President Mauro Palma's keynote speech given in the occasion of the presentation of the National Guarantor's 2020 Report to Parliament

Rome, 26 June 2020

I thank the President of the Republic for his message and for the attention he is always paying to the *National Guarantor's* activity. A week ago, the Head of the State received the National Guarantor's Board in order to be informed on how the Authority was proceeding in its mandate and overall activities. He also received a copy of our Annual Report, which we are now presenting to you.

Moreover, I welcome the public Authorities which — with their high-level Representatives attending today's Report presentation — are showing closeness to the very young Authority I have the honour to manage and to its first years of activity. In particular, in this difficult period when the necessity to be present in all places of deprivation of liberty — an activity which falls within the specific remit of the National Guarantor's — had to measure with the same need to restrict travels and movements nationwide.

Having here today the President of the Constitutional Court, the Senate's Vice-President, the Chamber of Deputies' Representative, the Home Secretary, and the Secretary of State for Justice — just to mention some among the many significant attendees — is also a sign of sharing with us such a challenging synthesis between the current problematic situation and the necessity to *see*, to *visit*, our mandate is dealing with. It is an urgency that surely entails the most quoted teaching of Pietro Calamandrei "we must have seen", frequently used to combine the analysis and reflections on prison carried out seventy-one years ago; yet, it is somehow affirming *everyone*'s peremptory acknowledgement to be part of the same social body that no mental or material wall can ever ebb. Indeed, a society that does not recognise as *its own* the wounds over its same body — which, on the contrary, are considered as something that is other than itself, and as such to be separated physically and mentally — is a society that is not able to make those parts of the body considered healthy act positively.

My special thanks go to the Dean of the hosting University, which is always open to the social dimension, and, through him, I would like to thank the many who have worked to make this important event limited to few participants, but open to the many which can follow us through some different communication platforms or dedicated channels.

I have found it particularly noteworthy to address today's speech to the Parliament from a place of education, a place where the elaboration of culture, the knowledge transmission in order to raise adult awareness is joint with the ongoing research on the ever-newer connections between different learnings.

Learnings that are not islands separated from each other, defined in their shapes once and forever. Quite the opposite, they constitute archipelagos that synthesize the learnings' calls for each other. More and more in them, many border morphologies are rediscovered yet to make

unmistakable the need for new connections, and new learnings, too. This liveliness and strength of culture — I am today recalling in this very place while addressing the rights of the most fragile or less visible persons — is the power of a new connective structure, after the silence and the remoteness of this period.

Also in those places that appear to be distant and separated from the community, we must invest in the intrinsic value of accessing culture and raising awareness on one's own need to learn. These are places where persons are often restricted not only physically, but also teared apart from the dynamic dimension brought about by culture.

Generally, in order to explain the value of education and the role that schools, universities and cultural institutions have for a new real recovery after this past time, there is today a need to retrieve time in the social communication and in the intervention schemes. Differently, in places of deprivation of liberty, in its different forms, there is not only a delay, but also a gap to be urgently filled.

In fact, in recent months, in most of these places training and education, as well as access to those activities that are culturally and individually targeted, and the acquisition and production of learnings have been all put on hold: an impasse that has often transformed those places in empty and deaf environments. For example, the places dedicated to the elderly or to persons with disabilities — for whom the connection with the outside world is decisive in keeping alive what remains of their vital rights to self-determination — lacked any essential stimulation. On the other hand, in detention facilities, technological tools were made available by the prison Service and limited — though justifiable — to compensating the lack of visual visits with the family: nonetheless, the same digital support was not accessible for educational purposes.

For this reason — that is to remember that education and culture are essential factors in any connection process between those who are on both sides of gates and walls — it is important for me to address the Legislative body from a University. For this reason, I do not address individually, but chorally, together with those who are connected today and with the world of professionals, students and volunteers that ask themselves on the effectiveness of the rights declared and expressed in our Constitution and in the international Conventions to which our country is committed. A world that every day acts in giving 'visibility' to those declarations and pronouncements, starting from the principle that the first effective instrument for exercising one's own rights is to know and comprehend them. The right to understand is the explanation of the "right to have rights" that Stefano Rodotà[1] once recalled because understanding is the decisive step towards mindful personal awareness and self-determination.

This choral recognition behind my words leads me to thank all those who have continued to work at different levels of function and responsibilities and in the different fields of intervention within the National Guarantor's remit. Next to the dutiful gratitude to health workers, expressed by more influential voices than mine, I would convey my personal thanks to those who have granted a constant public service in places of detention, criminal or administrative, and have not always been recipient of real recognition.

Today, the presentation of our annual report is taking place on the international day of the fight against torture. The use of torture is not a practice we think strictly linked to scenarios far away from us, as if no longer present in the culturally advanced juridical world, which democratic cornerstones naturally deny. This is not the reality and no State can consider itself as exempt from cases that can legitimately be so qualified.

