



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

President

**Summary document concerning the CPRs, also in the light of the monitoring activities carried out by the local Guarantors in the exercise of the visit powers conferred to them by the National Guarantor in January-March 2023.**

The deprivation of migrants' freedom in the Immigration Removal Centres (*Centri di permanenza per i rimpatri*, CPRs) remains a problematic issue, which involves different levels and heterogeneous responsibilities, such as legislative deficiencies, regulatory gaps, structural criticalities, systemic opacity and management inadequacies. During its mandate, the National Guarantor has devoted a large part of its activity to carrying out periodic visits, drafting reports, collecting and disseminating data, and analysing and drafting observations on administrative detention facilities.

In recent months, the National Guarantor has conducted a thematic visit to CPRs together with some local Guarantors to which it could transfer its visiting powers as provided in paragraph 5.1 of Article 7 of Italian Decree-Law No. 146 of 23 December 2013, as amended by Italian Decree-Law No. 130 of 21 October 2020, on the basis of a specific agreement. In particular, on the basis of the agreements signed with the Guarantors of the Apulia and Calabria regions in January and with the Municipal Guarantors of Milan and Turin in February, the CPRs of Bari (1 February), Brindisi (2 February), Turin (7 February) and Milan (22 February), the Taranto hotspot (3 February) and the Isola di Capo Rizzuto first reception centre (14 February) were visited<sup>1</sup>. The latter two facilities are outside the circuit of the Immigration Removal Centres, although migrants are sometimes deprived of their liberty in these same facilities. For this reason, apart from the preliminary critical issue related to the absence of a legal basis and related guarantees, which is the subject of a specific paragraph in this report, the general considerations expressed for the CPRs can be taken into consideration as a reference standard for the treatment of foreign nationals deprived of their liberty because of their administrative status. For any specific in-depth analysis referring to the single facility visited, please refer to the Reports that the local Guarantors have drawn up as a result of the monitoring carried out, which are published on the website of the National Guarantor.

Based on a reading of the latter and on the intensive and long-standing visiting activity carried out by the Guarantor since its establishment<sup>2</sup>, this Report intends to offer a broad, albeit not exhaustive<sup>3</sup>, summary of the main and, by now, recurrent critical issues that define the physiognomy of these facilities.

In particular, these critical issues arise as obstacles of a substantial nature to the protection of the fundamental rights of the persons there detained, from the standpoint of the requirements that the Constitution imposes in terms of personal freedom, both with regard to the inadequacy of the facilities and the shortcomings concerning the treatment of the persons accommodated and the level of services offered, for example, in terms of the right to information and communication or legal assistance.

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<sup>1</sup> The visit was necessary because, on several occasions in recent years, the facility has also been (improperly) used for the temporary detention of unaccompanied migrant minors, who were *de facto* deprived of their liberty.

<sup>2</sup> The National Guarantor first visited the Immigration Removal Centre in Brindisi in June 2016 (then CIE, now CPR), a few months after the Office became operational, and published thematic reports on administrative detention facilities for migrants in 2017, 2018 and 2021.

<sup>3</sup> For a complete overview of the issues raised by the National Guarantor on administrative detention centres, please refer to the Thematic Reports published on the website of the National Guarantor.



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These aspects, which, as shall be seen, have also been the topic in recent debates, will be dealt with more extensively and specifically in the following pages; however, general considerations on some of the main shortcomings of the system of administrative detention in Italy, which end up affecting daily life in the facilities for those housed and those who work there, should first be made.

1) The framework of the constitutional guarantees provided for by Article 13 raises the issues of the regulation by primary source of the modalities of detention of foreign citizens and of their jurisdictional review by a given judge. As reported in the last Thematic Report on CPRs of 2020 (hereinafter, 'Report on CPRs') "the lacking, weak regulatory framework does not offer sufficient protections and guarantees to ensure the *full* (Article 14, paragraph 2 of the Italian Consolidated Law on Immigration) *and absolute respect for the dignity of the person* (Article 19, paragraph 3 of Italian Decree-Law No. 13 of 17 February 2017), and risks leaving wide discretionary powers to public authorities and to the subjects responsible for their management".

Regarding the lack of judicial review, the possibility given to detained persons by the Italian Decree-Law No. 130/2020 to address complaints to the National Guarantor and the Local Guarantors regarding alleged infringements of their rights in the course of detention is certainly a step forward, but it definitely cannot make up for the protection of a Judge with ascertaining and authoritative powers of a binding nature.

The persistence of a 'weak regulation' on the subject of administrative detention severely limits the system of guarantees in a field of the deprivation of liberty that instead, precisely by virtue of its administrative and non-criminal nature, should, to the utmost degree, limit its impact on individuals. One of the main consequences is that the lack of an organic legal framework from a primary source, over the years, has led to the consolidation in the CPR system of management and processing practices that differ greatly from facility to facility, with significant consequences on the exercise of constitutionally guaranteed rights<sup>4</sup>. In this sense, the Legislator's attention, but also its responsibility, must be called upon to ensure that there is an overall rethinking of the system from a regulatory point of view, all the more so if the CPR system in Italy is to be enlarged by opening new Centres.

