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THE ROLE OF 'HAPPINESS' IN JUDICIAL REASONING IN FAMILY LAW CASES

ABSTRACT: This article introduces the role of 'happiness' in judicial reasoning within family law cases across European jurisdictions, with a particular focus on Italy, France, and England. It highlights how, traditionally indifferent or hostile towards emotions, the legal system has evolved to integrate emotions like happiness into legal reasoning, particularly in family law. The study underscores the increasing recognition of diverse family structures and how the law now often accounts for emotional well-being in decisions involving marriage, parenthood, and child custody.

Judicial decisions, although rarely explicit in recognizing happiness as a legal concept, frequently use it as an implicit factor in determining outcomes related to children's best interests, the welfare of families, and individual emotional fulfilment. The analysis also delves into how courts balance the pursuit of happiness with legal obligations, using happiness both as a persuasive tool and, occasionally, as a rational justification for legal conclusions. The study examines how courts in different jurisdictions invoke happiness to maintain consistency, protect emotional well-being, and confer legitimacy upon family law norms, offering insights into how emotions shape judicial reasoning in family disputes.

KEYWORDS: happiness, judicial legal reasoning, legal argumentation

I. INTRODUCTION

If we examine family law in Europe from a diachronic and comparative perspective, a clear shift in the law's approach to emotions becomes evident. With the significant constitutional and family law reforms following the post-war period, the law transitioned from a position of indifference, and at times even hostility, towards emotions—once deemed legally irrelevant and insignificant—to one where the individual, as the principal actor in their own personal development and fulfilment, is placed at the centre.

In this evolving context, we witness the legal recognition of *de facto* couples, the gradual—albeit incomplete—equalisation of homosexual and

heterosexual relationships, the removal of distinctions between children born inside and outside marriage, greater openness towards adoption or foster care by single individuals, and the recognition of a child's right to maintain stable and lasting relationships with grandparents or a parent's former partner with whom they have developed strong emotional bonds. These developments underscore the law's increasing acknowledgement and acceptance of diverse family structures.

Family law is no longer seen as an 'instrument for the authoritative control of love,'¹ confining it to relational models dictated by a public law framework. Instead, from the standpoint of the individual's free development of personality—now elevated to a fundamental right—it increasingly promotes and safeguards the individual's right to self-determination in shaping their own life, body, and, notably, emotional relationships.

The consideration of emotions in legal doctrine is not a recent development. Scholars have long explored how the legal system regulates 'emotional facts'² and how judicial assessments of the parties' emotions—particularly in family law disputes—can directly or indirectly shape the interpretation of legal provisions, ultimately influencing judicial decisions in specific cases. In many legal systems, emotions have traditionally been viewed as potentially disruptive, chaotic, and in need of control. As a result, when legal scholars discuss the role of emotions in legal processes, they often stress the importance of containing and regulating these emotions to preserve order and rationality in judicial proceedings. This issue has also been extensively examined in other jurisdictions, particularly from sociological and interdisciplinary perspectives.

North American and Canadian scholars, especially in the emerging field of 'law and emotions', have made substantial contributions.³ Their research often focuses on areas like tort law and family law, where emotions have a more explicit role. However, a key area of focus remains criminal law, where

¹ Stefano Rodotà, 'Diritto d'amore' in *Politica del diritto* 2014 (3), 335-358, at 335, 336.

² Angelo Falzea, 'Fatto di sentimento', in Angelo Falzea, *Voci di teoria generale del diritto* (Giuffrè, Milano 1985).

³ William J. Brennan Jr., 'Reason, Passion, and the Progress of the Law', 10 *Cardozo L. Rev.* 3 (1988); Reva B. Siegel, 'The Rule of Love: Wife Beating as Prerogative and Privacy', 105 *Yale L.J.* 2117 (1996); Kathryn Abrams and Hila Keren, 'Who's Afraid of Law and the Emotions', 94 *Minn L. Rev.* 1997 (2010); Rachel Moran, 'Law and Emotion, Love and Hate', 11 *J Contemp. Legal Issues* 747 (2001); Clare Huntington, 'Repairing Family Law', 57 *Duke L.J.* 1245 (2008); Terry Maroney, 'Law and Emotion: a proposed taxonomy of an emerging field', 30 *Law & Hum. Behav.* 119 (2006); Terry Maroney, 'Emotional Common Sense as Constitutional Law', 62 *Vand. L. Rev.* 849 (2009); Gerald Clore, 'The Law as Emotion Regulation', 16 *Va. J. Soc. Pol'y & L.* 334 (2009); Kathryn Abrams, 'Barriers and Boundaries: Exploring Emotion in the Law of the Family', 16 *Va. J. Soc. Policy & L.* 301 (2009); Susan A. Bandes (ed.), *The Passions of Law*, (New York, 1999); Terry A. Maroney, 'A Field Evolves: Introduction to the Special Section on Law and Emotion', *Emotion Review*, 1 (2016) 3.

emotions such as disgust, remorse, revenge, and frustration are closely scrutinised and managed in relation to sentencing and judicial decisions, reflecting the growing recognition of the complex interplay between emotions and legal processes.

