



TWELVE

Children's right
to participation
and the juvenile
justice systems

**NATIONAL REPORT
ITALY**



This project is co-founded
by the Fundamentals Rights
and Citizenship Programme
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DEFENCE FOR CHILDREN
International-Italia

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1. INTRODUCTION

In accordance with the main international and EU standards on children's rights and with the Child Friendly Justice Guidelines (CFJG) of the Council of Europe, children should have access to an adequate treatment in justice. Listening to children, hearing their views and recommendations, understanding their aspirations and concerns and taking them into account for decision making processes is key for policy and practice to become more appropriate and effective. It is also a human rights imperative under article 12 (the right of the child to express his opinions and to be heard) of the UN Convention on the Rights of the Child (CRC) and a prerequisite for achieving compliance with international standards. International and European bodies have repeatedly encouraged states to adapt their legal systems to the specific needs of children. However national juvenile justice systems do not take CRC into consideration on a permanent basis, which often leads to not considering the real needs of children and adapting the system to them.

As highlighted by previous analyses and recommendations made by international bodies (UNCRC, Council of Europe, ...) judicial proceedings are not conducted in an age- and a context-appropriate manner and do not respect children's rights in many countries. There is often lack of information in national realities; practices are not harmonized at European level and in many cases professionals contribute to the creation of contexts that are not compliant with children rights' principles and provisions. There is a need for a comprehensive policy in order to overcome common problems within the JJ system such as: fragmented systems, re-victimization, inadequate treatment, lack of information, lack of coordination and cooperation between different agencies involved, repeated interviews with many different interviewers in different locations, delays in the procedures, not taking the background and the context of the child into account on a permanent basis, etc.

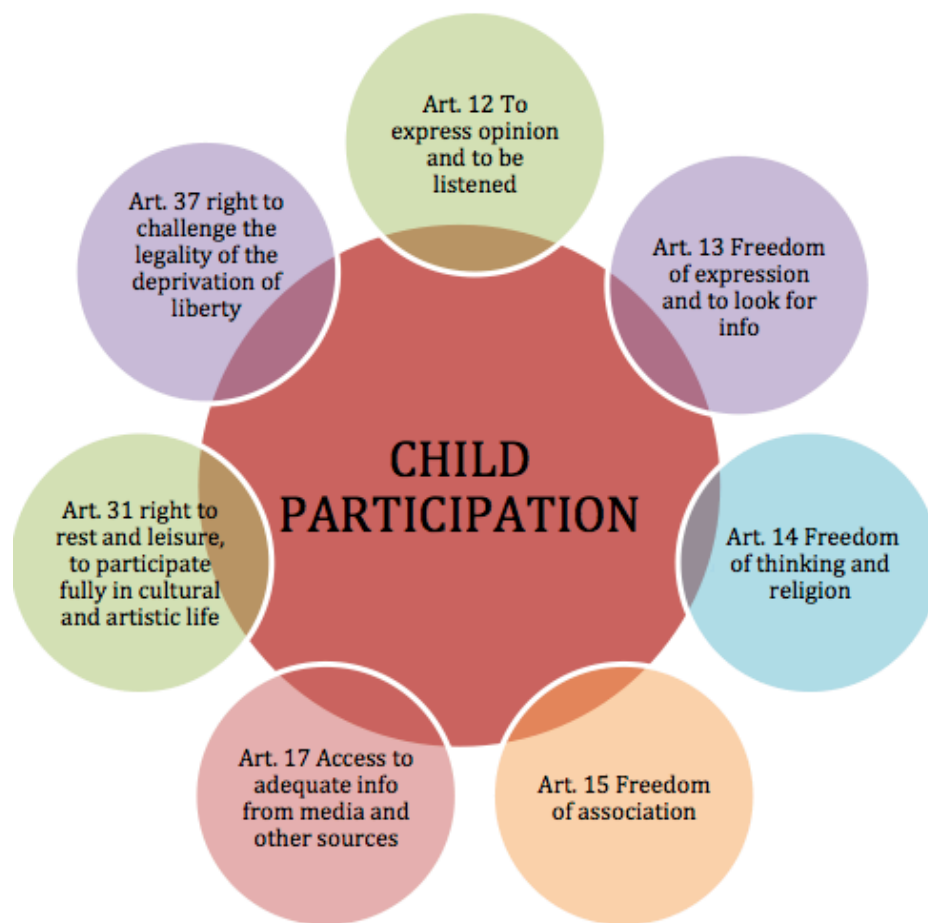
The adoption of a child-friendly approach and a human rights methodological basis in JJ systems are prerequisites for the achievement of an adequate treatment that recognizes the child as a subject of rights. Including participation and listening (art. 12 CRC in connection with other CRC articles) as core elements of actions concerning children is conducive to more efficient practices and improved communication.

The notion of participation should be understood as a principle that is expressed in many single rights through processes included in relevant international human rights tools¹. If an integral and holistic perspective is sought, child participation should be considered in connection with a set of interrelated rights of the CRC, including article 12, given the existing interrelation of rights, articles and instruments. In this sense, participation could be conceived as an entry point to the CRC system.

¹ UN CRC; General comments n° 10, 12, 14; the Beijing Rules; the Riyadh Guidelines; the Guidelines of the Committee of Ministers of the Council of Europe.

² The term chargeability (in Italian *imputabilità*) refers to the recognition of the criminal responsibility of an offender.

³ The Decree expressly recognizes the right to be notified of the criminal charges; the right to receive legal assistance; the right to counsel; the right to be heard and informed about the charges, process and the possible sentences; and



It is worth highlighting also how participation is conceived as one of the four general principles of the Convention. As such, participation is not only a right in itself, but should also be considered in the interpretation and implementation of all other rights including article 12 (right to express opinion and to be listened), article 2 (the right to non-discrimination), article 6 (the right to life, survival and development) and, in particular, is interdependent with article 3 (primary consideration of the best interests of the child). Furthermore, article 12 is connected to all other articles of the Convention, which cannot be fully implemented if the child is not respected as a subject with her or his own views on the rights enshrined in the respective articles and their implementation.

According to the CRC and in line with the restorative justice approach that aims at ensuring reparation, rehabilitation and reintegration of children, all Juvenile Justice systems should recognize and ensure the rehabilitative aims of a criminal sentence. The TWELVE's project hypothesis is that participation is a fundamental element for a successful rehabilitation process.

➡ **TWELVE's main assumption is that the level and quality of participation of children is closely related to the rehabilitative aim that should be at the core of any measure or action addressed to children.**

If participation within juvenile justice systems is not recognized or properly endorsed, the rehabilitative function of the measure may result neglected and the action would be placed

outside the rule of law. Participation is thus a central element for qualifying the rehabilitative function of the JJ system.

Child participation should be also understood in relation with the own identity surrounded by a context that sees the child as an active actor of his own life as well as of the surrounding context and the overall society. This consideration brings us to the concept of self-determination, which is directly linked with self-recognition. These are prerequisites for any person to be able to participate in a significant way. Hence the importance of considering and connecting the uniqueness of stories and the centrality of the child with the definition of proposals of participation.

However, the complexity of participation increases in the field of juvenile justice, in particular in contexts of deprivation of personal liberty, which it is often the institutional place in which the consequences deriving from poverty and social, economic and cultural exclusion are manifested. In the criminal institutions is where children are sanctioned. But these children - who are in vulnerable conditions - are those for whom institutional and social contexts have failed at creating conditions that meet their needs in line with their rights. This contradiction could be linked to a structural ambiguity of the system that makes us raise the following question: It is possible to talk about participation in situations where coercion is a core factor? The answer could put the credibility of the system at risk.

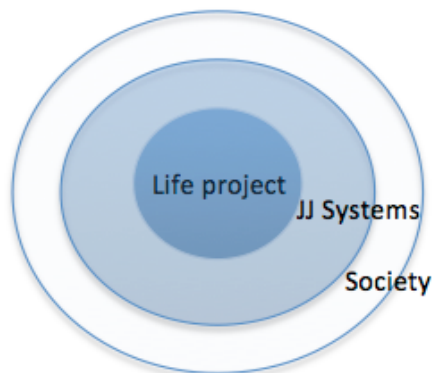
2. APPROACH AND METHODOLOGICAL CONSIDERATIONS

Based on a systemic and human-rights approach, the Twelve initiative itself considers the participation of children as a core element that informs all the other components and outcomes of the project. The project followed a participatory methodology that places the persons at the centre of its action and carefully considers the relation with the surrounding context. Under this approach, the CRC has been used as the framework for research purposes. The CRC Articles of reference related with participation have been explored in relation to 3 different national juvenile justice systems in Belgium, Italy and Spain, through a set of items:

- Laws and regulations
- Procedures
- Actors involved
- Competences
- Practices
- Independent supervision/monitoring

Three levels of participation that connect the child with different dimensions have been identified in order to reduce complexity of the analysis:

- Life project (building autonomy/reaching emancipation according to the evolving capacities)
- JJ Systems (criminal justice: before, during and after the trial; particular focus on children in conflict with the law in contexts of deprivation of personal liberty)
- Society (economic, social and cultural rights; and civil and political rights)

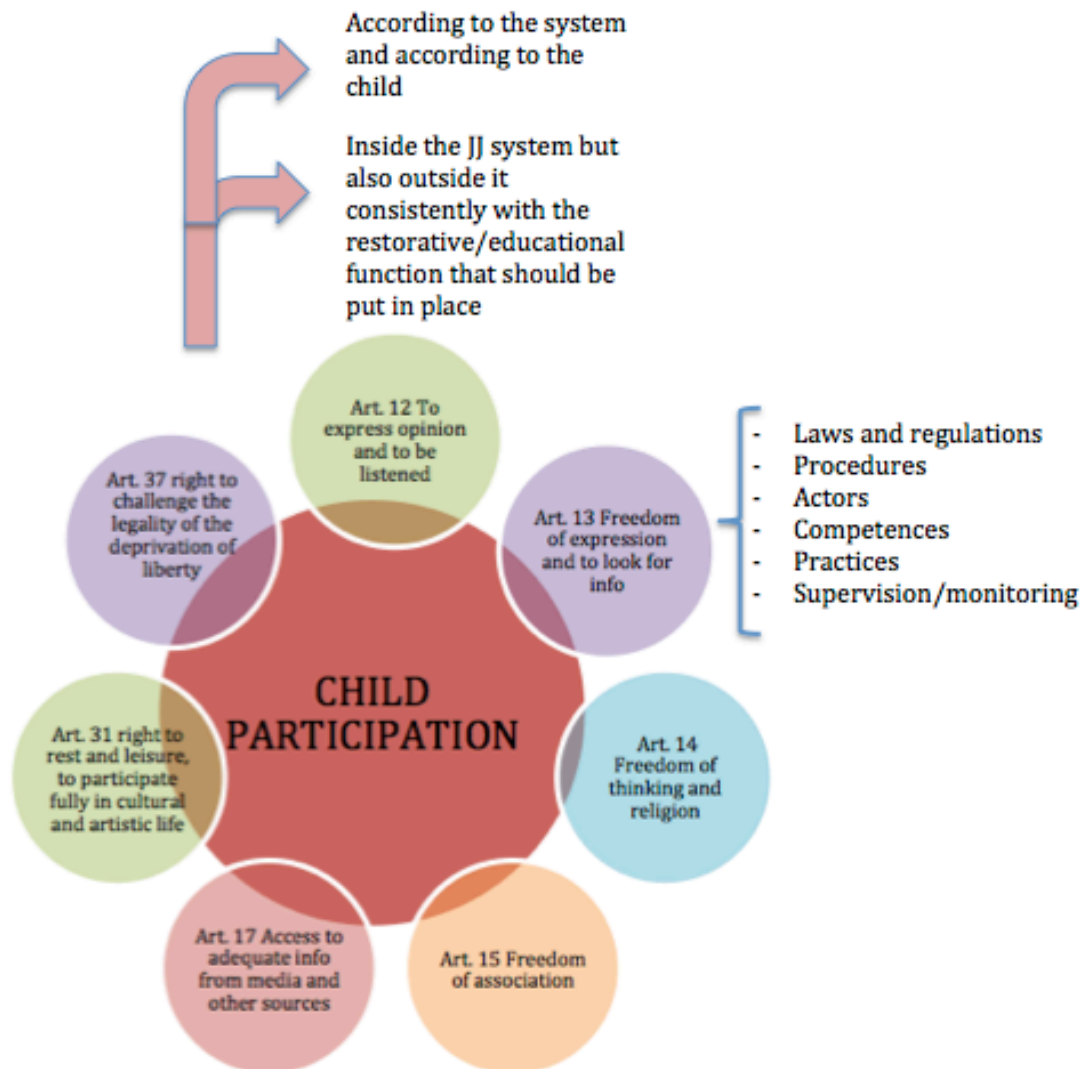


All these elements have been analysed according to two views: the children and the system/context. We could not talk about participation if these two points of view were not taken into consideration.