The first decades of this millennium have vanished, after all, this acquired immunity, also by making widely noticeable some practices carried out by so-called democratic states in war scenarios. We have also grown accustomed to debating on the subject as if some kinds of

[1] Stefano Rodotà (30 May 1933 – 23 June 2017) was an Italian jurist and politician, who had a brilliant national and international academic career. From 1983 to 1994, he was a member of the Parliamentary Assembly of the Council of Europe. In 1989, he was elected to the European Parliament and participated in the writing of the Charter of Fundamental Rights of the European Union (translator's note, from now on t/n).

interrogation methods — to be clearly qualified as torture — could become a possible option, at least in these contexts. However, this is not all: we have learnt — through what we have unfortunately experienced precisely nineteen years ago — how torture can occur even in any situation not technically definable as a conflict. Indeed, the use of mistreatment and torture can reveal a feeling of non-acceptance of the person placed, albeit temporarily, under other's custody and responsibility. It can occur when the person arrested, or detained, is regarded as an enemy, and this feeling ends up by replacing the guardian's awareness of being acting for the common good. Moreover, this awareness should never refuse the recognition of those who are detained as *fellow men*, as persons. Instead, the person deprived of liberty is viewed as the projection of what you want to overthrow by using any means to humiliate and degrade a human being in order to feel no longer attacked by their very existence.

Quite the opposite, on this day it should be understood that whoever has the task of placing a person under custody has also the responsibility to protect them and guarantee the exercise of their rights. Indeed, the remit the community has entrusted to them is within this double perspective. For this reason, the introduction of the crime of torture in our penal code should be acknowledged not only as the fulfillment, albeit belatedly, of an obligation assumed at international level. In fact, it showed to be an act of responsibility for a greater completeness of our system, to match with the prescription established in the second-to-last paragraph of article 13 of our Constitution, and to make such serious behaviors be punished while safeguarding the dignity of all those who work properly and the institution they represent. In any case, by examining the first applications of this new regulatory provision, and the allegations relevant to this crime brought forward in the investigations, even in situations recently reported in the news, it is necessary to reaffirm in the first place that investigating specific cases from this perspective will make it possible to safeguard not only the victim, but also all law enforcement officers and their partaken desire for transparency and accountability. It also reaffirms that those who believe to obtain consensus by considering any new inquiry as an attack on security forces, and their work, certainly do not express their true sense of confidence in law enforcement operations. At the end, their result is to make the public perceive the lack of transparency as a shielding instrument. Our law enforcement agencies — in their many isntitutions — know that they do not need this shouted and hypothetical endorsement.

The report we are presenting today gives an initial outline of this new type of offence, in light of its applications in the past year, and confirms the text which the National Guarantor proposed, with its own statement, when this was discussed in Parliament, despite having some inconsistencies with the definition of *torture* existent in international documents.

The Report covers all the past year, from my last presentation to the Parliament at the end of March 2019: it is necessary to return on those data and expectations, administrative management and legislative drafting processes. However, it is not possible to do so without considering the breakdown occurred from February 2020 onwards. Otherwise, the risk is that we look back in terms of a continuation with what had been before, which is no more possible. Therefore, in the figures reported we have highlighted — also graphically — their recent updates because, read together with the previous ones, they can help understanding which will be the different forms of the deprivation of liberty we can address and we are now considering.

I think it can help to use an image, almost a metaphor, to understand the current period. Some of you will certainly remember a movie directed by one of the greatest filmmaker of the time who would have turned 100 this year: Federico Fellini. The film is *Orchestra Rehearsal* and the image is in the final part, when suddenly a huge wrecking steel ball smashes through the wall of the building over the rather tumultuous orchestra: an unexpected event that completely disrupts the dynamism, already somewhat chaotic, that characterised the 'before'. The bewilderment and irrationality of the event is followed by the 'after' which is not the simple return to play among the ruins as if nothing had happened, because the relations between the fellow musicians and the conductor have also changed substantially. However, the results may be different: if, on one hand, some among the musicians resume playing, trying to find a

recomposed harmony, on the other, the director now addresses to them with an inflexible language — in the film he emphatically speaks guttural German — which is indicative of an order where their subjectivity can be no longer expressed.

As in the borrowed metaphor, the problem of how to resume playing arises also for us, and we will start again following a different path from the past. It could be that we let ourselves fall victims of the dismay, and we find a new harmonic music that is different from the former, but not exposed to a second steel ball smash. Or else, unfortunately, rely on a connection between musicians who simply follow the conductor's orders and are no longer the creators of their own music.

I believe that the objective of our 'after' should be the challenge given by a new form of possible harmony. However, in order to gain this harmony, we should examine the past while showing no mercy.

In last year's report, concerning activities carried out in 2018, we wanted to analyse the real situations in places of deprivation of liberty, their structural diversity and their intrinsic homogeneity given by their separation from the outer world. So, we introduced paragraphs describing these places: the prison cell, *the hotspot*, the hospital room, and also more informal places, such as the ship where to stay waiting for a *place of safety* to disembark. Or else, the sterile areas in a prison as inside-outside transit zones. We considered the unfurnished seclusion cell as an environment where personal discomfort is tackled by fully subtracting the individual's points of reference.

