



Peer Review on “Furthering quality and accessibility of Foster Care service”

Peer Country Comments Paper – Spain

**Advancing in foster care services in difficult
times**

Online, 20-21 May 2021

DG Employment, Social Affairs and Inclusion



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Contact: Stefan ISZKOWSKI

E-mail: EMPL-SPSI-PEER-REVIEWS@ec.europa.eu

Web site: <https://ec.europa.eu/social/main.jsp?langId=en&catId=1024>

European Commission

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1 Introduction

This paper has been prepared for the Peer Review on "Furthering quality and accessibility of foster care service". It provides an assessment and an overview of the policy situation in Spain in comparison to that in the host country (Croatia). For information on the host country policy example, please refer to the host country discussion paper.

2 Situation in the peer country

Foster care in Spain is very peculiar because the national legislation did not include such a protection measure until 1987. Until then, and due to the historical peculiarities of the Civil War (1936-1939), the postwar period and the dictatorship, practically the only measure to protect children consisted of institutionalisation. With the promulgation of the Constitution in 1978, the construction of a democratic and social state began. A main characteristic of the state was its highly decentralised structure of 17 Autonomous Communities and two Autonomous Cities (with their own Government and Parliament). The modernisation of social policies for children began in 1987¹ with a new law establishing foster care as the preferred measure for out-of-home care placements. This involved a very intense deinstitutionalisation policy and the implementation of foster care programs in each autonomous territory (Bravo and Del Valle, 2009; Del Valle, López and Bravo, 2009).

Then, in 1996 the national Law of Legal Protection of Minors² entered into force, which included different types of foster care. Finally, in July 2015 this law was reformed, with important advances in the types of foster care, including new categories such as specialised or professionalised foster care, as well as the rights and duties of foster carers.

Despite the existence of national law, the particularities in the form of foster care management among the different autonomous territories vary significantly. In particular, aspects such as the number of foster care placements, funding, economic compensation to families and aspects of the process (such as foster care requirements) vary in a remarkable way between the territories. According to the latest national statistics (Observatorio de la Infancia, 2020), there were 23,209 children in residential child care and 19,320 in foster care (on 31 December 2019), so 42.4% of out of home care placements are in family foster care.

3 Assessment of the policy measure

3.1 Legal framework and types of foster care

It is particularly remarkable and valuable the effort made in Croatia to develop a legal framework for foster care. The promotion of professionalised foster care as an alternative for territories where foster care has scarce implementation is a very interesting strategy. It is also observed that the number of kinship care is low in relation to non-kinship care.

In Spain, the latest legal amendment of 2015 (Law 26/2015 modifying the Child and Adolescent Protection System) establishes, from the point of view of duration, three types of foster care: emergency, for children under six years old with a maximum duration of six months; temporary with a maximum of two years; and permanent with an indefinite period. For permanent foster care, a request can be made to the

¹ Ley 21/1987 de 11 de noviembre, por la que se modifican determinados artículos del Código Civil en materia de adopción, acogimiento familiar y otras formas de protección (BOE n.275, de 17/11/87)

² Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor. (BOE n. 15, 17/01/1996).

Family Court to grant guardianship powers to foster carers (as they are usually kinship carers such as grandparents).

On the other hand, there is another distinction by the type of caregivers between kinship care and non-kinship foster care. In the latter, specialised foster care can be carried out for cases of special needs, but it requires that the foster carers have a special qualification, experience and training. Finally, the law of 2015 establishes that specialised foster care can be professionalised when the carer gets into an employment relationship with the regional authority.

3.2 Kinship care vs non kinship foster care

Taking into account these types of foster care, we can comment the following. First and foremost, Spain has a use of the kinship care that compared to non-kinship care is one of the highest in the world. In a comparative review of 16 economically developed countries carried out a few years ago (Del Valle and Bravo, 2013) Spain had 75% of kinship care and 25% of non-kinship foster care, the next European country being Italy with 44% of kinship care. Additionally, Croatia had 37% of kinship care. In the most recent data available, Spain still has high levels of kinship care with 65% (Observatorio de la Infancia, 2020). We are therefore facing a great difference between Spain and Croatia in the use of kinship care. This is something that can probably be reviewed further, as the Spanish experience presents very interesting data on the positive aspects of kinship care: less adaptation difficulties, greater motivation, more permanence, facilitation of the process of transition to adult life, etc. (Del Valle et al., 2008, 2009). Furthermore, the great debate in Spain is that these kinship foster families must be adequately evaluated and trained and, above all, they must receive financial as well as educational, psychological and social support. Kinship carers tend to be either grandparents, or in many cases widowed women, with low incomes and difficulties in education with a wide intergenerational gap. Traditionally, kinship families receive less support, as in Croatia's case where they do not receive any allowances. However, it has been argued that kinship carers should receive generous and extensive support (Del Valle et al, 2009) because of their positive results. They facilitate transition to adult life of young people after 18 years old, offer long and permanent emotional attachment and lower breakdown rate (Del Valle et al., 2011).

