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PARENTAL AUTHORITY IN THE ROMANIAN LAW SYSTEM

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COMPENDIUM

The doctoral thesis entitled „The Parental Authority in the Romanian Law System” addresses in detail the issue of child protection through parents, providing a thorough, theoretical and practical analysis of the current national and international regulations in this matter.

The theme of the doctoral thesis is of particular importance for both individuals and lawyers, as well for judges specialized in „minors and family”.

At the same time, considering the legislative perspectives on this matter, I have substantiated some proposals of the law on the thesis, which would bring some modifications or completions to both the Civil code and Law no. 272/2004 on the protection and promotion of children’s rights, so as to eliminate some inadequacies or legislative gaps.

The approach is structured in eight chapters, the content of which outline a comprehensive and complete picture of the theoretical and practical issues of the effective way of exercising parental rights and duties in the Romanian national law as well as in the comparative law.

In the introduction of the thesis, I have specified the actuality and importance of the analyzed topic, presenting the objectives of the scientific research and the scientific research methods used.

In the second chapter, I chose as a starting point the presentation of the general conceptual aspects of the doctoral thesis, especially those concerning parental authority. Also, in this context, I presented a brief but documented evolution of the national regulations in this matter.

The third chapter includes an in-depth analysis of the notion of „parental authority”, namely the definition, the legal characters and the principles of parental authority. In this respect, I reviewed the main doctrinal opinions and grounded my own choices.

The same contributory perspective I sought to impress in the fourth chapter entitled „Parental rights and duties” intended to analyze the rules on parental rights and duties related to the child’s person and his property, closely following the way in which the regulations were envisaged by the authors of the Civil code.

In chapter V, entitled „Joint exercise of parental authority”, I explored aspects of the main way of exercising parental authority, namely coparenting, the presumption of mutual consent of parents in the case of current legal acts, the joint exercise of parental authority within

the illegitimate family, the exercise of parental authority in case of separated parents in fact or by divorce. In this chapter, besides the in-depth analysis of the basic rules, I have presented some improvable aspects of the regulations in question, suggesting some *lege ferenda* proposals.

Chapter VI is intended for the analysis of national regulations dealing with the „exclusive exercise of parental authority”. In this chapter, I have defined the basic concepts, with some clarifications regarding the hypotheses in which it could intervene, namely: the exclusive exercise of parental authority in the event of the death of one of the parents; the exclusive exercise of parental authority in the event of total or partial deprivation of the exercise of parental rights; the exercise of parental authority in case of judicial interdiction of one of the parents; the exercise of parental authority in case of the inability of one of the parents to manifest, for any reason, his/her will; the exclusive exercise of parental authority in case of separation of the parents by divorce; the exclusive exercise of parental authority within the illegitimate family. Also, in this chapter are presented in detail specific procedural aspects of the judicial settlement of the misunderstandings between parents.

Chapter VII, entitled „Legal liability of parents for the inappropriate exercise of parental rights and duties”, analyzes: the legal nature of the deprivation of the exercise of parental rights, the conditions of the deprivation of the exercise of parental rights, the procedure for the deprivation of the exercise of parental rights, the effects of the deprivation of the exercise of parental right, regranting the exercise of parental rights.

The last part of the thesis, entitled „Conclusions and *lege ferenda* proposals”, describes the main contributions that I have proposed to the legislator for the improvement of the regulations in this matter.

In the light of those evoked and exploring a large bibliographic material, I believe I am entitled to say that the proposed scientific research’s objectives have been achieved and the proposed thesis provides a complete and complex picture of the current legal regime of parental authority in the Romanian legal system.

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KEY-WORDS: parental authority, parental rights and duties regarding the child’s person, parental rights and duties regarding the child’s property, joint exercise of parental authority, exclusive exercise of parental authority, deprivation of the exercise of parental rights, best interests of the child

FOREWORD



„The parental authority represents the ensemble of rights and duties that concern both the person and the property of the child”.

The proposed doctoral thesis provides a comprehensive picture of the theoretical and practical issues regarding the legal institution of „parental authority”, constituting a possible working tool available to all those with theoretical or practical concerns in this matter.

In elaborating the doctoral thesis, I sought to contribute to the logical and legal definition of the terms and phrases used in the relevant regulations, to identify any inadequacies or normative gaps and to substantiate relevant proposals of the law for their correction. The *lege ferenda* proposals are the results of a research activity through which I have pursued the objectives set in the scientific research plan.

The documentary base is extensive, including reference works from the Romanian and foreign published literature. Through its theoretical and practical content, the doctoral thesis addresses all those who have concerns in this matter of child protection, whether they are theoreticians or practitioners of law.

CHAPTER 1. INTRODUCTION

In Europe, it is not difficult to identify the areas where there are families where family connections are relatively „strong” and others where they are relatively „weak”. There are regions in which, traditionally, from a social perspective, the family and the extended group of the family have priority over the individual and others where the individual has priority over everything else, including family relationships. The way in which the relationship between the family group develops and manifests itself and its members has implications for the way in which the society itself operates. Thus, public authorities need to consider the nature of the existing family system when designing certain social policies and/or adopting a series of legal regulations governing family relationships.

The existence of „weak family ties” or „strong family ties” does not exclude the detriment of family relationships between spouses or between them and their children. The last two decades have seen a dramatic evolution of the number of divorced and lonely parents, and especially the number of children who do not live with both parent in the United States and the European Union, i.e. Romania.

Romania, unlike the other EU member states, has a specific peculiarity of settling disputes between different individuals and legal entities, including those dealing with „minors and the family” and it intends to solve these disputes exclusively in the courts of law.

As regards the breakdown by volume of activity at the level of the courts of law for 2017, the number of new cases involving „minors and family” accounted for 7% of the total volume of new entrants, namely 140,000 cases. Recording in a single year of approximately 140,000 cases involving „minors and family” and implicitly having as a primary or secondary purpose the resolution of some aspects of parental authority and how to exercise it, shows the impact that this institution has in the Romanian society.

Statistical figures mark a disturbing trend, as the breakdown of family relationships between parents is often accompanied by significant trauma and suffering, both for parents and for children. Solutions to avoid and/or ameliorate these traumas need to be found, developed and imposed by the public authorities, both through the adoption of legal regulations and especially through the development of social policies that take into account the specificity of family ties. The main area is the area of exercise of parental rights and duties, i.e. the exercise of the parental authority of the child as a whole.

The way in which the relationship between the family group and its members manifests itself in social relations has implications for the way in which the society itself operates and, above all, the way in which the state, generally regarded, regulated the issues of the protection of the individual, irrespective of the manner in which it is accomplished, namely by establishing the physical guardian, by prohibiting the minor and major individuals, by non-voluntary medical admission or the child's protection through specific modalities (the parental authority and the protection measures provided by the Law no. 272/2004).

The tutelage court and the authorities with specific attributions in this matter of the protection of the individual, when applying the community and national regulations in the matter of the protection of the individual, must take into account both the nature of the family ties that defines the social relations in the state, and the self-interest of the protected person.

By the notion of „protecting the individual” we understand all the legal provisions that regulate the protection of the property and the personal rights of the individual.

Civil law regulations aimed at protecting the minor and major individual are not intended to protect all individuals, but only those who, due to their age or physical or mental health, cannot individually protect their legitimate rights and interests.

Particularly, the constantly moving social relations as well as the jurisprudential necessities requires the analysis of the parental authority in the national and international courts, as well as by specialists and practitioners in the national states, of the institution of child protection, namely the protection of the child interest, an institution that is the foundation of the parental authority and the rights of the child in general.

In the Romanian law system, the regulations before the new Civil code on child protection and „parental protection” and, implicitly, in the matter of parental rights and duties were mainly found in the Family code, namely in the Law no. 272/2004 and Law no. 273/2004. And, under the auspices of the Civil code of 1864, the regulations on parental rights and duties were contained in Title VIII, which had the title „About Parental Power”.

By the entry into force of the Civil code and Law no. 71/2011 on the implementation of the Civil code, it was proceeded to the total express repeal of the Family code and partially of the Law no. 272/2004. This normative act has become the main instrument for regulating the matter of child protection through parents under the generic name of „parental authority”.

The Civil code approached a different solution regarding the premises of the matter than that adopted by the Family code, which contained in Title III all the legal regulations

regarding the protection of the individuals without legal capacity, the individual with limited legal capacity and the other individuals.

Thus, through Law no. 287/2009 on the Civil code, the legislator opted for a separate regulation of the common law aspects aimed at protecting the individual against the specific way of protecting the child or the protection of the child by the parents. In this respect: Book I, which is called „About persons”, stipulates the regulation of principle regarding measures for the protection of the individual, namely the protection of the children through guardianship and the protection of the major through the institution of „prohibition” or the institution of the „curator”; the second Book, titled „About family” regulates childcare rules through parents as a consequence of the existence in this book of a title on parental authority.

As regards the mechanism of parental authority, namely the conditions and modalities of exercising parental authority, it is only apparently simple, in practice, in the practice of minors and family courts, the litigations concerning parental rights and duties, the effective exercise of the parental authority and the discontinuation of the exercise of parental right receiving unequal solutions, even divergent, which question the vulnerabilities or weakness of the judiciary and social system as a whole.

As a consequence, the parental authority is a legal institution requiring a thorough analysis, since its application to social realities is far from being a unitary situation that is encountered not only in our law but also in the western European countries. Thus, although the child’s protection and the psychological effects of the various measures taken during his/her protection have been the subject of laborious and in-depth research, materialized in dozens of treaties, monograph and doctoral theses, the results obtained are far from definitive, failing to meet the specialists’ adherence regarding the key related to how to exercise parental authority, namely cases that may lead to deprivation of the exercise of parental rights.

These factors led us to choose as a doctoral thesis the institution of parental authority without claiming to find answers to all the theoretical and practical problems that the actual exercise of parental authority has raised or can raise – very hard if not impossible – but only to try to provide a new and perhaps more accurate picture of the key aspects to the effective way of exercising parental rights and duties.

To this end, considering the different aspects of the legal regime of parental authority, I preferred a structure of the material to three major parts, namely the first part, which will include general and historical notions regarding the origin, the foundation and the role of the parental authority; Part II which will analyze all the rights and duties regarding to the person

and the property of the child, as well as the key aspects related to the effective exercise of parental authority and the deprivation of the exercise of parental right; Part III which will address the conclusions and *de lege ferenda* proposals.

Considering this structure and the content of the first part of the doctoral thesis, I systematized this part in 2 chapters, namely:

- *First Chapter*, which will include a brief analysis of the historical milestones on the evolution of parental authority regulations;

- *Chapter II*, entitled „Historical milestones on the evolution of regulations regarding parental authority in Romania”, will naturally include, besides general and historical notions, the origin, the foundation and the role of parental care and the historical evolution of the regulations regarding the parental authority;

Part II of the doctoral thesis is structured in 5 chapters and will analyze the institution of parental authority in all its structural and constitutive elements, namely:

- *Chapter III*, entitled „General aspects of parental liability”, will address the definition, legal characters and principles of parental authority, and the delimitation of child protection by parents towards other civil law institutions (child custody, child protection measures in difficulty alternative means of implementing parental protection, prohibition, curatorship and non-voluntary interment).

- *Chapter IV*, entitled „Parental rights and duties”, will deepen the rights and obligations of parents regarding the child’s person and his property, closely following the structure envisaged by the authors of the Civil code: the right and duty of parents to raise the child; to take care of his/her health and harmonious physical and mental development; to take care of intellectual development as well as education, teaching and professional perfection of the child; to have and maintain personal ties with the child; to oversee the child; to prevent the correspondence and personal ties of the child without exercise of rights; the right to choose the child’s name and surname and to take disciplinary measures against him/her; the right to request the return of a child from any person without right and to establish his/her dwelling, the right to consent to the adoption, engagement and marriage of the child; to request the dissolution of the adoption; to take care of the child; the right and duty of parents to administer the child’s property in good faith while respecting the principle of patrimonial independence; to represent the child aged up to 14 years in legal acts as well as the right of parents to consent to the legal acts of the child over 14 years.

- *Chapter V*, entitled „Joint exercise of parental liability”, will explore aspects of the main modality of exercising the parental authority and the joint exercise of the parental authority, the presumption of parental consent in the case of current legal acts, the exercise of the parental authority jointly within the illegitimate family, the exercise of the parental authority jointly in the case of separated parents in fact or by divorce.

- *Chapter VI* will examine the „exclusive exercise of the parental authority” in all assumptions in which it may intervene, namely: exclusive exercise in the event of the death of one of the parents; the exclusive exercise of parental authority in the event of total or partial loss of parental rights; the exercise of parental authority in the case of the prohibition of one of the parents; the exercise of parental authority in the case of the inability of one of the parents to manifest, for any reason, the will; the exclusive exercise of parental authority in the case of separated parents by divorce; the exclusive exercise of parental authority in the illegitimate family; the exercise of parental authority by a third party; lawfully resolving misunderstandings between parents.