The research was divided into two parts: a first desk research to gather information mainly on the normative framework, and secondly a field action-research where a series of consultations were held with children in conflict with the law and with professionals working with them in order to listen to them and get their opinions on how participation works in practice. Consultations were made through focus group sessions.

The action research has a two-fold objective: on the one hand aims at getting information from the people consulted and at the same time provide them a paradigm verified during the

consultations for reframing their perspectives; and on the other, it seeks circularity between the information obtained from the research and the training contents of the project. This also facilitates the elaboration of a training that is multidisciplinary and therefore addressed to different categories of professionals.



The following analytical criteria have been used to systematize the findings that resulted from the consultations:

- Level of awareness and understanding of the right to participation
- Existing possibilities for participation within the juvenile justice system
- Unattended wishes or obstacles for participation in the juvenile justice system
- Proposals for improvement

This allowed understanding in each country children’s perceptions, actual situation regarding the compliance with children’s rights in practice, lacks and weaknesses and possible measures and proposals for improvement, everything concerning the relation between participation and the juvenile justice system.

3. BRIEF OVERVIEW OF THE ITALIAN 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 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. 2 CRC) appears to be the basis of the Italian juvenile justice system. In fact, the system is based on the concept of liability² (recognized in art. 98 of the Civil Code) according to which a child can be criminally prosecuted only if he is imputable. 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 (Pesarin, 2009).

This legal philosophy is very influenced by the Constitutional Court, which in various sentences has reiterated that the best interest of the child and his reintegration into society should always be considered before the punitive power of the state. A restorative approach to juvenile criminal justice rather than a coercive one seems therefore to be encouraged by legislators and magistrates.

Laws and regulations

The juvenile justice system in Italy is regulated by a set of laws and provisions and is managed separately from the adult justice system. The legislative framework is structured in line with the following main provisions:

- **Law n° 835 of 27th May 1935**, still partially in force, which establishes the Juvenile Courts as specialized bodies and represents the starting point for the juvenile justice system’s structure. This Law regulates the institution and functioning of the Juvenile Court and of the Rehabilitation Centres for minors, which provide for the execution of the civil and administrative measures of the Juvenile Court. Subsequently, the execution of these measures was transferred to the Social Services of the local authorities through the approval of the Presidential Decree n° 616 of 24th July 1977. The Juvenile Court has full competences on administrative, civil and penal matters.
- **Presidential Decree n° 448 of 22nd September 1988** that institutes the Criminal Juvenile Procedure Code. This Code regulates the provisions on criminal proceedings of juvenile offenders, including police custody and personal liberty. With this Decree a specialized code for children which is different from that for adults was established. The principles upon which the criminal juvenile procedure is based are contained in the Decree. According to them, the criminal procedure applied to minors should ensure: a) the minimum intervention of the process through the activation of all the necessary measures for a rapid way out from the criminal circuit without interrupting the educational processes under way; b) the appropriateness of the process in order to be compliant with

² The term chargeability (in Italian *imputabilità*) refers to the recognition of the criminal responsibility of an offender.

educational and empowering ends; and c) the residual use of detention both for precautionary measures and for the execution of the sentence (Pesarin, 2009).

It is worth mentioning that the Presidential Decree represents the shift towards a more child-friendly juvenile justice system that respects the Standard Minimum Rules for the Administration of Juvenile Justice, the so-called “Beijing Rules”, approved by the United Nations on 28 November 1988³, and introduces the precautionary measures that foresee imprisonment as a measure of last resort. It is also important to highlight that though the decree was adopted one year before the approval of the UN Convention on the Rights of the Child, it is completely in line with the spirit of the CRC.

- **Legislative Decree 272 of 28 July 1989** entitled “Implementation, coordination and transitional provisions upon the Presidential Decree n° 448 of 22 September 1988, bearing rules on criminal proceedings against young offenders”.
- **Decree Law n° 12 of 14th January 1991** establishing supplementary and corrective provisions on the criminal procedure and its related rules.

Finally, the **Prison System approved by Law n° 354 of 26 July 1975 foresees in article 79** the temporary application of its provisions for children until the adoption of a specific legislation. However, no specific regulations on juvenile prison law have yet been approved, despite the general claim for a new law⁴ and the indications made by international organisations including the Council of Europe in November 2010⁵. Therefore, the provisions established in the Prison Rules Act for adults are currently being applied for children. This fact hinders the possibility for the Italian Juvenile Justice to be fully compliant with the international standards on child-friendly justice. This legislative gap has been partially addressed by the jurisprudence of the Constitutional Court, which through declarations of unconstitutionality has reaffirmed the specific adaptation and flexibility of the treatment offered to a detained child as well as the need for rehabilitation and re-socialisation of young offenders recognized by articles 2, 27, 30 and 31 of the Italian Constitution (AIMMF, 2010).

Main actors of the Italian juvenile justice system

The **Juvenile Court** has exclusive jurisdiction in proceedings related to juvenile offenders indicted for criminal offences who are at least 14 years old and it is also responsible for preventive measures regarding socially dangerous juvenile offenders (DCI Italy, 2013). It has also civil and administrative competences. The Juvenile Court is a specialized and multidisciplinary judicial body composed of a magistrate of the Court of Appeal, a magistrate of the Court of Justice and two meritorious citizens –the so-called honorary judges - who have contributed to social assistance, a man and a woman, chosen among experts of biology, psychiatry, criminal anthropology,

³ The Decree expressly recognizes the right to be notified of the criminal charges; the right to receive legal assistance; the right to counsel; the right to be heard and informed about the charges, process and the possible sentences; and the right to privacy, among others.

⁴ Some legislative proposals have been presented in the Parliament and different institutions have addressed proposals to the Ministry of Justice.

⁵ Please see the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice available at:

<https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec%282010%291098/10.2abc&Language=lanEnglish&Ver=app6&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

pedagogy, psychology, and who have already turned 30 years⁶. The main powers of the Juvenile Court concerning criminal justice include the jurisdiction for the crimes committed by persons under the age of 18 years and the exercise of their competences until the young offender that has committed the crime when he was minor turns 25 years.

The **Ministry of Justice** and more concretely the **Department of Juvenile Justice**, is the competent authority for the execution of the criminal measures issued by the Juvenile Court as well as for the legal protection of children hosted in the juvenile institutes. The execution of the criminal measures is done through a set of specific decentralized structures that depend on the Ministry of Justice around which the Department of Juvenile Justice is articulated. The administrative bodies are called Centres for Juvenile Justice (CGM) and are territorial administrative bodies whose jurisdiction usually covers the area of several regions and districts of the Courts of Appeal. Their main functions are technical and economic programming as well as control and monitoring of the Juvenile Services operating thereunder.

The **Juvenile Services** are:

- **Offices of Youth Social Service (USSM):** there are a total of 29 offices of the USSM in Italy. Their function is to provide young offenders with assistance at any stage and level of the criminal proceeding and to gather information about them for the personality assessment under request of the Public Ministry. They also provide concrete project's processes and contribute to the decisions of the juvenile legal authority. These offices are activated once a child is drawn into the penal circuit and accompany the young perpetrator during the whole criminal path, from the beginning to the end (Department of Juvenile Justice).
- **Juvenile Detention Centres (IPM):** Their function is to ensure the enforcement of the measures issued by the legal authority such as pre-trial detention or conviction sentences addressed to juvenile offenders. In this context the young offender is granted the right not to interrupt his educational, physical and psychological development. To encourage their personal accountability processes and the attainment of maturity, educational, training, cultural, sport and recreational activities such as theatre are organized in the IPMs. (DCI Italy, 2013).
- **First Reception Centres (CPA):** are the structures that host arrested children, both retained or accompanied, until the validation hearing that needs to be held within 96 hours as stated by law. According to the Presidential Decree 448/88 these centres should guarantee the custody of the children but should not be established as penitentiary structures. The CPA are mainly aimed at providing to the competent judicial authority with the first information about children; support and inform minors; collaborate with the other juvenile services; and establish immediate contacts with the families.
- **Residential care facilities:** act by law both to ensure the enforcement of non-custodial measures and to help reintegrating young offenders in their social environment. A personalized educational program is developed taking into account the child's personal and familiar resources as well as the opportunities offered by the local agencies, with the aim of starting a process of personal accountability by the young offender (DCI Italy, 2013).

⁶ Royal Decree Law 20 July 1934, n° 1404

- **Day care centers** offer day services for precautionary, substitutive and alternative measures.

According to article 97 of the Penal Code, the **minimum age of criminal responsibility** is 14 years and therefore a child under this age cannot be criminally charged. In addition, article 98 establishes that “is imputable a minor that, in the moment in which he committed the crime, was already 14 years but not yet 18, and if he had the capacity to understand and discern”. Therefore, as previously mentioned, the concept of liability that is on the basis of the Italian juvenile justice approach constitutes a further qualitative criterion to determine the criminal responsibility of a young offender. To this purpose the capacity to understand and discern of a child with regards to the offence committed has to be always assessed, while for adults this capacity is presumed.

When the age of the offender is unclear, the judge orders an age assessment and in case of doubts after the assessment, the minority of age is presumed according to the Presidential Decree 448/88. Those minors who are not criminally charged are exempted from being sentenced and convicted. Like those under the age of 14 years, these minors may be subject to security measures such as placement in a reformatory or probation only if they are deemed to be *socially dangerous* (Flora and Tonini, 2002). 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.

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. As stated in this law “all the measures are applied adequately according to the personality and the educational needs of the minor⁷”. In this line, the negative consequences that the judicial proceeding can have on child’s development should always be taken into consideration by the judicial authorities, that assess case by case the opportunity to continue the procedure or to interrupt it according to educational scopes. In fact, the main scope of the juvenile criminal proceedings is the educational and social development and rehabilitation. To this purpose, imprisonment in the juvenile area seems to be frowned upon due to the negative consequences that it may entail for the child’s reintegration process. It is indeed generally assumed that a juvenile crime grows from an unfavourable social context determined by structural deficiencies also in educational terms and the penitentiary institutions do not help at repairing the consequences of a lack of positive reference points⁸. Law allows the judge choosing the more appropriate sentence for a young offender among a plurality of sanctions. Moreover the sentence is imposed within a flexible system that foresees the recognition of an acquired level of maturity as a possible mechanism for release (AIMMF, 2010).

Despite the progressive reduction of the use of restrictive measures, the juvenile justice system applies the following criminal measures of restriction of personal liberty applicable to young offenders:

⁷ Article 9 and article 19 of the DPR 448/88 make explicit references to these principles.

⁸ The difficulties related to rehabilitation processes faced by children in conflict with the law were particularly detected and addressed in a DCI Italy project called Tom-tom. This project aimed at reaching children during and after criminal proceedings in order to increase their chances of successful reintegration through the establishment of a group of volunteers that supported and connected children with local resources, to orient them in order to access professional and educational opportunities available in the surrounding context.

- **Detention sentences** can be ordered following a definitive sentence⁹ or in cases of pre-trial detention for offences punished by over 9 years in prison and if there are concerns about suppression of evidences, danger of flight or of re-offending. Imprisonment is served in an IPM in which educational and training activities are developed in coherence with the educational ends of the sentence. Children under the age of 18 can benefit from a reduction of the committed offence's sentence by a half and those under 16 years by two thirds.
- **Placement in a residential care facility** can be ordered by the judge as a precautionary measure (article 22 of DPR 448/88) and constitutes the more restrictive precautionary measure after the pre-trial detention. A young offender may also be sent to a residential care facility under articles 18, 36 and 37 of the DPR 448/88 concerning respectively accompaniment after arrest, execution of security measures and provisional application (Mastropasqua, 2008). Finally, during the criminal execution a minor may be hosted in a residential care facility as an alternative measure to detention (probation in the Social Services, home confinement, day-release) following the definitive sentence (CNCA, 2009).
- **Home confinement** is the sentence ordered by a judge according to which the minor should remain at home or in another private residence or public healthcare establishment. The judge may also order to limit or forbid the communication of the minor with people other than those living with or assisting him.