At first glance, associating the concept of happiness with the law may appear oxymoronic.⁴ Numerous contrasts complicate this relationship: happiness, as an emotion, belongs to the domain of spontaneity and personal emotional experience, while legal constructs are (or aspire to be) the epitome of rationality. Happiness is often transient and unpredictable, whereas the law is premeditated, designed to regulate future conduct based on present principles. Moreover, happiness fluctuates in intensity and presence over time, while the law is intended to persist and offer stability.

In light of these apparent contradictions between the spontaneous nature of happiness and the structured rationality of law, a compelling need arises for a more in-depth investigation into the role of happiness in the legal domain, particularly within family law. More than any other legal field, family law directly engages with personal relationships, emotions, and the well-being of individuals—especially in cases concerning marriage, parenthood, and child custody.

The intimate connection between emotional well-being and legal outcomes in this field underscores the importance of examining how judges incorporate, interpret, and reference happiness in their rulings. Judicial decisions, which often shape the practical application of legal principles, reveal that the concept of happiness, although rarely systematised or explicitly referred to in legislation, plays an implicit role in determining outcomes related to the best interests of the child, the welfare of the family unit, and the fulfilment of individual family members.

Therefore, it is essential to explore how courts balance the pursuit of happiness with legal obligations, and to what extent happiness serves as a persuasive or illustrative argument, or even as a rational justificatory element in judicial reasoning.

II. EXPLORING JUDICIAL PERSPECTIVES ON HAPPINESS: A PRELIMINARY ASSESSMENT

From a comparative analysis of Italian, English, and French case law, it is

⁴ Salvatore Casabona, 'La felicità nelle parole dei giudici', in Giuseppina Tumminelli (ed.), *Esplorare la felicità*, (Carocci, Rome, 2024), 75.

not uncommon to encounter merely 'narrative' references to happiness in judicial decisions. Often, happiness is invoked in separation and divorce proceedings to briefly describe the shift in emotional dynamics—from happiness to unhappiness—due to factors such as one spouse's indifference toward the other,⁵ the husband's irritable or violent behavior,⁶ marital infidelity,⁷ or, more generally, the spouses' incompatibility of character.⁸

At times, happiness is associated with specific, significant events, such as the birth of a child ('le bonheur de la naissance'). Alternatively, the term 'happy' appears in the context of a child's emotional state when spending time with one or both parents, as evidenced by statements like, 'Margot's smile speaks volumes about her happiness when with her father', underscoring the child's contentment as a key factor in custody determinations.

Before delving into the core of the issue, certain preliminary considerations must be addressed.

1. Unlike the American legal system, where the right to pursue happiness is explicitly mentioned in the Constitution,⁹ leading to significant jurisprudential developments, the concept of happiness does not feature in the legal systems under consideration (Italy, France, and England). In these jurisdictions, happiness is not referenced in any statutory provision; it is rarely a subject of doctrinal analysis, and its occasional invocation in case law is neither systematic nor routine. Instead, it appears sporadic, fragmented, and sometimes even incidental. For this reason, it is of particular interest to explore the judges' logical and argumentative reasoning, which reveals specific common trends regarding the judicial use of happiness.

2. Emotions, including happiness, may be understood not merely as

⁵ Tribunal of Trani, (Wolters Kluwer, 22 March 2007); Tribunal of Torre Annunziata, (Wolters Kluwer, 24 September 2013), <www.onegale.wolterskluwer.it> accessed 12 October 2024.

⁶ Tribunal of Benevento, (Wolters Kluwer, 10 February 2009); Tribunal of Messina, (Wolters Kluwer, 31 October 2023).

⁷ Tribunale of Chieti, (Wolters Kluwer, 20 May 2010); Tribunale of Larino, 26 April 2017, n. 256, <www.onegale.wolterskluwer.it> accessed 12 October 2024.

⁸ Tribunal of Castrovillari, 27 luglio 2018, <www.onegale.wolterskluwer.it> accessed 12 October 2024.; Tribunal of Firenze, 25 September 2000, <www.onegale.wolterskluwer.it> accessed 12 October 2024.; Tribunal of Catania, 5 October 2006, n. 3360, <www.onegale.wolterskluwer.it> accessed 12 October 2024.

⁹ 'The pursuit of happiness' appears in Art. 1 of the Virginia Declaration of Rights and Art. 2 of the Declaration of Independence dating back to 1776. See also Kurt Bayertz and Thomas Gutmann, 'Happiness and Law', 25 *Ratio Juris* 236 (2012); William P. Alford, 'Exporting the Pursuit of Happiness', 113 *Harv. L. Rev.* 1677 (2000); Carli N. Conklin, 'The Origins of the Pursuit of Happiness', 7 *Wash. U. Jurisprudence Rev.* 195 (2015).

personal experiences but as practices and performances shaped by social conditioning and cultural integration. In this framework, terms such as ‘emotional communities’,¹⁰ ‘emotional regimes’¹¹, and ‘shared modes of feeling’¹² have been developed to describe the collective emotional landscape of a society. These concepts encompass the notion of ‘affective norms’ or social customs that govern emotional expression. As a result, an individual’s emotional life—and its outward manifestations—are deeply influenced by the collective emotional climate and by societal evaluations of appropriate emotional responses to significant life events such as birth, death, marriage, and parenthood, both outside and within legal contexts.

