



The role of mediation in addressing adolescent issues within legal and social science contexts

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Abstract

"Mediation is a process, almost always formal, through which a neutral third person tries, by organising exchanges between the parties, to allow them to compare their points of view and to seek with his help a solution to the conflict that opposes them" (Bonafé-Schmitt, 1992). The article intends to investigate the adolescent problems and the development in the juvenile field of restorative justice and criminal mediation, with particular reference to the institution of the suspension of the trial and probation, ex art. 28 of Presidential Decree no. 448 of 22 September 1988, which represents the main means by which juvenile trial mediation is carried out. In particular, by re-elaborating the data provided by the Department for Juvenile and Community Justice relating to a wide time span from 1992 to the present day, an analysis of the actual application of the said institution is carried out, also referring to the prescriptions given, with specific regard to those concerning the so-called direct and indirect penal mediation. The analysis allows to assess the validity and effectiveness of juvenile criminal mediation and in general of restorative justice models, which are increasingly at the centre of a renewed interest culminated with the Cartabia reform of the criminal process, which with the legislative decree 10 October 2022 n. 150 has finally led to the introduction of an organic discipline of the matter.

Keywords: *adolescent issues; social sciences; mediation; restorative justice; probation.*

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Adolescent problems and mediation

Mediation in the social sciences is a highly relevant topic that brings together different disciplines to address complex challenges affecting adolescents. This topic involves the intersection of social, educational, psychological and legal aspects (Şerban, 2025) to provide support and effective solutions.

Adolescents face multiple challenges as they grow up, which may relate to interpersonal relationships and family difficulties; education and school performance; identity and self-esteem issues; diversity and inclusion; substance use and abuse (Ilie, Şerban and Dan, 2024); social media influence and technology addiction (Calderaro, Mastronardi and Serban, 2025); mental health; and bullying and cyberbullying.

Adolescent issues, therefore, are varied and complex, often influenced by a combination of biological, psychological, social and environmental factors. Among these issues, delinquent behaviour represents a worrying aspect (Serban, 2023).

Dealing with adolescent problems requires an interdisciplinary approach involving social workers; educators and teachers; psychologists and psychiatrists; lawyers and mediators.

Mediation presents itself as a valuable tool to resolve such issues in a non-confrontational and collaborative way and can be applied in different contexts: family; school; peer; community; criminal.

In particular, restorative justice and criminal mediation are paradigms that involve the victim, the offender and the community in finding solutions to conflicts caused by the commission of a crime.

This approach to criminal justice seeks to overcome the punitive logic and focuses on repairing the damage, making peace between the parties and strengthening the sense of social security, emphasising the more exquisitely relational aspect of the criminal event.

Although international legislation, in the past and on several occasions, has urged the national regulatory systems to increase the use of restorative justice, the Italian legal system has only partly implemented these indications and, with the exception of the juvenile field and of local and discontinuous experiments, has not offered concrete opportunities for the application of victim-offender mediation procedures.

Recently, thanks to the National Recovery and Resilience Plan (PNRR) of the year 2021 and the consequent Cartabia reform of the criminal justice process, an organic regulation of restorative justice was introduced with Legislative Decree no. 150 of 10 October 2022, which came into force on 30 December 2022.

The decree defines restorative justice as 'any programme that allows the victim of the offence, the person named as the offender and other community members to participate freely, consensually, actively and voluntarily, in the resolution of issues arising from the offence, with the help of an impartial, adequately trained third party called a mediator' (Article 42) and provides for its accessibility at every state and level of the criminal process and regardless of the case and the seriousness of the offence.

The Cartabia reform seeks to make effective recourse to this institution by overcoming institutional and cultural resistance and the still predominant conviction that prison sentences are the only effective response to crime, regardless of the more properly reparative aspect of the matter.

The idea of going beyond the logic of 'punishment', in favour of a restorative vision, allows social relations to be strengthened, rather than merely responding to crime

exclusively with punishment, without however neglecting the repression of crime and the need for security in society.

As mentioned above, the juvenile sphere has already previously made available spaces for this alternative form of justice, suitable to allow the avoidance of the trial by favouring the rapid exit of the juvenile from the penal circuit, and to make effective the recovery and reintegration of the offender, also preventing recidivism, and the recomposition of the relationship between the offender and the victim, with consequent reparation of the damage and full consideration of the latter's needs and requirements.

