

 JUST CLOSER 

EXECUTIVE SUMMARY

NATIONAL REPORT ON THE YOUTH JUSTICE
SYSTEM - ITALY



Annex III

National report Italy (D5.3)

Executive Summary

Laura Carpaneto – Professor in European Union Law, University of Genoa
Francesca Maoli – Researcher in international law, University of Genoa

Introduction

The Italian juvenile justice system (composed by the DPR 448/1988 and by DL 121/2018, to be complemented by the rules of the Code of criminal procedure) is based on the consideration of the peculiar needs and rights of children and young persons under the age of eighteen. It is based on the principles of adequacy, of minimum offensiveness and of de-stigmatization, as well as on the principle of detention as an *extrema ratio*. Therefore, on a first reading, the Decree (which was adopted a few days before the UN Convention on the Rights of the Child) presents guarantees that appeared to fulfil the requirements of the Directive 2016/800/EU, a circumstance that led to the conclusion that it was not necessary to proceed with a specific implementation of the Directive 2016/800.

Two recent legislative reforms (the so-called “Riforma Cartabia” and “Decreto Caivano”) have introduced important novelties.

The Legislative Decree no. 150/2022 (within the “Riforma Cartabia”) introduced important measures for the enhancement of restorative justice programs, introducing specific guarantees for juveniles. At the same time, few significant innovations seem to have been made, at least with reference to the position of juvenile defendants or suspects of interest to the present investigation. On the other hand, the reform intervened on the organisation of judicial offices: as from October 2024, the Juvenile Courts (Tribunale per i minorenni) will be replaced by the “Court for Persons, Minors and Families” (Tribunale per le persone, per i minorenni e per le famiglie). This will most likely entail changes in the composition of the panels, which will include specialised judges who cannot be assigned to other matters.

The Decree-Law No. 123/2023 (“Decreto “Caivano”), converted into Law 15/ 2023 , has introduced – among a wide range of measures – significant reforms to the Juvenile Criminal Code, with innovations of a preventive and punitive character. Three are the main field of actions: rules aimed at enhancing safety and preventing children’s crimes; rules aimed at reinforcing attendance of school and rules aimed at protecting children in the digital field (for more details, please make reference to the National Report).

Before the adoption of the “Decreto Caivano”, the Italian juvenile justice system was appreciated by professionals and scholars as satisfactory and in compliance with the Directive 2016/800, although with some criticalities that had induced the Ministry of Justice (Dipartimento per la giustizia minorile e di comunità) to launch a monitoring⁶⁵. The most recent interviews made to professionals (judges, lawyers, social service operators as well as representatives of the civil society) have showed some worries deriving from the above mentioned reform. Recent data collected by the Ministry of Justice show that the number of children which are detained in institutes has grown in the last months.

Most recently, the European Commission has decided to open an infringement procedure by sending a letter of formal notice, inter alia, to Italy ((INFR(2023)2090) for failing to fully transpose into Italian national law the Directive 2016/800. Completeness issues were identified, for instance, with regards to the right to information of the child and the right to a medical examination.

⁶⁵ See the results of the EU co-funded project CREW 2.0, *Contribuire a rinforzare i diritti delle persone minorenni indagate o imputate nei procedimenti penali - Linee minime essenziali a supporto dell'operatività*, available at <https://www.defenceforchildren.it/it/news-416/crew-2.0-linee-minime-essenziali-a>. See also the *Methodological orientations*, October 2022, available at <https://www.defenceforchildren.it/it/news-352/crew-orientamenti-metodologici-per-un-sistema>.

Accessibility

The DPR 448/1988 does not contain any specific provision on the right to have comprehensible and accessible information. No provision of the Code contains any reference to the submission of information or informative material to the accused or suspected child.

