



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

Il Presidente

**THEMATIC REPORT ON MONITORING ACTIVITY
OF FORCED-RETURN OPERATIONS OF FOREIGN NATIONALS
(1 JULY 2021 - 15 SEPTEMBER 2022)**

In compliance with its mandate under Article 7 of Decree-Law no.146 of 23 December 2013, converted into Law no.10 of 21 February 2014, and with the provisions of Articles 17-23 of the UN Optional Protocol to the Convention against Torture (OPCAT), ratified by Italy by Law no.195 of 9 November 2012, as well as its designation as an independent body for monitoring forced returns, as provided for in Article 8 point 6 of Directive 115/EC/2008 of the European Parliament and of the Council of the European Union, the National Guarantor of the Rights of Persons Deprived of their Liberty between 1 July 2021 and 15 September 2022 monitored no.39 forced return operations carried out by means of *charter* flights to Tunisia, Nigeria, Egypt, Albania and Georgia.

INDEX

FOREWORD

MONITORING ACTIVITIES IN THE PERIOD 1 JULY 2021 - 15 SEPTEMBER 2022

- A **COOPERATION**
- B **STAFF EMPLOYED IN OPERATIONS**
 - B.1 *Training*
 - B.2 *Professional figures and the right of returnees to understand and be understood*
 - B.3 *Staff identification and the use of vests*
 - B.4 *Standards of Conduct and Prohibited Conduct*
- C **INFORMATION**
 - C.1 *Lack of notification of the return order*
 - C.2 *Absent or inadequate communication about the return procedure*
- D **HEALTH PROTECTION AND HEALTH CARE**
 - D.1 *The rules*
 - D.2 *The health personnel employed in the operations and their training*
 - D.3 *Fitness to travel*
 - D.4 *The handover of information between the medical staff at the detention facilities and the medical staff on board: pre-identification of the returnees' health issue*
 - D.5 *Supply of medication*
 - D.6 *Health safety standards to prevent the risk of Covid-19 infection*
 - D.7 *Possible violation of the "non-refoulement" principle: a key case*
- E **THE USE OF FORCE AND OF COERCIVE MEASURES**
 - E.1 *The regulatory gap concerning the use of measures of restraint and how they should be applied*
 - E.2 *Critical practices in the use of means of restraint*
- F **THE MATERIAL CONDITIONS OF THE WAITING AREAS AT THE AIRPORT**
- G **SECURITY CHECKS**



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

Il Presidente

- H ACCESS TO BASIC NEEDS
- I THE PROTECTION OF PROPERTY
- L THE FRONTEX COMPLAINT MECHANISM
- M FURTHER OBSERVATIONS

FOREWORD

This Report comes six and a half years after the first monitoring and some reports containing many recommendations concerning different aspects of forced-return operations. Together with an in-depth analysis of the criticalities observed during this report timeframe, it is therefore an opportunity for an overall assessment of the results of the work carried out and the consequent actions implemented by the responsible administration.

Various recommendations and standards have been referred to and elaborated by the National Guarantor in recent years and have partly been accepted. However, it is the task of this Guaranteeing Authority to urge the full acceptance of its recommendations, albeit in the awareness of their non-binding nature. This is also in consideration of the difficulty that discontinuity - often dictated by various factors of a contingent nature - can generate in considering the recommendations of an institutional "Mechanism" whose task it is to cooperate with the entire system of Institutions in order to raise the standards of the rights of persons deprived of their liberty and also the protection of the country itself. The recommendations are in fact based both on norms, some of which are binding, and on the European and international "Guidelines" drawn up by supranational bodies called upon to verify the correct implementation of international human rights Conventions to which Italy is bound. On the latter, the country can be called to account internationally.

This gives rise to an overall perplexity, when taking stock of the activity related to return monitoring. One of the elements of this perplexity lies in the fact that, apart from European sources, the regulatory framework of forced-return activities by the State Police is largely defined by *circulars* and *internal provisions* that are often not adopted in the context of extended comparison procedures, as is the case with primary sources.

In this regard, it should be recalled that despite the fact that this is a borderline case of exercise of the coercive powers of the State, implemented irrespective of a profile of criminal liability and aimed, essentially, at counteracting passive resistance behaviours, the domestic regulatory framework must always measure itself, in each phase including the operational one, with the guarantees surrounding the restriction of personal liberty, which is inviolable and fundamental. This is affirmed by the Constitutional Court which recalled that "escorting [to the border] is inherent in the subject matter regulated by Article 13 of the Constitution, inasmuch as it presents that character of immediate coercion which qualifies, according to the constant constitutional jurisprudence, the restrictions on personal liberty and which is capable of differentiating them from measures affecting only the freedom of movement" (Constitutional Court judgement 22 March - 10 April 2001 no.105). The well-known judgement of the Constitutional Court has guaranteed, since 2001, a constitutionally oriented interpretation of the rule concerning the measure of forced repatriation, establishing that, in compliance with Article 13 of the Constitution and, specifically, with the *reservation of jurisdiction* provided for therein, the escorting to the border by means of public force



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

Il Presidente

cannot escape the validation of the judicial authority. Instead, the further guarantee of the *reservation of the law on the methods of exercising the coercive power* still appears largely disregarded.

At a supranational level, the specific reference legislation for the organisation and execution of forced-return operations is the Council Decision 2004/573/EC of 29 April 2004 which, as already highlighted in previous reports, must be considered binding by virtue of the reference to Directive 115/2008/EC and applicable to all removals carried out by air¹, as indicated in the common 'Return Handbook' referred to in Recommendation (EU) 2017/2338 of 16/11/2017 of the European Commission². On the side of domestic law, it was not deemed necessary to detail and supplement the European provisions with the adoption of a specific norm defining the rules for the enforcement of returns.

What is therefore revealed is that the overall profile of the set of non-primary sources concerning forced returns in our system is substantially still inadequate and deficient.

The knock-on effects are significant.

First and foremost, they concern the possible recourse to the use of force and the use of restraining tools: actions exercised without a specific provision of law, typified for such operations, which fully regulates their modes and prescribes the type of coercion tools envisaged in the equipment supplied to escort personnel, the rules for their application, the authorised personnel, the health protection aspects and the reporting and recording obligations of the event.

In this regard, however, consider at the same time Article 41 of Law no.354 of 16 July 1975 (Prison Law), which regulates the use of force and means of coercion in prison establishments, strictly indicating the conditions that legitimise their use, the guarantees that must accompany their exercise (in particular, immediate communication to the warden who orders the security checks, investigations and control by the doctor) and the relative methods (use exclusively of the means provided for by the regulations that refer to the instruments used in public hospital institutions)³. Not only that, but in a different domain, such as that regulating the Residences for the Execution of Security Measures (Rems), the Constitutional Court has recently clarified the significance of the guarantees provided for by Article 13 of the Constitution in the case of restraint practices: in judgement 22/2022 it clearly stated «[...] mental disorders are not infrequently treated using controversial methods involving physical or pharmacological restraint, perhaps the most intense

¹ " In carrying out removals by air, Member States shall take into account the Common Guidelines on security provisions for joint removals by air annexed to Decision 2004/573/EC " (Article 8(5) of Directive 115/2008 EC - Return Directive).

² A first version of the *Handbook* edited by the Commission to ensure uniformity in the implementation of rules and procedures was adopted in 2015. An updated version was adopted by the Commission Recommendation (EU) 2017/2338 of 16 November 2017 (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017H2338&from=EN>).

³ "The use of physical force against prisoners and internees is not permitted unless it is essential to prevent or impede acts of violence, to prevent escape attempts or to overcome resistance, including passive resistance, to the execution of orders given. Staff who, for any reason whatsoever, have used physical force against prisoners or internees must immediately report to the director of the establishment who shall, without delay, order medical examinations and carry out other appropriate investigations. No means of physical coercion may be used that is not expressly provided for in the regulations and, in any case, it may not be used for disciplinary purposes but only to prevent harm to persons or damage to property or to ensure the safety of the subject themselves. Use must be limited to the time strictly necessary and must be constantly monitored by the healthcare personnel. Officers on duty within the institutions may not carry weapons except in exceptional cases when ordered to do so by the director" (Article 41 of the Prison Law).



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

Il Presidente

forms of coercion to which a person can be subjected. Articles 13 and 32(2) of the Constitution, like Article 2, which protects the inalienable rights of the person, including psychophysical integrity, require the legislator to assume the problematic responsibility of establishing - naturally, as a last resort, within the boundaries of proportionality to the therapeutic needs, and provided that the dignity of the person is respected - whether and to what extent it is lawful to have recourse to restraint in a REMS and, if so, the admissible modes of implementation are».

Different domains - it is true - but which explain what caution the legislator must exercise in dealing with the various 'forms' of deprivation of personal liberty and the corresponding necessary protection in the implementation of procedures concerning this fundamental right, of which everyone is the holder, regardless of the individual's legal or illegal conditions and also irrespective of the due need to complete the operation.

From the point of view of the lack of guarantees, the security checks on persons, which are sometimes carried out, in operational practice, in the form of personal searches in the absence of a specific legal basis that allows them and strictly defines their prerequisites, rules and the perimeter of police intervention, are also a source of reflection.

In the context of such an incomplete legislative framework - such as the one concerning the conduct of repatriation activity - and from the perspective of the repeatedly announced and predicted intensification of this activity, soft-law sources therefore acquire particular, specific importance.

In this regard, the 'Twenty Guidelines on Forced Return' adopted by the Committee of Ministers of the Council of Europe in 2005⁴, the 'Frontex Code of Conduct' adopted in 2018⁵, the 'Code of Conduct applicable to all persons participating in Frontex operational activities'⁶, the 'Frontex Guidelines' adopted in May 2016⁷, the standards of the Council of Europe's Committee for the Prevention of Torture (CPT) and the recommendations expressed by the National Guarantor are to be considered. Although they are clearly not able to compensate for the shortcomings of the legal system - where the value of the protected goods requires respect for the principle of reservation of law - they are nevertheless fundamental regulatory instruments. For this reason, their limited acceptance in an area characterised by a substantially deficient discipline represents a further critical element for the functioning of the system outlined by the Directive 115/EC/2008 of the European Parliament and of the Council of the European Union.

⁴ *Twenty guidelines on forced return* of the Council of Europe, September 2005

https://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf

⁵ *Code of conduct for return operations and return interventions coordinated or organised by Frontex*, adopted on 26 April 2018.

https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_for_Return_Operations_and_Return_Interventions.pdf

⁶ *Code of conduct applicable to all persons participating in Frontex operational activities*

<https://euagenda.eu/upload/publications/untitled-60299-ea.pdf>

⁷ *Guide for Joint Return Operations by Air coordinated by Frontex* adopted on 12 May 2016.

<https://frontex.europa.eu/documents-and-publications/guide-for-joint-return-operations-by-air-coordinated-by-frontex-PkKeDV>



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

Il Presidente

MONITORING ACTIVITIES IN THE PERIOD 1 JULY 2021 - 15 SEPTEMBER 2022

The Report is the result of the reading and analysis of the reports produced by the monitors who participated in one or more phases of the operations considered. The designated monitors are part of the national monitoring network currently consisting of the members of the Office of the National Guarantor, the territorial Guarantors and their staff of the Friuli-Venezia Giulia, Veneto, Piedmont, Molise, Latium, Apulia, Campania and Sicily Regions and of the municipalities of Gradisca d'Isonzo, Milan, Turin and Oristano. They all received specific training on the protection of fundamental rights in forced return operations and on the tasks and methodology related to monitoring activities. Since 2017, in fact, the National Guarantor has been periodically realising training initiatives on forced return monitoring, some also in close cooperation with the Central Directorate for Immigration and Border Police, with the aim to increasingly consolidate the skills of the people employed in this delicate task.

In addition, on 7 March 2022, the National Guarantor embarked on a mission of cooperation with the same guaranteeing Authority of Georgia for the implementation of joint monitoring of forced-return operations of Georgian citizens, in order to extend the oversight activity to the *post-handover* phase, which monitoring is usually interdicted to the oversight Authority of the State enforcing the return order. The handover mechanism was implemented on the occasion of two operations and, in one case in particular, enabled the acquisition of important information related to a specific critical event.

A. COOPERATION

The communication between the Department of Public Security and the National Guarantor in relation to the planning of forced-return operations implemented through the use of international escorts has been consolidated for some time and ensures the national monitoring Authority full freedom of choice of the returns to be monitored. For this reason, we would like to thank, in particular, the Central Directorate of Immigration and Border Police, which is responsible for the organisation of return activities implemented through charter flights and for the authorisation of those implemented through commercial flights.

In the time span covered by this Report, however, there were some occasional tensions between the members of the monitoring delegation of the National Guarantor and the escort staff who, in such cases, were not fully aware of - and, therefore, not respectful of - the prerogatives and role of the monitor. On a few occasions, the criticality observed also concerned the medical staff.

Certain incidents were the subject of immediate confrontation between the two Authorities. With reference to one event, of specific relevance, the National Guarantor has been assured of internal investigations be conducted and will appreciate to know about its outcomes, hopefully in order to end the unfortunate incident quickly.

In this regard, it should be recalled that the task of the monitor consists of observing, detecting and reporting information in order to assess whether a forced return is carried out in compliance with the fundamental rights of the returnees and with the overall rules governing the matter⁸. In this

⁸ In this sense, Article 15 of the 2018 "Frontex Code of Conduct" provides «*The monitoring of forced RO aims at gathering information on and reporting of fundamental rights compliance and, where appropriate, at making recommendations for the strengthening of the protection of returnees*». Likewise, but with a relevant clarification, paragraph 5.13 of the 2016



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

Il Presidente

perspective, both the 2018 "Frontex Code of Conduct" and the 2016 "Frontex Guidelines" clearly outline the prerogatives granted to the monitor regarding the acquisition of information. The monitor, in addition to having unlimited access to all the places concerned by the operation and the possibility of interviews with the returnees, is made aware in advance, and subsequently kept updated throughout the duration of the operation, of any information pertaining to the operation, including that relating to the health status of the returnees⁹. In other words, in fulfilling their function, the monitor is required to be aware of any element that could be useful for evaluating the repatriation activity and must necessarily take steps to acquire any information that it may not be aware of through direct observation and/or that is not automatically communicated to it. The collection of information, the verification of any inconsistencies that may have emerged from the various information sources, with requests, even multiple ones if necessary, for clarifications to those responsible for the operation constitute the core of the monitor's work. Of course, it must be the absolute care of the monitor to act in full and absolute respect of the role of the other professionals involved, aware of the difficulty of the operation in the performance of which they must not cause undue hindrance¹⁰.

