



EMPOWERING GUARDIANS, LEGAL REPRESENTATIVES
& FOSTER FAMILIES OF CHILDREN DEPRIVED OF
PARENTAL CARE AGAINST VIOLENCE

NATIONAL ASSESSMENT
ITALY



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ELFO – EMPOWERING GUARDIANS, LEGAL REPRESENTATIVES AND FOSTER FAMILIES OF CHILDREN DEPRIVED OF PARENTAL CARE

NATIONAL ASSESSMENT ITALY

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The Project

On December 1st 2016 the EU co-funded project ELFO "Empowering guardians, Legal representatives and Foster families of children deprived of parental care against violence through child rights" has started. The 24 month initiative is carried out by a partnership of 5 organizations from Italy, Spain, Portugal, Bulgaria and Greece: Defence for Children International Italy (coordinator), ARSIS (Greece), CESIS (Portugal), DCI Spain (Spain) and Pulse Foundation (Bulgaria).

The reinforcement of parental care of those actors of civil society who undertake parental functions, like for example guardians foster parents and legal representatives, and who act independently and for the best interest of the child could constitute a key element to prevent violence and abuse of children deprived of parental care. Nevertheless, as reported by FRA Agency of European Union, often these subjects do not receive an appropriate, specialized and constant training in most of the European countries.

The project's general objective is to improve the level and quality of protection of child victims or potential victims of violence by empowering guardians, legal representatives and foster parents of children deprived of parental care within an integrated child protection framework.

In order to achieve this general objective, ELFO will pursue three specific objectives through the related activities:

- To improve the competences of guardians, legal representatives and foster parents to defend and promote the rights of child victims or potential victims of violence through a capacity-building and training process. After a first period of analysis of the national contexts and mapping of the training groups, a training module will be elaborated and the training cycles will be delivered in each country.

- To support and integrate these functions within the referral system with a view to enhancing the efficiency of the child protection system of reference. Multilateral cooperation meetings with key actors as well as follow up meetings with the trainees are foreseen in each country during the whole duration of the project. An information and support tool will be produced in order to be disseminated among participants to the project.

- To uphold, foster and expand quality family foster care and community based responses to violence against children as key components of child protection systems. After the definition of an information and awareness-raising strategy, some promotional activities will be carried out i.e. organization of info-days in each country, dissemination of the project's

developments through media and social network, creation of a promotional video, dissemination of the project results during a final event in Italy.

The ultimate beneficiaries are children deprived of parental care victims or potential victims of violence in contact with at least one of the three functions addressed by the project. The initiative will be specifically addressed to guardians, legal representatives and foster parents of children deprived of parental care as well as institutional actors, professionals and public officials working in existing child protection systems.

Introduction

This research aims to provide an overview on the institutes of foster care and guardianship over minors deprived of appropriate parental care, focusing on a particular category of subjects – the unaccompanied foreign minors – which currently appears to be more vulnerable to phenomena of violence, exploitation and abuse in Italy, and trying to figure out the actual application and implementation in the territory as well as the gaps and weaknesses of the system.

Foster care

This is an institution that aims to ensure minors who - for serious reasons - cannot, for a short or longer period of time, continue to live with their parents or relatives, to grow up in a family environment, avoiding their placement into a community or institute¹.

The foster care analyzed by this research is the hetero-familiar one that takes place outside the child's family. Intra-family foster care, by relatives up to the fourth grade of the minor, lies therefore outside the present report.

Foster family care is based on a positive vision: that refers to the changing possibilities for people and especially for children. This concept is empirically validated by recent years positive experiences and by recent studies on resilience which have demonstrated that children can cope in a positive way to traumatic events of various kinds and intensity when they are supported by a social network where they develop relevant interpersonal relationships and effective nurturing support².

Foster care should, therefore, be understood as:

- fulfillment of the "best interest of the child";
- support tool intended to reunify and empower families and not to separate them;

¹ <http://www.anfaa.it/famiglia-come-diritto/affidamento-familiare/cose/in-breve/>

² Ministry of Labour and Social Policy, Guidelines on foster care, page 8

- set of subjects and relationships (child, parents, foster parents, social services) that work together for a common goal: to provide support and help to minors temporarily distressed.

Foster care - international and national legislation

Within the international scene the foster care institution finds its basis in the UN Convention on the rights of the child (CRC) and particularly in art. 3 which provides that: "*the best interests of the child shall be a primary consideration*".

To ensure that this principle could find effective implementation, the child should benefit from: a standard of living sufficient to allow his/her physical, mental, spiritual, moral and social development³; the best health possible and to benefit from medical and rehabilitation services⁴; from job training and education according to ability⁵; from protection against economic exploitation and compulsion to any job that involves risks or is likely to endanger the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development⁶.

Other important reference should be made to the Guidelines developed by the United Nations General Assembly on the 20th November 2009, on the occasion of the 20th anniversary of the CRC⁷.

They outline the need for relevant policy and practice with respect to two basic principles: necessity and appropriateness. At the heart of *necessity* we find the desire to support children to remain with, and be cared for by, their family. Removing any child from his/her family should be a measure of last resort, and before any such decision is taken, a rigorous participatory assessment is required. Concerning *appropriateness*, the guidelines define a range of suitable alternative care options. Each child has specific requirements. The care option chosen has to be tailored to individual needs.

It must, however, be considered that one thing is the recognition of these rights, quite another thing is their implementation, necessarily demanded to reference figures, intended as emotional

³ Art. 27 CRC

⁴ Art. 24 CRC

⁵ Art. 28 CRC

⁶ Art. 32 CRC

⁷ UN Guidelines for the alternative care of children

https://www.unicef.org/protection/alternative_care_Guidelines-English.pdf

relationships and as State bodies entrusted with the responsibility to ensure and to draw up appropriate and accessible instruments to perform the best interests of the child⁸.

Considering the emotional relationships, the primary reference is the natural family as the fundamental unit of society and natural environment for the growth and well-being of all its members and particularly children. The child, for the full and harmonious development of his/her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.

However the family is not always the place where these conditions exist; sometimes it is the family itself to be harmful, to set limits on the healthy and balanced growth of their children. We should therefore refer to family in a wider sense, referring to any adult figure able to be a primary point of reference for the minor; the place where his/her needs, rights and affective instances can find full satisfaction. (ins. Bibliographic reference)

Therefore, when the natural family cannot offer the conditions – temporarily or definitely, for a contextualization of different environmental, economic and/or cultural factors – the above mentioned alternative cares become relevant to guarantee an harmonious growth and development of the child.

[...] children with inadequate or no parental care are at special risk of being denied such a nurturing environment⁹.

In such cases the instruments provided by the State must apply.

Where the child's own family is unable, even with appropriate support, to provide adequate care for the child, or abandons or relinquishes the child, the State is responsible for protecting the rights of the child and ensuring appropriate alternative care¹⁰.

