

FOREIGN DELINQUENT MINORS
JUDICIAL PROCEEDINGS AND REHABILITATION MEASURES

ITALY

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A - APPROACHES TO THE LEGAL AND JUDICIARY, HISTORICAL AND STATISTICS CONTEXT OF DISCRIMINATIONS RELATING TO ALIENS AND FOREIGN OFFENDERS

1. Legal and regular context

Until 1989 there were no specific norms that regulated in an organic way the legal conditions of foreign minors in Italy. The discipline was therefore entrusted to the praxis of the various territorial agencies, creating problems of country homogeneity when it comes to their treatment.

The Martelli Decree (1989) introduced some specific dispositions regarding the right to education and the obligation to report to the Juvenile Court the requests received for the status of refugees. The Law n. 40 of 1998 is the first attempt to rule the migratory phenomenon in all its aspects, parallel to the regulations of the law itself (D.P.R. n. 394 of 1999) and to the decree that has enforced the competences of the Committee for foreign minors (D.Lvo113 of 1999). Subsequently, the laws on juvenile prostitution, paedophilia and juvenile labour have enriched the protection mechanism of foreign minors in Italy (VI Rapporto Nazionale sulla Condizione dell'Infanzia e dell'Adolescenza, Telefono Azzurro, Eurispes).

2. Legal conditions of foreigners

According to the law on the Citizenship (l.n.91 of 1992), whoever is not in possession of the Italian citizenship is a foreigner. In Italy, the citizenship is granted by *ius sanguinis*: the descendents of a parent holding Italian citizenship, no matter where they were born, as well as adopted individuals, are Italians. On the other hand, individuals at foster care and children born in Italy from foreign parents are foreigners.

It is important to stress that, according to the Maastricht Treaty (7 February 1992), citizens from EU countries hold the same rights as Italians but the right of citizenship, for which they remain subject to the standard provisions for foreigners.

3. Citizenship law reform

The text of the law proposal of Citizenship Law Reform (modifications of Law n.91 February 5 1992 about new norms of citizenship-see annex for details) was signed on August 4, 2006 by the Council of Ministers. This proposal, which is going to be examined by the Parliament in the forthcoming months, is composed by seven articles and modifies Law n.91 February 5 1992.

Article 1 is about the acquirement of citizenship by birth (*ius soli*). According to it, children born in Italy from foreign parents will be Italian, if one of them is “legally resident in Italy without interruptions since 5 years at the moment of the birth and in possession of minimal income requirements for the permission to stay in the EU - for long staying”. When the individual would be eighteen years old, “he can choose to refuse the Italian citizenship if in possession of another citizenship”.

The second article is about minors which are born in foreign countries. They might become Italian if one of the parents is “legally resident in Italy without interruptions since 5 years at the moment of their birth and in possession of minimal income requirements for the permission of stay EU- for long staying”, but only if the subjects live in Italy since five years and if they attended school or a professional course or they worked for one year in here. These persons are also allowed to refuse the Italian citizenship when they are eighteen years old.

Article 3 renders more complicated the acquisition of citizenship by wedding, which is the 90% of acquirements in Italy until now. The foreign partner of an Italian citizen “acquires Italian citizenship if the person, after wedding, has been living legally in the territory of the Italian Republic for two years, or three years if the person was in a foreign country.

The time needed for naturalization is shortened by Article 4, which offers the possibility of becoming an Italian citizen to the “foreigner who has been living legally on the territory of the Italian Republic for five years”.

Citizenship will be granted by the Minister of Interior, whereas, for the time being, it is granted by the President.

Article 5 specifies that the acquisition of the Italian citizenship by wedding or by residence will be subordinated to “the real linguistic and social integration of the foreigner”. The new law regulation will further explain how to proceed.

4. Foreign minor

Minor is the subject who, according to the law of his/her country, has not reached the age foreseen by the law of that specific country for the acquisition of a number of rights and duties related to the adult age. The Italian law foresees that the provisions of protection of minors (The Hague Convention, 1961) also apply to foreign minors who become adults beyond the 18 years according to the legislation of their countries of origin. On the contrary, to the foreign minor younger than 18 years, whose country of origin legislation considers him/her as an adult,

the protection reserved to minors is still valid until the age of 18 (VI Rapporto Nazionale sulla Condizione dell'Infanzia e dell'Adolescenza, Telefono Azzurro, Eurispes).

5. The rights of foreign minors

5.1 Right of entry in Italy

The right of entry of foreign citizens applies also to foreign minors. A passport or an equivalent document is required, as well as approval of entry. The entry of foreign minors for other reasons than family causes, tourism, or study and treatment and who are not accompanied by a parent or a relative within the fourth degree is allowed only once the Commission for the international adoptions has given its approval, in order to avoid that the entry is infringing the law and for illegal adoption.

5.2 Right to the family unification

Law 40 of 1998 states the right to family unification (art. 28), according to which foreigners holding a regular permit of stay are entitled to request the reunification of their minor children, the children of the spouse, born outside marriage or adopted. To the ends of the reunion are considered minors the children under the age of 18. With regard of family reunification, minors are children beyond the age of 18. The art. 26 of the cited law states that the interest of the child is the most important element to be taken under consideration.

5.3 Family reunification

On July 28 2006, The Council of Ministers approved a decree that put into practice the European Directive 2003/86/CE on the right to family reunification and modified significantly the current law on immigration. First of all, a foreigner who is regularly residing in Italy will have no more need to demonstrate that his/her minor children who remained in the country of origin is on his/her charge. Also the parents are included in the family reunification, but they need to clearly be on charge of the applicant. Moreover, the decree makes the legislation more flexible on the suitability of the lodging requested for the reunification. Also the parents accompanying their child for treatment purposes will be granted the permit to work. For the time being, whoever does not hold a valid permit of stay cannot work.

The permanence

The foreigner entering Italy regularly is entitled to stay in the country only if holding a valid permit to stay, only if holding a valid permit of stay for 5 years (paper released to the foreigner regularly resident for 5 years) or a permit of stay (document released by the Chief of Police at the moment of the entry in Italy that allows the staying for a limited period, depending on the reason of permanence). The law states that the child up to 14 years of age is to be included in the paper or permit of the cohabiting parent. To the minor above 14 years of age the authorities will release an independent permit of stay for family reasons until the adult age.

The Juvenile Court, for serious concerns connected to the psycho - physical development of the minor and to his/her health conditions, can authorize the release of a permit of entry and the stay in favour of a relative of the minor for a determined period, provision that goes beyond the law dispositions. Such authorization is released for limited periods and is revocable.

To the fulfilment of the adult age of the minor can be released a stay permission for reasons of study or job or for sanitary requirements or cure.

Right to study

According to the art. 34 of the Constitution "the school is open to all" and "the inferior instruction must be given for at least eight years and is obligatory".

In our ordering, therefore, the instruction is a right constitutionally guaranteed not only to the Italian citizens but also to the foreigners. The foreign parents resident in Italy have moreover the obligation to make observe, according to the art. 731 c.p., this scholastic obligation.

Right to health

All the foreigners residing regularly have the obligation to register to the National Health Service. The enrolled and their relatives have parity of treatment regarding the Italian citizens.

To the foreign citizens not in rule with the norms of stay and entry in Italy are however guaranteed the hospital cures, without the obligation of denunciation or signalling to the authorities, to parity of conditions with the Italian citizen.

In case of lack of stay permission it is considered determinant the superior interest of the child and the pregnancy and the maternity are however protected, to parity of treatment with the Italian citizens and the health of the minor; to such aim the vaccines are guaranteed according to the enforced norm.

The measures of protection and the interventions of urgency

To the minors who reside in the Italian territory are applicable all the protection measures that our ordering previews for the minors, both the urgency and the ordinary interventions. The Convention of Aja of 1961 previews that the administrative and the judicial authorities of the State of residence, according to the own inner legislation, apply the normal measures of protection and the participations of urgency toward the minors whatever is their citizenship. Therefore to the foreign minor in Italy will be applied the normal measures of protection previewed from the laws of the Italian ordering, participations turn to remove conditions of prejudgment for the minor.

