



*Ministero della Giustizia*



*Autorità Garante  
per l'Infanzia e l'Adolescenza*

## **Memorandum of Understanding**

**between**

**The Ministry of Justice**

**The National Ombudsman for Childhood and Adolescence**

**and**

**Bambinisenzasbarre ONLUS**

**THE MINISTRY OF JUSTICE**

**THE NATIONAL OMBUDSMAN FOR CHILDHOOD AND ADOLESCENCE**

**BAMBINISENZASBARRE ONLUS**

- **Having regard to** articles 2-3 of the Italian Constitution, which guarantee respect for human dignity;
- **Having regard to** article 27 of the Italian Constitution, which promotes the principle of re-education and resocialization as a goal of the custodial sentence ;
- **Having regard to** Constitutional Law 18 October 2001, n° 3;
- **Having regard to** the UNO Convention on the Rights of the Child of 20 November 1989, ratified and brought into effect by Italy through Law 27-05-1991, n° 176 in particular articles 1-2-3-9-12-30;
- **Having regard to** “*Standard Minimum Rules for the Administration of Juvenile Justice*”, UNO, New York, 29 November 1985;
- **Having regard to** the European Convention on Human Rights, in particular art.8, which stresses the right to respect for private and family life;

- **Having regard to** the European Resolution 2007/2116 (INI), adopted in Strasbourg on 13 March 2008, art.24, which reaffirms the importance of respecting the rights of the child irrespective of the parent's legal status;
- **Having regard to** Resolution n°1663/2009 of the Parliamentary Assembly of the Council of Europe;
- **Having regard to** the European Prison Rules in the updated version of Recommendation R (2006) 2 of 11 January 2006, in particular as regards paragraph 36 concerning policies supporting parenting and paragraph 24(4), which prescribes visiting rules that must allow prisoners to preserve and develop as regular as possible family relationships;
- **Having regard to** the goals of the Council of Europe Strategy for the Rights of the Child (2016-2021)
- **Having regard to** Law 26 July 1975 , n°354 in the section which regulates a prisoner's relationships with the external world and with his/her family, especially with regard to preserving parental relationships;
- **Having regard to** DPR (Presidential Decree) 30 June 2000 n°230, *"Regulations containing provisions on the Penitentiary Act and on the measures entailing restrictions on, and deprivation of personal liberty"*;
- **Having regard to** Law 8 March 2001, n°40 *"Measures alternative to detention protecting the relationship between female prisoners and minors"*, art.5;
- **Having regard to** Law 21 April 2011, n°62, and in particular the agreement according to article 4 par. 1, as well as Decree 8 March 2013 *"Requirements for Protected Foster Homes"*;
- **Having regard to** Circular 10 December 2009 of the Ministry of Justice, Prison Administration Department, Directorate-General for Prisoners and Treatment, called "Prison treatment and parenting - facilitated path and prison stay for the child meeting his/her detained parent";
- **Having regard to** Law 12 June 2011, n°112, establishing the Ombudsman Authority for Childhood and Adolescence;
- **Having regard to** the Ministry of Justice's Decree 5 December 2012, called "Approval of the Charter of Prisoners' and Internees' Rights and Duties";
- **Having regard to** Recommendation CM/Rec (2012) 12 of the Committee of Ministers of the Council of Europe to Member States on foreign prisoners and in particular the chapter *"Women"*;
- **Having regard to** the Memorandum of Understanding signed on 28 January 2014, in the presence of the Minister of the Interior, between the Chief of Police – General Director of Public Security – and the Ombudsman Authority for Childhood and Adolescence;
- **Having regard to** Law 23 December 2013, n° 146, modified by the Law 21 February 2014, n°10, establishing the Ombudsman Authority for the Rights of People Detained or Deprived of Personal Freedom.

### **Considering that**

The Parties agree on the importance and necessity of renewing the Memorandum of Understanding, undersigned on the 21<sup>st</sup> March 2014, with the aim to reinforce and to expand the outcomes achieved so far and pinpoint new tools of action.

