

Programme "Prevention of and Fight against Crime"

European Commission – Directorate General Justice Freedom and Security



**JUST. Juvenile Justice.**  
Development of child-rights based methods of intervention to prevent juvenile crime  
and promote reintegration of young offenders.  
Italy, Greece, Romania.  
JLS/2008/ISEC/AG/097

***REPORT ON LEGISLATION AND PRACTICES  
IDENTIFIED IN ITALY USING THE  
TRANSNATIONAL FRAMEWORK OF ANALYSIS***

## *Introduction*

The present Report *aims at analyzing practices collected in the field of the Juvenile Justice System*, with a focus on prevention of recidivism and promotion of reintegration of juvenile offenders, in particular foreign children. By *practices* we mean *consolidated experiences, methods of action, projects, policies and procedures - either in the application of legislative and administrative provisions or to fill existing gaps - implemented by private and public actors*.

Practices have been analyzed according to the *child-rights transnational framework of analysis* (see Annexe 1), which was developed, after having been discussed also with children, together with all JUST partners. The framework of analysis contains a list of main standards and principles that a comprehensive policy for juvenile justice should respect, according to international and European documents. It includes, in particular, specific application indicators (developed on the basis of the same international and European documents as well as case-law) in order to provide the compliance of the practices identified with the mentioned standards and principles (*for more details see introduction annexe 1*). Depending on the indicator, the Report also includes the analysis of the main rules and dispositions developed in the mentioned field.

For the purpose of the JUST project, the identification of practices used in the fields of juvenile crime prevention and child and young offender's reintegration was carried out according to the following *methodology: analysis of statistical data; desk research; interviews with relevant stakeholders*.

**Analysis of statistical data** aimed at increasing the understanding of the phenomenon of foreign children involved in the criminal circuit and consequently bringing to light those local areas in Italy where the phenomenon appears more prevalent. The observation period was 2007 - 2009. All data analyzed has been taken from official data collected by the Ministry of Justice, Juvenile Justice Department. After the analysis of national and regional statistical data, the collection of practices has been focused on the main local areas having a more prevalent presence of foreign children in conflict with the law. The areas identified were: *Turin, Milan, Florence, Bologna, Rome, Naples, Bari, Palermo and Catania*. Analysis included: 1. movement and presence of children in IPM and CPA; 2. children referred to USSM by Judicial Authority and children for whom USSM have activated Social Services; 3. the IN and OUT *flow* of children from the Residential Communities; 4. children reported to Judicial Authorities (Prosecutor Office in the Juvenile Court) (last observation period available: 2007). The mentioned data was collected at national, macro-regional areas and partially at local level (only the main local areas identified). *Furthermore*, analysis also included the study of the "Report on foreign delinquency. Analysis of statistical data according to the nationality of the children", provided by the DGM (2001-2007) as well as the reports on statistical data provided by some LOCAL stakeholders questioned in the main areas considered.

The **desk research** was carried out using several sources: European and International Documents; National Legislation (including laws, regulations, ministerial circular letters,

etc...); Publications by relevant Authors on the matter of juvenile justice; Case-laws; Web-sites provided by Institutional stakeholders; Web-sites provided by International Organizations; Web-sites provided by relevant NGOs, Private actors, Associations, etc... active in the matter of juvenile prevention and assistance; Projects developed in the field of prevention and reintegration of juvenile offenders, carried out by Institutions, NGOs, Private Actors, etc.

**Interviews** have been carried out according to the following criteria. Preliminary: identification of relevant stakeholders and creation of a questionnaire, in collaboration with DGM. Therefore, conducting interviews in the field, when possible, and the compilation of the questionnaire by the relevant stakeholders sent by e-mail. In the first case, during the interview, the questionnaire was explained and relevant questions discussed. Following the interview all the completed questionnaires were sent to each stakeholder for checking. Sometimes it was possible to conduct the interview by way of a focus group (with the participation of different operators) in order to have a wider perspective of the stakeholders' service.

Relevant **stakeholders** were identified among people who, due to their own specific role and competence, are in contact with children in conflict with the law, in different ways and, consequently, are considered to have an elevated comprehension of the different issues of the criminal event and of the treatment of juvenile offenders. The main Stakeholders identified were: Juvenile Judicial Centres (CGM) functionaries; Juvenile Detention Centres (IPM) operators (director, educator, social worker, cultural mediator, police officer); Juvenile Classification Home (CPA) operators (director, educator, social worker, cultural mediator, and police officer); Offices of Youth Social Services (USSM) operators; Residential Community operators; Judicial Authorities; Penal mediators. The total number of stakeholders interviewed was 83. In particular: Juvenile Judicial Centres (CGM) functionaries: **n. 11**; Juvenile Detention Centres (IPM) operators (director, educator, social worker, cultural mediator, social mediator, police officer): **n. 28**; Juvenile Classification Home (CPA) operators (director, educator, social worker, cultural mediator, police officer): **n. 10**; Youth Social Service Offices (USSM) operators: **n. 17**; Residential Community operators: **n. 9**; Judicial Authorities: **n. 4**; Penal mediators: **n. 4**.

All information collected was *confirmed* by the same stakeholders and also *compared* with specific documents provided by them, when available (reports on statistical data, research, projects, etc.). Furthermore, information arising from questionnaires and documents was also *cross-checked* with results coming from desk research.

**Key-terms:**

***Children in conflict with the law.*** The laws and policies that define whether a child is formally in conflict with the law vary depending on the country context. However, by the term 'children in conflict with the law' we refer to anyone under 18 and young adults up to 21 years of age who come into contact with the justice system as a result of having committed or being suspected or accused of committing an offence.

***Recidivism.*** The legal terms of recidivism vary according to national legislation. The definition of recidivism is far from consistent. In the General Comment n. 10 of the Committee on the Rights of the Child, recidivists are children who are repeatedly in conflict

with the law. However, for the purpose of our project, by “recidivism” we mean the repetition of criminal behaviour including the widest possible range of measures of repetitive offence (further arrests, court referrals, convictions, reincarceration, etc).

## QUANTITATIVE INDICATORS

### International quantitative indicators

- a) *Children in conflict with the law.*
- b) *Children in detention*
- c) *Children in pre-sentence detention*

### *Introduction*

The Quantitative Indicators require the collection of numerical information about the Juvenile Justice System and are concerned with measuring features that can be expressed by numbers.

The analysis of the quantitative indicators was conducted over a period of observation which took place from 1<sup>st</sup> January 2007 until 31<sup>st</sup> December 2009.

The numerical data was taken from the Italian Juvenile Justice Department website of the Ministry of Justice (<http://www.giustiziaminorile.it/statistica/index.html>).

Special attention must be brought to the possible overlapping of some statistical data, creating

a slightly distorted result because the numerical collection of data is not based on a nominative criteria. For this reason, a child or adolescent repeatedly reported to the Judicial Authority during the same year is not statistically counted as one, but as the number of reports he received.

### Indicators of application

#### **a) Children in conflict with the law**

According to the framework of analysis of practices collected, the definition of ‘*children in conflict with the law*’ varies depending on the domestic law, but within this report the definition: which has been adopted refers to, “*anyone under 18 and young adults up to 21 years of age who come into contact with the justice system as a result of having committed or being suspected or accused of committing an offence*”.

This information provides a useful indicator of the level of child involvement in crime and it also provides data that can be used within the justice system services to develop and plan prevention.

For tracking trends and planning services, this indicator is of greatest use if the information is disaggregated according to factors, such as the category of offence, age and ethnicity.

For the purpose of this report of analysis of practices collected in the Italian Juvenile Justice System the quantitative indicator of the number of children in conflict with the law will be represented with the number of children reported from the Judicial Authority to the USSM. This data will include all children who came into contact, during the year, with the justice system for having committed or being suspected or accused of committing an offence which has been reported by the Judicial Authority to the USSM. In reality, the data of children in conflict with the law is bigger than the one reported below, because it also includes the minors in conflict with the law who are 'below the minimum age of criminal responsibility' plus all the minors between 14 and 17 years old who have been in contact with the Judicial Authority without having been reported to the USSM.

Unfortunately, the last statistical data on the total number of minors in conflict with the law reported to the Judicial Authority provided by the DGM is, only updated to and including the year 2007.

Just to give an example about the reality of the number of children in conflict with the law, in 2007 the total number of minors reported to the Judicial Authority was 38.193 (of whom 6.495 were below the MACR); in the same year the total number of minors reported from the Judicial Authority to USSM was 18.461.

Legenda:

I: Italian children and adolescents

F: Foreign children and adolescents

**Tab.1 Children reported to the Judicial Authority**

Year	Below 14 years of age (MACR)	Between 14- 17 years of age	TOTAL
2006	6.436	33.190	39.626
2007	6.495	<i>31.698</i>	38.193

**Tab.2 Children reported by the Judicial Authority to USSM**

	2007	2008	2009	I	F	Total	I	F	Total	
	I	F	Total							
New dossier		10298	4140	14438	11771	3805	15576	12923	3757	
New offence on already		2617	1406	4023	3472	1911	5383	3375	2084	

opened or archived dossier								
Total	<b>12915</b>	<b>5546</b>	18461	<b>15243</b>	<b>5716</b>	20959	<b>16298</b>	<b>5841</b>

### b) Children in detention

This indicator provides information about the general number of children in detention. It measures the number of all children deprived of liberty. This includes children in pre-trial, pre-sentence and post-sentence detention in any type of detention facility.

The definition of '*deprivation of liberty*' used by the UNICEF Juvenile Justice Manual is: "*A child is deprived of liberty when he or she is placed in any form of detention or imprisonment in a public or private setting, from which the child is not permitted, by order of any competent authority, to leave at will.*"

Children in detention are especially vulnerable to negative influences, including loss of liberty and separation from the usual social environment and are at a higher risk of being subjected to abuse.

International standards clearly state that the detention of children should only be used as a last resort. Measurement of the number of children in detention helps in monitoring progress towards reducing the use of deprivation of liberty, for resource allocation and administrative purposes.

Concerning the Italian Juvenile Justice System in this report, 'children in detention' will be considered as the total amount of minors, who, for any possible reason, entered in contact with IPM and CPA. Although the Italian Juvenile Justice System (DGM) does not consider Juvenile Classification Homes (CPA) as prison facilities, for the purpose of this report it will consider not only '*children in detention*' but also minors who entered in a Juvenile Classification Centre (CPA) where juveniles under provisional arrest and grant are deprived of their liberty for a maximum of 96 hours, at the most, until the validation hearing.

**Tab. 3 Children in detention (disaggregated data of CPA and IPM)**

Children in detention	2007	2008	2009						
	I	F	Total	I	F	Total	I	F	Total
CPA		1545	1840	3385	1547	1361	2908	1494	928
IPM		645	692	1337	694	653	1347	699	523
Total		<b>2190</b>	<b>2532</b>	4722	<b>2241</b>	<b>2014</b>	<b>4255</b>	<b>2193</b>	<b>1451</b>

**IPM**

Entrance Movements	2007	2008	2009	I	F	Total	I	F	Total	
	I	F	Total							
First entrance		545	605		1150	545	558	1103	535	412
Re-entrance		89	32		121	128	55	183	147	71
Entrance from transfer		11	55		66	21	40	61	17	40
<b>Total</b>		<b>645</b>	<b>692</b>		1337	<b>694</b>	<b>653</b>	1347	<b>699</b>	<b>523</b>

### CPA

Entrance Movements	2007	2008	2009	I	F	Total	I	F	Total	
	I	F	Total							
Accompanied		19	142		161	24	120	144	24	65
Arrested		1444	1632		3076	1462	1179	2641	1409	818
Apprehended		82	66		148	61	62	123	61	45
<b>Total</b>		<b>1545</b>	<b>1840</b>		3385	<b>1547</b>	<b>1361</b>	2908	<b>1494</b>	<b>928</b>

### c) Children in pre-trial detention

This indicator measures only the number of children who are deprived of their liberty before being sentenced by a competent authority. 'Children in re-trial or pre-sentence detention' are considered those who have received a custodial measure after the validation hearing, this means, children who are deprived of their liberty and are awaiting trial and those who have been convicted but are detained whilst awaiting sentencing. The indicator also includes children deprived of their liberty who are awaiting the outcome of an appeal against a sentence.

International standards specify that the detention pending trial shall only be used as a last resort; therefore this indicator is essential in order to ensure that pre-trial detention is used appropriately.

As tab.4 shows, the number of children in pre-trial detention describes all the children who entered in IPM for a non post-sentence detention, dividing them according to the reason of the pre-trial entrance.

**Tab.4 Children in pre-trial detention in IPM**

Children in pre-trial detention in IPM	2007	2008	2009						
	I	F	Total	I	F	Total	I	F	Total
New entrances									
From freedom		208	203	411	251	188	439	203	129
From CPA		280	368	648	228	305	533	233	199
From home confinement		2	8	10	2	5	7	--	1
From placement in Community		44	19	63	30	21	51	46	15
Re-entrances									
From home confinement		1	2	3	6	4	10	8	3
From placement in Community		87	28	115	116	47	163	121	62
Entrances from transfer									
From adult prisons		11	55	66	21	40	61	17	40
<b>Total</b>		<b>633</b>	<b>683</b>	1316	<b>654</b>	<b>610</b>	1264	<b>628</b>	<b>449</b>

The analysis of tab.5 shows an interesting data: the majority of children deprived of their liberty in IPM are in pre-trial detention, not in a post-sentence detention.



It has to be considered that the total number of children in pre-trial detention will not necessarily be sentenced to detention, because some could be acquitted during the criminal proceeding.

**Tab.5 Presences in IPM of children at the end of the year**

	2007	2008	2009	I	F	Total	I	F	Total	
	I		F							
In pre- trial detention	173		200	373	182	141	323	144	103	
In post-sentence detention	42		31	73	92	55	147	141	78	
Total	215		231	446	274	196	470	285	181	

**REMARKS**

- As stressed in the introduction of this chapter, special attention must be given to the possible overlapping of statistical data.
- The quantitative indicator of the total number of *children in conflict with the law*, during the observation period, underlines a constant growth. But the analysis of the disaggregated data on the foreigner minors shows that it has remained almost the same number during the period 2007-2009. The cause of this growth is due to the increased number of Italian minors reported by the Judicial Authority to the USSM.
- The indicator of *children in detention* shows a constant decrease from 2007 to 2009, even if the number of Italian minors in detention is almost the same every year. The cause of this data is due to a consistent decrease of foreign minors in detention (from 53,6% of foreign minors in 2007 to 39,8% in 2009). Even considering the disaggregating data of IPM and CPA the trend doesn't change.
- -Over 60% of children in detention are deprived of their liberty in CPA, where as minors remain only for a maximum of 96 hours. This means that after the validation hearing most children do not have a custodial measure which deprives them of their liberty.
- The total number of *children in pre-trial detention* slightly decreased during the observation period. But analyzing the disaggregated data on Italian and foreign children it is possible to observe that after 2008 the number of foreigners in pre-trial detention is less than the Italians. Almost 50% of the pre-trial detention measures come from a custodial measure inflicted after the validation hearing in CPA. This follows the pre-trial detention from freedom, the consequence being a warrant of arrest.

- The data on the *entrance of minors in IPM from adult prisons* is interesting. The majority of the minors transferred from adult prisons are foreigners. This means that the children's age assessment frequently failed, with a consequent violation of the principle of the separation of children being deprived of their liberty by adults.

## CORE ELEMENT n. 1: Prevention of Juvenile Delinquency

### International standard

Prevention plans **should be a key-part of** any child justice programme. *“The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging them in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young people can develop non criminogenic attitudes”* PJD, Art. 1;

*Member States shall endeavour to develop conditions that will ensure for the juvenile **a meaningful life in the community, which, during that period in life when he or she is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible*** [Beijing Rules, Article 1(2)]

***Full mobilization of all possible resources** to reduce the intervention by the law and to deal effectively with children in conflict with the law* (Beijing Rules, Art. 1.2; PJD, Art. 45 ss;)

### Introduction

According to General Comment n. 10 “a comprehensive policy for juvenile justice must deal with (between its core elements) the prevention of juvenile delinquency”. Children and adolescents “should be prepared to live individual and responsible lives in a free society (preamble, and article 29). In this regard, parents are responsible for providing for their child, in a manner consistent with his/her evolving capacities, appropriate direction and guidance in the exercise of his/her rights as recognized by the Convention”.

In particular, emphasis should be given to the prevention policies that facilitate the successful socialization and integration of all children. “This means the use of *inter alia* prevention programmes which should focus on support for particularly vulnerable families, the involvement of schools in teaching basic values (including information regarding the rights and responsibilities of children and parents under the law), and extending special care and attention to young persons at risk”.

### Indicators of application

#### Existence of preventive policies including:

- a) assistance is provided **to families in terms of care and protection, when ensuring the physical well-being of children** (PJD, Art. 12)
- b) special attention is given to families **affected by economic, social and cultural problems** (PJD, Art. 13)

c) specific measures of assistance are ensured to **children at social risk**; (PJD, Art. 33)

From a general point of view, Italian social policies provide a set of legislative measures to ensure assistance and protection for families and children.

According to Law n. 328/2000, "Framework Law for the implementation of an integrated system of intervention and social services" (also including interventions in favour of children), an integrated system of social services has been developed, and will be funded by a National Fund for Social Policies. The allocated budget, however, will be progressively reduced over the next years, as denounced by the Italian NGO Group for the CRC in its last report (*I diritti dell'infanzia e dell'adolescenza in Italia. 2° Rapporto Supplementare alle Nazioni Unite sul monitoraggio della Convenzione sui diritti dell'infanzia e dell'adolescenza in Italia Novembre 2009*).

With the coming into force of Law 328/2000, 70% of the National Fund for Childhood established by Law n. 285/1997 was incorporated into the general National Fund for Social Policies. The remaining part of the National Fund for Childhood, on the other hand, is allocated to only 15 specific Metropolitan areas which - as pointed out by the Italian NGOs Group for the CRC - could create significant differences between these Metropolitan areas and the rest of the country.

Other special funds having a positive impact on children's and families' policies are: Fund for Family Policies, including its national plan; Fund for the social inclusion of migrants; Fund for juvenile policies; Special Plan for the development of an integrated system of social-educative services; etc.

All of these funds will in any case be reduced as from 2010. In particular, the Fund for the social inclusion of migrants, which identified and allocated special resources for children and adolescents belonging to vulnerable groups (such as migrant, Roma and unaccompanied children and children of second generation migrants) was recently abolished. In its last report, Italian NGOs Group for the CRC also criticised the reduction of resources distributed by the local governments.

Finally, it should also be mentioned that Law n. 216/1991, providing rules on "early interventions for children at risk of involvement in criminal activities", which establishes a special fund for social interventions and encourages: the promotion of residential care facilities for children temporarily removed from their families; the implementation of interventions to support families; projects to be implemented in very degraded areas; networking etc. In actual fact, it would appear that the special fund has not been financed, as required by the law.

Apart from the above-mentioned financial resources, in the field of primary prevention, a fundamental role is played by the Social Services of the Local Authorities. The specific interventions and actions developed and implemented by them differ from place to place. In general, these actions should include: social services for families and children; financial assistance for families and children facing social and financial hardship; home care; services of local educational, etc.. For example, the Municipality of Rome's Social Services provides the following assistance: an info point regarding social services for all citizens; a specific service for families and children; family support centres; financial assistance for families and children (including work-grants; vocational training; exemptions of payment for educational services such as schools, sports, cafeterias; etc...); local educational services; career orientated services; reception in residential facilities (such as educational communities, group

apartments, etc.)<sup>1</sup>. The Municipality of Turin's Social Services also include a Centre for Conflict Resolution.

Nevertheless, it is quite difficult to monitor and evaluate the effectiveness of the policies and interventions developed in the practices.

Generally, more efforts are required in the field of prevention. Many operators who were interviewed emphasized the lack of effective actions and interventions, especially in favour of Roma children's families, both in terms of economic and social support and in terms of material assistance. This is essentially due to the lack of adequate financial and human resources, despite the many initiatives developed by private and public actors. According to the document "Submission by the Italian NGOs Group for the CRC related to Italy for Universal Periodic Review 7th session, Children's Rights in Italy: Key Issues of Concern", "the lack of suitable planning of policies to promote and safeguard the rights of the Roma and Sinti, of both Italian and foreign nationality, can also be attributed to the failure to allocate funds on a regular basis in order to adopt measures aimed at favouring their integration, such as cultural mediation in schools using suitably trained mediators".

#### *Focus on interviews*

"The focus group unanimously agrees that the investments dedicated to prevention are not enough ...street outreach units need more staff" (*IPM, Turin*).

"..it would be most desirable to implement external interventions especially for ROMA children and families, such as educational courses on sanitary issues and birth control..." (*CPA, Rome*).

"Interventions on ROMA families are almost impossible...sometimes, the best way to allow an effective reintegration of the child is to remove him/her from his/her family environment. Actions with the Roma community are complex also because they are a close-knit group so that it is almost impossible, on the one hand, to provide the family with information and, on the other hand, to allow the child to get out of a way of life that penalizes him" (*IPM, Naples*)

"Cultural mediation also with Roma families would be a useful intervention to implement..." (*CPA and Residential Community of Naples*)

Some good practices have been developed, for example, providing the creation of *ad hoc* Offices for foreign and Roma children (such as in Turin) or through the development of specific interventions.

#### *Focus on good practices*

In Rome, the Lazio *CGM* ran a project "**Foreigners forever?**", implemented by the ERMES Association. The project aims at promoting the continuity and further implementation of social mediation activities begun by

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Save the Children Italy within the CPA, and extended to children in the “external criminal area” in particular by way of family psychotherapy for Roma children and their families.

**Roma settlement in Via Germagnano (Turin)** “Every Wednesday and Thursday, volunteers and educators work at the settlement in Via Germagnano in Turin, where regular recreational activities are conducted. . People living in the camp are provided with information regarding health needs, work and, the role of the ‘ROMA Office of the Municipality of Turin’, etc... If necessary, people are accompanied to medical centres and also, assisted for school enrollment... Specific interventions are created for them outside the Roma settlement.”(*Oratorio San Luigi, Turin*).

