The penal system and freedom

The penal system and freedom

27. An overview of the penal system

The 191 prison institutions for adults located throughout Italy have a total capacity of 50,619 places. As of 30 April 2018, there were 58,285 persons detained, a year earlier, in 2017, there were 56,436, while in 2016 there were 53,725. The numbers are therefore increasing, albeit with a less rapid growth trend in the last few months, and depict a situation that must be kept scrupulously under control, although it is certainly far from the alarming state that led Italy to be condemned for the conditions of its prisons by the ECHR in 2013. With the measures adopted as a consequence of the "pilot" ruling, the numbers have consistently decreased, reaching 52,434 in October 2015, and then resumed an increase, slowly but apparently inexorable and totally unrelated to the numbers that indicate a decrease in reported crimes.

The 191 prison institutions for adults located throughout Italy have a total capacity of 50,619 places. As of 30 April 2018, there were 58,285 persons detained, a year earlier, in 2017, there were 56,436, while in 2016 there were 53,725. The numbers are therefore increasing, albeit with a less rapid growth trend in the last few months, and depict a situation that must be kept scrupulously under control.

This is why it is obligatory for the National Guarantor not to underestimate this data and its effect in many Institutes or in some specific divisions, as there is still a difference of about ten thousand places between the official capacity and prisoner occupancy, even when considering that Italian parameters for calculating capacity are much higher than those suggested by the European control bodies[1]. Moreover, the non-uniform distribution of data in Italy - as it is obvious that, given the different types of prisoners, the need for justice in the case of persons in protective custody, as well as the maintenance as far as possible of the "territoriality" of sentence execution - implies that in some situations occupancy attained values 150 percent higher than that of regulatory capacity. It should be kept in mind that, precisely due to the different factors that do not allow for the widespread uniform distribution of prisoners, the occupant level should not equal the capacity, given that it should not exceed roughly 85 percent so that the system does not become overcrowded.
Starting from this aspect - apparently both computational and essentially fundamental in prison life - the National Guarantor prepared the preliminary evaluation for its visits, which obviously concern many other potentially critical factors and elements of equally potential positivity, to the penal Institutes. So far (30 April 2018), it has visited 71, partly in the context of regional visits to a variety of facilities of deprivation of liberty, and in part with *ad hoc* visits due to particular circumstances or reports. The detailed preparation, undertaken to arrive at an Institute with an already clear vision of the officially reported parameters, is made possible by access to data from the Ministry of Justice and the Prison Administration Department - a sign of great transparency that the Guarantor appreciates - which in fact allows continuous monitoring of the numerical data reported by the Institutes and the events they report to the Central Administration. This is important information, though obviously not sufficient because, as reported several times, referring to an edition of the magazine *Il Ponte* from 1949, edited by Pietro Calamandrei, "we should have seen it". It is even better to see the conditions of the prison life of the detainees as well as the working conditions of the personnel who work there with that cooperative, but intrusive look that the Guarantor adopts in its unannounced visits.

The Reports of the Guarantor following the visits, sent in the first instance to the competent Administrations and subsequently published on its website[2] together with the responses received, describe the reality of the prison world through the eyes of the delegations who spent hours and days in those Institutes to take a deeper look, gain a better understanding, and check any information, observation, and report, from any source, examining documents and speaking privately with the detainees and holding meetings with the staff. The Reports on Prison Institutes - seventeen of which have been published so far, including, with few exceptions, several Institutes of the same territorial area - also reported the recommendations that the Guarantor sent to the Administrations concerned, in order to improve the level of protection of the rights of persons deprived of liberty, in close cooperation with all the actors involved.

The Reports of the Guarantor following the visits describe the reality of the prison world through the eyes of the delegations who spent hours and days in those Institutes to take a deeper look, gain a better understanding, and check any information, observation, and report, from any source, examining documents and speaking privately with the detainees and holding meetings with the staff.

During the year, the Guarantor decided to publish a collection *Norms and Normativity*, of all the Recommendations sent in the first year and a half of its activity to the Prison Administration and related to the visits made in the Institutes for adults. This provided a depiction of not only the critical issues detected, but also the observation grid of the Guarantor, structured according to a series of indicators: the material and hygienic conditions of the facilities, the common areas, the special units, those with special regime status pursuant to Article 41 bis of the penal code, the quality of prison life and the concrete regimen presented, the ways in which the critical issues are dealt with and their regular recording, and the prevention and management of radicalization in prison. Finally, the issue of respect for the rights of those held in prison and - a relevant topic not always given proper attention - the rights of those who work there and the conditions in which this daily life of hard work is carried out.

But the Guarantor's visits are not limited to mere verification of compliance with national or supra-national legislation. Its approach is holistic: it is based on the verification of the overall situation that in fact exists and not the individual provision and its legal prerequisite. The recommendations originate from this approach and, although not having direct binding effectiveness, they help to create a system

1. Italy calculates the regulatory capacity on the basis of the criterion of "habitability" of civil dwellings, which establish nine square metres for accommodating a single individual and an additional five square metres for each additional person (a parameter reiterated by the Ministerial memorandum of 17 November 1988 and never modified). However, this merely theoretical and never respected parameter, has in practice recently been replaced by the certainty, found in all visits to the Institutes, that three square metres per prisoner is not only necessary, but also sufficient, and in short a sort of new regulatory parameter .
The National Guarantor has repeatedly recommended, in its Reports on its visits, not to consider the limit of three square metres per prisoner as the "ideal" space, but the threshold below which there is strong presumption of violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), with the risk of condemnation for inhuman and degrading treatment. It also pointed out that in its document dated 15 December 2015, the European Committee for the Prevention of Torture (CPT) established as a standard six square metres for the placement of a single person plus four square metres for each additional person, with a maximum limit of four places per room.

2. www.garantenpl.it

of meaningful indications - often referred to as *soft law* - with a role of *moral suasion* towards public institutions. The objective is to define a system of basic national standards for Prison Institutes, which can be combined and dialogue with the supra-national ones, such as the *European Prison Rules*[3], the *Nelson Mandela Rules*[4] and the CPT standards[5].

Norms and Normativity is part of this approach, and the positive reception it has had among the operators of the Prison Administration, the supervisory magistrates and also the academic world represents an important sign and is also the expression of a void that the collection of Recommendations has in some way filled. But perhaps it also finally indicates a different attitude to the *soft law* system in Italy. The work of collecting and systematizing the Recommendations can be considered as an integral part of this Report, albeit standing alongside it as an independent publication.

28. Vulnerabilities

The first area to which the National Guarantor wishes to direct attention in this part of the Report devoted to the criminal sphere is that of vulnerable subjects.

The first area to which the National Guarantor wishes to direct attention in this part of the Report devoted to the criminal sphere is that of vulnerable subjects. If, in fact, the deprivation of liberty is a topic that always requires particular attention
be paid to the scrupulous protection of rights due to the intrinsic vulnerability of situations of restriction, it is also, however, true that the need for the preventive and protective scrutiny of the institutions must first of all address those already intrinsically vulnerable for other reasons deriving from their personal or relational situation. Any person detained, regardless of the reasons that led to the deprivation of liberty, is in a situation of vulnerability. However, some prisoners or groups of prisoners are particularly at risk and require more attention and
protection.

As stated in article 2 of the *Standard Minimum Rules for the Treatment of Prisoners* (the so-called *Nelson Mandela Rules*), "In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of detainees with special needs are required and shall not be regarded as discriminatory"[66].

It is hard to accept relegating people to "categories" and not seeing them as unique individuals. Yet, all the institutions, which regulate the entire day of great numbers of people, are accustomed to grouping presumably uniform categories, seeing this as a way of placing potential critical issues together. So it is usual to write "basic" rules of management for these critical issues that protect their rights, by considering these people as a "homogeneous group" according to these aspects. However, we should not lose sight of not ceasing to consider that each person in the, apparently homogeneous, group has his own needs, that he must interact normally with all the other people living in the institution and not only with those belonging to the same presumably uniform category, and that categorization should only serve to resolve the critical issues and not become a criterion for a separate way of life. Otherwise the categories become the basis of ghettoization and people are not protected, but separated from others, perhaps removing the original critical issues, but certainly creating others that are often more serious.

Acting on this premise, the Guarantor has monitored the conditions of detention of people of different sexual orientation, albeit in the different nuances that this generic category involves: the acronym LGBTI partially represents the different orientations that in detention situations all share greater vulnerability.

The Guarantor has monitored the conditions of detention of people of different sexual orientation, albeit in the different nuances that this generic category involves: the acronym LGBTI partially represents the different orientations that in detention situations all share greater vulnerability.

In some of the prisons visited practices have been encountered that place people in specific units or cells which, if on the one hand can meet the needs of protection, on the other hand they can lead to further discrimination and marginalization. In particular, when the separation becomes
such that it is for the entire day and, thus, also for opportunities of communication. Frequently, in fact, the Guarantor has verified how these solutions have given rise to serious problems: less access to the rights granted to the other detainees, fewer treatment benefits, exclusion from common activities, including school activities, and lack of a health service that meets their specific care needs. Thus, although the stated goal is to keep these people safe from acts of homophobia and violence, the system in place ends up excluding them from rehabilitation activities and from daily prison life and the request for protection tends to be responded to by exclusion and isolation. The Guarantor reiterates that protection, when required, must be ensured without the latter leading to a reduction in the ability to participate in community life and treatment processes.

An evaluation of the data from the information exchange system between the Central Administra-

3. Recommendation R (2006) 2 of the Committee of Ministers to the Member States on the European Prison Rules.

4. *Standard Minimum Rules for the Treatment of Prisoners*, United Nations General Assembly, 19 December 2015.

5. https://www.coe.int/en/web/cpt/standards

6. Rule 2.2 of the Standard Minimum Rules for the Treatment of Prisoners, *United Nations General Assembly, 19 December 2015.*

Unfortunately, however, it should be emphasized that even in some Institutes where people of different sexual orientation are housed in sections generally referred to as "for protected", the printed matter showing their location indicates the term "protected - homosexuals"; these printouts are handled by all personnel, including administrative staff, with an unacceptable non-protection of the private person's detention. The Guarantor requests that this practice be quickly revised throughout Italy.

tion and Institutes[7] indicates that two units are specifically defined for use by "homosexual inmates", one in the Piedmont-Liguria-Val d'Aosta Superintendence, the other in Campania, with a total of 22 occupants, eight in the first and fourteen in the second, respectively. Already last year the National Guarantor successfully intervened to close the experiment of a similar unit in Friuli-Venezia Giulia. It also reiterates in this Report that such units, named and conceived in this manner, constitute unacceptable discrimination based on sexual orientation, especially when placement in them is reported - as the Guarantor verified - in any documents relating to the detainee. The protection due must be implemented in ways that protect confidentiality and non-discrimination. Unfortunately, however, it should be emphasized that even in some Institutes where people of different sexual orientation are housed in units generally referred to as "protected", the printed matter showing their location indicates the term "protected - homosexuals"; these printouts are handled by all personnel, including administrative staff, with an unacceptable non-protection of the detainee's deprivation[8]. The Guarantor requests that this practice be quickly revised throughout Italy.

These de facto exclusions, albeit undesired, in addition to posing questions about the protection of rights and respect for the person, frequently lead to further aggravation of the psychological situation and a source of distress that accompanies the state of detention of LGBTI people and which sometimes manifests itself in self-injurious behaviours that make one fear for the very survival of the person. Instead, it is essential to put into practice a concept of sentence implementation capable of offering different opportunities to different individuals, one that does not contradict the principle of sentence enforcement marked by inclusion, with respect for diversity, and the complete, concrete affirmation of the dignity of each person.

A separate observation concerns transsexual people, currently reported in 10 specific units with 58 occupants[9], all located in male Institutes. The National Guarantor has long expressed the opinion that it is more appropriate to host these specific units in women's Institutes, giving greater importance to gender, as a subjective experience, rather than to the contingent anatomical situation. Over the past year, it satisfactorily oversaw the drafting of a Ministerial Decree that, at least on an experimental basis, pointed in this direction and redefined the units intended for transsexual people. Unfortunately, the decree was not issued and the issue seems to have disappeared from the immediate agenda. For this reason, it is recommended that the discussion be at least reopened, also in order to consider the perplexities that may have slowed down the process. However, it is here reiterated that even for these units, the specificity of which cannot be eliminated, the principle of inclusiveness in the general prison life of the Institute applies, and that both specific activities and activities shared with other inmates are made available.

More generally speaking, the National Guarantor calls for a greater dissemination of a culture of respect for the rights of every individual, whatever his or her specificity, in the penitentiary environment, through specific information, sensitization and training interventions aimed at the prison administration staff at various levels, in order to combat internal discrimination and further marginalization. It is in this perspective, to spread a culture of respect towards LGBTI people, that the Guarantor is working, together with the *Association pour la prévention de la torture* (APT) of Geneva, other NPMs and Volunteer Associations from various countries, on the creation of shared guidelines for monitoring the rights of these people in places of deprivation of liberty, whether they are criminal institutions, detention centres for migrants, or Police facilities.

There ar emany other categories of particularly "at risk" prisoners for whom detention can turn into a sort of "catalyst" of vulnerabilities; disadvantaged subjects, who are faced with the challenge of relating to themselves and others within a total institution that, despite offering real opportunities to take charge and care, is revealed to be inadequate in responding to the dramatic multi-problematic conditions that pass through it.

The consideration that manifests a widespread subculture, present in the external society and also among the people responsible at various levels of deprivation of liberty, with respect to Romani, Sinti and Camminanti, also indicates this group as vulnerable as regards the recognition of their rights in situations of detention. The problem concerns the detention Institutes of the vast majority of European countries, in some of which this group traditionally represents a numerically conspicuous whole and often is not easily managed, in others, especially in Western Europe, as a group whose presence has increased in more recent years and that is often chosen as the common "enemy" common by other population groups, for other vastly different aspects. Some critical detention issues - for example, the presence of children with detained mothers - are almost a specific prerogative of this "category" of people deprived of liberty, just as the presence of minors in juvenile penal institutions is for the most part. Recognizing the minority, though centuries-old and deeply rooted Romani, Sinti and Camminanti cultures, whether nomads or now largely resident, is a struggle for the external community and, therefore, it is difficult to think that the difficulties with acceptance and positive inclusion can be overcome in an institution that makes segregation and compartmentalization into groups and units its distinctive feature. Nevertheless, a culture of inclusion of all diversities can begin precisely when they are united by the negativity of the contingent situation experienced and the implicit sharing that this can create, if, in this as in other cases, whoever works there is equipped with training to understand the features of cohesion and not to increase separation and marginalization.

The consideration that manifests a widespread subculture, present in the external society and also among the people responsible at various levels of deprivation of liberty, with respect to Romani, Sinti and Camminanti, also indicates this group as vulnerable as regards the recognition of their rights in situations of detention.

7. Application of the DAP entitled *Monitoring of the European Court*. System particularly appreciated by the Committee for the execution of judgments of the ECHR, which operates within the Committee of Ministers of the Council of Europe. Having created a continuously-updated system that allows constant control of the spaces of the various Institutes and the placement of prisoners in them was one of the elements considered for the closure (8 March 2016) of the procedure opened with the "pilot" ruling *Torreggiani and others v. Italy* in 2013.

8. The issue was raised with the Directors of a large Veneto Institute given that the above indication was found marked on the "receipt" of a request for outside expenditures; a document that obviously passed through many hands and not only those of the staff. The Directors replied that it could not be helped because this is the classification of the specific "protected" unit to which that person was assigned.

9. Data referring to 9 April 2018.

Similar reflections can be made for the vulnerable group represented by foreigners, now substantially present - 19,844 occupants, equal to 34.11% of the population detained on 30 April last year - above all in the Prisons of large cities where their numbers account for more than half of the inmate population. For the precautions in dealing with the specific problems that foreigners present, starting often due to the lack of family ties that permit visits and support, which is increasingly supplied, even on the basic material level, by the generosity of Volunteer organizations, a good reference is given by the specific Rules contained in the Recommendation of the Committee of Ministers of the Council of Europe adopted on 10 October 2012, devoted precisely to the treatment of foreigners in prison[10].

There are many situations that can rightly be understood in the concept of *vulnerability*: the number of suicides, that at the date of writing this section[11] amounted to 16 people (who took their lives in jail in the first 16 weeks of 2018), is in many respects an indicator, as are the many cases of self-harm reported. Not only that, but mental distress is a growing phenomenon within penal institutions: *borderline* people or those with serious distress represent one of the major problems reported by personnel, who often find themselves managing situations without specific training and with enormous responsibility in their actions. To this is added the lack of units that can take care of these people. During its visits, the National Guarantor noted that not only are the "Mental Health Protection Service" units not sufficient, but also how many of them are such only in name: they are in part mere departments for psychiatric observation pursuant to article 112 of the penal code enforcement regulation (Presidential Decree 230/2000), units that are effectively never open due to the lack of a protocol with the local health authority or lack of personnel. More data on this will be examined later in a specific section of this Report, precisely due to its relevance.

Mental distress is a growing phenomenon within penal institutions: *borderline* people or those with serious distress represent one of the major problems reported by personnel, who often find themselves managing situations without specific training and with enormous responsibility in their actions.

Finally, it is decisive to underline the importance of preparing the "vulnerable" person for his return to free life and the support he needs in the periods immediately preceding and following his release: approaches which, until now, have almost never been provided, despite the provision of Article 46 of the penal code and Article 88 of the aforementioned Regulation. Specific programmes aimed at preparing for return to society should be activated, such as, placement in units for inmates being discharged, the creation of internal and external courses that make the return to society gradual, orientation for solving specific problems connected to the conditions of family life, work and environment which inmates will have to face. The predisposition of a specific discharge protocol that is able to collect data useful for tracking the strengths and weaknesses of each person being discharged and its systematic application in the period prior to release may constitute a useful tool to allow for planning measures to mitigate the impact of the release.

10. Recommendation CM/Rec (2012) 12 adopted on the occasion of the 1152th meeting of the Ministers' Delegates, available on the Ministry of Justice website: https://www.giustizia.it/giustizia/it/mg_1_12_1.wp?facetNode_1=3_1&facetNode_2=4_115&previsiousPage=mg_1_12&contentId=SPS1144611

11. 30 April 2018:

29. Female detention

It is always inadequate and substantially improper to make use of analytical elements that relate to the difference of females in a discussion of vulnerability. This concept always implies a recognized minority. However, their use here in the context of detention is appropriate because prison is a punitive and controlling institution designed for males, with rules established around this way of thinking and it continues to be such, even among the many voices that say that sentence enforcement is the same for everyone and is at the same time attentive to every specificity, beginning with that of gender. It is not. It has not been so historically since this institution began, and it is not so today, except for rare and well-respected local situations, and the institution's "male-centric" approach is present in many of the ways that the day and activities are organized, so that the desire to accommodate this difference often winds up offering activities based on an outdated female model tied to subordinate roles.

Moreover, the same abstract deprivation of liberty as a punitive measure implicitly contains within itself a concept of "neutrality" - detention as a criterion of equal response to the crime - that feminine thought has long shown to include more subtle differences; concretely, the time taken away from the outside life of a man and a woman does not have the same weight with regard to the contexts and loved ones left behind, the roles played before the deprivation of liberty cut them short, and the relationships that must be renewed once the sentence is served. A few years ago, the Prison Administration Department set up an internal division specifically devoted to dealing with the issue of female detention, making proposals, and monitoring concrete situations. There have been no reports on this in recent years and, unfortunately, the National Guarantor came upon some extreme situations in which, for example, four women were confined to an Institute of well over one hundred and fifty men.

The indispensable presence of women among the personnel, including in management and command roles of the Penitentiary Police, has had an important impact on taking a new and better approach to the topic, also given its effects on detention in general, though there is still much to be done in order for the female point of view to be taken up everywhere as a significant factor in the rethinking of prison and its daily operation as a whole and to overcoming outmoded male configurations. It is not merely by chance that even seventy years after the Constitution there has never been a woman in charge of the prison Administration.

It is always inadequate and substantially improper to make use of analytical elements that relate to the difference of females in a discussion of vulnerability. This concept always implies a recognized minority. However, their use here in the context of detention is appropriate because prison is a punitive and controlling institution designed for males, with rules established around this way of thinking and it continues to be such, even among the many voices that say that sentence enforcement is the same for everyone and is at the same time attentive to every specificity, beginning with that of gender.

The penal system and freedom

There is also enduring inattention regarding the residual role of the numbers of the female prisoner population. This represents on average 4% of the total prisoner population. As of 30 April 2018, in fact, there were 2,415 women detainees out of a total of 58,285 (equal to 4.1%), distributed in four women's Institutes (Venezia-Giudecca, Rome, Naples and Trani) and 150 women's units within male Institutes. It is difficult to understand which of the two situations causes greater or lesser problems for a female inmate, because placement in one of the, necessarily few, Institutes often means placing distance between them and their homes and loved ones, while being placed in the units, which are certainly more widespread and therefore offer greater proximity, leads to their irrelevance within facilties designed and operated almost exclusively for male inmates.

The female prison population represents on average 4% of the total inmate population. As of 30 April 2018, in fact, there were 2,415 women detainees out of a total of 58,285 (equal to 4.1%), distributed in four women's Institutes (Venezia-Giudecca, Rome, Naples and Trani) and 150 women's units within male Institutes.

In fact, their limited numbers, rather than garnering them greater attention, too often relegate them into being a residual consideration. If, on the one hand, it is understandable that given the insufficient amount of work and occupational opportunities, these tends to be offered to the larger population, and therefore to male prisoners, on the other hand, this risks penalizing women, solely because they are a minority. In some units there is a striking absolute lack of occupation: there is no work, projects or workshops and, sometimes, due to the lack of minimum numbers required to compose a class, there are no educational opportunities. Women, restricted to small units of the Institutes, often have to make do with knitting or crocheting in their so-called "overnight" rooms to somehow occupy the idle time of prison. The National Guarantor, in its Report on its visit to Liguria[12], for example, found that in the Pontedecimo Institute, in which the number of women is equal to that of men[13]"clear examples of gender differentiation that, although not explicitly intended to do so, act in a discriminating way: the spaces available to prisoners are narrower (women are in double-occupancy rooms, men in single rooms), women have no access to a gym, which is available to the men, albeit with difficulties of access that will be described later, the
male units have social areas on each floor, while in the female units socializing is done in the corridor. Even the occupational activities seem to suffer from a stereotypical vision that sees women working in the kitchen and in the tailor shop, while men are given computer and typing jobs"[14].

Equally unacceptable is the situation regarding gynaecological visits in some Institutes, such as the "Salvatore Bacchiddu" prison of Sassari, where it is necessary to systematically resort to external hospital visits because there is no gynaecologist among the prison specialists. It is needless to say that the prevention of female tumours, which is now assured to all women in Italy through informational and diagnostic campaigns by local health authorities, is unimaginable under such conditions: breast ultrasounds, mammograms or *PAP tests* are not offered to women and are provided only when prescribed by a physician, and thus in a reactive manner. It was also observed in several Institutes that the women's units in the male Institutes had been set up in unsuitable and isolated rooms with inevitable organizational consequences, such as for example, the female unit of the Avellino prison, where the distance from the main body of the other inmate units, combined with the lack of an independent kitchen, means that even using heated trolleys food for women arrives burnt and cold. In contrast to this, there have been some very positive experiences implemented in the Rebibbia (Rome) and Venezia-Giudecca Women's Institutes, where the initiatives undertaken and their management have often been examples of possible detention models that actually respond to the principle of making prison life as close as possible to the positive aspects of life outside the prison - a principle, mentioned as fundamental by the European Prison Rules. With regard to this, the National Guarantor recommends that these initiatives should not be interrupted or "sterilized" as a result of the possible rotation of senior figures, due to age or other limits, and that the selection of personnel to be assigned take into account the absolute need to give continuity to what has been initiated.

A separate observation - which will be developed in greater detail in the section devoted to the various inmate "special cases" - concerns the special regime women's unit pursuant to Article 41 bis of the penal code and the "high security 2" unit, both located in L'Aquila prison: situations in which special needs and vulnerability end up objectively overlapping, completely independent of the danger posed by those detained and appropriate security needs. These situations cannot impose isolation or something very similar upon women.

More generally, it should be noted that even in spite of some efforts by the prison administration, there is no gender approach that takes into account specific female needs, characteristics and problems, providing all female inmates, even those who are in small units inside
male institutes, accommodations and occupations appropriate to the situation. In other words, the Penitentiary Administration must do more, implementing a qualitative leap within a cultural perspective based on the recognition of gender specificity and therefore also of female detention: offering the same treatment for men and women is not only not enough, but cannot help but serve to produce unequal and sometimes even counterproductive results.

More generally, it should be noted that even in spite of some efforts by the prison administration, there is no gender approach that takes into account specific female needs, characteristics and problems, providing all female inmates, even those who are in small units inside male institutes, accommodations and occupations appropriate to the situation.

12. 17 – 21 October 2016. Report published, with responses, on the website of the National Guarantor www.garantenpl.it The recommendations expressed as a result of the visit are as yet to be implemented, despite assurances having been given.

13. On the days of the visit there were 59 women and 58 men.

14. Report on the visit to Liguria cit. p. 40.

National Guarantor for the rights of persons detained or deprived of personal liberty
The penal system and freedom

30. Tender age detention

The presence of children between the ages of zero and three in the Institutes deserves special mention. This issue is periodically the focus of attention of political, social and even legislative bodies. Nevertheless, it always ends up back at the same point.

The presence of children between the ages of zero and three in the Institutes deserves special mention. This issue is periodically the focus of attention of political, social and even legislative bodies. Nevertheless, it always ends up back at the same point. In 2011, the law of 21 April 2011, no. 62, entitled "Amendments to the Code of Criminal Procedure and to the Law of 26 July 1975, no. 354, and other provisions to protect the relationship between inmate mothers and minor children" was passed. This important regulation indicates the exceptional nature of protective custody and, where necessary, provides for house arrest or detention at specific family-centred group homes. Only as a fall-back measure is provision made for accommodation in Minimum-security Holding Facilities for Mothers (ICAM) - which it should be recalled are still prison facilities - in order to prevent children from being accommodated in penitentiary Institutes. The picture is completely analogous for the serving of sentences and both the intention of the legislation and the official understanding of the provision give the idea that children are no longer to be found inside normal prisons. The situation is not like that.

As of 30 April 2018, the number of children under three years of age in Prison Institutes - in areas called "nursery units" - is 27 (with 24 mothers); children can stay with mothers up to the age of 3 years. In the five active ICAMs there are 39 (with 32 mothers); here children can stay up to 6 years of age. The five ICAM are in Turin, Milan, Venice, Cagliari and Lauro (Avellino). There is also another ICAM in Senorbi, Sardinia, which was established in July 2014, but never actually began operation. The separate location of this facility, 48 km from Cagliari, makes it difficult for a mother to give up the familial setting and access a situation of semi-isolation. Obviously this poses questions as to the overall planning regarding the location of detention facilities.

This situation does not seem to be heading in the direction desired by the law. However, it may be on track as regards women with children under three years of age who are in alternative incarceration at the family homes. Firstly, there is one recently opened in Rome named after Leda Colombini (*Casa di Leda*) which hosts up to six mothers with children and, secondly, there are several facilities operated by Volunteer Associations. But information on the latter lacks numerical support, as there is no map of said facilities, nor data on the occupancy. The regional Penitentiary Administration Procurement Offices
contacted could not provide any information. The Guarantor sees this as a sign of insufficient attention paid to a situation that the Prison Administration should itself take an interest in.

The presence of infants who spend the first months, if not years, of their life, those most important for development, in a setting such as that of prison is in itself a serious *flaw*. And if some Institutes have equipped themselves with nursery units or rooms that actually revolve around the primary needs of the child, it must be said that the National Guarantor has encountered, in some of its visits, units that are not nurseries at all: traditional prison wards, at times even in poor material condition even lacking a bed suitable for a child of this age, where children live not only with their mothers but also in promiscuity with other women prisoners. Generally, there is a lack of connections with the territory both in the form of Volunteer associations and relationships with external nurseries.

For these children, who learn to speak inside prison, who become familiar with words like *lockdown or walkway*, who see the sky through windows with bars, who are separated from siblings and fathers and who, at the end of the third year of life receive as a gift sudden and painful separation from the mother with whom they have lived in symbiosis up to that moment, for these children building a positive relationship with institutions will be very difficult. However, these observations should not be understood as favouring an interruption of the relationship between the child and the mother on the basis of a supposed need to raise the child in a setting distant from criminality: the child's prevailing interest, as stated by the more than 25-year-old special Convention of the United Nations[15], requires a very accurate assessment of the specific situation and cannot be resolved in the single reference to the crime committed by the parent or the criminal context in which it was produced, because the specific relationship between parent and child must always be taken into account in each individual case.

For these children, who learn to speak inside prison, who become familiar with words like *lockdown or walkway,* who see the sky through windows with bars, who are separated from siblings and fathers and who, at the end of the third year of life receive as a gift sudden and painful separation from the mother with whom they have lived in symbiosis up to that moment, for these children building a positive relationship with institutions will be very difficult.

To this critical issue should also be added that of children entering prison to visit a detained parent. These are high numbers: recent research in Europe indicates that compared to the 1,527,060 on the old continent, around 2 million
children entered prison at least once in 2017. A special protocol developed some time ago by the Ministry of Justice[16] has given indications for a specific plan of equipping reception areas, training personnel for this function, and for the construction of informative moments for these children. This project has also garnered international praise, and the National Guarantor recommends its more extensive and complete implementation.

The steps taken by the law and the consequent creation of facilities to accommodate these children, such as the *Casa di Leda* of Rome, are certainly important, as is the opening of ICAM in Italy. However, the Guarantor believes that, seven years from the approval of the last legislative provision on the issue, it is necessary to give greater impetus, at the level of both the Magistracy and the Administration, to its full implementation.

15. UN Convention on the Rights of the Child, Article 3, approved in New York by the United Nations General Assembly on 20 November 1989.

16. Memorandum of understanding on parenting, between the Ministry of Justice, the Authority for the protection of children and adolescents and *Bambinisenzasbarre* NPO, 6 September 2016.

31. Special cases

A complementary and symmetrical image of *vulnerability* is given by the *special cases*. It is, in fact, difficult to describe a penitentiary institution uniformly. There are many areas and units, which almost always correspond to different prison regimes, different incarceration contexts and, in fact, to substantially dissimilar prison conditions, such as daily life and opportunities.

Several memoranda between the end of the previous decade and the beginning of the present have defined high-security circuits and subsequently initiated a "review process of the organizational and management system
of the Prison Administration which, through the creation of prison circuits in accordance with Article 115 of the Implementing Regulation (Presidential Decree 230/2000) seeks an informed rehabilitation by the entire central and territorial organization of the overall rationality of the system in line with the dictates of the legislation"[17].

Memorandum no. 3619/6069 of 21 April 2009 defines three levels of the high security circuit: AS1 "dedicated to the containment of mafia-type organized crime detainees and inmates, for which the implementation decree for the regime referred to in Article 41 bis of the penal code fell short [...] and in any case for having been considered key elements and relevant points of reference for their criminal organizations"; AS2 "dedicated to persons accused or convicted of crimes committed of terrorism, including international, or subversion of the democratic order by carrying out acts of violence"; AS3 is generically dedicated to subjects who have played less important roles in the criminal organizations, but are nevertheless involved in the organizations themselves. The three domains actually define different circuits, with different rules and represent *special cases* compared to normal incarceration. The presence of several circuits frequently winds up creating a management model that prevents community and, in fact, leads to immobility.

Approaches for declassification are not always clear. This is also because classification and declassification procedures are not jurisdictional and the non-acceptance of the passage from one classification to another or to the normal prison circuit is one of the main complaints submitted to the National Guarantor.

It is certainly neither the task nor the desire of the National Guarantor to refute the decisions and denials of the Prison Administration. However, the Guarantor must point out that an examination of various measures cannot fail to highlight the constant reference, by the District Attorneys involved, to the crime committed and to the (frequently many years past) criminal affiliation, without any additional elements on the reports of the necessity of classification as well as the uncritical assumption of these elements by the Central Administration in rejecting the requests, even in cases where these were supported by positive opinions from the Institutions' Directors. This merely bureaucratic procedure, eased in recent times, can be a source, together with delays in the acknowledging of the requests, of tense situations that can be eliminated with greater clarity of motivations.

Particular attention was given to the AS2 regime over the last year by the National Guarantor, with visits to the Institutes of Sassari, Nuoro, Terni, Rebibbia for women and, subsequently, to the women's unit of the L'Aquila prison. On 26 April, there were 93 inmates in the AS2 circuit, detained in seven units in Alessandria, Ferrara, Terni, Rebibbia for women, Rossano, Nuoro and Sassari, plus some temporarily detained in other facilities for trial or other reasons. Preliminarily, it should be noted that very diverse situations fall under the AS2 classification. Falling within the scope of this circuit are people accused or convicted of crimes of international terrorism of an Islamist nature, people sentenced to multiple years for crimes committed by the armed organizations of the 1970s (17 in all), and persons accused or convicted in recent years for crimes related to anti-government antagonism. It is actually a mixed circuit that requires different assessment tools and methods of approach, also on the basis of the different present dangers posed by the organizations they belong to, which in some cases no longer exist.

The National Guarantor calls for the development of differentiated approaches and the implementation of appropriate programmes, whose purpose of sentence execution and the objective of creating conditions for a positive return to outside society are never diminished.

Regarding detainees who are suspected or proven to belong to Islamic terror organizations, as already recommended by the Guarantor[18][18], the overall *anti-radicalization* strategy should also include specific, expertly advised, projects and programmes to assist with the path towards *de-radicalization* of those who are or have been convicted of crimes aggravated by the purpose of so-called religious fundamentalist terrorism. Different programmes, albeit having the same purpose, should be initiated by involving detainees who have expressed their agreement, even if only ideal, to this approach and who are subject to particular attention by the Prison Administration. Moreover, in order to deal with the risk of radicalization of other potentially vulnerable people, the Guarantor believes that particular development must be given to the qualified training of operators to enable them, at the different levels of responsibility, to perform the following functions: a) prevention of proselytism; b) identification of vulnerable subjects with respect to this risk and their protection; c) identification of elements of radicalization and proselytism towards others; d) management of detainees who have already been radicalized and, in part, already responsible for crimes relative to this area; e) gradual implementation of expertly validated and supervised de-radicalization programmes and projects in this direction; f)

Regarding detainees who are suspected or proven to belong to Islamic terrorist organizations, as already recommended by the Guarantor, the overall *anti-radicalization* strategy, should also include specific, expertly advised, projects and programmes to assist with the path towards *de-radicalization* of those who are or have been convicted of crimes aggravated by the purpose of so-called religious fundamentalist terrorism.

17. Memoranda nos. 445330, 206745 and 36997 - of 24 November 2011, 30 May 2012, and 29 January 2013, respectively.

18. See Report on the visit to Sardinia, 3 -10 November 2017.

Strategies for identifying individuals potentially attempting to recruit vulnerable subjects need to be adapted to specifically observe some prisoners not merely by referring to external forms of belonging or verbal expression, but rather through the study of the relational dynamics that they establish in daily prison life by a multi-disciplinary group that includes at least adequate linguistic skills.

management of external information and notice in the event of release of detainees who are deemed to have become radicalized. The National Guarantor recommends the adoption of coordinated training actions in this area and underlines the obligation that these should strictly comply with the ECHR as a structuring element.

Despite much investment in debates, documents and training oriented to these principles, the National Guarantor has observed that the reality of implementation in practice is still struggling to find an effective direction. Thus, strategies for identifying individuals potentially attempting to recruit vulnerable subjects need to be adapted to specifically observe some prisoners not merely by referring to external forms of belonging or verbal expression, but rather through the study of the relational dynamics that they establish in daily prison life by a multi-disciplinary group that includes at least adequate linguistic skills.[19]

A particular area of attention related to this circuit concerns the female presence. As already mentioned, during the visit to the Nuoro prison the Guarantor met four women detained in a special unit, also equipped with an indiscreet outdoor space, inside a prison with over 150 male inmates. The implicitly neglected position of this minority was obvious, and was reported, and the recommendation led to the transfer to another location. The outcome of this transfer was, however, placement within the same facility, albeit in a separate unit, of women under the regime pursuant to Article 41 bis of the penal code. Moreover, under the supervision of the Mobile Operations Group (GOM, the stridency of the solution is obvious: this logistical situation and the assignment of the same Prison Police unit - in an institute about which the Guarantor has many reservations - risks improperly assimilating the AS2 regime to the special one; the separated spaces and the limited number of prisoners, however, now reduced to three, certainly do not satisfy the need for the construction of an effective management plan aimed at the reintegration of people sentenced for crimes with limited prison terms. Moreover, generally speaking, the National Guarantor does not agree with the expansion of the GOM's area of responsibility to this circuit, as has already happened in the men's AS2 section of Nuoro, precisely due to the specific professionalism achieved by GOM operators in the detention of exponents of organized crime of a completely different nature.

The issue affects the most important of the special cases: the special regime circuit pursuant to Article 41 bis of the penal code. The Guarantor visited all the operational units of this circuit during the last year: Novara, Opera (Milan), Tolmezzo, Parma, Ascoli Piceno, Spoleto, Terni, Sassari, Viterbo, Rome "Raffaele Cinotti" (two separate units). Recently, following work in the Ascoli Piceno unit, which rendered it temporarily unusable, the Cuneo unit was reopened, and was visited by the Guarantor for this report. On 26 April, 731 prisoners were held under this regime.

19. The recommendations for this area are reported in *Norms and Normativity*. Standards for the enforcement of adult sentencing, published by the Guarantor in January 2018, p. 91 et seq.

The ability of the National Guarantor to make unauthorized and unannounced visits to these units derives from the law establishing it[20], as well as from its being designated as a NPM in the scope of the OPCAT. Article 20 letter d) of the OCCAT gives the Guarantor, as the NPM, the "ability to having confidential visits with persons deprived of their liberty without witnesses". The Prison Administration Department has properly reported these prerogatives in a special memorandum since May 2016. As regards the territorial Guarantors - regional, provincial or municipal - the ability to make unauthorized visits to the units is set out by Article 67 of the penal code, obviously in the same way as for Members of Parliament; the ability to hold visits is set out within the framework of the legislation included in Article 18 of the penal code. Nevertheless, it should be kept in mind that the territorial Guarantors are also potential recipients of complaints pursuant to Article 35 and, as such, they may need to hold an interview with the person submitting the complaint without this affecting the overall number of visits with family members, otherwise two rights - the one to submit a complaint and the one to have family visits - would improperly be put in conflict. The National Guarantor considers that the wording adopted in the memorandum dated 2 October 2017 does not meet this requirement.

The National Guarantor will prepare a report specific to this regime. The observation of the National Guarantor is however deduced from the approach of several judgments of the Constitutional Court aimed at considering the legitimacy of the regime itself within the scope assigned to it[21]. Indeed, the Guarantor, when ascertaining the current necessity of this legislative provision, has several times turned its evaluation to the individual measures imposed to assess whether they are functional to the interruption of internal and external connections and communications with criminal organizations or if they might risk being configured as additional punishment not provided for by our system. The same approach emerges from the CPT Reports and the jurisprudence of the ECHR that, in assessing the existence or lack of violation of Article 3 of the Convention, considers any specific rule or restriction in light of the overall purpose for which the scheme is adopted.

The National Guarantor will prepare a report specific to this regime. The observation of the National Guarantor is however deduced from the approach of several judgments of the Constitutional Court aimed at considering the legitimacy of the regime itself within the scope assigned to it.

In this context, the Guarantor has observed strong differences among the situations that are actually in place in the various Institutes, even in the presence of a regime that it is hoped would be unified. The hope of returning it to unity presented in the new memorandum issued last October[22] is currently finding little

20. Decree Law 146/2013, converted into law 10/2014, Article 7.

21. See: Judgment of the Constitutional Court no. 376/1997, which also refers to judgments 351/1996 and 349/1993. The Court has affirmed that the regime pursuant to Article 41-bis of the penal code is based "not solely abstractly on the title of crime subject to conviction or imputation, but on the effective danger of the permanence of connections, of which the offense concretely challenged constitute a logical premise; on the other hand, the restrictions made with respect to the ordinary prison regime can not be freely determined, but can be - again within the limits of the prohibition on the quality and quantity of the sentence and of treatments contrary to the sense of humanity - only those that are congruous with respect to the aforementioned specific purposes of order and security; and also congruent to such is the ex post guarantee of judicial control that can be activated on the ministerial measures. [...] It is forbidden to adopt restrictive measures giving rise to treatment contrary to the sense of humanity, or such as to completely nullify the rehabilitative purpose of the sentence".

22. DAP Memorandum no. 3676/616 of 2 October 2017.

feedback and often the less clear-cut parts are interpreted at the bare minimum of the possibilities presented. Nor has an external debate aimed at attacking the memorandum as excessively open to normalization proved much help. On the contrary, the Guarantor had to observe that some interpretative elements - supplied subsequently to the Directors of an Institute and circulated, albeit in a non-official and institutional way, among all the Institutes - have ended up leading to applications that are much more restrictive than those proposed in the complex and long debate that accompanied its drafting.

It is worth highlighting first of all the interpretation that has been given to the hours spent outdoors: in fact, the hour in the social room is subtracted from the two hours of outdoor time. The Guarantor believes that the term "outdoors" cannot be intended as meaning the opening of the cell, but that it defines access to "open air", and those spaces designed for this purpose are to be considered used for what is commonly defined as "open air time". We recall, for this purpose, Article 10 of the penal code[23] and Article 16 of the Implementing Regulation which limits this possibility to exceptional circumstances and that this limitation must be established by a provision motivated by the director of the Institute to be communicated to the regional administrator and the supervisory magistrate[24][25]. Article 41 bis of the penal code, in speaking of the limitation of "outdoor time" cannot therefore refer to the provisions of the aforementioned article of the law and the relative article of the regulation. Moreover, this interpretation seems - in the opinion of the Guarantor - in line with the modification of the ministerial decrees for application of 41 bis of the penal code that replaced, after the issuance of the memorandum, the wording of point g), passing from the prohibition of "staying outdoors for periods longer than two hours a day, one in the library, gym, etc. and in groups of more than four people" to the new wording of the ban on "staying outdoors for periods longer than two hours per day and in groups of more than four people". The National Guarantor therefore considers that it is widely supported in its interpretation.

It is worth highlighting first of all the interpretation that has been given to the hours spent outdoors: in fact, the hour in the social room is subtracted from the two hours of outdoor time. The Guarantor believes that the term "outdoors" cannot be intended as meaning the opening of the cell, but that it defines access to "open air", and that spaces designed for this purpose are to be considered those used for what is commonly defined as "open air time".

In the context of its absolute desire not to transform the suspension of the "normal treatment rules", in the parallel suspension of the fundamental rights of the person and also in the light of the reading of the measures taken to exclude this slippage, the Guarantor observed that of the places where persons deprived of liberty live should be configured in such a way so as not to affect their mental and physical abilities, otherwise the prison sentence would risk assuming the

23. Article 10 of the penal code, paragraph 1: «Inmates who do not work outdoors are permitted to stay for at least two hours a day in the open air. This period of time may be reduced to no less than an hour per day solely for exceptional reasons".

24. Article 16, paragraph 3 of Presidential Decree No. 230/2000: "The reduction of time spent in the open to not less than an hour a day, due to exceptional reasons, must be limited to a short time and made with a motivated reason by the director of the Institute that is communicated to the regional administrator and the supervisory magistrate".

25. Article 41 bis paragraph 2 quater letter f) of the penal code: "Limitation of the time spent outdoors that cannot take place in groups of more than four people, for a duration of no more than two hours a day without prejudice to the minimum limit referred to in the first paragraph of Article 10".

connotation of "corporal punishment", which has obviously been expunged from our system, as from all democratic systems. Therefore, particular attention is recommended at the general planning level so that the special regime units pursuant to Article 41 bis of the penal code, while taking into account the particular needs determined by this detention regime and its purpose include:
- facilities that are not constructed, as happened in the past and as found in some Institutes, which are below ground level;
- environments that are all such as to allow, as required by the penitentiary system as well as by Rule 18.2 of the *European Prison Rules* (Rec (2006) 2), the passage of fresh air and natural light such as to allow reading and activities during the day without recourse to electric light;
- window screens that are removed where they are not justified by their opening to transit areas of other prisoners or external personnel;
- walking areas that allow an extension of the gaze that does not affect overall visual ability, are not covered by thick fences, are of dimensions and structure that allow the actual performance of physical activities;
- rooms for visits that are suitable for children under the age of 12 years, who are authorized to hold visits without separation glass, and access be granted by means of a dignified entry and not by climbing over a window, a method which does not respect the dignity of the persons involved.

It, therefore, recommended that the existing units be progressively adapted to comply with these parameters, constituting minimum standards of habitability, and those new units or units that the Administration intends to reopen be made operational only in compliance with the parameters indicated above.

With regard to other aspects of prison life in this regime, the National Guarantor has recommended that searches of the overnight rooms be made with full respect for the persons accommodated in them and for storing legitimate personal goods, avoiding behaviours that can be perceived as harassing and unnecessarily punitive and reminding that, as confirmed by the memorandum, personal strip searches should be exceptional cases, when there are "grounds to suspect" the possession of objects not allowed, dangerous to the order and security of the Institute and not otherwise detectable. They may never be a routine practice.

The National Guarantor has recommended that searches of the overnight rooms be made with full respect for the persons accommodated in them and for storing legitimate personal goods, avoiding behaviours that can be perceived as harassing and unnecessarily punitive and reminding that, as confirmed by the memorandum, personal strip searches should be exceptional cases, when there are "grounds to suspect" the possession of objects not allowed, dangerous to the order and security of the Institute and not otherwise detectable. They may never be a routine practice.

Furthermore, in reaffirming the sharing of the purpose of the special regime pursuant to Article 41 bis of the penal code, as outlined by the law and reiterated by the Constitutional Court in numerous sentences and, therefore, the absolute priority to discontinue forms of communication outside the social groups, it stressed the risk that this ban ends up configuring an unacceptable prohibition of speech: the observed activation of disciplinary proceedings and the related sanctioning of those who greet - calling by name - a person not in their social group, seems to be closer to this second scenario that to the necessary control on the first.

Regarding medical confidentiality, following many reports received and as

many findings, the National Guarantor recommended that the Institutions' Directors always ensure respect for the privacy of the doctor-patient visit, also pursuant to the legislative decree of 30 June 2003, no. 196 "Code regarding the protection of personal data". Finally, a critical issue has been encountered with regard to the ability of consulting trial documents in digital format, which is often not done in the overnight room, but in the social room, subtracting this time away from the overall time normally expected to be spent in said environment: the Guarantor views this practice as presenting the risk of limiting the right to defence.

Finally, a critical issue has been encountered with regard to the ability of consulting trial documents in digital format, which is often not done in the overnight room, but in the social room, subtracting this time away from the overall time normally expected to be spent in said environment: the Guarantor views this practice as presenting the risk of limiting the right to defence.

All the foregoing considerations are of particular relevance when they refer to the special regime unit reserved for the ten women detained therein: their belonging to criminal organizations in different geographical areas and, therefore, the consequent prohibition of encounters between women from the same territory leads to difficulty in forming groups of more than two or at most three people with an inevitable effect on daily prison life: in fact a situation similar to that of the so-called "reserved areas" is configured with all the critical issues that these raise.

32. Abolishing reserved areas

During its second year of activity and within its specific observation of the units dedicated to the special regime envisaged by Article 41 bis of the penal code, the National Guarantor carried out specific evaluations of the so-called "reserved areas", or those separate wards inside these units used for persons considered to be top members of criminal organizations.

Currently, 52 people are held in the Institutes of Novara, Opera (Milan), Parma, Tolmezzo, L'Aquila, Terni, and Viterbo. There is no doubt that these are people whose criminal profile requires particular attention and maximum security conditions. However, it should be noted that this requirement falls within the same definition of the scope of application of the regime pursuant to Article 41 bis of the penal code, without the need for further special measures.

Direct and complete monitoring has yielded objective confirmation of the critical nature of these wards, which were already reported in the first Annual Report to Parliament: these are areas in which, using - according to the Guarantor in an improper manner (or even in the absence of the conditions prescribed by the law) - the legitimacy given by Article 32 of the Implementing Regulation a detention regime is applied of even greater harshness than that from the application of the rules of Article 41 bis of the penal code, which often leads to almost complete isolation of the detainee. To avoid official violation of the rules that govern the institution of isolation, another prisoner, who is also serving under the special regime, is placed in the reserved area and, though this individual is not entitled to

stay there, he performs a "companion" function in moments of "binary sociality" and during strolls: a solution that leads to the application of a completely unjustified and more punitive regime on a second person in addition to the recipient of this particular treatment. Moreover, a disciplinary measure of isolation for one of the two inevitably leads to the isolation of the other, with the result, groundless on the level of the rights of the person, that a punitive situation is experienced *de facto* even by a person who has not committed a disciplinary infraction and, as such, was not the object of the punishment. The Guarantor believes that this situation does not have a legitimate basis and should therefore be reviewed. Indeed, it mentions that the de facto imposition of a system of isolation on a person that has not committed any infraction, implemented as a result of organizational procedures, is prohibited because it conflicts with the principle of personal responsibility, as well as with the principle expressed by rule 60.1 of the *European Prison Rules*.

The presence of reserved areas within the units intended for the special regime pursuant to Article 41 bis of the penal code has, moreover, been objectively contested by the CPT: lastly, in the Report on the most recent visit that has affected our country from 8 to 16 April 2016[26].

On this issue, devoid of any formal discipline and which has, therefore, remained extraneous to the most recent regulation of the regime pursuant to Article 41 bis of the penal code dictated by the aforementioned memorandum of October 2017, the Guarantor maintains its critical attention and intends to resume its active confrontation with the responsible Authorities with the aim of achieving the abolishment of a special mechanism within the special custodial regime which, in addition to not having any legitimately justifiable foundations, exposes Italy to the risk of censorship by the supranational control bodies.

33. Legal impediment: a factor of insecurity

The word "impediment" refers to the concept of prohibition, and to automatic preclusion. It denies the ability to evaluate and make decisions, because the final decision that any assessment would indeed lead to has already been indicated. Strangely, it has entered into the normality of the legal lexicon of a codified system that is based instead on the individual ability of a judge to decide, and on his repeatedly proclaimed freedom of judgment. It determines outcomes, almost closing a door definitively.

26. CPT/Inf(2017) 23, point 51.

Yet this apparently definitive approach clashes with the reality of the purpose of sentence enforcement: returning to liberty after serving a sentence imposed by legal impediment and, therefore, upon the impossibility of gradually experiencing this return, its difficulties and its failures, of re-orienting one's ways, changing them and at the same time understanding how one will act with this liberty in the future, is a great source of insecurity for external society. Herein lays the paradox: asking for the door to be closed in order to obtain greater security from potential aggression only leads to finding oneself bereft of the tools with which to understand how to comprehend what one has to deal with once the door is reopened.

During the course of its visits, the National Guarantor has repeatedly found itself speaking to prisoners who were serving a temporary sentence without the possibility of parole, thus prohibiting any changes to the end date of their sentence and the consequent impossibility of understanding whether and how rehabilitative approaches might have produced an outcome, and thus, dealing with people who would return to outside society without the institution having had any chance of communicating to it the outcomes of a rehabilitative approach that the Constitution designated for that time in prison.

During the course of its visits, the National Guarantor has repeatedly found itself speaking to prisoners who were serving a temporary sentence without the possibility of parole, thus prohibiting any changes to the end date of their sentence and the consequent impossibility of understanding whether and how rehabilitative approaches might have produced an outcome, and thus, dealing with people who would return to outside society without the institution having had any chance of communicating to it the outcomes of a rehabilitative approach that the Constitution designated for that time in prison.

On the other hand, when a mandatory legal impediment is imposed that truly closes the door forever - that is, when it is combined with a sentence of life imprisonment - then one is faced with the question about its legitimacy, given that it configures a definitive removal of the subject from life - of which nobody is the owner, not even the State, whatever the offense committed by those who are condemned to such a sentence. Precisely for this reason, the European Court affirmed in its recent rulings that the impossibility of a hopeless punishment has been progressively evolving ("*without hope*", in the text), because inherent to it is a non-consideration of the person as such and, therefore, a potential violation of the prohibition of punishment contrary to the sense of humanity. If in the first sentences (as in the case *Kafkaris v. Cyprus* of 2008) had offered *hope* in the form of a presidential pardon, it then acknowledged that political discretion cannot be a source of hope and that there must be a codified element, a legal foundation upon which to build it: hence the sentence *Vinter v. UK* of 9 July 2013 and, subsequently, that of the case *Trabelsi v. Belgium* of 4 September 2014, referring to the element of existence in the legal system of a possible review of the approach, even after an extremely long period of time. Certainly, it is still a new precedent, with some successive contradictions, but the principle is clear: one can never be identified with the crime committed many years before, as if printing it like a picture - even the neurobiological sciences are moving towards affirming positive, organic change[27]. The approaches made must be evaluated. Otherwise, it means not having any confidence in the usefulness of criminal sanctions and remaining bound to the pre-modern concept of retribution with respect to the crime committed.

27. Umberto Veronesi, *Appeal for the abolition of life imprisonment*, U. Veronesi Foundation, 26 March 2013, updated 15 December 2016.

The Italian legal system does not provide for absolute legal impediment: it is removed in the case of cooperation with investigations, which are obviously intended to be incentivized. But, the situation poses an irreducible asymmetry that may not allow for choice: cooperation may be impossible or unreasonable after many years - so states the Court of Cassation - it may not be useful or even involve the endangerment of third-parties and, therefore, ethically difficult to request. This is not the place to undertake a discussion of sometimes irreducible contradictions. The fact remains that a system of legal impediment does not help to make external society less a victim of criminal aggression, nor does it really function as a criterion for the effective assessment of completed prison rehabilitations and, therefore, changes of the person responsible for serious crimes. Case-by-case assessment, individual by individual, would justify, moreover, and to a greater extent, the possible denials of access to certain institutions and would motivate the subject more towards the prospect of change.

Recently, efforts have been made to reduce the risk of automatic preclusions, restricting their scope in the most recent legislative decree on prisons. However, there remains the *weak point* of a legal impediment not restricted only to access to alternative measures, but also which extends to conditional release: an institution that serves to give a possible limit to the punishment and a glimmer of hope to those who must commit themselves in the attempt to achieve it. There is still the sense of a society that no longer wants to see its own wounds and thus decides not to remove the bandages from its body. But there is also the objective insecurity that this system, apparently dictated by the desire to provide even more protection, ends up causing.

34. The right to work

Work occupies a central position in the prison system, in that it is a fundamental rehabilitative element from the point of view of the social reintegration of detained people.

Work occupies a central position in the prison system, in that it is a fundamental rehabilitative element from the point of view of the social reintegration of detained people.

But the quantitative and qualitative lack of work offered within the Institutes has always been one of the major problems. The terminology used represents this: we do not speak about *workers*, but rather *labourers* and professions - despite the DAP memorandum[28][28] - continue to be called by disqualifying terms: just

28. DAP memorandum 0112428 of 31.03.2017 "Corresponding renaming of certain professional figures and others in prisons".

think of the tailors commonly called *patch workers*.

At 31 December 2017, according to data from the DAP, the total number of "working" prisoners was 18,404 people, equal to 1.95% of the inmate population. The previous year it was 16,251, equal to 29.73%. Thus there was a slight increase, but still well below 50%. Furthermore, as the Head of the Santi Consolo Department recalled in his report to the Parliament on work in prison[29] "The Institutes' Directors, in order to maintain a sufficient level of employment among the inmate population, tend to reduce per capita working hours and implement shift work". This means that among the 15,924 workers employed by the Prison Administration (which account for 86.52% of the total) a significant portion works without continuity, in rotation with other inmates.

The Guarantor appreciates the efforts made by the Prison Administration, particularly over the last year, to improve work in prisons, both in terms of numbers and the quality of work offered.

However, the Guarantor appreciates the efforts made by the Prison Administration, particularly over the last year, to improve work in prisons, both in terms of numbers and the quality of work offered. The Prison Administration has acted along three lines.

