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Editorial

EDITORIAL
Situation of mental patients who have contact with Justice in the Community of Madrid

The gradual increase of people who suffer from a mental illness and have contact with the Administration of Justice in Madrid should make us all consider the causes that lead to this situation and a current approach. The problems that the person with mental illness faces before Justice are varied, but sometimes the stigma attached to the disease can influence the sentencing court. The application of exempting or mitigating circumstances to non-competent persons has led to a huge increase in casuistry. Many people are referred to inpatient psychiatric units for psychiatric rehabilitation or extended care by the courts of justice without proper forensic psychiatric examination. The stay in such units can become a simple custodial measure without effective treatment or a therapeutic process which the patient will benefit greatly. The initial expertise in diagnosis is crucial and determines the appropriateness of further treatment. Crime rates among people with major psychiatric disorders (schizophrenia, bipolar disorder, schizoaffective disorder ...) have not been increased. However, the occupancy rate of psychiatric units has been increased, with a complicated waiting list, effectively managed by the Regional Office of Mental Health from the Madrid Health Service.

Given the difficulty of entry derived from limited availability of beds and, given the undeniable and indefeasible right to treatment and care that people with mental illness who come into contact with the justice system are entitled to, new solutions have to be considered by all actors involved.

Besides a good interagency coordination between the Courts and Health Administration, together with the security forces, new forms of alternative sentence should be used after clear regulation. The Commission of Case Analysis promoted by the General Secretariat of Penitentiary Institutions is an example of good practice to individually coordinate existing cases between different administrations. When seeking alternative treatments, there are some whose potential is not yet developed, and a successful example in some latitudes is the Involuntary Outpatient Treatment (IOT).

As precedents of the proposed future regulation of IOT in our country, the following should be mentioned: in the civil order, the regulations contained in Decree 3.7.1931 19 on the "assistance to the mentally ill" (Gazette of 07.07.1931) which establishes the regulatory rules that have been in force until recently (until Law 13/1983) and, in the criminal order, the modality included in the Criminal Code of replacing the custodial measure of confinement in a psychiatric facility, for external medical treatment. Royal Decree as of Mat 12th 1885 which approves the Organic Regulations for the internal regime and government of the Asylum of *Santa Isabel de Leganés,* allowed intuiting the existence of a form of "temporary leave". This is mentioned in Article 71 Paragraph 3 when referring to the registration of the establishment, although there is no specific regulation in this regard. The 1931 Act does address in more the question more thoroughly. In Article 30 two ways of leaving psychiatric facilities are considered: test permits or temporary licenses on one side and former permission or provisional leaves on the other.

In fact, in other countries, as we shall see, test permits are also regulated (France). With regard to criminal law, it is worth noting that Article 20 of the Criminal Code currently in force (Organic Law 10/1995 as of 23rd November) considers exempt from criminal liability those individuals who " at the time of committing the criminal offense on account of any mental defect or impairment, are not able to understand the wrongfulness of the act or act on that understanding "(Art. 20. 1 of the Spanish Criminal Code). Such type of criminal offenders "may be applied, if it were necessary, a custodial sentence for medical treatment or special education in a suitable setting for the type of anomaly or mental impairment that is appreciated" (Art. 101.1 CC). During the execution of judgment, i.e., during the detention, the judge or sentencing court may, upon recommendation by the Prison Supervision Judge and through an adversarial process, "replace a safety measure for other deemed most appropriate, among those planned for the course in question "(Article 97.b CC). That is, they can replace imprisonment by the "submission to external treatment at medical centers and other socio-sanitary facilities" for a period not exceeding five years (Article 105.1.a CC). It being understood that "in the event that the replacement was agreed and the subject evolved unfavorably, such action will void" (Art.

97.b CC). Or what is the same, thus concluding the external medical treatment (outpatient) the concerned subject would become again admitted to prison, although for a limited time "detention may not exceed the time that imprisonment would have taken, if the subject had been found liable, and for that purpose the judge or court shall set that maximum limit in the sentence"(art. 101.1 CC). On the other hand it is worth indicating that there is no doubt about the attribution —precisely to the prison supervision court— of monitoring the effectiveness of outpatient treatment.

However, some authors argue that an unfavorable evolution in undergoing outpatient treatment does not necessarily entail re-entry into the establishment to continue detention, since if such worsening was experimented with the alternative measure (outpatient treatment) this could mean that neither the substituted measure (internment) is adequate in the new situation, and hence the subject would need to be imposed a different measure.

The set of measures referred to in Article 105.1 of the Spanish Criminal Code admit, in principle, such a possibility in the case of the mentally ill. We must recall that such measures include, in addition to the submission to external treatment at medical centers or healthcare facilities, the obligation to reside in a particular place, the prohibition to reside in the place or territory specified, the prohibition to go to certain places or visit drinking places, family custody, submission to educational, cultural, training, professional, sex education programs and the prohibition of approaching the victim, or the relatives or other persons determined by the judge or court, or to communicate with them.

While it seems clear that this list of possible measures would be difficult to use in the event individuals who lack the ability of self-government. The procedure is as follows. The multidisciplinary team in charge of the patient will present to the Prison Supervision Judge a report indicating the need for maintenance, removal or replacement of detention (Article 186.2 Royal Decree 190/1996 as of 9 February, by which the Prison Regulations are approved). Prison Supervision Judges "shall be required to submit at least one proposal for maintenance, removal, replacement or suspension of the security measure of imprisonment imposed, annually," (Article 97 Paragraph 2 CC), yet the final decision corresponds to the judge or sentencing court, during adversarial proceedings (Article 97 CC). Consequently in criminal matters the execution of the security measure is chaired by the individualization and adaptation to the evolution of the subject submitted to such measure, based on his/her level of danger, hence imprisonment becoming the last resort only when necessary.

The validity of this principle of individualization is precisely what allows that the measure of external medical treatment can be taken "from the beginning or during the execution of the sentence" (Article 105 CC). In conclusion, in terms of IOP in civil matters it is worth noting that this criminal precedent is mainly characterized by the following:

a) Outpatient treatment can be initiated with or without previous hospitalization, since it can be adopted "from the beginning or during the execution of the sentence" (Article 105 CC);
b) It has a limited yet extended duration, up to five years. This is justified by the seriousness of the offence and the personal circumstances of the individual submitted to the measure;
c) It is always post-offence, thus the dangerousness of the subject has resulted in the commission of a crime, although the individual may not be criminally responsible for it;
d) The measure of outpatient treatment is conditioned to the subsequent evolution of the patient;
e) Outpatient treatment may be submitted to revocation and to its conversion into imprisonment or, exceptionally, into another non-custodial security measure.

In short, it would be desirable to put away thoughtless differences when approaching solutions to the huge caseload that we face today, yet knowing as we know that any solution which entails a relevant increase of the available resources is, today, frankly difficult.

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