

 JUST CLOSER 

National Report on the youth justice system

ITALY



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Introduction: the scope of this National Report

The JUST CLOSER project aims at fostering the rights and needs of youngsters involved in criminal proceedings, as provided by international standards and European Union law, and in particular by the Directive 2016/800/EU¹.

The promotion and effective implementation of children's rights in the field of justice is one of the key priorities of the 2021 EU Strategy on the Rights of the Child². In its objective of strengthening a child-friendly justice in Europe, the Strategy also addresses the field of criminal justice and recommends the complete and correct implementation of the aforementioned Directive. In this field, in addition to the Commission's commitment to contribute to the training of legal practitioners, Member States should (i) support judicial training providers and all professional bodies in their activities, in order to guarantee the rights of children and accessible justice for them; (ii) develop robust alternatives to prosecution, with specific reference to detention, as well as the use of restorative justice; (iii) strengthen cooperation in cases with cross-border implications.

This National Report represents the results of a research led by the University of Genoa (Department of Political and International Sciences) on the alignment of the Italian justice system with the human rights standards provided by International Law and European Union Law. Starting from the peer-led research conducted by young adults with past experiences with criminal justice, through the consultation of youngsters currently involved in criminal proceedings, the research has conducted interviews with criminal justice professionals in Italy in order to gain reliable and concrete information of the strengths and weaknesses of the criminal justice system in Italy.

This is the list of the professionals interviewed: Luca Villa – President of the Juvenile Court in Genoa; Roberta Di Bella – Criminal Lawyer in Genoa; Claudia De Luca – Public Prosecutor in Naples; Angela La Fortezza - Social Assistant, Responsible Education Unit, Juvenile Detention Centre in Bari; Christian Serpelloni – Criminal Lawyer in Verona; Ilaria Summa – Criminal Lawyer in Cosenza. The authors of this report are grateful to the above professionals, for their precious cooperation. The authors remain the only responsible for the content of this report.

The auspice is that the information gathered in Italy and in the other Member States involved in the project will constitute a valid contribution in the context of a future evaluation on the application of Directive 2016/800/EU in the Member States, also in the light of a possible recast.

¹ 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, in OJ L 132, 21.5.2016, p. 1.

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions, *EU strategy on the rights of the child*, made in Brussels on 24 March 2021, COM(2021) 142 final.

Main legislation

The Italian justice system is based on the consideration of the peculiar needs and rights of children and young persons under the age of eighteen.

The relevant legal framework of reference is composed by:

- Presidential Decree No. 448/1988 (hereinafter DPR 448/1988) providing the criminal procedural rules dedicated to children. The Decree (i) has been implemented by the Legislative Decree No. 272/1989³ and (ii) shall also be complemented, where necessary, by the rules of the Code of criminal procedure;
- Legislative decree No. 121/2018 (hereinafter DL 121/2018) envisaging the rules concerning the execution of punishments and the measures alternative to detention⁴.

Two recent legislative reforms (the so-called “Riforma Cartabia” and the so-called “Decreto Caivano”) have introduced important novelties, which will be described *infra*.

According to the most recent statistics by the Italian Ministry of Justice (*Dipartimento di giustizia minorile*), the aforementioned legal framework interests at least 15.000 children and young adults, considering the ones currently present in a residential institution (juvenile detention centres or communities) and the ones that are in charge of Juvenile Social Service Offices⁵. This figure is part of the total number of children and young adults who face criminal justice proceedings in the European Union, which is approximately 1 million⁶.

The DPR 448/1988⁷, laying down the rules governing the criminal proceeding in case of juvenile defendants, is based on the principle of the so-called “educational purpose”, whereby the proceedings must not interfere with the continuity of the children's education and training, but rather enhance it and make it prevailing over the constrictive and afflictive function of the charge and punishment⁸.

The lawmaker's choice was not aimed at creating an autonomous procedural system compared to the one in force for adults (provided by the Italian Code of Criminal Procedure⁹), but intended to provide the juvenile judicial authority with an instrument that would enable it to shape the rules of ordinary proceedings in such a way as to make them compatible with the protection of the child's personality still in the process of development.

³ See Decreto legislativo 28 luglio 1989, n° 272, Norme di attuazione, di coordinamento e transitorie del decreto del Presidente della Repubblica 22 settembre 1988 n° 448, recante disposizioni sul processo penale a carico di imputati minorenni, in GU n° 182, 5 August 1989, Suppl. Ordinario n° 57, available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1989-07-28;272>

⁴ See C. Cascone, Il nuovo ordinamento penitenziario minorile: un'occasione sfruttata a metà, in *Studium iuris*, 10/2019, 1137.

⁵ Italian Ministry of Justice (“Dipartimento per la giustizia minorile e di comunità”), *Minorenni e giovani adulti in carico ai servizi minorili*, updated 15 January 2024, available at https://www.giustizia.it/giustizia/it/mg_1_14_1.page?contentId=SST456442.

⁶ European Commission, *Frequently Asked Questions: Fair Trial Rights*, 27 November 2013, available at https://ec.europa.eu/commission/presscorner/detail/es/MEMO_13_1046.

⁷ D.P.R. 22 September 1988, No. 448, *Approvazione delle disposizioni sul processo penale a carico di imputati minorenni*, published in the Official Journal of the Italian Republic No. 250 of 24 October 1988. In the Italian legal literature, see G. GIOSTRA (ed), *Il processo penale minorile: commento al D.P.R. 448/1988*, Milano, 2009; M. BARGIS (ed), *Procedura penale minorile*, Torino, 2021.

⁸ L. RE, *La giustizia penale minorile. Un patrimonio da preservare*, in *Jura Gentium*, 2017, available online at <https://www.juragentium.org/forum/infanzia/it/re.html>.

⁹ D.P.R. 22 settembre 1988, No. 447, *Approvazione del codice di procedura penale*, published in the Official Journal of the Italian Republic No. 250 of 24 October 1988.

The Italian rules of criminal procedure for children are based on the following principles:

1. **Principle of adequacy:** under art. 1 of DPR 448/1998 measures shall be adequate to the personality of the child and to his/her educational needs. According to this principle, the judge shall find the adequate measures taking into consideration the family environment, the personal problems of the child and his/her educational path.
2. **Principle of the minimum offensiveness:** it shall be avoided as much as possible that children enter the so-called “criminal circuit”; subsequently, the interruption of the ongoing educational path shall, in principle, be avoided: all possible alternative measures shall be adopted.
3. **Principle of de-stigmatization:** the identity of the child and his/her social relationships shall be protected as much as possible. In this respect, attention shall be paid to protect his/her privacy, to celebrate criminal proceedings without audience.
4. **Principle of the detention as an *extrema ratio*:** alternative measures to detention shall have priority.

In the application of the above principles, the prior individual assessment of the child and his social and family environment of reference¹⁰ is key. In the wake of the acknowledged need to make the offender accountable, but also to guarantee the minimum detriment of the trial with respect to personal development, institutes such as the dischargement on the basis of the irrelevance of the fact¹¹ and the suspension of the trial with probation¹² are aimed precisely at the aforementioned educational objectives and accompaniment to adult life, as well as a rapid removal from the judicial circuit¹³. Therefore, on a first reading, the DPR 448/1998 (which was adopted a few days before the UN Convention on the Rights of the Child) presents guarantees that are even greater than those provided for by 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 Directive¹⁴.

With regard to punishments/sanctions and their execution, it shall be pointed out that the same punishments and sanctions envisaged for adults apply, with significant limitations, to children. However, from the adoption of the above-mentioned DL 121/2018, the Italian legal order has specific rules concerning the execution of punishments and sanctions vis-à-vis children. This is clearly a positive achievement since the set of rules regulating substantial and procedural aspects deriving from the combination of DPR 448/1988 and DL 121/2018 now offers a specialized legal framework for children in criminal proceedings.