This perspective aligns with the idea of an ‘emotional common sense’¹³ that permeates not only everyday life but also legal systems. This unwritten knowledge shapes preconceptions about what emotions should be felt and expressed and even determines which emotions are deemed valid or relevant, both outside and within the legal framework. As such, legal interpretation frequently draws upon these instinctual, informal, and implicit social standards of behavior, even in cases where the legislator has not expressly referenced them. In this way, legal reasoning and decision-making are often implicitly guided by societal expectations regarding emotions, particularly concerning family life and personal relationships, whether in judicial settings or broader social interactions.

3. This essay focuses primarily on family relationships and their legal consideration. As aptly highlighted, the family is ultimately identified by the emotional bonds between partners, parents and children, and among close relatives, regardless of any formalisation of these relationships.¹⁴ Moreover, the social value of emotional ties emerges as a common element across the various family models, which, despite their plurality and diversity, all deserve constitutional protection since family affections respond to a fundamental human need and thus constitute a fundamental personal right.

¹⁰ Barbara H. Rosenwein, ‘Worrying about emotions in history’, in *Am. Hist. Rev.* 107, 3 (2002) 821; Barbara H. Rosenwein, *Emotional communities in the Early Middle Ages* (Cornell University Press Ithaca, 2006).

¹¹ William M. Reddy, *The navigation of feeling: a framework for the history of the emotions*, (Cambridge University Press 2001) 129.

¹² Angelo Falzea, ‘Fatto di sentimento’, in Angelo Falzea, *Voci di teoria generale del diritto* (Giuffrè, Milano 1985) 556.

¹³ Susan A. Brandes (ed.), *The Passions of Law*, New York University Press, 1999.

¹⁴ Cesare M. Bianca, ‘Famiglia è la famiglia fondata sull’affetto coniugale e sull’affetto filiale’, in Ugo Salanitro (ed.), *Il sistema del diritto di famiglia dopo la stagione delle riforme*, (Pisa, 2019) 123. See also Nicolò Lipari, ‘Famiglia (evoluzione dei modelli sociali e legali)’, in *Enc. Dir* (Milano, 2022) 425.

That being said, the present study seeks to explore, from a comparative perspective, whether, how, and to what extent judicial references to the concept of happiness bear interpretative significance. In particular, it delves into the implications of happiness within several contexts: marital happiness, the happiness of the child, the happiness of the family environment, and the happiness of individual family members.

In this analysis, attention will be given to the use of the concept of happiness as a persuasive or explanatory-illustrative argument, particularly concerning the general context in which a given dispute takes place. Additionally, the way in which happiness, albeit only occasionally, may serve as a rational justificatory argument shaping the reasoning behind certain judicial decisions, will be examined. This dual function—persuasive or explanatory on the one hand and rational or justificatory on the other—helps uncover happiness's varying weight and role in the courts' reasoning across different legal systems.

III. THE COUPLES' HAPPINESS AND ITS JUDICIAL ARGUMENTATIVE USE

The concept of marital happiness is not explicitly articulated in family law provisions and is rarely invoked in judicial reasoning. In Italian jurisprudence, for instance, courts tend to reference the emotional and sentimental dimension of the marital relationship through the summarising term '*affectio coniugalis*', which refers to the 'spiritual and emotional communion between spouses'.¹⁵

Nevertheless, in judicial interpretations the couple's happiness is often treated as an inherent aspect of their relationship, viewed within the framework of societal norms, where a married couple is presumed to experience happiness.

This presumption, which exists outside the strict legal realm, influences judicial reasoning by shaping an implicit understanding of married life. In some cases, the concept of happiness plays a crucial role in explaining the context in which a specific marital dispute arises. In others, the judge refers to the presence or absence of happiness within the couple to influence the interpretative process substantively, thereby

¹⁵ Tribunal of Trani, 9 October 2008, n. 1053, <www.onelegale.wolterskluwer.it>accessed 12 October 2024.; Tribunal of Pisa 2 January 2023, n. 3, <www.onelegale.wolterskluwer.it>accessed 12 October 2024.; Supreme Court of Cassation, 10 January 2018, n. 402, <www.onelegale.wolterskluwer.it>accessed 12 October 2024.; Supreme Court of Cassation, 26 March 2015, n. 6164, <www.onelegale.wolterskluwer.it>accessed 12 October 2024.

impacting the legal outcome of the case.