- *Chapter VII*, entitled „Legal liability of parents for the inappropriate exercise of parental rights and duties”, will analyze: the legal nature of divorce from the exercise of parental rights, the conditions for the cessation of parental rights, the procedure for the cessation of parental rights, the effects of denial of parental rights, the regranting of parental rights.

The final part of the thesis contains a chapter, namely the VIIIth chapter, in which I mentioned the conclusions and the *lege ferenda* proposals that I have formulated.

In the published literature, parental care is defined as the instrument for the protection of the child and his/her property that is carried out by his/her parents. Mention should be made that the notion of „parents” refers to both natural (biological) and adoptive parents, and the notion of „child” encompasses both the child from the marriage and the child from outside the marriage.

Exercising parental authority usually involves the joint, equal exercise of all rights and the fulfillment of parental obligations by both parents together.

In the regulations regarding the divorce, the legislator of the Civil code instituted the rule according to which parental authority is exercised by both parents, but for grounded reasons it can be ordered by only one of the parents of the child.

The Civil code does not regulate the notion of „grounded reasons” nor does it provide clues for identifying the scope of „grounded reasons”, merely generalizing the hypothesis that may lead to the exercise of parental authority by a single parent.

The practical difficulty is to identify and appreciate the „grounded reasons” other than those exemplifying in article 507 of Civil code. Thus, in the practice of the courts, there have been held to be „grounded reasons” which may attract the exclusive exercise of parental authority: the consumption of alcohol and drugs, the violence exercised by one of the parents if they are proved by medical certificates or statements of witnesses, the definitive establishment of one of the parents abroad. According to their points of view, the same reasons can only be considered as grounded when it occurs in the relationship between parent and child.

It should be pointed out that article 507 of Civil code does not set out a simple exception to the joint exercise of parental authority, but genuine exceptional situations in which the parental authority is exercised by a single parent who are supposed to be interpreted restrictively.

Regarding these aspects, when elaborating the doctoral thesis I have considered the following objectives:

- The notion, conditions and duration of parental authority both in terms of European legislation, but especially in the light of the Romanian legislation and the actual way of its application.

- The rights and duties of parents. In this respect, I analyzed the content of parental authority, the specific duties of the parents towards their own children, the possibility of disciplinary measures, the rights of the minor parent, the child’s home, the patrimonial independence between parents and children, the administration of the child’s property.

- The exercise of parental authority, namely the joint and equal exercise of parental authority in case of divorce, the exercise of parental authority by a single parent, the situation of the child from outside of the marriage and the consent of the parents regarding the exercise of parental authority.

- Revocation of the exercise of parental authority rights, conditions, extent of divorce, regranting of the exercise of parental rights, caring obligation and establishment of guardianship.

- The obligation of parental care for children.

As far as the research methodology is concerned, I have structured the work based on the Romanian legislation compared to the legislation of the states that inspired the current Civil code and I also focused on the communitary regulations which are directly and immediately applicable to the juridical situations in Romanian law cases.

I have realized the doctoral thesis based on the national and international judicial practice, namely mentioning the relevant judicial practice in analyzing the situations that require the exclusive exercise of parental authority and, especially, I have indicated the typology of the court sentences that generated a non-unitary practice and examined the considerations that led to such a measure.

The theoretical documentation the analysis, the synthesis of the legal issues involved, the study of a moderate number of cases, the study of the similarities and differences patterns in order to understand the mechanisms that operate and the formulation of the concepts are activities specific to the comparative research proper by the case study method.

In this regard, I show that the case (the situation) represents the analytical unit that was the subject of the analysis, I presented the national and international theories, interpreted the causes and the possible effects, and also I formulated new concepts, theories and solutions compatible with the respective national system, I have made *lege ferenda* proposals in relation to the situations in society, situations that are not regulated and/or are insufficiently regulated.

As far as the research methodology is concerned, I show that I have done the work based on the national and international published literature, namely the literature from the countries that inspired every aspect of parental care. In this regard, I have accessed both the university library of „Lucian Blaga” University of Sibiu, the library of Sibiu Law School and the library of National Institute of Magistracy, as well as the Anelis site offered by „Lucian Blaga” University of Sibiu.

CHAPTER 2. HISTORICAL ASPECTS REGARDING THE DEVELOPMENT OF REGULATIONS CONCERNING THE PARENTAL AUTHORITY IN ROMANIA

2.1 OVERVIEW OF THE CHILD PROTECTION IN ANCIENT ROME

From the beginnings of the organized society, editing cohabitation rules as well as legal issues were related to the way in which family ties and relationships are organized in society and, in particular, the exercise of parental authority over children, namely how the relationships between parents and their children are regulated and organized, analyzed from the point of view of the mononuclear family.

The parental authority, as we know it from the current national and community regulations, is the fruit of a centuries-long evolution, during which it has undergone radical transformations from the ancient principle of *father's natural right to the child* to the present situation that pursues the exercise of parental authority *with respect to the supreme desiderate – the superior interest of the child* – as a result of the natural development of human society, of the religious, moral, economic and even political influences.

The analysis of the way in which the effective exercise of parental rights and duties is regulated in the current Civil code must be based on the exposition of the historical and conceptual roots of the parental authority, namely its evolution from the absolute power of the father of the ancient period to the central figure of exercising parental authority in the modern age – the child.

In ancient Rome, the family was organized on a monogamous basis, which involved the exercise of the sole power of the chief of family over all family members, including slaves. The Roman principle of *patria potestas* (power over the children) gave to the *pater familia* the absolute power over his children and his wife, including the power of abandoning (*ius exponendi*), selling (*ius vendendi*), banishing or killing his children (*ius vitae ac necis*). The content of the father's parental power over his family was so comprehensive that he in fact absorbed the entire legal personality and children's patrimony into the patrimony of *pater familias*.

Practical restrictions on parental power have existed since the beginning of Roman history and have evolved until the notion of the *patria potestas* has been reduced almost to the end of the Empire to nothing more than the right, through a strong correction. In addition, organized religion has created some restrictions on the effective exercise of father's authority over descendants. Thus, although there is no evidence of what constitutes an excessive or abusive application of patriarchal power, it seems that *pater familias* could not exercise his power over the lives of his children and their descendants without exceptional justification.

2.2. CHILD PROTECTION IN THE GERMAN CUSTOMARY LAW

The customary law of Germanic origin was widely spread in Europe, representing practically some small local variations, the central body of European law, in which is now the geographical area delimited by Germany, Central France, the Scandinavian Peninsula and Northern Italy.

The German society was also a patriarchal one, like the one of the Romans, but the German term *mund* or *mundium* explicitly included both the parental duties towards their own child and the father's rights towards the child. The moral and legal concept of the *mund* institution combines the notions of rights, power and liability. These parental power and rights have been the dominant theme of recent developments in French legislation and law practice on how to exercise parental authority, namely the rights and duties of parents over the child's person and property.

German influences have manifested themselves in Central France through customary law that evolved from the French *mainbourne* concept, meaning *mundium*. On the other hand, in the south of France, where the written law governed social relations, including the family (*le pays du droit écrit*), the Roman law was the main source of inspiration.

2.3. PARENTAL PROTECTION IN FRENCH CUSTOMARY LAW

Under customary French law, the parental authority or power (*la puissance paternelle*) belonged not only to the father but also to the mother. Moreover, parental authority ended when a child reached the age of majority, or acquired, expressly or tacitly, emancipation. Under French customary law, the parental authority is exercised only in respect of the person of the

child, and not in respect of his/her property. In fact, the property of the child coexisted with all the dismemberment of the property right over its possession and the father had a simple right to administer the child's property.

Thus, in the context of customary civil law, the notion, incorporated later in the French Civil code and taken over by the modern world, was „parental authority” essentially based on the obligation to protect the children. The Roman vision of parental authority and the existence of an absolute father's right over the family and, implicitly, of the child, never made part of the French customary civil law.

Finally, the Napoleonic Civil code embraced the concept of the *mundi* on child protection. Despite the general protection offered by the *mouiniumm*, the father still had extensive powers over his family, being free to decide on his children according to his own education and consciousness, but without being able to abuse excessively of his power.

2.4. CHILD PROTECTION IN MIDDLE AGE ENGLAND

The notion of Germanic origin *mund* was extended in Anglo-Saxon England, resulting in tempering and controlling the patriarch's power over his family. Thus, at one point in England, the wife was free to denounce a marriage and leave her marital residence with her own children and claim half of the common goods.

In feudalism, given the increased power of the church, the father became the natural guardian of his children, thus repealing any rules that concerned equality of rights between the two spouses or the rights of the child. In feudal times, the father had, according to common law, the absolute prerogative and the authority to control the education and religion of his children. With some exceptions, the father had the absolute right to decide on the form of schooling and religious education, and his desires had to be respected, including after his death.

The Shelley case and the Industrial Revolution have virtually marked the death of the „parent preference” in the United Kingdom. In 1839, Talford's law modified almost all the regulations that ensure parental preference for custody of children by giving to the mother the right to care for children under the age of seven. In 1873, Talford's law was amended again, this time to give the mother the right to entrust children regardless of their age.

2.5. CHILD PROTECTION IN FORMER ROMANIAN LAW

The old Romanian family was based on the customary patriarchal regime, in which the paternal authority was especially extended in moral terms.

Parental power was the source of the marriage that conferred extensive attributions to both parents, but especially to the father, mostly corrective.

Another way to acquire parental power was adoption, called „*soul-making*” (in Romanian *luarea de suflet*) which usually took place when a person had no descendants. Parents could only sell their children in exceptional situations, for example, in the case of famine when selling them was the only way to save them from death.

In Moldavia, the relations between parents and their children were regulated in the first Civil code of Moldavia based on the principles of Roman law governing these relations. Thus, in 1817, the Calimachus code extended powers to the father exercising exclusively parental power, while the mother did not exercise parental rights and duties even when the child’s father became unable to exercise the rights. In this situation, the parental powers were exercised by a guardian appointed for this purpose.

As far as the content of the notion of „child’s interest” is concerned, the father decides on his/her own convictions and without the intervention of the mother or a magistrate in terms of his education, the life and the health of the child. The father of the child had the fundamental right to create it „according to the rank and how it will fit”, but the child was entitled to ask the father to provide a specific education, namely to obtain a judicial change of the teaching „according to his departure and his powers”.

In Romanian civil law, under the Civil code of 1864, Title VIII having the marginal name „on parental power”, the raising and education of children was achieved through the institution of the parental power. Under the influence of French law, the parental power did not aim at ensuring the authority of the head of the family over children but the obligation to protect their own children. The legal regime of the minority was based on the rule that children "must be subjected" to the protection of their parents.

Parental power implied the total rights granted to parents on the person and property of the child while he was minor or unemancipated. The Civil code of 1864 made a clear distinction between the married child, considered "legitimate", to whom the parental power of both parents was exercised, and the non-married child considered "illegitimate" to whom no legal relationship was recognized with the biological father.

Under the rule of the Family code and Law no. 272/2004, the parental care was governed by certain principles, some of which were maintained under the auspices of the new Civil code:

- the exercise of parental rights exclusively in the best interests of the child;

- the equality of both parents in exercising parental authority;
- the exercise by the specially constituted bodies of the state of effective control over the way in which parents exercised their parental care;
- patrimonial independence between parents and children;

By the entry into force of the Civil Code, it was proceeded to the total repeal of the Family Code and Partial Law of Law no. 272/2004. This normative act has become the main instrument for regulating the field of child protection through parents under the generic name of "parental authority".

At Community level, Recommendation no. R (84) 4 of the Committee of Ministers of Member States on parental liability adopted by the Committee of Ministers of the Council of Europe on February 28, 1984 was the first Community instrument to specifically address both rights and parental responsibility in particular. Recommendation no. R (84) 4 regulates how parental rights and duties should be exercised in different situations.

Finally, the principles of European family law on parental liability developed by the European Family Law Committee – EFLC principles – deserve a special mention in this thesis even if they do not come from an European (or international) official organization.

The European Commission's Family Law principles suggest how national and community family legislation should evolve and progress. Subsequently, the principles were tested by applying them to the national systems in Estonia, Malta, Romania, Scotland, Denmark, England and Wales and Turkey.

The European Commission's principles on Family Law are, in our opinion, the most progressive and extensive regulations on parental rights and responsibilities .

These, through principle 3:11, establish the fundamental norm that regulates the relationships between parents and their children, namely the parents having parental responsibilities must have equal rights and the duty to exercise jointly all the responsibilities they have towards their own children. According to principle 3:10 these parental responsibilities should not be affected by parental separation.