2) There has long been a chronic lack of effective health protection in CPRs: this problem relates to the quality of the health services provided within the CPRs by the managing bodies, but also to the subordinate role assumed by the National Health Service (*Servizio Sanitario Nazionale, SSN*). Both the primary legislation and the ministerial regulation on CPRs currently in force<sup>5</sup>, instead, assign to the public system essential tasks concerning the care and custody of foreign citizens without residence permits, even more so if they are detained and therefore under the responsibility of the Authorities<sup>6</sup>. Consider, also, the issue repeatedly raised by the National Guarantor of the periodic monitoring of the hygienic/sanitary conditions of the Centres<sup>7</sup>. With a view to making the recently approved regulatory prescriptions on the material adequacy of the facilities really effective, the National Guarantor reiterates the need that in the CPRs and in any other facility dedicated to the execution of restrictive measures, whether *de jure* or *de facto*, the systematic control of the local health

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<sup>4</sup> Emblematically, the right to communicate and the use one's own mobile device, which is forbidden or severely restricted in many centres, but not in the CPR in Milan where, on the other hand, its possession and use is permitted on the basis of a recent ruling by the local Court of Appeal.

<sup>5</sup> 'Lamorgese' Regulation, May 2022.

<sup>6</sup> Think about, for example, the considerable presence of drug addiction problems that affect the majority of the 'migrants detained' in these facilities and the use of psychotropic drugs, which is often made without an effective individual assessment by the competent specialised physicians and without a prospective assessment of the effect that certain therapies have on the person over time.

<sup>7</sup> In 2019, following a report by the National Guarantor after a visit to the Caltanissetta CPR, the local health authority ordered its closure and mandated its compliance to hygienic/sanitary standards.



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authorities should be provided. Such control should aim, in particular, at the periodic verification of the hygienic and sanitary conditions of spaces intensively overused. The authoritative opinion of the Italian Committee for Bioethics goes in the same direction. According to it “the National Health Service must take charge of the CIEs; alternatively, agreements and arrangements to this effect must be activated immediately. Not only shall adequate services be provided – but also the state of the premises, the adequacy of the services and the state of hygiene, and the compliance of the living conditions with the requirements for respecting the people’s dignity shall be assessed” (La salute ‘dentro le mura’, 27 September 2013).

3) The CPR management model, which can be defined as the result of a hybridisation mechanism between internal security and repatriation management - entrusted to the public sector - and the material management – provided for by the private sector<sup>8</sup>, has turned out to be substantially acephalous, with relevant consequences on the quality of the overall governance, especially with regard to the perennial conflict between security needs and the possibility, as provided for by law, of carrying out various types of activities during the period of stay in the Centres, which, however, are almost completely absent. In the CPRs, in essence, there is a lack of a coordinating and responsible role that could, on a 'third party' level, take decisions capable of reconciling the various requirements to which the Centres respond and institutionally guarantee a synthesis between security and the protection of rights. This role, in the opinion of the National Guarantor, can only be performed by an in-house director, designated by the local Prefecture and chosen from among prefectural officials with greater specialised competence and marked managerial skills.

Over the years, the CPR system has maintained a substantial 'opacity' with respect to the outside world, which has ended up undermining both its intrinsic legitimacy and its functionality. It is not only a matter of a lack of transparency with respect to the publication of data, information and news on the CPRs - a serious deficiency, which is only partially limited by the action taken by the National Guarantor with the publication of its visits Reports and Reports to Parliament - but of a deliberate and persistent lack of osmosis with the external world. The experience of penal institutions has shown that internal/external communication has a positive effect on the quality of life of those deprived of liberty, as it tends to enrich their everyday life. *Mutatis mutandis*, even administrative detention cannot be totally impervious to requests from the outside to interact with the CPR world, whether they are aimed at disseminating news, university studies and research needs, or requests for solidarity and support from associations and the Third Sector in general<sup>9</sup>. Regarding the quality of living conditions in the CPRs, the National Guarantor reported that: “in general, there is a total absence of activities and opportunities to spend time in a meaningful way. In fact, the security approach applied to administrative detention condemns the detainees to live in a condition of permanent forced idleness, without educational, recreational or meeting opportunities with civil society organisations, which, even if they are willing to carry out some initiatives, are regularly refused access to the facilities. The actual emptiness of these environments is mirrored in the time deprived of any opportunity for employment or self-determination even with regard to small daily life activities, such as reading a book, writing, or playing a sport. The quality of detention life, as well as the right of defence, is also predominantly affected by the limitations imposed on the right to have contacts with the world outside (phone calls, for example) and the general impossibility to have access to video calls for maintaining family ties and exercising the freedom of communication with the external world. The quality of detention is also affected by the relational modalities between the detained community and the staff, which are almost always intermediated by the perimeter bars of the sectors, and by the lack of structured internal procedures for lodging complaints. The general practice of not entering the housing

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<sup>8</sup> This is the only case in Italy in terms of deprivation of personal liberty. On this matter, there is a need for a careful oversight activity in view of the constitutionally guaranteed rights at stake.

<sup>9</sup> The appointment of a director at the CPR by the Prefecture with coordination and decision-making powers would foster relations with the outside world together with the controlled access of third parties in the centres.



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pavilions or, in any case, of limiting the entrance by the staff on duty and the condition of substantial abandonment of the detention sectors, also constitutes a *vulnus* for the safety of detainees, who, in case of a critical event, such as aggressions or illnesses, risk not receiving timely assistance and protection”.

4) Lastly, the time seems to have come to terms with a factual recurrence that is now demonstrated by historical series which has been pointed out many times by the National Guarantor in its Reports: statistically, only 50% of the persons who are held in the CPRs are actually repatriated; therefore, the sacrifice of their freedom ends in nothing. This circumstance can no longer be tolerated and, in this respect, the National Guarantor recalls the responsibility of the competent Administrations in a rigorous application of the directives and laws on this matter in order to overcome what has been taking shape over time as a real 'institutional hypocrisy': administrative detention is possible only in the presence of a concrete prospect of deportation and cannot be the solution to other problems, such as, for example, a presumed social dangerousness, which should in any case be addressed with other instruments.

Although serious critical aspects remain, more specifically, with regard to the constitutional guarantees concerning the deprivation of personal liberty, , the situation of administrative detention in the CPRs has undoubtedly changed over the seven years after the outset of this guaranteeing Institution.

