**Nutrition-education’s choices and the best interest of the child in separation and divorce**

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*Introduction*

The Western world, after the Second World War, witnessed a radical change toward food and nutrition.

Hunger was the psychological and historical reason of human action and slowly, it entered in a phase of eclipse, thanks to the economic progress from the 50’s[[1]](#footnote-1).

Following this phenomenon, called in Italy the “economic miracle”[[2]](#footnote-2) the word “diet” has been used massively.

Starting from the 50’s and 60’s, the legal world began to know the nutrition law. So it became the centre of the juridical and legal debate and it has risen as an indipendent and autonomous discipline.

The economic growth has created a historical situation in which the food is not more a

“necessity” and, with several consequences, it became a “possibility”, first in the Western Countries and then everywhere.

But it means also the growth of problems linked to the food and to the proliferation of several

diets: just think of the problem of obesity, that nowadays represents one of the most relevant issue

of the modern countries. There has been an exponential rise in the number of obese individuals

especially in countries like United States and United Kingdom, so much so, that obesity has become a public health problems in most nations.

*What about vegeterian and vegan diet?*

But what can we say about the vegeterian and vegan diet?

The reason to choose to not eat animals are many: first of all ethics and then religious,

environmental, health benefits. In fact from the 70’s the moral subjectivity sphere has been

progressively spreaded. From the human responsibility to make their own choices, it has passed

to give major importance to the animal’s rights and environmental protection[[3]](#footnote-3).

For the law purposes it means that not all the decisions about one’s diet, even if its referred to

individual freedom, are juridically protected in the same way, and for this reason it becomes

essentially to understand the causes of a specific dietary choice[[4]](#footnote-4).

Indeed if the choice of a particular dietary regime is a question of “Freedom” of individuals, i.e.

“human right”, the vision changes if the diet is not freely choosen or if there is a question of

capability.

These reasons have come into light by Court decisions that have showed a double challenge on

which the legislation has not got clear definitions.

The first question concerns the vegan diet as a subjective freedom.

Should we think about veg diets choice as a freedom’s rights? For example in the USA legal

system, this freedom is called “happyness freedom” from the Declaration of indipendence of

1776: rights in which the State has to let their citizens be free, for example an infrangement of

this right is forcing inmates or students to eat food that, for valid ethic or religious reasons,

they prefer to not eat[[5]](#footnote-5).

So, the vegan’s reasons make it clear that the alternative in the legal system has to confront

between control and free-choices.

Because of this, veganism frequently becomes a hot topic especially in these last few years.

The opposition enthusiastically talks about either the vegan’s aggressive approach that defends

their own ideas or for the sensitivity of minor’s nutrition.

The second unclear question is if the vegan diet is or not dangerous for the minors’ health and

if this choice is attributable to the exclusive exercise of parental authority or parental formative

and educational responsibility.

*What can a vegetarian/vegan eat?*

The vegan diet is a variant vegetarian diet: while vegetarians don’t eat meat or fish, vegans

abstain by all food that contain products derived from animals, so even milk, cheese, eggs,

honey.

But veganism is not only nutrition: in its orthodox sense, the vegans do not use wool, silk

clothes, leather items and animal-tested cosmetics.

Essentially the vegan’s central way of life is the refusal of every kind of violence and duress to

the animal species, which is equal to the same violence made on humans.

2016 Eurispes[[6]](#footnote-6) data show an increase in the number of people who declare to be vegetarian in Italy, representing 7,1% of the interviewed. Vegans represent about 1% of the total, which is an encouraging number compared to the 0,6% registred in the previous year.

In the rest of the world, with the exception of India where the percentage of vegetarian is extremely high due to religious reasons, the contries where the veg tradition is the strongest are the the Anglo-Saxons, Uk being the first[[7]](#footnote-7).

That said, it is extremely relevant to acknowledge what science says about the role of the veg diet.

The two major arguments vegans nowadays base their position on are the cruelty free diet environmental sustainability and the related health issues. In this perspective we cannot forget that the basic concept remains the equality between humans and animals.

A recent research by the Oxford University has valued how much could be saved if in 2050 alle the people in the world were vegetarians or vegans: among related indirect costs, health related costs and environmental benefits, veg world would be saved about 1.500 billions of dollars.

