

## DOCTORAL THESIS

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## FATHERLY AUTHORITY,

in the new Civil code, SUMMARY

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Parents-mother and father-their children form a natural group is of primary importance. Parental group, biparental coparental is essential, firstly as a child development minor, but not only that: something always remains, even though the life seeping (coming coming of age), the links between parents and children lose weight, and even if the bonds between parents and children break part.

The term coparental is a new one but that points out an old idea in that it refers to the joint exercise of parental authority already raised to the rank of General. Coparental is the norm (as the co-holder or the exercise of parental authority to which they correspond) but certain degrees and a limit.

In the case of parents who are living together or married, either out of wedlock, co-parental, based on the real presence of the two parents and their relationship stability, its full form: joint exercise of parental authority in its natural environment.

When the two parents live separated after divorce or separation in fact or in the case of natural parents, if living there is a risk that parents do not work as normal, due to a lack of communication and trust; However, even in this case co-exercise remain the rule and that, in this situation, as if to defy the separation looms assertion parents retains, even now, their parental rights. However, when

reality fall short of this desire, it is necessary to rely on another variant-unilateral exercise.

Co-parenting implies bi-parenting. It has no base than if both fatherhood and motherhood are legally established. This always happens in the case of marriage but not outside it because of dividing paternal parentage and maternal parentage. Coparenting is doomed to failure in this case. In this situation, and reached a stalemate, erasing any distinction between legitimate and natural lineages draws upon two reproaches: denial of the legitimate right to the family, the legal presumption of paternity; in fact, denial in the natural family, the existence of a situation of real encoparenting.

The importance of parent group appears full when its members live together. It is normal what is happening in the family legitimate, at least as long as the children are minors. At the same time, the same thing happens where illegitimate children, more common now, the father and mother are not married even if their children grow up together.

So there is a focus that brings together two generations living one results from the other. This explains how to submit parental focus, as well as torque (in which the original) to a fully fledged status. Parents with children living together justifying what the right believes, overall, all the relations of property and non-group members.

The essential elements of the right of parents are, on the one hand, parental authority and , secondly, parental obligation of maintenance.

Third observation : thus presented , the right of parents appears to be related to the circumstances of time and place. Regarding child juvenile period , it is from this point of view , the right of a period . It governs , between parents and children , part of the latter's life : childhood and adolescence . It can be said that in these limits the right of parents is entitled juvenile period (corresponding to the duration of parental authority - art. 484 Civil Code . ), At least of childhood and adolescence. However, it is possible that this period of life to end before 18 years by empowering effect (Art. 40 Civil Code . ) Or , more as an exception, to extend beyond this age, parental maintenance obligation under the age of majority [ art. 499 para. ( 3 ) Civil Code . ] . As seen in cohabitation , the right of parents seems to be related to this situation : it is from this point of view , the right of a united group , a community , a home under one roof , parental cohabitation .

This view of the right of parents to be thorough , developed redirected diversified . In fact, it integrates other considerations , some worse contingent nature of the right of parents to the extent that it becomes a legal term , and others , on the contrary , reveals the deep structure constant.

On the one hand , the right of parents following the vicissitudes of family life. As conjugal group , the parent group can be dismantled , it can divide, disagreements and misunderstandings can be known either by repercussions ( the " kickback " separation of parents, married or not), either directly , when you install a crisis between parents and children. Therefore , there is a crisis right of parents , parental right of separation.

Furthermore, the right of parents ( part of its strength ) is based on a natural link . Parent group is a biological unit . A blood relation unites children from their parents . Specificity is the nature of the parent group of the ties of blood . Right of parents is, in the physical sense of the term, a natural right as it covers a natural rapport : maternity or paternity carnal connection .

