

Social Fieldwork Research (FRANET)

Procedural safeguards for children who are suspects or accused persons in criminal proceedings

Italy,
2021

Contractors: Fondazione “Giacomo Brodolini”

Authors: Marta Capesciotti

DISCLAIMER: This document was commissioned under contract as background material for a comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the project [Procedural safeguards for children who are suspects or accused persons in criminal proceedings](#). The information and views contained in the document do not necessarily reflect the views or the official position of FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

Table of Contents

PART A. EXECUTIVE SUMMARY	6
PART B. INTRODUCTION	9
PART C. RESEARCH FINDINGS	13
• C.1 Implementation of Directive (EU) 2016/800	13
a. General overview	13
b. Scope of the Directive’s application and relevant age categories	13
c. Special training	13
i. Legal overview	13
ii. Special training received by interviewees	13
d. Effectiveness of measures / Monitoring	15
• C.2 Age assessment and the presumption to be a child in case of remaining uncertainty	15
a. Legal overview	15
b. How is the age of a person suspected or accused of a crime assessed and determined in practice?	17
c. Discussion of findings	21
• C.3 The rights to information, having the holder of parental responsibility informed and audio-visual recording of the questioning	22
a. The right to information	22
i. Legal overview	22
ii. Information about procedural rights and safeguards in practice	23
iii. Information about the general conduct of the proceedings	27
b. Right to have the holder of parental responsibility informed	30
i. Legal overview	30
ii. Informing the holders of parental responsibility	30
iii. Having a nominated/designated person informed	33
c. Audio-visual recording of questioning and due verification of written records	34
i. Legal overview	34
ii. Implementation in practice	34
d. Discussion of findings	35
• C.4 The rights to be assisted by a lawyer and legal aid	36
a. Legal overview	36
b. Assistance by a lawyer and legal aid	36
c. Effective participation of a lawyer	39
d. Communication with the child and other important aspects when defending and assisting a child who is suspected or accused of a crime	42

e.	Confidential and private consultations and meetings	44
f.	Cooperation with the child’s holder of parental responsibility	47
g.	Discussion of findings.....	48
•	C.5 The right to an individual assessment	48
a.	Legal overview	48
b.	Individual assessment and exceptions in practice.....	49
c.	How and for what purposes are the results of the individual assessment used by national authorities in practice?	53
d.	Challenges	55
e.	Discussion of findings.....	57
•	C.6 Deprivation of liberty as a last resort and safeguards for children who are deprived of their liberty.....	58
a.	Deprivation of liberty as a last resort measure	58
i.	Legal overview	58
ii.	Deprivation of liberty as a last resort measure and the application of measures alternative to detention.....	59
b.	Medical examination.....	64
i.	Legal overview	64
ii.	The medical examination in practice	64
iii.	How and for what purposes are the results of the medical examination used by national authorities in practice?	64
c.	Special treatment in detention	66
i.	Legal overview	66
ii.	The special treatment in practice	66
d.	Contact with family members during deprivation of liberty	69
e.	Discussion of findings.....	71
•	C.7 The rights to effectively participate in and be accompanied during the trial	72
a.	Legal overview	72
b.	Right to effective participation in practice	73
i.	Enabling the child’s effective participation - Modifications of settings and conduct.....	73
ii.	How are children heard and their views taken into account?.....	76
c.	The right to be accompanied by the holder of parental responsibility	77
d.	Discussion of findings.....	78
	PART D. GENERAL ASSESSMENT	80
•	D.1 Challenges.....	80
•	D.2 Promising practices	81
•	D.3 Suggestions.....	81
	PART E. CONCLUSIONS	83

ANNEX – Overview of national organisations working with children who are suspects or accused persons in criminal proceedings..... 86

List of Tables

Table 1. Sample professionals

Box 1: Descriptions of abbreviations and terminology

PART A. EXECUTIVE SUMMARY

General implementation of the procedural safeguards for children who are suspects and accused persons in criminal proceedings as regulated by the Directive (EU) 2016/800:

The Directive (EU) 2016/800 has not been formally implemented in Italy, yet. The Italian juvenile criminal system is still governed by the Decree of the President of the Italian Republic (D.P.R.) No. 448 of 22 September 1988, which covers most of the safeguards enshrined in the Directive. Juvenile Courts are the judicial authorities in charge of dealing with criminal proceedings concerning offences perpetrated before the age of 18. Those subjects who perpetrated the offence as children remain in the juvenile criminal system until the age of 25. The interviewees, therefore, referred to the legislative provisions of the D.P.R. No. 448/1988 and to any other source relevant for its application. As stressed by many professionals, the rights and safeguards enshrined in the Directive are guaranteed by the Italian legislative system, and the overall level of satisfaction towards the functioning of juvenile judicial proceedings in Italy was generally high among all categories of professionals.

Age assessment and the presumption to be a child in case of remaining uncertainty:

None of the interviewed professionals reported that a multi-disciplinary approach is applied to age assessment. The age assessment procedure almost exclusively concerns unaccompanied migrant children, whose age cannot be determined through ordinary identity documents. Age assessment is generally carried out after the children's arrest, upon request of the prosecutor. Judiciary police officers transfer the child to the hospital for the x-ray of the wrist: this procedure is carried out exclusively by medical staff. All interviewees agreed that, in case the children's age cannot be determined with a sufficient degree of certainty, the *favor rei* principle is applied, and the children's minor age presumed by judicial authorities.

The rights to information, having the holder of parental responsibility informed and audio-visual recording of the questioning:

All professionals confirmed that information on rights and safeguards are provided to the children by public authorities. Basic information – concerning the right to appoint a lawyer and to have the holders of parental responsibility informed – are communicated by judiciary police officers at the moment of the arrest. More specific and thorough information on rights and procedural safeguards are conveyed by lawyers and by the staff working for the first-reception centres (*Centro di Prima Accoglienza – CPAs*) (in case of children who are arrested). As stressed by many professionals, information provision continues throughout the different steps of the judicial proceeding since information must be provided gradually to the children, in order not to stress and confuse them excessively at their first contact with the judicial system. The children's general level of comprehension of the information they are provided with was not deemed satisfactory by all professionals: many of them highlighted the importance of always using a plain and direct language with them, as well as the crucial support of cultural mediators when unaccompanied migrant children are concerned. Holders of parental responsibility (including guardians in case of unaccompanied migrant children) must also be informed about the children's situation and rights. They have the right to participate in all stages of the proceeding, including the trial's hearings. None of the interviewees mentioned the use of audio-visual recording of children's questioning. A written report is rather drafted of police and prosecutors' questions that is then transmitted to judicial social assistants and lawyers.

The rights to be assisted by a lawyer and legal aid:

Lawyers are immediately appointed during the arrest or at the end of the preliminary investigations. Children can either appoint an entrusted lawyer – generally acquainted with the family – or a public defender is ensured. Public defenders must undergo a specific training before being eligible: according to some professionals, these are therefore much more qualified compared to privately hired lawyers, who are not required to have a specific expertise, and who are generally used to deal with adult defendants. Legal assistance is considered effective when the lawyers have the real possibility to take part in all proceeding's stages and procedures, and when a trust and open relationship is established with the children. Communication between lawyers and children deprived of liberty in the pre-trial custody (in IPMs, CPAs or community centres) is generally guaranteed. However, some of the professionals mentioned that the Covid-19 emergency imposed some crucial challenges, since in-person meetings were suspended for some time and replaced with virtual meetings and phone calls.

The right to an individual assessment:

Information collection on the individual situation of the children starts since the early stages of the proceeding, namely upon the arrival of the child at the CPA after the arrest. In case of children who are not arrested, the individual assessment must be requested by judicial authorities during the preliminary hearing. The individual assessment generally is a multi-disciplinary procedure, since several specialised professionals intervene in the procedure, namely educators, social assistants, psychologists. The individual assessment is generally conducted ex officio. The outcome of the individual assessment is crucial for judicial authorities in all stages of the proceeding to decide whether and, if so, which pre-trial custody or probation measure to adopt, as well as to map the children's skills and vulnerabilities.

Deprivation of liberty as a last resort and safeguards for children who are deprived of their liberty:

All interviewed professionals confirmed that deprivation of liberty is used as a last-resort measure when children are concerned. Previous criminal records and/or reiteration of the same criminal conduct are two factors that influence judicial decisions concerning deprivation of children's personal liberty. The lack of a solid and supportive family background is another crucial issue in this respect: this disadvantage prevents them in practice from benefitting of home-custody. This latter aspect particularly affects unaccompanied migrant children, Roma children, or children from disadvantaged family and social environments. As for the right to a medical examination, all professionals referred and reported about the general medical assessment that children undergo when deprived of their personal freedom. This happens both in the CPA and in IPMs. Adults and children are always detained separately, since these two groups are involved into two completely separate judicial systems. As far as children and young adults are concerned (aged 18-25 who committed a crime as children), the risk exists that they are detained together in IPMs. Children are also offered a psychological support during their detention period. Education and professional training seem to be offered in all detention facilities. The lack of adequate funding and staff seems to be an element that can compromise the overall quality of the activities in most detention facilities. Interviewed professionals reported that children who are deprived of their personal freedom are always entitled to meet their family members. During the Covid-19 emergency this possibility was partially limited in some detention facilities: in-person visits were replaced with virtual meetings.

The rights to effectively participate in and be accompanied during the trial:

Most of the interviewees described children's participation in the hearings as effective. Some of the interviewees reported that judges, during the hearings, are welcoming towards the children and adopt a careful communication approach. On the opposite, other interviewees described judges' attitudes at trial as cold and non-empathic. Judicial backlog and lack of adequate human resources in Juvenile Courts were mentioned by some of the interviewees as elements potentially compromising the quality of the communication between children and judicial authorities. Children are generally heard by the Court: the children's testimony is important for the Court to adopt the measures that can best serve their interests. Holders of parental responsibility are entitled to participate in all stages of the proceedings, including the hearings. Lawyers always participate in the hearings, they can intervene, communicate to the Court and ask questions to the children. Moreover, children have the right to communicate with the lawyers during the hearings, and the privacy of the conversation should be always ensured.

PART B. INTRODUCTION

In total, **20 eligible interviews** were carried out in the timeframe of 5 March to 19 July 2021.

The interviewees were based in the two different locations covered by the research project (Rome and Genova) and allowed to include all the professional categories involved in the juvenile justice system. More specifically, four penitentiary police officers working for first-reception centres (*Centro di Prima Accoglienza* – CPA) were interviewed: CPAs are temporary detention centres where children (aged 14-18) are accommodated after the arrest for up to 96 hours, pending the validation hearing (*udienza di convalida*). This hearing is needed to confirm the legitimacy of the arrest and adopt possible pre-trial custody measures. Five criminal lawyers were interviewed: all of them have either previous or current professional experience also in the ordinary criminal justice system, dealing with adult defendants. Two prosecutors and two judges were interviewed, moreover, an honorary judge was interviewed, to provide relevant information on this specific aspect of the Italian juvenile justice system (see following sub-section). Six interviews were conducted with non-judicial specialists to cover all the different professionals working for juvenile justice social services.

18 out of 20 interviews were conducted online, due to the Covid-19 emergency and the consequent restrictions to travels. Only two interviews were conducted in person, both of them in Rome (one with a criminal lawyer and one with a juvenile public prosecutor). Face-to-face interviews were possible because the interviewees expressed their preference in this respect; moreover, both interviews were conducted in July when the pandemic emergency had become slightly milder

○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

The fieldwork was conducted in two different locations, namely the Italian regions of Lazio and Liguria. The regional level of governance is key in the Italian legal system, and it was therefore necessary to give an account of the functioning of the juvenile judicial system at local level in practice. To this end, two regions with different characteristics were selected. The Lazio region is one of those with the highest number of juvenile judicial proceedings; moreover, one of the biggest juvenile detention facilities (*Istituto Penale Minorile* – IPM) is located in this territory. On the opposite, the Liguria region – besides being geographically smaller – has a lower number of juvenile judicial proceedings, and does not have an IPM: where detention is needed, children are transferred to other nearby regions. These differences are reflected by the experiences shared by the interviewees who reported that the number and severity of proceedings is much higher in Lazio, compared to Liguria.

As for the interviewees' recruitment process, the support of the Juvenile and Community Justice Department of the Ministry of Justice (*Dipartimento per la giustizia minorile e di comunità*) was crucial. Thanks to this cooperation, the Italian research team had access to all but one non-judicial expert interviewed. The cooperation with the Ministry of Justice also allowed the Italian research team to get in touch with police officers, who generally are a hard-to-reach sample.

Judicial authorities and lawyers were recruited using other channels. Starting with established contacts a snowball recruitment method was thus used to involve lawyers. Judges and prosecutors were recruited by means of letters to the Juvenile Courts of Rome which allowed to interview both judges and public prosecutors who had a long-standing experience in this field and high-level functions in the judiciary power. Moreover, one honorary judge (based in Rome), was interviewed to include information on the role of this professional figure which is a specific feature of the Italian juvenile justice system. In fact, Juvenile Courts in Italy are formed by both judicial professionals – that is proper judges and prosecutors who have chosen the judicial careers and passed the national public selection to become such – and honorary judges (*giudice onorario minorile*), who are selected among

professionals in different fields, such as psychology, anthropology, criminology etc. These are full-fledged members of the Court – in that they can interrogate the parties and decide the case – even if they are not professional judges. This multi-disciplinary composition of Juvenile Court is an important feature of the Italian juvenile justice system, and it is based on the assumption that child defendants must be treated differently compared to adults.

○ **SAMPLE AND DESCRIPTION OF FIELDWORK**

Police officers:

Requested: 4, completed: 4

Defence lawyers:

Requested: 5, completed: 5

Judges/prosecutors:

Requested: 5, completed: 5

(Non-legal) Specialists:

Requested: 6, completed: 6

Table 2: Sample professionals

Group	Expertise in juvenile criminal justice	Gender
Police officer	Penitentiary police officer working in Genova.	Male
Police officer	Penitentiary police officer working in Genova.	Male
Police officer	Penitentiary police officer working in Rome.	Male
Police officer	Penitentiary police officer working in Rome.	Female
Defence lawyer	Criminal lawyer working in Rome.	Female
Defence lawyer	Criminal lawyer working in Rome.	Female
Defence lawyer	Criminal lawyer working in Turin. Despite not being based in Genova, the interviewee was included since the competence of juvenile judicial district of the juvenile justice system includes both Liguria and Piemonte.	Male
Defence lawyer	Criminal lawyer based in Genova. He also is a public defender, included in the lists of lawyers at the disposal of the Juvenile Court of Genova.	Male
Defence lawyer	Criminal lawyer working in Rome.	Female
Prosecutor	Public Prosecutor at the Juvenile Court of Genova.	Female
Judge	Judge working at the Juvenile Court of Rome.	Female

Prosecutor	Public Prosecutor at the Juvenile Court of Rome.	Female
Judge	Judge working at the Juvenile Court of Genova.	Male
Honorary Judge	Honorary Judge working at the Juvenile Court of Rome.	Female
(Non-legal) Specialist	The participant is the manager of a community centre for children involved in the civil and criminal judicial system located in the Lazio region.	Female
(Non-legal) Specialist	The participant is a professional social worker working for the Justice Social services of Genova.	Male
(Non-legal) Specialist	The participant is a professional social worker working for the First-reception centre (CPA) of Genova.	Female
(Non-legal) Specialist	The participant works for the Juvenile Justice Centre of Genova.	Female
(Non-legal) Specialist	The participant is a professional social worker working for the Justice Social services of Rome.	Female
(Non-legal) Specialist	The participant is a professional social worker working for the First-reception centre (CPA) of Rome.	Female

The interviews were all extremely informative and rich of inputs: their length was generally more than 60 minutes, with only a few exceptions. The shortest interview was conducted with a police officer and lasted 30 minutes. All interviewees were extremely cooperative and willing to share their professional experiences in the juvenile justice field. In some cases – especially with interviewees with long-standing professional experience on these issues – it was possible to collect information not only on the practical functioning of the judicial system, but also on its evolution over the years, and on the main differences with the ordinary criminal system involving adult defendants.

○ DATA ANALYSIS

The findings emerging from the 20 interviews were analysed using qualitative analysis techniques: keywords and main issues stressed by the interviewees were highlighted. Interviewees were clustered by profession and the information they shared analysed topic by topic: this approach allowed to stress some conflicting points of view between professionals categories. No quantitative analysis was carried out.

○ BRIEF OVERVIEW OF THE REPORT'S CONTENTS

The report provides an overview of the implementation of the Directive in the Italian legal system and summarises the results emerging from the fieldwork, stressing the key findings from the interviews. These are cross-cutting to the twenty interviews and regrouped in thematic areas, which mirror the main procedural safeguards protected by the Directive. The paragraphs of Part C of the report consider, in particular: the procedure to assess the child's age and the right to be presumed a child in case of remaining uncertainties, the right to information of both children and holders of parental responsibility, the right to be assisted by a lawyer, the right to an individual assessment of the

children's specific situation and characteristics, specific safeguards in place for children who are deprived of their personal freedom during trial, the right to effectively participate in the hearings. Moreover, these sections are introduced by an introductory section reporting the professionals' general points of view and experience in the juvenile judicial system. In conclusion, a summary of the key findings is provided, together with recommendations to public authorities on how to improve the functioning of the Italian juvenile judicial system, as well as the protection of children's rights and safeguards.

Box 3: Descriptions of abbreviations and terminology

First-reception Centres (*Centro di Prima Accoglienza – CPA*): First-reception centres are temporary detention facilities where children who are arrested by police officers are transferred and detained for up to 96 hours. The validation hearing (*udienza di convalida*) must be held within 96 hours: the judge must assess the legality of the arrest and decide whether and which pre-trial detention measure to adopt. Validation hearings are generally held in the CPAs. Many professionals work in these facilities: judicial social assistants, psychologists, penitentiary police officers, educators. Only children aged 14-18 can be accommodated in CPAs.

Juvenile Detention Facility (*Istituto Penale Minorile – IPM*): Juvenile Detention Facilities are used to detain both children and young adults (aged 18-25 if the crime was committed during the minor age) both as pre-trial custody measure, and serving a sentence. Female and male detainees are detained in different IPMs. Some IPMs allow for the separation between children and young adults: this is the case of the bigger IPMs – such as those located in Rome, Milan and Naples – which generally have separate buildings for children and young adults. Various professionals work in these facilities: judicial social assistants, psychologists, penitentiary police officers, educators

Community Centres: Community centres can be either managed directly by the Juvenile Judicial System or by private bodies – generally associations or cooperative societies – which establish specific agreements with the Juvenile Judicial System. Children can be held in this centre both in pre-trial custody – community centres represent the most common alternative to detention used in Italy – or serving their probation period. Community centres are based on three organisational principles: i. a family-style organisation, meaning that children involved in criminal proceedings and children entrusted to local social services are accommodated in the same community centre; ii. The staff includes professionals of different disciplines (social assistants, cultural mediators, psychologists, etc.; iii. Cooperation of all public stakeholders and networking with local public services.

Probation (*Affidamento in prova ai servizi sociali*): Probation is a judicial instrument which is accessible to all children, regardless of the type of crime they are charged with. If the children are granted a probation period, their proceedings are suspended and entrusted to judicial social services that are in charge of designing an individual rehabilitation project for each child. The probation period can last from one to three years, depending on the type of crime. The development and outcome of the probation project are constantly monitored by the judicial social services that must submit periodic reports to judicial authorities. If the conclusion of the probation period is positively assessed by judicial authorities, the proceeding and the charge are extinguished. The negative outcome of probation – which is generally due to the violation of the prescriptions included in the individual project – results into the continuation of the judicial proceeding.

PART C. RESEARCH FINDINGS

C.1 Implementation of Directive (EU) 2016/800

a. General overview

The Italian juvenile criminal system is still governed by the Decree of the President of the Italian Republic (D.P.R.) No. 448 of 22 September 1988¹. The D.P.R. covers most of the safeguards enshrined in the Directive, which has not been officially implemented in Italy though. The Annex A to the Law No. 163 of 25 October 2017 – the annual European delegation law by which the Italian Parliament delegates the Government to adopt the Legislative Decrees which are needed to implement EU law in the Italian legal system – explicitly mentions the Directive 2016/800/EU, imposing 11 June 2019 as deadline for the adoption of the relative Legislative Decree. Such Decree has not been approved by the Italian Government, yet. The information reported in the following sections of this report will therefore refer to the legislative provisions of the D.P.R. No. 448/1988 and to any other source relevant for its application, such as the Legislative Decree No. 272 of 28 July 1989 which implements the D.P.R.

b. Scope of the Directive's application and relevant age categories

According to the Italian legislative system, children aged less than 14 years cannot be charged of a criminal offence (Art. 97 of the Italian Criminal Code). Art. 3 of the D.P.R. No. 448/1988 establishes that Juvenile Courts are the judicial authorities in charge of dealing with criminal proceedings concerning offences committed by persons younger than 18. Those offenders who perpetrated the offence as children remain in the juvenile criminal system until the age of 25.

c. Special training

i. Legal overview

Entrusted lawyers – that is lawyers who are appointed by the children and/or their families, generally on grounds of previous acquaintance – are privately hired and are not requested to undergo a specific training: as emerging from the fieldwork, they often are criminal lawyers dealing with ordinary judicial proceedings involving adult defendants who have already legally represented the children's family members in previous judicial proceedings. On the opposite, public defenders – that is criminal lawyers who can be appointed by judicial authorities if the children cannot count on an entrusted lawyer, since legal assistance in Italian criminal proceedings is compulsory – must undergo a specific training in order to be included in the lists at the disposal of Juvenile Courts. In alternative, lawyers can be enrolled in these lists, if they can prove previous professional experiences in the juvenile criminal justice system. Art. 5 of the Legislative Decree No. 272/1989 explicitly establishes that the district's Bar Association Council – in cooperation with the Juvenile Court and the Juvenile Prosecutor's Office – periodically organizes training sessions for lawyers and prosecutors concerning the juvenile criminal system and the core issues concerning the childhood and adolescence. As for police officers, art. 6 of the same Legislative Decree foresees training sessions for judiciary police officers. Eventually, according to Art. 14, the Ministry of Justice and regional authorities are requested to jointly organize training sessions destined to the staff of the juvenile judicial system's social services.

ii. Special training received by interviewees

Some of the results emerging from the fieldwork confirmed the correct implementation of the legislative dispositions described above.

¹ [Decreto del Presidente della Repubblica 22 settembre 1988, n. 448](#). "Approvazione delle disposizioni sul processo penale a carico di imputati minorenni".

This is particularly the case of criminal lawyers. All interviewees of this professional category confirmed that lawyers – in order to become public defenders – must undergo a specific legal training which generally focuses on the specific aspects of the juvenile judicial system and on the most relevant differences from the ordinary criminal proceedings. In fact – as stressed by a criminal lawyer interviewed in Rome – a specific training is needed because the juvenile justice system is based on the Criminal Code as far as the crimes are concerned; however, the functioning and the purpose of the proceedings are different compared to judicial proceedings involving adults since the purpose is not the mere punishment of the perpetrator, but rather the social reintegration of the child. However, the same participant also stressed a major shortcoming of these trainings, namely that these do not generally address the issue of how to communicate with children: the training offered to the lawyers is not inter-disciplinary and it is mostly focused on the technical functioning and steps of the judicial proceeding. Lawyers are not trained on how to be empathic with the children or how to deal with the holders of parental responsibility or the social services. These skills are often learnt on the job. Another criminal lawyer based in Rome reported that these training sessions are organized every two years by the territorial Bar Associations.

As far as judicial authorities are concerned, a preliminary remark is needed: both judges and prosecutors have access to this professional role through a university career and a strict public examination. The same professional can perform in their professional life both the role of judge and of public prosecutor. Moreover, by virtue of the Superior Judicial Council's (*Consiglio Superiore della Magistratura*, the independent public organism representing the judiciary power) decisions each professional can be transferred to different branches of the judiciary power – for instance, from the ordinary criminal system to the juvenile one – without a specific request by the professional, and – most relevantly – without a specific preliminary training. As explained by one of the prosecutors, before the current position, the interviewee had been working for 12 years as an ordinary judge in the adults' criminal system. When she was transferred to the Public prosecutor's office of the Juvenile Court of Genova, she did not receive any prior training or specialisation: she learnt on the job and personally committed to fill any knowledge gap that would compromise her expertise in this field. In this respect, other interviewees mentioned attending optional training sessions organised by the Superior Judicial Council and by other professional organisations. More specifically, a public prosecutor interviewed in Rome reported that the Superior Judicial Council – located in Tuscany – provides regular training sessions to all judicial authorities. Among these, specific training sessions are offered to juvenile judges: these are particularly important especially for those judges who are transferred to the juvenile justice system from the ordinary one. These training sessions focus on judicial procedures and on procedural rights and safeguards. During these training sessions, judges have the opportunities to analyse practical judicial cases, and be updated about recent case laws and trends of the jurisprudence in this field.

None of the penitentiary police officers who took part in the research mentioned compulsory training sessions. However, all of them reported having participated in optional training sessions (not on a regular basis, though), and mentioned the importance of the mentoring offered by superiors and senior colleagues. A penitentiary police officer working at the CPA of Rome, reported that the training sessions he attended were not specifically focused on procedural safeguards and on the legislation governing the juvenile justice system but mostly on procedures and operative protocols in force for the penitentiary police officers, and how these were updated by legislative reforms over the years. These training sessions were mainly held by penitentiary police officers; however, sometimes other external professionals were invited, such as directors of detention facilities, social assistants, etc. It is worth mentioning that a penitentiary police officer working at the CPA of Genova reported that, during his career, he took part to training sessions focusing on the Italian legislation governing the juvenile criminal system, as well to several training and update sessions organised at a local level.

Thanks to these, a service operating manual (*manuale operativo di servizio*) was created, aimed at establishing standard procedures for penitentiary police officers working at the CPA of Genova.

As far as other professionals are concerned, such as social assistants, educators and psychologists, all of them must complete their university education in order to have access to their professional field. As it was the case of police officers, none of the interviewed professionals mentioned compulsory trainings requested to work in the juvenile criminal justice system; however, all of them mentioned having participated in one or more training sessions during the course of their careers. Professionals interviewed in Rome all reported that periodic training sessions are offered at local level by the local branches of the Ministry of Justice. One professional in particular – with a long-standing experience in this field – reported that the Centre for Juvenile Justice (*Centro Giustizia Minorile* – CGM) in Rome organised several training sessions for the staff of the community centre services for children involved in criminal proceedings. These training sessions mostly focused on the judicial proceedings and their stages and were developed and implemented by all the institutional services involved in the juvenile justice systems, included the local social services.

