



Forum of family associations – Lungotevere dei Vallati 10 - 00186 Roma - ITALY

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Policies and proposals of the Forum of Family Associations in the field of marriage crisis, separation, shared custody and rights of the child

In this historical moment in which the crisis of the family seems to expand and in which the traditional role it has played through the centuries steadily falling apart, it is necessary that each operator (and not just lawyers) asks themselves what they can do to overcome this social emergency.

And it happens that - ignoring the socio-cultural investigation of the genesis and development of family breakdown -, even if it still represents the basis of the European social fabric, it is experiencing an even more sad and dramatic decline.

However, we can ask useful questions about the means which the law and the social sciences, with all their limitations, put at the disposal of specialized operators.

When a crisis occurs within a couple (especially with children) we are witnessing a phenomenon that involves various effects from many points of views.

IS THE FAMILY BECOMING A PRIVATE RELATIONSHIP? AND IS IT THE RIGHT PATH?

However the primary aim is to find solutions that are as appropriate as possible to safeguard the best interests of children.

- a. Family should be an island, just lapped by law (Arturo Carlo Jemolo)
- The sea of the law (the strength of the state) should just lap the family, because inside each family there are personal rules that we have to conserve and respect
 - The law can act only to help and sustain
 - The power of the law has to stop in front of the power of love

- b. Separation and divorce in Western countries are the leading cause of loss of a parent by the children. The consequences of this loss are not only psycho-affective (Cfr. P. Ferliga, Conference of Genoa 2013), but – as showed by recent studies – they concern the health of the child, causing damage to cells (Cfr. V. Vezzetti – Strasbourg Conference 2013 <http://www.colibri-italia.it/2013/10/23-ottobre-strasburgo-reports-european.html>). Some other studies confirm physical and psychological illness in children growing up without one parent:

- Lack of parental care affects synaptic development in the anterior cingulate cortex (Brain Res. 2006 oct 20; 1116(1):58. Epub 2006 Sep 1 Heiemeke C., Braun K.)
- Paternal deprivation induces dendritic and synaptic changes and hemispheric asymmetry of pyramidal neurons in the somatosensory cortex (Von Guericke University Magdeburg 39118 Germany)
- The missing father. Epidemiological findings on the significance of early absence of the father for mental health in later life. Z Psychosom Med Psychother, 1999;45(3); 260, 278
- Does father absence place daughters at special risk for early sexual activity and teenage pregnancy?(Departement of Psychology, Christchurch, NZ)

Being able to grow up with both parents is a definite right of the child, a right which concerns not only the civic-legal sphere, but even more than the protection of health.

- c. The first and obvious solution is the care of the relationship of parental couples.

Some numbers...

Weddings in Italy (2011): 204.830

- Separations: 88.797
- Divorces: 53.806
- Separations + divorces: 142.603
- **Children involved: 162.971**

■ How we can help this huge number of people?

For too long married couples have been left alone to face this crisis (Cfr. S. Pillon – Strasbourg Conference 2013

<http://www.rc-comunicazione.it/images/gs/Pillon%20Strasburgo%2024%20ottobre%202013ok.docx>).

A renewed treatment of stable relationships, and the provision of social mechanisms of conciliation and "maintenance" of the relationship of couples is therefore certainly not to be considered a "rearguard action" but rather an innovative challenge to ensure better social cohesion, better support for the young generations and a more serene quality of life and relationships throughout the social fabric.

The proposals which the Forum of Family Associations wants to show in European Headquarters, after years of studying Associations' pilot projects, will be briefly examined.

They are:

- (Re)conciliation
- Family Mediation
- Parenting plan
- Training for family supporters

1. Reconciliation of the parental couple

- The unity of the family is a precious asset to be protected, primarily, and in spite of everything. The first idea is to deal with the crisis by focusing on strengthening the family, through support from outside and through the invaluable assistance coming from Associations. Many experiences, both locally (see www.casadellatenerenza.it) and in the international context (see www.retrouville.org) can prove that the possibility of giving a new chance to a destroyed marriage works in more than 60% of cases.

The "House of tenderness" Centre in Perugia - Italy offers one-year or two-year "schools of tenderness". All without any public help!

They offer

- paths for the training and coaching of young couples and engaged couples,
- pathways to support those who are separated or divorced.
- counselling and training courses for singles, couples and groups

- There are courses called "speaking groups" for children with divorced parents
- The purpose is to offer to the couple therapeutic tools to help them to overcome the crisis

Over 400 couples every year follow these courses and more than 50% of them (nearly 60%) overcomes the crisis and continues living together.

