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**EU-Project "FACT FOR MINORS. Fostering Alternative Care for Troubled minors"**  
Co-financed by the European Commission – Directorate General Justice and Consumers

**"THE INTERNATIONAL AND EUROPEAN FRAMEWORK FOR THE  
FUNDAMENTAL RIGHTS TO BE RESPECTED TOWARDS YOUNG  
OFFENDERS WITH MENTAL HEALTH DISORDERS"**

**Annex I**



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## Foreword

This report presents an overview of the most important International and European standards on the theme of the Fundamental Rights to be respected towards young offenders with Mental Health Disorders.

This document is not an exhaustive account, but rather a snapshot of the current legislative framework at International and European level.

At the end of the document, there is also an overview of the most important documents produced on this subject in the Italian context.  
In order to get a clear and comprehensive legal framework on the fundamental rights to be respected towards young offenders with mental health disorders, each project partners should provide a similar report relating to its national context.

### 1. International Level

#### • **The International Covenant on Economic Social and Cultural Rights 1966**

Article 12.1 *"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health"*.

• **The UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) GA resolution 40/33 of 29 Nov 1985**, declares: Article 13.5 *"While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality."*

• **The United Nations Convention on the Rights of the Child (1989)** requests in the Article 25 *"(States Parties) recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement"*.

Article 27 *"States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development."*

*The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development."*

#### • **The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) Adopted by General Assembly resolution 45/113 of 14 December 1990.**

Art. 1 - *The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles.*

Art. 27 - *As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the*



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*specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached."*

Art. 28 – *"The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being."*

Art.49 – *"Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community."*

Art.51 – *"The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer."*

• **The protection of person with mental illness and the improvement of mental health care (A/RES/46/119, 75th plenary meeting, 17 December 1991)**

Principle 1, Fundamental freedoms and basic rights:

1. All persons have the right to the best available mental health care which shall be part of the health and social care system.
2. All persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person.

Principle 2, Protection of minors

*"Special care should be given within the purposes of the Principles and within the context of domestic law relating to the protection of minors to protect the rights of minors, including, if necessary, the appointment of a personal representative other than a family member."*



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- **General Comment No. 10 (2007) - Children's Rights In Juvenile Justice Committee On The Rights Of The Child** (Forty-fourth session Geneva, 15 January-2 February 2007)

*"Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society. This principle must be applied, observed and respected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way to the implementation of all measures for dealing with the child. It requires that all professionals involved in the administration of juvenile justice be knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being, and the pervasive forms of violence against children".*

## 2. European Level

- **European Parliament Resolution on improving the mental health of the population. Towards a strategy on mental health for the European Union (2006/2058 (INI))**

Article 35.1. warns all member states that: "Where exceptionally children under the age of 18 years are detained in a prison for adults the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programmes or equivalents to them that are available to children in the community."

Article 37 - *"Emphasises the need to reform mental health services so that they are based on high-quality community care at home or in sheltered accommodation with access to proper health and social care; with regular monitoring and assessment; with respite care for people with mental health problems and their carers; with a one-stop-shop approach to accessing health, social, housing, training, transport, benefits and other services; stresses that this should be backed up by a range of in-patient services for acute, chronic or secure needs but always with independent monitoring of anyone who receives compulsory in-patient care"*

- **Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures**

Article 28. *"The rights of juveniles to benefits in respect of education, vocational training, physical and mental health care, safety and social security shall not be limited by the imposition or implementation of community sanctions or measures"*

Article 117 *"Juvenile offenders in mental health institutions shall receive the same general treatment as other juveniles in such institutions and the same regime activities as other juveniles deprived of their liberty."*



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Discussing the matter of *early assessment* of mental health problems, illness or disorder , as reported by:

- **The committee of Ministers of the Council of Europe, in the 2004 Recommendation Rec (2004)10 to member states concerning the protection of the human rights and dignity of persons with mental disorder,**

Article 5 – Promotion of mental health: *"Member states should promote mental health by encouraging the development of programmes to improve the awareness of the public about the prevention, recognition and treatment of mental disorders."*

- **The European Parliament, in its 2009 Resolution on Mental Health (2008/2209(INI))**

Article 5: *"Calls on the Commission to propose common indicators to improve the comparability o data and facilitate the exchange of best practices and cooperation between the Member States to promote mental health."* and Article 28 *"Stresses the need for the early detection and treatment of mental health problems in vulnerable groups, with particular reference to minors."*

Concerning the appropriate *placement* of young people with mental health problems, illness and disorders:

- **The committee of Ministers of the Council of Europe, in the 2004 Recommendation Rec (2004)10 to member states concerning the protection of the human rights and dignity of persons with mental disorder,**

