

CHILDHOOD SAFETY BETWEEN LAW, EDUCATION AND SOCIETY

L.D RATH-BOŞCA, F. MIRAGLIA

Laura Dumitrana Rath-Boşca¹, Francesco Miraglia²

¹ Faculty of Juridical and Administrative Sciences, Agora University of Oradea, Romania
<https://orcid.org/0009-0008-5735-528X>, Email: dumitra1970@yahoo.com

² National Institute of Family Pedagogy (INPF), Italy
<https://orcid.org/0009-0004-4690-1303>, Email: info@avvocatofrancescomiraglia.it

Abstract: *Children's rights are regulated at national and international levels, all of which guarantee fundamental rights and establish precise responsibilities for parents and the state. Their education is basically a process through which we all want to shape them into responsible adults. Parents, the state, society try to help them develop their skills and personality through all the means at their disposal. Society is equally important in this process of shaping children into future adults, playing a massive role in their socio-emotional, moral and cognitive development. Children are the keys to Paradise, said Eric Hoffer, the great American philosopher. Perfect, serene and pure beings, they are a treasure, the most precious treasure. And yet...*

Keywords: *children, legislation, education, society, Romania, Italy, parents, state, development, citizens, rights, policies.*

Introduction

The most important principle of democracy is that of respecting fundamental human rights. We talk, almost incessantly, about the respect due to the human being, human dignity. Our freedom and peace depend on respecting this principle, it depends on whether or not we are the masters of our own lives.

Children also have the same rights, but adapted to their age and needs. Children benefit from protection both before and after birth, given that the law considers them to be lacking physical and intellectual maturity until the age of 18. This is how the law regulates children's rights. Globally, violence against children is a never-ending problem. Statistics show that 2 out of 3 children suffer every day, from violent punishment at home, which includes physical and psychological abuse, to sexual violence. Every year, approximately 130,000 children and adolescents under the age of 20 lose their lives due to violence. This is the reality at a global level. In Romania, too, the situation is alarming.

Brief Presentation of the Situation in Romania

The Romanian Constitution in art. 49 states: paragraph (1) "Children and young people enjoy a special regime of protection and assistance in the realization of their rights. 2) The state grants allowances for children and aids for the care of sick or disabled children. Other forms of social protection of children and young people are established by law.

(3) The exploitation of minors, their use in activities that would harm their health, morality or that would endanger their life or normal development are prohibited.

(4) Minors under the age of 15 may not be employed as employees.

(5) Public authorities have the obligation to contribute to ensuring the conditions for the free participation of young people in the political, social, economic, cultural and sporting life of the country."

Also, Law 272/2004 on the protection and promotion of children's rights states in Article 2 paragraph (1) that: "This law, any other regulations adopted in the field of respecting and promoting children's rights, as well as any legal act issued or, as the case may be, concluded in this field, shall be subordinated with priority to the principle of the best interests of the child."

The provisions of the law establish the notion of child abuse or neglect as any voluntary action of a person who is in a relationship of responsibility, trust or authority towards the child, including parents, which endangers the life, physical, mental, spiritual, moral or social development, bodily integrity, physical or mental health of the child (Emeșe, 2018:308). With regard to neglect, we refer to the omission, voluntary or involuntary, of a person who has the responsibility for the upbringing, care or education of the child to take any measure subordinate to this responsibility, which endangers the life, physical, mental, spiritual, moral or social development, bodily integrity, physical or mental health of the child (Art. 89 (2) Law 272/2004).

The existence of a behavior that can be characterized as serious neglect does not necessarily refer to the existence of aggression or violence, family abandonment. Serious neglect also represents the fact that the minor is deprived of means of support that endangers his health and physical development (SCJ Civil Section, Decision no. 2396/1997).

The annex to Government Decision No. 969/2023 on the approval of the National Strategy for the Protection and Promotion of Child Rights "Protected Children, Safe Romania" 2023 - 2027, states that the strategy in question "was developed on the basis of a close collaboration process between the National Authority for the Protection of Child Rights and Adoption (ANPDCA) and line ministries, public institutions responsible for implementing policies in the field of the protection and promotion of child rights and representatives of the academic environment" (Annex to Government Decision no. 969/2023). The vision of this strategy is to ensure, with the involvement of children, the effective realization of the rights of all children, including the most vulnerable, in all areas of life, by ensuring full access to quality public services.

