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A COMPARATIVE ANALYSIS OF MENTAL HEALTH LEGISLATION ACROSS EUROPE*

SOMMARIO: 1. Introduction. – 2. The Belgian legislation. – 3. The Belgian New Act (2007 and 2014). – 4. The ECHR case law. – 5. The Swedish legislation. – 6. Conclusions.

1. When considering the recent European Court of Human Rights case law, related to judgements having as object the relationship between "Detention and mental health"[1], it is easy to realize how frequently occur human rights violations against people with mental health problems in Europe[2]. Sometimes those violations are justified by political or social views which consider mental problems as an expression of social danger[3], stigmatizing the pathology and the person who carries that burden[4].

My paper will focus on some aspects of the Belgian and the Swedish legislation and will also formulate some considerations in comparison with the Italian system.

2. Belgium arouses interest because it has been the subject of numerous judgements

* Testo della relazione svolta in data 8 settembre 2022 nell'ambito della Forensic Psychiatry International Summer School, tenutasi in Taranto dal 7 al 9 settembre 2022, organizzata da: Italian Society for Forensic Psychotherapy and Rehabilitation; Criminology and Forensic Psychiatry - Medical School – University of Bari "Aldo Moro"; Ionian Department - School of Law - University of Bari "Aldo Moro"; Dundrum Centre for Forensic Excellence – Ireland; Ramsay Healthcare – London.

[1] See the ECHR "Factsheet – Detention and mental health", January 2022, in *https://www.echr.coe.int/documents/fs_detention_mental_health_eng.pdf.*

[2] See, among others, national reports by K. Ligeti, *Defendants and detainees with psychiatric disturbances in the criminal process and in the prison system in Hungary*, in P.H.P.H.M.C. van Kempen, M.J.M. Krabbe (Eds.), *Mental Health and Criminal Justice International and Domestic Perspectives on Defendants and Detainees with Mental Illness*, Eleven, The Hague, 2022, p. 271 ff.; M. Davoren, M. Rogan, *Defendants and detainees with psychiatric disturbances in the criminal process and in the prison system in Ireland*, therein, p. 303 ff.

[3] The need for a revision of social hazards policies is proposed by G.B. Leong, *Revisiting the Politics of Dangerousness*, in *J. Am. Acad. Psychiatry Law*, 2008, n. 3, p. 278 ff.

[4] J. Randall, G. Thornicroft, E. Brohan, A. Kassam, E. Lewis-Holmes, N. Mehta, *Stigma and Discrimination: Critical Human Rights Issues for Mental Health*, in M. Dudley, D. Silove, F. Gale (eds.), *Mental Health and Human Rights: Vision, Praxis and Courage*, Oxford University Press, Oxford, 2012, p. 113 ff.

by the European Court of Human Rights (ECHR)[5].

Belgian law offers two different options to investigators or judges facing a mentally disordered offender in a criminal case: one is the insanity defence, and the other is the internment[6], as preventive measure[7]. My essay will focus on this last one.

The need to adopt a new approach towards insane offenders and offenders with diminished responsibility led to the approval of the Act of 9 April 1930 on the "protection of society against abnormal individuals and recidivists", later replaced by the Act of 1 July 1964.

Articles 1 and 7 of the Act lay down the conditions for internment. The perpetrator must have committed an offence described in statutory law as a felony or misdemeanour. S/he must be found to be in a state of insanity, serious mental disorder or deficiency that renders him/her unable to control his/her actions. The offender must be dangerous to society (there is no express statutory definition of this requirement).

Internment is based on the mental state and dangerousness of the offender at the time of the judicial decision rather than at the time of the offence. It is not linked to the insanity defence provided for in article 71 of the Criminal Code according to which "*There is no offence, when the defendant or the suspect was in a state of insanity at the time of the act, or when he was constrained by a force that he could not have resisted".*

