

***“MiRI - Minor’s Right to information in EU civil cases:
Improving children’s right to information in cross-border civil cases”***

Final Conference

June 17-18, 2021

Università La Sapienza, Roma (Piazzale Aldo Moro 5 – Aula XIII “D’Antona”)

Live streaming Zoom platform*

• **Thursday June 17, 2021 (afternoon session – h. 15.00/18.00)**

15.00 **Prof. Salvatore Patti** (Sapienza University of Rome)

Introduction and Chair

15.10 **Prof. Iliaria Queirolo** (University of Genoa)

Introduction to the MiRI Project

15.30 **Dr. Francesca Maoli** (University of Genoa)

Minor’s Right to information in Italy

15.50 **Prof. Vassil Pandov** (Institute of Private International Law)

Minor’s Right to information in Bulgaria

16.10 **Dr. Maria Gonzalez-Marimon** (University of Valencia)

Minor’s Right to information in Spain

16.30 **Dana Rone** (Turība University, Latvia)

Minor’s Right to information in Latvia

16.50 **Prof. Thalia Kruger / Tuur Minne** (University of Antwerp)

Adoptees’ right to information in intercountry adoption

17.10 **Daja Wenke** (Defence for Children International - Italy)

The role of service providers to provide child-friendly information in civil proceedings

17.30 **Geraldo Rocha Ribeiro** (Centro de Direito da Família, Coimbra)

Minor’s Right to information in Portugal

17.50 **Final discussion**

- **Friday June 18, 2021 (morning session – h. 10.00/13.00)**

10.00 **Prof. Iliaria Queirolo** (University of Genoa)

Introduction and Chair

10.10 **Dr. Roberta Bendinelli** (University of Sassari)

Introduction to the MiRI Project

10.20 **Dr. Maria Carla Gatto** (President at the Milan Court for minors)

Why, when and how minors need to be informed

10.30 **Prof. Carlo Rimini** (University of Milan)

The right of the child to be informed and his right to be heard during a judgement on the basis of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

11.50 *Coffee break*

11.10 **Dott.ssa Alessandra Gatto** (Judge at Caltanissetta Court of minors)

Hearing and self-determination of the child. Authorization to join the protection program for pentiti

11.30 **Prof. Samuel Fulli-Lemaire** (University of Strasbourg)

Minor's Right to information in France

12.50 **Avv. Maria Giovanna Ruo** (Foro di Roma)

Transnational cases and minor's rights to be heard and informed

12.15 **Sara Lembrechts, Tine Van Hof, Leontine Bruijnen** (University of Antwerp)

Custody and international child abduction proceedings in Belgium: how, when and by whom will the child be informed? On the right of the child to receive adequate information.

12.35 **Prof. Cristina Caricato** (Sapienza University of Rome)

The hearing of the minor in the adoption proceedings

13.00 **Final discussion**

Lunch break

- **Friday June 18, 2021 (afternoon session - h. 15.00/18.00)**

15.00 **Prof. Salvatore Patti** (Sapienza University of Rome)

Introduction and Chair

15.10 **Avv. Maria Pagliara** (Foro di Roma)

Introduction to the MiRI Project

15.30 **Prof. Mirzia Bianca** (Sapienza University of Rome)

The minor's right to information in Italy and the best interest of the child

15.50 **Dr. Vincenzo Vitalone** (Judge at Rome Family Court)

Hearing and protection of the child in separation and divorce cases

16.10 **Avv. Emanuela Andreola** (Foro di Padova)

The privacy of the child in the process and ethical duties of the lawyer

16.30 *Coffee break*

16.45 **Prof. Laura Carpaneto** (University of Genoa)

Child participation under Regulation Brussels II ter

17.10 **Prof. Claudia Benanti** (University of Catania)

Family conflict and a child's right to be heard in legal proceedings

17.30 **Prof. Claudio Cecchella** (University of Pisa)

Minor's procedural rights in Italian process, between technical defence and hearing

17.50 **Final discussion**

Registration: To apply, please fill out the [online form](#). The participants will receive the link to access by e-mail.

*The Conference will be held online on the Zoom platform both in English and Italian with simultaneous translation.

For lawyers, the Conference is in the process to be accredited by Consiglio dell'Ordine degli Avvocati di Roma.

For service providers, the Convention is in the process to be accredited by Consiglio Nazionale Ordine Assistenti Sociali.

The Conference will be recorded for archiving purpose. The application implies the acceptance of the recording policy.

In cooperation with:



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***MiRI – Minor's Right to Information in
civil actions – Improving children's right
to information in cross-border civil cases***

Laura Carpaneto – University of Genoa

The project

Lenght: 24 months – January 2020 - January 2022

The research team: a consolidated one with 2 new partners

Genoa Uni. – Italy,

Valencia Uni. - Spain,

Institute of PIL – Bulgaria,

Turiba Uni. – Latvia,

European Association for family and succession law (EFL) – Germany,

Defence for Children International – Italy

Not out of the blue...previous work on this topic

2016 VOICE – legal and sociological analysis of international child abduction

Legal aspects: analysis of national case-law from 2005 to 2018 in 17 EU MSs– 938 decisions

- a) To check whether and how the «*Best interests of the child*» are considered
- b) To check whether **children are heard**

Main findings:

BIC is not very much mentioned (approximately half of cases), much more frequent are implicit reference to the child's welfare, development, balance. Elements which are taken into consideration: prompt return, living conditions, stable relations with both parents, possibility to solve amicably the conflict

Hearing of the child: cases considered 435 (no reference to BIC), in 194 yes – 127 no – the remaining ones not clear

When hearing did not take place, the reasons were: age (too young, less than 11 years old) – maturity

Collaboration with **International Association of Child Law Researchers (IACLaR)**

The child's voice – Marilyn Freeman and Nicky Taylor: <https://assets.hcch.net/docs/a8621431-c92c-4d01-a73c-acdb38a7fde5.pdf>

One of the main common finding is ...

Lack of participation of the child to the proceedings concerning/affecting him/her... **despite the legal framework:**

Art. 12 CRC 1. States Parties shall assure to the **child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.**

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Art. 8 ECHR

Art. 24 *Charter of fundamental rights of the EU*

Regulation 2201/2003 *(and from 1 August 2022 2019/1111)*

Limit: none of the above instrument impose a real change in internal proceedings (procedural autonomy)

MiRI

Aim: to enhance the right of children to be correctly informed on the proceedings concerning them

Tools: deep analysis of national case-law and in applying EU law with an aim to provide guidelines providing good practices in order to make national legal order more «*child orientered and friendly*»

Key element: involvement of practitioners!!

Expected results:

1. **Collection of relevant domestic and supranational provisions, case-law and practices**
2. **Organization of best practices exchange conferences** (5 at local level and 1 at international level...this one!!)
3. Development of a **database** of domestic provisions, case-law, best practices
4. **Needs assessment**
5. **Guidelines on cross-border best practices**

...among the findings resulting from the Genoa's seminar

Dott. Mazzagalanti: it is always necessary to consider whether and at what conditions sharing information with the child is in his/her best interests

VIP the way by virtue of which the child is put in contact with the judicial system in civil proceedings – it is necessary:

- a) To clarify **how to start a dialogue** with the child and to provide him/her with information
- b) To adopt a **multidisciplinary approach**
- c) To clarify **tasks and duties of the different professionals involved**, also through a correct distribution of responsibilities
- d) To **enhance cooperation** between social assistants, courts, lawyers and «special curator»

Thank you for your attention



laura.carpaneto@unige.it

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Università
di Genova

DISPO DIPARTIMENTO
DI SCIENZE POLITICHE

Minor's Right to Information in Italy

17 June 2021

Francesca Maoli

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Children's rights in the context of (cross-border) civil proceedings

Focus: **right of the child to receive adequate and reliable information**

Legal analysis on the right of the child to receive information in EU civil proceedings:

- analysis of six EU countries (Italy, France, Latvia, Spain, Portugal, Bulgaria)
- analysis on the role of service providers in Italy



Guidelines on common best practices at the EU level

The right to information

- The **child's fundamental right to participate and express his/her views in proceedings** concerning him/her is one of the guiding principles of the 1989 United Nation Convention on the Rights of the Child (Article 12) and can be distilled from other sources of international and regional human rights.
- The child's fundamental right to participate and express his/her views in the proceedings cannot be effectively exercised (either directly or indirectly) if the child does not receive **adequate knowledge and support**.
See: General Comment n. 12, CoE Guidelines, IAYFJM...

Children's rights in the context of (cross-border) civil proceedings

EU regulations in matters of parental responsibility and other related matters

Regulation (EC) n. 2201/2003 (and from August 1st, 2021 – Regulation (EU) No. 2019/1111

Regulation (EC) No. 4/2009

Some important procedural changes that impact upon children involved in family proceedings (e.g. provisions on the hearing of the child)

No interference as concerns domestic child consultation procedures.

Significant divergence exists between the Member States in procedures for:

- hearing children
- providing adequate information to children

Child participation and child's right to information in Italy

- A two-stream research conducted by the University of Genoa (legal perspective) and by Defence for Children International – Italy (with a focus on service providers in the fields of social welfare, education and health).
- Analysis of current practice in the light of the normative framework of international and EU standards concerning the right of the child to information

Child participation and child's right to information in Italy

- In Italy, children do not have a statutory right to receive information about the procedures in which they are involved
- **Article 336-*bis* Italian civil code**: right of the child to be heard in every procedure concerning him or her + right to information. However:
 - only for children above twelve years of age or capable of discernment;
 - only information about "*the nature of the proceeding and the effects of the hearing*"

Compare: General Comment No. 12 – Committee Rights of the Child

Child participation and child's right to information in Italy

- The right to information is usually perceived as a corollary of the right to be heard and there is less awareness on the opportunity to conceive this as an autonomous right that fulfils the child's best interests.
- In general, the survey highlighted a low level of awareness among legal practitioners.
- High level of fragmentation as concerns: timing, concrete modalities and content of information.
 - inform the child **before** the beginning of the proceedings: no fixed rule/practice
 - inform the child **during** the proceeding: fragmented practice, usually before the hearing
 - inform the child **after the end** of the proceedings (about the final decision: no fixed rule/practice

Child participation and child's right to information in Italy

- Absence of consolidated access to child-friendly materials in the context of civil proceedings.
- No specific subject appointed with the duty to inform the child: the judge? Special curator? Social worker? The risk is over-reliance on the parents.