It’s also true that many question the real healthness of the veg diet suggesting that it could have negative medical consequences. In this respect, the answer is quite unanimous: the veg diet is healthy provided that there’s a balance between nutritional elements. But it’s difficult or maybe impossibile to ascertain that veg diet is healtier than omnivourous ones.

This topic becomes even more delicate when we are talking about children.

In the past, but particularly today, the news about the children’s malnourishment with vegan parents is very debated, starting from the first year of life.

It is indeed when the veg diet is applied to infants that issues and concerns arise more frequently among the scientific community, specifically about the veg diet as an alternative to breastfeeding.

The weaning seems not to create particular problems; in that cases parents should enquire about the nutrional regime and they shoul be guided by an expert pediatrician in vegegeterian or vegan diet[[8]](#footnote-8).

Our Constitution and the Declaration of fundamental rights of European Union, recognize the right and duty of parents to give instructions and education to the children according to their own religious, philosofic and pedagogical beliefs.

But the children grow and the problem of the choice does not only concern the contrast between father and mother but also the contrast between parents and children.

Here the question must be taken according to the art. 2 of the Constitution that recognizes and guarantees the minor’s rights to create their own conscience both indipendently and in association where they develop their personality, beginning with their nuclear family.

At the social level, before the legal one, the transmission of parent’s values is always the main rule. In fact family is the first environment where children grow and so it’s impossible to exclude from the parents role the transmission of their own ethic code, from religion to the food.

The legal problem that arises in case of contrast between parents fighting about the dietary choice of their children, is to locate and circumscribe the role of the judge and his legal power in that situation.

*Italian cases-law*

Exemplary is the recent case-law of Bergamo Court in april 2015[[9]](#footnote-9).

At the centre of this case there was a twelve year old boy.

The mother, in 2006, started her son on a macrobiotic diet, which is typically a vegetarian diet. The typical menù was: at breakfast rise cream, homemade bread and marmelade; at lunch brown rice with vegetables, legumes and vegetable garnish; at dinner mile, cous cous, macrobiotic pasta, vegetables and legumes.

But the father, who was divorced from the mother, complained that she had made the decision without consulting him and that the diet put his son’s health at risk.

So, when the boy was with his mother he followed a macrobiotic diet, when the father took custody of the child at weekends, despite the mother’s dietary regime, he was determined to give him a proper diet.

When away from his mother, the boy visited his paternal grandmother with his father and they would eat “great feasts” including polenta, meat, cheese, as well as Mcdonalds burgers. The mother in turn accused her former husband of harming the child by feeding him meat, which she claimed gave him stomach-aches.

The father eventually took the matter to Court so that the boy’s diet could be decided once and for all.

The Court ruled that the mother must prepare meat at least once a week for the child. The father, meanwhile, was ordered not to feed the boy meat more than twice at weekends.

The Bergamo judge invited the parents to be more tolerant and his decision wasn’t a preference for an omnivorous diet. His role was instead a mediation between the parents choices, but the child is going to be given the last real choice.

Accordingly, until now judges have ruled about custody, the maintenance, the extraordinary expenses, but they have never decided how many times children have to eat rice, meat or vegetables. It’s an important change in society and consequently about the relationship between parents.

A similar case has been ruled also by the Court of Rome[[10]](#footnote-10).

The father requested the change of the custody conditions of the previuos decree and they gave a warning to the mother for the unilateral choice of the daughter’s nutrition.

The mother said that she had asked for the consent of the father and he had accepted it, but the father demonstrated to have refused the request with a report to the social services of the city. He deposited a certificate written by the pediatrician in which showed how this dietary regime was unhealthy for his daughter. He substained that this diet compromised his daughter’s growth and even with a psychological impact caused by the difference with her classmates’ diets.

The Court ruled that the decision about nutrition regimes falls in the best interest of the minor[[11]](#footnote-11) according to article 337 of the Italian Civil Code and for this reason this decision has to be taken in accordance. In case of the parents disagreement, the decision has to be taken by the judge.

The judge, after valuating all of the medical certificates, decided that it has to be applied the parameter of normality and so a nutrition regime without restrictions. This decision is the only one, that in case of the parents disagreement, guarantees the welfare of the minor.

In this case-law it had not been valued the principle ethics, but just if the diet was justified by food intolerances.

But the italian judges didin’t hel the principle in the same way.

