

## ARTICLE

# Child Protection and Visitation in the Italian Legal Framework

## A Critical Pedagogical Analysis of the ‘Spazio Neutro’ Service

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### 1. Premise

This contribution<sup>1</sup> traces the main provisions in the Italian legal system concerning the protection of minors and the right to visitation and relationships. However, it is not a critical review of a specifically legal nature; rather, the legal corpus in question will be analyzed from a pedagogical perspective, based on the conviction that the law offers more than one reason for interest to educators, teachers, and pedagogists. We highlight at least two:

- Operationally, legal norms delineate a field of practices where some are deemed legitimate and others are subject to sanctions. This means that, both in direct action and in the interpretation of others' actions, the law represents a significant variable in understanding not only the limits and possibilities of educational action, but also which services and institutions are directly or potentially involved within various educational practices. For instance, consider the procedures underlying the legal rights (e.g., of a neighbor of a family suspected of intrafamilial abuse) and legal obligations (e.g., of a teacher who notices signs of violence on a student)<sup>2</sup> in reporting cases to social services.<sup>3</sup>
- Epistemologically, the law challenges the scientific status of pedagogy not only because, with the “aim of preventing or resolving conflicts between individuals and thus ensuring an organized and peaceful social community”,<sup>4</sup> it simultaneously expresses a viewpoint on these issues (which often, by necessity, are the subject of study and intervention by professionals in the pedagogical field), but also because this viewpoint is adopted in specific

1 Methodological note: all references to Italian legislation and any quotes from literature in Italian will be freely translated into English by the author. Furthermore, unless otherwise specified, references to the Constitution, the Civil Code, the Laws, and the sources of jurisprudence refer to the Italian legal system.

2 Law 184/1983 – Article 9, Paragraph 1: “Anyone has the right to report to the public authorities situations of child abandonment. Public officials, those entrusted with a public service, and those exercising a service of public necessity must report as soon as possible to the public prosecutor at the juvenile court of the place where the minor is located, concerning the conditions of any minor in a situation of abandonment that they become aware of in the course of their duties.”

3 L. Lenti, *Diritto di famiglia e servizi sociali*, ed. 4, Torino: Giappichelli 2022, p. 315-318.

4 *Idem*, p. 3.

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institutions, both educational and otherwise, and becomes ritualized in practices that have material<sup>5</sup> effects on the professionalism of those who embody it.

In this regard, consider the impact of legal norms and their interpretative implications on professions such as social workers and educators<sup>6</sup> who, often in a client relationship, work from very different professional perspectives on the same educational projects. From an epistemological standpoint, since there is neither formal nor substantive homology between law and pedagogy, the aforementioned professional situation could result in a flattening of the project and related educational practices to mere compliance with norms, producing welfare-like effects that, in the long run, could affect the professional status of educators. Conversely, educators should be committed to exercising critical thought to safeguard the formative experiences of individuals and groups from conformist and externally controlled tendencies.

In this sense, the law, through its application, effectively challenges the pedagogical specificity of educational work within the broader context of network-based collaboration. However, it is the individual and collective responsibility of the educator, the educational team, and the related educational institution to address this challenge within their own service culture. They must draw a clear demarcation between the legal and the pedagogical, which serves as a prerequisite for genuine and substantial interdisciplinary work.<sup>7</sup>

The attribution of the adjective 'critical' to 'pedagogy'<sup>8</sup> – a topic that we cannot fully develop here – stands at the crossroads of what has just been stated. It brings to light a typically pedagogical issue of an operational-procedural nature, which

5 L. Althusser, *On Ideology*, London: Verso 2008.

6 In Italy, the role of the socio-pedagogical professional educator received its first national legal recognition with the 2018 Budget Law (paragraphs 594-601). This law stipulates that the qualification is granted to those who obtain a degree in Education and Training Sciences (L-19). The law, effective from January 1, 2018, builds on Legislative Decree No. 65 of April 13, 2017, which regulates the integrated education system from birth to the age of six. Starting from the 2019/2020 school year, those working in early childhood services (birth to the age of three) must have a degree in Education and Training Sciences (L-19) with a specific focus on Early Childhood Education. Recently, Law 55/2024, effective from May 8, 2024, further defined the professions of pedagogue, socio-pedagogical professional educator, and early childhood educator. It established the requirements for these professions, including the creation of a professional registry and order. Additionally, the law addresses the recognition of foreign qualifications for professional practice (Article 9). The socio-pedagogical professional educator designs, organizes, and manages educational and training projects for individuals facing difficulties – such as minors, families, substance abusers, prisoners, disabled individuals, psychiatric patients, and the elderly. The educator works collaboratively in teams with other professionals to promote the holistic development and social integration or reintegration of individuals, coordinating educational, training, and socio-health interventions with other educational agencies.

7 A. D'Antone, *Il sostegno educativo alla famiglia e alla genitorialità. Contenuti, strumenti e strategie per la formazione delle figure professionali a valenza pedagogica*, Milano: FrancoAngeli 2020.

8 Refer to, as a preliminary point: F. Cambi and E. Frauenfelder (eds.), *La formazione. Studi di pedagogia critica*, Milano: Unicopli 1994; M. Baldacci and E. Colicchi (eds.), *I concetti fondamentali della pedagogia. Educazione Istruzione Formazione*, Roma: AES 2020; H. Giroux, *On Critical Pedagogy*, London: Bloomsbury 2020; D.I. Backer, *Althusser and Education*, London: Bloomsbury 2022.

will prove to be compelling throughout this contribution. We refer to the ‘Spazio Neutro’ service, which represents a synthesis between legal demands and pedagogical discourse concerning the right to visitation and relationships. More specifically, a critical pedagogical reading, according to Alberto Granese, considers that:

“[...] The formative action and educational process emerge ‘from nothing’, not in the sense of absolute creativity (*ex nihilo*) but in the sense that nothing preceding them (unlike what occurs in technological processes) fully and necessarily determines what follows. It is on this ground [...] that critique and clinical practice intersect. Both are concerned with the limited rationality that characterizes educational action. However, limited rationality does not imply a ‘defect’ or ‘lack’, but rather an ‘excess’. Here, the limit must be understood in its most proper sense, which is not about inhibiting access to a ‘beyond’, as if a wall were standing in front of us or as if we had reached a dead end, but rather as a meaningful determination that defines and shapes.”<sup>9</sup>

It is essentially a matter of envisioning a critical and problematic encounter between law and pedagogy that does not view legal norms as an abstract apparatus detached from social practices.<sup>10</sup> Rather, these norms should be seen as carriers of concrete constraints, procedures, and meanings that call upon pedagogically oriented professionals and the individuals in education to, on the one hand, adhere to certain rules; and, on the other hand, to interpret/translate these rules not in a deterministic sense, but by safeguarding a specific educational approach. Paolo Grossi writes, as is well known from a legal perspective:

“The aim is an epistemological cleansing, allowing one to view it with purified eyes: the old dominance of the text and the old passivity of the interpreter are replaced by the conviction that the text is not a self-sufficient reality, but rather incomplete and unfinished. It will attain completeness and fulfillment only through interpretation, which is not merely a cognitive operation, but an act of understanding in the sense of mediation between the message of the text, alienated from history by the immobilization of writing, and the

9 A. Granese, ‘Il pedagogista critico. Nascita, fine (morte e trasfigurazione) della pedagogia nella modernità remota e contemporanea’, in: A. Rezzara (ed.), *Dalla scienza pedagogica alla clinica della formazione. Sul pensiero e l'opera di Riccardo Massa*, Milano: FrancoAngeli 2004, p. 69.

10 With respect to the relationship between society and law, and therefore the historicity of the law itself, E.B. Pašukanis writes quite significantly: “Historical development is accompanied not only by a transformation of the content of legal norms and legal institutions, but also by development in the legal form as such. Having emerged at a particular stage of culture, this legal form persists for a long time in an embryonic state, with minimal internal differentiation, and with no clear demarcation from neighbouring spheres (mores, religion). Only after a period of gradual development does it reach its full flowering, its maximum differentiation and definition. This highest stage of development corresponds to quite specific economic and social relations. It is characterised simultaneously by the emergence of a set of general concepts which comprise a theoretical reflection of the legal system as a perfected whole.” (E.B. Pašukanis, *The General Theory of Law & Marxism*, New Brunswick & London: Transaction 2003, p. 71.)