The foster care arises therefore as a care measure for children removed from their families. The person, during his/her evolutionary age, needs absolutely a friendly environment and atmosphere to properly develop his/her personality. For this reason the law claims that a temporarily replacement of the family or an environment similar to the familiar one, through the institution of foster care, must be ensured to the child if it is not possible to let him/her stay in his/her original family.

The foster family is therefore the one which replaces or stays at the side of those who should be the primary key carers; it is the context within the best interests of the child can find full

⁸ J. Moyerson e G. Tarzia, L'evoluzione della normativa sui minori stranieri non accompagnati, in "Cittadini in crescita" 3-4/2002, p. 11.

⁹ UN Guideline n. 4

¹⁰ UN Guideline n. 5

realization, that is the true and only aim to be pursued. It is from this aspect that we must start: from the centrality of the child whose rights and needs must be fully realized.

According to the Italian legislation, the Law n. 184, 4th May 1983 “Right of the child to a family” (subsequently amended by law 149/2001¹¹ and by the recent Law 173/2015¹²) has attempted to give an adequate framework of the foster care institution. However, after more than thirty years after its entry into force, foster care still remains poorly applied and known for the reasons that we will show later.

In addition, the law concerned has covered thoroughly only a particular type of foster care: the temporary one aimed to prevent – through the recovery of the natural family – a pronouncement of adoptability. The child is therefore temporarily placed with another family until his/her family does not overcome its difficulties. It is therefore a form of care provision involving the placement of a minor in a family household different from the original one, so that he/she might be cared for, educated and protected for a period of time, until the original family acquires again the proper conditions to take him/her back.

The placement of the child in a family different from the original one, contrary to adoption, is therefore a temporary measure as it foresees the reintegration of the child in his/her natural family and the support to the original family in difficulty. This Law regulates foster care institution in its first 5 articles and provides that the child, if deprived of a suitable family environment, may be entrusted to (in the following order): another family (possibly with minor children) or to a single person, or to a family-type community and, only as a last resort, placed into a care institution which exercises the powers and obligations of the foster care parent (Art. 2 L.184/83).

The **child** in foster care:

- has from 0 to 18 years old (but the project may accompany the child even up to 21 years);
- is of Italian or foreign nationality, might have different cultures and practice different religions;
- has parents in difficulty in responding to his/her needs, sometimes having awareness and, in other cases, denying to need help;
- has lived severe problems in his/her original family: neglect, physical and/or psychological abuse, rejection, isolation, separation of various kinds, socio-economic difficulties¹³.

Foster care subjects are expressly foreseen by the legislator.

¹¹ “Regulation of the adoption and foster care of minors”

¹² “On the right to emotional continuity of children in foster care”

¹³ Guidelines on foster care drafted by the Ministry of Labour and Social Policy, n. 112

The *family*, preferably with their own minor children, is the privileged subject. This not only because in a so formed family it is less easy that unconscious motivations, such as those of "grabbing" a child, arise, but also because their presence strongly facilitates the inclusion of other children in foster care.

The foster family is an "extra family" and is called to:

- ensure the maintenance, upbringing, education and care of the emotional relationships of the child in foster care, providing, in accordance with his/her family and the operators, even to his/her health needs, by promptly intervening in case of gravity and urgency, informing the social service;
- respect and accept the child's family by maintaining positive relationships with it, according to the information of the operators and to any provisions of the Judicial Authority;
- encourage the return of the child in his/her family in accordance with the aims defined in the foster care project¹⁴.

Foster care can be placed in favor of a *single person*. Unlike adoption, we do not seek alternative parental figures, but a familiar reassuring environment.

Finally, the law considers the *family-type communities*. It is actually a rather generic term, but the important point is that such structures shall offer a highly personalized family relationship, standing out by the anonymous educational institute.

The foster parent has the **duty** to¹⁵:

- welcome the child, support, instruct, educate him/her, taking into account the indications of parents, who are not deprived from parental responsibility, or of the guardian and the prescriptions of judicial authorities;
- exercise the powers relating to parental responsibility with regard to the ordinary relations with the school¹⁶ and with the health authorities (for health interventions that go beyond the ordinary administration, such as surgery, the consent of parents or guardian is required);

¹⁴ Social care services are in charge to outline a support program after analyzing the difficult situation of the child and of his/her family of origin and assessing the medium and long term prospects. The project, containing the intervention-program, should be flexible in order to be modified during the evolution of the situation and in relation to the experience.

¹⁵ <http://www.anfaa.it/gli-affidatari-i-diritti-e-i-doveri/>

¹⁶ As for example the signature on the school diary, reasons for absences, authorization to outputs, managing relationships with the teachers, exercising the right to vote and be elected in the representative school bodies. .

- be heard in civil proceedings (otherwise void) involving the minor in foster care and related to parental responsibility, custody and adoptability, with the power to submit pleadings in the interest of the child;
- represent the child in all civil acts (the asset administration belongs instead to parents who are not deprived from parental responsibility or to the guardian).

The foster parent has the **right** to:

- be previously informed about the foster care conditions, also in accordance with the provisions of the Juvenile Court;
- be involved in all the steps of the project;
- have an individual support and take part to support activities (groups, conferences, training courses, etc..) arranged by the Social Services;
- receive a contribution and subsidies to access services;
- obtain legally recognized parents facilities at work;
- receive economic support measures as those that State, Regions and local authorities, within the limits of their financial assets, donate to the original family.

Foster care **cannot be longer than 24 months**, although this term may be extended if the suspension would be detrimental for the child (art. 4 L. 184/83).

Foster care can be **consensual** or **judicial**.

When there is the parents' or guardian's consent, foster placement is ordered by the local social services and is enforceable by the Decree of the Guardianship Judge of the place where the minor is located. In case of parents opposition, foster placement is instead provided by the Juvenile Court (art. 4, I e II paragraph L. 184/83).

Summarizing, the foster care institution provides the following essential characteristics:

1. temporary lack of a family or better of "a suitable family environment", as stated in art. 2. The non-suitability of the family environment is a very vast concept which basically means family events and conditions that have a detrimental impact on a child's life, causing him/her risky, harmful and prejudicial situations;
2. temporary duration of foster care as a measure aimed both at protecting minors and at recovering his/her original family and therefore it must cease as soon as these difficulties have stopped to exist. This period must not exceed the duration of 24 months, although it can be extended;
3. facilitation of the relationship between the minor and his/her parents;
4. return or reintegration of the child in his/her family (art. 5).

Depending on the needs of children and the intensity of the family problem, foster care can be structured differently: there may be placements requiring intense therapeutic projects and that can

involve at the same way very young children or older kids and there may be various types of foster care: emergency, for temporary situations or *sine die*. Depending on the situation, the role and task of the foster family might change, as well as the goals, the strategies and the actions of the project¹⁷.

With regard to the **legal effects**, foster care has educational purposes, does not disrupt relations with the family of origin and does not establish any family relationship between the child and the foster family.