The Italian juvenile justice system also provides a range of non-custodial penalties, the so-called alternative measures, that make it possible for children to promptly leave the formal criminal justice system, such as prescription, judicial pardon, suspended sentences with probation, acquittal for incapacity to understand and discern or irrelevance of the fact (DCI Italy, 2013).

⁹ In line with the basic principle of detention as a measure of last resort, the judge can make use of imprisonment only when there are evidences of the non-suitability of the other measures.

4. PARTICIPATION AND JUVENILE JUSTICE: THE LEGAL AND NORMATIVE FRAMEWORK

4.1 The international framework

The participation and listening of the child in the field of juvenile justice is explicitly recognized as such in the Italian legislation through the ratification and transposition of international treaties and conventions, in particular the **UN Convention of the Rights of the Child**. The transposition of the UN CRC in the Italian legal system through the Law 176 of 27 May 1991 introduces for the first time the listening of the minor's opinion as a general rule in any judicial proceeding.

The CRC is the reference treaty that considers the child as an active rights holder under a holistic approach and addresses the notion of participation as a central component.

Participation is one of the four guiding principles of the CRC and affirms that children are full-fledged persons who have the right to express their views in all matters affecting them and requires that those views must be heard and given due weight in accordance with the child's age and maturity. It recognizes the potential of children to enrich decision-making processes, to share perspectives and to participate as citizens and actors of change. The practical meaning of children's right to participation must be considered in each and every matter concerning children¹⁰. As a principle, the notion of participation needs to be read in relation with other CRC articles that give shape and indications on how to implement it. Participation is commonly identified with article 12, that recognizes the capacity of the child to form and express his own views and explicitly states that for the child's views to be given due weight "the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law".

The CRC four guiding principles

- Non-discrimination (article 2)
- Best interest of the child (article 3)
- Survival and Development (article 6)
- Participation (article 12)

However, the following articles recognized in the CRC are also of particular importance and directly related with participation. They actually help at qualifying the very notion of participation and therefore their respect should be carefully looked at in the specific context of juvenile justice¹¹:

Article 13 (Freedom of expression): Children have the right to get and share information, as long as the information is not damaging to them or others. In exercising the right to freedom of expression, children have the responsibility to also respect the rights, freedoms and reputations of others. The freedom of expression includes the right to share information in any way they choose, including by talking, drawing or writing.

¹⁰ <http://www.unicef.org/crc/files/Right-to-Participation.pdf>

¹¹ For the explanation of each article it has been used the UNICEF summary of the rights under the CRC: http://www.unicef.org/crc/files/Rights_overview.pdf. The full text of the articles can be found in the annex 1 of the present document.

Article 14 (Freedom of thought, conscience and religion): Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should help guide their children in these matters. The Convention respects the rights and duties of parents in providing religious and moral guidance to their children. Religious groups around the world have expressed support for the Convention, which indicates that it in no way prevents parents from bringing their children up within a religious tradition. At the same time, the Convention recognizes that as children mature and are able to form their own views, some may question certain religious practices or cultural traditions. The Convention supports children's right to examine their beliefs, but it also states that their right to express their beliefs implies respect for the rights and freedoms of others.

Article 15 (Freedom of association): Children have the right to meet together and to join groups and organisations, as long as it does not stop other people from enjoying their rights. In exercising their rights, children have the responsibility to respect the rights, freedoms and reputations of others.

Article 17 (Access to information; mass media): Children have the right to get information that is important to their health and well-being. Governments should encourage mass media – radio, television, newspapers and Internet content sources – to provide information that children can understand and to not promote materials that could harm children. Mass media should particularly be encouraged to supply information in languages that minority and indigenous children can understand. Children should also have access to children's books.

Article 31 (Leisure, play and culture): Children have the right to relax and play, and to join in a wide range of cultural, artistic and other recreational activities.

Two other articles are of particular importance when talking about juvenile justice and participation:

Article 37 on children's deprivation of liberty according to which no children should be subjected to torture or other cruel treatment. Deprivation of liberty should not be unlawful or arbitrary and detention should be used as a measure of last resort for the shortest appropriate period of time. According to the CRC, human dignity of every child deprived of liberty should be respected taking into account his needs, being separated from adults and having the right to maintain contact with the family. Every child should also have access to appropriate assistance and has the right to challenge the legality of the deprivation of liberty.

Article 40 about the criminal treatment that every child accused or recognized as having infringed the penal law should receive. It should be consistent with the promotion of the child's sense of dignity and worth and should promote the child's reintegration and the child's assuming a constructive role in society.

In addition to the UN CRC, there are other relevant international regulations and standards that specifically address the issue of participation and juvenile justice systems creating an international reference framework that has significant normative influence at the national level.

The most relevant are listed hereunder:

- UN Standard Minimum Rules for the Administration of Juvenile justice (*Beijing rules*, 1985)
- UN Rules for the Protection of Juveniles Deprived of their Liberty (*Havana rules*, 1990)
- UN Standard Minimum Rules for Non-custodial Measures (*Tokyo rules*, 1990)
- UN Guidelines for the Prevention of Juvenile Delinquency (*Riyadh Guidelines*, 1990)
- Guidelines for Action on Children in the Criminal Justice System (*Vienna Guidelines*, 1997)
- General Comment N. 12 on the Right of the Child to be heard, 2009
- Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010

In that connection, it seems appropriate to mention the recommendation issued by the UN Committee in 2011¹² regarding the implementation of article 12 that urges the Italian government to “introduce a comprehensive legal provision establishing the right of the child to be heard that would be applicable to all courts, administrative bodies, institutions, schools, childcare institutions and families in matters affecting children, and take measures to allow for the direct hearing of the views of the child and, in doing so, provide adequate safeguards and mechanisms for ensuring that such participation can be carried out effectively and free of manipulation or intimidation and be supported by expert opinions by concerned services when appropriate”.

4.2 The national framework

4.2.1 Participation in juvenile criminal proceedings

The right to participation in juvenile justice proceedings was introduced and recognized as such in the domestic legal system with the ratification of the CRC. However participation can be also presumed from a set of articles of the Italian juvenile criminal law. In fact a number of national provisions foresee the participation of the child in juvenile criminal proceedings and recognize some of the rights directly related to it.

The **Code of Criminal Procedure for Minors** is the legislative source of reference that regulates the juvenile criminal proceedings. Approved one year before the CRC, it introduces a new approach to the juvenile justice that takes into primary consideration the personality and educational exigencies of the child (article 1). This regulation also recognizes that the main scope of the juvenile criminal procedure is the rehabilitation and reintegration of the child into society through educational interventions. The introduction of specific alternative measures was intended to reduce the use of detention as a measure of last resort and for the minimum period of time.

The Code provides for child participation in criminal juvenile proceedings. It is however subject to the assessment of the personality of the minor, the family and environment situation as well as to the availability and degree of cooperation between the national authorities and the territorial social services.

Several articles of the present decree tackle participation of children in conflict with the law. The main elements and corresponding articles are listed hereunder:

- ✓ *Principles of the juvenile criminal proceedings: appropriateness and information* (Article 1)

¹²<http://www.grupprocrc.net/Osservazioni-Conclusive-del-Comitato-ONU>

Establishes the general principles of the juvenile criminal proceedings, according to which all the provisions should be applied according to the personality and educational exigencies of the child and establishes the judge's duty to explain the meaning of the procedure, the contents and even the ethical and social reasons behind the decisions.

- ✓ *Right to be heard* (Articles 1, 9, 28, 31, 33, 38, 40...)

The judge hears¹³ the accused minor in different stages of the criminal proceedings, including the hearings or the assessment of the probation period.

- ✓ *Specialization* (Articles 5, 11)

Institutes a specialized section of judicial police in the Juvenile Courts specifically staffed and prepared and states that the court appoints the lawyer from a list of professionals specialized in juvenile law.

- ✓ *Connection with the local context* (Article 6)

In any stage of the proceeding, the judicial authority can make use of the juvenile services of the justice administration and of the assistance services instituted by the local bodies.

- ✓ *Personality assessment of the child* (Article 9)

The Public Prosecutor and the Judge acquire information on the offender's personal, familiar, social and environmental resources and conditions in order to assess his imputability, the degree of responsibility and the social relevance of the fact. This assessment should allow the criminal measure to be as appropriate as possible. For this purpose, the Public Prosecutor and the Judge can also receive information from persons who have a relation with the minor and hear the views of experts, without any formality.

- ✓ *Right to receive assistance* (Articles 11, 12)

A child suspected or accused of a crime has the right to free legal assistance. The affective and psychological assistance to the child is ensured during all the proceeding, through the presence of the parents or of any other appropriate person suggested by the child and accepted by the concerned judicial authority.

- ✓ *Right to privacy* (Articles 13, 33)

The publication or divulgation, through any means, of information or images that consent the identification of the minor is forbidden.

The hearing in the juvenile court is closed-doors. If the child accused is 16 and above, he can ask the hearing to be public. The decision will be taken by the court based on the best interest of the child.

¹³ Is worth noting that the Italian legislator uses the term "to hear" instead of "to listen", which implies semantic differences since the verb to listen requires paying attention for the purpose of hearing, while the verb "to hear" is functional and it is an aseptic reception (Fadiga).

- ✓ *Right to challenge the judicial decision* (Articles 27, 28, 32, 41)

The minor accused can lodge an appeal against the sentence in the Court of Appeal.
The child can also challenge the decision taken by the surveillance magistrate.

REGULATORY GAPS IN THE NATIONAL LEGAL FRAMEWORK¹⁴

- Need for a further codification of the principle of participation and the right of the child to be listened;
- There is no legal obligation foreseen to provide training to professionals (judges, police, prosecutors, lawyers...) having direct contact with children in communicating with them at all ages and stages of development, as well as with children in situations of particular vulnerability, including the existence of a mandatory training requirement as a prerequisite for taking up a post where contact with children is likely;
- Need for a provision establishing means of multidisciplinary co-operation to obtain a comprehensive understanding of the child and assess their legal psychological, social, emotional, physical and cognitive situation;
- Legal obligation to ensure children are heard in the most favourable settings and under the most suitable conditions having regard to their age, maturity and level of understanding and any communication difficulties they may have, including provisions for specialised courts and prosecutors' services

4.2.2 Participation in detention settings

Reference to national legislation, regulations and rules:

- Law 345/1975 on the Prison System and the enforcement of measures of deprivation or limitation of liberty;
- Presidential Decree 448/88 regulating the juvenile criminal procedure;
- Legislative Decree 272/89 entitled "Implementation, coordination and transitional provisions upon the Presidential Decree n° 448 of 22 September 1988, bearing rules on criminal proceedings against young offenders";
- Presidential Decree 230/2000 on the prison system and measures of deprivation of liberty;
- Administrative circulaire of 17 February 2006 num. 5391 about the organisation and technical management of juvenile detention centres;
- Internal rules of juvenile detention centers;
- Administrative circulaire of 12 April 2013 on the intervention model and revision of the Juvenile Justice Services System.

Deprivation of liberty: scope and purposes

¹⁴ According with the criteria used by the Council of Europe in "The right to participation in juvenile proceedings".

The placement of children and young people in conflict with the law in juvenile detention centres is a residual measure in Italy. The majority of young offenders is in charge of the USSM (Offices of the Youth Social Services) and benefits from external alternative measures. However, there are 19 juvenile detention centers (IPM)¹⁵ ensuring the execution of the measures issued by the legal authority concerning the pre-trial detention and the serving of the definitive detention sentence of young offenders.

As pointed out above, the main legislative gap in the Italian juvenile justice system is the lack of a juvenile penitentiary system specific for minors in detention. In absence of such regulation, the ordinary prison system for adults approved in 1975 is applied and constitutes the main legislative reference. The presidential decree 230/2000 also regulates the measures of deprivation of liberty, without a specific section for minors. In 2006 a text – an “*administrative circulaire*”¹⁶ - regulating the organization and the technical management of the IPMs was approved. This document was elaborated to redefine the organizational and functional model of the Institutes in order to verify their level of appropriateness in relation to the European legislation and to adapt them to the current typology of users and demands¹⁷ (Ministry of Justice, 2006). Juvenile detention centres are also regulated through the Internal Rules of each IPM, which address some specific aspects related with the organization and management of the structure.