[5] In the 1998 Aerts case, the ECHR first censured Belgium for the practice of keeping internees in prison without appropriate psychiatric treatment, arguing that it was to be considered as the unlawful detention of a person of unsound mind: *Aerts v. Belgium* ECHR 1998-V 1939.
Many similar ECHR judgements followed: *De Donder and De Clippel v. Belgium* App. no. 8595/06 (ECHR, 6 December 2011); *LB v. Belgium* App. no. 22831/08 (ECHR, 2 October 2012); *Claes v. Belgium* App. no. 43418/09 (ECHR, 10 January 2013) ; *Dufoort v. Belgium* App. no. 43653/09 (ECHR, 10 January 2013); *Swennen v. Belgium* App. no. 53448/10 (ECHR, 10 January 2013); *Caryn v. Belgium* 43687/09 (ECHR, 9 January 2014); *Gelaude v. Belgium* App. no. 43733/09 (ECHR, 9 January 2014); *Lankester v. Belgium* App. no. 22283/10 (ECHR, 9 January 2014); *Moreels v. Belgium* App. no. 43717/09 (ECHR, 9 January 2014); *Oukili v. Belgium* App. no. 43663/09 (ECHR, 9 January 2014); *Plaisir v. Belgium* App. no. 28785/09 (ECHR, 9 January 2014); *Van Meroye v. Belgium* App. no. 330/09 (ECHR, 9 January 2014); *Smits et al v. Belgium* App. Nos. 49484/11, 5703/11, 4710/12, 49863/12, 70761/12 (ECHR, 3 February 2015); *Vander Velde and Soussi v. Belgium and the Netherlands* App. Nos. 49861/12, 49870/12 (ECHR, 3 February 2015) .
In particular two recent pronouncements have censored Belgium for inhumane handling of very vulnerable internees who had been kept in prison for many years while deprived of adequate psychiatric care, Claes v. Belgium App. no. 43418/09 (ECHR, 10 January 2013); Lankester v. Belgium App. no. 22283/10 (ECHR, 9 January 2014).

[6] K. Hanoulle, F. Verbruggen, '*Neuroscepticism' in the Courtroom: The Limited Role of Neuroscientific Evidence in Belgian Criminal Proceedings*, in S. Moratti, D. Patterson (ed.), *Legal Insanity and the Brain: Science, Law and European Courts*, Hart Publishing, Oxford, 2016, p. 43 ff.

[7] The nature of the internment measure has been controversial since the beginning, and it still remains. In line with Adolphe Prins' reasoning, the 1930 legislators considered the internment measure not as a punishment. Several high-ranking judges pointed out that the fact that *the punishment is called internment and that the prison in which it is served is called a "psychiatric wing of a corrections centre" makes no difference.*

From the procedural perspective, three different paths can be followed in case of internment.

First of all, internment can be imposed by the trial court; as second option, it can be imposed by the chambers supervising judicial investigation, except for political or press offences. Belgian law also provides for a third and particularly controversial internment procedure: the internment of a convicted detainee, under article 21 of the Act. It applies to detainees convicted for a felony or misdemeanour if during their detention period they are found to be in a state of insanity, serious mental disorder or mental deficiency that renders them unfit to control their actions. No clarification is provided in the Act about the meaning of this sentence. There is great discord in practice on how to interpret it.

From the organizational point of view, Social Defence Commissions ("CDS") are set up, which are composed of an effective or honorary magistrate who serves as president, a lawyer, and a doctor (Article 12).

The Social Defence Act does not foresee any obligation for an "appropriate institution" referred to in Article 14 paragraph 2 of the Law to receive an internee. This could mean that it cannot be guaranteed that decisions concerning the acceptance of such internee in an adapted psychiatric institution are executed within a reasonable time.

In principle, internment is aimed at protecting society and treating the internee; in practice, many internees do not receive the treatment they need for long periods of time. There is scarcity of beds in the forensic wards of mental health clinics. While waiting to be accommodated into an appropriate mental health facility, mentally ill offenders reside in psychiatric prison wards that are unsuitable for any type of psychiatric treatment. This solution is particularly problematic considering that open-ended internment lasts for an indeterminate amount of time, until the mental condition of the internee has improved.

For this reason, many ECHR sentences have been released against Belgium.

3. On 21 April 2007 a new Act on internment of persons with a mental disorder was enacted in Belgium.

The Act attracted considerable criticism, never entered into force, and was eventually replaced by a new Act in 2014 with the Internment Act. It focuses on treatment, and, unlike the 2007 Act, it is not dominated solely by concerns with the protection of society.

The new law defines the purpose of internment as a security measure intended both to protect society and to ensure that the interned person is provided with the care required by his/her condition with a view to his/her reintegration into society.

Following the new Act, the legal conditions for internment have changed.