The Court of Monza[[12]](#footnote-12) has ruled that the minor can follow the vegan diet, but with food corrections indicated by a forensic expert.

In 2012 the mother of a child, that today is nine years-old, was in disagreement with the father about the vegan diet that the son followed from the weaning.

First the case was ruled by the Court of Milan, that imposed an omnivorous diet to the minor. Following this dietary regime, the minor started to have health problems referable to the consumption of animal products, in particular dairy products.

In 2015 the mother was worried for the health of her son and for the limitation of her parental rights in the matter of the nutrition. She reapplied by the Court of Monza in order to revire the decision.

A nwe forensic expert was called to ascertain if the vegan diet could be suitable for the minor.

The Court ruled that the minor could follow a vegan diet, at home and at school. So the Court has agreed to the request and has made the appropriate reforms to the decree previously issued by Milan’s juvenile Court. The judge, then, requested that the Municipality had to advise the school of its decision to allow the pupil to follow a vegan diet. However, there were a number of conditions, including half a year check-ups at a hospital to verify the proper growth of this

child.

*Which is the best nutritional regime for childen?*

Dwelling over the legal aspect, we can follow two hypothesis: the first concerns separated parents who agree on vegan nutritional choice and so they had started their children on a vegan diet, even at school.

This choice has to be respected and it is legittimate, at the condition that parents have to adopt every health precaution in order to avert negative effects as happened in Italy, where several vegan babies were hospitalised for malnourishment.

In fact, vegan diet, if it’s not well followed, deprives the essential health elements for the growth of the minor[[13]](#footnote-13).

When parents don’t control the minor and have a diet without a good nutritional expert, they could have an external intervention, e.g. from the Court and social services, for the protection of the minor.

In severe cases, the parental responsibility can be limited[[14]](#footnote-14).

The second situation concerns separated parents, in joined custody, who have different ideas about the dietary regime.

If the contrast is not resolved, each parent can presents a recourse to the Court in order to receive help and resolve the empasse.

But, as we have seen, it’s clear that the judge does not intervene in his traditional adjuducative function, but he is called as a mediator. He, listening to the parents, would have to facilitate a common line concerning the child’s dietary regime. But if the empasse persists, the judge has to establish the dietary regime to follow, hoping that he is helped by a nutritional expert.

In the cases analized, it’s obviously and justified that the minor could not be listened to because of the difficulty of the argument. The capacity of discernment that could consent to the minor to be listened to in the Court is reduced in a contest in which there are medical and health aspects.

It is desiderable that the minor could be listened to when he is older, for example at 14 years-old and up, when he could have superior and more structured intellective and cognitive capacities compared to a younger minor.

This happened in the UK Gillick case law[[15]](#footnote-15), in which, even before the achievement of the majority, it was relevant the idea and the consense of the minor in the use of contraceptive, despite the opposition of the mother.

The Court must be persuaded that the children are sufficiently mature to reach their decision and not just be repeating the views of their parents.

The House of Lords, in fact, considered that the minor, although she was fifteen, has a sufficient maturity and knowledge in order to understand the nature and the consequences of the treatment. So in this case law the parental responsibility was subordinated to the minor’s best interest.

The Gillick case has had a great importance because, even if it concerned a specific and particular matter, it represented a precedent about the role of the minor in Court even outside the UK.

Nowadays, however, there is not a certainty about the resolution of minor’s diet if the parents have a different point of view.

For sure, it’s an important question, typical of the evolved society, where what someone eats, is an expression of a way of life and not more a “necessity”.

Although, as demonstrated, the case law is opening in a positive sense to the admissibility of these new food trends and even at a social level it has been noted a cultural change ( you only need to think about the recent openings of a vegan kindergarten, in which beyond the nutrition, the children learn to respect living things and nature).

It is, in fact, evident that the medical and legal disorientation on this topic is a sign of the society’s ongoing changes, that probably, with more knowledge and right information, will create less prejudice and aggressivity between people who love and who hate animal products.

