



## National Report

### Italy

#### Children's right to information in civil proceedings in Italy:

##### **The role of service providers in the social and health care field to provide child-friendly information in civil proceedings**

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## 1. Introduction

This report is part of a two-stream research process conducted in Italy in the context of the MiRI project under the leadership of the University of Genoa. Whereas the University of Genoa analysed the right to information of children involved in civil proceedings primarily from a legal perspective and specifically with a focus on the justice system, Defence for Children International – Italy (DCI Italy) undertook to conduct a parallel analysis with a focus on service providers in the fields of social welfare, education and health and their role in providing information to children involved in civil proceedings. The complementary nature of these two research components helped to broaden the analysis and to offer a more comprehensive view of how the relevant legislation is applied in practice by state officials, service providers and practitioners in different fields.

In light of the specific research design in Italy, this report builds on the legal analysis developed by the University of Genoa.<sup>1</sup> It complements the legal analysis with a review of examples of practice that were gathered through a survey questionnaire administered with service providers in the social and health care fields throughout Italy. The examples of practice are discussed in light of the normative framework of international and European standards concerning the right of the child to information in the context of civil proceedings.

Whereas the focus rests on the right of the child to information in the context of civil proceedings, the analysis considers also some key elements of the context in which children seek and receive information in relation to civil proceedings. The right to information is an important element of the so-called “participatory rights of the child” and relates very closely to general child rights principles, such as the right to non-discrimination, the right to development, the best interests of the child as a primary consideration and the right to be heard. In addition, the principles of child-sensitive justice and procedural safeguards are considered relevant for the context of civil proceedings.

## 2. Methodology

This report was developed on the basis of a desk review of relevant international and European standards relating to the rights of the child involved in civil proceedings, guidance and recommendations for policy and practice issued by international and European bodies such as the

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<sup>1</sup> Maoli, Francesca, *Children’s right to information in civil proceedings in Italy*, National Report Italy, MiRI – Minor’s Right to Information in EU Civil Actions, University of Genoa, January 2021.

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Committee on the Rights of the Child and the Council of Europe, as well as a selected number of research reports relevant to the theme.

The desk review was complemented by the data gathered through the survey questionnaire targeting service providers. DCI Italy developed the survey questions on the basis of the questionnaire for legal practitioners and the judiciary and the overall survey guidance elaborated by the University of Genoa in collaboration with the MiRI project partners. For the elaboration of the questionnaire, DCI Italy reverted also to previous work in this field.<sup>2</sup>

The survey questionnaire was disseminated widely to service providers in the social, educational and health care fields across the Italian territory. Through a special edition newsletter, Defence for Children International – Italy, which also represents the International Social Services in Italy, reached out to 876 contacts. The survey questionnaire was first disseminated in July 2020, followed by a reminder in September 2020. The Regional Council of social workers of the Italian Region Liguria has provided substantial support to the development of the questionnaire and its dissemination.

A total of 91 responses to the survey were received, of which 36 were complete and 55 had been filled in partially. The respondents were mainly social workers (42 responses or 46 percent) and psychologists (14 responses / 15 percent). Other professional groups who participated in the survey included educators or pedagogues (7 responses / 8 percent), child neuropsychiatrists (4 responses / 4 percent). 24 respondents did not specify their professional backgrounds (26 percent). Among the respondents, 56 (62 percent) were employed by the social services of a municipality or local health care centre (*Azienda Sanitaria Locale – ASL*). Two respondents stated to be free-lance service providers, two worked in socio-pedagogic day-care centres for children and four in different types of residential care facilities offering accommodation and care for children or parents with children.

The responses came from 12 of Italy's 20 regions reaching from the North to the South. The response rate was particularly high from Veneto (13), Liguria (12), Lombardy and Sicily (10 each), Puglia (8) and Emilia-Romagna (6). There were four responses each from Campania and Tuscany,

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<sup>2</sup> See for instance: Law and Internet Foundation, Defence for Children International – Italy et al., *Methodology for a Rights-based Individual Assessment of the Needs of Child Victims of Crime*, E-PROTECT, 2019, [http://defenceforchildren.it/files/DCI - E-Protect\\_English.pdf](http://defenceforchildren.it/files/DCI - E-Protect_English.pdf), pp. 40-41.

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two from Lazio, one response each from Friuli-Venezia Giulia, Marche and Piedmont. 19 respondents did not provide information about their region.

The vast majority of respondents are senior professionals with over 20 years of experience (41 respondents / 45 percent) and with 11 to 20 years of professional experience (15 respondents / 16 percent). Six respondents stated to have 6-10 years of experience and 8 had 1-5 years of experience.

