98)

BETWEEN

the University of Padua, with registered office in via VIII Febbraio, 2, - 35122 Padua, tax code no. 80006480281, hereinafter referred to as “the Promoter”, represented by the Head of Research Area and Relations with Companies, acting pursuant to DDG prot. no. 127015 of 16/03/2017, Dr. Andrea Berti, born in Padua (PD), on 05/01/1963

AND

the National Guarantor for the rights of persons deprived of liberty, registered office: via di San Francesco di Sales, 34 – 00134 Rome (RM), Tax Code/VAT no. 97908230580, hereinafter referred to as “host party”, represented by Dr Mauro Palma, born in Rome, on 20/08/1948, as the President

WHEREAS

In order to facilitate career choices through direct knowledge of the world of work and to create moments of alternation between study and work within the training processes, the entities referred to in Art. 18, para. 1, letter a) of Law no. 196 of 24 June 1997 and subsequent amendments may promote training and **guidance** traineeships in companies for the benefit of those who have already fulfilled the compulsory schooling pursuant to Law no. 1859 of 31 December 1962.

The following is agreed

Article 1

Pursuant to Art. 18 of Law no. 196 of 24 June 1997 and subsequent amendments, the host party undertakes to accept a number of students on training and guidance internships in its facilities in compliance with Art. 1, para. 3 of Ministerial Decree no. 142 of 25 March 1998 of the Ministry of Labour and Welfare, on a proposal from the University of Padua

Article 2

1. Training and guidance internships, within the meaning of Art. 18, para. 1, letter d) of Law 196/97 as amended, do not constitute an employment relationship;
2. During the internship, training and guidance activities are monitored and supervised by a tutor designated by the Promoter acting as the educational-organisational manager, and by a manager of the organisation designated by the host body;
3. A training and guidance project is prepared for each trainee placed in the host organisation under this agreement, containing:
 - the name of the intern;



- the names of the tutor and the organisation manager;
- objectives and modalities of the internship, with an indication of the time spent in the organisation, its structures (establishments, headquarters, departments, offices) where the internship takes place;
- the identification details of INAIL and third party liability insurance.

Article 3

During the internship and guidance period, the intern is required to:

1. carry out the activities envisaged in the training and guidance project;
2. comply with the rules on hygiene, safety and health at work;
3. maintain the necessary confidentiality with regard to data, information or knowledge concerning production processes and products, acquired during the course of the internship;
4. respect the instructions provided by the host company regarding the processing of personal data acquired during the training activities, in accordance with the principles of fairness, lawfulness and transparency, and protection of the confidentiality and rights of the data subjects, pursuant to EU Regulation 2016/679 (General Data Protection Regulation);
5. respect the host organisation's Code of Ethics.

Article 4

1. The Promoter insures the intern(s) against accidents at work with INAIL, as well as for civil liability with insurance companies operating in the sector. In the event of accident during the internship period, the host company undertakes to report the event to the Promoter. The Promoter undertakes to report the event, within the time limits provided for by the regulations in force, to the insurance institutions (referring to the number of the relevant insurance policy).
2. The Promoter undertakes to send to the Region or the delegated Province, to the provincial structures of the Ministry of Labour and Welfare with territorial competence for inspection, and to the company trade union representatives a copy of the Convention for each training and guidance project.
3. At the end of each placement experience, the Host Organisation undertakes to complete the Evaluation Questionnaire provided by the Career Service Office.

Article 5

Acknowledging that, pursuant to Art. 2 para. 1 letter a) of Legislative Decree 81/08 "Consolidated Law on Health and Safety at Work", trainees, for the purposes and to the effects of the provisions of the same legislative decree, are to be understood as "workers", the Promoter and host parties undertake to guarantee the protection measures and obligations established by the regulations in force, and in particular:

1. The Promoter is the guarantor of the "general training" on safety art. 37 Legislative Decree 81/08 "Training of workers and their representatives", as defined by the Agreement in the Permanent Conference for relations between the State, the Regions and the Autonomous Provinces no. 221/CSR of 21/12/2011, through the provision to aspiring trainees of training of 4 (four) hours, with production of



the final certificate;

2. The host party is subject to the obligations set out in Article 36 (Information to workers) of Legislative Decree 81/08, as well as to the provision of personal protective equipment (PPE) where provided for;
3. *The Promoter is the guarantor of the “general training” on safety as per Art. 37 Legislative Decree 81/08 “Training of workers and their representatives”, as defined by the Agreement in the Permanent Conference for relations between the State, the Regions and the Autonomous Provinces no. 221/CSR of 21/12/2011.* Pursuant to the aforementioned Agreement, the Host Organisation undertakes to provide interns with specific training in line with the risks to which they will be exposed, taking into account any specific training already carried out.

Article 6

The Parties declare that the processing of personal data is based on the principles of correctness, lawfulness and transparency and protection of the confidentiality and rights of the data subjects, in compliance with EU Regulation 2016/679 and Legislative Decree no. 196 of 30 June 2003 as amended. (Personal Data Protection Code).

With reference to the processing of the personal data of interns and staff involved in the performance of the activities covered by this Agreement, the Parties act independently, as data controllers, each for its own sphere of competence, and the information notice made available to the data subjects pursuant to Article 13 of EU Regulation 2016/679.

Interns are authorised by the host organisation to process personal data, exclusively within the scope of the training activities identified in this contract and in individual training projects. The host organisation provides operational instructions and ensures adequate training for the processing of personal data by interns.

This Convention shall be registered at a fixed tax, in case of use pursuant to Articles 5 and 39 of Presidential Decree no. 131 of 26/04/86. This Convention lasts for five years from the date of its conclusion; the Party wishing to terminate it shall give notice by registered letter within three months of its expiry.

13 January 2022

(for the Host Organisations)

The Legal Representative

Mauro Palma

(for the Promoter)

The Director of Research and
Relations with Companies

Andrea Berti



Cooperation Agreement
between
The National Office Against Racial Discrimination
and
The National Guarantor for The Rights of Persons Deprived of Liberty

Having regard to the Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948 in Paris by Resolution No. 21077;

Having regard to Law 67/88 and the DPCM 22/12/89 and its ff. amendments and integrations, which established and regulated the Residential Care Homes for the Elderly (RSA) and for the Disabled (RSD);

Having regard to EU Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

Having regard to Article 7 of Legislative Decree no. 215 of 9 July 2003 transposing Community Directive 2000/43/EC, which provides for the establishment of a special Office for the promotion of equal treatment and the elimination of discrimination based on racial and ethnic origin (hereinafter UNAR) - the National Office against Racial Discrimination;

Having regard to the Prime Ministerial Decree of 11 December 2003 on the establishment and internal organisation of the Office for the Promotion of Equal Treatment and the Elimination of Discrimination;

