Unification of Child Status and Parental Responsibility: the Reform of Filiation Remodels the Family in the Legal Sense in the Italian Legal System.

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Abstract: The importance of the recent Italian law reform on filiation, which unifies the status of the children in front of the law, is epochal in the Italian legal system. It determines a change in the notion of family in the legal sense within the Italian legal system. Family in the legal sense is no longer just the family based on marriage. Unlike the other legal systems of the Western legal tradition, in which this essential change came through the introduction of new familiar models regulated by law, such as civil unions or registered partnerships, Italy achieves this result through the reform of filiation of 2014.

Keywords: family law, Italian law reform on filiation, parental responsibility, kinship, family in the legal sense.

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SUMMARY: 1. Introduction. The technique of reform, the innovations introduced with it and its meaning from the systematic point of view. 2. The unification of the child status, the legal effects of the parent's recognition of the child and the new notion of kinship. 3. The redefinition of the family in a legal sense also takes place within it: from parental authority to parental responsibility. 4. About the notion of parental responsibility. 5. Entitlement and exercise of parental responsibility, legal representation, parental legal usufruct on the children's property and measures to protect minors. 6. Critical conclusions and reflections.

1. Introduction. The technique of reform, the innovations introduced with it and its meaning from the systematic point of view.

The legislative reform of the Italian legislation on filiation has been implemented in two distinct moments: through the law of 10 December 2012, nº. 219 and subsequently with the legislative decree nº. 154 of 2013, which entered into force on 7 February 2014. The law nº. 219 of 2012 contains some immediately preceptive legal provisions and a wide delegation to the Government to rewrite the discipline of filiation in the light of a series of well-defined principles and objectives: essentially the principle of uniqueness of status of children before the law and another one aimed at reshaping parental authority in one perspective centered on parental responsibility. The proxy was implemented by the Legislative Decree no. 154 of 2013, which profoundly modified the first book of the civil code.

With the present reform, kinship is established between the people who descend from a common progenitor, according to the traditional definition of kinship, precisely, already contained in the civil code, but enlarging it to any hypothesis of filiation, whether the child is conceived within marriage, or conceived outside it. In the new text of the Article 315 of the Civil Code, the unification of the status of children before the law is formalized and, consequently, the rights and duties between parents and children are regulated in a unified manner, according to the new Article 315 *bis* of the Civil Code.

After the reform of the Italian family law of 1975, the one we are dealing with is the most important Italian legislative intervention in the family matter, both as regards the objective areas touched by the intervention of the legislator, and with regard to the merit of the innovations introduced with it. The legislative technique used is that of novellation, that is essentially the intervention implemented by the law within the civil code, with modification of the rules already present in the code itself, but more

widely also in the further legislation in force. As we said, the innovations introduced are many and some of them constitute, as we shall see, an adaptation of the Italian system to the stimuli and the evolutions regarding the topic of the family that also derive from the other European legal systems. It is also a profound positive innovation in terms of the evolution of the Italian legal system on the road to the protection of children's rights and its significance at the general interpretative level must therefore be grasped in a much wider and appreciable way compared to the single changes introduced. The reform affects the very notion of family in the juridical sense present in the Italian legal system, both as regards its definition, and as regards its fundamental structures; it is, so to speak internal to it.

No longer only the family founded on marriage is a family in a legal sense, but, as we shall see, discouraging the protection of filiation from marriage, the legislator remodels the family institution through two fundamental innovations, deeply interconnected: the introduction of the uniqueness of the child's status before the law and the redefinition of the legal relationship between parents and children, through the replacement of parental authority with the notion of parental responsibility. But let us analyze this step by step.

2. The unification of the child *status*, the legal effects of the parent's recognition of the child outside marriage and the new notion of kinship.

