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EXERCISE OF PARENTAL RIGHTS AND OBLIGATIONS IN ROMANIA

Elisabeta SLABU[1]

Abstract

According to the legislation of the Romanian state, the general rule is that parental rights and obligations on the minor child are jointly exercised by both parents. In special situations, when there are good reasons, parental authority can be exercised only by one parent, the other parent retaining the right to maintain connection with the minor and also has the obligation to contribute to his or her maintenance. The exercise of parental rights and obligations towards the minor children is regulated in the Romanian legal system both by a framework law - the Civil Code - and by a special law - Law no. 272/2004 on the protection and promotion of the rights of the child. Both laws have been changed and adapted to the modern European requirements, so that children's rights be virtually protected, in a European legal space.

Keywords

Child; exercise of parental rights and obligations; Charter of Fundamental Rights of the European Union; UN Convention regarding the Rights of the Child; EU agenda for the rights of the child.

1. Introduction: Promotion and Protection of the Rights of the Children in the European Union (Eur-Lex, 2011)

Promotion and protection of the rights of the child is one of the EU goals to which the European Treaties have conferred greater importance. Particularly, Article 3 (3) of the Treaty on European Union explicitly obliges the EU to promote the protection of the child's rights: *"**The Union** fights social exclusion and discrimination and **promotes** justice and social*

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protection, equality between women and men, solidarity between generations and protection of the rights of the child".

Moreover, the rights of the child are established in the Charter of Fundamental Rights of the European Union. Article 24 of the Charter recognizes children as being holders of rights, independent and autonomous: "(1) Children have the right to the protection and caring needed for ensuring their well-being. They can freely express their opinion. This is taken into account in the problems concerning them, depending on their age and degree of maturity. (2) In all actions relating to children, whether performed by public authorities or by private institutions, **the best interests of the child shall be considered primordial.** (3) Any child has the right to regularly maintain personal relations and direct contacts with both parents, except when they are contrary to his/her interest." Therefore, the EU considers the child's best interests to be primordial in relations with public authorities and private institutions.

The promotion of children's rights in the EU is also the result of international commitments. All EU Member States have ratified the UN Convention regarding the Rights of the Child. Its rules and principles must continue to guide EU policies and actions having an impact on the rights of the children.

The Europe 2020 Strategy presents a vision of a 21st century Europe where children will attend a better education, improved access to the services and resources they need to grow and, one day, be able to lead Europe in the 22nd century. This is why the Commission pleads for "an EU child rights agenda". Its purpose is to reassert the firm commitment of all EU institutions and all Member States to promote, protect and observe the rights of the child in all relevant EU policies and to turn to account this commitment in actual results. In the future, EU policies that affect directly or indirectly children should be conceived, transposed into practice and monitored taking into account the principle of the best interests of the child, established in the EU Charter of Fundamental Rights and the UN Convention on the Rights of the Child. The EU agenda concerning child rights outlines the general principles that should guarantee the exemplary character of the EU actions for assuring compliance with the provisions of the UN Charter and Convention on the Rights of the Child with regard to the rights of the child. In addition, it focuses on a series of practical actions in areas where the EU can bring real added value, such as justice in the best interests of the child,

protecting children in vulnerable situations and fighting violence against children, both within the European Union, as well as outside it.

Through this EU Agenda for the Rights of the Child, the Commission urges the EU institutions and the Member States to renew their commitment to enhance their efforts for the purpose of protecting and promoting the rights of the child. The EU actions should contribute, in an exemplary way, to ensuring the observance of the provisions of the Treaties, the Charter of Fundamental Rights of the European Union and the UN Convention concerning the Rights of the Child. The Commission will permanently review the progress made in implementing the EU Agenda for the Rights of the Child in its annual report on the implementation of the Charter.

2. "Parental protection", "exercise of parental authority" or "exercise of parental rights and obligations"?