**d) ensured access to qualitative public education** (PJD Art. 20);

Concerning the access to public education, statistical data shows that the proportion of foreign children and adolescents, in total, enrolled in the Italian school system has considerably increased in recent years. In 2008/2009 school students without Italian citizenship were 574.133. Analysis of available data shows that the percentage of schools with foreign students is also increasing (from 67.1% in 2006/2007 to 71.3% in 2007/2008). Many of these are primary schools and are located in the North-east of Italy. Regarding second generation children, analysis of statistical data shows that pupils and students born in Italy without Italian citizenship are 34.7%. Statistical data also shows a reduction of the rate of early school leavers in the last four years (from 22.9% to 19.7%).

Recently, the Italian Government adopted several policies on schools to promote integration, inter-cultural dialogue and education, both through the development of the Guidelines for the reception and integration of foreign students in 2005, and through the creation of specific institutional structures such as the National Commission for inter-cultural education (within the Ministry of Education) in December 1999; the Office for the integration of foreign students in June 2004; and the Observatory for the integration of foreign students in 2006.

An important reform in the context of promotion of access to education is Law n. 139/2007, establishing compulsory schooling up to the age of 16.

However, particularly since 2008, there are some critical aspects, which have been reported, regarding the implementation of policies for the integration and promotion of inter-culturalism. For example, regarding financial resources, the National Fund for the Social Inclusion of Immigrants, which also made available €2,000,000 for the integration of foreign students, was abolished.

Furthermore, the Italian Chamber of Deputies presented the Motion n. 1-00033 (in 2008), asking the Government to review the actual system of access to education for foreign students and to create “inclusion classes”. This motion has been denounced as discriminatory and does not guarantee the integration of foreign children. On the contrary, children should be able to attend school, where possible, from the beginning of the school year, or at any time during the year, with the provision of an intensive Italian language course with specialized teachers and/or the support of cultural mediators, without placing foreign children in special “exclusion classes”.

Concerning the access of ROMA children, whether Italian or not, it is difficult to estimate the effective access due to the lack of specific data on the matter.

Furthermore, it should be mentioned that a recent internal circular (n. 2.10) by the Ministry of Education, established that the number of foreign children in each class cannot exceed 30% of the total number of students. This limitation, which will be applied in the the coming school year 2010-2011, and could be considered as discriminatory and contrary to European and Italian legislation, in particular the European Union directive no. 243/2000

and Art. 43 of the Italian Unified Code on Immigration. Discriminatory initiatives have also emerged in practice, for example, the municipality of Brescia was condemned by Judicial Authorities for having discriminated against foreign pupils in a public call for the assignment of scholarships.

Finally, some problems may arise from the application of the recent Law n. 94/2009, Security Act, which could jeopardize effective access to the educational system for foreign children belonging to families living illegally in Italy. Law no. 94/2000, in fact, introduces the crime of “entering and remaining illegally” in Italy. This could increase the likelihood that parents who are not legally resident in Italy will avoid using public facilities or approaching institutions, for fear of being identified as illegal immigrants and reported to the authorities.

**e) awareness-raising activities are conducted through media work (PJD, Art. 40 ss.);**

Practices collected show a lack of awareness raising campaigns aimed at preventing juvenile delinquency. The only ones carried out concern the prevention of bullying, many of them promoted and circulated by Governmental Institutions (such as the Municipality of Rome, Ministry of Education, Valle d'Aosta Region, etc.) or by NGOs (Save the Children Italy, Telefono Azzurro , etc...).

**f) research activity and analysis** are implemented to guarantee the capacity to evaluate the risk of recidivism

Practices identified and information collected confirm that the number of researches and studies in the field of prevention of recidivism are currently very few. Generally, this is due to the difficulty in obtaining reliable and comparable data (due to the diversity of the samples by age and gravity of the crime, times needed for follow-up and the criteria for a clear definition of recidivism, such as new arrest, new conviction, the alias used by migrant children, the lack of coordinating information between adult and juvenile system, etc.). Nevertheless, many of the stakeholders interviewed emphasized the importance of such a study in order to monitor the effectiveness of the interventions implemented on children.

***Focus on interviews***

“Emilia-Romagna CGM has not developed any research on recidivism. Generally, this is due to the difficulty in identifying criteria and monitoring the location of children, because children are sometimes moved to different territories, making it impossible to have full knowledge of their records. ... Moreover, given the lack of coordination between the Juvenile Justice System and the ordinary justice system, when children become adults, it is not easy to keep track of their location.” (*CGM Bologna*).

“Since 2007, the Turin CPA developed an internal system for monitoring recidivism, taking into account any new entry into the Centre and calculating an indicator of recidivism. Statistics are developed considering three groups of children: Italian, foreign and Roma children.

Furthermore, the Turin CPA collects data concerning: precautionary measures applied, ethnic group and average length of stay.

In 2009, for example, the indicator of recidivism concerning the total number of children was around 32%. In particular, taking into account each single group, the indicator is: approx. 7% (Italian children), 31% (foreign children) and 57% (Roma children)”. (*CPA, Turin*)

Some very interesting research has been conducted recently, by public and private actors.

***Focus on good practices***

“*STOP- CAR. STOP THE DEVIANT CAREERS OF JUVENILE CRIMINALS*”, developed by the *Italian Juvenile Justice Department*, in partnership with Romania, Portugal and Germany, in the context of AGIS Programme. The research represents the first qualitative and quantitative study on the phenomenon of

recidivism in juvenile justice (before this there are no available statistics). It aims at monitoring and identifying which operational strategies are most effective for lowering the number of recidivist children. It is important to know what kind of recidivism connotes the deviant actions of adolescents, if there is an escalation of crime in terms of quality and quantity. To prevent its renewal it is necessary to validate the current educational programmes, to recognize which activities are applied in Juvenile Service Institutes and in the Communities for children in Italy and in the different partners' countries. The main activities are: acquisition of data on the recidivism of children between 14 and 18 years of age in the countries involved; a comparative research between countries on patterns of rehabilitative treatment is in use and the results produced; a direct involvement of the protagonists of recidivism through the focus achieved with children and operators and meaningful exchange of practices at a transnational level including the production of a publication.

***ASSESSMENT ON THE RISK OF RECIDIVISM IN JUVENILE JUSTICE, led by Dr. Alfio***

***Maggiolini and other Authors.*** This research provides a structured evaluation table of the risk of recidivism of a child that can be a useful tool for the development of a specific programme of intervention for children involved in a criminal circuit. The evaluation table has been used to predict recidivism. It includes information about "criminal records and institutional intervention" (such as: number of previous charges; previous protective measures; response to previous protective measures e.g. probation, custody, etc.; previous experience with interventions by social services), as well as "changing measures" (such as cultural integration; commitment to school or work; friends, peer group; discipline provided by parents or other educational figures; family support and educational skills). Basically, an assessment based on a child's criminal record (in particular the number of previous offences) is quite effective, and therefore allows for more informed decisions to be taken by relevant judicial bodies in relation to the risk of recidivism. The research results are limited because of the reduced sample involved in the follow-up and because of the limited scope of the evaluation table. At any rate, the table allows for a quick but detailed compilation, which is an important prerequisite for its use in regular work of the Juvenile Justice Services.

The tool may be partly reformulated and used at national level by juvenile justice service operators, being particularly useful at the moment of a child's entry into the CPA, so as to verify the percentages of recidivism over a longer period of time.

**g) existence of a national plan for the prevention of child involvement in crime**

At the moment there is no national plan for the prevention of child involvement in crime.

The only strategic document developed by the Italian Government is the "National Action Plan to promote the protection of child rights" introduced by Law 451/1997, a two-year instrument by means of which the Government should define the framework of reference for national policies concerning children and adolescents, setting programme priorities, identifying funds and resources, promoting the protection of child rights in the world and coordinating government, regional and local authorities.

The plan includes a specific section concerning the fight against juvenile delinquency and deviance, in which, after a rapid examination of the main characteristics of juvenile delinquents and delinquency in Italy, emphasis is laid on the importance of implementing an adequate knowledge of the phenomena of juvenile crime in every Italian regional area. The National Action Plan also promotes the opportunity of intensifying actions and interventions involving children's families, new interventions aimed at reforming criminal law in particular and the research and testing of new alternative instruments to the ordinary proceedings, such as conciliation and penal mediation.



## CORE ELEMENT n. 2: Criminal Responsibility

### International standard

*The minimum age of criminal responsibility (MACR) must correspond to the emotional, mental and intellectual maturity of the child. (Beijing rules, Art. 4)*

*A minimum age below 12 years is not considered to be an internationally acceptable level. An age between 14 and 16 shall be considered as fully respecting the child's human rights and legal safeguards.*

*If there is **no proof of age and it cannot be established** that the child is at or above the MACR, the **child shall not be held criminally responsible**;*

*If there is no proof of age the child is entitled to a reliable medical or social investigation that may establish his/ her age and, **in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt***

### Introduction

In accordance with the Art. 4 of the United Nations Standard Minimum Rules for the Administration for Juvenile Justice (The Beijing Rules) *4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.*

From the Official UN Commentary the following principle emerges: the minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no minimum age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, full legal age etc.). Efforts should therefore be made to agree on a reasonable minimum age limit that is internationally acceptable.

### Indicators of application

#### **a) the MACR is between 14 and 16 years old;**

According to Article 97 of the Italian Criminal Code, a person who has not reached the age of 14 years at the moment when he or she has committed a crime, cannot be punished; he/she will be considered not responsible and will be automatically acquitted. Article 98, sub-section 1, established that, *vice versa*, a person who has reached the age of 14 but not 18 at the time of committing a crime and who has the capacity to understand and discern must



be punished, but the punishment is limited. These two conditions must both be present. The capacity to understand and discern must be specifically ascertained by the judicial authority in each case. In fact, juvenile criminal proceedings are very different to adult ones. The main difference is that the Juvenile Court has not only to ascertain whether indeed the juvenile committed the offence but also whether he/she was actually aware it was an offence. The child's personality and family environment are thoroughly investigated for that purpose by Juvenile Justice Social Services.

Consequently, age assessment plays a strategic role in both the consideration of criminal responsibility and in the application – where relevant – of certain specific provisions. For example, according to article 303 of the Criminal Procedure Code, the duration of pre-trial detention shall be reduced by half for the crimes committed by a juvenile between 16-18 years and by two thirds for those committed by children between 14-16 from the moment of arrest or capture. At any rate, once found responsible for a crime, the juvenile may benefit from a lesser punishment.

Article 24 of the Legislative Decree n° 272 of 28 July 1989 (Transitional provisions for the implementation and coordination of the Presidential Decree No 448 of 22 September 1988, containing rules on criminal proceedings against young offenders) states that: a) all precautionary and alternative measures, substitute penalties, custodial sentences and security measures established for juveniles are also to be applied to defendants who have turned 18, but who are not yet 21, while their personal freedom is being restrained; b) the above is true also when such orders shall be enforced after a juvenile turns 18; c) the juvenile legislator intended to prevent juvenile perpetrators of lesser crimes from being confined in adult prisons, at least up to 21 years of age.

*The Italian system respects the indicator.*

**b) a close relationship between MACR and emotional, mental and intellectual maturity is ensured**

The concept of the capacity to understand and discern shall be implemented by the concept of “maturity” processed by psychological science. The two concepts do not always coincide. Mental and psychological maturity depend on various criteria such as the native and family environment, access to education, different experiences and the social context in which the juvenile is living etc...

Intellectual development alone is therefore not sufficient. It is also necessary that the juvenile has a high level of understanding of his/her behaviour. Basically, the juvenile should be able to consider the reasons for their action in the light of their own free will, their moral and ethic character and also the likely consequences of the action. The type of each crime must therefore be examined in the light of the juvenile's particular personality.

Article 9 d.p.r. 448/88 prescribes to prosecutors and judges to collect elements regarding personal, family and social conditions of the young defendant. This normally requires magistrates to request a personality assessment from social services regarding the character, personality and background of the juvenile. The results of such an inquiry will be used to evaluate the social relevance of criminal behaviour, the minor's awareness of it and his/her degree of maturity and responsibility. Moreover, on the grounds of these elements, the judge will adopt the most suitable solutions in the minor's best interest.

*The Italian system respects the indicator.*

**c) should there be any doubt regarding the child's age with respect to the MACR, he/she will not be criminally responsible: e) in case of conflict or inconclusive evidence concerning the MACR the principle of the benefit of the doubt is applied.**

According to the Italian provisions article 67 code of criminal proceeding "at every stage and level of the proceedings, when there is reason to believe that the accused is a minor, the court shall forward the documents to the Public Prosecutor at the Juvenile Court" and article 8 dpr 448/88 concerning the determination of the child's age, establishes the following: "when the age of the young offender is unknown the judge may order an expert to ascertain same, also *ex officio*. Should the expert be unable to ascertain the child's minority, it shall be presumed for all intents and purposes, that he/she is not of the MACR. Provisions set forth in parts 1 and 2 shall also be applied when there are reasons to believe the defendant is under 14". Article 8 clearly affirms the intention of the legislator to guarantee presumption of minority and the application of the guarantee provided by the national and international instruments and provisions.

The indicators c) and e) are subject to a different interpretation and application if evaluated regarding the particular condition of foreign children in conflict with law.

As already mentioned, the investigation of criminal responsibility implies the assessment of the chronological age of the minor and his/her capacity to understand and discern.

The age assessment procedure, as indicated in the following paragraph, should be carried out using a combination or methods to include physical development and psychological, environmental and cultural factors.

From the practices taken into consideration, however, it is apparent that the current methods do not respect the above criteria.

In fact, as specified later, age assessment is usually carried out by means of an X-Ray which affects both the assessment of criminal responsibility and the application and guarantee of the principle of the benefit of the doubt.

*Therefore the indicators – although specifically provided by article 8 DPR 448/88 – are not fully respected in the practices thereby risking incomplete and not always reliable age assessment.*

**d) The age assessment procedure is the result of a combination of methods devised to include physical developmental and psychological, environmental and cultural factors;**

To be useful in court, age estimates of criminal offenders must meet particularly strict validity standards. Inaccurate age assessments can result in children being subjected to heavy sentences in violation of child rights.

To counteract this, a number of relevant general principles regarding the age assessment procedure should be adopted, as follows:

First of all, the age assessment should be carried out in the best interests of the minor in respect of his/her own rights and dignity. Secondly, if there is no proof of age, the child should not be held criminally responsible and in the case of conflict or inconclusive evidence, the child should have the right to the rule of the benefit of the doubt. Therefore, in the event of persisting uncertainty regarding the age of the individual, he/she should be accorded the benefit of the doubt, thereby ensuring, should he/she in effect be a child, they will be treated as such.

Criteria for age estimation should be developed with special attention to sensitive legal and ethical implications and should therefore be carried out on the basis of a complete anamnesis, in the presence of a cultural mediator, and include a physical examination, bone

assessment and take into account also the psychological, environmental and cultural factors relating to the minor.

Article 349 of the penal criminal proceeding (identification of the person investigated) states that police officers may, if necessary, use digital fingerprinting, photographic, anthropometric and other means, to identify the suspect.

Practices taken into consideration revealed that the age assessment method generally adopted is an X-ray of the left wrist and/or the orthopantomogram test. Medical experts in the field maintain the X-ray method is unreliable insofar as there can be an error margin of anything up to +/- 2 years, according to the nationality, nutrition and circumstances of the minor. It is consequently of prime importance that age assessment should be carried out on the basis of a complete anamnesis. Moreover, a study of practices in use has revealed the following critical situations:

- medical reports do not state the error margins;
- the children do not receive the medical reports;
- the children are not asked for their consent to the tests/examinations;
- the cultural mediator is not present during the tests/examinations.

*Finally, and most importantly, that the age assessment procedure does not guarantee the combination method mentioned above, (i.e. a complete anamnesis taking into consideration physical development and psychological, environmental and cultural factors), thereby disregarding the indicator of criminal responsibility and not guaranteeing the principle of the benefit of the doubt. .*

#### ***Focus on the interviews***

“...the age assessment procedure depends on the police and is generally carried out by means of an X-ray of the left wrist, which we maintain however, is unreliable, particularly where different ethnic groups are concerned. Sometimes the public prosecutor’s office may decide to request a specific test” **(CPA, Turin)**.

“The power of attorney informs the Judge of the Guardianship of a problem concerning the identity and the age of the children in conflict with the law. Should there be any doubt concerning age, the person is treated as a minor.... it is deemed very dangerous to consider adults and minors on the same level in a penal context.....”

**(CGM, Turin)**

“X-Rays are normally used but these are unreliable. Orthopantomograms are more expensive and can only be used in the case of serious crimes. These also carry certain health risks, so we try to avoid requesting them. ...”

**(Judge, Turin)**

“In the last 4 years, if the police have had doubts concerning age, they have requested an age assessment procedure from the Prosecutor. This normally involves an X-ray of the left wrist. We would like to emphasize the wide margin of error of this method....at the moment of entry to the CPA the individual undergoes another examination and if there are further doubts, the Prosecutor has the authority to make the necessary decisions...” **(CPA Bologna)**

“Concerning the age assessment procedure, this Institute uses the guidelines published by UE FASE (European school of forensic anthropological). In accordance with the guidelines, the age assessment is carried out by means of an X-ray on the left wrist and an orthopantomogram. The results of both tests are matched to obtain a reliable result. In particular cases, an X-ray of the thigh-bone is used (for women this procedure is a priority for testing pregnancy). The operators do not normally ask the minors for their consent, nor give them the medical reports, but they always inform them about the type of test and the reason for it. The medical report does not indicate the age but generally that *the age is compatible with a minor age*. In cases where an age assessment is requested by the Judge, it is possible to arrange a complete examination that includes the presence of a cultural mediator, and a full report on the minor’s medical and personal history. It is always better if the tests are done in the Institute of Legal Medicine and not in the A & E, (Accident & Emergency). Moreover, in our opinion, the X-rays must be read by very expert personnel able to distinguish the different growth/development rates of minors from various ethnic groups.” **(Institute of legal medicine, Bari)**

“The age assessment is carried out by means of an X-ray of the left wrist but, more frequently than before, the children, especially second-generation, have a document or a certificate...” **(CPA, Florence)**

“The age assessment is carried out by means of an X-ray of the left wrist, and the medical report is sent to the Public Prosecutor...in the case of doubt the judge may request further tests ...in particular for Roma children ...who are sometimes under 14 and not imputable..” (*CPA Nisida*)

### CORE ELEMENT n. 3: Judicial Process

#### International standard

*“right to a fair process”*

#### *Introduction*

According to article 40 of the CRC, the State parties have to recognize a *list of guarantees and rights* to every child “alleged as, accused of, or recognized as having infringed the penal law” in order to ensure him/her a *fair treatment and trial*.

The right to a fair trial is established in many existing human rights instruments too (first of all by the Art. 6 of the ECHR; ...) and it is also affirmed in another fundamental document concerning the administration of juvenile justice, “the Beijing Rules”, which especially recognizes as relevant guarantees and elements: the presumption of innocence, the presentation and examination of witnesses, the common legal defenses, the right to remain silent, the right to have the last word in a hearing, the right to appeal. The UN Rules also emphasize the need to be adjudicated by a **competent authority**.

Furthermore, the Committee for child rights (General Comment No. 10 (2007, Section 40) also emphasizes that “a key condition for a **proper and effective implementation of these rights and guarantees** is the *quality of persons involved in the administration of juvenile justice*”. These professionals should be trained in a systematic and on-going manner and also be informed regarding the child and the adolescent’s physical, psychological, mental and social development as well as the special needs of the most vulnerable children such as street children, refugee and asylum seeking children and children belonging to racial, ethnic, religious, linguistic or other groups.

State parties should promote the establishment of *laws, procedures, authorities and institutions specifically applicable to children in conflict with penal law*. This principle is also detailed in the Beijing Rules, in which the State parties shall make efforts to establish, in their respective national jurisdictions, “a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice...”.

In line with article 14 (3) (g) of ICCPR, CRC requires that a child not be compelled to give testimony or to confess or acknowledge guilt, making it clear that torture, cruel, inhuman or degrading treatment in order to extract an admission or a confession constitutes a grave

violation of the rights of the child (Art. 37 (a) of CRC) and is wholly unacceptable. No such admission or confession can be admissible as evidence (Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

### **Indicators of application**

a) **existence of a specialized juvenile justice legal system**

b) **existence of a specialized juvenile justice court**

According to international instruments, Italy established laws, procedures, authorities and institutions specifically applicable to children in conflict with the law.

Firstly, the Italian Juvenile Justice System consists of administrative offices. These include both central bodies, such as the Department for Juvenile Justice (*DGM*) - a branch of the Italian Ministry of Justice -, and local bodies, such as the local Juvenile Justice Centres (*C.G.M.*) and Juvenile Justice Services: the Juvenile Detention Centres (*I.P.M.*), the Juvenile Classification Homes (*C.P.A.*), the Offices of Youth Social Service (*U.S.S.M.*) and the Residential Communities. The personnel involved in Juvenile Justice Service's activities comprise various types of professionals: educators, penitentiary police and social workers.

Secondly, the Italian Juvenile Justice System is made up of special judicial authorities and bodies dealing with juvenile matters. First of all, the Juvenile Courts set up under Royal Decree N° 1404 of 20 July 1934 and amended in subsequent years, in particular by Act. N° 888 of 25 July 1956 and Act N° 354 of 25 July 1975 as well as the Presidential Decree n° 448 of 22 September 1988. The jurisdiction of the Juvenile Courts covers three sectors: civil, criminal and administrative each having 4 members: a President (a Magistrate from an Appellate Court), a Judge (from a Court) and two Lay Judges (a female and a male expert in criminology, psychology and pedagogy) who act as assistants and consultants. The Lay Judges are designated by the Supreme Magistrates Council according to their skills on juvenile matters and the operation of the Juvenile Justice System. Currently, there are 29 Juvenile Courts in Italy.

