

# EFSC - European Forum on Street Children

## *Migration of unaccompanied children:*

### *The increasing challenge to a Social EU.*

#### *The origin countries in Central and Eastern Europe after the first year of UE membership.*

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## Foreign nationals in prison

Written contribution by Serenella PESARIN

General Director for the enforcement of judicial decisions - Ministry of Justice – Juvenile Justice Department\* - ITALY

In Italy the tradition concerning the issue of minors' guardianship and protection, tends to give priority to the **educational, rehabilitative and restorative** finalities within the Juvenile Justice System both for Italian minors as well as for foreign ones, the last ones in particular of first or second generation, coming from EU members Countries, neo EU Countries and extra-EU Countries and/or unaccompanied, often suffer a "double intolerance", as offenders firstly and as foreigners lastly, sometimes speaking an incomprehensible language with unknown models of behaviour, religious and dietary different uses, adaptation strategies ranging from cultural resistance to assimilation (tendency to "become Italian"), from alienation to exclusion leading to "dual ethical" or "dual membership" which can also generate the so-called "**double absence**", i.e. the non-recognition both of own culture origin as well as of the Italian one. In addition other **specific critical points** must be added: the drug addicted, alcoholic, psychopathology juvenile foreign prisoner (interrelated categories which often lead to self-destruction and self-infliction), episodes of intolerance and racism, the transfer of minors from one institution to another, from the north to the south of the Country, because of overcrowding and the limited capacity of institutions.

Said that statistical data are not always reliable, as each Institution operating in the field gathers data starting from different assumption, **the statistical trend of Juveniles inserted in the Juvenile Justice System** during the last 5 years (2004-2008), highlights a progressive and strong decreasing of insertion of minors, foreigners included, in First Reception Centres and in Minors' Penal Institutes (3.866 in 2004 – 2.908 in 2008, Italians insertion are about 1.500 yearly). The strong decrease of insertion in First Reception Centres of juveniles and youth coming from Romania (795 in 2004 – 381 in 2008) can be connected to an increase of the rate of unaccompanied foreign minors, particular field of intervention. As regards Minors' Penal Institutes, it is important to stress the higher rate of insertion of Italian minors (629 in 2004 - 694 in 2008) respect the rate of insertion of foreigners (965 in 2004 – 653 in 2008), data confirmed also by the number of taken in charge carried on by Juveniles' Social Services Offices (13.892 in 2004 – 17.814 in 2008, within these, about 3.400 is the number of foreigners taken in charge yearly); a constant and important increasing of measures as the placement in community (on 2.188 placement in 2008, 664 must be referred to foreigners); a constant and important increasing in the use of the legal Instrument of Probation<sup>1</sup> (429 in 2004 – 512

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\* In Italy the Ministry of Justice – Juvenile Justice Department - exercises its jurisdiction with reference to guardianship and juridical protection of minors aged from 14 to 18 years and, in particular, on the ones submitted to penal procedure by the Juvenile Judicial Authorities, exercising the above-mentioned mandate, eventually, until the age of 21 years. It operates through no. 12 Regional or inter-regional Juvenile Justice Centres from which depends the following Juvenile Services:

- n.° 29 Juveniles' Social Services Offices that offers support to juvenile offenders in each state and degree of the criminal procedure and gather all the relevant information about the minor;
- n.° 26 First Reception Centres hosting and receiving Juveniles' in state of detention, detainee, or accompanied and taken in charge until the Hearing Validation to be held by 96 hours, with the taken in charge of penitentiary police and the support of an equipe gathering all relevant information about the minor;
- n.° 18 Juveniles' Penal Institutes ensuring detention for preventive custody or the serving of the sentence;
- n.° 12 Ministerial Communities ensuring the execution of provisions stated by competent Judicial Authorities, in particular the placement in Community and the safety measures, where the minor carry on a Tailored Educative Project.

<sup>1</sup> Probation is a legal instrument tested with good results in the field of re-education (788 cases in 1992 – 2.339 in 2007) consisting in the opportunity given to Court to order the suspension of the process, for a period not exceeding three years, when the Judge feels the need to assess the personality of the minor as a result of the implementation of an intervention program developed by the Juvenile Justice Services, providing the direct involvement of the minor, of the family and of social context, the specific tasks taken in charge by

in 2008), facilitating, more than other instruments, the insertion of foreign minor in efficient rehabilitation programs fitting to his/her needs.

Foreign Minors are **over-represented in the Juvenile Population in state of detention**, in consideration of the relationship between Italian/foreigners according to the reports of Prosecutors of Republic by the Juveniles' Court during the years 2002-2006 (40.588 in 2002 – 39.626 in 2006. Foreigners: 10.009 in 2002 – 11.413 in 2006). This phenomenon is due to the fact that a high rate of foreign minors arrived in Italy, often as illegal, live in personal, familiar and social conditions absolutely precarious, since many years, a particular class of minors called “unaccompanied” has been creating, i.e. minors and children without a parental figure of reference. These minors are often “recruited” by criminal organization composed by adults, often fellows, exploiting them for illegal activities compromising an adequate psychophysical development, right of each adolescent. This is particularly evident as regards foreign girls, for the major part of *Roma* culture, living, as we know, in condition of subordination which often became a real exploitation by the male part of their community of origin. As the situation above, towards these youths, easy prey of criminal organizations, **the penal provisions adopted constitutes a form of protection and guardianship** and of supporting action for their social and working resettlement.