The content of the strategy states that the current strategy "reaffirms the principles underlying the promotion and respect of children's rights, as adopted by the previous strategy, adding new ones, results from the evaluation carried out on the implementation of the previous National Strategy, which covered the period 2014 - 2020."

The 2021 evaluation report on the evaluation of the implementation of the National Strategy for the Protection and Promotion of the Rights of the Child 2014 - 2020, was carried out under contract no. 43289903/29.11.2019, between UNICEF Romania and Pluriconsult SRL, the evaluation which was carried out between December 2019 and June 2021 in accordance with the Terms of Reference and the Inception Report. The object of the evaluation, according to the Terms of Reference, is the National Strategy for the Protection and Promotion of the Rights of the Child 2014-2020 (Annexes 3 and 4). The Government of Romania

approved this document in 2014 by Government Decision no. 1113/2014 initiated by the Ministry of Labor, Family, Social Protection and Elderly People (currently, the Ministry of Labor, Family, Youth and Social Solidarity).

The 2021 Report shows that the UN Convention on the Rights of the Child, the provisions of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) and the Optional Protocol to this Convention, the objectives and targets proposed within the Europe 2020 Strategy in terms of poverty reduction, the priorities of the Council of Europe Strategy for the Promotion of the Rights of the Child (2012-2015) and the provisions of the European Commission Recommendation of 20 February 2013 "Investing in children: breaking the vicious circle of disadvantage" (2013/112/EU).

The results of this Report show that: the situation of children from disadvantaged socio-economic backgrounds has registered modest improvements; the percentage of children at risk of poverty or social exclusion has decreased to 35.8%, Romania remaining, however, at European level, with the highest rate of risk of poverty and social exclusion among children; the number of children in the special protection system has decreased very slightly from 58,178 on December 31, 2014, to 50,401, in December 2019, a decrease of 13.4%, the number of placement centers decreasing from 166 to 143; the number of children with disabilities increased between 2014 and 2019 from 70,493 to 72,349, the number of children with disabilities included in some form of education increased from 55% in 2014 to 62% in 2019; the main indicators that determine the impact of the education system have not improved, with the financing of the education system being far from the real needs of the education system, thus facilitating the increase in school dropout, the results in national and international assessments remaining modest and functional illiteracy or, rather, in some cases, non-functional illiteracy, increasing to a worrying level; the number of cases of violence against children has increased from 12,542 in 2014 to 15,996 in 2019; no progress was recorded in terms of the access gap of children from rural areas to services, the discrepancy between urban and rural areas increasing throughout this period; infant mortality was decreasing; progress was noted in terms of managing children's issues at local and county level by SPAS and DGASPC. Regarding the situation of children in conflict with the law, the disparity between urban and rural areas did not change. The authors of the Report believe that, for the future, it is important to invest in the training and education of specialists because the services responsible for respecting the standards of judicial procedures either do not exist in certain areas or are not sufficient, because the local authorities dealing with the development of these services have been modestly involved according to resources and skills, this determining the high rate of recidivism (Evaluation of the implementation of the National Strategy for the Protection and Promotion of the Rights of the Child 2014 – 2020).

It is very important to mention Government Decision No. 440/2022 for the approval of the National Strategy on Social Inclusion and Poverty Reduction for the period 2022 - 2027 dated 30.03.2022, a decision that shows what is the "Global Action Plan, which Romania chooses to support in the coming years, (and which) addresses poverty reduction, combating inequalities, social injustice and protecting the planet by 2030".

In point 4.2. The situation of children exposed to the risks of poverty and social exclusion, shows that: "According to the latest EUROSTAT data available for all 28 Member States of the European Union, in 2017, the values of the relative poverty rate calculated at the

threshold of 60% of the median disposable income per adult-equivalent for these states place Romania in last place in the EU28 ranking Source: Eurostat, EU-SILC. Romania occupies the same position in 2017 and in the EU28 rankings established for the relative poverty rate calculated at the threshold of 50% and 40%, respectively, but this rate is depreciating. Thus, if for the threshold of 60%, the ratio of the values known for this indicator for the EU28 and Romania is 1:1.6, for the threshold of 50%, the value recorded for Romania (17.6%) doubles the EU28 average (10.6%), and for the threshold of 40%, the value recorded for Romania (12.1%) almost doubles the EU28 average (6.0%) (Annex to Government Decision no. 440/2022).

