My Lawyer, MyRights

Enchancing children's rights in criminal proceedings in the EU

The role of the lawyer in the juvenile justice system in Italy

National Report

September 2017

Defence for Children International Italy

DEFENCE FOR CHILDREN International-Italia

IL MOVIMENTO GLOBALE PER I DIRITTI DEI BAMBINI

This project is cofinanced by the Justice Program of the European Union

This research report has been written in the context of the project « My Lawyer, My Rights – Enhancing children's rights in criminal proceedings in the EU», co-financed by the justice program of the European Commission. The content of this report does not necessarily reflect the position of the European Commission and thus does not imply in any way its endorsement of the views expressed in this report.
If inaccuracies or mistakes are to be found in this document, they can only be attributed to the authors of this report.

My Lawyer, My Rights

National Report Italy

Table of contents

INTRODUCTION 4
LIST OF ACRONYMS 5
ORGANISATION & TEAM 6
METHODOLOGY 6
LIMITATIONS 6
1. THE INTERNATIONAL FRAMEWORK 7
1.1 Ratified Conventions 7
1.2 Measures to promote the international not-binding legislation 7
2. THE EUROPEAN FRAMEWORK 8
2.1 Ratified Conventions 8
2.2 European Directives: transposition, implementation and enforcement. 8
2.3 Measures to promote non-binding European rules 10
2.4 European Union Court of Justice (EUCJ) and European Convention on Human Rights (CEDU) settled case law 11
3. NATIONAL FRAMEWORK 11
3.1 Legislation framework related to the juvenile justice system 11
3.2 Suspected or accused children in criminal proceedings: national definitions 14
3.3 The right of suspected or accused children to access and be assisted by an attorney in criminal proceedings 19
3.4 The right of suspected or accused children to information in criminal proceedings 20
3.5 The right of suspected or accused minors to interpretation and translation in criminal proceedings 21
3.6 The (free) legal aid assistance 22
4. THE JUVENILE JUSTICE SYSTEM 24
5. THE BEST INTEREST OF THE CHILD 25
6. YOUTH LAWYER, FROM THEORY TO PRACTICE 26
6.1 Role and function 26
6.2 The choice of the lawyer 27
6.3 The lawyer training in the juvenile justice system 28
6.4 The relationship between the lawyer and the minor 30
6.5 The relationship between lawyer and parents 32
6.6 The lawyer's collaboration with other actors 32
7. OBSTACLES AND GOOD PRACTICES 33
7.1 Obstacles/weaknesses: 33
7.2 Good practices 33
8. CONCLUSIONS 35
8.1 National recommendations addressed to policy makers 35
8.2 Recommendations to youth lawyers 36
ANNEX 1: INTERNATIONAL AND EUROPEAN FRAMEWORK 37
BIBLIOGRAPHY 38

Introduction

The project "*My Lawyer, My Rights*" aims to strengthen the rights of children who are suspects or accused persons in criminal proceedings, through several activities: supporting the Member States of the European Union for the application of the Directives n. 2013/48 (on the right of access to a lawyer) and n. 2016/800 on related procedural safeguards, in particular compliance with the juvenile criminal justice. Moreover, it is important to define the role, the mission, the training and the specialization of the youth lawyer, strengthening his/her ability and skills to become key actor in a better implementation of the right to access a lawyer for children who are suspects or accused persons in criminal proceedings. In general, the project wants to assure the practical implementation of the above-mentioned legal framework, on the basis of the different national contexts and adopting a children rights-based approach.

European justice systems are not yet appropriate to the specific children vulnerability and needs.

Children might be involved in legal proceedings either indirectly, when decisions have a relevant impact on their lives, such as in civil case of divorce or custody proceedings, or in case of juvenile offenders.

But when speaking about juvenile justice in Italy we immediately refer to criminal matters involving imputable children suspected or accused of facts considered crimes by the Italian system.[1]

In Italy, in compliance with the European legislative framework, the educational model has always been at the basis of the juvenile process and has finally been best represented in the Decree N. 448 of the President of the Republic of 22 September 1988. The Italian criminal juvenile proceedings aim to promote the development and the empowerment of the child in order to allow remedying-damage measures suitable to overcome the traditional punishment perspective. This happens even promoting the debating and meeting between the offender and the victim. This tendency gives voice to two needs: reducing as much as possible the action of the traditional criminal law and diversify the juvenile proceedings from those related to adults. These aims have already been revealed in the so-called Beijing Rules of 1985, and in articles 37, 39, 40 of the Convention on the Rights of the Child.[2]

[1] MOYERSOEN, *Il bambino come soggetto giuridico nei procedimenti giudiziari.*
[2] RIONDINO, *Developing tendencies of the Italian juvenile justice system,* p.1
http://www.pul.it/wp-content/uploads/2010/11/DEVELOPING-TENDENCIES-OF-THE-ITALIAN-JUVENILE-JUSTICE-SISTEM.pdf

List of Acronyms

- AG = United Nations General Assembly;
- CRC = United Nations Convention on the Rights of the Child;
- COA = Local Bar Association;
- COE = Council of Europe;
- COMMITTEE = United Nations Committee on the Rights of the Child;
- CPA = First reception centre
- D.P.R = Presidential Decree;
- ECHR = European Convention on Human Rights;
- EUCJ = European Union Court of Justice;
- ICCPR = International Covenant on Civil and Political Rights;
- IPM = Juvenile detention centre;
- JJS = Juvenile Justice System;
- UN = United Nations;
- NGO = Non-Governmental Organizations;
- O.P. = Penitentiary Rules;
- PM = Public Prosecutor;
- UE = European Union;
- UN = United Nations;
- CPP= (Italian) Criminal Procedure Code

Organisation & Team

The DCI Italy's team of researchers was composed by Júlia Pàmias and Alessandra Grava with the supervision and coordination of Gabriella Gallizia and Pippo Costella. Francesca La Civita reviewed and translated the report from Italian to English.
DCI Italy is a voluntary organization established in Italy in 2005 with the aim of protecting and promoting the rights of the child. Its main areas of intervention are justice for children; migration and children on the move; child protection from violence, exploitation and trafficking; and training activities on human rights of children and adolescents. In the recent years, Defence for Children Italy has been working in the field of Juvenile Justice through a series of projects mainly focused on research/analysis, training and advocacy activities.

Methodology

The present report has been drafted following the methodological indications of the project coordinator, which were the result of a working process that involved the entire partnership of "My lawyer, My rights" EU initiative. This assessment is therefore structured according to the table of contents that was provided to all partners. The approach adopted by the DCI Italy team is participatory and child rights-centred, anchored in the UN Convention on the Rights of the Child.
The aim of the present work is to analyse the extent to which the right to be defended and assisted by a lawyer during juvenile criminal proceeding is recognised, guaranteed and implemented in Italy. To this end, it presents, analyses and processes information gathered during a first desk review subsequently verified and completed through a field research.
The main sources of the desk research have been international and European law and instruments on child rights, procedural guarantees and access to justice; Italian legislation regulating the juvenile justice system and also other fields and proceedings that refer to the rights concerned; relevant academic publications and law handbooks as well as short articles written by experts on the issue.
The field research consisted on a series of interviews targeting different actors in contact with children involved in criminal proceedings and/or with youth lawyers. More specifically, the researchers interviewed 7 youth lawyers[3] 1 juvenile judge[4], 1 social worker[5], 2 academics[6]. Some of them were also part of relevant bar and judges associations and other related organisations. The research team chose to conduct semi-structured individual interviews in line with the questionnaire provided by the coordinator but flexible enough to get the most appropriate and quality information in relation to the context of analysis. The field research included also consultations with a total of 25 young people in contact with the law. In particular, 3 focus groups were held with: a) one group of 16 girls in prison, b) one group of 6 boys in prison and c) a mixed group of 1 girl and 2 boys in probation. These direct consultations followed a participatory methodology in line with the contents proposed in the common methodology. In the present report, the quotes deriving from the consultations with children are reported in orange, while the ones from the interviews with adults are in blue. In addition, the field research included an exchange with representatives at the Department of Juvenile and Community Justice of the Ministry of Justice (DJCJ). Following this visit, the DJCJ decided to support the initiative, its future actions and allow some consultations with children and youth in some detention centres.

Limitations

The geographical scope of the field research is limited to some areas mainly placed in the North-West of Italy and therefore the information gathered during the interviews does not cover all the national territory, due to the time and resources available. Nonetheless, the research team tried to verify and compare the information given by the different actors and attempted to explore the situation in other places by alternative means and from secondary sources.

[3] 4 female, 3 male
[4] male
[5] female
[6] both male

1. The international framework

1.1 Ratified Conventions

Italy has ratified most of the Conventions and International Treaties that might have relevance with the research. In particular:

	Signature/Date	Ratification/Date	Reserve(s)/ Declarations
The United Nations International Covenant on Civil and Political Rights (ICCPR)	18 Jan. 1967	15 Sept. 1978	art. 15, par. 1[7]/ art 19 par. 3[8] / Decl. Art. 28[9]
United Nations Convention on the Rights of the Child (CRC)	26 Jan. 1990	5 Sept. 1991	None
Optional Protocol 3 CRC	28 Feb. 2012	4 Feb. 2016	None

1.2 Measures to promote the international not-binding legislation

With regard to the soft law instruments, although is not possible to evaluate how much they affect the juvenile proceedings, it is important to underline that the Ministry of Justice, in collaboration with other ministries and NGOs has developed several informative campaigns and dissemination activities with the purpose to spread the fundamental principles at the basis of these instruments.

In particular:

- Beijing Rules and Riyadh Guidelines have been adopted by the General Assembly of the United Nations through the approval procedure by consensus. With regard to Italy, specialized literature refers to them.
- As regards the UN Basic Principles on the role of the lawyers, Italy has taken part in the work of the 8° United Nations Congress on September 1990 that approved this instrument. Also in this case the principles are contained in specialized literature rather than in the everyday practise of the juvenile proceedings.
- Italy has been among the promoters of a draft that contributed to the editing of the Havana Rules; wide references are available in specialized doctrine and literature.
- With refer to the UN Guidelines for Action on Children, it must be underlined the important activity carried out by NGOs, Defence for Children included. Activity developed with the purpose to guarantee their knowledge and effective application. Same considerations apply to the General Comments of the United Nation Committee on the rights of the child and to the UN Principles and Guidelines on access to legal aid in the criminal Justice System.

[7] Article 15, paragraph 1 *"With reference to article 15, paragraph 1, last sentence: "If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby", the Italian Republic deems this provision to apply exclusively to cases in progress. Consequently, a person who has already been convicted by a final decision shall not benefit from any provision made by law, subsequent to that decision, for the imposition of a lighter penalty*".

[8] Article 19, paragraph 3 "*The provisions of article 19, paragraph 3, are interpreted as being compatible with the existing licensing system for national radio and television and with the restrictions laid down by law for local radio and television companies and for stations relaying foreign programmes".*

[9] *The Italian Republic recognizes the competence of the Human Rights Committee, elected in accordance with article 28 of the Covenant, to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Covenant*".

2. The European framework

2.1 Ratified Conventions

In the context of the current research the participation of Italy to the European Union system and to that of the European Convention on Human Rights (ECHR) must be taken in great account. Hereafter a brief summary of the Conventions to whom Italy has taken part:

	Signature/Date	Ratification/Date	Reserve(s)/ Declarations
ECHR	04 Nov. 1950	03 Sept. 1953	None
European Union Charter of Fundamental Rights	13 Dec. 2007	02 Aug. 2008	Binding since the Lisbon Treaty entered into force on the 1st December 2009
European Charter of social rights	18 Oct. 1961	22 Oct. 1965	A declaration regarding art. 20,[10] has been made but art. 25 has not been accepted.

2.2 European Directives: transposition, implementation and enforcement.

As known, on the basis of the EU Treaties, when the legislative instrument used by the EU institutions is the Directive, the member States must adopt, in a period of time, the national measures required to adjust its own system in order to reach the goals established by the directives.

Also in the matters analysed by the current research different directives have been issued; some more general and others more detailed. Hereafter we would like to give an idea of the implementation instruments adopted by Italy.

	Transposition/Date	National Law	Opt. out
Dir. 2010/64/EU	04 Mar. 2014/ 02 Apr. 2014	Legislative Decree 04/03/2014 n.32	**None**
	23 Jun. 2016 / 14 Jul. 2016	Legislative Decree 23.06.2016 n. 129, amended Legislative Decree 32/2014	**None**
Dir. 2012/13/EU	01 Jul. 2014 /16 Aug. 2014	Legislative Decree 01/07/2014 n. 101	**None**
Dir. 2013/48/EU	15 Set. 2016/ 18 Oct. 2016	Legislative Decree 15.09.2016 n. 184	**None**
Dir. 2016/800/EU	Not transposed yet – deadline 11.06.2019		
Dir. 2016/1919/EU	Not transposed yet – deadline 25.05.2019		

The relationships between Italian and European law are nowadays regulated by the Law 234/2012 ("General rules on the participation of Italy to the development and implementation of the European Union politics"), that foresees a quicker implementation of the directives.[11] Up to now the annual community law was a sort of framework-law containing all the European acts to be implemented. Now, in order to remedy the long approval procedures of the annual community law in Parliament, causing the several infringements procedures settled by the European Commission, the traditional community law splits into two: the Government presents, instead of one singular annual law, the European delegation law by the 28th February of every year and, if necessary, might present another one, the European law.

[10] "*Declaration made at the time of deposit of the instrument of ratification, on 22 October 1965: The Italian Government accepts in their entirety the undertakings arising out of the Charter*".

[11] The new text satisfies the need to adequate Law 11/2005 (no more into force as replaced by the new one) to the innovations and simplifications of the Lisbon Treaty.

