

Etica e psichiatria

CoViD-19 and psychiatry: can mental illness justify further exceptions to the obligation to stay at home?

CoViD-19 e psichiatria: la malattia di mente può giustificare ulteriori deroghe all'obbligo di permanenza domiciliare?

GIANLUCA MONTANARI VERGALLO¹, GIUSEPPE BERSANI², RAFFAELLA RINALDI^{1*}

*E-mail: raffa.rinaldi@uniroma1.it

¹Department of Anatomical, Histological, Forensic and Orthopaedic Sciences, Sapienza University of Rome, Italy

²Department of Medico-Surgical Sciences and Biotechnologies, Sapienza University of Rome, Italy

SUMMARY. Introduction. To face the CoViD-19 pandemic, the Italian government has approved regulations which state, with no exceptions, that it is considered an offence for people tested positive to the virus to leave their house, whereas other people are allowed to leave their house for proven needs such as work, health or emergencies. **Methods.** The authors contextualize these regulations with European and international sets of principles, in the light of the characteristics that some psychiatric disorders can present. **Objectives.** Evaluate if such European principles need to be implemented with further specific exceptions to the obligation to stay at home for some people with mental disorders. **Results and discussion.** Prohibition to leave the house can aggravate mental disorders, resulting in the concrete risk of harmful actions, in particular in psychotic and bipolar patients, even with mild excitement, depressed patients, or in cases of delusional patients, resulting from uninterrupted cohabitation with emotionally significant family members. Even the health of subjects with anxiety pathologies, or with different forms of mental retardation can be prejudiced by forced permanence at home. From numerous provisions of the European Convention for the Protection of Human Rights and of the Charter of Fundamental Rights of the European Union there emerges that collective health must be balanced with individual health and with the dignity of the human person. **Conclusions.** As the European and international provisions are hierarchically above the national provisions, the latter should be interpreted so that the non-compliance to the obligation to stay at home: a) does not constitute an offence for a person tested positive to the virus, if therapeutic treatments resulting in hospitalization are deemed necessary; b) it does not constitute administrative offence if the subject proves, based on clinical and factual documented evidence, that leaving the house is necessary to avoid recrudescence of mental disorder. In addition, for evaluation purposes, particular attention should be paid to the severity of psychiatric illness in the specific case. In order to distinguish suitable subjects from those not suitable for home isolation, the reference criterion cannot be the only diagnostic element, but it will be necessary to take into account above all the severity of the condition. In the absence of such a qualitative assessment, there would be a risk of unfounded infringements of the obligation to stay at home.

KEY WORDS. CoViD-19, measures to prevent contagion, obligation to stay at home, psychiatric disorders, collective health, individual health, European Convention for the Protection of Human Rights; European Charter of the Fundamental Rights of the European Union, bio-ethical principles.

RIASSUNTO. Introduzione. Per fronteggiare la pandemia da CoViD-19, il governo italiano ha approvato normative per cui è sempre reato, senza eccezioni, per le persone positive al virus allontanarsi dalla propria abitazione, mentre per tutte le altre persone è possibile uscire solo per comprovati motivi di lavoro, di salute o altre urgenze. **Metodi.** Gli autori contestualizzano queste norme con il quadro di principi europei e internazionali alla luce delle particolarità che alcune patologie psichiatriche possono presentare. **Obiettivi.** Valutare se tali principi europei rendano necessarie per alcuni malati di mente ulteriori e specifiche deroghe all'obbligo di permanenza domiciliare. **Risultati e discussione.** Il divieto di uscire può aggravare la malattia mentale, comportando il rischio concreto di atti lesivi, in particolare nei casi di pazienti psicotici, bipolari in fase di anche modesto eccitamento, depressi o nei casi di condizioni deliranti conseguenti all'ininterrotta coabitazione con figure emotivamente significative. Anche la salute di soggetti con patologie ansiose o con diverse forme di ritardo mentale può essere pregiudicata dalla forzata permanenza domiciliare. Da numerose norme della Convenzione europea dei diritti dell'uomo e della Carta dei diritti dell'Unione Europea emerge che la salute collettiva deve essere bilanciata con la salute individuale e la dignità della persona. **Conclusioni.** Poiché le disposizioni europee e internazionali sono gerarchicamente superiori rispetto a quelle nazionali, queste ultime dovrebbero essere interpretate nel senso che la violazione dell'obbligo di permanenza domiciliare: a) non costituisca reato per la persona positiva al virus, se sono necessari trattamenti terapeutici in regime di degenza; b) non costituisca neppure illecito amministrativo se il soggetto dimostra, sulla base di circostanze cliniche e fattuali documentate, che quell'uscita è necessaria per evitare la recrudescenza di una malattia psichica. Inoltre, ai fini valutativi, sarà necessario tenere in particolare considerazione la gravità della malattia psichiatrica nel caso concreto. Per distinguere i soggetti idonei da quelli non idonei all'isolamento domiciliare il criterio di riferimento non può essere il solo elemento diagnostico, ma bisognerà tener conto soprattutto della gravità della condizione. In assenza di una tale valutazione qualitativa si configurerebbe il rischio di violazioni non motivate dell'obbligo di isolamento domiciliare.