The measures for the protection of the minor are those regarding the protection (art. 343 sgg. c.c.), the urgent participations of protection of the public authority (art. 403 c.c), the care foster, the judicial provisions relative to the exercise of the parental authority (art.330 sgg. c. c). In all the cases of urgency, the authorities of every state in which stay the minor adopt the "necessary" and temporary measures of protection, that cease when the state of belonging or of residence will have adopted the definitive measures (art. n 9 Convention of Aja 1961). In Italy, the juvenile Court of the place where the minor resides is competent for the adoption of the temporary and urgent provisions previewed from the Convention of Aja of 1961. The presence of a consisting number of foreign minors within the justice structures constitutes one of the areas of emergency in the context of juvenile crime and provokes a number of considerations referred to the living conditions of the second generation.

It results obvious the need to improve the first acceptance intervention and the social integration of immigrates in Italy, their situations of economic, social and cultural marginalization that determine the birth and the increase of shapes of not-conformity and deviance of the second generations.

There are problematic areas relative to the judicial measures in the case of foreign minors. A dispersion of the protection turns out obvious; it is produced between the legislative moment, the theoretical principles, on the base of the new juvenile criminal trial, and the moment of the normative application.

B - DENUNCIATIONS AND SENTENCES: THE GENERAL PICTURE

There is a meaningful difference between the denunciations that are recorded and the number of subjects that reach the judgment of definitive sentence.

This is valid both for the Italians both for the foreign.

Relatively to the foreign subjects it is necessary to emphasize that the episodes of violence and crime do not take place with the same frequency within the different ethnic categories. The phenomenon regards boys and girls of North African, Slavic, Albanian, Romanian origin and, within these populations, there is a greater frequency of criminal actions between the minors not accompanied or in situation of false accompaniment. It is also meaningful the involvement of nomadic foreign minors.

The deviance production by the second generations of foreign born in Italy or in Italy with their families is instead still rather rare and does not seem to configure a situation of emergency.

1. Crime typologies

Deviant behaviours committed by foreign subjects are characterized for a low level of social dangerousness. The crimes against the person are rather unusual while the most diffuse are those against the patrimony. In second position take place the crimes against the economy and the public faith; these include the crimes of falsity and of production and sale of illegal drugs.

A certain concern is due to the involvement of foreign minors in the organized crime and to the exploitation of minors in activities of begging in its various shapes (Ghiringhelli, 2006).

An important data relative to the foreign minors is that forehead of crimes of smaller gravity, regarding those committed by Italians, it is recorded between the nomadic and North African children a greater number of recidivism. This is a pointer of the social marginality that characterizes the life of these children and the difficulty in the giving answers and to construct participations of prevention both of the juvenile deviance and the recidivism (Ghiringhelli, 2006).

2. The judicial interventions in the case of foreign minors

The intervention of taking charge of the foreign minors subordinated to penal provision introduces some difficulties (VI Rapporto Nazionale sulla Condizione dell'Infanzia e dell'Adolescenza, Telefono Azzurro, Eurispes):

- the absence of a house, of a family and of a net of stable reference in the territory make difficult to set up a program of social reintegration of the minor;
- the not always easy collaboration with the authorities of the Country of origin of the minors;
- the lack of collaboration by the minors or a their excess of instrumental use of the offered possibilities.

3. The minor clandestine or irregular

For the minors whose age is under 18 it is previewed a prohibition of expulsion (excluded the cases of expulsion arranged from the Ministry of the Interior for public order or state security). Analogous prohibition exists for the women in state of pregnancy or during the six months succeeded to the birth of the son.

In the case in which the minor must be expelled, the provision is not of competence of the administrative authority, becoming competence, upon request of the Chief of Police, from the Juvenile Court.

In the case in which the parents are object of expulsion provision there is an exception about the right to follow the parent expelled, according to the right to live within the own family, sanctioned from the Convention on the Rights of the Child of 1989.

4. The assisted repatriation

The assisted repatriation is relative to those measures adopted in order to guarantee to the not accompanied minor the necessary attendance, until the moment of the meeting with the own relatives or of the putting under the care of the responsible authorities in the Country of origin, in compliance with the International Conventions and to the enforced norms.

The assessment of the status of not accompanied minor is carried out from the Committee for the Foreign Minors and happens on the base of the information supplied from the Public Official Services or in charge of Public Service that give the news, also of the outcomes of surveying of the public security authority about the identity of the minor, through the collaboration of the diplomatic-consular representations of the country of origin.

Once that the foreign minor is considered not accompanied the Committee carries out searches and impulse tasks in order to find the relatives of the minors. Surveying come carried out from not governmental organizations operating with the Ministry of the Job and of the Social Politics. The assisted repatriation can be adopted only if, as a result of a surveying in the Country of origin of the minor and to an appraisal of his specific situation, this is considered opportune in the interest of the minor and in order to guarantee the right to the familiar unit.

The assisted repatriation comes executed accompanying the minor until the putting under the care of the family or of responsible authorities of the Country of origin, and after the repatriation is proposed to the minor a reintegration plan. If instead the Committee considers that is in the interest of the minor to remain in Italy, it arranges the "place not to supply to the repatriation" and signals the situation of the minor to the Magistracy and to the Social Services in order to proceed to the confidence.

Regarding the repatriation the opinion of the minor must be listened.

5. The interventions of support and social assistance

Relatively to the irregular ones, it is guaranteed the protection of the health of the minor, in execution of the Convention on the rights of the child of 1989, according to which "every child, who it is temporally or definitively lacked of his familiar atmosphere or who cannot be left in such atmosphere in consideration of his interest, has the right to a protection and to special aids of the State"(art. 20). It must therefore be thought that, considering the health of the minor in its wider meaning can be placed in being great part of the interventions of attendance and support previewed for the minors or for the regular foreigners.

C - STATISTICAL SOURCES

In Italy there exist various statistical sources regarding foreign delinquent minors that take into account the various aspects of the migration phenomenon that has brought in the years different cultures in the society structure of our country, unfortunately not always in the best possible conditions.

Presently, foreign minors placed in the structures of Juvenile Justice are numerous if compared with the global number of delinquent minors, and frequently they come from difficult situations, with integration problems, without reference persons or with high expectations of a rapid improvement of their way of life.

Principal sources regarding juvenile justice are the data elaborated by ISTAT (statistical institute) and provided by the Prosecutor's Offices at the Juvenile Courts, regarding indicted minors. These data are very interesting and offer a complete description of the phenomenon as they consider minors criminally responsible and minors under the age of 14 (which is the age limit in Italy for minors' accountability). They describe socio-demographic conditions of indicted minors and the types of crimes they are indicted for.

Other ISTAT's data, regarding not only minors, offer information about minors indicted, minors under criminal proceeding (data do not distinguish nationality) and minors convicted.

Other relevant data are the statistical sources from the Ministry of Interior about minors reported by law enforcement agencies.

This data regards people indicted by law enforcement agents and do not include indictment from privates or prosecutors.

The Department of Juvenile Justice (D.G.M.) at the Ministry of Justice analyses data regarding minors placed in the Services of Juvenile Justice (First Reception Centres, Correctional Institute, Social Services, and Rehabilitation centres).

This analysis show the complicated dimension of persons accessing social services at national level and study the different features of delinquent minors and types of crimes they are indicted for.

Other analyses regarding foreign minors in Italy are carried out by the Ministry of Interior regarding immigration data, Foreign Minors Committee (Ministry of Social Affairs) regarding unaccompanied minors, Anti-crime General Directorate that carry out analysis of numbers of arrested minors and those under investigation.

Also many private foundations collect data regarding foreign minors, i.e. Caritas International in its annual immigration report, and Analysis and Documentation Centre by Institute of Innocenti in Florence.

The critical aspects regarding data collection about delinquent minors in general, and especially foreign minors (due the number of irregular migrant), relate to the difficulty in having a consolidated approach to collection of data.

Dispersion or loss of data could generate problems with their interpretation, in spite of the attempt of the Public Administration to rationalize and organize them, in the last years.

Problems could be generated from the type of collection done by the ISTAT, that do not collect nominative data, therefore the same minor who is indicted more then once during one year, is considered more than one in the final annual report.

Regarding data collected by the Department of Juvenile Justice (D.G.M.), the main problem is the lack of an informative system of data collection (presently under construction), that limits the possibility of a critical analysis, in particular regarding minors in the external penal area.

It's also recent the creation of a system of monitoring that provides information about every single minor and that offers the possibility to follow his progress, in spite of the previous periodic data recording.