Biological basis of the parent group is a key regime falling. It reveals at least three characteristics:

1 . Link relentless blood is explaining that even in case of separation, split, rights of parents cling to this link . There is no divorce between parents and children. There abandonment of children, denial of maternity or paternity but once the connection is established, it remains so, without exception . There is a distinct difference between it and the marriage bond : blood bond is indissoluble ;

2 . Right of parents is not just a right juvenile period : it goes out of age. He turns age but remains until death and even beyond. Parents will always be parents and children , children. In the chain of generations they will be bound for eternity. Law governing parenting and relationships between parents and their adult children or adults ;

3 . Finally , the nature of the relationship of parentage is where unity lies : because it is related by blood , paternity is always the same , whether it is legitimate or natural . The authorship itself is always the same. Motherhood is always similar, within marriage or outside it . What is not legitimate is child will never take the extra rewarding (because benefactions legal presumption of paternity ) of a maternity and paternity of a . However, considered in isolation ,

fatherhood and motherhood itself itself is always identically the same. However , marriage does not change parentage, considered as the connecting link (except automatic subordination it establishes between two links : it is his privilege ) .

However, this is really natural in front of the other truth : a dissociation may arise where a conflict or an alliance . Alongside or outside biological truth , a more emotional truth that can be consistent or opposite .

No doubt , even in the natural family ( and perhaps especially in the natural family by clearing ) the relationship between father and son remains always similar in the relationship between mother and child . How can state : motherhood isolated isolated paternity must (a fortiori ?) To its full duties and assume parental rights .

All these aspects have been treated in our doctoral thesis in an exhaustive manner , I tried to make a complete picture of parental authority when analyzed in separate chapters : the concept and development of the child care resources (Chapter I); notion nature, foundations and principles of parental authority (chapter II ) attributes of parental authority (chapter III ) parental obligation maintenance (Chapter IV ) ; exercising parental authority (chapter V century ) termination of parental responsibility and parental authority (chapter VI , or VII ) .

The conclusions we have reached means of studying the development of the child protection are: in retrospect the situation of children who require special protective measures to be observed that the early century . twentieth century children were treated and considered as an extension of the parents without holding rights per se. In this respect it is noted that by the end of the century . XVIII children could still be sold by their parents , and a 7 year old could be executed for stealing .

The idea that children might have rights and that those rights may be substantially different from those of adults , is recently published in socio- legal thought and practice . Only in the second half of the century . twentieth- century European and North American constitutional law arose explicit regulations on the child and his rights as a result of increasing the understanding of sociological needs and recognition of childhood as a value in itself, as well as regulations on positive obligation of the state to intervene in various ways in certain circumstances .

An important step in the collapse of absolute parental power over children was prompted by awareness at the beginning of sec . twentieth century , the state's

responsibility towards children and the need for its intervention when life , physical or psychological integrity are compromised in their family environment.

At mid-century. twentieth century most European countries are the regulations concerning the rights and duties of parents towards their children and the duty of the state to intervene through certain mechanisms and institutions responsible for their care .

Individualization child relationships with family, recognition of vulnerability and social care needs of its rights were devoted only towards the end of the twentieth century by regulating children's rights as human rights by adopting the United Nations Convention on the Rights of the Child (1989 ) .

In the current laws of the countries in the European Union enshrines expressly by legislation and international law, special protection of children and others who are in difficulty .

In our country in the period after 1989 is noted that the protection of persons deprived changed , giving up the unfair measures in law and practice.

Means of protection of civil law, pending the entry into force of the new Civil Code , have been maintained but have been adapted , supplemented, improved with new ones to fit the new political and socio -economic (eg , Law no. 272/2004 on the protection and promotion of children's rights ) . Particular attention was given to child protection , and especially adoption and reintegration of the child in the family, in this area occurring genuine legislative and institutional reform : adopted a number of laws have regulated new means and new institutions protection of the child or other vulnerable persons.

Currently Romanian legislation the legal and social protection is most adapted *acquis communautaire* , a trend reflected in the ratification and implementation of international law document that addresses this issue .

So , today won the final idea that parental authority concerning children involves not only rights but also obligations , and more , the element of primary importance is the protection of minors. Modern legislation , contrary to the ancient , focused on duties and not rights of parents . From here to set a more strict control of the State on how to exercise parental authority and was introduced sanctions , including criminal penalties for parents who do not adequately fulfill its obligations to children.

