

(UN)REGULATION OF EXTRAORDINARY EXPENSES FOR CHILDREN IN FAMILY CRISES: COMPARATIVE INSIGHTS FROM THE CANADIAN MODEL

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Abstract

The regulation of extraordinary expenses in separation and divorce proceedings represents a critical challenge in Italian Family Law. The absence of centralized legislation and uniform guidelines has resulted in fragmented practices across courts, amplifying judicial discretion and generating uncertainty for parents. This article provides the results of a systematic mapping of the protocols adopted by Italian courts, revealing significant disparities in the management of extraordinary medical, educational, and extracurricular expenses, both nationally and within individual Court of Appeal Districts.

Conversely, drawing on the Canadian model, which employs federal uniform guidelines to regulate extraordinary expenses, this study investigates how such an approach can balance certainty, predictability, fairness, and flexibility. Employing a methodology that integrates inductive and deductive approaches – including case study analysis and a review of normative and doctrinal sources from a comparative perspective – therefore, the article proposes actionable recommendations to harmonize Italian practices, aiming to reduce legal uncertainty and improve outcomes for families.

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Keywords

Extraordinary Expenses, Parental Responsibility, Italian Court Protocols, Canadian Child Support Guidelines, Comparative Law.

1. Introduction.

The management of extraordinary expenses in child custody, separation, and divorce proceedings represents one of the most sensitive and complex aspects of parental responsibility. Despite the frequent disputes arising from the legal uncertainty surrounding these expenses in Italy, the topic often receives limited attention in academic discourse. Typically relegated to footnotes or addressed tangentially in broader debates, it is frequently overshadowed by issues such as custody arrangements or ordinary child maintenance payments. Yet, the regulation of extraordinary expenses plays a pivotal role in the practical functioning of post-separation family life, directly influencing not only parental rights and obligations but, more importantly, the well-being of children.¹

The Italian law requires both parents to contribute to their children’s maintenance under article 30 of the Constitution and several provisions of the Italian Civil Code².

¹ For a general analysis of child well-being, see: Z. Vagheri, J. Zermatten, G. Lansdown, R. Ruggiero, (eds) *Monitoring State Compliance with the UN Convention on the Rights of the Child. Children's Well-Being: Indicators and Research*, vol 25. Springer, 2022.

² Specifically, Articles 147, 148, 315-bis, and 316-bis of the Italian Civil Code, as well as Article 337-ter in cases of separation and divorce (reference is made to Section 2 of this article).

However, the boundary between ordinary and extraordinary expenses remains ambiguous. Extraordinary expenses, by their nature, are unpredictable and occasional, leaving parents uncertain about when mutual consent is required for their approval. The absence of national uniform criteria has granted courts wide discretion in handling such cases, resulting in inconsistent decisions across the country. This fragmentation undermines predictability, fosters litigation, and places undue burdens on parents and the civil justice system (see Section 2).

To address these challenges, some courts, in collaboration with local bar associations, have introduced protocols to clarify the management of extraordinary expenses. However, rather than creating a cohesive national standard, this approach has produced a patchwork of inconsistent guidelines.

This research adopts a bottom-up approach, systematically collecting and analyzing national protocols on extraordinary expenses.³ By focusing on local practices as a foundation, it identifies patterns and discrepancies across courts⁴, offering a granular view of how extraordinary expenses are managed. This empirical basis enables the development of a broader comparative analysis (see Section 3.1). Building on this foundation, indeed, the article employs a multi-level approach, combining a synchronic analysis of court protocols across Italy with a diachronic perspective to examine how these categories have evolved over time in response to social and cultural changes. (see Sections 3.2 and 3.3). The fragmented legal framework that emerges from this analysis, resembles a mismatched puzzle, illustrates the difficulty of reconciling diverse local practices into a coherent and unified national standard. Instead of forming a clear and orderly picture, the resulting structure appears disjointed, lacking harmony and a guiding design.

³ The study related to mapping of extraordinary expenses in separation, divorce, termination of the civil effects of marriage proceedings started under the Children's Rights and Family law research line coordinated by Denise Amram, at LIDER Lab, Dirpolis Institute, Scuola Superiore Sant'Anna of Pisa in Spring 2024, that has been solicited as a member of the Family Law issues working group at the Observatory of the Civil Justice, established by the Tribunal of Pisa and the State Bar of Pisa, with the collaboration of the University of Pisa and the Scuola Superiore Sant'Anna. This request aimed to establish a knowledge base on Court protocols regarding extraordinary expenses, given the absence of unified guidelines and consistent practices at the national level, with the ultimate goal of developing a local protocol applicable at the Tribunal of Pisa.

⁴ A significant outcome of this effort was the development of an interoperable digital interface designed to improve transparency and accessibility of information regarding court protocols. See D. Amram, N. Patti, D. Cerasuolo, *Piattaforma Spese Straordinarie*, 2024, available for consultation upon request on www.iris.santannapisa.it.

In light of this, the Principles of the Commission on European Family Law (CEFL)⁵ offer a critical reference point, underscoring fundamental tenets such as consistency, predictability, and fairness in the regulation of child maintenance. These principles advocate for the establishment of a clear and coherent legal structure across European jurisdictions, aimed at mitigating legal uncertainty and ensuring equitable treatment for all parties involved. Within the Principles on Parental Responsibilities, in particular, Chapter II, dedicated to the rights of the child, provides a foundational perspective, affirming that the best interests of the child must be the primary consideration in all matters concerning parental responsibilities. Principle 3:3 highlights the centrality of this concept that remains undefined, implicitly recognizing its inherently flexible nature and acknowledging its dependence on societal values and the unique circumstances of each child, such as age, maturity, and needs. This principle serves as the guiding star for our analysis, shaping the framework through which issues of legal uncertainty, such as the management of extraordinary expenses, are examined.⁶

Drawing upon these foundational concepts, the article examines a non-European model, specifically the Canadian model⁷, which has successfully implemented child support guidelines at federal level.⁸ Like the CEFL Principles, the Canadian framework places the best interests of the child at the core of its legal approach, ensuring that all decisions concerning child support prioritize the child's needs and well-being. Unlike Italy, Canada operates within a federal system but has faced similar challenges, making it a particularly relevant case study. Both countries have grappled

⁵ The Commission on European Family Law (CEFL), established in 2001, is composed of legal experts specializing in comparative and European family law, representing various EU Member States. To date, the CEFL has developed several sets of principles, including those addressing divorce and maintenance obligations between former spouses, parental responsibilities, property relations between spouses, and the rights to property, maintenance and succession in *de facto* unions. The CEFL's work seeks to promote the harmonization of family law in Europe, offering a structured framework for legislators and policymakers. Further details about its initiatives can be accessed through its official website: <https://ceflonline.net/>.

⁶ See <https://ceflonline.net/wp-content/uploads/Principles-PR-English.pdf>.

⁷ The presence of Québec, with its system influenced by civil law, adds further relevance to the comparison with Italy. See: J.E.C. Brierley, R. A. Macdonald, *Quebec Civil Law: An Introduction to Quebec Private Law* (Toronto 1993). In general, for an analysis of mixed legal systems see: E. Attwooll, E. Örüçü, S. Coyle, *Studies in Legal Systems: Mixed and Mixing* (L'Aia 1996); J. Du Plessis, *Comparative Law and the study of Mixed Legal Systems*, in *The Oxford Handbook of Comparative Law* (Oxford 2006); S. Farran, E. Örüçü, S.P. Donlan, *Mixed Legal Systems: Endangered, Entrenched, Blended or Muddled?*, (Londra 2014); V.V. Palmer, *Mixed Jurisdictions Worldwide: The Third Legal Family* (Cambridge 2012).

⁸ *Federal Child Support Guidelines* (SOR/97-175) s 7.

with fragmented judicial practices and inconsistent decisions regarding child support, which have created uncertainty for families and increased litigation. In response to these challenges, Canada has developed an innovative and pragmatic solution by adopting federal guidelines that combine structured criteria with targeted flexibility. This approach offers a compelling example of how fragmented judicial practices can be harmonised through uniform and standardised guidelines, balancing consistency with adaptability (see Sections 4 and 4.1).