As for the frequency of the training, the interviewee reported that sessions are generally organised once per year and they can last one or more days, depending on the type of training that is offered to the participants. The sessions also addressed the communication with the children, an element which is not dealt by the training sessions offered to the other categories of professionals. The interviewee stressed that what is missing in the training is a focus on migrant children who are increasingly more present among children involved in criminal proceedings: according to her, a specific training is needed, focusing on how these children perceive crimes, the criminal justice system, the interaction with public authorities and how to best communicate with them. All the professionals interviewed in Genova confirmed having participated in professional trainings covering the functioning and procedural aspects of the juvenile criminal justice system. None of them provided specific details on the frequency and contents of these sessions.

d. Effectiveness of measures / Monitoring

The Ministry of Justice has developed its own statistical system², collecting data on several issues, including the Juvenile justice system. Such data is collected on a regular basis and is also based on information provided by local judicial districts. Available data concerns – among other issues – the number of children involved in criminal proceedings and the number of children deprived of personal freedom in IPMs, CPAs and local communities. The national statistics institute (*Istituto Nazionale di Statistica* – ISTAT) has developed a specific section of its website³ focusing on children and reporting – among other issues – data concerning the children involved in criminal proceedings or charged with criminal offences; children deprived of their personal freedom.

C.2 Age assessment and the presumption to be a child in case of remaining uncertainty

a. Legal overview

The age assessment procedure is crucial in two ways: on the one hand, to ascertain that the child can be charged, that is their age is over 14; on the other hand, to decide which judicial proceeding to start, the one in place for adults or for children, that is if the child is aged more or less than 18. If the age cannot be assessed through ordinary means (primarily, the identity documents of the child or the civil

² Available at: www.giustizia.it/giustizia/it/mg_1_14.page?selectedNode=0_6.

³ Available at: www.istat.it/it/archivio/minori.

registry), Art. 8 of the D.P.R. No. 448/1988 applies. According to this legislative disposition, the juvenile Court in charge of the case can request an age assessment which must be as non-invasive as possible. More specifically, in case of doubts concerning the age of the child, the age assessment procedure must be disposed by the Court, upon request from the Public prosecutor, the child's lawyer or by the Court during preliminary investigations, but also during the following stages of the proceeding, if solid doubts emerge. The age assessment can be requested even when the child is not formally charged (that is when the defendant receives the notification of indictment – *rinvio a giudizio*⁴ – but it can also concern children who are merely suspects (that is when the suspect person is notified of the conclusion of the prosecutor's preliminary investigations (*Avviso della conclusione delle indagini preliminari*)⁵).

The assessment traditionally consisted in an auxological exam: this type of analysis assesses the child's skeletal development, bones' calcification, and histological features. However, the procedure was gradually reformed as to adopt a multi-disciplinary approach⁶. According to this approach, children must be assisted by a cultural mediator during the procedure, as to allow them to perfectly understand the procedure itself and its aim; moreover, a guardian must be appointed before the procedure is carried out. The team in charge of the procedure must include a social assistant, a paediatrician with specific auxological expertise, a psychologist, a cultural mediator. The procedure is made of different steps, namely a meeting with the social assistant aimed at understanding the child's social background and history; a paediatric and auxological visit; a psychological assessment. At the conclusion of these steps, a multi-disciplinary report is drafted by the professionals, indicating an evidence-based age range. In case of children involved in criminal proceedings, the report is transmitted to police officers, juvenile judicial authorities and juvenile social services. Moreover, the Decree of the President of the Italian Government No. 234 of 10 November 2016⁷ was approved, introducing innovative mechanisms for the age assessment of unaccompanied migrant children who are victims of trafficking. Diplomatic authorities can be involved to ease the procedure unless the child expresses the intention to lodge an asylum application. The procedure must always ensure the protection of the child, taking also into account gender, culture and religion. Three different steps are foreseen – the social assessment carried out by the social assistant, the paediatric and auxological visit, the psychological assessment – and, if sufficient elements to determine the age emerge in one stage, the following one(s) are not conducted. The age assessment procedure must start within 3 days from the authorization issued by Judge in charge of guardianship, and concluded within 20 days. The resulting multi-disciplinary report is transmitted to the Judge in charge of guardianship and to the child's (temporary) guardian. The combination of these legislative acts provides the framework for the multi-disciplinary age-assessment procedure.

The age-assessment procedure must be conducted by a team of different experts and carried out in a public healthcare facility, chosen by the competent judicial authority. The exam must include an individual interview with the child, an auxologic pediatric exam, and a psychological evaluation: if a migrant child is concerned, the presence of a cultural mediator is mandatory: a cultural mediator/interpreter should be ensured in all types of judicial proceedings, both civil and criminal ones. This right is granted to both adult and minor defendants. The child must be adequately informed

⁴ Governed by [Art. 416 of the Italian Criminal Procedure Code](#).

⁵ As envisaged by [Art. 415-bis of the Italian Criminal Procedure Code](#) ([Art. 508](#) and [603](#) of the Italian Criminal procedure code).

⁶ This [protocol](#) was adopted in 2016 by the Conference of the Italian Regions and Autonomous Provinces.

⁷ [Decreto del Presidente del Consiglio dei Ministri 10 novembre 2016, n. 234](#), "Regolamento recante definizione dei meccanismi per la determinazione dell'età dei minori non accompagnati vittime di tratta, in attuazione dell'articolo 4, comma 2, del decreto legislativo 4 marzo 2014, n. 24".

about the procedure, the exams they will undergo, their purpose and the right to file a complaint against the outcome. It is worth stressing that the Superior Health Council (*Consiglio Superiore di Sanità*) issued an opinion in 2009⁸, recommending the adoption of the Tanner-Whitehouse 3 (TW3) method, since – according to the existing scientific literature – is the most precise and reliable method to assess the age of a child.

The outcome of the procedure is a final document, reporting the presumed age of the child, but also the margin of error of the assessment in terms of years. The document is approved by the competent judicial authority and notified to the child and to the person exerting the parental responsibility (parents, guardians). Until the end of the age-assessment procedure, the child must be considered a minor for the purposes of the assistance and protection (including, reception and accommodation, in case of unaccompanied migrant children). The age-assessment procedure is to be deemed not valid – and therefore object of complaint – if a single approach – rather than a multi-disciplinary approach – is adopted (for instance, if only the x-ray of the wrist is carried out). Moreover, the assessment is not valid also if the margin of error is not explicitly reported.

If the age assessment procedure does not allow to determine the child's age with certainty, the minor age is presumed, since the *favor rei* principle governs the entire juvenile criminal system.

- b. How is the age of a person suspected or accused of a crime assessed and determined in practice?

As a preliminary remark, **none of the interviewed professionals reported that a multi-disciplinary approach is applied** to age assessment: those who had an experience of the procedure and could provide insights on this issue, reported that a **medical exam** is generally used, namely **the x-ray of the wrist** or, more generally, of the bone structure of the children. Professionals interviewed in Genova reported that this medical examination is carried out always in the same hospital, the paediatric “Gaslini” hospital of Genova; on the opposite, in Rome the medical examination is performed in the hospital which is closer to the police station where the child was arrested or in the first available one.

A public prosecutor interviewed in Rome mentioned the existence of the multi-disciplinary protocol described in sub-section a. of this section, which was introduced for the correct identification of children who are victims of trafficking. However, in her experience, this is never applied since it is **very expensive**, and the Ministry of the Interior and the Ministry of Justice never negotiated an agreement on which institution must bear the costs of this procedure for children who are involved in criminal proceedings. A social professional based in Rome mentioned a similar shortcoming, stressing that **the multi-disciplinary assessment requires complex and long procedures**, whereas the juvenile justice system requires it to be rapid:

“In realtà ci sarebbe la legge N. 47/2017 che dà delle indicazioni molto più specifiche e molto più garantiste. Allo stesso tempo però affermo che se si volesse applicare la legge, l'accertamento dell'età forse non lo faremmo neanche su un soggetto perché la legge prevede innanzitutto di non utilizzare la radiografia ma altri accertamenti diagnostici. Prevede poi un esame multidisciplinare del soggetto che tenga presente tutta una serie di aspetti specifici. Ma il problema dell'applicazione di questa legge è che per noi l'accertamento dell'età è un fatto che deve rispondere alla immediatezza.”

⁸ Available at: www.asgi.it/wp-content/uploads/2015/03/Parere-Consiglio-Superiore-Sanit%C3%A0.pdf.

“The Law No. 47/2017 introduced indications for this procedure, which are more specific and protective for the children. At the same time, though, if this Law was really implemented, the age assessment would never be done, because the law requires not to use the x-ray, but rather other medical examinations. It also envisages a multi-disciplinary evaluation of the child, covering several specific aspects. However, the problem of this Law is that the age assessment, in our case, must be rapid and immediate.” (Social professional based in Rome)

However, this medical procedure is outdated and inadequate to consider the **different physical and developmental features of different ethnic groups**. For instance, a lawyer working in Turin stressed that this kind of evaluation is today outdated:

“L'accertamento dell'età, almeno fino a qualche tempo fa ma ancora oggi, si fonda su accertamenti radiologici [...] che sono in gran parte fondati su studi relativi alla popolazione dell'Ohio del 1960 e che non hanno nessuna seria e scientifica attinenza come paragone per le tipologie di soggetti per i quali veniva e viene ancora abbastanza utilizzato.”

“Age assessment, at least until recently, but still today, is based on radiological assessments [...], which are largely based on studies relating to the Ohio population in 1960 and which have no serious and scientific relevance as a comparison for the types of subjects for which it was and still is quite often used.” (Lawyer based in Turin)

Moreover, he stressed that most migration inflows to Italy come from Northern Africa where the bone structure and development is different from the Caucasian ethnic group: in his opinion, this element should be considered during the age assessment procedure. The differences among ethnic groups were mentioned also by a penitentiary police officer based in Genova:

“Con le varie etnie c'è un problema. Nel senso che per l'etnia Rom l'età scheletrica è molto più sottile rispetto all'etnia del centro Africa [...] Loro hanno un'età scheletrica più avanzata rispetto a Rom e Nord Africa. È molto complicato”

“There are specific issues concerning ethnic differences. I mean, the Roma ethnic group has a more subtle bone age compared to central Africa [...] children from central Africa have a more advanced bone age compared to Roma and children from northern Africa. It is very complicated” (Penitentiary police officer based in Genova)

To cope with this issue, a social professional based in Genova suggested that **the age assessment procedure should be revised** to also consider the specific ethnicities of the children, since this element (ethnic origin) might have an impact on their bone structure and physical development, thus influencing the reliability of the age assessment procedure. Moreover – according to an interviewee - hospitals' radiologists should be trained as to update these medical examinations:

“I radiologi dei singoli ospedali non è detto che siano specializzati su questo tipo di accertamento. Sappiamo poi che richiede anche una preparazione comparata alle varie etnie perché hanno indici di crescita diversi. E quindi il fatto di essere un buon radiologo dal punto di vista clinico, non implica che è anche un antropologo.”

“The radiologists in the hospitals are not necessarily specialised in this type of assessment. We also know that it requires comparative training for different ethnic groups, because they have different growth rates. So, just because you are a good radiologist from a clinical point of view does not mean that you are also an anthropologist.” (Judge based in Genova)

Moreover, the age assessment procedure is carried out only if the child’s age cannot be determined using ordinary identity documents. A lawyer interviewed in Rome stressed that other elements can be used by police officers – besides identity documents – to determine the child’s age, such as previous criminal records or any other element that can help establishing the children’s age (such as existing files at the local social services). As stressed by a prosecutor based in Rome:

Q: Per le persone giovani la cui età non può essere verificata tramite documenti ufficiali: chi la determina e come?

A: “Ovviamente la polizia giudiziaria ha anche un database con le impronte digitali. Quindi si fa il fotosegnalamento; se il fotosegnalamento è positivo, perché quel minore è stato già intercettato nel corso di altre attività di polizia, perché è un sistema a livello nazionale, si risale alle generalità collegate a quelle impronte. Laddove neanche questo dia esito positivo, ovviamente per capire se effettivamente possa essere imputabile, si porta al pronto soccorso e si fa il primo accertamento, quello sul polso, con il quale il medico del pronto soccorso più o meno stabilisce l'età del minore.”

Q: For young persons whose age cannot be verified by official documents: Who determines their age how and when?

A: “Obviously, the judicial police also have a **database with the fingerprints**. Therefore, the photo-identification is done; if the photo-identification is positive because that child has already been intercepted during other police activities, because it is a system at national level, it goes back to the generalities linked to those fingerprints. If not, even this gives a positive result. Obviously, to understand if they can be charged, the child is taken to the emergency room and the first check is made, the one of the wrists, with which the doctor of the emergency room more or less establishes the age of the child.” (Public prosecutor based in Rome)

The same information was confirmed by one of the penitentiary police officers:

“Abbiamo un sistema che si chiama SISM dove vengono inseriti tutti i minori che hanno avuto una denuncia. Quindi si può eventualmente ricollegare il soggetto a una persona già inserita, sempre se c’è una foto o qualche informazione certa.”

“We have a database called SISM where all the children reported to police authorities are registered. So, if a photo or certain information about the child are available, officers can check if the child is already registered.” (Penitentiary police officer based in Genova)

The absence of any of these elements **almost exclusively concerns unaccompanied migrant children**.

“I minori stranieri sono persone che oggettivamente è più difficile che abbiano dei documenti di riconoscimento. Mentre il minore italiano ha un documento di

riconoscimento, quindi, è facilmente accertabile la sua età. I ragazzi che non hanno i documenti generalmente sono i minori stranieri non accompagnati”

“Migrant children are those subjects who most often cannot count on official identity documents. Italian children always have an identity document, and it is easy to ascertain their age. Children who don’t have identity documents generally are unaccompanied migrant children” (Public prosecutor based in Genova)

As for the stage of the proceeding when the procedure is implemented, **the age assessment is generally conducted immediately after the arrest** of the children by police officers. In those cases, these children are transferred to the hospital to undergo the procedure. However, if doubts remain, **the Court – at all stages of the proceeding – can authorize further evaluations and exams**. These further exams are generally requested by the children’s lawyers to prove that the age that was established is not correct: in this respect, lawyers can also present further documents and evidence proving the person’s minor age. However, such further exams are expensive and the costs must be borne by the defendants, and are consequently **not affordable** by disadvantaged children, such as unaccompanied migrant children:

“Capita più di frequente che invece questa consulenza tecnica venga disposta sulla base di una consulenza tecnica di parte che viene richiesta, disposta ed eseguita da un tecnico incaricato dal difensore. Ma, visto che spesso questi minori sono minori non accompagnati, senza riferimenti di nessun tipo men che meno economici, diventa spesso proibitivo incaricare uno specialista perché approfondisca il tema sulla base anche di studi aggiornati e meno datati.”

“It happens more frequently that this technical advice is ordered on the basis of a technical advice of the party that is requested, ordered and carried out by a technician appointed by the defence counsel. However, given that these minors are often unaccompanied migrant children, without any kind of reference, not to mention economic, it is often prohibitive to appoint a specialist to study the matter in depth on the basis of updated and less dated studies.” (Lawyer based in Turin)

The **age assessment cannot provide an exact and certain outcome**: however, an age range is indicated by the medical professionals carrying out the examination. A lawyer interviewed in Rome stated That it is up to a lawyer to demonstrate that the child is not chargeable because being younger than 14.

“Se la differenza di età è minima, cioè se si varia tra i 13 e i 14 anni – che però è una differenza fondamentale [perché il minore è o meno imputabile] – la struttura sanitaria potrebbe dire che si tratta presumibilmente di un minore infraquattordicenne oppure ultraquattordicenne. A quel punto il difensore [...] deve far emergere, con un proprio consulente o tramite le proprie conoscenze, delle caratteristiche che sono predominante per ritenerlo infraquattordicenne. Si gioca molto sull’interpretazione”

If the age uncertainty is scarce, between 13 and 14 – which is a crucial difference [because the child can or cannot be charged] - the healthcare facility could report that the individual presumably is aged less or more than 14. It is up to the lawyer [...] to prove, through an independent expert or providing more information, those personal characteristics that are

relevant to consider the subject as aged less than 14. The interpretation has a crucial role in this” (Lawyer interviewed in Rome)

The same applies to the difficulties of determining whether the child is aged more or less than 18 and, therefore, if they must undergo a juvenile or an ordinary judicial proceeding. The lawyer stressed that the cooperation and trust between the lawyer and the defendant is crucial in this respect because the accused child can provide useful information to prove the minor age.

If – despite these efforts – the age of the child cannot be determined with a sufficient degree of certainty, the interviewees confirmed that **the favor rei principle is applied**. Consequently, the defendant is considered aged less than 18 (if the doubt concerns the minor or adult age), or less than 14 (if the doubt concerns the possibility to charge the person).

“Quando l’accertamento dell’età non fosse tale da eliminare il dubbio sulla minore età, è la stessa norma a dirci che la minore età si presume. Quindi ci stiamo riferendo evidentemente a quella zona di dubbio che può essere rilevata intorno ai 18 anni. Per quanto riguarda l’età minore di 14 anni in questo caso [...]il principio generale di favor nei confronti dell’incolpato di un reato fa sì che, nel caso in cui ci sia pur un margine di dubbio, questo dubbio prevale nel senso della non imputabilità.”

“When the age assessment is not such as to eliminate the doubt as to minority, it is the same rule that tells us that the minor age is presumed. So, we are evidently referring to that area of doubt that can be detected around the age of 18. With regard to the age of less than 14 in this case [...] the general principle of favour towards the accused of a crime means that, where there is a margin of doubt, this doubt prevails in the sense of non-chargeability of the child.” (Judge based in Rome)

As a final general remark, a social professional interviewed in Genova reported that – in her perception – the age assessment procedure was much more frequently requested in the past:

“Devo dire che un tempo l’accertamento dell’età veniva richiesto di più. Ora sempre meno. Anche perché ultimamente sono meno i ragazzi e sono proprio giovani, si vede che sono minorenni. E poi forse, se c’è il dubbio tra maggiore e minore età, vengono trattati da minorenni e si cerca comunque di trattarli da minorenni perché forse è più a loro favore.”

“I have to admit that, in the past, the age assessment was requested more frequently. It is not the case now. Also because, arrested children are very young in this period, they are glaringly minors. And, moreover, if the doubt remains about their age, they are treated as children since the treatment is more favourable for them.” (Social professional based in Genova)

c. Discussion of findings

- None of the interviewed professionals reported that a multi-disciplinary approach is applied to age assessment. Those who did mention the existence of multi-disciplinary protocols for

age assessment, also stressed that these cannot be applied either because they are too expensive or because these excessively delay the assessment.

- The age assessment procedure almost exclusively concerns unaccompanied migrant children, whose age cannot be determined through ordinary identity documents.
- Age assessment is generally carried out after the children's arrest, upon request of the public prosecutor. Judiciary police officers transfer the child to the hospital to undergo the x-ray of the wrist: this procedure is carried out exclusively by medical staff.
- If doubts persist, the age assessment procedure can be requested by judicial authorities at any stage of the proceeding. Moreover, criminal lawyers can file a request in this respect, and file additional evidence and documents proving the defendants' minor age.
- All interviewees agree that, in case the children's age cannot be determined with a sufficient degree of certainty, the *favor rei* principle is applied, and the children's minor age presumed by judicial authorities.

C.3 The rights to information, having the holder of parental responsibility informed and audio-visual recording of the questioning

a. The right to information

i. Legal overview

Art. 111 of the Italian Constitution⁹ establishes that "in criminal law trials, the law provides that the alleged offender shall be promptly informed confidentially of the nature and reasons for the charges that are brought and shall have adequate time and conditions to prepare a defense". Moreover, the Legislative Decree No. 101 of 1st July 2014¹⁰ – implementing the Directive 2012/13/EU – reformed articles 293, 294, 369, 369-bis, 386 and 391 of the Italian Criminal Procedure Code: thanks to this legislative reform, judiciary police officers who execute the arrest of the suspect must immediately inform the person with a written and clear notice, translated – if needed – in a language they can understand. This note must necessarily include information on the right to appoint a lawyer and to benefit from free legal assistance if the legal requirements for this provision are fulfilled.

In case of children, these are generally informed by judiciary police officers or by the staff working in the community where the child is sometimes temporarily detained after the arrest (*Centro di Prima Accoglienza* – CPA). Children are accommodated in CPAs when accused of severe criminal offences which entail the arrest of the suspects; in the remaining cases, the suspect child is informed about the charges, identified by judicial police officers, but remains at liberty pending the proceeding. According to a 2017 fieldwork with children involved in criminal proceedings in Italy, the information provided by police officers is described as scarce and inadequate: officers do not ask children to read the letter of rights and check the information it provides; they are merely asked to sign without being aware of the purpose of the notice itself, often in situations where they are scared and in distress¹¹.

Moreover, Art. 1.2 of the D.P.R. 488/1988 establishes that the Juvenile Court in charge of the case must inform the child about the functioning of the proceedings and about the content and ethical-social meaning of the decisions that are made, that is how these decisions are useful to and aimed at

⁹ English version available at: www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

¹⁰ [Decreto Legislativo 1° luglio 2014, n. 101](#), "Attuazione della Direttiva 2012/13/UE sul diritto all'informazione nei procedimenti penali".

¹¹ [Defence for Children International Italia \(2017\)](#), La difesa è un mio diritto. Rafforzare i diritti dei minorenni accusati o sospettati di reato nell'Unione Europea. Il ruolo dell'avvocato minorile nel sistema di giustizia penale minorile in Italia, September 2017.

the social reintegration of the child. The violation of the child's right to information results in the invalidity of judicial acts (Art. 178.c of the Italian Criminal Procedure Code).

According to this legislative system, the Juvenile Court is in charge of deciding the case but also of making sure that the suspect/accused child is fully informed about the reasons and content of its decisions.

ii. Information about procedural rights and safeguards in practice

All interviewed professionals confirmed that information about procedural rights and safeguards is provided to the children, even if different experiences emerged concerning which public authorities or professionals are mostly involved in this information-provision activity; and also concerning at which the stage of the proceeding this information is more usefully provided to the children.

As for the **stage of the proceeding**, it emerged from the interviews that the moment of the arrest, the temporary detention in CPA (in case of children arrested in flagrante delicto) and the validation hearing are the moments where most of this information is provided. During the following stages of the proceeding, children are already sufficiently aware of their rights and of the functioning of the juvenile judicial system.

As for the **moment of the arrest**, the child is generally informed since the first contact with public authorities, namely with judiciary police officers. Police officers can either arrest the child red-handed or notify the charge to the child who remains free pending trial (*denunciato a piede libero*). In both cases – as reported by a public prosecutor working in Genova - the officers must inform the child about the functioning of the proceedings and about the judicial authority in charge of the case. A judge based in Genova reported that during the **interrogation** by the judiciary police, that is delegated by the public prosecutor, children are provided with specific forms to inform the children about their procedural rights and about the functioning of the proceedings. A lawyer working in Rome explained that the judiciary police officers play a crucial role, as they are the first public authority that children often meet. The information should also explain the meaning and functioning of the proceeding, and the procedural rights they are entitled to. In her experience, judicial police officers are nowadays extremely trained to deal with children, and specialised sections have been created in most police headquarters. Thanks to this expertise, information about rights and procedural safeguards is provided to the children: the written reports produced by police officers after the arrest, often include the information provided to the children. A different opinion is expressed by a lawyer working in Turin who reported that information concerning rights is provided to the children by means of the police officers reading them – as they do it with adults – a written standard information sheet that, in his opinion, often is difficult to understand. According to him, this is the mere accomplishment of a formal procedure: the information sheet is handed in to the children without further explanations or possibility for them to ask questions/clarifications.

The provision of information at the moment of the arrest is a crucial issue: children often arrive to the CPA after being arrested with imprecise information provided by police officers dealing with their arrest. A penitentiary police officer working in Genova mentioned the case of foreign children with whom the communication is particularly difficult, both because they do not understand the language, and because they do not recognize and understand the role of penitentiary police officers (because they work in plainclothes).

“Partiamo dal presupposto che è chi arresta il minore – quindi la polizia – molto spesso non sa come esprimersi. Per esperienza ti posso dire che in un caso recente di un minore arrestato per omicidio, i carabinieri gli avevano detto che sarebbe andato in una comunità. Poi si è ritrovato in CPA [...] quindi l’informazione parte già sbagliata dall’inizio.”

“The first element to consider is that those who arrest the children – namely police officers – often do not know how to communicate with them. I can mention a recent case of a child arrested for murder who had been told by the Carabinieri that he would have been transferred to a community center. And then he ended up in the first-reception center (CPA) [...] so, the information is often wrong since the beginning.” (Penitentiary police officer in Genova)

The **role of the CPA** in providing information to the children was mentioned by several professionals (and from the children participating in the second part of the research as well). Professionals working at the CPA (penitentiary police officers, educators, social assistants and psychologists) are trained to communicate with the children. While at the CPA, children are explained the situation, the type of facility they are in, the purpose of the validation hearing, the crime they are charged for. The children are also informed about the right to appoint a lawyer or – in case they do not have an entrusted lawyer – to be assisted by a public defender; about the right to remain silent and the right to have the holders of parental responsibility contacted and informed. A penitentiary police officer working at the CPA of Rome also reported that children are informed about their right to medical assistance. Information is provided in the CPA either orally or also with written materials. Two police officers and a social worker from Genova referred to special materials, such as a **Charter of services** – providing information on the functioning and internal regulation of the CPA – and of a **DVD in multiple languages**, used especially with foreign children at the arrival to the CPA, if a cultural mediator is not immediately available.

“Abbiamo inventato degli opuscoli in tutte le lingue, un DVD multilingue per chi non parla italiano al momento dell’ingresso. L’ho curato io personalmente. Perché avevamo l’esigenza che chi entrava e non parlava l’italiano capisse dove si trovava e cosa stesse succedendo”

“We have developed specific booklets in many languages, and a DVD as well, for those who cannot speak Italian at the arrival at the first-reception centre. I personally worked on this project. Because we needed to ensure that the children arriving at the centre who could not speak Italian, could perfectly understand where they were and what was going on.” (Penitentiary police officer in Genova)

A social professional working in Genova reported that the CPA of Genova developed a **graphic booklet**, using the well-known story of Pinocchio, in different languages, to explain the functioning of the juvenile criminal proceedings to the children detained in the centre.

All this information is generally also repeated by the Judge during the validation hearing.

However, the staff working at the CPA is requested to collect a huge amount of information concerning the children in a very short time, including their physical and psychological conditions, their family and social background, etc. to be transmitted to judicial authorities for the validation hearing, and this might have an impact on the information-provision activity.

“Il centro di prima accoglienza funziona come una specie di pronto soccorso nel senso che in pochissimo tempo dobbiamo accumulare informazioni familiari, informazioni

scolastiche, capire come si muove il ragazzo nella vita quotidiana [...] se fa uso di stupefacenti, raccogliere informazioni anche da altri servizi [...] Quindi la comunicazione di informazioni relativa ai diritti può essere a volte ristretta da queste altre esigenze.”

“The first-reception center works as it was a kind of ER. I mean that in a very short period of time, we are requested to collect many information concerning the children’s families, school information, information concerning the daily lives of the children [...] whether they use drugs, information from other local services [...] So, the information-provision activity concerning the rights might be sometimes reduced because of these other activities we must carry out.” (Social professional working in Genova)

The **involvement of social professionals since the early stages of the proceeding** ensures that the information is provided to the children more carefully and gradually. A social professional working in Rome who reported that the staff of community centers – where children are accommodated in pre-trial custody or serving their probation period - have a daily contact with the children and this can help providing them continuous and gradual information on their possibilities and following steps of the judicial proceeding. The importance of providing information gradually to the children was stressed also by a lawyer working in Genova who explained that providing too much information in the initial phases of the proceeding can be counterproductive, since children are often confused by the new situation.