Previous research showed that there is no uniformity across the country for what concerns the communication of more specific information on the rights and procedural safeguards. In practice, there have been several cases reported in which the youngster has declared that they have not received adequate information or explanations. In other cases, they have declared that most of the time, they did not know what was going on. The Letter of Rights does not seem to be an established practice in Italy: in most cases, the youngster receives the information orally from a police officer, from the lawyer or from the judge (at a last resort). According to Italian Law, the child should be taken in a CPA (*centro di prima accoglienza*) immediately after the arrest, where a professional educator should explain to him or her what is going on. However, this not always happens and, in most cases, the young person receives information orally from a police officer, from the lawyer or from the judge (at a last resort). When this happens, the relevant provisions of the Juvenile Code of Civil Procedure are read, but they are usually not available in a child-friendly version. Different experiences are reported with reference to the involvement and effective participation of children to criminal proceedings: whilst in some juvenile courts there is a careful communication approach, it results that there are also courts where this is not the case.

As concerns legal assistance and legal aid, legal assistance in criminal proceedings is compulsory in Italy. Art. 11 DPR 448/1988 expressly envisages the so-called “*Difensore d’ufficio*” once the child is accused of a crime. It means that every accused child is entitled to a lawyer. The rule further points out that the Bar Association shall prepare list of the lawyers having specific knowledge of child law. However, a specific list of specialized lawyers in the field of child (criminal) law does not exist yet. From the interviews, it also resulted that in recent proceedings where sexual crimes needed to be ascertained, the lawyers of the accused children recommended them not to answer to questions. Such a procedural strategy, which is frequently applied in adults’ criminal proceedings, is not helpful in children’s ones.

With specific reference to police officers, from the interviews it resulted that in Naples an ad hoc team having specific skills in dealing with children in the criminal law field has been created with positive results. However, such an experience has not been continued and such a practice is not uniform across the country.

Despite being provided by the law, practice shows that professionals involved in the criminal proceedings concerning children do not always have the chance to be adequately trained.

Age-appropriate

Art. 97 of the Italian Criminal Code indicates that a minor below the age of 14 is never imputable. It is possible for the judge to order its ascertainment by virtue of an expert report (art. 8 DPR 448/1988). If doubts still exist, a presumption exists for the child to be under 18 years old (i.e. the *favor rei principle*). This also applies to migrant (and frequently unaccompanied) children. However, the practice seems not to be in compliance with the law: the x-ray of the bone structure still is the method of assessment generally applied and not sufficient attention is paid to the differences in physical and developmental features of the different ethnic groups. Despite the efforts made by the Italian authorities, age assessment of migrant (unaccompanied) minors still is an issue.

For minors between 14 and 17 years of age, capacity in relation to the offence committed must always be ascertained on a case by case basis, whereas for adult offenders it is presumed.

For offences committed by minors under the age of 18. The Juvenile Court and the Juvenile Supervisory Magistrate (*Magistrato di Sorveglianza*) exercise their jurisdiction until the child (who committed the offence as a minor) reaches the age of 25. This means that children (under 18 years old) who committed a crime remain in the juvenile criminal system until the age of 25 years old.

An amendment to art. 2 of Directive 2016/800 towards preventing the Member State from being able to lower the age of imputability of a child below 14 years would be welcome.

Speedy procedures

From the interviews made, it results that criminal proceedings involving children are very slow. It has been reported that hearings before the courts in 2023 were dealing with crimes which were allegedly committed in 2015. As for the moment, there are no specific legislative initiatives aimed at speeding up criminal proceedings concerning children. However, the effects of the recent legislative reforms and, in particular, of the Riforma Cartabia needs to be appreciated.

Diligence

In Italy, one of the main issue – existing now, but which is also likely to become more relevant in future perspective – is the one concerning unaccompanied minors.

Despite the existence of an advanced legal framework of reference (i.e. the so-called “Legge Zampa”), unaccompanied minors are in need of assistance not only under the legal point of view.

The whole Italian reception system face difficulties with regard to the protection of the rights of unaccompanied minors. Resources are surely needed.

One of the interviewed judges recommended the creation of a group of lawyers, having expertise in the field of child justice, who are available as “guardians” for the unaccompanied minors. However, this practice has not been considered the best solution by other professionals and researchers, who have underlined the fact that appointing lawyers as guardians would not seem to reflect the prerogative of autonomy of the mandate as implicitly required by Law 47/2017 (Legge Zampa) and international standards and would therefore be a step back.