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interpreter's present-day reality, with its own set of contemporary convictions."<sup>11</sup>

This approach must recognize that when working with families marked by irreducible singularities and complexities, any planning (even if legally informed and pedagogically rigorous) cannot be subject to any technical rationality,<sup>12</sup> lest it lose that 'excess' which characterizes the unique educational trajectory of each individual. Moreover, as Daniele Cananzi writes, "To understand, in hermeneutic terms, is to grasp the meaning in light of a broader framework within which it is situated – a framework shaped by pre-scientific relationships and the practical relations that need to be regulated. In this sense, the hermeneutic interpretation of meaning occurs with reference to the context in which the text exists and the history it influences."<sup>13</sup> Consequently, from a critical perspective, one can assert that this approach:

"brings about a theoretical revolution, which radically and completely transforms the old problematic: new objects and issues, 'invisible in the field of existing theory', not because they are part of it, but rather because they represent prohibitions – 'invisible because legally rejected, removed from the visible field' through a sort of 'dialectic of exclusion' – finally gain their theoretical significance. When we speak of a 'change of ground' or a different 'field', these metaphors should not be taken literally, as if one space exists alongside another, external to it: the second space is contained within the first and contains it as its own negation; indeed, it 'has only internal limits and carries its outside within itself'."<sup>14</sup>

For this reason, the contribution proposes a critical-pedagogical examination of the main legal norms regarding the protection of minors and visitation rights in Italy, structured around three key steps.

The first step involves a brief overview of the concept of family as it appears in certain norms within the Italian legal system.

The second step offers a succinct pedagogical analysis of the most relevant regulations concerning the protection of minors, including the provisions for family separation and the use of Court-Appointed Technical Consultants and Party-Appointed Technical Consultants.

The third step, though briefly outlined, discusses the impact of these analyses on the 'Spazio Neutro' service, which stands as a significant institution of a practical-procedural nature. This service is crucial for addressing the relationship between law and pedagogy within educational work and the network of services.

11 P. Grossi, *Prima lezione di diritto*, Roma-Bari: Laterza 2003, p. 107.

12 D.A. Schön, *The Reflective Practitioner*, US: Basic 1983.

13 D.M. Cananzi, *Percorsi ermeneutici di filosofia del diritto*, Vol. 2, Torino: Giappichelli 2016, p. 27.

14 P. D'Alessandro, *Darstellung e soggettività*, Firenze: La Nuova Italia 1980, p. 38.

## 2. The Concept of Family in the Italian Legal System: Preliminary Notes

It is possible to trace some important indications regarding the presence of the concept of family in the Italian legal system, starting with the text of the Constitution. As emphasized by Ambrosino,<sup>15</sup> the Constitution attributes significant centrality to the individual, both from a legal perspective and in ethical and moral terms. It expresses in its general principles a natural law inspiration, according to which, at least on a formal level, there are pre-legal rights pertaining to the inviolability of the human person. In this regard, Article 13<sup>16</sup> is paradigmatic in regulating the legal constraints on personal freedom. Since this inspiration is expressed within a social community, whose formations and related rights are recognized insofar as they promote the development of the individual to whom the fundamental principles are directed,<sup>17</sup> the family can be understood as a group, institution, and system subject to mechanisms of promotion and protection.<sup>18</sup> Group, institution, and system, regardless of the form it takes (single-person, same-sex, reconstituted, extended, single-parent, and others). The plurality of the family institution is an established fact, as can also be observed in pedagogical literature.<sup>19</sup> However, this clarification prompts the need to move beyond this fact, which, despite not fully addressing the social and political issue (for which, in certain conservative arguments, ‘family’ is only the traditional one), still presents the problem of not fully focusing on the typically formative characteristics of the family itself: its internal organization in terms of spaces, times, and rules, the symbolic meanings it cultivates and reworks at the intergenerational level, and which can be accepted, questioned, or rejected from one generation to the next.<sup>20</sup>

15 G. Ambrosino, *Introduzione*, in: G. Ambrosino (ed.), *Costituzione italiana*, Einaudi: Torino 2005, § 4.

16 Constitution, Title I (Civil Relations) – Article 13: “Personal liberty is inviolable. No form of detention, inspection, or personal search, nor any other restriction of personal liberty, is permitted except by a reasoned act of the judicial authority and only in the cases and in the manner provided for by law. In exceptional cases of necessity and urgency, expressly indicated by law, the Public Security authority may adopt provisional measures, which must be communicated within forty-eight hours to the judicial authority, and if the latter does not validate them within the subsequent forty-eight hours, they are considered revoked and are without any effect. Any physical or moral violence against persons subjected to any restriction of liberty is punished. The law establishes the maximum limits of pre-trial detention.”

17 A.C. Moro, *Manuale di diritto minorile*, ed. 6, Bologna: Zanichelli 2019, p. 18.

18 See, as a preliminary step, in the Italian pedagogical discourse: M. Contini, *Per una pedagogia delle emozioni*, Firenze: La Nuova Italia 1992; L. Dozza, ‘Setting e dinamiche anti-gruppo nei gruppi di formazione’, in: M. Contini (ed.), *Il gruppo educativo. Luogo di scontri e di apprendimenti*, Roma: Carocci 2000, p. 47-90; L. Formenti, *Pedagogia della famiglia*, Milano: Guerini 2000; E. Catarsi, *Pedagogia della famiglia*, Roma: Carocci 2008; M. Fabbri, *Il transfert, il dono, la cura. Giochi di proiezione nell’esperienza educativa*, Milano: FrancoAngeli 2012; A. Gigli, *Famiglie evolute. Capire e sostenere le funzioni educative delle famiglie plurali*, Parma: Junior 2016; J. Orsenigo, *Famiglia. Una lettura pedagogica*, Milano: FrancoAngeli 2018; P. Perillo, *Pedagogia per le famiglie. La consulenza educativa alla genitorialità in trasformazione*, Milano: FrancoAngeli 2018; P. Milani, *Educazione e famiglie. Ricerche e nuove pratiche per la genitorialità*, Roma: Carocci 2018.

19 *Idem*.

20 See preliminarily: R. Massa, *Le tecniche e i corpi*, Milano: Unicopli 1986. About the role of ‘negation’ into pedagogical discourse: D.R. Ford, ‘Pedagogy of the “Not”: Negation, Exodus, and Postdigital Temporal Regimes’, *Postdigital Science and Education* 2019, 1, p. 104-118.

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However, we will not have time to explore these important aspects in detail on this occasion: we limit ourselves to asserting that the multiplicity of family forms does not exhaust (although it is an important aspect, worth emphasizing and defending when necessary) the pedagogical and subjectivation role that the family carries with it.

Without dwelling at length on marriage as a legal transaction, which encompasses its interpretation in terms of personal and property relations,<sup>21</sup> nor on the complexity<sup>22</sup> introduced by the institutions of *de facto* cohabitation and civil

- 21 Both aspects seem relevant in this context, even if not directly related to the specific subject of the contribution, both in terms of the educational relationship and the related implications, which are not only political and ethical-social, but more straightforwardly epistemological with respect to the entire pedagogical discourse. Consider, as a purely preliminary and necessarily didactic note: the economic implications in cases of joint property regimes within marriage, in situations of judicial separation and sole custody; the ideological aspects, still pervasive and resulting in denials, stereotypes, and social stigma, in cases of civil unions and any related adoption procedures; the indeterminacy, if not explicit contradiction, in treating the bonds of affinity differently in marriage, civil unions, and cohabitation. We limit ourselves to highlighting how these particular cases, far from marginal, indicate a discrepancy between the legal and pedagogical considerations of the family institution, which not only call for the participation of pedagogically oriented professionals in judicial proceedings related to the family and the educational practices that take place within it, but also the necessary continuation of the internal debate within pedagogical communities (and the different positions on the matter) regarding the relationship between education and family.
- 22 Among the elements of complexity within the institution, it is important to note the wide variety of contemporary families, which makes their composition and related needs undoubtedly heterogeneous and not comparable to a single reference model. See, among others: Gigli 2016; Perillo 2018.

unions,<sup>23</sup> it is sufficient to refer to Articles 29-32 of the Constitution<sup>24</sup> to observe the coexistence of a natural component (see Article 29) and a social component in the consideration and regulation of the family.

