



# S a f e G u a r d

SAFER WITH THE GUARDIAN

## NATIONAL REPORT ITALY



**S a f e G u a r d**

PIÙ SICURO CON IL TUTORE

**NATIONAL REPORT – ITALY  
APRIL 2016**

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## Introduction

The present national report is a component of the SafeGuard project implemented from the 1<sup>st</sup> of September 2014 until the 31<sup>st</sup> of August 2016 with the financial support of the Prevention of and Fight against Crime Programme of the European Commission. The partnership is composed by 3 partners: Associazione I Girasoli, Defence for Children International Italy and NIDOS Foundation (NL), with the support of the International Social Service, ARCI Italia, Municipality of Catania and the Italian National Authority for Children and Adolescents as associates.

This national report attempts to provide an overview of the Italian guardianship system, models and practices for unaccompanied minors. The report is the result of a desk research based on existing legislation, regulations, studies and reports on the one hand; and semi-structured individual interviews with key referents in different Italian realities on the other. The sources of information that have particularly oriented this work are The Core Standards for Guardians of separated children in Europe, the FRA Handbook on guardianship for children deprived of parental care and the national guidelines on guardianship for unaccompanied minors issued by the Italian National Authority for Childhood and Adolescence. The study was also informed by ongoing institutional processes that aim at establishing models of guardianship performed by volunteer citizens at the local level. Initiatives on voluntary guardianship that do not involve any institutional actor have been excluded from this analysis.

The **main objectives** of the report are the following: a) to show the need and relevance for a qualified guardianship system for unaccompanied children in Italy as a key element for their effective protection; b) to identify key aspects for training orientation; and c) to inform institutional processes through suggested recommendations for improvement addressed to the competent actors and authorities.

The report is structured in 5 parts:

- **General overview** of the situation concerning the presence of unaccompanied minors in Italy. It reports recent child migration related data and trends as well as recent political and legislative developments that had an impact on unaccompanied children.
- **Review of the normative framework** and national standards regulating the Italian guardianship system.
- **Mapping of guardianship** for unaccompanied minors in Italy. This part explores the different modalities of guardianship and their practical implications for unaccompanied children. Particular attention is paid to processes of voluntary guardianship promoted by ombudsmen, to their common strengths and weaknesses.
- **In-depth description** of guardianship experiences in 6 Italian areas leading to a comparative analysis using the FRA guardianship principles as interpretative framework.
- **Set of recommendations for improvement** based on the results of the present study and on relevant European and national guidelines. These recommendations aim at contributing towards the development of systemic and integrated guardianship in relation to 3 different levels: the national child protection system, the guardianship system and guardians.

Overall, this study has attempted to identify existing strengths, gaps and possible future development for efficient, quality and harmonised guardianship in Italy.

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## Key definitions and concepts:

- **Unaccompanied children:** Unaccompanied children (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.<sup>1</sup>
- **Separated children:** Separated children are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.<sup>2</sup>
- **Guardian:** A guardian is an independent person who safeguards a child's best interests and general well-being, and to this effect complements the limited legal capacity of the child. The guardian acts as a statutory representative of the child in all proceedings in the same way that a parent represents his or her child.<sup>3</sup>
- **Guardianship authority:** The 'guardianship authority' is the institution or organisation or other legal entity that has the responsibility for recruitment, appointment, monitoring, supervision and training of guardians.<sup>4</sup>
- **Child protection system:** UNICEF defines a child protection system as the set of laws, policies, regulations and services needed across all social sectors – especially social welfare, education, health, security and justice – to support prevention and response to protection-related risks. These systems are part of social protection, and extend beyond it. At the level of prevention, their aim includes supporting and strengthening families to reduce social exclusion, and to lower the risk of separation, violence and exploitation. Responsibilities are often spread across government agencies, with services delivered by local authorities, non-State providers, and community groups, making coordination between sectors and levels, including routine referral systems, a necessary component of effective child protection systems.<sup>5</sup>

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<sup>1</sup> Committee on the Rights of the Child, General Comment No.6 (2005), par. 7

<sup>2</sup> Committee on the Rights of the Child, General Comment No.6 (2005), par. 8

<sup>3</sup> UN Committee on the Rights of the Child General Comment No. 6 CRC/GC/2005/6 and the UN Alternative care guidelines A/HRC/11/L.13.

<sup>4</sup> European Agency for Fundamental Rights, *Guardianship for children deprived of parental care*, page 12.

<sup>5</sup> United Nations Economic and Social Council (2008), *UNICEF Child Protection Strategy*, E/ICEF/2008/5/Rev.1, par. 12-13.

## 1. Unaccompanied children in Italy: general overview

The presence of unaccompanied minors in Italy has been constantly growing over the last years. As Table 1 shows, this increase is subject to fluctuations that depend on multiple factors<sup>6</sup>. It can be observed that the increased number of presences between December 2013 and December 2014 (4,217 - +66.7%) was substantially larger than the variation in the following year (1,385 - +13.1%).

**Table 1** – Presences of unaccompanied minors as of 31 December 2013, 2014, and 2015

Reporting period	N° of presences of unaccompanied minors	Increasing of presences compared with the previous periods
31/12/2013	6,319	-
31/12/2014	10,536	4,217 (+66.7%)
31/12/2015	11,921	1,385 (+13.1%)

Source: Ministry of Labour and Social Affairs, report December 2015

The inter-annual deceleration of the increase in the number of unaccompanied minors suggests a stabilization of the phenomenon. Data on arrivals confirm such trend. Table 2 shows how the proportion of unaccompanied minors into the total number of people arriving by sea was lower in 2015 compared to the same period of the previous year.

**Table 2** – Migrants and unaccompanied minors arrived by sea (2014 and first 8 months of 2015)

Reporting period	Migrants arrived by sea	Unaccompanied minors arrived by sea	% Unaccompanied minors from the total
01/01/2014 – 31/12/2014	170,764	7,831	4.6
01/01/2015 – 31/08/2015	106,341	2,146	2.0

Source: Ministry of Labour and Social Affairs

11,921 were the presences of unaccompanied minors reported in Italy on 30 December 2015 according to the data published by the Italian government. Despite variations on numbers, the arrival and presence of unaccompanied minors cannot be read as a temporary phenomenon and therefore needs to be faced in a planned, organized and integrated way.

The countries of origin of unaccompanied children present in Italy have been kept stable for the period 2013-2015. The country of origin from which comes the largest number of children is Egypt (23.3% in December 2014, 24.1% in December 2015, out of the total), followed by Albania (12% of total presences). As the last monitoring report of the Government highlights, the presence of unaccompanied minors coming from countries that are not affected by particular critical issues continues to be substantial in relation to total presences.

With regards to the age, the 81.2% of the unaccompanied minors present in Italy are between 16 (27.2%) and 17 (54.0%) years old, and therefore they are close to the age of majority. This trend, that seems to keep stable over the years, entails consequences in the management and planning of child protection agencies that should be prepared to properly support the child during his transition towards adulthood. Differences among genders

<sup>6</sup> Factors explaining changes in numbers include the launch of Mare Nostrum operation on 18 October 2013 and its conclusion on 31 of October 2014, according to a report issued by the Ministry of Labour and Social Affairs.

appear to be very substantial too. There is a clear prevalence of male unaccompanied children (95.4%) in contrast to a reduced presence of female minors (4.6%)<sup>7</sup>.

The number of unaccompanied minors seeking international protection has been constantly increasing. In the last two years, the number of applications submitted has increased a 54%; 3,959 new applications have been submitted in 2015 according to official data. Data indicate that there is a substantial diversity with regards to the principal nationalities of unaccompanied minors seeking international protection which, unlike adults, vary from year to year. Nonetheless, the majority of unaccompanied children seeking international protection (70.6% in 2014 and 84.4% in the first half of 2015) come from African countries (Ministry of Labour and Social Affairs, 2015).

More worrying are the data on missing unaccompanied children. On 30 December 2015 6,135 (34% of the total) unaccompanied minors had gone missing in Italy. The number of missing unaccompanied children and its incidence in the total number has significantly increased compared with the same period of the previous years. These figures show that an increased number of children are out of the Italian child protection system.

**Table 3** – Number and rate of disappeared unaccompanied minors from 2012 to 2015

Year	Number of disappeared children	% of the total number of unaccompanied minors
2012	1,754	23.2%
2013	2,142	25.3%
2014	3,707	26%
2015	6,135	34%

Source: Own elaboration based on the Ministry of Labour and Social Affairs data.

Finally it is important to report the distribution of unaccompanied minors throughout the country. As it can be observed from table 4, the majority of children are hosted in Sicily, followed by Calabria and Puglia. These three regions are the main Italian points of arrival of migrants by sea. The presences of children in other regions are mainly the result of territorial redistribution policies.

**Table 4** – Distribution of unaccompanied minors by region (30<sup>th</sup> December 2015)

Region	Presences	%
Sicily	4,109	34.47
Calabria	1,126	9.45
Puglia	1,102	9.24
Lazio	934	7.83
Lombardy	931	7.81
Emilia Romagna	783	6.57
Tuscany	521	4.37
Campania	510	4.28
Friuli Venezia Giulia	463	3.88
Piedmont	345	2.89
Veneto	322	2.70
Sardinia	220	1.85
Liguria	174	1.46
Marche	96	0.81
Basilicata	92	0.77

<sup>7</sup>[http://www.lavoro.gov.it/AreaSociale/Immigrazione/minori\\_stranieri/Documents/Report%20MSNA%2030-11-2015.pdf](http://www.lavoro.gov.it/AreaSociale/Immigrazione/minori_stranieri/Documents/Report%20MSNA%2030-11-2015.pdf)

Autonomous Province of Bolzano	69	0.58
Abruzzo	42	0.35
Autonomous Province of Trento	35	0.29
Molise	22	0.18
Umbria	20	0.17
Valle d'Aosta	5	0.04
<b>Total</b>	<b>11,921</b>	<b>100.00</b>

Source: Ministry of Labour and Social Affairs

## **Normative framework and recent developments concerning unaccompanied minors**

The Italian normative framework concerning unaccompanied minors refers on the one hand to the legislation on children including: the Convention on the Rights of the Child ratified by Italian law in 1991, the Civil Code from 1942 or the law related to child custody and adoption; on the other hand to migration law such as the Consolidated Law on immigration n° 286/98; and finally it includes specific regulations on unaccompanied minors (Comune di Bologna, 2003). In general, law applying to unaccompanied minors is very fragmented. As a result immigration law tends to prevail over child protection law when it comes to unaccompanied children. This may question the quality of protection offered to unaccompanied children as well as the respect for the rule of law, since according to the CRC and Italian law, all minors should see their rights as children respected irrespective of their status. They should, therefore, be firstly considered according to their age rather than to their immigration condition.

