CHILD-FRIENDLY JUSTICE IN ACTION!

National Report - Italy

Introduction

> *"Child-friendly justice" refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.*[1]

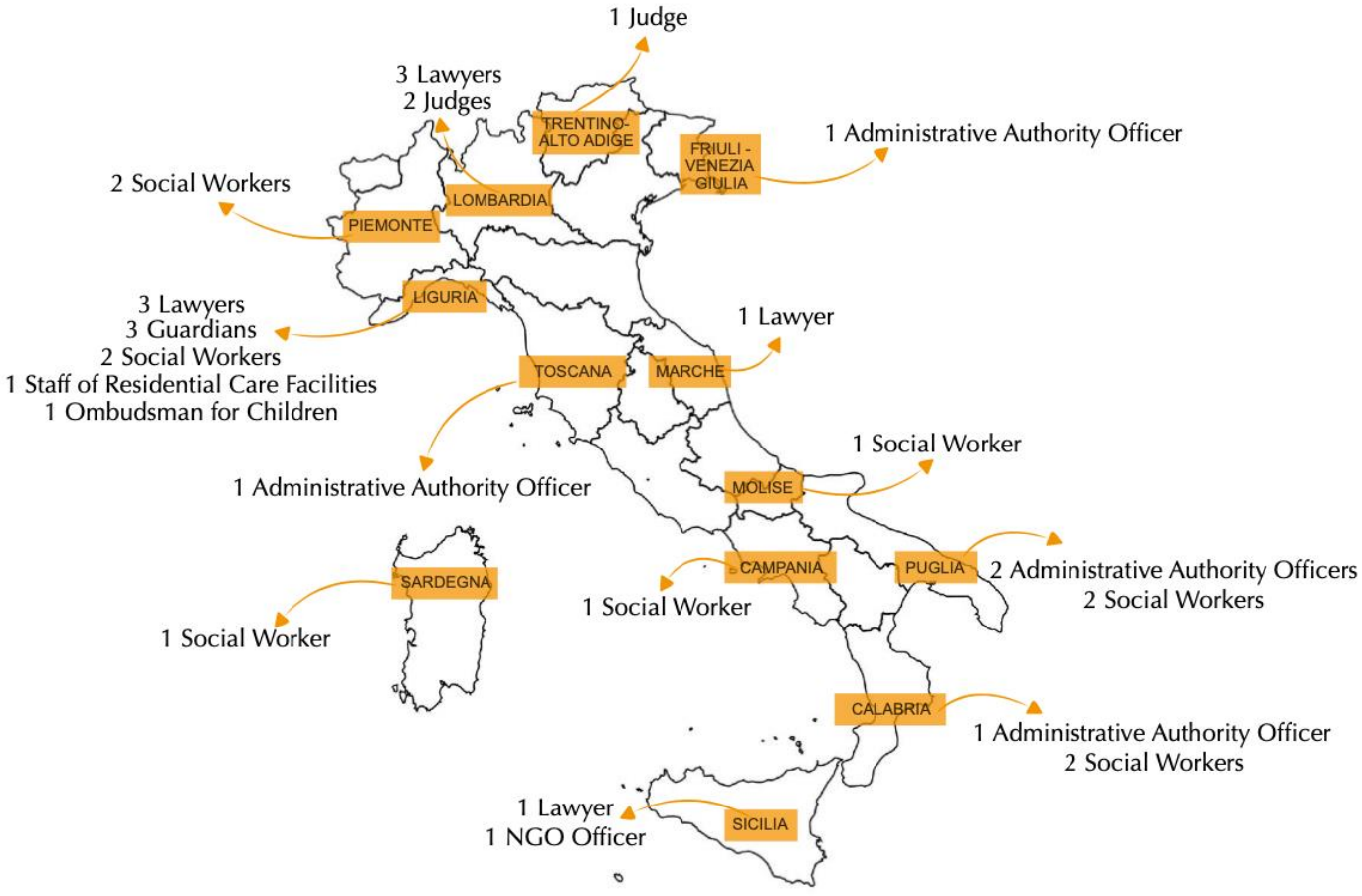
Having as a basis not only the Convention on the Rights of the Child, but also some of the widest spread human rights instruments and the case law of the European Court of Human Rights, the Council of Europe adopted on on 17 November 2010, the "Guidelines of the Committee of Ministers of the Council of Europe (CoE) on child-friendly justice". These remain as a benchmark in child-friendly justice, and the five fundamental principles contained therein continue to represent standards that are still far from being fully realized in practice.

The Principle of Participation entails the right of every person minor of eighteen years being seen and treated as full rights-holders heard, thus being heard and consulted regarding every proceeding which involves them, while taking into consideration their developmental capacities and possible difficulties in communication.[2] The principle of the best interests of the child is a complex and multidisciplinary concept. It is to be assessed on a case-by-case basis and should be of primary consideration in all questions concerning and/or the child. According with the CoE, when determining the best-interest of the child, their views and opinions should be given the adequate consideration, all child rights should be taken into consideration, namely the right to dignity, freedom and equal treatment and lastly, an inclusive and overarching approach should be taken by all the concerned authorities, in order to consider all the different dimensions of the child's life, "including psychological and physical well-being and legal, social and economic interests of the child".[3] The principle of Dignity comprehends the rights of every child to be treated with sensibility, equity and care in the court of whatever proceeding, while having a particular attention to their specific needs and well-being. The principle of protection from discrimination reaffirms the right of every child to have their rights guaranteed without discrimination based on any grounds. In addition it foresees the potential necessity of certain minors to a special need of protection, for their particular condition of vulnerability. The principle of the rule of law, including all the elements of due process should apply to children as to adults, in all judicial, non-judicial and administrative proceedings.

These principles, and in a broader perspective the Guidelines of the CoE on Child-Friendly Justice, represented the baseline for our research. In Italy, the desk research was conducted through online questionnaires sent to key actors in the field of administrative proceedings, such as lawyers, social workers, guardians, ombudspersons for children and questura (police stations) and three qualitative interviews with one ex-guardian of one unaccompanied minor, one legal advisor of a residential care facility and one lawyer.

[1] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum, ISBN 978-92-871-7274-7, Council of Europe (October 2011) 17.
[2] ibid, 17-8.
[3] ibid, 18.