Need: a better allocation of responsibilities among legal professionals involved in civil proceedings concerning children.

Parental responsibility proceedings (Regulation EC 2201/2003 and future recast Regulation 2019/1111)

- Typical scenario: the child receives information *about the hearing* a few days before, or shortly after the audition (or at the initial stage of the audition). [**is this a real *preparation*?**] Judge is mostly in charge of providing information.
- Jeopardized presence of tools and services for children that do not understand local language.
- Fragmented practice as concerns feedbacks after the audition, and as concerns the information on the final decision.

International child abduction proceedings

- Again: High level of fragmentation as concerns: timing, concrete modalities and content of information + difficulties intrinsic of child abduction cases and procedures;
- Who informs the child about the decision?
- A low degree of awareness as concerns the importance of **preparing the child to the enforcement of a return order.**

Maintenance proceedings (Regulation EC 4/2009)

- Children rarely participate and are heard in autonomous maintenance proceedings (outside divorce/separation);
- Again: High level of fragmentation as concerns: timing, concrete modalities and content of information – practice is almost absent.

Conclusions

- **Need** to promote a more comprehensive and clearer legal framework or other measures to ensure greater implementation of the right to information, which can provide guidance for legal practitioners involved in this type of process.
- **Need** to build practical modalities of providing information and guidance parameters to modulate the content due to the specificities of the case at hand – a solution that effectively pursues the best interests of the child.
- **Need** to better preparation/training of legal professionals who interface with children.

MINOR'S RIGHT TO INFORMATION IN SPAIN

“MiRI - Minor's Right to information in EU civil cases: Improving children's right to information in cross-border civil cases”

Final Conference

June 17-18, 2021

Prof. Dr. Carlos Esplugues Mota

Prof. Dr. Pablo Quinzá Redondo

Dr. María González Marimón

University of Valencia



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MINOR'S RIGHT TO INFORMATION IN SPAIN

I. The current situation of the right to be informed and to be Heard in the Spanish legal system

II. The National case law regarding the right of the child to be Heard.

III. Some conclusions from the MIRI Project Questionnaires

I. THE CURRENT SITUATION OF THE RIGHT TO BE INFORMED AND TO BE HEARD IN THE SPANISH LEGAL SYSTEM

Art. 39 of the Spanish Constitution of 1978:

- obligation for the public authorities in Spain to ensure social, economic and legal protection of the family, especially of children, pursuant to the international agreements that safeguard their rights.

Supranational provisions:

- A) Article 24 –“The rights of the child”- of the CFRUE.
- B) Art. 12. CRC and the CRC General Comment n. 12 on the Right of the Child to be Heard.
- C) Art. 6 –“Decision-making process”- of the European Convention on Exercise of the Rights of Children, January 25th, 1996.

I. THE CURRENT SITUATION OF THE RIGHT TO BE INFORMED AND TO BE HEARD IN THE SPANISH LEGAL SYSTEM

A) Spanish Civil Code .

B) Law 1/2000, of January 7th, 2000 on the Civil Procedure Act.

C) Legal Protection of Children and Young People Organic Act 1/1996, of January 15th, 1996.

I. THE CURRENT SITUATION OF THE RIGHT TO BE INFORMED AND TO BE HEARD IN THE SPANISH LEGAL SYSTEM

A) Spanish Civil Code

- hearing of the minor as regards different proceedings to be developed in the field of family law. For instance:
- In marital crisis' cases: Article 92(6) *"In any event, before decreeing the care and custody system, the Judge shall ask the opinion of the Public Prosecutor and hear the minor who has sufficient maturity, ..."*
- Parental authority: art. 154(III) *"If the children should have sufficient judgment, they must always be heard before adopting decisions that affect them".*

I. THE CURRENT SITUATION OF THE RIGHT TO BE INFORMED AND TO BE HEARD IN THE SPANISH LEGAL SYSTEM

B) Law 1/2000, of January 7th, 2000 on the Civil Procedure Act.

- Art. 777: special rules for those cases in which children are involved in separation or divorce proceedings concluded by mutual agreement or by one of the spouses with the other's consent.
- Art. 777.5: *"Should there be any minor or disabled persons be involved, the Court... shall hear the minors, should they have sufficient capacity, wherever the court may deem it necessary on an ex officio basis or at the request of the prosecutor, the parties, members of the court's technical team or the minor themselves..."*
- 770(I)(4) in fine: the judge *"shall ensure that any questioning of minors in civil proceedings is conducted under suitable conditions to safeguard their interests without interferences from other people, exceptionally making use of the help of specialists wherever necessary."*

I. THE CURRENT SITUATION OF THE RIGHT TO BE INFORMED AND TO BE HEARD IN THE SPANISH LEGAL SYSTEM

C) Legal Protection of Children and Young People Organic Act 1/1996

- Recently amended in 2015: a more child-centred approach.
- Art. 2: development of the principle of the best interests of the child.
- Art. 2(2) “*b) Taking into consideration the minor’s wishes, feelings and opinions, as well as their right to gradually participate -depending on their age, maturity, development and personal growth- in the process to determine their best interest.*”
- Art. 2.5: “*The resolution of any jurisdictional order and any measure in the best interest of the minor must be adopted respecting the due guarantees of the process and, in particular: a) The rights of the minor to be informed, and heard, and to participate in the process in accordance with current regulations”.*

I. THE CURRENT SITUATION OF THE RIGHT TO BE INFORMED AND TO BE HEARD IN THE SPANISH LEGAL SYSTEM

C) Legal Protection of Children and Young People Organic Act 1/1996

- Art. 9(1): *“Minors have the right to be heard and listened to without any discriminations on grounds of age, disabilities or any other circumstance, both within their family environment and in any administrative proceeding, judicial procedure or mediation proceeding affecting them and leading to a decision impacting their personal, family or social environments, and their opinions will be duly taken into account, depending on their age and maturity.” To that end, the provision states that “minors must receive information allowing them to exercise this right in a comprehensible language and accessible formats adapted to their circumstances.”*
- Art. 9(3) *“the decision shall be motivated by the minor’s best interest and communicated to the prosecuting authority, the minor and, where appropriate, their custodian, explicitly detailing any existing appeals against the decision.”*

I. THE CURRENT SITUATION OF THE RIGHT TO BE INFORMED AND TO BE HEARD IN THE SPANISH LEGAL SYSTEM

C) Legal Protection of Children and Young People Organic Act 1/1996

- Art. 9(1): *“appearance or hearings of minors shall be preferential and shall be conducted in an appropriate manner given their situation and evolutionary development -with the assistance, where necessary, of qualified professionals and experts-, taking care to preserve their privacy and using a language comprehensible to them, in accessible formats adapted to their circumstances, whereby they are informed both of the question being posed and of the repercussions of their opinion, subject to full compliance with the guarantees of the procedure.”*

I. THE CURRENT SITUATION OF THE RIGHT TO BE INFORMED AND TO BE HEARD IN THE SPANISH LEGAL SYSTEM

C) Legal Protection of Children and Young People Organic Act 1/1996, of January 15th, 1996.

- Art. 9(2): *“Minors shall be guaranteed the ability to exercise this right by themselves or through the person they may appoint on their behalf provided they are mature enough”. The assessment of the maturity must be made by “specialised personnel, taking into account both the minor’s evolutionary development and their ability to understand and assess the specific issue at hand in each case. At any rate, they shall be deemed to be sufficiently mature at the age of twelve.”*
- *“shall have the assistance, where appropriate, of interpreters”. And adds that “Minors may express their opinion verbally or through non-verbal forms of communication.”*
- *“should this not be possible or in the minor’s best interest, their opinion may be made known by their legal representatives, provided they have no interest that conflict with the minor’s, or through other people that, due to their occupation or special relationship of trust with them, are able to deliver it objectively.”*

II. NATIONAL CASE LAW REGARDING THE RIGHT OF THE CHILD TO BE HEARD

1. The need to hear the minor:

- but this “need” to hear the minor does not constitute a duty for the judge but a possibility for him / her to listen to the minor.
- The rejection to hear the minor is for the judge to be decided, but his / her decision must be always grounded “in the minor’s best interest”

2. The nature of the right to be heard in Spanish civil procedure:

- Compulsory vs. a right of the child.
- Traditionally the hearing of the minor has been approached as not –properly- constituting a procedural means of proof.
- Some debate of its double nature of being a procedural means of proof *stricto sensu*
- The hearing should be documented → controversies on the content.

II. NATIONAL CASE LAW REGARDING THE RIGHT OF THE CHILD TO BE HEARD

3. The meaning of “hearing of the minor” and the way it is implemented:

- The flexible –and variable- meaning provided to the “hearing of the minor”
- This lack of uniformity affects legal certainty and the bests interests of the minor
- Some ideas and principles for the implementation of the hearing of the minor are provided by Spanish case law

III. SOME CONCLUSIONS FROM THE MIRI PROJECT QUESTIONNAIRES



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**“MiRI - Minor's Right to information in EU civil cases: Improving children's
right to information in cross-border civil cases”**

FINAL CONFERENCE

Minor's Right to information in Latvia
Dr.iur. Dana Rone, Turība University, Latvia





Monday, 05 July 2021

Minor's right to information in legal proceedings

- Civil cases
 - Administrative cases
- Both are related, though with differences

Results of interviews: participants

- 25 respondents
- 72% from the capital
- 80% advocates
- 52% with work experience > 10 years

Minor's right to information in Latvia

1. Right to information – rarely applied, even formal
2. Right to be heard – more popular, though not in all cases

Minor's rights to information in Latvia

- **Law on the Protection of the Children's Rights**

- Article 13, part 1, Clause 1:

“A child has the right to freely express his or her opinions, and for this purpose to receive and impart any kind of information, the right to be heard [..]”

- A duty of all persons protecting rights of the child is to safeguard these rights efficiently
- Only 1 explicit norm exists, where a social institution shall provide information for the child (in case after the orphan reaches 18 years and leaves social care institution)

Minor's rights to information: test questions to judges and child-related institutions

1. What would you do, if you receive request from the child to give him/her information about court process, where his/her parents are litigating about custody rights?
2. Who should write answer to the child?
3. Would you use a child-friendly language?
4. How the child would know that he/she can request information and give information?