CHAPTER 3. GENERAL ASPECTS ON THE PARENTAL AUTHORITY

Since the beginnings of human society, the establishment of social cohabitation norms, which later became legal norms, aimed at protecting the individual. The need to protect specific social values as well as the existence of categories of persons to whom such special protection must be provided for various reasons has led to the adoption of legal rules that outline distinct protection regimes for each of the categories of vulnerable persons.

The raising, care, education and protection of children through parents is achieved through a set of legal rules governing the exercise of parental authority, the effective exercise of parental rights and duties towards the child, the effective exercise of parental rights and duties over the child's patrimony as well as the deprivation of the exercise of parental rights.

With the entry into force of the Civil code, it was proceeded to the total repeal of the Family code and partial to the Law no. 272/2004. This normative act has become the main instrument for regulating the field of child protection through parents under the generic name of „parental authority”.

In the Romanian Civil code the parental authority is regulated by articles 482-512 of Title IV, Book II, entitled „About family”. These general provisions are complemented by the provisions of Law no. 272/2004.

The Romanian legislator has defined the notion of „parental authority” as „the set of rights and duties that concern both the person and the property of the child” thus taking over the definition of the parental authority of the French Civil code and the Italian Civil code.

The relationships between parents and children are based on the primary duty of parents to raise and educate the child, which has led the legislator to expressly mention the elements that make up the notion of "parental authority" as follows: "parents have the right and duty to raise the child, taking care of his/her physical, mental and intellectual health, teaching, education and professional training, according to their own convictions, skills and needs of the child". They also "have the duty to give the child the guidance and counsel necessary to properly exercise the rights that the law recognizes him/her".

The duties that are included in the parental authority are of a dual nature. Typically, they are equally subject to the condition (s) of rights and duties. By attributing these powers,

the law recognizes a natural right, stemming from the bondage of filiation, but imposes at the same time their fulfillment and as an obligation that has its source in the same connection of parentage. This combines the mononuclear interest of parents with family and social family, giving rise to the category of rights - duties that characterize this institution.

In the Romanian legal system, parental rights and duties are not limited to the person of the minor, they also concern the goods or the civil acts of the child. The distinction between the two categories is useful in view of the possibility of separating parental authority when there is a division of specific rights and duties, especially those relating to the child's property, between the two parents or between them and a third person who assures subsidiary protection of the minor.

It is obvious that the best interests of the child and his/her rights take precedence, context in which it should be made clear that the consecration of the child's rights is not sufficient for the purpose of the law to be achieved. Child protection requires, first and foremost, concrete means and guarantees to achieve it. Thus, the implementation of these legal provisions can be made more difficult or, worse, prevented by many obstacles that can be found, in part or in full, in society.

In interpreting the provisions of principle contained in article 487 paragraph 1 thesis I of Civil code, Law no. 272/2004 states that both parents are jointly responsible for raising and educating their children, and the exercise of parental authority should only take into account the best interests of the child. Thus, "the parents have the duty to ensure the material and spiritual well-being of the child, especially by caring for him/her, by maintaining his/her personal relations, by ensuring his/her growth, education and maintenance, as well as by his/her legal representation for the conclusion of the civil acts managing the property of the child".

According to article 487 paragraph 1 Civil code, the obligation to care for the child implies for the parents the following duties:

- a) to take care of the child's health and harmonious physical, mental and intellectual development;
- b) to take care of the child's education, teaching and perfection;
- c) to give the child the necessary guidance and advice for the proper exercise of the rights and obligations that the law confer on him/her;
- d) to raise the child in such conditions able to ensure his/her physical, mental, spiritual and social development in a harmonious manner.

Therefore, the content of parental rights and duties is not suspended. They have both a general purpose (the superior interest of the child) that imparts common features, but each has its own specific object. As regards the enumeration and designation of parental rights and duties regarding the child, there is no consensus in the published literature, with a diversity of opinions.

Prof. Al. Bacaci with Mrs. Prof. Hageanu C.C. have stated that parental rights and duties related to the child are: the parent's right to establish the child's domicile and to keep it; the parent's right to guide the child; the right of the parent to have personal connections with the child; the right of the parent to watch over the child's growth, teaching, educating and training; the right of parents to consent to the adoption of the child; the right of parents to represent the child in civil acts or to approve such acts; parental responsibility to raise the child; parents' duty to support the child.

The parental rights and duties relating to the child's property are: the right and duty of the parent to administer the child's property; the right and duty of the parent to represent the minor child in civil acts or to approve such acts.

In the opinion of Prof. Teodor Bodoaşca, the parental rights and duties regarding the child are related to: the child's religion, the name of the child, the supervision of the child, the request for the return of the child from other persons who hold him/her without right and the minor's domicile.

Regarding parental rights and duties regarding the child's property, Prof. Teodor Bodoaşca notes that these are: the right and duty of the parents to manage the child's property, as well as the right and obligation of the parents to represent the child without exercise of rights at the conclusion legal acts, such as the right and duty of parents to consent to the legal acts of the child with limited exercise of rights.

Thus, it can be noticed that what differs from author to author is rather the way in which the statement is formulated, as the determination of the actual content of the listed rights and obligations results in the same result, namely the full coverage of the child protection field in its personal aspect, and heritage.

As far as we are concerned, we consider that the rights and duties of parents with respect to their child are:

- the right and duty of parents to take care of the health, integrity and physical, moral, social, mental and intellectual development of the child according to their own beliefs, but respecting the child's aptitudes, attributes and needs;

- the right and duty of parents to take care of and decide on the education, teaching and professional training of the children according to their abilities;

- the parental obligation to raise the child in such conditions to ensure his/her harmonious development from a physical, moral, social, mental and intellectual point of view;

- the parental obligation to establish, maintain and develop personal connections with the child;

- the right and duty of parent to supervise the activities and the person of the child;

- the parent's right to guide the child without exercise of rights in choosing a religion, taking into account his/her opinion, age and maturity;

- the right of parents to choose the child's name and surname, according to the law;

- the right of parents to take disciplinary measures of little importance against the child;

- the right of parents to ask for the return of the child from any person who holds him/her without right;

- the parents' right to establish the child's domicile;

- the right of parents to consent to the adoption of the child or to request the dissolution of the adoption;

- the parents' right to consent to the engagement and marriage of the child;

- the obligation to take care of the child;

The right and obligations regarding the child's property are:

- the right and duty of parents to administer the child's property in good faith while respecting the principle of patrimonial independence;

- the right and duty of parents to represent the child without exercise of rights at the conclusion of legal acts;

- the right and duty of parents to consent to the legal acts of the child with limited exercise of rights.

CHAPTER 4. PARENTAL RIGHTS AND DUTIES

4.1. PRELIMINARY PRECISIONS

Raising and protecting the children by parents is carried out through a set of legal institutions that regulate parental authority both in terms of rights and duties that concern the child and as regards their rights and duties towards the child's property.

The parental rights and duties are regulated by article 487 of Civil code, which has the marginal title „Content of parental authority” as follows: „parents have the right and duty to raise the child, take care of his physical, mental and intellectual health and development, education, teaching and professional training, according to their own beliefs, the characteristics and the need of the child. They also have the obligation to give the child the necessary guidance and advice for the proper exercise of the rights that the law recognizes him/her”.

4.2. PARENTAL RIGHTS AND DUTIES CONCERNING THE CHILD'S PERSON

4.2.1. THE RIGHT AND DUTY TO RAISE THE CHILD

The right and duty of parents to raise the children in such condition to ensure their harmonious development from physical, moral, social, mental and intellectual point of view is the most important element of the parental authority being established by article 48 paragraph 1 of the fundamental law of Romania, article 487 paragraph 1 of Civil code and article 47 paragraphs 1 and 2 of Law no. 272/2004 and aims to transform the child into a healthy, educated, balanced adult able to make the right decisions and face the challenges of life.

The right and duty of parents to raise the child according to their own beliefs, characteristics and needs of the child is found in all European states, being the foundation of child protection through parents.

The European Court of Human Rights, in *Keegan v. the Republic of Ireland* case, held that, if a parental relationship had previously been established between a parent and a child, it was for the national authorities to act in such a way that this connection should develop and also have to adopt and provide all the necessary legal safeguards to integrate fully into the family from the time the child is born. In this respect, should be mentioned the principle provided in article 7 of the United Nations Convention on the Rights of the Child, which expressly provides that a child, regardless of age, has the right to be cared for by his/her parents.

It should be noted that, in the view of the legislator, the concept of raising the child is complex and includes more duties for parents, all of which converge to the same goal, namely transforming the child into a healthy, educated, balanced adult able to make the right decisions, integrate in society, face the challenges of life, namely to ensure the growth and further education of their own children.

4.2.2. THE RIGHT AND DUTY OF PARENTS TO TAKE CARE OF THE PHYSICAL HEALTH AND DEVELOPMENT OF THE CHILD

Child health and development care is essential to the development, well-being and balance of the child and is an essential step towards transforming him/her into a healthy, educated, balanced adult able to make the right decisions, integrate into society, face the challenges of life, namely to ensure the growth and further education of their own children.

Considering the provisions of article 487 paragraph 1 of the Romanian Civil code, as well as article 488 paragraph 1 of the Romanian Civil code, mention should be made that the term „raising the unmarried minor child” includes the obligation of the parents to concern themselves with the child’s physical integrity, the optimal care of the child’s health and the harmonious physical development of the child.

The right to protect the health of individuals and, implicitly the minor, is raised to the rank of fundamental right among the constitutional provisions. Thus, the right to life, as well as the right to physical and mental integrity of the individual are guaranteed, the state having a positive obligation, namely to take all necessary measures to ensure optimum hygiene and public health.

Moreover, children and young people benefit from a special regime of protection and assistance from the state, aimed at achieving all their rights. In this respect, the state has the constitutional obligation to provide the granting of monthly financial allowances, by establishing social programs to ensure their proper nutrition within the public education system, namely the granting of financial aid for total or partial coverage of the costs of caring for the sick or disabled child.

A delicate problem arises when the parents refuse to give their consent in case of emergency for a surgery that must be done to save the child. In the exceptional situation „when the life of the child is imminently threatened or there is a risk of serious consequences with respect to his/her health or integrity, the doctor has the right to carry out those medical acts of

strict necessity to save the child's life, without the consent of the parents or other legal representatives thereof".

When it is not a complex condition, the individual right or duty to raise the child of the parent to which the child does not have a stable residence implies the existence of an obligation to inform and not the exercise of an effective prior consent to the medical act.

Similarly, we consider that decision on minor health issues that fall under the competence of a pediatrician may be taken by a single parent, but underlie the obligation to inform the parent where the minor does not live and his right to seek a second medical opinion.

However, we consider that the choice of a pediatrician is a decision that must be taken with the consent of both parents because the pediatrician's professional capacity, the degree of accessibility, the pediatrician's vision regarding the relationship between the doctor and the parent are important issues in the future physical development of the child.

4.2.3. THE RIGHT AND DUTY OF PARENTS TO CARE OF THE HEALTH AND HARMONIOUS MENTAL DEVELOPMENT OF THE CHILD

The profile of cognitive abilities, beliefs, ethical values of the child protection and the particular emotional state that characterizes the child at each stage of development is the result of various influences operating in complex ways. The most important determinants of different child profiles includes: inherited physiological models call temperamental qualities, practices and parenthood, the quality of the schools attended, relationships with colleagues, the orderly position in the family and ultimately the historical age in which late childhood and early adolescence occur.

The Romanian legislator, considering the importance of parents in developing the personality of their own children, through article 487 paragraph 1 of Civil code explicitly regulated the parents' right and obligation to deal with the child's optimal development from a psychological point of view and in article 488 paragraph 1 Civil code has imposed on the parents the specific duty to raise the child in such conditions to ensure a harmonious mental development.

In conclusion, in our opinion, the duty of the parents to concern themselves with the child's health and psychological development involves both a positive aspect of satisfying the needs of the child according to the stage of development and his/her special needs, as well as a

negative aspect that involves the protection of the child against any type of physical, emotional or negligent behavior of parents.

4.2.4. THE RIGHT AND DUTY OF PARENTS TO TAKE CARE FOR THE INTELLECTUAL DEVELOPMENT AND THE EDUCATION, TEACHING AND PROFESSIONAL TRAINING OF THE CHILD

By education, in the traditional meaning, it is expressed the activity carried out within the restricted (mononuclear) family, which aims to acquire general knowledge, moral values and social cohabitation rules that characterize the family, and in the largest meaning, it is expressed the child's guidance in developing his/her personality, in choosing of studies or profession, the type of education. Thus, within the framework of the family relations, the first points in the process of child's education and teaching are established, meaning the set of measures and influences exerted for the development of the physical, intellectual, cognitive, personality modeling and stimulation of the child's abilities, with his/her attributes.