Alongside the welfare-oriented concern (economic assistance, health promotion, etc.) and legal protection, Article 30 emphasizes the correlation between the maintenance of the minor and their education as both a right and a duty.<sup>25</sup> It also specifies that the protection of the family must necessarily be accompanied by the strengthening of the 'institutions necessary for this purpose'. Therefore, the family is considered not only in terms of its natural and historical aspects, but also as an institution situated between the private and public spheres. In particular, the 'private' element pertains to the parental functions that support the maintenance, education, and upbringing of the minor, while the 'public' element involves the characteristics of protection and safeguarding by the State towards the family institution.

- 23 The Law 76/2016, commonly known as the 'Cirinnà Law' in Italy, is a significant piece of Italian legislation that introduced civil unions for same-sex couples and legal recognition of cohabitation for both same-sex and opposite-sex couples. The law grants same-sex couples many of the rights and responsibilities traditionally associated with marriage, including inheritance rights, healthcare decisions, and pension benefits. Additionally, it recognizes cohabitation agreements for couples who live together, providing legal frameworks for property rights and financial support. However, the law does not extend full adoption rights to same-sex couples, with the exception of stepchild adoption, which is subject to judicial discretion. This law represents a major advancement in LGBTQ+ rights in Italy (G. Ferrari, 'The Cirinnà Law: Same-Sex Civil Unions and Cohabitation in Italy', *Italian Journal of Public Law* 2016, Vol. 8, No. 2, p. 241-258). See also the references to cohabitation and same-sex partnerships found in the *National Report: Italy*, edited by Maria Donata Panforti, for the Commission on European Family Law (<https://ceflonline.net/wp-content/uploads/Italy-IR.pdf> – Last consulted: 08/21/2024).
- 24 Constitutional Articles, Part I, Ethical-Social Relations (Articles 29, 30, 31, 32). 29: "The Republic recognizes the rights of the family as a natural society founded on marriage. Marriage is based on the moral and legal equality of the spouses, with the limits established by law to guarantee family unity." 30: "It is the duty and right of parents to support, educate, and raise their children, even those born out of wedlock. In cases where parents are unable to fulfill their duties, the law ensures that these responsibilities are met. The law provides every legal and social protection for children born out of wedlock, compatible with the rights of members of a legitimate family. The law sets the rules and limits for establishing paternity." 31: "The Republic facilitates, through economic measures and other provisions, the formation of the family and the fulfillment of its related duties, with particular attention to large families. It protects motherhood, childhood, and youth, promoting the necessary institutions for this purpose." 32: "The Republic protects health as a fundamental right of the individual and an interest of the community, and guarantees free medical care to the indigent. No one can be compelled to undergo any particular health treatment except as provided by law. The law can never violate the limits imposed by respect for the human person."
- 25 Despite the indeterminacy of the concepts proposed in the text, the linguistic co-text suggests (in line with the sedimentation of terms in common language) the connotation of the concept of education in value-based and ethical-social terms, and that of instruction in terms of content learning – a matter that we believe can be better specified as 'guaranteeing the attainment of an educational qualification by external entities', particularly if correlated with the concept of 'maintenance', which is more frankly material and economic and, by necessity, related to the function of the school system. Regarding the linguistic importance of the topic in the Italian pedagogical discourse, which does not exhaust the issue but allows for a more rigorous epistemological systematization, refer to: M. Baldacci, *Praxis e concetto. Il linguaggio della pedagogia*, Milano: FrancoAngeli 2022.



The forms of vulnerability within the family are identified, at this level, in certain general cases (poverty, large families, natural parentage, health, etc.).<sup>26</sup> This public connotation, or the entry of the social into family-related issues, is also reflected in the Constitution, where the legal framework explicitly addresses the venue, timing, and equal adversarial process for resolving any internal disputes.<sup>27</sup> The most relevant aspect here, for the purposes of our discussion, pertains to parental responsibility. The institution of parental responsibility has increasingly shifted towards the oversight and protection by society, due to the normative evolution of the concept (from '*patria potestà*'<sup>28</sup> to parental authority, and ultimately to the concept of parental responsibility towards children).<sup>29</sup> Indeed, as Maria Donata Panforti has stated,<sup>30</sup> between 1975 and 2012 the Italian legal system gradually shifted from viewing the primary role of parents as guiding and educating their children to emphasizing the recognition and protection of children's rights. This change placed greater importance on parents' responsibilities to love, support, and nurture their children's potential, including providing financial support until independence and contributing to their personal and professional development. Pedagogically speaking, this serves as an important counterpoint to challenge and counteract forms of adultism, which are sometimes implicit.<sup>31</sup>

In particular, Article 316, paragraph 1, of the Civil Code specifies that "both parents have parental responsibility, which is exercised by mutual agreement, taking into account the child's abilities, natural inclinations, and aspirations. The parents, by mutual agreement, establish the child's habitual residence."<sup>32</sup> This indicates a shift – certainly of interest in the pedagogical field – from the notion of possession of the child to the activities of accompaniment and care (as evidenced by the terms abilities, inclinations, and aspirations). Additionally, it reflects a responsibility that is not solely paternal, but shared and distributed among the adult figures of reference.

26 Regarding this specific passage, refer to: L. 17/2012, No. 293.

27 Article 111 – Constitution, Part II, Organization of the Republic: "Jurisdiction is exercised through a fair trial regulated by law. Every trial takes place with adversarial proceedings between the parties, under conditions of equality, before an impartial and independent judge. The law ensures its reasonable duration. [omitted] All judicial decisions must be motivated [see arts. 13, para. 2, 14, para. 2, 15, para. 2, 21, para. 3]. The application of this norm entails, even in the absence of procedural guidelines, a change in the position of the judge in relation to the parties and to the 'experts' or others involved."

28 In ancient Roman law, *patria potestà* granted the father nearly absolute authority over his children, including decisions on their upbringing and even their life or death. This power ended only upon the father's death or through legal emancipation. In modern contexts, the term has evolved to represent 'parental authority' or 'parental responsibility', where both parents share duties focused on the child's welfare, emphasizing care, protection, and education rather than absolute control by one parent.

29 See in this regard: L. 151/1975; D. Lgs. 154/2013; Article 316 of the Civil Code.

30 M.D. Panforti, 'Il rapporto genitori-figli dall'autorità alla condivisione. Tracce per un'analisi in diritto e letteratura', in: *Scritti in memoria di Rodolfo Sacco*, Torino: UTET 2024, p. 1219-1235.

31 F. De Giorgi, 'Maria Montessori', in: F. De Giorgi (ed.), *Storia della pedagogia*, Brescia: Scholè 2021, p. 225.

32 Civil Code – Article 316, Paragraph 1: "Both parents have parental responsibility, which is exercised by mutual agreement, taking into account the child's abilities, natural inclinations, and aspirations."



We will return to this point later. However, it is necessary to note that the evolution of the concept does not abandon the financial aspects and the related ‘administration of assets’<sup>33</sup> that derive from it (still relating to the notion of possession). Instead, it introduces a problematization of this issue in the context of interpersonal relationships, utilizing not only the concept of duty but also that of power<sup>34</sup> – in this specific case, the exercise of adult authority over the minor.<sup>35</sup> Here, the necessary control is applied to prevent situations that could be detrimental to the best interests of the minor. In this regard, it is possible to observe how the issue is addressed in Article 330<sup>36</sup> of the Civil Code, for which a judge may decide to revoke a parent’s parental responsibility if the parent seriously neglects or violates their duties or abuses their authority, causing significant harm to the child. In cases where the child’s well-being is at severe risk, the judge can take further measures, such as removing the child from the family home or expelling the abusive parent or cohabiting individual. This is done to ensure the child’s safety and well-being. The conditions of detriment must therefore be clearly articulated: not only the violation of the terms on which parental responsibility is based (see Civil Code, Article 316, paragraph 1) but also situations of maltreatment and abuse by the adult figure of reference. In such cases, the removal of the parent whose behavior is detrimental to the minor, or the removal of the minor for protective purposes, is explicitly outlined as a means by which the social and its legal expression can alter the family balance to safeguard its status as a natural society.

