

# The role of an effective guardianship for the protection of children's rights

## Guardianship for unaccompanied children in Italy



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**MARS Intensive Training Course - “International protection and rights of minors in the European Union” - January, 23rd 2021**

# Some definitions and general principles

## Who is the guardian?

Each country has its own definition. Even on the European and the international level there are some discrepancies about the meaning.

According to the Italian Independent Authority for Children and Adolescents, the **guardian** is *"the person who, free of charge and voluntarily, is not only willing and able to legally represent an unaccompanied foreign minor, but is also a motivated and sensitive person, attentive to the relationship with the minor, interpreter of his/her needs and problems"*.

This role was formally established by **Art. 11** of the Italian **Law n. 47/2017** ("Zampa" Law), which states that *"at each Juvenile Court a list of voluntary guardians is established, in which private citizens, selected and adequately trained, available to take on the guardianship of an unaccompanied foreign minor or several minors when the guardianship concerns brothers or sisters, can be enrolled"*.

## What are his/her main duties?

- To ensure that the minor's access to his/her rights is guaranteed without any discrimination;
- to promote the psychophysical well-being of the minor;
- to follow the education and integration paths of the minor, verifying that his/her abilities, natural inclinations and aspirations are taken into account;
- to monitor the conditions of reception, safety and protection of the minor;
- to manage any assets of the minor.

# International, European and Italian legal framework relating to guardianship

- **United Nations Convention on the Rights of the Child (CRC) adopted in 1989** → best interest of the child → Appointing a guardian.
- **General Comment 6 (2005)** = States shall create the underlying legal framework and take steps to appoint guardian asap and keep it.
- According to **Art. 3.3 of the consolidated version of the Treaty on EU and the Charter of Fundamental Rights of the EU (art. 24)**, the rights of the child must be protected within Member States (MS).
- According to **Art. 31 of Dir. 2011/95/EU** (“Qualification Directive”) *as soon as possible after the granting of international protection MS shall take the necessary measures to ensure the representation of unaccompanied minors by a legal guardian or [...].*
- **Directive 2011/36/EU** on Preventing and Combating Trafficking in HB and Protecting its Victims.
- **Directive 2013/32/EU** on common procedures for granting and withdrawing international protection.
- According to **Art. 24 of Dir. 2013/33/EU** (“Asylum Reception Conditions Directive”) *MS shall as soon as possible take measures to ensure that a representative represents/ assists the unaccompanied minor to enable him/ her to benefit from the rights [...].*

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- **Resolution 2136 (2016)** of the Parliamentary Assembly of the Council of Europe on Harmonising the protection of unaccompanied minors in Europe.
  - **Italian Law n. 47/2017** (“Provisions concerning protection measures for unaccompanied minors”).
  - **Italian Civil Code Articles 343 - 389** (“Della tutela dei minori”).
  - According to **Article 357 of Italian Civil Code** the guardian takes care of the minor's person, represents her/him in all civil acts and administers his assets.
  - Italian law n. **184/1983 art. 3(2)**.
  - On 11 December 2019, the Committee of Ministers of the Council of Europe adopted **Recommendation CM/Rec(2019)11 on effective guardianship for unaccompanied and separated children in the context of migration**. The Recommendation is based on **nine essential principles\***.
  - **Recommendation CM/Rec(2019)4** of the Committee of Ministers of the Council of Europe on Supporting Young Refugees in Transition to Adulthood.
  - **2020 Ethical Charter of the Voluntary Legal Guardian** promoted by the Italian Authority for Children and Adolescents (not legal rules).