Until recently these structures hosted minors or offenders under the age of 21 years that had committed the crime before turning 18. However a reform was introduced by article 5 of Law 117/2014 according to which young adults up to 25 years can be placed in juvenile detention centres. This new provision entails changes in the characteristics of users. As a result the management and staff of the institutes will have to adapt to the new typologies of people hosted. The average age of young people deprived of personal liberty was around 17 years before the extension of the age limit. The situation is currently changing due to the increased presence of young adults, some of whom coming from adult prisons.

According to the above references, the primary function of the criminal sentence addressed to children and young people is re-education. In this light, deprivation of liberty should aim at the rehabilitation of young offenders through individualized educational and care plans that promote personal growth and development for a rapid release. Beyond this primary scope, the main purposes of juvenile detention centers are the respect for human dignity and subjective rights; the development of children’s individual responsibilities; and the orderly maintenance of the daily life and the interpersonal relations in the center.

¹⁵ According to the website of the Ministry of Justice, https://www.giustizia.it/giustizia/it/mg_2_5_3.wp?previousPage=mg_12_4 (last accessed on February 18, 2016).

¹⁶ In Italy an *administrative circulaire* consists of a text intended for the members of an administration aimed at giving orders, instructions or information. The administrative circulaires are used by administrative departments to interpret and implement laws and regulations according with the indications given in the text.

¹⁷ The *circulaire* is also aimed at addressing the lack of a Prison Rules Act for children, transposing European regulations and constituting a common referral framework for all the juvenile detention centers operating in the Italian territory. The document contains the principles, institutional ends, organization, strategies and methodologies of intervention that every IPM should meet. In these regards is worth highlighting that the main principle that should inspire the organization of the IPM is to guarantee to detainees and staff a physical and relational environment characterized by the respect for the dignity of the person, his rights and his needs. Under this approach, the capacity of the context to orient the quality of the relational life and to represent an indispensable point to start processes of change is recognized.

The penitentiary treatment should thus ensure the respect for human dignity, should be impartial without discriminations for reasons of nationality, race and economic and social conditions, political opinion and religious beliefs; and should be re-educational and aimed, even through contacts with the outside, at the social reintegration of detainees according with a criteria of individualization in relation with the specific conditions of the subjects (article 1 prison code). The re-educational plan is also aimed at promoting a process of change of the personal conditions and attitudes, as well as of the family and social relations, that hinder a constructive social participation (article 1.2 D.P.R 230/2000).

Each juvenile detention centre should meet the conditions that ensure all children and young people the respect for the following rights:

- Right to health and to harmonic growth;
- Right to education, to work, to socialization and to leisure activities;
- Right not to interrupt the current educational processes and to maintain ties to significant figures;
- Right to religious freedom;
- Right to affective and psychological assistance;
- Right to respectful environments for the human dignity and hygienic safety;
- Right to vote;
- Right to individualized care;
- Right of defence.

Special reference is also made in relation with the specific linguistic and cultural needs and differences of foreign children and young adults and the necessity to take them into due account. The role of cultural mediators should be fostered even through agreements with local bodies or voluntary organizations. This aspect is of particular importance in order to ensure the effective participation of such specific group of children. In this sense, linguistic and cultural mediation should not only be made available on a permanent basis but must also be timely and of quality.

The individual care plan

The individual care plan, which appears to be the core element of the rehabilitation processes in the field of juvenile justice, if properly defined and implemented can represent an opportunity for participation of children deprived of personal liberty. The individual care plan is considered as the main tool for the social reintegration of a child in detention. It is individualized, hence it should respond to the specific needs and personality of each detainee and should make use of different elements including education, work, religion, cultural and leisure activities as well as of contacts with the outside and the relation with the family.

The concerned regulations state that an individualized educational project containing the objectives to be reached as well as the educational tools selected should be defined for every detainee, with the participation and integration of the different units involved in the implementation of the plan.

The definition of the care plan is left to the different professionals in charge of the child including the social worker of reference, the social assistant and the psychologist: "A multidisciplinary team

will devise a care plan that will be sent to the competent judicial authority with the aim of encouraging and stimulating the possibility of developing a process of change for an adequate social reintegration” (service charter IPM Palermo).

The definition of the individual care plan takes place during the first stage of the detention period called “observation”. During this phase social workers gather information directly from the child through individual interviews and participatory observation, or indirectly from the social services, the family or people in contact with the minor. During the next phase, the social workers activate the resources that constitute the tool for implementing the care and educational plan. During this period, the plan is adapted and assessed according to the exigencies of the child, including through regular meetings between him and the professionals.

The child’s participation therefore should inform the identification, implementation and assessment of the educational and care plan and the concerned professionals ultimately define it. As a result, the participation of children in such an important aspect of their criminal experience may be subject to the discretion of the professionals involved in their reintegration programs. It would therefore be advisable to further codify in regulations the co-definition of the individual care plan in order to ensure the systematic involvement of the child in such a process.

RECOGNITION OF THE CRC ARTICLES RELATED WITH PARTICIPATION IN REGULATIONS

Article 12: To express opinion and to be listened

The right to express opinion and to be listened is not explicitly recognized in the provisions that regulate the deprivation of liberty for minors. However, as we have seen, the definition and implementation of the individual care plan is supposed to include moments of discussion, listening and sharing between children and professionals.

The main interlocutor of the child is the social worker of reference. He is the technical responsible for the case, records the interviews with the child and updates the technical data sheet. Together with the social assistant and the psychologist, the social worker presents regular reports of the case to the rest of the team in order to assess and redefine the modality of intervention in accordance with the objectives set. In relation with article 12 particular attention should be paid to the methods of managing individual interviews, whose appropriateness may not be ensured due to the lack of common methodological tools and may be thus subject to the capacity and skills of single professionals.

Another modality to express opinion is through complaint mechanisms. Common child-sensitive complaint mechanisms are not foreseen within the juvenile justice system in Italy at a national level. In general terms it seems that children usually complaint orally to the social worker of reference or to the social assistant of the USSM. That is, persons who are present in their everyday life and with whom they have a close relationship. Although there are no specific complaint mechanisms for children, article 35 of the O.P. provides a general instrument of safeguard aimed at setting the necessary interventions in order to avoid illegitimate actions by the Administration (Napoli, 2007). Under this article detainees, internees and members of their families can address oral or written complaints or instances to a number of actors including the

director of the institute, the chief of the penitentiary Administration, the Minister of Justice, the Surveillance Magistrate, the judicial and health authorities visiting the institute, the President of the Region and the Head of State. In addition, complaints may also be sent to international bodies dealing with the protection of human rights and to the ombudsman at national, regional and local level (DCI Italy, 2014).

Article 13: Freedom of expression and to look for information

There is no explicit reference to the freedom of expression in the legal and normative framework regulating the deprivation of liberty. With regards to the right to be informed, detainees and internees, upon admission and whenever necessary, are informed about the general and specific provisions on their rights and duties, the discipline and treatment (article 32 of the prison code). The management of the centre shall also ensure that adequate information is given to the detainees with regard to the criminal sentence, the available activities organized in the centre and its rules. A copy of the internal rules is provided to them during the admission talk. This document should be translated in the most widely spoken languages among the foreign detainees.

In addition, according to article 69 of the prison code, information about the norms and provisions regulating the penitentiary life and about detainees' rights and duties should be made available in the library of the centre or in another accessible place. The concerned regulations encourage the use of a simple and accessible language when informing the child and his family; with the collaboration, if available, of a linguistic and cultural mediator in case of foreign detainees.

Article 14: Freedom of thinking and religion

While no reference is made to the freedom of thinking, the freedom of religion is explicitly recognized in laws and regulations. Article 26 of the prison code recognizes the detainees' right to profess their religious faith, to learn, and to practice it. The celebration of the catholic rites is ensured in the centres. Those belonging to a religion other than the catholic have the right to receive, upon request, the assistance of the ministers of their worship and to celebrate its rites, as long as they are respectful for the others and compatible with the context. The management of the centre should provide detainees with suitable premises to practice their religion and should make special diets for religious reasons available.

In addition, the administrative circulaire of 2006 states that a minister of religion represents an important figure with a high educational value in the juvenile field. This figure should therefore be involved in the definition and implementation of the educational agreement with the minor and could also be fundamental to involve the external community in the institutional activities by fostering initiatives of voluntary groups.

Article 15: Freedom of association

No mention to the freedom of association appears in laws and regulations. However there are provisions on the participation of external actors, associations and voluntary groups in the institute as a key element that contributes to the social reintegration of young offenders. For the

implementation of the activities organized in the centres, the participation of the community through the contributions of single citizens or representatives of bodies or associations should be stimulated (art. 17 L. 354/75 and art. 68 DPR 230/00). The purpose is to provide the child with a social network that could support him in his project after release. To this end, the Juvenile Department of the Ministry of Justice promotes opportunities for cooperation with those associations, private bodies and volunteers that guarantee inter-institutional and integrated operational models.

Collaboration with the outside community is therefore aimed at improving the available resources within the centres but also at favouring the participation of children to initiatives external to the centres, as a first propaedeutic phase to the social reintegration upon release.

Article 17: Access to adequate information from media and other sources

With regards to the right to have access to adequate information from media and other sources, article 18.6 of the prison code establishes that “detainees and interneers are authorized to have newspapers, diaries and books available for sale to the public and to use other means of information”.

Article 31: Right to rest and leisure, to participate fully in cultural and artistic life

The normative framework recognizes the right to education, work, socialization and leisure activities. In particular according to the prison code, education, work, religion, as well as cultural, leisure and sport activities are key dimensions of the prison treatment to which detainees can participate upon request (art. 15 L. 354/75).

These activities acquire special importance in the context of deprivation of liberty of minors. As stated in the internal rules of the juvenile detention centres, children and young people should be involved in such kind of activities for at least 6-8 hours per day, offering a range of opportunities to relate with different operational realities through the organization of initiatives. Cultural, leisure and sport activities may represent a relevant aspect to overcome tensions, allow increasing subjective and relational potentialities and enhance the self-expression, communication skills as well as the social reintegration. The different activities must be flexible, encourage the participation of the users and should take into account their specific characteristics and exigencies, as well as their time of stay. In addition, contacts with the outside world and relations with the family should be facilitated through these activities. It is worth noting that cultural, leisure and sport activities should not be suspended during the year but should be continued even during summer and during holiday periods such as Christmas or Eastern.

The prison code foresees the constitution of a commission composed of the Director of the establishment, the social workers, the social assistants and the representatives of the detainees, whose role is to organize the above-mentioned activities. This commission meets during free time.

Table: Summary of the transposition of CRC rights into domestic normative on juvenile criminal justice

CRC Articles	Explicit reference in legislation/regulations	Implicit reference	Codified procedures	Identification of actors/subjects responsible	Supervision/monitoring
Art. 12		✓		✓	✓
Art. 13					
Art. 14	✓		✓	✓	
Art. 15				✓	
Art. 17	Partly	✓	✓	✓	✓ (Internal)
Art. 31	✓		✓	✓	✓

GOOD PRACTICE: PROBATION (MESSA ALLA PROVA)

The alternative measure of probation was introduced for the first time in Italy by the D.P.R 448/1988 with the aim of improving the chances for children not to be detained, in line with the principle of detention as a measure of last resort. According with article 28 of the D.P.R 448/1988, the judge can order the suspension of the proceeding for a variable period not exceeding three years depending on the seriousness of the offence when he considers necessary to assess the personality of the child following probation. Unlike the Anglo-Saxon tradition, probation in Italy can be applied at any stage of the criminal proceeding and not only after the sentence.

During this period an intervention project is developed in collaboration with the Juvenile Services of the Ministry of Justice. The definition and implementation of the project includes the active involvement and acceptance of the child, his family and his social environment. During probation, the child assumes specific commitments based on his needs, capacities as well as on the local resources available. The supervision of the project is in charge of the competent professionals, mainly the social assistants of the Juvenile Services and of the local authorities. The judge may propose variations or suggest integrations in order to adapt the project to the needs of the child to the maximum extent possible. The probation period may also attempt to repair the consequences of the offence and to mediate with the offended person. The success of the probation period is examined by the judge and implies the extinction of the offence (Pesarin, 2009).