The first concerns the activities revolving around the Prison Administration itself and consists in the development, alongside domestic work, of industrial activities, that promote the self-production of a series of items for the Institutes, staff and guard quarters. This context has seen various furniture production activities begun (beds, chairs, wardrobes, tables and shelving), bed linen (pillowcases, sheets and blankets), work clothing (overalls, smocks, safety shoes) and printing. This has, above all, generated savings for the Administration as a whole. There were 655 inmates employed in these jobs as of 31 December 2017.

Of course, much remains to be done to upgrade "domestic" work to make it more in line with similar external work.

The second line is aimed at developing activities in the tourism and hotel sector in the three Sardinian prison farms of Mamone, Is Arenas and Isili, in order to fully utilize their accommodation capacities and increase the number of prisoners who work there. The increase in workers involved 52 inmates transferred in 2017 to the Institutes of Mamone and Is Arenas. In 2017, there were a total of 420 detainees working on the three prison farms. Moreover, projects are being studied together with the Tuscan Park Authority for activities linked to environmental protection on the islands of Gorgona and Pianosa.

Finally, the third line aims to foster services offering qualified work. During the year several agreements were signed with local companies to bring new job opportunities to the Institutes: with *Marinella Srl* and *Maumari Srl* for the creation of a tailor's shop in the women's prison in Pozzuoli; with *Brunello Cucinelli Spa* for the creation of a tailor's workshop in the prison of Perugia Capanne; with *Mutti Spa* for the creation of a workshop for the production and packaging of tomatoes at the Carinola prison.

These initiatives promote operating methods that are as consistent as possible with those used for similar works in the external context, as indicated by Rule 26 paragraph 7 of the *European Prison Rules*, in order to prepare prisoners for the conditions of normal professional life.

With the Association *Soroptimist international Italia* - whose purposes include advancing the condition of
women, the acceptance of diversity and the creation of opportunities to transform the lives of women - the Administration signed an agreement for the creation of training courses aimed at the female prison population.

These are significant initiatives that, however, need to be implemented with greater willingness of companies to invest in the Institutes, helping to foster the path of reintegration that the Prison Administration cannot do alone. But this also requires a change of pace within the Institutes, facilitating quicker methods that do not detract from the need for security, preventing any type of slowdown or bureaucratic or organizational obstacles, which are grounds to disincentivize business investments in prisons.

When speaking of work in prison, one can certainly not forget the important contribution made by Volunteer organizations - Cooperatives, Consortia, Associations - which provide over 1,550 jobs. A qualified job is often "accompanied" by volunteers and operators who support inmates along a real path of full social reintegration, a job that often begins inside and continues outside as part of alternative measures such as day release, or at the end of the sentence.

On the subject of work, the Guarantor reports two particular initiatives that, due to their specific nature, go beyond the scope of work. These are two shops, one for the sale of farm and dairy products and the other for bakery products opened at the "Germana Stefanini" women's prison in Rome-Rebibbia respectively and at the open prison home III of Roma-Rebibbia. They are physically inside the walls of the Institutes, but open to the public and the people who work there are male and female inmates. Those who shop at that store cross the prison wall, somehow breaking the distance, both physical and psychological, which separates the world of prison from external society.

The year 2017 was marked by an important allocation of € 120 million in the three-year period 2017-2019, which made it possible to give the prisoners who work a pay raise.

The year 2017 was marked by an important allocation of € 120 million in the three-year period 2017-2019, which made it possible to give the prisoners who work a pay raise. Work performed for the Administration is, in fact, paid using the national collective labour contracts of the various sectors as an economic reference, in a measure not less than 2/3 of the wages envisaged by the contracts themselves, as indicated in Article 22 of the penal code, but increases to the amounts were halted in 1994, for over 20 years. Now this *weak point* has been remedied.

29. *Report to Parliament on the state of implementation of the legal provisions relating to the work of prisoners in accordance with Article 20, last paragraph, of the law of 26 July 1975, no. 354. 2017*, of 13 April 2018

35. Departments of protected medicine

Protected medicine departments are hospital operating units that are structurally and functionally autonomous within the Hospital they belong to, with their own medical, nursing, technical and health care auxiliary personnel, exclusively intended for the treatment of prisoner illnesses that can not be dealt with in a prison environment.

It is certain that vulnerabilities and specialties are combined in a peculiar way when a part of the sentence is served in the Protected Medicine Department of a Hospital. The legal basis for the departments of protected medicine can be found in Article 7 of the Law of 12 August 1993, no. 296[30]. These are hospital operating units that are structurally and functionally autonomous within the Hospital they belong to, with their own medical, nursing, technical and health care auxiliary personnel, exclusively intended for the treatment of prisoner illnesses that cannot be dealt with in a prison environment. These facilities should be able to offer hospitalized inmates all the specialist services found in the hospital, through collaboration with the other hospital operating units, while ensuring a high level of security. The supervision of the Departments is entrusted to the Penitentiary Police, normally assigned to the territorial Prison Institute, making it possible to reduce the use of personnel for "guarding" the patients.

It should be said, first of all, that these facilities are extremely erratic throughout Italy and in some areas these departments are not yet active. The first operating unit of this type was opened in 2002 at the "San Paolo" Hospital in Milan. The department, called "Medicina V" has 18 beds for hospitalization and two for the *day hospital*. Over the years others have been opened, as reported by the Prison Administration Department[31], these are: at the "San Martino" Hospital of Genoa, the "Belcolle" of Viterbo, the "Sandro Pertini" of Rome, the "Cardarelli" of Naples, the "dei Colli" Hospital of Naples, the Municipal Hospital of Palermo, the "Cannizzaro" of Catania, the "Papardo-Piemonte" hospitals of Messina, and the "San Giovanni Battista le Molinette" of Turin. These departments have a minimum of four beds up to a maximum of 22.

The National Guarantor, during the visits conducted in Italy, found that alongside these facilities - definable as real hospital facilities - the tendency has developed to open small areas consisting of one or two rooms that are effectively actual Departments, but used for the protected and controlled placement of prisoners, often in 'neglected' areas of the Hospital. This is the case that exists at the "San Giovanni di Dio and Ruggi d'Aragona" hospital of Salerno or at the L'Aquila hospital or, again, at the hospital of Brescia, or at the Nuoro Hospital, in the process of opening in November 2017, to cite some examples. The distinction between actual Protected Medicine Departments and these small areas of secure placement is remarkable: if in the first cases the organizational structure is typical of a Hospital Department, as regards equipment, presence and medical responsibility, in the latter it is a small area, often not possessing its own equipment and with on-call health personnel.

One feature also unites the quality facilities: these are Departments that should envisage short stays, corresponding to paths of continuity with the health facility inside the prison Institute, thus avoiding lengthy hospital stays, except for exceptional cases of people who need ongoing bed rest and therapy and whose individual positions have not allowed recourse to Article 147 of the Criminal Code Otherwise, even the good level of health service - as it is, for example, in the cases of the "San Paolo" of Milan or "Belcolle" in Viterbo - ends up clashing with aspects of inadequacy in terms of daily detention and the relative rights of the person. In fact, the reality in which the detainees live is striking: it is a reality that speaks of segregation and isolation, where there are no spaces or moments of sociability, where the prisoner-patient remains locked in the room overnight, in some cases even without a television and without being able to exchange a word with anyone, except with prison or nursing staff and health workers. There are no courtyards for a walk, to guarantee - for those who can - the ability to spend at least one hour a day in the open air. In these hospital departments detention ends up being only restraint, control, and security - and all this is acceptable only for short periods of necessary intensive care. When thinking about daily treatments that do not however exclude the ability to conduct a normal life for the rest of the day, such facilities are inadequate. This is why the Guarantor has directly intervened in some cases to point out to the Supervisory Judge that prolonged admission in a Department of this type for people who, although in need of particular daily treatment, did not require continuous bed rest, was inappropriate and constituted an aggravation of their detention, even on the psychological level.

In fact, if it is true that officially - as mentioned by the Head of the Prison Administration in a note to the Guarantor[32] - the persons detained therein "benefit from the rights established by current legislation such as, for example, telephone calls, visits with lawyers and family members, often in rooms set up for this purpose" it is equally true that the rooms available are very rare; that, as already highlighted, in none of these departments is there the possibility of access to open air for those for whom there are no medical impediments; that the windows are almost hermetically sealed, even if - continues the note - "as regards the exercise of certain rights of the detainees ensured during their imprisonment, such as sociality, i.e. the possibility of spending time together with others in predisposed environments or the possibility to go out in the open air when the doctor certifies the patient's need to walk or spend time outdoors, this Administration guarantees and promotes these needs during hospitalization"[33]. It is striking that the medical "necessity" for access to air must be certified and that, therefore, this does not derive automatically from the "contrary

The Guarantor pointed out to the Supervisory Judge that prolonged admission in a Department of this type for people who, although in need of particular daily treatment, did not require continuous bed rest, was inappropriate and constituted an aggravation of their detention, even on the psychological level.

30. Article 7 of the Decree-Law of 14 June 1993, no.187, converted into Law 12 August 1993, no. 296: "1. In each provincial capital, the general hospitals shall reserve departments for use, as a priority, for the hospitalization in an external place of care, in accordance with Article 11 of the law of 26 July 1975, no. 354 [*(a) and Article 17 of the regulation approved by the Presidential Decree of 29 April 1976, no. 431 (b), and subsequent modifications*], of prisoners and inmates for whom the responsible authorities have ordered guarding. In provincial capitals where there are multiple general hospitals, these departments are to be established in the one containing an infectious diseases department".

31. Letter from the Head of the Department to the National Guarantor of 27 April 2018.

32. Cited letter of 27 April 2018.

33. *Ibid.*

necessity" of a medical nature pursuant to Article 10 of the penal code. The claustrophilia situation that these facilities seem to adopt is then quite evident in those small facilities not configured as specifically Protected Medical Departments and that, after all, only respond to the need to reduce guarding.

In general, in most hospital facilities for detainees there is no room for all the elements that the legal system defines as being central to their well-being, such as the positive maintenance of family relationships, occupational activities, sociability, and time in the open air. Sometimes there is no phone to call families or lawyers. Moreover, the bureaucratic and administrative organization makes life in some of them, for example in that of the "dei Colli" Hospital of Naples, very

In most hospital facilities for detainees there is no room for all the elements that the legal system defines as being central to their well-being, such as the positive maintenance of family relationships, occupational activities, sociability, and time in the open air.

difficult: in order to make a visit, family members must physically pick up a piece of paper from the hospitalized inmate's prison - which may be in another city - and take it with them to the hospital ward; detainees must make requests for any purchases to their prison institute,
who verifies their account, acquires the item and physically takes it to him in the hospital ward by means of the Prison Police. Almost everywhere there are no volunteers and, where they are operational, sometimes - as in the case of the "Sandro Pertini" of Rome - they must conduct visits with the inmate patients through the closed gate in the room. This is a practice that the Guarantor strongly condemns.

In other words, in the hospital prison risks going back to being only bars, armoured doors, separateness and idleness. Everything else is temporarily suspended. While understanding and reiterating that in hospital facilities the stay should be limited to the time strictly necessary for the particular test or treatment, the segregating aspect of these facilities, in particular those not configured as Departments but as separate rooms and usable as needed, requires substantial revision. This is true also in consideration of the fact that this situation also inevitably falls on the Police, who sometimes work without specific preventive attention on the prophylactic and psychological level, in spaces that risk being detached from the context of their natural workplace, in continuous contact with a surplus of suffering and in areas that too often transmit a feeling of marginality and sometimes degradation.

36. The double track system

The deprivation of liberty in the criminal sphere in our legal system has a particular specialty: that of moving along a double track: punishment and security measure, which can also be a deprivation of personal liberty. This is a long-debated issue, since it can in fact affect the single agent of a single crime with two types of sanctions, the first with reference to the crime committed and the second to his supposed "social danger": this is a legacy of the legal culture and ideology of the era in which the penal code originated, based on the principle of the prosecution of the agent as well as that of his behaviour.

The deprivation of liberty in the criminal sphere in our legal system has a particular specialty: that of moving along a double track: punishment and security measure, which can also be a deprivation of personal liberty.

Even though the law of 30 May 2014, no. 81 has corrected the original vagueness by binding the duration of the application of security measures to the maximum penalty for the crime committed, the system of security measures retains its highly critical implications on both the theoretical-juridical level, and in its concrete application, resolving itself, in the vast majority of cases, in an illegitimate extension of the main sanction.

On the juridical-theoretical level, we reaffirm the conviction, already expressed in many places, that "a radical reduction of security measures would be desirable and above all a diminished reference to categories of dubious scientific basis concerning the prognosis of "social danger". It is always worth recalling that criminal law in modern states is a subsidiary intervention method for sanctioning what has occurred and its agent and not to predict what might happen and the type of personality who could make it happen"[34]. In a rather effective synthesis, it may in fact be stated, that while a sanction punishes for what has been committed, a security measure punishes for what might be committed. Thus there are two elements with a dubious basis: the shift from the crime to the criminal and, the shift from what has been committed to what might be committed.

If once, however, detention security measures represented an Italian specificity, anomalous within the European systems, today they have instead found wide application even beyond the Alps. Consequently, the security measures have been the subject of considerations and judgments by the Court of Strasbourg with some guidelines that must be kept in mind; especially those related to some German

34. Opinion of the National Guarantor on the draft legislative decree implementing Article 1 paragraph 16, points c) and d) Law of 23 June 2017, no. 103.

The penal system and freedom

cases[35]. In a famous 2009 ruling, in the case *M. v. Germany*[36], the Court established that the detention security measure was an actual punishment and, as such, covered by the principle of non-retroactivity. It also reiterated the fundamental principle that the application of a custodial security measure is legitimate provided that there is a causal link between the act that is the object of the sentence and the deprivation of personal liberty, a mere chronological sequence between first and second is not sufficient (Article 5.1 letter a of the Convention), nor that the generic risk of commission of a new crime is sufficient for its application (Article 5.1 letter c). Consequently, it ruled that Article 5.1. and Article 7.1. of the Convention in the case in question had been violated because the duration of the detention security measure had been indefinitely extended during the period of execution of the applicant's sentence and this extension had been applied to him at the end of such enforcement. The element which is relevant in this as in other coeval cases - and which was taken up again later in the case law of the Court - is the impossibility of applying a security measure in a manner disconnected from the conviction and adopted during the enforcement of the sentence.

This legal orientation of the European Court of Human Rights affirms a principle that in our system meets profiles of possible incompatibility due to the effects of the combined provisions of Articles 205 paragraphs 2 and 3 of the Criminal Code and 109 paragraph 2 of the Criminal Code that allow the application of security measures with a provision subsequent to the sentence and on the basis of statements of qualified danger expressed at any time, even after the execution of the sentence. The same risk also occurs in the event of the extension of a custodial security measure; even in this second case, in fact, according to the ECHR's body of laws, the link with the sentence, which is essential for the legitimacy of the deprivation of liberty, is severed.

But it is at the level of the concrete application of the security measures that these manifest all the extremes of disharmony with regard to a modern penal system: it is important to underline that the application of a detention security measure can not be justified only because of the preventive function, if in fact its enforcement does not differ from a punishment. The latter, however, is a recurring circumstance in our system: again during the last year of visits to the penitentiary Institutes, the National Guarantor ecountered the continued presence of people who, after serving their sentences, have been held, sometimes in the same detention room and unit, despite being assigned to a work house for

But it is at the level of the concrete application of the security measures that these manifest all the extremes of disharmony with regard to a modern penal system: it is important to underline that the application of a detention security measure can not be justified only because of the preventive function, if in fact its enforcement does not differ from a punishment.

35. In particular the cases *M. v. Germany* (2009), *Kallweit v. Germany* (2011), *Maates v. Germany* (2011), and *Schummer v. Germany* (2011).

36. Judgment in *M. v. Germany* (19359/04) of 17 December 2009. The plaintiff had been sentenced to five years of imprisonment with subsequent application of the custodial security measure, which at the time of the sentence had a maximum duration of ten years. Subsequently, the 10-year limit was legally exceeded, making the security measure of indefinite length. For this reason, the plaintiff had seen his security measure extended beyond ten years, based on an assessment of danger posed by him. Following the violation of the Articles 5.1. and 7.1. of the European Convention on Human Rights and similar judgments in other cases (2011) the Federal Constitutional Court declared the constitutional illegitimacy of the imposition of custodial security to an unlimited extent.

enforcement of the detention security measure.

Precisely because security measures are punitive, it is necessary to ensure that the difference in functions between punishments and security measures also translates into different enforcement procedures, so as to ensure the rehabilitation and re-socialization supports necessary to allow the subject to end the enforcement of the measure as quickly as possible..

There are 209 people currently detained in work houses. A further 28 inmates are assigned to the Isili[37] prison farm. Most of the inmates assigned to the work house are serving their sentences at Vasto (120) and in Castelfranco Emilia (73). Of the rest, 21 inmates are in the Biella prison unit classified as a "Work House", while there are 10 women, of which 7 are in the unit classified as a "Work House" at Venice-Giudecca prison, and 3 in Trani prison, respectively. There are also an additional 6 inmates assigned to a work house that are detained under the special regime pursuant to Article 41 bis of the penal code in the Tolmezzo prison (data current as of 26.04.2018).

Work houses and prison farms are places designated for the expiation of the detention security measure
by imputable subjects[38], and should, therefore, offer the possibility of re-education in contact with the outside world and envisage work as an instrument for re-education and social reintegration for offenders, but in fact they risk being a further form of prison. Excluding the situations of the inmates assigned to the prison farms in Isili, Is Arenas and Mamone, where recent projects have been launched in the hotel tourism sector, for others, except for very rare exceptions, the absence of work is a constant factor. As to how the function that the law assigns to the work houses and its role of facilitating social re-entry can be reconciled with the provision of internment under the special regime pursuant to Article 41 bis of the penal code is absolutely unclear to the National Guarantor who sees in this provision the risk of a mere prolongation of the special detention situation for security reasons. Furthermore, work houses should be distinct and distinguishable from normal detention institutes: this is extremely difficult when it is a unit of a detention centre or a prison.

Mons. Bruno Forte, Bishop of Chieti-Vasto (the place where the largest work house is located - which is in Vasto), recently wrote about the vacuum that the application of this security measure currently poses: "Work houses should offer the possibility of re-education in contact with the outside world, but in fact they become a further form of prison for those who already so much experience with them. There are people who have served thirty and even forty years of in-

"Work houses should offer the possibility of re-education in contact with the outside world, but in fact they become a further form of prison for those who already so much experience with them. There are people who have served thirty and even forty years of incarceration. Work houses are filled with desperate people, in a situation that does not permit those who are sane to remain so for very long"

Mons. Bruno Forte, Bishop of Chieti-Vasto

37. According to Article 216 of the Penal Code, work houses and prison farms are two different enforcement methods of the same security measure. The subsequent Article 218 then gives the judge the choice between assigning inmates to one facility or the other, "taking into account the conditions and attitudes of the person being sentenced".

38. The issue is different for non-imputable subjects for whom there are residences for the implementation of security measures (REMS), which will be dealt with in the following section.

carceration. Work houses are filled with desperate people, in a situation that does not permit those who are sane to remain so for very long"[39]. Seven years ago the Chairman of the National Guarantor wrote this about the detention security measure following a visit to an Institute: "Walking along the corridors and talking to the people you meet, there is no difference, and yet their individual legal situations
are completely different. We are in a large prison in central Italy, but not all those who are here are prisoners serving a sentence or awaiting a final judgment. Many of the people we speak to have already served the prison term assigned to them by the Court that judged them, yet they are still inside these walls under a regime that is far too similar to what they previously experienced. They are deprived of personal liberty by virtue of a security measure and the so-called "Work House" that accommodates them and detains them has nothing in common with its name: there is little or no work, and there are many all-encompassing restrictions to which they are subjected".[40]

It is not enough to distinguish between the environments and look fortuitously for some job opportunities to offer. And yet these steps must be taken, in order to not to push the problem off to desirable future and presently unlikely overhauls of our Code, while the life of those who are interned continues to go on. If it is still not possible to completely re-think the double track, if one continues to deprive liberty not on the principle of strict legality summarized in *quia prohibitum*, or from the substantialist one of the *quia peccatum* but from a discretionary and neutralizing principle synthesized in the *ne peccetur*[41]; if we are as yet unable to change all this, perhaps the time is now for us to urgently rethink the manner in which all of this is realized so that at least words can rediscover their meaning.

37. The REMS

From 1 April 2015, the enforcement of custodial security measures involving assignment to custodial nursing homes and admission to forensic psychiatric hospitals was definitively replaced by admission to Residences for the Implementation of Security Measures (REMS).

From 1 April 2015, the enforcement of custodial security measures involving assignment to custodial nursing homes and admission to forensic psychiatric hospitals[42] was definitively replaced by admission to Residences for the Implementation of Security Measures (REMS). This was done to fulfil the process of implementing the laws of 17 February 2009, no. 11 and 30 May 2014, no. 81, that had been (and are) the subject of a great debate both in the criminal and psychiatric sphere and which marked a turning point in increasing the protection of the rights of people affected by mental illness. In last year's Report to Parliament (2017), the National Guarantor underlined the positive nature of the completion of a path that, having started with the decree law of 22 December 2011, no. 211[43], had received a decisive boost in 2014, when the law converting the decree law of 31 March 2014, no. 52 set 31 March 2015 as the deadline for the completion of the process and entrusted the Extraordinary Commissioner for the closure of the forensic psychiatric hospitals, Franco Corleone, with the task of continuously monitoring and guiding the implementation paths in the regions that had not yet begun establishing the REMS, even though provisional in nature.

The positive comment of the National Guarantor was expressed in last year's Report: "Today we can say that it gave way to a process that started forty years ago with the "Basaglia Law" (law 180/1978), which led to the closure of the psychiatric institutions, it showed that as regards mental
illness "we can make it different, because there is another way to address this issue, also without restraining measures" , as it stated. That law of civil innovation Italy remained incomplete with regard to the legal mental hospital system that has persisted for all these
years, based on the fears of the 'mad criminal' and applying to subjects that the law recognized guilty, but not responsible for their actions, the dual level of institutions: that of the prison and that of the asylum. For this reason, the OPG closure has a cultural dimension to be consolidated and we have to make it live completely, also inside some communities sometimes fearful to host in its
own territory the 'residences' recently opened. This positive dimension is enhanced by the fact that law 81/2014 introduced also other elements, considering a) the restrictive measure in REMS as a last resort, to be decided only when there are not other adequate measures to ensure suitable cares and consider the inmate's dangerousness, which cannot be deduced by the inmate's living conditions; b) the length of such a measure, as of other security ones."[44].

"Today we can say that it gave way to a process that started forty years ago with the "Basaglia Law" (law 180/1978), which led to the closure of the psychiatric institutions, it showed that "we can make it different, because there is another way to address this issue, also without restraining measures".

As regards the culturally and factually relevant element of this new approach, the Guarantor refers to the assessments made in the last Report. In any case, the activity of the year examined in this present Report involves three aspects. The first of these concerns the never-ending attempts to diminish the scope of the reform process initiated, with the risk of reproducing the obscurity of asylum hospitals even in the better facilties that have a small number of patients and are commonly found throughout Italy. The second aspect concerns the need to limit recourse to the REMS by a number representative of the actual need. The third aspect concerns the outcomes of the visits conducted and the difficulty of transforming the personnel who worked for years in facilities of this type.

Regarding the first aspect, the National Guarantor was able to express its dissatisfaction with the wording of article 1 paragraph 16 letter d) of the delegated law of 23 June 2017, no. 103. This letter in fact stipulates that persons assigned to the REMS may include not only can those who are serving a securi-

39. Mons. Bruno Forte, *Come andare oltre i drammi delle "Case di lavoro"*, "Il Sole 24 ore", 8 April 2018.

40. Mauro Palma, *La libertà non è star sopra un albero*, in "Italiani Europei", no. 10, 2011.

41. See: Luigi Ferrajoli, *Diritto e ragione. Teoria del garantismo penale*, Editori Laterza, Bari, 1989.

42. Articles 209 and 222, respectively, of the Penal Code.

43. Converted into the law of 17 February 2012, no. 9, setting the definitive closure at 31 March 2013.

44. National Guarantor for the rights of persons detained or deprived of personal liberty, Report to Parliament 2017, sect. 25, pp. 58-59.

ty measure due to the fact that they are not imputable, but also those who are detained - and therefore imputable - who have developed mental illness problems during the execution of the sentence.[45]. The National Guarantor does not agree with this approach and believes that the distinction between interned subjects and prisoners must be maintained, while ensuring both types of subjects access to therapeutic and rehabilitative programmes in full respect of the right of each pursuant to Article 32 of the Constitution. The establishing of 'mixed' territorial facilities runs the risk of re-proposing the all-encompassing logic typical of the old legal psychiatric facilities. It therefore calls for current and future governments not to exercise the delegated law on this point.

The National Guarantor does not agree with this approach and believes that the distinction between interned subjects and prisoners must be maintained, while ensuring both types of subjects access to therapeutic and rehabilitative programmes in full respect of the right of each pursuant to Article 32 of the Constitution.

The second aspect is raised by the frequent "cries of alarm" about measures not carried out due to the unavailability of places in the current REMS. At present (29 April 2018), 625 persons are accommodated in the REMS, of whom 236 are interned with provisional security measures and 387 with definitive security measures. Of these, 61 are women and 564 are men[46][46]. From the data taken from the provisions issued by the Court for the application of security measures - definitively or provisionally - it turns out that 441 people were, as of 31 March 2018, awaiting admission to appropriate territorial facilities due to the lack of beds[47][47]. The reading of the data offers a basis for two reflections: the first concerns the need to assign priority, if not exclusive, admission to the REMS to the recipients of definitive security measures; the second questions the numbers of the provisional security measures in order to establish the effectiveness of the application of the principle expressed by the provision according to which the security measure of deprivation of liberty must be ordered by the judge only if other measures are not effectively adequate to meet the social danger - which cannot, moreover, be deduced by the inmates living conditions[48][48].

The third aspect that emerged from the visits concerned the inexperienced manner in which the standard was applied, even within the context of many positive experiences. Preliminarily, the Guarantor once again here expresses its disappointment with the decision of the Region of Umbria not to implement any REMS in its territory and to establish an agreement with the Region of Tuscany for the admission of patients interned in its territory. This disappointment, in addition to being motivated by the incongruous connection that these patients may have with the local services in a region other than their own, as verified during a visit to a specific REMS where the Guarantor met an person from Umbria, who was also close to discharge, completely lacking any territorial support. Furthermore, it has been observed that the conversion of the large psychiatric hospitals, which were centred on segregation and institutionalization, into smaller facilities with a focus on potential and progressive reintegration, is not a simple undertaking. This is especially true when the staff has been operationally trained to suit the former method. For this reason the Guarantor, following an in-depth visit to the facility of Castiglione delle Stiviere, was most struck by the very name of this facility: *Polymodular system for temporary REMS*. Thus it is not a REMS, but rather a set of modules, each of which can be defined as temporary REMS: in short, there is a group of 155 patients interned in various modules in one large space, with many procedures that recall the past and which were reported in a special Report on the visit[49][49].

In the last year, the National Guarantor intensified its monitoring activity of the system actively initiated during the last decade. It did so through both through visits to the REMS, and by consulting the Computer System Monitoring the Closure of the OPG (SMOP). And, indeed, from 1
February 2018, following the signing of the Agreement with the Campania Region, the Guarantor has had access to collected in the SMOP information system, created as part of the activities of the "Eleonora Amato Experimental Prison Health Laboratory". The data is entered for each Region by local operators and relate to the persons present in the Services for the Closure of the OPG (SSO) and in the local Regional Health Services (SSR).

In the last year, the National Guarantor intensified its monitoring activity of the system actively initiated during the last decade. It did so through both through visits to the REMS, and by consulting the Computer System Monitoring the Closure of the OPG (SMOP).

45. Law 103/2017, article 1 paragraph 16: «The Government is delegated to adopt, within one year [from 4 July 2017, *ed. note*] Legislative decrees to modify the governing of the procedure for certain crimes and personal security measures and to reorganize some sectors of the penal code, according to the following principles and guidance criteria: [...] d) taking into account the effective abrogation of the forensic psychiatric hospitals and the setting up of new residences for the enforcement of security measures (REMS), foreseeing the destination of the REMS as a priority for the subjects for whom a state of infirmity has definitively been ascertained at the time of the commission of the crime, which led to the opinion of social danger, as well as of the subjects for whom mental infirmity has occurred during execution of the sentence, of defendants subject to provisional security measures and of all those for whom it is necessary to ascertain their relative mental condition, if the units of the prisons to which they are intended to be accommodated are not, in fact, suitable for the provison of therapeutic and rehabilitative treatments, with reference to the specific treatment needs of the subjects and in full compliance with Article 32 of the Constitution".

46. The fluctuation of the data, depending on the various sources, entailed the accurate control of the National Guarantor in each of the facilities. The data is thus absolutely reliable on the date to which it refers.

47. See the table on this topic in the *Maps* section of this Report.

48. Article 1, paragraph 1, letter b of the Law of 31 March 2014, no. 52 stipulates that: the assessment of social danger "be carried out on the basis of the subjective qualities of the person and without taking into account the conditions referred to in Article 133, second paragraph, number 4, of the Penal Code", i.e. of the individual, family, and social living conditons of the offender". And further on that "the sole lack of individual therapeutic programmes does is not sufficient in and of itself to support the opinion of social danger". In the first instance it attempts to avoid that family or social problems and marginality may be significant indices for the opinion of social danger and, in the second, that any organizational dysfunctions in the mental health Departments that must take charge of the subject can be a determining factor causing their internment.

49. The visit to the facility of Castiglione delle Stiviere took place in the context of a regional visit to Lombardy from 25 September to 6 October 2018. The relative Report was sent to the local Authorities and will be published on the website of the National Guarantor by the end of June, together with the corresponding responses received.

The information system consists of a uniform data platform, the consultation of which provides not only entry and exit flows from the REMS, but also information useful to the National Guarantor for the prevention of possible violations.

The information system consists of a uniform data platform, the consultation of which provides not only entry and exit flows from the REMS, but also information useful to the National Guarantor for the prevention of possible violations.. The data for each person is standardized and grouped into areas (personal, legal, health, and administrative data). The system makes it possible to monitor different aspects: the presence of people with a provisional safety measure, the existence of an Individual Rehabilitation Programme (PTRI) for each patient, and possible extensions of the hospitalization or waiting lists.

To date, 16 regions have signed the convention and more or less regularly update the data in the system. For greater completeness and reliability of the data obtained from the System (the system relies on the constant updating of data by the territorial SSOs and SSRs), the National Guarantor hopes for the implementation of search and consultation functions and the signing by all the Regions of the convention to join the SMOP. Moreover, within the framework of the REMS, a technical committee for inter-institutional dialogue has recently been established at the Department of Mental Health and Pathological Addictions of the Local Health Authority (ASL) Rome 5, with which the National Guarantor participates together with the director of ASL, a judge from the Public Prosecutor's Office of Tivoli and one from the Rome Supervisory Court. The technical committee, the first to be set up in Italy on the topic of REMS, aims to promote collaboration between institutional stakeholders in order to ensure the protection of the right to health of the persons hospitalized.

As already mentioned, the introduction of the REMS should be considered a victory of the battle to replace the psychiatric hospitals. Nevertheless, it cannot yet be considered the final destination on the path of protection and humanization of the cure and treatment of mental illness. In some Regions, local realities based on the old asylum model and operating methods or Courts that still deviate from the provisions of the recent regulations on the subject. It happens also - and the previous numbers testify to this - that recourse to the REMS is widespread and not with that residual and above all *transience* that should guide the decision. The question first raises the frequent use of provisional security measures. Moreover, although the security measure must be aimed at the recovery of the person and the overcoming of social danger, the cases where there is no PTRI are not isolated, which indicates a failure to take complete care of the person by the territorial services in anticipation of discharge from the REMS. To overcome these problems, it is necessary to define the operative methods of collaboration between the different *stakeholders* involved: judges, experts, consultants, ASL, DSM and UEPE. These operational procedures should include: timely communication between the director of the REMS, the ASL-DSM referent and Judge, the regulation of the methods used to send persons subject to security measures to external care facilities, the presence of a therapeutic discharge plan closely linked to the territorial facilities prepared to provide adequate health interventions even to subjects that are difficult to manage.

On the other hand, there is a positive role that has been played in recent years, and continues to be played, by the "thematic" associations whose effective protection of the health of people deprived of liberty and the thinking on its possible and effective forms, make up their own reason for existence. These also provide useful indications to the Guarantor for determining significant indicators that summarize the meaning of daily life within these facilities. A routine can vary greatly from one situation to another. Certainly in some the conduct of everyday life and the spaces are a sign of a positive

response to the 'challenge' that the provision of such facilities has in some way initiated. However, in others there is no set up for community living or adequate outdoor spaces that differ from those of a prison and that above all do not convey the idea of punishment. Inadequacy has been found in some cases also as relates to personal spaces and internal daily activities that are often far from rehabilitation and treatment aims with respect to the principle of individual self-determination. In some REMS, for example, access to common rooms, and even to private ones, is precluded on certain days or at certain times of the day. It is thus far from a community life and closer to the highly restictive logic of institutionalization.

Finally, it should be reiterated that overcoming the management of the REMS that still resembles the old OPG model is strictly connected to the investment in the continuous training and updating of the health personnel within them. Otherwise there is a risk that recourse to REMS may reinforce the tendency to conceal long-term institutionalization of marginal people under the guise of therapy, thereby translating social problems into health problems, in a sort of incongruent substitution.

Agreement for the "Computer System Monitoring the Closure of the Forensic Psychiatric Hospitals" - (SMOP)

On 1 February 2018 the National Guarantor of the rights of persons detained or deprived of personal liberty entered into an agreement with the Campania Region that allows it access to the Computer System Monitoring the Closure of the OPG called "SMOP". The System, which consists of an IT platform shared between the REMS of the Regions that have signed the agreement and the territorial social-health services, mainly allows monitoring the presence and entry and exit flows of the guests.

On 28 February 2018, the system was adopted by the following Regions: Abruzzo, Basilicata, Calabria, Campania, Emilia Romagna, Lazio, Liguria, Lombardy, Marche, Molise, Piedmont, Apulia, Sardinia, Sicily, Tuscany and Veneto, for a total of 25 REMS.

38. Physical and mental health

The closure of the OPGs, alongside the aforementioned meritorious progress that it has initiated, has nevertheless left one point unresolved: the ability to interrupt the enforcement of a sentence for a subject with serious mental illnesses, similar to what happens when serious mental illness occurs in convicted individuals. Article 148 of the Penal Code, in fact, stipulates that such cases be admitted to forensic psychiatric hospitals but, just as was described regarding the function of admission to the REMS, mere substitution within the Article of one facility with another is certainly not possible.

For years mental illness has certainly been the most frequently detected illness within detention facilities and getting a reliable map of the distribution of mental health conditions in the penitentiary institutions today is still difficult.

For years mental illness has certainly been the most frequently detected illness within detention facilities and getting a reliable map of the distribution of mental health conditions in the penitentiary institutions today is still difficult.

Monitoring of mental health in prison

In Italy, there are 47 "Mental Health Division" units (8 female and 39 male) that host 251 prisoners: 21 women and 230 men. Three of these units are "units for mentally disturbed disabled individuals". The Regional Procurement Office of Lazio, Abruzzo and Molise has the highest number of units (9), while that of Sardinia has only one.

There are only two "Psychiatric Departments", one is located in the "Lorusso, Cutugno" Penitentiary Institute of Turin, and the other in the "San Vittore" Institute of Milan. There are currently 31 people undergoing psychiatric care and all of them are male. Both facilities were visited by the National Guarantor and Reports on these visits were produced. (Data from 09.04.2018).

In order to best ensure the right to mental health for detainees, some regulatory changes are needed and, above all, a commitment to implement the interventions that have
already long been discussed and that were set out in the first legislative decree proposed by the Government in implementation of the delegation law of 17 June 2017, no. 103, in the wake of what was elaborated at the *General Assembly on Sentence Enforcement* committee discussion on the protection

of mental health and disorders[50]. The approach to the protection of "mental health" is set out in the following guidelines:

a) *Equivalence of physical and mental illnesses for granting suspension of sentences*. Overcoming, therefore, the difference in treatment between persons suffering from severe mental illness during the period of detention and those suffering from severe physical illness. For the latter, in fact, the deferment or suspension of the sentence or its enforcement through home detention pursuant to Article 47 ter of the penal code are envisaged: possibilities not stipulated for mental illness. The line identified renders the two illnesses equivalent puts an end to this discrimination.

b) *The provision of units specifically related to mental illness that has occurred during detention*, to be added to the Intensive Care Service (SAI) units already existing for physical illnesses; this will strengthen the health care management of the prison by including a decisive role of the ASL. With the replacement of the forensic psychiatric hospitals, in addition to the REMS, the law, in fact, stipulated the establishment of so-called "Mental Health Divisions" in different Institutes with different outcomes, from the positive, which enjoy full connection to local hospitals and those that merely offer a change of labels for units that are intended for solely psychiatric observation. The applicable line instead provides for actual units to be set up within the Institutes, run exclusively by health care providers, for the care of people with mental illness. This was done also in order to overcome the tendency to set up external multi-functional facilities, distorting the meaning of the REMS[51].

c) *The continuity of health treatments in progress outside or inside the Institutes in case of transfer*,

50. *General Assembly on Sentence Enforcement*, final document of Committee 10: Health and psychological disorders, p. 20: «[...] It was decided to identify the recipients of the measures as being the subjects with mental disorders that significantly impaired their mental functioning and whose fitness was such as to render null or void the efficacy of the therapeutic and rehabilitative interventions potentially available within the Prison, persons for whom it appears necessary and desirable to apply an alternative measure correlated by therapeutic and rehabilitative prescriptions formulated through an individual rehabilitation therapeutic programme realized together with the psychiatric and social services of the territory to which they belong and aimed at treatment and reintegration of the person. Below is a summary of the proposed regulatory changes [...]:
- Art. 147 no. 2 of the Criminal Code, it is proposed to place serious mental illness together with serious physical illness as a condition for the optional suspension of the enforcement of the sentence;
- Art. 148 of the Criminal Code, proposal for total repeal (obsolete in light of the abrogation of the OPGs), with the consequent elimination of the references contained in Art. 112 reg. exec.;
- Art. 47 quater of the Penal Code, it is proposed to modify the heading [...] and to insert a para. 1 bis with the wording "The measures set out in Articles 47 and 47-ter may be applied, even beyond the penalty limits provided for therein, on the request of the interested party or his/her defender, to those who are affected by psychiatric disorders that impair their mental functioning and fitness that are currently undergoing or intend to undertake a therapeutic rehabilitation programme"; to insert a para. 2 bis with the wording "The requests referred to in paragraph 1 bis must be accompanied by certification from the competent public health service or the prison health service attesting to the existence of the mental illness and must be accompanied by an appropriate individual therapeutic rehabilitation programme prepared by the local health services". With regard to this, we underline the need to identify specific measures for external criminal enforcement for persons with mental illness [...]".
https://www.giustizia.it/resources/cms/documents/sgep_tavolo10_relazione.pdf

51. See the previous section of this Report.

including the implementation of digital documentation. The construction of a digital medical file, manageable on a platform able to connect the Health Services of the various Regions, is an objective to pursue, also in order to ensure the therapeutic continuity of the detainees, in the event of inter-regional transfers. It is a clear goal, though not easy to pursue, given the different digital methods adopted over the years by the various regional services.

For psychological and psychiatric disorders, the generic regulatory framework in the sector so far in force
sets out that in the Institute there be "at least one psychiatric specialist" (Article 11 of the penal code), psychologists, social workers and clinical criminologists pursuant to Article 80 of the penal code. It also stipulates that "new arrivals" must undergo a psychological evaluation at the same time as their first medical examination and that, if particular disorders are detected, the detainees receive support, according to the general regulatory framework currently in force. This provides very weak support, as the National Guarantor was able to verify during its visits on multiple occasions. It focuses essentially on the role of legal-pedagogical officials, personnel contracted under Article 80, who frequently work for a few hours a week and low pay, and are often volunteers. There is no trace of effective mental therapeutic assistance focused on an individualized approach and punctuated by regular meetings at fixed times, within which a specialized operator deals mainly with the person deprived of liberty and his vulnerabilities.[52]. This is true especiaslly in the first phase of the detention. Thus there is a need to instead create a path of awareness and feasibility within the organization of the services for attention and care of the person that the prison needs to offer. In terms of somatic illnesses, medical attention, although focused on a reaction to existing illnesses and not on prevention, needs to demonstrate a certain continuity and organizational capacity. In terms of the identification of mental disorders and the consequent assistance and care, there is still much left to be done. This also because the data on the critical issues are eloquent and indicative of a vulnerability that can not be entrusted to the responsibility of personnel in more direct contact with the detained persons, perhaps through the ambiguous formula of "visual surveillance". The National Ombudsman calls for this practice, found in almost all the Institutes to contain critical situations of personal vulnerability, to be interrupted because it is not able to prevent unfortunate developments of the critical issues, and because it exposes prison police personnel to undue responsibility.

In terms of somatic illnesses, medical attention, although focused on a reaction to existing illnesses and not on prevention, needs to demonstrate a certain continuity and organizational capacity. In terms of the identification of mental disorders and the consequent assistance and care, there is still much left to be done. This also because the data on the critical issues are eloquent and indicative of a vulnerability that can not be entrusted to the responsibility of personnel in more direct contact with the detained persons, perhaps through the ambiguous formula of "visual surveillance".

52. A specific indicator is given by the number of "critical events" that the statistics of the Prison Administration Department make clear: in 2017 alone there were 9,942 episodes of self-harm, 50 suicides, and 1,132 suicide attempts reported in adult prisons. As of 30 April 2018, the number of suicides was already 16.

39. What it means to protect health

The World Health Organization (WHO) defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition"[53].

Starting from this concept, as reaffirmed with the Declaration of Alma-Ata in 1978[54], the protection of health in penal institutions is required to make a leap in quality, transforming its approach, going beyond a reactive approach, a mere response to the needs of care that emerge from time to time, to become a health promotion tool according to the WHO definition, whereby "health promotion is the process that allows people to increase control over themselves and improve their health"[5555]. This approach is still very far from the actual situation of penal institutions, which, moreover, precisely as places of deprivation of liberty have an inevitable negative impact on the physical and mental well-being of detained people.

The National Guarantor does exactly what was written by the Committee of Experts that prepared the courses of action of the *General Assembly on Sentence Enforcement*: "The protection of the mental-physical well-being of each person is part of the overall task of health protection that is in charge of those who organize and manage the deprivation of liberty. The conditions of detention, together with the fact in itself of operating within a closed microcosm with rules typical to each prison, accentuate the risk of not taking care of one's own health and body. For this reason, medicine in prison can not be limited to the provision of responses to existing illnesses, but must emphasize the dimension of prevention and health education. In this context the importance of adequate "prison space" is emphasized, highlighting the fundamental contribution that the environment can have on the mental-physical well-being of those detained. This relationship takes on particular importance with reference to the issue of taking care of those with mental illness, who are most affected by the degraded daily physical-environmental conditions. The essential and urgent need is therefore stressed for the protection of the health and mental-physical well-being in prison, of both those detained and the workers, so that prison areas are clean, and free, if enclosed, from the risk of passive smoking, that they are decorous and welcoming and therefore comply with minimum living and habitability requirements (air conditioning, hot water, compliance of the systems with EEC regulations, safety devices, fire-fighting sys-

53. Constitution of the World Health Organization signed in New York on 22 July 1946, approved by the Federal Assembly on 19 December 1946, entered into force on 7 April 1948.

54. Declaration of Alma-Ata of 1978: "The Conference strongly reaffirms that health, which is a state of complete physical, mental and social wellbeing, and not merely the absence of disease or infirmity, is a fundamental human right and that the attainment of the highest possible level of health is a most important world-wide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector".

55. WHO health promotion glossary, 1998.

tems, smoke extraction systems, etc.). From the point of view of medical assistance, it is essential that the places, in addition to being welcoming, meet the minimum criteria for accreditation by the NHS, an essential requirement also for medical instruments and equipment"[56].

The Guarantor's activity of making visits to Institutes over the last year has reinforced the need to move quickly to this different vision of health protection and, more generally, of the mental-physical well-being of those who work and those who are detained in the detention facilities. It also highlighted the urgency of intervening to remedy several shortcomings detected. There is a lack of Intensive Care Services (SAIs) in the territories and, above all of services capable of host "high security" prisoners, as is the case in Sardinia where, on the contrary, the number of people detained with this classification is particularly high. There are also insufficient protocols of agreement between local health authorities and prisons and a failure to open "Mental Health Divisions", with a clear inadequacy of some of those officially in operation. The overcrowding of some facilities does not help to create a health system that is able to meet the need for health education and prevention of detainees, especially in view of many their experiences before entering prison, which, moreover, negates the opportunity offered by the setting to reach people who are scarcely monitored by the national health system in the territory. Paradoxically, prison could provide a valuable opportunity for health promotion and education, as well as - of course - the exercise of a duty in full compliance with Article 32 of the Italian Constitution. Transforming health protection into health promotion is therefore the challenge to which health facilities, in agreement with the Prison Administration, are called upon to respond, taking charge of the persons entrusted to them in the perspective of creating physical, mental and social well-being. An investment in health promotion can only have positive effects on the social rehabilitation path of prisoners, and also meet the safety needs of citizens through better awareness and self-care. To this end the National Guarantor proposes a paradigm shift as central to the protection of health in the prison institutions: from the provision of assistance and care services in response to needs already present, almost as a mere response to detected illnesses, to the construction of tools for physical and mental well-being within these institutions through prevention, health education, improvement of the hygienic and environmental conditions. This approach that the Guarantor used as a basis for defining the indicators of assessment to be used during its visits and for its discussions with the staff working in the health area of the Institutes and with the different levels of the competent territorial Administrations, tends to create overall well-being, starting from the working conditions of those that operate in these institutions.

56. Committee of Experts to prepare courses of action for the General Assembly on Sentence Enforcement (established and supplemented by the Ministerial Decree of 8 May 2015 and the Ministerial Decree of 9 June 2015), *Final document*, paragraph 5.5. *Mental-physical integrity and prison space*.

Suicides in prison

Confronted by the number of suicides in prison reported in 2017, the National Guarantor, while considering the difficulty of attributing such events to a single matrix, considered it necessary to give its contribution to perfecting the prevention system developed by the Ministry of justice with the Directive of 3 May 2016.

To this end, as the entity responsible for the protection of the rights of persons detained and, consequently, of persons harmed by violations of protected rights, it decided to intervene as a plaintiff in the investigation of all suicide cases, starting from 2017, to provide any knowledge that it becomes aware of and to follow the investigations that will be conducted: in any case of suicide in prison the Guarantor sends a request for information on the state of the procedure to the competent Public Prosecutor's Office.

There were 50 suicides in the year 2017, while as of April 2018 there were 16.
These cases have all been investigated and the request for information on the various criminal proceedings brought by the Guarantor to the individual Public Prosecutor's offices has been confirmed.

40. Closed communities and deprivation of liberty

In addition to penal institutions, sentence enforcement can also be carried out outside these in closed communities where a person can be detained by a decision of the Court. These areas are not always considered and examined even by those who continually pay attention to and study sentence enforcement and prison conditions. The communities exist for both minors and adults. They are often "a world away" from sentence enforcement. Yet they are very numerous, particularly as regards juvenile justice, but there are also a great number for the sentence enforcement of adults, involving the use of alternative detention measures. Moreover, in April 2018, the number of detainees who were serving their sentences in some form of alternative measure was more than 51,000 and, even subtracting those not deprived of liberty, the "probation cases" which are a *diversionary* measure, given that they follow a "different" path from that of sentence enforcement and house arrest, there is still a large number of people confined to a closed community on the basis of a criminal conviction.

Closed communities can sometimes differ greatly from each other, but they are united precisely by the dimension of deprivation of liberty and by the lesser transparency from the outside. This lack of transparency is not always intentional, but is rather often due to greater inattention by external eyes,

also due to the fact that they are considered to be less in need of an intrusive watchful eye. This gives rise to the important task of the National Guarantor of examining the conditions within them, of identifying good practices that can be recognized and disseminated and even situations of non-respect of the rights of persons hosted in a context where the rules are more fluid and less set in common and defined legislative frames.

It is in this perspective that the National Guarantor intends to increase its visits to closed communities in the coming months - an activity so far conducted in a rather limited number of these - in order to extend its gaze on sentence enforcement to the various forms of its implementation. This is a demanding job starting with the mapping of the communities, especially regarding the criminal field of adults. While it is true that the Department of Juvenile Justice and the Community has an updated framework of the facilities for minors divided by region, there is no structured organization of the corresponding amount for adults: therapeutic communities for drug or alcohol addicts, communities for people with mental illness, halfway houses, or community housing. There is a variety of contexts in which people can find themselves serving all or part of their sentence.

In order to contribute to reducing the various problematic issues that communities may present, the task of the National Guarantor is to intervene, in collaboration with the Authorities, in potentially at risk situations and to cooperate to find solutions to critical issues.

In order to contribute to reducing the various problematic issues that communities may present, the task of the National Guarantor is to intervene, in collaboration with the Authorities, in potentially at risk situations and to cooperate to find solutions to critical issues. Problematic issues can concern the overall management of the system, of a part of it, or the same regulatory framework that defines and regulates it. First of all the monitoring of these facilities involves an evaluation of the criteria for
accreditation, which in some Regions remains provisional, pending official status for many years. And during this time, it may happen, as the Guarantor was able to verify in a community in Lazio, that the declared requirements do not correspond to the real ones, for example as regards the personnel. Furthermore, there must be clarity on the roles, on the classification of the personnel and on the effective activation of projects aimed at promoting social and work re-integration. But sometimes it must also be checked that the deprivation of liberty does not follow a further limiting form of liberty that goes beyond the limits established by the supervisory court. In fact, it also happens that stays in the community can go on for several years, so that, for example, a minor within the facility becomes an adult without knowing any life other than that of the community. Stays in the community should instead encourage the conscious reappropriation by each person of their own history, leading to a gradual process of motivation for change.

In the field of juvenile justice, recourse to communities is frequent and is indicative of a positive approach to the exercise of justice for a subject who is nevertheless undergoing an evolutionary process and can never be considered, although he has committed a serious crime, as a subject completely defined by the decision to engage in criminal behaviour. Here the subsidiarity of the sentencing tool acquires its most binding meaning because there are many other instruments of an educational, social, and support nature that must be put in place to reorient the choices and dissolve the conflicts that they may have produced. Inclusion in a community environment that should combine positive promotion and control is certainly a priority compared to a strictly punitive one. Communities for minors, in fact, create a sort of protected space, characterized by the co-existence of minors with a team of operators who perform educational roles by proposing 'other' behaviours than those previously chosen by the

minor. However, the approach should not be to configure the protection that this space interprets as a separate reality from the external context, but as a vehicle for opening it: hence the analysis of how the internal team cooperates with other external educational agencies, first of all schools, in order to gradually give them absolute pre-eminence in the conscious transition to adulthood of the minor and reduce the need for accompaniment by the institution restricting their liberty. In this sense, the methods and times of a subject's overcoming the need for the community need and, therefore, of the educational and reintegration projects that must be set up for each hosted minor are also the object of assessment by the Guarantor.

In many respects the evaluation of adult communities follows the same approach: these are places where people have come from a situation of subjective autonomy - due primarily to addictions to alcohol or psychotropic substances - and from where they should leave with the capacity for self-control of such personal experiences, aimed at reducing the harm they have produced in themselves and in others. The purpose of the adult community is not the correctional change of the subject, but rather the predisposition of tools that give him the ability to manage his daily life in an autonomous way and free from the risk of committing new crimes. For this purpose the communities cannot succeed alone without the support of the external social structure, without the commitment of local agencies and without the dialectical support of the bodies that can act externally to identify problems and hardships that can arise and cooperate with them to find a solution. The National Guarantor and the territorial Guarantors constitute the fundamental network for this critical support.

41. Waiting for a juvenile penal code

As of 31 march 2018, there are 480 inmates, 1,057 prison admissions from January 2017 to March 2018, 1,275 transits through the First Reception Centres (CPA) in the same time frame, and 998 persons present in youth communities as of 19 March 2018: these are the numbers of young people, between the ages of 18 and 25, which make up the universe of juvenile sentence enforcement among the 17 juvenile prison institutions (Turin, Pontremoli, Milan, Treviso, Bologna, Florence, Rome, Airola, Nisida (Na), Bari, Potenza, Catanzaro, Acireale, Caltanissetta, Catania, Palermo, and Cagliari), the 25 CPAs, and the different public, private, and social communities in Italy.

As of 31 march 2018, there are 480 inmates, 1,057 prison admissions from January 2017 to March 2018, 1,275 transits through the First Reception Centres (CPA) in the same time frame, and 998 persons present in youth communities as of 19 March 2018: these are the numbers of young people, between the ages of 18 and 25, which make up the universe of juvenile sentence enforcement.

This universe has remained constant throughout the year in both its size and its composition, retaining the average number of daily presences in prison of

just over 470 units already noted in the Annual Report of 2017[57], without being affected by significant fluctuations, yet which manifests the problematic features in the data for 'critical events': 29 suicide attempts, 97 acts of self-harm, and 122 violent acts during 2017[58].

This provides confirmation of an appreciation of the juvenile justice system, based on the residual idea of detention, the effects of which are seen, on the one hand, by the lack of increase in presences in prison and, on the other, by the decrease in the recurrence rate among those who were placed on probation (22% of total recidivists), and the effectiveness of the intervention of the internal educational area, demonstrated by the overall rate of recidivism (31% of subjects entering the juvenile justice circuit).

This is a positive scenario and, over the last year, it has been consolidated by the organizational strengthening of the Department of Juvenile Justice and Community, established as part of the Reorganization Regulation of the Ministry of Justice with Council of Ministers Presidential Decree 84/2015.

The number of critical events, including dramatic acts of attempted suicide and acts of self-harm committed by minors or young people under the age of 25, indicates the permanence of areas of distress evidently not absorbed by the structured action of the Department.

On the other hand, however, the number of critical events, including dramatic acts of attempted suicide and acts of self-harm committed by minors or young people under the age of 25, indicates the permanence of areas of distress evidently not absorbed by the structured action of the Department.

The monitoring of some of the juvenile penitentiary facilities conducted by the National Guarantor in the last year (Airola, Nisida Naples, Quartucciu-Cagliari, Bologna, Milan) has made it possible to identify a series of critical issues that, although not specifically traceable more difficult cases, indicate the need to provide for an overhaul of the justice system for minors with regard to the Institutes, the models of detentive life, and the regulatory framework.

The structural deficiencies that affect, for example, the availability of spaces for training and recreational activities (as in the case of the Institutes of Treviso and Quartucciu, the latter located in a facility built as a maximum security prison) or to the accessibility of the same Institute (this is the case of the Sardinian IPM), affect the effectiveness of the educational and re-socializing objectives of the sentence and the exercise of fundamental rights such as maintaining contact with family members, causing natural consequences in terms of internal tension.

There are design and organizational gaps that do not take into account the difference between "minors" and "young adults", which became relevant after raising the age of youth held in IPMs up to 25 years[59], and lead to improper mixing, as well as the maintenance of closed custodial models, clearly incongruous with respect to the purposes and the very nature of the Institutes for minors (as was found in the IPM of Airola). These are undoubtedly the basis of imbalances and dysfunctions that negatively affect the principal re-socializing intent of the sentence enforcement.

These last few critical issues, moreover, only serve to highlight the larger problem of the persistent disharmony of discipline between the different Institutes for minors that can be linked, in short, to the lack of a uniform system of rules.

The lack of specific sentence enforcement regulations for convicted minors constitutes, in fact, an undoubted element of dystonia in the juvenile justice system, even more than an obvious shortcoming: the inspiring principles of the jurisdiction process and its very nature, addressed primarily to educating the agent of the crime, clash in an unhealthy manner with the regulations for sentence enforcement used for adults which, deprived of the reinforcing rehabilitative contents, in harmony with the aims of the trial, are used to decide upon punishment for perpetrators of crimes under the age of 18.