This brings a decrease in the rate of family breakdowns and brings great benefit to the younger generation. Obviously, to obtain meaningful results it is necessary to provide adequate services through staff trained and prepared for a multidisciplinary approach in terms of ethical, psychological, legal, emotional and economic. The pilot projects - born from Association agreements with the public service - have obtained excellent results in Italy, such as to justify further investment. Europe has invested too little and for purely ideological reasons in reconciling families. One solution could be the implementation of the so-called "mandatory attempt at conciliation."

Italian civil law recognizes the possibility of a reconciliation between the spouses. Many believe that this attempt is the legacy of an outdated concept of marriage and want it to be deleted.

Of course, as it stands today it is not very useful: civil reconciliation is formally entrusted only the obligatory conciliation provided for under Article 708 cpc. More concretely, the conciliation is to be achieved spontaneously, thanks to the initiative of the spouses or the mediation of the lawyers, given that the state of separation should not hypothetically evolve inevitably to the dissolution of the marriage and the subsequent disintegration of the family.

It is believed, however, that **such an institution can find a second life if properly implemented and filled with content**. The attempt at conciliation already disciplined by the Code of Civil Procedure as the assumption of the separation procedure, can and should be made effective and fruitful by its fulfillment with schedules and methods that have reasonable success within a path of conciliation and proposal. Imagine saving about 60% of couples from divorce: it means saving about 100.000 children per year only in Italy...

It is hoped, for this reason, the introduction of a **path prior to conciliation** in accordance with an established protocol, to be made in a facility such as "counselings" public or private, or through the support of specialized and

affiliated associations. All this could be a necessary condition for the submission of the application for separation.

This would allow couples in crisis to sift to the bottom of the reasons for the crisis, and their possible removal, and however, it would allow the settling of mind essential to reach, whatever the outcome of the route to a brightening of the reports.

2. FAMILY MEDIATION

Between initiatives to support the family in crisis to find a shared location, **family mediation** is certainly the most suitable channel to handle the situation by avoiding open conflict. Founded as a tool for conflict resolution in family context of separation and divorce, it is a relatively new institution, the result of the innovations of the twentieth century, that identify it as a precious opportunity to independently manage the most significant events of family life and staff. Family mediation is the application of ADR methods that has had more success in Europe, and has spread to Italy as an indispensable tool for conflict resolution. The specific humus where the same is to operate is represented by the complex ecosystem of the "**paths of separation.**"

The mediation

→ **Aims:**

- a) Definition of problems
- b) Work on the emotional aspects - emotional to support restructuring of family relationships.
- c) Defining Options
- d) Select the opinion on which to negotiate in case of failed reunion.

- There are a lot of resistances in Italy against the introduction of ADR in family matter
- The lobby of lawyers and unbelievably also the mediators in Italy and in a lot of european countries are opposed to obligatory mediation

- **We believe that a middle ground between “obligatory mediation” and merely “optional mediation” could be “awarded mediation”**
- We are pushing to obtain more short legal paths and judicial procedures for couples who have followed paths of mediation

3. **PARENTING PLAN**

The proposed innovation is to use the tool of mediation for parents to co-opt the building of a " **EDUCATIONAL PROJECT** " cd . " **PARENTING PLAN** " .

It is essential to equip families with children of a well-defined program of meetings between parents and children , such as to make the system of foster truly shared , protecting primarily the interests of the child to benefit from the support and care of both parenting figures, extremely important from the point of view strictly clinical , even before the legal aspect. The main purpose is a full realization of co-parenting - even without going to the extreme of foster alternate hypothesis - allowing equivalent time attendance of children with both parents. The care plan must also contain the rules of time to spend with the ascending branch of each parental and relatives in general , as well as the prediction of a specific educational plan through the regulation of content . Specifically , they will build the basic educational foundation through the shared choice of school to attend , sports to practice , etc. .

In the education plan must also give proper emphasis to the Right of the child to continue living in his social and cultural habitat.

- The best practice in this issue is surely helping couples to write their own parenting plan. Counsellors and mediators but also lawyers and judges should have the duty to propose to the parents to arrange a specific parenting plan
- In the Canadian department of justice internet site a very good guide to parenting arrangements after separating or divorce, called “how to put your children first” can be downloaded
- In the Netherlands parenting plan is offered by municipal Youth and family centers

- In Italy we are pushing to change the law (or paths of judicial procedures) and to introduce the parenting plan as obligatory in separations and divorce trials

The Forum of Family Associations has been fighting for years in Italy and not only to see recognized a shared custody that is really "shared". **A parenting plan could be one great help to reach the physical shared custody.** The multiplicity of needs of a couple at the time of the dissolution of the marriage, and the various issues entailed in this event, lead people to seek new solutions, both alternative experience to that in which the Judiciary or therapeutic area, as well suited to respond to the dynamics of the conflict, even in a context like the Italian one, deeply attached to the traditional.