Defence for Children International Italy is a grass roots organization with strong connections in the Italian territory in the field of children's Rights. It is mandated by the Ligurian region to train the voluntary guardians of unaccompanied minors in Liguria, it partners with the Central Department of Juvenile Justice in several European Projects and it does advocacy campaigns at the national level. These different levels of action provide Defence for Children Italy with a de facto privileged observatory in the field of juvenile justice and even more so on the specific target of the research, unaccompanied minors. The questionnaires had has framing the right to information, the right to access to remedies, the right to participation, the rights to protection, the right to privacy/confidentiality and the principle of the best interests of the child. Defence for Children Italy succeeded in obtaining sixty-six partially answered questionnaires and thirty-three fully answered questionnaires with a total of ninety-nine questionnaires at the national level. For the analysis of the data, only the completed questionnaires will be considered, based on the received responses. When useful, data has been be desegregated by region and occupation. From the thirty-three completed questionnaires, the general overview is as follows:



The interviews, were based on open questions commonly agreed within the partnership, were led in person in a formal setting, and were on average one hour long.

In Italy the research was focused on unaccompanied minors in the context of administrative proceedings. Although the overall number of non-accompanied minors in the Italian territory dropped substantially in the last months as a consequence of the last political developments, the number is still significative. According to the last report of the Labour and Welfare Minister - Overall Immigration and Politics of Integration Management , the competent agency to provide official disaggregated data on unaccompanied minors in Italy, there were 7.580 unaccompanied minors present and registered in the Italian territory as of 31 May, 2019. The great majority, 93,3% of which are boys. More than half, 63,6% of all minors in the Italian territory are 17 years old, 22,5% are 16 years old and 13% are 7 to 15 years old. Only 1%, i.e. 73 unaccompanied minors are 0-6 years old. The most represented nationalities are Albania, Egypt, Gambia and Côte D'Ivoire. Regarding the distribution of these minors by region, 55% of all accompanied minors present in the Italian territory are in Sicily (29,1%), Lombardia (10,2%), Emilia Romagna (8,1%) and Friuli- Venezia Giulia (7,6%). The remaining 45% of the unaccompanied minors are spread throughout the other 17 italian regions. Only 0,1% of the unaccompanied minors are placed in Val D'Aosta.[4]

Each one of these minors has potentially to go through several and sometimes parallel administrative proceedings from the moment of their arrival in the Italian territory. The request for international protection, the process of age assessment and unaccompanied minors deprived of their liberty involved in administrative proceedings are the focus of our research in Italy.

The aim of this initial research was to gather concrete data on the administrative practices exercised in the different regions of Italy, so as to allow us a more tangible knowledge on the state of the art of the implementation of the child-friendly principles throughout Italy. This national report will provide a brief description of the national context in terms of the researched administrative proceedings, while assessing the effective realization of the child-friendly principles through the analysis of the questionnaires and interviews. Lastly, practical and well structured recommendations will be provided, organized in the six above identified criteria: the right to information, the right to access to remedies, the right to participation, the right to protection, the right to privacy/confidentiality and the principle of the best interest of the child.

[4] <https://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/minori-stranieri/Pagine/Dati-minori-stranieri-non-accompagnati.aspx > last access July 3rd, 2019.

Description of the National Context in Terms of Administrative Proceedings

As soon as arriving in Italy, unaccompanied minors see themselves implicated in different types of administrative proceedings, which can be lengthy and labyrinthine. Therefore, child-friendly justice principles are the only way to ensure a more bearable experience for the children and youth who come into contact with the justice system.

Our research in the italian territory is focused on unaccompanied minors involved in:

1. Request for International and Special Protection
    1.1 Asylum
    1.2 Subsidiary Protection
    1.3 Special Protection Permit
2. Age Assessment
3. Unaccompanied Minors Deprived of their Liberty Involved in Administrative Proceedings

1. Request for International and Special Protection

In Italy there are three modalities for unaccompanied minors to apply for protection. International Protection can be obtained through a request for refugee status, according with the Geneva Convention 1951 and through a request for Subsidiary Protection, according to the DIRECTIVE 2011/95/EU. Additionally, there is a third type of protection, which is national - the Special Protection Permit.

For applying for International Protection or for a Special Protection Permit, the Italian Law foresees a common and single procedure. Thereby, the procedural stages common to all the three types of protection will be laid out with a specification on the actors involved in such procedures, the first contact with the institutions, assistance to the child, decision and lastly remedies and following steps. Subsequently the three proceedings will be briefly described.