Through its comparative and multidimensional approach, this study tries not only to map the Italian landscape, but also to propose practical solutions inspired by foreign models, to harmonize national practices and reduce legal uncertainty surrounding extraordinary expenses (see Section 5). This dual perspective frames the analysis and underscores the study's objective to bridge gaps and establish greater consistency in the management of expenses under comment.

The methodology combines both inductive and deductive approaches, offering a comprehensive framework for analysing legal practices and theoretical foundations. The inductive approach draws conclusions from empirical observations, uncovering patterns and trends in judicial practices and their application in diverse contexts. Concurrently, the deductive approach engages in a detailed examination of legal doctrine, case law, and regulatory frameworks, providing a deeper understanding of the underlying principles and norms. Together, these approaches bridge practical insights with broader theoretical perspectives, enabling a multidimensional and context-sensitive analysis.

2. Legal Framework of Ordinary and Extraordinary Expenses in Parental Responsibility

As anticipated, the Italian Constitution, under Article 30, explicitly states: *“It is the duty and right of parents to maintain, educate, and raise their children, even those born out of wedlock”*.⁹

⁹ Regarding the definition of the “rights” and “duties” of parents toward their children, reference is made to E. Lamarque, *Art. 30*, in R. Bifulco, A. Celotto, M. Olivetti (eds.), *Commentario alla Costituzione*, Utet, Turin, 2006, vol. I, pp. 622 ss., who argues that “the rights of parents should never be separated from their corresponding duties, as such rights are merely a ‘function’ to be exercised in the best interests of the children”. For an extensive comment, B. Liberali, *(Prima) il dovere e (poi) il diritto: alla ricerca degli ‘ossimori costituzionali’ nella cura dei figli*, in *Gruppo di Pisa*, n. 3, 2018; G. Bonilini, *Nozioni di diritto di famiglia*, Torino, 2002, 173; P. Perlingieri, *Art. 30 Cost.*, in P. Perlingieri, *Commento alla Costituzione italiana*, Napoli, 2001, 191.

About the concepts that define the duties and rights of parents – namely maintenance, instruction, and education – three main areas can be identified. Maintenance refers to the obligation to provide

This principle is also codified in the Italian Civil Code. Specifically, within the institution of marriage, Article 147 obliges both spouses to support their children, taking into account the minor's "*abilities, natural inclinations, and aspirations*"¹⁰, and proportionally to each spouse's financial capacity and contributions, whether professional or domestic.¹¹ This obligation extends to biological parents outside of marriage, creating a uniform standard for all parental relationships. Rooted in the parent-child bond and arising solely from the act of procreation, it applies regardless of the child's birth circumstances or legal recognition.¹²

The duty of maintenance is thus a core component of the broader parental responsibility¹³, aimed at nurturing and safeguarding the child's personality development.¹⁴ Indeed, it encompasses the child's right to financial support, along with access to education and instruction, recognized as fundamental rights guaranteed

the child with the necessary economic resources to ensure the material foundations essential for the development of their personality. Instruction concerns the acquisition of technical skills and knowledge that enable the child to actively participate in civil society and engage in productive employment. Finally, education is more complex as it involves the transmission of values, which are never neutral, and the construction of an ethical framework. In this perspective, parents are entrusted with the task of guiding their children toward a coherent value-based education, built upon a unified and structured educational plan. This plan is conceived as an organized set of principles aimed at directing the child's development toward an integrated vision of life. In this sense see G. Giacobbe, *Educazione della prole, progetto educativo e ruolo della famiglia: spunti per una riflessione*, in *Iustitia*, 2012, IV, 432 ss.

¹⁰ This provision, in turn, refers to Article 315-bis, titled "Rights and Duties of the Child", which recognizes the child's "*right to be maintained, educated, instructed, and morally supported by their parents, with due respect for their abilities, natural inclinations, and aspirations*", as well as the "*right to be heard in all matters and procedures affecting them*".

¹¹ Art. 316-bis Italian Civil Code.

¹² See, among others, Cass., 14.8.1998, n. 8042, in *Famiglia e dir.*, 1999, 175; Cass., 16.10.2003, n. 15481, in *Dir. famiglia*, 2003, 928. P. Perlingieri, Pisacane, *Art. 30 Cost.*, cit., 191.

¹³ Article 316 of the Italian Civil Code significantly replaced the terms "parental authority" with the expression "parental responsibility". This change emphasizes the parents' duty of care towards their children, prioritizing the fulfillment of the children's best interests, in relation to which the parents' role is functional. On the concept of parental responsibility, introduced by Law No. 219/2012, see, among others, A. Gorgoni, *Filiazione e responsabilità genitoriale*, Cedam, Padova, 2017; M. Sesta - A. Arceri, *La responsabilità genitoriale e l'affidamento dei figli*, Giuffrè, Milano, 2016, 89; A. D'Aloia - A. Romano, *I figli e la responsabilità genitoriale nella Costituzione (art. 30 Cost.)*, in G. F. Basini - G. Bonilini - P. Cendon - M. Confortini (eds.), *Codice commentato dei minori e dei soggetti deboli*, Utet, Torino, 2011.

¹⁴ Angelozzi, *Sull'estinzione del diritto al mantenimento del figlio maggiorenne*, in *Famiglia e dir.*, 2006, 39; D. Achille, *Il mantenimento del figlio maggiorenne tra diritto positivo e prospettive di intervento legislativo*, in *Famiglia, Persone e Successioni*, 2011, p. 663.

regardless of the child's legal status.¹⁵ In essence, maintenance is the financial expression of the general duty of care, covering all expenses essential to meet the child's needs and ensure their overall well-being and psychophysical development.¹⁶

In cases of separation and divorce, Article 337-ter of the Italian Civil Code provides an “indirect”¹⁷ method for fulfilling the duty of child maintenance through the so-called maintenance allowance (*assegno di mantenimento*). Paragraph 4 of the article specifies the criteria courts must apply to determine the amount of the allowance, ensuring compliance with the principle of proportionality. These include the child's current needs, the standard of living maintained during cohabitation with both parents¹⁸, the time spent with each parent, their respective financial resources, and the economic value of domestic and caregiving contributions.¹⁹ This provision underscores the obligation for both parents to contribute proportionally to their child's maintenance, with the overarching aim of preserving their well-being and ensuring equity in fulfilling parental responsibilities, even during family crises.²⁰

Despite the apparent terminological clarity surrounding parental responsibilities, providing an exhaustive and comprehensive definition of their scope remains a challenging task for any interpreter. This complexity arises from the fact that parental

¹⁵ C. M. Bianca, *Diritto civile. 2. La famiglia – Le successioni*, 4a ed., Milano, 2005, 319.

¹⁶ F. Ruscello, *La potestà dei genitori. Rapporti personali (Artt. 315 – 319)*, in Comm. Schlesinger e diretto da Busnelli, 2a ed., Milano, 2006, 103.

¹⁷ E. Morotti, *Assegno di mantenimento del figlio: carattere ordinario o straordinario delle spese scolastiche e universitarie*, in *Famiglia, Il diritto della famiglia e delle Successioni in Europa*, 2022, p. 1, who writes: in the event of a family crisis “the duty of maintenance remains in a ‘direct’ form, i.e. through the immediate satisfaction of the child's needs, while the ‘indirect’ form, consisting of the so-called maintenance allowance, constitutes an exceptional modality, which occurs when the burden of providing for the child's needs falls on only one parent”. The translation is by the author.

¹⁸ The notion of maintaining the standard of living previously enjoyed by the child is a recurring theme in case law. For references, see, among others, Cass., 23 July 2020, no. 15774; Cass., 6 August 2020, no. 16739, in *Studium juris*, 2021, 371; Cass., 16 September 2020, no. 19299 in CED Cassazione, 2020; Cass., 10 October 2018, no. 25134, in *Foro it.*, 2018, 11, 1, 3465; Cass., 18 January 2017, no. 1162 in CED Cassazione, 2017 etc.