In particular, since 2001 is in course an analysis of the number of minors in the First Reception Centers and of minors detained in the Correctional Institutes.

More recently is the monitoring of the numbers of minors in charge of the Social Services for Minors.

These are nominative data, but it is very difficult to identify minors in residential centres or in charge of the social services, due the lack of documents of irregular foreign minors.

An attempt to solve the problem has been done with the registration of all the different names (*alias*) that identify every single minor.

Recently it has been created a system of registration, very contested by the public opinion, that provides the collect of the fingerprint of prisoners.

There are also limits for research and statistical data collection that represent a protection for minors, in particular d.p.r. 448/88 (decree of President of Republic) and d.l.vo 272/89 (law decree), and also the privacy law that forces operators and officers to protect the anonymity of minors and their family and to not reveal their sources or specific data.

Internet has proved to be both a very useful tool for the immediate communication of information and on the other hand also a very dangerous one as information can easily be plagiarised or manipulated by the mass media.

There are two different levels of complexity in the statistical sources that is important to mention.

The first level is a semantic one. The statistical data form the DGM distinguish foreign minors form nomads, to underline the different backgrounds, way of social inclusion, and type of crimes between this two groups, and that evidences that nomads minors have a longer tradition of presence in our country than foreign minors (that are a recent phenomenon due the transformation process in East Europe and Africa).

Moreover the statistical data collection system of the Ministry of Justice that is currently under revision it's not always in line with the Shengen system, because citizens from the UE Member States are registered as foreigners.

In spite of that , Department's of Juvenile Justice (D.G.M.) data are collected distinguishing minor's country of origin, so they can be published marking UE citizens from others foreign minors. The problem remains for those services collecting only aggregated data. Consequently these data do not allow a running monitoring mechanism.

The second level is quantitative. Data collection system depends on who does the collection.

ISTAT's data regarding the number of notice of crimes are not updated constantly, so they can represent the phenomenon only approximately.

1. Statistical analysis

The following statistical analysis about delinquent minors was developed starting from data regarding foreign minors indicted by the Prosecutor's Office at Juvenile Courts.

This data refers to all minors indicted, including those criminally responsible as well as those under age of 14 years old, apart from unidentified.

The source of data is ISTAT and the last updating is in the year 2003.

The number of indicted minors in 2001-2003 is about 40.000 every year, with a slight increase rate (2% more every year).

The number of foreign minors increases from 22% in 2001 to 25% in 2002 and to 28% in 2003.

The indicted foreign minors arrive most of all from East Europe Countries, (especially Albania, Ex-Yugoslavia, Romania).

It is worth underlining that the number of Romanian nationals is triplicate.

Many are also indicted minors from Africa, especially from Maghreb, while there are not many the minors indicted coming from others areas.

Regarding minors in charge by the Social Services (Uffici di servizio sociale per i minorenni (USSM) is important to underline that every year the Judicial Authority report to them more than 20.000 minors.

Most of them are Italians but the number of foreign minors increased in the period 2001-2005 from 26% in 2001 to 33% in 2004-2005.

Regarding minors actually in charge by the USSM, the percentage is lower but still increasing (from 21% in 2001 to 25 % in 2005).

The number of minors in the Correctional Institutes (Istituto penale per i minorenni (IPM) is less then 500 minors pro every day of the year.

During the period between 2001 and 2005 the number of foreign minors in Correctional Institutes has increased from 47% in 2001 to 54% in 2005.

Country of origin are the same as foe the indicted minors.

Foreigners represent also the majority of minors hosted in First Reception Centers and their presence in rehabilitation centres is increasing (from 40% in 2001 to 49% in 2005). The number of minors for whom the sentence has been suspended and who are placed under the supervision of social services is also increasing for the whole period 2001-2004.

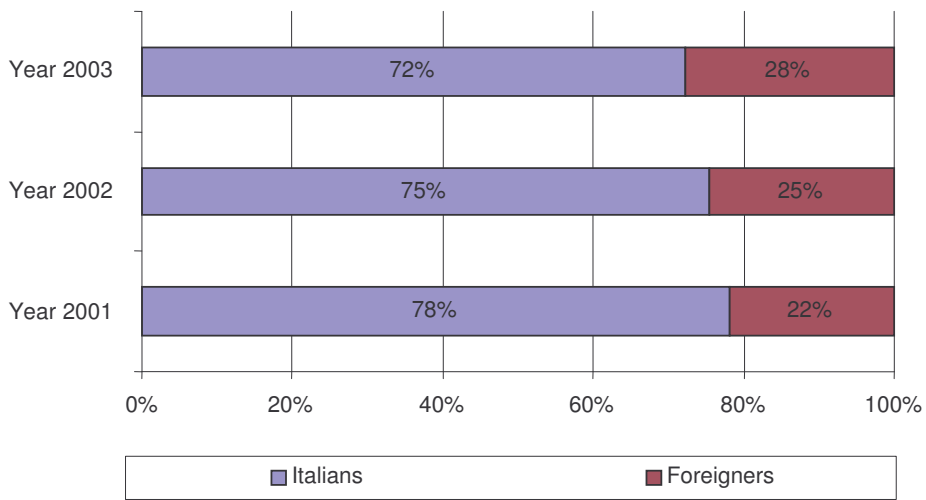
Regarding their nationality, the percentage of foreign minors is relatively low, between 10% and 14% in 2004.

Table 1 Minors indicted at the Prosecutor's Offices at the Minors' Tribunals according to their country of origin*

COUNTRIES	YEARS		
	2001	2002	2003
Italy	31.065	30.579	29.747
Other EU countries	240	320	338
<i>Among which:</i>			
France	72	81	96
Germany	94	134	148
UK	10	17	23
Spain	26	34	21
Other European countries	5.525	6.594	7.363
<i>Among which:</i>			
Albania	1.238	1.308	1.051
Bosnia-Herzegovina	200	332	267
Croatia	533	694	545
Serbia -Montenegro	2.081	2.022	1.605
Macedonia	53	69	64
Romania	1.184	1.848	3.323
Africa	2.399	2.467	2.968
<i>Among which:</i>			
Algeria	469	357	400
Morocco	1.706	1.822	2.206
Senegal	32	57	71
Tunisia	78	99	126
Asia	272	275	297
<i>Among which:</i>			
Bangladesh	32	29	24
China/People's Rep.	48	64	86
Iraq	56	24	46
Israel	85	30	27
America	283	349	497
<i>Among which:</i>			
Argentina	17	12	27
Brazil	44	64	91
Canada	1	4	8
Chile	24	28	24
Colombia	43	31	56
Ecuador	42	90	133
Peru	46	47	82
Dominican Rep.	19	27	34
United States	17	17	8
Oceania	1	4	2
<i>Among which:</i>			
Australia	-	3	2
TOTAL	39.785	40.588	41.212

*From ISTAT data

**Diagram 1 - Indicted minors at the Prosecutor's Offices at the Minors
Composition percentage according to nationality**



**Diagram 2 - Inticted foreign minors:
Composition percentage according to the origin area**

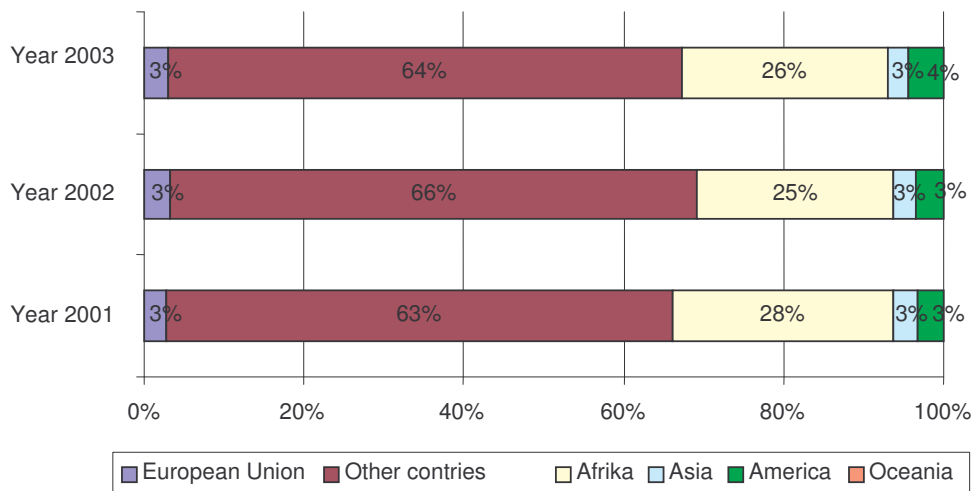


Table 2 Daily presence of minors in the Correctional Institutes according to the minors' country of origin

