



REPUBLIC OF SAN MARINO

We the Captains Regent of the Most Serene Republic of San Marino

Having regard to Article 4 of Constitutional Law no. 185/2005 and to Article 6 of Qualified Law no. 186/2005;

Hereby promulgate and order the publication of the following Ordinary Law, approved by the Great and General Council during its sitting of 27 April 2021:

LAW no. 79 of 30 April 2021

PROVISIONS ON THE RECEPTION OF UNACCOMPANIED FOREIGN MINORS

Art. 1

(Purpose)

1. The purpose of this Law is to regulate the legal status of unaccompanied foreign minors and to ensure that they can be placed and grow up in a family environment capable of improving their life chances, by guaranteeing them moral, educational, training and material support.

Art. 2

(Scope)

1. This Law shall apply to unaccompanied foreign minors who, due to their subjective and objective conditions and personal experience, are deprived of moral, educational, training and material assistance and are exposed to conditions of threat and violence, or in any case to possible traumatic events, and who, pursuant to international conventions and San Marino law, can be received in the territory of the Republic.

Art. 3

(Definitions)

1. For the purposes of this Law, "unaccompanied foreign minors" shall mean minors who are not nationals of San Marino or of a Member State of the European Union, who lack moral, educational, training and material assistance and are not represented by their parents or by adults legally responsible for them pursuant to the laws in force in San Marino, who are living in migrant centres or reception facilities, and for whose care and subsistence any adults resident in the Republic are willing to take charge.

Art. 4

(Authorised Organisations)

1. "Authorised Organisations" shall mean organisations, bodies or associations, both San Marino and foreign, whose purpose is, *inter alia*, the protection of minors placed in migration centres and reception facilities.
2. After hearing the Minister of Foreign Affairs, the Congress of State shall adopt, by its own decision, within sixty days from the entry into force of this Law, the list of the Organisations authorised, in the Republic of San Marino, to carry out foster care procedures relating to unaccompanied foreign minors.
3. In order to obtain the authorisation from the Congress of State, the organisations, bodies or associations concerned shall send, by e-mail to the Office for Intercountry Adoption and Foster Care referred to in Article 12, an application briefly describing their activity and the place(s) where they operate. This application shall be accompanied by a digital copy of the memorandum of association, the articles of association and any amendments made in the meantime, as well as the list of members of the governing bodies of the organisation.
4. The list referred to in paragraph 2 may be amended by Congress of State decision.
5. The requirements referred to in paragraph 3 may be amended by a delegated decree.

Art. 5

(Foster carers' requirements)

1. Foster care of unaccompanied foreign minors shall be allowed to single individuals or spouses, who are San Marino nationals or residents in San Marino and who meet the following requirements:
 - a) Having attained 25 years of age;
 - b) Being able to educate and financially support the minors they intend to foster;
 - c) Being at least eighteen years older and no more than fifty years older than the minor in foster care;
 - d) Favouring contacts between minors in foster care and their family of origin, where possible.
2. The financial support referred to in paragraph 1, letter b) may also be provided by third parties who are able to guarantee such support until the minor reaches the age of majority.
3. More than one minor may be fostered, priority being given in such cases to sibling relationships.
4. The age limits provided for in paragraph 1 may be waived in case of fostering of siblings, provided that such limits are complied with for at least one of them.