The offender must suffer from a mental disorder that damages or seriously impairs his/her ability to judge or to control his/her actions. The Act uses the phrase “mental

disorder" ("*trouble mental"*), a concept that covers both mental illnesses and disabilities and is recognised by the World Health Organisation and the American Psychiatric Association.

The law makes psychiatric assessment compulsory prior to any decision on internment and sets the minimum content. The law also foresees a panel of experts (already regularly used in practice) and provides for the assistance of other experts in behavioural science (also commonly used) while making the expertise potentially contradictory (art. 7). In response to the condemnations pronounced by the ECHR, internment remains the basic measure but can no longer, in principle, be served in the psychiatric wing of ordinary prisons. Internment should be only served in an institution for the protection of society, in a social defence section, in a forensic psychiatric centre for internees at "high risk", or in an institution recognized by the competent authority organized by a private institution, a Community or a Region for internees at "low or moderate risk" (Art. 3)[8].

External institutions which have concluded a cooperation agreement – specifying their reception capacity, the profile of the internees they receive and the procedure to be followed for such reception (Article 3(5)(o)—shall not refuse the placement (Article 19).

The management and control over internment is attributed to the Social Protection Chamber of the Sentence Implementation Court, comprising a judge (the sentence implementation judge) who will sit as president, an assessor specialized in social rehabilitation and an assessor specialized in clinical psychology (art. 93, 2).

Finally, automatic periodic review mechanisms have been introduced. However, in the recent case *Venken and others v. Belgium*[9], when analysing the new legislation, the ECHR considered that the automatic periodic control of the deprivation of liberty of the internee, which must be initiated within a period not exceeding one year after the previous decision of the CPS, is not reasonable for internees who are deprived of liberty under conditions contrary to Articles 3 and 5 § 1 of the Convention.

Although Belgium has made progress, not only from a legislative point of view, the problem seems to persist.

4. It is beneficial to briefly recall the principles expressed by the European Court on this matter, including the principle according to which prisoners shall retain all their rights, except the right to liberty.

Although no expressed reference is made to obligation to address special needs for detainees with mental health problems, the guarantees fall within the right to life (art. 2 of the European Convention HR) and the right to human treatment (art. 3 of the

[8] Y. Cartuyvels, G. Cliquennois, *La défense sociale pour les aliénés délinquants en Belgique : le soin comme légitimation d'un dispositif de contrôle?*, in *Champ pénal*, 2015, n.1, p. 11 s.
[9] *Venken and others v. Belgium* App. no 46130/14, 76251/14, 42969/16, 45455/17 et 236/19 (ECHR, 6 April 2021).

European Convention HR). In addition to that, guarantee to standard healthcare is foreseen under art. 5 of the European Convention HR. With specific reference to healthcare, detainees shall have the right to a standard of medical assistance equivalent to that available outside the prison (*principle of equivalence*). Article 3 of the Convention cannot be considered as a justification for a general obligation to release detainees on health grounds. However, it imposes a duty to protect the physical well-being of persons deprived of their liberty by providing, among other things, with the required medical assistance. A lack of guarantee in this sense configures a violation of art. 3 of the European Convention HR.

The parameters to assess if a detainee has undergone a violation of art. 3 of the Convention are: 1) the medical conditions of the prisoner; 2) the adequacy of medical assistance and care provided in detention; 3) the balance between the mental state and the detention status.

In several cases the Court has identified this kind of violation, not only in the diagnostic phase, but also in the subsequent treatment. What was identified was the lack of a specialized treatment, an inconstant supervision and monitoring, an inadequate living environment. All these aspects contribute to a detrimental effect over detainees' health and well-being, then configuring a violation of art. 3 of European Convention HR, and also represent a concrete obstacle to reintegration into the society.

An example of judgements regarding this violation is *W.D. v. Belgium*[10].

In *W.D. v. Belgium*, it is clearly stated that psychiatric wings of prisons not always represent a proper solution, because detainees require specialized psychiatric institutions, more than the social protection unit of the ordinary prison. This judgement evidently highlights the systemic and structural deficiencies in the Belgian system in providing appropriate treatment to mentally disordered detainees.