Italian law defines an unaccompanied child as “a minor who is not a national of Italy or any other EU Member State and who has not presented application for political asylum and for any reason is in the territory of the State without assistance and representation from parents or other adults legally responsible”<sup>8</sup>. This definition includes both unaccompanied minors and separated minors cared by adults other than guardians or caregivers based on a formal procedure since these minors would not be legally represented according to Italian law. The legal representation of a child can only be held by the parents or the guardian. In this light, legal representation becomes a key element for an unaccompanied minor to be formally recognized, and the guardian is, after parents, the subject that ensures his legal existence.

Some recent developments in the normative framework particularly affected the reception of unaccompanied minors. An agreement between State, Regions, and Local authorities was reached following a Joint Conference that took place in July 2014. This agreement<sup>9</sup> aimed at improving the reception system’s capacity to manage the arrival of migrants through a stronger involvement of regional and local bodies. The main change introduced by the agreement is the shift from an “emergency approach”, that has characterized the functioning of the Italian reception system for the last years<sup>10</sup>, to a “systemic governance”. One of the principal challenges identified in this agreement was the need to further support and enhance the protection and reception systems for unaccompanied minors. Specific measures were approved to this end including: the establishment of additional places for the Protection System for Asylum Applicants and Refugees (SPRAR) and the extension of this system to all unaccompanied minors<sup>11</sup>; an increased number of territorial Commissions for the asylum application evaluation; the establishment of new first reception shelters managed

<sup>8</sup> Art.1, Comma.2, D.P.C.M. n° 535/1999.

<sup>9</sup> The agreement approved a National Plan to face the extraordinary flow of third-country nationals, adults, families and unaccompanied minors.

<sup>10</sup> On 12 February 2011 the Italian government declared the status of humanitarian emergency in the Italian territory as a result of the arrival of an extraordinary flow of third-country nationals. The so-called North Africa Emergency included the adoption of extraordinary measures affecting also unaccompanied children, among which the appointment of a special Commissioner. This Commissioner was mandated to take all necessary measures to face the state of emergency vis-à-vis unaccompanied minors. The state of emergency was extended until the 31<sup>st</sup> of December 2012.

<sup>11</sup> Non-asylum seekers unaccompanied minors were hitherto excluded from the SPRAR system.

at the regional level; the opening of specialized governmental reception structures for unaccompanied minors in the first tracing stage with functions of identification, age and status assessment; increased financial resources allocated to the Fund for the reception of unaccompanied minors approved by law n° 132/2012, recently transferred to the Ministry of Interior. As a result, a unique reception system that does not distinguish children according to their legal status is taking shape. Recently, the time period for the first reception stage of unaccompanied children until the completion of the identification and age assessment procedures has been limited to 60 days.

The measures introduced by the agreement that apply to the different governmental levels have not been fully implemented to date. Implementation is being developed inconsistently. While some changes have already been made including the opening of first reception facilities; others are still pending. In any case, the effectiveness and quality of these policy changes in improving unaccompanied children's rights are yet to be demonstrated. However, in conformity with the CRC and as highlighted by the 8<sup>th</sup> CRC Report the extension of the SPRAR system should ensure equal non-discriminatory treatment to all unaccompanied minors.

Further normative changes regard the approval and entry into force of the legislative decree n° 142 of 18 August 2015 for the transposition into national legislation of two European directives: Directive 2013/33/EU, laying down standards for the reception of applicants for international protection; and Directive 2013/32/EU on common procedures for granting and withdrawing international protection. The legislative decree recalls that the best interest of the child should be the guiding criterion for the implementation of the reception measures in line with the CRC principles.

## 2. The Italian guardianship system: normative framework and national standards

Guardianship is not only a right of all children under article 20 of the CRC but its effective implementation gives access to a number of other rights recognized in the Convention of the Rights of the Child. The FRA Agency considers guardianship as an essential component of integrated child protection systems<sup>12</sup>. The prompt appointment of a guardian is one of the most important practical measures to be taken to protect children according to the General Comment No. 6 of the Committee on the Rights of the Child. Guardianship is particularly relevant for the protection of unaccompanied children who cannot have their interests represented by their parents. In this light, the existence of a consistent normative framework on child protection at the national level may determine the possibilities for implementing a guardianship system that is integrated and efficient and that enhances the respect for children's rights.

In Italy the normative and legislative framework regulating the guardianship system appears to be out-dated and inappropriate to respond to the current situation of children deprived of parental care; fragmented and incomplete; and inconsistently implemented (National Authority for Children and Adolescents, 2015). Such normative gaps, which are both substantive and procedural, challenge the systemic dimension of Italian guardianship and put the effective protection that children should receive from guardians at risk, particularly in the case of migrant children separated from their families. Unlike other European countries, Italy does not have a separated guardianship system for unaccompanied children but a unique system applicable to all minors implemented, however, inconsistently.

Among the few and fragmented regulations that specifically address the issue of guardianship of minors, two stand out: the Civil Code dating back to 1942 and tailored to the exigencies of that time, and Law n° 184 approved in 1983 on the right of the child to a family. The former represents the main source of law for the guardianship system and addresses the conditions to initiate the guardianship proceeding (art. 343), the appointment procedure (art. 343, 347, 348), as well as some characteristics (art. 348) and functions of the guardian (art. 357).

According to the **Civil Code** a guardian is appointed when both parents are dead or when due to other reasons they cannot exercise their parental responsibilities. Excluding certain exceptions<sup>13</sup>, the Tutelary judge of the Ordinary Court is the judicial authority responsible for appointing the guardian. To this end he can ask assistance to public bodies or other competent entities. Besides the guardian, the Tutelary Judge should also appoint the so-called "protutore"<sup>14</sup>, conceived as a monitoring mechanism, though in practice this hardly ever happens.

The civil code establishes that the judge should appoint the person designated by the parents or if not applicable an individual from the child's family environment following a hearing. Before appointing the guardian the judge should listen those children over 12 years of age or even less depending on the child's capacity for

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<sup>12</sup> See European Agency for Fundamental Rights, *Guardianship for children deprived of parental care*, pag. 16.

<sup>13</sup> In cases of adoption proceedings and emergency measures for the suspension of the parental responsibility the guardian is appointed by the Juvenile Court.

<sup>14</sup> The "protutore" represents the child in cases where the interest of the child comes into conflict with the interest of the guardian. If the protutore's interests are also in contrast with those of the child, the tutelary judge should appoint a special curator. The protutore should promote the appointment of a new guardian when the guardian is missing or if he abandons his role. Meanwhile the protutore is responsible for the child's care, represents him and is entitled to issue administrative acts.

discernment.<sup>15</sup> 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”.

The civil code prescribes some situations of incompatibility to perform the function of guardianship. It also provides for the institutional guardianship to those children who have no suitable family members or relatives to act as guardians, as in the case of the majority of unaccompanied children. In such cases guardianship is referred to a public local body or to the legal responsible of the residential care facility where the child lives. The practical execution of the guardianship function is then delegated to a member of these institutions. However, Art. 3, para. II of Law 184/1983 prohibits the appointment of legal representatives of child reception facilities or professionals working there as guardians, even if the same article envisages that, in order to ensure the implementation of the urgent and necessary protection measures for separated children, private and public reception facilities can carry out a “provisional guardianship” (so-called “*potestà tutelare interinale*”), which lasts until the appointment of the guardian (DCI Italy, 2013).

The functions of the guardian recognized in the civil code are three: the care of the minor, his or her legal representation in civil matters and the administration of the child’s properties. However the guardian does not have full decision-making power but is subjected to some limitations. The court has to approve all major decisions affecting the child taken by the guardian. Lastly, the Civil Code provides that guardianship is free of charge and therefore voluntary. Guardians cannot receive a salary for their work.

The very recent **Legislative Decree n° 142** that transposes the European directives mentioned previously (see page 8) relating to international protection specifically faces the issue of guardianship for unaccompanied minors seeking international protection. It contains the procedure for the appointment of the guardian. The Prosecutor should immediately notify the presence of an unaccompanied minor to the tutelary judge in order to start the appointment procedure. According to Italian law, the appointment of a guardian is a prerequisite to regularize the migration status of unaccompanied minors, and therefore is necessary to apply for any kind of residence permit or international protection<sup>16</sup>. Afterwards the guardian shall contact the child to inform him about his appointment as the guardian. The relevant element that this decree introduces is the explicit reference to the principle of the best interest of the child in article 18; “the guardian performs his tasks in conformity with the principle of the best interest of the minor”. It also mentions some incompatibilities to avoid conflict of interests.

It is worth noting that **draft law C. 1658** concerning protection measures of unaccompanied minors presented in October 2013 and still being examined by the Italian Parliament introduces a voluntary guardianship system for unaccompanied minors integrated into the reception system. This document provides for the institution of official registers of available guardians for unaccompanied minors. Such registers would include citizens selected and trained by the regional ombudsman for children and adolescents, which are bodies specifically mandated to safeguard children’s rights, that could collaborate with the Courts through institutional agreements to promote the appointment of voluntary guardians. Should not the regional ombudsman be established, the National Authority for children and adolescents would be responsible for the institution of the registry with the support of competent associations dealing with migration and children issues.

A recently published document called “Towards a guardianship system for unaccompanied minors” issued by a Commission of experts appointed by the National Authority for children and adolescents partly addresses the normative gaps affecting guardianship. Based on the CRC, international standards and national good practices, this guiding document aims at qualifying, harmonising and updating guardianship for

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<sup>15</sup> Until recently the age limit was 16 years of age but it was modified by the adoption of legislative decree 28/12/2013 n° 154, G.U. 08/01/2014 to introduce the listening of all children who are in a position to form a judgment of their own in any proceeding affecting them.

