



The CREW project is co-funded by the Rights, Equality and Citizenship Programme of the European Union (REC 2014-2020)

CREW 2022

TOWARDS A CHILD-FRIENDLY JUSTICE SYSTEM

SECURING THE RIGHTS AND PROCEDURAL SAFEGUARDS OF CHILDREN WHO ARE SUSPECTS OR ACCUSED PERSONS IN ITALY

METHODOLOGICAL ORIENTATIONS



Ministero della Giustizia

DIPARTIMENTO PER LA GIUSTIZIA MINORILE E DI COMUNITA'



membro per l'Italia
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The document was developed by Daja Wenke, Mariateresa Veltri and Gabriella Gallizia, Defence for Children International – Italy, in collaboration with Isabella Mastropasqua and her team from Office II of the General Directorate of Personnel, Resources and Implementation of Juvenile Justice Measures, Department of Juvenile and Community Justice, Ministry of Justice: Ninfa Buccellato, Giuseppina Barberis, Maria Branchi, Maria Casiello, Daniela Cuzzocrea.

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The following institutions and organisations participated in the project as associates:

- UNCM (National Union of Juvenile Chambers)
- CNOAS (National Council of the Order of Social Workers)
- AIMMF (Italian Association of Juvenile and Family Magistrates)
- IAYFJM (International Association of Youth and Family Judges and Magistrates)
- Child-Friendly Justice European Network
- ECBA (European Criminal Bar Association)

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Defence for Children International is an international organization founded in 1979 for the purpose of promoting and defending the rights of children nationally and internationally with representation in more than 40 countries around the world. Defence for Children International actively participated in the drafting of the United Nations Convention on the Rights of the Child.

Contacts and information: www.defenceforchildren.it – email: info@defenceforchildren.it

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1 INTRODUCTION

In Italy, every year around 31.000 to 35.000 children get in contact with the criminal justice system as suspects or accused persons.¹ This contact proves to be highly sensitive not least because of the criminal offences that are investigated or prosecuted and the harm inflicted on individuals and the society, but also because a highly regulated and formalised justice system is challenged to operate in a child-friendly manner, while upholding principles of rule of law and due process.

The rights of children, i.e. all persons under 18 year of age, who are suspects or accused persons in criminal proceedings are regulated by a body of international and European law, in particular the United Nations Convention on the Rights of the Child (1989) and the European Convention on Human Rights (1950). In addition, numerous policy instruments and guidelines set out principles to guide States and practitioners in ensuring that justice systems treat children with full respect for their rights.² The

- 1 National statistics for the years 2014-2017 indicate 31.567 criminal proceedings where children were suspects or accused persons in 2014, 32.335 in 2016, 35.384 in 2015 and 34.435 in 2014. ISTAT, [Annuario statistico italiano](#), 6, Giustizia, criminalità e sicurezza [Italian statistical yearbook, 6, justice, criminality and security], 2020, p. 235, Table 6.14. 30.801 for 2019 <https://www.istat.it/it/files//2020/12/Co6.pdf> Data for 2018: sheet 39, table 6.14.
- 2 Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950. Council of Europe, [Guidelines](#) of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010. Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, [CRC/C/GC/24](#). Replacing: Committee on the Rights of the Child, General Comment No. 10 (2007), Children's rights in juvenile justice, [CRC/C/GC/10](#), 25 April 2007. United Nations General Assembly, Standard Minimum Rules for the Administration of Juvenile Justice, [A/40/53](#), 1985. United Nations General Assembly, Rules for the Protection of Juveniles Deprived of their Liberty, [A/Res/45/113](#), 1990. European Council, Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, [2009/C295/01](#).

Guidelines on child-friendly justice of the Council of Europe (2010) and, more recently, the revised General Comment of the Committee on the Rights of the Child on children's rights in the child justice system (2019), are key documents of reference for policy and practice. The highly dynamic standard setting activity in this field demonstrates that States, multi-lateral organisations and civil society actors continue seeing a need for strengthening standards and safeguards for children in contact with the law.

The Committee on the Rights of the Child recognises the preservation of public safety as a legitimate aim of national justice systems. It underlines however also that exposure to the criminal justice system has been evidenced to cause harm to children and limits the child's chances of becoming a responsible adult. At the same time, research demonstrates that where national justice systems operate in accordance with the principles of child-friendly justice, the prevalence of criminal offences committed by children tends to decrease. The UN Convention on the Rights of the Child guides States in ensuring that children who are suspects or accused persons in criminal pro-

ceedings are treated always in a manner consistent with the promotion of the child's sense of dignity and worth. This represents an important investment in the prevention of recidivism.³

In the European Union, the Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (hereafter "the Directive") is currently the most important legal document setting out specific rights of children in this particular context.⁴

The Directive provides for the individual assessment of children as a key safeguard to ensure the justice system takes account of the circumstances of the case and the needs of the child. The individual assessment is instrumental in identifying the specific support required to enable the meaningful participation of the child in investigation and proceedings and to secure and promote the child's protection, education, training and social integration. The individual assessment helps to ensure that procedural safeguards are sensitive to the needs and rights of the child and that all decisions and measures taken, including in the process of sentencing, support the

3 Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, [CRC/C/GC/24](#), par 2-3.

4 [Directive EU 2016/800](#) of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Official Journal of the European Union, L 132/1, 21 May 2016.

child's (re-)integration and transition to adulthood and independent life (see Box 3).

The multidisciplinary scope of the assessment and its subsequent use to inform decisions and measures during investigations and proceedings offers an invaluable opportunity for making the child's contact with the criminal justice system a positive and empowering experience. This adaptation process is essential to promote compliance of

criminal proceedings with the best interests of the child as a fundamental principle under the UN Convention on the Rights of the Child. As an assessment and planning tool, the individual assessment ensures continuity throughout all steps and phases of the proceedings, from the initiation of the investigation and judicial proceedings, through to the process of sentencing and any follow-up, irrespective of the child's role in the criminal offence.

In Italy, the main law of reference regulating the juvenile justice sector is the national Juvenile Criminal Procedure Code enacted by Presidential Decree 488/1988 (D.P.R. 448/1988).⁵

The law provides for the participation of the child in all phases of the proceedings; an individual assessment of the child to ensure the child's ongoing processes of education and training are taken into due account; the right to assistance by a lawyer; the right to a medical examination; the information of the parents or other holders of parental responsibility; and alternative measures to detention to prevent deprivation of liberty. The law provides for a set of principles to guide

its implementation: proportionality and adequacy, least harm, de-stigmatisation, and recourse to detention as a measure of last resort.⁶

Although the legal framework regulating the juvenile justice system in Italy is regarded as largely compliant with the standards set out by the Directive, there remain challenges in ensuring its effective implementation in practice.⁷

The individual assessment has a

⁵ Decree of the President of Republic no. 448 of 22 September 1988, Approval of provision on the criminal procedures applicable to juvenile offenders; the decree has created a Juvenile Procedural Code, the Legislative Decree No. 272 of 28 July 1989, Carrying out rules of the Juvenile Procedure Code, which complements the Penal Code and Criminal Procedure Code.

⁶ Decree of the President of Republic no. 448 of 22 September 1988, Approval of provision on the criminal procedures applicable to juvenile offenders.

⁷ Discussions and conclusions of the interagency and multidisciplinary Round Table established under the project CREW, meetings of 4 March 2021, 20 April 2021, 21 June 2021 and 20 June 2022.

particular important role in enabling a meaningful implementation of the national Juvenile Criminal Procedure Code, as it provides for an established procedure for decision-making and adaptation of the proceedings to the needs of the child, based on a comprehensive case assessment and the collaboration of all relevant actors towards the best interests of the child. As a strategic implementation measure, the individual assessment merits the attention and coordinated dedication of policymakers, state officials and professional service providers.

In response to these challenges, the project CREW (Contribute to Reinforce and Enhance the rights of children who are suspects or accused persons in criminal proceedings) set out to contribute to strengthening the rights of children in contact with the criminal justice system as suspects or accused persons. The project was developed and implemented by Defence for Children International – Italy in partnership with the Department for Juvenile and Community Justice of the Ministry of Justice, and with co-funding from the European Commission.

CREW was implemented as a multi-step consultative process to gather and analyse data, expertise and hands-on experience from a range of state and non-state actors, as well as children and young people, on the status and quality of implementation of the Directive in Italy. The project activities included the administration of a survey questionnaire in all 29 judicial districts, consultations of stakeholders and adolescents in 3 regions and 6 cities (north, centre and south of Italy), as well as a consultative process with an interagency and multidisciplinary Round Table.

Throughout Italy, the consultations involved more than 60 officials and professionals, as well as 40 adolescents and young adults aged between 14 and 23 years, who had hands-on experience having been in contact with the justice system as suspects or accused persons in criminal proceedings. The consultations were important to hear the knowledge, views and experience of officials and professionals working in the juvenile justice system in Italy,

as well as children and young people, regarding the individual assessment, examples of practice, critical observations, as well as recommendations and proposals for action.

Based on these activities, DCI Italy and the Department for Juvenile and Community Justice elaborated a data report on the survey findings, a policy paper, a checklist for officials and professionals working in this field, as well as a mapping of existing methods for the individual

assessment. These materials have substantially informed the development of this methodology.⁸

The project is part of a long-standing collaboration between DCI Italy and the Office II of the Department for Juvenile and Community Justice of the Italian Ministry of Justice aimed at promoting the rights of the child in the justice system. An interagency and multidisciplinary Round Table of leading actors and experts from different judicial districts was established and chaired by the Department of Juvenile and Community Justice.⁹ After an in-depth analysis of the status of implementation of the Directive, the Round Table concluded that there is an urgent need to reduce the existing gap between legal standards and

their implementation in practice, and to promote comparable standards of procedure and practice throughout the country.¹⁰ In view of these considerations, the Department for Juvenile and Community Justice committed itself to leading a national process towards this objective.

This methodology aspires to systematise legal provisions on the individual assessment of children who are suspects or accused persons in criminal proceedings and, combined with examples of practice, provide orientation to officials and professionals involved in the individual assessment of children who are suspects or accused persons in criminal proceedings in Italy. In particular, it aims at:

- reiterating the principles of child-friendly justice and main elements of the legal framework setting out the rights of the children who are suspects or accused persons in criminal proceedings;
- introducing key considerations for a child rights-based approach to the individual assessment;

⁸ For further information on the project CREW, see the website of Defence for Children International – Italy at <https://www.defenceforchildren.it/it/news-208/crew>.

⁹ The interagency and multidisciplinary Round Table was set up with the participation of the Directorate-General for Personnel, Resources and the Implementation of Juvenile Court Orders (DGPRAM II), Judges and Juvenile Prosecutors, Directors of Juvenile Penal Institutes (IPM) and Juvenile Justice Centres (CGM), professors from the University of Rome La Sapienza and the University of Genoa, as well as representatives of the Italian National Independent Authority for Childhood and Adolescence, the judicial social services (USSM), the National Union of Juvenile Chambers, the Milan Juvenile Chamber, the National Council of Social Workers (CNOAS), the Genoa Juvenile Magistrates Association and the Italian Association for Juvenile and Family Affairs. The Round Table was coordinated by the Office II of the Department of Juvenile and Community Justice of the Italian Ministry of Justice.

¹⁰ Ministry of Justice, Department for Juvenile and Community Justice, Defence for Children International – Italy, *CREW – Contributing to reinforcing and enhancing the rights of children who are suspects or accused persons in criminal proceedings*, Policy Paper, 2022.

- providing a step-by-step overview of the individual assessment with specific consideration to useful assessment tools and methods, concrete examples for the management of risks for children in criminal proceedings, and approaches for interagency and multidisciplinary cooperation;
- sharing examples of practice of the individual assessment in different Italian judicial districts;
- providing orientation on general measures to support officials and professionals in conducting the individual assessment, such as access to information, support and training.

This methodology addresses the following main themes:

- **Chapter 2** provides a brief overview of the state of the art of the individual assessment in Italy.
- **Chapter 3** introduces the rights of the child as the main guiding principles for the individual assessment of child suspects and accused persons in the criminal justice system.
- **Chapter 4** explores step by step how the individual assessment contributes to ensuring that the justice system operates in accordance with the law, with due consideration to the rights of the child and the elements and principles of child-friendly justice.
- **Chapter 5** concludes with considerations regarding general implementation measures, in particular interagency and multidisciplinary cooperation and the training of professionals.

DEFINITION



This methodology uses the term “child” in accordance with the definition of a child as any person under 18 years of age (UN Convention on the Rights of the Child), considering that the age of criminal responsibility in Italy is 14 years¹¹: Children who are in contact with the juvenile justice system as suspects or accused persons are therefore in the age group of 14 to 17 years. The Italian Law D.P.R. 488/1988 (Article 3) provides that the Courts for Minors are responsible for criminal offences committed by children even where young adults are concerned as long as they were under 18 years old when committing the criminal offence and have not yet reached the age of 25 years.

¹¹ Italy, Criminal Code, Article 97.

THE INDIVIDUAL ASSESSMENT IN ITALY: REGULATION, PRACTICE AND PROPOSALS FOR ACTION

The Directive EU 2016/800 leaves a wide margin of discretion to Member States in implementing the individual assessment in the national justice system and in adapting the assessment process to the specific situation of the child and the circumstances of the case. In Italy, the Ministry of Justice is the lead authority for juvenile justice at national level, whereas 29 judicial districts are responsible for the administration of justice in the decentralised state administration.¹²

The Juvenile Criminal Procedure Code (D.P.R. 448/1998) regulates the individual assessment primarily under Article 9. It tasks the judicial authority, i.e. the public prosecutor and the judge, to assess the

child's personal, family, social and environmental conditions and resources to determine the child's degree and sense of criminal responsibility, to evaluate the social relevance of the offence, and to take the appropriate criminal measures and any civil measures.

The investigation shall therefore not be limited to the criminal offence, but should also clarify the circumstances of the case by assessing the direct and underlying reasons for the alleged offence, the child's living conditions, family and social context, level of education and training, and the child's behaviour before, during and after the alleged criminal offence (see Box 1).

According to recent case law, carry-

¹² In Italy, there are 26 Courts of Appeal and three detached sections, whose territorial jurisdiction is defined as a district. The Courts of Appeal connect 165 judicial sub-districts. The three detached sections of the Courts of Appeal are: Bolzano, a detached section of the Court of Appeal of Trento; Sassari of the Court of Appeal of Cagliari; Taranto of the Court of Appeal of Lecce. The territorial organisation in districts of Courts of Appeal and Court Districts differs from the Italian regions and provinces. See: Ministry of Justice, [La mappa degli UPP nei distretti](#) [The map of PPOs in the districts], last update: 31 May 2022.

ing out the individual assessment is mandatory.¹³ In accordance with the principle of least harm, this procedural instrument is considered essential to avoid or at least

limit the harmful effects associated with the child's contact with the juvenile justice system.

BOX 1: PURPOSE OF THE INDIVIDUAL ASSESSMENT UNDER ITALIAN LAW



The individual assessment shall enable the judicial authority to

- ascertain the child's degree and sense of criminal responsibility (Article 98 Penal Code)
- assess the social relevance of the criminal offence (Article 27 D.P.R. 448/88)
- take the appropriate criminal measures (Article 30 D.P.R. 448/88)
- adopt any temporary and emergency civil measures for the protection of the child (Article 32 D.P.R. 448/88).

INSTRUMENTS FOR THE INDIVIDUAL ASSESSMENT UNDER ITALIAN LAW

The Juvenile Criminal Procedure Code provides for special investigative tools for conducting the individual assessment: it authorises the judicial authorities to obtain information from persons who have had relations with the child and to hear the opinion of experts (Article 9.2 D.P.R. 448/1988).

Information from persons who have had relations or contact with the child is intended to support the judicial authorities in better understanding the child in view of his or her background, living situation and social networks.

Information or opinions from experts help to identify the child's

¹³ Italy, Constitutional Court sentence No. 46/1978, No. 128/1987, No. 78/1989, No. 182/1991, No. 143/1996, No. 109/1997. Supreme Court, Criminal Section III, 15/11/2016, No. 46356. See further: Bianchetti, R., *La personalità del minorenne: gli accertamenti esperibili e le finalità processuali* [The personality of the child: admissible assessments and procedural purposes] (art. 9, D.P.R. 22.9.1988, n. 448), in Basini, G.F., Bonilini, G., Confortini, M., *Codice di famiglia, minori e soggetti deboli, Codice commentato* [Family Code, children and vulnerable subjects, Annotated code], Tomo II, UTET, 2014, pp. 4902 ff.

needs and any vulnerabilities. They could be obtained in oral or written form from social workers, educators, psychologists, psychiatrists, criminologists, or other relevant professionals who are able to give an opinion on the child and his or her background and life situation.

The law provides that such information can be obtained “even without any formalities”. On the one hand, this provision represents an opportunity, as it can be understood as facilitating swift action and timely judicial proceedings by avoiding bureaucratic hurdles in obtaining information from various sources. On the other hand, there is a risk that an informal approach may lead to an excessive exercise of discretion by judiciary authorities, with a consequent risk of diluting standards and safeguards for the child.

The Juvenile Criminal Procedure Code also provides for the cooperation of the judicial authority with the **judicial social services** (*Uffici di Servizio Sociale per Minorenni, U.S.S.M.*) operating under the Ministry of Justice (see Box 2) and the **assistance services** of the local authorities. To this end, Article 6 provides that the judicial authority shall have recourse to these services at any stage of the proceedings. This broad provision leaves room for further specification, for instance by drawing up protocols defining the scope and purpose of cooperation and its practical arrangements. For the individual assessment, the cooperation of all these actors is essential. A methodology for individual assessment could provide practical guidance for their collaboration and clarify the specific tasks and responsibilities of each actor in the judicial district.