Also relevant for the purpose of this paper is art. 5 para. 1 (e) of the European Convention HR, which allows for "the lawful detention" of "persons of unsound mind", if this is done "in accordance with the law"[11]. In the context of criminal law, this provision is accepted by the ECHR as a valid legal basis for the application of isolation as preventive measure towards offenders with unsound mind who cannot be held criminally responsible for criminal acts in consideration of their mental health state *tempore criminis* but pose a danger to the society[12].

The ECHR lists three minimum conditions that must be fulfilled in order for a person to be legally deprived of liberty on the basis of Article 5 para. 1 (e) of the European Convention HR: it must be reliably shown to be of unsound mind, affected

[10] *W.D. v. Belgium* App. no. 73548/13 (ECHR, 6 September 2016).

[11] S. Rossi, *La salute mentale attraverso lo spettro dei diritti umani*, in *www.forumcostituzionale.it*, 22 marzo 2015, p. 34 ff.

[12] A comparative overview about preventive detention is in K. Drenkhahn, C. Morgenstern, *Preventive Detention in Germany and Europe*, in A.R. Felthous, H. Saß (ed.), *The Wiley International Handbook on Psychopathic Disorders and the Law*, 2nd Edition, vol. I, Hoboken, NJ, Wiley-Blackwell, 2021, p. 87 ff.

by a true mental disorder, as established before a competent authority on the basis of objective medical expertise; the mental disorder must be of a kind or degree warranting compulsory confiners; the validity of continuing confinement depends on the persistence of such a disorder.

It is also evident in the ECHR case law that, in principle and for the purpose of art. 5 para 1 of the European Convention HR, the detention of a person with unsound mind shall be considered as "lawful" only if effectuated in a hospital, clinic or other appropriate institution authorized for that purpose.

This is clear in the sentence *Sy v. Italy*[13], which reads *«112. The administration of adequate therapy has become a requirement as part of the broader notion of the "lawfulness" of the deprivation of liberty. Any detention of persons suffering from mental illnesses must pursue a therapeutic goal, and more specifically aim to cure or improve, as far as possible, their mental disorder, including, where appropriate, the reduction or control of their dangerousness. The Court emphasized that regardless of where these people are placed, they have the right to a medical environment adapted to their state of health, accompanied by real therapeutic measures aimed at preparing them for possible release».*

The parallelism between the Belgian pilot sentence and the case in which the European Court recently condemned Italy is evident, specifically for the violation of article 3 (despite a clear and ascertained prison incompatibility, the applicant Sy had remained in prison without receiving any treatment) and article 5 (despite the order of the Supervisory Magistrate to place the detainee into a REMS - Residence for the Execution of Security Measures for one year, the order was not executed due to lack of places. The national authorities had neither created new places in the centres nor found any alternative solution. The Court did not consider the lack of available places a valid justification for keeping the applicant in prison).

This sentence has dramatically relaunched the problem of the insufficient number of places in adequate health facilities, on which also the Italian Constitutional Court intervened, almost simultaneously (sentence no. 22 of 2022), and "underlined that due to its serious functioning problems, the system does not effectively protect neither the fundamental rights of potential victims of aggression, nor the right to health of the patient, who does not receive the necessary treatments to help him overcome his pathology and gradually reintegrate into society". Nevertheless, the Court held that it

[13] *Sy v Italy* App. No. 11791/20 (ECHR, 24 January 2022).
F. Gualtieri, *L'applicazione delle misure di sicurezza detentive e il "malfunzionamento strutturale" del sistema delle REMS, secondo C. Cost., sentenza n. 22 del 2022: un punto di svolta nel percorso di superamento degli ospedali psichiatrici giudiziari*, in *Giustizia Insieme*, 7 febbraio 2022; P. Scarlatti, *Tutela dei diritti e trattamento dei detenuti vulnerabili. A proposito del recente caso Sy contro Italia*, in *dirittifondamentali.it*, 2022, n. 1, p. 545 ff.; A. Sangiorgi, *La Corte di Strasburgo torna sul malfunzionamento del sistema carcerario italiano: la detenzione di individui vulnerabili affetti da disturbi psichiatrici non è conforme alla CEDU*, in *Ordine internazionale e diritti umani*, 2022, p. 498 ff.

could not declare the legislation in question illegitimate, because this would result in "*the complete disappearance of the REMS system, which is by the way the result of a tiring but unavoidable process of overcoming the old OPG*", with the consequence of "an intolerable vacuum of protection of constitutionally relevant interests".