A crucial role in this respect is also played by the **lawyers**, especially when they succeed in establishing a trust relationship with the children. Lawyers must be **immediately appointed**: either the family appoints an entrusted lawyer; or a public defender is appointed. Lawyers have the power to immediately contact the children. If children are under arrest, the lawyers are entitled to visit the CPA where the children are temporarily detained pending the validation hearing. Lawyers generally integrate and specify the information that public authorities provide to the children, as well as explain the children the best way to behave during the trial.

Judicial authorities, as well, are requested by the legislation to provide information to the children concerning their rights and the functioning of the proceeding. This obligation applies to all judicial authorities, regardless of the stage of the proceeding they deal with. However, from the fieldwork emerges that this information-provision activity is more necessary in the **early stages of the proceeding** when the children arrive for the first time in a courtroom (generally during the validation hearing). According to a judge interviewed in Rome, the aim of the information provided by the Court is not only to respect a procedural right or to provide children with a list of their rights, but rather to make them effectively aware of the situation they are facing, and the meaning of the different judicial phases. In her opinion, if information is provided with this purpose, the information-provision activity can be an opportunity for the children to mature and understand the consequences of their actions. However, the information might not be provided with adequate details if the judges – who carry out this activity on a daily basis – provide it in a standardized way, without paying the necessary attention to the specific case and situation of the child. A judge based in Genova – who usually deals with later stages of the proceeding – reported that he generally provides the information in case he perceives that the children were not adequately informed in previous judicial phases. For example, if a request for probation is lodged by the defendant, he checks whether the child is really aware of the meaning and purpose of the probation regime. This same information was confirmed by an honorary judge working in Rome who reported asking the children to explain the purpose and meaning of the probation regime to check their comprehension level.

Eventually, as for the **content of the information** provided to the children, a difference seems to exist between some procedural rights that are always communicated and explained to the children – such as the right to appoint a lawyer – and other rights that are implemented in practice, but not always communicated to the children – such as the right to have the hearings held behind closed doors to protect the defendants’ privacy. According to some interviewees, the children are either explained these technical aspects during the first hearing by the judge in charge of the case, or simply perceive them when they are applied.

One public prosecutor working in Genova added that a specific aspect of juvenile proceedings is that children are informed since the beginning about the possibilities at their disposal to rapidly end the proceeding, namely the judicial remission (*perdono giudiziale*)¹². This information is provided in order to obtain since the very first questioning the child’s consent to this kind of conclusion of the proceeding. This is a possibility that is excluded for adult defendants and therefore represents a specific right they can benefit from as children.

As for the **communication strategies** the professionals use to better communicate with the children and check their comprehension level, the interviewees mentioned several interesting approaches to this issue. Many of them stressed the importance of using a plain and simple communication style and language. A public prosecutor working in Genova also reported the importance of explaining to the children her role in the proceeding.

“ Noi magistrati siamo chiamati a spogliarci dei nostri tecnicismi, pur dovendo mantenere comunque il ruolo che abbiamo e specificarlo”

“Judicial authorities must abandon their technicalities, even though we must maintain and specify our role”

Lawyers in particular expressed the importance of providing thorough and honest information directly to the children, as well as guide them on the best behavior to adopt during the hearings, and the options they have during the proceedings. One lawyer working in Rome added that, however, one of the most important parts in her communication strategy with the children is the necessity to make them understand the meaning and reasons of their actions, and the impact on their lives and on the victims. In her opinion, making children understand these issues is the first necessary step for their rehabilitation path. Another lawyer working in Rome mentioned using an ongoing and non-judgemental communication with the children which considers the specific characteristics of each case.

The use of **plain and direct language** was mentioned as a key strategy by a social worker from Genova who reported that sometimes she asks the children to repeat the information they have received, to check if they understood it correctly. She said that this approach is particularly useful because judicial authorities, might use a technical language that can hardly be understood by the children. Judicial authorities – especially those who have previously worked with adult defendants – often use a formal and complex language that is difficult to understand for the children. Many judges, after officially and solemnly reading the decision, continue talking with the children and explain them the meaning of their words: however, in her experience, the role of the CPA professionals is crucial to ensure that the

¹² Judicial remission is governed by Art. 169 of the Italian Criminal Code. It is a judicial possibility that the Italian legal system recognizes to children involved in criminal proceedings for minor criminal offences. With this instrument, the Court can decide to discharge the child even if their guilt is judicially assessed. The crime is extinguished; however, the child’s criminal records report the offence and the proceeding. Each individual can benefit from judicial remission only once.

children fully understand what is going on in the proceedings they are involved in. Eventually she mentioned the importance of cultural mediators employed in CPAs:

“Nel caso di ragazzi stranieri, viene subito chiamato un mediatore culturale che comunque aiuta anche noi. Anche se il ragazzo comprende in maniera sufficientemente buona e la sua conoscenza della lingua italiana permette una comunicazione, facciamo comunque intervenire anche il mediatore perché è sempre importante avere una persona della stessa cultura del ragazzo ospite in modo che ci aiuti a comprendere anche aspetti del linguaggio non verbale.”

“When foreign children are concerned, a cultural mediator is immediately involved. This mediator also helps us [the professionals]. Even if a foreign child can adequately understand and speak Italian, the cultural mediator is nonetheless involved, because it is crucial to have a person with the same culture of the child, who can help us to also understand the non-verbal language.” (Social professional working in Genova)

The importance of establishing **trust** with the children in order to successfully communicate with them was also mentioned by a social professional working in Genova. According to the professional, this is something social assistants, who are in close contact with the children, are able and trained to do. Technical information about the rights, the procedural safeguards and the functioning of the proceeding must be conveyed through an emotional communication; this approach is also crucial to understand what the children have really understood of the information they are provided with.

Doubts and concerns emerged about the **actual comprehension and awareness of the children** involved in criminal proceedings. A lawyer working in Rome reported that, in her experience, children who are involved in criminal proceedings do not understand the information they are provided. They are aware that their actions have precise consequences, however how these consequences work in practice is not always clear. A similar opinion was expressed by a lawyer working in Genova who noticed some confusion – especially among foreign children and those who do not have a close relationship with their lawyers – concerning the different stages of the proceedings. In fact, some of them, who undergo the validation hearing and are released by the Court, often believe that the proceeding is concluded: after months (or even years) they are notified of the beginning of the proper proceedings.

Other professionals have a different opinion on the comprehension level of the children: for instance, a penitentiary police officer working at the CPA of Rome reported that most children are unfortunately already aware of the functioning of the juvenile criminal system when they arrive at the CPA, since they come from family and social backgrounds where this kind of experiences are not unusual. A similar perspective was expressed by a social professional working in Genova.

iii. Information about the general conduct of the proceedings

All interviewed professionals confirmed that children are provided with information concerning the functioning of the juvenile judicial proceedings and the role of the parties involved.

This type of information is not provided to the children during the arrest, the investigations or the preliminary stages of the proceeding. If the indictment is decided and the case arrives before the competent court, the child is informed by the judge about all the procedural aspects of the trial, including the role of the parties and other participants (namely, the defendant, the lawyer, the holders of the parental responsibility, the prosecutor, and the juvenile social services). This perception was for

instance expressed by a public prosecutor based in Genova. The scarce information on these issues provided by judiciary police officers was criticised by a lawyer working in Rome who stressed that children should also be carefully informed about what is going to happen after the arrest: if they are going to be transferred to a CPA, pending the validation hearing; or to a community centre. She mentioned the case of a child she assisted who was not informed adequately by police officers that he was going to be transferred – after the arrest – to a judicial community centre. Since he had already undergone a civil proceeding concerning his parents’ parental responsibility, he was convinced that he was being transferred to an ordinary community centre, as it had already happened in the past. He did not understand the difference between the two types of community centres: so, he decided to flee from the community centre, believing it would not have had legal consequences. However, since he was in pre-trial custody, he actually perpetrated a further crime leaving the community centre, and ended up in the juvenile detention facility (*Istituto Penale Minorile – IPM*) of Rome, as aggravation of his pre-trial custody measure.

A similar perception was confirmed by a social professional working in Rome:

“Spesso quello che notiamo è che è approssimativa l’informativa che viene fatta nell’ambito del fermo di polizia, o Carabinieri, o forze dell’ordine. Quello che noi abbiamo rilevato è che quando i ragazzi arrivano al CGM magari pensano – soprattutto se non sono stati arrestati – che, siccome sono stati restituiti alla famiglia, pensano che dopo quella fase lì si sia tutto chiuso. Che non ci sarà un seguito”

“What we often notice is that the information provided by law enforcement officers is sloppy. What we have registered is that children who are supported by the Juvenile Justice Centre – especially those who are not in pre-trial custody – believe that, since they are waiting the trial at home, everything will end up in nothing. They believe there will be no consequences” (Social professional working in Rome)

The role of judiciary police officers conducting the identification and interrogation after the arrest was nonetheless mentioned by some professionals, such as one judge based in Genova: according to him, children are informed about their procedural rights and safeguards, and on the functioning of the proceeding, since their interrogation with judiciary police officers. A similar perspective was shared by a lawyer working in Rome, who stressed, though, that the information provided in this phase is often incomplete and must be complemented by the lawyer.

Judges, lawyers and social professionals – both those working at the CPAs and in community centres, and IPM – seem to be crucial actors in providing this kind of information. Two lawyers from Rome, for instance, are convinced that the role of lawyers is crucial since this kind of information is not generally provided to the children and there is no specific procedure in this respect. For this reason, children are informed about the functioning and the steps of the proceeding by their lawyers.

“Al minore si dice tutto. Io affronto prima in maniera oggettiva che tipo di reato è, quale sarà la pena. Comincio a spiegare che lui per legge deve essere sempre sentito con il difensore. Gli spiego esattamente cosa vuol dire quel reato. Poi cerco di capire perché è stato commesso il reato. Gli dico tutte le fasi del procedimento. Gli spiego anche che una buona condotta nell’interrogatorio con il pubblico ministero è importante. Al di là dell’oggettività di quello che dico, cerco di fargli capire il reato e perché l’ha commesso. Perché cerco subito di iniziare il percorso di recupero.”

"I tell the child everything . I first deal with the technical matters, the type of crime, the possible sentence. I explain the right to be assisted by a lawyer. I explain what the crime means in practice. I try to understand the reason why the crime was perpetrated. I explain all the proceedings' phases. I explain that a good behavior during the interrogation with the public prosecutor can be useful. Beyond these technical issues, I try to make the children understand what they have done and why. I try to start as soon as possible their rehabilitation path." (Lawyer working in Rome)

The role of the staff working in the CPA is very important – as stressed by a penitentiary police officer working for the CPA of Genova. According to him, the children are immediately informed by the staff working at the first-reception centre about the functioning of the judicial proceedings in all its different steps. After the arrival at the CPA, children must undergo a validation hearing where the Court decides if and which pre-trial custody measure to adopt: the staff of the CPA informs the children about the possible outcomes of the trial, and which measures the Court could adopt. Furthermore, the interviewee also reported that the children are always informed about the conduct of the hearing and the court settings. Children are also informed that they will be accompanied to trial by the educators working for the CPA.

"Prima di portarlo in tribunale [per l'udienza di convalida], noi spieghiamo al minore fisicamente quali sono i posti, chi si troverà di fronte il giorno dopo. Spieghiamo che sarà a porte chiuse e il compito delle figure che si troverà davanti. Perché di fronte avrà il giudice. Addirittura, spieghiamo che ci sarà un cancelliere. Spieghiamo qual è il posto del pubblico ministero. Che ci sarà una persona che parla la sua lingua. L'avvocato dove si siederà. In modo che quando si troverà in un'aula di tribunale sappia già cosa succederà e chi sono quelle persone"

"Before taking them to Court [for the validation hearing], we explain the children how the courtroom is shaped, who they are going to meet there. We explain that the hearing will be held behind closed doors and what the role of the parties is. Because they have the judge in front of them. We explain the role of the chancellor. We explain the role of the public prosecutor. That there will be someone speaking the children's language. Where the lawyer is going to sit. This is necessary to make them aware what will happen in the courtroom, and who are the people the children are going to meet." (Penitentiary police officer working in Genova)

An honorary judge working in Rome, who is a member of the Court conducting ordinary hearings – namely those dealing with the children's case after the validation hearing – confirmed that this kind of information is not generally provided during the hearings she takes part in. The only exception concerns the information the Court can provide on the functioning of the probation, if the Court's members perceive that the children were not adequately informed by their lawyers. However, she also stressed that this aspect should be improved, and that information on these issues should always be provided. She also added that the Court does not explain to the children the role of the parties who participate in the hearing: the only exception concerns hearings held in videoconference when the child participates from the IPM or from the community centre: in those cases, the Court shows with the webcam all the persons present in the courtroom.

"No, non vengono spiegate tutte le procedure. La presentazione degli attori e delle attrici presenti in udienza non viene fatto e questo è un errore. Viene fatto ma viene fatto soltanto quando abbiamo l'imputato in remoto, dal carcere o dalla comunità. In quel caso, viene girata la telecamera e il minore può visionare l'aula. Però in effetti è una cosa che dovremmo fare sempre e con tutti, e non lo facciamo."

“No, all procedures are not explained. The presentation of the actors present at the hearing is not done, and this is a mistake. It is done only, when we have the defendant remotely, from prison or the community centre. In that case, the camera is turned, and the child can see the courtroom. But actually, this is something that we should always do and with everybody, and we don't do it.” (Honorary judge working in Rome)

b. Right to have the holder of parental responsibility informed

i. *Legal overview*

The information about the existence of an investigation, the notice about the end of the investigation phase, the information about the date of the preliminary hearing, and any other information concerning the proceedings, must be communicated to the child, but also to the holder of the parental responsibility (parents or guardian), in order to ensure that the child is adequately assisted and cared for (Art. 7 of the D.P.R. No. 448/1988). This information provision is mandatory.

More specifically, the Prosecutor's indictment request (*richiesta di rinvio a giudizio*) and the investigation's file must be forwarded to the Judge in order to schedule the preliminary hearing. The information concerning the hearing must be communicated to the child, the holder of the parental responsibility, to the victim, to the defendant's lawyer and to the juvenile social services that are in charge of the case.

The violation of this obligation is governed by Art. 7 of the D.P.R. No. 448/1988, which establishes that the consequence would be the invalidity of the judicial acts; moreover, if the child turns 18 during the proceeding, this notification to the holder of the parental responsibility is no longer mandatory.

ii. *Informing the holders of parental responsibility*

All interviewed professionals confirmed that informing the parents/holders of parental responsibility about the children's judicial situation and procedural safeguards and rights is an obligation of public authorities.

Parents/holders of parental responsibility are generally **informed about the children's arrest** by judiciary police officers who carried it out. As stressed by a lawyer working in Rome, when children are arrested by police officers, they have the right to call their parents/holders of parental responsibility, and they have the right to have their parents immediately informed of their arrest by the police.

A lawyer working in Turin expressed a critical point of view in this respect, stressing that, due to the Italian culture, which is mostly based on the role of the families, most information is generally provided to the parents.

“I genitori spesso sono ragguagliati sulle prerogative difensive molto di più è molto meglio di quanto avvenga nei confronti del diretto interessato che spesso insomma viene un po' ricondotto all'ovile e riposto sotto l'ala protettrice di una famiglia che a prima vista, per valutazione dell'operatore di polizia, può far fronte alle ordinarie esigenze familiari.”

“Parents are often better informed about the children's defensive prerogatives than the person concerned, who is often brought back into the fold and placed under the protective wing of a family that, at first glance, the police officer believes can cope with ordinary family needs.” (Lawyer working in Turin)

The **involvement of the holders of parental responsibility** is immediate and continues throughout the entire proceeding. They have the right to take part in all steps of the proceeding, including the first interrogation in case of arrest in flagrancy, and during the ordinary interrogation decided by the prosecutors. A public prosecutor working in Genova reported that, if an unaccompanied migrant child is arrested, the guardian is informed and – in case the child does not have a guardian, yet – a temporary guardian is appointed to support them in the initial phases of the proceeding.

The case of **unaccompanied migrant children** was also mentioned by a social professional working in Genova who reported that if they have already been identified and received by local social services, their guardians can be easily contacted and informed by public authorities. If unaccompanied migrant children have never been identified and supported by public authorities, they do not have a guardian:

“Allora, per quanto riguarda i minori stranieri devo fare un distinguo. Nel senso che se sono ragazzi che sono conosciuti dall'Ente locale spesso hanno un tutore e quindi noi abbiamo la possibilità di metterci in contatto con il tutore. Se sono ragazzi che non sono mai entrati a contatto con le istituzioni, generalmente sono ragazzi dei quali non esiste ancora un tutore e quindi tutta la nomina del tutore verrà fatta in una fase successiva. E quindi questi ragazzi si ritrovano in realtà senza nessuno.”

“Well, as far as foreign children are concerned, it is necessary to distinguish two different cases. If these unaccompanied migrant children were already supported by local services, they generally already have a guardian, and we can contact them. On the opposite, if these children were never in contact with public institutions, they generally do not have guardians, and the guardian will be appointed at a later stage of the proceeding. So, in that moment, these children do not actually have a person of reference.” (Social professional working in Genova)

These children are generally supported by social services and a trust relationship is sometimes established. In rare cases, social assistants might help these children retrace their family members who live in other parts of Italy or in other countries.

After the children are transferred to the CPA, parents are allowed to visit the children in the reception-centre. A penitentiary police officer working at the CPA of Genova said that before meeting the children, parents undergo a meeting with the CPA's professional educators who explain to them the situation of the children and the functioning of the judicial system. This meeting is needed – in the interviewee's experience – to prepare the parents and help them supporting the children who might be confused at this initial stage of the proceedings.

A public prosecutor working in Rome stressed that judicial social services working at the CPA are in charge of contacting and informing the holders of parental responsibility. As for the **children** who are involved in criminal proceedings but **who remain at liberty**, the interviewee confirmed that the notification of the conclusion of the investigation is transmitted to the holders of parental responsibility and to the lawyer. Once they receive this notification, the holders of parental responsibility generally contact the lawyers who inform them about the functioning of the judicial proceeding and the situation of the children. Moreover, in case of children who are not arrested, judicial social services do not have an obligation of information to the parents.

Holders of parental responsibility also participate in all hearings, including the validation hearing. A judge working in Genova stressed that that judges in charge of the validation hearings conduct the meeting with the children, and the children's parents generally participate: they sit behind the children and this can be an extremely sensitive moment since they might get to know for the first-time information on their children they cannot even imagine; this moment can be quite delicate and scaring for the children and judges must be aware of it.

Most professionals **could not mention cases where the holders of parental responsibility are not informed** about the children's situations and rights. A public prosecutor working in Genova stressed that, in some cases – such as the arrest of an accused child at the end of the investigation phase – they are informed after the arrest, but this information must always be provided. She also reported that no exception can be foreseen in this respect:

“Mi è capitato a volte di procedere ad audizioni di minorenni anche senza genitori, con il loro consenso. Anche perché su determinate questioni, i ragazzi fanno fatica a raccontare quello che è successo davanti ai genitori. Ci deve però essere un consenso univoco da parte di tutti, quindi del ragazzo e dei genitori. E lo si rassicura del fatto che in qualsiasi momento i genitori potranno raggiungerlo”

“On some occasions, I have questioned the child without the parents, with their consent. This is because it might be difficult for the children to discuss some issues in front of their parents. We must obtain the consent of all parties, though, both of the child and the parents. And we reassure the child that in any moment their parents can join them”
(Public prosecutor working in Genova)

A judge working in Genova confirms that parents are present at the hearings, however in some cases they might be not allowed to.

“È anche prevista la possibilità di non far partecipare i genitori all'udienza, cioè vengono avvisati ma è capitato in alcuni casi di allontanare i genitori dall'aula d'udienza perché avevano comportamenti disturbanti rispetto al processo e quindi anche alla serenità del minore. O hanno comportamenti diseducativi ma è previsto esplicitamente dalla legge.”

“There is also the possibility of not allowing parents to attend the hearing, i.e. they are informed but it has happened in some cases that parents have been removed from the courtroom, because their behaviour was disturbing with respect to the trial and, therefore, also to the serenity of the child. Or they behave in a non-educative manner, but this is explicitly provided for by law.” (Judge working in Genova)

However, this does not represent an exception to the right of the holders of parental responsibility to be informed and participate in the proceeding. Moreover, the same professional stressed that criminal juvenile judges have also civil competences and can decide to suspend the parental responsibility if, assessing the case, they realize that the family context is detrimental to the child. He mentioned the case of Roma children who are often encouraged and ordered by their families to perpetrate crimes (robberies in particular). However, those parents, even if later on deprived of their parental responsibility, were nonetheless informed about the child's situation and about the judicial proceeding. In cases of this kind, a guardian is appointed to represent the child.

Another case of this kind was mentioned by a penitentiary police officer working at the CPA of Rome who reported that, in some cases, police officers do not succeed in contacting the children's parents:

“è capitato che non siamo riusciti a contattare i familiari perché può capitare che il minore si rifiuti di dare informazioni in merito. In quel caso vengono i minori vengono affidati ai servizi sociali”

“It sometimes happens that we do not succeed in contacting the family because it can happen that the children refuse to provide information on them. In that case, the children are assigned to the local social services.” (Penitentiary police officer working at the CPA of Rome)

This situation can happen because children refuse to provide information and contact details of their parents and family members. However, this case does not represent an exception to the right of holders of parental responsibility to be informed.

As for **the role of the holders of parental responsibility**, it was described as absolutely relevant by most interviewees. A penitentiary police officer working in Genova, mentioned, for instance, the role of parents when the children are held in pre-trial home custody: in this case, parents have a crucial function of monitoring the children and make them accountable for their actions. On the opposite, according to the same professional, the role of the guardians of unaccompanied children is often limited to the legal representation of the children at trial.

“Il tutore ha un ruolo molto limitato nel senso che non fa altro che, in quel momento, rappresentare il minore straniero. Poi ci sono anche tutori che stressano i minori in un modo eccessivo: li tampano affinché possano capire cosa devono o non devono fare.”

“Guardians have a marginal role since they merely represent the children in that specific moment. However, there are also guardians who carefully watch over the children: they make the children understand what they can or cannot do.” (Penitentiary police officer working in Genova)

A social professional working in Rome confirmed that working with the families is crucial for the child’s reintegration: this is the reason why judicial social services often organise periodic meetings with the families to monitor the situation and provide support to the parents. If the parents cooperate with the social services, the individual reintegration project has more chances to be successful; otherwise, parents can be detrimental to the child’s best interests. The importance of the parents’ engagement and the need for period meetings between them and judicial social assistants supporting the children was reported also by another professional working in Genova. Another social professional working in Genova added that involving the holders of parental responsibility is important because the conduct of the children is often rooted in the family and social context. Parents are crucial in the accountability process of the children; they must be responsible for the children’s conduct during the proceeding and the probation period. This is the reason why, in her experience, it is often necessary to provide psychological support not only to the children, but also to the entire family.

iii. Having a nominated/designated person informed

As reported above, holders of parental responsibility must always be informed: interviewed professionals could not mention exceptions to this obligation. However, two elements can be added in this respect.

A lawyer working in Rome reported that the holders of parental responsibility must not be involved with the children in the perpetration of the criminal conduct. This is a crucial element to stress

because, in the interviewee's opinion, children involved in judicial proceedings often come from family contexts that are involved in criminal activities, or even use their children to carry out their criminal activities (she mentioned drug dealing in particular). If the holders of parental responsibility are involved in the crime, **other adults of the family** are involved to support the children and deal with public authorities (such as elder brothers or grandparents). These adult figures are **pointed out or directly named by the children or by the lawyers** through their communication with the children: in this latter case, the lawyers report to the public prosecutor and to the judicial authorities about the possibility to involve other adult figures that have a close relationship of trust with the children. However, children cannot take part to criminal proceedings, if they are not legally represented by an adult of reference.

A social professional working in Rome further mentioned the case of defendants who perpetrated the crime as children and are supported by the judicial social services until they are 25. The interviewee reported that if the social services enter in contact with a person that just turned 18, and this person refuses their consent to inform their parents, the social services cannot contact the family.

“Noi seguiamo i ragazzi per reati commessi da minorenni fino ai 25. Certo se prendiamo in carico un ragazzo di 19 anni che ci chiede espressamente che non vuole che parliamo con i genitori. Noi tenteremo di parlarci anche in seguito però bisogna prima lavorare con il ragazzo per convincerlo”

“We deal also with persons who perpetrated the crime when children, up to the age of 25. If we start supporting a person who is 19, and this person openly ask not to inform the parents ... we will try to talk to them in a later stage; however, we must convince the person first” (Social professional working in Rome)

c. Audio-visual recording of questioning and due verification of written records

i. Legal overview

This provision of the Directive was not implemented in the Italian legislative system: the only case where the videorecording of the questioning of the child is mandatory concerns the cases of sexual abuses where the child is the possible victim of the abuse. This gap in the Italian legislative system was confirmed by all interviewed professionals, as reported below: none of them had never experienced an audio-visual recording of police interrogations.

ii. Implementation in practice

The mandatory **audio-visual recording of children's questioning is not envisaged in the Italian legal system, and it is presumably not used in practice**. In fact, none of the interviewees mentioned a direct experience with this practice.

All for them confirmed, though, that written reports of police and public prosecutors interrogations are generally drafted and made available to the children's lawyers and to the CPA staff in case of arrest. These written reports also include information such as the name of the lawyer, of the holders of parental responsibility and identification data of the children.

A judge working in Genova stressed that he is not convinced of the necessity of a videorecording of the interrogation since it would entail an unnecessary complication of the procedure. A similar point of view was expressed by a criminal lawyer working in Rome:

“Nella mia esperienza è rarissimo che venga usata la video-registrazione se non nei reati gravissimi. Altrimenti no e io non la impongo nemmeno. Perché la trascrizione è più che sufficiente e permette anche di rendere a suo agio il minore. [...] Non mi sono mai lamentata come difensore anche se con la video-registrazione può essere utile per leggere il comportamento non verbale.”

“In my experience, videorecording of the interrogation is rarely used, except for the most severe cases. Otherwise, I do not even ask for it, because the written transcription is more than enough, and it makes the children more comfortable. [...] I never complained as a lawyer about the lack of videorecording, even if it could be useful to read the children’s non-verbal communication.” (Lawyer working in Rome)

A lawyer working in Rome stressed that the audio-visual recording of police interrogations can be requested by the lawyers; however, she never had direct experience with this issue, and she never heard of colleagues who filed complaints against the lack of videorecording of the interrogations.

A penitentiary police officer working at the CPA of Genova added that during the Covid-19 pandemic, the Juvenile Court of Genova did not adopt remote proceedings using videoconference techniques, children were therefore accompanied by penitentiary police officers to the Courtroom.

However, a social worker from Rome states that interrogations carried out in juvenile detention facilities are always audio-recorded.

“Io le posso dire che gli interrogatori fatti in carcere, a pena di decadenza proprio del procedimento stesso, devono essere fatti alla presenza dell'avvocato e vengono audio-registrati.”