Article 10 declares that *"Member states should takes measures to ensure sufficient provision of hospital facilities with appropriate levels of security and of community-based services to meet the health needs of persons with mental disorder involved with the criminal justice system."*

- **The 2006 European Parliament resolution on improving the mental health of the population, Towards a strategy on mental health for the European Union (2006/2058(INI))**

*"calls on the Commission to place the reform of psychiatry on the agenda for EU accession negotiations; considers that prison is not a suitable environment for those suffering mental ill health and that alternatives should be actively pursued."*

- **The 2006 Committee of Ministers Recommendation Rec(2006)2 to member states on the European Prison Rules,**

Article 12.1 states that: *"Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose."* and in Article 12.2. *"If such persons are nevertheless exceptionally held in prison there shall be special regulations that take account of their status and needs."*



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- **The committee of Ministers of the Council of Europe in its 2008 Recommendation CM/Rec(2008)11 to member states on the European Rules for juvenile offenders subject to sanctions or measure,**

Article 5 specifies that *"The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualization) as ascertained when necessary by psychological, psychiatric or social inquiry reports."*

Referring to the *training of all professionals* working with young people with mental health problems, illness or disorders:

- **The Committee of Ministers, in its 2006 Recommendation Rec(2006)2 to member states on the European Prison Rules,**

Article 81.3 underlines that *"Staff who are to work with specific groups of prisoners, such as foreign nationals, women, juveniles or mentally ill prisoners, etc., shall be given specific training for their specialised work."*

- **The European Parliament, in its 2009 Resolution on Mental Health (2008/2209(INI)),**

Article 29 *"Proposes that mental health should be incorporated into the programmes of study of all healthcare professionals and that provision should be made for continuous education and training in that sector."*

And in conclusion, concerning the *collaboration among agencies* appointed to the safeguard of the well being of children and young people with mental health problems, illness and disorders:

**The European Parliament, in its 2006 Resolution on improving the mental health of the population. Towards a strategy on mental health for the European Union (2006/2058(INI)),**

Article 20 *"Calls for a multi-disciplinary and multi-agency response to tackling complex mental ill health situations, such as how best to support children or adolescents with developmental or behavioural problems or eating disorders, and/or whose parents in many cases themselves suffer from mental ill health (or are kept in longterm institutions)."*

- **The Committee of Ministers, in its 2006 Recommendation Rec(2006)2 to member states on the European Prison Rules,**

Article 40.2 points out that *"Health policy in prisons shall be integrated into, and compatible with, national health policy."*<sup>1</sup>

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<sup>1</sup> Source: Mental Health and Young Offenders (MHYO), Recommendations, IJJO.



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- **Directive (eu) 2016/800 of the European parliament and of the Council of 11 May 2016 on "Procedural safeguards for children who are suspects or accused persons in criminal proceedings"**

Article 8 - Right to a medical examination: *"1. Member States shall ensure that children who are deprived of liberty have the right to a medical examination without undue delay with a view, in particular, to assessing their general mental and physical condition. The medical examination shall be as non-invasive as possible and shall be carried out by a physician or another qualified professional. 2. The results of the medical examination shall be taken into account when determining the capacity of the child to be subject to questioning, other investigative or evidence-gathering acts, or any measures taken or envisaged against the child. 3. The medical examination shall be carried out either on the initiative of the competent authorities, in particular where specific health indications call for such an examination, or on a request by any of the following: (a) the child; (b) the holder of parental responsibility, or another appropriate adult as referred to in Articles 5 and 15; (c) the child's lawyer. L 132/14 EN Official Journal of the European Union 21.5.2016 4. The conclusion of the medical examination shall be recorded in writing. Where required, medical assistance shall be provided. 5. Member States shall ensure that another medical examination is carried out where the circumstances so require.*

### **3. The National framework of the fundamental rights to be respected towards young offenders with mental health disorders - The Italian Case.**

- Accordo sul documento "Linee guida in materia di modalità di erogazione dell'assistenza sanitaria negli Istituti penitenziari per adulti; implementazione delle reti sanitarie regionali e nazionali". (TAVOLO PERMANENTE SANITA' PENITENZIARIA) (Codice sito: 4.10/2015/7 - Servizio III) Accordo ai sensi dell'articolo 9, comma 2, lett. c) del decreto legislativo 28 agosto 1997, n. 281;
- Linee guida in materia di modalità di erogazione dell'assistenza sanitaria negli Istituti sanitari penitenziari per adulti; implementazione delle reti sanitarie regionali e nazionali".
- Piano di Azioni Nazionale per la salute mentale (PANSM è stato approvato in Conferenza unificata con accordo n. 4 del 24 gennaio 2013).
- Circolare del Capo Dipartimento n. del 18 marzo 2013: "Modello d'intervento revisione dell'organizzazione dell'operatività del Sistema dei Servizi Minorili della Giustizia" relativi disciplinari.