COUNTRY	Years				
	2001	2002	2003	2004	2005
Italy	256,0	238,2	241,0	225,6	218,3
Other EU countries	2,0	3,1	1,9	1,4	3,5
Other European countries	122,9	119,0	132,5	167,6	162,2
Among which: Albania	46,6	46,4	32,2	18,7	15,3
Bosnia-Herzegovina	0,0	0,0	0,0	1,0	2,7
Croatia	2,5	3,6	8,3	14,7	13,4
Moldavia	1,0	0,6	1,2	5,9	6,3
Romania	10,8	17,6	45,6	71,5	80,0
Serbia Montenegro	57,7	49,5	44,7	53,6	43,8
Africa	95,0	97,9	81,8	87,5	75,9
Among which: Algeria	16,1	16,3	11,8	11,2	8,1
Morocco	71,2	72,6	62,2	68,9	60,6
Tunisia	6,8	8,9	7,1	6,2	5,0
America	4,7	7,0	6,2	5,6	7,3
Among which: Chile	1,8	1,9	1,1	1,3	1,9
Colombia	1,1	0,8	0,7	0,7	0,5
Ecuador	1,3	1,8	2,5	3,1	3,4
Asia	6,0	5,1	12,2	9,6	9,7
Among which: China, People's Rep.	0,0	2,8	8,3	7,9	5,0
TOTAL	486,6	470,3	475,4	497,3	476,9

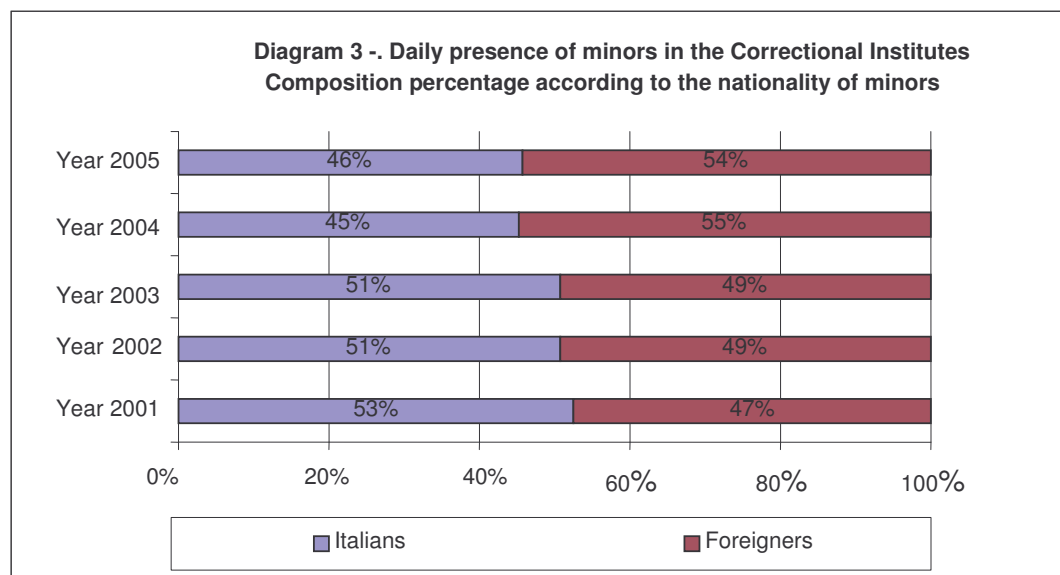


Table 3 Entries in First Reception Centers according to nationality

Years	Italians		Foreigners		Total	
	N°	% di riga	N°	% di riga	N°	% di riga
2001	1.711	46%	1.974	54%	3.685	100%
2002	1.561	44%	1.952	56%	3.513	100%
2003	1.532	43%	1.990	57%	3.522	100%
2004	1.587	41%	2.279	59%	3.866	100%
2005	1.540	42%	2.115	58%	3.655	100%

Table 4 Placement in Rehabilitation Centers according to nationality

Years	Italians		Foreigners*		Total	
	N°	% di riga	N°	% di riga	N°	% di riga
2001	804	60%	535	40%	1.339	100%
2002	752	57%	574	43%	1.326	100%
2003	770	54%	653	46%	1.423	100%
2004	912	50%	894	50%	1.806	100%
2005	967	51%	945	49%	1.912	100%

* including Italian persons of Roma origin

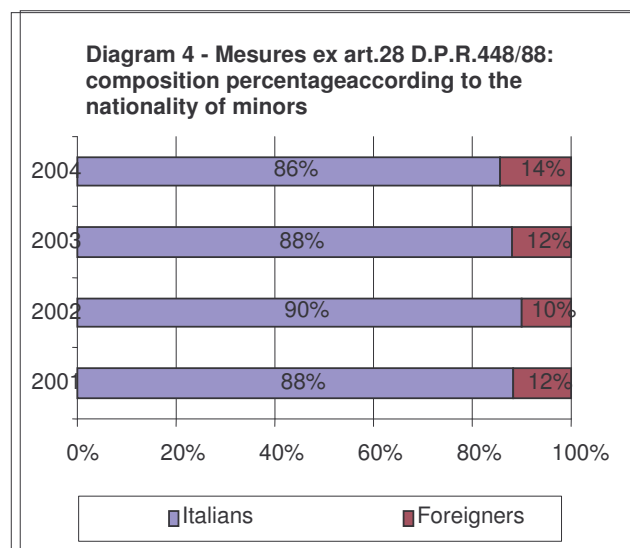
Table 5 Minors signalled to the Judiciary Authority and taken care of by the Social Services for Minors, according to nationality

Years	Italians		Foreigners*		Total	
	N°	% di riga	N°	% di riga	N°	% di riga
<i>Signalled by the Judicial Authority</i>						
2001	16.514	74%	5.756	26%	22.270	100%
2002	15.489	71%	6.362	29%	21.851	100%
2003	15.274	69%	6.717	31%	21.991	100%
2004	15.341	67%	7.659	33%	23.000	100%
2005	14.461	67%	7.181	33%	21.642	100%
<i>Taken care by the Social Services for Minors</i>						
2001	11.050	79%	2.903	21%	13.953	100%
2002	10.811	77%	3.233	23%	14.044	100%
2003	10.820	77%	3.276	23%	14.096	100%
2004	10.501	76%	3.391	24%	13.892	100%
2005	10.429	75%	3.472	25%	13.901	100%

* including Italians of Roma origin

Table 6 Decree of suspension of sentence and placement under the supervision of social services (art.28 D.P.R.448/88).

Years	Decreases ex art.28 D.P.R.448/88	Index numbers
2001	1.711	116
2002	1.817	106
2003	1.856	102
2004	2.173	117



D – TERRITORY LEVEL OF THE STREET POLICE FORCE/ JUSTICE/ EDUCATIONAL SERVICE

1. Introduction

It is difficult to identify categories or precise definitions in relation to the condition of “foreigner” in the juvenile system in Italy as all commonly used categories and expressions end up by being insufficient or not fully applicable.

Presently, that same category of “foreign minor” is extremely diversified and complex. This diversity is essential in order to carry out proper analysis, understand needs, and formulate responses.

On one hand, the condition of foreign minor, in itself, relates to a social group with a low rate of delinquency (criminal deviation), particularly if the individual is in Italy together with his/her family and the whole family resides legally on the Italian territory, according to the Aliens’ Law. On the other hand, there also exist some specific conditions characterizing the migratory flows towards Italy, which imply (a high-risk rate of delinquency) high risks of criminal deviation, particularly when minors are involved in these processes.

This phenomenon is increasingly assuming worrying aspects with the growing pressure of irregular migration along with the progressive closing of borders¹.

After the year 1989, new migratory flows involving minors coming from Eastern European countries, primarily Albania and then Romania have started to occur. These latter flows combined with those coming from more traditional areas, such as Maghreb, where there is a consolidated practice of familiar support to the migration of minors, have resulted in the progressive increasing involvement of under-aged in migration flows towards Europe in the last ten years².

