

Press Release of 27 January 2022

PSYCHIATRIC RESIDENTIAL FACILITIES: PRIMARY LEGISLATION URGENTLY REQUIRED TO RESOLVE CRITICAL ISSUES

Various aspects of the practical application of the rules on residential facilities for the enforcement of psychiatric safety orders (*residenze per l'esecuzione delle misure di sicurezza*, REMS) against mentally ill offenders are at odds with constitutional principles. The legislator must rectify these as soon as possible.

This position was asserted by the Constitutional Court in [judgment no.22](#) filed today (author Francesco Viganò), which ruled inadmissible the questions raised by the judge in charge of preliminary investigations at the Court of Tivoli concerning the legislation applicable to REMS.

Having considered the information submitted in accordance with the Court's previous order ([press release of 24 June 2021](#)), the Court noted in particular: that between 670 and 750 people are currently on waiting lists for allocation to a REMS; that the average waiting time is around ten months, although is much longer in some regions; and that a large number of these people have committed serious, and in some cases violent, offences.

The judgment filed today recalls that, according to legislation enacted in 2012, REMS are envisaged as residential facilities with a radically different approach from that of the former judicial psychiatric hospitals, which operated exclusively as custodial facilities. By contrast, REMS are intended to contribute to the process of gradual social rehabilitation. They are small facilities, which must promote the maintenance or re-establishment of relations with the outside world. Mentally ill people may only be placed in such facilities where it is not possible to control their dangerousness by alternative means, for example by referring them to local mental health services.

However, under Italian law, a decision to place an individual in a REMS is a psychiatric safety order issued by the criminal courts. The purpose is not

only to ensure treatment but also to contain the dangerousness to society of a person who has committed an offence. This means – the Court noted – that the constitutional principles applicable to psychiatric safety orders and compulsory medical treatment must be complied with. These include the “reservation to primary legislation” (i.e. the requirement that the relevant matter must be regulated under primary State legislation) as regards not only the circumstances under which they may be issued but also the manner of their implementation. By contrast, only a small part of the rules currently applicable to REMS is set out in primary legislation; most rules are contained in secondary legislation and agreements concluded between the State and local government bodies, with the result that these facilities differ widely from region to region.

The Court also stressed that, due to serious operational problems, the system does not effectively protect the fundamental rights of potential victims of the offences that mentally ill people could commit again, nor the right to health of the latter, who do not receive appropriate treatment for their condition.

The Court also observed that the failure to vest the Minister of Justice with any competence whatsoever over REMS – and thus over the enforcement of psychiatric safety orders issued by the criminal courts – is not compatible with Article 110 of the Constitution, which charges the Minister of Justice with responsibility for the organisation and proper functioning of services pertaining to the justice system.

However, the Court held that it was unable to declare the legislation unconstitutional. Such a decision would result in “the abolition of the entire system of REMS, which has resulted from an unavoidable process of replacing the old judicial psychiatric hospitals”; to do so would leave “an intolerable gap in the protection of constitutionally significant interests”.

The Court therefore called upon the legislator to implement, without delay, a comprehensive reform of the system in order to ensure:

- an appropriate legislative framework for the new psychiatric safety orders;
- the establishment and proper operation throughout the country of a sufficient number of REMS to cover actual needs, as well as the enhancement of alternative non-custodial facilities for treatment of mentally ill criminals;

– appropriate involvement by the Minister of Justice in the coordination and monitoring of REMS and other arrangements for protecting the mental health of offenders, as well as planning for the respective budgetary requirements.

Rome, 27 January 2022

Palazzo della Consulta, Piazza del Quirinale 41 Rome - Tel. 06.4698224/06.4698438