An important institution with responsibility for protecting the minor guardianship authority, it has been replaced in the new Civil Code of guardianship and family court (art. 107 Civil Code . ) . Guardianship and family court . Guardianship judge, family and child protection within the body and the lack of capacity, given that it is his responsibility to give final judgment in all matters related to the control of the State .

Court proceedings can take several forms:

a) in certain circumstances the magistrate relied in its actions impartiality criterion incumbent as law enforcement bodies, as in the case of a contentious lawsuit between a minor and a third party. In that case, the fact that a party is a minor, does not affect the judge's decision, which must receive evidence presented at trial, irrespective of ability or inability of the parties .

b) in other cases, judgments must be pronounced according to the moral and material interests of the minor. This happens, for example, in cases where the parents authorizing them to enter certain acts on behalf of children or when one parent deprives the exercise of parental authority in case of divorce or when considering an application for adoption ;

c) in other cases, parents impose either by termination of parental rights or their placement or reinstatement criminal punishment (eg, child maltreatment) ;

d) finally, may have guardianship of minors and can exercise control over how the task is paid tutor .

However, during this development, there is a risk of going too far. With the pretext of protecting minors, there is a tendency to emphasize too much government interference in the private life of the family. It states that parental authority is a social function. No doubt, it has a social function, but the concept is not limited to the institution the obligations imposed on parents or social function contained in fulfilling these obligations . It also means rights that people have in their capacity as human beings, and are therefore true natural rights . Like, for example, the right to educate their children, to shape the spirit, to train under his moral ideas, religious or political . I said that although it is fair and necessary to legislate institution primarily considering the interest and protection of children for this reason should not be underestimated and respected the rights that parents have unquestionably .

Definition , nature, foundations and principles of parental authority subject head. II of the paper . Parental authority is defined by art . 483 para. ( 1 ) as : "The parents → presses is the set of rights and duties relating to both person and property belonging to the child and both parents equally ." So it is the means of legal protection of the child by exercising rights and duties regarding the person and property of the child by parents ( ie both natural parents - in marriage or outside marriage - and adoptive parents ) .

The legal framework concerning parental authority is established by the new Civil Code which establishes its Book II, Title IV , Chapter I - "General " (art. 483-486 ) and Chapter II - " parental responsibility " ( Article . 487-502 ) Chapter III - "The exercise of parental authority " (art. 503-507 ) . But the provisions relating to child protection are contained in Law no. 272/2004 on the protection and promotion of child rights .

The legal definition of parental authority contained in art . 483 para. ( 1 ) Civil Code . allows us to understand the nature of parental authority .

a) Parental authority is a function , ie a set of rights and duties related to each recognized as the father and mother at the same time a duty imposed on them .

b ) Parental authority is a function that belongs to parents , that father and mother , the legislature thus recognizing that mother and father have a right primordial natural to ensure the protection and education of minors : rights of father and mother precede the society . The principle is in accordance with Article 5 of the International Convention on the Rights of the Child , which states that : " States Parties shall respect the responsibilities , rights and duties of the child's parents [ ...] to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention " ( adde art . 18-1 of the International Convention on the rights of the Child ) .

c ) completed Parental authority is a function in the best interests of the child.

Rights and duties of father and mother are related to interests of the child [ art . 483 para. ( 2 ) Civil Code . ] . This concept is the basis of parental authority and children's rights in general. The law was stressed several times that what must always prevail in any decision relating to a child's situation , it 's best interest . Meaning flexible and able to evolve the best interests of the child must be examined in each case , therefore , the interest of the child should be reported to

each child because it varies depending on many factors. Interest of each individual child is one concrete and one rather general and abstract . This makes the state intervention if the father and mother would prove incapable or unworthy to fulfill its mission. In any case, we hold that the best interests of the child must always be appreciated within the law , and therefore is inadmissible to ignore a legal provision under pretext that it would require the child's interests .

Regarding fundamental principles of parental authority , they were divided in the paper : a) principles regulating relationships between parents and children ( duty to respect) : "The child of his parents due respect , regardless of his age " (art. 485 Civil Code . ) . Calcutta at the commandment of the Decalogue, implemented in the form of maximum inscribed solemnly in the general provisions concerning parental authority duty " filial piety " has a dual symbolic value.