¹ The analysis of migration flows in Italy implies some hints on the impact of the Schengen agreement in our country. This agreement, signed on 14 June 1985 among France, The Netherlands, Belgium and Luxembourg, represents an anticipation of the common market and the EU regime of free circulation of persons, goods, services and financial capitals, through the suppression of controls at the internal borders and the reinforcement of controls at the external borders.

Concerning Italy, the condition for its adherence to the Schengen agreement was the respect of some criteria, set by the other adhering countries which feared the uncontrolled flow of illegal immigrants coming from Third countries through the Italian borders, among which criteria are the following ones:

- the introduction of restrictive provisions in the field of entry and permanence of extra-EU foreigners;
- the setting up of a compulsory visa weaving system for citizens coming from some specific countries, such as Maghreb;
- the conclusion of a re-admission agreement regarding irregular migrants with France.

Italy signed the Schengen agreement on 27 November 1990. On 26 March 1995 the agreement entered into force for all countries except Italy and Greece due to some delays in accomplishing some of the obligations. Italy entered the Schengen space in the following year, on 26 October 1996.

² For further information regarding the dynamics of minors’ immigration from Albania, see studies and researches such as: I.P.R.S., *The voluntary return of Albanian unaccompanied minors in Italy: a psychological analysis of the conditions of return and reintegration*, May 1999; I.P.R.S., Italian branch office of the International Social Service, *Albanian unaccompanied minors, a research coordinated between Italy and Albania*, Rome, July 2001. For what it concerns the Moroccan migration of unaccompanied minors, see a recent research of R. Rossolini, *Project “minor redemption”*. *Minors between Italy and Morocco*, whose consultation is available on the website www.liberimigranti.it. On the basis of the

In Italy, according to the provisions regulating the citizenship, adopted foreign minors whose adoption judicial order is enforceable acquire the Italian citizenship at the time of the entry into force of the adoption judicial order, whereas there is no acquisition of the Italian citizenship for those foreign minors who are in pre-adoption custody or in foster care, according to Law 4 May, 1983 n. 184³. The minors who are born from foreign parents do not acquire the Italian citizenship, unless they have resided in Italy with no interruption until the age of 18 and they request the acquisition of the Italian citizenship. Finally, the children of one Italian citizen anywhere born are Italian citizens as well as children of unknown parents found on the Italian territory. Very often the cultural diversity of these minors is more difficult to get over than the linguistic one. In particular, foreign minors, sometimes precociously adult-acting, have no roots or reference families while having numerous identities. In addition, there may be big differences of habits and traditions among foreign minors themselves, depending on their rural or urban origin area of the same home country, etc.

With respect to the complexity of experiences of foreign migrant minors getting in contact with the Italian juvenile system, three levels of analysis can be identified:

- The foreign minors
- The services of the juvenile system
- Trial-and-error experiences and the cultural mediation.

The foreign minor who gets in contact with the juvenile system is identified as such through the identification assessment and the cultural milieu she/he belongs to and, moreover, according to his/her individual “migration-related project” (i.e. to earn money and send it to the family periodically and go back home as soon as possible, or to migrate permanently in Italy with his/her family and work). The educational undertaking proposed by the social workers of the institutions and the stronger or weaker capacity of this proposal to draw on the minor’s situation originate from the analysis of the combination of the above described factors. Those minors who belong to more stabilized minorities have the possibility of investing in educational projects, others, those who will have to leave the country at the age of eighteen, encounter serious difficulties in this respect, and prove not to be motivated in educational or vocational training proposals being aware that at the age of eighteen they will be expelled and/or their educational qualifications not recognized.

It is therefore important to offer different typologies of interventions according to the diversity of situations with respect to foreign minors and identify integration opportunities for those particularly disadvantaged.

2. Legislative provisions and different opportunities

The Italian legislative provisions in the field of juvenile justice are very much innovative and advanced with respect to many other countries and in the efforts in promoting and carrying out rehabilitation measures in support of minors represent a primary objective of the Juvenile Justice Department of the Ministry of Justice. According to the different competencies in the field of rehabilitation, numerous and diversified activities aimed at the rehabilitation, reinsertion and social inclusion of foreign minors transiting in the structures of the juvenile system are carried out, particularly in the correctional institutions for minors where the foreign minors presently represent the majority of the detained under-aged persons.

The analysis of the yearly reports of the Social Services for minors reveals the effectiveness of measures and activities proposed to the young ones and, in general, a situation in which, despite the limitation of funds available, operators and social workers at all levels face up to difficulties with professionalism and intelligence, also through networking with local administrative entities and NGOs.

The evident intention of the Italian legislator to protect the condition of the foreign minor getting in contact with the penal system encounters more effective ways to be applied inside the Penal Institutions, where the numerical presence of foreign minors is more relevant. However, despite the intention of the legislator, it is nevertheless

observations of Alessandro Ciuffa, President of the Italian branch office of the International Social Service, (I.S.S.), regarding the phases of the intervention of ISS with respect to foreign unaccompanied minors, it can be deduced that until the beginning of Nineties the arrival of foreign minors was linked to contingent, critical situations and still was not identifiable as a specific phenomenon: “the Service has been constantly involved in interventions in support of unaccompanied minors only when linked to exceptional events in some countries. Therefore, the Service intervened at the time of the Hungarian Revolution in 1956 and, later on, to manage the foster care of Cambodian minors to Italian families, then to support the re-establishment of relationships between Italian minors coming from Ethiopia, inserted in institutions in Italy, and their Ethiopian mothers left behind in Ethiopia at the time of the Italian exodus from the country, and again to verify the conditions of local families and explore the possibility to return in the country of origin of Albanian minors at the time of the 1991’s exodus, or to support Ethiopian minors arrived illegally in Italy or accompanied by complaisant adults in the attempt to find job opportunities in the country or to further emigrate to other countries”, in *The foreign unaccompanied minors in the experience of the International Social Service: the need of a national and international coordination mechanisms*, in S. Gindro, *The disaggregated family. Alternative possibilities to the family and immigrant minors*, CIC Edizioni Internazionali, Rome, 1999.

³ Law 4 May 1983 n. 184, *Discipline of adoption and foster care of minors*.

evident that it is more difficult for foreign minors to have access to the opportunities offered externally, outside the institutions.

Young offenders can enter the Penal institutions for reasons of preventive detention or for the enforcement of a sentence. With reference to the first hypothesis, which is “one of the possible precaution acts”, current data show that foreign minors suffer more frequently of the measures limitative of freedom, the prison, because they are hardly eligible for other types of options. In fact, they are often without their families, without a house, they have no job or that job is unstable, and it is inevitable that the criteria of social reliability end up by putting them in a disadvantaged situation. And this happens because the evaluation of the judge regarding the risk of escape and the risk of recidivism is decisively influenced by considerations related to the individual personality, the life style, and the social, economic and legal conditions of the person to be judged”⁴.

Therefore, the same condition as a migrant, because of the lack of an external supportive social environment, and because of the existing weak and precarious external relations, puts the foreign young offender, wrongful act being equal, in a disadvantaged situation with respect to a possible Italian offender.

Similarly it happens when the judge is requested to evaluate the conditions regarding the concession of suspended sentence (art.163 penal code).

Such evaluation, according to the art. 133 of the Penal Code, relates to the individual, familiar and social life before, during and subsequent to the wrongful act. Also in this case, the specific conditions of the migrant minor more frequently expose the foreign under-aged person to an unfavourable decision. Similarly, there exists the problem of access to the measures alternative to detention. Despite the abstract possibility for everybody to benefit from these measures, in practice the foreign minors are unable to access them.

These legal institutes, despite the differentiations, are based on objective criteria (i.e. the length of sentence) which very frequently occur in the sentences involving foreign convicted minors. The problem arises with respect to the subjective criteria, as the application of measures alternative to the detention implies the insertion in the territory (a house, a job, reference family members, etc.) and these pre-conditions are often lacking in the case of migrant minors.

In addition, there comes the fundamental role of the defence: the access to the measures alternative to detention implies the setting up of a proceeding through a defence motion. The quality of defence is a primary tool to acquire knowledge about timing, modes and functioning of each institute. It is easy to imagine that convicted under-aged persons, in addition foreigners and often in disadvantaged economic conditions, are very often unable to access a quality defence. In the majority of cases, in fact, foreign minors are granted the court appointed defender. This aspect must not be underestimated. A simple, technical defence does not entail the same level of guarantee of a private counsel. In the structure of the penal proceeding, a good defence can ensure the best result possible for the indicted person, or at least the attempt of pursuing the best possible result.