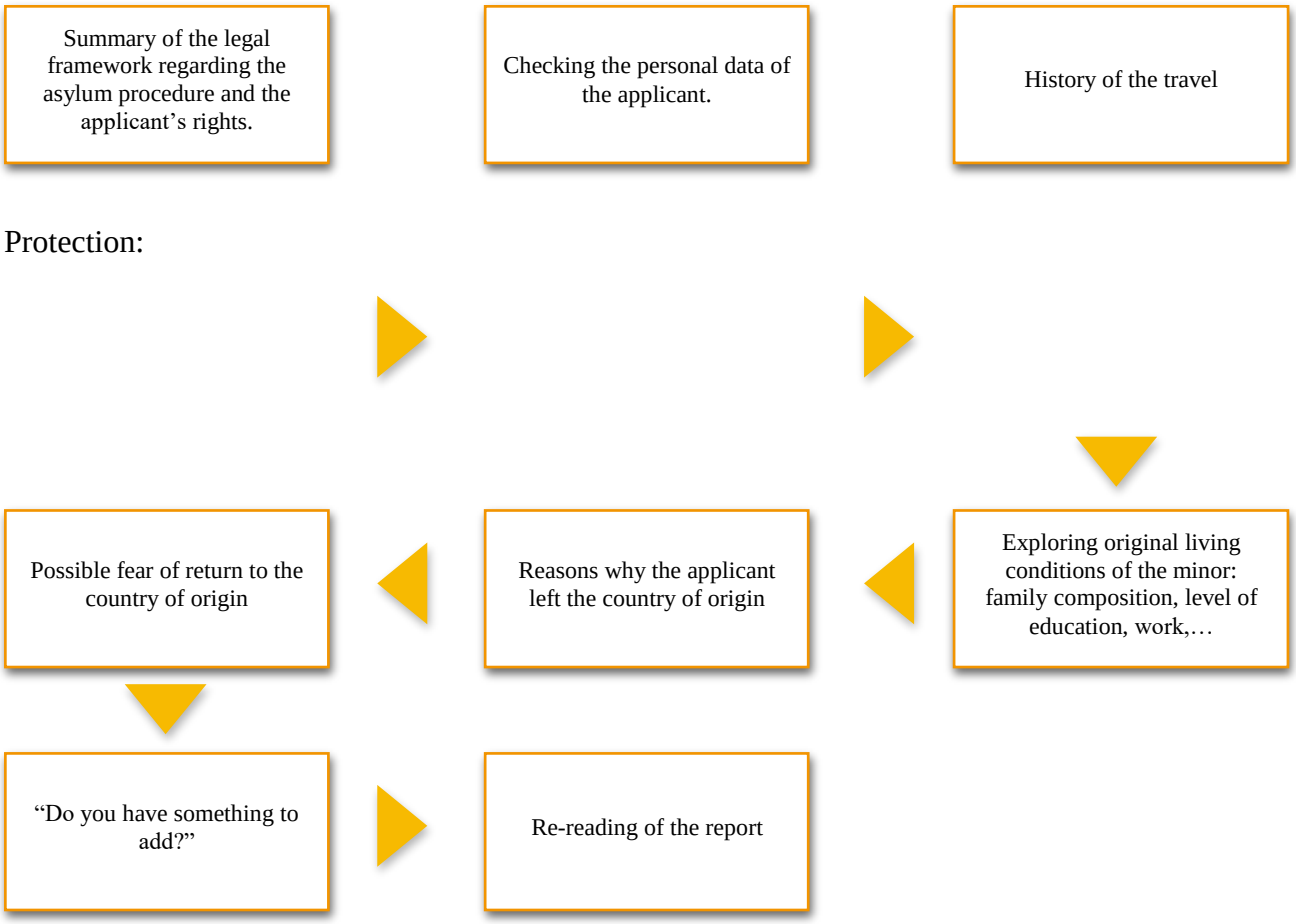
As soon as an unaccompanied minor arrives in the italian territory, the questura (police office) is always involved in the identification and processing of the minors. Sometimes, the unaccompanied minors present themselves to the questura and if someone knows of the presence of an unaccompanied minor in the territory is obliged to inform the local questura, which is responsible for reporting to the Office of the Public Prosecutor of the Juvenile Court which opens the procedure for appointment of a voluntary guardian. Not withstanding the advanced legge Zampa (L.47/2017), the appointment of voluntary guardians continues to be a lengthy process in many Italian regions and in the meantime an institutional guardian is appointed. Most of the times the appointed institutional guardian is the Manager of the Residential Care Facility where the unaccompanied minor is placed or Municipality Chief of Social Affairs or even the Mayor, which clearly represents a conflict of interests regarding the unaccompanied minor.

The request for international protection must be presented at a Questura (Police station), through the compilation of the C3 form. The minor is accompanied in all the process of compilation by the Residential Care Facility Staff or by the appointed volunteer guardian and a cultural mediator should translate the C3 form to the minor, as it is in only available in Italian. Usually the presence of a cultural mediator is not granted, being replaced by an interpreter.

The Police Headquarters issues a residence permit for asylum request to the applicant which is valid in the national territory for six months. It can be renewed up to the final decision. The The application for international protection is now considered to be formalized and the unaccompanied minor will wait to be called to present her/himself in front of the Territorial Commission for the Recognition of International Protection, the body responsible for making a decision regarding the international

protection. According to the Art. 5 co.2 of the D.L. 119/2014, in the hearing of the minor is present just one member of the Territorial Commission. The Guardian should accompany the minor to the hearing. The minor has the rights to a lawyer, a cultural mediator and when necessary a supporting person.[5]

Hearing of the minor in front of the Territorial Commission for the Recognition of International Protection:

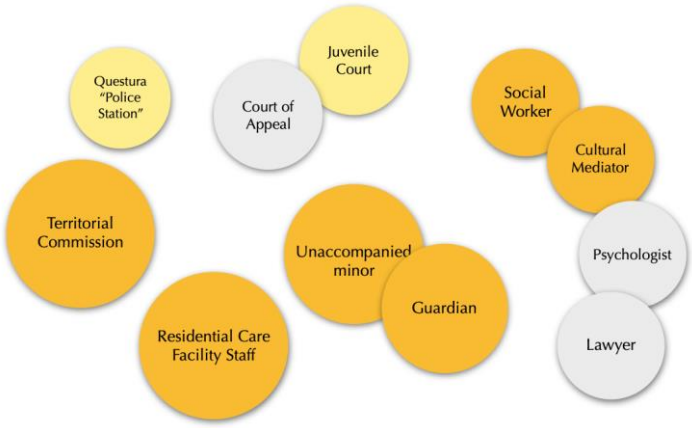


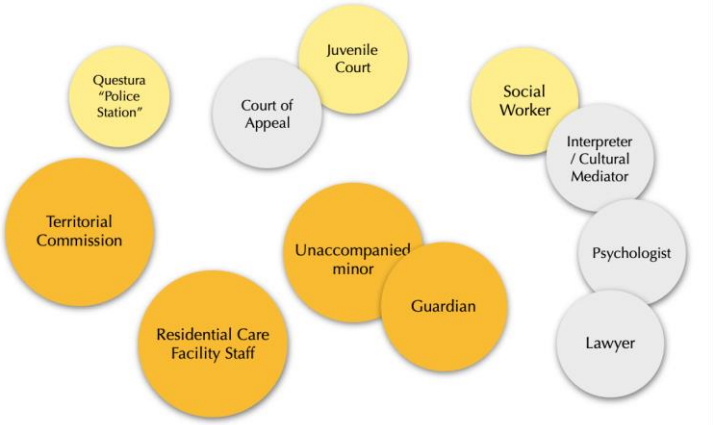
After the hearing, the minor should wait the decision of the application. Regarding the timing, the request of minors have precedence regarding the ones for adults, but as explained by some of the interviewed people, applications to international protection can take up to two years to process. The Commission may decide to recognize the refugee status - which gives the applicant the right to asylum, grant subsidiary protection, one of the forms of special protection or reject the application. In the event of a negative outcome of the examination before the Territorial Commission, the applicant has three levels of appeal. The first appeal against the decision of the Commission must be presented within 30 days from the date of notification of the decision before the Court in the district where the Territorial Commission has taken place. The applicant should ask authorization to the Court to suspend the provision of the Territorial Commission, in order for her/him to be allowed to remain in the Italian territory until the end of the appeal, which is the judicial stage.[6]

The second appeal is to be presented to the Court of Appeal and the third "Corte di Cassazione", which doesn't decide on the merits.