Moreover, it should be noted that information on special needs or vulnerabilities should be provided prior to the operation. For this reason, the monitoring responses that the National Guarantor sends to the Central Directorate always make express mention of the necessity to receive information on particular and individual situations. Instead, it is regrettable to observe that in practice - apart from the details contained in the operational telegram and the list of persons to be repatriated - information concerning any medical needs and/or related treatment to be ensured is not punctually transmitted in advance to the monitoring body¹¹. The consequence is that the monitor only knows of such problems during the repatriation operation, sometimes in a fragmentary and incidental way through interviews with the returnees themselves, having to turn from time to time to the staff concerned in order to reconstruct the picture and in any case to communicate to the escort officers what has been reported by the foreigners.

"Frontex Guidelines" says that «The monitoring of a JRO aims at gathering information and observing whether a JRO is conducted in compliance with fundamental rights, paying specific attention to the treatment of vulnerable persons».

⁹Article 16 of the 2018 Frontex Code of Conduct "In order to ensure an effective monitoring system, forced-return monitors must have access to all relevant information concerning the RO, including: a. [...] the number and origin of returnees, particularly including any forms of vulnerability, e.g. pregnant women, families with children, elderly people or persons with disabilities or medical conditions".

"Frontex Guidelines on Joint Flights", 2016, paragraph 5.13:

"Monitors [...] must have access to all relevant and up-to-date information concerning the JRO prior to the implementation day of the operation and during the operation, including information on the current mental and physical state of the returnees, except for confidential medical documentation, which must only be shared between medical personnel".

¹⁰The possible power of the National Guarantor as a 'National Preventive Mechanism' under the UN OPCAT Protocol is not relevant in this context. This position, which can only be acted upon in the presence in the delegation of a member of the Board of the National Guarantor, is in addition to the prerogatives that are in any case recognised to the Monitoring Body, which operates on the basis of the specific European Directive and of those instruments defined within the European Union that characterise its function.

¹¹ Moreover, sometimes those responsible for the repatriation service itself report to the Guarantor that they too have not received this information.



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

Il Presidente

It is the monitor's duty to pay attention to every problem they encounter, as well as to all critical events that occur, in order to report objectively and impartially.

Moreover, it is evident that making the information necessary for the return activity available to the Office of the National Guarantor in a timely manner, in particular that related to the transmission of health information, in addition to guaranteeing the full protection of the health of the persons subject to return, allows for a more orderly and regular flow of communication of the monitors with those responsible for the operation.

Finally, during the monitoring of some operations towards Tunisia, monitors were not permitted to attend consular hearings. The National Guarantor recalls that access to all the places concerned by the operations is an essential prerogative of the monitor and that therefore, if the hearing is carried out in the course of the procedure, unless in the case of exceptional and justified requirements, the members of the guaranteeing body must be ensured the right to attend it.

B. STAFF EMPLOYED IN THE OPERATIONS

B.1 Training

As a general rule, police personnel employed in international return operations with escort receive specific training, including initial qualification courses and periodic refresher sessions.

This standard is, however, subject to an exception in the organisation of escort services on the *chartered* flights to Tunisia. According to the provisions contained in the operational telegrams, the decentralised offices of the State Police are in fact permitted to designate, to the extent of 50% of the quota requested of them, personnel who have not attended the tailored 'escort course'. In practice, it may also be the case that this percentage falls even further, as observed in the operation carried out on 9.08.2022, which involved 83 personnel in the escort service, of whom only 34 had received specific training on forced returns.

Although this Authority is aware that Tunisia is the country to which most frequently Italy organises return flights by *charter* (twice a week) and therefore of the plausible difficulty of finding personnel to be employed in that service, the possible engagement of non-specifically trained personnel could constitute a serious critical element.

Forced repatriation operations, in fact, are by their very peculiar and complex nature, of considerable duration, in which vulnerable situations are often present and it is precisely for this reason that the operator must possess professional skills as well as human and psychological aptitudes that cannot be left to a selection made upon enrolment or addressed in basic training.

The issue of training interventions involving also the Police Force personnel employed in the phases prior to departure, i.e. the preparation in the Immigration Removal Centres (CPR) and the transfer of the returnees to collection or departure hubs on the national territory, is still open. With the exception of some virtuous practices¹², the personnel, both uniformed and armed, who carry out this service have not received specific training on forced returns. As already pointed out in previous Reports, it is essential that from the earliest stages of the procedure all the relevant rules, in particular on the right to information, security checks, use of force and coercive measures, are

¹² Bari Police Headquarters personnel carry out the transfer in civilian clothes.



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

Il Presidente

exactly known and applied by all operators involved. In this Report, some critical events involving police personnel employed in the transfer of returnees back to the national country will be reported.

In this regard, according to reports from monitors employed in monitoring the pre-return phase, it appears that, in the Immigration Removal Centre in Turin, officers from the Army continue to be present within the perimeter of the centre itself, in contrast with the current regulation of the surveillance service established by the Directive annexed to the Decree of the Minister of the Interior of 19 May 2022 on criteria for the organisation of the Immigration Removal Centres, which replaced the Regulation of 20 October 2014. As requested by the National Guarantor, the provision of Armed Forces staff from the internal security arrangements has been expunged from the current regulatory framework in compliance with international sector standards¹³.

B.2 Professional figures and the right of returnees to understand and be understood

For some time now, the National Guarantor has been making recommendations for the deployment of language professionals, as provided for in the Annex to Council Decision 2004/573/EC of 29 April 2004 at point 3.3¹⁴, to support staff involved in forced return activities (escort operators and health personnel).

The issue is not of a secondary nature, but affects the subjective rights of the individual, as it should be remembered that the *right* to understand is central to the effective exercise of all other rights.

For example, in repatriation *charter* flights that mainly concern the repatriation of persons who have just arrived in our country, it is certainly foreseeable that the persons do not have adequate knowledge of the Italian language¹⁵. Consequently, the impossibility of language support risks preventing the exercise of fundamental rights - such as the right to health or to access asylum - by returnees who do not know Italian or another language familiar to the escort personnel.

In the answer provided to the previous 'Thematic Report on the monitoring activity carried out between January 2019 and June 2021', it is pointed out that 'escort personnel attending the training course for the qualification for escort services carry out a pre-selection in English and that the foreigner receives extensive information in comprehensible language both at the Police Headquarters and at the detention facilities'.

The National Guarantor welcomes this provision; however, it must observe that the issue still remains and has an impact on a smooth implementation of the operations, since, as verified in the field, not all foreigners are able to understand the main vehicular languages.

¹³ See Rule no.71 of the *European Prison Rules* according to which «Prisons shall be the responsibility of public authorities separate from military, police or criminal investigation services».

¹⁴ «(d) each returnee shall be able to address the doctor or the escorts directly, or via an interpreter in a language in which he or she can express him- or herself Each returnee may address the doctor or escort personnel directly or through an interpreter in a language in which he or she can express him or herself, [...] e) the organising Member States ensure that appropriate medical and language staff are available for the removal operation.».

¹⁵ As stated in the Report to Parliament 2022, a total of 1,221 persons who were subject to a refusal of entry order immediately after arrival in Italy were forcibly repatriated by *chartered* flight to Tunisia or Egypt. They represent 56 % of the persons repatriated by charter flights in 2022 (a total of 2,172).



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

Il Presidente

Having verified the impact that the absence of interpreters and cultural mediators in forced-return operations continues in practice to have on the fundamental rights of foreigners, the National Guarantor reiterates the urgent need to remedy this shortcoming more effectively.

It should be pointed out in this regard that in line with the provisions of Article 16(5) of the 2018 'Frontex Code of Conduct'¹⁶, the monitoring delegation of the National Guarantor is routinely supplemented by a cultural mediator who supports the monitors in their interaction with the persons subject to the return measure. Being the only linguistic professional available, it is the case that the returnees are only able to express their needs during the interview with the monitor assisted by their interpreter. As a result, the monitoring delegation may find itself in the situation of receiving requests that should be directly expressed to the health personnel or the escort by the returnee¹⁷.

The presence of the mediator is also crucial in cases where the person expresses protection needs that must be taken on board by the authorities at the time of their manifestation¹⁸.

Furthermore, language barriers are a major obstacle to the implementation of *de-escalation* techniques necessary to avoid the use of force, the application of coercive measures in the

¹⁶ «Forced-return monitors may use the services of participating interpreters in order to communicate with the returnees».

¹⁷ What happened during the forced repatriation operation to Georgia (CRO) on 20 January 2022 is emblematic in this respect: according to the monitor, the foreigner was only able to express his request for treatment and to relay to the doctor basic information about his health thanks to the intervention of the mediator of the National Guarantor who, at the specific request of the doctor, facilitated the interview with him.

A similar situation occurred in the repatriation charter flight to Tunisia that took place on 17 February 2022, during which the cultural mediator of the National Guarantor supported the health staff in three separate interventions carried out on three returnees who expressed feeling unwell. In particular, A. S. who suffered a respiratory crisis, S. H. whose state of total immobility was considered an attitude of passive resistance and B. A. M. who had been on hunger strike for four days. After verifying the health conditions of all three, the health officer ordered the suspension of the repatriation of A. S. and instructed the operators to treat the foreigner appropriately.

The presence of the cultural mediator of the National Guarantor also proved essential in the repatriation operation carried out towards Tunisia on 24 February 2022 on the occasion of an episode of self-harm on the part of a Tunisian citizen who, during security checks, began to struggle in an attempt to expel metal objects he claimed to have swallowed. The language expert of the National Guarantor played a key role in understanding the repatriate's statements both in the conversation with the State Police doctor and in the conversation with the medical staff of the emergency room who later intervened to transfer the person to hospital.

¹⁸ Consider, by way of example, what happened during the *chartered* flight to Egypt carried out on 15 December 2021. During the operation, the situation of two Egyptian nationals who had just arrived in Italy, recipients of a deferred refoulement order, became apparent. During the interviews carried out by the monitor with the help of the cultural mediator, they expressed strong fears of returning to Egypt, thus expressing very clearly their desire to access the international protection procedure. One of the two coming from the Immigration Removal Centre in Caltanissetta, I. I. A., who was resisting the return and had therefore been immobilised in the transfer, declared that he had tried, unsuccessfully, to have his asylum application registered a few days before the return. The other foreign national, who was young and had also just arrived in Italy, appeared in a fragile state and spoke and understood only in Arabic. The monitor reported having noticed, inside the airport shuttle, M. L. S. R. crying. He was wearing a big Christian cross around his neck. The boy appeared to have recently arrived in Italy and spoke only Arabic; he told the monitor that he was a Coptic Egyptian and was therefore afraid to return to his country where he could be killed. As a result of what was reported to the monitoring delegation, the repatriation of these two Egyptian citizens was duly suspended. It is also recalled that according to Article 10 of the 2018 'Frontex Code of Conduct', all actors in a return procedure are obliged to activate the *referral* mechanism provided for the protection of asylum seekers and vulnerable groups.



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

Il Presidente

management of critical phases and the understanding of the information to be provided before and during the operation¹⁹.

Finally, it seems useful to recall that the technical and operational assistance provided to Member States by Frontex in the context of return activities under Article 48 of the Agency's Regulation also includes interpretation services²⁰.

The National Guarantor therefore recommends once again that

1. at all stages of a return operation (or at least on chartered flights) linguistic professionals be provided. They shall be able to address the person subject to return in a language that he or she understands, in line with the provisions of the Annex to Council Decision (EC) 573/2004 of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders 3.3(e) and Article 14 of the 'Frontex Code of Conduct' adopted on 26 April 2018.

B.3 Staff identification and the use of vests

According to Frontex operational provisions, all staff members of a forced return operation must wear a vest identifying their nationality and indicating their role (*Escort leader, Escort, Medical staff, Interpreter, Back-up team, Monitor* etc.).

This is an important organisational measure from the point of view of transparency and accountability, which also strengthens the understanding of foreigners who are thus able to distinguish the responsible persons and, for example, recognise the health personnel to whom they can address if required.

This aspect, however, remains limited to joint operations, coordinated and financed by the European Agency. On the other hand, this is an aspect that is still unresolved, at least during the period covered by this Report, in national return operations by chartered flights for which police personnel always wear civilian clothes without said vest clarifying the task performed in the operation.

This issue had been previously raised by this guaranteeing Authority. In the reply provided to the last Report, it was indicated that "the procedure for the purchase and distribution of vests to all escort officers was being finalised, which will allow the systematic use of these garments during forced-return operations".

¹⁹ In this regard, during the repatriation operation to Tunisia carried out on 7 February 2022, M. S. was very agitated and appeared to be in a state of confusion unable to understand the various stages of the procedure. For this reason, during the bus transfer from Immigration Removal Centre in Gradisca to the airport, the police escort requested the intervention of the mediator of the National Guarantor. At the moment of disembarkation, the foreigner became agitated; the staff decided to apply additional restraining straps and actually carried the Tunisian citizen onto the aircraft. Subsequently, the foreigner calmed down and only the restraints on his wrists were maintained.

²⁰ «The technical and operational assistance referred to in point (b) of paragraph 1 shall include activities to help Member States carry out return procedures by the competent national authorities by providing, in particular: (a) interpreting services» (Article 48(2) of the Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard).



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

Il Presidente

The National Guarantor is therefore interested in an update on this issue, reiterating what has already been recommended in previous specific Reports.

B.4 Standards of Conduct and Prohibited Conduct

The National Guarantor received a number of complaints concerning certain conduct of escort personnel that was not fully respectful of foreigners. Regardless of the truthfulness of what has been reported, it is important to highlight the critical aspects that these complaints have brought to light: sometimes a threatening message has been reported²¹, with others an attitude of derision²², also disregarding the particular state of psychophysical vulnerability of foreign citizens. Obviously, these are isolated episodes that cannot, however, be overlooked by a guaranteeing Authority that has the institutional mandate to seize upon any sign of criticality in order to prevent the risk of practices of this kind that could then also become systematic and generalised. Not only this, but it is precisely the well-grounded cooperation with the Authorities in charge of repatriations that determines for the National Guarantor the absolute necessity to report any element that could evolve into a critical situation.

The National Guarantor therefore recommends that:

2. a constant effort should be made to ensure that all participants in a forced-return operation are provided with specific training on the rules contained in the 'Frontex Code of Conduct' adopted in 2018 and applicable to all persons involved in the Agency's work; rules indicating behavioural standards marked by courtesy and respect, expressly prohibiting the use of vulgar and offensive language²³.