¹⁹ The trial judge's assessment of the quantum is not subject to review by the Court of Cassation, provided it is adequately reasoned.

²⁰ A. Figone, *Alcune questioni applicative in tema di affidamento condiviso*, in *Dir. fam. e pers.*, 2006, 641 ss; P. Vercellone, *I rapporti genitori-figlio. I doveri di entrambi*, in *Trattato di diritto di famiglia*, diretto da Zatti, II, Filiazione, 2012, 951; F. Ruscello, *Il rapporto genitori-figli nella crisi coniugale*, in *Nuova giur. civ. comm.*, 2011, 402.

duties inherently encompass a broad and undefined range of the child's needs, which often go beyond the predictable and ordinary, making it challenging to classify expenses with precision. The monthly maintenance allowance is, in many cases, insufficient to cover all actual expenses, particularly those related to unforeseen and exceptional circumstances, creating significant difficulties in managing and allocating these additional costs between the parents.²¹

It is therefore evident that a central issue in this framework is distinguishing between *ordinary* and *extraordinary* expenses. In general, ordinary maintenance typically encompasses predictable and necessary daily costs related to the child's basic needs²², such as food, clothing, and housing. In contrast, extraordinary expenses – that are not explicitly defined by law and are instead clarified through case law – typically arising from exceptional or unforeseen circumstances²³, such as specialised medical treatments, study abroad, or extracurricular activities involving significant financial commitments. Courts frequently allocate extraordinary expenses by establishing percentages during separation or divorce proceedings. This approach defines cost-sharing responsibilities, which may be equal, proportional, or entirely assigned to one parent based on financial capacity and the child's needs.²⁴ However, ambiguity persists regarding what constitutes an extraordinary expense versus one covered by the allowance and when prior parental agreement is required.

A recent judicial ruling²⁵ illustrates the complexities involved in distinguishing extraordinary expenses. For educational and school-related expenses, the ruling clarified those expenditures for textbooks, stationery, and school uniforms – despite being incurred annually – are considered ordinary expenses, as they pertain to the child's fundamental and predictable needs. Similarly, monthly school fees, including semi-boardings costs, fall within the category of ordinary expenses, reflecting the

²¹ E. Morotti, *Assegno di mantenimento del figlio*, cit., p. 5; D. Achille, *Il mantenimento del figlio maggiorenne tra diritto positivo e prospettive di intervento legislativo*, in *Famiglia, Persone e Successioni*, 2011, p. 663.

²² Cass., 12 November 2021, n. 34100.

²³ Among others, Cass. 15 February 2021, no. 3835; Tribunale di Roma, sez. I, 7 May 2020, no. 6964.

²⁴ As a general rule, unless otherwise specified by the court, extraordinary expenses for minor children are divided equally between the parents (50%), in accordance with the general principle established by Article 30 of the Constitution and reiterated in Article 337-ter of the Civil Code, which imposes on both parents the duty to maintain their children. For reference, see Cass., January 11, 2022, No. 663, in CED Cassazione, 2022.

²⁵ Tribunale Savona, 29 January 2019, n. 84.

child's pre-separation standard of living. In contrast, study trips abroad, school excursions, private tutoring, and extracurricular sports activities were classified as extraordinary expenses. University-related expenses, such as tuition fees and textbooks, were also deemed ordinary due to their foreseeable and regular nature. However, this classification often warrants an increase in the maintenance allowance to account for the additional financial burden. In healthcare, the distinction between ordinary and extraordinary expenses is equally nuanced. Routine medical visits, over-the-counter medications, and regular pediatric check-ups are categorized as ordinary expenses. Conversely, extraordinary medical expenses include urgent surgical interventions, psychotherapy treatments, physiotherapy following accidents, and the purchase of medical devices such as glasses or orthodontic braces. Recreational and leisure activities, while not essential to survival, are recognised as important components of a child's life. Accordingly, parents are generally expected to contribute to such expenses within their financial means. Purchases such as computers, scooters, or the costs associated with obtaining a driver's licence – and even fines for traffic violations – are often categorised as extraordinary expenses.

The lack of clear parameters for distinguishing these expenses creates uncertainty, often leading to disputes that strain parent-child relationships.²⁶ The key challenge is determining how extraordinary expenses should be shared and integrated with the allowance while ensuring the child's stability and well-being. To reduce disputes, it has often been suggested to include extraordinary expenses as a lump sum within the maintenance allowance. This approach aims to minimize unforeseen costs by incorporating as many predictable expenses as possible into the calculated amount. However, the Court of Cassation has repeatedly emphasized that this method could conflict with the principles of proportionality and adequacy enshrined in Article 337-ter of the Civil Code. If extraordinary expenses do not materialize, the paying parent may end up covering unjustified amounts, while, if such expenses exceed the lump sum, the custodial parent might not receive adequate reimbursement. In both cases, the principle of equitable distribution of the maintenance burden between parents would be compromised.

In response many courts have adopted non-binding protocols developed in collaboration with local bar associations. These protocols aim to clarify the classification of expenses and establish decision-making authority (whether assigned

²⁶ D. Achille, cit. 665; In this sense also M.R. Mottola, la *Responsabilità Genitoriale al tempo del Covid 19*, 2020, p. 31, who states: "Such statutes, uncertain both in the *an* and *quantum*, lead to moments of tension and dispute between the parents".

to the custodial parent or requiring mutual consent)²⁷. Although not legally binding, these guidelines strive to standardize decision-making processes and reduce conflicts across different Courts. Nevertheless, their localized nature raises concerns about consistency at the national level. Without a unified framework, disparities in the interpretation and application of parental obligations persist – an issue that will be explored further in the following sections.

3. Court Protocols on Extraordinary Expenses: A Comparative Analysis.

3.1. Methodology for Mapping and Classification.

This section outlines the methodology used to systematically map and classify the protocols adopted by Italian courts concerning extraordinary expenses. The analysis involved the comprehensive collection and cataloguing of the protocols issued by individual courts, organized by district of the Court of Appeal, and grouped into three main categories: medical expenses, educational expenses, and extracurricular expenses. While not all courts explicitly adhere to this tripartite classification, it proved to be a logically coherent framework, offering much-needed clarity and structure to the often-indistinct array of expense categories, thus enabling a meaningful comparative analysis.²⁸ A key aspect of the analysis was the distinction between expenses requiring mutual parental consent and those that could be decided unilaterally by one parent. This differentiation proved crucial in assessing how various courts regulate parental decision-making authority concerning extraordinary expenses.

On this basis, an excel form was created and validated. The resulting database consists of 120 rows, representing the individual expenditure items identified and organized

²⁷ The prior agreement between the parents should ensure not only a mutual decision on incurring the expense but also a shared commitment to the underlying educational choice. For instance, the purchase of a mobile phone – an expense that may qualify as extraordinary and exceed the maintenance allowance – requires agreement on financial aspects as well as broader educational considerations, such as providing internet access and determining the appropriate age for the child to start using it.

²⁸ The research concerning the total mapping was conducted using a rigorous methodology, which involved the collection and cataloguing of protocols existing in Italian courts. Data have been analysed in a form aimed at classifying the expenses in a common and standardized category. Each protocol was analysed, and a dataset comprising 110 rows was created, with each row corresponding to a specific type of expense. This detailed mapping, validated by selected experts - Avv. Dr. Elena Occhipinti and Avv. Isabella Sardella - allowed for the classification of each expense based on its nature (medical, educational, extracurricular), and determined whether prior approval from both parents was required for each category.

into the three mentioned categories – medical, school, and extracurricular expenses – and 110 columns, corresponding to the courts grouped by district of the Court of Appeal. To ensure that the database was not only readable and interpretable but also searchable across a variety of variables, a digital platform was developed to consolidate and organize the data.²⁹ The tool enabled detailed searches across court protocols, focusing on expense categories, consent requirements, and variations in judicial approaches. The outcome clarified how courts categorize and regulate extraordinary expenses, identifying broader trends and divergences.³⁰ This foundation supports the synchronic analysis of current patterns and inconsistencies, and the diachronic analysis of how judicial practices have evolved in response to shifting social and legal dynamics.