The lack of specific sentence enforcement regulations for convicted minors constitutes an undoubted element of dystonia in the juvenile justice system.

In this perspective, the framing of the juvenile prison system in the principles of the legal system for adults determined by the use (not by chance defined immediately as provisional, "until provided for by applicable law") of the rules of the prison system contained in Article 79 of the penal code, seems evidently insufficient to satisfy the peculiarities of needs and objectives of the legal institutes for minors, already used for the jurisdiction process: as noted in the final document of Committee 14 of the *General Assembly on Sentence Enforcement*, "The approach to the juvenile process moves from the priority need for intervention on the personality and on the as yet unstructured identity of the minor, due to the incomplete mental and physical development of the same; ascertainment of criminal responsibility is, therefore, accompanied by the objective of rehabilitation of the same, constituting an inseparable combination that permeates juvenile proceedings from beginning to end"[60].

These principles, which find specific legal reference in the European Rules for young offenders subject to sanctions or criminal measures, which are set out, lastly, in Recommendation CM/Rec (2008) 11 of the Committee of Ministers of the Council of Europe[6161], mark a point of no return with regard to the special nature of the juvenile justice system in the debate, which has particularly developed in the international community in recent times, where positions of a security nature appear to lead to opposite conclusions and to see exclusively repressive tools as the solution to the phenomena of juvenile delinquency.

57. Report to Parliament 2017, Sanctions and Freedom, sect.30, page 64.

58. Source: Child Services Information System (SISM)

59. Decree 92/2014, converted into law no.117 of 11.08.2014 which amended Article 24 of Legislative Decree no. 272 of 1989, raising the age from 21 to 25 years in the internal penal circuit for those who committed crimes as minors.

60. Committee 14 - Sentence Enforcement: comparative experiences and international rules, Annex 8 to the Final Report. https://www.giustizia.it/resources/cms/documents/SGEP_tavolo14_allegato8.pdf

61. *Recommendation CM/Rec (2008) 11 of the Committee of Ministers to Member States on the European Rules for juvenile offenders subject to sanctions or measures (Adopted by the Committee of Ministers on 5 November 2008 at the 1040th meeting of the Ministers' Deputies).*

These principles and commitments undertaken by Italy with the signing and ratification of International Charters such as the Beijing Rules, the UN Convention on the Rights of the Child and the European Convention on the Exercise of Children's Rights, are recalled, in effect, by the draft decree implementing the delegated law of 23 June 2017, no. 103 in the - letter p) paragraph 85 of Article 1 - introduction to the juvenile prison system: "The focus of the delegated law is represented by the preference given to external sentence enforcement and by the envisaging of a prison model that, seeing to the needs of each individual convict, radically changes the current punitive perspective focused on prison" with "the guiding idea of betting on an enforcement archetype that, while not renouncing detention, permits its application only in extreme cases and, in particular, when no other type of treatment, following careful evaluation, can reconcile the need for punishment and safety with the pedagogical demands of a subject in the developmental years"[6262].

«The guiding idea of betting on an enforcement archetype that, while not renouncing detention, permits its application only in extreme cases and, in particular, when no other type of treatment, following careful evaluation, can reconcile the need for punishment and safety with the pedagogical demands of a subject in the developmental years»

In this perspective, a set of rules has been articulated, which encompass eight sets of criteria for configuring the "adaptation of the rules of the prison system to the educational needs of detained minors": the establishment of a specialized jurisdiction entrusted to the Juvenile Court, the provision of alternative measures to detention consistent with the educational needs of underage convicts, the strengthening of education and vocational training, the discipline of the prison organization from the perspective of socialization, empowerment and promotion of the person. This is a regulatory framework that responds overall to the indications expressed by the National Guarantor at the end of its first year of activity: the need for a reflection on the type of facility intended for juvenile sentence enforcement, which takes care of retributive needs and educational aims, and the research and development of alternative responses to incarceration.

In line with these intentions, therefore, the National Guarantor now hopes that the extensive work of drafting legislation already completed will not be wasted and that the legislative process will fill a system and justice gap that has persisted for more than forty years.

62. Report accompanying the legislative decree scheme 'Regulations for the adaptation of the law of 26 July 1975, no. 354 to the educational needs of convicted minors'.

42. Complaints to the Guarantor

Article 35 of the Penitentiary Act governs the right to complain, or lodge a so-called "generic complaint", that prisoners and internees can submit, not only to various Authorities, but also to the National Guarantor and to the regional or local Guarantors of the rights of prisoners. The inclusion of the national Guarantor among the recipients of generic complaints, introduced by the law establishing it, integrates a different and complementary instrument with respect to the legal complaints submitted before the supervisory court. In fact, as the experience of the last year has shown, this institute constitutes, on the one hand, an effective means of solving individual problems and, on the other hand, an extraordinary observatory of the inconveniences of the detained persons or of the critical issues found in the Prison Institutes.

The Guarantor Authority, which is predominantly a prevention body, can therefore promote the raising of the standards for the protection of rights not only through monitoring visits but also through direct dialogue with the Administrations concerned about situations of which it has become aware through complaints. In cooperating with these Authorities, the National Guarantor has contributed over time to developing that framework of *soft law* which, as already highlighted in other parts of this Report, has proved decisive in resolving different situations. It has often brought certain 'hidden' problems to light which, while not requiring intervention of a purely legal nature, are nevertheless found to contribute to the drama of daily life. Moreover, the confidentiality with which prisoners and internees can apply to the National Guarantor, sending letters in sealed envelopes without censorship or restrictions, no matter what detention regime they are subjected to, probably favours access to more specific and in-depth information.

The Guarantor Authority, which is predominantly a prevention body, can therefore promote the raising of the standards for the protection of rights not only through monitoring visits but also through direct dialogue with the Administrations concerned about situations of which it has become aware through complaints.

Despite the lack of a specific legal procedure for dealing with such complaints, the National Guarantor has elaborated a procedure for taking charge and evaluating the requests that is designed to allow it to respond as soon as possible and to initiate the most appropriate actions to resolve the relevant issue, whether individual or generic in nature. The Office's resources are not yet such as to allow for the complaints received to be verified in real time, but much has been done considering that these have increased twofold over last year and more than half of them have completed the process. Of those still pending resolution, the majority are in an advanced phase of preliminary investigation, mostly awaiting feedback from the Administrations.

The picture that emerges from the overall experience of the second year of activity highlights the needs most felt by the population in question. There are basically two main issues: requests for transfer to another Institute to be near the family or for reasons of study and health protection. The issue of territorial placement is regulated in the penitentiary system with attention to the formative and treatment needs of the detained person and to the maintenance of relations with the family (Article 42 of the Penitentiary Act), yet the complaints describe consideration of these fundamental needs in subordinate terms, more, to the organizational needs of the Administration.

A large part of the complaints received over the last year concerns health and takes many forms: from those relating to requests for transfer to Prison Institutes that can offer more adequate care or that are closer to the family for assistance and emotional support, to those relating to the lack of health care that sometimes results in lack of care, which leads to particular situations of vulnerability. The issue of health is thus closely connected to that of the detention conditions, a topic frequently reported along with the first two issues. As is known, the conditions of detention must be compatible with respect for the dignity of the detained person; moreover the methods of sentence enforcement should not subject the prisoner to further punishment than that which comes with the same deprivation of liberty. On the other hand, complaints often describe non-habitability situations, not so much relating to the space available in the overnight room - which in recent years seems to be the focus of the attention in the more complex detention situations - as to the lack of essential elements such as toilets that are well separated from the rest of the room, hot water, natural light, heating, the hygienic conditions of the environments, and areas for decent walks. With the same intensity, the inadequacy of work and occupational activities is indicated: there are many letters from prisoners who, though aware of their situation, do not wish to be merely passive subjects during theie stay in prison, but rather to have the opportunity to make responsible decisions aimed at re-establishing them on their individual pathway.

Finally, it should be noted how complaints to the National Guarantor pursuant to Article 35 of the Penitentiary Act are increasing continuously in proportion to the increased awareness among inmates of this new institutional figure, with whom they have increasingly met directly during monitoring visits and recognized as

a representative. This entails a greater structuring of the work and dialogue with the Penitentiary Administration to concretely and systematically deal with individual cases, in order to generate the definition and observance of good practices and parameters of prison life in compliance with constitutional principles and supranational obligations.

Complaints to the National Guarantor pursuant to Article 35 of the Penitentiary Act are increasing continuously in proportion to the increased awareness among inmates of this new institutional figure, with whom they have increasingly met directly during monitoring visits and recognized as a representative.

43. Obligation to respond in a timely manner

In recent years, Italy has witnessed the start of a legal approach that is increasingly to ensuring the concrete application of the rulings of the supervisory court, or to those legal measures that ascertain violation of a right. In 2013, the Constitutional Court[63] clarified the obligation of the Administration to comply with the ordinances of the supervisory court, affirming in this case the conflict of the attributions of powers of the State as a result of non-compliance with a court order, and had "nullified a court order, issued within the limits and in accordance with legal forms" with the consequent result of "rendering ineffective a judicial protection explicitly provided for by the laws in force and constitutionally necessary, according to the jurisprudence of this Court"[64].

In recent years, Italy has witnessed the start of a legal approach that is increasingly to ensuring the concrete application of the rulings of the supervisory court, or to those legal measures that ascertain violation of a right.

In the same year the "pilot" sentence of the ECHR - the aforementioned Torreggiani and others v. Italy of 8 January 2013 - had, among other things, highlighted the absence of a system of internal remedies - preventive and compensatory - in our system that, following a complaint or report by the person concerned, actually made it possible to interrupt a situation potentially in violation of Article 3 of the ECHR, as well as of making restitution to those who had suffered this violation. The Court, in its case law concerning cases arising in the 47 States of the Council of Europe, particularly as regards the enforcement of sentences and conditions of detention, repeatedly stressed the importance of the provision in domestic law of this dual system of remedies that would operate effectively in order to ensure timely intervention and thus restore the supranational court to its effective role of subsidiarity: the absence of an internal remedy, in fact, determines the direct admissibility of cases before the Court, ending with assigning it an improper substitute role. Following the sentence, Italy duly presented an "Action Plan" within the stipulated six month period, which, in addition to other measures designed to reduce prison overcrowding and the incidence of pre-trial detention and to provide for instruments and bodies aimed at keeping the system under control, outlined the system of remedies required: the new Article 35 bis of the Penitentiary Act introduces legal complaints with a preventive function and Article 35b introduces those for compensation. Consequently, as is known, the Committee of Ministers of the Council of Europe regognized Italy's compliance with the Court's requests and the case was closed on 8 March 2016. Recently, on 13 March 2018, the Chairman of the National Guarantor spoke to the Committee of Ministers on the progress of the situation regarding the effectiveness of the system of remedies introduced - also reporting data on the application of the dual expectations of Article 35b, the reduction of the days of sentence enforcement and financial compensation for each of them - and the system in place once again garnered approval from the Committee.

However, should the legal complaint prove lacking - which the Constitutional Court has reported since 1999[65] - there remains the need to quickly deal with those complaints that concern legitimate interests and which can be resolved through timely and clear dialogue with the prison administration with regard to the requests of the detainees. These requests are not of a serious enough nature such as to prefigure a possible violation of Article 3, and often do not concern rights, but rather point out 'eccentric' interpretations of the rules in some local situations, service orders that limit already positively tested possibilities, relating to transfers granted or denied. This series of situations is apparently less relevant and concretely decisive for the quality of daily life in a prison. They are critical issues requiring representation - and in a reasonably short time - with those responsible for managing the detention

63. Judgment of the Constitutional Court no. 135 of 3 June 2013.

64. *Ibid.*

65. Judgment of the Constitutional Court no. 26 of 8 February 1999.

at different levels. Such timely interlocution can be the first useful and effective instrument in terms of the overall guarantees for prison life that respects the needs of the detained persons and above all an ex ante protection that reduces potential internal tensions and avoids lengthy court proceedings.

Yet this representation is often lacking. The National Guarantor has discovered some situations in which the director of the Institute never has direct contact with the detained persons: in some cases, dialogue occurs only by a written request to which a response is given, in a manner that often does not correspond to the urgency of the concern expressed by the request, and is bureaucratic. By contrast, there are other situations - moreover with many detainees - where direct knowledge of individuals by the Directors is evident and the situation is certainly less conflictual. Dialogue with the Administration at a decentralized or central level, especially for the purpose of requesting a possible transfer, although recently improved, has always been a source of uncertainty and one that generates a feeling of lack of consideration among many detainees.

The National Guarantor has discovered some situations in which the director of the Institute never has direct contact with the detained persons: in some cases, dialogue occurs only by a written request to which a response is given, in a manner that often does not correspond to the urgency of the concern expressed by the request, and is bureaucratic.

Suitably, the scheme of the legislative decree for the implementation of the delegated law for the reform of the prison system[66], provides a clear definition of this principle by reaffirming the obligation to reply within 60 days to transfer requests proposed by prisoners or inmates. This was done in order to overcome the recognized and widespread problem of the Administration's delays in responding to these requests - objectively identified by the National Guarantor - in dealing with the complaints raised on this point.

Compliance regarding the length of the administrative procedure should be guaranteed, however, not merely through a law or a regulation: it entails, above all, a reorganization of the entire public administration starting from the streamlining of procedures, the qualification of employees, and finally the implementation of IT/computer tools able to properly manage the data flow. An appropriate and timely response to the petition of a citizen should be the norm, like all activities that relate to the exercise of rights, without any distinction relating to the legal position of the person. It is thus hoped that the entire penal system will evolve towards an increasingly responsible environment for all stakeholders, detainees and the government Authorities that guard them.

66. Law of 23 June 2017, no. 103, article 1, paragraph 85, letter r). The law modifies the provision of Article 42 para 2 of the Penitentiary Act.


Migration
and freedom

Migration and freedom

44. Detained, restrained, returned

By looking back and analysing the numbers, we can see how the use of deprivation of liberty as a measure to combat illegal immigration has intensified over the last year.

By looking back and analysing the numbers, we can see how the use of deprivation of liberty as a measure to combat illegal immigration has intensified over the last year. If, on the one hand, in 2017, there was indeed a decline in arrivals to Italian coasts and a corresponding decrease in admissions to the Italian hotspots (65,295 in 2016 and 40,534 in 2017), on the other hand, there has been an increase in the number of people passing through the detention Centre (+ 36%), the number of the Centres themselves and the people forcibly repatriated under international escort (+ 25%). The National Guarantor's scope of action in the area of deprivation of the personal liberty of migrants has therefore expanded both in terms of an increase in the number of persons with rights to monitor, and in terms of the expansion of the network of facilities to be monitored.

This trend seems destined to expand further if we look at the reforms currently under discussion at the European level on the common asylum system, which, if approved, would place an increasingly central role on the so-called border procedures. Such reform projects include, for example, the possibility of carrying out administrative detention for up to four weeks during evaluation of applications for international protection. To this must be added the further measures being studied to limit the secondary movements of asylum seekers who are increasingly forced to follow predefined paths and times in the drafts of the texts being prepared.

Faced with the expansion of the scope and forms of deprivation of the liberty of foreign citizens, the National Guarantor has started elaborating and systematizing the standards and principles for the protection of fundamental rights, starting from the results of its monitoring activity, with the objective of contributing effectively to a structural improvement of the system.

Over the past year the National Guarantor has continued to monitor the *hotspots*, which, as illustrated in the section of the Report devoted to them, are still struggling to find their own legislation among the legal uncertainties and applicable practices also being viewed by the ECHR. The risk is that situations of *de facto* deprivation of liberty are created without the necessary protections and that are thus in contrast with the principle of the inviolability of personal liberty. Thus there has been greater monitoring of the forced repatriations carried out pursuant to EC Directive no. 115/2008 (the so-called Return Directive), and investment in the training of regional guarantors in order to build and operate a network of monitors distributed throughout a large part of Italy.

The following sections describe the approach taken in the various fields of action by the National Guarantor in this area of intervention, observing the current physiologies, the improvement prospects of the various regulatory frameworks, and the results of the monitoring activities.

45. Administrative detention

In the annual report of the area entitled Deprivation of liberty and migrants, one can only start from the traditional realm of administrative detention, as it is set up by the Administrative Authority to respond to the violation of a rule on entry or residence by a foreign citizen, with intervention by the Court only in the next phase of validation.

In the annual report of the area entitled Deprivation of liberty and migrants, one can only start from the traditional realm of administrative detention, as it is set up by the Administrative Authority to respond to the violation of a rule on entry or residence by a foreign citizen, with intervention by the Court only in the next phase of validation. Administrative detention is similar to criminal detention only in its shared measure of deprivation of personal liberty, whereas the conditions, scope of application, purpose and discipline are radically different.

Although having reinvented itself frequently, administrative detention has always attracted severe criticism from a large part of civil society, which has stigmatized it as an expensive and inefficient system, difficult to manage in terms of public order and above all not respectful of the fundamental rights of the person.

Following a period of downsizing that culminated in 2014, coinciding with the progressive closure of most of the then functioning Centres and the reduction of the maximum terms of detention, administrative detention reappeared on the political agenda last year with the decree law of 17 February 2017, no. 13 converted with amendments into the Law of 13 April 2017, no. 46 (hereinafter Decree Law 13/2017), which ordered the expansion of the network of Centres.

As indicated in the Technical Report on the conversion bill, the objective is to move from an availability of about 400 place distributed among the four Centres in operation at the time of the entry into force of the Decree (Turin, Rome, Brindisi and Caltanissetta), with a total capacity of 1,600 places, through the provision of a facility for each region. The provision is closely related to the request made several times by the authorities of the European Union to more effectively manage illegal immigration in Italy and in particular to intensify repatriations.

The legislation, however, did not limit itself to quadrupling the capacity but, aware of the numerous problematic aspects of the institute, very clearly indicated the basis for a new foundation. Smaller facilities, absolute respect for human dignity, accentuation of the role of the National Guarantor and extension of visiting power for the subjects indicated in Article 67 of the Penitentiary Act are the features that should distinguish the new Immigration Removal Centres (hereinafter CPR) from the old Immigration Detention Centres (CIE).

The law in question has not added anything to the verification and access powers to which the National Guarantor is already entitled under its own establishing legislation and its designation as a national preventive mechanism under the OPCAT Protocol, but has undoubtedly emphasized attention to the issue of fundamental rights as a lever to overcome the criticisms and management problems that have plagued the Centres over the years. The National Guarantor has welcomed the Government's commitment to put people's rights back at the centre of administrative detention and has closely followed the start of this new season by visiting the CPR of Bari and Potenza, recently made operational, and

carrying out follow-up visits to the Centres of Rome, Brindisi and Turin[1].

A little more than a year after the entry into force of the decree, it should be noted that the renewed expression of commitment to absolute respect for fundamental rights have remained statements of principle, which were not followed through with effective improvement of the conditions of liveability and/or a different organizational structure of the facilities. The National Guarantor is aware of the difficulties related to the apparently unresolvable paradox inherent to the institution, aimed at holding a person for the sole purpose of proceeding with his removal, and the constant problems with order that characterize life within the Centres, but the temptation to resort to easy pragmatic approaches must give way to the protection of the fundamental rights of individuals.

A reform of administrative detention would be possible by starting from the results of the monitoring activity of the National Guarantor contained in the topical Report sent to the Ministry of the Interior in June 2017[2]. On the other hand, it should be noted that no response or comment was received from the offices of the Ministry of the Interior in relation to the findings made in the aforementioned Report, nor, as verified during the subsequent visits, were the Recommendations formulated taken into account or implemented.

A reform of administrative detention would be possible by starting from the results of the monitoring activity of the National Guarantor contained in the topical Report sent to the Ministry of the Interior in June 2017. It should however be noted that no response or comment was received from the offices of the Ministry of the Interior in relation to the findings made in the aforementioned Report.

The poor physical and hygienic conditions of the facilities, lack of activities, lack of openness of the Centres to organized civil society, lack of transparency starting from the lack of a system for reporting critical events and their management methods, not considering the different legal positions of the people held and the different individual needs and vulnerabilities, difficulties in accessing information, the lack of a complaint procedure for enforcing rights violations or representing claims, are just some of the critical issues found that persist even in the current makeup of the Centres.

46. The necessary rules

When establishing the administrative detention Centres (Article 12 paragraph 2 of 6 March 1998, no. 40, which then became Article 14 of the Legislative Decree of 25 July 1998, no. 286 - the so-called "Consolidation Act on Immigration"[3], hereinafter Tu-Imm.), the 1998 legislation already postulated full respect for the dignity of the foreign persons held.

Except for specifying the limited capacity of the facilities, when indicating the need for the new Centres to ensure "absolute respect for the dignity of the person", Decree Law 13/2017 does not introduce any new concrete element regarding the detention conditions of foreign citizens. Obviously having to acknowledge a gap between the application and the bad reputation earned by the facilities over the years, the legislation reiterates the key point, but misses the opportunity to legally define, in an organic manner, the fundamental rules for the regulation of the institute that effectively places the figure of the foreign citizen at the centre as a person.

Except for specifying the limited capacity of the facilities, when indicating the need for the new Centres to ensure "absolute respect for the dignity of the person", Decree Law 13/2017 does not introduce any new concrete element with respect to the conditions of detention of foreign citizens.

In order not to limit itself to a mere theoretical statement, the practical implications and the applicative nuances of the above-mentioned principle must be identified, in the attempt to trace a path starting from the circumscribed landscape of the provisions concerning the methods of administrative detention.

Unlike criminal detention, which is extensively articulated in the law of 26 July 1975, no. 354 (Penitentiary Act) completely governing the conditions for the treatment of prisoners, thus giving practical effect to the opening statement ("Prison treatment shall be humane and shall assure respect respect for the dignity of each individual" - Article 1, paragraph 1), the methods of implementation of the deprivation of personal liberty of an administrative nature are not based on a consolidated text, nor on the dictates of a piece of legislation.

To reconstruct the framework of the rules of the detention Centres, with the exception of Article 6 of the Legislative Decree of 18 August 2015, no. 142 concerning the detention of asylum seekers, it is necessary to look at the provisions contained in the Regulation implementing the Legislative Decree of 25 July 1998, no. 286 - Presidential Decree of 31 August 1999, no. 394 on the methods of detention and operation of the Centres (Articles 20 to 23) and the decree with which, on 20 October 2014, the Minister of the Interior approved the regulation setting out the *Criteria for the organization and management of Immigration Detention Centres*. The latter has tried to make up for the lack of a consolidated text, establishing uniform rules on the methods of treatment among the Italian facilities, but has met the criticism of those who do not approve of the fact that the governing of aspects relating to personal liberty has not been given primary status, as indicated in Article 13 of the Constitution. Taking this aspect into consideration as well, it is necessary to broaden the democratic debate as to the real and profound meaning to attribute to the principle of respect for human dignity, which marks the common belonging of all people to humanity, without losing grasp on the commitment to create an effective change of pace of the administrative detention in Italy.

1. At the time of writing of the Report the Reports on visits are being drafted.

2. The Report is on the website of the National Guarantor, www.garantenpl.it

3. Officially: *Consolidated text of the provisions concerning the regulation of immigration and rules on the condition of foreigners*, published in the Official Gazette on 18 August 1998.

In order to offer its contribution, the National Guarantor decided to collect international standards in this area, develop them according to the specific features of the Italian legal system and identify concrete solutions for their effective implementation. The document is being drafted and, once completed, will be sent to all institutional stakeholders and civil society organizations for an open and participatory debate, in the hope of providing a useful orientation towards the direction indicated by the legislation.
In undertaking this systematization of basic standards, the National Guarantor started from the work begun in 2016 by the Committee of Experts tasked by the Council of Europe with developing a platform of European rules for administrative detention similar to the European Prison Rules; this work should come out in 2019 and the National Guarantor made its contribution to it alongside a committee meeting held in Strasbourg in May 2017[4].

Immigration Removal Centres: current sites and forthcoming openings

In April 2018, five Immigration Removal Centres (CPRs) were operational, with a total capacity of 538 places:
- Rome with 125 places for female guests
- Bari with 90 places for male guests
- Brindisi with 48 places for male guests
- Turin with 175 places for male guests
- Potenza with 100 places for male guests

The Caltanissetta Centre is temporarily closed for renovations rendered necessary as a result of damage caused to the facility by some guests in December of last year.

This year, according to indications by the Department for Civil Liberties and Immigration, should see the completion of the procedures for the opening of the facilities of Gradisca d'Isonzo (formerly a CIE), Modena (formerly a CIE) and Macomer (formerly a prison).

By 2019, the renovation work on the Oppido Mamertina (formerly a prison) and Montichiari (formerly the Serini Barracks) Centres is expected to be complete.

4. For more information, see the website https://www.coe.int/en/web/cdcj/activities/administrative-detentionmigrants.

47. *Hotspots*, still a legal limbo

Over the course of 2017 and the first months of 2018, the hotspots were the subject of particular consideration by the National Guarantor. After the first round of visits in the first months of 2017 that ended with the drafting of the Report on the CIEs and hotspots, at the beginning of this year the National Guarantor made follow-up visits to the Centres of Taranto and Lampedusa. Specific attention was also paid to the intervention of the legislation that, with decree law 13/2017, stipulated their establishment in the Legislative Decree of 25 July 1998, no. 286 (Tu-Imm.)[5] approving two fundamental guarantees to protect migrants who are guests of the hotspots. The legislation in fact stipulated that information relating to the international protection procedure must be provided within them and that it is not possible to use force in photo and fingerprint taking operations.

Despite their specific establishment in a legal text, the hotspots continue to be places of uncertain legal status, performing different functions that continually change their character and governance. On the one hand, they appear to be places of humanitarian support for first aid and assistance activities, along with information and initial intake for those who have expressed the desire to request international protection and, on the other hand, they are places for police preliminary/photo identification and the beginning of forced repatriation operations. For the guests, these procedures involve a prohibition on leaving the Centre until completion and coercion in the execution of deferred removal measures.

Despite their specific establishment in a legal text, the hotspots continue to be places of uncertain legal status, performing different functions that continually change their character and governance. On the one hand, they appear to be places of humanitarian support for first aid and assistance activities, along with information and initial intake for those who have expressed the desire to request international protection and, on the other hand, they are places for police preliminary/photo identification and the beginning of forced repatriation operations.

The multiple functions and characters correspond to the same number of institutional actors (Police Forces, operators of private agencies in charge of personal assistance services, officials of international organizations responsible for informing and protecting persons in need of international protection and minors, representatives of the various European Union agencies called upon to support Italy with the management of migrants arriving at its border) who apply different intervention methods, sometimes operating without coordination among the various roles, with possible serious repercussions on the fundamental rights of foreign people[6]. Unfortunately, the follow-up visit carried out by the Guarantor in January 2018 witnessed this lack of coordination.

5. Article 17 of the Legislative Decree introduced Article 10 ter to Legislative Decree 286/98 containing *Provisions for the identification of foreign nationals found to be in Italy illegally or rescued during the course of rescue operations at sea*.

6. For more on this, see the report of the visit to the hotspot of Lampedusa carried out on 14 January 2017, contained in the 2016-2017 Report on the CIEs and hotspots, published on the website of the National Guarantor: http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/6f1e672a7da965c06482090d4dca4f9c.pdf

Without any clear legal definition and in view of the extreme variety of activities that take place within them and the non-uniformity of roles and tasks engaged in by the various actors, the hotspots risk becoming shady areas that are open or closed facilities depending on the needs of the Public Safety Authority and the procedures put in place.

Without any clear legal definition and in view of the extreme variety of activities that take place within them and the non-uniformity of roles and tasks engaged in by the various actors, the hotspots risk becoming shady areas that are open or closed facilities depending on the needs of the Public Safety Authority and the procedures put in place. The legal ambiguity of these places thus winds up affecting the personal freedom of the guests, who, moreover, do not enjoy any legal protection. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its report on its visit to Italy from 7 to 13 June 2017, requested the Italian Authorities to legally establish the cases in which foreign citizens may be deprived of personal freedom within the hotspots[7].

Leaving aside the extremely different physical conditions within the various Centres, a further, serious critical issue concerns the time people spend there. If, as often happens due to the huge flow of arrivals, the 24-48 hours stipulated by Ministerial directives are exceeded, the prolonged forced cohabitation of migrants registered as illegal for repatriation, asylum seekers waiting to be placed in one of the shelter facilities, unaccompanied foreign minors, households, and individual vulnerable subjects, can trigger tense situations that endanger the safety of operators and all the guests inside the Centre, as well as frustrate the legitimate expectations of those in need of protection.

The hotspot of Lampedusa (Contrada Imbriacola) has become a symbol of these tensions, given the fact that between January and March 2018, as reported by the press and documented to the National Guarantor, there were numerous critical events, including a riot among the guests of the Centre, which culminated with an injury to the face of a Tunisian citizen, the wounding of a Carabiniere on guard duty, a fight of a minor present in the hotspot with his family and a minor who was the victim of personal injury, and finally the burning of some housing units.

The temporary and partial closure of the Contrada Imbriacola Centre, subsequently ordered by the Ministry of the Interior to allow renovation of the premises damaged by the fire set on 8 March, requires serious reflection of the need to revise the entire hotspot system, starting by defining a clear regulatory framework that respects people's fundamental rights.

The meeting recently held with the Prefect of Agrigento, who was kind enough to visit the Office of the National Guarantor to assess the critical issues detected and reported, leaves hope for the future of the Lampedusa facility.

7. https://rm.coe.int/16807b6d56

Update on the *hotspots*

As of April 2018 there are 4 operational *hotspots:*
- Messina with a capacity of 250 places
- Trapani with a capacity of 400 places
- Pozzallo with a capacity of 300 places
- Lampedusa with a capacity of 96 places

According to reports received by the National Guarantor, since March 2018, the hotspot of Lampedusa is operational solely to cope with spontaneous landings, given that the facility recently suffered damage by some guests and the Department for Civil Liberties and Immigration therefore ordered the partial suspension of its activities. A tender procedure is currently underway for the assignment of renovation and restoration work on the damaged premises.

The hotspot of Taranto was closed for repairs at the time of writing the Report (April 2018). It is scheduled to reopen on 19 May 2018.

48. Regulations for the *hotspots*

The stratification of European and Italian instruments, which since their introduction in May 2015 (European Commission's Migration Agenda) have intervened to regulate the establishment and operations of the hotspots, has not cleared the field of misunderstandings related to the legal framework of these facilities. The problem of their elusive legal definition and the consequent critical issues that arise from the lack of a framework of provisions concerning them has already been extensively addressed in the Report presented to Parliament in 2017.

This critical issue, however, is once again being discussed because, the text of the law that, more than a year since the hotspots have become operational, sanctioned their express recognition in the primary sources[8], has not fully clarified their nature.
Nevertheless, the Guarantor knows that it can agree with the Administration on the principle that when potential limitations of the individual liberty of people are at stake - as indeed happens in these facilities - the legislative definition of rules that legitimize such power is not an option to exercise or abdicate to discretionally, but a mandatory obligation dictated, as a fundamental guarantee, by Article 13 of the Constitution as well as by Article 5 of the European Convention on Human Rights. Compli-

8. Decree Law of 17 February 2017, no. 13 converted with amendments into the Law of 13 April 2017, no. 46.

ance with these provisions presupposes a clear and predictable legal basis in its application, which supports and justifies the deprivation of personal liberty or that determines in a decisive manner its non-existence within the hotspots, overcoming cases of *de facto* detention of the people hosted there.

With regard to the use of force in photo and fingerprint taking operations, the legislation has fully exercised its role, dispelling any doubts that might arise from the operational guidelines contained in the *Standard Operating Procedures*[09] (hereinafter SOP) document, that permitted "a use of force proportionate to overcome resistance". Decree law 13/2017 has in fact regulated such a case by specifying another measure to oppose the refusal of photo taking: the detention of the party in question. That decree did not intervene on the SOP provision that establishes the inability of the person to leave the hotspot before having his photo taken. Thus deprivation of personal liberty still currently lacks legal coverage.

In addition to the need for a legal basis in national law, compliance with additional guarantees such as the obligation to inform the subject of the reasons for the restrictive measure must also be provided for. Moreover, it is the opinion of the National Guarantor that the legislation should indicate the indispensable role of the Court in providing the motivated reason for the deprivation of liberty or in any case verifying under certain *ex post* conditions, its legality and, in any case, exercising legal jurisdiction during the appeal phase.

In addition to the need for a legal basis in national law, compliance with additional guarantees such as the obligation to inform the subject of the reasons for the restrictive measure must also be provided for. Moreover, it is the opinion of the National Guarantor that the legislation should indicate the indispensable role of the Court in providing the motivated reason for the deprivation of liberty or in any case verifying under certain ex *post* conditions, its legality and, in any case, exercising legal jurisdiction during the appeal phase.

In addition to the need for a legal basis in national law, compliance with additional guarantees such as the obligation to inform the subject of the reasons for the restrictive measure must also be provided for. Moreover, it is the opinion of the National Guarantor that the legislation should indicate the indispensable role of the Court in providing the motivated reason for the deprivation of liberty or in any case verifying under certain *ex post* conditions, its legality and, in any case, exercising legal jurisdiction during the appeal phase. In this regard, it should be noted that, in December 2016, in the case *Khlaifia and others v. Italy*[10] the ECHR issued a judgment against Italy for violation, among other reasons, of Article 5 of the Convention for having held people newly arrived in Italy for a prolonged period, without any legal basis and without the possibility of appeal. It is also the responsibility of the National Guarantor to protect Italy, and to point out that persisting in legislative inertia on this aspect, exposes us to serious international complaints, as well as not effectively protecting migrants from the risk of arbitrary conduct detrimental to their freedom.

9. The Standard Operating Procedures (SOP) were drafted by the Ministry of the Interior, Department for Civil Liberties and Immigration and the Department of Public Safety with the contribution of the European Commission, Frontex, Europol, EASO, UnHCR and AIOM. As can be read in the text of the document itself, it is "an operational guide for the activities organized within the hotspots. In case of discrepancies between this document and the current legislation, the latter applies."

10. Grand Chamber judgment of 15 December 2016.

Case of *Khlaifia and others versus Italy*: clarifications requested from Italy by the Committee of Ministers of the Council of Europe on 15 March 2018

In the case *Khlaifia and others versus Italy,* with the sentence of 15 December 2016 of the Grand Chamber of the ECHR, Italy was condemned for violation of Articles 3, 5 (paragraphs 1, 2 and 4) and 13, due to the lack of an appropriate legal basis for the detention in 2011 of three Tunisian citizens in the Centre of Lampedusa and in some ships and the lack of a remedy that can be activated by the applicants to submit complaints about the conditions of detention and to challenge any violations of ECHR Article 3.

In September 2017, Italy submitted its implementation plan of the sentence to the Committee of Ministers of the Council of Europe, in order to give account of the measures taken to repair the damage suffered by the plaintiffs and the general measures that Italy was required to implement to prevent the recurrence of the violations ascertained.

With the decision of 15 March 2018, the Committee of Ministers, while acknowledging the payment of compensation due to the three Tunisian citizens, considered the information provided insufficient and asked Italy for further clarifications on the regulatory framework for first aid and assistance operations, the lrnght of the average stay of people inside the Centres where these operations are carried out, practices relating to the freedom of movement of the persons identified and the measures adopted or planned to prevent situations of arbitrary deprivation of personal liberty.

In its examination, the Committee of Ministers also focused on the role and the prerogatives of the National Guarantor, appreciating its power to visit the hotspots and conduct individual visits with guests regarding shelter conditions, however, it asked the Italian Authorities to clarify whether and how the actions of the National Guarantor actually improve the individual conditions of individuals.

By next June, Italy will have to provide clear and precise answers to the monitoring body of the Council of Europe, which, more than a year after the ruling of the European Court, are still not forthcoming.

49. Unofficial segregation sites

On multiple occasions, the National Guarantor has pointed out how thin the line between *deprivation* and *restriction* of liberty is. It did so particularly with regard to the residential living conditions of disabled or elderly people, who are often without effective familial support or, in any case, lacking assistance and deprived of their legal capacity, creating a situation of non-self-determination and full reliance on the institutional residential care setting. Albeit under a different profile, the fragile line between the two different situations - of total *deprivation* and great *restriction* - recurs in the context of the shelter and control conditions of illegal migrants in Italy, where the restrictions placed tend to configure *de facto* situations of the lack of self-determination and of rules of control rules, the non-compliance with which leads to effective detention or an administrative or criminal violation.

The instruments set up on the international level for the protection of persons deprived of liberty, starting from the control bodies such as the CPT within the Council of Europe, refer mainly to the total impossibility of leaving the place where they are accommodated in order for the concept of deprivation to be recognized and the ability to exercise the powers to visit, monitor and ascertain the conditions and make subsequent recommendations, may be exercised. This is based on the European Convention for the Prevention of Torture and Other Inhuman or Degrading Treatment or Treatment of 1987. The OPCAT Protocol, for its part, follows the same approach.

The instruments set up on the international level for the protection of persons deprived of liberty, starting from the control bodies such as the CPT within the Council of Europe, refer mainly to the total impossibility of leaving the place where they are accommodated in order for the concept of deprivation to be recognized and the ability to exercise the powers to visit, monitor and ascertain the conditions and make subsequent recommendations, may be exercised.

However, this experience of the CPT has been expanded in its nearly thirty years of activity, through visits to places where liberty is not *de iure*, but rather *de facto* deprived based on the overall conditions of shelter and forced accommodation. Following this approach, the National Guarantor has initiated talks, especially at the European level, so that the instruments put in place for the protection of the rights of people unable to fully exercise them on their own, based on their placement in public facilities, under direct or delegated control, are officially extended to places of informal segregation. These places, in the case of migrants, are not few and have various classifications and denominations. Moreover, several episodes involving conflicts that have made the news have taken place within large temporary placement and shelter facilities that are not officially definable as places of deprivation of liberty, but that require an external look that can both support the work of those responsible for running it, and guarantee information and protection. With this in mind, last year, the Guarantor visited the temporary shelter located in Ventimiglia at the freight yard owned by the Italian railway network called "Campo Roja", managed by the Red Cross, and opened a dialogue with the Ministry of the Interior on its evaluations and relative recommendations. The idea is to establish an agreement with the Ministry itself to extend this preventive action also to the so-called hubs and propose this operation of enhanced protection as a positive practice to be extended throughout Europe, so that the instruments of visit and control currently in the field will now include more flexible and multi-form facilities than those provided for in the Convention of thirty years ago.

The term *regional hub* in political and journalistic jargon is used to indicate the first line reception

Centres for foreign citizens, as stipulated by Article 9 of the Legislative Decree of 18 August 2015 no. 142[11]. The Government used this term for the first time in the *Roadmap* memorandum of 28 September 2015[12], referring to this phrase to the first line reception centres governed by the aforementioned Article 9, paragraph 1, which states: "For the requirements of first reception and for the completion of the operations necessary for the definition of the legal status, a foreigner shall be accommodated in the first line reception centres established by decree of the Minister of the Interior", specifying in paragraph 4 that: "The applicant shall be accommodated for the time needed to perform identification operations, if not previously completed, to submit an application and to begin the examination procedure of the application, as well as the verification of health conditions [...], situations of vulnerability [...]". In other words, in the so-called *regional hubs*, the operations for identifying foreign citizens who have entered Italy without authorization can take place, if these have not already been carried out in the places for first aid (i.e. in the hotspots). Consequently, the various *regional hubs* are liable to all of the problems related to the restriction/deprivation of personal liberty just as in the hotspots. The latter, in fact, are commonly described with two different meanings: the first indicates a place, normally - but not necessarily - near the landing point and the second indicates a *working method*, generally a team of Italian Authorities in cooperation with European support teams[13] for the "proceduralized management of activities", including identification and photo taking. This latter activity may also be performed in the hubs. Moreover, it is useful to remember that, pursuant to Article 11 (*Extraordinary reception measures*) of the aforementioned Legislative Decree, the identification functions - if not previously carried out - may be implemented even if the foreign citizen is sent to an extraordinary reception facility (so-called *CAS*), even if in this case the legislation clarifies that "the operations of identification and submission of the application are carried out at the police station closest to the reception point"[14] and not even within the same reception centre, thereby limiting the danger that such facilities may in fact pose problems of arbitrary limitation of personal liberty for identification purposes.

"For the requirements of first reception and for the completion of the operations necessary for the definition of the legal status, a foreigner shall be accommodated in the first line reception centres established by decree of the Minister of the Interior", specifying in paragraph 4 that: "The applicant shall be accommodated for the time needed to perform identification operations, if not previously completed, to submit an application and to begin the examination procedure of the application, as well as the verification of health conditions [...], situations of vulnerability [...]".

These situations might be described as fluctuating, and are not configured as places of temporary detention in the strict sense, but rather often lead to critical issues internal to them and in the relationship with the local community that in some cases perceives them as a source of insecurity and that often tends to

11. The decree bears the title *Implementation of EU Directive 2013/33 laying down rules on the reception of applicants for international protection, as well as EU Directive 2013/32, laying down common procedures for the recognition of the revocation of international protection status*.

12. Ministry of the Interior, *Italian roadmap*, p. 4: "The first line reception system is composed of facilities belonging to former government centres (CARA/CDA and CPSA), which are currently being reconfigured as *regional hubs*", specifically because "the so-called *regional hubs* have been conceived as a key mechanism designed to facilitate the management of large arrivals of third-country nationals".

13. Staff assigned by Frontex, Europol, and EASO (European Asylum Support Office).

14. Legislative Decree 142/2015, Article 11, paragraph 4.

configure them as "invisible" places, external to their context, almost like "ghettos" in their territory. Intrusive and cooperative eyes like those of the National Guarantor can help to overcome many prejudices and to resolve critical issues as they begin to appear and before they explode into conflicts, as well as to collaborate with the responsible Authorities to increase the protection of the rights of the people hosted.

50. The presumed age of minors

One of the major aspects considered is that of the identification of minors. In fact, in the case of subjects not aggregated to a household, it is a decisive factor for determining who may be expelled and who cannot be expelled or rejected and is therefore deserving of protection.

In its activity of visiting the facilities and monitoring the procedures of forced repatriation, the National Guarantor has paid utmost attention not only to the measures taken to protect vulnerable persons but also to the identification of vulnerabilities. In this regard, one of the major aspects considered is that of the identification of minors. In fact, in the case of subjects not aggregated to a household, it is a decisive factor for determining who may be expelled and who cannot be expelled or rejected and is therefore deserving of protection. Thus, since the first months after its entry into force, the Guarantor has dedicated particular interest to the implementation of the Law of 7 April 2017, no. 47, the so-called Zampa law, which marked a decisive step in the improvement of the system of rules designed to protect unaccompanied foreign minors.

The decree of the President of the Council of Ministers of 10 November 2016, no. 234, expressly referred to unaccompanied minors who were victims of trafficking, and introduced some fundamental guarantees regarding the assessment of age, but it was only with the entry into force of Law no. 47 in 2017, that legislation established a uniform and timely procedure for determining the age of foreign minors entering the country without adult reference figures.

The basic guarantees introduced in terms of identification concern in particular:

- the provision that only when there are doubts about the declared age and the person does not have identification documents, only the Public Prosecutor's Office in the Juvenile Court is authorized to arrange social and health examinations with the aim of making a determination;
- the obligation to inform the foreign person concerned and the person temporarily exercising custodial powers;
- the multi-disciplinary nature of the approach when carrying out the social and health assessment;
- communication of the outcome of the assessment to the minor with indication of the margin of error in the health report;
- the adoption of a provision for the awarding of age by the court (Juvenile Court, as set out by Article 2 of the Legislative Decree of 22 December 2017, no. 220), and the related notification to the foreigner concerned and to the person temporarily exercising custodial powers;
- the contestability of the measure.

The rule is of fundamental importance and marks the definitive obsolescence of Police practices that had proliferated in the absence of an organic framework. These practices were mainly based on the use of the diagnostic technique of bone radiography and in some cases were set out in some Protocols prepared at local level, promoting a multi-disciplinary approach. The procedure for ascertaining the age of a foreign citizen is now included in the guarantees provided by the legal system: the new legislation is very clear in attributing the Prosecutor at the Juvenile Court the task of initiating a social-health assessment in all cases in which a well-founded doubt about the minority of a foreign citizen persists, and to the Juvenile Court, after it receives the report of the social-health assessment, the authority to issue a motivated and appealable ruling, that attributes the age.

During its visits and the monitoring of forced repatriation operations[15], the National Guarantor observed a serious lack in the implementation of the law, even months after its entry into force, and instead witnessed the repetition of the pre-existing practices of initiating social-health assessments without the involvement of the court. It also noted the lack of awareness of the relevant provisions by both the police forces and the courts.

During its visits and the monitoring of forced repatriation operations, the National Guarantor observed a serious lack in the implementation of the law, even months after its entry into force, and instead witnessed the repetition of the pre-existing practices of initiating social-health assessments without the involvement of the court.

Specific recommendations were made to the responsible Authorities in order to set in motion all appropriate initiatives for the stakeholders, who in their various capacities come into contact with a foreign person about whom there is a doubt regarding the declared minority or majority age, so that these are fully aware of the procedure to activate for the performance, if necessary, of social-health checks and legal guarantees related to the protection of the interested party.

Continuing to look at the text of the Law of 7 April 2017, no. 47, further consideration should be given to the actual power of the assessment procedure, examining the subjects entitled to its exercise and questioning the possible role of the National Guarantor. It is undisputed that pursuant to Article 9 of Law no. 184 of 1983, Public Officials, Public Service Agents and Public Service Operators have the duty (and whoever has the right) to report to the Court the presence of a child in a state of neglect, and thus also of a foreign citizen for whom there is a well-founded doubt as to whether he is a minor. Law no. 47 of 2017 also attributes to the foreign citizen (and his legal representative) a real power, in the form of the right to appeal, as the directly interested party, to the Prosecutor at the Juvenile Court to point out the existence of a founded doubt about his age (both in cases where it has not been identified at all, and if it has already been identified by law enforcement agencies).

It is now worthwhile to question the possible active role of the National Guarantor in promoting an assessment procedure under this law since, in the course of some visits, the entity has witnessed dubious

15. See, in particular, the Report on the visit to the Roma Capitale First Aid and Reception Centre (CPSA) for troubled and abandoned minors on 23 June 2017, the Report on the monitoring of a charter flight for the repatriation of Tunisian citizens on 13 July 2017, and the Report on the monitoring of a forced repatriation operation of Tunisian citizens using charter flights carried out on 26-27 November 2017.

cases of age registration and, in particular, the frequent assigning of a conventional date of birth, such as the first of January of the current year[16]. In these cases, the Guarantor has signalled the arbitrariness and the extent to which this practice is detrimental to the rights of children and adolescents to the competent Authorities, who consequently initiated an internal audit. In consideration of this, the National Guarantor, as a guarantee institution responsible for preventing fundamental rights violations, should be granted the actual power (beyond the simple reporting obligation which it certainly holds) of the age assessment procedure in the event of well-founded doubt, with the consequent obligation of the Court to provide for such a request with a motivated and challengeable decision.

51. European reforms *in progress*

The reforms currently under discussion in the European institutions relating to the Common Asylum System (CEAS) deserve careful consideration as regards the profiles extending the possibilities for detention and increasing the restrictions imposed on the freedom of movement of asylum seekers. The CEAS structural reform process currently under evaluation by the legislative bodies of the European Union was begun in 2017. The proposal formulated by the European Commission revolves around some focal points that would radically change the procedures and standards of protection currently in force: redefinition of the concepts of safe third country, country of first asylum, *country of origin, border procedure, accelerated procedures, implicit withdrawal of the application*.

One of the objectives pursued by the reform project is the renewed centrality of border procedures, the associated accelerated procedures, and eligibility procedures. These procedures involve the possibility of a rapid examination of asylum applications in the places of first arrival of foreign nationals.

One of the objectives pursued by the reform project is the renewed centrality of border procedures, the associated accelerated procedures, and eligibility procedures. These procedures involve the possibility of a rapid examination of asylum applications in the places of first arrival of foreign nationals. In this perspective, both the hotspots and the CPRs would be appointed to play a central role in the new system envisaged by the EU Commission: the vast majority of asylum applications would be subjected to a rapid preliminary examination in order to assess, for example, whether or not the applicant comes from a *country of safe origin or a safe third country* or if his application *is manifestly unfounded*. During this evaluation phase, the applicant could be held for up to four weeks and subsequently subjected to other restrictions on his freedom of movement, so that the Member State can carry out forced repatriation (either to the country of origin, the safe third country, or to the country of first asylum)

16. As reported in the Report on CIEs and hotspots, the situation was detected both in the visit to the hotspot of Trapani on 15 January 2018 and in that to the same facility on 26 April.

immediately after the rejection or declaration of ineligibility of the asylum application. The CEAS reform, in other words, aims - among other things - to move a large part of asylum seekers in the southern border areas of the EU (especially the more southerly regions of Greece, Italy and Spain) to the hotspots and the CPRs, shortening the time for the evaluation of the applications and increasing the cases in which it is possible, quickly, to perform the forced repatriation of the foreign citizen to his country of origin or to a third country considered safe. In this perspective, the border Member States (especially Greece and Italy) would realistically be urged to significantly increase the availability of places within the hotspots and the CPRs, in particular those located near the maritime borders.

The reform package under discussion also proposes the issue of a new Dublin Regulation and a new Reception Conditions Directive.

In particular, Article 3, paragraph 3, of the Dublin Regulation proposal provides that the examination of the jurisdiction criteria[17] occur only after the application eligibility procedure has been completed (for possible transit of the applicant to a country of first asylum or safe third country), as well as the accelerated procedure (origin of the applicant from a safe country of origin or because the applicant is considered a danger to national security or the public order of the Member State). This confirms the desire of the EU Commission to attribute to the border areas (and therefore to the so-called *hotspots* and to the CPRs) a filtering role, with the foreseeable consequence that a large number of foreign citizens will be concentrated in such places, and even deprived of personal liberty, while waiting for a potential forced repatriation to a third country.

Article 3, paragraph 3, of the Dublin Regulation proposal provides that the examination of the jurisdiction criteria occur only after the application eligibility procedure has been completed (for possible transit of the applicant to a country of first asylum or safe third country), as well as the accelerated procedure (origin of the applicant from a safe country of origin or because the applicant is considered a danger to national security or the public order of the Member State).

Additionally, for the purpose of determining the Member State responsible for examining the application (as well as for preventing the applicant from being untraceable), the proposal for a new Reception Conditions Directive (Article 7) of the EU Commission requires Member States to establish, where necessary, a place of residence for the applicant, in particular if the latter has previously violated the obligations set out by the Dublin Regulation. Furthermore, the draft provides that, if there are reasons to believe that an applicant might evade the obligations set out by the Dublin Regulation, the Member States may require him to report his presence to the competent authorities or to appear before them in person. Article 8 of the proposed Reception Conditions Directive also introduces new forms of administrative detention, including in particular: "In the event that the applicant has violated his/her residence obligations and/or reports his presence to the authorities and there is a risk that he/she becomes untraceable" (Article 8, paragraph 3, letter c).

17. These criteria determining the specific case in which the Member State will have to host the asylum seeker during the procedure take place only after the application eligibility procedure has been completed (for possible transit to a country of first asylum or safe third country).

52. Forced returns

One of the tasks assigned to the National Guarantor is that of monitoring the forced repatriation operations of foreign citizens illegally present in Italy. For a comprehensive legal framework on forced repatriations and the types of monitoring adopted by the National Guarantor, please refer to sections 65-71 of the 2017 Report to Parliament.

Given the observations in that report, and in light of the higher number of forced repatriation operations monitored in this second year of the Guarantor's existence (4 operations involving on-board monitoring of aircraft in 2016, 7 operations in 2017, and 7 in the first four months of 2018), it is opportune to update these to include a series of evaluations regarding the critical issues encountered, whereas the situation remains unchanged as regards the positives.

The list of critical issues indicated in the previous Report to Parliament needs to include the inertia demonstrated by the Ministry of the Interior in responding to the recommendations sent through the monitoring reports. With regard to the reports relating to forced repatriation operations monitored in 2017, in fact, to date, the National Guarantor has not received any reply from the responsible authorities of the Interior Ministry. It is, moreover, doubtful whether a sort of silent assent should be inferred from this, implying tacit acceptance of the recommendations forwarded and a commitment to modify those practices that the National Guarantor considers to be not in line with international standards, given that these same practices, which have been repeatedly stigmatized, have continued and continue to be used during forced repatriation operations. The reference here is, for example, to the practice, encountered in most of the operations monitored, of keeping the wrists of the returnees bound by Velcro straps for many hours, indiscriminately and in the absence of openly non-collaborative behaviour.

Another practice that the National Guarantor believes should be reviewed as soon as possible is that of not providing the parties involved any advance notice of their imminent repatriation. Such notice would be useful for checking any updates of their legal position, and to allow them to get ready not only materially but also psychologically for the departure and to alert family members of their return home. As noted in the 2017 Report to Parliament, the lack of advance notice risks, in particular, undermining the fundamental rights of individuals in the case of deferred rejections in the hotspots. Further considerations will be developed in the following section that relate to this case, to which the Guarantor has always paid particular attention and that in the past year has been examined by the Constitutional Court.

Another practice that the National Guarantor believes should be reviewed as soon as possible is that of not providing the parties involved any advance notice of their imminent repatriation. Such notice would be useful for checking any updates of their legal position, and to allow them to get ready not only materially but also psychologically for the departure and to alert family members of their return home.

Finally, as has already been pointed out in almost all the Reports, it is not acceptable that the returnees often spend several hours standing in outdoor areas, exposed to extreme heat in summer or cold in winter, or in dilapidated rooms without seats or tables for eating and drinking, while waiting for a consular hearing or security checks at the airport. This refers to the special airport facility in Palermo, which the Guarantor firmly believes is not suitable for the needs of the returnees nor for those of the police operators. In this regard, it should be recalled that under international law the freedom of each State to remove foreigners from its territory is subject to certain restrictions, relating not only to the *legitimacy of the provision* - as for example the absolute ban on *refoulement*, the 'collective expulsions/rejections' and expulsions of foreigners who have a close and lasting connection with the State that intends to remove them - but also to the *methods* by which the removal is carried out. In particular, the EU Directive 115/2008/EC on returns allows the use *proportionate* and *reasonable* force - if necessary to implement the removal order - only in compliance with fundamental rights and with respect for the dignity and physical integrity of the foreigner it desires to repatriate. Failure to honour these guarantees thus renders forced repatriation illegitimate.

For a more detailed analysis of the results of the monitoring of forced returns please refer to the Reports published on the website of the National Guarantor. Speaking more generally, the National Guarantor, in its capacity as the Authority responsible *in a broad sense* for the protection of the rights of persons deprived of personal liberty, expresses strong doubts about the possibility of organizing forced repatriation flights to countries, such as Egypt and Nigeria, which have not established a national mechanism for the prevention of torture. Add to this that, as observed in the Report of the *Special Rapporteur* on torture and other cruel, inhuman or degrading treatment or punishment presented to the UN Human Rights Council in February 2018[18], States wishing to remove foreigners from their territory must scrupulously evaluate whether the foreigner in question is in danger of being subjected to torture or ill treatment, also as regards a "general situation of violence" in the destination country. In particular, the ruling in the case *Hirsi Jamaa v. Italy* (2012)[19] of the European Court of Human Rights, referred to in the UN report, states that the existence of internal rules or the ratification of international human rights treaties are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment, in the event that reliable sources show that practices that are manifestly contrary to the principles of the ECHR have been implemented or tolerated by the authorities of the receiving countries. According to the Court, in short, since the prohibition referred to in Article 3 of the ECHR is absolute, the assessment of the risk of torture or ill-treatment in the Report of reliable non-governmental or international organizations is of great importance. According to several authoritative international observers, the rule of law is seriously limited in the two countries mentioned. In particular, indiscriminate violence committed by elements of the security forces against the civilian population has been reported.