Having regard to Art. 7 of the Decree-Law 23 December 2013, no. 146 converted, with modifications, into Law 21 February 2014 no. 10, which established the National Guarantor for the rights of persons deprived of liberty (hereinafter the National Guarantor) and assigned it the task of ensuring that the custody of persons subject to the limitation of liberty be implemented in compliance with the national laws and the international Conventions on human rights ratified by Italy;

Having regard to Decree-Law no. 130 of 21 October 2020, converted, with amendments, into Law no. 173 of 18 December 2020, setting out urgent provisions on immigration, international protection and complementary matters, amendments to Articles 131-bis, 391-bis, 391-ter and 588 of the Criminal Code, as well as measures on the subject of banning access to public establishments and places of public detention, combating the distorted use of the web and regulating the National Guarantor of the Rights of Persons Deprived of Liberty;

Having regard to the fact that the National Guarantor operates as the National Prevention Mechanism (NPM) pursuant to Article 7 of Decree-Law no. 146 of 2013 as amended by Decree-Law no. 130 of 2020 and pursuant to Article 3 of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted on 18 December 2002 by resolution A/RES/57/199 by the United Nations General Assembly and ratified pursuant to Law no. 195 of 9 November 2012, and exercises the powers, enjoys the guarantees and fulfils the obligations set out in Articles 3 and 4 and 17 to 23 of the said Protocol;

Having regard to Law no. 46 of 13 April 2017 converting Decree-Law no. 13 of 17 February 2017, which extends all the powers of verification and access of the National Guarantor referred to in Article 7 paragraph 5 letter e) of Decree-Law no. 146 of 2013 also to Immigration Removal Centres;



Having regard to the designation of the National Guarantor as the independent monitoring body for forced returns, referred to in Article 8 point 6 of Directive 115/EC/2008 of the European Parliament and of the Council of the European Union;

CONSIDERING THAT

The Italian prison environment and the places where liberty is institutionally restricted show, with growing concern, an increase in episodes of violence and discrimination against persons held there;

The condition of persons detained at the Immigration and Removal Centres (CPR), under Law no. 46/2017, converting Decree-Law no. 13/2017, is of equal concern;

The condition of people accommodated in nursing homes for the elderly and in similar facilities for the disabled, built starting from the provisions of Law 67/1988 and of the DPCM 22 December 1989, is of particular concern, especially following their closure to the outside during the pandemic phase; that in the above-mentioned places of detention and/or deprivation of liberty, the condition of fragility of LGBTQI people (in particular transgender people) or people discriminated against because of their belonging to an ethnically defined group (in particular Roma, Sinti and Caminanti people), religious beliefs, age or disability, is particularly relevant;

Both the Head of State and the President of the Council of Ministers have recently, on several occasions, emphasised the importance of a management based on respect for fundamental rights and the principle of humanity on the part of the institutions entrusted with the management of the institutions and places where the restriction of liberty is exercised, as an indicator of the democratic nature of the State, both nationally and internationally;

UNAR is the official referent for: 1) the National Action Plan against Racism, Xenophobia and Intolerance; 2) the National LGBTQI Strategy; 3) the National Strategy for the Inclusion of Roma, Sinti and Caminanti (RSC), in implementation of the European Union Commission's Communication no. 173 of 4 April 2011, in which Member States were urged to draw up national strategies for the inclusion of the Romani populations;

The current health emergency, caused by the Covid-19 virus pandemic, has also worsened the distress of persons that for different reasons find themselves under restriction of liberty, including prisoners, immigrants hosted in CRPs and elderly or disabled persons hosted in nursing homes (RSAs and RSDs);

That the respective institutional missions of the UNAR and the National Guarantor have many points of contact and possible inter-institutional cooperation for the better protection of persons discriminated against, detained or subject to restriction of liberty;

That Article 15 of Law no. 241 of 7 August 1990, according to which Public Administrations may, at any time, enter into agreement with each others to regulate the performance, in collaboration, of activities of common interest;

That it is therefore considered appropriate to initiate and build a fruitful cooperation between UNAR and the Guarantor in order to enhance and increase the effectiveness of their respective policies against violence (physical and psychological) and discrimination in places where persons are deprived of liberty;

It is therefore considered appropriate to regulate, in the following terms, the modalities for the realisation of a cooperation useful to guarantee - albeit in the autonomous and independent exercise of their respective functions - greater effectiveness and incisiveness in the action of UNAR and the National Guarantor, also in compliance with the principle set forth in the Article 97 of the Constitution;



IT IS DEEMED TO SHARE

- The high value of respect for human rights and ‘diversity’ in the context of places of deprivation of liberty, avoiding forms of violence or discrimination and thus fostering the spread of a culture of respect for these rights also and above all through the institutional actors operating in those realities;
- The need to activate information, training and awareness-raising initiatives on human rights and respect for ‘diversity’;
- The promotion of socially responsible behaviour with regard to preventing and combating violence, racial discrimination and other forms of discrimination in places of detention and deprivation of liberty;
- The need to initiate joint actions to increase the effectiveness and efficiency of their respective institutionally assigned actions and prerogatives;

HAVING REGARD TO ALL THE ABOVE

The UNAR and the National Guarantor undertake to:

- Jointly set up a Control Room for the implementation of this Agreement, with the functions of:
 - Guiding, coordinating and monitoring the activities covered by this Agreement;
 - Periodic consultation to share the activities promoted by UNAR and the National Guarantor;
 - Promotion of initiatives at national and territorial level, after the necessary sharing with the respective peripheral branches.

UNAR commits to:

- Share with the National Guarantor the territorial reports received by the National Anti-Discrimination Contact Centre and other structures working in cooperation with UNAR, of cases of discrimination suffered by persons detained, deprived of liberty, or ex-detainees;
- Disseminate the widest knowledge on the legal and administrative instruments for the protection and promotion of equal treatment and the fight against discrimination on the basis of sexual orientation and gender identity, ethnicity, also with reference to multiple discrimination and other forms of discrimination, in contexts of deprivation of liberty, and to prepare, in relation to its institutional competences and the availability of resources, a series of interventions in these areas;
- Promote training, information and awareness-raising initiatives for staff working in prison institutions (DAP and DGMC), in CPRs and RSAs/RSDs on protection against all forms of violence and discrimination on the grounds of sexual orientation and gender identity, ethnicity, also with reference to multiple discrimination and other forms of discrimination;
- Carry out initiatives to raise awareness and promote positive actions, in agreement with the National Guarantor and with the involvement of the respective structures at territorial level, also within the framework of the NOP Inclusion and Legality 2021-2027, the Asylum and Migration Fund (AMIF) and in general other national and European public funding channels;
- Promote initiatives to combat discrimination in the world of work in favour of former prisoners, also with reference to European Parliament Directive no. 54 of 5 July 2006 on the implementation of the principle



Framework

of equal opportunities and equal treatment in matters of employment and occupation.

