

# CONSIDERATION OF THE EXERCISE OF PARENTAL AUTHORITY EXCLUSIVELY BY ONE OF THE PARENTS

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**ABSTRACT:** *Parental authority is the set of rights and duties which concern both the person and the property of the child and belong equally to both parents, provided for in Article 483, paragraph 1 of the Civil Code. It follows from those legal provisions that the rule as regards the exercise of parental rights is the exercise of parental authority jointly by both parents. By way of exception, parental authority may also be exercised by one of the parents exclusively in the cases and under the conditions laid down by law.*

**KEY WORDS:** *parental authority; parents; the minor; means of protecting.*  
**JEL Code:** *K 15*

Parental authority is the means of protecting the minor by exercising his or her rights and performing duties with regard to the minor's person and assets by his or her parents (Ungureanu & Munteanu Cornelia, 2011).

## 1. PRINCIPLES GOVERNING PARENTAL PROTECTION

Parental protection is governed by a number of principles (Marian , et al., 2016):

*The exercise of rights and the performance of parental duties solely in the best interests of the minor:* In order to express the association of the child with decisions concerning him or her, the Civil Code provides for the child's right to be heard, consisting of the possibility for the child to request and receive any information, according to his or her age, to express its opinion and to be informed of the consequences it may have.

The principle is contained in the provisions of art. 263, alin. 1<sup>1</sup> and art. 483, alin. 2<sup>2</sup> of the Civil Code.

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<sup>1</sup> Any measure concerning the child, whatever the child, must be taken with due regard for the best interests of the child.

<sup>2</sup> The parents shall exercise parental authority only in the best interests of the child, with due respect for his or her person, and shall associate the child with all decisions concerning him or her, taking into account his or her age and degree of maturity.

*Independence from the assets between parents and children:* The child's heritage is distinct from the parents' heritage. Parents have no right to the child's property or to the child's property, except the right to inheritance and maintenance.

Equality of rights between the marriage child and the non-married or adopted child: The parents have the same rights and duties regarding their minor children, without distinction as they are marriage, non-marriage or adopted.

The exercise of parental authority shall be carried out under the control of the State represented by the Court of guardianship:

Pursuant to the provisions of Article 107, paragraph 1, of the Civil Code, the proceedings under this Code relating to the protection of the natural person shall fall within the competence of the supervisory and family court established in accordance with the law.

Termination of parental authority upon the acquisition of the full exercise capacity of the child: full exercise is acquired when reaching the age of 18 or, as an exception,

by marriage of the minor or by recognition by the court for good reasons of the capacity for early exercise.

These principles are added to those laid down in article 6 of Law no 272/2004:

- priority respect and promotion of the best interests of the child;
- equal opportunities and non-discrimination;
- empowering parents with regard to the exercise of their rights and the fulfillment of their parental obligations;
- the primacy of parents' responsibility for respecting and guaranteeing the rights of the child;
- decentralization of child protection services, multisectoral intervention and partnership between public institutions and authorized private bodies;
- providing individualized and personalized care for everyone;
- respect for the dignity of the child;
- hearing the opinion of the child and taking it into account, taking into account his or her age and degree of maturity;
- assuring stability and continuity in the care, growth and education of the child, taking into account his or her ethnic, religious, cultural and linguistic background, in case a protection measure is taken;
- speed in making any decision with regard to the child;
- ensuring protection against child abuse, neglect, exploitation and any form of violence;
- the application of each legal rule on the rights of the child in relation to all regulations in this area.

## **2. CONTENT OF PARENTAL AUTHORITY**

Parental authority requires, toward the minor, two sides: the personal side and the property side.

The personal side refers to the protection of the child's person and the property side to the child's estate.

In the area of property, parents shall have the right and duty :

- to give care to their child under age, providing them with the necessary life, as well as his education, training and professional training. If the minor has a personal income that is not sufficient his parents have an obligation to provide him with the necessary conditions for his or her upbringing, education and professional training. Parents are obliged to maintain the child who becomes a child if he or she is still in education until his or her studies are completed but not exceeding 26 years of age;

- from an heritage point of view, the parent has no right over the property of the child, nor the child over the property of the parent, other than the right to inheritance and maintenance;

- to administer the assets of their minor child, as well as to represent him in civil legal acts, or to approve them, as appropriate.

