

WHAT ABOUT THE FAMILY?

Practices of Responsibility in Care

Edited by Marian A. Verkerk

Hilde Lindemann

AND

Janice McLaughlin

OXFORD
UNIVERSITY PRESS

Paternal Responsibility for Children and Pediatric Hospital Policies in Romania

DANIELA CUTAȘ AND ANCA GHEAUȘ

In this brief text we look at one instance of how gender norms continue to inform institutional treatment of parents regarding care for children—specifically, how the exercise of fathers' responsibilities for their children can be discouraged or altogether blocked. Expectations about fatherhood have changed significantly in Europe in the last decades (Collier and Sheldon 2008) in the direction of closer involvement in the lives and hands-on care of their children. At the same time, moral and political philosophers have for many years been stressing the value of family relationships (see, e.g., Lindemann Nelson and Lindemann Nelson 1995), and some offer accounts of why individuals of any sex are entitled to have opportunities to develop flourishing relationships with their children (see, e.g., Brighouse and Swift 2014). State regulations increasingly support parent-child relationships independently of the relationship in which parents stand to each other (Parkinson 2011, 2006). In this way, the recognition of close father-child relationships and the

encouragement of uptake and continued exercise of fathers' responsibility for their children are gaining support. This is happening to unequal degrees in various European countries. In Sweden, for example, co-parenting after the parents' separation or divorce is common and expected.¹

According to recent changes in the Romanian civil code (Monitorul Oficial 2009) that came into force in 2011, parental authority (but not the child's residence²) is by default shared between post-separation parents. This is a radical change from the previous legal status quo in Romania, where divorce usually led to the loss of parental authority for one parent, generally the father. (A father's loss of authority did not also imply the end of his financial responsibilities for the children.) It is unclear to what extent the changes concerning shared parental authority are implemented, and some claim that the practice has not changed and that, in fact, children are placed with one parent who controls the access of the other parent to the child.

Post-divorce parental authority provisions represent only one important change in Romania (at least on paper). Other legislative changes encourage parents to share at least some of the parental leave: one month of leave is lost if they choose not to share it. Legislative changes such as these indicate a new direction in thinking about post-separation co-parenting, one that may conflict with individual and social practices. They also indicate a new way of thinking about the division of parental responsibilities for the provision of hands-on care to the child. The widespread practice was to delegate almost all hands-on care to mothers; new legislation nudges parents toward a more gender-balanced involvement in the life of the child.

Steps are thus clearly being taken toward a more gender-egalitarian recognition of parental rights and responsibilities. Yet, in practice, mothers and fathers do not have equal opportunities to exercise their parental responsibilities in Romania. One recent example of this in the private sector has been the decision of a major

gym chain in Romania to forbid parents to use the locker rooms with children of a sex different from that of the parent and other users. This effectively prevents fathers from accompanying daughters to the gym, and mothers from accompanying sons, unless another adult of the same sex as the child can accompany them and use the locker room with the child. Instead, these parents have been invited to use the toilet as a changing room. A same-sex couple who have a young daughter has filed a complaint against the gym at the Romanian National Council against Discrimination (CNCD). Following a decision from the CNCD in favor of the parents,³ a separate locker room for families was created in the one location where the incident took place, while all other locations still lacked any solution other than the toilet (ActiveWatch 2014).

It is not only private companies that enforce a gendered division of parental responsibilities. This case study focuses on an example of public institutions preventing fathers from exercising their parental responsibilities: pediatric hospitals.

I. THE CASE

Romanian public hospitals allow, and sometimes require, a parent to stay in hospital with their child in pediatric wards. This is done for the benefit of the child and is in line with national regulations according to which children under fourteen who are hospitalized are entitled to have one family member present for the duration of the hospitalization (Ordin. 1284/2012, Art. 5). However, not all hospitals comply consistently with these regulations. In response to a petition from parents accusing hospitals of separating them from their children, representatives of the Health Ministry and Work Ministry emphasized that the hospitalization of children younger than fourteen with a parent is “a right and not a privilege” (Agerpres.ro 2016).

At the same time, even when hospitals have been willing to comply with these regulations, they have not always done so in a gender-neutral way: only the mother can spend nights in hospital with her child. This gendered interpretation of the legal regulations has been enforced even when the father was a single parent: in the absence of a mother, another female relative may take her place. Fathers can be accommodated with their children, but only subject to availability of individual hospital rooms, which are scarce and may require parents to pay an additional fee. As a result of complaints, the CNCD ruled in 2008 (Hotărîrea nr. 649/04.12.2008) that the practice is discriminatory and that hospital managers should remove these restrictions and admit fathers who wish to accompany their children, on the same terms on which they admit mothers. These recommendations have been repeated by the CNCD in subsequent complaints against hospitals.

