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Phenomenology of Juvenile Delinquency and the Illusion of Criminal Deterrence

From adolescent intimate-partner violence to the 2026 emergency legislation: structural limits of statutory intimidation, the rebuttable presumption of criminal capacity under Article 98 of the Italian Criminal Code, and the refounding of juvenile sentence enforcement

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Current Legal Framework as of 30 October 2026: This contribution examines the phenomenological transformations of juvenile delinquency in light of Senate Bill no. 1990/2026, Chamber of Deputies Bill no. 3080/2026, and Law Decree no. 190 of 22 October 2026, which entered into force on 23 October 2026.

ABSTRACT

This contribution examines the **phenomenological transformation of juvenile delinquency**, marked by the emergence of severe violent offences against the person within adolescent romantic relationships (aged 13–15) alongside collective urban unrest. In addressing these dynamics, the study highlights the **structural failure of abstract general deterrence**, demonstrating how severe statutory penalties—including the newly codified offence of femicide—prove incapable of guiding minors governed by emotional immaturity and heightened impulsivity. The analysis critically assesses the governmental bill approved on 14 July 2026 and introduced on 30 July 2026 (Senate Bill no. 1990, 19th Legislature), exposing the incongruity of **situational crime prevention** in public urban spaces with respect to offences committed within the private sphere and the limits of a budget-neutral territorial educational alliance, as well as the proposed **rebuttable presumption of criminal capacity** (Chamber of Deputies Bill no. 3080, 19th Legislature), subsequently enacted through emergency decree legislation. Identifying the sentence-execution phase as the true epicentre of the systemic crisis, the Author advocates a structural refounding of the **scientific observation of personality** within juvenile penal institutions and the adoption of binding forensic assessment protocols pursuant to Article 27(3) of the Italian Constitution. Finally, the study examines Law Decree no. 190 of 22 October 2026, highlighting the aporias of a further repressive tightening devoid of effective preventive safeguards addressing underlying socio-educational vulnerability.

Key Takeaways

- **Phenomenological mutation:** Alongside violent urban youth gatherings, extremely grave relational offences are emerging in the 13–15 age bracket, defying reduction to traditional sociological models of peripheral marginalisation alone.
- **Ineffectiveness of abstract deterrence:** Increasing statutory sentencing ranges, including the newly enacted offence under Article 577-bis of the Criminal Code, fails to act as a psychological counter-motive upon adolescent personalities marked by incomplete inhibitory impulse control.
- **Rebuttable presumption under Article 98 Criminal Code (Law Decree no. 190/2026):** The presumptive shift introduced for minors aged fourteen and over does not extinguish the constitutional and European duty (Directive (EU) 2016/800) to conduct an individualised personality assessment.
- **Refounding juvenile sentence enforcement:** Overcoming the systemic crisis requires specialised clinical-diagnostic units within Juvenile Penal Institutions, standardised forensic assessment protocols, and adequately funded educational safeguards.

RESEARCH DOSSIER

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Within the juvenile criminal justice system, countering severe relational offences committed during developmental age as well as collective urban violence cannot be reduced to the symbolic escalation of statutory penalties or presumptive automatisms regarding criminal capacity under Article 98 of the Criminal Code; Articles 27(3) and 31(2) of the Italian Constitution require a concrete, individualised assessment of the minor's bio-psychic and ethical-relational maturity, coupled with an enforcement phase grounded in the continuous scientific observation of personality.

01. FROM GROUP VIOLENCE TO RELATIONAL OFFENCES: THE PHENOMENOLOGICAL MUTATION OF JUVENILE DELINQUENCY.

1.1 — The Explanatory Inadequacy of Urban Deviance and Youth Aggregations.

Over recent decades, criminal law scholarship and criminological inquiry have consistently interpreted juvenile deviance through the prism of collective manifestations, identifying group dynamics and the degradation of metropolitan environments as the primary vectors of criminal genesis. During that period, the attention of both the social sciences and public opinion became polarised around conduct perpetrated by so-called “baby gangs”[1] or around the manifold forms of bullying[2] and coercion disseminated across digital networks, adopting as their primary paradigm fluid youth aggregations rooted predominantly (though not exclusively) in suburban peripheries and marked by overt hostility toward public institutions—an opposition that also erupts into violent acts of devastation and pillage which, amid clamour and revelry, disturb, as Cesare Beccaria famously remarked, “public tranquillity and the quiet of citizens”[3].

Within that conceptual framework, the unlawfulness of juvenile conduct was frequently traced back to an essentially sociological causality, in which material deprivation, educational dropout (attributable in part to glaring shortcomings

that have surfaced within school institutions over recent decades), and the erosion of parental authority acted as decisive factors driving affiliation with delinquent subcultures, particularly in specific peripheral districts of major urban centres[4].

Such an approach led both the legislature and subject-matter specialists to structure the State's response around two complementary axes: on the one hand, intervention upon the primary agencies of socialisation, identified in the school and the family; on the other hand, the deployment of repressive safeguards aimed at policing urban space and neutralising antisocial impulses manifested primarily in public places or venues open to the public. Seen from this perspective, the commission of an offence by an individual minor appeared as the predictable outcome of an educational and environmental fracture, wherein a stable—or even occasionally formed—peer group operated simultaneously as an amplifier of harmful intensity and as a responsibility-diffusing shield for each individual participant.

Upon closer inspection, however, authoritative scholarship had already forcefully denounced since the final decades of the twentieth century that a prominent role in bringing about this state of affairs was played by school maladjustment, manifested in poor academic performance among students, reprehensible conduct tolerated without reprimand, and a restlessness that progressively escalated into outright violent assaults against teachers, perpetrated even with weapons brought inside classrooms. Consequently, within a system culpably devoid of oversight and discipline, the primary function of the school progressively eroded—a mission that crystallises not merely in instructing pupils by imparting an adequate body of knowledge, but also in educating them by fostering the socialisation of those entrusted to its care so as to integrate them into the social fabric in full compliance with the rules of civil coexistence[5].

A further dimension highlighted over time concerns the structural transformation of the family community and the contraction of time devoted to caring for and listening to children: contexts in which heightened occupational and economic pressures weighing upon both parents at times render the exercise of educational authority more onerous, curtailing opportunities to transmit constructive relational models and to maintain vigilant stewardship over their children's ethical growth. Concurrently, increasing difficulties have emerged regarding the social and cultural integration of family units formed in the wake of the large-scale phenomenon of immigration that remains ongoing today[6].

Family disintegration within an environment lacking cohesion for the most varied reasons[7] undoubtedly fosters an affective insensitivity capable of escalating into overt displays of aggression, amplified today by the pervasive use of modern mass communication and social media platforms (including through the proliferation of copycat phenomena) which minors have appropriated entirely beyond any supervision by parents who are frequently culpably absent or incapable of fulfilling their educational role, within a domain marked by sporadic and uncoordinated legislative interventions[8].

Certainly, no adequate remedy to this alarming situation was afforded by the juvenile criminal procedure framework delineated in Presidential Decree no. 448 of 22 September 1988, which from its inception was oriented toward the moral redemption of the offender while leaving in the shadows the foundational concept of criminal capacity (*imputabilità*)[9], increasingly tied to the offender's personal "maturity" within a climate of pervasive, indulgent permissiveness ("after all, they are just kids!") that would eventually prompt society to demand not the protection of the minor, but protection from the minor[10]. Nor was this conceptual trajectory altered by the amendments enacted under the "Cartabia Reform". While Legislative Decree no. 150 of 10 October 2022 introduced a comprehensive framework for restorative justice into the Italian legal system (expressly referenced in Article 28 of Presidential Decree no. 448 of 22 September 1988) alongside a reshaping of juvenile substitute penalties (Article 30), those reforms left untouched the substantive core of juvenile criminal capacity[11]. In parallel, the comprehensive institutional reform enacted by Legislative Decree no. 149 of 10 October 2022, centred on establishing the unified Court for Persons, Minors and Families, remains subject to a five-year deferred entry into force and an intricate transitional regime: pending criminal proceedings before the Juvenile Court

continue before the district division under the previously applicable rules, whereas for certain civil proceedings the transitional regime extends until 1 January 2030[12].

Only recently, through Law no. 131 of 17 July 2026, did the legislature enact provisions establishing personal protection measures and financial assistance for the protection and support of minors exclusively within organised crime contexts, whether as direct victims or by reason of belonging to family units stably embedded in such criminal environments[13].

Public perception of insecurity has thus progressively intensified within a community that legitimately demands protection across both its individual and collective dimensions[14]; consequently, statistical claims portraying juvenile delinquency as undergoing a drastic decline appear strikingly dissonant with empirical experience[15]. On the contrary, a marked surge in such criminality is currently unfolding, recently manifesting itself in major tourist cities through pickpocketing offences (so-called "street crime") perpetrated above all by small groups of girls under the age of fourteen (colloquially dubbed *maranzine*)[16], clandestine street races involving microcars along public thoroughfares by day and night (routinely broadcast on social media so as to trigger copycat behaviour), violent assaults committed inside school classrooms, and the deliberate vandalisation of school premises and teaching equipment.

This empirical picture is corroborated by the *Eurispes* report[17], drawing upon official data from the Central Directorate of the Criminal Police — Criminal Analysis Service, which documents a broad-based, pronounced, and steadily escalating rise in juvenile delinquency following the temporary downturn recorded during the Covid-19 pandemic years, with particular intensity in sexual offences and weapons-related crimes.

All the foregoing considerations compel close scrutiny of individuals in their developmental age—conventionally spanning the period from age eleven up to the threshold of full personal maturation[18]—subject to the crucial caveat that reducing juvenile crime exclusively to the binary of urban marginality and school dysfunction today betrays a manifest explanatory inadequacy. The emergence of heinous violent crimes committed by individual adolescents wholly outside any associative or gang context (one need only recall incidents of setting fire to homeless individuals merely to relieve boredom) refutes the sufficiency of traditional deterministic models, especially where the destructive act occurs away from public squares and dispenses with gang-related identity display, rendering the traditional paradigm of educational poverty incapable of offering adequate interpretive keys.

Accordingly, it becomes imperative to move beyond a rigidly sociological causal model and examine vulnerabilities of a different order, rooted in the intrapsychic and relational dimension of the minor, which elude the ordinary interpretive grids of "street crime"—an arena where delinquent conduct is frequently perpetrated by groups of adolescents from diverse social backgrounds (including affluent families)—without necessarily having to founder in the turbulent waters of neuroscience (whose continuously evolving findings nonetheless merit attentive consideration[19]). Rather, it is necessary to rethink the outdated juvenile statutory framework[20] across all its components so as to address the pressing demands for security voiced by civil society, which inter alia laments uncoordinated territorial policing by law enforcement agencies, above all in sensitive urban areas—areas that are by no means confined to districts traditionally devoted to the *movida* (the feminine past participle of the Spanish verb *mover*, denoting movement, a term absorbed into Italian usage in the 1990s to designate nightlife often turbulently animated by minors, thereby largely shedding the potent political-cultural meaning it originally acquired in Spain following the end of Francisco Franco's dictatorship).