<sup>16</sup> An not only, it is indispensable to exercise many other rights ranging from the right to health, assisted return, procedural rights in criminal proceedings to other more practical issues such as, for example, the purchase of a scooter.

unaccompanied minors in Italy. In particular it defines the role of the guardian and proposes a systemic reasoning on guardianship that includes training requirements, appointment procedures, competences and operational modalities, cooperation and integration of actors and mandates, monitoring and assessment mechanisms, everything tailored to the specific needs of unaccompanied children. This document represents an important step forward in terms of child protection policies since draws up detailed orientations and tools to establish a guardianship system that is substantial, effective, independent and anchored in children rights. The proposal structures a model of guardianship that is voluntary<sup>17</sup> and carried out by trained competent citizens institutionally supported. The recruitment of guardians is structured in a first identification stage followed by a training process. Support, accompaniment and assessment mechanisms that include participation of children are also foreseen to assist and monitor guardians' performance.

**Regional legislation** also rules on guardianship for children. Many Italian regions have constituted the regional ombudsman for children and adolescents in recent years through regional laws<sup>18</sup> in line with the 1996 Strasbourg Convention ratified by Italian law in 2003. In most of the cases the constitutive law of the regional ombudsman includes as part of the body's mandate the institution of a regional register of voluntary guardians to be used by the competent judicial authorities. The recruitment and training of guardians are other tasks usually recognised by the same law. It seems interesting to remark that such guardianship system set at the regional level through regional ombudsmen emanates directly from their functions of respect for and safeguarding of the rights of all children as recognized in the UN Convention. From this perspective the best interest of the child is the guiding principle of all actions taken by these regional bodies, including guardianship.

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<sup>17</sup> In both senses of the word: done, made, brought about, or performed through or by one's will or one's own free choice; and made without payment or recompense in any form in accordance with the national legislation that states that guardianship is free.

<sup>18</sup> Laws establishing the ombudsman for children and adolescents currently exist in 18 Regions and in the two Autonomous Provinces of Trento e Bolzano, yet not all of them have already appointed the ombudsman.

### 3. Mapping guardianship for unaccompanied minors in Italy: models and practices

Significant differences on how the concept of guardian is understood and applied have been detected within the national territory. The quality of the services and the degree of protection offered to children under existing guardianship systems may vary considerably even within the same region. Time of appointment, length of procedures, cooperation mechanisms among institutions and actors, the degree of commitment of the single guardians, among others, are some of the factors that often vary from a place to another. As we have seen, gaps in existing law strongly determine the system's capacity to turn guardianship into an effective element of child protection at the national level.

As it emerges from the legislative framework presented in the previous section, a guardianship model that is well defined, structured and homogeneous does not exist in Italy.

Guardianship provisions apply to all children irrespective of their situation and status including unaccompanied children. Generally speaking close relatives or members of the extended family are assigned as guardians of Italian children after assessing their suitability. When it comes to unaccompanied children the appointment of relatives as guardians is less frequent and external subjects are assigned this role. The attention that must be paid in appointing appropriate guardians to these children is particularly important in order to provide them with competent adults of reference who may become the key to their social and cultural integration in a new world.

However, the few data available on the appointment of guardians for unaccompanied minors show that the number of unaccompanied children for whom a guardian is assigned increased from 2008 until 2012 (Giovanetti, 2014). Nonetheless, these data refer to children in second reception<sup>19</sup>. The same report recognizes the lack of uniformed appointment procedures and the fact that the guardian is not always and everywhere appointed, in particular during the first reception stage that is the moment in which guardianship should be activated.

#### >> APPOINTMENT PROCEDURE

The appointment of the guardian is, in any case, left to the judicial authority, which has no unified eligibility criteria on which the appointment is based apart from the general provisions provided by the Civil Code. This lack introduces an element of considerable subjectivity, compromising the principle of accountability. In other words, what judges are based on to appoint a guardian cannot be determined. There is no guarantee that the best interest of the child is the principle that guides the judge's decision. Nor is it possible to assess the appropriateness of guardians to represent children's best interest and perform their duties. The lack of clear normative defining procedures, methods and standards and the fact of not considering guardianship as an integral part of the wider child protection system gives place to heterogeneity of practices not only with regards to the appointment of the guardian but more generally in guardianship management. Interviews revealed that this is an important weakness.

Public authorities are the ones who report the presence of an unaccompanied minor to the competent judicial

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<sup>19</sup> The reception project of unaccompanied minors is divided into different stages. The first reception stage lasts from 30 to 120 days. The child is placed in a first intervention facility in which a care and educational plan is defined for and with the child. Afterwards the child accesses the second reception phase where he or she may be normally placed in a long-term residential care facility, even if he could also be placed in foster family care or in an autonomous shelter with other youngsters. In any case, it is the moment in which the implementation of his or her individualized project towards autonomy starts.

authority and to the Public Prosecutor of the Juvenile Court. The judge should appoint a guardian for the unaccompanied minor within 48 hours from the reception of the notification. This deadline is not always respected in Italy. It has been reported that in some cases unaccompanied children are appointed a guardian after several months from their identification. In some other children do not even have a guardian. Such delays not only represent a serious protection gap but violate the rights these children are entitled to according to Italian, European and international law. This critical issue that challenges the timely appointment of the guardian could be, in part, a result of the lack of uniformity of identification and age assessment procedures<sup>20</sup>. Common indications on how to implement these procedures as well as clear division of tasks among competent subjects are missing. This seems to determine significant differences on the practices of the different institutions involved that produce serious problems for the minor's identification, which is necessary to activate the subsequent protection measures including guardianship. The importance of appointing the guardian since the beginning, in the first reception, is fundamental to guarantee the maximum level of protection. Overlook this may compromise child's wellbeing and prove counterproductive for the system itself. However, for this to become effective, all actors involved in the first identification and reception stage as well as judicial authorities should share priorities and be coordinated in order to converge towards common objectives and steps, and therefore operate under the same referral framework. Only a guardianship system that is integrated in the wider child protection system can systematically ensure such promptness.

## >> GUARDIANSHIP MODALITIES

In general two main trends can be identified concerning the subject to be appointed as guardian for an unaccompanied minor:

- 1) **Private person** who expresses the willingness and availability to become a guardian on a voluntary basis<sup>21</sup>
- 2) **Institutional actor**, both natural or legal person

Even if institutional guardianship should be used as a measure of last resort, the selection of one typology or the other seems to depend on the one hand on the culture and approach resulting from the experience of each single court; and on the other hand on the resources that the context makes available to the judicial authority. It may be also determined by conjunctural situations, as is the case of emergency periods. In many instances both models coexist in a territory under the same jurisdiction. This reveals a strong need for standardized integrated procedures in order to overcome differences not only between regions but even within them; differences dictated by variables that are currently uncontrollable, being thus difficult to correct. A further institutionalisation of voluntary guardianship could most likely help to mitigate subjectivities and discretions in the guardian's appointment in favour of impartiality. In any case, as we will see, the implications that the choice of one model or another may have for the child are considerable and may result in different degrees of protection provided to children, compromising the principle of equal treatment.

In the majority of cases, when the judge has a list or a register of **voluntary guardians** at his disposal, he uses it. However the existence of such list can derive from two scenarios:

### a) Registers established by the Court

The first and earliest one is the list established by the court itself. In such cases, judicial authorities have their own registers usually composed of lawyers or persons close to courts who expressed availability to act as guardians. In such cases guardians exercise their role autonomously without specific support, tools, references and training. As a result, the role of this kind of guardians is extremely heterogeneous depending

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<sup>20</sup> This has been specifically highlighted by the National Authority for Childhood and Adolescence and by the recommendations made by the UN Committee on the rights of the child addressed to Italy.

<sup>21</sup> We will refer to this typology as "voluntary guardianship".

on the commitment, sensitivity and experience of the single individual. Interviews revealed that this typology of guardians often appears to interpret guardianship as a bureaucratic issue, considering only the legal representation aspect and ignoring the aspects related to the child's care and the more general human dimension of the guardian's role. In such cases, the relationship between the child and the guardian seems not to be very significant but rather limited to formal meetings related to administrative procedures. It can be thus questioned whether in such circumstances the best interest of the child can effectively inform and guide guardian's decisions affecting child's life. In fact an interesting element to look at is the motivation of these subjects, whether it responds to sense of ethical and professional responsibility, as argued often, or to particular interests. During research interviews, some concerns were expressed, for instance, with regards to the cases in which the guardian is a lawyer that could become the child's defendant.

Considering that the child is surrounded by many actors with different interests, it would be important that at least the guardian ensures that the child's point of view is taken into due account in every decision affecting him. However the degree of cooperation between guardians and other involved actors such as the social services or the staff of the residential care facilities depends on each single case since there are no mechanisms of cooperation uniformed and institutionalised to share information and integrate guardians in the decision making and planning processes. In fact, the main weakness of appointing this kind of guardians is the absence of formal safeguards to ensure appropriateness in fulfilling their tasks. In other words, there are no indicators that allow assessing their role in safeguarding children's interests and rights other than doing it on an individual basis. As guardians they are not subject to any specific training, code of conduct, or any other practical and behavioural requirement beyond responding as legal representatives. The judicial authority is the only source of reference and supervision for these guardians.

#### **b) Registers established by ombudsmen or other local actors**

The other possible and more recent mechanism to appoint voluntary guardians responds to initiatives taken at the regional or local level. In some Italian realities registers of guardians have already been established by regional or local ombudsmen. The institution of ombudsman offices for children and adolescents responds to the obligations deriving from the implementation of the CRC and in particular of the 2002 General Comment n° 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child. To this end the National Authority for Childhood and Adolescence was established in 2011 aiming at ensuring the full implementation and the safeguard of the rights and interests of minors.