In modern domestic law, which comes under the umbrella of the Civil Code from 1864, **"parental protection"** was done through the agency of **"parental power"**. This implied *"the entirety of all rights granted by the law to the parents on the person and the goods of the child, as long as it was minor and unemancipated"*. After the entry into force of the Family Code, in 1954, the phrase **"parental power"** was replaced by **"parental protection"** (Imbrescu, 2006). Thus, from 1954, the protection of the rights of the child within his/her family was achieved based on the **Family Code**, that is on the basis of Law no. 4/1953, with the subsequent amendments and republishing. It was repealed by Law no. 71/2011 for the implementation of Law no. 287/2009 regarding the Civil Code.

Article 1 of the **Family Code** provided as follows**:** "In the Socialist Republic of Romania, the state protects marriage and the family; it supports, through economic and social measures, the development and strengthening of the family. The State **defends the interests of the mother and the child** and shows great care for the growth and education of the young generation. The family is based on the freely agreed marriage between spouses. In the relations between spouses and **in the exercise of rights towards children**, **men and women have equal rights**. **Parental rights are exercised only in the interests of children. "**

Also, according to Article 43 of the Code, "the divorced parent, **to whom the child has been given, exercises parental rights in relation to him/her.** When the child has been given to another person or institution of protection, the court will determine **which of the parents will exercise the right to administer the goods and to represent or grant the acts** ... The divorced parent, to whom the child was not entrusted, it holds the right to have personal connections with it, as well as to watch for its growth, education, teaching and training". Therefore, based on the **Family Code**, when the parents divorced, the child was entrusted to one of the parents, **a parent who exercised parental rights alone.**

In 2004, by **Law no. 272/2004 regarding the protection and promotion of the rights of the child,** clarifications are made in relation to the way of exercising parental rights. This special law dedicated to the protection of the child's rights has been amended several times and subsequently republished, in order to adapt to the national legal regulations to the current social situation, both in Romania and in the European Union. The provisions of Law no. 272/2004 are supplemented by other regulations that refer to the rights of the child, including the provisions included in the international conventions and treaties to which Romania is a party. We can conclude that there has been a process of convergence of European regulations to national ones, because previous national legislation could determine situations of discrimination of parents following the divorce as concerns the exercise of parental rights.

Article 36 of the law stipulates that: "(1) **Both parents are responsible for raising their children. (2) The exercise of the rights and the parental obligations fulfillment** must take into account the best interests of the child and ensure the material and spiritual well-being of the child, in particular by caring for him, by maintaining the personal relations with him/her, by ensuring his/her growth, education and maintenance, as well as through its legal representation and administration of its heritage. (3) In case **both parents exercise parental authority**, but do not live together, important decisions, such as those on choosing the type of education or professional training, complex medical treatments or surgical interventions, the child's residence or the goods administration, shallbe made only with the agreement of both parents. (4) In case, for any reason, a parent fails to express his/her will for making the decisions provided in par. (3), these

are taken by the parent with whom the child lives, except when this is contrary to the best interests of the child. (5) Both parents, regardless of whether or not **they exercise parental authority**, have the right to request and receive information about the child from school units, health units or any other institutions that come into contact with the child. (6) **A parent cannot give up parental authority, but one can agree with the other parent regarding the way to exercise parental authority, under the conditions of Article 506 of the Civil Code**. (7) There are **considered justified reasons** for the court to decide that**the parental authority to be exercised by one parent**the alcoholism, the mental affection, the drug addiction of the other parent, the violence against the child or the other parent, the convictions for offenses of human trafficking, drug trafficking, sex offenses, crimes of violence, as well as any other reason related to the risks for the child, which would derive from that parent's exercise of parental authority. (8) In the case of disagreements between parents regarding the **exercise of rights and the fulfillment of parental obligations**, the court, after hearing both parents, shall decide according to the best interests of the child".

Again from the national legislation must be mentioned the **Civil Code, which incorporated the old Family Code. Law no. 287/2009,** respectively **the Civil Code of July 17, 2009**, as amended and supplemented, contains important regulations as concerns **the exercise of rights and the fulfillment of obligations by parents**.