- 33 See in this regard Article 334 of the Civil Code: “When the minor’s assets are poorly managed, the court may establish the conditions to which the parents must adhere in the administration, or it may remove one or both of them from the administration and deprive them, in whole or in part, of the legal usufruct. If both parents are removed, the administration is entrusted to a curator. These measures can be revoked at any time [742 c.p.c.]. In such cases, for serious reasons, the judge may order the removal of the child from the family residence [333] or the removal of the parent or cohabitant who mistreats or abuses the minor.”
- 34 Naturally, the duty here could be legally related to the concept of a ‘right’, but we find it functional to expand the discussion in order to better understand it in light of the concept of parental responsibility. As is well known, the concept of ‘responsibility’ is connected not so much to ‘duty’ (not even in a strictly ethical sense) but rather to ‘choice’, albeit in terms of ‘limited freedom’. Since, strictly speaking, responsibility is associated with the ability to foresee the effects of one’s behavior in order to correct its outcomes, we believe that the accompanying duty refers back to its pedagogical dimension: that is, the assumption, understood as a duty, of mental habits capable of constantly reflecting on one’s conduct (which is now responsible), aimed at the protection and care of the minor. Regarding this concept, see: N. Abbagnano, *Dizionario di filosofia*, ed. 3, Milano: UTET 2019, p. 929-930.
- 35 R. Massa, ‘Prefazione’, in: M.G. Riva (ed.), *L’abuso educativo. Teoria del trauma e pedagogia*, Milano: Unicopli 1993, p. 9-11.
- 36 Civil Code – Article 330: “The judge may pronounce the forfeiture of parental responsibility when the parent violates or neglects the duties associated with it [147; 30 Constitution; 570 Penal Code] or abuses the related powers [320, 323, 324; 571 ff. Penal Code] to the serious detriment of the child. In such a case, for serious reasons, the judge may order the removal of the child from the family residence [333] or the removal of the parent or cohabitant who mistreats or abuses the minor.”

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Articles 333 and 336 of the Civil Code<sup>37</sup> establish a legal framework for protecting children from harmful parental behavior, balancing the child's welfare with procedural safeguards. Article 333 addresses situations where a parent's conduct is detrimental to the child, but does not warrant full revocation of parental responsibility as stipulated in Article 330. In such cases, the judge may still intervene by imposing corrective measures deemed necessary to protect the child's well-being. This can include ordering the child's removal from the family residence or excluding an abusive parent or cohabitant from the household. These measures allow the judge to address issues within the family setting without entirely stripping the parent of his or her rights, thereby providing a tailored response to the child's specific needs and circumstances. Article 336 outlines the procedural steps for implementing the protective measures described in Articles 330 and 333. These measures can be requested by the other parent, family members, or the public prosecutor, and in cases involving the reversal of previous rulings, by the affected parent as well. The court conducts a confidential review, gathering relevant information and consulting with the public prosecutor. It also ensures the participation of any child aged twelve or older (or younger, if capable of discernment) and the involved parent, who must be given a chance to be heard. In urgent situations, the court has the authority to enact temporary measures independently to prioritize the child's safety. Additionally, the child and parents are guaranteed legal representation, with the State providing counsel when necessary. Together, Articles 333 and 336 offer a structured approach for responding to harmful parenting, granting the court flexibility in safeguarding the child while respecting the rights and involvement of all parties concerned.

The measures cited, in light of the specifics already mentioned regarding the fair trial regulated by law (see Constitution, Article 111), raise several issues of significant interest, which we will briefly outline here:

- the reversible nature of the measure;
- the necessity of establishing a series of institutions and procedures that, depending on the degree of exceptionality, provide for the separation of the minor from one or more adult figures of reference, with the consequent need to ensure a placement option that upholds the child's right to a family;

37 Civil Code – Articles 333, 336. 333: “When the conduct of one or both parents does not warrant the pronouncement of the forfeiture provided for in Article 330, but still appears to be detrimental to the child, the judge [38, 51], depending on the circumstances, may adopt appropriate measures and may also order the removal of the child from the family residence [336] or the removal of the parent or cohabitant who mistreats or abuses the minor.” 336: “The measures indicated in the preceding articles are adopted upon petition [125 c.p.c.] by the other parent, relatives, or the public prosecutor [69 c.p.c.], and, when it concerns the revocation of previous decisions, also by the parent involved. The court decides in chambers [737 c.p.c.], after gathering information and hearing the public prosecutor [738 c.p.c.]; it also orders the hearing of the minor child who has reached the age of twelve, and even of a younger child if capable of discernment. In cases where the measure is requested against a parent, that parent must be heard. In cases of urgent necessity, the court may also adopt temporary measures ex officio in the interest of the child. For the measures referred to in the preceding paragraphs, the parents and the minor are assisted by a lawyer [including at the State's expense in cases provided by law].”

- the importance of hearing the child during the legal process and the competencies involved in such aspects of the procedure, as well as the obligation of legal defense in juvenile cases;<sup>38</sup>
- the involvement of prevention, education, and rehabilitation services that can integrate with the legal protection of the minor, engaging in dialogue from their own specific perspective, within an integrated system where social services serve as the specific point of transmission.<sup>39</sup>

### 3. The Priority of the Child's Best Interest in the Integrated System of Interventions and Social Services

In this regard, DPR 616/77 transferred the administrative functions of the State to the Regions in matters of public assistance and charity, delegating to local authorities the interventions in favor of minors who, in both civil and administrative contexts, are subject to measures by the Judicial Authority. This transfer involves the establishment and oversight of territorial interventions aimed not only at promoting collective and socialization experiences for minors but also at prevention, education, and rehabilitation in situations of disadvantage, marginalization, or vulnerability for minors and their families.

- Article 6: “1. The objectives of the projects referred to in Article 3, paragraph 1, letter c., can be pursued, in particular, through the support and development of services aimed at promoting and enhancing the participation of minors at the proposal, decision-making, and management levels in collective experiences, as well as opportunities for reflection on issues relevant to civil coexistence and the development of socialization skills and integration into school, collective, and family life. 2. The services referred to in paragraph 1 are provided through educational professionals with specific professional competence and may also be implemented as part of the regulation governing complementary initiatives and integrative activities in educational institutions, issued by decree of the President of the Republic on October 10, 1996, No. 567.”
- Article 4: “b. information and support activities for maternity and paternity choices, facilitating access to family and maternity assistance services as provided by Law No. 405 of July 29, 1975, and subsequent amendments; c.

38 L. 149/01: Article 37, paragraph 1: “The following words are added to Article 330 of the Civil Code: ‘or the removal of the parent or cohabitant who abuses or mistreats the minor’”. Article 37, paragraph 2: “The following words are added to Article 333 of the Civil Code: ‘or the removal of the parent or cohabitant who abuses or mistreats the minor’”. Article 37, paragraph 3: “The following paragraph is added to Article 336 of the Civil Code: ‘For the measures mentioned in the preceding paragraphs, the parents and the minor are assisted by a legal defender, including at the expense of the State in cases provided for by law’”.

39 ‘Legge Quadro’ 328/2000 – Article 1: “The Republic ensures for individuals and families an integrated system of interventions and social services, promotes actions to guarantee quality of life, equal opportunities, non-discrimination, and citizenship rights, and prevents, eliminates, or reduces conditions of disability, need, and individual or family distress arising from inadequate income, social difficulties, and conditions of lack of autonomy, in accordance with Articles 2, 3, and 38 of the Constitution.”