The National Guarantor undertakes to:

- Share knowledge, tools and prerogatives with UNAR to combat violence and discrimination in places of detention and deprivation of liberty;
- Promote joint initiatives with UNAR to increase the effectiveness and efficacy of actions in defence of human rights in the contexts and places where it fulfils its institutional mandate;
- Implement joint training activities, also with other Institutions;
- Share with UNAR the analysis and processing of cases of discrimination that occurred in detention or deprivation of liberty institutions on the grounds of sexual orientation and gender identity, ethnicity, religious beliefs, age or disability, identifying possible responses and actions to prevent the recurrence of such episodes;
- Allow UNAR staff, after consultation and authorisation, to take part in monitoring visits, or parts thereof, carried out by the National Guarantor at places of deprivation of liberty (Prison Institutions, CPRs, RSAs, RSDs) by virtue of its institutional powers and prerogatives, in compliance with the regulations in force, confidentiality constraints and personal data protection obligations and, in particular, with the limits set out in Law no. 354 of 26 July 1975 and subsequent amendments;

All the strategies, initiatives and actions to be planned and undertaken as a result of this Agreement will be shared and undertaken by the Control Room composed of 2 contact persons (one for each Office) with the provision for each Office of an alternate contact person.

This deed shall be effective for two years and shall be deemed tacitly renewed for the same period, unless the Parties give notice to the contrary, or it may be terminated unilaterally, at any time and without the need to state reasons, upon written notice to be sent to the other Party at least thirty days in advance from the date of termination.

The Parties shall define in a subsequent act any amendments to the provisions of this Agreement that may be necessary or, in any case, appropriate.

This deed shall be published on the websites of the Parties in the manner set forth in their respective regulations.

Read and signed.

Rome, 21 March 2022

for UNAR

Triantafillos Loukarelis

for the National Guarantor

Mauro Palma



Agreement between
the Penitentiary Administration Department - Lombardy Regional Superintendency
and
Milan Politecnico University
and
National Guarantor for The Rights of Persons Deprived of Liberty

The Penitentiary Administration Department - Lombardy Regional Superintendency, hereinafter referred to as “PRAP”, Tax Code 80118570151, represented by the Lombardy’s Regional Superintendent of the Penitentiary Administration Pietro Buffa, domiciled for this purpose at Via P. Azario 6, Milan;

AND

Milan Politecnico University, hereinafter referred to as “Politecnico”, Tax Code 80057930150 and VAT No. 04376620151, with headquarters in Milan, Piazza Leonardo da Vinci, 32 represented by the Rector Prof. Ferruccio Resta;

AND

The National Guarantor of the Rights of Persons Deprived of Liberty, hereinafter briefly referred to as the ‘Guarantor’, with headquarters in Rome, Via San Francesco di Sales 34, represented by the President Prof. Mauro Palma, domiciled for the office at the headquarter;

WHEREAS

- Law no. 354/75, establishing rules on the prison system and on measures for the deprivation and restriction of liberty, in Article 17, relating to the “*Participation of the outside community in re-educational action*”, provides that “*The purpose of the social reintegration of sentenced persons and internees must also be pursued by soliciting and organising the participation of private individuals and public or private institutions or associations in re-educational action*”;
- The Ministry of Education, University and Research and the Ministry of Justice entered into a Cooperation Agreement on 21/10/2020, entitled: “Special Programme for Education and Training in Prison Institutions and Juvenile Justice Services”;
- The Politecnico, having regard to Presidential Decree no. 382 of 11/7/1980, intends to encourage initiatives aimed at developing cooperation between the Politecnico and other public Institutions;
- The Politecnico, in line with various international experiences, has launched an academic social responsibility programme called ‘Polisocial’, which aims to put the university in close contact with the dynamics of changes in society, extending the Politecnico’s mission towards social issues and needs, promoting and encouraging a new multidisciplinary project that is attentive to human and social development, expanding the training, exchange, and research opportunities for students, young researchers, teaching and technical-administrative staff at the university;
- The Politecnico, in particular the Department of Architecture and Urban Studies, have over the years



carried out a series of research and training activities on the themes of places of imprisonment, in Italy and abroad, and on the interior and exterior spaces of penal Institutions;

- The National Guarantor, with regard to his task of protecting the dignity and psycho-physical integrity of persons deprived of liberty, recognises that the university institution has a synergic role in the pedagogical, training and research activities towards innovation, in order to achieve ever greater adherence to the constitutional purpose of punishment. Moreover, the National Guarantor considers it of primary importance to support, specifically, the reflection on the quality of space and its practices in detention facilities; the characteristics of spaces and their possibilities of use are understood as substantial elements supporting the reconstruction of the relations of detained persons and operators, according to the principle of the Constitution.

HAVING REGARD TO

- Presidential Decree no. 230/00 “Regulations containing rules on the prison system and on measures for the deprivation and restriction of liberty”;
- Law 328/00 “Framework law for the implementation of the integrated system of interventions and social services”;
- Article 7, paragraph 7 of Lombardy Region Law no. 166/2017 “Provisions for the protection of persons confined in the Penitentiary Institutes of the Region of Lombardy Region” provides that the Region, in agreement with the Regional Penitentiary Administration Superintendency and the Juvenile Justice Centre, promotes, supports and finances the right of access to vocational education and training courses both inside and outside the Penitentiary Institutes;
- The Ministry of Justice’s Memo no. 3541/5991 of 21.02.2001 D.A.P. - Central Office for Prisoners and Treatment “Establishment of a network service between Local Authorities, Regions and the State - Active policies for education and introduction and reintegration into work”;
- The DAP’s Memo of 29 January 2013 “Implementation of the regional circuit pursuant to Article 115 of Presidential Decree no. 230 of 30 June 2000 - Programmatic lines”, which states that “the Administration’s objective does not consist in a nominal reorganisation of the Institutions, but in the implementation of an integrated system based gradualness of the sentence, consistent with the provision of Article 15 of Presidential Decree no. 231/2000, where the differentiation of the structures by type of detention will be the premise for an overall improvement in the conditions of both staff and prisoners” and that “the treatment in its different meanings should be strengthened in all Institutions by developing a different, and wider, articulation and use of space”;

CONSIDERING THAT

- Article 15 of Law no. 354/75 lists education and work among the elements of re-educational treatment;
- Article 19 of Law no. 354/75 provides for benefits to be granted upon the completion of university courses;
- Articles 20 and 21 of Law no. 354/75 provide for a commitment to encourage the work of prisoners inside and outside penitentiary institutions;
- The Parties intend to enable the cultural enhancement of students through lectures, laboratory activities,



privileged testimonies, internship and apprenticeship activities in prison facilities (Institutes and PRAP);

- The Parties intend to increase their mutual knowledge in theoretical and practical terms of the procedures connected with penal enforcement in the organisational, architectural and design aspects of physical, legal and educational spaces, contributing to the improvement of intervention standards;
- Article 44 of Presidential Decree no. 230/00 provides for support to prisoners enrolled in university courses or meeting the requirements for enrolment in such courses for completing their studies; to this end appropriate arrangements are established with the academic authorities to enable students to take advantage of all possible assistance and to sit examinations;

AGREE

to promote collaboration between the three Institutions by identifying areas of intervention aimed at:

- Fostering the cultural development and university education of prisoners held in regional penitentiaries with the primary objective of reintegration;
- Promoting the employment of persons subject to court orders, also taking into account the opportunities and contexts in which the signatories of this Agreement operate;
- Developing areas of joint research and design activities on the reality of prisons, with particular reference to the relationship between prison and city and the redevelopment of prison spaces;
- Cooperating in the improvement of architectural and urban planning, educational and organisational aspects, by deepening knowledge of the prison environment;
- Providing new training opportunities for penitentiary administration employees.

