



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



National Preventive Mechanism under the OPCAT

The National Guarantor in the context of Covid-19 outbreak

Rome, 3 April 2020

Prisons

Let us have a look at some figures. Actually, "prison and probation" data at the end of March still do not appear on the website of the Ministry of Justice. For this reason, the National Guarantor's bulletin, at least in this context, ends up by being the source to which, as we have acknowledged, many press articles do refer. Prisoners held in prison cells are now (at 16:30) 56,830. The operational capacity is the same as in the past few days (just over 47,000 beds). Despite the downward, the prison population rate remains 121.75% and, as repeatedly stressed, it is not consistent nationwide. All the monitoring bodies of the European Prison Services (and not only them), whether they are independent or even internal to the prison administrations, recommend never to operate at 100% of the prison design capacity in order to leave availability of places for prisoners transferred and emergency responses that may require a margin of places uncrowded. This theoretically advanced possibility we are now experiencing directly and we are at least one fifth above that 100% that should not be achieved. It follows that — despite some steps taken that should not be disregarded — it is necessary to weigh in with significant actions. We need also keep in mind the twofold dimension of all interventions: the extent of the number of prisoners, so that prison crowding does not exceed 98% its design capacity; the dimension of time, so that all release schemes can produce effects at a speed comparable to any worrisome and rapid contagious epidemic. The National Guarantor is adding a third dimension: any measure adopted shall go beyond the unique contraposition on how sentences are enforced; and it shall focus on the specific right that is now to be safeguarded. A fundamental right, so plain in its connotation, which is that of the individuals' health, of those who are housed in places of deprivation of liberty, of staff working every day in these structures with professionalism and plausible apprehension, of those living outside these institutions who might suffer serious backlashes if the epidemic inside is developing. This dimension is even more important since we knew that in many cases the lack or unsuitability of the place of detention indicated by a prisoner is in fact detrimental to the detainee's application for home detention — even when the application might have well coped with all other limits and requirements posed by article 123 of Decree-Law n.18/2020. It is clear to everyone that this prerequisite has nothing to do with the applicant's dangerousness or with their behavior: instead, it is associated with their economic and social steadiness or instability. An effect that is bewildering if we look at the good purpose the ruling wanted to safeguard. If, on one side, many voices keep on repeating the need to find ourselves united against an unexpected and still indomitable aggressive variable — that is interesting our health and economic conditions — on the other, it is also true that we must affirm the principle that this cohesion involves everyone, the communities living inside and outside the walls.

The second aspect of concern is the number of mothers with their children behind bars: to date, there are 42 imprisoned mothers with 48 children. 26 mothers with their children are housed in the so-called ICAM [Attenuated Custody for Detainee Mothers], while the other 16 are accommodated in the prison nurseries. This number, though small, is indicative and meaningful if we want to tell about vulnerabilities in prison.

A symmetric vulnerability is the number of elderly prisoners: in Italy, 986 prisoners age 70 and above. Some diseases are recurrent among prison population: they can draw us a picture for suggesting custom-

made provisions and make effective the safeguard of that right constitutionally defined as "fundamental".

Another focus in the current debate is on the possibility of transforming the last part of a prison sentence into an alternative to prison custody to be enforced at home. Let us think about those 15,716 people who are part of prison overcrowding but with a remainder of sentence of less than two years. According to the Italian law, they could already have had access to alternative measures. Likewise, 17,468 people are put in custody on remand (of these 8,854 are still awaiting the first sentencing hearing). These figures are shown not to say that all could hypothetically no longer be behind bars, but that there are some wide scopes for intervening, discretionarily but consistently, and that these new regulatory steps to be taken have a large chance to become significant.

To these numbers we must add others apparently small, but dramatic in its reality and potentiality. Yesterday, as already reported, a prisoner housed in Syracuse prison [Sicily] committed suicide. Now, as we write, we are informed of the sixteenth suicide (in the fourteenth week) in Rebibbia prison in Rome. Yesterday, too, a prison officer committed suicide in Cantù [Como, Lombardy]. While the newspapers reported about the first prisoner who died in custody after contracting coronavirus — a man aged over 70 in remand custody — the images of the funeral of the prison officer who died from Covid-19 and greeted by his comrades from Opera prison are still impressed in our mind.

These figures are depicting a situation that seems to be contained, especially among prison population (less than 30 cases). Nevertheless, there is a risk for potential outbursts in particular if isolation measures addressed to symptomatic and non-symptomatic cases are not effective (currently, they count a few hundred cases).

Finally, we would like the reader to be informed about two papers. The first is a letter referring to preventive detention, a subject which is denied consideration until now despite 30% of prisoners are in custody for precautionary reasons. On April 1, the General Prosecution Office at the Italian Supreme Court urged all prosecutors to consider the need to protect public health, in light of the current emergency, as paramount. He suggested the opportunity to evaluate the different options that the current legislation makes available to reduce prison overcrowding, including through extensive or analogical interpretation of the provisions governing personal freedom.

https://www.giurisprudenzapenale.com/wp-content/uploads/2020/04/Nota_PG_carceri.pdf

The second paper is the advice of the Superior Council of the Judiciary on Decree-Law No.18/2020, the so-called "Cura Italia", in which the Council «hopes for solutions designed for reducing overcrowding in prisons, including interventions aimed at postponing — for the time being — imprisonment of people convicted to short sentences due to petty offences».

<https://csmapp.csm.it/documents/21768/92150/parere+dl+18+del+2020+cura+italia+26+marzo+2020/51a8d452-8a1e-b3ef-f27a-2f56408dc772>

The international networking

The Court of Justice of the European Union yesterday announced its judgment in the appeal presented by the Commission v. Hungary, Poland and the Czech Republic regarding the three Member States' failure to fulfill their obligations concerning the relocation of 120,000 asylum seekers from Italy and Greece. The Court gave reason to the Commission, stating that the three Countries, by repeatedly failing to indicate an appropriate number of applicants for international protection — who could be relocated to their respective territories — had failed to fulfill their obligations deriving from Council Decision (EU) 2015/1601, which established a mandatory relocation mechanism.