3.2. Synchronic Comparison.

The synchronic analysis explores the current state of judicial protocols at the national level, highlighting areas of convergence and divergence in the classification and management of extraordinary expenses in separation and divorce cases.

A broad and generalized overview reveals a few (albeit limited) constants. For instance, urgent medical expenses or those covered by the National Health Service (SSN) - which are everywhere classified as extraordinary expenses - typically do not require parental agreement. Conversely, private facility expenses or non-urgent treatments often require prior consent from both parents. In education-related matters, routine expenses - such as non-overnight school trips or public-school enrolment fees - usually do not require parental agreement, whereas the latter is required to attend private schools.³¹ Similarly, certain extracurricular costs, like

²⁹ The *Piattaforma Spese Straordinarie* is a graphical interface that enables users to: consult the extraordinary expenses protocols of each court, analysing which expenses are covered and whether they require parental consent; conduct searches by expense categories (medical, educational, extracurricular) or by individual courts, allowing for comparisons of the practices adopted across different Italian Courts; and extract aggregated statistical data by expense category or court, providing a valuable tool for academic research and policy-making purposes.

³⁰ In the future, the platform could be enhanced by incorporating data on actual disputes that have arisen over extraordinary expenses, potentially integrating information from courts.

³¹ The issue was also addressed by the Court of Cassation in its ruling of October 10, 2008, No. 25026 which explicitly clarified that attending a private school cannot be considered a fundamental necessity, as the right to education can be adequately fulfilled through public schooling. Consequently, when an expense is not directly linked to essential needs, the financial responsibility lies solely with the parent who incurred it. Applying this principle, the Court rejected the appeal,

babysitting service may be decided unilaterally when justified by factors such as work obligations or lack of alternative childcare. In some cases, courts have set economic thresholds for specific expenses, mandating parental consent only when costs exceed a certain limit – independent of the economic situation of the individual family – to ensure financial stability.

While these patterns serve as a general starting point, a more in-depth analysis reveals a high degree of heterogeneity in the guidelines adopted at the local level. The data collected underscores the lack of uniformity regarding the classification and management of medical, educational, and extracurricular expenses. Discrepancies arise not only regarding the types of expenses considered extraordinary but also in the criteria courts use to determine whether these expenses require mutual parental consent.

For example, while some courts classify orthodontic care as an extraordinary expense requiring mutual parental agreement, other courts do not consider such consent necessary, particularly when such treatment is deemed essential for the child (see Fig. 1). Similarly, study trips abroad and extracurricular activities in some courts, these are considered extraordinary and require agreement, while in others, they do not, because viewed as part of the child's educational pathway.

Statistical analysis quantifies these inconsistencies, providing a clear mapping of territorial disparities. Even within the same appellate district, courts may adopt divergent approaches. For instance, in the Milan Court of Appeal District, significant disparities have emerged: Courts such as Lecco and Varese require consent for 24% of medical expenses, whereas the Pavia Court requires parental agreement in just over 10% of cases. By contrast, the Sondrio Court does not distinguish between expenses requiring prior consent and those that do not (see Fig. 2). These differences are particularly pronounced in expenses like dental care or ophthalmological assessments, creating uncertainty that risks fueling disputes between the parties.

By focusing on a single expense category, we can further investigate these differences. For medical services not covered by the Italian National Health Service, courts such as Milan and Varese require advance consent, whereas Lecco allows these expenses to be incurred unilaterally (see Fig. 3).

affirming the decision that excluded shared liability between the parents for the tuition fees of a private school, as the enrollment had been decided unilaterally by one parent.

Educational expenses show similar variability: while the Varese and Milan Courts require consent for nearly 35% of educational expenses, the Sondrio Court applies this criterion in less than 3% of cases. Specifically, overnight school trips and school contributions are subject to varying regulations, with some courts always requiring prior agreement, while others do not deem it necessary (see Fig. 4).

A particularly illustrative example involves public transportation costs for school commutes: while courts such as Como, Lecco, Milan, Pavia and Varese do not require prior parental consent, the Monza Court expressly demands it, and Sondrio mentions the expenses without providing specific guidance on whether agreement is necessary (see Fig. 5). The fragmentation observed in this area raises critical legal questions about safeguarding the best interests of the child.³² Italian courts are tasked with ensuring that children can continue participating in school and educational activities even after their parents' separation, without parental conflict impeding their educational path. However, the lack of consistent protocols often makes it difficult for parents to anticipate which expenses require mutual consent.

In the field of extracurricular expenses, fewer discrepancies are noted. Most expenses are not accounted for in the protocols of courts within the Milan District (approximately 60%). However, 30% of catalogued expenses still require prior parental consent across all courts, while the remaining 10% do not (see Fig. 6). This situation confirms a lower degree of fragmentation compared to other expense categories, but disparities remain.

These divergences, made possible by Article 337-ter of the Italian Civil Code which grants judges broad discretion in assessing the needs of the child, reflect territorial

³² The concept of the best interests of the child is established under Article 3 of the UN Convention on the Rights of the Child, which states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration". As Basset states, "the best interests of children is a physical and legal truth. It is legal because it expresses a practical truth, a directive orientation that runs through all of law, without exception. It is a physical truth because minors constitute an evolutionary condition of subsistence of humanity. Therefore, there is a structural resistance of the concept of the minor's interest to its manipulation". Please refer non-exhaustively to U.C. Basset, *The best interests of the child: the new challenges of a vague concept*, in Mirzia Bianca, *The best interests of the child*, 2020, p. 5; see also E. Lamarque, *Prima i bambini. Il principio dei best interests of the child nella prospettiva costituzionale*, FrancoAngeli, Milano, 2016; Zermatten, J., *The Best Interests of the Child Principle: Literal Analysis and Function*, in *The International Journal of Children's Rights*, 18(4), 483-499, 2020, <https://doi.org/10.1163/157181810X537391>; P. Alston, *The best interests principle: towards a reconciliation of culture and human rights*, in *International journal of law and the family* 1994, n. 8, p. 2; C. Breen, *The Standard of the best interests of the child: a western tradition*, in *International and comparative law*, The Hague, 2002.

differences not only in legal interpretation but also in access to public services, their quality, and the economic capacity of families. From a legal realism perspective, these differences mirror the specific social and economic needs that arise in local contexts. Judicially crafted protocols are often shaped by recurring disputes and challenges particular to their jurisdictions, reflecting the localised realities frequently encountered by the courts. For instance, regions with limited access to public healthcare or education may develop protocols that accommodate the higher prevalence of private expenses, whereas wealthier districts might focus on issues like extracurricular activities. This localised responsiveness aligns with the realist view that law must adapt to societal conditions to remain effective and relevant. Nonetheless, while this flexibility is valuable, the resulting territorial disparities can lead to unpredictability and conflict.

Without uniform standards, parents in similar circumstances could receive different legal outcomes for the same type of expense based on local court in which they find themselves, with repercussions on the principle of equality, a cornerstone of Western legal tradition.

