

ROOTS AND DREAMS: THE CHILD'S RIGHT TO GROW UP IN HIS FAMILY

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Abstract: *Article 19 of the UN Convention provides for the protection of the child both in the home and outside the home. This is only possible by ensuring absolutely necessary protection systems, laws, regulations, policies and services in all social sectors, such as: education, health, justice and security, and social welfare, a set of services administered, for the most part, by the Government, designed in such a way as to ensure the protection of children and young minors with the aim of encouraging family stability.*

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Introduction

Since ancient times to the present, the status of the child has undergone dramatic changes. In a famous study, Phillippe Aries wrote: "Childhood, like the family, is a recent feeling in Europe." If in Antiquity, there was no concern for a special protection of children, in the Middle Ages, children were considered and treated as "little adults" because, from an early age, they contributed to the well-being of the family through work. Only in the century in the 17th century, once the religious orders inaugurated the schooling movement, "the well-to-do classes considered separately childhood and the birth of the family as a place of privacy and private affections" (Pascal Bruckner, 2005). Later, in industrialized countries from the end of the 19th century, beginning of the 20th century, children worked alongside adults, most of the time, in poor safety and hygiene conditions (Phillippe Aries, 1962).

In Romania, children were used for hard labor. For example, in the 30s of the last century, they were used in gold mining. Historian Liviu Zgârciu shows that: "There are photos and documents that show that in 1937, for example, children entered the galleries in Roşia Montană and carried ore on their backs. They were 10-12 years old. Being small, they entered the galleries more easily".

In the modern period, industries dedicated to children's entertainment grew, schools expanded. The generation of children from the interwar period "grew up in silence", the so-called Silent generation (1919-1942). The era of the Baby Boomers (1943-1961) follows, the birth rate increases, the generation of numerous, competitive, hardworking people. In our country, the phenomenon arrived in 1967 and ended in 1989. We are talking about the so-called "decrees". The name comes from the decree issued by the communists that prohibited voluntary abortion. Thanks to the decree, the birth rate increased, on the one hand, but on the

other hand, the number of deaths also increased, because women resorted to all kinds of methods to have an abortion.

Between 1962-1977 we are talking about Generation X, the children neglected by their working parents. Between the years 1978-1997, we are talking about the Millennials, a large generation, adapted to technology, independent, adaptable. Between 1995-2010, we are talking about Generation Z, called digital natives, a generation that grew up with access to the Internet from an early age.

Children's rights to grow up in their families in Romanian legislation

In Romania, Law no. 272 of 2004, amended and republished, on the protection and promotion of children's rights, regulates the legal framework regarding the respect, promotion and guarantee of children's rights.

The legislator states that: "The child has the right to be protected against abuse, neglect, exploitation, trafficking, illegal migration, kidnapping, violence, Internet pornography, as well as any form of violence, regardless of the environment in which he is: family, educational, medical, protective, crime investigation and rehabilitation/detention environments, internet, mass media, workplaces, sports environments, community, etc. (Art. 89 paragraph (1), Law 272/2004). As can be seen from the article above, the family is also included in the regulation in the situation where, unfortunately, the child is subjected to abuse, exploitation, neglect, violence or other actions that, in one form or another, have an impact negative on him, even within the family by a family member.

Any form of physical, mental, sexual abuse or mistreatment, negligent treatment and any type of exploitation, which can have devastating consequences on the health and behavior of the child, on his development and dignity, in the context of a relationship of trust, responsibility or power, derives, most of the time, from the adult's inability to restrain his violent impulses, to control himself in the face of uncontrolled impulses due to frustrations and his own conflicts. Violence takes many forms and there are many classifications of forms of violence. Including threatening a person with harm, likely to cause them fear, constitutes violence (Morozan, 2014).

There are, unfortunately, situations in which the child suffers abuse in the family, some cases being known with the help of the mass media, cases that horrified public opinion in Romania, others less known or even not known at all, when the children have no chance to live decently because they choose, out of fear, shame or other considerations, to remain silent.

Competent institutions draw attention to the alarming increase in cases of domestic violence, in which children become victims of adults in their own family, adults who are supposed to have the duty to raise them and provide them with a peaceful and prosperous life. Statistics also show that in 2024, one out of ten abused children in our country were victims of sexual abuse, many of whom become victims of their own family members. Equally serious is the case of children who, instead of being protected by competent institutions, are physically and sexually abused by the employees of these institutions.

Nor are the cases of abuse against defenseless children in the care of foster care rare or negligible. Again, those who have the obligation, moreover, are paid, to take care of some children who, if they ended up in the care of a foster care, already have an unfortunate history, become the executioners of those whose upbringing they are responsible for. It is well known

the case of the three foster carers from Timiș, from June 2022, members of the same family (mother, father and son) who were sentenced to 23 and 4 months for ill treatment of the minor and qualified rape in repeated and continuous form of recidivism and post-execution. The girls were respectively 6 and 10 years old and the brother was 12. It was not enough that they were raped, physically and mentally assaulted, the three monsters forced them to wear nettles in their underwear, as the children recounted after coming out of the horror story they lived it.