3.3 Foster care vs residential care

It is important to note that there has been a strong promotion of foster care over residential care in Spain with the aforementioned law 26/2015. The law establishes that no children under six years old may enter residential care except in special and adequately justified cases. Although the 2019 national data shows that 6% of the children in residential care are under six years old (Observatorio de la Infancia, 2020), it seems that in the coming years children of these ages could be in foster care.

3.4 Professionalized and specialised foster care

A fundamental aspect of the foster care situation in Croatia is the emphasis placed on developing professionalised foster care in order to extend this measure in territories where traditional foster care has scarce use. To this end, constant legislative efforts have been made in recent years, resulting in the adoption of the Foster Care Act in 2018. The Act establishes two types of foster care: the standard and the specialised professional type. From what can be read in the host country discussion paper, the new requirements for specialised professional foster carers have hindered the development of this category. Moreover, those falling into the category of professional carers by virtue of the previous law, cannot be longer admitted as specialised professionals.

The situation in Spain shares the same issues and the lack of a professionalised foster care development, despite having been included in the Law 26/2015 as a variant of specialised foster care. In this sense, it is curious that the two countries have made an

inverse proposal: while in Croatia the specialised care is a type of professionalised foster care, in Spain, the professional care is a subtype of the specialised care category. It can be understood that Spain restricts professionalised use much more, only for specialised cases. However, Spain has not managed to develop this type of foster care with professional dedication and employment relationship. It seems that the difficulties in finding a fit for the job of the foster carers within the Spanish labour framework (taking into account the peculiarities of time allocation, vacations, etc.) and concluding contracts with the autonomous administration (with the strict requirements for making labour contracts) make its implementation extremely difficult. Indeed, nowadays, there is practically no autonomous community that has a professionalised foster care program in place.

It should be added that at the time of writing this report, the new Law for the Integral Protection of Children and Adolescents Against Violence was approved by the Spanish Congress (April, 15th, 2021). Although it is pending of final approval by the Senate, this law modifies the Child Protection System and comes to exclude the concept of professionalised foster care. It indicates that specialised foster care for children with special needs must be carried out by people who have the appropriate "qualification, experience and training", may have a full-time dedication, and receive financial compensation. The law adds that within one year, the legislator has to regulate how full-time foster carers can be covered under the social security system as special workers. So, although the term professional is deleted, the idea of having foster carers as full time "workers" remains. This amendment stems from past complexities between the term "professional" and labour regulations. We really hope that this new regulation can help to promote this type of foster care.

It is important to note that, unlike to Croatia, professionalised or specialised foster care do not require a minimum qualification in terms of having a university degree (in Croatia the law requires university graduate or undergraduate qualification). In Spain, qualification or experience is understood as foster carers have the experience and qualification to meet the special needs of each case. Therefore, Spanish law is much more flexible in this regard and this would undoubtedly facilitate the implementation in view of the results in Croatia.

3.5 Statistical data management, NGO's and the role of associations

With regard to statistical data management, which is so important to be able to evaluate social policies and proceed to carry out well-founded planning, it should be noted that the Spanish national government has made a significant effort in the unified collection of information on protection measures, including foster care (Observatorio de la Infancia, 2020). This system (*Statistical bulletin of data on measures of child protection*) began in 1997 and it is published annually. It includes data on the types of foster care, residential care and adoption measures from all the autonomous communities. As it is the case with the Croatian Statistical System, we need to include more detailed and disaggregated data on the profiles of both origin and host families. Currently, a European study is being developed by Eurochild (Datacare Project) that aims to gather experiences of collecting data from child care to advance towards data harmonisation at European level and could be of great interest to national authorities.³