The responses are to be considered individual responses from a random sample. They are not representative of the whole Italian territory nor of the different professional groups or institutional affiliations. Despite this significant limitation, the responses are considered to provide a valid insight into the practice of professionals across the country.

The survey questions were phrased in such a way that the responses would help to identify clues about systemic methods, approaches and good practice, as well as prevailing gaps in law, policy and practice. The analysis of the responses has therefore a highly informative value despite the data biases.

### **3. The right to seek and access information: A fundamental right and procedural safeguard**

#### ***3.1. The right of the child to seek and access information***

Access to information is a fundamental precondition for children to exercise each and all of their rights and to participate in a meaningful way in the decisions and proceedings that concern them. The right of the child to seek, receive and impart information (UN Convention on the Rights of the Child, article 17) is a fundamental right of the child and a procedural safeguard for children's involvement in administrative and judicial proceedings. To be able to exercise their rights effectively, children require information in a language they understand, adapted to the child's age and maturity. To prevent discrimination, the communication of information has to take into account the child's national and social origin, gender and culture, as well as possible experiences of violence and the correlated health impairments or trauma.<sup>3</sup> When providing children with information, state officials and service providers therefore are challenged to assess the child's specific communication

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<sup>3</sup> Council of Europe, *Guidelines on child-friendly justice*, 2010.

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and information needs and adapt the language, methods and contents of their communication accordingly.<sup>4</sup>

### **3.2. The “participatory rights” and evolving capacities of the child**

Article 12 of the UN Convention on the Rights of the Child affords the child who is capable of forming his or her views the right to express those views in all matters affecting the child and provides that these views are given due weight in accordance with the child’s age and maturity. This right applies to the child’s participation in social and political matters (Article 12.1) as well as in judicial and administrative proceedings (Article 12.2).

The right to be heard is often interpreted as a right to “participation”. Participation refers to consultations and hearings of children to ensure that the views and perspectives of children inform decision-making processes and procedures affecting them. Participation is relevant for each child individually, as well as for groups of children and the child population more generally. Due to its significance, the right to be heard is considered a general principle of the UN Convention on the Rights of the Child and, as such, the right of the child to be heard can be claimed and enforced, and should be considered in the implementation and interpretation of all other rights.<sup>5</sup>

Together with other civil rights and freedoms, article 12 is at the centre of the so-called “participatory rights of children”. These include in particular the child’s right to freedom of expression (article 13), freedom of thought, conscience and religion (article 14), freedom of association (article 15), and the right to seek and access information (article 17).<sup>6</sup>

The right to be heard is also closely interlinked with the other general principles of the Convention: the right to non-discrimination (article 2), the primary consideration of the best interests of the child (article 3), and the right to development (article 6).

The Convention recognises that the evolving capacities of the child need to be considered to understand the degree to which children are able to exercise the right to be heard, in accordance

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<sup>4</sup> Council of Europe *How to Convey Child-friendly information to children in migration, A handbook for frontline professionals*, Building a Europe for and with Children, 2018.

<sup>5</sup> United Nations Children’s Fund, *Implementation Handbook for the Convention on the Rights of the Child*, Fully Revised Edition, 2002, p. 159. Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 2.

<sup>6</sup> United Nations Children’s Fund, *Implementation Handbook for the Convention on the Rights of the Child*, Fully Revised Edition, 2002, p. 159.

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with their age and maturity. The child's needs, demands and use of information evolve accordingly. Article 5 provides that the direction and guidance from parents – or a guardian – are important to support a child in exercising their rights with gradually increasing autonomy as the child grows up and develops his or her capacities.<sup>7</sup>

### **3.3. Access to information as a procedural safeguard**

Under international law, access to information in the context of administrative and judicial proceedings is considered a procedural safeguard, alongside other requirements that need to be in place to ensure judicial proceedings are carried out in conformity with principles of rule of law, due process and fair trial. Where information is not provided effectively to the parties concerned, or other procedural safeguards are not in place, the legality of a proceeding could be challenged.

For administrative and judicial proceedings involving children, procedural safeguards have to be sensitive to the rights and needs of the child. This requires special consideration to the provision of information in a language that the child understands, the hearing of the child, representation by a guardian or representative where children are not represented by their parents, legal assistance and access to remedies.<sup>8</sup>

For the context of best interests determinations for children involved in administrative or judicial proceedings, information is the basis on which social workers and judges, as well as children themselves, make a decision on the best interests of the child. The Committee on the Rights of the Child underlines that States parties have to “ensure that the child receives all necessary information and advice to make a decision in favour of his or her best interests”.<sup>9</sup>

Effective access to information is connected to several obligations of the state that are directly or indirectly relevant to guarantee that all procedural safeguards are sensitive to the needs of the child. This requires effective information on the right to access legal representation, to access the

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<sup>7</sup> Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 68, 69, 80.

