INTERNATIONAL ADOPTION IN THE ITALIAN LEGAL SYSTEM

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International adoption is the adoption of a foreign child in its own country under the law and in front of the local Authorities.

A characteristic of international adoption is that the child and the adoptive parents-between which a definitive "filial- parent relationship" is established - are citizens of different countries. It represents the meeting of two different cultures, the instrument through which a mother and a father who are on side of the world, can respond to the cry for help of a child who lives on the other side.

International adoption is an instrument for the protection of foreign minors in a state of abandonment and can intervene only in cases in which no other form of life within a family is possible.

The spirit of the Italian Law, such as the International Convention of the Hague on the protection of minors and cooperation of 29 May 1993, ratified by Statute n. 184 of May 1983, recently amended by Statute n. 149 of 28 March 2001, in fact, is based on the principle of subsidiary of international adoption: that is, adoption must be the last path to pursue in order to secure the interest of a child where there has been no possibility of helping it within its own family (where it exists) and its own country of origin.

The Hague Convention drew up incisive forms of guarantee to ensure respect for the fundamental rights of the minor also in the sphere of the adoption procedure, recognizing furthermore the principle that international adoption must be subsidiary to every other form of protection of minor in difficulty.

As a priority, a child must be placed for adoption in his/her own country or in a cultural, linguistic and religious environment akin to his/her community of origin. A decision in favour of international adoption should be taken only after an unsuccessful search has been conducted for a satisfactory solution in the child’s country of origin.

Thus, the Italian legislation provides these forms of minor’s protection:

- foster care, in case of temporary unsuitability of the original family;
- placement in a family-like sheltered community or, if this is not available, in a public or private welfare institution;
- in the last resort, adoption, when the child is totally deprived of the moral and material support of his or her parents and relatives.

Foster placements are normally decided by the social-welfare services. A child without a family temporarily can be taken into care until he/she is assigned to another family that ensures his/her maintenance, upbringing, education relationships and affection he/she needs. Foster care involves many different parties: the original family, the foster care family,
the social service staff, the magistrates of the juvenile Court involved, the tutelary judge and the Local Health Unit services.

The analysis of the findings of a survey conducted by the Italian National Centre for Research on Childhood and Adolescence showed that almost twenty years after its establishment, and in spite of the provisions set out by Law 184/83 (as confirmed by the new Law 149/01), foster care is still not a priority choice when placing a child unable to live with his or her family. Thus, the number of children placed in foster care is still lower than that of children placed in family-like sheltered communities or institutions. At present, a total of about 10,200 children are in foster care (0.1% of Italian minors), 6.4% of whom are foreign children. There is significant geographical disparity in practice: children are placed in foster care mostly in the north (16.4% only in Lombardy), while children are mainly placed in institutions in the south (in Sicily, 2,247 children have been placed in child-care institutions vs. 523 in foster care; in Calabria, numbers are respectively 1,387 vs. 137).

Foster care tends only to be used by administrators, judges or social workers who are confident that this is the right choice and will produce positive results. Fears and prejudices still persist towards foster care, partly due to concerns that the child might take roots in the new family and be doubly traumatised when the time comes to return to his or her original family. Similarly, many social services staff are critical of foster care placements because they are often used without a clearly defined plan or timetable for the child’s future. In practice, foster care tends to be offered only after the child has spent years in sheltered communities or child-care institutions or when the original family has completely abandoned the child.

The fact that most foster care placements are made by the Juvenile Court (72.9% of children are placed in foster care after judicial proceedings and only 26.1% of placements are implemented on a mutual consent basis), indicates that it is still perceived - and used - as a form of punishment rather than as a valuable resource for the child and his/her family. Furthermore, it is the task of the Juvenile Court, whenever the suspension of foster care is detrimental to the child, to extend the period beyond the maximum duration established of 24 months. According to some parties, however, since this provision will necessarily transform the foster care into a judicial measure, there is the risk of introducing causes for conflict even in cooperative circumstances.