“I do know that in juvenile detention facilities, interrogations must be conducted with the lawyers and be audio-recorded, otherwise the entire proceeding is invalid.” (Social professional working in Rome)

d. Discussion of findings

- All professionals confirmed that information on rights and safeguards are provided to the children by public authorities. Basic information – concerning the right to appoint a lawyer and to have the holders of parental responsibility informed – are communicated by judiciary police officers at the moment of the arrest. However, more specific and thorough information on rights and procedural safeguards are conveyed by lawyers and by the staff working for the CPAs (in case of children who are arrested).
- Many professionals stressed the importance of gradually providing information to the children, in order not to stress and confuse them excessively at their first contact with the judicial system.
- Some professionals expressed concerns about the actual comprehension of the children of their rights and functioning of the proceedings. Therefore, many of them highlighted the importance of always using a plain and direct language with them, as well as the crucial support of cultural mediators when unaccompanied migrant children are concerned.
- Information concerning the functioning of the judicial proceedings is generally not provided during the arrest, but rather in the CPAs and at the validation hearing. In this case as well, the role of lawyers, of CPAs’ staff members, but also of judicial authorities conducting the validation hearing was mentioned as pivotal.

- Holders of parental responsibility (including guardians in case of unaccompanied migrant children) must also be informed about the children’s situation and rights. They are generally contacted by police officers at the moment of the arrest, and can visit the children in the CPAs. Moreover, they have the right to participate in all stages of the proceeding, including the trial’s hearing.
- Most professionals described the active involvement and engagement of the parents as crucial. Their participation helps social assistants and lawyers to better understand the children’s context, and can foster their prompt social reintegration.
- None of the interviewees mentioned the use of audio-visual recording of children’s questioning. A written report is rather drafted of police and prosecutors’ questionings that is transmitted to judicial social assistants and lawyers.

C.4 The rights to be assisted by a lawyer and legal aid

a. Legal overview

Children involved in criminal proceedings are required to be assisted by a lawyer since the very first contact with police and judicial authorities: according to the Italian legislative system, all defendants must be assisted by a legal professional and this applies also to juvenile criminal proceedings. Children can either resort to entrusted lawyers – generally lawyers who are already acquainted with the child’s family – or they can be assisted by a public defender/Court-appointed lawyer (*difensore d’ufficio*) (Art. 11 of the D.P.R. No. 448/1988). Public defenders are appointed by the judicial authorities in charge of the case, choosing from a list of professionals at the disposal of the Court that are drafted by the judicial districts’ Bar Association Councils (*Consiglio dell’Ordine degli Avvocati*). Since the legal defense is mandatory in the Italian criminal justice system – when both adults and children are concerned - if the child does not appoint an entrusted lawyer, a public defender (*difensore d’ufficio*) is appointed *ex officio* by the Court (Art. 97 of the Italian Criminal Procedure Code).

Children are not automatically entitled to free legal assistance; however, as any other defendant, they can request this if their family fulfills the income criteria established by the law. Free legal assistance can be provided to defendants whose annual income does not exceed a threshold established by law every two years, according to data provided by the National Statistics Institute: EUR 11,746.68 was established as threshold for 2021¹³.

According to Art. 15 of the Legislative Decree No. 272/1989, each Bar Association Council is requested to update the lists every three months, as to include all lawyers who are eligible to be enrolled, and to transmit such lists to the President of the district’s Juvenile Court. The Court is in its turn responsible to transmit such lists to the district’s juvenile judicial authorities, including public prosecutors. Lawyers are considered eligible to be appointed as public defenders in juvenile criminal proceedings if they have a substantial professional experience in criminal proceedings involving children or if they have attended training sessions on the juvenile criminal system destined to lawyers and legal professionals.

b. Assistance by a lawyer and legal aid

According to the Italian Criminal Procedure Code, **legal defence is mandatory in all criminal proceedings** (including juvenile ones) and the presence of the lawyer is mandatory in all stages of the

¹³ [Decree of the Ministry of Justice No. 24 of 23 July 2020](#) (*Ministero della Giustizia, Decreto 23 luglio 2020, “Adeguamento dei limiti di reddito per l’ammissione al patrocinio a spese dello Stato*).

judicial proceeding. In this respect, **lawyers must be informed about all the decisions, acts and documents** adopted by the judicial authorities – including the prosecutors – dealing with the case. The implementation of this right was confirmed by all interviewees.

Children are informed about the right to appoint a lawyer since their very first contact with public authorities, that is at the moment of the arrest and transfer to the CPA, or – in case of children who are not arrested in flagrante delicto – at the conclusion of prosecutors’ preliminary investigation. The right to appoint a lawyer is one of the procedural safeguards which are always communicated to the children and their parents. **When children arrive at the CPA** after the arrest, **they usually already have a lawyer** whose contact details are reported in the written report of the arrest and police questioning, as reported by two penitentiary police officer working in the CPA of Genova.

“È impossibile arrivare a un’udienza di convalida o nel nostro servizio [nel centro di prima accoglienza] senza un avvocato perché noi stessi lo contestiamo alle forze dell’ordine se non l’hanno scritto. Ma nella mia carriera non è mai successo che le forze dell’ordine – al momento dell’arresto o del fermo – non chiedano di nominare un avvocato”

“It is impossible that the child arrives to the preliminary hearing or to our service [the first-reception centre] without a lawyer because we complain to police officers if they do not report the lawyer’s name on the arrest report. In my entire career, it never happened to me that police officers – at the moment of the arrest – do not ask the child to appoint a lawyer.” (Penitentiary police officer working in Genova)

Lawyers seem to be involved in practice **since the very first stages of the proceeding**, that is the moment of the arrest and the first interrogations carried out by police officers and prosecutors. These interrogations cannot be considered judicially valid if carried out without the presence of the child’s lawyer: lawyers can file a complaint to the Court to report a violation of this rule.

Q: Ci sono casi in cui i minori vengono interrogati senza la presenza dell’avvocato?

A: “No. Se c’è un qualunque tipo di nullità, io la eccepisco anche di fronte al Tribunale per i Minorenni. [...] il processo penale minorile è un processo. E pertanto deve essere regolato dalle norme sul processo. Quindi io, in udienza preliminare [...] Posso fare eccezione sul contenuto del fascicolo del pubblico ministero, sulla formazione del tribunale, sull’utilizzabilità degli atti, su qualunque cosa.”

Q: *Are there instances where children who are suspects or accused persons are questioned at the pre-trial stage without a lawyer?*

A: *“No. If there is any kind of nullity, I object also before the Juvenile Court. [...] the juvenile criminal trial is a proper trial. And therefore it must be regulated by the rules on the trial. Therefore, [...] during the preliminary hearing, I can file complaints on the content of the public prosecutor’s file, on the formation of the court, on the usability of the acts, on whatever.” (Lawyer working in Genova)*

However, the actual involvement of the lawyers in the initial stages of the proceedings can be sometimes merely formal. This is for example the case in the **Lazio region** as reported by a social professional working in Rome:

“Nel Lazio la mole di casi è abbastanza alta. Quindi quanto poi l’avvocato si attivi per fare un lavoro preprocessuale è difficile da dirsi. A noi capitano avvocati che non conoscono i

ragazzi [fino all'udienza]. Noi magari abbiamo provato a contattare il ragazzo inviando una lettera, ma poi l'avvocato – mi riferisco agli avvocati d'ufficio – non ne sa niente.”

“In the Lazio region there are many juvenile judicial proceedings. I cannot tell what extent they actively support the children in the pre-trial phase. It often happens to us that lawyers do not meet the children [until the hearing]. We might try to contact the children sending them letters at home; but then we find out that the lawyers – I refer especially to public defenders – do not know anything about the case.” (Social professional working in Rome)

To always ensure the legal assistance, **specialised and trained public defender is always present in the courtroom** and they replace the entrusted lawyers who did not show up at the trial. The honorary judge working in Rome stresses that this represents an additional measure in place to always ensure legal assistance to the children.

As for the **costs of legal assistance**, besides what already reported in the legal overview, a lawyer working in Rome reported a relevant information: public defenders are always paid by the Juvenile Courts and this is a specific feature of the juvenile proceedings. If the defendant becomes adult during the proceeding, the public defender is no longer paid by the Court and the costs of the legal assistance must be paid by the defendant (the defendant can always file a request for free legal assistance if their income is below the threshold envisaged by the law). The lawyers appointed by the defendant (or their family) are not paid by the Court: they are paid by the defendant (or their family).

As reported above, in order to be included in the public defenders' lists at the disposal of Juvenile Courts, lawyers must complete a specific training focusing on the functioning of juvenile criminal judicial proceedings. On the opposite, entrusted lawyers have not the obligation to undergo any specific training. According to some of the interviewed professionals, the lack of specific training and expertise of some entrusted lawyers has an impact on the positive outcome of the proceeding, since they generally adopt the same defence strategies they are used to when dealing with adult defendants. For instance, a public prosecutor working in Rome observed that lawyers with no relevant experience generally advise the children to decline their responsibility for the charges, which might be actually damaging for the children, since they can be eligible to probation only, if they demonstrate to the Court to be accountable for their actions.

“L'avvocato che viene nominato, perché si conosce o perché te l'hanno consigliato, non deve essere per forza uno che ha frequentato un corso sulla giustizia minorile. Quindi spesso le modalità difensive di avvocati anche di una certa età che magari qui al minorile non ci vengono mai sono modalità che sono più proprie di un giudizio ordinario. E quindi si tende a far negare il fatto invece che ad assumersi la responsabilità delle condotte compiute. E questo è un grave danno per il minore.”

“The lawyer who is appointed because they are known or because they have been advised, does not necessarily have to be someone who has attended a course on juvenile justice. Therefore, often the defence modalities of lawyers of a certain age, who maybe never come here to the juvenile court, are more typical of an ordinary case. And, therefore, there is a tendency to deny the fact instead of assuming the responsibility of the behaviour carried out. And this is a serious damage for the child.” (Public prosecutor working in Rome)

The **lack of qualified expertise** was also mentioned by an honorary judge working in Rome, who noted that lawyers often make mistakes concerning the terminology, but also the choices of the procedures that best serve the children's interests. She confirmed that this probably happens because most lawyers generally deal with proceedings involving adult defendants.

"Io vorrei che tutti gli avvocati che si presentano in aula a seguire un minore siano specializzati non solo nell'ambito minorile ma nel processo penale minorile. Sbagliano i termini delle richieste, sbagliano la procedura, sbagliano addirittura nelle richieste. [...] C'è una massiccia incompetenza: su dieci avvocati, tre sono molto competenti e sette no."

"I would like all the lawyers who come to court to represent a child to be specialised not only in the juvenile field, but also in juvenile criminal procedure. They get the terms of the requests wrong; they get the procedure wrong; they even get the requests wrong. [...] There is a massive incompetence: out of ten lawyers, three are very competent and seven are not." (Honorary judge working in Rome)

Eventually, the active involvement of the lawyer in the proceeding relevantly depends on the **financial means and the educational level of the family**: in the experience of a social professional working in Genova, those families who actively support the children and can afford it, generally immediately resort to an entrusted lawyer to assist their children. On the opposite, those children who are not actively supported by their families might arrive to the validation hearing without ever being in contact with their lawyers who generally are public defenders.

c. Effective participation of a lawyer

The effectiveness of the participation of the lawyers is not governed by the Criminal Procedure Code, and there is not a system in place to monitor it. However, all professionals were asked to provide their own **definition and understanding of the effective participation** of the lawyers in juvenile criminal proceedings.

In this respect, an element often emerging from the interviews concerns the **difference between lawyers working with adult defendants and those assisting children involved in criminal proceedings**. The latter must not only formally represent the child and legally protect their rights and position; but also support the children during the proceeding and make sure they properly understand what it is going on. Differently from ordinary judicial proceedings, lawyers seem to be **expected to cooperate with all public authorities** involved – namely prosecutors, judges and judicial social assistants – in order to foster the children's reintegration into society.

The importance of ensuring legal defence was confirmed by all interviewees. Different points of view emerged concerning some of the traditional elements of the defence strategies used by lawyers in ordinary proceedings – such as suggesting to the defendant to deny the responsibility or to remain silent during the hearings. These strategies seem to be considered by some professionals counterproductive in juvenile judicial proceedings.

"È diverso difendere un adulto da difendere un minore. Ci capita a volte di vedere quando i difensori non sono particolarmente avvezzi al procedimento minorile perché magari danno consiglio di non rispondere all'interrogatorio quando invece molte volte è importante perché il pubblico ministero grazie alla risposta può anche valutare

fuoriuscite. Quindi è logico che il difensore specializzato contribuisce alla buona riuscita del procedimento”

“Defending an adult is different from defending a child. We often notice when the lawyers are not accustomed to juvenile judicial proceedings because they might, for instance, suggest the child remain silent, but answering is important because the prosecutors – depending on the answers – might decide which conclusion to propose. So, it is clear that a specialized lawyer contributes to the positive outcome of the proceeding” (Public prosecutor working in Genova)

However, a lawyer working in Turin expressed a different opinion, stating that the information provided by the lawyers on the functioning of the proceeding is relevant because, in his experience, the role of social services and of the other professionals who are in contact with the children is to convince the children to take responsibility for their actions and comply with the rehabilitation designed by the judicial social services. The children’s guilt is somehow assumed. So, the lawyers have a crucial role in explaining to the children all the different steps of the proceedings, but also the different judicial possibilities they have: admitting the guilt and accepting a probation period is not the only existing outcome of the proceedings.

It is crucial that lawyers establish a direct connection with the children, based on mutual trust. In fact, even if the lawyers must necessarily deal with the holders of parental responsibility, children must remain the key actors in the proceedings. In order for the legal assistance to be effective, children must be made aware of all the aspects of the proceedings and of the options at their disposal:

“Avere consapevolezza che l’assistito è il ragazzo e non il suo genitore. Anche se deve interloquire, quando si tratta di un ragazzo ancora minorenne, deve per forza interloquire anche con l’esercente la responsabilità genitoriale. Però si trova in una condizione per la quale l’assistenza è da imputare a lui personalmente quindi bisogna che si sintonizzi con il ragazzo, spieghi a quel ragazzo quali sono le conseguenze di quel che ha fatto, cosa sta accadendo, cosa gli accadrà da un punto di vista delle procedure, quali sono le sue le possibilità.”

“Be aware that the person assisted is the child and not their parent. Even if the lawyer has to talk, when the child is still a minor, they have to talk also with the person exercising parental responsibility. But lawyers are in a condition for which the assistance is to be attributed to the child personally, so they have to tune in with the child, explain to them what the consequences are of what they did, what is happening, what will happen to them from the point of view of the procedures, what are their possibilities....” (Judge working in Rome)

A public prosecutor working in Rome stressed that – in her experience – **the role of the lawyers is in practice effective**. Lawyers can always provide to the Court further documents, evidence and information on the children that contribute to the judicial decisions and to a better understanding of the children’s context and environment. Examples of this additional information include the activities children carry out in their lives, their school results, volunteering activities, drug addictions, etc. Lawyers can also contribute to the investigations for example by providing an alibi.

The effective participation of the lawyers depends on the personal attitude of the professionals themselves: there are some lawyers who actively support the children, even after the conclusion of the proceeding during the probation period; on the opposite, other lawyers merely do their job without getting too involved in the child’s situation. This point of view was expressed, for instance, by

an honorary judge working in Rome, by a penitentiary police officer working in Genova and by a social professional working in Genova.

“Alcune volte gli avvocati vengono anche proprio nel centro di prima accoglienza a parlare con i ragazzi, telefonano, si informano. Altre volte l'avvocato non si vede. Per esempio, ci sono alcuni avvocati d'ufficio che hanno la sensibilità per cui sebbene siano d'ufficio assolutamente si informano e chiedono del ragazzo; altri che proprio non me gliene può fregare di meno insomma. Arrivano magari in udienza e non sanno nulla del caso.”

“Sometimes, lawyers come to the first-reception center and speak with the children, call them on the phones, collect information on the case. Other times, we [the staff of the center] never see the lawyers. For instance, there are some public defenders who are sensitive and, despite being public defenders, carefully deal with the case and collect information on the children; other public defenders do not care about the situation. They arrive to the hearing without knowing anything about the case.” (Social professional working in Genova)

Lawyers themselves were asked to provide their interpretation of effective participation. A criminal lawyer working in Rome stated that criminal lawyers represent a crucial **connection bridge between the family and the institutions**. Moreover, they are a reference point to the children, answering to their questions and doubts. Eventually, lawyers also interact with the social services: they are aware of the child's specific situation and needs and can influence the decisions of the social services accordingly. The effective role of the lawyer was described by another lawyer working in Rome as a **pedagogical** one, since they are expected not only to communicate with the children, but also to make them understand the actions they did, the impact these actions had and the social and emotional origins of these actions.

A criminal lawyer working in Turin reported **two technical hurdles** which might compromise the activity of the lawyer and the possibility to provide effective legal assistance to the children. The first one is related to the **territorial competence of Juvenile Courts**, whose districts, in some cases, are quite huge: this is the case of the Piedmont judicial district, which also covers the Liguria region. Public defenders are appointed by judicial authorities, and they might need to defend children who are arrested in small towns far away from the place where the lawyers live. This might be difficult for the lawyer who might not be able to participate in some steps of the proceeding, such as a police interrogation which is conducted with short notice. The second element concerns the fact that, in case of petty crimes, children must be reported for several offences before a judicial proceeding actually starts: each offence has its own proceedings; however, they are suspended until the number of proceedings against the child becomes relevant. In each proceeding, the child has a different public defender (unless they have an entrusted private lawyer), and these professionals do not know each other. During the preliminary hearing, the proceedings are generally joined, and the public defender of the most dated proceeding is appointed, who might not be the most specialized one.

A lawyer working in Rome reported that the effective participation of the lawyers might be hindered by a **lack of will to cooperate of judicial social assistants**, who have a crucial role in the proceedings. And this is something that, in her opinion, should be changed because lawyers can have a deep knowledge of the children's situation, desires and points of view. In her opinion, if a more effective cooperation was established between judicial authorities, judicial social assistants and lawyers, the children's interests would be better served. On the other hand, some social professionals stressed that the participation of the lawyers is effective if they are willing to establish a useful cooperation with the judicial social assistants who deal with the children's cases. A social professional working in

Genova mentioned the example of those lawyers who contribute to the design and development of the children's individual rehabilitation project: he reported that, in some cases, the community center – where the child will spend their probation period, which can best serve the child's interests, is chosen by the social assistants in cooperation with the child's lawyer, considering the child's specific needs and situation. In the interviewee's opinion, the will to cooperate highly depends on the sensitivity and professional approach of each lawyer. The same issue was mentioned by another social professional working in Genova. Lawyers generally try to avoid pre-trial custody measures or probation periods since they strive to have children acquitted. In the opinion of the interviewee, though, these measures are useful – in some cases - for the children to invest in better future prospects, thus, also limiting the risk that these children perpetrate other crimes. Moreover, in her experience, some lawyers understand the importance of the cooperation with social services; others are quite reluctant in cooperating or even undermine the social assistants' assessment.

- d. Communication with the child and other important aspects when defending and assisting a child who is suspected or accused of a crime

Communication between children and their lawyers is a crucial element, as confirmed by most interviewee.

One lawyer working in Rome stressed that there is no common standard on how to communicate with children: much depends on the personal approach and sensitivity of the professional:

“Non ci sono degli standard, è affidarsi alla sensibilità di ognuno. Le mie pratiche sono quelle di cercare di parlare con il minore e io mi affido al mio istinto. Se il minore è un ragazzo sveglio, io ci parlo, sia con i genitori che da solo. Anche per capire e farmi raccontare delle cose. Gli spiego come funziona il processo [...] e decidiamo insieme la strategia anche in virtù delle sue prospettive future e della sua stabilità familiare. Allo stesso modo, in udienza trovi il giudice che è più sensibile e si sofferma per capire qual è il substrato da cui viene il ragazzo, se il reato può essere contestualizzato. Devi confidare nella sensibilità anche degli operatori e degli assistenti sociali”

*“There are no standards in this respect, the key is the sensibility of each person. My personal practices include the necessity to directly communicate with the child and use my instinct. If the child is smart, I talk to them, both with the parents and alone. And I also try to understand the situation and collect information. I explain the trial's functioning [...] and we decide together which strategy to adopt, also considering the child's future perspectives and family background. Similarly, during the trial, there are some judges who are more sensitive and try to understand the child's background and the context of the crime. You must rely also on the sensibility of the social professionals and assistants”
(Lawyer working in Rome)*

As for the most **salient aspects of legally representing and assisting children** in criminal proceedings, one lawyer working in Rome argued that no relevant differences exist between judicial proceedings involving adults and children. The only specific aspect – in her opinion – is that lawyers working with children must develop specific skills concerning the **assessment of the defendant's personality and social background**, which is something that is not asked in proceedings involving adults. Moreover, lawyers working with children must develop specific **communication skills** that allow the children to

adequately understand the proceeding and its consequences. A similar perspective was expressed by another lawyer working in Rome who reported that – differently from proceedings involving adults – juvenile criminal lawyers must have a profound expertise in communicating with the children and in understanding their **non-verbal communication**.

Another lawyer working in Genova described **the two types of legal defence as completely different**. Juvenile criminal proceedings are aimed at the social reintegration and rehabilitation of the children; they are not merely aimed at assessing the judicial responsibility for the criminal conduct. In this context, the role of the lawyers is also different, since, in juvenile criminal proceedings, they are requested to cooperate with judicial and local social services, and with the families serving the children's best interest.

It is worth reporting that two professionals – namely a lawyer working in Turin and another one working in Rome – expressed some **concerns about the role lawyers are expected to have** in juvenile criminal proceedings, if compared with proceedings involving adults. More specifically, they both stressed that lawyers are often expected to encourage the children to declare themselves accountable for the crime they are charged for, as it is considered a preliminary condition to have access to some judicial possibilities, such as the probation regime. According to them, this might compromise the role of the lawyer, as if the children's guilt is always assumed in the proceedings. The lawyer working in Turin further added that – in his opinion - the role of juvenile criminal lawyers is somehow stigmatized by juvenile judicial authorities and social services. These professionals are often convinced that criminal lawyers badly advise the children, and prevent them from taking responsibility for their actions and, therefore, start a social rehabilitation process.

“L'intervento dell'avvocato a sostegno in difesa del minore è normalmente letto a priori come tossico, come inquinante, perché introduce, a parere di chi la pensa ancora così e non sono pochi, elementi di scaltrezza, di speculazione, di calcolo che invece sono d'ostacolo all'apertura trasparente, alla liberazione che il minore dovrebbe fare raccontando tutto quello che deve raccontare, come è gradito alle autorità che stanno indagando.”

“The intervention of the lawyer in support of the child is normally interpreted a priori as toxic, as polluting, because it introduces, in the opinion of those who still think this way, and there are many, elements of cunning, speculation, calculation that instead are an obstacle to transparent openness, to the liberation that the child should do by telling all that they have to tell, as it is appreciated by the authorities who are investigating.”
(Lawyer working in Turin)

In line with the findings reported above, it is possible to highlight conflicting points of view among the interviewees concerning the usefulness of some judicial instruments that are specific of juvenile judicial proceedings (such as forgiveness and probation). Lawyers stressed the risk that these instruments – which are based on the children's recognition of their responsibilities – leave no room **to the possibility for the children to declare their innocence and be discharged**.

“Avverto un forte senso di frustrazione del ruolo dell'avvocato specie se la scelta del minore che rappresento è quella di volersi difendere fino in fondo. Non ci sono mai riuscita ad avere veramente mani libere per come si strutturava il processo. A volte la scelta diventa un po' costretta perché si presuppone che comunque andrai verso quella direzione, verso la direzione della condanna. E poi ti costringono a ragionare per il male minore che è frustrante sia per l'imputato che per l'avvocato.”

“I feel a strong sense of frustration in the role of the lawyer, especially if the choice of the child I represent is to defend themselves to the end. I have never really managed to have a free hand because of the way the process was structured. Sometimes, the choice becomes a bit forced because it is assumed that you will go in that direction anyway, towards the direction of a sentence. And then they force you to reason for the lesser evil, which is frustrating for both, the defendant and the lawyer.” (Lawyer working in Rome)

On the opposite, other professionals had a completely different interpretation of this issue:

“Il processo penale minorile è proprio diverso. Spesso con gli avvocati ordinari è complicato fargli capire che si devono fidare di noi [degli operatori della comunità] e che stiamo dalla parte del ragazzo. Perché c’è il tentativo di trovare il cavillo per farlo uscire. Quando invece c’è l’avvocato che capisce che se anche c’è un cavillo però forse per quel ragazzo stare in comunità è opportuno perché così può avere una progettualità e fare un percorso di formazione che magari non ha mai fatto, un progetto lavorativo o uno sport [...]”

“The juvenile criminal proceeding is completely different. It is sometimes quite difficult to make criminal lawyers understand they should trust us [the staff of the community centre] and that we are pursuing the child’s best interest. They always try to find the loophole to release the child. When, on the other hand, there is the lawyer who understands that, even if there is a loophole, it may be appropriate for that child to stay in the community because in this way they can have a project and do a training course that perhaps they have never done, a work project or a sport [...]” (Social professional working in Rome)

e. Confidential and private consultations and meetings

Children **always have the possibility to communicate with their lawyers**, especially before hearings take place. This information was confirmed by all interviewees, including lawyers.

One lawyer working in Rome (reported that, in her 42 years of professional experience, she had only two cases of children involved in mafia criminal organizations where the public prosecutors suspended all communications, including with the lawyer: however, she also stressed that it was a short suspension (24 hours).

A criminal lawyer working in Turin confirmed that this possibility is never denied to children, however, lawyers might face some difficulties in visiting the children if the IPM or the community centers are located far from the place where they live.

Most professionals also confirmed that the communication between lawyers and children is **confidential**.

One lawyer working in Genova reported that **some community centres** – where children sometimes spend their pre-trial custody period – **might have a strict regulation in this respect**, and impose that the phone calls with the lawyers are always witnessed by ‘s staff member of a centre, the privacy of the communication might therefore be compromised. In those cases, the interviewee generally asks the child if someone is present in the room and asks this person to leave the room if necessary.

A lawyer working in Rome stressed that she dealt with children subjected to detention, both in IPMs and in pre-trial custody in community centres. In her experience, she could always confer with the

children: she was always given a room where to communicate privately with the children. She also reported that during the meetings with children detained in CPAs or in community centres, the manager of the CPA or of the community centre was always present during the meetings; however, she could ask for a private room.