With this "splitting" the delays of the community law, together with its reasons, should therefore be removed, ensuring a quicker parliamentary process. In particular, the "European delegation law" will only contain the proxies to the Government for the implementation of the European directives and framework decisions to be transposed in the national legal system, while the "European law" (only potential) will implement the European Acts and the International Treaties concluded in the framework of the EU's external relations.[12]

2.2.1 Directive 2013/48/EU

This Directive lays down minimum rules concerning the rights of suspects and accused persons in criminal proceedings and of persons subjected to proceedings pursuant to Framework Decision 2002/584/JHA ('European arrest warrant proceedings') to have access to a lawyer, to have a third party informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

It belongs to a series of measures set out in the 30.11.2009 European Union Council Resolution related to a reinforcement program of the suspected or accused persons' rights in criminal proceedings. The Resolution is included in the Stockholm Programme approved by the European Council 10-11 December 2009.

This Directive applies to anyone (children included) from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence. It applies until the conclusion of the proceedings (including, where applicable, any appeals). As far as concerns, art. 13 imposes that Member States shall ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of this Directive; category to which juvenile offenders belong.[13]

The transposition deadline was on the 27th November 2016. A five articles Legislative Decree was brought to the attention of the Italian Parliament: art. 2 amends art. 364 of the Italian Criminal Procedure Code, relating to appointment and legal assistance, to extend the guarantees already provided for technical assistance and defence in case of questioning, inspection or comparison also to the identification of persons and things done by the public prosecutor (PM) ex art. 361 c.p.p. In section 3, the Italian legislature sets out that with refer to the right of access to a lawyer at the execution stage, it is not necessary to expressly restate or change what is already considered by the code of rite on access to defence and notices, communications and conversations with relatives and other persons[14].

2.2.2 Directive 2016/800/EU

"The purpose of this Directive is to establish procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration".[15]

This Directive aims to strengthen the trust of Member States in each other's criminal justice systems and thus to improve mutual recognition of decisions in criminal matters. Although the Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and the UN Convention on the Rights of the Child, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States. This Directive promotes the rights of the child, taking into account the so-called soft law rules, that is the Guidelines of the Council of Europe on child-friendly justice.[16]

---

[12] It is also possible, if necessary, to adopt a second delegation European draft law ("second semester") by the 31st July of every year, as well as the possibility for the Government to adopt specific draft laws for the implementation of individual regulatory EU acts in cases which are of political and social importance. http://www.politicheeuropee.it/attivita/18410/italia-ue-le-novita-introdotte-dalla-legge-2342012

[13] From the documentation for the examination of bills in the Chamber of Deputies, law of European delegation 2014 and report on Italy's participation in the EU (year 2014) http://documenti.camera.it/Leg17/Dossier/Pdf/ID0018A.Pdf

[14] From the summary of the proceedings of the Senate of the Republic http://www.senato.it/leg/17/BGT/Schede/Ddliter/dossier/45211_dossier.htm

[15] From the prolog of the directive, "Recital" n.1.

[16] From the prolog of the directive, "Recital" n. 2,3,7

Comparing the Directive with the Italian rules regulating the juvenile criminal proceedings it is important to notice that, according to the ninth recital of the Directive, Member States should give children particular attention in order to preserve their potential for development and reintegration into society. Attention that is at the basis of the Decree n. 488/1988 of the President of the Republic (D.P.R. n. 488/1998) thus becoming a guideline for the interpretation of the general rules applied to the juvenile proceedings.[17] It is important to notice that this Decree integrates the provisions contained in the Criminal Procedure Code which refers to criminal law in general, while the decree only deals with juvenile criminal law.

It is moreover necessary the prevision of an informative system about the general rules of the proceedings; the juvenile accused person should be informed about the different steps of the proceedings, in the measure this is compatible with the criminal proceeding's interest and the involved authorities' role, as foreseen also by the Directive 2012/13. As known, in the Italian law this role is assigned to the judge (art.1 D.P.R 488/1988), even if, according to some of the interviewed lawyers, it might happen that this kind of information is given by the lawyer, while meeting the child in the preliminary steps of the proceedings or by the social workers or by public security forces, although the modalities are not always suitable to be understood by the children.[18]

The Italian law complies with art. 6 of the Directive, regulating the lawyer assistance: according to the criminal procedure Code if the accused person (children included) does not choose his/her own lawyer, he/she will be assisted by a court-appointed lawyer who is required to have a specialized training according to the art. 11 D.P.R. 488/1988 (*see* §6.3 of this Report).

The Italian legislation is therefore quite in compliance with the Directive under consideration, but problems might arise in practice with regards to the specialist training of lawyer and judges operating in the juvenile proceedings and to the promptness and accuracy of the proceedings. In fact art. 11 of the D.P.R. does not describe the content of the training and which are the fields in which the lawyers should specialize. Moreover, some interviewed children, lawyers and other professionals have underlined that with reference to the promptness and accuracy of the proceedings, the lengthiness is one of the biggest problems as it might happen that proceedings start many years after the offence was committed, without taking into account the fact that children's development is quite quick:

> *"He/she is someone different, four years for a child are as if they were twenty for an adult. This is the biggest weakness"* [19]
>
> *"To make the criminal approach more effective, in order to carry out the task to be a quick analysis instrument able to take a child into care […] time is fundamental."*[20]

However, according to children's perspective, lawyers could play a proactive role in trying to speed up procedures or, at least, to refer this issue to the competent authorities; but this does not seem to be the case in practice: "*the lawyer is slow in performing his work, but for him one year is nothing while for us is a life. There are girls that enter here (in juvenile detention centre) three years after having committed the offence, when the situation is completely different and they have children and a husband, this is not fair*".[21]

2.3 Measures to promote non-binding European rules

Also in the European regional setting we find soft law instruments as well as informative campaigns developed by the involved Ministries and by NGOs; the Guidelines on a Child Friendly Justice of the Council of Europe are known also in Italy but not always taken into account in practice in the juvenile criminal system.

With regards to the European Institutions Recommendations, with reference in particular to the Commission Recommendation C(2013) 8179/2 (right to legal aid) and to the Commission Recommendation C(2013) 8178/2 (procedural safeguards for vulnerable persons), it is necessary to remember that a Recommendation

[17] RIONDINO*, already mentioned,* p. 3 Relazione Stati Generali dell'Esecuzione Penale, Tavolo 14, *Esecuzione penale nel procedimento minorile,* https://www.giustizia.it/resources/cms/documents/SGEP_tavolo14_allegato8.pdf p. 2

[18] INT. Lawyer #2, INT. Lawyer #1 e #5, INT. Lawyer #3_4, INT.OP.#4

[19] *INT. Lawyer #3_4, INT.OP.#3*

[20] *INT.OP.#4*

[21] Focus Group, girl in detention

is not-binding as it allows European institutions to make the standpoints clear and suggest an action line without imposing any legal obligations on those to whom it is addressed.
When the Commission recommended to EU Member States to enforce the videoconferences to help the legal services to better work in a cross-border contest, this has not had any positive consequences on the judicial activity in Italy.

2.4 European Union Court of Justice (EUCJ) and European Convention on Human Rights (CEDU) settled case law

Neither pending nor ended procedures exist in which Italy is considered responsible for any rule infringements related to the European Convention on Human Rights concerning the right of access to a lawyer for children involved in criminal proceedings. Therefore, there are no national decisions referring specifically to Italy. Italian judges, of all types and at all levels, in adopting their decisions, take into great account the considerations deriving from these supranational bodies. For example, it has to be considered how the Italian judge, dealing with the criminal fair trial rules, considers art. 6 ECHR according to the interpretation of the EHR Court (Criminal Supreme Court, section VI decision n. 2296/13.11.2013).

3. National framework

3.1 Legislation framework related to the juvenile justice system

From a legislative point of view, Italy constitutes a good example of transposition of international standards and gives rise to a system that safeguards the right of the child to growth and develop his/her capacities.
In this sense, the offence committed by a person under the age of 18 is firstly considered as an expression of unease or discomfort, of a difficulty in the psychophysical development, and therefore a starting point for an educational process. On paper, the principle of the best interest of the child (art. 3 CRC) appears to be the basis of the Italian juvenile justice system. In fact, the system is based on the concept of liability (recognized in art. 98 of the criminal code) according to which a child can be criminally prosecuted only if "imputable" (responsible from the criminal point of view)[22]. This concept implies the capacity to understand and discern as a precondition to be recognized as guilty. The system is also compliant with the principle of "minimum intervention", according to which judicial interventions are reduced to the minimum, especially those of coercive and restrictive nature.
The juvenile justice system in Italy is regulated by a set of laws and provisions and is managed separately from the adult justice system. [23] Hereafter a chart containing the main rules regulating this field of the criminal law.

	Is there a law?	**Name and reference of the law(s)?**	**Date**	**What does the law provide for? (briefly)**
Juvenile Justice system	There is a set of laws regulating the JJS	Royal Decree n. 1404, 20 July 1934, entered into force with Law n. 835 of 27th May 1935 (Law 835/1935).	1935	Establishes the Juvenile Courts as specialized bodies and represents the starting point for the juvenile justice system's structure.
		- Presidential Decree n. 448 of 22 September 1988 (D.P.R 448/88)	1988	It is a Decree that integrates the Criminal Procedure Code and regulates the provisions on criminal proceedings of juvenile offenders, including police custody and personal

[22] According to articles 97 and 98 of the criminal Code *It's imputable who, at the time he committed the fact, was fourteen, but not eighteen, if he had the ability of discernment*
[23] DEFENCE FOR CHILDREN INTERNATIONAL – ITALIA, *TWELVE National Report,* p. 8 ff, Genova, 2016. http://defenceforchildren.it/files/twelve_Italy_.pdf

				liberty.
		- Legislative Decree n. 272 of 28 July 1989 (D. Lgs 272/1989).	1989	Regulates the implementation, coordination and transitional provisions upon the Presidential Decree 448/88, bearing rules on criminal proceedings against young offenders.
		Decree Law n. 12 of 14th January 1991 (D.L. 12/1991)	1991	Establishes supplementary and corrective provisions on the criminal procedure and its related rules.
Age of criminal responsibility	The Criminal Code	Art. 97 and 98 Criminal Code.	1930	"Cannot be attributed who, at the time when he committed the fact, had not reached the age of fourteen" "It's imputable who, at the time he committed the fact, was fourteen, but not eighteen, if he had the ability of discernment".
	D.P.R 448/88	Art. 26 D.P.R 448/88.	1988	1. At every stage and grade of the proceedings, the Judge, if finds that the defendant is less than fourteen years, pronounce, even ex officio, ruling not to prosecute as the person is not imputable.
Right of access to a lawyer	Criminal Procedure Code	Title II (Lawyer)	1988	The accused has the right to appoint no more than two lawyers. (art. 96)
Right of assistance by a lawyer	Criminal Procedure Code	Title VII (Lawyer)	1988	The accused who has not appointed a lawyer or was lacking is assisted by a court-appointed lawyer (art. 97)
Legal aid system	Criminal Procedure Code	Title VII (Lawyer)	1988	The accused, the victim of the crime, the victim who wishes to bring a civil action and the responsible party may apply to be admitted to the civil legal aid of the State, according to the law rules on legal aid of underprivileged (art.98)
	Law 30 July 1990, n. 217	Law 30 July 1990, n.217 Establishment of legal aid for the underprivileged	1990	In criminal proceedings against children, where the person concerned has not done so, the authority shall appoint a lawyer whose remuneration extent is paid according to the manner prescribed by this Act. The State has the right to demand the amounts paid in respect to the child and family members exceeding the income limits referred to in article 3.
	D.P.R 30 May 2002, n. 115		2002	Art. 118: Liquidation of the remuneration and expenses to the court-appointed youth lawyer

		Remuneration: provision related to lawyers	2012	Art. 1.1. The lawyer's fee is proportional to the importance of the work. Art. 12.5. In the case of a court-appointed youth lawyer the fee can be reduced up to half. (amended by Ministerial Decree 55/14 in which is not proposed).[24]
Appointment of a lawyer	Criminal Procedure Code	Title VII (Lawyer)	1988	1. The accused has the right to appoint no more than two lawyers. 2. The appointment is made with a statement to the authority concerned or by the lawyer or forwarded by registered post. (art. 96) The lawyer appointed under subsection 1 is chosen among the members of the national list referred to in art. 29 of the implementing measures (…) (art. 97)
	D.P.R 448/88	Art. 11	1988	1. Notwithstanding the provision of art. 97 of the Criminal Procedure Code, the Council of the Law society shall establish lists of lawyers with special training in juvenile law.
1.6 Socio-legal defence centres	D.P.R 448/88	Art. 6	1988	1. At every stage and grade of the proceedings, the judicial authority uses administration justice social services. May also use services established by the local entities.
	D.P.R 448/88	Art. 12 (1, 2)	1988	1. Emotional and psychological assistance to the accused child is ensured at every stage and grade of the proceedings by the parents' presence or other suitable persons designated by the child and accepted by the proceeding judicial authority. 2. In any case the assistance of the services referred to in art. 6 is ensured to the child.
1.7 National monitoring mechanism(s)	Criminal Procedure Code	Title VII (Lawyer)	1988	Art. 97.4 Art. 103
	Law 12 July 2011, n. 112	Establishment of the Authority for childhood and adolescence	2011	Art. 1: In order to ensure full implementation and protection of children rights and interests. (…) Art. 4.
	Law Decree 23 December 2013, n.	Urgent measures regarding protection of the detainees' fundamental rights and	2013 2014	National Guarantor of the rights of persons detained or deprived of personal liberty shall **ensure** that the execution of the custody of detainees

[24] http://www.altalex.com/documents/news/2014/04/09/parametri-forensi-il-decreto-attuativo-in-gazzetta

	146 and Law 21 February 2014, n. 10	of the controlled reduction of the prison population. Law 21 February 2014, n. 10 amending and converting into law Decree-Law n. 146, 23 December 2013, regarding urgent protection measures of the detainees' fundamental rights and of the controlled reduction of the prison population.		in prisons and of inmates conform to national and international principles and norms and **acts** on general problems or issues requiring immediate action.

