



## 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, 31 March 2020

#### **Prisons**

57,405 is the number of prison population, today, while the availability of places is of less than 48,000. Still there are too many prisoners and this situation make it difficult to undertake the necessary preventative measures to be implemented to thwart the spread of Covid-19. For this reason, the National Guarantor believes it is essential, while appreciating what has been done so far, that new and robust measures be adopted significantly committed to reducing prison population.

Prisons are getting on opening new wards inside the walls for precautionary isolation. To date, there are 122 prisons with 171 active wards and 380 people have been assigned there. This is the distribution along the Italian territory: 80 people in Piedmont, Liguria and Valle d'Aosta; 26 in Lombardy; 15 in Emilia-Romagna and Marche; 26 in the Triveneto area; 16 in Lazio, Abruzzo and Molise; 90 in Campania; 20 in Apulia and Basilicata, 61 in Sicily, none in Sardinia.

The Prison Regional Directorates are replying to the National Guarantor's request of been informed about the recent riots in some prisons. The most severe damages to facilities have been reported in Lombardy and Campania where total recovery needs are estimated at millions of euros. Serious damages are also in some prisons in Lazio and Emilia-Romagna, even if they have not yet been estimated.

#### **The networking with the territorial Guarantors**

The territorial Guarantors confirmed their commitment to monitoring situations in prisons and other places of deprivation of liberty being in their scope of intervention. The situation is reported as calm, though tensions are always lying in wait — like in the population in general in this emergency context, but most particular is the situation of those who are deprived of liberty and live in a closed environment. However, there is also a strong expectation of some changes, as well as the risk that a feeling of abandonment may return and even forms of exasperation may develop.

The National and local Guarantors highlight the need that alongside with the implementation of alternative means of communication, which have been debated so far, particular attention is paid to ensuring that these methodologies are also used for continuing in training and educational courses. The *Rete delle scuole ristrette* [a network of educational courses for prisoners] asked the Minister of Education and the Minister of Justice to carry out distance

learning courses for incarcerated people and to debate on how to continue the training activities already started.

### **The international networking**

On March 25, the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) — established under the Optional Protocol to the UN Convention against Torture (OPCAT) — adopted a new, more general Advice on how the Subcommittee and the National Preventive Mechanisms (Npm) shall continue to exercise their mandate during the emergency situation caused by the global spread of Covid-19.

The Advice is divided into 5 chapters: an introduction; a second part on measures to be taken by authorities that manage all places of deprivation of liberty (from criminal to immigration detention, closed refugee camps, psychiatric hospitals to other medical settings); a third chapter on measures to be taken by authorities in respect of those in official places of quarantine; a fourth part on measures to be taken by NPMs; a fifth and last chapter for its conclusion.

These are the principles expressed by the UN Committee:

To effectively protect all places of deprivation of liberty — and consequently the world outside — it is mandatory to fully protect the rights of all, that is, "all the rights of persons deprived of their liberty" but also "their families and detention and healthcare staff".

Therefore, the SPT underlines the importance in this period of the principles of "*do no harm*" — that is the duty not to cause harm — and of "equivalence of care" according to which the level of care of people deprived of their liberty must be equivalent to that of any patient in the community.

Furthermore, the UN Committee highlights the need and the importance of having a transparent communication: the restrictions for public health reasons have to be well explained in advance to avoid lack of clarity that can turn in protests and violence.

Finally, the SPT clarifies that, now as never before, NPMs and the Subcommittee shall be committed to their monitoring mandate and visit the places of deprivation of liberty in order to prevent torture and serious ill-treatment. The more places are closed to the outside world — even if for uncontroversial reasons — the more the risk of censurable behaviors increases.

In short, the legal observer has to work in synergy with the healthcare observer. As the Subcommittee stated, in these times of Covid-19 "It is the responsibility of the SPT and of NPMs to respond in imaginative and creative ways to the novel challenges they face in the exercise of their OPCAT mandates".

The impact on global freedom of movement caused by the pandemic crisis, determined by the border closure and by the marked decrease in international connections, has clearly also influenced the entity of forced return operations by air, actually being suspended in all European States. The images of these days of web applications for real-time monitoring of air traffic mostly trace the routes of planes connecting internal areas to different countries or continents. The former indistinct swarm of airplanes that piled up on every point of the global map without interruption is today replaced by the portrait of an orderly traffic with few aircrafts concentrated on areas much distant one from another.

For this reason, a survey on the implementation of forced returns of irregular migrants in the context of Covid-19 outbreak was launched within the European network of forced-return

monitoring, the National Guarantor being one of its members. 15 States have participated in the survey, Italy included.

Although in many of them forced return operations have not been officially suspended by the competent Authorities, the operations, after having drastically reduced, are currently at a standstill due to the overall cancellation of many national and international flights and a state of emergency announced almost worldwide. In very few cases, assisted voluntary returns and pushbacks are still carried out, as well as transfers by land from one border to another: this is the case in Greece and Albania.

