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The therapeutic treatment of mentally ill offenders and their return into the community

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Closing Judicial Psychiatric Hospitals in Italy

Law no. 9/2012 and Law no.81/2014 provided for the definitive closing of Judicial Psychiatric Hospitals in Italy and the establishment of new facilities, called Residential home care services, for the execution of security measures. In such facilities the offenders suffering from psychiatric disorders impairing, totally or partially, the mental capacity, as per art. 219 and following of the criminal code, are held. Such topic is addressed in the delegated legislation no. 103/2017, providing for a specific issue on mental illness occurred in the course of the execution of the sentence. A radical change in the legislation on the treatment of the mentally ill offenders was carried out: the Residential home care services take on completely different meanings with respect to Judicial Psychiatric Hospitals in that they are specifically and exclusively healthcare facilities only with external supervision.

It is important to step back and review the various phases which led to the establishment of *Residential Home Care Services for the execution of security measures* and the closing of judicial psychiatric hospitals.

The debate began at the end of the eighties: the psychiatrists of that period (Lombroso, Virgilio, Tamburini) struggled for the establishment of criminal mental hospitals, for those persons for whom "prison would be an injustice and freedom a danger". By a mere administrative act issued by the Directorate General of prevention and prison institutions in 1876, the judicial mental hospital of Aversa was opened (a former convent near Caserta) to which Montelungo Fiorentino and Reggio Emilia followed (1982). In 1891 the general Regulation of penitentiary institutions and reformatories defined the typologies of persons to be hospitalized in judicial mental hospitals: they were *mad offenders* (prisoners becoming mad) and *mad offenders* (prisoners suffering from mental illness which caused the commission of the offence). However, judicial mental hospitals brought by Italian psychiatrists did not concretely satisfy the expectations: Italian psychiatrists complained about the inadequacies of facilities, the poor hygienical conditions and the clinical promiscuity of internees.

The maximum number of persons hospitalized in mental hospital was reached in 1941: more than 3400 internees.

In 1930 the new so-called Rocco code was approved in Italy. It took the name of the Minister of Justice. The new code was welcomed with enthusiasm by psychiatrists and provided for the of "twin-track approach" joining the systems of penalties and security measures. The new criminal code provided that acquitted persons considered socially dangerous (that is offenders suffering from a mental pathology/illness who could commit again an offence) be applied the detention security measure in the Judicial mental hospital.

In the post-war, the Italian Psychiatry was based on the paradigms of mental hospitals and to the care instruments experimented before the war (let's think at the therapy through electroshock).

In 1970 at Castiglione delle Stiviere (a Judicial Psychiatric Hospital near Mantova) a new care methodology was experimented on the model of therapeutic community but after some years everything was as before: such experience constituted a precursor with respect to the current

model chosen by the Italian legislator. In the seventies, the number of hospitalized persons in psychiatric hospitals ranged between 1000 and 1500 internees.
Between 1978 and 2008 (year in which the Committee for the prevention of torture and Inhuman or Degrading Treatment or Punishment went to visit the Aversa Judicial Psychiatric Hospital detecting critical points) many bills aiming at closing judicial psychiatric hospitals were provided for but they had no effect and important judgements of the Constitutional Court and of the Court of Cassation were issued on the topic of the mentally ill offenders. Therefore, the Constitutional Court addresses the topic of the possibility to request the anticipated revocation of the security measures and even the issue of the social dangerousness to be concretely assessed and not abstractly; the Court of Cassation in penal sessions states that the personality disorder can be a cause excluding the person's mental capacity. It is, therefore, a period of intense activity.
The Decree of the President of the Republic of 1° April 2008 was issued concerning "Modalities and criteria for the transfer to the National healthcare service of healthcare functions, of job relationships, financial resources and equipment and instrumental goods in matter of prison healthcare"; then, law number 9 of 2012 provided for three fundamental principles:

A) the exclusive healthcare management within the facilities;

B) perimeter security, but only where necessary in relation to hospitalized persons;

C) the principle of territoriality or the principle according to which the persons are located in the Home care close to the territory/country of origin.