C. INFORMATION

A fundamental guarantee for the person deprived of liberty is the right to receive information about the procedure to which they are subjected. Failure to implement this obligation on the part of those responsible to inform the third-country national affects the inalienable protection of the dignity of every person, firstly because it determines that insecurity which is based on not understanding where one is placed. Moreover, it affects the unawareness of events and may determine

²¹ In the repatriation operation carried out on 15 November 2021, during the pre-departure phase at Palermo airport, the monitor heard a policeman address a foreigner who was expressing from the bus the need to go to the toilet with the following words 'if you piss there, we will beat you up'.

²² This attitude was observed by the monitor in the joint repatriation operation carried out on 21 April 2022 in the manner of a *Collecting return operation* against a returnee who maintained a calm demeanour and for this reason was referred to in a mocking tone by an escort operator as 'little angel'. In addition, the mocking attitude of the escort operator employed in the translation service at Palermo airport was the subject of a specific complaint expressed to the monitor by a Tunisian national repatriated on 7 February 2022.

²³ «Article 10 Behavioural standards- Participants in Frontex activities whether on or off duty shall: a) abstain from all behaviour likely to compromise the prestige and the nature of the public mission in which they are involved or to bring discredit upon their organisation or Frontex; b) act with fairness and impartiality in their dealings with the public and with other participants in the Frontex activities, treating all with courtesy and respect, avoiding all forms of victimisation or discrimination, bearing in mind the diverse nature of all persons, including backgrounds, origin and/or rank; c) abstain from actions contrary to the public order; d) refrain from using vulgar, obscene or otherwise offensive speech or gestures that could be considered abusive towards other participants in Frontex activities or the public». Code of conduct applicable to all persons participating in Frontex operational activities.



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

Il Presidente

oppositional attitudes, problematic for the protection of overall security and become the push factor of any possible recourse to coercive measures.

In this regard, in the reply provided by the Chief of Police, Director General of Public Security, to the latest Thematic Report on Repatriation Activity (January 2019 - June 2021) it is stated: "It is considered that the information obligation towards the foreigner who is the recipient of a return decision is duly fulfilled at every stage of the procedure, as well as the right to access legal protection. Therefore, we do not agree on the need for "prior notification of the planned return", as it is contained in the orders subject to notification and fully translated".

The National Guarantor acknowledges the fulfilment of the information on the return decision through the due notification of the removal order.

However, the important question remains open as to when and how this decision will be enforced. This in fact constitutes, in the opinion of the National Guarantor, the recognition of a right to the returnee.

This right is in fact compromised in forced return operations in relation to several aspects, considered below.

C.1 Lack of notification of the return order

International standards on the right to information in forced-return procedures prescribe that information must be provided in advance and cover certain essential elements of the operation.

Very clear on this point is Guideline 15 of the 'Twenty Guidelines on Forced Return' adopted by the Committee of Ministers of the Council of Europe in 2005 according to which: *«where the returnee is detained pending his/her removal, he/she should as far as possible be given information in advance about the removal arrangements and about the information given to the authorities of the country of return. He/she should be given an opportunity to prepare that return, in particular by making the necessary contacts both in the host country and in the country of return and, if necessary, to retrieve his/her personal belongings which will facilitate his/her return in dignity»*.

Regarding the need for persons detained in an Immigration Removal Centre also to be duly given notice of their return, in the 'Report on the monitoring of a forced repatriation flight of Afghan nationals carried out by Germany on 14 August 2018', the Council of Europe's Committee for the Prevention of Torture (European Committee for the Prevention of Torture) observed: *“The German approach of not preparing persons prior to their impending removal appears to be mainly grounded on practical and security-related concerns (i.e. to avoid the returnee escaping removal); there is however no reason to apply such an approach for returnees who are already deprived of their liberty in an immigration detention centre. In the European Committee for the Prevention of Torture's view, it is essential that immigration detainees be informed sufficiently far in advance of their prospective removal, so that they can also begin to come to terms with the situation psychologically. This might be achieved by providing psychosocial support services to returnees. The European Committee for the Prevention of Torture recommends that the competent Länder authorities take the necessary measures to ensure that all returnees who are held in detention pending deportation are in practice officially informed in writing, in a language they understand, at least one week in advance of their*



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

Il Presidente

scheduled removal, as required by law. All returnees should systematically be prepared for their removal, including through the provision of psycho-social support²⁴.

Nevertheless, even in many of the operations covered by this Report it has been observed that persons to be repatriated are picked up from their respective accommodations immediately upon departure without having been previously informed about the final purpose of the transfer²⁵. The lack of prior notice does not allow them to prepare themselves materially²⁶ and mentally for their repatriation and in fact inhibits any possibility of notice or contact with family members or lawyers.

As indicated in the "Thematic Report on the monitoring activity of forced repatriation operations of foreign nationals (January 2019 - June 2021)" of the National Guarantor, "the person deprived of personal liberty should always have the opportunity to have access to his or her legal representative, even in the phase of the physical enforcement of the forced-return operation, in order to receive complete and exhaustive information and to avoid any belief construct that risk determining oppositional attitudes and perceptions of insecurity...[...] Furthermore, in order to promote contacts with the country of origin before the very outset of the operation, the possibility to use mobile phones be granted to returnees is regarded as a best practice. Instead, what happens in many cases is that mobile phones are removed from the availability of the returnees without granting the possibility of making at least one last call once they have learned that repatriation is imminent".

The impossibility of communicating with the outside world extends to all stages of the procedure as no public devices are available in the waiting areas at the Immigration Removal Centres or at the airport terminals used in operations and the use of the personal device²⁷ is not permitted.

The National Guarantor noted positively that in order to remedy this shortcoming, escort personnel sometimes make their personal mobile phones available to returnees. However, the possibility to call their family members, especially if short notice was given about the operation, should always be ensured by setting up public telephones in the waiting areas (at the Immigration Removal Centres, at the airport terminals, etc.) and providing, if necessary, mobile phones to be used by returnees during operations.

²⁴ <https://rm.coe.int/1680945a2d>

²⁵ Operations usually start at night or in the very early hours in the morning with the law enforcement officers breaking into the accommodation building and suddenly awakening the returnees.

²⁶ In the chartered flight of some Nigerian nationals carried out on 7 May 2022, one of the persons being repatriated complained, in the pre-return phase at the Immigration Removal Centre in Rome, about the failure to return a large sum of money that had been confiscated at admission to the Centre. The complaint proved to be well-founded, and the escort turned to the managing body for the immediate return of the foreigner's property. This was only possible because the pre-return operations took place between 9 a.m. and 12 noon, i.e. at a time when all the services of the Immigration Removal Centre were operational.

In the joint return operation carried out to Albania on 25 January 2022, an Albanian citizen, who had been in Italy for six years, reported to the monitor that he had received notification of deportation two weeks before the operation during a spontaneous access to the Police Headquarters. As he was not aware of the date of repatriation, he complained that he had not been able to organise the retrieval of his personal belongings, except for a small part contained in a package received during his detention in the Immigration Removal Centre in Macomer.

²⁷ The latter, moreover, is often removed because during the detention period it was kept in the warehouse due to the rules of the Immigration Removal Centre. Moreover, persons returned after a period of detention in a penal institution often do not have a personal device at all.



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

Il Presidente

In this context, it is worth highlighting the good practice observed during the return operation to Nigeria on 7 May 2022, during which the returnees departing from the Immigration Removal Centre in Gradisca d'Isonzo could have the availability of their personal mobile phones during all the phases of the operation, except the in-flight phase.

C.2 Absent or inadequate communication about the return procedure

As a further lack of information, the National Guarantor has noted that returnees do not in fact receive adequate information on how the return is carried out throughout the operation. In fact, according to Frontex's indications, returnees must be informed about "*the removal procedure (e.g. reason, phases of travel and procedures, the necessity for body and luggage searches, the possibility of using coercive measures when deemed necessary, etc.) and answers to their questions*" ("Frontex Guidelines" 2016²⁸). Furthermore, the information must include "*the possibilities to lodge a complaint concerning an alleged fundamental rights violation during the RO*" ("Frontex Code of Conduct" 2018).

From the interviews carried out during the repatriation procedures both with the foreigners and with the police personnel who carried out the transfers, it became apparent that there is a widespread practice to give reasons for the returnees' leaving the Immigration Removal Centre as an ordinary transfer on the national territory²⁹: it is rarely explained that repatriation is taking place and in some cases misleading information is given³⁰. It also appears that foreigners who ask for clarification and information are given generic reassurances by the escort personnel themselves and that even when faced with statements concerning possible obstacles to return, these statements are not taken into account but are postponed to later stages of the procedure³¹. The monitors observed that sometimes the teams alternating in the management of the various phases of the operation tend to shift the information obligation to the one involved in the next phase.

²⁸https://frontex.europa.eu/assets/Publications/General/Guide_for_Joint_Return_Operations_by_Air_coordinated_by_Frontex.pdf

²⁹ For example, in the repatriation carried out to Tunisia on 7.02.2022, at the Immigration Removal Centre in Gradisca d'Isonzo in many cases the persons were told that they were being transferred to Bari, without further indications regarding the real final destination of the operation. The same situation was observed with the Egyptian citizens repatriated from the Immigration Removal Centre in Turin on 29.04.2022. In this case, moreover, it was observed that at the same time of the repatriation, in the middle of the night, the escort picked up from the same accommodation unit a Nigerian citizen for a transfer to the Immigration Removal Centre in Gradisca: all the foreign nationals (the Egyptians be deported and the Nigerian be transferred to another Immigration Removal Centre) were informed that it was a national transfer.

³⁰ During the pre-return phase of the charter repatriation flight to Nigeria on 14 September 2022, a Nigerian citizen who was about to be transferred from the Turin Repatriation Detention Centre to Rome for repatriation reported that he was reassured that, as he did not have a passport, he would not have to worry about being repatriated.

³¹ For example, in returns to Tunisia or Egypt, where the consular hearing does not precede the departure from the Repatriation Detention Centre, being carried out respectively in Palermo shortly before the departure of the repatriation charter or directly in Cairo immediately after arrival, it is common practice to make the returnees believe that the decision on repatriation is completely in the hands of the consul. In the repatriation carried out to Tunisia on 7 February 2022 departing from the Repatriation Detention Centre of Gradisca d'Isonzo, in many cases the persons were told that they were being transferred to Bari, without any indication on the repatriation operation. In the return to Georgia implemented through a *Collecting return operation* on 21 April 2022, the monitor observed that a returnee expressing a number of circumstances potentially hindering repatriation was informed of the possibility to represent them before the Georgian authorities once he arrived in Düsseldorf.



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

Il Presidente

The impact of these information gaps is visible in the state of upset and agitation that returnees express in the preliminary stages of the operations: many insistently ask for explanations, some complain that they have not been able to contact their lawyer to obtain updated news about their legal position, that they have not had the opportunity to call their relatives and inform them of their imminent departure and to collect the personal belongings they wish to take with them, or they complain that they have not been able to find all the belongings confiscated upon admittance at the Immigration Removal Centre because the departure took place at night when the Centre Bursar's Office was closed. In some cases, the state of stress caused by the lack of clarity and information triggers oppositional attitudes that could be reduced or avoided with a greater transparency of information, related to every aspect that does not compromise the effectiveness of the removal operation, which would reduce the tension and avoid the frequent recourse to the application of coercive measures, as the usual method of response to such attitudes. It should be noted that reactions occur, in particular, upon arrival at the airport when there is a clear understanding of the actual destination of the transfer. At that point, the tight pace of the operation leaves little time for processing any news and for implementing de-escalation techniques, and thus the only means of countering resistant attitudes is through the use of force.

The National Guarantor renews its recommendations so that:

3. the date of departure is communicated in advance to the persons concerned³² in order to allow the returnees organising their journey, verifying the handover of all personal belongings retained on entry to the Centre, preparing their luggage in dignified conditions, notifying their family members or, in any case, persons they trust and/or their lawyer in order to be informed of any updates concerning their legal position;
4. at the latest at the start of the operation, in full respect of their dignity, foreign nationals are informed of all the operation phases, including the different stages of the journey, the length of stay at any stopovers, the place and approximate time of arrival in the country of origin, the carrying out of security checks on both the person and on their luggage, the possible use of coercive measures in the event of refusal or opposition to return, the possibility of lodging a complaint;
5. communication with returnees is always based on clarity and transparency, excluding equivocal information that could give lead to misunderstandings or misplaced expectations;
6. freedom of telephone correspondence is guaranteed.

D. HEALTH PROTECTION AND HEALTH CARE

D.1 The rules

The domain of the returnees' health protection and health care appeared to be particularly critical in relation to a variety of aspects requiring careful consideration and timely action on several levels.

³² On this point, it should be further noted that other European countries engaged in return operations provide, with the help of an interpreter, detailed information to the returnee that includes, to being with, the type of operation and the date of return and, subsequently, information on the maximum weight of luggage that can be transported, flight identification and other information; Frontex, *Factsheet for Forced Return Monitors*, Hungary, 2021.



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

Il Presidente

For a clearer understanding of the problems encountered, it is worth briefly recalling in the introduction the principles and rules governing the subject.

Article 5 of Directive 115/2008/EC provides that "When implementing this Directive, Member States shall take due account of: a) the best interests of the child; b) family life; c) the state of health of the third-country national concerned and respect the principle of non-refoulement". The Court of Justice of the European Union in a recent ruling of 22 November 2022³³ ruled that, taking into account the provisions of the Charter of Fundamental Rights of the European Union³⁴, this provision must be interpreted as «precluding a return decision from being taken or a removal order from being made in respect of a third-country national who is staying illegally on the territory of a Member State and suffering from a serious illness, where there are substantial grounds for believing that the person concerned would be exposed, in the third-country to which he or she would be removed, to a real risk of a significant, permanent and rapid increase in his or her pain, if he or she were returned, on account of the only effective analgesic treatment being prohibited in that country» (paragraph 76)³⁵. Moreover, the Court of Justice has also specified that 'before adopting a return decision or a decision to remove' a person suffering from a serious illness, Member States must be able to rule out «any serious doubts regarding the risk that returning that third-country national results in a rapid, significant, and permanent worsening of that illness or of the pain caused by that illness. Where such doubts cannot be ruled out, the competent national authority may not adopt a return decision or remove the third-country national concerned [...] The Member State concerned must ensure that, when the state of health of the person concerned so requires, that person receives not only health care during removal in the strict sense but also after that removal, in the receiving country» (paragraphs 80 and 81). It follows that the Directive must be interpreted as precluding «the consequences of the removal order in the strict sense on the state of health of a third-country national from being considered by the competent national authority solely in order to examine whether he or she is able to travel».