1. In a purely explanatory perspective of the context in which a marital dispute arises, the judicial decision in a marital separation case is instructive. Here, the judge dismisses one spouse's allegations concerning the other's responsibility for the breakdown of the marriage, explaining:

The cause of the marital crisis lies entirely in this; a crisis that conforms perfectly to the pattern found in most couples' crises [...] fundamentally characterized by a shared inability [...] to awaken, after a more or less prolonged dream, to that vale of tears which, without exception, spares no one—not kings nor popes—and is life itself, composed of renunciations, unfulfilled expectations, illness, sometimes tragedy, and the passing of years—a tragedy in itself marked by physical decline, whether or not mitigated by facelifts, and, ultimately, death. Some couples succeed in adapting to the evolving nature of daily life, perhaps discovering new stimuli and sources of happiness, while others lack this capacity and progressively become unhappy, attributing the failure to the relationship, if not to each other [...].¹⁶

Here, the concept of happiness and the couple's (in)ability to renew it daily is used by the judge to illustrate a common experience in marital life, providing a clearer explanation of the context within which a particular legal case unfolds and drawing the reader into the narrative of the marital dispute. Another example is a ruling addressing the nullity of a marriage due to the wife's incurable functional impotence, attributed to her paranoid condition, which led to a total aversion to sexual relations. Following a medical examination that ruled out any physical impediment, the judge remarked that 'at first glance, one would expect a healthy individual, capable of enjoying marital happiness and of bringing happiness to their spouse'.¹⁷ The reference to happiness in this context does not appear to serve a legal purpose, but rather seeks to illustrate what is typical in healthy marital relationships, where sexual intimacy is a source of mutual happiness and fulfilment.

In the same way, in an action for paternity brought by the mother against the alleged father, the court, considering the man's behaviour—particularly the fact that he accompanied the expectant mother to the hospital for essential prenatal care—stated that 'the happiness with which the parties left the hospital after the reassuring test results' could only be

¹⁶ Court of Appeal Florence, 18 November 2004, www.onelegale.wolterskluwer.it accessed 12 October 2024.

¹⁷ Tribunal of Napoli, 31 October 1904, in *Il Foro Italiano*, 1905, 30 (1905), 32.

understood as the man's acknowledgment of his paternity.¹⁸

Arguments aimed at persuasion rather than strict legal conviction can also be observed in other areas. For example, in a case concerning compensation for wrongful birth due to a failure to diagnose severe foetal malformation, the judge ruled that the mother had been deprived of adequate information necessary to make an informed decision about a potential abortion. This case raised legally complex and ethically sensitive issues. What stands out in this case is the judge's use of persuasive reasoning, when he remarked, 'very few parents are willing to give birth to a child who runs a serious risk of severe mental retardation, condemned to an unhappy and painful life'.¹⁹

The appeal to sentiment, in this instance, reinforces the alignment of the judicial decision with common societal values, particularly the deep-rooted desire of parents for their children's happiness—a desire that is gravely and irreparably compromised in cases of severe congenital disability.

2. In addition to the judge's use of persuasive argumentative strategies to clarify the context in which the facts of the case arise, the concept of happiness is sometimes invoked as a rational basis for the decision. The idea of happiness within a marriage—its loss or deterioration due to the actions of one spouse—can occasionally become a legitimate legal criterion from which specific legal consequences are drawn.

According to well-established Italian case law, a violation of marital duties—such as the duty of fidelity or cohabitation—can result in a judicial separation with fault attribution only if it is proven that the violation was the direct cause of the irreparable breakdown of the marriage. Therefore, if it is demonstrated that 'the marriage was never happy' and that a marital crisis predated the husband's infidelity²⁰ or the wife's abandonment of the marital home,²¹ the judge must reject the request for fault-based separation due to the breach of the duty of fidelity.

In such cases, the pre-existing state of unhappiness within the family unit, which precedes the violation of marital duties, deprives such a violation of the sanction consisting of a separation with attribution of

¹⁸ Tribunal of Minorenni Palermo, Sent., 5 July 2011, n. 143, <www.onelegale.wolterskluwer.it> accessed 12 October 2024.

¹⁹ Court of Appeal Rome, 10 July 2012, n. 3634, <www.onelegale.wolterskluwer.it> accessed 12 October 2024.

²⁰ Tribunal of Ravenna, 3 August 2023, <www.onelegale.wolterskluwer.it> accessed 12 October 2024.

²¹ Court of Appeal Campobasso, 11 November 2015, <www.onelegale.wolterskluwer.it> accessed 12 October 2024.

fault.

Similarly, in English case law, when assessing whether one spouse's adultery has caused an irretrievable breakdown of the marriage,²² the court hearing the divorce petition must determine whether 'the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent'.²³ To do so, judges must consider the unique circumstances of each family and couple: 'if the marriage is unhappy, a particular piece of "conduct" may have more impact and be less "reasonable" than exactly the same conduct if the marriage is happy. ... what may be regarded as trivial disagreements in a happy marriage could be salt in the wound in an unhappy marriage.'²⁴

This context-dependent assessment emphasises the nuanced role that happiness (or lack thereof) plays in judicial evaluations of marital breakdowns.

In another Italian case regarding damages for the violation of marital fidelity, the courts offered contrasting interpretations of happiness, leading to divergent legal outcomes.

The Court of Appeal, for instance, viewed the unfaithful spouse's 'desire for freedom and happiness', which resulted in the family's dissolution, as a fundamental aspect of their personal and existential rights. Consequently, while the court assigned fault for the separation to the unfaithful spouse, it denied the claim for damages.²⁵

In contrast, the Supreme Court of Cassation overturned the Court of Appeal's decision, awarding damages for the violation of the duty of marital fidelity. The Supreme Court recognised the right to compensation for the unlawful harm caused by the husband's actions, particularly the detrimental effects on the wife's health, privacy, and reputation. By broadening approach to compensability, the Supreme Court contrasted two different notions of happiness: the husband's pursuit of 'new happiness' through his extramarital affair and the wife's 'loss of happiness' due to the infringement of her rights. Ultimately, the Supreme Court deemed it legally appropriate to protect the wife's essential life interests—such as her health, privacy, and reputation—by awarding damages for the

²² Matrimonial Causes Act 1973, § 1(2), now abrogated.