Several of the interviewed professionals have highlighted the importance of a proper net-working among all the actors in the juvenile justice system, involved in the same case and who interact in differentiated ways and levels with the young person.

A good example of synergy between the professionals involved is the practice of interlocutory discussions with honorary judges during the execution of probation (a practice that has been reported in Genoa, but may be in place also in other cities).

One weakness that has been reported is the lack of communication between the criminal and civil system: an exchange of information on the situation of a child – who is, for instance, already known by the Social Services as concerns civil proceedings on custody and finds himself/herself involved in a criminal proceedings – would enable the professionals to take in consideration the overall situation, in order to find a solution that best corresponds to his/her best interests.

From the interviews made, it results that effectiveness of probation and of other diversion solutions strictly depends on the functioning of the networking, but is also largely left to the good will among the actors involved. Ad hoc programs and resources should be dedicated to the treatment of juvenile deviances and to the instruments of diversion.

Adapted and focused on the rights of children

The recent reform after “Decreto Caivano” risks to challenge some of the founding principles of the Italian juvenile justice system: adequacy, de-stigmatization, minimum offensiveness, and detention as an *extrema ratio* (and overall the best interests of the child). In particular, the risks concern the principle which consider the deprivation of a child’s freedom as a measure of last resort. This clearly results from the analysis of the new rules and it is also confirmed by the opinion of the persons interviewed as well as from the literature considered. One example, in this respect, is worth mentioning: the new regime concerning the danger of escaping. The possibility for the judge to order precautionary custody for the child in case of danger of escaping was originally provided by DPR 448/1988, but declared illegitimate by the Constitutional Court (decision 359/2000). The Caivano Decree now (i) has extended the possibility of resorting to the measure of precautionary custody in prison (now for all crimes for which the maximum decree provides for at least 6 years of imprisonment, instead of the previous 9m as well as without limits for certain specifically identified crimes), but (ii) has also reintroduced precautionary detention “if the accused has fled or there is a concrete and present danger that he will flee” (see the new text of art. 23(2)(a-bis) of DPR 448/1998). Such a “step back” made by the Caivano Decree shall be considered together with the extension of the possibility for judicial police officers to accompany minors caught in the act of committing a crime to their offices, as well as the possibility for the judge to order precautionary measures. Of particular concern is the expansion of the use of pre-trial detention in prison, which is already determining an increase in the numbers of children detained in IPM.

Another element concerns the individual assessment provided by art. 7 Directive 2016/800 and also by art. 9 DPR 448/1988. From the interviews made, it results the lack of a uniform consolidated practice on the “evaluation report”, which, as mentioned, is a key instrument in light of the best interests of the child *in concreto*. In ascertaining the elements and circumstances for the individual assessment, both the public prosecutor and the judge are allowed to listen to persons having relationship with the child as well as to collect the opinion of experts, even informally. However, a crucial role in this regard is played by the Office of social services of the Ministry of Justice (USSM, Uffici di servizio sociale per i minorenni), which is in charge to conduct an analysis of the situation of the child. From the interviews made, it results the lack of a uniform consolidated practice on the “evaluation report”, which, as mentioned, is a key instrument in light of the best interests of the child *in concreto*. In particular, it resulted that such an individual assessment is made by USSM, but not as quickly as necessary in order to have a clear picture of the situation of the child and also in order to adopt protective measures for the child himself/herself and also for the other children who are close to the child at stake (such as, for example, brothers or sisters).

Two good practices existing in the Italian legal order shall be, however, mentioned in this respect. The first one is that some lawyers operating in some areas of the Italian territory – who are specialized in the field of child criminal law – make on their own initiative a document (called “memoria”), describing the relevant elements. This is a practice not provided for by any provision of law: it is therefore left to the good will of the lawyers as well as to their specialization. It would be important for this good practice to be shared among the professionals working in this field and also to be further developed. A second good practice which is worth mentioning is the one followed by the staff of some territorial Social Service offices (USSM) to follow a specific format in writing the individual assessment report. It shall be pointed out that the report is generally made by a team of professionals having multi-disciplinary competences and therefore it can offer a wide picture of the conditions of the child. The fact that a team of professionals is involved is important also because it is a safeguard for a (as much as possible) “neutral” approach to the case, not influenced by individual appreciation of the persons involved.