Minor's rights to be heard (1)

1. Adoption
2. Custody
3. Access rights
4. Cross-border abduction cases

- Age and maturity
- No age threshold

Who hears the child?

- The Custody court employee (municipal institution in each city)
- The court (in rare and exceptional cases)
- Special guardian (only in administrative cases)
- The psychologist

IEROBEŽOTAS PIEEJAMĪBAS INFORMĀCIJA



RĪGAS BĀRĪNTIESA

Tērbatas iela 69, Rīga, LV-1001
Tālrunis 67037746, fakss 67037338, e-pasts: bt@riga.lv

**Protokols
par bērna tiesību tikt uzklaustāam nodrošināšanu
un bērna viedokļa noskaidrošanu**

Rīgā

03.06.2021.

1. Vispārīgā informācija

1.1. Bērns

Personas dati (Vārds, Uzvārds, pēc nepieciešamības dzīvesvieta, personas kods)	[redacted] dzimusi 2008.gada 9.oktobrī
Vecums	12 gadi
Valoda un runa	Bērns runā <input checked="" type="checkbox"/> latviešu valodā <input type="checkbox"/> krievu valodā <input type="checkbox"/> _____ valodā Runa saprotama
Briedums un attīstība	Atbilsts vecumam
Emocionālais stāvoklis	Stabils
Informācija par vecākiem/ ārpusģimenes aprūpes nodrošinātāju	Bērns atrodas vecāku [redacted] un Renāra Kadžula aizgādībā, meitene dzīvo vienu nedēļu pie tēva, otru nedēļu-pie mātes
Papildus informācija, kurai varētu būt nozīme	

1.2. Speciālists, kas veic darbības

Vārds Uzvārds	Mairita Kimeiša
Amats	Rīgas bāriņtiesas locekle

1.3. Jautājums,
par kuru bērnam jāsniedz informācija un jādod iespēja izteikties

Atzīmēt atbilstoši:

- Aizgādība (kā māte iesaistās bērna aprūpē, par saskarsmi ar māti utml. Par vecāka aizgādības tiesībām)

2. Saruna ar bērnu

Vieta	Izmantojot videozvanu pa nr.27884545
Ilgums	Saruna sākas plkst.13:25 Saruna beidzās plkst.13:45
Citi dalībnieki -vārds, uzvārds, piedalīšanas pamats	Bez vecāku klātbūtnes.

2.1. Tikšanās ar bērnu un sarunas apraksts

Sarunu uzsāku ar sevis iepazīstināšanu, un par ko runāsim

Bērnam sniegtā informācija, ka vēlos aprunāties par viņu, viņa vecākiem un par to kā māte ir tikusies un sazinājusies ar bērnu, par bērna turpmāko dzīvesvietu

Bērns informēts par tiesībām/vajadzīgo atzīmēt ar x/	Jā	Nē
*par tiesībām izteikties/sniegt viedokli	X	<input type="checkbox"/>
*tiesībām nerunāt/neatbildēt uz jautājumiem	X	<input type="checkbox"/>
*tiesībām pārtraukt sarunu jebkurā brīdī	X	<input type="checkbox"/>
*tiesībām, lūgt, lai informācija netiktu izpausta likumiskajiem pārstāvjiem	X	<input type="checkbox"/>
*par tiesībām piedalīties bāriņtiesas sēdē, bāriņtiesas sēdes laiku un vietu	<input type="checkbox"/>	X
*par to, ka sarunas laikā sniegtā informācija tiks fiksēta un pievienota lietai	X	<input type="checkbox"/>

Novērojumi par sarunas norisi un bērna komunikāciju

Parilgi / Mairita Kimeiša
nosvērtā
Mairita Kimeiša
09.06.2021.

2.2. Bērna sniegtā informācija
[redacted] pastāstīja, ka pašreiz atrodas pie mātes dzīvoklī, kurā dzīves apstākļi viņu apmierina. Vecāki ir vienojušies, ka vienu nedēļu viņa ar māsu, brāli dzīvo pie tēva, otru nedēļu-pie mātes. Šobrīd Railija jau divas nedēļas uzturas pie mātes, savukārt Daniela Kadžule jau četras nedēļas, jo tēvam sakarā ar pašvaldību vēlēšanām, ir daudz darba un viņš vēl ierodas mājās un nevar pagatavot ēst. Tētis teicis, ja meitenes pašas sev ēst gatavos, tad var uzturēties pie tēta, bet Railija labāk izvēlējusies šo laiku padzīvot pie mātes. Par vecāku savstarpējo komunikāciju Railija saka, ka vecāki viens otru nevarot sazināt, nezin kas ar telefoniem viņiem noticis, tādēļ abi nodot informāciju caur viņu un brāli un māsu. Kopš vecāki dzīvo atsevišķi, viņu starpā strīdi ir mazinājušies, bet tie ir kļuvuši citādāki. Katrs vecāks vairāk iesaistās bērna ikdienas aprūpē un uzraudzībā, pie kura tajā laikā bērns atrodas. Abi vecāki labi rūpējas labi par Railiju. Railijai patīk ciemoties un uzturēties pie vecvecākiem laukos, jo tur mazs sunītis, ar kuru spēlēties meitenei patīk, var pabraukāt ar kvadraciklu. Attiecības ar māti meitenei ir labas, var interesējošās lietas pārrunāt, kopā pasmierties un pajokoties. Uz jautājumu vai Railija gribētu ikdienā dzīvot mātes ģimenē un nedēļas nogalēs tikties ar tēvu, atbild, ka viņu apmierina pašreizējā kārtība pa vienai nedēļai pie katra vecāka.

2.3. Bērna viedoklis
[redacted] vēlas arī turpmāk dzīvot vecāku ģimenēs, kurās par viņu labi rūpējas. Māte nodrošina meitenei aprūpi un uzraudzību.

Vajadzīgo atzīmēt ar x

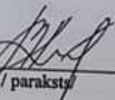
Fiksētā informācija bērnam nolasīta X

Bērns pats izlasīja fiksēto informāciju

Bērns iebilst informācijas izpaušanai likumiskajiem pārstāvjiem - jā nē X

Rīgas bāriņtiesas locekle
Rīgas bāriņtiesas locekle

/amats/


/paraksts/

Mairita Kinciša

/vārds, uzvārds/

2.2. un 2.3. Bērna sniegtā informācija un bērna vidoklis (atsevišķā lapa)

3. Secinājumi un turpmāk veicamās darbības

Pievienot lietai un vērtēt kopsakarā ar citiem lietas materiāliem

Rīgas bāriņtiesas locekle

/amats/


/paraksts/

Mairīta Kimeiša

/vārds, uzvārds/

Adoption & Paternity recognition cases

- Child's opinion is asked from age of 12 (Civil Law, Article 169)
- Before age of 12 – conversation protocol with child is prepared
- Conversation protocol – written form. Most frequently used in Latvia

Custody and access rights

- Substantial law
- «Disputes between parents regarding custody rights shall be decided taking into account the interests of the child and ascertaining the views of the child if only he or she is able to formulate such» (Civil Law, Article 178.-2)
- Procedural law
- “The Custody court representative [...] at court’s request provides any information about: [...] 2) views of the child if only he or she is able to formulate such” (Civil Procedure Law)

Custody and access rights

- No procedural rules on how the child is heard in the court
- He child has no legal status (no procedureal rights, no obligations because of minor age)

Custody and access rights

- The court invites the child «if it is necessary to precise information given by the custody court»

Cross-border abduction cases

- Hague Convention & Regulation 2201/2003/EC
- Civil Procedural Law, Chapter 77.-2

“Custody court representative is invited to the court, as well as child’s opinion is heard if he or she is able to formulate such due to age and maturity.”

Case law

- Supreme Court of Latvia, Senate on 23 September 2008 judgment SKA-457/2008 (A425278074) :

«The opinion of a mature teenager must prevail. If the court decides against the child's opinion, the court should give special reasons for this.»

«The longer the time has passed since the termination of custody rights for parents, the more important the decision on the right of custody to be restored should also be given to the views of the minor.»

Case law

- Supreme Court of Latvia, Senate on 16 October 2008, judgment in administrative case No SKA-513/2008 (A42548607):

«It is important to consider whether the minor himself wishes to attend the hearing. As can be seen from the circumstances of a particular case, a 14 year old teenager himself wanted to attend the hearing.»

«The opinion of the child may also be received in writing to the court (for example, the child submits a letter to the court with his or her own vision of the situation).»

Case law

- Supreme Court of Latvia, Senate on 12 March 2009, judgment in administrative case No SKA-182/2009 (A42439708):

“The opinion of the child, in order not to achieve the repetition of negative feelings experienced as much as possible, should be clarified comprehensively and qualitatively at the time of the hearing of the case in the Orphan's Court and only due to the essential necessity that the child should be reheard in court.

The minor should be involved in the process and asked as little as possible and by circle of persons as narrow as possible. If a direct hearing does not correspond to the best interests of the child, the opinion of the child shall be discovered indirectly.»

Case law

- Supreme Court of Latvia, Senate on 10 October 2011, decision in administrative case No SKA-290/2011 (A42941109):

«The teenager is able to evaluate and count on the fact that the information he provides to the psychologist, which may be reflected in the psychologist's opinion without his consent, will not be disclosed to other persons or disclosed to a limited extent. This also respects the private life of the teenager.»

Results of the research: main conclusions

1. Minor's rights to receive information are granted at times formally, not effectively
2. Minor's are heard in some, but not all category cases related to interests of minors
3. No child-friendly materials available about their rights
4. No uniform procedure elaborated for finding out child's opinion
5. Minors are not prepared for being heard in the court
6. Minors are not informed about court rulings in their cases
7. Parents are not prepared how to inform children about court cases/court rulings

Thank you!

