

# IDEAS AND PRACTICES FOR A FUTURE WITHOUT FORENSIC STRUCTURES



In Italy Law 81/2014 abolished the Forensic Hospitals and established REMS (Residential facilities for Security Measures), which must provide care to people with psychiatric inability and judgement of dangerousness (as decided by the Judge).

## **REMS key principles:**

The Department of Mental Health of Trieste applied to the REMS the “Trieste deinstitutionalization model” with open doors.

- part of Health System (not Court System);
- last resort;
- in the same region where the person lives;
- mandatory personal care plan in 45 days;
- no restrain;
- maximum duration based on penalty for that crime.

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## Small network: 3 Rems in FVG

TRIESTE : 2 person

UDINE : 2 persons

MANIAGO (PN): 2 persons

REMS in Italy.....

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## CRITICAL ISSUES

- Part of Health System (not Court System), the structures are managed by health care staff
- **But the penitentiary code system is applied**
- last resort, not ever...
- **in the same region where the person lives, not ever**
- mandatory personal care plan in 45 days, not ever
- **collaboration with local services is difficult**, because the REMS are at risk of becoming like discharge of therapeutic failures and management difficulties or never happened or weak
- no restrain.....
- maximum duration based on penalty for that crime.
- **risk of holding the person until the security measure expires**
- **risk that the measure is renewed and therefore doubled**

# IDEAS AND PRACTICES FOR A FUTURE WITHOUT FORENSIC STRUCTURES



How to deal the current and future challenges, with practices and methods that break down the barriers of current regulations, in the scenario of the old and new principles, that design an effective treatment system for the mentally ill offender.

Non-centrality on the safety measure but centrality on the health of the person

Breaking down barriers does not mean breaking the law and prescriptions but bending them towards the person need for health and not the opposite, REMS as a place for transforming the measure towards a course of care.

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After years of trying to talk about how we work in REMS, we try to demonstrate how to shift attention to work and paths beyond REMS, as if REMS does not exist or in any case its becomes really and extremely residual

**REMS like a place where transform the security measure.**

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The orientation of our objectives must surely continue in this direction, but we can find some references that push us to go further (overcoming the REMS?), or at least direct our practices in that direction.

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New goals could be reached immediately, we believe we have already achieved results, at the end of this presentation we give some data.

# IDEAS AND PRACTICES FOR A FUTURE WITHOUT FORENSIC STRUCTURES



ONLY COMMON SENSE?

What are the basic fundamental on which  
we have thought?

# IDEAS AND PRACTICES FOR A FUTURE WITHOUT FORENSIC STRUCTURES



The sentence of the asylum implied and implies the rewriting of psychiatric knowledge and gave rise a discussion on one of the technical powers in which he had identified himself:

**Social control.**

Piccione (Il Pensiero Lungo)

# IDEAS AND PRACTICES FOR A FUTURE WITHOUT FORENSIC STRUCTURES



In the same way the condemnation and the overcoming of the OPG, must lead the rewriting of the judicial knowledge, because in this case the judiciary was and still is, **the strong technical power**

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## FREEDOM IS THERAPEUTIC

It is not just a slogan!

Basaglia with the 180 was inspired by the constitution therefore the asylums were "unconstitutional" as the OPG, as can then be therapeutic pathways for offenders with mental health disorders with total deprivation of freedom, incompatible with the right to health

# Art. 27 ITALIAN CONSTITUTION

**Article 27..” The penalties cannot consist in treatments contrary to the sense of humanity and must tend to the rehabilitation of the condemned”**



# IDEAS AND PRACTICES FOR A FUTURE WITHOUT FORENSIC STRUCTURES



One of the main challenges of deinstitutionalization, and of psychiatric reform, was to demonstrate that it would have been possible to treat people with mental disorders without using OPG or prison as a discharge of therapeutic failures and management difficulties, but trying to give back to people the integrity of their experience, the continuity of their existence, maintaining the necessary support and care for them.

(Mezzina ISTISAN 2018 – Pellegrini P. *Liberarsi della necessità degli ospedali psichiatrici giudiziari. Quasi un manuale. Edizioni AlphaBeta Verlag, Merano; 2017*)

# IDEAS AND PRACTICES FOR A FUTURE WITHOUT FORENSIC STRUCTURES



The detention security measure in the REMS is, in any case, considered the exception to which one can only resort when there are no valid alternatives, which guarantee adequate therapeutic prospects. This residual principle is closely linked to a clear stance that radically eliminates all the misunderstandings of the past, so that **"the lack of individual therapeutic programs as well as the economic and family conditions, is not a suitable element to support the judgment of social danger."** The re-modulation of the diagnosis of social dangerousness operates, therefore, both on entry, limiting the use of REMS to more serious situations, and on output, favoring the transformation of the security measure from detention to alternative measure.