[5] Art. 13 - 16 DL 25 del 2008.
[6] Arts 32, 35 and 36 of the DL 25/2008 and of the DL 159/08.

Actors Involved in the Request for International and Special Protection :





Present throughout the Request for International and Special Protection

Present in some stages of the Request for International and Special Protection

Eventually Present in the Request for International and Special Protection

Voluntary Guardian

As established by law — Nominated by the Juvenile Court, independent and voluntary, the guardian represents a key role in the administrative proceedings. As our research will show, the voluntary guardian can accompany the minor in all steps of the proceeding and ensure the minor's rights and coherent application of the child-friendly principles embedded in the italian law. — In practice

Territorial Commission for the Recognition of International Protection

The Territorial Commission for the Recognition of International Protection is the body mandated to evaluate and decide on the application for international protection, after hearing the unaccompanied minor. Currently there are 20 in the national territory. The Commission is composed of an official of the Prefecture, who is the President of the Territorial Commission; a Police Officer; a representative of the municipality or of the province or region, and a representative of the UNHCR.

1.1 Asylum

According to the Geneva Convention of 1951, which Italy ratified:

[T]he term 'refugee' shall apply to any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail

himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[7]

In Italy, the residence permit for political asylum can be granted to unaccompanied minors which have refugee status.

Once the refugee status is received, the foreigner can request the issuance of the asylum residence permit from the Immigration Office. The residence permit for asylum is valid for five years and is renewable.

1.2 Subsidiary Protection

'Person eligible for subsidiary protection' means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 [Serious Harm], and to whom Article 17(1) and (2) [Exclusion] does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.[8]

The subsidiary protection is accordingly, issued to non accompanied minors against which risk serious damage in case of return to the country of origin, or are sentenced to death, risk being tortured or subjected to inhuman and degrading treatment. It is also issued to minors individual life threat, resulting from indiscriminate violence in situations of internal or international armed conflict. The subsidiary protection permit is valid for five years and is renewable.[9]

1.3 Special Protection Permits for Unaccompanied Minors

The last political developments in Italy had serious consequences at the normative level. The Humanitarian Residence Permit was abolished by the DL n. 113/2018, also known as Salvini Decree. Nevertheless, special residence permits were introduced in the Italian framework, which afford different types of protection for distinct periods of time. When international protection is not afforded, the "questore" (chief of Police) can still decide to issue a special residence permit.

Permit for Social Protection[10]

Assumptions:

- Situations of violence or serious exploitation against an unaccompanied minor;
- Danger (concrete, serious and current) for the safety of the victim due to the attempt to escape from the exploiters or due to statements made to the judicial authorities during the criminal proceedings.

Release Procedure:

- The "questore" (chief of police) by proposal or favorable opinion of the Public Prosecutor, issues a special residence permit.

Duration:

[7] Convention and Protocol Relating to the Status of Refugees (Geneva Convention) 1951, Art. 1 (A).
[8] DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (Qualification Directive), Art. 2, (f).
[9] DL 18/2014 which modified Art. 23 of the DL 251/2007.
[10] Art. 18 T.U.I.

- 6 months (renewable for one year or until the reasons subsist).

Particular Characteristics:

- It allows to carry out study and work activities and is convertible for these reasons;
- If reasons for protection cease to exist, the unaccompanied minor can still apply for a minor age permit;
- It can also be issued to the subject, minor or adult, who has completed a custodial sentence for crimes committed during the minority age and has given concrete proof of participation in a program of assistance and social integration.

Permit for victims of domestic violence[11]

Assumptions:

- Situations of particular violence against a minor;
- Actual and concrete danger for the life of the child.

➡ The aforementioned assumptions must emerge in the context of police operations or investigations by the judicial authority for certain types of crime or during welfare interventions of anti-violence centers, local social services or services specialists in assisting victims of violence.

Release Procedure:

- The "questore" (chief of police) by proposal or favorable opinion of the Public Prosecutor or having as a basis a report from the Social Services, with the favorable opinion of the Public Prosecutor.

Duration:

- 1 year.

Particular Characteristics:

- It allows to carry out study and work activities and is convertible for these reasons;
- If reasons for protection cease to exist, the unaccompanied minor can still apply for a minor age permit;
- Upon expiry it can be converted into a residence permit subordinate or autonomous work, or in a residence permit for study reasons.

Residence Permit for Medical Care[12]

Assumptions:

- Particularly serious health conditions such as to cause a significant damage to the health of the same in case of return to the country of origin or provenance.

Release Procedure:

- Must be requested directly in the "questura" (police station) upon providing medical documentation stating the pathology must be produced.

Duration:

[11] Art. 18 T.U.I
[12] Art. 19, co.2 lett. d) -bis T.U.I

- Equal to that attested by the medical certification, however not exceeding 1 year. The permit is renewable, until the particularly serious state of health persists.

Particular Characteristics:

- If reasons for protection cease to exist, the unaccompanied minor can still apply for a minor age permit.

Residence Permit for natural disasters[13]

Assumptions:

- Situation of contingent and exceptional natural disaster in the country in which the unaccompanied minor should return, which does not allow the return and permanence in conditions of safety.

Release Procedure:

- The "questore" (chief of police).

Duration:

- 6 months, renewable one time if the assumptions remain.

Particular Characteristics:

- It allows to carry out work activities but it is not convertible in residence permit for working reasons;
- If reasons for protection cease to exist, the unaccompanied minor can still apply for a minor age permit;
- Upon expiry it can be converted into a residence permit subordinate or autonomous work, or in a residence permit for study reasons.