In response, one hospital has sued the CNCD, claiming that:

Pediatric hospitals do not have separate facilities for fathers and mothers, and in particular toilets and showers;
 Pediatric hospitals have beds allocated for maternal caregivers;
 There are cases in which the mothers breastfeed, and for them it is embarrassing that a man is in the room;
 There is medical care in which the mother is actively involved and which is more easily accepted by the children under the supervision of the mother;
 This is not the only hospital in the country that imposed this rule. (Curtea de Apel Bucuresti 2009, 1–2, our translation)

On the basis of these points, the representatives of the hospital claimed that it had not discriminated against fathers and that the decision of the CNCD should be annulled. The court rejected the complaint. The first two claims were rejected on the grounds that the law

requires that parents of any sex be accommodated by hospitals when they accompany minors younger than three. Any sex-based discrimination would need to be justified by very serious reasons, which, in this case, were absent. The court also found appeal to the child's comfort requiring mothers' but not fathers' presence problematic, noting that fathers and mothers are equally entitled to parental care leave by law—and thus are entitled to develop and exercise their parental care. The fact that other hospitals had similar restrictions could not be accepted as “a justification of discrimination.”

II. ANALYSIS

This case offers a rich palette of issues relevant for discussions about parental and in particular paternal rights and responsibilities in relation to children. It illustrates how the exercise of fathers' responsibilities can be discouraged or altogether prevented by public institutions. Hospitals that deny fathers' access on equal terms with mothers' access are operating on a double bias: one gender-based, favoring mothers over fathers, and the other class-based, favoring fathers who can pay additional fees for overnight accommodation over those who cannot. The practice perpetuates a gendered division of labor, whereby mothers, but not fathers, are responsible for the hands-on care for their children. Feminist scholars have been arguing for a long time that the gendered division of labor is incompatible with achieving equality of opportunity for women and men in the family and in the workplace. Therefore, policies regulating childrearing, as well as their implementation, need to make gender-egalitarian sharing of hands-on care the default option (Gheaus and Robeyns 2011).

An obvious complication arises, however, when, as a matter of practice, mothers and fathers share hands-on care for children very unequally (in spite of legislation enabling or encouraging them to be

more gender-egalitarian): the longer one parent is the exclusive, or main, caregiver of a child, the more specialized she or he—usually she!—becomes. While parents of any sex can in principle be equally competent caregivers, the parent who spends considerably more time caring for a child will be increasingly better at understanding and addressing that child's needs. In this way, discouraging or outright preventing fathers from acting as hands-on carers of their children, in the name of gendered parental competence, becomes a self-fulfilling prophecy.

As we have illustrated, the transition from gender-traditional to gender-egalitarian childrearing is likely to involve costs, both for the child and for the less experienced parent. In our view, the existence of these costs does not justify the perpetuation of gendered practices of childrearing. On the contrary, it highlights the need for the provision of additional support to families during the transitional phase. Thus, the hospital representatives' appeal to children's emotional comfort during medical procedures may be factually accurate without legitimizing the exclusion of fathers. (In many cases, of course, such appeal will be misleading: that is, in cases when the father is the primary caregiver of the child.) Instead, institutions may choose to take extra steps to attend to the children's emotional comfort if this is what is needed to enable fathers to support their children during hospitalization. For instance, hospitals could allocate more time to the treatment of children accompanied by fathers and give fathers psychological support in addressing the children's emotional needs. Current expectations and policies such as the ones discussed here presuppose that it is mothers or even women in general who are or should be children's primary carers. This not only discourages or altogether prevents fathers from taking care of their children when children also have a mother, but also sees relatives who may be less involved in children's lives as more appropriate carers than fathers. It, thus, effectively denies fathers' status as their children's carers.

The transition from gender-traditional to gender-egalitarian practices of childrearing often requires additional effort and resources in order to prevent the costs of this transition from falling on children. Critics may worry, first, that regulations meant to facilitate fathers' function as caregivers to their children constitute illegitimate interference within the privacy of the family. Second, they may see the spending of additional resources as an unfair use of public money. Both worries should be easy to dispel by appeal to children's interests. The aim of the state in enacting more progressive gender policies would not be to encourage a particular (gender-egalitarian) conception of the good on adults. It is, instead, to protect and foster the father-child relationship and effectively recognize fathers as well as mothers as caring parents.

In the petition mentioned earlier in this case study, parents complained that children's emotional comfort was clearly not what had motivated decisions to separate children from their parents in hospital wards: hospital practices had included restriction of movement and forcing treatment upon unwilling, distressed children. According to the parents, such practices have caused significant distress to their children, in addition to the distress of having been separated from their parents. Furthermore, a survey suggested that parents themselves, both mothers and fathers, do not align with the hospitals' policies to not allow fathers to stay in the hospital with their children, but instead deem them discriminatory and against the interests of both parents and children (Atudorei and Mardache 2012).