1.2 — Intimate-Partner Violence in the 13–15 Age Bracket: The Pedagogical Fracture in Interpersonal Relationships.

In the new millennium, the complex landscape of juvenile deviance[21] has been compounded by harmful manifestations that diverge profoundly from the patterns of group criminality or "street crime" outlined above. Judicial chronicles and

criminological observatories increasingly record the emergence of dramatic **intimate-relational violence** perpetrated within the earliest romantic relationships among adolescents aged between thirteen and fifteen. These are no longer predatory acts aimed at territorial dominance or joint attacks upon property interests, but rather exceptionally grave violent crimes unfolding within the intimate sphere of the adolescent couple (*Teen Dating Violence*), at times culminating in lethal acts that extinguish the victim's very life[22].

The defining feature of this phenomenology[23] lies in the stark disproportion between the triviality of the emotional trigger and the savagery of the destructive reaction. Underlying the harmful conduct is neither a utilitarian nor an ideological motive, but rather an acute psychological short-circuit fuelled by the inability to process rejection, the termination of a romantic bond, or the mere assertion of relational autonomy by the targeted victim. Here, the bio-psychic immaturity inherent to developmental age fuses with a proprietary conception of the partner, whereby the narcissistic wound inflicted by abandonment converts instantaneously into a coercive, violent impulse: the adolescent offender frequently acts under the sway of a total lack of differentiation between his own will and the other person's autonomous existence, betraying a radical deficit in managing emotional frustration[24].

In short, this empirical scenario lays bare a profound **pedagogical fracture** that directly calls into question the resilience of traditional primary socialisation agencies: whereas for decades the legal order looked to schools and families as bulwarks against truancy and peer bullying, those institutions today display glaring practical difficulties in detecting emotional dysfunctions that gestate within the private sphere of minors[25].

The absence of systematic curricula in emotional and relational education, coupled with frequent parental inattention toward adolescents' earliest romantic dynamics, leaves young people devoid of ethical coordinates anchored in respect for another person's freedom[26]. Recognising this preventive vacuum raises a pressing question: if families and schools, lacking any coordinated strategy, struggle to guide the affective maturation of youths[27], the State's subsequent penal threat risks intervening only after tragedy has already struck, proving incapable of averting violent escalation or preventing disabling or fatal harm to victims—phenomena that are likewise surfacing to an alarming, albeit varying, degree in other jurisdictions[28].

02. THE STRUCTURAL LIMIT OF CRIMINAL DETERRENCE IN THE FACE OF DEVELOPMENTAL IMPULSIVITY.

2.1 — The Fallacy of the Calculating Rational Agent and the Ineffectiveness of General Statutory Threats.

The doctrinal architecture of **negative general prevention** traditionally rests upon the Enlightenment postulate of the rational agent, capable of lucidly weighing the costs and benefits of his own conduct and of perceiving the statutory threat of punishment as a decisive psychological counter-motive against committing an offence[29], and is therefore grounded in the idea of deterrence. Transposed into the design of criminal sanctions, this paradigm of *homo oeconomicus* presumes that a legislative command inherently exerts an intimidating force commensurate with the severity of the punishment threatened in the abstract[30]. Yet this theoretical construct reveals its radical fallacy as soon as it is extended to the domain of juvenile justice, generating a perilous methodological abstraction that disregards the specific phenomenological and bio-psychic reality characteristic of developmental age[31].

In individuals aged between thirteen and fifteen, cognitive and volitional processes do not conform to the canons of calculating rationality typical of adults: this proposition is borne out by the findings of developmental science and neuropsychology[32], according to which the cortical regions responsible for **inhibitory impulse control**, affective

regulation, and accurate prospective evaluation of long-term consequences are still undergoing a phase of transition and incomplete structural maturation[33]. When a minor is engulfed in a relational crisis or experiences a traumatic romantic breakup, emotional dynamics take on a destabilising trajectory: the urgent drive to react to frustration or to annihilate the source of suffering overwhelms any capacity for deliberation, reducing to zero the deterrent efficacy of the threat of incurring a severe sanction, even one of a criminal nature.

Within such a psychic landscape, raising statutory penalty ranges or expanding custodial severity yields no tangible general-preventive effect, amounting instead to an exercise in pure **penal symbolism**. Expecting to govern violent adolescent drifts solely through the intimidation of punishment conflates the protection of fundamental legal interests with an illusory reassurance offered to a public opinion clamouring above all for heightened urban security. In doing so, the criminal justice system ends up presupposing a decision-making maturity that the minor does not yet possess, penalising at the sentencing stage a deficit in self-control that ought instead to have been addressed through timely, individualised educational (including through active engagement with parents[34]) and preventive interventions long before unlawful conduct ever materialised.

2.2 — The Offence of Femicide Tested Against the Personality of Minors Under Sixteen.

The inadequacy of the deterrent mechanism emerges with particular clarity in the recent debate surrounding the applicability of criminal offences enacted to combat gender-based violence to developmental-age criminality. The Italian legal system has progressively stiffened criminal protection, first through the "Red Code" (Law no. 69 of 19 July 2019)[35], subsequently by increasing aggravating circumstances for offences committed against a person bound by a romantic or marital relationship (Article 577(1), no. 1, of the Criminal Code), and ultimately by introducing, under Law no. 181 of 2 December 2025[36], the autonomous criminal offence of "femicide" set forth in Article 577-bis of the Criminal Code. That provision criminalises causing the death of a woman where the act is committed out of hatred, discrimination, or subjugation, or as an act of control, possession, or domination over her as a woman, or in connection with her refusal to establish or maintain an affective relationship, or as an act aimed at restricting her individual freedoms[37]. Nevertheless, the uncritical transposition of these normative categories into juvenile justice produces a striking doctrinal distortion: categories calibrated upon adult ideological domination are applied to conduct which, in an adolescent, stems from a still fluid process of identity formation, wherein violence expresses an emotional short-circuit and a pathological inability to process abandonment rather than a structured intent of patriarchal subjugation.

In the case of a minor under sixteen, the abstract severity of the penal response remains devoid of the prospect of life imprisonment—constitutionally barred for criminally responsible minors since Italian Constitutional Court Judgment no. 168 of 1994—yet may still translate into exceptionally lengthy fixed-term custodial sentences. Consequently, the deterrence problem relates not to the threat of life imprisonment as such, but rather to the adolescent's actual capacity, at the height of a relational crisis, to perceive and mentally govern even the gravest penal consequences[38].

Leaving aside the concerns that may be raised regarding statutory precision and determinacy, the configuration and wording of the offence of femicide thus intersect two distinct planes: on the one hand, the legal qualification of the act and the severity of the penalty abstractly prescribed for adult offenders; on the other hand, the assessment of the juvenile defendant's criminal capacity. Under the regime predating the amendment of Article 98 of the Criminal Code, such an assessment had to be conducted in concreto, free from any automatism inferred merely from the gravity of the offence. Under the text of **Law Decree no. 190 of 22 October 2026** examined in this study, the capacity of understanding and volition of a minor aged between fourteen and eighteen is instead governed by a rebuttable presumption, subject to proof to the contrary. Even within this amended statutory framework, however, the objective gravity of the offence cannot supplant an individualised evaluation of the minor's personal circumstances and the concrete indicators of maturity.

Accordingly, the legal response to lethal violence cannot be exhausted in proclaiming maximum statutory severity, but must proceed from verifying the minor's concrete capacity to grasp the inviolable boundary of another person's personal freedom within an affective bond[39].

03. THE SYSTEMIC RESPONSE BETWEEN SITUATIONAL PREVENTION AND EDUCATIONAL SAFEGUARDS: AN ANALYSIS OF SENATE BILL NO. 1990, INTRODUCED ON 30 JULY 2026.

3.1 — Policing Public Space: Enhanced Oral Warning and Preventive Police Detention in Gathering Areas.

The trajectory of recent public-security policy finds emblematic expression in the governmental bill approved by the Council of Ministers on 14 July 2026 (Senate Bill no. 1990, 19th Legislature), setting out provisions on public security and the prevention of youth distress, as well as on the institutional structure, organisation, and operation of police forces and the Ministry of the Interior, currently undergoing parliamentary scrutiny.

This bill follows in the wake of Law Decree no. 123 of 15 September 2023 (converted, with amendments, into Law no. 159 of 13 November 2023), which assembled urgent measures to combat youth distress, educational poverty, and juvenile crime (commonly referred to as the "Caivano Decree"), yielding decidedly meagre results—as evidenced by the perceived need, after a remarkably brief interval, to mount yet another governmental intervention[40]. Indeed, that decree neither genuinely targets the root causes of such criminality nor invests in sustained policies supporting parenthood and establishing widespread community-based educational, sporting, and cultural services across degraded neighbourhoods —measures that alone offer concrete alternatives to social isolation, school dropout, and "street crime".

The architecture of the draft legislation squarely embraces the paradigm of **situational crime prevention**, seeking to curtail criminogenic opportunities in urban space by expanding the prohibitory and policing powers vested in public-security authorities. In this vein, Article 1 of the bill amends Article 3 of Legislative Decree no. 159 of 6 September 2011 (the "Anti-Mafia Code"), introducing the measure of an **oral warning coupled with a prohibition against assembly**[41]. This instrument empowers the Provincial Chief of Police (*Questore*) to prohibit assembly in public places or venues open to the public with one or more persons in respect of individuals who—having already been subjected to preventive measures or convicted within the preceding five years of offences against the person or property—participate in intimidating, harassing, or violent conduct perpetrated by five or more persons, thereby reinforcing the requirement of current social dangerousness[42].

Driven by the same logic of stringent policing over collective spaces, Article 2 of the bill inserts paragraph 3-*ter* into Article 11-*bis* of Law Decree no. 59 of 21 March 1978 (containing substantive and procedural criminal provisions for preventing and repressing serious offences), expanding the scope of compulsory police escort and temporary detention for identification purposes. Specifically, the power to detain individuals on the basis of specific, concrete circumstances and factual elements is rendered operational within police operations aimed at averting breaches of public order in areas marked by heavy pedestrian crowds, with explicit reference to so-called *movida* districts—that is, areas hosting particularly lively and crowded nightlife[43]. Regrettably, empirical observation confirms that pack violence, vandalism, and intimidation unfold not only in degraded or peripheral neighbourhoods traditionally frequented by so-called *maranza* youths (a term of uncertain etymology, plausibly derived from the audiophile brand "Marantz" and originally denoting boisterous youngsters before coming to signify outright offenders identifiable by distinctive attire and accessories—a veritable "*maranza* style"), but also in affluent districts of major metropolises frequented by adolescents raised in non-dysfunctional, and frequently wealthy, families.

The objective pursued by this legislative proposal is unmistakable: adapting police powers to operational demands in high-density social venues that have become theatres of criminal episodes, so as to forestall offences associated with disorderly nightlife (so-called *Mala Movida*).