The National Guarantor, in its capacity as the Authority responsible *in a broad sense* for the protection of the rights of persons deprived of personal liberty, expresses strong doubts about the possibility of organizing forced repatriation flights to countries, such as Egypt and Nigeria, which have not established a national mechanism for the prevention of torture.

It can not therefore be excluded a priori that citizens illegally present in a foreign land are perceived at home as common criminals or in some way hostile to the regime, or as a troublesome source of international embarrassment and that for these reasons are subjected, upon repatriation, to inhuman

18. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/37/50*, paragraph III, C. Human Rights Council, 37th session, 26 February 2018: http://www.ohchr.org/Documents/Issues/Torture/A_HRC_37_50_EN.pdf

19. Grand Chamber judgment of 23 February 2012.

and degrading treatment with unforeseeable consequences. Hence the perplexities surrounding more isolated cases, such as the individual forced repatriations recently carried out towards countries such as Libya[20] and Sudan which, for different reasons, present critical issues similar to those indicated above.

53. Deferred rejections

In 2017, foreign persons forcibly repatriated following a deferred rejection by the Public Safety Authority numbered 1,917, corresponding to 29 percent of the total people removed.

Many repatriation charter flights, in cases where there are special readmission agreements, involve foreign nationals who receive a so-called deferred rejection measure[21] pursuant to article 10, paragraph 2 of the Consolidation Act on Immigration. Indeed, this measure is widely applied in the case of migrants rescued at sea who, not having expressed the desire to apply for international protection and in any case not falling into one of the categories protected by the prohibition on expulsion and rejection set out in Article 19 of the Consolidation Act on Immigration, after being identified and photo-reported in the hotspots, are considered for all intents and purposes to be illegal migrants and therefore subject to removal. To get an idea of the phenomenon, in 2017, foreign persons forcibly repatriated following a deferred rejection by the Public Safety Authority numbered 1,917, corresponding to 29 percent of the total people removed[22]. Some of these people, after having received notification of the rejection procedure, were transferred to a CPR in order to prepare for the repatriation and, at the time of the validation hearing, received a judicial review of their individual position. Others, in accordance with the law, were subjected directly to the coercive measure of forced repatriation at the order of the Public Safety Authority without any intervention by the Court.

During the monitoring carried out, the Guarantor devoted specific attention[23] to the deferred rejections, considering their mental and emotional impact, (potentially traumatic, when implemented upon recently rescued people), evaluating the critical aspects related to the effective understanding of the information provided following disembarkation, access to the asylum process, as well as effective mechanisms for identifying vulnerabilities deserving protection and, finally, examining the problematic profiles linked to certain implementation practices, which reveal excessive discretion used by the Public Safety Authority in resorting to this case.

The failure to provide for control by the judicial authorities despite the appeal, in an ordinary manner, of the use of force for the execution of deferred rejections has always raised multiple concerns of constitutional compliance with the doctrine and the issue has recently been the subject to examination by the Constitutional Court in ruling no. 275 of 8 November 2017. In the present case, the Court of Palermo raised the question of constitutional legitimacy by contrast with certain constitutional provisions (including Article 13, paragraph 3), in particular by arguing that so-called "deferred" rejection is always characterized by 'accompaniment to the border, that is from a restrictive measure of personal liberty protected by Article 13 of the Constitution and should therefore always be subject to control by the Court. The Constitutional Court rejected the question of constitutional legitimacy raised, clarifying that the rejection decree does not constitute a restrictive measure of personal freedom if - as in the specific case handled by the Court of Palermo - it is not carried out with forced accompaniment to the border, but only accompanied by an "order of the Police Commissioner to leave the territory of the State"[24]. The Constitutional Court has, in fact, clarified that if the decree of rejection is not followed by forced repatriation but only by an expulsion order, there is no effective restriction of freedom falling within the scope of Article 13 of the Constitution. On the other hand, if the method of deferred rejection is that of coercive forced repatriation, according to the Court, a problem of compliance with article 13 of the Constitution is opened "that this implementation method restricts personal freedom (judgments No. 222 of 2004 and No. 105 of 2001) and therefore requires to be regulated in accordance with Article 13, third paragraph, of the Constitution."[25] To this end, the Constitutional Court calls upon the legislator to "intervene on the legality of deferred rejection with accompaniment to the border"[26].

In the light of this ruling, the National Guarantor deems it urgent and necessary, as the Court's own warning states, to initiate a parliamentary debate on the institution so that full compliance with the Constitutional Charter is restored in all its applications.

20. 22 January 2017 and 7 December 2017.

21. The deferred refoulement is ordered by the Police Commissioner, in accordance with article 10, paragraph 2 of the Consolidation Act on Immigration, for those who *entering the territory of the State by evading border controls, are stopped upon entry or immediately afterwards, or who have been temporarily admitted to the territory only for the purpose of emergency rescue.*

22. As noted in the 2017 Report to Parliament, the figure is set to increase considering that the EU Regulation 2016/1624 of 14 September 2016 - the so-called *Frontex regulation* - gives priority, in choosing repatriation operations to finance, to joint operations and those initiated by hotspots.

23. See, in particular, the Report on the monitoring of the operation for the forced repatriation of Nigerian citizens organized by Italy on 17-18 May 2017.

24. Pursuant to Article 14, paragraph 5-bis of the Consolidation Act on Immigration, the foreign citizen must spontaneously comply with the order of the Police Commissioner within seven days.

25. Judgment of the Constitutional Court no. 275 of 20 December 2017.

26. *Ibid.*

54. The monitoring system as a European project

On 30 December 2016, the Supervisory Authority of the National "Asylum, Migration, and Integration Fund" Programme 2014/2020 (FAMI), co-funded by the European Commission and managed by the Ministry of the Interior, Civil Liberties and Immigration Department, approved the project "Implementation of a monitoring system for forced repatriations" presented by the National Guarantor on 14 October 2016.

On 30 December 2016, the Supervisory Authority of the National "Asylum, Migration, and Integration Fund" Programme 2014/2020 (FAMI), co-funded by the European Commission and managed by the Ministry of the Interior, Civil Liberties and Immigration Department, approved the project "Implementation of a monitoring system for forced repatriations" presented by the National Guarantor on 14 October 2016.

The project, worth € 799,168.82 and lasting 30 months, was financed under the accompanying measures provided for by the *FAMI* to support activities related to the forced repatriation of foreigners illegally present in Italy, with the aim of improving the national monitoring capacity of these operations. This project is fully integrated into the institutional activity carried out by the National Guarantor, in its capacity as the National Authority for the monitoring of forced repatriations and, thanks to the provision of additional resources to those officially allocated, is improving the capacity of the national system to monitor forced repatriation operations, by ensuring the timely and organic surveying of a large number of procedures.

The activities financed under the project include:

1. monitoring of forced repatriation procedures;
2. collection of information and creation of an IT platform for the recording, management, collection, analysis and exchange of information related to forced return operations, with decision-making support functions;
3. training aimed at raising the levels of technical and linguistic skills of the National Guarantor monitoring team;
4. information, training and exchange with the various stakeholders involved in forced repatriation operations;
5. selection of a pool of experts specialized in matters concerning monitoring: health, legal, linguistic-cultural mediation, protection of human rights in support of the work of the National Guarantor;
6. communication and awareness initiatives;
7. creation of multimedia products: multi-lingual video tutorials and multi-lingual videos for immigrants, stakeholders, and the general public
8. drafting of *National guidelines* for the monitoring of forced repatriations.

The grant agreement between the Ministry of the Interior and the National Guarantor was signed on 22 March 2017; the project officially started on 5 April 2017 with the commencement notice.

In August 2017, a public selection procedure was launched in order to recruit the experts referred to in point 5 above which led, among others, to the recruitment of a lawyer with expertise in legal issues related to immigration law, an expert in international human rights protection, and a communication expert.

The creation of the project also saw the National Guarantor sign a series of agreements with the Regional Guarantors in order to establish a national monitoring system based on mutual collaboration and on the provision of human resources for the establishment of a network sufficiently widespread throughout Italy.

So far, the regional guarantors of Campania, Emilia Romagna, Lazio, Marche, Piedmont, Apulia, Sicily and Tuscany have joined the national monitoring network.

In this context and in order to structure the network with the Regional Guarantors, the first multi-disciplinary training seminar on the monitoring of forced returns was held in Rome on 25 and 26 October 2017, and was attended by both National Guarantor officials and those sent by the Regional Guarantors. Subsequently, on 11 December 2017, in Rome, the first workshop on the "Protection of rights in forced repatriation operations" was held, and saw participation by both the Regional Guarantors and the Interior Ministry's departments responsible for immigration and forced repatriation, such as the Department of Public Safety and the Department for Civil Liberties and Immigration. Furthermore, on 15 January 2018, at the headquarters of the National Guarantor, a seminar was held on the new legislation for the protection of unaccompanied foreign minors, in which the Guarantor for Children and Adolescents also took part with its staff.

Training initiatives for the monitoring of forced repatriations were also carried out by the National Guarantor at the premises of the Regional Guarantors participating in the national monitoring network: in Palermo on 22 and 24 January 2018 and in Turin on 28 February 2018.

The FAMI funds have also allowed - as envisaged by the project - the start of language skill development for the National Guarantor's monitors: the first module of the English school is currently active and, in 2019, French language training will also start.

Between April and May 2018, notices were published for the awarding of the linguistic and cultural mediation service and for the recruitment of a medical consultant with expertise in the application of the 2004 *Istanbul Protocol*.

In terms of the intensification of monitoring activities, the project's final objective, since the project start date (April 2017), a total of 12 forced repatriation operations have been monitored on air carriers, of which 11 were national operations to Tunisia and one a joint operation (with the participation of other European countries) to Nigeria.

In terms of the intensification of monitoring activities, the project's final objective, since the project start date (April 2017), a total of 12 forced repatriation operations have been monitored on air carriers, of which 11 were national operations to Tunisia and one a joint operation (with the participation of other European countries) to Nigeria. These numbers are augmented by the monitoring carried out during the "pre-departure" and "pre-return" phases which, in some cases, were carried out in collaboration with the representatives of the Regional Guarantors (Bari, 26 November 2017, 18 January 2018, and 14 March 2018, Palermo, 25 January 2018, and Turin, 1 March 2018).

The Project is scheduled to end on 30 September 2019.

National Guarantor for the rights of persons detained or deprived of personal liberty
Migration and freedom

The National Guarantor is effective and independent as a national mechanism for monitoring forced repatriations: the European Commission has closes the infringement procedure against Italy.

In July 2017, the European Commission definitively closed infringement procedure 2235 opened in 2014 against Italy for violation, among other provisions, of Article 8 paragraph 6 of Directive 2008/115/EC of 2008 which sets out that: "Member States provide for a system of effective monitoring of forced returns".

The National Guarantor had since its creation been seen as the National Mechanism for the monitoring of forced repatriations, by responding institutionally to those characteristics of independence and impartiality required for such a function in which, substantially, the work of the State Police in this delicate task is placed under a magnifying glass. Yet it took a full 17 months, from March 2016 to July 2017, in order for the work of the National Guarantor in this area to be deemed not only independent, but also effective, that is efficacious. The National Guarantor, in fact, had to demonstrate its operational capacity in the field, monitoring a sufficient number of repatriation flights to Tunisia and Nigeria, and also demonstrating that it had built solid foundations (thanks also to the resources of the FAMI project) for a stable monitoring system built around specifically trained professional figures.

The independence and operation of the Guarantor have also been certified in this area by various evaluations of the "Schengen Commission" which, as is known, operates at European level, through on-site visits and the acquisition of documents and which, during the same period (2016-2017) assessed the work of the Guarantor.

With the closure of the infringement procedure Italy, in addition to having increased independent control and transparency on forced repatriations - operations which, as is known, are very sensitive from the point of view of the protection of human rights - has put the word "closure" to the matter of the fines that the infringement mechanisms entail.

The monitoring Reports are duly published on the National Guarantor's website www.garantenpl.it

Security and freedom

Security and freedom

55. Holding facilities

Although the period of stay in a holding facility should be as short as possible, only that needed to prepare documents and for the subsequent appearance of the person detained before the court, it is not uncommon, especially when the arrest or detention occur near the weekend, that the stay involves detention at night, and sometimes even for more than one night.

Although the period of stay in a holding facility should be as short as possible, only that needed to prepare documents and for the subsequent appearance of the person detained before the court, it is not uncommon, especially when the arrest or detention occur near the weekend, that the stay involves detention at night, and sometimes even for more than one night. In this regard there are some international standards regarding the material and procedural conditions of such detention that should be strictly observed. These are briefly mentioned here, also as they relate to the National Guarantor's monitoring of the holding facilities used by the Italian Police Forces, where there has often been an imperfect connection between the standards and practices in use.

First of all, we make reference to the *Standard Minimum Rules for the Treatment of Prisoners* adopted in 1957 by the United Nations and reviewed in 2015 under the name of Mandela Rules, which underline, inter alia, the specificity of the detained person. Persons who have a criminal charge brought against them, but have not yet been tried and sentenced are "unconvicted" and are "presumed to be innocent" and shall be treated as such (*Mandela Rules*, Rule 111, points 1 and 2). Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate (Rule 113 of the *Mandela Rules*). In this regard, it is useful to recall the provisions of the *European Code of Ethics for the Police* (CEEP) adopted by the Council of Europe in 2001 concerning holding facilities, which must be of reasonable size, have adequate lighting, ventilation and be suitably equipped for rest (CEEP paragraph no. 56). Since 2001, the CPT (12th Annual Report) notes that holding facilities, in order for a detained person to be placed there for at least one night, must be equipped with a clean mattress and sheets (and therefore also a fixed structure upon which the mattress rests and where the person can sit) and that there be access to a clean and equipped washroom and toilet area, to allow people to wash themselves (12th CPT Report, paragraph no. 47). Regarding the size of the holding facilities, the CPT considers standard (especially when the stay is for more than a few hours, which frequently occurs) a surface of seven square metres, with at least two metres between opposite walls and a height of at least two and a half metres (2nd Annual Report of the CPT, 1991). The management of the holding facilities must also provide complete access to drinking water and provide food at appropriate times, including at least one full meal per day (something more than just a sandwich, explains the Committee).

It should not be forgotten, with regard to material conditions, that there may be very different needs depending on whether the person is male or female. In this sense, assistance is provided by the *Bangkok Rules*[1], which indicate, in rule 5, that detention facilities such as the holding facilities in question must be equipped with all those supplies directly connected to specific female hygiene needs, as well as provisions for the potential needs generated by the presence in the holding facility of a mother with a child. Obviously, the National Guarantor believes that the presence of a mother with a child in the holding facilities, for a period not exclusively limited to procedural operations, should be avoided: the rule is important because it addresses the international context.

The National Guarantor believes that the presence of a mother with a child in the holding facilities, for a period not exclusively limited to procedural operations, should be avoided: the rule is important because it addresses the international context.

The verification of many other material conditions forms an integral part of the monitoring of these facilities by the National Guarantor and, in addition to those already mentioned above, these include: the presence of a doorbell that can be operated from inside for use by the person to request the intervention of a police operator for various reasons of necessity or for emergencies, the availability of electric lighting (as well as natural light) and the assessment of whether or not it may be switched on and/or regulated from within. Finally, it should not be forgotten that detention in a holding facility might involve a disabled person and that it is therefore necessary to provide full access to the facility through the removal of architectural barriers, as well as the possibility of rest and use of the toilets according to the standards established by national laws for people with disabilities, as well as by the 2006 *Convention on the Rights of Persons with Disabilities* of the United Nations[2] (Article 9).

There is a further series of needs that should be met and which, very often, are not adequately considered by the Police Authorities. In particular, the opportunity to exercise in the open air for a suitable period of time during the 24 hours of stay in a holding facility. This is referred to by the CPT in the aforementioned 12th Annual Report. Moreover, detained persons must be allowed to change clothes and underwear, as well as, in the case of investigations by Forensic Police involving the seizure of clothing, the possibility (if necessary at the administration's expense) that other clothing be provided. A final - though certainly not unimportant - point is that during the period of detention in a holding facility the person be given the opportunity to freely and reasonably practice their religious faith.

In summary, since the holding facilities used by Italian police forces belonging to different administrations are also used for a considerable number of hours that includes night-time, they must correspond to a set of standards to guarantee the minimum requirements in terms of the size of the rooms, the availability of toilets that offer the ability to wash oneself, the supply of drinking water and meals, as well as the ability to spend at least one hour every twenty-four in the open air. Furthermore, they must be suitable to host particularly vulnerable persons (disabled people, pregnant women, homeless people, drug addicts, etc...) and offer the opportunity to practice one's religion. These are criteria that the Administrations at the national and local level, should consider and that complement the more general ones related to the detailed recording of people and events and of every episode that manifests itself during the stay in the facility, along with an indication of the person in charge at the time of its occurrence. It goes without saying that in environments where persons arrested may be held, questioned, or required to undergo procedural formalities, the presence of any object that can be used - or perceived as usable - as an instrument of possible threat or violence is not tolerable. Any object that

1. *United Nations rules for the treatment of women prisoners and non-custodial measures for women who have committed crimes*, adopted by the General Assembly on 6 October 2010: http: //www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf

2. Adopted by the General Assembly on 13 December 2006.

enters the facility as a result of completed operations and relative confiscation must be strictly recorded and indicated with an appropriate label corresponding to the registration number and placed in a suitable room, not accessible to persons other than those in charge of it. Unfortunately, the Guarantor witnessed, at least in one case reported in its visit report, that this precept had not been respected[33].

The rights of persons arrested

During its visits, the National Guarantor also verifies that the effective exercise of procedural rights is guaranteed to the persons arrested:
• *The right of access to a lawyer* - the person must be guaranteed access to a lawyer, potentially of his/her choice. In the event that the person does not have a lawyer or his/her economic or social conditions do not allow him/her to do so, he/she must in any case be granted access to an attorney or defence attorney with legal aid, according to a list defined with the Bar Association and available at the various Police stations. In the event that there is a specific provision of the court that exempts the immediate visit with a lawyer (indicated by the person stopped or arrested), this refusal must be motivated and included in the personal file of the arrested person;
• *The right to notify a relative or a person of their own choosing* of their deprivation of liberty - It may be that for investigative reasons this notice must be delayed or that it may not be possible to agree to inform the specific person indicated by the subject: these cases must be duly motivated and should be included in the personal file of the arrested person;
• *The right to be examined by a doctor* - The health conditions and, more generally, the physical conditions of the person deprived of liberty must be duly verified and reported in his/her personal file, so as to be able to take any necessary measures and to protect those responsible for deprivation of liberty with respect to possible future disputes; the continuity of any necessary medical treatments must be guaranteed;
• *The right to be informed of one's rights* - The person deprived of liberty must certify by signature that he/she has been informed of his rights and that he has understood them. This is to protect the effectiveness of his/her rights, and also to protect those responsible for the deprivation of liberty.

3. See Report on the visit to Campania 29 November - 6 December 2016 and 23-31 March 2017 and related reply of 26 March 2018.

56. Continual revolving doors

Among the measures taken between the end of 2011 and the beginning of 2012 to counteract the tense detention situation caused by prison overcrowding[4], the intervention aimed at resolving the so-called 'revolving doors' phenomenon (i.e. the placing in prison for no more than three days of those arrested in the act of committing a crime and intended to be tried directly), immediately assumed an important role. At the time, among the factors burdening the accommodation potential of the prison facilities, along with all the known negative consequences in terms of liveability and respect for human dignity, was the number of very short detentions, resulting from arrests, which involved 23,008 people at the end 2010 and 10,039 in the first half of 2011 alone[5]. In addition to the consideration of the effect on the overcrowding of the Institutes, there was also the burden posed by the transits of a few hours or a few days on the administration of the prison and on the workload of the prison police personnel, whose duties included the processing of all who entered (intake, medical exam, placement in a specific unit, and in a suitable room).

Among the measures taken between the end of 2011 and the beginning of 2012 to counteract the tense detention situation caused by prison overcrowding4, the intervention aimed at resolving the so-called 'revolving doors' phenomenon (i.e. the placing in prison for no more than three days of those arrested in the act of committing a crime and intended to be tried directly), immediately assumed an important role.

Article 558 of the Code of Criminal Procedure was amended with he intention of resolving this critical system profile. It stipulated that persons arrested be kept primarily in their home or in an equivalent place and, failing the availability of these "at suitable facilities available to officers or agents of the criminal investigation department making the arrest and who have custody of the arrested person". Only in the event that such facilities are lacking or not available does the law permit the person to be placed into a local prison facility. The new regulations proved effective in determining a drastic drop in prison stays pending direct trials: there was a drop in the numbers given above to the current ones, which, for the year 2017, shows the percentage of admissions for three-day stays out of the total access made by people coming from the condition of liberty to be 5,792 out of 48,144[6].

Although the deflationary effect produced by the change in legislation is appreciable, the creation of the new system is not deemed satisfactory. Those arrested who pass through the 'revolving doors' are in fact those who, by law, do not have a private or public domicile and, for whom the facilities of the Police Forces are not available for the restrictive requirements set out by Article 558 of the Code of Criminal Procedure. It should be noted that it is not by chance that the number of foreigners taken into prison awaiting a direct trial hearing constitutes 60.4% of the total admissions from freedom with stays that do not exceed three days (3,496 out of 5,792): this is evident from the fact that the lack of a domicile (in all likelihood greater for the foreign population) is not compensated for by the presence

4. The reference is to the Decree Law of 22 December 2011, no. 211, converted into the Law of 9 February 2012, no. 9.

5. Source: Department of Prison Administration

6. Source: Department of Prison Administration

of a police facility where persons arrested may be held. During the monitoring visits conducted in the second year of activity, the National Guarantor again found[7] a great lack of holding facilities throughout entire territories, such as, for example, the provinces of Taranto and Brindisi, or the unavailability of the facilities intended for such use, or for their complete absence at the locations of the forces operating in the territory. The outcome of these deficiencies is the overcrowding of the prisons in these territories, which was observed in due proportion. Furthermore, it should not be overlooked that the prison admission, in addition to the burden placed upon space resources and human energy mentioned above, always causes a traumatic impact on those admitted, even more so in the case of people who are inexperienced and young: such an impact is not justified by any purpose other than that of mere custody.

Prison admission, in addition to the burden placed upon space resources and human energy mentioned above, always causes a traumatic impact on those admitted, even more so in the case of people who are inexperienced and young: such an impact is not justified by any purpose other than that of mere custody.

Due to this factor, and with the aim of preventing its occurrence as much as possible, the regulation for custody after being arrested in the act of committing a crime was changed in 2011: its effectiveness, especially as benefits people in more precarious economic and social conditions, depends concretely on the collaboration and commitment of the State Administrations to provide physical holding facilities in full compliance with internationally defined standards and in numbers corresponding to actual needs. To this end the Guarantor has recommended, at each monitoring, the restructuring or creation of holding facilities that have been determined to be inadequate. However, the Guarantor also points out that the Police Forces in a territory should be considered as a whole and that, before placing persons in prison due to the the unavailability of holding facilities, it is necessary to first verify that there are not other facilities available from any of the Forces (State Police, Carabinieri, Guardia di Finanza, ...) operating in that territory.

This, however, requires that legislation (already proposed in the 2017 Report to Parliament) be passed in order to consider the reform of the entire system of compulsory arrest so that the detention of persons caught in the act of committing a crime is limited only to the most serious cases of real danger for public security.

7. See *Report to Parliament 2017*, par. 81, p. 131.

Notification of a visit to local police forces

The local police force performs various functions, including: administrative police, criminal investigation, road police, tax police, and maintaining public security in their local territory. Furthermore, according to the Ministry of the Interior's memorandum no. 3 of 2001, the qualification and functions of the municipal police officer are identical to those of the State Police officers regarding the enforcement of involuntary medical treatments (TSOs) together with the medical staff in charge.

In this context, during 2017, the National Guarantor sent the various Municipal Police Departments a letter, informing them about the role and powers attributed to it in its mandate. Subsequently, it began monitoring the holding facilities and the admission and interrogation facilities of the local Police headquarters, as part of its visits to other police forces, beginning - as its first experience - with the Naples Municipal Police Headquarters.

57. Training for dignified detention

Dealing with situations involving the deprivation of freedom of individuals by police forces certainly constitutes a very delicate aspect of their professional life. Consider, for example, the handling of persons detained in holding facilities, or interrogating those who have been arrested. Generally, arrests or police detentions take place in a context of high stress for all the parties involved in which physical, verbal or acute situations can be generated. These are also accompanied by the mental and physical imbalances that such situations entail, especially when the procedures that restrict liberty concern subjects with a particular vulnerability, for example drug addiction, or some form of mental illness. In such cases, there it is particularly important, so that behaviours potentially harmful to the fundamental rights of the person are not implemented, that the personnel have received specific training, and that they carefully observe codes of conduct.

Dealing with situations involving the deprivation of freedom of individuals by police forces certainly constitutes a very delicate aspect of their professional life. Consider, for example, the handling of persons detained in holding facilities, or interrogating those who have been arrested.

Taking for granted that the basic standards required by the various codes of conduct of police officers in terms of efficiency, effectiveness, integrity, impartiality, non-discrimination, responsible use of public resources, with the ultimate goal of not undermining the fiduciary relationship between Police Forces and the population (we refer in particular, in addition to national laws and regulations, to the International Code of Conduct for Public Officials, the European Code of Ethics for Police and the Code for Police Officers adopted by the United Nations) have been implemented, here, we note mainly the specific and general training that ultimately reflects the general organizational approach of the

security administration. This must continually strive to ensure the integrity of its personnel in order to ensure full respect for fundamental rights and freedoms with complete implementation of the principles of the European Convention on Human Rights, of which officers and agents of public security are, to all intents and purposes, the last defenders.

In this regard, ethical standards derived from national and international codes of conduct, coexist and are able to operate in parallel - or independently - with national laws concerning the Police and are very important as they form a common ethical basis, encouraging the adoption of professional behaviours and the assumption of individual responsibilities. Training based on these standards and, even unofficial, communication from the administrative leaders of the Police Forces has a significant influence on the behaviour that the latter assume, for example with regard to a detainee in a holding facility. This culture must necessarily permeate the whole organization and not only concern the 'operational' aspect, because it should not be forgotten that the members of the Police forces are strongly influenced by the behaviour of their hierarchies - as well as by other factors, including politics, media, public opinion, all of which, however, are not included and may not be dealt with here.

The adoption of a national code of conduct for the handling of temporary situations of deprivation of liberty by the Police Forces is strongly recommended.

Therefore, the adoption of a national code of conduct for the handling of temporary situations of deprivation of liberty by the Police Forces is strongly recommended. But what does this specific training mainly include?

Firstly, the training and informing of personnel involved in any capacity in the custody, interrogation or processing of any individual subject to any form of arrest, detention or imprisonment about the absolute prohibition of torture or any form of inhuman or degrading treatment[8]. In this regard, of particular interest are the provisions set out by the *Principles and Best Practices on the Protection of Persons Deprived of Personal Liberty in the Americas* (2008) which, in principle no. 20 state that: "The personnel of places of deprivation of liberty shall receive initial instruction and periodic specialized training, with an emphasis on the social nature of their work. Such instruction and training shall include, at least, education on human rights; on the rights, duties, and prohibitions in the exercise of their functions (as public officials, ed. note); and on national and international principles and rules regarding the use of force, firearms, and physical restraint."[9]. Therefore, a qualified and well-trained Police force is the basis for the proper functioning of the security system and, in particular, for a balanced handling of those situations which involve a restriction of personal liberty. The professional curriculum of Police must be oriented towards ethical values and respect for human rights and continually reinforced through specialized training throughout the course of their working life, focused on the methods of conducting interrogations, the use of physical restraint methods, and the use of force and firearms.

8. In this regard see Article 10 of the frequently mentioned *United Nations Convention against Torture and Other Inhuman or Degrading Treatment or Punishment*.

9. *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*. Text approved by the Inter-American Commission for Human Rights at its 131-st regular period of sessions, 3-14 March 2008: https://www.oas.org/en/iachr/mandate/Basics/principles-best-practices-protection-persons-deprived-liberty-americas.pdf

Furthermore, training and instruction must involve interpersonal communication, prevention and non-violent conflict management (de-escalation), and stress management. These professional skills can allow for the proper handling of situations that, as previously stated, could lead to the use of physical violence with consequent and possible violations of the fundamental rights of every person: the right to physical integrity and respect for one's own dignity. Indeed, there is no doubt that ethically-oriented specialized training constitutes the main antidote to this, as well as full access to psychological support and group work (*debriefing* in particular), especially after events of a violent nature.

Finally, in all the situations outlined above (interrogations, detention at the holding facilities, temporary situations of deprivation of liberty as in the case of arrest and detention), it is no small consideration that police operational personnel be fully recognizable both as regards its function, and as regards the identity of the operators, at least through the wearing of ID badges. The National Guarantor reaffirms its recommendation to this effect, already given in the 2017 Report to Parliament. The use of masks or balaclava in contexts of deprivation of liberty by Police Forces can only be justified in truly exceptional, duly motivated, cases that are reported with clear motivations[10].

10. In this regard see the 14th Annual Report of the European Committee for the Prevention of Torture, in the section entitled *Combating Impunity*, as well as the section of this Report dedicated to the fight against impunity.

58. *Tasers* in Italy?

From March 2017, the Department of Public Safety has begun, in a limited number of Italian cities, experimentation with the use of Tasers (acronym of *Thomas A. Swift's Electronic Rifle*). A Taser is a device similar to a gun capable of release high voltage electric shocks in order to inhibit the autonomous use of the muscular system and render individuals essentially impotent, although for a brief period, in order to allow agents to place them under control during police operations.

From March 2017, the Department of Public Safety has begun, in a limited number of Italian cities, experimentation with the use of Tasers (acronym of *Thomas A. Swift's Electronic Rifle*). A Taser is a device similar to a gun capable of release high voltage electric shocks in order to inhibit the autonomous use of the muscular system and render individuals essentially impotent, although for a brief period, in order to allow agents to place them under control during police operations.

The use of this device, which is part of the so-called "non-lethal weapons", hitherto unknown in the range of equipment used by Italian police forces - but used abroad, especially in the United States - was already introduced a few years ago in Italian legislation, through an amendment to the law on the safety of stadiums of 22 August 2014, then converted into the law of 14 October 2014, no. 146. In fact, Article 8 states that "the Public Safety Administration shall initiate, with the necessary precautions for public health and safety and according to precautionary principles and prior agreement with the Minister of Health, the testing of the electric *Taser* pistol for the needs of their institutional tasks".

On 28 February, the Department consequently issued some *Technical and Operational Guidelines* for the initial experimentation of the electric *Taser* pistol model "X2". These guidelines reiterate the concept that the electric pistol is "according to the legal qualification offered by the current legislation on weapons, a weapon in its own right [...]" and that it is, therefore, "to be used by police operators in the service of institute and its use is allowed only in the cases provided by the current legislation for the use of weapons". Furthermore - emphasize the Guidelines - "The use of the weapon in question is alternative to that of the firearm, in cases where it is necessary to temporarily immobilize the subject".

It therefore appears out of the question that, at least in principle, the use of *Tasers* - as in the case of firearms - can be justified only in a very limited area of cases and that, moreover, we must take into account that the benefit deriving from a reduced use of lethal weapons is certainly counterbalanced by some negative elements that are not negligible: the potential risks of abuse, deriving precisely from its alleged non-lethality; the suffering caused by the electric discharge with which it is associated, in addition to the loss of control of the muscular system, acute pain, and the further physical consequences as the person affected by the *Tasers* normally falls on the ground and can therefore suffer injury to the head or to other parts of the body. Finally, in severe cases, death may occur from cardiac arrest or consequences, for example, on the health of the foetus in the case of pregnant women. Regarding the possibility of death[11], the *Reuters* agency meticulously documents on its website, 1,033 deadly episodes related to the use of the *Taser* in the United States: data confirmed also by other non-governmental organizations working on this issue. The concept of "non-lethal weapon" is shaky when viewed alongside these numbers.

In 2010, the CPT intervened on the use of *Tasers* in its discussion of them as part of its 20th Annual Report, drawn up after extensive consultation also on a technical level, as credible evidence had been gathered on the use of this device for the purpose of the maltreatment of persons deprived of their liberty. The observations and recommendations drawn from the CPT document constitute a substantial basis for reflection for all the national Authorities which, on the basis of a law and specific regulations, intend to introduce or introduce weapons based on the release of one or more electric discharges.[121]

First of all, the basic criterion or guiding principle in this context is that, being a weapon, the use of the electric pistol is linked to constraints of necessity, subsidiarity, proportionality, gradualness and precaution. Thus a *Taser* can only be used in the presence of a real and immediate threat that puts life or the physical safety of people at risk. It follows that the use of this device for the sole purpose of ensuring the execution of an order is unacceptable.

Thus a *Taser* can only be used in the presence of a real and immediate threat that puts life or the physical safety of people at risk. It follows that the use of this device for the sole purpose of ensuring the execution of an order is unacceptable.

But there is an additional precautionary criterion: the use of the *Taser* can only be allowed when less coercive methods or measures such as negotiation, persuasion or, in case of close distance, physical restraint techniques, have failed or are impracticable and only if the non-use of the electric gun could pose a great risk of serious physical injury or death. It absolutely may not be authorized in those contexts where the use of traditional weapons is not permitted such as, for example, in places of deprivation of liberty such as prisons, administrative detention centres for migrants, or in the course of forced repatriation operations, unless exceptional circumstances such as, for example, hostage taking occur. There is no way, however, that the use of the electric pistol may become standard in such places and contexts. This prohibition of standardization should also be extended to public order keeping operations for protests, sporting events, etc.

According to several reports collected in recent years, in the countries that have already adopted its use, the *Taser* is mainly used during the arrest phase, with the methods and the precautions mentioned above. However, it should be clarified that in case of repeated discharges on people already unarmed and on the ground, the crimes of mistreatment and torture can be easily configured - with criminal

11. See, inter alia, Douglas P. Zipes, *Sudden Cardiac Arrest and Death Following Application of Shocks from a TASER Electronic Control Device*, published in *Circulation* by the *American Health Association* 22 May 2012.

12. In particular, the *Omega Research Foundation* provides a basis of information on instruments on the market that can be used, directly or indirectly, for torture. The European Union has set up rules to inhibit the trade in instruments that may potentially be used for torture since 2005 (*Council Regulation (EC) 1236/2005*) and amended it on 23 November 2016 (*Regulation (EU) 2016/2134 of the European Parliament and of the Council*) on the basis of the work of a special commission composed of eight members from different EU countries, including the Chairman of the National Guarantor.

National Guarantor for the rights of persons detained or deprived of personal liberty
Security and freedom

consequences for the police operators. In this regard, it is necessary to clarify that the electric gun can only be used by personnel specifically trained for this purpose, who have been previously selected on the basis of criteria such as resistance to stress and the ability to properly interpret operating situations, being professionally equipped with other tools for resolving critical situations. Training for the use of *Tasers* should include frequent specialized courses and recurring evaluations.

From the technical point of view, the *Taser* should be calibrated in such a manner that the number, duration and intensity of the discharges are kept within a safe level. Furthermore, it is necessary to include technical tools - for example micro-chips - that can accumulate information about the use of the gun and its user; information that must be periodically checked. If it is actually intended to begin experimentation and if this expected to be expanded, then it is essential to also establish an external Authority that - at the national level - monitors the use of electric guns by police operators, also on the basis of a principle of caution for the operators themselves. The National Guarantor, in questioning the actual necessity of their introduction, recommends that these precautions be respected in the experimentation.

From the technical point of view, the *Taser* should be calibrated in such a manner that the number, duration and intensity of the discharges are kept within a safe level. Furthermore, it is necessary to include technical tools - for example micro-chips - that can accumulate information about the use of the gun and its user; information that must be periodically checked. If it is actually intended to begin experimentation and if this expected to be expanded, then it is essential to also establish an external Authority that - at the national level - monitors the use of electric guns by police operators, also on the basis of a principle of caution for the operators themselves.

From the medical point of view, there is no doubt that the use of electric guns involves significant risks to the health of the person who experiences the shock. A general precautionary principle therefore indicates that it should not be used on the elderly, the very young, or on pregnant women. It should also not be used on people who are mentally disturbed or under the influence of psychotropic substances. In fact, the documentation of numerous cases in the United States shows that death occurred in relation to its use on people who manifested forms of delirium or were drug addicts. In relation to this it has been recommended that the countries that have already introduced these, supposedly non-lethal, weapons, engage in the operational practice of performing a medical examination immediately after any use and, if necessary, taking the person to the hospital for related checks. It is also necessary after each use of this non-lethal weapon to require a debriefing of the operators who participated in the operation, as well as the drafting of a detailed Report to be submitted to the top management.

The *Guidelines* published by the Ministry of the Interior on the use of the *Taser* seem to follow the multiple aspects listed here and the recommendations of the CPT in terms of the conditions of use, procedures for use, precautions and training. The decision to begin an initial experimental phase limited to a small number of Italian cities, indicates a caution and gradualness on the part of the competent Authority with respect to the introduction of a device that requires careful monitoring and evaluation. The question remains as to what the actual need that led to the 2014 legislation expanding the weapons supplied to law enforcement with a device that requires much more caution than its non-lethal description suggests was.

Networks

Networks

59. Regional guarantors, their laws and differences

The Regional Guarantors of persons deprived of personal liberty, whatever their name, are protective agencies established within the bodies of the respective Regions.

The Regional Guarantors of persons deprived of personal liberty, whatever their name, are protective agencies established within the bodies of the respective Regions. Some of them were established several years before the National Guarantor, although some Regions - such as Basilicata, Liguria and the Autonomous Province of Bolzano - are still lacking their own guarantee body. This phenomenon has created a certain lack of homogeneity between the laws establishing the various Regional Guarantors.

An examination of the regional laws of the 15 Guarantors established reveals the first incongruity, which affects five Regions [Lombardy, Marche, Molise, Valle d'Aosta and Veneto], that have established a more generic guarantee agencies that does not cover the area of deprivation of liberty alone. These regions have established an Ombudsman, who is responsible for representing the rights of natural and legal persons vis-à-vis public administrations and public service operators, as well as promoting, protecting and enforcing the rights of persons deprived of their personal liberty. Furthermore, some of them protect the rights of children and adolescents through awareness, protection, orientation and support activities.

The National Guarantor has in general expressed some reservations concerning the control activity of the Ombudsman in the complex area of deprivation of liberty because, unlike the National Guarantor, it is distinguished by a *reactive* approach for all of its areas of interest. The National Guarantor considers the population of individuals deprived of liberty a complex and specific social minority, which needs to be treated and dealt with by means of holistic interventions that take into account various factors, some of which are certainly also reactive, but essentially of a *preventive* nature. Furthermore, deprivation of liberty requires a specificity of continuous observation, assessment and skill that risks becoming compromised within an excessively broad system of general protection. Of course, the National Guarantor is equally committed to collaborative and coordinating action with all Regional Guarantors, regardless of their legal configuration, but requests that the Regions do not establish the general guarantee agency model where it has not yet been adopted, and to review it where it is already in place.

The Regional Guarantors of persons deprived of personal liberty are generally elected by the Regional Council, whereas in Sicily the Guarantor is appointed by decree of the President of the Region. The term of office varies from three years, with the possibility of being re-elected several times [Veneto], to seven years, with the possibility of being re-elected only once [Sicily]. For some, the appointment coincides with the beginning and the end of the regional legislature [Abruzzo, Marche, Piedmont, and the Autonomous Province of Trento]. As regards the possibility of revoking the mandate of the Regional Guarantors, in some regions this may occur due to non-fulfilment or violations of duties related to the exercise of its mandate, in other regions, however, revocation is envisaged following a reasoned motion of the Regional Council, while in other cases only for serious, yet undefined, reasons [Tuscany]. The extent of the mandate of these guarantee agencies is also not uniform. In fact, for some

Regions, this mandate does not cover the administrative detention centres for migrants or does not include the facilities where involuntary medical treatments are carried out. The only area of activity that unites them is the traditional one of persons detained in prisons.

This quick overview clearly shows that it would be useful to standardize the many differences, including those concerning, among other things, financing, and the incongruences and requirements for appointment of the Regional Guarantor. This would make it possible to influence particular situations, for example the fact that some Guarantors receive only a percentage of the funds allocated for the office of Regional Councillor as compensation (even though the task is no less demanding), or by clearly establishing which professions are incompatible with this role in order to avoid any conflict of interest and to prevent multiple appointments [Lazio and Umbria] in which the Regions can find themselves 'competing' with the Guarantor, forcing it to take on sometimes excessive workloads.

Working closely with the territory is extremely valuable and it is precisely herein that lays the potential of the territorial Guarantors. Precisely on this basis - as well as for the tasks assigned to it by the establishing laws - the objective of the National Guarantor is to network with its regional counterparts and, subsequently, with provincial and municipal agencies. Networking is essential given the dual complexity of the territories and areas of intervention. Equally essential is the need to standardize laws, powers and tasks, preferably by calibrating them with international instruments such as the European Convention for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment of 1987 and the Optional Protocol to the UN Convention against Torture of 2002.

Networking is essential given the dual complexity of the territories and areas of intervention. Equally essential is the need to standardize laws, powers and tasks, preferably by calibrating them with international instruments such as the European Convention for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment of 1987 and the Optional Protocol to the UN Convention against Torture of 2002.

60. Network building

Remaining focused on the theme of *community building*, the National Guarantor has invested a large part of its second year of activity in the construction of potential communities of *stakeholders*, with a view to the evolution and reinforcing of the system of protection of the rights of persons deprived of personal liberty.

As early as November 2016, meetings were held with the Regional Guarantors to inform them of the desire to implement a FAMI Network as part of the project "Implementation of a system for monitoring forced repatriations" of the 2014-2010 FAMI National Programme, launched in April 2017. This is a *NPM Network* based on the OPCAT, coordinated by the National Guarantor, in compliance with what was communicated in the diplomatic letter of 25 April 2014, of the Permanent Mission of Italy

in Geneva to the International Organizations, and to the UN Subcommittee (SPT)[1]. Therefore, the purpose of the two networks falls with the larger scope of the National Guarantor's evolution project and the independent supervisory role that is achieved through the unrestricted access to places of deprivation of liberty, documents and persons held there.

The NPM Network is, in fact, a networked community of Regional Guarantors in which the task of the National Guarantor is to contribute to the construction of a coherent system among the different Regions, with a mandate extensive enough to make the national network of Guarantors an overarching National Preventive Mechanism having the requirements for accreditation by the SPT[2]. This Network, due to the difficulties encountered especially as relates to the extent of the mandate (until now restricted only to places of criminal detention), and to the independence and confidentiality of the actions carried out by the Regional Guarantors, is still in *the project stage*[3], even though considerable progress has been made and both of the United Nations' control bodies - CAT and SPT - while they do not yet consider the Regional Guarantors as 'nodes' of this network, have encouraged continuing the activity of effectively building this network[4]. If the *NPM Network* is achieved, the role of the Guarantor within it will be to coordinate the activities of the Regional Guarantors and to send the results from all monitoring activities to the authorities concerned at the central level, through the instrument of recommendations.

The NPM Network is, in fact, a networked community of Regional Guarantors in which the task of the National Guarantor is to contribute to the construction of a coherent system among the different Regions, with a mandate extensive enough to make the national network of Guarantors an overarching National Preventive Mechanism having the requirements for accreditation by the SPT.

The *FAMI Network* was completed with the signing of bilateral agreements with several Regional Guarantors[5] in order to expand and reinforce the national system of monitoring forced repatriations by providing additional and territorial resources. Controls were thus intensified on flights for the repatriation of foreign persons and the Regional Guarantors' personnel involved in the Network received training in the specifics of the mandate both in the classroom and in the field. Thus, the role of the Guarantor remains that of monitoring forced repatriations pursuant to Directive 2008/115/EC, a role that, through the *FAMI Network*, it may also delegate, if necessary, to the Regional Guarantors who have signed the bilateral agreement.

1. United Nations Subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, established by the OPCAT. It is headquartered in Geneva.

2. As indicated in the Guidelines of the National Guarantor for the establishment of the Regional Guarantor of the rights of persons detained or deprived of personal liberty, the necessary requisites are: duration and extent of the mandate of the interested parties, independence, cooperative approach and confidentiality.

3. The National Guarantor is firmly convinced of the need to build the NPM Network and, to this end, met in February with a delegation of Regional Guarantors at the Conference of Presidents of Legislative Assemblies of Regions and Autonomous Provinces to work together to create the bases for an action plan to be proposed to the Government.

4. The reference is to the 62nd session of the Committee of Nations against Torture, held in Geneva from 6 November to 6 December 2017. The four-year Report on the implementation of the Convention by Italy was discussed from 13 to 15 November. On 14 November, the Committee held a closed hearing with the National Guarantor.

5. At the time of writing this Report, the Regional Guarantors of Campania, Emilia Romagna, Lazio, Marche, Piedmont, Apulia, Sicily and Tuscany had joined the FAMI Network.

61. The multilevel system

The system for the protection of human rights has now become a multilevel system, within which the internal level comes, in principle, first (in a temporal sense and in a logical sense) before the international level. In fact, States do not commit themselves only to *respect* but also to *guarantee respect* of the rights included in the catalogue of internationally recognized rights. The guarantee of those rights must be achieved, first of all, within the political and legal system of each State - which is required to have and to effectively operate effective internal means of guaranteeing individual rights. Only in the second instance, when the internal means have not worked properly - either due to their inadequacy, or lack of political will - do the various international guarantee procedures take over.

The system for the protection of human rights has now become a multilevel system, within which the internal level comes, in principle, first (in a temporal sense and in a logical sense) before the international level. In fact, States do not commit themselves only to *respect* but also to *guarantee respect* of the rights included in the catalogue of internationally recognized rights.

This multilevel nature of the system expresses some well-known rules. First among these is the rule of the "prior exhaustion of internal remedies", according to which it is possible to appeal to a Regional Court of Human Rights (starting with the Court of Strasbourg) or to a Committee of the UN system (for example , the Human Rights Committee or the Committee against Torture) only on condition that all useful and available internal remedies have been unsuccessful. The aim of coordinating the different levels of human rights protection is also the "complementarity principle", according to which the International Criminal Court exercises its functions of ascertaining and sanctioning the most serious and systematic violations of human rights only in the extent to which no State is able or willing to do so.

The internal means of guarantee that international law requires States to have and to operate are, first and foremost, the normal ones, present in the field of state criminal, civil, and administrative legal systems. However, 'special' national guarantees of rights do exist, and may play a very important role, especially in the prevention of human rights violations. The institution of such guarantees is the object, at the international level, of both acts of *soft law* and of binding obligations. Among the former we mention the so-called *Principles of Paris*, approved by the General Assembly of the United Nations with resolution 48/134 of 1993, which promote the creation of independent national Institutions for human rights and indicate the fundamental requisites[66]. Among the latter, however, is the Regional Protocol to the UN Convention against Torture which, in addition to establishing an International Organ for the Prevention of Torture (SPT), requires States Parties to set up NPMs.

The National Guarantor for the rights of persons detained and deprived of personal liberty is fully

6. Principles relating to the status of national human rights institutions (1993), attached to the Resolution of the United Nations General Assembly 48/134 of 20 December 1993.

part of the 'special' guarantees of human rights. It has in fact a plurality of "mandates", each of which is set within a legislative framework that is European and international, as well as national. Relevant in this regard, firstly, is Article 3 of the European Convention on Human Rights, which imposes not only a negative obligation to abstain from the practice of torture and inhuman or degrading treatment or punishment, but also a positive obligation to equip oneself with an adequate system of prevention and repression of such practices. Set in this context, in fact, is the *Action plan* elaborated as a response to the "pilot" ruling in the case *Torreggiani and others v. Italy* of 2013 - a plan that included, among other preventive measures, the establishment of the National Guarantor. The Guarantor is, moreover, an NPM, fulfilling the obligation to establish such an internal guarantee body as provided for in the aforementioned Optional Protocol. A further 'mandate' of the Guarantor is set out in European Directive no. 115 of 2008 - the so-called *Repatriation Directive* - Article 8 (6) of which imposes a state system for monitoring the forced repatriation of illegal third-country nationals. It is in this context that the Guarantor is recognized by the supranational bodies of which it is an expression or upon which it depends, both with respect to the 'regularity' of its system and its own actions, and with respect to the effective protection of the rights of persons deprived of liberty.

In short, the Guarantor is, for more than one reason, an integral part of an extensive multilevel system of human rights protection, at the same time national and international (of the United Nations, of the Council of Europe and of the European Union), to the overall good functioning of which it aims to make an effective contribution. This was the purpose of the meetings held last year with the various supranational bodies and also with their national counterparts in other countries: with the CAT on the state of implementation in Italy of the United Nations Convention against torture, with the SPT, also in view of the creation of a national NPM Network, with the Human Rights Committee on the state of implementation in Italy of the UN International Covenant on Civil and Political Rights, with the Committee of Ministers of the Council of Europe on the execution of judgments of the European Court of Human Rights, to illustrate the actions taken by Italy following the condemnation of Italy for prison overcrowding, with the CPT on the occasion of its visit to the places of deprivation of liberty in Italy, with particular reference to the facilities for migrants, with the various NPMs and the human rights organizations of the North African countries in the process of being established or consolidated, with the Mediterranean Ombudsman Association, which visited a CIE and a hotspot, with the *RAN Network (Radicalisation Awareness Network)*[7] to combat Islamist radicalism, with the Frontex Agency as part of the monitoring of the forced repatriation of illegal migrants, with various Associations operating in the protection of the rights of persons deprived of liberty such as *the Association pour le prévention de la torture* (APT), and the *NPM Observatory*, and with the *NPM Forum* on the "Pilot project for the creation of a European repository of knowledge on criminal monitoring".

7. The *Radicalisation Awareness Network* (RAN) is a work group set up by the European Commission at the initiative of Commissioner Cecilia Malmström in 2011, following the massacre in Utoya, Norway.

62. A network to guarantee the rights of people with disabilities

On several occasions during its first year of activity, the National Guarantor presented its activity of guaranteeing the rights of persons deprived of their liberty in a didactic and effective manner. There are three flags - those that fly in front of its headquarters in the Trastevere district of Rome - that correspond to the same number of sources of regulatory power: the tri-colour Italian flag that refers to the law establishing the Authority, the map of the stylized world ensconced in a wreath of olive branches on a blue field that alludes to the UN mandate contained in the OPCAT, and the twelve golden stars arranged in a circle on a blue background that recall the mandate of Directive 2008/115/EC of the European Union.

During the second year of activity, another United Nations emblem has been added that depicts a sort of stylized human figure with open arms set in a circle, which recalls the Vitruvian man of Leonardo and symbolizes the inclusion of people of "all abilities" around the world.

During the second year of activity, another United Nations emblem has been added that depicts a sort of stylized human figure with open arms set in a circle, which recalls the Vitruvian man of Leonardo and symbolizes the inclusion of people of "all abilities" around the world.

The reference Convention is the *Convention on the Rights of Persons with Disabilities* (CRPD) approved by the General Assembly of the United Nations on 13 December 2006. Italy signed the *Convention on the Rights of Persons with Disabilities* on 30 March 2007, and ratified it on 15 May 2009[8]. The *monitoring body* of the Convention, that is, the body that must oversee the respect of human rights recognized by the Charter and more generally assess its state of implementation with respect to the individual States that have ratified it, is the *Committee on the Rights of Persons with Disabilities*. The Committee receives and examines the Reports that States Parties are required to present periodically. Article 35 of the Convention stated that the first Report of the States Parties was due in Geneva within two years.

But, let's take a closer look at the situation in Italy. Italy took a little more time to prepare its first Report and submitted it on 21 January 2013. The Committee received the Report and drafted a list of issues on which the States were requested to provide clarifications or additional information (24 March 2016). As to point no. 16 of the list of issues - which concerns the application of Article 15 of the Convention, that is the oft mentioned "*right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment*" - the Committee asked Italy to indicate a time frame within which the mandate of the National Preventive mechanism for Cruel, Inhuman or Degrading Treatment would effectively include visits to psychiatric institutions and other residential facilities for people with disa-

8. The date when ratification law no. 18 of 3 March 2009 was filed with the United Nations.

bilities, in particular for people with intellectual or psychosocial disabilities[9].

Italy submitted its response to the list of issues to the Committee after a couple of months (2 June 2016). To point no. 33 the State replied to the Committee explaining that in Italy the matter was currently under consideration by the National Guarantor of the Rights of detainees and persons deprived of personal liberty that has been identified as the National Preventative Mechanism[10]. On 24 and 25 August 2016, there was a session held in Geneva in which the Committee heard the Italian delegation on its first report. On 5 October 2016, the UN Committee published the *Concluding observations* whose point no. 42 recommended that Italy, through its National Preventive Mechanism immediately visit and report on the situation in psychiatric institutions or other residential facilities for persons with disabilities, especially those with intellectual or psychosocial disabilities[11].

Monitoring for health care includes involuntary medical treatments (*TSOs*), the Psychiatric Diagnosis and Treatment Services (SPDC) and, for hospital settings, the REMS, whose units intersect with the criminal area, being established for security measures, and the social *care homes.*

The National Guarantor is well aware of this delicate mandate that, we recall, grants it the power to visit not only legal, but also *de facto* places of deprivation of liberty, on the basis of Article 4 of the OPCAT previously ratified by Italy. This implies the obligation to visit not only "traditional" places of deprivation of liberty such as prison but also "non-traditional" places and situations. *As has already been greatly discussed in this Report, monitoring for health care includes involuntary medical treatments (*TSOs*), the Psychiatric Diagnosis and Treatment Services (SPDC) and, for hospital settings, the REMS, whose units intersect with the criminal area, being established for security measures, and the social* care homes. In this context, the control of the National Guarantor is peculiar because it is focused on the rights of the people who are hosted there and not on the more traditional approach that primarily considers the health and medical profiles. And it is here that the legislative instrument represented by the UN Convention on the Rights of Persons with Disabilities is useful, particularly in some of its provisions. Like that of Article 14, which states that people with disabilities should not be deprived of their liberty. Or like Article 15, already mentioned, which concerns the establishment of the National Guarantor as a Preventive Mechanism with respect to torture and serious ill-treatment, or Article 17 that emphasizes how every person with a disability has the right to the respect of only physical but also mental integrity and, above all, Article 19, which affirms the right to independent living and inclusion in the community[12]. This last profile is perhaps one of the most complex to monitor in these residences, which somehow end up completely enveloping the lives of the people who are hosted there. These people, in fact, should always remain subjects that maintain the ability of self-determination and - naturally within the limits of their physical and psychological capabilities - to exercise the right to choose and disapprove.

Finally, there is another international body that deals with the same issues as the Convention, even if it belongs to the Council of Europe and not to the UN: the *Ad Hoc Committee of Experts on the Rights of Persons with Disabilities* (CAHDPH). This *ad hoc* Committee may further assist the National Guarantor in its monitoring of those minority or disability situations that spill over into cases of segregation or that risk becoming such.

The tendency and also the hope of the National Guarantor is to gradually increase its control of non-traditional places of deprivation of liberty compared to traditional ones like prison, on the assumption that the former, precisely because they are not traditional, are generally less monitored, in addition to the fact that they are sometimes less clearly recognizable as places where people are actually deprived of personal liberty. Naturally, the complexity of the task requires territorial proximity - unavoidable if it is to be effective - in order to identify first and foremost the facilities to be monitored, to understand their various features, to forge relationships of cooperation and confidence with the local organizations operating there, also on a voluntary basis, and to have a continuous flow of micro-information about life on the inside, which is far too often shrouded in a cloak of obscurity. Thus, this is yet one more *network* that the Guarantor is engaged in consolidating.