Indeed, according to EU law, the possibility of not adopting an appropriate national implementing legislative measure is considered an exceptional circumstance, which requires a strict verification of the existence of sufficiently precise and clear principles or rules to ensure full compliance with the Directive. This has been confirmed by consistent case law of the Court of Justice of the European Union, who has stressed the assessment of superfluity of transposition implies that the domestic rules previously in force “guarantee that

¹⁰ Article 9, as well as Articles 16-24 of the D.P.R. No. 448/1988.

¹¹ Article 27 of the D.P.R. No. 448/1988.

¹² Article 28 of the D.P.R. No. 448/1988.

¹³ B. BERTOLINI, *Verso una giustizia “a misura di minore” nella giustizia penale: garanzie, diversione e giustizia riparativa*, cit., p. 357.

¹⁴ National transposition measures communicated by the Member States concerning the Directive 2016/800/EU are available at <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX%3A32016L0800>. On the topic L. CAMALDO, *Garanzie europee per i minori autori di reato nel procedimento penale: la direttiva 2016/800/UE in relazione alla normativa nazionale*, in *Cassazione penale*, 2016, pp. 4572-4585; A. CONTI, *Le garanzie processuali del minore: un confronto tra l’ordinamento europeo e la disciplina italiana*, in *Minorigiustizia*, 2019, pp. 96-107.

the national authorities will in fact apply the directive fully and that, where the directive is intended to create rights for individuals, the legal position arising from those principles is sufficiently precise and clear and the persons concerned are made fully aware of their rights and, where appropriate, afforded the possibility of relying on them before the national courts”¹⁵.

At the time when the Directive 2016/800/EU was adopted and was to be implemented by Member States, it appeared that the above requirements were fulfilled by the Italian legal system, in the face of a system that not only was already aligned with the indications of the European lawmaker, but also constituted a relevant source of inspiration for the drafting of the Directive itself. In any event, consistent with the objectives of minimum harmonisation that inspired Directive 2016/800/EU, while respecting the nature and functions of the act of secondary legislation that sets objectives and grants a certain margin of discretion to the Member States, the instrument under consideration did not intend to go beyond what is necessary to introduce an essential level of protection.

The Italian legal system is bound by the main sources of International and EU Law in the field of children rights. The UN Convention on the Rights of the Child¹⁶ still represents one of the fundamental instruments, to which the ratifying State (Italy included¹⁷) are legally bound and which has inspired the adoption of further initiatives at the international and local level.

The Convention has also had a central role in the development of the action of the EU in the field¹⁸. This has contributed to strengthen the legal value of the Convention in the legal system of the Member States, Italy included.

According to the EU Treaties, the protection of human rights in general is one of the core values of the EU (Art. 2 TEU¹⁹). The protection of children rights is among the core aims and objectives of the organization (Art. 3 TEU). This means that any measure adopted by the European institutions shall comply with the applicable human rights standards in order to be consistent with primary law²⁰. Moreover, EU institutions and Member States have the obligation to promote, protect and fulfil the rights of the child in all relevant EU policies and actions.

According to Art. 6 TEU, fundamental rights – including the rights enshrined in the UN Convention on the Rights of the Child – are general principles of EU law. The same provision states that the EU Charter of Fundamental Rights²¹ is primary EU law and enjoys the same legal value as the founding Treaties. The

¹⁵ Court of Justice, 23 May 1985, case 29/84, Commission of the European Communities v Federal Republic of Germany. More recently, see Court of Justice, 5 July 2007, case C-321/05, Hans Markus Kofoed.

¹⁶ UN Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of November 20, 1989, entered into force on September 2, 1990.

¹⁷ Italy has ratified the Convention with the Law no. 176 of 27 May 1991, in the Official Journal of the Italian Republic No. 35 of 11 June 1991.

¹⁸ See the *briefing* of R. SHREEVESK, *Children's rights in the EU in the light of the UN Convention on the Rights of the Child*, November 2022, available online at [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2022\)738223](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)738223), where it is highlighted that “The EU is not a party to the CRC, but it is guided by the principles and rights set out in it, meaning that all policies and actions with an impact on children must be in line with the best interests of the child”. Moreover, while “The EU has developed its own legal and policy framework on children's rights and child protection”, it is observed that “the fact that all Member States are currently parties to the CRC has helped to improve the coherence of policies developed to promote and protect children's rights”.

¹⁹ Treaty of the European Union.

²⁰ On the topic, see the contributions in S. DOUGLAS-SCOTT, N. HATZIS (eds.), *Research Handbook on EU Law and Human Rights*, Cheltenham/Northampton, 2019.

²¹ Charter of Fundamental Rights of the European Union, in OJ C 326, 26.10.2012, p. 391.

Charter explicitly addresses the rights of children in its Art. 24²², which can be considered as a structural and conceptual link between children's rights – as consecrated at the international level – and the EU legal framework. As explicitly stated in the Explanation to the EU Charter, Art. 24 is «[b]ased on the New York Convention on the Rights of the Child [...] and ratified by all Member States, particularly Arts 3, 9, 12 and 13 thereof»²³. This means that the core principles of the UN Convention on the Rights of the Child are considered an integral part of EU law and since the provision relies on the principles enshrined in the Convention, it has to be interpreted accordingly²⁴. This rule is stated by Art. 52, para. 4 of the Charter, establishing that «[I]n so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions»²⁵. As a consequence, Art. 24 of the Charter is filled with content by the Convention's provisions, as interpreted and applied over the years. The General Comments to the Convention, drafted by the UN Committee on the Rights of the Child²⁶, play a relevant role in this regard.

Italy is also part of the Council of Europe, under whose auspices not only the European Convention on Human Rights (ECHR)²⁷ has been adopted, but also several initiatives to protect children's rights have been consolidated, also through soft law acts that, nevertheless, have acquired an authoritative role in the process of strengthening rights. Among the latter are the Guidelines on Child Friendly Justice adopted by the Council of Europe (CoE) in 2010²⁸, but still considered an authoritative benchmark to ensure respect for the rights of minors who come into contact with the judiciary²⁹. On the other hand, the European Court of Human Rights has consistently affirmed that the ECHR must be interpreted in a manner consistent with the UN Convention on the Rights of the Child³⁰, reflecting a unified (and, as much as possible, shared) approach to the matter.

²² R. LAMONT, *Article 24*, in S. PEERS, T. HERVEY, J. KENNER, A. WARD (eds.), *The EU Charter of Fundamental Rights. A Commentary*, Oxford, 2014, p. 678.

²³ See the Explanations relating to the EU Charter of Fundamental Rights, in OJ C 303, 14.12.2007, p. 25.

²⁴ See A. ADINOLFI, *La rilevanza della CRC nell'ordinamento dell'Unione europea*, in (eds.) Autorità garante per l'infanzia e l'adolescenza, *La Convenzione delle Nazioni Unite sui diritti dell'infanzia e dell'adolescenza: conquiste e prospettive a 30 anni dall'adozione*, Rome, 2019, p. 63 available at https://www.garanteinfanzia.org/sites/default/files/2020-03/agia_30_anni_convenzione.pdf.

²⁵ Similarly, since the EU Charter takes inspiration from the ECHR, art. 52, para. 3 establishes that «[I]n so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection».

²⁶ See in particular UN Committee on the Rights of the Child, *General comment No. 24 (2019) on children's rights in the child justice system*, del 18 settembre 2019, CRC/C/GC/24, available online at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>.

²⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 005, opened for signature in Rome on November 4, 1950 and entered into force on September 3, 1953. The Convention has been ratified by all 47 States of the Council of Europe. The procedure for the accession of the European Union to the ECHR is still on-going, following the Opinion 2/13 of December 18, 2014 delivered by the Court of Justice of the European Union that declared the incompatibility of the draft Accession Agreement with EU law: on the topic J. CALLEWAERT, *The accession of the European Union to the European Convention on Human Rights*, Council of Europe Publishing, 2014 (available at <https://johan-callewaert.eu/wp-content/uploads/2015/05/eu-accession.pdf>, last accessed March 30, 2021).

²⁸ Committee of Ministers of the Council of Europe, *Guidelines on Child-Friendly Justice*, adopted by the Committee of Ministers on November 17, 2010 at the 1098th meeting of the Ministers' Deputies, available at <https://www.coe.int/en/web/children/child-friendly-justice>.