Calculated at the threshold of 60% of the median disposable income per adult-equivalent, the relative poverty rate among children in Romania is over 40% higher than the value recorded among people over 65 years of age, "that calculated at the threshold of 50% almost doubles the value recorded among people over 65 years of age; and that calculated at the threshold of 40% almost triples the value observed in the population over 65 years of age. (Source: Eurostat, EU-SILC).

Balancing the legislation regulating the promotion and observance of children's rights and the grim statistics regarding the real situation of children in our country (violence, poverty, poor education, etc.), the result raises big questions and many reasons for concern. Can this vicious circle be broken?

42 articles of the UN Convention - the foundation of the rights of the child, define the rights of children everywhere.

Among these principles we find: the best interests of the child, non-discrimination, the right to life and development, etc. Furthermore, the convention, ratified by Romania in 1990, clearly establishes that the authorities have the obligation to protect families so that they can fulfill their caring role.

There is an entire organized system that is responsible for protecting and promoting children's rights in our country. The family, the community, and the authorities must collaborate in implementing children's rights. Somewhere this chain breaks.

The questions that arise from the enumeration of these legislative norms that regulate, ensure and promote children's rights are, why, even in the 21st century, do not all children benefit from their respect and application? Why are there unhappy children, whose rights are constantly or sporadically violated? Why are there children who are physically and emotionally abused, children who beg, children who are unhappy because they have to endure loneliness in the countless cases when parents are forced to choose other states in order to be able to offer them a decent living?

For too many years now, there has been talk about the problem of an entire system that needs to be changed. Changed by whom and how and when? The eternal answer: "a joint effort by the authorities, civil society, schools and the media is needed for this change". Answers on paper. In the meantime, we encounter emotionally and physically abused children, children who go to bed hungry, children given to the care of relatives who cry for their departed parents, children killed by violence and everyone's indifference. Of course, during all this time, reports are being drawn up, catalogs are being made, associations are being established, promises are being made, reorganizations are being made, laws are being adopted, challenges are being talked about, debates and research are taking place. Theoretically, every child in Romania has

their rights ensured and guaranteed. Theoretically... In real life, however, there are thousands of children without rights, without protection, without childhood.

The major themes of research and analysis regarding them are related to: child protection against any form of violence, the quality of education, their access to health, combating poverty in families and communities, the quality of social services, improving the situation of children with disabilities, the role of parents, authorities and society.

If we consult the statistics on abuse against minors, we find that in 2025, cases of sexual abuse and exploitation of children reached a critical level, doubling compared to those in 2024.

In Romania, Law 156 on the organization of the activity to prevent the separation of children from their families was published in the Official Gazette no. 484 of May 31, 2023. This law gave rise to heated debates because there were accusatory voices expressing concern about the fact that the Romanian state proposes a census of all children in Romania based on established criteria, carries out a screening of them, after which it determines which of these children represent a "risk of family separation" (<https://www.juridice.ro/679311/separarea-copilului-de-familie-devine-norma-sa-nu-fie.html>). These voices say that a presumption of dysfunction is established for families with children, a presumption that can only be removed by presenting or proving criteria necessary to demonstrate the absence of family vulnerability. Such a regulation annihilates, they say, the most authentic and delicate part of human freedom, related to the relationship of an individual with their own child, the state intervening to decide some limits over the will of the parent.

We give two negative examples in this regard. The case of Ashya King whose parents were arrested for taking their child for treatment abroad. The parents, Brett and Naghmeh King, were arrested in Spain, a country that refused to hand them over to the British authorities. They were put on international wanted list, not because they were feared criminals, but because they wanted what was best for their own child. Brett and Naghmeh King stole their own child from Southampton General Hospital. The child is healthy today precisely thanks to the two parents who refused to give in to the authorities who had already decided that Ashya was lost.