This measure besides reducing the contact of the child with the criminal circuit, may contribute to strengthen positive personal resources that are conducive to a constructive rehabilitation process.

5. CHILD PARTICIPATION AND JUVENILE JUSTICE SYSTEM IN PRACTICE: THE VIEWS OF PROFESSIONALS

PARTICIPATION KEYWORDS FROM FOCUS GROUPS WITH PROFESSIONALS					
Respect	Recognition	Empathy	Exchange	Understanding	Listening
Centrality of the person	Commitment	Identity	Alternatives	Trust	Credibility
Spaces	Openness	Dynamic and flexible project	Story	Imagination	Opinion

5.1. General considerations

The project TWELVE's assumption is that participation is a key element of the re-education and reintegration scope of the criminal sentence and that it represents a key entry point to the CRC system. As revealed by the reflections that emerged in the different focus groups with professionals held within the framework of the Twelve project, participation is a complex notion that includes many elements, both objective and subjective.

Participating means being part of something¹⁸. Participation of children in conflict with the law may involve at least two subjects: the juvenile and the surrounding context. Therefore the surrounding context in which the child finds himself should play an active role and should create the conditions for him to be able to relate with different realities in order not to limit the opportunities for participation. Hence the importance of the quality of the relation between the child and the context, which according to the professionals consulted should be trustful, fluid and open.

However, beyond the objective definition and implications, the notion of participation contains also subjective attributes assigned by the involved party, in this case the children themselves. Seen in this light, the key attributes that should shape the children's understanding of participation in order for it to be full and effective are:

- **voluntary**, without impositions but the result of the child's own will;
- **chosen**, which implies the existence of alternatives and an active involvement of the child;
- **useful**, responding to the child's individual needs, conditions, interests and aspirations;
- **meaningful**, making sense to the child and having a real value for him;
- **informed**, which requires the provision of appropriate information and knowledge to the child;
- **shared**, that requires the predisposition and capacity of the context both to involve and to be actively involved.

"There is participation only when the child understands the meaning of what is being done."

¹⁸ Etymologically "participation" derives from Late Latin *participatio(n-)*, "shared in", from the verb *participare*, based on *pars*, part- "part" + *capere* "take". Participation means to take part or have a share, as with others.

On the other hand, the context should facilitate such an understanding and meet some conditions to ensure a full participation of children in conflict with the law. To this end, the centrality of the child, the uniqueness of his story and his best interest should be the guiding principles of the actors relating with the child's reality. Their actions and strategies should take this as a primary consideration and should therefore ensure the active involvement of the child in any decision and implementation process affecting him on a permanent basis. In this regard, the context should be ready to encourage child's initiative and to listen to him while providing appropriate communication and information as fundamental prerequisites. A plurality of options and alternatives should be made available to children in conflict with the law all along their rehabilitation process for a successful social reintegration.

GENERAL CONSIDERATIONS FOR EFFECTIVE PARTICIPATION

- CENTRALITY OF THE PERSON AND OF THE BEST INTEREST OF THE CHILD
- APPROPRIATE COMMUNICATION AND PROVISION OF INFORMATION
- CO-DEFINITION OF THE INDIVIDUAL LIFE PROJECT
- LISTENING OF CHILD'S OPINIONS AND PROPOSALS
- ACCESS TO DIFFERENT POINTS OF REFERENCE

The general view is that reality is very far from these considerations. Uniformity of procedures and practices is not ensured within the Italian juvenile justice system and common tools to implement the principle of participation are lacking. From the point of view of professionals, the degree of participation of children in conflict with the law currently depends on subjective elements and therefore it is not equally ensured.

*"The word participation appears out of place to me within the juvenile detention centre."
(Volunteer in a juvenile detention centre)*

5.2. Recognition and implementation of the right to participation and other CRC articles

There is an initial difficulty when it comes to the notion of participation within the juvenile justice system: the sentence, whatever it might be, is something perceived as an obligation by children in conflict with the law. This perception which is in the basis of any experience in the criminal circuit, at least during the initial phase, conflicts with the notion of participation described above and makes its implementation extremely challenging. As we will see, the tension between opposite poles - such as *obligatory vs. optional* - is an unresolved recurrence in the juvenile justice world.

The respect for the right to participation in the Italian juvenile justice system's practices could be examined according to a procedural criterion; this is to say depending on the moment of the criminal experience. A distinction must be therefore made between the situation before, during and after the judgment stage.

During pre-trial stages participation of children is recognized by law, in particular by some articles of the D.P.R 448/1988. Mechanisms enabling participation of children in conflict with the law do exist, mainly referred to **personality assessment, involvement and hearing of the child** during decision making processes, or the presence of **different actors that interact** with the child and

assist him. However, in view of the lack of codified procedures and supervision mechanisms, in practice the implementation of such provisions may depend on the individual capacity and willingness of the single actors involved and also on the functioning of the system at the local level. The coordination among all the actors involved is also extremely relevant to effectively promote children's participation.

The **lawyer** is another of those mechanisms. He is the link between the magistrate and the child and is the one who is called to interact with the child, listen to him, and make his voice heard during the criminal proceeding. The lawyer may also play a crucial role in relation with the right to information. He is supposed to provide legal assistance making sure that appropriate information is given to his defendant and that he fully understands all the judicial and legal aspects concerning him. In this regard, children should also be given the opportunity to express their opinion regarding their lawyer to the competent authority, such as the public prosecutor's office.

"During the interrogations in the prosecutor's office, children are asked about their opinion, also regarding the lawyer. But it is also necessary to act in relation with the parents because sometimes there is a hyper-protective attitude. In a lot of instances, the absence of the parents during interrogations is preferable. But again, it must be asked to children. Participation means listening to children's opinions. In this light, the way that one communicates is very important." (Officer of the public prosecutor)

Opportunities of participation during enforcement of sentences exist but depend on the typology of cases. The primary element of differentiation is whether the measure entails deprivation of personal liberty.

Detention settings

In contexts of deprivation of liberty, mainly detention, participation of juveniles is more difficult to ensure, above all when the child lacks a supportive environment that may accompany him during the whole rehabilitation process. This particularly affects foreign children in conflict with the law, whose family and legal status may not meet the conditions that according to the system could support the child's reintegration project. Their possibilities to participate will most likely be determined by the actions and proposals coming from the juvenile justice services.

However, generally speaking, participation within juvenile detention centres is often directly linked to the individualized care plan, which constitutes the main tool for the relation of the child with the surrounding social environment.

"The PEI (Individualized Educational Project) is an operational tool that, based on the development, personal and family story, capacities, potentialities and exigencies of the child, contains objectives, strategies and interventions to foster positive change. The PEI, main tool of participation of the young offender in the criminal process, includes interventions and activities agreed with the child and his family that can be modified in relation to the evolution and exigencies of the single case." (Officer of the Juvenile Justice services)

The implementation of the plan seems however to be subject to the approach and quality of staff of the detention centre as well as to the resources available at the local level, and this is likely to determine to a large extent the child's possibilities for participation.

Beyond the individualized care plan, there are other common trends and opportunities allowing participation in juvenile detention centres:

Regular meetings and exchanges between children and professionals, mainly social workers of reference, was the most reported mechanism. Bilateral meetings use to take place regularly in juvenile detention centres to discuss and assess the educational agreement and the rehabilitation process. This is also an occasion, but not the only one, for the child to **make proposals**, such as suggesting new activities, or **to issue complaints**. Complaints may also be lodged to other subjects, such as the surveillance magistrate, whose presence in juvenile detention centres appears to be extremely variable depending on the commitment of each single magistrate. Furthermore, concerns were raised about the insufficient use of formal complaint mechanisms, most probably due to a lack of awareness and appropriateness of procedures. It seems that in many cases the active engagement of children, either in terms of constructive proposals or objections, is not conceived nor encouraged enough in juvenile detention establishments.

Different kind of **activities are organised** in detention contexts by the centres themselves and also by external associations. A common view is that the possibilities of participation are proportional to the quality of the relation between the detention facility and the local context. In fact, the legal framework foresees the collaboration among the juvenile justice services and civil society associations, including volunteers. These moments of relation with the outside world, through activities, may represent an extremely valuable mechanism of participation. A good example is the possibility for juveniles to get involved in **voluntary work** with external associations.

Nonetheless, collaborations with the outside may sometimes respond to reasons other than the best interest of the child and his social reintegration:

“In the IPM there is a long standing good practice of theatre laboratories. However the motivations of the centre may respond to the will of showing a certain image of the centre and the management to the outside. In fact, it is an activity that began many years ago, successful and that involves both the children and external people that can participate as audience. This shows that if there is will, things can be done: in this case theatre. But it must be said that the music room with all the instruments, for example, is always closed and cannot be used by the children. It is indeed a matter of will”. (Volunteer in a juvenile detention centre)

One of the highlighted strengths of the system is the **presence of many different actors** that can enhance and qualify participation. Amongst all of them, the teacher is the one perceived as a potential provider of tools for participation. Through appropriate education, children and young people could be empowered and acquire useful knowledge and skills and discover new interests. The degree of engagement and commitment of youngsters in their educational process is likely to depend on the capacity and quality of teachers and other educators as well as on the range of educational opportunities.

Some criticalities were instead pointed out with regard to the freedom of association and, in particular, to the possibility for youngsters to organise themselves. Informal power structures could be exacerbated, increasing the risk of bullying and other abuses among peers. Many small groups are often created within juvenile detention centres, each one with its own internal dynamics and leaderships. Giving the possibility for them to meet together and organize themselves collectively without appropriate supervision could crystalize these power structures,

with the result that participation may not be free for all of them but subject to potential pressures or threats coming from others. Should such kind of collective participation be allowed, appropriate mechanisms may be put in place in order to prevent abuses.

The implementation of article 17 on access to adequate information from media and other sources appears to be weak. In many cases, juveniles are not given newspapers and do not have the possibility of accessing Internet. They watch TV.

In general terms, there is a trend towards the individualized intervention within the Italian juvenile justice system that may improve the chances for participation. Some examples include facilitating the vote during election times or taking into consideration special food needs. Regular exchanges of good practices among the different national territories could help to enhance positive experiences.

In the context of alternative measures

Participation of juveniles is made easier when it comes to alternative measures. First of all there is no physical separation between the child and the society, but rather some restrictions. Secondly, rehabilitation projects always include a relationship with the social environment based on educational achievements. Participation of children and young adults constitutes therefore a central element of the implementation of alternative measures.

There are different ways and mechanisms available to professionals to promote participation of juveniles that benefit from alternatives to institutional care and deprivation of liberty. Among these are regular exchanges with social assistants to follow up the rehabilitation process together, social and legal mediation to confront the victim and the offender, the possibility to relate with different contexts and have new positive points of reference, or the fact that the juvenile may choose where to serve probation amongst a range of different proposed organizations and associations. The possibility to choose the context in which the juvenile wants to be engaged during probation constitutes a good example of participation.

The main issue when it comes to participation in the context of alternative measures regards quality, and more precisely the quality of listening. Juveniles have regular meetings with different subjects, including the social assistant of reference, in order to assess their experience and eventually adapt it to their needs. There seems to be a real risk that the opinion and views of children and young people are not taken into due account on a permanent basis by all these actors. As a matter of fact, professionals could decide the child's path invoking his best interest, without substantially listening and considering children's contributions. In this sense, efforts should be done to systematically ensure that the views of the child are taken into due account through co-decision models.

GOOD PRACTICE: ANEMMU PROJECT

Anemmu Project begun in 2012 in Genoa from a collaboration among different entities (Anti-Mafia civil society organisation called Libera and the local juvenile justice services). It was born in Sicily in collaboration with the different governmental services (CGM) and has been exported in other Italian cities. It consists of a restorative justice project based on the volunteering,

participation and the co-responsibility of minors in probation.

