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PROTECTING JUVENILE DEFENDANTS IN THE TRIAL AND FROM THE TRIAL: SPECIAL SAFEGUARDS IN EU AND ITALIAN REGULATIONS

OCHRONA NIELETNICH OSKARŻONYCH PRZED ROZPRAWĄ SĄDOWĄ ORAZ W JEJ TRAKCIE: POMIĘDZY WŁOSKIMI A UNIJNYMI GWARANCJAMI PROCESOWYMI

Both the Directive 2016/800/EU and the Italian national law on juvenile criminal trial (presidential decree no. 448/1988) aim to provide specific safeguards for young suspects and defendants to protect their fragile and still-developing personality, and to ensure that any crime allegedly committed by the minor is an isolated incident in their past. These safeguards are required throughout criminal proceedings, especially during the trial stage, which can be confusing and overwhelming for a juvenile and may seriously impact their development. The trial phase – along with the precautionary limitation of personal freedom – seems to be the most dangerous procedural segment for children's personalities. The trial is where the justice 'play' comes to life on its main stage, with its whole ritual, language, and characters. When attempting to identify safeguards intended to operate during the trial phase, two main fields seem to emerge: one focuses on the issue of assistance, which has to be more profound due to the unique nature of juvenile personality and experience of life; while the other one aims to protect children's privacy so that their public image will be shielded as much as possible from the negative consequences of the trial. The article first focuses on these aspects by analysing legal regulations and the jurisprudence. In some cases, Italian legal regulation exceeds European directive standards, serving as a model for other legal systems. However, even though the internal regulation formally matches the EU requirement in some instances, it needs further improvement. Also, in terms of the law in action, the Italian jurisprudential approach sometimes weakens the safeguards provided by law, demonstrating the need for different interpretative solutions that are adequate to respect children's rights fully. In the light of such issues, the author suggests some exegetical solutions.

Keywords: juvenile criminal justice; criminal trial; privacy protection; childhood protection

Zarówno dyrektywa 2016/800/UE, jak i włoska ustawa krajowa o postępowaniu karnym w sprawach nieletnich (dekret prezydencki nr 448/1988) mają na celu zapewnienie szczególnych zabezpieczeń dla młodych podejrzanych i oskarżonych, aby chronić ich delikatną i wciąż rozwijającą

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się osobowość oraz aby zapewnić, że każde przestępstwo rzekomo popełnione przez nieletniego jest odosobnionym incydentem w ich przeszłości. Zabezpieczenia te są wymagane w trakcie całego postępowania karnego, zwłaszcza na etapie procesu, który może być mylący i przytłaczający dla nieletniego i może poważnie wpłynąć na jego rozwój. Faza procesu – wraz z zapobiegawczym ograniczeniem wolności osobistej – wydaje się najbardziej niebezpiecznym segmentem proceduralnym dla osobowości dzieci. Proces sądowy jest miejscem, w którym „sztuka" wymiaru sprawiedliwości ożywa na głównej scenie, z całym swoim rytuałem, językiem i postaciami. Próbując zidentyfikować zabezpieczenia, które mają działać podczas fazy procesu, wyłaniają się dwa główne obszary: jeden koncentruje się na kwestii pomocy, która musi być głębsza ze względu na szczególny charakter osobowości i doświadczenia życiowego nieletnich; drugi ma na celu ochronę prywatności dzieci, tak aby ich publiczny wizerunek był w jak największym stopniu chroniony przed negatywnymi konsekwencjami procesu. Artykuł koncentruje się na tych aspektach, analizując regulacje prawne i orzecznictwo. W niektórych przypadkach włoskie regulacje prawne wykraczają poza standardy dyrektywy europejskiej, stanowiąc wzór dla innych systemów prawnych. Jednakże, mimo że regulacje wewnętrzne formalnie odpowiadają wymogom UE w niektórych przypadkach, wymagają one dalszej poprawy. Ponadto na poziomie prawa w działaniu włoskie podejście orzecznicze czasami osłabia zabezpieczenia przewidziane przez prawo, co wskazuje na potrzebę różnych rozwiązań interpretacyjnych, które są odpowiednie do pełnego poszanowania praw dziecka. W obliczu takich kwestii autor sugeruje pewne rozwiązania egzegetyczne.

Słowa kluczowe: wymiar sprawiedliwości w sprawach karnych nieletnich; proces karny; ochrona prywatności; ochrona dziecka

I. THE EUROPEAN FRAME: THE 2016/800/EU DIRECTIVE

As the writer Giovanni Papini once said, youth 'is the only time in which men and women are like white and flexible iron, ready to be poured into awful or divine moulds because they are not yet eternally thickened in the hard ice of habits'.[1] Indeed, young people are subject to a higher negative impact by the criminal justice system due to their transitional stage of development and lack of a fully formed personality. This can result in heightened emotional stress, feelings of alienation, damage to social relationships with friends and family, and negative impacts on their self-image and perception. Because of this troubled background, the situation of juveniles – along with criminal and criminal procedure traits – captures the attention of international legal standards and regulations.

[1] Papini (1932): 3. More scientifically, Scott, Steinberg (2008: 32) affirm that adolescence is a transitional period 'because it is marked by rapid and dramatic change within the individual in the realms of biology, cognition, emotion, and interpersonal relationships, and by equally important transformations in major social contexts – family, peer group, and school. Even the word "adolescence" has origins that connote its transitional nature: it derives from the Latin verb *adolescere*, to grow into adulthood. At the same time, adolescence is a formative stage in the sense that events and experiences that take place during this period place individuals on particular pathways into adulthood that may set the course of their future lives'.

This was well diagnosed by Rap and Zlotnik, who said that 'in recent years, children's rights have been increasingly addressed in a structured and coordinated fashion in EU legislation and policymaking, whereas in the past it took place in a piecemeal fashion'.[2] Following this path, Directive 2016/800/EU of the European Parliament and of the Council of 11 May 2016 on the procedural safeguards for children who are suspects or accused persons in criminal proceedings (hereinafter: Directive) is significant. It aims 'to establish procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, can understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration'.[3] Member States pursue this ambitious purpose by adopting minimum standards in their criminal systems.

Among all the drafted juvenile protection strategies, it is interesting to see which safeguards the Directive raised to soften the impact of criminal justice. In particular, our focus lies on those aimed at mitigating the effects of the trial phase, which – along with the precautionary limitation of personal freedom – seems to be the most dangerous procedural segment for children's personalities. The trial is where the justice 'play' comes to life on its main stage, with its whole ritual, language, and characters. Attempting to identify the safeguards intended to operate during the trial phase from the Directive, two main fields seem to emerge: one focuses on the issue of assistance, which has to be more profound due to the unique nature of juvenile personality and experience of life; while the other one aims to protect children's privacy so that their public image will be shielded as much as possible from the negative consequences of the trial. The paper will analyse these points and their translation into the Italian legal system.

II. ALL-ROUND SUPPORT FOR THE DEFENDANT

The Directive does not establish a separate justice system for minors, possibly to prevent excessive interference with national legal systems. This approach aligns with the Beijing Rules, which do not specifically support a separate jurisdiction. According to Article 2 § 3 of the Beijing Rules, States must establish a set of laws and regulations specifically applicable to juvenile offenders. This does not necessarily imply the creation of a separate court system. It is, however, crucial to ensure that the treatment of juvenile offenders

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[2] Rap, Zlotnik (2018): 112.