Secondly, other judicial bodies are: the State Attorney's Office, the Judge for pre-trial investigations, the Juvenile Division of the Court of Appeal, the Prosecutor General with the Court of Appeal, and the Juvenile Supervising Judge. Jurisdiction of the juvenile courts is limited to proceedings related to juveniles indicted of criminal offences who are at least 14 years old. The Juvenile Court is responsible for preventative measures regarding socially dangerous juveniles aged 14 and over.

Juvenile criminal proceedings are ruled by the Pres. Dec. n° 448 of 22 September 1988 (DPR), Ratification of provisions pertaining to juvenile criminal proceedings. According to Sec. 1 of the DPR 448/'88, the rules therein established are integrated with the ordinary Code of Criminal Procedure.

DPR includes "some essential tenets resulting from the most recent observations made in Italy, also on the ground of international experiences, concerning the treatment of juvenile deviance": the **principle of minimum intervention by criminal justice**, whereby judicial authorities aim at reducing the involvement of children in criminal proceedings as far as possible in view of the averred risk - in terms of structural deviance - inherent in the relationship between children and criminal justice; the **principle of reducing imprisonment**, whereby juvenile offenders are increasingly addressed to reintegrate into society through non-custodian facilities; the provision of **psychological and emotional**

**support** granted by parents or other suitable persons (chosen by the child and admitted by the Judicial Authority) as well as provision of **assistance** granted by **the Juvenile Services and welfare Services** *at every stage of the proceedings, The presence of these individuals (parents or other suitable persons and social Services) is granted unless believed not to be in the best interests of the child; the assistance and representation by a legal counsel; the notice of indictment and other documents* also to the holders of parental responsibility; the compulsory and informal **investigation of the child's personality** and his/her personal, family and environmental circumstances; the **inadmissibility of civil actions**; the **prohibition of any publication and disclosure** (by any means) of **information or images** which could help identify any child whatsoever involved in proceedings.

**In every criminal proceeding the following international standards are guaranteed**

**a) the presumption of innocence:**

According to Art. 27, co. 2 of the Italian Constitution “the accused is not considered guilty until a final sentence”.

**b) the charges are notified to the children**

According to Article 7 of the DPR 488/'88 “the notice of indictment and the writ fixing the relevant hearing shall also be served on the *holder of parental responsibility*, under penalty of nullity”.

Generally, according to the code of criminal procedure (Art. 369 c.p.p.) the notice of indictment (safeguard information) aims to inform interested parties that a criminal proceeding has begun. It also specifies the offence with which the juvenile is charged, the date and the place in which the crime was committed and the faculty to be assisted by a counsel. This notice is only sent out when an act has to be made by a judicial authority in the compulsory presence of a lawyer. Compared to the criminal proceeding for adults, the juvenile criminal proceeding provides the obligation “to notify the notice of indictment also to the holder of parental responsibility, under penalty of nullity”. This means that in the case of the holder of parental responsibility (or the guardian) not being informed of or receiving the notice of indictment, the proceeding will be discontinued. Relating to the notice of the date of the relevant hearing, Art. 31, co. 2 of the DPR 488/88 also remarks that “The date fixed for the hearing shall be notified to the victim, the Juvenile Services assisting the young offender and the *holder of parental responsibility*.”

From various practices studied, it emerges that it is often difficult to notify foreign children of notices ex Art. 7 DPR 488/'88, due to the absence of their parents in the national territory (as in the case of unaccompanied children) or due to the difficulty in locating them. The latter is often the case of ROMA children, particularly when they live in unauthorized areas. According to doctrine<sup>2</sup>, in many cases Judicial Authorities omitted to notify the notice of indictment, violating the child right to defence and access to alternative solutions for which the presence of parents or a guardian is essential.

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***Focus on interviews***

“Concerning the notice ex Art. 7 DPR 448/88, particularly in the case of ROMA children, the problem exists, but is solved without much difficulty, especially when one of the parents is in detention (in this case the notice is notified in prison), otherwise judicial acts are notified directly in the ROMA camp to the person in charge of the child” (*Judicial Authorities, Turin*).

“In the case of unaccompanied children, on the other hand, the notices are notified to a guardian, generally nominated as soon as possible” (Juveniles Service of Turin). In order to prevent the negative effects resulting from the lack of notification, the Guidelines of the Piedmont Region promote collaboration between the Juvenile Services, the Judicial Authorities and the Local Services in the case of children involved in the penal area to establish special procedures and criteria to identify the Judicial Authority responsible for nominating a guardian for unaccompanied children (including children of no fixed abode or not contactable” (*CGM of Piemonte, Valle d'Aosta e Liguria*).

A social worker from an NGO emphasizes that the problem is relevant in the case of children living in unauthorized camps. In these cases it is very difficult to locate the parents, mainly due to the lack of a correct address. The most relevant consequence for these children is that they may receive several sentences without being aware that a criminal proceeding towards them has begun and without having been able to exercise the right to defence. Most importantly, they risk receiving a serious sentence due to the ascertainment of recidivism. This can be avoided by social mediation, as used in the penal circuit. (*CivicoZero, Rome*).

**c) legal assistance and involvement of the child and his/her parents in the judicial process.**

Legal assistance is always provided during a criminal proceeding. With the notice of indictment, the Judicial Authorities inform the juvenile of the faculty to be assisted by a legal counsel. If the juvenile does not appoint his/her own specific legal assistant, the Court will assign one to him/her (legal counsel undersigned by the Court).

According to the Law n. 134/2001 and to the articles from 74 to 141 of the D.P.R. n. 115/2002 (Unified Code establishing provisions on matters of justice costs), the Italian Justice System recognizes free legal assistance (or legal assistance for free), paid by the State, to indigent people (including juveniles) involved in criminal, civil, administrative and fiscal proceedings. Concerning criminal proceedings in particular, free legal advice is offered to national as well as foreign people even if they have no regular residence permit.

Furthermore, according to Art. 11 of the DPR 488/'88 “without prejudice to rules under Sec. 97 of the Code of Criminal Procedure, the Bar Council shall set forth a list of counsels specialized in juvenile law.” Particular rules of application are also contained in Art. 15 of the D. Lgs. n. 272/1989, according to which the above-mentioned specific list of legal counsels, which shall be updated every three months, consists of people specifically trained in juvenile law or with long-standing experience with the Juvenile Judicial Authorities.

From practices studied, it emerges that specific lists of counsels are prepared in all judicial districts of the territory.

**d) children are heard and informed about the charges, the process and the possible sentences**

According to Art. 1, co. 2 of the DPR 448/'88 “The Judge shall explain to the defendant the meaning of any procedural activities accomplished in the latter's presence as well as the contents and reasons, including ethical-social ones, of any decision”.

In order to ensure the right to be adequately informed, at any stage of the proceedings, the assistance of the Social services (Art. 6) as well the presence of parents (or other suitable

person(s) chosen by the child and admitted by the prosecuting authority) shall be granted to the child.

Furthermore, as specified in the previous section, children are informed about the charges and process by the notification of the notices ex Arts. 7 and 31 co. 3 of DPR 488/'88.

According to Art. 31 co.1 “without prejudice to Sec. 420-*bis* and 420-*ter* of the Code of Criminal Procedure, the Judge can order the defaulter’s compulsory transfer to trial”. As supposed by many authors, this provision aims to ensure the presence of the child in order to collect information directly from him/her, which is essential to elaborate an appropriate re-educational project.

The consent (acceptance) of children is also essential to settle the dispute during the pre-trial hearing and before opening debates (judicial pardon or upon legally irrelevant facts). The child’s consent is also required to order the proceeding to continue and the placement under supervision (ex Art. 28 DPR) as well the “placement under the supervision of the Social services”, ex article 47 of Act n° 354/75.

Concerning foreign children involved in criminal proceedings, practices studied have revealed that in the case of untraceable children, judicial authorities have some difficulty in granting judicial pardon, as this requires the consent of the juvenile. The Judicial Authorities in Turin affirm that there is an on-going debate concerning this matter and different interpretations exist. According to a more restrictive interpretation, the judicial pardon shall not be granted to untraceable juveniles that have not previously given special power to an attorney.

The practices studied reveal that the children are well-informed by the personnel of Juvenile Justice (social assistants, educators, etc.) during the various interviews they are summoned to participate in. From practices studied regarding foreign children, it is clear that an excellent instrument to effectively ensure the child’s right to be heard is the presence of a social or cultural mediator. This operator is able to give the child the opportunity of expressing his/her views at all times, making him/her competent and able to participate in the decisions, also with regard to the sentences that may be imposed. Unfortunately, there are no specific legislative provisions regarding the presence of a cultural mediator during criminal proceedings.

***Focus on interview***

“The presence of a socio-cultural mediator is usually provided for inside the juvenile facilities even if in a very fragmentary manner. Juvenile Justice personnel interviewed often complain of the lack of cultural mediators. “To fill the gap, in many cases, it is necessary to involve other child detainees as interpreters, and by so doing, also violate the child's privacy” (*IPM, Bari*).

In order to encourage better understanding on the part of the children, the National Observatory on Children and Adolescents recommended, in its report on the conditions of children and adolescents in Italy (2009), that the provision (Art. 1DPR 488/1988) be extended to enable the police, prosecutors and counsel (not only judges) to inform and explain to the juvenile defendants the meaning of the activities they participate in and the ethical and social sense of decisions taken during the process.

**e) decisions are taken *without delay***

According to General comments n. 10, decisions have to be taken “without delay”. The Committee recommends that the State parties set and implement time limits for each stage of the proceedings (the completion of the police investigation, the decision to bring charges,



the final adjudication, etc.). These limits should be different to those set for adults, but in any case they should be the result of a process in which “the human rights of the child and legal safeguards are fully respected”.

Abstractly, the provision of special mechanisms making it possible for children to quit the penal circuit promptly is compatible with the principle of a "reasonable duration" of the trial as established under Article 111 of the Italian Constitution and Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Unfortunately, due to the lack of economic and personnel resources as well as the cost of works, practices studied reveal that in general, the time lapse between the commission of the offence and the final response is unreasonable. This problem was particularly stressed by Judicial Authorities interviewed, who emphasized that the longer the period taken to reach a final response, the less positive, effective and re-educational is its impact. In particular, long-drawn out proceedings induce foreign juveniles to consider our justice system as weak and permissive, with the risk of encouraging recidivism (see also interviews to personnel of Turin CPA).

The Italian Parliament is currently working on a new legislative proposal (DDL 1880) containing rules for shorter trials. The proposal includes different time-limits for the main stages of the proceeding (first degree, second degree and third degree) according to the gravity of the crime. According to the Italian Union of Penal Juvenile Chambers, the proposal does not, in any case, take into consideration the educational goals of DPR 448/'88 . For example, it does not provide for the suspension of the trial for the time necessary to locate the juvenile defendant, thereby nullifying his/her right to be present at the criminal proceedings relating to him/her and to give valid consent to the early definition of same. To avoid the trial being cancelled, the judge may be obliged to hold it in the child's absence, which could arguably be more relevant in the case of foreign children, it being more difficult to ensure their presence at the hearings.

**f) admission or confession is not admissible as evidence**

Italian legislation establishes rules aimed at avoiding children being compelled to give testimony or to confess or acknowledge guilt. According to article 198, co. 2 of the Italian Code of criminal proceedings a witness cannot be obliged to testify about matters from which his/her criminal responsibility could arise. If a Judicial Authority obliges a witness to give testimony in violation of the afore-mentioned article, the testimony is not acceptable as evidence.

**g) equality of arms (accusatorial/inquisitorial trials) is ensured**

The equality of arms is a typical principle of Italian criminal proceedings. According to Art. 111 of the Italian Constitution “The law shall be administered by means of a fair trial governed by an Act of Parliament. The parties to all trials may speak in their own defence in the presence of the other parties, with equal status, before an independent and impartial court. An Act of Parliament shall lay down provisions to ensure that trials are of a reasonable length”.

**h) assistance of an interpreter is free**

Art. 11 of the Constitution also ensures the assistance of an interpreter. Practices studied have confirmed that access to an interpreter is generally guaranteed and is free. Some operators interviewed considered guaranteeing the presence of a cultural mediator in criminal juvenile proceedings would also be a positive step.

**i) if considered to be in the best interests of the children, the presence of parents and/or guardians is assured**

Concerning the involvement of parents in the judicial proceeding, article 12 of the DPR 488/'88 establishes that “Psychological and emotional support to the juvenile defendant shall be granted throughout all stages of the proceedings either by his/her parents or other suitable person(s) chosen by the child and admitted by the prosecuting authority”. The prosecutor or the single judge or the Court can exclude them only when they consider it to be in the best interests of the juvenile. The juvenile’s parents or those having parental responsibility are also informed of the hearings, including the preliminary hearing, to enable them to assist the juvenile in the preparation of his/her case. Both the defendant and his/her parents or those having parental responsibility must receive the notices of the proceedings for these to be valid. They are involved in the proceedings at various stages: they must be informed immediately of the child's arrest (whatever form this takes); they give evidence at the hearing held to state the acquittal for irrelevance of facts during the investigation; they are questioned during the preliminary hearing and the trial in Court to collect information concerning the personality and family or social resources of the defendant; they are consulted regarding prescriptions that the judge may apply to encourage educational activities.

As already mentioned in b), from practices studied, the presence of parents of ROMA children cannot always be guaranteed due to the difficulty in locating them. Added to this, since the coming into force of the recent Security Act, law n.94/2009, those with irregular status have become reticent in coming forward, fearing detection.

EDITOR’S QUERY TO AUTHOR – are sections j), k), and l) missing? Otherwise to change sequence.

**m) respect of children’s dignity and privacy**

In order to reduce the psychological impact of the trial, DPR n. 488/1998 establishes that all hearings are held in a closed hearing. The trial session can be held in an open Court only if the defendant is over 16 and only at his/her request. This decision will rest in any case with the Court, taking into account the best interests of the defendant.

Although media presence and intervention are severely restricted and it is forbidden to publish information or pictures of the juvenile, in practice it is a different matter, as sanctions concerning the violation of these rules are not severe and rarely applied and consequently, they (the rules) are frequently broken by the press, with serious consequences. (C. CESARI, the Juvenile Justice System in Italy).

**n) special provisions are guaranteed for adolescents with physical, mental and social problems and special attention is given to the needs of the children most at risk** (children with disabilities, displaced children, children living and/or working on the street, refugee and asylum-seeking children, children belonging to ethnic, religious, linguistic or other minorities) (UN/GA/61/299 of 29 August 2006, rights of the child, II, C, 31)

*See points Core element n. 5*

**CORE ELEMENT n. 4:  
DEPRIVATION OF LIBERTY: INCLUDING PRE-TRIAL DETENTION AND  
POST-TRIAL INCARCERATION**

***Introduction***

According to international standards, deprivation of liberty should be a measure of last resort, applied for the minimum necessary period. Juvenile offenders should not be incarcerated unless there is no other appropriate response. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

The danger to juveniles of "criminal contamination" while in pre-trial detention must not be underestimated. It is therefore important to stress the need for alternative measures, encouraging the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile. Pre-trial detention should only be used as a measure of last resort and no child should be held in a facility where they are vulnerable to the negative influences of adult detainees and the particular needs relating to the stage of development of the child should always be taken into special account.

Juveniles under pre-trial detention are entitled to all the rights and guarantees of the UN Standard Minimum Rules for the Treatment of Prisoners.

Speed is essential while conducting the formal procedures in juvenile cases, because the more time passes, the more the juvenile will find it increasingly difficult, if not impossible, to relate to the procedure and disposition of the offence, both intellectually and psychologically.

**4.1 International standards**

*No child shall be deprived of his or her liberty **unlawfully or arbitrarily**. The arrest, detention or imprisonment of a child **shall be used only as a measure of last resort and for the shortest appropriate period of time**. CRC, Art. 37(b);*

*"The placement of a juvenile in an institution shall always be a **disposition of last resort and for the minimum necessary period**". Beijing Rules, Art. 19(1);*

*"Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these rules and in the UN standard minimum rules for the administration of Juvenile Justice (the Beijing Rules).*

***Deprivation of liberty** of a juvenile should be a disposition of last resort and for the minimum necessary period and should **be limited to exceptional cases**. The length of the sanction should be determined by the judicial authority, **without precluding the possibility of his or her early release**"*

JDL, Art. 2.

*"Detention pending trial shall be used only as measure of last resort and for the shortest possible period of time.*

*Whenever possible, **detention pending trial shall be replaced by alternative measures**, such as close supervision, intensive care or placement with a family in an educational setting or home.*

*Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.*

***Juveniles under detention pending trial shall be kept separate from adults** and shall be detained in a separate institution or in a separate part of an institution also holding adults.*

*While in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational,*

*vocational, psychological, medical and physical - that they may require in view of their age, sex and personality.”*  
Beijing Rules, Art. 13.  
*“Each case shall from the outset be handled expeditiously, **without any unnecessary delay.**”*  
Beijing Rules, Art. 20.

### **Indicators of application**

**a) the duration of detention is limited by law** and subject to regular review

According to Part II of DPR 448/88 on “Rules on Personal freedom” the duration of detention is limited by law. In particular Article 23.3 provides that “*The statute of limitations provided by Art. 303 of the Code of Criminal Procedure shall be halved for offences committed by juveniles under 18 and shall be reduced by two thirds for offences committed by those under 16.*” Art. 303 of the Code of Criminal Procedure states on the duration of the pre-trial detention.

It is the sole prerogative of the Supervising Judge to review the detention and order any possible alternative measures. The Juvenile Supervising Judge, on the other hand, is responsible for offenders still under 25 or who were children at the time of the offence.

Most non-custodial measures were first introduced by Law n° 354/75, both for adult and child offenders. They offer well-behaved and not socially dangerous convicts the possibility of serving their sentences outside a detention centre.

It can therefore be said, both from the above and from the analysis of practices studied, that this indicator is respected.

**b) every child arrested is brought before a competent authority to examine the legality of (or the continuation of) the deprivation of liberty within 24 hours**

According to Art. 1 of the D.P.R. 448/88 “*Juvenile criminal proceedings shall be regulated by the rules provided in this Decree as well as by the Code of Criminal Procedure also regarding matters not provided therein.*” Under Italian Juvenile Criminal law, a child may be arrested or apprehended or transferred (according to provisions included in sections 16-18bis of the DPR 448/88).

In particular, the arrest or apprehension of a child (caught in the act of committing a crime) is always optional. It depends on: a) the type of crime (it must be a crime for which pre-trial detention is applicable); b) the seriousness of the offence as well as the offender's age and personality.

In the case of arrest or apprehension, police officers shall promptly notify the Juvenile State Attorney, the holder of parental responsibility and the Juvenile Services of the Ministry of Justice. After being informed, the Prosecutor shall order the placement of the child in a Juvenile Classification Home or in a public or private Community. Only if deemed fit, on consideration of the circumstances of the offence, the child's age and his/her family situation, may he/she be taken to his/her home and placed there at the Attorney's disposal.

Concerning the child brought before a competent authority to examine the legality of the deprivation of liberty, D.P.R. 448/88 states in Art. 18.5 that “*Provisions under Sections 390 and 391 of the Code of Criminal Procedure shall be applied in every case*” The provisions of Art. 390 and 391 require the validation hearing to examine the legality of deprivation of liberty.

Unfortunately this indicator is not respected in the Italian Juvenile Justice System: the legality of the deprivation of liberty is examined within 96 hours (within 48 hours the Prosecutor

must request the validation hearing and within the next 48 hours the validation hearing must take place, Art. 390 c.p.p.).

**c) the legality of pre-trial detention is reviewed regularly, preferably every two weeks**

Reviews on the legality of pre-trial detention are not regulated in the Juvenile Justice Reform of D.P.R. 448/88. but rules regarding regular reviews of pre-trial detention are to be found in the criminal procedural code, in particular Art. 309 c.p.p. This states that, within 10 days from the notification or from the execution of the pre-trial detention, review of the pre-trial detention decision may be requested by a different judge (Review Court, which has exclusive authority concerning pre-trial detention reviews).

The Italian Juvenile Justice System therefore guarantees reviews concerning the legality of the pre-trial detention, but this special review procedure may be requested only once within 10 days from the execution of the pre-trial detention; a regular review of pre-trial detention can be requested only ex Art. 299 c.p.p. of the Judge presiding at the pre-trial hearing.

**d) a formally charged child is brought before a court or other independent and impartial authority or judicial body no later than 30 days from the beginning of his/her pre-trial detention**

There are no legislative measures to guarantee that a formally charged child be brought before a Court no later than 30 days after his/her pre-trial detention has taken effect.

This indicator is not respected in the Italian Juvenile Justice System, in fact interviews conducted all over Italy in the JUST project showed long delays from the commission of the offence to the trial. This is a negative aspect of criminal proceedings against children, because with such long delays, they are barely able to understand the consequences of their illegal acts.

**e) a final decision on the charges is taken no later than 6 months, extendable only in exceptional cases**

This indicator is not respected in the Italian Juvenile Justice System either, there being no legislative measures to guarantee a maximum time limit for the proceedings. Interviews conducted underlined a very big problem related to this issue. The duration of the proceedings is unacceptable, sometimes lasting up to 6 months between hearings. The European Court of Human Rights has condemned Italy on many occasions for violation of Art. 6 of the European Convention on Human Rights regarding the “right to a fair trial”, for unreasonable delay of criminal proceedings. According to the UN General Comment n.10 on Juvenile Justice: *“Internationally there is a consensus that for children in conflict with the law the time between the commission of the offence and the final response to this act should be as short as possible. The longer this period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized”*.

The Committee recommends that the States parties set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final adjudication and decision by the court or other competent judicial body. These time limits should be much shorter than those set for adults but should in any case, always fully respect the legal safeguards and human rights of the child.