The criminal measures applicable to children by the judicial authority need to be considered taking into consideration the logic and principles that inspired the current Italian juvenile justice system as embodied in the Presidential Decree 448/88.[25] In fact, as stated by article 1 of the Decree, *"in the proceedings against children the provisions of this Decree and, as far as they have not provided, those of the Criminal Procedure Code, are observed. These provisions are applied appropriately to the personality and educational needs of the child".*

The Italian juvenile criminal process is therefore characterized by underlying ambivalence, because as legally governed, it is a process "of the fact" and "of the person": it is called to perform a penalty function in that criminal trial and, at the same time, an educational function. It is an ambivalence that causes problems in search of solutions, but that necessarily derives from the Italian Constitution (article 31) and from the international law. If this is the peculiarity of the juvenile criminal process, it follows that the defence of the child must be effective and guaranteed both with regard to the issues of fact and with regard to the questions of the person. The word "defence" must mean not only the legal assistance of a lawyer and the procedural initiatives that can be undertaken, but also (and even before) the strict observance of the rules of the process.[26]

3.2 Suspected or accused children in criminal proceedings: national definitions

3.2.1 Minimum age of criminal responsibility

As stated in the criminal Code, art. 97 *"Cannot be attributed who, at the time when he committed the fact, had not reached the age of fourteen".* Art. 26 of the D.P.R 448/88 establishes the immediate declaration of *imputability*: *"At every stage and grade of the proceedings, the judge, if finds that the defendant is less than fourteen years, pronounce, even ex officio, ruling not to prosecute as the person is not imputable*". Art. 98 Criminal Code adds: *"It's imputable who, at the time he committed the fact, was fourteen, but not eighteen, if he had the ability of discernment, but the penalty is diminished. When the sentence imposed is less than five years, or is it monetary penalty, the sentence does not achieve additional penalties. If the penalty is more serious, the sentence just involves prohibition from holding public office for a period not exceeding five years, and, in the cases established by law, the suspension from the exercise of parental responsibility".*

The child age is not always obtainable with certainty from documentary sources (see for example the case of migrant minors or undocumented minors); consequently, the legislator, in articles 8 and 9 of the D.P.R 488/1988 designated procedures to be taken to determine the age and personality of a minor:

[25] DEFENCE FOR CHILDREN INTERNATIONAL – ITALIA, *Twelve…above mentioned.* p. 11

[26] LUCCHELLI, *Limiti della difesa penale del minore straniero,* Milano. http://www.cameraminorilemilano.it/wp-content/uploads/2015/10/ppmstraniero_3.doc p. 1

"Art. 8. establishing the age of the child:

- *When there is uncertainty about the minority of the defendant, the court might, even ex officio, request an expertise.*
- *If, after the assessment, doubts remain about the minority, this is presumed for all purposes.*
- *The provisions of paragraphs 1 and 2 shall also apply when there is reason to believe that the defendant is less than fourteen years".*

"Art. 9. Investigation on the personality of the child: "

- *the Prosecutor and the judge acquire elements about the conditions and personal, family, social and environmental resources of the child in order to establish whether he is chargeable and the degree of responsibility, evaluate the social significance of the fact and the appropriate criminal measures and adopt any civil measures*".

For the same purposes the Public Prosecutor or the judge can take information from people who have had a relationship with the child or hear expert opinion, even without any formalities.

The juvenile proceeding is therefore characterized, from the very beginning, by the centrality of the investigation of the personality of the child, based on personal, social and family conditions surveys that allow for the adoption of an individualizing path for the child who enters the criminal circuit.

With this in mind, in fact, findings on the personality of the child are predisposed, aimed at providing an appropriate response to the deviant behaviour of the same, including the assessment of his personality and context of origin.

This is the differential element compared to the ordinary proceedings against the adults, where any kind of expertise on the personality of the accused person is excluded, as provided by art. 220, paragraph 2, c.p.p. Moreover, establishing the age of the child is essential in order to continue the proceedings and implies that, in case of uncertainty, a technical evaluation is needed. If doubts persist, the minority is assumed in order to guarantee the application of child- favour measures.[27]

Those minors who are not criminally charged, are exempted from being sentenced and convicted. Like those under the age of 14 years, these children may be subjected to security measures such as placement in a community centre or probation only if they are deemed to be socially dangerous.[28] It is also foreseen the possibility to apply administrative measures to minors who are not criminally charged in order to prevent and rehabilitate them in case of problems of conduct or behaviour.[29]

3.2.2 Vulnerable groups

a) Girls

In the juvenile justice system, there are not any rules specifically related to girls that might be involved in some proceedings. It is however important to underline that women detention is a phenomenon quantitatively modest and girls in Italian children penal institutes in recent years have been rarely more than fifty. Girls have represented a percentage between 17% and 15% of the reported minors, while in prison are about 10%.[30]

On the Italian territory there is a total of 16 Juvenile detention centres (IPM), among which one is completely for women (Pontremoli) and two have sections dedicated to juvenile female detainees (Roma and Nisida). The female section of the detention centre in Milan has been closed recently. In these institutes the different

---

[27] RIONDINO, Relazione Stati Generali dell'Esecuzione Penale, *Esecuzione…above mentioned.* p. 3. Worth mentioning in this respect the proposal made by the National Union of Juvenile Chambers with regard to the possibility to edit the article 9 of the D.P. R 448/88, entitled "Investigations on the personality of the minor and defensive guarantees" (2006) in order to regulate the defensive personality assessment phase guarantees of the child.
MUGLIA – PETRACHI *Il ruolo dell'avvocato minorile,* in BISCIONE – PINGITORE (a cura di), *L'intervento con adolescenti devianti: teorie e strumenti,* Milano, 2015, p.90.

[28] FLORA- TONINI, *Diritto penale per operatori sociali,* Vol. II, Milano, 2002.

[29] DEFENCE FOR CHILDREN INTERNATIONAL – ITALIA, *Twelve…above mentioned,* p. 11

[30] From the card provided by the Ministry of Justice, https://www.giustizia.it/giustizia/it/mg_1_12_1.page;jsessionid=9qwunFnLZk9ctZNDcTp3QQum?facetNode_1=0_2&facetNode_2=1_0(2015)&facetNode_3=0_2_12&contentId=SPS1155101&previsiousPage=mg_1_12

needs of female minors are taken into account: either through specific training courses (hairdresser, beautician, baking and cooking), or recreational activities such as dance, volleyball, theatre, and finally through a health awareness raising activities.[31]

Box 1. The case of Roma girls

"My boyfriend chose my lawyer", these words come from a girl involved in criminal proceedings, met together with a group of other girls in the framework of the project "My Lawyer, My rights". The group of girls consulted, the majority of which were of Roma origin, agreed on the fact that the lawyer is chosen by the family and acts in accordance with her, without consulting or listening the young girls. In fact, lawyers often present to the judicial authorities legal petitions concerning detained girls who are not even aware about the contents. Normally Roma girls use to appoint trusted lawyers and, according to some informants, in Italy there are some lawyers who are specialized in those cases affecting this community. In the case of these girls, lawyers are normally paid by the husband's families.

But in order to get a better understanding of the situation of these girls, the knowledge on their culture of belonging should be further deepened. A culture such as the Roma one, heterogeneous but profoundly paternalistic where the social identity prevails over the individual one and where both the extended and the traditional family take precedence over personal needs and projects.[32] Roma girls become adults prematurely. When the time of maturity comes, they are "sold" to the family of the appointed fiancé, to whom they are constrained to repay their own price. They remain trapped in this cage that will close even further in the moment in which they give birth to a baby, who is often used as a strong emotional blackmail.

According to some professionals met during research and training activities, prison represents in many cases a breathing space; trying to postpone the moment of the release from an institution that exclusively considers them as offenders but that, paradoxically, offers them protection. Protection from a world that constrains them to a life that many of them do not desire but to which are not able to rebel against. It is hard to escape because not only their children but also their own lives are at stake.

The social exclusion and marginalisation of this community, beyond the resistance of the original culture itself, do not enable a change, an evolution and the possibility to creolize their culture, that remains instead closed, isolated, protectionist. In particular, the situation of Roma woman is completely absent of analyses and discussions, remaining thus little known and documented.

What about the child's lawyer in all this?

"They are always the same and act to defend the interests of the family, and for this they are paid, generally in gold or in cash"[33]. Is precisely in this case where the lawyer should assume a role of defender of the child's interests that are evidently in conflict with those of her family. However the lack of attention on the issue prevents this to getting out to the surface.

Institutional responses to this phenomenon are absent. A Roma girl who commits an offence suffers a double violence: that of the society of belonging, which relegates her to a pre-defined and controlled social role; and that of the dominant culture in which very often prevail elements of marginalisation and stigmatization of diversity, that considers and simply treats her as a perpetrator.

b) Minors with mental diseases

Specific rules are not included in the D.P.R. 488/1988; general rules shall therefore be applied. In particular, with respect to this category of children, articles 88 and 89 of the Criminal Code may be of particular

[31] From the third report on Italian penal institutes for children "Ragazzi fuori". http://www.associazioneantigone.it/upload2/uploads/docs/RagazziFuoricompleto.pdf p. 11ss

[32] Fundació Surt, 2012

[33] Interview with a professional

importance. To determine if the person is chargeable, the Criminal Code distinguishes the partial defect of mind from the total one. The first one discloses, pursuant to art. 88, when who has done the deed was by reason of insanity in that state of mind to *exclude* the ability of discernment.
The consequence is the immunity of the agent. In this case, however, the judge may order a detention, but only if he/she ensures the extremes of social dangerousness. The partial defect of mind, based on art. 89, reveals when who has done the deed was by reason of insanity in this state of mind to *decrease greatly* without excluding the capacity of discernment. In this case the subject will respond equally to the offence committed, but the penalty is diminished.

c) Minors with disability

Even for this category specific rules are not included neither in the DPR 488/1998 nor in other legislations. We can recall what has already been said with respect to *imputability*. We cannot however forget the art. 24 of the Constitution, which enshrines the right of defence as inviolable at every stage and grade of the proceedings, for any defendant, regardless of its age and/or physical condition. The subject acquires a special meaning in relation to the defendant with a sensory or physical disability; conditions that may create obstacles in participating to the process and thus affect the rights of defence.
Both the Constitutional Court and the Supreme Court have dealt with this theme, recognizing a duty of the institutions to overcome the limitations associated with disability in order to allow an informed participation to the different steps of a trial and thus ensure the full right of defence. The starting point was the art. 119 criminal procedure code governing the participation of the accused deaf and/or mute in criminal proceedings.[34] This article has although been declared illegal by the Constitutional Court as it does not provide for those people (deaf, dumb or both) the right to have the free assistance of an interpreter in order to be an active part of the proceeding[35].
Always in relation to the principle contained in article 24 of the Constitution, the Supreme Court has had occasion to state that the declaration of contumacy cannot be pronounced against a handicapped accused person who has expressed his/her intention to take part in the proceeding but the presence of architectural barriers does not allow his/her participation[36].

d) Foreign minors

The analysis of current flows of minors in the criminal circuit highlights that in recent years there has been a significant increase of foreign children authors or suspected of crime. Issues relating to the presence of foreign minors in the penal circuit, often irregular on the territory and unaccompanied, have led to an objective obstacle to the application of alternative measures to detention for them. They are often without references and stable socio-familiar conditions, thus resulting in a substantial inequality compared to the Italian minors who can benefit less afflictive measures.[37] The problem has been faced by the Supreme

---

[34] *Art. 119 c.p.p. When a deaf, mute or deaf-mute wants or needs to make statements, for the deaf questions warnings and admonitions must be written, and he/she shall reply orally; for the mute requests, warnings and admonitions are oral and he/she responds in writing; the deaf-mute occur in writing questions, warnings and admonitions, and he/she responds in writing.*
2. If the deaf, mute or deaf-mute can't read or write, the authority concerned shall appoint one or more interpreters, preferably chosen among those accustomed to deal with it.

[35] With decision N. 341 of 7/22/1999 the Constitutional Court declared the illegality of article 119 c.p.c. because contrary to art. 3 and 24 of the Constitution. *"Insofar as it does not provide that an accused deaf, dumb or both, regardless of whether he/she can read or write, has the right to have the free assistance of an interpreter, chosen among people accustomed to dealing with him/her, in order to be able to understand the charges formulated against him/her and to follow the performance of acts involving him/her"*.

[36] Decision of the Supreme Court, December 17, 2001, n. 3376, stating that the absolute inability to appear at the trial, already due to unforeseeable circumstances and force majeure (pursuant to article 420 ter c.p.c.) *"prevents the defendant's declaration of contumacy. This must be recognized even when, in case of a handicapped accused person, the same defendant has previously expressed his/her intention to participate in the proceedings, but the lack of access to the hearing, because of architectural barriers, denies him/her. It must be considered that the removal or neutralization of these barriers through appropriate technical devices, according to precise provisions contained in particular in law February 5, 1992 n. 104 and in D.P.R. July 24, 1996 n. 503, is up to public authorities, which must do so regardless of the manifestation of the needs of the individual disabled person ".*

[37] Relazione Stati Generali dell'Esecuzione Penale, *Esecuzione… above mentioned,* p. 6

Court, which affirmed the principle that the alternative measures to detention may also apply to the non-European foreigner entered illegally in the State and without a residence permit.[38]
Later, in the same direction, the Constitutional Court, with decision N. 78 of 2007, has expressed the constitutional illegality of articles 47, 48 and 50 of the L.354/1975 establishing the Prison Code in so far as those rules are considered not applicable to the non-European foreigner entered illegally in the territory. A reference to Recommendation (2012) 12 must be done. It reiterates the need to ensure non-European foreigners respect for the human rights, the dignity and the principle of non-discrimination, establishing, moreover, to guarantee them the same range of precautionary measures, non-custodial sanctions and measures and alternative measures with the same conditions as the other accused offenders, avoiding unjustified limitations due to their status.
However, it should also be pointed out that in the juvenile process is often felt the difficulty of ensuring the educational purposes of the penalty in respect of foreign minors, by means of ad hoc institutes. This considering the impossibility of involvement of the family context, often non-existent or clandestine, or in consideration of the placement in community that are not always equipped to treat cultural diversity.
With regard to the function of the lawyer in this area, there is a strong limitation of the typically defensive activity. This is based on a few factors. One is the frequent contumacy of the accused person; absence that is not always a free and informed choice, but rather the result of the irregular situation of the minor and of the superficiality of those who shall ensure his/her identification and declaration of residence (normally in the absence of an interpreter). Another relevant element is the reported reduced possibility to obtain measures (precautionary or not) alternatives to imprisonment and the lack of resources that the Court-appointed lawyer normally has (that is in most cases the lawyer of foreign minors). Finally, the regulatory restrictions for foreigners, especially if irregular, to the free legal assistance.[39]
Another weakness is in the event that the minor is not accompanied, for example because the parent (or the person who has the parental responsibility) is not identified or is not in Italy. In this case, a guardian should be appointed, because on the contrary the proceeding can be declared invalid, even ex officio. However, the guardian is very rarely appointed in Italian judicial practice in the perspective of the rehabilitation aim of the juvenile criminal proceeding.[40]
Therefore, with regard to foreign minors, whether accompanied or not, mostly punitive rather than the educational instances are carried out, with a more frequent use of deprivation of liberty instead of alternative measures. In some cases, the educational measures are either not pursued (as in the case of processes to "ghosts" and, generally, processes to Roma children), or find unsatisfactory answers when the personality assessment of foreign juveniles are carried out on the basis of criteria that do not take into consideration multicultural variables.[41]
In conclusion, with regard to the foreign accused child, the following rights, as required by law, are not adequately implemented:

- the principle of adequacy to the personality of the child in the application of the rules (art. 1 D.P.R. 488/1988), for lack of information about the personality of the minor;
- the principle of least offensiveness of the process (articles 1, 16, 19, 27 and 28 D.P.R. 488/1988). This due to the lack of resources and perspective limits that encourage a punitive approach;
- the right to have information and decisions explanation (article 1, paragraph 2 D.P.R. 488/1988). The presence of cultural mediators also in juvenile courts should be necessary to realize it;
- put in the condition to carry out this role, the emotional and psychological assistance is required (articles 12, co. 1 D.P.R. 488/1988). In addition, the ministerial and local services assistance should be granted (articles 12, co 2 D.P.R. 488/1988), but on the contrary they are not always triggered. Finally, the presence of the adults having the parental responsibility (article 7 D.P.R. 488/1988), above mentioned.