[3] Directive, § 1. It has been noticed that this Directive differs from the previous ones issued according to the Roadmap for strengthening the procedural rights of the suspected or accused in criminal proceedings, adopted in November 2009 by the EU Council, 'because it regulates various procedural rights that can be applied only to a specific category of persons, suspect/accused children' (Radić 2018: 471).

is specialized to protect their interests and create an environment of understanding where they can freely express themselves (Article 14 Beijing Rules).[4]

The Directive is therefore focused on ensuring a 'special environment' – not necessarily in a 'specialized body' – to protect the juvenile defendant in the trial and from the trial. For instance, before the Directive was issued, it was clear from the European Court of Human Rights that the effective participation[5] in the trial mentioned by Article 6 ECtHR does not necessarily require a detailed understanding of every technical aspect of the trial. Nonetheless, it requires a 'broad understanding of the nature of the trial process and of what is at stake, including the significance of any penalty which may be imposed'.[6]

The path opened by the ECHR is the same one followed by the European Union. According to Article 4 § 1 of the Directive, during criminal proceedings, juvenile suspects or accused not only have the right to be 'informed promptly about their rights in accordance with Directive 2012/13/EU' but also 'about general aspects of the conduct of the proceedings'. § 2 specifies that 'Member States shall ensure that the information referred to in paragraph 1 is given in writing, orally, or both, in simple and accessible language, and that the information given is noted, using the recording procedure in accordance with national law'. Children can participate in their trial, organize their defence, and even understand what's happening only with adequate knowledge about the rights they can exercise and their consequences. Active participation in decision-making improves young defendants' understanding and increases their readiness to accept the final decision.[7]

Most of the information contained in this regulation is supposed to be given to the juvenile starting from the earliest phases of the proceedings, especially during investigations, and much has been said about when and how the information on rights should be made available.[8] But is a Member State entirely in line with the Directive after providing complete information on rights at the beginning of a criminal proceeding? Or is it asked to do something more?

Some of the Directive provisions allow us to say that national law must ensure that juveniles receive prompt information about rights and continue to be informed about the path and shape of the proceeding. It is crucial to our purpose to refer to the information duty on the 'general aspects of the conduct of the proceedings', present in Article 4 § 1 of the Directive. Certainly, a warning is not ideal for providing this kind of information, and surely it is not suitable for giving it once and for all, as it depends on the various proceeding routes. In this regard, the Directive specifies that 'a brief explanation about the next

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[4] The Council of Europe's Rec (87) 20 is more outspoken about social responses to juvenile delinquency and encourages the Member States to avoid referring juveniles to the same jurisdiction as adults. However, the Council of Europe's recommendations are nothing more than a mere aspiration (Article 5 Rec. (87) 20).

[5] On this aspect, see Forde (2018): 265–284.

[6] *S.C. v. the United Kingdom*: § 29.

[7] Rap (2016): 101.

[8] de Vocht et al. (2014): 492.

procedural steps in the proceedings in so far as this is possible in the light of the interest of the criminal proceedings, and about the role of the authorities involved. The information to be given should depend on the circumstances of the case'.[9] Furthermore, it is interesting to highlight that this part of the Directive was introduced at the request of the Parliament, which prevailed over Council opinion, according to which 'providing such information is the responsibility of the lawyer', 'might prejudice the proceedings', and 'would constitute a substantial extra burden for the competent authorities'.[10] In the end, general information about what is happening in the proceeding, and of course during trial, must be given by all its participants – prosecutor, lawyer, judge; everyone within the limits appropriate to their role and in accordance with the actual procedural *iter*.

Moreover, Article 4 § 2 of the Directive affirms that information must be given – in writing, orally, or both – 'in simple and accessible language' so that young accused and defendants can understand it, despite their incomplete education and social development. Indeed, statistics indicate that around 60% of the minors who fall into the criminal justice machine have speech, language, and communication needs; 30% have a learning disability.[11] Compared with the average adult population, young offenders exhibit much higher rates of learning disability[12]; post-traumatic stress disorder[13]; and attention deficit hyperactivity disorder.[14] Furthermore, their empathetic skills, their ability to understand the perspective of others, their capacity for autonomy and resisting social pressure, and their ability to experience guilt and shame, are all underdeveloped.[15] In these cases, juveniles' ability to understand the criminal system and communicate their needs is even more negatively affected.

These rules and aspirations allow us to say that the informational duties do not end with the first contact with the child. All involved parties must follow proper procedures and communicate in clear and comprehensive language to ensure the juvenile's understanding. In every procedural step, someone must

[9] Directive, § 19. Garrido Carrillo, Jiménez Martín (2021): 75, suggested that 'it is appropriate to provide the child with an explanation of the different stages of the proceedings, and the role of the various intervening authorities'.

[10] This is reported by Cras (2016): 113.

[11] Bryan, Freer, Furlong (2007): 505. On a more specific topic, see Hughes et al. (2017): 1106: the prevalence of language and communication impairments in adolescents in custody is much higher than that seen in the general population, with estimates ranging from 60–90% compared to 7–12%, respectively.

[12] Hall (2000): 279. See also Zhang et al. (2011): 15, where it's reported that 'on average, it took about 2.75 years for offenders with disabilities to be referred again, whereas it took about seven years for offenders without disabilities to be referred for the second time'. Also, empathy has a role: Jolliffe, Farrington (2004: 267): 'cognitive empathy has a stronger negative relationship with offending than has affective empathy'. It has been assessed that a part of treatment of juveniles can be focused on empathy improvement, and that this has a positive impact on recidivism rates (Narvey et al. 2019: 45–67).

[13] Steiner, Garcia, Mathews (1997): 357.

[14] Kazdin (2000).

[15] Stone (2010): 292.

clearly explain – although it is not mandatory that this be in an oral form[16] – to them what is happening, why it is happening, and what can happen next.

On this matter, Radić says that the 'Directive should have prescribed that every MS should implement in their legislation some kind of procedure to determine in each individual case whether the suspect/accused child fully understood his/her rights, and the concept of the criminal proceeding, or if he/she needs extra explanation or help in understanding and exercising those rights'.[17] The Directive does not impose the burden to ensure that juveniles fully understand the meaning of given information. However, the Directive prescribes that information on rights and activities must be provided during all the proceedings and in a child-comprehensible way. Ultimately, it is an obligation of means, not a specific-result obligation: the juridical system and its characters must do whatever it takes to inform and explain.

Article 20 of Directive 2016/800/EU constitutes a key provision about the necessity of being clear and understandable to the young defendant. Member States must ensure the specific preparation of the people dealing with children during the proceeding.

For what concerns the trial phase, § 2 of Article 20 of the 2016/800/EU Directive affirms – with specific reference to magistrates – that 'without prejudice to judicial independence … Member States shall take appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field, effective access to specific training, or both'. According to the exemplification made by the 'whereas' n. 63, this specific training shall be focused 'in particular with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to children'.