1. During the Second World War every Nations hade to make difficult choices when allocating in limited food supplies to feed its population and support its war effort. For recent comparative studies of how the major Nations allocated food, see Collingham, “The Taste of War”, Frank Tretmann and FlemmingJust, eds, Food and Conflict in Europe in the Age of the Two World Wars (New York: Palgrave Macmillan, 2006). [↑](#footnote-ref-1)
2. The “Italian economic miracle” is the term used by historians, economists and mass media to designed the extraordinary economic growth in Italy after the Second World War from the 1950s to 1960s. Several important reforms were launched: agrarian reform, fiscal reform and the country enjoyed a period of social and cultural changes. See N. Crafts – G. Toniolo, “Economic growth in Europe since 1945”, Cambridge University Press, 1996. [↑](#footnote-ref-2)
3. In England the first vegetarian movement was born around the second half of the XIX century, in France at the end of the same century and in Italy only at the middle of the XX century. The first Vegan Society was born in England in 1944. [↑](#footnote-ref-3)
4. Just think about dietary religious restrictions. A number of religions have dietary guidelines that are juridically protected in respect of the freedom of religion, as a constitutionally right. E.i. Halal or Kosher slaughter. [↑](#footnote-ref-4)
5. The European Court of Human Rights has judged in favour of a polish buddhist inmates, that requested only vegetarian food during his detention. The ECJ ruled that the polish prison is condemned to pay damages for € 30.000,00 to the prisoner since the man was given only meat based dishes and in so doing they violated his religious freedom. In addition, the polish authorities punished the prisoner with 14 days isolation period because they identified his refusal of food as an action of rebellion. ECJ n. 18429/06 (Jakobski c. Poland). [↑](#footnote-ref-5)
6. Eurispes Italia is a research institute of political, economic and social studies. [↑](#footnote-ref-6)
7. The number of vegans in the UK has risen by more than 360 per cent in the last 10 years according to data reported by The Vegan Society and Vegan Life Magazine. [↑](#footnote-ref-7)
8. According to some dietician, raising a vegan child can lead to nutrient deficiencies, inadeguate energy intake and faltering growth. The first years of life iso ne of the most important development periods for a child and nutritional deficiencies are common for vegans, particularly iron, B12, iodine.

   Other nutritional experts say that a vegan diet does not represent a risk for children otherwise is an opportunity for families to teach children about nutriotion and healthy eating principles from an early age. It can be nutriotionally complete as long as careful planning is carried out. See the complete article “Benefits and risk of raising a vegan child , according to experts”, in [www.independent.co.uk](http://www.independent.co.uk). [↑](#footnote-ref-8)
9. See www.ecodibergamo.it [↑](#footnote-ref-9)
10. Court of Rome, civ. sec., 19 ottobre 2016. [↑](#footnote-ref-10)
11. Even if in Italy the best interest of the minor is used by the courts as a general principle, scholars and judges tend to recognize the capability of the minor, preadolescent and teenager, to express their consent so far as there is discernment. In this way they interpret the best interest of the minor in a way very similar to the “Gillick case”. So the minor, although he has not the ability to act legally speaking, can request intervention by the State that increase his phisical welfare, even without the consent of the parents or the legal guardians. See AA.VV. “Prima dei 18 anni. L’autonomia decisionale del minore in ambito sanitario”, FrancoAngeli, 2010. [↑](#footnote-ref-11)
12. Court of Monza, civ. sec., 15 luglio 2016 n. 10984. [↑](#footnote-ref-12)
13. An Italian politician has recently proposed a law against parents, that should face a prison sentence, who force vegan diets on children because it can make them malnourished. [↑](#footnote-ref-13)
14. A one-year old boy in Milan who was raised on a strict vegan diet has been removed from his parents custody after he was found to weigh as much as a three month-old baby. Following the hospital visit, prosecutors opened an inquiry into the case and ordered the boy be removed from his parents. A children’s court will now decide whether the boy should now be looked after by his grandaparents. [↑](#footnote-ref-14)
15. Gillick competency guidelines refer to a famous legal case which looked specifically at whether doctors should be able to give contraceptive advice or treatment to under 16 years-olds without parental consent. The case went to the High Court in 1984 where Mr Justice Woolf dismissed Mrs Gillick’s claims. The Court of Appeal reserved this decision and in 1985 it went to the House of Lords that still ruled in favour of the original judgement. For the complete case-law read Gillick v. West norfolk and wisbech Area Health Authority and Department of health and Social Security (1984) Q.B. 581. and Gillick v. West Norfolk and Wisbech AHA (1985) UKHL 7. [↑](#footnote-ref-15)