In this year's Report, relevant to activities carried out in 2019, the focus is on the *person* who is hosted, accommodated or restricted in these places. Indeed, the period before the outbreak of the virus, the subjectivity of the person deprived of liberty has lost much of its attention: detained people have often become data for statistical analysis, factors that represent only the complexity of their being placed under custody without considering the person with their own life pathways, tensions, hopes, even mistakes.

We do not know the names of those who lost their lives in crossing the Mediterranean Sea and even less the expectations they had or their projects, even if negative, which pushed them to reach the European mainland. We hardly know the names of those who lost their lives during the serious and violent prison unrests in March this year, just as we hardly know the names of the persons who are often abandoned due to various accidents of life in care homes that become eventually closed institutions.

For this reason, I believe that in order to read the numbers properly and also to understand how the smashing of the 'steel ball' represented by the pandemic has influenced the places hosting different types of persons, it is necessary to reflect on the subjectivities that these same places contain. We should start from the recognition of the people who inhabit them, to the different reasons for their living in said facilities, and, at the same time, to the common element of the deprivation of liberty and its impact on such different subjectivities.

By speaking of *persons* and not of *individuals*, I would like to underline the single element individually considered and his relational sphere given by the personal dimension to each of us. In a way, the *person* certainly corresponds to our identification as an individual, however, it is the individual perceived in his life interaction with others and, as such, by them comprehended. In the modern era's linguistic and conceptual use, the term *subject* then becomes indicative of his sentient activity, to denote his conscious capacity, opposed to that of the mere object.

Different accentuations and ways of measuring oneself against what these terms indicate, as well as the nouns deriving from them, arise from these dissimilarities, which the Report will emphasize. As it is of utmost importance the need to keep together — albeit with different roles — the three terms when referring to those deprived of personal liberty.

Thus, it is necessary to recognise the absolute *individual* uniqueness, to comprehend his essential consideration as a *person*, thus his inclusion in a universe of discourse that knows how to reflect itself in his condition. Finally, to relate to his being a *subject* capable of constructing knowledge and self-determination, with his own story, even if made of defeats, which is always an expression of his overall feeling and acting. For this reason, we deal with people deprived of liberty while considering each one individually and collectively in the relational scheme in which the person is occasionally placed and in their lives beyond the limits imposed by the deprivation of liberty. Let us talk about the person's subjectivity.

If, as I have already said, the report of last year was focusing on the different 'places' where the deprivation of liberty is enforced, this year we wanted to make the core of our dissertation on the different highlighted subjectivities in such places. They distinguish from one another for roles, functions, reasons for their detention, but are united by the overall interconnection that these places determine. Thus, the Report considers three different subjective connotations related to those places. Those assigned to places in relation to their own personal situation (age, different abilities, illness), and those who instead find themselves there because of their actions, either for having committed a crime, or for having faced the risk of irregular positions pushed by other factors or even by choice. Moreover, the subjectivity of those who have to decide on the lives of others: this too is considered as a problematic connotation of the person in his individual journey.

These are all subjectivities that have to do with the limitation or the deprivation of liberty. They implicitly reacquire their just name and highlight their physiognomy only if considered in their aspects of often difficult and polysemic interpretation. They are no more simple numbers.

Anonymity is very much the greatest risk of all detained communities.

Frequently, children are not granted any attention as a subject, especially when they become the matter of legislative acts or of institutional actions to resolve conflicts or to decide on them.

Children, adolescents, become numbers and anonymous. They become assets to be divided in disputes between adults. Rather, they are almost bothersome complications to the fulfillment of 'other' needs, such as, for example, of justice. Similarly, children with families who face the risk of abandoning their familiar, though unlivable, environment for another, alien but full of hope, place and eventually die along their journey, are often counted as anonymous: they are only numbers added to the death toll. «Among them, also such and such number of children» is reported in the bulletins of despair and death at sea to which we have unfortunately become accustomed in recent years.

However, not only minors are anonymous. Anonymity very often concerns foreign nationals who are to be recognised, accepted or rejected: the frequent tendency of some of them to provide aliases to make identification more difficult, often due to previous negative experiences, exacerbates anonymity because it is almost a self-renunciation to one's own name. Just as — again stressed in this Report — it was difficult — and for some of them only a useless addition — to know the names of the people who lost their lives in the prison riots of early March. The interest was over pieces of information and analysis of the situation occurred, and not for the subjectivity of the deceased persons: obviously, it was more interesting to know the subjectivity of those organising the unrests. Indeed, their identification was necessary to take measures and decisions.

Even the parade of the coffins to be moved to 'other' cemeteries, coming from areas particularly affected by the recent and still persistent pandemic, was to be read as a message of anonymity as well as, after all, the daily figures of the death toll could not even indicate the different ages of the people disappeared.

Topics such as that of dissolving families, of emigrating minors, of deaths at sea, of persons housed, hosted, restricted in places where anonymity is furthered, may appear as distant. It is not as such. Those topics are held together by the carelessness about the persons' names, too

often marking the indifference towards their lives that matter only for those within the family fellowship. Those exercising a guaranteeing function should take responsibility over their capacity to return identities to said persons. Truly, a person's name is to him or her the first fundamental right.