The Decision of the Council of the European Union of 29 April 2004 No.573 recalls the principle that repatriating a person entails assuming responsibility that the person is «in an appropriate state of health, which allows legally and factually for a safe removal by air». The European standard also states «Medical records shall be provided for returnees with a known medical disposition or where medical treatment is required»³⁶.

³³ Court of Justice of the European Union, Grand Chamber, Judgement of 22 November 2022 in Case C-69/21 concerning a reference for a preliminary ruling from the Rechtbank Den Haag (The Hague Tribunal, Netherlands).

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62021CJ0069&from=EN>

³⁴ In particular, Articles 1, 4 and 19 of the Charter.

³⁵ According to the jurisprudence of the European Court of Human Rights (ECHR), in the case of the removal of a seriously ill person, a question may arise in relation to Article 3 of the Convention if «substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy». *Paposhvili v. Belgium* judgement of 13 December 2016 of the Grand Chamber of the ECtHR.

³⁶ In the area of health protection, the guidelines annexed to the Decision provide:

«Medical condition and medical records - The organising Member State and each participating Member State shall ensure that the returnees for whom they are responsible are in an appropriate state of health, which allows legally and factually for a safe removal by air. Medical records shall be provided for returnees with a known medical disposition or where



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

Il Presidente

In order to make such a guarantee effective, other international specific standard, sources of soft law³⁷, stipulate that prior to a forced-return operation, all returnees should undergo a medical examination to verify that they are in a suitable state of health to be repatriated. The European Committee for the Prevention of Torture states in an operation Report «*The fact that persons are medically examined on admission to a CIE does not automatically mean that they will be fit to travel when their removal takes place. Furthermore, the substance of the medical examination carried out on admission to a detention centre might well not cover the large number of pathologies enumerated in the International Air Transport Association (IATA) flight inadmissibility criteria, or the need to specifically assess the risks associated with the possible prolonged use of means of restraint, in particular in confined spaces such as aircraft*»³⁸.

As is well known, the medical clearance for the removal is documented in the *fit to travel* certificate which, according to the rules established by Frontex, must always be issued in the case of «*...any pre-existing medical condition affecting a returnee and/or medical treatment required*» ("Frontex Guidelines" of 2016)³⁹.

In the opinion of the National Guarantor, also in the context of the well-established case-law of the European Court of Human Rights (ECtHR) and of the above-mentioned recent ruling of the European Court of Justice, this medical assessment, especially in the presence of particular health conditions, should consist of both a *fit for travel* and a *fit for return certification*: it should therefore assess the risk that the person with certain health vulnerabilities may face a worsening of his or her health

medical treatment is required. These medical records shall include the results of medical examinations, a diagnosis and the specification of possibly needed medication to allow for necessary medical measures. Multilingual versions of medical records shall be provided if the accompanying medical staff is not able to understand properly the original language. Organising and participating Member States are encouraged to use common standardised forms for medical records or fit-for-fly declarations. Participating Member States shall inform the organising Member State in advance of a removal operation of any medical condition which would have a bearing on the removability of a returnee. The organising Member State shall reserve the right to refuse access to a joint flight to any returnee with a medical condition which would mean that their return was not compatible with the principles of safety and dignity».

³⁷ According to the European Committee for the Prevention of Torture (since 2003) and according to the Council of Europe Committee of Ministers' 2005 'Twenty Guidelines on Forced Return', prior to the operation every returnee must undergo a medical examination in order to be issued a certificate of fitness to travel - the so-called *fit-to-fly/fit-to-travel*. This is a necessary preventative measure when the use of force is envisaged.

³⁸ European Committee for the Prevention of Torture, Report on the monitoring of the repatriation charter flight to Nigeria carried out by Italy between 16 and 18 December 2015.

³⁹ «6.1.17 Fitness to travel and medical examination.

The OMS and each PMS must ensure that all returnees are in an appropriate state of health to travel. The returnees are to be removed only as long as they are "fit-to travel" at the time of the JRO. The OMS' medical doctor on board must be informed by the PMS' medical doctor as soon as possible prior to a joint return flight about any pre-existing medical condition affecting a returnee and/or medical treatment required. Only medical staff have access to the medical information of returnees. In such cases the PMS must send the required information using the "fit-to-travel" form (for the recommended template, see Annex 1). The form must be issued by a medical doctor and be transmitted from the PMS' medical staff to the OMS' medical staff. After an evaluation, by the medical personnel available, of those individual(s) from a PMS whom the OMS considers are not "fit-to-travel", their participation in a joint return operation coordinated by Frontex must be refused if their unfitness to travel is confirmed. If there is any doubt, the returnee(s) should not be accepted on the flight; it is the PMS that should document the fitness to travel. The processing of medical information must be carried out in line with applicable and relevant personal data protection legislation» (Guide for Joint Return Operations by Air coordinated by Frontex, May 2016).

The same provision is contained in Article 8 of the 2018 'Frontex Code of Conduct'.



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

Il Presidente

condition once repatriated. As indicated by the Luxembourg judges, «Article 5 of Directive 2008/115, which is a general rule binding on the Member States as soon as they implement that directive, obliges the competent national authority to observe, at all stages of the return procedure, the principle of non-refoulement». Even after the decision to return has been taken, in the phases preceding the removal, careful assessment and preparation activities are therefore necessary, on the part of the doctors in charge at the structures where foreign nationals were detained before removal and on the side of the Police Central Directorate of Health, to verify that the return takes place in compliance with the international protection obligations to which the country is bound and in conditions of safety of the person. If it is ascertained that the person is in an adequate state of health to be repatriated *without a real risk of a significant, permanent and rapid increase in his or her pain* caused by the possible serious illness from which he or she is suffering, it is then essential to guarantee all relevant information on the person's state of health to the health personnel employed in the operation., with particular reference to any undergoing pharmacological therapies.

For this purpose, appropriately, the Directive annexed to the decree of the Minister of the Interior of 19 May 2022 laying down criteria for the organisation of the Immigration Removal Centres, which replaced the regulation of 20 October 2014, explicitly provided that a copy of the health record, indicating the outcome of the examinations carried out within the Immigration Removal Centre, any prescriptions and the outcome of the treatment provided be delivered to the Police medical staff on board the operation. The Directive also provides that «The Managing body shall provide the escort personnel with the necessary pharmacological supply at least until conclusion of the repatriation procedures and in any case according to the doctor's prescription». On the same point, the 2016 "Frontex Guidelines" establish a number of further guarantees by stating that the medical staff are also required to assess the opportunity to make available to foreign nationals, at the end of the operation, a supplementary quantity of medicines so that they do not risk a sudden interruption of treatment in the country of return⁴⁰.

Lastly, in all return operations organised by means of *chartered* flights there is a medical device consisting of a doctor and a nurse with the task of protecting all participants in an operation and in particular the returnees. Such a measure is established by the various international sources regulating the organisation of repatriation operations and responds to the general obligation to protect the physical integrity that State authorities have towards all persons subjected to a coercive measure such as a forced return. The doctor is responsible for administering the pharmacological therapies in progress at the time of removal, ensuring that they are taken throughout its duration.

However, the National Guarantor has noted that in practice all these aspects present various critical aspects that have an impact on the rights of returnees, which will be examined below.

D.2 The health personnel employed in the operation and their training

The medical escort of forced-return operations carried out through chartered flights consists of a doctor and a nurse belonging to the State Police. Taking into account the possible use of force in repatriation activities and the related role of guarantee of the health professionals, carried out both

⁴⁰ «The relevant MS ensures that the necessary quantity of medication prescribed is available for returnees who are under medical treatment. Moreover, the MS should consider the possibility of providing an advance supply of medication (e.g. for several weeks) in order to prevent any interruption of treatment in the country of return (please see 6.2.4.2. with regard to the need to leave behind in a MS any medicines prohibited in a CoR)».



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

Il Presidente

to protect the person concerned and the Police personnel, also in the context of a specific episode which will be mentioned in paragraphs E.1 and L of this Report, the National Guarantor considers it necessary to recall the observation expressed by the European Committee for the Prevention of Torture in the "Report on the monitoring of a forced return flight" organised by Italy in 2015. Regarding the organisational choice of employing State Police doctors and nurses, the European Committee, in fact, observes that «*in order to reduce the potential for any conflict of dual obligations and to best assure the clinical independence of healthcare staff, it would be preferable if the medical staff participating in a removal operation were to be engaged by an authority distinct from the agency responsible for the operation itself (in this case the State Police)*».

The National Guarantor takes note of the Italian authorities' response to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) regarding the inherent impartiality of medical personnel bound by the Hippocratic Oath.

However, it invites the responsible administration to review this practice with a view to increasing the protection of persons subjected to return measures and to enhancing the system of safeguards provided.

In addition, the monitoring carried out revealed the need for the health personnel involved in the procedures to receive specific training on the regulations provided for by the various regulatory sources on the protection of the health of repatriated persons. On several occasions, the monitors have, in fact, observed that the doctors and nurses present in the operations, despite having, in some cases, extensive experience of forced returns are not familiar with, for example, the rules contained in the 2018 "Frontex Code of Conduct" or in the 2016 "Frontex Guidelines". That is, they are unfamiliar with the guarantees to be provided to returnees in the preparatory stages with regard to prior medical certification (*Fitness to travel and medical examination*, Art. 8 of the "Frontex Code of Conduct"), the characteristics that such certification should have, also taking into account the forms drawn up by the European Agency⁴¹ and the need for it to be updated in the event of problems arising after its being completed ("Frontex Guidelines" of 2016).

In some cases, there was also a lack of awareness of the role related to the need to provide the monitor with any information related to the operation, including those related to the health of foreign nationals (Article 16.1 'Frontex Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex' 2018).

D.3 Fitness to travel

In almost all cases, the National Guarantor found that the medical clearance for repatriation had been issued by the doctor in charge of the Immigration Removal Centre and not by a doctor of the National Health Service, who can ensure an independent assessment from the Public Security Authority, having as their only mandate the protection of the patient's health.

⁴¹ *Fit to travel* form - Annex 1 of the 2016 'Frontex Guidelines'.



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

Il Presidente

The recommendation of the National Guarantor to establish the competence of the medical personnel of the Public Health Service, by analogy with what has been established for the assessment of the migrant's compatibility with detention, has so far not been accepted⁴².

Therefore, in view of the responsibility that the country assumes in carrying out removals and the importance of the protected subject, the National Guarantor invites the responsible Authorities to start reflecting so that such a procedure shall be adopted at least in the presence of particular health conditions that require on the whole a careful and scrupulous scrutiny⁴³.

It should also be noted that the health clearance document consists of a generic 'certificate of fitness' without any reference to the person's state of health; in fact, it is devoid of any indication of the pathologies suffered or the treatments in place. The lack of a stringent assessment that the Authorities should ensure when they take responsibility for expelling foreign nationals risks depriving the guarantee of a preliminary medical assessment of its effectiveness, endangering the right of migrants to be protected from the risk of inhuman and degrading treatment as a possible consequence of their expulsion. The absence, inaccuracy or lack of information may sometimes be the result of summary examinations.

In addition to this, even if particularly significant health vulnerabilities are reported in the document, the medical assessment remains limited to the compatibility of the pathologies suffered with the return journey without extending to the effects that the return to the country of origin entails in terms of the possibility of continuity of therapy, available treatments and medicines, and adequate care by the health and/or social services.

It must also be reported that monitors have found that the '*Fit-to-travel*' document is not reviewed even in the event of the occurrence of events that may have affected the person's health⁴⁴, contrary to international standards that prescribe that the certification be kept up to date at all times during the operation.

Finally, a further critical issue sometimes concerns the non-use of the '*Fit-to-travel*' form annexed to the 2016 'Frontex Guidelines' even in the case of joint operations. The European form contemplates the inclusion of a multiplicity of information both on the person's medical history and current pathologies with a view to providing a comprehensive picture of the person's health condition. Its adoption in the English version also facilitates the transmission of information between medical escorts belonging to different national contingents deployed in the various phases

⁴² See the Report on the monitoring of the joint operation for the forced removal of Nigerian nationals of 26 January 2017 and the Report on the monitoring of a chartered flight for the repatriation of Tunisian nationals of 13 April 2017.

⁴³ In this regard, please refer to section D.7 of this Report for a particularly serious case that occurred during a repatriation operation to Nigeria. In addition, consider what happened to A.S. whose repatriation to Tunisia, scheduled by chartered flight on 17 February 2022, was suspended following his illness during the pre-departure phase of the operation. According to the monitor, the examination of the medical records by the doctor present at the Palermo airport showed that the foreign citizen suffered from asthma and similar respiratory crises already recorded at the Immigration Removal Centre where he was detained prior to repatriation. Therefore, the doctor considered it appropriate to interrupt the operation and expressed the need to subject the foreign national to adequate treatment.

⁴⁴ On the charter repatriation flight to Tunisia on 15 November 2021 a foreign national performed a self-harming action by banging his head against the wall of the waiting area at Palermo airport. The doctor, on the basis of the examination of the pupil of the person concerned, decided to exclude the risk of head trauma and gave his authorisation, exclusively verbally, to continue the repatriation. The *fit-to travel* completed before the critical event remained unchanged and kept in the personal records.



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

Il Presidente

of an operation involving several countries⁴⁵.

D.4 The handover of information between the medical staff at the detention facilities and the medical staff on board: pre-identification of the returnees' health issues.

As pointed out in the introductory paragraph of this section, without prejudice to the responsibilities assumed by the State in forcibly repatriating a person, the field regulations do not establish the need for the so-called "*Fit to travel*" for all persons involved in a repatriation procedure, but they do agree in providing for the transmission of the health documentation related to each returnee to the medical staff employed in the operation. For this reason, the Central Directorate of Immigration and Border Police orders in the operational telegrams of each operation that, in the days preceding the operation, all the concerned Police Headquarters should communicate in advance to the Central Health Directorate responsible for organising health assistance in the repatriation procedures any possible health needs of the foreigners to be repatriated (ongoing pathologies, medication intake, etc.). In practice, however, this is frequently not the case: often this documentation is not sent, in some cases it is made available on the same day as the operation or appears incomplete. As a result, healthcare personnel are left with no information or insufficient data to ensure proper care to the person. The risk is to find oneself unprepared to handle unforeseen situations such as, for example, states of ill health related to illnesses suffered or requests for undocumented therapies. In fact, on several occasions, the monitors noted the emergence of health problems or pharmacological treatments that were not mentioned in the '*Fit to Travel*' forms and were not even traceable in the individual health records (because they had not been received or were incomplete)⁴⁶. During some of the operations monitored, such shortcomings in the preparatory phase of repatriation had the

⁴⁵ In the repatriation flight to Georgia on 4 November 2021 with the modes of a *Collecting return operation* the *fit for travel* forms were not issued using the *form* annexed to the Frontex 2016 Guidelines not even in the cases of persons with ongoing treatment and the information was transmitted verbally by the doctor of the Italian escort to the Georgian medical escort. The monitor, while remaining at a distance, noticed that the Georgian doctor was taking pictures of the health documentation with his mobile phone.