<sup>8</sup> Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, 29 May 2013, par. 89. Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 40-47.

<sup>9</sup> Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 16, accessed from:

<https://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>.

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documentation and legal reasoning of the proceedings, as well as access to legal remedies. The Committee on the Rights of the Child noted, for instance, that in preparation for the hearing of a child in court proceedings, the competent authorities have to ensure that the child is informed about his or her right to be heard and the way in which the views expressed by the child will be used and taken into consideration. The child has to be informed about the possibility to be heard either directly or through a representative. In addition, the child has to be informed about practical aspects of the hearing, such as the date and time, the location, the modalities of the hearing and any participants who are present or following the hearing through video transmission from another room. The child has to be informed also about the possible consequences of the choices he or she makes and the impact that his or her views may have on decisions and outcomes of proceedings.<sup>10</sup>

The right to information imposes an obligation on the competent authorities to inform the child about the outcomes of any administrative or judicial proceedings concerning the child. This information must include a transparent legal reasoning of how the child's views have been heard, considered and taken into account and how they have been weighed against other evidence and legitimate interests involved in the case. Making this written documentation accessible to the child and his or her representative is a safeguard against tokenistic hearings of children that are merely conducted as a formality. On the basis of this information, the child may consider to challenge decisions or court rulings, launch a formal complaint or access legal remedies. To be able to exercise this right, children have to be informed about how to access child-sensitive complaint mechanisms and how to appeal against a court ruling.<sup>11</sup>

### ***3.4. Children as informed decision-makers and competent service users***

The adoption of the UN Convention on the Rights of the Child in 1989 marked a milestone in a process of change regarding the role of children in society and their upbringing. By providing for all the human rights of children, which are all closely interconnected, the Convention recognises the right of the child to develop their evolving capacities, resources and potentials, the right to protection from all forms of violence and exploitation, the right of the child to seek, receive and impart information and to have their views heard and taken into account in all matters concerning them.

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<sup>10</sup> Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 41, 42, 45.

<sup>11</sup> Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 45-47.

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This broad perspective reflects the concept of children's agency, viewing children not only as persons with a limited legal capacity and in need of special protection, but also as informed decision makers and active members of society – and as rights holders.<sup>12</sup>

Although childhood and family structures are typically shaped by traditions, culture and religion, the way children are raised and cared for in families around the world has been changing significantly over the past decades, with new dynamics created by globalisation, mobility and digitalisation. Children are no longer expected to tacitly obey adults but are taught to seek and reflect on information and to form an opinion, to participate in matters concerning them and to act as responsible members of their families and communities. Adults encourage children to take responsibility for their actions and to judge what is good for them and others. Children demand respect from parents, teachers and service providers, and complain when they feel their views and interests are not taken into account.

In light of these developments, adults need to reflect on their own roles in relation to children – including as service providers and state officials. The relationship between adults and children is no longer focused only on protection but is also based on communication, mutual respect, trying to understand the perspectives and ways of thinking of the child and the adult. These changes influence the role of professionals working with children and parents. Social workers, professionals in childcare, youth work and education, health care professionals, law enforcement officials and the judiciary observe and feel these changes in their work. They are challenged to adapt their skills and working methods accordingly.

Children can be competent service users from a young age, as long as they receive the appropriate support to participate and get involved in accordance with their evolving capacities. Consulting children can be essential to understand how services can become meaningful for them, how to support them so that they trust and collaborate with service providers and in proceedings.<sup>13</sup>

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<sup>12</sup> Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 1.

<sup>13</sup> Wenke, Daja, *Service Providers as Champions for Non-Violent Childhoods, Service provision for children and parents to end corporal punishment*, Non-Violent Childhoods Project, Council of the Baltic Sea States, 2018, <http://www.childrenatrisk.eu/nonviolence/2018/11/09/service-providers-as-champions-for-non-violent-childhoods/>, pp. 13-14.

