



Press Office of the Constitutional Court

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CONSTITUTIONAL COURT: PRISONERS SUFFERING FROM SERIOUS MENTAL ILLNESSES CAN RECEIVE TREATMENT OUTSIDE THEIR PLACE OF DETENTION. A BALANCE MUST BE STRUCK BETWEEN SECURITY AND TREATMENT

From now on, if an individual manifests a serious psychiatric illness while incarcerated, courts may provide for him or her to receive treatment outside the place of detention and may therefore grant – including in cases where the residual prison sentence is longer than four years – the alternative measure of “humanitarian” (or “derogating”) house arrest, which is already available in cases of serious physical illnesses.

In particular, courts will be required to evaluate whether the supervening psychic illness is compatible with the detainee’s continued incarceration or, rather, necessitates his or her transfer to an external site (the detainee’s home or public treatment, assistance or residential facilities) under conditions such as to protect his or her health, as well as safety. Therefore, the evaluation will have to take several issues into consideration: the detainee’s clinical picture, level of dangerousness, and social and family circumstances, as well as the treatment facilities and services available within the prison, the need to protect the other detainees and the prison staff, and the need to safeguard public security.

This was established in Judgment no. 99 (Judge Rapporteur: Marta Cartabia), filed today, in which the Constitutional Court ruled upon the question of constitutionality raised by the Supreme Court of Cassation. The Constitutional Court stated that the absence of alternatives to incarceration for individuals who, during their detention, develop serious mental – and not physical – illness gives rise, first and foremost, to a gap in the protection effectively afforded to the fundamental right to health, and constitutes inhuman and degrading treatment

when it causes suffering so serious that – combined with the ordinary degree of affliction ensuing from the deprivation of freedom – brings about an excess in punishment that is contrary to humaneness and is such as to further prejudice the detainee’s health.

Therefore, the Court upheld the question raised by the Court of Cassation as well as the “remedy” it identified, that is, application of the alternative measure of “humanitarian” (or “derogating”) house arrest (Article 47-ter(1) of the Prison Law), which is capable of satisfying all interests and values at play.

“The suffering that imprisonment, in and of itself, inevitably entails for all detainees,” states the judgment, “is exacerbated and heightened for those who are ill”. The courts will have to verify whether detainees should be transferred rather than continue being incarcerated, “without prejudice to the fact that that this [transfer] cannot occur if, in individual cases, the court considers that the needs of public security should prevail”.

Rome, 19 April 2019