Ombudsman offices were also established in many regions and cities, even before the appointment of the National Authority. Among the functions that these regional and local bodies are mandated to perform by law there is the establishment of guardians' registers and the recruitment and training of candidates. The region of Veneto pioneered such kind of initiatives. According to the 1998 law on the regional ombudsman for minors of Veneto, this body is mandated to "recruit, select and prepare individuals available to assume the role of guardianship of minors as well as to provide advice and support to those that will be appointed as guardians". Such action falls within the wider institutional scope of safeguarding the rights of the child, which ensures the supremacy of the interest of the child over other possible interests. The experience in Veneto represented a new concept of guardianship consistent with international standards and focused on the care function of guardians. Particular attention is given to the relationship of the guardian both with the child and with the involved actors. "The guardian listens to the child as a sensitive person who commits himself to the child, who is available to leave him time and mental space, to pay him attention in order to ensure that he is not forgotten and to obtain any possible protection from the institutions mandated to safeguard his rights"(Regione del Veneto, 2005).

A number of other regional and local ombudsman subsequently followed suit. In some Italian localities that are lacking regional or local ombudsman, projects to establish voluntary guardianship have been developed by other actors mostly local bodies in collaboration with other competent subjects involved in child reception and

care. The guardian that these programmes seek to promote is therefore a person that becomes a point of reference for the child and that assists him in interacting positively with the context. In practice, however, it becomes difficult to monitor the appropriateness of voluntary guardian's performance.

The following map<sup>22</sup> shows the projects that have been already activated in Italy by regional ombudsmen to recruit, train and support voluntary guardians. Not all of them are continuous or regular but represent relevant territorial experiences:



<sup>22</sup> The map indicates the following information for each project: region/city, authority of reference and starting year.

Local processes led by the ombudsman to train and recruit guardians have progressively increased in the last years. As it can be observed from the map the initiatives undertaken cover half of the Italian regions and the majority were activated from 2009 onwards. These data show: a) that the importance of guardianship as an element of protection for unaccompanied minors has been perceived in Italy; b) that the need to further qualify and reform guardianship has been detected; and c) that resources have been activated to reinforce guardianship systems.

The main challenge remains the extent to which these efforts are being capitalized in favour of a more consistent and sustainable guardianship system since research revealed a significant level of disconnection among all these experiences, and between the guardianship model that they promote and the systemic context.<sup>23</sup> Looking at the **strengths and weaknesses** that these projects share may result useful to try to respond to this question and shape possible future developments.

#### ➤ COMMON STRENGTHS:

- **Existence of an institution of reference** that is impartial<sup>24</sup> and mandated to safeguard the rights of the child and to monitor the implementation of the CRC in the area for which the competent institution is responsible. Ombudsman offices have the best interest of the child as guiding principle and therefore all their actions may fall under this principle. The recruitment and training processes that have ombudsmen as reference are conceived as institutional projects and therefore are defined and structured. As a consequence, they include the existence of recruitment and selection procedures setting specific requirements that guardians need to meet, normally following established criteria including geographic accessibility, age limit, unobjectionable background and appropriate skills. Additional documents that constitute a framework of reference for development and implementation of projects are also foreseen. These elements provide clarity and transparency of processes, which allow assessing the progress towards the set objectives. Moreover, a certain degree of institutionalization is likely to ensure reliability and legitimacy of projects.
- **Normative framework.** Regional ombudsmen are established by law. This law rules ombudsman's mandate, which in most of the cases include recruitment and training of voluntary citizens aiming to become guardians as well as the creation of a register of guardians to be used by the competent judicial authority. The existence of a law of reference is of particular importance since makes voluntary guardianship processes enforceable. Although the legislative framework on guardianship at national level appears to be incomplete and obsolete, ombudsmen draw their action upon the existing national normative references and are also based on European and international tools.
- **Financial allocation.** Financial resources are allocated in the ombudsmen's budgets to develop processes to establish voluntary guardianship. This element constitutes an indicator that helps understand the degree of commitment of institutions and the coherence between intentions and facts. However financial resources often appear to be a critical issue. On the one hand in most cases economic resources are subject to institutional constraints and therefore cannot be freely managed. Secondly from interviews it emerged that in many instances the available financial and human resources are insufficient to guarantee a support facility needed for these projects to become sustainable and replicable. Economic allocation should therefore be calculated according to the real implementation requirements and be ensured on a permanent basis.
- **Agreements with other institutional actors and public authorities to ensure cooperation.** In most cases cooperation agreements are reached in two kinds of situations. Firstly with other

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<sup>23</sup> The document published by the National Authority for Childhood and Adolescence aims precisely at addressing the disconnection and difference between practices by proposing common criteria to set up guardianship models under a systemic approach.

<sup>24</sup> Impartial in terms of not serving particular interests but not with regards to its position and actions taken, which should be fully consistent with the mandate of safeguarding children's rights and best interest.

stakeholders to define and implement the training process for guardians. Another kind of agreements, normally memoranda of understanding, is instead signed with judicial authorities to establish in the court the register of guardians provided by the ombudsman. In such way, judges can count on a list of specifically trained guardians whose competences and appropriateness are certificated by the ombudsman. Nonetheless, apart from these two kinds of frequent collaboration agreements, it seems that there are no conditions allowing the guardian to systematically be active part of the network of actors in charge of the child's care and to work in partnership with them. This gap may hinder guardian's efficiency and capacity for action. According to the typology of guardian promoted by the voluntary guardianship's projects, the guardian should act as a bridge between the child and the context. He is the one who should verify and ensure that the rights of the child are respected.

- **Multidisciplinary training.** Training cycles are offered to candidates by qualified professionals. The training program tends to be multidisciplinary and includes knowledge about child rights and protection, relevant legislation and normative, referral system and support services, and cultural mediation. In most cases the programme foresees thematic sessions to address specific issues such as child migration or asylum law. Training is usually organized in collaboration with other competent actors from universities, judicial field, professional bodies, etc. In general, ombudsmen propose a profile of guardian that is consistent with the model promoted by international and European standards, including the core standards. The quality of the training can determine the approach that future guardians will adopt to perform their role and to establish a relationship with the child. This is particularly important when there is little time to create the relationship with the child.

➤ **COMMON WEAKNESSES:**

- **Weak sustainability and lack of independence.** The continuity of initiatives and processes seems to depend on the ombudsman offices' conditions, which are subject to political decisions taken by local or regional governments. More concretely, currently Italy is witnessing a process of unification of regional ombudsmen's offices. This means that the ombudspersons dealing with different social groups become one single authority. Unification implies, as a consequence, revision of strategies and restructuring processes. In such circumstances continuity, sustainability and replication of voluntary guardianship projects is not ensured. Becomes thus important to empower the guardianship system itself and turn it into an integral part of the wider child protection system, ideally through a national process.
- **Weak accompaniment and support available to guardians.** Insufficient economic and human resources generate significant difficulties in ensuring appropriate support and supervision to voluntary guardians. Resources are allocated to fulfil legislative mandates. Available budget tends to allow, sometimes with difficulties, recruitment and training of guardians. Little financial and limited human resources are left to the accompaniment and support stage, which is of paramount importance for voluntary guardianship to be durable, but rarely integrated in law. Guardians often find themselves alone or without appropriate support to face challenging situations, not only in technical and psychological terms but also economically. In addition, the control function of the tutelary judge appears to be variable and discretionary. Absence of support could compromise not only child's wellbeing but also guardians' actions.
- **External inefficiencies.** The success of ombudsmen's initiatives in making guardianship more efficient and protecting children's interests and rights is subject to external factors. Procedures and decisions that are relevant for the child's wellbeing are also in the hands of other stakeholders. As a consequence many criticalities, related for example to the timely appointment of the guardian or to the number of children assigned to each guardian, subsist with projects for voluntary guardians in place. A systemic intervention would be needed to overcome dysfunctions resulting from fragmented mandates and procedures.

<b>Strengths</b>	<ul style="list-style-type: none"> <li>• Impartial institutional of reference</li> <li>• Normative framework</li> <li>• Financial allocation</li> <li>• Cooperation agreements with relevant actors</li> <li>• Multidisciplinary training</li> </ul>
<b>Weaknesses</b>	<ul style="list-style-type: none"> <li>• Insufficient sustainability and independence</li> <li>• Weak support to guardians</li> <li>• External inefficiencies</li> </ul>

When no suitable person is available to act as guardian the judge uses the **institutional guardianship**, mainly appointing an assistance local body.

In such cases the judge does not appoint the natural person who will be effectively in charge of the child's guardianship but the institutional body or representative that is nominally responsible, mainly the municipality, the mayor or a head of department. Subsequently the institutional agent delegates the exercise of guardianship to a natural person, usually social assistants of the municipality or public officers. However, in recent years, the suitability of institutional guardianship has been questioned to the extent that alternatives to this model have been institutionally promoted. In fact, many weaknesses have been detected and widely recognized by different actors and studies.

First of all the more evident problem refers to the **overlapping of roles**. The public body adds the guardianship work to its primary assistance function, and this fact could derive in a situation of **confusion** and even **conflict of interests**. In practice it becomes difficult to distinguish the guardianship role of the institutional actor and its role in providing social assistance to the child. Moreover, the mandate and interests of institutional subjects could not necessarily converge with the interest of the child, which should be the primary consideration of guardian's action. Actually the existence of conflicts of interest could significantly determine the capacity to ensure the respect for the rights of the child. Especially if we consider that the guardian should be in the unique position to connect the various authorities and the child and should be the person who must hold public authorities accountable (European Agency for Fundamental Rights, 2014).

In general the **high number of cases** assigned to institutional guardians does not allow them to manage effectively all children. There are cases in which the mayor is in charge of all children domiciled in his municipality. Caseloads tend to be too high to ensure frequent contact between the official guardian and the child, and even between the person delegated. Institutional guardianship **lacks time availability** and rarely allows developing a meaningful relationship with children, providing appropriate support on an individual basis. If we also take into account that unaccompanied minors have specific needs, ensuring appropriate attention based on the best interest of each child becomes extremely challenging. In some occasions there have been detected operational barriers for the guardian's delegates to perform the tasks of legal representation.