²⁹ See Committee of Ministers of the Council of Europe, *Strategy for the Rights of the Child (2022-2027)*, adopted on 23 February 2022, p. 33 ff.

³⁰ U. KILKELLY, *The Best of Both Worlds for Children's Rights? Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Rights of the Child*, in *Human Rights Quarterly*, 2001, p. 308 ff.

Two recent legislative initiatives

During the last two years, two important legislative initiatives have introduced some novelties in the Italian juvenile judicial system. Although their impact on the rights of children suspected or accused in criminal proceedings shall be appreciated in due time, it is however important to provide a brief description for each of them.

1. The so-called “Riforma Cartabia”

The Legislative Decree no. 150/2022³¹ introduced important measures for the enhancement of restorative justice programs, introducing specific guarantees for children and young people. 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**. It is possible to refer to art. 9 of the Decree, which amended arts. 134, 135 and 141-*bis* of the Code of Criminal Procedure and includes some profiles of audio and video recording as ordinary forms of documentation of procedural acts (which are similarly aligned with the changes introduced by arts. 17 and 18 concerning the documentation of the investigation acts of the prosecutor and the judicial police).

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*)³². This will most likely entail changes in the composition of the panels, which will include specialised judges who cannot be assigned to other matters³³. In particular, the district chambers established at each seat or section of the Court of Appeal will judge juvenile criminal matters in a collegial composition, with the presence of two magistrates and two experienced honorary judges. The provision of specialization has the potential to implement the multidisciplinary approach advocated by supranational standards, especially if it is accompanied by a national strategy on the systemic and organic training of justice professionals³⁴.

³¹ Decreto Legislativo No. 150 of 10 October 2022, *Attuazione della legge 27 settembre 2021, n. 134, recante delega al Governo per l'efficienza del processo penale, nonché in materia di giustizia riparativa e disposizioni per la celere definizione dei procedimenti giudiziari*, in the Official Journal of the Italian Republic No. 243 of 17 October 2022. On the reform, see A. NATALE, *Introduzione. La c.d. “riforma Cartabia” e la giustizia penale*, in *Questione giustizia*, marzo 2022, p. 10 ff.; L. PULITO, *Giustizia riparativa e processo minorile nelle prospettive della c.d. “Riforma Cartabia”*, in *Archivio penale*, 2022, p. 1 ff.; A. SCELLA, *La riforma Cartabia del processo penale: spinte efficientistiche e questioni irrisolte*, in *Diritto penale e processo*, 2022, p. 1133 ff.

³² Articles 30-40 and 45-49 of the Decreto Legislativo No. 149 of 10 October 2022, *Attuazione della legge 26 novembre 2021, n. 206, recante delega al Governo per l'efficienza del processo civile e per la revisione della disciplina degli strumenti di risoluzione alternativa delle controversie e misure urgenti di razionalizzazione dei procedimenti in materia di diritti delle persone e delle famiglie nonché in materia di esecuzione forzata*, in the Official Journal of the Italian Republic No. 243 of 17 October 2022.

³³ Articles 45-49 of the Decreto Legislativo No. 149/2022.

³⁴ The Italian Constitutional Court, with the decision No. 310 of 2008, noted how the pre-eminence of the child's best interests finds adequate protection precisely in the specialized composition of the court. See on the topic also F. TONIZZO, M. I. DE MEIS, *La riforma della giustizia minorile. Intervenire con modifiche “dalla parte dei bambini”*, 25 October 2021, available at <https://welforum.it/la-riforma-della-giustizia-minorile/>

The second area of intervention of the reform concerns **restorative justice**³⁵. It is important to stress that, from the Nineties, it is exactly in the juvenile justice system that pilot-projects in the field of restorative justice have been experienced³⁶. These projects found their justification on the wording of art. 9 and art. 28 of the D.P.R. 448/1988. More precisely, art. 9 concerns the evaluation of the child and art. 28 concerns alternative measures, among which it is considered the possibility for the judge to suspend the proceeding and to establish how to repair the consequences of the crime, to promote the conciliation between the child and the offended person, where possible to participate to restorative justice programs.

As a further effect of the legislative reform, restorative justice programs have been expressly valorized also with reference to the **executive phase of the criminal proceedings concerning children**. More precisely, in the relevant legal framework of reference³⁷, it is expressly emphasized that the restorative justice programs are to be favored in the enforcement phase of the sentence, as they are consistent with the aim of promoting the child's empowerment, education and full psycho-physical development, preparation for a free life, social integration and prevention of the commission of further offences.

A specific provision is now included in the legal framework of reference, according to which the competent court shall determine, at any moment of enforcement, that children have access to restorative justice programs, after having been duly informed and on a voluntary basis. A child's participation in such programs and their restorative outcome shall be taken into account by the judge. On the contrary, the latter shall not take into account possible negative elements, such as the non-participation in the program, its interruption or the lack of positive restorative outcomes.

Despite the above positive achievements, it shall be considered that offended persons are still marginalized in the context of criminal proceedings concerning children, where it is not possible to also consider the

³⁵ Restorative justice can be defined as “any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party. In Restorative Justice processes, victims have an opportunity to express their needs and concerns at individual or collective level and to actively participate in the proceedings. Restorative justice aims to repair, in so far as possible, the harm suffered and to bring offenders to understand the consequences of their behaviour and accept responsibility. Restorative justice models include victim offender mediation, conferencing, circles, reparation panels and restorative cautioning, amongst others”, see European Guidelines for Victims' participation in restorative justice processes in juvenile justice systems, edited by A. PEMBERTON, F. MOYANO MARQUES AND R. SAAVEDRA, within the *European Project Prevention and Fight Against Crime*, Ministero della Giustizia, Dipartimento per la Giustizia Minorile, Ufficio Studi, ricerche e attività internazionali, Roma, 2015, available at https://www.giustizia.it/cmsresources/cms/documents/YOVI_European_Guidelines.pdf. For the definition introduced in the Italian legal order, see art. 42 of *Decreto Legislativo* No. 150 of 10 October 2022. On the impact of the Cartabia reform on the restorative justice in the criminal proceedings concerning children, see P. MAGGIO, *Giustizia riparativa e Sistema penale nel decreto legislativo 10 ottobre 2022, n. 150. Parte II: Disciplina organica e aspetti di diritto processuale*, <https://www.sistemapenale.it/it/articolo/maggio-giustizia-riparativa-e-sistema-penale-nel-decreto-legislativo-10-ottobre-2022-n-150-parte-ii-disciplina-organica-e-aspetti-di-diritto-processuale>.

³⁶ See the report of the Autorità Garante per l'Infanzia e l'Adolescenza, *La mediazione penale e altri percorsi di giustizia riparativa nel procedimento penale minorile, Documento di studio e di proposta*, Rome, 2018, available at <https://www.garanteinfanzia.org/sites/default/files/mediazione-penale-giustizia-riparativa-minori.pdf>. See also G. DI PAOLO, *La giustizia riparativa nel procedimento penale minorile*, in *Diritto penale contemporaneo*, available at <https://archiviodpc.dirittopenaleuomo.org/upload/4653-dipaolo2019a-converted.pdf>.

³⁷ See *Decreto legislativo* 2 ottobre 2018, n° 121 – *Disciplina dell'esecuzione delle pene nei confronti dei condannati minorenni*, in attuazione della delega di cui all'art. 1, commi 82, 83 e 85 lettera p), della legge 23 giugno 2017, n. 103 available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2018-10-2;121>

instances of the offended persons and, therefore, civil liability aspects, in light with the higher purpose of lowering conflict and stigmatization of the offender³⁸. Restorative justice may help filling this gap.

There are currently no further legislative initiatives on other profiles concerning the procedural rights and guarantees of juvenile suspects or defendants in the criminal field.

2. The so-called “Decreto Caivano”

Most recently, the Decree-Law No. 123 of 15 September 2023 (the so-called *Decreto “Caivano”*), converted into Law No. 159 of 13 November 2023³⁹, has introduced – among a wide range of measures – significant reforms to the Juvenile Criminal Code, with innovations of a preventive and punitive character.