First, the reform unified the legal status of children before the law, regardless of whether the parents were united in marriage at the time of conception. The law marks a turning point compared to the past: there are no longer "legitimate" or "natural" children, a status depending on whether they were conceived or not in a constant marriage. There are only children. And this is a historical and radical change. Before this reform, in reality, even the 1975 reform had tried to follow the path of parification between the children, but the distinction between "legitimate" children and "natural" children was still present in the Italian legal system in a concrete way.

The process of equalization of "natural" and "legitimate" children was then further pursued by the 2006 legislator who, through the establishment of the rules regarding shared custody, has unified the substantive rules applicable following the breakup of the parental couple, which are the same, also in reference to proceedings relating to children of

unmarried parents ([1]), which represented a significant step towards the equalization of the natural family to the married one

It should also be noted that, over time, with a series of actions implemented over the years, the Italian Constitutional Court had partly removed residual inequalities in treatment between the two categories of children, who were present in the code or in special legislation. Its intervention stopped when it became clear that it was necessary for the legislator to intervene in a technical way to abolish the distinction. Thus, for example, under this last profile, even in recent times, the right of "*commutazione*", provided for in succession matters by Article 537 of the Civil Code in favor of legitimate children, was considered consistent with the provisions of Article 30 of the Constitution, which in the 3rd paragraph states that, for children born out of wedlock, the law ensures all legal and social protection compatible with the rights of the members of the legitimate family ([2]). The relationship between natural relatives has recently been evaluated by the Italian Constitutional Court as a mere factual relation of consanguinity and not as a legal bond of kinship ([3]).

From a technical point of view, the substantial equalization of the children and the change in the notion of kinship are made possible by the fact that the law radically changes the legal effects of the parent's recognition of the child outside marriage. In fact, the recognition of the child by the parent produces legal effects not only regarding the status given to the child, but also its relatives, according to Article 258 of the Civil Code. It follows that today the relationship of kinship exists between people who descend from the same progenitor in every filiation hypothesis, born in marriage, but also outside of marriage ([4]).

Single child status means equal treatment of all children who are or are not conceived within marriage. Any terminological difference is also eliminated, since the normative language substitutes the terms "legitimate children" and "natural children" with the sole reference to "children".

The unification of the status of child in front of the law, wanted by the reform, immediately entailed the abrogation of the institution of

([1]) See Article 4, paragraph 2, of Law No. 54/2006

([2]) See: Italian Constitutional Court, December 18, 2009, n. 335.

([3]) The major differences in this area concerned especially the successor relationships between the natural brothers. See in this context, among the others sentences: the Italian Constitutional Court of 23 November 2000, n. 532, but also, in the course of time, the Italian Constitutional Court of 4 July 1979, n. 55; the Italian Constitutional Court of 24 March 1988, n. 363; the Italian Constitutional Court of 12 April 1990, n. 184; the Italian Constitutional Court of 7 November 1994, n. 37.

([4]) According to Article 74, 1st paragraph of the Civil Code.

legitimation of the natural child, through which, with express legal discipline, the natural child acquired the status of a legitimate child. The institution of legitimacy was in fact at the same time a clear sign of the difference between the two types of children that, in the system of the 1975 reform, still marked the condition of "legitimate" and "natural" children, but also the tool needed to obtain for the "natural" children the protection reserved by the law for "legitimate" children. The law, with an immediately perceptive provision, established by Article 1, paragraph 10, has provided for the revocation of Section II of Chapter II of Title VII of the First Book of the Civil Code. The fact that the abrogation of the institution of legitimacy was immediate, proves that the uniqueness of the state of a child, for all purposes, even succession, was immediately determined from the temporal point of view, that is, when the delegated law entered force, without having to wait for the subsequent delegated decrees ([5]).

From a systematic point of view, in a critical reflection on the scope of the reform innovations, the unification of the children's status desired by the law marks an epoch-making milestone.