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### ***3.5. A trend towards evidence-based working methods and service tools that reflect the evolving childhood***

As childhood and the role of children in the society evolves, some of the methods and tools that service providers used in the past are today no longer considered appropriate or effective today. Across Europe, there is a trend towards an increasing use of evidence-based methods that have been developed, tested and refined on the basis of empirical data and demonstrated to enhance the quality of service provision and outcomes for children, families and professional service providers. Some of these tools are guiding service providers in transforming their own professional roles, attitudes and behaviours to gradually take on the role of a facilitator who is coaching and guiding children and families in taking responsibility for resolving problems and challenges they are struggling with.<sup>14</sup> These trends can be expected to gradually change also the methods and approaches used in providing children with information in the context of civil proceedings as a key to their empowered participation in the proceedings and the respect of their views.

## **4. Informing children involved in civil proceedings: Examples of service practice in Italy**

The service providers that are most directly working with children and families involved in civil proceedings in Italy include the social workers employed by the municipalities and the local health care centres (ASL), as well as education professionals, psychologists, child-neuropsychiatrists, medical staff, guardians, specialists who assess children and families for the purpose of writing opinions (Official opinion writers/*Consulente Tecnico d'Ufficio CTU*; Specialists hired by the child's parent(s) or representative to assess the case for an opinion / *Consulente Tecnico da Parte CTP*).

### ***4.1. Knowledge on the right to be heard and the right to information***

The responses reflect a rather low level of awareness of the participating professionals with regard to the right of the child to information. 33 respondents (36 percent) declared to be aware of a general obligation to provide written or oral information to a child with regard to matters that concern the child or could influence the child's future life. 4 respondents denied to be aware of this right. Four

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<sup>14</sup> Wenke, Daja, *Service Providers as Champions for Non-Violent Childhoods, Service provision for children and parents to end corporal punishment*, Non-Violent Childhoods Project, Council of the Baltic Sea States, 2018, <http://www.childrenatrisk.eu/nonviolence/2018/11/09/service-providers-as-champions-for-non-violent-childhoods/>, pp. 13-14.

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respondents recognised this right only for specific contexts, with reference to the Italian Civil Code. Comments provided in response to this questions referred also to the UN Convention on the Rights of the Child and Council of Europe Conventions concerning children's rights. 50 respondents refrained from expressing themselves.

When asked if the right to information depended on the age of the child, 19 respondents affirmed and referred largely to the age limit of 12 years old, the maturity and capacity of discernment of the child (21 percent). 17 respondents were of the opinion that the obligation to provide information to the child did not depend on age (19 percent). Five responded that they did not know, 50 withheld a response.

26 respondents (29 percent) provided more detailed information on the type of information that should be provided to the child, indicating either information about the proceedings and the hearing or information about the situation of the child and the family and what will happen to him or her. Some respondents combined both. The responses demonstrate that the knowledge of the professionals, who are aware of the rights of the child in this field, is relevant but fragmented. 65 respondents abstained.

23 respondents (25 percent) confirmed that the child should generally be heard in the context of civil proceedings that concern him or her before issuing the decision or judgement. 11 respondents affirmed this only for specific cases and circumstances. One respondent denied and four were uncertain. 52 did not respond. The majority of comments to this question referred to the child's age and capacity of discernment as the main criteria to determine a child's right to be heard.

#### ***4.2. Professional experience in providing information to children involved in civil proceedings***

Despite the numerous senior professionals who participated in the survey, many respondents have no or little experience in providing information to children involved in civil proceedings. Only 21 affirmed that they are frequently providing information to children in proceedings (23 percent), six said to have occasionally provided information to children and seven rarely did so (7 and 8 percent respectively). Six respondents did not have any specific experience in this regard. 50 respondents abstained.

Among the 34 respondents who affirmed to have provided information to children involved in civil proceedings, the majority have experience in civil proceedings concerning parental responsibility

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(21 frequently, 8 occasionally, three rarely). Although the respondents have less experience with international child abduction cases, these cases are sometimes part of their work (one respondent stated to have often provided information to children in international child abduction cases, one occasionally, 3 rarely).

In addition, 9 respondents stated that they have occasionally or frequently provided information to children involved in civil proceedings concerning other issues, in particular cases regarding high-conflict parental separations, placement decisions and adoptions, child abandonment and neglect, substance abuse by a parent, psychological issues, dysfunctional families or cases of violence against a child, proceedings initiated due to the child's behaviour, visiting rights and others.