The reform in question takes the name of the place in southern Italy where sexual crimes were committed by children against other children⁴⁰, and is therefore aimed at tackling an emergency related to situations of degradation, social vulnerability and juvenile distress (as is expressly stated in the title of the reform).

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.

The main novelties introduced by Decreto Caivano concern the DPR 448/1988. However, some provisions also consider the regime provided by DL 121/2018.

A summary of the main novelties is hereby provided:

1. **Accompanying the child *in flagrante delicto***, which is also called “child arrest”: this measure (see Art. 18-bis of the DPR 448/1988) is now extended to crimes for which is envisaged the punishment of prison not less than 3 years as well as to specific crimes such as personal injury, theft, damage, alteration of weapons, manufacturing of explosives, illegal possession of weapons. Given that the application of the precautionary measures (which should follow the one hereby indicated) is foreseen for crimes the punishment of which is not less than 4 years, it results that there is a gap in the legislation for crimes the punishment of which is between 3 and 4 years, for which the precautionary measures shall not apply. As a consequences, minors over 14 years old who are the addressees of the new measure hereby considered, would be *de facto* just stigmatized, since they will not be channelled in a real recovery procedure.
2. **Precautionary measures**: since in general the punishments for children over 14 years old have been increased by the Decreto Caivano, art. 19 DPR 488/1988 now establishes that, in applying precautionary measures, the circumstance that a child is at stake shall be considered and balanced. This is generally evaluated as a good change in the legislation⁴¹.
3. **From placement in an community shelter (in Italian “*collocamento in comunità*”) to remand (in Italian “*custodia cautelare*”)**: under art. 22 of DPR 448/1988, when the child over 14 years old is placed in an institute and violates the instructions provided or escape from the institution, it is now

³⁸ See art. 10 of DPR 448/1988 which excludes the possibility to exercise civil actions for the reimbursement of damages. On this point, see in particular the report of the Autorità Garante per l’Infanzia e l’Adolescenza, *La mediazione penale e altri percorsi di giustizia riparativa nel procedimento penale minorile*, at p. 25.

³⁹ In the Italian Official Journal No. 266 of 14 November 2023. On the Caivano reform, see G. PANEBIANCO, *Sicurezza, criminalità minorile e urgenza a fronte del c.d. decreto “Caivano”*, in *Diritto penale e processo*, 12/2023, pp. 1554-1568; F. TRIBISONNA, *Interventi in materia processuale penale: da Caivano alla deriva dei principi sul “giusto processo minorile” il passo è breve*, ibidem, pp. 1568-1586; P. MOLINO, *In GU la conversione del decreto Caivano: le novità*, in *Il Quotidiano Giuridico*, 15 November 2023.

⁴⁰ See <https://www.nytimes.com/2023/09/03/world/europe/italy-rape-women-violence.html>.

⁴¹ See, in particular, F. TRIBISONNA, *Interventi in materia processuale penale*, cit., pp. 1569-1570.

possible for the judge to establish a remand, anytime a crime for which punishment with prison of not less of 4 years is at stake. Remand is now much easier to apply to children over 14. Doubts exist with regard to the compatibility of such a rule with the Constitution and with the principles inspiring DPR 448/1988 (such as minimum offensiveness and detention as an *extrema ratio*).

4. **Remand:** under 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.
5. **Diversion/probation:** art. 28 of DPR 448/1988 regulates one of the most important instrument of diversion envisaged for children, the so-called “*sospensione del processo e messa alla prova*”, which means that for children over 14 the criminal procedure is suspended and the child is “*tested*” with projects/measures different from traditional punishments. If it works, the crime is extinguished. Recourse to such an important instrument, 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.
6. **Ex ante probation:** art. 27-bis of DPR 448/1988 now envisages a “re-education path” as a measure for those crimes committed by children over 14 years old. However, the measure is limited to crimes which shall be punished with pecuniary sanctions or the punishment of prison for less than 5 years. The rationale is to provide an instrument for less serious crimes, with the idea of channeling the child through an educational programme proposed by the Public Prosecutor and accepted by the child's lawyer or the child himself/herself. “Re-educational” programs may include socially useful work as well as co-operation in activities of a non-profit nature within the local community. A major criticism which has been pointed out is that a compression of procedural guarantees surely exists: everything starts from the Public Prosecutor, there is no real cross-examination and social services do not play a relevant role.
7. **Ex ante protection:** when investigations on crimes of relevant social alarm (such as those concerning mafia or narcotics) make it clear that children are in danger, it is possible to adopt *ex ante* measure of protection for children: the investigation authority shall inform the juvenile judge and civil protection measures may be adopted. This form of coordination shall be appreciated.
8. **Transfer of the child to adults’ detention institute:** The new art. 10-bis of DL 121/2018 provides for the possibility for the director of a IPM (Detention Centre for Children) to transfer a person of 21 years of age who has been detained in the detention institute for children since committing the offence when he or she was a minor, whenever that person is responsible for dangerous behaviour, such as endangering the security and order of the institute, making it impossible for the other persons in the institute to carry out their activities, and taking advantage of his or her position of coercion vis-à-vis the other persons in the institute. Such a rule gives a high degree of discretion to the directors of children's detention centres.
9. The so-called “**DASPO urbano**”, which is the extension to children of a measure which was originally addressed just to adults and consists in the prohibition of access in certain urban areas. In case of violation of such rule, the consequence is an administrative sanction, together with the order of leaving the area where the crime has been committed;
10. **Prohibition of mobile and internet for children** (for two years maximum), taking into account the needs concerning health, family relationship, education.
11. **Oral warning for children over 12 years old** is envisaged for any crime which is punished with prison for not less than 5 years. It means that the above mentioned children are required by public authorities to act in compliance with the law. This rule applies in cases where specific crimes against persons or possessions are made as well as crimes concerning narcotics.
12. Introduction of a new crime: **non-compliance with the obligation to educate children** (art. 570-ter criminal code) aimed at combating school drop-out. The rule aims at including both the conduct of

not registering the child in school as well as the conduct of not doing everything possible for the child to attend school.

Before the adoption of the “Decreto Caivano”, the Italian juvenile justice system was appreciated by professionals and scholars⁴² as satisfactory and in compliance with the Directive 2016/800⁴³, although with some criticalities that had induced the Ministry of Justice (*Dipartimento per la giustizia minorile e di comunità*) to launch a monitoring⁴⁴. 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.

A first source of concern is the repressive attitude of the rules, which runs against the principles inspiring DPR 448/1988.

Beside this, it has been pointed out that no particular attention is paid to the need to search for individualized solutions, neither to the idea that the punishment/sanction shall have an educational nature (not a re-educational one).

Furthermore, rules originally envisaged and drafted for adults have been “automatically” extended to children, without taking into consideration their special needs. As an example, the “sanction” concerning the prohibition of instruments of communication which are also instruments of social relationships might have detrimental effects on children. Besides this, it is also difficult to monitor the compliance with this rule.

The effects of the above-mentioned legislative reforms shall be considered in due time.

Recent data collected by the Ministry of Justice show that the number of children which are detained in institutes has grown in the last months⁴⁵. However, it seems that such a situation is not likely to be the immediate consequence of the legislative reforms yet.

⁴² See B. BERTOLINI, *Verso una giustizia “a misura di minore” nella giustizia penale: garanzie, diversione e giustizia riparativa*, in (eds.) Autorità garante per l’infanzia e l’adolescenza, *La Convenzione delle Nazioni Unite sui diritti dell’infanzia e dell’adolescenza: conquiste e prospettive a 30 anni dall’adozione*, Rome, 2019, p. 355.

⁴³ Ibidem, pp. 358-359.

⁴⁴ 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>.

⁴⁵ See Italian Ministry of Justice, cit. above at note 4.

The implementation of the Child-Friendly Justice Principles in the Italian legal system

In line with the approach informing the research and on-field activities of the Just Closer Project, this report analyzes, in the Italian context, the implementation of the nine principles distracted from the CoE Guidelines on Child-friendly justice

Accessibility

Justice must be accessible for all children. Any barriers to access to justice must be removed and children shall be provided adequate information about their rights. Justice must be free of charge and legal aid must be guaranteed, and so must be access to support services and remedies.