BOX 2: THE JUVENILE SOCIAL SERVICES (U.S.S.M.)

Established in 1962 by Law 1085, the Juvenile Social Service Office (U.S.S.M.) is responsible for working with children involved in criminal proceedings and also works in prisons. The Juvenile Social Service Offices **are a decentralised service of the Department for Juvenile and Community Justice** of the Ministry of Justice. The Department currently oversees 11 Juvenile Justice Centres with 29 associated juvenile social service branches; 22 First Reception Centres; 17 Juvenile Penal Institutions; three state-run Residen-

tial Facilities or “Communities” and six multifunctional day centres.¹⁴

The Juvenile Social Services provide assistance to children and young adults who are suspects or accused persons in criminal proceedings from the beginning of the criminal investigations through to the conclusion of the proceedings and as long as the person is in contact with the juvenile justice system. Together with the social services of local authorities, the U.S.S.M. are responsible for assessing the child’s personal, family and environmental situation and for developing, implementing and reviewing individual educational projects.¹⁵

The **main tasks** of the judicial social services are:

- collect and share information with the judicial authority about the child involved in criminal proceedings, including information about the child’s personal and family situation and social environment, to support the judicial authority’s decision-making;
- develop an individual intervention plan for each child with the aim of activating resources for the child’s growth and empowerment, support the child and his or her family in developing and implementing an educational project that meets the child’s needs, and accompany the child until he or she leaves the criminal justice system;
- develop intervention projects at all stages of the proceedings (Articles 6 and 9, precautionary measures; Article 28, custodial measures, alternative and substitute measures and security measures), ensuring continuity up to the age of twenty-five;
- review interventions in relation to the individual plan and the progress made;
- support the child throughout the criminal justice process by providing information and clarification on legal matters and proceedings;
- support and monitor the implementation of arrangements made by the judicial authority in relation to children subject to non-custodial cautions, in coordination with other juvenile justice services and services provided by local authorities;

14 Ministry of Justice, Circular No. 72676, 1996.

15 Legal references: Law No. 1085 of 16 July 1962 – Order of the Social Service Offices and establishment of the roles of the staff of the aforementioned service. Circular No. 72676 of 16 May 1996 – Organisation and technical management of the USSM. Circular No. 5351 of 17 February 2006 – Organisation and technical management of the USSM. Circular No. 1 of 12 April 2013 – Intervention model and review of the organisation and operation of the Juvenile Justice Service System. Specification No. 1 – Annex 1 to the Circular – Juvenile Justice Service Office (USSM).

- promote and carry out research and development work, including on working methods, to support the continuous development of the service and contribute to the development of social policy for adolescents, including in relation to secondary prevention, restorative justice, promoting the wellbeing of adolescents and a culture of legality.¹⁶

The national survey carried out as part of the CREW project revealed that the individual assessment is not yet systematically implemented in Italy. Although the majority of survey respondents affirmed that the individual assessment is carried out in their judicial districts, dedicated assessment tools and working protocols are not yet consistently in place. According to the survey results, only 14 of the 29 judicial districts have a methodology or protocol for the individual assessment in place (Ancona, Bari, Cagliari, Caltanissetta, Catanzaro, Florence, L'Aquila, Lecce, Milan, Naples, Potenza, Reggio Calabria, Rome and Trieste). At the same time, respondents from some of these districts stated that such a methodology was not in place. The contradictions in data could be interpreted as an indication of a limited lev-

el of knowledge or information among respondents regarding the availability of a method for the individual assessment at the district level. They show that even where a methodology exists, it does not seem to be known and used effectively by all relevant actors.

The survey revealed further that different authorities are in charge of conducting the individual assessment of child suspects and accused persons in criminal proceedings. The main authorities responsible for the assessment are social services (84%), followed by the judge (39%), an inter-agency group (24%), the prosecution services (23%) and law enforcement (6%).¹⁷ The responses show that the involvement of more than one agency or service is not uncommon. An interagency and multidisciplinary approach is in fact envisaged by the Directive EU 2016/800 (Article 7.7).

¹⁶ Ministry of Justice, Circular No. 72676, 1996.

¹⁷ Percentages refer to a total of 176 responses to this question. See Defence for Children International – Italy, CREW 2022, *Per un Sistema di giustizia child-friendly, L'attuazione dei diritti e delle garanzie procedurali delle persone minorenni indagate o imputate di reato in Italia, Report dati 2021 [Towards a child-friendly justice system, Implementation of the rights and procedural safeguards of children who are suspects or accused persons in Italy, Data Report 2021]*, 2022.

The survey results indicate the need to

- **develop methodological protocols for the individual assessment where they are not yet in place,**
- **promote the dissemination and consistent application of existing methods, and**
- **strengthen the cooperation between the judicial authority, the social services of the juvenile justice system and local municipalities and other relevant actors in the assessment process.**

PROPOSALS FOR ACTION IDENTIFIED IN THE CREW PROJECT: MAIN CONSIDERATIONS FOR A METHODOLOGY

The CREW project, in collaboration with the national interagency and multidisciplinary roundtable, identified the following main proposals for action for the 29 Italian judicial districts to ensure that an

individual assessment is carried out for each child who is a suspect or accused person in criminal investigations and proceedings, in accordance with provisions under the Directive and national law:

- ensure the competent authority or a designated interagency and multidisciplinary group responsible for the individual assessment is clearly identified and known to all relevant actors;
- regulate cooperation between the judicial authority and all relevant services such as the judicial social services under the Ministry of Justice (U.S.S.M.), the social and health care services under local authorities, as well as civil society actors and private service providers at local level;
- regulate and facilitate the close involvement of the child in the individual assessment, with all due safeguards;
- guarantee the child's access to adequate and effective information throughout the assessment process and at all stages of investigation and proceedings, in a language and manner that the child understands;
- ensure the timely initiation of the assessment at the earliest appropriate stage of the proceedings so that the findings can

inform relevant decisions and measures of each state and non-state actor involved and at every step of the proceedings;

- provide for the individual assessment to be carried out and updated with due continuity throughout the investigation and proceedings to ensure respect for the rights of the child and procedural safeguards from the moment of first contact between the child and the justice system;
- ensure appropriate coordination and communication mechanisms are in place to enable all relevant actors, such as law enforcement, the judiciary, social services and other relevant service providers, as well as the child him- or herself, to access and work effectively with the results of the assessment in accordance with the rights and the best interests of the child and in compliance with applicable legislation on the protection of personal data;
- enable the child, the child's parents or other holders of parental responsibility or guardian, as well as lawyers, to claim an individual assessment where it is not promptly initiated and to hold the responsible authorities accountable for their conduct in this regard.

These action points can guide the development of a methodology for the individual assessment, or review of existing tools and practice, and contribute to the elaboration of a dedicated protocol for cooperation of all relevant actors at the district level. A nationwide exchange of experience would be particularly useful to stimulate the cooperation of all judicial districts towards this goal and support the harmonisation of practice. In addition,

there is a need to develop and devise training on the rights of the child, principles of child-friendly justice and the individual assessment, including joint interagency and multidisciplinary training, for all relevant officials and professionals, such as judges and prosecutors, law enforcement services, lawyers, judicial social services, as well as local social, educational and health care services.

BOX 3: THE INDIVIDUAL ASSESSMENT UNDER ARTICLE 7 OF DIRECTIVE EU 2016/800 – OVERVIEW



The Directive sets out the individual assessment as a mandatory measure to be carried out for every child who is a suspect or accused person in criminal proceedings. The assessment shall take into account in particular the personality and maturity of the child, as well as the child's economic, social and family background and any vulnerability.

The individual assessment shall be carried out with the close involvement of the child and by qualified personnel, preferably through an interagency and multidisciplinary approach. Collaboration of different actors in the assessment is necessary, as different assessments need to be done, different areas of expertise are required and the results of the assessment should inform the decisions of different state actors and service providers.

The assessment should take place at the earliest appropriate stage of the proceedings and before indictment. Where an individual assessment has not been made, an indictment may still be filed, provided that this is in the child's best interests and that in any event the individual assessment is available at the beginning of the court hearing. The Directive recognises that the extent and detail of the assessment may be adapted according to the circumstances of the case, taking into account the seriousness of the alleged criminal offence and the measures that might be taken if the child is found guilty. If the circumstances of the case change, the responsible authorities have to ensure that the individual assessment is updated throughout the duration of criminal proceedings.

Why is the individual assessment important?

The individual assessment is a key element of child-friendly justice. As a method for a coordinated interagency and multidisciplinary approach and action, it aims to ensure that children who are suspects or accused persons in criminal investigations and proceedings are able to understand and follow the proceedings and participate in a meaningful way. By ensuring that procedural safeguards are sensitive to the needs and rights of the individual child, the assessment supports the child in exercising the right to a fair trial.

Guaranteeing these conditions is important to prevent that children suffer harm as a result of their contact with the justice system and to identify appropriate measures for a child found guilty of a criminal offence, to support the child's social integration and prevent re-offending. The individual

assessment not only addresses the immediate needs and rights of the child during criminal investigation and proceedings, it also facilitates coordinated planning, with the active participation of the child, and fosters trust in the justice system as a first step to invest in the child's present and future.

What is the purpose of the individual assessment?

The individual assessment shall enable the competent authorities to

- understand the circumstances of the case,
- determine the extent of the criminal responsibility of the child,
- ensure that the special needs of the child are taken into account, in particular with regard to protection, ensuring continuity of education and training, as well as social (re)integration,
- determine whether and to what extent the child would benefit from special measures and practical support during the proceedings,
- assess the appropriateness and effectiveness of any precautionary measures in respect of the child, such as decisions on provisional detention or alternative measures, and
- determine the appropriateness of a particular penalty or educational measure.

The assessment should also identify if the child has been subject to an individual assessment in the past and, if so, that assessment should be taken into account and updated.

(Directive 2016/800 Art. 7.1, 7.3, 7.4, Recitals 35, 38)

What is assessed?

Through the individual assessment, information is gathered on

- the child's personality and level of maturity,
- the child's economic, social and family background,
- any specific vulnerabilities of the child, including learning and communication difficulties or disabilities.

(Directive 2016/800 Art. 7.2 / Recital 36)

How is it carried out?

The individual assessment is carried out

- by qualified personnel,
- with the involvement of the child,
- following, as far as possible, a multidisciplinary approach, and
- involving, where appropriate, the holder of parental responsibility or another appropriate adult or professional.

(Directive 2016/800 Art. 7.7)

Whom is it for?

While the individual assessment is primarily intended to benefit the child, the information it gathers is intended for the competent authorities who make the relevant decisions in the context of criminal investigations and proceedings. The primary users of the assessment findings are therefore the prosecution services and the judge, although other competent authorities and service providers, including law enforcement, social services and educational staff, may also need information on the child to adapt their measures and services accordingly. The child's lawyer can use the results of the assessment to defend the child's rights throughout the proceedings.

THE RIGHTS AND BEST INTERESTS OF THE CHILD AS GUIDING PRINCIPLE FOR THE INDIVIDUAL ASSESSMENT: TOWARDS A RIGHTS-BASED APPROACH

The individual assessment provided for in the Directive, is the single most important tool to ensure that criminal investigations and proceedings are conducted in accordance with the rights and the best interests of the child. A rights-based approach can only be ensured, if the individual needs and vulnerabilities of the child are adequately assessed and taken into account at all stages of the proceedings, and in all measures and decisions.

Through the individual assessment, responsible personnel identify the child's needs and vulnerabilities at the earliest appropriate stage of the proceedings, to assist the competent authorities to take measures or decisions in the best interests of the child.

Some needs and vulnerabilities of the child may arise from their experience with the justice system. Inappropriate treatment during arrest, for example, could under-

mine the child's trust in the justice system and make it difficult for the child to collaborate with officials and professionals throughout the proceedings. If a child does not receive information in a language and manner that he or she understands, the child might not be able to participate effectively in the proceedings. Other needs and vulnerabilities may be related to structural or administrative issues, such as the length of proceedings or the unavailability of specific services responding to a need of the child, for instance in relation to mental health. The individual assessment should therefore aim at identifying such needs and vulnerabilities and to remediate the effects of actions or omissions that have caused them. This broad understanding qualifies the individual assessment as a *quasi* individualised monitoring and support function with a collaborative approach, as all relevant actors should be involved, with the child at the centre.

THE BEST INTERESTS OF THE CHILD AS A SUBSTANTIVE RIGHT, A FUNDAMENTAL PRINCIPLE AND RULE OF PROCEDURE

The best interests of the child is a general principle under the UN Convention on the Rights of the Child (hereafter the Convention or UNCRC). According to Article 3.1 of the Convention, the best interests of the child shall be a primary consideration in all decisions and actions concerning the child (see Box 4). The principle of the best interests of the child guides the implementation of the Convention in relation to individual children, as well as in broader legislative, policy, administrative and budgetary deci-

sions. In Italy, the Law No. 176 of 27 May 1991 provided for the ratification of the Convention and its full transposition into national law.¹⁸

The Committee on the Rights of the Child, an international body of experts mandated to monitor the progress of national governments in implementing the Convention, provided guidance on the interpretation of the best interests principle as a threefold concept: a substantive right; a fundamental, interpretive legal principle; and a rule of procedure.

- As a **substantive right**, Article 3.1 is considered directly applicable and can be invoked in court. Every child has the right to have his or her best interests assessed and made a primary consideration when different interests are to be weighed against each other to make a decision.
- As a **fundamental, interpretive legal principle**, the best interests principle provides guidance for the application of laws: where a law allows for a margin of interpretation, or where state officials have discretion in applying a specific law, the interpretation that best serves the best interests of the child shall be applied.
- As a **rule of procedure**, the principle implies that decision-making processes concerning children individually or collectively, in particular those aimed at determining the best interests of a child or a group of children, need to be transparent and explain the possible positive or negative impact of the decision on the child or a relevant group of children.¹⁹

¹⁸ Law No. 176 of 27 May 1991 on the ratification and execution of the Convention on the Rights of the Child.

¹⁹ Committee on the Rights of the Child, General Comment No. 14 (2003) on the right of the child to have his or her best interests taken as a primary consideration, [CRC/C/GC/14](#), 29 May 2013, para. 6.

The Charter of Fundamental Rights of the European Union (EU Charter) reaffirms the best interests principle in Article 24.2. According to Article 51(1), the Charter applies to EU Member States when they implement European Union law, such as the Directive EU 2016/800 (see Box 4).

On this basis, *the best interests of the child can be considered a sub-*

stantive right, a guiding principle and a rule of procedure for the criminal justice systems of EU Member States. The threefold meaning of the best interests of the child is therefore of direct relevance as a guiding principle for the individual assessment of children who are suspects or accused persons in criminal proceedings.

BOX 4: THE BEST INTERESTS OF THE CHILD IN THE UN CONVENTION ON THE RIGHTS OF THE CHILD AND THE EU CHARTER



UN Convention on the Rights of the Child, Article 3.1.

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

EU Charter, Article 24.2

In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

THE BEST INTERESTS OF THE CHILD AND THE GENERAL CHILD RIGHTS PRINCIPLES

Securing the best interests of the child in criminal investigations and proceedings requires due attention to other general principles under the Convention:

The *right to non-discrimination* (UNCRC Article 2) requires constant attention to the individual

needs and rights of the child. Preventing discrimination does not mean treating all children equally, but ensuring that the responses and services provided to a child are tailored to his or her individual needs, situation and background. In this way, a non-discriminative approach aims at ensuring that all

children enjoy equal opportunities to exercise their rights.

The **right to life, survival and development** of the child (UNCRC Article 6) refers to the right of every child to receive support for the full development of their capacities, skills and potential. From an early age, this support should assist and support the child in his or her transition to adulthood and independent life. While all children have a right to development, each child may have different needs for support to enjoy this right in practice.

The **right to be heard** (UNCRC Article 12) means that every child has the right to have his or her views heard and given due weight in accordance with the age and maturity of the child. This right applies to all decisions affecting the child, including in the family and community, at school, in relation to service provision and in the context of criminal investigations and pro-

ceedings. Children have different needs to be able to form an opinion and make their views heard, which depend not only on their age and maturity; some children may be timid, others may have hearing or speech difficulties, some children may need an interpreter. Some children may be used to forming and expressing an opinion, for others this might be more difficult. These differences require the person hearing the child to be willing and able to adapt their communication to the child's needs, to genuinely listen to what the child is saying, and to ask questions as appropriate. The right to be heard applies individually to children and collectively to groups of children and the child population more generally, so it also has a social and political dimension.