The law in fact separates for the first time the full protection of filiation from the institution of marriage. Children, and that means all children, are protected by law in every aspect, regardless of the fact that there is a marriage within which they are conceived or not. The filiation is protected as an autonomous value, regardless of the legal bond that unites the parents. This is a full implementation of the principle of equality established by the Italian Constitution in Article 3, which is no longer expressed only in relation to the single parent, but it is horizontally and vertically stated, that is, also towards the parent's relatives and family members, who become relatives and family in a broad sense of the child who has been recognized.

At the same time, with the unification of the status of children before the law, Italy accepts today a principle that has long been shared at European level also through the interventions put in place by the Court of Strasbourg since the end of the 1970s ([6]). At the same time, always in a broader

([5]) Of the same opinion also G. FERRANDO, "*Stato unico di figlio e varietà dei modelli familiari*, in *Famiglia e Diritto*, 2015, 10, p. 952 et seq., which cites the circular of the Ministry of the Interior n. 33/2012 according to which the surname of the child following the marriage of the parents is regulated by the art. 262, "the hypothesis contemplated in the d.p.r. can no longer be used. 396/2000, in art. 33 (provisions on surname), in paragraph 1, part one ('the legitimized child has the surname of the father')».

([6]) On the principle of equality between all children before the law, in the jurisprudence of the European Court of Human Rights, the leading case is Court

perspective, the equalization of children in front of the law represents the implementation of the principles contained in the Charter of Fundamental Rights of the European Union. Article 21 of the Charter of Nice expressly provides that any discrimination is forbidden, be it based on gender, race, skin color or ethnic or social origin, or on genetic characteristics, language, religion, personal beliefs, political opinions of any other nature, including belonging to a national minority, heritage, birth, disability or sexual orientation. The uniqueness of a child's status does not only mean equality of all children without discrimination arising from birth. It also means protecting filiation as a value independent of marriage and the irrelevance of marriage in defining the legal status of children. The very idea of a classification of children in relation to the marital status of the parents is lost. The uniqueness of the status means, therefore, full separation between filiation and marriage, also with regard to the constitution of the relationship and not only in relation to its content. The reform modifies the rules concerning the ascertainment of the *status*, preserving however the fundamental difference whereby if the parents are married it happens in a way that is automatic with regard to both parents, due to the birth declaration to the official of the state civil law, while in the case of unmarried parents, the recognition by the parent or through the sentence of the judge is required.

Among the other most important consequences of the new approach given by the legal system to filiation and family, there are those regarding succession matters. As we said before, the law implements a substantial revision of the rules on the necessary succession and the legitimate succession, as a consequence of the principle of the uniqueness of the child's status and on the new legal concept of kinship. The right of *commutazione* is abolished, which according to the Article 537, 3rd paragraph of the Civil

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CEDU Marckx c. Belgium, 13 June 1979 (also in *Foro italiano*, 1979, IV, c.3 342), in which Belgium was convicted because the national legislation on natural parentage determined the emergence of legal effects exclusively between the unmarried mother who had recognized the minor daughter, but not against the family of the same mother. In this case the European Court analyzes all the main issues on the subject. They will be resumed, even individually, in subsequent sentences. See also, among others: Johnston and others c. Ireland, 18 December 1986; Inze c. Austria, 28 October 1987; Vermeire c. Belgium, 29 November 1991. In Mazureck c. France, 1 February 2000, The European Court established that there was a violation of Article 1 of Protocol No. 1, concerning the protection of property rights, since the national law did not recognize equal rights of successors to legitimate children and natural children compared to their parents, regardless of the existence of a matrimonial bond.

Code, today repealed, allowed the legitimate children, that is the children who had been conceived in constant marriage, to liquidate in cash the portion of inheritance due to the natural children.

3. The redefinition of the family in a juridical sense also takes place within it: from parental authority to parental responsibility.