#### **4.3. *Information in a language that the child understands***

Enabling the child to exercise his or her right to be heard in the context of civil proceedings requires the relevant service providers and authorities to communicate information in a language that the child understands, with due regard to the age, abilities, health and evolving capacities of the child. Child-friendly information is essential to enable the child to form an opinion and to express his or her views. In cases of children belonging to minority groups and non-national children, quality interpretation and cultural mediation may be required to prevent discrimination. In cases of children who cannot be represented by their parent(s), where this would be contrary to the best interests of the child or where parents are unavailable or unable to represent the child, the child has a right to be assisted by a guardian or representative to ensure the child has access to information and is able to fully understand the information.<sup>15</sup> The Committee on the Rights of the Child underlines also the need to ensure that younger children and children belonging to particularly marginalised and disadvantaged groups require targeted support to overcome any barriers in communication and enable effective access to information.<sup>16</sup>

The survey responses suggest a low to medium level of awareness of and access to cultural mediation and interpretation to facilitate the communication with children involved in civil

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<sup>15</sup> Council of the Baltic Sea States, *Guidelines on the Human Rights and Best Interests of the Child in Transnational Situations*, Council of the Baltic Sea States Children's Unit and Expert Group for Cooperation on Children at Risk, 2015, pp. 23-24, 89-92.

<sup>16</sup> Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 4, accessed from:

<https://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>.

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proceedings. 29 respondents (32 percent) stated that these services are available for situations where a child or a parent does not understand Italian. Five respondent stated that interpretation or similar services are not available, and two respondents were uncertain. 55 respondents abstained.

The comment of one respondent indicated that cultural mediation services are available from voluntary associations. This suggests that the question to what degree service providers can rely on the support from interpreters and cultural mediators from within the public service system or need to seek out private volunteer services may be an area for further research. From a child rights-based perspective, the provision of quality interpretation is directly connected to the right to information and to be heard as a procedural safeguard and, in consequence, has to be offered and provided in a systematic way and free of charge for the users.

In some situations, the direct involvement of an interpreter can bear some risks for the child, where the conversation with the child might include disclosure of sensitive information, such as acts of violence within the family or community. In small diaspora groups, minority populations or other rather closed social groups, children or adults might feel inhibited to speak openly and disclose sensitive information in the presence of an interpreter from the same population group. Experience from several European countries shows that the use of telephone interpretation could be an alternative to consider in those situations.<sup>17</sup>

Whereas the use of interpretation and cultural mediation is not uncommon in the survey sample, the respondents appear to have less experience in meeting other special communication needs of children, such as physical disability or mental health issues. Among the respondents, only 13 respondents (14 percent) have occasionally and 11 (12 percent) rarely provided information to children with special communication needs. In these situations, the respondents mostly relied on specialists whom they involved to facilitate the communication with the children. Special information material and attention to the room where the conversation takes place were also mentioned as support measures. 12 respondents stated that this has never been part of their work. 55 respondents abstained.

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<sup>17</sup> Wenke, Daja, *Guidelines on the Human Rights and Best Interests of the Child in Transnational Situations*, Council of the Baltic Sea States Children's Unit and Expert Group for Cooperation on Children at Risk, 2015, <https://www.childrenatrisk.eu/projects-and-publications/protect-children-on-the-move/>.  
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These findings are not easy to interpret as they could imply that among the non-representative sample of respondents the experience of working with children whose communication abilities are impaired by a disability or mental health issue is underrepresented. Considering the specific skills and additional effort required to enable effective communication with children who have special needs, and the high risk of discrimination against this group, any follow-up research and the development of methodological guidelines should dedicate special attention to this field.

#### **4.4. Child-friendly material**

Child-sensitive communication for the provision of information is a fundamental precondition for children to exercise their right to be heard and to have their views taken into account. Child-friendly material can be made available as brochures handed out to children, videos, through social media presence of service providers, drop-in centres or others. Child-friendly material helps to support the information flow, communication and mutual understanding of children and service providers, including in the digital environment.

The survey responses do not indicate that service providers would have established a routine to work with child-friendly material when informing children on their rights and proceedings. Only five respondents affirmed that they have occasionally provided children with child-friendly material explaining their right to information and/or to be heard during the proceedings. Five respondents stated that they had rarely provided child-friendly information material to children. 26 respondents have never done this and 55 abstained from responding to the question. Only one respondent affirmed to have collaborated in the development of child-friendly material aiming to inform children about their rights in civil proceedings.

The material that the few respondents have used to inform children, even if only rarely or occasionally, includes information sheets, pictures or drawings and a brief video. Individual respondents reported that they would read the court file together with the child, describe the court building and the authorities that would be involved in the proceedings, and explain what would be happening during the court proceedings. One respondent reported to have invited a 13 year old child who had experienced a very similar situation to tell her story to the child facing civil proceedings, with the parents' consent. These responses indicate the commitment and creativeness of individual service providers to provide information and prepare the child for the proceedings. The responses do not suggest that written or digital child-friendly material would be generally in use. Searching

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solutions on a case-by-case basis requires time and effort from service providers within already busy schedules. The development of a more systematic and consistent approach to providing child-friendly information material emerges therefore as one of the areas to explore further and to strengthen in follow-up activities.