In the end, law no. 81/2014 containing urgent provisions on the closing of judicial psychiatric hospitals establishing home care for the execution of security measures was provided for. Home care services are exclusively healthcare facilities, managed by a physician responsible for healthcare and administrative tasks, with reduced capacity of places (maximum 20), where therapeutic-rehabilitative activities for hosts are carried out, in coordination with territorial psyco-social services. Then, home care services are completely different from prison mental hospitals. Currently, all judicial psychiatric hospitals in Italy have been closed. The last which have been closed are Barcellona Pozzo di Gotto (Sicilia) and Montelupo Fiorentino (Toscana).

The residual nature of hospitalization in Residential home care facilities

The purposes of legislative interventions on the execution of security measures is based on the principle according to which for the person who is not criminal responsible the resort to the *lato senso* custodial measure must be considered the extreme and residual solution. The hospitalization in Residential care home facilities shall be carried out only when it turns out that any other measure is not fit for ensuring, on one hand adequate care and on the other hand it is not fit to address the social dangerousness of the mentally ill person. Such assessment shall be carried out on the basis of the individual qualities of the person and shall be (renewed periodically).
The measure may be applied also on a temporary basis when the trial is still ongoing and there is not yet a judgement on the fact-offence. In any case, even when the measure is temporarily applied the decision of the judge is necessary (it's the judge for preliminary investigations) who is asked to assess if the hospitalization is absolutely indispensable for the purposes of care and social protection. .

The transitory nature of hospitalization in Residential home care

The hospitalization in Residential home care facilities takes on both the character of exceptional nature and that of temporariness: the competent mental Health Department, in fact, for each hospitalized person shall prepare, in a very short time, a tailored rehabilitation therapeutic project sent to the competent judge. Such project is regularly revised before leaving the hospital.

It has besides been introduced the maximum term for security measures in order to avoid "*white life sentences*" in order to prevent that security measures, *de facto*, become perpetual and on the requirement that the postponement of a security measure in the long period turns out to be a source of strict sterile sanctions, chronic issues and of marginalization of the individual from society.

As already said, in order to ensure the temporariness of the security measure it is provided that the social dangerousness of the patient be constantly monitored. This occurs through the setting of a hearing by the judge carried out at the presence of the patient and his/her counsel concerning the current condition of the mentally ill offender. Such hearing shall be normally carried out at the Home Care for the execution of security measures: the judge and his/her counsel go to the Home Care facilities and not the patient to the Court. Such hearing concerning the new assessment of the social dangerousness is set at least every year but nothing prevents the judge from setting it even after a shorter period of time, according to the subject's conditions. Even the counsel, provided for by law, can urgently lodge an appeal to the judge to set in advance the hearing to assess if the security measure is already justified or if the social dangerousness is such to make any other measure insufficient to contain it: in such case the judge is obliged to anticipate the hearing. The patient is formally notified of the scheduled hearing and even his/her guardian is summoned in person. The judge, before the hearing, requests the physicians responsible for the Home Care facilities a detailed report on the current conditions of the patient, on the progress of the tailored therapeutic-rehabilitation programme. The judge also asks the probation system for a detailed report on the patient's family in order to understand, among other things, if he may be welcomed on the territory: to this end the judge also asks that in the Probation Office report be indicated if the relocation in the family is appropriate or if it would be more suitable/fit the choice of a community. The community is then placed in an intermediate stage between the home Care and the return to the patient's family. To this purpose the law provides that the patient be hosted, according to a principle of territoriality, in the home care of the Region of origin, in order to guarantee a specific closeness with the territory of origin. In the course of the hearing, where the public cannot be present, the judge can ask questions to the patient and listen to his/her needs. In case the judge decides to postpone the security measure, the appeal to another Court can be lodged: in any case such decision shall be however re-evaluated when the new hearing is set (as said normally after a year but even after a shorter period of time) to check if the mentally ill shall be still considered socially dangerous. In order to facilitate the judge to carry out the treatment of the mentally ill offender agreements shall be carried out enabling the judge to quickly link with mental healthcare services of the Department of Mental Health: the judge shall have an adequate and complete knowledge of the resources and the solutions offered on the territory.