The case of baby Alfie, which has generated indescribable emotions, raises big questions about the limit that a parent can set for the state authorities in a situation where the state makes decisions regarding a minor whose parents are alive and can decide for their child alone, a decision that is diametrically opposed to the decision of the parents who gave him life and who know and understand the interests of their child best. Who and how can set this limit? Doesn't exceeding such a limit actually represent a serious, gross violation of human rights, of the rights of the child? Can't the English state be accused of seriously violating the rights of little baby Alfie and his parents? Is the British judiciary guilty for giving its consent to disconnecting the little baby from the machines that kept him alive, despite the will of the parents?

Indeed, Article 4 of Law 156 explains which children are considered to be at risk of family separation.

Depending on the family that is responsible for raising and caring for the child, that is, in the situation where the family is faced with one or more of the following situations: a) the economic situation and precarious living conditions existing in its family environment and/or in the community, respectively a situation of risk of monetary poverty or extreme poverty; b) the precarious health of one or more family members, including their disability; c) the abusive,

violent environment existing in the family and risky behaviors that may negatively affect the relationships between adults, children and between adults and children.

And in the situation where the child is in vulnerable situations such as delinquent behavior, repeated leaving of the home, alcohol and drug use, attempted suicide and school dropout, he is in such a situation of risk of separation, even though the family he is part of does not fall into any of the situations presented above.

According to this law, the public social assistance service, whose competences we must trust, determines, following an assessment, whether the child is in one of the situations considered vulnerable. After that, this same service is obliged to draw up a service plan that will include the necessary services with which the state, through its competent authorities, will respond to "the identified needs of the child and his family, the social assistance benefits, the interventions necessary to implement the respective plan, the purpose pursued by implementing the plan, who provides those services and for what period of time". This service plan, drawn up by the public social assistance service following the assessment of all aspects related to each individual case, must be approved by order of the mayor.

We note, with some reservation, that the public social assistance service has a series of responsibilities and we wonder to what extent these social assistance representatives will cope with all the challenges and situations they will encounter in carrying out their activities compared to the insufficient number of employees in these services. Also, it is not by chance that we wonder how prepared or if the expertise of these social workers is up to the level necessary to solve such serious problems involving children. Considering the fact that the state charges them with such a great responsibility, we believe that it will also pursue their specialization in this regard.

Moreover, we cannot help but wonder who guarantees us, the parents, that in a few years, the expressions "social environment unsuitable for the child's upbringing and education" or "negative influences on the child" will have the same meaning as they do today. Because a situation can become so-called "vulnerable" depending on how certain terms often used in the law are explained.

Chapter II of the law shows which institutions and services have responsibilities in the activity of preventing the separation of children from their families, namely "the Ministry of Family, Youth and Equal Opportunities, the central public authority which, through the National Authority for the Protection of Child Rights and Adoption, implements the national policy in the field of child rights protection".

We note that the law envisaged that public social assistance services at the level of communes, cities and municipalities would register in the National Children's Observatory all children at risk of family separation and all families with children in vulnerable situations. Law 156/2023, art. 16: "(1) The National Children's Observatory is hereby established, hereinafter referred to as the Children's Observatory, which is a module within an information system developed and administered by the National Authority for the Protection of Children's Rights and Adoption, hereinafter referred to as ANPDCA.

(2) The child observatory represents the set of activities carried out with IT means for the registration by local public administration authorities of children at risk of family separation.

We will see, in the future, whether or not this law will give rise to abuses in terms of establishing the risk situation for the minor child and how the parents of such a child at risk of family separation will react or confront the authorities in their desire to keep their family intact.

Brief Overview of the Situation in Italy

Child safety is today one of the most frequently evoked and, at the same time, the most ambiguous concepts in the entire system of protection of fundamental rights, being frequently invoked as an absolute and indisputable value, without clarifying its legal scope, its normative basis and, above all, its relationship with other constitutionally and conventionally guaranteed rights. In institutional language and in practical application, child safety has become a kind of general clause, capable of absorbing and justifying deeply invasive interventions in family life, often pushing the threshold of public intervention far beyond the limits initially established by the legal system. This expansive function has been repeatedly highlighted by researchers as problematic in terms of the legality and substantive proportionality of public action (Ferraro, 2022). This evolution requires critical reflection not only on the formal legitimacy of the measures adopted, but also on their real coherence with the principle of proportionality and the substantive purpose of protecting the best interests of the child.