Rounding out this apparatus for policing multi-offender conduct, Article 4 of the governmental bill introduces a new aggravating circumstance for the oft-amended offence of criminal damage (Article 635 of the Criminal Code)[44] where committed by five or more persons acting together—namely youth groups or gangs—raising the statutory sentencing limits and broadening the availability of discretionary arrest *in flagrante delicto* as well as deferred arrest pursuant to Article 382-*bis* of the Code of Criminal Procedure.

From the standpoint of criminal policy, however, relying upon urban surveillance tools and intensive territorial policing to curb juvenile crime betrays a pronounced, structural teleological incongruity when confronted with the rise of **intimate-relational violence**. Indeed, the measures crafted by the bill presuppose visible group dynamics unfolding in the public arena, driven by territorial assertion and geared toward gaining status and peer approval within the delinquent group itself; conversely, the heinous offences against the person involving adolescents aged thirteen to fifteen almost invariably unfold within the opaque confines of the private, romantic sphere[45].

Harbouring the illusion that developmental relational crises can be contained by patrolling city squares or banning street gatherings leaves entirely unguarded the intimate terrain in which deeply localised emotional distress festers into unlawful violence—confirming that public-order policing is structurally alien to preventing the emotional short-circuits that culminate in interpersonal aggression, and thereby exposing the glaring shortcomings of the governmental bill.

3.2 — The Territorial Educational Alliance (Article 7): Potential and Limits of Horizontal Subsidiarity.

Alongside public-security and policing measures, Chapter II of the bill under examination finally introduces provisions expressly devoted to preventing youth distress and supporting parental functions.

Article 7 establishes, within the territorial framework of Family Centres (operating as community hubs) governed by Article 1(1250)(e-*bis*) of Law no. 296 of 27 December 2006, the **Territorial Network of the Educational Alliance**, conceived as a permanent coordinating body linking families, schools, and sports organisations. This normative model seeks to give effect to the constitutional principle of **horizontal subsidiarity**, fostering shared projects aimed at strengthening relational resources and combating educational poverty while formally invoking the educational co-responsibility pact between schools and families[46]. In the abstract, therefore, the initiative aspires to rebuild that primary web of social protection whose progressive erosion has historically been identified as a major contributing cause of youth disorientation.

Close scrutiny of the provision, however, reveals substantial aporias on the plane of practical effectiveness. First, implementation of the educational alliance is bound by a strict **budget-neutrality clause**: funding is drawn solely from existing shares of the Family Policies Fund (pursuant to Article 19(1) of Law Decree no. 223 of 4 July 2006, converted into Law no. 248 of 4 August 2006) and from existing national school programmes, without any dedicated investment to permanently expand the staffing of social workers, educators, and psychologists (illustrating emblematically how such laudable initiatives are destined to remain mere *flatus vocis*). Second, participation by families remains purely voluntary.

This institutional design suffers from a structural limitation well known to juvenile criminology[47]: the most severely dysfunctional households, or those marked by acute affective neglect, are precisely the ones least inclined to access community services voluntarily. Across such settings, preventive outreach consequently risks remaining confined to

families already endowed with adequate social capital, leaving untouched the pockets of relational abandonment and school truancy in which deviant conduct takes root.

Furthermore, when measured against **intimate-relational violence**, Article 7 displays a specific functional inadequacy: promoting sporting activities and community workshops addresses socialization difficulties within peer groups, yet provides no specialised safeguards capable of decoding toxic relationships and affective pathologies among very young adolescents. As legal and criminological scholarship has emphasised[48], relational violence among under-sixteens feeds upon isolation, emotional dependency, and a distorted sense of possession—dynamics that entirely elude ordinary community recreation. Devoid of specialised clinical-pedagogical safeguards capable of delivering targeted **primary prevention** focused on affective education and early detection of coercive warning signs within adolescent couples, the educational alliance amounts to a mere declaration of principle, powerless to avert the eruption of grave violent offences committed far from community visibility and frequently abetted by parental inattention[49].

04. THE CYCLICAL RECURRENCE OF REPRESSIVE DEMANDS AND THE SIDESTEPPING OF CRIMINAL CAPACITY.

4.1 — Long-Term Law-and-Order Regression: The Precedent of the Governmental Bill of 1 March 2002.

Examining recent statutory developments requires a diachronic perspective capable of uncovering their deeper ideological roots: the recurring revival of sentencing models geared toward the immediate neutralisation of young offenders does not represent an improvised reaction to newly emerging criminal phenomena. Rather, it reflects the periodic resurfacing of a criminal-policy orientation that cyclically seeks to erode the defining safeguards of the juvenile legal status—an involutive trajectory emblematically illustrated by the draft governmental bill approved on 1 March 2002, entitled *Modifiche alla composizione ed alle competenze del Tribunale penale per i minorenni* [Amendments to the Composition and Jurisdiction of the Juvenile Criminal Court][50].

That 2002 reform bill anticipated with striking fidelity the punitive policy choices that would gain partial legislative traction in subsequent decades. On the institutional plane, Article 2 of the 2002 draft altered the composition of the specialised bench governed by Article 50 of the Judicial Organization Act, reducing the lay expert component to a single member. As expressly stated in the accompanying Explanatory Report, the avowed aim was to secure a numerical majority for career magistrates, marginalising the contribution of the behavioural and human sciences on the (mistaken) premise that the career judiciary had by then acquired sufficient pedagogical expertise.

On the substantive and procedural planes, the 2002 proposal likewise intervened directly upon Article 98 of the Criminal Code by differentiating the mandatory sentence reduction: no longer a general reduction of up to one-third, but a curtailed reduction capped at one-fourth for youths aged between sixteen and eighteen, predicated on the assumption that their personal maturation was essentially complete. Correspondingly, Article 11 of the draft barred access to pretrial probation with suspension of proceedings (*messa alla prova*) for a catalogue of offences generating heightened social alarm, including completed or attempted intentional homicide and sexual offences.

Comparing the 2002 draft bill with subsequent legislative enactments—both enacted and pending—demonstrates how State policy has remained captive to the very same conditioned reflex: introducing objective offence-based bars to rehabilitative pathways and compressing favourable sentencing rules for sixteen- to eighteen-year-olds replicate the persistent institutional temptation to expel minors accused of serious crimes from specialised juvenile jurisdiction and strip away developmental procedural safeguards. Under this logic, the objective gravity of the harmful event becomes the

sole yardstick of judgment, sacrificing individualised personality assessment upon the altar of collective reassurance: a trend thus consolidates that sidesteps the central question of subjective criminal capacity[51], presuming full moral and emotional maturity in the minor precisely where the criminal act instead betrays a condition of tragic, profound developmental disorientation[52].

4.2 — The Centrality of Assessing Ethical-Relational Maturity in Concreto.

Overcoming punitive shortcuts requires restoring to the heart of the juvenile justice system the empirical inquiry mandated by Article 98 of the Criminal Code[53], whose doctrinal resilience is severely tested today not least by the rise of **intimate-relational violence** within the thirteen-to-fifteen age bracket[54].

Consider, by way of example, violent conduct committed within an adolescent's very first romantic relationship: in such instances, judicial review risks falling prey to a dual perspectival error—on the one hand, the inclination to infer full maturity from the sheer atrocity of the act; on the other hand, the opposite tendency to treat the destructive act as irrefutable proof of transient adolescent immaturity.

In this respect, the case law predating the 2026 amendment had developed settled interpretive guidelines anchored in the **individualised assessment of maturity**; their continuing scope must now be evaluated in light of the new presumption inserted into Article 98 of the Criminal Code by Law Decree no. 190 of 22 October 2026. Prior to the amendment, the capacity of a minor aged between fourteen and eighteen was presumed neither positively nor negatively, and the prosecution bore the burden of proving the capacity of understanding and volition required under Article 98 of the Criminal Code[55]. That inquiry was relative in nature and had to encompass both intellectual and volitional components by evaluating the psychological, physical, familial, socio-environmental, educational, and behavioural factors existing at the time of the offence[56]. Settled case law did not invariably require a formal court-appointed expert evaluation, provided that the court's reasoning demonstrated a concrete examination of the minor's personality and its nexus with the charged offence[57].

Even the amended statutory framework, however, does not dispense with the requirement of individualised judicial reasoning, inasmuch as the presumption introduced by the Law Decree may be rebutted through specific elements pertaining to the minor's maturity and personal circumstances[58]. From an analytical standpoint, the judicial inquiry ought not to stop at verifying the adolescent's mere cognitive awareness of the wrongfulness of homicide or physical assault; within the specific phenomenology of intimate-relational violence, it must also encompass verifying the minor's concrete capacity for self-determination and ability to resist destructive impulses triggered by the frustration of rejection or the breakup of an affective bond. Such scrutiny represents an operational specification of volitional capacity assessment rather than a substitute for an overall evaluation of personality, the manner in which the act was committed, and familial and socio-environmental conditions.

Indeed, in early romantic relationships, a minor's volitional sphere is frequently held hostage to a disharmony between biological growth and emotional emancipation: the absence of overt psychiatric pathology does not equate to achieved maturity, because the legal concept of **developmental immaturity** is ontologically distinct from insanity or mental defect (*vizio di mente*)[59], describing instead a state of ethical incompleteness that precludes genuine impulse control[60].

Judicial fact-finding must therefore rest upon rigorous parameters capable of probing the concrete execution of the offence without lapsing into automatisms: courts must ascertain in concreto whether the act was preceded by lucid planning or erupted as a reactive short-circuit when confronted with losing possession over the victim, while simultaneously assessing the minor's grasp of relational alterity—understood as the capacity to recognise the victim's autonomy and freedom as an impassable limit to one's own will.

Only by weighing the minor's overall conduct, interpersonal life, and post-offence behaviour can the court arrive at an individualised personality diagnosis (informed likewise by the socio-pedagogical dimensions of developmental age)[61]. Absent this delicate inquiry, criminal punishment ceases to fulfil its culpability-based and proportionate function (geared toward the adolescent's rehabilitation[62]), degenerating into a blind reaction of incapacitation wholly incompatible with the constitutional status of the minor enshrined in Article 31(2) of the Italian Constitution[63].

4.3 — The Presumption of Criminal Capacity: From Chamber of Deputies Bill no. 3080 (19th Legislature) to Emergency Decree Legislation.

The legislative drive to overhaul juvenile criminal capacity—fuelled in part by debates surrounding neuroscientific findings on the maturation of cognitive and volitional functions[64]—first took formal shape in the governmental bill approved by the Council of Ministers on 23 July 2026 and introduced before the Chamber of Deputies on 5 August 2026 (Chamber Bill no. 3080, 19th Legislature), whose provisions were abruptly enacted into positive law by Article 1(1) of Law Decree no. 190 of 22 October 2026. The amendment inserts into the first paragraph of Article 98 of the Criminal Code the rule whereby the capacity of understanding and volition of a minor aged between fourteen and eighteen "is presumed unless proven otherwise". Correspondingly, the decree amends Article 9 of Presidential Decree no. 448 of 22 September 1988 by inserting paragraph 1-*bis*, empowering both the public prosecutor and the court to gather evidentiary elements specifically aimed at assessing criminal capacity.