²³ Matrimonial Causes Act 1973, § 1(2)(b), now abrogated.

²⁴ Owens v Owens [2017] EWCA Civ 182 (24 March 2017), par. 37, <www.bailii.org> accessed 12 October 2024; VW v BH (Contested Divorce Proceedings) [2018] EWFC B68 (05 November 2018). p. 28. <www.bailii.org> accessed 12 October 2024.

²⁵ Court of Appeal Ancona, 16 April 2010.

breach of marital fidelity.²⁶

In French jurisprudence, an interesting approach to the concept of happiness emerges in the evidentiary context. In certain cases, references to happiness, whether explicitly stated or inferred from letters or messages, have been evaluated as probative evidence to challenge the credibility of one party's version of events.

For instance, in a case decided by the Court of Appeal of Limoges,²⁷ a divorce ruling initially placed full blame on the husband for his violent behaviour toward his wife. The husband's defence relied on justifying his irritability by attributing it to his wife's pathological jealousy. However, the Court of Appeal rejected this justification, pointing out that there was no evidence of discord in the couple. The judges cited the husband's own letter to his wife, written shortly after she filed a complaint for violence, in which he apologised and expressed 'gratitude for the happiness and joy they had shared over the years'.

Conversely, in other legal cases, references to happiness found in letters or declarations are not considered sufficient to substantiate the validity of specific claims. For example, the Court of Cassation ruled that the Court of Appeal of Basse-Terre had improperly interpreted a letter from a man who claimed to have experienced 'five years of happiness with her'²⁸ as an implicit and unequivocal admission of paternity.

IV. FELICITÀ, HAPPINESS AND BONHEUR OF THE CHILDREN AS PART OF THEIR BEST INTEREST

Similarly to how the courts approach the marital relationship, judges tend to view the child's happiness as an emotional condition that should characterise their daily life. However, the only legal reference to the happiness of minors is found in the Convention on the Rights of the Child,²⁹ which addresses the family context where the child has the right to live their daily life. In contrast, Italian, French, and English laws do not refer to a child's happiness.

²⁶ Supreme Court of Cassation, 1 June 2012, n. 8862, <www.onelegale.wolterskluwer.it> accessed 12 October 2024.

²⁷ Court of Appeal Limoges, 6 January 2014, n. 13/00024, <www.legifrance.gouv.fr> accessed 12 October 2024.

²⁸ Court of Cassation, 12 February 1968, <www.legifrance.gouv.fr> accessed 12 October 2024.

²⁹ Convention on the Rights of the Child (New York 20 November 1989), Preamble: 'Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding'

Although there is no statutory reference to happiness, the concept is considered by courts when evaluating the child's best interests, particularly when assessing their psychological and physical well-being.

In this regard, English case law—particularly in child custody, placement, and adoption—emphasises the importance of a 'happy environment where the child will be cherished and have her needs met'.³⁰ For instance, in a case where biological parents contested the suitability of the foster family to care for their child, the court ruled that, 'the blood relation does not outweigh the considerations, such as the great distress that C would be bound to feel if he were removed from what is agreed as a settled and happy environment that he knows as his family'.³¹ A similar ruling was made to end the biological parents' visits to the foster family, as 'continuing contact would be stressful and unsettling generally and would undermine the efforts of the new family to provide a secure and happy environment'.³²

Attention to the child's environment is also evident in Italian case law, which sometimes considers the child's happiness and well-being as significant factors when determining placement with one of the separated parents. For instance, it was stated in one case that 'the father's home is certainly a positive and suitable environment for the healthy development of the child: the child, at the father's house, is content and cheerful and interacts well with both the paternal grandmother and his cousins'.³³ In another decision, where the father challenged the suitability of the separated mother's residence for raising their daughter, the court rejected the claim, instead concluding that the 'child is happy and content, living in an environment suited to her needs and leading a regular life'.³⁴

An interesting case concerning the relocation of a child to South Africa with the mother after separation connects the child's happiness to that of the mother. The court stated that 'in my judgment, the fortunes of the child and thus his happiness are closely in line with those of his mother, and it is not supportive of his welfare for him to be living in a home where his mother feels, and in fact would be, trapped and at a

³⁰ *MJC (adoption)*, Re [2015] EWFC B121 (24 August 2015), < www.bailii.org > accessed 12 October 2024.

³¹ *Aberdeen City Council v. JM AND AL* [2010] ScotSC 4 (23 September 2010), < www.bailii.org > accessed 12 October 2024.

³² *Dundee City Council v. McL* [2005] ScotSC 34 (16 May 2005), < www.bailii.org > accessed 12 October 2024.

³³ Court of Appeal Milan, Sez. V, Sent., 12/02/2021, n. 475, <www.onelegale.wolterskluwer.it> accessed 12 October 2024.

