



*Garante Nazionale
dei diritti delle persone private della libertà personale*
President

Renata Degener
First Section Registrar
European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex – France

Re: ECHR-LE14.8bP3 (mod)

Rome, 14 September 2021

Application no. 368/21
Ciotta v. Italy

Dear Madame,

Further to your letter dated 18 August 2021, the National Guarantor for the Rights of Persons Deprived of Liberty, the “Garante delle persone sottoposte a misure restrittive della libertà personale della regione Lazio” (the Regional Guarantor) and the “Garante dei diritti delle persone private della libertà personale di Roma” (the Municipal Guarantor) submit their joint observations on the case referred above (*Ciotta v. Italy*).

The following written submission was drafted under the coordination of the National Guarantor and jointly agreed by the Third Party.

Yours respectfully,

Mauro Palma


Enc.:

– Third Party’s written observations application no. 368/21 – Ciotta v. Italy



*Garante Nazionale
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Rome, 14 September 2021

English only

Third party intervention

Joint observations by the National Guarantor for the Rights of Persons Deprived of Liberty (National Preventive Mechanism), the Latium Region Guarantor for the Rights of Persons Detained, the City of Rome Guarantor for the Rights of Persons Detained

**Application no. 368/21
Ciotta v. Italy**

Introduction

1. On 18 August 2021, the submitting Third Party [the National Guarantor for the Rights of Persons Deprived of Liberty (from now on 'National Guarantor'), the "Garante delle persone sottoposte a misure restrittive della libertà personale della regione del Lazio" (from now on 'Regional Guarantor', and the "Garante dei diritti delle persone private della libertà personale di Roma" (from now on 'Municipal Guarantor')], was asked to send joint observations to the Court, after having been granted leave to intervene as Third Party concerning the case *Ciotta v. Italy*, in accordance with Rule 44, paragraph 3, of the Rules of Court. The decision was made in order to ensure the consistency of the information provided to the European Court of Human Rights (hereinafter: 'the Court'). The case relates to an Italian citizen with mental disorders who has been detained in 'Regina Coeli' prison in Rome while awaiting for a place to be available in the facility provided for the accommodation of persons subjected to court-ordered detention security measures, namely the *Residenza per l'esecuzione delle misure di sicurezza* (from now on 'REMS'), and the alleged human rights violation resulting from his continued imprisonment.
2. According to their mandates, the three guaranteeing Institutions monitor places of deprivation of liberty through a scheme of regular visits, thus assessing the effectiveness of fundamental rights in such places, as enshrined in our Constitution and in international Conventions and Treaties, in particular the European Convention on Human Rights (hereinafter: 'the Convention'). These guaranteeing Institutions give account of the results of their visits in Reports sent to the relevant authorities and then put in the public domain together with the received replies. In the case of the National Guarantor, are sent to the Governmental Bodies having responsibilities on the visited facilities, so to enhance their



*Garante Nazionale
dei diritti delle persone private della libertà personale*
President

