

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,

- **With regard to** Articles 2-3 of the Italian Constitution, which guarantee respect for human dignity;
- **With regard to** Article 27 of the Italian Constitution, which promotes the principle of education and resettlement as a goal of the custodial sentence;
- **With regard to** Constitutional Law 18 October 2001, n°3;
- **With regard to** the UN Convention on the Rights of the Child of 20 November 1989, ratified and brought into effect in Italy through Law 27-05-1991 ,n°176, in particular articles 1, 2, 3, 9, 12 and 30;
- **With regard to** the “*Standard Minimum Rules for the Administration of Juvenile Justice*”, UN, New York, 29 November 1985;
- **With regard to** the European Convention on Human Rights, in particular Article 8, which stresses the right to respect for private and family life;
- **With regard to** the European Resolution 2007/2116 (INI), adopted in Strasburg on 13 March 2008, in particular Article 24, which reaffirms the importance of respecting the rights of the child irrespective of their parent’s legal status;
- **With regard to** Resolution n°1663/2009 of the Parliamentary Assembly of the Council of Europe;
- **With regard to** the European Prison Rules in the updated version of Recommendation R (2006) 2 of 11 January 2006, in particular with regard to paragraph 36 concerning policies supporting parenting and paragraph 24(4), which prescribes visiting rules that must allow prisoners to preserve and develop family relationships in a way which is as normal as possible;
- **With 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;

- **With regard to** DPR (Italian Presidential Decree) 30 June 2000 n°230, *“Regulations concerning provisions in the Penitentiary Act and on the measures entailing restrictions on, and deprivation of personal liberty”*;
- **With regard to** Law 8 March 2001, n°40 *“Measures alternative to detention protecting the relationship between female prisoners and their children”*, Article 5;
- **With 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”*;
- **With 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: facilitating the procedure and prison visit for a child visiting his/her imprisoned parent”*;
- **With regard to** Law 12 June 2011, n°112, establishing the Guarantor Authority for Childhood and Adolescence (Ombudsman for Childhood and Adolescence);
- **With regard to** the Ministry of Justice Decree 5 December 2012, entitled *“Approval of the Charter of Prisoners’ and Detainees’ Rights and Duties”*;
- **With regard to** Recommendation CM/Rec (2012) 12 of the Committee of Ministers to Member States on foreign prisoners and in particular the chapter *“Women”* ;
- **With 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 for Childhood and Adolescence;

the Parties agree on the importance and necessity of:

- favoring maintaining contact between imprisoned parents and their children, while always safeguarding the child’s best interests;
- highlighting the uniqueness of children of imprisoned parents, so that regulatory interventions and measures are promoted which allow for this social group’s need for parental and emotional relationships without, however, creating further stigma and discrimination against them;
- protecting the child’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 child-parent relationships during and after detention, assisting the family and, in particular, supporting the children who may face emotional, social and economic instability, with frequent negative repercussions on their health and other effects such as 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 in order to build a supportive and inclusive society;
- considering the articles, signed in this Memorandum of Understanding, as reference in making decisions and in establishing the *modus operandi* as to what concerns all parents, including underage parents, who are subjected to measures of restrictions of liberty;

THE PARTIES, EACH WITHIN THEIR AREA OF RESPONSIBILITY, AGREE:

Article 1

(Decisions concerning judicial orders, judgments and sentences)

Judicial authorities will be made aware of the importance of the following provisions and, in particular, will be asked to:

1. 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. enforce the restrictions imposed on contacts between pre-trial detainees and the external world in such a way as to not violate the children's right to remain in contact with their parent, as stipulated in the UN Convention on the Rights of the Child;
3. choose, in the case of parents of underage children, sentencing measures which take into consideration the child's best interests;
4. consider the needs of underage children in granting temporary permissions or bonus leaves of absence to imprisoned parents and to commit to implementing them.

Article 2

(Children visiting prisons)

The Ministry of Justice, with the collaboration of the Ombudsman for Childhood and Adolescence and the association Bambinisenzasbarre ONLUS, commits to taking all steps necessary to ensure that:

1. the choice of prison or detention centre for a parent with underage children takes into account the need to guarantee the possibility of direct contact between the child and parent during the latter's imprisonment;
2. a child can visit his/her imprisoned parent within a week after the arrest and on a regular basis from then on;
3. all waiting rooms are equipped with a suitable children's space, where children feel welcome and recognised. In these spaces, staff will welcome and supply family members with what any necessary provisions (such as bottle warmers or changing tables) and young children with resources such as toys or drawing tables, in order to prepare them for the visit with their imprisoned parent;
4. every visits room, even the small ones, is equipped with a "children's space" that is reserved for playing. Space permitting, it is important to provide a separate space intended for use as a playroom. This plan will be gradually implemented, becoming fully effective within the end of this year at least in institutions for the execution of prison sentences (establishments where longer sentences are served);
5. buildings are accessible to disabled children or to those with special access needs;