The right to understand the proceedings

An accessible justice system ensures that children involved in a criminal proceedings, from their very first contact with the justice system, are able to understand what is going on – and what may happen in the future – at any stage. They should be guided in understanding their rights and in obtaining all the relevant information, also through an assistance in understanding the acts and documents of the proceeding, characterized by a highly technical language.

All the operators and professionals have a role in ensuring that this right is respected.

For this purpose, art. 4 of the Directive 2016/800/UE states that “Member States shall ensure that when children are made aware that they are suspects or accused persons in criminal proceedings, they are informed promptly about their rights in accordance with Directive 2012/13/EU [*on the right to information in criminal proceedings*] and about general aspects of the conduct of the proceedings. Member States shall also ensure that children are informed about the rights set out in this Directive”, also identifying the specific content of the information. Those information shall be given “*in writing, orally, or both, in simple and accessible language*”. Where children are provided with a *Letter of Rights* (pursuant to Directive 2012/13/EU), the Letter shall include a reference to rights established under the Directive 2016/800/UE.

In this context, special needs may arise in relation to children of foreign nationalities or migrant (even unaccompanied) children, who may experience further difficulties in receiving an adequate orientation during the proceedings⁴⁶.

In front of a detailed discipline as concerns the *minimum* standard that Member States should guarantee in this regard, 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.

⁴⁶ See in this regard also the Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, in OJ L 280, 26.10.2010, p. 1.

From a report provided in 2021⁴⁷, it results that basic information on the right to appoint a lawyer or to have the holders of parental responsibility informed are communicated to children.

However, there is no uniformity across the country for what concerns the communication of more specific information on the rights and procedural safeguards⁴⁸.

In practice, there have been several cases reported in which the young people have 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. 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 on⁴⁹. 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 as read, but they are usually not available in a child-friendly version.

Beside procedural rights, also the other relevant rights should be communicated.

In the short term, the **Letter of Rights** together with **child-friendly version of the relevant provisions of the Juvenile Code of Criminal Procedure** should be made available across the country.

In the mid-long term, in the context of a reform of the legal framework of reference (i.e. DPR 448/1988), a specific provision on the right to have comprehensive and accessible information should be envisaged.

Children's participation: the communication approach

Access to justice means also that children's participation in the hearings shall be effective.

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.

Uniformity in the approach is therefore needed not only for what concerns the information provided to children, but also for what concerns the communication approach with children.

Legal aid

The rules concerning legal assistance and legal aid were among the most controversial in the procedure for the adoption of the Directive 2016/800/UE: art. 6 is the result of a compromise between the original proposal of establishing mandatory assistance and, therefore, providing also legal aid by the Member States and the need for the latter ones to avoid significant financial consequences from the implementation of the Directive⁵⁰.

In the Italian legal system, legal assistance in criminal proceedings is compulsory.

⁴⁷ See M. CAPESCIOTTI, Social Fieldwork Research (FRANET) – Procedural Safeguards for Children who are suspects or accused persons in criminal proceedings, Italy 2021, available at https://fra.europa.eu/sites/default/files/fra_uploads/it_ccp_country_report.pdf.

⁴⁸ A report on the hearing of the child in civil procedure in Italian juvenile courts have been published by the Italian Authority for children and adolescents and is available at https://www.garanteinfanzia.org/sites/default/files/2021-07/ascolto-minorenni-procedimenti-giurisdizionali_0.pdf. As it results from the report, in civil proceedings involving children, protocols are frequently adopted by juvenile courts establishing good practices to be followed.

⁴⁹ Art. 18 DPR 448/1988.

⁵⁰ See S. CRAS, The Directive on Procedural Safeguards for Children, cit., at 113-114.

As a consequence, art. 11 of the 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 a list of the lawyers having specific knowledge of child law.

In the Italian system, lawyers are appointed immediately during the arrest.

Children may appoint (i) an entrusted lawyer, who generally knows the whole family and not necessarily has a specific expertise in the field of children criminal proceeding, (ii) a public defender, who in order to be eligible has already undergone a specific training.

From the 2021 report, it results that generally lawyers working *ex officio* (i.e. paid by the State and under a duty to assist) are more qualified than private ones. The problem still exists: 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 and is against the principle of the educative purpose, as well as of the principle of child participation, which characterize the juvenile criminal proceedings.

In the latter proceedings, cooperation is key, also in order to make use of diversion for the purpose of educating children who are entering the criminal system.

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.

The need for specialization in the field is acknowledged by the Legislative Decree No 272/1989, which under arts. 5, 6 and 14 envisages specific duties to provide training sessions for lawyers, prosecutors, judiciary police officers and the staff of the juvenile judicial system’s social services.

Despite this, practice shows that professionals involved in the criminal proceedings concerning children do not always have the chance to be adequately trained⁵¹.

Specialization in the field of child (criminal) law and in dealing with children is needed at all levels (police officers, social service staff, judges, public prosecutors, lawyers).

A list of lawyers having specific competence in the field of child criminal law should be provided at national and/or local level.

Best practices existing in this field in specific context shall be continued and shared at national level.

Age appropriate

At all stages of the proceedings, children must be treated according to their age, their specific needs, their degree of maturity and their level of understanding. Everything must be explained in a language they can understand.

Juvenile’s capacity to be declared responsible of a criminal offence

⁵¹ See M. CAPESCIOTTI, *Social Fieldwork Research (FRANET) – Procedural Safeguards for Children who are suspects or accused persons in criminal proceedings*, cit., at 14-15.

In order to prosecute a young person, it is necessary that he/she be imputable, i.e. that the child's capacity to be declared responsible for a criminal offence and be subjected to punishment has been assessed. Art. 97 of the Italian Criminal Code indicates that a minor below the age of 14 is never imputable.

The rationale of this rule lays on the un-rebuttable presumption (i.e. a presumption which cannot be reversed) that a minor below the age of 14 is not able to understand and to take voluntary decisions.

Accordingly, art. 26 of DPR 448/1988 establishes that, in any phase of the procedure whatsoever, the judge who ascertains that the child is below the age of 14 shall pronounce a decision which immediately concludes the proceeding.

If a decision punishing a child below the age of 14 is held, such a decision shall be considered as not existing⁵².

Art. 98 of the Criminal Code indicates that *"a person is imputable who, at the time of committing the act, had reached the age of 14 but not yet the age of 18, if he or she had the capacity to understand and to consent"*. Thus, under art. 98 of the Criminal Code, for minors between 14 and 17 years of age, capacity in relation to the offence committed must always be ascertained, whereas for adult offenders it is presumed.

The capacity in relation to the offence shall be ascertained on a case by case basis, by considering psychological, social, cultural elements, which may be also inferred by the behavior of the child during the criminal proceedings⁵³.

It is important to stress that, for those children over 14 years old who have been considered guilty, the same punishments/sanctions envisaged for adults are applied, with the relevant exception of life sentence⁵⁴. The only difference is that, as stated under art. 98 of the Criminal Code, the fact of being a child plays the role of a mitigating circumstance, which shall be balanced by the judge with other circumstances in the specific case at stake.

The Juvenile Court (*Tribunale per i Minorenni*) is a specialized collegial body, in that it consists of four judges: two ordinary judges (*"togati"*) and two honorary judges, chosen among experts in biology, psychiatry, criminal anthropology, pedagogy or psychology. This body is competent 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.

As a general principle, art. 1, para. 1 of the DPR No. 448/1988 provides that all measures: *"shall be applied in a manner appropriate to the personality and educational needs of the child"*.

With specific reference to the age of the child, art. 8 DPR 448/1988 clarifies that it is possible for the judge to order its ascertainment by virtue of an expert report. If doubts still exist, a presumption exists for the child to be under 18 years old (i.e. the *favor rei* principle).

However, if a minor below the age of 14 has made a crime and is considered "socially dangerous", it is possible to establish measures such as probation or approved school.