In the Italian constitutional system, child protection has never been conceived as a substitute for parental authority, but rather as a subsidiary and residual intervention, activated only in the presence of proven incapacity or serious insufficiency of the parents, according to the model outlined in articles 2, 30 and 31 of the Constitution, which assigns to the family the role of primary social formation, and to the State a function of guarantee and support, not of ordinary substitution (Sesta, 2023). This framework is fully confirmed in the supranational dimension, where child protection is part of a multi-level system of rights that places family life at the center, as the main space for personal development.

Article 8 of the European Convention on Human Rights, as consistently interpreted by the case-law of the Strasbourg Court, requires States not only to refrain from arbitrary interference with private and family life, but also to adopt positive measures aimed effectively at preserving family ties, clarifying that the separation of a child from his or her family unit can be justified only in exceptional circumstances and always subject to a strict assessment of necessity and proportionality (ECtHR, K. and T. v. Finland, 2001; ECtHR, Neulinger and Shuruk v. Switzerland, 2010). From this perspective, the safety of the child cannot be understood as a value incompatible with the family, but rather as an objective that must be pursued primarily within it, unless this proves impossible for serious, present and demonstrated reasons, the authorities being obliged to take measures specifically aimed at family reunification (ECHR, Strand Lobben and Others v. Norway, Grand Chamber, 2019).

Despite the clarity of these principles, judicial and administrative practice demonstrates a progressive expansion of the concept of risk, which is increasingly defined in potential, prospective or merely hypothetical terms, with a shift from concrete risk to perceived risk, which ultimately legitimizes anticipatory and highly invasive interventions (Camerini, 2020). The safety of the child is thus separated from the assessment of a current and objectively verifiable danger and anchored in indicators of social vulnerability, economic fragility or family history which, although relevant for the analysis, do not in themselves constitute a condition of prejudice capable of justifying the restriction of fundamental rights.

One of the most problematic aspects of this development concerns the role assumed by social services and technical-administrative bodies, which are often attributed a decisive role in assessing the safety of a child. The reports drawn up by these services, although formally classified as knowledge instruments, are in fact elevated to the rank of privileged sources of evidence, often kept away from effective critical examination, with a methodology that is frequently opaque and characterized by a mixture of descriptive observations, subjective interpretations and value judgments not always supported by verifiable evidence (Ferraro, 2022; Barone, 2021). The evaluative language used, rich in elastic categories and non-operationalized concepts, contributes to the construction of risk frameworks that are difficult to challenge precisely because they lack a basis in measurable and common parameters.

In this context, juvenile judges risk operating in an extremely conditional decision-making framework, in which technical assessments tend to overlap with jurisdictional functions, transforming the decision into a formal ratification of preconceived decisions. The jurisprudence of the Court of Cassation has repeatedly reiterated that the removal of a minor from the family unit constitutes a last resort and that any intervention that limits parental responsibility must be based on a thorough assessment of the current harm and the impossibility of adopting less invasive measures, excluding automatic decision-making and generalized presumptions (Civil Court, Section I, no. 14426/2021; Civil Cassation, Section I, no. 9691/2022; Civil Cassation, Section I, no. 23320/2024). However, these principles struggle to translate into uniform and coherent practice, leaving room for heterogeneous and sometimes disproportionate interventions.

The tendency to favour separation as the standard response to family complexity is one of the most obvious shortcomings of the current system. Removal, which legally constitutes an exceptional and temporary measure, is increasingly used as a tool for risk management and operational simplification, responding to organizational concerns and limiting institutional liability, rather than an individualized assessment of the best interests of the child (Camerini, 2020). In this way, safety is pursued through separation, rather than through strengthening parenting skills and available local resources.

