



RECEPTION OF CHILDREN ON  
THE MOVE  
IN ITALY

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## **1. Application of international law in domestic law of the host/transit country**

### **1.1. Status of international treaties in Italian domestic law**

Prior to exploring the Italian reception system in-depth, there are some preliminary questions to be addressed: which treaties have been ratified by Italy, what is the status of those treaties in domestic law, to what extent are they applied by the courts and what happens in the event of conflict between domestic law and international treaties? For this reason, this section gives a brief introduction to the status of international treaties in Italian law. In order to facilitate the reader's understanding, relevant treaties and internal regulations which will be mentioned frequently throughout the text, are listed below.

The introduction of international customary law and treaties in Italian legal systems is founded on a constitutional basis.

Concerning customary law is the Art. 10, paragraph 1, of the Constitution that expressly establishes: "the Italian legal system conforms to the generally recognized rules of international law", and furthermore in Art. 11, which admits "the limitations of sovereignty where they are necessary to allow for a legal system of peace and justice between nations." This regulation vests domestic courts with the authority to directly interpret and apply international law, thus they are fully independent and in charge to verify the existence, the content and the subsequent modifications produced within the Italian legal system. The use of international treaties to integrate domestic provisions on the same topic has been quite frequent in Italian case law and in some cases, this integration has taken place even automatically by the courts, without explicit invocation by the parties and/or when the treaty itself was not applicable to the case at hand, either because it was not yet in force, or because its ruling was different albeit similar.

As affirmed several times by the Corte di Cassazione<sup>1</sup> the Art. 10, paragraph 1, of the

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<sup>1</sup> Corte di Cassazione (Sez. Unite civili) No. 5044/2004; Corte di Cassazione (Sez. I penale) No. 1072/2009; Corte di Cassazione (Sez. I penale) No. 1295/1998.

Constitution incorporates within the Italian legal system rules of international customary law and also peremptory rules of international law, i.e. *jus cogens*, and gives them the same rank as constitutional rules. For this principle, just when an international rule contrasts with a constitutional fundamental principle, the judge of the pending case cannot apply it without first bringing the question before the Constitutional Court.

In contrast, the international treaties do not have the highest level of the national legal hierarchy, as per constitutional rules. The Article 117, paragraph 1, of the Constitution provides that “in performing their legislative powers, the State and the Regions shall respect the Constitution and the obligations arising from international law”. Under the quoted article, international treaty law has an intermediate position, between constitutional law and ordinary law (“infra-constitutional” rank), in the Italian hierarchy of legal sources. Consequently, international treaty law must be in compliance with the Constitution, but it prevails over any conflicting domestic ordinary laws.

After decisions n. 348 and 349/2007, confirmed then by the decision n. 93/2010, the Court, affirming that the European Convention on Human Rights, as an international treaty is “norma interposta”, between the law and the Constitution, implicitly admits the prevalent position of international law upon the domestic legislation. Therefore, since treaty law enjoys constitutional coverage by virtue of Article 117, paragraph 1, Constitution, the ordinary judge cannot decide not to apply national laws in contrast with the treaty, but instead only have the option to submit a question of constitutionality to the Court because of the indirect violation of Art. 117.

## **1.2. Ratified international treaties**

The main international treaties relevant to children in migration which Italy has ratified are:

- *United Nations Convention relating to the Status of Refugees*, Geneva, 1951. Ratified in

1954, with no reservation, affects migrant children<sup>2</sup>.

- *United Nations Convention on the Rights of the Child*, New York, 1989, ratified and entered into force in Italy with Law no. 176/1991, without reservations.

- *European Convention on the Exercise of Children's Rights*, ratified with law no. 77/2003, without reservations<sup>3</sup>.

### **Other useful international treaties relevant to children**

- *European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children*, Luxemburg, 1980 and the *Convention on the Civil Aspects of International Child Abduction*, both ratified by law no. 64/1994 without reservations.

- *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, 1993. Ratification in 2000, without reservation, for complete declarations see <https://www.hcch.net>

### **Relevant EU legislation**

In national legislation, Italy incorporates EU legislation which includes many provisions concerning migrant children. The EU legislation underlines that the best interests of the child shall be a primary consideration for Member States when implementing relevant provisions that involve minors. The purpose of all these resolutions and directives, outlined below, is to establish European guidelines for the treatment of migrants. They contain specific provisions

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<sup>2</sup> For the complete text of the reservations and declarations see United Nations, Treaty Series, vol. 189, p.192.

<sup>3</sup> For the complete text of declarations see: <https://www.coe.int> - Reservations and Declarations for Treaty No.160 (last accessed on 21 September 2016)

for migrant children and unaccompanied minors.

- Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries.

- Schengen Borders Code - Regulation No 562/2006 of the European Parliament and of the Council, Annex VII, Article 6.

- Dublin Regulation No. 604/2013.

- Numerous directives concerning conditions, qualifications and minimum standards on procedures, for instances no. 2001/55/EC, 2003/9/EC, 2004/83/EC, 2011/36/UE, 2013/32/UE, 2013/33/UE.

### **National Legislation**

The principles of the international treaties and the EU directives are often recalled in the national legislation regarding migrant children: *D.lgs no. 286/98 articles 32 and 33, D.P.R. no. 394/99, D.P.C.M. no. 535/99, D.Lgs. no. 25/08 (art. art. 19; art. 6, para 2 e 3; art. 26, para 5 e 6) D.Lgs no. 251/2007 (art. 28), D.Lgs no. 142/2015<sup>4</sup>*

Worthy of mention is the legislative proposal C. 1658-A, approved by Chamber of Deputies and currently under evaluation of Senate A.S. 2583. The proposal focuses exclusively on unaccompanied minors and could finally introduce a comprehensive and well-framed approach.

