

THE RIGHT TO HEALTH IN PRISON: PSYCHO-PEDAGOGICAL ASPECTS AND MOTOR ACTIVITY

IL DIRITTO ALLA SALUTE IN CARCERE: ASPETTI PSICO-PEDAGOGICI E ATTIVITÀ MOTORIA

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Abstract

The detainee must be considered a subject who can exercise his rights and, in the execution of the sentence, it is essential to create the conditions so that he no longer commits crimes, returned to freedom. The treatment must have as its purpose the development of the individual as a whole and be defined on the peculiar characteristics and needs of the individual. Detention deprives or restricts the freedom of the individual who nevertheless retains ownership of certain rights. The right to health includes different conditions that concern the medical aspect, the protection of psycho-physical integrity, living in a healthy environment, the possibility for the poor to access free care, the possibility of access to facilities. The denial of the right to health would imply that the rehabilitative purpose of the penalty would become exclusively punitive. Deprivation of liberty seems to be incompatible with the overall state of well-being of the person as the prison institution can be a pathogen that has the power to aggravate already existing pathologies or, determine the onset of new pathologies. In an order based on the re-educational aspect of punishment and on treatment contrary to the sense of humanity, it is essential to pay attention to the state of health of the prisoner, also as an indispensable prerequisite for his social reintegration.

Il detenuto deve essere considerato un soggetto che può esercitare i propri diritti e, nell'esecuzione della pena è indispensabile creare le condizioni affinché non commetta più reati, tornato in libertà. Il trattamento deve avere come finalità lo sviluppo dell'individuo nella sua globalità ed essere definito sulle caratteristiche peculiari e sui bisogni dell'individuo. La detenzione priva o limita la libertà dell'individuo che tuttavia conserva la titolarità di alcuni diritti. Il diritto alla salute comprende condizioni diverse che riguardano l'aspetto medico, la tutela dell'integrità psico-fisica, il vivere in un ambiente sano, la possibilità per gli indigenti di accedere a cure gratuite, la possibilità di accesso alle strutture. La negazione del diritto alla salute implicherebbe che il fine riabilitativo della pena diverrebbe esclusivamente punitivo. La privazione della libertà sembra essere incompatibile con lo stato di benessere complessivo della persona in quanto l'istituzione carceraria può essere un agente patogeno che ha il potere di aggravare patologie già esistenti o, determinare l'insorgenza di nuove patologie. In un ordinamento fondato sull'aspetto rieducativo della pena e su trattamenti contrari al senso di umanità è imprescindibile porre attenzione allo stato di salute del recluso, anche quale presupposto

indispensabile per il suo reinserimento sociale.

Keywords

Right to health, Prison, Motor Activities, Well-being

Diritto alla salute, Carcere, Attività Motorie, Benessere

Introduction

The principle of humanity of the penalty is explained by the Constitutional Court with sentence no. 349 year 1993, established in art. 27 paragraph 3 of the Italian Constitution: “...*the prison sentence may not result in a total and absolute deprivation of liberty of the person; It is certainly a serious limitation, but not the abolition. Those who are in detention, even if deprived of most of their freedom, always retain a residue of it, which is all the more precious since it constitutes the last area in which their individual personality can expand*”.

The protection of the residual freedom can only take place if the penitentiary treatment does not constitute additional suffering compared to that resulting from the limitation of the freedom itself.

The detainee must be considered a subject who can exercise his rights and, in the execution of the sentence it is essential to create the conditions so that he does not commit more crimes, returned to freedom. The treatment must have as its purpose the development of the individual as a whole and be defined on the peculiar characteristics and needs of the individual. The Council of Europe asserts that "detention is a cause of deterioration of personality and education plays an important role in limiting this damage". The re-educational treatment, however, must be preceded by a careful observation of the characteristics of the subject in order to identify a suitable re-educational intervention.