**Specific training and support is not provided** in cases of institutional guardianship. This gap is exacerbated by the lack of procedural safeguards to ensure respect for the rights of children and by the absence of common guidance for guardians, including tools to support them at responding to children's needs. The effective role that institutional guardians are able to play appears to be insufficient and often inadequate to ensure the child's overall well-being, to safeguard the child's best interests and to exercise legal representation. As illustrated by the fact that many unaccompanied children under institutional guardianship not only do not know who their guardian is, but ignore the existence of this figure (DCI Italy, 2013).

Those legally responsible for residential care facilities for unaccompanied minors may also be appointed as guardians, although this is not particularly frequent. In fact article 3 of law n° 184/1983 prohibits “the appointment as guardians of legal representatives of residential care facilities and of all those people that carry out activities in these structures in a voluntary basis”. These actors may be provisionally responsible for the legal guardianship until the final guardian will be appointed. It is actually their duty to request the guardian’s appointment within 30 days after the placement of the child in the center. In fact, the appointment of a responsible of the residential care facility represents a clear situation of conflict of interest. Guardians should be a valuable resource to verify that accommodation conditions meet quality standards. Cases in which staff members of residential care facilities have rejected their appointment as guardians have indeed been reported.

Finally, sometimes the judicial authority provides for the **interim guardianship**, which normally ensures timely appointment. Interim guardianship is usually assigned by the Juvenile Court rather than by the Tutelary Judge. In these cases, the provisional guardian is likely to be ratified by the Tutelary judge as the definitive guardian, unless there is evidence that this person is not suitable to perform such role.

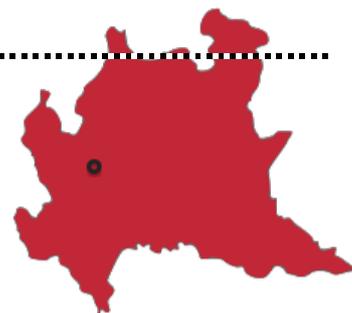
## 4. In-depth pictures in 6 Italian realities

Heterogeneity of practices and fragmentation of procedures are two elements that characterize the Italian guardianship system in general, and particularly for unaccompanied minors. As we have seen, the level of protection that guardianship provides to children varies within the national territory depending on many factors including the model of guardianship adopted at the local level, the level of integration between different agencies and services, the resources available, the degree of collaboration among actors, the skills, capacities and commitment of the single guardian, and is even subject to circumstantial aspects. In fact, the characteristics of child migration in the different regions vary depending on the geographical position, for instance. While many regions have to face massive arrivals by sea through identification and first reception, many others deal with second and longer-term reception. In the absence of clear, harmonized, normative and procedures, authorities and agencies involved in reception of unaccompanied minors at the local level face the appointment and management of guardianship following a non-homogeneous and often emergency approach.

Six Italian localities have been selected for a more in-depth analysis. The purpose is to show how guardianship is dealt in practice in different contexts and to draw possible orientations through a comparative analysis of different experiences. The selection of the six units followed both geographical and strategic criteria. They are local areas that cover the Italian peninsula and that represent different situations in relation to the presence of unaccompanied minors and experiences of guardianship.

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### MILAN



#### Appointment procedure

The Tutelary Judge is in charge of the appointment procedure after having received a report from the competent social services of the Municipality of Milan. The unit of the social services dealing with unaccompanied minors conducts some first interviews with the child to assess his situation. Within 30 days from the placement of the child in the residential care facility it reports the assessment to the judicial authority and requests to open the guardianship. The ordinary practice is that tutelary judge appoints the head of the Guardianship Board who will take an oath. The time of appointment is variable depending on the urgency of cases<sup>25</sup>. If no urgency is reported the guardian may be appointed after several months.

#### Who acts as guardian?

Guardianship is assigned to the Municipality of Milan through the appointment of a public officer of the Guardianship Board. The public officer deals with the administrative and property matters of the child while the practical exercise of guardian's task is delegated to the social assistant that follows the child. In practical terms the social assistant is not distinguished from the guardian, also from the child's perspective. An average of 50-60 children are assigned for guardianship to each social assistant. Even if social assistants have regular meetings with the child, the high number of cases may compromise the quality of the professional's guardianship work and of the relationship with the child, as international standards suggest. No monitoring

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<sup>25</sup> Urgent cases may refer for instance to health related issues for which the authorization of the guardian is required. In such cases a guardian is appointed immediately.

mechanisms specific for guardians are in place. The Direction of the service is responsible for the overall supervision.

### **Guardian's tasks**

The roles of the social assistant and the guardian overlap significantly. Beyond their normal work, social assistants are mandated to accompany and support children in the procedures for which the presence of the guardian is required. The tasks as guardians are therefore an extension of their professional mandate as social assistants.

### **Coordination and cooperation with other agencies and authorities**

The best interest of the child is determined in collaboration with the network of subjects involved in decision-making processes after having listened the child. In practice the guardian's tasks defined by European standards are performed both by social assistants and by the workers of residential care facilities. The social assistant plans the individualized project for the child in collaboration with the residential care facility and, if available, with the cultural mediator. This results in a triangulation composed of the child, the residential care facility and the social services.

### **The relationship with the child**

Children meet social assistants on a regular basis. However is difficult to ensure a relationship based on mutual trust and confidentiality. Children are given the telephone number of the social service offices, where they can call in case of necessity. Frequently children present themselves in the offices without prior notice to report what they perceive as urgent needs. However, children's relationship with social assistants does not fall under guardianship tasks but is the result of the assistance role of these professionals.

### **Training of guardians**

Social assistants are qualified professionals and therefore they have knowledge and competences according to their professional requirements. They are obliged to receive continued training on different fields, including joint training with other actors involved in child protection. Specialized training as guardians is not provided nor requested.

### **Future perspectives**

There is the need to improve guardianship and ensure that guardian's tasks are well defined and distinguished from the ones of social assistants. A possible step forward towards voluntary guardianship may be activated following the upcoming appointment of the local ombudsman for children, who could promote the training and recruitment of voluntary guardians in collaboration with other relevant actors including judicial authorities and the municipality.

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**GENOA**



### **Appointment procedure**

The judicial authority responsible for the appointment procedure is the Tutelary Judge. He appoints the guardian following a request of the competent authority, usually the police headquarters (Questura) for asylum seeking children. Since the guardian is indispensable for the application procedure for the residence permit, the appointment procedure tends to be immediately activated. For non-asylum seekers the procedure is longer and passes through the local services of the Municipality of Genoa. The appointment of the guardian is, in any case, necessary to activate the procedure for the legal status and the protection services.

### **Who acts as guardian?**

The appointment of guardians for unaccompanied minors in Genoa was introduced in 2008 and was faced by the Municipality in 2010 for the first time. At the beginning the guardians appointed were lawyers who expressed their availability to the Tutelary Judges on a voluntary basis. Some years later the number of unaccompanied minors significantly increased and this modality appeared to be unsustainable due to the scarcity of available lawyers. As a result, guardianship was extended to institutional actors including heads of Department of the Municipality, who delegate guardianship functions to other subjects such as public officers. Institutional and voluntary guardians currently coexist.

### **Guardian's tasks**

The role of the guardian in Genoa has traditionally been identified with the function of legal representation and therefore conceived from a legal perspective. Up till now the guardian is mainly in charge of supporting children during application procedures and plays also a legal assistance role. Guardian's presence appears to be also functional to the exigencies of other actors involved in child reception and protection. In some situations the interest of the local system and the interest of the child seem to conflict. Guardians do not guarantee the supremacy of the best interest of the child on a permanent basis. Given the absence of a clear mandate, each single guardian tends to interpret his role on an individual and autonomous basis. With institutional guardianship the gaps affecting guardianship emerged. As a result, the Municipality is starting to promote a process to recruit competent volunteers to ensure that the guardian is also responsible for the care and wellbeing of the child. Guardian's tasks should always respond to the specific needs and exigencies of unaccompanied children, in line with European standards.

### **Coordination and cooperation**

Voluntary lawyers who act as guardians relate to other agencies and authorities through informal mechanisms of collaboration. However the level of coordination appears to be weak. The guardian is absent in many decision-making processes affecting the child, such as the definition of the care plan. The difficulty to ensure the continued presence of guardians leads other actors to assume some of their tasks, mostly related with the educational and care role of the guardian. With regards to institutional actors, guardianship becomes an extension of their institutional mandate of assistance and protection. The experimental project promoted by the Municipality sees instead the guardian as a bridge between and a focal point for the child and other actors involved. The multidisciplinary network of actors around the child should be actually enhanced and become also a resource for the guardian.

### **Relationship with the child**

The relationship that current guardians are able to build with the child cannot be objectively assessed. However many elements suggest that it is not based on mutual trust, openness and confidentiality, but rather limited to occasional meetings. In the Genoese context children tend to establish deeper relationships with other actors, mainly social workers, social assistants and, when available, cultural mediators. In view of the lack of a systematic approach, the quality of the relationship appears to depend on the single guardian. To

overcome this excessive subjectivity, the on-going experimental project foresees the creation of a collective group of guardians as an element of mutual support that may help also at creating inter-personal relationship with children. Guardians should be able to establish *ad personam* relationships with children within an ecologic system composed of many elements and actors.

## Training

Until recently no specialized training opportunities had been offered to guardians in Genoa. With the recent initiative of the Municipality, a pilot process to train and recruit citizens to act as voluntary guardians for unaccompanied minors has been activated. The multidisciplinary specialized training program has been developed and implemented in collaboration with DCI Italy. The training contents were structured around 5 main topics: CRC principles and provisions; European and national legal and normative framework; mapping of the child protection system and actors; child development, psychology and listening techniques for a meaningful relation with the child; and knowledge on migration related issues and intercultural communication. The training followed a participatory and interactive methodology and included evaluation mechanisms to meet participants' expectations and training needs.