[38] Supreme Court 27.04.2006 n. 14500
[39] LUCCHELLI, *Limiti… above mentioned,* p.2
[40] LUCCHELLI, *Limiti… above mentioned,* p.2
[41] LUCCHELLI, *ibidem*

A relevant change in the direction to protect and safeguard foreign unaccompanied minors has been introduced by a very recently approved law on "protection measures for the unaccompanied foreign minors"[42]. Article 16 foresees that the foreign unaccompanied minor, involved in a proceeding, has the right to be informed of his/her right to appoint a lawyer even through his/her guardian or those who have the parental responsibility and the right to benefit from the free legal aid system at every stage and grade of the proceedings.

e) Minors with AIDS or other serious diseases:

For the persons affected of serious diseases the criminal procedure code and the penitentiary system (O.P.) provide alternative measures.

The art. 47-quater of the penitentiary system, in particular, provides the application of the probation custody to the social services and house detention outside the punishment limits referred to in articles 47 and 47-ter of the O.P., whereas the offender wants to undergo treatment program in specialized hospital units.

This provision has to be regarded in relation to the rules on the postponement of the punishment or security measures execution, ex articles 146 and 211-bis penal code. This is not a rule dictated specifically for underage convicts suffering from these diseases, but there is not even a ban application to them. [43]

3.3 The right of suspected or accused children to access and be assisted by an attorney in criminal proceedings

"*Any person who comes into conflict with the law is entitled to procedural guarantees under the rule of law, including the right to state his or her view on the matter in question, on whether he or she is guilty and on the possible sanctions imposed. It should be self-evident that children are entitled to the same*".[44]

Children, as well as adults, can actually enforce their substantive rights only if also their procedural rights are recognized; rights that must be exercised through a representative.

The reference standard in this case is art. 24 of the Constitution, whereby everyone can take legal action to protect its own rights and legitimate interests, since defence is an inviolable right at every stage and grade of the proceedings.[45] In the Constitution there are no rules expressly referring to the juvenile criminal justice system. This lack, however, is widely filled through the call to a number of provisions that deal with the person, with his/her rights and freedoms, together with the essential principles of the criminal and procedural matter. In addition to art. 24, particularly important is art. 31, second paragraph of the Constitution, which, by imposing the Republic to protect maternity, childhood and youth, becomes a constitutional compatibility assessment parameter of any rule related to minors, including criminal penalties.

It is also an interpretation criterion of other constitutional provisions, in particular, of the art. 13, which guarantees the inviolability of the personal freedom.[46]

It is necessary to identify the fundamental aspects that characterize the defence of the child. Traditionally, the criminal defence is divided into technical defence, indispensable as such, within the exclusive competence of the enabled lawyer, and material defence, namely self-defence, which has a great importance in the juvenile proceedings.

This defence, in fact, is left to the accused's cognitive, argumentative and communicative abilities, which, in the case of an accused minor, may not be as developed as in the case of an adult.[47] The Italian law recognizes the right of the child, who is capable of forming his/her opinion, to express himself/herself on any question and the possibility for any minor to be assisted by a lawyer, in line with the main international provisions on the subject, most notably the art. 12 of the CRC. This provision is of particular importance as it

[42] Law 7 April 2017, no. 47.
[43] Relazione Stati Generali dell'Esecuzione Penale, *Esecuzione…op. cit.* p.22
[44] SANDBERG, Rapporteur UN Committee on the Rights of the Child, Introduction to DEFENCE FOR CHILDREN INTERNATIONAL – ITALIA, *TWELVE National Report,* Genova, 2016.
http://defenceforchildren.it/files/twelve_Italy_.pdf
[45] SCOLARO, *Il diritto di difesa del minore,* in *Minorigiustizia,* 2008, 2, p. 160
[46] LARIZZA, *I principi costituzionali della giustizia penale minorile,* in PENNISI (a cura di), *La giustizia penale minorile: formazione, devianza, diritto e processo,* Milano, 2012, p. 105.
[47] MUGLIA – PETRACHI, *Il ruolo… above mentioned,* p. 78

gives application to the right of the controverting principle, introduced as a rule of the fair trial by article 111 of the Constitution, and to the principle of the right of defence of article 24, paragraph 2 of the Constitution. However, it is also true that in juvenile criminal proceedings should be given more space to the technical defence in order to compensate the gap left by a weaker self-defence.[48]

No criminal proceedings can exist without a debate in the court between the prosecution and defence: and the particular condition of vulnerability of the accused person, as party subjected to investigation, requires that he/she must be necessarily assisted by a licensed professional and the defendant, including children, can't waive his right of a lawyer.

Whatever the general definition is, it is commonly believed that the technical defence ensures the respect of the rules regarding the collection of evidence and their evaluation; the exact application of the relevant procedural rules (procedural penalties, such as invalidity and uselessness); the correct factual and legal reconstruction of the episode; the basis of the reasons of the accused and, in particular, of personal qualities and conditions helpful to relieve the position. So it is, also, for the accused/suspected person in D.P.R. 488/1988.[49] The complex role of the youth lawyer unfolds, from this point of view, through the intervention in favour of the accused minor, aimed to help him/her understand the technical and psychological significance of the procedural situations, as well as to help him/her to adequately defend himself/herself.

Assisting the minor means to be a reassuring presence next to him/her, informing him/her of and making him/her understand the meaning of procedural activities. Legal representation also entails the commitment for the lawyer to relate to all other procedural subjects, echoing the educational children needs and recommending the best procedural solutions.[50] (See § 6.5 and 6.6 of this Report).

The mere appointment of a lawyer is not sufficient to meet the obligation of the State to ensure effective legal assistance. As we will see later (see § 6.3 of this Report), the specialized training of the lawyer is fundamental to ensure this right to the accused minor. In fact, the juvenile process implies needs and requires knowledges that differ from those of the adult proceedings. It is necessary to respect the educational purposes of the juvenile criminal process.[51] However, it became clear, due to the interviews conducted in the field research of this project that this right is guaranteed quantitatively but not qualitatively, although the criminal defence is compulsory.[52] Notwithstanding, some of the consulted boys and girls believe that they do not need a lawyer and affirm that if it were up to them, they would waive this right and would self-defence. Others, instead, say that the lawyer is necessary because he knows very much about of law.

3.4 The right of suspected or accused children to information in criminal proceedings

Also in this case, we must refer firstly to the Constitution, in particular to paragraph 3 of art. 111, which, among other things, provides the right to information, confidential and timely, with regard to the imputation moved to the defendant and to the development of the proceedings. This is one of the aspects of the right of defence, which allows to establish a balance among the parties of the process, that only in this way can be defined as fair, according to the parameters of article 6 of the ECHR. It must be also underlined that with the Legislative Decree N. 101/2014 was given implementation to the Directive 2012/13/EU of the European Parliament and of the Council of May 22, 2012 on the right to information in criminal proceedings. On its basis articles 293, 294, 369, 386 and 391 369-bis of the criminal procedure code have been amended. At present, the official or the police officer responsible for carrying out the measure of arrest or detention must deliver to the defendant a copy of a written notice, written in a clear and precise form, translated into a comprehensible language (if he/she can't understand Italian). With this notice the defendant is informed, among other things, of the right to appoint a lawyer or being entitled to ask for free legal aid in cases provided by law; the right to obtain information concerning the accused and the right to ask for an interpreter and for the translation of fundamental documents.

Specific rules for the accused minor do not exist, but by the practice of the Italian legal system it is possible to gather, even in this hypothesis, that the informational task is entrusted to the police, but also to social

[48] SCOLARO, *Il diritto …above mentioned*
[49] DI NUOVO - GRASSO, *Diritto e procedura penale minorile,* Milano, 2005
[50] MUGLIA – PETRACHI, *Ivi,* p. 85
[51] MUGLIA – PETRACHI, *Ivi* , p. 78
[52] INT. Lawyer #1, #5

services and to the operators of the First Reception Centres (CPA). Then a distinction has to be made in situations where a minor is arrested, or released after the identification because the crime does not justify the arrest. If the juvenile is arrested, and this happens in very serious cases, the police officer declares the arrest and brings him/her to the CPA for up to 48 hours according to the law, even if in practice this time limit is not always respected. From the consultations with children, it emerged a rather negative perception about the informative role of the police.

> *"The police take advantage of the fact that you don't know your rights. When they arrest you they do not say anything, they ask you to sign a document without telling you to read it before and verify if what is written is correct. You are in panic and therefore you sign without understanding what is going on".*[53]

Art. 1 paragraph 2 of D.P.R. 448/88 must therefore be read taking into account what above mentioned: *"the judge explains to the defendant the meaning of procedural activities that take place in his/her presence and social-ethical reasons for decisions. The violation of the right to information of the child involves a general invalidity ex 178 lit. c) C.P.C."*

The D.P.R. redraws the shape of the juvenile judge, giving him/her tasks that go beyond the mere verification of facts, for the purposes of punishment: the juvenile judge also plays an educational role, as we have seen, as he/she has to illustrate the meaning and the social and ethical reasons for his/her actions and the content of his/her decisions. The qualifying aspect for which it is possible to distinguish the juvenile judge from other judges is therefore the task of communication, with a role that involves not only the parties in the strict sense, but all figures present in the proceedings; the magistrate who fails to perform this communication would be missing in one of the most significant characteristic of his/her specific work, failing also to contribute to the education of the child and to the assessment of his/her interest. [54]

> *"Also the lawyer has an informative role in order to allow juvenile offenders to follow the process and educate them to what a child process is, because if we want it to be successful, they must play their role too".*[55]

The lawyer must thus give information to the child about his rights but also about the proceeding in order to enable a dialogue that is conducive to decisions that are taken based on the best interest of the child. However, some weaknesses were expressed in this regard:

> *"There have been cases in which the lawyer has done a request to the judicial authority without having consulted the girl beforehand, thus requesting a measure that the girl did not want".*[56]

3.5 The right of suspected or accused minors to interpretation and translation in criminal proceedings

Through legislative decree March 2, 2014, n. 32, was given effect to the EU directive 2010/64/. Circumstance that has led to some changes to the criminal procedure code (arts. 104 and 143), to its implementing provisions (arts. 67 and 68) and to the consolidated law on court fees (article 5).

In 2016, the legislature has intervened on the issue with the Legislative Decree 129, corrective of Legislative Decree 32/2014, with further amendments to the criminal procedure code and its implementing rules.

This law codifies cases and manners related to the assistance of an interpreter and the document translation. The accused, for each of the cases referred to in article 143, paragraph 1, second period of the criminal procedure code, is entitled to the free assistance of an interpreter for an interview with the lawyer. This assistance can also be provided for more than one interview, where, for facts or circumstances, the exercise of the right of defence requires more consultations in relation to the fulfilment of the same pleading.

Even in this case do not exist specific rules for the defendant minor, despite the fact that the right to translation and to the assistance of an interpreter is one of the fundamental requirements of a system of Juvenile Justice, according to international standards (see United Nations [UN] Committee on the Right of

[53] Focus Group, girl in probation

[54] GALLINA FIORENTINI – RESSA, *La formazione specializzata del difensore e del giudice nelle disposizioni del nuovo processo penale minorile,* in *Rivista Italiana di Criminologia,* 1/1994, p. 492

[55] INT. Lawyer #5

[56] Social worker of a juvenile prison

the Child, [the Committee], General Comment 10-2007). But the Italian practice reports that this discipline is applied unevenly depending on the court and it is not always a quality translation. The court-appointed lawyer [notwithstanding with the 2016 amendment] cannot refer to the system in case of need. Moreover, while the interpreter is guaranteed during the hearing, he/she is not guaranteed at the encounter with the police[57]. During the stage of execution of the penalty in a juvenile prison, the presence of a cultural mediator seems to be ensured.

3.6 The (free) legal aid assistance

The right to a fair trial is not only reserved to those who can afford to pay a lawyer. To any accused person or defendant shall be guaranteed equal and fair treatment, as well as the right to defend himself/herself, regardless of his/her financial position. One of the fundamental safeguards to ensure fairness in criminal proceedings is therefore the right to admission to legal aid, a legal measure that allows also the underprivileged persons the concrete exercise of the inviolable defence-right, as enshrined in art. 24 paragraph 3 of the Constitution.[58]

In general, legal aid, despite being a right of all suspects/defendants, must be secured to vulnerable groups and individuals who, for the specific personal situation, may not be able to defend themselves in court.