⁴⁶ On the repatriation chartered flight to Tunisia on 7 February 2022 was E. M. A. N. suffering from diabetes and undergoing insulin therapy. The medical condition was not indicated in the medical file but, according to the monitors, the doctor employed in the operation nevertheless assessed that he could be repatriated as he appeared to be in good health and had medical documentation issued by his country and stocks of medicines.

On 21 April 2022 E. R. a Georgian citizen, suffering from several pathologies and under composite pharmacological treatment, was about to be repatriated with the CRO operation without pharmacological supply. According to what was reported to the monitor by the doctor employed in the operation, the documentation sent by the Immigration Removal Centre to the Central Health Directorate in the days preceding the repatriation was partial and very deficient with respect to the documentation available to the repatriated person himself. This circumstance may be symptomatic of an inadequate assessment of the foreign national's health conditions. In this case, the repatriation was suspended following his request for international protection.

Finally, in the repatriation operation organised towards Tunisia on 11 August 2022, A. R., had a stock of medicines (a packet of an anti-anxiety drug and a packet of an anti-epileptic drug) made available by the detention facility when he left the Immigration Removal Centre in Caltanissetta. The doctor reported to the monitor that he had not received any health documentation concerning the Tunisian citizen, that he was therefore not informed of the existence of a diagnosis and that he did not know the prescription, dosage, and method of administration of the drugs. He therefore decided to contact the Immigration Removal Centre officers, but not receiving sufficient explanations and considering that the possible pathologies suffered by the Tunisian citizen needed careful consideration, he decided to suspend his repatriation.



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

Il Presidente

impact of determining its suspension by the decision of the doctor in charge, who considered that it was not possible to carry out the operation under conditions that would be safe for the person⁴⁷.

D.5 Supply of medication

The often-lacking connection between the medical staff at the detention Centres and the medical staff from the escort may, moreover, concern the medication supply, even in the case of therapies correctly reported in the documentation available to the personnel employed in the repatriation operation, as illustrated below. As already mentioned, in fact, the national and supranational regulatory sources establish the principle of therapeutic continuity at least for the entire duration of the procedure; they also provide for the need for a medical assessment aimed at considering the possible effects of any disrupted therapy or of the need to make available a supplementary quantity of drugs for the days immediately following the arrival to the Country of origin. This is to avoid harmful effects on health resulting from the difficulty of obtaining medicines in the countries of return in a timely manner. The suspension in the administration of certain medicines, in fact, can cause damage to the health of persons of a severity proportional to the complexity of the action of the medicine itself.

Nevertheless, in the course of the many operations monitored, monitors witnessed returnees' requests for treatment that were not met because the Immigration Removal Centres did not have the necessary stock of drugs to ensure their administration at least for the duration of the operation⁴⁸.

⁴⁷ For example, during the repatriation operation to Tunisia carried out on 30 December 2021, the repatriation of H. B. C. was suspended by a doctor's decision, following the emergence of his situation as a person undergoing treatment with methadone (a treatment not administered on departure from the Immigration Removal Centre and not made available to the medical staff employed in the operation, who had not even been informed in advance about the rehab treatment). According to the monitor, during the consular hearing the returnee stated that he was undergoing methadone therapy (a circumstance unknown to the medical staff). The medical records were then retrieved, but it was not clear whether the treatment was ongoing or finished. Contacted by the doctor, the detention facility confirmed that the person was indeed undergoing treatment with methadone on a sliding scale, which was still ongoing.

Similarly, in the CRO made to Georgia on 20 January 2022, two foreign nationals approached the monitor complaining that they had not taken their medication. The circumstance turned out to be particularly critical for one of the two Georgian nationals, as the drug had not been made available by the Immigration Removal Centre and the medical escort had no information on the last administration made in the hours before departure (in one case no information on the current therapy had been received from the detention facility). The severity of the situation prompted the doctor to order the suspension of the repatriation operation, which nevertheless continued in the context of the repatriate's expression of willingness to return to his own country. At the airport, the doctor then took the initiative to purchase the drug and contacted the Immigration Removal Centre medical staff for information on the dosage.

⁴⁸ On the repatriation flight to Georgia on 4 November 2021, carried out with the modes of a *Collecting return operation*, for instance, the returnees reported to the monitors that three of them had ongoing therapies (G. D. coming from Cuneo prison, T. B. coming from the Immigration Removal Centre in Brindisi and G. Z. coming from the Immigration Removal Centre in Gradisca) but none of them had been guaranteed the pharmacological supply for the very first days after the return. In fact, they had taken the medication on the day of their departure and then they would have been individually addressed in the country of return for continuation of the treatment.

According to the monitor, the medical escort in charge of the transfer to Germany (the place of departure of the repatriation charter escorted by the Georgian police) had only been forewarned about the treatment referred to the returnee from the Immigration Removal Centre in Brindisi.



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

Il Presidente

The lack of pharmacological coverage verified by the monitors of specific therapies led the medical expert of the National Guarantor to emphasise a number of related risks in a document delivered to the National Guarantor⁴⁹.

It is also necessary to consider the widespread situation of returnees undergoing methadone rehab programmes, the continuity of which could be ensured through prior information to the social-health services of the country of return for their prompt treatment (clearly subject to the consent of the person concerned). Persons are repatriated with their treatment guaranteed until the day the operation starts; this is likely to result in a sudden interruption of treatment with the risk of developing withdrawal-like symptoms with all the associated problems and disorders⁵⁰.

Alongside this, there remains a general critical issue concerning the right of persons to access data on their health conditions, also in order to be able to have all the information needed to find the medicines in use in their country of origin. The issuance of a copy of the health records to the foreign national upon leaving the Immigration Removal Centre is a practice that requires greater attention and more constant implementation⁵¹ because without the documentation and/or clear medical prescriptions, having arrived in the country of origin, foreign citizens run the risk of not being able to ensure, at least in a timely manner, continuity to the therapeutic programmes to which they were subjected in Italy⁵². Hopefully, the medical documentation should also be drafted in at least one foreign vehicular language as drafting it only in Italian risks making it difficult to understand in the country of origin (Common Guideline 1.1.2 of the Annex to Decision 2004/573/EC of 29 April 2004).

D.6 Health safety standards to prevent the risk of Covid-19 infection

During the period of the health emergency, several safety problems were observed relating to the lack of common protocols for preventing the spread of the virus, to travel conditions that were in

⁴⁹ In one specific case, the doctor made the following observation: «Its suspension or delayed provision may lead to the risk of a hypertensive crisis with dangerous consequences for normal cardiac activity and even include the hypothesis of serious arrhythmia and alteration of normal coronary function». In another case: «Its withdrawal may lead to gastric damage and even possibly the formation of peptic ulcers with intense painful symptoms». Again, in one case: «Its sudden discontinuation determines the risk of coma crises as well as the appearance of neurological pain and particularly severe anxiety states».

⁵⁰ Situations described above were encountered during the repatriation operation to Nigeria by *chartered* flight on 4 November 2021 and in the CRO charter flights to Georgia on 4 November 2021, 20 January 2021, and 21 April 2022.

⁵¹ The requirement was provided for in Article 3 of the 2014 Regulation and is also present in the current version of Article 3 of the Directive of 19 May 2022.

⁵² During the repatriation operation to Nigeria carried out by a chartered flight on 2 October 2021, the situation of O.I. C. became evident who was undergoing antibiotic prophylaxis treatment for tuberculosis, started four months before the repatriation while he was detained in prison and continued during the month of detention at the Immigration Removal Centre in Gradisca d'Isonzo. According to what was reported to the monitor, a few days before the operation, the doctor employed in the operation, after having received the *fit to travel* from the detention Centre in Gradisca d'Isonzo, lacking specific information on the health conditions of the returnees, had decided to contact the health staff of the Centre. He thus learnt about the therapy administered daily to O.I.C. and was assured by the staff that it would be administered on the morning of his repatriation. From the interview with the Nigerian citizen, however, the monitor learnt that no supplementary quantity had been made available at least for the days immediately following his return to Nigeria and that O.I.C. did not know the name of the drug, as he had always taken it in a detention context and on leaving the Immigration Removal Centre, he had not been given the health records. When the critical issue was represented to the escort chief, the doctor in charge took action to acquire the document, which he handed over and later showed to the foreign citizen as it was written in Italian.



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

Il Presidente

some cases inappropriate compared to the pandemic period, and in general to the application of less stringent rules than those in force for circulation on public transport on the national territory (in particular the obligation to have a valid *green pass*). The monitors found that the minimum caution of measuring body temperature before boarding the air carrier was only adopted on a few occasions, with different practices even within the same operation⁵³.

The requirements concerning the personal conditions of returnees indicated in the operational telegrams, as an exception to the obligation to possess a valid *green pass* for the use of public transport, are also puzzling⁵⁴.

This exceptional regime with respect to the rules set up to protect public and individual health during the period of health emergency appeared even more worrying in the case of *chartered* repatriation flights to Tunisia, for which it was even permissible, in particular cases, to board foreigners who had refused to undergo a swab⁵⁵.

In the opinion of this Guaranteeing Authority, the responsibility of the State Authorities to protect the physical integrity of persons deprived of liberty imposes particularly rigorous and strict conditions of health protection, and in any case no less stringent than those provided for the general population.

As a preventive measure with respect to possible similar or analogous situations, the National Guarantor is interested in knowing the opinion of the Central Health Directorate of the Department of Public Security and the health evaluations underlying the contagiousness containment provisions issued for repatriation operations during the health emergency period.

That stated, on the subject of health protection and health care in forced repatriation operations

the National Guarantor recommends that:

7. recalling that the 2018 'Frontex Code of Conduct' and the 2016 'Frontex Guidelines' are applicable to all persons involved in forced return activities, health personnel involved in operations should receive specific training including the discipline of the monitor's role and prerogatives;
8. in line with the 'Twenty Guidelines on Forced Return' adopted by the Committee of Ministers of the Council of Europe in 2005 and the European Committee for the Prevention

⁵³ In the repatriation operation to Nigeria on 2 October 2021, the foreigners who left from the Immigration Removal Centre in Gradisca before boarding were subjected to temperature measurement, while a similar precaution was not taken with regard to those who boarded at Rome Fiumicino.

⁵⁴ More specifically, as already pointed out in a specific communication of 27 January, consider the joint charter flight of forced repatriation of Albanian citizens organised by the Frontex Agency on 25 January 2022 with the participation of four Member States (in addition to Italy, Spain, Germany, and France), which travelled practically at full capacity with a total of 178 people on board out of 186 available seats without any possibility of social distancing. Among other aspects, during the boarding phase of the Italian contingent, body temperature was not even taken as a precautionary measure. The operative telegram indicated that foreign nationals were to be provided with a *green pass*; a PCR test carried out within 72 hours, or a rapid antigenic test performed within 48 hours of entry into Albania, and a certificate of recovery certifying that they had recovered from the SARS-COV 2 infection issued no later than six months prior to entry into Albania. It therefore seems plausible to think that some of the passengers on board were without vaccination coverage and therefore particularly exposed to the risk of contagion: the monitor confirmed this at least in the case of an Albanian citizen with whom he had a brief conversation.

⁵⁵ Similarly, on the charter repatriation flight to Egypt on 12 January 2022, a returnee was not vaccinated and had not undergone a swab.



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

Il Presidente

- of Torture, all persons involved in a forced return procedure undergo a prior medical check to verify the compatibility of their health conditions with the coercive procedure, in the context of any conditions of vulnerability or ongoing therapeutic programmes;
9. in the presence of particularly serious health vulnerabilities, the health check prior to return is particularly stringent in compliance with Article 5 of the Directive, as interpreted by the Court of Justice of the European Union, and is always carried out by a doctor from the National Health Service;
 10. operational protocols are established and implemented to guarantee - through the use of common forms, in particular the "*Fit to travel form*" annexed to the "Frontex Guidelines" of 12 May 2016 - the issuance of certificates of fitness to return effectively based on stringent assessments of the health conditions of the persons concerned, as well as the timely and complete transmission to the medical staff employed in return activities of the relevant health information, in particular of the pathologies suffered and pharmacological treatments in place;
 11. in joint return operations the above-mentioned "*Fit to travel form*" is always used and filled in in English in order to ensure the transmission of information on the health conditions of returnees to the medical staff responsible for assistance as far as the country of return (Organising Member State or State of return in case of *Collecting Return Operations*);
 12. in the event of ongoing pharmacological treatment, the necessary pharmacological supply is guaranteed also for the days following repatriation or, in any case, a special medical assessment is always carried out to ensure that no damage to the health of foreign nationals can result from sudden disruption of treatment;
 13. with a view to ensuring the subject's right to care and, more generally, the constitutionally guaranteed right to health, in accordance with what is established by the general regulations on access to personal data and on the basis of what is explicitly provided for in Article 3 of the Directive of the Minister of the Interior of 19 May 2022, the following are ensured to foreign citizens detained in Immigration Removal Centres or accommodated in other facilities: access to their health data and, upon discharge, a copy of their health records, possibly with an indication of the treatments under way and, with particular reference to treatments that should not be interrupted, of any therapeutic prescriptions drawn up in a simplified form and in a language comprehensible to the person to whom they are addressed.

D.7 Possible violation of the "non refoulement" principle: a key case

A particularly emblematic case, in terms of the impact on fundamental rights that non-compliant procedures and practices in the field of health protection of persons subject to return measures may entail, was represented during the monitoring activity.

