



National Guarantor for the Rights of Persons Deprived of Liberty



National Preventive Mechanism under the OPCAT

### ***The National Guarantor in the events of a new surge of infection***

28 October 2020 – The Viewpoint no.1



Today, the National Guarantor resumes the periodic publication of its information bulletin. It will contribute to give a thorough “Viewpoint” on the situation. The illustration by Tomi Ungerer helps treating the present time with all due seriousness and the necessary optimistic gaze.

Certainly, there is again great concern about the new phase of Covid-19 disease, which is resurfacing and viciously expanding, in everyday life as well as in places where people are restricted and cannot leave at their will. The double anxiety that the National Guarantor highlighted in its bulletins last Spring is reappearing in those corridors and rooms. It is also manifest in the attention paid to the records and data which we daily receive in order to understand where the trend is moving and how can it be reversed. However, both outside in the free world and inside the places of deprivation of liberty, two aspects somehow are somehow reassuring. The different relationship between people who tested positive for coronavirus and those who then develop the disease; the different people's approach towards something that is no longer unknown and which modalities of expansion and possibilities of prevention are known. The debate again is on the capacity to equip against the virus so that these factors can really act and not remain background variables of an unchanged or too little changed reality, compared to the scenarios of a few months ago.

#### **Detained persons**

Prison is one of the places with respect to which external anxiety often turns into announcements, voices –sometimes shouted– which end up with breeding apprehension. Certainly, the numbers are not to be underestimated. Compared to today's prison population of 54,815, the data made known refer to around 150 prisoners infected, to which corresponds a higher number of infected prison staff (about 200). They together represent a somewhat greater incidence than last May. However, compared to that period, the number of those showing symptoms is much lower. Not only that: the protective equipment does not represent a theoretical hypothesis as in the beginning and the same procedures implemented make any contagion less likely. Certainly, inside, as well as outside, the rapid resurgence of infections is of concern, particularly where *clusters* with a robust surge in the number of persons tested positive are identified. However, in the case of prisoners, we can count some emergency situations on the fingers of one hand (two or at most three – a couple in Lombardy and one in Umbria), while in the other cases we are faced with small numbers widespread in different prisons, which situations can be easily and properly managed.

That said the matter relevant to how to provide places in prison where to effectively quarantine persons remains inescapable. We hope it will not be necessary, but it would be wrong not to make any forecast.

The topic is once again that of reducing the number of prisoners by adopting measures which, while being coherent with any parameter of overall safety, are able to highlight the heart of the matter, that is the safeguard of each person's health. And that is that, because the number of prisoners has importantly soared since May (when it dropped to less than 53 thousand prisoners). The measures that the National Guarantor expects from the Government will have to confirm and expand those adopted at that time, drawing lessons from that experience and thus avoiding those aspects that have sometimes made their scope very limited.

It is necessary to firmly clarify that the need for more places is unavoidable. Therefore, it makes no sense to let prisoners spend the night in their cell after having worked the whole day in the community. Or to keep persons who have to serve a short time in prison if the prison administration has provided them with the possibility to open to new opportunities outside the prison institution, through the Cassa delle Ammende [Office for the Fines Fund] in coordination with those who have territorial competences. For these low-risk prisoners, the possibility to postpone the enforcement of the sentence might be coherently evaluated.

It is necessary to reaffirm the principle of protecting the particular vulnerability of the elderly or of those who suffer from specific disease which remains intact in its value, and goes beyond some opinions expressed and shouted in TV talk shows.

Finally, it is necessary to ask ourselves, also on this occasion, how it is unacceptable to have prisoners with mental disease serving their time in prison while they are placed under a security measure. They are illegitimately held there only because no places are available in the dedicated structures. Here the responsibility is up to the Regions, which are administering health services locally, also in order to avoid further rulings from supranational bodies.

These are all aspects that look at the pressure cast on quantitative data, also in consideration of the necessity to avoid turning out on the local health services any possible escalation of contagion, which finds fertile ground in densely packed environments. These are aspects that, however, do not dodge the question of the *quality* of detention, which is also a problem, a very significant one. Contrary to what someone is recklessly talking about these days, the prison environment will be able to bring together the necessary rules of protection, for those who work in it and for prisoners too, with the possibility of keeping alive the institutional and planning activities that give the constitutional value to any time served in prison (on this aspect see the recently published article by Mauro Palma<sup>1</sup>).