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support actions for minors and family members in order to carry out effective prevention of psycho-social crisis situations and risks, also through the strengthening of network services for home interventions, day care, territorial educational support, school attendance support, and emergency services; d. family placements, both day and residential.”<sup>40</sup>

The emphasis here is placed on crisis situations: alongside the necessary emphasis on abuse, legally understood as a violation of the duty connected to parental responsibility, there is also a need to reflect in legal terms on those characteristics of family instability that do not necessarily involve forms of maltreatment (for example, contentious separations between partners). This provides a thematic framework in which territorial and home interventions can be accompanied by the procedures for day and residential placements as tools for prevention, education, and recovery.<sup>41</sup> However, for such an institution to take shape, it is necessary to *momentarily set aside the naturalness of the family institution* and instead adopt a historically and critically problematic perspective on it.

Consider this: if there were a complete alignment between the marital (or cohabitation) relationship, familial educational competencies, and parental responsibility, then the breakdown of the emotional bond between partners and the potential separation or divorce would necessarily entail the exclusive custody, following a legal process, of one parent, with the exclusion of the other from the daily life of the child, precisely to ensure the proper exercise of parental responsibility. This interpretation would reinforce the idea of the family as a natural institution, but it would overlook the complexity that, within each family, educational styles and significant experiences express in a way that is relatively independent of the emotional bond between the adult figures of reference.

40 L. 285/1997 – Articles 6, 4.

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Law 54/2006<sup>42</sup> reflects this issue by introducing the principle of joint/shared parenthood (*affido condiviso*), connected to the concept of ‘Parental Responsibility’.<sup>43</sup> On the one hand, it underscores the necessary presence of both parents in the processes of education and development of the child, which are inherent to parental responsibility but also relatively independent of it; on the other hand, it establishes the necessary custody procedures to ensure the paramount interest of the child in cases of crisis and separation.

It is not yet a matter of fully articulating the technical methods for recovering the potential significance of the relationship with the adult figure for whom custody has not been granted, but rather of establishing the necessity of ‘maintaining a balanced and continuous relationship’ with both parental figures. Additionally, before making custody arrangements, the judge ‘may, upon request or on their own initiative, collect evidence’, also allowing the adult figures to ‘attempt mediation with the assistance of experts’ to protect ‘the moral and material interests of the children’.

In this context, we refer to the roles of the Court-Appointed Technical Consultant (C.T.U.) and the Party-Appointed Technical Consultant (C.T.P.), two quite different yet complementary figures. Although we can only briefly touch upon their professionalism here, the mediation role they play between the judge (who, even when involving external experts, remains the *peritus peritorum*) and the parties involved is particularly interesting, especially considering the importance that the C.T.U. has progressively assumed in law and jurisprudence. Articles 62 and 194 of

42 L. 54/2006 – Articles 155, 155-bis, 155-ter, 155-sexies. Article 155 – “(Measures regarding children). Even in the case of the personal separation of the parents, the minor child has the right to maintain a balanced and continuous relationship with each of them, to receive care, education, and instruction from both, and to maintain meaningful relationships with grandparents and relatives from each parental branch.” Article 155-bis – “(Custody to one parent and opposition to shared custody). The judge may order the custody of the children to one parent if they believe, with a reasoned decision, that custody by the other parent would be contrary to the child’s best interest.” Article 155-ter – “(Review of provisions concerning child custody). Parents have the right to request a review of the provisions concerning child custody, the allocation of parental authority, and any provisions related to the amount and method of support at any time.” Article 155-sexies – “(Powers of the judge and hearing of the child). Before issuing any decisions under Article 155, even provisionally, the judge may, upon request or on their own initiative, collect evidence. The judge also orders the hearing of the minor child who has reached the age of twelve and, if capable of discernment, even younger children. If the judge deems it appropriate, after hearing the parties and obtaining their consent, they may postpone the adoption of the measures under Article 155 to allow the spouses, with the help of experts, to attempt mediation in order to reach an agreement, particularly concerning the moral and material welfare of the children.”

43 For a more detailed analysis, see: R. Probert, S. Gilmore, and J. Herring (eds.), *Responsible Parents and Parental Responsibility*, Oxford and Portland, Oregon: Hart Publishing 2009. Additionally, it is important to emphasize the contemporary variability of the concept of shared custody and parental responsibility in the European debate (including variations in linguistic terms and substantive differences: see, for example, the distinctions between the concepts of joint custody and shared parenting, where the latter reflects a greater emphasis on the shared responsibilities of parenting from a pedagogical perspective), as highlighted in the documentation produced by the *Commission on European Family Law* in its principles (<https://ceflonline.net/principles/> – Last consulted: 08/21/2024).

the Italian Code of Civil Procedure<sup>44</sup> establish the responsibilities and procedures involving technical consultants appointed by the court, highlighting their role in assisting judges with specialized knowledge. Article 62 outlines the general duties of the court-appointed consultant, who is tasked with conducting investigations as directed by the judge. The consultant provides necessary clarifications and explanations, both in court and in chambers, following the guidelines set by Article 194 and subsequent articles, as well as Articles 441 and 463. This provision ensures that the consultant's findings are fully integrated into the judicial process and readily accessible to the judge. Article 194 specifies the procedural role of the technical consultant in greater detail. It mandates that the consultant attend court hearings upon request and conduct investigations assigned by the judge, even outside the judicial district if required.

The consultant may work independently or alongside the judge, based on the judge's instructions. If authorized, the consultant can also seek clarifications from the parties involved, collect information from third parties, and conduct practical assessments like surveys, molds, and measurements. Even when the consultant works independently, the involved parties retain the right to participate in the investigative process. They may be present through their legal representatives and technical consultants, and they are permitted to make observations and submit requests, either verbally or in writing, to ensure their perspectives are considered. Together, Articles 62 and 194 define a collaborative framework in which technical consultants assist the court with complex, specialized inquiries. This structure facilitates the consultant's independent investigation while ensuring that the parties involved have opportunities to engage in the process and contribute insights, thus upholding transparency and thoroughness in judicial proceedings. The interpretation offered here regarding the profile and functions of the Court-Appointed Technical Consultant (C.T.U.) can be better understood by distinguishing, in legal terms, between the *deductive* and the *perceptive* roles of the professional.<sup>45</sup> In jurisprudence, it is generally accepted that the C.T.U., as a professional in the field registered in the Register of Technical Consultants of the Court, not only performs a set of practices that are beyond the control of the parties and are exclusively subject to the judge's assessment, but also that this

44 Code of Civil Procedure – Articles 62 (Technical Consultants in Courts of Appeal and Courts of Cassation) and 194 (Duties of the Court-Appointed Expert). – Article 62 c.p.c.: “The consultant conducts the investigations assigned to them by the judge and provides, in court and in chambers, the clarifications that the judge requests from them in accordance with Articles 194 and following, as well as Articles 441 and 463 [disp. att. 90, 91, 92].” Article 194 c.p.c.: “The technical consultant attends the hearings to which they are invited by the examining judge; they conduct, even outside the judicial district, the investigations referred to in Article 62, either alone or together with the judge, as the latter directs. They may be authorized to request clarifications from the parties, gather information from third parties, and carry out surveys, molds, and measurements. Even when the judge orders the consultant to conduct investigations alone, the parties may participate in the proceedings in person and through their own technical consultants and legal representatives, and they may submit observations and requests to the consultant, either in writing or orally [90, 91, 92 disp. att.]”