³⁴ Trib. Minorenni Bologna, 4 January 2018, <www.onelegale.wolterskluwer.it> accessed 12 October 2024.

disadvantage should she remain in the United Kingdom'.³⁵

In contrast, the Court of Appeal of Paris reached an opposite conclusion regarding the relationship between a parent's happiness and the child's welfare. The court stated that professional success and development plans pursued by the mother do not necessarily align with the child's best interests, particularly when the minor's interests appear only indirectly, diluted by the mother's needs and aspirations: 'le bonheur d'un des parents ne fait pas forcément tout l'intérêt des enfants' (the happiness of one parent does not necessarily constitute the entirety of the child's best interests).³⁶

In French case law, the concept of a child's happiness ('bonheur de l'enfant') sometimes plays a pivotal role in determining parental suitability for custody in separation disputes. Courts occasionally evaluate the parent's ability to ensure the child's well-being and emotional fulfilment as a key factor in such decisions.

In certain instances, joint custody is awarded because 'the father's qualities and the child's evident happiness in his presence are supported by submitted statements', while simultaneously highlighting 'the child's happiness with her mother, who provides her with a sense of security'.³⁷ This suggests that courts recognise both parents as having equal caregiving abilities, and stress that they 'must jointly prioritise the child's happiness and well-being'.³⁸

Conversely, in other cases, exclusive custody may be granted to one parent when the court deems the other less attuned to the child's needs. For example, one ruling emphasised that, 'relatives describe Mr. M. as a father whose primary concern is his daughter's happiness and stability', while portraying the mother as 'ambivalent and unconcerned with the child's best interests or emotional well-being'.³⁹ Judges have further reinforced their decisions by pointing to evidence such as the father's 'love and tenderness toward his daughter, with the child visibly happy to spend two full days with him',⁴⁰ or characterising him as 'a loving and dedicated

³⁵ MM (A Child: relocation) [2014] EWFC B176 (27 October 2014), par. 76, <www.bailii.org> accessed 12 October 2024. See also F & H (Children) [2007] EWCA Civ 692 (07 June 2007), par. 11: 'An unhappy mother often means an unhappy child'.

³⁶ Court of Appeal Paris, 2 December 2009, n. 09/10149, <www.dalloz.fr> accessed 12 October 2024.

³⁷ Court of Appeal Paris, 4 February 2014, n. 14053, <www.dalloz.fr> accessed 12 October 2024.

³⁸ Court of Appeal Aix-en-Provence, 20 May 2014, n. 13/16162, <www.dalloz.fr> accessed 12 October 2024.

³⁹ Court of Appeal Rennes, 7 January 2008, n. 06/08103, <www.dalloz.fr> accessed 12 October 2024.

⁴⁰ Court of Appeal Dijon, 1 August 2014, n. 14/00971, <www.dalloz.fr> accessed 12 October 2024.

parent committed to his children's happiness'.⁴¹

In a decision by the Rennes Court of Appeal,⁴² the court partially modified a prior ruling concerning custody and financial responsibilities. While primary residence was awarded to the mother, citing the child's need for stability due to her young age, the father was granted visitation rights. However, the court admonished the father for remaining focused on the separation, stressing that, 'it is crucial to set aside personal grievances and prioritise the child's happiness and best interests above all else'.

By weaving together these observations, French case law demonstrates that the child's happiness (his/her 'bien être, de l'équilibre et du bonheur')⁴³ is not merely an abstract concept but an integral consideration in decisions regarding custody and parental responsibilities. The courts seek to balance the emotional needs of the child with the practical realities of parental care, always prioritising the best interests of the child above other considerations.

V. THE JUDICIAL USE OF THE 'HAPPINESS ARGUMENT' IN ITALIAN CASE LAW: BETWEEN LEGAL RELEVANCE AND IRRELEVANCE

Having examined the role of happiness in the couple's relationship and in the context of the child's best interests, it is worth focusing on a relevant aspect that emerges in Italian jurisprudence, consisting of a specific argumentative use in judicial proceedings.

Judges sometimes deny legal relevance to the concept of happiness, a decision that can significantly limit the legal recognition of the parties' claims. On other occasions, however, the attribution of legal relevance to the concept of happiness is employed either to expand or, conversely, to restrict the scope of certain rights, thereby influencing the outcome of the case.

Let us proceed systematically.

A. The exclusion of the legal relevance of happiness as a means to restrict the parties' claims

As previously mentioned, certain judicial rulings reveal logical-

⁴¹ Court of Appeal Chambéry, 16 December 2014, n. 13/02342, <www.dalloz.fr> accessed 12 October 2024.

⁴² Court of Appeal Rennes, 16 April 2013, n. 12/01601, <www.legifrance.gov.fr> accessed 12 October 2024.

⁴³ Court of Appeal Basse-Terre, 14 June 2010, n. 09/00880, <www.dalloz.fr> accessed 12 October 2024.

argumentative paths in which the legal irrelevance of the concept of happiness is expressly affirmed. For example, it is stated that happiness 'is not found in our Constitution or codes' ⁴⁴ or that the right to happiness 'is neither recognisable nor protectable' ⁴⁵ within the Italian legal system. This denial of the legal relevance of happiness serves as the logical premise in judicial reasoning, allowing the judge to justify the rejection of specific claims seeking the legal recognition of certain rights.