Finally, the role and value of foster care families is inadequately understood, despite the demands of many child care professionals for greater recognition of their value. There is a need for better training for foster parents to raise awareness of the psychological and developmental factors affecting children in care, and to help them provide appropriate support. In addition, special attention should be paid to finding and supporting foster families who are willing to face particularly challenging situations, such as having an HIV-positive child.

In the last resort, the Italian Legal System provides the procedure of adoption. International adoption process for foreign children involves seven steps:

1. DECLARATION OF AVAILABILITY
The first place for those desiring to adopt a foreign child is to present the “declaration of availability” for international adoption at the Civil Affair Office (cancelleria civile) of the Juvenile Court competent for the area of residence.

In this place it is important to remember that those wishing to adopt have no “right” to obtain a child, but may only express their availability for adopting one; the object of the institution of adoption is in fact to meet the right of every child to have a family, and offer the possibility of having one to abandoned children.

Aspirants parents must in the first place meet the requirements of Article 6 of Statute n° 184/1983, as reformed by Statute n. 149/2001, meaning that the declaration of availability may be presented by:

- married couples;
- married for at least three years (not counting any previous period of cohabitation);
- without any separation in being;
- with a maximum difference in age either of 40-45 years (and a minimum of 18) from the child to be adopted;
- in possession of the capacity to bring up, educate and maintain the adoptive child (these requirements which will be the object of enquiry by the area services after the first check by the Court).

If the Juvenile Court finds a manifest lack of the above requirements it will immediately issue a decree of unsuitability.

2. ENQUIRY BY AREA SERVICES

The second step is the enquiry by the local authorities.

The services of the local authorities have the important task of becoming acquainted with the couple and assessing their parental capacities, gathering information on their personal, family and social history. The work of the services leads to the drawing up of a report to be sent to the Court which will supply the judge with the elements for assessing the couple’s request.

It is clear that this is a very delicate aspect, and aspirant adoptive parents may feel as if they are being subjected to examination. The services must however seek to explore their capacity to take charge of a child, the openness of each to adoption, their social and economic position, in discreet fashion, placing themselves “alongside” and not “opposite” the aspirants for adoption. In this way they will be ready to supply the couple with any useful element for further preparation for adoption.

At this stage it is also the task of the services to inform the aspirant adoptive parents fully and correctly on the living conditions of children in their countries of origin and the lifestyles to which they are accustomed.

In particular, making use of the local health units and collaborating with the accredited bodies as appropriate, the local authorities have to:

- supply information on international adoption and the relevant procedures, on the accredited bodies and their functions, and on other forms of solidarity towards juveniles in difficulty;
- ensure preparation for prospective adopters, helping them to understand their resources and the deep motivations for the request to adopt, as well as verifying
together with them their real willingness to face the responsibilities they are taking on;
• gather information on the personal family and health situation of prospective adoptive parents, on their capacity to handle an international adoption and on any special features of the juvenile(s) they might be able to take;
• collect any other factor that may help the Juvenile Court to assess their suitability for international adoption.

3. DEGREE OF SUITABILITY

Once the report has been received, the Court calls the couple and, if it considers it appropriate, may arrange for further investigations. At this point, the judge decides whether to issue a decree of suitability or instead a decree attesting the absence of the requirements for adoption. It is clear that the Court takes its decision in reference to the findings made by the services, which constitute the basis for assessing suitability.

The decree of suitability may also contain, in the interests of the child, any element useful to complete the picture of a couple’s characteristics, in order to promote their encounter with the specific child or children to be adopted. Once issued, the decree is sent to the Commission for International Adoptions and the accredited body, if already chosen by the couple.

The Italian Jurisprudence of the Juvenile Court recognizes the couple’s suitability only if the spouses are really capable to adopt a child.