The juvenile legislation, in addition to incorporating the dictates on restorative justice contained in international law, is respectful of Articles 27(3) and 31(2) of the Constitution, which provide for sanctions for juvenile offenders that tend towards re-education and recovery, also in consideration of their *developing* personalities.

The criminal trial of juvenile defendants is regulated by Presidential Decree No. 448 of 22 September 1988 (Approval of the provisions on the criminal trial of juvenile defendants) and by Legislative Decree No. 272 of 28 July 1989 (Implementation, coordination and transitional provisions of Presidential Decree No. 448/88). 448/88) that have "collected and usefully elaborated the indications coming from international reflections and experiences, anticipating in some cases the same elaboration of the principles contained in important international charters, such as the UN Convention on the Rights of the Child signed in New York in 1989" (Mastropasqua and Ciuffo, 2004).

As pointed out by Manuela Mazza "the Presidential Decree 448/88 is the legislative provision that has most embraced some fundamental and innovative criteria of the restorative justice paradigm" (Mazza, 1999).

The legislator, in fact, has provided multiple possibilities to put into practice the penal mediation that, in the juvenile field, has a very relevant pedagogical value.

The juvenile can become fully aware of the existence of the victim and the damage caused to him/her and, through the repair of the same and the recomposition of the relationship, grow and improve his/her personality.

Martucci observes that this legislation has 'further accentuated the social and civil interventions and the educational role of the proceedings with respect to repressive values, introducing institutes aimed at favouring the rapid exit of the minor from the "penal circuit"' (Martucci, 1995).

Presidential Decree 448/88 provides for regulatory spaces, 'implicit' or 'explicit' (Scardaccione & al., 1998), in which mediation can be carried out during the preliminary or trial hearing, in the application of substitute sanctions, in the penal enforcement phase or in the application of alternative measures to detention.

Leaving aside the other regulatory provisions, it is worth analysing in particular Article 28¹, which regulates the suspension of the trial and probation of the child.

¹ Art. 28 Presidential Decree 448/88 - Suspension of the trial and probation.

The judge, having heard the parties, may order the suspension of the trial when he deems it necessary to assess the juvenile's personality at the outcome of the trial ordered pursuant to paragraph 2. The trial shall be suspended for a period not exceeding three years when prosecuting offences for which the penalty is life imprisonment or imprisonment of not less than a maximum of twelve years; in other cases, for a period not exceeding one year. During this period, the course of prescription is suspended.

With the suspension order the judge entrusts the juvenile to the juvenile services of the administration of justice to carry out, also in cooperation with the local services, the appropriate observation, treatment and support activities. In the same order the judge may issue prescriptions aimed at remedying the consequences of the offence and at promoting the conciliation of the juvenile with the offended person, as well as issue an invitation to participate in a restorative justice programme, if the conditions are met.

Basically, the preliminary hearing judge and the trial judge may suspend the trial and entrust the child to the juvenile services of the administration of justice for treatment and support.

By doing so, the State does not give up its legitimate punitive claim, but temporarily suspends it.

In concrete terms, paragraph 2 fully introduces the restorative model into the juvenile criminal proceedings.

The original wording provides that the judge, with the order entrusting the child to the social services, may 'issue prescriptions aimed at repairing the consequences of the offence and at promoting the conciliation of the child with the person offended by the offence'.

The Cartabia reform, at the end of the aforementioned paragraph, expressly added that, with the same measure, the judge may 'formulate an invitation to participate in a restorative justice programme, if the conditions are met'.

Legislative Decree No. 272 of 1989, in Article 27 paragraph 2 letter D)², lays down a rule for the implementation of Article 28 and provides that the intervention project, drawn up by the juvenile services of the administration of justice in cooperation with the social welfare services of the local authorities, must provide, inter alia, "the implementation modalities possibly aimed at repairing the consequences of the offence and at promoting the conciliation of the juvenile with the offended person".

As pointed out by Ruggeri, the institution of trial suspension and probation can certainly be considered as a hypothesis of trial mediation, 'both because it is inserted in the phase following the exercise of the criminal action and because it is expressly regulated ex lege, and therefore harmonised with the principles governing the trial' (Ruggeri, 1998).

The Public Prosecutor, the defendant and his defence counsel may appeal against the order in cassation.

Suspension may not be ordered if the defendant requests an abbreviated trial or an immediate trial.