In the Romanian legal system, the education and professional training of children aims at „developing their competences, understood as a multifunctional and transferable set of knowledge, skills and aptitudes, necessary for personal fulfillment and development, by realizing their own objectives in life according to the interests and the aspirations of each and the desire to learn throughout life”.

Mention should be made that parents should be aware of their social liability as the main factors of guiding and educating the child, shaping and modeling their personality in full accord with the generally accepted moral values of the society, justice, humanity, love, respect, honesty, non-discrimination, etc.

4.2.5. THE RIGHT AND DUTY OF PARENTS TO HAVE PERSONAL CONNECTIONS WITH THE CHILD

Practically, the question of exercising the rights occurs in cases where the child does not permanently live with one of the parents at his/her home, namely in cases where parental rights and duties are not legally exercised by or on behalf of both parents only in part.

The right of the parent who does not live with the child to have personal connections with him/her at his own home, together with the caring obligation, is one of the most often

invoked rights in parental disputes and poses real problems in judicial practice, regarding the effective realization of this right.

Mention should be made that the right of children to establish and maintain their personal relationships with both parents must be exercised by them regardless of the background to the separation of the family life established between the child and his/her parents or if the child was born as a result of an extramarital relationship.

In this respect, it can be noted that, from the point of view of the Court of Justice of the European Union, a measure that prevents a child from regularly having personal connections and direct contacts with both parents can be justified only by another great interest of such a child that it has priority over the interest underlying that fundamental right.

European Union law expressly recognize the right of every child to maintain personal connections and direct contact with both parents. Article 24 paragraph 3 of the Chart clarifies the content of the right, in particular the meaning of the notion of „contact”, which must: take place *regularly*, allow the maintenance of *personal relationships* and be in the form of *direct contact*. Although the Chart does not expressly limit the exercise of the parent’s right to maintain connections with the child, we appreciate that the child’s own right to establish and maintain personal connections with his/her parents or the parents’ own right to establish and maintain personal connections with their child are limited only by their child’s best interest.

Furthermore, the child’s own right is expressly mentioned by the Council of Europe Convention on Personal Relations for Children. Thus, article 4 paragraph 1 of the Convention provides that „the child and his/her parents shall have the right to establish and maintain constant personal relations”.

The Council of Europe has not confined itself to the general regulation of personal relations concerning children and, by the Convention of May 15, 2003 it was regulated in detail the way in which the ties (literally the „contact”) between the child and the parent as well as the obligations of the member state to protect such connections.

Law no. 272/2004 lists the main ways in which the right to maintain personal connection can be exercised, such as:

- actual meetings of the child with the parent with whom he/she does not live together;
- actual meetings of the child with members of the extended family who, according to the law, have the right to develop personal connections;
- visiting the child by the parent with whom he/she does not live together or by the extended family members at his/her home;

- housing the child for a specified period by the parent with whom he/she does not live, or by the extended family members, with or without the supervision of the way in which the personal connections are maintained and developed;

- establishing communication ways between the parent and the child regardless of the way in which it is carried out;

- informing the child about the parent with whom he/she does not live or about third parties who have the right to develop personal connections with the child;

- informing the parent with whom the child does not live or third parties who have the right to develop personal connections with the child of all relevant information related to the child, including medical checks and assessments, school and/or other assessments to which the child was subject;

- actual meetings of the child in a neutral place, with or without supervising the way that the personal connections are maintained and developed;

- actual meetings of the child with third parties with whom he/she has the right to develop personal connections in a neutral place, with or without supervising the way that the personal connections are maintained and developed.

In our opinion, parents are free to determine by their consent the actual exercise of the right to the parent with whom the child does not live to have and maintains personal connection with him/her, such an agreement being subject, of course, to judicial control and producing effects only after verifying its concordance with the best interests of the child.

We appreciate that the subsequent modification of the program and the actual manner in which the child's personal connections with the parents are exercised is possible both by the parent's consent with prior consultation of the child to extend this program and by the intervention of the guardianship court in terms of reducing the parent-child connection program.

Mention should be made that the reduction of the program can only be made if the parent and extended family's behavior is proven to be harmful for the harmonious development of the child. To this end, the appreciation of the guardianship court is wide and will analyze the child's best interest in all aspects and not just as to the establishment or content of the personal connections program.

4.2.6. THE RIGHT AND DUTY OF PARENTS TO SUPERVISE THE CHILD

Provided by article 493 paragraph 1 of Civil code, the right and duty of parents to supervise the child is an element of parental authority closely linked to the general obligation to raise the child and gives parents control over the child's daily activities, concerns and entourage.

We consider that the right to supervise the child does not belong exclusively to the parents, based on the parentage connection, but according to Law no. 272/2004 may also belong to the public administration authorities with child protection attributions or to the guardian. Thus, during the minority period, parents have the right and even the duty to supervise the child more specifically to follow the child's activities to ensure that they are appropriate for the child's age and harmonious development and do not endanger the child's life or health.

Supervising is a continuous activity that is done both directly – when the parent is physically present with the child and directly follows his/her behavior, activities, how he/she interacts with other people, and indirectly – when the parent is informed about the activities of the child in his absence, the environment and the entourage he/she is attending. Parental control over the activity of the child, by virtue of its right and duty of supervision, is not an absolute necessity to be carried out responsibly, respecting the dignity and development of the child, and also respecting the right to inform the other parent about it, in case of separated parents.

4.2.7. THE PARENT'S RIGHT TO REDUCE FOR GROUNDED REASONS THE PERSONAL CORRESPONDENCE AND PERSONAL RELATIONS OF CHILDREN AGED BELOW 14

Modern ways of communication are numerous, varied and, most of the time, available for any child. Not to mention a classic letter or phone call from your home place. Communication is currently mostly on the mobile phone, via a phone call, e-mail, or through social networks. There are, therefore, dangers for children, who are often naive, without life experience and whose trust is extremely easy to win.

The right and duty of parents to supervise the child is not absolute in character and can not be exercised discretionary, but if they find that a certain correspondence of the child or certain connection he/she maintains with certain persons affects the child's subsequent physical and psychological development, parents have the right and, moreover, the obligation to intervene to restrict the child's access to the means of communication and, of course, to prevent him/her from having correspondence and connections with those persons.

However, the parent's right to intervene and prevent the correspondence of the child with certain persons does not allow him/her to access the contents of the correspondence carried out by the child, since the provisions of article 302 of the Criminal code does not foresee a case of non-punishment in the case of parents who access the contents of the correspondence carried by the child.

4.2.8. THE PARENTS' RIGHT TO GUIDE THE CHILD OVER HIS OWN BELIEFS IN SELECTING A RELIGION, TAKING INTO ACCOUNT THE AGE AND THE DEGREE OF THE CHILD'S MATURITY

The choice of religion or, more specifically, the decision to raise the child in any religion or the pursuit of certain religious teachings and practices is a right guaranteed by the International Convention on the parents' right to children. Thus, article 14 paragraph 1 of the Convention requires the member states to respect the rights and obligations of the parents to guide their child in the exercise of his/her right to freedom of thought, conscience and confession in a manner that is appropriate to the child's capacities.

Mention should be made that the rights of parents, in the context of freedom of choice of religion by their own children, are treated differently in European law as opposed to international law. Thus, unlike communitary regulations, the International Convention on the Rights of the Child refers to the exercise of freedom by the child and provides that parents have the right to provide guidance and advice not only in accordance with their beliefs but also in full accordance with the beliefs of the child.

Religious education has also received a special attention in the regulation of additional protocols to the European Convention on Human Rights. Thus, according to article 2 paragraph 1 of Protocol no. 1 to the Convention, the member states must take into account the (religious) beliefs of parents in the exercise of all the functions they undertake regarding the education and teaching.

As far as the religious education of the child is concerned, in the Romanian legal system, mention should be made that parents have the freedom to choose from the beginning the religion or confession of their child. Thus, they are the ones who guide the child, according to their own religious and philosophical beliefs, in choosing a confession, but the exercise of this right is defined by the child's opinion as well as the age and degree of maturity. Furthermore, in our opinion, the exercise of this right does not imply a correlative obligation

on the part of the child, he/she cannot be compelled to adhere to a particular religion or confession.

4.2.9. THE RIGHT OF THE PARENT TO CHOOSE THE NAME AND THE SURNAME OF THE CHILD

The name is a complex notion, being from the beginning of articulated language, one of the concepts behind the identification and individualization of the person in the community as well as in the family.

Because the surname means family affiliation, the legislator considered its attribution to be dependent on parentage. Exceptionally, the surname can be settled in an administrative way when there is no parentage connection. So the principle that dominated this matter is that the way of acquiring the surname is based on the affiliation.

As regards the name, we appreciate that parents are free in their choice, being subject only to moral, religious or social constraints if they are prejudicial to the child. The Court has held that the refusal of national authorities to register a name based on the fact that it is likely to harm the child does not infringe article 8 of the Convention.

As regards the name and surname of the child, the European Court of Human Rights, in *Guillot v. France* case, held that the name „as a way of identifying persons within their families and the community” falls within the scope of the right to private and family life, as enshrined in article 8 of the Convention.

The name and the surname chosen by parents for the child are part of their private life. On the other hand, the refusal of the national authorities to register a name which is not inappropriate for a child and which was previously considered to be acceptable may constitute a violation of article 8 of the Convention.

4.2.10. THE PARENT’S RIGHT TO TAKE CERTAIN DISCIPLINARY MEASURES AGAINST THE CHILD

The right of coercing, including the physical one that parents have to the child, has evolved greatly from the notion of „*pater familias*” from the Roman law system and „*mund*” from the German law system and is now totally forbidden by physical punishment and other coercive measures that can affect the transformation of the child into a healthy, educated,

balanced adult able to make the right decisions, integrate into society, face the challenges of life and ensure the growth and further educations of his/her own children.

At the moment, in an unprecedented but shy and questionable attempt to restore „parental power” against the child, article 489 and article 494 of the Romanian Civil code provide the possibility of taking some „disciplinary measures”, namely the application of „physical punishments” to the minor child. In this respect, the legislator does not exclude the right of parents to take certain disciplinary measures, but requires that they should be exercised only by ensuring the dignity of the child. Taking such disciplinary measures by parents or physical punishment likely to affect the development of the child is forbidden.

In our opinion, the necessity to take disciplinary measures of little importance is obvious, being claimed, especially by the superior interest of the child. Indeed, in order to fulfill their importance and the many obligations they have on the child, parents must also have the „appropriate legal instruments” including the legal possibility of taking certain punitive or coercive measures against them in order to „correct the inappropriate and guilty behavior”.

Considering the provisions of article 489 of Civil code and Law no. 272/2004, we consider that the following measures may be included among the disciplinary measures allowed to be used by the parents: child molesting or reproaching, prohibiting or limiting the child’s various recreational activities, banning or restricting the child’s access to social or internet networks, prohibiting or restricting the child’s access to television, requiring the child to carry out some minor domestic activities such as washing his/her own dishes, cleaning the premises he/she used.

4.2.11. THE PARENT’S RIGHT TO REQUEST THE RETURNING OF THE CHILD FROM ANY PERSON WHO HOLDS HIM/HER WITHOUT RIGHT

Parents may request „whenever the child returns from any person who holds him/her without right” but the guardianship court will consider this request and will order the child to be returned if the measure is in the best interests of the child.

Mention should be made that, in our opinion, the exercise of this right is imprescriptible.

With regard to conflict concerning the non-return of the child in civil relation with an external element, the Hague Convention on the civil aspects of international child abduction is the framework regulation that governs these legal relationships.

Thus, according to article 3 of the Hague Convention, the movement or non-return of a child is the nature of an offense:

a) „when committed by a violation of a right of custody attributed to a person, institution or other body acting either separately or jointly by the law of the state in which the child was habitually resident immediately before his/her movement or non-return”;

b) „if at the time of the movement or non-return, that right was actually exercised, acting separately or jointly, or was exercised, if such circumstances did not arise. The right of entrustment referred to at letter a) may result, *inter alia*, from a rightful award, from a judicial or administrative decision or from an agreement in force under the law of that state”.

In the view of the Romanian legislator, the parent who has established in any way the right to secure the child's housing also benefits from the right to ask for the return of the child from any person - physical or juridical - if it holds it without right - irrespective of the nature of the connection established between the child and the person who refuses to return it even if that person is a member of the family.

Thus, in our opinion, the person from whom the child will be asked to return can be both a third party with whom the minor has established a connection protected by article 8 of the European Convention on Human Rights, as well as the other parent, to whom the child's dwelling has not been established, as a result of separation in fact, divorce, marriage annulment as well as in case of a child from outside the marriage.