Moreover, it shall be borne in mind that public authorities must operate according to an individual assessment when giving information and making decisions on children's procedural destiny.[18] Article 7 of Directive 2016/800/EU embeds this fundamental cornerstone of the juvenile system. It embraces this principle and imposes on Member States the obligation to 'ensure that the

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[16] 'The morphological and functional completeness of the central nervous system occurs around the age of 20. The areas developing at last during adolescence are the frontal and prefrontal cortex. They are responsible for self-control and cognitive control and the latter has the task of inhibiting emotions'. But, also, 'these factors make adolescence the ideal age to try "therapeutic interventions", especially in adolescents at risk, aimed at strengthening the resilience of the future adult and preventing alterations in social and psychological behaviour' (Muglia 2020). On this topic, see also Whittle et al. (2014): 7–17; and Haines et al. (2021): 275–298, according to whom the development processes during adolescence 'are crucial to the consistent regulation of feelings, stress, and impulses in different social contexts, which is dependent on connectivity between the cognitive processes of the frontal lobes and the emotional processing performed by the amygdala'. That's why 'it is of importance that children are provided with explanations and support to be able to understand the implications of their rights (or waiving these rights)' (Rap et al. 2016: 28).

[17] Radić (2018): 485.

[18] Panzavolta (2019: 93): 'in any case, each system leaves room for discretion in the end, albeit to a different extent. However, there is a need for greater flexibility in the system for the minority, which is expressed in less rigid rules'. On the topic, see Vaičiūnienė (2020).

specific needs of children concerning protection, education, training, and social integration are taken into account' (§ 1) through the assessment of 'child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have' (§ 2).

During the trial stage, the judge must ensure that juveniles have a complete understanding of the purposes, procedural steps, and meaning of the activities that take place during the hearing; in other words, judges must ensure that children are aware of the juridical landscape surrounding them.

However, prosecutors have fewer opportunities to play an active role in the defendant's technical 'support' during the trial. That is not mainly due to their 'antagonist' role but because of their lack of directive powers in this phase (which is held by the judge)[19] and because of their lack of proximity to the child.

Lawyers' professionalism with regard to juvenile matters is considered by Article 20 § 3 of Directive 2016/800/EU. It establishes that defenders shall have particular competencies: 'Member States shall take appropriate measures to promote the provision of specific training as referred to in paragraph 2 to lawyers who deal with criminal proceedings involving children', this time 'with due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers'. The right to effective legal aid is, ultimately, enshrined by Articles 6 and 18 of Directive 2016/800/EU; about the trial phase, § 3 (d) of Article 6 states that children have the right to promptly be assisted by a lawyer when they have been summoned to appear before a court having jurisdiction in the criminal matter.

The lawyer is essential in guiding children throughout their trial 'journey'. Indeed, the judge or the prosecutor shall help the child orient themself in the trial from specific positions: the judge is ultimately the impartial subject of the trial, while the prosecutor is, in essence, a procedural opponent. In contrast, the lawyer is called to always act entirely in the interest of their client. In this case, the general principle of the child's best interest (which dominates advanced juvenile criminal systems) has the same direction as the general principle of a trustworthy defence (typical of all contemporary criminal systems). In terms of proximity, trust, and assignment, a lawyer is a subject who must make the most substantial effort to inform and guide children in their trials. Therefore, the lawyer must be fully prepared to work with children during the trial to ensure their success.

Personnel appointed to deal with the psychological assistance of children must also have specific preparation: 'Member States shall encourage initiatives enabling those providing children with support and restorative justice services to receive adequate training to a level appropriate to their contact with children and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner' (Article 20 § 4 of the Directive 2016/800/EU).

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[19] Instead of what usually happens during the investigations when – at least in adversarial systems – public prosecutors rule the phase.

Nevertheless, the assistance of children during a trial is not only technical; they also have the right to be supported during this difficult time by people they trust. It is impossible to demand specific preparation from these people on how to deal professionally with the issues of a juvenile involved in criminal proceedings. Nevertheless, by representing a positive model for the child, they can be an essential moral support at a challenging moment in the child's life.

In the first place, those who hold parental responsibility – usually parents, but legal regulations can assign this duty to other subjects – are called into action. According to Article 5 of Directive 2016/800/EU, they must be informed as soon as possible about all pertinent information regarding the minor based on Article 4 of Directive 2016/800/EU. Moreover, Article 15 of Directive 2016/800/EU affirms that the children in question can choose one of these subjects to accompany them during court hearings.

The European Directive, however, considers the possibility that those who hold parental responsibility are not reachable or unknown; or circumstances in which, due to pathologies, those people are deemed unfit for the role because their presence is contrary to the child's best interest, or when there is the risk they could 'substantially jeopardize' the criminal proceeding 'on the basis of objective and factual circumstances'. Especially under the latter case, the danger lies in the destruction or the alteration of the evidence; or when the holder of the parental responsibility 'might have been involved in the alleged criminal activity together with the child'.[20]

In these events, Articles 5 and 15 of Directive 2016/800/EU set exceptions to the general rule: the juvenile can nominate an 'appropriate adult', which must be approved by the competent authority. If children remain inactive, or if their choice cannot be accepted by the prosecutor or by the judge – depending on the stage of the proceeding, the public authority must designate another person to support the juvenile; in this case, the Directive itself takes into account the possibility of selecting this person from inside the institution in which the minor is in custody.

III. BROAD-SPECTRUM PRIVACY PROTECTION

The defendant's privacy and reputation are at risk during a criminal trial, which always generates a 'labelling effect'. The more the object of the proceeding is media-attractive, the more the consequences of the labelling are vast and severe. Once again, the danger run by an adult defendant becomes more significant for a juvenile.[21]

[20] Directive: §§ 23 and 58.

[21] In well-known English court case it was stated that 'Because the defendant is a child or young person and not an adult, his or her future progress may well be assisted by restricting publication. Publication could well have a significant effect on the prospects and opportunities of the young person, and, therefore, on the likelihood of effective integration into society. Identifying a defendant in the media may constitute an additional and disproportionate punishment on the

The impact of a negative image can destroy any chance of the minor's rehabilitation regardless of the final decision: if children turn out to be guilty, society might refuse to reabsorb them on the assumption that they will offend again[22]; if they turn out to be innocent, the stain on their image will be difficult to remove, and the subsequent risk is that children will come to conform with people's wrong perceptions. In fact, no matter how the trial ends, juveniles can perceive themselves as the 'criminals' everybody thinks they are: every possibility of social recovery is in danger if they are guilty, and a substantial unfair social treatment can await those who are proven innocent.[23]

Aware of this danger, the European lawmaker ensured children's privacy with a safeguard rule in the Directive: Article 14 not only states the vague principle according to which 'Member States shall ensure that the privacy of children during criminal proceedings is protected' but sets a more tangible protection. Member States must enforce the general rule for court hearings involving minors is that the public should be absent, or – at least – that the judge can hold juvenile hearings without the public so that no one beyond the trial's protagonists can know its detailed progress. That is because children prefer private hearings, as they often feel ashamed or intimidated by the presence of others. Many children have expressed discomfort when interacting with the justice system in the presence of numerous unknown individuals.[24]

This 'closed door' policy cannot, of course, be tout-court derogation of the general principle according to which public opinion must be able to control the justice made in courts. That is why the Directive does not impose the secrecy of trials against juvenile offenders: the complete confidentiality over the alleged criminal behaviours of the child may protect privacy and the possibility of them returning to society without extreme prejudices (whether they are guilty or not); but a 'non-classified' justice is a safeguard for the community, accused and defendants, because the public authorities have to be liable for their actions, and 'supervised' to avoid abuses.