As far as the **specific situation of CPAs** is concerned, some professionals working in these detention facilities confirmed that confidential meetings between the children and their lawyers are always ensured. In the CPA of Genova, lawyers generally visit the children 2-3 days before the validation hearing: this meeting is necessary for the lawyers to get to know the children, understand their situation, and inform them about all the procedural aspects of the trial. Penitentiary police officers, in particular, reported to be only requested to carry out a visual monitoring of the situation. This was reported by a penitentiary police officer working in Rome and by another one working in Genova:

“Durante il colloquio con l’avvocato, per me [agente di polizia] ci deve essere un controllo visivo non di ascolto. Poi molte volte l’ambiente del CPA di Genova è piccolo e gli avvocati sono pochi e molte volte sono loro che ci invitano al colloquio per far capire al ragazzo che posto è. Non è che ci intromettiamo nella parte legale”

“During the meeting with the lawyer, I [as a penitentiary police officer] only need a visual control. I do not need to hear the conversation. However, the first-reception centre (CPA) CPA of Genova is a small facility and there are not so many lawyers: sometimes we are invited by the lawyers to participate in the meeting with the children to explain what the first-reception centre (CPA) is. But we do not intervene in the legal part of the meeting”
(Penitentiary police officer working in Genova)

Eventually, a social professional working in Rome reported that in IPMs penitentiary police officers are always around, monitoring the facility’s security: this might compromise the confidentiality of the conversations between lawyers and detained children. As for the community centres, there are generally many people (children and staff members) around, and some of them might not have a specific room where lawyers and children can communicate confidentially.

Some interviewees mentioned the **impact of Covid-19 emergency** on this issue. Professionals from all categories considered in the fieldwork reported that – especially during the beginning of the emergency phase, where a national lockdown was imposed – communication between children and lawyers was replaced by phone or video calls.

A judge working in Genova recalled that, during the initial phase of the Covid-19 pandemic, judicial interrogations were conducted online and the lawyers could participate via videoconference, which prompted some criticism regarding the communication between the defendant and the lawyer:

“Durante il periodo del Covid può essersi verificata qualche difficoltà perché l’interrogatorio, in una breve fase, era consentito a distanza e magari il difensore non si trovava al fianco del proprio assistito. Sappiamo che gli interrogatori hanno dei tempi stringenti e in quei casi, quindi, può esserci stato anche un deficit di comunicazione. Ma è stata una situazione francamente emergenziale.”

“During the Covid period, there may have been some difficulties because the interrogation, in a short phase, was allowed at a distance and perhaps the defender was not at the child’s side. We know that interrogations have strict time limits and, in those

cases, there may have been a lack of communication. But it was truly an emergency situation.” (Judge working in Genova)

However, he also stressed that lawyers are strongly against the **use of videoconference**, even if, in some specific cases, this can be a useful instrument. He mentioned the case of judicial districts which do not have juvenile detention facilities (*Istituto Penale Minorile – IPM*), such as for example Genova, where children who are in pre-trial detention are transferred to the IPM of Turin. The interviewee said that, in those cases, children are interrogated by the judge in charge of the validation hearing based in the location where the children are detained: he suggested that the use of videoconferences in these cases would be worth considering, so that these children can be interrogated by the judges dealing with their cases.

The problems emerged during the Covid-19 emergency were analysed in more details by a lawyer working in Turin who reported that **the access to the IPM was completely forbidden to the lawyers**, as confirmed also by a penitentiary police officer working in Genova. This suspension lasted until March-April 2021 (one year after the outburst of the pandemic). The interviewee expressed criticism against this decision, stressing that penitentiary police officers and educators working in the IPM were allowed to enter and leave the detention facility depending on their shifts.

“Purtroppo, la pandemia ha inciso parecchio, quindi ad esempio il locale istituto penitenziario minorile è stato letteralmente off limits per i difensori. [...] Quindi la prima risposta, che però è durata direi fino a marzo aprile di quest'anno [2021], è stata quella di non fare entrare gli avvocati. Fermo restando che gli operatori e gli agenti penitenziari entravano la mattina e tornavano a casa la sera dalle loro famiglie. E il pericolo di contagio poteva arrivare anche da lì. Lo stesso per quanto riguarda gli educatori. Quindi francamente questa lettura per cui gli avvocati fossero potenzialmente più infetti di quanto non lo siano gli altri operatori della giustizia facciamo fatica a comprenderla.”

“Unfortunately the pandemic had a big impact, so for example the local juvenile detention facility was literally off limits to lawyers. [...] So, the first response, which lasted I would say until March-April this year [2021], was not to let lawyers in. It is understood that the operators and prison officers entered in the morning and returned home in the evening to their families. And the danger of infection could also come from there. The same with regard to the educators. So, frankly, we [as lawyers] find this interpretation hard to understand that lawyers were potentially more infectious than other professionals.”
(Criminal lawyer working in Turin)

A criminal lawyer working in Rome mentioned that, during the emergency, she was assisting a child detained in the IPM and described the critical situation of that period:

“Bisognerebbe fare un ragionamento sul Covid. Perché in quella fase io ho avuto un imputato in carcere con il quale ho potuto comunicare solo ed esclusivamente per il tramite di telefonate perché appunto c'erano una serie di regole e nei primi quindici giorni era addirittura in isolamento. C'è stata una fase complessa in generale per tutti i detenuti. Certo è che un detenuto minorenne ha anche delle complessità maggiori rispetto a un adulto.”

*“It would be necessary to think about Covid. Because, in that phase, I had a defendant in prison with whom I could communicate only and exclusively through phone calls because in accordance with the rules, he was in **the solitary confinement for the first fifteen days**.*

That was a difficult phase in general for all the detainees. Certainly, it is that a child prisoner has even more complexities than an adult” (Lawyer working in Rome)

Another penitentiary police officer working at the CPA of Rome commented that, before the Covid-19 emergency, lawyers could also visit the CPA every day with no time limits. Recently, short in-person meetings were restored, especially before the validation hearing. The same information was confirmed by a colleague of the participant:

“Adesso sotto periodo Covid viene utilizzata una stanza arieggiata che rispetti le norme. In momento di piena emergenza, i colloqui sono stati effettuati telefonicamente, sempre previo controllo che fosse l’avvocato che era stato nominato.”

“At this point of the Covid-19 emergency, we have organized an adequately aired room, which complies with the safety measures. At the beginning of the emergency, the conversations happened by phone, after controlling that the person at the phone was the lawyer the child had appointed.” (Penitentiary police officer working in Rome)

f. Cooperation with the child’s holder of parental responsibility

Holders of parental responsibility are always involved in the development of the defensive strategy. One criminal lawyer working in Rome mentioned, for instance, that the cooperation of the family and the information the family can provide are crucial to prove that the child’s conduct was an isolated episode, as well as to effectively make the child accountable for their actions. However, a lawyer working in Genova stressed that, in some cases, lawyers might even find it necessary to **ask them to leave the room, and let the children speak alone** with the lawyers. In fact, children might feel ashamed or embarrassed to share information and details in front of their parents.

A useful cooperation can be established with the holders of parental responsibility, depending on the lawyers’ expertise and ability to immediately understand the children’s family context. Especially because – according to a lawyer working in Rome – in some cases, **the reasons for the conduct of the children are rooted in the parent’s behaviours and in the family context**. This is the reason why, in the interviewee’s experience, it is crucial to meet and communicate with the parents; but also to have private meetings with the children alone.

The same professional also added that cooperation with parents is **more difficult with specific ethnic groups** (she mentioned the case of Roma). However, the opposite also exists. Children coming from a wealthy family are often spoiled, and parents have little time to spend with them. In these cases, in her experience, it is important to understand if and how children are supported by the parents and what kind of education they were given, and whether or not the parents are really figures of reference for them. In her opinion, it is crucial for lawyers to understand how the different cultural groups function and organize their community life, in order also to understand what type of family relationships exist. Since each family is different, the interviewee sometimes suggests to the family to undergo a psychological path supporting the entire family.

A lawyer working in Rome, despite encouraging an active and effective cooperation with the families – with the aim of figuring out together the options that can best serve the children’s best interest – also stressed that **the role of the family** – and its cooperation with the lawyer – **must never replace the children’s choices**: families and lawyers must support the children in making their own decisions.

g. Discussion of findings

- According to the professionals, legal assistance is a fundamental procedural safeguard that is always ensured to the children, since the early stages of the proceedings: lawyers are immediately appointed during the arrest or at the end of the preliminary investigations.
- Children can either appoint an entrusted lawyer – generally acquainted with the family – or a public defender is ensured. Public defenders must undergo a specific training before being eligible: according to some professionals, these are therefore much more qualified compared to entrusted lawyers, who are not obliged to be specifically trained to deal with children, and who are generally used to deal with adult defendants.
- Legal assistance is considered effective when the lawyers have the real possibility to take part in all proceedings' stages and procedures, and when a trust and open relationship is established with the children. Some different points of view emerged in this respect among professional categories: some lawyers complained that their professional role might be compromised in juvenile judicial proceedings, where no room is left to the defence to plead not guilty; social professionals, in some cases, complain about the lack of cooperation of lawyers who are much keener at proving the children's innocence, thus hindering – in their opinion – the accountability process of the children.
- The involvement of holders of parental responsibility was described as key by all professionals, including lawyers. The presence of supportive families can help design the legal strategy that best serves the children's interests.
- Communication between lawyers and children deprived of personal freedom during pre-trial custody (in IPMs, CPAs or community centres) is generally guaranteed. However, the Covid-19 emergency imposed some crucial challenges: in-person meetings were suspended for a period of time and replaced with virtual meetings and phone calls.

C.5 The right to an individual assessment

a. Legal overview

The individual assessment of children who are involved in criminal proceedings¹⁴ represents the core of the juvenile judicial proceedings. According to the law, the Court, or the prosecutor in charge of the case are requested to collect information on the child, concerning their personal conditions and resources, the family situation, the social environment the child lives in, and any other elements that might be useful to ascertain the level of responsibility, the social impact of the child's actions, as well as to adopt adequate judicial measures. This is because juvenile criminal proceedings – differently from the ones involving adults – are not merely aimed at establishing the defendant's position (guilt or innocence), but also at assessing the conditions that led the child to possibly perpetrate a crime, and the resources they can count on to foster their reintegration into society. Elements that can be covered by the individual assessment include life conditions of the child, the reasons behind the criminal conduct, the family situation, the level of education of the child, the type of crime that was perpetrated, the child's behaviour before the crime and during the proceeding, the child's general physical and psychological conditions, including possible drug addictions and previous trauma and/or abuse. For this reason, this individual assessment is generally updated throughout the entire

¹⁴ Governed by Art. 9 of the D.P.R. No. 448/1988.

proceedings if further relevant elements emerge. The individual assessment often starts immediately, since the arrival of the child at the CPA after the arrest.

Information can be collected by prosecutors using different sources¹⁵: directly questioning the child; with the cooperation of juvenile social services; interviewing adults that are usually in contact with the child (such as, family members, foster family, teachers, sport trainers, the victim, etc.); involving other experts (such as, psychologists, psychiatrists, etc.). According to the legislation, this information can be collected exclusively by judicial authorities: judiciary police officers cannot autonomously collect information on the child; however, judicial authorities can count on the cooperation of the judiciary police to carry out specific activities. In practice, the information is often collected by justice juvenile social services, deploying a team of experts which includes social assistants, educators, psychologists and other consultants.

The law does not clearly establish the mandatory nature of the individual assessment. According to the jurisprudence of the Italian Courts¹⁶, though, the individual assessment is mandatory because the juvenile criminal system in Italy is based on the core principle that judicial proceedings must avoid or at least limit the detrimental effect on the children involved. However, the lack of an explicit mandatory provision in the Italian legislative system resulted in a debate concerning the available legal remedies in case the right to an individual assessment is violated. Most experts¹⁷ – including some Italian Supreme Courts judges – agree that the omission of the individual assessment can result in the invalidity of the Court’s decision (Art. 180 of the Italian Criminal Procedure Code).

As for the way the assessment is carried out in practice, judicial authorities benefit from a certain margin of discretion: they can *directly* observe the child’s behavior during the trial; and/or resort to an *indirect* observation, thanks to the support of professional services and experts. Paragraph 2 of Art. 9 explicitly mentions two assessment instruments: the collection of information from people who are in close contact with the child; and the opinions and reports from experts, such as psychologists, psychiatrists, educators, criminologists.

b. Individual assessment and exceptions in practice

When asked to report on the practical implementation of the right to an individual assessment, interviewees referred to **two different issues**.

On the one hand, the **collection of information** on the children and their social and family context, which is started immediately after the first contact of the children with the judicial system – in most cases, upon arriving at the CPA after the arrest. As stressed by a public prosecutor working in Rome, in some cases, the first evaluation of the specific situation of the child can be carried out even before the CPA, that is during the preliminary investigation if the public prosecutor needs specific information on the suspected child. This collection of information is carried out by judicial social services. When **children are not arrested by police officers**, the individual assessment is conducted if judicial authorities presume that the children’s social and family context is critical. During the preliminary hearing, the judge can involve the judicial social services and ask them to carry out the individual assessment. This is generally done in view of the children’s access to the probation regime, in order to develop prospects of a consistent and effective individual rehabilitation. However – as reported by

¹⁵ Mangione, A. & Pulvirenti, A. [Ed.], *La giustizia penale minorile: formazione, devianza, diritto e processo*, Giuffrè Francis Lefebvre, 2020, pages 470-471.

¹⁶ For instance, Italian Court of Cassation Section V, 9 May 2006, No. 2118.

¹⁷ De Luca, C. (2018), Gli accertamenti sulla personalità dell’autore di reato minorenne e il divieto di perizia psicologica nel rito ordinario: riflessioni e nuove prospettive, *Giustizia Penale Minorile*, No. 06/2018.

a public prosecutor working in Rome – in case of severe offences (she mentioned stalking and cyber-crimes) it is carried out ex officio even when the child is not arrested.

On the other hand, the **individual reintegration project** developed by judicial social assistants in the framework of the **probation period**, which is based on all the elements and information collected on the child throughout the judicial proceeding.

These two types of information collection are closely connected, especially because they are carried out by the same professionals, namely social professionals. However they pertain to two different stages of the proceeding: the probation period might be adopted by the Court after the validation and the preliminary hearings, if the child requests for it, and they are deemed eligible by the Court.

As for the collection of information on the children, it is generally started immediately after the first contact of the child with the judicial system, namely upon their arrival at the **CPA** after the arrest, as confirmed by a social worker from Genova. The first focus is on their emotional status: the staff members attempt to understand the children's feelings and awareness of their situation and conduct. Moreover, the professionals try to trace back the origins of the children's behavior, collecting information on the social background, school context and their families, resorting also to local social services in case they are already in contact with the children and their families. **Local healthcare services** can also be involved, if, during this observation period, specific medical needs emerge, including drug addictions. Another social professional working in Genova highlighted that educators meet the children more than once during their stay at the CPA to understand better their situations. The attitude, needs and specific characteristics of the children are **monitored and observed by all the members of the staff** working at the CPA, including the penitentiary police officers. However, the CPA staff has a short time to carry out this activity, since children are detained in these facilities only for up to 96 hours:

“Quindi in quella giornata incontriamo i ragazzi, incontriamo la famiglia, sentiamo i servizi sociali, cerchiamo una comunità: è tutto concentrato in quella giornata, in quelle nove ore. Talvolta siamo fortunati e abbiamo anche il giorno successivo in cui effettivamente mettere a punto una strategia. Cerchiamo di raccogliere tutto quello che riusciamo a raccogliere cerchiamo di confrontarci con le persone che possono essere davvero utili, come per esempio gli educatori presenti sul territorio.”

During the same day, we [the staff of the first-reception center, meet the children, the families, the local social services, we find a community center: everything during the same day, within 9 hours. Sometimes, we are lucky and have more time to develop a strategy. We try to collect as much information as possible, contacting all the subjects that can be useful, such as the educators working in the territory.” (Social professional working in Genova)

Children are informed that the role of the CPA's staff is to collect information on their situation and forward it to the Court.

As for the probation individual project, a social professional working in Rome reported that it is generally developed by the staff of the community centre – which always include psychologists and other professionals – together with the staff of the justice social services. The individual project is developed on grounds of the individual interviews with the children, conducted by the social assistants; however, these professionals also collect evidence and information on the social and family background of the child to attain a wider perspective of the specific situation. In some cases, a psycho-diagnostic consultation might be necessary and can be outsourced to the psychologists working for

local healthcare departments or for the juvenile justice social services. This kind of assessment should be carried out for all children subjected to criminal proceedings; however, judicial social services are often understaffed, and the assessment is therefore requested only in specific cases when the child shows clear signs of psychological impairment or distress. The child's individual project is **periodically updated**: the interviewee reported that the community centre organises a weekly briefing when all individual projects are monitored and assessed by the staff. If no crucial issues arise, the project is updated every three months by the staff of the community centre, and more specifically by the educators dealing with the children's cases.

All interviewees confirmed that the collection of information on the children is **carried out ex officio** since it is a necessary element of the juvenile judicial proceeding, aimed at figuring out the children's situations and adopt the protective measures that can best serve their interests. It is, therefore, not necessary for the children – and their lawyers – to request it. As reported by a social professional working in Genova, judicial social services are legally requested to propose measures and actions to the judicial authorities in charge of the case: these proposals cannot be suggested without being aware of the specific situation of the child, and this awareness is gained thanks to the individual assessment and the collection of information.

All professionals stressed that the individual assessment is carried out by judicial social assistants and other social professionals, such as educators and psychologists. The role of educators was particularly stressed by a penitentiary police officer working in Rome:

“L'educatore è una figura specializzata che lavora nel centro a stretto contatto con il minore. Ed è qui per cercare di avere un contatto diretto e rieducativo del minore. L'educatore cerca di percepire le notizie necessarie inerenti alla vita del minore, ma anche il fatto accaduto. Quindi è un insieme di nozioni che riguarda il minore all'esterno, cosa è successo al minore e il motivo per cui è qui. Individuare possibili motivazioni che hanno portato il minore a commettere quella cosa.”

“Educators are specialized experts who work in the first-reception center in close contact with the children. These professionals are here to be in contact with and reintegrate the children. Educators try to collect all the necessary information concerning the life of the children and the judicial case. They collect information concerning the external life of the children, what happened to them, the reason why they end up in the center, [and] point out potential reasons explaining the conduct.” (Penitentiary police officer working in Rome)

However, the **role of lawyers** as well was reported as relevant. For instance, a lawyer working in Rome stressed that lawyers might obtain from the children information that is not shared with the other professionals. In some cases, this information can be relevant for the proceeding, and it is up to the lawyer to report it to judicial authorities dealing with the case. In some cases, lawyers – with the cooperation of the families – can also involve in the proceeding other professionals that are needed to support the child's specific needs and to make the Court more aware of the individual situation of the children. This is the case, for instance, of children who are charged with drug dealing, but who also have drug addictions that require specific support.

Some **extraordinary examples of exceptions in this respect** can be reported.

For instance, a social professional working in Genova referred to some marginal cases where information collection is not conducted or only partially conducted, **due to practical reasons**. For

instance, if the children arrive to the CPA on Saturday afternoon and the validation hearing is held on Monday morning, the staff of the CPA does not have the possibility to contact all the persons that are needed to collect adequate information (such as, for instance, the local social services). Another case is when more children arrive at the same time at the CPA: in those cases, the staff collects the information that is needed; however, instead of writing a complete report, a fiche is filled in and delivered to the judicial authorities, reporting basic information on the children.

The individual assessment is sometimes not conducted **when the public prosecutors decide not to continue with the proceeding:**

“Rimane una sacca di minori che non ce l'hanno questa valutazione. E sono quelli che fuoriescono dal circuito perché evidentemente, mi viene da dedurre, in udienza o al momento della identificazione, hanno espresso determinate variabili che hanno reso necessario un articolo 9 [DPR No. 448/1988]. Quindi rimane una piccola parte scoperta rispetto a questa valutazione. Ed è soprattutto riferita a quei minori che fuoriescono subito o che ci entrano accidentalmente o che addirittura accedono a una fuoriuscita in termini di assoluzione. Però tutti gli altri minori presi in carico vengono valutati.”

“There remains a share of children who do not have this assessment. And they are those who go out of the juvenile criminal system because evidently, I deduce, in the hearing or at the moment of identification, they have expressed certain variables that have made unnecessary an Article 9 [of the DPR No. 448/1988, governing the individual assessment]. So, there remains a small, uncovered part with respect to this assessment. And it is mainly referred to those children who escape immediately or accidentally enter the juvenile criminal system or even access an escape in terms of acquittal. However, all the other children are evaluated.” (Honorary judge working in Rome)

Another example was mentioned by a lawyer working in Rome, and it concerns **defendants who decide to refuse the suspension of the proceeding** and the probation regime and undergo the ordinary juvenile proceeding which is quite similar to the one in place for adult defendants. In this case, the child is not compelled to establish a relationship with the social services and agree to an individual reintegration project. However, the lawyer can provide the Court with information and documents proving the efforts of the child to be socially integrated – such as school results, sport results, etc. – however, this kind of documents pertain to the defensive strategy.

In this context, a lawyer working in Genova pointed out that the individual assessment is generally not carried out for the proceedings that are decided by the Juvenile Court of Appeals or by the Juvenile Court of Cassation (the second and third degrees of the proceedings):

“La valutazione individuale non viene fatta in Corte d'Appello minorile e secondo me è un'altra carenza. Finché il procedimento è al Tribunale per i minorenni le garanzie ci sono tutte. La Corte d'Appello minorile, che spesso e volentieri non è che una sezione della Corte d'Appello che una volta al mese fa anche minorile, in genere non ci sono. La mia esperienza dice che ha pochissima sensibilità minorile. Ma anche la Cassazione minorile.”

“The individual assessment is not carried out in the Juvenile Court of Appeal, and, in my opinion, this is another deficiency. As long as the procedure is in the Juvenile Court, the guarantees are there. The Juvenile Court of Appeal, which is often only a section of the Court of Appeal that once a month does also juvenile proceedings, are generally not there.

My experience is that this Court has very little sensitivity with regard to juvenile issues. But the same applies also to the Juvenile Court of Cassation.” (Lawyer working in Genova)

Eventually, a lawyer working in Rome stressed that – in her experience - the individual assessment might be **biased by the ideological values** concerning how a child should behave in life: however, these values might not apply to the context the child comes from.

“Non so se sempre si riesca a tener conto seriamente delle esigenze del minore. Una cosa è astrattamente dire di voler tenere conto delle esigenze del minore nel suo progetto di vita e nel suo progetto educativo. Altra cosa è capire il minore cosa vive, quali sono i suoi sogni, i suoi desideri, le sue speranze e il contesto dove sta. [...] e possono esserci anche elementi ideologici rispetto a qual è il modello a cui il minore deve corrispondere, se il minore sente o meno, come parte del suo percorso esistenziale, rispondere a quel modello che il professionista adulto ha stabilito.”

“I do not know whether the needs of the child are always taken seriously. It is one thing to say abstractly that one wants to take into account the needs of the child in their life project and educational project. It is another thing to understand where the child lives, what their dreams, wishes, hopes and context are. [...] and there may also be ideological elements with respect to what the model to which the child has to correspond is, whether or not the child feels - as part of their existential path - to respond to that model that the adult professional has established.” (Lawyer working in Rome)

As for **the probation project**, it is **not mandatory**: it can be developed and implemented in case the children – during the proceeding – request for it, and when it is authorised by the judicial authorities in charge of the case.

- c. How and for what purposes are the results of the individual assessment used by national authorities in practice?

As for sub-section b., the purposes of the individual assessment must be distinguished, considering the collection of information, on the one hand, and the individual probation period, on the other.

As for the collection of information on the children, the professionals working at the CPA draft a report summarizing all the elements and information collected on the children’s situation. This report is sent to the Court in charge of the validation hearing and to the public prosecutor. The report also includes the assessment of the psychologists that visit the children during their detention period at the CPA. The report is always concluded with a proposal made by the judicial social services to the judge, concerning the pre-trial custody measure that can best serve the children’s interests. Judicial authorities can accept or reject this proposal, depending on their independent evaluation of the case. The report is not shared with the children; however its main content is communicated to them.

A social professional working in Genova mentioned that judicial social services act as if they were “the eyes” of the judge: without their evaluation and monitoring activities, judicial authorities would not know which decisions to adopt. Of course, judges are an independent power, and they are not compelled to accept the opinions and proposals of the social services. Similarly:

“Diciamo che il giudice in linea di massima si fida molto dei servizi sociali e quindi utilizza molto la relazione che i servizi producono. Talune volte devo dire i giudici sono più

buonisti degli operatori nel senso che talune volte magari l'operatore ritiene che non ci siano gli spazi per un progetto individuale nei confronti di un ragazzo. E magari il giudice decide di rinviare l'udienza chiedendo ai servizi di elaborare un progetto.”

“I can say that judicial authorities generally have a deep trust towards social services, and therefore use the assessment drafted by the professionals. Sometimes, I must admit that judges are even milder than social assistants: sometimes, the professionals believe that children are not ready for the individual rehabilitation project yet, whereas the Court decides to suspend the hearing asking the social services to design the project.” (Social professional working in Genova)

Another social professional working in Genova further commented that judicial authorities consider the social services' assessment at the moment of deciding whether and, if so, **which pre-trial custody measure to adopt:**

“Non esiste una ricetta per tutti perché ogni minore ha la sua provenienza particolare ed è per quello che la relazione sulla personalità è il fulcro del nostro procedimento. Perché la valutazione individuale dà la possibilità al giudice di adottare nel corso del procedimento i provvedimenti più adatti a quel minore sulla base di questa relazione che prende in considerazione a 360 gradi non sono la personalità del minore ma tutto il contesto e le sue risorse. [...] è una relazione talmente completa che dà la misura al giudice di come bisogna intervenire rispetto a quel minore.”

“There is no recipe for everyone, because each child has its own particular background, and that is why the individual assessment is the core of our procedure. Because the individual assessment gives the judge the possibility to adopt, during the proceedings, the most suitable measures for that child on the basis of this report, which takes into account at 360 degrees not only the child's personality but the whole context and its resources. [...] It is such a complete report that it gives the judge the measure of how to intervene with respect to that child.” (Public prosecutor working in Rome)

As for the individual probation project, it is decided on grounds of the elements emerging from the individual assessment, as stressed by a public prosecutor working in Genova: probation projects are individual and must be tailored to the specific needs, skills and problems of the child. Periodic hearings are held, involving the children, the lawyers and the social assistants dealing with the case, to update the Court about the implementation of the project and the results achieved by the children. Periodic reports are submitted to the Court by the staff of the community centre, explaining which steps have been taken, the implementation of the project and the behaviour of the child. On grounds of these elements, the judge can revise the judicial decisions, such as duration and conclusion of the probation period. This approach was, for instance, mentioned by a social professional working in Rome, managing a community centre.

Judicial authorities – when analysing the information collected by the judicial social assistants and their reports – make use not only of their independent power, but also of the distinct composition of Italian juvenile judicial Courts, as stressed by a judge working in Rome:

“C'è uno strumento di valutazione che è insito nella composizione del giudice minorile, che è la presenza dei giudici onorari. Cioè la composizione del collegio così peculiare – nel caso del giudice dell'udienza preliminare, un togato e due esperti, e in quello del giudice

del dibattito, due togati due esperti – fa sì che il giudice minorile sia attrezzato in modo specializzato per la valutazione. Per l'acquisizione delle informazioni ci si serve di altri professionisti, ma per la valutazione di ciò che si è conosciuto della personalità del ragazzo e delle sue condizioni di vita personale, familiare e sociale, ci si avvale anche di questa componente specifica e anche delle specifiche attitudini del giudice togato minorile perché ha una formazione particolare ed acquisisce una formazione particolare sul campo.”