As regards the activities directly coordinated and organised by the European Frontex Agency, also in this case there has been a drastic drop in activities: since 17 March, only two forced return operations via charter flights have been performed, while in the week of March 23<sup>rd</sup>, 7 operations were organised through commercial flights.

In addition to Italy, Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Hungary, Greece, Switzerland, Norway, Holland, Luxembourg, Romania and Slovakia have sent information in reply to the survey.

### **Immigration Removal Centres (CPRs)**

Closely related to the suspension of forced-return operations, is the detention of those who are to be expelled. Based on international and European legislation, their detention in CPRs is legal only if the enforcement of the removal orders is feasible and guaranteed.

In many countries, different voices have called upon the closure, at least temporarily, of the Immigration Removal Centres, which today are considered as illegitimate. Like all closed communities, they are hardly compatible with the contagion prevention measures established for the population in general and inadequate in terms of health care services available in the Centres.

The strongest call came from the Commissioner for Human Rights of the Council of Europe, Dunja Mijatović who on March 26 called on all the Council of Europe member countries to "review the situation of rejected asylum seekers and irregular migrants in immigration detention and to release them to the maximum extent possible".

If we have a look at the international press, very few States have taken measures to downsize the activity of the Centres. In addition to Spain, which was accounted for in the previous days, the decision taken in the United Kingdom last week, following a legal challenge led off by the human rights charity *Detention Action*, to order the release of over 300 people with medical conditions placing them at increased risk from Covid-19. The British authorities have also published a guidance for the fight against the epidemic in all places of deprivation of liberty. They have committed to urgently review the cases of every person held in immigration detention, with a view to further releases over the coming days (736 people detained on March 24<sup>th</sup> according to *Detention Action*) and have also halted the new detentions of persons liable to administrative removal to 49 countries, including Jamaica, India, Pakistan, Afghanistan, Iraq, Sudan, and Albania.

Before the United Kingdom, Belgium had also ordered the release of about 300 people taking into account the impossibility of respecting the social distancing measures required to avoid the spread of the epidemic.

On the other hand, the situation in France appears to be different: the legal action undertaken by a network of associations — asking for the closure of the Centers for repatriation [Centres de Rétention Administrative] — was rejected by the French Council of State which argued with data showing that very few people are now detained in the Centres (152 on 26 March), that

they had supplies for personal hygiene and cleaning administered, that greater attention is going to be paid to new arrivals and to the general health conditions within the Centers. With reference to the lack of legal basis for detaining migrants in the Centres due to the impossibility of their effective removal, the Council of State replied that the Administrative Authority informed on recent repatriation operations being carried out.

Still with regard to France, the decision of the European Court of Human Rights is still pending related to the possible prospect of inhuman and degrading treatments detrimental to the physical integrity of the persons detained within the Centers for repatriation. By today, the French government will have to provide clear replies to the judges of Strasbourg and then it will come to the last decision.

<https://www.gov.uk/government/publications/covid-19-prisons-and-other-prescribed-places-of-detention-guidance/covid-19-prisons-and-other-prescribed-places-of-detention-guidance>

<https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-27-mars-2020-demande-de-fermeture-temporaire-des-centres-de-retention-administrative-cra?fbclid%20%E2%80%8B>

The current number of migrants in the Italian CPRs is of 344, including 23 women. The greatest number is in Rome and Turin CPRs: 93 men and women in the first, 90 in the second.

If we look at the trend starting from March 12, we can still see a downward in numbers, albeit very slight:

Day	Number of detainees
12 March	425
16 March	410
20 March	393
24 March	381
27 March	367
31 March	344

### **Residences for people with disabilities or the elderly**

It took place today the joint press conference with the National Institute of Health on the situation in the assisted healthcare residences and the ravaging risk posed by the Covid-19 epidemic. The two institutions also discussed on the research-action they have undertaken on this subject which first outcomes will be announced in the coming days.

At this moment it seems important to us to underline the importance of the collaboration between such different institutions that will allow the analysis of this new situation — of people experiencing such difficult and critical times — from a double perspective, the health care and the human rights aspects.

The commitment of the National Guarantor is to monitor the situation in these facilities and to ensure full respect for the rights of the people there housed, who are around 88,571. A

commitment which is fulfilled in compliance to its mandate as National Prevention Mechanisms (NPM) given by the United Nations. In Italy, therefore, the National Guarantor has the task to monitor any form of deprivation of liberty —also *de facto* detention — regardless of the reasons for the deprivation itself. It may be a monitoring activity on prisoners or on those undergoing a compulsory treatment, or else on people housed in residential facilities where they sometimes enter voluntarily but it is not always as easy to leave.