In the case of juveniles, this 'balancing' becomes very delicate. That is why Article 14 § 4 of the Directive affirms that national legislatures shall, 'while respecting freedom of expression and information, and freedom and pluralism of the media, encourage the media to take self-regulatory measures in order to achieve the objectives set out in this Article'. In this respect, a too-specific directive could have led to a too-extended limitation of press freedom. That is also why the European Directive leaves the floor to soft law sources to regulate the phenomenon, giving much room for manoeuvre to press associations of the

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child or young person. In rare cases (and not in this case) the child or young person may be at serious personal risk if identified' (*R. v. Aylesbury Crown Court*, 2012).

[22] On this aspect and, more generally, on the topic, see Radić (2020).

[23] Bouchard (2005): 48–49.

[24] European Union Agency for Fundamental Rights (FRA), 'Child-Friendly Justice: Perspectives and experiences of children involved in judicial proceedings as victims, witnesses, or parties in nine EU Member States', Publications Office of the European Union, 2017 (https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-child-friendly-justice-children-s-perspective_en.pdf).

Member States to establish a plausible set of rules to protect minors' privacy, in close dialogue with national legislatures.

Moreover, the Directive states that audio-visual recording of questioning of the suspect/accused youngster – which shall be taken according to Article 9 of the Directive 'where this is proportionate in the circumstances of the case, taking into account, among other things, whether a lawyer is present or not and whether the child is deprived of liberty or not, provided that the child's best interests are always a primary consideration' – is not to be made public, in order not to disclose their identity (Article 14 § 3 of the Directive).

IV. THE ITALIAN PAINTING: THE PRESIDENTIAL DECREE NO. 448/1988

In 1988, Italy completely rewrote its criminal procedure system. This reform entailed a profound revolution because of the abandonment of the inquisitorial model, moving criminal justice very significantly in the direction of a much more adversarial procedure'.[25] New codifications are the product of delegation laws through which the parliament gave the government principles and powers to adopt legal acts.[26]

Since then, both juvenile and adult defendants can count on rules built on principles such as the dialectical acquisition of the evidence, the knowledge – immediately after the end of the investigative stage – of the charge and of the elements gathered against them, and a pretty sharp right of defensive assistance. Nevertheless, in the cultural climate that guided such a change, juvenile criminal trial regulation was assigned to a specific legal source: the presidential decree no. 448 of 1988 (hereinafter: the d.P.R.). This set of rules does not draw a criminal procedure for juveniles from scratch: as much as the d.P.R. is a special law, it is not autonomous, and its wagons are made to run on the rails of the new criminal trial code (the presidential decree no. 447 of 1988, hereinafter: c.p.p.). In other words, the set of rules contained in the d.P.R. regulates some traits of the juvenile proceedings, but the 'new' criminal procedure must be generally applied in the absence of a special juvenile rule. So, only for juveniles, the entire system is based on principles such as: the fast exit of the accused from the criminal proceedings, which is granted through many diversion strategies (most of them gravitate towards the preliminary hearing, seen as an ideal 'last stop' in the trial)[27]; an individual assessment for all decisions; particular attention to children's support and protection.

[25] Nelken (2015): 522.

[26] Law no. 81 of 1987, Legislative delegation to the Government for the issue of the new code of criminal procedure.

[27] This seems to be a common trait in Juvenile criminal systems built by States. According to Panzavolta (2019: 78), we see a sort of 'de-juridicisation: that is to avoid, where possible, the youngster's entry into the formal judicial mechanism, in the formal procedure'.

On paper, the d.P.R. offers children a very high standard of safeguards. In this perspective, if we look at Directive 2016/800/EU as a 'frame' which has to commonly guide Member States to issue minimum levels of protection for juvenile accused and defendants, it seems that the 'painting' represented by Italian regulation often naturally inscribes itself into it. The safeguards issued by the European lawmaker had, to a certain extent, already been adopted by the Italian system; actually beyond the expected standards, since it issued rights not taken into account by the Directive.

V. TECHNICAL, AFFECTIVE, AND PSYCHOLOGICAL ASSISTANCE

With the double objective of reducing feelings of alienation and increasing the defence standards, the Italian lawmaker imposed several filters between the minor and the harsh environment of the criminal justice system.

In the first place, technical assistance is linked with a matter we already discussed: minors are missing the necessary cultural and intellectual tools to understand what is going on and cope with it. So, they need more opportunities and skills to prepare a proper defence. To balance this weakness, the juvenile system requires that all the subjects called to act in the proceeding must be specialized and ready to deal with juvenile behaviour.

Two of these subjects – the judge and the lawyer – are expressly asked to be prepared to deal with juveniles and to ensure they understand what happens during the trial and why.

The judge must be prepared to deal with young defendants: 'the minor's right to their "own" judge represents one of the cornerstones of juvenile justice, together with the right to their "own" trial'.[28] Article 2 of the d.P.R. affirms that magistrates appointed in juvenile courts compose a specialized justice body.

During the preliminary hearing, there is a court composed of a professional judge and two honorary magistrates – a man and a woman – chosen from experts of juvenile matters. Similarly, the trial court comprises four judges: two of them are professional magistrates, and two are honorary.[29] In the Italian judiciary system, only the juvenile and the detainee fields class honorary judges as experts in non-juridical topics.[30] This mixed composition aims to have judg-

[28] Ciavola (2021): 30.

[29] 'Worthy people in social assistance, chosen among scholars of biology, psychiatry, criminal anthropology, pedagogy, psychology, who have reached the age of thirty': this is provided by Article 2 of royal law decree no. 1404/1934. For a historical overview on Italian honorary judges in juvenile trial, see Fadiga (2009). For an interesting contribution on the relationships between lawyers and honorary judges, see Abbruzzese (2006): 116–126.

[30] The *tribunale di sorveglianza*, which can be literally translated as 'surveillance court' is called to decide on detainees' requests, asks for special permission or legal benefits; it is composed of three members: one is a professional judge, two are experts in psychological, pedagogical, sociological, or medical topics.

es with a 'harmonic and multifaceted knowledge framework'.[31] Bouchard once wrote that juvenile courts have an 'amphibious nature'. They are responsible for punishing unlawful acts while protecting juveniles from society's pitfalls, especially in disadvantaged family contexts.[32] This approach was recently confirmed by the Constitutional Court, which held that the mixed composition is constitutionally bound, as it is intended to protect childhood, relevant under Article 31 of the Constitution.[33]

Turning to a provision that constitutes a specific adaptation to the European Directive *dicta*, Article 5 of the d.P.R. implementation rules specifies that it is a duty of the Ministry of Justice, in collaboration with the Supreme Council of the Magistrature, to organize apposite training and refresher courses for ordinary and honorary magistrates in charge of juvenile judicial offices, in matters relating to juvenile law, to the problems of the family, and the age of development.[34]

In addition to cultural preparation, judges are assigned a specific task according to Article 1 § 2 of the d.P.R. They must 'explain to the defendant the meaning of the procedural activities they participate in, as well as the content and the ethical and social reasons of the taken decisions'.

It is possible to criticize the rule from different points of view. On the one hand – at least according to the literal meaning – the judge is called to explain what happens in the presence of children. However, the defendant must fully understand the nature of the proceeding, but children may do not attend to the whole sequence of activities. Therefore, judges should interpret this rule broadly, as their obligation to provide information applies to all trial activities. The judge aims to ensure that juvenile defendants understand the basis for decisions made in their case, so they can take responsibility for their fate and play an active role in their trial. From this point of view, the judge appears as a sort of 'interpreter' with the duty of making the defendant understand what is going on and why: 'the court has the task of making the child understand all

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[31] Nosengo (2009): 170. It has also been said that the aim of the lawmaker lies in the will of having judges whose 'look is not only attentive, expert, sensitive, but also, multiple, and choral so that it can capture the nuances and the complexity of a developing personality and evaluate both its personal, family and social needs and resources' (Mazzucato 2008: 62).