In this regard, the inadequacy of the material conditions of the Centres, as recurrently reported by the National Guarantor in its Reports, has found a first and clear legislative answer through the amendment of paragraph 2 of article 14 of the Italian Consolidated Law on Immigration, as introduced by Decree-Law No. 130 of 21 October 2020, which prescribes as compliance parameters of the facilities the respect of “adequate hygienic and sanitary standards and housing, in such a way as to ensure the necessary information on the detainees' conditions, well-being and dignity”. Moreover, as already indicated, the same Decree-Law introduced the possibility of lodging a complaint with the Authorities for the protection of persons deprived of liberty.

However, it is above all in secondary legislation, with the new regulation of the CPRs approved by the Directive of the Italian Minister of the Interior of 19 May 2022, that some particularly positive elements have been recorded in terms of the enhancement of the rights of detained migrants, such as the attention and consideration of the conditions of vulnerability, the emphasis placed on the role of the public health system with respect to the evaluation of the health conditions of the detained persons, the explicit provision of the judicial control on the certification of the detainee's compatibility with life in detention and on the checks carried out by the Centre's medical staff, the stricter regulation on sanitary isolation measures, the strengthening of the guarantees relating to the right to information and to the custody of personal belongings, the exclusion of the Armed Forces with respect to the support of the internal surveillance system.

However, as already indicated, the guarantees affirmed by the Legislator are hardly effective without the vigilant control of a Judicial Authority, in particular; together with the persistent severe aspects of the system, they make up the critical framework whose salient features have been indicated so far and which will be taken into account in this Report.

Preliminarily, in relation to what has been highlighted above, **the National Guarantor once again expresses its recommendations indicated in the introductory part of the Thematic Report on the CPRs, so that:**

- **Decisive structural improvements be made to the Centres, both by providing for periodic maintenance and timely intervention when necessary, and by making up for the chronic lack of spaces for activities and social life, such as a canteen and worship rooms.** This is also in implementation of the new Article 14,



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paragraph 2 of the Italian Consolidated Law on Immigration, which establishes the need for adequate hygiene and housing standards in the centres;

- **The centrality of the National Health Service (SSN) in ascertaining the suitability of foreign citizens for life in detention be fully respected, and the envisaged cooperation agreements between the local health authorities and the Prefectures be activated in order to ensure timely access to health care for detained persons;**
- **Periodic checks by the Local Health Authority on the health services provided by the managing body inside the Centres and on the hygienic and sanitary conditions of the premises be scrupulously guaranteed;**
- **The permeability and osmosis of the Centres with respect to the local area be increased, with the participation also of civil society organisations, for the implementation of activities, including training activities addressed to detained persons, for a significant use of the time spent in detention;**
- **Each room in each centre be equipped with an alarm system for promptly reporting emergency situations of medical or other nature;**
- **The possibility to make phone calls, provided for by Article 14, paragraph 2 of the Italian Consolidated Law on Immigration, be fully and effectively implemented, guaranteeing foreign detainees the possibility to receive and make an unlimited call, also with the help of video-calling systems, as already experimented in some Centres during the pandemic;**
- **A generalised and standardised method of recording critical events be adopted, which allows both the individual examination of the event relating to each person involved, and the overall assessment of the number and type of such events in different time periods.** The records should feed into a remotely searchable national database, also accessible to the National Guarantor.

### **1. Structures and their use**

Generally speaking, the material conditions of the places visited within the framework of the delegations conferred on the Local Guarantors appeared to be very critical and degraded in terms of both maintenance and hygiene: apart from the beds, the bedrooms were devoid of any furnishing elements and the equipment for sleeping at night, such as mattresses and bedding. All in all, they were in very poor and unhygienic conditions.

The conditions of the bathrooms and toilets in most of the facilities visited are even more serious, as they are in a dilapidated state and characterised by neglect and widespread dirtiness. Moreover, a long-standing problem is the lack of doors and curtains separating the toilets or showers from the common rooms. This is an unacceptable deficiency in a material context that should limit as much as possible the afflictive and uncomfortable aspects of detention condition outside the penal environment. The National Guarantor has repeatedly expressed its recommendations on this issue, which raises a question of protection of human dignity, privacy and healthiness of the environments, which has been widely debated – under this specific profile – for a long time by the Supervisory Court in the context of sentence execution. The ECtHR has also assessed the lack of sufficient separation of the toilet facilities from the rest of the cell as an element that may contribute to a violation of Article 3 of the Convention. In *Szafranski v. Poland*, the Court concluded that the domestic authorities had not fulfilled their positive obligation to ensure a minimum level of privacy for the applicant and had therefore violated Article 8, as the applicant had to use the toilets in the presence of other detainees and had therefore been deprived of a basic level of privacy in his daily life.



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The lack of attention to the set-up and adaptation of spaces for sociality, worship, exercise, and educational and cultural activities also persists.

Therefore, the observations expressed in the Thematic Report on the CPRs remain unchanged: “As noted in the 2018 Report, the material conditions of the Centres visited appear, in some cases, unacceptable. The most critical factors are represented by the level of degradation and unhealthiness of the structures and their furnishings, the poor access to natural light and air, the absence of rooms and spaces for communal activities, the configuration of the places and the lack of certain furnishing elements that severely affect the quality of life inside the structures. These situations also determine the risk of restricting the exercise of elementary rights. These are problems of different nature - whether planning, ordinary or extraordinary maintenance - which involve multiple levels and profiles of responsibility, including the one - as the National Guarantor well knows - of the periodical damages to the facilities by the detainees. The high degree of conflict and tension that characterises administrative detention, however, cannot be considered completely unrelated to an environmental and organisational context that is neglected and inattentive even to the basic needs of the people living there”.