During the preparatory meeting organised the day before the repatriation operation, the monitor became aware of the situation of O.S. suffering from a serious infectious disease and subjected to important and complex therapy, based on the administration of class H drugs, whose use - it is to be reminded - must be limited to hospitals or similar facilities, except in particular cases. Also, on the basis of the opinion of its medical expert, the National Guarantor immediately expressed strong perplexity to the Central Directorate of Immigration and Border Police with respect to the



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

Il Presidente

continuation of the forced-return operation, considering it necessary to acquire clearer information on the situation.

Nevertheless, on the morning of 2 October, the Nigerian citizen was transferred from the Immigration Removal Centre in Palazzo San Gervasio to Rome Fiumicino airport. The monitor then reiterated the perplexities expressed by the National Guarantor concerning the legitimacy of the expulsion (possible violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and therefore of the prohibition of *refoulement for the removal of a seriously ill person to a country where he could not receive adequate treatment*) and its modalities of enforcement. On the day of repatriation, the Nigerian citizen was given an envelope containing health documentation⁵⁶ written only in Italian and a supply of medicines. No prescription was provided, which clarified, in a simplified manner, the correct way to take them. Moreover, no check had been made as to whether the person concerned could actually receive adequate treatment in the country of return.

Pending the examination of the situation, given the strong doubts of the National Guarantor about the completion of the operation, the Nigerian citizen applied for asylum. The repatriation was therefore suspended and he was transferred back to the detention Centre.

The information subsequently acquired by the National Guarantor showed that the Nigerian national had been detained at a penitentiary institute with placement within the Intensive Care Service (Sai)-Infectious Diseases Department, without interruption from 18 September 2019 until 25 August 2021, the day of his release. On the same day, the Prefect of Naples decreed his expulsion and the Police Headquarters adopted the measure of detention at the Immigration Removal Centre. On the same day, the person concerned underwent a medical examination at a public hospital which, without any mention of attached medical documentation (even though he had just been discharged from the Intensified Assistance Service (Sai) of a prison) certified the "absence of external infectious pathologies that could affect life in the restricted community". When he arrived at the Immigration Removal Centre, the Justice of the Peace validated his detention on 26 August 2021. The relevant report makes no mention of his illness.

According to the Police Headquarters, 'only after entering the Immigration Removal Centre did the Nigerian citizen hand over a set of medicines to the health service of the centre which, noticing the type of medicines, immediately moved the guest from a shared module to an isolated module and prescribed a blood test to confirm the pathology'.

After the illness was ascertained, a new assessment of suitability to remain at the facility was not carried out and the person concerned remained detained in a separate module from the rest of the detained population.

It was only after the re-entry of O.S. in the Immigration Removal Centre as an asylum seeker that the centre's doctor requested the local health authority to carry out a new assessment of his suitability for life in detention. After 45 days of stay at the Immigration Removal Centre and 12 since the repatriation attempt, the Health Authority in Potenza (Asp) declared his non-compatibility with restricted community life: "having seen the documentation exhibited, which shows that the

⁵⁶ These were the "treatment scheme" and the "nursing scheme", documents in use by the staff in charge which were not suitable for ensuring an effective understanding of the correct dosage. Consideration must also be given to the circumstance that the person concerned had never taken the drugs himself as they had always been administered to him by medical staff in a detention facility.



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

Il Presidente

detainee is suffering from serious pathology", also considering that "the clinical-diagnostic and therapeutic situation appears to be difficult to manage from the health point of view", it attested that "due to the risk of worsening of the pathology, there are no conditions of suitability for restricted community life".

Moreover, the certifying doctor added a very important indication - which also relates to the legitimacy of the repatriation - from the point of view of the continuity of protection and care that must be guaranteed to the foreign national: 'Finally, it is emphasised that the subject also needs to have their state of health and pathology periodically monitored with diagnostic and clinical examinations to be carried out at specialist centres and facilities'.

This case encompasses a few issues repeatedly raised by the National Guarantor and calls for a serious reflection on the need for certain channels of communication to be established between the various administrations that perform custody tasks in different capacities so that there are no gaps in protection when a person remains under the responsibility of the State by virtue of several restrictive measures applied without interruption.

E. THE USE OF FORCE AND OF COERCIVE MEASURES

As widely set out in previous Reports, the issue of the use of force and means of coercion remains one of the most critical aspects of forced-return operations. The National Guarantor considers it useful to propose, hereunder, a reflection that primarily questions the responsibilities of those who have legislative duties and that also puts at risk those who must then concretely carry out the operations and face the difficulties that these inevitably may present.

E.1 The regulatory gap concerning the use of measures of restraint and how they should be applied

According to what has already been indicated in the introduction, the organisation and execution of forced-return operations is regulated by *Decision 2004/573/EC of 29 April 2004*, without having in the domestic sources of law a specific supplementary discipline that fully defines the methods of coercive action.

The European rule clearly indicates the cases in which coercive instruments may be applied, while it leaves it up to the States to define, according to their own legal systems, the instruments permitted and the manner in which they may be used, limiting themselves to recalling the fundamental principles of proportionality, reasonable use of force, and protection of the dignity and physical integrity of the returnee.

The circular of the Central Directorate for the General Affairs of the State Police of the Department of Public Security of 20 January 2016, with which the "multi-purpose Velcro strap" was introduced on an experimental basis among the equipment of the State Police personnel, established its possibility of use, in a general way, within the perimeter of Article 53 of the Criminal Code and, in the case of the execution of a forced repatriation, in accordance with the above-mentioned European decision, «against those who refuse or oppose removal». However, as noted in the same "Guidelines for Officers in charge of escort services on board chartered flights" edited by the Central



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

Il Presidente

Directorate of Immigration and Border Police⁵⁷, there is no primary source instrument that defines the type of means of coercion available to escort personnel. Just as, on the other hand, there is a lack of provisions on the specific methods of application, authorised personnel, health protection aspects, communication and recording obligations in the event of use, and operational indications to ensure effective implementation of the principle «no removal at all cost»⁵⁸ (Common Guideline 3.2 of the Annex to Decision 2004/573/EC of 29 April 2004).

In the sphere of penal execution, the discipline of Article 41 of the Prison Law, while derogating from the principle of strict legality establishes: «No means of physical coercion may be used that is not expressly provided for in the regulations»; the latter provides in Article 82 that «Physical coercion, permitted for the purposes indicated in the third paragraph of Article 41 of the law, is carried out under medical supervision with the use of the means used for the same purposes in public hospitals». With regard to the specific use of handcuffs during transfers, as we shall see in more detail, Article 42-bis of the Penitentiary Law outlines a determined scope of application.

The absence of similar guarantees in the area of forced returns risks undermining the fundamental right to protection of the person deprived of liberty against coercive action by state powers and opens up risks of discretion, inadmissible in an activity protected by the guarantees of Article 13 of the Constitution and Article 5 of the European Convention on Human Rights.

Consider, in particular, the coercive interventions with a greater impact on the person carried out with the substantial complete immobilisation of the body through the restraint of the upper and lower limbs by means of Velcro straps⁵⁹, the lifting and embarkation of a person onto the aircraft, the immobilisation of the person to the aircraft seat, again by means of Velcro straps⁶⁰, or the

⁵⁷ "In no normative reference can however be found any indication of the type of coercive measures that can be employed in repatriation operations..."(Guidelines for Persons in Charge of Escort Services on Board Charter Flights, version updated July 2021).

⁵⁸ According to Decision 2004/573/EC of 29 April 2004, this principle applies (even simply) if there is a doubt surrounding the execution of legal coercive measures, due to the resistance and dangerousness of the returnee, that could violate the dignity and physical integrity of the returnee.

⁵⁹ This was the case, for example, in the repatriation operation to Tunisia on 7 February 2022, during which two foreign nationals who were protesting against repatriation at the Palermo airport were strapped around their torso and legs, placed in a horizontal position and carried onto the aircraft. The same procedure had already been applied to another returnee embarked in Trieste. On the charter flight to Egypt on 9 September 2022 A. A. S., coming from Palazzo San Gervasio (PZ), was bound hand and foot, and held on the ground inside the waiting room of Rome Fiumicino airport. He suffered visible head injuries, self-inflicted by banging his head several times against a wall, according to the escort. The repatriation was suspended, and the Egyptian citizen was transferred to hospital.

⁶⁰ The practice of restraining a person in the aircraft seat was observed in the following operations: 1) in the charter flight carried out on 15 November 2021 to Tunisia a returnee who had shown signs of agitation shortly after boarding was contained with Velcro straps applied to his arms and blocked to the seat for the entire flight phase lasting approximately one hour; 2) in the charter flight carried out on 17 February 2022 to Tunisia a returnee who was showing passive resistance to repatriation was immobilised with straps applied to his hands and feet in order to be boarded (11.30); subsequently (from 14.00) inside the aircraft his torso was secured to the seat with additional ties. The coercive devices were removed on arrival in Tabarka (15.10 hours); 3) In the repatriation operation carried out towards Georgia on 21 April 2022 in the manner of a *Collecting return operation* G. S. who manifested passive resistance to repatriation was restrained, carried onto the aircraft and immobilised for part of the flight with his chest and arms blocked to the seat by two Velcro straps applied at two different heights of the torso (wrist and ankle straps maintained by the previous immobilisation on the inter-runway vehicle).



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

Il Presidente

application of the *French body cuff*⁶¹. In all these hypotheses, which are not at all uncommon in forced repatriation operations, returnees are subjected to a substantial use of force by the Police officers and mechanical restraint that may affect the person's very physical and psychological safety. Instead, the police officer who is required to take measures to carry out the repatriation is entitled to have certain elements indicating the limits of the operation and the legitimacy of the means necessary for this purpose.

That is why, also for the protection of the officers themselves, it is essential that the matter be regulated and accompanied by effective guarantees.

In the last Report on a repatriation operation, the National Guarantor highlighted «the importance that the medical personnel present at the operations carry out a constant monitoring activity aimed at verifying the modes of implementation of the manoeuvre and the health conditions of the person subjected to such measures». The medical assessment is also essential *ex post* for any medication and treatment that may be necessary as a result of the coercion suffered and in order to update the assessment of suitability for repatriation. Moreover, it is essential, according to the legal obligations of doctors and to all those exercising a medical role, to document any signs present on the person's body with the simultaneous recording of their relative statements, including any complaints of ill-treatment suffered and observations regarding the compatibility of the reported ill-treatment with the objective findings identified during the medical examination⁶².

The National Guarantor requests knowledge on the regulatory source of the instructions given to staff and on the relevant regulations on the application of Velcro straps to immobilise a person to the aircraft seat and the use of the French body cuff.

This Guaranteeing Authority also asks to be informed about the '*Gost body cuff*' or '*Italian body cuff* in experimentation', according to the operative telegram concerning an operation scheduled for 14 September 2022.

E.2 Critical Practices in the use of means of restraint

⁶¹ In the operations covered by this Report, the French body cuff was used in the following cases: 1) in the joint repatriation operation carried out towards Albania the French body cuff was applied on departure from the Immigration Removal Centre in Rome-Ponte Galeria to a returnee who was agitated also due to the lack of the possibility of telephoning (a possibility that shortly before boarding the plane was granted to him but that in the end was refused to him as it was too late). The device was maintained for approximately two hours until shortly after take-off; 2) on the repatriation charter carried out towards Tunisia on 31 January 2022, the device was applied in the pre-return phase at the Immigration Removal Centre in Gradisca d'Isonzo towards a person who had adopted a self-harming behaviour several times. Having arrived at the Palermo airport completely immobilized (in addition to the French body cuff she had wrist, ankle, knee and shoulder blocked with straps) she was carried to the consular hearing and by the same modality she was subsequently embarked onto the international transfer flight.

⁶² In the repatriation operation to Georgia on 21 April 2022 carried out in the manner of a *Collecting return operation*, G. S. during the boarding phase and during the flight underwent a major restraining operation at the end without any assessment by the doctor: during the restraint, in fact, he was limited to a remote visual check of the situation. Subsequently, the monitors of the Public Defender of Georgia, who were present on the transfer flight to Georgia, acquired a document signed by G. S. drawn up with the support of the doctor of the health services of the Migration Department of the Ministry of Internal Affairs of Georgia employed on the Düsseldorf - Tbilisi leg. It describes in detail the marks on the foreign national's body and contains a statement made by G.S. that these injuries were caused during transport to Italy by non-uniformed personnel and police. The matter is also being investigated by Frontex.



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

Il Presidente

The second critical aspect with regard to the use of force concerns the use of restraining devices, particularly wrist bands, outside the scope established by the European standard.

Also, with regard to the immobilisation of wrists, in the absence, as already mentioned, of a specific rule, the general principles of the sector apply, which admit its use «on individuals who refuse or resist removal» (para.3.2 (b) Decision 2004/573/EC of 29 April 2004).

However, as indicated in previous Reports, regardless of the manifestation of conduct opposing repatriation, it is the practice that these restraining measures are automatically used on all returnees arriving at the airport of departure and are maintained without interruption throughout the pre-departure phase, during embarkation and for part of the in-flight phase at least until the flight altitude is reached⁶³.

In the return operation carried out on 6 September 2022 to Tunisia, the monitor noted that coercive measures were also applied on two Tunisian nationals whose removal was recorded in their personal files as 'voluntary' (their personal files being consulted at the Immigration Removal Centre in Turin⁶⁴). Despite this situation of exclusion of the danger of attempted escape or other risks related to the refusal of return, the two persons remained with straps on their wrists, like all the other returnees, from the departure from the Immigration Removal Centre at 5.15 a.m. until 2.20 p.m., the time of landing in Tunisia.

On some occasions, monitors found that the devices were not even removed to allow them having their meals⁶⁵ or using the toilets⁶⁶.

Moreover, it is not unusual to see escort personnel supporting returnees - impeded in their mobility - in the fulfilment of the most elementary needs, such as arranging their clothes or carrying their hand luggage during the boarding phase; however, it is also not uncommon to observe that they have to do this themselves even though their hands are immobilised.

In addition to this, the security protocols adopted in every transfer of a person within the airport provide for the use of wrist restraints and the accompaniment under the arm of two escort officers.

This extensive - and improper - use of coercive means also concerns the initial phases, as observed in the Immigration Removal Centre in Bari and in Gradisca d'Isonzo, during the pre-return phases of a number of charter flights to Tunisia on 20 December 2021, 24 January and 7 February 2022

⁶³ According to the monitors, in the following operations coercive tools remained applied throughout the in-flight phase. 1) on the charter flight made to Nigeria on 4 December 2021, the returnees had their wrists tied for the entire duration of the Rome-Lagos flight (more than 5 hours); 2) on the charter flight to Tunisia on 15 November 2021, the wrist straps were maintained until arrival in Tabarka; 3) on the charter flight to Nigeria on 7 May 2022, wrist straps were applied on a returnee for the entire duration of the journey from Trieste to Lagos (more than 9 hours).

