



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, 9 April 2020

From the world: immigration detention, the Spanish experience

Since the declaration of the state of emergency in Spain following Covid-19 epidemic, issued with the Royal Decree-Law No. 463/2020 of 14 March, the country's political and administrative Authorities, together with the Judiciary, the guaranteeing Bodies for the rights of persons deprived of liberty, including the *Defensor del Pueblo*, the legal advisors and the civil society began to question on whether not to close the *Centros de Internamiento de Extranjeros* [CIE – Centre for the Detention of Foreigners]. Indeed, in these times, the preconditions for their existence have failed, in undoubtedly exceptional and unpredictable circumstances: first of all the prospect of repatriating migrants, which, in the emergency and reasonable spell and the borders closed between and with many countries, would be impossible to perform.

Immediately after the declaration of March 14, amended on March 17, the Spanish *Defensor del Pueblo* (which the National Guarantor has been in contact with in these last few days) started exchanging letters both with the General Commissioner for Migration and Borders of the State Police, and with the Secretary of State for Migration. The object of their correspondence has been to urge the adoption of measures to gradually empty the immigration Centres and protect all guests' and staff's health and safety.

In fact, at the core of the request, there was not only the impossibility to return migrants to their country of origin but also the principle in the Spanish Constitution and Laws of equal rights and opportunities to all citizens, with no distinction, to protect their health. This principle is not guaranteed in an Immigration Removal Centre, given the conditions of immigration population density. In this sense, the Authorities concerned should have taken measures to progressively relieve the immigration Centres — until they are completely empty — and also to display coordination actions to ensure guests a safe return to their homes — once released — or provide them with a secure roof if they have housing problems.

Hence, for this reason, from March 20 the Spanish Immigration Centres have opened their gates to repatriated migrants, first the one in Barcelona and then in Valencia, Madrid, Las Palmas and Murcia. In many cases, the public territorial services or some voluntary organisations have taken on responsibility of migrants. Moreover, it should be noted that, in this context, the Spanish Ministry of the Interior signed a specific agreement with some Non-Governmental Organisations (NGOs) that showed available to offer hospitality.

This has been possible because of the support and contribution of many actors. First of all, the law-enforcement agencies, responsible for the security in the Centres, which have evaluated on a case-by-case basis the personal situation of migrants, in order to assess mainly the real possibility of their repatriation. Then, the judicial authorities — having the duty to control the Centres, which have responded with the closure of two immigration detention Centres — one in Murcia on 30 March and the next day the one in Las Palmas. They considered the overall combination of said principles and

objective conditions in the Centres: the principle of equal rights, including the right to health; the risk of contagion in the Centres and the vulnerability of the persons detained and those who work there; the unfeasibility of implementing the migrant's return decision. In this regard, the deadline for the removal, which in Spain is fixed at 60 days, has helped in voiding the Centres. On the decision of the law-enforcement Agency, they will not be opened until the health emergency has overcome. It is worth noting that the adoption of these extraordinary measures is not a judicial remedy to the illegal position of migrants in Spain. In fact, their illegal stay on the territory will be assessed again after the influenza virus transmission has ended.

On this issue, the discussion between the Italian Ministry of the Interior and the National Guarantor continues.

Prisons

The Regional Prison Administration in Lombardy has started collaborating with the international organisation MSF/Doctors Without Borders for the prevention of the spread of coronavirus in its county establishments. The NGO has begun its activity in San Vittore Prison in Milan since last Friday and yesterday had a long call with the National Guarantor concerning the situation in that prison and how to intervene.

Today, there are 55,939 prisoners in custody, again a downward trend, though slight. However, Covid-19 virus transmission is demanding more robust and rapid actions to reduce overcrowding in prisons. The dramatic situation developed in nursing homes should sound as an alarm bell on how the virus outbreak could be devastating in a total institution, where social distance is hard to manage due to lack of space.

Although figures remain roughly low, yesterday the number of cases tested positive among prisoners has almost doubled since last week update by the Prison Service. A moderate number that, however, is to be read as a risk indicator, especially if clearing space and create capacity for social distancing is becoming a great challenge.

The number of cases tested positive among staff is raising at a slower pace. However, the virus strain among prison and medical staffs peaked last week.

Residences for the execution of security measures (REMS)

In recent days, the National Guarantor gave news of a patient in Ceccano REMS tested positive. Accordingly, however, 57 swab tests were carried out on staff and patients and they all tested negative. There are therefore no cases positive for coronavirus in the REMS.

The National Guarantor's bulletin will come back after the Easter holidays