In Europe, the only country that has accepted the challenge of the "Parenting Plan", thus providing a valuable support for parents starting with the basic points of the resolution of the conflict, is the Netherlands. For years the Dutch government has asked municipalities to establish the cd. "Youth and Family Centers" and this initiative has significantly reduced the impact of divorce.

Specifically, in the Netherlands, municipalities are responsible for five areas of parenting support and growth, which are mentioned in the law of social support. In the Netherlands, the parents of minor children who divorce have a legal obligation to submit a parenting plan to the court, provided of agreements concerning the minor children. This plan outlines the organization of the parents about the division of labor and care of "parenting". When parents, by themselves, are not able to set a "Parental Plan", the judge will make a decision on the matter. He may also require the cd. "Child Care" in order to investigate the situation in practice and to identify the most appropriate path to follow, in the exclusive interest of the child. We are convinced that the plan should be adopted in all countries and should be recognized as best practice and standards in the child's best interest.

What should be the minimum contents of parenting plans?

- It is essential to equip families with children of a well-defined program of meetings between parents and children
- This program has to be customized according to the age of children to ensure a correct physically shared custody

- It has to consider rules of time to spend with other relatives and friends
- It has to include rules about where to live, which school to attend, sports, holidays and other activities in relationship to the educational directions of both parents
- It absolutely must include a very specific **expenses plan**

The plan of apportionment of expenses (Expenses plan)

- In Italy the law (former art. 155 Codice civile, now art. 337 Codice civile) states that "unless otherwise agreed by the parties, each parent provides (directly) for the maintenance of the children in proportion to his own income". **This is a good law but is completely unapplied.** In 99% of separations and divorces the court orders the payment of a monthly contribution from one parent to the other.
- **Our proposal is to apply the law and to provide with direct maintenance of the children with the help of the expenses plan and a bank account held jointly by both parents**

Across Europe, most of the conflicts between parents arise from the economic aspect of the management of maintenance for their children. This is because each of the parents - who are clearly at odds with each other - turns the child support for the child in a tool with which to "hit" the other side. In essence, each chooses to provide for the maintenance, education and recreational and training of children, without the need to meet - clash with each other. It is precisely for this reason that the introduction of an innovative system for managing expenses for the offspring is necessary.

Bearing in mind the European regulatory framework regarding child support in a pair separated and divorced couple - specifically Italian context - and bearing in mind the post-debate about Italian law n. 54/2006 on the rules of contribution to the development and growth of the child in a family crisis - we can see that essentially two visions contrast:

- On the one hand there is conservation: the parent which lives with the child must receive the alimony and manage the full contribution for the child (this is a method contrary, in our opinion, to every principle of co-responsibility). The text of the Italian law n. 54/2006 differs from previous legislation which governs the maintenance of children in separation and divorce. While in the past, according to art. 155 co. 2 and art. 6 co. 3 Italian law n. 898/70, the judge had to determine the extent and the manner in which the non-custodial parent must contribute to the maintenance of the child, in the legislative text, which focuses on shared custody, the judge must determine the extent and mode of the

contribution of each parent, with different logic operation. Recalling the principle of shared parental responsibility and the principle of proportionality, already envisaged by art. 148 of the Italian Civil Code, the fourth paragraph of Art. 155 Italian Civil Code states that "unless otherwise agreed by the parties freely entered into, each parent provides for the maintenance of the children in proportion to their income .."

- On the other hand, there is the proposal of direct maintaining. This is a central issue that has sparked a lively debate in doctrine and jurisprudence. It refers to the direct contribution on the part of both parents to the maintenance of the minor child. Despite the innovation of an idea that would lead to banish the alimony payment to a mere instrument of "equalization", which is used in order to restore balance in relation to the contribution made by each party, the majority jurisprudence seems reluctant to abandon the practice of 'periodic alimony payment on the basis that the parent with whom the child is placed or who keeps it to himself with the character of stability, must be able to cater directly to the needs of the offspring.

The proposed solution is to maintain a substantial direct computed previously by the distribution plan expenses. In this way, the parents, in advance and with the help of the mediator, may be attributed to spending whole chapters dividing eg. expenses for sport, or for school, or even travel.