Questions and comments are welcome

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University of Antwerp
| Faculty of Law

Information in intercountry Adoption

Thalia Kruger

& Tuur Minne

Rome, 17 June 2021

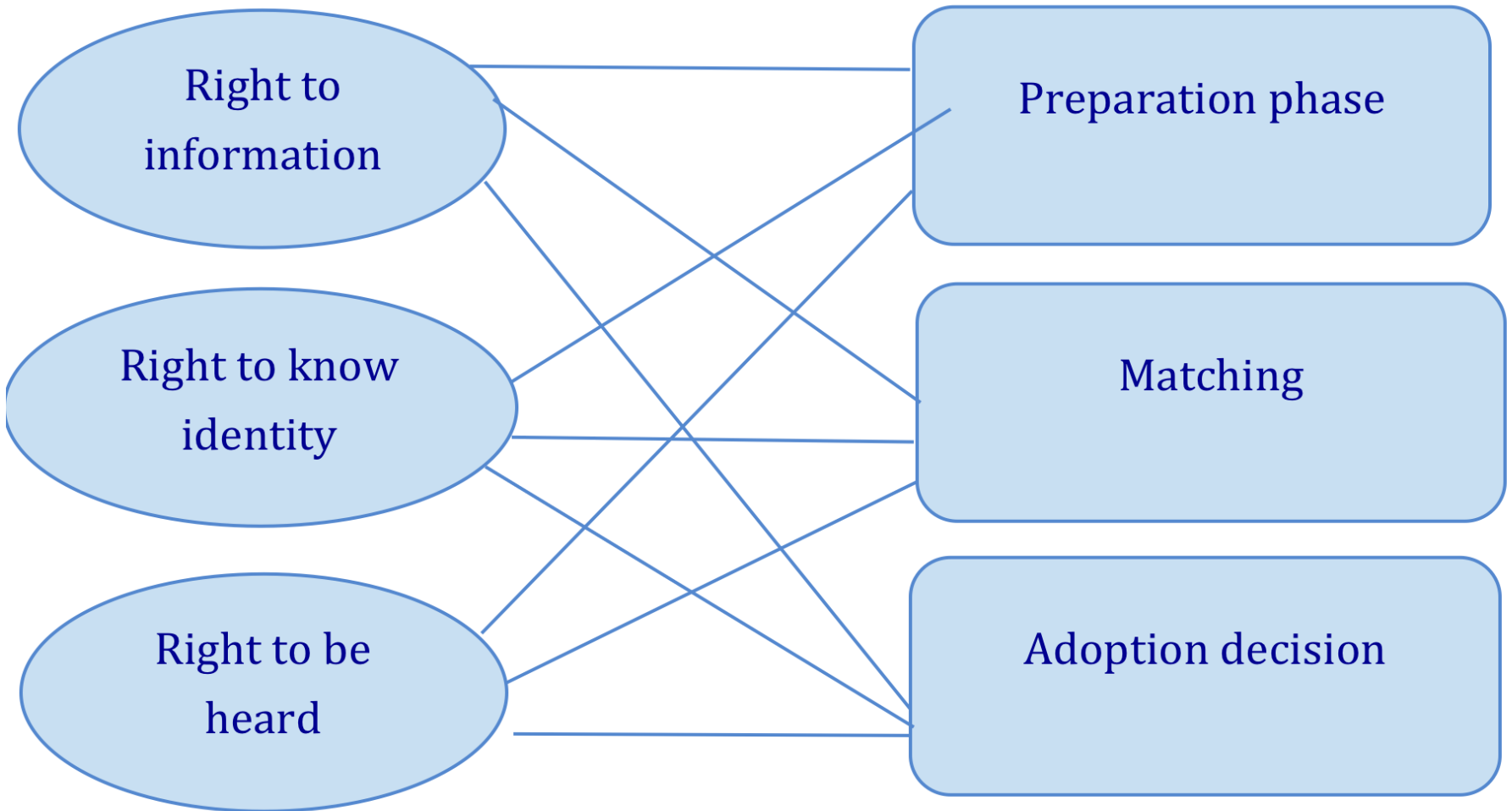


Diagram 1: Clusters of rights linked to stages in the adoption procedure.

Relevant legal sources

Human&Children's rights

- UN Children's rights Convention
- European Convention of Human Rights
- International Covenant on Civil and Political Rights
- (Various reports and Commentaries)

Adoption

- Hague Intercountry Adoption Convention (1993)
 - National implementations
- European Adoption Convention
- (Various Guidelines)

Right to information

- **Right to *access* to information**

- Legal protection to access of information sources

- **Explicit formulations**

- Article 13 UNCRC: freedom of expression
 - Seek, receive and impart information
- Article 17 UNCRC: Role of the mass media

- **Implicit formulations**

- Protecting children's rights presupposes information
 - Right to identity, respect of private life, freedom to think and expressing their views

Right to info: through the Adoption steps

Preparation phase

- Information to “persons concerned” to enable informed consent
- By whom?
 - Authorities in State of origin
 - State of destination: only check at the end of procedure
- What?
 - How procedure will take place;
 - What adoption entails

Right to info: through the Adoption steps

Matching phase

- **By whom?**
 - Authorities in State of origin

- **What?**
 - Explaining matching process to child

Right to info: through the Adoption steps

Adoption decision

- **By whom?**

- Courts in State of origin
- (Authorities of State of destination)

- **What?**

- Information about procedure: duration, result
- Information about consequences: migration

Right to know identity & origins

■ Identity =

- name, nationality, family relations
- personal history, culture, religion, language, physical appearance, abilities, inclinations

■ Arts. 7 & 8 UNCRC

- Registration after birth; record of information
- Know and cared for by parents
- Preserve identity

■ Art. 8 ECHR

- Establish details of personal identity & parents
- > Negative and positive obligation on State

Right to know identity & origins

Balancing of rights

Child's right to know
identity & origins



Birth parents' right to
privacy & interests in
secrecy

Limits:

- National law
- International law
- Margin of appreciation

NOT ABSOLUTE!

- ECtHR, *Jäggi v. Switzerland*;
Ebrü v. Turkey

Right to ID: through the Adoption steps

Preparation phase

- **By whom?**

- Authorities in the State of origin
- Authorities in State of destination

- **What?**

- Ensuring identity is recorded and records kept
- Informing candidate adoptive parents of children's rights

Right to ID: through the Adoption steps

Matching phase

■ By whom?

- Authorities in State of origin
- Authorities in State of destination

■ What?

- Taking identity into account in matching options
- Allowing child to meet candidate adoptive parents
- Ensuring that candidate adoptive parents are willing to assist child in finding origins
- Revealing identity of birth parents?
 - Difficulty Art. 16(2) Hague Adoption Convention

Right to ID: through the Adoption steps

Adoption decision

- **By whom?**

- Court in State of origin
- Recognising authorities in State of destination

- **What?**

- Recording names, places in decision
- Obligations in decision to ensure child's rights

Conclusion

- **Rights framework not always strong**
- **Balancing of rights**
- **Huge responsibility on States of origin**
-> should be shared

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THE RIGHT OF THE CHILD TO INFORMATION IN CIVIL PROCEEDINGS THE ROLE OF SERVICE PROVIDERS STUDY FINDINGS FROM ITALY

MiRI – Final Confernece

17 June 2021



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THE RIGHT OF THE CHILD TO INFORMATION IN CIVIL PROCEEDINGS

Role of service providers in safeguarding the rights of the child

- » Assessing the needs and special vulnerabilities of the child
- » Plan and provide specialised support to enable the meaningful participation of the child in the proceedings
- » Support to legal and judicial professionals in relation to the hearing of the child
- » Expertise for best interests determination concerning the child
- » Services from a child rights-based and child-centred approach
- » Continuity of service provision before, during and after the proceedings
- » Support to the child's parent(s) and/or extended family members

MIRI QUESTIONNAIRE FOR SERVICE PROVIDERS

Questionnaire based on legal survey developed by University of Genoa

Purpose:

Assess the role of service providers in providing information to children involved in civil proceedings:

- General questions:
 - Data regarding the respondents
- Specialised questions on civil proceedings concerning:
 - Parental responsibility
 - International child abduction
- Professional training

PROGETTO MIRI: QUESTIONARIO

Questionnaire to service providers administered country-wide in Italy

Responses:

- 91 responses
- 12 regions of Italy
- 56 respondents from municipal social services or health care centres
- Social workers (46%)
- Psychologists (15%)
- Educators and pedagogues (8%)
- Child neuropsychiatrists (4%)
- 26 % respondents did not specify their professional backgrounds
- Majority of respondents are senior professionals with over 20 years experience (45%), or between 11 and 20 years of experience (16%)

➤ **Sample is not representative but valid**

SURVEY FINDINGS

Knowledge about the right of the child to information

- » 33 responses (36%) stated to be aware of the general duty to convey information to the child involved in civil proceedings, with regard to matters concerning them or relevant for their future life (written or oral information)

Professional experience in conveying information to children involved in civil proceedings

- » Only 21 of the participants stated to often provide information to children involved in civil proceedings as part of their work (23%).
- » Despite the high number of senior professionals in the sample, many respondents did not report any or only very limited experience in providing information to children involved in civil proceedings

SURVEY FINDINGS

Child-friendly material to inform children about civil proceedings

- » Child-friendly material is not used in a consistent way.
- » Five respondents affirmed to have occasionally provided to the child involved in civil proceedings child-friendly material to inform the child about his/her right to information and about the hearing.

Provide information in a language that the child understands

- » 29 respondents (32%) have easy access to interpretation services
- » Less access to specialised expertise to facilitate communication with children who have special needs (disabilities, mental health issues)

SURVEY FINDINGS

Cooperation and multi-disciplinary approaches for informing and hearing the child in the context of civil proceedings

- Only 4 respondents affirmed that a protocol exists in their judicial district for the interagency and multi-disciplinary cooperation
- Only 21 respondents (23%) stated to have participated in a training programme on the rights and/or the best interests of the child in the context of civil proceedings.
- Only 15 respondents have received training on child-sensitive interviewing and communication.

