

GUARDIANSHIP FOR UNACCOMPANIED CHILDREN IN ITALY

**Update after the adoption of Law No. 47 of 7 April 2017 and
Legislative Decree No. 220 of 22 December 2017**

"He faced the sea and the desert. Help him to face normality."

On 7 April 2017, Italy adopted Law No. 47 on "Provisions on protective measures for unaccompanied children in Italy" [*Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*]. The law entered into force on 6 May 2017. It regulates all aspects relating to the protection of foreign unaccompanied children in Italy. For the first time in Italy but also in the European Union (EU) a legislative measure of general nature is adopted for their protection. According to Article 2 of Law No. 47 an unaccompanied child is a "minor who does not have Italian nationality or the nationality of an EU Member State, who is for any reason present on the territory of the state or otherwise under Italian jurisdiction, who is without care and representation by his or her parents or other adults legally responsible for him or her according to Italian legislation".

Law No. 47/2017 amends existing legislation, among others Legislative Decree No. 142/2015 transposing the Reception Conditions Directive (Directive 2013/33/EU) and the Asylum Procedures Directive (Directive 2013/32/EU) and the Italian Immigration Code set out in Legislative Decree No. 286 of 25 July 1998. Law No. 47/2017 codifies already existing principles, for example the prohibition of forced return in Article 3, and formulates new rules. Among these, Article 11 provides for the establishment of lists of volunteer guardians for unaccompanied children within the youth courts. This note, which FRA and the Italian Independent Authority for Children and Adolescents prepared, summarises the main novelties relating to guardianship for unaccompanied children.

Selection and training of volunteer guardians

To be included in the lists of volunteer guardians, candidates must be selected and adequately trained by the Ombudspersons for Children of the regions or the autonomous provinces of Trento and Bolzano. In those regions where there is no Ombudsperson, the Italian Independent Authority for Children and Adolescents temporarily selects and trains the candidates; civil society organisations with expertise in children in migration support the Authority, as

well as local institutions, professionals' associations and universities. As at March 2018, there is no Ombudsperson for Children in Abruzzo, Toscana and Valle d'Aosta. For the Valle d'Aosta region, however, the Italian Independent Authority delegated its responsibility to the Ombudsperson of the Piemonte region.

To promote an as uniform as possible approach to selection and training throughout Italy, the Italian Independent Authority for Children and Adolescents developed the following guidance in the framework of the National Conference for the Rights of Children and Adolescents – the forum that gathers all the Children Ombudspersons of Italy's regions and autonomous provinces:

- a) Guidance for the selection, training and registration of voluntary guardians, available at: <http://www.garanteinfanzia.org/sites/default/files/Linee%20guida%20tutori%20volontari.pdf>.
- b) Model Memorandum of Understanding between the Presidents of the Youth Courts and the Ombudspersons for Children in the regions or autonomous provinces.
- c) Standard training modules to train individuals who expressed an interest to become volunteer guardians, which contain a training unit on the phenomenon of children in migration, a legal unit and a psycho-social unit; the training module covers 24 to 30 hours and is accessible online at: <http://garanteinfanzia.org/sites/default/files/documenti/Moduli%20formativi.pdf>.

To facilitate the appointment of volunteer guardians, the Presidents of the Youth Courts and the Ombudspersons for Children in Italy's regions or autonomous provinces have concluded Memoranda of Understanding. In the absence of an Ombudsperson for Children in a region, the Italian Independent Authority for Children and Adolescents concluded the Memorandum of Understanding with the Presidents of the youth courts.

For the first phase of the selection and training of volunteer guardians in the regions under its responsibility, the Italian Independent Authority for Children and Adolescents received the support of the European Asylum Support Office (EASO), as well as other actors among the organisations with expertise on children in migration, including FRA. In the other regions and autonomous provinces, Ombudspersons for Children involved other actors with expertise on the matter, in practice resulting in differences in the content of the training provided.

Types of guardianship in Italy

By establishing volunteer guardians for foreign unaccompanied children, the legislator wanted to put an end to the diversified judicial practice to deal with children in migration in Italy at the time of the entry into force of Law No. 47/2017. The fragmented practice, caused also by the number of unaccompanied children present in the different parts of Italy, concerned:

- i. the nature of guardianship, public/institutional in some parts of Italy and private/volunteer in others;
- ii. the time necessary to appoint a guardian;
- iii. the existence of monitoring mechanisms and their functioning.

The Italian Independent Authority for Children and Adolescents published an overview of the different guardianship practices in Italy in its 2016 Activity Report to the Parliament, illustrating the different approaches.¹

Volunteer guardians and requirements for selection

Volunteer guardians are **private citizens**. They must fulfil minimum conditions as described in the guidance by the Italian Independent Authority for Children and Adolescents and must have received adequate training. Candidates are registered in a list of volunteer guardians for foreign unaccompanied children as soon as they have completed the training and have confirmed their availability.

The volunteer guardian is an essential element of the Italian reception system for unaccompanied children. Guardians must be inter-connected and have regular contacts with all other relevant actors: social services, persons in charge of reception centres, regional education offices, youth courts and youth public prosecutors. The volunteer guardian plays a fundamental role to support the integration process in Italy of the unaccompanied child for whom he or she is responsible.