The reform of filiation also acts within the family in a juridical sense. After having changed its essential features through the disengagement between its traditional founding title, that is, marriage and the full legal protection of filiation, thus admitting in a clear way that it is a family in a legal sense also that not based on marriage, since the legal protection is directed equally and equally to children conceived outside of it, the law also organically redefines the relationships between family members. The reform aims, in terms of content, to redefine the relationships between the members of the family unit. The instrument through which this takes place is the abolition of parental authority and its replacement with parental responsibility.

Before today, as it is known, through the Italian Family Law reform of 1975, in implementation of the principle of equal treatment between men and women, therefore, in the various areas, of equality between wife and husband, between mother and father, the institution of the power that had been changed was changed not only in the name, but also in substance: from the parental authority, understood as the exclusive exercise of the fathers of the right-duty to educate, instruct, maintain and assist their children materially and morally , this authority had reached the prerogative of both parents.

The reform of filiation overcomes all this. In the context of relations between parents and children, Title IX of the first Book of the Civil Code is stated today: "Of parental responsibility and the rights and duties of the child" and is divided into two Heads: the first, " Duties of the children ", includes the articles 315- 337 c.c. and the second, "Exercise of parental responsibility following separation, dissolution, termination of civil effects, annulment, nullity of marriage or the outcome of proceedings relating to children born out of wedlock", the new Articles 337 *bis*-337 *octies* c.c. The rights and duties of the children are also modified in their content.

The reform therefore completely replaced Article 316 of the Civil Code on parental responsibility, establishes that: it is called, henceforth, "parental responsibility", as if to underline its more "dutiful" and optional character. Parental responsibility must be exercised by mutual agreement between both parents, whether they are married or not. The previous

provision of the law that attributed the exclusive exercise of power to the parent who first recognized the child or with whom the minor cohabited if the parents were neither married to one another, or cohabiting is repealed. It is no longer provided for the termination of parental responsibility with the achievement of the child's age, as established by Article 316, in its old formulation, with regard to parental authority.

This element, that consists in the shift of perspective "from power to duty", is extremely significant.

Parental responsibility must continue to be exercised even after the child's eldest age and until he has achieved economic independence. After having established the principle of the uniqueness of the status, the legislator introduces a new Article 315 *bis* in the Civil Code, entitled "Rights and duties of the child", in which the precepts previously contained in the articles are inserted and developed in Article 147 (duties towards the children) and Articles 315 of the Civil Code (duties of the child towards the parents). More precisely, Article 315 *bis* provides that the child has the right to be maintained, educated, and assisted morally by the parents, respecting his/her abilities, natural inclinations and aspirations. The child has the right to grow up in his/her family and to maintain significant relationships with relatives. The minor son who has completed the twelve years, and even of younger age when capable of discernment, has the right to be heard in all matters and procedures concerning him. The child must respect the parents and must contribute, according to their abilities, to their substances and their income, to the maintenance of the family as long as they live with it.

With respect to what has been previously arranged, the rights of the child are developed and inserted into a general provision that concerns all children. The right to family, the right to relationships with relatives, the right to listen, are now governed in general terms. In the event of a dispute, the judge is asked that, having heard the parents and willing to listen to the eldest son of twelve years old and even younger, if he has sufficient discernment, he suggests the determinations that he considers the most useful in the interest of the son and of the family unity. If the contrast persists, the judge attributes the power of decision to the parent whom, in the specific individual case, he considers it more suitable to take care of the child's interest. There is no distinction between cohabiting parents or not, even if it is much more difficult, if you do not live together, to establish a true relationship with your child. Recall also that in case of second recognition and judicial declaration of paternity, the judge can give the measures that she/he estimates to be useful for the assignment as well as for the maintenance, education and education of the child. In the case of recognition by a single parent, parental responsibility rests with him/her

exclusively. The law explicitly takes into account those responsible for parental responsibility in the event of a pathology in the relationship between parents. Parental responsibility also persists following the separation, as well as the dissolution, the cessation of civil effects, the annulment and the nullity of the marriage ([7]); the right-duty to educate children must be exercised taking into account the child's natural abilities, inclinations and aspirations; in case of conflict between the parents on decisions of particular importance, each of them can appeal to the court - no more than minors, but ordinary - indicating the solution held to be most convenient for the child.