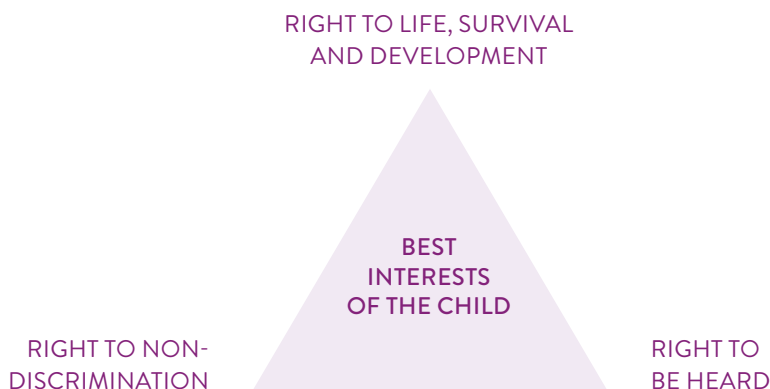


FIGURE 1: The general principles of the UN Convention on the Rights of the Child

THE UN CONVENTION ON THE RIGHTS OF THE CHILD AS A GUIDE FOR THE INDIVIDUAL ASSESSMENT

The CREW individual assessment methodology builds on the UN Convention on the Rights of the Child as the cornerstone and main reference for a child-friendly justice system that secures children's rights and is sensitive to the needs of the individual child. The Convention sets out the human rights of the child and related obligations of state authorities, as well as the rights, duties and responsibilities of private actors such as parents, guardians and private social welfare services.

Because the Convention is such a significant legal document, officials and professionals involved in the individual assessment of children can use it as a comprehensive guide for assessing a child's needs, analysing the child's situation and making decisions in accordance with the best interests of the child. As all officials and professionals working in the field of juvenile justice are bound by the Convention, it offers a common platform for them to work together in the best interests of the child.

The CREW methodology proposes the four dimensions of the UN Convention on the Rights of the Child as a guide for individual assessment:

- meeting the **primary needs** of the child to ensure the child's survival and enable the child to lead a healthy life;
- promoting the child's **development**, evolving capacities, skills and potentials and supporting the child's transition to adulthood and independent life;
- enabling and facilitating the child's **participation** in all matters affecting the child, while respecting the child's right to be heard and to have the own views taken into consideration with due weight;
- ensuring the **protection** of the child from all forms of neglect, violence and exploitation.

These four dimensions embrace all articles of the Convention and represent a widely recognised and used model for clustering the

rights of the child (see Table 1).²⁰ They can be used as a comprehensive guide for assessing and analysing a child's situation, which fluidly links an analysis of needs with an analysis of rights from a child-centred perspective.

Figure 2 represents these four dimensions and illustrates the **systemic and multidisciplinary scope of the Convention** that can guide the assessment of the child's situation, background and future prospects.

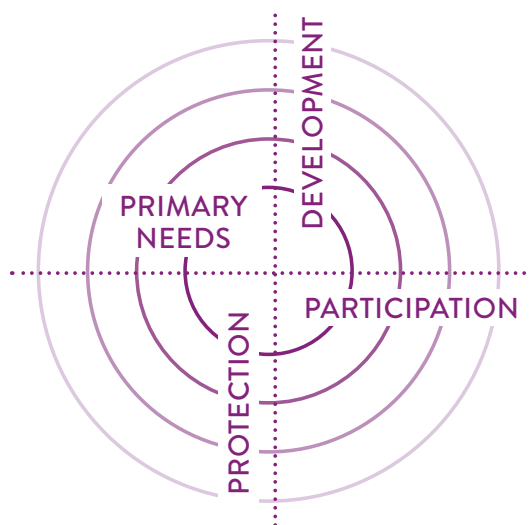


FIGURE 2

The four dimensions of the UN Convention on the Rights of the Child

The CREW methodology aims at encouraging officials and professionals involved in the individual assessment to work with such a holistic and child-centred approach to gain a more comprehensive understanding of the child's perspective. Using the four dimensions of the Convention as a guide for analysis and action helps to complement the sector-specific analysis that each official and professional carries out within their own professional mandates, with an analysis covering all four clusters

²⁰ See for instance: Theis, J. (2018), *The state of international children's rights*, Care and Protection of Children (CPC Learning Network). International Institute for Child Rights and Development (2007), 'A developmental child rights approach', *Child rights in practice: Tools for social change workbook*, British Columbia. Save the Children (2016), *Understanding four most important sets of children's rights*, 15 September 2016. UNICEF (2019), *What is the Convention on the Rights of the Child, Child rights we should all know*. UNICEF (1990), *World Declaration and Plan of Action from the World Summit for Children*.

of rights: the prosecution services may assess the child's situation mainly from a law enforcement perspective, the judge may focus on judicial analysis and review of available evidence, social services may focus on the social inquiry, family assessment and child welfare. By combining these specific professional perspectives and competences in the individual assessment, a broader child-centred analysis will be achieved.

REDUCING VULNERABILITY IN THE CRIMINAL JUSTICE SYSTEM: UNDERSTANDING RISK AND RESILIENCE FROM A RIGHTS-BASED PERSPECTIVE

Directive EU 2016/800 recognises the vulnerability of children who are suspects or accused persons in criminal proceedings. It obliges States to ensure that a child's vulnerability is adequately assessed and that specific safeguards are in place to take due account of the child's vulnerability in all measures and decisions. The main mechanism to ensure this is the individual assessment.²¹

This idea is also embedded in the Italian legal system, which is based on the consideration that the child should exit from the proceedings as soon as possible, without inter-

rupting the ongoing educational processes and his/her own growth in this delicate phase.

The Directive considers children in general as "vulnerable" and in need of special protection.²² It does not define the term but gives examples of vulnerability, such as learning disabilities or communication difficulties (recital 36) and recognises children deprived of liberty as particularly vulnerable (recital 45), in accordance with the Council of Europe Guidelines on child-friendly justice.²³

²¹ [Directive EU 2016/800](#) of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Official Journal of the European Union, L 132/1, 21 May 2016, Recitals 4, 18, 25, 36, Articles 2 and 7.

²² [Directive EU 2016/800](#) of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Official Journal of the European Union, L 132/1, 21 May 2016, Recitals 25, 48.

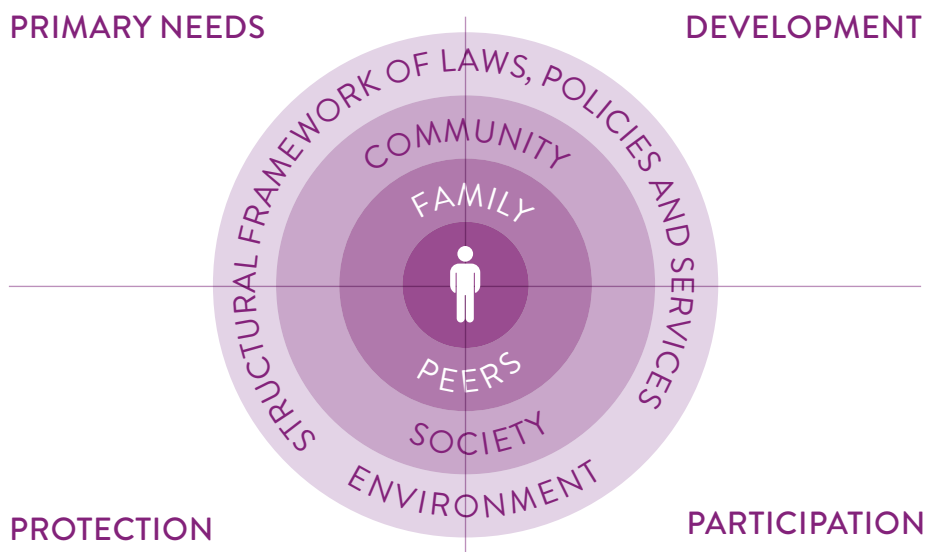
²³ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 2010, p. 24, par. 21; p. 66, par. 73.

WHAT DOES VULNERABILITY MEAN?

The way “vulnerability” is defined in different disciplines such as health and social protection, shows that it can be understood as an empowering concept, which recognises that persons generally have the capacity to resist the harmful effects of a risk. The ability to mitigate a risk is called resilience. All persons are confronted with risks in the course of their lives. Whether these risks lead to actual harm to the person depends on the person’s resources and capacities, but also on access to support and remedial measures and on the extent to which the person’s living situation and social context offers help. If personal resources are insufficient to mitigate a risk, access to support is crucial to prevent the risk from leading to real harm to the person.

Vulnerability thus depends on two main factors: risk and resilience. Risk and resilience interact dynamically and evolve as a child grows up and develops his or her skills and capacities (see Box 5).

Risk and resilience are influenced by the child’s context and “ecology”. The ecology of the child refers to all of the child’s social contacts and relationships, the child’s position in the family and community, as well as broader social, economic, legal and political issues and their impact on the child’s life and prospects. According to an ecological model, the child’s very personal risks and resilience, which may be related to the child’s physical, cognitive and health situation, character and life history, are closely intertwined with risks and resilience arising from the direct and indirect relationships, social contexts and environment. A person’s risks and resilience therefore interact at multiple levels and are cumulative: personal risks and resilience are closely intertwined with those arising from relationships, socio-political systems and the environment (see Figure 3).

**FIGURE 3**

Risk and resilience influence the child's vulnerability and interact at different levels

BOX 5: RISK, RESILIENCE AND VULNERABILITY KEY TERMS AND DEFINITIONS



Risks, barriers and obstacles:

A risk describes an event or an action that could possibly occur, but is not certain. Risks can relate to a person's health and well-being, their social relationships, professional and financial situation or their housing situation. Risks can also arise from the environment or climate, they can be related to the actions of others, to the reliability of service provision or policies. A risk can affect an individual or a group of people. Risks often arise from barriers and obstacles faced by a person.

A risk assessment can serve as the basis for risk management and mitigation measures. Ex-ante measures set in before a risky event occurs and take a preventive approach. Ex-post measures respond when a risky event

has occurred and take a remedial approach.²⁴

Resilience, protective factors and sources of support:

In physics, resilience is understood as the ability of an object or a body to withstand an external physical impact.

In relation to persons, resilience was first observed as the phenomenon that persons faced with comparable stressful situations reacted differently and did not exhibit the same adverse outcomes. Identifying and strengthening resilience factors is therefore considered important to limit the harmful effects of adversity.

Research in the fields of social protection, medicine and psychology has analysed how persons cope with adversity, such as poverty, illness or mental health issues.²⁵

In summary, according to the findings from these disciplines, resilience can be described as a person's ability to adapt positively when confronted with adversity, stress or major setbacks. This includes skills to

- cope with stress;
- cope with disruptive change;
- deal with obstacles and barriers that stand in the way of meeting personal needs or pursuing the own life project;
- mitigate risks;
- maintain a positive attitude and positive relationships;
- continue building and advancing the personal life project.

The initial narrow understanding of resilience as an individual or personal attribute has evolved into a broader, ecological understanding that recognises the interaction between internal and external factors: "Individuals take an active role in engaging with protective factors in the environment, in addition to innate assets in their personality. The effective use of protective factors and resources depends on the ability of the individual to

²⁴ Wenke, D. (2011), *Vulnerable children in Switzerland, Safeguarding the rights of every child, A discussion of a systemic approach to the implementation of the Convention on the Rights of the Child*, Zürich, Swiss Committee for UNICEF. Featherstone, B. Gupta, A., Morris and K. Warner, J. (2018), [Let's stop feeding the risk monster](#): towards a social model of child protection, *Families Relationships and Societies*, Volume 7, Number 1, March 2018, pp. 7-22.

²⁵ Alwang, J., Siegel, P.B., Jorgensen, S.L. (2001), *Vulnerability: A view from different disciplines*, Social Protection Discussion Paper No. 0115, The World Bank.

creatively interact with and use resources. For example, resilient children are able to capitalise on their assets, such as good interpersonal skills and the ability to engage others, in order to gain social and other support”.²⁶

In addition to the personal capacities and skills, the availability and accessibility of meaningful protective factors and support from the family, community, society and state are essential to help children strengthen their personal resilience. In fact, conducive circumstances are a precondition for a person to use their resilience proactively and to mobilise sources of support and protection.²⁷

Vulnerability

The vulnerability of a child refers to the limited chances of the child to fully exercise their rights under the UN Convention on the Rights of the Child. From a rights-based perspective, vulnerability depends on the number and severity of infringements or violations to which a child is or may be exposed (the risk) and the child’s resilience. Risk and resilience are understood according to an ecological model. They interact at multiple levels and are cumulative: personal risk and resilience are closely intertwined with risk and resilience arising from relationships, socio-political systems and the environment. Child vulnerability can be determined by the capability of the public administration and service providers to implement child rights standards and safeguard the human rights of the child in practice. This is understood as structural vulnerability. Structural vulnerability is related to state structures, actions or inactions and can lead to a violation of the rights of the child.²⁸

²⁶ Snider, L.M. (2006), *Psychosocial vulnerability and resilience measures for national-level monitoring of orphans and other vulnerable children: Recommendations for revision of the UNICEF Psychosocial Indicator*, UNICEF, p. 15.

²⁷ Losi, N. (2006), *Lives elsewhere, Migration and psychic malaise*, The international series of psychosocial perspectives on trauma, displaced people, and political violence, Routledge.

²⁸ Adapted from the definition of vulnerability presented in: Wenke, D. (2011), *Vulnerable children in Switzerland*, cit. Defence for Children International – Italy, Family and Childcare Centre Greece (2014), *IMPACT, Improving monitoring and protection systems against child trafficking and exploitation, Transnational analysis*, Family and Childcare Centre Greece and Defence for Children International – Italy, p. 22. Dercon, S. (2001), *Assessing vulnerability to poverty*, Oxford University. Alwang, J., Siegel, P.B., Jorgensen, S.L. (2001), *Vulnerability: A view from different disciplines*, Social Protection Discussion Paper No. 0115, The World Bank.

PRIMARY NEEDS AND SURVIVAL

Primary needs are physical and economic needs that have to be met to ensure the child's life and survival as a basis for development. Primary needs include food, clean water, clean air and a healthy environment, accommodation, health care and treatment, as well as an adequate standard of living and economic means. A child may have specific needs related to a health condition, disability or other individual factors.

Articles under the UN Convention on the Rights of the Child:

- Article 6: Right to life, survival and development
- Article 23: Rights of children with disabilities
- Article 24: Right to the highest attainable standard of health
- Article 25: Periodic review of treatment while in care
- Article 26: Right to social security
- Article 27: Right to adequate standard of living

PROTECTION

Protection refers to the child's protection from all forms of violence, exploitation and neglect. It requires consideration for a continuum of prevention, protection and empowerment measures. When children have experienced violence, exploitation or neglect, protection measures support the child's recovery, rehabilitation and (re)integration. Protection also requires access to complaint and reporting mechanisms and access to justice for children who are victims of violence or of a criminal offence.

Articles under the UN Convention on the Rights of the Child:

- Article 11: Protection from parental abduction and kidnapping
- Article 19: Protection from all forms of violence
- Article 20: Alternative care for children deprived of family environment
- Article 21: Adoption
- Article 22: Refugee children
- Article 32: Protection from child labour
- Article 33: Protection from the use of harmful drugs and from being used in drug trade
- Article 34: Protection from sexual exploitation
- Article 35: Protection from abduction, sale and trafficking
- Article 36: Protection from other forms of exploitation
- Article 37: Protection from cruel or harmful punishment

DEVELOPMENT

Development refers to all aspects of human and social development and the related needs of the child to develop personal identity, skills and capacities. This includes development through education and training, social relationships as a member of a family and community, as well as cultural and religious or spiritual factors. To have prospects for the near future and in the longer term and to be able to realise life projects are essential preconditions for development.

Articles under the UN Convention on the Rights of the Child:

- Article 5: Appropriate guidance and direction in accordance with the evolving capacities of the child
- Article 7: Right to a name, birth registration, nationality and care
- Article 8: Preservation of identity
- Article 9: Right to live with the parents
- Article 10: Right to family reunification
- Article 18: Parental responsibilities and state assistance
- Article 28: Right to education
- Article 29: Goals of education
- Article 30: Rights of children belonging to minority or indigenous groups
- Article 31: Right to leisure time, play and culture

PARTICIPATION

Participation refers to the opportunities for a child to exercise his or her skills and capacities, to feel part of a family and community, and to gradually take responsibility for his or her own action and as a member of a community. Participation refers to the possibility to influence decisions that affect the child, in all areas of the child's life, including in social, economic, political, civil and cultural dimensions. It requires a child to be able to seek, receive and impart information in a language he or she understands, to form an opinion and express it freely, and to know that the own opinion matters to others, that it is heard and taken into account.

Articles under the UN Convention on the Rights of the Child:

- Article 12: Respect for the views of the child
- Article 13: Freedom of expression
- Article 14: Freedom of thought, conscience and religion
- Article 15: Freedom of association
- Article 16: Right to privacy
- Article 17: Access to information (mass media)

TABLE 1: The rights of the child in relation to survival, development, protection and participation

INDIVIDUAL ASSESSMENT: STEP BY STEP TOWARDS CHILD-FRIENDLY JUSTICE FOR EVERY CHILD

The Council of Europe guidelines on child-friendly justice set out fundamental principles and general elements of child-friendly justice. These principles and elements are further elaborated in Directive EU 2016/800 and in General Comment No. 24 (2019) of the Committee on the Rights of the Child.²⁹

This chapter explores how the individual assessment contributes to ensuring that the justice system operates in accordance with the rights of the child and the elements and principles of child-friendly justice, with particular attention to the following:

- best interests of the child
- participation
- information and advice
- dignity
- safety and special prevention and protection measures
- protection of private and family life
- protection from discrimination
- legal representation
- alternative measures and deprivation of liberty as a measure of last resort.

²⁹ Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, 2010. Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, [CRC/C/GC/24](#). [Directive EU 2016/800](#) of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Official Journal of the European Union, L 132/1, 21 May 2016.