### **1.3. Interpretation of the principle of “best interest of the child” in Italian domestic law**

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<sup>4</sup> Further information at:

[http://www.camera.it/leg17/465?tema=minori\\_stranieri\\_non\\_accompagnati#m](http://www.camera.it/leg17/465?tema=minori_stranieri_non_accompagnati#m) (last accessed on 21 September 2016)

The Italian Constitution does not mention the best interest of the child as such, but Article 2 of the Constitution guarantees the inviolable rights of the person as an individual. However, the Italian Constitutional Court affirmed in its jurisprudence that the principle of best interests of the child is considered implicit to the provisions of the Italian Constitution concerning human rights and the protection of children. During recent decades, the principle is beginning to become more widely recognized among professionals, gradually becoming present in national legislation. Fittingly, the Italian jurisprudence is also progressively recognizing its importance<sup>5</sup>. The principle is commonly interpreted as a fundamental criterion of the social policies for childhood protection and support to guarantee the access to the best opportunities for children's development. Therefore, the best interest of the child must be given priority in all proceedings affecting children taken by legislative bodies or law courts. There are samples of concrete applications of the principle in diverse matters, including: adoption and foster care<sup>6</sup>, parental separation and shared custody<sup>7</sup>, or in the field of criminal law where the principle of the best interests of the child has been affirmed many times by the Supreme Court and the Constitutional Court<sup>8</sup>.

With respect to non-national children and immigration, the best interest of the child is explicitly mentioned in the newly approved D.Lgs no. 142/2015 at the Art. 18 para 1 and 2. It provides: *"in all proceedings affecting children, priority shall be given to the best interest of the child, in order to assure adequate children's living conditions and guarantee proper protection regime, wellbeing and development, also social, of minor, in accordance with the art. 3 of the Convention on the Rights of the Child of 20 November 1989, ratified with law n. 176/1991"* and *"for the assessment of the best interest, minor shall be heard taking into consideration his/her maturity and personal development, also in order to know his/her previous experiences and evaluate the risk he/she is victim of human trafficking or the*

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<sup>5</sup> Emanuela Canetta, Marilena Verbari, Country Report on Italy for the Study on Member States' Policies for Children with Disabilities European Parliament, European Union, Brussels, 2013.

<sup>6</sup> Law no. 184 of 28 March 1983 Disciplina dell'adozione e dell'affidamento dei minori.

<sup>7</sup> Law no. 54/2006 Disposizioni in materia di separazione dei genitori e affidamento condiviso dei figli.

<sup>8</sup> Constitutional Court n. 149 /2003, Corte di Cassazione n. 1527/2013.

*possibility of family reunification, in accordance with art. 8 para 2 Regulation No 604/2013 of the European Parliament and the Council Europe of 26 June 2013, provided that it is in the best interests of the minor."*

In the same direction is the Supreme Court with the decisions n. 21108/2013 and n. 1842/2015 regarding family reunification, in which it overcame the issue about the qualification of Kafalah as alternative care and stated the reunification just on the basis of the principle of best interest of the child<sup>9</sup>.

#### **1.4. Definition of separated and unaccompanied children**

While the CRC provides definitions for unaccompanied children or unaccompanied minors, and separated children, Italy—similarly to other countries around the world—has not developed different definitions for these terms as they apply within the context of its immigration, asylum, child protection and criminal justice systems.

The recent laconic definition in the Art. 2 D.Lgs 142/2015 is: "unaccompanied minor means foreign national persons below the age of eighteen who are, for any reason, in national territory, without assistance and legal representation." However, the definition is interpreted (see Art. 1 D.P.R. no. 535/99 and Art. 33 (2-2bis) D.lgs no. 286/98) as the one specified in European directive no. 2001/55/CE: "unaccompanied minors means third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States"...

While the definition of unaccompanied minors exists in Italian legislation, and includes the

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<sup>9</sup> Corte di Cassazione - Sezioni Unite, 16 settembre 2013, n. 21108, in Fam. min., 2014, 127, con commento di R. GELLI, Il ricongiungimento del minore in kafalah al cittadino italiano: la svolta delle Sezioni Unite.



due interpretation given before, it complies with the definition provided by the Committee on the Rights of the Child, and the definition of separated children does not exist. Nevertheless the condition of separated children are touched on the family reunification issue (see Art. 8, para 2, recalling EU Regulation 604/2013 Art. 8, paragraph 2), providing that "*Member State shall unite the minor with his or her relative.*"

## **2. Reception of children in the host/transit country**

### **2.1. Initial evaluation**

Minors arriving at the borders of the Italian State must be preliminarily identified by Police authorities. Upon arrival, migrant children (both asylum seeking and non-asylum seeking) are placed in the first reception centers, where they are guaranteed essential facilities and, being considered members of a vulnerable group, special reception services are ensured (Art. 17 and 18 D.Lgs 142/2015). The accommodation provided is limited to the time strictly necessary to carry out the indispensable operations to define the legal status of the children concerned. In any case, the duration stay in first reception centers cannot exceed 60 days. After the first-line accommodation, children are transferred to the second-line reception centers. These centers are mainly provided under the System for the Protection of Asylum Seekers and Refugees, a.k.a. SPRAR. The SPRAR, established in 2002 by the Ministry of Interior and entrusted to ANCI (National Association of Italian Municipalities), is a network of local authorities and NGOs which accommodates asylum seekers and beneficiaries of international protection. It is composed of over 400 small reception structures where assistance and integration services are provided.

According to the law, Police authorities must undertake an initial age assessment and should report the presence of the unaccompanied minor to: the Prosecutor's office at the Juvenile Court, the Guardianship Court for the appointment of the Guardian, to the Juvenile Court for the approval of the assistance services provided and to the Ministerial Directorate under Minister of labour and social policies in order to assure the registration and monitor activities.