The parent who does not exercise parental responsibility supervises the child's education, education and living conditions according to Article 316, paragraph 4, of the Civil Code. It should be cases in which one of the two parents has exclusive custody. In the case of exclusive assignment *ex* 337 quater, moreover, it is added that the decisions of greatest interest are taken by both parents, while Article 316, paragraph 4, does not specify anything about it. The standard is appreciated for the attempt to give a unified discipline of the legal position of parents towards their children, both in the case of parents who are married to each other, and in that of unmarried parents (where the major news are recorded). This happens in spite of the failure to distinguish between cases in which married parents cohabit or do not cohabit. What seems not to be taken into account is the variety of situations and the importance that the existence of a common family life determines in the education of children. The new Article 316 *bis* addresses the rules governing the competition in the maintenance charges previously contained in art. 148. The new Article 317 *bis* has regard to "Relations with ascendants". It affirms the right of the ancestors to maintain meaningful relationships with the minor nephews. And it is added that the ascendant to whom the exercise of this right is prevented can resort to the judge of the place of habitual residence of the minor so that the most suitable measures are adopted in the exclusive interest of the minor. The ascendant is therefore now recognized as having a real "right" to the relationship with the grandchildren. As for the other relatives, instead, Article 315 *bis* recognizes only to the child the right to maintain meaningful relationships with them. As mentioned earlier, in Articles 337 *bis* and 337 *octies* the rules governing relations between parents and children are contained in the event of separation, dissolution, termination of civil effects, annulment, nullity of marriage and proceedings relating to children born out of wedlock. This is the direction already contained in articles 155 and following of the Civil

([7]) See, among others: Court of Cassation, n. 11020 of 2013 .

Code. Among the changes, we highlight the parental responsibility direction in the case of exclusive assignment. The parent to whom the children are entrusted exclusively, unless otherwise provided by the judge, has the exclusive exercise of parental responsibility over them; he/she must abide by the conditions determined by the judge. Unless otherwise established, the decisions of greatest interest to the children are taken by both parents. The parent to whom the children are not entrusted has the right and duty to supervise their education and can appeal to the judge when he/she considers that the decisions taken are prejudicial to their child's interests. Further changes concern the disposition of hearing the child who may otherwise be excluded by the judge in the proceedings when an agreement is made or an agreement is made by the parents regarding the conditions of custody of the children. The judge does not approve the hearing if this is in contrast with the interests of the minor or if it is manifestly superfluous.

4. About the notion of parental responsibility.

The change of perspective required by the law, which cancels the notion of parental authority and replaces it with that of parental responsibility in the relationship between parents and children is extremely significant. The abolition of the notion of power certainly implies, at an interpretative level, the will of the law to remove from the content of the parent-child relationship those authoritarian elements that have always characterized the parental role with respect to children in different historical periods.

In fact, historically speaking, at least as regards the evolution that characterizes the Western legal systems, the juridical tradition is characterized by a position of pre-eminence only of the father at first, that is, when the power was homeland "*potestas"* and later "*patria potestà"*, then, in the following period - in Italy only since 1975 - the position of both parents, with the parental authority of their parents towards their children. The perspective that seems to emerge, therefore, is that of underlining the responsibility of the parental relationship towards the children, from a point of view in which the child, first as a minor, then as possibly not yet self-sufficient, requires traditionally sustained emotional support, educational and, last but not least, also patrimonial.