Foster care **ceases**, from a legal point of view, with the completion of 18 years of age. In some cases it is possible to continue the placement until the age of 21 on the basis of specific projects and prior permission of the Juvenile Court¹⁸.

Foster care and unaccompanied foreign minors

After having briefly analyzed the regulatory references on foster care, it is important to try to understand how these are concretely implemented in our country, in particular with regard to a peculiar category of people in need of protection and safeguard. We refer to unaccompanied foreign minors that are those **minors located in the Italian territory without their parents or other adults legally responsible for their assistance or representation**. The context is that of completely alone minors or who live with adults other than parents who are not guardians or foster parents on the basis of a formal decision (these children are thus deprived of legal representation according to Italian law).

It is debated whether minors living with relatives within the fourth degree (brothers, uncles, cousins, etc.), that aren't guardians or foster parents on the basis of a formal decision (so called foster parents *de facto*), are to be considered or not "unaccompanied minors". Some believe that they should be considered so, while others feel that they are not to be considered "unaccompanied" because Italian law does not require a formal measure in case of foster care with relatives within the fourth degree. The Committee for foreign minors has differently expressed itself stating that are deemed to be "accompanied" minors entrusted with a formal measure to relatives within the third degree, while they are to be considered "unaccompanied" in the other cases¹⁹.

¹⁷ <http://www.comune.torino.it/casaffido/archivio/sussidiario-affido.pdf>, p. 35.

¹⁸ <http://www.anfaa.it/famiglia-come-diritto/affidamento-familiare/cose/in-breve/>

¹⁹ The Council Resolution of the 26th June 1997 states unaccompanied minors as "minors who are nationals of third countries and enter and stay in the territory of Member States without being accompanied by a responsible person and without obtaining the necessary authorization".

It is important to underline that the definition of unaccompanied foreign minor does not coincide with that of a child in a state of neglect²⁰: for example an unaccompanied minor may not be "abandoned" when hosted by relatives within the fourth degree, morally and materially able to look after him/her but without legal representation.

With respect to unaccompanied foreign minors is worth noting that, for them, the applicability of the foster care institution – as above described and analyzed - finds its basis in the **non-discrimination principle** enshrined by the Convention on the rights of the child of 1989, ratified and enforced in Italy by law no 176/91. The Convention establishes that all children, wherever they may be, have a number of rights which must be respected. As a result, the unaccompanied migrant minors should have the same rights as Italian ones. This principle has been confirmed also by Law 184/83 whose art. 37-bis provides that *"Italian law in matters of adoption, foster care and measures necessary in cases of urgency applies also to the foreign child lying in the State in a situation of abandon"*.

First of all, no difference should be made between forms of foster care for Italian minors and for other minors present, for whatever reason, on the national territory. In this respect also the UN Guideline no 140: *"Unaccompanied or separated children already abroad should in principle enjoy the same level of protection and care as national children in the country concerned"*.

The normative reference is therefore always the Law 184/83, although the receivers' peculiarity involves some considerations ²¹:

- This kind of foster care is first and foremost a response **to the minor** and is not oriented to the support and rehabilitation of the family of origin (far away and often unknown). This form of hospitality integrates, implements and, to some extent, reviews the objectives of foster care, as the relationship with the original family is not predicted nor foreseen. The aim is to offer the child a warm relational context, emotionally rich, but aimed to support him/her in the project of future autonomy.

- Therefore, we face a specific form of family hospitality and we must consider the conditions of implementation and the expectations of the subjects involved in order "to use properly this precious resource". *"In determining appropriate care provision, the diversity and disparity of unaccompanied or separated children should be taken into consideration on a case-by-case*

According to the rules of the Committee for foreign minors (D.P.C.M. 535/99 art. 1) the unaccompanied foreign minor is defined as the minor not having Italian citizenship or of other European States who, having not applied for asylum, is deprived of assistance and representation from parents or other adults legally responsible for him/her under the current Italian law.

²⁰ Able to justify a different measure: that of adoptability in accordance with articles 6 and ff. Law 184/83.

²¹ National round table on Foster care – considerations and proposals – of the 3rd October 2016

basis”²². Family hospitality must therefore be a **designed, monitored, supervised and accompanied** (by social service) **project**.

- The unaccompanied minors **are mostly adolescents**. It is therefore necessary to support policies and “accompanying actions to independence” as we deal with an increasing and particularly vulnerable age group as they are not able to cope with their adult-life away from their family/parental network of origin. Similarly, in the case of adolescents, it is necessary to provide policies and actions beside hospitality such as – for example – specific programs to promote their integration and education, internships, scholarships, free access to counselling and therapeutic services, if necessary.

This direction is also followed by **the Guidelines for Foster Care**, later better analyzed. In the no 224e we read:

"Foster care represents a useful intervention also for the unaccompanied minors, provided that it is activated with a specific plan that takes into consideration the context, the actors and the child migratory project".

As already mentioned the unaccompanied minors are children, in most cases, between 14 and 17 years, who arrive in Italy alone, following the routes used by illegal immigration with the aim, more often than not, to work to help the family at home and repay the debt contracted to organize the trip. They are in close and constant contact with their family members and ask to be given the opportunity to achieve autonomy as soon as possible, considering the approaching of the majority age.

The assignment of an unaccompanied foreign minor is complex because it deals with teenagers who are in a foreign and unknown country, without any key figures to rely on. The foster family, in addition to ensure a suitable environment for the child’s development, is called upon to facilitate the knowledge of the social context and the integration on the territory.

In such projects also cultural mediators should therefore be involved; they have the aim, among others, to facilitate mutual understanding, contacts and involvement of the natural family.

Foster care of unaccompanied foreign minors is a type of foster care, similar to the one for adolescents, but at the same time it also has its own features. The foster care project must be planned from the understanding of the migration project of every child, the reasons that have led him/her in our country and the relationship with his/her family. Starting from an in-depth analysis, carried out with the child itself, of at least these three factors, it may be possible to choose the best form of external foster care, which may involve families of the same cultural

²² UN Guidelines n. 141

origin, or a "normal" residential placement, as some initial experiences of successful integration between Italian families and foreign teenagers have recently proved²³.

Recommendation 224.e.1 *Administrations, through their social and health services, promote foster care - both full time and part time - of unaccompanied foreign children in Italian or foreign families and individuals, preferably culturally related (same language or religion), activating all the required actions to ensure the best possible match.*

Awareness and training

We have seen how families assume a key role in the context of foster care. It is therefore fundamental and necessary to offer them support.

Persons who agree to follow a foster child have an extremely important and delicate task. For this reason it is extremely important to train and support them. The information is an essential tool to ensure the accuracy of the message with regard to: reference legislation, time, project modalities, role of social services, associations, family networks and judicial authority.

