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CREW 2022

TOWARDS A CHILD-FRIENDLY JUSTICE SYSTEM

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

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CREW 2022: Towards a child-friendly justice system

Securing the rights and procedural safeguards of children who are suspects or accused persons in Italy

Methodological orientation – Executive summary

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

The rights of children, i.e. all persons under 18 year of age, who are suspects or accused persons in criminal proceedings are regulated by a body of international and European law, in particular the United Nations Convention on the Rights of the Child (1989) and the European Convention on Human Rights (1950). In addition, numerous policy instruments and guidelines set out principles to guide States and practitioners in ensuring that justice systems treat children with full respect for their rights.² The Guidelines on child-friendly justice of the Council of Europe (2010) and, more recently, the revised General Comment of the Committee on the Rights of the Child on children's rights in the child justice system (2019), are key documents of reference for policy and practice. The highly dynamic standard setting activity in this field demonstrates that States, multi-lateral organisations and civil society actors continue seeing a need for strengthening standards and safeguards for children in contact with the law.

The Committee on the Rights of the Child recognises the preservation of public safety as a legitimate aim of national justice systems. It underlines however also that exposure to the criminal justice system has been evidenced to cause harm to children and limits the child's chances of becoming a responsible adult. At the same time, research demonstrates that where national justice systems operate in accordance with the principles of child-friendly justice, the prevalence of criminal offences committed by children tends to decrease. The UN Convention on the Rights of the Child guides States in ensuring that children who are suspects or accused persons in criminal proceedings are treated always in a manner consistent with the promotion of the child's sense of dignity and worth. This represents an important investment in the prevention of recidivism.³

The individual assessment under Directive EU 2016/800

¹ National statistics for the years 2014-2017 indicate 31.567 criminal proceedings where children were suspects or accused persons in 2014, 32.335 in 2016, 35.384 in 2015 and 34.435 in 2014. ISTAT, *Annuario statistico italiano*, 6, *Giustizia, criminalità e sicurezza [Italian statistical yearbook, 6, justice, criminality and security]*, 2020, p. 235, Table 6.14. 30.801 nel 2019 <https://www.istat.it/files/2020/12/C06.pdf> Dati ultimi relativi a 2018, scheda 39 tab 6.14.

² Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950. Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, 2010. Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, [CRC/C/GC/24](https://www.unhcr.org/refugees/crc/crc-cg-24). Replacing: Committee on the Rights of the Child, General Comment No. 10 (2007), Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007. United Nations General Assembly, Standard Minimum Rules for the Administration of Juvenile Justice, A/40/53, 1985. United Nations General Assembly, Rules for the Protection of Juveniles Deprived of their Liberty, A/Res/45/113, 1990. European Council, Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, [2009/C295/01](https://www.consilium.europa.eu/media/106544/main/attachment/data/file/142222). For a more detailed overview and discussion, see ...

³ Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, [CRC/C/GC/24](https://www.unhcr.org/refugees/crc/crc-cg-24), par. 2-3.

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

The Directive provides for the individual assessment of children as a key safeguard to ensure the justice system takes account of the circumstances of the case and the needs of the child. The individual assessment is instrumental in identifying the specific support required to enable the meaningful participation of the child in investigation and proceedings and to secure and promote the child’s protection, education, training and social integration. The individual assessment helps to ensure that procedural safeguards are sensitive to the needs and rights of the child and that all decisions and measures taken, including in the process of sentencing, support the child’s (re-)integration and transition to adulthood and independent life (see Box 3).

The multi-disciplinary scope of the assessment and its subsequent use to inform decisions and measures during investigations and proceedings, offers an invaluable opportunity for making the child’s contact with the criminal justice system a positive and empowering experience. This adaptation process is essential to promote compliance of criminal proceedings with the best interests of the child as a fundamental principle under the UN Convention on the Rights of the Child. As an assessment and planning tool, the individual assessment ensures continuity throughout all steps and phases of the proceedings, from the initiation of the investigation and judicial proceedings, through to the process of sentencing and any follow-up, irrespective of the child’s role in the criminal offence.

Child justice in the Italian legal framework

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

The law provides for the participation of the child in all phases of the proceedings; an individual assessment of the child to ensure the child’s ongoing processes of education and training are taken into due account; the right to assistance by a lawyer; the right to a medical examination; the information of the parents or other holders of parental responsibility; and alternative measures to detention to prevent deprivation of liberty. The law provides for a set of principles to guide its implementation: proportionality and adequacy, least harm, de-stigmatisation, and recourse to detention as a measure of last resort.⁶

Although the legal framework regulating the child justice system in Italy is regarded as largely compliant with the standards set out by the Directive, there remain challenges in ensuring its effective implementation in practice.⁷ The individual assessment has a particular important role in enabling a meaningful implementation of the national Juvenile Criminal Procedure Code, as it provides for an established procedure for decision-making and adaptation of the proceedings to the needs of the child, based on a comprehensive case assessment and the collaboration of all relevant actors towards the best interests of the child. As a strategic

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

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

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

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

implementation measure, the individual assessment merits the attention and coordinated dedication of policymakers, state officials and professional service providers.

CREW – strengthening the rights of children in contact with the justice system in Italy

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

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

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

Based on these activities, DCI Italy and the Department for Juvenile and Community Justice elaborated a data report on the survey findings, a policy paper, a checklist for officials and professionals working in this field, as well as a mapping of existing methods for the individual assessment. These materials have substantially informed the development of the CREW individual assessment methodology.⁸

The project is part of a long-standing collaboration between DCI Italy and the Office II of the Department for Juvenile and Community Justice of the Italian Ministry of Justice aimed at promoting the rights of the child in the justice system. An interagency and multi-disciplinary round table of leading actors and experts from different judicial districts was established and chaired by the Department of Juvenile and Community Justice.⁹ After an in-depth analysis of the status of implementation of the Directive, the round table concluded that there is an urgent need to reduce the existing gap between legal standards and their implementation in practice, and to promote comparable standards of procedure and practice throughout the country.¹⁰ In view of these

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

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

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

considerations, the Department for Juvenile and Community Justice committed itself to leading a national process towards this objective.

CREW methodological orientation on the individual assessment

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

- reiterating the principles of child-friendly justice and main elements of the legal framework setting out the rights of the children who are suspects or accused persons in criminal proceedings;
- introducing key considerations for a child rights-based approach to the individual assessment;
- providing a step-by-step overview of the individual assessment with specific consideration of useful assessment tools and methods, examples of the management of risks for children in criminal proceedings, and approaches for interagency and multi-disciplinary cooperation;
- sharing examples of practice of the individual assessment in different Italian judicial districts;
- providing orientation on general measures to support officials and professionals in conducting the individual assessment, such as access to information, support and training.

The CREW methodology addresses the following main themes:

Chapter 2 provides a brief overview of the state of the art of the individual assessment in Italy.

Chapter 3 introduces the rights of the child as the main guiding principles for the individual assessment of child suspects and accused persons in the criminal justice system.

Chapter 4 explores step by step how the individual assessment contributes to ensuring that the justice system operates in accordance with the law, with due consideration to the rights of the child and the elements and principles of child-friendly justice.

Chapter 5 concludes with considerations regarding general implementation measures, in particular interagency and multi-disciplinary cooperation and the training of professionals.

CREW methodological orientations: towards a rights-based approach

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

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

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

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

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

By proposing the UN Convention on the Rights of the Child, the principles of child-friendly justice as a guide for analysis, the CREW methodology aims at encouraging officials and professionals involved in the individual assessment to work together with a holistic and child-centred approach to gain a more comprehensive understanding of the child's perspective.