The simplification now made, however, is not able to grasp in itself the complexity of the relationships that the family unit expresses within it. By definition, in fact, the contents of the individual subjective situations, especially those of the relationship between the members of the family, enjoy a sphere of freedom and discretion in which the law does not enter into

the pathological definition of the relationship itself. This change is in line with the perspective embraced by the Western systems for several decades, in which the child and family material in the broad sense has long been informed of the pursuit of the child's concrete interest. The *ratio* that moves the legislator, as well as the judge who is called to intervene in this area, takes into account the pre-eminent interest of the minor and its realization. What this means, concretely, in terms of content to be attributed to the expression of parental responsibility is not easy to define. From a purely legal point of view, this certainly implies not only the respect of the fundamental rights of the child, but also the fact of supporting one's parent work to provide him/her with a life project that can constitute a satisfactory explanation of his/her personality. If, therefore, also in the matter of parental responsibility, we tend to emphasize that the parental position is not characterized by authoritarian elements, at the same time the parental relationship requires recognition, by the law, of its necessarily complex nature. The necessary function of the parent, which is legally carried out not only in matters of legal representation of the interests of the child and of legal usufruct on the assets of the child, necessarily includes a position of direction and guidance that characterizes the relationship with the child beyond his/her natural elements of eminently affective character. At the same time, the pursuit of the child's interest must be balanced with the rights and needs of all the members of the family unit, and therefore also of the other parent and of any other children.

Finally, parental responsibility includes the power of legal representation towards third parties, that of administering the assets of the child and the ownership of the legal usufruct on the assets of the child.

5. Entitlement and exercise of parental responsibility, legal representation, parental legal usufruct on the children's property and measures to protect minors.

As we said previously, parental responsibility includes the power of legal representation towards third parties, that of administering the assets of the child and the ownership of the legal usufruct on the assets of the child.

The power-duty to administer the property of the minors by the parents who exercise parental responsibility, also translates into the power to act in their name and on their behalf, representing them in relations with the outside world, for the accomplishment of ordinary administrative actions, which may also be carried out separately by each of the parents and by extraordinary administrative deeds, which instead require joint exercise, as well as in the case of more" risky "acts for the minor's patrimony, the

intervention of the tutelary judge who must first authorize the operation ([8]). According to Article 324 of the Civil Code, the parent or parents who have the exclusive or joint exercise of parental responsibility must administer the minor's assets but obtain a "return", because the law recognizes their right to perceive the natural fruits (for example the harvest of a land) and the resulting benefits (for example collecting rents of the property in the name of the minor), to allocate them to meet the needs of the family unit.

There are cases in which a parent can be declared deprived of parental responsibility (following a ruling by the judge, because he/she has violated or neglected the duties deriving from it), thus losing the ownership of the same. Other cases, on the other hand, in which, although the ownership of the responsibility remains with both parents, the exercise of it remains with only one parent and this can happen: in cases of parental couple crisis (in cases such as separation and divorce, the exercise of responsibility is regulated by the regulations on provisions relating to children); in the event that the other parent is prevented to exercise this ownership due to remoteness, incapacity or other impediment ([9]).

Consequently, the parent who retains both ownership and exclusive practice is the only person entitled to legally represent the child, to administer the assets and to make all decisions concerning him. If, for example, one of the parents declines from the "ownership" of parental responsibility, all the powers are concentrated on the other parent who will be able to assume all the most important decisions regarding the personal, educational and patrimonial issues of the child. The parent who loses the exercise, while retaining ownership, is recognized as having the power to supervise the child's education, education and living conditions, if necessary by referring to the judge if he/she considers that the decisions taken are prejudicial to his/her interest. This may happen if, in the event of separation or divorce, the judge decides, contrary to the general principle of shared custody, to favor, by motivating him/her, the exclusive assignment to only one of the parents.

In the same way in which it happened previously, that is, when there was still talk of parental authority, as we speak today of parental responsibility, the parent who is entrusted with the children in an exclusive way has the exclusive exercise of the same parental responsibility over them unless otherwise provided by the judge. At the same time, unless it is otherwise established by the judge, the decisions of greatest interest to the children remain adopted by both parents. In any case, the parent who is not entrusted with the children (who, as mentioned, retains ownership but loses

([8]) Based on what expressly provides Article 320 of the Civil Code.
([9]) See: Article 317 of the Civil Code.

the exercise of parental responsibility) has the right and duty to supervise their education and education and can resort to the judge when he/she considers that decisions have been taken that are detrimental to their children's interests (for example, think of enrollment in a school that the parent does not consider suitable for the child).