- commitment to comply with obligations under the Convention, so identifying possible shortcomings in law, bylaws and – last, but not least – in the observed practices.
3. In addition, the National Guarantor, was designated as National Mechanism for the prevention of torture (NPM) under the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or degrading Treatment or Punishment (OPCAT), which Italy ratified in 2012, as provided for in article 7 paragraph 1-bis of decree-law no. 146 of December 23, 2013. Relevant to its remit, pursuant to Article 19 letter c) of the OPCAT, the National Guarantor provides advice on draft legislation. Moreover, it can recommend revisions to draft legislation and amendments to the existing law. The authorities are firmly requested to open a dialogue with the National Guarantor on its recommendations.
 4. The Regional or local Guarantors yearly present a Report on their activity to the relevant local Authorities, regional or municipal. The National Guarantor presents its Annual Report to Parliament. The President of the Parliament and the concerned Ministries attend the presentation in a public event, widely broadcasted; on occasion, the President of Republic attends the presentation.
 5. As regards the case under scrutiny of the Court, the National Guarantor coordinated a group in order to offer a shared opinion to the Court, together with the similar bodies at regional and local level. The Regional Guarantor's contribution to the following written observations related mainly on the Regional Healthcare Service, in particular in prison, as the healthcare responsibility in Italy is under the competence of the Regions. The National authorities have only a coordinating role as regards the minimum level of assistance that should be provided for to any person in its jurisdiction (the so called "Livelli essenziali di assistenza", namely "minimum standards of health care", in acronym 'LEA'). The Municipal Guarantor contributed to the present intervention as Third Party giving significant information about the specific case and the alleged violation of the Convention claimed by the applicant during his imprisonment.
 6. All these 'Actors' regularly visited the REMS (at local, regional and national level)¹ since their full opening in 2015, according to the law adopted in 2012, the implementation of which was postponed for three years. On its side, the European Committee for the Prevention of Torture (hereinafter: 'CPT') visited a few REMS during its periodical visit to Italy from 8 to 21 April 2016.
 7. The present case refers to the period of Covid-19 pandemic. Therefore, the peculiarity of the measures adopted has to be taken into account as well as the increased vulnerability of persons accommodated in places of deprivation of liberty. However, during this period the National Guarantor did not put on hold its visits, although taking into account the principle of "do no harm", when carrying out its monitoring.
 8. Such activity is at the basis of this Third Party intervention. The outcomes of the Third Party's visits were systematically discussed with the relevant Administrations, according to the principle of cooperation that is fundamental in the monitoring activity and the subsequent dialogue. As the REMS constitute a new pathway to address the problems given by mental and psychiatric disorders that supported the impossible liability of the offenders to

¹ In details,

– from 2017 to 2021, the National Guarantor conducted 17 visits to 16 REMS on a total number of 30 structures;

– since July 2016, the Regional Guarantor conducted 12 visits to the six regional REMS.



*Garante Nazionale
dei diritti delle persone private della libertà personale*
President

- prosecution for the committed crimes, the discussion about new problems, attempted solutions and new systems for regulating the life in these facilities was constant. The cornerstone of this discussion was how to adopt strategies aimed at complying with both therapy and full safeguard of the persons' rights. The discussion involved also stakeholders from the civil society, at large.
9. On the initiative of three Ministries – Health, Justice and Regional Affairs – the National Agency for Regional Health Services (Age.n.a.s.), by resolution 275/2021 and following the Constitutional Court's rulings 131/2021, set up the *Steering Committee on REMS*. The aim of the Committee is giving solutions to the serious problem of the non-execution of court decisions ordering the adoption of security measures consisting in the placement in REMS of persons non liable for prosecution and their consequent permanence in prison custody without any legal basis. The Committee started working acquiring information on each case and looking for individual solutions. The National Guarantor's President is member of the Committee.
 10. In addition: a) the National Guarantor signed an agreement with the *Sistema informativo per il monitoraggio del superamento degli OPG – SMOP* – a portal created by the Campania Region to collect data on REMS²; b) the Regional Guarantor acquired a robust knowledge on the different aspects pertaining the health care of REMS patients due to the fruitful collaboration with the regional facilities Directors and with the responsables at the Departments of Mental Health (Dipartimenti di Salute Mentale - DSMs); c) the Municipal Guarantor has gained a direct understanding on persons remaining in prison and awaiting the foreseen placement in REMS. These different levels of cooperation helped the Third Party collecting accountable data to be used for the present observations.
 11. Briefly, the Third Party's intervention will illustrate: the rationale behind the law which established REMS and a general overview of the current state of play (**Section I**); the critical aspects stemming from the practical implementation of the provision and possible implications conducive to an alleged violation of Article 5 § 1 and Article 3 of the Convention (**Section II**); possible horizons to tackle issues and the Third Party's concluding observations (**Section III**).