“There is an evaluation tool that is inherent in the composition of the juvenile judge, which is the presence of honorary judges. In other words, the composition of the panel is so distinct - in the case of the judge of the preliminary hearing, one judge and two experts, and in the case of the judge of the trial, two experts and two lawyers - that the juvenile judge is equipped in a specialized way for the evaluation. For the acquisition of information, other professionals are used, but for the evaluation of what is known about the personality of the child and their personal, family and social life conditions, this specific component is also used, as well as the specific aptitudes of the juvenile honorary judges, because they have a particular training and acquire a particular training in the field.” (Judge working in Rome)

d. Challenges

Lack of sufficient time and administrative backlog represent two relevant challenges to the collection of sufficient and complete information on the children in the initial phases of the proceeding. This hurdle particularly concerns the Lazio region where – differently from Liguria – judicial authorities and judicial social services are requested to deal with a high number of juvenile judicial proceedings. A social professional working in Rome stressed this aspect, reporting that an informal agreement is in place between judicial social services and the juvenile justice system, according to which **the individual assessment is requested only for more serious proceedings.**

“Visto che ci sono molti casi, c’è un accordo con la magistratura che ci richiede la valutazione solo per i reati più significativi. Perché ci sono molti reati bagatellari qui nel Lazio, per i quali non interveniamo. Poi se in udienza si verifica la necessità di un intervento o di un’indagine, per fare un progetto o per la conoscenza del ragazzo, subentriamo”

“Since there are so many judicial cases, there is an agreement with judicial authorities, and they request the evaluation only for serious cases. Because there are many proceedings for minor offences in the Lazio region: we do not intervene in those cases. But, if during the hearings the necessity emerges of carrying out an intervention or an evaluation, for the purposes of the child’s individual rehabilitation project or for a better understanding of the situation, we can intervene.” (Social professional working in Rome)

The differences among localities were mentioned also by a judge working in Genova:

“Qui c’è una differenza tra i vari territori nel senso che per esempio a Genova e in altri distretti tutti i ragazzi vengono valutati dal Servizio Sociale del Ministero della Giustizia e quindi da personale che ha una preparazione specifica sul penale minorile. Mentre in altri distretti, in particolare Milano che è quindi uno dei distretti più importanti d'Italia, il servizio ministeriale si occupa dei minori che sono stati arrestati e, anche se poi vengono

revocate le misure coercitive, continuano a essere seguiti dagli stessi operatori; mentre per le denunce senza misure coercitive, le relazioni vengono fatte dagli operatori dei servizi sociali cosiddetti territoriali, dei comuni, che possono non avere una specialità e uno studio approfondito di diritto penale minorile. Quindi in quel caso il giudice oltre che a formare e informare il ragazzo e il difensore, deve anche guidare un po' gli operatori dei servizi."

"Here, there is a difference between the various territories in the sense that, for example, in Genova and in other districts, all the children are evaluated by the Social Service of the Ministry of Justice and, therefore, by staff having a specific preparation on juvenile criminal law. While in other districts, in particular Milan, which is one of the most important districts in Italy, the ministerial service takes care of children who have been arrested and, even if the coercive measures are revoked, they continue to be followed by the same operators; while for complaints without coercive measures, the reports are made by the operators of the so called territorial social services, of the municipalities, who may not have a specialisation and an in-depth study of juvenile criminal law. Therefore, in that case, the judge not only has to train and inform the child and the lawyer, but also to guide the professionals of the services." (Judge working in Genova)

The impact of inadequate human resources on the individual assessment was mentioned also by a judge working in Rome:

"La valutazione individuale sicuramente viene fatta. Certo anche lì misurando le risorse. Tutti sanno che quello che il sistema immette come risorse specializzate, poi se lo ritrova utilizzato, altrimenti la magistratura soffre la stessa povertà di cui soffrono i servizi e il territorio e tutte le aree di assistenza ai minori e alle persone in situazione di fragilità o di necessità."

"The individual assessment is certainly done. Certainly also by measuring the resources. Everyone knows that what the system puts in as specialised resources, it then finds used, otherwise the judiciary suffers the same shortage of resources from which the services and the territory and all the areas of assistance to children and people in situations of fragility or need suffer." (Judge working in Rome)

Additionally, when migrant children are concerned, an **ethno-psychiatric support** would be structurally needed – as mentioned by one professional working in Genova. Participation of **cultural mediators** is also very important, said the social worker from Rome: :

"Tutti i servizi della giustizia minorile possono usufruire di mediatori culturali. Che sono mediatori culturali e non interpreti. Secondo me è un livello superiore perché il mediatore culturale non traduce solo la lingua ma anche il modello culturale. Ed è quindi utile al soggetto reo, perché possa contestualizzarsi, ma torna utile anche all'operatore perché possa a sua volta inquadrare determinati comportamenti in un modello culturale tradotto dal mediatore."

"All juvenile judicial services can resort to cultural mediators. They are not interpreters. In my opinion, cultural mediators are at a higher level, because they do not merely translate the language, but also the cultural model. In this respect, they are useful for the children to understand the situation they are in; but also for the professionals to help them

understand the children's behavior in accordance with the cultural model translated by the mediator." (Social professional working in Rome)

As far as the **probation project** is concerned, a major hurdle for its successful impact on the children's reintegration depends on the **financial and human resources** at the disposal of judicial social services and community centres.

A social professional working in Rome reported that the individual projects – and their positive impact on the child's future – depend both on the skills and assets of the child and their family; and on the financial resources at the disposal of the community centre to offer a wide range of opportunities and activities to the children. For instance, the interviewee reported that her community centre can count on a private financing from the Waldensian religious community that allows them to implement more projects that they would not be able to if they had to count only on their own funds.

The lack of adequate staff and resources was mentioned also by a social professional working in Genova who reported that the individual assessment is often conducted by a single professional, generally an educator or a social assistant, due to the lack of staff in judicial social services. Only in severe and particularly difficult cases, when the children are already monitored by local social services, it is possible to work in a multi-disciplinary team which also includes a psychologist or a psychiatrist: in these cases, the assessment is more refined and detailed

Another major challenge to the individual project aimed at the social reintegration of the children concerns the **transition to adult age**, as clearly stressed by a lawyer working in Turin:

"Il dramma al quale assistiamo con grande frequenza è quello rappresentato dal compimento formale della maggiore età. Quindi se per i minori che finiscono in determinati circuiti si aprono tutta una serie di opportunità [...] il compimento della maggiore età vuol dire sostanzialmente un libera tutti che spesso vanifica il lavoro magari anche di anni fatto nell'interesse di questi minori fin quando sono minori. [...] questi minori, più o meno garbatamente, vengono progressivamente allontanati dalle strutture che avevano fatto un po' da rete di sostegno e di riferimento e si ritrovano letteralmente in mezzo a una strada senza risorse."

"The drama that we witness with great frequency is that represented by the formal attainment of adult age. Therefore, if for the children who end up in certain circuits a whole series of opportunities was opened [...], the coming of age basically means a free-for-all that often nullifies the work of even years done in the interest of these children while they are minors. [...] These children, more or less politely, are progressively removed from the structures that had acted as a support and reference network, and they literally find themselves in the middle of the road without resources." (Lawyer working in Turin)

e. Discussion of findings

- Information collection on the individual situation of the children starts since the early stages of the proceeding, namely upon the arrival of the child to the CPA after the arrest. In case of children who are not arrested, the individual assessment must be requested by judicial authorities during the preliminary hearing.
- The individual assessment is generally described as multi-disciplinary since several specialised professionals intervene in the procedure, namely educators, social assistants, psychologists.

Moreover, other professionals might be involved – such as local social services dealing with drug addictions – if the necessity emerges during the assessment.

- The individual assessment is generally conducted *ex officio*. Some of the professionals mentioned exceptional cases where the assessment is not generally conducted; however, the procedure is implemented in almost all judicial proceedings.
- The outcome of the individual assessment is crucial for judicial authorities in all stages of the proceeding. The Court needs to understand how the children perceive their involvement in the episode. Moreover, the individual assessment is necessary to decide whether and, if so, which pre-trial custody or probation measure to adopt. The individual assessment is also necessary to map the children's skills and vulnerabilities: this assessment is crucial at the moment of deciding on the individual rehabilitation project that is at the core of the probation period.
- As for the existing challenges, many professionals mentioned the inadequacy of financial and human resources, as well as the judicial backlog as relevant hurdles in the correct and successful implementation of the individual assessment.

C.6 Deprivation of liberty as a last resort and safeguards for children who are deprived of their liberty

a. Deprivation of liberty as a last resort measure

i. *Legal overview*

The Italian juvenile criminal system is based – among other principles – on the use of detention as a last-resort measure, both during and after trial. For this reason, judicial authorities adopt alternatives to detention any time that the specific case allows for this. However, in some cases children that are suspects or accused of a crime can be deprived of their personal freedom.

First, children who are caught while perpetrating a crime can be arrested¹⁸. Judiciary police officers are entitled to arrest the child caught in flagrancy. This possibility though is allowed only for some criminal conducts, as established by the Italian Criminal Code. These include, for instance, sexual violence, drug dealing, arms detention, etc. However, at the moment of deciding whether to arrest the child, police officers must always consider the severity of the conduct, the age, and the personality of the offender.

Moreover, children can also be subject to police custody if they are formally accused of a crime that allows for pre-trial custody: however, this possibility can only be adopted if the crime is punished by the Italian Criminal Code with at least a two-year sentence¹⁹.

The in-force legislation strictly governs pre-trial custody measures applicable to children²⁰. These include: limitations (*prescrizioni*); home custody (*permanenza in casa*); community custody (*collocamento in comunità*); and protective custody (*custodia cautelare*). These are all limitations of the child's personal freedom and, as such, they must be decided by judicial authorities, balancing the need for a pre-trial custody for safety reasons and the necessity to avoid interrupting the education

¹⁸ Art. 16 of the D.P.R. No. 448/1988.

¹⁹ Art. 17 of the D.P.R. No. 448/1988.

²⁰ Art. 19 of the D.P.R. No. 448/1988.

path the child is involved in. Such measures must, therefore, be proportionate to the severity of the conduct and to the criminal sanction that might be imposed to the child as trial's outcome.

Limitations can include specific obligations imposed on the child, concerning school activities, work activities or other activities that are deemed useful for their education. Such limitations have a two-month validity and can be renewed only once, to allow for the conclusion of the investigation activity. The judge must communicate with the parent/guardian before adopting such limitations, in order also to engage them in such process. If limitations are repeatedly violated, judicial authorities can impose home custody.

Home custody is a judicial measure imposing on the child to stay at their family home or at another private dwelling. This measure can be accompanied by other dispositions, such as limits to the possibility to communicate with people not belonging to the family unit. The child can be allowed by the judge – with a separate act – to leave the home to attend school, to go to work or to carry out any other useful activity. Parents/guardian are expected to monitor the child's behavior, allowing judicial social services or local social services to carry out support and control interventions. In case home custody is repeatedly violated or if the child leaves the house without a legitimate reason, judicial authorities can impose community custody.

Community custody is a judicial measure imposing the child to be accommodated in a public or private (and judicially authorized) community. Children held in communities are ensured the possibility to attend school, work or carry out any other activity that is deemed useful for their education. The manager of the community must cooperate with judicial and local services in the interest of the child. In case community custody is repeatedly violated or if the child leaves the community without a legitimate reason, judicial authorities can impose protective custody for a period no longer than one month, and only in case the child is charged with a crime that is a punished with 5 (or more) years of detention.

Protective custody is the harsher form of deprivation of personal freedom that can be imposed on the child during the trial. Judicial authorities can adopt this measure only if: i. it is necessary for crucial and imperative investigation purposes, to avoid the risk of making evidence impossible to collect or to remain unadulterated; ii. Because of the specific circumstances of the case or because of the personality of the defendant, the risk exists that the child might perpetrate severe criminal offences using arms or other violent means, or might threaten the constitutional system, or might be involved in criminal organisations.

Some data can be provided concerning the effective implementation of this principle. According to the Ministry of Justice²¹, as of 31 December 2020, 4 children (all males) were hosted in first-reception centers (*Centri di Prima Accoglienza – CPA*); 314 (301 males and 3 females) were held in home-custody; 51 (50 males and 1 female) were held in community-custody. As for protective custody, as of 31 December 2020, 43 children (40 males and 3 females) were detained in juvenile detention facilities pending the first-degree sentence.

ii. Deprivation of liberty as a last resort measure and the application of measures alternative to detention

Deprivation of liberty is in practice used as last-resort measure when children are concerned, as confirmed by the interviewed professionals. This applies to both pre-trial custody and definitive

21

measure. Alternatives to detention – that were mentioned by the interviewees – are community centres and home custody.

Detention in IPMs is used for severe criminal offences, or when less-restrictive measures are violated by the children. As reported by a public prosecutor based in Genova:

“Posso dire che la misura alternativa più in voga è il collocamento in comunità anche per fatti non proprio modesti anche perché si cerca di modulare l'intervento prima con la misura un po' meno grave e poi devo dire che il carcere è applicato con estrema cautela e in pochi casi”

“I can say that the alternative measure that is most popular is the detention in community centres which is applied also to cases that are not at all petty. This is because the approach is to adopt first a measure that is milder, and detention in prison is decided cautiously and only in a few cases” (Public prosecutor working in Genova)

A judge working in Rome – which is a judicial district with a high number of juvenile judicial proceedings – confirmed that this happens in practice in the **judicial district of Rome**:

“Guardi, su un territorio come Roma l'Istituto penale minorile ha visto diminuire in modo drastico le sue presenze nel tempo, negli ultimi dieci anni diciamo. Anche in ragione del cambiamento delle tipologie di reati per i quali si veniva arrestati. Quindi, comunque, è un dato di fatto che le presenze in carcere sono veramente una minima percentuale rispetto al numero dei minori imputati di reati.”

“In an area like Rome, the Juvenile Detention Institute has seen a drastic decrease in the number of detained children over time, in the last ten years, also because of the change of the typologies of crimes for which detention is envisaged. So, anyway, it is a fact that the presences in prison are really a very small percentage compared to the number of children accused of crimes.” (Judge working in Rome)

A judge working in Genova provided an interesting point of view on detention. Most children are in IPMs in pre-trial detention, rather than serving a definitive sentence. A critical aspect of the Italian detention system for adults is that many detainees spend a long time in prison pending trial. This same aspect is positive if children are concerned, because very few of them serve their sentence in IPMs. In fact, detention is replaced by alternatives as soon as possible. Moreover, he also stressed that **detention in IPMs is sometimes necessary** when children need to be given a limit in order to not reiterate a criminal conduct:

“Il carcere è una misura residuale per quella fase in cui il minore ha bisogno di ricevere uno stop che non può valicare. Nel senso che con il collocamento in comunità – e, anche è una misura coercitiva, le comunità non hanno le sbarre – il minore si può allontanare. Quindi abbiamo una serie di minori per i quali sappiamo che la misura comunitaria sarebbe data inutilmente, e basta anche un periodo molto breve di detenzione in carcere per poter avviare quel lavoro educativo.”

“Prison is a last-resort measure for that phase in which the child needs to receive a stop that they cannot cross. In the sense that with the placement in the community centre - and, even if it is a coercive measure, community centres do not have bars, - the child can

leave. Therefore, we have a series of children for whom we know that the community-centre measure would be given uselessly, and also a very short period of detention in prison is enough to start that educational work.” (Judge working in Genova)

A similar perception was expressed by a social professional working in Genova who stressed that pre-trial custody measures can sometimes be **useful to prevent the children from perpetrating other crimes**:

“Le autorità giudiziarie possono utilizzare delle misure meno afflittive. Tuttavia, in alcune situazioni queste misure potrebbero non essere comprese dal ragazzo, o addirittura essere controproducenti. Io ho adesso il caso di questo ragazzo di quasi 18 anni che all’ennesimo reato è finito direttamente in carcere, forse se avesse fatto prima delle esperienze in comunità non si sarebbe arrivati a questo punto. Questo per dire che non bisogna osannare neanche questa cosa della residualità perché non è detto che sia la cosa giusta.”

“Judicial authorities can adopt milder pre-trial custody measures. However, in some cases, these measures might not be understood by the children or even be detrimental. I am dealing with the case of a child who is almost 18 who has perpetrated the ninth crime, and he ended up directly in the juvenile detention facility. Maybe, if he had been imposed a period in the community center before, he would not be in this situation now. What I would like to stress with that is that we should not [automatically] acclaim alternative measures because they are not necessarily the right thing.” (Social professional working in Genova)

Temporary detention in CPA should not be considered an exception to the general rule of detention as last-resort measure. In fact, detention in these facilities – which cannot last more than 96 hours – is not even a pre-trial custody measure; but rather a temporary arrangement for children who are arrested *flagrante delicto* and must undergo the validation hearing where the effective pre-trial custody measure is – if deemed necessary – adopted. Moreover, in CPAs only individuals aged 14-18 can be accommodated: the issues concerning the separation from children and adults/young adults do not apply, either.

“Sin dal primo ingresso nel circuito penale, il minore arrestato viene portato nel centro di prima accoglienza. Quella è la sede deputata dal legislatore al primo contatto del minore con la giustizia che, a differenza degli adulti, non prevede che i minori vengano trattenuti nelle celle di sicurezza della polizia giudiziaria dell'arresto o vengano portati in carcere in attesa della direttissima del giudizio. Il legislatore ha istituito un luogo neutro nel quale il minore non deve subire l'impatto violento con l'ingresso nel circuito penale.”

“From the first entry into the criminal judicial system, the arrested child is taken to the first reception centre. This is the place designated by the legislator for the first contact of the child with the justice system, which, unlike adults, does not provide for children to be held in the security cells of the judiciary police or to be taken to prison pending the summary judgment. The legislator has created a neutral place where the child does not have to suffer the violent impact of entering the criminal circuit.” (Public prosecutor working in Rome)

As for the measures most frequently adopted, some professionals reported their perceptions on recent trends in this respect. For instance, a penitentiary police officer working in Genova reported that there is the **increasing trend of avoiding the arrest** of the child and the subsequent accommodation in the CPA. Children are generally reported to police officers and wait for the trial free. However, he also recently observed a higher number of cases where children are stopped and identified by police officers and directly transferred into pre-trial custody in IPM. These trends depend on the approach adopted by juvenile public prosecutors: in the past, many of them decided for the arrest and detention in the CPAs with the subsequent release to make children understand the consequences of their actions; recently, public prosecutors avoid the arrest or directly decide to subject the children to pre-trial custody in IPM (before or immediately after the preliminary hearing). A lawyer working in Rome confirmed that the personal approach of the judge has an impact on the frequency of adoption of pre-trial custody in IPM.

A crucial issue concerns the existence of **specific characteristics of children or groups of children** that might influence the judicial decisions concerning deprivation of liberty, namely that might reduce their possibilities of benefitting from alternatives to detention. In this respect, some of these characteristics are explicitly established by the legislative system: this is the case of **previous criminal records** or **reiteration** of the same criminal conduct. **Other characteristics**, though, *de facto* expose the children to a higher risk of being deprived of personal freedom pending trial.

This is the case in particular of **unaccompanied migrant children, Roma children, or children from disadvantaged family and social environments**. The main reason for this seems to be the lack of a solid and supportive family background: this disadvantage prevents them in practice from benefitting of home-custody.

a public prosecutor working in Rome admitted that Roma children are more often exposed to deprivation of liberty in IPMs:

“Se parliamo per esempio dei minori rom che più spesso vengono assoggettati a misure restrittive, questo forse è un fenomeno che esiste, anche se le convenzioni sovranazionali ci impongono di valutare la situazione del minore a prescindere dalla sua provenienza. Perché è chiaro che dove si applichi una misura non restrittiva, c'è bisogno della collaborazione del contesto familiare [...] Se io [in quanto giudice] ritengo che il contesto familiare non sia sufficientemente idoneo ad assicurare un una funzione educativa di vigilanza e di controllo è ovvio che io non posso assolutamente collocarlo in permanenza domiciliare.”

“If we talk, for example, about Roma children who are more often subjected to restrictive measures, this is perhaps a phenomenon that exists, even if the supranational conventions impose us to evaluate the situation of the child regardless of their origin. Because it is clear that where a non-restrictive measure is applied, there is a need for the cooperation of the family context [...] If I [as a judge] believe that the family context is not sufficiently suitable to ensure an educational function of supervision and control, it is obvious that I absolutely cannot absolutely place the child in home-custody.” (Public prosecutor working in Rome)

A similar perspective was shared by a lawyer working in Turin:

“Se c'è un contesto abitativo che, sotto il profilo non tanto educativo ma anche meramente materiale, si possa definire degno di tal nome, in altre parole una collocazione abitativa dove ci sia una figura che può prendersi cura del minore sul fronte delle esigenze di sostentamento ma anche dal punto di vista economico, in questi casi c'è una prevalente tendenza a favorire questo tipo di misura. Tant'è vero che carceri minorili sono spesso abitati da minori stranieri non accompagnati che oggettivamente non hanno nessun appiglio, nessun riferimento.”

“If there is a housing context that, not only from an educational point of view but also from a purely material one, can be defined as worthy of the name, in other words a housing placement where there is a figure who can take care of the child in terms of sustenance needs but also from an economic point of view, in these cases, there is a prevailing tendency to favor this type of measure [home-custody]. So much so that juvenile detention facilities are often inhabited by unaccompanied migrant children who objectively have no support, no reference point.” (Lawyer working in Turin)

A lawyer working in Rome firmly confirmed this bias:

“Dovendo rispondere anche all'idea corrente di società e di Stato, è chiaro che alcuni soggetti secondo me subiscono una sorta di pregiudizio comunitario, d'appartenenza, identitario. E quindi quello si spesso influenza perché è chiaro che se tu pensi che il contesto familiare e sociale abbia una possibilità di contenere effettivamente, allora si interviene con la prescrizione, con una forma di contenimento minore. Mentre se tu pensi che il contesto socio familiare sia già in parte compromesso, paradossalmente non è che guardi la specificità della vita del minore o anche del reato, si interviene con nelle forme più restrittive.”

“Having to answer also to the current idea of society and State, it is clear that some children, in my opinion, suffer a sort of community, belonging, identity prejudice. And then, that often influences, because it is clear that, if you [the Court] think that the familiar and social context has a possibility to contain effectively, then you intervene with the prescription, with a minor form of containment. While, if you think that the socio-familiar context is already partly compromised, paradoxically, you do not look at the specificity of the child's life or even of the crime, you intervene with the most restrictive forms.” (Lawyer working in Rome)

The same perspective was shared also by a social professional working in Genova:

“Quello che le posso dire che sicuramente con i minori stranieri, per esempio, si usa il collocamento comunità o il carcere perché la permanenza a casa difficilmente viene utilizzata perché magari i genitori esistono ma stanno tutto il giorno fuori a lavorare. Quindi il ragazzo è praticamente a casa da solo. [...] anche se voglio dire non è una questione legato allo status di straniero è una questione di responsabilità delle persone alle spalle del minore insomma.”

“What I can report is that migrant children, for instance, are generally subject to pre-trial custody in community centers or juvenile detention facilities; home-custody is rarely adopted because the parents are either missing or spend the entire day working. So, these

children are basically alone at home [...] however, this trend is not strictly connected to the nationality, but rather to the level of accountability of the holders of parental responsibility.” (Social professional working in Genova)

b. Medical examination

i. *Legal overview*

This right enshrined in the Directive does not seem to be protected by a national legislative disposition. According to the results of the fieldwork described in the following sub-section, children always undergo a medical examination when (and if) they arrive to the detention facility (both in case of pre-trial custody and when serving their sentence): each detention facility has its own medical team which is in charge to assess the general physical and psychological conditions of the child. However, this practice does not exactly correspond to the right enshrined in the Directive. Moreover, the child’s lawyer and family can request an independent medical examination if they consider that the child’s conditions are not compatible with the detention regime. Further medical exams can be requested by judicial authorities dealing with the case, as well.

ii. *The medical examination in practice*

When asked to comment on the right to a medical examination, all professionals referred and reported about the **general medical assessment** that children undergo when deprived of their personal freedom. This happens both in the CPA and in IPMs.

A public prosecutor working in Rome reported a critical issue concerning medical assistance in IPMs. The competence on the health conditions of detainees – including detained children – has been recently transferred from the Department of Detention Administration (*Dipartimento dell’Amministrazione Penitenziaria – DAP*) to the local healthcare departments, the local branches of the Ministry of Health. According to the professional, this transfer of competences was critical because the DAP cannot have a wide perspective of health issues in detention facilities. For instance, if children are supported in their drug addictions by the doctors sent to the IPM by local healthcare department, this information might not be communicated to the DAP for privacy reasons.

A penitentiary police officer working in Genova confirmed that the child undergoes a **medical exam at the arrival to the CPA**: if police officers arresting the child report a critical situation, the doctor will be called immediately to receive the child at the arrival; otherwise, the examination takes place within 12 hours from the arrival. During the child’s stay in the CPA, the doctor can be called again if the necessity emerges. The child can **autonomously express the need of a medical examination**: this request is generally received and accepted by the staff working in the CPA. A similar approach to medical assistance is in place also in the CPA of Genova – stated a penitentiary police officer working in this detention facility. A social professional working in Genova reported that migrant children are assisted by a **cultural mediator** during the medical exam at the CPA, and the role of this professional is to ease the communication between the children and doctors, making sure that the children clearly understand what is happening to them, as well as the purpose of the medical examination.

iii. *How and for what purposes are the results of the medical examination used by national authorities in practice?*

Children – through their lawyers – and judicial authorities can ask for **additional medical tests and visits**. These might be aimed at proving that the children’s psychological and physical conditions are not compatible with the detention regime; or to opt for a different and more suitable pre-trial custody measure.

For instance, a public prosecutor working in Genova reported that the judicial authority in charge of considering the results of a possible medical examination requested by the child’s lawyer is the **Judge of the Preliminary Hearing** (*Giudice dell’Udienza Preliminare* – GUP). This examination is generally considered to revise the pre-trial custody measure that was adopted in the first place if it is deemed to be inadequate for the child’s situation.

A judge working in Rome mentioned another example of medical examination requested by the Court. It is the case of **intellectual impairments or drug addictions**:

“Se nel corso del procedimento, qualunque dei giudici competenti viene a conoscenza della necessità di sottoporre il ragazzo ad un accertamento medico lo dispone. Ad esempio, per quanto riguarda i minorenni con infermità psichiche o con problemi di tossicodipendenza, lo prevedono le norme perché non possono stare in una comunità che non siano specificamente attrezzate per l'accoglienza di minori con problemi di infermità psichica o di tossicodipendenza. È anche vero però che i posti disponibili per questo sono veramente insufficienti.”