In accordance with art. 1, paragraph 3, L. 184/83 the State, Regions and local authorities are responsible to promote training and preparation meetings for families and people who intend to host children in foster care. As we read in the *Subsidiary for professionals and families* ²⁴ the basic training course represents a minimum level of training, essential and preparatory to the foster care experience. More training activities (related to the awareness on the forms of solidarity or to continuing education, etc.) may be present in the territory, through private social contribution and with different contents, within a common planning, periodically built together with the CAF (Family Foster Care Center).

Usually attending a basic course is binding to start the foster care experience. The common thematic units, that need to be addressed in all basic courses, are:

1. the growth and development needs of the child or adolescent, psychological and educational growth dynamics in the family;
2. the child or the adolescent and the vulnerable family: the relationship with the child's family, the dual membership, the idea of family reunification, problems arising from the crisis of family relationships and traumas;
3. the foster family: skills, needs, resources, social networks; the upbringing in a foster family: the balance between ethics and affections;

²³ *New words for foster care*, Subsidiary for professionals and families, page 44

²⁴ *New words for foster care*, Subsidiary for professionals and families, page 144

4. the relationship with the social services: what is foster care (legal, psychological and social aspects), how social services work, what collaborating on a project with social services means, the logic of social planning, actors, when, how and why to make a project;
5. the dynamic attachment-separation and the end of the project;
6. the duties and responsibilities of a foster family.

In order to form Italian families available to be foster carers, even of foreign children, special attention should be paid to reference values, cultural and religious differences, also through the involvement in preparatory courses of representatives of foreign communities or experienced teachers.

In line with the non-discrimination principle, to unaccompanied foreign minors must be guaranteed the same protections as to minors in Italy. All minors have the same rights and have the need to see their needs fulfilled. We cannot, however, deny the existence of a different native context/background that legitimizes the fulfillment of specific and peculiar requirements. Therefore, selected families must be trained to welcome foreign minors, taking into account the above requirements.

Administrations activate awareness and training actions to raise the availability of families and individuals and prepare them for their meeting with the foreign child, including the involvement of communities or of foreign families in the territory²⁵.

It is essential to create a network around them that might help them from a legal, bureaucratic, academic and linguistic point of view.

These families should be aware and feel that they are part of a network: aware of the rules and contexts and supported to share strategies, actions and processes. It is necessary to promote and build complementarities between services and future families so that knowledge and approach can take place starting from shared relational contexts, mediated by professionals in order to promote the relationship, the knowledge and the beginning of a profitable relationship between the child and the family²⁶.

This network of families is also taken into account in the Guidelines; group membership can, in fact, encourage mutual support and relational and material help.

Recommendation 225.b.1 *"Promote placement in a foster family belonging to a network of families both in reception difficult situations, where you may need to have a support network of family relations, and in those areas where it is appropriate to clarify the usefulness of solidarity between families."*

²⁵ Recommendation 224.e.2

²⁶ National round table on foster care, *Unaccompanied foreign minors and foster care*, Considerations and proposals of the 3rd October 2016.

And this is exactly at what ELFO aims: promote in citizen and local communities a culture of solidarity, reciprocity and acceptance through widespread, capillary and integrated actions among the different public and private entities.

Weaknesses of the system

We have seen as Foster care, in addition to be a welfare institute is a measure that interests the culture of hospitality. However, the culture of hospitality in Italy is struggling to take off and, in fact, this institute is not very widespread yet, although known²⁷. The reasons are various.

Surely its necessary **temporariness** plays an important role in the choices of potential foster parents. From this feature, moreover, a set of questions to which the legislature has not responded, arises.

“Are 24 months (time established by law for the duration of foster care) enough to recover the family of origin, in order to bring the child in its original nucleus? And, if an extension of this period occurs (foreseen by law), what does it happen in the emotional and daily life of a child that remains for a long time in another family even if aware to have his/her own original family?

And what does it happen if the family is not recoverable?

And if at the age of 18 the family has not recovered, what does it happen to the child who has grown up for long in another family?”.

The temporary nature, then, in the law on foster care, as well as perceived by our legislature, is paradoxical. Paradoxical, because in order to safeguard the blood ties, the legislature has not been able to distinguish between the temporary difficulties and the irreversible ones of the original family, thus creating in practice many long-term foster care placements.

In fact, the law has omitted the likelihood that there may be irreversible difficulties in a family, continuing to consider the whole thing in a temporary family-problems perspective and delegating the adoption as a last resort only if it is established the moral and material abandonment of the child by the family of origin. When we refer to abandonment we speak of abandonment by both parents and relatives within the fourth degree who cannot or do not want to look after the child. The law on foster care, so, despite being a law with a worthy protection purpose, should be reviewed in relation to the *time factor* and reformulated in the interest of the child. The current legislation shows therefore severe weaknesses: it gives to biological parents a

²⁷ Dell’Arso Rita, “la tutela dei minori al di fuori della famiglia d’origine: criticità e punti di forza dell’affido familiare” Tesi di laurea in Diritti Umani e Storia del Diritto Internazionale

recovery-time (2 years, which could also be considered an adequate recovery-time), but it fails to look at the irretrievability of the biological family, it does not define properly the concept of temporality and does not invest much on the recovery of these families. The child, from this point of view, is protected by another adequate family, but often he/she suffers for the long waiting-time before the matching with a foster family and, in addition, he/she might find him/herself in a situation of unfeasible hope.

*Removal of a child from the care of the family should be seen as a measure of last resort and should be, whenever possible, temporary and for the shortest possible duration. [...]*²⁸.

This aspect of time might probably have a less decisive impact with regard to unaccompanied foreign minors for whom, as we have seen, the recovery of the original family, often far away or absent, it is not an important prerogative. However, other cultural and linguistic problems may arise to inhibit potential foster families.

Another problem that often occurs in foster care is that **families expect young children**, while statistics tell us that most unaccompanied foreign minors are teenagers. Also reception centers are meant for young Italian children, while a lighter hospitality - defined as semi-autonomy - is recommended; an hospitality which should also provide important services to foreign adolescents, such as job orientation and language courses²⁹.

As a result communities, that should only be temporary for a minor, become unfortunately their dwelling.

*“Use of residential care should be limited to cases where such setting is specifically appropriate, necessary and constructive for the individual child concerned and his/her best interests”*³⁰.

*“While recognizing that residential care facilities and family-based care complement each other in meeting the needs of children, where large residential care facilities (institutions) remain, alternatives should be developed in the context of an overall deinstitutionalization strategy, with precise goals and objectives, which will allow for their progressive elimination [...]”*³¹.

In the perspective of a necessary deinstitutionalization it is important to highlight the existence of different types of foster care which represent a *continuum* of interventions, ranging from "lighter" and less conventional, less institutional and requiring less training and support to families, to the

²⁸ UN Guideline n. 13

²⁹ <http://frontierenews.it/2014/09/affidamento-familiare-minori-stranieri-save-the-children-ottima-idea-momento-non-realizzabile>

³⁰ UN Guideline n. 20

³¹ UN Guideline n. 22

"heavier" and conventional ones, with greater need for institutional intervention and which require more training and resources for foster parents, as family situations to deal with are more complex.