[32] Bouchard (2005): 51.

[33] Constitutional Court, decision of 13 January 2022, n. 2: 'the juvenile offender must be judged by a specialized court, whose practitioners are also selected based on specific professional competence in juvenile matters, and which operates for purposes and on the basis of rules different from those that characterize the ordinary criminal court'. Yet in 2015 the Constitutional Court stated that honorary magistrates 'ensure adequate consideration of the minor's personality and educational needs', at the point that only the 'mixed composition' can produce 'decisions that are attentive to the minor's personality and to his or her social development and educational needs'. And yet at the time Siracusano affirmed that 'juveniles have the right to be "naturally" judged by a collegial court in a mixed composition' (Siracusano 2015: 9–19). On the same positions, see Lorenzetto (2015) and Conti (2021): 80.

[34] This means to 'train a judge as much "all-round" as possible, a judge able to extricate himself from the many aspects that can be brought to his knowledge: not only criminal but also civil issues, with the adoption of the relative measures, albeit of a temporary nature' Bargis (2021): 54.

the procedural steps (avoiding erudite legal explanations); it has the task to highlight the reasons that lead the State – which it embodies – to issue 'that' decision; it has the task to make the juvenile understand that they have been taken in charge and that they will not be left to themselves'.[35]

That is why, on the other hand, Article 1 § 2 of the d.P.R. risks expressing a condescending trait: the decision's ethical and social reasons shall not lead to moralistic preaching. In other words, 'nothing is farther from the educational needs of the young defendant than a cold verdict accompanied by a paternalistic sermon'[36]; the judge shall adopt strict self-restraint and 'explain why the rules lead to a particular decision; they should not explain their own beliefs or prejudices or hopes'.[37]

This aspect plays a role in all the forms of participation of the juveniles in the trial. For instance, in the Italian system, the court can mandate that the defendant attend preliminary and trial hearings (Articles 31 § 1 and 33 § 4 of the d.P.R.). And the main kind of active participation of the defendants lies in their questioning.[38] In juvenile trials, two 'types' of questioning may take place. One is intended to obtain information about a child's personality (to develop educational plans), while the other is meant to gather evidence. On both occasions, in full accordance with Article 64 § 3 c.p.p., a general rule on the questionings, the judicial authority warns the defendant about his right to remain silent. In other words, children cannot be compelled to speak, but they can be forced to be present.[39]

Refusing the defendant's cross-examination is one of the leading procedural adaptations for juveniles. While the parties lead the adult defendants' questioning, the judge leads the juvenile. When the questions are asked as a cross-examination, they extract a genuine contribution more effectively: the fast sequence of questions from different parties usually brings the truth to the surface. But it also implies a high tension between the examiners and the defendant; the exchange of questions and answers is stressful, sometimes even verbally violent, and traumatic.

This pressure can be unbearable for children who do not share the same language as adults and have more significant problems dealing with technical expressions. The judge has general control over the parties' activities, pursuant to Article 499 §§ 4 and 6 c.p.p., but the lawmaker concluded that this 'was insufficient to prevent the turmoil and suggestion related to the brutality of the cross-examination'.[40] For all these reasons, in juvenile courts, young defendants are examined – if indeed they are examined – by the court's president

[35] Nosengo (2009): 170.

[36] Giostra (2021): 23.

[37] Pepino (1989): 17.

[38] A different issue lies in questionings that take place during investigations, which the police or prosecutors usually perform. On the topic, see Torma (2021): 92–105.

[39] When the defendant is present, it 'must be heard' by the judge (Articles 31 §§ 5 and 4; and 33 § 4 of the d.P.R.).

[40] Mazza (2021): 658.

(Article 33 § 3 of the d.P.R.). Ultimately, the prosecutor and lawyer can only suggest questions to the judge, who filters and turns them to the defendants.[41]

On a different layer, lawyers who provide technical assistance have a dual responsibility. They need to have a comprehensive understanding of the jurisdiction and possess knowledge in the field of education. This is essential because they must work with a vulnerable defendant while developing a defensive strategy.[42] Lawyers must have expertise in the unique 'culture of juvenile trial' to excel in this role.[43] So, they 'must possess psychological, pedagogical, medical, sociological, anthropological knowledges that allow them to understand personal and interpersonal phenomena' and 'must be aware of being a link of a circuit made up of judges, social operators, and the whole community where team play is essential'.[44]

In the Italian system, the more safeguarded side is the court-appointed lawyers' one: Article 11 of the d.P.R. makes clear – in line with Article 20 § 3 of the Directive 2016/800/UE[45] – that public defenders shall be specifically prepared to assist a minor: the 'bar association prepares the lists of defenders with specific preparation in juvenile law'.

The interesting question is: what does 'specifical preparation' mean? Article 15 § 2 of the d.P.R. implementation rules says that for the purposes of Article 11 of the d.P.R. 'those who have not occasionally been engaged in the legal profession before the juvenile justice authorities or who have attended specialization and refresher courses for lawyers in matters relating to juvenile law and the problems of developmental age are considered to have specific training'. According to Article 15 § 3 of the d.P.R. implementation rules, lawyers with the mentioned requirements can ask to be included in the special list handled by the Bar Association.

More recently, a general rearrangement of the court-appointed lawyers regulation, realized through the legislative decree no. 6 of 2015, introduced some novelties.[46] First, defenders must have strict – and periodically verified – requirements to be registered in the national list of juvenile court-appointed lawyers.[47] Moreover, Article 3 § 4-*bis* of the National Bar Association guide-

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[41] Nosengo (2009): 173.

[42] See also Forza (2005): 71–73.

[43] Muglia (2006): 109.

[44] Mestitz (2003): 300.

[45] With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of specific training as referred to in para 2 to lawyers who deal with criminal proceedings involving children.

[46] It reorganized the office defence regulation (according to Article 16 of the law no. 247 of 2017).

[47] Article 29 c.p.p. implementation rules affirms that: 'The National Bar Council prepares and updates, on a quarterly basis, the alphabetical list of lawyers enrolled in the professional registers, available to take up official defence' and that the inclusion in the 'is arranged on the basis of at least one of the following requirements: a) participation in a two-year training and professional refresher course in criminal matters, organized by the District Council or by a territorial Criminal Chamber or by the Union of Criminal Chambers, lasting a total of at least 90 hours and passing the final exam; b) enrolment in the register for at least five years and experience in

lines clarifies that to be registered in the special list which qualifies lawyers to practise in juvenile trials the lawyer must participate in a public course on juvenile law or attend at least two juvenile hearings per year (in particular, the soft law regulation set a more specific definition of the 'non-occasional' juvenile experience).

