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# Aspects Regarding the Need to Settle Conflicts Between Parents as Concerns the Exercise of Parental Rights Within a Reasonable Time

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**Abstract**: *For the special situations that may occur due to the wrong behaviour of a parent there must be identified solutions to ensure the actual protection of the child, even towards his/her parent. These solutions must be identified and applied within a reasonable time, otherwise the inadequate behavior of the parent being favored and strengthened, and the treatment of the traumas suffered by the child will be more and more difficult to accomplish. The state must organize its judiciary system so that its jurisdictions, especially in the cases concerning children, guarantee the right to obtain a decision within a reasonable time.*

**Keywords:** *children; exercise of parental rights; reasonable time; divorce/separation.*

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**1. Exercising joint parental authority following the divorce/separation**

Pursuant to **Article 396 para. (1) of the Civil Code, "The court of guardianship decides, along with pronouncing the divorce, on the relationship between the divorced parents and their minor children,** taking into account the best interests of the children, the conclusions of the social worker report as well as, if necessary, the agreement of the parents who are heard." **Article 397 of the same Code** provides that **"Following the divorce, the parental authority falls jointly on both parents, unless the court decides otherwise."**

Parental authority is a series of rights and obligations of the parents or those acting instead of the parents and must always be exercised "in the best interests of the children". The purpose of exercising parental authority should be assistance and support for the child on his or her way in life, while respecting his or her age-specific opinions and needs. The exercise of joint parental authority by both parents, a rule set up by the current Civil Code, can be auspicious for the child when the parents respect each other and work together in guiding and assisting the child, so that he/she benefits from best conditions of raising and education.

Setting up this rule intends to make both parents responsible, a fact that is also specified in Law No. 272/2004 concerning the protection and promotion the rights of children, which, in Article 36 provides that "both parents are responsible for raising their children." This act details the basic rule established by the Civil Code, stating that "the exercise of rights and the fulfillment of parental obligations shall take into account the best interests of the child and ensure the material and spiritual well-being of the child, especially by caring for him/her, by maintaining the personal relations with him/her, by ensuring his/her raising, education and maintenance, as well as by his/her legal representation and the administration of his/her patrimony." Moreover, it lais down that "in the event of existing any disagreement between the parents concerning the exercise of the rights and fulfillment of the parental obligations, the court, after hearing both parents, decides according to the best interests of the child."

Also in **Law no. 272/2004** it is shown that "there are considered justified reasons for the court to decide that the parental authority should be exercised by one parent alcoholism, mental illness, drug addiction of the other parent, violence against the child or the other parent, convictions for offenses of trafficking in human beings, drug trafficking, infractions relating to sexual life, violence, **as well as any other reason connected with the**

**risks to the child, which would derive from the exercise by that parent of parental authority."**

## 2. The occurrence of conflicts between parents regarding the exercise of parental authority after divorce/separation and the possibility of the phenomenon of parental alienation

Many times, caught up in the midst of discontents related to the cohabitation within a marriage that broke, parents do not cooperate as concerns the joint exercise of parental rights and obligations. There are situations in which the two parents blame each other for various child abuses and act to restrict the rights of the other parent concerning the child. One of the parents believes that the other parent should be taken away from the child for as long as possible, without taking into account the fact that this may harm the child in the long run, which in this way loses some of the roots and landmarks required for a balanced child development. It is put in jeopardy the subsequent development of the child, through calumnious statements to the other parent, often taking advantage of the fact that the minor lives with him/her. It is intended that, during the psychological evaluation required by the court, the minor declares that he/she does not want to live with the other parent or that he/she has been abused by the other parent.

The denigrating statements against the other parent determine the occurrence of parental alienation, which "is diagnosed only in the case of separation/divorce of parents and consists in the rejection by the child of a parent who does not have severe parental deficiencies and has not abused the child (Pivniceru & Luca, 2016).

Parental alienation is a relatively recent theme put forward by mental health professionals (Pivniceru & Luca, 2016). The specialized doctrine states that **parental alienation is a form of psychological/emotional abuse of the child** (Pivniceru & Luca, 2016).