To this end, the Administrations signing this Agreement undertake to mobilise resources and professionals, in a targeted manner and according to the decisions that the signatories themselves will take by mutual agreement.

Article 1

The recitals form an integral part of this Agreement.

Article 2

The University undertakes to actively collaborate in the implementation of the penal enforcement of the prisoners detained in the regional Penitentiary Institutes and to promote training opportunities for prison staff working in these Institutes. The interventions will be aimed at:

- a) Collaborating on training opportunities for prisoners and penitentiary administration staff;
- b) Favouring the enrolment of detained persons at the University, also through the identification of administrative procedures that specifically take into account their deprivation of liberty; with particular reference to finding educational and organisational information, managing relations with the teaching and administrative secretariats, and providing access to library services;
- c) Creating concrete opportunities for the employment of persons serving prison sentences aimed at social



inclusion through the acquisition of skills employable on the labour market after imprisonment;

- d) Supporting study and research activities, in various forms, aimed at improving the spaces of detention facilities and the areas of relation with the city and the territory, as well as at enhancing appropriate use practices to support relational faculties, treatment, work and cultural activities, and, in a broader sense, to safeguard the dignity of prisoners.

This agreement is addressed, in its first application phase, to the staff serving at the Bollate Prison - House II, the Francesco di Cataldo Prison in Milan, the Opera Prison - House I, and for territorial contiguity to the staff of the Monza and Lodi Prisons, as well as to the staff of the Brescia Verziano Prison.

Article 3

The university is willing to develop studies and research, also aimed at designing activities, in the prison environment, possibly involving prisoners and/or prison staff. The objectives and modalities of these activities will be agreed upon from time to time by the signatories to this Agreement and formalised through the stipulation of specific acts, also in the form of consultancy. These activities may relate, in particular, to the relationship between prison and city, the redevelopment of prison spaces from organisational, architectural, legal and educational points of view.

Article 4

The Penitentiary Administration undertakes to:

- a) Encourage the cultural, training and work initiatives referred to in paragraphs a) and c) of Article 2, recognising them as fundamental elements of the re-educational treatment and of the training and vocational pathway, thus facilitating, to the extent of its competence, their implementation;
- b) Encourage university studies as referred to in paragraph b) Art. 2;
- c) Involve the Politecnico in the planning of training and educational activities for prisoners and prison staff as provided for in the previous articles of this Agreement;
- d) Support the Politecnico in the implementation of work placement programmes for prisoners;
- e) Involve the Politecnico in the design, in the prison environment, of practices and spaces aimed at improving and implementing the facility's treatment, training, work and relational practices, possibly involving prisoners and/or prison staff;
- f) Liaise with the University, as another institution of the State, in all critical situations that may concern detained persons attending university courses, in order to ensure together the successful development of the curriculum and to avoid as far as possible transfers or interruptions of the educational pathway.

The objectives and modalities of these activities shall be agreed upon from time to time by the signatories to this Agreement and formalised through the stipulation of specific acts, also in the form of consultancy. These activities may relate, in particular, to the relationship between prison and city, the redevelopment of prison spaces from an organisational, architectural, legal and educational point of view.

Article 5

The National Guarantor undertakes to make available its knowledge gained from constant supervision of



penitentiary institutes in order to harmonise the actions of the other two Parties to this Agreement,

- a) assessing on the occasion of its visits to the institutes in the region the adequacy of the space and technological facilities available to prisoners attending university courses,
- b) producing recommendations addressed to the other two Parties to this Agreement aimed at avoiding existing or easily foreseeable criticalities on the basis of what they have observed in their own visits,
- c) monitoring the implementation of these recommendations by issuing a specific Report on their implementation status.

Article 6

An **educational-organisational committee** - chaired by the Regional Superintendent of Lombardy - is set up to verify the progress of this Agreement and to propose corrective measures for its implementation. It is attended by representatives of the Lombardy PRAP, the directors of the prison facilities concerned, and the two delegates of the Politecnico Prof. Andrea Di Franco (Department of Architecture and Urban Studies) and Prof. Giancarlo Vecchi (Department of Management Engineering).

Article 7

The Politecnico shall allow university teaching staff, subject to the authorisation of the department to which they belong, to carry out research, consultancy and tutoring activities in the framework of the activities governed by this Agreement.

The prison facilities participating in this Agreement shall ensure the ongoing management of the related activities and, where required, the availability, usability, safety and use of the spaces, as well as the identification and possible selection of support staff and/or belonging to voluntary associations.

Article 8

Where necessary, the Parties shall implement the commitments set forth in this Agreement by means of special agreements disciplining the operating procedures and timeframes, as well as any necessary financing.

Article 9

The Convention has a duration of 3 years with the possibility of renewal on the basis of a written agreement approved by the competent bodies of the Parties and shall remain valid also in the face of any updates to the reference legislation.

Article 10

Each Party shall provide for the statutory insurance coverage of its staff who shall be called upon to attend the venues where the activities will be carried out under this Agreement. The staff of both Parties are required to comply with the disciplinary and safety regulations in force in the places where the activities pertaining to this Agreement are carried out, in reciprocal compliance with the regulations for the safety of workers pursuant to Legislative Decree no. 81 of 9 April 2008, as amended and/or supplemented, observing in



particular the obligations set forth in Article 20 of the aforementioned Decree, as well as the provisions of the facility manager for safety purposes. The obligations of health surveillance fall to the employer of the home institution, who will take action if necessary by supplementing the protocols according to new specific risks to which workers will be exposed. The safety officer (EXECUTIVE IN CHARGE FOR SAFETY/SECURITY) of the host venue is bound, prior to the access of guests to the premises where the activities are carried out, to provide information on the safety, prevention and protection measures in force at the venue. Afterwards, a countersigned declaration shall be issued.

Article 11

The Politecnico shall not borne any charge arising from this Agreement. Each activity shall be carried out in compliance with the university laws and regulations governing the penal execution of the prisoners involved.

Article 12

The Polytechnic may not be cited in venues other than technical-scientific ones, and in any case may never be cited for advertising purposes.

Article 13

For any disputes that may arise between the Parties in connection with this Agreement the place of jurisdiction is Milan.