SURVEY FINDINGS

Obstacles to providing information to children involved in civil proceedings

- Young age and capacity of discernment
- Preconception on the capacity of the child to make an accurate and reliable testimony
- Judges' discretion to decide on whether or not to hear the child
- No authoritative guidance on the assessment of the child's capacity of discernment
- Insufficient preparation or limited capacity in child-sensitive communication of officials conducting the hearing
- Inappropriate location for the hearing of the child
- Timing of hearings and duration of the proceedings not in accordance with the needs of the child
- Limited collaboration by parents
- Limited cooperation among different service providers / doubts about responsibilities and competence
- High case load of service providers

(23 respondents provided information)

CONCLUSIONS AND RECOMMENDATIONS

The right of the child to information in the context of civil proceedings has not been addressed in a systematic way in Italy, neither in the legal framework, nor in the judiciary or in service provision

- Recommendations from survey respondents:
 - Training, including multi-disciplinary and joint training, continuous and specialised post-graduate training
 - Increased collaboration between different service providers with clear responsibilities and procedures
- Working methods and protocols to guide service providers in providing information and conducting the hearing of the child
 - With due consideration to continuity before, during and after the proceeding
- Child-friendly material – including material developed in consultation with children
- Strengthened monitoring of this area
- Reporting and complaints mechanisms accessible for children, family members and service providers

GRAZIE



**DEFENCE FOR CHILDREN
INTERNATIONAL
ITALY**



SERVIZIO SOCIALE INTERNAZIONALE
INTERNATIONAL SOCIAL SERVICE
SERVICE SOCIAL INTERNATIONAL

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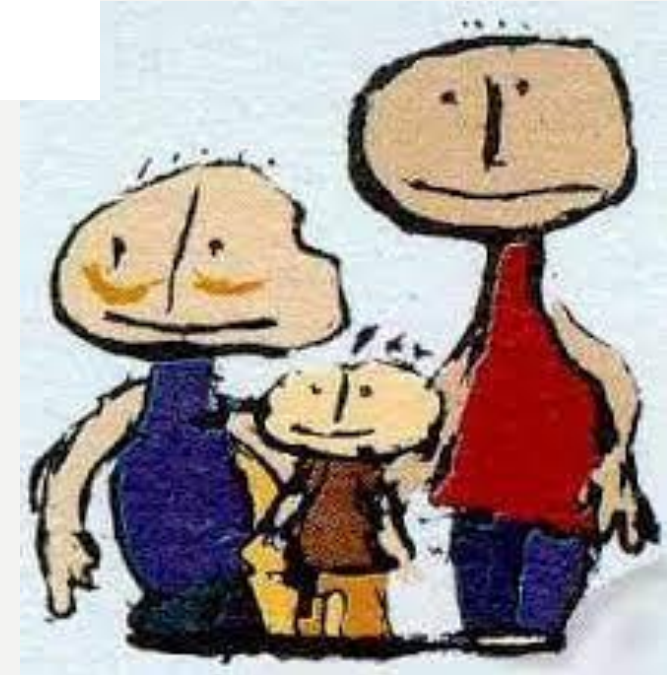
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RIGHT TO INFORMATION IN PORTUGAL

GERALDO ROCHA RIBEIRO

<http://www.centrodedireitodafamilia.org/>

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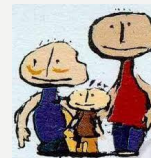
THE CHILDREN'S RIGHT TO INFORMATION AS AN ESSENTIAL COMPONENT OF THE RIGHT TO BE HEARD AND TO PARTICIPATE

Portuguese Constitution

Article 8

(International law)

1. The norms and principles of general or common international law form an integral part of Portuguese law.
2. The norms contained in duly ratified or approved international conventions come into force in Portuguese internal law once they have been officially published, and remain so for as long as they are internationally binding on the Portuguese state.



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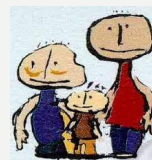
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Portuguese Constitution

Article 13

(Principle of equality)

1. All citizens possess the same social dignity and are equal before the law.
2. No one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation.

Article 18

(Legal force)

1. The constitutional precepts with regard to rights, freedoms and guarantees are directly applicable and are binding on public and private entities.
2. The law may only restrict rights, freedoms and guarantees in cases expressly provided for in the Constitution, and such restrictions must be limited to those needed to safeguard other constitutionally protected rights and interests.
3. Laws that restrict rights, freedoms and guarantees must have a general and abstract nature and may not have a retroactive effect or reduce the extent or scope of the essential content of the constitutional precepts.

Article 16

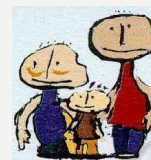
(Scope and interpretation of fundamental rights)

1. The fundamental rights enshrined in the Constitution shall not exclude any others set out in applicable international laws and legal rules.
2. The constitutional precepts concerning fundamental rights must be interpreted and completed in harmony with the Universal Declaration of Human Rights.

Article 26

(Other personal rights)

1. Everyone is accorded the rights to personal identity, to the development of personality, to civil capacity, to citizenship, to a good name and reputation, to their image, to speak out, to protect the privacy of their personal and family life, and to legal protection against any form of discrimination.



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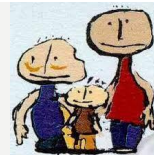
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THE CHILDREN'S RIGHT TO INFORMATION AS AN ESSENTIAL COMPONENT OF THE RIGHT TO BE HEARD AND TO PARTICIPATE

Convention on the Rights of the Child

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.



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European Convention on the Exercise of Rights

Article 3 – Right to be informed and to express his or her views in proceedings

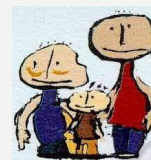
A child considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority affecting him or her, **shall be granted, and shall be entitled to request**, the following rights:

- a. to **receive** all relevant information;
- b. to **be consulted and express** his or her views;
- c. to **be informed of the possible consequences** of compliance with these views and the possible consequences of any decision.

Article 6 – Decision-making process

In proceedings affecting a child, the judicial authority, before taking a decision, shall:

- a. (...);
- b. in a case where the child is considered by internal law as having sufficient **understanding**:
 - ensure that the child has received all relevant information;
 - consult the child in person in appropriate cases, if necessary privately, itself or through other persons or bodies, in a manner appropriate to his or her understanding, unless this would be manifestly contrary to the best interests of the child;
 - allow the child to express his or her views;
- c. **give due weight to the views expressed by the child.**

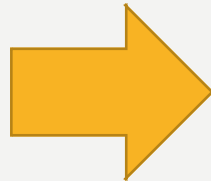


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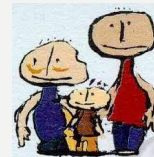
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THE CHILDREN'S RIGHT TO INFORMATION AS AN ESSENTIAL COMPONENT OF THE RIGHT TO BE HEARD AND TO PARTICIPATE

The child's right to be heard is an **autonomous right** (human right) that is valid per se and instrumental in the child's best interests.



- The right to speak and to express one's will
- The right to participate actively in processes concerning the child and to have this opinion taken into account
- Recognition of the child as a subject of rights



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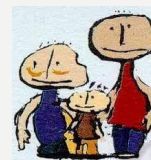
THE CHILDREN'S RIGHT TO INFORMATION AS AN ESSENTIAL COMPONENT OF THE RIGHT TO BE HEARD AND TO PARTICIPATE

The child's hearing is a process of dialogue, in which the child expresses or does not express what he or she wants as his or her right.

Free to express an opinion having the opportunity

it is not an obligation in which he or she is called to express his or her opinion and detail what one of the parents' demands.

Obligation to the State to ensure that all conditions are in place for this opinion to be genuinely expressed freely and unreservedly, primarily by ensuring that the person who will listen to the child recognises the actual value to his or her voice, avoiding any constraints on the exercise of this right



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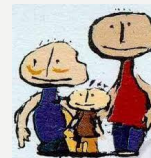
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THE CHILDREN'S RIGHT TO INFORMATION AS AN ESSENTIAL COMPONENT OF THE RIGHT TO BE HEARD AND TO PARTICIPATE

- The reference to national law to specify the standard for determining the moment from which the child's capacity to be heard is recognized does not remove the need for an interpretation under the principles and human rights mentioned above.



- By requiring that due weight be given to the child's views in accordance with his or her age and maturity, Article 12 CRC makes it clear that **age cannot determine the interpretation** of his or her views.
- Therefore, the weight to be given to the child's opinion has to be assessed on a case-by-case basis.
- The child's right applies to all relevant legal proceedings affecting he or her



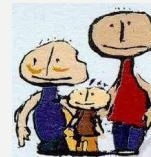
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THE LEGAL FRAMEWORK

The main legal statute of the right of the child to be heard and participate

- **CC** — Civil Code
- **LPCJP** — Law for Protecting Children and Young People at Risk (Law 147/99, 01-09, last modification by Law 26/2018, 05-07)
- **RGPTC** — General Regime of Tutelage Procedure (Law 141/2015, 08-09 last modification by Law 24/2017, 24-05)



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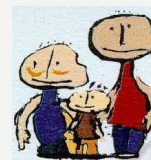
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DUE PROCESS

- The child is heard preferably with the **expert assistance** and the comfort of an adult of his or her choice is guaranteed, except if the Judge discards such possibility given reasons for the refusal (art.42 (1), e) RGPTC).
- **The hearing is a child's right** but not an obligation.
- **The child is free to refuse to express his or her opinion and remain silent.**
- The Judge can decide that the child should not be heard when "**serious reasons discourage him/her**" (art. 1901 (2) (3) CC or if the defence of his/her **best interest** discourages him/her (art. 35 (2) (3) RGPTC) and may use expert assistance to assess the child's capacity to understand (art. 42 (2) RGPTC).

Specially trained expert reporting to the court afterwards, or whether the child should be heard in the courtroom or another place or through other means.

Special representative for the child

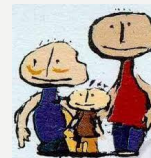


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DUE PROCESS

- The law **presumes the child's natural capacity to be heard. at the age of 12 years**
- The burden of proof of the incapacity or the harmful nature of the hearing rests with the person who invokes it, the parents or the Public Prosecutor;
 - The Judge must investigate the degree of maturity of the child and the psychological harm that may occur from the hearing.
- A reasoned judicial decision must be taken to refuse to hear the child.
 - Art. 35 (2) (3) RGPTC adopted the principle of the hearing of the child, in the Conference on the process of regulating parental responsibilities, following art. 4 (1), e) and 52 RGPTC. This principle extends to any proceeding relating to non-compliance agreement or decision on parental responsibility, or even if the decision is void and without effect. Art. 5 RGPTC establishes rules to be observed by the courts in hearing the child.



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DUE PROCESS

- **The hearing is discouraged, if:**
 - the child is not mature or incapable of expressing himself;
 - there are conflicts of loyalty, feelings of guilt or other psychological damage resulting from the child's involvement in the parents' conflict, as well as the danger of being coerced by the parents or a third person.