The detention of a minor by a parent constitutes the material element of the offense of non-compliance with the measures concerning custody of the minor in the manner provided for in paragraph 1 of article 379 of Criminal Code. It can be noted that in this manner of committing the offense it is a child whose dwelling was settled in one of the parents or another person and who, temporarily living with the other parent, legally, is not allowed to return to the parent of the person entrusted to him/her under the law.

For the existence of the offense, we appreciate that the possible custody of the child must be done without the consent of the other parent or the person to whom the child has been entrusted. Detention, as a material element of the offence provided by article 379 of Criminal code should not be confused with the notion of „abduction of the minor” used in the description of conflict that has at least one foreign element.

In my opinion, if a mother's concubine or a third person keeps the child and prevents him/her from moving to see any of the parents, we are in the presence of the offense of deprivation of liberty illegally and not of the offense of non-compliance with custody measures.

We consider that regardless of the hypothesis we are in – parents live together and exercise simultaneously and equally parental authority, respectively, do not coexist but exercise simultaneously and equally parental authority – the action for the return of the child may be introduced by any of them without seeking the express consent of the other parent, but the citation of both parents is useful for the court to better assess the relationship between the parents and the child and, as such, to be able to decide on the opportunity to return.

Similarly, when the parents are not living together and there is a previous court settlement or settlement order, any of them may directly request the return of the child by virtue of their personal ties with the child, however, in the absence of a such parental conventions or judgments, the parent who considers himself/herself to be in breach of his/her rights may only seek subsidiary return of the child to the place of residence of the claimant parent, the principal claim being always the establishment of the child's domicile to the claimant parent.

4.2.12. THE PARENTS' RIGHT TO ESTABLISH THE CHILD DOMICILE

Currently, this right of parents to establish the home of a minor child is regulated by articles 496-498 of Civil code. In case of divorce or in case of separation in fact of the parents, in case of the illegitimate family, the domicile of a child is determined according to the regulations provided in article 400 of the Civil code. Mention should be made that these legal provisions do not regulate the child's domiciled, but only various aspects of the „child's home". Indeed, the domicile of the minor and the one placed under judicial interdiction is regulated by article 92 of Civil code and article 27 paragraph 2 of the Emergency Ordinance no. 97/2005.

The child lives with his parents and, if they do not live together, will settle the child's house by mutual consent.

This parental decision is imposed on both children, due to their lack of financial resources and full exercise capacity to choose and provide their own homes, especially to authorities with competence in the field of child protection and other state authorities. However, if the child acquires limited exercise capacity, he/she may ask the parents to change their home, provided this is necessary for the completion of their teaching or professional training. Such situations are extremely exceptional, and we appreciate the need for a profound analysis of the whole complex of factors to adopt such a solution, to decide only for the intended purpose of the legator and the child's interest, the wishes of parents are relevant.

4.2.13. THE RIGHT OF PARENTS TO CONSENT TO THE ADOPTION OF THE CHILD OR TO REQUEST THE DISSOLUTION OF THE ADOPTION

The current internal regulation of Romania pays particular attention to the consent of the natural parents to the adoption. This orientation is based on the option of the legislator to try as far as possible the safeguarding of family relationships based on the natural connections and is determined by the circumstance that, according to article 470 paragraphs 1 and 2 of Civil code, the proximal effect of adoption is the irremediable termination, in principle, of connections between the adopted person, on the one hand, and the parents or their extended family on the other hand.

Considering the provisions of article 463 paragraph 1 Civil code, in our opinion, for the valid conclusion of an adoption, it is required the prior consent of the person adopted if he/she reached the age of 10, the person who carries out the protection function of the adopted person and, of course, the adopter and spouses from the adoptive family, unless a lack of discernment makes it impossible for them to manifest their will.

Mention should be made that it is necessary to obtain an act of will from both natural parents as the cessation of the relationship of ancestry between the adopted and its descendants and the ascendant of the adopter refers to any legally established bond of affiliation irrespective of whether the adopted child is from marriage or out of marriage, parents are married, separated in fact or divorced.

Moreover, the exclusive exercise of parental authority by the parents or, exceptionally, by a third person does not lead to the loss of the right to consent to the adoption of the child of both biological parents respectively of the parent exercising exclusively the rights and duties both parents and those who do not exercise these rights or are deprived of the exercise of parental rights.

4.2.14. THE RIGHT OF PARENTS TO CONSENT TO THE ENGAGEMENT AND MARRIAGE OF THE CHILD

Marriage can be terminated only if future spouses have acquired full exercise capacity and are not placed under judicial interdiction. For well-founded reasons, a child aged between 16 and 18 may validly conclude marriage, however, it is necessary to obtain a prior medical

opinion, the consent of his or her parents or, where appropriate, of that guardian after obtaining the authorization from the guardianship court in whose constituency the child is domiciled.

If only one parent consents to the marriage of the minor and the other refuses or is unable to express his/her consent, the guardianship court will decide on marriage approval if it satisfies the best interests of the child. We appreciate that the guardianship court can overcome a parent's refusal to consent to the child's engagement and marriage if it is proven by any means of proof that it is abusive and contrary to the best interests of the child.

4.2.15. THE CARING OBLIGATION

Parents who are the main holders of child-raising responsibility have the obligation to ensure, as far as possible, the best living conditions, dwelling and, in general, all the material support necessary for the child's growth, education, teaching and perfection; calls, where appropriate, for the support of public authorities in the implementation of social assistance and social security rights for the child. They are also required to have access to healthcare services so that the child has an optimal state of health and that life-threatening situations, growth and development are avoided.

4.3. PARENTAL RIGHTS AND DUTIES REGARDING THE CHILD'S PROPERTY

4.3.1. THE RIGHT AND DUTY OF THE PARENTS TO ADMINISTER WITH GOOD FAITH AND SUBJECT TO THE PATRIMONIAL INDEPENDENCE PRINCIPLE THE GOODS OF THE CHILD

As a rule, this right extends to all of the child's goods; by exception, the goods acquired by the child for free – which will be administered by the curator or the person appointed by act or, as the case may be, appointed by the court – are not subject to administration unless the testator or the donor has otherwise ordered.

4.3.2 THE RIGHT AND DUTY OF PARENTS TO REPRESENT THE CHILD WITHOUT EXERCISE OF RIGHTS AT THE CONCLUSION OF LEGAL ACTS

In principle, the minor without the exercise of rights and the person put under judicial interdiction, are unable to exercise the rights, cannot conclude valid legal acts alone, and during the limited exercise capacity of the child aged between 14 and 18, its participation in civil legal relations is limited to protecting its interests, including its own lack of maturity and experience.

That way, both minors and persons under judicial interdiction can participate in legal life but through legal representation. Mention should be made that neither the child aged below 14 nor the person under judicial interdiction can designate a conventional representative because they cannot validly enter into agreements (in this case a representation agreement).

Mention should be made that if the consent of a legal act can be given by a single manifestation of will from the parents or the guardian, assisting the child with limited exercise of the rights cannot be achieved by a preliminary and unique consent for the whole process, but by successive concessions given for each act.

4.3.3 THE RIGHT AND DUTY OF PARENTS TO CONSENT TO THE LEGAL ACT OF THE CHILD OLDER THAN 14 YEARS

Upon reaching the age of 14 and until full exercise of right, the child's legal acts are concluded by him/her with the prior consent of the parents and, in the cases specified by law, with the authorization of the guardianship court.

Unlike the conclusion of some legal acts of substantive law, we consider that, in the matter of procedural rights, prior and general consent is insufficient because the procedural acts that a party exercise in the civil trial involve a succession of acts, some foreseeable, such as the action, but other unpredictable imposed by the normal course of the procedure. In this regards, the Supreme Court held that „the parent or guardian cannot authorize the child to carry out all procedural acts and a generic authorization given at the beginning of the trial would be likely to lack the minor – in an activity can seriously harm his interests – the protection that the law has deemed necessary for a person without legal knowledge and experience. A simple prior authorization would have a formal character and would deprive a minor of the assistance that may be needed at any time of the debate and in unpredictable situations”.

5. JOINT EXERCISE OF PARENTAL AUTHORITY

5.1. PRELIMINARY PRECISIONS

In our opinion, parents exercise parental authority, as a rule, together, jointly and equally, both during and outside the marriage, regardless of the situation of a divorce or of the one where the parents have never been married, namely in the situation of the child from a null or cancelled marriage.

5.2 CONDITIONS TO EXERCISE PARENTAL AUTHORITY

The exercise of parental authority with respect to the person and property of the child, whether by virtue of the principle of coparentality or in a shared way, if exercised by only one of the parents of the child, implies, in our opinion the cumulative fulfillment of two conditions:

- a) full exercise of rights of the parent, doubled by his/her ability to manifest the will;
- b) the beneficiary of the rights and duties that come within the content of the parental authority can only be a child.

5.3. SUBJECTS OF PARENTAL AUTHORITY

5.3.1. REGULAR SUBJECTS OF PARENTAL AUTHORITY

- a) Regular exercise of parental authority
- b) Parental authority and the separation of parents
- c) Loss of parental rights

5.3.2. PARTIAL SUBJECTS AND EXTRAORDINARY SUBJECTS OF PARENTAL AUTHORITY

Child care through the institution of „parental authority” is based on the parentage relationship between parents and children, regardless of the manner in which it was established (biologically or by adoption) and thus seen in its entirety, can only belong to the father and mother. On the other hand, there are third parties who can exercise some of the parental rights and duties, and partly assume certain aspects related to the protection of children through their parents.

- a) Partial subjects

b) Extraordinary subjects

The death of both parents, their incapacity as well as the deprivation of their parental rights shall lead to the right to exercise parental authority by a number of exceptional subjects, the minor passing from the parental protection regime to a special protection regime according to article 110 Civil code, namely to Law no. 272/2004.

5.4. RULE OF JOINT EXERCISE OF PARENTAL AUTHORITY

In the background of increasing parents' liability for child care, decisions aimed at raising, educating, supervising, guiding and caring for the child are taken together and agreed by the child's parents (the principle of coparentality),

In family relationships, the harmonious development of the child translates beneficial relationships between parents and children, and the child's opinion is taken into account and he/she is involved in any decision concerning him/her, his/hers opinions being listened to and considered by the parents, each measure being taken in pursuit of the child's harmonious development.

5.5. THE PRESUMPTION OF THE PARENTS' AGREEMENT FOR CURRENT ACTS

As a matter of novelty in relation to the previous regulation of the Family code, article 503 paragraph 2 of Civil code provides that „towards third-party of good faith, any parent who performs a single act for the exercise of parental rights and duties, is presumed to have the consent of the other parent”. Other way said, we believe that the law extends the sphere of the silent reciprocal mandate between spouses to their current acts on raising, educating, caring for and supervising the child.

The presumption of tacit mandate regulated by article 503 paragraph 2 of Civil code is a relative one, that may be overturned by the contrary proof by the parent who, before the conclusion of the act, opposed to the conclusion if he/she succeeds in proving both his/her opposition and the fact that the third party was of bad faith at the conclusion of the act, meaning that he/she knew the parent's opposition to the conclusion of the act.

5.6. JOINT EXERCISE OF PARENTAL AUTHORITY WITHIN THE ILLEGITIMATE FAMILY

In the light of the provisions of article 505 paragraph 1 of Civil code, it is obvious that the principle of coparentality is the rule of common law also for unmarried parents, but, in our opinion, it is required to fulfill two cumulative conditions, namely:

- the filiation to be legally established, concurrently or successively, with respect to both parents;
- the parents to live together.

Thus, the hypothesis regulated by the Romanian jurisprudence and legislator refers to the fact that in our days, very often, within the freely consensual union, the two parents are equally interested in the child since the birth (sometimes before or shortly after) and that, although maternal and paternal recognition are not simultaneous, both occur and none of them intervene too late after childbirth.

5.7. JOINT EXERCISE OF PARENTAL AUTHORITY IN CASE OF SEPARATED PARENTS

We consider that the exercise of coparentality by two non-cohabitants is the culmination of the joint exercise of parental authority. Thus, the deterioration of family relationships which led to a separation of the parents in fact and which, for various reasons, have decided to maintain their marriage relationship does not in itself constitute an obstacle to establishing the joint exercise of parental authority as the exercise of such joint exercise is also open to divorced parents.

5.7.1. SEPARATION IN FACT

For married parents who for various reasons no longer live together, the joint exercise of parental authority is not a new rule but in fact is a continuation of a specific way in which they exercised their rights and duties towards their children during the marriage and after ending the cohabitation of parents.

Thus, we consider that the exercise of parental authority is preserved in the patrimony of parents and, exceptionally, if there are grounded reasons, the guardianship court may decide that the exercise of parental authority rests solely with one of the parents of the child.