⁶⁴ When asked why a voluntary return procedure was not followed, it was answered that both returnees had expressed a certain urgency to return to their country, with timeframes not compatible with the activation of a voluntary return measure.

⁶⁵ Repatriation *charter* flight to Tunisia on 20 September 2021 (note the monitor during the meal at the airport).

⁶⁶ Repatriation *charter* flight to Tunisia on 15 November 2021 and repatriation *charter* flight to Albania on 25 January 2022.



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

Il Presidente

respectively⁶⁷.

In the course of the operations, the monitor was told that the application of wrist Velcro straps meets in particular the security requirements linked to the possible concealment by returnees of means they may use for self-harming or other stuff in order to avoid repatriation. In this regard, it should be noted that in the course of the operations, the environments and means of transport are regularly cleansed, the returnees are subjected to multiple security checks by the teams in charge of their transfer, and that in any case the escort personnel employed in the international return operation perform a thorough check on the person and on their baggage immediately upon taking charge of the person and in any case before boarding the aircraft.

On this critical issue, the Ministry of the Interior in reference to the "Report on the monitoring of forced repatriation operations of foreign nationals" of 31 August 2021 responded by specifying that: «Instead, regarding *charter* flights, due to the always very high number of foreigners to be repatriated (around 20/40 foreigners), the risk assessment is to be considered always high. Consequently, in the boarding and take-off phases, during which foreigners normally may engage in acts of self-harm and/or resistance to avoid repatriation, Velcro straps are applied».

In the opinion of this Authority, these reasons justifying the application of coercive measures is not supported by any field legislative framework, in a multiplicity of aspects.

Firstly, the "Frontex Guidelines" of 2016 provide that States, in the framework of the preparatory activities for return, carry out a preliminary risk assessment aimed at defining the organisational modalities of the operation (establishing the number of escort operators, the size of the *back-up team* and determining the possible use of coercive means), but also provide that the same should be carried out *individually on the basis of the previous behaviour of the individual subjects*⁶⁸. In conducting such a predictive analysis, there is therefore no room for general assessments related to the way the return operation is carried out. Moreover, the presence of a large number of foreigners to be repatriated is a typical feature of joint return operations, such as those governed by the Guidelines.

Moreover, the risk assessment, although carried out in the timeframe provided for by the standard, is aimed at preliminarily establishing the mere possible use of the devices⁶⁹, the application of which remains in any case limited «on individuals who refuse or resist removal» (Council of the European Union Decision of 29 April 2004 no.573) or, depending on the general provisions, when there is a "need to repel violence or to overcome resistance to the Authority, or in any case to prevent a series

⁶⁷At the Immigration Removal Centre in Gradisca, foreigners had to wake up in the very early hours of the morning, were asked to prepare for departure and shortly afterwards police officers applied wrist straps on them without any clear need for security.

⁶⁸ «6.1.16 Risk assessment - "The OMS and each PMS carry out an individual risk assessment of their returnees (based on factors such as previous behaviour and removal history)", Guide for Joint Return Operations by Air coordinated by Frontex adopted on 12 May 2016.

⁶⁹"6.1.16 Risk assessment - " [...]Such assessment should be used to determine the number of escorts and ground staff and the size of the back-up team in order to ensure security during all the JRO phases, as well as for the determination of the possible use of coercive measures", Guide for Joint Return Operations by Air coordinated by Frontex adopted on 12 May 2016.



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

Il Presidente

of offences against public order, against property or against the person" (Article 53 of the Criminal Code).

The 2018 'Frontex Code of Conduct' also specifies that means of restraint may be applied «*when strictly necessary on returnees who refuse or resist removal or in response to an immediate and serious risk of the returnee escaping, causing injury to themselves or to a third party, or causing damage to property*». Thus, the provisions established by the European Agency state that a hypothetical risk is not sufficient, but the manifestation of an immediate and serious risk of escape is necessary⁷⁰.

Finally, from a factual point of view, it must be considered that the main response to the high level of risk established beforehand in the case of the organisation of *charter* flights is the large number of escort officers employed in the operations, who continuously monitor foreign nationals. Considering 22 monitored flight operations in the period from 31 August 2021 to 21 April 2022⁷¹, an average of three escort officers were employed for each returnee. The ratio falls to 2.8 in the case of monitored returns to Tunisia and reaches 3.7 for operations to Georgia and Egypt.

In view of this, it must be reiterated that «such use of means of coercion, massive and indiscriminate, contrary to the principles of necessity, proportionality, reasonable use and recourse as a last resort, not based on an individual risk assessment subject to continuous verification during the operation, as repeatedly recalled by the National Guarantor - is unlawful and constitutes a violation of human dignity as indicated by the ECtHR in numerous rulings⁷²» (Thematic Report on the monitoring of forced-return operations of foreign nationals, January 2019 - June 2021 of 31 August 2021).

Lastly, the monitor reported that in the charter operation carried out to Egypt on 7 September 2021 in Palermo, some migrants, who presented a calm and submissive attitude, were made to sit on the ground inside a room and were guarded by the Guardia di Finanza personnel in public order equipment, with truncheons held. Also, in the repatriation operation carried out on 15 November 2021, during the pre-departure phase at the Palermo airport, it was observed that the police contingent coming from Caltanissetta was armed and holding truncheons while guarding the foreigners transferred from the Repatriation Detention Centre who were seated in the coaches. On that occasion, the monitor also heard a policeman address a foreigner's need to go to the toilet with the words reported in footnote 21 of this Report.

Finally, in the repatriation flight to Georgia on 4 November 2021, carried out in the modes of a *Collecting return operation*, a critical episode occurred, which raises a question of possible mistreatment due to an excessive use of force against G.S., who had expressed his opposition to the repatriation during the aircraft boarding phase. The incident was the subject of an exchange of letters with the Central Directorate of Immigration and Border Police immediately after the operation, also in relation to a further profile of serious criticality that had occurred during the

⁷⁰ It is noted, however, that in order to counter escape risks, it is normal practice to take away shoelaces and belts.

⁷¹ Of 29 operations monitored during the reporting period, only 22 presented complete data.

⁷² *Selmouni v. France*, judgement of 28 July 1999 paragraph 99, *Berlinski v. Poland* judgement of 20 June 2002 paragraphs 59-65. "In respect of a person deprived of their liberty, recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3".



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

Il Presidente

operation and is now being examined by the Frontex *Fundamental Rights Officer* who has opened a verification procedure.

The National Guarantor, reiterating what has already been recommended in previous Reports, recommends that

14. during forced return operations the use of force and coercive measures is resorted to in full compliance with the European and international *soft law* standards, which allow their use only as a measure of last resort, when strictly necessary on "returnees who refuse or resist removal" (Decision (EC) 573 of 2004⁷³) or in response to an immediate and serious risk of the returnee escaping, causing injury to themselves or to a third party (Article 7 of the 2018 "Frontex Code of Conduct"). They must not be systematic: on the contrary they should be justified by an individual and dynamic risk assessment ("Frontex Guidelines" of 2016);
15. in order to protect the health of returnees, restraining interventions, which involve the intensive use of force, are always monitored by medical personnel who constantly check the health condition of the person and whether he/she is able to support the coercive measure applied;
16. at the end of these interventions, the medical personnel ascertain the health conditions of the persons subjected to the coercive measure in order to verify that they are in any case compatible with the repatriation procedure, whether there is a need for any medication and treatment and document any signs present on the body by recording any relevant statements made by the person concerned, including any complaints of ill-treatment suffered and their own observations as to the compatibility of the reported ill-treatment with the objective findings identified during the examination.

F. THE MATERIAL CONDITIONS OF THE WAITING AREAS AT THE AIRPORT

In the repatriation operations covered by this Report, the Palermo and Bari airports were mainly used as stopover or collecting places.

⁷³ In the guidelines developed for joint return operations in the annex to the EU Council Decision of 29 April 2004 on the use of coercive measures it is established that

- « (a) coercive measures shall be implemented with due respect to the individual rights of the returnees;
- (b) coercion may be used on individuals who refuse or resist removal. All coercive measures shall be proportional and shall not exceed reasonable force. The dignity and physical integrity of the returnee shall be maintained. As a consequence, in case of doubt, the removal operation including the implementation of legal coercion based on the resistance and dangerousness of the returnee, shall be stopped following the principle 'no removal at all cost';
- (c) any coercive measures should not compromise or threaten the ability of the returnee to breathe normally. In the event that coercive force is used, it shall be ensured that the chest of the returnee remains in upright position and that nothing affects his or her chest in order to maintain normal respiratory function;
- (d) the immobilisation of resisting returnees may be achieved by means of restraints that will not endanger their dignity and physical integrity;
- (e) the organising Member State and each participating Member State shall agree on a list of authorised restraints in advance of the removal operation. The use of sedatives to facilitate the removal is forbidden without prejudice to emergency measures to ensure flight security;
- (f) all escorts shall be informed and made aware of the authorised and forbidden restraints».



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

Il Presidente

Within the respective premises dedicated to repatriation activities and separated from the area used for ordinary passenger traffic, returnees may spend between two and three hours depending on the procedures to be carried out, their total number and the flight plan.

Palermo Airport

About the Sicilian airport premises, the serious critical issues highlighted in previous Reports must once again be reiterated regarding the degrading physical conditions, the absence of minimal furniture and services and the configuration of the spaces which, as repeatedly stated, can in itself represent a risk factor for the safety of the operation.

In the time span covered by this Report there has in fact been no improvement: while waiting, foreigners and escort personnel continue to remain in environments that are inadequate in various respects⁷⁴. Consider, for example, the circumstance that during the waiting time, except for a brick bench that can be used by a few, foreigners can only sit on the floor with the help of someone who supports them due to their reduced mobility due to the wrist straps applied.

In September 2021, the Ministry of the Interior informed the National Guarantor that an area was being identified near the airport where a *ad hoc* structure could be built, as per the project drawn up by the Department of Public Security in cooperation with the Palermo Police Headquarters. Since then, there has been no further news on the matter.

The National Guarantor considers it urgent to interrupt the continuation of these conditions and stigmatises the fact that no action, not even minimal, has been taken, also in view of the intensive use that is made of these local environments (there are generally two charter flights to Tunisia a week).

Bari Airport

At Bari airport, the waiting room is a large empty room, equipped with folding chairs for the returnees. The accommodation is decent, although some monitors noted poorly maintained conditions and the absence of sanitary facilities⁷⁵. In addition, there are no vending machines for drinks and snacks, nor telephone apparatus.

The National Guarantor recommends that:

17. all waiting areas used in operations are always in a good state of repair and cleanliness, suitable for shelter and insulation from the weather, furnished with seating, equipped with public telephones and provided with snack and beverage dispensers, equipped with a room for sanitary use and provided with directly accessible toilets.

G. SECURITY CHECKS

The measure is provided for - as is well known - by both the rules of the International Civil Aviation Organisation (ICAO) and by the Decision of the Council of the European Union of 29 April 2004 No.573. The latter states that «all returnees shall undergo a meticulous security search before they

⁷⁴ Dirty conditions and the absence of soap, sanitising solution, toilet paper and hand wipes in the toilets were reported at times. The toilets are located in an outdated container, with rusty parts and in unsafe conditions.

⁷⁵ The note relates to the monitoring of the charter flight to Tunisia on 7 February 2022.



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

Il Presidente

board a joint flight. All objects that could be a threat to the safety of individuals and to the security of the joint flight shall be seized and placed in the luggage hold».

This case represents a particular control hypothesis, justified by the need to ensure the security of the forced repatriation operation, and undoubtedly goes beyond the provisions on searches laid down by the Prison Law and by the Code of Criminal Procedure, accompanied by the constitutional guarantees set out in Article 13, designed to protect the inviolability of the body and of their dignity.

Nevertheless, in practice it may be the case that the checks on returnees are carried out with forms similar to those of a personal search and with modalities considered exceptional even in the context of the penitentiary regime⁷⁶, with the risk of significantly affecting the dignity of foreigners. Consider the practice of the strip search (including intimate parts) repeatedly detected by the monitors as, for example, on the occasion of the checks carried out at Palermo airport against all Tunisian citizens repatriated by charter flight on 30 August 2022⁷⁷. While, during the monitoring of the repatriation charter flight carried out to Egypt on 9 October 2021 and of those carried out to Nigeria on 2 October 2021 and 7 May 2022, the mortifying practice of strip searches with squats⁷⁸ was observed, in the first case, moreover, inside rooms with poor ventilation and insufficient heating as at Bari airport.

During the same operation, it is frequent, moreover, that the foreign national is subjected to multiple checks by the various escorting teams overseeing his or her transfer, both within the national territory and in international transfers.

The National Guarantor expresses its opposition to the adoption of highly invasive forms of control in a systematic manner that is not justified in specific and individual terms.

Moreover, these are typical forms of investigative activity, improperly included within the typology of 'security checks' provided for by the European legislation or implicitly considered as part of the restrictions of personal freedom related to the coercive measure of forced return. All this happens in the absence of a specific discipline on the executive and procedural modes. The National Guarantor therefore requests an opinion from the Ministry of the Interior on the relative conditions of legitimacy⁷⁹.

However, it is noted that there is a lack of operational provisions that clearly differentiate the way in which check procedures are carried out in the various contexts in which police personnel operate and that clearly establish the limits of the control power exercised over persons subjected to a return operation. This requirement is particularly important in the initial phases of operations, during which personnel who have not received specific training on forced returns are employed.

⁷⁶ See the circular of the Department of Prison Administration of 16 February 2001 on "Sentence of the Constitutional Court on 15.11.2000. Personal searches and corporal inspections on the detainee".

⁷⁷ This practice also emerged in relation to the transfer to Rome of E.P. repatriated to Lagos on 12 August 2022 within the framework of a joint repatriation operation. The dynamics of the verification carried out on that occasion was the subject of an immediate exchange of letters with the Police Headquarters concerned also in relation to a further critical profile.

⁷⁸ In the case of the repatriation of 9 October 2021, the returnees were subjected to this form of verification at Bari airport, whereas in the case of the other two operations, only some foreign nationals were subjected to this form of inspection.

⁷⁹ The Constitutional Court in its judgement No. 526 of 15 November 2000, rejecting the question of the constitutionality of Article 34 of the Prison Law on the subject of personal searches, specified that searches are implicated in the prison detention regime but the power to search can be considered legitimate only if exercised in compliance with a series of limits and conditions, including, in particular, the procedural modes providing for the detailed documentation of the activity carried out in order to ensure the effective protection of the rights of detainees in court.