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THE EFFECTIVITY OF THE HEARING AS DEPENDENT ON THE RIGHT TO RECEIVE ADEQUATE INFORMATION: GAPS AND DEFICIENCY IN THE PORTUGUESE LEGAL SYSTEM

- One of the problems that can be pointed out to the Portuguese legal system's entropies or inadequacies is the lack of standardised and technically validated procedures. Making this right to be heard and participating, in reality, depends more on the practice of the different judicial actors than the legislation.
- Standardisation, proper training, necessary critical sense about the way our children are heard are more needed. There is still a need for proper training in child-friendly and understandable language to inform them.

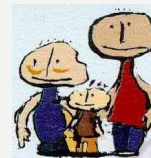


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- The lack of standardised and technically validated procedures.;
- Making the child's right to be heard and participate depends more on the practice of the different judicial actors than the legislation..
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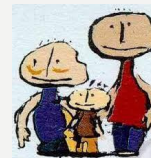
CURRENT PRACTICES IN PORTUGAL

- Since 2015, as stated above, there are special rules that determine how and where the child's hearing should be (art 5 RGPTC).
- The information provided to the child is made at the time of the hearing and is normally provided by the Judge. Sometimes, experts (social security assistants, psychologists) provide a context for the proceedings.



Once the hearing has taken place, there is no continuity of information or the proceedings' outcome.

- The facilitation of information is not guaranteed, beyond the proceeding moment in which it takes place.
- There are no guarantees in keeping the child as the interlocutor in the process.
- The rule is that the child is only heard in the light of new facts or circumstances,

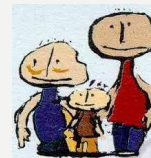


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MAIN CONCLUSIONS

- The child's effective right to be heard embodies the conditions for his or her emancipation as a holder of rights and self-determination as an element that enhances his or her dignity and promotes his or her development.
- Despite the path taken by the Portuguese system, it is still imperative to change mentalities and procedures in order to ensure a continuum of information that enables the child to participate effectively in the processes that concern him/her.
- It requires the adoption of validated procedures and training that require concerted action and not left to ad hoc or voluntary approaches. This does not need to be adopted in legislative terms (considering the content of the law in force, especially, the art. 5 RGPTC), **but as a result of the implementation of common rules commissioned by the judicial authorities** (magistrates, academics, experts, lawyers, professionals' bars, institutions...).
- Improvements to the system include an awareness of children's rights, which requires an opening up of the judicial system to a multidisciplinary approach and cooperation between the different actors.

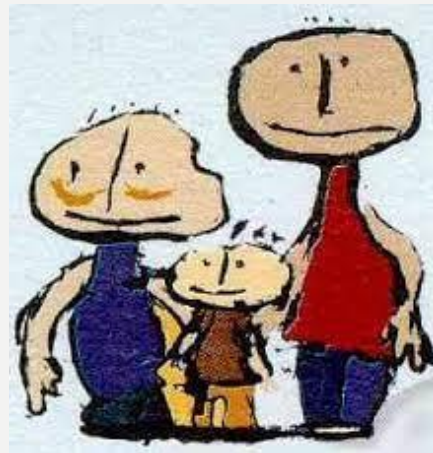


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“If I were abducted, I wouldn’t know what to do. I would not know whether to talk to a judge because I do not know how the procedure works. I think, if I had known more, I might make different choices.”

(young person, no personal experience with abduction, 2019)



University of Antwerp
| Faculty of Law

Custody and international child abduction proceedings in Belgium: how, when and by whom will the child be informed?

Leontine Bruijnen, Tine Van Hof and Sara Lembrechts

Right to information...

- In legal instruments
- In international academic literature
- In empirical research involving children's own perspectives
 - EWELL, 2016-2017
 - INCLUDE, 2019-2021
- Special case of high-conflict family settings
 - How?
 - By whom?

Outline

- **Legal framework**
 - United Nations
 - Council of Europe
 - Belgium
- **Procedures of custody and international child abduction in Belgium**
 - Phase 1 – before the opening session at the court
 - Phase 2 – between the opening session and the court's judgment
 - Phase 3 – after the judgment
- **Conclusion**
- **Questions and comments**

Legal framework – United Nations

- **Convention on the Rights of the Child**
 - UN Committee on the Rights of the Child
- **Relevant articles in the CRC**
 - Article 12 – right to be heard
 - Article 13 – right to seek, receive and impart information
 - Article 17 – right of access to information through media
 - Article 3 – best interests of the child

Legal framework – Council of Europe

- **Guidelines on Child Friendly Justice (2010)**
 - Development of justice systems
 - Implementation of children's rights before, during and after legal proceedings
 - Information = General Element of Child Friendly Justice
 - ❖ Promptly
 - ❖ Adequately
 - ❖ Directly
 - ❖ In child-friendly manner

Legal framework – National law in Belgium

- **Belgian Constitution: Article 22bis, §2**
 - Best interests
 - Hearing of the child

- **Belgian Code of Civil Procedures: Article 1004/1 and Article 1004/2**
 - Legal proceedings before family court
 - Minors above 12: automatically informed
 - Minors below 12: at own request

Procedures of custody and international child abduction in Belgium

- **Custody**

= Proceedings to obtain exclusive parental custody, residence, or access arrangement

- Family Court

- ❖ Hears parents about dispute

- ❖ Might hear child

- ❖ Can order investigative acts: e.g. social study by judicial assistant or medical-psychological examination by expert

- Parents:

- ❖ Present in person at every hearing

- ❖ Often assisted by a lawyer

- Child:

- ❖ Right to be heard (difference between +12 and -12 year-olds)

- ❖ Can be assisted by a youth lawyer BUT no party to the proceedings

Procedures of custody and international child abduction in Belgium

- **International child abduction**

= Proceedings to obtain the return of the child to his/her State of habitual residence

- Left-behind parent

- ❖ Can send request to Central Authority
- ❖ Can initiate proceedings directly (without CA)

- Central Authority (if involved)

- ❖ Tries to achieve voluntary return
- ❖ If voluntary return fails: initiates return proceedings

- Child

- ❖ Right to be heard by judge
- ❖ Can be assisted by youth lawyer BUT no party to the proceedings

Phase 1 – before the opening session at the court

Right to information in Phase 1

- **Content of information that child should receive**
 - Possible outcomes of proceedings
 - Practical information on how the process works (i.e. time and place of opening hearing, involved actors and their roles, likely duration)
 - Existing support mechanisms for child
- **Actors involved in phase 1**
 - Parents
 - Parents' lawyers (not necessarily)
 - Central Authority (only in child abduction cases and not necessarily)
 - Youth lawyer (not necessarily)
- **Proposal to improve right to information in phase 1**
 - Raising awareness of the existence and the role of youth lawyers

Phase 2 – between the opening session and the court's judgment

Right to information in Phase 2

- **Content of information that child should receive**
 - Practical and procedural information, i.e.
 - ❖ Time and place of court hearings and possible investigative acts
 - ❖ General progress of the proceedings
 - ❖ Involved actors and their roles (both during court hearings and investigations)
 - ❖ Possible impact of investigations and the hearing of the child on the outcome
 - Foundational rights-based information (i.e. the child's right to be heard)

Right to information in Phase 2

- **Actors involved in phase 2**
 - Judges
 - Parents
 - Parents' lawyers (not necessarily)
 - Youth lawyer (not necessarily)
 - Judicial assistant (not necessarily)
 - Experts (not necessarily)
- **Proposal to improve right to information in phase 2**
 - Raising awareness of the existence and the role of youth lawyers

Phase 3 – after the court's judgment

Right to information in Phase 3

- **Content of information that child should receive**

- Judgement and legal reasoning
- Children's view
- Social study and other investigations
- Enforcement
- Possibilities of appeal

- § **Actors involved in phase 3**

- Parents
- Parents' lawyers (not necessarily)
- Youth lawyer (non-party thus needs to request transcript of judgement)
- Central Authority (only in child abduction cases and not necessarily)

- **Proposal to improve right to information in phase 3**

- Raising awareness of the existence and the role of youth lawyers

Right to information in Phase 3

- **How can a judgement become more child-friendly?**
 - Use of child-friendly language:
 - ❖ Short sentences
 - ❖ Clear sentence structure
 - ❖ Avoidance of jargon
 - ❖ Explanation of difficult words
 - ❖ Use of an understanding tone
 - Possibilities:
 - ✓ Judgement written in child-friendly language
 - ✓ Judgement with section, letter or document attached in child-friendly language
 - ✓ Personal conversation
 - ✓ Video-recording

Conclusions

- **Still a lot of room for improvement**
 - Previous research shows importance of information to children
 - BUT: right to information underdeveloped in Belgian custody and international child proceedings
- **Proposed improvements**
 - Youth lawyers: figure with great potential in all three phases of proceedings
 - Other proposals (e.g. information letters)

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Child participation under Brussels II ter

Laura Carpaneto – University of Genoa

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«Brux II system» rules on parental responsibility

- ✓ children rights «*sensitive*» instrument from the very beginning
- ✓ interesting example of interaction between PIL/human rights

Now 2 specific reasons within the EU context:

1. **Post-Lisbon legal framework of reference:** art. 3 TEU and art. 24 Charter – (more) proactive role of the EU in protection of children (in the EU and «*in its relations with the wider world*»)
2. **Growing PA for adults' relationship and *favor divortii* – counter-measure** stronger attention to the protection of children's rights

Two words on the recast...

From Bruxelles II bis (2201/2003) to Brussels II ter (2019/1111)

Aim of the recast: improvement of a well-functioning instrument ... by *strengthening legal certainty* and *increasing flexibility* to ensure that access to court proceeding is improved and to ensure that such proceedings are made more efficient (recital 2)

Express link to HR: (...) Any reference to the *BIC* should be *interpreted in light of Art 24 of the Charter of Fundamental Rights of the EU and the UNCRC 1989* as implemented by national law and procedure (recital 19)

More attention!! All-ecompassing protection of children's rights in PIL!!

BIC «driver» of Brussels II *ter*

- ✓ in abstracto – legal certainty: jurisdiction = centrality of HR, circulation of judgements = reducing obstacles
- ✓ in concreto – flexibility: jurisdiction = flexibility, circulation of judgements = limits
- ✓ ... knowing that the ECtHR has the power for an ex-post assessment of the BIC

Jurisdiction: is flexibility the new paradigm?