Cases of abuse against minors are numerous and seem to never end. New cases are constantly appearing, terrifying cases, in which minors are victims of all existing types of violence. But what should be our reaction when we encounter cases where abuses are exaggerated and due to exaggerations or misunderstandings, children are removed from their own families that are considered harmful to their life and growth?

The legislator adopted Law no. 156/2023, law regulating the legal framework regarding the organization of activities to prevent the separation of the child from the family.

This law, in addition to the fact that it caused a national hysteria, which created a war in Romanian society, between parents, between parents and the school, between political parties, also led to the false promotion, in the public space, of the idea that they will be take children away from their parents, "they will be injected, removed from their families and adopted to strangers, even LGBTQ families."

It reached street protests. The Minister of Family, Youth and Equal Opportunities at that time, went out publicly to inform and explain to parents that this law does not take children from the family, but helps families raise their children.

The law we refer to comes to the support of parents and vulnerable families, precisely to prevent the separation of the child from the family. They will benefit from counseling and help in several areas, such as: health, education, employment, social protection, etc., precisely to help children not end up in foster care, but to stay in their own families.

The law shows the situations that lead to the separation of the child from the family. These situations are: a poor economic situation and poor housing conditions in the family or community, extreme poverty, the low level of education in the family, the poor state of health of one or more family members, including their disability, the existing violent environment in the family, abuses that affect children's growth and education, etc. Likewise, children who have delinquent behavior, who repeatedly leave their home, have become alcohol and drug users or have suicidal tendencies are also at risk.

The law shows that parents whose children are at risk of separation will benefit from emergency aid, psychological and psychotherapeutic services, courses to learn how to develop their parenting skills. Moreover, the establishment of day care centers, the so-called support centers intended to prevent the separation of children from their families, is expected, where children receive, in addition to education, at least a hot meal, that is, what the parent cannot provide. In this way, they are not taken from the family, on the contrary, they are provided with the psycho-emotional well-being that only the family can give them.

In Chapter III of the law, it is stated that, "At the national level, the National Child Observatory is established ... through which all children at risk of family separation are identified, registered and monitored". The Child Observatory, the platform designed by the Ministry of Family, is a module within an IT system, managed by the National Authority for the Protection of Children's Rights and Adoption, which is made available to local

administration authorities (Art. 16 paragraph (1) Law 156/2023). The data and information about those who are in vulnerable situations will be entered into the platform by the social worker or the person responsible for the activity of preventing the separation of the child from the family within the Public Social Assistance Service at the level of the commune, city and municipality.

From the above it appears that the Romanian state makes efforts to support parents whose children are in vulnerable situations that lead to the separation of the child from the family. The Romanian authorities have not proven so far that they want children to be removed from the family environment, the environment that is best able to offer stability, peace and harmonious development to any child.

Several cases of families who, wishing for a better life, left Romania with their children are well known to public opinion. I bring to your attention a case from 2014, the case of the Avrămescu Cruz family, two husbands with hearing disabilities, whose children were taken by the Norwegian authorities. Moreover, after being taken from the family, the children were separated in turn. Although there is a court decision, which established that the measure taken by Child Protection is not justified, not even a year after the decision, the children had not returned to their families, on the grounds that Barnevernet, the Child Protection authority, invoked the fact that they had not succeeded to train them in the mimic-gestural language. How much and what the two children, one 5 years old, the other 6 years old, understood from the experience they went through, is hard to assume. What was the impact on their psyche, how were their feelings affected after being separated from their parents, then separated from each other? Hard to determine... What is the impact of the monthly meetings that the children, under the strict supervision of social workers, had with their biological parents? Who can say?

Another case, another drama. The case of the Bodnariu family is similar to the one presented above. In this case, 5 children of the family were taken into the custody of the Norwegian state in 2015 on the grounds that the parents behaved violently. It was circulated in the media that religious issues would have been the basis of this dispute. Although it turned out to be false, several Christian groups protested, considering the Norwegian authorities' actions exaggerated and unfounded. In this case, the events had an extremely fast course. If on October 8, 2015, the director of the school where the two older daughters of the Bodnariu family studied, made a telephone report to the local Child Protection Service, already on December 15 (a record time), the same Service triggered the forfeiture procedure from parental rights for Marius and Ruth Bodnariu and the adoption procedure for the 5 children in other families. The youngest of the children was 4 months old. The children were separated and placed in three Norwegian families. The questions we had in the case above, we also have in this case.

