



Unaccompanied children: an overview on national and European law

International Conference on Comparative Family Law

Dubai 17 December 2020

Cinzia Valente

Research Assistant in "Private Comparative Law"

University of Modena and Reggio Emilia - Italy

This contribution is developed as part of the EU-funded research, Jean Monnet project entitled "Unaccompanied children: italian and european remedies", cod. 587039-EPP-1-2017-1-IT-EPPJMO-MODULE, University of Modena and Reggio Emilia, scientific director Prof. Maria Donata Panforti

Social and legal background

- Reform in Family Law
- Migration flow
- Unaccompanied children

Data

www.lavoro.gov.it

Year	Children' number registered in Italy
2016	12.241
2017	17.864
2018	13.151
2019	6.054
2020	6.227

Italian System

Before 2017

Family Law

Immigration rules

Specific Laws

International Law

Italian System

Decree of the President of the Council of Ministers No. 535/1999
(Regulation on the duties of the Committee for the Foreign Minor)

Art. 1: The term 'unaccompanied foreign minor' refers to a minor who does not hold Italian or other EU citizenship, has not applied for asylum and is, for any reason, within the territory of the State without care or representation by their parents or other adults who are legally responsible for them under existing Italian laws

Italian System

After 2017

Zampa Law (7 April 2017 n. 47)

Art. 2

The term 'unaccompanied foreign minor' refers to a minor who does not have Italian or EU citizenship, is for any reason, within the territory of the State without care or representation by their parents or other adults who are legally responsible for them under existing Italian laws.

Art. 1

The unaccompanied children enjoy the same rights afforded to minors who are Italian or EU Nationals.

Italian System

Best interest of the child:

- Non-refoulement principle
- Exchange of information
- Identification and age assessment procedure
- Placement in first line reception centres
- Long – term solution
- Juvenile Court

Italian System

- Placement in a shelter and identification (by 10 days)
- 30 days after the first placement



- Definitive accomodation: foster care or secondary centre (i.e. SIPROIMI)

Italian System

Key points


- Identification procedure: involvement of cultural mediator and psychologists
- Age assessment: non invasive methods and gender respect
- Guardian appointment: Juvenile Court
- Guardian assistance: exercise of rights (health care, access education, ets), legal representative, managing the asset

French System

Lack of a uniform and organic discipline:

- Immigration Law
- Civil Code
- Specific laws
- Administrative acts

French System

- 2016 reform: Loi n. 2016-297 du 14 mars 2016 relative à la protection de l'enfant
- Mineur isolé étranger  mineur non accompagné
- Recognition of the fundamental rights

French System

Age determination procedure

- Before 2016: medical investigation
- Post 2016: interview – documents – medical investigation (judge's order)

French System

Reception of the minor

- Temporary placement
- Mixed reception facilities
- Families

French System

Legal representative of the minor

- Guardianship

- Ad hoc Administrator

European Level

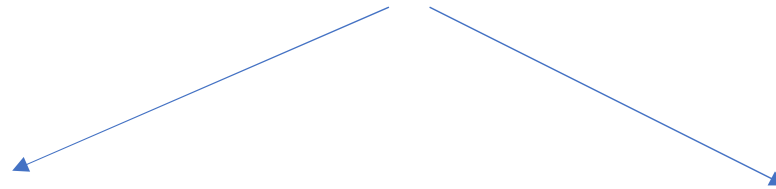
General principles: i.e. European Charter of Fundamental Rights

Directives on specific issues: i.e. 2013/32/EU

European Resolution 26 June 1997 (97/C/221/3)

European Level

«European» Strategies



i.e Action Plan 2010-2014

European Commission Activities

European Level

Critical points:

- Rights effectiveness
- Reception facilities
- Identification procedure
- Long –lasting solutions
- Guardianship

Some concluding remarks

- Practical application of the legal discipline
- Need for monitoring the efficacy of the reform
- Interaction between key players
- State involvement
- Enhancement of guardianship and foster care



Thank you