Section I

12. The Third Party recalls that the transfer of responsibility for the provision of prison health care from the Ministry of Justice to the regional health authorities (Aziende Sanitarie Locali – 'ASLs'), including the provision of health care in the then Forensic Psychiatric Hospitals (Ospedali psichiatrici giudiziari – 'OPGs'), became effective on 1 April 2008.
13. Law No. 9 of 17 February 2012 stipulated that all existing OPGs were to be closed down by 31 March 2015 and all patients transferred to **new health-care structures under the exclusive authority of the local health authorities**, more specifically, the DSMs, with particular emphasis on **the treatment and rehabilitation of patients in a non-custodial**

² At present, the SMOP collects information about 19 out of 21 regions and autonomous provinces. Overall, the system uploads information from the current 30 operational REMS (out of a total of 32 opened since 2015, as one closed in March 2021 and one is temporarily under renovation). The IT system is fed fortnightly with updated information and can be inquired with queries on entry and exit flows (occupied beds, waiting lists, regional accommodation capacities, etc.), and on patients (socio-personal, legal, health data, etc.).



*Garante Nazionale
dei diritti delle persone private della libertà personale*
President

- environment.** The full implementation of the law was postponed for a few years, as the Regions were not ready to identify places where to create the new facilities.
14. Law-decree No. 52 of 31 March 2014, converted into Law No. 81 of 30 May 2014 "Urgent provisions concerning the closure of the forensic psychiatric hospitals" (*Disposizioni urgenti in materia di superamento degli ospedali psichiatrici giudiziari*), put an end to the postponement and established the total closure of OPGs on 31 March 2015. A Special Commissioner was appointed in order to support Regions in creating REMS on a regional basis, having a total bed capacity not exceeding twenty beds.
 15. As already mentioned, REMS are assigned a specific **therapeutic-rehabilitative, and non-carceral task**³, aimed at the patient's recovery, which provides for the preparation of an individualized project for the internee that takes into account their care needs in close collaboration with the local mental health services and the judicial authorities⁴. Furthermore, in the aforementioned reform, the general model of REMS was defined, consisting of a structure in close organizational and professional connection with the structures and services available in the region.
 16. Therefore, a closer description of REMS would certainly take into consideration the following essential elements: 1) be an expression of the **principle of necessary medical treatments** for the patient which places REMS among the health measures that treat the psychiatric illness with appropriate (individualised) and timely treatment. A treatment that cannot be offered to psychiatric patients, either quantitatively or qualitatively, in the prison environment, namely a place of custody, and not of care; 2) its remaining a **measure of last resort** (*extrema ratio*): the court judge shall apply a security measure other than custody "except when justified and acquired evidence result in any different measure not suitable for ensuring adequate care and tackle the patient's 'dangerousness'⁵; 3) its being a **"non-permanent" measure**, which is intrinsically distant from its eventual, and actual, transformation into a "semi-stable" solution, not entirely distant from to the old-fashioned asylum philosophy; 4) the REMS basic **territorial principle**, functional to the patient's community re-entry; 5) the validity of the **holistic approach** in processing a security measure with placement in REMS, which brings together the efforts of a network of actors all having

³ With decision No. 253/2003, the Italian Constitutional Court had already ruled on the incompatibility of the OPGs, which we recall had a prevalent custodial character, with the imperative need to protect the health of the individual, guaranteed by Article 32 of the Italian Constitution. The sentence states that "The need for the protection of the community could never justify measures capable of causing harm, rather than advantage, to the patient's health: and, therefore, if the coercive measure [...] proves to be such as to cause harm to the patient's psychic health, it could not be considered justified even in the name of these needs». Furthermore, again on the subject of the management of a psychiatric patient in places provided for the execution of sentences, the same Court has recently ruled (with judgment No. 99 of 19 April 2019), declaring the constitutional illegitimacy of art. 47-ter, paragraph 1-ter, Law No.354 of 26 July 1975 (Italian Penitentiary Law), in the part in which it does not provide that, in the event of serious mental illness, the Supervisory Court can decide for home detention, even in derogation of the limits referred to in paragraph 1 of the same art. 47-ter.