Among the novelties of the Caivano Decree, there is the re-educational path of the child under art. 27-bis DPR 448/1988 (“*ex ante* probation”). It is a measure limited to crimes which shall be punished with pecuniary sanctions or the punishment of prison for less than 5 years, which envisages a re-educational program proposed by the Public Prosecutor and accepted by the child's lawyer or the child himself/herself.

the re-educational program is a tailored measure (respecting the best interests of the child *in concreto*) and, once completed, has the effect of extinguishing the crime. It shall be however pointed out the rule does not expressly state that the re-educational project should be grounded on the personality and the educational needs of the child. No specific investigation in this respect is provided. It is likely that such a re-educational project relies on the individual assessment report, the preparation of which, however, may encounter some problems (as pointed out *supra* in this paragraph). Beside this, the involvement of the child in the re-educational project concerning himself/herself is not clarified. The compression of procedural guarantees is, perhaps, the major criticism: everything starts from the Public Prosecutor, there is no real cross-examination, Social Services do not play a relevant role and it is a measure implying a kind of “negotiation” between the justice system and the child.

Respecting the right to a due process

In general, as mentioned, DPR 448/1988 is based on the principles that children involved in criminal proceedings shall enjoy at least all the rights and guarantees attributed to adults (and disciplined by the Italian Criminal Code), with additional specifications deriving from their peculiar situation of vulnerability.

As concerns the principle of proportionality, an application of the latter is to be found in all provisions which limit or adapt the criminal sanctions which is possible to apply to juveniles. As mentioned, the principles of minor offensiveness and of detention as *extrema ratio* inform, at least formally, the discipline of the DPR 448/1988.

Some legislative innovations introduced by the “Decreto Caivano” may be the object of particular attention when it comes on their effects on the principles of proportionality, minimum offensiveness and detention as *extrema ratio*. Under the new Art. 23 of DPR 448/1988, as modified by the Decreto Caivano, remand is now a measure which can be applied more frequently to all crimes for which the punishment of prison for no less than 6 years is envisaged, but also when the child escapes or a concrete and actual risk for the child to escape exists. Apparently, already in the first

months of application of the Decreto Caivano, the number of young persons of minor age in detention centres has increased unusually: this has also been highlighted by some judges in interviews published in local newspapers. Moreover, recourse to probation, after the Decreto Caivano, is restricted: under Art. 28, point 5 bis, it is not possible to apply the “messa alla prova” for specific crimes such for example murders or specific sexual crimes.

Another important principle is the one of the presumption of innocence, which the Italian legal system recognizes as a constitutional principle (art. 27, par. 2, Italian Constitution), as a general principle of criminal law (Art. 115 bis Italian Code of Criminal Procedure and Art. 2 of the Legislative Decree No. 188/2021) and of course as a general principle of juvenile justice (Art. 7 DPR 448/1988). In this context, some concerns may be risen with reference to the novelties introduced by the Decreto Caivano, such as the new institute of ex ante probation provided by the new art. 27-bis of DPR 448/1988. The institute provides that, during the preliminary investigation, the public prosecutor, when prosecuting offences for which the law prescribes a custodial sentence not exceeding a maximum of five years' imprisonment or a fine, alone or jointly with such a custodial sentence, if the facts are not particularly serious, may notify the child and the person exercising parental responsibility of the proposal for early termination of the proceedings, subject to the condition that the child enters into a civic and social rehabilitation and re-education programme. As pointed out by the doctrine, the newly-created institute finds an express place of application “during the preliminary investigations”, and therefore at an earlier stage of the procedure than the properly procedural one, where the “classic” probation is usually possible. If, on the one hand, the ex ante probation allows the juvenile to leave the judicial circuit early, and thus embark - at an equally early stage - on the re-educational path, on the other hand, however, it risks introducing doubts of compatibility with the constitutional presumption of innocence.