Unlike adults, unaccompanied foreign minors entering or staying in Italy are entitled, to being delivered a “residence permit for minors” simply by virtue of their being underage (see Art. 28 D.P.R. no 394/1999, Art. 19 para 2 a D.Lgl no 286/1998), on the basis of their declarations, even when they do not have official documents or in cases when the minor's age is doubtful and/or the age assessment procedure has not yet been undertaken.

The stay permit of an accompanied minor, conversely, follows the stay permit of his/her parents. Furthermore, the minors travelling with parents or legal caregiver (on the basis of Art. 343 of Italian civil code) are placed with them. Unfortunately, the evaluation does not distinguish between separated and unaccompanied children.

According to the current Italian legislation minors are *"unable to act"*, thus they do not have full legal capacity to exercise their rights until they reach 18 years of age. Consequently, children have the possibility to make legal claims through parents when they are accompanied, or when unaccompanied through guardians. Nevertheless, all children can make informal claims to social services systems and inform these organizations about any unpleasant circumstances by which they are affected.

There appear to be no professional interviewers specializing in the reception of migrant minors and no training courses for police authorities on this issue. The initial assessments conducted by police authorities are regulated by sources of a different nature. Some principles refer only to criminal law or international protection, and as such are not perfectly applicable in this context. Other secondary sources, like Ministerial circulars or guidelines, have limited scope. The memorandum of understanding *"Protect child's rights - Handbook for police authorities"*, is a good sample. It was signed in 2014, between the Minister of Interior and the Italian Authority for Child's rights<sup>10</sup>. It provides a specific section dedicated to pointing out the principles and measures to apply in migrant minor reception, with remarkable advice. Such recommendations include the provision of preliminary assistance to minors to require that their essential physical and mental well-being is ensured before the

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<sup>10</sup>[http://www.interno.gov.it/sites/default/files/vademecum\\_insieme\\_per\\_la\\_tutela\\_dei\\_minori.pdf](http://www.interno.gov.it/sites/default/files/vademecum_insieme_per_la_tutela_dei_minori.pdf) (last accessed on 24 September 2016)

interview, a safe space and the support of interpreters and cultural-linguistic mediators during the interview.

There is no specific provision to accelerate initial evaluation and identification in favor of migrant children, but a general provision that gives priority to vulnerable groups in the broader reception policies (art. 9 D.lgs no 142/2015).

Youth from the age of 18 are considered adult without benefits from measures established for children.

## **2.2. Establishment of identity /Age assessment**

Despite the reference to many principles sanctioned internationally, Italian regulation lacks organic unity concerning unaccompanied foreign minors' (hereafter UAM)' age assessment. Primary sources refer only to criminal offences and are only partially applicable to age assessment procedures for presumed UAMs. In past years, the most prevalent practice was to undertake the age assessment through medical examination only, mainly through the carpal (hand/wrist) X-ray. However, after contrary judicial decisions<sup>11</sup>, circulars and the European Parliament resolution of 12 September 2013, in March 2016 a recent Protocol was signed within the Committee of Regions<sup>12</sup> which has changed this practice. The Protocol complies with the principles and best practices, and designs a common minimum standard for the age's assessment procedure, and introduces a multi-disciplinary holistic assessment as well.

To ensure the highest level of protection of UAMS's dignity, the Protocol establishes the first step should be to consider all evidence available before having recourse to a medical examination. And, only when reasonable doubts regarding the age persist, the full assessment should be used. Therefore, it should be only ever considered as a last resort. For this reason, the full age assessment must first be authorized by judicial authority, as a justified request

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<sup>11</sup> Giudice di Pace di Genova, ord. n. 442/2006, Giudice di Pace di Roma RG. 5370/16

<sup>12</sup> Protocollo per l'identificazione e per l'accertamento olistico multidisciplinare dell'età dei minori non accompagnati, Conferenza delle Regioni e delle Province autonome 16/30/CR09/C7-C15 (see also the former Ascone Protocol, 2009)

from police authorities.

The assessment is undertaken with the consent of the minor and of his/her previously appointed guardian. With the support of cultural-linguistic mediator, the minor is informed about the type of medical examination and its possible consequences, taking into account the fact that his/her refusal does not constitute an impediment to the acceptance and evaluation of his/her asylum request, and on his/her right to explain the causes of his/her refusal. The multidisciplinary approach combines physical examination with an interview and psychological assessment. Safe space in public hospitals and specialized staff with specific and multidisciplinary skills have been identified. The team is constituted by a social worker, a pediatrician, a psychologist and a cultural-linguistic mediator. This multidisciplinary team provides an estimation of possible age, specifying the error margin and the reasons for that error.

The whole procedure takes into account the best interest of the child and his/her dignity. The child is granted the benefit of the doubt and the minority of the child is always presumed, in the final evaluation as well. Appeal and judicial review is available against the final declaration. In case of an evaluation confirming the minority of a child, a stay permit for minors and identity document should be quickly delivered.

### **2.3. Migrant children victims of trafficking**

All forms of trafficking in human beings, including children on Italian territory, are covered by Articles 600-602 of the Italian Criminal Code. The articles condemn the acts of trafficking in compliance with international law and standards.

In the last decade, several measures were adopted to implement numerous relevant policies in order to prevent children from becoming victims of trafficking (the creation of the free help line 800.290.290, D.Lgs. no 24/2014 issued to implement the directive 2011/36/UE and the

National Action Plan against slavery and trafficking 2016-2018<sup>13</sup>). Italy has both an organized task force for investigating human trafficking as well as a coordination body for the social protection of trafficked victims.