PAROLE CHIAVE. CoViD-19, misure di prevenzione del contagio, obbligo di permanenza domiciliare, malattie psichiatriche, salute collettiva, salute individuale, Convenzione europea dei diritti dell'uomo, Carta dei diritti fondamentali dei cittadini dell'Unione Europea, principi bioetici.

INTRODUCTION: DATA ON THE EMERGENCY

The Coronavirus pandemic, caused by the Sars-CoV-2 virus, originated from China¹, has rapidly spread all over the world.

According to the updated statement issued by the Johns Hopkins University, the CoViD-19 contagion figures are 4,001,437 while the death toll is over 277,917. The highest figures of the contagion are in the United States, with over 1,283,929 confirmed cases and 77,180 dead, followed by Spain with 262,783 cases and 26,478, Italy being the third most hit country, with 218,268 confirmed cases and with a death toll of 30,395, Germany 168,551 cases and 7369 dead, United Kingdom 148,377 cases and 31,662 dead, France 174,191 cases and 26,313 dead. The data refer to 9 May 2020.

Such alarming figures have forced governments to order strict forms of social distancing².

THE REGULATORY FRAMEWORK FOR THE PROTECTION OF HEALTH AND COMMUNITY IN ITALY

Without going into detail about the evolution of the detailed regulations issued by the Italian Government starting from the law decree n. 23 issued in February 2020 n.6, then changed with the law decree of March 5, 2020 n. 13³, it is sufficient to notice that the Prime Minister decree of March 9, 2020⁴ further extended on national scale the provisions previously issued for Lombardy and some provinces of Veneto, Piemonte and Trentino, i.e.: a) prohibition to leave the house for unmotivated reasons, except for proven needs such as work, health or emergencies; b) the absolute prohibition to leave the house for people in quarantine who tested positive to the virus. More recent decrees have then confirmed such prohibitions⁵.

The law decree n. 19/2020 contained innovative sanctions. The previous law decree in fact – law decree n. 6/2020 – provided, for all those who did not comply with the containment measures, the application of art. 650 p.c., i.e. detention up to three months or financial penalty up to 206 Euros. Law decree n. 19/2020, instead, introduced two different sanctions, by punishing the non-compliance to the prohibition to leave the house with an administrative sanction, that is, a fine from 400 to 3.000 Euros, and it punishes with three to eighteen months detention and with a financial sanction from 500 to 5.000 Euros all the people in quarantine, tested positive, who do not comply with the strict prohibition to leave their house. In case this causes an outbreak or water or food poisoning, adulteration of the above mentioned or sale of adulterated or dangerous food, and in case this is carried out with guilt, the punishment is applied as in art. 452 p.c. In any case, the decree excludes more serious offence, if configurable.

Hence, the law in force considers the non-compliance to the obligation to stay at home as a mere administrative offence if committed by subjects who tested negative to the virus, whereas it results in offence if committed by people who tested positive to the virus. It is clear that the movement of people already positive is more dangerous for public safety, and this explains the different sanctions. Furthermore, a more serious sanction is necessary to dissuade already positive people from leaving the house. Non positive tested people, in fact, have a personal interest by remaining at home to

avoid contagion, whereas positive tested people, being already ill, may not comply with the prohibition and leave the house. Introducing administrative and/or penal sanctions is therefore reasonable considering the public interest in containing the outbreak.

Just like all regulations, though, even the one here examined must balance opposite interests. The decree has imposed the closing of many productive businesses, as these imply the presence of more people in smaller places. Such a situation has seriously determined a halt in the economic development of the country, which clearly represents the public interest. In managing the health emergency then, Italy has given a neat prevalence to the protection of collective health respect to interests which, even having economic nature, have nevertheless negative repercussions even on the condition of living, i.e. resulting job loss.