## 4.2 International standards

***Promoting the use of non-custodial measures and minimum safeguards for persons subject to alternatives to imprisonment (Tokyo Rules, Art. 1.1)***

*The criminal justice system should provide a wide range of non custodial measures, from pre-trial to post-sentencing dispositions (The Tokyo Rules, Art. 2.3)*

*The application of the non custodial measures should be used in accordance with the principle of proportionality and according to the legal safeguards prescribed by the international documents.*

*A wide range of community sanctions or measures, adjusted to the different stages of development, shall be provided at all stages of the process (trial or procedure). Priority shall be given to sanctions and measures having an educational impact as well as constituting a restorative response. (Rec. (2008)11, Art, 23.1 ss)*

### Indicators of application

#### **a) alternative measures to replace detention**

The Italian Juvenile Justice System provides a range of alternative measures to be employed with juvenile offenders.

#### **PRE-TRIAL ALTERNATIVE MEASURES**

According to Art. 19 D.P.R. 448/88 no personal precautionary measures alternative to detention shall be adopted against young offenders as alternative measures during the pre-trial detention other than: prescription, placement under house confinement and placement in a Community. Concerning these measures, the Judicial Authority must consider the following **general principles**: 1) only the personal precautionary measures indicated in DPR No. 448/'88 can be applied; 2) respect of the **principle of not interrupting the child's ongoing educational process**; 3) other general principle (available also for adults) of **fumus commissi delicti** and **pericula libertatis** (risk of recidivism, risk of escape, etc..)

**Prescription:** Unless additional precautionary measures are required, upon hearing the holder of parental responsibility, the Judge may impose on the young offender specific educational or professional prescriptions or other useful educational activities. Prescriptions shall no longer be enforceable two months after the issue of the relevant order. The Judge is entitled to renew them once only, pending probative evidence. The Judge is entitled to place the young offender under home confinement in case of repeated and serious breaches of prescriptions. (Art. 20 D.P.R. 448/88).

**Placement under home confinement :** with placement under home confinement the Judge may order the young offender to remain at his/her own home or other private dwelling as well as restrict or prohibit his/her communication with people other than those living with or assisting him/her. Additionally, by a supplemental order the Judge may allow the child to leave his/her home according to his/her educational or professional needs or any other activity useful for his/her upbringing. The child's parents or the people living in the same house where the child is confined shall supervise his/her conduct. The period of home confinement shall be included in the term to serve. The judge can order the child's placement in a Community in case of serious and repeated breaches of prescription or in case of unauthorized absence. (Art. 21 D.P.R. 448/88)

**Placement in a community:** with placement in a community the Judge may order to place the young offender within a public or private authorized Community upon specific

provisions concerning his/her educational or professional activity or any other activity useful for his/her upbringing. The Judge may order a pre-trial detention of one month at the most in case of serious and repeated breaches of prescriptions or unauthorized absence of the child.

***Focus on practices collected:***

“Alternative non-custodial measures are applied. Some of them are more appropriate to foreign children, others are difficult to apply, due to the lack of fundamental conditions. One of the non-custodial measures most frequently applied to foreign children is the placement in a Community.” (*IPM, Milan*).

“... the most common measure for unaccompanied children is the placement in a Community ..., but in many cases the child does not like this alternative measure and frequently runs away from the Community. This violation of the non-custodial measure of placement in a Community involves the adoption of a stricter measure such as placement in pre-trial detention in IPM.” (*USSM, Bologna*).

“The Prosecutor’s Office in the Bologna area tends to apply the alternative measure of placement in a Community whenever possible, in particular to foreign children. Placement in a Community is also frequently ordered as an alternative measure both for probation and placement under supervision.” (*CGM Bologna*).

“Detention is usually considered as a measure of last resort but, because of the “double track” system of treatment, foreign children do not have the same access to alternative measures as Italian children. This depends on the conditions existing for the application of some alternative measures, created at a time when the migrant children in conflict with the law were not present on the territory. For example, it is not possible to apply placement in home confinement to unaccompanied children or to those who live on the street.” (*CPA, Milan*).

“Alternative non-custodial measures are widely applied during the validation hearing. Placement in a Community or confinement to the nomad camp is frequently applied to Roma children, in particular, while pre-trial detention remains a residual measure.” (*CPA, Turin*).

“...Placement in a Community is not widely applied because very often the period of time necessary to prepare the child adequately is insufficient to avoid him/her running away from the facility. Placement under home confinement is applied whenever it is possible to have contact with the child’s family. In the case of Roma children, the alternative measure of confinement to the nomad camp is frequently applied, interpreted as placement under home confinement.” (*USSM, Rome*).

“Pre-trial detention is rarely applied in IPM. In practice this extreme measure is applied for recidivist children, as in the case of Roma girls involved in multiple thefts...Usually the most common prescriptions applied are: community service in the same field as the committed offence, mandatory school attendance, The implementation of day centres like “CivicoZero” would be useful because this type of facility has better results compared to traditional communities, where frequently the child tries to escape. This “light facility” is more flexible and less invasive, therefore much more useful to understand the child’s qualities. The traditional Community puts the children into unusual life conditions and for this reason it frequently fails. With “light facilities” such as day centres there are concrete opportunities to adjust the child’s path to reintegration in a more appropriate way. (For example, from the child’s point of view, the immediate legal assistance of day centres is sometimes more important than a structured intervention in the community.” (*CPA, Rome*).

“Prescriptions are not applied to foreign children because frequently the holder of parental responsibility is not present, particularly in the case of unaccompanied children, therefore the respect of prescriptions cannot be guaranteed. Consequently the only applicable measure is a more afflictive one.” (*USSM, Milan*).

“Prescriptions are not really useful, because of their limited duration. They are inadequate, if compared to the duration of the proceedings.” (*CPA, Milan*).

“In my experience the trend of alternative measures applied to migrant children underlines consistent application of non-custodial measures, compared to previously. I frequently see the application of placement under home confinement, in particular to “second generation” foreign children living with their families normally resident in the territory.” (*CPA, Florence*).

“Pre-trial detention is usually applied to Roma children (because of recidivism, even if the crime committed is minor). In particular cases, with the assistance of a cultural mediator, it is possible to apply a less afflictive custodial measure such as placement in the nomadic camp.” (*CPA and Residential Community, Napoli*).

“During 2009 the measures applied to the 6 foreign children admitted to the CPA are: two pre-trial detentions, three placements in a Community (two of them unaccompanied children), one release (for a second generation foreign child, thanks to the presence of the family in the territory). (*CPA, Palermo*).

“Alternative measures are not widely applied, except placement in a Community, because most of them are ill-equipped to guarantee custodial needs. Unaccompanied minors cannot respect the prescription because they do not have a permanent residential address. Detention should be considered the last resort measure but sometimes the criteria to apply a non-custodial measure does not correspond to the situation of the foreign children” (*Prosecutor, Turin*).

“Placement under home confinement has also been applied to unaccompanied children placing them in Casa Africa. It is possible to apply this measure extensively, also to Roma children resident in nomadic camps, even if its preventive efficacy is quite limited. Not many Roma children accept the placement in a Community measure and very frequently run away, jeopardizing the positive result of their re-educative path.

Sometimes children with no fixed abode, in particular if at their first offence, can benefit from indulgent decisions such as judicial pardon. This measure does not promote social reintegration of the child, and sometimes they mistake it for impunity for the commission of future offences.

The custodial measure of pre-trial detention is often the only appropriate measure to guarantee the beginning of a re-educational treatment with positive results. (*Prosecutor, Turin*).

### ***ALTERNATIVE JUVENILE CRIMINAL MEASURES***

Criminal proceedings against young offenders also envisage some specific alternative non-custodial penalties, making it possible for the child to leave the formal criminal justice system promptly, such as the *judicial pardon*, or even *the non-suit (in case of petty crimes)*, as well as the stay of proceedings with the *placement of the juvenile under supervision* (whose successful completion entails the total extinguishment of the offence from criminal records), release on parole and special rehabilitation.

#### ***Focus on interviews***

“The placement under supervision is applied equally both to Italian and foreign children. It usually reduces the risk of recidivism”. (*USSM, Roma*).

“Supervision is not widely applied to juveniles detained in IPM. It was used more extensively immediately after the Juvenile Justice Reform of DPR 448/88. This is probably because many children became recidivists, after being subjected to unsuccessful alternative measures.” (*IPM, Palermo*).

“Supervision is widely applied and offers equal opportunities to Italian and foreign children. It is sometimes used as an instrument for social emergencies and is particularly beneficial in the case of foreign children and older adolescents.” (*CPA, Florence*)

“Placement under supervision is definitely the most effective measure and is used wherever applicable.” (*Judge, Turin*).

“Judicial pardon and the nonsuit in case of petty crimes are applied indiscriminately to both Italian and foreign children, whenever the criteria for the application are present.

Since judicial pardon requires the child’s acknowledgement of responsibility, it can be applied in the preliminary hearing only if the lawyer has a specific mandate or if the child explicitly consents to the proceedings and the act of clemency. There is a divergence of opinion concerning this topic in the Juvenile Court of Turin. The most restrictive interpretation does not permit the application of judicial pardon to children not present in court, unless they have previously released a specific mandate to the defendant. In any case, I do not consider judicial pardon instrumental either in reducing recidivism or promoting reintegration. (*Prosecutor, Turin*).

### ***SUBSTITUTE PENALTIES***

Juvenile convicts can also be ordered substitute penalties (i.e. **day release** or **supervised release**), first introduced by Act n° 689 of 24 November 1981, in the case of sentences of a maximum of 2 years’ detention.

### ***ALTERNATIVE PREVENTIVE MEASURES***



Should a juvenile not be criminally responsible, either because he/she is under 14 or mentally unstable, but is nevertheless considered socially dangerous (i.e. more than likely to commit further crimes), the following preventive measures shall be applied as ruled by Articles 36-41 of the Presidential Decree n° 448/88): placement in a **remand home** (usually carried out in community homes) or **probation** (either with specific prohibitions or placement under home confinement).

#### **POST-SENTENCE ALTERNATIVE PENALTIES**

Most non-custodial measures were first introduced by Act n° 354/75, both for adult and child offenders and give well-behaved and not socially dangerous convicts the possibility of serving their sentences outside a detention centre. Only the Supervising Judge can order such measures or the Juvenile Supervising Judge in the case of offenders who were minors at the time of offending or who are still under 25.

The following are alternative measures available in Italy under the current legislation some of which are commonly used for juvenile offenders and will therefore be more detailed, others are less frequent and will simply be outlined: **Placement under the supervision of Social services** – article 47 of Act n° 354/75; **Placement under house arrest**, first introduced by article 47<sup>ter</sup> of Act n° 663/86, later amended by Act n° 165/98; **Semi-custody** (article 48,1 Act n° 354/75); **Early release**.

Finally, among alternative measures the following should be included: **permissions** granted to inmates or offenders under semi-custody as well as the **release of debt** due for court fees and detention expenses.

Analysis of practices studied underlined that post-sentence alternative measures “are not frequent, in particular because Juvenile Courts try to avoid condemning a child with a definitive sentence to serve, preferring more effective juvenile criminal alternative measures such as judicial pardon and placement under supervision”

*(USSM, Milan).*

“Post-sentence alternative measures are not frequent, but are sometimes applied, in particular placement under supervision of the Social Services” *(USSM, Florence).*

“There are very few detained minors serving a sentence, most juveniles detained in IPM being in pre trial detention. As far as the executive sentence is concerned, it is preferable to avoid post-sentence detention in IPM, promoting instead alternative measures such as placement under supervision of the Social Services” *(Judges of Juvenile Court, Turin).*

#### **b) new non-custodial measures are developed** (The Tokyo Rules, Art. 2)

Since the Juvenile Justice Reform of D.P.R. 448/88, no new legislative non-custodial measures have been developed. From practices studied, however, it is evident that some new non-custodial measures have been developed with a legal orientation.

“The legislative provision, however, of a half-way measure between placement in home confinement and placement in a Community, is missing. Day centres could become a new non-custodial measure. In Milan there are two day Centres, namely the cooperatives “La Strada” and “NSC.”

Compared to Communities, day centres have less costs and frequently obtain good results, in particular with children at risk” *(CPA, Milan).*

“Placement under home confinement has been widely applied, to include unaccompanied minors in day centres such as Casa Africa and Casa Romania, created within the NOMIS project. In fact this measure should also be applied to Roma children living in nomad camps” *(Judge of Juvenile Court of Turin).*

“A new practice applied in Rome is the placement of foreign children in day centres, such as “Civico Zero” *(CPA, Rome).*

Moreover, reform of the juvenile penitentiary rules has not, as yet, been approved. The applicable juvenile penitentiary rules are the same as provisions for adults established in the L. 354/75.

Art. 79 of L. 354/75 provides for the introduction of a specific juvenile penitentiary rule of law but this has never come into being, although it has been recommended by the UN Committee for Rights of the Child, the Council of Europe and the Italian Constitutional Court.

On 6<sup>th</sup> August 2007, document n. 28650 from the Head of the Department of Juvenile Justice, Carmela Cavallo, established a working group to elaborate a proposal for juvenile penitentiary rules, according to international standards.

On 15<sup>th</sup> January 2008 the reform proposal was given to the Italian Ministry of Justice to complete the necessary steps for the adoption of the juvenile penitentiary rules but so far it has not been approved.

*Ad hoc* penitentiary rules for children, needed to bring the execution of sentences into line with international standards and which would guarantee the application of alternative measures to detention for children and support the reintegration process, are still lacking. (CRC Committee, II supplementary report).

It also appears from the analysis of practices studied, that there is unanimous agreement on the necessity of the introduction of such rules.

“The lack of juvenile penitentiary rules is a weak point in the Italian Juvenile Justice System. A parliamentary committee on this issue was established in 2008, but the reform project has never been discussed. To guarantee the specific rights of children deprived of their liberty it is essential to introduce the juvenile penitentiary rules as soon as possible.

It is equally important to reform the L. 448/88 concerning the new phenomenology of the presence of foreign children in the territory.” (*CPA, Bologna*).

“A reform of the juvenile penitentiary rules would ensure specific provisions based on the needs of the children which should be quicker to apply and more flexible than the penitentiary rules for adults.” (*USSM, Milan*).

“It is necessary to introduce specific penitentiary rules for juveniles to guarantee adequate treatment of the children. It is a waste of time to invest in specific training on juvenile matters and not introduce juvenile penitentiary rules.” (*IPM, Turin*).

“At the time of the adoption of the Penitentiary rules for adults in L. n. 354/75 it was decided to create specific penitentiary rules for juveniles. I think that 35 years on, that time has come.” (*CGM, Rome*).

“The Juvenile Justice System requires measures specifically tailored to the needs of children, not general dispositions created for adults. Alternative sanctions such as literacy classes and mandatory job training would be positive substitutes for custodial sentences. This reform should be considered and devised in the light of the children’s requirements, with proportionate sentences and include sanctions which take into account the age and psychological development of the juvenile to guarantee fair treatment. Personally I would suggest reducing the number of detention facilities and implementing the human resources available. One of the main causes of recidivism is the child’s separation from the adult that represents his/her point of reference and helped him/her on their path to social reintegration. It is a big mistake to initiate re-educational treatment with a child, give them a chance in a facility and then abandon them at the most critical phase of re-entry into society.” (*Judges, Juvenile Court of Bari*)

### **c) specific selection criteria for applying non-custodial measures**

According to Art. 23 D.P.R. 488/88 “The judge may order pre-trial detention:

- upon serious and mandatory investigative requirements in case of risk of compromising the collection or authenticity of evidence;
- in case of the offender’s escape or risk of escape;
- in case of the risk that the offender may commit serious crimes, according to specific

circumstances and to his/her personality, by using arms or other means of duress, or acting against public authority or committing organized crimes or any other offence of the same category as the one for which he/she is being prosecuted.”

These are the legislative criteria necessary to be applied for custodial measures. Furthermore, for non-custodial measures there are also specific criteria to be applied. As already mentioned, some of these criteria were created in 1988, before the massive phenomenon of migrant children, therefore some of them are not easily applicable to foreign minors, in particular those unaccompanied. Practices studied clearly stressed the difficulty of fitting the specific criteria for applying non-custodial measures to foreign children.

#### **d) community sanctions or measures.**

According to Art. 28.2 D.P.R. 448/88 the judge, ordering the stay of proceedings and placement under supervision, “*can also prescribe compensation for the consequences of the offence and encourage a settlement between the young offender and the victim*”.

Criminal mediation can also be an efficient measure of restorative justice to solve conflicts between offender and victim. (see point 9.e).

“Among the prescriptions ordered under the stay of proceedings and placement under supervision the most frequent are: socially useful activities, sometimes related to the same field as the offence committed and support activities directed at other foreign children from the same country of origin”  
*(Judge of Juvenile Court, Turin).*

### **4.3 International standards**

*All children should be helped to understand the regulation governing the internal organization, the goals and methodology of care provided (The Havana Rules, Art. 24), ...their rights and safeguards in a manner that ensure their full understanding (Recc. (2003) 20 COE, Art. 19)*

*Children and adolescents deprived of their liberty shall be guaranteed a variety of meaningful activities and interventions according to an individual overall plan that aims at progression through less restrictive regimes and preparation for release and reintegration into society.*

*These activities and interventions shall foster their physical and mental health, self-respect and sense of responsibility and develop attitudes and skills that will prevent them from re-offending.*

*(The Havana Rules)*

#### **Indicators of application**

##### **a) a copy of the rules governing the detention facility**

According to Art. 36.2 of D.P.R. 230/00 the rules governing the detention facility are compulsory. They regulate: opening and closing times of the detention facilities, detainees' daily time schedule, instructions regarding all conversations, face to face or on the telephone, mail correspondence, and games permitted. According to Art. 36.5 D.P.R. 239/00 the internal regulations must be accessible to the detainees.

From all practices analyzed, it is evident that the internal regulations have been adopted in every detention facility of the Italian Juvenile Justice System.

### **b) a fully comprehensible written description of children's rights and obligations**

Practices analyzed showed various implementations of this indicator in Italy. In 2002 the Directorate for Immigration and the Committee for Foreign Children approved a project called "Pinocchio" in the Italian regions of Tuscany, Lombardy and Emilia-Romagna.

"The Pinocchio project published a multi-language booklet informing children entering IPM of their rights and obligations" (*IPM, Milan*).

"The Pinocchio project released informative material for minors entering CPA and IPM, written in Italian, Arabic, Albanese and Romanian which basically explains the internal regulations and the procedural phases of juvenile criminal proceedings" (*CPA, Bologna*).

"The multi-language guide of the Pinocchio project was directed at foreign children in conflict with the law. However, in the case of illiterate children, the guide was of no use." (*CPA, Milan*).

"In the past, IPM distributed informative material and a resume of the internal regulations translated into Arab and Romanian. This has however, been discontinued, firstly because the children hardly used it, some being illiterate and secondly because it has become redundant with the presence of the cultural mediator." (*IPM, Turin*).

"At the present time there is no informative material translated for foreign minors. In the past there was a brochure, but it was of no use due to the fact that many foreign children are illiterate. Subsequently, a very user-friendly, direct multi-language video guide concerning criminal proceedings and children's rights was released. However, with the presence of the cultural mediator this too became redundant." (*CPA, Turin*).

"Internal regulations, children's rights and obligations are explained orally, without any written material in any language." (*IPM, Bari*).

"A multi-language brochure for foreign minors is provided on entering CPA and IPM. This does not mean however, that the children fully understand the internal regulations and their rights and obligations." (*CPA, Palermo*).

The "RETEOLD" project has released some interesting informative material:

- Presentation of the RETEOLD Project

(<http://www.reteold.it/PDF/OLD-Pieghevole.pdf>)

- *Informative Brochure*

(<http://www.reteold.it/FaseII/C/05/brochure%20cittadinanza%20OLD%20II.pdf>)

The informative brochure presents the main theme to the relevant actors and stakeholders.

It is an easily accessible informative instrument.

- *Multi-language informative guide*

(<http://www.reteold.it/FaseII/C/05/Miniguide%20minori%20stranieri%20OLD%20II%20-%20IT.pdf>)

The Multi-language informative guide, created for the children and their families, concerns the Juvenile Justice System and services and the opportunities for social inclusion available to foreign children.

It is available in the following languages: Italian, Arabic, English, French, Spanish and Romanian.

- *Guidelines for the media*

(<http://www.reteold.it/FaseII/C/05/Linee%20Guida%20per%20i%20Media%20Giustizia%20Minore%20OLD.pdf>)

Written in conjunction with the main journalist associations, regarding the role of the media in promoting awareness and information on the phenomenon of foreign children in conflict with the law in Italy, in order to overcome discrimination.

### **c) complaints**

According to Art. 75 D.P.R. 230/00 detainees can address written or oral complaints to the director of the detention facility or to the competent Supervising Judge. Practices studied, however, bore no evidence of this legislative provision being operative in IPM.

**d) public or private agencies and organizations providing legal assistance**

Practices analyzed underlined that no legal assistance is provided in IPM, due apparently to lack of communication with the Bar Association.

In certain areas, contacts for external public or private organizations offering legal assistance are provided in the detention facilities.

“At the moment there is no legal assistance service available.” (*IPM, Bologna*).  
“No legal assistance service is operative, owing to resistance by the Milanese Bar Association” (*CPA, Milan*)  
“A specific project concerning the entire Juvenile Justice Services and managed by the private social sector, offers the possibility of legal assistance within the IPM.” (*IPM, Turin*).

**CIVICO ZERO: good practice concerning legal assistance service**

Between September 2008 and October 2009 the legal assistance service of the day centre “CIVICO ZERO” in Rome gave legal advice in 71 instances.

The legal consultant ensured a monthly availability to children in the care of USSM for support in practices related to administrative regularization and also specific “on call” availability for children in pre-trial detention in IPM.

She secured two afternoon shifts per week with free access to “CivicoZero” starting with 20 sessions directly with street children and adolescents and another 5 on reports of the day centre operators.

She also took on 34 cases transmitted from the network services (12 reported from the family homes, 2 from the Municipal Department for foreigners and 10 from various other organizations working with the asylum seekers).