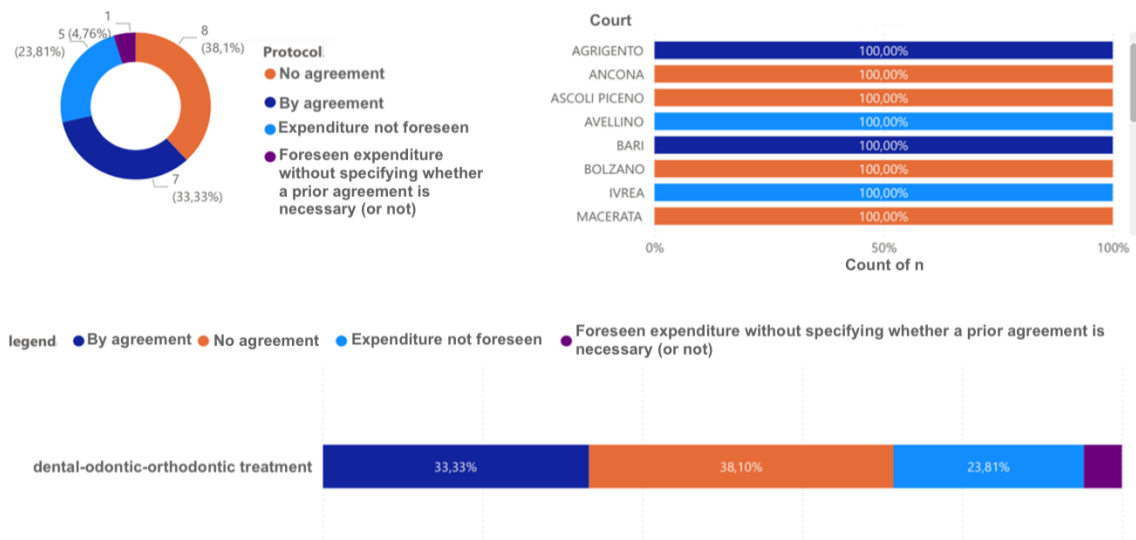


Fig. 1: National overview of the percentage distribution of cases requiring (or not requiring) parental agreement for orthodontic care.

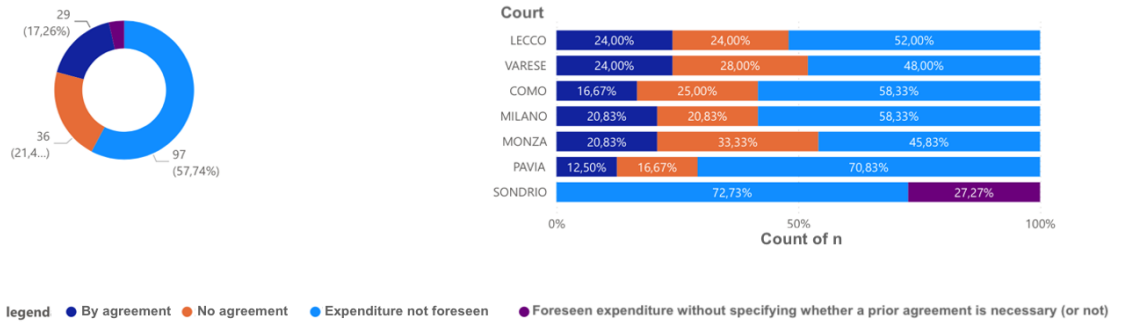


Fig. 2: Percentage distribution of medical expenses requiring parental consent in the Milan Court of Appeal District.

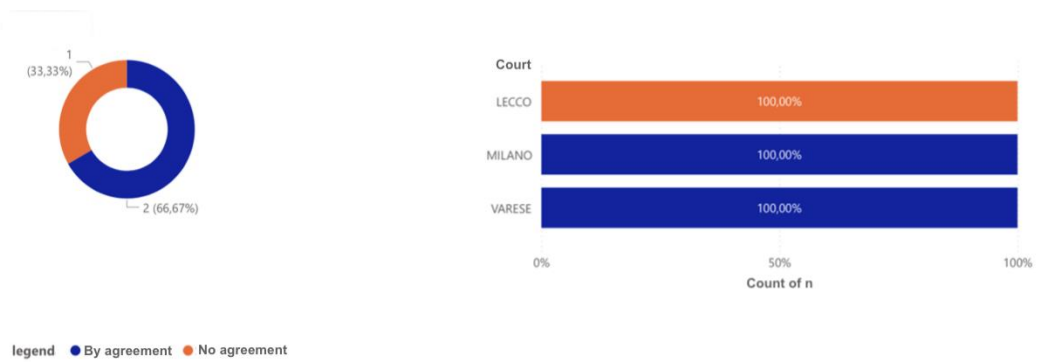


Fig. 3: Comparison of court requirements for parental consent on medical services not covered by the Italian National Health Service in the Milan Court of Appeal District.

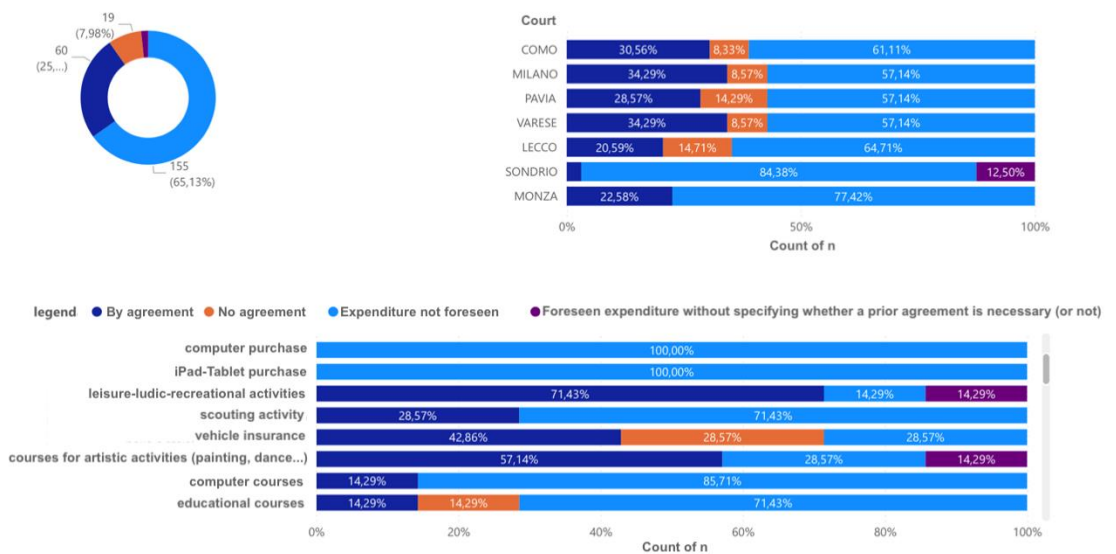


Fig. 4: Variability in parental consent requirements for educational expenses across courts in the Milan Court of Appeal District.

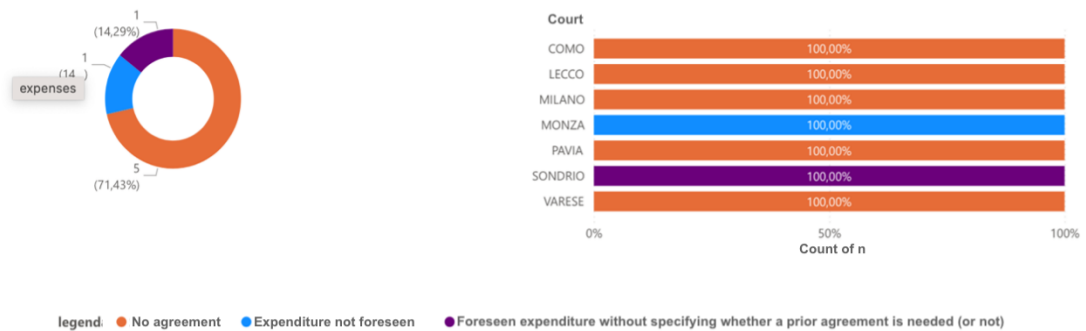


Fig. 5: Comparison of court approaches to parental consent requirements for public transportation costs for school commutes in the Milan Court of Appeal District.

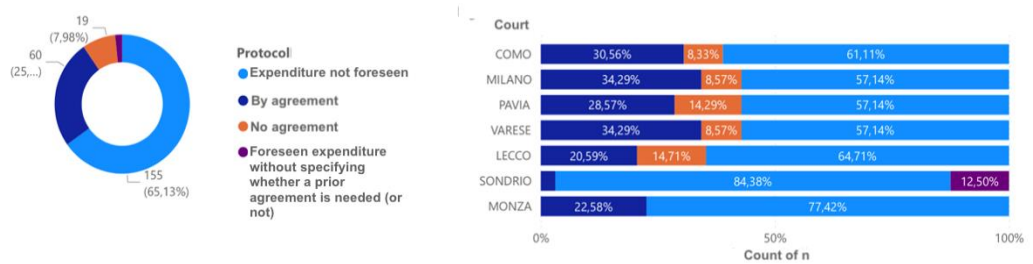


Fig. 6: Distribution of parental consent requirements for extracurricular expenses across courts in the Milan District.