Residence Permit for particular labor exploitation[14]

Assumptions:

- Being a third country child in non-working age (less than 16 years old) and being employed);
- Having filed a complaint and cooperating in the criminal proceedings instituted against the employer.

Release Procedure:

- The "questura" by proposal or favorable opinion of the Public Prosecutor.

Duration:

- 6 months, renewable for one year or for the period indicated in the proceedings.

Particular Characteristics:

- It allows to carry out work and study activities and it is not convertible in residence permit for working reasons;
- If reasons for protection cease to exist, the unaccompanied minor can still apply for a minor age permit;

[13] Art. 20-bis T.U.I
[14] Art. 22, co.12-quater T.U.I

- Upon expiry it can be converted into a residence permit subordinate or autonomous work, or in a residence permit for study reasons.

Residence Permit for acts of particular civil value[15]

Assumptions:

- Having performed acts of particular civil value, in the cases referred to in Article 3 of Law no. 13/1958.

Release Procedure:

- By authorization of the Minister of the Interior, based on the proposal of the competent Mayor.

Duration:

- 2 years, renewable.

Particular Characteristics:

- It allows to carry out study and work activities;
- Upon expiry it can be converted into a residence permit subordinate or autonomous work, or in a residence permit for study reasons.

2. Age Assessment

The procedure for age assessment takes place when serious doubt concerning the age of the minor arise and it is disciplined by the Art.5 of the Law 47/2017, which foresees a holistic and child-friendly approach, which still finds resistance in its practical implementation. According with this framework, "the identity of an unaccompanied foreign minor is ascertained by law enforcement authorities, assisted by cultural mediators, in the presence of the guardian or temporary guardian if already appointed, only after being granted the same minor immediate humanitarian assistance". When the age of the minor cannot be proved though personal documentation, a serious doubt remains and the collaboration of the diplomatic-consular authorities of the country of origin is not possible, "the Public Prosecutor's Office of the Juvenile Court may arrange for social and health examinations to be carried out to assess" the age of the minor.[16]

Firstly, with the help of a cultural mediator, in a language that the minor can understand and in accordance with his degree of maturity and literacy, s/he is informed of the fact that his age can be assessed through social and health examinations, about the kind of examinations to which s/he shall be submitted, about the possible expected results and their possible consequences, as well as those deriving from his possible refusal to undergo such examinations. Such informations shall also be given to the guardian of the unaccompanied minor.[17]

Secondly, the Law 47/2017 outlines the methodology for such assessment, which should be "carried out in a suitable environment with a multidisciplinary approach by appropriately trained professionals and, where necessary, in the presence of a cultural mediator, using the least invasive ways possible and respectful of the presumed age, the sex and the person's physical and mental integrity".[18] Moreover, no social-health examinations that could compromise the psycho-physical status of the person should be carried out.

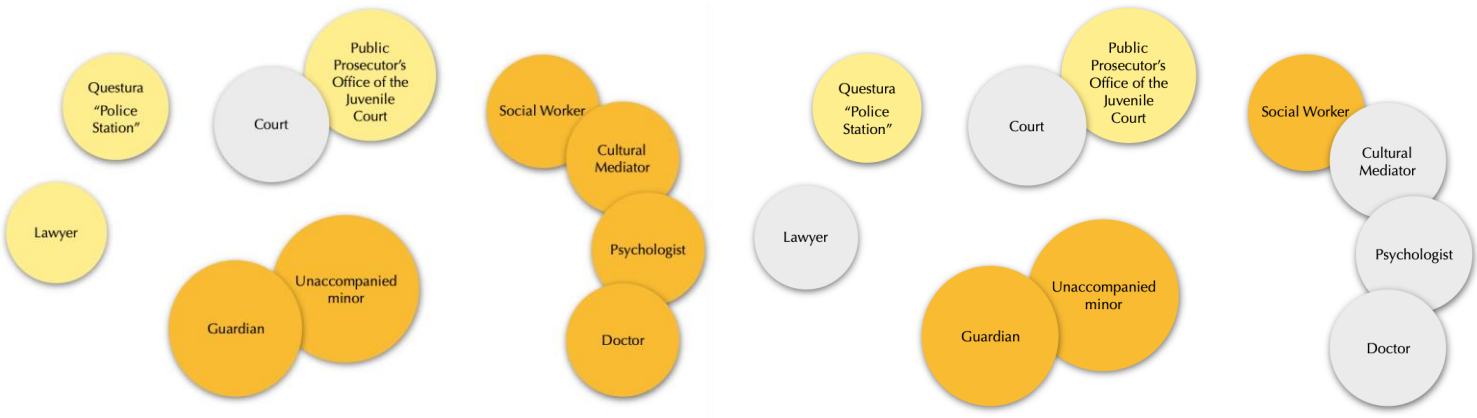
[15] Art. 42-bis T.U.I
[16] Law No. 47 of 7 April 2017 Provisions on Protective Measures for Unaccompanied Foreign Minors (L 47/2017) Art.5 co. 4.
[17] L 47/2017 Art 5 co. 5.
[18] L 47/2017 Art 5 co. 6.

The legislative framework furthermore foresees the way the result of the social-health age assessment should be communicated to the unaccompanied minor. It should be done in a way consistent with her/his age, maturity and level of literacy, in a language that the minor can understand. The results should also be communicated to the holder of parental responsibility (guardian) and to the judicial authority that ordered the assessment. The final report shall always contain the margin of error.[19]

Lastly, the Zampa Law specifies that in the cases where even after the social-health age assessment, doubts remain on the minor age, the latter is presumed for all legal purposes, in accordance with Art. 8 c. 2 of D.P.R. 448/88.

In what regards the access to legal remedies, and according to paragraph 9 of Article 5 of the Law 47/2017, the decision concerning the age assessment can be challenged in the context of a claim pursuant to Articles 737 ff. of the Code of Civil Procedure. In the event of an appeal, the judge decides as a matter of urgency within ten days. In addition, every administrative and criminal procedure resulting from the identification as an adult is suspended until the decision is issued. Despite the text of the law it was observed that the appeals take much longer and there were cases where minors were placed in residential facilities for adults while waiting for the decision of the appeal.