The balance provided by the Government between collective health interest and personal interests is more articulated. In particular, the above-mentioned decree of 8 March 2020 provided different regulations for quarantined subjects, i.e. people who were tested positive or had close contact with positive people, and for the community in general.

For subjects in quarantine, there are no exceptions to the prohibition to leave the house. The collective interest to avoid the transmission of the virus prevails over people who tested positive and is based on the general rule according to which limitations to one's own freedom are necessary to avoid harm to the community. People with no or weak symptoms have all interests to leave the house and lead a normal life, but this would prove to be risky for other people.

For non-quarantined people, on the other hand, the law acknowledges the possibility to leave the house when strictly necessary, for working or health reasons or for emergencies. In such cases, the interest of the community to block the transmission of the virus coincides with the interest of the single individual to be infected.

Even though penalizing, these strict rules are particularly delicate for people with mental disorders. For a number of psychic disorders, in fact, socializing is part of the therapy. The need to remain at home can result in an upsurge of the symptoms. The problem remains, then, to decide whether such need to socialize can be considered as one of the righteous reasons to leave the house during quarantine on the one hand, or whether this can justify the compliance to given rules for people in quarantine on the other.

OBLIGATION TO STAY AT HOME FOR PEOPLE WITH MENTAL DISORDERS: IS IT REALLY LIMITLESS?

The Government's choice to avoid any exception to the obligation to stay at home for everyone implies a radical preference for collective interest over individual rights. It is necessary to reflect upon the outcome of such imposition, albeit correct, in those cases in which the quarantined subject suffers from mental disorders.

On the clinical panorama of the possible evaluations on the consequences of the obligation to stay at home for people who suffer from mental disorders, in fact, we can make some considerations. There are many forms of psychopathology that can suffer damage⁶, in their condition and progress, from not being able to leave the house for a prolonged peri-

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od of time. An obvious case is naturally related to psychotic patients who, while leaving the house, experience structured or spontaneous rehabilitation process of socialization, and can thus, if forced to be at home, suffer from a deterioration resulting from strengthening tendencies to autistic isolation always present in their psychic structure. Furthermore, it needs be considered that this may lead to a recrudescence of delusional conditions resulting from a continuous cohabitation with emotionally significant people such as family members, with incremented risk of relational tensions or aggressive behaviour.

A similar or more severe reaction to forced stay at home can be suffered by bipolar patients even with mild excitement, already specifically intolerant to any form of limitation and with a tendency to serious reaction both on the affective and behavioural level in case of contrast.

On the opposite side, in patients with depressive symptoms isolation can result in the impossibility to recover relations and interests, always compromised in the clinical stages of the disorder.

Less serious but still clinically relevant disorders include subjects with anxiety pathologies, such as subjects suffering from phobia or panic, who can experience intensification of their emotional reactivity caused by the prohibition to leave the house.

An even more serious problem can be represented by mentally retarded people of various degree, who cannot understand the motivations which impede them to leave the house and who are often extremely emotionally and behaviourally responsive to all the factors that contrast their habits and demands.

It is clear that the criterion of evaluation of the degree of distress associated to forced isolation depends on the clinical severity of the disorder in the present stage of its progress, but the risk that the same progress can be negatively influenced by the undergoing situation is in many cases real.

The European Convention of biomedicine signed in Oviedo on 12 April 1997 and ratified by Italy with the law n. 145 of 2001⁷ clarified in art. 2 that the interest of the single individual cannot be subordinated to the collective interest.

In such point of view, obligations which result functional to collective interest could be allowed only if they also consider individual interest. Such principle could lead to admit, even for quarantined patients, the exception due to health issues, exception already provided for non-quarantined people.

Even if the above-mentioned exception only concerns health issues, the principle ratified by the above-mentioned art. 2 is not relevant. Such European Convention, in fact, only examines the lawfulness of health treatments on the subject. In such context, it is clear that the individual interest must prevail over the collective interest. Were it not so, this would legitimate the use of the body as exclusive interest of others. Unsurprisingly, even the Italian constitutional court has decided that involuntary psychiatric treatments are only legitimate if they are functional to both collective and individual interest, just as it happens for vaccines and for serious mental disorders⁸.