It is particularly important in the early stages of criminal proceedings, as that individuals detained by police forces are in a vulnerable position and have greater need of defence.[59] As regards the Italian system, regulated by Presidential Decree 115/2002, low income limits have been set in order to be entitled to benefit legal aid in criminal proceedings: the applicant should have an annual income not exceeding euro 11,528.41, with arrangements in the event that the person concerned lives with a spouse or other family members.

Both Italian citizens and foreigners residing in the State may apply, whatever role they play in the criminal proceedings. Admission is valid for each grade and step of the process and for all deriving and incidental procedures. The instance is presented at the office of the competent judge, whether he/she is the judge for preliminary investigations, preliminary hearing or trial. In case the instance is rejected, the applicant may file an appeal. If there is admission, applicants may choose a lawyer among the list of lawyers for legal aid held at the Local Bar Association (COA) of the competent Court of Appeal District.

As a result of admission to legal aid, some expenses are free, others are anticipated by the Treasury and among these is the fee of the lawyer.[60]

3.6.1 The (free) legal aid system for minors

The system of legal aid is also provided in the juvenile criminal procedure. As for the right of defence, also in this case, the suspect must be informed of the possibility to benefit it from the very first investigative measure; whether executing the precautionary measure of arrest or only verbal identification, always in accordance with the discipline of the fair process.

In the juvenile criminal proceedings, the free legal aid is ensured by law when the child is assisted by a court-appointed lawyer included in the list held by the competent Local Bar Association (article 80 DPR 115/2002). In such cases the child or his/her family do not need to apply for the free legal aid since the court-appointed lawyer is automatically paid by the State. The family is asked to document the existence of the above mentioned economic conditions. If the income limit is overcome, the State has the right to request the return of the amount paid to the lawyer. Instead, when the child is assisted by a trusted lawyer the child and/or his family should present a request to be admitted in the free legal aid system.[61]

---

[57] INT.OP.#3; int. Lawyer # 2; int. Lawyer # 6; int. Lawyer # 3-4

[58] From the information document prepared by the Juvenile Court of Reggio Calabria http://www.tribmin.reggiocalabria.giustizia.it/gratuito-patrocinio-nei-procedimenti-penali/872/905/. For further rules refer to the chart of §3.1 of this Report.

[59] OPEN SOCIETY JUSTICE INITIATIVE (by), Information document No. 3) on the arrested people rights: the right to free legal aid, New York, 2013.

[60] From the information document prepared by the Ministry of Justice https://www.giustizia.it/giustizia/it/mg_3_7_7.page

[61] From the Observatory on Immigration of Piedmont: http://www.piemonteimmigrazione.it/site/index.php?option=com_content&view=article&id=75%3Ail-patrocinio-a-spese-dello-stato&catid=199%3Alegislazione&Itemid=66

However, an exception associated only to the court-appointed lawyer must be highlighted. The 2002 legislator aimed to ensure adequate defence to the minor, requiring a special training in juvenile law for the court-appointed lawyer (§ 6.3 of this Report). On the other hand, the legislator ensured the lawyer the certainty of a settlement, "without demonstration charges" about the poverty of the family of the child, when he/she is not appointed by the child (his/her family) but by the court. Art.118 raises a reflection: the prediction of a settlement from the State for the court-appointed lawyer assisting the child has ancient origins and it was already included in law 217/1990, establishing legal aid for poor people. The current rule resumes in all respects the original one (article 1, paragraph 5 law 217/1990), which was approved by Parliament in order to ensure the technical defence of the child, legally incapable to conclude a contract of private nature having a professional performance object.

Basically, in the case of assistance to a minor by a court-appointed lawyer, the legislator has introduced a policy that is opposed to that of article 116 of the D.P.R.: in fact, if the court-appointed lawyer of an adult is required to recover the professional credit directly from his/her client, and only if fails can recover it from the State, in the case of a Court-appointed lawyer in favour of the child, the State intervenes in the first place and it's always the State that, after having paid the lawyer, tries to recover its outlay.[62] A record of a lawyer follows:

> *"Unlike for adults, children defence costs are paid in advanced by the State, i.e. the lawyer is paid by the State, which then has the right of recourse on the family, if the family can afford it. It differs from legal aid: the Court-appointed lawyer is paid directly and automatically by the State; but if you know the guy and the family you can also decide to turn the relationship into a trusting one and agree a fee with the family according to the fee schedule, tables and other needs. At that point, it is clear that anything more can be asked to the State. If you do not know the guy/family or they tell you that they are not able to pay, then you as appointed by the Court must assist him/her, it is your duty. In this case, you should present a liquidation at the end of the proceedings and hope to be paid, because payment times are usually quite long, sometimes you can wait for years"*[63].

In practice, some problems have been recorded, which undermine the effectiveness and quality of this system and thus, ultimately, the right of defence of the child.

> *"I had the court-appointed lawyer, but it was fine for me. Trusted lawyer are too expensive and I cannot afford it, but it is clear that they are more proactive. Fortunately my court-appointed lawyer works very well and I have established a trust relationship with her."*[64]

This perception very common among children shows how in many cases the choice of the lawyer by the child or his/her family is determined by the economic capacity.

The interviewed lawyers have highlighted that the payment system is not clear even to them; therefore, a first criticism concerns the extreme complexity of the system in terms of bureaucracy. Another issue is that users are not always aware of the prerequisites for admission to legal aid. The court-appointed lawyer must assert himself/herself in order to be liquidated. Furthermore, this payment is only guaranteed until the person is a minor. If during the proceedings, he/she becomes an adult, for the activities done after that, there must be an admission to legal aid or the person/family has to pay even if there is still a court-appointed lawyer[65].

Another difficulty reported is related to the amount of compensation. Reference tables are planned and prepared every two years by the Ministry.

> "*There is a minimum, medium, maximum. The court has its own values; so for a trial you may have the right to be paid € 1.000,00. The youth lawyer undergoes a reduction of 50%, as Court-appointed lawyer, because our law provides that ... after that there is another reduction of one third, if it is legal aid. The cuts are therefore excessive".* [66]

In this case, the reference is to the Ministerial Decree 140/2012 which has set the parameters of professional fees between 2012 and 2014. It was intended that the child's attorney's fee – whether court-appointed lawyer or trusted lawyer - admitted to legal aid system, underwent a reduction of 50% of the fee. During the

[62] DIPAOLA, *Difesa d'ufficio e patrocinio dei non abbienti nel processo penale,* Milano, 2016: p. 50 ss.
[63] INT. Lawyer # 1
[64] Focus group, boy in detention
[65] INT. Lawyer # 2; INT. Lawyer #3_4
[66] INT. Lawyer #5

research activities, we have tried to investigate the rationale of this prediction, indicative of how the juvenile law is devalued:

> "*because it's fun to assist children. The ratio is that there is no money*".[67]

It should be noted that in the subsequent ministerial decree (DM 55/2014), this kind of provision has not been included. It has been reported the circumstance why the time required to obtain a settlement is so long:

> *"the Juvenile Court has been not paying for years, so the legal aid is not at all an incentive, this is really a scandal".*[68]

It has also been pointed out that, for a period of time some courts have failed to give effect to settlements. In other cases, applying the legislation very strictly, admission to legal aid was revoked by the court for lack of documentation considered instead necessary to that end[69].

In this regard, a good practice is the Protocol signed between the juvenile court, the public prosecutor at the same court, the lawyers and the Juvenile Chamber of Milan, to ensure the effectiveness of the liquidation, in reasonably short terms: [70]

> *"The parameters are high and the State has little money", therefore as the system establishes that is the judge who has to pay off the lawyer, the Juvenile Court judges of Milan have said "we have no statutory time to pay you (lawyers) off, so if you want to be paid immediately, let's agree on lower fees."*[71]

4. The juvenile justice system

The approach to juvenile process moves from the priority need to intervene on the not yet structured personality and identity of the child, because of his/her incomplete psychophysical development. The determination of criminal responsibility, therefore, goes together with the aim to recover the child; this constitutes an inseparable duo which permeates the juvenile proceedings from beginning to end.

In this respect, the execution of the penalty against deviant minors has to be framed in the principles dictated by D.P.R. 488/1988 and by ad hoc institutes prepared to understand the purpose and necessity of the execution phase.

The juvenile procedure has the aim not only to ascertain the fact, but also to investigate the personality. The so called "social investigation" and the assessment of the child's personality, represent crucial moments that affect the outcome of the trial.[72] The child participation at all stages of the proceedings is an essential characteristic of juvenile proceedings. This as proof of the centrality of the presence of the child that must be adequately assisted also from the emotional point of view at all stages in which important decisions are taken.

This peculiarity goes with the specialization of all the actors in the process who for various reasons come into contact with children; the judge, the penitentiary police, lawyers and social services in the administration of justice.[73] It is evident, therefore, that the juvenile process develops an educational plan: the new legislative structure foresees, in fact, that the court and the social services provide both a procedure project (aimed to determine whether a rapid release of the minor from the penal system is appropriate or not and which instruments to use,) and, subsequently, an educational project. The latter must mend a development of the child's personality using all the resources of the child itself and its environment.

Currently our system provides an intermediate model between that of education, suggested by international standards, and the punitive one for adults. It should be noted, however, that if the aim of the juvenile proceedings is definitely focused on the social rehabilitation of minors, the absence of a juvenile criminal set of rules implies an effort of continuous adaptation of the rules included in L.354/75. This happens although, in the meantime, the educational needs, especially with the entry into force of the D.P.R. 448/1988, are

[67] INT. Lawyer #5
[68] INT. Lawyer #1,#2, #6, INT.OP.#1, #4
[69] INT. Lawyer # 3_4; Int. Lawyer 6 #
[70] http://www.camerapenalemilano.it/public/file/Protocollo%20Tribunale%20per%20i%20minorenni%202014.pdf
[71] INT. Lawyer #3_4
[72] MUGLIA – PETRACHI, *Il ruolo …above mentioned*, p. 78.
[73] Relazione Stati Generali dell'Esecuzione Penale, *Esecuzione… above mentioned*, *p.2*

anticipated to the procedure phase where there is a wide range of institutions aimed to avoid the recourse to imprisonment, that should only be used as *extrema ratio*.[74] The educational purpose and the specialization of the juvenile process is also evident in the compulsory presence of individuals who have a specific expertise on the dynamics of the subject in evolutionary age. Indeed, the judge's specialization is provided through participation in training courses; the police's specialization is provided through the creation of a specialized section of the judicial police in each public prosecutor at the juvenile Court, with specific expertise and preparation of this organ.

Finally, the lawyers' specialization is necessary although this is compulsory only for the court-appointed lawyer. This is provided through the provision of a specific list of "lawyers with special training in juvenile law" established at each local bar association.

In juvenile process, particular emphasis is taken by the lawyer, which should not be the mere legal technician, whose only goal is to exclude or reduce the customer's liability, but a privileged interlocutor of the realization of an educational project which has as its goal the recovery of the subject.

He/She will help to find the best procedural strategy to ensure the best recovery of the child. He/she must set up and maintain a dialogue both with services and with family members involved in the recovery process; he/she will help the child to understand the educational value of the process and the measures taken in his/her exclusive interest.

5. The best interest of the child

In relation to the defensive strategy, the decisions to be taken and any procedural opportunities, the lawyer should consider and give the best value to the child's interest.[75] Particularly interesting for these purposes is the n. 104 of the guidelines on child-friendly Justice of the Council of Europe: "*A system of specialized youth lawyers is recommended, while respecting the child's free choice of a lawyer. It is important to clarify the exact role of the child's lawyer. The lawyer does not have to bring forward what he or she considers to be in the best interests of the child (as does a guardian or a public defender), but should determine and defend the child's views and opinions, as in the case of an adult client. The lawyer should seek the child's informed consent on the best strategy to use. If the lawyer disagrees with the child's opinion, he or she should try to convince the child, as he or she would with any other client*".

Child criminal defence must be conducted according to a logic that, in some cases, may not even match the utilitarian purposes of his/her parents. The lawyer's behaviour, in front of the conflict of interest between the child and his/her family, is therefore essential. The lawyer shall in any case protect and safeguard the interests of the child and not those of the family members that have given him/her the job and from which he/she might also receive professional compensation.[76] In this perspective, the accused minor must be able to recognize in his/her attorney the only key figure, able to ensure the full and effective exercise of the right of defence. The only person who, through his/her professional competence and procedural instruments, is in the position to offer him/her a concrete protection from the punitive measures that might hinder the educational aim of the juvenile criminal proceeding.

The child must become aware that the lawyer works in his/her unique favour, even despite the attempts, that often occur, of parents to monopolize the defence relationship with the professional.

The minor must at all times rely on the figure that really "stands on his/her side" and that, in the event of "conflict of interests", will keep with him/her a privileged and exclusive assistance relationship. The dyad lawyer/defender must therefore be protected with instruments aimed to ensure this privileged relationship between the lawyer and the child. Relationship that must be protected by any sort of intrusion and that, in case of proven conflict of interests between the position of the client and that of other persons, requires the replacement of the lawyer which became unfaithful to the mandate.[77]

---

[74] Relazione Stati Generali dell'Esecuzione Penale, Tavolo 14, *Esecuzione… above mentioned*, *p.23*

[75] MUGLIA – PETRACHI, *Il ruolo … above mentioned*, p. 90

[76] MUGLIA – PETRACHI, *Ivi*, p. 97

[77] FORZA, *Il ruolo dell'avvocato del minore autore di reato.* http://www.studiolegaleassociatoforza.com/uploads/1/6/8/0/16803976/il_ruolo_dellavvocato_del_minore_autore_di_reato.pdf p. 13.