Legislative changes facilitating gender-egalitarian childrearing challenge current practices and expectations from fathers in Romania. At the same time, the nature of the relationship between patients, their families, and healthcare professionals is changing, and this leads to renegotiations and redefinitions of what is acceptable in a healthcare setting (Munthe et al. 2012). New laws often conflict both with existing practices and with people's expectations. Even when

social expectations change, institutional practices may take their time and require further nudges before they adjust. In turn, these conflicts trigger processes that require the questioning and ultimately the abandoning of widespread gendered practices in childcare. These are constrained by the changing regulations as well as changing norms and expectations in the general population.

NOTES

1. The ways in which states choose to implement a preference for supporting co-parenting may raise their own set of issues. See, e.g., Bruno (2016) for an analysis of the consequences of the Swedish state's involvement in families separated by intrafamilial violence.
2. "(1) After the divorce, parental authority is shared by both parents, except when the court decides otherwise" (Art. 397) and "(1) In the absence of agreement between parents or if this is contrary to the superior interest of the child, at the time of the pronouncement of the divorce decision, the court establishes the child's residence at the parent with whom she has lived stably. (2) If the child has lived with both parents before the divorce, the court will establish the child's residence at one of the parents, keeping account of the child's superior interest" (Art. 400) (our translation).
3. The Council lacks the authority to enforce its decisions beyond issuing fines against individuals or other entities that are found to have discriminated.

REFERENCES

- ActiveWatch, World Class. 2014. "Reguli Discriminatorii de Acces la Vestiar," November 19, 2014. activewatch.ro/ro/antidiscriminare/evenimente-si-activitati/world-class-reguli-discriminatorii-de-acces-la-vestiar.
- Agerpres.ro, Ministerul Sanatatii. 2016. "Internarea copiilor mai mici de 14 ani, impreuna cu Unul Dintre Parinti, Este un Drept," May 10, 2016. agerpres.ro/sanatare/2016/05/10/ministerul-sanatatii-internarea-copiilor-mai-mici-de-14-ani-impreuna-cu-unul-dintre-parinti-este-un-drept-15-12-06.
- Atudorei, Ioana, and Andreea Mardache. 2012. "Institutional Discrimination in Pediatric Hospitals." *Bulletin of the Transylvania University of Brasov* 5 (54): 119–24.

- Brighthouse, Harry, and Adam Swift. 2014. *Family Values: The Ethics of Parent-Child Relationships*. Princeton, NJ: Princeton University Press.
- Bruno, Linnéa. 2016. *Ofridstid. Fäderns våld, staten och den separerade familjen*. Uppsala: Uppsala Universitet.
- Collier, Richard, and Sally Sheldon. 2008. *Fragmenting Fatherhood: A Socio-Legal Study*. Oxford: Hart Publishing.
- Curtea de Apel Bucuresti 2009 Sentinta Civila nr. 4180.
CNCD, Hotărîrea nr. 649/04.12.2008.
- Gheauș, Anca, and Ingrid Robeyns. 2011. "Equality-Promoting Parental Leave." *Journal of Social Philosophy* 42(2): 173–91.
- Lindemann Nelson, Hilde, and James Lindemann Nelson. 1995. *The Patient in the Family: An Ethics of Medicine and Families*. New York: Routledge.
- Monitorul Oficial no. 511, of July 24, 2009. www.dreptonline.ro/legislatie/codul_civil_republicat_2011_noul_cod_civil.php
- Munthe, Christian, Lars Sandman, and Daniela Cutas. 2012. "Person Centred Care and Shared Decision Making: Implications for Ethics, Public Health and Research." *Health Care Analysis* 20(3): 231–49.
- Ordin. 1284/2012. "Privind Reglementarea Programului de Vizite al Apartinătorilor Pacienților Internati în Unitățile Sanitare Publice." dreptonline.ro/legislatie/ordin_1284_2012_programul_de_vizite_apartinatori_pacienti_internati_unitati_sanitare_publice.php.
- Parkinson, Patrick. 2011. *Family Law and the Indissolubility of Parenthood*. Cambridge: Cambridge University Press.
- Parkinson, Patrick. 2006. "Family Law and the Indissolubility of Parenthood." *Family Law Quarterly* 40(2): 237–80.

Family Caregiving as a Problematic Category

JACQUELINE CHIN

Seventy-five-year-old Philomena Loh has been discharged from the hospital after two weeks, following an admission through the Accident and Emergency department for a stroke that has caused weakness in the left side of her body, including contractures in her left leg causing her knee to stiffen and stay bent. Philomena is otherwise mentally alert and her speech and swallowing reflexes have been unaffected. The hospital's discharge planning process involved helping Philomena's husband, Tom, 76, to prepare their home, a two-bedroom Housing and Development Board (HDB) apartment, for Philomena's return, including purchasing a wheelchair, installing ramps for wheelchair accessibility and a hospital bed for the ground-floor guest room, and hiring a foreign domestic worker, a 35-year-old Indonesian woman named Hana, through a special state-subsidized program for helping families to care for frail elderly relatives at home. Their daughter Stephanie, a television reporter, helped Tom and Philomena with the expenses for home remodeling and is paying Hana's salary, but work pressures make it hard for her to make regular