The breach of the obligations of maintenance and education of children is punished by law in a serious way, by both criminal and civil law. In general, the obligation of parents to maintain children is considered to be external to parental responsibility and instead related to filiation in itself. In fact, it does not die out when the child reaches the age of majority, but it continues until he/she reaches his economic independence ([10]). Although not technically attributable to parental responsibility, even the violation of this obligation in reality is related to situations in which there is a disease in the exercise of the responsibility itself. This gives reason to the fact that, in many cases, the law takes into consideration the violation of the different situations in a single context. This is what happens in the criminal area, for example.

From the criminal point of view, the provisions of art. 570 of the Penal Code provide that anyone who escapes the obligations of assistance relating to parental responsibility or the quality of spouse is punished with imprisonment up to a year. From the civil point of view, however, protection is also achieved through precautionary measures to divert the income of the obligor. The current Article 316 *bis* of the Civil Code, in fact, provides that parents must fulfill their child-bearing obligations in proportion to their respective substances and according to their capacity for professional or home work. In case of default, the President of the civil court can order by decree that a portion of the income or salary of the obligated parent is paid directly to the other parent or to the person (ascendant or guardian) who physically bears the expenses for the maintenance and education of children.

The legal protection of children can also be implemented through traditional precautionary measures of sequestration of the assets of the defaulting debtor up to the most serious measures, that is, forfeiture of parental responsibility (Article 330 of the Civil Code), as well as through discretionary measures to protect the minor, such as the removal of a parent from the administration.

With regard to the measures of a discretionary nature that the judicial authority can adopt to protect the child pursuant to Article 333 of the Civil Code, in general, called to issue the measures is the Court for Minors and the contents of the provisions change from time to time according to the

([10]) See on the issue: MAJELLO, *Filiazione naturale e legittimazione*, in *Commentario Scialoja- Branca*, sub Articles 250-290, Bologna-Roma, 1982, 118.

situation subject to judicial screening. For example, it may be a question of arranging family custody, ordering the parent to fulfill an obligation that up until that moment he/she has violated against the child, up to the most serious cases, involving the removal of the child from the family home, in cases where the fact of remaining in it may cause damage to the child himself. The possibility of obtaining an order of protection against family abuse by the judge lies in this area.

Even before the reform of the filiation, the Italian legal system with the introduction of the Law 4 April 2001, n. 154, and the consequent insertion in the civil code of the Article 342 *bis*, has adapted the situations of abuse protected by the law to the reality present at the social level, in which the multiplicity of households and the types of them, required that the protection extended even outside the family founded on marriage and included each form of abuse against the child, carried out by anyone who was part of his/her family. As early as 2001, it is therefore possible to protect the child from family abuse, not only by the spouse of the parent, but also by any other member of the family, including the cohabitant. The protection orders are strictly temporary: they last a maximum of one year and can be extended only if there are serious reasons and for the time strictly necessary. The order consists of a provision by which the ordinary tribunal attaches to the abuser the cessation of the conduct, the removal from the family home, setting the new residence in a place at a distance that avoids occasions of interference with the life of the family. The judge is able to adapt the provision to the specific case and to the needs of the minor. The provision may in fact possibly also provide an order of non-approach with which the author of the abuse is constrained to keep away from the places habitually frequented by the victims of his actions. The provisions also foresee the possibility to have an economic support in favor of the minor and at the expense of the dismissed person, as well as the court may also request the intervention of social services, whose purpose, if possible, is to try to restore a normal family life relationship