Continuous attention should be paid to these issues throughout criminal investigations and proceedings until a sustainable solution for the child has been identified and implemented, in accordance with the rights and best interests of the child. The step-by-step approach aims at strengthening the respect for the rights and best interests of children who are suspects or accused persons in crimi-

nal proceedings. Securing respect for each principle is necessary in a rights-based and child-centred justice system. The steps are not intended to be chronological and the orientation provided in this chapter is not considered exhaustive. In practice, the individual situation of the child and the circumstances of the case should always be considered.

5.1. BEST INTERESTS OF THE CHILD

Under international and European standards, the best interests of the child is a substantive right of the child and a fundamental principle of child-friendly justice.³⁰ It has implications for the conduct of proceed-

ings, decision-making, casework and planning of measures.

The Committee on the Rights of the Child explains in its General Comment No. 24 (2019) on children's rights in the child justice system that

*“ the reaction to an offence should always be proportionate not only to the circumstances and the gravity of the offence, but also to the personal circumstances (age, lesser culpability, circumstances and needs, including, if appropriate, the mental health needs of the child), as well as to the various and particularly long term needs of the society. A strictly punitive approach is not in accordance with the principles of child justice spelled out in article 40(1) of the Convention. Where serious offences are committed by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need for public safety and sanctions. Weight should be given to the child's best interests as a primary consideration as well as to the need to promote the child's reintegration into society”.*³¹

³⁰ See: Council of Europe, [Guidelines](#) of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010, Chapter III, p. 18.

³¹ Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, [CRC/C/GC/24](#), par. 76.

The European Court of Human Rights has repeatedly underlined that criminal proceedings involving children as accused persons have to be conducted in such a way as to respect the best interests of the child. The Court considers that respect for the best interests of the child is closely linked to the effective participation of the child in the

proceedings. It held that States are obliged to ensure that a child who is accused of a criminal offence is treated with due regard to his or her age and level of maturity, as well as intellectual and emotional capacity, which is a precondition for the child to understand and participate in the proceedings.³²

CONSIDERATIONS FOR PRACTICE



Respecting the best interests principle in practice requires that competent authorities and service providers carefully assess each case

and follow an established procedure to ensure that decisions and measures are taken in accordance with the best interests of the child.

The individual assessment as an assessment of the best interests of the child

Embedding the best interests of the child in the own area of work requires officials and professionals to assess the child's **situation, background and needs** comprehensively and take the results of the assessment into account when making decisions affecting the child. In addition to the child's current situation and personal history, the best interests determination essentially aims at projecting the child's future. The aim is to ensure that the decisions and measures taken are the most appropriate to secure the rights of the child at the

present time and to promote the child's holistic development and the full and effective enjoyment of the rights recognised in the Convention throughout the childhood and as the child transitions to adulthood and independent life.

To obtain a good understanding of the child, decision-makers usually need to work with a range of **professionals** to gain a fuller picture of the child's social, economic, physical, psychological, cognitive and emotional situation, as well as any other factors relevant to the case.

³² *V. v. the United Kingdom*, 1999, ECtHR, Application No. 24888/94, para. 85-86.

Given the importance and sensitivity of such an assessment and decision-making process, the Committee on the Rights of the Child has issued guidance on the steps in a best interests determination process. These steps help to ensure that the best interests of the child are determined in a transparent and objective manner through an established procedure with specific safeguards for the child (see Box 6).

The individual assessment of a child who is a suspect or accused person in criminal proceedings could be considered essentially a **best interests determination procedure**, as it aims at ensuring that criminal investigations and proceedings are conducted with due regard to the child's specific situation and back-

ground, taking into account the circumstances of the case, and ensuring that procedural safeguards are sensitive to the needs and vulnerabilities of the individual child. Like a best interests determination procedure, the individual assessment is structured into three main phases: the assessments, the decision-making phase based on the assessments, and a follow-up phase that allows for periodic review and adjustments. The individual assessment also aims at ensuring that decisions and measures taken during the proceedings are conducive to the child's development with a longer-term perspective for the child's social integration, transition to adulthood and independent life.

BOX 6: BEST INTERESTS DETERMINATION STEPS OF THE PROCEDURE



The Committee on the Rights of the Child describes the best interests determination as an established procedure consisting of a comprehensive case assessment and decision-making process and a follow-up phase with periodic review. The Committee underlines that a best interests determination should be carried out by a multidisciplinary team of well-trained professionals.³³

1. BEST INTERESTS ASSESSMENT:

case assessment phase

The **case assessment**, also known as best interests assessment, aims at gathering and verifying data and information about the child's situation. The assessment should be conducted with due diligence, taking into account the views of the child and using, as far as possible, a multidisciplinary approach. The following criteria should be assessed:

- the child's views;
- the child's identity, including age and gender, personal history and background;
- the preservation of the family environment, taking into consideration the willingness and ability of the parents or other holders of parental responsibility to care for and meet the needs of the child, as well as the child's contact and relationships with other family members and important attachment persons;
- the care, protection and safety of the child;
- any situation of vulnerability, including any risks as well as sources of support and protection;
- the child's wellbeing;
- the child's evolving capacities and development;
- the child's health;
- the child's education.³⁴

³³ Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3, para. 1), [CRC/C/GC/14](#), 2013, para. 64.

³⁴ Committee on the Rights of the Child (2013), General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3, para. 1), [CRC/C/GC/14](#), 2013, Chapter V.A.1 and para. 44.

2. BEST INTERESTS DETERMINATION: decision-making phase

Any **decision on the best interests of a child** has to be based on the preceding case assessment. In legal proceedings, decision-makers have to balance the best interests of the child with the rights and legitimate interests of the other parties to the proceedings, while respecting procedural safeguards. In this balancing process, decision-makers are challenged to assign weight to the various factors that have been assessed and make the best interests of the child a primary consideration.

Preserving the family environment, for instance, may conflict with the need to protect the child where a family member is suspected of having been involved in the criminal offence and of having induced or exploited the child. The child's right to continuity of care and education may conflict with considerations to relocate the child to protect him or her from the harmful influence of organised criminal networks or exploiters. Specific health needs, for instance due to a chronic illness or disability, may limit the possibilities to divert the case or consider alternative measures to detention at the sentencing phase.

For the balancing of the various rights and legitimate interests in a decision-making process, the Council of Europe Guidelines on child-friendly justice provide that,

- the views of the child shall be given due weight;
- all other rights of the child, such as the right to dignity, liberty and equal treatment should be respected at all times;
- all relevant authorities should adopt a comprehensive approach to give due consideration to all the interests at stake, including the psychological and physical wellbeing and legal, social and economic interests of the child.³⁵

The Guidelines also underline that the best interests of all children involved in the same proceedings or case should be assessed and balanced separately to reconcile possible conflicting interests of the children.³⁶ This may be the case where two or more children are suspects or accused persons in the same case or where a child is investigated or prosecuted for a criminal offence against another child.

³⁵ Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, 2010, p. 18.

³⁶ Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, 2010, p. 18.

While the decision-making process should be based on the assessment of the case in hand, it has to be informed also by available evidence and scientific criteria.³⁷ To this end, decision-makers should have access to information material and practical guides, which examine key questions in light of state-of-the-art research and science. Key questions include, for instance, when to consider certain measures in the best interests of a child, such as the use of restorative justice approaches, alternative measures or deprivation of liberty, or the relocation of a child to another province or region. Evidence should further be available on the support services and approaches that are most appropriate to support the child's rehabilitation and (re)integration and prevent recidivism. This material should be updated periodically in light of new knowledge and evidence, and should be based on consultations with persons having relevant expertise and experience, including children, families, service providers and state officials.

3. FOLLOW-UP PHASE:

Review and evaluation

The best interests determination, including the relevant assessments and decisions, may need to be periodically updated, in accordance with the circumstances of the case, the child's evolving capacities and situation. This follow-up phase is best organised through a structured process of individual care and education planning. The periodic review of the plan and the evaluation of the child's situation should ensure that the child is closely involved and heard at every step and that all relevant officials and professionals collaborate in the process.

The review and evaluation should continue as long as the child is under the supervision of the state or delegated private service providers and until a sustainable solution for the child has been identified and implemented.

37 Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3, para. 1), [CRC/C/GC/14](#), 2013, para. 46, 99..

QUESTIONS FOR THE INDIVIDUAL ASSESSMENT



Among the particularly important decisions concerning the child that should be made on the basis of a best interests determination are the following:

- Are the parents prepared and willing to represent the child in all matters during the proceedings or should a guardian be appointed?
- What type of contact with the parents, other family members and any significant third persons is in the best interests of the child?
- In what way should the child be heard at the investigation stage and during the proceedings?
- Is placement of the child outside the parental home in the best interests of the child and if so, what type of placement and location would be most beneficial for the child?
- Are precautionary measures necessary in the case and if so, which?
- Is the use of a restorative justice approach in the best interests of the child, and if so, in which principle way?
- Is diversion from criminal proceedings in the best interests of the child, and if so, in which principle way?
- Is deprivation of liberty considered a measure of last resort in the specific case, in accordance with the best interests of the child, and if so, in which principle way?³⁸
- What type of services would be most appropriate to ensure respect for the rights of the child and to support the child's (re) integration?

The individual assessment may be a particular suitable method to identify responses to these and any other relevant questions in respect of the child. The assessment is a continuous measure and remains relevant throughout the proceedings, from the first contact with law enforcement and the ju-

diciary through to the sentencing and any follow-up. Specific methods and tools are essential to guide professionals through the complex assessments and decision making (see example of practice: [Framework Assessment of Children in Need](#)).

³⁸ See: Defence for Children International – Italia, [La difesa è un mio diritto](#), *Il caso delle ragazze Rom [The defence is my right, The case of Roma girls]*, 2017, p. 16.

EXAMPLES OF PRACTICE: THE FRAMEWORK ASSESSMENT OF CHILDREN IN NEED, A SOCIAL WORK METHOD TO GUIDE THE BEST INTERESTS DETERMINATION



The Framework Assessment of Children in Need (see Figure 4) is a social work method used in several European countries to guide social workers in determining the best interests of a child in care proceedings. Developed in the UK, the tool has been in use for over twenty years and has been tested and positively evaluated. It assists social workers in assessing the child's needs and providing services to strengthen his or her safety, wellbeing and development. The assessment looks at physical, psychological, emotional, cognitive and educational factors as well as the child's health and socio-economic situation, social relationships and skills. The method guides social workers in assessing how the family and the social environment affect the child's situation. It examines the parents' skills, capacities and willingness to care for the child, to understand and respond to the child's needs and to provide for a non-violent upbringing.³⁹

The method guides social workers in applying general child rights principles in their work practice, such as hearing and giving due weight to the child's views and making the child's best interests a primary consideration. It provides step-by-step guidance on the entire assessment process, including information gathering, analysis and decision-making in a case. The method also assists social workers in collaborating with other service providers and relevant state officials as it clarifies the roles and responsibilities of different services and agencies involved.

³⁹ UK: Department of Health, Department for Education and Employment, Home Office, *Framework for the Assessment of Children in Need and their Families*, 2000. HM Government, *Working Together to Safeguard Children, A guide to inter-agency working to safeguard and promote the welfare of children*, 2015. Sweden: Socialstyrelsen, *Child Welfare in a State of Change, Final report from the BBIC project*, 2012.

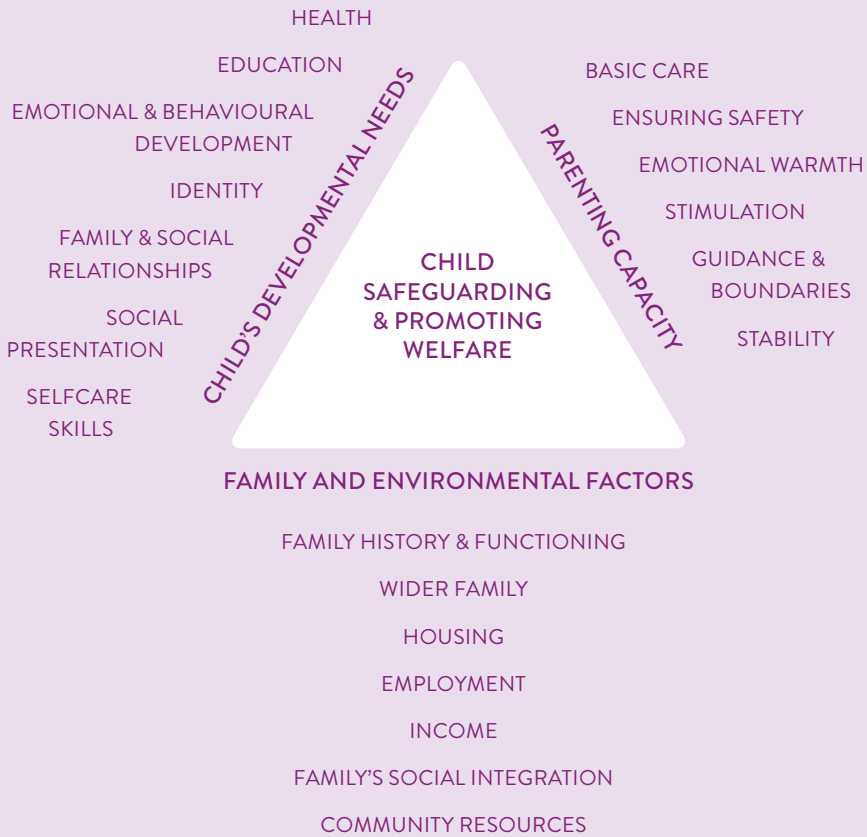


FIGURE 4: Framework assessment of children in need.⁴⁰

⁴⁰ Source: HM Government, *Working Together to Safeguard Children*, A guide to inter-agency working to safeguard and promote the welfare of children, 2015, p. 22.

5.2. PARTICIPATION

To be heard and to participate in the proceedings is a human right of the child and a fundamental principle of child-friendly justice.

The Committee on the Rights of the Child underlines that children who are considered criminally responsible as a general rule should be considered also capable and competent to participate in all stages of the proceedings concerning them.⁴¹ As a principle of child-friendly justice, children should be considered and treated as full rights-bearers and supported in exercising their

rights in a manner that takes into account their capacity to form their own views, as well as the circumstances of the case.⁴²

Children may need support, however, to exercise their right to participate. They may have limited understanding of criminal investigations and proceedings, of their own role and rights in the proceedings, and of the implications for their present and future. They may feel intimidated by the formality of places, measures and communication.



The European Court of Human Rights has repeatedly underlined that States are obliged to ensure that a child who is accused of a criminal offence is treated with due respect for the child's age and level of maturity and intellectual and emotional capacities. Measures should be taken to support the child in understanding and participating in the proceedings.⁴³

Treating the child as an active participant in the proceedings and ensuring the child understands and feels the importance of their own participation can help the child to gain trust and confidence in the justice system, to respect the different actors involved and their decisions and feel respected by them. These are all preconditions for the successful rehabilitation and (re)integration process of the child. Active participation can strengthen the child's sense of responsibility, autonomy and self-confidence, and support the child in the development of their

⁴¹ Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, [CRC/C/GC/24](#), par. 46.

⁴² Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 2010, pp. 17-18.

⁴³ [V. v. the United Kingdom](#), 1999, ECtHR, Application No. 24888/94, para. 85-86.

evolving capacities and skills in the transition to adulthood and independent life.⁴⁴

CONSIDERATIONS FOR PRACTICE



To enable the child's effective participation, it is necessary to go beyond the mere presence of the child in the proceedings. The conditions for the child's participation have to be supportive and friendly, enabling and encouraging the child to participate and express his or her views freely. Considerations for making the proceedings child-friendly concern the location and environment, treatment that is consistent with the child's dignity, and communication in a language and manner that the child understands. The right to be heard has to be respected by all actors and at all stages of the proceedings, including pre-trial investigations and hearings, at all stages of adjudication and disposition and throughout the implementation of measures. Officials and professionals who hear the child should be willing and able to genuinely listen to the child and take his or her views into account, in particular law enforcement officers, prosecu-

tors and judges, as well as service providers.⁴⁵

Officials and professionals involved in juvenile justice should be systematically trained in a communication that is sensitive to the needs of children. Involving children in the training of officials and professionals can greatly enhance the learning experience (see example of practice: Youthlab).

The case law of the European Court for Human Rights clarifies that state authorities shall treat the child with due regard to his or her capacities and any vulnerabilities from the time of first contact and as soon as the child becomes involved in criminal investigations. In particular, the authorities shall take measures to reduce the child's sense of intimidation and inhibition and to ensure the child understands the proceedings, what is at stake, the implications of any penalty, and his or her rights, including the right to remain silent and the rights of defence.⁴⁶

⁴⁴ Beneitez, M.J.B., Dumortier, E., Why children obey the law: rethinking juvenile justice and children's rights in Europe through procedural justice, *Youth Justice*, Vol. 18(1) 34-512018. Limantė, A., Vaičiūnienė, R. and Apolevič, J., Child-friendly legal aid and individual assessment of children in conflict with the law: building the basis for effective participation, *International Journal of Environmental Research and Public Health*, 2022, p. 2.

⁴⁵ Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, *CRC/C/GC/12*, 20 July 2009, para. 42, 58, 60.

⁴⁶ Güveç, V. *Turkey, 2009*, ECtHR, Application No. 70337/01, para. 123-124. *Blokhin, V. Russia, 2016*, ECtHR, Application No. 47152/06, para. 195.

In practice, it may be necessary for law enforcement officers and judicial authorities to collaborate with social workers, child-psychologists, interpreters and other specialists to facilitate contact and communication with the child and to assess the child's needs regarding communication and participation.