Actors Involved in the Age Assessment Procedures:



As established by law

In practice

Present throughout the Age Assessment Procedures

Present in some stages of the Age Assessment Procedures

Eventually Present during the Age Assessment Procedures

[19] L 47/2017 Art 5 co. 7.

Implementation of the Child-Friendly Principles Analysis of the questionnaires and interviews

Based on the questionnaires' results and the interviews with key informants - and building on the on-going DCI Italy's observation and analysis – the following section tries to examine how child-friendly justice principles are effectively implemented in the field of administrative justice. In particular, it seeks to outline the extent to which administrative practices concerning unaccompanied children are compliant with laws and international standards. Of course, the underlying assumption is that only an integrated system of justice and protection can appropriately meet the specific exigencies of children in full respect of their rights. Unfortunately, the reality is still far from such a scenario according to which the different actors and mandates should operate in a coordinated manner, sharing a common logic based on the principle of the best interest of the child. However, it is possible to identify existing weaknesses and strengths that need to be taken into consideration in order to: a) have a picture of the reality with which unaccompanied children interact in Italy; b) delineate possible proposals for improvement of the system with a specific focus on administrative justice; c) acquire relevant elements to inform the development of operating tools to orient and support the work of institutions, authorities and professionals.

In general, the implementation of child-friendly justice principles in the Italian system of administrative justice for unaccompanied children is partial. Even if there has been a progressive improvement in terms of legislation and procedural safeguards regarding children involved in judicial proceedings, practices are still very far from implementing them on a permanent and homogeneous manner. Interpretation and implementation tools of the relevant rules are not well defined at the central level, which contributes to minimize the power of an advanced normative framework.

The actual and correct application of child-friendly justice principles differs depending mainly on the following factors: geographic location, type and phase of the procedure, actors involved. We will try to analyse the situation on the basis of these factors.

Fragmentation and heterogeneity of procedures and practices throughout the territory is one of the main problems affecting Italy. Because of the State's territorial organization – which is between a federal State and a centralised State, depending on the matters of competence - different administration levels coexist. Such multilevel governance implies the existence of divergences in the way regional and local institutions legislate and implement laws and policies. In addition, economic conditions and cultural specificities do influence the way in which the different regions incorporate law and policy reforms and adapt to new operating models. As a consequence, each territory develops its own protocols and practices, which results in a system that works differently depending on the place the child finds him or herself, calling into question the respect for the principle of non-discrimination and equal treatment. In this sense, the present section aims at providing general considerations and trends that can be detected throughout the Italian territory but in order to obtain a complete and in-depth picture, they would need to be specified in relation to each local context. Some specific practices are however reported since they might exemplify practical implications of the critical aspects highlighted in the present report.

According to the research results, there is no significant difference in the way institutional actors and authorities involved in administrative justice relate with unaccompanied children and adults during procedures. Certain safeguards are not respected, and normally administrative officials do not seem to adapt their language and attitude to the specific needs

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and situation of unaccompanied children. As a general rule, there are no child-friendly spaces available nor appropriate information materials addressed to migrant children. Unaccompanied children are still treated first and foremost as migrants rather than as minors with specific needs and rights deriving from their situation of deprivation of parental care.

Individualized consideration and treatment of migrant children is not ensured on a permanent basis within administrative justice. As a matter of fact, the way in which the system perceives and recognizes unaccompanied children seems to be highly standardized and even stereotyped. For example, the choices and decisions during the application process for obtaining international protection are to a large extent based on some general characteristics (namely ethnicity and country of origin). A specialized lawyer interviewed during the research explained that according to her experience Territorial Commissions – when examining a request made by a child - rarely assess and verify the existence of protection reasons that are child specific. Actually child specific reasons for protection do exist such as child labour, child exploitation, the denial of the right to education, child rights violations in general. These elements should be taken into consideration when assessing the specific situation of a child and when verifying the child's story before granting the most suitable status of international protection. Only this would enable to ensure the most protective permit. However, such considerations are hardly ever included during the application's examination, bringing children's cases into line with those of adults.

The way in which children are treated within the reception system is again very much determined by similar criteria. There is seldom a situation in which the context where the child finds him/herself is arranged to meet the child's individual needs and to provide individualized responses. This applies also to the modality with which administrative institutions or authorities refer to unaccompanied children. Methods and approaches are not child-centered at all. The research results suggest that institutional actors –namely law enforcement officers, social assistants of the Municipalities, members of the Territorial Commissions, Judges, etc. - tend to adopt an approach which is significantly less child- sensitive than the approach adopted by non-institutional actors such as guardians, social educators, cultural mediators or lawyers.

There are many reasons that can explain this fact. A critical aspect is that often institutional actors act according to interests other than the best interests of the child. This is particularly serious when the institutional mandate should actually contribute to defend and uphold this principle, such as the case of social workers. However, the fact that unaccompanied children are economically in charge of the local administration created a situation of conflict of interests in which the local body may want to minimize costs at children's expenses. Possible consequences of this kind of logic are being witnessed for example in Genoa, where children are being transferred sudden and unexpectedly from a residential care facility to another. This happens bypassing the safeguards established by law, including the involvement of the child in decisions that concern him/her and the participation of the guardian in the decision. Instead, transfers are occurring as a result of a political determination, with no time to inform and prepare the child in advance.

Political considerations risk also interfering in the development of the examination of the international protection application. Recently we had access to a document signed by a member of a regional government that contained proposals for changes addressed to residential care facilities. The majority of them clashed with child rights based principles. One of them was particularly surprising since it introduced the possibility of prolonging children's procedures to obtain the international protection as a deterrent mechanism for those unaccompanied children who do not respect the rules of residential care facilities. This approach appears unacceptable from a child rights-based perspective and risks to join the growing trend in which political management derogates human rights, international standards and even EU and national law.

According to one of the interviewees, lawyers and legal operators are currently struggling to obtain children's residence permits for minor age, which are established by law 47/2017 and therefore should be granted to every child when requested. Likewise, another administrative procedure foreseen by the law is the possibility to request an extension for prolonged support within the child protection system until 21 years of age to ensure a successful path of social integration. From the analysis it emerges that there is a general reluctance to use this measure due to interests other than the best interests of the child, such as financial constraints.