Building upon the trajectory inaugurated by the "Caivano Decree"[65], the August 2026 initiative—informally dubbed the "anti-*maranza* bill"—provoked sharp scholarly criticism for introducing a statutory presumption into a domain traditionally governed by strictly individualised assessment[66]. On the doctrinal and procedural planes, the reform codifies a rebuttable presumption (*iuris tantum*); although the statutory wording appears to shift onto the defence the burden of proving the minor's immaturity, the true operational scope of the provision remains an open interpretive question. Read in light of the **presumption of innocence** enshrined in Article 27(2) of the Constitution, the prosecution's ultimate burden of proof cannot be deemed extinguished; rather, the amendment more properly translates into a burden of production (*onere di allegazione*) pointing to symptomatic indicators of incapacity or immaturity inferable from personal, familial, and environmental conditions.

Even so, the constitutional compatibility of the new rule raises serious doubts that cannot be dispelled merely by invoking constitutional duties of solidarity or the protection of youth under Articles 2, 3, and 31 of the Constitution[67]. Indeed, reliance on Italian Constitutional Court Judgment no. 128 of 1987 is misplaced, as that ruling concerned the distinct issue of extraditing a minor to a foreign jurisdiction lacking specialised juvenile courts and does not settle the constitutionality of a domestic presumption of criminal capacity[68]. Likewise, while from a comparative perspective the legislative choice echoes the rebuttable presumption of discernment for minors aged thirteen and over under Article L. 11-1 of the French *Code de la justice pénale des mineurs* alongside debates across other European legal systems[69], a presumptive automatism stands in interpretive tension with Article 7 of Directive (EU) 2016/800 (on procedural safeguards for children who are suspects or accused persons in criminal proceedings[70]), which mandates a thorough individual assessment of the child's personality, maturity, and economic, social, and family background at the earliest appropriate stage of the proceedings—ordinarily before indictment and, in any event, at the outset of trial hearings, subject only to derogations compatible with the child's best interests. Reconciling that EU obligation of individualisation with the new domestic presumption of criminal capacity poses a delicate interpretive challenge that must keep analytically distinct the minimum age of criminal responsibility—expressly left to Member States—and the mandatory concrete evaluation of the minor's personal conditions.

05. THE COLLAPSE OF THE SENTENCE-EXECUTION PHASE AND THE REFOUNDING OF SCIENTIFIC PERSONALITY OBSERVATION.

5.1 — The Rehabilitative Vacuum in Juvenile Penal Institutions and the Management of Aggravated Social Dangerousness.

Historically, the architecture of Italian juvenile justice has concentrated its axiological and doctrinal focus upon the trial and adjudicative stage, privileging mechanisms for early diversion from the criminal justice circuit and rapid procedural disposition[71]. Guided by the **principle of minimal offensiveness** of criminal proceedings, however, this focus has engendered a progressive and culpable neglect of the sentence-execution phase, turning penal enforcement into the true breaking point of the entire juvenile system[72].

Confronted with offences against the person of extraordinary objective gravity, perpetrated within the intimate-affective sphere by adolescents under sixteen, the legal order betrays a glaring structural deficit: its inability to govern **aggravated social dangerousness** through rehabilitative programmes capable of combining secure containment with genuine social reintegration of the developing offender[73], supported inter alia by the indispensable work of juvenile social services[74].

The sentencing and enforcement options currently available exhibit a dual, symmetrical inadequacy. On the one hand, placement in open residential youth facilities[75]—designed around quasi-familial relational models and devoid of active security supervision—proves manifestly disproportionate when dealing with personalities undermined by severe emotional disharmonies and destructive violent impulses, exposing host communities to unmanageable risks[76]. On the other hand, custodial detention inside Juvenile Penal Institutions (*Istituti Penali per i Minorenni*) risks degenerating into a purely punitive, incapacitating response: stripped of adequate specialist psychological and clinical-rehabilitative staffing, as scholars have long warned[77], custodial confinement amounts to sterile temporal segregation for its own sake, betraying the constitutional mandate of offender rehabilitation under Article 27(3) of the Constitution[78] while leaving untouched the deep-seated impulsive root that triggered the criminal act.

The core proposal advanced in this study centres on strengthening the **scientific observation of personality**. Legislative Decree no. 121 of 2 October 2018 already provides, within the framework of juvenile community penal measures, for gathering judicial, penitentiary, medical, psychological, and social records, as well as ordering specialist clinical assessments through territorial health services. It further stipulates that detention in Juvenile Penal Institutions must proceed on the basis of an individualised educational intervention plan, drafted within three months of the commencement of enforcement, updated continuously to reflect psycho-physical development and personal maturation, and accompanied by psychological support upon admission.

Statutory provisions alone, however, neither demonstrate the actual degree of effectiveness achieved by these instruments in operational practice nor suffice by themselves to establish that personality observation has uniformly degenerated into bureaucratic monitoring or that shortages of specialist staff invariably preclude continuous clinical assessment[79]. Yet, from the perspective maintained here, the gulf between the statutory blueprint and the resources concretely allocated on the ground is liable, in numerous settings, to reduce personality observation and individualised educational planning to largely formalistic compliance.

Accordingly, the proposal to reinforce multidisciplinary clinical teams and guarantee continuous evaluation of relational distortions proceeds from an operational vulnerability requiring empirical verification rather than from an automatic deduction drawn solely from the statutory text.

5.2 — Proposals for an Individualised Enforcement Model: Clinical-Diagnostic Units and Forensic Protocols.

Refounding the juvenile sentence-execution phase requires dispelling the illusion that rehabilitation can occur spontaneously or through generic recreational and informal activities. The emergence of heinous violent crimes born of deep intrapsychic and relational fractures demands a structural overhaul of the juvenile penitentiary system currently governed by Legislative Decree no. 121 of 2 October 2018[80].

The primary objective, to be pursued through a targeted reform of juvenile penitentiary law, must consist in supplementing Legislative Decree no. 121/2018 by establishing **specialised clinical-diagnostic units** within Juvenile Penal Institutions. Conceived as high-intensity diagnostic centres, these units should operate not as disciplinary isolation wings, but as permanent clinical laboratories staffed by multidisciplinary teams comprising child and adolescent neuropsychiatrists, clinical psychologists, and specialised educators tasked with mapping out in detail the factors driving impulse dysregulation and relational distortion in the young offender[81].

Seen in this light—which presupposes adequate dedicated facilities backed by commensurate financial appropriations that remain chronically scarce if not altogether non-existent—personality assessment cannot remain confined to the moment of the minor's initial admission into the penal facility, but must pace the entire trajectory of rehabilitative treatment through **standardised forensic assessment protocols** endorsed by the scientific community. Access to non-custodial community measures, admission to external work release, or the granting of good-conduct furloughs (*permessi premio*) cannot rest upon presumptions of moral reform inferred merely from the absence of intramural disciplinary infractions.

Graduated sentence progression must therefore be made strictly conditional upon a rigorous clinical verification that the offender's harmful propensity has genuinely subsided and that he has acquired the capacity to recognise the victim's autonomous personhood. With specific regard to minors convicted of grave offences against life and bodily integrity committed within romantic relationships, the prognostic evaluation must ascertain that the proprietary conception of the affective bond has been definitively overcome, averting premature reward-based automatisms that would hollow out protection for both the victim (all too frequently forgotten) and society at large.

Such an individualised enforcement model makes it possible to implement faithfully the constitutional mandate of the **rehabilitative function of punishment** enshrined in Article 27(3) of the Constitution, preserving its genuine pedagogical substance without yielding either to purely custodial simplifications or to welfare-style indulgence. The juvenile justice system can safeguard its constitutional specificity only if deprivation of personal liberty becomes the structured setting for a profound restructuring of the developing offender's personality: anchoring the post-conviction stage in a rigorous, verifiable, and individualised clinical-rehabilitative pathway represents one of the most coherent ways to reconcile necessary firmness in the State's penal response with the indispensable goal of reintegrating the adolescent into society, restoring doctrinal coherence and public credibility alike to the exercise of punitive power.

06. A NEW LEGISLATIVE INTERVENTION AGAINST JUVENILE DELINQUENCY: LAW DECREE NO. 190 OF 22 OCTOBER 2026 (THE SO-CALLED “PUBLIC DEMONSTRATIONS DECREE”). A FIRST READING.

Law Decree no. 190 of 22 October 2026, enacting urgent provisions on public security and countering juvenile delinquency, was published in Official Gazette no. 246 of 22 October 2026 and entered into force on the following day pursuant to Article 10 thereof. The decree amends the Criminal Code, the Code of Criminal Procedure, juvenile

criminal procedure, the Judicial Organization Act, administrative sanctions linked to unlawful conduct committed by minors, preventive measures, police powers of compulsory escort and temporary identification detention, and the public-security deployment in the city of Milan. The present section critically examines its legislative drafting technique, the balance of its repressive instruments, and the relationship between public-space policing measures and the prevention of youth distress[82].

Comprising ten articles, the decree concentrates the bulk of its provisions on criminal, procedural, administrative, and public-security amendments. In the Author's view, this predominance of repressive and territorial-control instruments reflects an overwhelmingly law-and-order conception of the phenomenon, inasmuch as the decree introduces, alongside urgent security measures, no autonomous structural programme of social and educational interventions addressing family and economic vulnerability. Assessing the actual adequacy of preventive policy, however, remains analytically distinct from describing the statutory text and requires empirical data on public-policy implementation and concretely allocated resources.

The opening three articles of the decree introduce a set of amendments to the Criminal Code, the Code of Criminal Procedure, and the juvenile criminal justice statutes, upon which close analysis will shortly focus[83]. From the outset, however, it bears noting that these provisions are grafted onto a criminal justice system already congested by a proliferation of criminal offences (sixty new offences having been enacted over the four years of the current 19th Legislature, between 22 October 2022 and 22 October 2026) and a comparable number of aggravating circumstances—the product, as once again exemplified by the decree under examination, of a legislative drafting style driven by a rudimentary **casuistic method** rather than by generalising synthesis, resulting in a wasteful inflation of offence definitions that severely complicates the interpreter's task of demarcating each provision's precise sphere of application[84].

Article 4 amends Article 110 of Royal Decree no. 12 of 30 January 1941, governing the Judicial Organization Act[85], by inserting paragraph 2-*bis*: by way of derogation from paragraph 1, this provision enables an expedited temporary assignment of magistrates within twenty-four hours of a request from the head of the competent judicial office—without awaiting the prior opinion of the Judicial Council (*Consiglio giudiziario*)—whenever events affecting public order are likely to entail, or have entailed, a substantial number of arrests *in flagrante delicto*, so as to ensure that arrest-validation proceedings are completed within statutory time limits, with subsequent transmission of the relevant records to the Judicial Council for evaluation.