The suspension is revoked in the event of repeated and serious transgressions of the prescriptions imposed.

(The Constitutional Court, with its sentence 5-14 April 1995, no. 125 (in G.U. 1a s.s. 19/4/1995, no. 16) declared the constitutional illegitimacy of paragraph 4 of this Article 28 "in the part where it provides that the suspension cannot be ordered if the defendant requests the abbreviated trial" and "in the part where it provides that the suspension cannot be ordered if the defendant requests the immediate trial").

² Article 27 of Legislative Decree 272/89 - Suspension of trial and probation.

The judge provides in accordance with Article 28 of Presidential Decree No 448 of 22 September 1988, on the basis of an intervention project drawn up by the juvenile services of the administration of justice, in cooperation with the social welfare services of the local authorities.

The intervention project must provide, inter alia

- a. the methods of involvement of the minor, his family unit and living environment;
- b. the specific commitments to be undertaken by the minor;
- c. the modes of participation in the project of legal practitioners and the local authority;
- d. the methods of implementation, if any, aimed at remedying the consequences of the offence and promoting the juvenile's reconciliation with the offended person.

The services periodically inform the judge of the activities carried out and the evolution of the case, proposing, where they deem it necessary, changes to the project, possible shortening of it or, in the event of repeated and serious offences, revocation of the suspension order.

The chairman of the panel ordering the suspension of the trial and foster care shall receive the reports of the services and shall have the power, which may be delegated to another member of the panel, to hear, without procedural formalities, the operators and the minor.

For the purposes of the provisions of Articles 28(5) and 29 of Presidential Decree No. 448 of 22 September 1988, the services shall submit a report on the juvenile's behaviour and the evolution of his personality to the chairman of the panel that has ordered the suspension of the trial as well as to the Public Prosecutor, who may request the setting of the hearing provided for in Article 29 of the same Decree.

Mediation, therefore, can take place in this institution and tends towards the reconciliation of the juvenile with the victim and the reparation of the consequences of the crime.

Article 28 'would seem to constitute the main vector of mediation and reparation in juvenile criminal law, since the legislator, in describing the content of the prescriptions has in fact used a very broad formula, designed to delimit not the contents but only the objectives' (Mannozi, 2003).

Thus, a variety of activities may be the subject of the prescriptions issued by the judge, provided that they are suitable for remedying the consequences of the offence and promoting the conciliation of the juvenile with the offended person.

The outcome of probation, assessed in the light of the provisions of Article 29 of Presidential Decree 448/88³, may lead to the offence being declared extinct.

Concrete application: suspension of trial and probation

Through the re-elaboration of the data provided by the Department for Juvenile and Community Justice on the suspension of trial and probation, the actual application in the juvenile field in the years from 1992 to 2023 was analysed, also referring to the prescriptions given and in particular to those concerning the so-called direct and indirect penal mediation.

The suspension of the trial and probation, precisely through prescriptions, is certainly the most relevant institute through which juvenile trial mediation is applied.

As analysed above, Article 28 of Presidential Decree 448/88 lays down the specific discipline and paragraph 2 fully introduces the reparative model in juvenile criminal proceedings.

The subsequent Legislative Decree No. 272 of 1989, in Article 27 paragraph 2 letter D), sets out the implementing rule.

The institution makes it possible to interrupt the trial and deviate from its natural course with the possibility for the juvenile to avoid conviction and punishment by proving his repentance.

The data contained in table 1 and in the following graph, relating to the historical series for the period 1992-2023, show an almost always increasing trend in the number of trial suspension orders for trial by probation, with sporadic decreases due to emergency or exceptional situations, as for example in 2006 (- 6.9%) on the occasion of the issuance of the pardon measure (Law No 241 of 31 July 2006).

There was also, in the year 2020, a significant decrease of 23.7% compared to the previous year, due to the Covid-19 coronavirus pandemic that forced some Juvenile Courts to postpone the hearings for the granting of probation; this, of course, generated the substantial increase of 52% in the following year 2021.

The highest increases, in overall terms, were reached in the years 2019, 2021, 2022 and 2023, with a variation of more than 400% compared to 1992, reflecting the increasing use of this institution.