On the other hand, it is worth mentioning that in 2019 a proposal has been made to make it possible for a minor to be imputable at the age of 12⁵⁵. The proposal has not been adopted.

⁵² See Corte di Cassazione penale, 2 January 2019, no. 35.

⁵³ See Corte di Cassazione penale, 2 March 2017, no. 10478

⁵⁴ See Corte Costituzionale, 28 April 1994, no. 168.

⁵⁵ See Proposta di legge n. 1580 "Modifiche al codice penale e alle disposizioni sul processo penale a carico di imputati minorenni, di cui al decreto del Presidente della Repubblica 22 settembre 1988, n. 448, in materia di imputabilità dei minori e di pene applicabili a essi nel caso di partecipazione ad associazione mafiosa", Atti parlamentari, Camera dei deputati, XVIII legislatura, Disegni di

However, similar initiatives - which are clearly against the protection of the children's rights as well as against art. 40.3 and 41 of the New York Convention and the indications deriving from the General Comment of the Committee for the rights of the child - are possible in light of the literal wording of art. 2 of the Directive 2016/800 (see, in particular, art. 2.3 and recital 21).

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.

Age assessment

The age assessment procedure is crucial for the application of the special rules envisaged for children in criminal proceedings. It applies not only for accused children, but also to merely suspected ones.

Age shall be assessed through ordinary means, such as identity documents of the child or civil registry.

When age cannot be assessed by the ordinary means, art. 8 DPR 448/1988 applies and age shall be assessed, in the less invasive way possible, by virtue of an expert report.

Whilst in the past, the age assessment consisted of an auxological exam (i.e. the exam concerning the child's skeletal development, bones' calcification and histological features), more recently a multi-disciplinary approach is envisaged⁵⁶.

More precisely, a team of persons is involved, with different competences (such as a cultural mediator, a guardian and, a social assistant, a paediatrist, a psychologist).

Italian legislation on age assessment is aimed at the protection of the rights of children, since it not only envisages the above mentioned multi-disciplinary approach, but it shall also be concluded in due time (20 days max).

It shall be immediately stressed that for children having Italian nationality as well as the nationality of one of the EU Member States the ordinary means of age assessment generally apply.

Art. 8 DPR 448/1988 applies to migrant (frequently unaccompanied) minors.

Unfortunately, as pointed out by the 2021 report⁵⁷, 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.

legge, 7th of February 2019, available in Italian at the following link: <https://documenti.camera.it/leg18/pdf/pdf/leg.18.pdf.camera.1580.18PDL0047160.pdf>. On this topic, see L. Camaldo – F. Manfredini, La definizione di un sistema penale minorile conforme ai principi internazionali, in *Diritto penale e uomo, Criminal Law and Human Condition*, 2019, available at https://dirittopenaleuomo.org/contributi_dpu/la-definizione-di-un-sistema-penale-minorile-conforme-ai-principi-internazionali/, p. 48.

⁵⁶ See Protocollo multidisciplinare per la determinazione dell'età dei minori stranieri non accompagnati, 2020, available at <https://www.statoregioni.it/media/2751/p3-cu-atto-rep-n-73-9lug2020.pdf>.

⁵⁷ See M. Capesciotti, Social Fieldwork Research (FRANET) – Procedural Safeguards for Children who are suspects or accused persons in criminal proceedings, Italy 2021, cit., pp. 15-22.

Rapidity

The principle of urgency must be applied in order to provide a quick response, in the light of the child's best interest. Preliminary decisions must be reviewed.

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

Diligence is the quality in which commitment, care, thoroughness and converge. Juvenile-friendly justice must encompass all of these qualities, respecting the rights of children and always acting in their best interests.

One of the most important challenge of juvenile justice is to be able to act in the best interests of all children. Beside the rules, this is also a matter of persons involved.

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.

Together with action by the civil society.

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 back⁵⁸.

⁵⁸ On the topic, see the report on the application of the Law 47/2017 in the Italian regions of Sicilia, Puglia, Marche and Liguria in the year 2021, available at <https://www.defenceforchildren.it/it/news-327/la-legge-47-2017-rapporto-2022>

On this regard, the experience of **Defence for Children International - Italy** within the RoAD Project⁵⁹ may constitute a good practice which could be adopted at the institutional level. In order to support unaccompanied children and young adults in their transition towards adulthood and integration, the project was based on the social mentoring methodology for the preparation of migrant and refugee unaccompanied children to integrate in the local community through the development of voluntary mentorship relationships that support their transition to adulthood. The process of accompaniment brought together two parties who showed a joint commitment to share their experience and knowledge, with the support of a third party (professional)⁶⁰.

The importance of sound networking between the actors of the justice system

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.

The Italian juvenile justice system is characterized by the involvement of a large number of different professionals and operators, who operate at different levels and stages of the proceedings. A system characterized by the protection of the best interests of the child should involve a high level of cooperation - and above all communication - between legal practitioners.

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 to - and focused on - the rights and the needs of the child

The entire proceedings must be carried out with the child's needs and rights in mind. Any form of deprivation of a child's freedom must be a measure of last resort and of the shortest duration possible. Alternative means must be encouraged if they are in the best interests of the child. This section may concern, in particular, detention (in child institutions) and probation.

⁵⁹ Project RoAD - "Road to Adulthood – Mentorship Helping Migrant and Refugee Unaccompanied Minors Navigate Adulthood", (AMIF-2020-AG-101038507), co-funded by the European Union. More information is available at <https://www.defenceforchildren.it/en/news-329/road-road-to-adulthood>.

⁶⁰ For more details, reference is made to RoAD, *Methodological orientations for the implementation of a social mentoring project for unaccompanied minors*, available at <https://www.defenceforchildren.it/en/news-384/guidelines-for-social-mentoring>.

Best interests of the child *in abstracto*

The best interests of the child shall be the driver and inspiring principle of the juvenile justice system.

The Italian juvenile justice system pursues the best interests of (every) child by recalling and enhancing the principles of adequacy, de-stigmatization, minimum offensiveness, and detention as an *extrema ratio* (see *supra*).

The recent reform after Decreto Caivano challenges some of the above principles and, in particular, the one 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**.

In 1991, the danger of escaping was introduced in the DPR 488/1988 as a reason allowing the judge to order precautionary custody for the child a stake and, therefore, to order a restrictive measure (contrary to the principle of detention as an *extrema ratio*).

The Italian Constitutional Court (with the decision n° 359 of 26 July 2000) considered such a change contrary to the Italian Constitution and pointed out that the use of custody in prison in juvenile proceedings shall be ordered only when there are serious and mandatory investigative needs or there are serious needs for the protection of the community and further clarified that the danger of escaping shall not. Be included among the conditions allowing the custody of minors in prison.

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, paragraph 2, lit. a-bis of Presidential Decree 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 will inevitably see an increase in the numbers of children detained in IPM.

It is now too early to evaluate the concrete effects of the novelties introduced by Decreto Caivano, however, they need to be carefully monitored and considered in due time and in light with the principles which should inspire the juvenile justice system.

Best interests of the child *in concreto*

Beside the promotion and enhancement of the fundamental principles mentioned, which are the expression of the best interests of the child *in abstracto* considered, the juvenile justice legal framework also envisages rules and instruments aimed at searching for the most adequate and tailored solution for each specific child entering the system (best interests of the child *in concreto*).

Key in this respect is the right to an individual assessment.

Art. 7 of the Directive 2016/800 envisages the individual assessment as the instrument through which Member States shall ensure that the specific needs of the children concerning protection, education, training and social integration are taken into account.

In the Italian juvenile system, art. 9 of DPR 448/1988 envisages the duty on the public prosecutor and on the judge to collect elements concerning conditions, personal, familiar, social and environmental resources of the child in order to ascertain whether he/she can be considered imputable and also the degree of his/her responsibility, together with the social relevance of the conduct with the view to adopt the adequate criminal sanctions as well as to adopt civil law measures where necessary.

