



UNACCOMPANIED MIGRANT CHILDREN INVOLVED IN CRIMINAL PROCEEDINGS

A model to support and help legal professionals to assess vulnerabilities of young unaccompanied migrants, victims or offenders

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This project is co-financed by the European Union's Rights, Equality and Citizenship Programme (2014-2020)



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Equality and Citizenship Programme (2014-2020)



The need to carry out an Individual Assessment: WHY?

Because:

- ✓ IA procedures offer a chance of protecting children against secondary victimisation
- ✓ IA procedures promote children's social reintegration
- ✓ IA procedures enable a participatory process for the determination of the best interests of the child

The need to carry out an Individual Assessment: TO WHOM?

Individual

The child receives fair treatment and his involvement is considered as priority.

System

The justice system optimizes its resources and, moreover, ensures greater incisiveness and effectiveness in the judicial action.

The process is based on universal standards of application of human rights.

The Legal Framework

UNCRC - United Nation Child rights Convention, New York 1989

The first binding international instrument to promote the adoption of a "holistic approach" or "**multidisciplinary approach**" towards the child and expresses an attitude of satisfaction of the child's needs.

The European scenario

Directive (EU) 2016/800

Art.7 "... specific needs of the child with regard to protection, education, training and social reintegration... in particular, the child's personality and maturity, his or her economic, social and family situation, as well as any specific vulnerabilities of the child..."

Directive 2012/29/EU

Article 22 "... individual assessment of victims to identify specific protection needs. Personal characteristics of the victim, the type or nature of the crime, and the circumstances of the crime."

International instruments

The best interest of the child: the "Best Interest Procedure" applied by UNHCR

In May 2021, UNHCR published updated guidelines on the "Best Interests Procedure - BIP". The Best Interests Determination Procedure is designed to provide quality procedural standards for children at risk who require structured, systematic, and coordinated support. All decisions must be made with a holistic, multidisciplinary approach.

Guidelines for case management and child protection: Interagency guidelines for case management and child protection Child Protection Working Group

In 2012, participants in the Child Protection Working Group, released the "Interagency guidelines for case management and child protection" guidelines. These guidelines were created to reinforce the concept of a coordinated approach to child protection case management

The context in the Italian legislation

Individual assessment in the Italian criminal proceedings

Presidential Decree No. 488, 22 October 1988 - Children **suspected or accused** of having committed a crime, have their proceeding before the Juvenile Court in the juvenile criminal trial, which is regulated by the so called “Juvenile Criminal Procedure Code” (art. 9)

Decree No. 212, 15 December 2015 – Transposition of Directive 2012/29/EU. Implementation of measures for assistance and **protection of victims**. (Art 90 quater CPC)

An abstract model to be implemented

- *The role and adaptation of the social file (“**cartella sociale**”)*
- *The use of specific techniques for conducting the interview (**child oriented**)*
- *The use of information research tools on countries of origin (**COI**)*
- ***Cultural mediator’s** role within the juvenile justice and community system*
- *Further **capacity development tools** for the coordination and monitoring of network*

The role and adaptation of the social file (“cartella sociale”)

The art. 9 of the Law n.47, 7 April 2017, so called Zampa Law has introduced the Social File.

- It's a tool to support professionals in conducting **individual assessments**, in a fully **multidisciplinary perspective**, observations of the condition of vulnerability of the child.
- It's a document, that shall be filled in by qualified personnel (psychologist, social worker, lawyer, guardian) operating in the reception centre and in general involved in the care of the child.
- It might be used within the judicial system, especially in criminal proceedings, playing as an alternative way to individual assessment.
- Thus the use of the social file or a similar tool will avoid secondary victimization and distress related to multiple assessment.

Interviewing an unaccompanied migrant child

At any stage of the proceedings, investigation phase, pre-trial or during the trial itself, it is useful to consider some aspects when conducting an interview with a child in a **CHILD FRIENDLY MANNER**

Setting

Preparation

Knowing the child

Explaining the procedure

Communication

Closing

The use of COI - country of origin information in the criminal justice system

- Human rights and security situation
- Political situations and the legal and legislative framework
 - Cultural aspects and societal attitudes
 - Humanitarian and economic situation
 - List of security events and incidents

It's a resource that can be used by police, lawyers, prosecutors and judges.

THE ROLE OF CULTURAL MEDIATOR WITHIN THE JUVENILE AND COMMUNITY JUSTICE SYSTEM

The **cultural mediator** is a specialized figure who operates in the field of interpersonal communication, but above all, can be defined as that bridging figure between different cultures.

Particular relevant in the immigration field could be useful in the courts but also of the public prosecutor's office, and USSM.

The idea to create a model of individual assessment that takes into account not only the needs imposed by the law, but also the needs that unaccompanied migrant children, victims or offenders, carry with them.

Capacity building tools for coordinating and monitoring the network

A multi-agency or multi-disciplinary system, such as the one described in this model, requires an investment not only in terms of specific training on the issues involved but also requires capacity building activities to be planned on three levels:

1. ***Individual***
2. ***Organisational***
3. ***Systemic***



Thank you !!!



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