The intervention focused on: supporting practices for the administrative regularization (including visits to the Embassy of the country of origin for the release of the passport), legal advice for regularization ex Art. 18.6, support for the issue of travel tickets, preparation of the dossier for the political asylum application, support for the appointment of a guardian, reunion with other relatives resident in other EU countries, protected inclusion in home families, complaints for abuse, submission of appeal against expulsion orders, support in proceedings to establish the age of the minors, guidance on criminal matters and reference to office defendants.

**e) children are interviewed in the minimum time possible and given a written psychological and social report**

According to Art. 23 D.P.R. 230/00, the minors receive a compulsory medical check-up within 24 hours of entering the institute. This practice was confirmed in every interview. The medical check-up is usually followed by a meeting with a psychologist and an educator. However, practices analyzed revealed no instances of copies of the medical and psychological reports being given to the children.

“On entering the CPA the child is subjected to a medical checkup and immediately after an educator interviews the child to obtain information concerning the alleged crime, the cultural and social condition of the family and, should it be necessary, coordinate the intervention of the psychologist and the cultural mediator.” (*CPA, Turin*).

“Two psychologists of whom one is specialized in child neuropsychiatry and two consultants are operative in the IPM. If necessary, it is possible to contact a psychiatrist from the A.S.L. Mental Health Department” (*IPM, Turin*).

“On entry to the CPA, the child is given a general medical check-up, with the support of a psychologist, in order to obtain a personal file on the state of his/her physical and psychological health.” (*CPA, Milan*).

**f) children are separated from adults and adolescents (although they are all allowed to participate together in organized activities).**

This core indicator is an essential rule concerning juveniles deprived of their liberty. According to Art. 14 of L. n. 354/75 children are separated from adults and adolescents, although they are allowed to participate jointly in organized activities.

Practices analyzed confirmed the application of this indicator.

**g) health, hygiene and learning assistance**

According to art 8 and 17 DPR 230/00 hygiene and health assistance is ensured. Showers must be mandatory for hygienic and sanitary reasons.

Practices studied revealed this indicator was respected and in some cases the Juvenile Justice Services also provided learning assistance related to hygiene issues, in particular for foreign and Roma children.

**h) regular access to parents, family and lawyers**

Art. 37 DPR 230/00 contains the provision of regular access to parents and family for visits and conversations. During pre-trial detention, conversations must be authorized by the Judicial Authority in charge of the proceedings. If there is no reason to deny such an authorization i.e. non-involvement of parents in the same crime, it is generally granted. Particular dispositions for children are provided in Art. 61 DPR 230/00. In order to overcome the crisis following the separation of the child from his/her family and to guarantee the continuity of an adequate relationship between the child and his/her family, the director of the institute may authorize extra conversations with family and parents.

Moreover, lawyers nominated to defend a child in the proceeding, are authorized to have unlimited conversations with them. Practices analyzed revealed that this indicator is respected, albeit with certain variations.

“Conversation between child and parents is guaranteed.” *(CPA, Bologna)*.

“Conversation with parents is ensured, also before the validation hearing. The Prosecutor authorizes conversation between the child and his/her family almost without exception” *(CPA, Milan)*.

“The internal rules of CPA discipline conversation between child and family, but in practice conversation is authorized only in the presence of an educator or an agent.” *(CPA, Palermo)*.

“Another specific issue concerning foreign children is their families’ reticence to visit them in detention, particularly if they are illegal immigrants as they fear identification. To overcome this problem, certain penitentiaries do not ask for the parents’ papers, but simply request documentation concerning the parental relationship” *(CPA, Nisida)*.

**i) practice of their religion is guaranteed**

According to Art. 26 DPR 354/75 and Art. 58 DPR 230/00 practice of religion is guaranteed.

Practices analyzed confirmed that Muslim religious prescriptions are respected.

“Religious freedom of the minors is respected, also with regard to the Muslim religious prescriptions during Ramadan. However, the only religious representative present in CPA is the Catholic chaplain” *(CPA, Milan)*.

“On request, a room can be used as a place of prayer” *(IPM, Palermo)*.

**j) special assistance for young people who are drug addicts, alcoholics, mentally ill or suffering from the trauma of arrest**

The DPR 230/00 in Art. 20 provides special assistance for the mentally ill and drug addicts. The Ser.T. (*Servizio Tossicodipendenze*) is the ad hoc assistance service for drug and alcohol addicts, while psychological or psychiatric assistance is provided to people with mental disorders.

Responsibility for the medical, psychological and psychiatric assistance service has recently been transferred from the Ministry of Justice to the A.S.L. From practices studied, this innovation created a certain amount of coordination difficulties all over Italy. It also appears there is a lack of specific facilities able to manage problems related to drug abuse, alcoholism and mental illness.

“Specific residential facilities or a community should be introduced for mentally ill people, in coordination with the territorial sanitary services (A.S.L., Ser.T), able to assist in psycho-related suffering, with the support of specific instruments such as ethno-psychology, without underestimating the educative and pedagogic components. “There are very few therapeutic communities for adolescents in Lazio, both for drug addiction and for psychological and psychiatric disorders.

Drug addiction in children, adolescents and adults is not given adequate consideration or treated in many communities.

Therefore, since communities for mental disorders deal mainly with allegedly serious cases (although the relevant costs are paid by the A.S.L.) it often occurs that young people with socio-psychological (but not psychiatric) disorders are placed in socio-educative communities. Frequently these facilities are not properly equipped from a psychotherapeutic or pharmacological point of view, as would be necessary, resulting in a number of problems within the community.

One of the most serious deficiencies, not only in Lazio but all over Italy, is the lack of residential communities for borderline children with socio-psychological problems.

There are no hospitals or facilities where these children can be placed. There are no specialized psycho-educational residential facilities, where the operator/child ratio is 1 to 1, where the presence of a specialized team of professionals (psychologists, ethno-psychologists) is permanently guaranteed and where there is strict and constant control over the children.

Positive action would be to provide at least two levels of residential communities for the treatment of these special target children: a first-level residential community (for borderline children) and a second-level residential community (for the most serious cases).

A very good example of one of these is the “Red House” (Casetta Rossa), a residential psycho-educational community for children and adolescents with mental disorders subjected to criminal or civil measures. The residential community - managed by the “Desert Flower” Association of Rome, as part of a project funded by Vodafone Italy - is included in an integrated network with the Emergency Psychiatric Services for children and adolescents and with the Local Health Agencies of Rome” (*CGM Roma*).

**CASETTA ROSSA: good practice regarding assistance for young people who are drug addicts, alcoholics or mentally ill**

In June 2009 the social promotion association “Il fiore del deserto” (Desert Flower) opened “Casetta Rossa” in Rome, a community for adolescents created to strengthen the services for psychiatric emergencies in teenagers. The project started with an inter-institutional cooperation between the A.S.L. Rm /A, 5<sup>th</sup> Department of the Municipality of Rome, I.S.M.A. and CGM by creating residential and semi-residential day centre facilities for psychiatric support.

“Casetta Rossa” is a protected environment in Via della Camilluccia, Rome, which takes in young people between 14 and 21 years of age on a temporary basis, in situations of evident psycho-social disorder. The placement in the community is focused on children in conflict with the law, for the application of alternative measures to detention.

The difference, compared to the traditional socio-educational communities for children, is the specialization of the facility in the treatment of children with mental disorders.

The continuity of the treatment is guaranteed to those between 18 and 21 years of age by an operation run jointly by the Social Services for adults and the USSM for adolescents.

The facility has 6 places for children sent by the Juvenile Justice System, the Juvenile Court or from the territorial social services, with 2 places reserved for priority cases in post-trauma emergency situations.

**k) access to education (schooling, vocational training, work and occupational therapy, citizenship training, social skills and competence training, individual and group therapy, physical education and sport, tertiary or further education)**

Access to education is a key role indicator. Art. 41 DPR 230/00 establishes the basic principle concerning access to education as a fundamental element not to be ignored. Great importance is given to the principle of not interrupting the child's ongoing educational process.

The analysis of practices collected showed that detention facilities give special attention to the educational process, with different programmes from basic Italian literacy courses for foreign children to school classes in primary and high school.

In CPA it is more difficult to guarantee adequate access to education due to the short period of time that minors attend (96 hrs.). Ideally, it would be better to introduce short basic educational modules in CPA.

Educational aspects will be re-examined in core element n. 7.

**l) preparation for release and aftercare** (for more information about this indicator please refer to core element n. 6.)

#### 4.4 International standards

*No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.*

*Instruments of restraint and force can only be used in exceptional cases.*

*Neither capital punishment nor life imprisonment without possibility of release shall be imposed.*

#### Indicators of application

**a) instruments of restraint and force are never used except under the following conditions:**

- if explicitly authorized and strictly regulated by law;
- they do not cause humiliation or degradation.

According to Art. 39 L. 354/75 disciplinary sanctions must be explicitly authorized and strictly regulated by law. Art. 41 L.354/75 admits the use of instruments of restraint and force as explicitly set out and regulated by the law. Despite the constant requests from the UN Committee against Torture, the Italian criminal code has, unfortunately, yet to include torture as a crime.

Moreover, Italy has still to ratify the UN Optional Protocol against torture.

**b) The following disciplinary measures are prohibited:**

- corporal punishment
- placement in a dark cell
- closed or solitary confinement
- reduction of diet
- restriction or denial of contact with family members



- requirement to work;

Art. 33 of the Italian penitentiary rules considers closed or solitary confinement as disciplinary sanctions, even if for a limited period of time and under strict regulation by law. Children in consultations stressed that in a few cases penitentiary police agents used corporal punishment as a disciplinary measure. This violation was also reported by the European Committee for the Prevention of Torture. The Committee stated that *“in the interest of ill-treatment prevention, all forms of corporal punishment, including ‘educational slap’, must be prohibited and avoided in practice. Badly behaved children should be subjected only to the disciplinary measures foreseen.”*

“In particular situations such as episodes of aggression or violence, the disciplinary measures adopted are closed confinement or solitary confinement, including the exclusion from common activities (professional training and sports). During solitary confinement school attendance and conversations with social workers and educators is guaranteed. The measure is adopted by the disciplinary committee consisting of the director, the child, the educator, and the doctor (without the participation of the penitentiary agent). Solitary confinement can be applied for a maximum of 15 days, extendable for a further 15 days. After a period of confinement of more than 7 days, the child may show signs of anxiety and crisis.” *(IPM, Nisida)*.

### **c) an effective monitoring system is in place and operational**

The European Committee for the Prevention of Torture has been established to monitor violation of the European Convention against torture. However the CPT operative monitoring system is neither regular nor sufficiently frequent.

The Optional Protocol of the UN Convention against Torture provides for an operative monitoring system for the prevention of torture based on independent visits conducted by national and international impartial organizations in places where people are deprived of their liberty. Unfortunately Italy has yet to ratify the Optional Protocol.

## **4.5 International standards**

*The right of the child separated from one or both parents to maintain personal relations and direct **contact with both parents on a regular basis, except if it is contrary to the child ‘s best interests***

### **Indicators of application**

#### **a) The following facilities are ensured:**

- **regular and frequent visits**, in principle, once a week and not less than once a month;
- leaving detention facilities **for a visit to their home and family**;
- **communicating by letter**, with no restrictions;
- communicating as often as possible **by telephone** with their families or other persons and representatives.

Art. 18 DPR 354/75 disciplines visits and correspondence. According to Art. 28 L. 354/75 particular care is dedicated to maintain and re-establish the relationship of the detained minor with the family. The relationship with the minor’s family or other important people in their life must be given priority, because it represents an important protection factor for detained children.

According to the DGM's internal letter n. 5391 of February 2006, involvement of the detained child's family not only helps the educator to gain better insight into the child in his/her social and cultural context, but also gives back to the family the primary responsibility regarding the educative action of the child, activating a process of responsibility on the part of the whole family as a necessary condition for social reintegration.

Regular and frequent visits are ensured to children deprived of their liberty, due to the particular situation arising from the separation of the child from his/her family. Detained children are not permitted to leave the detention facilities to visit their home and family. This measure is applied only to children in semi-detention.

The reform proposed in August 2007 by the Italian Head of Department of Juvenile Justice with the proposal n. 28650 included the measure of children leaving the detention facilities for family visits.

Communications by phone or letter with the child's family are ensured, according to the internal rules of the detention facility.

Art. 18 ter DPR 354/75 admits limitations and control of mail correspondence. This restriction should be strictly motivated by reasons related to the investigation or for crime prevention. The maximum period of inspection of correspondence is six months, but may be extended for a further three months.

As far as foreign and particularly unaccompanied, children are concerned, it must be stressed that telephonic communication is often the fastest and most immediate way of maintaining contact with the families and therefore must be guaranteed as much as possible.

Practices analyzed showed that "communication with the family is ensured particularly by visits and by phone." *(IPM, Rome and Palermo).*

"Unaccompanied children can have regular communication with their families by phone. For minors that have no possibility of communicating with their families there are two cultural mediators who dedicate their time to talking with the children" *(IPM, Turin).*

#### ***4.6 International standards***

*Placements shall be guided by the provisions of the type of care best suited to the particular needs of the children.*

##### **Indicators of application**

##### **a) Availability of placements\_easily accessible from the home or place of social reintegration;**

This indicator is not respected, in particular for female juveniles.

In Italy there are only 4 IPM's with a female section: Turin, Milan, Rome, and Nisida.

For this reason the girls in IPM (most of them are Roma children) are frequently detained far away from their families, resulting in forced separation from the territory of origin.

In particular, for a young girl in conflict with the law from the south of Italy, the only facility of detention is in Nisida, which will not be easily accessible either from her home, territory of origin or place of social reintegration.

“The IPM in Palermo only has a male section. Visits and contacts with parents and relatives are ensured for foreign children with families. Detained females, on the other hand, must necessarily be placed in a facility with a female section, the closest for the south of Italy being Nisida. If the child is detained away from home, USSM creates a link between the family and the social services of the detention territory organizing visits, ensuring communication with the child and activating social support for poor families.” (*IPM, Palermo*).

**b) The following criteria concerning transfers are guaranteed:**

- **children’s opinions are meaningfully sought and taken into due account;**
- **decisions are ordered by judicial or administrative authority;**
- **promotion of effective reintegration into society;**
- **presence of plausible reasons for security;**
- **which must never be applied as a disciplinary measure;**
- **information concerning children is transmitted in order to ensure the continuity of care.**

Placements are regulated by various dispositions: according to art 42 L. 354/75 they should be ordered only for important security reasons, on motivation of the institute, for reasons of justice, health, study, or family reasons. Moreover, when deciding on a placement, primary importance should be given to the criteria regarding the transfer of the detainees to an institute providing easy access to and from the home of their families.

Art. 41 DPR 230/00 also contains important rules concerning placements: they should be avoided whenever the child is already involved in scholastic activities, even if motivated by reasons of overcrowding, it being in the best interests of the child not to interrupt participation in educational programmes.

Art. 83 DPR 230/00 states that the request of the detainee concerning the destination of his/her placement should be considered.

The second supplementary report of the Committee on the Rights of the Child reported that “*children are often transferred from one IPM to another for disciplinary reasons or reasons of overcrowding. This phenomenon concerns foreign children in particular and has negative connotations as it disrupts the child’s educational formation and destroys the social, family and working connections*”.

Moreover, circular letter n. 5391 of the Department of Juvenile Justice (Feb. 2006) admitted using placements as a solution to a child’s difficult behaviour. It considered placements to be an educative instrument in exceptional cases, but only as a temporary measure adequately targeted to the child’s well-being and education.

Placements can never be adopted as a disciplinary sanction. They must serve as a moment for the child to reflect on his/her behaviour from an external point of view, as opposed to the context of his/her usual situation and surroundings. They are also helpful for the detention facility to redirect the educative treatment on the child’s return.

‘Difficult’ children can only be transferred for reasons of justice, security, or reasons of overcrowding, based on a clear and substantiated proposal, as stated in the previous circular letters (prot. 26533 of 14 September 2000, prot. 11328 of 31 March 2001, prot. 38523 of 31 December 2002).

Practices analyzed and the analysis of the statistical data concerning transfers from one IPM to another showed a wide use of the placement measure, in particular with foreign children.

“The educational project of the transferred child is prepared on the basis of his/her previous educational treatment. It is usually preferable to continue the same educative approach in order to strengthen the child’s idea of the validity of the reintegration programme. For this reason, placements in a different institute should

be avoided when the child is at an advanced stage of treatment. Constant contact between the educators is fundamental to gain insight into the child's behaviour." (*IPM, Bari*).

"This IPM has many foreign children transferred from other institutes. These children are particularly problematic, especially where their reintegration path and its positive outcome are concerned. The director of the facility tries not to interrupt the previous programme, but in any case the absence of a strong link with someone in the territory usually creates a feeling of loneliness for the child and probably at the moment of release he/she will not remain in the same territory." (*IPM, Bari*).

"Placement in facilities away from the territory where the child started an educative treatment is always considered a supplementary punitive sanction, in particular for foreign children. Frequently a placement is the cause of the negative result of the child's reintegration programme." (*IPM, Bari*).

"Usually when a child arrives in an IPM from another institute, his/her personal file follows, requested by the new institute in order to continue the treatment previously started. Where useful, the operators of the new institute will talk to the educators and psychologists that had treated the child before." (*IPM, Turin*).

"Where children transferred from another institute are concerned, it is usually preferable to continue the same educational project." (*IPM, Rome*).

"If the facility the child is transferred to does not have the same laboratory for professional training, his/her previous programme will necessarily be discontinued. Foreign children are usually transferred without too much difficulty, particularly if the families are not present or if there are no reasons why the child's point of view is not taken into consideration." (*IPM, Palermo*).

#### **4.7 International standards:**

##### ***Regular independent inspections***

#### **Indicators of application**

##### **a) The presence of qualified inspectors is ensured**

The Convention on the Rights of the Child introduced the National Ombudsman for Children, an independent office that should be established to promote children's rights, to collaborate with the European Network of Ombudspersons' for Children (ENOC) and with all the international organizations focused on children's rights and to give an opinion on legislative acts related to children's issues. The Ombudsman on children's rights is not especially focused on juveniles deprived of their liberty.

On 1<sup>st</sup> August 2008 the Italian Government submitted a legislative draft (DDL A.C. n. 2008) to Parliament on the establishment of the Italian National Child's Ombudsman.

In February 2009 Parliament began its examination of the legislative draft for the creation of the National Child's Ombudsman but so far the legislative procedure has not been concluded. The second supplementary report of the Committee on the Rights of the Child has consequently expressed as critical the position regarding the legislative draft for the institution of the Ombudsman. At the moment it does not correspond to the international standards required, in particular concerning the independency of the Office, its economical autonomy and competences.

(  
<http://www.gruppocrc.net/IMG/pdf/1MISUREGENGARANTENAZIONALEINFANZIA.pdf>)

A law establishing the Regional Child's Ombudsman has been adopted in 15 Italian regions. So far, however, the Ombudsman has been nominated and is operative only in 6 Italian regions and the current complex situation with different regional legislations on the Ombudsman's competence, structure and composition has yet to be streamlined.

Another qualified inspector is the Ombudsman for the rights of people deprived of their liberty, an independent office established to receive complaints from detainees. (See point 5.8).

**b) the inspector pays particular attention to the use of force, restraints, disciplinary punishments and others forms of treatment**

The Committee on the prevention of Torture (see point 5.4) gives special attention to the use of force, restraints, disciplinary punishments and other forms of treatment.

Another independent inspector with similar competences is the Ombudsman for the rights of people deprived of their liberty (see point 5.8)

**c) A reporting mechanism is in place to ensure that findings are made public**

There is no clear reporting mechanism in place to ensure that findings are made public. However, reports from the Regional Child's Ombudsman are periodically published and the Ombudsman's websites are frequently updated with interesting articles.

The Regional Ombudsman on the rights of people deprived of their liberty periodically publishes a report on websites concerning the conditions of detainees. Unfortunately these reports are not regularly released (see point 5.8).

#### ***4.8 International standards:***

##### ***Right to complaint mechanisms:***

#### **Indicators of application**

##### ***The tools available are:***

**a) requests or complaints to be submitted without censorship to the Director of the detention facility or to the central administration**

Art. 35 L. 354/75 establishes the right to complaint. People deprived of their liberty can address their complaint, written and oral, to the director of the detention facility, to the Supervising Judge, to the Judiciary and Sanitary Authorities, to the President of the Region, to the Ministry of Justice and to The President of the Republic. From practices analyzed these indicators are respected.

**b) an independent office (ombudsman) is established to receive and investigate complaints made by juveniles deprived of their liberty**

The most important qualified inspector is the Ombudsman for the rights of people deprived of their liberty. He should guarantee regular independent inspections to all people detained, adults and children. Unfortunately the national Ombudsman for the rights of people deprived of their liberty has still not been established in Italy.

There are regional, provincial and local Ombudsmen, with different operative functions. Specifically, they receive complaints concerning the violation of penitentiary rules and the violation of the rights of people deprived of their liberty. The Ombudsman also maintains constant contact with the competent authorities requesting explanations and with actions of advocacy in order to guarantee complete and effective implementation of detainee's rights.

The operative functions of the Ombudsman are very different to those of the Supervising Judge or internal administrative inspections. Ombudsmen require no permission to talk to people deprived of their liberty and they may visit any detention facility without authorization, according to Art. 18 and 67 L. 354/75 as modified by L. 14/09. At the moment regional Ombudsmen are present in: Campania, Lazio, Lombardia, Marche and Sicilia. The Ombudsmen in Emilia Romagna, Puglia and Umbria have not yet been elected. Provincial Ombudsmen are present in Ferrara, Lodi and Milan, while in Enna they will be elected shortly. Another qualified and independent inspector is the Ombudsman for child rights. (See point 5.7)

#### **4.9 International standards:**

*Personnel should be qualified and include a sufficient number of specialists, such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialists should normally be employed on a permanent basis. [Havana Rules, Art.81]*

#### **Indicators of application**

##### **Existence of:**

##### **a) regular careful selection and recruitment in order to assure every grade and type of personnel (Havana Rules, Art. 82; Beijing Rules, Art. 1.6)**

There is a careful selection and recruitment of personnel for the Juvenile Justice System. However the selection procedure is not regular and for the time being the Department of Juvenile Justice has closed down the recruitment procedure. It appeared, however, from practices studied, that the operative personnel are insufficient to deal with the amount of work in the Juvenile Justice System, in particular in the USSM. Statistical data concerning the administrative personnel and penitentiary agents is available from the Juvenile Justice Department website.