## Future perspectives

Voluntary guardianship is being institutionally promoted in Genoa. A process of recruitment of volunteer guardians lead by the Municipality is currently taking place following the specialized training process of candidates. Selection criteria have been already defined in collaboration with other subjects and based on International standards and consolidated European experiences. The objective is to provide Tutelary Judges with a list of qualified volunteer guardians specifically trained and certified by the local body in order to establish a guardianship model that safeguards the rights of children and properly responds to their needs taking into primary consideration their best interest. In order for this model to be sustainable the project attempts to develop mechanisms to support the work of the appointed guardians including a support desk, a process of regular training-supervision and collective meetings with the group of guardians as well as inter-institutional cooperation agreements.

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**BOLOGNA**



## Appointment procedure

In the region of Emilia Romagna the appointment procedure follows the notification of the presence of an unaccompanied minor to the Public Prosecutor, which reports it to the Juvenile Court in order to activate the adoptability procedure, whose acts will be subsequently transmitted to the Tutelary Judge. Given the length of this procedure, the first notification is now addressed both to the Public Prosecutor and to the Tutelary Judge. However the procedure may take from 1 to 2 months. Though the timely appointment of guardianship has been recognized as an important issue, it is not ensured on a permanent basis. It must be considered that without the guardian the child cannot proceed with the request for asylum or other protection. Furthermore, it may happen that the child turns 18 during the waiting period, becoming automatically an irregular migrant.

## Who acts as guardian?

An experimental project of Voluntary Guardianship for unaccompanied minors coordinated by the Municipality of Bologna and the Cooperativa Sociale Camelot is being implemented since 2014. Before, guardianship was

institutionally exercised through the appointment of the Mayor or a Public Officer that delegated guardianship tasks to the Guardianship Offices of the Municipality. This project aims at contributing to the shift from institutional guardianship to voluntary guardianship through the involvement of civil society. It follows a previous initiative of the regional ombudsman implemented in 2013 that offered training to 25 volunteers, 17 of which concluded and were entered in the official register presented to the Tutelary Judges. However only 8 volunteers finally confirmed their availability to act as guardians due to substantial delays related with the appointment procedure. The on-going project was thus conceived to support the already appointed guardians and to recruit new volunteers, to get closer to the logic “one guardian for each child”. Voluntary guardians for unaccompanied minors include competent citizens such as teachers, educators or university students.

### **Guardian’s tasks**

Guardians resulting from this project are mostly assigned asylum seeking children and holders of international protection included in the SPRAR project of the Municipality of Bologna. Guardians are expected in any case to represent a concrete support for unaccompanied minors and to perform their tasks in line with the Core Standards for Minors, which represent a key reference. The performance of guardians’ tasks should be tailored to each child’s needs and exigencies and should aim to represent the best interest of the child in any situation affecting him.

### **Relationship with the child**

The project conceives the relationship between the guardian and the child as a complex but crucial element for a protective guardianship. According to the coordinators, children’s opinions, their views as well as their right to be listened deserve priority attention. As a consequence, guardians are assigned a child after the child’s acceptance. To this end children are informed since the beginning about the guardian’s role and in particular about the importance that this person may have in their path towards autonomy. Listening, together with training, are two cross-cutting conditions that should be continuously met on a permanent basis.

### **Coordination and cooperation**

The project seeks a high degree of cooperation at the local level. It is coordinated by the Municipality of Bologna (which includes Guardianship Offices and social services) and the Cooperativa Sociale Camelot that deals with child reception and care. Collaborates also the regional ombudsman for children and DCI Italy which is in charge of the monitoring and documentation process. Tutelary Judges have also been informed. The configuration of this initiative could therefore represent an example for turning guardianship into an integral part of the local protection system. Beyond formal agreements, the project foresees also mechanisms to ensure permanent communication between professionals, guardians and children. Regular meetings are held with all these actors to assess the project’s process and address eventual needs.

### **Training**

All voluntary guardians have received specialized training. The training offered in the framework of this project was addressed to people between 25 and 65 years old. It was limited to 20 participants who should attend at least 80% of the training activities. The training cycle was composed of a series of laboratories, with the participation of professors and experts coming from different experiences. The main issues addressed included the formal aspects of the legal guardianship, the network of services, the different local actors, and the psychological support. To ensure continuity with the training process promoted by the regional ombudsman and in order to favour exchange among volunteers, active guardians acting in Bologna were invited to share their experiences and perceptions.

### **Future perspectives**

The project promoted by the Municipality of Bologna is close to its end. The challenge may be thus to ensure continuity and long-term impact, given the resources available. A complementary objective of the project is to advocate for a normative reform able to better integrate guardianship in the wider national child protection system.

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## MARCHE



### **Appointment procedure**

The competent judicial authority, either the Tutelary Judge or the Juvenile Court, appoints the guardian after having received the request from the local services. If the guardian is appointed by the Juvenile Court the procedure tends to be immediate, especially for urgent cases. Tutelary judges instead tend to appoint guardians with significant delay, even several months after the identification of the child, creating serious problems for the safeguard of other rights. The time of appointment seems to depend on the sensitivity and commitment of the single tutelary judges.

### **Who acts as guardian?**

The typology of guardians in Marche region appears to be very variable since judges are autonomous in their decisions. Depending on the area, judicial authorities may appoint institutional actors – mostly mayors - or voluntary guardians that can belong to registers established by the courts or to registers provided by the regional ombudsman. The first register that was established by the ombudsman dates back to 2006, responding to a legislative mandate. It is currently composed of 180 guardians and divided into four provinces. At the beginning they were mostly lawyers, but the scope has been extended to other backgrounds to promote a less bureaucratic and more multidisciplinary model of guardianship. All candidates are subject to training and to a selection process based on a series of requirements.

### **Guardian's task**

The typology of guardian promoted by the ombudsman prioritizes the relationship between the guardian and the child in order to safeguard the rights of the child and promote his best interest. The relationship should be based on closeness, listening and should pay attention to the child's life project. Even if most of the guardians adopt this approach, some volunteers continue to interpret the role as a mere bureaucratic task. So despite everything, subjective elements that may question guardian's appropriateness still persist. In addition, case management may vary significantly; while some guardians may be in charge of 20 children, others are assigned 2 children. In such kind of situations, caseload may significantly determine the quality of guardian's work.

### **Coordination and collaboration**

A weakness that these voluntary guardians face is the lack of recognition by other actors involved in the child's care. No agreements among agencies and institutions have been developed. As a result, the relationship between guardians and other actors, in particular judges, depend on subjective variables and tend to be distant. Guardianship in Le Marche is not an integral part of the protection system yet. An association of voluntary guardians was created to fill this gap as a mechanism of protection and representation for the guardians themselves.

### **Training**

Training of voluntary guardians is a legislative mandate of the ombudsman. As a consequence, compulsory training is provided for voluntary guardians. Different training editions have been held in Le Marche from 2002 until 2013. The training contents have evolved from a theoretical and didactical approach to a more participatory approach that involved different subjects working directly with children. One of the priorities of the training was to make future guardians understand the importance of identifying and being able to give appropriate responses to children's needs through a close relationship. This was done through case studies and interactive sessions. Specialized sessions were also introduced in the most recent training cycles.

### **Support and monitoring mechanisms**

The ombudsman office made available a desk of support aimed at advising and accompanying the work of guardians. This service, which basically responded to guardian's requests, revealed extremely useful. However it could not be as proactive as planned due to a lack of economic and human resources. The continuity of this service is to be confirmed. Apart from providing support, the ombudsman monitors the activity of guardians. When inappropriate behavior of a guardian is reported, the ombudsman offices exclude him/her from the register after verification.

### **Future perspectives**

Currently the project of voluntary guardians of the ombudsman is in a situation of uncertainty. Recently the different regional ombudsmen bodies were unified under the same office. This entailed consequences in the continuity of projects. Ideally, voluntary guardianship should be further reinforced by: improving cooperation among actors, establishing formal agreements with key stakeholders, promoting the public recognition of guardians' role and finding mechanisms for their economic support, everything both at local and national level.

**BARI**



### **Appointment procedure**

The majority of unaccompanied minors in Bari are transferred from other Italian points of arrival of migrant people. It is frequent that these children are registered as adults in the first identification procedure and placed in a CARA<sup>26</sup>. The social services of the hosting structure notify the presence of the child to the municipality, the police headquarters and to the public prosecutor in the Juvenile Court. Assuming that the child has been erroneously identified as an adult, the social services report to the judicial authority the application for the recognition of the minority of age based on the child's declaration, interviews held with other involved actors and the birth registration of the child when available. The judge will provide for the placement of the child in an appropriate residential care facility and for the appointment of the interim guardian once the age assessment will have confirmed the minor age of the child.

The juvenile court communicates to the tutelary judge the appointment of the interim guardian that becomes effective after few months. The tutelary judge, in a subsequent stage, may confirm the interim guardian,

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<sup>26</sup> The C.A.R.A are the reception centres for asylum seekers. These facilities host migrant who arrive to the Italian territory irregularly and who intend to apply for international protection. Asylum seekers remain there pending the outcome for their application. According to the normative, the period of stay should not exceed 35 days, beyond which the asylum seeker should receive a temporary residence permit of 3 months, renewable every 3 months, until the conclusion of the asylum application. In practice, the periods of stay generally exceed 6 months due to delays during application procedures. Various stakeholders have been denouncing the bad living conditions in the C.A.R.A. A common problem in Bari is that children are wrongly identified as adults upon arrival and sent to the C.A.R.A, where they will remain until their minority of age is recognized. This very frequent fact, however, constitutes a violation of the rule of law.

appoint another subject or may even not make any appointment<sup>27</sup>, depending on the workload. Usually the interim guardian becomes permanent. The Juvenile Court uses two registries of voluntary guardians for the appointment: the one composed of lawyers that traditionally performed this role in collaboration with the Court and the one provided by the regional ombudsman which is normally prioritized. However the proportion of motivated volunteers is insufficient if compared with the real needs. As a consequence caseloads can exceed a reasonable number of children per guardian.

### **Who acts as guardian?**

Guardianship has passed through different phases in Bari. Ranging from Institutional guardianship exercised by social assistants, to lawyers, the situation evolved until the voluntary guardianship promoted by the regional ombudsman. This evolution involved also the Juvenile Court of Bari that conceives guardians as persons close to the child and not just a formality, appointing therefore only those people that show consistent commitment. The awareness of the judicial authority appears to be an essential element of the ombudsman's success in mitigating the bureaucratic dimension in favor of a qualified, attentive and protective guardianship<sup>28</sup>. Most of the volunteers recruited by the ombudsman at the beginning were young lawyers attracted by professional aspirations. The project currently targets socially responsible and sensitive citizens.