It is reaffirmed the will to continue with the intent of:

- Favoring the maintenance of contacts between imprisoned parents and their children, always safeguarding the minor's superior interest;
- highlighting the peculiarity of imprisoned parents' children, so that regulatory interventions and measures are promoted, which allow for this social group's need for parental and emotional relationships without, however, producing further stigma and discrimination against them;
- protecting children's right to an emotional and continuing bond with their imprisoned parent, who has a duty and a right to play his/her parental role;
- supporting family and parental relationship during and beyond detention, assisting the family and, in particular, supporting the minors who are emotionally, socially and economically damaged, with frequent negative repercussions on their health and effects also on their dropping out of school;
- overcoming barriers connected to prejudice and discrimination with a view to a process of social integration and deep cultural change, which is necessary for the project of a supportive and inclusive society.
- Considering the articles, undersigned in this Memorandum of Understanding, as reference in making decisions and in establishing the *modus operandi* as to what concerns all parents, even minor ones, who are subject to measures entailing restrictions of liberty;
- Ensuring that is offered to mothers and fathers in prison the support along assisted paths to parenthood.

## **THE PARTIES AGREE:**

### **Article 1**

(Decisions concerning judicial orders, judgments and sentences)

Judicial authorities will be sensitized and invited, in particular:

1. to take into account the rights and requirements of the underage children of the arrested or detained person who still has parental responsibility, when a possible precautionary measure is being decided, giving priority to measures alternative to pre-trial detention in prison;
2. to enforce the restrictions imposed to contacts between pre-trial detainees and the external world so as not to violate minors' right to remain in contact with the distanced parent, as provided for in the UNO Convention on the Rights of the Child;
3. to select, in the case of parents of underage children, measures for the implementation of the penalty which would also take into consideration the minors' superior interest;
4. to consider as significant the needs of underage children – such as birthday, first day of school, hospitalization - in granting temporary permissions of leaves of absence (bonus or necessity) to imprisoned parents.

### **Article 2**

(Minors' visits to prisons)

The Ministry of Justice, with the collaboration of the Guarantor Authority for Childhood and Adolescence and the Association Bambinisenzasbarre ONLUS, commits to implementing all necessary actions so that:

1. the choice of the detention place for a parent with minor children takes into account the need to guarantee the possibility of direct contact between child and parent during his/her stay in prison;
2. a minor can visit the imprisoned parent within a week from the arrest and, on a regular basis, from then on;
3. in all waiting rooms a children's space is equipped, where minors can feel welcome and recognized. In these spaces, operators will welcome and supply family members with what is needed for a decent wait (like a bottle warmer or a changing table) and young children with resources such as toys or drawing tables, in order to prepare them to the meeting with their imprisoned parent;
4. every visiting room, even small ones, provides a "children's space" that is reserved to playing. Where the building allows it, to equip a separate space intended as a playroom. This plan will be gradually implemented, becoming fully at least in Institutions for the execution of prison sentences (establishments where longer sentences are served);
5. buildings are accessible to disabled minors or to those with special access needs;
6. visits are organized over six days a week, allowing at least for two afternoons so as not to prevent minors from attending school. Visits are to be scheduled also on Sundays and public holidays;
7. minors are given information appropriate for their age about visiting procedures and rules, as well as information on what can be taken to visits and on how security checking procedures are handled on their arrival in the prison. This information must be provided in various languages and various formats (for example through large size posters, video and audio versions that are easily understood even by smaller children);
8. security checks are adequate and in proportion to minors' rights and conditions, considering, in particular, their right to privacy, to physical and psychological integrity, to safety;
9. children are offered the possibility to visit their parents also with special attention to privacy, when it is necessary and in particular circumstances;
10. minors are allowed to acquire knowledge of their parents' life under detention and, where the facilities allow it and if it is seen as appropriate in the minors' superior interest, to visit some of the spaces which their imprisoned parents frequent (for example, the canteen or recreation rooms or workshops or places of worship);
11. alternative accompaniment for minors from 0 to 12 years of age is provided, in case the other parent or a reference adult is not available. This aim can be achieved with the help of qualified social workers, or permission can also be given to members of non-governmental organizations (NGO) or associations that are active in this field ;
12. in detention centers, wherever possible, "groups of experts in support of minors" are organized, with special attention to younger children, in order to assess regularly how they experience prison visits, in order to favor contact with parents also through different means and in order to provide advice about possible improvements to facilities and procedures.

### **Article 3**

(More types of relationships with the imprisoned parent)

The Parties also undertake:

1. not to consider additional contacts with minor children as "rewards" granted on the basis of the prisoner's behavior;

2. to develop specific guidelines concerning support and maintenance of contacts between imprisoned parents and minor children who cannot easily meet. Under these circumstances specific regulations need to be provided which can more systematically allow the use of mobile telephone systems and the Internet, including webcam and chat communications.