- ✓ **Art. 7** – habitual residence – *proximity BIC in abstracto*
- ✓ **Art. 10** – choice of court – *flexibility BIC in concreto*
- ✓ **Art. 12** – transfer of jurisdiction – *flexibility BIC in concreto*
- ✓ **Art. 13** – request for transfer of jurisdiction (**new**) – *flexibility BIC in concreto*

BIC *in concreto*: how to appreciate it?

Saponaro C-565/16 – art. 12 beside the **connection** child/MS, the fact that the court is in a good position to evaluate and the fact that the choice does not «*in any case prejudice the interests of the child*»

EP v. PO C-530/18 - transfer of the case providing a genuine and specific added value (rules of procedure, not substantive law)

Recognition and execution

new balance «**BIC in abstracto**» (quick and automatic execution) / «**BIC in concreto**»
(circumstances of the case)

- ✓ **Abolition of exequatur**
- ✓ **Art. 50 refusal of recognition** if and to the extent that are **irreconcilable with a later decision** relating to parental responsibility concerning the same child
- ✓ **Art. 56 temporary suspension or refusal of enforcement** (temporary or of a lasting nature grave risk of physical or psychological harm due to temporary impediments or by virtue of changes significant changes of the circumstances)

**Child's right to participate
under Brux II *ter*
*what's new?***

The context has changed (*rectius* ...is changing)

Children's rights to participate under art 12 CRC «umbrella term» for a cluster of rights

- ✓ **Right to freely express their views**, to be heard and to contribute to decision making affecting them, their views being given due weight in accordance with their age and maturity
- ✓ **Active role** in their own lives and their community
- ✓ Means through which children rights may **better respected and protected**

Lundy model of child participation: space, voice, audience and influence

1. Art. 21 Right of the child to express his/her views

1. When exercising their jurisdiction (...), the courts of the MSs States shall, *in accordance with national law and procedure*, provide the *child who is capable of forming his or her own views* with a *genuine and effective opportunity to express his or her views*, either directly, or through a representative or an appropriate body.
 2. Where the court, *in accordance with national law and procedure*, gives a child an opportunity to express his or her views in accordance with this Article, the court shall give *due weight to the views* of the child *in accordance with his or her age and maturity*.
- ✓ **Alignment with art. 12 CRC (not dependent on age and maturity but on capability of forming views)**
 - ✓ **MSs' procedural autonomy**

2. art. 26 right to be heard...in child abduction

Art. 21 of the Reg shall also apply in return proceedings under 1980 Hague Convention

Not new – but in a **new context**: clear now that the second-chance procedure is «**on the substance of rights of custody**»

Recital 48: the Court of the State of origin (HR) shall evaluate the entire child situation and of his/her family

uniform procedure in MSs – echoing the ECtHR's case-law

«Higher» tension between need to act expeditiously – child participation

3. art. 47.3 requirement for certificate for privileged decisions

Hearing of the child still is one of the condition for the issuing of the certificate for privileged decisions

Softer approach: Hearing not at any cost (recital 57 and 71) and as a consequence not a ground for refusal

It might be not reasonable to hear the child for

1. Proceedings concerning the **property of the child**
2. In cases where there are **serious grounds** to be taken into consideration and urgency

4. art. 56 Possibility to act for suspension of termination

Direct participation in the form of inclusion of the child (duly represented) among the persons entitled **to act for suspension or termination of the execution** of a decision in parental responsibility matters

VIP «where applicable under national law»

In PIL, unique example: Reg. 2019/1111 gives to children greater room to participate in proceedings affecting them

5. Further examples of involvement of the child

- ✓ **Cooperation among Central Authorities:** information on child, parents, siblings, ongoing proceedings and orders/decisions adopted
- ✓ **Evaluation of the child situation report for** cross-border placement

What impact?

«unprecedented» attention to the right of the child to express his or her views...

Those legal order traditionally restricting the hearing to over 12 y.o. child?

Not in compliance with artt. 21 and 26

Appliation for suspension of execution? Not foreseen in all MSs...possibility to influence the other legal orders? Bottom-up harmonisation?

We shall see...

Thank you for your attention



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Il difensore del minore e il curatore speciale

di Claudio Cecchella

1. Il minore da estraneo, a parte sostanziale e formale del processo civile, il diritto internazionale ratificato

L'ostracismo del minore

Il minore è stato vittima di un ostracismo dal processo, come parte sostanziale o formale, che non poteva, né può giustificarsi, **sulla base di principi sistematici nazionali e internazionali.**

La ingiustificata *ratio* dell'ostracismo

Non è più sostenibile sul piano positivo l'idea che il fanciullo, secondo la preferibile dizione delle convenzioni internazionali, per la sua intrinseca debolezza e fragilità, non possa essere coinvolto in sede giurisdizionale, nei luoghi in cui si consuma il conflitto matrimoniale ovvero nei luoghi in cui si assumono determinazioni fondamentali per la sua vita e la sua crescita, come la responsabilità genitoriale, l'affidamento, l'adottabilità.

Il minore titolare di diritti soggettivi

Il processo familiare implica interessi che fanno capo al minore, molti dei quali assurgono a veri e propri diritti soggettivi indisponibili (arg. nuovi artt 316 e 316 – *bis* c.c., a seguito riforma della filiazione) e come tali non può non coinvolgerlo, non soltanto come parte sostanziale (il che è nelle cose), ma come vera e propria parte formale, cui discende l'obbligo di munirsi di un difensore tecnico.

Principi costituzionali e sovranazionali implicati

1) il diritto di azione e il diritto di difesa, di cui all'art. 24 Cost.;

2) ma anche internazionali, come quelli introdotti dalla Convenzione di New York del 1989 e dalla Convenzione di Strasburgo del 1996, entrambe ratificate con legge dallo Stato italiano.

Convenzione di NY: l'ascolto

si legge all'art. 12, 2° comma: “... *si darà in particolare al fanciullo la possibilità di essere ascoltato in ogni procedura giudiziaria o amministrativa che lo concerne, sia direttamente, sia tramite un rappresentante o un organo appropriato, in maniera compatibile con le regole di procedura della legislazione nazionale”.*

Convenzione di Strasburgo

art. 1, **tutela di diritti azionabili e diritto di partecipare ai procedimenti**

nell'art. 1, si legge: “*oggetto della presente Convenzione è promuovere, nell'interesse superiore dei minori, i loro diritti, concedere loro diritti azionabili e facilitarne l'esercizio facendo in modo che possano, essi stessi o tramite altre persone od organi, essere informati e autorizzati a partecipare ai procedimenti che li riguardano dinanzi ad un'autorità giudiziaria”.*

art. 5, rappresentanza tecnica

art. 5, poi, sono sanciti: “a) il diritto di chiedere di essere assistiti da una persona appropriata, di loro scelta, che li aiuti ad esprimere la loro opinione; b) il diritto di chiedere essi stessi, o tramite altre persone od organi, la designazione di un rappresentante distinto, nei casi opportuni, di un avvocato; c) il diritto di designare il proprio rappresentante; d) il diritto di esercitare completamente o parzialmente le prerogative di una parte in tali procedimenti”.

art. 9, **il conflitto di interesse** con i genitori

art. 9, in caso di conflitto di interessi con i genitori: “1. *Nei procedimenti che riguardano un minore, quando in virtù del diritto interno i detentori delle responsabilità genitoriali si vedono privati della facoltà di rappresentare il minore a causa di un conflitto di interessi, l'autorità giudiziaria ha il potere di designare un rappresentante speciale che lo rappresenti in tali procedimenti.* 2. *Le Parti esaminano la possibilità di prevedere che, nei procedimenti che riguardano un minore, l'autorità giudiziaria abbia il potere di designare un rappresentante distinto, nei casi opportuni un avvocato, che rappresenti il minore”.*

Art. 10, il rappresentante tecnico, deontologia

“1. Nei procedimenti dinanzi ad un'autorità giudiziaria riguardanti un minore, il rappresentante deve, a meno che non sia manifestamente contrario agli interessi superiori del minore: a) fornire al minore ogni informazione pertinente, se il diritto interno ritenga che abbia una capacità di discernimento sufficiente; b) fornire al minore, se il diritto interno ritenga che abbia una capacità di discernimento sufficiente, spiegazioni relative alle eventuali conseguenze che l'opinione del minore comporterebbe nella pratica, e alle eventuali conseguenze di qualunque azione del rappresentante; c) rendersi edotto dell'opinione del minore e portarla a conoscenza dell'autorità giudiziaria”.

2. Il diritto positivo interno.
il difensore tecnico del minore

la lacuna

Il legislatore **non disciplina in maniera generalizzata una qualità di parte formale del minore**, con il conseguente obbligo di essere assistito e rappresentato da un difensore tecnico.

La legge sulla adozione

Salvo sei anni di *prorogatio* secondo un costume invalso nei tempi recenti (l'entrata in vigore risale al 1° luglio 2007), la legge 28 marzo 2001, n. 149, sull'adozione e sull'affidamento dei minori, impone all'art. 8, comma 4, che *“il procedimento di adottabilità deve svolgersi fin **dall'inizio con l'assistenza legale del minore** e dei genitori o degli altri parenti, di cui al comma 2 dell'articolo 10”*.

La nomina del difensore

All'art 10, 2° comma, poi : “. *Con lo stesso atto il presidente del tribunale per i minorenni li invita a nominare un difensore e li informa della nomina di un difensore di ufficio per il caso che essi non vi provvedano. Tali soggetti, assistiti dal difensore, possono partecipare a tutti gli accertamenti disposti dal tribunale, possono presentare istanze anche istruttorie e prendere visione ed estrarre copia degli atti contenuti nel fascicolo previa autorizzazione del giudice”.*

I procedimenti sulla responsabilità genitoriale

All'art. 37, poi, novellando l'art. 336 c.c. ed introducendo l'eventualità anche nel contesto del processo avente ad oggetto la responsabilità genitoriale si sancisce all'ultimo comma della disposizione: *“Per i provvedimenti di cui ai commi precedenti, i genitori e il minore sono assistiti da un difensore (anche a spese dello Stato nei casi previsti dalla legge)”*.

il d.p.r. n. 115 del 2002 e la abrogazione di un inciso

All'art. 336 era aggiunto un inciso: “ **anche a spese dello Stato nei casi previsti dalla legge**”.