Art. 6

(Decree of eligibility for fostering)

1. Anyone intending to become a foster carer shall submit an application to the Minors' Service - Minors' Protection Simple Operational Unit providing all documents necessary to demonstrate compliance with the requirements set forth in Article 5.
The Minors' Service - Minors' Protection Simple Operational Unit shall forward the application to the Judge (Commissario della Legge), together with its opinion.
2. Upon request of the Minors' Service - Minors' Protection Simple Operational Unit, the decree of eligibility for fostering shall be promptly issued by the Judge, following the favourable opinion of the Minors' Service - Minors' Protection Simple Operational Unit.
3. The Judge's decree declaring eligibility for fostering shall contain the following information on the foster carer, which shall be transmitted by the Minors' Service - Minors' Protection Simple Operational Unit:
 - a) Personal, family and health situation;

- b) Profession pursued and economic capacity to support the minor, taking into account the provisions of Article 5, paragraph 2;
 - c) Social background;
 - d) The reasons for initiating the foster care procedure;
 - e) The characteristics of the minors to be fostered.
4. The single individual or spouses declared as foster carers shall take on the role of guardians and shall legally represent the minors in foster care.
5. Eligibility for fostering shall lapse three years after notification to the applicant of the decree declaring eligibility if the applicant fails to complete the foster care procedure; however, eligibility for fostering may be reapplied for. If the foster care procedure is initiated before the time-limit laid down in this paragraph, it shall last until the end of the procedure, without prejudice to any unjustified delay attributable to the applicant.
6. Upon notification by the Minors' Service - Minors' Protection Simple Operational Unit or *ex officio*, the Judge may, for any reasons demonstrating the foster carer's ineligibility for fostering, revoke at any time the declaration of eligibility by means of a motivated decree, after hearing the single individual or the spouses concerned, and after having obtained all appropriate information. The revocation of eligibility, which has become final pursuant to paragraph 7 below, shall preclude the continuation of the foster care procedure or the initiation of a new procedure pursuant to paragraph 5.
7. The decree refusing or revoking eligibility may be appealed against before the Judge of Appeal in civil matters by lodging an appeal with the Civil Registry within ten days of notification. The file shall be immediately transmitted to the Judge of Appeal, who shall fix the hearing within 30 days. The reasoned decision shall be filed within ten days of the hearing, shall not be appealed against and shall be immediately enforceable.
8. Once the revocation decree has become final, it shall be notified without delay by the Judge to the Office for Intercountry Adoption and Foster Care and to the Minors' Service - Minors' Protection Simple Operational Unit.

Art. 7

(Procedural steps for the completion of the foster care procedure)

1. Once the decree of eligibility for fostering has been issued, the applicant shall sign an application form at the Office for Intercountry Adoption and Foster Care. Such form shall also contain the obligation, if the foster care procedure is completed with the minor's entry into the Republic, to be subject to supervision by the Minors' Service - Minors' Protection Simple Operational Unit until the minor reaches the age of majority or, if the foster care procedure is concluded before that date, until the end of such procedure.
2. On pain of inadmissibility, the applicant shall submit, together with the application:
- a) A certified copy of the decree of eligibility for fostering, which has not expired;
 - b) A certified copy of the opinion by the Minors' Service - Minors' Protection Simple Operational Unit, filed pursuant to Article 6, paragraph 1 of this Law.
3. The Office for Intercountry Adoption and Foster Care shall inform the persons concerned that, if one or more minors are placed with them for fostering purposes, they shall have the duty to arrange, at their own expenses, for their transfer from their State of current residence, with due respect for their dignity and sensitivity, including by accompanying them during their journey.
4. The authorised Organisations on the list referred to in Article 4 shall transmit to the Office for Intercountry Adoption and Foster Care any documents concerning the minors and indicating their identity, status as unaccompanied minors, social environment, personal development and medical history of the minors and their family, if known, as well as their special needs. The Office for Intercountry Adoption and Foster Care shall promptly transmit the documents to the Minors' Service - Minors' Protection Simple Operational Unit.