9. "Please indicate a time frame for including within the mandate of the national preventive mechanism visits to psychiatric institutions and other residential facilities for persons with disabilities, particularly persons with intellectual or psychosocial disabilities"

10. *"The matter is under consideration by the National Guarantor of the Rights of detainees and persons deprived of personal freedom who has been identified as the national preventative mechanism".*

11. *"The Committee recommends that the national preventive mechanism immediately visit and report on the situation in psychiatric institutions or other residential facilities for persons with disabilities, especially those with intellectual and/or psychosocial disabilities"*

12. For more on this see the *Freedom and health* section of this Report.

63. Primary legislation for the National Preventive Mechanism

As already stated, the Optional Protocol to the UN Convention against Torture (OPCAT) grants the States the ability to decide how to configure their NPM: they may either establish a centralized body or set up bodies at the local level that correspond to the standards set out in Article 17 of the Protocol. Many States have entrusted this task to a pre-existing Ombudsman, sometimes setting up a special division within it, while others have established an independent Institution under their constitution authority for the non-jurisdictional protection of subjective rights. Italy, as is done in these cases, issued a diplomatic letter - *Note Verbale of the Permanent Mission of Italy to the United Nations Office*, 25 April 2014 - notifying the UN Sub-Committee (SPT) of the appointment of its own *National Preventive Mechanism* (NPM). In this correspondence it clarified, in particular, two points.

The first: the National Guarantor, established by law, will coordinate the network of local Guarantors formed by already existing Institutions or those still to be established at the regional or sub-regional level; naturally, the local Guarantors will submit their recommendations to the corresponding local Authorities, while the National Guarantor will do so with the Central Government. Second point: the entire system will constitute the *National Preventive Mechanism* pursuant to the OPCAT. This provides a national and networked territorial mechanism coordinated by the National Guarantor. As for this last point, it could not be otherwise: if it is true that even local bodies can become part of *National (preventive) Mechanisms*, it is also true that they cannot act alone because each of them has authority limited to its territory, making it, therefore, difficult to be represented at the national level, especially in situations where criminal enforcement is not territorialized, but central. Thus there is the national structure, whose coordination of local agencies serves to act as 'glue'. This coordinating function also includes international representation of the *NPM Network*, which maintains relations with independent international bodies and proposes the accreditation of local Guarantors for the network to the UN on the basis of their compliance with the OPCAT.

So far the biggest obstacle to the creation of the network has been the diversity of the laws establishing the local guarantors - each having different characteristics and powers - to which the National Guarantor has tried to cope by publishing *Guidelines* aimed at harmonizing the regulations, so as to render them compliant with the criteria established by the Protocol. The creation of the network is a work in progress that is proving laborious, but one that is certain to achieve the goal of a networked prevention system. The current situation is still in the 'intermediate' phase: some Regions still lack legislation for the Regional Guarantor, while others have such a Regional Law and have not as yet appointed it. There are yet other situations in which the existing Regional Laws need to be amended to make them fully compliant with the requirements of the United Nations.

So far the biggest obstacle to the creation of the network has been the diversity of the laws establishing the local guarantors - each having different characteristics and powers - to which the National Guarantor has tried to cope by publishing *Guidelines* aimed at harmonizing the regulations, so as to render them compliant with the criteria established by the Protocol.

The difficulties that been encountered while attempting to set up the network also seem to be linked to the lack of an authoritative law on the subject that greatly affects the local autonomous agencies. This is why the National Guarantor believes that the content of the *Note Verbale* should be redefined through the adoption of a piece of primary legislation that also indicates the need to provide the structures that are defined by the region with adequate resources to deal with the many areas of intervention that will be required of them.

A primary regulation for defining the NPM system adopted by Italy would certainly help to overcome the issue of assigning tasks and effectively guarantee effective local protection as required by the UN Protocol.

64. Pending requests

An annual Report to Parliament cannot disregard the recommendations made the previous year, when the same Report was submitted. With regard to what was set out in March 2017, one cannot help but point out that some of the evolutionary and planning lines presented have only partially been implemented, and require renewed commitment by both the Guarantor itself and the Administrations with which the Guarantor interacts and relates within the scope of its mandate.

An annual Report to Parliament cannot disregard the recommendations made the previous year, when the same Report was submitted. With regard to what was set out in March 2017, one cannot help but point out that some of the evolutionary and planning lines presented have only partially been implemented, and require renewed commitment by both the Guarantor itself and the Administrations with which the Guarantor interacts and relates within the scope of its mandate.

Before briefly examining these issues, we should reiterate the positive collaboration that the Guarantor has enjoyed with the institutions at the highest levels, and with the administrations directly concerned: the Departments of Justice, the Interior, Defence and Health, as well as the State-Regions Conference, Local Authorities, and the Regional Government Bodies. The forging of these relationships, with the shared aim of increasing the standards of protection of the rights of people in Italy - and therefore of democracy - and the, frequently expressed, common desire to move in this direction are undoubtedly an important signal.

Here below are some of the evolutionary lines that have not yet been fully accomplished, though for some of things have begun to move in the right direction.

Criminal:

- *The suspension or deferment of sentences due to mental infirmity, just as with physical infirmity*.
  This critical issue[13] has already been discussed in the previous pages of this Report. Resolution of this point is entrusted to the issuing of the legislative decree implementing the delegated law 103/2017 which, at the time of closing this Report, is still pending. The National Guarantor hopes that the matter will be resolved before the actual submission of what has been written up to now to Parliament.
- *Full compliance with all aspects of the special regime pursuant to Article 41 bis of the Penitentiary Act in all Institutes where it is implemented, as per the dictates of the Constitutional Court.*
  Over the course of the past year, the Guarantor visited all the detention departments under special regime pursuant to Article 41 bis of the Penitentiary Act with the aim of verifying the correspondence between the effective application and the aims of the regime, and its compliance with

13. Following the closure of the Forensic Psychiatric Hospitals, for persons who, although capable of being imputed, have developed serious mental illness, there is currently no other possibility than to remain in prison; nor is a discretionary suspension of the sentence envisaged. The decree in question provides for the abolition of Article 148 of the Penal Code and the insertion of serious mental infirmity in Article 147 of the Penal Code, on par with physical infirmity.

the constitutional requirement. This issue is discussed in great detail in the section of the Report dealing with special detention: there are still aspects as yet unresolved, even after the issuing of a memorandum by the Penitentiary Administration Department aimed at resolving these aspects and standardizing the special regime in all Institutes where it exists.

- *Abolition of the so-called "reserved areas".*
  This is an extremely critical topic, and is discussed in the section dealing with these areas. The issue has, however, opened a debate that the Guarantor intends to continue, also in order to comply with the findings of international control bodies, such as the CPT.

Migration:

- *The introduction of complaint mechanisms for migrants*
  A year later, the problem of the lack of an appeal tool for migrants to raise complaints about the conditions of detention remains open; as described in the relevant section of this Report, it is a gap highlighted by a specific ruling by the ECHR (15 December 2016). Thus, the National Guarantor once again requests a reflection on the need to establish a procedure for making complaints that allows the assertions to be brought before an independent Authority.
- *Strengthening guarantees in agreements with third countries*
  Forced returns are permitted only with those countries with which Italy has established readmission agreements, negotiations both at national and at European levels. However, such agreements may reduce guarantees, in order to accelerate the negotiation process and achieve speedier agreements in terms of diplomatic relations. Therefore, it is essential to strengthen the protection of rights, highlighting, even by referring to the guaranteeing institutions' advice, such as the National Guarantor, any risk factors with respect to possible violations, which can arise from the modalities and conditions of removals." This is what the Guarantor wrote in its 2017 Report. In light of the changing international and national contexts of the countries of origin of migrants and the primary need to protect people to be repatriated, the Guarantor, with a view to collaboration between State Institutions, reaffirms the need to keep this attention alive and hopes for greater involvement of the guarantee institutions, such as the National Guarantor, in the pre-negotiation phases of agreements concerning repatriation arrangements and conditions and possible violations of rights.
- *The strengthening of the negotiating autonomy of the National Guarantor in its relationship with Frontex.*
  A member of the Board and a member of the Office of the National Guarantor participated in the special training activities for monitors, obtaining certification as a European monitor, to be used in the monitoring of forced repatriation flights, consolidating the relationship with the Frontex Agency, from which the National Guarantor regularly receives calls that, in respect of the reciprocal prerogatives, are evaluated according to organizational demands. However, there remains a need for greater definition and clarity with respect to the impartiality of the monitoring role of the independent national monitoring bodies (in the case of Italy, the National Guarantor) which are at the same time also monitors of the Frontex pool.
- *The construction of an international NPM network*
  The National Guarantor has taken part in some international cooperation meetings with third countries that are destinations for the subjects subjected to repatriation operations, in order to consider the possibility of providing support to the repatriated when they are delivered to the authorities of the country of origin. The first contacts were made with Tunisia through representatives of the United Nations Development Programme - Tunisia (PNUD-Tunisie) and *Instance nationale pour la prévention de la torture* (NPM of Tunisia). The National Guarantor met with the PNUD-Tunisie representative in Rome and a short-term action programme was launched to start cooperation. Algeria and Morocco still remain within the framework of the National Guarantor and the first contacts are being created for the definition of future initiatives.

Police Forces

- *The identifiability of all the institutional actors who manage the deprivation of liberty*
  The topic has been debated in various encounters. The Guarantor reiterates the need to guarantee that all actors involved may be identified, as an element of the promotion of democracy and human rights in the belief that this ability also protects Law Enforcement operators, who otherwise risk being held accountable as a whole for potential acts of a few.
- *The absolute independence of the Body that investigates cases of mistreatment*
  The cases - that the National Guarantor has found - in which the interrogations or the investigations of the people involved in an episode and belonging to a particular Body are conducted by subjects belonging to the same Body risk nullifying the perception of independence and impartiality of the investigation and are also open to possible inferences about their effective desire to investigate. For this reason, the National Guarantor reiterates the relevance of this point.

Health

- *The implementation of a procedure to notify the National Guarantor about involuntary medical treatments (TSOs).*
  The National Guarantor hoped that the notification to the Guarantor of the individual measures for the use of planned TSOs and any renewals would be envisaged. The Parliament did not discuss a bill presented to this effect in the lastest Legislature. In light of what is described in the section of this Report on health protection, the Guarantor renews this request and hopes that the political powers will pick it up and that Parliament can discuss it.

As regards, instead, the structure of the Office of the National Guarantor, it must be noted with satisfaction that the law of 27 December 2017, no. 205 introduced multi-disciplinary criterion in the composition of the personnel working with the Guarantor, accepting the proposal formulated in the previous Report to the Parliament.

The Guarantor reiterates the need to guarantee that all actors involved may be identified, as an element of the promotion of democracy and human rights in the belief that this ability also protects Law Enforcement operators, who otherwise risk being held accountable as a whole for potential acts of a few.

Regional Guarantors

The mandate of the National Guarantor includes the activity of coordinating local Guarantors. It is in this context that it asked each of them for a report on the activities performed throughout the year according to three guidelines: significant legislative changes that occurred at the regional level, operational areas - relating to the different areas, i.e. criminal, migrants, police forces and health - dealt with during the year, and the focus on these operational areas.

Campania

Samuele Ciambriello

Regional legislation regarding the position of the Regional Guarantor, its powers and operational areas, has not changed from last year.

Since the appointment of the new Guarantor, Samuele Ciambriello, which took place at the end of September 2017, the Regional Guarantor has made 44 visits to 18 Prison Institutes present in the Region. Naturally, in some larger and crowded Institutes - such as the prisons of Secondigliano, Poggioreale, Santa Maria Capua Vetere and Salerno -, visits were regular and ongoing, also considering the large number of visits requested by the prisoners.

Overall, the Guarantor and his staff effected 557 visits followed, almost always by interventions at the penitentiary institutions, in particular with the DAP, the PRAP, the directors and medical directors of the Institutes, as well as with the Supervisory Court, the local health authorities (ASL) and hospitals.

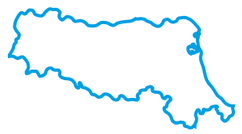
The main problems that emerged were:
- Transfer requests for family reunification;
- Lack of knowledge by inmates of their instructor;
- Excessive delays in obtain exams or outside specialist visits in public facilities;
- Significant delays relating to health care even within the penitentiary system and an almost complete absence of some specialties;
- Scarce job opportunities within prison institutions, often only for a few months a year due to rotation among prisoners;
- Delays of the Supervisory Court in acknowledging early release days, with repercussions on the granting of benefits such as alternative measures to detention; - Extreme delays with the Court in making decisions regarding detainee applications for "free legal aid" assistance.

With regard to the Supervisory Court, the Guarantor also observed low usage of the allowances pursuant to Article 30-ter as an exceptional and non-rewarding instrument and a granting of fewer days than those provided for by law and exclusively for "religious holidays".

The Guarantor's attention was also focused on awareness events relating to penitentiary health care, in particular on mental health in prisons and mental health protection units present only in some Institutes, but not sufficiently in relation to the needs. Visits were made to the psychiatric units present in the Campania Institutes of Secondigliano, Santa Maria Capua Vetere, Pozzuoli, Benevento and Sant'Angelo dei Lombardi.

Also worthy of note here is the establishment and start-up of the*Observatory on the Conditions of Detention in Campania*, a body expressly provided for by the regional law establishing the Guarantor of prisoners, which has been entrusted with the task of monitoring the problems that develop in the Institutes and the ability to intervene to resolve or improve these issues.

http://www.consiglio.regione.campania.it/garantedetenuti



Emilia Romagna

Marcello Marighelli

The Regional Guarantor of persons subject to measures restricting or limiting personal liberty of the Emilia-Romagna Region was established by the Regional Law of 27 September 2011, no. 13, which amended the Regional Law of 19 February 2008, no. 3, "Provisions for the Protection of Restricted Persons in the Prisons of the Emilia-Romagna Region", extending the mandate to the rights of persons present in Penitentiary Institutes, in Criminal Institutes for minors, in health facilities for involuntary medical treatment, in first line reception Centres, in temporary assistance Centres for foreigners, and in other places of restriction or limitation of personal liberty. The Guarantor, Marcello Marighelli, was elected by the Legislative Assembly in the session of 12 December 2016, with a secret vote and qualified majority.

In the first year of its mandate, the Guarantor submitted a programme of activities that included three commitments: regularly visits to the Regional Correctional Institutes, the REMS and other places restricitng the liberty of persons, with the intent of actively preventing potential situations of risk of inhuman or degrading treatments; cooperation, in agreement with the Prison Administration, to promote the rehabilitation and re-integration of persons in prison into society; extending its observation area to other situations of limitation of personal freedom with particular reference to those defined by recent regulations. As of January 2017, the activities of supervision and monitoring of places of detention have also begun, along with the handling of reports and requests by prisoners, the promotion of human rights, and the consolidation

and development of institutional relations.

In 2017, the Guarantor received 186 requests for intervention, mainly from prisoners, but also from family members, lawyers, associations and volunteers, which were taken up by the Regional Office, sometimes with the collaboration of the Municipal Guarantors. Individual visits requested by the detainees were all carried out by the Guarantor, assisted by his office staff, and a total of 77 people were met; several visits were made at the initiative of the Guarantor. There were 37 accesses to the Correctional Institutes of the Region, to the "Casa degli Svizzeri" REMS in Bologna, and to the Juvenile Penal Institute of Bologna, for the purposes of conducting interviews, visits and participating in initiatives and events.

Details of the visits and interviews:
- Bologna Penitentiary Institute, three accesses, two visits and six individual interviews;
- Holding facility of the Police Headquarters of Bologna, one access made together with the National Guarantor;
- Hub of Bologna, one visit;
- "Casa degli Svizzeri" REMS in Bologna, one visit;
- Protected Medical Department of the Arcispedale of Reggio Emilia, one access and one individual interview;
- Penitentiary Institute of Castelfranco Emilia, two visits and 12 individual interviews;
- Institute of Ferrara, five accesses (one together with the Guarantor of the Rights of Children and Adolescents of the Region of Emilia-Romagna on the occasion of the "Saturdays for Families" initiative and 10 individual interviews;
- Forlì Penitentiary Institute, three accesses and eight individual interviews;
- Modena Penitentiary Institute, two accesses, one visit and 11 individual interviews;
- Parma Penitentiary Institute, two accesses and five individual interviews;
- Piacenza Penitentiary Institute, four accesses, one visit and three individual interviews;
- Ravenna Penitentiary Institute, one access and a visit; - Reggio Emilia Penitentiary Institute, three accesses, one visit and 20 individual interviews; - Rimini Penitentiary Institute, one access; - Penal institution for minors in Bologna, two accesses (one together Guarantor of the Rights of Children and Adolescents of the Region of Emilia-Romagna), one visit and one individual interview.

One access by the Guarantor to the Bologna Penitentiary Institute took place during the inauguration of the Pavarini Library, which includes over 2,500 volumes of the legal library of the professor of criminal and penitentiary law of the Alma Mater, Massimo Pavarini, who died in 2015 and donated it to the prison.

The Memorandum of Understanding between the Ministry of Justice and the Emilia-Romagna Region of 1998 and the Supplementary Operational Protocol of 2014 highlight the Region's commitment to promoting methods and tools to support prisoners during the discharge phase, considering the information, communication and connection with local services, among the more significant interventions. Based on these assumptions, in agreement with the PRAP, a joint experience was created dedicated to both prison workers (educators, prison police officers and administrative staff) and to the operators of other administrations involved (ASP, Municipalities) and to volunteers. The project was developed through eight meetings with 87 participants on the following topics: residence, identity and related documents, delegation/power of attorney; residence permits and assisted voluntary repatriation; job searches, curriculum preparation and enhancement of training and work experience in prison; alternative measures to detention, and free volunteer work in projects useful to the public. Instructors included professional leaders and experts from the following organizations: Police Headquarters of Ferrara, Prefecture of Bologna, Bologna Supervisory Court, University of Ferrara, National Association of Civil Status and Registry Office (ANUSCA), Metropolitan Bologna Area Centre for Employment, International Organization for Migration (IOM), Political Service for the Social Integration of the Emilia-Romagna Region, the Inter-district Office for the Enforcement of External Sentences.

The Guarantor, in compliance with its mandate, referred to in Article 10 "Office of the Regional Guarantor of Persons Subject to measures Restricting or Limiting Personal Liberties" of the Regional Law of 27 September 2011, no. 13, and the Guarantor for Children and Adolescents, as regards the area of unaccompanied foreign minors, also in implementation of the recent national law 47/2017, made a short visit to the "Mattei" Reception Centre (Hub) in Bologna, accompanied by two regional officials and members of their staff. The regional adult hub is characterized by being the place of first arrival and therefore the first line reception centre for the entire Emilia-Romagna region. People stay there for a short time in order to complete health and identity checks, and are then transferred to other facilities in the region. The spaces and services provided by the "Mattei" Centre are thus structured to meet short-term needs. As of 13 December, there were 382 people present in the facility, of these 26 were unaccompanied minors and a three-year-old boy accompanied by his family. The report on the visit was sent to the Prefect of Bologna.

As per the work programme, a survey of the premises was undertaken, preliminary to the objective of visiting the holding facilities and the accredited residential therapeutic health facilities for pathological addictions. For the holding facilities, all the Prefectures of the Region were requested to supply a list containing the number and capacity of the holding facilities used by the Police Forces within the provincial territory pursuant to the law of 17 February 2012, no. 9, and Article 67-bis of the law of 26 July 1975, no. 354. Here below is the outcome of the monitoring carried out on the basis of the answers received from the Prefectures. Holding facilities in the Emilia-Romagna Region

Place	Number of holding facilities	Number of places
Piacenza		
Parma*	14	28
Reggio Emilia	7	12
Modena		
Bologna	9	14
Ferrara		
Ravenna	9	23
Forlì -Cesena	6	9
Rimini		

* Police forces in the province of Parma do not have holding facilities, with the exception of the Carabinieri.

The 36 accredited *residential therapeutic facilities* for pathological addictions are distributed throughout the Emilia-Romagna territory with a capacity of accommodation equal to 689 places. The mapping of these facilities, accredited for pathological dependencies managed by non-profit organizations of the Emilia-Romagna Region, was carried out in collaboration with the Region's Health Policies Department.

Residential therapeutic facilities

Place	Number of facilities	Number of places
Piacenza	1	23
Parma	5	80
Reggio Emilia	4	103
Modena	4	68
Bologna	7	104
Imola	2	35
Ferrara	3	58
Ravenna	3	105
Forlì	2	26
Cesena	3	50
Rimini	2	37
Total	**36**	**689**

Due to the extending of the institutional mandate of the position of the Regional Guarantor, the residential facilities subject to verification of the conditions of the restriction of personal liberty were also identified. In particular, attention was focused on residences for the elderly, on facilities for involuntary medical treatment and on the reception facilities of people detained with alternative measure.

For the *residential homes for the elderly* (CRA) it was decided to visit some facilities among those that have joined the "Free from Restraint" project that includes some operators of residential facilities for the elderly of the territory of the local health authority (ASL) of Bologna who have joined together to abandon the restraint of non-self-sufficient elderly people.

As for the *facilities for involuntary medical treatment* (TSOs), which can be carried out exclusively by the SPDC, reference was made to the mental health Centre of the local health authority (USL) in each District.

Finally, concerning the *reception facilities for people as an alternative measure to detention*, following an experimental project financed by the Emilia-Romagna Region and by *Cassa Ammende*, three organizations were identified for the visit in the region that made their facilities available in whole or in part for the accommodation of people with alternative measure sentences.

http://www.assemblea.emr.it/garanti/i-garanti/detenuti

Friuli Venezia Giulia

Giuseppe Roveredo

Over the course of the year 2017, the Friuli Venezia Giulia Region expressed the following:
- *Resolution no. 906 of 18 May 2017* "Approval of the Regional Plan for the Prevention of Suicidal Behaviours and Self-Injurious Acts in Prisons and Indications for Local Plans";
- *Resolution no. 2145 of 6 Nov. 2017* "Memorandum of Understanding between the Friuli Venezia Giulia Region and the Juvenile Justice Centre for Veneto, Friuli Venezia Giulia and the Autonomous Provinces of Trento and Bolzano relating to Inclusion in the Community, on the provision of the Juvenile Court for Minors and Young Adults, pursuant to Article 2 of the Prime Ministerial Decree of 1 Apr. 2008 and Article 2 of Legislative Decree 274/2010".

The critical issues that emerged during the verification of the implementation of the international conventions and European, state and regional regulations, with indications on the possible innovations or legislative or administrative changes to be adopted are reported below.

With regard to the scope of the Guarantor for persons deprived of personal liberty, certain critical issues cannot be ignored, and thus the commitment to continue its careful and continual verification is maintained active in order to seek resolution of these issues through consultation, reports and any other initiative deemed appropriate.

In particular, the Guarantor for persons deprived of personal liberty reports:
- prison overcrowding;
- lack of social-educational staff and penitentiary police.

Prison overcrowding Findings on the regional prison situation provided by the Department of Prison Administration reveal the persistence of the phenomenon of prison overcrowding. In Friuli Venezia Giulia there are five Institutes: Trieste, Tolmezzo, Udine, Gorizia and Pordenone, which host 20 women and 594 men for a total of 614 inmates, compared to a regulatory capacity of 476. The number of foreigners present in the Region is 248 inmates. Compared to the previous year, the prison population has increased, albeit slightly.

Lack of social-educational staff and penitentiary police The Guarantor has observed some critical issues regarding the appearance of the organic endowment in force at the Prison Institutes: in particular, ot reports a shortage in the body of the Prison Police, with strong repercussions on the workloads of the staff employed and psychophysical stress related to the situation, and in the social-educational staff, with consequent consequences on the possibility of activating and implementing specific projects for prisoners. For people deprived of personal liberty this may translate into dangerous forms of isolation, detachment from society, and in the active impediment to rehabilitation with the possibility of repeated criminal acts.

The Guarantor, as part of its mandate, will continue to verify the regional prison situation to call attention to critical situations and solicit the implementation of appropriate initiatives to protect persons deprived of personal liberty.

In Trieste, on Friday, 3 March 2017, the Guarantor for persons deprived of personal liberty convened the "First Working Group to Promote the Social and Workforce Inclusion of Detainees". The aim of the Group was to involve the institutions and the various stakeholders that could develop forms of collaboration and

dialogue to facilitate the social and working inclusion of detainees at the territorial level. The first meeting was followed by a second one, held on 20 September 2017, to take stock of the situation. Later on the Group was also convened in Pordenone (24 November), at the regional office.

The activities of the Working Group are aimed at raising awareness on the issues, promoting relationships, starting collaborations between the participants, identifying strategies for the implementation of preparatory courses for learning activities and professions to promote the social and occupational integration of the detainee, the identification of ways to facilitate the employment of detainees in work activities, the detection and monitoring of interventions and/or projects carried out to support the rehabilitation and social and occupational reintegration of restricted persons and the dissemination of best practices in the other territorial settings of the FVG Region.

During 2018, a similar working group will be proposed in the provinces of Udine and Gorizia to promote social and work integration for detainees.

http://www.consiglio.regione.fvg.it/cms/pagine/garante-diritti-persona/

Lazio

Stefano Anastasia

No legislative acts concerning the deprivation of liberty were approved during the period being evaluated. Instead, there were significant administrative acts approved to address and implement regional competences and policies:

- Regional Social Plan - Regional Council Decree no. 214 of 26 Apr. 2017. This is the first three-year plan implementing the Regional Law of 10 August 2016, no. 11, containing rules on *Policies Benefitting People Subjected to Criminal Measures and Policies Benefitting People Discharged from Forensic Psychiatric Hospitals* (Articles 16 and 17);
- Strategic Plan for the Empowerment of the Detainee Population (Regional Council Decree 205 of 26 Apr. 2017). Allocation of a total amount of € 2,100,000 for social inclusion and the fight against poverty, active inclusion to promote equal opportunities, and active participation to improve and increase the employability and participation in the labour market of the most vulnerable people;
- *Acting* Commissioner's Decree no. U00563 of 20 December 2017 "Assistance for the Protection of the Mental Health of Adults in Prisons";
- Exec. Decision G18232 of 22 Dec. 2017, for the activation of cultural mediation aimed at foreign citizens detained in the Prison Institutes of the Lazio Region, through the allocation of € 400,000.00 divided among the Municipalities and leading Bodies of the Prison social-health units;
- "Memorandum of understanding for the implementation of the security measures applied definitively or provisionally with regard to persons suffering from partial or total mental impairment" between the Lazio Region and the Ministry of Justice approved with Regional Council Decree no. 642 of 10 October 2017.

During the period being evaluated the Guarantor or persons delegated by him engaged in the following activities:

Criminal

- 111 visits to the penitentiary Institutes of Lazio for a total of about 440 encounters with prisoners;
- 3 visits to the Casal del Marmo Institute for minors;
- 14 visits to the REMS of Lazio;
- 3 visits to the Department of Protected Medicine at the "Sandro Pertini" Hospital in Rome;
- 2 visits to the Department of Protected Medicine at the "Belcolle" Hospital in Viterbo.

The following notices were sent:

- Note to the heads of the sanitation departments at the Prison Institutes, as well as for the awareness of the directors of the Institutes themselves, about the procedures for conducting medical visits of the detainees; - Note to the Director of the Cassino Institute on the possibility of increasing and facilitating contacts with family members electronically according to a procedure already positively experimented with in other detention contexts;
- Note to the PRAP of Lazio, Abruzzo and Molise on a proposal to resolve the difficulties inherent in the procedures for accreditation of INPS benefits for prisoners.
- Note to the Head of the Prison Administration Department on the constitutional legitimacy of the halting of social benefits to prisoners pursuant to Art. 58-61 Law 92/2012 (Fornero Law);
- Note to the General Director of ASL Rm2 regarding the health and safety of the G9 department of the "Raffele Cinotti" Institute of Rome-Rebibbia, following the serious situations of decay detected during a visit to the department;
- Note to the director of the Penitentiary Institute of Viterbo on the critical issues found relating to the living conditions within the Institute, caused in large part by structural deficiencies;
- Note to the director of the "Raffele Cinotti" Institute of Rome-Rebibbia, regarding critical issues relating to the personal hygiene of the detainees detected during the visit of 29 August 2017;
- Note to the health director of the REMS of Ceccano and Pontecorvo, and for awareness to the directors of the local health authorities, relating to the findings contained in the CPT report "Report to the Italian Government on the visit to Italy carried out by the European Commission for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment".
- Note to the rector of the University of Roma Tre on the request to extend the exemption from registration fees to include prisoners enrolled in "individual courses";
- Note to the Director General of the Regional School Office for Lazio on the non-activation of school courses, in particular two fifth-level classes, in the "Raffele Cinotti" Institute of Rome-Rebibbia;
- Note to the health director of the Institute of Frosinone and for awareness to the director, regarding the non-supply of non-prescription drugs and C-class drugs regularly prescribed;
- Note to the head of the health department of the Penitentiary Institute of Cassino relating to serious episodes of self-harm at the Institute.

Migration

- 3 visits to the CPR of "Ponte Galeria";
- Visit to the First Aid and Reception Centre for abandoned or distressed children (CPSA) "Villa Spada" of Rome carried out with the National Guarantor;
- Joining the "forced repatriation monitoring

system" of the National Guarantor as part of FAMI.

Police Forces

- Note to the Police Headquarters of the Provinces of Lazio on the implementation of the European directives concerning the rights of persons arrested in custody within the Police Commissariats.

Health

- 1 visit to the SPDC at the Sant'Eugenio hospital in Rome. The area of deprivation of liberty most taken into consideration in the period under review was that relating to persons deprived of personal liberty for legal reasons.

http://www.garantedetenutilazio.it

Lombardy

Carlo Lio

Regional law no. 25 of 24 November 2017, "Provisions for the Protection of Persons Subject to Court Measures" is a new regulation on the protection of persons subject to the Court and as such provides for the repeal of the Regional law of 14 February 2005, no. 8 which governed the matter. The new law aims to further improve the regulatory framework, implemented with Regional law 8/2005, which, although dated, is in some respects still efficient and effective, in particular, with regard to regional interventions put in place benefitting the detainee population and their families, but which needs to be adapted to the national legislation, to the regional reform in the health and social-health field, as well as to the reform in terms of vocational education and training.

The objective of the law is the protection of the rights and dignity of adults and minors subject to Court measures and the promotion of actions aimed at their rehabilitation and reintegration into society, favouring the least possible use of measures for the deprivation of liberty. This purpose is achieved through an integrated system of interventions that promote participation by the PRAP, the Inter-District Department for the Implementation of Sentences Served Outside of Prison, and the Centre for Juvenile Justice for Integrated Social Planning. Furthermore, the interoperability of IT systems and the collection of data, both from the Public Administration and Volunteer Organizations, is promoted through the definition of common minimum elements to ensure a constant updating of the individual path of the person subjected to the Court measure. Particular attention is paid to interdisciplinary training courses

on specific issues, such as foreign languages, for operators performing activities that benefit the persons subject to Court measures.

The Region, through the network of health services, also protects the health of persons subject to Court measures through health prevention interventions, including the prevention of infectious diseases. The Regional Council promotes the establishment of an inter-institutional body, tasked with monitoring the network of penitentiary health services, which also includes representatives of the ATS. The Region promotes access to rehabilitative therapeutic communities and semi-residential centres for the health and social rehabilitation of adults and minors with pathological addictions subject to non-custodial criminal measures. The activation of telemedicine systems and the dissemination of tools to support health services for the collection of health information for epidemiological and treatment appropriateness is encouraged at the penitentiary facilities. Where necessary, the activation of procedures to accompany discharge from the penitentiary facilities at the end of the criminal measures is envisaged, as is the taking charge of psychiatric patients that committed criminal acts and are subject to security measures and of persons who during the course of their criminal sentence develop psychiatric problems.

Treatment proposals include the promotion and support of intramural interventions aimed at implementing the project of individual reintegration, through intercultural mediation initiatives, sports, cultural and musical activities. The knowledge of tools for social mediation and conflict management is enhanced by promoting training courses for peer supporters. As regards relations with the family, the Region supports and finances intra- and extra-mural projects aimed at maintaining and strengthening prisoners' ties with family members, aimed in particular at protecting the parental role and the relationship between the child and the parent. It also promotes inclusion paths through temporary housing projects. As far as work is concerned, there are educational interventions, professional training, as well as university courses, professional retraining, consistent with the needs of the labour market and aimed at effective social reintegration, involving projects, including of an experimental nature, of social entrepreneurship. . To promote the implementation of law 103/2017 on restorative justice specific measures are promoted and supported to sensitize perpetrators on the consequences of the crime committed and on the remedies that can be put in place, as well as to strengthen the involvement of the local community in the path of social inclusion of the person, promoting activities of mediation in the various situations of conflict.

For the purposes of monitoring the implementation of the law, the establishment of a special technical group to promote the coordination and control functions between the various institutional levels is envisaged, without cost to the regional budget. An evaluation clause has been inserted in the legislative text whereby the Regional Council commits to sending a report to the Council every two years that provides a series of selected information on the implementation status of the law. It is reiterated that the Regional Ombudsman, in agreement with the territorial Guarantors, perform the functions of the Guarantor of prisoners aimed at protecting the rights of persons subject to Court measures in prison facilities as well as persons subjected to non-custodial criminal measures.

As for the Lombard Ombudsman, significant changes have been made to Regional law no. 18 of 6 December 2010 "Framework of the Regional Ombudsman" which governs and regulates the activity and the exercise of the functions of the Regional Ombudsman. Its areas of competence and the incisiveness of its action are extended and strengthened considerably. Subject to change in health matters is the arti-

cle concerning the functions for an adaptation to the state legislation that set out, in fact, new functions for this institution: this is the law of 8 March 2017, no. 24 "Provisions on the Safety of Care and the Assisted Person, as well as on the Professional Responsibility of Health Care Professionals", which includes the possibility of entrusting the Ombudsman with the function of Guarantor for the right to health, and of Legislative Decree 33/2013, as amended and supplemented by Legislative Decree 97/2016, which attributes to the Ombudsman the functions of protection of the right of general civic access and access to administrative documents.

With specific regard to the functions of the Guarantor of the detainees, the modification introduced involves the extension of the mandate to all areas of deprivation of liberty. In fact, paragraph 4 of Article 8 has been replaced in order to allow the Regional Guarantor to be part of the National Guarantor's NPM network. The territorial Guarantors that make up this body must meet a series of requirements as set out by the UN protocol. Law 18/2010 did not satisfy the requirement related to the extension of the mandate which must include any form of deprivation of liberty, as envisaged by Article 4 of the OPCAT. The further approved amendment concerns the appointment of the "Department for the Implementation of Sentences Served Outside of Prison" contained Regional law 18/2010. Following the Decree of the President of the Council of Ministers (DPCM) 84/2015 - "Regulation of the Ministry of Justice and reduction of management and organic staff and subsequent implementing decrees - the Department for the Implementation of Sentences Served Outside of Prison (UEPE)", these now belong to the new Department for Juvenile Justice and Community and no longer to the Department of Penitentiary Administration, and have therefore become "territorial offices of the Department for Juvenile Justice and Community". In particular, Articles 9 and 10 of the Ministerial Decree of 17 November 2015 identify the district departments for external sentence enforcement and the inter-district departments for external sentence enforcement, respectively.

The other modifications of the regional law concern more detailed aspects, namely:
- the clarification of the duties of collaboration with the Ombudsman that must be envisaged in the codes of behaviour of the Regional System Bodies (amendment to Article 12 of Regional law 18/2010);
- the obligation of the Ombudsman's office to comply with the privacy policy of the Regional Council (in this sense it is a modification to Article 14).

Given that the operational areas of intervention of the Regional Guarantor of prisoners in Lombardy have so far been limited to the criminal sphere, and given the content of the current legislation, it is considered useful to refer, by way of example, to some issues discussed by the Department during the year that are of general interest and have led to addressing broader issues. The interventions relating to the mental health of persons subjected to court measures were repeated during the year. Critical issues: formulation of individualized therapeutic plans and identification of adequate residential facilities/therapeutic communities by the local health authorities and applicable territorial services. The critical issues that emerged need to be the subject of work shared by an "inter-institutional network" of health services and the judicial/penitentiary system. Over the course of 2017, in fact, various requests were received in this area regarding the difficulties of the appointed institutional subjects and the family members of those affected by mental disorders, subject to court measures. Again this year, the profitable collaboration with the Prison Healthcare Unit (UOSP), confirmed by Regional executive committee resolution X/4176 of 13 January 2016, which regulates the regional network of Prison Healthcare Units, which has been operating for some time, has been confirmed. The Regional Guarantor on health services as a reference structure and operative interface for the realization and the monitoring of interventions in the penitentiary field, has often made it possible to give positive feedback to reports by prisoners affecting particularly disabling illnesses. Critical issues: electronic submission of introductory medical certificates for invalidity assessments; failure to register subjects subject to court measures with the NHS.

Visits to the penitentiary institutions

- "Francesco di Cataldo" prison in Milan, 26 September 2017;
- Opera prison (Milan), 12 October 2017;
- Como prison, 20 October 2017;
"Beccaria" Criminal Institute for Minors in Milan, 22 November 2017;
- Monza prison, 13 December 2017.

http://www.difensoreregionale.lombardia.it

Marche

Andrea Nobili

The activity of the Guarantor of the rights of prisoners (or rather of persons subject to restrictive measures of personal liberty) of the Marche Region, governed by the Regional Law of 28 July 2008, no. 23, falls under the guarantee institute named the "Guarantor of the Rights of Adults and Children - Regional Ombudsman". The Authority, which is based at the Regional Legislative Assembly of Marche, carries out the tasks related to the Office of the Ombudsman, including measures against discrimination against foreign immigrant citizens, the Guarantor for children and adolescents and the Guarantor for the rights of prisoners.
Almost ten years after the law establishing the Authority, it can be said that the unification of competences in a single guarantee agency has not compromised or harmed the autonomy and independence of the
Authority. On the contrary, it has strengthened the effectiveness of the quality of service offered to citizens by allowing the consolidation of a coordinated and unitary intervention, above all to protect vulnerable categories such as minors and prisoners, increasing the authority of the institution and allowing for a better allocation of resources.

In 2017, the Office, in compliance with the provisions of Articles 13 and 14 of the law establishing it, dealt with various issues relating to persons subject to measures restricting their liberty. One of the main commitments concerned the constant verification of the conditions of the Prison Institutes and of the REMS present in the Region and their suitability to guarantee the respect of the rights of detained persons: "Montacuto" prison in Ancona and "Barcaglione" prison in Ancona, "Villa Fastiggi" prison in Pesaro, Fossombrone

prison, Ascoli Piceno-Marino del Tronto prison, Fermo prison, and the REMS of Montegrimano Terme. This is in terms both of the quality of life of prisoners in the management of daily life (activities present, adequacy of the premises), and as concerns the care and management of the person with regard to health issues. Relations with the prison operators are particularly intense and the talks with the prisoners are numerous.

Inspections in the prisons took place on a regular basis, at least once every month and a half, with greater intensification in periods characterized by particular problems (such as during the summer), which required constant monitoring and were also characterized by a certain frequency of contacts with the directors, the commanders of the Prison Police and the medical staff of the health area in light of the exceptional heat wave and overcrowding expected at that time in the Institutes of Ancona, Pesaro and Marino del Tronto. Another reason that led to the intensification of meetings in the Ancona-Montacuto prison concerned the re-opening of the high security units, with the consequent problems relating to the repopulation of these units.

After obtaining the results of the visits to the Prison Institutes, various formal reports were made to the DAP and the PRAP regarding requests for the transfer of some prisoners and the living conditions for a total number of 61 files (43 per transfer - 18 for quality of life) on 205 issues opened in 2017. There were 272 direct meetings with detainees.

During 2017, the Guarantor also organized "Encounter and discussion groups", including meetings with the volunteer associations "*Volontariato in carcere*"(March-October 2017) and with the unions representing the Penitentiary Police "*Penitentiary police unions*" (June 2017). Particular interest was also shown for the issue of psychologists within prisons: a joint meeting was organized with the Office of the President of the Legislative Assembly, the Guarantor and the heads of the penitentiary health area - Asur Marche, the President of the Order of Marche Psychologists, the coordinator of prison psychologists on the subject of "*Psychologist situation and support in prison*" (October 2017). The Guarantor also sponsored some seminars and conferences: "*Defensive medicine in prison:*
legal and psychological medical aspects", (27 November 2017); "*The Prison of the future - towards a reform of the penitentiary system*", promoted and organized by the Guarantor in collaboration with the Department of Jurisprudence of the University of Macerata (1-2 December 2017).

All of this was accompanied by an awareness-raising activity among Marche parliamentarians about prison issues with the organizing of visits to the prison facilities of the province of Ancona (Montacuto and Barcaglione) to focus on some issues including - among the others - those relating to the matter of consolidating the PRAP for the Emilia Romagna and Marche Regions and the lack of a responsible Procurement Office (at present the role is performed by a regent: the Procurement Office for Friuli-Venezia Giulia, Veneto and Trentino Alto-Adige) with all that this involves in the management of the activities of the six regional detention institutes. Another significant activity, in addition to all the other commitments undertaken by the Office, concerns that of the direct relationship with the detainee population. As already mentioned, 272 meetings were held during the year with the detainees who requested contact with the Office. For some problems, such as those related to the management of daily life and those concerning the quality of life in prisons (issues that have often involved most prisoners of some units) we proceeded to meet with several prisoners representing entire unit in order to discuss the problems present in a more comprehensive way. These meetings

were followed by official and unofficial interventions involving the various competent sectors (from prison administration to social services, from penitentiary health to the volunteer field).

The situation of the penitentiary Institutes was publicly presented on 19 December with the presentation of the "*Annual Report on the Situation of Prison Institutes and REMS*". The initiative received good coverage on television stations and a dedicated service with an interview of the Guarantor on the regional Raitre station and local newspapers.

Alongside the implementation of specific projects aimed at strengthening the treatment activities for prisoners, as well as raising awareness and promoting the participation of the external community in the re-education process of the prisoners through cultural, educational, socialization and integration initiatives, support was made through an intense synergistic activity between public administrations and three important regional projects.

Regional university campus of Fossombrone
In March 2017, the Guarantor became partner to the Memorandum of Understanding signed in July 2015 between the University of Urbino and the PRAP of Emilia Romagna for the establishment of the penitentiary university campus at the Prison of Fossombrone. By joining the campus, which serves as the university centre for the university activities of the six Penitentiary Institutes of Marche, the Guarantor has committed to promoting the right to a university education for prisoners, facilitating the circulation of information, encouraging access of interested parties to the campus, and to carrying out monitoring activities on its operation. The needs of the detainees were presented during the meetings of the "Campus organizational committee", which met in May and December 2017. The number of students enrolled at the campus in the 2016/2017 academic year was 15 (8 enrolments for the 2nd year and 7 new enrolments for the 1st year). In order to support the university activity of the prisoners that is witnessing continuous growth, a "university study service" was activated with the aim of promoting the right to study among prisoners, re-socialization, fostering learning through tools, conceptual maps and strategies of study, providing learning support and emotional support, and promoting communication and language expression skills.

Professional centre based at the "Barcaglione" Institute of Ancona. In December 2017, following numerous meetings with the Regional Administration and the Emilia-Romagna PRAP, a "Memorandum of Understanding and Cooperation for the establishment of a Professional Centre" was signed, together with the competent Regional Councillorship, at the Penitentiary Institutes of Ancona location of Barcaglione ". The site of the Centre is a minimum-security facility designed to accommodate prisoners close to relaease and in any case with a sentence discharge date not exceeding 8 years. As a first step and on an experimental basis, the Centre will focus its vocational training interventions in the mechanical and catering sectors. Courses will begin in the spring of 2018 and include collaboration with the Centre for Territorial Employment to ascertain the possibility of employing people close to the end of their sentences.

Communityl Garden at the Institute "Barcaglione" Institute of Ancona. In 2017, the Guarantor signed a collaboration agreement with the Agency for Agri-food Services in the Marche (Assam) to support the expansion of the agricultural activities of the "Community Garden in Prison" project, already supported by the Marche Region and by the Directors of the "Barcaglione" Institute of Ancona. The project aims, through training activities held by the Assam, to provide detainees the opportunity to independently manage a space to be cultivat-

ed in the vegetable garden and aimed at the direct consumption of the products obtained. It represents an innovative experience of community gardening with a high treatment value, in which, alongside the recreational and educational aspect of the vegetable garden, the function of creating a bridge between prison and the outside world (guards and farmers) is set to transfer to detainees knowledge and experience related to the agriculture sector and other related activities.

All the projects supported by the Guarantor are aimed at promoting the well-being of the prisoners, enhancing the themes of information, education, training and retraining, as indispensable tools for the rehabilitation, recovery and social and work reintegration of the inmates at the end of their sentence.

http://www.ombudsman.marche.it

Molise

Leontina Lanciano

Leontina Lanciano was appointed as the Regional Guarantor for the Rights of the Person on 28 July 2017.

Article 14 of Regional law no. 17/2015 "Functions benefitting persons subject to restrictive measures of personal liberty" sets out that:
"1. The Guarantor, without prejudice to the functions of the competent administrations pursuant to the applicable national legislation and through forms of collaboration with them, works on behalf of persons detained in prisons, in penal institutions for minors, in the services of juvenile justice centres, in identification and removal centres, in health care facilities that are used for involuntary medical treatment, as well as of private individuals deprived for any reason of personal liberty".
2. The Guarantor, in relation to the functions referred to in paragraph 1, in addition to promoting and encouraging relations with the National Guarantor, established by the Decree Law of 23 December 2013, no. 146 converted with amendments into the Law of 21 February 2014, no. 10, as part of social solidarity initiatives, carries out, in collaboration with other institutional figures responsible for the same subjects, the following functions:

- monitoring to ensure that the custody enforcement of prisoners, inmates, and persons subject to pre-trial detention in prison or other forms of limitation of personal liberty are implemented in accordance with the rules and principles established by the Constitution, international human rights conventions ratified by Italy, the laws of the State, and according to the regulations. In particular, it undertakes every initiative for the purpose of ensuring that the parties concerned are provided with the services related to the right to health, to education and professional training and any other services aimed at rehabilitation, social reintegration and placement in the world of work;
- requesting that competent administrations undertake the initiatives aimed at ensuring the services referred to in letter a);
- intervening with regional facilities and bodies in the event of ascertained omissions or non-compliance with their own competences, which compromise the provision of the services referred to in letter a) and, if said omissions or non-compliance persist, proposing appropriate initiatives to the regional bodies tasked with the supervision of these facilities and bodies, including substitutive powers;
- making visits throughout the regional territory, without the need for authorization pursuant to Article 67 of the Law of 26 July 1975, no. 354, to penitentiary Institutes, forensic psychiatric hospitals and health care facilities that accommodate people subjected to security measures, therapeutic and host communities or in any case the public or private facilities where there are people subjected to alternative measures or to the precautionary measures of house arrest, the correctional Institutes for minors and the host communities for minors subject to these measures, with prior notice and without this causing harm to investigative activities;
- proposing administrative interventions and legislative measures to be enacted to regional bodies to contribute to ensuring full respect for the rights of the persons referred to in paragraph 1 and, at the request of the same bodies, expressing opinions on administrative and legislative acts that may also concern said persons;
- proposing concrete initiatives to the Regional Council for awareness and cultural promotion on the issues of rights and guarantees of persons subjected to measures restricting personal liberties; - promoting initiatives of collaboration, study and comparison on issues related to human rights and the enforcement of sentences; - preparing a yearly report, by 31 March, on the activity carried out in the previous year and on the results obtained to the Regional Council and the council committee responsible for the matter, which shall inform the Regional Council. The Guarantor shall send a copy of the report to all directors of the facilities referred to in paragraph 2 of Article 1".

The Guarantor plays an important and at the same time complex role, given the relevance and topicality of the issue. In fact, it may receive reports about the failure to comply with prison legislation, on the rights of prisoners who have been violated or partially implemented, who can contact the competent authority for clarifications or explanations, requesting that the necessary steps or actions be taken. The Guarantor may conduct interviews with the detainees and can visit the Prison Institutes without authorization, in order to check and monitor their conditions. Numerous requests for interviews were received directly from the inmates by the Regional Guarantor, which were then followed up.

http://consiglio.regione.molise.it/content/garante-dei-diritti-della-persona-eletta-la-dottssa-leontina-lanciano-la-consigliera

National Guarantor for the rights of persons detained or deprived of personal liberty
Networks

Piedmont

Bruno Mellano

A draft law entitled "Provisions on the Subject of the Ombudsman and Regional Guarantors" was presented and is currently being examined by the Bureau of the Regional Council, which would unify the founding laws of the Piedmont guarantee authorities (Ombudsman, Guarantor of persons subject to restrictive measures of personal liberty, Regional Guarantor for Children and Adolescents and Guarantor for animal rights) in a sort of single text, while providing some new items regarding the autonomy and organization of the offices. The Office of the Guarantor of persons subject to restrictive measures of personal liberty has raised the issue of the opportunity of a legislative amendment not agreed in a broader context (such as the State-Regions Conference and the Conference of Presidents of the Legislative Assemblies of the Regions and autonomous provinces), the question of protection and indeed the strengthening of the autonomy and independence of the guarantor and, finally, emphasized the need for an effective and efficient operative organization that allows the performance of the tasks provided for by the establishing law and the national coordination agreements.

The operational areas most addressed were, in order: criminal, health, and migrants.

Criminal:

During the period 1 March 2017 - 1 March 2018 a total of 86 visits were carried out in the thirteen Piedmont prisons for adults, and more precisely:

- 3 to the prison units of the "G. Cantiello and S. Gaeta" prisons of Alessandria;
- 4 to the isolation units of the "G. Cantiello and S. Gaeta" prisons of Alessandria;
- 25 to the "Lorusso e Cutugno" prison of Turin;
- 5 to the prison of Asti;
- 3 to the prison of Ivrea;
- 3 to the prison of Vercelli-Billiemme;
- 6 to the "Giuseppe Montalto" prison in Alba;
- 6 to the prison of Biella; - 12 to the "Rodolfo Morandi" prison in Saluzzo;
- 9 to the prison of Fossano;
- 1 to the prison of Verbania;
- 6 to the prison of Cuneo;
- 3 to the prison of Novara;

In addition, 6 visits were made to the "Ferrante Aporti" correctional Institute for Minors in Turin.

Health and safety measures:

The Guarantor is part of the Inter-institutional Technical Group of Prison Health instituted by the Health Department of the Piedmont Region and the "Health Minority" Sub-groups "For the taking charge of individuals subject to security measures" and participates regularly in the meetings of the groups.

The Guarantor was requested to coordinate a special monitoring group on the implementation and operation of the network of health services in the penitentiaries of the Piedmont Region. Work was undertaken with coordination between the Department and the PRAP: the Court also participates in this sub-group. Assessments and evaluations were collected for both halves of the year 2017, as evaluation is currently underway.

Four visits were made to the temporary REMS "Clinica San Michele" of Bra and two to the temporary REMS "Anton Martin" at Fatebenefratelli in San Maurizio Canavese.

From 6 December 2017 to 31 January 2018 the exhibition "The Faces of Alienation" was organized at the National University Library of Turin, which hosted the drawings of Roberto Sambonet made at the Juqueri mental hospital in Brazil, photos taken by the photographer Max Ferrero in the Italian OPGs on the eve of their closure, as well as texts on the subject selected by the National University Library. An exhibition catalogue was also produced.

On 18 January, the conference "After the OPGs, REMS and the psychiatric prison units: in the middle of a possible reform. The new role of health and penitentiary administrations and civil society in a vanguard approach in Europe" was organized, with the participation - among others - of the Regional Councillor for Health, Antonio Saitta, President of the Health Commission of the State-Regions Conference.

Migration:

During the period considered, the Guarantor visited the former CIE (now CPR) of Turin on multiple occasions: - 25 May 2017, with the Municipal Guarantor of the City of Turin, Monica Cristina Gallo, Dr Antonio Pellegrino (Corporate contact person for prison medicine of the Local Health Authority of the City of Turin, and Dr Roberto Testi (director of the health care unit at the "Lorusso e Cutugno" prison and director of the "prevention" Department of the Local Health Authority of the City of Turin), and the coordinators of regional business referents;

- 9 Aug. 2017, with the Turin Municipal Guarantor Monica Cristina Gallo;
- 13 Sept. 2017, with the university professors Laura Scomparin and Roberto Beneduce, the lawyer Maurizio Veglio, and several students of the University Clinic of the Department of Jurisprudence;
- 16 Nov. 2017, with the Turin Municipal Guarantor Monica Cristina Gallo;
- 17 Nov. 2017, with the Turin Municipal Guarantor Monica Cristina Gallo;
- 21 Dec. 2017, with the Regional Councillor for Rights Monica Cerutti and the Turin Municipal Guarantor Monica Cristina Gallo;

The Guarantor also joined, officially involving the office of the Guarantor of the rights of persons deprived of personal liberty of the city of Turin, the "FAMI" Project for the monitoring of forced repatriations, carrying out planned training sessions in Rome (25 and 26 October 2017) and in Turin (28 February 2018), and supporting the delegation of the Office of the National Guarantor in an ad hoc visit to the CPR of Turin (1 March 2018).

On 28 June 2017, it also organized the conference "From CIE to CPR: the innovations of Law 46/2017" which was also attended by the National Guarantor and the Prefect of Turin;

The Guarantor sent various notes, indications and reports to various Administrations.

Prison administration:

- Confidential note to the director of the "Lorusso e Cutugno" prison and a follow-up letter to the regional administrator and to the director regarding the serious problems of the so-called "filter" unit;
- Letters to the head of the DAP and to the regional administrator concerning the failure to implement the redevelopment project for a courtyard inside the Verbania prison;
- Letter to the regional administrator and to the director of the "Lorusso e Cutugno" prison concerning entry and reception problems for relatives of prisoners visiting the penitentiary unit at the "Molinette" Hospital of Turin;
- Letter to the Head of the DAP and to the

Regional Procurement Office with the second "List of the main structural problems of the Penitentiary Institutes of Piedmont", whose resolution constitutes the necessary premise for new sentence enforcement and follows the one presented a year earlier at the initiative of the Regional Guarantor and of the Piedmont Coordinator of Guarantors;
- Letter to the director of the prison of Alessandria to officially indicate the lack of information regarding the possibility of contacting Guarantors detected in the prison unit of the Cantiello and Gaeta prison Institutes;
- Letter to the regional administrator on the video surveillance project at the prison of Ivrea;
- Letter to the Minister of Justice Andrea Orlando and to the Head of the DAp concerning the overcrowding situation of the only partially reopened prison facility in Alba (CN) and the renewed request for an overall restoration of the Institute;
- Letter to the Head of the DAP and to the regional administrator on the announced reopening of the unit pursuant to Article 41bis at the Penitentiary Institute of Cuneo and on the pre-existing critical logistical issues;

National Guarantor for the rights of persons detained or deprived of personal liberty
Report to Parliament 2018
Networks

- Letter to the Head of the DAP on the failed or delayed issuing of "attendance cards" for participation in the training courses carried out in the prison facilities;
- Letter to the regional administrator and to the directors of the prisons concerned about the activation of the "Legal aid help desk" of the Legal Bar of Cuneo;
- Letters to the DAP related to the critical issues of the "Work house" and the delayed start of the tailor activity at the Biella prison;
- Note to the PRAP on the programmatic lines of the "Freedom Project" of the Compagnia di San Paolo and on the involvement of the territory and institutions;
- Letter to the PRAP and to the Municipal Guarantors concerning the situation of "sex-offenders" in the Penitentiary Institutes of Biella, Turin and Vercelli;
- Letter to the DAP and to the PRAP about the serious critical issue caused by the downsizing of the educational and treatment staff;
- Interview with the DAP on the methods of access to the Penitentiary Institutes pursuant to Article 67.

Region of Piedmont:
- Letter to Marina Gentile of the Regional Health and Social and Healthcare Management Department of the Piedmont Region on relations between family members of the patients and healthcare personnel in the Piedmont penitentiary facilities;
- Letter to the Regional Councillor for Social Policies Augusto Ferrari on the reconstitution of local Operative Groups (GOLs) for the prison;
- Letters to the head of the Labour Policies of the Region division on the implementation of the tool "Work vouchers" to support the vulnerable and disadvantaged groups, which include prisoners, ex-prisoners and people serving alternative measures;
- Preliminary report of the monitoring subgroup of the "Inter-institutional Technical Group on Penitentiary Health" sent to the head of the health and social-health care division of the Regional Health Department, Vittorio Demicheli;
- Report to the Office of the Presidency of the Regional Council and to the individual regional councillors on the interpretation of the memorandum of the DAP for the entry of collaborators of the figures authorized to make visits to prisons pursuant to Article 67 of the Penitentiary Act;
- Report on the findings regarding the conditions of sports facilities and gyms within Piedmont prisons;
- Report to the Office of the Presidency of the Regional Council on the proposed law on the guarantee figures of the Piedmont Region.