"The lawyer has a rehabilitative role in the process. The lawyer-client relationship is based on trust, so any accused person, adult or child, needs to have confidence in the lawyer and the lawyer in the client, with whom there is a quite honest relationship" [78]

6. Youth lawyer, from theory to practice

Defence	Professional	Bridge	Stress
Accompaniment	Listening	Complex language	They are useless
Defence	Attention	Earn money	To lie

Keywords from the focus groups with girls and boys about the role of the lawyer

6.1 Role and function

The provisions of the juvenile criminal process have embraced the image of the minor as a person with comprehensive and decisional skills, with a greater chance, than ever before, to play an active role, independent and responsible within the process itself.

In this context, the figure of a specialized lawyer has emerged. He/she helps the child to unravel under the legal rules and is able to make the minor understand the meaning of the entry into the criminal circuit and how to get out in order to finally return to the system of social relations. It is therefore clear that the implementation of these objectives requires a specialization of figures called to exercise the jurisdiction in order to protect the educational needs of the child, fulcrum of the system of the D.P.R. 488/1988.[79]

According to the basic principles of the criminal juvenile process, the lawyer is definitely called to offer the accused (or suspected) minor a good defence, aimed to identify ways for a rapid exit from the judicial circuit through mechanisms specifically provided by the Decree; moreover, the lawyer in charge of defence must also explain to the child the content, the social and ethical reasons of the acts of the process and in general the meaning of the trial in which he/she got involved in order to allow an active participation and minimize the stigmatizing effects of the criminal action, keeping in mind his/her on-going maturation process.[80]

Taking the role of child's lawyer involves an important commitment, certainly heavier than that required for the protection of the adult. It is not enough, in fact, to be prepared as a criminal lawyer, but it is also required a specific and specialized competence as well as a multidisciplinary approach.

The full implementation of the child's defence right requires the presence of a specialist lawyer, who can guarantee, through special training, a high quality of defence in order to balance the child's maturity level that make him/her difficult to understand and follow the process. The actual and conscious pursuit of the defence right can be carried out only providing the youth a lawyer in possession, not only of the necessary technical and legal instruments, but also of a specific expertise in psychological knowledge, in general, and of the children and adolescents problems, in particular. In fact, the lawyer, in juvenile criminal process, must have not only a legal assistance ability, but also a peculiar ability to intervene on the child in order to allow him/her to understand the technical and psychological value of the procedure and to help him/her to defend himself/herself properly.[81]

The complex role of the child's lawyer is part of a new perspective, consisting of the interaction; that is the ability to grasp the complexity of the context in which you work, while maintaining the characteristics of its role in the each other contact (§ 6.6 of this Report). The procedure becomes in this way the summary of the different previously acquired contributions and the lawyer intervenes to assist technically the minor and represent his/her educational needs and responsibilities, in contradictory with the prosecution and in mediating with the reasons of the crime victim. The role of the lawyer as described is thus complex and full of responsibility. It requires more than a legal expertise. It is essential also a child-focussed culture oriented to the interest of the child and of his/her educational needs.[82]

---

[78] INT. Lawyer #1
[79] GALLINA FIORENTINI – RESSA, *La formazione…. above mentioned*, p. 491-492.
[80] From http://www.altalex.com/documents/news/2015/09/03/il-difensore-di-ufficio
[81] FORZA, *Il ruolo… above mentioned,* p.20
[82] MESTITZ – COLAMUSSI, *Il difensore per i minorenni,* Roma, 2003, p. 18ss

According to one of the interviewed lawyer the difference between the youth lawyer and the adult's lawyer can be explained as follows:

> *"we must think not only about the interest of the person, which is what we normally do with adult, but about the best interest of the child and his/her position in the family and the response expected by the authority, the Court. If the lawyer represents an adult, the lawyer must give him/her an opinion, explain all the options, perspectives, possibilities and put him/her in a position to choose, because it is he/she who must choose and decide. While representing a child we must consider not only the immediate perspective, but also the perspective of growth and what are the consequences of his/her past and lived. You have to enter into greater harmony with his/her environment and prospects, trying to figure out his/her family and social environment, and to recommend him/her more closely, as if you were his/her guardian, not only his/her lawyer"*[83].

The youth lawyer should therefore have a primary role. However often this role has always been misunderstood arriving to deform this function and image: he/she is considered sometimes a mere employee of the judge, other simply a juvenile services partner. However, the youth lawyer is not a mere law specialist, whose aim is to get the exclusion or mitigation of responsibility of his/her client. He/she is a privileged and essential interlocutor aimed at setting and implementing an educational project which will allow recovering the child's personality formation. She/He must find the right balance between two requirements, the technical defence and educational purposes:

a) He/she must exercise the defence right both regarding the investigation on personality and the existence of the fact, contributing to the quick release of the minor from the penal circuit;
b) He/she should not emphasize the principle of the right of controverting, of accusatory style, in order to respect the educational purposes of juvenile criminal process, which the lawyer has to facilitate, not undermine or hinder. [84]

These circumstances are confirmed also by the judicial practice analysis. It emerged that often the youth lawyer has a marginal role, characterized by little interest in the history of the accused person and by unwillingness of communication during the trial.[85]

In any case, the youth lawyer figure should be evaluated in the complexity of the juvenile process, starting from the stage of the preliminary investigation until the final conclusion of the process.

The group of girls consulted define, in fact, the lawyer as the one who "*should defend us, help us and give us attention",* they add that however in practice "*they just want the money, they don't care if we are sad*", a very common opinion among young people in contact with lawyers.

6.2 The choice of the lawyer

In this context, there are several problems with regard to the technical defence of the minor. Despite the D.P.R. 488/1988 and the connection established between it and the C.P.P., procedural rules lack, for example with respect to who is entitled to appoint a lawyer for the child and to give him/her the mandate[86].

From the interviews has emerged that in theory the minor himself/herself, being the accused person should make a choice, but this is very rare. This happens only when the minor is alone. It has been noticed that often children in criminal circuit choose the lawyer following suggestions of acquaintances, family members, "colleagues", prison-mates. Others choose it for "hearsay". In other cases, families or parents choose the lawyer. The appointment may also take place through the child's guardian (when any). The problem is that the guardian is often a bureaucratic figure that doesn't expose that much[87].

The court-appointed lawyer is not chosen by the child, but is given by prosecutors based on the available lists. This is prepared in accordance with the criteria and procedures laid down by the combined provisions of articles 97, paragraph 2 c.p.p. and 29 of its implementing provisions. This system is quite complex but fundamental to avoid discretionary choices made by the authority proceeding to the appointment. Art. 29

[83] INT. Lawyer #2
[84] MUGLIA – PETRACHI, *Il ruolo …above mentioned,* p. 82
[85] MESTITZ – COLAMUSSI, *Ivi,* p. 11
[86] SCOLARO, *Il diritto… above mentioned,* p.160
[87] INT. # 1, # 5, Lawyer. INT. Op. 3 # 1, #; INT. Lawyer # 7

provides that every three months the competent bar association prepares a list of the lawyers "willing to assume the defence". [88]

> *"As regards the system of identification of the Court-appointed lawyer, it must be said that while for the adults there is a centralized system, a data processing system, for children there are these lists; the appointment shall be made for shifts. The Court-appointed lawyer shall write a registered letter to the child in order to arrange an appointment".* [89]

The child has the right to change his/her lawyer if any disagreements or contrarieties arise with him/her.
In general children are aware of this possibility that, in fact, occurs often. According to the consulted young people, court-appointed lawyers' performance is often unsatisfactory.

> *"Different court-appointed lawyers refused my case apparently because they say that there is nothing they can do"* [90].

However, there is no clear alternative to ensure that the lawyer is a competent and sensitive professional. The majority of children do not know how they would choose the right lawyer. Generally, trusted lawyers are chosen by the family or, when it comes to girls, by the boyfriend or husband. This may lead to situations of conflict of interests where the best interest of the child may not be appropriately considered. Moreover, it has been referred that there are cases in which the lawyer decides and communicates the defensive strategy (when existing) directly with the family without involving the child.

> *"Paradoxically in some cases it would be better to have a court-appointed lawyer, even if they use to be absent and often they don't know the cases well".* [91]

6.3 The lawyer training in the juvenile justice system

It was said that the need for special training is based on the purpose pursued by the juvenile justice system in order to ensure the effectiveness and efficiency of the intervention, assistance and representation of the accused minor in the proceedings. [92] The UN Committee, with General comment N. 10 (2007) Children's Rights in Juvenile Justice, pointed out that the fundamental condition for the implementation of a fair trial depends on the quality of the people involved in the administration of juvenile justice. "*The training of professionals, such as police officers, prosecutors, legal and other representatives of the child, judges, probation officers, social workers and others is crucial and should take place in a systematic and on-going manner*". [93]
From a national legal point of view, the conjunction between articles 11 of the D.P.R. 22/09/1988 n. 488 and 15 of the implementing rules (d.lgs. n. 272/1989), related to the figure of a specialized court-appointed lawyer, set out for the first time into the national system law the terms and conditions in order to assure that specialization.
It is established that training as well as updating, are achievable through participation in courses organized by the COA, periodically and with multidisciplinary character. It is the Bar association of the lawyer that certifies the existence of at least one of the two requirements with the consequence that the selection of the lawyers who have access to the lists of court-appointed lawyers is left to the discretion of the Council. [94] It is important to point out that this precondition is not required for the trusted lawyer who only has the professional duty to accept a professional assignment. The result is that you may notice, in a hearing, a Court-appointed lawyer more prepared than the trusted one. [95] Restricting the attention to the professional who wishes to be a court-appointed lawyer in juvenile proceedings, it should be noted that the lawyer must be "available" (§ 6.2 of this Report) and "eligible" to be entered in the register established and updated on a quarterly basis by the Council of the Bar association.

---

[88] ARCELLASCHI, *La difesa d'ufficio. Aspetti normativi e pratici,* Milano, 2009, p. 18
[89] INT. Lawyer #1
[90] Focus Group, girl
[91] Social worker from a juvenile detention centre
[92] MESTITZ – COLAMUSSI, *Il difensore… above mentioned,* p. 15
[93] General Comment CRC/C/GC/10 par. D – 40. The Italian translation has been taken from the unofficial Italian UNICEF Onlus Committee.
[94] MESTITZ – COLAMUSSI, *Ivi*, p. 97
[95] GALLINA FIORENTINI – RESSA, *La formazione… above mentioned,* p. 493.

Regarding the assumption of suitability, art. 15, above mentioned, considers that the capacity is reached alternatively in these two different manners: the professional must show evidence of having been practicing, not occasionally, before the juvenile courts or of having attended specialized courses in matters related to juvenile law and to problems of children and adolescents. The legislator has therefore considered appropriate a specialized training (not its necessity), but on the other side the trusted lawyer may not have it; in addition to this the experience alone without a specific cultural preparation can provide this expertise required. Moreover, there is no specific penalty for cases where the court-appointed lawyer is not provided with specialized training.

The lawyers interviewed have so summarized the ways to enter the lists of Court-appointed lawyers, considering that recently a reform of the professional law has taken place:

If a lawyer was already appointed by the Court and wants to stay within the list he/she must document the participation in ten criminal hearings, plus three juvenile hearings or a certain number of hours of training if he/she desires to be a youth lawyer too. If he/she was not registered when the reform entered into force, he/she must still be qualified as criminal specialist; specialization that is acquired on the basis of the rules contained in the reform [although at the time of the interview the implementing decrees were not issued yet] or have taken a two-years course for ordinary criminal defence, and a specialized training for youth lawyers[96].

Despite the reported gaps, these rules are particularly important as they highlight that to be a lawyer or a judge it is not enough to know the law, but also social sciences (psychology, sociology, criminology) are important. This is moreover true considering the absolute lack of all these in the nowadays university legal experts education. [97] It can be further observed that neither the professional law n. 247/2012 nor the Legislative Decree 6/2015 provided regulatory certain criteria to be considered in order to evaluate the non-occasional professional activity, with the result that the requirement "practical" for the continuous professional development activity in front of the juvenile jurisdiction is discretionary as related to each Bar association.

Art. 29, paragraph 6, of the implementation provisions of c.p.p. applies to the special framework of the juvenile rite; provision according to which the President of the COA or an authorized member monitors compliance with the criteria for the identification and designation of the Court-appointed lawyer. [98] With respect to the development of these standards, designed for the youth lawyer, there are several unruled situations that deserve to be taken into account, so that training doesn't concern only the "knowledge", that is the traditional legal concepts, but also "how".[99]

Beyond training, then, ethical precepts must be considered: *"the lawyer, in order to ensure the quality of his/her professional services, must not accept assignments that may not be able to conduct with adequate competence*" (article 14 Professional ethic code). As a result, the youth lawyer should approach the trial carefully, with a sensible and qualified approach. The professional ethic qualification must be real and compulsory and has to involve the trusted lawyer too (being nowadays provided only for the lawyer who wants to enter the Court-appointed lawyers' lists) [100].

It is evident that compliance with these rules of ethics, however, is not enough by itself to ensure the effective protection of citizen rights that will appeal to the lawyer: the lawyer, which deals with matters related to minors, must acquire a specialized training and some practical experience. It is therefore necessary implementing new instruments to limit or reduce the risk that the lawyer who takes on the defence of a child has not the skills to be able to complete the mandate effectively. This is the only way to make the child an active subject of his/her defence[101].

During the research phase it was possible to interview lawyers coming from different Italian cities and users of different juvenile courts. This circumstance has allowed us to get a picture of the practical situation which

[96] INT. Lawyer #3_4

[97] GULOTTA, *Elementi di Psicologia giuridica e di diritto psicologico,* Milano, 2000: p. 968 ss.

[98] Da http://www.altalex.com/documents/news/2015/09/03/il-difensore-di-ufficio

[99] CESARO, *La formazione dell'avvocato del minore,* in GUIDA (by), *I figli dei genitori separati – ricerca e contributi sull'affidamento e la conflittualità (Atti del Convegno),* Milano, 2008, p. 281.

[100] MUGLIA, *Prospettive di riforma della figura del difensore nel processo penale,* in *Minorigiustizia,* 2006,1, p. 106.