At all stages of the proceedings, the child has the right to be heard directly and not only through a representative or lawyer. The child

also has the right to remain silent. Where this is the case, the child should not suffer any adverse consequences if he or she chooses not to testify.⁴⁷ Judicial authorities, law enforcement agencies and service providers should investigate, however, whether the child's decision to remain silent is related to any external factors or third parties exerting pressure on the child and how the child can be protected from such influence.

EXAMPLE OF PRACTICE: YOUTHLAB⁴⁸



The moment an adolescent is arrested or deprived of liberty, he or she enters a new world, run by adults who speak a language that may at times be unfamiliar and incomprehensible. This system absorbs the young person, imposing its logic, rhythms and language on him or her. This experience often causes alienation and disorientation for young people, with a consequent negative impact on their well-being, on their future contacts with justice professionals, on their perception of the fairness of the procedures and on their ability to participate. This perception stands in stark contrast to the rehabilitative and re-educational aims of juvenile justice. The process of alienation is largely caused by language and modes of communication, strictly legal and instrumental, which can be very distant from the young person and different from what the young person knows and understands.

In order to foster engagement, which is essential in the rehabilitation process, it is necessary to improve the language and communication skills of justice professionals who emphasise the respect and participation of young people and provide them with the means to increase control of their case and their lives.

⁴⁷ Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, [CRC/C/GC/12](#), 20 July 2009, para. 45.

⁴⁸ Defence for Children International – Italy, [Youthlab](#), 2022.

The Youthlab model originated in the Netherlands where it has already been tested by Young In Prison to train magistrates and prosecutors. In Italy, Defence for Children International - Italy led the project from 2020-2022, in close cooperation with the Department of Juvenile and Community Justice of the Italian Ministry of Justice, the National Council of Social Workers, the National Union of Juvenile Chambers and the Ligurian section of the Magistrates' Association. The project aims to improve the juvenile justice system and support the professionals in using language and communication for building rapport with the young people. The project aims further to promote a training model based on the participation of young people in formal training and education programmes for lawyers, prosecutors and judges.

To achieve this, a group of young people who have experienced the juvenile justice system were recruited and involved in a training process. Using a methodology based on social theatre, the young people were prepared to participate as co-trainers in the training programmes for judges and prosecutors, lawyers, social workers, educators, law enforcement officers and other relevant professionals. Subsequently, a series of training sessions were organised throughout Italy with the participation of about 110 officials and professionals working in the juvenile justice field.

The Youthlab methodology is based on youth participation models and research results on the involvement of young people in judicial proceedings, as well as on international, European and national standards, policies and guidelines on child-friendly justice. The project developed a toolkit to guide the dissemination and replication of the Youthlab approach.⁴⁹

⁴⁹ The Youthlab toolkit is available from Defence for Children International – Italy, info@defenceforchildren.it.

QUESTIONS FOR THE INDIVIDUAL ASSESSMENT



The following questions could guide the individual assessment of a child who is a suspect or accused person in criminal investigations or proceedings. If the assessment leads to a negative response or doubt, further assessment may be required to resolve any doubts and, where appropriate, to provide targeted support and remedial measures to ensure a positive response.

Child-friendly and supportive environment

- Is the place where the child is heard appropriate, supportive and friendly so that the child can express him- or herself freely?
- Is the behaviour and communication of state officials and service providers towards the child conducive to the child's effective participation?

Capacity to understand and to express views

- Does the child understand the charges against him or her, the options and relevant processes?
- Is the child able to understand what relevant officials and professionals say during investigations and in court?
- Is the child able to read and understand all written communications and documents about the investigation and proceedings?
- Is the child able to understand the statements of witnesses and to explain his or her own views?
- Does the child receive adequate support in understanding the proceedings from his or her parents, other holders of parental responsibilities or guardian, and the legal representative?
- If the child is not able to read or understand the language used in the justice system, does the child have effective assistance from a qualified interpreter, free of charge?
- Does the child receive any additional, specific assistance he or she needs to understand statements and written documents, to correct matters where necessary and to express himself or herself?

Genuine opportunity to express views

- Does the child have the opportunity to express his or her views directly?
- Does the child have the support of a qualified legal representative to express his or her views and participate in the proceedings?
- If the child chooses to remain silent, has it been ascertained that this decision is not due to any obstacles or barriers that prevent the child from expressing himself or herself?

Questioning and hearing

- Is the child assisted by a lawyer during the questioning or hearing?
- Is the child supported by a parent, other holder of parental responsibility or a guardian during the questioning or hearing?
- Is the questioning or hearing video recorded?
- Are the police officers or other investigative authorities well trained to question or hear the child?
- Does the questioning or hearing take into account the child's age and maturity and any vulnerabilities?
- Is the length of questioning or hearing appropriate to the child's age and maturity and any vulnerabilities?
- Do the officials or professionals responsible for the questioning of the child use methods and approaches appropriate to prevent coerced confessions or unreliable statements?
- In the event that the child has made a confession or self-incriminating statement, has it been ascertained that the child has done so without coercion, intimidation, other cruel or degrading treatment?

Transparent procedure

- Are the child's views and how they were heard and weighted represented clearly and transparently in the written documentation of the case?

Views of the child

- Does the child feel heard and listened to?
- Does the child consider that his or her views have been given due weight?

Obstacles and barriers to participation and remedies

- Has it been ascertained that the child is protected from any persons or factors that might intimidate the child?
- Has it been ascertained that the child is protected from any persons or factors that might prevent him or her from expressing the own views?
- Have any other obstacles or barriers preventing the child's effective participation in the proceedings been effectively identified and removed?

5.3. INFORMATION

Access to information is an important element of child-friendly justice and a precondition for the child's effective participation in criminal investigations and proceedings. The information provided should enable the child to understand the charges, the roles of the various actors in the justice system, the general conduct of the proceedings, the role and rights of the child, including procedural rights, the options available and any possible implications and consequences for

the child. Information empowers children and can help reduce their feeling of insecurity and stress during the proceedings.⁵⁰

The right to information of children differs from the right to information of an adult in contact with the justice system in two respects: the information provided to children must be child-friendly and complemented by information provided to the child's parents or other holder of parental responsibilities or guardian. Both are essential to

⁵⁰ Council of Europe, [Guidelines](#) of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010, pp. 21-22. Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, [CRC/C/GC/24](#), par. 47-48. European Union Agency for Fundamental Rights, [Children as suspects or accused persons in criminal proceedings](#), Procedural safeguards, 2022, p. 43.

enable the child's meaningful participation and representation during investigations and proceedings, taking into account the child's limited legal capacity due to young age.

In Italy, as in most European countries, the age of criminal responsibility (14 years) does not coincide with the age of majority (18 years). While a child may be considered capable of being criminally responsible for his or her actions from a certain age, the child also enjoys the special rights and protection granted by the UN Convention on the Rights of the Child. Consequently, safeguards must be put in place to ensure that children know their rights and that standards of equal process are upheld.

The UN Convention on the Rights of the Child sets out not only the rights of the child but also the rights, duties and responsibilities of parents or other holders of parental responsibility and clarifies the obligations of the State towards them. The justice system is called upon,

therefore, to interact with the child in an appropriate manner and to respect the role of holders of parental responsibility and, where appropriate, to support them in exercising their rights, duties and responsibilities. The right to information and its implications for the child's participation in the proceedings, is regulated therefore under European law for both children and holders of parental responsibility, unless the involvement of the holders of parental responsibility is not in the best interests of the child.⁵¹

The European Court of Human Rights underlines the importance of information as a procedural safeguard. It found that the failure of law enforcement authorities to inform a child suspected or accused of a criminal offence of his or her right to legal assistance and the assistance of a family member or other adult present during questioning can amount to a violation of Article 6 of the European Convention on Human Rights.⁵²

51 [Directive EU 2016/800](#) of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Official Journal of the European Union, L 132/1, 21 May 2016, Recitals 23-24, Article 5.

52 ECtHR, *Blokhin v. Russia*, No. 47152/06, 23 March 2016, para. 206.

CONSIDERATIONS FOR PRACTICE



At the district level, a special information service for children who are suspects or accused persons in criminal investigations and proceedings may be the most appropriate way to ensure systematic and reliable information of children and their parents. This service should specify who is responsible for informing children, parents and other relevant actors at the different stages of the proceedings. Ideally, information should be provided orally and in writing. Child-friendly materials are useful as they support officials and professionals in providing information to children and allow children to read and reflect on the information. Where letters of rights are used to inform children, a standardised model letter should be adapted to child-friendly language and be available in different languages. Children should have the opportunity to ask questions in the moment when they are informed and afterwards.

The provision of information should take into account any special needs

or vulnerabilities of the child, such as limited literacy or language skills, mental health issues, disabilities, or increased levels of stress or trauma due to experiences of violence. The individual assessment is important to identify the needs and vulnerabilities of the child and ensure that these are adequately addressed by all relevant officials and professionals.

The information service should guide officials and professionals on how to ascertain that the child has understood the information, for instance by asking the child if he or she has understood and to repeat what they have understood. It should offer access to specialised support, such as interpreters, and ensure such support is available in a timely manner. A telephone or internet-based interpretation service could be considered, especially where interpretation is needed into rare languages and if there are particular concerns about the protection of the child's privacy, personal data and safety.

Check-lists can be helpful to ensure information provided is objective, complete and updated at different stages of the proceedings. The information service should determine how to document the provision of information at each stage of the process for increased transparency.

The child shall be informed directly and information has to be provided also to the child's parents or other

holders of parental responsibilities, or the guardian, as well as the child's legal representative. Infor-

mation provided to children should be child-friendly, i.e. it should be provided in a language and manner that the child understands, that is adapted to the child's age and maturity and sensitive to the child's gender and culture.⁵³

Responsible officials and professionals should ascertain that the child's parents or other holders of parental responsibilities are able and willing to help their child access information. Parents with limited cognitive, literacy or communication skills may need support themselves, as they may have difficulties in accessing and understanding relevant information and conveying it to their child.

In some cases, parents or other holders of parental responsibility or third persons may have a vested interest in the outcomes of the proceedings, for instance

if they have been involved in the criminal offence, if the child has been exploited, coerced or instigated to commit an offence, or if organised criminal groups are involved. If there is a risk that the child receives biased information from parents or other holders of parental responsibilities, the appointment of a guardian may be in the best interests of the child. In addition, the child's lawyer has a particular important role in identifying and rectifying any bias or undue influence and securing the child's right to information.⁵⁴

Legal advice and counselling services, as well as independent institutions such as Ombudspersons and other human rights structures, also play an important role in providing information to children, individually or collectively.

⁵³ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 2010, pp. 21-22; para. 25, p. 25; p. 26, paras 28, 29; p. 27, para 41; p. 28, para 48; pp. 31-32, paras 75, 77.

⁵⁴ [Directive EU 2016/800](#) of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Official Journal of the European Union, L 132/1, 21 May 2016, Recitals 23-24, Article 5.

EXAMPLES OF PRACTICE: CHARTER OF RIGHTS AND RESPONSIBILITIES OF CHILDREN IN CONTACT WITH JUVENILE JUSTICE SERVICES



The 'Charter of rights and responsibilities of children in contact with juvenile justice services' provides child-friendly information in nine languages (Arabic, Chinese, English, French, German, Italian, Romanian, Russian, Spanish). It is available from the website of the Ministry of Justice and explains in simple terms the tasks and objectives of the juvenile justice services, the different forms of support they provide, as well as the rules of juvenile justice institutions and, above all, the rights and responsibilities of children. The Charter includes a glossary of key words.⁵⁵

The Charter is a useful child-friendly information material, which could be handed out and explained to the child at the first contact with the juvenile justice system and combined with digital information services. In practice, however, as shown by the national survey conducted as part of the CREW project, the Charter has not yet been effectively disseminated to all 29 Italian judicial districts. State authorities and professionals do not systematically use child-friendly material to inform children who are suspects or accused persons in criminal proceedings.⁵⁶

The Charter could be strengthened if enriched with infographics, conceptual maps and a visual presentation to make it even more accessible, readable and understandable for children and a specific version should be made accessible to children with physical and sensory disabilities.

⁵⁵ The Charter was developed in the context of the project CO.S.MI. - Comunicazione sociale e minori stranieri nei sistemi di Giustizia europei (Social communication and foreign minors in European justice systems) led by the Italian Ministry of Justice, General Directorate for the Implementation of Judicial Measures, in collaboration with the Psychoanalytical Institute for Social Research (IPRS) and Casa San Benedetto – Istituto Don Calabria, with EU co-funding under the Fund for the Integration of Third Country Nationals 2007-2013. Ministero della Giustizia, Dipartimento Giustizia Minorile, Ministero dell'Interno, Dipartimento per le Libertà Civili e l'Immigrazione, Istituto Psicoanalitico per le Ricerche Sociali, Casa San Benedetto, Istituto don Calabria, [La Carta dei diritti e dei doveri dei minorenni che incontrano i servizi minorili della giustizia](#), 2014. Centro Europeo di Studi di Nisida, [Carta dei Diritti](#).

⁵⁶ See CREW Report Data: Defence for Children International – Italy, CREW 2022, *Per un Sistema di giustizia child-friendly, L'attuazione dei diritti e delle garanzie procedurali delle persone minorenni indagate o imputate di reato in Italia*, [Report dati 2021](#) [Towards a child-friendly justice system, Implementation of the rights and procedural safeguards of children who are suspects or accused persons in Italy, Data Report 2021], 2022.

EXAMPLES OF PRACTICE: A LITTLE MAP FOR PATHWAYS THROUGH THE JUVENILE JUSTICE SYSTEM



The Juvenile Justice Centres of Piedmont, Valle d'Aosta and Liguria, together with the operators of the Juvenile Services of Genoa, have developed a guide for children coming into contact with the criminal justice system.⁵⁷ In simple language, the guide explains criminal proceedings and the child's role in it, clarifies key terms such as precautionary measures, abbreviated trial, probation, prescription and many others. The little map aims to give the child a tool for orientation, clarify the role of different actors and services and reduce the negative impact of the proceedings on the child as much as possible. The guide follows the pathway through the juvenile justice system step by step from the first contact with the police and the arrest and charge without arrest, the trial, precautionary measures, prescription, stay at home, community placement or custody in prison, hearings and courtrooms, and probation. In addition, it offers a useful tool for practitioners and provides them with support in communicating and informing children who are suspects or accused person in criminal proceedings.

QUESTIONS FOR THE INDIVIDUAL



⁵⁷ Carbone, P., Petraroli, R., *Piccola mappa per percorsi penali minorili, Strumenti per orientarsi [A little map for pathways through the juvenile justice system, Tools for orientation]*, Ministero della Giustizia, Dipartimento per la Giustizia Minorile, Centro Giustizia Minorile del Piemonte, Valle d'Aosta e Liguria [Ministry of Justice, Department for Juvenile Justice, Juvenile Justice Centres of Piedmont, Valle d'Aosta and Liguria].

ASSESSMENT

The following questions could be used as a guide for the individual assessment of children who are suspects or accused persons in criminal investigations or proceedings. If the assessment leads to a negative response or doubt, further assessment may be required to resolve any doubts and, where appropriate, to provide targeted support and remedial measures to ensure a positive response.

Information about the child's status as a suspect or accused person in criminal proceedings

- Has the child been informed promptly that he or she is a suspect or accused person and of the charges against him or her?
- When informed of these facts, was the child also informed of his or her right to
 - have the parent or other holder or parental responsibility informed;
 - remain silent;
 - be assisted by a lawyer;
 - protection of privacy;
 - be accompanied by the parent or other holder of parental responsibility or another appropriate adult in the proceedings, where this is in the best interests of the child; and
 - legal aid and how to access it?
- Has the child been informed of his or her right to
 - an individual assessment?
 - be accompanied by the parent or other holder of parental responsibility at court hearings?
 - appear in person at trial?
 - effective remedies?

Information about the criminal investigations and proceedings

- Has the child been informed about
 - the steps of the proceedings?
 - the different persons the child will meet during the proceedings?
 - the own role in the proceedings?
 - the different options available and possible consequences for the child?
 - the time and place of hearings and court proceedings?
 - the progress and outcome of the proceedings?

Provision of child-friendly information

- Has the child been provided with oral information?
- Has the child received relevant child-friendly material to support the oral information?
- Has information been provided in
 - simple and accessible language, taking into account the child's age and maturity?
 - a manner that is sensitive to the child's gender and culture?
 - a manner that is sensitive to any specific needs or vulnerabilities of the child?
- Is the child able to repeat and explain the information in his or her own words?
- Have the child's parents or other holders of parental responsibility or guardian been provided with information?
- Have the child's parents or other holders of parental responsibility received support in understanding the information and conveying it to their child?
- Has the provision of information to the child and the holder of parental responsibility or guardian been documented?

Letter of Rights

- Has the child received a letter of rights in child-friendly language?
- Does the letter of rights contain information on the rights set out by Directive EU 2016/800?
- Is the letter of rights written in a language that the child is able to read?
- Has the child received appropriate assistance in reading and understanding the letter of rights?

Deprivation of liberty

- Has the child been informed about
 - the reasons for the deprivation of liberty?
 - the right to limitation of deprivation of liberty and the right to periodic review of detention?

- the right to the use of alternative measures?
- the right to a medical examination and medical assistance while deprived of liberty?
- the right to specific treatment during deprivation of liberty?

Support services and protective measures

- Has the child been informed about available support mechanisms for his or her participation in the judicial or non-judicial proceedings?
- Has the child been informed about available protection measures?