Other authorities:
- Letter to the Public Prosecutor at the Court for Minors, Annamaria Baldelli, concerning the procedures for recognizing minors hosted by the CPRs;
- Report to the Attorney General of Ivrea (TO) on the serious specific critical issues reported by prisoners (already sent to the attention of the National Guarantor Board);

The following are listed with regard to the focus of the Guarantor:
- specific and nominal reporting on health cases to local health authorities;
- specific and nominal reporting on cases of transfers or access to the PRAP or the DAP;
- reports to the PRAP on matters relating to work or treatment;
- monitoring of the implementation of the prison services network through the coordination of the sub-group for the monitoring of the inter-institutional technical group of penitentiary health at the Regional Health Department;
- construction of the territorial network for the monitoring of critical situations at CPRs;
- participation in the process of activation and taking charge of those leaving the REMS and above all as an alternative to detention approaches; - activation of initiatives and projects by the Region and local authorities, with particular reference to persons with internal or external sentence enforcement.

National Guarantor for the rights of persons detained or deprived of personal liberty
Networks

Apulia

Pietro Rossi

Regional law no. 180 of 2017 greatly modified the previous Regional law no. 4 of 2010 which permits the recovery and reuse of prosthetic and technical aids.

Article 32 of Regional law no. 4 of 25 February 2010, "Urgent regulations on health and social services", thus reformed, has the objective of allowing the recovery and subsequent re-use of prostheses and aids made available to patients by the public health system (wheelchairs, child seats , beds, prostheses, hearing devices, etc.). These devices will no longer be thrown away or abandoned after use, but rather the local health authorities will provide for their recovery, maintenance and sanitisation, and then make them available for new uses. This will create undeniable savings for the community of Apulia, and is estimated at 50% of the cost of purchasing prosthetics and devices, which, in 2015 alone, exceeded thirty million euros.

Moreover, thanks to the approved law, it will be possible to develop entrepreneurial initiatives, also of social relevance, aimed at the recovery and reuse of health devices and aids. For example, this is being done with the project "Atelier dell'Ausilio", which has led to the creation of workshops for the recovery of devices in the Prison of Lucera and in the industrial area of Cerignola, experimenting with a social-employment inclusion project for prisoners and other individuals subject to restrictive measures.

This project is supported by the "Con il Sud" Foundation, through the "Carceri 2013" Initiative, and promoted by a strong partnership (with some direction from the Office of the Regional Guarantor of people subjected

to restrictive measures of liberty) and has already led to the establishment and start-up of a social enterprise that handles the collection, maintenance and return of sanitized aids. The project has ongoing agreements with the Local Health Authorities of Foggia, Brindisi, Taranto, and Barletta-Andria-Trani.

On 6 December 2016, by resolution of the City Council, the figure of the Territorial Guarantor of the Municipality of Taranto was established; on 24 April 2017, the Municipality of Trani established its own guarantor's office with a similar procedure; resolution no. 79 of 6 November 2017 saw the City Council of Lecce establish its own in the municipality of Lecce. Taranto and Lecce have already begun selection procedures to evaluate potential candidates to be appointed by the respective municipal councils. In all three cases, procedural practices identical to those of the institution of the Regional Guarantor have been adopted.

Most of the activity of the Regional Guarantor has been concentrated in the Penitentiary Institutes present in the Region and at the REMS of Spinazzola and Carovigno.

The psychiatric issue continues to constitute an emergency. In a few isolated cases, some indivudals sentenced with security measures are still waiting for a place in a REMS. Although not subject to restriction in a prison, this is indeed the case (a phenomenon that seems to be in a clear regression, considering that until the end of last year it seemed that this was seen as a real emergency). At the same time the number of cases of people suffering from psychiatric illnesses arising during their sentences is multiplying.

At the prison in Bari, there is an experimental project underway in the field of entertainment, conducted by a volunteer organization, supported by the Office of the Guarantor, which is offering opportunities for progressive socialization among subjects suffering from psychiatric illness. The project, pending its definition, will be proposed in Lecce, where there is an "observation" unit, pursuant to Article 132 of the Penitentiary Act. Collaboration with the Volunteer Associations - with which agreements have been signed - has been consolidated, with the structuring of a system for increasing the use of information useful for taking care of applicable users. The volunteers who assist the Office of the Guarantor and who provide information to the office for which the Guarantor itself is responsible, periodically undergo professional refresher courses for the sharing of information and "languages" relating to the world of sentence enforcement that assists them to provide a uniform service in their activities and in their listening technique, albeit independently and within the specific realm of their respective areas of expertise and training matrices. The next refresher course is scheduled for the month of June, to be held by the Department of Political Sciences of the University of Bari, on the basis of a memorandum of understanding signed in March 2018.

The Guarantor is directly engaged in listening to detainees, and does so, on average twice a week. Requests for interviews are sent by regular post, forwarded by the interested parties or by relatives; the request forms (Penitentiary Administration Form 393) are also sent to the Office by the treatment areas or by the Directors of the Institutes by e-mail. The current functional load consists of a total of over 150 users, divided as follows:

- 62 inmates of the Bari prison, all males between 20 and 65 years of age, 13 of whom are foreigners aged 20 to 35;
- in the prison of Lecce, 42 prisoners were interviewed, 29 males and 13 females;
- in the men's prison of Trani 12 inmates, and in the women's prison 13 inmates;
- in the prison of Brindisi, 15 male prisoners;
- in the prison of Foggia, 5 male prisoners;
- in the Turi prison, 8 male prisoners;
- in the prison of Altamura, 4 male prisoners;
- in the prison of Lucera, 2 male prisoners;
- in the prison of Taranto, 6 male inmates and 3 female inmates.

Most of those detainees who make a request are met and heard several times, even after the (partial or total) resolution of the problem for which the request was made. The cases dealt with, despite the variety of their natures, mainly concern issues of health and relationships with family on the outside, support for requests for transfer to facilities closer to families and requests by the Guarantor for the protection of the rights of prisoners in their daily life in prison (difficulty with making phone calls, letters and parcels not received, loss of mail and requests). Requests are often made for support in the processing of applications relating to social security and employment issues, for which so-called mutualism projects are active in the Institutes of Bari and Lecce (by volunteer organizations supported by this Office) that will soon also be adopted in Turi and Taranto.

During unspecified intra-regional transfers, the continuity of responsibility is handled with particular attention by notifying the volunteer organizations linked to the activities promoted by the Guarantor, which help to monitor the evolution of the issues raised by the requests.
We should also mention the recurrent "plenary" discussions that take place at periodic meetings with the communities, either directly requested or procured by the Guarantor, in conjunction with public events (conferences, shows, presentations of cultural entertainment projects, or work training).

In Lucera, Trani, Bari, Brindisi and Taranto, there are significant initiatives being undertaken for the reception of minors visiting relatives in prison. Other experiences that are momentarily not in progress but are soon to be reactivated took place in Turi and Altamura. There is a decisive and binding intention to follow up on initiatives for accommodating and supporting the experiences of parents throughout the region. To this end, in Lucera, at the end of last year, the Office of the Guarantor held a training course, under the patronage of the National Association of Children without bars, aimed at creating a regional network among the various organizations that are engaged in this process of assistance, exchanging mutable and repeatable models of action.

Migrants detained

Participation in the FAMI project of the National Guarantor for the monitoring of forced repatriations, through the construction of a national network, has recently re-initiated control and research activities, in partnership with the Department of Political Sciences, including the imminent updating of the data on the website www.osservatoriomigranti.org.

http://garantedetenuti.consiglio.puglia.it

Sicily

Giovanni Fiandaca

It is noted that the Office of the Guarantor for the Region of Sicily, in accordance with its express competences, has turned its attention to the Sicilian prison situation in several aspects as specified below.

Outside the prison world, the Office has maintained a working relationship with the Office of the National Guarantor within the framework of the FAMI project, "Implementation of a system for monitoring forced repatriations". In particular, some office officials took part in the seminar organized by the National Guarantor on 11 December 2017 in Rome on the theme "Protection of rights in forced repatriation operations"; they carried out topical and training activities with officials and experts from the office of the National Guarantor in the period 22-25 January 2018 in view of the involvement in the monitoring operation of a pre-departure phase held at the Palermo-Punta Raisi airport on 25 January 2018. The office of the Regional Guarantor was also included in the planning of the monitoring activities for the first half of 2018, with a second phase that should have taken place in the period 12-16 March 2018, but was then postponed.

As part of the activities carried out in relation to prisons, there were visits carried out in the period March 2017 - March 2018 to the following prisons:

- Pagliarelli Prison of Palermo, 3 March 2017;
- Caltanissetta Prison, 27 March 2017;
- "Ucciardone" Prison of Palermo, 21 March 2017;
- 'Pagliarelli' Prison of Palermo, 24 April 2017;
- Agrigento Prison, 27 April 2017;
- Prison of Termini Imerese, 21 September 2017;
- Prison of Augusta, 30 October 2017;
- Prison of Siracusa, 31 October 2017;
- 'Pagliarelli' Prison of Palermo, 6 December 2017;
- Catania Prison, 10 January 2018;
- Prison of Termini Imerese, 16 March 2018;
- Prison of Giarre, 22 March 2018;
- Caltagirone Prison, 23 March 2018.

In addition, the Guarantor accompanied a group of Rai reporters from Tgr-Sicilia to the Pagliarelli Prison of Palermo on 29 March 2017.

The aforementioned visits, all made without prior notice, were motivated by the dual need to generally verify the prison living conditions and to conduct interviews with some prisoners at their prior request. The overall impression can be summarized as follows: although the different prison situations examined were not uniform among the different profiles of the structural conditions of the buildings, the spaces available in the cells, the penitentiary regimes applied (open regime or not, dynamic surveillance, and so on), the rooms available for socializing, the classrooms for school and training activities, sports facilities, in no Institute, however, were critical issues found that raised particular alarm or the need for urgent resolution interventions.

National Guarantor for the rights of persons detained or deprived of personal liberty
Networks

In fact, among the critical issues worthy of mention, in particular emerge: the occurrence of moisture in various Institutes due to infiltration caused essentially by insufficient maintenance, the difficulty in some Institutes of continually guaranteeing the functioning of showers with hot water and the lack or insufficiency of heating (and, more particularly, in the Institutes of the districts of Catania and Siracusa, an insufficient water supply which requires the need for water rationing); on the side of the services, it is particularly pointed out that the health service is not always satisfactory, especially in terms of the length of time needed, in many cases, to obtain specialist visits or other external health interventions.

With regard to structural problems, this office of the Guarantor has more than once written to the DAP and the PRAP to highlight the need - moreover, previously reported by the directors of the prisons concerned on several occasions - to allocate resources for suitable intervention projects to eliminate the critical issues in question. Likewise, regarding the services, this Guarantor met both the former and the current Regional Health Counsel to urge them to identify procedures that are more suitable to reduce waiting times for extra-mural health services. Also in the context of dialogue with health Assessors, this Guarantor also reported the insufficient availability of places for the hospitalization of prisoners suffering from mental disorders in the only two REMS existing in Sicily, and the consequent lengthy wait with placement in improper locations of the detainees concerned.

This Office of the Guarantor was also involved in making a contribution to the intra-mural cultural and recreational activities by, in particular, signing an agreement with the "Vincenzo Bellini" Music Conservatory of Palermo which allowed for the realization of four concerts at the Institutes of Agrigento, Messina, Catania Piazza Lanza and "Ucciardone" of Palermo, whose costs were paid for with resources of the Region.

http://pti.regione.sicilia.it/portal/page/portal/PIR_PORTALE/PIR_LaStrutturaRegionale/PIR_PresidenzadellaRegione/PIR_UffGarantedetenuti

Tuscany

Franco Corleone

There were 3,281 inmates in Tuscany at 31 December 2017 (including 129 women and 1,617 foreigners), while there were 3,276 as of 31 December 2016 (including 115 women and 1,567 foreigners), and 3,260 as of 31 December 2015 (including 117 women and 1,511 foreigners). These figures confirm the slow but continuous growth of imprisonment and, even more evident, the over-representation of foreigners.

During 2017, the Tuscan penitentiary landscape saw the alternation of some penitentiary directors, as well as the arrival of a regional administrator: "Sollicciano" prison in Florence finally, after years of uncertainty, has a permanent director, and a director has been confirmed for the Prato prison. There is still a wait for a permanent director for the San Gimignano prison, which has always been subject to serious structural deficiencies (the most incredible of which is the lack of drinking water) and of links to means of transport, which renders both the work of the inmates, and visits by family members almost impossible. There are other issues that still remain unresolved: for example, in the prison in Pisa where the women's unit was renovated two years ago creating open bathrooms, and in the high-security unit of Livorno where the large and well-equipped kitchen has never been opened because it is not possible to certify it due to irregularities in the construction of the support columns. Some good news, on the other hand, is the closure in February 2017 of the forensic psychiatric hospital of Montelupo Fiorentino (FI). Empoli prison has been closed and work is underway for its use as a REMS. Two probation facilities have been opened and procedures have been initiated for the construction of a permanent REMS in Volterra. The Guarantor presented its report on its 2016 activity to the Regional Council at the end of April 2017. The report was approved by the two Institutional Affairs and Health Commissions, and then by the Regional Council Assembly in June 2017.

The institution of the Guarantor for the rights of prisoners is regulated by Regional Law no. 69/2009, which gives it extensive authority over all places of deprivation of personal liberty. Article 1 states that the Guarantor "carries out its activity on behalf of persons subject to restrictive measures of personal liberties, such as, in particular, those present in the penitentiary Institutes, in the Correctional Institutes for minors, in the forensic psychiatric Hospitals, subjects hosted in Immigration Detention Centres (CIEs), and subjects present in health facilities that subjected to involuntary medical treatment".

The Region of Tuscany already intervened in the prison health reorganization process in 2015, with a resolution of the Regional Council: Regional Council Resolution no. 873 of 14 Sept. 2015, which acknowledges the agreement reached at the Unified Conference no. 3/CU of 22 Jan. 2015 (National guidelines for the provision of services and for the creation of regional and national health networks) and approves the guidelines for the provision of health care to persons detained in Tuscan Institutes. Penitentiary health services have become part of the regional health services network. In 2017, instead, it prepared a three-year plan with priority objectives for the protection of health in prison in the three-year period 2017-2019, including the protection of mental health, addictions, the promotion of proper lifestyles, the protection of the health of minors in the reception centre and in the two IPMs of Florence and Pontremoli, and the updating of the guidelines for suicide risk prevention.

The resolutions that govern the Residences for the Implementation of Security Measures (REMS) are: 231 of 9 March 2015, no. 380 of 30 March 2015, no. 666 of 25 May 2015. The Regional Health Service as a whole is instead governed by Regional Law 40/2005, which has been amended several times. Regional acts also include the protocols signed by the PRAP with the Region of Tuscany: one for suicide risk (signed on 27 January 2010), which was followed by the Guidelines issued by the Regional Council with the Resolution of 3 October 2011, no. 842. Another was signed with the Universities of Florence, Pisa and Siena, for the institution of the penitentiary university campus. Additionally, there is the protocol approved by resolution of the Regional Council no. 301 of 16 April 2014, on the implementation of joint actions in the field of education, training, guidance and work. The Guarantor Franco Corleone responds continuously to the petitions of the prisoners, most of whichy arrive by letter from Tuscan prisons. Some come from outside the region, and by other means (telephone, e-mail) from relatives of prisoners and other Guarantors. One of the most common requests is support with the transfer to other Institutes, mainly for family reasons. There are numerous health problems, both physical and mental, not adequately addressed in prison, which are reported. Access to permits and alternative measures, as well as the maintenance of emotional and family relationships are also common themes. The Guarantor regularly visits the prisons of Tuscany, to verify conditions and to meet with detainees. Often the most serious cases, for which the exchange of letters is not enough, are dealt with directly during the visits, or ad hoc visits are made to meet them.

The theme of the health of prisoners has received constant attention: the handling of drug addiction in prison, with a particular look at the problems of foreign drug addicts, the availability and mutability of dental care, the organization of the penitentiary services offered by the Region, access to procedures for the recognition of invalidity of prisoners, and the planning of rehabilitation pathways for so-called sex offenders.

The Guarantor also closely followed the process of closing the OPGs, and the opening of the REMS of Volterra, as well as the intermediate facilities provided for by the regional regulations of Tuscany. He continuously visited these, keeping a watch on the issues generated by the application of the new regulations (implementation of the provisional security measures pursuant to Article 206 of the Criminal Code and the destination of convicted persons with infirmities pursuant to Article 148 of the Criminal Code). Health, both physical and mental, in prison and in the REMS, was all subject to constant dialogue with the Councillor for Health of the Tuscany Region, Stefania Saccardi, through encounter discussions and correspondence. Psychiatric health was also a subject of the activity of the Guarantor, as was attention to the performance of involuntary medical treatment (TSO). On this topic a relationship was started with the Regional Health Agency of Tuscany (ARS) for the study of case studies.

The Guarantor also made a survey regarding the consumption of alcoholic beverages in prisons, by request to the directors of the Prison Institutes of Tuscany. Since the widespread practices of stockpiling and self-distillation of alcoholic substances in the cells are unfortunately known, the aim has been to suggest ways to reduce harm and to educate prisoners on consumption awareness, such as the possibility of consuming modest quantities of alcohol (wine or beer) in common areas, for recreational purposes and without the use of bottles or other take-away containers. The Guarantor also drew the attention of the new regional administrator of the Prison Administration to the problems of Tuscan prisons. Some requests for information were in particular addressed to the

l liberty

2017 estab-
ous Province
ant probity,
ormance of
qualified ex-
eld or in the
e of associ-
e provincial
ompetence
s, to those

ompared to
on of other
e Guarantor

e Guarantor
endently in
the second
rdinator for
the division
er clarifying
f the rights
and reports
ercise of the
promotion
ate Admin-

s a qualified
e Ombuds-
prorogatio
esolution of

new regional administrator regarding various issues: critical events and protests of prisoners, presence of Italian prisoners without identity documents and stateless persons without documents, and lack of prison police personnel. In addition, following a case of assault in a cell with a deadly outcome, a request was made for an investigation into the conditions of the San Gimignano prison and the health management of prisoners with mental problems.

The Guarantor also intervened in relation to the protection of the privacy of detained persons: following a report to the Guarantor relating to privacy in the case of improper use of health data collected in the women's department of the "Sollicciano" Institute of Florence, the case is now pending before the Court of Rome, which has integrated the opposition of the Guarantor, with a hearing scheduled for 29 May.

Regarding the focus of the operational areas, the Guarantor of Tuscany emphasizes that the activity of the Guarantor had privileged access to the penitentiary Institutes and the REMS. In Tuscany there are currently no detention facilities for migrants, so there was no need for their monitoring, even though the authority for this in the abstract is set out by Regional law 69/2009. The theme of the TSOs was taken up, but no SPDC has as yet been monitored.

http://www.consiglio.regione.toscana.it/oi/default?idc=42&nome=gdetenuti

Autonomous Province of Trento (Trentino Alto Adige)

Antonia Menghini

Following a lengthy and laborious process provincial law no. 5 of 20 June 2017 established the figure of the Guarantor of the rights of prisoners for the Autonomous Province of Trento. Specifically, the Guarantor is chosen from among citizens who warrant probity, independence, objectivity, competence, confidentiality and ability in the performance of the functions entrusted to them and who possess the following requisites: qualified expertise and professional experience of at least five years in the penitentiary field or in the field of legal sciences, social sciences or human rights, also as a representative of associations or social groups. In particular, the newly introduced Article 9 bis of the provincial law on the Ombudsman of 20 December 1982, no. 28, defines the specific competence of the Guarantor, limiting it to the persons present in the Prison Institutes, to those subject to alternative detention measures, and to internees in the REMS. Compared to other realities, therefore, where the figure is also responsible for the protection of other subjects "in any case deprived of personal liberty", the operative scope of the Guarantor of the Autonomous Province appears to be more limited.

In addition, the new Article 9 bis sets out in the first paragraph that both the Guarantor of the rights of minors, and that of the rights of prisoners, "operate independently in the performance of their duties and collaborate with the Ombudsman". In the second paragraph, the law specifies that the Ombudsman assumes the role of coordinator for the two newly established figures, with specific powers also with regard to the division of cases and the relative power of advocacy.

Finally, the new Article 9 bis, after clarifying the role of the Guarantor with reference to the affirmation and protection of the rights of prisoners, states that "the Guarantor promotes interventions, actions and reports aimed at ensuring, in compliance with the law in particular, the effective exercise of the rights of the persons present in the penitentiary Institutes, also through the promotion of memoranda of understanding between the Province and the competent State Administrations".

The appointment, which is the responsibility of the Provincial Council, requires a qualified *quorum* of two-thirds. The term of office coincides with the mandate of the Ombudsman and expires with the provincial council that appointed him, subject to the *prorogatio* regime. Given the appointment of the current Guarantor with the Board resolution of 4 October 2017, this means that the mandate will expire as early as October 2018. His re-eligibility for a second term, as a rule excluded, was exceptionally authorized, only due to the brevity of the assigned mandate. This of course depends on whether the newly elected provincial council intends to renew its confidence.

It is pointed out that, given that it is the Guarantor of an autonomous Province, the National Guarantor has equated its position to that of the Regional Guarantors. This was done in order to permit its inclusion in the important project of creating the NPM network coordinated by the National Guarantor. To take part in the project, however, some criteria are required relating to the appointment procedure, the term of office, the extension of the object of the function and confidentiality obligations that the provincial law does not provide: both the requirement relating to the duration of the mandate, that should be completely independent from that of the political body that elects the Guarantor, and the requirement linked to the object of the function, which should extend to all places of deprivation of personal liberty, are not in line with this. This has therefore, at least for the time being, made it impossible for it to be part of the NPM network.

In September 2012, the Ministry of Justice, the Autonomous Province of Trento and the Autonomous Region of Trentino-Alto Adige signed an institutional agreement aimed at undertaking integrated action and collaboration in the exercise of activities of their respective competences to promote treatment, training, work orientation and social reintegration of minors entering the criminal circuit, of the subjects subject to the restriction of liberty and of alternative detention measures, as well as the implementation of paths of mediation and conflict resolution. The institutional agreement, which replaced the protocol between the Autonomous Province of Trento and the Ministry of Justice of 12 November 1993, was valid for five years and expired in September 2017. The Guarantor of prisoners was involved in the drafting of a new agreement. Specifically, in accordance with Article 1, the agreement regulates the planning and implementation of inter-institutional forms of collaboration for the promotion and implementation of the following initiatives:

- treatment and social and labour reintegration of prisoners and individuals subject to alternative detention measures, substitute penalties, security measures and other measures, as well as minors entering the criminal circuit;
- implementation of pathways for the social inclusion of minors entering the criminal circuit, with particular attention to the areas of education, vocational training, work

and socialization activities;
- development of pathways for resolution of the conflict generated by the crime through actions both of mediation between the agent and the victim and the repair of the offense and/or damage.

For the implementation of the agreement, a technical Commission was set up composed of the directors of the Services of the Autonomous Province of Trento engaged by field of expertise, by the director of the Regional procurement office, by the director of the Prison of Trento, by the director of the local Centre for Youth Justice, and two representatives of volunteer organizations. The Commission was tasked with proposing an annual programme of interventions to the Provincial Council, as well as to periodically verify the state of implementation of the agreement and of the programme itself.

Since the beginning of his mandate, the Guarantor has attempted to cover the activities to be carried out both inside and outside of prison. Outside the prison in these first three months, in addition to talks with the relatives of the detainees and with the prisoners in alternative measure and to the contacts with the other Guarantors, a significant number of meetings were held with all the institutional representatives and with all the operators variously involved in the prison system: the Supervisory Office, the UEPE of Trento, the provincial councillor for health and social policies, the social cooperatives operating inside the prison and the related "Consolida" Consortium, the prison Volunteer organization. Furthermore, the Guarantor met with the Bishop and the chaplain. As Guarantor of the Autonomous Province, the Guarantor participated in the meeting of the Regional Guarantors in Rome.

The Guarantor also worked on raising awareness of the territory by organizing a conference on "Alternative measures to detention and social reintegration" and participated in various seminars and meetings.

As for the activity carried out within the Spini di Gardolo facility, it met with the director, the warden, and all the operators (prison police officers, doctors and psychiatrists, educators, and administrators). The Guarantor then visited the nine units that make up the facility, in order to present himself to the detainees. Individual interviews began with the detainees in November. The amount of requests is really impressive: the requests for interviews received up to December numbered more than 200, with about 80 interviews being made. Other interviews took place following direct reporting by the operators. Furthermore, during each visit, the Guarantor goes to the isolation and infirmary wards to check for any critical issues.

There were about twenty visits to prison. The REMS of Pergine was also visited, and contact was made with the manager, Dr Gasperi, and the operators and the internees.

Problems encountered

Maintenance of the facility: the immediate perception, even for those entering the prison of Spini di Gardolo for the first time, is of the poor maintenance of the building. Given the characteristics of a facility of this type, in fact, the cost of routine maintenance is particularly high. The figure allocated annually by the DAP for routine maintenance is instead completely insufficient and inadequate compared to a "modern" facility like that of Spini, so much so that only after countless requests from the accounting department was the amount originally allocated, equal to € 18,000 for the year 2017, increased to € 30,548, though this still seems largely inadequate compared to the expenses incurred during the year (much higher than the € 100,000 expenditure incurred for routine maintenance the previous year and

reported on the balance sheet in the residual account). This meant that the conditions of the building are gradually deteriorating year by year. At present, the entire second floor of the women's unit is already unused and, if not adequately "restored", will also become unusable. In addition to this there are entire areas where you notice the presence of water infiltration from the roof or the presence of moisture on the walls.
There are also damaged or removed tiles, baseboards and false ceiling panels. Finally, even the entire technological equipment used for most of the surveillance is becoming obsolete: just to give an example, the video screens in the control room are beginning to show considerable damage. Unfortunately, the facility suffers from the concrete risk, which for certain spaces has already become certainty, of deterioration that can no longer be remedied by ordinary maintenance. This occurrence is largely undermining the huge investment made originally for the construction of the facility by the Autonomous Province of Trento and, in the not-too-distant future, may translate intp a "loss" of entire spaces, that will thus be taken away from the treatment activities.

Overcrowding: it is impossible not to take into account the significant increase in the number of indivduals present over time, especially in the last two years. On the basis of the original agreement with the Province, normal capacity was set at 240 persons. Today, the number has been redefined by the DAP in 418 units, a capacity that ensures a per capita space of no less than 3 square metres. As of 31 December 2017, occupancy amounted to 297 prisoners (including 21 women), of which 215 were permanent. The percentage of foreign/non-EU prisoners was 72%. Staff shortages correspond to a gradual increase in the prison population, with an evident increase in duties. The numerical growth of detainees and the opening of the two so-called "protected" units have, especially in the common units, entailed the need to add a third bed in the cells, in addition to the bunk bed. Though it may be true that compared to the European minimum standard recognized in Strasbourg, Spini prison does not appear to be overcrowded to the degree that would generate situations potentially in violation of Article 3 of the ECHR, nevertheless the situation appears worrisome, especially with respect to the number of staff that has remained the same as that determined necessary for a capacity of 240 units.

Mental distress: since the first visits to prison, it has emerged that mental illness is a neuralgic issue that is too often unresolved, despite the good medical and psychiatric support that the health service provides. An inmate suffering from psychological distress in prison does not currently have a specific location in the facility. The choice in the end is almost always that of placement in the infirmary unit, even if this should only be a temporary solution. The prisoner in this situation has no access to the treatment activities and ends up living in a situation that obviously, in the long run, sometimes risks further compromising his overall mental and emotional stability.

Staff: it is undeniably evident that the lack of personnel, especially of Prison Police and educators, translates into a reduction of the treatment provided and therefore frustrates the rehabilitative path that should characterize the enforcement of the sentence. By way of example, during visits to some units, detainees described the inability to perform more hours of physical exercise a week, or the ability to use the football pitch, or even the library (especially the so-called protected units), due to difficulties related to the significant reduction of prison police personnel. It is therefore clear that the role of the Guarantor should be understood in a broad sense, as a means of protecting not only the direct rights

of prisoners but also their "indirect" rights, which necessarily requires special attention to those who perform professional activities in a prison environment.
In particular, at the date of the assignment, the Prison Police was experiencing considerable staff shortages, with a perceptible increase in professional duties which, by itself, was very difficult and wearisome. Specifically, the budget for personnel included in the Ministerial Decree of 27 June 2014 is equal to 214 units. As of January 2011, the units administered amounted to 187; as of 4 November 2017 to 150 units, of which 149 are stationed in Trento. Of these, however, taking into account those who are going into retirement, on maternity leave, and those on medical leave, the units employed in the prison service totaled 121 (including 17 women and 104 men). The data showed a real lack of personnel (93 units less than called for by the Ministerial Decree of 2014), which became even more evident with specific reference to qualified inspectors and superintendents. The framework involved a massive use of overtime, amounting to an average of 92 hours per day, for a foreseeable monthly average of 2,760 hours (a figure also verified at 4 November 2017). Unfortunately, the situation is destined to further worsen due to the presence of about thirty units with over 30 years of service, who are expected to leave the service and retire in the next two years. Following the report and the intervention of the Guarantor, 30 new units were assigned to Trento, arriving before the end of 2017.

The same personnel problems are found in the educational area. The organizational chart includes six officials, plus a support figure. Currently, and practically always, despite the fact that the staff appears to be in line with the budget, there are four operators present. The relationship between the number of educators and the number of prisoners appears to be largely deficient, to such an extent that it compromises the conduct of the interviews, a key moment in terms of rehabilitation and functional operation of the treatment programme.
The office of the UEPE has had to deal with a serious lack of personnel, the entry into force of the law on the suspension of adult trial procedures, a no-cost reform that has, in very short time, doubled the amount of paperwork for the local office. Only recently, the situation seems to have partially improved, thanks to an expansion of the Office's staff.

General operational guidelines: with all the difficulties related to the fact that a prison normally accommodates, in addition to those in pre-trial custody, detainees who must serve a sentence up to 5 years, the Guarantor considers it appropriate to invest on education, occupational training and job opportunities in prison, replicating, with the necessary investments, those practices and continuing on the path undertaken with a series of initiatives, such as the production of aromatic herbs and saffron used in the making of craft beer.

Volunteer organizations should be supported, and there are many active in the Trentino prison system (APAS, ATAS,, CARITAS, CRVG, among others), which offer not only a lively sense of social solidarity, but also of involvement with the community that should never be lacking, and which the Penitentiary Act also enhances.

Furthermore, there is also a problem of individuals without a permanent residence and a job to be mentioned. It is therefore of primary importance to invest in this dual front: on the one hand, by implementing the number of beds in public care, reception and assistance facilities and, on the other, by investing in the possibility of exploiting the work force on the territory, to make the recourse to Article 21 of the Penitentiary Act possible, thus contributing to a progressive rapprochement with the local population. With respect to these issues, a valid representative was found in the President of the Province who said he was willing to discuss new projects related to social and, in particular, work, reintegration.

https://www.consiglio.provincia.tn.it/istituzione/garante-detenuti/Pagine/presentazione.aspx

Umbria

Stefano Anastasia

No legislative acts concerning the deprivation of liberty were approved during the period being evaluated. Instead, a significant administrative act was approved for the direction and implementation of regional competences and policies concerning "Module for the reception of offenders in type-2 therapeutic-rehabilitation communities for the protection of mental health" (Regional Executive Committee resolution no. 758 of 3 July 2017).

Criminal:

- During the period under review, the Guarantor made 15 visits pursuant to Article 67 of the Penitentiary Act to the Prison Institutes of the Region, carried out 45 interviews pursuant to Article 18, and responded to 10 complaints pursuant to Article 35, engaging - where applicable - with the competent public administrations.
- During the months of July-August 2017, a Memorandum of Understanding concerning the methods of collaboration in the exercise of institutional functions recognized by the law of the State and the Regional Guarantor was digitally signed by the Guarantor and by the Superintendent of the Prison Administration for Tuscany and Umbria.
- In December 2017 the Guarantor signed the inter-institutional and territorial network agreement for the implementation in the Umbrian Institutes of the Miur-Ministry of Justice Memorandum of Understanding of 23 May 2016.

Health:
- The Guarantor made a visit to the SPDC of the "Santa Maria della Misericordia" Hospital in Perugia.

The area of deprivation of liberty most taken into consideration in the period under review was that relating to persons deprived of personal liberty for legal reasons.

http://www.regione.umbria.it/sociale/garante-dei-detenuti

Valle d'Aosta

Enrico Formento Dojot

There were no legislative changes at the regional level. The function of the Guarantor of the rights of persons subject to restrictive measures of personal liberty is provided for by Article 2 ter of the Regional law of 28 August 2001, on the "Governance of the functioning of the Office of the Ombudsman. There was a repeal of the Regional law of 2 March 1992, no. 5 (Establishment of the Ombudsman) ", introduced by Article 2 of the Regional Law of 1 August 2011, no. 19.

Criminal:
The Guarantor dealt with 138 cases over the course of 2017. The main areas of intervention concerned the territorial location of the sentence, closely linked to the right to emotional support, health services and the lack of job and training opportunities, which involved a clear minority of prisoners.

The reference context has not changed compared to 2016 and, on the contrary, it has deteriorated in some ways. There is still an absence of a director-in-chief and of a titular warden, so the reference figure in prison is frequently a senior inspector. The top figures are deputies of directors on loan from other prisons. These absences create disorientation among the detainees and between the operators, with the Offices
experiencing a lack of coordination that reverberates on their functionality. The Guarantor, in particular, faced with the lack of normal representatives, is forced to find the information to respond to the detainees from individual Offices, which are increasingly disconnected from each other. There is also a lack of a social service.

Moreover, Brissogne prison is acting mainly as a "lung" in support of neighbouring Institutes. The result is a very heterogeneous population with a percentage of foreigners - also very heterogeneous - that is about twice the national average. The aforementioned "lung" function involves a high turnover rate that, in a place with the critical issues just mentioned, greatly hinders the implementation of work, training and recreational activities. In short, this is a prison without an identity. The problems described thus far have been exposed to the temporary directors in place and to the Piedmont-Liguria-Valle d'Aosta regional superintendent, without any substantial response.

Recently, the Guarantor has become aware of the fact that two bottles of water are assigned daily to the prisoners and operators, for unspecified reasons. From information gathered, it was found that technical investigations were in progress regarding the healthiness of the water. Given the absence of representatives, the Guarantor sent a note to the superintendent to obtain clarification.

http://www.consiglio.vda.it/difensore-civico/garante-dei-detenuti

Veneto

Mirella Gallinaro

Activities carried out at the Penitentiary Institutes of the Veneto region
- 23 January visit by the Giotto cooperative to the Padua prison;
- 1 March, a seminar on the general conditions of sentence enforcement at the prison in Treviso;
- 28 June exhibition of works at the end of the school year at the Treviso Prison - Criminal unit;
- 6 September meeting with the psychologist of the AULSS 2 Criminal area of the prison of Treviso;
- 21 September, bicentennial of the foundation of the Penitentiary Police Corps at the Treviso prison;
- 2 September, bicentennial of the foundation of the Penitentiary Police Corps at the Belluno prison;
- 5 October, "Daily life in detention" conference at the Penitentiary Institute of Padua;
- 11 October, meeting with pedagogical officials and penitentiary health workers at the Treviso prison;
- 27 October, inauguration of the "Encounter spaces with minors" created by Telefono Azzurro at the Prison of Padua;
- 29 November, unannounced visit to the Prison of Padua.-

Activities carried out by the Office of the Guarantor at the direct request of prisoners:

- Number of prisoners dealt with: 74;

Areas of requests from prisoners in interviews or by e-mail/letter

EMOTIONAL SUPPORT	9
WORK	3
OPINION	1
PROCEDURAL	3
QUALITY OF LIFE	11
HEALTH	12
TREATMENT	24
POST SENTENCE	1
OTHER	10

- Interviews were held at the Treviso prison on the following dates: 11 January, 1 February, 1 March, 3 April, 3 May, 7 June, 4 July, 24 July, 4 August, and 6 December;
- Interviews conducted at the Padua prison: 13 December.

Seminars and conferences

- 27 March, Seminar day "REMS and the Court a comparative dialogue" at the Town Hall of Nogara (VR);
- 8 June, Inter-institutional permanent observatory for health in prison at the Palazzo Regionale;
- 16 June, National Congress "External sentence enforcement for substances abusers who commit crimes: how to change the paradigm" at the Aula Magna of the University of Padua;
- 18 October, Monastier (TV), Conference on the theme "Safeguarding and protection of persons in fragile condition";
- 24, 25, and 26 October, National Guarantor study and training days at the Scuola Superiore della Polizia in Rome;
- 10 November, Conference "Handling *Privacy* and the incompatibility with detention in the Penitentiary Institutes of the Veneto Region: norms, practices and perspectives" at AULSS 3 - Venice - Mestre;
- 15 December, Office of he Guarantor internal course on *Privacy*;
- 27 December, meeting with Treviso Provincial Coordinator of Active Citizenship;

Coordination

National

- 21 March 2017, Rome, meeting of Regional Guarantors;
- 26 October 2017, Rome, meeting of Regional Guarantors;
- 28 November, Florence, meeting of the regional, provincial and municipal Guarantors of the rights of prisoners.

Regional

- 24 March, Venice - Mestre, coordination of municipal Guarantors;
- 13 July, meeting with Dr Reho at the PRAP of Padua;
- 12 December in Venice-Mestre,

Municipal coordination

Within the Regional coordination, the situation of the Venetian penitentiary Institutes is, among other things, monitored and compared.

Activities carried out in the health sector

Evaluation and observations related to the organization and activity of health units within the Penitentiary Institutes of the Veneto region.

Data sheets of the seven ULSS offices for the Penitentiary Institutes for the year 2016 were collected and reviewed. Data has not yet been received for 2017 because there was a large reorganization of the UlSS Centres in Veneto, which were merged at the provincial level, transforming them from 21 into 9. The new centres, which include on average 3 of the previous centre, are identifying

common ways to assemble the data and send it later.

Specialist services provided within the Institutes

Charts indicating weekly and monthly access in 2016 were collected and requests were made for those relating to 2017. For the prisons in which the visits were carried out, the actual situation of accesses made to outpatient specialists was collected, and the various heads of Prison Health units were engaged to request coverage of the vacant positions. It turns out that in some situations the ULSS unit has begun recruitment procedures for the vacant specialties, but these have gone unanswered. The centres have thus made up for this by sending their specialists, but for fewer hours than stipulated.

Admissions to involuntary medical treatment

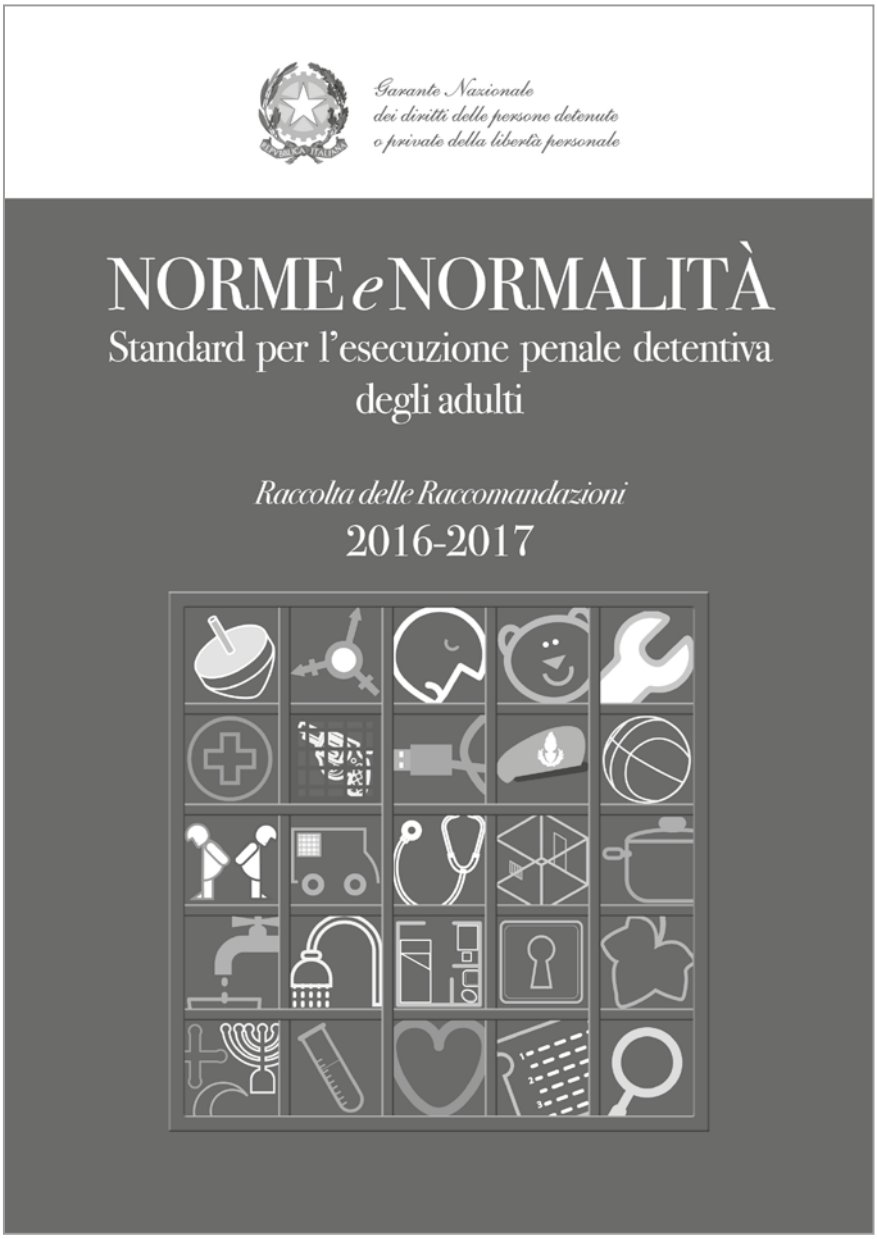
The Veneto Regional Guarantors have set out to monitor the TSOs in the Region, in the light of the recommendations contained in the document approved in the Conference of Regions in 2010 entitled "Physical restraint in psychiatry: a possible prevention strategy". The Recommendations contained in the aforementioned document are aimed at constructing a strategy for prevention of physical restraint that is set within the context of the prevention of violent behaviour in places of care. The same document reports the situation of the various regions concerning the issuing of directives aimed at monitoring and processing the phenomenon. Veneto is one of those Regions that have not issued any specific directive in line with the 2010 recommendations, but in which the Centres have independently adopted procedures on the subject. All mental health departments have adopted their own operating procedures approved by their respective corporate leadership. The Guarantor asked the Departments for such procedures and admission data for the TSOs but, due to the problems outlined above, only 7 out of 9 healthcare centres sent this data.

http://garantedirittipersona.consiglioveneto.it/

Publications

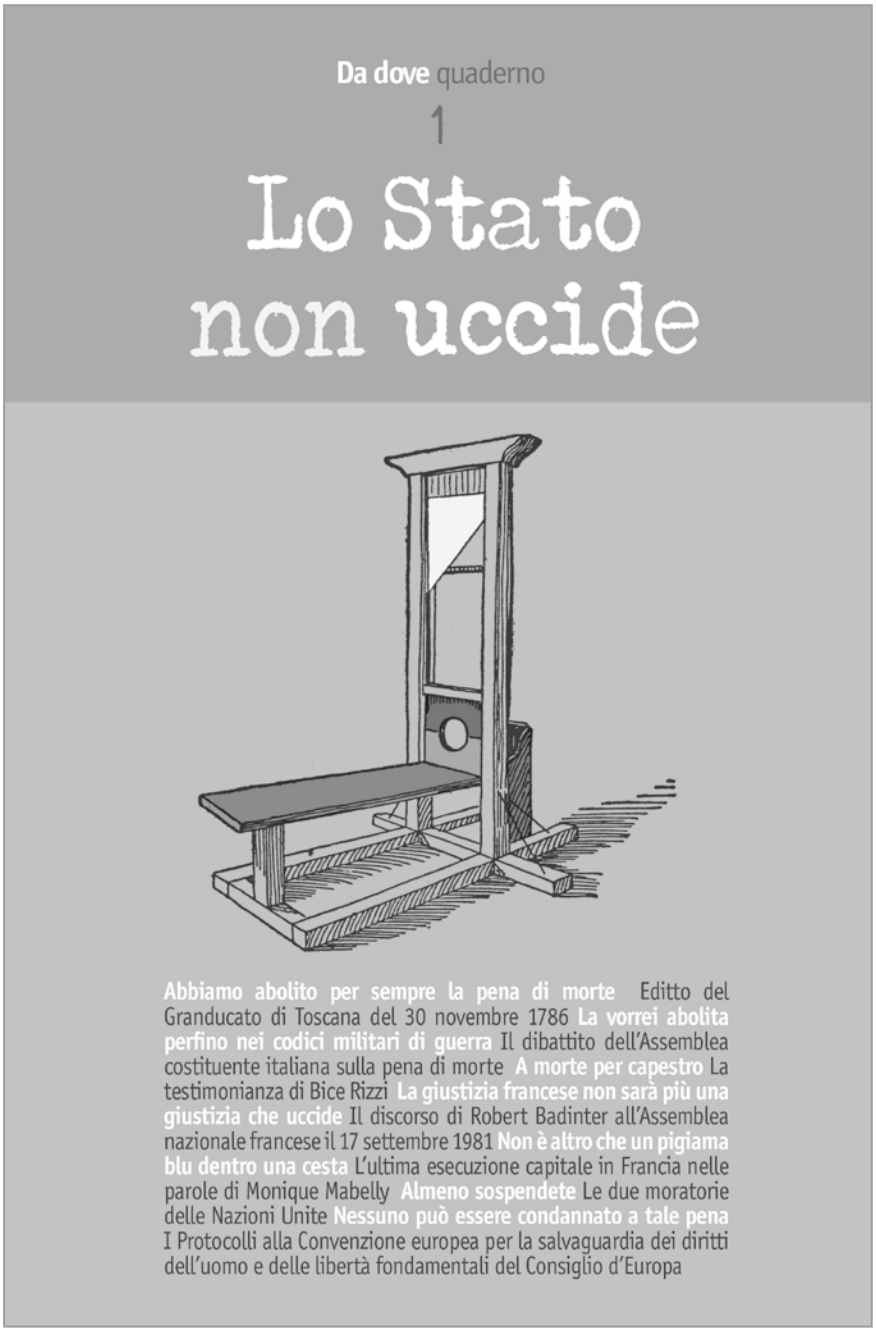
Publications

Publications by the National Guarantor



Norms and Normativity - In January 2018, the National Guarantor published *Norms and Normativity: Standards for the enforcement of adult sentencing*, a collection of Recommendations made by the National Guarantor relating exclusively to the enforcement of adult sentencing.
The collection, organized and arranged into thematic areas, aims to establish parameters to serve as a guide for those who are in charge of adult prison Institutes in being attentive to the scrupulous protection of the rights of the persons entrusted to them and towards the progressive achievement of the purpose of the sentence itself. In this perspective, the National Guarantor is attempting to come up with national standards that can support and interact with supranational ones.
Yet, unlike the internationally defined *minimum* standards, which attempt to find a minimum common denominator below which no State can fall - whatever the cultural and political context and the criminal law system, the National Guarantor aims to establish *elementary* standards, that is, an attainable level from which an evolution of the system can take place in the prospect of the progressive elevating of rights.
"A *minimum* standard - states the introduction of Mauro Palma - is limited to indicating the threshold below which a particular aspect of detention is unacceptable and risks becoming an "inhuman or degrading treatment" – and a possible breach of Article 3 of the European Convention on Human Rights. Thus, a downward target. An *elementary* standard indicates a reachable and accessible target and at the same time, indicates that change is possible, toward progressive improvement. It is the term itself 'elementary' that has a generative meaning, thus an *elementary standard* is not restricted to defining a minimum cut-off limit because it indicates also the developments that the considered issue must have. In this sense, the system can evolve and perhaps overcome the current model of deprivation of liberty in answering to crime, which today seems to be the only inevitable way".
The reception that the volume has had among the operators of the Prison Administration, the supervisory courts and even the academic world has been striking, to the extent that a second edition has been requested. The Guarantor has also seen this interest as a sign of a void that the collection of Recommendations has in some way filled. But, even more, it seems to indicate a new and, in some ways unprecedented, attention to the *soft law* system even in Italy.

Publications



Da dove: a series of recovered writings - Keeping memory alive through the recovery and dissemination of speeches and writings that represented decisive stages in the affirmation of human rights is the aim of the series *Da dove* (From where) initiated by the National Guarantor in its second year of activity. In the current historical phase, in which some values such as those of equality between persons and peoples, inclusion, solidarity and anti-fascism are faltering, and the language of exclusion and hatred are finding a space in the public discourse such as they never had, the National Guarantor has chosen to publish or re-publish texts or speeches on some central issues in the area of the rights of persons deprived of their liberty. These are texts or speeches that marked significant milestones in the struggle for the affirmation of rights, and through their publication we wish to bring them back into remembrance.
The first is entitled *Lo Stato non uccide* (The State Does Not Kill) and is on the subject of the death penalty. It contains a republishing of the Edict of the Grand Duchy of Tuscany of 30 November 1786 with which Peter Leopold for the first time in Europe and the world abolished the death penalty for every type of crime, and the speech with which on 17 September 1981 the French Minister of Justice, Robert Badinter, addressed the National Assembly asking to vote for the abolition of the death penalty in France. This was a powerful speech, interrupted at times by shouts and protests, but which nevertheless led to the approval of the law. it also contains the testimony of the dean of the French investigative judges Monique Mabelly, written immediately after witnessing the execution by beheading of Hamiba Djandoubi on 9 September 1977: three dry and sober pages that are also full of horror and anger in which she describes the last minutes of the man's life. The book also contains documents such as, the UN resolutions of 2007 and 2016 on the moratorium on the death penalty and the additional Protocols to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1983 and 2002.
Other volumes are already in the pipeline, including the proceedings of the seminar carried out by the National Guarantor on the ruling by the ECHR on the case *Mursi v. Croatia*, with the contribution of the vice-president of the Cónstitutional Court Marta Cartabia, the text of the sentence and the subsequent sentence of the Court of Cassation on the calculation of the living spaces in the overnight cells in prison..

Contents

Rules and obligations of the National Guarantor

Rules and obligations of the National Guarantor

Rules that establish the National Guarantor

Reference Standards

Supranational regulatory framework

National institutions for the promotion and protection of human rights (General Assembly of the United Nations, Resolution 48/134 of 20 December 1993)

Comment

The National Consultative Commission on Human Rights to be established with a triple function of providing advice, supervision and proposals on human rights issues.

European Directive 115/2008/EC
setting out common rules and procedures applicable in the Member States for the return of illegal third-country nationals

Comment

The purposes are as follows: "effective policy on deportation and repatriation based on common standards for people to be repatriated in compliance with human rights and in full respect of their fundamental rights and dignity".

Art. 8, paragraph 6
Removal
1. Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 7, paragraph 4, or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 7.
[...]

6. Member States shall provide for a system of effective monitoring of forced returns.

Comment

Establishment of an independent monitoring system for forced repatriations (entrusted to the National Guarantor)

Note verbale 5007-2/A2014-001564/IX, 9 December 2014, Ministry of the Interior
Bureau of Legislative Affairs and Parliamentary Relations sent to:
- Presidency of the Council of Ministers, Department for European Policies,
- Presidency of the Council of Ministers, Department for Legal and Legislative Affairs,

- Ministry of Justice - Legislative Office.

RE: Infringement Procedure 2014/2235 (formerly EU Pilot Case 6534/14/Home) incorrect transposition of Directive 2008/115/EC on Common rules and procedures applicable in the Member States for repatriation of third country nationals whose are present illegally and alleged violation of Directive 2003/9/EC setting out minimum standards for the reception of asylum seekers in the Member States.

Comment

With this note verbale, the infringement procedure already started and the default notice from the European Commission, the National Guarantor is designated as the monitoring body for forced returns pursuant to Art. 8. paragraph 6, of Directive 2008/115/EC (see above).

DEP Note verbale 0002621 P - 4.22.23, 12 March 2015, Presidency of the Council of Ministers
Department for European Policies, Mission structure for infringement procedures sent to:
- Ministry of the Interior, Cabinet Office
- Ministry of the Interior, Legislative Office
- Ministry of Justice, Cabinet Office
- Ministry of Justice - Legislative Office.
- Presidency of the Council of Ministers, Department for Legal and Legislative Affairs
- Ministry of Foreign Affairs, Cabinet Office
- Ministry of Foreign Affairs, Legislative Office
- Ministry of Foreign Affairs, Directorate General for the European Union
- Ministry of Labour and Social Policies, Cabinet Office
- Ministry of Labour and Social Policies, Legislative Office
- Ministry of Health, Cabinet Office
- Ministry of Health, Legislative Office

RE: Infringement Procedure 2014/2235 - Incorrect transposition of Directive 2008/115/EC on Common rules and procedures applicable in the Member States for repatriation of third country nationals whose are present illegally (return directive) and alleged violation of Directive 2003/9/EC setting out minimum standards for the reception of asylum seekers in the Member States (reception conditions directive). Letter of formal notice pursuant to Art. 258 TFEU. Response. Enclosures.
[...]
1. Monitoring body (Article 8, paragraph 6, return directive)
With regard to the **independence of the body** designated for the monitoring of returns, the Commission considers the proposed solution of the **National Guarantor for the rights of persons detained or deprived of personal liberty**, established by the Decree Law of 23 December 2013, no. 146 to be satisfactory.

Rules and obligations of the National Guarantor

However, for the full resolution of the Issue**, the Commission deems it necesaary to have an explicit indication of the duties for the monitoring of returns in the Self-Regulatory Code which the Guarantor will adopt**. To this end, it requested the sending of a **draft** of the text and a timetable for its adoption.

Comment

With this note verbale, the infringement procedure already started and the default notice from the European Commission, the National Guarantor is designated as the monitoring body for forced returns pursuant to Art. 8, paragraph 6, of Directive 2008/115/EC (see above).

DEP Note verbale 0007884 P - 4.22.23, 14 July 2017, Presidency of the Council of Ministers
Department for European Policies, Mission structure for infringement procedures sent to:
- Ministry of Justice, Cabinet Office
- Ministry of Justice - Legislative Office.
- National Guarantor for the rights of persons detained or deprived of personal liberty
- Ministry of Foreign Affairs, Directorate General for the European Union
- Permanent Representative of Italy to the European Union

RE: Infringement Procedure 2014/2235 - Incorrect transposition of Directive 2008/115/EC (return directive) and alleged violation of Directive 2003/9/EC setting out minimum standards for the reception of asylum seekers in the Member States (reception conditions directive). FILED.

Comment

With this note verbale, the Presidency of the Council of Ministers hereby gives notice of the closure of the infringement procedure of the European Commission against Italy, following the work done by the National Guarantor in the context of the repatriation of third-country nationals whose presence is illegal (pursuant to Article 8, paragraph 6 of Directive 2008/115/EC)

Art. 7, Decree Law of 23 December 2013, no. 146 (converted into law 21.02.2014 no. 10):

1. The National Guarantor for the rights of persons detained or deprived of personal liberty, hereinafter referred to as the "National Guarantor", is established at the Ministry of Justice.

2. The National Guarantor is made up of a board, composed of the chairman and two members, who shall remain in office for five years and whose term of office may not be extended. They are chosen from among people who are not employees of public administrations, who ensure independence and expertise in the disciplines concerning the protection of human rights, and are appointed by resolution of the Council of Ministers and by Presidential Decree in consultation with the competent parliamentary committees.