# IDEAS AND PRACTICES FOR A FUTURE WITHOUT FORENSIC STRUCTURES



**Convention on the Rights of  
Persons with Disabilities (CRPD)  
CRPD, art.12 (same recognition in front  
of the law)**

# CRPD ART. 12



## Article 12 - Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy **legal capacity** on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

# UN - OMS – WHO AND CRPD



According to the WHO (WHO Quality Rights Program Training), according to the UN Convention on the Rights of Persons with Disabilities (CRPD, art. 12), people with mental disorders have the right to equal recognition before the law<sup>1</sup> and consequently to receive, even in conditions of detention, adequate services, as also foreseen by the DPCM 2008 on prison health, direct activity of the DSM teams in prison.

In support of this we say: "mental capacity can fluctuate, but legal capacity never fluctuates".

This principle, supported for forty years, is supported by recent developments in the application of the CRPD to mental health. In particular, the Committee on the Rights of Persons with Disabilities, in the document "Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities: the right to liberty and security of persons with disabilities", adopted in the 14th session, September 2015, establishes:

- **not special forensic services;**
- **right to defense;**
- **exclusion of forced treatment;**
- **no adoption of any form of decision-making that is a substitute for the subject, but only a support to it.**

# GENERAL COMMENT



The General Commentary on the CRPD defines mental capacity as "the decision-making abilities of a person" and rejects the prevailing medical conceptions of mental capacity, stating that they are "highly controversial" and that mental capacity "is not, as is commonly presented, an objective, scientific phenomenon that occurs in nature".

The Committee maintains that mental capacity and legal capacity should not be "confused" and that competences compromised in the decision-making process should not be a justification for suspending legal capacity if we consider the principle of informed consent to be affirmed.

He therefore concludes that **substitution decision-making, mandatory treatment and exclusion from the criminal liability based on mental disability are no longer acceptable.**

# The Italian Association of Professors of Criminal Law



Hopes that the issue **of the safety of citizens will not be dealt with exclusively, nor predominantly, on the subject of prison sentences**: criminological surveys show that prison, more than any other type of sanction, **generates recidivism**, and therefore **decrease safety of citizens** .

They recommended to **have recourse to the prison sentence only as it appears absolutely necessary**, due to the **lack of other sanctioning (therapeutic??)** instruments capable of responding equally effectively to a criminal phenomenon.

# The Italian Association of Professors of Criminal Law



A fundamental contribution to the social reintegration of the person sentenced to prison, in accordance with the provisions of art. 27 co. 3 of the Constitution, it can also come from a **balanced dosage between the flexibility of the penalty and the progress made by the condemned in a path of gradual return to the free society**. It should be emphasized that **the recidivism rates of those who have served their sentences, in whole or in part, in the form of an alternative measure to prison are far lower than those recorded among those who have served their entire sentence into the walls prison**. In our opinion, those who care about the safety of citizens and an orderly social life should beware of the temptation to demonize alternative measures and non-prison sentences in general: in spite of widespread prejudices in public opinion, **less prison can mean more security for citizens.** "

# What actions we put in place respect these principles?



- Incoming filter trying to avoid the application of the measure, applying the regional protocol with the magistracy that indicates to connect with the DSM before each sending. (regional protocol, working with the judiciary, meeting)
- Work on the awareness of the fact-crime, awareness of the legal situation and health condition, open doors (work on the person, art. 12 CPRD)
- Reduction of residence times in the the REMS, with the maximum exploitation of licenses and permits and early transformation of the measure (therapeutic freedom, constitution, right to care, assoc. Criminal Law Prof.)

# What actions we put in place respect these principles?



- Intense work with services to speed up the therapeutic project
- Intense work with the judiciary to speed up the paths
- **Maintaining a reduced and personalized dimension, it favors the rapid turn-over in favor of the PTRI but also by creating money savings .**

# The 10 virtuous joints of the treatment systems for the offender who experiences mental disorders

Daniele Piccione



Below are the principles by which to design an effective treatment system for the offender who experiences mental disorders. These are some judicial policy guidelines that have a profound impact on the mental health protection regime. The matter is therefore placed on the border between the treatment of different social sciences.

It has now become a common heritage that an effective legal and procedural system for the treatment of the mentally ill with criminal judicial experience behind it constitutes **one of the social determinants of mental health** (according to the conceptual framework developed by M. Marmott).

# The 10 virtuous joints of the treatment systems for the offender who experiences mental disorders

Daniele Piccione



1. Territoriality and proximity to the social and environmental fabric of the offender.
2. Subsidiarity of treatment restricting personal freedom.
3. Processing of individualized treatments according to the individual therapeutic Plan (or Project).
4. Development of the responsibility of the perpetrator of the crime, in the direction foreseen by the UN Convention on the rights of persons with disabilities, of the progressive overcoming of the criminal law schemes of non-imputability.
5. Definitive overcoming of the psychiatric judicial hospital structures, in favor of models of low intensity coercive residence, **of short or maximum average duration**, integrated with institutions of home detention.