45 F. Fenizio, *Manuale di consulenza tecnica pedagogica in ambito giuridico. La C.T.U. e la C.T.P. dalla A alla Z*, Lecce: Youcanprint 2020.



assessment may concern either the mere evaluation of established facts (deductive function) or the actual determination of those facts (perceptive function). Nonetheless, these operations do not relieve the interested parties from the burden of proof.<sup>46</sup>

Technical consultancy generally does not constitute a means of proof, but rather a tool for evaluating the evidence that has been acquired. However, it can rise to the level of an objective source of proof when it involves the determination of facts that can only be revealed with the aid of specific knowledge or technical instruments. On the other hand, the court-appointed technical consultant, even without explicit authorization from the judge, may, pursuant to Article 194, first paragraph, of the Code of Civil Procedure, gather information from third parties and ascertain accessory facts that are necessary to answer the questions posed to them. However, the consultant does not have the authority to ascertain the facts that form the basis of claims and defenses, for which the burden of proof lies with the parties. If the consultant exceeds the inherent limits of their mandate, such findings are null due to the violation of the principle of adversarial proceedings and are therefore devoid of any probative value, even as circumstantial evidence.<sup>47</sup>

Although the function of the Court-Appointed Technical Consultant cannot be of a judicial nature (a role strictly reserved for the judge, as previously mentioned), the sources suggest an interesting appreciation for the technical specificity involved not only in the ascertainment of facts, but also in the actively investigative search for data<sup>48</sup> that, during the trial, can support a judgment as closely aligned as possible with the protection of the child's best interest. Certainly, the constraints

46 Civil Cassation, United Sections, Judgment No. 9522/1996: "The judge may assign the technical consultant not only the task of evaluating the facts ascertained by the judge or assumed to exist [deductive consultant], but also the task of ascertaining the facts themselves [perceptive consultant]. In the first case, the consultancy presupposes the completion of the means of proof and is concerned with the evaluation of facts whose elements have already been fully proven by the parties; in the second case, the consultancy itself may constitute an objective source of evidence. However, this does not mean that the parties can avoid the burden of proof and delegate the determination of their rights to the consultant's activity. In this second case, it is necessary, in fact, that the party at least asserts the fact on which they base their right, and that the judge considers that its determination requires technical knowledge that he does not possess, or that there are other reasons that prevent or advise against proceeding directly to the determination."

47 Civil Cassation, Section III, Judgment No. 1020/2006.

48 Civil Cassation, Section I, Order No. 15774/2018: "The prohibition for the court-appointed technical consultant from conducting exploratory investigations can be overcome only when the determination of certain factual situations can only be carried out with the aid of special technical knowledge. In this case, the consultant is allowed to acquire any necessary elements to answer the questions, even if they result from documents not produced by the parties, provided that these are accessory facts and fall strictly within the technical scope of the consultancy. Conversely, the prohibition is fully operative when the burden of proof lies with a party and the case does not fall within the above-mentioned exceptional and derogatory circumstances. [In this case, the Supreme Court declared inadmissible the appeal against the decision of the lower court which, in the face of a technical consultancy aimed at determining whether, within the context of a bank account relationship, the interest on the amounts debited to the client had been calculated at a rate conventionally determined by the parties, had held that the court-appointed expert could not directly acquire the bank contracts that were not duly produced by the parties]."



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of the burden of proof (*onus probandi*) cannot (and should not) be circumvented,<sup>49</sup> nevertheless, it remains necessary to recognize that the reference to 'specific knowledge or technical instruments' should not be seen merely as a form of purely technological expertise in the narrow sense, but rather as an acknowledgment – if not explicitly, then at least *de facto* by the legislator – of the intensive, vertical, and relational nature that evidentiary procedures must consider, even if only for the purposes of the child's protection and welfare, and within the limits and functions of the professional involved in the consultancy.

#### 4. Notes for a Pedagogical Reading of Visitation and Relationship Rights

For this reason, the path opened by Law 54/2006 is significant not only for specifying the principle of joint parenthood, but also for enabling the establishment and oversight of interventions that can, at least in principle, simultaneously recover the *horizontality of planning* and the *verticality of practices* in contexts that extend beyond the legal realm, while still maintaining a careful dialogue with it. Let us explain. This involves a possible shift in perspective that occurs when moving from the legal realm to the pedagogical one.

In terms of intervention, legal norms are applied to resolve a problem or dispute (vertical dimension), while pedagogically oriented professionals can reclaim a territorial dimension, focusing on coordination and networking with the individuals involved in legal proceedings (horizontal dimension).

Conversely, where the application of norms formally requires the equitable and just nature of the proceedings (horizontal dimension: individual cases must be assessed against the law and jurisprudence), in educational intervention, it is possible to recover a critical and clinical<sup>50</sup> dimension – one that cares for the relationship, problematizes the institutional context in which this relationship is situated, safeguards the group dynamics in which the individual operates, and appreciates the irreducible uniqueness of the specific case (vertical dimension: educational work pertains to maintaining the structure within which significant experiences can be produced and supported, as well as to the depth of individual and social relationships with those involved in education).

Put differently: it is not a matter of conceiving of the law as merely the application of norms and educational work as a passive recipient of them. Both domains (law and education) express demands for power (in verticality) and freedom (in horizontality), where discipline and analysis, as Michel Foucault insightfully observed, accompany each other reciprocally.<sup>51</sup>

And here we return to the issue of interpretation and its pedagogical effects. To interpret, rather than merely apply mechanically, opens up a critical and structural approach to pedagogy that we consider essential for understanding the problem at hand and for advancing the important intersection between law and pedagogy that

49 See also: Civil Cassation, Section III, Judgment No. 31886/2019.

50 M.G. Riva, *La consulenza pedagogica. Una pratica sapiente tra specifico pedagogico e commessione dei saperi*, Milano: FrancoAngeli 2021.

51 M. Foucault, *Discipline and Punish. The Birth of the Prison*, New York: Vintage Books 1995.

we seek to explore. ‘Critical’ and ‘structural’ because, instead of focusing solely on interpersonal relationships, it highlights the dynamics of the subject’s positioning within the social structure, revealing power implications as well as the margins for action and transformation – so that the constraints and possibilities of the law can be seen as elements of a broader process of subjectivation, that is, of education. David I. Backer writes:

“To repeat, structural education says society is a formation of forces. These forces emerge from relations between people and groups of people. The relations show up in practices: the ways the people have their hands on things, how they treat each other, how they understand and enact their positions in society. People come in and out of these positions, but the positions themselves change and stay the same at a different pace. There is thus a key difference between people and their positions, and the different ways positions impact people and vice versa.”<sup>52</sup>

It is now possible to better understand the differences and complementarity between the two perspectives under discussion, if only to underscore their legal significance. Without this understanding, it would be difficult to adequately explain the productive and problematic indeterminacy of the norms, judgments, and orders related to the possible level of involvement of the C.T.U. (Court-Appointed Technical Consultant) in legal proceedings. Moreover, Law 54/2006 is itself aligned with the more established and general guidelines of the UN Convention on the Rights of the Child (CRC), which not only underscores, within its status as a living document,<sup>53</sup> the centrality of the best interests of the child and the principle of joint parenthood, but also the importance (naturally subsumed under it) of maintaining continuous relationships with adult figures of reference. A passage from Article 9<sup>54</sup> states that a child should not be separated from their parents

52 Backer 2022, p. 183.

53 I. Biemmi and E. Macinai (eds.), *I diritti dell’infanzia in prospettiva pedagogica. Equità, inclusione e partecipazione a 30 anni dalla CRC*, Milano: FrancoAngeli 2020.

54 UN Convention on the Rights of the Child (ratified by Law 176/91). Article 9: “States Parties shall ensure that a child is not separated from his or her parents against their will, except when competent authorities decide, subject to judicial review and in accordance with applicable procedural laws, that such separation is necessary in the best interests of the child. Such a decision may be necessary in particular cases, for example, where the parents are mistreating or neglecting the child, or where the parents are living separately and a decision must be made as to the child’s place of residence. In all cases covered by paragraph 1 of this article, all interested parties shall be given an opportunity to participate in the proceedings and to express their views. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests. Where such separation results from measures taken by a State Party, such as the detention, imprisonment, exile, deportation, or death (including death from any cause while the person is in custody) of one or both parents or of the child, the State Party shall, upon request, provide the parents, the child, or, if appropriate, another family member with essential information concerning the whereabouts of the absent family member(s), unless the provision of such information would be detrimental to the well-being of the child. States Parties shall also ensure that the submission of such a request does not in itself entail adverse consequences for the person or persons concerned.”