A peculiar administrative pecuniary sanction of markedly doubtful deterrent efficacy, directed against the holder of **parental responsibility** over a minor—even one below the age of criminal capacity—is introduced by Article 5 through careless, approximate statutory wording, compounded in its fourth paragraph by a sweeping, perfunctory cross-reference, for all matters not expressly governed therein, to Law no. 689 of 24 November 1981 and its general principles[86]. Liability is triggered whenever the minor "participates in the commission" (an ambiguously worded phrase) of acts constituting one or more of the criminal offences exhaustively listed in paragraph 1, unless the person subjected to the pecuniary penalty proves that he or she could not have prevented the unlawful conduct.

The pecuniary penalty is set within a range of EUR 500 to EUR 1,000, while Article 5(2) addresses "reiteration" of the criminal offence by the minor, in which case an administrative pecuniary sanction ranging from EUR 1,000 to EUR 2,000 applies, to be quantified according to the criteria laid down in Article 11 of Law no. 689/1981. Although paragraph 2 omits to specify an autonomous time window for reiteration, the cross-reference in paragraph 4 to the provisions of Law no. 689/1981 could support applying the five-year period set forth in Article 8-*bis* of that statute, unless paragraph 2 is construed as establishing a self-contained special rule. Reconciling the special provision of the Law

Decree with the general statutory regime governing administrative reiteration therefore remains an open interpretive question that cannot be conclusively settled on the basis of textual wording alone[87].

Abruptly, in the third paragraph of Article 5, the figure of the Prefect (*Prefetto*) makes an appearance—demonstrating the absence of a coherent legislative design, since only from reading that third paragraph does one infer which administrative authority actually imposes the sanction, even though territorial jurisdiction is left unspecified (whether the place where "participation" in the offence occurred or the place of residence of the holder of **parental responsibility**). Territorial competence is specified solely with regard to the discretionary power vested in the Prefect to notify the Juvenile Court of the place of residence of the holder of parental responsibility regarding the advisability of activating personalised educational-support projects—projects subjected, however, to the strict **budget-neutrality clause** under Article 9 of the decree, meaning that they are destined to remain mere *flatus vocis*.

Moreover, it is likewise the Prefect, "when issuing the injunction order" (*ordinanza-ingiunzione*)—an ambiguous phrasing in its use of the conjunction "when" rather than "by means of", potentially suggesting power to adopt a separate administrative order distinct from the injunction itself—who may order the holder of **parental responsibility** to pay a sum of money (in favour of the State, the Regions, or unspecified "local authorities"), quantified on the basis of the case file, by way of compensation for damage caused by the minor as a result of committing the criminal acts listed in Article 5(1). That textual ambiguity is heightened by the sixth paragraph, which provides for judicial opposition before the ordinary court of the person's place of residence solely against "the injunction provided for under paragraph 5", governed by the procedural rules of Article 32(1) and (3) of Legislative Decree no. 150 of 1 September 2011—wording that might suggest an order distinct from the sanctioning measure under paragraph 1.

Finally, the closing paragraph of Article 5 stipulates that private parties who have suffered damage under the aforementioned circumstances may seek compensation by petitioning for a summary payment order (*decreto ingiuntivo*) pursuant to Articles 633 et seq. of the Code of Civil Procedure.

Upon closer reflection, these provisions will in the vast majority of cases prove ineffective or largely unenforceable at the collection stage: in households marked by acute economic fragility, actual recovery of pecuniary sanctions is notoriously problematic, correspondingly eroding any deterrent force.

Article 6 of the Law Decree amends the Code of Anti-Mafia Laws and Preventive Measures (Legislative Decree no. 159 of 6 September 2011), specifically inserting into Article 3 a new paragraph 5-*bis* composed of three successive sentences—the first of interminable length (an affront to sound legislative drafting)—empowering the Provincial Chief of Police (*Questore*), on public-security grounds, to issue an oral warning coupled with a prohibition against assembly (for a duration not exceeding one year) across specified modalities and time slots in designated public places or venues open to the public alongside groups of five or more persons (even "in a group"!) engaging in "intimidating, severely harassing, or violent behaviour against persons or property". Notably, this measure may be imposed upon individuals—including minors aged fourteen and over—who have specific police records within the preceding five years or criminal convictions handed down even by non-final judgment: this latter choice raises the gravest constitutional reservations under the **presumption of innocence** enshrined in Article 27(2) of the Constitution.

Article 7 next amends Article 11-*bis* of Law Decree no. 59 of 21 March 1978, converted with amendments into Law no. 191 of 18 May 1978, by inserting paragraph 3-*ter*[88]. The provision extends **compulsory police escort and temporary identification detention** at police stations to targeted policing operations conducted in venues experiencing heavy crowds whenever specific, concrete circumstances of time and place, factual elements, and well-founded grounds exist to believe that the individual may engage in conduct posing a concrete danger to public safety[89]. Within the limits prescribed by the statutory text, the measure may also be applied to minors. Colloquially referred to in public debate as

"preventive police detention", this mechanism must not be conflated with the provisional arrest of a crime suspect (*fermo di indiziato di delitto*) governed by Article 384 of the Code of Criminal Procedure, as it constitutes a temporary escort and holding measure strictly for identification and preventive purposes.

Lastly, Article 8 of the Law Decree authorises, until 31 December 2026, an increase of 500 Armed Forces personnel assigned to territorial patrolling ("Safe Streets" operation) in the city of Milan[90] and regulates the attendant logistical, infrastructural, and operational support requirements, authorising the necessary expenditure and permitting recourse to extreme-urgency procurement procedures for acquiring services and supplies.

07. AMENDMENTS TO THE CRIMINAL CODE AND THE CODE OF CRIMINAL PROCEDURE.

Structured into six lengthy paragraphs, Article 1 of Law Decree no. 190/2026 introduces a substantial array of amendments to the Criminal Code, several of which raise acute doctrinal misgivings quite apart from the slipshod wording of the statutory text.

First, introducing the numerical threshold of five or more persons alongside the requirement of group organisation raises a delicate problem of systematic coordination with the general aggravating circumstances set forth in Article 112(1), nos. 1 and 2, of the Criminal Code. Settled case law permits the concurrent application of the general aggravating circumstance based on the number of accomplices and a special aggravating circumstance grounded in the physical co-presence of co-offenders where the two provisions differ in structure and *ratio legis*[91]. That judicial precedent, however, cannot be automatically transposed to the newly enacted Articles 420-*bis* and 635.1 of the Criminal Code, wherein the number of participants and, in part, the group's organisation already form constitutive elements internal to the special provision. A coordination problem thus arises, requiring courts to verify, for each provision, whether the general aggravating factors capture genuinely distinct elements or improperly double-count the very same degree of offensiveness[92].

Standing alone, the aforementioned case law does not settle the interplay between Article 112 and Articles 420-*bis* and 635.1 of the Criminal Code. A principled solution will require carefully distinguishing between the sheer number of participants, the group's organisational structure, physical co-presence during the execution phase, and any directing or leadership role played by an individual accomplice, so as to avoid punishing the identical disvalue twice over[93].

With that premise established, attention must turn first to Article 1(1) of the Law Decree, which incorporates the rule previously floated in Chamber of Deputies Bill no. 3080 of the 19th Legislature by introducing, for minors aged fourteen and over, a rebuttable presumption of capacity of understanding and volition subject to proof to the contrary. All the critical observations developed earlier apply in full here[94], all the more so given that so sensitive a foundational rule warranted thorough parliamentary deliberation and scholarly debate rarely achievable through emergency decree legislation.

Paragraph 2 amends Article 419 of the Criminal Code, entitled "Devastation and pillage" (*Devastazione e saccheggio*), which—relying on ordinary linguistic usage in the absence of statutory definitions—punishes acts of damaging, dispersing, or blowing up substantial quantities of movable or immovable property, or plundering movable goods belonging to others; where committed against weapons, ammunition, or foodstuffs kept at a place of sale or storage, Article 419(2) already prescribed a penalty increase (constituting a special aggravating circumstance of ordinary effect)[95]. The decree now adds a third paragraph mandating a penalty increase "from one-third to one-half if the act is committed during demonstrations in a public place or a venue open to the public against property kept at a place of sale or storage".

This addition vividly exemplifies an exasperated casuistic drafting methodology: the new rule could readily have been folded into a redrafted second paragraph, thereby clarifying the legislature's normative design (given the divergent penalty increases now coexisting) and delineating how acts of devastation and pillage committed individually outside public demonstrations relate to the specific locations targeted across the two aggravated hypotheses.

Similarly, Article 420 of the Criminal Code—which punishes attacks on public-utility installations, namely conduct aimed at damaging or destroying them—is amended by inserting after its first paragraph an additional paragraph replicating verbatim the new wording added to Article 419[96]. Yet in concrete empirical reality it is difficult to conceive how attacks against public-utility plants could simultaneously take place "during" demonstrations held in a public place or venue open to the public.

In its haste, moreover, the 2026 legislature entirely overlooked Article 421 of the Criminal Code, which punishes public intimidation (*pubblica intimidazione*), failing even to harmonise its modest existing penalty (imprisonment of up to one year) with the steep sentencing ranges introduced across the revised or newly created offences—such as the offence enacted by Article 1(4) of the Law Decree. Specifically, immediately after Article 420 of the Criminal Code, the decree inserts Article 420-*bis* under the imprecise heading "Organised violence in public demonstrations", yet another textbook example of rudimentary **casuistic drafting** marked by sprawling, haphazard enumerations that paradoxically risk creating lacunae in criminal protection. The new provision establishes an offence bounded in time and place, requiring that the prohibited conduct occur "during demonstrations in a public place or a venue open to the public", not by acting alone, but "by participating in a group composed of at least five persons operating in an organised manner, even if only occasionally". Deciphering the phrase "organised even if only occasionally" proves arduous: if organisation is required by the offence definition, qualifying it as "occasional" can only refer to the duration or temporal stability of coordination, not to its absence. To qualify as an operational group, a plurality of individuals must exhibit at least minimal coordination, rendering the statutory wording redundant at best and apt to sow interpretive confusion. Punishable by two to five years' imprisonment and a fine of EUR 10,000 to EUR 20,000 is "whoever ... unlawfully uses clubs, bats, blunt instruments, or any other objects capable of causing bodily harm, or hurls such objects or flares, fireworks, firecrackers, or devices capable of spraying gases containing irritant active agents". Nor does that suffice: such conduct must cumulatively create a concrete danger to personal safety and also cause damage to property[97].

Two critical observations are warranted here. First, the adverb "unlawfully" (*illegittimamente*), qualifying the use of the listed objects, introduces an elusive normative element: it remains unclear whether it denotes the unlawfulness of the concrete manner of use, the lack of administrative authorisation, or an additional requirement tied to the context of the demonstration. Omitting any mention of small unmanned drones likewise raises questions as to how far the residual clause covering objects capable of causing harm may be stretched without offending strict legality, though not every deployment of such devices necessarily falls outside the provision. Second, the literal wording cumulatively requires both a concrete danger to personal safety and actual property damage, employing the conjunctive "and" rather than the disjunctive "or". Consequently, the absence of either element ought to preclude liability under the offence, barring corrective judicial construction or legislative amendment upon parliamentary conversion.

