

## PARENTAL AUTHORITY. THEORETICAL AND PRACTICAL CONSIDERATIONS

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**ABSTRACT:** *Parental authority is a set of rights and duties that concern both the person and the property of the child and belong equally to both parents.*

*As regards the exercise of parental authority, the rule is that established by Article 503, paragraph 1 of the Civil Code, in the sense that parents exercise together and equally parental authority. This study aims to analyze the institution of parental authority, with emphasis on situations where parental authority can be exercised exclusively by one of the parents, as reflected in current legislation as well as in judicial practice.*

**KEYWORDS:** *parental authority; the minor; the guardianship court; the best interests of the child.*

**JEL code:** K 15

The current Civil Code defines in the article 483 parental authority as the set of rights and duties that concern both the person and the property of the child and belong equally to both parents. The parents exercise parental authority only in the best interests of the child, with respect due to the person, and associate the child with all decisions that concern him, taking into account its age and degree of maturity.

The rule as regards parental authority is enshrined in article 503, paragraph 1 of the Civil Code according to which parents exercise together and equally parental authority.

The current regulation has thus established the principle of joint parental authority to enable parents to remain, despite their separation, actively and effectively associated with all important decisions relating to health, education and care, the formation and recreation of their common children, and which thus constitute an ideal to attain (Daghie, 2013).

However, there are also exceptional situations where only one of the parents exercises parental authority.

Thus, under the assumption of the parent receiving legal advice, the guardianship court may decide that the rights and duties in respect of the child's property are exercised only by the other parent. When the protected person exercises parental authority alone, the guardianship court decides, depending on the circumstances, on the continuation of the exercise of parental authority or the institution of guardianship over his child.

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Regarding this situation, the legislator's prudence regarding the way of exercising parental authority is noted, the court will decide according to the concrete situation and, whether or not the parent in respect of whom the measure of protection of judicial advice has been ordered is fit to exercise the patrimonial side of parental authority.

Art. 507, paragraph 1 of the Civil Code states situations in which the exercise of parental rights by both parents is impossible to achieve due to causes that are above their will, respectively: if one of the parents is deceased, declared dead by court order, benefits from special guardianship, is deducted from the exercise of parental rights or if for any reason, he is unable to express his will. For the latter hypothesis in the doctrine it was emphasized that there will not enter the scope of the legal text situations such as those in which the parent is imprisoned or is found in a country other than the child, and allegedly unable to express his will, but such situations as brain death, clinical death, comatose states.

Regarding the parent on whom the special guardianship was established, he retains the right to watch over the way of raising and educating the child and, as well as the right to consent to its adoption, unless it is unable to manifest its will due to lack of discernment.

In the case of divorce, the legislator maintained the rule of exercising parental authority jointly, according to the provisions of article 397 of the Civil Code. The exercise of parental authority by only one of the parents must be justified on good grounds, having regard to the best interests of the child (Nicolae, et al., 2016).

Such valid reasons are set out in article 36, paragraph 7 of Law no. 272/2004 on the protection and promotion of the rights of the child. According to this legal text, good reasons are considered for the court to decide that parental authority to exercise by one parent psychiatric illness, drug dependence of the other parent, violence against the child or the other parent, convictions for crimes of human trafficking, drug trafficking, crimes relating to sexual life, crimes of violence, and any other reason relating to the risks to the child arising from the exercise by that parent of parental authority. Therefore, the reasons justifying the exercise of parental authority exclusively by one parent take into account the risks to which the minor may be exposed. Therefore, the court, when considering the reasons invoked, must convince itself that the reason, in concrete terms, is the one that affects the interests of the child.

However, judicial practice has held that the tense relationship between parents and the fact that the minor perceives the father's behavior as an element of stress, generating fear and anxiety are good reasons for granting parental authority exclusively to the mother<sup>1</sup>.

Also, the disinterest manifested by one of the parents<sup>2</sup> justifies the taking of the measure to order the exercise of parental authority exclusively by the other parent.

Thus, in a solution of the case<sup>3</sup>, it was considered that, given the lack of interest shown by the defendant in the fulfillment of the rights and obligations of parental authority in reference to the minor, for a period of approximately 6 years, corroborated the establishment of the defendant for an indefinite period in Spain, so at a considerable distance from the other holder of the parental authority located in Romania, in the situation of the exercise of joint parental authority by both parents, in the situation of the joint

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<sup>1</sup> Decision of the Galati Court of Appeal no. 446/R/2013.

<sup>2</sup> Sentence of the Galati Court no. RJ 4e394e25d din 20.04.2023.