At 31.12.2009 the personnel was insufficient: the administrative personnel recruited and operative was 72% of the total required, and the penitentiary police agents operative on duty amounted to 80% of the total amount demanded.

( [http://www.giustiziaminorile.it/statistica/dati\\_statistici/2009/Pol\\_Pen\\_2009.pdf](http://www.giustiziaminorile.it/statistica/dati_statistici/2009/Pol_Pen_2009.pdf) )

“The lack of economic resources and the understaffed personnel are some of the most critical issues of the Juvenile Justice System” (*USSM Bologna and Florence*).

“CGM has a lack of personnel and in particular of cultural mediators within the Juvenile Justice System. The presence of adequate personnel would facilitate the children’s reintegration.” (*CGM, Bari*).

“At the moment educators are insufficient, and do not correspond to the DGM’s disposition of 2006 that states a 1:8 educator/child ratio”. (*IPM, Turin*)

“The lack of personnel and resources do not help to improve the quality of the interventions” (*CPA, Milano*)

“The scarcity of economical resources and insufficient personnel are critical aspects of the Juvenile Justice System” (*USSM, Bologna*)

“Positive action would be to improve resources which are particularly limited at the moment. D.P.R. 448/88 is quite a good legislative provision; the problem is its practical application in a constantly critical situation with limited resources and discontinuity of opportunities.” (*IPM, Firenze*).

"It is necessary to implement formative training for staff of the communities of the private social sector, in particular in the Agrigento area. These communities have also been admitting children from the penal circuit recently and the staff is not adequately trained to deal with them. As these facilities were initially established for Italian children, and are now admitting foreign children in contact with the law, it is also necessary to introduce cultural mediators

Operators of these communities require more in-depth knowledge of procedural aspects, alternative measures, school attendance, etc." (*USSM Palermo*).

"The penitentiary agents are 30 in all, working shifts, but to be adequate should number 43. For the facility to be adequately staffed, there should be 14 educators but so far there is only one Head educator in charge of the technical area, three full time educators, three temporary educators and two cultural mediators recruited so far." (*IPM, Bari*)

"Present in March 2010 in the IPM of Palermo there were: One institutional educator that was working on 18 cases (almost half of the total!); two educators by agreement with the private social sector (not staff of the Juvenile Justice Department) charging by the hour per week (for a total of 45 hours for two people, almost as much as one person working full time); two psychologists under contract by agreement with CGM; one neuro-psychiatrist by agreement and 42 penitentiary police agents". (*IPM, Palermo*).

"During the period 2007-2009 the IPM was completely renovated. Until 2008 the capacity of the IPM had been 12 children but this was insufficient for all those present. Statistically there were 15 present, therefore it was overcrowded. The new IPM has two floors with a total capacity of 44 children. For the time being only one floor is open with an effective capacity of 22. The second floor remains closed due to the lack of educators and penitentiary police agents.

There should be three treatment groups: a welcome group, an orientation group and a resignation group. At the moment only two groups are operative: the welcome group and the orientation group, the third group is not operative because of insufficient personnel. Also, the number of penitentiary police agents is inadequate for the number of children. For a correct balance between children and police agents on duty in the IPM, there should be 37 operative police agents. Currently there are only 27.

There are five educators in IPM: one is the coordinator, with specific pedagogical training, two are in the welcome group and two in the orientation group. This number is also insufficient considering that two educators are working part time." (*IPM, Bologna*)

"The capacity of the Nisida IPM is 40 males and 10-12 females. At the moment they have 54 boys (of whom 11 are foreigners) and 15 Roma girls, so the facility is overcrowded.

Six educators are present: four full time and two on loan from an external agency. The educators' presence in the Institute is guaranteed from 08,00 until 20,00.

The total number of penitentiary agents on duty, both male and female, is 65. They work three shifts (morning, afternoon, night).

The number of both educators and agents is inadequate for the number of children in the IPM." (*IPM, Nisida*).

"The Milan IPM has a capacity of 48 male children and 15 female children. Very often the facility is overcrowded (today there are 56 males and 13 females).

At the moment 70 police agents and 10 educators (three of whom are paid from projects of the Municipality of Milan) are employed in the IPM. Two cultural mediators and the sanitary personnel from A.S.L. Ser.T. are responsible for drug addicts. The total number of personnel employed is inadequate for the requirements of the facility." (*IPM, Milan*).

## **b) adequate remuneration to attract and retain suitable men and women**

One of the major problems of the Juvenile Justice System is the limited economical resources allocated to it. This lack of financial resources creates big problems in personnel management.

## **c) special training in child psychology, welfare and international standards before entering duty and special in-service training organized at suitable intervals (Havana Rules, Art. 85)**

On taking up duty, Juvenile Justice System personnel are obliged to do special training on juvenile justice matters. Special in-service training is organized but not at regular intervals.



The Committee on the Rights of the Child, in its second supplementary report, emphasized that the specialization level of the Juvenile Justice System operators is insufficient, as also stressed in the concluding observation of the UN Committee on the Rights of the Child (CRC/C/15 Add. 198, point 52-53). The 2003 Italian governmental report refers to the training activities of the Public Administration's Institute for Advanced Studies but from the point of view of the CRC Committee, these activities could not be considered adequate because only 30 penitentiary agents were trained out of a total number of 83 on duty (CRC Committee, II Supplementary report, page 161).

Concerning the training of agents, some practices studied revealed that "DGM's training of Juvenile Justice System penitentiary agents is very technical and specific, focused on the use of I.T. instruments, but not sufficiently focused on the pedagogical approach." (*CPA, Milan*).  
"With regard to training, in the past, specific training was planned, but at the moment most of the agents come from the adult penitentiary police and get specific experience on juvenile matters in the field." (*IPM Palermo*).

## **CORE ELEMENT no. 5: AFTERCARE**

### **International standards**

*All minors should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.*

### ***Introduction***

Art. 79 and 80 of JDL (Havana Rules – juveniles deprived of their liberty) recommended that *all minors should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure as far as possible, that the juvenile is provided with suitable residence, employment, clothing and sufficient means to maintain him or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them on their return to the community.* Aftercare can be defined as reintegrative services that prepare out-of-home placed juveniles for reentry into the community by establishing the necessary collaborative arrangements with the community to ensure the delivery of prescribed services and supervision (Altschuler and Armstrong, 2001).

The term "aftercare," however, is something of a misnomer—the process does not begin only after an offender is released. Instead, a comprehensive aftercare process typically begins



after sentencing and continues through incarceration and an offender's release into the community. Effective aftercare requires a seamless set of systems across formal and informal social control networks. It also requires a continuum of community services to prevent the recurrence of antisocial behaviour, and it can involve public-private partnerships to expand the overall capacity of youth services.

Two key components of the aftercare concept distinguish it from the traditional juvenile justice model. Firstly, offenders must receive both services and supervision. Secondly, they must receive intensive intervention while they are incarcerated, during their transition to the community, and when they are under community supervision. This second component refines the concept of reintegrative services to include services that occur before release as well as after release.

A typical aftercare programme could be to:

- prepare juveniles for increased responsibility and freedom in the community;
- encourage positive social youth interaction in the community;
- work to bring together the juveniles, their families and community support systems;
- identify and develop new and existing resources and supports for juveniles;
- monitor juveniles in the community through the use of a coaching model;
- connect juveniles to employment vocational training and/or an academic study courses;
- identify target high risk offenders;
- address changeable criminogenic factors including cognition, attitudes education, peer associations, use of drugs, attitude to authority, behaviour in the work place, and inter-personal relationships;
- link institutional and community-based services for a seamless transition;
- involve systems of collaboration to build a comprehensive supportive network.

Return to society consequently represents a challenge for the penal system and depends on successful methodology implemented for crime and recidivism prevention.

### **Indicators of application**

#### **a) guidance in finding housing and meaningful occupation (whether studying or working)**

The phenomenon of children in conflict with the law basically concerns children from backgrounds of poverty and great hardship. There are many causes of criminal behaviour and they depend on a variety of factors (poverty, critical family conditions, absence of the reference group – parents, friends, adults etc., – social segregation, drug addiction etc.). It can represent an isolated event in the life of the child or it can become repetitive. The aim of the penal system is to create the necessary positive and concrete conditions to make the offenders' reintegration and re-education possible. To this end and in compliance with the Constitutional Charter (Art. 27), a variety of methods of intervention shall be put in place to guarantee re-education of the offenders.

A suitable system for the re-education and reintegration of children involved in the criminal circuit requires a multidisciplinary approach and must consider the possibility of allowing

access to status regularization on the territory, accommodation, work, education and facilities.

It was apparent from practices studied that generally speaking, although the indicator was well implemented at a regional but not at national level, nowhere was it fully applied, due to lack of funds, human resources, the lack of trust in the opportunities available and/or lack of self-esteem and the lack of status regularization in the territory.

Furthermore, great difficult in guaranteeing the reintegration process to minors transferred from one city to another during their detention was noted. In these cases, children return to their own territories and consequently miss out on reintegration.

An important point that came out of the interview was the importance of the status regularization in the territory. In the opinion of the stakeholders contacted, it represents a fundamental building-block for the reintegration process. So research for concrete employment or opportunity for studying must proceed together with status regularization in the territory. It has also been observed that repatriation practices do not take into consideration the minors' interests. Finally, it can be said that notwithstanding the good practices studied, *the various methods of intervention do not achieve the desired results due to insufficient implementation.*

#### *Focus on interviews*

“Networking resources is fundamental for the reintegration process. Making the necessary arrangements to assist minors returning to society, such as support with external activities and in particular researching contacts, is key to the success of the educational project. It is very difficult to promote initiatives in the case of minors from other regions because when they are released, they often wish to leave the territory. The first problem is of an administrative nature and concerns the offenders' status regularization in the territory. The most ambitious goal is to let the child have a residence permit before the end of the sentence. The day care centre for children is an example of good practice. It is an external reintegration programme that plans placements for children in apartment groups. It also welcomes foreign minors on work placements on confiscated agricultural land entrusted to and managed by LIBERA. *(USSM??, Palermo).*

“Positive intervention regarding education and finding employment is provided by good inter-action between the penitentiary and a long-standing private agency in the regional territory in conjunction with the regional facilities. In this case the agency has access to the IPM and its operators can work directly with the children on-site. This method softens the barriers of detention and also improves the work capacity, making it possible to continue post- release...” *(IPM, Bari).*

“The DEDALUS association is responsible for the aftercare of children in conflict with the law, by obtaining status regularization, finding accommodation (apartment groups) and employment. Our job begins during detention which constitutes a real, concrete opportunity...it is very important to create a good feeling with the minors and to have an individualized approach with them. Children involved in drug crime can earn 1000 euro a week.” *(Coop. Dedalus, Naples).*

#### *Focus on good projects studied in Turin*

The *IN&OUT project* is achieved through the CPA of Turin. Recipients of the project are unaccompanied minors for whom the court orders a remission in freedom without application of any precautionary measures. It provides an educational team formed by one educator from the Turin Municipal Dept. for Foreign Minors, cultural mediators and the educators from the CPA. The first contact takes place within the CPA, where the cultural mediators (of Romanian and Moroccan origin) share lunch and then spend a few hours with the children every day from Monday to Saturday. They are also allowed to conduct personalized interviews to gather elements needed to set in motion the process of post-release from the CPA. Whenever possible, on release the young person is accompanied to the Sanabil cooperative which can become a reference venue for socializing and attendance activities because of the more informal setting provided that facilitates an educational process for the children. Project goals are: to anchor minors through acquaintance with those already in the CPA, establish a trusting relationship for co-planning the way forward with the child, to provide continuity of technical assistance work in the CPA with appropriate instruments.

The *NOMIS project* focuses on children coming into contact with justice for the first time without, of course, excluding those who already have a criminal record. The project is inspired by studies on resilience and takes into careful consideration the forcefulness of the factors intended as protection from the risk of deviance. The operation is based on the process of empowerment of personal resources and relationships to overcome difficult situations and strengthen opportunities for positive achievement. The main target is to provide opportunities of taking charge of foreign children entering the criminal circuit by alternative means to the pre-trial measure in IPM or in a Community. The project, designed and tailored to the characteristics and needs of foreign children, aims to overcome the gap between Italian and foreign minors. First, the macro objective described above is carried out with the first approach, engagement and acquaintance with children who have committed offences. Second, primary importance is given to alternatives to imprisonment in order to "stop" the child and give him/her the chance to sign a pact and inter-act with the operators. Finally, a third line of action, at start-up, provides an extended network, working with the family, the community of origin or the urban area where the minor is located. The underlying idea is to use the compulsory entry of a child to a CPA facility as an opportunity and not as a passive moment. The mediators' hours have been increased, especially at weekends and other busy days, and also to include informal periods such as meal times. In the CPA the mediators explain to the minor his/her legal position and tries to open a dialogue to learn as much as possible about his/her situation. The attention given to the time spent by the children in CPA opens the debate on the need to extend this attention also outside the facility. It is interesting to note that this project has made it necessary to formalize an essential coordination between the various activities of street educators, which they had already created themselves unofficially. An informal network has been formed, working to avoid territorial overlapping and creating good partnerships. Another of the project's innovative ideas was the creation of two community facilities (called Casa Romania and Casa Africa). The goal is to create a community very close to a home so providing unaccompanied minors with a preferable alternative to detention in prison and at the same time seeking to provide more guarantees to judges regarding the positive results from placements in the community. The houses are a secure and protective environment where the child can have the time to acclimatize, get to know and learn about other members of the "family". The houses are designed for transitory periods, where the children have a space designed to make them feel secure. The aim of the intervention is to build a path based on trust as a vehicle to achieve compliance with clear and precise rules (self-management of their space and their own things, to respect the timetable, the other inmates and operators). It seems important to stress that the success of this experiment relies on being able to maintain a fair balance between an effective environment and discipline. Like any family community it is necessary to avoid the risk of turning it into a playground or, at the other extreme, use a rigid and punitive child-approach.

From various interviews, it has become clear that it is necessary to guarantee status regularization on the territory to the children involved in the criminal circuit. This is a fundamental building-block for the reintegration process. Consequently, research for concrete employment opportunities must go hand-in-hand with status regularization in the territory. It has also been observed that the repatriation practices do not take into consideration the minors' interests.

**b) individual counselling, family counselling, educational courses and social skills courses, or therapeutic programmes to treat drug and alcohol addiction.**

The intervention depends on the context, the territory and the associations present on it. Practices studied showed gaps in the support of the local authorities for creating a network making it possible for the child to continue his/her reintegration process once released from the community. In the case of drug and alcoholic addiction, it is also necessary to provide psychological support and a specific facility with specialized personnel. Family counselling is totally lacking or, at best inadequate. Practices studied revealed that the indicator is not sufficiently respected, due mainly to a lack of resources, (economic and human), personnel that are not always properly qualified or are insufficiently dedicated, infrequent training, lack of child communication with their families, lack of coordination with USSM and local government etc.).

*Focus on interviews (summary)*

Good practices have been seen in the municipality of Bologna where there is a department dealing exclusively with unaccompanied children, although there has been a slight decrease in these in recent years, and an increase in accompanied minors and second-generation children.

During their period in a community the minors attend literacy courses even though they would prefer to be working ... they feel very strongly about sending money to their families. The unaccompanied children live in a state of uncertainty and discrimination and often committing a crime is an attempt to survive...at the same time, entering into contact with the officers of the criminal law is sometimes an opportunity to follow a path of reintegration into society. The promotion and involvement in projects realized through both public and private actors is aimed at supporting children in counteracting social exclusion and school dropout. It also provides an opportunity for using special commitment to delivering orientation, training courses and job placements.

A good suggestion (Firenze) is to encourage and permit operators that have worked with the children to accompany them for a time outside the community/facility. The social workers in Perugia also considered it very important that children be removed from the forms of exploitation by criminals through integration measures; they have underlined that it is equally important that children themselves have confidence in public institutions and dedicated paths. On the other hand, from the minors' point of view obviously, the prospect of being released once they become of age will jeopardize the project as they would definitely consider it preferable to continue to be exploited. Another gap regards the transfer of minors to a different institute located in a city different to that in which he/she has been living and put down roots. In these cases the minors are frequently not interested in the reintegration process because they return to the cities they were transferred from. (Bari experience). As a penal experience is, in most cases, the result of the social phenomenon of lack of integration, a network of facilities affiliated with the government should be developed to protect the child once released. Children in conflict with the law need a concrete answer and a rapid solution (Bari).

**c) presence of aftercare and rehabilitation services provided both by public and NGOs in partnership, with funding from government and others resources.**

The indicator requests the cooperation of public and private sector partnerships and the involvement of long-standing non-governmental organizations in the territory. The competence of the different partners could bring real added value to offenders' reintegration. The children in conflict with the law require specific intervention and the answers must be concrete, authentic and present effective alternatives to the circuit in which they often find themselves. For the moment, from practices analyzed, neither the

participation of the private and public sectors nor the partnership between them seems to have improved, although they represent a focal point for a suitable aftercare process.

#### *Focus on good practices*

In Rome a good practice is the creation of the day care “CivicoZero Centre”. The project is implemented by the city of Rome and it provides support, guidance and protection for both foreign children and children coming from new EU countries. It also cares for children in situations of marginality and social deviance, and subjected to risk of exploitation and abuse and it aims to ensure improvement of the quality of their lives and respect for their rights. “CivicoZero” carries out consulting activities, workshops, outreach, participation of children and adolescents, training and networking, which are organized within the Centre in order to strengthen the protection of minors. The Centre "CivicoZero provides some of the young migrants with basic services (showers, meals and washing machines). In addition, the Centre takes care of children who require medical assistance or being driven or dropped off at specified clinics. Peer education and peer research are some interesting activities of the centre which also provides children with legal advice. A consultant provides support for the resolution of more frequent legal issues. At the CivicoZero Centre young children can also use internet freely, under the supervision of the staff and be involved in computer labs where they are informed about the risks of using new technologies inappropriately. Furthermore, a specialist in art therapy organizes art workshops in external aggregative venues or on the road. In these places the Save the Children operators sometimes work with children involved in situations of exploitation, they inform children about their rights and opportunities and provide information about risky behaviour to their health. Other operators work on the identification of child victims of exploitation or trafficking.

In Naples the Dedalus association is particularly active regarding both administrative aspects and the educational reintegration process. Dedalus manages a day care centre where legal consultants and peer-to-peer research are provided.

## **CORE ELEMENT n. 6: EDUCATION AND OTHER NECESSARY ASSISTANCE**

### **International standards**

*Efforts shall be made to provide juveniles, at all stages of the proceedings, with the necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process (The Beijing rules, art. 24)*

*Education is vital for the rehabilitation and reintegration of young offenders and to their healthy development, which is also a factor in the prevention of recidivism process.*

### **Indicators of application**

**a) diplomas awarded do not refer to the place where the children studied (it is important no reference be made of the juvenile being institutionalized)**

All practices analyzed revealed that children detained in juvenile institutions, who had successfully attended academic courses, received diplomas in which there was absolutely no indication of their having been institutionalized. Certain detention facilities, in any case, have no internal school. (IPM, Firenze).

### *Focus on interview*

“...Certificates and diplomas bear no mention of the fact they were achieved in IPM. Diplomas and certificates are issued directly by the school.” (*IPM, Bari*).

“Scholastic activities are guaranteed in IPM. In order to protect the children’s privacy, the awarded diploma is released from a public school and does not refer to the attendance in the detention facility.” (*IPM, Rome*).

“The IPM does not have an internal school and, consequently, the same operators provide for teaching and supporting children in order to prepare them to sit school exams as external pupils. This practice is considered inadequate and damaging for the children. Furthermore, there are currently no vocational courses organized in the IPM, due to the lack of funds and proposals from Local Government.” (*IPM, Firenze*).

**b) detention facilities have an adequate and appropriate library (books and periodicals)**

Generally, juvenile detention facilities in which children are placed for a longer time (such as IPM) include libraries. A lack of resources has been complained of with regard to the CPA (i.e. Roma, Bari, etc.).

In general, considering the time the children spend in these facilities, the educational materials provided are quite insufficient, nor are any school activities implemented. In the past, the CPA of Rome had a good practice, whereby, thanks to an agreement with the Public Library of Rome, a book loan service was provided. This service is no longer available, nor is there a library in the facility at present, due also to restructuring work. Some operators also pointed out that short school initiatives should be implemented in CPA, such as history or geography for example, with a focus on the territory of origin.

In the case of libraries being provided in detention facilities, it would be useful to make material available in the languages of the foreign children present.

**c) vocational training** in various occupations is ensured.

Practices analysed show that vocational training is considered one of the best instruments to promote the re-education and reintegration of juveniles involved in the criminal circuit, particularly in the case of the foreigners as they are generally in their late teens or about to become of age. On the whole, ‘general’ training is widely practised on almost all territories considered, and practices analyzed show a great variety of courses both within and outside the facilities (pizza courses, upholstery, woodwork, theatre, music, etc). Notwithstanding vocational training is considered a very useful resource, it “is only made available with great difficulty.” (CGM Roma).

Generally, the majority of operators questioned complained of the fragmentation of several interventions, due in many cases to the scarcity of economic resources and public funds as well as to the short duration of the courses.

**Focus on interviews**

“There is a serious general decline in public funds which greatly affects programming possibilities. Most of the resources available for children are used to ensure food, presence of support staff and, only partially, to cover expenses related to fees for placements in residential communities. In recent years, a considerable contribution was provided by the Province of Rome to ensure several project activities aimed at children and young adults in the criminal area, both internally and externally.” (*CGM, Rome*).

The IPM in Bari reports that many projects are financed by European and, above all, Regional funds.