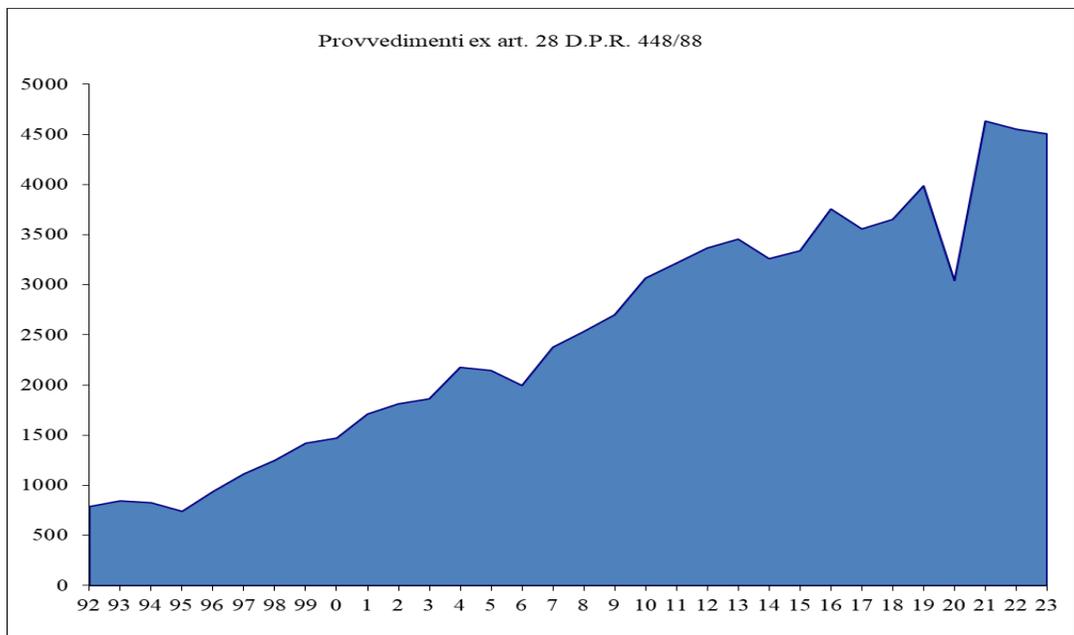
³ Article 29 Presidential Decree 448/88 - Declaration of extinction of the offence due to successful trial. Once the suspension period has expired, the judge fixes a new hearing at which he declares the offence extinguished if, taking into account the behaviour of the juvenile and the evolution of his personality, he considers that the trial has had a positive outcome. Otherwise he shall proceed in accordance with Articles 32 and 33.

Years	Measures ex Art. 28 Presidential Decree 448/88	% variation compared to the previous year	% variation compared to 1992
1992	788	-	-
1993	845	+ 7,2	+ 7,2
1994	826	- 2,2	+ 4,8
1995	740	- 10,4	- 6,1
1996	938	+ 26,8	+ 19,0
1997	1.114	+ 18,8	+ 41,4
1998	1.249	+ 12,1	+ 58,5
1999	1.420	+ 13,7	+ 80,3
2000	1.471	+ 3,6	+ 86,7
2001	1.711	+ 16,3	+ 117,1
2002	1.813	+ 6,0	+ 130,1
2003	1.863	+ 2,8	+ 136,4
2004	2.177	+ 16,9	+ 176,3
2005	2.145	- 1,5	+ 172,2
2006	1.996	- 6,9	+ 153,3
2007	2.378	+ 19,1	+ 201,8
2008	2.534	+ 6,6	+ 221,6
2009	2.701	+ 6,6	+ 242,8
2010	3.067	+ 13,6	+ 289,2
2011	3.217	+ 4,9	+ 308,2
2012	3.368	+ 4,7	+ 327,4
2013	3.456	+ 2,6	+ 338,6
2014	3.261	- 5,6	+ 314,6
2015	3.340	+ 2,4	+ 323,8
2016	3.757	+ 12,5	+ 376,8

2017	3.558	- 5,3	+ 351,5
2018	3.653	+ 2,7	+ 363,6
2019	3.988	+ 9,2	+ 406,1
2020	3.043	- 23,7	+ 286,2
2021	4.634	+ 52,3	+ 488,1
2022	4.553	- 1,7	+ 477,8
2023	4.506	- 1,0	+ 471,8

Table 1 - Suspension of trial and probation measures. Period 1992/2023.

N.B.: starting from the year 2016, the figure also includes probation orders relating to minors followed by the Local Authority, i.e. no. 138 in 2016, no. 105 in 2017, no. 110 in 2018, no. 91 in 2019, no. 172 in 2020, no. 328 in 2021, no. 114 in 2022 and no. 281 in 2023.