The consequences of this approach are particularly significant for the psychological and emotional development of the child, as separation from parents and the family context has a profound impact on the child's identity, emotional continuity and sense of internal security. The rupture of primary ties, especially if prolonged and lacking a clear prospect of return, can generate lasting traumatic effects, compromising the very well-being that institutional intervention is intended to protect (Barone, 2021; ECHR, Strand Lobben, cited above). From this perspective, the safety of the child cannot be assessed solely in terms of the absence of immediate danger, but must include the protection of relational and emotional stability.

Other critical issues arise at the systemic and cultural level, as the current guardianship model tends to selectively target families characterized by socioeconomic fragility, migratory origins or a history of difficulties, transforming the child's safety into a criterion for differentiated intervention, which risks reinforcing structural inequalities, instead of reducing them (Ferraro, 2022). Added to this is an often formal management of the child's right to be heard, which is recognized at the legislative level, but undermined in practice when their voice is not in line with the already outlined institutional trajectory (Barone, 2021; ECHR, Neulinger and Shuruk, cit.).

In light of these considerations, the need for a profound rethinking of protection policies is evident, aimed at restoring the principle of proportionality and reaffirming the residual nature of removal. Child safety must be brought back to a relational and dynamic dimension, based on concrete, current and demonstrable assessments and on institutional interventions designed as instruments to support, not replace, the parental role (Sesta, 2023; Cass. civ., Sect. I, no. 23320/2024). Only a system capable of distinguishing real from assumed risk and investing in strengthening family and territorial resources can be considered truly oriented towards protecting the best interests of the child.

Conclusions

Two countries, same problems. A unanimous conclusion is that not all children benefit from the regulations that protect and represent their interests.

In Italy, we observe that the state, through the competent authorities, intervenes far too easily in family life, extracting children from their families for more or less objective interests and reasons. In Romania, the state is preparing or trying, we believe, to ensure the rights of minors in difficulty by burdening social workers with major responsibilities, both with regard to them and their families.

Whether they are in Romania, Italy or any other corner of the world, children need the protection of all of us.

Child safety cannot be reduced to an abstract formula or a simple defensive objective, it must be understood as the result of a complex balance between protection, freedom and responsibility. A system that sacrifices complexity for the sake of simplifying decision-making risks producing new forms of insecurity, undermining trust in institutions and compromising the well-being of the children it aims to protect.

The real challenge lies not in expanding the scope of public intervention without discrimination, but in improving the quality of decisions, restoring the centrality of the law, motivation and family as the main guarantee for the safety of children.

Among the most important rights of children are: the right to health, the right to education, the right to protection from violence, the right to play and leisure, the right to family and care, the right to opinion and expression, the right to protection from exploitation, the right to a decent standard of living. Unfortunately, they are rights on paper.

REFERENCES

1. Annex to Government Decision No. 440/2022 for the approval of the National Strategy on social inclusion and poverty reduction for the period 2022 - 2027, of 30.03.2022.
2. Annex to Government Decision No. 969/2023 on the approval of the National Strategy for the protection and promotion of children's rights "Protected children, safe Romania" 2023 - 2027 of 12.10.2023
3. Camerini G., Removal of the minor and the principle of proportionality, Family and Law, 2020.
4. European Court of Human Rights, K. and T. v. Finland, Grand Chamber, 12 July 2001. European Court of Human Rights, Neulinger and Shuruk v. Switzerland, Grand Chamber, 6 July 2010. European Court of Human Rights, Strand Lobben and Others v. Norway, Grand Chamber, 10 September 2019. Italian Supreme Court of Cassation,

Civil Section I, No. 14426/2021. Italian Supreme Court of Cassation, Civil Section I, No. 9691/2022.

5. Emeşe Florian (2018), Family Law in the Regulation of the Civil Code, ed. CHBeck
6. Evaluation of the implementation of the National Strategy for the Protection and Promotion of the Rights of the Child 2014 – 2020.
7. Ferraro G., Protection of minors between protection and control, Giappichelli, Turin, 2022. Barone L., The child's right to be heard in civil proceedings, Cedam, Padua, 2021.
8. Law 156/2023 on the organization of the activity to prevent the separation of children from their families
9. Law 272/2004 on the protection and promotion of the rights of the child
10. Sesta M., Parental responsibility and public intervention, Italian Journal of Civil Law, 2023.