5.7.2. SEPARATION BY DIVORCE

If parents are divorced „parental rights and duties are exercised according to the provisions on the effects of divorce in parent-child relationships”.

We consider that the rule of coparentality imposed by the legislator leads to the conclusion that the separation of parents by divorce implies rather the joint exercise of parental rights and duties than the unilateral exercise of one of the parents. This forced application of the principle of coparentality is difficult to achieve because the joint exercise of parental rights is based on a presumption of understanding, while it is reasonable to assume that divorced parents no longer have such an understanding, practically a *de facto* exercise of parental rights and duties is achieved only by the parent who lives with the child.

6. EXCLUSIVE EXERCISE OF PARENTAL AUTHORITY

6.1 PRELIMINARY PRECISIONS

The Romanian Civil code, in Chapter III entitled „Exercise of parental authority” introduced a series of exceptions to the rule of coparentality. Thus, parental rights and duties are exercised by only one of the parents in the following situations:

- if one of the parents is deceased;
- if one of the parents is declared dead by court order;
- if one of the parents is placed under judicial interdiction;
- if one of the parents is deprived of the exercise of parental rights;
- if for any reason one of the parents is unable to express the will.

6.2. EXCLUSIVE EXERCISE OF PARENTAL AUTHORITY IN CASE OF MARRIED PARENTS

6.2.1 EXCLUSIVE EXERCISE OF PARENTAL AUTHORITY IN CASE OF THE DECEASE OF ONE OF THE PARENTS

If the child’s both parents are dead, the guardianship of the child is established. Although guardianship performs the functions of parental protection, the rights of the guardian regarding the child are not identical to those of the natural parents, being, in our opinion, just similar, because in the case of guardianship there is no transfer of parental rights and duties to the guardian, as in the case of adoption and so we are in the presence of specific rights and duties based on the law.

Interpreting *per a contrario* the provisions of article 110 paragraph 1 Civil code, it can be noted that the death of one of the parents automatically leads to the exclusive exercise of the parental rights and duties by the surviving parent, whether or not he/she exercises them, and thus the definitive cessation of the exercise of parental rights and duties by the deceased parent.

6.2.2. EXCLUSIVE EXERCISE OF PARENTAL AUTHORITY IN CASE OF TOTAL OR PARTIAL DEPRIVATION OF PARENTAL RIGHTS

Deprivation of one or both parents of the parental rights and duties is a legal sanction specific to family relationships, whether final or temporary, which may only be ordered by the court if the parental behavior indicated the parent's inability to exercise parental care.

The cases where this sanction is applied are strictly regulated by the Civil code, „the deprivation of the exercise of parental rights occurs if the parent endangers the life, health or development of the child through ill-treatment, alcohol or narcotics, abusive behavior, through serious negligence in fulfilling parental obligations or by seriously undermining the superior interest of the child”.

The immediate consequence of the application of this sanction is the total or partial withdrawal of the exercise of parental rights, namely the protection of the child from any negative influence on the part of the parent that could affect his/her harmonious development.

6.2.3. EXCLUSIVE EXERCISE OF PARENTAL AUTHORITY IN CASE OF THE PARENT UNDER JUDICIAL INTERDICTION

In our opinion, the main effect in the matter of family relations of the definitive court decision on judicial interdiction is the incapacity of the person to exercise all the rights, including parental rights and, consequently, the exercise of parental rights individually by the other parent.

We consider that if one of the parents is placed under judicial interdiction, it is his/her duty to contribute to child raising and bringing costs only if his/hers means exceed the normal needs of his/her care and healing, assuming that he/she has the necessary financial resources to fulfill the obligation to contribute to child raising and education expenses by the guardian in the name and on his/her behalf.

6.2.4. EXCLUSIVE EXERCISE OF PARENTAL AUTHORITY IN CASE OF THE PARENT UNABLE TO EXPRESS THE WILL

In our opinion, a situation that finds its applicability in the provisions of article 507 paragraph 1 Civil code is the exclusive exercise of parental authority, between the date set by the court decisions as the death date and the moment of the definitive court decisions, by the living parent.

6.2.5. DISAPPEARANCE OF ONE OF THE PARENTS

In this situation, we consider that the guardianship court will have to determine the state of the facts and, if this protects the best interests of the child, to order the exclusive exercise of all parental rights and duties, both those concerning the child and those concerning the property, by the parent who continues to raise the child.

6.2.6. CONFLICT OF INTERESTS BETWEEN CHILDREN AND PARENTS

The published literature starts from the premise that the parent who shows contrary interests to the child does not have the moral guarantee that he/she will exercise the parental rights and duties exclusively in the child's best interest, but it is noted that this contradiction of interests cannot be a strong ground to justify the total exclusion of that parent from the exercise of any parental rights.

6.2.7. PREVENT A PARENT TO FULFILL AN ACT IN THE NAME AND INTEREST OF THE CHILD OR TO CONSENT HIS/HERS ACTS

If, due to a physical illness or for other reasons, the parent is prevented from performing a particular act in the name of the child he/she represents or whose act he/she approves, the guardianship court will appoint a special curator who will be responsible for the representation and/or consent of the child in order to carry out his/her act or his/her consent.

6.2.8. CONVICTION OF ONE PARENT TO A PENALTY INVOLVING DEPRIVATION OF LIBERTY

The execution of a penalty involving deprivation of liberty involves by itself the isolation of the convict and, implicitly, the considerable reduction of his/her connections with the family. It goes without saying that during the period of imprisonment, the imprisoned parent will not be able to exercise his/her rights and duties over the child, so that it is only temporarily necessary for the other parent to exercise parental authority alone during the imprisonment.

6.2.9. ONE OF THE PARENTS IS VOLUNTARILY IN THE IMPOSITY OF EXERCISE PARENTAL RIGHTS AND DUTIES

Although this hypothesis is not explicitly provided by the law, in our opinion it refers to the situation where there are a number of objective impediments to exercise the parental

rights and duties such as one of the parents permanently leaving the country without having contact with the child, although he/she does not leave the country, breaks any connections with the child, not exercising for a long time the rights and duties that concern the minor.

6.2.10. OTHER REASONS

The legislator considers reasonable grounds for the court to decide that parental authority must be exercised by a single parent, such as „alcoholism, psychological illness, drug dependence of the other parent, violence against the child or the other parent, convictions for crimes, human trafficking, drug trafficking, sexual offenses, crimes of violence, and any other reasons related to the risks to the child that would arise from that parent’s exercise of parental authority”.

6.3. EXCLUSIVE EXERCISE OF PARENTAL AUTHORITY IN CASE OF SEPARATION IN FACT

Given that the mother did not care about the child from the factual separation of the parents, and did nothing to raise and educate the child, and the fact that she is currently abroad, the court decided that is in the child’s interest that parental authority to be exercised only by the father who will decide on all essential issues related to the person and the property of the child under the law and will be responsible for the good faith performance of these duties.

6.3.1. EXCLUSIVE EXERCISE OF PARENTAL AUTHORITY IN CASE OF SEPARATION BY DIVORCE

The rule of common law established by the legislator is, in our opinion, that separation of parents by divorce requires, in principle, the joint exercise of parental authority and, by way of exception, the exclusive exercise of parental authority.

Maintaining the parental relationship between the parent who does not live with the child and the child, in my opinion, implies the joint exercise of parental authority by divorced parents, but may and must be established and retained for the parent who has been excluded from the exercise of parental authority. In this case, co-parenting is undermined in the form of attenuating supervisory, information, visiting and accommodation rights associated with the duties in that situation.

6.3.2. EXCLUSIVE EXERCISE OF PARENTAL AUTHORITY IN CASE OF ILLEGITIMATE FAMILY

Regarding the exercise of parental authority over a child from outside the marriage but having the established affiliation to both parents, mention should be made that the Civil code has distinguished between parents who live together and parents who do not live together. Thus, in the first situation, the parental authority is exercised jointly by the parents and equally, and in the second situation, when the parents do not live together, even if the affiliation has been established for both parents successively or concurrently, the court may decide, if there are grounded reasons, that the parental authority is exercised exclusively by one of them, taking into account the need for the child to harmoniously develop from a physical, moral, social, mental and intellectual point of view.

6.4. EXERCISE OF PARENTAL AUTHORITY BY THIRD PARTIES

Entrusting the children, after divorce, to a person other than the father or the mother is, in our opinion, an exceptional measure that is only necessary when the child's care growth and education would suffer. The general rule is therefore that the child should be entrusted with the divorce of one of the parents and only if this measure would be harmful to the minor may be entrusted to another person.

6.5. SOLVING THE DISPUTES BETWEEN PARENTS

6.5.1 JURISDICTION IN SOLVING THE DISPUTES BETWEEN PARENTS REGARDING THE EXERCISE OF PARENTAL RIGHTS AND DUTIES

6.5.1.1. SUBJECT-MATTER JURISDICTION

Jurisdiction in the matter of parental authority is rigorously determined and belongs to the law courts, in particular, in our opinion, the subject matter jurisdiction to solve the disputes of this kind belongs in the first instance to the ordinary court.

6.5.1.2. TERRITORIAL JURISDICTION

In our opinion „unless otherwise provided by the law, any requests for the protection of the individual under the Civil code in the jurisdiction of the guardianship and family court” shall be settled by the court at the domicile or residence of the protected person. Mention should be made that this rule governs an exclusive territorial jurisdiction.

It should be noted that paragraph 2 of article 114 of the Civil Procedure code regulated a case of alternative jurisdiction, namely the court of guardianship of legal acts, when they concern a real estate, can be formulated both at the domicile or residence of the protected person and at the guardianship and family court in whose territorial jurisdiction the real estate is located. The purpose of the rule is to facilitate the judicial procedure and to fulfill the real estate formalities.

6.5.2. INTERVENTION OF THE GUARDIANSHIP COURT JUDGE REGARDING THE CONVENTIONS BETWEEN PARENTS WITH RESPECT TO THE EXERCISE OF PARENTAL AUTHORITY

The parties, in the ideal situation in which they agree on the effective way of exercising parental rights and duties, may submit to the guardianship court their agreement regarding the exercise of parental authority. Thus, parents, with the consent of the guardianship court and the mandatory obedience of the child, can agree on any matter concerning the exercise of parental authority or about the adoption of measures for the protection of the child, if this respects the best interest of the child.

In our opinion, the possibility offered to parents is based on the fact that they have a better knowledge of the child and of his/her interests, on the fact that a good understanding between parents regarding the exercise of parental authority will lead to their voluntary fulfillment of the assumed obligations without the need for further interventions by the guardianship court when analyzing the actual fulfillment of parental duties.

6.5.3. INTERVENTION OF THE JUDGE IN CASE OF A CONFLICTUAL SITUATION

The judge specialized in „minors and family” or the judge in the guardianship court may be seized by one of the parents, by common law action or by way of emergency injunction, to decide on the ways of exercising the parental authority; or, more specifically, on the actual

way of exercising a distinct right or duty with respect to the child's home or on the manner and amount of the individual contribution for raising and educating the minor.

6.5.4. HEARING OF CHILDREN

The guardianship court judge has a duty and minors, after the age of 10, have the right to be heard in all administrative or judicial proceedings that concern them. However, if the competent authority deems it necessary to settle the case, it may also proceed to the child's hearing before the age of 10 years.

6.5.5. THE TEMPORARY CHARACTER OF SOLVING PARENTAL DISPUTES

Even after divorce, the exercise of parental rights and duties, and the need to protect the child, are excluded from the negative effect of the double jeopardy as opposed to divorce and other aspects such as the name of the child who, at the moment of the definitive court decision, cannot be discussed by the parties.

7. LEGAL LIABILITY OF PARENTS FOR THE INAPPROPRIATE EXERCISE OF PARENTAL RIGHTS AND DUTIES

7.1. PRELIMINARY PRECISIONS

Taking over in some respects the provisions of articles 109-112 of Family code, the Civil code regulates the „deprivation of the exercise of parental rights” under the following aspects: conditions (article 508), extent of the deprivation (article 509), caring obligation (article 510), establishment of guardianship (article 511), regranting the exercise of parental rights (article 512).

7.2. THE LEGAL NATURE OF THE DEPRIVATION OF THE EXERCISE OF PARENTAL RIGHTS

As far as we are concerned, we consider that „the sanction of the deprivation of the exercise of parental rights” has a „complex” legal nature. An argument for this conclusion is that, most often, this „sanction” is ordered as „ancillary criminal penalty” under the conditions of article 65 Criminal code or as „complementary criminal penalty” according to article 66 paragraph 1 of the Criminal code. Thus, in a brief analysis of the „facts” that determine the „state of danger” for „life”, „health” and „development of the child”, we find that they are committing the content of some crimes that potentially can lead to „criminal penalties of the parent” and, as a consequence, the application of the complementary penalty, namely of the „deprivation of the exercise of parental rights”.