A probation project may contain several prescriptions and, as shown in tables 2 A - B and C, in the period from 2000 to 2023, those most frequently issued by the judge in the application order concern voluntary and socially useful activities, study, work and stay in the community.

The use of prescriptions relating to so-called direct criminal mediation (conciliation with the injured party and compensation for damages, including symbolic damages) is far less than those relating to so-called indirect criminal mediation (socially useful activities

and voluntary work), addressed to the community in general and not specifically to the crime victim.

Further prescriptions include the ever-increasing use of 'interviews and educational support', the data for which have been available since 2012 and which currently exceed the others mentioned above.

It should be emphasised that probation is a very important *chance* for the juvenile, but also a rather demanding one, to the extent that there are cases where juveniles are not willing to undertake the process.

Prescriptions	2000	2001	2002	2003	2004	2005	2006	2007
Work activity	884	973	987	972	1.136	1.079	944	1.156
Voluntary activities	737	722	853	942	1.059	1.156	1.011	1.627*
Study activities	614	686	754	838	898	1.063	887	1.071
Sports activities	256	330	362	329	309	317	258	347
Community stay	222	258	284	282	355	401	360	412
Plaintiff conciliation	150	178	208	193	264	233	187	263
Socially useful activities	201	272	293	329	385	374	362	1.627*
Socialisation activities	162	181	178	215	223	220	157	210
Symbolic damages	66	83	90	66	53	63	73	57
Other	265	264	292	262	324	305	282	n.a.
Educational/employment guidance	n.a.							
Interviews and educational support	n.a.							
Referral to the Mediation Office	n.a.							
Day centre attendance	n.a.							

Table 2 A - Prescriptions given in the probation order. Period 2000/2007.

* For the years 2007/2023 the data concerning voluntary activity has been merged with that of socially useful activity.

Prescriptions	2008	2009	2010	2011	2012	2013	2014	2015
Work activity	1.194	1.320	1.255	1.565	919	828	804	849
Voluntary activities	1.907*	1.992*	2.321*	2.292*	2.484*	2.615*	2.621*	2.802*
Study activities	1.265	1.189	1.531	1.237	1.453	1.475	1.475	1.484

Sports activities	377	285	399	316	480	445	540	477
Community stay	445	543	475	594	n.a.	749	708	682
Plaintiff conciliation	307	285	405	377	227	171	159	224
Socially useful activities	1.907*	1.992*	2.321*	2.292*	2.484*	2.615*	2.621*	2.802*
Socialisation activities	192	215	259	215	326	332	327	300
Symbolic damages	65	106	105	103	219	182	135	138
Other	n.a.							
Training/employment guidance	n.a.	n.a.	n.a.	n.a.	466	424	452	473
Interviews and educational support	n.a.	n.a.	n.a.	n.a.	2.580	3.029	3.246	3.683
Referral to the Mediation Office	n.a.	n.a.	n.a.	n.a.	n.a.	199	156	222
Day centre attendance	n.a.	n.a.	n.a.	n.a.	n.a.	54	77	57

Table 2 B - Prescriptions given in the probation order. Period 2008/2015.

* For the years 2007/2023 the figure for voluntary activity has been merged with that for socially useful activity.

Prescriptions	2016	2017	2018	2019	2020	2021	2022	2023
Work activity	821	750	752	778	563	905	1.084	1.024
Voluntary activities	2.776*	2.799*	2.908*	3.217*	2.327*	3.473*	3.627*	3.684*
Study activities	1.531	1.465	1.526	1.629	1.148	1.702	1.721	1.708
Sports activities	474	475	473	503	279	299	456	526
Community stay	845	827	919	989	829	984	841	788
Plaintiff conciliation	174	169	170	164	82	126	106	87
Socially useful activities	2.776*	2.799*	2.908*	3.217*	2.327*	3.473*	3.627*	3.684*
Socialisation activities	269	283	297	282	203	291	327	275
Symbolic damages	159	139	107	151	103	204	223	110
Other	n.a.							

Educational/employment guidance	504	547	495	527	476	698	605	717
Talks and educational support	4.132	4.032	4.140	4.452	3.578	5.140	5.108	5.286
Referral to the Mediation Office	189	237	244	271	218	415	498	474
Day centre attendance	68	57	105	87	77	87	92	109

Table 2 C - Prescriptions given in the probation order. Period 2016/2023.