The Anemmu hypothesis is that through Libera, youngsters can serve probation in collaboration with social assistants from the social services (USSM). The project foresees activities in the field of education, information, training as well as moments of direct exchange and discussion with different realities. Excursions and travels are also organized and children are regularly asked to make proposals. Through direct experiences the project attempts to offer opportunities of personal growth and knowledge. The main issues addressed by the activities organized in the framework of the project are related with legality, citizenship and anti-mafia.

The notion of participation is in the centre of the Anemmu project since the boys and girls can choose whether to join Libera and the Anemmu project. If they do so, the Anemmu team assumes that the child accepts a responsibility and a commitment that should be respected. According with the Anemmu approach, participation means choice, exchange, voluntariness and proposal of association (in a context of legality).

“The point is that these adolescents perceive probation as an obligation. What the project Anemmu suggests is a proposal of participation that is voluntary but responsible: if youngsters accept to be part of the project, they must be committed; otherwise they are invited to leave it. In such a way you make sure that the participation is real and meaningful, which is the only way for it to be effective.” (Reference person of the project)

Anemmu offers new points of reference for the young people as well as the possibility to participate in situations that they wouldn't probably have known in their context of origin. The idea is to make youngsters come in contact with contexts of social and civil participation that may be positive for their social reintegration. Coming in contact with such contexts allow the juvenile to recognize and identify himself in a different way from the category with which he is usually identified by the context. In fact, these young people find themselves in relation with complex situations that are at the same time stimulating stories of overcoming and civil resistance that can positively influence them. The Anemmu project also tries to provide children with mechanisms to tell and show their participation in order to give further meaning to it.

5.3. Obstacles to participation

In the juvenile justice system

- **Structural limits deriving from the system**

There are many obstacles for participation that are directly determined by the overall configuration of the system. They mainly relate to normative and regulatory gaps as well as to the lack of tools for implementing laws and regulations. In this sense, the main gap is the lack of a common and explicit definition of the principle of participation and related tools and indications on how to implement it. Participation remains a very broad and even abstract assumption, whose implementation is not systematized and supervised. In fact, monitoring mechanisms are lacking, as well as specific compulsory training on the rights of the child.

Another structural inconsistency regards the coexistence of opposite approaches within the juvenile justice system, and more concretely in the criminal area. The tension between the restorative and the punitive approaches may give place to incoherencies of actions and procedures implemented by the different subjects. Such ambiguities risk creating confusion to youngsters and may lead to problems of credibility of the system. Participation may be hindered for security reasons. The possibility to use isolation in up to 15 days¹⁹ in juvenile detention centres clearly shows this kind of inconsistencies between approach, scopes, procedures and methodologies. A balance should be found between safety and educational exigencies. Ladder of priorities, actions and procedures in this regard must converge to avoid incompatibilities.

Disparities in the administration of juvenile justice may result in *de facto* discriminations. Equal treatment may not be ensured on a permanent basis among children in conflict with the law since their sentence may also depend on their family and social situation. Given that, as highlighted above, participation opportunities may be subject to the typology of measure. Those children and young people whose contexts don't meet the conditions for benefiting from alternative measures are automatically consigned to fewer opportunities to participate.

- **Criticalities concerning the functioning of the JJS**

There are some other obstacles linked to the functioning of the system, which actually affect the implementation of the legal and normative framework. One of the aspects that were repeatedly pointed out as a significant weakness is the insufficient economic and human resources as well as the ineffective management of the juvenile justice and social services. This leads to a work overload in public services that results in a “permanent-emergency” situation, with direct consequences in the quality of the treatment that children receive and the respect for their rights. The lack of appropriate spaces, responses based on a “here and now” logic, insufficient prevention strategies or poor working conditions run the risk of becoming structural features of the juvenile justice system.

“The problem is that it seems that a step back is needed in the sense that the simple concepts must be addressed. One can try to organise thousands of initiatives but the concept of participation requires an initial will. The child must thus be put in a position that allows him to be actively interested because otherwise it seems that they are always engaged passively by these incentives that remain external and do not become theirs. Also because there is no true will that children live the activities in a certain way by the prison management. If we add the lack of instruments, the lack of spaces, and the insufficiency of social workers vis-à-vis a significant number of children... We must work on clear common basis that are lacking. The system lacks the foundations and everything that is being built upon is unsteady”. (Volunteer in a juvenile detention centre)

There appear to be insufficient spaces and moments for reflection and discussion within public bodies. Professionals may not have the time to assess and eventually improve their action. Often excessive bureaucracy may overwhelm public services, which are already congested.

¹⁹ A number of studies and international and European actors such as the CPT have expressed concern about the use of isolation for disciplinary purposes and have noted that “any form of isolation of juveniles is a measure that can compromise their physical and/or mental well-being”. Some international actors such as the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment or the Committee on the Rights of the Child state that isolation for juveniles must be forbidden. Some others such as the CPT recommend that isolation must be “highly exceptional” and last no longer than is strictly necessary, and supports a limit of three days.

“The complexity of the services and of the system, including the constant need for time consuming authorisations and bureaucracy, often constitute a deterrent and a waste of energies that could be used more efficiently to enhance participation”. (City official)

High fragmentation and heterogeneity between operational realities at the national level constitutes another problem to ensure child participation. Practices and procedures can vary widely within the country and even within the same region due to different reasons.

A partial understanding and implementation of regulations is most likely one of those. The fragmentation of competences and roles between actors of the same system and even unit, which may have different and sometimes opposite missions, priorities and methods of implementation, prevent consistent and continuous developments towards a participatory approach from being achieved.

“Everyone’s mission has different priorities that do not converge towards a common end that should be the centrality of the person. Hence the importance of making understand to all professionals in contact with the minor –including police officers - the centrality of the child, who should be the protagonist of his project”. (Expert on juvenile criminal law)

- **Prevailing mentality**

The socio-cultural mentality and stereotypes which see detainees as a separated category that must be punished and placed apart from the rest of society is still a reality in Italy. This backward-looking perspective closely linked to a punitive approach clashes with the restorative model of juvenile justice. Opinions and behaviours of civil society may influence political decisions. Up until now the prevailing trend responded to an adult-centred logic poorly focused on participatory processes conceiving the society as a whole. This is also manifested within the juvenile justice system. The role and mentality of some professionals, in particular of the penitentiary police, may be more in line with a classic punitive approach than with a restorative one, giving place to incoherencies in the treatment and the messages that children receive from the different actors.

- **Participation as a subjective variable**

All these elements bring us to conclude that participation in the juvenile justice system is currently a subjective variable subject to a number of different elements closely related with the quality of the concerned actors, professionals and services, their implementation capacity and responsiveness.

In detention settings

“The main problem for the implementation of participation within juvenile detention centres is safety. The projects that are presented clash with the centre’s priority: to avoid problems within the structure. Often proposals are rejected or limited arguing that there are not enough security agents to guarantee safety in all spaces. This is the point of view adopted by the management of the centre.” (Volunteer in a juvenile detention centre)

Again security and the order of priorities of juvenile detention centres' managers are seen as a barrier for improving participation opportunities. Above all from the point of view of outsiders that participate in detention centres' activities. The leisure and educational opportunities for children in detention is often limited for security reasons. In this case, participation is secondary to the objective of security. However, the rigidity of such position may vary from establishment to establishment since each one has its own internal rules and a working line fixed by the director of the centre. As a consequence, the training and background of the director becomes very important, since his role goes beyond the implementation of regulations. He establishes the approach to be followed and decides how to use the tools at his disposal. The low degree of codification of procedures and actions gives to the director certain room for manoeuvre that could (or not) be used to enhance restorative justice through co-participation among the different subjects. In many cases the quality of participation in juvenile detention centres seems to be determined by the directors' capacity. In a similar way, the role and mentality of the penitentiary police and of the staff determine much of the possibilities in the centre.

- **Categorization of subjects according to their condition**

Participation from the very basic conception implies a process of self-recognition, which is directly linked to self-image, identity and personal autonomy. Children in detention often fall under the category of "detainees". Such perspective is incompatible with a child-centred approach and hampers individualized treatments able to enhance participation processes. The identification of the individual according to his condition of detainee is not recognizing the person in its entirety. Responses may be inefficient without considering that every person has his own story, his own past and his own future perspectives. To put it differently, children should be considered as unique persons; in this sense is worth noting that what works for one may not work for another. Thus the need for enhancing personalized care able to activate and strengthen individual capacities and resources. Treating children and young people hosted in detention centres as a compact group and not individually may result inefficient for their successful social emancipation.

"In practice children perceive that they are recognized according to their condition (the offence committed). They see themselves through the eyes of others and face self-limiting and self-esteem problems. There is thus a recognition deriving from a category". (Volunteer in a juvenile detention centre)

- **Inadequate proposals to children and young people**

The reintegration project, including the educational and leisure activities, offered by detention centres does not always respond to children's interests, capacities and resources in a long term perspective.

"Children's participation to the activities is rarely 100% voluntary. Also because participating in the activities proposed by the centre may bring them a series of benefits vis-à-vis the social assistants and their rehabilitation process assessment. They often participate physically but not substantially, they are there because they are supposed to be there. It is a disrupted concept of participation."
(Volunteer in a juvenile detention centre)

This constitutes and obstacle for participation opportunities to be useful also after the detention period. The detention experience is supposed to contribute to the social reintegration of young

offenders, and therefore should provide for durable solutions. In practice the care and educational plan offered to children in detention appears instead to be useful only during the sentence.

“Children do not participate in activities that allow them building something outside, after leaving the centre; or being integrated; or that aim at having a better life than the one they had when they arrived in the centre. They participate in activities that are appropriate or seem to be appropriate just during their stay in the centre.” (Volunteer in a juvenile detention centre)

This is linked to another criticality that concerns language and communication. Clear information through child-friendly channels should be provided to children and young people in order to adapt their expectations to reality. Some of the professionals consulted agree that there are no codified procedures and modalities to make children understand the importance of defining a meaningful personal project useful for the future.

“Unfortunately young offenders present a lack of self-awareness and a low level of self-esteem and self-efficacy. These conditions make the processes of self-determination and accountability proposed by professionals difficult”. (Officer of the Juvenile Justice services)

- **Role of external actors undervalued**

As mentioned in laws and regulations, the juvenile justice services should collaborate with local bodies and private social associations including non-profit and voluntary organisations. The logic behind it is that keeping relationships with the surrounding context may increase the possibilities of successful reintegration of children in detention. The role of external actors should therefore actively contribute and support the rehabilitative scope of the measure. In this regard, the strength of involving different external actors is that it widens the range of activities and positive reference available to children. For this to happen, openness should characterize juvenile justice services.

However, as pointed out by consulted external actors that collaborate with juvenile detention centres, outsiders may sometimes be treated as complementary service providers. Their presence within the structure is therefore functional for the centre’s management. Often the contribution of external subjects may fit with the approach and workstyle of the juvenile justice services or the director of the establishment, which limits the modalities and contents of proposals of participation coming from the outside.

*“If the proposal of participation confirms the centre’s hypothesis it will be accepted; otherwise becomes a problem and the centre tends to adopt behaviour of suspicion towards the outside”.
(Volunteer in a juvenile detention centre)*

There is a disconnection between the inside and the outside that of course reduces the possibilities for participating.

With regard to the juvenile detention centre there is a wall created between the “inside” and the “outside”. There is a problem of communication and of participation from the inside to the outside and from the outside to the inside. It is very difficult that the outside takes part in the things happening inside. Civil society has no idea of what is really happening inside the centre due to the

*rules, but also because is much simpler and convenient to reduce participation to the minimum.
(Volunteer in a juvenile detention centre)*

Participation in juvenile detention centres refers to activities within them that often seem to be disconnected from the outside world and therefore are ineffective for a reintegration into society after release.

- **Discontinuity of the intervention plan and fragmented care**

Shifting to a more internal point of view in some cases juvenile justice services complaint about the difficulties of proposing a useful individualised project to a juvenile in detention that usually stays there for a short time. In some Italian juvenile detention centres children's turnover is very high and the average time of stay in the centre is quite low. In addition, their exigencies and needs depend on children's profile. Foreign children usually require literacy in a new language while national youngsters have other educational and training needs. These differences that affect the functioning and offer of the centres seem to be difficult to manage in short periods of time.

This problem could be mitigated by ensuring the continuity of the child's educational plan, through close cooperation between all the professionals involved in all the different stages of a case. However from the focus groups it emerged that the discontinuity of the intervention plan and the fragmented care is a recurrent practice. Children's transfers to other prisons are usual. Even if the continuity of the defined educational and care plan should be ensured during the entire criminal proceeding, it is often interrupted when adjustments are introduced.