For example, in the case of non-pecuniary damages, which arise from harm to personal interests without economic relevance, judicial reasoning often reflects a cautious approach toward expanding compensability.

The courts typically apply a restrictive framework, limiting compensation for non-pecuniary damage to the infringement of inviolable rights rather than any interest merely related to a constitutionally protected right. Consequently, claims are dismissed when they concern inconveniences, disturbances, or discomforts suffered by an individual based on the misconception that the constitutional charter guarantees a right not to experience even the slightest emotional disturbance, which would effectively amount to a 'right to happiness'.⁴⁶ In this context, courts have emphasised that damages should not be trivial or arise from 'the violation of entirely fictitious rights, such as a supposed right to quality of life or happiness'.⁴⁷

In emphasising the necessity of clearly defining the boundaries of compensable 'existential damage' (i.e., the harm that compels an individual to make life choices they would not have otherwise made, resulting in a deterioration of their quality of life and personal habits),⁴⁸ it has been observed that excessive vagueness could lead to the untenable conclusion that any subjective desires of the injured party might warrant compensation. For instance, trivial activities such as being unable to perform somersaults, pick flowers, or climb trees could be considered

⁴⁴ Court of Appeal of Bari, 25 June 2013, <www.onegale.wolterskluwer.it> accessed 12 October 2024.

⁴⁵ Tribunal of Pescara, 24 May 2018, n. 764, <www.onegale.wolterskluwer.it> accessed 12 October 2024.

⁴⁶ Tribunal of Catania, 15 April 2008, <www.onegale.wolterskluwer.it> accessed 12 October 2024.

⁴⁷ Supreme Court of Cassation, 22 January 2024 n. 2203, <www.onegale.wolterskluwer.it>; Supreme Court of Cassation, 11 November 2008, n. 26972, <www.onegale.wolterskluwer.it> accessed 12 October 2024.; Supreme Court of Cassation 25 September 2009, n. 20684; Supreme Court of Cassation, 24 September 2013, n. 21865, <www.onegale.wolterskluwer.it> accessed 12 October 2024.; Supreme Court of Cassation, 26 October 2017, n. 25420, <www.onegale.wolterskluwer.it>; Supreme Court of Cassation, 10 May 2018, n. 11269, <www.onegale.wolterskluwer.it> accessed 12 October 2024.; Supreme Court of Cassation 11 November 2019, n. 28985, <www.onegale.wolterskluwer.it> accessed 12 October 2024.; Supreme Court of Cassation, 24 February 2020, n. 4886, <www.onegale.wolterskluwer.it> accessed 12 October 2024.

⁴⁸ Francesco Gazzoni, 'Alla ricerca della felicità perduta: psicofavola fantagiuridica sullo psicodanno psicoesistenziale', (2000) 11 *Rivista del Diritto Commerciale* 675.

compensable under such an indeterminate framework. This interpretation would render existential damage less a reflection of an objective legal necessity and ‘more an expression of an abstract desire for happiness, which civil liability law is not intended to guarantee.’⁴⁹

In case law concerning the recognition of the right to parenthood for homosexual couples who have undergone heterologous artificial insemination abroad, it is not uncommon for the parties to invoke the right to happiness as a basis for their claim to ‘procreative liberty’. From their perspective, this is viewed as an inviolable and universal human right to become a parent, irrespective of sexual orientation.⁵⁰

In a notable case,⁵¹ the judge reaffirmed that such matters should be addressed by Parliament through legislative action rather than by individual judicial rulings. The judge also urged the legislature to give concrete effect to the principle of protecting private and family life, as outlined in Article 8 of the European Convention on Human Rights. However, this should be done solely from the perspective of Article 3 of the Italian Constitution, which promotes the full development of the human person without distinctions based on sex, ‘without adopting a North American-style right to happiness (as in the 1st Amendment of the U.S. Constitution)’.

B. Attribution of legal relevance to happiness in justifying the restriction or expansion of a right's scope

In contrast to the previously mentioned cases, some judicial decisions do attribute a certain degree of legal relevance to happiness. In such instances, happiness—or, conversely, sadness—may be cited as a factor justifying the restriction of certain rights when their exercise compromises, or risks compromising, an individual's well-being. In other cases, happiness is invoked to expand existing rights to compensate for the harm caused by the loss of happiness due to the actions of third parties.

A clear example arises in custody disputes involving minor children in cases of parental separation. While the legal principle generally favours joint custody, exceptions are made when circumstances justify granting exclusive custody to one parent or necessitate intervention by social

⁴⁹ Tribunal of Brescia, 13 giugno 2003, <www.onelegale.wolterskluwer.it> accessed 12 October 2024.

⁵⁰ See George P. II Smith, ‘Pursuing a Right to Genetic Happiness’, 22 J.L. Sociology 1 (2022).

