

## **Referral of mentally ill prisoners**

Referring mentally ill prisoners to appropriate care is one of the essential missions of the sector psychiatric teams working in prisons and of the SMPR (regional medical-psychiatric service). For this orientation, it is essential to take into account the "regulatory locks" between prison and psychiatric hospital for mentally ill prisoners, which are determined by the Penal Code and the Code of Criminal Procedure:

The 1994 Penal Code in its article 122-1 provides for criminal irresponsibility as abolition of discernment. It includes two paragraphs:

The person who was affected at the time of the facts, of a psychic or neuro-psychic disorder having abolished his discernment is not criminally responsible.

A person who, at the time of the offence, was suffering from a mental or neuropsychological disorder that impaired his or her judgement or control of his or her actions is still liable to punishment: however, the court shall take this circumstance into account when determining the sentence and setting the terms of the sentence.

Article D 398 of the Code of Criminal Procedure provides that prisoners suffering from the mental disorders referred to in article L. 3213-1 of the Public Health Code may not be kept in a prison. In the light of a detailed medical certificate and in accordance with the legislation in force, it is up to the prefectural authority to proceed, as soon as possible, with their compulsory hospitalization in a health establishment authorized under article L. 3222-1 of the Public Health Code.

This orientation can be summarized as follows:

If the defendant is awaiting trial, the psychiatrist should intervene with the examining magistrate so that a psychiatric expertise can be rapidly carried out. Three cases are then possible:

The expert recognizes that the patient is not criminally responsible in the sense of article 122-1 paragraph 1 of the Penal Code: if the investigating judge does not request a counter-expertise, the case is dismissed and the file is transmitted to the prefect who can, in view of the expertise (and often of a regulatory medical certificate), sign an order of compulsory hospitalization carried out in the sector where the patient belongs;

The expert concludes that the patient is responsible, in which case the care is given in detention if the prisoner consents (in ambulatory care or if the condition requires it after admission to a SMPR); if the prisoner does not consent, article D 398 of the Code of Penal Procedure may be applied, which provides that a mentally ill prisoner may be hospitalized automatically in the psychiatric sector;

If the expert is in favor of a reduced responsibility according to article 122-1 paragraph 2 of the Penal Code, no specific measure can be envisaged and one finds oneself in the previous case of total responsibility. Often, the court of assizes can even pronounce paradoxically heavier sentences, the jury seeking to protect society from a person considered responsible but nevertheless mentally ill and therefore at risk of reoffending. This is one of the major problems that our country faces in terms of penal responses to mental disorders.

In the case of a convicted person, no new expertise procedure is possible. Two cases are possible:

If the mentally ill prisoner consents, he/she is subject, depending on his/her clinical condition, either to ambulatory care by the sector team working in the prison, or he/she is proposed for admission to the regional SMPR. If his condition is not compatible with admission to the SMPR, article D 398 of the CPP is applied and he is automatically hospitalized in the sector to which he belongs or the UMD (unit for the dangerously ill).

If the sick prisoner does not consent, article D 398 of the CPP is applied to him and he is automatically hospitalized in the sector or in the UMD.

These procedures for referring mentally ill prisoners are often difficult to apply. Obtaining an involuntary hospitalization in application of article D 398 of the CPP often proves to be very difficult due to the reluctance of the prefects or, even more often, of the sectors that do not have

services adapted to the reception of a mentally ill person under judicial control, especially if the subject has been found responsible and convicted, and if particular surveillance measures must be taken, in particular to avoid an escape.

Similarly, admission is difficult in SMPRs, which are often overcrowded and limited to admitting inmates from their establishment who consent to their care. The UMDs are imperfect responses, as these structures operate with waiting lists of several months.

This is one of the reasons why the Ministry of Justice and the Ministry of Health have planned to create hospital units for sick prisoners, the UHSAs (Specially adapted hospital units), which should be set up in psychiatric hospitals according to the same procedure as the UHSIs for medical pathologies: inter-regional units for the care of mentally ill prisoners treated by hospital staff volunteering to work in the psychiatric hospital and supervised by penitentiaries. These UHSAs should complement the units for difficult patients, which do not meet the needs of prisons because of their long waiting lists.