One of the key aspects of foster care is the form of management. In Spain, for the basic and legal processes⁴ management depends on the regional authority (Autonomous Community or regional government). However, foster care management processes in terms of recruitment, information, training, assessment of the adequacy of foster carers, as well as support and monitoring, is carried out by non-profit organisations (Red Cross is one of the most extended). This occurs for non-kinship

³ <https://www.eurochild.org/initiative/datacare/>

⁴ Such as the signing of the foster care agreement and all the administrative and legal support.

foster care, but it is crucial to note that, when it comes to kinship care, almost all processes are greatly diluted (less support, less financial budget, less careful assessment, etc.), and management in many territories falls directly under the authority of the regional government. Due to the high number of kinship foster care cases, regional governments usually entrust the follow-up of those cases to the community social services (municipalities) who carry out follow-up visits and reports once or twice a year without the existence of more continuous and intensive support.

In Croatia, it seems that the state institutions have a greater presence in care management, whereas NGOs are involved only in providing support services. In Spain, the role of the NGOs is much relevant (in the case of non-kinship care) and this has led to a very interesting development of alternatives and ways of providing foster care throughout the different Spanish territories. This happened because different NGOs have developed different initiatives and ideas for foster care processes; always supervised by the regional government.

I would like to highlight the importance of the foster care associations movement, which in several Spanish communities is very prominent and closely resembles the success of the Forum for Quality Foster Care of Children in Croatia. The ASEAF (State Association of Foster Care) is the Spanish national association and it includes 17 regional associations of foster carers. They have a very active role in recruiting new foster carers, developing training programmes, supporting services and helping the regional authorities to promote foster care. This is a very good example of engaging civil society in the development of foster care, as well as a model of participation.

Finally, another relevant and very recent question, in the context of the fight against the social and economic crisis caused by the pandemic, is how the European funds will be allocated under the Recovery, Transformation and Resilience Plan of the Spanish Government. In this Plan there is a commitment to improving child care services by modernising their structures, and improving the digitalisation and the training of professionals. This will fundamentally affect residential programs modernising and expanding foster care in all the Spanish territories.

4 Assessment of success factors and transferability

In this section, I will comment on the relationship between the successful or positive aspects mentioned in the host country report in comparison to Spain. As will be seen, it is not so much a question of being able to apply these factors to the Spanish situation, but trying to make some comparisons, since most of these questions have been already implemented in Spain (always keeping in mind the significant differences between the 19 autonomous territories).

4.1 Specific law on foster care

A differential aspect of the foster care situation between Spain and Croatia is the existence of a national and specific law in the latter. This is not possible in Spain since the responsibility of social services in general, and therefore child welfare, falls on the autonomous communities and they must establish these regulations. The common situation is that there are regional child protection laws, which include the basic aspects of the management of foster care. Under regional laws, we have other laws (for example regional decrees) with specific regulations or in the form of guides for foster care. In any case, in some autonomous communities, there is a lack of a specific detailed foster care regulation.

4.2 The cultural tradition of foster care

Among the successful aspects mentioned in the host country discussion paper, the stable implementation of foster care in some regions of Croatia stands out. It is referred to regions where there is a long tradition and in which foster care has been passed from generation to generation, with children who lived with other children in

their families and then continued fostering as adults. This culture of foster care through generations has not been possible in Spain since foster care was not legal until 1987 and this is being a serious inconvenience for the development of non-kinship foster care in Spain. Fortunately, a few autonomous communities are beginning to form this cultural base, for example, in territories such as Gipuzkoa in the Basque Country (for more details about this practice, see Annex #2) where special good practices have been implemented in terms of funding and intensive support for foster carers since the very beginning and with very important and very active foster care associations emerging (as in Croatia).

4.3 Transforming residential care agencies in foster care actors

The experience of deinstitutionalisation and conversion of residential care agencies into agencies or support centers for foster care is a positive idea promoted in Croatia. However, this process of deinstitutionalisation was already carried out in Spain at the end of the 90s when foster care programs began. In this transition, residential care agencies were not employed in family foster care development, but other historical NGOs such as the Red Cross and other newly emerging organisations specific to foster care (Márgenes y Vínculos in Andalusia, Agintzari in the Basque Country, Meniños in Galizia, etc.) were involved. In Spain residential care is still very important (40% of out-of-home care), mainly due to the huge arrival of unaccompanied migrant minors from North Africa (Observatorio de la Infancia, 2020), who account for half of all the cases in residential care. Thus, similar to Croatia, the strong, positive experience of the public and non-governmental partnerships has enormous relevance in Spain as well.