The second paragraph of the new Article 420-*bis* sets out two aggravating circumstances carrying a penalty increase from one-third to one-half: first (subparagraph (a)), where the act is committed by persons "in disguise or otherwise acting in a manner apt to hinder identification" (leaving unclear whether all group members must be disguised and introducing marked vagueness as to when identification becomes "hindered"); and second (subparagraph (b)), where the hurling or use of the listed objects targets statutorily enumerated energy infrastructure or movable or immovable property dedicated to public utility or exposed by custom or necessity to public trust (*pubblica fede*). Here too, one struggles to fathom the

illogical inversion placing "hurling" ahead of "use"—whereas the basic offence in paragraph 1 rightly lists "use" before "hurling".

An autonomous felony, incongruously placed among offences against public order, is enacted in the third paragraph of Article 420-*bis* of the Criminal Code and carries four to twelve years' imprisonment: it punishes whoever, including by means of computer or telematics systems, organises or promotes the formation of the group described in paragraph 1, or incites or instigates the commission of the conduct set forth therein. Systematically, such a provision ought instead to have been properly redrafted and placed among cybercrimes under Articles 615-*ter* et seq. of the Criminal Code[98].

A further aggravating circumstance, increasing the penalty by one-third to one-half, is set forth in the final paragraph of Article 420-*bis* whenever the conduct described in paragraph 1 results in bodily injury within the meaning of Articles 582 (itself amended by Article 1(5) of the Law Decree), 583, 583-*quater*, and 583-*quinquies* of the Criminal Code.

The sixth and final paragraph of Article 1 of the 2026 Law Decree intervenes among offences against property by inserting Article 635.1, entitled "Criminal damage committed by an organised group", applicable whenever acts of criminal damage described in the first three paragraphs of Article 635 of the Criminal Code are perpetrated by a group of at least five persons operating in an organised manner, even if only occasionally, prescribing a penalty increase from one-third to one-half.

Once again, the careless legislative drafting style is unmistakable. Although the statutory heading suggests an autonomous criminal offence, the operative text—stipulating that for conduct under Article 635 of the Criminal Code "the penalty is increased from one-third to one-half"—configures a special aggravating circumstance rather than a standalone crime. Because the maximum increase reaches one-half of the base penalty, exceeding the one-third threshold under Article 63(3) of the Criminal Code, it qualifies as an **aggravating circumstance of special effect**; judicial balancing against mitigating circumstances under Article 69 of the Criminal Code remains applicable, absent any statutory bar.

All these scattered aggravating provisions could far more coherently have been consolidated, using a generalising legislative technique, into a single, shielded general aggravating circumstance[99] covering offences committed during or on the occasion of a public demonstration marked by violent or vandalistic conduct disturbing public order and safety.

Turning to criminal procedure, Article 2 of the Law Decree regulates **deferred arrest *in flagrante delicto*** under Article 382-*bis* of the Code of Criminal Procedure for offences committed in the context of public demonstrations, while Article 3 amends the juvenile precautionary-measures regime under Presidential Decree no. 448 of 22 September 1988. On the one hand, it expands the catalogue of offences permitting pre-trial detention in custody under Article 23 (adding Articles 420-*bis* and 635.1 of the Criminal Code), correspondingly widening discretionary arrest *in flagrante delicto* under Article 16; on the other hand, it amends Article 19(2) by carving out from the statutory bar therein the exception "unless the defendant has reached the age of sixteen". That exception renders applicable to juvenile defendants aged sixteen and over the specific rule of Article 275(3), second sentence, of the Code of Criminal Procedure, solely in respect of the offences enumerated therein and without assimilating the juvenile precautionary regime wholesale to that of adults. The closed statutory catalogue of juvenile precautionary measures, concrete assessment of precautionary needs, and the mandatory duty to safeguard ongoing educational processes all remain intact. Nevertheless, a selective tightening of custodial severity takes shape for the 16–18 age bracket, eroding the traditional insulation of the juvenile justice statute against adult-style custodial presumptions.

It is earnestly to be hoped that during parliamentary conversion proceedings Law Decree no. 190/2026 will undergo thorough revision so as to acquire rigorous technical-normative form and systematic coherence with the existing legal

order: a considered redrafting of the new provisions, rescuing the subject matter from hasty emergency emotionalism, would overcome glaring drafting defects and avoid compounding the acute operational difficulties already triggered by the procedural reforms of the past five years[100].

08. TOWARD GENUINE FORMATIVE LEGALITY BEYOND THE LOGIC OF PUNISHMENT.

The foregoing inquiry demonstrates that countering the spreading phenomenon of juvenile delinquency—recently manifested even through hooded adolescents, some under thirteen, infiltrating peaceful marches solely to destroy, devastate, pillage, and loot everything in their path in bouts of urban guerrilla warfare—cannot be reduced either to escalating abstract statutory penalties or to deploying situational-prevention instruments modelled upon policing "sensitive" urban venues and routine territorial patrolling by law enforcement agencies, whose interventions have at times proved insufficiently incisive to guarantee public safety, not least owing to failures to intercept mobilization messages circulating openly across social media. Still less, when confronted with heinous lethal violence committed within the intimacy of earliest romantic relationships among adolescents under sixteen, can severe statutory penalties exert deterrent force against the emotional immaturity and neuropsychological incompleteness characteristic of developmental age[101]; harbouring the illusion that developmental relational crises can be stemmed through criminal repression alone foists upon the criminal courts an improper role of social substitution, intervening only after irreparable harm has occurred without addressing the generative roots of unlawful conduct in preventive terms.

Restoring effective legality requires instead forging a structural link between **primary prevention** and penal enforcement. On the preventive front, rebuilding the educational alliance among families, schools, and local communities cannot be exhausted in hollow, budget-neutral programmatic declarations destined to remain dead letters[102], but demands funded specialist safeguards dedicated to the early detection of toxic romantic dynamics and adolescents' inability to process the frustration of rejection.

On the sentencing and enforcement plane, overcoming purely custodial drifts requires refounding the **scientific observation of personality** within Juvenile Penal Institutions through dedicated clinical-diagnostic units and **standardised forensic assessment protocols**. Only by restoring punishment to its authentic rehabilitative mission, in full fidelity to Article 27(3) of the Italian Constitution and to the foundational canon of criminal law as *extrema ratio*[103], will the legal system succeed in reconciling rigorous management of aggravated social dangerousness with the pedagogical recovery of the minor—preserving the axiological coherence of a specialised justice system created to educate rather than merely to neutralise.

Toward the close of the twentieth century, a young Minister of Public Education voiced deep concern over the lack of incisive coordination between schools and families in the best interests of children, warning against a growing disconnect between the responsibilities proper to each of those two foundational institutions, and calling for renewed investment in "social provisions" (*provvidenze sociali*) in the classic tradition of Giovanni Carmignani so as to meet—through adequate, urgent public funding—the pressing needs that empirical reality presented then and continues to present today in this delicate domain[104]. We were waiting for Godot, who is slow in coming; will he ever arrive?

References & Authorities Cited

Statutory Provisions

- Articles 2, 3, 27, and 31 of the Italian Constitution — Constitutional principles of solidarity, presumption of innocence, rehabilitative function of punishment, and constitutional protection of youth

- Articles 97, 98, 419, 420, 420-bis, 577-bis, 635, and 635.1 of the Italian Criminal Code — Juvenile criminal capacity, offence of femicide, and offences against public order and property

- Presidential Decree no. 448 of 22 September 1988 — Provisions governing criminal proceedings against juvenile defendants

- Legislative Decree no. 121 of 2 October 2018 — Rules governing the enforcement of sentences in respect of convicted minors

- Law Decree no. 123 of 15 September 2023 (converted into Law no. 159 of 13 November 2023) and Law Decree no. 190 of 22 October 2026 — Urgent measures to combat youth distress and juvenile delinquency and to safeguard public security

Case Law Cited

1. **Italian Constitutional Court, Judgment of 22 January 2015, no. 1** — Reaffirms the constitutional necessity, within juvenile criminal proceedings, of assessments grounded in individualised prognoses geared primarily toward rehabilitating the deviant minor and safeguarding ongoing educational needs.

2. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 14 June 2016, no. 24737** — Clarifies the relative nature of the maturity inquiry under Article 98 of the Criminal Code in relation to the specific offence committed and underscores the ontological autonomy separating developmental immaturity from mental defect under Articles 88 and 89 of the Criminal Code.

3. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 21 March 2018, no. 13080** — Holds that assessing the capacity of understanding and volition of a minor under eighteen requires a concrete verification of personal, familial, and socio-environmental conditions existing at the time of the offence.

4. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 15 January 2024, no. 1728** — Confirms the individualised character of the inquiry into juvenile criminal capacity across both intellectual and volitional dimensions, barring presumptions derived solely from the category of offence charged.

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D1. Metodo Giuridico, *Crisi del sistema penale minorile: dal Decreto Caivano all'imputabilità* [Crisis of the Juvenile Criminal Justice System: From the Caivano Decree to Criminal Capacity]. Analysis of the tensions between law-and-order demands, the constitutional rehabilitative paradigm, and legislative proposals to alter juvenile criminal responsibility thresholds.