3.3. Diachronic Perspectives.

The analysis of protocols related to extraordinary expenses reveals a significant evolution in the types of expenses recognised over time, closely tied to the shifts in social and family dynamics. The diachronic analysis presented here examines how the classification of extraordinary expenses has adapted to social, cultural, and economic changes.

Earlier protocols tended to focus on traditional aspects. Medical expenses were generally limited to specialist visits, dental and orthodontic treatments, diagnostic tests, and surgical interventions, with an emphasis on urgent and emergency needs. Educational expenses included school fees, learning materials, and school trips, with parental consent required only for particularly costly items or overnight trips. Extracurricular activities reflected a more conventional approach: occasional activities often did not require consent, while continuous ones, such as music lessons or sports courses, typically did due to their financial and time commitments. This framework reflected a more linear social reality, centred on essential needs.

More recent protocols reflect the changing technological and social landscape of modern families, introducing new categories of extraordinary expenses. Among these are technological devices such as smartphones, tablets, and computers, which underscore the increasing importance of digital literacy in education. The acceleration of digitisation during the pandemic has further highlighted this trend, with devices like iPads now recognised as necessary educational tools.³³ For instance, courts in Agrigento, Belluno, and Como have formally included these expenses in their protocols (see Fig. 7).

Moreover, certain courts have adapted their protocols to reflect the increasing emphasis on the psychological well-being of minors. More recent protocols, adopted by courts such as Belluno, Benevento, and Bolzano, explicitly require parental consent for expenses related to psychological support, underscoring a growing awareness of mental health needs, especially in post-separation contexts. The number of courts that include this item is significant and underscores how the protection of the psychological health of children is increasingly seen as a priority in separation and divorce proceedings (see Fig. 8).

Another emblematic example of this evolution concerns expenses related to the care and custody of domestic animals, a category absent in older protocols but gaining prominence in some courts, reflecting the growing attention given to the emotional bond between minors and domestic animals. Pets are taking on a more central role in family life, and therefore, expenses related to their care are now recognised as part of post-separation economic management. Courts such as Treviso, Vercelli, and Verona now systematically include provisions for such expenses in their protocols, demonstrating that the care and welfare of domestic animals are considered part of the overall well-being of the child. This recognition has been formalised in several rulings, including one issued by the Court of Venice³⁴, which established that expenses for the care of companion animals can be attributed to both parents, in proportion to their respective financial capacities, as they are considered part of the child's emotional needs (see Fig. 9).

A significant aspect concerns educational and professional development expenses. The analysis shows that expenses for language certifications or computer courses are

³³ For an in-depth look at the relevance of digital tools in education and the legal framework, see: UNESCO, Judging for generative AI in education and research: <https://unesdoc.unesco.org/ark:/48223/pf0000386693>, 2023.

³⁴ Tribunale di Venezia, No. 324/2022.

always included among extraordinary expenses in the more recent protocols. This reflects a heightened awareness, on the part of the courts, of the importance of digital and linguistic skills for the future of minors (see Fig. 10).

Overall, these categories represent a notable shift in protocols, the court's responsiveness to evolving social, educational, technological, and cultural priorities. The diachronic analysis highlights how recent social trends and challenges have led to greater specificity and inclusion of these expenses in court protocols, demonstrating increased attention to the overall well-being of children, beyond traditional ordinary and extraordinary expenses. In other words, this transformation reflects a society in continuous evolution, where the education and personal development of minors are increasingly aligned with global and modern standards.³⁵

At the same time, this diachronic analysis highlights how the timing of protocol adoption has created an additional layer of divergence. Older protocols, often less specific, fail to address the needs of modern families, while newer ones show greater sensitivity to contemporary priorities. This fragmentation exacerbates uncertainty for separated parents, contributing to increased litigation and significant disparities between Courts.

The absence of uniform criteria for managing extraordinary expenses remains a critical issue requiring coordinated intervention. A brief examination of the Canadian model³⁶, where the Federal Child Support Guidelines of 1997³⁷ have created a more predictable and transparent system, may offer valuable insights for reducing judicial discretion and fostering greater uniformity in decision-making. As previously highlighted, Canada has encountered analogous challenges, positioning it as an ideal laboratory for our research and a significant source of comparative insights.

³⁵ As Oliver Wendell Holmes and Roscoe Pound have emphasized, effective legal systems must align with the real-world contexts in which they operate. In this regard, the adaptability of Italian courts to evolving social and cultural dynamics illustrates the capacity of family law to remain both relevant and impactful. Oliver Wendell Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 1897, 461; Oliver Wendell Holmes, *Natural Law*, 32 Harv. L. Rev. 40, 42 (1918).

³⁶ The Canadian system has faced challenges similar to those observed in the Italian context, such as excessive judicial discretion and inconsistent outcomes, which the guidelines were designed to address effectively.

³⁷ For an in-depth analysis, also historical, of the child support system in Canada, see J.D. Payne, M.A. Payne, *Child Support Guidelines in Canada* 2022.



Fig. 7: Inclusion of technological devices as extraordinary expenses in court protocols.

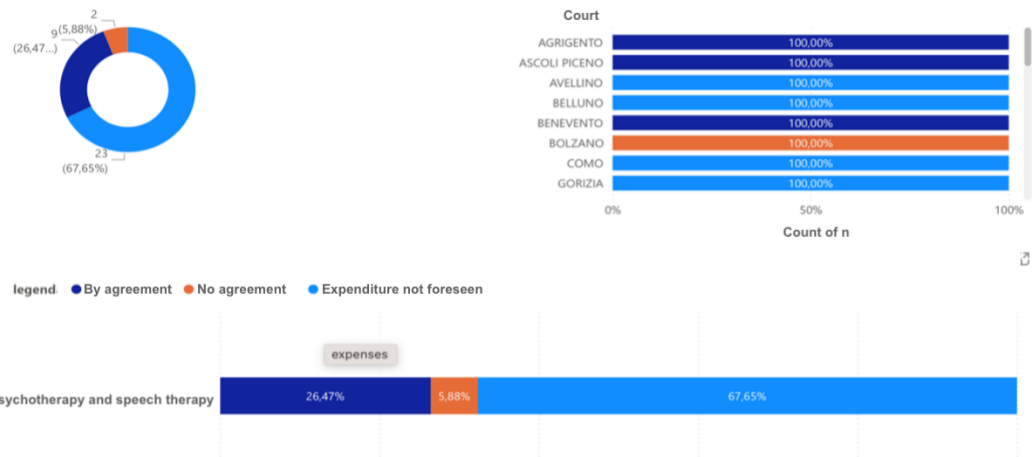


Fig. 8: Inclusion of psychological support expenses as extraordinary costs in court protocols.

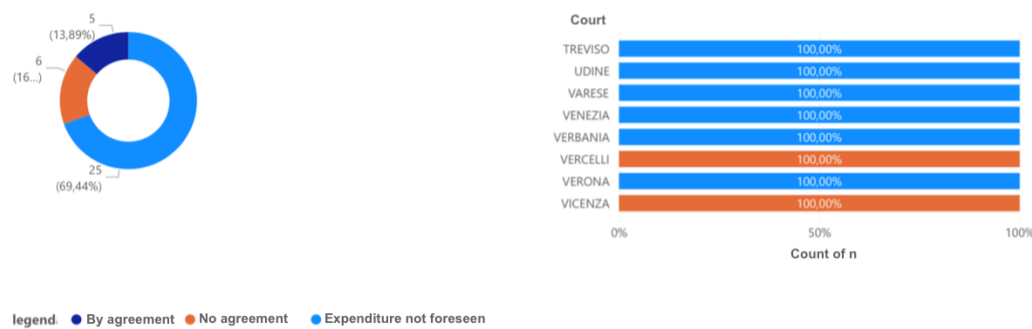


Fig. 9: Recognition of expenses for the care and custody of domestic animals as part of post-separation economic management in court protocols.