[101] CESARO – LOVATI, *La deontologia dell'avvocato e la specializzazione minorile che non c'è,* in *Minorigiustizia,* 2011, 3, p. 182.

deviates from the rules above. It was pointed out how the Bar association organizes courses for access to lists of Court-appointed lawyer (pure and simple training), while the refresher phase is left to the sensitivity of the individual lawyer, without a real control in this sense, notwithstanding the legal provisions. There is no "format" on national level. So each Bar association structures these courses differently, with all the consequences that may occur in practice, when lawyers of different courts come into contact. Doubts have been expressed regarding the quality of formation proposed: the COA of Genoa organizes a training course per year, whose quality was defined as inadequate; first for the time dedicated (one day) and then for the contents, unsuitable to train a lawyer able to be a Court-appointed lawyer and to face the trial[102].

For some time, the COA of Milan gave special attention to the practical aspect, simulating the relationships that can be established between lawyer and minor, even with psychologists and organizing role plays. Today there are no more simulations, but it is established a minimum amount of hours. Then there are moments of joint advocacy and judiciary training. Sometimes also the social services are involved on specific themes: these initiatives are organized by the Juvenile Judges Association - section of Milan - together with the Juvenile Criminal Chamber [legal association]. There are training sessions, periodically organized, on specific themes, which enable lawyers to discuss and find solutions to possible problems[103].

From the involved children's perspectives, lawyers are professionals who are not always appropriately prepared to defend a minor. In general, children are aware about the specificities of the juvenile proceeding and understand that the lawyer should be specialized. However, their experiences show that lawyers, above all the trusted ones, do not tend to adopt a listening attitude but a rather formal approach that does not facilitate the creation of a trusted relationship and that hardly corresponds to the rehabilitative and educative scope of the juvenile justice system.

> *"The lawyer creates false expectations. When you are in and you call him, he tells you "don't worry, in a week you'll be outside" but is not true, and you remain disappointed without knowing anything"*[104].

6.4 The relationship between the lawyer and the minor

The relationship between lawyer and minor depends very much from the background and expertise of the attorney. In fact, only through proper training, the lawyer may relate to a minor who is not completely capable of discernment or has a position clearly at odds with that taken by his/her lawyer.[105] The first need of this delicate phase is therefore the correct setting of the talks between the two, avoiding to leave it to the sole humanity and sensibility of the interlocutor: alongside the legal concepts, the lawyer should have the competence in those other disciplines that are able to offer a more complete picture of the psychological structure of individuals and of the social reality in which they live. After the conversation with the minor and having collected all the necessary information, provided also by the social workers involved in the proceedings, the lawyer must already have in mind the procedural solutions, the set of choices that he/she should be able to do, even before the other processual parties. [106] Youth lawyer could play some sort of education to legality, making it clear to the minor the limits between lawful and unlawful, while it is inappropriate to think of a "lawyer-educator" which fills his/her professional relationship, with the child-client, with moral content[107]. A lawyer who induces a change in his/her assisted becomes important for that minor, a significant point of reference. It is a role that does not end with the process, on the contrary it often continues[108].

All interviewed lawyers said that the relationship between lawyer and client should be based on trust, although it is not always easy to establish. This depends very much on the youth and also on the sensitivity and skills of the lawyer. Additionally, listening to the child has been highlighted as fundamental both by lawyer and by non-legal professionals.

---

[102] INT. Lawyer #1,INT. OP.#3; INT. Lawyer #3_4; INT. Lawyer #2,#6, INT. OP.#2
[103] INT. Lawyer #3_4; INT. OP.#3
[104] Focus Group, girl in detention
[105] MARCUCCI, *Il dilemma dell'avvocato del minore nell'esperienza italiana,* in *Minorigiustizia,* 1, 2006, p. 110.
[106] GALLINA FIORENTINI – RESSA, *La formazione …above mentioned,* p. 494 e 498.
[107] MESTITZ – COLAMUSSI, *Il difensore… above mentioned,* p. 12.
[108] ABBRUZZESE, *Avvocati e giudici onorari, un rapporto difficile,* in *Minorigiustizia,* 1,2006, p. 122.

6.4.1 First contact

Before the hearing, the lawyer's job foresees the contact with the client. The relationship with the latter can arise in a trusty manner and in this case the contacts between defender and defended are adjusted independently, as required by the two parties. The first step is therefore represented by the relationship established between the lawyer and the child in care, through the interview. With regard to this phase, there must be a distinction between the situation where the lawyer is trustworthy appointed or nominated by the Court. Normally, in the first case the lawyer is contacted by the family who is in charge of the child or by the child himself/herself and we can assume that the first and subsequent meetings shall take place at his/her office[109].

In the case of a court-appointed lawyer, occasionally the relationship is virtual, in the sense that it may happen that the client is unavailable or that, despite the reminder, never takes contact with the lawyer. It is clear that the lack of personal contact with its own client may have important consequences on the entire defensive strategy. Under these assumptions, the lawyer works in absence of valuable information that only the client can supply. He/she cannot therefore play an effective defence of the child.[110]

The situations can change a lot and the difficulties identified by doctrine are also confirmed by the practice. The court-appointed lawyer receives his/her notification of appointment by the judicial police as soon as an act must be done: for example, a questioning would be invalid if carried out in the absence of a lawyer. The court-appointed lawyer contacts the child, often by registered post. He/she tries to make an appointment before the interrogation, but this is not always successful as in communications from judicial authorities the data to trace the child often lack. In this case, the initial contact takes place during the day of the interrogation with the police, if this happens. Otherwise it may happen that lawyer and defendant meet directly at the hearing, with very little time to prepare the defensive strategy. In the case of minors in detention, the lawyer (trusted) receives a fax from the minor, so that he/she can enter the prison for the meeting with the client. Sometimes the social services report the minor to the lawyer.

6.4.2 Communication and meetings (how, when, where, language) during the proceedings

The way in which the relationship between lawyer and child is established has repercussions for the next meetings. It is necessary to distinguish the situation where the lawyer, trusted or appointed by the court, has already met the child or not (and this last situation happens more frequently, as we have seen, in the case of court-appointed lawyer). Meetings following the first one can be useful to give the latest suggestions or clarifications to the minor. In the case of a "virtual" meeting, therefore lacking, as defined above, it may happen that the first contact between the two takes place directly at the time the authorities must put in place an act for which the assistance of the lawyer is necessary. The most correct professional choice would be to demand an end to defence under art. 108 c.p.p., but it happens that the reasons of procedural economy prevail over fundamental rights, such as the effectiveness of the defence, forcing the celebration process anyway[111].

> *"If the child is in a CPA or in a juvenile criminal Institute (IPM), the lawyer meets him/her in dedicated places that, however, are not always suitable to the child's needs".*

However in general contacts with the lawyer take place by phone.

With regards to communication, it should be based on a simple, clear and appropriate language.

> *"Lawyers, in general, tend to use a clear and simple language to make children understand the situation, but much really depends on each child and, once more, on the sensitivity and preparation of the lawyer".* [112]

[109] MESTITZ – COLAMUSSI, *Il difensore above mentioned,* p.72

[110] BASTIANELLO – DE RISO, *Difesa e dibattimento penale,* Milano, 2008 e ARCELLASCHI, *La difesa… above mentioned.*

[111] The lawyer appointed in a hearing and replacing the titular one who didn't show up ex art. 97, 4 paragraph c.p.p. should act in the same way. MESTITZ – COLAMUSSI, *Ivi*, p.73

[112] INT. Lawyer #1, #3-4,#5

6.4.3 Complaining and lawyer replacing mechanisms

There are no specific legislative mechanisms to complain and to replace a lawyer in the juvenile framework. However, in any case, whether chosen or appointed by the court, the child has the right to change lawyer, without having to justify his/her decision.

It should be noted that the Bar Association is empowered to deliver a disciplinary action against its own members, on the basis of the professional standards of the law and that any citizen can report any cases of abuse or violation of the mandate committed by the lawyer. The judiciary has an obligation to make such recommendations, when the breach of discipline takes place at the hearing. At the juvenile court of Milan, the judge intervenes in the event of repeated unexcused absences at hearings, reporting the fact to the COA. Usually the rules of the relationship between judicial authority and defence are honoured.[113]

6.5 The relationship between lawyer and parents

Even on this subject, it is believed that the professionalism of the lawyer, his/her ability to understand the minor and his/her family situation, should exclude a priori choices and drive the lawyer, case by case. He/she must consider whether allow or not the presence of persons different from the minor involved in penal circuit, since sometimes these presences can be supportive and collaborative,

> *"The lawyer talks to my mother to communicate with me. He is convinced that there are things that I haven't told him and therefore tries to ask my mother to tell me to say the truth. There is thus an opposite problem of trust: is the lawyer who does not trust me and not me who does not trust my lawyer".*[114]

but sometimes can cause the youth to be less spontaneous or may even fear him/her.[115]

> *"Usually the lawyers do not receive the accused children alone as mothers go with them".* [116]

In any case the parents' presence in the process is a fundamental element required by law and highly considered by the courts.

On the other hand, the lawyer can play a decisive interaction role between the accused person and the social services, in order to facilitate the latter's operations, but also of mediation between the suspect and the victim. The connection role of the lawyer between parents and institutes should therefore not be underestimated as it is aimed to allow parents an effective participation to the proceedings.[117]

6.6 The lawyer's collaboration with other actors

The lawyer must not be a psychologist, educator or other; everyone must know how to locate itself without invading the role and space, even emotional, of the other professionals. This is important to avoid confusion and/or false expectations for the minor. Of course, the various actors have to collaborate together to a recovery, support and clarification program. The choice of procedural strategy (§ 5 of this Report), for example, comes mainly from knowledge of data concerning the child: the opinion of services therefore becomes crucial, not because the lawyer follows it blindly, but to better understand the instances and the needs that the child has expressed even before the proceedings.[118] Therefore art. 9 of P.D.R. 488/1988 is short-sighted as does not provide the lawyer's presence during the investigation of the personality of the minor, even if it does not ban it. That difference has a very special meaning, whereas the initial task of observation of personality greatly affects the whole process. The socio-behavioural investigation must be a prerogative recognized also to the lawyer, insofar as he/she applies the appropriate procedural provision relating to the personality and educational needs of the child and using for such purposes a direct or mediated contact with the social services or the consultants[119].

The inquisitorial connotation of the juvenile rite code is connected to another aspect: the realization of the educational objective involves a physiological accentuation of the role of the judge, while the lawyer has

[113] INT. Lawyer #3_4; INT.OP.#3
[114] Focus group, boy in detention
[115] MESTITZ – COLAMUSSI, *Il difensore above mentioned,* p.76.
[116] INT. Lawyer #1
[117] Da http://www.altalex.com/documents/news/2015/09/03/il-difensore-di-ufficio
[118] GALLINA FIORENTINI – RESSA, *La formazione…above mentioned,* p. 495 e 498
[119] MUGLIA – PETRACHI, *Il ruolo … above mentioned*, p.89.

taken a marginal role as if bearer of an interest conflicting with that of the child. However, the doctrine agrees that the lawyer should be a privileged and essential interlocutor of the judge, overcoming the natural contrast with the same and not obstructing the educational aims of the process.

> *"The judge does not believe us he thinks that we don't say the truth".*[120]

Indeed the lawyer must help the minor to understand the educational value of the process and the measures taken in his/her interest[121].

> *"It depends on the lawyer and on individual subjects. In theory, the lawyer should cooperate with all persons involved in the process. The rules of the juvenile process lead to this. In practice, there are lawyers who prefer to speak with judges or prosecutors and others with services. In the juvenile proceedings, the lawyer plays a crucial role and unlike the other figures, is present from the beginning to the end of it".* [122]

> *"My lawyer speaks a lot with the social workers and tries to understand from them which is my educational plan".*[123]

7. Obstacles and good practices

7.1 Obstacles/weaknesses:

- Several interviewed persons, not just lawyers, stressed that a strong critical issue affecting the child process concerns the **lawyer specialist training, only required for court-appointed lawyers**. There is no national format about the course structure, as mentioned, and some lawyers report a poor quality of contents.
- Other really relevant obstacle concerns the **remuneration** of the youth lawyer according to what prescribed by the legal aid system. Several lawyers, in fact, point out that, on one hand, the rates are very low and, on the other, payments do not take place or settlements arrive very late.
- There is a general lack of **resources, both human and economic, in the juvenile justice proceedings**. Such failure, as well as structural factors seems to be the result of a general underestimation of the juvenile law, even by lawyers. Another consequence is found in the analysis of the relationships between the various actors involved in the process: there is a communication problem within the juvenile process not only among lawyers, but also in relation to communications from the court that often are not intelligible. Except in some cases, then, there are few sharing moments among these subjects.
- Some lawyers have decided to emphasize the unreliability of the medical method for **assessing the age** (through the x-ray of the wrist and teeth), which should be replaced by a multidisciplinary verification.
- It is common opinion from the interviewed professionals that the **lengthiness of the procedure and bureaucracy** are relevant problems that can hinder the defence process. Moreover, it might happen that proceedings start many years after the offence was committed without taking into account the fact that children's development is quite quick and therefore a prompt intervention is required.

7.2 Good practices

- Milan Juvenile Court Protocol: this practice has already been reported as mean adopted by the juvenile court, the public prosecutor at the same court, the lawyers and the Juvenile Chamber of Milan, to ensure the effectiveness of the liquidation in reasonably short time. Refer to § 3.6.1. of this Report
- Burning Times Project (Milan): in the territory of Monza, local services and the juvenile Prosecutor are carrying out a project of experimentation of premature "probation", that is, between public forces report and the first hearing. In this case, social workers intervene before

[120] Focus Group, boy in detention
[121] MUGLIA, *Prospettive … above mentioned*, p. 106.
[122] INT. Lawyer #2
[123] Focus Group, boy in a juvenile detention centre

the procedure starts. Both an operator of social services and two lawyers have recommended it as a good way to prevent damages on children that can be caused by lengthy of proceedings[124].

- Joint trainings: within this research this kind of training has been reported only for the Court of Milan. They are organized by the Juvenile Judges Association, together with the Juvenile Chamber. Refer to § 6.3 of this Report.