1. The right to health

Detention deprives or restricts the freedom of the individual who nevertheless retains ownership of certain rights. The Constitution, art. 2, asserts that "The Republic recognizes and guarantees the inviolable rights of man both as an individual and in the social formations where his personality takes place and requires the fulfillment of the mandatory duties of political, economic and social solidarity." This article establishes the presence of rights that in no case can be denied by persons or institutions and this does not allow to consider the prison as a space in which a system of extraterritoriality is functioning with regard to the basic guarantees protected by the State. These guarantees are the subject of different resolutions and recommendations promoted by the Council of Europe. The prison institution, defined by Erving Goffman as "Total Institution", represent the space of legality, in which to exercise the

rights guaranteed since they are functional to the process of re-education. The penitentiary system indicates certain rights of prisoners, including the rights relating to physical integrity that have the purpose of protecting the right to health. This is the context in which to interpret the provisions of articles 5-6 O.P. on the characteristics of prison buildings and on the living and overnight rooms, art. 7 O.P. on clothing and clothing, art. 8 O.P. on hygiene and personal cleanliness, art. 9 O.P. on nutrition, art. 10 O.P. on staying in the open air for at least two hours a day, and Article 11 O.P. which outlines the characteristics of the prison health service. *The World Health Organization (1983) defines health as "a state of complete physical, mental, social well-being and does not consist only in the absence of disease or infirmity.. The possession of the best state of health that can be achieved is one of the fundamental rights of every human being, whatever his race, his religion, his political opinions, his economic and social condition. Governments have a responsibility for the health of their peoples: in order to be part of them, they must take the appropriate health and social measures"*. This definition emphasizes the multiplicity of physical and psychological, personal and social elements that influence the individual by specifying his state of health. The state of physical and mental well-being are continuously connected with the social conditions of the individual, inferring from this that the health of the individual is connected to these interconnected elements. The World Health Organization considers that "good mental health is an integral part of health and well-being" and mental health as "a state of well-being in which each individual can realize his or her potential, cope with the normal stresses of life, work productively and fruitfully, and make a contribution to their community." Health is a complex phenomenon and the WHO in the publication Social determinants of mental health indicates ten certain social determinants that, through their interaction, can affect the state of health of individuals: the social gradient, stress, early life, social exclusion, work, unemployment, social support, drug addiction, nutrition, transport. Social determinants of health affect mental and physical health, and poor physical health can result in mental disorders and vice versa. An approach based on social determinants of health must analyse both mental and physical health effects in organization appropriate actions to prevent health inequalities. Health promotion actions must start from the analysis of the determinants of health, which can be modified. The analysis covers two levels namely the actions of individuals, such as healthy behaviours and lifestyles, and factors such as income and social position, education, employment and working conditions, access to suitable health services and physical environments.

"The Ottawa Charter for Health Promotion" drawn up during the conference of the World Health Organization in 1986 is considered the founding document of Health Promotion understood as a process that makes individuals and communities able to increase control over the "determinants of health" allowing them to live a healthy, active and productive life (WHO, 1986, 1993). Health is therefore a resource for daily life, it is, that is, a concept that highlights personal, social and physical resources. The World Health Organization has issued the directives "Principle of equivalence of care" which establish the need to guarantee the prisoner the same medical and psycho-social care, which are guaranteed to all other members of the community. The right to health includes different conditions that concern the medical aspect, the protection of psycho-physical integrity, living in a healthy environment, the possibility for the poor to access free care, the possibility of access to facilities. The Constitution with Articles.

2, 3 and 32, protects the individual in his need for personality and sociability. In our Constitution, the interest in the protection of health is realized in a fundamental right; in fact, for art. Art. 32 "The Republic protects health as a fundamental right of the individual and the interest of the community, and guarantees free care to the poor".