“The instance for obtaining the Juvenile Court decree of suitability x art. 29 bis Statute no. 476/98, may be rejected even if social services involved had expressed a positive report for adoption, if the couple is excessively bound to their habits and had manifested difficulties to put themselves in touch with adoptive child”.
(Court of Appeal of Bologna-Juvenile Section-27 April 2004)

“The suitability to adopt a child needs the consciousness of the reasons and the choice of adoption and their consequences, a capacity of adoption to the minor’s needs, especially with regard to the best minor’s interest to have a comfortable environment”.
(Juvenile Court of Emilia Romagna -13 May 2004)

“For having a decree of suitability, it’s necessary a maturity higher than the maturity necessary to grew up ar biological child”.
(Juvenile Court of Milan -22 March 1985)

4. SEARCH BEGINS

The couple with the decree of suitability must within one year of its issue begin the International adoption procedure by approaching one of the accredited bodies by the Commission for the International adoption. At this stage the couple may opt for one of the countries where the agency operates. Almost all the accredited bodies organize meetings with the object of informing couples on procedures in the countries they are engaged in, on the facts of international adoption and on preparation, in collaboration with psychologists and other experts, for their future role as adoptive parents.
Approaching an accredited body is a compulsory stage in order for a valid International adoption to come about. The agency follows the parents and handles the necessary steps throughout the procedure.

5. THE “MEETING” ABROAD

This is the most delicate and important stage of the whole adoption procedure. In this stage the accredited body approached by the couple, takes up the search for the child in the chosen foreign country.

The agency, once a child eligible for adoption has been identified, accompanies the aspirant parents to a meeting with the child and follows them through the stage of initial contact. If the meetings lead to a positive opinion from the authorities of the foreign country, the agency forwards the papers and the reports on the combination between adoptee and adopters to the Commission for International Adoption in Italy, attesting the presence of the requirements laid down by the Hague Convention in Article 4.

If instead the meetings do not end positively, the agency takes note and so informs the Italian Commission, also reporting the reasons why the combination did not prove to meet the child’s interest. This information is useful, indeed essential, to any possible subsequent combinations.

It may further happen that it is the agency that does not accept a particular adoption proposal by the foreign central authority. In this case the aspirant adoptive parents may appeal in Italy to the Commission for International Adoption, which may not confirm the agency’s refusal and proceed directly, standing in for the agency itself, or else entrust to another agency the job of completing the procedure.

The accredited body must forward all the documentation relating to the child along with the provision from the foreign judge to the Commission for International Adoption in Italy, who see to their conservation.

6. RETURN TO ITALY

Once the documentation on the meeting abroad and the assent to it by the couple has been received by the accredited body, the Commission for International Adoption authorizes the adopted child’s entry to Italy and stay there, having certified that the adoption conforms with the provisions of the Hague Convention.

7. CONCLUSION

Once the child has entered Italy and any period of pre-adoptive fostering has elapsed the procedure is completed with an order from the Juvenile Court to transcribe the adoption decision in the registries of civil status. The power to have this transcription done lies with the Juvenile Court of the place of residence of the parents at the moment of their entry into Italy with the child (even if this differs from the one that first issued the decree of suitability).

With transcription the child definitively becomes an Italian citizen and a member to all intents and purposes of the new “multi-ethnic” family that has just come into being.
The reform recently passed by Statute no. 149 of 28 March 2001, introduced important innovation:

- **The decision to raise the maximum age difference between the adopting parents and the adoptable children from 40 to 45 years of age, with the granting of an even further extension.**

This provision should not however be considered as absolute as it is subject to assessment of the minor's best interests. The new provisions, causing much controversy, appear to have given rise to a principle in contrast with what is repeatedly declared in preparatory works and in the law itself; in other words that the minor's best interests must be at the base of adoption reform. Recent reform, in fact, is less severe regarding suitability requirements, and in this way focuses on the would-be adoptive parents and their "right" to have a child. Between the two extremes of opinion, for and against this reform, there is a middle voice, which is of the view that the recurring error made when assessing possible parents is that of automatically considering a young couple as more suitable for adopting a child, a view that only takes into consideration life expectancy, neglecting research carried out into effective parenting ability, which is in no way linked to age.