⁴ One of the developments introduced by law No. 81 of 30 May 2014 was an obligation to establish for each patient an Individual Therapeutic Rehabilitative Plan (*Progetto Terapeutico Riabilitativo Individuale – 'PTRI'*), to be communicated to the Ministry of Justice and the relevant judicial authorities, within 45 days of the law entering into force with a view to the discharge of the person concerned (Article 1, comma 8, 8.1, 1-ter) for the discharge or transfer of the patient.

⁵ *Ibidem*, Article 1, comma 1(b).



*Garante Nazionale
dei diritti delle persone private della libertà personale*
President

the same goal of taking responsibility on the psychiatric patient, their care and re-adaptation to their social context.

17. Basically, notwithstanding the Third Party's positive opinion on the current regulatory framework, which effectiveness must absolutely be strengthened, before reflecting on some aspects that will be the subject matter of the next sections of these observations, it is appropriate to point out some key points starting from the collection of updated data⁶ and the evolution of REMS in terms of quantity and quality. Today (9 September 2021), the REMS' total bed capacity is of 674 beds nationwide on the 30 operational structures, with an increase of around 4% if compared to 2017, when the bed capacity was 644. The availability of places in REMS is indeed almost unchanged since 2018.

Table 1

	2017	2018	2020	2021*
No. of operational REMS	30	30	29	30
Bed capacity	644	655	653	674

*Data refer to situation on 9 September 2021.

18. In the same years, according to this Third Party, the most worrying data concerns both the exponential growth of waiting lists for entry into REMS – only three years after the completed transition from OPGs – and the figures concerning the psychiatric patients subjected to provisional or definitive detention security measures⁷ still present in the Italian prisons.

Table 2

	2017	2018	2020	2021*
No. of patients in waiting lists	241	603	714	770
No. of patients detained in prisons		63	76	64
– of which subject to provisional security measure		53	65	61
medium length of stay in REMS (in days)**	365	437	682	703

*Data refer to situation on 15 April 2021. **Data collected from a reduced sample of REMS which has responded to the National Guarantor's requests (in particular: 22 REMS in 2017; 23 REMS in the other considered years). The figure in year 2021 is updated to 9 September 2021.

19. The most interesting data for the present case, emerging from the data collected, is bound to the persistent issue, over the years, of the permanence in prison custody of persons subjected to security measures with placement in REMS and among said data the high percentage of individuals under provisional security measure (95% in 2021) in prison wings.

⁶ All reported data refer to the National Guarantor's survey and to the SMOP data.

⁷ The provisional security measure with placement in REMS or in another place of care differs from the definite ones in that it is applied during the trial, in place of the preventive custody in prison, and, therefore, when there is still no definite decision on the criminal responsibility of the offender. The provisional security measure, provided for in Article 206 of the Criminal Code, can be applied to cases of total or partial insanity.



*Garante Nazionale
dei diritti delle persone private della libertà personale*
President

Section II

20. The closure of the OPGs in 2015 must also be interpreted in its cultural value. Over the years, such a cultural significance needed acceptance from the communities which, sometimes, were fearful of hosting REMS on their own territory⁸. The creation of facilities dedicated to the placement of persons recognised by law as not responsible for their conducts, has granted us the possibility to overcome the application of a double level of total institutions on these offenders: that of the prison institution and that of the mental institution, typical of the OPG, where offenders with psychiatric pathologies of different nature were accepted without distinction and regardless of their liability by reason of inability of understanding and volition at the time of the act or if they had developed a mental illness following their conviction. The closure of the OPGs is part of the long tradition of de-institutionalization that, starting from the seventies, has characterized the "Italian model" of mental health care and treatment (Law 180/1978 has in fact sanctioned the closure of psychiatric institutions in Italy, while the OPGs remained the "last insane asylum" still foreseen in the Italian legal system).
21. These positive assessments, which this Third Party continues to consider sustainable and indeed indispensable for outlining the future horizons of the practical application of a security measure with placement in REMS, must not, however, divert the attention from the critical aspects deriving from an interpretation of the reform not fully adhering to legislative principles and guidelines. These, in fact, as already highlighted, refer to the placement in REMS as a last resort with respect to the measures imposing a placement in residential or semi-residential facilities with the application of the so called 'libertà vigilata' (on probation)⁹, in case of a security measure, or house arrest in a nursing facility, if it involves a preventive measure ordered by the court.
22. From the constant monitoring activity of this Third Party, however, the objective data of the progressively more frequent resort to the application of the provisional security measure with placement in REMS emerges, in particular, by the sentencing judges, during a trial. An application that does not take into account the need to contain the adoption of this measure within the margins of the actual capacity of the existing structures and, above all, of the "last resort" character of this measure compared to others, also provided for by law and, therefore, available, such as probation combined with the assignment to a therapeutic community or, in the field of preventive measures, house arrest in a health-therapeutic facility¹⁰.
23. Data from survey give us the picture of fully-occupied structures and security measures with placement in REMS not implemented due to the lack of accommodation. They also tell us of the reason for such limited capacity related to the application of the provisional security measures. Currently, 621 patients are placed in the 30 operational REMS: >50% are under a provisional security measure. This value, in addition to contrasting with the real nature of REMS, intended for the execution of definite security measures, also indicates a certain devaluation of the task of 'taking care' of patients, an identity characteristic of this structure