“If, in the course of the proceedings, any of the competent judges becomes aware of the need to subject the child to a medical examination, they shall so order. For example, as far as children with psychic impairments or drug addiction problems are concerned, the rules provide for it, because they cannot stay in a community centre that is not specifically equipped to receive children with psychic impairment or drug addiction problems. However, it is also true that the places available for this are really insufficient.” (Judge working in Rome)

A lawyer based in Turin stated however that he rarely requested a medical examination: when he did so, it was to report to the Court **specific distress** situations suffered by the children, such as domestic abuse, or **incidents occurred in the detention facilities**. However, he also stressed that the staff working in IPMs is generally very careful on the prevention of these incidents. If incidents of this kind occur, though, the interviewee generally resorts to the Court or the public prosecutors, asking them to verify what happened in the IPM. Whenever possible, the interviewee **avoids resorting to independent experts** and professionals because they are generally perceived with suspicion by judicial authorities:

“Sono poco propenso a fare delle consulenze tecniche di parte medico legali perché anche queste vengono viste con un certo sospetto, come se l’esperto professionista e lo psichiatra, lo psicologo, il neuropsichiatra fossero un po' alle dipendenze delle scelte difensive neanche tanto dell'interessato ma del suo avvocato. E che quindi siano disposti per questo solo fatto a prescindere da ogni valutazione tecnico scientifica ma semplicemente favorire la direzione auspicata dal committente l'approfondimento.”

“I am not so much in favor of medical-legal technical consultations because these are also seen with a certain suspicion, as if the expert professional and the psychiatrist, the psychologist, the neuropsychiatrist were a bit dependent on the defensive choices, not so much of the person concerned, but of their lawyer and that, therefore, they are willing for this fact alone to disregard any technical-scientific evaluation but simply to favor the

direction desired by the person who commissioned the in-depth study.” (Lawyer working in Turin)

c. Special treatment in detention

i. *Legal overview*

Specific provisions must be adopted when a child is arrested or in police custody²². First, officers must immediately inform the public prosecutor and the child’s parents/guardians, as well as the juvenile social services of the judicial administration. Once informed, the prosecutor must promptly and without delay order the transfer of the child to the first-reception centre (*Centro di Prima Accoglienza* - CPA), or – if the circumstances or the specific situation of the child allows for it – that the child is transferred to the family house, while remaining at the disposal of the prosecutor. Eventually, the prosecutor can also request the release of the child if no custody measure is deemed necessary. During police custody, children must be held in specific rooms, separated from adults²³.

The Legislative Decree No. 272/1989 introduced specific standards on children detention. CPAs must be conceived as temporary detention facilities and they cannot be located in juvenile detention facilities (Art. 9). Communities – either public or private – must be organized according to specific principles (Art. 10): they must be based on a family-resembling organization and accommodate both children undergoing criminal proceedings, and children in foster care; they cannot host more than 10 children in order to ensure effective individual reintegration projects; the staff must be made of trained and multi-disciplinary professionals; they must operate in close cooperation with local services and institutions.

According to the in-force legislation²⁴, juvenile detention facilities are destined to children (in protective custody or serving their sentence) but also to young adults up to the age of 25 who perpetrated the offence while still being children. A legislative reform concerning the enforcement of sentences of condemned children was recently introduced²⁵, envisaging that children and young adults are detained in separate areas of the detention facilities; defendants are detained separately from condemned children; girls are detained in specific sections or facilities.

ii. *The special treatment in practice*

As for the **separation between children and adults/young adults**, it is worth mentioning – as a preliminary remark – that detention facilities of the juvenile justice system (namely, CPAs, IPMs and community centres) only accommodate individuals who are involved in juvenile judicial proceedings. The separation between children and adults is therefore always ensured. This applies also to police custody since children – when arrested – cannot be held in police stations (as it is sometimes the case of adults): they must be promptly transferred to the CPAs. The issue of separation does concern

²² Art. 18 of the D.P.R. No. 448/1988.

²³ Art. 20 of the Legislative Decree No. 272/1989.

²⁴ Art. 24 of the Legislative Decree No. 272/1989.

²⁵ [Decreto Legislativo 2 ottobre 2018, n. 121](#), “Disciplina dell’esecuzione delle pene nei confronti dei condannati minorenni, in attuazione della delega di cui all’art. 1, commi 82, 83 e 85, lettera p), della legge 23 giugno 2017, n. 103”.

children and young adults since – as reported above – the Italian juvenile justice system concerns individuals up to the age of 25, if the crime was perpetrated during the minor age.

Separation between children and young adults seem easier to attain in **big IPMs**, such as those located in Rome, Naples and Milan. In these facilities, children and young adults are accommodated in separate buildings, and they generally meet only while eating at the common canteen and during some specific shared activities.

This point of view was expressed also by a social professional working in Rome:

“A Roma, la struttura dell’IPM è grande e ci sono varie palazzine, tra cui la palazzina dove vengono ospitati i minorenni, una palazzina dove vengono ospitati i giovani adulti e una palazzina dove viene ospitata l’utenza femminile. Ma questo perché Casal del Marmo lo permette, perché architettonicamente ha degli spazi che permettono una suddivisione di questo tipo. Ma ci sono tante altre strutture in Italia, tanti altri centri penali per minorenni che sono piccole strutture [...] e diventa difficile separare il minorenne dal giovane adulto, il cautelare dal definitivo perché proprio lo spazio non lo consente.”

“The juvenile detention facility in Rome is huge and has different buildings where children, young adults and girls are separately detained. But this can be done because the facility allows for this separation. However, there are other detention facilities in Italy, which are much smaller [...] and it can be difficult to separate children from young adults, defendants from those serving definitive sentences, because the facility does not allow for it.” (Social professional working in Rome)

A lawyer working in Rome reported that – in her experience – the staff of IPMs try to group together children of similar age (separating children from young adults): these two groups might share the same spaces only during common activities organised in the detention facility.

The issue of separation was considered by an honorary judge working in Rome as secondary to the more critical situation of those **persons who are involved in a criminal proceeding when they just turned 18**:

“Immagino che sia drammatico il caso dei ragazzi che commettono un reato appena diventati maggiorenni. Cioè vengono tutelati quelli che l’avevano commesso prima fino ai 25 anni, ma non sono tutelati i diciottenni, cioè i giovani adulti nel carcere per adulti. È una situazione drammatica e pericolosa secondo me. [...] Cioè non è una sacca di detenuti protetta: il diciottenne non è meno bisognoso di tutela. Mi preoccupa quella fascia più che quella dell’istituto penale minorile. [...] Cioè, secondo me la fascia di età 18-25 dovrebbe essere tutelata, indipendentemente se il reato è stato commesso da minorenne.”

“I imagine that the case of young people who commit a crime as soon as they come of age is dramatic. In other words, those who had committed a crime [before the age of 18 years] up to the age of 25 are protected, but 18-year-olds, i.e. young adults in adult prisons, are not protected. It is a dramatic and dangerous situation in my opinion. [...] That is, it is not a protected group of prisoners: the 18 years old is not less in need of protection. I am more concerned about that group than about those detained in juvenile detention facilities. [...] I mean, in my opinion, the 18-25 age group should be protected, regardless of whether or not the crime was committed as children.” (Honorary judge working in Rome)

Another element worth stressing is that IPMs for males and females are located in completely different facilities. The situation of **IPMs for girls** was never mentioned by professionals, with the exception of a judge working in Genova. The IPM for girls is located in Pontremoli, a small town in the Emilia-Romagna region, and it is the only IPM for female detainees in centre and northern Italy. According to the interviewee, the detainees in that IPM are almost exclusively Roma girls. He had the opportunity to visit the detention facility on two occasions, and, – in his perception, – even if their lawyers file requests for alternatives to detention, these girls actually enjoy their detention period. In his opinion, while in the IPM, they have the opportunity to take care of themselves and to study, which is something they are precluded from in their ordinary lives.

Children are also offered a **psychological support** during their detention period:

“Il supporto psicologico è anche finalizzato alla prevenzione del rischio di atti di autolesionismo e di suicidio perché è un altro dei fenomeni ricorrenti all'interno degli istituti penitenziari minorili. Si può comprendere: la privazione della libertà per un adulto è terribile e lo è ancora di più per un soggetto in età evolutiva. Quindi [...] questo supporto psicologico serve proprio a predisporre un progetto che possa consentire a quel minore con le sue fragilità e le sue abilità di affrontare la vita carceraria in un'ottica di prevenzione dei rischi di autolesionismo.”

“Psychological support is also aimed at preventing the risk of self-harm and suicide, because this is another recurrent phenomenon in juvenile prisons. It is understandable: deprivation of liberty for an adult is terrible and even more so for a child. Therefore, [...] this psychological support serves precisely to prepare a project that can allow that child with their fragilities and abilities to face prison life with a view to preventing the risks of self-harm.” (Public prosecutor working in Rome)

Psychological assistance starts in the CPA and generally continues throughout the entire judicial proceeding, and also during the probation period. It is offered in both IPMs and community centres.

As for the adequacy of the **activities and opportunities** offered to the children during their detention period, professionals generally referred to IPMs and community centres, since detention in CPAs can only last up to 96 hours.

However, one penitentiary police officer working at the CPA of Rome provided information on the **activities that are offered to the children during their short detention period in the CPA**. Before the Covid-19 emergency, several leisure activities were available in the center, such as reading, sports, etc. These activities were organized also by external organizations and associations. During the Covid-19 emergency, the staff of the CPA had to dramatically limit the contacts between children and with the members of the staff. External staff was no longer allowed in the center for these leisure activities. A colleague of this professional reported that in the **CPA of Rome** the children can spend time in their rooms only to sleep or rest; the rest of time is spent in common areas to foster socialisation. After breakfast, several leisure activities are organised by both volunteers and professionals. Meals are provided in the common area. The interviewee confirmed that, during the Covid-19 emergency, these socialisation moments and activities were suspended:

“Durante il Covid, purtroppo il lasso di tempo passato nel centro di prima accoglienza è talmente ristretto che non riusciamo a garantire il tampone e la sicurezza di essere tutti negativi. Quindi è più una sicurezza del minore. Quindi diciamo che c'era un isolamento sanitario dei minori.”

*“During the Covid-19 emergency, unfortunately children spend not enough time in the first-reception center to allow us to test them all and wait for a negative result. This measure was for the children’s safety [the decision not to let them out of their rooms to meet other children in the common areas]. It was **a sort of sanitary isolation.**”*
(Penitentiary police officer working in Rome)

The **right to education and professional training** seems to be always ensured, both in IPMs and in community centres. In these latter facilities, children might also be allowed by judicial authorities to attend school outside the facility, a possibility that is generally excluded in IPMs. As reported by a public prosecutor working in Genova, it is up to the judicial social services to decide whether the children who are detained in community services can be allowed to go to the same school they used to, or to an equivalent school nearby the facility.

The general perception emerging from the interviews is that community centres have the possibility – where adequately staffed and financed – to offer a wide range of opportunities and possibilities to the children during their pre-trial custody period (but also during their probation period). **Lack of funding, lack of staff and overcrowded facilities** (in the case of IPMs) are mentioned as elements that can compromise the adequacy and quality of the opportunities offered to the children during the detention period.

“Sicuramente ci sono le attività all’interno delle strutture. Che siano adeguate, non lo so. Che siano personalizzate lo escludo. Anche perché il numero di detenuti elevato o comunque non adeguato al numero degli insegnanti e degli operatori, rende di fatto molto difficile la possibilità di godere di queste possibilità”

“Some activities are for sure offered in detention facilities. I cannot tell if these are adequate. They are not individually tailored, though. Also, because the high number of detainees compared to the available teachers and staff members, make it extremely difficult to actually benefit from these opportunities” (Lawyer working in Rome)

For instance, a lawyer working in Rome reported that, in her experience with the IPMs, despite some activities should have been offered to the children, the **detention regime was actually empty** and no possibilities were given to the children. This was probably due to the **lack of cooperation between the IPM and the civil-society organisations** which generally develop activities in juvenile detention facilities. In those cases, she reported that the children used to complain that they had nothing to do during the day

d. Contact with family members during deprivation of liberty

Interviewed professionals reported that children who are deprived of their personal freedom are **always entitled to meet their family members**: this right is explicitly ensured by the Italian criminal system both to children and to adult defendants. Community centres and IPMs can regulate these contacts, depending on the internal regulation of these centres.

Even if the right to communication and visit is generally ensured – some hurdles exist in practice, such as, for instance, **how far the IPM is located** from the family. In these cases, it might be difficult and expensive for the family to travel often to visit the child.

This right can be limited by judicial authorities only if strictly necessary for **investigation purposes**, as stated by a public prosecutor working in Genova. However, she also stated that she never dealt a case

of this kind. A similar case was mentioned by a penitentiary police officer working in Genova referring to the cases of children whose criminal conducts were perpetrated in the family contexts: in those cases, the CPA's director and the judicial authorities decided to suspend the communication and meetings with their families.

A public prosecutor working in Rome provided information on the situation of **children serving their definitive sentence in IPMs**. She stressed that the possibility exists²⁶ for these children to have 8 meetings per month with their families. At least one of them must be carried out during the weekend, as to allow all family members to participate; this possibility is extended to all persons of relevance for the children, if deprived of family support. As for detained children who already have their own family, they can benefit from four monthly extended visits (4-6 hours); at this purpose, the IPMs have set up at this purpose housing units, that are small flats where these meetings are held, and detainees can cook and eat with their families. Moreover, the Legislative Decree established that children cannot be detained in IPMs which are too far from their families, in order to foster the visits of the members of their families.

The **Covid-19 emergency** had an impact on the possibility for children to contact and meet their family members during deprivation of liberty, including when detained in CPAs.

A judge working in Rome mentioned that, during that period, in-person visits of the family members were replaced with phone calls or virtual meetings. She also added that the Ministry of Justice is considering continuing using this technique even after the end of the pandemic, since, in some cases, children have reported that virtual meetings can be even better than in-person ones, since they have the possibility to see their homes and pets.

A criminal lawyer working in Rome strongly stressed the impact of Covid-19 on detained children.

“Durante il Covid questa cosa è saltata. Io credo che abbiano vissuto un contesto d'isolamento veramente duro che ha avuto delle implicazioni. Cioè non è che non era garantito nessun colloquio o nessun contatto. E anche le attività esterne, quelle poche attività che magari in una comunità c'erano, in un contesto di privazione di libertà c'erano, lì con la pandemia mondiale è saltato completamente anche quel poco che la comunità poteva garantire o il carcere poteva garantire. E quindi io credo che toccherebbe pensare un sistema di assistenza seria a chi ha subito una privazione della propria libertà in un contesto del genere.”

“During the Covid-19 pandemic, this thing blew up. I think children experienced a very hard isolation context, which had implications. That is to say, no interview or contact was guaranteed. And also the external activities, those few activities that maybe were offered in a community centre in a context of deprivation of liberty, there, with the pandemic, even the little that the community centre could guarantee or the prison could guarantee was completely lost. Therefore, I believe that it would be necessary to think about a serious assistance system for those children who have been deprived of their freedom in such a context.” (Lawyer working in Rome)

Differently from the abovementioned experiences, a penitentiary police officer working in Genova reported that, during the Covid-19 emergency, the CPA where the interviewee is employed did not suspend face-to-face meetings of the children with their families: parents and holders of parental responsibility were asked to **show a negative Covid-19 test**. A colleague of the same professional

²⁶ Legislative Decree No. 128/2018.

added that parents were also asked to respect all the measures aimed at preventing the virus transmission (no symptoms, facial masks, inter-personal minimum distance, etc.). Moreover, only one parent at a time was allowed in. On the opposite, in the CPA of Rome meetings with families were replaced with virtual ones or phone-calls. However, short meetings have been recently and gradually restored, as reported by two penitentiary police officers working in the facility.

Eventually, a social professional interviewed in Genova (reported that, during the pandemic emergency, he had requested the authorization of the Court to allow one child who was detained in a community center to visit their family at home: in fact, family members were not allowed in the community center because of the virus transmission risk. The Court authorized the visit, asking the children to undergo a Covid-19 test before going back to the community center.

e. Discussion of findings

- All interviewed professionals confirmed that deprivation of liberty is used as a last-resort measure when children are concerned. This applies to both pre-trial custody and definitive measure.
- According to some professionals, pre-trial custody measures can sometimes be useful to prevent the children from perpetrating other crimes.
- Specific characteristics of children or groups of children that might influence the judicial decisions concerning deprivation of liberty: this is the case of previous criminal records or reiteration of the same criminal conduct. The lack of a solid and supportive family background is another crucial issue in this respect: this disadvantage prevents them in practice from benefitting from home-custody. This latter aspect particularly affects unaccompanied migrant children, Roma children, or children from disadvantaged family and social environments.
- As for the right to a medical examination, all professionals referred and reported about the general medical assessment that children undergo when deprived of their personal freedom. This happens both in the CPA and in IPMs. However, some professionals also mentioned that further medical tests and exams can be formally requested by lawyers and judicial authorities to better assess the psychological and physical conditions of the children and adopt the necessary protection measures.
- Separation between children and adults is always ensured since adults and children are involved into two completely separate judicial systems. As for children and young adults (aged 18-25 who perpetrated the criminal conduct as children), the risk exists that they are detained together in IPMs, especially the smallest ones which often do not have the necessary space to create two different wards.
- Children are also offered a psychological support during their detention period. Psychological assistance starts in the CPA and generally continues throughout the entire judicial proceeding, and also during the probation period. Education and professional training seem to be offered in all detention facilities.
- As for the other activities, each IPM and community centre has a different range of services and activities offered to the children. However, lack of adequate funding and staff seems to be an element that can compromise the overall quality of the activities in most detention facilities.
- Interviewed professionals reported that children who are deprived of their personal freedom are always entitled to meet their family members. During the Covid-19 emergency this possibility was partially limited in some detention facilities: in-person visits were replaced with virtual meetings.

C.7 The rights to effectively participate in and be accompanied during the trial

a. Legal overview

As for adult defendants, children who are accused of a crime have the right – but not the obligation – to participate in the trial. The only parties of the proceedings that are compelled to participate – otherwise the hearing must be postponed – are the prosecutor and the child’s lawyer.

The Court can impose the coercive presence of the child (*accompagnamento coattivo*)²⁷: in practice, the Court can issue a decree, ordering judicial police officers to conduct the defendant before the Court. According to the scientific literature²⁸, this possibility is not aimed – as it is the case of a similar procedure concerning adult defendants – at collecting evidence that is necessary to decide the case; but at obtaining information from the children that is vital to assess the specific situation of the child and to develop the individual project that is pivotal for the defendant’s reintegration into society.

The child can also be forced by the judge to leave the courtroom²⁹. In order to adopt this measure, the parties – the child and the prosecutor – must be heard beforehand. This measure is meant to be protective of the child’s interests, even if it formally is a derogation to the child’s right to participate in the proceeding. However, the decision to remove the child must be strictly limited to those phases or activities of the proceeding that can cause psychological distress to the child: it cannot be extended to whole hearing/proceeding’s length.

As for the possibility of the child to speak during the trial, the child can ask to be heard at the same conditions of adult defendants during the preliminary hearing³⁰. However, differently from adults’ proceedings, during the preliminary hearing, the Juvenile Court is compelled to hear the defendant³¹: this questioning of the child allows the Court to collect all the necessary information and elements on the child’s situation. If the case is not decided with the preliminary hearing (which is often the case) and the pleading stage (*fase dibattimentale*) begins, the defendant has the right to ask at any moment to be heard and they must be informed about this right by the Court itself³².

As for the practical implementation of the right to an effective participation, in 2019 the Authority for the Protection of Childhood and Adolescence (*Autorità Garante per l’Infanzia e l’Adolescenza* – AGIA) reported the experiences of children involved in criminal proceedings³³. In many localities, children reported that they did not feel heard during the proceeding; most of them reported being aware and informed about the functioning of the proceeding thanks to the information provided by social assistants and lawyers (not by judicial authorities); the presence of a cultural mediator explaining the functioning of the proceeding was requested and stressed as crucial by migrant children; children also reported being generally involved in the decisions concerning the defence strategy, even if some of them clarified that most decisions were made by the lawyer without a real involvement of the child.

²⁷ Art. 31.1 of the D.P.R. No. 448/1988.

²⁸ Mangione, A. & Pulvirenti, A. [Ed.], *La giustizia penale minorile: formazione, devianza, diritto e processo*, Giuffrè Editore, 2020.

²⁹ Art. 31 of the D.P.R. No. 448/1988.

³⁰ Art. 421.2 of the Italian Criminal Procedure Code.

³¹ Art. 31.5 of the D.P.R. No. 448/1988.

³² Art. 494.1 of the Italian Criminal Procedure Code.

³³ [AGIA \(2019\)](#), *AgiAscolta. I diritti dei ragazzi di area penale esterna. Documento di ascolto e proposta*, December 2019, page 32.

As for the privacy of the children, judicial hearings involving children are always held behind closed doors and no public (including journalists) can participate³⁴: this regime is aimed at protecting the child from the risk that the presence of the public might increase the stigmatizing effect of the criminal proceeding on them. However, the same legislative disposition also envisages exceptions to this principle. These include: the possibility for the defendant aged more than 16 to request for the hearing to be public; the consent of all defendants to the exception; the absence of a defendant aged less than 16.

Moreover, Art. 7 of the Code of Professional Ethics³⁵ of the journalists on data protection imposes the prohibition for media professionals to disclose neither the names of children involved in news stories, nor any element allowing their identification. Children's data protection must be considered as prevailing on the right to information.

As for the children's right to be accompanied at trial, the child has the rights to be accompanied and assisted by the parents/guardians or any other adult chosen by the child and authorised by the Court³⁶. Additionally, the child has the right to be supported by juvenile services of the judicial administration and by local social services. Parents/guardians and these professionals are expected to provide the child with the adequate psychological assistance and support. According to paragraph 3 of the legislative disposition, the Court or the prosecutor can proceed with the acts that require the participation of the child without the presence of the above-mentioned adults, if this choice is in the child's best interests or if strictly required by judicial necessities.

If the parents do not show up at trial without providing an adequate explanation, the Court can impose a fine on them³⁷ : this provision is aimed at fostering the involvement of the parents and their accountability toward the child. On the opposite, the participation of judicial and local social services to the trial is not ensured by any mechanism at the disposal of the Court: therefore, it cannot be considered as properly mandatory. However, the defendant' lawyers can file a complaint to the prosecutor, in order to have these services charged with dereliction of duty³⁸.

b. Right to effective participation in practice

i. *Enabling the child's effective participation - Modifications of settings and conduct*

Most of the interviewees described children's participation at the hearings as already effective. **No spatial modifications** to the courtroom were reported as necessary by the professionals. Juvenile Courts are completely separated from ordinary ones, and the hearings are always conducted behind closed doors to protect the children's privacy.

“Secondo il nostro ordinamento, il tribunale per i minorenni si deve trovare in un luogo separato rispetto al tribunale ordinario. Ci deve essere una separazione tra la giustizia adulti e la giustizia minorile per l'evidente ragione di non fare entrare un ragazzo minorenne, seppur indagato o imputato, in un luogo che è finalizzato a una giustizia diversa, che è quella per gli adulti”

³⁴ Art. 33 of the D.P.R. No. 448/1988.

³⁵ [Codice deontologico relativo al trattamento dei dati personali nell'esercizio dell'attività giornalistica](#).

³⁶ Art. 12 of the D.P.R. No. 448/1988.

³⁷ Art. 31.4 of the D.P.R. No. 448/1988.

³⁸ Art. 328.2 of the Italian Criminal Code.

“According to our judicial system, juvenile courts must be located in facilities that are separated from ordinary courts. There must be a separation between adult justice and juvenile justice for the glaring purpose of avoiding that a child, even if accused or charged with a crime, enters a place that is destined to a completely different justice, that is the justice for adults” (Public prosecutor working in Genova)

Only one judge working in Genova suggested that it would be useful to **widen the space outside the courtrooms but inside the Courthouse**, so that children can have a softer access to the courtroom: the interviewee was trying to say that it would be useful to introduce a sort of wide vestibule between the entrance to the Courthouse and the entrance to the Courtroom which allows children to get gradually used to the courthouse’s environment before entering the courtroom for their hearing.

A lawyer working in Rome suggested a partial reform of the courtrooms.

“Innanzitutto, ritengo che forse per i minori dai 14 ai 18 anni sarebbe necessario un contesto ambientale diverso. Perché un minore di 14, 16, 16 anni che arriva in aula, non la deve percepire come un momento di punizione [...] L’ambiente deve essere diverso, seppur formale. [...] Occorre un ambiente circolare affinché il minore riceva quella familiarità per comprendere in tranquillità che quelle persone sono lì per lui e per trovare una soluzione adeguata a lui.”

“First of all, I believe that some changes are needed in the environment when children aged 14-18 are concerned. Because, when a child aged 14, 15, 16 arrives at the courtroom, they should not perceive it as a punishment moment [...] The environment must be different, despite the formal character. [...] A circular environment is needed to convey to the child the familiarity to make them understand that those persons are there for them, to find the best solution for them.” (Lawyer working in Rome)

However, this change is not considered by this professional necessary for children aged 17 or more, who are already aware of their role in the society and of the existence of rights and responsibilities.

Some interesting elements emerged from the fieldwork concerning **the way judicial authorities conduct the hearings**.

According to a lawyer working in Rome, the general approach of judicial authorities when interacting with children is to make the **conversation as welcoming as possible**, allowing the children to report their experiences and impressions.

“La tendenza è quella di rapportarsi a loro come un genitore: non si utilizzano toni o frasi perentori, ma cercando di metterlo a suo agio. Gli viene chiesto come svolge la sua vita. Anche quando si valuta la conclusione della messa alla prova, il giudice lo fa parlare e raccontare. Si cerca di rendere la conversazione meno inquisitoria.”

“The trend is to deal with them as parents would do: peremptory tones or sentences are never used; the child is made to feel at ease. They are asked to tell the Court about their life. Even when the probation period is assessed, the Court ask them to express their points of view and to report about their life. The attempt is to make the conversation less inquisitorial as possible.” (Lawyer working in Rome)

An opposite perspective was expressed by a lawyer working in Turin who reported that – in his experience – judicial authorities (both public prosecutors and judges) are often **cold and not empathic**, and not always trained to deal with children. This is because working in the juvenile justice system is not a choice that is made out of passion or specialization, but generally because a place was

available at that Court or public prosecutor's office, and they are transferred to the juvenile system after working with adults. they are used to, and they are often intimidated by the authorities that take part in the hearings.

"Inoltre, si deve aggiungere la capacità di gestione del giudice minorile. Perché è vero che sono affiancati da esperti ma gli esperti contano come il due di picche. Il giudice minorile spesso avrebbe bisogno di una rieducazione per primo. Faccio riferimento al fatto che il pubblico ministero non deve essere empatico, ma probabilmente segna ancora di più questa immensa distanza perché è vestito come un damerino e sfoggia scarpe e un orologio da decine di migliaia di euro di fronte magari a un soggetto [il minore] che arriva da contesti di povertà pressoché assoluta. [...] E anche il giudice che mastica il chewing-gum facendo la morale al ragazzino[...] non ha comunque ben compreso il proprio ruolo."

"Furthermore, the management capacity of the juvenile judge must be considered. Because it is true that they are supported by experts [the honorary judges], but the experts count as two spades. The juvenile judge often needs a re-education first. I refer to the fact that public prosecutors do not have to be empathetic, but they sometimes mark even more this immense distance because they are dressed like dandies and show off shoes and watches costing tens of thousands of Euros in front of a person [the child] who comes from a context of almost absolute poverty. [...] And also the judge who chews the chewing-gum giving the moral to the kid [...] has not well understood their role." (Lawyer working in Turin)

A similar approach was described by a lawyer working in Genova when commenting the approach generally adopted by the judges of the **Court of Appeals**: they never explain their decisions to the children, differently from the judges working for the Juvenile Court.