As a consequence, the statistical data reflect the described situation, and show that the large majority of convicted minors benefiting from alternative measures to detention are Italian.

Similarly, the concession of the suspended sentence and the placing of the offender under the supervision of social services are alternative measures which are applied with less frequency to foreign minors for the already described reasons (lack of places and situations in the framework of which the foreign offender could benefit from a measure that, in case of successful result, could replace completely the sentence), although the total number of minors benefiting from these options – according to the attached statistical analysis – has increased in the period under review (2001 – 2004).

Some critical elements have been identified through the sharing and confrontation among operators and social workers of the numerous experiences gained in the last years, working with the young foreign offenders particularly with respect to the approach and methodologies of intervention with them.

According to the operators active in this field of social intervention – qualified and experienced psychopedagogues – some of the services offered by the Italian juvenile system are not presently sufficiently “advanced”, in terms of concrete perspectives and managerial capacity, in order to develop a fair, impartial integration policy for foreign minors, *intra* and *extra-moenia*. This is a consequence of the institutional context: while, in general, Correctional Institutions for Minors have consolidated strategies and practises targeting specifically young foreign offenders, the Social Services – whose competency relates to the external penal area – perceive the increasing need to develop short, mid and long-term *ad hoc* projects for foreign minors, according to the different needs/interests linked to their individual story. It is therefore necessary to analyse and develop models of management and shared practices to respond effectively to the actual needs of foreign minors in the juvenile system, in order to support and facilitate social integration processes. The deep understanding of symbolic references and systems of values of different cultures is a necessary tool for the reciprocal respect among minors, between minors and adults. And reciprocal respect is the best guarantee for a good coexistence.

⁴ PASTORE M., already cited.

3. Provisions, initiatives, cultural mediation

In the following paragraph, the main provisions issued by the Juvenile Department in support of foreign minors are listed, together with initiatives and activities carried out or being carried out in support of minors transiting in the juvenile system, with a specific reference to foreign minors.

3.1 Circulars and other provisions

The Juvenile Justice Department guidelines regarding the activities of cultural mediation are particularly relevant. This circular (n. 6/2002), dated 2002, first of all envisages a response to the increasing number of foreign offenders entering the juvenile system and the consequent immediate need to set up a more direct contact with the foreign minor. In this context, the cultural mediator is defined as “an active element participating at the institutional life at all phases, facilitating the communication between the minor and the operator”. The circular provides operational indications regarding the activity of cultural mediation, on one side, and on the other it describes the aspects related to the selection procedures of cultural mediators, their professional requirements, the contractual regulation of their cooperation and the deontological code to be respected.

Presently, cultural mediators are available in the majority of Correctional Institutes for Minors, First Reception Centres and Social Services for Minors⁵.

Additional guidelines on the treatment of foreign minors are included in the Circular n. 1/2001 issued by the Committee for Foreign Minors at the Prime Minister’s Office.

Since 2001, the Department has been issuing a directive yearly to “protect the right to express the individual’s religious beliefs”. This directive provides the Correctional Institutions with information and guidelines in order to facilitate, during the period of Ramadan, the observance of cult practices and the respect for religious precepts related to this religious feast.

A Memorandum of Understanding with “Opera Nomadi” (Roma Charity Institution), IRRE Veneto, the Public Education Department of Veneto Region, the University of Padua, in order to support training and orientation initiatives targeting the social workers and operators aimed at supporting the school insertion of Roma and Sinti minors in the penal external area.

3.2 School activities

Courses of alphabetisation are active in the Correctional Institutes for Minors, with the direct involvement of cultural mediators.

Additional modular courses are also organized aimed at the acquisition of intermediate educational degrees for minors transiting for short periods of time in the Correctional Institutes. The minors participating to these courses are primarily foreigners, both males and females (statistical data of the Department of Juvenile Justice 2003-2004: 58% foreign males, 11% foreign females, 30% Italian males, 1% Italian females).

3.3 Professional Courses

Various vocational training courses have been activated on the basis of the minors’ interests and attitudes and the opportunities offered in the local labour market. The data related to the percentage foreign of minors enrolled in vocational training courses are the following: in the year 2003, 47% foreign males, 9% foreign females, 43% Italian males and 1% Italian females.

3.4 Cultural, recreational and sport activities

As a consequence of the increasing involvement of local entities, associations of volunteers and NGOs in the organization of recreational and sport activities, the provision of opportunities and occasions of exchange and integration with the territory is strongly diversified. Besides, in cooperation with the local Public Health Services, courses of health education as well as for the prevention and treatment of psychological problems and drug addiction are organized. The innovative methodologies and the interactive approach pursued allow the active involvement of both Italian and foreign minors.

3.5 Studies, researches and projects

During the last years, the Department has initiated and carried out various researches, studies and projects on the condition of the foreign minor in Italy and the services of the juvenile system.

In particular, the following ones among others:

- “Giustamente”, an analysis of good practices targeting minors in the juvenile system: many of the excellence experiences reported, relate to foreign minors, as the project “La Rou(t)e”, four action-

⁵ Correctional Institutes for Minors, First Reception Centres and Social Services for Minors, which are the three structures where foreign minors transit when getting in contact with the Italian juvenile system.

projects in support of Roma minors carried out in Southern Italy, or the Semi-residential Educational Centre targeting Roma young offenders or at high-risk of involvement in delinquency activities.

- A study on the conditions of detained foreign minors, in cooperation with ISTAT.
- A three-year research project titled: *“Pushing, production and use of drugs among foreign minors: an analysis of delinquent behaviours of foreign minors in Ital and in the structures of the juvenile system”*. In the framework of this project, carried out in cooperation with the Psycho-analytic Institute for Social Researches, interviews have been carried out with minors, directors of institutions as well as social workers and operators. Emblematic cases of foreign minors of first and second generation were collected and focus-groups with the operators were organized. Among project results, there is the creation of a website (www.gavroche.it) dedicated to all matters related to juvenile foreign delinquency, providing a collection of researches, legislation and international directives.
- A research project: *“In-To: Inside the outsiders: Deviant Immigrant Minors and Integration Strategies in European Justice Systems”*, concerning an analysis of the phenomenon of foreign delinquent minors and integration strategies at level of European Juvenile Systems.
- It is in its conclusive phase, the research project: *“GiJJS – Gender in Juvenile Justice System”*, in the framework of the EC AGIS 2005 program, aimed at exploring specific aspects of delinquency related to the female gender (both nationals and foreigners) in four EU Member State and one Accession State: Italy, France, Spain, Germany and Romania.
- Other national researches, in the field of minors’ abusers and grave deviating behaviours, take into account also aspects specifically related to foreign minors.

3.6 Training

The Department supports the participation and involvement of the specialized staff of the Juvenile System to training seminars (compulsory for the newly inserted staff) and/or updating training courses on matters related to minors offenders and, in particular, foreign minors.

In the last years, inter-ministerial courses on unaccompanied foreign minors and abuse and violence on minors have been organized at the three Training Schools of the Department, in cooperation with the Public Security Department – Criminal police section. This initiative has provided a unique opportunity to exchange experiences of their daily activities with minors among different actors (law enforcement, educators, and social assistants).

It is clear that each one of these activities can be improved and enhanced. It is worth underlining that, in the last years, the internal Units within the Juvenile System dedicated to research, project and training activities have started to be very accurate in the oral and written use of terminology (what the term “foreigner” means, as well as “person of Roma ethnic origin”, the meaning of terms such as “multi-cultural” or “inter-cultural”, etc.). This attention demonstrates the strong intention to abandon old stereotypes and prejudices induced by unfounded sources, offering at the same time more qualified quantitative and qualitative data, and oriented to the understanding of the reference cultures of the foreign minors.

3.7 Conclusions

In order to reflect seriously the deep and actual transformations in our country, and in order to avoid too sharp disparities, there is the strong need of a radical, cultural change that may support the adoption of new tools and the pursuing of new approaches, both in the penal and social areas, up to now still very difficult to be defined.