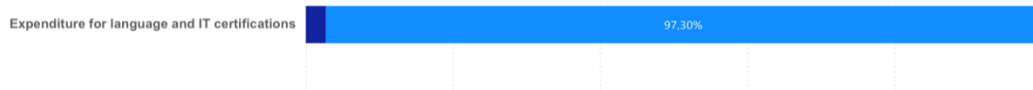


Fig. 10: Inclusion of language certifications and computer courses as extraordinary expenses in recent court protocols.

4. The Canadian Model: Federal Child Support Guidelines.

Before the implementation of the 1997 Federal Child Support Guidelines in Canada, the system for determining child support was heavily influenced by judicial discretion.³⁸ This approach led to inconsistent decisions, resulting in significant unpredictability regarding the amount of support payments. Consequently, disputes between spouses had increased, along with the costs associated with divorce. The lack of a clear and uniform method for calculating child support had made the legal process particularly contentious, exacerbating tension between the parties involved and making it harder to reach agreements. Judicial discretion was frequently perceived as arbitrary and unfair, leading to a growing recognition in the late 1980s of the need for reform.³⁹

To address these concerns, the Federal Family Law Committee conducted a series of studies between 1991 and 1995 to identify the weaknesses of the discretionary system.⁴⁰ These studies culminated in the introduction of the Federal Child Support Guidelines in 1997, with the aim of reducing judicial discretion and ensuring greater consistency in decision-making. Despite the term ‘guidelines’, which may suggest an advisory role, these provisions are binding. Judges have limited discretion to deviate from them, ensuring that their application leads to predictable and uniform outcomes.

The Federal Child Support Guidelines marked a clear departure from the previous regime. Instead of relying on subjective assessments, child support obligations are

³⁸ J.D. Payne, M.A. Payne, *Child Support Guidelines in Canada* 2022. Julien D. Payne, *Child Support Guidelines in Canada - Some Landmark Cases*, 42 *Advoc Q*, 2014, 309. Ming Ren Tan, *Developing Child Support Guidelines in Singapore: Lessons from Canada*, 32 *SAC LJ* 964, 2020, p. 975.

³⁹ Department of Justice, Canada, *Children Come First: A Report to Parliament Reviewing the Provisions and Operation of the Federal Child Support Guidelines vol 1* (Ottawa: Minister of Justice and Attorney General of Canada, 2002), p. 1.

⁴⁰ Department of Justice, Canada, *Child Support Discussion Paper: Backgrounder*, Minister of Justice and Attorney General of Canada, Ottawa, June 1991; Federal/Provincial/Territorial Family Law Committee, Canada, *Child Support: Public Discussion Paper*, The Committee, Ottawa, June 1991; Federal/Provincial/Territorial Family Law Committee, Canada, *The Financial Implications of Child Support Guidelines: Research Report*, The Committee, May 1992, Ottawa; and Federal/Provincial/Territorial Family Law Committee, Canada, *Report and Recommendations on Child Support* Department of Justice, Communications and Consultation Branch, Ottawa, January 1995.

now calculated through a standardised system based on pre-determined tables.⁴¹ These tables determine support amounts according to the paying parent's income and the number of children, eliminating the need for detailed examinations of family budgets or individual needs. Importantly, the income of the custodial parent is not factored into the calculation, reflecting the assumption that the child will benefit from both parents' financial resources as if they were still living together. This new framework represents an "ultimate example of rule-based decision-making"⁴², aimed at promoting greater predictability and uniformity within the judicial system.⁴³ The guidelines reflect a broader trend in Canadian family law towards prioritising general justice, ensuring consistent treatment across cases-over finely tuned individualised justice.

Section 1 of the Federal Child Support Guidelines sets out the following objectives: (a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation; (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective; (c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and (d) to ensure consistent treatment of spouses and children who are in similar circumstances. These objectives should guide the interpretation and application of the substantive provisions of the Federal Child Support Guidelines.

However, while the guidelines provide a solid foundation for calculating ordinary child support, they also account for certain exceptional situations that require a more flexible approach to ensure fairness. These exceptions arise primarily in the context of managing extraordinary expenses.

⁴¹ The tables are developed at provincial and territorial level. The principle behind the tables is that they represent an average of the expenses incurred by families with similar characteristics and take into account the cost of living in the different provinces. This approach aims to ensure a fair distribution of financial responsibilities between parents, while simplifying the decision-making process for the courts and reducing the judge's discretion. See: J.D. Payne, M.A. Payne, *Child Support Guidelines in Canada* 2022, p. 10.

⁴² D A Rollie Thompson, *Rules and Rulelessness in Family Law: Recent Developments, Judicial and Legislative*, 18 Can Fam LQ, 2000, pp. 25 - 31.

⁴³ Ming Ren Tan, *Developing Child Support Guidelines in Singapore: Lessons from Canada*, 32 SAclJ 964, 2020, p. 977.

4.1. Distinguishing ordinary, special and extraordinary expenses

While the Federal Child Support Guidelines provide a standardised framework for ordinary maintenance, Section 7 introduces necessary flexibility to account for expenses that exceed the normal financial burden of caring for a child.⁴⁴ These expenses, referred to as ‘special’ or ‘extraordinary’, cover a range of exceptional costs that cannot be adequately covered by the amount set by the standard tables alone.⁴⁵ Indeed, although the ordinary maintenance tables provide a solid basis for most of the expenses associated with raising a child, there are numerous circumstances in which parents are faced with unforeseen or large costs that go beyond what is considered ordinary and require more flexibility in calculating the contribution.

In particular, Section 7(1) of the Federal Child Support Guidelines permits the court to grant an additional sum, beyond the standard tabular amount, to address special or extraordinary expenses. These expenses fall into the following categories: (a) child care expenses incurred as a result of the employment, illness, disability or education or training for employment of the spouse who has the majority of parenting time; (b) that portion of the medical and dental insurance premiums attributable to the child; (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses; (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child’s particular needs; (e) expenses for post-secondary education; and (f) extraordinary expenses for extracurricular activities.

The list of special and extraordinary expenses is exhaustive: any request that does not fall into these categories is automatically rejected. This strict criterion ensures procedural clarity and limits the scope for arbitrary interpretation.

What makes these expenses particularly significant is the recognition that not all families face the same costs in raising their children. Needs may vary according to socio-economic status, the health of the child and other specific circumstances. For this very reason, Section 7 grants judges limited discretion in determining when and

⁴⁴ Federal Child Support Guidelines (SOR/97-175) s 7.

⁴⁵ J.D. Payne, M.A. Payne, *Child Support Guidelines in Canada* 2022, p. 267.

how to award an additional contribution for extraordinary expenses, thus allowing for customisation that takes into account the particular situations of individual families.⁴⁶

In order for these expenses to be recognised and apportioned, they must meet two essential criteria set out in Section 7(1): the expense must be *necessary* for the best interests of the child and *reasonable* in relation to the financial means of both parents, the child and the family spending pattern prior to separation.

For example, while babysitting services may fall within the category of Section 7(a) expenditure as a childcare expense, they may not be claimed if the custodial parent is unemployed or if the child can be adequately cared for by the former spouse's family. In that case, the expenditure would not satisfy the Section 7 test of necessity.