As a "duty of piety ," it requires an act of the heart, justified itself as a kind of moral principle , without resort to any sanctions ( law is silent in this regard , to sanction a rule would mean decay ) . Civil Code Article 485 . is one of those rare shows that civil law provisions pretends sometimes to govern feelings . At least in this case , the law is not keen to seek outward signs of a formal respect . This could be the first beatitude civil law .

As filial duty , this duty of respect has two features that make it unique : it is at the same time , unilateral and perpetual b ) the principles governing the relationship between the parties ; : equality between mother and father ; principles governing the situation of parents relationship with their parents : the equality of all children (of marriage, out of wedlock , adopted) .

Nowadays won the final idea that parental authority concerning children involves not only rights but also obligations , and more , the element of primary importance is the protection of minors. Modern legislation , contrary to the ancient , focused on duties and not rights of parents . From here to set a more strict control of the State on how to exercise parental authority and was introduced sanctions , including criminal penalties for parents who do not adequately fulfill its obligations to children.

Duties included the parental authority are likely complex , and generally they are subject equally condition ( natural ) rights and duties . Educating a child living with it , shaping its spirit , care for the person and his property , is for a father and mother used the most sustainable source of satisfaction and joy . By assigning these powers , the law recognizes a natural right , but imposes the same



time as fulfilling its obligation. Such conjugates parental interest at family and social , giving rise to this category of rights - duties that characterize this institution. These attributes were developed parental authority in Chapter III of the paper. Protection of the child and his property management are complementary blessings of parental authority . There have always been such concerns . Law put the two parents on an equal footing , both need to focus on children, that the law is interested .

The baby? Any child born from the marriage or outside it .

In primary and necessary parental authority covering child. To protect his person , the child is the subject of family governance . In a first step we study focused on analyzing parental rights and duties regarding the person in relation to the subject child 's own characteristics parental authority : care, education ( vocational and moral guidance , instruction and school education , religious education and vocational guidance and disciplinary measures ) and child supervision ( paragr. 1 - section II) , so that in the second phase to detach the common characteristics of the attributes of parental authority : rights and duties . Parents have the right to care , to supervise and educate their children . These rights give them powers that they can stand on one side, and others , on the other hand, children . In this double enforceability materialize scope of the right . In the first case we have shown that the right of parents to third parties stated educational mission superiority in the family : parents have a right enforceable " erga omnes " (if applicable against state authorities ) . The child can not be taken from the family home only where absolutely required by law. Relative to the right of parents to child

We expressed to the effect that parental authority , imposing minor child , it creates a duty of cohabitation until his majority or emancipation . Law expresses this in a practical manner possible " minor child lives in his parents ' [ Art. 496 para. ( 1 ) Civil Code . ] And " parents guardianship court may at any time require the return of the child to any person who holds it without right" [ Art. 495 para. ( 1 ) Civil Code . ], It could be brought back at the request of parents , the police behold difference from conjugal cohabitation .

A more rare but very serious that we analyzed in this chapter is that of religious discord in the family .

Regarding the duties we considered parental authority imposes mandatory obligations holders . Like the two sides of the same coin , their parental rights are

to their relatives minor duties obvious. Parents can not be relinquished by them. The law provides that parents just can be downloaded duties ( placement) or be " fired " ( the decay ) . But as long as they care children, parents assume obligations (including the obligation school ), which employs Failure to observe their responsibility to third parties , in principle , can bring the issue to their function . In terms of civil authority failure related duties exposes parents to the two main types of sanctions: parental liability and total or partial prohibition of parental rights.

Second and occasionally parental authority extends to child heritage when it happens to possess personal property .

Parents have the duty and the right to care for their minor children's goods . It is a very personal task and therefore non-transferable , either against payment or free of charge , which does not preclude a third party mandate to perform certain actions relating to management , provided that they are conducted under the guidance and coordination.

Parental authority on child's property or asset side refers to its heritage , and that the civil law relations :

- Administration of the minor;
- Legal representation of minors under 14 years of civil legal acts ;
- Approval of minor acts of civil legal age of 14.