* For the years 2007/2023, the figure for voluntary activity was merged with that for socially useful activity.

Table 3 shows that over the years the trials were always successful in more than 80% of proceedings; in the remaining cases, an acquittal, conviction or committal for trial was pronounced.

It should be noted that the outcome of the trial is assessed *ex post* by the judge at the hearing on the basis of Article 29 of Presidential Decree 448/88.

If the assessment is positive, also in consideration of the behaviour of the child and the evolution of his personality, the judge issues a sentence of extinction of the offence, which entails the waiver of the State's claim for punishment; in the event of a negative outcome of the trial, the trial continues as if it had never been suspended.

If the initial suspension was ordered by the judge at the preliminary hearing, the judgement declaring the extinction of the offence will be that there is no need to proceed; if ordered by the trial judge, it will be that there is no need to proceed.

Year	Positive (extinction)	Negative
2003	83,5%	16,5%
2004	83,3%	16,7%
2005	81,8%	18,2%
2006	83,3%	16,7%
2007	82,8%	17,2%
2008	81,9%	18,1%
2009	82,5%	17,5%
2010	83,3%	16,7%
2011	85,8%	14,2%
2012	83,5%	16,5%
2013	83,3%	16,7%
2014	81,8%	18,2%

2015	83,3%	16,7%
2016	82,8%	17,2%
2017	81,9%	18,1%
2018	82,5%	17,5%
2019	83,3%	16,7%
2020	85,6%	14,4%
2021	82,9%	17,1%
2022	85,1%	14,9%
2023	83,0%	17,0%

Table 3 - Probation orders issued in the years 2003 to 2023, according to outcome. Definite cases (situation on 22 March 2024).

The data refer to finalised cases, the outcome of which was known, as at the time of processing, the probation period was still ongoing in some cases.

Another noteworthy aspect, which emerges from the data provided by the Department for Juvenile and Community Justice, is related to the significant reduction in the recidivism rate for those who have successfully completed their probation, compared to those who have served their sentence through traditional trial procedures.

Probation, therefore, proves to be an effective institution with a low rate of recidivism, which best meets the educational needs of the juvenile, allowing a life project outside the penal circuit.

Conclusions

Mediation in the social sciences represents a bridge between law and adolescent issues, providing an integrated and humane approach to address the challenges of this critical phase of life.

Adolescent issues are complex and multifactorial and require an integrated approach involving families, schools, communities and professionals.

The social sciences play a crucial role in understanding these issues and designing effective interventions to support adolescents as they grow.

Collaboration between professionals from different disciplines and the adoption of non-confrontational methods are key to promoting the well-being and harmonious development of adolescents.

Mediation offers a constructive and positive approach to dealing with adolescent problems and delinquent behaviour.

By involving the conflicting parties in a process of dialogue and collaborative resolution, mediation not only resolves current conflicts but also provides useful skills to prevent future problems.

Starting from the year 2021, with the PNRR, there is an increasing consideration towards restorative justice and the legislative decree no. 150 of 10 October 2022,

implementing the Cartabia reform, has introduced in the Italian legal system an organic discipline of the matter, which makes its application effective at every stage and degree of the criminal trial and regardless of the case and the seriousness of the offence.

As clarified above, the juvenile field has long been making use of this alternative form of justice, which allows juvenile offenders, whose personality is still in formation, to avoid trial by favouring their recovery and social reintegration, without neglecting the recomposition of the relationship with the victim and the reparation of the damage caused.

The analysis of the data provided by the Department for Juvenile and Community Justice carried out in the previous paragraph, highlights, without fear of contradiction, the validity and effectiveness of restorative justice models.

Undoubtedly the suspension of trial and probation pursuant to art. 28 Presidential Decree 448/88, with the relevant prescriptions given, is the main means by which juvenile trial mediation is implemented.

In the period from 1992 to 2023, there was an ever-increasing recourse to this institution, intended as a tool of social reintegration policy of the juvenile as an alternative to traditional judicial paths, which even quadrupled in the monitored time span, with positive results always equal to over 80% and a significant reduction in the recidivism rate.

What has emerged justifies a desirable ever greater application of restorative justice, not only to the juvenile field but also to the ordinary trial, so as to contribute to making the entire judicial system more efficient and providing relief.

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