

ITALIAN NPM'S EXPERIENCE IN MONITORING IMMIGRATION DETENTION FACILITIES

By Massimiliano Bagaglini, Head of Unit "Deprivation and Migrants", National Guarantor for the Rights of Persons Deprived of Liberty – National Preventive Mechanism

massimiliano.bagaglini@garantenpl.it

It is difficult to condense the subject in a few minutes but I will try to use the time available to give you an idea of the main lines of intervention of the Italian NPM in the field of administrative detention and I will conclude with what I believe is a good practice for the Opcat system.

The Italian NPM began operating six years ago and immediately equipped itself with an organizational unit responsible for monitoring situations of deprivation of liberty in the context of measures to combat and control irregular immigration.

Visit to the places of de iure deprivation of the freedom

Since then, he has been making regular visits to places dedicated to administrative detention which in recent years has seen a phase of expansion primarily through the growth of the network of facilities: it has gone from 4 in 2016 to 10 today:

- Centre for Repatriation (CPR) "Brunelleschi", Turin;
- CPR Milan;
- CPR Gradisca di Isonzo (Gorizia);
- Cpr "Ponte Galeria", Rome;
- CPR Palazzo San Gervasio (Potenza);
- CPR Bari-Palese;
- CPR Brindisi-Restinco;
- CPR Trapani-Milo;
- CPR Caltanissetta;
- CPR Macomer (Nuoro).

The main critical issues verified concern:

1. Lack of an organic law that regulates life within the CPR and introduces effective guarantees for the protection of the rights of detained foreign persons;
2. systematic deficiencies in the protection of the right to health of detainees (specific criticalities: checks on life suitability in restricted communities, the care of sick people or those with health vulnerabilities, the quality of the services provided, the adequacy of the environments, as well as periodic surveillance of the material conditions of the structures).
3. segregated material conditions of the living spaces;
4. total absence of social activities and opportunities to use time in a useful way;
5. unjustified practices of limiting the freedom of telephone correspondence provided for by law;
6. difficulty of access by organized civil society for the implementation of support and assistance initiatives;

7. lack of accountability and transparency of the facility management system, lack of recording of critical events.

The expansion of the administrative detention system then resulted in the identification of new places of detention. From October 2018 it is in fact possible to detain foreign citizens subjected to a repatriation measure within the premises of the Police Headquarters for a maximum of 4 days and at the airports for a maximum of two days.

The latest survey, as of December 31, 2021, indicates the presence in the national territory of a total of 44 police stations that have the availability of these environments, while 21 police stations are those for which the design/construction /renovation of such places is underway.

The National Guarantor between 2021 and 2022 visited 5 police stations (Chieti, Livorno, Pavia, Rome, Siena) which have suitable facilities available.

The main problems encountered during the visits to this type of structure concern:

1. lack of precise parameters for identifying these structures and lack of a public list with its location;
2. inadequacy of the material conditions of the structures visited to date (Chieti, Livorno, Pavia, Rome, Siena);
3. absence of an explicit regulation of the conditions of detention, with tendential assimilation of the migrant to the status of person arrested/stopped and detained in a security room;
4. consequent failure to recognize the guarantees and fundamental rights of the person detained by virtue of an administrative measure, in particular in the matter of freedom of telephone correspondence, which cannot be fully exercised or it is severely limited, of the right to information in an understandable language on rights and obligations of those detained, on the right of defense, on the right to seek international protection, on the right to receive health care;
5. lack of transparency and accountability due to the absence or poor keeping of the registers that must contain the details of the events during the detention, of the information provided, of the rights exercised by the detained person, of the activities carried out by the Police Forces.

Visit to places of de facto deprivation of freedom

The National Guarantor did not stop at the codified places of deprivation of liberty and has also pushed his visit activity to other places that in practice are configured as *de facto* places of deprivation of liberty:

- Hotspot
- Community for unaccompanied foreign minors
- Rescue ships without Pos
- Quarantine ships
- Airport waiting rooms for rejected persons

These are extremely different situations and conditions which share the fact that the material execution of a restrictive measure in such places has no clear legal basis.

Various reports relating to the visits made are available on the website of the Guarantor.

Exercise of the consultative prerogative

The web site also contains the opinions that the Guarantor has formulated on the subject of administrative detention. In addition to the visit activity, the National Guarantor has in fact dedicated a lot of effort to formulating opinions on the legislation by intervening in the parliamentary approval processes or by sending intervention proposals on its own initiative.

As part of the advisory function, 3 particularly important objectives were achieved:

- Reduction of the maximum period of detention from 6 months to 3 - 4 months (in special cases). The National Guarantor has collected data showing that the percentage of people repatriated from the Centers does not improve with the increase of the maximum detention period established by law.

This prospect was accepted and the law was changed.

In this regard, it should be noted that in these years of activity, the National Guarantor has dedicated particular effort to the statistical collection of data relating to situations of deprivation of liberty. The goal is to give transparency to the system by making analysis tools available to political decision makers, public opinion, the world of academic research ...

- The introduction of judicial verification of rejections (refusals of entry) that were carried out directly by the hotspots. The Constitutional Court had given a precise indication in this regard and the National Guarantor indicated to Parliament the need to implement it. Parliament accepted the amendment proposed by the National Guarantor.

- The provision of the right to complain to the National Guarantor in favor of foreign citizens detained in the CPR who intend to raise complaints relating to the conditions of detention.

A good practice

I conclude by sharing what in my opinion constitutes an added value of the National Guarantor's strategy in the field of monitoring situations of deprivation of freedom of migrants: the search for forms of operational collaboration with other NPMs aimed at implementing common actions for the protection of the rights of foreign citizens in respect of whom the jurisdiction or elements of connection with several countries emerge.

It is an approach that the National Guarantor has adopted in the initiatives undertaken to protect migrants stranded in the Mediterranean, in international water, by the Italian authorities' entry bans on board rescue boats flying a foreign flag.

And it is a strategy that the National Guarantor is also following in perfecting its forced return monitoring system. On 7 March 2022, the National Guarantor signed a cooperation agreement with the Georgian NPM to establish a relay mechanism in the monitoring of forced returns in order to extend observation to post-handover and therefore guarantee greater protection to foreign nationals who have been repatriated.

Cooperation with civil society

The work of the Italian NPM on migrant detention matters is, obviously, based also on the large amount of information provided by the organizations, expression of the civil society, operating in this specific environment; many of them, in fact, operates in the centers with activity, in instance, of support to the migrants or advocacy. This important relationship between the National Guarantor and the civil society and its organized expressions it develops in a constant dialogue and reciprocal exchange of information and cooperation. Nevertheless, the levels of the respective actions remain constantly separated why the National Guarantor, as public authority, must to preserve its independency. Moreover, there are many spaces where this cooperation may give useful outputs, such as the area of the training: in this context, the National Guarantor is quite active in the training for the monitoring of forced returns and organizes, at least once a year, joint training session or thematic workshops on specific issues in which the main stakeholders such as NGO's, research and academic institutions, lawyers, police forces, media are involved.

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