Personnel questioned remarked that “.. it is always important to ensure an in-depth analysis of each single case, in order to identify the best intervention for the child and ascertain how his/her ability could be put to the best use on release. Work is considered a basic element for the reintegration of the child, and training is essential to find employment. Generally, as conditions for recruitment, enterprises and businesses require professional and educational credibility of the child to be employed. In many cases employment is achieved through direct contact with the person and businesses are encouraged to recruit from the detention centre if favourable economic conditions and social security are provided. Consequently, the objective to be achieved in IPM is that of overcoming the psychological prejudice a potential employer often has against people involved in the

criminal circuit. This is also the reason for IPM promoting companies accessing the detention centres through innovative projects." (*IPM, Bari*).

Usually, "courses include several hours' training activities, while a portion of time (30-40%) is dedicated to employment simulation inside the detention centre, as an alternative to the formative training, with the possibility of subsequent integration. This simulation makes it possible for companies to bring their staff and equipment directly to the IPM. On completion of the course, the children receive a certificate with a statement of credits, recognized throughout the country and showing that the vocational activity was carried out inside the detention facilities." (*IPM, Bari*).

Personnel questioned from the Juvenile Services in Bari considered as positive the legislative provisions (such as law n. 193/2000) which establish rules aimed at promoting working activities for detained persons and provide tax breaks and fiscal allowances for businesses that recruit underprivileged subjects, such as detained persons. The Puglia region has recently adopted social policies and operational provisions providing financial incentives to promote professional employment also for detained juveniles (see: *DELIBERAZIONE DELLA GIUNTA REGIONALE 15 dicembre 2009, n. 2468, REGOLAMENTO REGIONALE 21 novembre 2008, n. 25*).

Although vocational training is always considered very useful, it is apparent that much of it is implemented inside the detention facilities. Furthermore, even in the case of a positive process of social reintegration, the lack of care outside the Juvenile Justice System added to the difficulty of obtaining status regularization in the territory (in the case of migrant children, usually has the effect of frustrating and nullifying every kind of intervention adopted by the juvenile justice operators. This was the case, for example, of "a juvenile from ex-Yugoslavia, recruited by a business on completion of his sentence and also involved in a theatre programme in collaboration with the Kismet Association. Due to the absence of a network of contacts after the detention period and to the lack of various documents that were delaying his recruitment, the juvenile decided to leave the territory, forfeiting all the opportunities he had received up to that moment." (*CGM, Bari*).

Negative effects have also been noticed in the case of children being transferred from one penal institution to another. The problem is particularly evident in Southern Italy, where the presence of foreign children coming from other institutes is more consistent. In Bari, operators explain that the main problem is not the execution of the reintegration project, but rather its effective success. "When a juvenile is transferred from another institute, the personnel try, if possible, not to interrupt the reintegration project initiated. Nevertheless, the absence of any connection and / or contact person on the territory provokes a sense of loss and loneliness in the child. Consequently, he/she will lose all interest in remaining in the territory and will tend to return to the city from which he/she was transferred.

**d) remunerated labour** (if possible within the local community) is provided;

Everyone emphasizes the necessity of implementing wider access to remunerated labour within the local community. Currently, the economical resources available for investment in this area are insufficient and the initiatives implemented, although positive, are few and far between (USSM Roma, CGM Roma, Coop. Dedalus Napoli, etc.). According to a social worker from Rome: "generally, "work grants" are considered a very useful method of intervention to promote social reintegration and vocational training for children, preventing the risk of recidivism. Unfortunately, these are only available to foreign children in possession of a regular residence permit. These work-grants are funded by various Institutions (Municipality, Regions and various Agencies). They provide work and tutoring

costs. Work grants are also considered to be one of the most useful tools because they are well accepted by employers.

***Focus on interview***

However, also in the cases of work grants “..in order to ensure the effective reintegration of juveniles it seems very important to accompany children on such training courses, so the presence of a tutor is considered essential.” (*USSM, Rome*).

“Only children from the external penal area benefit from work grants. In current practices, Art. 21 of the Penitentiary Laws, which establishes the possibility of work activities outside the prison, does not apply because of the lack of regular family contact in the territory.” (*IPM, Roma*).

***Focus on good practice***

A good practice promoting and ensuring access to the work grants is the one implemented by the CGM of Bologna which has instituted an apposite “work grants” coordination team.

“The team is in charge of coordinating available resources, evaluating the priority and the continuity of the allocation (accessing, if relevant, other national, European or regional funds). A critical aspect was also the considerable reduction of the economical resources allocated by the DGM, for this reason the CGM was encouraged to look elsewhere for financial aid. (*CGM Bologna*).

**e) the educational programmes of the country are respected**

According to the circular letter of the DGM of the 17 February 2006 (concerning the organization of IPM), annual or multi-year educational programmes are established by the IPM’s Education Commission, in compliance with the target of juveniles placed in detention. Furthermore, according to the internal circular it is necessary to create and organize special literacy linguistic courses for migrant children.

In practices, for example, literacy courses are effectively developed in IPM (Rome, Bari, Turin, etc.), while juveniles in the external penal area attend literacy courses and school courses organized by state schools present in the territory or by private associations (for example, Ass. Don Bosco in Rome).

**f) recreation time for free daily exercise is guaranteed and includes: arts and crafts, skills development and independent life skills development, physical education programmes, the practice of religion**

As reported by several operators, various activities related to the above are generally implemented, above all in the Penal Detention Centres, Residential Communities or in the external area.

***Focus on interviews:***

“Juveniles in IPM do various sports and participate in educational and vocational training courses. The day is perfectly organized. IPM has many sports grounds (football, volleyball) as well as a gymnasium. Many sports activities are conducted by UISP. Computer courses are organized as well (Aurora project). Every day, juveniles attend elementary school available both to Italian and foreign pupils, twice a week a volunteer organizes artistic workshops and there is also a musical laboratory.” (*IPM, Bari*).

“Several activities are implemented in the Residential Communities, both in the external and internal area: digital photography and gardening courses, voluntary activities, bookbinding, carpentry, hairdressing, cooking classes and theatre... Activities involving children are usually paid.” (*Residential Community, Bologna*).

In the case of several CPAs, the principal activity is watching television and during the week-end the children are usually alone in the absence of the educational personnel (Turin, Palermo, Rome and Bari), No sports activities are available in Rome or Palermo. CGM of



Piemonte, Liguria and Valle d'Aosta, emphasize the lack of external areas available to children, the main reason being the difficulty of structuring an intervention for children temporarily placed in the Centres. Nevertheless, many operators emphasize the opportunity of developing more flexible interventions able to be used for shorter periods .In this context a very good initiative is that developed by Save the Children Italy “I and the image”, a video-animation project developed by children.

*Focus on good practice*  
“I and the Image” (CivicoZero)

## **CORE ELEMENT no 7: CONTACT WITH THE POLICE**

### **International standard**

*Police should be specifically instructed and trained. [Beijing Rules, Art. 12]*

*Police should adopt a non-discriminatory attitude during contact with children [Recc. n. R.(88) 6, Art. 7]*

### ***Introduction***

The above-mentioned standard establishes that police officers should be specifically instructed and trained and shall adopt a non-discriminatory attitude during contact with children (Art. 12 Beijing Rules and Art. 7 Recc. (88) 6).

According to the Recommendation (2006) 2 Committee of Ministry to the State Parties on European prison rules (11 January 2006 – 952 meeting) the lack of economic resources does not justify restrictive conditions placed in violation of human rights. Paragraph 81.3 establishes that: Staff who have to work with specific groups of prisoners, such as foreign nationals, women, juveniles or mentally ill prisoners, etc., shall receive specific training for their specialized work. Paragraph 81.4 indicates that the training of all staff shall include instructions on the international and regional human rights instruments and standards, especially of the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as in the application of the European Prison Rules.

### **Indicators of application**

**a) special training and instruction for police officers frequently or exclusively dealing with young offenders**

**EDITOR’S NOTE to author: b) IS MISSING**

**c) special training for police focused on the cultural values and standards of behaviour of the various ethnic groups and considering the benefit of diversity**

Police officers working in the penitentiary system are provided for by law number 395 of 15 December 1990. Article 15 establishes that police working with children in conflict with the law shall be chosen according to criteria regarding aptitude, established by ministerial rule. Article 16 point 6 establishes that the training programmes shall take into consideration the particular nature of the service in IPM [...].

In 1993 the Italian Ministry of Justice adopted a ministerial decree “in consideration of the urgent need to ensure a competent and specialized police body working in the child sector”. Art. 1 establishes that staff are managed by the central office for Juvenile Justice that organizes recruitment based on aptitude for the specific duties. The decree notes also that personnel recruited shall have specific abilities, psychological aptitude, and shall be trained regularly. The decree, however, has never been applied.

Practices analyzed revealed the following:

- ✓ lack of appropriate legislation regarding access to the police by staff employed with minors;
- ✓ awareness of the role and responsibilities in dealing with children, taking into account special issues such as gender, trafficking, exploitation etc..
- ✓ training to ensure that police are familiar with the UNCRC international standards, national legislation, etc. needs to be provided.

Police officers are recruited by means of a national competitive examination. The Italian system does not provide for a specific examination for police involved in activities with children in conflict with the law. Training is generally carried out following recruitment, at the ISSP (Superior Institute for Penitentiary Studies). From practices analyzed it appears the indicator is not applied.

***Focus on interviews***

“Police officers attend a general training course at recruitment and are subsequently assigned to the Juvenile Justice System. Only now will they be trained in the field of juvenile justice. The organization of the refresher course depends on available funds. The police working in IPM have affirmed that they attended a 3-day course in Rome in 2005 and another 3-hour course in Turin in 2009 on communication and interaction with children.” (??, *Turin*).

“Specific training to work in places dealing exclusively with minors does not exist. The police are trained by the professional school of human resources and receive subsequent training at the moment of employment. There is no organization of training or refresher course.” (???, *Bologna*).

“At recruitment there is training concerning police law enforcement. The police officers are transferred from the facilities for adults to the institutions for minors (for example, a police officer in Bari has been transferred to IPM after 15 years of work in the adult system). In these cases, they receive training at the time they are transferred. Moreover, refresher courses are rare (in Bari the last one was organized 4 years ago).” (???, *Bari and ???, Rome*).

## **b) ??? or c) ??? special police units for the same purpose in large cities**

According to Art. 12.1, “In order to best fulfill their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose”. Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the Juvenile Justice System, it is most important that they act in an informed and appropriate manner. While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

Special units are not provided for by Italian law. *The indicator is not respected.*

## **CORE ELEMENT n. 8: USE OF ALTERNATIVES**

### **International standard**

*Promoting the use of diversion whenever appropriate and desirable (CRC, Art. 40 (3); Beijing Rules, Art 11)*

### ***Introduction***

Many international documents state the importance of promoting diversion options (or discontinuation of proceedings) aimed “at preventing juveniles from entering the criminal justice system” (par II.2, R(87)20) or by putting juveniles on trial “as rapidly” as possible. (par. III.4 R(87)20).

Furthermore, these international principles comply with another general standard which is “the principle of minimum harm”.

### **Indicators of application**

**In accordance with the respective legal system, the existence of the following points must be ensured:**

- a) diversion measures involving removal from criminal proceedings and referral to alternative social services (CRC, Art. 40(3); Beijing Rules, Art. 11.1 ss).**
- b) diversion measures in the context of judicial proceedings (such as mediation, probation, etc.);**

A part of the “ordinary” proceedings (governed by the Criminal Procedural Code), DPR no. 448/'88 envisages some special proceedings (fast-track judgements), allowing the child to exit the formal criminal justice system promptly, for reasons such as: judicial pardon,

dismissal for irrelevance of fact, suspension of proceedings and probation order (for which the successful completion entails the total removal of the offence from criminal records). Italian legislation does not provide for referral to alternative social services.

During pre-trial investigations, the State Attorney may ask the Judge to enter a ***non-suit upon legally irrelevant facts (dismissal for irrelevance of facts)*** if by continuing proceedings this would prejudice the child's educational needs. Conditions of application are: the legal irrelevance of the facts and the occasional nature of the child's conduct. The Judge decides upon hearing the child and the holder of parental responsibility as well as the victim of the offence. The Judge may enter a non-suit ex-officio upon legally irrelevant facts either at the pre-trial hearing, at the fast-track judgement or in the immediate trial procedure.

Either at the pre-trial or trial hearing, according to Article 16 of the Criminal Code and article 19 of the Royal Decree n° 1404 of 20 July 1934 (subsequently amended), juvenile courts have the power not to sentence or prosecute a juvenile under 18 who has committed a specific crime but to apply ***the judicial pardon***. The judicial pardon extinguishes the offence. It cannot be applied to recidivists or previously pardoned juveniles unless the new crime is a continuing offence, or was committed before the offence under consideration, and when the accumulation of the two penalties provided for these crimes does not exceed two years.

According to Articles 163 and 168 of the Criminal Code, a Judge can suspend the sentence if the offender is unlikely to commit further crimes (***conditional suspended sentence***). This benefit (applicable both to young people and adults) can be granted only once to juveniles sentenced to a maximum of 3 years detention, and only if the new sentence does not exceed 3 years. If a juvenile does not commit either a new offence (punishable by arrest) within 5 years or an offence (not punishable by arrest) within 2 years and complies with all the criteria, the offence is extinguished: the measure will be withdrawn in the case of recidivism.

Moreover, the judge can also deliver a sentence of conviction when it is estimated that a fine would be an adequate sanction or possible to substitute imprisonment with a measure of attenuate detention (***substitutive measures***).

The institution of ***stay of proceedings with placement under supervision*** (ex article 28 of the Presidential Decree 448/88 is similar to the Anglo-Saxon probation and is widely used by the Italian juvenile courts; this is a probationary period that precedes criminal proceedings. If this ends successfully it enables the offence to be extinguished. Otherwise the criminal proceedings will be resumed. The offender is placed under supervision according to a programme laid out by the Juvenile Justice Services, with the assistance of the local Social Services.

*The indicator is respected*

*(for practices, see also core element n. 5)*

#### **b) diversion measures, not limited to children who have committed minor offences**

As explained before, one of these measures is the ***judicial pardon***, which could be applied to children who have committed minor offences only once. Furthermore, the ***non-suit upon legally irrelevant facts*** could also be considered for minor offences, even if (unlike the judicial pardon) there are no limits of application according to the gravity of the sentence. In effect, the legal irrelevance refers to the fact and not to the criminal provision.

There are also no provisional limits for the access to penal mediation.

## **EDITORS NOTE: c) PARAGRAPH MISSING**

### **d) community programmes, such as:**

- care, guidance and supervision orders
- probation services
- community service orders
- financial penalties, compensations and restitution

See core element 4.2

### **e) criminal mediation or other restorative justice (Recc. (2008) 11 COE, Art. 12)**

The Italian system does not provide any form of victim-offender mediation in the Juvenile Justice System. Nevertheless, practices show that intervention of mediation has been progressively implemented at territorial level. In fact, welfare and juvenile justice operators found a margin for mediation within the fold of the law. The disciplines used to perform mediation practices are the provisions about acquittal for irrelevance of fact and probation order. In both cases, a successful mediation offers the chance of an early definition of process.

However, practices confirm that the intervention of mediation so far experimented, are not adequately implemented or spread across the national territory. Although the majority of the juvenile justice operators, who were questioned, emphasized the use of such a restorative instrument, which is considered useful and sometimes crucial in order to prevent recidivism and helps to encourage an effective re-socialisation of juveniles involved in criminal circuits, this also refers to foreign children (Juvenile Services of Florence, Turin, Palermo, etc.); although in both scientific and political circles, mediation is vigorously enhanced, due to the absence of specific provisions on the matter, mediation is not regularly practised.

Some existing Mediation Offices have actually been closed due to the lack of economic resources (This is the case of the Mediation Offices in both Florence and Milan).

Juvenile Justice operators from Turin, where the practice of mediation has been experimental for a considerable length of time, affirms that during the last few years the use of a progressive increase of mediation intervention has proved to be a positive factor in the reduction of recidivism..

According to the data provided by the new Mediation Office of Palermo, there is no difference between the number of cases sent by the Judicial Authorities to the Office involving Italian and foreign children. In reality the difference seems to lie in the particular conditions and methods adopted when the offender is a migrant child. First of all, the Mediation Office of Palermo points out the opportunities to provide a wider involvement of the family of origin, if present, or of a person belonging to the community of origin. Secondly, it needs to consider the time element, due to the fact that in such mediation it is absolutely fundamental to involve cultural mediators, from the very beginning. Their presence is essential during all phases of intervention, from the translation of letters to the telephone calls, preliminary conversations and meeting of mediators. Finally, the number of preliminary conversations is more frequent than in the case of the involvement of Italians, and the presence of parents or representatives from the community of origin is more often promoted. More time is needed in order to form mutual understanding and exchange different cultural points of view and help the offender to realize the relevance of mediation. Furthermore, when a first survey on all interventions was set up from 2006 to 2008, it was noticed that not even one of the offenders involved in mediation turned out to be recidivist.

In general the present indicator shows that from the collection of practices the application of mediation is fragmentary and depends on the territory considered.

#### ***Focus on interviews***

“In 1996 a Criminal Mediation Centre in Turin was established and this is one of the first in Italy dealing with restorative justice. It functions with individual subjects and a focus group. It is neither a public nor a private service, but a mixture of interventions from different sources such as; the Turin Municipality, CGM, retired Judges, associations of volunteers, social workers from USSM. Sometimes placement under supervision entails the obligation to contact the Criminal Mediation Centre. Naturally the result of the mediation and that of the criminal proceeding are two different grounds. Statistical data reveals that mediation is more common with Italian children than with foreign nationals, even if at the moment, with the increase of the phenomenon of second generation foreign children, it is still more frequently practised for migrant children. Families from Maghreb participate in criminal mediation with intense emotive involvement” (*USSM, Turin*).

“In Turin criminal mediation has been practised for a considerable length of time .but less frequently with foreign children. This is mainly because the victim needs to fully understand the problems the foreign child encounters such as integration and cultural differences. In order to carry out a successful mediation it is essential that a cultural mediator is present at all times as without his presence the result could be negative. It is necessary that the child really understand the significance of mediation and restorative justice, because he could easily misunderstand the institute and dangerously consider our criminal juvenile justice model as a system where criminals remain unpunished” (*Prosecutor from Juvenile Court, Turin*).

“In Milan criminal mediation was an inter-institutional service that until 2005 worked with great results. Unfortunately since 2005 the Criminal Mediation Centre has been closed. It is undoubtedly a great practice in helping to reduce recidivism, in particular for foreign children who are not detained” (*USSM, Milan*).

“In Bologna CGM is promoting the start of a service of Criminal Mediation for Juveniles. At the moment this is operating in collaboration with CIMFM (Italian Mediation Centre and Formation of Criminal Mediation Centre)” (*CGM, Bologna*)

“Mediation was practised in the past in Florence, but at the moment this is no longer operative because the convention between the municipality of Florence and the Mediation Centre has not been renewed. It is useful to promote criminal mediation because of its positive impact on children in reducing recidivism” (*USSM, Florence*).

“In Rome Criminal Mediation is not operative at the moment. There is an ongoing discussion between the Municipality of Rome and the Mediation Office to find an agreement to start the activities. Presently, there is a Mediation Centre in Latina” (*CGM, Rome*).

## **CORE ELEMENT no. 9: MIGRANT CHILDREN**

### **International standards**

*Governments should take measures in legislation and practices in order to **avoid any discriminative** treatment of young people coming from migrant families both **in the Juvenile Justice System** and within the policy of social integration of youth and to help those who have displayed delinquent conduct to derive the maximum benefit from the measures available under that system*

### **Introduction**

Governments should take measures in legislation and practices in order to avoid any discriminative treatment of young people coming from migrant families both in the Juvenile Justice System and within the policy of social integration of youth and to help those who have displayed delinquent conduct to derive the maximum benefit from the measures available under that system.

## Indicators of application

**a) equal access to innovations (for young nationals) in the juvenile justice and care system (diversion, mediation, other new forms of intervention, etc.)**

**b) non – custodial measures and alternatives to placement and imprisonment are accessible and effectively applied.**

Juvenile criminal proceedings (and educational and rehabilitative intents) do not make any distinction between Italian and foreign children but, in practice, there are many institutes that do not fully comply regarding foreign children. On the one hand the Juvenile Justice System is often in conflict with other branches of the law, such as migration law (and its security purposes). For these reasons it is very hard to maintain a strict balance between the efficacy of the provisions – on the point of the guarantee of children’s rights - and the promotion and respect of the foreign children’s rights, as indicated by the stakeholders interviewed. Generally, many stakeholders emphasized that the reform introduced by DPR 448/’88, when migration was not so intense, tends to meet the needs of the Italian child rather than those of the foreign child.

### ***Focus on interviews***

“When juvenile justice legislation was developed, the migration phenomenon had not reached the size or the impact of the last decade. Consequently, it needs to be adjusted, considering the inevitable social and economic costs of such a reform (for example, the use of community assistance in the absence of valid parental or family references, the essential presence of mediators, the importance of *ad hoc* mentoring during educational treatment).” (CGM, Rome).

"It also took account of the problem of the recent Safety Act, particularly concerning the principle of non-expulsion of the child, noting a clash between the DPR 448/’88 and the immigration legislation. In this contest the DPR is not perceived as a value always valid.” (CPA Palermo).

On the other hand, problems are often connected to other reasons such as the lack of a family, the lack of communities, the shortage of resources etc. In fact, most juvenile justice measures which are alternatives to detention or custody (such as prescriptions, placement under home confinement, or alternative non custodial penalties) are not applied to foreign children because resources needed are not available (e.g. family support). The respect of the indicator depends on various considerations:

- ✓ the nationality of the children involved (alternative measures are much more frequently applied to Roma children);
- ✓ the different targets between accompanied or unaccompanied children.