⁵¹ Tribunal of Venice, 3 April 2019, <www.onelegale.wolterskluwer.it> accessed 12 October 2024.

services.⁵²

In cases of severe conflict between parents, where it is found that the child is experiencing significant distress, marked by 'sadness and confusion' due to the conflict, the judge may order the child to be placed under the care of social services. This decision restricts the parents' right to joint or exclusive custody to safeguard the child's right to grow up in an environment of happiness or, at the very least, serenity.⁵³

In cases involving a minor's right to be informed and to express their views in proceedings affecting them, as outlined in Article 315 bis of the Civil Code, it is established that the child's hearing may be waived if it is deemed contrary to the minor's best interests or if specific circumstances advise against it. These circumstances may include protecting the child from potential emotional harm caused by involvement in parental disputes or the distress of recounting events that would cause them significant pain and sadness.⁵⁴ Therefore, the judge can limit the child's right to be heard in such proceedings if there is a risk of causing emotional distress or sadness.

Conversely, the concept of happiness has been used to expand the scope of certain existing rights. In earlier case law—now largely superseded by the more restrictive approach to compensating non-pecuniary damages—there are decisions where compensation was awarded to surviving relatives for the emotional harm caused by the accidental death of a family member. These rulings recognised that 'the loss of the joy, happiness, and emotional fulfilment derived from frequent interactions and mutual affection, especially in cases of the sudden and violent death of a family member, constitutes a reduction of the overall emotional and relational benefits that family members enjoy'.⁵⁵

Sadness—along with feelings of shame, distress, and despair—which, though not clinically diagnosable, arise from the unjust harm inflicted by the wrongful actions of a third party, may also be eligible for compensation. This approach reflects an evolving interpretation of the

⁵² Law 8 February 2006, n. 54, Disposizioni in materia di separazione dei genitori e affidamento condiviso dei figli.

⁵³ Tribunal of Monza, 7 July 2009, n. 2074, <www.onelegale.wolterskluwer.it> accessed 12 October 2024.

⁵⁴ Supreme Court of Cassation, civil session, 8 November 2022, n. 32876, <www.onelegale.wolterskluwer.it> accessed 12 October 2024.

⁵⁵ Court of Appeal Milan, 20 October 1931, in *Il Foro Italiano*, 57 (1932), 209. See also Supreme Court of Cassation 7 November 2014, n. 23778, <www.onelegale.wolterskluwer.it> accessed 12 October 2024.; Tribunal of Padua, 19 November 2012, n. 2741, <www.onelegale.wolterskluwer.it> accessed 12 October 2024.

legal framework surrounding damage compensation.⁵⁶

VI. CONCLUSION

The brief investigation outlined above, in initiating a preliminary reflection on the subject, has referenced certain judicial decisions. In some instances, it has focused on the ratio decidendi underlying long-established jurisprudential orientations. Conversely, at other times, it has delved into the argumentative use of family-related sentiments, as revealed in isolated rulings that nonetheless appear particularly insightful.

The emotional and affective relationships are assumed to be a defining element of the family as a socially constructed entity that forms an integral part of the pre-understanding that judges bring to their judgments in family law, thereby influencing their interpretation and application of legal norms.

The happiness of the married couple, of the child and the familial environment integrate assumptions, biases, or preconceptions that influence interpretation before engaging with a text or situation. The legal consideration of happiness reflects the existence of an implicit framework or set of assumptions that influence judicial reasoning.⁵⁷

The reasoning of judges, where the use of 'happiness' as a latent factor in family relations emerges, provides a highly nuanced picture. In this framework, the reference to emotional and affective dimensions is employed to reach solutions in individual cases that adhere to the legal system and resonate with the 'sentiment' of a given community, its 'emotional common sense'.⁵⁸ Such reasoning also aims to ensure a certain interpretative consistency in the application of family law norms and to confer 'cultural legitimacy' on the expressed rules.

Instances of judicial reasoning demonstrate the subtle integration of happiness as both a contextual and explanatory element. Judges employ it to narrate the lived realities of litigants, providing a humanised lens through which legal disputes are viewed. This narrative use is particularly evident in family law, where the emotional states of parties are intricately

⁵⁶ See also Supreme Court of Cassation, 7 November 2014, n. 23778, <www.onelegale.wolterskluwer.it> accessed 12 October 2024.

⁵⁷ Hans-Georg Gadamer, *Truth and Method* (2nd edn., Continuum, London, 1989); Josef Esser, *Precomprensione e scelta del metodo di individuazione del diritto* (E.S.I., Naples, 1983).

⁵⁸ Terry A. Moroney, 'Lay conceptions of emotion in law' in Susan A. Bandes, Jody L. Madeira, Kathryn D. Temple, and Emily Kidd White (eds.), *Research Handbook on Law and Emotion* (Edward Elgar, Cheltenham 2021) 15.

linked to the outcomes of cases concerning custody, divorce, and relational dynamics.

Moreover, the concept of happiness occasionally ascends to the level of a rational justificatory argument, influencing legal decisions in substantive ways. For instance, in the adjudication of marital disputes, the happiness of the menage is recalled to determine fault and responsibility, with judges weighing the emotional tenor of relationships against legal obligations. Although not uniform, this trend indicates a growing judicial sensitivity towards the affective dimensions of legal conflicts.

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