7.3. CONDITIONS OF DEPRIVATION OF THE EXERCISE OF PARENTAL RIGHTS

Even though the marginal name of article 508 Civil code is „conditions”, the plural being used, it should be noted that this text established in fact only one condition, that the „parent endangers the child’s life, health or development”. Moreover, although the legislator uses the marginal name „conditions”, article 508 Civil code regulates both the „conditions/de facto reasons” that the court must retain for the deprivation of the exercise of parental rights and a series of special „procedural regulations” for taking this measure.

7.3.1 ENDANGERING THE LIFE, HEALTH AND DEVELOPMENT OF THE CHILD BY MISTREATMENT

In chronological order, article 508 paragraph 1 Civil code refers, first of all, to the mistreatment of the minor by virtue of the fact that the offense of „mistreatment applied to the minor”, provided for and punished by article 197 Criminal code. However, it is not necessary to apply a criminal penalty to order the application of the specific sanction for family law.

7.3.2. ENDANGERING THE LIFE, HEALTH AND DEVELOPMENT OF THE CHILD BY THE PARENT WHO IS CONSUMING ALCOHOL OR OTHER NARCOTICS

The second fact which may attract the parent’s deprivation of the exercise of parental rights evoked by article 508 paragraph 1 Civil code is the consumption of alcohol or narcotics. Considering the alternative reference to the legal text on „alcohol” or „narcotic” consumption, we believe that for the incidence of this article it is not necessary a cumulative consumption of both alcohol and drug use, being sufficient for the parent to consume only a certain type of substances, only alcohol or only narcotics.

7.3.3 ENDANGERING THE LIFE, HEALTH AND DEVELOPMENT OF THE CHILD BY ABUSIVE BEHAVIOR OF THE PARENT

Deprivation of the exercise of parental rights as a result of abusive behavior by parents is intended to make the child’s right to be protected, among other things, against „abuse”, according to article 94 paragraph 1 of Law no. 272/2004.

Abuse of the child means „any voluntary action of a person who is in a relationship of liability or authority towards him/her, which endangers the life, physical, mental, spiritual, moral or social development, physical integrity, physical or mental health of the child”, and neglecting the child means the „voluntary or involuntary omission of a person who has the responsibility of raising, caring for or educating the child to take any measure that involves the fulfillment of that responsibility, which jeopardizes physical, mental, spiritual, moral or social development, physical integrity, physical or mental health of the child” and take several forms: food, clothing, neglect of hygiene, medical neglect, educational neglect, emotional neglect or abandonment, which represents the worst form of neglect.

7.3.4 ENDANGERING THE LIFE, HEALTH AND DEVELOPMENT OF THE CHILD BY SERIOUS NEGLIGENCE IN FULFILLING PARENTAL OBLIGATIONS

In its turn, the deprivation of the exercise of parental rights for serious negligence in fulfilling parental obligations, even if it questions the basis of these civil sanctions, has the role of making the child's right to be protected against „negligence” more effective. However, we express the opinion that „negligence” provided by article 508 paragraph 1 Civil code is not synonymous with the „negligence” evoked by article 94 paragraph 2 of Law no. 272/2004, the legislator mistakenly uses the term „negligence” instead of „neglect” of the child, which consists in the failure or inadequate fulfillment of parental duties.

7.3.5. SERIOUS INFRINGEMENT OF THE BEST INTEREST OF THE CHILD

At least, the last deed listed in article 508 paragraph 1 Civil code is the serious infringement of the best interests of the child, which must, in particular, be the consequence of the inappropriate exercise of parental right.

It should be noted that the legislator abstains from establishing the meaning of the expression „the best interests of the child” used by article 508 paragraph 1 Civil code. In the current language, the term „interest” has the meaning of material and/or moral benefit pursued by the person by exercising the rights recognized by the law.

7.4. THE PROCEDURE OF DEPRIVATION OF THE EXERCISE OF PARENTAL RIGHTS

Under the procedural aspect, article 508 Civil code established the following special rules, derogations from the common law: court jurisdiction, court referral only by the public administration authorities with attributions in the field of child protection; judging the request for urgency, quoting the parents to the request, conducting a psychosocial investigation, mandatory participation of the prosecutor.

7.4.1. PRELIMINARY STAGE TO THE GUARDIANSHIP COURT REFERRAL

„In our opinion, any separation of the child from his/her parents and any limitation on the exercise of parental rights must be preceded by the systematic provisions of services and benefits provided by the law, with particular emphasis on proper parenting, counseling, therapy or mediation, granted on the basis of a service plan drawn up by the civil service of DGASPC (General Direction for Social Assistance and Child Protection)”.

7.4.2. COURT JURISDICTION

7.4.2.1. SUBJECT MATTER JURISDICTION

The subject matter jurisdiction for settling such disputes belongs in the first instance to the ordinary court, while special measures of protection fall within the jurisdiction of the tribunal.

7.4.2.2. TERRITORIAL JURISDICTION

In our opinion, requests for the protection of the individual under the Civil code in the jurisdiction of the guardianship and family court, including those concerning the deprivation of the exercise of parental rights, shall be settled by the court in whose territorial jurisdiction the protected person has the domicile or residence.

7.4.3. STANDING TO BRING PROCEEDINGS

According to the provisions of article 508 of Civil code, we consider that none of the parents of the child has an active standing to bring proceedings in order to claim the parental rights of the other parent. Thus, in our opinion, the active standing to bring proceedings belongs exclusively to the authorities of the public administration with attributions in the field of child protection, which implies some particular precisions.

7.4.4. THE COURT OF FIRST INSTANCE

7.4.4.1. JUDGING FOR URGENCY

The requirement under article 508 paragraph 2 sentence I of the Civil code regarding the „urgent judging” of the applications is, in our opinion, unnecessary, since it duplicates the provisions of article 107 paragraph 2 Civil code, which generally provides that in all cases the guardianship court shall immediately settle such claims.

7.4.4.2. SUMMONING THE PARTIES

We also consider that the provision in article 508 paragraph 2 sentence II of the Civil code is unnecessary because it duplicated the provisions of article 14 Civil procedure code, which, in principle, stipulates that the court may decide on an application only after the summon or the appearance of the parties, unless the law provides otherwise.

7.4.4.3. PSYCHOSOCIAL INVESTIGATION REPORT

Even if article 508 paragraph 2 Civil code inflexible provides that „the request is judged on the basis of the psychosocial investigation report”, we consider that this provision only has the effect of imposing the obligation to carry out the psychosocial investigation in the cases concerning the examination of the applications for deprivation of the exercise of parental rights; not to limit the probation to this test. In fact, nothing precludes that, under article 22 paragraph 2 of the Civil procedure code, the court may also order the administration of other evidence if it deems it necessary for the proper settlement of the case.

7.4.4.4. HEARING THE CHILDREN

The judges of the guardianship court have the obligation and the minor, after the age of 10 years, has the right to be heard in all administrative or judicial proceedings concerning them, including those which have as object the deprivation of parents from the exercise of parental rights. However, we consider that if the competent authority deems it necessary to settle the case, it may also proceed to the minor’s hearing before the age of 10 years.

7.4.4.5. PARTICIPATION OF THE PROSECUTOR

The participation of the prosecutor in the settlement of applications for the deprivation of the exercise of parental rights is mandatory, in our opinion, circumscribed to the „special regime of protection and assistance in the realization of children’s rights” evoked by article 49 paragraph 1 of the fundamental law, as well as the role of the Public Ministry in the judicial activity to represent the general interests of society and to defend the rule of law, as well as the rights and freedoms of citizens provided by article 131 paragraph 1 of the fundamental law and article 4 paragraph 1 of the Law no. 304/2004 on judicial organization.

7.5. THE EFFECTS OF THE DEPRIVATION OF THE EXERCISE OF PARENTAL RIGHTS

As a rule, the deprivation of the exercise of parental rights is total, meaning that the parent loses the exercise of all parental rights, both on the person and on the property of the child, except for the right to consent to the adoption of the child and, extends to all children born at the time of the judgment.

However, we consider the fact that the court can order the deprivation only with respect to certain parental rights or certain children, but only if, in that way, children are not harmed regarding their raising, education and training. Undoubtedly, in the hypothesis regulated by article 509 paragraph 2 Civil code, the court is obliged to nominate in the sentence the rights and children to whom the deprivation extends.

7.6. REGRANTING THE PARENTAL RIGHTS

The sanction applied, even if it is a total or partial deprivation of the exercise of parental rights, is not a definitive measure, meaning that the court may regrant the parent the exercise of the parental rights if the circumstances that led to such a sanction have ceased and the parent no longer is endangering the life, health and development of the child.

The legal possibility of „regranting the exercise of parental rights” denotes the „temporary nature of the measure”. The solution is logically and legally justified by the fact that every child has the right to live with his/her parents in his/her family environment and, above all, on the idea of cessation of the circumstances that imposed the measure.

8. CONCLUSIONS AND *LEGE FERENDA* PROPOSALS

The parental authority is the set of the rights and duties that a parent has in relation to his/her child and includes, among other things, the establishment of the child's home, parental supervision, decisions on the child's religion, medical interventions, caring and education of the child. Moreover, it can be defined as the power attributed to parents by allowing them to decide on any aspect of raising, educating, supervising, guiding, caring and housing the child.

As shown in the thesis, the duties that are included in the parental authority are of a dual nature; typically, they are equally subject to the condition (nature) of rights and duties. By attributing these powers, the law recognizes a natural right, stemming from the bondage of filiation, but imposes at the same time their fulfillment and as an obligation that has its source in the same connection of filiation. This combines the mononuclear interest of parents with family and socially, giving rise to the category of rights-duties that characterize this institution.

As far as we are concerned, we consider that the rights and duties of parents with respect to their child are:

- the right and duty of parents to take care of the health, integrity and physical, moral, social, mental and intellectual development of the child according to their own beliefs, but respecting the child's aptitudes, attributes and needs;

- the right and duty of parents to take care of and decide on the education, teaching and professional training of the child according to their abilities;

- parental duty to raise the child in such conditions able to ensure his/her harmonious development from a physical, moral, social, mental and intellectual point of view;

- parental duty to establish, maintain and develop personal connections with the child;

- the right and duty of parents to supervise the activities and the person of the child;

- the right of parents to prevent the child with no exercise of rights any personal correspondence and connections;

- the right of parents to guide the child with no exercise of rights in choosing a religion, taking into account his/her opinion, age and maturity;

- the right of parents to choose the child's name and surname, according to the law;

- the right of parents to take disciplinary measures of little importance against the child;

- the right of parents to request for the return of the child from any person who holds him/her without right;

- the right of parents to establish the child's home;
- the right of parents to consent to the adoption of the child or to request the dissolution

of the adoption;

- the right of parents to consent to the engagement and marriage of the child;
- the child's caring obligation;

The rights and duties of parents with respect to the property of the child are:

- the right and duty of parents to administer the child's property in good faith while respecting the principle of patrimonial independence;

- the right and duty of parents to represent the child with no exercise of rights in legal acts;

- the right and duty of parents to consent to the child's with limited exercise rights legal acts.

The co-parenting is the common rule of law in the exercise of parental rights and duties. As it was shown, the derogation from the rule of joint and equal exercise of parental rights and duties interferes, in our opinion, with the fulfillment of two conditions which, only cumulatively, may justify the exercise of parental authority by a single parent:

- to exist *grounded reasons*;
- *the measure to be in accordance with the child's best interests*.

In our opinion, the notion of „child's best interest” refers to the effective benefit for the child (positive aspect) combined with a negative aspect, namely the absence of any disadvantage for the child. This is a constantly changing concept as a result of the individual situation of each child, and an evolutionary notion as a consequence of the sociological context; the specific implications of the principle will be taken into account by each judge individually depending on each child and his/her concrete situation.

Mention should be made that „the child's best interests” also imply a child's right to participate in the adoption of any decision that concerns him/her. „Protection, provision and participation” dominates the approach of the child's position in the parental care system, without giving the child the sovereignty to determine his/her destiny. The competent authority will take into account certain criteria such as the child's existing situation, his/her stability, the establishment of sustainable relationship between the child and the parents, the child's wishes, the child's age, the educational capacity of the parents, the availability of the parents and their financial conditions.

As a matter of novelty, in relation to the previous regulation of the Family code, it should be noted that article 503 paragraph 2 of the Civil code, with respect to the third parties in good faith, any parent who carries out a single act for the exercise of rights and the performance of parental duties is presumed to have the consent of the other parent. In other words, the new regulation extends the sphere of silent reciprocal mandate between spouses and their current acts on raising, educating, caring for and supervision the child.