Article 18 of Italian Law on Immigration grants a special residence permit to foreign nationals who are presumed to have been victims of violence or severe exploitation, and whose lives are still in danger as a result of their desire either to escape from the control of criminal organizations or to cooperate with police and prosecutors. A residence permit may be granted without the victim reporting the trafficker, because exploitation and the associated danger for the victim are a sufficient condition for the permit to be obtained. Child victims of trafficking therefore fall under this provision irrespective of their actual cooperation with the police and prosecutors. The same article allows the holder to benefit from social services, educational provision and labor provision to find a permanent job.

There are also social integration programs and children in these programs have the right to obtain a permanent residence permit once they reach the age of majority. Furthermore, Article 13 of law n. 228/2003 establishes a special aid program granting suitable accommodation on a temporary basis and food as well as healthcare to the trafficked victims, which are financed by a special fund. This protection program grants victims of trafficking appropriate accommodation in locations that are kept secret, in order to protect them from threats by criminal organizations. The legal instruments described below provide a general framework for procedures that should be followed concerning identification and support of child victims.

In concrete terms, the procedure establishes a tool referred to as the AGIS methodology<sup>14</sup> to

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<sup>13</sup> To see complete regulations, plan and methodology visit:  
<http://www.pariopportunita.gov.it/index.php/component/content/article/70-traffico-di-esseri-umani-/2295-contro-la-tratta-di-persone> (last accessed on 7 October 2016)

<sup>14</sup> Development of a child rights methodology to identify and support child victims of trafficking, Final Report, Save the Children Italy, 2007.

identify the victims of trafficking and also contains a section concerning procedures to assess relations between the child and accompanying adults. It is not an automatic and in-depth verification, it is instead used when a child is suspected to be at risk. The verification involves many actors including the police force, NGOs, social services, and embassies. There is a first evaluation based on identity documents and later an in-depth interview of the child and accompanying adults separately to collect information on the story of the potential victim and discover any relevant discrepancies. The assessment of the relations between the child and accompanying adults is always conducted in light of the best interest of the child, and all considerations related to immigration or crime control should be subordinate. During the procedure of identification, children are informed about the potential risk of being a victim and about the integration programs provided. There are no recorded cases of DNA tests.

#### **2.4. Application for international protection**

An unaccompanied minor who might suffer persecution in his/her country, for reasons of race, religion, nationality, political beliefs or belonging to a social group, is entitled to apply for asylum through his/her guardian.

The asylum application is examined by the Local Commission for the Recognition of Refugee Status. If the minor is granted refugee status, he/she receives a residence permit for asylum reasons. When qualification criteria are not met to concede Refugee status, the commission can concede the subsidiary protection when there are founded motives to consider that if he/she returns to the country of origin, or in the country in which he/she habitually resided, he/she would effectively risk serious injury, and cannot, due to this risk, or does not want to benefit from the protection of the said country.

If the above asylum application is rejected, the Commission can still invite the Questura (police headquarters) to issue a residence permit for humanitarian reasons, if the repatriation of the minor could be dangerous or inappropriate.

Regardless, the minor is entitled, through his/her guardian to appeal against the Commission's decision before the ordinary Court. Generally, the Questore does grant a resident permit for humanitarian reasons, allowing the child to stay in the country legally until he/she turns 18.

Being a child does not constitute itself a particular requisite to obtain Refugee status. The status is allowed following the qualification as laid down in the definition of *refugee* in 1. Art. of the Geneva Convention of 1951, t in the case of persecution for reasons of race, religion, nationality, political opinion, or membership in a particular social group, as threats to life, torture, wrongful deprivation of personal freedom, or serious human rights violations or if there exist well-founded reasons to fear exposure to serious risk of persecution if repatriated. In all other cases, as with domestic violence, child labor, female genital mutilation, severe disease, etc. subsidiary and humanitarian protections are granted.

It is important to note that unaccompanied minors are always granted with “residence permit for minors” until they turn 18 years old, independently from international protection or a humanitarian visa.

## **2.5. Migrant children’s access to justice**

Usually free legal assistance is provided within NGOs services, at least until a guardian is appointed. Guardians play a key role in ensuring access to legal support for asylum and migration proceedings. Their role, amongst others, consists of informing minors about procedures and their right to free legal assistance. This includes finding a legal advisor or a specialized lawyer when lawyers are automatically appointed by the court or by the Authorities. The quality of the legal support is often linked to the availability and commitment of guardians with enough time and resources to help unaccompanied minors in completing any relevant proceeding. Even though a guardian must be immediately appointed ,as soon as the authorities detect a minor, and independently of the status of the child (asylum seeker or illegal migrant), in practice it could take many months. Until the Guardianship Court appoints a guardian, the minor cannot formalize his/her international protection application, and clearly a late appointment of guardians negatively impacts the likelihood of

legal support and access to justice.

Furthermore, there is no national training for lawyers employed to represent migrant children. Sometimes, short trainings are provided at a local level only, and often professionals involved have a lack of specific knowledge.

In regard to access to justice, in Italy everyone, whether adult or minor, Italian or not, has the right to access to a court and to exercise his/her rights or to defend him/herself from a charge<sup>15</sup>. If the holder cannot pay the costs of the lawsuit, he/she has the right to obtain free legal aid<sup>16</sup>. This right is also granted to foreign nationals and stateless persons. Similarly, the holder has the right to be assisted by an interpreter at no cost if entitled to free legal aid. In case of children victims of a crime, there exists specialized victim services, as illustrated in the above paragraph. At any stage of the legal or administrative proceedings, migrant children/guardians can have access to legal remedies against any form of decision (for instance: i.e. the rejection of asylum application, age assessment declaration).

### **3. Child protection system**

#### **3.1. Guardianship system**

According to current Italian regulation a minor is not considered able to exercise his/her rights, that is he/she “*not capable to act*”, thus until they reach the age of 18 their rights are exercised by their parents. When parents are unable to exercise their parental responsibility, or when a minor is unaccompanied, the law provides for the appointment of a guardian who will guarantee the protection of the minor and the exercise of his/her rights.