Some recently published researches⁶ regarding foreign minors offenders show that both social workers and operators active in the Social Services for Minors as well as the reference judiciary forces (as described in the Annual Reports of the Minors’ Prosecutors Offices) are strongly critical regarding the appropriateness of current provisions and available tools in responding to the phenomenon of foreign minors offenders, not only for the limitation of financial resources allocated to this purpose, but also for the limitations inherent to the current, possible judiciary practices.

It is extremely difficult to reconstruct the individual stories of these minors and collect the necessary information in order to carry out positive, punctual projects. Many actors come in the play, not always with a positive influence in the overall management of the case (International Social Service, the Committee for Foreign Minors, the Juvenile System, magistrates, the defence, tutors, consulates, social workers, etc.).

In particular, there is the need for a stricter cooperation among judiciary actors, the Services of the Juvenile System, local Entities, who are competent in the field of health and social assistance, the Offices of Minors at the local Police Stations, the Immigration Offices, the civil rights Offices set up at the Territorial Government Offices, the decentralized services of the Ministries of Labour and Education, in a nut-shell, to develop the so-called “operational networks”.

⁶ BELOTTI V., MAURIZIO R., MORO A.C., *Foreign minors in jail*, Milan, Guerini e Associati, 2006

Only through the involvement of all available local resources the foreign indicted/convicted minors will be guaranteed in their “fruition of a system of equal opportunities and therefore the possibility to access all measures and benefits envisaged for minors either under preventive detention rules or under the enforcement of the sentence. In addition, the activation of a network of services aimed at the reception and the social integration is also strictly related to the possibility of fully enforcing the civil judicial decisions adopted by Minors’ Tribunals along with the penal decisions, aimed to protect foreign minors⁷.

In conclusion, the path bringing to integration and equal opportunities is still difficult to pursue and still presents many lights and shadows, despite the strong will of those working in this sector to support such approach. The problematic matters arising in the Italian Juvenile System can be faced and possibly solved only through the support of and the networking with the whole civil society and local territories.

E - SPECIFIC QUESTIONS PARTICULARLY RELEVANT

1. The instruments of clinical and psycho-social assessment

The study and the assessment of the subject “personality” represent a sort of confined passage within the penal investigations (inquiries) for those subjects in the developmental range of age, on the sheet of ruled paper of detailed indications of our legal system. From a criminological point of view the regulations appear, primarily, in the art. 133 c.p (1930) that requests to the judge to be aware of the young offender personality.

Later, art. 11 of the of the Royal Decree Law 1404 of 1934 (institutive of the Juvenile Court) announces that the Public Prosecutor, The Court and the section of the Appeal Court can have information and ask for technical consultation without any formal procedure, whenever it must be evaluated the young personality and the causes of his irregular behaviour” (co. 2). The investigations must be effected in order to asses the earlier personal and familiar penal questions of the young offender, on a physical, psychic, moral and environmental point of view (co. 1).

The art. 9 of the actual DPR 448/88 is also relative to the “assessment of the young personality”.

The art. 9 substitutes the art. 11 and introduces the concept of resources and conditions (instead of causes) in order to:

1. acknowledge the criminal responsibility and the fact importance;
2. define the most adequate penal measures.

2. Goals and criteria of the assessment

Taking into account the personality assessment criteria within the criminological field, it is firstly necessary to put in evidence that the concept of personality is not referred only to the intra - psychic characterizations, but includes the study of the familiar and social resources in relation to the development stage, in consideration of the individual, familiar and psychosocial risk factors.

The “minimal conditions” for a correct clinical and psychosocial assessment provide for the observance of some criteria:

- To use the highest possible number of possible informative sources;
- To effect a detailed personal anamnesis (physical and psychiatric), familiar and social anamnesis ;
- To use different methods: interviews, questionnaires, tests;
- To respect the autonomy role of the expert who effects the assessment;
- To avoid a too specialized language;
- Not to deduce directly the existence of a “pathology” on the base of a deviance condition

The most useful outcomes don’t come from a unique observational point of view, but derive from the integration between evaluation instruments that allow to draw a profile of personality by the integration between cognitive area and relational-affective area, starting from the “evidences” that emerge from the analysis of his personal, familiar and social condition and from the study of his adaptive resources. New models in the psychiatric and psychosocial field (Fulford, Stanghellini, Broome, 2004) underline the opportunity to connect the evidence based paradigm with the *values-based practice* (VBP), a new model of the mental health that unites data of evidence with the values’ system: the philosophical approach offers those instruments that allow to work focusing the attention on the superior interest of the subject in examination. The VBP constitutes a theoretical model and a methodological apparatus that occupies an essential role in the *decision making* processes within the sanitary and psychosocial assistance, representing a series of values that because of their diversity can also be in conflict. The methodological apparatus of the VBP is based on key indicators, whose starting points consist in the particular attention reserved to the values’ system to which every single subject (and every family)

⁷ BELOTTI V., op. cit., pag. 175

refers and the multi-disciplinary approach, where the different values of the members of the multi-disciplinary *équipe* concur to a balanced approach useful in order to reconstruct the differences, promoting the collaboration between those who are involved in a decision making process based both on the evidence both on the values.

Referring to the treatment choices and the question of the of the social dangerousness, a first necessary assessment must be done, in general, on the risk factors that can influence the evolution of a subject to a delinquent behaviour (antisocial and violent) (Bailey et al, 2001; Garbarino, 2001).

Family features:

- Parental antisocial personality disorder;
- Violence witnessed;
- Abuse, neglect, rejection.

Personality features:

- Unemotional personality style;
- Violent/sadistic fantasy;
- Tendency to view people as objects;
- Paranoid ideation;

Environmental characteristics:

- Repeated relational experiences of loss and rejection
 - Threats of self-harm;
 - Hopelessness and helplessness;
 - Lack of social inhibition in groups
- Substance misuse;
- Disphoric/ bipolar temper.

(Mental Health Promotion and Mental Disorder Prevention. A policy for Europe, Imhpa, 2005).

A deviant behaviour emerge more frequently in those children or in those adolescents whose coping ability and protective factors (among these: school and professional success; steady affective relationships; positive relations with peers) are not able to contrast the long term vulnerability factors and the episodic stressors. Research has shown the necessity of a revision of the concept risk: it would be necessary to assess the risk that an adolescent, in certain circumstances, behaves in a deviant way rather than the individual dangerousness.

Aggressive behaviours in childhood can evolve in violent and antisocial behaviours if not managed with immediate answers and interventions (Farrington, 1993; Loeber, Hay, 1997).

The main predictor of deviance in adult age result an antisocial behaviour in adolescence or earlier violence episodes (especially if repeated and associated to sadism) (Loeber, 1990). The development of the deviant behaviour is part of a wide scheme of deviant development that usually starts with a disruptive not criminal behaviour (Rutter, Giller, Hagell, 1998; Loeber, Farrington, 2000). The analysis of the international literature (Farrington, 1995) suggest that serious antisocial behaviours in adolescence difficultly appear: more than the 90% of youths authors of crimes with recidivism would have problems of antisocial behaviours from the age of 7 years old and had already been identified as aggressive and “problematic”. In Italy it is difficult to outline reliable data in this direction because the studies on the recidivism, both in statistical method and in clinical and criminological evidence, are increasing only in these last years not reaching yet meaningful results in representative terms.

Starting from these epidemiologic and psycho- social considerations, the expert can, through a prognostic perspective, be engaged to assess the individual, psychosocial and cultural condition of the subject author of crime and the “risk of recidivism”, in order to plan, within the sanctions’ decisions, psychosocial interventions of prevention - in rehabilitation and therapeutic terms – considering the environmental and familiar context of the subject his origins and his system of familiar, cultural and social values.

These assessments need an integration work (network work) between the different subjects and agencies involved in the planning and actuation of the project:

- Juvenile Justice System;
- Families;
- Social Services;
- Public forces;
- Social volunteers;
- Expert consultants (child psychiatrics; psychologists)

3. Assessment instruments

The *BARO*, largely used in the north of Europe, represents a semi-structured interview useful as first clinic examination of a minor author of crimes. Two or more informers can be used, chosen among the minor itself, the parents, the teachers, the public forces. The instrument examines the impact of the individual and psychosocial problems and the subject level of functioning, in order to be immediately used from the judge in the decision making.