5. After receiving the documents, the Minors' Service - Minors' Protection Simple Operational Unit shall convene the single individual or the spouses concerned to examine the foster care proposal transmitted by the authorised Organisations.
6. The examination of the proposal shall take place in the presence of a representative of the proposing authorised Organisation, connected by video conference where he/she cannot be physically present.
7. Acceptance of the proposal shall:
 - a) Include a written undertaking by the applicants to meet the minor in his/her current location, in accordance with the procedures established by the authorised Organisation, in order to finalise the foster care procedure;
 - b) Be signed and countersigned by the representatives of the Office for Intercountry Adoption and Foster Care and of the Minors' Service - Minors' Protection Simple Operational Unit;
 - c) Acknowledge the favourable opinion orally expressed by the representative of the Organisation during the examination of the proposal.
8. In case of acceptance of the proposal by the applicants, the Office for Intercountry Adoption and Foster Care shall inform as soon as possible the authorised Organisation from which the documents have been received and shall request it to notify the time and place of the meeting with the minor. It shall also inform the Organisation that, if at the end of the meeting the applicants express their willingness to continue with the procedure, and also the Organisation expresses a positive opinion, the same willingness to continue the procedure shall be deemed to have been expressed by the Minors' Service - Minors' Protection Simple Operational Unit and by the Office for Intercountry Adoption and Foster Care.
9. Once the foster care procedure has been completed, the Office for Intercountry Adoption and Foster Care shall transmit the acceptance of the proposal to the Judge, who shall promptly issue the foster care decree, shall transmit it to the Vital Statistics Office pursuant to Article 10, paragraph 1, and shall entrust the Minors' Service - Minors' Protection Simple Operational Unit with the function of supervising the progress of the foster care procedure.

Art. 8

(Protection of a foreign minor)

1. Pending the completion of the foster care procedure, or in case of revocation of foster care, the Judge shall, without delay, appoint an interim guardian and shall adopt any measures deemed appropriate in the minor's best interests.
2. For the appointment referred to in paragraph 1, the Judge shall draw from the appropriate register of qualified guardians for the guardianship of minors or, if no guardians are available, the Judge shall appoint a guardian *ex officio*.
3. The guardianship shall cease when the unaccompanied foreign minor is placed with a foster carer, or when a new foster carer is identified following revocation of foster care.
4. The Minors' Service - Minors' Protection Simple Operational Unit shall monitor the appropriateness of the support provided by the foster carers who have received the foreign minor.
5. In the application of the reception measures referred to in this Law, the best interest of the minor shall be a priority, in order to ensure living conditions appropriate to minors with regard to their protection, well-being and development, in accordance with Article 3 of the Convention on the Rights of the Child of 20 November 1989.
6. The minor concerned by the procedure under this Law shall be duly informed by the proposing authorised Organisation of the consequences of foster care.
7. The Authorities and authorised Organisations involved in the procedure shall take due account of the wishes and opinions expressed by the minors, in particular where they are over the age of 14.

Art. 9

(Revocation of foster care)

1. Revocation of foster care shall take place if there is a serious cause preventing its continuation, taking into account the minor's best interests.
2. Revocation shall be declared by the Judge, upon recommendation of the Minors' Service - Minors' Protection Simple Operational Unit or *ex officio*, by means of a judgement. The decree issued by the Judicial Authority shall not entail the revocation of residence referred to in Article 10.
3. Once it has been established that the relationship between the foster carer and the minor is unsuitable to continue, the Minors' Service - Minors' Protection Simple Operational Unit shall promptly identify a new foster carer for the minor.
4. If the identification of a new foster carer lasts long due to the difficulties in finding one, and the Judge has declared and justified in the decree referred to in paragraph 1 that it is not in the minor's best interest to continue living with the foster carer referred to in paragraph 1, the Minors' Service - Minors' Protection Simple Operational Unit shall inform the Judicial Authority thereof and shall place the minor for a short time, in any case not exceeding 60 days, which can be extended for another 60 days, preferably with known families registered with San Marino associations, as referred to in Article 4, paragraph 1, residing in the Republic's territory or, if not available, with communities or bodies with which the Republic of San Marino has entered into specific agreements. During this period of time, the Minors' Service - Minors' Protection Simple Operational Unit shall endeavour to find a suitable foster carer.
5. In the situation referred to in paragraph 4, the Judge shall appoint an interim guardian to the benefit of the minor concerned by a decree of revocation of foster care.
6. Taking into account the maturity of the minor, the latter shall be consulted on the measures to be adopted under this Article.