Prima della entrata in vigore, questo inciso è stato abrogato e si è precisato con la legge n. 175 del 2002: che “ *sino alla emanazione di una specifica disciplina sulla difesa d'ufficio e sul patrocinio a spese dello Stato...continuano ad applicarsi le disposizioni processuali vigenti.*”

Minori stranieri non accompagnati

Legge 47 del 2017, art. 16

<<Il minore straniero non accompagnato coinvolto a qualsiasi titolo in un procedimento giurisdizionale ha diritto di essere **informato dell'opportunità di nominare un legale di fiducia**, anche attraverso il tutore nominato o l'esercente la responsabilità genitoriale ai sensi dell'articolo 3, comma 1, della legge 4 maggio 1983, n. 184, e successive modificazioni, e di avvalersi, in base alla normativa vigente, **del gratuito patrocinio a spese dello Stato** in ogni stato e grado del procedimento. Per l'attuazione delle disposizioni contenute nel presente comma e' autorizzata la spesa di 771.470 euro annui a decorrere dall'anno 2017>>

l'obbligo di rappresentanza tecnica

Da tali disposizioni sembra chiaro un dato, che nel processo di adozione, sulla responsabilità genitoriale e per la tutela del minore straniero non accompagnato vige l'obbligo della rappresentanza tecnica del minore.

La atecnicità della legge:

il problema della nomina congiunta e i rapporti con il curatore

Basti evidenziare la scarsissima sensibilità per i problemi del conflitto, laddove si ipotizza in astratto (la congiunzione “e” ripetuta nelle due norme) **che un difensore possa assumere il mandato del minore e contemporaneamente dei genitori.**

La legge di riforma dell’adozione e dell’affidamento, infatti, lascia del tutto impregiudicato il delicato tema del coordinamento della nuova normazione con la disciplina della nomina del curatore ex art. 78 c.p.c., in caso di conflitto di interesse con i genitori.

Manca della normazione di cornice

Il legislatore lascia inoltre del tutto insoluta **una normazione di cornice**, che renda concretamente operativo il dettato della legge, attraverso la introduzione di una difesa d'ufficio del minore, necessitante di un'organica disciplina, anche in relazione ai compensi destinati al professionista prescelto.

La supplenza del gratuito patrocinio

Tuttavia **la legge sul gratuito patrocinio**, consente la nomina del difensore con l'applicazione del regime relativo, considerando che nelle controversie di famiglia non si cumulano i redditi dei componenti ai fini del beneficio. **La previsione espressa per il minore straniero non accompagnato, ne è la prova.**

l'eccezionalità

La normazione interna nell'intervenire soltanto nelle controversie sull'adozione e sulla responsabilità genitoriale **sembra escludere in altri procedimenti la necessità di una rappresentanza tecnica del minore.**

ratio

Negli altri processi infatti, se non vi è conflitto esplicito, è **il genitore che rappresenta il minore** nel processo (art. 320 c.c.), **le controversie su adozione e responsabilità genitoriale semplicemente implicano di per sé un conflitto.**

Il conflitto

Tuttavia anche nelle altre controversie **se vi è palese conflitto tra genitori e figli**, è necessario pensare ad una diversa rappresentanza nel processo del minore (**il curatore**), ma anche alla nomina di un difensore tecnico del curatore (**il difensore del minore**)

3. La giurisprudenza, tra incostituzionalità e interpretazione abrogatrice

la questione di costituzionalità

La Corte di appello di Brescia, Sezione per i minorenni, con ordinanza **depositata il 19 marzo 2010**, ha sollevato, in riferimento agli articoli 2, 3, 24, 30, 31 e 111 della Costituzione, questione di legittimità costituzionale dell'articolo 250 del codice civile (riconoscimento), **laddove il procedimento non contempla il minore con tutti i diritti di una parte.**

La censura

“richiamato il disposto dell'art. 250 cod. civ., espone che, per principio costantemente affermato dalla giurisprudenza di legittimità, nel giudizio instaurato, ai sensi del quarto comma della citata norma, il figlio naturale, non ancora sedicenne, non assume la qualità di parte”

la Corte cost., Sent., 11-03-2011, n. 83

*“Una menzione a parte merita, infine, **l'art. 336** cod. civ. ...Come già notato da questa Corte (sentenze n. 179 del 2009 e n. 1 del 2002), dal coordinamento tra l'art. 12 della Convenzione di New York, e l'art. 336, comma quarto, cod. civ. si desume che, nelle procedure disciplinate da tale norma, sono parti non soltanto entrambi i genitori ma anche il minore, con la necessità del contraddittorio nei suoi confronti, previa nomina, se del caso, di un curatore speciale, ai sensi dell'art. 78 del codice di procedura civile”*

segue, il minore è parte

“Ne deriva che al detto minore va riconosciuta la qualità di parte nel giudizio di opposizione di cui all'art. 250 cod. civ. E, se di regola la sua rappresentanza sostanziale e processuale è affidata al genitore che ha effettuato il riconoscimento (artt. 317-bis e 320 cod. civ.), qualora si prospettino situazioni di conflitto d'interessi, anche in via potenziale, spetta al giudice procedere alla nomina di un curatore speciale. Il che può avvenire su richiesta del pubblico ministero, o di qualunque parte che vi abbia interesse (art. 79 cod. proc. civ.), ma anche di ufficio, avuto riguardo allo specifico potere attribuito in proposito all'autorità giudiziaria dall'art. 9, primo comma, della citata Convenzione di Strasburgo”

rappresentanza della parte incapace e rappresentanza tecnica

Se è corretto quanto afferma la Corte costituzionale, seppure in una sentenza interpretativa di rigetto della questione, **non si possono confondere i concetti della rappresentanza della parte incapace e della rappresentanza tecnica nel processo civile.**

rappresentanza dell'incapace

Non è dubitabile, infatti, che l'incapace debba stare in giudizio **con il suo rappresentante legale** (art. 182 c.p.c., che per il minore è il genitore) e che, in caso di conflitto con il proprio rappresentante, l'incapace sia parte del processo con **un curatore speciale** ex art. 78 c.p.c.

rappresentanza tecnica

Ma è ben altra cosa la rappresentanza tecnica, a cui nessuna parte può sottrarsi, salvo le eccezioni dell'art. 82 c.p.c., ovvero la obbligatorietà a pena di nullità degli atti del processo di un mandato ad un avvocato iscritto all'albo, **a cui deve provvedere il rappresentante legale come il curatore speciale**

App. di Milano, del 16 ottobre 2008

Pres. Gatto

*“La difesa è dunque diventata obbligatoria nei giudizi di responsabilità genitoriale fin dall’inizio, con la conseguenza che le parti, ivi compreso il minore, devono stare in giudizio con il ministero del difensore e che è stata così per la prima volta inserita nel sistema processuale civile la figura del difensore d’ufficio, il quale per evidenti criteri di opportunità **deve essere nominato dall’autorità giudiziaria**, anche in considerazione del fatto che tale incarico va affidato a professionisti **“in possesso di competenze adeguate alla particolarità ed alla delicatezza della funzione da assolvere”**”*

prevalenza della norma sostanziale sulla norma processuale

- E' difficile, come l'importante pronuncia milanese, non condividere la necessità di riempire la lacuna e la carenza sul piano tecnico della legge nazionale, attraverso la disciplina convenzionale e sotto questo profilo di ritenere prevalente la regola introdotta dalla legge di ratifica della convenzione sull'originario art. 78 c.p.c.
- Si può di conseguenza affermare che è introdotto inderogabilmente, almeno nei casi espressamente contemplati, nel nostro sistema, oltre al riconoscimento di una qualità di parte formale del minore, anche quella derivata di prevedere la nomina obbligatoria di un suo difensore tecnico, mediante iniziativa dello stesso ufficio, il quale ne assuma pienamente la rappresentanza e difesa, riassorbendo in sé il ruolo del curatore.

conclusione

E' introdotto inderogabilmente nel nostro sistema, oltre al riconoscimento di una qualità di parte formale del minore, anche quella derivata di prevedere la nomina obbligatoria di un suo difensore tecnico, mediante iniziativa dello stesso ufficio, il quale ne assuma pienamente la rappresentanza e difesa.

Cassazione Civile Sent. n. 16553 del 14-07-2010, il ritorno al passato

“Tuttavia la previsione di un' "assistenza legale" del minore, fin dall'inizio del procedimento, senza, come si è visto, indicazione di modalità alcuna al riguardo (a differenza della posizione dei genitori o dei parenti), non significa affatto, come sostiene il giudice a quo, che debba nominarsi un difensore d'ufficio al minore stesso, all'atto della apertura del procedimento. Il minore è dunque parte a tutti gli effetti del procedimento, fin dall'inizio, ma, secondo le regole generali e in mancanza di una disposizione specifica, sta in giudizio a mezzo del rappresentante, e questi sarà il rappresentante legale, ovvero, in mancanza o in caso di conflitto di interessi, un curatore speciale”

Segue. Il curatore se non avvocato nomina il difensore

*“E' appena il caso di precisare che **il curatore speciale**, ove sia comunque nominato (quando il tutore non provvede alla nomina di un difensore, e non esiste il protutore, ovvero sorge conflitto di interessi tra tutore e minore), non riveste necessariamente la qualità di difensore (anche se nella prassi prevalente, a fini di semplificazione, si nomina un curatore, rappresentante del minore che, quale difensore, possa stare in giudizio senza il ministero di altro difensore, ai sensi dell'art. 86 c.p.c.) **e in tal caso provvedere alla nomina di un difensore**”.*

la sentenza della S.C. 31-03-2014, n. 7478,
limitazioni solo alla resp.gen.

“l’ultimo comma dell’art. 336 cod. civ. trova applicazione soltanto per i provvedimenti limitativi ed eliminativi della potestà genitoriale, ove si pone in concreto un profilo di conflitto d’interessi tra genitori e minore, e non in una controversia relativa al regime di affidamento e di visita del minore, figlio di una coppia che ha deciso di cessare la propria comunione di vita”

Cass. sent. 11782 dell' 8 giugno 2016,
l'obbligo di nomina se il curatore non è
avvocato.

E' nullo il procedimento di adozione se manca
l'assistenza legale del minore interessato, **che
deve essere nominato quando il curatore
speciale non è iscritto all'albo degli avvocati**
(fattispecie che riguardava il caso in cui era un
Comune a rappresentare nel processo il minore).

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