In ascertaining the above conditions, 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 often lawyers operating in some areas of the Italian territory – who are specialized in the field of child criminal law – knowing the importance of the individual assessment, make on their own initiative a document (called “*memoria*”), describing the relevant elements pointed out under art. 9 of DPR 488/1998. 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.

It shall be pointed out that such a document is frequently very useful, since the lawyer who is able to be trusted by the child may collect important information not only for the immediate protection of the child and of the other children who might be involved/interested, but also in order to find the best solution possible for the specific child at stake.

The professionals interviewed have pointed out a *de minimis* content that the individual assessment report should have: (i) a description of the family context, with specific indications concerning the relationship between the parents and the child; (ii) a description of the education, whether or not the child attend school regularly; (iii) a description of the extra-school activities of the child, such as for example sport activities; (iv) a description of the attitudes and passion of the child, which is a very important aspect in order to tailor the best probation or other diversion instrument. In this respect, the relationship between the lawyer and the child, whether existing and ground on reciprocal trust, is important and gives to the informal document provided by the lawyer (the so-called “*memoria*”) an added value. The lawyers who generally follow this good practice pointed out that their “*memoria*” is a very important first step to assess the situation of the child, which shall be completed by the information collected by the other actors of the juvenile justice system.

A **second good practice** which is worth mentioning is the one followed by the staff of territorial Social Service offices of the Ministry of Justice (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.

More precisely, the individual assessment report is divided in 4 parts:

1. **Legal framework of reference** in the case at stake (taking into consideration whether the child has already contact with the Social service or with the juvenile justice system)

2. **Description of the familiar, social, environmental situation** (pointing out the evolution of the child inside his/her family, at school)
3. **Observation and treatment:** this part is particularly relevant since it provides the judicial authority with information/evaluation on whether the child can be dangerous, whether the child is in conflict with the societal context where he/she lives, hypothesis on the origin and causes of his/her behaviour)
4. **Conclusions:** it is the most creative part of the report, where the staff of the Social Service office envisages the path that the child should follow, with specific proposals (and sometimes also solutions) on the project to be followed.

Both the mentioned good practices deserve further attention: it would be very helpful not only to share them, but also to favour as much as possible their application in criminal proceedings concerning children.

The “re-educational path” introduced by Caivano Decree

Among the novelties of the Caivano Decree, in light of the best interests of the child principle it is worth mentioning the re-educational path of the child under art. 27-bis DPR 448/1988, which in this report is also called **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.

Such “re-educational” program may include socially useful work as well as co-operation in activities of a non-profit nature within the local community.

On the one side, such a novelty is inspired by the principle of minimum offensiveness as well as by the principle of adequacy (best interests of the child *in abstracto*). On the other side, 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 rule states only that the child is “heard” at the moment of the adoption of the order establishing the re-educational project by the judge.

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.

Attention shall be paid to the practice following the introduction of this measure, which up to now cannot be considered.

Respecting the right to a due process

Children, like adults, must be guaranteed all the principles of due process, such as the principle of legality and proportionality, presumption of innocence, right to a fair trial, right to legal assistance, right of access to justice.

As known, the right to a due process encompasses the right of a person to be treated fairly, efficiently and effectively by the administration of justice. As well as the other rights and principles, when it comes to children, the respect of this right results particularly important not only because of the special rights that children shall enjoy in the light of their vulnerable position, but also because of the general interests in children building a relationship of trust with the institutions.

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. It is worth recalling Art. 9 of the DPR 448/1988, according to which the criminal proceedings for juveniles must adapt, both in its general conception and in its concrete application, to the juvenile's personality and educational needs.

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. Thus, if a conviction proves to be necessary, the system tries to ensure that the punishment is as short as possible and is in accordance with the needs of the child. The first important exception to the regulations for adults is contained in Art. 98 of the Criminal Code, for a person who was between fourteen and eighteen years old at the time of the offence, the sentence is reduced by up to a third. The other peculiarity of the juvenile system relates to the greater breadth of the maximum suspended prison sentence. In fact, the maximum term of imprisonment that can be conditionally suspended for minors is three years, subject to the existence of all the other conditions indicated in Art. 164 of the Criminal Code. Substitute sanctions for short prison sentences are also applicable to juveniles, with the possibility of avoiding a prison sentence of up to two years.

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 doctrine⁶¹, 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.

Other components of the right to a due process have already been analyzed in the present report, such as, for instance, the right to legal aid (see “Accessibility”, above). Here, one recent development toward a fair(er) trial in the Italian legal system shall be mentioned.

The development is the 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 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty⁶².

More precisely, as mentioned *supra* in the introduction, the Commission believed that Italy did not give express implementation to art. 5.2 of Directive 2013/48 (stating that “*If the suspect or accused person is a child, Member States shall ensure that the holder of parental responsibility of the child is informed as soon as possible of the deprivation of liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child, in which case another appropriate adult shall be informed. For the purposes of this paragraph, a person below the age of 18 years shall be considered to be a child*”).

As a matter of fact, in its original version, art. 18 of DPR 448/1988 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.

The Italian lawmaker has firstly adopted the so-called “decreto salva infrazioni” (DL 69/2023)⁶³ with a view to implement the European Union acts not yet fully implemented and avoid the continuation of the ongoing infringement procedures *vis-à-vis* the Italian government. art. 18 has been recently amended by DL 69/2023: coherently with the rules applying to unaccompanied minors (under Law 47/2017), *it is now possible to appoint an adult such as a guardian, 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.

⁶¹ G. Martiello, *Gli interventi del c.d. «Decreto-Caivano» sul diritto penale minorile, tra salvaguardia della società dal minore delinquente e tutela del fanciullo dalla società indifferente*, in *La legislazione penale*, 2024, p. 1 ff.

⁶² More detailed information on the procedure are available here <http://documenti.camera.it/dati/leg18/lavori/documentiparlamentari/IndiceETesti/073/009/00000010.pdf>.

⁶³ See art. 4 of DL 60/2023 available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2023-06-13:69>. A brief description of decreto salva infrazioni's content is provided by the Italian government at the following address: <https://www.affarieuropei.gov.it/it/ministro/comunicati-stampa/8-giu-2023-infrazioni/>

The DL 69/2023 has been converted in Law 103/2023, with few amendments which do not concern the rules at stake.

As pointed out by a judge who has been interviewed, such a guardian 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.

The judge interviewed referred to a case of robbery that occurred in Milan: there was a child who used to commit robberies on the orders of her parents. The lawyer assisting her was appointed by her parents, with a view to grant continuity of her behavior. The court found it necessary to order the suspension of parental responsibility for the parents and to appoint a guardian, who was capable of enhancing the best interests of the child *in concreto*.

Respecting the right to participate in and understand the proceedings

Children must be informed in a language they can understand about their rights and about all judgments and decisions that affect them. They must understand how the situation may or will evolve, what options they have and what the consequences will be. They have the right to be heard and to give their opinion in all matters that affect them.

Under DPR 448/1988 participation to proceedings is granted, in particular, to children and youngsters over 16 years old. It is frequently foreseen in the DPR 448/1988 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 children in detention and it resulted that information provided by police officers were scarce and inadequate⁶⁴.

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 *supra*, no specific reference to the Letter of Rights is generally made. According to the DPR 448/1088 (art. 18), the child should be conducted 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, **good practices** exist.

With specific reference to the problems concerning the language used in the juvenile justice system and the need to make it more child-friendly, an interesting project promoted by the Italian association of judges, is a

⁶⁴ See the report available here https://www.defenceforchildren.it/easyUp/file/96_dci_mlmr_eng_Y342.pdf, at p. 21.

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’ life⁶⁵.

Graphic booklet, DVD and other instrument providing relevant information with images/simple language has been realized⁶⁶.

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.

The key role of lawyers

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.

Video-recording of examination

In the majority of the cases, children interact with the juvenile justice system when the examination from the police takes place. From interviews and from the 2021 report, it resulted that the examination is generally not video-recorded and, on the contrary, a written report is provided.

Some operators have pointed out that written report is helpful and that probably the video-recording would entail an unnecessary complication of the procedure⁶⁷.