**The National Guarantor therefore recommends that:**

- **Material conditions that respect the dignity of the person and their state of health be guaranteed in detention areas: adequate heating and ventilation systems; furnishings; bedding, in line with standards of hygiene and cleanliness; bathrooms with hot water, in good working order and hygiene, with doors and fully partitioned toilets, suitable for guaranteeing the essential and necessary privacy and thermal comfort for users;**
- **Checks be intensified on the conservation of the environments, the functioning of the systems and the state of the fixtures and fittings in order to periodically verify the state of healthiness and material suitability of the detention areas.**

### **2. Health Protection**

Health protection and health care provided in detention facilities are clearly crucial aspects, and much attention was devoted to them by the delegations led by the Local Guarantors, who were able to rely on the support of the medical expert of the National Guarantor during each visit. As usual, the analysis focused on the assessment of the health conditions at arrival, the organisation and adequacy of the health care provided, the material requirements of the facility in terms of hygiene and security, the environmental conditions and a detention regime that guarantees a dignified daily life.

The Thematic Report on CPRs addressed four aspects of administrative detention, with respect to which some of the following considerations were expressed, which are also confirmed by the more recent visits.

#### **2.1. Health protection and poor liaison with the National Health Service**

##### *Medical examination to verify suitability for restriction and community life*

“As is well known, health care, like other personal services, is entrusted to the Managing Body rather than to the National Health Service in the CPRs. However, the latter is exclusively responsible for the preliminary assessment of the health conditions of foreign citizens prior to their arrival to the Centres, and for playing a role with respect to further areas defined by specific memoranda of understanding drawn up according to the outline attached to the General Regulation of the CIEs more than six years ago. The organisational choice of entrusting a private subject with the provision of such a service, which is already potentially problematic



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in itself from the point of view of the guarantees to be granted to the importance of the asset in question, suffers from deficient, non-compliant implementation practices”<sup>10</sup>.

In the context of delegated visits, it has been observed that, although the problem of a doctor certifying suitability for admittance to the CPR has been overcome, who by law must belong to the public health system, health checks continue to be limited to certifying the absence of infectious diseases, without any assessment of documentation, omitting to consider “psychiatric disorders, acute or chronic degenerative pathologies - detected through anamnestic or symptomatologic investigation, as well as through available health documentation - that cannot receive appropriate treatment in detention facilities” (Article 3). However, this assessment must be continuously updated and, in the opinion of the National Guarantor, should be renewed every time the person is temporarily transferred to another CPR or to another facility, such as a place of care, and enters the CPR again after a few days.

Moreover, Article 3 of the new Regulation extends the verification of the psychophysical well-being of the person both during the pre-entry assessment and the medical screening by the doctor of the Managing Body to the assessment of possible states of vulnerability pursuant to Article 17, paragraph 1, of Italian Legislative Decree No. 142 of 18 August 2015; the same provision very appropriately also calls on the doctors responsible for the CPRs to play an active role in the search for signs or symptoms of specific morbid conditions, signs of trauma or outcomes of torture according to the 'guidelines' drawn up by the National Institute for Health, Migration and Poverty – NIHMP, the Italian National Institute of Health – ISS and the Italian Society of Migration Medicine - SIMM, approved by the State-Regions Conference on 10 May 2018.

According to what emerges from the Reports of the delegated visits, these aspects continue to be neglected or at least underestimated, determining a strong impact on the right to health of foreign persons, especially in the case of problems of mental distress or particularly vulnerable conditions. On this aspect, the National Guarantor dwelt at length in his Report on the *ad hoc* visit carried out in the Turin CPR on 14 June 2021, to which we refer for further details. That Report also highlighted what was reported in the Thematic Report on the CPR: “Finally, in relation to the entry health checks, the importance of guaranteeing the effectiveness of the guarantees put in place to combat and detect any previous mistreatment of persons found to be irregularly present and transferred to the Centres should be considered. Without prejudice to the general obligations to report to the Judicial Authorities provided for by the Italian Code of Criminal Procedure to which also the health employees of the Managing Body are bound<sup>11</sup> measures should be taken for the timely regulation of the entry examination and the adaptation of health registers to European and international standards<sup>12</sup>”.

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<sup>10</sup> Thematic report on CPRs.

<sup>11</sup> Specifically: depending on the case, the obligation to report a crime pursuant to Article 331 of the Italian Code of Criminal Procedure for doctors who, in their capacity as public officials or persons in charge of a public service, in the exercise of their functions or their service, become aware of a crime, and the obligation to report a crime pursuant to Article 334 of the Italian Code of Criminal Procedure for all healthcare professionals in general (including nurses).

<sup>12</sup> In particular, the CPT standards provide that “The record drawn up after a medical examination of a detainee, whether newly-arrived or not, should contain: (i) a full account of objective medical findings based on a thorough examination; (ii) an account of statements made by the person concerned which are relevant to the medical examination, including any allegations of ill-treatment made by him/her; (iii) the doctor's observations in the light of (i) and (ii), indicating the consistency between any allegations made and the objective medical findings [...] Whenever injuries are recorded which are consistent with allegations of ill-treatment made by a detained person (or which, even in the absence of the allegations, are indicative of ill-treatment), the information should be immediately and systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned”. (CPT/Inf(2017)3, para. 9).