For those restricted, anonymity highlights a further specific vulnerability, which is added to that of being deprived of the ability to self-determine one's own movement and decision. More properly, a set of vulnerabilities which, as such, always require a stout protection of the person's rights: firstly, the right to dignity and then the right to physical and mental integrity. This is the meaning — the *raison d'être* — of the Authority that guarantees the rights of persons deprived of liberty.

Let us not be misled by the restrictive conditions we have all recently experienced, which has been repeatedly told as the same for the communities at both sides of walls and gates: this is not true. In those places that I defined as intrinsically vulnerable, the lockdown measures were aggravating the pre-existent restrictive condition. The feeling of anxiety due to the invisible enemy, of which each person was a potential carrier, which, by accessing those places could have determined an uncontrolled impossibility for the community to defend from the infection, was added to the already existing feeling of apprehension that is generally experienced in such closed places. Said double feeling of anxiety has ended up with turning itself into anguish, which is very different from fear because it cannot identify the object of the feeling and, therefore, cannot even dispel it. Nonetheless, it can lead to a sense of abandonment.

This situation has clearly been disruptive in the residences of the most vulnerable persons, whose feelings at the very outset of the lockdown we do not know, but much we can guess. A lockdown that was certainly hidden behind the violent unrests occurred in prisons, however, announced as tighter than how it was actually determined on the run.

It will be up to the judiciary to decide whether there was a criminally organised plan behind the protests, as often happens. Undoubtedly, the outbreak of a feeling of anguish in a place of deprivation of liberty is always premonitory of some unpredictable results. It is even more so when one does not focus on the correct communication and dialogue with the recipient of said measures.

This is, therefore, the perspective through which we have analysed how the places of deprivation of liberty developed in 2019 and how they have coped with the unpredictable event of the first months of this year. This is how we should look at the reconstruction of an 'after' in order not to crystallize the 'void' experienced in this period and to risk overcoming the enduring serious situation through a rapid backward movement. On the contrary, it is linked with the assumption of a recovery that knows how to head forwards, and to contribute to the evolution of the hastily-defined 'public opinion', which often represents the recipient of a political action that does not have as objective the public's cultural and civil growth, but only the prior adhesion to the alleged consent. Projecting forward the horizon of an increasingly inclusive community capable of facing its difficulties is no lesser objective. Perhaps, it is a goal that must involve all of us who with different roles and interventions represent the democratic institutions of this country.

After these considerations, I will only report some data and trends that emerge from this year's activity within the National Guarantor's scope of intervention. They highlight some 'crucial aspects' and outline goals that I would like to bring to the attention of the Parliament.

The analysis of the deprivation of liberty and the execution of criminal sentences is generally restricted — above all in the mainstream debate — to two topics: overcrowding and the effectiveness of security provisions. For the latter, the focus is on the effective impossibility of continuing criminal activities from behind the bars and the deserved protection from possible aggressions for those who work in prisons.

Two important topics, which also highlight the limits of an analysis that is restricted to them.

The first issue — overcrowding — refers, in fact, to the only criminal execution of adult sentencing, without grasping the positive aspects of criminal execution applied to minors, in terms of the limited recourse to custodial sanctions and the variety of measures to be applied. Definitely, the latter being a system which has succeeded in outlining its own plurality of actions and somehow a guarantee of safety even though it has just recently adopted its own penitentiary law which is internationally recognised as among the most well-constructed.

The second topic — security, declined as I previously described — is affecting only a category, important, but restricted to less than a fifth of the current prison population (9,985 prisoners compared to the 53,527 registered in cells). The risk is to encapsulate the prison complexity in this specific minor subset, represented by the high-security prisoners and the maximum security prisoners placed under a special regime, ending up with determining choices that are parametrised with the few but have an impact on the daily prison life of the many.

Even if the public debate is limited to the security matters of the few, there is no doubt that these two aspects of the execution of adult sentencing require further investigation. Starting from clearing the field from the hypothesis that prison overcrowding is not as such, but the mere result of the determination of prison capacity with excessively broad standards — as has been sometimes told in recent years. For sure, the calculation parameter that is carried out in our country is higher than that of others, in the European context. Moreover, many countries use very variable and poorly defined standards, which make incomparable the population density between the different penitentiary systems in Europe and useless those prison population rankings that occasionally appear when the Council of Europe's data are presented. So, if we reckon the number of places available according to the *minimal* standards — and I stress the adjective — defined by the European Committee for the Prevention of Torture in 2015, the result will be that our prison system has been overcrowded throughout 2019 and the first months of the current year. Furthermore, its characteristic variety of prison regimes does not allow a consistent distribution of detainees. The result is that the number of prisoners should be held *below* the design capacity to avoid creating 'pockets' of overcrowding in some wings, as it currently is, despite the downward trend of the last period (in some cases prison population more than doubles if compared to the current prison capacity rate).