Article 14

This Agreement, whose stamp duty shall be paid virtually by both Parties in equal parts, is subject to registration only in case of use pursuant to Article 4, Tariff - Part Two annexed to Presidential Decree no. 131 of 26/04/1986.

Article 15

The Parties reciprocally declare to be informed and expressly consent, for their respective area of competence, that the “personal data” communicated, also verbally, for pre-contractual activities or in any case collected as a result of and in the course of the execution of this Agreement, shall be processed exclusively for the purposes of the Agreement, by means of consultation, processing, interconnection, comparison with other data and/or any further manual and/or automated processing and also, for statistical purposes, with exclusive processing of data in anonymous form, by means of communication to public entities, when they request it for the pursuit of their own institutional purposes, as well as to private entities, when the purpose of the request is compatible with the institutional purposes of the University, in the knowledge that failure to provide such data may result in the non-execution or partial execution of this Agreement.

In respect of this Article, the Data Controllers are the Parties as identified, named and domiciled in the above section thereto.

Finally, the Parties declare that they are informed of their rights under Article 7 of Legislative Decree no. 196 of 30/06/2003.



Article 16

For all matters not provided for in this Agreement, reference is made to the laws and university and prison regulations in force.

Article 17

This Agreement is concluded by means of a private contract in electronic format and digitally signed by the Parties.

for the Penitentiary Administration Superintendent The Superintendent	for the Politecnico di Milano The Rector	for the National Guarantor of Rights of persons deprived of liberty The President
Pietro Buffa	Prof. Ferruccio Resta	Prof. Mauro Palma

ANNEX 10 - Network Agreement

The Directorate General for External Criminal Enforcement and Probation, a body registered in the SCU register with the code SU00301, hereinafter referred to as “reference body”, with registered office in the Municipality of Rome (RM), Via Damiano Chiesa, 24, proposer of the Programme of intervention “Giustizia di comunità tra innovazione e resilienza”, represented by Lucia Castellano, born in Naples (NA) on 20/02/1964, resident in Rome (RM), Via G. Ferrari n. 2 CAP 00195, tax code CSTLCU64B60F839R, as legal representative

and

The National Guarantor of the rights of persons deprived of liberty, non-registered SCU, hereinafter referred to as “network body”, with registered office in the Municipality of Rome (RM), Via San Francesco di Sales no. 34, represented by Mauro Palma born in Rome (RM) on 24/08/1948, resident in Piazza dei Carracci no. 1-00196 Rome (RM), Tax Code PLMMRA48M20H501G, as legal representative

hereinafter also jointly referred to as ‘the Parties’,

WHEREAS

The Legislative Decree no. 40 of 6 March 2017 established universal civic service, which is implemented through intervention programmes of high social utility, articulated in projects, carried out in Italy or abroad by public entities or private non-profit entities and organisations, registered in a special Register;

The Decree of the Ministry of Youth Policy and Sports of 4 November 2019 approved the 2020-2022 Three-Year Plan and the 2020 Annual Plan for the programming of universal civic service;

The Decree of the Ministry of Youth Policy and Sports of 16 November 2020 approved the 2021 Annual Plan



for the programming of universal civic service;

The Memo of the Head of the Department for Youth Policies and Universal Civic Service dated 25 January 2022, laid down the “*Provisions for the drafting and presentation of universal civic service intervention programmes - criteria and assessment methods*” and, in particular, recognised that the entities registered in the universal civic service register may, within an intervention programme, set up networks with public and private entities not registered in the aforementioned register, or registered in the previous national civic service registers, but not yet in the universal civic service register, operating in the area covered by the programme, in order to ensure greater effectiveness and efficiency of the programme itself;

The aforementioned Memo provided that the establishment of networks shall be the subject of a specific agreement, signed by the body proposing the programme and the network subjects, which shall contain a clear and detailed description of the contribution made by the network to the intervention programme and to the individual projects that make it up;

On 25 January 2022, the notice to entities was published for the submission of universal civic service intervention programmes for the year 2023, with deadline 30 April 2022;

CONSIDERING THAT

The Parties intend to form a network for the implementation of the intervention programme called “Community Justice”, and its related projects, recognising the value of universal civic service and the importance of spreading the culture of participation, legality and active citizenship

ALL THE ABOVE BEING CONSIDERED, THE PARTIES AGREE AS FOLLOWS

Article 1 - Subject of this Network Agreement

With this Network Agreement, the Parties intend to describe:

- a) The motivation of the ‘network’ entity to participate in the intervention programme;
- b) The contribution of the ‘network’ entity to the implementation of the intervention programme in its entirety;
- c) The motivation of the ‘network’ entity to participate in the intervention programme.

Article 2 - Reasons for the Network Agreement

The National Guarantor for the Rights of Persons Deprived of Liberty Network participates in the “Community Justice” intervention programme for the following reason: to share the needs and social challenges pursued by the intervention programme, aimed at strengthening and implementing the community justice model by actively involving the territory. The development of individualised projects, the involvement of the territorial communities, envisaged by the programme and declined in the individual projects make it possible to carry out support, empowerment and social reintegration interventions, realising what is stated in Article 27 of the Constitution.



Article 3 - Contribution to the Network Agreement

The National Guarantor for the Rights of Persons Deprived of Liberty Network, in order to contribute to the implementation of the entire programme, ensures the dissemination of the relevant projects.

Article 4 - Modalities of Implementation

With reference to the contribution mentioned in the preceding Article, the National Guarantor for the Rights of Persons Deprived of Liberty Network shall offer its support, in particular for the implementation of the activities envisaged in the programme by promoting the dissemination on its institutional website of the activities of the desks activated, also by participating in the awareness-raising initiatives with the Courts and Local Authorities that will be necessary for their activation. The organisation also undertakes to organise a national meeting with SCU volunteers at the end of the training experience, aimed at offering a broader view of external criminal enforcement.

Article 5 - Entry into Force and Duration

This Agreement enters into force from the start date of the intervention programme and shall be valid until its conclusion.

Rome, 5 March 2022

The Director General of External Criminal
Enforcement and Probation

Lucia Castellano

National Guarantor for the Rights of Persons
Deprived of Liberty

Mauro Palma



“Implementation of a Forced Return Monitoring System” Project

Prog-3475

Cooperation Agreement

between

National Guarantor for the Rights of Persons Deprived of Liberty²³

and the Guarantor _____ of The Region _____

WHEREAS

As part of the accompanying measures provided for by the Asylum Migration Integration Fund 2014/2020 of the Ministry of the Interior (AMIF) in support of activities related to the forced return of third-country nationals irregularly present on the territory, the National Guarantor for the Rights of Persons Deprived of Liberty (hereinafter “the National Guarantor”) has been granted the funding € 943,350.00 for the Project.

The project initiative “Implementation of a forced return monitoring system” is aimed at strengthening the institutional activity carried out by the National Guarantor as the national forced return monitoring authority under Directive 115/EC of 2008 (Art. 8 para. 6).