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**The National Guarantor therefore reiterates the recommendations expressed in its previous Reports:**

- **“the medical certificate of suitability for entry and stay in a CPR be always issued by a doctor of the National Health System and is based on effective and scrupulous knowledge of the person, the destination facility and the services guaranteed therein<sup>13</sup>”.**
- **“the Public Security Authority ensures that all the available health documentation, including the health form drawn up by the detention or care facility of origin – or known to the authority ordering and carrying out the removal and detention procedures – and any further information useful to assess the state of health be provided to the doctor called to ascertain that the physical and mental health conditions of the person detained are compatible with the admission to the CPR<sup>14</sup>”.**

### *The planned memoranda of understanding and cooperation between the Prefectures and the Local Health Authorities*

The liaison of the private health facilities of the CPRs with the National Health Service is an essential element of the organisation system of the health care service in the administrative detention facilities and is articulated in various items indicated by the same Regulation to protect both individual and public health.

As reported in the Thematic Report on the CPRs, “The strengthening of the coordination between the internal health centres of the CPRs and the network of health services is essential, in particular, for the care of certain vulnerable categories, which are in any case considered suitable for detention and too often simply separated from the rest of the detained population without a specific care. [...] In this regard, the National Guarantor was able to observe how the high concentration of foreigners with drug addiction, psychological problems or other forms of social distress, requires a strong involvement of the local health services (*Azienda Sanitaria Locale*, ASL) to support the doctors of the Managing Body and to provide specialist services. With regard to this aspect, moreover, also during the monitoring activity on forced returns, the National Guarantor had to point out on several occasions how the lack of forms of connection also concerns the sharing of health documentation by the local facilities that were in charge of the person before their detention or the failure to acquire any medical documentation at arrival the facility. Therefore, it may happen that the health staff of the centre remains completely unaware of the clinical events of the detained persons, with all that follows in terms of evaluation and failure to take charge, for example, of mental health problems or drug addiction conditions, of ensuring therapeutic continuity and also of risk assessment with respect to a procedure of forced return”.

However, also on the basis of the findings of the visits carried out by the Local Guarantors, there remains a critical level of coordination, which entails, in particular, strong criticalities in the management of mental health and, in general, of the provision of specialist services with a decisive impact on the prescription and administration of drugs. In relation to this aspect, which has recently been the subject of particular attention, in some of the CPRs visited, it emerged that drugs, which should be the subject of specialist prescriptions, are formally prescribed by external doctors, who have no knowledge of the person, at the request of the centre's doctors. Therefore, these physicians prescribe therapies despite not possessing dedicated specialist training. The practice clearly raises serious concerns with particular reference to the administration of psychotropic drugs, also with regard to the continuity of care that this kind of therapies entail.

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<sup>13</sup> Thematic report on CPRs.

<sup>14</sup> Report on the visit to the Turin CPR on 14 June 2021.





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Therefore, the National Guarantor recommends that:

- **Agreements be signed as a matter of urgency between the Prefectures and the local health authorities; concrete cooperation also be set up to guarantee the necessary link between the health centres in the CPRs and the public health system, as provided for in the CPR Regulation.**

### **2.2. Health monitoring rooms**

The explicit provision contained in the CPR Regulation, which was approved with Directive of 19 May 2022, stipulating that the health monitoring rooms must be located in proximity of the health unit, definitively connotes the nature of these places and clearly precludes the set-up of rooms *de facto* intended for improper isolation practices. A further positive element, resulting from the acceptance of the Recommendations formulated by the National Guarantor in its Reports, is the indication that the use of monitoring rooms must be documented by means of a special register.

However, in spite of the important normative innovations, according to the findings of the delegated visits, in some CPRs solitary confinement practices of a substantially disciplinary nature still exist, for purposes attributable to security and the maintenance of order. In this regard, the National Guarantor reiterates what has been indicated in its Reports: “The CPRs regulation does not provide for a disciplinary regime and therefore for the typification of offences, procedural rules, an exhaustive framework of applicable sanctions such as solitary confinement or other punitive measures (see Articles 38-40 of the Penitentiary Regulations). Moreover, even considering the situation of persons with particular vulnerabilities at risk in an ordinary dimension of community life, solitary confinement cannot be the answer to the particular protection needs they express: the objective of guaranteeing them a protected environment should not be pursued with afflictive solutions of confinement but possibly through the set-up of dedicated accommodation areas”.

From the point of view of the safety of the detained persons, as already highlighted in the Thematic Report on the CPRs, the fact that some Centres still do not have rooms for medical monitoring is also a cause for concern, since the prescribed regulatory guarantee of having such rooms available “in order to safeguard the health of the individual and of the community” while waiting for a new medical assessment.

Therefore, the National Guarantor recommends that:

- **Isolation practices unrelated to health reasons be disrupted, and “any need for separation for other than health reasons should never lead to situations of *de facto* isolation; people be always guaranteed the possibility of during the day to relate to other detainees; the rooms assigned to health monitoring within the Centres should be effectively and exclusively used for that purpose and under the strict and constant supervision of medical and nursing staff; the persons assigned to such rooms, compatibly with their health conditions, should have daily access to open air spaces of adequate size to enable them to exercise their physical activity and be able to exercise effective and full right to private contacts; practices should be disrupted whereby persons deemed responsible for jeopardising the order and security of the Centres are assigned to health monitoring rooms in the absence of a specific legal discipline laying down procedures, duration of the sanction, conditions and guarantees connected with the hypothesis of disciplinary isolation”;**
- **In order to deal with situations in which the person requires constant health attention or the need for separation from the rest of the population arises, if there is any doubt of a health condition that is dangerous to the community, health monitoring rooms be set up in all centres and kept in a good state of repair and cleanliness.**



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### **2.3. Quality of healthcare and continuity of care**

As reported in the Thematic Report on the CPRs, the monitoring carried out by the Local Guarantors also confirms the consideration that “from the point of view of adequacy, the health care provided within the CPRs appeared particularly critical. In general, the staff does not have specific expertise in migration medicine and does not follow specific training courses. Despite the numerous episodes of self-harm [...] risk prevention protocols or interventions are not implemented”.