Author's Notes

1. Cf. V. ANDREOLI, *Baby gang. Il volto drammatico della adolescenza*, Milan, 2021, pp. 38 ff.
2. Cf. C. COLOMBO, *Il bullismo. Un terreno di verifica per la devianza minorile*, Padua, 2023, *passim*; E. LANZA, *Bullismo. Fra diritto penale e complessità*, Pisa, 2021, pp. 35 ff.; and A. FONZI, *Il bullismo in Italia*, Florence, 2000, *passim*.
3. C. BECCARIA, *Dei delitti e delle pene* [On Crimes and Punishments], Livorno, 1764, ch. XI.
4. On these aspects, see the overview in E. CADAMURO, *La risposta alla devianza minorile fra istanze punitive ed esigenze educative. Alla ricerca di un "sistema"*, Padua, 2025, pp. 9 ff.
5. Cf. F. MANTOVANI, *Il problema della criminalità. Compendio di scienze criminali*, Padua, 1984, pp. 282 ff.
6. See, in this regard, the edited volume by B. AGOSTINELLI and V. CUFFARO (eds.), *Relazioni, famiglie, società*, Turin, 2021, *passim*.
7. Cf. S. DAVIES, *Quando i genitori sono narcisisti. Come gestire i rapporti tossici e disfunzionali in famiglia*, Milan, 2026, pp. 26 ff.
8. Cf. S. RIONDATO, *Cornici di "famiglia" nel diritto penale italiano*, Padua, 2014, pp. 22 ff., highlighting the inability of criminal law to keep pace with the incessant mutability of familial social relations, merely witnessing the erosion of traditional family models.
9. Cf. G. MARINI, *Nuovo processo penale minorile: profili di diritto penale sostanziale*, in *La tutela dei diritti dei minori nell'ordinamento interno e nell'ordinamento internazionale*, Messina, 1991, pp. 21 ff., as well as, on specific procedural aspects, A. CRISTIANI, *Il diritto ad un giusto processo*, *ibid.*, pp. 13 ff.
10. See the Author's own *Intervento*, in *La tutela dei diritti dei minori nell'ordinamento interno e nell'ordinamento internazionale*, cit., pp. 57–58.
11. Cf. A. DI SANTO, *La riforma Cartabia e le modifiche al processo minorile. Un addio posticipato all'interdisciplinarietà e alla multidisciplinarietà?*, in *Altalex*, 2025, pp. 1 ff.;

A. CONTI, *Le modifiche introdotte dalla "Riforma Cartabia" in tema di processo penale minorile*, in *Dir. pen. e proc.*, 2023, pp. 305 ff. ↑

12. Cf. L. PULITO, *Giustizia riparativa e processo minorile nelle prospettive della c.d. "Riforma Cartabia"*, in *Arch. pen.*, 2022, pp. 1 ff.; E. CADAMURO, *Percorsi di giustizia riparativa nell'esecuzione penale minorile*, in *Dir. pen. e proc.*, 2020, pp. 258 ff. More generally on this topic, cf. G. MANNOZZI and G. A. LODIGIANI, *La giustizia riparativa. Formanti, parole e metodi*, Turin, 2025, *passim*. ↑

13. Cf. G. SPANGHER, *La tutela della fragilità in un recente intervento legislativo*, in *Riv. polizia*, 2026, pp. 654 ff.; A. DI TULLIO D'ELISIIS, *Minori e criminalità organizzata: cambiano le regole del processo penale*, in *Diritto.it*, 2026, pp. 1 ff. ↑

14. Cf. C. MOSCA, *La sicurezza. Valori, modelli e prassi istituzionali*, Naples, 2021, pp. 75 ff., framing security both as a constitutional value and as a right of liberty spanning multiple dimensions of social and community life; and F. FORZATI, *La sicurezza fra diritto penale e potere punitivo. Genesi e fenomenologia dell'illecito securitario postmoderno fra involuzioni potestative e regressioni al postmoderno*, Naples, 2020, *passim*. On practical and institutional aspects, cf. C. RUGA RIVA, A. SQUAZZONI, P. RONDINI, and B. BISCOTTI, *La sicurezza urbana e i suoi custodi (il Sindaco, il Questore, il Prefetto)*, in *Dir. pen. contemporaneo*, 2017, pp. 244 ff. ↑

15. Cf. M. BERTOLINO, *I minori della post-modernità di fronte alla responsabilità penale: questioni di maturità e di (neuro)scienza*, in *Teoria e critica della regolazione sociale*, 2021, pp. 233 ff., contending that no emergency exists capable of justifying lowering the minimum age of criminal responsibility (!). ↑

16. In tourist districts and underground stations in the city of Rome alone, during peak tourist seasons, no fewer than ten (unreported) thefts by sleight of hand occur daily. See *infra*, Section 3.1. ↑

17. *La criminalità giovanile. Fra rappresentazione e realtà*, 2026, *passim*. See also *infra*, Section 4.2. ↑

18. Cf. B. LIEVEGOED, *Le fasi evolutive dall'infanzia alla maggiore età*, Alassio, 2021, *passim*. ↑

19. Cf. M. F. BEAR, B. W. CONNORS, and M. A. PARADISO, *Neuroscienze. Esplorando il cervello*, Altavilla Vicentina, 2016, *passim*; D. E. PRESTI, *Fondamenti di neuroscienze*, Bologna, 2019, *passim*; A. ROUX, *Il cervello felice. Come si innamora, si sbaglia, si stressa e sogna*, Milan, 2024, *passim*. ↑

20. Cf. G. PANEBIANCO, *Il sistema penale minorile*, Turin, 2012, pp. 15 ff. ↑

21. Cf. C. CARDINALI and M. LUZI, *Devianza minorile. Interpretare l'adolescenza nella società contemporanea*, Rome, 2017 ed., *passim*. ↑

22. Cf. P. OFFENHAUER, *Teen Dating Violence*, New York, 2025, *passim*. ↑

23. See, on this topic, the edited volume by O. GRECO and N. DI NINNO (eds.), *La violenza nelle relazioni affettive*, Lecce, 2018, *passim*.

24. Cf. A. N. SCHORE, *La regolazione degli affetti e la riparazione del sé*, Rome, 2008, *passim*.

25. Cf. M. C. LORUSSO, *Il bullismo e l'insuccesso scolastico*, Romagnano al Monte, 2023, pp. 18 ff.

26. Cf. M. P. TURIELLO, *La famiglia: un porto sicuro o una prigione?*, Rome, 2021, pp. 29 ff.

27. Cf. M. TISO, *Strumenti e strategie per la progettazione educativa*, Lecce, 2024, *passim*.

28. Cf. G. M. CALETTI, *Dalla violenza al consenso nei delitti sessuali. Profili storici, comparati e di diritto vivente*, Bologna, 2023, *passim*.

29. For a critical assessment of the general-prevention paradigm, cf. W. HASSEMER, *Perché è necessario punire*, Bologna, 1975, *passim*; G. V. DE FRANCESCO, *La prevenzione generale tra normatività ed empiria*, in *Scritti in onore di Alfonso M. Stile*, Naples, 2013, pp. 15 ff.

30. Cf. W. HASSEMER, *Sicherheit durch Strafrecht*, in *Strafverteidiger*, 2006, pp. 325 ff.

31. Cf. R. TAMBELLI, *Psicologia clinica dell'età evolutiva*, Bologna, 2012, pp. 34 ff.

32. Cf. E. LÀDAVAS and A. BERTI, *Neuropsicologia*, Bologna, 2025, *passim*.

33. For a fuller examination of these aspects with further bibliographical references, see the Author's contribution *La criminalità minorile tra prevenzione e repressione. La crisi del paradigma rieducativo e la rimodulazione dell'imputabilità*, in this Journal, 2026, pp. 10 ff.

34. Cf. L. CAMALDO and F. MANFREDINI, *La definizione di un sistema penale minorile conforme ai principi generali*, in *Dir. pen. e uomo*, 2019, pp. 1 ff.

35. See, in this connection, M. P. TURIELLO (ed.), *L'applicabilità e le lacune del Codice Rosso*, Rome, 2023 ed., *passim*.

36. On which cf. M. BOSSO, *La controversa introduzione del reato di femminicidio: l'affermarsi di un nuovo paradigma in un leitmotiv emergenziale*, in *Dir. pen. e proc.*, 2026, pp. 18 ff.; A. DI TULLIO D'ELISIIS, *Il nuovo delitto di femminicidio. Commento alla legge 2 dicembre 2025, n. 181*, Pisa, 2025, *passim*. On procedural aspects, cf. A. MARANDOLA, *Le "nuove" disposizioni processuali*, in *Dir. pen. e proc.*, 2026, pp. 27 ff.

37. Cf. A. SANNELLA, *Strumenti sociologici e transdisciplinari per il contrasto del femminicidio*, Padua, 2024, pp. 38 ff.

38. Neuroscientific research over the past decade has underscored the critical role played by emotional-affective components in decision-making, particularly in adolescent criminal behaviour. See L. STEINBERG and G. ICENOGLE, *Using Developmental Science to Distinguish Adolescents and Adults Under the Law*, in *Annu. Rev. Dev. Psychol.*, 2019, pp. 30 ff.; D. BUENO, *Il cervello dell'adolescente*, Florence, 2022, *passim*.

39. Cf. L. BELTRAMINI, *La violenza di genere in adolescenza. Una guida per la prevenzione a scuola*, Rome, 2020, pp. 45 ff.

40. On the so-called Caivano Decree, see the collective volume *Il Decreto Caivano. Sicurezza e criminalità minorile*, Pisa, 2023, *passim*, as well as L. BARTOLI, *Il processo al minore nel decreto "Caivano"*, in *Leg. pen.*, 2023, pp. 1 ff.

41. Regarding constitutional questions raised by this preventive measure, cf. A. CHNITER, *Ancora sul difficile equilibrio tra esigenze di prevenzione e rispetto delle garanzie costituzionali: l'avviso orale "rafforzato"*, in *Cass. pen.*, 2025, pp. 1686 ff.

42. On the amendments made to Article 3 by Article 6 of Law Decree no. 190 of 22 October 2026, see *infra*, Section 6, and the critical observations developed therein.

43. Cf. S. DI PINTO, *Ordine pubblico e sicurezza urbana*, in *Riv. pol.*, 2019, pp. 507 ff.

44. Cf. L. ALESIANI, *Sub art. 635*, in *Commentario al codice penale*, Vol. IV, Turin, 2002, pp. 3201 ff.

45. Cf. M. GANCITANO, *Erotica dei sentimenti. Per una nuova educazione sentimentale*, Turin, 2024, *passim*.

46. Cf. P. CARDINALI and L. MIGLIORINI, *Scuola e famiglia. Costruire alleanze*, Rome, 2013, *passim*; B. FIORE, *La relazione tra famiglie e scuola. Modelli organizzativi e politiche sociali*, Rome, 2021, pp. 32 ff.

47. See, on this point, G. ORTOLANI, *Fondamenti di criminologia minorile. Il minore autore e vittima di reati*, Lecce, 2026, pp. 54 ff.

48. Cf. P. CREPET, *Cuori violenti. Viaggio nella criminalità giovanile*, Milan, 2017, *passim*; D. MATZA and G. SYKES, *La delinquenza giovanile. Teorie e analisi*, Rome, 2010, pp. 63 ff.

49. Cf. F. SCALA, *Diritti dei minori e responsabilità dei genitori nell'era digitale*, Naples, 2020, pp. 35 ff.; A. THIENE, *Ragazzi perduti online: illeciti dei minori e responsabilità dei genitori*, in *Nuova giur. civ.*, 2018, pp. 1618 ff.

50. Cf. I. FANLO CORTÉS and G. PETTI, *Giustizia minorile. Ascesa e declino del Tribunale per i minorenni in Italia*, Milan, 2025, *passim*.

51. On the (alleged) crisis of the concept of criminal capacity, cf. M. BERTOLINO, *Psicologia giuridica. Prova scientifica, imputabilità e vizio di mente*, Milan, 2024, pp. 83 ff.

52. Cf. L. DI PENTIMA, *Percorsi di sviluppo normale e patologico in età evolutiva*, Rome, 2026, *passim*.

53. On this point, see the insightful observations of criminologist M. BERTOLINO, *Fattispecie di reato e delinquenza minorile: questioni di imputabilità*, in *Scritti in memoria di Giuliano Marini*, Naples, 2010, pp. 51 ff.