Alienated children, regardless of age, have the following symptoms: anxious attachment or separation anxiety, unusual distress when being moved from one parent to another, sleep disturbances, social isolation, become stiff and despiteful, disorganized, have low self-esteem, tenseness regarding his/her opinion towards the rejected father and rejects any information that does not confirm his/her words (Pivniceru & Luca, 2016).

Recent research studies have estimated that approximately 25% of children involved in the processes of determining the manner of exercising parental authority have parental alienation (Pivniceru & Luca, 2016).

The Romanian College of Psychologists recognized the phenomenon of parental alienation as "a form of severe psychological (emotional) abuse of the child, consisting in the activity of systematic denigration of one parent by the other parent, with the intent to alienate (divide) the child from the other parent" (Provision No. 2/2016 for the recognition of the phenomenon of parental alienation and the provisions of the Protocol concerning the recognition of the parental alienation, concluded between the Institute of Judicial Psychology and the Romanian Association for Joint Custody).

## 3. Settlement of disputes between parents with regard to the exercise of joint parental authority after divorce, according to the legislation in force

When there are misunderstandings between parents concerning the exercise of parental authority, they resort to the court, which will determine the inhabitancy of the minor child to one of them, taking into account his best interests. The parent separated from the child has the right to have personal relations with the child. In case of disagreement between the parents, the court decides regarding the possibilities of exercising this right.

Nevertheless, the parent who does not live with the child will not always comply with the decision of the court, generating a conflict in which there will be involved more authorities. Most of the times, the parent who does not live with the child appeals, according to the law, to the services of a bailiff, in order to take the child to his/her home. The bailiff will send to the parent or the person with whom the minor lives the decision acknowledging the enforcement, together with a summons in which he/she will communicate to him/her the date on which to appear together with the minor at his/her headquarters or in another place fixed by the bailiff, with a view to taking the child by the other parent.

If the parent with whom the child lives hampers the maintenance of the relations of the other parent with the minor, the bailiff will also require the other parent to allow the other parent to exercise his/her right to have personal relations with the minor, according to the schedule set in the enforceable title.

However, in case the bailiff finds that the minor himself/herself categorically refuses to leave the debtor or shows aversion to the creditor, **will draw up a report in which he/she will record his/her findings** and will communicate them to the parties and to the representative of the General Directorate of Social Assistance and Child Protection. The

representative of the General Directorate of Social Assistance and Child Protection will notify the competent court at the place where the minor lives, so that it can rule, depending on the child's age, **a psychological counseling program**, for a period which may not exceed 3 months. The request is settled urgently in the council chamber, by a decision not subject to any appeal, pronounced with the summoning of the parents and, as the case may be, of the person where the child lives. (**Articler 913 of the Civil Code: Refusal of the minor**)

Upon completion of the counseling program, the psychologist appointed by the court will prepare a report which will be notified to the court, the bailiff and the General Directorate of Social Assistance and Child Protection. After receiving the psychologist's report, the bailiff will resume the enforcement procedure. If during this procedure the enforcement will still not be possible due to the minor's refusal, the creditor may notify the competent court from the place **where the minor is with a view to applying a penalty**, pursuant to the provisions of Article 906 para. (2) and (4) - (6) of the Code of Civil Procedure. If within 10 days from notifying the decision acknowledging the enforcement the parent fails to execute the obligation set by the court, he/she can be constrained to fulfill it, **by applying some penalties, by the enforcement court**. The court notified by the other parent may oblige the debtor, through final decision given with the summons of the parties, to pay in favor of the creditor a **penalty from lei 100 to lei 1,000, established per one day of delay, until the execution of the obligation provided in the enforceable title.**

If within 3 months from the date of notifying the decision for enforcing the penalty, the debtor fails to execute the obligation provided in the enforceable title, **the enforcement court, upon the request of the creditor, will fix the final amount owed to him in this respect**, through decision, given with the summoning of the parties. **The creditor may request the fixing of the final amount by way of penalties for delay following the expiration of each period of 3 months in which the debtor does not execute its obligation provided in the executory title, until its full settlement**. The penalty may be waived or reduced, by way of a challenge of enforcement, if the debtor performs the obligation provided in the enforceable title and proves the existence of good reasons that justified the delay in execution.