Different institutional approaches, logics and priorities constitute a key obstacle for coordinated cooperation among actors. The lack of well-defined responsibilities and accountability mechanisms gives place to a system of diffused responsibilities in which there is no final responsible for violation of standards or infringement of norms.

The gap between law provisions and practices responds also to an absence of applicative tools and guidelines developed at the central level. Very often, law provisions lose their substantial content in their application. Age assessment procedures well exemplify this problem. As established by law, in case of doubts, age should be assessed through socio- health examinations in a suitable environment with a multidisciplinary approach by appropriately trained professionals. However in practice this hardly ever occurs. Age assessments continue to be based mainly on medical examinations – namely anthropometric examination of the wrist. It has been internationally recognized that the degree of variability and the lack of accurateness of the results of such examinations prevent this method to be considered as valid. Nonetheless, this method continues to be the main reference for age determination in Italy, which constitutes a violation of the child's procedural safeguards.

The adoption of the recent Law 47/2017 on protection measures for unaccompanied children is an example of the gap between norms and their effective translation in practice. It is an extremely innovative legal text that outlines a reception and protection system for unaccompanied children that is in line with the UN CRC and other international standards including the child-friendly justice principles. In fact, it is recognized that unaccompanied children are holders of the same rights than Italian and EU children and enjoy equal treatment. It establishes the different procedures in which unaccompanied children may be involved until the age of majority and provides for specific indications on how the different stakeholders should develop their mandates.

The law recognizes the importance of multidisciplinary cooperation, cultural mediation, child participation and individualized intervention as key elements of any action involving unaccompanied children. It introduces important safeguards that apply also to administrative proceedings. In this sense, it is worth mentioning article 11 establishing a model of guardianship based on selected and adequately trained citizens. The guardian is the legal representative of the child and therefore accompanies him/her in all judicial and administrative proceedings. S/he is also mandated by the judge to monitor the child's wellbeing and to protect and uphold the rights of the child, defending his/her best interests.

In the form in which it is being applied, this provision constitutes a key safeguard: through the presence of a third and independent party who can claim the rights of the child and enhance the system's compliance with child-friendly justice principles. A clear example is how the presence of a volunteer guardian qualifies the child's right to information during administrative procedures. Normally, the guardian talks to the child in a language s/he understands, tries to make sure that the child has understood the sense of the information provided, verifies if the child would like to receive some information and sometimes acts as a bridge between the child and the information providers.

Similarly, the guardian qualifies the child participation principle. Usually the guardian builds a relationship with the child based on mutual trust and personal commitment. This enables the child to express her/himself freely with her/his guardian, who should always listen and take the child's opinion into due consideration. When a guardian is appointed, the involvement of the child in procedures and decision-making tends to become meaningful and decisive. Therefore, the presence of a guardian ensures higher standards in terms of child-friendly justice practices. It also has an

important function of integration of all the different components of the system. Finally, it can have a

> "Probably, one of the moments in which I perceived that despite all the difficulties my role is useful is when I compared the situation between a child with a volunteer guardian and a child without it and I saw how having a guardian means to have more safeguards".
>
> Volunteer guardian

deterrent effect on malpractices of other actors.

The law implementation needs however to be improved since some critical aspects are emerging gradually. For instance, with regards to the volunteer guardians, almost everywhere there are less volunteer guardians available than unaccompanied children residing in that given place, creating a situation in which not all children have the same access to this measure.

Another important development that law 47/2017 has introduced is the explicit provision on the rights of unaccompanied children to be heard during proceedings. According to article 15, "the emotional and psychological assistance of unaccompanied foreign minors is assured, in every state and degree of the procedure, by the presence of suitable persons indicated by the minor, as well as groups, foundations, associations or non-governmental organizations with proven experience in the assistance to foreign minors and registered in the register (...), with the consent of the minor, and admitted by the judicial or administrative authority proceeding". "The unaccompanied foreign minor has the right to participate, through a legal representative, in all judicial and administrative proceedings concerning him and to be heard on the merits. To this end, the presence of a cultural mediator is guaranteed". The overall application of this provision is partial and absolutely heterogeneous depending on the territory and the professionals involved. In administrative proceedings the child is listened to in an extremely formal way by institutional actors. The child's participation during the procedure to obtain international protection, for example, is functional to the procedural rules but very often looses its substance. Children's opinion may be listened but not taken into due consideration. Child participation is not even considered in other venues such as the *Questura* where the police staff tends to fail in correctly implementing their mandate in relation to children. In *Questura* none of the child-friendly justice principles seem to be fully respected and the approach is essentially formal and standardized. According to some informants, police officers tend to talk to the adult who accompanies the child instead of creating the appropriate environment to communicate and interact with her/him. They often do not respect the right to privacy and talk loudly about individual cases in front of others. The presence of a cultural mediator is not ensured, and the way information is provided is inappropriate.

Procedural safeguard are respected into a larger extent in Territorial Commissions since they should follow the UNHCR guidelines on international protection. Again, in practice this depend on the single members that compose the commission in the different locations.

> "In judicial and administrative contexts the cultural mediator or the interpreter are often an optional."
>
> Lawyer

In general, there is not a systematic presence of cultural mediation or interpretation in the framework of administrative proceedings to ensure effective understanding and participation of the child, as well as the effective representation.

Actually a characteristic that could define the administrative justice system in Italy is that it is by essence adult-centered and children, especially if foreigners and unaccompanied, have to relate with a context that is distant from their world. The multiplicity of actors around the child, which have different mandates, functions and tasks – and that lack coordinated cooperation - can be perceived by children as a factor of confusion and fragmentation. The problem for these children who find themselves alone in a new context is to find a stable adult of reference with whom to establish a relationship based on trust that can accompany them throughout the entire procedure. Volunteer guardians are an important step forward towards this direction.

Another good practice related with the child's legal assistance and support is the presence of legal advisors (operatore legale) in some residential care facilities. Legal advisors deal with the administrative practices related mainly with residence permits: they support the child in applying for international protection, in verbalizing the request before the *Questura*, in accompanying him or her in the Territorial Commission and facilitate the contact with the lawyer in case of appeal. Legal advisors have an important information role with regards to children but also guardians and residential care facility staff.