The rights and duties of parents on the child's property shall be governed by the principle of the independence property between parents and children requires that parents have no right over the child's property or the property fathers child , except the right to inheritance and maintenance (art. 500 Civil Code . ) . Furthermore, the two components of the economic side , or the administration of the child and acts of civil legal representation or consent of the minor, shall have legislative power in art . 501 Civil Code . , Who took over the provisions of art . 105 of the Family Code . , Stating : "Parents have the right and duty to manage the assets of their minor child , and to represent in legal acts of civil or approve these measures, as appropriate ." After the age of 14 only minor exercise rights and perform their obligations so , but only with prior approval of the parents and , where appropriate, the court guardianship [ art . 501 para. ( 2 ) Civil Code . ] .

These issues have chosen to analyze four separate paragraph 1 ) Preliminary , 2) representation and declaration system , 3) the administration of the child , 4)

control and limits of parental authority regarding the administration of the child. Regarding the system of representation and declaration I treated separately principles: a) each child is represented and this is a general legal representation [ art . 43 para. ( 2 ) , art. 501 para. ( 1 ) Civil Code . ] , B) minor limitations regarding where I thought it should include the following: minor acts book about acting alone without representation and without assistance [ art . 42 , art. 43 para. ( 3 ) Civil Code . ] Except as the declaration of [ art . 41 , art. 501 para. ( 2) ] ; book where the minor 's consent is required [ art . 13th C. work and art . 463 para. ( 1 ) Civil Code . ] Book where minor consultation is possible and even necessary ( Civil Code 264 . ) C) conflicts between the interests of the child and the parent - guardianship d) legal legal representation (art. 57 , art. 177, 180, 151 NCPC ) e ) Failure to comply with the sanction of legal agreements on capacity requirements .

Regarding the administration of the child - simple administration , we treated : 1). concurrent administration ( individual initiative father or mother ) 2) . common administration ( joint action of father and mother ) 3 ) . administration of judicial control ( parents and guardianship court ) 4 ) . acts that parents can not end with approval of the court or guardianship

And in a separate paragraph of the report and discharge .

A problem that seems interesting and I developed it is the limits of parental authority regarding the administration of the child. There are situations in which the power conferred on the holder of parental authority is exercised according to its purpose , namely the interest of the child. In such cases , public authority intervention is justified and can take many forms.

First, in principle , all goods are subject to minor administration by parents or guardian. As an exception to the general rule laid down in art . 142 para. ( 1 ) Civil Code . , Are excluded from the administration of the goods referred to in paragraph parent . (2), art . 142 and the provisions of art. 42 Civil Code .. These limits are: a) property acquired by Title minor charge. These goods are stolen administered only if the testator or donor has stipulated otherwise. These assets are managed by the trustee or designated by the act of provision or , as the case by the court appointed guardianship [ art . 142 para. ( 2 ) Civil Code . ] . If the testator or donor would think that management would be affected by their parents , could help make the liberality of the resulting injury to a child injury that the law wants to avoid.

As shown in the paper , a problem might ask is this: can the author testament to deprive the parent of the administration of the inheritance belonging rezervatară his child ? Even if the donor can deprive the parent of administration, the question is whether the author of the will has the same right in respect of goods that are part of children . This problem generally arises when the grandfather - the father of the deceased spouse in advance - in a relationship of enmity with his son- or daughter wants to prevent them manage assets would revert grandchildren succession by inheritance forced to .

In our case it seems clear that Art . 142 para. ( 2 ) Civil Code . relates only to the voluntary property. Under that rule , we have already said , is that if it would not accept the condition that deprives the parent of administration, the testator may refrain from its formulation , the result of injury to the child. Only under this concerns minor damage could not admit that asset management regime in this case depend on the will of the parties and not by law. But this concern is not about the book inheritance . And it is possible that free will can author testament to deprive that parent 's responsibility by law , no reason. Book succession completely circumvent the will of the author, which can not impose any conditions on it .