According to **Article 911 of the Code of Civil Procedure,** if within one month from notifying the decision provided in Article 906 para. (2), the debtor fails to execute its obligation, the bailiff will proceed to the **enforcement**. The enforcement will be carried out in the presence of a

representative of the General Directorate of Social Assistance and Child Protection and, when considered it necessary, of a psychologist appointed by it. Upon the bailiff's request, public order agents are obliged to give their support in the enforcement. It is expressly stated that "No person shall be allowed to strong-arm the minor or put pressure upon him/her in order to carry out the execution."

**Article 911 of the same Code** further establishes the following: if the debtor fails to perform his/her obligation, the penalty set by the court according to Article 906 will run until the time of execution, but not more than 3 months from the communication of the decision provided in Article 906 para. (2). **In case the debtor does not fulfill its obligation within 3 months, as well as when the debtor is in bad faith and hides the minor, the bailiff will record this fact and will immediately notify the prosecutor's office attached to the court of execution with a view to commence criminal prosecution, for committing the crime of failure to comply with the judge's decision.**

## 4. Identification of the legal solutions so that the minor can resume or maintain contact with the parent with whom does not live or can be taken from the other parent within a reasonable time

If neither the intervention of the DGASPC specialists, nor of the bailiff showed results, the next step will be **investigating the criminal case opened for failure to comply with the court decision**. But this undertaking takes a long time, during which time the parental alienation occurs, which will have psychological consequences that are hard to remove for the child.

What other legal undertakings could be used by the parent who cannot maintain contact with his/her own child, who is isolated/hidden by the other parent, is not taken to school or kindergarten, etc.?

**One solution** would be to request the court **to issue a protection order against the other parent, on behalf of the child** who is being kept isolated and who is traumatized by the other parent's behavior. **Article 38 of Law No. 217/2003 for the prevention and combating of domestic violence** states that**: "A person whose life, physical or mental integrity or liberty is endangered through an act of violence by a family member may request the court that, for the purpose of removing the state of danger, issue a protection order** through which to order, on a temporary basis, one or more of the following measures - obligations or interdicts:

e) obliging the aggressor to keep a determined minimum distance from the victim, from the members of his/her family, as defined according to the provisions of Article 5, or to the residence, place of work or educational unit of the protected person;

f) the prohibition for the aggressor to travel to certain localities or certain areas that the protected person frequents or visits regularly;

h) forbiddance of any contact, including by telephone, correspondence or otherwise with the victim;

**j) the custody of minor children or the determination of their residence.**

The request will be based on:

- definition of domestic violence: any **inaction or** intentional **action** of physical, sexual, **psychological**, economic, social, spiritual or cyber-violence that occurs in the family or domestic environment…

- *definition of psychological violence* - **imposition of will or personal control, causing states of tension and mental suffering in any way and by any means, through verbal threat or in any other way** ... which, through their periodicity, content or timing, create fears as well as other actions with a similar effect;

- *definition of social violence* - **imposing the isolation of the person from family, community and friends, prohibiting the attending of the educational institution**.. as well as other actions with a similar effect;

Article 40 of Law no. 217/2003 provides that: „(1) The request for issuing the protection order is under the jurisdiction of the court within the territorial limits where the victim has his/her domicile or residence. (2) The request for the order issuance may be lodged by the victim personally or through a **legal representative.**" **Article 42 of the same law provides that:** (1) The request for issuing the protection order is judged in the council chamber, the participation of the prosecutor being compulsory... **(4) The judgment is made urgently and by choice ... (6) In the settlement of the request, it will be not admissible evidence whose administration requires a long time**.. **(9) The settlement of requests may not exceed a period of 72 hours from the lodgment of the request, except for the case when a provisional protection order has been previously issued, the initial time for which it is ordered being extended, as of right, with the time required for fulfilling the legal proceedings for issuing the protection order, while informing the aggressor about this fact".**