In parallel, it should be noted that in the period between March and the first half of June there was a significant decrease in prison population — from 61,230 to the current 53,527 (52,650 those actually present) — but it is equally true that recently the numbers no longer show a downward trend.

If in January, the average daily flow of prisoners has been of 130 entries and 95 releases, in April it was 58 arrivals and 72 releases, thus a considerable decrease. Now, the same average is of 117 incoming detainees and 86 outgoing, a trend boost that resulted in an increase of almost 150 prisoners in the last fifteen days.

In this regard, acknowledgments to the Minister of Justice are due for having maintained a continuous dialogue with those who, at different levels of responsibility, could provide elements for assessing the situation from different perspectives and take shared decisions, in that very difficult period. This debate has also involved the National Guarantor. I believe it is also our duty to express acknowledgments to the leaving Director-general for Prisoners and Rehabilitation for having invited the prison regional subsidiaries to report to the judicial Authority any prisoner with potential-risk-factor comorbidity if associated with COVID-19 infection during the pandemic. The judicial Authority could then make its own independent decisions on the necessity to place a person in preventive detention or to continue imprisonment or place the prisoner in alternative measure to incarceration. A sense of responsibility which had no connection with the clamour reserved to the measures ordered by the judicial Authority. Together with the communication the Attorney General at the Supreme Court sent to the General Prosecutors at the Courts of Appeal, the circular note on the cases of comorbidity helped protecting the whole prison system from possible serious health consequences (in total there were 284 cases in prison out of which 33 were hospitalised).

However, a protection that has had more the meaning of raising awareness on the problematic situation than focusing on the outcomes of produced and adopted measures. Compared to the home detention measure due to the new article 123 of Law-Decree of 17 March 2020[2], which involved only 1,077 prisoners, the measure adopted according to the pre-existing law[3] interested 2,535 in the same period. I hope that the overcoming of the emergency phase will be characterised by the continuity of this attention and a procedural speed which, although in a different way, has involved the many Surpervisory Courts, with no way back to the previous patterns. It is difficult to explain, in fact, that it must be a serious exception to determine this operational empowerment.

With regard to the second aspect, which concerns a topic dear to all those who care about the connection between the guarantee of security and the constitutional purpose of the sentence, I will only recall the necessary distinction between the indispensable separation between different high-risk prisoners, more serious if the crime is aggravated by the connection with the organised crime, and the *exacerbation of the detention conditions*. It is worth remembering that the legal principle of criminal execution is based on the differentiation of tailored solutions and interventions and not on the aggravation of prison living conditions. True enough, the objective of a prison sentence is the deprivation of liberty so — as I have repeatedly said — *a person is sent to prison because is punished and not to be punished*. The hypothesis of redefining the high security prison regimes, to be implemented while obviously maintaining the principles of criminal execution and the respect for the person's dignity, has nothing to do with the return to closed prison regimes, which often do not offer valuable criteria to assess the progress individually made by the prisoner. A symptom of myopia would be any confusion made between the separation of prisoners and the turn of the screw on everyday life. Similarly, would be any attempt to connect any dynamic security model implementation with the increase in the number of episodes of violence against those who work in prison.

In the past years, the judgments of the Constitutional Court and of the European Court for Human Rights have been of great help in this direction. In fact, they aimed at strengthening that residual of freedom that every punishment must in any case safeguard, and removing the purely afflictive elements that are not justified by punishment from any enforced sanction. This last aim should crosscut all typologies of custodial sanctions, not only those deriving from the criminal actions of a single offender, but also those related to a criminal organisation that have the objective to cut any possible communication with the outside world. Mostly, these judgements should help in countering any identification of the detainee with the crime committed — as if the person is caught in an indelible snapshot — while reiterating the dynamic dimension of the penal path of the single prisoner. In this way, it is still possible the reconstruction of every person's right to hope.

However, it is necessary to go beyond this approach to prison that focuses its attention and limits its analysis on the two aforementioned aspects — overcrowding and organised crime — which are certainly fundamental, but also reductive if compared to the mandatory questions of *why do we punish* and *how do we punish*.

It is necessary to reconstruct an effective direction to criminal execution, starting from the unavoidable fact that today such a wide-dimensioned prison is harbor to situations that represent the absence of external, territorial responses, which have not been able to meet the discomfort and life difficulties in order to decrease their exposure to the risk of committing crimes. Still today, 867 people are in prison serving sentences under one year — not a residual part of a sentence — and 2,274 prisoners are serving a sentence of between one and two years. Which might be the answers to give to those persons outside those walls is relevant to us all. We are confronted with an increased class connotation of our prison situation — moreover also in the case of the 13,661 prisoners who have a residual part of their sentence of less than

[2] Law-Decree no.18 converted into Law no.27 of 24 April 2020 (t/n).

[3] Law no.199 of 26 November 2010 (t/n).

two years raises the question of why they do not have access to the measures alternative to imprisonment that our legal system provides.