### **Guardian's tasks**

Beyond the tasks normally attributed to voluntary guardians, in Bari their role is particularly important with regards to the verification of children's placement. Some guardians are assigned children placed in CARA, which constitutes a violation of rights. Guardians may therefore be strong in their position and take all necessary steps to ensure that children are placed in residential care facilities appropriate to their age and individual needs. Guardians play also a significant role in ensuring that asylum procedures are based on the best interest of the child.

### **Training**

The ombudsman in collaboration with many other institutional and professional actors has organized multidisciplinary trainings. Even if until now the training was part of the recruitment process, training opportunities are being planned for all those who were already acting as guardians. They will be mainly focused on guardianship for unaccompanied minors and on professional ethics of guardians. Future training cycles will be shorter but more intensive, since the 40 hours training held until now appeared to make the process too long and dispersive.

### **Monitoring**

Judicial authorities carry out a control function every two months through the listening of the guardian. However guardianships are most often of short duration since many children are almost 18 upon arrival. This does not preclude the guardian to continue his relation with the youth after the end of guardianship. The ombudsman office is instead facing difficulties in ensuring monitoring and support of guardians. Insufficient human and economic resources hamper the establishment of a desk of support. This weakness has been partially addressed through the involvement of a wide support network of competent and qualified actors.

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<sup>27</sup> In Bari this seems to be very frequent and in such cases interim guardianship subsists. Actually the sense of the interim guardianship is to try to ensure a timely appointment and a comprehensive treatment.

<sup>28</sup> The Juvenile Court of Bari developed a good listening practice. The Court established a protocol for the listening procedure to be applied by all judges. This protocol provides specific indications for the case management of unaccompanied minors and foresees the listening of 4 key actors: the child, the social assistant, the responsible of the residential care facility and the guardian. All these actors are asked their opinion around the project of the child.

However no specific references, orientation and accompaniment is currently available for guardians, despite their claims to have a space in which to support mutually.

## **Future perspectives**

The ombudsman is planning to take measures to reinforce and consolidate the experience. Such measures should aim at establishing a mechanism of technical and training support; improving guardians' work conditions by taking into account the territorial criteria during the appointment procedure, among other actions; combining the two existing registers of voluntary guardians; extending the culture of "care" guardianship to the Tutelary Judges and other relevant actors.

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## **CALABRIA**



### **Appointment procedure**

Guardians of unaccompanied minors are appointed in a first stage by the Juvenile Court and by the Ordinary Court in the subsequent stage. The Juvenile Court always assigns a provisional guardian to unaccompanied children immediately after their identification. The Ordinary Court confirms the provisional guardians further on, once the identification procedure has been completed and the child is placed in a facility. The time period between these two phases is not fixed but varies depending on the single case. The regional ombudsman mandated by regional law has recently made 4 registers of trained voluntary guardians available to different courts. From then on, Tutelary Judges tend to confirm all those guardians appointed by the Juvenile Court from these registers.

### **Who acts as guardian?**

Guardians in the past were merely formal legal representatives with high caseloads and poor relationships with children. Usually, the persons assigned were mostly lawyers but also those responsible for residential care facilities. Professionals working in the social services are instead less likely to assume this role due to incompatibility problems, even if in practice it depends on the individual case. However incompatibility problems may also affect lawyers acting both as legal representatives and legal defendants of a child. The courts' position in this regard is not homogeneous; in Calabria they tend to allow the legal guardians to act as defendant when there is real need. The Calabrese ombudsman, through specific training, recently started to promote a model of guardian that, unlike formal guardians, establishes a close relationship with the child and defends his best interest in line with international standards, with a particular emphasis on the participation of the child in all decisions affecting him. The great part of guardians that have been trained by the ombudsman are lawyers and psychologists, persons that somehow are sensitive and close to the issue.

### **Guardian's tasks**

The ombudsman initiative originated in the framework of this new concept of guardian as a person who is proactive in understanding and responding to the needs of the child. In this regard, the purpose was to create professional guardians with specific technical abilities to fulfill the obligations established in the civil code. These guardians should carry out functions of assistance, legal representation, creating a meaningful relationship with the child. According to the regional law, the guardians trained by the ombudsman are included in a register that is made available to the competent court.

### **Collaborations**

In practice the process lead by the ombudsman began in 2014. It was first piloted in one city and then extended to other three localities. However, networking between relevant stakeholders and public bodies preceded the implementation phase. Registers of guardians have been established following training courses in four northern localities (Castrovillari, Crotona, Cosenza and Catanzaro) in collaboration with the courts, municipalities, boards of lawyers and psychologists, and the juvenile chamber.

## **Training**

All trainings were implemented under the leadership of the regional ombudsman with the participation of the courts, both ordinary and juvenile. Magistrates were actively involved in the training sessions in order to show the different aspects that guardianship entails, ranging from technical issues to the most practical ones. The training topics included the following: legislation and policy, child rights and the best interest determination, intercultural mediation and specific provisions for unaccompanied minors. With regards to the organisational dimension, applications to participate in the training course and therefore to have access to the guardians' register may be only issued by persons who reside within the territory of competent court. This is to ensure the accessibility of the guardian and to reduce the travel expenses and other related costs assumed by guardians. Another requirement is that absence of participants to the training should not exceed a quarter of the course length. All those who pass the final exam are admitted to the register, used by the competent court.

## **Support**

According to regional law no. 28 of 12 November 2004 the ombudsman should ensure assistance and support of guardians. Support requests to the ombudsman office coming from active guardians do not appear to be very frequent till now, even though the office should be able to provide for it. However, there is a significant lack of financial resources that hampers the provision of consistent technical assistance and support. As a result, it is subject to the goodwill and commitment of those involved.

## **Monitoring**

The ombudsman does not have full monitoring powers on guardians' performance; this function is left to the judicial authorities. The ombudsman office is in charge of offering continuous training - and therefore update guardians' skills – and managing guardians' registers. However, as a safeguarding body, the ombudsman may report any concern to the competent court.

## **Future perspectives**

Overall, the future perspective is to expand voluntary guardianship into other Calabrese localities. Registers should be established in Reggio Calabria, the Calabrese capital, and Vibo Valentia. At this moment efforts are underway to include the Court of Reggio Calabria which hosts also the Juvenile Court. The ombudsman should also organize follow-up training sessions to keep guardians updated, even if the conditions to undertake such initiatives are subject to the regional government's decisions. Finally, further actions may be adopted to increase the number of volunteer guardians, which should also address measures to ensure the economic sustainability of guardians' work.

## 5. Comparative analysis

Place	Projects of voluntary guardianship	Specific for unaccompanied minors	Institution of reference	Partnership	Who acts as guardian?	Level of collaboration and cooperation	Training
Milan	No	No	Social services of the Municipality	n.a.	Social assistants	n.a.	No Compulsory induction training
Genoa	Pilot experience	Yes	Municipality	Municipality – DCI Italy	Citizens	n.a.	Compulsory induction training and follow-up
Bologna	Yes	Yes	Guardianship offices of the Municipality	Municipality – Coop. Soc. Camelot – DCI Italy	Citizens	Very high; agreements with local services, judicial authorities, and other stakeholders	Compulsory induction training and follow-up
Marche	Yes	No	Regional ombudsman	Ombudsman – University of Urbino (CRISIA)	Citizens	Low; involvement of local actors	Compulsory induction training and specialized sessions
Bari	Yes	No	Regional ombudsman	No	Citizens	High; involvement of local actors and agreement with judicial authorities	Compulsory induction training, supplementary courses
Calabria	Yes	No	Regional ombudsman	No	Citizens, mainly lawyers and psychologists	High; networking with relevant stakeholders, public and judicial authorities	Compulsory induction training and, eventually, follow-up.

## Key Findings

The main findings resulting from the comparative analysis of the different guardianship experiences have been interpreted according to the fundamental principles of guardianship systems of the FRA Handbook, reported also in the document issued by the National Authority for Childhood and Adolescence.

### ➤ NON-DISCRIMINATION

Consistency of standards and practices among different Italian regions and localities is not ensured. Diversity of practices and guardianship models coexist in most of the analyzed territorial units, even within the same locality. According to article 2 of the CRC all children should receive the same level of protection irrespective of their situation. However, the level of protection provided by guardians is subject to guardianship procedures, services and practices implemented at local level. As a consequence it could be affirmed that the quality of protection offered to children may be determined to a great extent by the place of residence and placement, which questions the principle of equal treatment.

In some realities the time of appointment may depend on the legal status of children, whether they are asylum seekers or not. In some other the timely appointment is only ensured in case of urgency. Providing unified standards and procedures on voluntary guardianship at the national level would be a crucial element to fill protection gaps.

Many subjects are involved in child protection and guardianship management. The level of involvement and collaboration between all actors within a common framework can determine the efficiency and sustainability of voluntary guardianship experiences. The present analysis has revealed that the degree of cooperation between the involved stakeholders is proportional to the inclusiveness of the system and, therefore, to the absence of discrimination.

### ➤ INDEPENDENCE AND IMPARTIALITY

Guardianship exercised by institutional actors, mostly local public bodies, may give place to confusion, overlapping or even conflict of interests. Institutional guardians seem to develop their role as an extension of their wider institutional function of assistance. They are not thus in the position to take actions and decisions based in the best interest of the child without contrasting it with the interest of the institution they represent.

Voluntary guardianship is more likely to ensure independence and impartiality of guardians, above all when the institution of reference is the ombudsman, whose mandate is to safeguard children's rights and whose guiding principle is the best interest of the child. Properly trained citizens acting as guardians on a voluntary basis and having a competent institution of reference should take independent decisions based on the best interest of the child. The degree of impartiality in such cases would be subject to the safeguard of the child's interest.