Precisely on the issue of quality, the National Guarantor positively greeted the closure of the indecorous "blue section" of the Trani prison, communicated to the press in recent days. It has been seen as a signal showing the willingness to abandon those sections which conditions are not acceptable, and there are examples spread nationwide (jargon expressions are also often used to identify some of them, such as "pigsty", "unfurnished cell" or other sad connotations).

### **Migrant persons**

As is well known, the Government has approved the law-decree no.130 of 21 October 2020, which amends certain rules contained in the so-called "security" decrees of recent years. In particular, the "security" decree of 2019 on which the highest State Authority expressed his many comments. During its Annual Report presented to the Parliament on 26 June this year, the National Guarantor wished those remarks be accepted as well as others that arose precisely from the enforcement of those provisions and their failure in terms of perception of safety and worsening the life conditions of the addressees. At that time, the National Guarantor requested «an amendment that starts from the issues raised by the President of the Republic and is capable of interrupting the implicit increase in the number of illegally stays and the consequent insecurity that the dismantling of the widespread migrants' reception network

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<sup>1</sup> Mauro Palma, "Il carcere senza direzione", from Collettiva of 25 October 2020. Available at this link [https://www.collettiva.it/copertine/culture/2020/10/25/news/il\\_carcere\\_senza\\_direzione-414573/](https://www.collettiva.it/copertine/culture/2020/10/25/news/il_carcere_senza_direzione-414573/)

has determined». Certainly, the specific solutions adopted by the new law-decree will be scrutinized by the National Guarantor which will draft its own comments resulting from the debate with the civil society organisations that have been courageously dealing with the effectiveness of the rights of migrants since long time. Its advice will be sent to the Parliamentary Commission which is in charge of analysing the decree for its conversion into law. However, a positive aspect is immediately emerging: the possibility to lodge a complaint with the Guarantors. Such a new measure was so far unavailable to migrants who were detained on the basis of their illegal stay in the territory, their repatriation foreseen. Consequently, the provision for the National Guarantor to elaborate specific recommendations to be addressed to the competent Authorities at the various levels. It is worth remembering —as recently and authoritatively emphasized, albeit in a different context— that the National Guarantor's recommendations are not mere invitations, but the core of a *soft law* that can progressively acquire legal relevance.

Alongside the legislative evolution, however, practices must be considered. As is well known, the National Guarantor, following a visit on a ferry used for quarantining people who have just arrived in a fortunate manner on the national territory, expressed a positive opinion on the housing material conditions (especially when compared to the unmanageable overcrowding conditions of first reception centres on the ground). However, the National Guarantor pinpointed two critical aspects. The effectiveness of the information on the rights that can be given by the Red Cross staff on the ferry, when it is not supported by any written material and showed in multiple languages, and administered to a very large number of migrants housed there. The difficulty of relating with people in such a way as to recognise their often traumatic past and consequently develop a concrete support plan. The death of 15-year-old Abou, subjected to a past of ill-treatment or torture during his journey, is a painful proof of this difficulty. These two critical issues risk becoming central in the context of the protection of rights in cases where the practice of a deferred “refusal-of-entry” is carried out as soon as people are brought ashore.

In recent days, the National Guarantor has been informed of some migrants, who tested positive for coronavirus, be moved from the reception centres —where they had been hosted for some time— to a ferry used to quarantine migrants. In this regard, the National Guarantor has expressed to the Minister of the Interior its perplexities and its concern for this practice, because of its having no legal basis and factual motivation as well as being critical in terms of the rights and guarantees of the people involved, including front line staff. In fact, the use of ferries for the application of precautionary health provisions appears to be a solution that cannot be proposed if it does not maintain the features of an initial measure of an exceptional nature. Otherwise, when applied to persons legally residing in Italy, it risks becoming a collector of the difficulties of the territory and determining a discriminatory effect on particularly vulnerable people. The recent statements by the Home Secretary to the Chamber of Deputies regarding the exceptional and contingent nature of these transfers reassures the National Guarantor. Nonetheless, it will keep a watchful eye on the application of said quarantine measures that fall within his mandate.