⁸ «In many cases, at regional level, delays were determined by the mayors' and the concerned communities' opposition rejecting the opening of the Residenze per l'Esecuzione delle Misure di Sicurezza (REMS) on their territories». Semester Report on the activity carried out by the Single Commissioner for the Closure of the OPGs, Franco Corleone, 19 February - 19 August.

⁹ Article 228 of the Penal Code.

¹⁰ Article 285 of the Code of Criminal Procedure.



*Garante Nazionale
dei diritti delle persone private della libertà personale*
President

with health and rehabilitation features, hardly compatible with any provisional determination of a security measure.

Therefore, the reflection that is here required concerns the effectiveness of the application of the principle expressed by law according to which security measures depriving persons of their liberty must be ordered by the judge only if the other measures are not effectively adequate to tackle their 'dangerousness'¹¹ – not conceivable, however, from the conditions of the offender's life.

24. In this regard, further reflection is needed: the two aspects of "extrema ratio" and "temporality" should govern the operational trends locally or the interventions by the Judiciary which, it was found, still differ from the provisions established by law. What was observed during the monitoring visits of REMS is a heterogeneous picture of structures, some still marked by the old insane asylum model, and their uneven distribution with some Regions, such as Umbria, Molise and Valle d'Aosta that do not have any such structures. Furthermore, although the security measure must be aimed at rehabilitating the person and overcoming the offender's 'dangerousness', the cases of absence of the PTRI¹² are not isolated, which indicates a failure to take full charge over the person by the local services before the patient's release to the community.

Article 5 § 1

25. «The key purpose of Article 5 is to prevent arbitrary or unjustified deprivations of liberty [...] The right to liberty and security is of the highest importance in a "democratic society" within the meaning of the Convention»¹³. In these written observations, the Third Party acknowledges as well-founded a violation of Article 5 § 1 in all cases where a person who has been recognised not guilty by reason of insanity at the time of the offense due to his/her mental incapacity, to whom a security measure with placement in REMS was decided, has remained detained not by reason of a conviction ruled by a competent court, as provided for in Article 5 § 1 (a) of the Convention, but by reason of a lack of available beds in the dedicated structures. Indeed, as established by the Court «Article 5 § 1, first sentence, lays down a positive obligation on the State not only to refrain from active infringement of the rights in question, but also to take appropriate steps to provide protection against an unlawful interference with those rights to everyone within its jurisdiction. [...] The State is therefore obliged to take measures providing effective protection of vulnerable persons, including reasonable steps to prevent a deprivation of liberty of which the authorities have or ought to have knowledge»¹⁴.
26. In summary, the data presented so far clearly indicate the systemic criticality element in the application of the REMS regulatory framework, substantially determined by the tendency of judicial bodies to adopt the security measure with an unbalanced intervention more on the need to contain the 'danger to society' posed by the individual with mental illness rather

¹¹ Cf. footnote No.5 of the current observations.