The State is responsible for organizing prevention, treatment, rehabilitation and intervention programs to protect the psycho-physical balance of the population. Sen believes that health equity does not translate into an accessibility of health services, but is the concrete opportunity to use them to achieve a real state of health by the individual, according to his needs. Amartya Sen, around the mid-eighties, formulated the "capability approach" or "capabilities", a theoretical scheme capable of examining and evaluating the quality of life and the sustainability of development processes for two main reasons. The well-being of the individual is considered by this approach not as a stable condition, determined by the availability of material resources but, rather, as a process by which to obtain well-being in which the availability of resources are a tool. This approach draws attention to the plurality of personal and family factors, and to the multiplicity of social, environmental, economic, institutional, cultural contexts, which act in determining the process of individual well-being. The right to health, in the prison institution, circumscribes the boundaries that cannot be crossed in the name of punishment and also becomes the condition that the organization must ensure in order to make the sentence re-educative. A further consideration concerns the fact that, imprisonment is not a voluntary act, and this makes the prison institution responsible for the health of the detainee. The detainee is guaranteed the freedom to refuse medical examinations and treatment.

The denial of the right to health would imply that the rehabilitative purpose of the penalty would become exclusively punitive. The very body of the individual would become an instrument of punishment.

2. Psycho-pedagogical aspects of motor activity in prison

The WHO definition of health underlines the interdisciplinary character of health-related issues, considering the individual as a whole and in relation to the environment. In the specific case, the environment to which reference is made is that of the total institution that must combine the need for security and execution of the sentence which, however, must not imply, for the detainee, the impossibility of exercising his rights. The detainee, therefore, is an individual placed in an environment in which he must have the faculty to assert his right. Health is not to be considered as obtaining a state, but is to be considered as a process that urges the individual to a constant activation to obtain, preserve and increase it. In Sen's vision, development is closely linked to the promotion of development and human progress. A fundamental element connected with this vision is the living condition of individuals which is related to freedom of choice, well-being and quality of life.

Health and well-being refer to an active process on the part of the individual, implying a personal and social responsibility in their protection. Cottini (2017) reports that "It is the set of potentially achievable goals (capacity space, capability set) or actually achieved (functioning space) that contributes to determining people's well-being and quality of life". Individuals

differ from each other, writes Devastato (2012), "from different points of view. There are differences of a physical and psychological type (for example, with regard to sex, age, health condition, the presence or absence of handicap, natural abilities), social and economic (level of education, family structure, employment status, etc.) or environmental type (different is, for example, the natural environment in which we live but also the institutional context is different, political, cultural). The combination of these personal, family, social and environmental characteristics determines and conditions our ability to convert the goods and resources available into 'functioning' or into real achievements. For the same income and resources, different people have different needs and different capacities or possibilities to transform these resources to achieve results.

Any measure of well-being and equality must take this simple truth into account. To mark the difference between the traditional concept of well-being (or welfare) understood as the amount of material resources and this broader conception of well-being, Sen uses the term well-being((literally, "feel good"))". "Well-being" is, therefore, a condition that includes "what the individual can do or can be" by referring both to the means and resources at his disposal, and to people's abilities to modify these means into goals they wish to achieve. This approach emphasizes the active role of individuals, even if in unfavorable conditions, actively involved in the process of determining their well-being. The right to health, therefore, must be understood not only as the right to care, but also as the possibility of access to the means and resources that contribute to the development of the individual. This vision of health considers the individual as a psycho-physical unit with a patrimony of inviolable rights, first of all dignity. The centrality of the well-being of the prisoner focuses on the psycho-pedagogical dimension, which is realized with the development of the area of school and professional education activities and, of the cultural, recreational, and sports ones. It is essential to implement a model of pedagogical rehabilitation, suitable for facilitating the process of social reintegration of prisoners. These activities can be an indispensable opportunity to obtain knowledge, skills, competences and can also be suitable moments to achieve a relationship between the imprisoned society and the free society. The activities regulated by art. 15 of the penitentiary system become an opportunity for learning and education for a future life project. Cultural, sports and recreational activities can help to encourage the individual to carefully consider and understand their personal experiences and any paths of change. They can be, in fact, an opportunity for change, enhancement and re-elaboration of experiences, and moreover, they can represent an opportunity to increase motivation to improve one's living condition. Through cultural, sporting and recreational activities, the prisoner extends his inclinations and creativity, with effects against the repression of the personality originated by the deprivation of personal freedom. The aim of re-education is therefore to promote empowerment, change, opportunities, learning, orientation, problem solving, sharing, participation, dialogue, exchange, comparison, self-discovery, a life project. Specifically, the importance of motor activity as a treatment element is declined on two different levels. The first level, of a subjective type, concerns the function that sporting activity can play, towards the prisoner and is given by providing a positive opportunity for recreation, aggregation and an alternative to the idle attitude. In addition, it can transmit fundamental values for the process of personal and social growth of the prisoner, including: fair-play, respect for the rules, the participation of all in a