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against the parents' will, except when competent authorities, through a lawful and judicially reviewed process, determine that such separation is necessary for the child's best interests. This may apply in cases of parental neglect, mistreatment, or when parents live separately and decisions on the child's residence are required. In all such cases, those involved, including the child, should be allowed to participate and voice their opinions in the proceedings. Moreover, the article protects the child's right to maintain regular, direct contact with both parents unless it is deemed contrary to its best interests. If separation results from actions taken by the State – such as detention, exile, or death of one or both parents – the State must, upon request, provide essential information on the location of the absent family member(s) to the child, parents, or another family member, unless doing so could harm the child. Lastly, the article ensures that requesting such information should not lead to any negative consequences for those involved.

The same principle is adopted by the Civil Code – through the use of the term 'moral and material interest' – with an understanding of the inseparability between parental responsibility, family crisis, removal orders, and the child's right to a family. The protection and safeguarding of children, therefore, represent the cornerstone of the legislation. However, Articles 337-ter and 337-quater are cited here to highlight the consistency between them and Article 9 of the CRC and to also specify a detail in Article 337-quater that is far from insignificant.<sup>55</sup> Articles 337-ter and 337-quater of the Italian Civil Code outline the rights of minor children to maintain meaningful relationships with both parents and family members, and they establish the responsibilities and procedures for custody and parental authority.

Article 337-ter asserts the child's right to a stable and balanced relationship with each parent, emphasizing that each parent has the duty to provide for the child's care, education, and moral support. Additionally, it ensures that the child maintains

55 Civil Code – Articles 337-ter and 337-quater, paragraph 3. 337-ter: "The minor child has the right to maintain a balanced and continuous relationship with each parent, to receive care, education, instruction, and moral support from both, and to maintain meaningful relationships with grandparents and relatives from each parental branch. To achieve the objective stated in the first paragraph, in the proceedings referred to in Article 337-bis, the judge adopts measures regarding the children with exclusive reference to their moral and material interests. The judge prioritizes the possibility of joint custody of the minor children by both parents or determines which parent will have custody, establishes the times and conditions for the children's presence with each parent, and also sets the amount and method by which each parent must contribute to the children's maintenance, care, education, and instruction. The judge acknowledges any agreements reached between the parents, provided they are not contrary to the children's interests. The judge adopts any other measure concerning the children, including, in cases of temporary inability to place the minor with one of the parents, family foster care. The enforcement of measures regarding the custody of the children is carried out by the judge of the case, and, in the case of family foster care, also ex officio. To this end, a copy of the custody order is transmitted by the public prosecutor to the guardianship judge [...]" 337-quater: "The parent to whom the children are exclusively entrusted, unless otherwise determined by the judge, has exclusive parental responsibility for them and must comply with the conditions set by the judge. Unless otherwise established, major decisions concerning the children are made by both parents. The parent who does not have custody has the right and duty to monitor their education and upbringing and may appeal to the judge if they believe that decisions detrimental to the children's interests have been made."

significant relationships with grandparents and relatives from both sides of the family.

To fulfill these objectives, in cases related to custody as referenced in Article 337-bis, the judge makes decisions with a primary focus on the moral and material well-being of the child. Joint custody is prioritized, allowing both parents to remain actively involved, although the judge may decide on sole custody if it better serves the child's interests. In such cases, the judge determines visitation schedules, sets the amount and methods for each parent's financial contributions to the child's care, and recognizes any parental agreements, provided they align with the child's best interests.

When neither parent can assume custody, the judge may order temporary family foster care, which can also be implemented *ex officio*. This article ensures that the enforcement of custody-related orders is supervised by the judge in charge, with the involvement of the guardianship judge when foster care is ordered. Article 337-quater specifies that the parent granted sole custody typically holds exclusive parental authority over the child and must adhere to the court's conditions. Major decisions concerning the child's welfare, however, are generally to be made jointly by both parents unless otherwise directed by the judge. The non-custodial parent retains the right and duty to remain involved in the child's upbringing, with the ability to monitor and, if necessary, appeal to the court if they believe decisions have been made that could harm the child's welfare. Together, these articles emphasize the child's right to receive support from both parents and establish a framework for custody arrangements that prioritize the child's needs. They provide flexibility in determining custody structures that can accommodate family dynamics, safeguard the child's best interests, and promote the involvement of both parents in the child's upbringing, even in cases of sole custody.

In this last article (337-quater), one can identify a theme of great urgency and relevance for teachers, pedagogists, and educators. For practicality, we will focus on the procedural implications for the latter two figures.

Setting aside the principle of joint parenthood and the paramount interest of the child (in other words: no intervention that harms the child can be considered practicable), exclusive custody by one of the adult figures does not exclude the 'oversight of education' that the non-custodial parent has the 'right and duty' to exercise. In line with what was expressed in the previous paragraphs, the child's education is less about direct involvement and more about ensuring school attendance and related educational activities. However, regarding education, reducing it merely to the transmission of values seems insufficient, even within the necessarily operative constraints of legal language and procedures.<sup>56</sup> Conceptualizing this issue in its pedagogical density leads to interpreting the evolution of the law not only as an adaptation to the conditions that families materially experience but also, and perhaps more importantly, as an epistemological deepening within the pedagogical discourse when grounded in the materiality of social contradictions. Consequently, it also serves as a specification of the actual scope of action for pedagogically oriented professionals in legally sensitive contexts.

56 We limit ourselves, as a preliminary matter, to referring to: Baldacci and Colicchi 2020.

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For example, Article 388 of the Penal Code, in line with Sentence No. 50072/2016 of the Court of Cassation, describes the lack of transparency in parental functions during family crises and judicial verification as a criminal offense:

- Anyone who, in order to evade the fulfillment of obligations arising from a judicial authority's order, or obligations that are under verification by the same judicial authority, performs simulated or fraudulent acts on their own or others' property, or commits other fraudulent acts for the same purpose, and fails to comply with the injunction to execute the order, shall be punished with imprisonment for up to three years or a fine ranging from 103 to 1,032 euros. The same penalty applies to anyone who evades the protection order provided for in Article 342-ter of the Civil Code, or a similar order issued in the proceedings for the personal separation of spouses, or in the proceedings for the dissolution or cessation of the civil effects of marriage, or in the execution of a civil, administrative, or accounting court's order concerning the custody of minors or other incapacitated persons, or that prescribes precautionary measures to protect property, possession, or credit.<sup>57</sup>
- As specified in Articles 342-bis and 342-ter of the Civil Code, except where it conflicts with the child's best interest, the Social Services represent, within a broad range of cases, the institution responsible for monitoring and safeguarding such interests, with the authority to activate a network of services aimed at preventing harmful situations.
- When the behavior of a spouse or another cohabitant causes serious harm to the physical or moral integrity or the freedom of the other spouse or cohabitant, the judge, [provided the act does not constitute a crime prosecutable ex officio,] upon the request of a party [Articles 736 bis and following of the Code of Civil Procedure], may issue one or more of the orders provided for in Article 342-ter.
- The judge may also order, where necessary, the involvement of local social services or a family mediation center, as well as associations whose statutory purpose is to support and assist women, minors, or other subjects who are victims of abuse and mistreatment; the periodic payment of an allowance to cohabitants who, as a result of the measures provided for in the first paragraph, are left without adequate means, setting the payment methods and deadlines and prescribing, if necessary, that the amount be paid directly to the entitled person by the employer of the obligated party, deducting it from the salary owed to the same [Articles 2099; 545 c.p.c.].<sup>58</sup>

57 Criminal Code – Article 388. In this regard, the Court of Cassation (Section VI, Judgment No. 50072/2016) confirmed a sentence of three months in prison, in addition to compensation for damages, against a woman found guilty of the offense under Article 388, paragraph 2, of the Criminal Code for having, on three consecutive occasions, denied her former partner and father the opportunity to meet with their daughter. According to the Court of Cassation, even if there are forms of conflict or tension between the minors and the ex-partner, the mother must seek the intervention of Social Services or resort to suspension measures.

58 Civil Code – Articles 342-bis and 342-ter.

From a legal perspective, the issue remains a subject of ongoing debate, and we do not have the opportunity to delve into the details here.<sup>59</sup> However, Law 205/2017<sup>60</sup> specifies certain important aspects regarding the professional roles of socio-pedagogical educators and pedagogists, particularly in terms of their professional scope within the network of services that can be activated by the Social Services for Child Protection.