5. To sum up, the ECHR permits deprivation of liberty of persons of unsound mind if they pose a threat to themselves or to others. A rather different approach stems from art. 14 para 1 (b) of the UN Convention on the Rights of Persons with Disabilities (CRPD) which stipulates that the "*existence of a disability shall in no case justify a deprivation of liberty*".

This is the starting point to study Swedish legislation.

The core principle of the current legislation, dating back to 1965, is that all individuals are considered legally responsible and liable for their intentional unlawful actions, regardless of their mental state at the time of the crime. As a consequence, all defendants are treated as if sane, and are subjected to the same evaluation of intent. If the requirements for intent are fulfilled, the defendant is convicted and there is no possibility of acquittal on the basis of legal insanity in the Swedish criminal justice system[14].

The difference between insanity and intent is often illustrated with the following example[15]. A person falsely believes, due to psychosis, that s/he is a soldier attacking enemy soldiers. S/he does understand that s/he is killing other persons and thereby has the intent required for murder. Yet s/he does not understand the meaning of this act in a wider sense, since s/he is acting in his delusional world.

The intent requirement is identical for all defendants. Although the intent assessment can be difficult in case of severe mental disorder, even the Supreme Court in a 2004 case has concluded that defendants suffering from a severe mental disorder are able to commit crimes intentionally if their mental capacities are sufficient to fulfil the criminal law requirements for intent[16].

The mental state of the defendant plays a certain role in the choice of sanction. If, at the time of the commission of the crime, a psychiatric disorder, an emotional state or a similar situation seriously reduced the ability to control the behaviour, the penalty is reduced. The type of sanction is chosen taking into account the psychic condition of the offender at the time of the sentence and the following possibilities are available:

[14] T. Bennet, S. Radovic, *On the Abolition and Reintroduction of Legal Insanity in Sweden*, in Sofia Moratti and Dennis Patterson (ed.), *Legal Insanity and the Brain: Science, Law and European Courts*, cit., p. 169.

[15] P. Gooding, T. Bennet, *The Abolition of the Insanity Defense in Sweden and the United Nations Convention on the Rights of Persons with Disabilities: Human Rights Brinksmanship or Evidence it Does not Work?*, in *New Criminal Law Review*, 2018, n. 1, p. 160 s.

[16] Supreme Court of Sweden, 2 December 2004, Judgment in Case B 3454-04, reported in NJA 2004 p 702.

- Pecuniary penalty –if a person, suffering from a severe psychiatric disorder, has committed a crime for which the pecuniary penalty cannot be considered adequate, the judge can send it to psychiatry care facilities, if, having regard to his/her psychic condition and further personal circumstances it is necessary that s/he be admitted to an institution for psychiatric treatment with restriction of personal freedom and others obligations (Chap 31, § 3 par 1 BrB[17])[18].

- Conditional sentence - the offender has the obligation to conduct an orderly life, maintain him/herself, repair or compensate for any damage. This for a probationary period of two years, without supervision.

- Probation - the offender is put on a three-year probation with surveillance (for a minimum period of one year).

- Committal to special care – the treatment into specific forensic facilities is a compulsory measure, applicable in situations ("severe psychiatric disorder") that legitimize in general the compulsion to care for any citizen. The judge determines the type of sanction and duration. The Forensic Psychiatry Service defines the content and duration of the individual measures chosen. In general terms, institutional hospitalization is usually justified on the basis of the patient's care needs and not on the "risk of recurrence". In the event that the offense was committed under the influence of a severe mental disorder, and because of this there is a risk that the patient commits new serious offenses, the judge may decide to make the release from the psychiatric facility subject to a judgment of dangerousness. social regulated by the law on psychiatric-forensic assistance (Chap. 31, § 3 par. 2 BrB). The judge makes use of this possibility very frequently (80/90% of cases). For the resignation it is not enough an improvement of the clinical conditions, but it is required that the risk of recurrence has ceased.

- Custodial sentence – not applicable before 2008 for mentally ill patients, while after 2008 applicable only in particular circumstances such as particular gravity of the offense, modest or no need for psychiatric care, incapacity caused by intoxication or other cause, further circumstances. Prison is excluded if the offense is committed under the influence of a severe mental disorder, such as to make the offender unable to understand the full extent of the behaviour and to control it. These changes have been considered necessary to resolve the problematic situation occurring when the defendant suffers from a temporary state of insanity.