3. The members of the National Guarantor may not hold government office, even elected offce, or positions in political parties. They shall be immediately replaced in the event of resignation, death, incompatibility, verified physical or psychological impairment, serious violation of duties related to the office, or in the event they are convicted of an intentional criminal act. The members of the National Guarantor shall be compensated with an annual lump-sum payment, fixed in an amount equal to 40 percent of the annual parliamentary allowance for the Chaiorman and 30 percent for the members of the board, without prejudice to the right to the reimbursement of expenses actually incurred for board, lodging and transport for travel undertaken in the performance of institutional activities.

4. For the National Guarantor, which makes use of the facilities and resources made available to it by the Minister of Justice, an office is established of no more than 25 staff, including at least 20 from the same Ministry and, in leadership positions, no more than 2 units from the Ministry of the Interior and no more than 3 units from the National Health Service, who shall retain their current salaries, limited to the fixed and continual terms of employment, with the costs for both the basic remuneration as well as fixed and ongoing bonuses being borne by the administrations of origin. Other costs for bonus pay shall be borne by the Ministry of Justice. The aforementioned personnel shall be chosen according to their experience and expertise in the areas of competence of the Guarantor. The structure and composition of the office are determined by decree of the President of the Council of Ministers, in concert with the Minister of Justice, the Minister of the Interior and the Minister of Economy and Finance.

5. The National Guarantor, in addition to promoting and encouraging collaborative relationships with the territorial guarantors, or with other institutional figures, however named, which have the same competence in the same fields:
a. monitors to ensure that the custody enforcement of prisoners, inmates, and persons subject to pre-trial detention in prison or other forms of limitation of personal liberty are implemented in accordance with the rules and principles established by the Constitution, international human rights conventions ratified by Italy, the laws of the State, and according to the regulations;
b. visits, without any authorization required, penitentiary Institutes, forensic psychiatric hospitals and health care facilities that accommodate people subjected to security measures, therapeutic and host communities or in any case the public or private facilities where there are people subjected to alternative measures or to the precautionary measures of house arrest, the correctional Institutes for minors and the host communities for minors subject to these measures, as well as, announced and unrestricted visits, without hindering any ongoing investigation, to law enforcement holding facilities, and to any room used or otherwise functional to detention needs;
c. examines, also with the consent of the person concerned, the documents in the file of a person detained or deprived of liberty and in any case all documents related to the conditions of detention or deprivation of liberty;
d. requests from the administrations of the facilities indicated in letter b) the necessary information and documents; in the event the administration does not respond within thirty days, it shall inform the competent supervisory court and may request the issuance of an order to produce them.
e. verifies compliance with the obligations related to the rights set out in Articles 20, 21, 22, and 23 of the regulation referred to in Presidential Decree no. 394 of 31 August 1999 and subsequent amendments, at the Centres for Identification and Expulsion provided for by Article 14 of the Consolidated Act as per the Legislative Decree of 25 July 1998, no. 286 and subsequent modifications, making unrestricted access to any premises;
f. making specific recommendations to the administration concerned if it ascertains violations of the rules of the law or the validity of the requests and complaints proposed pursuant to Article 35 of the Law of 26 July 1975, no. 354. In the event of refusal, the administration concerned shall provide notice of the motivated denial within thirty days;
g. annually sends a report on the activity carried out to the Presidents of the Senate of the Republic and

Rules and obligations of the National Guarantor

the Chamber of Deputies, as well as to the Minister of the Interior and the Minister of Justice.
5-bis. For the operations of the National Guarantor the amount of EUR 200,000 is authorized for each of the years 2016 and 2017, and the amount of EUR 300,000 per year starting from the year 2018.

Comment

The National Guarantor for the rights of persons deprived of personal liberty has been established as a key element strengthening the supervisory and monitoring activities of conditions of deprivation of liberty
During the 15th legislature the establishment of such a supervisory body was set out in a unified text approved on 4 April 2007 by the Chamber of Deputies. This provision envisaged establishing it within the "Commission for the promotion and protection of human rights". The bill was not passed in the Senate, however, due to the early termination of the legislative session.
Non-governmental organizations had repeatedly called for the introduction of such a figure. The body is tasked with monitoring, visiting, consulting documents, and speaking privately with persons deprived of personal liberty in order to strengthen the protection of their rights and, in general, to provide indications for the proper functioning of the institutions. It also has the task of coordinating the territorial guarantors.
The law of 27 December 2017, no. 205 replaced paragraph 4 of Article 7 of the law establishing the National Guarantor in its entirety.
The main innovations include the ability to select personnel from administrations other than the Ministry of Justice.

Article 35, Law of 26 July 1975, no. 354 and subsequent amendments
"Detainees and internees may make oral or written requests or complaints, even in closed envelopes:

1) To the director of the institute, the Regional Administrator, the Head of the Prison Administration Department and the Minister of Justice;
2) To the judicial and health authorities visiting the institute;
3) To the National Guarantor and regional or local guarantors for the rights of prisoners;
4) To the president of the regional council;
5) To the supervisory court;
6) To the Head of State.

Comment

The Decree Law of 23 December 2013, no. 146 (converted into the law of 21 February 2014, no. 10) introduced the so-called "jurisdictional complaint" by inserting the new Article 35 bis into the Penitentiary Act. It also strengthened the first level of protection, the non-jurisdictional right, which consists of the right to make a "generic" complain: prisoners may send oral or written complaints to a greater number of Authorities, which now also includes the Guarantors for the rights of persons deprived of liberty. Therefore, the function that the National Guarantor is called upon to perform is to support the judicial protection of the Supervisory Court with an extra-judicial protection safeguard which, in this context, begins with individual requests.

Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
(United Nations General Assembly, Resolution No. 57/199 of 18 December 2002)

[...]
Art. 4
1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.
2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.
[...]
National Preventive Mechanisms

Art. 17
Each State Party maintains, constitutes or creates, at most within one year from the entry into force of this Protocol or from its ratification or accession, one or more independent national prevention mechanisms of domestic torture. They can be qualified as national mechanisms for the purposes of this Protocol, also bodies set up at the local level, provided that they meet the requirements set out in this Protocol.

Art. 18
1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge.
They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Art. 19
The national preventive mechanisms shall be granted at a minimum the power:
a) To regularly examine the treatment of the persons deprived of their liberty in places of detent ion as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

Rules and obligations of the National Guarantor

c) To submit proposals and observations concerning existing or draft legislation.

Art. 20
In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:
a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
c) Access to all places of detention and their installations and facilities;
d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
e) The liberty to choose the places they want to visit and the persons they want to interview;
f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Art. 21
1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.
2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Art. 22
The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Art. 23
The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

Comment

The OPCAT, which came into force in June 2006, has created a 'double pillar' for the prevention of torture: the United Nations Subcommittee on Prevention of Torture (SPT) and at national level the so called National Preventive Mechanisms (NPMs) that each state has to establish in the form of dedicated independent bodies.
Italy ratified the OPCAT in 2012 and has indicated the National Guarantor as its NPM.
Both the Subcommittee and the National Mechanisms have the task of conducting regular visits to places of deprivation of liberty and of drafting reports and recommendations to improve the protection of people's rights and to prevent any form of ill-treatment or conditions disrespectful to people's dignity. They shall also state opinions on existing laws, on issues under debate at the parliamentary level, and shall propose amendments or possible reforms.

Art. 3 Law 9 November 2012, no. 195 ratifying the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

Comment

(See above) Ratification makes the obligations deriving from the Protocol operational. In particular, Article 3: "Each State Party shall establish, appoint and maintain at national level one or more bodies with powers of attorney for the prevention of torture and other cruel, inhuman or degrading treatment or punishment".

Note Verbale **1105, 25 April 2014** *- Permanent Mission of Italy to the International Organizations in Geneva*

[...] the new Guarantor for the rights of persons detained or deprived of personal liberty, established by law no. 10/21 February 2014, will coordinate the network of local Guarantors, formed by institutions already in place or to be set up at regional Authorities, while the national Guarantor will submit recommendations to central Government. The whole system will constitute the National Preventive Mechanism pursuant to the Optional Protocol of Cat [...].

Comment

Diplomatic communication through which the Permanent Mission of Italy to the International Organization of Geneva provides information on the appointment of the new Guarantor for the rights of people detained or deprived of liberty as the coordinator of the network of local guarantors and the Italian NPM.

Concluding observation on the initial report of Italy by Committee on the Rights of Persons with Disabilities, 6 October 2016

Point no. 42: The Committee recommends that the national preventive mechanism immediately visit and report on the situation in psychiatric institutions or other residential facilities for persons with disabilities, especially those with intellectual and/or psychosocial disabilities.

Replies of Italy to the list of issues in relation to the initial report of Italy, 2 June 2016

Reply to the issues raised in paragraph 16 of the list of issues
33. The matter is under consideration by the National Guarantor of the Rights of detainees and persons deprived of personal freedom who has been identified as the national preventative mechanism.

Comment

The Committee of the United Nations asks Italy to initiate the monitoring of psychiatric institutions and residential facilities for people with disabilities, including those of a psychosocial nature.
Italy assigns the National Guarantor in its capacity as the NPM the task of implementing the monitoring of psychiatric institutions and residential facilities for people with disabilities.

Rules and obligations of the National Guarantor

Minister of Justice Decree of 11 March 2015, no. 36, Regulations on the structure and composition of the Guarantor
[...]
Given the law of 9 November 2012, no. 195, entitled "Ratification and Enforcement of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, made in New York on 18 December 2002", and in particular Articles 17 et seq. of the Protocol;
[...]

Art. 2 *The Guarantor*
1. The Guarantor with regard to the competences referred to in Article 7 of Decree Law no. 146/2013
a) determines the addresses and general criteria to which the Office's activities are reported and defines the objectives to be achieved, verifying its implementation;
b) adopts the self-regulatory code of the Office's activities the discipline of the operation, the guiding principles of its conduct, its components the Office and all those who, in any way, collaborate with the Guarantor, in accordance with the principles set out in Part IV, Articles 17 to 23, of the UN Protocol;
c) draws up the annual report on the activities to be carried out by the Presidents the Senate of the Republic and the Chamber of Deputies, the Minister of the Interior and to the Minister of Justice referred to in Article 7 (5) (g), of the decree-law. The report also contains an illustration of the objectives and the analysis of the results achieved and is published on the website of the Ministry of Justice

Art. 3 *Headquarters and operating assets of the Office*
1. The Office is headquartered in Rome, in premises made available by the Ministry of Justice.
2. The Ministry shall provide the Office with furniture and equipment, including IT equipment, necessary for its activities. It shall also provide organisational and logistical support to the National Guarantor for the implementation of its nationwide activities by means of its own facilities and assets, without using any additional public funds.

Art. 4 *Composition of the Office*
The Ministry of Justice shall assign 25 staff members to the Office from among its personnel in accordance to the staff distribution scheme established by the National Guarantor in agreement with the Ministry of Justice after meeting with the trade unions.
2. The Guarantor shall see to the management and evaluation of the personnel assigned to the Office. The staff members assigned to the Office work exclusively on its behalf and may not be assigned to other offices without its approval.

Art. 5 *Organization of the Office*
1. The organization of the Office is inspired by the principles of efficiency, effectiveness and transparency of administrative activity.
2. The Guarantor, acting at its own discretion, shall establish the operational methods and internal organization of the Office, in compliance with the principles contained in the legislative decree.

Art. 6 *Reimbursement of expenses*
1. The National Guarantor shall be reimbursed for the expenses incurred in the performance of its tasks conferred to it by article 7 of the decree-law, taking from the ordinary budget of the Ministry of Justice allocated for the reimbursement of expenses of domestic missions;
2. The present decree, bearing the seal of the State, shall be inserted in the Official Journal Collection of the Italian Republic and shall take effect from the day following its publication. It shall be obeyed and enforced by any person to whom it applies.

Comment

In its preface, the decree refers to the OPCAT ratification and defines the structure and composition of the National Guarantor's Office within the framework of the obligations and powers given by the Protocol to the National Preventive Mechanism.

The National Guarantor establishes the Office organisational chart and is responsible for selecting staff and the function assigned to each staff member.

Self-Regulatory Code of the National Guarantor for the rights of persons detained or deprived of personal liberty

Approved by resolution on 31 May 2016
Updated version (as per the resolution of 6 December 2017)

Article 1
Definitions
1. Hereinafter in the text:
a) "Guarantor" refers to the collegial body of the National Guarantor, established according to article 7 of the Law Decree 14, of 23 December 2013, converted, with amendments, from Law 10, of 21 February 2014, and composed of the Chairman and two members;
b) "Office" refers to the Office of the Guarantor;
c) "Staff member" refers to people forming the Office of the Guarantor;
d) "UN Protocol" refers to the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 18 December 2002, and ratified by Law 195, of 9 November 2012;
e) "Establishing Law" refers to article 7 of the Law Decree 14, of 23 December 2013, converted, with amendments, from Law 10, of 21 February 2014;
f) "Regulations" refer to the Set of regulations on the composition and organisation of the Office of the National Guarantor for the Rights of Persons Detained or Deprived of Liberty, adopted by the Decree of the Ministry of Justice, of 11 March 2015, no. 36;

g) "Directive 2008/115/EC" refers to the "Directive 2008/115/CE" refers to the Directive of the European Parliament and of the Council of 16 December 2008, n.115, on common standards and procedures in Member States for returning illegally staying third-country nationals;
(h) "FRONTEX" refers to the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Warsaw);
i) "FRA" refers to the European Union Agency for Fundamental Rights (Vienna);
j) "ECHR" is the European Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe and signed in Rome on 4 November 1950;
k) "Subcommittee on Prevention, in art. 2 of the UN Protocol" refers to the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment established – in compliance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) adopted in New York adopted in New York on 18 December 2002, and ratified by Law 195, of 9 within the "Committee against Torture" established by art. 17 of the UN Convention of 10 December 1984;
l) "CIE" is the Centre for the Identification and Expulsion of illegal migrants;
m) "Code" refers to this Self-Regulatory Code;
n) "Ethical Code" means the Guarantor's Code of Ethics.

Article 2
Operational aspects of the Guarantor
1. The Guarantor is a board formed by the Chairman and two members, in compliance with the competences
attributed by the establishing law and its regulations, and in conformity to the principles in part IV, articles 17-23 of the UN Protocol:
a) a) Determines the guidelines and general criteria to which the Office activity shall comply and defines the objectives to be achieved, which outcomes are periodically assessed;
b) b) Adopts the Self-regulatory Code of the Office activities, which disciplines its operational aspects, gives the guiding principles of its direction, of its members and of all individuals who, for whatever reason, collaborate with the Guarantor;
c) c) Regularly examines the conditions of the persons deprived of their liberties, who are restricted in the places, also temporary, described in art. 4 of the UN Protocol; has private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Guarantor believes may supply relevant information;
(d) d) Actively tries to improve the treatment and conditions of the persons deprived of their liberties and prevents tortures and other inhuman or degrading punishments through the proposal, when necessary, of the empowerment of measures of protection - which are defined in reciprocal collaboration and exchange of information with the Subcommittee in article 2 of the UN Protocol - and of the national instruments of protection adopted by other countries which have ratified the UN Protocol
e) e) Drafts the Annual Report on the implemented activities, which contains the description of the objectives and the analysis of its results. The report is transmitted to the President of the Republic, also by virtue his role as President of the Higher Council of Courts, to the President of the Constitutional Court, to the President of the Senate of the Republic, to the President of the Chamber of Deputies, to the President of the Cabinet of Ministers, to the Minister of Defence, to the Minister of Justice and to the Minister of Health. The Report is published on the Ministry of Justice and the Guarantor's websites.

Article 3
Tasks of the Guarantor
1. 1. The Guarantor carries out his mandate aiming at the protection of the rights of those deprived of their liberties
or in prison without any conditions. It avails itself of some facilities and resources from the Ministry of Justice, and other public bodies, from the European Commission and from other international agencies,
which are in line with the goals of its establishing law and the UN
Protocol.
2. In full independence and without any condition, the Guarantor:
a) a. Promotes and fosters collaborations with the local ombudsmen and with other local appointed public entities, which have the same competences as the Guarantor. The local ombudsmen can be invited to collaborate with the steering committee for the activities of the local ombudsmen, where established;
b) b. Monitors the legality of the enforcement of sentences on inmates, internees, persons held in pre-trial detention or under other orders privative of their personal liberty, and its compliance with the legislation and principles set in the Constitutional Charter and in the international conventions on the promotion and protection of the rights and dignity of persons, ratified by the Italian current laws and regulations;
c) c. Visits, on a regular basis and with no need of permissions: prison establishments; facilities for the treatment and custody of prisoners with mental illness and other places, also temporary, employed for housing persons under detention orders for security reasons; rehabilitation and host communities; public or private houses accommodating persons under probation orders or house arrest; detention centres for juveniles and host communities for minors under judicial orders.
d) d. Visits, on a regular basis and with no need of permissions: police forces detention cells, where admission to any place used for restrictive and security purposes shall take place without restriction;
e) e. Has access, after obtaining permission (also verbal) from the applying person, to all documents in the personal file of the inmate or of the person deprived of his/her liberty, and of all documents relevant to the detention or deprivation of personal liberty conditions;
f) Requests all information and documents necessary for carrying out its tasks to the administrative entities responsible for facilities falling under letters c) and d). In case the administration responsible is not replying within thirty days, as per visits to places falling under letter c), the Guarantor will inform the judicial authority in charge and ask for an order to have the requested documentation; as per visits falling under letter d), the Guarantor will also inform all authorities in charge and ask for their intervention so to have the requested documents supplied;
g) Expresses justified remarks and specific recommendations to the addressed administrations when it verifies that provisions established in the Prison Act are not respected, and the rights of persons deprived of their liberties and the relevant obligations in charge of the responsible administration are violated. Or rather, it verifies the plausibility of requests and complaints forwarded in accordance with art. 35 of Law 354, of 25 July 1975, Provisions on the prison act and the enforcement of measures depriving or limiting liberties. In the event of refusal, the administration concerned shall provide notice of the motivated denial within thirty days; Upon expiry of this deadline, all remarks, recommendations and replies from the addressed administration, if any received, are published on the Guarantor's website without indicating the name of the persons involved, and when necessary, they are sent to the Subcommittee on Prevention, established in art.2 of the UN Protocol;
h) Verifies the fulfilment of obligations relevant to articles 20, 21, 22 and 23 of the Regulations on the

enforcement of the Consolidated Act of Provisions concerning immigration and the condition of third country nationals, in accordance to article 1, paragraph 6 of the legislative decree 286, of 25 July 1998, approved with Decree of the President of the Republic 394 of 31 August 1999, and following amendments and integrations, by visiting, without any preventive communication and restrictions, the CIEs, and similar facilities where identification photos or other forms of registration of third-country people, whose permanence or admission to the national territory is irregular, are undertaken;
i) Verifies, additionally, the respect of the obligations concerning the protection of fundamental rights and dignity of the individual, by visiting, without any preventive communication and restrictions, any site, aircrafts and other modes of transport included, where persons deprived of their liberties are placed after the enforcement of a judicial or administrative order;
j) Monitors the modalities enacted in the enforcement of forced returns and removals by air or ship of third-country nationals as described in Directive 2008/115/CE, article 8, paragraph 6, and according to relevant procedures provided by FRONTEX and FRA. Where violations of rights and concerning unfulfilled obligations in charge of the responsible administrations are verified, it expresses remarks and recommendations so to improve the treatment and conditions of the involved persons and to prevent tortures and other inhuman or degrading punishments and treatments, through the proposal, when necessary, of the empowerment
or the amendment of the current measures of protection. The administration concerned shall submit its observations within thirty days. Upon expiry of this deadline, all remarks, recommendations and observations from the administration, if any received, are published on the Guarantor's website, and when necessary, they are sent to the concerning departments of the Subcommittee on Prevention, established in art. 2 of the UN Protocol, of FRONTEX and of FRA
3. 3. If during a visit, a violation of article 3 of the ECHR ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment), is deemed to have occurred, the Guarnator shall promptly inform the authority in charge in order to immediately halt the violation, and at the same time notify to the court and the relevant Minister for the appropriate interventions.

Article 4
Guiding principles
1. 1. The Guarantor, the Office, the staff members and all individuals who, for whatever reason, collaborate with the Guarantor in institutional activities shall follow these guiding principles:
a) a. Fully independent behaviours respectful of the principles in the UN Protocol, in particular article 18, and provisions in the code of ethics;
b) Protection of confidential information collected by the Guarantor. In particular no personal data can be published without the agreement of the interested person;
c) Confidentiality concerning preliminary investigations, information and documentations acknowledged during the institutional visits and the carrying out of the other Guarantor tasks;
d) Confidentiality concerning the outcomes of the visits relevant to article 3 of the Code, and up until they are published on the Guarantor's website;
e) Duty to immediately inform the competent legal authorities of crimes committed to persons detained or deprived of liberty, which it becomes aware of while carrying out
its institutional tasks.
2. The Guarantor strives to avoid that an authority or a civilian can order, apply, allow or tolerate a sanction against a person or an organisation for having given the Guarantor any true or false information. The Guarantor will strive so that this person or the organisation does not undergo any kind of prejudice.

Article 5
The Chairman
1.The Chairman represents the Guarantor in its various institutional relations. He make proposals to the Guarantor at board meetings
for the approval of the general guidelines and criteria to which the Office activities shall comply, and defines the results to be achieved and their relevant priorities.
2. The Chairman shall convene the Guarantor board meeting, also at the request of one member, which shall take place periodically, at least once in a month, to decide on the institutional activity to be planned; he drafts the agenda to be sent to the Guarantor members no more than two days before the meeting, including the minutes from the previous meeting. Resolutions are approved with the approval of the Chairman and at least one member. The procedures for conducting the board meetings are determined at each session.
3. Acting on his own decision and the interested person's agreement, the Chairman can assign board members individual operational and representative tasks to be carried out directly or with the help of the Office staff members. The relevant outcomes are reported to the Chairman, assessed in board meetings and written in the Annual report on the activity of the Guarantor, in accordance with art. 2 of the Code;
4. When necessary, the Chairman may take urgent decisions, which are communicated in due time to the members for board ratification;
5. The Chairman drafts the code of ethics to be adopted by the Guarantor by board resolution.
6. 6. The Chairman can appoint study commissions and call for unpaid consultants with high expertise and professionalism to carry out his institutional tasks. Consultants are unpaid and are appointed at the Chairman's discretion.
7. The Chairman authorises the implementation of the Office staff members' missions, with no costs, the costs for missions, for the purchase of assets and for service supplies according to what is established in article 9 of the Code.
8. The Chairman determines modalities, time and number of the Office staff members during the Guarantor visits and in other institutional tasks, and yet the monitoring activities under letter j) of article 3 of the Code.
9. In case of prolonged or temporary absence, the Chairman can delegate his tasks to the Guarantor members, also separately.
10. The Chairman appoints the person Responsible for Preventing Corruption and Promoting Transparency. Said person will be chosen among the Organisational Units of the Guarantor's Office.

Article 6
Headquarters and operating assets of the Office
1. The Office is located in Rome on the premises made available by the Ministry of Justice, in Via San Francesco di Sales, 34, 00165.
2. The Ministry provides the Office with furniture and equipment, including IT equipment and a website, necessary for its activities and is also responsible for their maintenance. The Ministry of Justice alsos provide organisational and logistical support to the National Guarantor for the implementation of its nationwide activities by means of its own facilities and assets.

Article 7
Composition and management of staff assigned to the Office
1. The Ministry of Justice shall assign 25 staff members to the Office in accordance to the staff distri-

bution scheme established by the National Guarantor in agreement with the Ministry of Justice after meeting with the trade unions.
2. When needed, the Guarantor can apply for further staff members after having signed agreements with other public administrations involved in the fulfilment of its tasks as per article 3 of the Code.
3. Staff members to be assigned are selected by the Guarantor who assesses their expertise and successful experience in the Guarantor's field of intervention.
4. The Guarantor sees to the management and evaluation of the personnel assigned to the Office. The personnel work exclusively for the Guarantor and may not be assigned to other tasks without the approval of the Guarantor.

Article 8
Organization and articulation of the Office
1. 1. The Office organisation is based on the principles of transparency, efficacy and efficiency of administrative activity, as well as on the flexible use of staff in operational activities
2. a. The Office is composed of the following units, in relation to the preliminary investigation necessities required in the implementation of the Guarantor's functions and tasks. It is open to modifications and adaptations according to operational experiences:
Unit 1 - General affairs: Office secretary, protocol and distribution of files to the Units. Filing: Maintenance of the report schedule and receipt of replies. Administrative management of staff. Office logistics.
Accounting: missions and control of section 1753 National Guarantor for the rights of persons detained
or deprived of personal liberty of the Budget of the Ministry of Justice.
Unit 2 - Information systems: IT functions related to the acquisition and organization of data of various Administrations. Analysis of data and of regular or specific reports.
Computerized management of internal flows and related archives. Website.
Unit 3 - Deprivation of liberty in the criminal justice system: monitoring of adult, juvenile and community correctional facilities. Relations with relevant Administrations. Viewing of documents, requests for documentation, contacts with the Supervisory Court.
Unit 4 - Deprivation of liberty by the Police: monitoring of all law enforcement
facilities. Relations with relevant Administrations. Viewing of documents, requests for documentation.
Unit 5 - Deprivation of liberty and migrants: monitoring of facilities for the deprivation of liberty to migrants (Reception and repatriation Centres, Hotspots, Centres for unaccompanied children, Centres for asylum seekers). Monitoring of forced returns. Coordination of additional units related to possible management of the Asylum, Migration, Integration Fund (FAMI).
Unit 6 - National and international relations, studies: relations with territorial guarantors, with international organizations and other bodies operating within the system of protection of persons deprived of liberty. Legislative updates and regulatory processes (national and European) in progress. Support to the Board for research and studies. Interpreting service.
Unit 7 - Deprivation of liberty in health care: Monitoring and visits to people
undergoing involuntary medical treatment (TSO) outside the criminal system. Monitoring and visits to residences for the disabled or elderly in which the deprivation of liberty actually occurs. Security measures (in particular Residences for the implementation of security measures). Relations with relevant Administrations. Viewing of documents, requests for documentation.
b. Under the Board's direct supervision is the Board Support Organisational Unit, which has been established to carry out the following
tasks: management of the Board's agendas, coordination of the resolutions and minutes of Board meetings, institutional relations, establishing the examination procedure for complaints pursuant to Article 35 of the Penitentiary Act and administration of documents for the approval Committee. Invitations to conventions, conferences or other institutional events. Final coordination for submission of the Annual Report.
c. The evaluation of nursing homes for disabled people, vulnerable people and, in general, for people in hospital and deprived of their legal capacity or with impairment of their legal capacity, as well as the evaluation of involuntary and temporary medical treatments entrusted to the Board.
d. The units referred to in point a. of this section are coordinated by an official of the Office tasked with implementing the directives of the Board.
3. The Guarantor assigns personnel to the various organizational units defining their tasks and competences and, if necessary, appointing one or more coordinators, by means of board resolutions with the consent of the interested parties and taking into account staff availability.
4. The methods, times and presence of the members of the Office for visits and monitoring activities of the Guarantor are specifically established by decision of the Chairman.
5. Among the officials responsible for the Organizational Units, the Chairman appoints the Corruption Prevention and Transparency Prevention Officer who prepares the three-year Corruption Prevention Plan (PTPC) according to the strategic objectives defined by the Guarantor for the prevention of corruption, integrity and transparency. The Guarantor, in a board meeting, adopts the PTPC and provides for the further obligations set out by the provisions of Law 190/2012, as amended by Presidential Decree 97/2016, and by the decisions of the National Anti-corruption Authority, including those for the training and updating of personnel in service, with particular attention to those operating in areas where the risk of corruption is high.

Article 9
Financial resources, administration and accounting for expenses
1. The financial resources necessary for the fulfilment of the institutional duties of the Guarantor are administered according to criteria of economy and transparency. Within the limits of these resources, the Chairman, at his own discretion, justifies and authorizes spending on missions andf the purchase of goods and provision of services.
2. The financial resources of the Guarantor are allocated by the National Budget Law and flow into a specific budget section for full autonomous and independent use by the Guarantor. Treasury functions are carried out by personnel of the Ministry of Justice who perform accounting operations in accordance with the directives given by the Guarantor.
3. Auditing of the administrative and accounting regularity of the expenses incurred by the Guarantor is carried out by the Ministry of Economy and Finance, an administration responsible for verifying the legitimacy of public spending.
4. A summary account of the expenses incurred during the calendar year, attributed to the section referred to in paragraph 2 of this section, will be reported in a specific section of the Annual Report to be submitted to Parliament.

Rome, 31 May 2016

Mauro Palma, *Chairman of the National Guarantor*
Daniela de Robert, *Member of the National Guarantor*
Emilia Rossi, *Member of the National Guarantor*

Registry of the National Guarantor for the rights of persons detained or deprived of personal liberty

Resolution of 31 October 2017

Title I
General regulations

Article 1
Definitions

Hereinafter in the text:
a) Guarantor refers to the collegial body of the National Guarantor, established according to article 7 of the Law Decree 14, of 23 December 2013, converted, with amendments, from Law 10, of 21 February 2014, and composed of the Chairman and two members appointed by the President of Italy;
b) Office of the Guarantor refers to the structure, composition and organization of the Guarantor;
c) Self-Regulatory Code means the Self-Regulatory Code adopted by the Guarantor in a board meeting on 31 May 2016, pursuant to Article 1 bis, letter b) of the Ministerial Decree of 11 March 2015, no. 46;
d) Establishing law refers to article 7 of the Decree Law of 23 December 2013, no. 14, converted, with amendments, by law 21 February 2014, no.10 and supplemented by Article 1, paragraph of the Law 28 December 2015, n. 208 of the 2016 Stability Law;
e) Recipients of the Code include the Chairman and members of the Guarantor, personnel in positions of command, detached or placed on secondment by the State Administration and other public institutions in service at the Office of the Guarantor, as well as subjects who collaborate in any capacity or associate with such office, including consultants;
f) "UN Protocol" refers to the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 18 December 2002,
and ratified by law 9 November 2012, no. 195;
g) Presidential Decree 62/2013 refers to the Decree of the President of Italy of 16 April 2013, no. 62, Regulation containing the code of conduct for civil servants, pursuant to Article 54, paragraph 5, of Legislative Decree 30 March 2001 no. 165;
h) ANAC refers to the National Anti-Corruption Authority, formerly CIVIT;
i) "ECHR" is the European Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe and signed in Rome on 4 November 1950.

Article 2
Objectives and purposes

1. The Code aims to define the best conditions for promoting the proper functioning and reliability of the Guarantor and to protect its public image. For this purpose, the Code adopts the provisions of Presidential Decree no. 62 of 2013 and Resolution no. 75 of the 2013 ANAC as minimum principles of ethics and integrity of conduct in carrying out the institutional tasks of the Guarantor.
2. The provisions of the Code ensure that these provisions are adapted to the specific characteristics of the Guarantor to specify the contents of the Guiding Principles referred to in Article 4 of the Self-Regulatory Code, as well as the relevant articles of the UN Protocol, in order to define the duties of diligence, loyalty, impartiality, independence, transparency and good faith that must influence the conduct of the Guarantor, the staff in service at the Office of the Guarantor, and of subjects operating in any capacity within its scope.
3. The Code is a fundamental instrument for the prevention of corruption and respect for legality in line with the requirements of the National Anti-corruption Plan prepared by ANAC.

Article 3
Scope of application

The Code applies to the members of the Guarantor, to the members of the Office of the Guarantor and to all subjects who, in any capacity, collaborate or associate with the Office, including consultants.

Article 4
Publication and dissemination of the Code

1. The Code is widely circulated by its publication in the Official Gazette, on the corporate website of the Guarantor and on the Ministry of Justice website, as well as on the Intranet. A hard copy of the Code is affixed in a clearly visible and accessible position, at the entrance and in all the premises of the offices of the Office of the Guarantor.
2. The person in charge of transparency and prevention of corruption of the Guarantor is responsible for sending it by e-mail to staff in service and to regular collaborators, even those who are unpaid, who are required to sign it for acknowledgement and acceptance of obligations and duties. Failure to do so may result in removal from office and the termination of contractual relationships.

Title II
Conduct in the performance of institutional tasks and work

Article 5
General principles of good conduct

1. The conduct of the Guarantor and the members of the Office of the Guarantor is based on establishing relationships of trust and collaboration with the subjects involved in any capacity in the institutional activity carried out, as well as mutual respect for the dignity of each person in interpersonal relations within the guarantee institution. For this purpose, behaviour should be friendly and courteous in all communication with various interlocutors using simple and understandable language, fully justifying responses to requests for help or clarification on the condition of detention or deprivation of personal liberty.
2. The personnel of the Guarantor and the Office of the Guarantor shall show the utmost willingness to collaborate with other public administrations, ensuring the exchange and transmission of information, data and documentation in any form, also electronically, in compliance with current legislation, without prejudice to the obligations of confidentiality.
3. The Guarantor and the members of the Office of the Guarantor shall limit to cases of absolute necessity any use for personal reasons of the telephonic and telematic devices and the photocopiers supplied, even for the mere reception of communications.

Rules and obligations of the National Guarantor

Article 6

Independence

1. The recipients of the Code are required to ensure absolute independence of their behaviour, first of all by
observing the principles of the UN Protocol, in particular those indicated in Article 18.
2. The recipients of the Code also take care to counter any undue interference in the performance of the institutional tasks referred to in Article 3 of the Self-Regulatory Code and any further tasks entrusted to them by law.
3. The recipients of the Code must refrain from making decisions or performing activities related to their duties in situations of conflict, even potential, with personal interests, those of their spouse, domestic partners, relatives and in-laws to within the second degree. The conflict may concern interests of any kind, even non-pecuniary, including those related to supporting political, professional, trade union and hierarchical superiors.
4. Without prejudice to occasional teaching, study and research assignments, participation in study conventions or specialization courses that should be promptly notified to the Chairman of the Guarantor for the relative authorizations, the staff in service is forbidden to take on another job or stable assignment, including professional, commercial and entrepreneurial activity of any kind, even if unpaid.
5. The recipients of the code are forbidden to accept, for themselves or for others, gifts, awards or other benefits, also in the form of discounts, even during trips, seminars or conferences, except for those of modest value, provided they do not exceed 150 euros in a single calendar year and are paid in the context of ordinary courtesy and local habits. It is also forbidden to request or solicit gifts or any other benefit as consideration for performing an official deed.
6. Without prejudice to the right of association and to belong to political parties and trade unions, the Guarantor and the staff of the Office of the Guarantor shall avoid participating in the activities of associations, organizations, political parties and movements that conflict with the institutional aims of the Guarantor. The Chairman and the members of the Guarantor, in the event they accept candidacy for European or national, political or administrative elections, shall be suspended from their duties and, where elected, be removed from office. A member of the Office of the Guarantor, after accepting candidacy and for the entire duration of the election campaign, shall be placed on leave, as well as in the case of election.

Article 7

Impartiality

1. The personnel of the Guarantor and the Office of the Guarantor are required to avoid favourable treatment, to reject undue pressures of any kind, to take decisions with the utmost transparency, and not to create or benefit from situations of privilege for themselves or others.
2. The personnel of the Guarantor and the Office of the Guarantor are also required not to make promises, not to make commitments or to give assurances regarding matters that fall within the institutional competences.
3. The personnel of the Guarantor and the Office of the Guarantor shall avoid active participation and taking up positions in associations, clubs or other bodies, which may involve obligations, constraints or expectations that could jeopardize their impartial behaviour in the performance of institutional activities or work.

Article 8

Protection of confidential information

1. The recipients of the Code are required to protect confidential information collected in any way by the Guarantor for reasons of office.
2. No personal data collected may be collected without the consent of the interested party and disclosed without his consent.

Article 9

Secrecy of investigative activity

1. The recipients of the Code must guarantee the utmost secrecy on investigative activities, information and documents acquired during visits or inspections arranged in accordance with Article 3 of the Self-Regulatory Code and in the performance of other institutional tasks entrusted to the Guarantor by the law or by European or international Conventions.

Article 10

Confidentiality on the results of visits

1. The results of the investigations pursuant to article 9 above must be kept confidential until they are published on the Guarantor's institutional website.

Article 11

Obligation to report crimes to the competent authority

1. The Guarantor is required to immediately inform the competent legal authorities of crimes committed to persons detained or deprived of liberty, which it becomes aware of while carrying out its institutional tasks.
2. If during a visit the situation, a violation of article 3 of the ECHR is deemed to have occurred, the Guarantor shall promptly inform the authority in charge in order to immediately halt the violation, and at the same time notify to the court and the relevant Minister for the appropriate interventions.

Article 12

Protection of informants

1. The Guarantor and the Office of the Guarantor, within the limits of their respective competences, are required to actively work to ensure that no authority or public official orders, applies, permits or tolerates a sanction against a person or organization for communicating any type information to the Guarantor even if not truthful.
2. The Guarantor shall also strive to prevent this individual or organization from suffering any kind of prejudice.

Article 13

Person Responsible for Preventing Corruption and Promoting Transparency

1. The Chairman appoints the person Responsible for Preventing Corruption and Promoting Transparency (RPCT). Said person will be chosen among the Organisational Units of the Guarantor's Office.
2. The RPCT prepares the Three-year Corruption Prevention Plan (PTPC) according to the strategic objectives defined by the Guarantor on the prevention of corruption, and the promotion of integrity and transparency.
3. The Guarantor, in a board meeting, adopts the PTPC and provides for the further obligations set out

by the provisions of Law 190/2012, as amended by Presidential Decree 97/2016, and by the decisions of the National Anti-corruption Authority, including those for the training and updating of personnel in service, with particular attention to those operating in areas where the risk of corruption is high.

Article 14
Liability for the violation of the obligations of the Code

1. Violation of the obligations established by the Code constitutes behaviour contrary to the duties of the office.
2. Without prejudice to the scenario in which violation of the provisions contained in the Code, as well as the violation of duties and obligations set out in the corruption prevention plan periodically prepared by the Guarantor in line with the National Anti-Corruption Plan of the ANAC, also entail the criminal, civil, administrative or financial liability of personnel in service if public servants, they are grounds for disciplinary responsibility to be ascertained upon the outcome of the related procedure in compliance with the principles of graduality and proportionality of sanctions.
3. Each individual violation is assessed by the Ethics Committee referred to in Article 14 regarding the severity of the behaviour and the extent of the resulting damage, including moral, to the prestige and public image of the Guarantor. The type, extent and method of application of the relative sanctions are indicated in paragraph 2 of article 16 of Presidential Decree 62/2013.

Article 15
Ethics Committee

1. The Guarantor shall appoint an Ethics Committee composed of at least 3 members who work without compensation. Members must ensure absolute independence and have expertise in the disciplines related to the protection of human rights. They are preferably chosen from among individuals who exercise or have exercised the functions of judges in higher courts or as full professors in university law departments, or as lawyers authorized to practice before the higher courts. The oldest member of the Committee assumes the functions of Chairman of the Committee and makes use of a secretary provided by the Guarantor.
2. The Ethics Committee monitors the correct application of the principles and regulations of the Code and formulates to the Guarantor possible adjustments to their operative content by means of a specific justifying document.
3. The Ethics Committee evaluates and proposes the resolution of specific cases opened ex officio or reported by the Chairman of the Guarantor.
4. The Committee reports its findings to the Guarantor both in cases where it has identified the details for the initiation of disciplinary proceedings against public employees, and in cases where it considers that no disciplinary action is needed.

Article 16
Revisions to the Code

1. The Board of the Guarantor, also at the behest of the Ethics Committee or the Person Responsible for the Prevention of Corruption and the Promotion of Transparency, shall periodically revise and supplement the provisions of the Code.
2. The procedures for approving any changes and subsequent transparency requirements for their disclosure remain, as a rule, those observed for the entry into force of this Code.

Rome, 31 October 2017

il Presidente
Mauro Palma

First Three-Year Plan for the Prevention of Corruption and the Promotion of Transparency 2018-2020 of the National Guarantor for the rights of persons detained or deprived of personal liberty

Foreward

The Law of 3 August 2009 no. 116 ratified and implementedthe United Nations Convention against Corruption, adopted by the UN General Assembly on 31 October 2003 with resolution no. 58/3, signed by the State of Italy on 9 December 2003. Subsequently, the Law of 6 November 2012, no. 190 established the provisions for the prevention and repression of corruption and illegality in public administration, identifying, inter alia, at national level, the National Anti-Corruption Authority (ANAC). Article 19 of the Decree Law of 24 June 2014, no. 90 then transferred entirely to the aforementioned Authority the competences regarding corruption prevention and the promotion of transparency in public administrations. In 2016, the ANAC submitted the first National Anti-Corruption Plan (PNA), in line with the relevant regulatory changes introduced by the Legislative Decree of 25 May 2017, no. 97 "*Revising and simplifying the provisions on the prevention of corruption, publicity and transparency, correcting the Law of 6 November 2012, no. 190 and the Legislative Decree of 14 March 2013, no. 33, pursuant to Article 7 of the Law of 7 August 2015, no. 124 on the organization of public administrations*'. Finally, with resolution no. 1208 of 22 November 2017, the ANAC approved the 2017 update to the National Anti-Corruption Plan. The PNA serves as the official guidelines for the Administrations, has a duration of three-years, and is updated annually. It therefore contains indications that commit the Administrations to carrying out assessments of the organizational situation in which activities in the public sector and public interest are carried out that are exposed to the risk of corruption, and the adoption of concrete measures to prevent corruption, according to a principle that is not merely formal and in compliance with regulations, but aimed at strengthening the link between anti-corruption measures and measures to improve the administrations and the performance of offices and public officials. The ANAC, in its guidance towards this virtuous path, does not impose uniform solutions, inviting individual Administrations to effectively implement the anti-corruption measures envisaged to prevent risks in the specific organizational context, while making use of assessment procedures that are as standardized as possible. It should nevertheless be borne in mind that the contents and recommendations elaborated by the ANAC in the PNAs are strictly functional to the implementation - also required of the Italian State - of the obligations envisaged in international forums such as the UN, the OECD, the G20, the European Union, and the Council of Europe. In this regard, the notion of corruption must be understood in a broad sense, and not merely as coinciding with the specific crime of corruption, understood as "*...taking decisions (...) that deviate from the safekeeping of the general interest due to improper conditioning by particular interests. It is necessary to have regard to acts and behaviours that, while not constituting specific crimes, contrast with the necessary concern*

Rules and obligations of the National Guarantor

for the public interest and prejudice faith of citizens in the impartiality of the administrations and the subjects that carry out activities in the public interest." (2015 update to the PNA). The ANAC guidelines also acknowledge that the concept of 'transparency' has been strengthened, as a principle value that characterizes the organization and activity of public administrations and relations with citizens. On this basis, the figure of the person responsible for prevention and corruption (RPC) has been strengthened by the fact that the person tasked with preventing corruption and promoting transparency (RPCT) now occupies both roles. As a result, the three-year plan for the prevention of corruption and the promotion of transparency (PTPCT) has been rendered a single instrument.

Frame of reference of the National Guarantor for the rights of persons detained or deprived of personal liberty

Article 7 of the Decree Law of 23 December 2013, no. 146 converted with amendments into the Law of 21 February 2014, no. 10, established the National Guarantor for the rights of persons detained or deprived of personal liberty (National Guarantor) and assigned it with the task of ensuring that the custody of persons subject to restrictions of personal liberty is implemented in accordance with national regulations and international human rights conventions ratified by Italy.

The National Guarantor consists of a Board, made up of the Chairman and two members, chosen from persons who are not employees of public administrations; they are appointed following a resolution of the Council of Ministers, after hearing from the competent parliamentary committees, by decree of the President of Italy. The Presidential Decree of 1 February 2016 appointed as Chairman of the National Guarantor, Prof. Mauro Palma, and as a member of the Board, the lawyer Emilia Rossi; on 3 March 2016, the other member of the Board, Dr Daniela de Robert, was appointed.

The National Guarantor is an independent body and has been indicated by the Italian Authorities as a National Preventive Mechanism for the prevention of torture and cruel, inhuman or degrading treatment or punishment (NPM), pursuant to Article 3 and following of the Optional Protocol to the Convention against torture (OPCAT) adopted by the General Assembly of the United Nations on 18 December 2002 (in force since 22 June 2006) and ratified by Italy with the law of 9 November 2012, no. 195. Following the filing of the ratification instrument on 3 April 2013, the Protocol entered into force for Italy on 3 May 2013. The Treaty, establishing the UN Sub-Committee on the Prevention of Torture with inspection and monitoring tasks at the global level, has committed all the States Parties to adopt a National Preventive Mechanism with powers to visit all places of deprivation of liberty . In order to prevent torture and other cruel, inhuman or degrading treatment or punishment, the Protocol provides for the establishment of a system of regular visits by national and international independent bodies in places where people are deprived of their liberty. For Italy, the National Guarantor for the rights of persons detained or deprived of personal liberty has been identified as the National Preventive Mechanism.

In this capacity, with the powers and guarantees conferred under Articles 19-21 of the Protocol, the National Guarantor has access to all places where persons are or may be deprived of their liberty.

The Minister of Justice Decree of 11 March 2015, no. 36 "Regulations containing the structure and composition of the Office of the National Guarantor for the rights of persons detained or deprived of personal liberty" set out, in article 7 paragraph 4, that Ministry of Justice staff be assigned to the Office of the National Guarantor (there is no national role for the role of the National Guarantor) in the number of 25 units, divided according to the human resource levels established by the National Guarantor in consultation with the Minister of Justice. The *ratio* was - and is - such as to assure the new Body specialized and prepared personnel, chosen according to knowledge acquired in the areas of competence of the Guarantor, as stated in article 7 paragraph 4 of Decree Law 146/2013. In the most recent 2018 budget law, paragraph 476 was approved, which replaces the aforementioned paragraph 4 of article 7 of the Decree Law of 23 December 2013, no. 146 converted with amendments into the Law of 21 February 2014, no. 10, and states "for the National Guarantor, which makes use of the facilities and resources made available to it by the Minister of Justice, an office is established of no more than 25 staff, including at least 20 from the same Ministry and, in leadership positions, no more than 2 units from the Ministry of the Interior and no more than 3 units from the National Health Service, who shall retain their current salaries, limited to the fixed and continual terms of employment, with the costs for both the basic remuneration as well as fixed and ongoing bonuses being borne by the administrations of origin.

Other costs for bonus pay shall be borne by the Ministry of Justice. The aforementioned personnel shall be chosen according to their experience and expertise in the areas of competence of the Guarantor. The structure and composition of the office are determined by decree of the President of the Council of Ministers, in concert with the Minister of Justice, the Minister of the Interior and the Minister of Economy and Finance". This amendment includes a specific request by the National Guarantor regarding the necessary multi-discipline nature of the staff, taking into account the multiple and complex competences assigned to this Guarantor Authority. Within three months of the issuance of the aforementioned budget law, the decree of the President of the Council of Ministers will have to be issued which, among other things, will have to establish, in the wake of what has been achieved so far, the different staff categories and the methods for the selection of the units not currently in place (so far the Office is composed of 17 units of the Ministry of Justice and 1 from the Ministry of the Interior).

The Office of the National Guarantor has been operational since 25 March 2016 and, as already mentioned, has not yet completed the recruitment of all personnel units. As of 30 January 2018, the personnel situation is as follows:

Staff for Functional Areas and Police Roles

Areas/Roles	Women	Men	Total
Central functions department, Area 2		2	2
Central functions department, Area 3	6	2	8
State Police, Inspectors		1	1
Prison police, Agents and Assistants		7	7
Total	6	12	18

Rules and obligations of the National Guarantor

Staff by Areas/Roles and Positions

Area/Profile - Role/Position	Wom-en	Men	Total
Central functions department, Area 2		2	2
Administrative assistant		1	1
Computer assistant		1	1
Central functions department, Area 3	6	2	8
Managing director	1		1
Administrative officer	1		1
Accounting officer	1		1
Social service officer	1		1
Pedagogical legal officer	1	1	2
IT officer		1	1
Linguistic officer	1		1
State Police, Inspectors		1	1
Deputy coordinating commissioner		1	1
Prison police, Agents and Assistants		7	7
Special agent		2	2
Assistant chief coordinator		1	1
Agent		4	4
Total	6	12	18

As set out in the Self-Regulatory Code adopted, for the performance of institutional duties, the Chairman of the Guarantor may use unpaid highly competent and professional consultants, appointed at his own discretion, also stipulating special agreements with other State Administrations. The Guarantor sees to the management and evaluation of the personnel assigned to the Office. The personnel work exclusively for the Guarantor and may not be assigned to other tasks without the approval of the Guarantor.

In addition to those indicated in the Decree establishing the Guarantor, the National Preventive Mechanism is tasked with the monitoring and investigation of voluntary reclusive facilities such as therapeutic communities or homes for the elderly, places for involuntary medical treatment, house arrest, and interrogation rooms of investigating authorities.

As a National Preventive Mechanism, the Guarantor is also required, pursuant to art. 2 of the Decree of the Minister of Justice of 11 March 2015, no. 36, to govern the collaboration of all subjects who, in any way, cooperate to achieve the objectives of the UN Protocol. In particular, it is up to the National Guarantor to coordinate the network of territorial guarantors, by *primarily* promoting institutional consolidation through the recognition of adequate guarantees of independence and autonomy with respect to their local governments. The National Guarantor also monitors the procedures relating to forced repatriations and is part of the system established by Article 8 paragraph 6 of the EU Directive no. 115 of 2008.

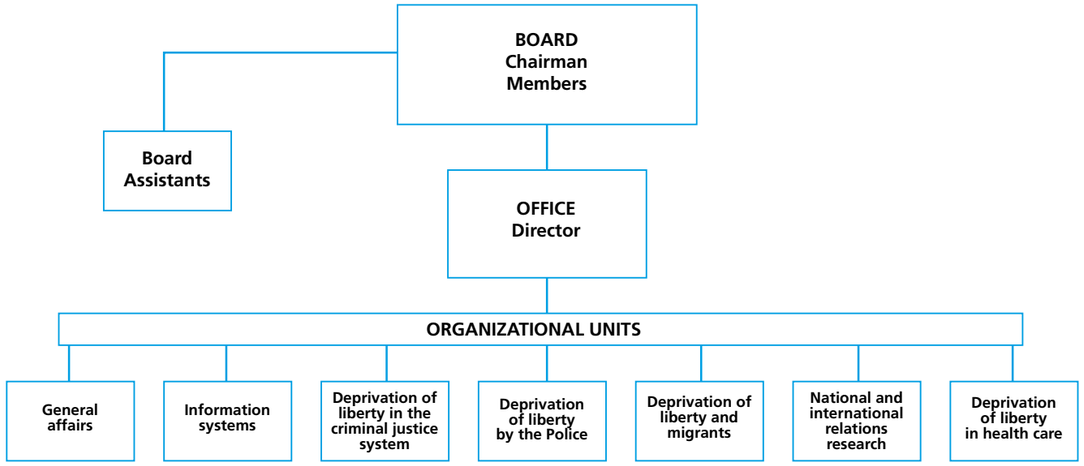
The National Guarantor performs its monitoring activity in places of deprivation of liberty, adopting resolutions on the times, places, and the composition of the delegation taking into account information provided by the Organizational Units in each case and on the basis of general planning.

The Office is located in Rome on the premises made available by the Ministry of Justice, in Via San Francesco di Sales, 34. The Ministry provides the Office with furniture and equipment, including IT equipment and a website, necessary for its activities and is also responsible for their maintenance. The Ministry of Justice also provides organisational and logistical support to the National Guarantor for the implementation of its nationwide activities by means of its own facilities and assets. The financial resources of the Guarantor are allocated by the National Budget Law and flow into a specific budget section for full autonomous and independent use by the Guarantor. Treasury functions are carried out by personnel of the Ministry of Justice who perform accounting operations in accordance with the directives given by the Guarantor. Auditing of the administrative and accounting regularity of the expenses incurred by the Guarantor is carried out by the Ministry of Economy and Finance, an administration responsible for verifying the legitimacy of public spending. Within the limits of these resources, the Chairman, at his own discretion, justifies and authorizes spending on missions andf the purchase of goods and provision of services.

The Office of the National Guarantor, coordinated by an official tasked with management duties in implementation of the directives given by the Board, is divided into 7 Organizational Units (OU); the "Board Assistants" Organizational Unit is under the direct supervision of the Board.

Rules and obligations of the National Guarantor

Here below is the *organizational chart*:



Unit 1 - General affairs

This unit performs the general administrative tasks of the Office, registering documents and distributing files to the OUs for storage. It keeps a schedule of the reports on the monitoring visits made and the receipt of the replies. It handles the administrative management of the staff and the logistics of the Office. It manages the missions and oversees the formalities related to section 1753 'National Guarantor for the rights of persons detained or deprived of the personal liberty of the Budget of the Ministry of Justice', bearing in mind that all purchases of goods and services are made through the offices of the Ministry of Justice.

Activity	Unit	Stakeholders
Management of missions	General affairs	Members of the Board and staff of the Office
Procurement of goods	General affairs	Board and Organizational units, suppliers
Protocol administration	General affairs	Senders, Members of the Board and staff of the Office who are the final recipients of the notes
Management of staff attendance	General affairs	Staff of the organizational units

Unit 2 - Information systems

The Information Systems Unit deals with the IT functions of the Office. Specifically, in addition to providing technical assistance to the members of the Board and to the staff of the Office, it is responsible for the acquisition and organization of the data received by the various Administrations from the Office. This data is processed and analysed for the production of regular or specific reports. To this end, the Unit deals with the computerized management of internal information flows and creates and manages the relative archives. Part of this activity is carried out through an intranet portal created internally by the personnel assigned to the Information Systems Unit. Finally, the Unit publishes the contents on the institutional website and makes small changes to the layout of the site, regarding the arrangement of the elements on each page of the site. The IT administration of the site is entrusted to the Directorate General for the automated information systems of the Ministry of Justice. The processes related to the activity of the IT systems are internal and created with the available resources and thus do not involve risks for the aims of preventing corruption.

Activity	Unit	Stakeholders
Technical assistance	Information systems unit	Members of the Board and staff of the Office
Acquisition and organization of information	Information systems unit	Board and Organizational units
Regular or specific reports	Information systems unit	External institutional and other recipients involved in the areas of intervention by the Guarantor
Implementation and management of the intranet portal	Information systems unit	Board and Organizational units
Publication of content on the institutional *website*	Information systems unit	External institutional and other recipients involved in the areas of intervention by the Guarantor

Unit 3 - Deprivation of liberty in the criminal justice system

This unit deals with the monitoring of the Prison Administration and Juvenile Justice and Community facilities, handling relations with the relevant Administrations, examining documents, requests for documentation, and also through contacts with the Supervisory Court.

Rules and obligations of the National Guarantor

Activity	Unit	Stakeholders
Monitoring Prison institutions for adults	Deprivation of liberty in the criminal justice system	Ministry of Justice, Hospitals, Volunteer Associations, Regional and Local Guarantors, Regional and Local Authorities
Monitoring of protected hospital departments	Deprivation of liberty in the criminal justice system	Ministry of Health, Ministry of Justice, Hospitals, Regional and Local Authorities, Regional and Local Guarantors
Monitoring of juvenile prison institutions	Deprivation of liberty in the criminal justice system	Ministry of Justice, Hospitals, Volunteer Associations, Regional and Local Guarantors, Regional and Local Authorities
Monitoring of first reception centres	Deprivation of liberty in the criminal justice system	Ministry of Justice, Hospitals, Volunteer Associations, Regional and Local Guarantors, Regional and Local Authorities
Monitoring of communities for minors	Deprivation of liberty in the criminal justice system	Ministry of Justice, Hospitals, Volunteer Associations, Regional and Local Guarantors, Regional and Local Authorities
Monitoring of therapeutic-rehabilitation communities	Deprivation of liberty in the criminal justice system	Ministry of Justice, Hospitals, Volunteer Associations, Regional and Local Guarantors, Regional and Local Authorities

Unit 4 - Deprivation of liberty by the Police

Decree Law no. 146 of 23 December 2013, converted into law no. 10 of 21 February 2014 (Article 7 paragraph 5 letter b) states that: "The National Guarantor visits, without any authorization required ..., as well as, announced and unrestricted visits, without hindering any ongoing investigation, to law enforcement holding facilities, and to any room used or otherwise functional to detention needs". The Organizational Unit is responsible for monitoring all Police facilities for persons deprived of their personal liberty as they are being held for investigation purposes in *ad hoc* Police facilities, such as

holding facilities or places where judicial police interrogations are carried out. Relations with relevant Administrations. Viewing of documents, requests for documentation.