If we put at the center of all, the theme of the evolving needs of each child, we observe that this open and plural conception of foster care is a direct consequence of the plurality of the evolving needs of children, of the plurality of family situations in which they live, of the complexity of the issues often faced by their families: it is therefore necessary, rather than optional, to use all facets of foster care in order to ensure an appropriate response to the needs of each child, rather than a standardized one³².

It is therefore important *"to perceive foster care as a broad platform capable of supporting different actions depending on the nature of the needs of the child, his/her family and the resources that the services and the local community are able to provide"* - **Recommendation 220.1.**

Some figures

In the 9th CRC Report (2015-2016) the lack of reliable, complete and comparable data in reference to the complex situation of children outside their original family is reported. Inhomogeneous methods of data collection from the Institutions in charge (Ministry of Labour and Social Affairs, ISTAT and now also Authority for Childhood and Adolescence) remain.

The latest data available are those provided by the Ministry of Labour and Social Affairs from which it emerges that **on the 31st December 2012** minors entrusted to relatives were 6.750 and 7.444 those entrusted to third parties. **The total number of minors in foster care** was therefore 14.194, slightly lower than those 14.255 placed in residential communities.

Ministerial survey has highlighted, in continuity with previous years, **the prevalence of the placement in residential services** rather than in third parties-foster care; we observe that every three children placed outside the family and parental circle, two are in residential services and one is in foster care, in spite of the priorities laid down by Law n. 184/1983, as amended, providing for the inclusion in family communities only *"where foster care is not possible"*³³.

Very high and increasing, moreover, is the percentage of foreigners among minors in foster care (16.6% of which 16.2% are unaccompanied foreign minors) and placed in residential facilities (30.4% of which 49.5% unaccompanied foreign minors)³⁴.

³² *New words for foster care*, Subsidiary for professionals and families, page 39

³³ National round table on foster care, consideration on the Italian situation, 24th March 2015.

³⁴ 9^o updated Report on the United Nations Convention on the Rights of the Child in Italy, 2015-2016

On the 31st December 2012, 74.2% of foster care placements were judicial and the data related to their duration leads to reflections: 56.7% of minors has been staying in foster care for more than two years, thus confirming that the practice of "long term" foster care is still a reality. No data is yet available with regard to the continuity of social care interventions towards children in foster care that **after 18 years old** still live with the foster parents. These children should be guaranteed the possibility of an administrative continuation and supports should be extended (including expenses reimbursement to families) up to 21 years.

Comparing data of 2012 with those from previous years there is a **progressive contraction of the total number of children outside their family**. In 2007 they were 32.400, in 2012 they were 28.449. In five years there has, therefore, been a decrease of 12%. This contraction affects both the placement in the community, with a -8% (which corresponds to the transition from 16.600 in 2007 to 14.255 in 2012), and family foster care with a -16% (equal to the reduction from 16.800 in 2007 to 14.194 in 2012). The fear, as already reported by the National Round Table on Foster Care comment to previous years data, is that, when changes are real (the fragmentation of data collection and monitoring systems prevents from giving this gap an absolute validity), the difference would indicate not a desirable "need" (which would be indicative of a greater capacity for prevention of departures and of a better health of families of origin) but the reduced ability to intervention of the juvenile protection system, caused by the continued contractions of welfare resources. This would be symptomatic of a serious and unacceptable "lack of protection" for an increasing number of children and young people³⁵.

With regard to the reception arrangements for the unaccompanied foreign minors, there is a clear **infringement of the non-discrimination principle**, given the organization of reception facilities only for foreign minors with authorization policies/standards that differ from those required for the educational communities by the regional regulations. Moreover, in these communities professionals trained in the ethno-cultural field lack, as well as professionals able to carry out adequate intervention in order to take account of the culture and of the family and social backgrounds of origin³⁶.

Measures and practical steps

Regarding the institutional side of foster care interventions, we must highlight the "**guidelines for foster care**" developed within the framework of the national project "*Un percorso*

³⁵ National round table on foster care, consideration on the Italian situation, 24th March 2015

³⁶ 9° updated Report on the United Nations Convention on the Rights of the Child in Italy, 2015-2016

*nell'affido*³⁷. This is a project launched in 2008 by the Ministry of Labour, Health and Social Affairs with the aim to revive the institution of foster care and to promote awareness and dissemination of foster care successful factors and best practices in our country.

From the regulatory point of view, the project refers to Law n. 184/83. The project has already led to:

- the creation of a database of services and experiences on foster care – constantly updated
- which provides the mapping of public and private realities operating in Italy and reports the most significant carried out projects³⁸;
- the implementation of a training organized in 4 national workshops³⁹;
- the creation of experience-exchanges (regional and cross-border thematic workshops)⁴⁰;
- the development of information and guidance tools regarding the institution of foster care,
- the drafting and publication of the **Guidelines for foster care** divided into three main areas:

1. subjects and contest;
2. characteristics and requirements for foster care;
3. the foster care path.

The topics addressed transversally deal with the organization of services, tools, and relations with the judiciary authority ⁴¹.

The interaction between the different actors is therefore a necessary prerequisite for foster care to achieve its purpose and develop. It is therefore essential to support the quality and effectiveness of foster care through training, updating and professional debate, monitoring of interventions, study and professional reflection⁴². In this regard also to the recommendation 331.3:

³⁷ In order to support the project and identify the detailed activities and programming phases, a Control Room, presided by the Ministry of Labour and Social Affairs has been activated. It is made up of representatives of the Department for the family, of the Regions and Provinces Conference, of the national coordination of services for foster care and of the National Documentation and Analysis Centre for children and adolescents.

³⁸ <http://www.bancadatiAffido.minori.it/>

³⁹ - Affidamento... affidamenti (Roma, aprile 2009);

- I centri e i servizi per l'affido familiare (Potenza, giugno 2009);

- Linee guida e prassi per l'affidamento familiare (Catania, settembre 2009);

- Servizi, affido e autorità giudiziaria (Genova, ottobre 2009).

⁴⁰ <http://www.minori.it/it/incontri-regionali-scambi-inter-regionali>

⁴¹ <http://www.minori.it/minori/linee-guida-per-laffido>

⁴² Justification to the Recommendation 122.c.1 of the Guidelines on Foster care

“ensure children, for which it has been activated a protection and care path, care by a multidisciplinary team, formed possibly by figures of social worker, psychologist and professional educator, integrated with other figures according to the problems of the child”.

Precisely in this context and in order to enhance the path of building a common and spread knowledge on foster care, the Ministry of Labour, Health and Social Affairs and the city of Genoa have signed in December 2008 a memorandum of understanding for the project *New Words for the Foster Care - Parole nuove per l'affido familiare*⁴³.