Article 397 of the Civil Code stipulates that: "Following the divorce, **the parental authority falls jointly on both parents, unless the court decides otherwise."** However, "if there are good reasons, having in view the best interests of the child, **the court decides that the parental authority is exercised only by one of the parents**. The other parent keeps the right to watch over the child's uprearing and education, as well as the right to agree to his/her adoption, or in a care institution.Exceptionally, the guardianship court may decide to place the child to a relative or other family or person, with their consent, or in a care institution They **exercise the rights and obligations incumbent upon the parents concerning the child**. The court determines whether **the rights with regard to the child's property are exercised by the parents jointly or by one of them**".

In conclusion, all three concepts are used when holding talks on the people who are concerned about the rights of the children being

observed. Parents are those who, as a general rule, **exercise parental rights**, but they must also **fulfill their parental obligations**.

3. The Content of the Parental Authority in the Romanian Legislation

The current civil code also gives us a **definition of the notion of parental authority**, as follows: "**Parental authority is the entirety of rights and obligations that concern both the person and the goods of the child and belong equally to both parents**." In addition, the Civil Code also establishes the **rules applicable to the exercise of parental authority**, as follows: "**Parents exercise parental authority only in the best interests of the child**, with all due deference to his/her person, and associate the child in all decisions regarding him/her, taking into account the age and his/her degree of maturity. Both parents are responsible for raising their minor children ... **Parental authority is exercised until the child acquires full capacity of exercise**".

Article 487 of the same Code also defines **the content of the parental authority**, as follows: "Parents have the right and obligation to raise the child, taking care of his physical, mental and intellectual health and development, his/her education and professional training, according to their own beliefs, peculiarities and needs of the child; they are bound to give the child the guidance and advice needed for the proper exercise of the rights which the law recognizes to him/her ".

Therefore, according to the new regulation, the rule is that **parental authority falls jointly on both parents, after divorce**, and only in well-founded circumstances, considering the best interests of the child, **the court decides that parental authority be exercised only by one parent, or by relatives or other persons.** However, the other parent retains **the right to watch over the manner of upbringing and educating the child, as well as the right to consent to his/her adoption**.

Thus, according to Article 396 of the Civil Code, "The guardianship court decides, along with the pronouncement of the divorce, concerning the relations between the divorced parents and their minor children, taking into account the best interests of the children, the conclusions of the psychosocial investigation report, as well as, as the case may be, the

agreement of the parents, whom he/she listens to. " Also, the Civil Code provides in Article 399 that: "Exceptionally, the guardianship court may decide the placement of the child to a relative or to another family or person, with their consent, or in a child protection institution. They **exercise the rights and obligations coming to the parents regarding the child**. The court determines whether **the rights regarding the child's goods are exercised by the parents jointly or by one of them**."

Articles 262, 401 and 496 of the Code sets up the parents' right to have personal connections with those children not living at their home. The exercise of this right can only be limited under the conditions provided by law, for solid reasons, taking into account the best interests of the child.

Also, Article 272 establishes the right of the parents to consent to the marriage of their minor children, who turned 16, with the authorization of the guardianship court in whose jurisdiction is the minor's domicile. According to Article 490 of the Civil Code, the minor parent who has reached the age of 14 has only **the parental rights and obligations regarding the child**. The rights and obligations concerning the goods of the child belong to the guardian or, as the case may be, to another person, according to the law.

Parents have the right to choose the forename and, where appropriate, last name of the child, pursuant to the law. Parents have the right and obligation to supervise the minor child. Parents may, for good reasons, interdict the correspondence and personal connections of the child up to 14 years of age. Disagreements are resolved by the guardianship court, with the child hearing. Parents have the right to ask at any time the guardianship court to return the child from any person who keeps him/ her rightless.