In addition, according to what was reported to the National Guarantor, the problem of not issuing any health certification when the detainee is leaving the facility persists. This practice is particularly serious in the case of people in a severe state of vulnerability who are released without any support or indication to enable them to benefit from the necessary support and continuity of care.

**Therefore, the National Guarantor recommends that:**

- **In reaffirming that “suicide prevention is fully part of the defence of health and life” (Il suicidio in carcere. Orientamenti bioetici, Italian Committee for Bioethics, 25 June 2010), and thus of custodial duties, the adoption of plans for the prevention of self-harm and suicide risk be initiated in cooperation with the competent local services, as aimed at the timely identification of vulnerability indicators for the preparation of adequate support and directed to the implementation of training programmes for the staff;**
- **During the stay in the CPRs, at the request of the person concerned or in any case during the release phase, the detainee be always provided with a copy of their personal file, with a view to ensuring the person's right to be cared for and to have access to their personal data;**
- **The relevant Administrations always put in place all necessary measures to ensure that foreign persons in custody, even when being released from the CPR, receive the necessary care and assistance to protect their physical integrity.**

### **2.4. Further rights and guarantees**

Also during the visits carried out by the Local Guarantors, they observed that medical visits are carried out at the presence of police officers in some CPRs. In this regard, therefore, the recommendations expressed in the Thematic Report on the CPRs are reported: “This practice, which is incongruous from the point of view of the confidentiality and dignity of the person, continues to be followed despite it has been already considered in the *Report on the thematic visits carried out in the Detention Centres for Repatriation (CPRs) in Italy (February - March 2018)* and in response to the remark made by the Department of the State Police<sup>15</sup> specified that “any kind of medical activity takes place in full respect of the confidentiality of the detainee, in the absence of law enforcement officers, who, in any case, do not enter the room during the visit, except in cases of particular aggressiveness of the patient and always and only at the request of the health personnel”. As pointed out in the National Guarantor's *Report to Parliament 2019* “only in a specific and justified situation may the doctor request the presence of a police officer during the examination of a particular person, never as a routine practice. [...] This aspect assumes a particular relevance in the context of prevention and reporting of ill-treatment: the lack of confidentiality in the doctor-detained patient relationship could constitute a strong obstacle to the detection of any violence”. In the most recent *Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture*, it is

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<sup>15</sup> Reply by the Chief of Police (Department of Public Security - Central Directorate of Immigration and Border Police – Immigration Service) of 2 January 2019 to the Thematic Report on the visits carried out in the Immigration Removal Centres in Italy (February-March 2018).



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noted that the delegation found in the monitored penitentiaries a total lack of medical confidentiality during the medical examinations of inmates and that many detainees who were victims of ill-treatment expressly admitted that the presence of penitentiary staff during the examinations has a dissuasive effect in denouncing any abuse.

**Therefore, the National Guarantor, in finding unacceptable the presence of police personnel during medical examinations as a normal practice and not as a consequence of a specific and motivated request by the doctor in certain circumstances, recommends that this practice be immediately interrupted and that the usual practice of remote, visual and non-auditory control be established, with respect for confidentiality, also in accordance with Italian Legislative Decree No. 196 of 30 June 2003 'Italian Personal Data Protection Code'.**

### **3. Security and order**

As is well known, the amendment proposal formulated by the National Guarantor to exclude the Armed Forces from the internal security arrangements of the CPRs was accepted in the Regulation approved with the Directive of May 2022. In this respect, the organisation of the security service is therefore now aligned with international standards and in particular with Rule No. 71 of the European Prison Rules, which states, "This rule requires prisons to be under the responsibility of public authorities, separate from military, police or criminal investigation services". However, according to reports to the National Guarantor, in some of the visited CPRs, no changes have taken place and army personnel continue to operate within the facilities in a supervisory role.

Moreover, also as a result of the visits carried out in the framework of the delegation exercise by the Local Guarantors, in some CPRs the problem of the lack of call systems within the detention areas emerged. As repeatedly stressed in their Reports<sup>16</sup>, this is a very serious deficiency that can have a decisive impact on the occurrence of particular critical events. In this regard, the judicial case related to the death of the Georgian citizen Vakhtang Enukidze on 18 January 2020 in the CPR of Gradisca d'Isonzo is emblematic: according to the hypothesis formulated by the Public Prosecutor's Office, he might have been rescued with some delay because of the malfunctioning of the alarm device in the sector where he was detained.

**Against this background, the National Guarantor recommends that:**

- **The role of Armed Forces personnel be limited to the performance of the tasks entrusted to the external surveillance in accordance with Article 12 of the Regulation on CPRs approved by the Directive of 19 May 2022;**
- **In order to safeguard minimum safety standards and to ensure timely intervention in the housing modules by staff, that sectors be equipped with bells accessible from the inside for calls in case of need, as indicated by the CPT standards.**

### **4. Right to information**

In its visits, the National Guarantor pays the utmost attention to the right of persons to be informed in relation to every aspect of the restrictive measure applied to them, including knowledge of the rules of the facility in

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<sup>16</sup> See the Report on the thematic visits carried out in the Immigration Removal Centres (CPRs) in Italy (February - March 2018) sent to the Ministry's Central Offices on 7 September 2018 and the Report on visits carried out in the Detention Centres for Repatriation (CPR) in 2019-2020, sent to the Italian Ministry of the Interior's Central Offices on 9 March 2021.



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order to have certainty as to what is permitted and what is prohibited in their daily lives, as well as to have knowledge of the reasons for any prohibition.