The project tested the application of the Guidelines in some territories and realities throughout the country (North, Central and South), in order to validate the "minimal" contents to which they must respond. This monitoring activity involved the Consortium Monviso and the municipalities of Trieste, Milan, Genoa, Florence, Alatri, Jesi, Caltanissetta, Bari and Salerno. The project ended with the **drafting of a document on the paths related to foster care and aimed in particular to operators and families** (a kind of vademecum), the **Subsidiary for professionals and families**, whose goal is to extend, expand and support the concepts, guidelines and principles expressed in the new national *Guidelines*. All this in order to build a common and shared understanding.⁴⁴.

The reform proposals on the subject of unaccompanied foreign minors

According to the most recent data made available by the Ministry of Labour and Social Affairs in September 2016, there **are more than 14.000 foreign unaccompanied minors in Italy**, 47% more than those present in the same period of the previous year. These are mainly male adolescents, close to becoming of age: only 7,3% are under 15 years old, while the 17-year-olds are 56%. Altogether the male component represents the 95% of the total, while the most represented countries of origin are Egypt (20.9%) and Albania (12.5%) followed by States of Central Africa (Gambia, Eritrea, Nigeria and Somalia)⁴⁵.

⁴³ The project started in February 2013 and has been coordinated by the Ministry of Labour and Social Affairs in collaboration with the, already mentioned, Control Room and the help of LabRIEF (Research and intervention Laboratory in family education) of the Department of philosophy, sociology, pedagogy and applied psychology (FISPA) of the University of Padua.

⁴⁴ <http://www.minori.it/percorso-affido>

⁴⁵ <http://www.istitutodeglinnocenti.it/?q=content/migranti-un-anno-il-47-pi%C3%B9-dei-minori-non-accompagnati-italia>

It is evident, therefore, as we deal with strongly increasing numbers that require suitable protection tools to minimize the risk for all children involved. Considering this data, over the last few years have been taken important reforms in the system of reception of this fragile segment of population, some of which are still being discussed (as those to increase the number of centers and services for unaccompanied minors).

Recently the draft law on **“protection measures for the unaccompanied foreign minors”**⁴⁶ has been adopted; it contains important reforms of the reception-system, such as:

- the integration of the reception of unaccompanied foreign minors in the reception-system of asylum seekers - point already implemented;
- the prevision that the child identification must be made within 5 days;
- a specific information technology system to track children;
- the promotion of foster care through the creation of a list of properly trained persons;
- the appointment of adequately trained guardians;
- specific measures for child victims of trafficking;
- support and integration measures when the child becomes 18 years old;
- the creation of a specific fund.

Italy is therefore the first country to have adopted an homogeneous legislation on the unaccompanied foreign minors rights⁴⁷.

In this perspective, considering the increasing number of unaccompanied foreign minors, the project ELFO might be an important contribution to the development and implementation of this law with the aim to protect this particular type of minors, more than others, vulnerable to phenomena of violence, exploitation and abuse.

Foster care and guardianship

Another tool for child's care, provided for the case where both parents exercising parental responsibility are missing, is represented by the institute of guardianship.

According to art. 343 c. c. "If both parents have died or for other reasons cannot exercise parental responsibility, guardianship is opened by the Court of the district where the principle place of business and interests of the child is ".

Guardianship is a replacement tool of the missing or unable parental figure, through the activities of a person, the guardian, officiating legal representation, administration and personal care⁴⁸.

⁴⁶ Draft Law A.C. 1658 –B (MP. Zampa and others)

⁴⁷<http://www.istitutodeglinnocenti.it/?q=content/migranti-un-anno-il-47-pi%C3%B9-dei-minori-non-accompagnati-italia>

“The guardian has the **care** of the person of the minor, **represents** him/her in all civil acts and **administers** the assets”⁴⁹.

With respect to the **care**, despite the reference to the same rules provided for parents (arts. 147, 315 bis, 316, 320) there are some differences. In fact, while parents, respecting the child's aptitudes, shall take decisions regarding the education and his/her dwelling freely, the guardian can only offer the most suitable solutions to the guardianship judge and only the latter is responsible for final deliberation, in particular in the field of education (article 371 cc). The guardian is not obliged to live with the minor nor have any maintenance obligation towards him/her. The sums necessary for the maintenance are found within the latter's heritage and determined considering its entity.

With reference to civil representation a distinction must be made between:

- personal acts

that require the consent or the consultation with the guardian. So for example the consent of the legal guardian is required in order to activate a consensual foster care; the guardian must also be heard in the procedure for ascertaining the state of abandonment of the child and also in the adoptive process. The minor's guardian must also be heard in the child's decision (ascertained that he/she is already 16 years old) to marry, as the permission of the Court is required;

- in the other civil acts

in relationships with institutions and with third parties (school enrolment, demographic offices, passports issue, asylum instance), in civil, criminal and administrative proceedings; privacy release forms and consents, concerning the legal sphere of the child.

Finally, with regard to the asset **administration**, the guardian has a personal, non-delegable power. The guardian, however, does not have full decision-making powers, but is subject to the permission of the guardianship judge or of the Court to proceed with the implementation of actions referred to in articles 374 and 375 c.c. or those acts exceeding the ordinary administration.

The appointment of the guardian is made by the Judicial Authority: the guardianship judge appoints the guardian and (in some cases) the (Pro-Guardian) as soon as he/she is informed of the fact which leads to the opening of the protection (article 346 c.c.). Regarding the choice of the guardian, the Civil Code provides that "*the guardianship judge appoints as guardian the person designated by the parent who has exercised the parental responsibility*" or, if not applicable, "*the*

⁴⁸ Municipality of Bologna in collaboration with Defence for Children International-Italia, *Quaderno operativo per tutori volontari di minorenni stranieri non accompagnati*, 2016, pag. 8.

⁴⁹ Art. 357 c.c.

choice of a guardian occurs preferably between ancestors or other close relatives and relatives in-law of the child's that, if necessary, must be heard" (article 348 c.c.). The provision stating that *"the judge, before the appointment of the guardian, orders the hearing of the 12-years old child or younger if capable of discernment"*⁵⁰ should be underlined. It follows that through the child's hearing it shall be possible to have a specific assessment of his/her needs and aspirations, so that the choice of guardian can fall on the most suitable person.

A **private citizen** who expresses its willingness and availability to act as volunteer guardian and that is recorded in a list held at the jurisdiction court, may be appointed guardian as well as an **institutional subject** which can be a natural or legal person. In practice the institutional guardianship, although it should be used only as a last resort, appears to be the most prevalent nationwide choice. The institutional guardianship refers to a protection measure exercised by the municipality or by the local authorities where the minor resides⁵¹.

This circumstance is even more frequent towards the unaccompanied foreign minors for whom the presence of ancestors or close relatives on the national territory is a quite rare chance. Also in this context the project ELFO must be considered important.

The guardian plays a fundamental role in the daily life of the child; is the one who helps the child to enforce his/her own voice, which promotes his/her interests and, more generally, acts to ensure that his/her rights are respected⁵². This role is even more important in relation to unaccompanied foreign minors, who constitute a particularly vulnerable group, at risk of various forms of violence and exploitation, including trafficking, both during the travel and on arrival and establishment in the country of destination.