#### **4.5. Age limits**

The Italian Civil Code provides for different statutory age limits regulating as of what age children have a right to be heard. Article 315-bis, para. 3, provides the right of the child to be heard in all matters and proceedings concerning the child as of the age of 12 years old and younger where the child is considered to have the capacity of discernment.<sup>18</sup> In some cases, the age limit is higher or lower and ranks between 10 years and 14 years.

As discussed in Maoli (2021), questions concerning age limits are subject of different, at times conflicting, interpretations by Italian courts at all levels. The diversity of interpretations could be seen as an indicator of the weakness of this regulation, not least in light of the evolving role that children have in society and the rights afforded to them under international and European standards.

In its General Comment No. 12 on the right of the child to be heard, the Committee on the Rights of the Child "... discourages States parties from introducing age limits either in law or in practice, which would restrict the child's right to be heard in all matters affecting him or her".<sup>19</sup> The Committee advises States parties to recognise the right of the child to express his or her views on the basis of a general presumption that children are capable of forming their own views. Acting on this basis would require States parties, through their public institutions and agencies and delegated private partners, to automatically provide for the hearing of the child's views in all matters concerning him or her, unless this would be contrary to the best interests of the child, and to duly motivate any exceptions.

The Committee notes further that research demonstrates how "children's levels of understanding are not uniformly linked to their biological age. Research has shown that information, experience, environment, social and cultural expectations, and levels of support all contribute to the

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<sup>18</sup> For a detailed discussion of different age limits and relevant court practice and rulings, see Maoli 2021, pp. 8-11.

<sup>19</sup> Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 21.

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development of a child's capacities to form a view. For this reason, the views of the child have to be assessed on a case-by-case examination."<sup>20</sup>

In fact, research has evidenced that children are generally able to remember events and emotions they experienced. They are able to give accurate accounts of their experiences even at a young age. The child's capability to narrate in free recall and to resist suggestive questions by an interviewer evolves however significantly with age. The capability of children to provide accurate information and disclose what they remember depends on several factors. The location and environment of the place where the interview or hearing takes place are fundamental. A child-friendly place with as little distractions as possible offers the most conducive conditions for interviewing or hearing children in the context of administrative or judicial proceedings. Support services should be available for the child before, during and after the hearing, in accordance with the child's needs and best interests. The most important factor influencing the accuracy and reliability of a child's statement is the interviewer's ability to elicit information and the child's willingness and ability to disclose it. Research in this field has identified some fundamental principles and rules that professionals have to observe in order to positively influence the child's willingness and ability to express their views and what they remember. These rules and considerations form the basis of evidence-based interviewing protocols, which guide the interviewer step-by-step through the interview and help creating supportive conditions for the child to speak out and to make an accurate statement.<sup>21</sup>

The Committee on the Rights of the Child specified that "a child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained

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<sup>20</sup> Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 29.

<sup>21</sup> Lamb, Michael E., Orbach, Y., Hershkowitz, I., Esplin, P.W., Horowitz, D., Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol, <https://www.ncbi.nlm.nih.gov/entrez/eutils/elink.fcgi?dbfrom=pubmed&retmode=ref&cmd=prlinks&id=18023872>.

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staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.”<sup>22</sup>

Whereas these evidence-based interviewing protocols are increasingly being used throughout Europe to conduct forensic interviews and hearings of child victims of crime even at a young age and where children are traumatised, the relatively high age limits defined under national law for the context of civil proceedings are in not coherent with state-of-the-art knowledge and evidence regarding children’s capability to make accurate and reliable statements.

#### ***4.6. Interagency and multidisciplinary cooperation for informing and hearing the child in the context of civil proceedings***

As noted by Maoli (2021), the right of the child to information in the context of civil proceedings has thus far been legislated for primarily with regard to the hearing of the child, whereas the provision of information prior to the hearing and after the ending of the proceedings has not been regulated explicitly by law. Civil Code article 336-bis provides that the main responsibility to inform the child on the nature of the proceedings and the consequences of the hearing rests with the judge. The judge has the possibility to avail him- or herself of the assistance of a psychologist, social worker or other professionals. The collaboration of judges with service providers would also be particularly important when judges are assessing the child’s capacity of discernment as a precondition for the child to be heard. Where the risk is that an assessment of the child’s capacity of discernment decides about the right of the child to be heard in civil proceedings, the involvement of specially trained and competent professionals should in fact be assured.