4.4 Introducing Individual Case Plan

An important element indicated in the host country discussion paper is the need to introduce the Individual Case Plan as a tool guiding the decision making and the evaluations of child care interventions and, in particular, foster care. Fortunately, in Spain this was an advancement introduced in the autonomous communities in a pioneering way in the first child care handbook of the autonomous community of Junta de Castilla y León (in 1995) and it is currently integrated as a fundamental part of the intervention process in all communities.

4.5 The relevance of emergency foster care

Another relevant aspect that is having development problems in Croatia is emergency foster care. As it is not included in the legislation in Croatia, it consists a serious obstacle. In Spain, it has been defined since the 2015 reform and it is an essential resource to avoid having to use residential care facilities in cases of emergency. The implementation of emergency foster care in Spain is widespread and it has been possible, among other things, due to the aid that an important banking entity provided to autonomous communities to develop the "Kangaroo Families Project" many years ago (Amorós et al., 2003). This program allowed autonomous communities to receive financial support for implementing different types of foster care, according to their own needs, and some of them chose to implement emergency foster care.

5 Questions

- What is the reason for the limited kinship care use? Is that a policy trend? Or it is just a question of family availability? How is this kinship care defined and treated in the Foster Care Law?
- There is a mention of "standards for foster care" on page 16, but in the rest of the document, it seems to be standards for social services and non specific for foster care (as most of the references are in Croatian is difficult to check if there is a document for this). Could you please elaborate on why is this the case?

- Could you please elaborate more on the balance between residential care and foster care, particularly in the case of young children? Are they (0-6 years old, for example) still in residential care in some regions? Is there any political trend to prioritise the use of foster care in those ages? As Croatia does not have emergency foster care, does it mean that young people have to be attended always in residential care in emergency situations?

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Annex 1 Summary table

The main points covered by the paper are summarised below.

Situation in the peer country

- Institutionalisation was almost the only measure for child protection until 1987.
- Relatively recent implementation of foster care in Spain (1987) and no cultural tradition of foster care.
- Decentralised model of government with 19 autonomous governments under a common national child protection law.
- Clear definition of foster care types in national law: emergency, temporary, permanent and specialised.

Assessment of the policy measure

- Spain has the highest percentage of kinship care compared to other most economically developed countries (65% vs 35% non-kinship care).
- Kinship care is a positive choice if carers receive proper material and professional support.
- Spain has decided to remove the term professionalised foster care and use "full time" specialised foster care to avoid problems with the labour legislation (April 2021). Spanish requirements are more flexible than Croatia.
- Spain will use a portion of the European funds for recovering from the pandemic to improve residential and foster care.
- There is a significant role of social initiative of associations to support foster care.

Assessment of success factors and transferability

- There is no specific national law in foster care in Spain due to the decentralised government system. Consequently, remarkable differences exist among territories.
- There is no cultural tradition of foster care, remaining as a very unknown practice among the society.
- The implementation of the Individual Case Plans in the 90's made a serious advance in the process of decision making in child protection. This is a good practice which could lead to positive impact in other Member States as well, for example in Croatia.
- Emergency foster care is a key resource to avoid the use of residential care emergency cases. Spain has developed this measure by implementing a specific program.

Questions

- What is the reason for so low kinship foster care compared with non relative foster care?
- Are there specific quality standards for foster care?
- What is the connection between policy promoting foster care and the use of residential care?

Annex 2 Example of relevant practice

Name of the practice:	Supporting the role of foster carers association Beroa in Gipuzkoa (Basque Country)
Year of implementation:	2010
Coordinating authority:	Diputación de Gipuzkoa (Basque Country)
Objectives:	Financial support for the BEROA foster care association to run different programs in order to give them an active and relevant paper promoting and supporting foster care.
Main activities:	<ul style="list-style-type: none">- Etxegorria program: A child-family contact service in order to facilitate supervised birth family visits for fostered children- Annual Conference of foster care to improve training and knowledge of foster carers- Summer camps for foster families- Respite support for week-ends and holidays for foster families
Results so far:	Beroa goes on with their programs and the government of Gipuzkoa maintain its support.