For this type of persons deprived of liberty, we should probably imagine some different places more in connection with the local services and opportunities, in which security and gradual reinsertion can dialogue. We should allot resources and probably also make investments in terms of building renovation of the existing structures. Indeed, in the medium term certainly the choice that today may appear economically challenging will prove tomorrow to be convenient.

Much of the mental disease that is suffered in prison is linked to these observations, because it is undeniable that it is often confronted with the insufficient commitment of the Health care service and the inevitable consequence on staff working in the wings. The psychiatric support is mostly arranged only in reaction to occurring pathological situations and the service offered is not taking on effective responsibility of the single patient. This architecture is reflected in the continuous mobility of the psychiatrists available to prisons, in a very robust use of pharmacological sedation to contrast any occurring acute cases and in the constant reliance on the prison police officers' sight surveillance on the isolated prisoner, who meanwhile has been deprived of any effective points of reference. I have already pointed out on other occasions that the National Guarantor cannot agree with a practice that effectively transfers responsibility on staff which is not trained for this function, with the result of being exposed to the risk of having to respond to all consequences.

Indeed, this aspect requires a choral assumption of responsibility starting from the principle — which I tend to repeat in every occasion of discussion — that the subject's difficulties shall not be addressed by subtracting objects, references, sometimes even clothes, and proximity to the troubled person, moreover by entrusting their management to a more attentive surveillance. Rather, it would be more effective a service that adds attention and opens up to a therapeutic dialogue that has greater levels of continuity. A service that is successfully taking responsibility on the patient through an adequate programme and not through spotted interventions. Even less should be adopted procedures aiming at transferring the prisoner from one institution to another, thus objectively creating troubles deriving from their behavioural or psychic difficulties.

The problem of the continuity of the interventions to the prisoner's discomfort generally identified as of a psychic nature must be faced with urgency and commitment. I will here point out, almost by single chapters, some aspects that require a more in-depth reflection and decisions that cannot be further postponed.

The first aspect deals with the persistent unbalance between articles 147 and 148 of the Penal Code, on which the National Guarantor is urging to intervene with a dedicated legislative provision that will remedy the permanent discrepancy between physical and psychic infirmity. For the first, the suspension of the execution of a criminal sentence is provided by law, for the second, there is not such a possibility. The result is that a therapeutic programme, for which might be essential its development outside the detention facility, in appropriate secured environments, is sometimes hardly practicable.

The second aspect concerns the recourse to solitary confinement for persons with subjective problems, which are decreasing. Indeed, their vulnerable conditions can be exacerbated precisely by this decontextualized environment. This aspect is even more relevant today when people sent to custody in prison, perhaps for the first time, are placed, albeit dutifully, under precautionary confinement to avoid contagion, but they can find themselves in a context that doubles the separation inherent in the deprivation of liberty.

The last three suicides that occurred in prison concerned people in this condition, isolated in the early days of their confinement after their apprehension. This is a problem that is connected with the high number of committed suicides, often taking place in solitary confinement units, which occurred again in our prisons at a rate higher than one per week in year 2019 and with the same trend in the first 170 days of this year, despite the reduced overall prison population in the last three months.

Another aspect to be urgently considered is the tendency to *psychiatrize* any difficulty that occurs within the prison walls. I refer to some behaviors that are sometimes excessive when compared to the objective difficulties of living in certain structures or of following some impromptu rules, and as such having behavioral nature. As well, some learning difficulties or even reactions due to the effects of or addiction to drugs. Everything that does not correspond to an expected normal approach is inserted in an amplified dimension of psychiatrization. The outcome of such an amplification has not resulted, at least for now, in boosting the implementation of operational "Mental health treatment units" in prison, totally managed by the health care service which holds responsibility for their treatment programmes. Notwithstanding some positive implemented experiences of these kind of "Units", in some prisons, other formula have been arranged which, in some cases, have just the description of their objective in their name, nor have they the real operational activity managed by the health care service or adequate mental care treatment pathways been implemented. Not even are they acceptable in terms of structures and programme delivery.

Moreover, the emphasis — also highlighted by the media — about the psychiatrization of every vulnerable behavior in prison runs the risk of periodically proposing again, by a few, the possibility of not reserving the "Residences for the Enforcement of Security Measures" (REMS), having a psychiatric dimension, to only those called "internati"[4] (Italian for "forensic patient"). Instead, the risk is to consider them more or less as the former forensic psychiatric hospitals. They are no more a monolithic institution with an indecent structure, but rather they are split into single treatment departments spread nationwide.

After all, in our country, there is always the risk that those who contrast cultural progress are periodically questioning some culturally advanced reforms with considerations being set forth, they say, after their practical implementation. So one of the few system reforms that have marked our recent times with a conquest of civilization, such as, precisely, the forensic psychiatric hospitals' closure and the realization of the REMS, is systematically criticised.