The presence of such advisors helps the child and his/her volunteer guardian in dealing with the high administrative and bureaucratic complexity that characterises the Italian administrative justice system. Administrative procedures are so cumbersome that without appropriate support children – and even adults – would feel absolutely lost. Unfortunately, this figure is not present in all the residential care facilities.

The excessive lengthiness of administrative procedures, especially those related with the request for international protection, is another evidence of this adult-centred system. Examination of the international protection application may last between 1 and 2 years. In case of appeal, the procedure can be prolonged 1 or 2 years more. The majority of the unaccompanied children who arrive in Italy are 16 or 17 years old and, as all other adolescents, their perception of time is very different from the adult perception. Periods seem much longer for them and such excessive time frames are incompatible with a system that priorities children's protection, wellbeing and harmonic development.

From the analysis emerges a very complex situation in which different elements come into play when determining the degree of compliance of the Italian administrative justice regarding the principles for a child-friendly justice. The different interrelated components of the system seem to apply different approaches and priorities, which are often discretional and dependent on the knowledge, sensitivity, training and positioning of the concerned professionals.

This brings us to the last point related with training and supervision of professionals involved in administrative procedures concerning unaccompanied children. According to our analysis, appropriate training of the different professionals and actors working with and for unaccompanied children is extremely variable and left to the discretion of each single individual or concerned organisation. Training on the rights of the child is not systematically provided to the different functions of the system. In fact, the use of child rights-based standards and international instruments by lawyers and judicial professionals is rare. They are seen as a generic and vague reference but not as instruments of positive law that can be effectively used in the concrete case.

In general, there is the perception that professionals in contact with unaccompanied children should be more specialized, receiving continuous specific training and supervision. This is particularly important in relation to those professional contexts in which the working conditions are precarious, such as in residential care facilities. Social educators are the primary references in the daily life of unaccompanied children and they are often involved in the management of administrative-related

issues of children. It would be important to support these figures through the possibility for them to have continuous legal advice and support.

Finally, professionals – in particular lawyers – do refer to resource centres in order to keep up to date with normative or political developments affecting unaccompanied children. The main references are the Italian Association of Legal Studies on Immigration (https:// www.asgi.it/), the Italian Association of family and youth lawyers (https://aiaf-avvocati.it/), the Italian Association of family and youth Magistrates (http://www.minoriefamiglia.it/), the National Authority for Children and Adolescence (https://www.garanteinfanzia.org/) and the project Melting Pot (https://www.meltingpot.org/). Non governmental organizations working in the field constituted another important reference.

Obstacles preventing the implementation of the child-friendly justice principles on a national level and good practices

Principle	Obstacles	Good Practices
The right to information	- Absence Of Child Friendly-Material In Different Languages - Lack Of Cultural Mediation And Interpretation	✓ Presence Of Non Insitutional Actors ✓ Legal Operator In Residential Care Facilities
The right to access to remedies	- Non-Consideration Of Child Specific Violations	✓ Ensured Through The Right To Defence (Lawyer)
The right to participation	- Specialisation Of Professionals - Lack Of Cultural Mediation And Interpretation	✓ Procedural Step
The right to protection	- Political Choices And Pressures - Standardization Of Proceedings	✓ FamilyTracing
The right to privacy/ confidentiality	- Lack Of Dedicated Spaces	✓ Professional Secrecy
The principle of the best of interest of the child	- Conflict Of Interests - Poor Multidisciplinary And Inter-Agency Cooperation - Length Of The Procedures	✓ Volunteer Guardian

Recommendations

A. The right to information

- Cultural mediation is a transversal competence aimed at facilitating a mutual understanding, and therefore relations between people with a different cultural background that does not concern a mere translation and interpreting. There is the necessity for an ulterior qualification of the figure of the cultural mediator, ensuring the presence of this independent actor, whenever needed and in all instances of the administrative proceedings, in a logic of continuity.
- Ensure that all children involved in administrative proceedings have access to child-friendly information, adapted to the child's age, maturity, language, gender and culture.[20]
- Mainstream the figure of the legal advisor on a national level, ensuring all children place in residential cara facilities have access to child-friendly and independent legal counseling.

B. The right to access to remedies

- Develop coherent and independent evaluation, monitoring and accountability mechanisms.
- Within the administrative proceedings, all children should have access to a confidential Ombuds service to where they can report concerns and complaints and receive support to address those.

C. The right to participation

- Ensure to all children the right to be heard and to express their views in all matters affecting them, in a child-sensitive and friendly environment.[21]
- Ensure that all professionals having direct contact with children receive specialized training on how to comunicate with children at all ages and stages of development, and with children in situations of particular vulnerability.[22]

D. The right to protection

- Ensure that the age assessment procedure follows all the steps established by the Law 47/2017, particularly paragraph 6: The socio-health age assessment shall be carried out in a suitable environment with a multidisciplinary approach by appropriately trained professionals and, where necessary, in the presence of a cultural mediator, using the least invasive ways possible and respectful of the presumed age, the sex and the person's physical and mental integrity. No social-health examinations that could compromise the psycho-physical status of the person shall be carried out.
- Support the homogeneous and effective implementation of the Law 47/2017 throughout the national territory, ensuring uniformed practices to all children.

[20] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum, ISBN 978-92-871-7274-7, Council of Europe (October 2011) Guideline 2.
[21] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum, ISBN 978-92-871-7274-7, Council of Europe (October 2011) Guideline 44 and 45.
[22] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum, ISBN 978-92-871-7274-7, Council of Europe (October 2011) Guideline 15.

E. The right to privacy/confidentiality

- The confidentiality of the exchanges must be ensured, through the setting of specialized child-friendly spaces in Policy Stations, Territorial Commissions, Courts and Residential Care Facilities.

F. The principle of the best of interest of the child

- Improve inter-agency coordination through the setting-up of applicative tools and guidelines at the central level.
- Ensure that all unaccompanied children are appointed a trained and independent voluntary guardian as soon as they are identified.
- Ensure that all concerned professionals working in contact with children in justice systems receive appropriate support, training, and practical guidance in order to guarantee and implement adequately the rights of children, in particular while assessing children's best interests in all types of procedures involving or affecting them. [23]

[23] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum, ISBN 978-92-871-7274-7, Council of Europe (October 2011) 34.