54. See the official statistics compiled by the Ministry of the Interior (Criminal Analysis Service of the Central Directorate of the Criminal Police — Department of Public Security) in *Criminalità minorile e gang giovanili* (April 2024).

55. Cf. Italian Supreme Court of Cassation, Criminal Division, Judgment of 14 June 2016, no. 24737, emphasising the relative nature of the criminal capacity inquiry under Article 98 of the Criminal Code and underscoring the sharp ontological distinction between developmental immaturity and mental illness, and hence its autonomous sphere of operation vis-à-vis the general rule under Article 85 of the Criminal Code (see likewise Italian Supreme Court of Cassation, Criminal Division, Judgment of 13 June 2006, no. 24271).

56. Italian Supreme Court of Cassation, Criminal Division, Judgment of 21 March 2018, no. 13080.

57. Italian Supreme Court of Cassation, Criminal Division, Judgment of 15 January 2024, no. 1728.

58. Italian Supreme Court of Cassation, Criminal Division, Judgment of 3 March 2026, no. 8317.

59. Cf. S. D'AMATO, *Imputabilità, vizio di mente e responsabilità. Questioni dommatiche, empiriche e politico-criminali*, Turin, 2025, pp. 60 ff.

60. Cf. S. SPIRIDIGLIOZZI, *Cognitività dell'età evolutiva*, Rome, 2021, pp. 64 ff.

61. Cf. C. TAORMINA, *Criminologia e prova penale*, Turin, 2017, pp. 245 ff. In case law, cf. Italian Supreme Court of Cassation, Criminal Division, Judgment of 13 March 2026, no. 8152.

62. Cf. A. MENGHINI and E. MATTEVI, *La rieducazione oggi. Dal dettato costituzionale alla realtà del sistema penale*, Naples, 2022, *passim*.

63. On this point cf. C. DI COSTANZO, *La tutela costituzionale del minore: identità, salute e relazioni*, Turin, 2023, pp. 38 ff., as well as C. SCIVOLETTO, *Sistema penale minorile*, Rome, 2022, *passim*. See also Italian Constitutional Court, Judgment of 22 January 2015, no. 1, underscoring the absolute necessity within juvenile criminal proceedings of assessments grounded in individualised prognoses geared primarily toward rehabilitating the deviant minor and adopting precautionary measures suited to safeguarding educational needs. In identical terms, see Italian Supreme Court of Cassation, Criminal Division, Judgment of 15 January 2026, no. 413.

64. Drawing upon recent neuroscientific findings (on which cf. P. H. RUDEBECK and E. A. MURRAY, *The Orbitofrontal Oracle: Cortical Mechanisms for the Prediction and Evaluation of Specific Behavioral Outcomes*, in *Neuron*, 2016, pp. 1143 ff.), proposals had also been floated to amend Article 97 of the Criminal Code by lowering the minimum threshold of criminal capacity to age twelve and setting the age of penal majority at sixteen, while retaining existing Criminal Code rules for minors and dangerous juvenile offenders. For further details cf. P. MAZZA, *Pericolosità sociale e legalità*, Padua, 2021, pp. 127 ff. See also *infra*, Section 5.1.

65. Cf. G. PANEBIANCO, *Sicurezza, criminalità minorile e urgenza a fronte del c.d. decreto "Caivano"*, in *Dir. pen. e proc.*, 2023, pp. 1554 ff., highlighting its emergency character and law-and-order shift away from traditional juvenile justice principles.

66. Cf. L. BIARELLA, *Imputabilità dei minori, il Governo intende cambiare le regole con un Ddl*, in *Altalex*, 2026, pp. 1 ff.

67. On the constitutional principle of solidarity and its systemic scope, see S. RODOTÀ, *Solidarietà. Un'utopia necessaria*, Rome-Bari, 2017, pp. 39 ff.

68. Cf. Italian Constitutional Court, Judgment of 15 April 1987, no. 128, addressing the constitutionality of passive extradition of a minor to the United States with respect to guarantees of differentiated penal treatment—a precedent relevant at most by analogy and non-dispositive as to domestic allocation of the burden of proof under Article 98 of the Criminal Code.

69. Cf. C. RENAULT-BRAHINSKY, *Justice pénale des mineurs: 14 fiches pour décrypter le parcours pénal des mineurs*, Paris, 2024, *passim*. On the German juvenile criminal justice system, cf. U. EISENBERG, *I principi fondamentali del diritto penale minorile tedesco*, in *Quaderni di diritto e procedura penale*, 2011, pp. 1 ff. (offprint).

70. Cf. S. CIVELLO CONIGLIARO, *All'origine del giusto processo minorile europeo. Una prima lettura della Direttiva 2016/800/UE sulle garanzie procedurali dei minori indagati e imputati nei procedimenti penali*, in *Dir. pen. contemporaneo*, 2016, pp. 1 ff.

71. Cf. E. TURCO, *Manuale di procedura penale minorile*, Turin, 2025, *passim*.

72. Cf. A. MACRILLÒ, *La nuova esecuzione penale minorile*, Santarcangelo di Romagna, 2019, *passim*.

73. Cf. P. MAZZA, *Pericolosità sociale e legalità*, cit., pp. 147 ff.

74. Cf. L. MASTROPASQUA, *L'assistente sociale nella giustizia minorile e di comunità*, Santarcangelo di Romagna, 2023, *passim*, as well as the Author's own observations in *Giustizia penale e servizi sociali*, in *Riv. pol.*, 1993, pp. 1 ff. (offprint).

75. Cf. P. BASTIANONI and A. TAURINO, *Le comunità per minori. Modelli di formazione e supervisione clinica*, Rome, 2009, *passim*.

76. See the volume edited by Y. PACE and A. BELLANTONI (eds.), *Il servizio antiviolenza tra cura e diritto*, Rome, 2026, *passim*. ↑

77. Cf. F. P. GABRIELI, *Trattamento giuridico-penale dei minorenni*, in *Arch. pen.*, 1953, pp. 1 ff. (offprint). ↑

78. Seminal on this point remains G. VASSALLI, *Funzioni e insufficienze della pena*, in *Riv. it. dir. e proc. pen.*, 1961, pp. 311 ff. ↑

79. Cf. D. LOIACONO, *La devianza minorile, forme di controllo e rapporto educativo dei servizi sociali con i minori*, Gaeta, 2021, *passim*. ↑

80. On this enactment, see the volume edited by L. CARACENI and M. G. COPPETTA (eds.), *L'esecuzione delle pene nei confronti dei minorenni. Commento al d.lgs. 2 ottobre 2018, n. 121*, Turin, 2019, *passim*, with extensive bibliographical and case-law references therein. ↑

81. Cf. F. DETTORI, *Giustizia minorile e integrazione sociale*, Milan, 2020, pp. 83 ff. ↑

82. See, in this regard, the Author's contribution *Codice delle leggi di pubblica sicurezza e feste del delirio (rave parties)*, in *Giust. pen.*, 2023, I, cols. 125 ff., pointing out the absence of prognostic preventive intelligence regarding the potential unfolding of organised gatherings. ↑

83. See *infra*, Section 7. ↑

84. Cf. V. ITALIA, *Le leggi: poche, brevi e chiare*, Milan, 2020, pp. 23 ff. ↑

85. Cf. R. BICHI, *Istituzioni di ordinamento giudiziario*, Pisa, 2025, *passim*. ↑

86. Cf. S. CARDIN, *L'illecito punitivo-amministrativo: principi sostanziali, procedimentali e processuali*, Padua, 2013, *passim*. ↑

87. On these issues, see the Author's essay *Reiterazione dell'illecito amministrativo e reiterazione dell'illecito civile sottoposto a sanzioni pecuniarie*, in *Riv. pol.*, 2016, pp. 1151 ff. ↑

88. Cf. M. LA MONICA, G. MARINI, L. MAZZA, and S. RIONDATO, *Manuale del diritto di polizia*, Milan, 2003 ed., pp. 470 ff. ↑

89. Cf. T. PERRELLA, *Il nuovo fermo preventivo di polizia: sicurezza pubblica, diritti fondamentali e prospettive di riforma*, in *Sistema pen.*, 2026, pp. 1 ff. ↑

90. A metropolis that has witnessed repeated episodes of organised street guerrilla violence featuring widespread participation by armed minors with covered faces and attire designed to hinder identification, several acting under the influence of narcotic substances. ↑

91. Italian Supreme Court of Cassation, Criminal Division, Judgment of 24 January 2019, no. 3486. ↑

92. On these aggravating circumstances cf. A. R. LATAGLIATA, *Concorso di persone nel reato*, in *Enc. dir.*, Vol. VIII, Milan, 1961, pp. 595 ff. ↑

93. Cf. Italian Supreme Court of Cassation, Criminal Division, Judgment of 14 July 2025, no. 25778, and Italian Supreme Court of Cassation, Criminal Division, Order of 15 October 2026, no. 36397. ↑

94. See *supra*, Section 4.3. ↑

95. Cf. S. ARDIZZONE, *Sub art. 419*, in *Commentario al codice penale*, Vol. III, Turin, 2002, pp. 2052 ff., with doctrinal and case-law references cited therein, as well as the systematic reflections of E. CONTIERI, *I delitti contro l'ordine pubblico*, Naples, 1961, pp. 38 ff. ↑

96. Cf. S. ARDIZZONE, *Sub art. 420*, in *Commentario al codice penale*, cit., pp. 2056 ff. ↑

97. See also Law Decree no. 23 of 24 February 2026 (the so-called "Security Decree"), converted into Law no. 54 of 24 April 2026, on which cf. M. BONAZZI, *Il decreto-legge 24 febbraio 2026, n. 23 (cd. decreto sicurezza) tra istanze securitarie e di tutela delle libertà fondamentali*, in *Riv. pol.*, 2026, pp. 121 ff. ↑

98. Cf. G. CORASANITI, *Cybercrime. Reati informatici, indagini e prova digitale*, Santarcangelo di Romagna, 2026, *passim*. ↑

99. Cf. A. PECCIOLI, *Le circostanze privilegiate nel giudizio di bilanciamento*, Turin, 2010, *passim*. ↑

100. On this point see the Author's essay *Una riforma "imposta" ai tempi della pandemia*, in *Riv. pol.*, 2022, pp. 481 ff. ↑

101. Cf. S. VICARI and M. C. CASELLI, *Neuropsicologia dell'età evolutiva*, Bologna, 2017, pp. 124 ff. ↑

102. As occurs under Article 3 of the aforementioned governmental bill introduced on 5 August 2026. ↑

103. Cf. G. P. DEMURO, *Ultima ratio: alla ricerca di limiti all'espansione del diritto penale*, in *Diritto e Storia*, 2013, pp. 1 ff. ↑

104. Thus S. MATTARELLA, *Intervento*, in *La tutela dei diritti dei minori nell'ordinamento interno e nell'ordinamento internazionale*, cit., pp. 233 ff. ↑

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