Accepting the many amendments proposed by the National Guarantor during its drafting, the CPR Regulation approved by the Directive of 19 May 2022 has strengthened the right of information guaranteed to the foreign national with reference to certain rights of particular relevance.

However, there remain some areas in which access to information remains deeply deficient.

Firstly, with regard to the right of defence, with respect to which we will elaborate further in the following paragraph: also on the basis of a number of reports received by the National Guarantor, it has emerged that foreign nationals, who have not retained a lawyer, are not fully informed about how the *ex-officio* defence works and therefore do not understand that, not having appointed a lawyer, the service of an *ex-officio* attorney is limited to the counsel during a hearing and that for any validation hearing and subsequent extension there will be the assignment of a different *ex-officio* attorney<sup>17</sup>. Such information does not appear in the Charter of Rights and Duties, which, by establishing the right of the foreigner to be informed “of the possibility of receiving the assistance of a trusted lawyer, with possible admission to free legal assistance, or, failing that, of a lawyer appointed *ex officio*”, would suggest a substantial equivalence between a trusted lawyer and a *ex-officio* attorney.

Furthermore, with regard to the execution of the removal, as highlighted in the Thematic Report on the Monitoring of Forced Return Operations of Foreign Nationals (1 July 2021- 15 September 2022), it has also been observed in the context of delegated visits that foreign nationals are picked up from their accommodation wards, immediately upon departure, without having been noticed of their removal within 24 hours prior the operation and thoroughly informed about the final purpose of the transfer.

**That said, the National Guarantor recommends that:**

- **As part of the legal information provided to detained foreign nationals, they should be fully informed of the effects of not appointing a trusted lawyer and of how the *ex-officio* defence works in practice.**

**In addition, the National Guarantor renews its recommendations so that:**

- **“The date of departure is noticed in advance to the persons concerned, so as to enable them to organise their journey, verify the return of their personal belongings retained at arrival, prepare their baggage in a dignified condition, notify family members or in any case persons of trust and/or their lawyer in order to be aware of any updates concerning their legal position;**

- **No later than at the start of the operation, in full respect of their dignity, foreign nationals are informed of all the various stages, including the different legs 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 the baggage, the possible use of coercive measures in the event of refusal or opposition to return, the possibility of lodging a complaint”.**

### **5. Right to defence**

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<sup>17</sup> With regard to some critical aspects of the functioning of the *ex-officio* defence in the context of administrative detention, the National Guarantor has started an exchange of proposals with the National Forensic Council (see the note published on the Guarantor's website <https://www.garantenazionaleprivatiliberta.it>).



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As stated by the EU Agency for Fundamental Rights (FRA) in a 2021 publication on the right to defence in return procedures, “Effective access to competent legal assistance is a key safeguard to enable people in return proceedings to exercise their right to an effective judicial remedy under article 47 of the Charter and to access justice in general. It also promotes lawful implementation of return procedures more generally<sup>18</sup>”.

However, the effective recognition of this right is affected by problematic rules and practices of application.

A first critical profile concerns the subject of the *ex-officio* defence, which was mentioned in the previous paragraph and in respect of which the National Guarantor has initiated a specific dialogue with the National Forensic Council, recalling the principles of immutability of the defence and of continuity of the technical-legal assistance, which must be implemented to protect all persons deprived of their liberty at every stage of the application of the restrictive measure<sup>19</sup>.

A further aspect of particular concern concerns the non-immediate, or in any case not timely, administrative registration of the appointment of a trusted lawyer by the detained foreign national. In this regard, the regulation of the CPRs approved by the Directive of the Italian Minister of the Interior of 19 May 2022 provides *verbatim* that “for the purposes of the first access, foreigners may indicate the name of a trusted lawyer, whom they intend to appoint. This indication, even if given orally, must be promptly noted down and a record kept of it until a defence mandate is granted”. On the basis of the results of the delegated visits and in the light of some periodic complaints sent to the National Guarantor on this subject, the provision is not punctually applied. It happens that although a trusted lawyer has been expressly appointed, he or she is not duly informed and foreign nationals in court are therefore defended by a court-appointed lawyer.

**Therefore, the National Guarantor recommends that:**

**The acquisition of the appointment of a defence counsel is always ensured in a timely manner, even if it is made orally, as provided for by the Rules, and the consequent due communications necessary for the formalisation of the appointment and the performance of the defence activity are therefore promptly arranged.**

**The Isola di Capo Rizzuto centre and the Taranto hotspot (structures pursuant to Article 10-ter of the Italian Consolidated Law on Immigration)**

As mentioned in the introduction, in addition to the CPRs, the delegated visits included the first reception centre of Isola di Capo Rizzuto and the hotspot of Taranto, which, except for the hypothesis of detention in specific cases of asylum seekers (currently inapplicable), are not codified places of deprivation of personal liberty. However, the rules imposed on foreign nationals housed there may in practice configure situations of deprivation of personal liberty, implemented without legislative provision, recognition of the related guarantees, judicial review and possibility of appeal.

This condition affects all persons entering the hotspot and lasts until the operations indicated in Article 10 *ter* of the Italian Consolidated Law on Immigration are completed, which, according to reports, are in any case concluded within 72 hours. In this regard, noting that this deadline, which corresponds to the one imposed by the Eurodac Regulation<sup>20</sup> on Member States to enter in the European database the fingerprints of third-country nationals found when crossing the border irregularly, does not seem to refer to any form of restriction

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<sup>18</sup> [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2021-1legal-aid-in-return\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-1legal-aid-in-return_en.pdf)

<sup>19</sup> See footnote 17.

<sup>20</sup> Regulation (EU) No. 603/2013 of the European Parliament and of the Council of 26 June 2013.



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of personal liberty provided for by the law applicable in the specific case, the National Guarantor is interested in knowing the legal basis of the detention implemented in the centres visited.