As a consequence of an infringement procedure (n° 2021/2075) introduced by the European Commission vis-à-vis Italy due to the un-complete reception of art. 5(2) Directive 2013/48, the Italian lawmaker has recently amended art. 18 DPR 448/1988. In precedence, art. 18 envisaged that when a child is under arrest, the authorities should inform the persons having parental responsibility over the child. No specific attention was paid to the fact that, in some circumstances, it might be contrary to the best interests of the child at stake to inform the persons exercising parental responsibility and that, perhaps, another adult should be informed. Following the reform, coherently with the rules applying to unaccompanied minors (under Law 47/2017), it is now possible to appoint an adult such as a tutor, who can be informed about the situation of the child. The Italian legal order is now in compliance with the Directive 2013/48 and, as a consequence, the infringement procedure has been archived. As pointed out by a judge who has been interviewed, such a tutor does not provide any legal assistance, but it would be important for the tutor to have legal background in order to be able to deal with many of the issues concerning the child. This, being understood that the guardian should be clearly aware about his or her role, which is very different from a lawyer. According to the Law 47/2017, the guardian must be trained and must know which professionals to contact in case of need.

Respecting the right to participate in and understand the proceedings

Under DPR 448/1988 participation to proceedings is granted, in particular, to children and youngsters over 16 years old. It is frequently foreseen the acceptance of the minor as a condition for the application of the measure envisaged. However, the juvenile justice system is frequently perceived by the child as not clear, difficult to understand.

In 2017, Defence for Children International – Italy has conducted interviews with girls in detention and it resulted that information provided by police officers were scarce and inadequate.

As pointed out by a lawyer during the interviews, there is no more complicated language than the one used by Italian criminal procedural law. Beside this, such a language is applied in a very delicate moment, when a crime happened, and this make it more difficult for the children involved to understand also basic communications such as those concerning the right to have assistance from a lawyer. As pointed out, no specific reference to the Letter of Rights is generally made.

However, good practices exist. An interesting project promoted by the Italian association of judges, is a book entitled “*Leggi qui*”, which has the goal of explaining with simple words and examples the law with specific reference to the law applying to situation of the adolescents' life. Graphic booklet, DVD and other instrument providing relevant information with images/simple language has been realized.

Such initiatives are frequently left to single persons/group of persons and are not known across the country. It would be helpful to share such information/instruments and further develop them by virtue of a common approach. New technologies (social network and applications) and instruments (such as tutorials) should be also considered to the above purposes.

From the interviews, it also resulted that, when a crime is committed and the procedure starts, minors consider their lawyer as the first person making it clear what is happening. In this light, during interviews it has been stressed the importance of specialization and training.

In the majority of the cases, children interact with the juvenile justice system when the examination from the police takes place: in this regard, art. 9 Directive 2016/800 provides for video-recording of the examination of the child. In this respect, the Italian legal order resulted to be not fully in compliance with the Directive. However, recently, the Cartabia Reform has made it mandatory to have video-recording the examination. The impact of such a change in the system needs to be monitored.

Respecting the right to a private and family life

From the analysis of the practice as well as from the interviews with professionals, no specific problems resulted in the respect of this right.

Confidential meetings between children and their lawyers are always granted (with few limited exceptions, as for example in case of crimes concerning mafia).

Contacts with family members are always granted, also when children are deprived of their personal freedom, even if detention in centers that are far from the youngster's residence may result in reduced contacts with the family. Some limitations of contacts might take place only for investigation reasons (such as for example when criminal conducts were perpetrated in family contexts) .

Respecting the right to integrity and dignity

In general, it results that the main problems is the scarce availability of resources and infrastructures, both with regard to the juvenile detentions facilities/communities and with regard to the probation system. In principle, children should stay in the so-called centres of first reception just for the time necessary to find a solutions in juvenile detention facilities or community centres and, in principle, children are separated from young adults. However, it frequently happen that, due to the scarce availability of resources, it becomes necessary for the young adults to be placed together with children.

On the contrary, from the interviews, it results that probation (in Italian "messa alla prova") is a successful solution, even if left to the good will of the actors involved (from the lawyer assisting the child, to the Social Service assistants, to the staff of the association/no profit organizations involved).