With a view to safeguarding the rights of minors, the recent reform has turned its attention to the child's right to speak and be heard by institutions, thus incorporating the indications that emerged during the Conventions of New York (1989) and Strasbourg (1996). Current legislation governing the procedure for declaration of adoptability has replaced a rule in Article 7 of Statute no. 184 /1983 with the following indication: "If the adoptee is over twelve years of age s/he must be interviewed; if s/he is not yet twelve, s/he may be interviewed, if opportune, depending on her/his capacity for discernment". Under the previous law the under-twelve-year-old could be interviewed "if opportune" and "provided that the interview" did not "prejudice the minor". Replacement of the expression "if opportune" with "depending on her/his capacity for discernment" implies a change in perspective with regard to the judge interviewing a minor. Focus has in fact shifted from the figure of the judge, who had to assess if it was opportune or not to interview the minor, to the figure of the minor, who will need to have reached an acceptable standard of maturity and judgement.

Furthermore, it should also be noted that cross-questioning has been introduced right from the initial stages of the procedure for declaration of adoptability for a minor. Whereas previous legislation called for a non-contentious courtroom type judgement, whereby the right to defence of the minor’s parents or fourth degree relatives was not contemplated until the subsequent phase of opposition to the minor’s declared state of adoptability.

This decision has been criticized by most adoption professionals, because it increases the opportunity for couples to demand a small child, thereby increasing the already high number of adoption applications. In addition, there is widespread concern over the provision allowing the maximum age difference of 45 years to be extended «whenever the court acknowledges that non-adoption causes a severe and unavoidable damage to the child». This will apply where the child has already spent a period of time with the candidate adoptive parents and it therefore may be used by those who intend to overcome the normal procedures required by this law.

- **The right of the child to know the identity of his/her biological parents.**
With a view to protecting the rights of minors, the law governing access to information regarding the origins of the adoptee has also been changed. Article 24 of Statute no. 149 of 28 March 2001 introduced new rules to replace Article 28 of the previous legislation. The changes brought about by the new law are very significant: paragraph 5 allows adopted over the age of 25 access to information regarding their personal background and the identity of their biological parents; in the case of confirmed, serious motives of mental and physical health, access is authorised at 18 years of age (Article 24, paragraph 4). It is also interesting to note that the interruption of juridical relations between the adoptee and the biological family, as laid down by our legislation, in no way implies an interruption of effective contact, which may precede the adoption or which may develop subsequently. It has been argued that cases should be assessed individually, to avoid severing bonds, however unsatisfactory, which may have been important in the child’s past. This solution has already been put into practice in countries like Great Britain and the United States, in the form of so called "open adoptions".

A child is undoubtedly entitled to be informed of his/her adopted status, and it will be the task of each adoptive parent to help the child understand his/her own history. However, concerns have been felt that giving the right of the adopted child to know the identity of his/her biological parents (without even requiring authorization to do so if the adoptive parents have died or can no longer be found) can be considered an intrusive provision that undermines the role of the adoptive family, because it appears to give precedence to the indissolubility of blood ties.

In order to simplify the procedure, the Italian law has been revised by the recent Bill “Norme in materia di adozione internazionale e affidamento internazionale”, passed by the Ministeries’ Council on March 18th 2005.

The main changes proposed are:

- The removal of an enquiry by area services that assesses parental capacities before the declaration of suitability;
- The introduction of the regulation of the temporarily international foster care.

The temporarily International foster care is defined as:

“The introduction of a foreign minor, temporally deprived of a suitable environment, in a person, Italian or European citizens, resident in Italy, able to guarantee the maintenance, the education, the instruction and the afect he needs.

The foster care presupposes that he child or who has the parental authority had given their consent to foster care spontaneously and without any benefits, for themselves or for others”.

(Art. 16, Bill 21 of March 2005)