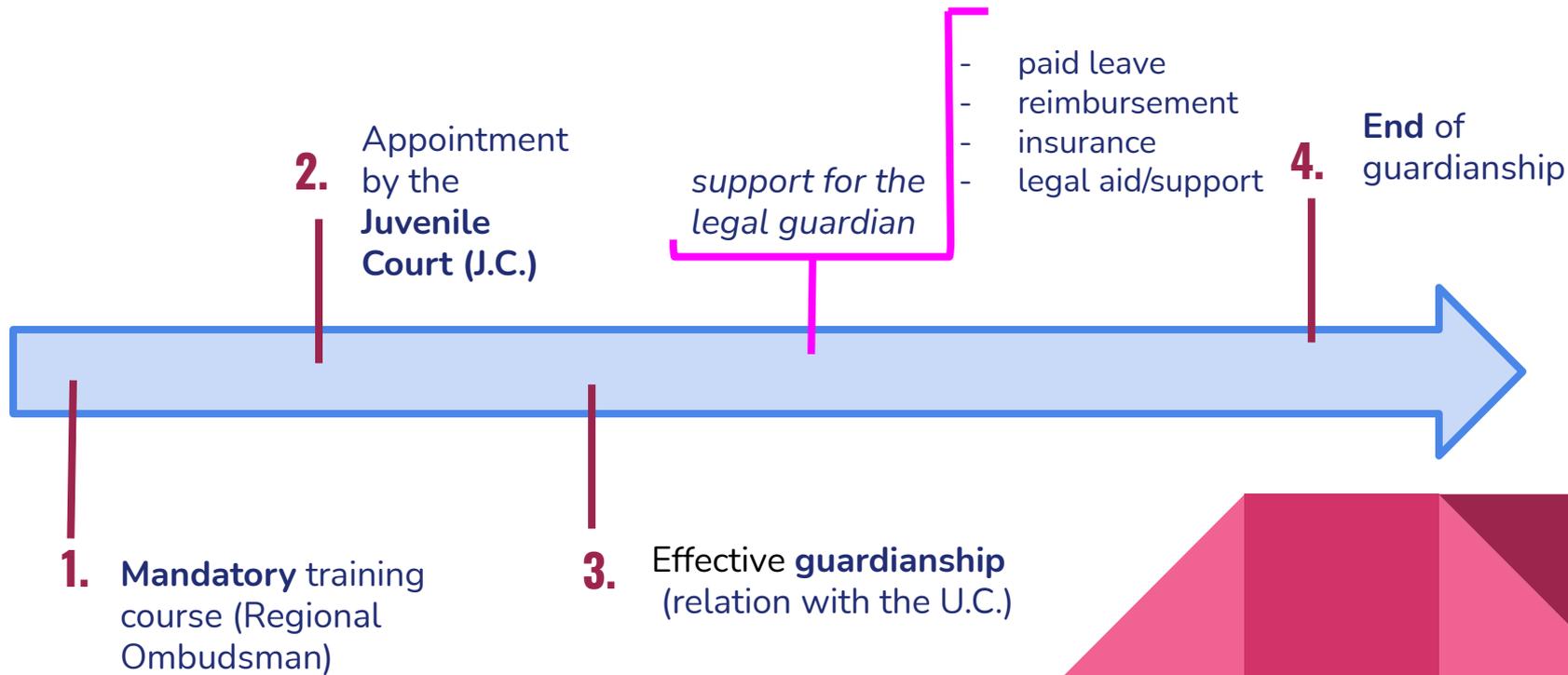


**\*Recommendation CM/Rec(2019)11 on effective guardianship for unaccompanied and separated children in the context of migration.** The Recommendation is based on **nine essential principles.**

## PRINCIPLES

1. Protection of the rights of unaccompanied and separated children in migration through guardianship
2. Guardianship frameworks and measures
3. Appointment or designation of guardians without undue delay
4. Legal responsibilities and tasks of guardians
5. Information, access to justice and remedies, including child-friendly complaint mechanisms
6. Institutional measures
7. Resources, recruitment, qualifications and training
8. Co-operation and co-ordination at national level
9. International co-operation

# Voluntary guardianship for Unaccompanied Children (U.C.) in Italy: the main phases



# Main issues

## 1. Mandatory training course (by Regional Ombudsperson)



**National Guidelines\*** on the contents of the course, but there are still many differences between regions.

## 2. Appointment by the Juvenile Court



- a. Average age of the U.C. is 16-18: the J.C. must be **quick**
- b. Criteria for U.C. - guardian's match?