Among the last relevant Institutional activities and actions, it must be in evidence the “**Guidelines on social inclusion for people subject to provisions by the Judicial Authorities**”, issued in 2008 by the National Consultative Committee of Coordination for Relations with Regions, Local Authorities and Voluntary world, where specific actions favouring the social inclusion of foreign minors inserted in the internal and external Juvenile Justice circuit are indicated.

In this document following needs are indicated:

- a) to define **agreement with the Foreign Countries most interested** on the issue, as, for example, Intergovernmental agreement Italy/Romania signed in 2008 for the cooperation and the protection of unaccompanied Romanian minors or in situation of disease living in Italy. It previews:
  - identification of unaccompanied Romanian minors living in Italy;
  - adoption of necessities measures of protection and social re-inclusion, for example the temporary placement of the minor, the health care and the school and educational guidance;
  - facilitation of their return to own Country of origin.
- b) to re-define the **Concertation Bureaus already existing**, as the “**Committee for Foreign Minors**” by the Ministry of Work, Health and Social Policies, competent about minors coming from extra EU Countries; to make such bureaus leaner and efficient in order to make them able, when requested, to individuate solutions meeting all the different needs; as stated also in the “**Directive on the management of the presence of unaccompanied Romanian minors or in situation of disease living on the Italian territory**” in 2007, the **Central Connecting Bureau (OCR)** with functions and tasks of connection for all bureaus and agencies competent for the management of the presence and protection of Unaccompanied EU minors on the national territory (see also the issue of identification) has been established, it activates the agreement Italy/Romania on the issue of unaccompanied Romanian minors and it values programs and projects concerning the reception and re-entry of minors.
- c) to make available the **alternative programs to detention** also through resources offered by association, NGO's and Voluntary associations in order to avoid the praxis of detention as preventive measure i.e. “the prison of non-condemned”. The difficult to extend this measures to foreigners is principally due to the difficult in gathering the residence permit, to the lack of a social capital as a family, a house, a job along with a life-project uncertain and ever suspended between here and elsewhere, to the social and cultural distance of the Roma who, beyond the spoken language, makes difficult any communication, to the lack in many cases of an identity, especially for unaccompanied Romanian minors, those are all elements against the

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the minor, the modalities of participation of operators of Juvenile Services and Local Agencies, the restore of the consequences of the crime and the reconciliation with the person offended (victim). The positive outcome of probation involves the extinction of offence.

establishment of alternative programs, elements taken in charge by juveniles Services in last years.

- d) to implement project previewing **a service of cultural mediation** also through specific points of information and consultant about the rights of juridical protection and the comprehension of the judicial iter, the network of public and private resources oriented to possible working inclusion programs. Actually, in Italy, 27 inter-cultural mediation projects have been activated, where the figure of cultural mediator in the Juvenile Justice Services operates. The cultural mediator is a crucial figure between the reality of detention and the sources of the territory, solver of comprehension difficulties about interior diseases related to cultural nature and the role within the society.
- e) to support the **rights of study and education** in cooperation with the Ministry of Education as regards the educational iter, literacy courses and language courses to carry on inside the Minors' Penal Institutes, i.e. the Permanent Territorial Centres, oriented to the juvenile offenders submitted to measures non depriving of their liberty; in Italy, n. 44 literacy courses have been activated, the major part are held in Minors' Penal Institutes to favour the social training and working integration.
- f) to offer **an integrated training program between School and professional training**, oriented to the needs of foreign minors, in order to favour the availability of the training activities, through the re-planning of training programs according to a logic of flexibility and modularity of learning in relation to the times of permanence in the penal circuit, to degrees and the basic skills requested, to the different level of knowledge of adolescent, to disaffection for structured training programs due to repeated school failure or to the background of origin, to personal transgression stories and to rejection of rules. As regards the external area instead, the blind is constituted by the degree of motivation of the minor, this request therefore Teaching/Training runs able to be modular, brief and formally certifiable, possibly connected with those carried on in the intra-mural field in order not to dissipate the sources already activated and the skills acquired, important is moreover to implement the motivation in learning, the construction of relationship of trust and the increase of self-esteem. This is fundamental in such an historical period of world crisis in which social inclusion is more difficult, in particular for those without degrees and professional skills.
- g) to preview **different modalities of issue of the residence permit** allowing to minors to acquire it even before the conclusion of the sentence, in case of positive re-inclusion run, as the Act - Legislative Decree 286/98 - poses significant problems of application due to paradoxical situations such as the following:
  - foreign minors reported for crimes such theft or drug dealing, even in case of positive run, in accordance with Art. 4 paragraph 3 of the Act, can not get the residence permit, this way the inclusion program is interrupted and the young is almost always involved once again in the circuits of illegality;
  - foreign minors submitted to "probation", previewing the extinction of crime in case of positive result, or submitted to alternative measures to detention with light sentences therefore can't get the residence permit as instead provided by art. 18 paragraph 6 of the Act, for minors who expiated the sentence.
- h) to preview that the **Health care and treatment** for foreign minors consider also the specific diseases arising from environmental conditions compared to those ones of the places of origin.
- i) last but not least **the procedures for the identification and the assessment of the age of the foreign minors**, as the method carried out till now, the Radiographs, is not so efficient, the identification of the minor would prevent some children to become vulnerable and exploited by criminal organizations managing the traffic of human beings.

What we intend to represent, i.e. a part of the operative and educational offer of the Italian Juvenile Justice System, allowed the Working Group on Arbitrary Detentions (WAGD) of United Nations, as from declaration issued at the end of the visit in Italy in November 2008, to recognize the same system as “[...] *example of application of the principles on the issue of treatment of juvenile offenders as stated by the UN Convention on the Rights of the Child [...] Italy could represent a good example and a model for the other Countries in this field [...]*”.