For much longer periods of time, a similar condition concerns unaccompanied migrant minors who, while waiting to be transferred to dedicated facilities, as provided for in Articles 19 and 19-*bis* of Italian Legislative Decree No. 142 of 18 August 2015, remain inside the visited facilities without tailored services and any possibility of exit, even during daylight hours.

The first right affected by the practices detected in such places is therefore the right to freedom, which is sacrificed *de facto* by operational needs or influenced by the deficiencies of the reception system.

The National Guarantor recalls that with regard to the detention practices carried out at the Lampedusa hotspot, in addition to the condemnation ruling in the case *Khlaifia and Others v. Italy* of 15 December 2016, on 30 March 2023 the further decision *J.A. and others v. Italy*<sup>21</sup> was handed down. In this recent ruling, the ECtHR declared the violation of Articles 3 and 5.1 (*inter alia*) of the ECHR in relation to the Sicilian centre due to its material reception conditions and connotation as a place of deprivation of liberty, without a legal basis and without the possibility of recourse for the persons there held.

The lack of regulating provisions is also clearly reflected in the modalities of the detention, which takes place in a framework of complete informality and without being accompanied by the complexity of essential attentions and protections that the application of a detention measure requires. The absence of regulation about the conditions of detention also concerns, moreover, the hypotheses of detention of asylum seekers provided for by Italian Decree-Law No. 113 of 4 October 2018, converted with amendments by Italian Law No. 132 of 1 December 2018, and now also by Italian Decree-Law No. 20 of 10 March 2023, whose proposed conversion law – currently under discussion – establishes an unprecedented extension of the possibilities of using the facilities indicated in Article 10<sup>ter</sup> of the Italian Consolidated Law on Immigration as places of detention.

In this regard, this National Guarantor is obliged to recall the multiplicity of obligations assumed by the State Authorities in the implementation of a measure of deprivation of liberty. Without prejudice to the need for a punctual regulation on the detention modalities, in the application phase of the rules extending administrative detention, it must be considered that the implementation of a detention measure entails not only the task of setting up a security system aimed at preventing absconding, but also implies the responsibility of protecting the physical and psychic integrity and safety<sup>22</sup> of the detained persons, to guarantee their health care, the necessary psychological support, access to justice, contacts with the outside world, the right to complain, to provide for their protection the necessary measures to prevent and combat the risk of suicide, because the loss of liberty accentuates vulnerabilities and the detention experience is per se a traumatic.

From this point of view, and in general, the facilities visited appeared inadequate in terms of both the material reception conditions and the quality and quantity of the services provided, especially when referring to users with special protection needs such as unaccompanied migrant minors.

During the visit to the Isola di Capo Rizzuto centre, an episode occurred which raises serious concerns regarding the obligation to provide information on the international protection procedure, as provided for by

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<sup>21</sup> <https://hudoc.echr.coe.int/eng/#%22itemid%22:%22001-223716%22>}.

<sup>22</sup> In this regard, the National Guarantor noted with concern the news of the arrest of a foreign national accused of sexual assault on a minor (according to press reports, taken in with her family) inside the Isola di Capo Rizzuto centre on 22 April.



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Article 10-ter of the Italian Consolidated Law on Immigration<sup>23</sup>. What happened also appears symptomatic of poorly structured organisational procedures, which are implemented from time to time to cope with the functions that the structure is occasionally called upon to perform. With regard to the affair between the delegation and the contact person of the European Union Agency for Asylum (EUAA), the National Guarantor has undertaken an interlocution with the top management of the European body, so that full cooperation is always ensured to the delegations of the guaranteeing institutions.

That said, with reference to the **centres referred to in Article 10-ter of the Italian Consolidated Law on Immigration, the National Guarantor recommends that:**

- **Practices that have the effect of determining the deprivation of personal liberty of migrants entering the facilities, contrary to the guarantees and limits provided by Article 13 of the Italian Constitution and Article 5 of the ECtHR, be avoided;**
- **That the transfer of persons belonging to vulnerable categories, in particular pregnant women and unaccompanied migrant minors, be carried out as quickly as possible and that their stay, exceptionally, be limited in time and accompanied by appropriate measures to ensure their scrupulous and concrete protection;**
- **The necessary initiatives be taken urgently to guarantee adequate hygiene and housing standards, with a view to ensuring material conditions that respect the dignity of the person and their fundamental rights: adequate heating and ventilation systems; furnishings; toilets with hot water, in good working order and hygiene, equipped with doors or other devices separating the toilet and shower, suitable for ensuring the essential and necessary privacy and thermal comfort for those who use them;**
- **The regularity of the inspections provided for in Article 20 of Italian Legislative Decree No. 142 of 18 August 2015, be carried out also in cooperation with the territorially competent health authority, should be guaranteed;**
- **The right of foreign citizens to be informed, in a language and manner they understand, about the international protection procedure, the rules and the functioning of the facility, also through the involvement of UNHCR and other bodies involved in the identification of persons with specific protection needs (e.g., bodies specialised in the protection of trafficking victims), be always fully ensured;**
- **The service specifications requested from the managing bodies be promptly and duly adapted to the variety of functions attributed to the centres.**

*In presenting this document, the National Guarantor recalls that each visit inherently constitutes an element of cooperation with the Institutions.*

*The document contains some Recommendations and a request for some clarifications to which the National Guarantor asks for a reply from the competent Authorities within thirty days from the date of transmission. The document will be made public on the Guarantor's website, together with the replies received.*

Rome, 26 April 2023

Mauro Palma

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<sup>23</sup> It seems superfluous to emphasise that breach of this duty to provide information determines the unlawfulness of any refusal of entry measure adopted.