The regulation is provided by the Italian Civil Code under the articles 343 and the following section, in which the requirements, the functions of the guardian and the appointment

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<sup>15</sup> Article 24 of the Italian Constitution.

<sup>16</sup> Presidential Decree n. 115/2002.



procedure are illustrated.

### 3.2. Appointment of Guardians

The legal guardian is appointed by the Guardianship Court. The general procedure is to formally appoint the Mayor of the place where the minor is received. The Mayor then usually delegates a social assistant, a psychologist or a professional educator from the social services and sometimes from host NGOs, even though the law forbids appointing people who are in charge of reception facilities. In some cities, public guardianship offices have set up a list of private persons willing to become a guardian on a voluntary basis, upon which the applicant guardian has to formalize his/her appointment before the Guardianship Court. The Guardianship Court must hear children over 16-years-old and favor a person designated by the parents as guardian or relatives of the child. Only in cases when there is no family member and/or the best interest of the child lead to different conclusion, the Court appoints an external guardian. In any case, the guardian must be "*a person suitable for the role, with unobjectionable conduct, who must safeguard the child's right to education and protection and take into account his/her capacities, desires and aspirations*"<sup>17</sup> and he/she must not have conflicting interests<sup>18</sup>.

As illustrated, the institutions entrusted with Guardianship are the social services in the local municipality, the Mayor and the Guardianship Court, and even if there are no specific provision, it could be said that they share responsibility of guardianship proceedings and the duty to supervise them.

For the above reason, the law states that at the beginning and on a regular basis (at least every year) the guardian has to submit a report to the court on the cases assigned. In the unfortunate case that a guardian turns out to be unsuited to his/her role, he/she may be suspended and removed from his duties by the Guardianship Court.

External supervision, central national authority and complaint mechanism accessible to

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<sup>17</sup> Articles 348 and 147 Italian Civil Code

<sup>18</sup> Article 19 para 6 D.lgs. n. 142/2015

migrant children are not provided for by law.

### **3.3 (N/A)**

### **3.4. Responsibilities and duties of guardians for migrant children**

According to the law, the guardian must personally or through others, apply for a residence permit at the Questura, register the minor with the national healthcare service and give consent to the medical treatments, as well as enroll the minor at school. The guardian is also required to legally represent the minor in his/her asylum request and in every legal proceeding, in addition to if/when the minor is involved in a criminal case, and eventually assist him/her to contest the rejection of the international protection qualification.

Furthermore, the guardian must accompany the asylum-seeking minors to the interview with the Commission for the Recognition of Refugee Status. Finally, the guardian has to reliably manage the minor's assets, when they exist.

Even though it is not specifically mentioned, the Guardian should be responsible to exercise and support all the rights of child, including long-term integration programs, recreational and working activities and ensure the child's well-being, observing the best interest of the child<sup>19</sup>.

The guardian has to guarantee the child's access to justice, engaging a lawyer for the child, as well as stimulating and following his/her activities. The legal responsibility and representation of the Guardian to exercise rights sometimes needs the compulsory support of a lawyer (for instance, in resort to legal remedies against any form of decision). The lawyer and Guardian have different tasks but they should cooperate to ensure the effective realization of rights.

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<sup>19</sup> Article 19 para 6 D.lgs. n. 142/2015

### 3.5. Profile of guardians

The profile of appointed guardians only partially complies with the provisions of Article 103 of the UN Guidelines for the Alternative Care of Children. They are to be appointed among reputable individuals without conflict of interest and they are obliged to safeguard the child's best interest and welfare. They are recruited on a voluntary basis with no remuneration among private persons without relevant knowledge of children's issues, or specific ability to work with children affected by special and cultural needs. Furthermore, after their appointment, they have few possibilities to receive appropriate trainings or continuing education trainings. The Italian system suffers from the lack of guidelines/protection models and specialized trainings for guardians. In theory, regional legislation regulates guardianship services for children and in recent years, 18 Italian regions have established regional ombudsman offices for children which must, as part of their mandate, monitor the respect of children's rights and establish a regional register of voluntary guardians. Nevertheless, even though these 18 regions have an ombudsman, and Italy has the National Observatory/Ombudsman and the National Authority for children, there is no form of accreditation of guardians recognized at the national level and therefore no specific accreditation criteria exist. Consequently, there exist huge disparities in the national territory concerning standards for Guardian's qualification and training. As it has been observed by Moyersoer and Tarzia, *"mismatches between procedures and the interpretations of regulation in different local contexts is a crucial issue in Italy, due to which the right of an unaccompanied minor to have a guardian is not always adequately respected"*<sup>20</sup> In fact, the pre-qualification trainings are often delivered by local municipality together with NGOs and the support of the regional Ombudsman, and only then are participants registered in the list of voluntary guardians.

These trainings last just a couple of days and applicant guardians are given only a general framework, without practical suggestions as to how to fulfill in practice their duties. No

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<sup>20</sup> Moyersoer and Tarzia, *L'evoluzione della normativa sui minori stranieri non accompagnati, cittadini in crescita*, 2002

information is relayed about special needs concerning children on the move or the complexity of the environment in which they are called to operate.

The divergence between different local contexts, as illustrated above, is ascertained also within the referral mechanism to provide a timely appointment: police authorities should instantly report the presence of the unaccompanied minor to local authorities, to the Prosecutor's office at the Juvenile Court and to the Guardianship Court for the appointment of the Guardian. The court has to proceed for the appointment immediately, (in theory within 48 hours), but timing may vary and take a long time (up to 6 months or more) depending on the local context and resources available.