\* Autorità Garante per l'Infanzia e l'Adolescenza:

<https://www.garanteinfanzia.org/sites/default/files/Linee%20guida%20tutori%20volontari.pdf>

# Main issues (i)

## 3. Effective guardianship

- a. social and institutional **acknowledgement** of the role
- b. relationship with the U.C.: time, trust, multiple appointments (...)
- c. support for the guardian (peer to peer group, psychological assistance, continuing education ... ).
- d. total lack of a “protection system” for the guardian: insurance for civil liability, reimbursements of expenses for the activity performed and work leave (paid or unpaid).

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- e. age assessment practices (July 2020: National Protocol on multidisciplinary approach).
- f. gaps in the referral system for trafficking/smuggling victims
- g. role of the guardian when the minor leaves the protection system.

# Main issues (ii)

## 4. End of guardianship

### b. What can be done



The end of the voluntary guardianship does not mean total achievement of the goals or the end of the **unaccompanied child's (U.C.)** needs (at the moment strictly connected to the duration of the guardianship).

According to FRA and AGIA *“it is desirable that the relationship between the former volunteer guardian and the child continues also after the child reaches the age of majority”*, as the new role of the former guardian should and could grant formal and informal support in the extremely vulnerable phase of transition to adulthood and independence.

### a. Reaching the age of majority may imply:



Obtaining a form of international protection (asylum, subsidiary protection, special permit).



Obtaining a study/work permit (passport holders)



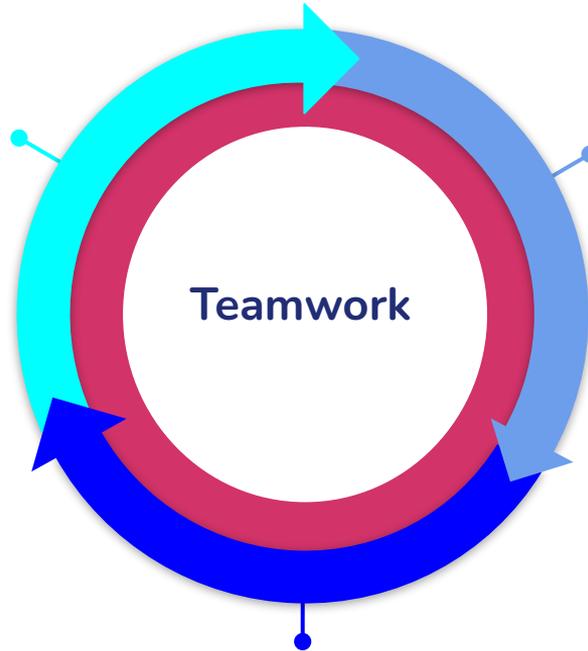
Obtaining after-care under **“Prosieguo amministrativo”**: Article 13 of Law No. 47/2017 enables the Juvenile Court to assign the child, if requested by social services or legal guardians, a period of after-care that may only last until **21 years of age**, when the **ex-U.C.** is undertaking a social inclusion programme but still needs support to become autonomous after reaching the age of majority.



# Strengths of Voluntary Guardianship in Italy

## Individual relationship:

the italian volunteer guardianship model: guardians must be the point of reference for the child, which requires establishing a relationship of trust.



## More time / quality time:

according to **Article 11 of Law No. 47/2017**, “Legge Zampa”, a volunteer guardian, once appointed, can assume guardianship for up to three unaccompanied children at a time.

## More resources (personal and professional):

the role of networking in the process of integration and community building.

## References/useful links

- [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-it-guardianship-legal-update\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-it-guardianship-legal-update_en.pdf)
- [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-guardianship-systems-in-the-eu-summary\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-guardianship-systems-in-the-eu-summary_en.pdf)
- [https://www.unhcr.it/wp-content/uploads/2019/11/Report-UNHCR\\_UNICEF\\_OIM-A-un-bivio.pdf](https://www.unhcr.it/wp-content/uploads/2019/11/Report-UNHCR_UNICEF_OIM-A-un-bivio.pdf)
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