

THE CHARTER OF CHILDREN'S RIGHTS

WITHIN THEIR
PARENTS' SEPARATION



AGiA

Autorità garante
per l'infanzia
e l'adolescenza

THE ITALIAN INDEPENDENT AUTHORITY
FOR CHILDREN AND ADOLESCENTS

THE **CHARTER**
OF **CHILDREN'S**
RIGHTS

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Thanks to the Experts heard and the Commission* for their availability and collaboration in carrying out the present work.

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* The Italian Independent Authority for Children and Adolescents set up an ad hoc Commission made up of judges, psychiatrists, a psychologist and officers of the Authority with the purpose of hearing the Experts, as well as the children of the "Consulta dei ragazzi", and of drafting the present Charter [Translator's note].

PREFACE

From its Preamble, the 1989 New York Convention on the Rights of the Child emphasizes the importance of the family in the life of every child and adolescent as a “*fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children*”. Many rights of the child revolve around the family: the right to preserve family relations (Article 8), the right not to be separated from the parents (Article 9) and to maintain personal relations and direct contacts with both of them on a regular basis, even if they reside in different States (Article 10), the right to express the child’s views freely in all matters affecting him/her (Article 12).

Title II of the Italian Constitution dedicates Articles 29, 30 and 31 to the family.

The family should ideally survive the difficulties it faces, but sometimes it is challenging; it is necessary that the parents are able to re-establish a balance also following the termination of their relationship.

Talking about separation, however, it is not possible to refer only to legal aspects, since the separation represents a change and a moment of difficulty both for adults who separate and for children, especially minors, who inevitably suffer from it.

The need for reorganization, the conflicts, the changes, the problems related to the economic sphere can divert attention from children’s *needs and rights*.

For this reason, the Italian Independent Authority for Children and Adolescents has adopted ***The Charter of Children’s Rights within their Parents’ Separation***, whose founding principles are based on the New York Convention and in particular the right to be heard and the child’s best interests. The Charter is also the result of what emerged from the involvement of experts, associations and, above all, from the contribution provided by children.

Targeted, first of all, to children and adolescents, it addresses a number of recipients, including parents, together with judges, lawyers, health and psychosocial professionals and adults of reference.

In order to meet the needs of the evolving society and to spread the Charter beyond national borders, we have decided to translate it into several languages.

The Charter represents the statement of rights and principles of ethical value aimed at promoting the centrality of children at the time of the crisis of the couple.

The aim of the Charter, therefore, is to make the children aware of their rights and to contribute to the cultural growth of parents and of society in general, in order to guarantee respect for children and adolescents' rights.

Filomena Albano

INTRODUCTION

In order to implement The Charter of Children's Rights within their Parents' Separation, the Italian Independent Authority for Children and Adolescents set up this Commission that deeply and critically questioned on the rights of the children in the separation of the parents.

In order to examine the issue from every point of view, we made use of Experts, chosen among personalities of the legal, social, psychological and pedagogical field, who have been heard. The reflection constantly placed children at the center of the separation.

We raised the question of the concept of co-parenting, of the behaviors that parents should hopefully adopt in separation as well as those to be avoided; we debated on the needs of the children in accordance with their age, on the need to listen to them and to return to them the outcome of the decisions taken. We also debated as to whether and, if necessary, how to make them participate in the reorganization of family life and as to whether or not to undertake a path of family mediation.

These are important, delicate issues that sometimes adults find difficult to deal with. For this reason, we also asked "them", the children, for an opinion, through the *Consulta dei ragazzi*, the advisory body that the Authority set up: many of the articles that come to life in this Charter are the result of their work.

During the hearings, in the diversity of approaches to the issue of separation, some common and transversal points emerged.

Parents must be aware that separation, as a change, affects children who, therefore, will have to face a path to process the changes necessary for the new family organization. Children need to know that in each parent's heart and mind there is a place for them. Knowing that it is possible to continue to maintain emotional ties with both parents reduces children's anxiety of the loss. Children need to be prepared with communication methods, which are appropriate to their age and to the period of life they are going through.

Likewise, the modalities of hearing the child change; the right to be heard shall be guaranteed in an authentic way, and this shall not lead to the attribution, to the children, of any responsibility of the choices of their parents or, in the most difficult separations, of the judges. Children need parents to contain conflict and that they do not bring separation to economic aspects that can interfere with emotional relationships. Any form of manipulation and physical, psychological, economic violence shall be avoided.

Maintaining a personal relationship with both parents must be guaranteed by ensuring the quality of such relationship, which is not only measured by time, but by being able to recognize the parenting skills of the other.

Both parents have to accompany the children in their growth. Parents shall be responsible for sharing choices that concern them, supporting them in difficulties, allowing them to express their feelings, often feelings of anger and frustration, allowing time to process the “mourning”, respecting their timing even with regard to the introduction of any partner and in adapting to any blended families.

It may not be easy for parents to face this situation by themselves; they must then know that they can ask for help and that they can also take the path of family mediation, which is important to be informed about.