Specifically, the project pursues the objectives of consolidating the national forced return monitoring system entrusted to the National Guarantor through the reinforcement of the main actions carried out under the previous AMIF 1536 project. Specifically, with the aim of enhancing the protection of human rights in forced return operations, the initiative aims to strengthen cooperation with the local Guarantors within the national monitoring pool, to reinforce collaboration with the institutions concerned by also developing cooperation modalities with foreign bodies homologous to the National Guarantor, and to ensure transparency in forced return operations, by offering analysis and knowledge tools available to the public.

To this end, in particular, the National Guarantor plans to carry out, according to the timetable set out in the project, by the closing date of the project itself (scheduled for 30 September 2022):

- a) The monitoring activities in relation to 1554 persons subject to a return measure for a total of 200 operations monitored through:
 - desk checks carried out by requesting information and/or documents on the detained third-country nationals from the authorities responsible for the forced return operation;
 - the participation of the monitor in one or more of the following phases:
 - *pre-return* phase (this phase starts approximately 24 hours before departure from the facility where the third-country national is detained and lasts until he/she is transported to the carrier’s station of

23. This is a model of a cooperation agreement between the National Guarantor and the Local Guarantors provided for in the project “Implementation of a forced return monitoring system” PROG-3475, which, with the necessary adaptations, was signed with the Guarantors of the regions: Calabria, Campania, Friuli Venezia Giulia, Lazio, Molise, Piedmont, Apulia, Sicily, Veneto, and the municipal guarantors Gradisca d’Isonzo, Milan, Oristano, and Turin. The above agreements are operational since 2021.



- departure or, if appropriate, to a detention facility nearby),
- *pre-departure* phase (this phase may originate at the temporary detention facility close to the carrier's station of departure or directly at the station of departure),
 - *travel* phase with embarkation of the monitor in the air/ship/ground carrier.
- b) training activities with the support of experts in immigration and asylum law, health and international human rights protection (6 specialised training sessions);
 - c) dissemination activities through the organisation of workshops in cooperation with stakeholders (two initiatives) and national/international conferences (two initiatives);
 - d) consolidation of the IT system for recording, managing, collecting and analysing information on forced return operations.

All of the above considered

The above-mentioned parties agree and sign this Cooperation Agreement.

Article 1

Subject

The agreement is aimed at establishing the modalities of cooperation between the Parties in the framework of the implementation of the project "Implementation of a forced return monitoring system" by defining, in particular, the participation of the Regional Guarantor in the monitoring of forced return operations.

Article 2

Modalities of Collaboration

1. The National Guarantor, who receives advance notice of forced return operations, shall establish the procedures to be monitored and also through the IT platform, with as much advance notice as possible, considering the specific circumstances, also on the basis of criteria of geographical proximity with the logistics of the operations, shall ask for support or instructs the Regional Guarantor to carry out monitoring of the return or of a single phase (travel, pre-return, pre-departure, detention).
2. In the event of contingent impediments, the Regional Guarantor shall urgently notify the National Guarantor of the impossibility of carrying out the requested monitoring activity.
3. In each individual monitoring request addressed to the Regional Guarantor, the National Guarantor shall specify the operational details and define the phase in relation to which the observation activity is requested, with the specification of the travel and, if applicable, any costs allowed to be charged to project budget.
4. Without prejudice to urgent information in the case of particular critical events occurring during an operation, within 20 days of the monitored return procedure, the Regional Guarantor shall send the National Guarantor a report with the results of the monitoring activity implemented using the checklist provided by the National Guarantor.



Article 3

Training

1. During the project's duration, the Regional Guarantor is invited to benefit from multidisciplinary events aimed at developing technical expertise in the monitoring of forced returns organised by the National Guarantor.
2. The National Guarantor shall cover travel and accommodation expenses for one person per regional guarantor body, without prejudice to the possibility of authorising higher expenses if proper funding is provided for the project.

Article 4

Information Platform

The Regional Guarantor has granted access to the online Information Platform for data and communication exchange set up by the National Guarantor under the previous AMIF 1536 project.

Article 5

Duty of Confidentiality and Conduct

1. The Regional Guarantor undertakes to observe confidentiality with regard to the data and outcomes of the activities under this agreement, until they are published by the National Guarantor.
2. The Regional Guarantor also undertakes to respect the Code of Ethics of the National Guarantor.

Article 6

Entry Into Force and Final Provisions

1. This Agreement is effective from the date of signature and remains in force until 30 September 2022 (project end date) unless the project is extended or modified.
2. The Parties shall take all useful action to promote the implementation of the activities envisaged in this Agreement and shall actively cooperate in its implementation through their respective competent organisational structures.
3. The agreement may be extended to the Local Guarantors with effect from the date of the signature of the National Guarantor to the agreement signed between the Regional Guarantor and the Local Guarantor. In this case, the cooperation modalities provided for in Article 2 remain applicable, without prejudice to the possibility for the Regional Guarantor, after notifying the National Guarantor to entrust the execution of the monitoring activity to the Local Guarantor. The provisions referring to the Regional Guarantor shall also be construed as referring to the Local Guarantor.
4. The National Guarantor in any case reserves the possibility of establishing direct cooperation with the Local Guarantors, if in a specific Region, the Regional Guarantor is not operational or, if it exists, has not signed this Agreement.
5. Any further modification to this Agreement after its conclusion shall be agreed by the Parties and shall be



the subject of a separate supplementary agreement.

Rome, date _____

SIGNATURE _____ SIGNATURE _____

COOPERATION AGREEMENT

“Operation of the complaint mechanism for migrants detained in Immigration Removal Centres (CPRs)”²⁴

This Agreement (‘Agreement’) is entered into by

the National Guarantor for the Rights of Persons Deprived of Liberty

and the Guarantor _____

the Guarantor _____

Preamble

Whereas the National Guarantor is the Authority responsible by law for the supervision of all places of deprivation of liberty and, with specific reference to the Immigration Removal Centres (CPRs), and in its capacity verifies compliance with the obligations related to the rights provided by Articles 20, 21, 22, and 23 of the “Regulations on the implementation of the Consolidated Text of the provisions concerning the discipline of immigration and the condition of foreigners, pursuant to Article 1, Paragraph 6, of the Legislative decree of 25 July 1998, no. 286”, as per Presidential Decree of 31 August 1999, no. 394, and subsequent amendments.

Considering that Decree-Law no. 13 of 17 February 2017, converted with amendments by Law no. 46 of 13 April 2017, has strengthened the role of Local Guarantors with respect to the Immigration Removal Centres (CPRs) by expanding their prerogatives of access and visit as provided by Article 19, paragraph 3, according to which in the CPRs “the provisions of Article 67 of Law no. 354 of 26 July 1975 shall apply”.