Only four respondents of 91 affirm that there is a protocol for interagency and multidisciplinary cooperation in their district. 11 respondents deny, while 19 are uncertain. 56 did not respond.

Some respondents indicate courts of law that have set up cooperation protocols, for instance in the city of Milan. One respondent noted that a cooperation protocol exists in the criminal justice system but not for civil proceedings. The reluctance of some service providers to interagency and multidisciplinary cooperation is mentioned as a reason for the absence of cooperation mechanisms. One respondent notes that protocols exist on paper but are not operationalised.

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<sup>22</sup> Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, par. 34.

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The responses and the comments provided suggest that this field requires more attention in terms of research and analysis to support the development of child-sensitive cooperation protocols and make them fully operational in practice, strengthening the knowledge of service providers in this field and providing joint transdisciplinary and multi-professional training to this end.

## **5. Civil proceedings regarding parental responsibility**

Among the survey respondents, 27 stated to have heard or interviewed a child in the context of civil proceedings concerning parental responsibility (30 percent). 6 denied having this experience and 58 abstained from responding.

Among the affirmative responses, 20 stated that they have frequently or occasionally done so in their capacity as social workers and in the context of the social and health care services provided by the municipality or the local health care centre. Service providers also have a role in the hearing of children as specialists who prepare opinions about the child or the family (CTU/CTP) and as court appointed experts providing special advice to the judge (*esperto ausiliario del giudice*). 12 respondents stated to have frequently or occasionally supported the judge in hearing the child and the comments provided indicate that this happened primarily through expertise on child-sensitive communication and the case assessment.

Only one response indicates that the collaboration with the judge may have been institutionalised in a systematic way as the respondent stated to be always called upon to support the ordinary judge of the Juvenile Court in hearing the child whenever the child was an injured party to the case. Considering the reference made to cases where the child is an injured party, this response, although individual, raises the question whether the rights of the child in administrative and judicial proceedings might have been regulated more explicitly in relation to cases where the child is a victim of violence. This observation calls for a more detailed analysis of the degree of coherence between legal standards and practice across the different fields where children are involved in administrative and judicial proceedings, under civil and criminal, public and private law. Different standards in law and practice could amount to *de jure* or *de facto* discrimination and determine a need for law reform to pursue coherent standards for all children involved in administrative or judicial proceedings.

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Only 12 respondents affirmed that they have frequently provided information to children in proceedings concerning parental responsibility; 16 respondents have done so occasionally or rarely, and most of them in their capacity as social worker in the social welfare and health care system. There is a discrepancy between this number and the number of service providers who declare to have participated in the hearing of children suggesting that only a part of them provided information to the child concerning the hearing.

This might be related to the division of tasks, whereas the judges are mostly in charge of providing information to children in relation to their hearing in civil proceedings (see Maoli, 2021). It raises however also questions as to how standards in law, policy and practice could guarantee the provision of information to children in a more systematic and continuous manner coordinating the different professionals involved with the child's case, and especially those service providers who collaborate with the child in continuity before, during and after judicial proceedings, such as social services.

The respondents provided the following information about their actions to provide information to children at different stages of civil proceedings concerning parental responsibility:

- Only 12 respondents stated that they had provided information to the child prior to the court proceedings (4 frequently, 4 occasionally and 4 rarely);
- 24 respondents provided information during the proceedings (12 frequently, 10 occasionally and 2 rarely);
- 17 before the hearing of the child at court (9 frequently and 8 occasionally);
- 15 during the hearing of the child (6 frequently, 7 occasionally and 2 rarely);
- 17 after the hearing (6 frequently and 11 occasionally);
- 17 after the conclusion of the court proceedings (7 frequently, 7 occasionally and 3 rarely).

Many respondents noted that there is no specific rule as to when information has to be provided to the child involved in the proceedings (19 respondents). Three respondents reported to always provide information to the child on a continuous basis during the proceedings and 12 stated to do so frequently. Seven respondents declared to do so occasionally and five rarely.

The information provided to children is focused mainly on the reason of the hearing (25 respondents) and explaining to the child that his or her views are important but that the child is not responsible for the outcomes of the proceedings and the judge's decision (22 respondents). In

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addition, the respondents reported to inform the child about the overall purpose of the proceedings, the role of different officials and professionals involved in the hearing, the possibility that in addition to the judge and the psychologist, other persons might be present at the hearing, who will have access to the child's statement, how to behave during the hearing, and the relevance of the hearing and possible consequences for the judge's decision.

