



Co-funded by the
European Union

Hearing children in family proceedings: Italy

1. General Obligation to hear children

- Art. 12 CRC is directly applicable and as such recognized under Italian law (judgment of the Constitutional Court (1/2002)). In general, the CRC has been ratified by Italy and implemented by the Parliament through Law No 176 of 27 May 1991. The Convention can thus be enforced by domestic courts through this piece of legislation (CRIN, 2015, p. 1).
- Law No 219 of 10 December 2012 and Legislative Decree No 154 of 28 December 2013 inserted a new provision in the Italian Civil Code, providing for the right of the child to be heard in any decision that regards him/her. In particular, Art. 315-bis of the Civil Code establishes said right for minors ages 12 and up, whereas Arts. 336-bis and 337-octies specify the procedural aspects, together with Art. 38-bis of the Final Provisions of the Civil Code. If the hearing appears to conflict with the child's best interests, or to be manifestly unnecessary, the judge can decide not to carry out this duty, provided that such decision is duly motivated.
- Also before this general provision was adopted, the child's right to be heard was mentioned in special acts and procedures, including Law No 64 of 15 January 1994 on the hearing of the child in return procedures in regard of international abduction cases.

2. Minimum age

- Pursuant to Arts. 315-bis, 336-bis and 337-octies, the minimum age is 12. Children above 12 must be heard. Children below 12 can be heard only if necessary and he/she has reached the age of understanding. The juvenile court of Milano has "heard" children as young as 3,5 years old by observing a child's relations with his family members at home (Honorati, 2016).
- When hearing the child is against the best interest of the child itself, or is clearly not necessary, the court may not hear the child, explaining the reasons for not doing so (Honorati, 2016; Art. 336bis Civil Code; Country Profile, 2016).

3. Who hears the child?



Co-funded by the
European Union

- The child is heard either directly by the judge (CEFL, 2005, p. 38), with the assistance of experts or special officers such as competent Welfare Offices or Child and Adolescence Psychology Centres (Country Profile, 2016; Honorati, 2016). The hearing can take place also in a child friendly manner (Baruffi, 2016).
- Parents, parents counsels, the Childs' Guardian and the Public Prosecutor may assist at the hearing, if allowed by the court to do so. Before the hearing they can advance to the Court questions or issues they would like to be asked to the minor (Honorati, 2016).
- Before beginning the hearing, the Court shall inform the child of the nature, the reasons and the effects of the hearing. The hearing is recorded by transcripts or by video-tape in order to collect the reaction of the child (Honorati, 2016).
- In case of the parents' inability to bring a case on behalf of their child, or in case of a conflict of interests, the child can be represented by someone acting on his/her behalf (for example, a guardian ad litem or a "special curator" appointed by the presiding judge) (Civil Code Art. 346) (CRIN, 2015, p. 3) (see also Country Profile, 2016).

4. Specific rules for hearing children in child abduction cases?

In abduction cases, the hearing of the child was prescribed even before the introduction of Arts. 315-bis, 336-bis and 337-octies (see Art. 7 of Law No 64 of 15 January 1994).

5. Cross-border element (i.e. hearing a child who is abroad in second-chance procedure Brussels IIbis?)

- The lack of a EU common standard regarding the procedure and the requirements of the hearing of the child has led to some issues in the recognition and enforcement of decisions according to the Brussels IIbis Regulation. In Italy, the main ground used to refuse recognition of judgments is the lack of the hearing of the child (Baruffi, 2016) (see further the Study on the assessment of Regulation (EC) No 2201/2003 and the policy options for its amendments. Final Report, Analytical annexes, 2015, pp. 52-53).
- In return proceedings, hearing of the child is often made extremely short through expert's opinions – and sometimes denied - on the ground that this is a summary proceeding having urgent nature and thus not allowing for more in depth hearing (Honorati, 2016).

6. Other relevant matters



Co-funded by the
European Union

Case law has traditionally given a “cognitive relevance” to the hearing of the child, in particular in child abduction cases, where it has been considered an element that helps the judge to appraise if the return to the State of habitual residence causes prejudice to the child. In any case, the negative opinion of the minor on the return could not provide the sole ground to refuse the request of return (see Supreme Court, No 12293 of 19 May 2010, available at <http://www.minoriefamiglia.it>; Supreme Court No 17201 of 11 August 2011, available at <http://www.italgiure.giustizia.it/sncass>). However, more recent case law has taken a wider approach. In fact, it was held that the state of mind of a child who has been heard according to the Civil Code provisions must “always and necessarily” be taken into account (see Supreme Court, No 5237 of 5 March 2014, available at <http://www.italgiure.giustizia.it/sncass>. Following this judgment, see, among others, Supreme Court, No 7479 of 31 March 2014; Supreme Court No 16658 of 22 July 2014; Supreme Court, No 19007 of 10 September 2014; Supreme Court, No 19327 of 29 September 2015, all available at <http://www.italgiure.giustizia.it/sncass>).

7. Legal sources on hearing the child

- Arts. 315-bis, 336-bis, 337-octies of the Civil Code, and Art. 38-bis of the Final Provisions of the Civil code; Art. 7 of Law No 64 of 15 January 1994
- Judgment of the Constitutional Court (1/2002).
- Supreme Court, 23.07.1997 No. 6899, Giust. Civ., I, p. 2295.
- Supreme Court, No 12293 of 19 May 2010.
- Supreme Court No 17201 of 11 August 2011.
- Supreme Court No 5237 of 5 March 2014.
- Supreme Court, No 7479 of 31 March 2014.
- Supreme Court No 16658 of 22 July 2014.
- Supreme Court, No 19007 of 10 September 2014.
- Supreme Court, No 19327 of 29 September 2015.

8. Sources in literature

- [Ballesteros et al.](#), 2013, pp. 181-192
- [CEFL](#), 2005
- [CRIN](#), 2015
- [Hague Convention Country Profile](#) section 10.4 (last updated March 2016)



Co-funded by the
European Union

- [Study on the assessment of Regulation \(EC\) No 2201/2003 and the policy options for its amendments. Final Report, Analytical annexes, 2015](#)
- Contact in Italy: Prof. Maria Caterina Baruffi and Prof. Costanza Honorati