²⁴. This is a model of a cooperation agreement between the National Guarantor and the Local Guarantors to regulate the new Complaint Mechanism for Migrants Detained in Immigration and Removal Centres - “Operation of the Complaint Mechanism for Migrants Detained in Immigration Removal Centres (CPRs)”, with the necessary adaptations, was signed with the Regional Guarantors of Friuli Venezia-Giulia, Piedmont and Apulia, the Provincial Guarantor of Brindisi and the Municipal Guarantors of Gradisca d’Isonzo and Turin. The above agreements are operational from 2022.



WHEREAS, the Guarantor _____, established by _____
_____.

Considering the Decree-Law no. 130 of 21 October 2020 converted, with amendments, into Law no. 173 of 18 December 2020, introduced paragraph 2-*bis* to Article 14 of Legislative Decree no. 286 of 25 July 1998 (Immigration Consolidated Act). This paragraph states: “The detained third-country national can address oral or written instances or complaints, also in a closed envelope, to the National Guarantor, to the Regional or Local Guarantors for the rights of the persons deprived of liberty.” The provision also sets forth that, having established that the complaint is well-founded, the National Guarantor can make specific recommendations to the administration concerned.

Considering that the provision of a plurality of addressees for the complaint, with different roles and responsibilities, makes it appropriate to define forms of connection and a coordinated strategy for the implementation of the rule in order to provide uniform application, to avoid overlapping in the interlocution with the various institutional actors, to ensure the proper functioning of the mechanism, and along with that an adequate and homogeneous levels of protection, throughout the national territory, of the effectiveness of the rights recognised.

That being said, the Parties mutually agree and stipulate the following:

Article 1 - Definitions

For the purposes of this Agreement, the following definitions shall apply:

- a) “Complaint” refers to a communication formulated pursuant to Article 14, paragraph 2-bis of the Legislative Decree no. 286 of 25 July 1998 (Immigration Consolidated Act) by or on behalf of a person detained in a Immigration Removal Centre (CPR) containing complaints or claims relating to detention;
- b) “National Guarantor” refers to the National Guarantor for the rights of persons deprived of liberty;
- c) “Local Guarantor” refers to the Regional Guarantor and/or the Guarantor of a metropolitan, provincial or municipal city, whatever its specific name may be;
- d) “Centre”, the Immigration Removal Centre (CPR).

Article 2 - Purpose and Subject of the Cooperation Agreement

The Parties undertake to implement a common strategy to ensure the effectiveness of the right to complain, to coordinate, make effective and efficient action, to ensure adequate and homogeneous standards of treatment throughout the country and to identify systemic problems that make it appropriate for the National Guarantor to formulate recommendations.

To this end, they agree on the operational rules to be shared with the subjects in charge of the CPRs and to be disseminated to the beneficiaries of the mechanism, so that they are guaranteed the effective possibility of exercising their right, as well as the lines of action to be followed in dealing with them.

Article 3 - Submission Modalities

The complaint can be filed directly by the detained person in oral or written form. It may also be transmitted on its behalf, with the consent, in writing only, by a lawyer, a trusted person or other persons with a recognised interest, such as organisations, associations, rights protection entities.



A complaint in written form may be filed as follows:

- Delivery of the complaint by hand, in a sealed envelope, to the staff of the Managing Entity, who shall send it to the National Guarantor and/or the Local Guarantor, depending on the complainant's instructions;
- Delivery of the complaint, also in a sealed envelope, in the special mailbox dedicated to complaints located inside the CPR, in a place accessible by the detained persons that can be opened only by the Local Guarantor or by persons identified by it, who shall process it or send it to the addressee indicated by the complainant. It shall be the responsibility of the Local Guarantor to indicate to persons detained in the Centres how often he intends to access the dedicated mailbox, by means of a notice affixed on/near the box;
- Sending the complaint to the address of the National Guarantor, Via di San Francesco di Sales n. 34, 00165 Rome or to the address of the Local Guarantor _____;
- Sending the complaint by e-mail to the e-mail address of the National Guarantor migranti@garantenpl.it or to the e-mail address of the Local Guarantor _____.

The complaint may be expressed orally:

- On the occasion of visits by delegations of the National Guarantor and/or Local Guarantors to the Centre;
- During the information and guidance desk activities on their rights promoted by the Guarantor, and also carried out by persons specifically delegated by the Guarantor and authorised by the Prefecture when they enter the Centre.

The use of the form attached to this Agreement is recommended but not compulsory.

Article 4 - Complaint Management

The procedures foreseen for taking up the grievance vary according to the type of complaint.

The National Guarantor is responsible for dealing with complaints that concern general problems of a systemic nature and may request the cooperation of the Local Guarantor to check on the situation reported, in concrete terms, in the complaint.

The Local Guarantor is responsible for dealing with complaints concerning local problems of a non-systemic nature, in relation to which the National Guarantor retains a subsidiary role, intervening if the criticality persists - despite the intervention of the Local Guarantor - or if the same problem is repeatedly raised over time by several complainants.

The Parties shall deal jointly, in a manner to be agreed from time to time, with complaints that concern a local problem of a systemic nature. This category also includes complaints initially classified as “non-systemic” which, due to persisting criticalities (e.g. multiple complaints on the same issue made by several persons detained in the same facility), assume a “systemic relevance”.

The Local Guarantors keep each other informed and inform the National Guarantor on a quarterly basis of the complaints they receive as sole addressees, and treated without the need to involve the National Guarantor.

Article 5 - Duty to Act and Confidentiality

The Parties undertake to deal with the complaint promptly, in the manner set out in Article 4, and to take



appropriate action.

The Parties undertake to respect confidentiality in relation to sensitive data and to take all necessary precautions to protect the dignity of individuals, protecting them from any risk of retaliation.

The Parties also undertake to disseminate the outcomes of activities undertaken that could have a positive impact in similar cases.

Article 6 - Contact Persons

Within 15 days from the date of signature, each Party shall notify the name of one or more contact persons for the activities related to this Agreement. Any replacement of contact persons shall be promptly notified.

Article 7 - Entry into Force and Final Provisions

This Agreement is effective from the date of signature and remains in force for two years.

The Parties shall take all useful action to promote the implementation of the activities envisaged in this Agreement and shall actively cooperate in its implementation through their respective competent organisational structures.

Any further modification to this Agreement after its conclusion shall be agreed by the Parties and shall be the subject of a separate agreement.