Thus, in addition to those who try to reorganise the REMS into indistinct places, there is the problem related to the insufficient availability of the places. Despite the fact that some regions do not have a REMS, and in this respect it is necessary, though for limited cases, to tackle the problem if only to maintain a relationship with the local services and give effectiveness to the rehabilitative treatment plans, much of a prudent approach is also needed in this respect. We should reflect about the numerical value of temporary security measures and their increase in number in recent years. Moreover, we should ask ourselves if these security measures which have not been adopted towards persons at liberty have so far posed significant problems. Or else, have they invited the reflection on the need for these provisional measures, recalling the principle that placing a person in REMS should be considered as a last resort at the end of a tailored path that has its added value in the territorial assistance by the local mental health services. Obviously, behind the discussion on this issue, the other matter is related to the prison custody of a forensic patient — hence not a prisoner — when the assignment of a place is still waited, which is unacceptable and illegitimate.

In almost all cases, said REMS, in opposition to what sometimes is known from the outside, are responding positively to their purpose. They have been the structures to react better in the current necessities and difficulties due to the suspension of visual visits undertaken so far.

The attention posed on mental disorders, is leading me to report, albeit briefly, on the National Guarantor's commitment relevant to the *Psychiatric Service for Diagnosis and Care* (SPDC) in general hospitals — therefore for people who have nothing to do with the criminal proceeding but, at times, find themselves retained in these structures only for life personal reasons.

[4] *Internato* is the offender who is not considered criminally responsible — or is at least partially responsible — for what he/she has committed. They are usually detained in the REMS, a mental health facility fully managed by the health care service (t/n).

On other occasions, I have reported to the Parliament, pausing longer on the *Involuntary Placement Order* (TSO), in particular whether they are implemented in a strictly health care environment or elsewhere. They fall in the National Guarantor's remit for their intrinsic non-voluntary nature, and it is not for sure our intention to relate them to situations of implicit detention. This is why I would limit my report on this topic to few considerations.

In this respect, two problems have been highlighted and reconsidered in this year's Report: the lack of independence between the two medical advices, which constitute the prerequisite of the mayor's provision in order to authorize any treatment alike; the real possibility of giving tools of analysis to the judge with responsibility for guardianship cases for the validation of the provision. The low number of validations has led us to hold attention on this last aspect. Just as the frequent repetition of involuntary and formally voluntary placement orders of people hospitalised in these services, in the same conditions, for periods that become particularly long, well beyond what is expected from the legal provisions.

But, one event happened in 2019 cannot escape from its detailed report: on August 13, a twenty-year girl lost her life in the SPDC in Bergamo, after a fire developed in the structure while she was restrained in her bed. In this, as in other cases that require the National Guarantor's closer oversight, it offered its participation in the preliminary inquiries as the offended party, in compliance with Article 90 of the Code of Criminal Procedure. It will be up to the Prosecutor to ascertain facts and possible responsibilities. It is our task to follow the inquiry thus avoiding both improper generalizations, often shouted out on *social* networks, and any hypothesis of codification of what happened as a sort of painful "side effect".

Let us open a reflection on coercive measures, be they mechanical, chemical or environmental. A reflection, which is necessary and highlights on the person with its intrinsic relational definition. This is what this Report would like to do.

It is not up to the National Guarantor to engage in a debate on a medical level, because it does not have any competence. Moreover, the Court of Cassation has clearly expressed that the use of restraint should never be considered as a treatment. Instead, it is under the responsibility of the National Guarantor and of the local Guarantors, which are much in closer contact with the territory and in direct dialogue with the regional health authorities responsible exclusively in this scope of intervention, the evaluation and redefinition of the *Protocols* that rule the use of restraint. This falls within their mandate to protect the patient's personal dignity and psychic integrity that are inevitably affected by the execution of such an 'extreme' order.

Therefore, when the conditions of the current epidemic allow, the National Guarantor will propose a wide-ranging debate in a meeting with several participants, right about the possible safeguards against the implementation of medical decisions in a specific context. The debate will then focus on the different decisions adopted, in order to make any *Protocol* signed more homogeneous and any intervention pinpoint on the principles of proximity, of dialogue, of extreme deprivation and its possible overcoming. As well as the unconditioned and complete recording of all possibilities to lodge complaints on such interventions.

Relevant to the *deprivation of liberty applied on migrant* persons, who are irregularly staying in our country, any consideration by the National Guarantor shall be read in the context of the so-called *Security* decrees — which revision has been announced many times — on which the 2019 Report to Parliament has long focused. A review that takes on the remarks raised by the President of the Republic and that is strong enough to stop the extension of the conditions of illegal stay to other categories of migrant persons, which is implicit in the decrees. And also to stop the consequent feeling of insecurity determined by the dismantling of the integrated reception services.

Data collected in 2019 confirm the inconsistency between how many people have been retained in the Immigration Removal Centres (CPRs), though their stay in these structures varied a lot, and how many of them have actually been repatriated after such an experience.

Of the 6,172 people who have been retained in the Centres — in a situation of *administrative detention* — only 2,992 were effectively returned to their country of origin, while 1,775 had their detention not confirmed by the judicial authority. In particular, only 135 women out of 664 detained — that is 20% — were repatriated.