The areas of functioning considered are:

Delinquent act
Development
Physical handicaps/diseases
Externalizing disorders
Internalizing disorders and abuse
Functioning at home
Functioning at school
Functioning in spare time
Environmental factors

For each one of these areas the following notes are given:

No information	No concern	Some concern	Much concern	Very much concern

The conducted studies have shown the consistency, the clinical utility and the reliability of this instrument, easily applicable and able to give indications for the decision process within the judicial proceedings.

Other assessment instruments can result useful both to consider the psychosocial “risk” indicators that can appear together to a violent behaviour both to plan specific models of intervention in consideration of the subject characteristics, of his familiar and environmental context and of the consequent adaptive problems, offering a real and concrete perspective of integration. Structured and internationally reliable assessment protocols, such as *SAVRY* (Borum, 2002) and *Mc Arthur Risk Assessment* can be used. These instruments, largely used in the north European countries, allow to take in consideration important elements to achieve a “*psychosocial risk*” assessment of a minor author of crime.

The *MCARTHUR RISK ASSESSMENT* provides the analysis of some variables:

1. Dispositional factors (demographic, personality, cognitive);
2. History factors (social, familiar, schooling history, clinical history, earlier events of violence and crimes);
3. Context factors (perceived distress, social support, reach to fire-arm);
4. Clinical factors (clinical diagnosis, drugs misuse).

The *SAVRY* is a semi-structured questionnaire that allows an assessment of the subjects needs and of psychosocial risk of recidivism (The Salford Needs Assessment Schedule for Adolescents. *Psychological Medicine*, 29(4): 891 - 902).

It is based primarily on the analysis of the historical risk factors (codification: low, moderate, high):

1. History of violence;
2. History of non-violent offending;
3. Early initiation of violence;
4. Past supervision/intervention failures;
5. History of self-harm or suicide attempts;

6. Exposure to violence in the home;
7. Childhood history of maltreatment;
8. Parental/caregiver criminality;
9. Early separation from caregivers;
10. Poor school achievement.

The following environmental and social risk factors are considered:

11. Peer delinquency;
12. Peer rejection;
13. Stress and poor coping ability;
14. Poor parental management;
15. Lack of personal/social support;
16. Community disorganization.

And the individual and clinical risk factors:

17. Negative attitudes;
18. Risk taking;
19. Drugs misuse;
20. Anger management problems;
21. Low empathy/remorse;
22. Attention deficit/hyperactivity;
23. Poor compliance;
24. Low interest/commitment to school.

The assessment must be concluded with the analysis of the protective factors (codification: past, present):

- Pro-social involvement;
1. Strong social support;
 2. Secure attachment and strong bonds;
 3. Positive attitude toward interventions and authority;
 4. good commitment to school;
 5. Resilient personality traits.

4. General considerations

The Juvenile Court in Italy is characterized by an overlap between legal and administrative competences. In 1989 the recognition of the rights of children according to the principles enounced by the Convention of New York has transformed the *minor* from unable, submitted to protective powers exercised discretionarily in his interest, to a *subject titular of subjective perfect autonomous rights* though with the particularities established from the international and internal codes in order to compensate his natural position of weakness because subject in developmental age.

The recent reform of title V of the constitution has furthermore differentiated the jurisdiction from the administration. The first one is pertinence of the State (art.117 lett. L) and, so, of the judicial organ, where the system of the interventions and of social services belong to the legal and administrative competence of the regions and of local agencies. The centralized and generalized concentration between assistance and control that was at the base for structure and functions of the juvenile court doesn't exist anymore.

For these reasons the function of protection from someone so strongly claimed for the juvenile court result largely overcome. The court has to guarantee the rights of the personality recognized from the law. Its decisions must be jurisdictional according to the art 3 co. 1 of the convention of New York” *in all the decisions relative to the children of competence both of the Social Assistance Public and Private Institutions, of Courts, of the Administrative Authorities, of the Legislative Organs the superior interest of the child must be a main consideration*”.

The judicial decisions can not be confused with the legislative and administrative ones. Each one of these maintains its own nature and function, even if every institution will have to consider mainly the superior interest of the child. The used systems can be different, but it is necessary to distinguish the *principle of legacy*, which corresponds the submitting of the judge to the law, from the one of *beneficial*), the empirical criteria that conduces the assessment of the minor personality and the choice of the adequate measures for the development of his personality. The Social Service, for example, can autonomously arrange the familiar care foster of a minor

temporarily in a condition of lack of an adequate familiar context. In respect of the rights of the children and of the parents, the familiar care foster can happen only with the consent of the tutor and after having heard the opinion of the minor (art. 4 L. 184/83). The measure will become executive by the judge of the place where the minor resides, in order to verify the legitimacy. The judge and the service work together in this “strong” model of juvenile judicial intervention characterized from wide obliging and discretionary powers; the prescriptions to parents, according to the art. 12 of the law 184/83 will be possible only if the service elaborates a shared project with the judge.

The confusion between the legal standards about the relational rights of the personality, considered from the authority and that the protective intervention should assure, and the affective well-being, the psycho-physical equilibrium, the health of the interest subject, risk to produce a personal and social prejudice to whom is submitted to decisions that influence his life. This happens especially to the foreign minors for whom it is very difficult to comprehend how the same social agency (Court or Social Service) can sum and effect both control functions both of support and aid. The aid relation should focus on the children needs and on the exigencies of the psychic, familiar and relational reality of the subject without the interferences of legal models that interpret the reality on the base of social-ethnic options for the judicial regulation of the people conduct, when a comparison is stated (such as for the foreign) and, sometimes, emerge a conflict of interests between very different rules and values systems.

In this perspective some changes of our judicial and legislative ordering result necessary, according to what underlined from the international conventions and from our Constitution:

- a) The same Convention of New York already ratified and the Convention of Strasbourg of 1996 recognize the autonomous position of the child within the judicial proceedings that concern himself – also in consideration of the possible conflict of interests with who has the parental authority – and give importance to his ability to discern providing specific juridical rights to be exercised directly or with the assistance of a *legal representative*, who will be able to be, *a person, a lawyer, or an organ designed to act toward the judicial authority representing the minor* (cfr. art. 12 co. 2 Conv. of N. Y. and art. 2 lett. c Conv. of Strasbourg of 1996).
- b) If the parental authority (temporary or definitive) is weakened or suspended, it is necessary in the judicial proceedings to nominate a *legal tutor* or a guarantor of the minor subject involved in the judicial proceeding. This measure allows to separate the responsibilities and the functions of the different social agencies, giving back to the judge (in accordance with the model of jurisdiction proposed by the New Text of the art. 111 of Constitution) his function of impartial judge, the *guarantor judge* who operates above the other powers to realize a function of protection of the fundamental rights of the person.

This model result in opposition with the one based on the concept of *administrator judge* belonging to the ordering of the totalitarian state gifted of wide discretionary powers, also of self-activation. Also, the nomination of a *legal tutor* allows to mark a distinction between the sanction’ interventions for the subject author of crimes (established from the judge in a perspective of attribution of responsibility) and the psychosocial interventions in a re-education and treatment perspective (carried out from the social service), while the legal tutor is responsible of the care of the minor submitted to his protection; the tutor represents the minor in all the civil proceedings and in the cases in which the minor is owner of a patrimony the tutor administers his belongings (art. 357 c.c.). The tutor competences don’t include the daily caring of the minor that is assumed by the family or by the community to which the subject has been entrusted.

Since the minor - in a condition of lack of a parent with parental authority - doesn’t have the ability to act in the patrimonial questions, he will be represented by the tutor. Relatively to the personal questions and with the goal to represent and protect his rights, it is necessary that the tutor, on the base of the national legislation and of the international Conventions, involves the minor of age sound minded – in the most adequate ways - in the decisions about him. In these cases the tutor doesn’t substitute to the minor but accompanies and supports him making an intervention only if necessary in order to better represent his opinion, known through the systematic practice of listening and diffused to the other subjects competent to decide the future of the minor. The tutor, in relation to the minor age and to his effective sound minding and willing, represents the young point of view supporting him in the expressing directly his opinions. So, the tutor has to inform the minor on the questions that concern him, also referring to the judicial proceeding in which is involved following the most adequate ways for his age and his stage of development. The tutor carries out his functions under the supervision of the tutelary judge; he relates with the Social Services that supervise the minor and with the tutelary community that eventually host him, contributing to a clearer separation of the respective functions and competences within the re-educative-treatment project.

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