Date _____

COOPERATION AGREEMENT

BETWEEN

The Public Defender (Ombudsman) of Georgia (Georgia)

AND

National Guarantor for the Rights of Persons Deprived of Liberty (Italy)

Given that the National Guarantor for the Rights of Persons Deprived of Liberty, Italy, hereinafter 'the National Guarantor', and the Public Defender (Ombudsman) of Georgia, Georgia, hereinafter 'the Public Defender', are independent guaranteeing institutions whose task is to monitor the protection of the rights of persons deprived of liberty in their respective countries,

Given that the National Guarantor was established by Decree-Law no. 146 of December 23, 2013 (converted by Law no. 10 of February 21, 2014), which conferred the task to ensure that the custody of people subject to the limitation of liberty is enforced in accordance with the national legislation and the international conventions on human rights ratified by Italy,



Given that the National Guarantor was also conferred mandate to monitor forced returns under the EU Directive no. 115 of 2008, Art. 8(6),

Given that the Public Defender is the independent constitutional institution whose main functions and duties are determined by article 35 of the Georgian Constitution adopted in 1995 and articles 3, 4 and 5 of the Organic Law on the 'Public Defender' of Georgia and its amendments dated on 16 July 2009 designating the Public Defender as National Preventive Mechanism,

Given that both institutions have been appointed in their respective countries as National Preventive Mechanisms under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Given that both institutions agree on the convenience and effectiveness of strengthening mutual relations in order to enhance the sharing of information on their respective activities and to implement forms of collaboration, including operational,

THE PARTIES AGREE ON THE FOLLOWING

Article 1 - Sharing Information and Experience

The National Guarantor and the Public Defender intend to start an exchange of information and to set up an operational collaboration in order to strengthen their mutual capacities to implement their respective mandates.

The joint activity shall consist in the preliminary organisation of one or more meetings for mutual understanding and planning of future collaboration.

The meetings shall be an occasion for examining any possible collaboration in the Institutions' forced return monitoring with a view to respecting the human rights of migrants subject to return operations before, during and after their repatriation.

Article 2 - Scope of the Activities

The collaboration may set forth the following activities, after appropriate procedure established and feasibility assessment provided:

a) *exchange of information:*

- *from the National Guarantor to the Public Defender in relation to planned/ongoing forced return operations;*

b) *handover procedure:*

- *monitoring of forced return operations' handover on arrival at the country of return of third-country nationals and exchanging information from the Public Defender to the National Guarantor concerning the post-handover phase.*

c) *joint monitoring:*

- *pre-departure/in-flight/arrival/handover/post-handover forced-return phases in Frontex JROs and CROs and in NROs.*



Article 3 - Scope of the Cooperation

The Parties' cooperation shall be prepared with and supported by an activity of sharing methodologies and applicable operational pathways. It is also possible to envisage an exchange experience of one or more staff units (its length to be established), in order to share mutual knowledge on the respective working methods.

Article 4 - Cooperation Funding

The financial obligations arising by the Parties as a result of signing this Cooperation Agreement or any additional agreements or other memorandums of understanding shall be subject to the decisions of their competent bodies, the availability of funds and mutual norms, rules and regulations.

Article 5 - Exchange of Information

The exchange of information is done in accordance with the provisions of the national law of each Party and in compliance with international standards.

Article 6 - Validity Period

The Agreement between the Parties shall become effective on the date of its validation by the competent authority of each Party, in accordance with the provisions of law.

This Agreement has a duration of one year from its signature by the Parties.

The duration is automatically extended by a maximum of one year, except in the event that the Parties agree to a revision of the text of the Agreement before the agreed deadline.

Article 7 - Modifications

This Agreement may be modified by mutual agreement between the Parties, on the written proposal of one or the other. Changes come into effect immediately after the date of notification of consent.

Article 8 - Denunciation

In case of termination, the Parties agree to finalise the ongoing activities and end the cooperation in a way that guarantees the results achieved by the cooperation at the time of the termination. The Parties also agree to minimise the disruption of ongoing activities in case of termination. This Agreement expresses the intention of the Parties to cooperate and does not contain legally binding provisions.

Done in Rome

On March 7th, 2022

*For the Public Defender
(Ombudsman) of Georgia*

*For the National Guarantor
of the rights of persons deprived of liberty*



Cooperation Framework Agreement

The Comité nacional para la prevención de la tortura (National Committee for the Prevention of Torture, 'CNPT', by its Spanish acronym) of the Argentine Republic, domiciled at Hipólito Yrigoyen 1710 - 7mo piso, oficina 701.B of the City of Buenos Aires, hereby represented by Juan Irrazabal and the Garante nazionale dei diritti delle persone private della libertà personale (National Guarantor for the Rights of Persons Deprived of Liberty, 'GNPL', by its Italian acronym), domiciled at via di San Francesco di Sales 34, 00165 - Rome, Italy, hereby represented by Mauro Palma in his capacity as President.

WHEREAS:

- *The CNPT and the GNPL share an interest in establishing relationships to promote the rights and dignity of persons deprived of their liberty, to foster good prison practices, and to encourage information exchange, research and training in areas common to both institutions.*
- *Both institutions meet the legal requirements to establish formal cooperation bonds.*
- *Therefore, under the rules applicable to each of the above-mentioned institutions, the Parties hereby agree to enter into this Cooperation Framework Agreement pursuant to the following Clauses:*

FIRST: *The purpose of this Agreement is to establish a broad collaboration framework to develop and coordinate activities related to persons deprived of their freedom and to the prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of confinement.*

SECOND: *In order to fulfil this objective, the parties shall enter into Specific Agreements to regulate the activities of each of the projects in which both institutions may share a common interest. The objectives and duties of each party shall be expressly mentioned.*

THIRD: *The objectives of the Specific Agreements shall be: a) to collaboratively develop research work related to the problems of detention and confinement places of persons deprived of their liberty; b) to jointly promote specific actions and strengthen opportunities to create synergies, and to combine experiences and training to foster, consolidate and fully respect the rights of persons deprived of their freedom; c) to create working committees to study and analyse cases in order to draft specific rules on the subject; d) to prepare and promote training courses for the parties about any of their areas of common interest; e) to propose and develop training courses with relevant organisations in order to raise awareness on the rights of persons deprived of their freedom; f) to jointly design and create training and awareness-raising strategies and content according to the purpose of this Agreement; g) to create materials to raise awareness on the subject among the staff of security forces; h) to carry out theoretical and practical training activities, as well as monitoring activities in places where there are persons deprived of their freedom.*

FOURTH: *Each institution shall appoint those responsible for the programmes to be implemented. These coordinators shall report to their respective authorities.*

FIFTH: *This Agreement shall remain in force for 2 (two) years and shall be automatically renewed. If any of the Parties decides not to renew this Agreement, it must formally notify the other party two (2) months before the expiration date. If any of the parties wishes to terminate this Agreement before its expiration date, it must formally notify the other party two (2) months in advance. The decision not to renew this Agreement shall not entitle any of the Parties to make any claims or seek any compensation whatsoever.*



Framework

SIXTH: *Any dispute arising from the implementation of the programmes agreed hereunder shall be settled by mutual agreement of both Parties, in line with the amicable spirit of collaboration that imbues this Agreement.*

In witness whereof, the parties hereby sign this Agreement in two (2) counterparts of the same tenor and to the same effect.

ADDRESSES AND SIGNATURES OF THE PARTIES

GNPL

*via di San Francesco di Sales 34
00165 - Rome, Italy Mauro Palma
Mauro Palma
06/11/2022*

CNPT

*Hipólito Yrigoyen 1710 – 7mo piso
City of Buenos Aires
Juan Irrazabal
06/11/2022*