<sup>3</sup> Sentence of the Constanta Court no. 13665/2017.

parental authority, it would be likely to constitute a risk with respect to minors, caused by the impossibility of making easy decisions regarding its growth and education, and, which fall within the scope of the notion of parental authority, which is why the court is to order the exercise of parental authority over the minor exclusively by the complaining father.

In the same sense, in another solution<sup>4</sup>, the court held that the defendant neglected his children, thus assessing that it would not be in the interests of minors for the father to exercise parental authority, his disinterest in his contribution to the upbringing and care of children is evident.

The absence of one of the parents for a long period of time and the impossibility of the family to get in touch with him was considered to be a good reason for the exercise of the authority of the parents exclusively by the other parent<sup>5</sup>.

Also, the fact that the father never took an interest in the minor, that he saw him only once, as well as in relation to the concrete state of affairs, the mother of the minor, not knowing where the defendant lives and not being able to contact him, requires that the exercise of parental authority in respect of the minor be carried out exclusively by his mother<sup>6</sup>.

To the contrary<sup>7</sup>, it has been shown that it is not necessary to grant parental authority exclusively to one of the parents if the other parent refuses to make a punctual decision on the minor, the, in such a situation, it may be required to supplement the agreement of the other parent by court.

As regards the existence of a violent attitude towards minor children in judicial practice<sup>8</sup> there have been situations in which it has been assessed that such a circumstance is not such as to justify the loss of parental authority over minors, in a hypothesis where the violence manifested against the background of the health problems that the respective parent had.

The rule of exercising joint parental authority is also applicable to the non-marriage child hypothesis. If the parents of the child outside marriage do not live together, the exercise of parental authority is determined by the court of guardianship, and the provisions on divorce are similar.

Article 506 of the Civil Code regulates the possibility for parents to understand about the exercise of parental authority. However, this possibility is subject to censorship by the court, and it is not possible for the parent to decide to renounce parental authority.

In this sense, in judicial practice<sup>9</sup> it has been argued that parents should not be encouraged to neglect their parental duties towards their minor children, and that they should understand that important decisions, who exceed the current daily acts and who organize the life of their child, must take them together.

În literatura juridică (Barbur, 2020) a fost analizată și posibilitatea ca instanța de tutelă să dispună exercitarea autorității părintești în mod exclusiv de către un părinte pentru o durată de timp limitată, urmând ca, la finalul ei, să se revină la regula exercitării în comun.

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<sup>4</sup> Sentence of the Bistrița Court no. 6310/2015.

<sup>5</sup> Sentence of the Beclean Court no. 847/2012.

<sup>6</sup> Sentence of the Bistrița Court no.7486/2012.

<sup>7</sup> Sentence of the Raducaneni Court no. RJ 59g257974/2023 din 19.04. 2023.

<sup>8</sup> Sentence of the Bistrița Court no. 591/2021.

<sup>9</sup> The decision of the Court of Appeal of Bacau no. 335/2014.

Regardless of the legal situation of the minor, all the measures to be taken in respect of him will take into account the respect of his best interests, this is an indispensable condition for any steps and decisions that concern children.

Thus, according to the provisions of article 263, paragraph 1 of the Civil Code, any measure concerning the child, regardless of its author, must be taken in compliance with the best interests of the child.

The principle in question is not defined by the legislator, but Law no. 272/2004 sets out the criteria that must be considered for determining the best interests of the child, these being: the needs of physical, psychological, educational, health, security and stability and belonging to a family; the opinion of the child, depending on the age and degree of maturity; the history of the child, the, having regard, in particular, to situations of abuse, neglect, exploitation or any other form of violence against the child, as well as potential risk situations that may arise in the future; the capacity of parents or persons to take care of the child's upbringing and care to meet his or her specific needs; maintaining personal relationships with people to whom the child has developed attachment relationships.

The concept of a minor's superior interest was not defined by the legislator because, obviously, the, it would not have been possible to cover all the aspects that should be considered when considering a concrete situation. The responsibility for determining this concept in concrete terms will lie with the person who takes the measure or decision regarding the minor, given his particular situation.

In doctrine (Moloman, 2021) it was emphasized that by establishing the rule of joint exercise of parental authority was aimed by the legislator to make both parents responsible, and they were encouraged to assume parental obligations, to realize that every child needs to be raised by both parents and not to abandon the exercise of parental rights and obligations.

Exceptional situations, where only one of the parents exercises parental authority will be analyzed with caution by the courts, on the basis of an appropriate evidential, it is certainly indispensable to listen to the minor in accordance with the provisions of article 264, paragraph 1 of the Civil Code. The considerations underlying the court ruling will also adequately support a possible grant of parental authority exclusively.

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