Statistical data shows that the social groups which are over-represented in IPM are: migrant children, many of whom are unaccompanied minors, the Roma and Sinti, and Italians from the deprived areas of southern Italy. The transferring of juveniles from one institution to another concerns mainly foreign minors who are often moved for administrative reasons (e.g. overcrowding). The transferring of juveniles from one institution to another interrupts their education and destroys social, family and employment ties.

The lack of alternative measures for foreign children is frequently justified (practices collected) by the absence of a place where he/she could attend the alternative measure (Bari, Turin). This circumstance creates the phenomena of the “double track” for foreign minors with a difference in treatment between Italian and foreign children. Sometimes, alternative measures are more frequently applied to Roma and second-generation children as opposed to the more vulnerable group of unaccompanied minors (Florence).

The Italian government must implement structural, legislative and organizational limits to ensure equal opportunities, treatment and respect for foreign minors. This is a fundamental principle in order to overcome the prejudices and stereotypes of the dangers they may encounter.

*Notwithstanding the implementation of the guarantees of the use of alternatives, the indicator is not respected (for more details, see also core element n. 5.??)*

**Focus on interviews**

“Concerning foreign minors two points should be underlined. The first one refers to the shortage of economic and human resources and the lack of a uniform method of intervention for regularization. The second one concerns the necessity to pass from an emergency situation to the creation of a methodology directed to the specific target of foreigners” (CGM, Rome).

“DPR 448/88 is not able to cover the exigencies of foreign minors; it does not permit spaces of intervention. The problem is also connected with the concept of punishment ...synthesizing should take account of the following: the perception of minors in the comprehension of the judiciary decision, the length of the procedures and the protection of the credibility of the operators” (???, Turin).

An effective practice to promote the access of foreign children to the benefits and guarantees offered by Juvenile Justice System is the presence of a cultural mediator inside the Juvenile Justice Services. However, this presence, as emphasized by many stakeholders interviewed, should be enforced (IPM Rome, IPME Bari, etc..) or, according to some operators, even institutionalized (CGM Rome). In many cases it is not possible to contact them in time (this is, usually, the case of CPAs). Furthermore, they play a central role also in the implementation of relationships with family and parents (USSM, Florence).

EDITOR’S NOTE TO AUTHOR: this needs to be noted then removed : (ANNA, *mi sembra il punto migliore del rapporto dove parlare di questa buona prassi*)

**Focus on interviews**

“This figure has been ensured thanks to projects funded by local or private services (i.e. Vodafone). However, it would be useful to "institutionalize" the cultural mediator inside Juvenile Services, considering that this constant presence is fundamental, even if actually decreased, for migrant children in the criminal circuit”. (CGM Rome)

“...due to the lack of a mediator, in many cases children who are already present in the Institution are used as interpreters, this is a violation of the privacy of the child...” (IPM Bari).

“..the mediator’s presence is very useful but unfortunately, at the moment not, always available” (IPM, Florence).

“Successfully tested in the past and considered very useful, cultural mediation service has been reduced by two years because of the lack of funds. At present it is ensured “on-call” by the Mediation Service of the Municipality” (CGM Bologna).

**c) the food practices and the religious convictions are respected**

The *indicator is respected* both in legislation and practices.

**d) the recruitment of foster families representative of the various communities existing in the national territory**

Drawn from the practices collected is the case of foster families who arrange care for unaccompanied minors. In one instance a foster parent highlighted the fear of his son being involved with children in conflict with the law. In this context, stronger awareness of social needs and multidimensional approaches are needed.



**e) avoiding expulsion of second-generation migrants during adolescence or later for offences committed during their adolescence**

The Italian provisions do not establish a specific rule about avoiding expulsion of minors of second-generation migrants or for offences committed while under age. The migration law (legislative decree 286/98 article 4 provides for the specific case in which the person who has committed a crime could be expelled and article 5, in the case of family reunification, recommends particular attention to adopt measures regarding denial of a permit for those with family ties.

Notwithstanding, there are various international principles which do consider the particular condition of these situations. In particular the European Convention of Human Rights and the case law of the European Court (Boultif / Switzerland del 2.8.2001, Maslov c. Austria, 23.06.2008, Beldjoudi / France del 26.3.1992, Mehemi / France del 26.9.1997, Ezzouhdi / France del 13.2.2001, Amrollahi / Denmark dell'11.7.2002, Yildiz / Austria del 31.10.2002, Jakupovic / Austria 6.2.2003, Mokrani / France del 15.7.2003, Slivenko / Latvia del 9.10.2003, Radovanovic / Austria del 22.4.2004) recommends the State parties to protect the rights of family life and the private life of the second generation migrants in cases concerning applicants who have committed offences. Moreover the Council of Europe (Recommendation Rec(2000)15 of the Committee of Ministers on the security of residence for migrants, and the Recommendation Rec(2002) 4) and the European Union recommend avoiding measures of expulsion in favour of integration through facilitation of access to citizenship.

*From the experience and practices collected it is possible to affirm that the indicator, in principle, is not respected.*

**f) support measures for the regularization of foreign children**

According to the Italian law, article 18, paragraph 6, law decree 286, 25 July 1998, "Residence based on Social Protection", this residence permit can be issued upon release from a penal institution, or at the suggestion of the public prosecutors or juvenile court supervising judges, for foreign citizens who have served prison sentences for crimes committed as juveniles, and who can provide concrete evidence of their participation in a rehabilitation and social integration programme.

An offender who has served a prison sentence may be considered by the court to be suitable for alternative measures. This is an important opportunity for the juvenile to lay the basis for reintegration into society. From the practices collected we can confirm that *the indicator is not respected*. However it has been noticed that there are some useful initiatives which promote regularization such as the social work

of Coop. Dedalus (Naples) and CivicoZero(in Rome) which, in particular, provide legal assistance to Juvenile Justice Services (Rome) (see. Core element n. 5)

"The use of article 18, paragraph 6 is rare. It has been applied under request. Personally, I think that it is necessary to implement the application" (*Juvenile Judge, Turin*).

"I asked for the application of article 18, paragraph 6, just once during a hearing. But I'm convinced that it could represent a resolution for their regularization" (*Juvenile Prosecutor, Turin*).

"..It does not apply to restrictive interpretation basis on a served prison sentence. At the end of the sentence a child, upon reaching majority age, is taken to the police for deportation. If

he is a minor without parental references, he is placed in a residential community ...." (*USSM and IPM, Palermo*).

"...the application of the article 18, paragraph 6, has been continuously requested but rarely granted" (*??, Bologna*)

"..never applied" (*IPM, Florence*)

"..it is not applied" (*USSM, Perugia*)

"... maybe just once" (*IPM, Bari*)

"never applied" (*IPM, Palermo*)

".. Article. 18 paragraph 6 has always been requested during the past few years but it has only been granted in a few cases (perhaps 12 cases, after the entry into force of the Law "Bossi-Fini") ... Some prosecutors considered it appropriate to ask for a permit for social protection, after placement under supervision with a positive conclusion, while others prefer to adopt a more strict interpretation . It was noticed as negative as there was a wide margin of discretion by judges, which makes impossible to assess in advance if the social protection permit will be delivered or not ...." (*USSM, Bologna*)

"In April 2008, 15 children have benefited from Article 18, par.6. Juvenile Authorities accepted a broad interpretation of the rule (the application of which has been extended to successful placement under supervision too..." (*USSM of Rome*)

"... In relation to Article 18, paragraph 6, vague procedures and too much discretion by police headquarters was noticed. In fact, there are not many requests for a residence permit under Article 18 paragraph 6...." (*USSM of Turin*)

"... Art. 18 paragraph 6 TU 289/98 Art.18 is mostly practised in favour of children who concluded placement under supervision successfully. Furthermore, this practice is not uniform in the area; several police stations interpret this rule differently ...." (*USSM Milan*)

**g) presence of special staff prepared to adopt a non discriminatory attitude during the contact with children.**

The principle of anti-discrimination is the basis of the respect for human rights. It crosses each area dedicated to the implementation of the Juvenile Justice System.

Global education aims at going beyond the self-oriented perspective in looking at things in an attempt to see them from the point of view of others. Children learn prejudice and stereotypes from the beliefs and behaviour of adults who surround them. These are reinforced and perpetuated by other social institutions such as the media, or people in contact with children for work or free time. Furthermore, where children take on stereotypes and rigid social constructions of their own identity, as well as that of others, their ability to reach their full potential may be limited. In this way, discrimination is passed down through generations. All professionals working with children, therefore, need training to help them understand the right to non-discrimination and the implication of any new legislation or policies related to this. It is fundamental in developing and providing educational programmes on the human rights of children to professionals working with and for children and in this way to promote the respect for children, their needs, their rights and their best interests among and through professionals who, by virtue of their expertise, leadership and acknowledged value, influence the lives of children, their families, and communities. Coming from the practices collected, in general, the professionals working with children

respect the principle of non discrimination but, they are not trained in this specific field or in topics concerning migration and the problems connected with this.

**h) cooperation with diplomatic or consular officials representing when it is in the child's best interest**

Cooperation with diplomatic or representative consular officials can be realized only if they correspond to the child's best interest. In this case personnel should be able to understand and recognize particularly vulnerable and/or the need for protection (i.e. asylum seekers, children involved in trafficking and sexual exploitation, children involved in criminal organization (arms, drugs...) to use the channel of cooperation with diplomatic or consular officials for the well-being of the children. A good cooperation between the respective Authorities shall have as an objective the promotion and protection of the children.

**CORE ELEMENT n. 10: INTER-AGENCY COOPERATION AND COORDINATION**

**International standards**

*Children's justice programmes involve a wide range of people from various institutions, government departments and the society, including:*

- *police*
- *judiciary*
- *prison officials*
- *civil society groups and the community, including parents, school and the peers of*
- *children in conflict with the law*
- *social welfare personnel*

***The planning of these programmes therefore requires a multi-disciplinary approach.***

*Training is vital to bring effective changes to criminal justice systems. The setting up of a child-friendly justice system requires that personnel working within the justice system be knowledgeable about international standards and guidelines and about how these international standards are to be applied locally. Training before entering duty and after entering duty. Staff shall maintain and improve their knowledge and professional capacity by attending in-service training and refresher courses.*

***Introduction***

International guidelines emphasize the importance of inter-ministerial and inter-departmental co-operation in enhancing the administration of juvenile justice as well as in improving the quality of institutional treatment for children in conflict with the law.

**Indicators of application**

**Existence of:**

**a) a networking system between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, both NGOs and governmental;**

**b) a multi-disciplinary and an intra-disciplinary interaction and coordination between economic, social, education and health services, the justice system, methods of intervention and good practices, etc.**

Generally, practices collected point out the excessive fragmentation of all operators and actors involved in the assistance and treatment of juveniles. On occasions, juvenile justice operators complained of a lack of coordination and communication, also inside the same Juvenile Justice Services (Focus group Torino, CPA Rome).

A stricter cooperation between Juvenile Justice Services and Judicial Authorities should be encouraged.

Concerning foreign children, positive experiences have been collected in Turin, where thanks to some positive projects realized in favour of foreign children (Project NOMIS and Project IN&OUT) a formal network between institutions, associations, NGOs and other actors has been created. Periodically they meet together and organize a street Table, during which they promote the exchange of experiences and information also concerning children entering the criminal circuit "Sometimes, it happens that a child who has just entered in CPA asks for a specific operator as children often exchange information between themselves."

Another good practice, regarding migrant children, is the one implemented by the CGM, which provides for the creation of special units in charge of programming and coordinating all interventions relating to foreign children (for example: CGM Rome, CGM Florence, CGM Palermo).

"I think that a stronger presence of USSM personnel will be useful in the detention facilities. It does not mean there is no cooperation with them, but I think it needs to identify a special space for social services directly inside the detention institute, to promote the constant share of experiences. The proximity of social workers could provide educators with more opportunities for effective intervention concerning children. According to our mandate, we should observe and assist the child as well as provide him/her with useful information, but our time is limited..." (*IPM Florence*)

***Focus on good practices***

"A very good practice is the promotion of a greater coordination, implemented by the "Technical Service of CGM", between Juvenile Justice Services of Bologna and the local territory. Previously, each service had its own contacts and resources in the territory which were rarely shared with other services (sometimes they seem to be jealously guarded!). This fragmentation produced overlapping, duplications, to the detriment of the quality of the intervention and functionality of the services. Gradually, good practices are being developed by the "inter-departmental working team" through which it is possible to combine both the needs of direct participation and the coordination and the exchange of information and resources. To this regard, we notice: the "management team", which involves the Director of CGM, the Directors of Juvenile Services and the Coordinator of Technical Services of CGM; the "coordination of resources" team, which plays the role of coordination in relation to external resources used for developing educational projects; the "work-grants" team, responsible for the allocation of work-grants to children involved in the criminal circuit; the "residential community", dealing with all aspects and procedures concerning placements..." (*CGM Bologna*).

b) personnel trained according to Rec (2008)11 (COE) § 129.3.  
see Core??

## CORE ELEMENT n. 11: EVALUATION AND RESEARCH

### International standard

*Sanctions and measures designed for children and adolescents are to be developed on the basis of research impact monitoring evaluation. Such evaluation shall pay special attention to recidivism rates and their causes.*

### *Introduction*

The sanctions and measures designed for children and adolescents must be developed on the basis of research and scientific evaluations. Such evaluation shall pay attention to recidivism rates and their causes.

From the data and practices collected it is possible to arrange various hypotheses concerning the target of children in conflict with the law and a risk of recidivism. Regarding gender, the analysis showed a significant association between gender and readmission to CPA, with the relative readmission propensity being over twice as high in females compared to males. In this regard, it should be pointed out again that females admitted to juvenile classification homes are almost all of foreign and nomadic background. Concerning the country of origin of the juvenile's family, many juveniles classed as foreigners were actually born and bred in Italy. The latter includes juveniles living in nomadic encampments, who form a major portion of those admitted to classification homes – in particular in some areas of Italy. Bearing in mind this circumstance, it was considered appropriate to probe deeper into the nationality-based analysis by distinguishing the foreign nationals born in Italy from those born abroad. Therefore, it was assumed that over 90% of the foreign juveniles born in Italy belonged to nomadic communities; this rate was considerably lower (under 50%) for the foreigners born abroad.

Among foreign juveniles born in Italy, the percent rate of readmissions is markedly higher than for those born abroad (49% and 21%, respectively). Statistical analysis highlighted, in particular, that readmission propensity was three and a half times higher in the former group compared to the latter.

Regarding schooling, the analysis of educational levels showed that the percentage rate of readmissions decreased with the increased educational level – indeed, it is higher among juveniles without diplomas or with only primary school diplomas compared with juveniles who have attained secondary school diplomas. The association between schooling and recidivism, shows that readmission to a juvenile classification home, was found to be significant. The juveniles who had not completed their compulsory education curricula showed a relative readmission propensity which was more than double in comparison to the juveniles holding a secondary school diploma.

As for activities carried out by juveniles, the analysis showed that the readmission rate was higher among juveniles who did not participate in any activities, compared to those who attended school and/or worked (whether occasionally or not); in particular, the highest rates applied to juveniles who had never worked, whilst the lowest rates applied to those working on a regular basis.

As for the former, it could be found that offences against property were most common both in readmission cases and in the remainder. However, the readmission rate was higher among juveniles involved in offences against property compared to those charged with other types of offences. The relationship between the type of crime and readmission was found to be significant; the risk coefficients showed the relative readmission propensity to be almost twice as high in juveniles involved in offences against property compared to the remainder. The analysis showed that application of a precautionary measure (injunction, stay within family home, placement with a community, pre-trial custody) worked as a protective factor against readmission, whilst the relative readmission propensity in juveniles discharged without being subjected to precautionary measures was higher than in the remainder (85% higher).

### **Indicator of application**

**The research activity aims to promote the following subjects:**

- a) comparative data on children's personal and social circumstances;**
- b) comparative data to evaluate the efficacy of the measures used with children and the risk of recidivism;**

The data collected (desk research, interviews, articles...) showed a lack of in depth research (with social, juridical, political and economics aspects) about the children in conflict with the law and the risk of recidivism. We recognize the research STOP CAR "Stop the deviant careers of juvenile offenders" as a good practice and a great work realized by the centre of study of the Department of Juvenile Justice. At the same time Italian literature has a great number of bibliography (articles published, case-studies, report etc etc.) concerning children in conflict with the law.

The absence of specific research about the risk of recidivism was also concluded from the interviews carried out..

#### ***Focus on interview***

"A method of recidivism's survey does not exist..." (CGM??, Bari)

"We have taken part in a project of research but we cannot reach (achieve) our goal (??, Bologna).

"I have not had any notice about a research concerning the risk of recidivism. (??, Firenze)

### **c) the demographic changes on the labour-market, the position of migrants and, the development of criminality.**

There are two important issues about the study of the phenomenon of demographic changes in Italy; these are the ISTAT (Italian National Institute of Statistics) and the analytic study conduct by the CARITAS/MIGRANTS (a religious organism). There are concerns about the following topics:

- demographic changes and population census including the migration flow;
- census on the industry sector, facilities and agriculture;
- collection of data about families, job market, unemployment, security, free time etc.

There is no specific research with data and analysis regarding; social, economic and juridical problems concerning the phenomenon of migrant children. In 2009 Save the Children published the first report on migrant children, giving general knowledge about foreign children - The awareness of the social transformation is a focal point to highlight concrete and effective measures for children in conflict with the law and for the success of reintegration procedures.

The practices collected showed that it is necessary to implement a complete research concerning migrant children.

**d) the perception of the juvenile system from the point of view of young migrants and young people belonging to ethnic or cultural minorities.**

Children's participation gives a genuine opportunity for them to express their views, be involved in decisions or take action. The practice standards should be interpreted within the context of the following general principles derived from the UN Convention on the Rights of the Child.

- Children have a right to be listened to, freely express their views on all matters that affect them, and be allowed to have; freedom of expression, thought, association and access to information.
- Measures should be put in place to encourage and facilitate their participation in accordance with their age and maturity.
- Participation should promote the best interest of the child and enhance the personal development of each individual.
- All children have equal rights to participation without discrimination.
- All children have the right to be protected from manipulation, violence, abuse and exploitation.

These standards can be met by applying the following criteria:

- The issues are relevant to the children being involved and draw upon their knowledge, skills and abilities.
- Children are involved in setting the criteria for selection and representation for participation.
- Children have time to consider their involvement and processes are established to ensure that they are able to give their personal consent to their participation.
- Children's participation is voluntary and they can withdraw at any time if they wish.
- Children are involved in ways, at levels and at a pace appropriate to their capacities and interests.
- Children's other time commitments are respected and accommodated (i.e. home, work and school).

Participation is about having the opportunity to express a view, influence decision-making and achieving change. Children's participation is an informed and willing involvement of all children, including the most marginalized and those of different ages and abilities, in any matter concerning them either directly or indirectly. Children's participation is a way of working and an essential principle that cuts across all programmes and takes place in all arenas – from homes to government, at local and international levels.

Unfortunately, we cannot provide the application of the indicator from the practices collected. The stakeholders contacted have not apparently taken a position on this issue and there has been a direct approach to investigate the perception of child migrants with regards to the Juvenile Justice System. On the other hand, we have ascertained that during the period of detention or alternative measures the children are always heard.

***Focus on good practices***

**"COLOURFUL HORIZONS"**, Rome by Save the Children. The project idea comes from the request of the Lazio and Abruzzo Centres for Juvenile Justice, which proposed to Save the Children the partnership to implement a project aimed at reintegration of foreign minors in criminal proceedings, with particular attention to unaccompanied foreign minors with Romanian nationality. The overall project's objective is to help reduce

the number of foreign children who are exploited or involved in illegal activities, with particular attention to unaccompanied minors subjected to criminal prosecution. It offers, firstly, information, guidance and support to minors contacted on the street or in the institutions of juvenile justice to help them to gain awareness of their situation and consciousness of the opportunities and risks associated with it. It is also supported in the context of their migratory project or in adhering to a path of social inclusion. Secondly, it provides support and experience in the social reintegration of minors present in host communities as alternative to detention. It strengthens, finally, the ability of the system institutions to address the problem of deviance of foreign children by deepening the knowledge about the phenomenon, the training of operators, coordinating inter-institutional awareness of the institutions and the development of a model of intervention. The project objectives are achieved through a series of actions with integrated activities such as street educators, social mediation within the CPA and in the criminal community, ethno-psychological and legal advice. It also activates a cultural mediation service (conducted by the agency of mediation CIES) at the facilities of the Juvenile Justice Centre and at the host communities. Finally, there are training and research actions aimed at improving understanding of the phenomenon of juvenile deviance both in Rome and in Romania and it is expected to promote an inter-institutional coordination Table. During the realization of the project introduced a course of peer education and peer support (120 hrs), was, attended by 10 youths from 16 to 20 years of age, two of which were peer tutors. The participants were chosen either from within the Municipality's network of services, within Penal institutions by the project's social mediation team, or by those who had participated in the first training course which had been publicly advertised. The youths came from Afghanistan, Romania (including some of Roma origin), Brazil and Morocco. The participants shared their knowledge and understanding of the migration experience, integration in Italy, life in institutions or involvement in criminal circles, based on their own experiences. This was part of a strategy to actively promote support between these peers in their daily lives. Furthermore, throughout the course, they met with representatives from government services provided for children (such as health, education, juvenile justice, and social services), as well as charitable services (cultural mediation, day centres for children, shelters, legal services and street outreach activities). **With certain key adults they had the opportunity to exchange points of view and experiences particularly regarding criminal circles, the integration of migrant children in Italy, exploitation, and developing service and outreach orientated projects run by peers alongside the usual outreach and support programmes offered by adults.** They contributed, in particular, to planning a project for a low-threshold children's day centre, as well as providing input to the Protocol for the Identification and Support of Child Victims of Trafficking and Exploitation (AGIS Project – Save the Children Italy, with the financial support of the European Commission), by way of a structured consultation. The participants were constantly supported in the various activities by the Course Coordinator (an Ethnopsychologist) and an Educational Trainer. This highlighted the importance of their participation and gave them the opportunity to exchange their points of view.