However, in all the analyzed experiences remains the practical challenge to assess and monitor the guardian's effective performance. A possible method to prevent or mitigate risks of inappropriate conduct is to set up a careful selection process. This has been useful, for example, to early detect cases in which professional interests seemed to take the upper hand.

### ➤ QUALITY AND APPROPRIATENESS

Institutional actors, delegates and lawyers appointed as guardians do not receive specific training on guardianship. In Milan social assistants who act as guardians do attend training courses as part of their professional requirements but they are not focused on guardianship.

In all territories under analysis, appointed voluntary citizens are recruited following a specialized training that involves different qualified actors. Training processes tend to follow multidisciplinary approaches that combine practical and theoretical knowledge. However national indications establishing common training criteria, methodologies and content are lacking. As a result, each project develops its own training program. While compulsory induction training is ensured, continuous training and follow-up is not offered on a permanent basis. In most cases, projects programs include follow-up processes, whereas in practice this is what most often is missing.

Recruitment of voluntary guardians is also subject to selection criteria defined by the coordinators of the initiatives with the aim of assessing the appropriateness of volunteers. All projects under analysis recognize the importance of the selection process in ensuring quality of guardians, since not all candidates have experience in and knowledge on the field of child protection.

### ➤ **ACCOUNTABILITY**

Accountability appears to be one of the main weaknesses affecting the majority of guardianship processes. National law provides insufficient legal basis for guardianship and lacks detail in defining procedures and criteria for the appointment and management of guardians.

Judicial authorities responsible for the appointment of guardians for unaccompanied minors, either Tutelary Judges or Juvenile Courts, do not share common appointment criteria. Selection of guardians is thus left to discretionary approaches. Sometimes judicial authorities are reluctant to use the register of guardians provided by the ombudsman, which is the only accountable and certified source of recruitment. In all the analyzed situations judicial authorities continue to appoint guardians who are not included in the ombudsman's register, in some instances to address the lack of available trained guardians.

Judicial authorities do not supervise the exercise of guardianship on a permanent basis, which should be done irrespective of the modality adopted. In practice the control function of judicial authority is more respected by Juvenile Courts than by Tutelary Judges, as in the case of Bari for example, in which the magistrate is supposed meet guardians for monitoring purposes every two months.

External monitoring of guardianship processes is foreseen in the two projects that are being implemented by Municipalities in Bologna and Genoa. These initiatives include also mechanisms of training follow-up that constitute also occasions to monitor guardian's work.

The processes promoted by regional ombudsman face instead substantial difficulties in ensuring monitoring and supervision of guardians since it does not fall specifically under their legislative mandate, even if the need is widely recognized. While regional law provides for training and recruitment of voluntary guardians, monitoring is not included in the legal provisions. As a consequence, they lack the financial resources to set up a consistent mechanism for support and monitoring.

### ➤ **SUSTAINABILITY**

In Italy guardianship is not integrated in the national wider protection system and its management is inconsistently operated at the local level. As a result the way in which guardianship is conceived varies from a place to another. Anyway, guardianship systems are not an integral part of any local or regional child protection system yet, even if actions are being taken as the case of Bologna shows.

The approach and sensitivity of judicial authorities appears to determine to a large extent the quality of guardians appointed; which at the same time is proportional to the level of protection that they are able to offer to the child. However, voluntary guardians often face difficulties related to the lack of acknowledgement and respect for their role by the other involved actors, in particular Tutelary Judges and staff of residential care facilities. This lack of recognition constitutes a barrier for effective action as well as for the sustainability of projects. Voluntary guardians are often faced with delicate situations in difficult conditions. Additional hurdles deriving from a lack of awareness on the importance of guardian's role have already deterred the continuity of many guardians' commitment and availability.

On the other hand sustainability cannot be ensured without sufficient human and financial resources for guardianship system's operation. This is the case of the majority of projects coordinated by ombudsmen. Budgets include costs related to training and recruitment. No expenses are foreseen for oversight and support services. As a consequence active voluntary guardians do not have access to qualified support and assistance, including psycho-social support, and they lose opportunities for improve their skills.

Economic resources should also be allocated to support the expenses related to the effective exercise of guardianship work. In practice voluntary guardians often have to assume costs associated with administrative procedures. In few cases reimbursement of guardians' expenses or insurances are foreseen. However, the conditions in which guardians exercise their role are likely to determine sustainability of voluntary guardianship systems.

#### ➤ **CHILD'S PARTICIPATION**

Participation of children with regards to the appointment, management and evaluation of guardians does not seem to be a central element of guardianship arrangements. In the majority of cases the appointment of a guardian follows an assessment of the situation of the child through interviews normally conducted by the local social services. Moreover, judges should by law listen to children over 12 years before appointing a guardian. However it is not clear the extent to which the child's opinion is likely to inform the appointment procedure.

Projects of voluntary guardianship that involve the network of actors around the child are more likely to give children the opportunity to express their opinions about their guardians, as in the case of Bologna. Projects promoted by ombudsmen, instead, face more difficulties in involving children directly. At the present stage the provision of clear and appropriate information to children regarding scope of guardianship is not ensured. This kind of information is normally provided by the local social services and by voluntary guardians once appointed. Likewise, child friendly mechanisms to lodge complaints relating to guardian's performance are not included as a basic requirement of projects of voluntary guardianship. The active participation of children is not a core element of guardianship yet, steps forward should be taken to ensure this as a cross-cutting principle.

## 6. Recommendations for improvement

*Preliminary observation: the best interest of the child is a guiding principle that informs all actions affecting children.*

### **NATIONAL CHILD PROTECTION SYSTEM**

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National authorities should ensure that the guardianship system is an integral part of the national child protection system. To this end measures must be adopted at the national level including:

- ✓ The adoption of **up-to-date legislation** laying down the guardianship framework to ensure consistency of standards and practices within the national territory.
- ✓ The establishment of an **independent national guardianship authority** to coordinate and monitor the implementation of the various local institutional experiences of voluntary guardianship. This authority should act as the national institution of reference for all actors involved in voluntary guardianship.
- ✓ Allocation of sufficient **financial and human resources** for the guardianship system's operation.
- ✓ Development, promotion and dissemination of **national standards and guidelines for guardians** that are consistent with children's rights and International and European standards.
- ✓ Development of policies and procedures that **include guardians in decision making and planning processes** affecting children deprived of parental care. Specific provisions on unaccompanied children should be included.
- ✓ Improvement of **multi-agency and inter-institutional working** for policy coherence and continuity of interventions within the national territory in the field of child reception, assistance and protection. This should include **institutional agreements** between judicial authorities, local authorities, service providers and child protection agencies.
- ✓ Provision of **public information and awareness campaigns** on the protective dimension of guardianship as well as on the role and duties of voluntary guardians.
- ✓ Improvement of **data collection and provision** on unaccompanied minors at local level.

### **GUARDIANSHIP SYSTEM**

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#### **Appointment procedure:**

- ✓ Establish a **unique specialized judicial authority** responsible for appointing guardians of unaccompanied minors;
- ✓ Ensure the prompt appointment of guardians through **uniformed procedures**, including age assessment and best interest determination procedures;
- ✓ Define **common criteria** for the selection of guardians. Institutional guardianship should be avoided when certified registers of voluntary guardians are available. A **unique register of guardians** should be established in the competent Court.
- ✓ Introduce **mechanisms to ensure that children's views are duly taken into account** during appointment procedures. Children must also **receive appropriate information** on guardianship before the appointment of the guardian.
- ✓ Whenever possible, judicial authorities should assign **one child to each guardian**. Guardian's **caseload should be reasonable** and ensure a close relationship with the child.

#### **Voluntary guardianship management:**

- ✓ Guardianship should be managed and coordinated by a legitimate independent institution or a public body in partnership with other actors involved in the care and protection of unaccompanied children including judicial authorities, local social services, reception care facilities and civil society organizations dealing with child-related issues.
- ✓ Recruitment of voluntary guardians should be based on **common minimum eligibility criteria**. Once recruited, guardians should be included in the certified register established in the competent Court.
- ✓ **Compulsory induction training** should be offered to candidates. The training program must:
  - be multidisciplinary and include knowledge on children’s rights (CRC), legal issues, normative framework, psychosocial and interpersonal dimensions, intercultural communication, local services and actors, referral system, role and tasks of guardians for unaccompanied minors;
  - combine theoretical and practical sessions;
  - be organized in collaboration with other competent and qualified stakeholders;
  - provide attendees with learning tools;
  - limit the number of places to allow interaction of participants and establish a length that facilitates attendance.
- ✓ **Follow-up training opportunities** should be made available to guardians of unaccompanied children. Supplementary sessions addressing specific relevant issues must be scheduled regularly. These sessions must also constitute opportunities for **process monitoring and experience sharing** between guardians.
- ✓ The guardianship authority of reference should ensure **mechanisms of support and accompaniment** for guardians. Desks of support, online platforms, meeting points or assistance teams of qualified professionals are some concrete methods. Sufficient financial and human resources should be made available to this end.

### Monitoring and evaluation:

- ✓ The role of guardians should be effectively monitored by the competent judicial authority through **regular meetings** both with the guardians and the child.
- ✓ Voluntary guardianship experiences must be subject to **independent external monitoring**.
- ✓ Voluntary guardianship experiences shall include **appropriate evaluation mechanisms** addressed to children and guardians. Children should be provided the possibility to **lodge complaints** against guardians through appropriate and accessible child-friendly mechanisms.

### GUARDIANS

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- ✓ Guardians should understand their role and carry out their tasks in conformity with European and national standards and guidelines. Particular attention should be given to **safeguarding and promoting the best interest of the child and to facilitating his participation**.
- ✓ Candidates for guardian should **assess their suitability** and **be sincere** in accepting their commitment before being appointed.
- ✓ The **relationship with the child and the identification of a durable solution** should be given special importance.
- ✓ The guardian should be **proactive in relating with the various actors** that are responsible for the child’s care in order to ensure that his needs are appropriately met. The guardian should always reaffirm the centrality of the child.

- ✓ Guardians should **ask for assistance** whenever they feel uncertain about their action. Guardians may find **mechanisms of mutual support** as well as experience sharing through the creation of a group of guardians with the involvement of children.

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