

Presidenza del Consiglio dei Ministri



Abstract

**MENTAL HEALTH AND PSYCHIATRIC CARE IN
PRISONS**

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Mental health in prison is a particularly critical area in the context of the protection of the general health of persons sentenced to prison. This is true, despite the fact that protection of health is both a human right as well as a constitutional right, therefore equally valid "inside" and "outside" prison walls, in conditions of equal treatment for those who are free and those who are imprisoned. If prison, by its very nature, compresses individual rights, mental health in particular is undermined by the suffering linked to the state of restriction and total dependence of the prisoner for provision of all the necessities of everyday life. From the incompatibility of prison with mental health stems the indication that the treatment of persons with psychiatric disorders should as a rule take place out of prison, in regional community setting. Psychiatric care in prison should be limited to people with minor disorders, or to the small number of those for whom it is not possible to apply an alternative to imprisonment for therapeutic purposes. It should also be remembered that the safeguarding of mental health does not coincide with psychiatric care, however important it may be: the invitation is to set up a sufficiently adequate environment in order to maintain the mental balance of prisoners and not exacerbate the conditions of those already suffering from disorders, ensuring first of all decent conditions of detention and respect for fundamental human rights.

The crux of the problem of mental health-prison is complicated by other issues, including, from the start, the different treatment by the criminal justice system (the so-called `double track`) to which offenders with psychiatric problems may be subjected. Some (so-called "insane offenders"), judged to be non-imputable (not criminally responsible), *for their offences by reason of (total or partial) insanity at the moment of the act and therefore acquitted*, were however subjected to a security measure in the Judicial Psychiatric Hospital - OPG; this was the case before Law 81/2014 which closed OPGs: today, on the other hand, those acquitted are directed to the new articulated system of transferring responsibility for treatment to community regional facilities, which includes the Residences for the Execution of Security Measures-REMS. Others, so-called "mentally ill offenders", judged to be imputable (criminally responsible) for their offences were sentenced to prison, where they developed a serious psychiatric disorder or faced with an aggravation of a previous pathology, were transferred to a Judicial Psychiatric Hospital. Today, with the abolition of OPGs "mentally ill offenders" do not enjoy the protection to which they are entitled, since there is no clear legislation to establish their incompatibility with prison and direct them to alternative therapeutic measures.

The legacy of the OPG is still alive both on a concrete level, due to the still uncertain fate of the various types of psychiatric patients who crowded these institutions; and above all on a cultural level, given the persistence of the old vision of the psychiatric patient as being *per se* dangerous, and therefore better locked up rather than treated. This concept is also fuelled by excessive recourse to the "track" of non-imputability and acquittal as a result of "mental defect", along with the correspondingly extensive use of security measures. Hence the reluctance to use legislative instruments that can favour *treatment while not detained in custody* for both mentally ill offenders and insane offenders, as well as the delays to regulatory changes moving in this direction.

Starting from these considerations, the ICB recommends:

- ensuring, as a basic form of mental health protection in prison, humane detention methods, respectful of people's dignity, offering treatment with opportunities for training and work within the perspective of re-socialization;

- provision of health care for persons suffering from a serious mental disorder who have committed crimes should take place as a general rule in community-based settings, in therapeutic facilities and not in detention institutions, in compliance with the principle of equal protection of health for those who are free and those sentenced to prison;

- strengthening mental health services in prison, overcoming the historic "separateness" inherited from penitentiary healthcare: so that they function as an integral part of robust Mental Health Departments, capable of identifying community-based network resources for the treatment of serious pathologies out of prison and cooperate with the judiciary called on to ascertain the situation and the supervisory judiciary for this purpose;

- the ICB also calls for some legislative innovations to protect both persons judged to be criminally responsible for their acts and sentenced to prison terms, as well as those declared not criminally responsible and acquitted. Specifically;

- deferment of sentence when mental health conditions are incompatible with detention by analogy with the provisions of art. 146 and 147 regarding impairment of physical health; the provision of specific alternative measures for those who manifest a mental illness in prison; the introduction of Clinical Sections in prisons managed exclusively by health care services;

- a more incisive reform of security measures, to limit the use of the prison security measure. In addition, in accordance with the therapeutic purpose of REMS, it is necessary to limit admission to REMS for subjects with a definitive custodial security measure.

Lastly, the ICB invites reconsideration of the particularly problematic concept of "social dangerousness", which is at the basis of security measures, and the special "double track" legislation of imputability/non-imputability of subjects affected by mental disorder.