As a result, we have identified children’s rights within their parents’ separation. We have followed a line that begins with the parents’ decision to separate, until the realization and definition of separation, in a path that has - as a guiding thread - the continuity of affections and habits of life and, above all, the need to recognize to the child the right to continue to be a child, to be light and carefree according to his/her age.

The Charter is divided into 10 points, 10 rights, and aims at representing an instrument designed to protect children and young people involved in the experience of separation, with a streamlined, synthetic, clear and effective language, which can be used directly by them, but with the aim of making adults and, above all, parents aware of the need to maintain the centrality of the child in the joint construction of a new family structure.



1

Children have the right to continue to love their parents and to be loved by both of them and to keep their affections

Children have the right to be free to continue to love both parents; they have the right to show their love without fear of hurting or offending one or the other. Children have the right to keep their affections intact, to remain united to their siblings, to maintain the relationship with their grandparents, to continue to maintain a personal relationship with the relatives of both parents' families and the friends.

Love is not measured by time but by care and attention.

2

Children have the right to continue to be children and to live their years

Children have the right to lightheartedness and lightness; they have the right not to be overwhelmed by adults' suffering. Children have the right not to be treated as adults, not to become their parents' confidants nor friends, and not to have to support or console them. Children have the right to feel protected and reassured, comforted and supported by their parents in addressing the changes in separation.



3

Children have the right to be informed and helped to understand the separation of their parents

Children have the right not to be involved in the separation decision and to be informed by both parents, in a manner which is appropriate to their age and degree of maturity, without being charged with responsibility or faults, without being made aware of information that could negatively affect the relationship with one or both parents. They have the right not to suffer the separation like a lightning, nor to be flooded with their parents' uncertainties and emotions. They have the right to be accompanied by their parents to understand and live the transition to a new family stage.

4

Children have the right to be heard and to express their feelings

Children have the right to be heard, first of all by parents, together, within the family. Children have the right to be able to speak, feeling welcomed and respected, without being judged. Children have the right to be angry, sad, to feel bad, to be afraid and to have uncertainties, without being told that "everything is fine". Even in the more peaceful separation, children can experience such feelings and have the right to express them.



5

***Children have the right not to be put under pressure
from parents and relatives***

Children have the right not to be manipulated nor to be messengers of communications and explicit or implicit requests addressed to the other parent. Children have the right not to be induced to lie nor to be involved in lies.

6

***Children have the right that choices that concern
them be shared by both parents***

Children have the right that the most important choices on residence, education, instruction and health continue to be taken by both parents and by mutual agreement, while respecting the continuity of their habits. Children have the right that any changes take into account their emotional and relational needs.



7

Children have the right not to be involved in conflicts between parents

Children have the right not to witness and suffer the conflicts between parents, not to be forced to take sides of one or the other, not to have to choose between them. Children have the right not to be forced to side with one or the other parent and with their families.

8

Children have the right to have their times respected

Children need time to process separation, to understand the new situation, to adapt to live in the different family balance. Children need time to get used to changes, to accept new siblings, new partners and their families. They have the right to be reassured about the fear of losing the affection of one or both parents, or being overshadowed by their parents' new ties.



9

***Children have the right to be preserved
from economic issues***

Children have the right not to be involved in economic decisions and that both parents contribute adequately to their needs. Children have the right not to feel the weight of economic hardship of the new family balance, and not to be subjected to unjustified changes in family standard and lifestyle, not to live forms of economic violence from one parent.

10

***Children have the right to receive explanations
on decisions that affect them***

Children have the right to be heard, but decisions must be taken by the parents or, in case of disagreement, by the judge. Children have the right to receive explanations about the decisions taken, particularly when they differ from their demands and expressed wishes. The child has the right to receive non-conflicting explanations from the parents.

THE CHARTER OF CHILDREN'S RIGHTS

WITHIN THEIR PARENTS' SEPARATION



1

CHILDREN HAVE THE RIGHT TO CONTINUE TO LOVE THEIR PARENTS AND TO BE LOVED BY BOTH OF THEM AND TO KEEP THEIR AFFECTIONS

6

CHILDREN HAVE THE RIGHT THAT CHOICES THAT CONCERN THEM BE SHARED BY BOTH PARENTS

2

CHILDREN HAVE THE RIGHT TO CONTINUE TO BE CHILDREN AND TO LIVE THEIR YEARS

7

CHILDREN HAVE THE RIGHT NOT TO BE INVOLVED IN CONFLICTS BETWEEN PARENTS

3

CHILDREN HAVE THE RIGHT TO BE INFORMED AND HELPED TO UNDERSTAND THE SEPARATION OF THEIR PARENTS

8

CHILDREN HAVE THE RIGHT TO HAVE THEIR TIMES RESPECTED

4

CHILDREN HAVE THE RIGHT TO BE HEARD AND TO EXPRESS THEIR FEELINGS

9

CHILDREN HAVE THE RIGHT TO BE PRESERVED FROM ECONOMIC ISSUES

5

CHILDREN HAVE THE RIGHT NOT TO BE PUT UNDER PRESSURE FROM PARENTS AND RELATIVES

10

CHILDREN HAVE THE RIGHT TO RECEIVE EXPLANATIONS ON DECISIONS THAT AFFECT THEM



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