In the decree under exam, though, nothing is said regarding the issue of body exploitation for the interest of others. This issue does not concern all non-positive people, because the obligation to stay at home also fulfils their personal in-

terest, nor does this regard already positive-tested people who cannot infect others because they are not subject to psychiatric treatment.

Art. 5 of the European Convention for the protection of human rights is, instead, more applicable under "Rights to Freedom and Safety". Such regulation clarifies that «Everyone has the right to freedom and safety. No one shall be deprived of freedom, if not in the case as follows and in accordance to the provisions: ... e) if this regards regular detention of a person liable to infect others, of an alienated subject, an alcohol or drug addict or a vagabond»^{9,10}. The right to freedom and safety is safeguarded, with no apparent exception, even in art. 6 of the Charter of Fundamental Rights of the European Union, which holds the same legal value as the European Treaties, i.e. above the set of rules of the single States. Art. 52 par. 1, though, states that «any limitations on the exercise of the rights and freedoms of the present Charter shall be provided for by the law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and if they genuinely meet objectives of general interest recognized by the Union or the need to protect rights and freedoms of others».

As freedom and safety are rights safeguarded both by art. 6 of the Charter of Rights and by art. 5 of the European Convention, art. 52 par. 3 of the Charter of Rights is here applied, according to which the meaning and the range of the rights approved by the Charter are equal to those conferred by the Convention. As a consequence, limitations of freedoms cannot overcome the limits provided by art. 5 of the European Convention.

Anyway, even the last provision does not clearly explain if the prohibition to leave the house for people with infectious diseases is mandatory to the extent that it needs be respected even if a person suffering from mental disorder, aggravated by the prohibition to leave the house, harms himself or others.

On the one hand, in fact, the above-mentioned art. 5 of the Convention admits the deprivation of freedom for all people suffering from infectious diseases, with no exceptions. Therefore, the prevalence for collective interest seems absolute. On the other hand, though, even if the Convention does not directly provide a right to health, this is safeguarded by the European Court when a possible infringement turns into violation of the rights expressly provided by the Convention¹¹. In fact, the European Court protects the health of prisoners in case they are victims of humiliating treatments, which art. 3 of the Convention explicitly prohibits in all fields, not only in the penitentiary field. The foundation of art. 3 must guarantee protection to the fundamental principle of human dignity¹². Moreover, if mental disorder can lead to suicide, art. 2 of the European Convention becomes relevant, as it protects the right to live¹⁰. Therefore, the effect of Covid-19 on people with mental disorders results in an issue of balance inside the self-same Convention.

To support the possibility of an exception to the obligation to stay at home for some individuals suffering from disorders, it is to be noticed that the Charter of the Fundamental Rights of the European Union explicitly acknowledges the right to psychic integrity. Moreover, the above-mentioned art. 52 of the Charter recalls the principle of

proportionality, thus leading to believe the need of a balance between public interest and psychic integrity of the individual. Lastly, art. 53 of the Charter ratifies that “No provision of the present Charter shall be interpreted as limiting or harmful to human rights and to the fundamental freedoms acknowledged, in the exercise of their respective powers, by the right of the Union”. Hence, the absolute lack of exceptions to the obligation to stay at home for people in quarantine should be reconsidered to allow the necessary balance with the right to live and psychic health.

Such conclusion looks supportable even on the bio-ethical point of view. The obligation to stay at home, in fact, is expression of the principle of non-maleficence, especially for people in quarantine. This principle prevails on the principle of autonomy, prejudiced by the obligation to stay at home, because the freedom of one individual cannot legitimate behaviours that can lead to harm the health, and therefore the freedom, of many others. But the effect of staying at home on a person with mental disorder is a datum that affects moral judgement, because the contrast is no more between freedom and health, but it is between some people’s health and collective health. This makes the role of the principle of beneficence decisive. For this principle, in fact, the moral evaluation of a choice (in this case, or a juridical provision) depends on the risk-benefit relation¹³. To this respect, it is true that the risk for the health of many people should prevail on the risk for some people’s health. On the other hand, though, the obligation to stay at home is not the only way to contain the risk of transmission of the contagion, as the use of masks and the adoption of other prudential rules (even if less effective) is also possible. Instead, the outbreak of psychic disorders makes it necessary, even for people in quarantine, to leave the house and undergo therapeutic treatments, if these cannot be treated at home. So, a question arises: is it respectful for the principle of beneficence to let a psychic disorder worsen to avoid a contagion that can be avoided in a different way? Similarly, even for non-quarantined people with previous psychic disorders, a prolonged permanence at home, sometimes in solitude, can prejudice health, whereas socializing can avoid recurring to pharmacological therapy. It is therefore necessary to give an answer to this question: is it respectful of the principle of beneficence to deprive a fragile person of self-assurance to avoid a contagion that can be contrasted in other ways?