In addition to rights, parents also have the liability to raise the child in conditions that would ensure his/her physical, mental, spiritual, moral and social development in a harmonious way. For this purpose, the parents have the obligation to:

a) to cooperate with the child and to respect his/her intimate, private life and dignity;

b) to present and enable the child information and explication about all the acts and facts that might affect him/her and to take into account his/her opinion;

c) to take all measures required for protecting and achieving the rights of the child;

d) to cooperate with natural persons and legal persons with duties in the field of child care, education and vocational training.

Article 499 of the Civil Code also provides that the parents are bound, to jointly support their minor child, providing him/her with everything that is needed for living, as well as his/her education, teaching and professional training. If the minor has his/her own income which is not enough, the parents are under an obligation to ensure the conditions necessary for his/her uprearing, education and professional training. Parents must provide for the child who became major, if he/she continues his/her studies, until their completion, but without exceeding the age of 26 years. In case of misunderstanding, the extent of the maintenance obligation, the manner and methods of execution, as well as the contribution of each parent are determined by the guardianship court on the basis of the psychosocial investigation report.

Also, pursuant to Article 501 of the same Code, the parents have the right and obligation to administer the assets of their minor child, as well as to represent him/her in the civil legal documents or to approve these acts, as applicable. After reaching the age of 14, the minor exercises his/her rights and performs his/her obligations alone, according to the law, but only with the permission of the parents and, as the case may be, the guardianship court.

With the approval of the guardianship court, the parents can agree upon the exercise of parental authority or taking a measure for child protection, if the best interest of the child is observed**.**

The guardianship court, upon the request of the public administration authorities with responsibilities in the field of child protection, can pronounce on **the termination of the exercise of parental rights if the parent endangers the life, health or development of the child by bad treatments applied to him/her, by the consumption of alcohol or drugs, by abusive behavior , by gross negligence in the fulfillment of parental obligations or by the seriously prejudicing the best interests of the child.**

It should be mentioned that, if one of the parents dies, is declared dead by court decision, granted an interdict, deprived from the exercise of parental rights or if, for whatever reason, he is unable to express his/her will, **the other parent exercises his/her parental authority alone**.

Conclusions

The civil code defines **parental authority**, this being considered **the entirety of rights and obligations that concern both the person and the assets of the child.**

According to the legislation of the Romanian state, the general rule is that **parental rights and obligations on the minor child are jointly exercised by both parents**. In special situations, when there are good reasons, **parental authority can be exercised only by one parent**, the other parent retaining the right to maintain connection with the minor and also has the obligation to contribute to his or her maintenance.

In addition, exceptionally, the guardianship court may decide the placement of the child to a relative or to another family or person, with their consent, or to a child protection institution. They **exercise the rights and obligations coming to the parents with regard to the child**. The court determines if the **rights concerning the child's assets are exercised by the parents jointly or by one of them.**

Moreover, the guardianship court may rule the termination of the parental rights exercise, if the parent endangers the child's life, health or development. The termination of the parental rights exercise does not relieve the parent of his/her obligation to give alimony for the child.

Besides rights, parents have also the **liability to raise the child in conditions that would ensure his/her physical, mental, spiritual, moral and social development in a harmonious way**. Failure to perform the obligations may, in well-reasoned situations, lead to the termination of parental rights and the entrustment of parental rights and obligations to other persons, through the judgment of a court. But there are also special situations when no other natural person wants or can assume this responsibility. Consequently, the court will have to give this task, according to the law, to the director of the General Directorate of Social Assistance, within which it will be taken the special protection measure needed for that child. In fact, this responsibility falls on the head of the public service specialized in child protection in the following situations:

- for the child whose parents are dead, unknown, lapsed from the exercise of parental rights or to whom it has been enforced the punishment of the parental rights prohibition, granted an interdict,

declared dead or missing by the judge, when guardianship could not be established;
- for the abused or neglected child;
- for the child found or child left in sanitary units.

In conclusion, the exercise of parental rights and obligations towards the minor children is regulated in the Romanian legal system both by a framework law - the Civil Code - and by a special law - Law no. 272/2004 on the protection and promotion of the rights of the child. Both laws have been changed and adapted to the modern European requirements, so that children's rights be virtually protected, in a European legal space.

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