Another concern regards the fragmented care that children receive in juvenile detention centres. There are cases in which the personnel of a centre is not fine-tuned in terms of approach and treatment. Rules should be consistently implemented by all the staff, including the penitentiary police. Even if training opportunities on child-rights based approach do exist, prison staff, in particular penitentiary police, rarely benefit from them.

“Power over children remains in the penitentiary police's hands at night. And of course they establish relationships with children during the evening and night that give place to dynamics that are not included in the educational project of the child. This could raise contradictions that may question the legitimacy, seriousness and commitment towards the educational and care plan”.
(Volunteer in a juvenile detention centre)

6. CHILD PARTICIPATION AND JUVENILE JUSTICE SYSTEM IN PRACTICE: THE VIEWS OF CHILDREN


6.1 Introduction

The following section is based on information obtained from consultations with young people in conflict with the law under probation held in the Italian region of Liguria. All consulted youngsters had been or were involved in judicial proceedings, were in contact with many different actors of the juvenile justice system and were serving their probation in connection with a project led by Libera Association (see page 28). The lack of a representative sample prevents the study from providing an objective analysis that represents the opinions of children in conflict with the law in Italy. Nonetheless, it is worth presenting some interesting and relevant elements that emerged during the discussions.

Two initial considerations are made below, before getting into specific issues. First of all is important to highlight that despite the homogeneity of the group in terms of: a) the profile of the youngsters (the majority of them were Italians aged between 16-18 belonging to low middle class families), b) the territorial unit and c) the juvenile justice system and local services of reference; many differences emerged in their perceptions and experiences. This heterogeneity of opinions and views in a quite homogeneous group shows the relevance of article 12 and the principle of participation, which should be implemented on an individual and permanent basis.

A second reflection is that overall the notion of participation was not clear, above all in terms of definition and common understanding. Its conception seemed to be even more critical in relation with the criminal experience. This unclarity may be determined by the approach that predominates in the juvenile justice system in which, as in many others, comprehensiveness lacks. In fact, the lack of a common and clear definition of participation within the juvenile justice system, but at the same time the complexity of such notion, was evident in the young people's ideas and conceptions.

6.2 Recognition and implementation of the right to participation and other CRC articles: reflections and concerns



Art. 12 To
express opinion
and to be
listened

During the focus groups with young people two different main positions regarding the implementation of article 12 during criminal proceedings were detected: while some of them defended that they had the possibility to express their opinion during the trial and that they felt listened by the judge and the lawyer; some others argued that according to their experience the freedom of speech was not ensured and that they did not feel listened at all, in the sense that their opinions were not taken into due account in most of the cases by the judge. The primary conclusion that derived from this situation was that procedures do foresee mechanisms of listening but the main problem regards quality and lack of monitoring mechanisms to ensure its implementation. Related to this was the fact that appropriate listening spaces are not always available.

Concerns directly linked to the centrality of the child and to the principle of the best interest of the child were also raised above all concerning the decision of the judge.

“But is precisely for this reason, because the judge doesn’t know me... I cannot serve a sentence if I haven’t committed the offence I was accused for... but still... if a judge arrives with a file that received few hours ago, without knowing anything about the story, how can he actually have the power to take a decision that has such a huge effect on one’s life...?”

The requirement stated in international and national provisions according to which juvenile justice professionals should be well informed about the adolescent’s physical, psychological, mental and social development and conditions may not be effectively transmitted to children in conflict with the law. This may have negative consequences for the credibility of the system and may exacerbate the disconnection with the child’s sense of worth. A treatment that takes this into due account should be a priority.

“The lawyer asked my opinion and I felt listened. The judge, instead, asked my opinion just to be able to say *I listened to you*”.

The lawyer, another key subject with regards to the child’s experience in the juvenile justice context and in particular to the exercise of the right to be heard, is not homogeneously perceived. There was a general agreement on the importance of the role of the lawyer as the defender of children’s interest and views. However disparities on how children perceive the extent of lawyers’ commitment and support were identified.

“Perhaps there are lawyers that defend you but sometimes there is no freedom of speech. Before a judge you cannot say what you think or he doesn’t listen what you think.”

“The lawyer does something if he is well paid.”


In contrast with the controversy around the figures of the judge and the lawyer, there appeared to be consensus on the role of social assistants. The social assistant was seen as the person that may “listen and help”. Is actually the one who appears to involve in a larger extent the adolescent in the definition of the reintegration project and in some cases could even defend the opinion of the child in response to the proposal of the judge. The opinion of the young person concerning the performance of the individualized educational project is often exclusively asked by the social assistant, who presents regular reports to the judge.

Art. 13 Freedom
of expression
and to look for
info

However a significant criticality was identified in this regard. The child may not feel that he can freely express his opinion about the performance of his reintegration program because it could harm the positive assessment to be issued by the judge. As a consequence, some youngsters may tend to say and act in the way that is most likely to ensure their release from the criminal circuit according to their perception. The possibility to express their views and opinions becomes therefore instrumental to the positive assessment of the individual reintegration process. The main problem in such cases is that the meaning and importance that children give to the expression of their opinions deviate from the original significance and purpose that seeks rehabilitation.

Related with the possibility to express the own opinions and to actually perform this right is the access to information, in particular about the rights and responsibilities of children under the law and the functioning of the criminal system.

“Being the first time that I was accused and sentenced, and not feeling myself identified with this context also because I would never have imagined this, I felt a kind of fear to give my opinion. Above all when I first came in contact with this criminal justice system because I could guess what to expect but at the end of the day I was never told about these kind of situations and this world before.”




Art. 17 Access to adequate info from media and other sources

In situations of criminal justice children and adolescents sometimes feel fear. This fear may derive from a sense of uncertainty and disorientation. Often when children come in contact with the juvenile justice system do not find themselves in a situation of control but rather of emergency. Being better informed about the juvenile justice and about the consequences of committing and offence in advance would have helped some of the children consulted, also as part of a prevention strategy.

When providing information, professionals should give clearer messages and use a simpler and understandable language according to children’s views.


“The functioning of the juvenile justice system came to my knowledge once I was already within it.”



Art. 15 Freedom of association

There was also an interesting debate related with article 15 about the freedom of association and the existing possibilities for minors to be part of civil society associations. In particular, concerns were raised regarding the limitations for children in exercising this right due to age constraints. In some cases it may happen that a child under 18 years cannot perform autonomously certain associative activities. The tension between security and participation emerged again. Solutions and modalities tailored to these kinds of situations were proposed in order to find a balance between protection and participation.

A key issue emerged with regards to the possibility of the child to challenge and review the decision and the measures imposed by the competent authority in accordance with article 37 and 40 of the CRC. It refers to the full understanding of the judge’s decision, which could be seen as a precondition to exercise the right to challenge the legality of the decision and to review the measure imposed.



Art. 37 right to challenge the legality of the deprivation of liberty

“I had the possibility to express my opinion and expose my arguments. However I have never understood why the judge decided to impose me those measures. If I wanted to deepen the matter and review the decision of the judge I would have had to go from the preliminary hearing to a trial hearing, which has significant economic costs. So I saw it as a problem of money. I didn’t want to start another proceeding. ”

The complexity and configuration of the system, beyond the economic costs, was a barrier for this boy to properly understand and review the decision of the judicial authority. In this case the judge

did not communicate an informed decision in an appropriate manner to the child, which should be a key condition for a fair trial according to the CRC General Comment No. 10 and to art. 1 of the Decree 448/88 that recognize the right to effective participation in the proceedings and to prompt and direct information of the charges by the judge²⁰.

Getting back to the wider concept of participation, as mentioned above it was not completely clear for the majority of the young people consulted. The word participation does not seem to be frequently used by professionals working within the juvenile justice system. Nonetheless children were asked to provide a keyword representing their notion of participation, hereunder some of the replies:



Give the best of oneself
Memory
Motivation
Commitment

To the question “What should a proposal of participation have in order to work”, their answers revolved around the following requisites: pleasure, importance, relevance, learning, interest, proximity. According to their experience the relationships between children and professionals or other subjects working with them should be based on parity rather than on hierarchy.

“Is like when you go to school: if you have the cool and friendly teacher you learn more things and you feel better”.

Despite the fact that the experience in the juvenile justice system is often seen as something imposed, which constitutes a key difficulty to talk about participation in such context; there is the possibility to turn this experience into new and positive opportunities for children in conflict with the law. The importance in this regard lies on the capacity of the system to make children understand the sense of all decisions affecting them, offer them the possibility to positively transform their relation with the context as well as make them feel that their views count and are valuable.

“They already let us speak, but more than anything I would say them: Listen to us!”

²⁰ The GC No. 10, in Section D, par. 48 concerning *Prompt and direct information of the charge(s)* states “Providing the child with an official document is not enough and an oral explanation may often be necessary. The authorities should not leave this to the parents or legal guardians or the child’s legal or other assistance. Is the responsibility of the authorities (e.g. police, prosecutor, judge) to make sure that the child understands each charge brought against him/her.”

VISIT TO A JUVENILE DETENTION CENTRE FOR GIRLS: EXPERIENCING PARTICIPATION

Interactive focus groups with two groups of detained girls were held in the framework of the Twelve project. The main purpose of the activity was to share with them some information about their rights, in particular about the principle of participation, through direct experience. The work was structured in two main parts.

The first one consisted in identifying the needs of a young girl and understanding their translation into rights. To simplify the exercise, each need was placed in one of the following dimensions, which together compose a system: survival, development, protection and participation.

The second part was focused on the girl's needs in a detention setting. The participants were invited to express their views with regards to their needs and proposals for improvement within the detention centre. Some of the answers are reported hereunder:

FAMILY	To improve communication with the family. They suggested to increase calls duration and to have the opportunity to visit their home and family.
FOOD	To have the possibility to cook their food.
SPACES	To ensure appropriate interior and outdoors spaces. To be placed closer to their families. To make an outdoor courtyard available. To put doors in the bathrooms.
LEISURE	To improve the contacts with the wider community and establish relationships with people from the outside. To be given the opportunity to listen to music together in the cells.
ACTIVITIES	To do more exercise and gymnastics and to have access to do outdoor activities.
IDENTITY AND DIGNITY	To allow more flexibility to take care of their body and image. To pay more attention to their affective needs.
HEALTH CARE	To be examined by a qualified physician and to receive adequate medical care also during his absence.

The exercise lead to a final proposal addressed to the director and staff of the facility: to hold periodic meetings between the girls and social workers in which to express opinions, discuss collective issues and find shared solutions. These could be consultative occasions but also moments for information and reflection.

7. CONCLUSIONS AND PROPOSALS FOR IMPROVEMENT

The findings of the Italian national research have shown that ensuring participation within the juvenile justice system is a challenging but important issue. The Twelve's hypothesis according to which participation is a crucial element for children's rehabilitation has been verified, which reinforces the need for improving the respect for the right to participation in criminal justice contexts. Participation is a broad concept that includes many elements such as openness, accountability, project, process, culture, process, emancipation, and listening, among many others. Despite the fact that all these aspects are not ensured on a permanent basis, child participation is often invoked by many subjects of the system and in many cases is even taken for granted. However participation is a complex notion that is interdependent to many factors and therefore it can only work under a systemic approach. Dysfunctions affecting some aspects of the system may determine the respect for the right to participation or limit participation opportunities of children in conflict with the law.

Clear laws, rules and regulations are needed in any system, as well as available tools for their correct implementation. In this regard and in relation with the specific principle of participation within the national juvenile justice system, there is an urgent need for a common definition on the concept of participation to be enshrined in the normative framework. The clarity of the definition of participation is proportional to its capacity to positively influence and contribute to the system's efficiency. Such definition could be derived from the CRC and other international and European instruments. It has been also noted that there is a partial understanding and implementation of regulations and procedures that leads to inconsistency of practices. Hence the need to complement the codification of participation with specific implementation tools.

Priorities deriving from the direct opinions of children and professionals are addressed hereunder in the form of suggestions to improve participation within the juvenile justice system.