Although the rate has increased from last year, it is still open the debate on the legitimacy of the detention order, a legitimacy which is certainly not formal, but substantial, and has achieved such low results. All the more because the average length of the migrants' stay in the Centres has been longer than in the year before, as in the case of the Centres in Turin and Brindisi where it has been of almost two months (58.67 and 59.72 days, respectively).

This extension of their detention periods shall reflect on an incisive reform of the rules governing these Centres, still reliant on the Regulations of the former CIEs (Centres for Identification and Expulsion), also considering that there is no supervisory mandate over the Centres given to an independent and jurisdictional Authority.

The National Guarantor's activity on this regard is detailed in the thematic report on the forced return flights be monitored by our Office. We monitored 46 flights in 2019. This was much possible due to the positive collaboration with the Ministry of the Interior and its commitment to communicate the planned flights to the National Guarantor in advance so to allow us any evaluation on a possible desk or flight monitoring.

The network of eight regional and one city Guarantors gave a significant boost to the activity in this area together with the participation in the training sessions of the escort officers assigned to the forced return operations. Certainly, this is a phase that shall cover, at national level, the possibility of implementing an effective monitoring on the repatriation of those who are expelled upon the decision of the city Police Commissioner or the Minister — as both are processed differently. At international level, the challenge is to open a discussion with Frontex, the European Border and Coast Guard Agency, increasingly dominant in the activities to be carried out and the decisions to be taken in this area. Nevertheless, it is more and more necessitating full recognition of the predominance of national constitutional and legislative obligations over the regulations Frontex has adopted.

Lastly, I have paid attention to the most 'crowded' structures among those that the National Guarantor is called to visit, monitor and make them connected to the outside world. These are the care homes for the elderly and the disabled, which according to the latest available data provide 88,571 beds in 12,458 facilities. In these places the resident's stay often turns, even due to the families' contingencies, in robust institutionalisation where the principle of empowerment of the person's self-determination, despite limited or residual, is difficult to pinpoint. A self-determination which is to be preserved as a heritage for everyone. As I have repeatedly stressed today, every person has the right to have all their makings fully cultivated and developed, in order not to diminish their relational possibility and the full exercise of that residual liberty that everyone brings with oneself.

Having made it the last topic for a reflection does not mean it is less important. What has recently happened in the care homes during the lockdown due to COVID-19 made them simply recognizable as potential clusters of infection. Almost nothing was actually said of their being places where a forced disruption of visits was carried out and its ominous results have become tangible in a context where, in many cases, emptiness and a feeling of absolute solitude are factors to be considered.

The problem is now known to the public and, in some cases, also to the investigating authorities. I will not utter a word more: it is not necessary. Except that the National Guarantor has signed an agreement with the National Institute of Health for surveying and researching on nursing homes while carrying out a continuous monitoring of these structures — and not only for statistical purposes. In the survey questionnaire, the National Guarantor has asked to introduce some indicators which could give significant overviews to understand the quality of the care home residents' access to rights, especially in cases where family ties are inexistent.

Alongside the care homes for the elderly, the scope of the survey has been extended to the care homes for people with a disability or mental health needs, so far receiving less the public's attention. In particular, by taking into account the specific value that the disruption of direct and close stimulus may have affected their lives. The National Guarantor received many requests urging the essential need to maintain direct contacts for persons with particular disabilities: the last request came from the Association supporting deafblind persons for whom the lack of a direct contact determines the absolute disruption in communication and sensorial stimuli.

All these areas of intervention are different from each other. Some may leave us in dismay if considered for all the difficulties they come across. These are places that have become more visible to the public also due to the recent and still current emergency that has brought many realities, well-known to limited family networks or personal commitment, to a collective awareness.

Perhaps we should catch this positive sign in the negativity of this past period. In many respects, we will no longer be able to pretend not to know about them.

Now, we know. We know how, in another context, the large number of 'homeless' emerged widely when we were repeated to 'stay home'. Or else, as in another different, but connected, environment, it emerged the concrete result of years passed considering the structural precariousness an inevitable sign of the times, rather than the overall downgrading to an almost slavish work. As well, the visibility acquired by any marked vulnerability, by places where the lockdown took the form of a total separation from the rest of the world outside, must give a sign of the responsibility of those who now know. And, as such, they must take action.

The broad scope of the National Guarantor's mandate has thus become fully visible in recent months. Some critics have countered its extension, some other international bodies have recalled that the mandate should also extend to places of quarantine, which, meanwhile, were becoming *de facto* places of deprivation of liberty.

At international level, the capacity of independence and incisiveness of action of the Authority, Italy has established in recent years, has been recognised and now requires to be made solid from a regulatory point of view. Especially because the experience so far carried out would never risk becoming the sign of a single season. A pathway to a firm organisation that has been established in these years also due to the dialogue with the various State institutions and which now has legs to proceed along the way already initiated. In particular, having the capacity of never exhibiting certainties, as with the self-confidence shown by any 'partisan' approach, but continuing to question what it means to give full content to that concept of *person* that our Constitution refers to, in the different places where *people* are met in a situation of intrinsic vulnerability — being deprived of their personal liberty.