Complaint mechanism

- Has the child been informed about whom to contact with a complaint against any inappropriate conduct or behaviour of officials or professionals in the juvenile justice system?
- Is there an independent and confidential complaint mechanism to support children in such cases?

Access to effective remedy

- Has the child been informed of the right to effective judicial review and appeal?
- Has the child been informed about how to access legal aid and representation to seek remedy?

5.4. DIGNITY

Respect for the inviolability of the inherent dignity of the child is a fundamental human right and a principle of child-friendly justice.⁵⁸

Treating child suspects or accused persons in criminal proceedings in accordance with the rights and principles of the UN Convention on the Rights of the Child helps to reduce

the number of crimes committed by children. Promoting the child's sense of dignity and worth is therefore not only a central element of a child rights-based approach, it represents also a meaningful investment in the best interests of the child and the society.⁵⁹

CONSIDERATIONS FOR PRACTICE



Promoting the child's sense of dignity and worth can be best achieved when the rights of the child are guiding the actions and communication of officials and professionals in the juvenile justice system. In practice, this means treating every child as a unique and valuable person with care, sensitivity, fairness and respect, giving due consideration to the child's personal situation, well-being and needs. Hearing the child's story, genuine listening, and taking the child's views into account is essential for building a working relationship with the child based on dignity. In addition, securing the child's

right to privacy is as fundamental as safeguarding the child's physical and psychological integrity and ensuring that children are never subjected to torture or inhuman or degrading treatment or punishment.⁶⁰

Respect for the child's sense of dignity and worth is an overarching concern for all interactions with the child, the child's parents or other holders of parental responsibility, family and social context. This principle has to be respected from the first moment of contact between the child and the justice system until the conclusion of the proceedings, including in sensitive

⁵⁸ Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, 2010, pp. 18-19. Constitution of Italy, Articles 2 and 3.

⁵⁹ Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, [CRC/C/GC/24](#), par. 2-3.

⁶⁰ Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, 2010, pp. 18-19. United Nations, *UN approach to justice for children*, Guidance note of the Secretary General, 2008, p. 3. United Nations Economic and Social Council, *Guidelines on justice in matters involving child victims and witnesses of crime*, [ECOSOC Resolution 2005/20, 2005](#), Principle 8(a).

situations such as arrest, searches and intimate searches, and deprivation of liberty. In all institutional contexts where children are accommodated or detained, positive discipline approaches are of particular importance to prevent cruel or degrading treatment and punishment of children.

Children in conflict with the law may not have had a chance to develop a sense of their own dignity and worth, or the dignity and worth of others, particularly if a child has experienced neglect, violence or exploitation in the family or community. The individual assessment should help to understand if a child needs support in this regard.

Respect for the child's dignity may be jeopardised where the age of a child is uncertain, which may be the case for migrant and refugee children. If a child is not in possession of any identity documents and the authorities have serious doubts about the child's age or suspect that he or she may

be over 18, the child should be presumed to be a child and treated as a child, in accordance with the principles of the benefit of doubt and the presumption of minor age. Where necessary, the age of the child should be assessed through an age assessment interview and a review of documentary evidence, in accordance with applicable law and policy.⁶¹ Age assessment methods must respect the dignity and physical integrity of the child at all times; recourse to medical examinations that interfere with the physical integrity of the child, such as methods employing x-rays or other radiation or ionisation, should be a measure of last resort and be carried out with the least invasive methods, taking into consideration the margin of error of the specific method.⁶²

⁶¹ With regard to young migrants and refugees whose age is uncertain, the Italian Law 47/2017 on the protection of unaccompanied children applies: [Law No. 47 of 7 April 2017](#). See also: Defence for Children International – Italy, Child Rights Helpdesk Assessment, p. 134.

⁶² Council of Europe, [Age assessment for children in migration, a human rights-based approach](#), 2019. Council of Europe, Recommendation [CM/Rec\(2022\)22](#) of the Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration and its Explanatory Memorandum, 2022. [Directive EU 2016/800](#) of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Official Journal of the European Union, L 132/1, 21 May 2016, Recital 13, Article 3. Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, [CRC/C/GC/24](#), par. 24, 33-34.

QUESTIONS FOR THE INDIVIDUAL ASSESSMENT



The following questions could be used as a guide for the individual assessment of children who are suspects or accused persons in criminal investigations or proceedings. If the assessment leads to a negative response or doubt, further assessment may be required to resolve any doubts and, where appropriate, to provide targeted support and remedial measures to ensure a positive response.

- Does the child have a well-developed sense of dignity and worth?
- Does the child understand and respect the sense of dignity and worth of others?
- Has the treatment in contact with the criminal justice system helped the child to uphold and positively develop the own sense of dignity and worth?
- Has the child been treated with respect for his or her sense of dignity and worth in the phase of
 - arrest,
 - questioning, hearings or interviews,
 - searches, including any intimate searches,
 - deprivation of liberty,
 - any transfers between facilities or institutions, or to the court,
 - stays at any facility or institution,
 - deprivation of liberty.
- Has the child been informed about the reasons and legal grounds for any searches, including any intimate searches?
- Was the search conducted by a person of the same sex as the child or, where appropriate, such as in the case of intersex or transgender children, did the child have the possibility to choose the sex of the person conducting the search?
- Does the facility or institution where the child is staying ensure that positive discipline approaches are followed, in accordance with the child's dignity and worth?

5.5. PROTECTION OF PRIVATE AND FAMILY LIFE

The protection of personal data, privacy and family life is a fundamental right of children who are suspects or accused persons in criminal proceedings and an important principle of child-friendly justice. Guaranteeing the privacy of children during criminal investigations and proceedings is necessary to ensure respect

for the dignity of the child and to support the child's social (re)integration. A breach of privacy, especially in media reporting, causes harm to the child, which can be irreparable.⁶³ In Italy, several national laws regulate the protection of personal data of children in contact with the juvenile justice system (see Box 7).

BOX 7: DATA PROTECTION IN ITALIAN LAW

In Italy, data protection is regulated by administrative law rooted in EU law, as well as by criminal law provisions. Legislative Decree No. 101 of 10 August 2018 adapted the Personal Data Protection Code (Legislative Decree No. 196 of 30 June 2003) to the provisions of the General Data Protection Regulation (Regulation (EU) 2016/679).

In addition, the following laws are relevant for the protection of personal data of children in contact with the juvenile justice system:

⁶³ [Directive EU 2016/800](#) of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Official Journal of the European Union, L 132/1, 21 May 2016, Article 14, Recitals 56, 66. Regulation EU 2016/679, EU General Data Protection Regulation (GDPR). UN Convention on the Rights of the Child, Article 16. Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108). European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 6. Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010, p. 22, 82. Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, CRC/C/GC/24, par. 66-71.

Juvenile Criminal Procedure Code (Presidential Decree 448/88), Article 13: Prohibition of publication and disclosure

1. The publication and dissemination, by whatever means, of news or images likely to enable the identification of the child involved in proceedings shall be prohibited.
2. Paragraph 1 shall not apply after the commencement of the trial if the case is heard in open court.

Legislative Decree 101/2018, Article 50: News or images of children

The prohibition of publication and dissemination of news or images suitable to enable the identification of a child (Article 13 of Presidential Decree No. 448/88) shall be observed if a child is involved in judicial proceedings in any capacity, also in other than criminal matters. Infringement of this prohibition is punishable pursuant to Article 684 of the Criminal Code.

CONSIDERATIONS FOR PRACTICE



As a general rule, personal data of the child may only be gathered, processed and shared in accordance with national law. Special safeguards should be in place for the gathering, processing and sharing of sensitive data, such as personal data on criminal convictions, sexual identity or orientation, or data on the child's health status. National law defines, which data categories are considered sensitive.

In the context of criminal investigations and proceedings involving children as suspects or accused persons, special measures have to be taken to protect the child's data and privacy. Access to files and records should be restricted to au-

thorised personnel, and the child's identity, personal data, images and audio or video recordings should not be disclosed to the public.

Court hearings involving children should be held in camera, in the absence of the public. In practice, this requires additional considerations to ensure the child's identity is not disclosed by any written or oral announcements made in court.

Media reporting on child suspects and accused persons in criminal proceedings has to uphold the child's right to privacy and family life, in accordance with national law and the self-regulation of media. Media reports have to ensure that descriptions of the child or the

child's family do not allow indirect disclosure of the child's identity, for instance by referring to a child in an anonymous way or using a pseudonym, disguising voices and images (see example of practice: Charter of Treviso).

QUESTIONS FOR THE INDIVIDUAL ASSESSMENT



The following questions could be used as a guide for the individual assessment of children who are suspects or accused persons in criminal investigations or proceedings. If the assessment leads to a negative response or doubt, further assessment may be required to resolve any doubts and, where appropriate, to provide targeted support and remedial measures to ensure a positive response.

- Is the child aware of his or her right to privacy and family life?
- Is the child aware of their right to data protection?
- Does the child feel that his or her rights to protection of personal data, privacy and family life are respected?
- Is the hearing of the child conducted behind closed doors in camera?
- Is the child's right to privacy respected in all written and oral communication and announcements in court?
- Are court files and records relating to children kept strictly confidential and closed to third parties, except for those directly involved in the investigation and adjudication of the case?
- Is the child's right to privacy respected in pronouncing the verdict or sentence?
- Are case law reports anonymised to prevent disclosure of the child's identity?
- Is the child protected from being listed in any public registers of offenders?
- Does media reporting on the case respect the child's right to privacy and family life?

EXAMPLE OF PRACTICE: TREVISO CHARTER



The “[Charter of Treviso](#)” was signed on 5 October 1990 on the initiative of the National Press Federation, the Association of Journalists and *Telefono Azzurro*, a national helpline for children.⁶⁴ The three founding bodies set up an interdisciplinary working group of journalists, magistrates, academics and educators to resolve the relationship between two constitutionally guaranteed rights and responsibilities: the right to freedom of information and the right of children under 18 to protection and development, guaranteeing a proper education.

Subsequently, the Charter was amended and updated several times from 1995 to 2016, when it was included in the “Unified text of the duties of journalists” (Article 5), a harmonised deontological code for journalists.⁶⁵

The Charter refers to the UN Convention on the Rights of the Child and relevant European Conventions and reiterates the principles of the UNCRC such as the best interests of the child, the right to privacy and confidentiality, development and protection. In the Charter, the Association of Journalists and the National Press Federation underline that they are “aware that the fundamental right to information may reach its limits when it comes into conflict with the rights of persons in need of special protection. Without prejudice to the right to report facts and responsibilities, a balance must be sought, therefore, with the child’s right to a specific and superior protection of his or her psycho-physical, affective and relational integrity.”

⁶⁴ Ordine dei Giornalisti [Association of Journalists], [Carta di Treviso](#) [Charter of Treviso], 19 February 2016. See further: Autorità Garante Nazionale dell’infanzia e dell’adolescenza [National Authority for Children and Adolescents], [La tutela dei minorenni nel mondo della comunicazione](#) [Safeguarding children in the world of communication], 2017.

⁶⁵ Ordine dei Giornalisti [Association of Journalists], [Testo unico dei doveri del giornalista](#) [Unified text of the duties of journalists], 22 January 2019. Ordine dei Giornalisti [Association of Journalists], [Da oggi è in vigore il “Testo unico dei doveri del giornalista”](#) [“Unified text of the duties of journalists” in force as of today], 3 February 2016.

5.6. SAFETY AND SPECIAL PREVENTION AND PROTECTION MEASURES

Children have the right to be protected from all forms violence. This right is connected with positive obligations of States and public authorities to ensure children's safety and protection at all times and to take preventive and protective measures as necessary.⁶⁶ Safety is an important principle of

child-friendly justice. Protecting the child from any form of violence or exploitation during contact with the justice system is essential to ensure respect for the dignity of the child, foster trust in the state system and its representatives and support the child's social (re)integration.

CONSIDERATIONS FOR PRACTICE



Violence can occur in all contexts and situations and can take many different forms, such as physical, sexual, psychological or emotional violence. Ensuring the safety of children who are suspects or accused persons in criminal proceedings therefore requires continuous consideration for the child's protection during contact with the justice system, in the family and community, at school and in institutions, as well as in the digital environment (see example of practice: assessment of risk and protection factors as part of the individual assessment).

If a child is referred to out-of-home care or an institution, or deprived of liberty, the prevention of peer violence, sexual violence, and the

protection from corporal punishment and other forms of cruel and degrading treatment requires special attention.

Children who are suspects or accused persons in criminal proceedings may at the same time be victims of crime, for instance in connection with organised crime, exploitation and child trafficking (see for instance example of practice "Free to choose"). Special safeguards should be in place to identify and protect children who have been coerced or induced to commit a criminal offence.

International and European standards protect child victims of crime, in particular trafficked children, from sanctions and prosecution for offences committed as a direct

⁶⁶ UN Convention on the Rights of the Child, in particular Article 19. Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010, pp. 22-23.

consequence of their situation as victims.⁶⁷ This “non-punishment principle” is intended to foster the child’s trust in the authorities and prevent secondary victimisation, particularly in the case of children who have been exploited in criminal activities, such as stealing or drug trade, or who have contravened immigration regulations as a result of their exploitation in a cross-border situation. It shall also support the child in exiting from contexts of exploitation and violence or organised criminal groups. Ensuring non-punishment of child victims depends on the effective identification of the child, captur-

ing indications of victimisation from the child’s story and acting accordingly.

Considering that migrant and refugee children are at a particular risk of exploitation and trafficking, UNHCR has developed guidelines and a set of indicators to facilitate the correct identification of children who are victims of trafficking and to ensure their reception and assistance in Italy (see Box 8 and example of practice: UNHCR indicators for identification of child victims of exploitation and trafficking).

⁶⁷ European Parliament and Council of the European Union, [Directive 2011/36/EU](#) of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Official Journal of the European Union, 15.4.2011. Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197, 2005, Article 26. The UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime acknowledge the risk that “children who are victims and witnesses may suffer additional hardship if mistakenly viewed as offenders when they are in fact victims and witnesses.” The guidelines emphasise that child victims should be considered and treated as such “... regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders”. This broad approach calls for protection of child victims of crime from prosecution irrespective of any form of ‘consent’ or active involvement of a child in the offence, and irrespective of national laws defining the age of criminal liability. United Nations Economic and Social Council, [Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime](#), Economic and Social Council Resolution 2005/20, 22 July 2005, para. 6, 7e, 9a.

EXAMPLE OF PRACTICE: “FREE TO CHOOSE” “LIBERI DI SCEGLIERE”



The “Free to choose” protocol was developed in Calabria to support children from social and family contexts strongly influenced by a mafia culture in pursuing an individual educational programme. The programme considers these children as victims of “educational maltreatment” resulting from the mafia context of origin, which is often also the cause of their involvement in the criminal justice system. When the judicial authority decides that out-of-home placement and relocation from such a context is in the best interests of a child, targeted educational projects are activated to protect the child, introduce him or her to a different social context and support his or her education and development towards adulthood and independent life.⁶⁸

EXAMPLE OF PRACTICE: UNHCR INDICATORS FOR THE IDENTIFICATION OF CHILD VICTIMS OF EXPLOITATION AND TRAFFICKING IN ITALY



UNHCR Italy has developed specific indicators⁶⁹ to facilitate the identification of child victims of trafficking children seeking asylum in Italy:

Declared and/or identified personal conditions:

- Evidently underage, even if the person is claiming to be an adult;
- Belonging to a particularly vulnerable group, such as children living or working on the street, children from very poor families, orphans, children who are abandoned or separated from their families, child victims of violence;
- experience of marginalisation from family or community;
- transit through or long-stay in a transit country, sometimes reporting exploitative situations during this time;
- travelling alone or accompanied by a person who is not a parent or relative;
- travelling and/or stay in Italy with an adult who, according to statements, would be a parent or relative but with whom the child apparently has a relation of non-confidence and/or fear;
- involvement in unlawful activities in Italy;
- debts within the family or with third persons;
- pressure from the family to pay off debts.

⁶⁸ For further information, see: Ministry of Justice, Progetto “Liberi di scegliere” [The “Free to choose” project], 8 August 2022.

⁶⁹ UNHCR Italy, Commissione Nazionale per il Diritto d’Asilo [National Commission for the Right to Asylum], *L’identificazione delle vittime di tratta tra i richiedenti protezione internazionale e procedure di referral, Linee guida per le Commissioni Territoriali per il riconoscimento della protezione internazionale* [Identification of victims of trafficking among applicants for international protection and referral procedures, Guidelines for the territorial Commissions for the recognition of international protection], 2021, p. 72.

BOX 8: RESIDENCE PERMITS FOR PERSONS WHO ARE VICTIMS OF EXPLOITATION AND TRAFFICKING

In 1998, Italy adopted a regulation for the protection of non-national victims of serious exploitation and trafficking and their social inclusion regardless of their cooperation with law enforcement and the judiciary in the prosecution of perpetrators: Article 18 of Legislative Decree No. 286/1998, in conjunction with Article 27 of Presidential Decree No. 394/99, provides for the issuance of a residence permit for non-nationals who are victims of violence or serious exploitation and exposed to a real danger to their safety because of statements made in criminal proceedings or because of their decision to escape the situation of exploitation.

Today, these provisions apply to

- persons who are victims of trafficking in persons, reduction to or maintenance in slavery, purchasing or selling slaves, and unlawful brokering and exploitation of labour (Criminal Code, Articles 600-603bis),
- criminal offences related to exploitation and trafficking, such as prostitution-related offences (Law 75/58, Article 3),
- ill-treatment (Criminal Code, Article 572),
- extortion (Criminal Code, Article 629),
- kidnapping (Criminal Code, Article 605),
- irregular immigration offences (Legislative Decree 286/98, Article 12),
- sexual offences (Criminal Code, Article 609bis *et seq.*),
- intimidation and violent crimes in general (Criminal Code, Articles 582 *et seq.* and 612).