The original lack of clear guidance in the Federal Guidelines had led to different interpretations of the term 'extraordinary' used in (d) and (e) by the courts. Canadian courts had adopted two main approaches: one objective and one subjective. Some courts interpreted the term 'extraordinary' objectively, assessing the nature of the expense regardless of the parents' income. In this case, 'extraordinary expenses for extracurricular activities' were simply considered unusual or exceptional, based on the nature and amount, without considering the family's financial capacity.⁴⁷ Instead, a subjective approach took the parents' income into account to determine whether an expense was indeed extraordinary in relation to their economic circumstances.⁴⁸ This subjective approach was considered fairer because it took into account the specific needs of a family and the resources available to meet them. Considering economic conditions made it possible to avoid situations in which families with significantly different incomes incurred the same type of expenditure, which could be burdensome for one but completely ordinary for the other.

In 2006, to remedy the lack of consistency in interpretation, a formal definition of 'extraordinary expenses' was introduced in the Federal Guidelines.⁴⁹ The amendment established a two-part test: (a) expenses that exceed what the requesting spouse can reasonably cover, considering their income and the amount they would receive under

⁴⁶ J.D. Payne, M.A. Payne, *Child Support Guidelines in Canada* 2022, pp. 267 – 283.

⁴⁷ See *Raftus v Raftus* (1998) 37 RFL (4th) 59.

⁴⁸ *McLaughlin v McLaughlin* (1998) 44 RFL (4th) 148.

⁴⁹ J.D. Payne, M.A. Payne, *Child Support Guidelines in Canada* 2022, p. 279.

the applicable table, or, if the court finds the table amount inappropriate, the amount the court deems appropriate; or (b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account various factors, including the amount of the expense in relation to the requesting parent's income, the nature and number of educational or extracurricular programmes, the child's special needs and talents, the overall cost of the activities, and any other relevant factors.

As can be seen, Article 7(1.1) of the Guidelines adopts a subjective approach that relates expenditure to parental income and the child's inclinations, recognising that not all families have the same economic capacity or needs. This flexible approach allows courts to ensure that maintenance decisions are tailored to the specific circumstances of the family in question. Thus, extraordinary educational and extracurricular expenses include costs that go beyond the basic school curriculum, such as regular school fees, general school supplies, school trips, regular transport, and school lunches, which are all considered "usual expenses" and not "extraordinary" under Section 7 of the Federal Child Support Guidelines. The underlying principle is that the standard maintenance amounts are designed to cover all ordinary expenses necessary for the child's growth, including food, shelter, clothing, and many educational, extracurricular, and recreational costs. However, some extracurricular activities, such as recreational sports or dance lessons, are typically regarded as part of ordinary expenses unless the child's participation exceeds what is considered typical for a child of that age. A particularly controversial issue arises when distinguishing between basic and advanced activities. While basic sports or music lessons are considered ordinary, participation in more advanced programmes or high-level sports competitions may be classified as extraordinary. The recognition of such expense's hinges on both the nature of the activity and the financial capacity of the parents. For families with lower incomes, even activities with significant costs may be deemed extraordinary, while for higher-income families, those same activities might be considered part of ordinary expenses.⁵⁰

This nuanced approach reflects the importance of balancing the financial resources of the parents with the specific needs of the child, ensuring that extraordinary expenses are properly recognised where they impose a significant burden on the family.

⁵⁰ For a detailed analysis of the individual expenditure categories, see J.D. Payne, M.A. Payne, *Child Support Guidelines in Canada* 2022, pp. 293 - 323.

Although the introduction of the Federal Guidelines has brought more clarity, courts still retain some discretion in applying the Section 7 rules, especially when there is a significant income disparity between parents. In such cases, the proportional allocation of extraordinary expenses may be adjusted to prevent a parent with a lower income from bearing a disproportionate burden, while maintaining fairness to the child.

Ultimately, the introduction of the Federal Child Support Guidelines is an important step towards greater fairness and predictability in the calculation of child support. However, Section 7 reflects the realisation that not all families face the same financial needs and that a degree of flexibility is needed to ensure that every child receives the support they need, regardless of the parents' financial circumstances.

This balance between structure and flexibility contrasts sharply with the Italian system, where the absence of uniform criteria often leads to inconsistency. The Canadian model demonstrates how structured criteria, combined with targeted flexibility, can provide a more equitable framework. Adopting a similar approach in Italian family law could reduce unpredictability and foster fairness in addressing extraordinary child expenses, aligning with the principles of predictability and equality.

5. Comparative remarks

The comparative analysis between the Italian and Canadian systems in managing extraordinary expenses for child support provides valuable insights for improving transparency, predictability, and fairness in the Italian system. While the legal and cultural contexts of the two countries differ, the Canadian experience highlights critical lessons that could enhance the Italian framework.

The 1997 Federal Child Support Guidelines in Canada illustrate how adopting uniform guidelines can significantly reduce uncertainty and litigation between separated parents. However, they also demonstrate that consistency and predictability are achievable only with clearly defined criteria for determining extraordinary expenses. Without such definitions, judicial discretion and divergent interpretations inevitably lead to inconsistent outcomes and increased legal disputes.

In Italy, as we have seen, the lack of a precise definitions has resulted in fragmented judicial decisions and non-uniform protocols that vary from one court to another. This fragmentation complicates the predictability of decisions, undermines the

achievement of consistent justice, and exacerbates family litigation. It is therefore advisable for the Italian system to draw inspiration from the Canadian model by promoting a uniform regulation for the management of extraordinary expenses. From the outset, a legislative intervention could include a clear definition of “extraordinary expenses”, categorized into standard types (e.g. medical, school, and extracurricular expenses), to reduce ambiguity and prevent divergent interpretations. Equally important could be limiting the recognition of extraordinary expenses to truly exceptional circumstances. These legislative provisions could then be implemented through non-binding national guidelines, developed in collaboration with judicial authorities. This framework would allow judges to retain the flexibility necessary to adapt decisions to the specific needs of families while ensuring greater consistency and reducing interpretative uncertainties.

An approach that balances uniformity with the flexibility required to address unique family situations is essential. Italian judges have already acknowledged this need. For instance, a judicial ruling⁵¹ deemed university expenses – generally considered ordinary⁵² – to be extraordinary when they significantly impact the family’s budget. Striking the right balance between rules and discretion remains a complex challenge.⁵³ As Carl Schneider observed, it is inherently difficult to determine “a priori what mixture of rules and discretion best suits a particular situation”.⁵⁴

Following the Canadian model and incorporating the criteria already embedded in the Italian legal framework, judicial discretion should provide evidence of being ‘guided’ by the criteria of *necessity* and *reasonableness*, taking into account the family’s *financial context* and always prioritizing the *child’s best interests*. The best interests of the child, in particular, remain the overarching principle, the guiding star that should inform every decision regarding children. This principle must also encompass consideration of the child’s abilities, natural inclinations, and aspirations, which play a crucial role in determining the expenses necessary for their well-being. In line with Article 337-ter of the Italian Civil Code, parents’ prior agreement should be required in all circumstances involving “*decisions of major interest for children related to education, upbringing*

⁵¹ Trib. Bari, 25 March 2010.

⁵² Cass., 12 November 2021, n. 34100.

⁵³ Ming Ren Tan, *Developing Child Support Guidelines in Singapore: Lessons from Canada*, 32 SAclJ 964, 2020 p. 1001.

⁵⁴ Carl E. Schneider, *Discretion and Rules: A Lawyer’s View in The Uses of Discretion*, Oxford, 1992, p. 88.

and health”, except in urgent situations, with the judge intervening only in cases of conflict.

In other words, the goal for the Italian system should be to provide a clear definition of extraordinary expenses harmonised guidelines that are simple and understandable even to non-professionals, allowing parties to easily apply them to resolve disputes independently and reduce judicial litigation. This would also avoid interpretative inconsistencies allowing judges to adapt rules to specific family contexts while preserving fairness and predictability. Striking this balance – between clear, standardised rules and purposeful flexibility – could foster a more equitable and responsive judicial system for families in Italy.

Inspired by a perspective of legal realism, which views law as a dynamic phenomenon shaped by societal needs, the outlined proposal would reflect the changing realities of family life in Italy. By aligning judicial practices with the social and economic challenges faced by modern families, such enhancements would not only enhance predictability and fairness but also ensure that the legal framework remains relevant and adaptable.