20 respondents provided information about the methods they used to inform the child. In most of the cases, this happened in a conversation with the child in the office of the service providers or in the child's home. Some respondents explained to use play or drawing to support the communication with younger children.

After the hearing of the child by the judge, the service providers are not necessarily involved in following up with the child. Only six respondents stated to always provide feedback to the child with regard to the hearing and the next steps in the proceedings and 10 do so frequently. Six respondents provide this information occasionally and two rarely. Ten respondents stated that they would provide this information personally, whereas seven noted that they collaborate with other service providers to this end, such as a psychologist or child care staff. Where respondents are involved in providing this information to the child, they do so mostly in a personal conversation.

Only 12 of the respondents had occasionally or rarely been requested by the judge to offer support in providing information to the child. This was the case mostly during the hearing, but also before and after the hearing of the child, and during the proceedings more generally. Only one respondent stated to have been approached by the judge prior to the initiation of the proceedings and one after its conclusion with a view to offering support for informing the child.

Only few respondents have been asked to support the special support person appointed for the child in the context of civil proceedings (*curatore speciale*). 20 respondents have never received such a request, two rarely, five occasionally and only three have frequently been asked for support. Where special support persons asked service providers for support, this tends to concern the whole duration of the proceedings.

Parents or their representatives are also requesting service providers' support to inform the child about the proceedings. Among the respondents, 20 stated that they have had these requests (2 frequently, 9 occasionally and another 9 rarely). These requests regarded mostly support to inform

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the child during the proceedings (12 respondents), but also before and after the hearing and in other phases.

Among the respondents, the service providers from the social and health care sector have more often than others been involved in preparing the parents or other holders of parental responsibility in how to explain the reason of the proceedings and the matters at stake to their children and how to inform the children on the outcomes of the proceedings. Overall, however, only seven respondents stated to have done so frequently, 10 occasionally and 8 rarely. Five respondents have never done this and 61 did not respond. Where social and health care services provide this support to parents, it is typically requested from other service providers or the court, or results from an initiative taken by individual social workers. In fact, 16 respondents noted that they collaborated with other service providers in providing information and advice to parents. The respondents do not indicate any mechanisms in place to ensure this support was provided in a systematic manner or automatically.

After the judge's ruling, the service providers are not necessarily involved in following up with the child. Only 8 respondents stated to always provide information about the outcomes of the proceedings and the consequences for the child and 9 do so frequently. Four respondents provide this information occasionally and four rarely.

Twenty respondents stated that they inform the child about the outcomes and consequences of the proceedings and they mostly do so in a personal conversation. 26 of the respondents have provided this information in the presence of other officials or practitioners (3 always, 10 often, 11 occasionally and 2 rarely), such as a parent or foster parent, psychologist, social worker, the special support person of the child appointed for the purpose of the proceedings, the judge, or childcare and educational professionals.

## **6. Conclusions**

Based on the review of survey responses in light of relevant international and European child rights standards, this paper concludes that there is no indication that the right of the child to information in the context of civil proceedings would have been addressed systematically in the national legal framework of Italy and social service practice. This paper affirms the analysis presented by Maoli, 2021 that the right of the child to information in the context of civil proceedings has been legislated for primarily in connection to the hearing of the child by a judge and insufficient attention has been

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given to regulating the right to information and correlated obligations of state and private service providers with continuity before, during and after proceedings.

The review conducted in this paper concludes further with the observation that this limited legal framework translates to an also limited service practice. Law reform is required to more specifically and explicitly regulate the right of the child to seek and access information at any stage where they are involved in administrative or judicial proceedings, as well as the responsibilities of different service providers individually and in cooperation.

Law reform itself will only be a first important step to initiate a process of change in this field. It will require a concerted action by policymakers across different policy sectors and levels of the decentralised public administration to see the legal reform through to practice. Law reform is only sensible if complemented by effective implementation measures, such as systematic training, mechanisms for child-centred interagency and multi-disciplinary cooperation, systemic working methods that are evidence-based, child-sensitive and reflect the dynamics of modern childhood. Research may be needed to analyse the structures of the state administration and how it may create conducive conditions for the implementation of the right to information. In addition, data collection, monitoring and evaluation, communication and dissemination, including child-friendly material, will be required to ensure effective implementation.

Considering the novelty of the issue for the legal context, policy and practice, a close collaboration between researchers and the academia and policymakers would be important to ensure law reform processes are informed by state-of-the-art knowledge and evidence. Advocacy for a national action plan might be considered to strengthen the rights of the child in administrative and judicial proceedings more generally, aiming at the promotion of coherence across proceedings under civil, criminal or administrative law, public and private law.

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