The residence permit provided for by Article 18 of Legislative Decree 286/98 can be issued following a complaint by the victim, but also in those cases where the person cannot or does not wish to report the crime and in cases where a person adheres to an assistance and social integration programme provided by a local authority or other state agency or association certified for assisting victims of serious exploitation.⁷⁰

⁷⁰ Judicial pathway for obtaining a residence permit: Article 18 of Legislative Decree 286/98 in conjunction with Article 27 of the implementing regulation of the Consolidated Immigration Act, approved by Presidential Decree 394/99, amended by Presidential Decree 334/04. Social pathway for obtaining a residence permit: Article 52 of Presidential Decree 394/99.

QUESTIONS FOR THE INDIVIDUAL ASSESSMENT



The following questions could be used as a guide for the individual assessment of children who are suspects or accused persons in criminal investigations or proceedings. If the assessment leads to a negative response or doubt, further assessment may be required to resolve any doubts and, where appropriate, to provide targeted support and remedial measures to ensure a positive response.

- Is the child aware of his/her right to be protected from all forms of violence?
- Does the child know where to turn to in case of risks or concerns?
- Is the child safe in the place where he or she is staying?
- Is the child safe in his or her daily life, for instance at school, at work, in a sports club, or among peers in the community?
- Are the parents able and willing to ensure the child's safety?
- Are there other protective adults and positive relationships in the child's life that can empower the child?
- Has a risk assessment been conducted for the child?
- Have sources of support and protection for the child been identified?

EXAMPLE OF PRACTICE: ASSESSMENT OF RISK AND PROTECTION FACTORS AS PART OF THE INDIVIDUAL ASSESSMENT



In the Netherlands, the online platform “LIJ Tools” offers officials and professionals in the juvenile justice sector access to a set of working methods and tools for different stages of the proceedings. LIJ stands for “national juvenile justice toolbox” and provides law enforcement officers, social workers and health care professionals, prosecutors and judges with a hands-on practical guide for assessing risks and protection factors of a child who is a suspect or accused person in criminal proceedings.⁷¹

The guide provides a set of questions in child-friendly language and a table format to take note of the child’s responses. Thanks to the visual representation and a scientific approach, the method guides officials and professionals in assigning weight to the different risk and protection factors identified during the risk assessment and identifying appropriate measures in the case. Risk and protection factors are assessed in relation to different areas concerning the child, such as school, work, family, leisure time, relations, and others (see Figure 5 below).

PROTECTION FACTORS			AREAS	RISK FACTORS		
high	medium	low		low	medium	high
████████████████████			SCHOOL	██████████		
			WORK			
██████████			FAMILY	██████████		
██████			LEISURE TIME	████████████████████		
			RELATIONS			
			SUBSTANCE USE			
			MENTAL HEALTH			
			ATTITUDES			
			AGGRESSIONS			
			VALUES			

FIGURE 5: Assessment of risk and protection factors of children in the juvenile justice system

⁷¹ See: van der Put, C.E., [Risk and needs assessment for juvenile delinquents](#), in UvA-DARE (Digital Academic Repository), University of Amsterdam.

5.7. LEGAL ASSISTANCE AND REPRESENTATION

The right to legal assistance and representation is a procedural safeguard and minimum guarantee for a fair trial in the criminal justice system that applies to all persons, including children. As suspects or accused persons in criminal proceedings, children are entitled to legal representation from the outset of the proceedings, including in the preparation and presentation of the defence and, where applicable, throughout judicial review or appeal.⁷²

Directive EU 2016/800 was drafted taking into consideration the case law of the European Court of Human Rights, which has repeatedly

held that States must afford greater protection to children in the criminal justice system.⁷³ It found that omissions to ensure the child's right to assistance by a lawyer constituted a violation of the European Convention on Human Rights where a child confessed a criminal act without the presence and assistance of a lawyer; where a child was convicted *in absentia* without legal representation; or where, due to the nature of the offence with which a child was charged, the case was heard by an ordinary rather than a juvenile court and, in consequence, the child was not assisted by a lawyer.⁷⁴

⁷² International Covenant on Civil and Political Rights, Article 14(3)(b),(d). United Nations Convention on the Rights of the Child, Article 40(2)(b)(ii). European Convention on Human Rights, Article 6(3)(b),(c). EU Charter of Fundamental Rights, Article 48(2). [Directive 2013/48/EU](#) of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty of 22 October 2013, L294/1, 6 November 2013. [Directive \(EU\) 2016/800](#) of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, Official Journal of the European Union, L 132/1, 21 May 2016, Article 6. Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, [CRC/C/GC/24](#), par. 49–50.

⁷³ ECtHR, *Blokhin v. Russia* [GC], No. 47152/06, 23 March 2016, paras. 198–199; ECtHR, *Salduz v. Turkey* [GC], No. 36391/02, 27 November 2008, para. 60. Cited in: European Union Agency for Fundamental Rights, *Children as suspects or accused persons in criminal proceedings*, *Procedural safeguards*, 2022, p. 53.

⁷⁴ ECtHR, *Salduz v. Turkey* [GC], No. 36391/02, 27 November 2008, paras. 56–63; ECtHR, *Blokhin v. Russia* [GC], No. 47152/06, 23 March 2016, paras. 205–210; ECtHR, *Panovits v. Cyprus*, No. 4268/04, 11 December 2008, paras. 75–77 and 84–86. ECtHR, *Vaudelle v. France*, No. 35683/97, 30 January 2001, paras. 58–66. Cited in: European Union Agency for Fundamental Rights, *Children as suspects or accused persons in criminal proceedings*, *Procedural safeguards*, 2022, p. 53.



CONSIDERATIONS FOR PRACTICE

The criminal justice system has to put in place conditions to allow for effective legal representation and defence by ensuring, inter alia, legal representation free of charge, adequate time and facilities for the child to collaborate with the lawyer in preparing the defence, and confidentiality of the communication between the two. Confidentiality should be guaranteed, as a minimum, in meetings, correspondence and telephone conversations.

Lawyers assisting children who are suspects or accused persons in criminal proceedings have to be specifically trained and qualified. In addition to legal and procedural expertise in the field of juvenile justice, they require a solid understanding of the rights and best interests of the child, including with regard to child development, evolving capacities, special needs and vulnerabilities, as well as skills and techniques of child-sensitive communication. Lawyers should be able to treat the child with empathy and respect, establish a trusted working relation with the child and hear the child's story to reconstruct the events under investigation. The lawyer should be able to translate legal jargon into child-friendly language, taking into account the child's age, gender, language and culture, and help the child understand the charges and relevant evidence, as well as case files.⁷⁵

QUESTIONS FOR THE INDIVIDUAL ASSESSMENT



The following questions could be used as a guide for the individual assessment of children who are suspects or accused persons in criminal investigations or proceedings. If the assessment leads to a negative response or doubt, further assessment may be required to resolve any doubts and, where appropriate, to provide targeted support and remedial measures to ensure a positive response.

- Does the child have effective access to qualified legal assistance and representation, appropriate to the circumstance of the case?

⁷⁵ European Union Agency for Fundamental Rights, *Children as suspects or accused persons in criminal proceedings, Procedural safeguards*, 2022, pp. 55-57.

- Is the child able to access legal assistance and representation free of charge?
- Has the child received legal assistance and representation without undue delay after being informed that he/she is suspected or accused?
- Is the child assisted effectively by a lawyer during
 - police questioning,
 - other relevant evidence-gathered acts,
 - court hearings,
 - any detention?
- Is sufficient time available for the child and his/her lawyer to prepare the defence?
- Are appropriate facilities available for the child to meet with and consult the lawyer?
- Is the communication between child and lawyer confidential?
- Does the child feel
 - he/she can trust the lawyer representing him or her?
 - the lawyer listens genuinely to their story and responds to any questions or concerns the child may have?
 - the lawyer helps him/her to prepare well for a court hearing?
- Is the child satisfied with legal assistance and representation he/she receives?
- Is the child actually able to change lawyer if he or she is not satisfied or comfortable with the one assigned to him/her *ex officio*?

INDIVIDUAL ASSESSMENT: TOWARDS A COLLABORATIVE, CHILD-CENTRED APPROACH

6.1. SYNERGY OF PROFESSIONAL ROLES AND FUNCTIONS FROM THE BEGINNING TO THE END OF CRIMINAL PROCEEDINGS

In the juvenile justice sector, officials and professionals from law enforcement, judiciary, social and health care fields have to collaborate closely with each other and with the child and the child's family. Each actor is operating according to the own professional mandate, using their specific working methods and approaches, language and terminology. Service cultures differs significantly, including with regard to matters of independence, hierarchy and positions of power towards other institutions. In a range of settings, state actors collaborate with non-state actors and civil society in the social field. In the judiciary, judges are in dialogue with honorary judges, the judicial social

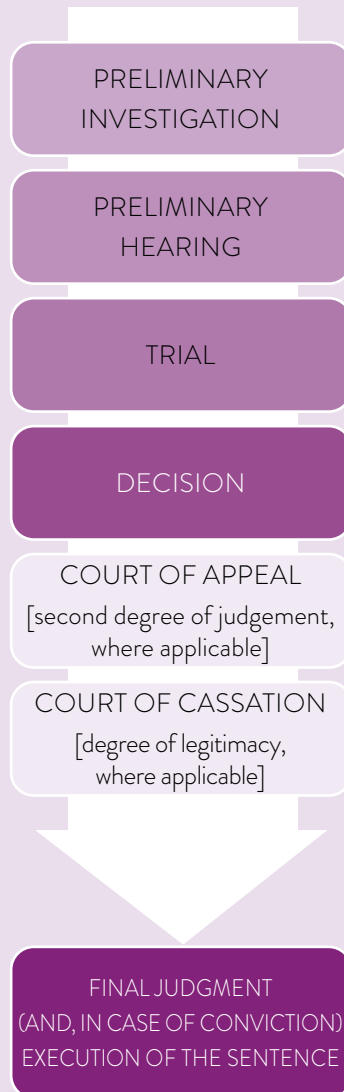
services collaborate with the municipal services in case assessment and longer-term service provision. In this complex setting, mediation between different institutional and social mandates is an important additional action required to create synergy. All actors are challenged to enter into dialogue to overcome compartmentalised mandates and to develop a collaborative service culture to support the child throughout the stages of the proceedings. A "socialisation of discourses" helps different actors to connect with each other, to create greater synergy of perspectives, views and approaches and to prevent an overlap, contrast or dissonance of mandates and actions.⁷⁶

⁷⁶ Ghidelli, R., *Interconnessioni e snodi dialogici nella giustizia penale minorile tra criticità e sfide educative* [Interconnections and dialogue junctions in juvenile criminal justice between critical issues and educational challenges], in *Minorigiustizia, rivista interdisciplinare di studi giuridici, psicologici, pedagogici e sociali sulla relazione fra minorenni e giustizia* [Minorigiustizia, Interdisciplinary journal of legal, psychological, pedagogical and social studies on the relationship between juveniles and justice], FrancoAngeli, n. 1-2021, 2021. The article notes that the emergence of Covid-19 has made it even more evident that matters relating to children in conflict with the law have to be addressed from a perspective focused on communities and systems. Operational services can respond to the increasing complexity and uncertainty of the biographies of children in conflict with the law by developing inclusive pathways to nurture not only individual but also social empowerment.



PHASES OF CRIMINAL PROCEEDINGS

Juvenile justice proceedings begin with the filing of a complaint regarding the commission of an act constituting a criminal offence by a person under the age of 18, or with the application of precautionary measures (arrest, detention, accompaniment). With the registration of a suspect, the procedural phase begins and follows the following stages:



The first two stages of criminal proceedings are of particular importance in juvenile justice cases: the preliminary investigation conducted by the Juvenile Criminal Prosecutor and the preliminary hearing in the Juvenile

Tribunal. In these two stages, the child's status changes from suspect to accused person. In Italy, 90 percent of the cases end with the preliminary hearing and the child is never assigned the status of defendant, in accordance with the Beijing Rules.⁷⁷

Child caught in the act or suspect

Very serious criminal offences

The Judiciary Policy (Polizia Giudiziaria) makes the arrest within 24 hours and notifies the Juvenile Prosecutor who orders that the arrested person is taken to the First Reception Centre (Centro di Prima Accoglienza), where he or she remains for a maximum period of 96 hours. The parent, other holder of parental responsibility or guardian is notified. Where a guardian has not yet been appointed, for instance in cases of unaccompanied foreign children, a guardian has to be immediately appointed.

Serious criminal offences

The Judiciary Police escort the child to the police station where the child is handed over to the parent or other holder of parental responsibility, and the child is reported "at large". The criminal offence is reported to the Juvenile Prosecutor and to the Judicial Social Services (U.S.S.M.).

Minor criminal offences

The Judiciary Police hands over the child to the parent or other holder of parental responsibility, and the child is reported "at large". The criminal offence is reported to the Juvenile Prosecutor and to the Judicial Social Services (U.S.S.M.).

Arrest and accompaniment are alternative to each other: the Judiciary Police can choose an alternative based on the upbringing and personality of the child. Both require validation and summary judgment.

Preliminary investigation

After the arrest of the child, the case is sent to the Juvenile Prosecutor at the Juvenile Court. If the Juvenile Prosecutor, after assessment of

⁷⁷ United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (*The Beijing Rules*), adopted by General Assembly resolution 40/33 of 29 November 1985.

the case, asks the Preliminary Investigation Judge to detain the child and requests the application of precautionary measures, the judge evaluates the case and decides between three options:

1. Request for dismissal, whereby the offence is declared extinct and the case is archived;
2. Declaration of non-imputability (Article 26 Presidential Decree 448/88) or irrelevance of the fact (Article 27 Presidential Decree 448/88);
3. Indictment and referral to trial if there is sufficient evidence.

CRITICAL ISSUES DURING THE APPLICATION OF PRECAUTIONARY MEASURES

If the Preliminary Investigation Judge orders precautionary measures for the child, the Judicial Social Services (U.S.S.M.) are in charge of these measures irrespective of whether the child has been sent to a First Reception Centre or not, and also where other civil or administrative measures are taken in the case. The precautionary measure has mainly a restraint and control function, and the municipal social services collaborate with the Judicial Social Services in activities of observation, control, support and treatment of the child.

CASE STUDY NO. 1



Matteo is the third child of a family in economic difficulties. The father is in severe depression due to his unemployment and refuses to accept any help, while the mother is consuming drugs. Since Matteo is having learning difficulties and the school has contacted the parents several times because of his aggressive behaviour, the parents decided to change school but refused accepting any other type of support. After Matteo was found guilty of armed robbery committed together with a group of adults, the Preliminary Investigation Judge ordered placement in an institution as precautionary measure, which the family perceived as an attack on their nucleus rather than a penal measure ordered in response to the criminal offence.

As the story of Matteo and his family were reconstructed during the proceedings and indicators of risk and protection were identified as part of the individual assessment, the precautionary measure of placement in an institution was identified as the measure that could best meet the needs of safety and protection of the boy. The social worker of the Judicial Social Services had a key role in making the assessments and reporting the findings to the judge. The court-appointed lawyer representing Matteo had an important role in explaining to the boy and his family why this measure was considered necessary and sensible from a legal point of view. The shared understanding of the lawyer and the social worker and their joint support for the precautionary measure, as well as the interaction both have had with the boy and his family, supporting them with information was decisive to help them understand the opportunities the measure could represent for Matteo. The fact that different professionals communicated and acted in synergy for the best interests of the boy eventually led to the family's proactive and non-oppositional acceptance of the precautionary measure.

Preliminary hearing

Under Article 32 of Presidential Decree 448/88, the outcome of the preliminary hearing can be of various kinds. The judge can decide on non-prosecution in the case of :

- irrelevance of the fact
- judicial pardon
- non-imputability because the child has not reached the age of criminal responsibility (14 years) or is incapable of understanding the act due to immaturity, which can be pronounced at any stage and level of the proceedings (Article 26 Presidential Decree 448/88).

In most cases, the prosecutor requests a preliminary hearing even if aiming at pursuing alternative measures that do presuppose guilt but do not require a trial.

It is therefore possible for the phase to be closed with the application of an alternative measure only on the basis of the request of the prosecutor, to which it is possible to lodge an opposition. The sanctions that can be applied in this case are: semi-detention, supervised liberty, or a fine.

From this overview, it is possible to see how the individual assessment becomes extremely delicate and relevant, as it is functional to allow the Public Prosecutor to choose one option rather than another, and the Judge to identify the decisional formula most appropriate to the child and to the specific case in hand, with its specific circumstances and peculiarities.

CRITICAL ISSUES RELATED TO THE PROBATION (MESSA ALLA PROVA, M.A.P.)

A further outcome of the preliminary hearing is linked to whether or not a probation requested previously and the related suspension of the trial was successful or not (Article 28 Presidential Decree 448/88 and Article 27 Legislative Decree 272189). The suspension can last from one to three years and is also granted in more serious cases. Probation is an educational pathway that takes place over a period of time during which the judgement in the child's case is suspended to observe the child's personality and development; during this period the child commits to a programme aimed at achieving educational, conciliatory and reparative objectives, as agreed with the Judicial Social Services and approved by the judicial authority. The probation can be proposed by either the Judicial Social Service, the child's lawyer or the Juvenile Court.