In July 2017, the Italian Independent Authority for Children and Adolescents published a public call for the selection of persons suitable to exercise the role of guardians for unaccompanied children on a volunteer and non-remunerated basis. The call concerned the regions of Abruzzo, Molise, Sardinia, Toscana and Valle d'Aosta (at the time of entry into force of Law No. 47/2017, the regions of Molise and Sardegna did not have an Ombudsperson for Children).²

Article 1 of the public call³ establishes the requirements for the presentation of a request to become a volunteer guardian. Candidates must be "resident and regularly living" in the respective regions of Italy. The requirements for volunteer guardians are to:

- possess Italian citizenship or be a citizen of another EU Member State, a third country or a stateless person holding a regular residence permit, with adequate and proven knowledge of the Italian language;

¹ See Italian Authority for Children and Adolescents, *Report to Parliament, 2016*, pp. 142 ff, <http://www.garanteinfanzia.org/sites/default/files/2016%20Annual%20Report%20Italian%20Authority%20for%20Children%20and%20Adolescents.pdf>.

² Information on Ombudspersons for Children in the regions and autonomous provinces of Italy, including links to their respective webpages are available at: <http://garanteinfanzia.org/rete-dei-garanti>.

³ The public call is available at: http://garanteinfanzia.org/sites/default/files/documenti/Tutori%20Volontari_AvvPubb%20AGIA.pdf.

- have completed 25 years of age;
- be entitled to the full enjoyment of civil and political rights;
- have a clean criminal record and not be subject to criminal proceedings, or the application of security or preventive measures;
- be free from impediments as provided for by Article 350 of the Italian Civil Code, in particular
 - have free administration of own assets;
 - not be subject of orders for revocation, limitation or suspension of parental responsibility;
 - not have been subject to withdrawal of from other guardianship;
 - not be registered in the bankruptcy register;
 - have an irreproachable conduct, i.e. suitable from a moral point of view;
 - have time and energy available to carry out the function;
 - absence of any conflict of interest with the child.

Appointment and functions of the volunteer guardian

Legislative Decree No. 220/2017 establishes that volunteer guardians for unaccompanied children are to be appointed by the youth courts from the list established under Article 11 of Law No. 47/2017. In the past, the responsibility to nominate volunteer guardians was with the ordinary courts.

According to Article 19 (5) of Legislative Decree No. 142/2015 (as amended), the judicial procedure to appoint a guardian starts with the communication that the police must immediately send to the youth public prosecutor, informing him or her about the presence of an unaccompanied child. The President of the youth court or a judge delegated by the President is responsible to appoint the guardian, as well as to take any other measure for the protection of the child. This procedure applies for all communications by the police after 3 March 2018. Legislative Decree No. 220/2017 clarifies that the ordinary courts remain responsible for the guardians appointed by ordinary courts before that date.

Pursuant to Article 11 of Law No. 47/2017, a volunteer guardian, once appointed, can assume guardianship for up to three unaccompanied children at a time, unless there are specific and relevant reasons to depart from this rule. This limitation reflects the underlying logic of the volunteer guardianship model, as guardians must be the point of reference for the child, which requires establishing a relationship of trust.

Article 11 (2) of Law No. 47/2017 clarifies that the functions of the volunteer guardian for unaccompanied children are regulated by Title X, Volume I of the Italian Civil Code (corresponding to Articles 343-397). Title X of the Code concerns "Guardianship and emancipation" and applies to all forms of

guardianship for children, regardless of whether it is public/institutional or private/voluntary and whether it concerns unaccompanied children or unaccompanied children who are Italian or EU nationals.

The volunteer guardian does not receive any remuneration for the exercise of his or her guardianship functions. As of March 2018, Law No. 47/2017 does not envisage any compensation for incurred expenses, nor the right to special leave from work. The volunteer guardian is also not entitled to a civil liability insurance.

The volunteer guardian exercises his or her functions until the child reaches the age of majority. However, given that this arrangement intends to give a message of social solidarity focusing on the care of a person, it is desirable that the relationship between the former volunteer guardian and the child continues also after the child reaches the age of majority. Article 13 of Law No. 47/2017 enables the youth court to assign the child to social services, when he or she is undertaking a social inclusion programme but still needs support to become autonomous after reaching the age of majority. Such “administrative follow-up” can also be requested by the social services. In any event, it cannot last beyond 21 years of age.

Monitoring

Legislative Decree No. 220/2017 assigns the responsibility to monitor the state of implementation of the guardianship provisions in Article 11 of Law No. 47/2017 to the Italian Independent Authority for Children and Adolescents. The relevant provision also requires that for this purpose the Ombudspersons for Children in the regions and the autonomous provinces cooperate regularly with the Italian Independent Authority for Children and Adolescents to whom they have to present a report on their activities every two months.

Conclusions

Law No. 47/2017 on “Provisions on protective measures for unaccompanied foreign children in Italy” adopts an innovative approach. Article 11, which institutionalises the volunteer guardian, addresses private citizens and relies on people’s willingness to guarantee a better future to the boys and girls who arrive in Italy without any adult responsible for them. By establishing a relationship of trust with the child, the volunteer guardian plays a fundamental role for the protection of children in migration. This in two ways: from the point of view of the individual child, the guardian provides support for his or her inclusion in the Italian society; from an institutional point of view, volunteer guardians are an essential instrument, a pillar for the management of children in migration.

This approach could become a promising practice in the EU: it establishes a flexible guardianship system that can respond to changing needs; is less costly than a system based on professional guardians; and, more importantly, involves

actively the society in the destination country. At the same time, however, this system may also involve significant risks, in particular for its management, the support to and the oversight of a high number of persons who decide to become volunteer guardians.

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