This would reduce a lot of the payment of money from one parent to another, favoring the direct management of alimony. Any remaining needs may find forms of compensation to be paid by means of a **double-payment of both parents to be paid to a bank account held jointly and aimed at the residual needs of children**, including medical expenses and school. The bill would thus be fed by both parents and from which each parent (or adult child) may be taken for the needs of the child (or in the case of their adult child). This is all to the advantage of accountability, transparency and equality of the two parenting positions.

4. Specific training for "family supporters"

- There are a lot of family supporters or caregiver like counselors, mediators, police officers, psychologists, social workers, lawyers, judges, who are not always well prepared to offer appropriate support to families in crisis.
- **Is important to ensure a permanent training for professionals who want to take care of families**
- **Family court, specialization and permanent training should be the minimum required in all European countries**

However, couples must be sustained even if they decide to reach separation, in order to maintain as far as possible, the civilization of the reports and the patency of appropriate channels of dialogue, particularly in respect to a balanced and proper exercise of shared parenting.

For this reason it is useful to promote:

a) Family Court

The idea, proposed several times and also subject of an Italian parliamentary initiative (DDL n. Italian Senate 3040. Alberti Casellati) is assessed in the overall context of the need for reforming the institution of the judiciary and of the specialized sections of the Tribunal for disputes in respect of persons and family law. The idea is to provide for the establishment by the courts already existing (ordinary courts and Courts of Appeal) of a section, which centralises the skills of all trials relating to family, children, status and legal capacity of the person and marital status, currently divided between the Juvenile Court (for underage people), the tutelary judge and the ordinary courts. The establishment of a specialized section of the Family Court also would realize the need for a specific "procedural family law ", allowing the elimination of some major discrepancies in the procedural practices of the various courts and ensuring greater consistency in the decisions. The idea in fact, would be to rationalize and unify the various process models that are currently being used in family litigation, children and incapable, the result of a law which in recent decades has shown that development is not always staffed. The establishment of the Family Court would achieve a simplification and rationalization of the rites of the proceedings, through the reorganization and unification of legal disputes and those that affect the status and capacity of the person, in general, to protect greater dignity of individuals.

b) Watch out for children's right

- Art. 3 of the convention on the rights of the child (20 nov 1989) states that in all actions concerning children, whether undertaken by social welfare institutions, private and public, courts of law, administrative authorities and legislative bodies, the higher interest of the child shall be the primary consideration
- **To receive love, education and care from mum and dad is the first of the rights of the child**
- **In front of love, law have to stop itself**

As early as 1990, the Hague Conference on Private International Law had promoted a Convention regulating the guardianship of minors and numerous conventions. This was incorporated into our legal system through the instruments of ratification and enforceability, were taken out, since the twenties, for to adjust the disciplinary powers of the authorities and the applicable law to the protection of minors, as well as to regulate some institutions particularly sensitive to family law. In particular, the **Convention on the Rights of the Child**, adopted at the UN November 20, 1989, not only outlines in a comprehensive and sufficiently complete a "**Statute of the rights of the child**" but also allows, through the law of ratification, that the principles and the provisions of the Convention are to be an integral part of domestic law and therefore become fully active even in different countries (Italy has ratified and made enforceable by the Convention of 27 May 1991, n. 176). The Convention on the Rights of the Child, while moving from the traditional view of the child as a person who "by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth," attaches to a lesser progressive autonomy in the exercise of a comprehensive catalog of human rights.

c) Procedural Representation of the child

Various European and international Conventions such as the **European Convention on the exercise of children's rights** (Strasbourg January 25, 1996), the Hague Convention of 25 October 1980, the Luxembourg Convention of 20 May 1980, and the recent Convention of Oviedo claim the principle of the necessary procedural representation of the child.

Article 5 of the European Convention on the Rights of the Child, in particular, recognizes the minor in proceedings that directly affect it, the right to participate as an autonomous part of the judgment, through representation by a private lawyer.

c) Preparation and training of operators

To ensure an adequate level of specialized technical expertise to "operators" who play a decisive role in cases concerning underage people and family, they should be regulated through adequate and continuous training mandatory for all persons charged with caring for the family in crisis, from judges to legal services, social services workers for brokerage services, from family counsellors, teachers, and the police. The Convention on the Rights of the Child of 20 November 1989, at Article 3 expressly states

that in all actions concerning children, whether undertaken by social welfare institutions, private and public, courts, administrative authorities, legislative bodies, the higher interest of the child should be the subject of primary importance, and this principle became a full part of our legal system. Moreover it has become more and more often refer to either the ordinary law of merit and legitimacy, both the constitutional jurisprudence. For this reason, it was considered that the legal practitioners, appointed to resolve disputes in the field of family and children, should have a specific skill and, above all, a cd. "Overview".

The future of our families is the future of our society

Thank you.

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