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

Il Presidente

Moreover, indications on how to carry out personal checks on foreign citizens are also absent in the recent regulations on the management of the Immigration Removal Centres⁸⁰.

Also, with a view to avoiding unlawful practices and detrimental to the rights of foreign citizens, for some time now the National Guarantor has been calling for the adoption, except in specific justified cases, of less intrusive techniques for checking persons, such as, for example, those in use at airports, which provide for the use of electronic instruments. Bearing in mind that the use of alternative control tools for the detection of metal objects potentially detrimental to security (metal detectors) is also encouraged in penal institutions⁸¹, this Guaranteeing Authority reiterates the recommendation already expressed in previous reports on the adoption of such technological tools, also on the basis of similar experiences developed by European countries engaged in forced repatriation activities⁸².

It also points out that the environments in which the checks are carried out must be appropriate to preserve the confidentiality and the dignity of foreigners⁸³.

The National Guarantor recommends that:

18. all personnel employed at any stage of a forced return operation are informed that security checks on returnees cannot be systematically conducted with individuals fully naked and requested to bend forward or squat;
19. if, on the basis of well-founded suspicion, recourse to personal and intimate search is unavoidable, this must take place with absolute protection of confidentiality, with respect for the dignity of the person involved, without any possibility of the search be conducted at the presence of persons not involved in the search; with a record of the event, the reason for it and the outcome.

H. ACCESS TO BASIC NEEDS

In the charter flight for the repatriation of Egyptian nationals on 7 September 2021, the monitor reported that a group of returnees from the Immigration Removal Centre in Palazzo San Gervasio were not given a packed lunch, as indicated in the telegram of the operation. The foreign nationals were therefore left without food and water from 8.00 a.m. (when they had had breakfast at the centre) until 5.00 p.m. when they received their meal on the transfer flight to Egypt.

The National Guarantor considers it superfluous to make a recommendation in this regard as it is certain that the authorities in charge of managing repatriations fully share the need to ensure access

⁸⁰ Directive annexed to the Decree of the Minister of the Interior of 19 May 2022.

⁸¹ According to the second paragraph of article 74 of Presidential Decree no.230 of 30 June 2000 (Regulations for the implementation of Law no.354 of 26 July 1975) "The search may not be carried out when it is possible to perform the ascertainment by means of control instruments", while the circular of 16 February 2001 of the Department of Prison Administration, with a view to guaranteeing an implementation fully respecting the constitutional dictate, expresses the intention "to resort to increasingly more suitable control instruments (*metal detectors* and similar devices) which allow the progressive reduction of the recourse to ordinary searches, ultimately including their complete replacement".

⁸² For example, Greece; Frontex *Factsheet for Forced Return Monitors*, 2021.

⁸³ In the repatriation operation for Nigeria on 4 December 2021, some of the controls carried out inside the Immigration Removal Centre in Rome-Ponte Galeria took place in a passage room.



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

Il Presidente

to basic goods and that, therefore, they will ensure the provision of food during each operation, also providing for the distribution of bags with sandwiches and spare drinks, in the case of intermediate stages of an operation at airports or transit prisons, as provided for in the practices of some countries observed during the monitoring of joint operations⁸⁴.

I. THE PROTECTION OF PROPERTY

As already mentioned in several Reports drawn up following specific monitoring operations, it should be noted that the protection of the property of repatriated persons continues to be neglected and subjected to careless procedures. In most cases, foreign nationals arrive at the departure airports with their personal belongings collected in plastic bags, sometimes already torn due to the various transfers. On each one is taped a sheet with the name of the owner handwritten on it⁸⁵.

In addition, the practice of not issuing returnees with a receipt for checked luggage continues. In the event of mishaps in the return of luggage to its destination, foreign nationals therefore have no documentation to prove their right to have their belongings back or to be compensated in any case. In the repatriation flight carried out to Georgia on 4 November 2021 with the modes of a *Collecting return operation*, it was observed that the form *Protocol on the hand-over of the person* - in fact used as a receipt for the valuable personal belongings kept by the Italian Police and then handed over to the Georgian Police to be returned to the legitimate owner - although being in English, had been filled in in Italian.

20. The National Guarantor recommends greater attention to these aspects, which constitute essential elements for the person being repatriated to a country that, although considered their country of origin, is not always familiar to them. For this purpose a system of baggage labelling is required that provides for the use of professional identification labels as well as the issuance of a receipt in English indicating any packages delivered.

L. THE FRONTEX COMPLAINT MECHANISM

As already highlighted in several previous Reports on forced return operations carried out with the support of Frontex, the complaint mechanism regulated by Article 111 of the EU Regulation 2019/1896 of the Parliament and of the Council of 13 November 2019 regarding the functioning of the Agency is substantially lacking in effectiveness. There are probably multiple reasons for the non-use of the instrument in the context of forced returns and they are partly related to the likely lack of interest of foreign nationals to have recourse to it once the violation has occurred and the return has taken place.

⁸⁴ The practice was observed in Germany during the monitoring of joint CROs to Georgia.

⁸⁵ In general, the Immigration Removal Centres are not provided with more resistant bags, even of simple workmanship, and the labelling continues to take place manually by the escort officers without the use of a professional system offering greater guarantees of property protection. It was positively observed, in the repatriation operation carried out to Egypt on 9 October 2021 that at the Immigration Removal Centre in Bari each returnee was provided with plastic bags with zips to store their personal belongings.



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

Il Presidente

Apart from the inherent critical aspects of the remedy, the practice of not providing foreign nationals with any information about this possibility persists, even in cases where returnees express explicit complaints about the treatment they have suffered.

As already pointed out in the paragraph on the use of force, in the operation carried out towards Georgia on 21 April 2022 in the modes of a *Collecting return operation* organised by Germany, a critical episode occurred which raises a question of possible ill-treatment towards G.S., who, by expressing his opposition to the return, underwent a restraining action which was not easy. The foreigner concerned repeatedly complained about his treatment without, however, being informed of his right to lodge a formal complaint with the European Agency and/or to receive the appropriate forms.

Similarly, a Tunisian citizen⁸⁶, during the operation carried out on 7 February 2022, reported apparently circumstantiated complaints concerning the treatment he had suffered in the initial phase of the operation, without, however, receiving any kind of information regarding the possibility for a complaint procedure.

That stated, in recalling the general principle set out in guideline 20 of the 'Twenty Guidelines on Forced Return' adopted by the Committee of Ministers of the Council of Europe in 2005 concerning the need to ensure that an independent investigation is initiated in the case of complaints of ill-treatment and the essential requirements of the Council of Europe's Committee for the Prevention of Torture (CPT) aimed at ensuring that complaints mechanisms constitute an effective guarantee of protection for persons deprived of their liberty⁸⁷,

The National Guarantor recommends that:

21. all foreign nationals subjected to a forced-return operation carried out with the support of Frontex (including those that take place via national charter flights) are provided with, in

⁸⁶ According to the monitor, O.K. arrived to Palermo airport from the Immigration Removal Centre in Caltanissetta wearing a pyjama and slippers. He declared to the monitor, supported by the mediator, that he had not received food since the beginning of the operation and that he had been ill-treated by the Police for opposing the repatriation. In particular, he reported that he had objected to the repatriation inside the Immigration Removal Centre, that he was then kicked, dragged outside the facility and on the way to the airport was forced to travel with the windows open and finally mocked by the police officers for his complaints about the cold. The person showed abrasions on his hand and his clothes were soiled with dirt and dust. The monitors immediately reported the circumstance to the escort leader, also with a view to carrying out a medical examination, which the medical staff decided to postpone to the in-flight phase. However, during the boarding phase of the repatriation flight, O. K. again expressed opposition and was therefore restrained and carried onto the aircraft. In the context of the occurrence of this critical event, the verification subsequently carried out by the doctor remained focused on the effects of the restraint measure, without evaluating the marks on the body which, according to the foreign national's statement, could be referred to alleged ill-treatment by the escort personnel employed in the initial phases of the operation.

⁸⁷ The European Committee for the Prevention of Torture in its 2017 Annual Report emphasised that for complaints mechanisms to be effective «*they should be available, accessible, confidential/safe, effective and traceable. As part of these guarantees, persons deprived of their liberty should promptly receive information, both verbally and in writing, about all avenues of complaint, in a language they can understand. However, during the present return operation, none of the returnees was informed about this right, nor were they told how to make a complaint, and there were no complaints forms provided during the flight, rendering the right to complain ineffective in practice. The European Committee for the Prevention of Torture recommends that the German authorities provide adequate information to returnees on how to make a complaint, both verbally and in writing, in a language they can understand, prior to the departure of the flight. The complaints mechanism should be made accessible and effective in practice*».



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

Il Presidente

a language they understand, information about the possibility of reporting to the European Agency violations of their fundamental rights during a forced return procedure and the standardised complaint form is made available to them in accordance with Article 111(10)⁸⁸ of Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 (Regulation on the functioning of the Agency).

M. FURTHER OBSERVATIONS

Access to international protection

No situations of violations of the right of access to the international protection procedure were reported to the National Guarantor during the monitored operations, and the monitors reported that with regard to those returnees who expressed such a willingness, removal was suspended.

Considering, however, that in such cases the return procedure was suspended following a specific report of the monitor to the escort leader, it is recalled that the obligation to promptly report to the competent authority the manifestation of a request for international protection by a returnee is for all participants in the operation, including escort personnel⁸⁹.

Finally, it must be reiterated that this right must be fully ensured at every stage of the return procedure and that at detention facilities in particular, the relevant information must always be provided even during short stays⁹⁰.

Event Recording

The last Report highlighted the absence of a mechanism for recording critical events which, in addition to the generic service reports drawn up from time to time by the officer in charge, would feed useful elements for analysing repatriation activities into a centralised database, visible in real time by all hierarchical levels of the Administration, as well as consultable by the Guaranteeing Authorities.

«In particular, it is essential to record cases of: acts of aggression against staff, recourse to the use of force and coercive measures, acts of restraint, interventions by medical staff, protest demonstrations and escape attempts, episodes of self-harm, complaints and requests expressed. The collection and cataloguing of data of this kind in a national database that can be consulted on

⁸⁸ «The Agency shall ensure that information on the possibility and procedure of making a complaint is readily available, including for vulnerable persons. The standardised complaint form shall be made available on the Agency's website and in hardcopy during all activities of the Agency in languages that third-country nationals understand or are reasonably believed to understand».

⁸⁹ "Participants must refer persons seeking international protection and vulnerable persons without delay to the competent authorities of the relevant MS that are responsible for considering their requests", Article 10 of the 2018 Frontex Code of Conduct.

⁹⁰ On the charter repatriation flight to Tunisia on Monday 15 November 2021, a returnee, who had arrived at the Immigration Removal Centre in Palazzo San Gervasio on the evening of Friday 12, directly asked the monitor for information about the possibility of applying for protection. The monitor reported the circumstance to the escort leader, who conducted a short interview with the returnee, because of which the return was suspended for the asylum application.



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

Il Presidente

the basis of a variety of queries (type of event, place, phase of the operation, etc.) is a fundamental tool for the protection of both returnees and operating personnel, as well as for the management and evaluation of operations and in general of the functioning of the system»⁹¹.

On this point, the Central Directorate of Immigration and Border Police of the Department of Public Security replied that «all the critical points found are noted in the service report drawn up by the person in charge. The same is included in the file of the operation and is accessible on the basis of a simple request».

Bearing in mind that the traceability and verifiability of the activities of the Authorities in the context of the deprivation of liberty constitute fundamental guarantees to allow the control of the respect of the limits placed on the exercise of State powers, the National Guarantor reiterates the importance of providing for a system of recording on an electronic platform every significant event of an operation. Unlike service reports, which are more subject to the discretion of the rapporteur, a tool of this kind ensures uniformity in the recording of information and provides senior management with an important tool for analysing the work of the offices entrusted with such a delicate task.

In the commentary to the guideline 20 of the 'Twenty Guidelines on Forced Return' adopted by the Council of Europe in 2005 on the registration of repatriation activities⁹², also to protect the escorting device itself, the possibility of video-recording the most critical stages of a repatriation: departure from the detention centre, the journey to the airport and boarding of the plane is also indicated.

The National Guarantor recommends that:

22. a computerised database is set up to record critical events that have occurred during an enforced return operation, i.e. acts of aggression against staff, the use of force and coercive measures, medical interventions, security checks carried out in a special manner, protests and escape attempts, self-harm and requests expressed by foreigners.

Post-handover

On some charter flights to Tunisia, monitors found that the local authorities proceeded to handcuff Tunisian nationals as soon as they disembarked from the aircraft⁹³.

In this regard, reference is made to the guideline 13 of the 'Twenty Guidelines on Forced Return' adopted by the Council of Europe in 2005: «*The state of origin or the state of return shall refrain from applying any sanctions against returnees - on account of their having filed asylum applications or sought other forms of protection in another country; - on account of their having committed offences in another country for which they have been finally convicted or acquitted in accordance with the law and penal procedure of each country; or - on account of their having illegally entered, or remained in, the host state*».

⁹¹ Thematic report on the monitoring of forced return operations of foreign nationals (January 2019 - June 2021).

⁹² "The forced return operation should be fully documented, in particular with respect to any significant incidents that occur, or any means of restraint used in the course of the operation", Twenty Guidelines on forced return, Council of Europe, September 2005.

⁹³ Circumstance observed in the return operations carried out on 15 November and 30 December 2021 and 17 and 24 February 2022.



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

Il Presidente

This being considered, in the context of the readmission agreements negotiated with Tunisia, the National Guarantor is ready to cooperate with the Italian Authorities in defining *handover* procedures that are consistent with the context of protection of the rights of the persons to be stringently guaranteed in the various phases of the operation prior to their handover to the Authorities of the country of arrival.

In presenting this Report, the National Guarantor recalls that any monitoring inherently represents an element of cooperation with the Institutions, thanks the Ministry of the Interior and, in particular, the departmental units involved in the operations reported here, as well as the escort leaders and the staff involved, for their availability and cooperation during the monitoring.

The Report contains a number of Recommendations and a request for some clarifications to which the National Guarantor requests a response from the competent Authorities within thirty days. The Report will be made public on the website of the Guarantor, without any indication of names, after the afore-mentioned thirty days, together with the replies received by that date.

Rome, 9 January 2023

Mauro Palma