EXAMPLE OF PRACTICE: OPERATIONAL PROCEDURE OF THE JUVENILE JUSTICE SERVICES IN FLORENCE⁷⁸



Feasibility elements to build a probation pathway:

- willingness of the child to undertake an empowering and changing path;
- the child assumes responsibility for the crime charged;
- collaboration of the family context.

Situations in which probation is considered preferable:

- identified educational needs;
- poor elaboration of the offence;
- serious criminal offences.

Situations in which probation is considered less relevant:

- minor offences;
- occasional nature of the offence;
- absence of specific problems in the child's situation and background.

Project development methods:

- assessment of the child's needs;
- identification of the objectives of the probation period;
- preliminary verification of resources;
- discussion of the probation project with the child and family members: this phase is very important because it lays the foundations for the child's active participation and for setting up an agreement that the child has to reconfirm at the hearing;
- any contacts with the defence.

⁷⁸ Summary of consultation meetings organised in the context of the CREW Project between Defence for Children International – Italy and the Judicial Social Services of Florence, Italy, during 2021 and 2022.

Services managing the project

The Judicial Social Services are the main interlocutor of the judicial authority and maintain regular contact with the judge who referred the child to probation, during the course of the probation measure (both verbal and written). The Judicial Social Services coordinate relevant other service providers such as municipal social services.

The probation report

The probation process is documented in a report sent to the judicial authority. It is advisable to make explicit the general objectives (to support the child in reflecting on the offence and its social consequences, as well as on him/herself) and the specific objectives for the particular child. Especially in the case of complex probation programmes, making the objective explicit facilitates the subsequent follow-up work. It is necessary for the report to illustrate the project choices, linking the type of need to the actions and commitments that the child will undertake. The probation project will also contain the methods of involvement of the various parties in its implementation: parents, private social services, other specific services.

Duration of probation

The duration of the probation period is not generally regulated but it is considered appropriate to coincide with the specific achievements identified in the programme so that the evaluation of the positive evolution can be measured on the basis of precise indicators (e.g. school or training pathway).

Project verification

The Judicial Social Services are responsible for assessing and verifying the child's progress during probation and reporting on it in a final evaluation. Verification checks are done at least monthly, in accordance with the tools that the social worker considers most appropriate to the individual case, such as interviews, team meetings with other service providers, telephone calls, home visits, acquisition of documentation (e.g. attendance certificates, pay slips, etc.).

Periodic reports

If the probation period has a duration of up to 6 months, and if it proceeds well, interim reports are not considered indispensable unless explicitly requested by the judicial authority. In the case of longer proba-

tion periods, periodic updates and interim evaluations are appropriate, which the social worker can use to compose the framework of the final evaluation.

Possible modification of the programme

If inconsistencies emerge between the initial project and the evolution of the situation, the social worker contacts the judge in charge of the probation, usually in writing, possibly requesting a convocation, to propose changes to the prescriptions. Even if these changes do not distort the completion of the pathway, e.g. appointing a different association for social activities of the child and are independent of the child's behaviour, it is still necessary to communicate the motivations for any changes to the referring judge, without requesting a convocation.

Repeated non-compliance by the child

In the event of repeated non-compliance by the child, the social worker assesses the situation and the reasons for non-compliance with the child and the other actors involved in the programme and renegotiates the commitment where necessary. If a child repeatedly breaches the programme, the social worker reports to the referring judge so that he/she reminds the child to his or her commitments to the probation programme. Where it clearly emerges that the child does not wish to continue the probation, the social worker adjourns the judicial authority for an evaluation of the situation.

Evaluation of probation

The final evaluation of a probation period focuses on the evolution of the child's personality. It is therefore considered not so much a mere return of information to the judge on the achievement of objectives, but rather a tool to review the development of awareness of the offence, maturation and (re)integration of the child. The report must contain elements to express an opinion on the attainment or non-attainment of the overall goals and specific objectives and their timeliness and, more generally, on the change in the child's lifestyle, comparing the initial situation with the current one. Reports about any negative outcome linked to repeated and serious non-compliance of the child, which may be considered as indications that the child is unwilling to commit to the probation, must contain reflections on the reasons for this outcome.

Feedback and reporting

At the end of the probation, a concluding meeting is held in which attention is drawn to the course followed and the results achieved, discussing them with the child and family members where possible, in particular in order to acquire elements on the child's experience with the probation. It is desirable, for the future, to adopt instruments that enable an assessment of the child's level of satisfaction on having felt welcomed, supported and reassured by the officials and professionals involved in the probation. As an example, a satisfaction form could be developed to be filled in by interested parties and returned in a sealed envelope.

Sub-files and presence at the hearing

The social worker who deposits the sub-file for the hearing in the secretary's office is required to check that the sub-file contains documentation that is significant and useful to ensure the judicial staff conducting the hearing has relevant knowledge of the case, in particular: the basic report, the report containing the probation programme, the probation measure and, if considered appropriate, any notes on the form "Communications for the colleague on duty at the hearing". The final probation report must contain an evaluation; in the event that the social worker chooses to leave this evaluation to the judicial authority, this decision should be explained in detail.

Final phase of the intervention

Once the probation period has been concluded, it is good practice to notify its outcome to all services involved in the programme, possibly using a standardised reporting form.

BOX 9: PROBATION AND RESTORATIVE JUSTICE



Probation fits well within a restorative justice perspective. Over the years, the Department for Juvenile and Community Justice, despite the absence of national legislation on the matter, has worked to promote an approach based on reparation and penal mediation in line with European legislation on victims and the Council of Europe Recommendation on “restorative justice”.⁷⁹

In 2019, the Department issued Guidelines on restorative justice and the protection of victims of crime. The Guidelines define the concept of reparation, where attention is paid to the offender, his/her personality and history with an ecological and systemic-relational perspective, broadening the focus to the context where the offence takes place, trying to restore a balance that the latter has compromised, in an attempt to heal the wound inflicted by the offending conduct in the relationship with the victim where possible and more generally with society. In this sense, the decisions and measures taken against the person suspected or accused of an offence should tend towards this reconciliation, an action of reparation and empowerment, with pedagogical and educational intent.⁸⁰

At the Department of Juvenile and Community Justice, Office II is in charge of promoting interventions for the prevention of deviance and the promotion of restorative justice and mediation, and works in coordination with Office I - General Directorate for External Criminal Execution and Probation, which deals with adults.

⁷⁹ Council of Europe, Recommendation of the Committee of Ministers to member States on restorative justice in criminal matters, CM/Rec(2019)8.

⁸⁰ Ministry of Justice, *Linee di indirizzo del Dipartimento per la Giustizia minorile e di comunità in materia di Giustizia riparativa e tutela delle vittime di reato* [Guidelines of the Department for Juvenile and Community Justice on restorative justice and the protection of victims of crime], 2019. For further information on criminal mediation and restorative justice services in Italy, see <https://www.garanteinfanzia.org/sites/default/files/medi-azione-penale-giustizia-riparativa-minori.pdf>.

6.2. THE INDIVIDUAL ASSESSMENT OF CHILDREN CONVICTED OF A CRIMINAL OFFENCE IN THE ENFORCEMENT PHASE

In 2018, with the adoption of Legislative Decree No. 121/2018 on the “enforcement of sentences against juveniles convicted of criminal offences” law reform was concluded to better adapt the rules of the penal system to the educational needs and personal characteristics of children convicted of criminal offences, in light of the *favor minoris*, and providing an organisational framework for the enforcement phase following the conviction.

The heart of the reform is the “educational intervention project” (Article 14, see Box 10) to be adopted within three months from the beginning of the enforcement to enable the child to initiate his or her pathway towards social (re)integration in a timely manner, avoiding further trauma following the criminal experience, and reducing any possibility of recidivism. The educational intervention project should be drawn up based on established principles in the field of juvenile criminal law: the personalisation of prescriptions and flexibility in the enforcement phase.

On closer inspection, the project is the result of an individual assessment of the convicted child,

set within a programmatic and structured framework according to the principles of child-friendly justice. The law aims at involving the child, as much as possible, in the educational project both in the phase of preparing the intervention project and in the implementation phase, mainly through psychological support and hearing the child. The objectives and measures for implementation of the educational intervention project are continuously reviewed and updated in accordance with the child’s active participation and commitment to it and his or her development, psycho-physical evolution and empowerment.

This law reform builds on Presidential Decree 448/1988 and, through the educational intervention project, strengthens consideration to the child’s educational needs. The focus on education and development are the key to understanding the new juvenile penal system in Italy. With a view to positively support the development of the child up to the age of 25 years old, the community penal measures envisaged by the reform aim at reconciling the educational needs and the security requirements underlying

the enforcement of the sentence. The personalisation of the intervention through the focus on the individual child's needs and adopting a broad and multidisciplinary approach, requires an active role of the child or young person, together with the involvement of the whole community.

The normative scope of Legislative Decree 121/2018, hitherto little explored in literature, could and should act as a driving force for law and policy developments regarding the individual assessment of children also during the stages of criminal proceedings.

BOX 10: ARTICLE 14 OF LEGISLATIVE DECREE 121/2018



1. The stay in penal institutions for juveniles shall take place in accordance with an educational project prepared within three months of the commencement of execution. The project, drawn up in accordance with the principles of personalisation of prescriptions and executive flexibility, after listening to the offender, shall take into account his aptitudes and the characteristics of his personality. The project contains indications on how to cultivate relations with the outside world and implement group life and responsible citizenship, also respecting gender diversity, and on the personalisation of education, vocational training, education and vocational training activities, as well as on work, socially useful, cultural, sporting and leisure activities useful for social recovery and prevention of the risk of committing further offences.
2. On entering the institution, psychological support by specialised personnel is guaranteed, also useful for the preparation of the educational project and for the prevention of the risk of acts of self-harm and suicide.
3. The educational project is illustrated to the offender in comprehensible language and is constantly updated, taking into account the degree of adherence to the opportunities offered, the psycho-physical evolution and the pathway to maturity and empowerment.
4. The educational intervention project ensures the gradual return of spaces of freedom according to the progress achieved in the recovery process.

6.3. SPECIALISED AND MULTIDISCIPLINARY TRAINING ON INDIVIDUAL ASSESSMENT

Research carried out in the context of the CREW project reaffirmed the importance of training. Training is key to strengthen synergy between officials and professions operating in the juvenile justice system and their collaboration at different stages and levels of proceedings. Training is instrumental also for creating a common language and mutual understanding and recognition of each actor's role and a common understanding of shared objectives.

There are numerous training opportunities for officials and professionals in the juvenile justice field: seminars, conferences, advanced training courses, more or less structured, are offered by non-governmental organisations, Juvenile Justice Chambers and Universities, as well as by the Higher School of Magistrates (see Box 11). To a significant degree, the available training programmes focus on legal and judicial matters, while other themes related to social matters, child development and psychology are available

less. Training is also often provided from a single discipline perspective, and multidisciplinary or joint multi-stakeholder training are rarely provided in this field. In addition, the available training programmes do not seem to support officials and professionals in evaluating the impact of their own work, strengthening skills in impact assessment and evaluation from a child rights-based and child-centred perspective.⁸¹

An important aspiration of training is to encourage officials and professionals to reflect on their own working approaches and measures, to enter into dialogue with officials and professionals from other disciplines and to actually succeed in applying the knowledge and learning acquired in training courses in their day-to-day work practice. The individual assessment methodology, as proposed in this orientation document, aims also at guiding officials and professionals in this challenging task.

81 Defence for Children International – Italy, CREW 2022, [Policy Paper](#), 2022. CREW Report Data: Defence for Children International – Italy, CREW 2022, Per un Sistema di giustizia child-friendly, L'attuazione dei diritti e delle garanzie procedurali delle persone minorenni indagate o imputate di reato in Italia, [Report dati 2021](#) [Towards a child-friendly justice system, Implementation of the rights and procedural safeguards of children who are suspects or accused persons in Italy, Data Report 2021], 2022.



BOX 11: THE HIGHER SCHOOL OF MAGISTRATES

The Higher School of Magistrates (Scuola Superiore della Magistratura) is an autonomous entity, which provides professional training to members of the judiciary and performs other teaching and research activities, such as the continuous training of magistrates and, in cooperation with the Higher Council of Magistrates, the initial on-the-job training magistrates, training of judicial office managers and of honorary magistrates. In 2022, the Higher School of Magistrates offered a course on “procedural and substantive child protection in juvenile jurisdiction”, as part of the continuous training programme.⁸²

Considerations for specific training

The importance of specialised training for officials and professionals in the juvenile justice field was recognised as early as by the Beijing Rules adopted in 1985 (see Box 12). Based on experience in delivering training in the juvenile justice field, as well as lessons learned from European projects and missions, Defence for Children International Italy, together with the Department for Juvenile and Community Justice, have identified several considerations

for strengthening training satisfaction of officials and professionals and enhancing training impact on the quality of measures and services at every stage and level of criminal proceedings.

Irrespective of the training provider – Ministries, Judicial Social Services, Higher School of Magistrates, Universities, professional associations, Juvenile Penal Chambers, organisations – specific training should,

- always ensure the participation in the **training of a multi-stakeholder group** of officials and professionals from different backgrounds: social workers, judges and honorary magistrates, lawyers, law enforcement officers, and other relevant professionals with an interest to specialise in the field;

⁸² Scuola Superiore della Magistratura [Higher School of Magistrates], website available at: scuolamagistratura.it. An overview of the 2022 course “Procedural and substantive child protection in juvenile jurisdiction” is available from the School’s [website](#).

- involve **trainers from a variety of scientific disciplines** to address a combination of topics, including social work, pedagogy, forensic psychology, sociology and anthropology, ethno-psychiatry, as well as the legal sciences;
- provide **training on specific working methods and instruments**, such as the development of an individual project in view of the child's status at different stages of the proceedings, the individual assessment as a process for securing and promoting the rights and best interests of the child, as well as appropriate interrogation techniques, assessment methods of juvenile psychology, communication in child-friendly language adapted to the child's age, gender, language and culture;
- ensure the training provides for an **exchange of knowledge and practice**, as well as participatory workshops on specific cases, focus groups, and the **development of a common language**, in order to overcome stereotypes or prejudiced positions and foster a shared understanding of approaches and mandates;
- provide sessions on how to **manage and settle conflicts between practitioners** should they arise;
- promote the **participation of junior trainers**, i.e. young people who have come out of the penal circuit and who can share their experiences and stimulate reflections and exchange in order to overcome the self-referentiality of individual sectors.

State responsibility to provide training

The UN Committee on the Rights of the Child has repeatedly reminded States of their obligations under the UN Convention on the Rights of the Child to ensure systematic training of officials and professionals working with and for children and families. Systematic training on the UN Convention on the Rights of the Child is consid-

ered a general measure for the implementation of the Convention.⁸³ Specifically for the field of juvenile justice, the Committee underlines in General Comment No. 24 (2019) the following:

⁸³ Committee on the Rights of the Child, General Comment No. 5 (2003), General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27 November 2003.

“ It is essential for the quality of the administration of child justice that all the professionals involved receive appropriate multidisciplinary training on the content and meaning of the Convention. The training should be systematic and continuous and should not be limited to information on the relevant national and international legal provisions. It should include established and emerging information from a variety of fields on, inter alia, the social and other causes of crime, the social and psychological development of children, including current neuroscience findings, disparities that may amount to discrimination against certain marginalised groups such as children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities and the available diversion measures and non-custodial sentences, in particular measures that avoid resorting to judicial proceedings. Consideration should also be given to the possible use of new technologies such as video “court appearances”, while noting the risks of others, such as DNA profiling. There should be a constant reappraisal of what works.⁸⁴ ”

The Committee of the Rights of the Child notes that training can be delivered by State and civil society actors. Systematic training should ensure that training on the Convention is part of general academic and professional curricula for initial training, as well as continuous and on-the-job training. It should be multidisciplinary in scope and delivered not only as role-specific, but also as joint, multi-stakeholder training involving different officials and professionals collaborating in a specific field.⁸⁵

Directive EU 2016/800 regulates the training of officials and professionals in juvenile justice. Article 20 provides that law enforcement and staff of detention facilities should receive specific training, of a level appropriate to the type of contact they have with children, on the rights of the child, appropriate interrogation techniques, child psychology and communication in a language adapted to the child. Judges and investigating magistrates dealing with juvenile justice proceedings, as well

⁸⁴ Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, CRC/C/GC/24, para. 112.

⁸⁵ Committee on the Rights of the Child, General Comment No. 13 (2011), The right of the child to freedom from all forms of violence, CRC/C/GC/13, 18 April 2011, para. 44.

as defence lawyers representing children who are suspects or accused in criminal proceedings, should have specific competence and/or have effective access to specific training. In addition, States should ensure that public services supporting children in contact with the law and providing restorative justice services receive appropriate training and meet professional standards to ensure that services are provided in an impartial, respectful and professional manner. Where civil society organisations are providing such services, the State should provide funding to this end.

BOX 12: BEIJING RULES⁸⁶



§12. Specialisation of police services

In order to better perform their duties, police officers who frequently or exclusively deal with juveniles or who are essentially dedicated to the prevention of juvenile delinquency must receive special education and training. In large towns and cities special police services should be set up for this purpose.

§22. Professional competences and training

Professional training, further education, retraining courses and other appropriate teaching initiatives shall aim to provide and support the necessary professional competence of personnel dealing with juveniles.

⁸⁶ United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, adopted by General Assembly resolution 40/33 of 29 November 1985.



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