"Ritengo un punto debole invece la Corte d'Appello anche perché veramente il giudice del Tribunale per i minorenni ha una sensibilità e una formazione diversa. La Corte d'Appello nella sezione specializzata minorenni, l'esperienza mi dice che sono magistrati abituati al penale dei maggiorenni e che una volta a settimana o una volta al mese sono chiamati a giudicare anche dei minorenni. Non voglio lanciarmi in accuse infondate, ma non so neanche se abbiano veramente mai letto o approfondito le tematiche."

"I think that the Court of Appeal is a weak point, also because the judge of the Juvenile Court has a different sensitivity and training. With regard to the Court of Appeal in the specialised juvenile section, experience tells me that they are magistrates who are used to the criminal justice of adults and that once a week or once a month they are called to also judge children. I don't want to make unfounded accusations, but I don't even know if they have really read or studied the subject in depth." (Lawyer working in Genova)

Additionally, a judge working in Rome reported that the shortage of staff at juvenile judicial Courts can compromise the attention paid to the children by the Court, since judicial authorities must deal with several proceedings and a huge judicial backlog. In this situation, they do not always have the time to ensure children with the adequate time to express themselves during the hearing.

A similar point of view was expressed by a lawyer working in Rome:

"A mio parere funziona male il meccanismo con cui viene ascoltato il minore perché tu hai pochi minuti d'ascolto di un minore, ripeto in una complessità di contesto, con le

relazioni dei servizi sociali che già sono state consegnate, con una serie di preconcetti perché spesso si dà per scontato che il minore abbia commesso il reato.”

“In my opinion, the mechanism with which the child is listened to works badly, because the judges only have a few minutes to listen to a child, I repeat, in a complex context, with the reports of the social services that have already been delivered, with a series of preconceptions, because it is often taken for granted that the child has committed the crime.” (Lawyer working in Rome)

A social professional working in Genova seemed to reinforce this point:

“Anche i giudici sono sottoposti a uno stress lavorativo, e anche il personale di cancelleria. Sono persone che sono al limite delle risorse fisiche e umane. E questo si riverbera sulla capacità e sulla sensibilità delle persone. Perché non si può pretendere di essere sensibili, attenti, bravi se si è sottoposti a uno stress lavorativo.”

“Judges are subject to a working stress, and the same applies to the administrative staff. These professionals are at the limit of the physical and human resources. And this has an impact on their sensitivity. Because it is impossible to request people to be sensitive, careful, skilled, if they are subject to such a working stress.” (Social professional working in Genova)

Eventually, an honorary judge working in Rome reported that – in her experience – the most critical aspect concerns the length of the proceedings. In the interviewee’s opinion, the long waiting times risk weakening the children’ rehabilitation process.

“Passa troppo tempo da quando commette il reato a quando arriva in udienza. Passa troppo tempo da quando è in udienza filtro a quando magari deve essere rinviato e inizia il dibattimento. I tempi rischiano di svilire la stessa azione progettuale. Non sono gli spazi ma i tempi.”

“Too much time passes from when the child commits the offence to when they arrive at the validation hearing. Too much time passes from when they are in the preliminary hearing to when they may have to be adjourned and the trial begins. The time risks debasing the rehabilitation project itself. It is not the space, but the time.” (Honorary judge working in Rome)

ii. *How are children heard and their views taken into account?*

Children are generally heard by the Court: no relevant exceptions were reported in this respect. The children’s testimony is important for the Court to adopt the measures that can best serve their interest. This is the reason why children are generally encouraged by judicial authorities to speak during the hearings, to ask questions and to provide information.

“Il minore viene veramente sollecitato in maniera molto proficua a parlare e a dire la sua. Su questo non c’è dubbio e infatti le nostre udienze durano tantissimo perché veramente si dà spazio al minore e veramente si dà la possibilità di capire.”

“The child is really encouraged in a very profitable way to speak and to have their say. There is no doubt about this and, in fact, our hearings last very long, because we really

give space to the child, and we really give them the possibility to understand.” (Public prosecutor working in Rome)

More specifically, a public prosecutor working in Genova stressed that it is a crucial right of the child to participate at the hearings of the trial they are involved in:

“È diritto di ciascun imputato – maggiorenne o minorenni – di partecipare al processo a suo carico. Quindi in caso di impedimento, il processo non può andare avanti e quindi deve essere rinviato [...] diverso se il ragazzo decide di non partecipare, quella è una sua decisione. Ma devo dirle la verità anche lì si cerca di avere la presenza del ragazzo”

“It is the right of each defendant – adult or child – to take part to the trial they are involved in. In case of impediment, the trial cannot go on and the hearing must be postponed [...] it is different if the child decides not to show up, this is their decision. To be honest though, we always try to convince the child to show up” (Public prosecutor working in Genova)

The importance of the children’s presence is further highlighted by a public prosecutor working in Rome who reported that the judge can impose the **forced accompanying of the child before the Court** if they do not show up at trial.

As for the effective possibility of children to have their **points of views considered by the Court**, a critical element was raised by a lawyer working in Turin who reported that it depends on what the children are saying. If they are willing to admit their responsibilities and to apologize, judicial authorities will try to understand the context and reasons for their actions. On the opposite, if the children try to provide a different version of the episode, judicial authorities adopt a suspicious attitude towards them and try to find the contradictions in their statements.

According to a social professional working in Genova, the participation of the children in the proceedings increase hand in hand with the development of the proceeding:

“Secondo me più si va avanti nella fase dell’iter processuale più il ragazzo partecipa anche perché ha una consapevolezza diversa di sé. Un ragazzo che arriva alla fine della messa alla prova e partecipa all’udienza di verifica finale e quindi di chiusura del suo percorso, è ben diverso dallo stesso ragazzo che compare davanti al giudice per l’udienza di convalida.”

“In my opinion, as the proceedings develop, children participate more actively in the trial because they are more aware of their situation. A child who concludes the probation period and is convened before the Court for the final assessment is extremely different from the same child at the validation hearing.” (Social professional working in Genova)

c. The right to be accompanied by the holder of parental responsibility

Holders of parental responsibility are entitled to participate in all stages of the proceedings, including the hearings. During the trial the child sits next to the lawyer and behind them there are the family, the staff of the community centre and the social assistant in charge of the case. Holders of parental responsibility are in the courtroom to provide support to the children. Moreover – as reported by a lawyer working in Rome – they can also be directly involved if information is needed by the Court on their side.

As for the **lawyers**, they always participate in the hearings, they can intervene, communicate to the Court and ask questions to the children. Moreover, children have the right to communicate with the lawyers during the hearings, and the privacy of the conversation should be always ensured.

A lawyer working in Turin reported that the hearing can even be shortly suspended to allow the lawyers to confidentially communicate with the children. During these confidential moments, the lawyers often suggest the children how to behave in the hearing or provide explanations of specific aspects of the trial.

However, a social professional working in Rome reported that the approach of the lawyers to the hearing can sometimes be detrimental for the children:

“Per quanto riguarda il buon comportamento processuale, cioè il fatto che il ragazzo è collaborativo e si apra rispetto all’imputazione e faccia capire il suo punto di vista, è un punto nevralgico. Secondo me gli avvocati – che spesso lavorano anche con gli adulti – non sempre sanno prendere la posizione giusta. Assistiamo anche a minori che si avvalgono della facoltà di non rispondere e questo è del tutto deleterio per la situazione processuale perché non permette al giudice di conoscere il ragazzo e di costruire quel minimo di relazione che gli fa comprendere il punto di vista del ragazzo”

“The children’s judicial behavior, that is whether or not the children are cooperative and open to the charges and to express their points of view, is a crucial issue. In my opinion, lawyers – who are generally used to work with adult defendants – often make the wrong choices. We deal with children who sometimes decide to remain silent during the trial, and this approach is completely detrimental for the proceeding because it does not allow the judge to get to know the child, to create the relationship with them that helps the Court to understand the child’s point of view.” (Social professional working in Rome)

d. Discussion of findings

- Most of the interviewees described children’s participation in the hearings as already effective. Only partial spatial modifications to the courtroom were reported as necessary by the professionals, in order to make the environment less intimidating for the children.
- The approach of judicial authorities to the hearing was described by the professionals in different opposite way: for some of them, judges adopt a welcoming and careful communication approach to the children during the hearings; for others, the approach must be described as cold and non-empathic.
- Judicial backlog and lack of adequate human resources in Juvenile Courts were mentioned by some of the interviewees as elements potentially compromising the quality of the communication between children and judicial authorities.
- Most professionals confirmed that children are generally heard by the Court: no relevant exceptions were reported in this respect. The children’s testimony is important for the Court to adopt the measures that can best serve their interest.
- Holders of parental responsibility are entitled to participate in all stages of the proceedings, including the hearings. Moreover, they can also be directly involved if information is needed by the Court on their side.

- Lawyers always participate in the hearings, they can intervene, communicate to the Court and ask questions to the children. Moreover, children have the right to communicate with the lawyers during the hearings, and the privacy of the conversation should be always ensured.

PART D. GENERAL ASSESSMENT

D.1 Challenges

On the whole, interviewees expressed a high level of satisfaction on the procedural rights and safeguards envisaged by the Italian criminal juvenile legislation. However, they confirmed that some challenges might compromise the practical implementation of these rights.

One major challenge mentioned by several interviewees concerns **the lack of adequate human and financial resources**. This shortage of funds represents a risk both for the timely conclusion of judicial proceedings, and for the variety and quality of the activities and projects offered to the children who are involved in an individual rehabilitation project (especially during the probation period). Additionally, lack of adequate staff might result into a work overload for the professionals, exposing them to the risk of work burn-out, and compromising the quality of the assistance and support provided to the children. Moreover, the investment of financial resources should be even on the entire national territory, as to reduce local disparities: an honorary judge working in Rome mentioned that provinces can be disadvantages in this respect when compared to big cities, where more resources and possibilities are available for the children who undergo a probation period.

Another issue concerns the **insufficient specific expertise of some of the professionals** working in the juvenile criminal justice system. This challenge concerns both lawyers – especially entrusted ones who are generally used to deal with adults defendants, and who are not requested to undergo a specific training, as it is the case of public defenders, and judicial authorities who often are transferred to the juvenile justice system from the ordinary one, without being asked to undergo training sessions on the specific aspects of these proceedings.

A specific training for judicial **police officers** dealing with children involved in criminal proceedings would be needed. A public prosecutor working in Rome stressed that children – even if involved in criminal proceedings as suspects or accused persons – still are **vulnerable subjects** and should be treated as such by all public authorities, including police officers. As vulnerable subjects, children must be granted all the procedural safeguards that are generally offered to children who are victims of crimes. In her opinion, specific legislative measures should be introduced in this respect. A similar opinion was expressed by an honorary judge working in Rome who pointed out that the most crucial challenge in the protection of children's rights and safeguards concerns their first contact with public authorities, namely at the moment of the arrest. In her experience, the arrest can be a crucial moment for the children in their accountability process. She mentioned that some EU Member States have introduced early-identification mechanisms of children's vulnerabilities to be used by police officers: this kind of measures does not exist in Italy. In her opinion, police officers generally treat children as adults, using the same arrest practices which can have a traumatic impact on some children.

Reducing the length of the proceedings would be needed as well, especially the period time elapsing between the arrest and the beginning of the proceeding: it is counterproductive to judge a child after 3-4 years from the moment of the arrest or of the police notification.

As far as **foreign children** are concerned, a social professional working in Rome mentioned that they often do not have the possibility of home-custody, and they more frequently serve their pre-trial custody in IPMs or community centres, compared to their Italian peers. Moreover, these children have

a residence permit for minor age; however, when they turn 18 and are concluding their judicial proceeding, they must face many difficulties at the moment of applying for a residence permit.

Eventually, some professionals (one police officer and a social worker) stressed that the efforts to socially reintegrate the children can be nullified if the root causes of their behaviour are not addressed, that is **social exclusion and marginalization**: as stressed by a penitentiary police officer working in Rome, children can be reintegrated when they are supported by judicial social services; however, when they go back to their social contexts, all the efforts might be nullified. In this same perspective, a social professional working in Rome stressed that a **strong prevention system** would be needed, supporting the children at local level, especially when they start perpetrating crimes before the age of 14. All efforts should be made so that children never get in contact with the criminal system. At this end, the active involvement of families is key, to monitor and help the children after the conclusion of the experience in the criminal system.

D.2 Promising practices

One promising practice mentioned by the interviewees is the judicial instrument of **probation**, which allows the children to invest time in their future perspectives, in their education and training, fostering their reintegration into society. Moreover, the successful conclusion of the individual probation project results into the deletion of the charges from the children's criminal records.

A public prosecutor working in Rome mentioned, as good practice for the protection of children's procedural safeguards, the intense and mandatory **information-provision activity** carried out by judicial authorities during the trial's hearings. As far as the provision of information is concerned, other interviewees reported some good practices in place in the judicial institutions they work for, aimed at providing clear and comprehensive information to the children concerning their rights and the functioning of the judicial proceedings. These include conceptual maps, multimedia materials in different languages, leaflets, etc. An example of this kind was mentioned by a social professional working in Rome who stressed that it is extremely difficult for the children – especially migrant children – to understand the complicated functioning of judicial proceedings: at this end, the community centre she manages has developed a **visual map**, summarising the phases of the proceeding and the parties involved in each step, together with their role. According to her experience, this practice can help children with the distress and anxiety they might feel because of the uncertainty concerning their situation and future perspectives.

A lawyer working in Turin reported that a good practice in place in the Italian juvenile justice system is the **multi-disciplinary cooperation between different professionals**, namely judges, lawyers, educators, social assistants, psychologists. These professionals – each one with their expertise – can usefully cooperate and figure out the best options for the children's reintegration. This information was confirmed also by a lawyer working in Rome and by a penitentiary police officer working in Rome.

D.3 Suggestions

Unaccompanied migrant children and the protection of their rights and specific needs emerged as a crucial issue during the fieldwork. In this respect, a judge working in Genova suggested that the availability of **cultural mediators for foreign children** involved in judicial proceedings should be further enhanced. Moreover, a social professional working in Genova mentioned that these children must be

ensured the possibility to respect their culture and religion during pre-trial detention (she mentioned the possibility for Muslim children to carry out the Ramadan in the CPA).

The **necessity to adequately train police officers** dealing with the investigations and interrogations of the children was mentioned also by a lawyer working in Rome. In her opinion, the officers should be trained to use a different language and attitude to deal with children, and they should work in team with other professionals, especially educators and psychologists. Children – when dealing with the police – should not have the impression to be under detention, otherwise their rehabilitation program is compromised since the beginning.

The eligibility criteria of the probation regime could also be revised, as suggested by two lawyers working in the two different localities. A change of perspective would be needed to attain the goal of considering the children – with their needs and desires – at the centre of the proceeding. Assuming that the children are guilty and making the possibility of rehabilitation probation projects dependant on the children's admission of their actions, might result into a weak rehabilitation process of the children themselves. Because they might feel, nonetheless, punished and somehow forced to accept a reintegration project that was decided by other adult persons, without really listening to their points of view.

As for the functioning of the proceedings, a lawyer working in Rome reported that – in her opinion – **juvenile criminal proceedings should be simplified**. She suggested to introduce an intermediary stage where the child's situation is assessed and the child made accountable for their actions, avoiding this to take place in a courtroom which can be always traumatic for children. Moreover, a penitentiary police officer working in Genova suggested to **further separate children from young adults** since they are in two completely different stages of their lives, even if he is aware that it would be impossible to introduce a third judicial and detention system (in addition to those already existing for children and adults).

PART E. CONCLUSIONS

Even if the Directive (EU) 2016/800 was not formally implemented in Italy, most rights and safeguards it protects are already guaranteed by the Decree of the President of the Italian Republic (D.P.R.) No. 448 of 22 September 1988, which governs the Italian juvenile judicial system. The only exception to this general perception – expressed by most professionals – concerns the children’s rights to have police and prosecutors’ questioning audio-visual recorded. In this respect, all interviewees reported that a written report is rather drafted of police and prosecutors’ questions that is transmitted to judicial social assistants and lawyers.

The Italian juvenile judicial system involves children aged 14-18, but also young adults aged 18-25 if the crime was perpetrated as children. Age assessment is therefore crucial both to determine whether the child is chargeable (or aged less than 14), and to decide with judicial proceeding to adopt (the juvenile or the ordinary one). None of the interviewed professionals reported that a multi-disciplinary approach is applied to age assessment: this procedure is mostly carried out with a medical exam (the x-ray of the wrist). Moreover, the age assessment procedure almost exclusively concerns unaccompanied migrant children, whose age cannot generally be determined through ordinary identity documents. However, a multi-disciplinary protocol to assess the age does exist in Italy, and it was introduced in the framework of the protection measures for unaccompanied migrant children and victims of trafficking: however, some professionals reported that it is not generally used in the context of criminal proceedings because it takes more time, and it is more expensive than the medical examination. Eventually, if the age assessment does not allow to determine the age with a sufficient degree of certainty, the *favor rei* principle is generally applied, and the children’s minor age presumed by judicial authorities.

All professionals confirmed that information on rights and safeguards are provided to the children by public authorities. Basic information – concerning the right to appoint a lawyer and to have the holders of parental responsibility informed – are communicated by judiciary police officers at the moment of the arrest. More specific and thorough information on rights and procedural safeguards are conveyed by lawyers and by the staff working for the CPAs (in case of children who are arrested). Information needs to be provided gradually and constantly to children, especially in the first phases of the proceeding when they are often stressed and confused by their first contact with the judicial system. Professionals have reported some good practices in this respect – such as multimedia materials, conceptual maps and leaflets – aimed at providing information to the children during their pre-trial detention period, available also in different languages as to inform foreign children, as well. In the information provision activity, the role of cultural mediators is crucial to support foreign children, who might find it even harder to understand the situation and the role of the different figures they get in contact with: some professionals suggested that the role of cultural mediators should, therefore, be reinforced. Information concerning the functioning and steps of the proceeding is generally provided in the CPAs (especially concerning the validation hearing), and by judicial authorities during the hearings. The role of lawyers in this respect was deemed crucial since they can more easily establish a trust relationship with the children. Holders of parental responsibility (including guardians in case of unaccompanied migrant children) must always be informed about the children’s situation and rights: no exceptions were reported in this respect. They have the right to participate in all stages of the proceeding, including the trial’s hearings.

Legal defence is mandatory in Italy, and this principle applies also to juvenile judicial proceedings. Lawyers are immediately appointed during the arrest or at the end of the preliminary investigations. Children can either appoint an entrusted lawyer – generally acquainted with the family – or a public

defender is ensured. Public defenders must undergo a specific training before being eligible: according to some professionals, these are therefore much more qualified compared to entrusted lawyers, who are not requested a specific expertise, and who are generally used to deal with adult defendants. Legal assistance is considered effective when the lawyers have the real possibility to take part to all proceeding's stages and procedures, and when a trust and open relationship is established with the children. Some diverging points of view emerged in this respect among interviewees: some lawyers complained about the compression of their professional role in juvenile judicial proceedings, where no room is left to the defence of the children's innocence; social professionals, in some cases, complaint about the lack of cooperation of lawyers who are much keener at proving the children's innocence, thus hindering – in their opinion – the accountability process of the children. The involvement of holders of parental responsibility was described as key by all professionals, including lawyers. The presence of supportive families can help design the legal strategy that best serves the children's interests. Communication between lawyers and children deprived of personal freedom during pre-trial custody (in IPMs, CPAs or community centres) is generally guaranteed, especially before judicial hearings. However, some of the professionals mentioned that the Covid-19 emergency imposed some crucial challenges, since in-person meetings were suspended for a period and replaced with virtual meetings and phone calls, thus potentially compromising the confidentiality of the conversations.

Individual assessment represents the core of juvenile judicial proceedings, which are not primarily aimed at punishing the subject, but rather at fostering their social reintegration. The information collection on the individual situation of the children starts since the early stages of the proceeding, namely upon the arrival of the child to the CPA after the arrest. In case of children who are not arrested, the individual assessment must be requested by judicial authorities during the preliminary hearing. The individual assessment generally is a multi-disciplinary procedure, since several specialised professionals intervene in the procedure, namely educators, social assistants, psychologists. The individual assessment is generally conducted *ex officio*: however, the inadequacy of financial and human resources, as well as the judicial backlog, represent – according to some professionals – relevant hurdles in the correct and successful implementation of the individual assessment: for instance, individual assessment might be conducted only for the proceedings focusing on relevant charges, and overlooked in case of petty offences. The outcome of the individual assessment is crucial for judicial authorities in all stages of the proceeding to decide whether and, if so, which pre-trial custody or probation measure to adopt, as well as to map the children's skills and vulnerabilities.

All interviewed professionals confirmed that deprivation of liberty is used as last-resort measure when children are concerned: as for the alternative measures, they mentioned community centres, and home custody. Specific characteristics of children or groups of children that might influence the judicial decisions concerning deprivation of liberty: this is the case of previous criminal records or reiteration of the same criminal conduct. The lack of a solid and supportive family background is another crucial issue in this respect: this disadvantage prevents them in practice from benefitting of home-custody. This latter aspect particularly affects unaccompanied migrant children, Roma children, or children from disadvantaged family and social environments. As for the right to a medical examination, all professionals referred and reported about the general medical assessment that children undergo when deprived of their personal freedom. This happens both in the CPA and in IPMs. However, some professionals also mentioned that further medical tests and exams can be formally requested by lawyers and judicial authorities to better assess the psychological and physical conditions of the children and adopt the necessary protection measures. Children and adults are always detained separately since these two groups are involved into two completely separate judicial

systems. As far as children and young adults are concerned (aged 18-25 who perpetrated the criminal conduct as children), the risk exists that they are detained together in IPMs, especially in the smallest ones which often do not have the necessary space to create two different wards. Children are also offered a psychological support during their detention period, which is also – but not exclusively – aimed at helping children coping with detention and avoiding self-harm episodes. Education and professional training seem to be offered in all detention facilities; professionals also mentioned other possibilities offered to the children. The general impression is that there is not a common standard applicable to all detention facilities: each facility (community centres or IPMs) is free to decide which activities to offer, whether to rely on internal human resources or external organisations/professionals, etc. The result is an extremely variegated picture both at territorial level, and among different facilities. The lack of adequate funding and staff seems to be an element that can compromise the overall quality of the activities in most detention facilities. The interviewees reported that children who are deprived of their personal freedom are always entitled to meet their family members. During the Covid-19 emergency this possibility was partially limited in some detention facilities: in-person visits were replaced with virtual meetings.

Most of the interviewees described children's participation in the hearings as already effective: no major spatial modifications were suggested, even if some professionals reported that courtrooms should be formal but as less intimidating as possible for the children. Some professionals described the judges' approach to the children as welcoming; others, as cold and non-empathic. Judicial backlog and lack of adequate human resources in Juvenile Courts were mentioned by some of the interviewees as elements potentially compromising the quality of the communication between children and judicial authorities, especially in those judicial districts with a high number of juvenile judicial proceedings. Children are generally heard by the Court: the children's testimony is important for the Court to adopt the measures that can best serve their interests. Holders of parental responsibility are entitled to participate in all stages of the proceedings, including the hearings. They can even be heard by the Court to provide additional information. Lawyers always participate in the hearings, they can intervene, communicate to the Court and ask questions to the children. Moreover, children have the right to communicate with the lawyers during the hearings, and the privacy of the conversation should be always ensured.

ANNEX – Overview of national organisations working with children who are suspects or accused persons in criminal proceedings

Organisation	Focus	(Publically available) Contact details
Juvenile and Community Justice Department of the Ministry of Justice (<i>Dipartimento per la giustizia minorile e di comunità</i>)	The General Direction of the Department oversees the social reintegration process of the children: it implements, assesses, and monitors the decisions adopted by juvenile judicial authorities. Its competence covers the whole Italian territory, and it is located in Rome	Via Damiano Chiesa, 24 – 00136 Rome Phone +39 06.681881 e-mail: dgmc@giustizia.it certified e-mail: prot.dgmc@giustiziacert.it www.giustizia.it/giustizia/it/mg_12_4.wp
Juvenile Justice Centres (<i>Centri per la Giustizia Minorile – C.G.M.</i>)	There are 12 CGMs in Italy and their competence covers, in some cases, different regions. These centres coordinate the activities and functions of juvenile social services	The list of existing CGMs and their contact details are available at the website of the Italian Ministry of Justice .
Juvenile Social Services Offices (<i>Uffici di servizio sociale per i minorenni – U.S.S.M.</i>)	There are 29 USSMs in Italy. Their role is to carry out the first individual assessment when the child is arrested or in police custody. In a later stage, they develop the child’s individual reintegration project and provide support and assistance to children in pre-trial custody, in cooperation with local social services.	The list of existing USSMs and their contact details are available at the website of the Italian Ministry of Justice .
Juvenile Detention Facilities (<i>Istituti penali per i minorenni – I.P.M.</i>)	There are 17 IPMs in Italy, where children and young adults (up to the age of 25) can be detained in pre-trial custody or serving their sentence. IPMs are not mere detention facilities, they must offer the children activities and study/training opportunities	The list of existing IPMs and their contact details are available at the website of the Italian Ministry of Justice .
First-reception Centres (<i>Centri di prima accoglienza – C.P.A.</i>)	There are 25 CPAs in Italy: their function is to accommodate children under arrest for up to 96 hours until the validation hearing (<i>udienza di convalida</i>). The staff of the CPA provides judicial authorities with a first assessment of the child’s personality and family conditions.	The list of existing IPMs and their contact details are available at the website of the Italian Ministry of Justice .
Reception community centres for children	These community centres – scattered in the entire Italian territory – hosts children from different backgrounds, including unaccompanied children and children in foster care. A reduced share of these children is involved	The data reported in this row is provided by the association “Antigone” in its period monitoring report on the juvenile justice system.

	<p>in criminal proceedings and are held in the community centre in pre-trial custody (Art. 22 of the D.P.R. No. 448/1988) or to serve a probation period. Three community centres are directly managed by the Ministry of Justice and these are located in Bologna, Catanzaro, and Reggio Calabria: as of 15 January 2020, they accommodated 20 children and young adults. The remaining existing community centres are managed by associations or social cooperative societies authorized by the Ministry of Justice: as of 15 January 2020, these community centres accommodated 1,104 children involved in criminal proceedings.</p>	
<p>Italian Association of lawyers assisting children and families (<i>Associazione Italiana degli Avvocati per la Famiglia e per i Minori – AIAF</i>)</p>	<p>This is an association of legal professionals with a specific expertise in assisting children involved in criminal proceedings as victims or perpetrators. It organizes conferences and training sessions specifically dealing with these issues. It has a central office located in Milan and regional branches in each region.</p>	<p>Via Lentasio 7, 20122, Milan Phone: +39-02.58323913 e-mail: segreteria nazionale@aiaf-avvocati.it Website: https://aiaf-avvocati.it/.</p>