### **3.6. Child bride**

In Italy, minors, defined as people under the age of eighteen, cannot get married. Under certain conditions, Courts may permit the marriage of minors over sixteen years old, Art. 143 and followings of the Italian Civil Code.

The marriage which has been validly contracted abroad is recognized in Italy by virtue of the principle of the favor matrimonii (Law 218/1995). To this end, the original marriage act must be translated and legalized. Then, the spouses must transmit the document to the Italian Consular authority abroad, which provides ability to forward it to Italy in order to enter the certificate in the civil registers of the competent municipality.

Alternatively, the Italian spouse can present the act, once translated and legalized, directly to the Italian municipality where he/she lives (pursuant to Article 12 subsection 11, Decree of the President of the Italian Republic 396/2000). So in Italy the validity of the consent to the marriage given in the country of origin is not verified. Therefore, a child accompanied by a spouse is referred to as accompanied.

Furthermore, the Italian legislation does not provide for a crime of “forced marriage”. The sentences which have taken into consideration the conducts of relatives who are the victims

to psychological and physical violence oblige them to “live according to the tradition.” Consequently, to forced marriage are prosecuted as a crime of “family maltreatments” (article 572 of the Penal Code)<sup>21</sup>.

#### **4. Family reunification**

Family unity is a fundamental right recognized by the Italian legal system, and also applies to foreign nationals that intend to rejoin their family members (Art. 28 Legislative Decree 286/1998 Consolidated Law on the provisions governing immigration and the status of foreign nationals). Family reunification may be granted to relatives of foreign nationals holding a residence permit with a validity of at least one year, provided they meet certain requirements, notably a suitable house and the availability of a minimum annual income (Art. 29 Legislative Decree 286/1998). Asylum seekers and refugees, however, do not need to demonstrate suitable housing and income (Art 29bis Legislative Decree 286/1998). This enables more favorable conditions for family reunification of refugees. In the context of family reunification, Directive 2003/86/EC which regulates the right to family reunification and the Dublin Regulation that establishes transfer in a EU country for family reasons, are not completely fully in Italy. This seems to be largely due to a range of practical, legal and administrative obstacles, and lack of available data.

In cases of unaccompanied children, well-established structured systems for family tracing with referral mechanism to family tracing system of the International Red Cross Committee or other relevant entities do not exist. Furthermore, guardians are not involved to evaluate whether to launch or not a family tracing process, let alone whether the family reunification is in the best interests of the child. No exact data are available on the number of unaccompanied children reunified with their families, or the numbers of child applicants for family reunification. This is in part due to the fact that the family network is the tracing tool mostly used by asylum seekers upon their arrival in Italy. Concerning unaccompanied children, Italy

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<sup>21</sup> Forced Marriage in Italy: a qualitative research, Le Onde Onlus, 2014

has a convention with International Organization for Migration (IOM)<sup>22</sup>, presumably still in force, for the implementation of programs aimed at tracing the families of UAMs. In past years, a project has provided family tracing services for up to 700 UAMs present in Italy over fourteen months, for the minors who express their will to be reunited with their families following family tracing. These projects provide for social integration projects based on employment, education and health care.

## **5. Placement of migrant children**

### **5.1. 1<sup>st</sup> Reception Centers**

Recently Legislative Decree n. 142/2015 has amended the reception system in Italy. It provides first reception and second reception centers, and in September 2006 , Decree n. 1/2016 set up the new structures of first reception concerning unaccompanied minors and the general requirements they must meet. The new centers must "ensure the safe and monitored stay of the foreign unaccompanied children for 24 hours, monitor and record of the daily movements of Children". They must also guarantee services as the canteen, goods for personal care, the linguistic orientation and cultural mediation, legal support, and deliver administrative tasks with the competent authorities. The decree focuses as well on the best interests of the child to ensure adequate living conditions to minors, with regard to the protection, welfare and social development of the child.

Upon arrival, migrants are placed in the first reception centers, which are structures where the applicants formalize their asylum requests and where are guaranteed essential facilities. Child-safeguarding policies such as segregated safe spaces, and special reception services are ensured (art. 17,18 and 19 D.Lgs 142/2015). No data is available regarding disabled children. The accommodation is limited to the time strictly necessary to carry out the indispensable steps to define the legal status of the children concerned, and in any case, the stay cannot exceed 60 days. Even if law provides special protection for children and safeguarding policies, recent cases of unsafe conditions putting children at risk have been recorded, in

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<sup>22</sup> IOM website at: <http://www.familytracingitaly.org/index.php/en/investigations>

particular in southern Italy, as reported by HRW in June 2016<sup>23</sup>.

According to LD 142/2015 and Decree n. 1/2016 the centers are open to UNHCR, NGOs, religious entities, lawyers and family members. Nevertheless, the Prefect establishes rules on modalities, the time to enter these centers, and may refuse entrance for security reasons. In any case, in theory, children are free to contact NGOs, lawyers and UNHCR offices outside of the centers. No regular independent monitoring mechanism exists, but in May 2016, a declaration of Intent between UNICEF and Government of Italy was signed and it provides that UNICEF will monitor reception standards in reception centers for migrant children, particularly in southern Italy<sup>24</sup>.

## **5.2. Placement of migrant children**

After the first-line accommodation, children are transferred to the second-line reception centers. When a placement is offered to him/her, the child's view and a long-term solution in the child's best interests are taken into consideration. However, there are not many options for children because the system is based on the consultation of an electronic system of accredited reception communities for minors, to determine which places are available nationwide. In fact, the reception system mainly provided under the System for the Protection of Asylum Seekers and Refugees, a.k.a. SPRAR. The SPRAR, established in 2002 by the Ministry of Interior and entrusted to ANCI (National Association of Italian Municipalities), is a network of local authorities and NGOs which accommodates asylum seekers and beneficiaries of international protection. It is composed of over 400 small reception structures where assistance and integration services are provided, as aforementioned.