common goal, teamwork, acceptance of limits, knowing how to lose and loyalty to the opponent. Motor activity activates an extraordinary process of physical, psychic, cultural and socio-pedagogical formation that acts on the personality and behavior of the detained subject, shapes his character and increases in him the sense of responsibility. The opportunity to practice physical exercises can enhance the adaptability of prisoners and is an excellent means to limit aggression, increased by the insufficiency of the spaces in which the inmates are forced to live together. Physical activity proves to be an effective means of benefiting physical health. The second level, of a social nature, concerns the function that motor activity can play in prison contexts, representing a significant element of communication between the "outside" and the "recluse" world. Sports activity, considered in its pedagogical meaning, has acquired a particular value in the implementation of a re-education program which, as we have already seen, aims to promote the harmonious and global development of the prisoner's personality.

The practice of motor activities is a source of psycho-physical well-being, and is the privileged field favoring social inclusion. The body is a means through which to build one's identity and increase the skills to act in the world. Many scientific evidences identify corporeity as the basic dimension for the processes that act on the change of human behavior. Body experience is a central element in cognitive processes. The experience in the environment through body mediation allows the knowledge of one's own self and self in relation to the other. The interventions for the promotion of sport and physical activity in prisons have a dual purpose, on the one hand, there is the need to protect the psycho-physical well-being of the individual in detention and, on the other, to lead him in the reconstruction of a transition to socialization based on respect for others and the rules. The treatment interventions must start from the awareness of the prisoner regarding his potential and self-knowledge as a prerequisite for an analysis of his own experience capable of suggesting new ways of implementing his own life project. Several scientific evidences have shown that physical activity promotes personal care, self-esteem and the ability to interact. In the prison institution it contributes to obtaining normal health conditions in the inmate but, above all, its value is linked to its re-education.

Motor and sports activities represent the "elective space" in which to experience oneself and at the same time become the "privileged means" by means of which to develop and consolidate in people the identity, self-efficacy, self-esteem, personal autonomy, ecological relationships favoring the development of psychosocial skills of the personal, social, interpersonal, cognitive and affective area of each individual.

Conclusion

Individuals in detention show increased fragility in terms of health, and this is determined by two orders of factors. First, adopted lifestyles usually generate a lower level of health than the general population; secondly, the conditions of detention can favor the development of pathologies and aggravate pre-existing states of suffering. The right to health seems to be, in practice, irreconcilable with prison detention. The concept of health has taken on a broad meaning coming to coincide with the general well-being of the individual. With regard to health in prison, however, it would seem that this coincides with a minimum meaning of absence of disease. The concept of health and its right would seem, therefore, to have a double meaning

depending on whether it refers to free individuals and individuals subject to limitation of freedom. If we assume that the concept of health includes care and assistance in a state of illness, but also environmental and psychological conditions closely related to the state of health of the person, it is easy to conclude that in a state of detention the right to health does not correspond to that of free individuals. Deprivation of liberty seems to be incompatible with the overall state of well-being of the person as the prison institution can be a pathogen that has the power to aggravate already existing pathologies or, determine the onset of new pathologies. In an order based on the re-educational aspect of punishment and on treatment contrary to the sense of humanity, it is essential to pay attention to the state of health of the prisoner, also as an indispensable prerequisite for his social reintegration.

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