Art. 10

(Transit Visa and Residence)

1. Minors concerned by a foster care decree shall be registered by the Registrar of the Vital Statistics Office in the register of the resident population in accordance with Article 16, paragraph 6bis of Law no. 118 of 28 June 2010 and subsequent amendments.
2. After receiving from the foster carers, the authorised Organisation or the competent foreign authority the documents concerning the unaccompanied minors fostered by residents in the Republic of San Marino, the Ministry of Foreign Affairs shall obtain, through the competent diplomatic channels, the transit visa for the Italian territory, if the minors are not already on that territory.
3. Foster carers shall be obliged to promptly inform the Juvenile Judge and the Ministry of Foreign Affairs of the minor's entry into the State of San Marino.

Art. 11

(Training function and other functions of the Minors' Service - Minors' Protection Simple Operational Unit)

1. The Minors' Service - Minors' Protection Simple Operational Unit, together with the Office for Intercountry Adoption and Foster Care, shall assist and provide the necessary information to the foster carer throughout the foster care procedure provided for by this Law.
2. With a view to achieving the objectives set forth in this Law, the Minors' Service - Minors' Protection Simple Operational Unit shall organise meetings or seminars on foster care, also in collaboration with the Office for Intercountry Adoption and Foster Care and with San Marino or foreign associations or bodies.

3. The Social Security Institute shall ensure adequate training on foster care for the staff of the Minors' Service - Minors' Protection Simple Operational Unit.

Art. 12

(Coordination provisions)

1. Pursuant to Article 5 of Law no. 188 of 5 December 2011, and in addition to the functions provided for in Article 4 of Annex A to Law no. 188 of 5 December 2011, the Legal Affairs Directorate of the Department of Foreign Affairs shall also be entrusted with the function of coordinating the foster care procedure for unaccompanied minors as provided for under this Law, and of maintaining relations with the organisations, bodies or associations competent in the field of foster care, in order to ensure the proper application of international treaties.

Art. 13

(Tax regime, family allowances and benefits)

1. All acts relating to the provisions of this Law shall be exempt from stamp duties and registration fees.
2. Starting from the tax year 2021, all tax provisions concerning family allowances and the right to education applicable to adoptive parents shall apply, *mutatis mutandis*, in favour of the foster carers referred to in this Law.

Art. 14

(Establishment of a Fund to support foster families)

1. A specific delegated decree may regulate the establishment of a Fund for the economic support of foster families. Monetary donations by private parties interested in the implementation of the foster care projects referred to in this Law shall be allocated to this Fund.
2. Anyone participating in the financing of this Fund shall be entitled to a deduction of the amounts paid, within the limits indicated in point 14 of Annex A to Law no. 166 of 16 December 2013.

Art. 15

(Benefits in favour of foster carers)

1. Foster carers shall be entitled to the benefits provided for by Law no. 43 of 31 March 2014 and subsequent amendments and integrations.

Art. 16

(Integrations to this Law)

1. The provisions of this Law may be integrated by means of a delegated decree.

Art. 17

(Financial Assistance Fund)

1. In the event that the Judge issues a decree for the revocation of foster care and the minor shall inevitably be placed with a community or body as referred to in Article 9, paragraph 4, the costs shall be paid from the budget chapter established for this purpose at the Social Security Institute.

Art. 18
(Entry into force)

1. This Law shall enter into force on the fifteenth day following that of its legal publication.

Done at Our Residence, on 30 April 2021/1720 since the Foundation of the Republic.

THE CAPTAINS REGENT
Gian Carlo Venturini – Marco Nicolini

THE MINISTER OF
INTERNAL AFFAIRS
Elena Tonni