In our opinion, the relative legal presumption of silent mandate between spouses is a facility for each parent that favors his/her individual action in decision-making and also makes them responsible for the relationship with the child. Thus, when one of the parents is alone in front of a third party (in performing an act of administering, a current act of education of the child, of a minor medical act) in order to carry out this act, the law does not make the valid conclusion of this act conditional on the prior submission of the other parent's agreement to that third party.

In conclusion, in our opinion, exercising the rights and duties of the parents regarding the person of the property of the child, has both a positive aspect, which involved satisfying the needs of the child according to the stage of development and his/her special needs, as well as a negative aspect, to protect the child against physical, emotional abuse, negligence, practices that could harm.

Since many of the deficient regulations have been highlighted throughout the thesis, we still want to highlight some of them, which we consider to be particularly important in relation to the entire regulation of the parental authority, trying to offer possible solutions to remedy them.

The *lege ferenda* proposals which we intend to support concern, on the one hand, the effective way of exercising parental authority, the clear identification of the scope of parental rights and duties, and, on the other hand, the work carried out on this matter by the judge. At the same time, we aim to contribute to the elimination of some inconsistencies in terms of the improper use of certain terms, as well as in the improvement of the norms regulating the judicial activity under Law no. 272/2004 and the Civil code, namely the Civil procedure code.

In this regard, we continue to present some of these situations and the *lege ferenda* proposals to remedy them:

- The second act which may attract the parent's deprivation of the exercise of parental rights evoked by article 508 paragraph 1 Civil code is the consumption of alcohol or narcotics; since no special requirement is imposed on „the circumstances of consumption”, we conclude

that it may lead to the taking of this measure „any consumption”, whether or not imputable to the parent.

In fact, in the case of „drug use”, in order to be imputable, it must be circumscribed to the requirement stipulated by Law no. 143/2000. Thus, according to article 22 paragraph 1 of the law, drug use without prescription is forbidden on the territory of Romania. So „drug use” to be imputable to a person, including parents, should be done „without prescription” and only if it has the object of „drugs under national control”.

In the context, it can be observed a terminological inconsistency between the provisions of article 508 paragraph 1 Civil code that uses the notion of „narcotic” and Law no. 143/2000 which uses the notion of „drugs” defined in article 1 letter b) of the law as „narcotic or psychotropic plants or substances or mixtures containing such plants and substances listed in Table no. I-III”. Therefore, the provisions of article 508 paragraph 1 Civil code only refer to a single species of drugs, omitting „psychotropic plants and substances” which could lead to the conclusion that the sanction of deprivation cannot be applied for the consumption of psychotropic plants or substances.

In our opinion, the use of the legislator in article 508 paragraph 1 Civil code of the usual term „narcotics” is incomplete and, as a consequence, it is necessary to modify the term „narcotic” in the article 508 paragraph 1 Civil code with the term „narcotic or psychotropic plants or substances or mixtures containing such plants and substances, listed in Tables no. I-III of the Law no, 143/2000”.

- Article 40 of the Civil code regulates the conditions under which the guardianship court may recognize the full exercise of rights of emancipated child who has reached the age of 16 years. Even if article 40 Civil code does not explicitly establish the child’s active power to engage in legal proceedings, we appreciate that the right to act in recognizing the full exercise of rights of the emancipated child belongs exclusively to the child. Given that it is a person with limited exercise of rights, the action can be initiated by the child who wants to be emancipated, but with the consent of the legal representative (parents or guardian, if case) according to article 41 paragraph 2 Civil code, corroborated with article 32 paragraph 1 letter a) Civil procedure code.

In the published literature, without a legal provision, it has been appreciated that if the legal guardian objects, at the request of the minor, the guardianship court may appoint a special curator. However, it should be noted that, according to article 109 Civil code, „the protection of the individual by means of the curatorship takes place only in the cases and conditions

stipulated by the law”, which is not the case in the analyzed situation. Practically, we are in the presence of a legal gap that could affect the right of the 16-year-old child to request emancipation. For these reasons, we consider it necessary for the legislator to intervene. This intervention is also due to the fact that according to article 40 Civil code, legal representatives (parents or guardians) are heard in this procedure.

Eventually, *de lege ferenda*, a new paragraph could be introduced in article 40 Civil code, which provides that „if the parents or guardians oppose, the guardianship court shall appoint a curator from the lawyers registered with the bar registry”.

- article 498 paragraph 1 Civil code regulates the possibility for the child who has reached the age of 14 to ask the parents to change the dwelling, as this is necessary for the completion of his/her teaching or professional training. Even if article 498 paragraph 1 Civil code does not expressly state that the procedural interest belongs, in this situation also, to the child only. Given that the child has limited exercise of rights, the action can be initiated by the child who wants to change the dwelling only with the consent of the legal representative (parents or guardian, if case), according to article 41 paragraph 2 Civil code corroborated with article 32 paragraph 1 letter a) Civil procedure code.

Practically, in this situation also, we are in the presence of a legal gap that could affect the right of a child aged 14 years get a dwelling appropriate for his/her need of professional training. For these reasons, we consider it necessary for the legislator to intervene. Eventually, *de lege ferenda*, a new paragraph could be introduced in article 498 paragraph 1 Civil code, which provides that „if the parents or guardians oppose, the guardianship court will appoint a special curator from the lawyers registered with the bar registry”.

Also, given that this right of the child can be practiced only at the time of enrollment for high school studies, which is, in our opinion, a late time to maximize intrinsic performance of the child, we consider it appropriate to amend the provisions of article 498 paragraph 1 Civil code in a such a manner to reduce the age from which the child may require the change of the dwelling requires for completing the teaching or professional training at the age of 10 years.

- In the published literature it was stated that the provisions of article 501 Civil code, on the acts of the child without exercise of rights and of the child with limited exercise of rights, are useless. Thus, it can be observed that they double the provisions of article 41 paragraph 2 and article 43 paragraph 2 Civil code, which also refer to acts of the child with limited exercise of rights, namely without exercise of rights. In this respect, two parallels were generated, contrary to the regulations regarding the elaborations of laws. For these reasons, in accordance

with the provisions of article 16 of Law no. 24/2000 on the technical norms for the elaboration of laws, we propose, *de lege ferenda*, the repeal of the provisions of article 501 Civil code on the right and duty of parents to represent the child in legal acts or to approve them, as the case may be.

- According to article 508 paragraph 2 sentence I of the Civil code, the request for the deprivation of the exercise of parental rights shall be judged as a matter of urgency, with the parties' summoning and on the basis of the psychosocial investigation report. Thus, the requirements for the „urgency” judgement and the „summon of the parties” of the application for the deprivation of the exercise of parental rights double the provisions of article 107 paragraph 2 Civil code, which, as a general rule stipulates that, in all cases, the guardianship court shall settle immediately those requests, namely those of article 14 Civil procedure code, which in principle stipulates that the court may decide on an application only after the summons or the appearance of the parties, unless the law provides otherwise. In this respect, two parallels were generated, contrary to the regulations regarding the elaborations of laws. For these reasons, in accordance with the provisions of article 16 of Law no. 24/2000 on the technical norms for the elaboration of laws, we propose, *de lege ferenda*, the repeal of the provisions of article 508 paragraph 2 sentence I Civil code related to the „urgency” judgement and the „summons of the parties” of the application for the deprivation of the exercise of parental rights.

- According to article 503 paragraph 1 Civil code, „the parents exercise jointly and equally the parental authority”. The generic reference to the text reproduced in the „exercise of parental authority” is questionable. We underline that, according to article 483 paragraph 1 Civil code, the parental authority is a set of rights and duties for the parents, both in relation to the child's person and his/her property. So, in the content of the parental authority are included rights that are exercised and duties to be fulfilled by the parents. Practically, the expression of the exercise of parental authority reflects only one side of its content (the active one), the passive (the fulfillment of duties) being omitted.

Even though, in terms of purposes, the expression „exercise of rights and fulfillment of parental duties” has far more extensive dimensions than the expression of exercising parental authority. In this regard, in order to avoid possible different interpretations, we consider it desirable, *de lege ferenda*, to replace the phrase „exercise of parental authority” with the expression „exercise of rights and fulfillment of parental duties”.

- According to article 508 paragraph 1 Civil code, the guardianship court may, at the request of the public administration authorities with attributions in the field of child protection, declare the deprivation of the exercise of parental rights.

In this respect, in order to avoid possible different interpretations, we consider, *de lege ferenda*, that it is necessary to complete the provisions of article 508 Civil code by expressly indicating the rights which may be subject to the deprivation of the exercise of parental rights, as well as by expressly indicating the rights whose exercise is not lost.

- As regards the facts that may imply the application of these sanctions, we consider that there is evidence of „legal asymmetry”. Thus, although article 508 paragraph 1 Civil code refers to the deprivation of the exercise of parental rights, some of the facts that draw this sanction refer to „inadequate performance or fulfillment of parental duties”. It is in this situation „serious negligence in the fulfillment of parental duties” and „serious harm to the best interests of the child”.

In a natural logic, we consider that the deprivation of the exercise of parental rights should only be ordered for the inappropriate exercise of parental right and the non-fulfillment or inappropriate fulfillment of parental obligations (especially those related to the child’s property) should attract other legal sanctions.

Moreover, we consider it is necessary to distinguish between the fulfillment of the parental duties regarding the child's person and the fulfillment of the parental duties regarding the child's property. In this respect, the patrimonial interests of the child may be affected by the actions or inactions of the parent, in which case the guardianship court must take appropriate measures to redress the child's property damage (annulment of the act, adaptation of the act, provision of guarantee measures claims, taking action to prevent the loss of rights, bearing parental damage, etc.).

For these reasons, we propose, *de lege ferenda*, the partial abrogation of the provisions of article 508 paragraph 1 Civil code and the abrogation of the phrase "serious negligence in the fulfillment of parental obligations", which obviously has to attract the specific sanctions for the non-fulfillment of the obligations and not the deprivation of the exercise of the parental rights.

- Article. 510 Civil code, being placed in the context of the regulations devoted to the deprivation of the exercise of parental rights, refers to the caring obligation. In particular, according to this article, "the deprivation of the exercise of parental rights does not exempt the parent from the obligation to care for the child". As long as the deprivation has as its object the

exercise of parental rights, such a rule is not justified in the context of articles 508-512 Civil code.

Moreover, in the common law, the obligation of parents to support the child is provided by article 499 and article 516 paragraph 1 and following Civil code without being conditioned in any way by the fact that parents are deprived of the exercise of parental rights or not. A rule with identical content was also provided by article 110 of the Family code. Most likely, by the provisions of article 510 Civil code the provisions of article 110 of the Family code were assumed. Faced with the obvious uselessness of article 510 Civil code, we propose, *de lege ferenda*, that it shall be eliminated.

Equally useless are the provisions of article 511 Civil code, which provide for the establishment of guardianship in the situation where both parents are unable to exercise parental authority. In this case the provisions of article 44 of the Law no. 272/2004 and of article 110 Civil code are doubled;

- the current civil legislation has enshrined the legal caring obligation in several regulations in the content of the chapter on parental authority, contained in article 499 Civil code and up to article 510 Civil code. Moreover, two articles in this section are identically named "Caring obligation", which denotes a lack of accuracy of the legal text and also a leak of the legislator, not allowed at this level, which is why we propose, *de lege ferenda*, the renaming of article 510 Civil code in "Continuing caring obligation", or repealing article 510 Civil code and the regulation in its content to be restored in a distinct paragraph in the content of article 499 Civil code referred to as the "Caring obligation", by using a referral rule with reference to the conditions of the deduction established by article 508 paragraph. 1 Civil code, so that article 499 paragraph 5 reads as follows: "The caring obligation subsists also in the situation provided by article 508";

- We consider that, *de lege ferenda*, the text of article 499 Civil code should be repealed as regards paragraph 1, 2 and 4, which unnecessarily duplicates other provisions of the Civil code, namely: article 487, article 516 paragraph 1 and article 521, as well as the reformulation of paragraph 3 of the same article, which establishes the condition for the effective continuation of studies by the major creditor child and thus eliminates any form of abuse of rights.

- Given that we consider that the limitation of the parent's contribution only to his/her income at the maximum rate of his/her income is likely to affect the harmonious development of the child, we consider that *de lege ferenda* is required the partial abrogation of article 529 Civil code regarding the limitation of the amount of maintenance and the reformulation of the

concept of "net monthly income" in "the entire financial means of the parent", and thus it is necessary to report the amount of that obligation of the parent to the entire movable and immovable assets of the parent.

- We consider that, *de lege ferenda*, it is necessary to complete article 499 Civil code with a new paragraph to establish the obligation of the surviving spouse of the child's parent to ensure their caring within the limits of the property acquires as a result of the death of the child's parent.