The remedies for the protection of the child are also included in those remedies pursuant to Article 334 of the Civil Code, in which the parent declines from the administration of the minor's assets, while maintaining the ownership of parental responsibility and legal representation of the child, to the latter attributable. This is a remedy resulting from the unreliability shown by the parent in the administration of the child's assets. In case of removal from the administration pronounced against only one of the parents, the power-duty to administer remains with the other parent only. When the provision concerns both parents, the law provides that the Juvenile Court must entrust the administration of the assets to a specially appointed

administrator. The parent can also decay from the parental responsibility, pursuant to and by effect of Article 330 of the Civil Code. The provision consists of a sanction ordered by the Juvenile Court against that parent who has violated in a significant way and imputable to him/her, the duties arising from parental responsibility, with facts or deeds suitable to provide moral or material damage to the minor. If it concerns only one of the parents, the ownership remains attributed to the other; if it concerns both, protection opens. The forfeiture entails, among other things, the loss of ownership, as well as the exercise of responsibility. It also entails the loss of legal usufruct on the assets of the child and the loss of any obligation to feed the parent for the child in case of need. The removal of the child from the family residence may be ordered if the facts that caused the confiscation are serious.

6. Critical conclusions and reflections.

With the reform of the filiation the Italian legislator completes an important process of adaptation of the national legal system to the need for protection that the civil society has been expressing for years. The new legal protection of filiation for any legal effect, regardless of the fact that it took place within a marriage or not, radically changes the notion of family in the legal sense present in the Italian legal system. An important first step in this direction had certainly been already realized by the law no. 54 of 2006 concerning the shared custody of children to parents. In fact, already since 2006, the procedures and the substantive rules for the legal treatment of children in the case of pathology of the relationship between the parents, whether married or not, had been unified by the law and the new rule, common to all cases, is nowadays that of shared custody of the children. Since then, it could perhaps be said on an interpretative level that Italian law expressly recognized other forms of family as well as that based on marriage. With the entry into force of the reform on filiation, however, this legislative process, although still today perfectible, is accomplished. By completely discarding the legal protection of the filiation from the protection granted to marriage, the law expressly recognizes not only that marriage is no longer the only founding title of the family in the legal sense, but it reaches this result that we can label as historical, epochal for the Italian system itself, in a different and peculiar way compared to any other system of the Western legal tradition. In fact, in the legal system of the latter, the law gradually introduced, over the last few decades, new titles founding the family in a juridical sense, through the laws on registered partnerships and

on civil unions ([11]). In Italy this happened before any legal discipline regarding cohabitation and civil unions and in different ways ([12]). Through the full legal protection of filiation, whatever it is, within or outside the marriage, the Italian law recognizes for all intents and purposes that the filiation *per se* can be a founding title of full legal protection, up to this moment recognized only to the married family nucleus. Starting from the reform of the filiation and with the reform of the filiation, the legal consequences of the equalization introduced by the law go beyond the explicitly considered objective scope. They extend in full also to the single-parent family formed by one or more children and one parent. Even this nucleus, regardless of the absence of any previous marriage of the parent with third parties, is a legal family in all respects. Since the protection is directed to the filiation and from the filiation the legal relationships today extend by law to the whole branch of the parents' relatives, the single-parent family is legal, juridical family protected to every effect as the matrimonial one ([13]).

Notes

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([11]) On the point I would like to return to a F. Giardini, The Concept of "Legal Family" in Modern Legal Systems: A Comparative Approach, in AA.VV., Family Law: Balancing Interest and Pursuing Priorities, William S. Hein & Co., Inc., Buffalo, New York 2007, p. 73 ss.

([12]) As a matter of fact, the Italian legislation on civil unions and cohabitation has intervened only after the reform of the filiation, with the law of 20 May 2016, n. 76, entered into force on 5 June 2016.

([13]) Where there still remains the absence of full protection, even after the recent legislation on civil unions is in the legal relationship that exists between the two possible parents, in the absence of marriage between them.