We specify that the Child Protection Services in Norway, Sweden, Denmark and Finland have triggered several reactions from some NGOs and parents' organizations, who have complained about abusive practices. There is a dramatic episode in Norway's not-so-distant past when the Minister of Education at the time said: "the belief that parents are best suited to raise their children is wrong." This unfortunate statement remained in the collective memory and caused waves of disapproval.

The case of the Furdui couple, whose children were taken over by social services in Germany in 2021, following allegations of physical and mental abuse. The 7 children were separated and placed in different families. The Romanian authorities have identified members

of the children's extended family in Romania, as a more suitable option than the German authorities' separation and placement in different families.

It is difficult to establish the "fault of the parents" in the ways in which they choose to educate and raise their children, and it is even more difficult to establish when the authorities, which deal with the promotion and defense of children's rights, exaggerate and overcome certain barriers in their approach.

We can say that the Romanian state makes substantial and serious efforts to protect children, but Romanian society, which has great deficiencies in terms of education, economy, health, and not only, ensuring the protection of children and promoting their rights, is difficult and faces very many times of outdated, erroneous mentalities and even the inability of the authorities to deal with all the obstacles that intervene in their approach. In theory, Law 156/2023 looks very good, but there are many questions: are the authorities dealing with protecting children logistically, professionally and materially prepared for their actions? Can there be real and serious cooperation between institutions regarding the best interest of the minor? Can the state, as regulated by law, provide help in situations of vulnerability, to parents facing poverty, lack of education or other deprivations?

Unfortunately, the problems are old and deep. A restructuring of the entire Romanian society is necessary. The state must find concrete, viable solutions for the protection of children in Romania.

It seems that the abuse of defenseless children continues and does not end either in Romania or in other parts of the world. This year, in our country, the number of sexually abused children has increased, and in 80% of cases, the aggressor is a family member. The youngest victim is 4 years old. On average, every day 8 children are sexually abused. The actual number of abused children is unknown because many of them live in terror, afraid to report their abusers. Prosecutors and social protection workers say they are dealing with more and more cases of sexual and other violence.

The rights of children to grow up in their families in Italian law

The right of every child to grow up in its family of origin is a central and sensitive issue in contemporary societies, and in Italy it has generated a heated public debate.

In recent years, one case has captured the attention of the whole country: a young Sinti mother was separated from her daughter by the decision of the Juvenile Court in Rome, raising fundamental questions about when it is justified to remove a child from the family and this case highlighted the tension between the need to protect minors and the fundamental right to maintain contact with the family of origin.

Removal of the child from the family is an extreme measure provided only as a last resort in Italy, as in most European countries. This right to grow up in a family is enshrined in Italian Law 184/1983 which states that minors have the right to live within their own family and that the declaration of adoptability should only be considered after they have tried every possible alternative solution, it protects the family bond and provide support to families before taking drastic measures such as removal. These principles are supported by the main international child protection instruments, such as the UN Convention on the Rights of the Child and the European Convention on Human Rights (ECHR). Both treaties provide that

removal from the family must be a measure of last resort and that children must grow up in their family environment, unless there is a real and serious danger to their safety.

A fundamental aspect for understanding the circumstances justifying an expulsion is the principle of proportionality enshrined in the ECHR. The European Court of Human Rights has over time provided significant guidance on the separation of parents and children, establishing that this step should only take place if strictly necessary and based on a concrete and proven risk to the child's welfare. In the 2002 *Kutzner v. Germany* judgment, the Court condemned the German authorities for removing children from their parents without any real danger and clarified that any separation decision must be based on strict and objective criteria demonstrating the need for intervention. This ruling emphasizes that the state, before intervening, must consider all measures, the least invasive necessary to protect the child, without compromising the family bond. This principle recalls that the state has an obligation to provide concrete help to families in difficulty before resorting to adoption or placement, and must act as a support rather than a substitute for the family.

With this perspective in mind, it is important to deepen the meaning of the best interests of the child, which is the main guide for all legal decisions involving children. The best interests of the child are a complex concept that requires assessment of individual and contextual factors to ensure the child's maximum well-being and respect for his or her psychological, emotional and cultural needs. This principle calls on the authorities to: balance the need for child protection with the right to family stability by avoiding choices that may cause trauma or take the child away from the family without adequate justification. In practice, any removal decision must take into account the specifics of the case and the circumstances in which the child lives, carefully evaluating the available alternatives (Italian Civil Code).

A central aspect in decisions regarding children is the right to emotional and cultural continuity. Especially when the child belongs to a cultural minority, as in the case of the young Sinti mother, this aspect acquires a particularly significant value. In *K and T v. Finland* (2001) the ECtHR stated that the right to family life also implies the child's right to maintain links with its culture and traditions, as these roots are essential to the development of the child's identity and self-esteem the child. Cultural ties play an essential role in the construction of identity and are an integral part of the child's psychological balance, especially when it comes to minorities who transmit their values through the community and this right emphasizes that decisions about removing a child from a family belonging to a cultural minority must be taken with great care to prevent losing a sense of belonging and suffering emotional damage related to the loss of one's identity (Caruso, 2018).