From the interviews with the operator, it resulted that a document providing a description of the ongoing probation solutions does not exist. It is here submitted that it could be useful to provide a real "map" of the probation solutions, in order to share good practice and also projects which might perhaps be applied in a different context from the one it has been envisaged.

In general, the Italian juvenile justice system takes the principle of the separation between children and adults very seriously and envisages different structures. Contrary to the above principle, the Caivano Decree has introduced rules envisaging the possibility by the director of structures dedicated to young adults to order the transfer of dangerous young adults to the structures dedicated to adults.

Alongside the interviews conducted with the professionals, reference should be made to outside resources and previous researches – such as the country research conducted by the FRA European Union Agency for Fundamental Rights in 2021 – highlighting the need to provide specialized training for police officers working with children and young persons, the absence of which may raise the risk of ill-treatment of young persons in juvenile detention institutes (IPM). According to the aforementioned FRA research, some professionals working in the juvenile justice system have highlighted that "police officers generally treat children as adults, using the same arrest practices which can have a traumatic impact on some children". Contrary to what the actual practice suggests, police officers do not usually receive compulsory

specialized training, which is specifically focused on procedural safeguards and on the legislation governing the juvenile justice system.

On the 22nd of April 2024, international and national press reported on the existence of an ongoing investigation concerning suspicion of torture and ill-treatment of juvenile detainees in Milan (at the Cesare Beccaria juvenile detention center in Milan). 13 prison guards have been arrested, 8 officers have been suspended.

The investigation needs to be carefully monitored.

Final comments

The overall analysis of the legal framework of reference shows that the Directive 2016/800/EU has not been originally implemented in the Italian legal order under the formal point of view, since the Italian lawmaker considered the relevant Italian legislation (i.e. DPR 448/1988 and DL 121/2018) already in compliance with EU law. At the same time, the analysis of the practice concerning the effective application and respect of the content of the Directive 2016/800/EU shows that further steps for a full substantial implementation of its content are needed.

As a matter of fact, the Commission has recently called on Italy (as well as Spain, Cyprus, Luxembourg and Poland) to fully transpose the EU rules on procedural safeguards for children in criminal proceedings. More precisely, the European Commission decided to open infringement procedures by sending letters of formal notice. In the case of Italy, with letter dated 13 March 2024 (INFR (2023) 2090), the Commission identified completeness issues regarding, for instance, the right to information of the child and the right to a medical examination.

No further information are available at the present moment on the ongoing infringement procedure.

However, good practices exist in this respect. There is, however, a need for the dissemination of such good practices among operators and, where possible, for their mandatory application.

It shall be noted, the recent legislative reforms (i.e. Cartabia Reform and Decreto Caivano) have changed the legal framework of reference and have altered the existing situation concerning the need to tackle issues deriving from juvenile deviance and to protect the (procedural and substantial) rights of children.

The impact of the legislative reforms as well as the infringement procedure need to be monitored closely in the following months and assessed in due time. However, it is worth mentioning that the Antigone – an Italian association founded in 1992 dealing with justice, human rights and prisons – has recently published its annual report on the situation of children facing the criminal justice out a worrying increase of the number of children who are now under detention in Italy. As pointed out in the report, the increase is mainly due to the Decreto Caivano's rules concerning the possibility of remand ("custodia cautelare") which is applicable for facts connected to narcotics substances. Antigone recommends to avoid remand and, on the contrary, to make use of services in the field of education as well as to services aimed at providing assistance in drug addiction situations.

Beside the implementation of the recent legislative reforms, specific attention shall be paid to the issue of unaccompanied children in Italy.

Lastly, as highlighted by previous researches and by the recent event that have interested the Cesare Beccaria juvenile detention center in Milan, there is a need to carefully monitor the treatment received by the young persons in contact with police officers. The aforementioned ongoing investigation concerns the suspicion of torture and ill-treatment of young persons detained in Milan: prison guards and officers have been arrested and/or suspended.

As already mentioned, this investigation needs to be carefully monitored and should be the opportunity to effectively examine whether professionals working with children receive an adequate training and whether juvenile detention centers – in their actual conditions and availability of resources – effectively are the best place to put an adequate educational process into practice.