6. visits are organised over six days a week, allowing at least two afternoons so as not to prevent children from attending school. Visits are to be scheduled also on Sundays and public holidays;
7. children are given age-appropriate information 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 at 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 younger children;
8. security checks are adequate and take into account child rights, considering, in particular, their right to privacy, to physical integrity and to safety;
9. children are offered the possibility to visit their parents, with special attention paid to privacy, when necessary and under particular circumstances;
10. children are given information about their parents' life in prison and, where facilities allow it and if in the children's best interests, to visit some of the spaces their imprisoned parents frequent, such as the canteen or recreation rooms, workshops or places of worship;
11. alternative provisions for accompanying children between 0 and 12 years of age are provided, in case the other parent or guardian is not available. This aim can be achieved with the help of qualified social workers. Permission can also be given to members of non-governmental organizations (NGO) or associations that are active in this field;
12. in detention centres, wherever possible, children's expert groups are organised regularly, with special attention to younger children, in order to assess how children experience prison visits, to discuss how to promote contact with parents using different means and to provide advice about eventual improvements to facilities and procedures.

Article 3

(Other types of relationships with the imprisoned parent)

The Parties also agree to:

1. not consider additional contacts with underage children as "rewards" granted on the basis of the prisoner's behaviour;
2. allow the parent, during detention, to be present at important moments of their child's life, especially if they are underage, such as birthdays, first day of school, recitals, exhibitions, degree, festivities;
3. offer prisoner-parents the chance to have special leave permits in case of emergency, for example to visit their children if they are in hospital;
4. develop specific guidelines concerning support and maintaining contact between imprisoned parents and underage children who cannot easily meet in person. 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
(Staff training)

1. Penitentiary Administration staff and Juvenile Justice operators, operating in institutes must be specifically trained about the impact of a parent's detention and of the prison environment on children.
2. In particular, prison staff must be specifically trained about security procedures appropriate for children and adolescents, so that specially trained prison officers are present in every prison and juvenile penal institute who are adequately trained in helping children and families during prison visits.

Article 5
(Information, assistance and support)

Each of the Parties undersigned, within its scope and through its own procedures, will strive to:

1. give prisoners, their relatives and their children, including those underage, appropriate, up-to-date and relevant information in every phase of the process, from arrest to release, both about procedures and possibilities for maintaining contact and about the help specifically offered them before, during and after the relative's detention period. Children must be given clear and age-appropriate information about possible support services that may be available to them independently of their parents, for instance through NGOs 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 maintain contacts with their children using the various means of communication that are available, especially during the time prior to the first possible physical visit;
3. offer programmes which support parenting, encouraging the development of a constructive child-parent relationship and supporting positive experiences for children;
4. encourage imprisoned parents to gradually assume their parental responsibility towards their children, and, in particular, to explore the possibility of providing special leave permits so that they can go home, permits which would form an integral part of preparation before release;
5. support, in detention centres and in juvenile penal institutes, information and counselling activities for imprisoned parents about the social and educational services available to families provided by local authorities and to provide support to imprisoned parents in updating documents pertaining to their family and social situations;
6. make full use of NGOs and associations and cooperate with them, so that in every detention facility a positive child-parent relationship is maintained and that priority is given to the work of the NGO according to the needs of the institute in question.

Article 6
(Data collection)

1. The Department of Penitentiary Administration and the Department for Juvenile Justice will systematically collect information about the number and age of children whose parents are detained on remand or in prison, along with any other relevant information.
2. Statistics, grouped according to age, on the number of underage children who have one or both parents in prison, must be made available to the public.

Article 7
(Temporary provisions)

Though stating forcefully that it is important to avoid having children reside in correctional centres or in low security institutions (ICAM) and to provide alternative measures to detention for parents of young children, if in exceptional cases detention cannot be avoided, the Parties agree to systematically and carefully verify that:

1. all children living in prison with their parents can freely access open air areas;
2. procedures and agreements with NGOs 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, if appropriate, schools outside the prison;
4. staff working in detention centres which house children is made up of qualified personnel, trained in the psychological and physical development of children, as well as in their education;
5. educational and support facilities are offered, preferably outside the institutes housing children with their 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, for example the opportunity to cook their meals for them, to get them ready for nursery school and school, to spend time playing with them and to undertake other activities both inside the centre and in the open air areas;
7. psychological and social support measures are provided in order to support the imprisoned parent and child at the point where the child can no longer live in the prison and to ensure that these measures aim to reduce any potential negative impact of the separation.

Article 8

(Creation of a permanent working group)

A permanent working group will be established, composed of representatives of the Ministry of Justice, the Ombudsman for Childhood and Adolescence and the association Bambinisenzasbarre ONLUS, which:

1. will periodically monitor the implementation of this Memorandum of Understanding;
2. will promote the cooperation of the institutional and non-institutional agencies involved in various ways, with special care given to the arrest phase, as well as to informing and raising awareness among staff in schools who come into contact with children of imprisoned parents;
3. will encourage the exchange of good practice, 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 updated at any time if the Parties agree and can be renewed upon expiration.

Rome, 21 March 2014

THE MINISTER OF JUSTICE
(Andrea Orlando)

THE PRESIDENT OF THE ASSOCIATION BAMBINISENZASBARRE ONLUS
(Lia Rosa Sacerdote)

THE NATIONAL OMBUDSMAN FOR CHILDHOOD AND ADOLESCENCE
(Vincenzo Spadafora)