Specific procedural sanctions are called into action if these rules are not respected. If a lawyer (not registered in the special juvenile list) is court-appointed, the performed activity is null. In the Italian criminal trial regulation of *nullità* it is provided that activities realized in breach of rules concerning the defendant's intervention, assistance or representation are always null (Article 178 § 1 letter *c* c.p.p.). The consequences of nullity vary depending on its categorization: the violations we are discussing always lie in the absolute or the intermediate ones. For example, absolute nullity occurs if a lawyer without special requirements is court-appointed for a trial hearing where defensive assistance is mandatory. These kinds of nullities have some quite severe effects because they can also be declared *ex officio* by the judge and within wide procedural time ranges (more precisely: an absolute nullity question according to Article 179 c.p.p. can be raised in any stage of the proceeding and cannot be regularized; an intermediate nullity question according to Article 180 c.p.p. can be submitted in possibly long times – for example, if the nullity occurs during the preliminary hearing it is possible to have it declared until the first instance decision is deliberated; if it occurs during the trial, it can be declared until the second instance decision is deliberated).

Unfortunately, the latest jurisprudential assessment has delivered a different interpretative solution. The Court of Cassation said that no nullity is 'explicitly provided' when an unlisted lawyer is appointed *ex officio* after the defendant's trusted lawyer renounces their power of attorney.[48] This exegetical position is dangerous for the child's defence and lacks a solid legal background. The fact that Article 178 c.p.p. catalogues different categories of rules, the breach of which leads to nullity, means that no 'express provision' is needed. The only necessary passage lies in the breached rule belonging to one of the general categories of *nullità*.

Moreover, in the juvenile system, it seems clear that a lawyer must be either one they choose and trust despite their lack of specific preparation – as we will shall soon see – or a specialized defender the court nominates to support the juvenile. No other option is considered. Both options are part of the defendant's right to legal assistance, and failing to recognize a trusted lawyer or appointing an unqualified one would result in nullity. Therefore, the new interpretative approach taken by the Court of Cassation should not be applied to future cases.

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criminal matters, proven by the production of suitable documentation; c) achievement of the title of specialist in criminal law, in accordance with the provisions of article 9 of law no. 247 of 2012'.

[48] Court of Cassation, fifth section, decision of 4 February 2019, n. 15050: 'in the juvenile trial, if the trusted lawyer quits, the court-appointment of a lawyer not registered in the list of legal counsellors is not a cause of nullity, lacking an express legislative provision in this sense'.

Further shadows stand over the trusted lawyers' regulation. Article 11 of the d.P.R. exclusively considers the court-appointed lawyer, and applying the rule beyond its clear literal meaning is impossible. According to some scholars, this legislative choice is the result of the complete autonomy conferred to the young defendant in the selection of his lawyer, which can have positive effects on a psychological level: the benefits of the personal entrustment to the professional, according to this opinion, can overcome the need for specific preparation. Nevertheless, it is unlikely that the juveniles already know the lawyer before their criminal trial journey begins; it is more probable that the lawyer is known by their parents or family. So, in many cases, the entrustment is the reflection of somebody else's opinion, and the renouncement to someone who could handle a juvenile trial better is made without any real gain in terms of the defendant's psychological well-being.

Due to the peculiar nature of juvenile trials, it is highly recommended that children always work with a specialized lawyer.[49] The Youth Proceedings Advocacy Review report similarly highlights that the formal language and nature of court proceedings pose significant barriers to young defendants' understanding of and engagement with the criminal trial.[50]

A vast part of the literature criticized the difference between trusted and court-appointed lawyers' regulations, recommending the extension of specialization duties to the minor's trusted lawyers.

It has been proposed that a solution working on the deontological path be adopted. The lawyers' code of ethics provides strict guidelines on the defence acceptance: according to Article 14 'the lawyer, in order to ensure the quality of professional services, must not accept assignments that they are unable to perform with adequate competence'. According to this point of view, it is up to lawyers who are about to take such a delicate role in a highly specialized sector to self-assess whether their experience and specialization are sufficient to fulfil a fiduciary appointment. In the end, we can say 'with a pinch of rhetoric' that 'the juvenile lawyer should know how to be, if necessary, also a social operator'.[51]

On the side of affective support, those who constitute the juvenile's close environment are called to action. Beyond affective assistance, these subjects also 'complete' the child's self-defence: parents, relatives, or other caregivers should help the minor to prepare the defence strategy agreed with the lawyer and act as intermediaries between them and the whole world of criminal justice.

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[49] Muglia (2006): 109.

[50] In the United Kingdom, Wigzell, Kirby, Jacobson (2015: 7) noticed that 'research and policy papers in the field of youth justice have argued that specialist training and expertise should be required to practise in youth proceedings for a variety of reasons: the sentencing framework is distinct to that in adult courts; youth court law is complex; children have particular needs by virtue of their young age, which should be addressed through a "developmentally appropriate child-centred approach"; and, among child defendants, there is a high prevalence of vulnerabilities and problems, such as speech and language difficulties and acquired brain injury, which may impede their understanding and affect their presentation in court'.

[51] Pulitanò (2004).

Article 12 § 1 of the d.P.R. aims to assure 'psychological and affective support' to the children and affirms that this support can be provided in any state of the proceeding – trial included, of course – from 'parents or from another suitable person chosen by the defendant and eligible according to the proceeding authority'. People on whom the minor's trust is placed shall be a constant presence during the trial: being the main character of a criminal hearing means that the young defendant is surrounded by an unusual and harsh environment, ruled by artificial and – by their point of view, probably – contorted rules, and in addition populated by strangers. So, the people they love and trust should protect and sustain minors to mitigate their feelings of loneliness and disorientation.

Usually, these people are the parents. But they also can be other people, relatives or not, as long as they are chosen by the young defendant and allowed to attend the trial by the judge, who makes an assessment based on their adequacy to the task.[52]

On the one hand, the reference to 'parents' is a linguistic inaccuracy of the d.P.R. Yet in 1988, it was clear that in the legal system, biological parents could not be the holders of parental powers (*potestà genitoriale*, according to the civil code' caption after the 1975 reform). Since 2013, a family law reform 'updated' the juridical system dictionary and imposed a new, more adequate locution: parental responsibility (*responsabilità genitoriale*).[53] To fully update the system, the adoption of the Directive – which in Article 15 more properly speaks about the holders of parental responsibility – could have been the opportunity to amend the anachronistic reference to 'parents'.[54] This lexical mishap can be easily overcome through a systematic interpretation of the rule, which nowadays can be extended to the holders of parental responsibility, whether they are the parents of the defendant or not.

A more severe problem arises under another profile of this regulation. The European Directive wisely considers the possibility of excluding parental responsibility holders or chosen supporters if they are inadequate to support the child. Italian law does not allow a general 'exclusion' but only considers the possibility of refusing the appointment of the people chosen by the child when they are inadequate for the task. Nevertheless, what if the holder of parental responsibility is 'unfit' for the role?[55]

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[52] Camaldo (2016): 4580, footnote n. 29, affirms that in the d.P.R. 'there are no express sanctions for the omission of such psychological and emotional assistance. Criminal or civil rules provide some consequences'.

[53] Article 105 § 1 of the legislative decree no. 154 of 2013 affirms that 'the words: "*potestà genitoriale*", everywhere present throughout the current legislation, are replaced by the following: "*responsabilità genitoriale*"'.

[54] The lawmaker partially amended this inaccuracy in the arrest regulation by Article 18 § 1 (new added last period) d.P.R. with the law decree no. 69 of 2023 (entitled: 'Urgent provisions for the implementation of obligations rising from the European Union and from pending infringement and pre-infringement proceedings against Italy'). Showing the sadly known negligence, the lawmaker left a reference to parents in the Article 18 § 1 (first period) d.P.R.