In the common opinion, however, there is still an interpretation of the role of the guardian as a rather formal and bureaucratic matter where the aspect of legal representation is almost exclusively considered. Aspects related to the care of the minor and to the more general human and relational dimension, which should describe the role of the guardian as well as the effectiveness of its functions, are therefore omitted. Such a perspective does not seem to support

⁵⁰ Paragraph amended by art. 57, Decree Law 28 December 2013, n. 154, with effect from 7th February 2014. The previous paragraph stated: "the judge, before appointing the guardian, must hear the 16 years old minor".

⁵¹ *SafeGuard* – Safer with a Guardian – Analysis, perspectives and guidelines for an integrated guardianship system based on juvenile rights. Report developed by Defence for Children International Italia and the Association i Girasoli .

⁵² Safeguard pag. 11

the development of a meaningful relationship between the guardian and the child, but rather a relationship which is limited to formal meetings related mainly to administrative procedures.

Consider also that if guardianship and foster care are entrusted to different persons the guardian's powers-duties of care are compressed: it is for example the foster parent who maintains relations with the school or health authorities (art. 3 Law 184/83). In this case the guardian's child-care activity is limited to giving directions and monitoring the operations of the foster parent.

As in the case of foster care, even for guardianship it has been observed that most beneficiaries consist of subjects coming of age, particularly between 16 and 18 years old. In most cases we deal with adolescents with highly complex personal and family experiences, who come from countries where extreme poverty, war or dramatic social conflicts impede their survival.

There are also other considerations elaborated and summarized in the Practical Handbook for volunteer guardians of unaccompanied foreign minors⁵³ elaborated by the Municipality of Bologna; considerations that might be valid also for foster care. And, in fact, although the guardian plays a role of formal representation is also the one who takes care of the child, as well as the foster parent, and who is concerned, on the child's behalf and favour, to meet his/her needs and rights, in the absence of parental figures. Here some basic principles that should be adopted:

- Promptness of the appointment: the immediate appointment of a "third" guarantee figure is essential to increase care and decrease the risk factors to which the migrant minor is exposed.⁵⁴;
- Non-discrimination: according to Italian legislation every minor in Italian territory is entitled to maximum protection, irrespective of his/her nationality, status, gender and cultural background, in accordance with art. 21 of the European Charter on Fundamental Rights;
- Independence and impartiality: the guardian (and as we have seen also the foster parent) is the one that promotes the best interests of the child and for this he/she must be free from any actual or potential conflict or overlap of interests that might arise in the context of this role;
- Quality and suitability: given the delicate function and liabilities resulting from the assumption of the role of guardian (and we could say of the foster parent) a proper and continuous multidisciplinary training is required, as well as support and supervision that

⁵³ Municipality of Bologna in collaboration with Defence for Children International-Italia, *Practical Handbook for volunteer guardians of unaccompanied foreign minors*, 2016, page. 24

⁵⁴ The guardian should be appointed by the judge within 48 hours following the notification by the public authorities. However in practice, this term is not always followed; in some cases the guardian is appointed several months after the notification.

will allow to deal with the proper preparation any problematic or particularly complex situation;

- Sustainability: guardianship is a free institution. However authorities should put the guardian in a position to act and best perform his/her function, particularly ensuring him/her access to quality training, ongoing support during the period of guardianship, the covering of the expenses supported during the guardianship, an insurance coverage (considerations that apply to the foster parents too, considered that although these may be entitled to a subsidy, in fact rarely the same is paid);
- Participation: the minor must be informed on the guardianship measure and the role and functions of the guardian, in an understandable language and appropriate manner.

Similarities with foster care are therefore various.

In addition to exercise **legal representation** - this is a prerogative of the guardian and not always of the foster parent, unless appointed guardian - the guardian:

- ensures the *general well-being* of the child and responds to his/her needs;
- protects and promotes the *best interests* and, more generally, the rights of the minor.

In doing this, the guardian must act to develop a trusty relationship with the child, trying to understand the past, present, and future; he/she must provide the minor all the information concerning him/her and must be accessible at any time.

Accessibility that leads us to an important difference compared with the figure of the foster parent; the latter hosts the child by his/her own family, establishing with him/her a more direct and permanent relationship.

We have seen how, while the guardian tends to interpret his/her role as a rather formal issue, preferring the legal representation aspect and omitting aspects of the child's care and the more general human and relational dimension that should qualify his/her (of the guardian) role; on the other hand there are foster families that tend to load their role with too high emotional expectations, looking in the foster child for the satisfaction of their emotional needs and losing sight of the key of the institution itself: the best interests of the child; that is the same aim of guardianship.

It is therefore necessary, through a raising awareness and training process, to bring both figures together to a complementary dimension where we can find the right balance between needs and rights of the child, together with his/her emotional satisfaction.

Considering the indivisibility of the aims and objectives it is therefore essential to establish a dialogue between the two figures, an ongoing relationship. If we consider the core standards for guardians of unaccompanied minors, it is evident that they may also apply to foster parents, with

the only peculiarity of the standard n.9, considered that in the case of foster care the proximity to the minor is necessarily greater.

Standard 1:

The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.

Standard 2:

The guardian ensures the child's participation in every decision, which affects the child.

Standard 3:

The guardian protects the safety of the child.

Standard 4:

The guardian acts as an advocate for the rights of the child.

Standard 5:

The guardian is a bridge between and focal point for the child and other actors involved.

Standard 6:

The guardian ensures the timely identification and implementation of a durable solution.

Standard 7:

The guardian treats the child with respect and dignity.

Standard 8:

The guardian forms a relationship with the child built on mutual trust, openness and confidentiality.

Standard 9:

The guardian is accessible.

Standard 10:

The guardian is equipped with relevant professional knowledge and competences.

Differences between foster care and adoption – brief notes

Since there is often confusion between the two institutes, it is important to underline that foster care and adoption are two completely different measures and differ according to the following characteristics:

- **the temporary nature:** in foster care is, in fact, provided the return of the child within the family of origin. The adoption, on the other hand, is a process in which relations with the natural family are permanently interrupted;
- **the maintenance of relations with the family of origin:** foster care assumes for the entire duration, a constant and frequent relationship between the child and the family of origin; relationship that is interrupted in case of adoption;

- **return of the child in the family of origin:** is only suitable for foster care at the end of the period which prevented the family from taking care of its own child;
- **legal nature:** foster care does not change the child's relationship with his/her parents (from a legal point of view) while with the adoption the child acquires the *child status* of the new couple and its surname;
- **socio-economic status:** this is essential in an adoption in order to be accepted. The family that requires the adoption must possess certain objective requirements (age, a stable marriage or cohabitation) that for foster parents are not expected.