[124] INT.AVV#3-4, INT.OP.#4

8. Conclusions

The examination of the various regulatory measures seems to confirm that the legislator's attention was focused in particular on guarantees, in order to give new life to the lawyer and his/her procedural role. The aim seems to be to give greater force to the protection of the rights, so as to restore a balance between prosecution and defence. However, as these efforts have to be appreciated, some gaps persist. To confirm this assumption, it will be sufficient to note that in the various reforms that have been launched in the field of safeguards since 1988, the minor has been completely ignored. Where the minor has been considered, for example in the reform of fair trial, it was necessary the intervention of the Constitutional Court to overcome the doubts and inconsistencies of a discipline that appears superficial.[125]

If therefore, theoretically, it can be said that the Italian system seems appropriate enough compared to the general system provided by the international and European sources, on a practical level, as we have seen, some weaknesses have to be noted. The efficiency of a Juvenile Justice system is also based on the ethical behaviour of all operators involved and working in the proceedings.[126] A true leap forward will take place only when the culture of juvenile law that inspired and infused itself the D.P.R. 448/1988 will be reawakened. This may result from the resumption of discussions on issues and institutions that are typical of the juvenile field (imputability, centrality of the person, and so on) and that, on the contrary, appear to be vanishing.

Only from this perspective, the actors of the juvenile criminal process can contribute to the construction of a different law, open to pluralistic coexistence.[127] In addition, enhancing the ambivalence of juvenile criminal proceedings - trial of "the fact" and of the "person" - should claim greater rigour in implementing the protection of procedural rights of defence, representation and assistance of the minor defendant.[128]

In order for this to happen, we need to re-evaluate the role of the lawyer in the dynamics of juvenile criminal process, in which too often the lawyer was relegated to a mere "companion" of the child, based on the erroneous belief that the same may not be able to take charge of the renewed educational function of the process. We must re-evaluate it considering the lawyer as a vehicle for the realization of the best interest of the child. [129] In order to ensure that this role, a system that is not only technical, but that also takes into account other values and principles must be considered. The UN CRC highlights that the approach to juvenile justice system must be organic "*This comprehensive approach should not be limited to the implementation of the specific provisions contained in articles 37 and 40 of CRC, but should also take into account the general principles enshrined in articles 2, 3, 6 and 12, and in all other relevant articles of CRC, such as articles 4 and 39".*[130] Only in this way member States that have ratified the CRC shall have the opportunity to "*Respond to children in conflict with the law in an effective manner serving not only the best interests of these children, but also the short- and long-term interest of the society at large*".[131] Of the same opinion, even some lawyers interviewed during this research, who believe that the revaluation of the lawyer's role is something that needs to be done[132].

8.1 National recommendations addressed to policy makers

"Can we seriously say that in our country the ratification of the UN Convention has been the occasion for a serious rethinking on the relationship adults-children and on the achievement of a better condition of children and adolescents in our society? […] The UN Convention has been in our country more rhetorically emphasized than considered in all its aspects, especially those positive and programmatic, and conveniently metabolised; the collective reflection was episodic and not organic and mostly limited to a few newspaper articles; a serious attempt to translate the principles of the Convention in working practices in the various sectors invested from the precepts of the Community of Nations has lacked. The Convention was thus

[125] MESTITZ – COLAMUSSI, *Il difensore...above mentioned,* p. 109 ss
[126] MUGLIA – PETRACHI, *Il ruolo… above mentioned,* p.100
[127] MUGLIA, *Prospettive… above mentioned,* p. 109.
[128] LUCCHELLI, *Limiti… above mentioned,* p. 4
[129] MESTITZ – COLAMUSSI, *Il difensore above mentioned,* p. 15
[130] Committee on the Rights of the Child, General Comment 10 (2007), par. 4;
[131] Committee on the Rights of the Child, General Comment 10 (2007), par.3.
[132] (INT. Lawyer #3_4)

hastily put into brackets.[133] To achieve a Juvenile Justice system that actually complies with the international standards, therefore, the CRC should be used as a mean of active and proactive operating, whose general principles, but not only, should be a guide parameter for the interpretation and application of national law, primarily the DPR 448/1988. The State Authorities should then try to resort more frequently to measures that do not require court proceedings.

In the Italian legislation on juvenile trial, an explicit reference to mediation cannot be found, although its use is in fact acceptable due to the educational purpose to which the entire juvenile proceedings should aim, in order to facilitate the recovery and the reintegration of the young offender. It is particularly the article n. 28 of the D.P.R. 448/88 that provides for the judge the possibility to indicate, in the suspensive proceedings of the trial by which is placed the probation, prescriptions that are directed to repair the consequences of the crime and to promote the reconciliation of the child with the person harmed by the offense. It is noted that through probation, a true measure is introduced for the first time in the Italian legal system, a measure that allows to respond to crime without the infliction of a punishment, and particularly of an imprisonment sentence: subverting in this regard, the assumption that the size of the sanction would constitute the only way to respond to the evil of the offense. The most accredited doctrine agrees on considering that probation is not to be considered in any way a measure of mere clemency, but rather as an innovative and proactive tool, which forms the vehicle to giving implementation to some of the goals and purposes of typical juvenile justice such as, for example, the quick exit from the criminal justice system for minors, the timeliness of the institutional intervention, the diversion, the possibility of using practices of mediation and reconciliation (between the child and the victim) as well as the need to provide the child with individualized answers.[134]

"*The nature and duration of these measures offered by the prosecution may be more demanding, and legal or other appropriate assistance for the child is then necessary. The performance of such a measure should be presented to the child as a way to suspend the formal criminal/juvenile law procedure, which will be terminated if the measure has been carried out in a satisfactory manner*".[135]

In this sense lawyers and practitioners who were interviewed have expressed themselves. They asked to adopt measures to qualify the mediation in the juvenile criminal process, ensuring the contact with the victim.

8.2 Recommendations to youth lawyers

In order to have a juvenile process able to guarantee the rights of children and all the different needs mentioned, is therefore important to give the lawyers some recommendations:

- their relationship with the child should not be influenced by the child's family or other people having the parental responsibility. The only right that must be represented by the lawyer is the child's interest and not that of his/her family-members even if the lawyer is appointed and therefore rewarded by them;
- as the legal aid system is quite complex, it would be useful to adopt Protocols as the one in practice in Milan in order to have uniform standards. Moreover, the lawyer should be active part of the system, trying to find out solutions and make proposals in order to ensure the effectiveness of the liquidation in a quite equal measure and in reasonably short time;
- cooperation among all the operators (lawyers, judges, social workers, prosecutors, public forces, families) involved in the juvenile proceedings is fundamental. This is necessary also under a different point of view, that is the lawyer must have a specialized training: not only the necessary technical and legal instruments, but also a specific expertise in psychological knowledge, in general, and of the children and adolescent's problems, in particular. Therefore, also joint trainings, as above mentioned, are important. Only in this way we can have a judicial system able to safeguard the best interest of the child;

[133] MORO, *L'attuazione della CRC in Italia*, p. 131-132
[134] RIONDINO, *Mediation in the Italian juvenile justice system* http://www.pul.it/cattedra/upload_files/13647/The%20history%20of%20juvenile%20crime%20policy%20in%20Europe%20(01).pdf
[135] Committee on the Rights of the Child, General Comment 10 (2007), par.68

- in accordance with art. 14 of the Professional ethic Code *"the lawyer, in order to ensure the quality of his/her professional services, must not accept assignments that may not be able to conduct with adequate competence*".

List of children's recommendations on the role of the lawyer:

- To listen better
- Not delude
- To say the truth, to be sincere
- To call things by their name and do not make fun of us
- To use an appropriate and respectful language ("we are humans, not animals")
- To use a simple language so that we can understand what is being said
- To help legally but also emotionally
- Do not say "first give me the money and then I will bring you out"
- Do not present petitions without having consulted us in advance (perhaps is not what we want)
- To encourage
- To study, to be up to date
- To be less expensive
- To be less focused on the compensation
- To represent my voice and tell it before the judge

Social workers' recommendations on the lawyer:

- A lawyer should be appointed within the juvenile detention centre, completely independent and made available to children, not paid by the family
- Lawyers should be more prepared in relation to the execution phase

Annex 1: International and European framework

	Signature/Date	Ratification/Date	Adhesion/Date	Reserve(s)/ Declarations	
ICCPR	18 Jan. 1967	15 Sept. 1978		art. 15/ art 19 par. 3 / Decl. Art. 28	
CRC	26 Jan. 1990	5 Sept. 1991		None	
Optional Protocol 3 CRC	28 Feb. 2012	4 Feb. 2016		None	
ECHR	04 Nov. 1950	03 Sept. 1953			
European Union Charter of Fundamental Rights	13 Dec. 2007	02 Aug. 2008			Binding since the Lisbon treaty ratify
European Charter of social rights	18 Oct. 1961	22 Oct. 1965		Decl. Art. 20 F19	

Bibliography

- ABBRUZZESE, *Avvocati e giudici onorari, un rapporto difficile,* in *Minorigiustizia,* 1,2006, p. 122.
- ARCELLASCHI, *La difesa d'ufficio. Aspetti normativi e pratici,* Milano, 2009.
- BASTIANELLO – DE RISO, *Difesa e dibattimento penale,* Milano, 2008.
- CESARO, *La formazione dell'avvocato del minore,* in GUIDA (acd), *I figli dei genitori separati – ricerca e contributi sull'affidamento e la conflittualità (Atti del Convegno),* Milano, 2008, p. 281.
- CESARO – LOVATI, *La deontologia dell'avvocato e la specializzazione minorile che non c'è,* in *Minorigiustizia,* 2011, 3, p. 182
- DI NUOVO - GRASSO, *Diritto e procedura penale minorile,* Milano, 2005.
- DIPAOLA, *Difesa d'ufficio e patrocinio dei non abbienti nel processo penale,* Milano, 2016.
- FLORA- TONINI, *Diritto penale per operatori sociali,* Vol. II, Milano, 2002.
- GALLINA FIORENTINI – RESSA, *La formazione specializzata del difensore e del giudice nelle disposizioni del nuovo processo penale minorile,* in *Rivista Italiana di Criminologia,* 1/1994, p. 492.
- GULOTTA, *Elementi di Psicologia giuridica e di diritto psicologico,* Milano, 2000.
- LARIZZA, *I principi costituzionali della giustizia penale minorile,* in PENNISI (a cura di), *La giustizia penale minorile: formazione, devianza, diritto e processo,* Milano, 2012.
- MARCUCCI, *Il dilemma dell'avvocato del minore nell'esperienza italiana,* in *Minorigiustizia,* 1, 2006, p. 110.
- MESTITZ – COLAMUSSI, *Il difensore per i minorenni,* Roma, 2003.
- MORO, *La riforma dell'ordinamento minorile: una utopia o una realtà*, in FADIGA (a cura di), *Una nuova cultura dell'infanzia e dell'adolescenza. Scritti di Alfredo Carlo Moro*, Roma, 2006.
- MOYERSOEN, *Il bambino come soggetto giuridico nei procedimenti giudiziari.*
- MUGLIA – PETRACHI *Il ruolo dell'avvocato minorile,* in BISCIONE – PINGITORE (a cura di), *L'intervento con adolescenti devianti: teorie e strumenti,* Milano, 2015.
- OPEN SOCIETY JUSTICE INITIATIVE (a cura di), *Informativa n. 3 sui diritti riconosciuti alle persone arrestate: il diritto al gratuito patrocinio*, New York, 2013.
- SCOLARO, *Il diritto di difesa del minore,* in *Minorigiustizia,* 2008, 2, p. 160.

Websites:

- http://www.politicheeuropee.it/attivita/18410/italia-ue-le-novita-introdotte-dalla-legge-2342012
- http://documenti.camera.it/Leg17/Dossier/Pdf/ID0018A.Pdf
- http://www.senato.it/leg/17/BGT/Schede/Ddliter/dossier/45211_dossier.htm
- http://www.altalex.com/documents/news/2014/04/09/parametri-forensi-il-decreto-attuativo-in-gazzetta
- https://www.giustizia.it/giustizia/it/mg_1_12_1.page;jsessionid=9qwunFnLZk9ctZNDcTp3QQum?facetNode_1=0_2&facetNode_2=1_0(2015)&facetNode_3=0_2_12&contentId=SPS1155101&previsiousPage=mg_1_12
- http://www.associazioneantigone.it/upload2/uploads/docs/RagazziFuoricompleto.pdf

- http://www.tribmin.reggiocalabria.giustizia.it/gratuito-patrocinio-nei-procedimenti-penali/872/905/
- https://www.giustizia.it/giustizia/it/mg_3_7_7.page
- http://www.camerapenalemilano.it/public/file/Protocollo%20Tribunale%20per%20i%20minorenni%202014.pdf
- CERQUA, *Il difensore d'ufficio nel rito per i minorenni,* (Estratto) in http://www.altalex.com/documents/news/2015/09/03/il-difensore-di-ufficio
- DEFENCE FOR CHILDREN INTERNATIONAL – ITALIA, *TWELVE National Report,* Genova, 2016. *http://defenceforchildren.it/files/twelve_Italy_.pdf*
- FORZA, *Il ruolo dell'avvocato del minore autore di reato.* *http://www.studiolegaleassociatoforza.com/uploads/1/6/8/0/16803976/il_ruolo_dellavvocato_del_minore_autore_di_reato.pdf*
- FUNDACIÓ SURT, *Tackling male violence against Romani women: Recommendations for the prevention, detection and intervention", 2012,* *http://www.fondazionebrodolini.it/sites/default/files/guia_ingles.pdf*
- General Comment CRC/C/GC/10 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11
- LUCCHELLI, *Limiti della difesa penale del minore straniero,* Milano. http://www.cameraminorilemilano.it/wp-content/uploads/2015/10/ppmstraniero_3.doc
- Relazione Stati Generali dell'Esecuzione Penale, Tavolo 14, *Esecuzione penale nel procedimento minorile,* https://www.giustizia.it/resources/cms/documents/SGEP_tavolo14_allegato8.pdf
- RIONDINO, *Developing tendencies of the Italian juvenile justice system,* *http://www.pul.it/wp-content/uploads/2010/11/DEVELOPING-TENDENCIES-OF-THE-ITALIAN-JUVENILE-JUSTICE-SISTEM.pdf*