Activity	Unit	Stakeholders
Monitoring of holding facilities at the Commissariats, Police Stations, Command Centres, Inspection Units, Police Headquarters, Courts, and the central and peripheral units of the State Police, the Carabinieri and the Guardia di Finanza, as well as the Provincial and Local police.	Deprivation of liberty by the Police	Ministry of the Interior, Department of Public Safety, Ministry of Defence, Carabinieri, Ministry of Economy and Finance, Guardia di Finanza, Ministry of Justice, Department of Penitentiary Administration, Judicial Organization Department, Municipalities and Provinces, Provincial and Local Police.

Unit 5 - Deprivation of liberty and migrants

This Organizational Unit is in charge of activities related to the mandate of the National Guarantor for the protection of the rights of migrants subjected to deprivation of personal liberty. In particular the law establishing the National Guarantor, Decree Law no. 146 of 23 December 2013, converted into law no. 10 of 21 February 2014, sets out that the National Guarantor (Article 7 paragraph 5 letter e) verify compliance with the obligations related to the rights provided for in Articles 20, 21, 22, and 23 of the Regulations referred to in the Presidential Decree of 31 August 1999, no. 394 and subsequent amendments, at the Centres for Identification and Expulsion provided for by Article 14 of the Consolidated Act as per the Legislative Decree of 25 July 1998, no. 286 and subsequent modifications, making unrestricted access to any premises; Furthermore, the National Guarantor has been identified as the National Authority for the monitoring of forced repatriations in implementation of the provisions of article 8 paragraph 6 of the European Commission Directive 115/2008. In relation to this mandate, the National Guarantor is beneficiary of a grant from the National Migration Asylum Migration Fund (FAMI) 2014/2020 of the Ministry of the Interior through the project "Implementation of a system for monitoring forced repatriations". The project, in the amount of EUR 799,168.82, was launched on 5 April 2017 and will end on 31 March 2019. The project is part of the action to strengthen the National Guarantor with regard to the monitoring of forced repatriations through the provision of goods and services functional to this competence. For the functions referred to in the aforementioned FAMI project, the Unit makes use of a pool of experts selected through public recruitment procedures by means of a specific assessment form.

Rules and obligations of the National Guarantor

Activity	Unit	Stakeholders
Monitoring Repatriation Centres and Hot Spots	Deprivation of liberty and migrants	Ministry of the Interior, Department for Civil Liberties and Immigration, Department of Public Safety, Italian Army, Managing Authorities, Regions, Local Health Authorities, Municipalities, Associations, Universities, Regional and Local Guarantors
Monitoring of waiting rooms, airports, carriers (planes or ships)	Deprivation of liberty and migrants	Ministry of the Interior, Department of Public Safety, Frontex, Regional and Local Guarantors

NAME AND SURNAME	JOB DESCRIPTION	DELEGATION OF POWERS	REASON of the assignment	c.v.	DURATION	COMPENSATION (gross) €	OTHER TASKS or professional activities	Declaration of NO CONFLICT OF INTEREST	COMMUNICATION to the PCM
LAURA D'ANTONIO	Expert in reporting on European projects	Contract no. prot. m_dg. DAP-PR20.29/11/2017.0000428. ID	Project: Implementation of a forced repatriation monitoring system" as part of FAMI 2014 - 2020	*Yes*	Until 31/03/2019	75.000,00	*Consultant*	*Yes*	*NO*
DARIO PASQUINI	Communications expert	Contract no. prot. m_dg. DAP-PR20.29/11/2017.0000429. ID	Project: Implementation of a forced repatriation monitoring system" as part of FAMI 2014 - 2020	*Yes*	Until 31/03/2019	75.000,00	*Publicist journalist*	*Yes*	*NO*
SALVATORE FACHILE	Lawyer expert in legal issues on legal provisions relating to immigration and asylum law	Contract no. prot. m_dg. DAP-PR20.29/11/2017.0000432. ID	Project: Implementation of a forced repatriation monitoring system" as part of FAMI 2014 - 2020	*Yes*	Until 31/03/2019	40.000,00	*Lawyer*	*Yes*	*NO*
ANTONIO MARCHESI	Expert in issues of international protection of human rights	Contract no. prot. m_dg. DAP-PR20.29/11/2017.0000430. ID	Project: Implementation of a forced repatriation monitoring system" as part of FAMI 2014 - 2020	*Yes*	Until 31/03/2019	20.000,00	*Full professor*	*Yes*	*NO*
AGATINO LIPARA	Auditor	Contract no. prot. m_dg. DAP-PR20.29/11/2017.0000427. ID	Project: Implementation of a forced repatriation monitoring system" as part of FAMI 2014 - 2020	*Yes*	Until 31/03/2019	34.900,00	*Statutory auditor*	*Yes*	*NO*
MICHELE GORGA	Legal expert	Contract no. prot. m_dg. DAP-PR20.29/11/2017.0000431. ID	Project: Implementation of a forced repatriation monitoring system" as part of FAMI 2014 - 2020	*Yes*	Until 31/03/2019	13.900,00	*Lawyer*	*Yes*	*NO*

Unit 6 - National and international relations, research

This Unit has three main areas of activity:

In its national relations it deals with the activities useful to promote and foster collaborative relationships with the regional, provincial and municipal Guarantors for the rights of persons deprived of the liberty, those which act in different parts of Italy - and are thus territorial - and to create a network of preventive mechanisms for torture and other serious ill-treatment involving the territorial guarantors and coordinated by the National Guarantor, the so-called NPM Network - *National Preventive Mechanism* - under the Optional Protocol to the UN Convention against Torture (OPCAT) of 1984. It also deals with promoting cooperation among the national stakeholders engaged in the protection of the rights of persons deprived of liberty by participating in and organizing initiatives in line with the institutional mandate in Italy.

In the area of international relations it is responsible for consolidating the position of the National Guarantor within the network of international mechanisms for the prevention of torture and cruel, inhuman or degrading treatment or punishment - such as the UN Sub Committee on Torture Prevention (SPT) and the Committee for the prevention of torture of the Council of Europe (CPT) - and the national ones of the other States (NPMs). It takes part in international meetings - hearings, conferences, expert consultations, forums, and so on - in Italy and abroad and receives international delegations. It maintains relations and collaborates with: a) International Organizations, as well as with their bodies and representatives (in particular, it maintains relations with the UN Sub-Committee on the Prevention of Torture); b) the Interministerial Committee for Human Rights and participates in its work; c) the *Ombudsman* and *National Human Rights Institutions* (NHRI) of the other States; d) International NGOs, such as APT, AOM, and so on. It prepares the responses - on behalf of the National Guarantor - to the observations and recommendations formulated following the visits to Italy carried out by monitoring mechanisms of the international organizations responsible for the rights of persons deprived of liberty such as the CPT for the Council of Europe and the SPT for the UN. It prepares parts of the National Guarantor's Periodic Reports that Italy is required to submit to the Monitoring Mechanisms of the international organizations responsible for human rights such as the UN Committee on Human Rights (HRC). It gathers the information requested by the NPM from the monitoring mechanisms of the international organizations responsible for human rights. It has an interpreting and translation service that, among other things, prepares the English edition of the Annual Report of the National Guarantor to Parliament.

It carries out studies, research and information activities in the field of the protection of persons deprived of liberty. It takes care of legislative updates and follows the regulatory processes (national, regional and global) in progress.

Rules and obligations of the National Guarantor

Activity	Unit	Stakeholders
National relations	National Guarantor - Organizational Unit 6: *National and international relations, research*	• Regional, provincial and municipal Guarantors for the rights of persons deprived of liberty • Regional ombudsmen • Institutions of the State and NGOs that deal with the protection of the rights of persons deprived of liberty
International relations	National Guarantor - Organizational Unit 6: *National and international relations, research*	• UN Sub Committee on Torture Prevention (SPT) Council of Europe's Committee for the Prevention of Torture (CPT) • NPMs of other States • Interministerial Committee for Human Rights (CIDU) • *Ombudsman and National Human Rights Institutions* (NHRI) of the other States • UN Committee on Human Rights (HRC) • International NGOs, such as APT, AOM
Research	National Guarantor - Organizational Unit 6: *National and international relations, research*	• National and international research institutes • National and international universities

Unit 7 - Deprivation of liberty in health care

This Unit engages in monitoring and visits to persons subject to involuntary medical treatment (TSO) outside the criminal context, monitoring and visiting homes for the disabled or elderly in which de facto deprivation of liberty exists, monitoring and visits to places for the implementation of security measures (in particular Residences for the implementation of security measures), and handles relations with the relevant administrations. Viewing of documents, requests for documentation.

Activity	Unit	Stakeholders
Monitoring of residential facilities for the disabled and the elderly	Unit for the deprivation of liberty in health care	Ministry of Health, Regions, Local Health Authorities, Municipality, Associations, Universities, Regional and Local Guarantors
Monitoring of Psychiatric Diagnosis and Treatment Service (SPDC) (TSOs)	Unit for the deprivation of liberty in health care	Ministry of Health, Region, Local Health Authority, Municipality, Regional and Local guarantors; Guardianship Court
REMS monitoring	Unit for the deprivation of liberty in health care	Ministry of Health, DAP, Region, Local Health Authority, Municipality, Regional and Local Guarantors, Supervisory Courts
Signing protocols with Universities and research institutions, public bodies and the Supervisory Court	Unit for the deprivation of liberty in health care	Universities and research institutions, public health protection bodies, Regional and Local Guarantors, Supervisory Court
Monitoring of safety measures (SMOP) REMS	Unit for the deprivation of liberty in health care	Institutional bodies (Ministry of Health, DAP, Region, Local Health Authority, Municipality, Regional and Local Guarantors, Supervisory Court)
Training with the Ministry of Health, Regions, Local Health Authorities, Municipality, Associations, Universities, Regional and Local Guarantors	Unit for the deprivation of liberty in health care	Ministry of Health, Regions, Local Health Authorities, Municipality, Associations, Universities, Regional and Local Guarantors, DAP, Superviory Court

Board Assistants Organizational Unit

This OU is directly subordinate to the Board and performs the functions of special secretary, managing the agendas of the Chairman and the other two members of the Board, handling institutional relations with relative Authorities. The OU is responsible for drafting executive and board resolutions and coordinating the minutes of the plenary meetings. It also coordinates the so-called Complaints service pursuant to Art. 35 of the Penitentiary Act, as amended by Decree Law 146/2013 converted into law 10/2014, which included the National Guarantor among the recipients of this general complaint by the detainees and inmates with the aim of strengthening the protection of the rights of these subjects.

The OU also takes care of the final coordination for the sending of the annual report of the National Guarantor, which, as already mentioned, must be submitted to the Parliament.

Rules and obligations of the National Guarantor

Activity	Unit	Stakeholders
Agenda for the Chairman and members of the Board, relations with Authorities	OU Assistants to the Board	Presidency of Italy, Constitutional Court, Chamber, Senate, Presidency of the Council of Ministers, Ministry of Justice, Ministry of the Interior, Ministry of Health, Guarantor Authority for Children, Advocacy, University, Local Authorities, Associations, etc.
Drafting of executive and board resolutions, coordination of the minutes of plenary meetings	OU Assistants to the Board	The Board and staff of the Office
Coordination of the Complaints service pursuant to art. 35 of the Penitentiary Act	OU Assistants to the Board	Prisoners, detainees, lawyers, Associations, Prison Administration Department
Final coordination for submission of the Annual Report to Parliament	OU Assistants to the Board	The Board and staff of the Office

By law the National Guarantor sends a yearly report on the activity carried out to the Presidents of the Senate of the Republic and the Chamber of Deputies, as well as to the Minister of the Interior and the Minister of Justice. The first Report was submitted on 21 March 2017.

Despite being a young Institution, still undergoing structuring and consolidation, the National Guarantor has already taken some measures to prevent corruption, though it is aware of having to continue to engage in organizational self-assessment, systematic acknowledgement of the processes it performs, and the administrative procedures for which it is responsible.

Adoption of certain measures to prevent corruption

With the resolution of 31 May 2016, the Board of the National Guarantor adopted the Self-Regulatory Code in which, among other things, the tasks, functions, guiding principles, organization of the Office, financial and instrumental resources are specified. Subsequently, with the resolution of 15 June 2017, the Board of the National Guarantor drafted, pursuant to Article 5, paragraph 5, of the aforementioned Self-Regulatory Code, an outline of the Code of Ethics, opening a staff consultation phase, in order to collect any comments and proposals for amendments by July 31, 2017. The framework of the Code of Ethics complies with current legislative requirements that require the adoption of adequate regulatory instruments for the prevention of corruption and respect for legality, in line with the PNAs of the ANAC. The framework of the Code of Ethics also responds to the need to better specify the guiding principles of the Self-Regulatory Code and to adapt them to the principles of the UN Protocol and of Presidential Decree no. 62/2013, translating them into standards defining the duties of transparency, independence, impartiality, loyalty and good conduct to which the Guarantor and the

staff of the Office, as well as all those who collaborate with it, are bound. With the subsequent resolution of 31 October 2017, after examining the contributions received during the consultation phase, the National Guarantor adopted the final draft of the Code of Ethics. At the same time, the Chairman of the National Guarantor appointed the Person Responsible for the prevention of corruption and promotion of transparency, Dr Daniela Bonfirraro, from among the heads of the Organizational Units, as a mangerial position was not envisaged in the organizational chart of the National Guarantor.

As envisaged by the 2016 PNA, the RPCT identified, although in a position of autonomy and having the role of ensuring the effectiveness of the system of prevention of corruption, is sufficiently knowledgeable about the functioning of the Administration, and performs duties effectively, interacting with the policy-making Body and with the entire administrative structure. The RPCT has the exclusive role of directing, coordinating, and monitoring the effective adoption and application of the PTPCT adopted by the policy-making Body. Both the Self-Regulatory Code and the Code of Ethics have been published on the website of the National Guarantor, and are also in English.

On 3 November 2017, the President of the National Guarantor sent the Code of Ethics adopted on 31 October 2017 to the ANAC by certified mail. The Chairman of the National Guarantor also requested and obtained that the adoption of the Code of Ethics be published in the Official Gazette (see G.U. no. 272 of 21.11.2017). On 27 November 2017, the RPCT convened the first meeting with the Chairman of the National Guarantor and the Director of the Office, proposing a time schedule for the drafting of the first PTPCT of the National Guarantor, followed by two coordination meetings with the Heads of the OUs with the awareness of the importance that the objectives of prevention of corruption be shared with the internal subjects of the Administration, who are familiar with the organizational structure, the decision-making processes, and the risk profiles involved. On 29 November 2017, the Chairman of the National Guarantor approved the appointment of the Representative for Transparency, who is tasked with overseeing the formalities relating to the publication of data and their updating, public and general access, the Freedom of Information Act, and the keeping of the access register. With the resolution of 7 December 2017, the Chairman of the National Guarantor appointed a Unit Member to act as the Assistant to the RPCT, with the task of assisting her in the position, taking into account the complexity of the requirements of national and international regulations. The measures undertaken also included an immediate training procedure through the participation of the RPCT in the course "Implementation of legislation on the prevention of corruption in public administrations" at the National Administration School (SNA) in Caserta on 12 and 13 December 2017 The RPCT is required to keep an archive of the acts, proceedings and minutes of the meetings relating to the matter of preventing corruption and promoting transparency.

The active participation of the personnel involved in the organizational self-assessment, has led, albeit in the very short time available, to the production of several reports relating to the procedures put in place, the related risk event and the level of the prevention measure envisaged.

These assessments will be the object of more in-depth evaluation over the next few months, through the risk management study undertaken according to the Iso 31000 model, with the hope of progressively overcoming some structural and organizational problems that exist due to the recent establishment of the National Guarantor.

Here below are the reports cited:

Rules and obligations of the National Guarantor

Procedure	Risk event	Prevention measures	Risk level
Management of missions	Choice of service provider	Consip Convention agreement	High
Procurement of goods	Poor programme scheduling	Planning needs	Low
Protocol administration	• Violation of privacy • Data loss	• Different allocation of access levels • Protocol register (Pursuant to DPCM 2014 - Italian digital agency model adopted by the Ministry)	Low
• Internal personnel recruitment • Presence management	• Promoting of candidates not in possession of the qualifications stated in the application for participation in the procedure • Violation of privacy	• Clear participation requirements • Secure management of personnel file archives	High Low High
Acquisition and organization of information	Unauthorized access to sensitive data	Limitation of access to information only from the intranet	Low
Monitoring of criminal justice system detention facilities: choice of facility, visit, reporting and advertising	• Guided choice of the place to be monitored • Omission of verification and monitoring activities during the visit • Omissive or tendentious reporting • Lack of confidentiality (notice of the visit, news leaks, imposition of restrictions after the visit)	• Adoption of random or justified sample selection criteria • Presence during visits of at least two operators • Adopting a template (control checklist) • *Debriefing on the reports* • Involvement of third party experts • Code of Ethics • Staff training	Low
Monitoring of critical events and detention spaces	• Violation of duty to maintain confidentiality • Improper use of information and documents • Data alteration and manipulation	• Code of Ethics • Staff training • Identification of criteria for issuing and protecting passwords	Low

Procedure	Risk event	Prevention measures	Risk level
Monitoring at administrative detention facilities	• Guided choice of the place to be monitored • Omission of checks during the visit • Omissive or tendentious reporting Lack of confidentiality (notice of the visit, news leaks, imposition of restrictions after the visit)	• Adoption of random or justified sample selection criteria • Presence during visits of at least two operators • Adopting a template (control checklist) • *Debriefing on the reports* • Involvement of third party experts • Code of Ethics • Staff training	Low
Monitoring of forced repatriation operations	• Guided choice of the operation to be monitored • Omission of checks during the monitoring • Omissive or tendentious reporting • Lack of confidentiality (unjustified notice of monitoring, news leaks, imposition of restrictions after the visit)	• Adoption of random or justified sample selection criteria • Presence during monitoring of at least two operators • Adopting a template (control checklist) • *Debriefing on the reports* • Involvement of third party experts • Code of ethics • Staff training • Signing of memoranda of understanding with the territorial Guarantors that participate as monitors	Low
Assigning employee tasks	• Promoting of candidates not in possession of the qualifications stated in the application for participation in the procedure • Promoting 'special' tasks	• Verification of self-certifications *pursuant to* Presidential Decree 445/2000 and subsequent amendments • Correspondence of tasks to the precise objectives set out in the approved project.	Low

Rules and obligations of the National Guarantor

Procedure	Risk event	Prevention measures	Risk level
Creation of a national network of mechanisms to prevent torture and other cruel, inhuman or degrading treatment or punishment coordinated by the National Guarantor	Excessive flexibility on the part of the National Guarantor in the identification and interpretation of the standards to be met for accreditation of the territorial Guarantors within the NPM Network	Rigorous adoption by the NG of the indications set out by the OCCAT, by the SPT and by the CAT	Low
		More Dialogue with Supranational Bodies (CAT and SPT)	
	Lack of rigorous verification, by the National Guarantor together with the territorial Guarantors, of the compliance of the territorial Guarantors with the standards for entry into the NPM Network	Training of territorial Guarantors: a) aimed at developing proper awareness of the OPCAT mandate and the goals of the NPM Network; b) to carry out monitoring activities in accordance with the OPCAT	Low
		Programming of coordination meetings between the National Guarantor, the territorial Guarantors, and stakeholders	
Regional (COE) and global (UN) cooperation for the protection of human rights in places of deprivation of personal liberty	Guided choice of the International Organization with which to cooperate to pursue purposes that differ from the institutional mandate.	Interacting with international bodies in the most transparent and complete manner possible	Low
		Staff turnover in cooperative activities	
	Untimely or delayed interventions that prevent or damage international cooperation	Periodic staff meetings to keep the Unit's commitments under control and consequent rescheduling of programming	Low
		Feedback to the Board on the activities of the Unit	
	Compromised or incomplete foreign language representation that can occur when such communication is entrusted to a very small amount of personnel	Programming of English training courses	

Procedure	Risk event	Prevention measures	Risk level
Dialogue with the Network of International Mechanisms for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment International Organisms	Transmission of false information and improper maintenance of reports	Intensifying relations with the Bodies and sending experts from the National Guarantor on site following a rotation and planning criterion decided with the Board	Low
		Standardization of procedures and comparison with international best practices	
		Flexible planning of meetings with the bodies	
	Violation of the secrecy of information contained in documents from supranational bodies	Standardization of procedures and mutual sharing of information between the Board and the Units involved in the Reports	Low
Planning of studies and research, international projects and European programmes for the protection of persons deprived of personal liberty	Arbitrary identification of research and programme areas in which to invest resources	Strengthening interaction with research institutes and opening up to Institutions and stakeholders who are interested in participating in the activities identified	Low
		Standardization of procedures and mutual participation in projects/research/studies by the Board and other Units of the Office	
Monitoring of health care facilities that restrict liberty: choice of facility, visit, reporting and advertising	• Guided choice of the place to be monitored • Omission of verification and monitoring activities during the visit • Omissive or tendentious reporting Lack of confidentiality (notice of the visit, news leaks, imposition of restrictions after the visit)	• Adoption of random or justified sample selection criteria • Presence during visits of at least two operators • Adopting a template (control checklist) • *Debriefing on the reports* • Involvement of third party experts • Code of Ethics • Staff training	Low

Rules and obligations of the National Guarantor

Procedure	Risk event	Prevention measures	Risk level
Signing of protocols with INSTITUTIONS	• Conflict of interest • Violation of duty to maintain confidentiality • Improper use of information and documents • Alteration and manipulation of information and data	• Signing of commitments/intent with the Institutions.	Low
Monitoring of safety measures (SMOP)	• Violation of duty to maintain confidentiality • Improper use of information and documents • Alteration of the transfer and manipulation of information.	• Identification of a person responsible for access to the system • Identification of criteria for the allocation of access keys to the system • Identification of a security system for privacy	
Complaints service procedure *pursuant to* Art. 35 of the Pentitentiary Act Initial screening of requests	Criterion of the order for accepting the requests	Use of a chronological criterion Exception only in case of executive assessment	Low

Timetable of measures to prevent corruption and promote transparency

WHAT	WHO	WHEN
Convening of the meeting with the Chairman of the Board, the RPCT, the Unit of Assistants to the RPCT for evaluation of the document produced on 29.12.2017 on data to be published in the 'transparency' section of the institutional website	Contact for Transparency	By 01.02.2018
Publication of shared data in the 'transparency' section of the institutional website	Contact for Transparency	By 01.05.2018
Preparation of the procedural scheme for widespread access and maintenance the access register and subsequent publication on the institutional website	Contact for Transparency	By 01.05.2018
Identification of who must be specifically trained for reporting to the SNA	RPCT	By 25.02.2018
Planning, within the internal training seminar, of a session dedicated to the prevention of corruption and promotion of transparency	Board of the National Guarantor	By 30.09.2018
Convening of the organizational meeting to prepare the whistleblowing procedure with the Chairman of the Board, Contact for Transparency, Unit of Assistants to the RPCT	RPCT	By 31.03.2018
Adoption of the procedure for *whistleblowing*	Board of the National Guarantor	By 30.06.2018
Convening of plenary meetings for the planning of strategic objectives and the planning of monitoring activity on a quarterly basis	Board of the National Guarantor	By 30.03.2018 By 30.06.2018 By 30.09.2018 By 30.12.2018
Sending of the in-depth analyses and updating of the mapping of the work processes implemented by the OUs and the stakeholders involved tot he RPCT, along with the risk levels for each process and the prevention measures adopted	OU directors	By 30.09.2018

Rules and obligations of the National Guarantor

WHAT	WHO	WHEN
Convening of coordination meeting with the directors of the OUs to prepare the annual report containing the results of the activities carried out	RPCT	By 10.10.18
Sending of the draft annual update report to the policy-making Body	RPCT	By 10.01.19
Adoption of the annual update report to be sent to the ANAC and published on the website of the National Guarantor	Board of the National Guarantor	By 30.01.2019
Risk management study and analysis performed with the aim of strengthening the structure of the National Guarantor and expanding its organizational perimeter	Board of the National Guarantor, RPCT, OU directors	By 30.06.2019
Programming of an update session on the subject of corruption prevention and transparency at the internal training seminar of the National Guarantor	Board of the National Guarantor	By 30.09.2019
Public consultation of the stakeholders following definition of the mapping of external representatives	Board of the National Guarantor, RPCT, OU directors	By 15.10.2019
Adoption of the annual update report to be sent to the ANAC	Board of the National Guarantor	By 30.01.2020

The Rpct will oversee the effective implementation of the measures to prevent corruption, reporting any critical issues regarding their sustainability to the Board, taking into account that Article 1 paragraph 9 letter c) of Law 190/2012 sets out "information obligations for the RPC required to monitor the operation and compliance with the Plan", meaning that these information obligations concern all the subjects involved, even during the phase of formation of the Plan and then, during the phases of verification and implementation of the measures adopted. Article 8 of Presidential Decree 62/2013 also sets out a duty for employees to collaborate with the RPCT, violation of which is subject to disciplinary sanction.

The General affairs unit will send this PTPCT to the certified mail address of the ANAC, no later than 31 January 2018, together with the executive resolution of 31 October 2017 appointing the RPCT.

The Head of the Information Systems Unit will publish it on the institutional website (pending the creation of the specific "transparent Administration" section) of the National Guarantor, and see to its circulation among the Office staff.

Rome, 30 January 2018

Mauro Palma

MEMORANDUM OF UNDERSTANDING

between

The National Institute for the Health of Migrant Populations and the Fight against Poverty-related Diseases (hereinafter INMP), with registered office in Rome, Via di San Gallicano 25/a, VAT/Tax Code no. 09694011009 in the person of the General Director, Dr Concetta Mirisola, born in San Cataldo (CL) on 2 June 1959, with legal address at the INMP headquarters;

and

the National Guarantor for the rights of persons detained or deprived of personal liberty (hereinafter the National Guarantor), based in Rome in via di San Francesco di Sales 34, in the person of Chairman Mauro Palma, born in Rome on 20 August 1948, with legal address at the headquarters.

WHEREAS, pursuant to Article 14, paragraphs 2 to 7 of the Decree Law of 13 September 2012, no. 158, converted, with amendments, by the Law of 8 November 2012, no. 189, the INMP is a legally recognized body, having organizational, administrative and accounting autonomy, supervised by the Ministry of Health, with the task of promoting assistance, research and training activities for the health of migrant populations and combatting poverty-related diseases;

WHEREAS, also, given that the mission of the INMP, as a body of the National Health Service, is to promote activities of assistance, research and training for the health of migrant populations and for the fight against poverty-related diseases, developing knowledge and innovative systems to fight health inequalities in Italy and promote access to the National Health Service by the most disadvantaged social groups, through a cross-cultural and person-oriented approach and with collaborative methods aimed at networking and giving concrete and specific implementation to the principle of universal prevention and care for the community .

ALSO ACKNOWLEDGING that the INMP:
- is the reference Centre of the National Network for the problems of assistance in the social health field related to migrant populations and poverty (ReNIP);
- is the Centre for Transcultural Mediation in Healthcare;
- provides for the collection, processing and dissemination of epidemiological and statistical data, also in order to verify the effectiveness of diagnostic and therapeutic interventions carried out, - involving regional reference centres;

WHEREAS the INMP promotes and shares, in agreement with the Conference for relations between the State, the Regions and the Autonomous Provinces of Trento and Bolzano, research projects and assistance protocols on the most vulnerable Italian and foreign population groups;

WHEREAS the General Director of the INMP, on 11 April 2017, signed a three-year Memorandum of Understanding for the protection of the health of detained populations and the training of personnel working in the penitentiary system with the Minister of Health and the Minister of Justice;

WHEREAS the INMP, through agreements with the Ministry of the Interior - Department of Civil

Liberties and Immigration, provides specialized health assistance within the Hotspots of Trapani Milo and Lampedusa;

IN COMPLIANCE WITH the Decree Law of 23 December 2013, no. 146, converted into the law of 21 February 2014 no. 10 and subsequent amendments, which, in art. 7, establishes the National Guarantor, giving it the task of ensuring that the custody of persons subject to the limitation of personal liberty is implemented in accordance with the rules and principles established by the Constitution, international human rights Conventions ratified by Italy, State laws and regulations;

WHEREAS, on 25 April 2014, the Permanent Mission of Italy to the International Organizations in Geneva designated the National Guarantor as the *National Preventive Mechanism* (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted by the UN General Assembly on 18 December 2002 and ratified by Italy on 4 April 2013, according to the law of 9 November 2012, no. 195;

WHEREAS the OPCAT establishes powers and obligations of the *National Preventive Mechanism*, confirming and expanding the powers conferred by the law of 21 February 2014, no. 10 to the National Guarantor;

WHEREAS Italy has designated the National Guarantor as a monitoring body for forced repatriation of migrants, set out pursuant to art. 8 paragraph 6 of the European Directive 115/2008/CE on common rules and procedures applicable in the Member States for the repatriation of illegal third-country nationals;

IN COMPLIANCE WITH the Minister of Justice Decree of 11 March 2015, no. 36, regulating the structure and composition
of the National Guarantor,

ACKNOWLEDGING that the National Guarantor has the task of monitoring and supervising:
- compliance within places of deprivation of liberty of the right to health for all, enshrined in Article 32 of the Constitution;
- the implementation and the material conditions of execution of involuntary medical Treatments pursuant to art. 34 of the law of 23 December 1978, no. 833;
- social and health facilities for people with limited autonomy and subject to restrictions of liberty, as well as respect for their fundamental rights;

IN COMPLIANCE WITH Article 15 of Law no. 241 of 1990 and subsequent amendments, which states that public administrations may sign agreements among themselves to govern the development of collaborative activities of shared interest;

GIVEN that it is the shared intention of the Parties to promote the greatest collaboration, with respect to their reciprocal institutional autonomy, with the aim of improving both the quality and effectiveness of health care to be provided to vulnerable population groups present in restricted places, as well as acting in the respect of the rights recognized by the Law and by the international Conventions to such individuals

AGREE AS FOLLOWS:

Art. 1
(Subject)

1. This Memorandum of Understanding identifies the areas of collaboration of shared interest between the INMP and the National Guarantor:
a. Support to the National Guarantor to accomplish its institutional functions regarding health issues of a special cultural nature, as well as the right to health of the subjects it protects, within the limits of the institutional mandate of the INMP;
b. Support to the INMP in defining health care models for individuals deprived of personal liberty that respect individual rights.

Art. 2
(Method of collaboration)

1. The Parties shall implement this Memorandum within the context of their available human, instrumental and financial resources and, in any case, without additional charges.
2. Implementation of this Understanding entails specific operational projects to be determined at different times, including those of training, which may require external financing.
3. The Parties shall also collaborate by providing their staff with specific skills on initiatives of shared interest.

Art. 3
(Confidentiality)

1. The parties undertake to respect the levels of confidentiality or secrecy to which each of them is obliged within their institutional duties.

Art. 4
(Duration and final provisions)

1. This Memorandum is valid for 3 years from the date of signing and may be renewed, by specific act, subject to the explicit approval of the Parties.
2. The Parties shall take all appropriate steps to facilitate the carrying out of the activities envisaged in this Memorandum and actively collaborate in its implementation, through their respective competent organizational structures.
3. Any changes to this Memorandum of Understanding subsequent to its signing must be agreed upon by the Parties and be the subject of a specific additional act.

National Guarantor for the rights of persons detained or deprived of personal liberty

The Chairman
Prof. Mauro Palma

National Institute for the Health of Migrant Populations and the Fight against Poverty-related Diseases

The General Director
Dr Concetta Mirisola

Rules and obligations of the National Guarantor

MEMORANDUM OF UNDERSTANDING

between
the National Guarantor for the rights of persons detained or deprived of personal liberty

and
the National Forensic Council

In compliance with Legislative Decree no. 146 of 2013 on "*Urgent measures concerning the protection of the fundamental rights of prisoners and of controlled reduction of the prison population*", converted, with amendments, by the law of 21 February 2014, no. 10 and subsequent amendments;

In compliance with the Ministerial Decree of 11 March 2015, no. 36 on "*Regulation containing the structure and composition of the office of the National Guarantor for the rights of persons detained or deprived of personal liberty*" which defined the regulation for the structure and composition of the Office of the National Guarantor for the rights of persons detained or deprived of personal liberty (hereinafter, Guarantor);

In compliance with the law of 27 December 2017, no. 247, which, in art. 35, paragraph 1, letter *q)* requires the Council to give opinions, at the request of the Minister of Justice, on proposals and draft laws that affect, even indirectly, the forensic profession and the administration of justice;

In compliance with the law of 27 December 2017, no. 247, whihc, in article 35, paragraph 1, entrusts the Board with the promotion of relations with the competent institutions and public administrations (letter *a*), as well as the establishment and discipline of a permanent observatory on the exercise of jurisdiction (letter *r*);

Whereas the Guarantor is an independent, non-jurisdictional and guarantee authority with the function of monitoring all forms of deprivation of liberty, including penal institutions, police custody, stays in detention centres for illegal migrants present in Italy, residences implementing psychiatric safety measures (REMS), and involuntary medical treatments;

Whereas the Guarantor is, at the international level, an independent monitoring body pursuant to Articles 17 and following of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and in this context coordinates the teritorial guarantors;

Whereas, in the context of criminal sentence enforcement for adults and minors and with regard to security detention measures, the Guarantor: (a) *monitors* to ensure that the enforcement of custody of persons in prison and inmates complies with national and international principles and standards; and (b) *intervenes* on critical issues of a general nature or on issues that require immediate action;

Whereas, finally, the Guarantor:

a) *visits*, without the need for authorization: prisons, forensic pschiatric hospitals and health care facilities used for housing persons under detention orders for security reasons, rehabilitation and

host communities and, in any case, public or private houses accommodating persons on probation or under house arrest, detention centres for juveniles and host communities for minors under court orders,

b) *visits*, without the need for authorization: police holding facilities, making unrestricted access to any room used or otherwise functional to restrictive needs;

c) *examines*, subject to the consent of the interested party, the documents in the file of the person detained or deprived of liberty,

d) *requests* from the administrations of the aforementioned facilities the necessary information and documents; in the event the administration does not respond within thirty days, it shall inform the competent supervisory court and may request the issuance of an order to produce them;

e) *assesses* complaints addressed to it pursuant to art. 35 of the law of 26 July 1975, no. 354;

Whereas the Council, as part of its institutional activity, has always maintained that the effectiveness of the protection of the rights of persons detained or deprived of personal liberty is achieved with the contribution and the involvement of the legal profession. In the context of criminal justice activities, the Council:

a) *collects, monitors and evaluates* data on the treatment of prisoners, with particular attention to the relationship between pre-trial detention and enforcement of the sentence;

b) *scrutinizes* regulatory and exegetical developments regarding the standard of proof and the effective compliance of the procedural system with the constitutional rules on due process and with the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

c) *examines* every issue connected, also in terms of the prospects for reform, to the concrete and effective application of the provisions aimed at ensuring due process and certainty of punishment;

Whereas, moreover, the Council, through the internal commissions and the Permanent National Observatory on the exercise of the legal system, pursues the objective of contributing to better administration of the legal system in order to favour access by citizens to an efficient Justice system that it is capable of satisfying its rights, as well as to protect those of persons detained or deprived of personal liberty;

Whereas, finally, the Council considers that the best protection of rights, especially for persons detained or deprived of personal liberty, comes through proper information and constant training implemented through the collection of data and scientific evaluation that contribute to improving the criminal justice service, and the actual structural, logistical and organizational conditions in which justice is administered in Italy and its effects in the enforcement phase, with the aim of developing objective and complete, transparent and reliable evaluations on the basis of which to study and to propose possible interventions and/or remedies;

Whereas the Council and the Guarantor (hereinafter, the Parties) intend to develop ongoing collabo-

ration in order to agree on shared initiatives to identify the real needs for improvement of the criminal enforcement system, taking into account the actual needs also noted by the Bar and emerging in detention centres for adults or for minors, or equivalent institutions;

Whereas the Parties intend to promote the culture of legality inside and outside of places of detention, as well as in facilities with *de facto* deprivation of liberty for adults or for minors, through in-depth studies relating to the enforcement of criminal punishment aimed at the development and implementation of re-socialization measures, including through the development of responsible behaviours for the legal operators involved and in any case inspired by awareness and respect for the law;

Whereas, moreover, the Parties intend to promote, in synergy, the implementation of information and training projects, also through the regional or local Guarantors and prison and district organizations, aimed at implementing the culture of legality through training courses that combine the study of criminal sentence enforcement, both custodial and non-custodial, through forms of practical learning carried out in the professional forensic context in order to render lawyers capable of acquiring knowledge, skills and competences regarding their role in the enforcement phase of the sentence, both in trial and non-trial activities;

Whereas, moreover, the Parties intend to pursue:

a) a qualitative improvement in the enforcement of sentences, both in detention and not, through specifically identified, agreed and shared training courses, providing for the development of specific modules on the subject of non-custodial punishment, imprisonment and alternative forms of sentence enforcement, as well as education relating to citizenship and the law;

b) the implementation of information and training projects: (*1*) identifying guidelines within which ad hoc informative meetings should be held; (*2*) establishing uniform lines for the preparation of training plans prepared by Local Bar Associations pursuant to art. 23 of the National Forensic Council Regulations of 16 July 2014, no. 6 "Regulations for continuing education";

Whereas, finally, the Parties agree on the opportunity foster, develop and share common positions on issues of criminal sentence enforcement, developing synergistic actions to promote, in general, the qualitative improvement of the Italian penitentiary system;

The Parties agree as follows

Article 1

Purpose

1. With this Memorandum of Understanding, the Parties undertake to carry out joint actions aimed at promoting and encouraging, also through the Council Foundations, Local Bar Associations, and Regional or Local Guarantors, information initiatives on the state of detention in Italy, highlighting its strengths and critical issues through the development of specific orientation events aimed at operators in the legal system relating to the issue of punishment, its enforcement, both inside and outside of prison, in order to ensure informed awareness as much as possible.

2. With this Memorandum of Understanding, the Parties also undertake to carry out joint actions aimed at encouraging the development of training courses, to be implemented also through the Council Foundations, Local Bar Associations, and Regional and Local Guarantors, in order to implement knowledge on specific issues concerning the criminal sentence enforcement, both custodial and non-custodial, and, where already in place, to achieve a qualitative improvement of the training courses by providing specific modules on the constitutional function of the sentence, methods of its enforcement and on the conditions of detention.

3. The shared actions referred to in the preceding sections should pursue achievement of the following objectives:

a) development of skills in the area of sentence enforcement including the enhancement of intercultural and peace education, respect for differences and dialogue between cultures, support for the assumption of responsibility, as well as solidarity and respect for common assets and awareness of the rights and duties of prisoners and persons deprived of personal liberty;

b) strengthening knowledge about sentence enforcement, conditions of detention, alternative methods of sentence enforcement, protection of human rights, fundamental human rights, case law of European Courts;

c) development and implementation of awareness of the role of the lawyer during the enforcement phase both in trial and non-trial activities;

d) legal orientation in sentence enforcement.

Article 2

Object

1. The Parties, acting jointly and for the achievement of the purposes referred to in art. 1, through this Memorandum:

a) identify the operating methods by which the Local Bar Associations, in carrying out the informative and training events, ensure the implementation of specific events and/or courses - that are in any case related to issues concerning sentence enforcement, conditions of detention, alternative methods of sentence enforcement, the protection of the fundamental rights of the person, the protection of human rights - held by lawyers or by experts identified by the Guarantor;

b) set up technical-scientific work groups to study issues pertaining generally to sentence enforcement by elaborating and/or collecting suitable illustrative and informative materials.

Article 3

Commitments of the Parties

1. The Parties hereby mutually agree:

- to ensure the utmost disclosure of the concerted initiatives implemented, both nationally and regionally, through their respective institutional channels and communication tools;

- to set up a scientific group, composed of lawyers with proven experience in sentence enforcement and qualified legal operators, who can support the institutional activities carried out by the Guarantor.

2. The Council hereby agrees:
- to promote awareness for issues concerning sentence enforcement in the context of relations with international, European, national and regional institutions, as well as in relations with Local Bar Associations and, finally, with Forensic Associations;

- to promote the establishment of a national network composed of lawyers identified by Local Bar Associations that can provide pro bono legal assistance to the Guarantor in criminal proceedings and in civil or administrative judgments in which he is an interested party.

3. The Guarantor hereby agrees:
- to contribute to the scientific realization of the informational events and training courses referred to in paragraphs 1 and 2 of art. 1 of this Memorandum;
- to make the data processed and, for whatever reason, received as part of its institutional activities, where it may be shown, available.

Article 4
Project: "Protection of the rights of prisoners and persons deprived of personal liberty"

1. The Parties undertake, also by encouraging the participation of other institutions, to collaborate with the aim of developing and implementing a national project for the dissemination of a culture of "protection of the rights of prisoners and persons deprived of personal liberty" through study and learning, including multi-disciplinary and multimedia methods, aimed at exploring the tools and means available to detainees or persons deprived of personal liberty for the protection of their rights.

2. In particular, the Project aims to remind civil society, as well as the operators of the legal system and health care professionals, of the value of legality and respect for the fundamental rights of the person, including those of persons detained or, in any case, restricted by encouraging the civic sense and promoting knowledge and awareness of human rights, including through the illustration of the tools made available by the legal system for their protection.

3. For the purpose of carrying out the Project, the Parties also agree to develop a schedule of local meetings both inside and outside of the prison setting, with the main purpose of disseminating and publishing a "National Charter for the rights of persons detained or deprived of personal liberty"

Article 5
Implementation methods and contacts

1. For the implementation of the objectives and purposes referred to in this Memorandum and for the activities of verification and monitoring of the initiatives undertaken, the Parties shall make use of their structures.

2. Within thirty days from the date of signing of this Protocol, each Party shall communicate the name of the National Contact person for activities connected to this Memorandum. It is the right of each Party to replace its Contact Person, giving timely notice to the other.

Article 6
Duration and changes

This Memorandum shall commence from the date of its signing and has a duration of three years.

Rome, 30 November 2017

THE NATIONAL FORENSIC COUNCIL	THE NATIONAL GUARANTOR FOR THE RIGHTS OF PERSONS DETAINED OR DEPRIVED OF PERSONAL LIBERTY
President, Andrea Mascherin	*The Guarantor, Prof. Mauro Palma*

Memorandum of understanding for studies and projects concerning the freedom of persons with disabilities

between

the National Guarantor of the rights of persons detained or deprived of personal liberty (hereinafter National Guarantor), with registered office in Via di San Francesco di Sales 34, 00165 - Rome, represented by the Chairman Prof. Mauro Palma,

"The Other Right - Inter-university Research Centre on Prison, Deviance, Marginality and Migration Governance" (hereinafter ADir), based at the Department of Juridical Sciences of the University of Florence, Via delle Pandette 35, 50127 - Florence, represented by the Director Prof. Emilio Santoro

and

the "Robert Castel Centre for Governmentality and Disability Studies" of the University of Naples "Suor Orsola Benincasa" (hereinafter CeRC), located at via Suor Orsola, 10, 80135 - Naples, represented by the Rector Prof. Lucio d'Alessandro;

jointly referred to as "Parties".

Whereas:

- Article 7 of the Decree Law of 23 December 2013, no. 146, converted into the law of 21 February 2014 no. 10 and subsequent amendments, established the National Guarantor for the rights of persons detained or deprived of personal liberty;

- with the note dated 25 April 2014 of the Permanent Mission of Italy to the International Organizations in Geneva, the National Guarantor was designated as the National Preventive Mechanism (NPM) pursuant to Art. 4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT);

- with the powers and obligations referred to in Articles 17 to 23 of the above-mentioned Protocol and pursuant to the law establishing the National Guarantor, it carries out visits, monitoring and assessment of all places that can be considered as limiting the autonomy and independence of persons, and therefore de facto segregating, also in the field of social and health care;

- national and international standards confer on the National Guarantor the task of making recommendations to the competent Authorities, on the basis of the findings in their site monitoring functions and access to the documentation related to the hosted persons, in order to improve their treatment and conditions of daily life and assistance, also through the full freedom to carry out private interviews with them and with the staff;

- the purposes of the National Guarantor also include those for the recognition of the host facilities at national level and their legal configuration, the development of quality standards and the definition of guidelines for their monitoring;

- ADir has as its purpose the development, promotion and coordination of studies and projects, which may also be international in nature, in the field of the sociology of marginality, the governance of marginalization, discriminatory phenomena and the related contrast strategies, as well as of the rights of the persons deprived of liberty;

- CeRC is a research centre on government regulations, which performs basic and applied research through the experimentation of policies to contrast forms of inequality and the methods of exclusion and discrimination of persons with disabilities.

Whereas:

- the National Guarantor, ADIR and CeRC intend to establish partnerships for activities of common interest to protect the rights of persons with disabilities;

- Disability is a limitation, or even absence, of independence in the interaction between people with impairments and behavioural and environmental barriers, which prevents their full and effective participation in society on an equal basis with others.

The following is agreed:

Article 1 - Principle of reciprocity

The National Guarantor, ADir and CeRC intend to collaborate in the fields and for activities of common interest based on the principle of reciprocity.

Article 2 - Activities

The collaboration will focus on the following activities in particular:

a) planning and conducting of studies, research and planning;

b) planning and execution of coordinated training activities;

c) promotion of seminars, conferences and other cultural activities;

d) collection of documentation and support data in aggregate form;

e) initiatives of publication, information and awareness.

Article 3 - Operational programs

The specific collaboration programmes are identified and defined by the Parties with operational Protocols, implementing the present Memorandum of Understanding.

Rules and obligations of the National Guarantor

Article 4 - Technical-Scientific Advisory Council

1. The Technical-Scientific Advisory Council oversees the application of the Memorandum of Understanding and defines the scientific guidelines and contents of the operational programmes.

2. The Chairman of the National Guarantor or a member of the Board designated by him shall chair the Technical-Scientific Advisory Council.

3. The Technical-Scientific Advisory Council is composed of a member designated by each of the Parties by its own administrative act.

Article 5 - Validity

1. This agreement is valid for a period of 3 years starting from the most recent signature date.

2. For renewal, if no changes are required to the current text, a written request sent to the National Guarantor, endorsed by the representatives of the other two Parties, shall be sufficient. The renewal request must be received by the National Guarantor within three months of expiry.

3. The date indicated in the "stamp for acceptance" will constitute the beginning of the new starting date.

4. In the event that operational protocols are in place at the expiration date of the Protocol, they will remain in force until their indicated expiration date.

Article 6 - Withdrawal or dissolution

1. The Parties have the right to unilaterally withdraw from the present Protocol or to dissolve it consensually; withdrawal must be exercised by means of written notice.

2. Withdrawal shall take effect three months from the date of receipt of the notice.

3. In case of unilateral withdrawal or dissolution, the Parties agree to complete the activities in progress, unless otherwise mutually agreed.

Article 7 - Financial charges

1. The present Protocol does not imply financial charges for the Parties.

2. Operational Protocols may entail potential implementation costs.

3. The Parties may find the resources necessary to support the planned actions also through joint participation in both national and international funding programmes, which do not include Sponsors or

actions that may impinge upon the Supervisory role of the National Guarantor or which may constitute conflicts of interest with its activities.

Article 8 - Insurance coverage

Each Party shall provide insurance coverage for its personnel engaged in the activities performed in implementation of this Agreement.

Article 9 - Use of data and research results

1. The Operational Protocols determine the conditions and methods of use of the data and the results of the research contained in the scope or of this Protocol.

2. ADir and CeRC undertake to ensure that all the subjects involved in the research projects in application of this protocol expressly indicate their mutual cooperation in publications and give appropriate emphasis in all communications to the outside world.

Article 10 - Confidentiality

1. The Parties acknowledge the confidential nature of any information, data and documentation reported as confidential by the Party that transmitted it in execution of this agreement, committing not to disclose to third parties, in any form, the confidential information received, or to use said information for purposes other than those set out in this Protocol.

2. The Parties undertake to clearly and promptly report information to be deemed confidential.

3. The Parties undertake to carry out any activity aimed at preventing said information, data and documentation from being acquired by third parties.

4. The obligation of confidentiality does not apply to information that the Parties receive in a legitimate way from third parties not subject to the obligation of confidentiality.

Article 11 - Processing of Personal Data

The Parties undertake to process and store personal data and information related to the performance of activities covered by this protocol and the related operational appendices, in compliance with the provisions of the Legislative Decree of 30 June 2003, no. 196.

Article 12 - Disputes

Any dispute that may arise in relation to the interpretation, validity, execution and termination of this Protocol shall be under the exclusive jurisdiction of the Court of Rome, meaning that any other form of territorial jurisdiction is waived.

Rules and obligations of the National Guarantor

Article 13 - Final clause

1. With the agreement of the Parties, the Protocol may be modified or supplemented by a Agreement at any time.

2. Changes or additions are an integral part of the agreement and come into force at the time of their signing.

3. For anything that is not expressly indicated in the present Protocol, the provisions in force on the subject, insofar as they are compatible, remain in force, including the internal regulations of the individual Parties.

Rome, 1 June 2017

For the National Guarantor for the rights of persons detained or deprived of personal liberty, the Chairman, Prof. Mauro Palma

For the Other Right - Inter-university Research Centre on Prison, Deviance, Marginality and Migration Governance, the Director, Prof. Emilio Santoro

For the "Robert Castel Centre for Governmentality and Disability Studies" of the University of Naples "Suor Orsola Benincasa", Prof. Lucio D'Alessandro

Operative research protocol on Places, forms and methods of segregated disability

Pursuant to Art. 3 of the Memorandum of Understanding between the National Guarantor of the rights of persons detained or deprived of personal liberty (hereafter the National Guarantor), "The Other Right - Inter-university Research Centre on Prison, Deviance, Marginality and Migration Governance" (hereinafter ADir) and the "Robert Castel Centre for Governmentality and Disability Studies" (hereinafter CeRC) of the University of Naples "Suor Orsola Benincasa".

Whereas
the United Nations Convention on the Rights of Persons with Disabilities (CRPD) of 13 December 2006, ratified by Italy with the law of 3 March 2009, no. 18:

ensures that these (a) enjoy the right to personal freedom and security and (b) are not deprived of their liberty illegally or arbitrarily and that any deprivation of liberty is in compliance with the law and that the existence of a disability does not justify in any case a deprivation of liberty (Article 14);

guarantees the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment, requiring that States Parties take any effective legislative, administrative, judicial or other measures to prevent people with disabilities, on the basis of equality with others, from suffering torture or cruel, inhuman or degrading treatment or punishment (Article 15);

guarantees the right not to be subjected to exploitation, violence and mistreatment, requiring that States Parties take all legislative, administrative, social, educational and other appropriate measures to protect persons with disabilities (Article 16);

recognizes the right of all persons with disabilities to live in society, with the same freedom of choice as other people, also ensuring that:

people with disabilities have the ability to choose, on the basis of equality with others, their place of residence and where and with whom they live and are not obliged to live in a particular arrangement; persons with disabilities have access to a range of home or residential services and other social support services, including personal assistance necessary to enable them to live and engage in society and prevent them from being isolated or victims of segregation;

the services and social facilities for the entire population are made available, on the basis of equality with others, to people with disabilities and are adapted to their needs (Article 19).

Whereas:
– the *Committee on the Right of Persons with Disabilities recommends in point 8 of its Concluding observations on the Initial Report of Italy* of 31 August 2016 the establishment of a permanent body that effectively and significantly consults persons with disabilities through their organizations in the implementation of all laws, policies and programmes; at point 42 of the same document that the National Preventive Mechanism (NPM), referred to in Article 4 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), visits psychiatric institutions or other facilities for people with disabilities, especially those where people with intellectual or psycho-social disabilities are

Rules and obligations of the National Guarantor

accommodated and report on their condition and, in point 48, recommends putting in place guarantees of the maintenance of the right to an autonomous and independent life;

- following the ratification by Italy of the OPCAT with the law of 9 November 2012, no. 195, the Permanent Mission of Italy to the International Organizations in Geneva has designated the National Guarantor as the NPM;

- in the *Concluding Observations on the Initial Report of Italy* of 6 October 2016, the designated NPM is required to visit as soon as possible the facilities for persons with disabilities existing in Italy, generically indicated by the National Guarantor in its First Report to Parliament as "Health and social care homes".

In implementation of the Memorandum of Understanding signed on 1 June 2017, and according to the procedures set forth in Art. 3 of the aforementioned Protocol, the Parties intend to carry out a joint study and research activity, as defined below:

Article 1 - Objectives
1. Identification of practices leading to *de facto* segregation and institutionalization in health and social care facilities (*health and social care homes*) of people with care dependency and definition of parameters that characterize these practices.

2. Identification of situations and practices at risk of violation of the mandatory principle of prohibition of torture or cruel, inhuman or degrading treatment to which persons with disabilities and/or care dependency may be subject.

3. Drafting of a typological catalogue and a list of potentially segregating places and facilities, on the basis of national, regional and municipal regulations.

4. Carrying out the mapping and creation of a National Register of places and residential social-health facilities that may fall within the scope of the monitoring action of the National Guarantor.

5. Drafting and testing of guidelines for monitoring the *health / social care homes* through the creation of indicators related to: (a) structure and organization, (b) respect for the autonomy and independence of the guests, their rights and needs as well as those of their family members, (c) respect for emotional relationships, (d) relations with the territory, (e) care and assistance provided, (f) informed consent, (g) use of means of restraint, 01) respect of confidentiality, (i) access to information.

Article 2 - Steering Committee
1. The study and research activities referred to in this operating protocol are directed by the Steering Committee.

2. The Steering Committee identifies methods, techniques, protocols and length of investigations appropriate to the achievement of the objectives of the activities.

3. The Steering Committee identifies scholars and experts who constitute the research unit.

4. The Steering Committee is chaired by the Chairman of the National Guarantor, Prof. Mauro Palma who is a member by right.

5. The Steering Committee is made up of Dr Gilda Losito, as a member of the Office of the National Guarantor, by Prof. Emilio Santoro, as director of ADir, and Prof. Ciro Tarantino, as scientific director of CeRC.

6. The members of the Steering Committee may identify collaborators to carry out and assist with research activities.

7. The Steering Committee establishes any forms of documentation, information, disclosure and publication of the activities in compliance with Art. 9 of the Memorandum of Understanding cited in the introduction.

Article 3 - Organization of work
1. The activities are organized by thematic work groups.

2. The groups may include experts and representatives national and international organizations, institutions, and bodies according to specific needs.

3. Permanent members of the research unit, in addition to the members of the Steering Committee, include Prof. Stefano Anastasia, Prof. Alberto Di Martino, Prof. Mariagrazia Giannichedda, Prof. Marco Pelissero, and Prof. Daniele Piccione.

Article 4 - Advisory Board
1. For the duration of the activities an Advisory Board shall be established on the topics, analyses and materials investigated.

2. The Board is made up of delegates from the Organizations for the protection of the rights of persons with disabilities who will be defined by the Parties by a subsequent act.

Article 5 - Duration
The activities have a duration of eighteen months.

Article 6 - Confidentiality
The activities are subject to the confidentiality obligations set out in Art. 10 of the Memorandum of Understanding.

Rome, 1 June 2017

For the National Guarantor for the rights of persons detained or deprived of personal liberty,
the Chairman, Prof. Mauro Palma

For the Other Right - Inter-university Research Centre on Prison, Deviance, Marginality and Migration Governance, the Director, Prof. Emilio Santoro

For the "Robert Castel Centre for Governmentality and Disability Studies" of the University of Naples "Suor Orsola Benincasa", Prof. Lucio D'Alessandro

Index of Maps - Tables - Charts