Confusion may arise from the fact that Law 184/83 in articles 22 and ff. states pre-adoptive foster care. It is, however, a particular kind of foster care that arises in the context of adoptability, where the child, before being adopted, is placed in the "chosen" family (the one considered better able to meet the needs of that child, based on a whole series of investigations conducted as part of the procedure of adoptability) for a certain period of time (one year, possibly extended for an additional year). Only after this period the juvenile court can issue the judgment in deciding whether or not to execute the adoption. It is, therefore, a foster care considered as a prerequisite for adoption.

Another hypothesis is that introduced by Law 173/2015 *on the right to emotional continuity of children in foster care* who introduced the art. 5-bis of the L.184/83 under which the judge who has to decide on the adoptability of a child **already placed in foster care** "*takes into account the significant emotional relations and stable and enduring relationship consolidated between the child and the foster family*". Obviously the latter must request to adopt him/her and must fulfil the requirements that the law already requires for future adoptive parents.

Final considerations

Foster care is therefore a complex institute that involves important aspects of our society: minors and their original families. Minors, who are the most vulnerable subjects and on whom our society should invest for the future; the concept of family, that in our Constitution is the cornerstone of society. Foster care affects the topic of solidarity, as the family that hosts the child in difficulty becomes available, through social services, to perform this task. Foster care affects foreign minors already in Italy and those arriving continuously as a result of migration flows.

Foster care is also about the problem of communities, family-homes and of all minors who are still placed in these institutes⁵⁵.

It is also an enriching experience for foster parents who, hosting a child, come into contact with a new story, a new network of relationships and accept the challenge of a unique adventure. Being foster parents means experiencing joy and gratification to help building new life paths and give value to its own availability, educational capacity and emotional richness⁵⁶.

Foster care as a key-resource that is first and foremost expression of true, real and genuine institutional responsibilities, combined with the **shared responsibility of adults in building a social parenting and a supportive and welcoming local community. "THEY ALL ARE OUR CHILDREN"**: "adult" responsibility is an experience that opens spaces, dreams, attention and makes of its own nation, its neighborhood, a place where it is possible to build "solidarity city" through a virtuous interaction between institutions (regions, local authorities, youth judiciary, ...) and skills of foster parents and of civil society. Foster care must therefore be considered as an expression of active citizenship able to promote, support and implement the culture of solidarity and hospitality.

Foster care, without doubt, is as an expression of shared responsibility between the different actors involved: social and health administrators and operators of public services, juvenile judges, teachers, educators, foster parents, the network of families, civil society. **It is the correct functioning of this context of shared public-private responsibilities that makes foster care and the single foster care project sustainable.** A context of co-responsibility that necessarily involves different subjects: the "sustainability" of this context of shared responsibilities makes the foster care experience possible.

In order to give practical and effective implementation to all this it is however essential to have adequate financial resources.

The continuous gradual **reduction of financial resources for the welfare system** (and thus the reduction of the Fund for Family Policies, Childhood and Adolescence Fund, Youth Services Fund) may cause the provisions and methodologies in support of foster care to become ineffective⁵⁷.

⁵⁵ Dell'Arso Rita, "la tutela dei minori al di fuori della famiglia d'origine: criticità e punti di forza dell'affido familiare" Tesi di laurea in Diritti Umani e Storia del Diritto Internazionale, pag. 3

⁵⁶ http://affidomilano.it/5/14_Norme_e_regolamenti

⁵⁷ Consider that the National Plan for children (in Italian:PNI) should be defined every two years. It is actually from 2004 that Italy has not a PNI. The PNI is a very important document because it contains the fundamental strategic lines and concrete commitments that the Government intends to continue to develop an appropriate policy for children and adolescents. Introduced in Italy by law 451/1997, it aims to give

A foster care project supports and resumes the original family in its parenting skills, does not leave alone the foster parents, supports networks and their associations, stimulates the local community in order to be able to express more and more human-rights, hospitality and solidarity culture; it gives value to the relationships between the different actors involved.

All this fails in the current social and institutional context, where the welfare-system is conceived and proposed as residual, continuously deprived from economic resources.

In the common awareness that preventive interventions - to accompany and support the original family, to support and implement the various forms of foster care - shall undoubtedly save money and, more importantly, reduce the use of institutionalizing measures, the following is considered **essential**:

- to invest resources in support of quality of life in **local communities**, monitoring and implementing processes of social cohesion and promoting the culture of human rights, of hospitality and solidarity;
- to invest in **professional Social Service of local authorities** (children protection and family services) and **Foster Care Services** monitoring the correct implementation of the workforce. The professional work to support the family of origin and to monitor the foster care project is not practicable with the existing workforce – numerically limited – exposed to an excessive turnover, with often precarious employment contracts, supported by questionable forms of "outsourcing" of the service;
- to invest in training agencies and in particular in the school in order to be a place of citizenship education, a welcoming place for all children and a competent observatory of their discomfort, a subject in network with other agencies involved;
- to support the original families, providing them with the economic-social supports, care and benefits they need, during the foster care and at the end of it;
- to ensure to foster parents the refund of all the expenses adequate to children needs, as well as proper support, particularly for complex situations such as those related to children with disabilities and/or mental disorders;
- to ensure real **socio-medical integration, priority and free access** to services, resources of municipalities and to public health service, with special reference to psychological services and - if necessary – psychotherapeutic ones;

priority to programmes relating to children and to strengthen cooperation for the development of the children in the world. The PNI locates the funding arrangements for the protection of rights and interventions as well as the forms of enhancement and coordination of actions taken by public administrations, regions and local authorities - <http://www.gruppocrc.net/Il-Piano-Nazionale-d-azione-per-l>

- to ensure a real, also economic, support to the independence of foster care children, after their becoming of age;
- to promote the experiences of **networks and family associations** as a major and irreplaceable place of expression of family solidarity and social parenthood, and provide some form of financial support to the family network activities, carried out by the networks and family associations themselves.

Foster parents are volunteers⁵⁸ who play an important role in the foster care project; they should not be considered as mere users of the services: they must be recognized as partners by the operators of social care and health services, juvenile courts and, even through groups and associations to which they belong, by administrators (mayors, council members, etc.). This means that foster parents are active players who must be prepared, evaluated and supported in executing foster care, but also heard by operators and juvenile courts before taking relevant decisions on the child or teen placed by them: it is with the foster family that the minor lives. We believe that on these issues we must secure synergies and from here restart to continue to support the right of children and teens to grow in a family⁵⁹.

⁵⁸ In the Italian system, the foster care family has a monthly grant to cover expenses related to the child that in most cases varies between € 300 and € 400 per month. Only in some case the grant is about of €500/600 per month. In most cases this grant is neither recognized nor provided, especially in the Centre-South of Italy. – National Round Table on Foster Care, , Public note *The non “business” of foster care* , 13rd January 2014.

⁵⁹ National round table on foster care, contribution to the conference CNSA of the 4th March 2011, “ the welfare system: cost cutbacks and lack of ELC (Essential Levels of Care)”.