IS THE NEED FOR SOCIALIZATION OF THE SUBJECT WITH MENTAL DISORDERS PART OF THE HEALTH REASONS THAT AUTHORIZE THE SUBJECT TO LEAVE THE HOUSE AND BENEFIT FROM PERMITS IN CASE OF RECOVERY IN NURSING HOMES?

Whether they diagnostic or therapeutic treatments in public or private nursing homes, or doctors’ offices, serious pathologies such as mental disorders, are one of the health reasons that make leaving the house a necessity. Just by referring to health issues, the patient could leave the house to see his/her psychiatrist or office of reference. This would result in frustrated socialization as a component of the therapeutic path.

But if leaving the house is part of the therapy and it avoids the recrudescence of the symptoms, it is only reasonable to

state that leaving the house can be considered as a health reason. It is not a case that, even when hospitalized, patients with mental disorders are given permits. The fact that such permits are given by psychiatrists to hospitalized people who will then have to go back to hospital is part of the path to full recovery, and it is therefore justified as health reason.

On the other hand, by following this logic, there comes the risk of creating a valid justification for all the subjects with previous psychiatric episodes, if not for everyone, because a prolonged and forced permanence at home can lead to psychic disorders even in people that never suffered from them. Such problem, though, can only be resolved by taking adequate restrictive rules to avoid violation. There does not seem to be a correct logic according to which, just to avoid that some may make a wrong use of freedom, freedom is also denied to people who need it for their psychic integrity and, sometimes, for their survival.

In fact, both the above-mentioned provisions of the European organization and the coexistence of opposite bio-ethical principles highlight that individual health can only undergo restrictions that are strictly necessary for the protection of collective health.

CONCLUSIONS FOR AN APPLICABLE PROPOSAL

It appears appropriate and proportioned that the Government modifies the present provisions by allowing mental disorders as one of the exceptions on the obligation to stay at home in a different way, whether the subject is quarantined or non-quarantined.

In the first case, since there are major risks that he/she may spread the contagion, leaving the house should be allowed only in case of symptoms that make psychiatric intervention of hospitalization necessary.

As for non-quarantined people, psychiatrists working in public hospitals should have the task to justify single cases in which, seen the personality and the different living condition of the subject, the already allowed possibilities to leave the house (i.e. to buy food) are not considered enough to contain the risk of a recrudescence or onset of psychic disorders. In this case, it is necessary to specify in a document the possible ways of socializing that are strictly necessary to avoid such outcome for the subject’s health, so that presenting the document to the public security authorities allows to avoid administrative sanction. Apart from the quarantine status, it appears necessary for the psychiatrist to pinpoint an analysis motivating his/her choice, and for the Government to provide precautionary measures, such as the use of a mask, to which the subject must comply to benefit from the exceptions suggested by the psychiatrist.

Even regardless of the adoption of a modification in the provisions, as the above-mentioned European provisions are hierarchically above the internal provisions, the latter should be interpreted so that the non-compliance to the obligation to stay at home: a) does not constitute offence for a person tested positive to the virus, if therapeutic treatments resulting in hospitalization are deemed necessary; b) it does not constitute administrative offence if the subject proves, based on clinical and factual documented evidence, that leaving the house is necessary to avoid recrudescence of psychic disorder. It is clear that this is a clinically, judicially and partly in-

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definite complex subject, with a wide margin of discretion as related to the vast heterogeneity of the possible clinical scenarios, potentially greatly variable both for type and seriousness of the disorders and for different environmental situations. In the face of an unprecedented general situation, so serious and partly unpredictable in its outcome, such as the Sars-CoV-2 virus pandemic, the issue of the relation between public health and individual mental health protection, at least in the cases of people suffering from clinically serious disorders, it appears that, notwithstanding a complex set of rules, this is not permanently resolved and, to further be clarified, it still refers, maybe inevitably for the future, to the clinical and judicial evaluation of single individual cases.

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