# The 10 virtuous joints of the treatment systems for the offender who experiences mental disorders

Daniele Piccione

6. Elaboration of punishment policies that involve different agencies and that see the permanent collaboration between judicial authorities and territorial psychiatric assistance networks.
7. Development of integrated training for judicial operators and those active in mental health protection services.
8. Prediction, also within prisons, of an adequate system of protection and protection of mental health as an integral and decisive part of the very concept of social, environmental and psychophysical well-being that must be cared for and guaranteed even in places where personal freedom is restricted.
9. Progressive abandonment of the concept of social danger and similar expressions, the result of scientific misunderstandings and harbingers of fruitless or improper treatment outcomes.
10. Introduction and enhancement, as a basis for the treatment of the offender with mental health problems, of ductile and therapeutic penal measures according to the model of home detention, **with curative and rehabilitative aims and prescriptions.**





# Does the deinstitutionalization model of Trieste applied to Security Measures improve social re-inclusion outcomes?



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## Introduction

According to the World Health Organization, the deinstitutionalization model of Trieste (Italy) of public psychiatry is one of the most progressive in the world. Here, in the 1970s Franco Basaglia implemented his vision of **anti-institutional, democratic psychiatry**. The Trieste model put the suffering person (not his or her disorders) at the center of the health care system. The model, revolutionary in its time, began with the closure of the traditional mental asylum and with the creation of community mental health centers, promoting social inclusion and **full citizenship** of users of mental health services.

In Italy Law 81/2014 abolished the Forensic Hospitals and established REMS (Residential facilities for Security Measures), which must provide care to people with psychiatric inability and judgement of dangerousness (as decided by the Judge).

### REMS key principles:

- part of Health System (not Court System);
- last resort;
- in the same region where the person lives;
- mandatory personal care plan in 45 days;
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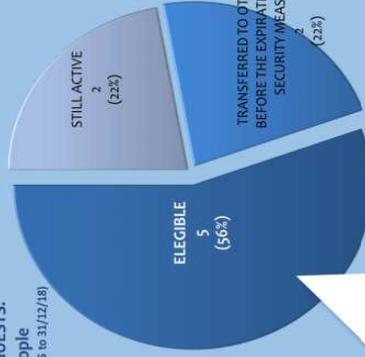
The Department of Mental Health of Trieste applied to the REMS the “Trieste deinstitutionalization model” with open doors.

Days open: (from 04/05/15 to 31/12/18)	1337	<input type="checkbox"/> Only 6 beds in Region Friuli Venezia Giulia
Total beds:	2	<input type="checkbox"/> No need for more beds thanks to territorial work (prevention, support, follow-up, contact with the judges)
Occupancy rate:	62,64 %	<input type="checkbox"/> No waiting list in Trieste and in Friuli Venezia Giulia Region

## Objective

The aim of the study is to establish whether the deinstitutionalization model applied in Trieste improves the outcomes in terms of social re-inclusion for people admitted to REMS (Residential facilities for of Security Measures) compared to the provisions of the Court System.

TOTAL GUESTS:  
9 people  
(From 04/05/15 to 31/12/18)



## Methods

The activities, based on a small sample size, but representative of complex needs, allow to highlight some quality index:

- cases in which the security measure was transformed before it expires;
- activities within the Diffused Day Center located in the REMS facility;
- days not spent inside the facility compared to days spent inside the REMS;
- nights not spent inside the REMS compared to nights spent inside.

## Results

Social re-inclusion is **precocious**, with the possibility of leaving the structure thanks to the direct collaboration with the Judges for the approval of personal care plans. Key factors:

- REMS **open to public** thanks to the Diffused Day Center in the same facility;
- constant **contacts** with social and life context;
- connection with the belonging Community Mental Health Center, providing a personal care plan as soon as possible.

Data show that:

- spent **outside** the REMS during the Security Measure: **60% days and 6% nights**;
- REMS stays are **reduced by median of 48%**;
- the reduction in the duration of the Security Measure leads to a **theoretical saving of 38%**.

Cost per day per bed:	260 €
Planned cost: (based on planned day of Security Measures)	706000 €
Actual cost:	435000€
Saving:	270000 €

## Conclusions

The operative model, strictly in contact with places of life, promotes the recovery of social function and the improvement of psychopathological conditions and reduces healthcare costs.

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ASUITS

# REMS TRIESTE



COSTI	Residenti FVG	Fuori regione	Totale	Arrotondato	%
al die per PL	€ 260,00	€ 585,00			
GG previsti	2715	0	€ 705.968,75	€ 706.000,00	100%
gg effettuati	1675	0	€ 435.482,08	€ 435.000,00	62%
Riparmio			€ 270.486,67	€ 270.000,00	38%

# REMS UDINE



COSTI	Residenti FVG	Fuori regione	Totale	Arrotondato	%
al die per PL	€ 260,00	€ 585,00			
GG previsti	1820	0	€ 473.200	€ 473.000,00	100%
gg effettuati	812	0	€ 211.120	€ 211.000,00	45%
Riparmio			€ 262.080	€ 262.000,00	55%

**It is interesting to note that the offender is not sent to prison because he cannot understand what it means punishment and reeducation. He is then sent to the forensic hospital, where in the form of health treatment he expiates a punishment that is even less understood.**

**Si capisce ancora meno.**

**F. Basaglia Conferenze brasiliane San Paolo 21 giugno 1979**