Specific proposals for improving participation of children in conflict with the law

The first step to ensure child participation in criminal procedures is to have it codified. A common definition on the notion of participation adapted to judicial contexts involving children and young people should therefore be done and disseminated in order to implement it within the juvenile justice system. Such provision should also aim at improving the clarity and coherence of objectives and mandates between the different actors that play a role in the system including police officers, judicial authorities, court-appointed lawyers, social assistants, staff of juvenile detention centres, etc. It is important that practices and procedures are harmonised at national level. To this end, national standards and indicators on how to ensure the right to participation in the juvenile justice field could be developed for internal assessment of actions, strategies and procedures.

Include legal provisions explicitly defining the right to participation and providing specific tools and procedures for its implementation in criminal procedures and sentence enforcements. A specific section on article 12 about the right to express opinion and be listened should be developed. Monitoring mechanisms to ensure appropriate implementation should also be made available.

According with national and international legislation children should see their rights respected in

contexts of criminal justice. Participation is one of the CRC guiding principles and is implicitly recognized by many national provisions. It is seen as a key element for the educational and reintegration scope of the sentence under a restorative approach in opposition to a punitive approach. However in practice this assumption is not ensured on a permanent basis. Actions must be taken to promote a notion of participation that is voluntary, chosen, useful, meaningful and effective in children's lives. The active involvement of the child in all decisions affecting him should be always ensured. To this end co-participation models could be further explored and implemented. A starting point could be to regulate the co-definition of the educational and care plan by both the child and professionals. The use of isolation and transfers for disciplinary purposes should be further limited or even forbidden in regulations. Developing and exchanging innovative methodologies that enhance child participation could also constitute a way to easily expand the participatory approach. Work experience grants, peer-to-peer education, story-telling and creative laboratories, mechanisms to reassess participation experiences, etc. are good examples based on participation easily replicable and adaptable to many contexts.

Take actions to strengthen the restorative approach to juvenile justice in practice, in line with the national legal framework and international standards.

Authorities should ensure equal treatment of all children in contact with the juvenile justice system. All minors are entitled the same rights regardless of their origin, economic, social and family conditions. However de facto discriminations above all with regards to the access to alternative measures do exist and need to be addressed. Further steps should be taken to ensure that all children have equal access to alternative measures and diversion. Many studies have shown the benefits of such kind of measures in terms of recidivism and social integration. In fact, opportunities for participation are higher for children in alternative measures.

Ensure equal treatment to all children in conflict with the law and take further steps in order to ensure that criminal sentences are issued and applied without discrimination.

Well-functioning public services are a requirement to ensure proper implementation of regulations and provisions. Quality of services could be affected by a lack of economic and human resources. Efficiency and cost effectiveness principles should inspire service management in order to ensure optimization of resources available. Participation opportunities would improve with a better capacity of public bodies to perform their mandates, which includes good working conditions, appropriate spaces, opportunities for collective reflection and discussion, internal assessments, etc.

Allocate resources efficiently for improving quality of public services, guarantee the conformity with laws and standards, invest on prevention and ensure efficient cooperation.

Considering the child as an active subject who is able to take decisions about his own situation and future means to value his personal resources and capacities. This is a fundamental consideration to enhance participation. To this end is also important to take always into consideration the cultural and psychological dimension when implementing actions and responses to children's needs, and especially when promoting participation.

Adopt a child-centred approach on a permanent basis, including improved individualized treatment by considering that every child has his unique story as well as his own personal capacities, skills and resources.

Appropriate communication and adequate provision of information to children on their rights is a requirement for their effective participation. Hence the need to ensure professionals' knowledge on the rights of the child and to encourage the use of clear language and appropriate communication techniques through specific and continuous training. Communication should be detailed, efficient with respect to its objectives, immediate and should catch the attention of the child. The affective dimension should also be considered above all with regards to children in detention.

Introduce legal obligation to provide inter-disciplinary training to professionals (judges, police, prosecutors, lawyers, social assistants, social workers) on children's rights and communication skills.

The relation of children with the surrounding context, in particular with realities of civil participation, opens spaces and possibilities of participation to situations that children wouldn't probably have known in their context of origin. This also gives the possibility to have new positive points of reference that could result helpful for their reintegration into society. Moreover, it allows children to come in contact with contexts that may contribute at enhancing their self-recognition and identity.

Promote activities and relations that can allow young people in conflict with the law to experience social and civil participation.

In detention settings

Participation should be considered as a central element of the educational scope of the sentence and a key factor for juveniles' positive social reintegration within juvenile detention centres. Harmonised mandates and behaviours of staff are crucial to ensure effectiveness of actions addressed to children. For this reason, a list of priorities in terms of approach and methods of treatment should be made available to all personnel in order to ensure that all of them converge towards the same principle, which should be the centrality of the child. Detailed tools and mechanisms for implementation of internal rules could also limit discretionary power and subjectivities. They could also further define the relation between participation and security, which actually represents an unresolved tension.

Introduce mechanisms to ensure that rules are implemented consistently by all the staff of the detention centre with the best interest of the child as primary consideration.

Involve children in decision-making processes from a multi-level perspective may be an efficient and comprehensive method for participation. Engaging the child in the definition of his individual plan but also in the internal rules and management of the establishment should be highly encouraged. Involving children and letting them participate in matters that affect them is a way to recognize their active role in the closest context. This may activate processes of responsibility and self-care. Every person and every child is constantly changing, thus the importance of considering

the care plan and the individual project as dynamic elements that require continuous assessment and redefinition.

Introduce co-participation models and involve children in decision and planning processes as a way to get closer to meaningful proposals of participation.

External actors can be valuable resources for the centre's management and also for children's reintegration processes. The connection with the surrounding local context should be dealt with openness and constructive spirit in order to lead to the best possible results for the children hosted in the centre. Particularly advisable are the relations with contexts of civil participation; the promotion of voluntary work; the provision of external positive references; the establishment of useful and constructive relations between the child and a neutral competent person. Organising activities connected with the surrounding social context will most likely improve the chances for successful social reintegration processes.

Strengthen collaboration with external local actors through openness and constructive exchange.

As a process, rehabilitation requires time and continuity. The educational and care plan is a central element of the rehabilitative process. It is of primary importance to ensure its continuity in order to achieve progress. Some suggestions to improve continuity of interventions include expanding the presence of social workers to 24 hours; promote multidisciplinary trainings and upgrade staff skills on child-friendly techniques; improve mechanisms of cooperation within the juvenile justice services; and avoid the use of prison transfers.

Ensure continuity of intervention plans and care through close cooperation between all actors involved in a case.

Annex I: Full text of relevant CRC articles

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is

considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Annex II: Outcomes of the training sessions in Italy

Training results of the TWELVE project in Italy

PROPOSALS TO IMPROVE CHILD PARTICIPATION IN THE JUVENILE JUSTICE SYSTEM

LEGISLATION

- Follow processes of legislative reform closely in order to verify if they respect and contribute to a child-friendly justice.
- Develop regulations to orient implementation processes in order to bridge the gap between legal provisions and practices.

COORDINATION & COOPERATION AMONG ACTORS

- Create cooperation mechanisms between the various actors involved in the same case including judges, lawyers and social assistants.
- Enhance the networking capacity of the system by scheduling periodic meetings for reflection and confrontation between the different subjects.
- Promote dialogue.
- Give the opportunity for the child's social worker of reference to accompany the child during meetings with lawyers and judges since he is the professions who is closer to the him, above all in cases of detention.

FACILITY MANAGEMENT

- Ensure that the relation between the numbers of educators is proportional to the number of juveniles placed in a facility.
- Make qualified cultural and linguistic mediation available on a permanent basis.

INFORMATION & EXCHANGE

- Have group sessions between peers to share and exchange experiences and opinions.
- Value, improve or create information tools useful to orient families and juveniles along their experience in the juvenile justice system.
- Gather and exchange good practices experienced in the different territories on a regular basis.
- Try to help the child to better understand what is his or her global judicial situation as well as the institutional mandate of each person involved in his or her case.
- Use information tools elaborated by children for children.
- Pay attention to the transparency, clearness and coherence of information and messages.

TRAINING

- Make multidisciplinary training courses on juvenile justice and the CRC available and involve all the different professionals and stakeholders working in the juvenile justice field.
- Include the cultural dimension in training programmes.
- Ensure on-going training for professionals and officials.

ASSESSMENT AND EVALUATION MECHANISMS

- To give juveniles a stronger voice in the final assessment of their probation experience before the court through direct listening but offering also the possibility to use non verbal methodologies such as drawing.
- Develop mechanisms for the evaluation of the juvenile justice services that include the participation of children.
- Put in place an evaluation procedure of the juvenile justice system that includes feedback from children, families as well as follow-up mechanisms and action research programmes.
- Develop assessment mechanisms that allow the child to evaluate his or her path and increase self-awareness.

COMMON INDICATIONS AND GUIDELINES

- Uniform practices regarding the right of the child to maintain contact with his or her family through common guidelines issued by the department of juvenile justice (in particular for private subjects).

LANGUAGE AND COMMUNICATION

- All professionals and in particular judges should pay greater attention to the language; it should be as clear and simple as possible in order to ensure juveniles' comprehension.
- Ensure that the emotional and psychological dimension is taken into account in every case and respond according to the child's needs, involving the family when appropriate.
- Work for the construction of an empathic relation with the juvenile.
- Increase efforts to make sure that the child understands all the decisions affecting him or her, that he is being listened, that his opinions are taken into account and that he feels free to ask in case of doubts or uncertainties.

DECISION-MAKING AND PLANNING PROCESSES

- Enhance the participation of the juvenile in the definition and implementation of his or her individual plan.
- Promote the implementation of "training agreements" between professionals working in juvenile detention centres and juveniles. The training agreements are a mechanism of participation based on the capacities and knowledge that the juvenile has acquired through experience and facilitates continued interventions.
- Promote the co-planning of the educational plan between the juvenile and the professional taking the aspirations and capacities of the youngster as a starting point.
- Improve the capacity of actors in identifying durable solutions with juveniles, which are useful for their social reintegration after detention periods.

- Try to involve to the extent possible the family and other elements of the context of origin when developing and implementing the reintegration plan.

INNOVATIVE METHODOLOGIES AND APPROACHES

- Adopt narrative methodologies that allow individualized and meaningful communication and understanding.
- Foster approaches based on active listening without judgement.
- To use methodologies that allow the child to re-write his or her story and to express his or her cultural background including music, theatre, narration, cine forum, etc.
- Improve opportunities for penal mediation.

RELATION WITH THE WIDER ENVIRONMENT

- Improve juveniles' relations with realities that are out from the juvenile justice system.
- Place detention centres and residential care facilities in contexts that are not isolated but allow establishing contacts with the outside.
- Identify and implement actions to facilitate the active and direct participation of the child in the surrounding external environment. This participation should not be applied only through third parties but should aim at turning positive the direct relation between the child and the context.

PREVENTION

- Introduce courses on citizenship and legality in school curricula.

Annex III: List of meetings, consultations and interviews of the research phase

1. Institutional meetings

- Italian Ministry of Justice, Department of Juvenile Justice
- Centre for Juvenile Justice of the region Lazio

2. Interviews with key informants

- Key experts from the University of Florence and L'altro Diritto Association
- Antigone Association, Rome

3. Focus Groups with professionals

- Florence, March 2015. Participants: 4 volunteers from L'altro Diritto Association and 2 experts.
- Bologna, March 2015. Participants: 4 volunteers from L'altro Diritto Association working in a Juvenile Detention Center.
- Genoa, May 2015. Participants: 1 member of the judiciary police, 1 educator and volunteer working with children in conflict with the law, 1 social assistant of the Municipality of Genoa.
- Rome, May 2015. Participants: 1 member of the National Ombudsman for Childhood and Adolescence, 1 representative of the Lazio Region, 1 member of the CGM Lazio, 1 member of the association Antigone and 1 social assistant and volunteer in a detention centre for minors.

4. Focus Groups with children

- Genoa, June 2015. Participants: 5 young people in conflict with the law and 4 volunteers (social assistants, social educators, social workers) from the project Anemmu run by Libera Association Genova.
- Sarzana, September 2015. Participants: 3 young people in conflict with the law, 4 volunteers from the project A'ndemo run by Libera Association La Spezia and 1 social assistant.
- Pontremoli, January 2016. Participants: 19 girls, 1 social worker, 1 educator.

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