**Article 44 of the Law No. 217/2003 stipulates that „(1) The protection order is enforceable.** (2) The enforcement of the decision is made without summons or without the passage of any time. (3) The

compliance with the protection order is mandatory also for the person protected through it". By **Article 46 of Law No. 217/2003 it is stated that** "(1) A copy of the operative part of the decision through which it was ruled the request for issuing the protection order shall be notified, within maximum 5 hours from the time of pronouncing the decision, to the structures of the Romanian Police within whose territorial limits is located the home of the victim and/or the aggressor, as well as the Directorate for the Persons Records and the Administration of Databases. **(2) The protection order by which it is ordered any of the measures provided in Article 38 para. (1) shall be enforced immediately, by or, as the case may be, under the supervision of the police. (3) For the enforcement of the protection order, the police officer may enter the family home and any of its extensions, with the consent of the protected person or, in its absence, of another member of the family.** (4) The police bodies have the duty to supervise the manner in which it is observed the court decision by which the protection order was ruled and to notify the criminal investigation body in case of avoidance from the enforcement.".

**Another solution would be to bring a criminal complaint against the other parent for ill-treatment applied to the minor,** invoking Article 197 of the Criminal Code: **"Serious endangerment, through measures or treatments of any kind, of the physical, intellectual or moral development of the minor, by the parents or by any person in whose care is the minor, shall be punished by imprisonment from 3 to 7 years and the forbiddance of the exercise of certain rights. "**

But even this approach takes a long time, during which the parental alienation takes place.

**Another solution** would be to require the issuance of a court decision for **putting urgently in institutional care** the child isolated/hidden by one of the parents, explained by the fact that he/she is subjected to constant psychological abuse by his/her parent. Article 68 para. (1) of Law no. 272/2004 provides that " Putting urgently in institutional care is a special, temporary protection measure that is set for the child who is in the following situations: a) abused, neglected or subjected to any form of violence." This request can be addressed to the court only by the GDASPC and after the psychological evaluation of the child from which to arise the signs of his emotional abuse. It will be proposed that the child be taken from the abusive/ alienating parent and place him/her in a family specially prepared so as to ensure the adequate protection of the child, but also his/her presence at psychological counseling activities intended for diminishing the consequences of alienation and getting closer again to the

parent who did not have access to the child due to the actions of the abusive/alienating parent.

With the approval of the court, the child may remain in the care of the foster family until the time when it can be achieved reconcilement and accommodation to the parent who has been separated from the child. Paragraph (5) of the same article provides that "During the urgent putting in institutional care, the exercise of parental rights shall be suspended as of right, until the court decides concerning the maintenance or replacement of this measure and on the exercise of parental rights…".

## Conclusions

For the special situations that may arise due to the misbehavior of a parent, **there must be identified solutions to ensure the real protection of the child**, even towards his/her parent, who in fact states that he/she is interested in protecting his/her child, without being aware that isolating the child to the other parent, to other siblings, and even to other children, they only cause trauma that can be difficult to treat later. These solutions must be identified and applied within a reasonable time, otherwise the inappropriate behavior of the parent being favored and strengthened, and the treatment of the traumas suffered by the child will be more and more difficult to accomplish.

Moreover, Article 263 para. Article 4 of the Civil Code shows that "The procedures concerning children shall be carried out within a reasonable time so that the best interests of the child and the family relations are not affected."

Article 6 of Law No. 272/2004 concerning the protection and promotion of the rights of the child also states, as a principle guaranteeing the rights of the child, **the expedience "in making any decision regarding the child"** but also **"ensuring protection against the abuse, neglect, exploitation and any form of violence against children"** and **"the interpretation of each legal norm concerning the rights of the child in correlation with all the regulations in this matter".**

The expedience of the procedures aims "their entirety, including appeals, until the final settlement of the case, including the full execution of the court decision." It is stated that the expedience of the procedures concerning decision-making with regard to children ... is internally related to the very dynamic situational context in which the child finds himself, and dragging cases with this object could produce a significant range of negative effects on the development of the child (personality, socialization, socio-

emotional balance) since the family psychological climate is irreplaceable ... " (Pivniceru&Luca, 2016, p. 87).

In conclusion, the state must organize its judiciary system so that its jurisdictions, especially in cases concerning children, guarantee the right "to obtain a decision within a reasonable time." (Pivniceru&Luca, 2016, p. 88).

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