¹² Out of the 612 patients in the REMS on 9 September 2021, around 70% had a PTRI established.

¹³ ECtHR Guide on Article 5 of the European Convention on Human Rights - Right to liberty and security. Updated on 30 April 2021.

¹⁴ *Ibidem*.



*Garante Nazionale
dei diritti delle persone private della libertà personale*
President

than to «creating the intended therapeutic environment under a wholly new philosophy of care»¹⁵ and providing interventions for the patient's rehabilitation.

Therefore, the problem of bed shortages in REMS and the factually connected problem of the permanence in prison 'sine titulo' of persons who were ordered to be placed in REMS, is not to be referred to the accommodation capacity of these facilities, but the criteria established to enter REMS and to be released from them which – in some regions – are causing a high number of patients admitted in the structures, and some enduring difficulties in leaving the establishments.

Article 3

27. Taking care of a psychiatric patient in prison custody is a difficult task and, in many cases, their detention may rise concerns of illegitimacy in light of the intrinsic incompatibility of their state of health with the prison environment. In fact, from one side, incarceration can trigger and worsen symptoms of mental illness; on the other hand, the prison health system is unsuitable for the treatment of psychiatric inmates. For years, mental health has certainly been the most frequently reported pathology in prison establishments and having a reliable mapping of mental illness in prisons is still difficult today.
28. The approach to the protection of mental health is built upon the following guidelines:
- the equivalence of physical and mental illness, when the judge may consider the suspension of the execution of a prison sentence¹⁶, thus overcoming the disparity in treatments addressed to persons suffering from serious mental illness developed during their imprisonment and prisoners suffering from serious physical illness;
 - the provision of prison wings specifically dedicated to those prisoners who have developed a mental disorder following their conviction, in addition to the already existing specialised services for intensive care (“Servizio di assistenza intensiva” – ‘SAI’) for physical illness; in this way the prison health services are boosted and the role of the ASLs becomes paramount while the rehabilitation purpose of any therapeutic intervention is not enhanced as such. Together with the definitive closure of the OPGs, and the opening of REMS, the law in fact provided for the establishment of dedicated prison sections called *Articolazioni per la salute mentale* – ‘ATSMs’ opened in some prison institutions which outcomes are somehow patchy and varied. They range from positive experiences in full connection with the ASLs to ATSMs where there has been a mere change of labels to sections specialised only for psychiatric observation at their very outset. On the other hand, the guiding provision provides for real detention units inside prison facilities with an exclusive health care approach, addressed to persons with mental illness. This also in order to overcome the tendency to set up external multifunctional structures far away from the function of REMS already mentioned;
 - the need to strengthen coordination between prison and concerned local services. Article 11 of law No. 354/1975 (Italian Penitentiary Law) generically establishes the principle of therapeutic continuity, which is actually not guaranteed. In many situations, when the a person suffering from mental disorders is admitted to a prison establishment, there is not the handover of the patient's health conditions to the prison

¹⁵ CPT/Inf (2017) 23.

¹⁶ Cf. footnote No. 3 of the present observations.



*Garante Nazionale
dei diritti delle persone private della libertà personale*
President

health service and the custodial facility does no more interact with the local health services. In this way, an effective and real continuity of care is almost unattainable due the lack of information on the patient/prisoner which may result in an interruption of the pharmacological therapy taken before imprisonment or the risk of administering a different treatment. Briefly, what happens is that the prison health services are admitting a person whose clinical biography is unknown.

The ATSMs

29. From the monitoring carried out on the Italian prison establishments, it emerges that, though the purpose of the ATSMs is to guarantee continuity of care and an individualized therapeutic and rehabilitative treatment to patients, they are often lacking an appropriate medical care and resocialization plan. Thus nullifying the prospects of treatment that the legislator had set as the ultimate goal of the ATSMs' healthcare services which consequently become fertile ground for the worsening of the pathologies of the those there assigned.

Very often, in fact, the therapeutic approach in an ATSM is limited to containing the inmate in acute condition and administering pharmacotherapies, giving priority to reasons of order and security.