On the personal side, parents have the right and duty to raise the child, taking care of his or her physical, mental and intellectual health, and of his or her education, training and professional training, according to his or her own convictions, qualities and needs; they are responsible for giving the child the guidance and advice necessary for the proper exercise of the rights which the law recognizes to him. To this end, parents shall have the following rights and duties:

- cooperate with the child and respect his or her privacy and dignity;

- present and permit the child to be informed and clarified of all acts and facts which might affect him or her, and to take into account his or her opinion;

- take all necessary measures to protect and enforce the rights of the child;

- cooperate with natural persons and legal persons responsible for the care, education and professional training of the child;

- to take only disciplinary measures that respect the dignity of the child. Measures, including physical penalties, that are likely to affect the child's physical, mental or emotional development are prohibited;

- to guide the child, according to his own convictions, in the choice of religion, in accordance with the law, taking into account his opinion, age and degree of maturity, without being able to force him to adhere to a particular religion or religious cult. The child aged 14 has the right to choose his or her religious confession freely;

- choose the child's first name and, where appropriate, the family name;

- supervise the child under the age;

- on reasonable grounds, hinder the correspondence and personal ties of the child under the age of 14;

-to require the child to be returned from any person who holds the child without right;

-to agree, if they do not live together, the child's home;

- to have personal ties with the minor parent to which the child does not reside in a statornic manner.

### 3. THE PROCEDURES FOR THE EXERCISE OF PARENTAL AUTHORITY

The parents shall jointly and equally exercise parental authority, as provided for in article 503, paragraph 1, of the Civil Code<sup>3</sup>. When exercising parental rights and fulfilling parental obligations, they must take into account the best interests of the child and ensure the child's physical and spiritual well-being, in particular by caring for the child, by maintaining personal relations with him, by ensuring his or her growth, education and maintenance, Article 36, alin. 2 of the Civil Code provides for its legal representation and management of its assets.

In respect of bona fide third parties, any parent, who alone carries out a current act for the exercise of parental rights and the performance of parental duties, shall be presumed to have the consent of the other parent<sup>4</sup>.

If one of the parents is dead, declared dead by court judgment, placed under prohibition, fallen from the exercise of parental rights or, for any reason, is unable to express his will, the other parent shall exercise his parental authority alone<sup>5</sup>.

If the parents are divorced, parental authority shall be exercised in accordance with the provisions relating to the effects of the divorce in relations between the parents and the children<sup>6</sup>.

In the case of a child outside the marriage the parentage of which has been established concurrently or, where appropriate, successively regarding both parents, parental authority shall be exercised jointly and equally by the parents if they live together<sup>7</sup>.

With the consent of the supervising court, parents can be understood as to exercise parental authority or to take a measure to protect the child if the best interests of the child are respected. Listening to the child is compulsory, the provisions of article 264 of the Civil code being applicable.

The rule ensures a supervisory role and control of the court of guardianship even when parents understand each other, meaning that simply presenting a Convention is not enough to be "enshrined" by the court ( Baias, 2012).

In the event that the parents of the child outside the marriage do not live together, the manner of exercise of parental authority shall be determined by the court of guardianship and shall be applicable by similarity to the provisions relating to divorce<sup>8</sup>. The court seised of an application for parentage shall order the exercise of the parental authority and the provisions relating to divorce shall be applicable in the same way.

Also in the Law no. 272/2004 there are a number of provisions relating to the exercise of parental authority exclusively. Thus, there are grounds for the court to decide that the parental authority should be exercised by a single parent, the psychic disease, the drug dependence of the other parent, the violence against the child or the other parent, the convictions for human trafficking offenses, drug trafficking, offenses concerning

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<sup>3</sup> Sentence of Bicaz Court no. 615/2021, unpublished, Sentence of Cluj Napoca Court no. 5745/2021, unpublished.

<sup>4</sup> Art. 503, alin. 2 of the Civil Code.

<sup>5</sup> Art. 507 of the Civil Code.

<sup>6</sup> Art. 504 of the Civil Code.

<sup>7</sup> Art. 505, alin.1 Cod civil.

<sup>8</sup> Sentence of Buzău Court no. 4970/2021, unpublished.

sexual life, offenses of violence, and any other reason related to risks to the child, which would arise from the parent's exercise of parental authority.

Therefore, the removal of one of the parents from the exercise of parental authority is an exceptional measure which can only be taken on the basis of sound legal grounds<sup>9</sup>.

In all the circumstances, in the event of any misunderstanding between parents as to the exercise of parental rights and the fulfillment of parental obligations, the court, after hearing both parents, shall decide in accordance with the best interests of the child.

#### 4. CONCLUSIONS

The Civil Code unequivocally enshrines the rule of parental authority exercised by both parents. The circumstances in which the exercise of parental authority is carried out exclusively by one of the parents are expressly provided for by law and are the exception to the rule.

In all cases, the exercise of parental rights and the fulfillment of parental obligations is subordinate to the best interests of the child and must ensure the child's physical and spiritual well-being, in particular by caring for the child, maintaining personal relations with him, ensuring his or her growth, education and maintenance, and by legal representation and management of its assets.

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<sup>9</sup> Decision of the Iași Court no. 2518/2021, unpublished.