[55] During the investigations, the provision on arrests better responds to this issue. After the 2023 reshaping mentioned in the previous footnote, the new Article 18 § 1 d.P.R. affirms that

Article 12 § 3 of the d.P.R. faces this problem with an approach that is not entirely satisfying. When the presence of the minor is required, the assistance provided by the people identified in the previous paragraphs can be forbidden by the proceeding authority only in the interest of the defendant or when this is imposed by 'unavoidable necessities of the proceedings'. So it is only under exceptional circumstances that activities involving the child's participation can be performed without the presence of those who provide affective assistance.

Another controversial issue arises when the parents are missing (which is unfortunately quite common for foreigners) or in conflict with each other (therefore, it must be clarified which of them can best accompany the child). In these cases, who will take care of the juvenile, supposing they are not willing to choose someone who can have the judge's approval? In the first case, it is possible that a guardian can be appointed through a specific proceeding before the Juvenile Court in its civil functions, according to Article 357 of the Civil Code. However, in other cases, according to Article 15 § 2 of the Directive, the proceeding authority should be permitted to appoint someone adequate to the task, possibly someone who knows the minor well.

A partial solution is possible thanks to Article 12 § 2 of the d.P.R., which says that the social services assure their assistance to the young defendant in any circumstances and even in addition to the assistance provided by family members or friends. After all, it has been said that 'almost always a minor is accompanied before the Court by a parent or by a relative or by some protective adult or lawyer who shows him or her the way, but this is not enough'[56]: the social services can be vital support. So, the judge can appoint someone from the social services to provide emotional and psychological support for the children. These people are undoubtedly qualified to deal with them, but it is hard to believe they can have the trust of the defendant because of their lack of affective proximity. Moreover, there is another risk: at court hearings, a social services representative is always present but according to a schedule of shifts that does not ensure the actual continuity of assistance in the disputed cases.[57] In this perspective, a more accurate adoption of the Directive – with the express attribution of a power to court-appoint someone to support the children – could fix this problem, which may not arise frequently, but it undoubtedly exists.

Moreover, some authors highlighted that even the inspections of child behaviour – which according to Article 9 of the d.P.R. prosecutors and judges can

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'when it is necessary to safeguard the minor's best interest, another suitable person of age shall be informed of the arrest or detention instead of the one exercising parental responsibility'.

[56] Pazè (2008): 9.

[57] 'The "assistance" role assigned to the services appears … more nuanced in consideration of the ambiguity of their "itinerant" procedural position, characterized, from time to time, by the exercise of the typical functions of the auxiliaries of the judicial authority, by the fulfilment of purely "defensive" tasks, from the impulse to the reconciliation between the minor and the victim of the crime', Sfrappini (2021): 187.

order[58] and that are routinely performed by the social services (Article 6 of the d.P.R.) – are nowadays limited to a 'bureaucratic assumption of information to be written in reports and, by these, in sentences' rather than be centred on a 'communication and relationship with the child and his or her family and to aim at co-construction of support and change projects'.[59] The fact that the juvenile criminal justice can count on its social service structures (USSM)[60] – which can cooperate, of course, with other public social services based in other administration branches – is positive, because the specific preparation of its personnel can reach high standards. In the best possible world, these services should follow – possibly through the same personnel – the juveniles from the beginning of the proceedings to their end. If necessary, the social system's work inside the criminal trial ensures a support package for the child and parents. Looking at the results, young offenders who can count on an individual educational project offered by the social services within the criminal trial have their recidivism rate drop from 31% to 23%.[61] This path is expensive,[62] but tackling social and welfare problems means saving in the long term, as the child will not end up in the adult penal system.

The reality is unfortunately quite different: these structures cannot function at their best without appropriate funding, which has not been achieved in this political and financial phase. Therefore, the effective care for children can be compromised: as was mentioned, at trial, very often, the social worker knows the defendant only thanks to the office's report.

VI. FRAGILE BARRIERS FOR PRIVACY?

The Italian Constitutional Court stated in the early 1980s that 'the clamour of a criminal case can seriously affect both the spiritual and material development of the minor' and that 'these matters have constitutional relevance under the terms of Article 31 § 2 of the Constitution [which provides for the protection of childhood] and of the fundamental principle of Article 2 of the

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[58] On this topic, see Ventura (2008): 46–52.

[59] Pazè (2008): 7.

[60] They are the Offices of social services for youngsters (Uffici di servizio sociale per i minorenni), a part of the Justice Ministry structure.

[61] Totaro (2013): 52. According to the Ministry data, in 2020, about 441 social assistants were appointed in USSM (https://www.fpcgil.it/wp-content/uploads/2020/10/Relazionepianteorganiche.pdf, p. 3). This is quite a low number for a juvenile criminal system which dealt with about 20,000 youngsters in 2021 alone (https://www.giustizia.it/cmsresources/cms/documents/USSM_2021.pdf).

[62] Gili (2013): 99, reports that the daily average cost of each social service worker of the USSM amounted to 222.39 euros in 2013. More recently, Ciappi et al. (2022): 32, affirm that for court hearings activities the costs vary between €400 and €600: 'there is a minimum of two to a maximum of five public hearings per person (initial, pretrial, and verification) because all care packages involve the juvenile court. In each hearing, operators are involved for between 4 and 6 hours at €32 per hour'.

Constitution [on inalienable human rights], due to the adverse effects that the diffusion of news emerged in the trial can cause'.[63] For the same reasons, privacy 'falls under the main international charts' of the juvenile matter.[64]

This awareness led parliament to assign a specific task to the government, which was called upon to put together the juvenile criminal regulation of the d.P.R., and thus to exclude 'the publicity of criminal hearings' and forbid the 'publication and dissemination, by any means, of news or images from which the suspect, the accused or the convicted could be identified'.[65]

On the side of closed-door hearings, the lawmaker satisfied the Parliament's will without creating a special rule. Indeed, the preliminary hearing provided by the Code of Criminal Procedure is held in the absence of any public; in this respect, the juvenile preliminary hearing follows the general rule while differentiating its regulation only for other aspects, according to Article 31 of the d.P.R.

On the contrary, trial hearings are public according to the Code of Criminal Procedure. So, with regard to the juvenile system Article 33 § 1 of the d.P.R. had to stipulate a special rule to protect minors' privacy; it affirms that the hearing is held with closed doors. In contrast to what happens in an adult's trial, when it is necessary to acquire the testimony of a minor, no specific rule – not in law, not in regulatory sources – is given about the environment in which the hearing takes place. This kind of aspect should probably be considered in order to 'try to make the court hearing more informal because in an informal atmosphere, with a limited number of participants and less social and physical distance between the participants, there is a better chance that the juvenile will fully and effectively participate in the criminal proceeding'.[66]

In the juvenile trial, with an 'inversion between the rule and the exception that characterizes the judgment for adults',[67] hearings are by default kept in the chamber. Here an exception is foreseen: according to Article 33 § 2 of the d.P.R., hearings can be held in open court, but only if a defendant who is older than 16 asks for it and only if the court approves going public, considering first the best interest of the child. The rationale behind this rule lies in acknowledging that the occurrence of a 'secret' trial can represent a violation of

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[63] Constitutional Court, 10 February 1981, n. 16.

[64] Magno (2019): 258. Article 8 of the Beijing Rules affirms that the 'juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling' and that 'no information that may lead to the identification of a juvenile offender shall be published'.

[65] Article 3 letter *c* of the delegation law.