On 22 October 2020, the ten Immigration Removal Centres (hereinafter: CPR) operating nationwide were housing 344 people (including eight women) on a total capacity of 548 places. Numbers are higher in the centres of Rome, Turin, Gradisca d'Isonzo (GO) and Macomer (NU) with respectively 102, 73, 58 and 45 retained migrants. The rest are distributed in the CPRs of Bari (32) and Brindisi (27) and in the reopened centre of Milan (8). In the *hotspots*, on the same date, there were 250 migrants, out of which 174 were in the hotspot of Lampedusa and 76 in Pozzallo (RG). Furthermore, on the basis of the information acquired by the Prefectures, in Italy in the Centres for Quarantine there were 1,632 migrants, of which 1,078 on board the dedicated ferries.

The National Guarantor's new project on the monitoring of forced-return operations has been approved by the Asylum, Migration and Integration Fund (AMIF). The project is aimed at strengthening the capacity of the National Guarantor himself and of those territorial Guarantors with which a common protocol has been established. The National Guarantor is the national body appointed for the monitoring

of forced-return operations pursuant to the European Directive 2008/115/EC. This second edition of the project is, indeed, the continuation of the first which successfully concluded on 28 February 2020, after two years of activity. Thanks to the resources allocated to the project, the National Guarantor will be able to further enhance the collaboration among different institutions carried out within the national network of forced-return monitors, through training activities, debates on specific issues with its *stakeholders*, communication, information and raising awareness on the issue, as well as with international networking activities. Finally yet importantly, the project will allow the strengthening of the data collection system on forced returns in our country.

### **The National Guarantor**

The aforementioned law-decree no.130 of 21 October 2020 intervened as well on the structure of the National Guarantor. First of all, by changing its name which, as suggested in its Annual Report to Parliament in 2018, was "corrected" by eliminating the specific reference to criminal detention. In this way, it is now fully reflecting the scope of the mandate assigned to the National Guarantor which is now unequivocally the *National Guarantor for the Rights of Persons Deprived of Liberty*. The moment for the reform was very much favorable, due to the fact that the National Guarantor's remit was in continuous expansion in different aspects of the deprivation of liberty: one example for all is relevant to the places of quarantine which have been indicated as places of deprivation of liberty to be monitored.

Moreover, the legislative provision has modified the original structure of the National Mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (NPM) — pursuant to the well-known UN Protocol (OPCAT)— by clarifying the relationship between the National Guarantor and the territorial Guarantors. It establishes that the National Guarantor is the Italian NPM: it has granted all the powers and prerogatives of the OPCAT Protocol. The territorial Guarantors cooperate with it and can be delegated «to carry out specific tasks» in «particular circumstances», for a maximum of «six months». This change is also explained by the growing scope of the National Guarantor's mandate which, having to be carried out in multiple areas of competence nationwide, requires the guaranteeing Authority to have recourse to the network of the local Guarantors.

This last aspect opens up to the issue of the social care homes (RSA), and the need to rely upon a network of monitors spread nationwide. The National Guarantor is currently monitoring the evolution of the situation, both through its oversight visits to the structures and through various working groups and national surveys, and will pay particular attention to this issue in "*The Viewpoint*" to be published next.

With the same law-decree, the duration of the National Guarantor's Board is extended by two years with respect to its established extent.

As already announced with a specific press release, the National Guarantor positively welcomed the designation, for the first time, of an Italian component in the United Nations *Subcommittee for the Prevention of Torture* and, in particular, the appointment of the Head of Unit dealing with the deprivation of liberty and migrant person of this office. This is a sign that shows to what extent the issue of migration is necessarily bound to the effective safeguard of the persons' rights in a complex geopolitical scenario.

Also on the international level, the National Guarantor was granted leave by the European Court of Strasbourg as *amicus curiae* in the *J.A. v. Italy* and *S.B. and Others v. Italy* cases. It is preparing its written submissions to the First Section of the Court which is in charge of this proceeding.