#### **Article 4**

(Training of the staff)

1. Penitentiary Administration staff, as well as Juvenile Justice and Rehabilitation Youth Centers operators, working in institutes must be specifically formed about the impact produced on minors by a parent's detention and by the prison environment.
2. In particular penitentiary Police staff must be specifically formed about security checking procedures appropriate for children and adolescents, so that in every prison and juvenile penal institute specialized police officers can be found, adequately formed for the assistance to minors and families during visits.

#### **Article 5**

(information, assistance and instruction)

Each of the Parties undersigning this Memorandum, within its scope and through its own procedures, will strive in order to:

1. give prisoners, their relatives and their children, including minors, appropriate, updated and relevant information in every phase of the process, from arrest to release, both about procedures and possibilities for their contacts and about the assistance specifically offered them before, during and after the relative's detention period. Minors must be given information – clear and adequate to their age - about possible supporting services that may be available to them independently of their parents, if possible, also through the help of NGO's or qualified associations;
2. offer support and assistance to imprisoned parents, who may be worried about the impact prison visits may have on their children and/or themselves, so as to promote the maintenance of contacts with their children using the various means of communication that are allowed, especially during the time preceding the first possible visit;
3. propose in detention institutes assisted parenthood programs, encouraging the development and the strengthening of a constructive parent-child relationship;
4. encourage detained parents to practice, during detention, their parental responsibility towards minor children, and, in particular, envisaging that the possibility of having leave permits –to visit their family at home- may be an integral part of preparation to release;
5. support ,in detention centers and in juvenile penal institutes, information and counselling activities for imprisoned parents of minor children about the social and educational services provided for by Local Authorities to families and about the necessary updating procedures of documents pertaining their family and social situations;
6. avail themselves of NGO's and of associations and cooperate with them, so that in every facility a positive parental relationship is maintained and their activity is adequately favored according to the different needs in the various institutes.

**Article 6**  
(Data collection)

1. The Department of penitentiary administration and the Department for Juvenile Justice and Rehabilitation Youth Centers will systematically collect every useful information about the number and the age of minors children of indicted, convicted or detained parents in prison or mental health facilities, and more possible information on the number of family visits effectively used on a yearly base.
2. Statistics, grouped according to age, on the number of minors who have one or both parents in prison, will be made available to the public.

**Article 7**  
(Transitional provisions)

In the await for the achievement of the objective to avoid the stay of children inside prison, the Parties would imperatively and scrupulously verify that:

1. all children living in prison can freely access open air areas;
2. procedures and agreements with ONG's and Associations are carried out so that children can freely access the external world (if necessary, under the supervision of qualified staff, wearing civilian clothes);
3. children attend nursery schools and schools outside the prison, ensuring that they are always accompanied;
4. staff working in detention centers hosting children is made up also by qualified people, trained on what concerns the psychological and physical development and education of individuals in their developmental age;
5. educational and supporting facilities are offered, preferably outside the institutes hosting children and imprisoned parents;
6. imprisoned parents living with their children in prison are supported in the development of their parental abilities, have the opportunity to adequately look after their children , having for example the possibility to cook their meals for them, to get them ready for nursery school and school, to spend time playing with them and undertaking other activities both inside the center and in the open air areas;
7. measures for psychological and social accompaniment are provided so as to support the imprisoned parent and his/her child in their separation and to reduce its negative effect.

**Article 8**  
(Establishing of a permanent working Table)

A permanent working Table is established, constituted by representatives of the Ministry of Justice, the Ombudsman Authority for Childhood and Adolescence, the Ombudsman Authority for the Rights of People Detained or Deprived of Personal Freedom and the Association Bambinisenzasbarre ONLUS, which is summoned every 3 months by the Ombudsman Authority for Childhood and Adolescence, and which:

1. will periodically monitor the implementing of this Memorandum;
2. will promote the cooperation of the institutional and non-institutional agencies, involved in various ways, with special attention to the phase of the arrest, as well as to the information and sensitization of school operators working in contact with minors with imprisoned parents;

3. will encourage the exchange of good practices, of analyses and of suggestions on the national and European level.

### **Article 9**

(Validity)

This Memorandum of Understanding has a validity of two years from the date of signing and can be modified and integrated at any time if the parties agree and it can be renewed upon expiration.

Rome, 6 September 2016

THE MINISTER OF JUSTICE

(Andrea Orlando)

THE PRESIDENT OF THE ASSOCIATION BAMBINISENZASBARRE ONLUS

(Lia Rosa Sacerdote)

THE NATIONAL OMBUDSMAN AUTHORITY FOR CHILDHOOD AND ADOLESCENCE

(Filomena Albano)