New impact and relapse

The analysis of the phenomenon of the new impact (the term 'new impact' stands for the commission of a further offence ascertained with a final sentence even if the person had already committed another offence for which the sentence has been served with a community sanction) and relapse. Relapse in its proper meaning mainly refers to return in prison under the form of prison detention or community measure because of final sentences relating to offences committed after the community measure has been served and identified through the criminal records) of the mentally ill person is carried out by the Department of Juvenile and Community Justice through best practices and procedures aiming at enhancing the scientific and legal practice interdisciplinary information, with a method characterized by discussions between experts, scholars, workers and judges.

As said before, the Departments of mental health, carrying out therapeutic and rehabilitation programmes have been placed at the centre of the system. For such reason, law no.81/2014 has also provided for training courses for workers in this specific field so that all those who enter for various reasons in the circuit of the rehabilitation of the mentally ill offender be prepared under the profile of the legal physician. For such reason today we speak of the professional "legal psychiatrist", considering the psychiatrist the person who deals with the mentally ill offender. This is a polyhedric professional in that he is competent in the fields of criminology, criminal procedure, penitentiary law, legal medicine, psychiatric clinics in prison (with specific regard to the relationship between mental illness and violence), psychopharmacology of the aggressiveness of violence, social psychotherapeutic interventions on specific issues as sex offenders).

The measures for the treatment of the mentally ill persons

Now let's see concretely, which security measures are provided for by the Italian system for the mentally ill offender in addition to hospitalization in Home Care facilities, without prejudice to what is being reviewed with reference to security measures for mentally ill offenders as provided for by the above-mentioned law no.103/2017. Such law aims at a comprehensive adjustment of the provisions of "intermediate segments" between the most restricting measure of Home care facilities and that of supervised liberty.

The preliminary distinction is between: a) mental illness at the time of the commission of the offence; b) mental illness after the commission of the offence not being the cause of the commission of the offence.

A) For totally or partially mentally ill, when committing the offence, applicable security measures correspond to the hospitalization in Home Care or supervised liberty. Hospitalization in Home Care facilities, as already said, is the most afflictive measure to be applied only if the measure of supervised liberty is not adequate to address the social dangerousness of the mentally ill offender. Supervised liberty is a very flexible security measure managed by the probation system: the mentally ill remains on the territory, at his home or in an open community and without supervision, and is followed by the Probation Office in constant coordination with the Department of mental health and, if necessary, with the drug-addict and alcohol-dependent Service. If the case is so serious to request the hospitalization in Home care facilities, treatment programmes are carried out aiming at replacing as soon as possible the more restricted security measure with the security measure of supervised liberty. To this purpose, planned re-entries of the patient from the REMS to the family, according to a gradual programme which is communicated and authorized by the judge shall be carried out. Leaves to re-enter the territory are becoming more and more frequent and long and allow to monitor the person in his/her rehabilitation and care pathway. The probation system is directly involved in such preparatory phase to the release from REMS and assignment to supervised liberty. As already said, supervised liberty does not provides for forms of external supervision and is carried out in therapeutic communities which can vary from high, medium or low assistance or even at home, with reintegration in the territory. The probation system through the probation office takes on a significant role at the release of the mentally ill person from Home Care facilities who shall be assigned to supervised liberty.

B) For the offender whose mental disorder has occurred during detention (and, however, not affecting the mental capacity when committing the offence), the therapeutic – rehabilitative treatment shall be carried out in appropriate psychiatric wings, on regional basis, addressing mental health within prison. If, on the other hand, mental illness is so serious such as to prevent the execution of penalty, the judge can order the postponement or suspension thereof.