30. There are 32 operational ATSMs on a total of 190 prisons. As of 10 September 2021, 232 prisoners are accommodated in these psychiatric wings¹⁷. An availability of services that hardly meet the therapeutic needs of those who can be placed in these sections.

31. The framework described in this paragraph can only indirectly condition the present observations, considering that the ATSMs are structures specialised for persons who have developed a mental illness following their conviction or during their imprisonment. However, it may be used to counter the hypothesis, often suggested by the responsible authorities at different levels, that the person's permanence in prison pending the availability of places in REMS where they should be placed in accordance with a court-ordered decision, can be compensated in some way by the assignment to a ATSM. This solution, in fact, does not overcome the illegitimacy of a detention "sine titulo", as well as its not being practicable in terms of availability of places and not ensuring the therapeutic plan that can only be prepared and implemented in REMS.

In short, there is no legal and operational reason to consider ATSM as "alternative" to placement in REMS: the rationale of the legislation on overcoming the OPGs is no doubt to keep prison custody and security measures rigorously distinct. Any unavailability of places in REMS should therefore be faced with the execution of other security measures provided by law (including the person's placement under probation in residential structures with high therapeutic purposes).

Section III

32. In light of the data and considerations reported so far, this Third Party believes that the solutions to the phenomenon of unlawful permanence in prison of persons who are ordered

¹⁷ Re: Department of Prison Administration – data elaborated by the National Guarantor.



*Garante Nazionale
dei diritti delle persone private della libertà personale*
President

to be placed in REMS can be identified, in accordance with the current legislation, in the following measures:

- strengthen and increase alternative forms of security measures – and their enforcement – which may be ordered by justices and supervisory judges that already exist, such as probation, also with placement in a therapeutic community or at the person’s home and with the preparation of individualized therapeutic plans by the local DSMs;
 - set up an active collaboration between the tribunals and the Regions (competent in health care services) so that the latter is able to provide the court with a list of contacts at the DSM (which can thus provide useful information on therapeutic paths) and the updated list of dedicated structures. This collaboration, as occurs in some regions, is established as soon as possible after the perpetration of a crime, as it should be immediately understood whether a person was already known from the local mental health services and which "solutions" may be found to balance the offender’s needs for care and security;
 - re-evaluate the psychiatric conditions of the patient who is in the REMS waiting list before their concrete placement in the structure; currently the law establishes that the supervisory judge can reassess the person’s ‘dangerousness’ only when the security measure is to be carried out after the execution of their prison sentence (Article 679 of the Code of Criminal Procedure).
33. To achieve these objectives, it is necessary to empower the network of institutional “actors” who are all involved in the implementation of security measures such as the judicial authority, psychiatric local services, the prison service and the REMS, the Department of Penitentiary Administration and the REMS themselves. The consolidation of the network of institutional relations is not carried out by increasing the number of psychiatric structures; on the contrary, it is based on the strengthening of all local interventions, which main objective is to take responsibility on the patient’s care and provide for their placement in REMS, be interpreted as a temporary phase along the person’s Individual Therapeutic Rehabilitative Plan (*Progetto Terapeutico Riabilitativo Individuale – ‘PTRI’*). Their placement in REMS is then supported by effective prospects of change of the patient’s health conditions, by returning the patient to the care of a network of local health services and by the patient’s full rehabilitation and reintegration in their social context.

All in view of an overall rethinking of the regulatory system on detentive security measures – moreover already provided for in the provisions of the delegated-law No. 103 of 23 June 2017, Article 1, comma 16 (c) – which may consider their future overcoming while restoring full compliance with the principles of the ECHR to the criminal justice system and, in particular, with the obligation prescribed by Article 5 § 1, as this Third Party has long hoped for. In its 2021 annual Report to Parliament, the National Guarantor has reiterated proposals and observations on current legislation, in compliance with its powers given by Article 19 (c), of the OPCAT¹⁸.

Mauro Palma

¹⁸ In 2021 Report to Parliament, National Guarantor. Horizons, Problematic aspects about REMS, page 227.