With regard to situations of family hardship, it is essential to distinguish between temporary hardship and abandonment. Article 8 of Law 184/1983 establishes that the declaration of adoptability can only be ordered when there is a serious and lasting condition that demonstrates the inability of the parents to guarantee adequate care. ECtHR jurisprudence has made it clear that economic or social difficulties, which often underlie family difficulties, are not a sufficient reason to declare a child adoptable, as established in the 2008 *Saviny v Ukraine* judgment, which requires the state to provide all possible support families in difficulty. The state must not replace the family, but must act to strengthen it, giving parents concrete tools to deal with difficulties. Therefore, the concept of abandonment must be understood as a condition of effective and permanent inadequacy that cannot be solved with state aid.

An equally important aspect is the extended family network, which can be an important support in cases where the parents are unable to adequately provide for the child. Italian law states that before declaring a child adoptable, the judge must verify the existence of fourth-degree relatives, such as grandparents or uncles, who can care for the child. This principle of family subsidiarity aims to maintain the connection, whenever possible, and to ensure the child's upbringing in a familiar emotional context. This choice recognizes the importance of emotional continuity for the harmonious development of the child who needs to maintain stable family relationships and live in an environment that provides security (Guarnieri, 2020)

Social services are the main resource for supporting families in difficulty and monitoring the child's living conditions to ensure that each child grows up in a safe environment. ECHR jurisprudence requires social services to adopt a collaborative and non-repressive approach respecting the right to family life and to intervene with removal only in cases of extreme necessity. Decision *Wallová and Walla v. Czech Republic* (2006) emphasize the importance of a thorough assessment of the family situation to avoid decisions based on generic criteria that could lead to the separation of families that could be helped to stay together.

A further reflection concerns the role of the community and educational institutions. Schools, teachers and school psychologists are often among the first to detect signs of distress or family difficulties. Collaboration between these figures and social services can be essential to prevent deterioration of the family situation and to activate support networks that can help parents in difficulty. The community is an important point of reference for the child, especially for children belonging to cultural minorities who can find in school and in the community an environment of integration and support in favor of their identity (Marconato, 2021).

Finally, it is also necessary to consider the possible psychological consequences that derive from a separation from the family of origin and which can have a lasting impact on the child's life. Separation from affective reference figures can actually cause trauma to the child, such as a sense of abandonment, isolation and lack of belonging, which can negatively affect his personality development. For this reason, it is essential that the authorities are aware of the importance of keeping the child in the family whenever possible and that removal decisions are only taken as a last resort, taking into account all the possible negative effects on the child's life.

In conclusion, the story of the young Sinti mother and her child invites us to reflect on the importance of respecting the cultural roots and emotional ties of minors and to ensure that any state intervention is proportionate and respectful of the child's right to his own cultural and family identity. Preserving the family bond is a priority enshrined in Italian and international laws that protect the child's right to grow up in an environment that respects its history, roots and aspirations. State intervention must always aim at strengthening the family unit and preserving the cultural context that represents a source of safety and belonging for the child.

CONCLUSIONS

Respecting the rights of the child is not only a moral obligation, but also a legal one, as the child acquires rights even before being born.

According to the Civil Code, the child acquires rights from the moment of conception. Art 412 of the Civil Code defines conception as the period of time between the three hundredth

and the one hundred and eightieth day before the birth of the child. However, the condition for his rights to be recognized from conception is that he is born alive. The child that is conceived is considered to be born whenever its rights are concerned. They acquire rights with the acquisition of the capacity for use. Before birth, they have anticipated utility, which is provisional. It has been stated that: "the embryo or fetus must be recognized as a potential human person who is or was alive and whose respect is due to all" (Ungureanu et al., 2013:42).

Wherever they are in the world, at whatever age of childhood and in whatever situation, children need the protection of adults. Human rights, respectively the rights of the child refer to those aspects necessary for a safe, healthy life and for the possibility of each of us to reach the maximum possible development. Only with the benefit of these rights can we be treated with respect and treat each other with respect.

However, children need special rights, special protection, which we adults do not need. During childhood, children depend on adults, on the people around them, otherwise they will not succeed in becoming independent adults and will not be able to develop. Help and respect for the most vulnerable is a duty of us, of all of us. To help children, adults have an obligation to promote a family climate based on feelings of love and safety. This is the only way children will understand what respect, appreciation, safety and support are.

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- only in the presence of a serious and proven danger to the child, reaffirming the principle of proportionality.
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