True is that Art. 9 of the Directive asks to the Member State to provide video-recording of the examination of the child. In this respect, the Italian legal order was not fully in compliance with the Directive.

However, recently, the Riforma *Cartabia* 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

The private life and personal data of children who are or have been involved in any proceedings should be protected. No information, images or data that could directly or indirectly allow the identification of the child may be disclosed. The authorities should provide limited access to records or documents, and all proceedings involving minors should take place behind closed doors.

⁶⁵ Beside the book, the project also envisages activities in schools. Further information are available here: <https://www.associazionemagistrati.it/doc/3729/arriva-leggi-qui-guida-galattica-enorme-per-adolescenti-un-programma-di-educazione-alla-legalit-rivolto-a-insegnanti-e-studenti.htm>.

⁶⁶ See M. CAPESCIOTTI, *Social Fieldwork Research (FRANET) – Procedural Safeguards for Children who are suspects or accused persons in criminal proceedings*, cit., at 24.

⁶⁷ Ibidem at 34-35.

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)⁶⁸.

Respecting the right to integrity and dignity

Children must be protected from harm, including intimidation, reprisals and secondary victimisation. They must always be treated with care, sensitivity, fairness and respect, and with full respect for their physical and psychological integrity. Special protection and care must be provided for the children in special conditions vulnerability. If deprived of their liberty, they must be separated from adults. Children must not be subject to torture or inhuman and degrading treatment or punishment. This section also concerns the condition of detention.

The general problem of resources and infrastructures

In general, from the interviews, 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 centers of first reception (CPA) just for the time necessary to find a solutions in juvenile detention facilities or community centers 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).

Although data with regard to the functioning of probation across the country are available⁶⁹, from the interviews with the operator, it resulted that a document providing a description of the ongoing probation solutions does not exist.

⁶⁸ Ibidem at 70.

⁶⁹ Reference is made in particular to statistics published by NISIDA, a centre for studies in this field, available at http://www.centrostudinisida.it/Statistica/statistiche_minori.html

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.

Separation of children/young adults from adults

In general, the Italian juvenile justice system takes the principle of the separation between children and adults very seriously and envisages different structures.

As pointed out in the introduction, 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 adults⁷⁰.

Although, as mentioned already, it is not yet possible to appreciate the impact of the above novelty in the legislative framework, it has to be carefully monitored.

Stigmatization/victimization

One of the judge interviewed pointed out that in dealing with children specific attention shall be paid to the need not to stigmatize. It was reported an example of the need to pay particular attention: in a case where a girl was stalked by the girl vis-à-vis whom she previously had an aggressive behaviour, the judge said to the girl at stake that she was not a victim, since she has been aggressive before.

Such a message should be avoided, in particular when children are at stake.

Once again, this has to do with the need to be specifically trained and skilled when dealing with children.

Dignity

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 2021⁷¹ – 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”⁷². 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 system⁷³.

⁷⁰ Reference is made to art. 10-bis of DL 121/2018.

⁷¹ M. Capesciotti, *Procedural safeguards for children who are suspects or accused persons in criminal proceedings – Italy*, 2021, research commissioned by the European Union Agency for Fundamental Rights, available at <https://fra.europa.eu/en/publication/2022/children-criminal-proceedings#country-related>.

⁷² M. Capesciotti, *Procedural safeguards for children who are suspects or accused persons in criminal proceedings – Italy*, cit., p. 80.

⁷³ M. Capesciotti, *Procedural safeguards for children who are suspects or accused persons in criminal proceedings – Italy*, cit., p. 14.

On the 22nd of April 2024, international⁷⁴ and national⁷⁵ 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 further integrated by DL 121/2018) already in compliance with EU law.

However, the analysis of the practice concerning the effective application and respect of the content of the Directive 2016/800/EU shows that steps for a full substantial implementation of its content are needed.

1. Right to information and right to a medical examination

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 examination⁷⁶.

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

With specific reference to the right to information, as pointed out in the present report, good practices exist. There is, however, a need for the dissemination of such good practices among operators and, where possible, for their mandatory application.

In relation to the right to a medical examination, no specific issues have emerged from the interviews with the professionals. A problem exists – as highlighted in the report – with regard to the age assessment procedures, in particular when foreign children are interested.

2. Impact of the recent legislative reforms (and, in particular, of Decreto Caivano)

⁷⁴ See <https://www.reuters.com/world/europe/italy-arrests-13-prison-guards-over-suspected-torture-juvenile-detainees-2024-04-22/>

⁷⁵ See <https://www.ilsole24ore.com/art/maltrattamenti-e-tortura-carcere-minorile-cesare-beccaria-milano-13-arresti-e-8-sospensioni-AFmYjxgD>.

⁷⁶ See the information available at https://ec.europa.eu/commission/presscorner/detail/en/inf_24_663.

Besides the issues which will be considered in the context the ongoing infringement procedure, two further aspects deserve specific attention and shall be monitored in the following months.

The first one is the effect of the recent legislative reforms mentioned: the reforms have changed the framework of reference and have altered the balance (reached by the previous legislative framework) between the need to tackle issues (and emergency situations) deriving from juvenile deviance and the need to protect the (procedural and substantial) rights of children. The impact of the legislative reforms needs 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 prisons⁷⁷ - has recently published its annual report on the situation of children⁷⁸ 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.

In 2024 children in detention are 500 (it appears to be the highest number in the last ten years). In January 2023 the children under remand were 243, in January 2024 the children under remand are 340.

3. Unaccompanied children in Italy

As pointed out by the professionals interviewed, one of the most relevant issue in the Italian criminal justice system is the one concerning the situation of unaccompanied children and their treatment.

Recently, the Italian republic has been condemned by the European Court of Human Rights for the conditions of the (administrative) detention in the so called "hotspots" (the centers of reception for migrant).

One of the most recent decisions (ECtHR, judgment of 23 November 2023, A.T. and others v. Italy, application n° 47287/17) concerned unaccompanied minors detained at the Taranto hotspots and points out problems which unaccompanied minors may encounter in criminal proceedings as well. More precisely, the Italian Republic has been condemned because of the violation of many provisions of the ECHR (arts. 3, 5, 13), given that the applicants children have been deprived of their liberty for one month and twenty days in poor conditions, in the absence of any clear and accessible legal basis, and that it had been impossible to challenge the lawfulness of their deprivation of liberty. Problems are not limited to administrative detention conditions, but also to the respect of the fundamental rights of children entering the criminal system. The professionals interviewed have highlighted the existence of problems concerning the right to be informed, the right to participate as well as problems in age assessment.

In general, the situation of unaccompanied children and their contact with the justice system is strictly interconnected with the implementation of the legislative measures providing measures of protection, such as the already mentioned Legge Zampa (Law 47/2017). When it comes to criminal justice, the specific situation of migrant children impacts on all the Child-Friendly Justice Principles and should be taken into

⁷⁷ For further information, see the official website of the association <https://www.antigone.it/english/who-we-are>

⁷⁸ The report, in Italian language, is available at the following link: https://www.antigone.it/upload2/uploads/docs/PROSPETTIVE%20MINORI_cartella%20stampa.pdf.

adequate consideration through the implementation of adequate protection measures. For instance, the examined issues concerning accessibility (*supra*, p. 14) result to be critical when the child does not understand the local language. At the same time, justice professionals dealing with migrant children should be adequately trained to deal with cultural differences and migration issues. An effective child participation in all the phases of the criminal proceedings cannot be guaranteed if the child is not put into the condition to communicate effectively. From the above, the importance of allocating adequate resources to cultural mediation services.

4. Suspicion of torture and ill-treatment of child detainees

As highlighted by previous researches and by the recent event that have interested the Cesare Beccaria juvenile detention centre 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 centres – in their actual conditions and availability of resources – effectively are the best place to put an adequate educational process into practice.

The results of the analysis made up to now with the purpose of writing this national report are surely helpful not only in light of a possible recast of the Directive 2016/800/EU (for which a further deliverable will be prepared by the project-team, i.e. the European Report), but also in light of possible (new) reform of the Italian juvenile criminal system also in light of the ongoing recent developments.