For this purpose, after the introduction of latest Legislative Decree n. 142/2015, Regions mutually agreed on minimum standards in reception/institutional care of unaccompanied migrant children, as held in the protocol 16/64/CR9/C8-C15<sup>25</sup>. The centers cannot host no

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<sup>23</sup> See at: <https://www.hrw.org/news/2016/06/23/italy-children-stuck-unsafe-migrant-hotspot>

<sup>24</sup> See at: [https://www.unicef.org/media/media\\_91249.html](https://www.unicef.org/media/media_91249.html)

<sup>25</sup> Conferenza Delle Regioni e Delle Province Autonome 16/64/CR9/C8-C15

more than 16 children, and siblings are whenever possible placed together. Even if Italian government has made many efforts to implement the reception system, first-line and second-line centers remain overcrowded and unsafe. For this reason Oxfam reported that at least 28 unaccompanied children go missing each day from Italy's reception centers due to this inadequate accommodation. Instead, many children prefer to run away from what are de-facto detention centers to live on the streets<sup>26</sup>. Furthermore, Italian Government has not yet addressed the problem concerning the overcrowded and inadequate accommodations, taking into consideration different type of care arrangements, such as foster care, or especially child-headed households or supported independent living when minors are up to 14 years of age, could be a good solution to prevent homelessness and children fleeing from reception centers. In this regard, Italy did not identify appropriate alternative care arrangements and consequently has not developed adequate monitoring and support mechanisms.

On the ground of Art. 32 Legislative Decree 286/1998, UAMs upon turning 18 years of age can ask for the conversion of the resident permit if he/she already has three years of residence in Italy and he/she participated in a two-year social integration project. If the child has not completed the criteria required by law to remain in Italy by the time he/she come of age, the Directorate General of Immigration and Integration policies may, in any case, issue positive authorization to convert his/her residence permit in consideration of other individual integration experiences. Local authorities have limited resources to put in place measures to support UAMs during this delicate phase of transition.

### **5.3. Detention/Retention**

Italian immigration law provides for detention of migrants only when it is not possible to immediately expel or reject an individual because of exceptional circumstances (i.e. supplementary verification of identity/nationality, travel documents not immediately available, or lack of a means of transport). However immigration legislation establishes that

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<sup>26</sup> See: <http://www.oxfam.org.uk/media-centre/press-releases/2016/09/twenty-eight-children-a-day-go-missing-from-italian-reception-centres>



minors cannot be expelled, except for their right to follow their expelled parent or guardian<sup>27</sup>. Therefore, unaccompanied minors should theoretically never be expelled or detained and subsequently detention of unaccompanied minors is prohibited. Italian legislation does not include specific provisions concerning the treatment of minors in detention facilities but the general norms concerning all migrant minors apply in those cases. The last cases of detention as mentioned above, in situations where children are not separated from non-family adults and conditions of detention are not age-appropriate, were recorded in 2006<sup>28</sup>.

## **6. Access to fundamental rights**

### **6.1. Education**

Unaccompanied minors have the same right to education as other children in Italy. All foreign children, including those without a residence permit, have the right to be enrolled in school. The enrollment of foreign children takes place under the same conditions and manner provided for Italian minors, and can be requested at any time of the year. No specialized educational establishments are provided for UAMs or asylum-seekers and they can attend the same schools as any other Italian or foreign student. Foreign minors with an undocumented age or with irregular or incomplete documentation, are enrolled with a reservation.

An enrollment with reservation does not affect the achievement of the final school certificate or diploma, at any school institution.

The education program is defined as soon as possible by social services and the host community where the child has been received. UAMs are subject to compulsory education until age 16, as Italian children. They are enrolled by their parents or guardian in a class in line with their age, unless the Academic Board approves enrollment in a different class.

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<sup>27</sup> Article 19 Legislative Decree 286/1998

<sup>28</sup> Italy: Invisible children - The human rights of migrant and asylum-seeking minors detained upon arrival at the maritime border in Italy, Amnesty International, 2006.

The Board takes into account a series of factors: the educational system in the country of origin, assessment of skills, qualifications and levels of preparation of the student, type of school the child attended in the country of origin, and the student's level of education. Yet the recognition of qualifications obtained abroad is still problematic.

Knowledge of the Italian language is also supported with specific activities delivered by Municipalities and host communities. Currently, there is no national standard or measures to help the UAM with the transition to education in Italy. Only in some contexts are there specific projects supporting UAMs within the school system, and sometimes the Academic Board defines a possible adjustment of school curricula. For this specific purpose, individualized or specific interventions may be adopted for groups of students to facilitate the learning of Italian. The proper knowledge of the Italian language is also facilitated through courses based on specific projects as defined within the school.

Although according to the national legislation, all children must complete compulsory education up to 16 years of age, it is a common practice to attend secondary school or take specific vocational training courses or an apprenticeship. At this regard, the Permanent Territorial Centers for Education and Training promotes courses for adults who wish to take courses or improve their communication, interpersonal and professional skills. After high school at the age of 18, the right to education is guaranteed through some facilities. UAMs can continue to study and convert their residence permit for minors into a study permit (apprenticeship and traineeship in general) or work permit.

## **6.2. Health care**

UAMs and asylum-seekers UAMs must be compulsorily registered by their guardians with the National Healthcare Service. They are therefore fully entitled to access all of the benefits guaranteed by the Italian National Healthcare Service. The NHS has universal coverage and is available for free.

To register a child with the NHS, it is necessary to go to the Local Healthcare Authority of the place of residence and exhibit: proof of ID, social security number, residence permit, self-certification of one's own place of residence or what is usually a reception center where the child has been received.