It is evident the fact that the Swedish system has increased the number of the users of the “forensic psychiatric service” by delegating to it the treatment of people who could have been excluded from it under in other circumstances, like in Italy where they could have been considered as not imputable, and therefore excluded from the criminal law system (with exception of social dangerous cases).

[17] Brottsbalk (1962:700), available at *https://lagen.nu/1962%3A700#A3*.
[18] i.e. Committal to special care.

However, a crucial issue concerning proportionality emerges.

The choice of sanction regarding offenders without a diagnosis of mental disorder is based on the principle of proportionality, where the sanction determined should reflect the severity of the crime. However, sanctions regarding offenders diagnosed with a mental disorder focus on individual need for treatment and risk of future violent crimes. The result is that a serious offence followed by recovery (as determined by forensic experts) could lead to a quick release, while a relatively minor offence without recovery (again, as determined by forensic experts) could result in many years of incarceration in forensic psychiatric care. Governmental committees have also considered the critique on ethical grounds of the procedure requesting a special release inquiry, since the assessment is largely based on the risk of recidivism rather that need for psychiatric treatment. This critique was raised by medical professionals concerned that keeping persons under medical treatment regardless of need for treatment is unethical and gives rise to questions as to whether such persons are experiencing a violation of their right to freedom from torture or cruel, inhuman, or degrading treatment or punishment.

While discussions are taking place in Sweden concerning abolition and reintroduction of Legal Insanity (many proposals to introduce a legal insanity standard in Swedish law have been done in the last years; a Committee emphasises that it would be ethically questionable to issue guilty verdicts for mentally ill defendants, just to give them access to the psychiatric treatment they need), in Italy completely opposed proposals have been submitted. Reference is made to the proposal for Law submitted to the Parliament on 11 March by the deputy Magi, with the object to abolish the non-imputability and, subsequently, the "double track", consisting of the penalty and the security measure[19].

6. The topic is very broad and different countries have applied different solutions to face similar problems.

Although provisional, I would like to draw a quick conclusion.

Regulatory changes will be satisfactory if they maintain the necessary guarantee of safeguard of human rights, in the light of ECHR judgements[20].

[19] A.C. 2939 "Modifiche al codice penale, al codice di procedura penale e alla legge 26 luglio 1975, n. 354, in materia di imputabilità e di misure alternative alla detenzione per le persone con disabilità psicosocial", Law proposal submitted by the member of the Parliament Mr. Magi on 11 March 2021.
In the same sense, see the document Presidenza del Consiglio dei Ministri, Comitato Nazionale per la Biotetica, "Mental health and psychiatric care in prisons", 22 March 2019, in *https://bioetica.governo.it/media/4268/p134rr_2019_mental-health-and-psychiatric-care-in-prisons_en.pdf*, p. 20: «More generally, there should be reconsideration of the particularly problematic concept of "social dangerousness", at the basis of security measures and the special "double track" legislation of imputability/non imputability for persons affected by mental disorder».

[20] M. Rogan, *Human rights and correctional health policy: a view from Europe*, in *International journal of prisoner health*, 20017, n. 1, p. 3 ff.

On a global level, the responsibility for offenders with mental illness is currently heavily concentrated in the hands of the justice system, overlooking the vital need for a major involvement of health services providers. In fact, a solid general mental health policy seems to be a precondition for this cooperation to be successful[21].

Furthermore, ministries of social and economic affairs may also have to play a more active role in improving the current situation. The dilemma about the best place to accommodate mentally affected detainees is not only limited to the identification of the responsible officer/service provider, but it expands to the health and justice systems as a whole. It would be advisable to address the situation of mentally affected offenders as top priority from a political point of view. The final aim would be the creation of a more humane place where mentally affected offenders may benefit of the expertise of dedicated professionals and ad-hoc treatments, with the outcome to implement the highest possible degree of resocialization. This would be not only in the interest of the offenders themselves, but also in the interest of the society as a whole.

[21] M. Krabbe, *A legal perspective on the worldwide situation of defendants and detainees with mental illness*, in P.H.P.H.M.C. van Kempen, M.J.M. Krabbe (Eds.), *Mental Health and Criminal Justice International and Domestic Perspectives on Defendants and Detainees with Mental Illness*, cit., p. 44.