[66] Radić (2020): 592. See also Rap (2016): 102, who affirms that, 'in order effectively to hear the views of juvenile defendants, five requirements should be met: 1) creating a less formal setting in the courtroom; 2) using certain conversational techniques that are geared towards adolescents; 3) giving the juvenile defendant the opportunity to give his own views on the case; 4) showing genuine interest in the story of the young person; and 5) involving the parents of the young person in the proceedings'.

[67] Camaldo (2016): 4584.

the guarantees of the accused: 'the publicity of the hearing is in fact the best deterrent against distortions or, even worse, abusive practices'.[68]

The law also provides two exceptions to the exception, so that the trial cannot be open to the public, even if the defendant requests this. This happens in cases where co-defendants are involved and (i) one or more of them are over 16 and do not want the trial to be public, or (ii) if any of them are under 16.

With regard to media publicity, it can be noticed that the Article 147 c.p.p. implementation rules generally forbid capturing and disseminating images of closed-door hearings. Moreover, Article 13 of the d.P.R. forbids 'publishing, with any mean, news or images which might lead to identifying the minor'. Nevertheless, these provisions and the closed-door policy do not imply that what happens during hearings cannot be published. In other words, media can 'provide information on the criminal proceedings against the youngster because the prohibition concerns people and not facts'.[69] However, the press must recognize several limits because youngsters 'do not have a public sphere',[70] so the dissemination of news involving them must be extremely cautious. In the end, the need to protect minors from the negative consequences that could derive from their involvement in the criminal trial is deeply felt.

Even if the media can be informed about what happened to those who are legitimately present at the hearings, the prohibition of Article 13 of the d.P.R. considers both personal data and any indirect reference that might lead to identifying children involved in the trial.[71] For example, it is forbidden to publish: 'nicknames, particular physical characteristics, detailed information on parents or relatives, initials of the name and surname accompanied by age, or residence or school affiliations'.[72] It must also be noted that Article 13 § 2 of the d.P.R. specifies that the last paragraph shall not be observed when the trial hearing is public because of the defendant's will, according to Article 33 § 2 of the d.P.R.

On closer inspection, the prohibition of Article 13 of the d.P.R. has a broader spectrum than the one requested as a minimum standard by the delegation law and perfectly matches the one issued by Article 14 of the Directive: the rule covers the suspect, the accused, the convicted as well as other juveniles involved in the proceeding, such as witnesses or victims. It should be noticed, moreover, that the criminal procedure code gives children similar protection when they are involved in an ordinary criminal proceeding against adults: 'it is forbidden to publish pictures, details or any other information that could possibly lead to the identification of juvenile witnesses or victims' (Article 114 c.p.p.).

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[68] Mazza (2021): 657.

[69] Gabrielli (2021): 198.

[70] Assante, Giannino, Mazziotti (2000): 191.

[71] This purpose emerges vividly also from Article 20 c.p.p. implementing rules, which requires the adoption of appropriate precautions to protect the minor 'from the curiosity of the public and from any form of advertising' at the time of his or her arrest or detention.

[72] Gabrielli (2021): 198.

The d.P.R. does not refer to any soft law source to persuade the press association to arrange autonomous rules to further ensure the young defendant's privacy. Article 14 § 2 of the Directive was 'adopted' in this field thanks to the new press code of conduct. It requires that 'the anonymity of the minor involved in news events, even if not of criminal relevance, but potentially harmful to his personality as author, victim or witness' must be guaranteed. Moreover, 'the publication of all the elements that could easily lead to its identification must be avoided' and 'in case of harmful or self-damaging ... behaviours carried out by minors, it is necessary not to emphasize those details that may cause suggestive effects or emulation'.[73]

The law on the protection of minors' privacy from the media seems to be very restrictive. Moreover, the deontological regulation is focused in the same direction. However, violations of Article 13 of the d.P.R. do not seem to be a valid legal basis for imposing any sanction. In other words, the provisions of Article 13 of the d.P.R. are binding, but its breaches cannot be punished because no legal provision links them to a sanction.

Here the lawmaker caused a severe injury: in the preliminary draft of the d.P.R. a specific rule took care to punish with a significant administrative fine the breach of Article 13 of the d.P.R. The government, unfortunately, removed this provision, intending not to give birth to a regulation too different from the one provided by the Code of Criminal Procedure (on the violation of its prohibition on the publication of proceeding acts, which is given by Article 114 c.p.p., the breach of which leads to the application of Article 684 of the Criminal Code, hereinafter: c.p.). This is because the prohibition to publish data and images of the juvenile defendant was supposed to automatically be linked to the existing sanctions. The premise turned out to be wrong.

On the one hand, Article 114 § 1 c.p.p. affirms that secret acts of the investigations (the list of which is provided by Article 329 c.p.p.) cannot be published. Article 114 § 7 c.p.p., however, specifies that once an act ceases to be secret, its content can be published. Please note that investigative secret ends when the acts are known or can be known by the defendant, but these extensions cannot stand beyond the investigative phase; and even the prosecutor's power to require that specific acts or information be kept secret cannot overcome the investigation phase (Article 329 § 3 c.p.p.). So, with the complete discovery at the end of the preliminary investigations, there are no longer any secret acts.

On the other hand, Article 684 c.p.p. punishes individuals who publish documents or information related to a criminal case that is prohibited from public dissemination by law.

At this point, it should be clear that these regulations are entirely useless in protecting young defendants' privacy during the trial phase. All the acts – and their content – are no longer secret, so their content can be revealed and published without breaching Article 684 c.p. As the closure of this reasoning, Article 13 of the d.P.R. is also useless because the rule of law forbids any extensive interpretation of Article 684 c.p.

[73] Consolidated text on journalist's duties approved on 22 January 2019.

However, even if Article 684 c.p. could be applied because of an explicit law reference, it would lack any real deterrent strength. That is because of the mild sanction foreseen (imprisonment for up to 30 days or with a fine between 51 and 258 euros); this kind of minor violation, a *contravvenzione*, is suitable to be subjected to an *oblazione* (Article 162 c.p.), which gives the offender the right to obtain a dismissal by paying a fine amounting to the half of the maximum provided by law.

Even the deontological remedies are not satisfactory because they have a real deterrent effect only for those who are members of the journalists' association (*Ordine dei giornalisti*), which is the entity that carries out disciplinary actions. If all professional journalists must be registered in the association, people who only occasionally write in a newspaper might not be. Moreover, people hosting television shows are not necessarily journalists, and neither are their guests or – trying to translate an already widespread word in Italian – 'opinionists'. Ultimately, many people in the media business are not subjected to the disciplinary powers of the journalists' association, and the observance of clear rules on juveniles' data ultimately depends on individual commitment.

VII. CONCLUSION

It may be true that 'the history of childhood is a nightmare from which we have just begun to awaken'.[74] In the criminal procedure field, all the special rules built by the Italian legal system to protect the young defendant in different ways seem like getting out of bed on the right side. Without these rules, the child would be granted a fair trial only in theory, as in practise they would not be able to understand it well enough to make the best choices; on the contrary, they would probably be overwhelmed by some difficult procedural moment and identified by society as a criminal by profession ahead of time.

However, in this awakening process many steps must be made to achieve satisfying results in the actual protection of juvenile defendants. There is still work that has to be done to ensure the best results in this field. While the Italian rules usually meet or exceed those established by Directive 2016/800/EU, not all of them are consistently effective. It is up to lawmakers to update minor aspects and ensure the existing rules are respected.

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[74] deMause (1974): 1.

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