Even if the public guardianship case has not been opened yet, or foreign minors don't have residence permit and therefore are not covered by the NHS, they are always entitled to urgent or essential hospital care, or even long term care, injury and sickness care and preventive medicine programs. The following benefits are guaranteed: assistance for the social protection of pregnancy and maternity, protection of health, vaccinations (according to the law and within the scope of collective prevention campaigns authorized by the Regions), international prophylaxis measures and prevention, as well as diagnosis and treatment of infectious diseases.

## **7. Expulsion**

### **7.1. Exclusion clauses**

No recorded cases concerning application of exclusion clauses Article 1F of the 1951 Convention.

### **7.2. Internal relocation/expulsion to country of origin**

Immigration legislation establishes that minors cannot be expelled, except for their right to follow their expelled parent or guardian. Voluntary return, as provided in the 2008 EU Repatriation Directive, is regulated in Italy by Law No 129/2011.

As previously mentioned, the IOM and the Ministry of Labour and Social Policies signed an agreement for a project aimed at providing family tracing services for the minors who express a will to be reunited/repatriated with their families, including in their country of origin. In this context, willing UAMs receive help to go back voluntarily to their countries of origin

safely and with suitable assistance, according to the guiding principle of the best interest of the child.

### **7.3. Resettlement to a third country**

Italy is a Member state of annual EU resettlement plans, and although it remains (as a State) the one to decide on how many people can be resettled each year, the EU resettlement channel is the main structured framework used in Italy, which operates under EU redistribution agreement and quota. Isolated cases are those like the "human corridor" program concerning Syrian refugees resettled in Italy under mutual agreement and due to Saint Egidio community support<sup>29</sup>.

## **8. Data Collection**

The Directorate General of Immigration and Integration Policies - Ministry of Labour and Social Policies is the authority responsible for surveying UAMs in Italy and for providing information on their presence. Besides specific studies carried out by experts on this topic and by migration experts, data from different sources and specific reports on UAMs have been produced over the years:

- Data produced by the Committee For Foreign Minors, which, in 2012, was merged into the Directorate General of Immigration and Integration Policies, the System of Protection for Asylum Seekers and Refugees, compiles an annual report every year;
- ANCI – National Association of Italian Municipalities has published five Reports on UAMs in Italy.

Despite attention from the government, the actual number of UAMs within the territory of the State is difficult to define. The data that have been regularly collected and published,

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<sup>29</sup> See at: <https://www.middleeastobserver.org/2016/10/25/75-syrian-refugees-arrive-in-italy-under-resettlement-program/>

however significant, are by no means complete. In fact, not all competent Authorities within the territory of the State systematically report the presence of UAMs. For instances as in those concerning victims of trafficking, who are therefore “hidden” and separated children. At the same time, not all UAMs who enter Italy come into contact with these institutions, nor are they necessarily intercepted by Authorities<sup>30</sup>.

Some data do not include UAMs who applied for asylum. They are in fact, since 2002, surveyed by the National Asylum Commission and by SPRAR, and therefore information collected has been filed in two separate records: One contains files on the identified minors who have a residence permit for minors; the other contains the files of all other reported but unidentified children, included in the database only for survey purposes. However, since 2015 the Directorate General of Immigration and Integration Policies is the institutional body in charge to collect all aggregated data and report regularly<sup>31</sup>. The periodic report indicates the number of unaccompanied minors who entered the country, the number that have filed claims for asylum, and the number of children returned to the country of origin.

In Italy, personal data collection and processing is based on and governed by Legislative Decree No. 196/2003, which contains the Italian Personal Data Protection Code which has implemented Directive 95/46/EC on data protection into the Italian legal system. All data concerning children is confidential and secured. Persons working with children are also obliged to follow their professional code of conduct concerning confidentiality and data protection.

## **9. International relations**<sup>32</sup>

Apparently, there is no specific agreement or foreign aid in place to prevent the root causes of

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<sup>30</sup> Giovannetti Monia *Storie minori. Percorsi di accoglienza e di esclusione dei minori stranieri non accompagnati*, Quaderni Cescvot 36, Cescvot, Firenze, 2007.

<sup>31</sup> Report di Monitoraggio I Minori Stranieri Non Accompagnati (MSNA) in Italia, agosto 2016, Direzione Generale dell'Immigrazione e delle Politiche di Integrazione – Div. II

<sup>32</sup> These questions are based on recommendations issued in the Communication from the European Parliament and the Council – Action Plan on Unaccompanied Minors (2010-2014)

migration of UAMs. The only significant experience of agreements between Italy and other countries is related to assisted repatriation. Minors are usually included in the general program funded by the European Commission's Repatriation Fund.

Moreover, even though Italy has signed bilateral agreements with some countries (Mauritius, Moldavia, Albania, Sri Lanka, Morocco and Egypt) to strengthen the legal channels of entry for foreign workers and the matching mechanisms of supply and demand, minors are not mentioned in any of these agreements.

Concerning Prevention of child trafficking, in the last decade, several awareness-raising campaigns and programs have been carried out in collaboration with the General Directorate of the Italian Cooperation for Progress, the Ministry of Foreign Affairs, together with some of the most relevant Italian NGOs, such as Terre des Hommes, UNICEF, ECPAT, UNICRI<sup>33</sup>, Telefono Azzurro<sup>34</sup>

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<sup>33</sup>[http://www.unicri.it/topics/trafficking\\_exploitation/archive/women/nigeria\\_1/research/dr\\_it\\_aly\\_eng.pdf](http://www.unicri.it/topics/trafficking_exploitation/archive/women/nigeria_1/research/dr_it_aly_eng.pdf)

<sup>34</sup> Marta Cartabia, Elisabetta Lamarque, Francesco Viganò, FRA Thematic Study on Child Trafficking Italy.