If the cited text includes the specific possibility of intervening in the areas of 'parenting and family', such an intervention, in line with Law 54/2006 and Article 9 of the CRC, may possess the following characteristics from a strictly legal perspective:

- the protection of the child in their paramount/best interest;
- the safeguarding of the principle of joint parenthood;
- attention to the rights and duties of non-custodial parents in the educational and upbringing processes of their children;
- the care for continuous relationships between the child and the non-custodial parent.

## 5. Conclusions: Supervised Visits or Spazio Neutro (Neutral Space)?

From a pedagogical perspective, therefore, there is a crossroads that requires a participatory and responsible choice.

On the one hand, educational work can be conceived as subsumed under legal provisions and carrying their related implications, resulting in a mere enforcement (more or less rigorous, depending on the case, service culture, professional sensitivity, etc.) of the correct application of these provisions.

On the other hand, the practices of educators, teachers, and pedagogists can approach the law from an *autonomous and differential* pedagogical discourse, enabling them to consider and interpret legal constraints in light of the educational

59 On the relationship between ex post intervention and preventive practices, reference is made to the following observation by Leonardo Lenti: "The removal should not mark the beginning of an intervention in support of a minor, but rather indicate that the intervention plan previously developed and implemented by the services has failed [...] Instead, it is often applied as the remedy par excellence for situations where it seems appropriate to act for the protection of the minor [...]" – Lenti 2022, p. 315.

60 Law 205/2017 – Paragraph 594. "The socio-pedagogical professional educator and the pedagogist operate within the educational, training, and pedagogical fields, in relation to any activity carried out formally, non-formally, and informally, across the various stages of life, with a perspective of personal and social growth, according to the definitions contained in Article 2 of Legislative Decree No. 13 of January 16, 2013, pursuing the objectives of the European Strategy adopted by the European Council in Lisbon on March 23 and 24, 2000. The professional figures mentioned in the first period operate within socio-educational and socio-assistive services and centers, serving people of all ages, with priority in the following areas: educational and training; school-related; socio-assistive, limited to socio-educational aspects; parenting and family; cultural; judicial; environmental; sports and physical activities; integration and international cooperation. Pursuant to Law No. 4 of January 14, 2013, the professions of socio-pedagogical professional educator and pedagogist are included among the professions not organized into orders or colleges."



needs of the child and their families – an approach that, by necessity, would have retroactive effects on the safeguarding of the child's paramount interest.

This choice concerns not only a professional and individual stance but also carries social, political, epistemological, and broader theoretical implications. It involves rejecting the subordination of the pedagogical discourse to the legal one in order to initiate a genuinely interdisciplinary dialogue between the two. The complexity of this choice, made with varying degrees of awareness, underpins the mechanism used in cases involving visitation and relationship rights, namely 'Spazio Neutro'. For a more detailed and pedagogically informed analysis of the service and the professional roles involved, we refer to a recent work of ours, as well as to additional fields of application and research to which this contribution is certainly connected.<sup>61</sup> Simultaneously, to highlight both the genealogy of the service and its organizational forms in different contexts within Italy, the interdisciplinary literature is certainly valuable.<sup>62</sup> However, to conclude, we sketch out a specific aspect of the service that serves as a synthesis of the previous arguments and as a basis for the systematization and evolution of the debate on this topic.

In brief, the Spazio Neutro (also known as 'Luogo Neutro' – i.e., 'Neutral Space or Environment/Context') is an educational service overseen by Social Services and the Judicial Authority, but generally conducted by typically educational services in a commissioned relationship. It provides supervised or monitored meetings between a minor and the adult figure who was not granted custody following contentious separations, irresolvable disputes between partners, or serious family crises. This service is meticulously organized and designed in terms of spatial aspects, scheduling and appointments, and internal rules and regulations. The educational figure maintains a dialogue and exchange with the adult figures of reference for the minor, ensuring that in a neutral space, separate from the parents' respective homes, a meaningful meeting can occur. This service accompanies the family system through a series of meetings and their subsequent reflection, aiming

- 61 D'Antone 2020. On the developments of this contribution in related areas, where the relationship between the legal dimension (and more broadly related to the 'norm') and the pedagogical dimension is further explored, we limit ourselves to noting: A. D'Antone, "Mi porteranno via i bambini?". Problematizzazione della crisi e presidio pedagogico dell'allontanamento in servizi di educativa familiare', in: G. Annacontini, A. Vaccarelli, E. Zizioli (eds.), *Sesto atto. Prospettive per una Pedagogia dell'emergenza*, Bari: Progedit 2022, p. 170-179; A. D'Antone, 'Dal "teatro dell'atroce" al dispositivo educativo. La "pedagogia nera" di Katharina Rutschky tra istanze di potere e percorsi di emancipazione', in: A. Mariuzzo (ed.), *Dalla compassione all'educazione. Vie emancipative comunitarie nel Novecento*, Bologna: Il Mulino 2022, p. 93-115; A. D'Antone, *Prassi e supervisione. Lo 'scarto interno al reale' nel lavoro educativo*, Milano: FrancoAngeli 2023.
- 62 Among others: G.B. Camerini and M. Pingitore, *Separazione, divorzio e affidamento con la Riforma Cartabia. Novità, prospettive e sfide*, Milano: FrancoAngeli 2023; D. Bissacco, P. Dallanegra, D. Bencivenni, *Cento percorsi a Spazio Neutro – Una ricerca. Ricerca qualitativa sugli esiti degli interventi realizzati a Spazio Neutro*, Provincia di Milano, Settore Politiche Sociali – Comune di Milano, Settore Servizi alla Famiglia. Milano 2001; I. Caruso, M.C. Mantegna, *Lo spazio dei legami. Curare le relazioni familiari nei servizi: un modello di ricerca-intervento*, Milano: FrancoAngeli 2009; I. Caruso, M.C. Mantegna, *Aiutare le famiglie durante la separazione. Dalle linee guida alla definizione dell'intervento per gestire il 'diritto di visita'*, Milano: FrancoAngeli 2012; A. Muschitiello, 'Lo spazio neutro per so-stare nel conflitto genitori-figli e trasformarlo in conflitto formativo. Riflessioni pedagogiche in prospettiva fenomenologica', *MeTis. Mondi educativi. Temi, indagini, suggestioni* 2019, 9 (1), p. 363-379.



to rebuild, where possible, a balance between parents and children, regardless of the crisis between the partners.

The 'Spazio Neutro' service indeed embodies the ambivalence between law and pedagogy in a radical way, without a consistent, material solution being implemented at a national or systemic level. However, individual service cultures, both individually and in collaboration with similar service networks, have long engaged in processes of reflection and revision of their practices. This has been facilitated through in-service training and the systematic use of pedagogical supervision involving multiple services in various projects.

In 'Spazio Neutro', where an encounter typically occurs – often increasingly supervised by professionals with pedagogical expertise within services specifically designed and implemented for this purpose – between a minor and an adult figure for whom custody has not been granted, the dynamic involving the educator, the team, the service culture, and social services can lead to a wide range of possible interventions. Within this range, two primary poles can be isolated:

- the encounter is defined as a 'protected meeting' (or 'supervised meeting'): the focus is on protection and safeguarding;
- the encounter is defined as an actual 'Spazio Neutro': the focus is on nurturing primary cultural and natural relationships.

We believe that, notwithstanding the social and political challenges that the role of the socio-pedagogical professional educator continues to face (which we do not have the space to explore here), only a critical and problematizing dialogue between law and pedagogy – both in strictly epistemological terms (within the pedagogical discourse) and in practical and technical aspects – can lead to genuinely transformative interactions along the aforementioned axis wherever visitation and relationship rights are materially exercised. In other words, to ensure the rigorous and coherent application of the relevant legal provisions, it becomes increasingly essential for the professionals materially involved in the social practices to which these norms apply to engage in a problematization of these norms, rather than merely applying them. This approach is necessary to foster an environment where the legal and educational dimensions can effectively collaborate to serve the best interests of the child.