Apart from exceptional cases , the entire family is structured regime norms. As those that confer the management of the parent task . It better be . In this case it is a matter of family solidarity and cohesion . Deprivation of the right administration father in the family creeping distrust reason , an abnormal situation , undermining parental authority . And what is worse is that in most cases , this exclusion would be based not on the child's interest, but the hatred of the parent. And do not forget that against maladministration by the parent property of the child , the law has provided remedies.

Naturally , if the testator would leave a child in addition to the reserved share , could impose this condition in terms of surplus . Here we enter the field of action of the Article 142 para. ( 2 ) Civil Code .

b ) . Revenues generated by child labor , sports or artistic pursuits on their profession.

Although the legal documents relating to the matters listed ending with the consent of parents, para. (2), art . 42 tells us that in this case only minor exercise the rights and perform all such acts and obligations arising from these revenues alone may have acquired.

In Chapter IV we presented in full parental maintenance obligation that I structured it as follows: Section I - Definition , regulation and the maintenance characters ; Section II - Object of maintenance ( quantitative and qualitative determination of legal , how to make , methods of execution, modification of alimony ) section III - Creditors of maintenance ( possible extension of the obligation by increased maintenance possible exclusion of duty before age) , section IV of the Debtors obligation ( in marriage , outside of marriage ) section V - Termination of maintenance ( general causes of extinction, special causes loss of the right to maintenance ) .

New Civil Code establishes the obligation for maintenance of parents by art . 499 as part of parental authority and responsibility with details on the right of the descendant minor maintenance in art . 525 , the amount of maintenance payable (art. 529) , these provisions complementing the rules of the common law , art. 513-534 .

Note that the very causes of extinction of maintenance , the new Civil Code regulates the first loss by way of penalty, the right to maintenance. In this respect art . 526 para. ( 1 ) entitled " inappropriate behavior " establishes that one can not claim maintenance has been guilty towards the maintenance required to grave acts contrary to law or morality .

In this chapter, the fact that the parental authority is less present Austrian law , I got to redeem stages of documentation that we conducted in Vienna, including a separate section in which we exposed custody ( under Austrian law parental authority the institution was înlocuintă custody ) and to maintenance in Austrian law . We observe that , unlike our right where the " obligation" to equip the spouses is a moral in Austrian law required parents to give their children a proper dowry during their marriage . This right is regulated in § 1220 - 1223 ABGB . It was reformulated by FamRÄG 2009 . Contrary FamRÄG legal situation before 2009 , now only the child who has the right to ask for dowry and dowry can not can ask his / her spouse ( § 1221 ABGB ) . The right to dower is prescribed after three years ( § 1486 ABGB paragraph 7 ) .

Right dowry has its basis in the obligation of maintenance and growth of the parents and should be a helpful starting up a family . By this it exists only once. If he is granted full time, then he can not be called again on future marriage ( § 1223 ABGB ) . Right from the wedding dowry is born , matures only cease at the end of the marriage and marriage.

It is directed against the parents who must pay dowry in accordance with § 140 ABGB in proportion to their means. If parents are not able to provide the benefit, grandparents are the ones who owe dowry ( § 1220 ABGB ) . Decisive in terms of the amount of the obligations are on one hand the wealth that this obligation and on the other hand needs of those who are entitled to receive at the time of marriage . Own wealth or income well above the average of those entitled to reduce right and I can totally excluded . Indicative evaluation in dowry case law consider 25-30 % of the net annual income required . There is no right to a dowry when he married the child without the knowledge or against the will of parents and is established due to lack of parental consent to the marriage ( § 1222 ABGB ) .

A comprehensive analysis of my work exercise parental authority in the fifth chapter of the thesis . It comprises five sections as follows: 1) The conditions and subjects exercising parental authority . The subjects I treated subjects passive parental authority , legal holders and holders of partial and exceptional , given the importance of the protection of minors and guardianship institution since guardian exceptional exercise parental authority holder I devoted a special paragraph , 2) ways to exercise parental authority , 3) guardianship court intervention , 4) special adaptations - placement of the child , 5 ) implicațiilw medical assisted reproduction techniques on the exercise of parental authority .

Treating the problem how to exercise parental authority was based on the following logic that, in fact we have structured section : overview of the procedures for the exercise based practice principles lead to tracking the achievement and thus control adapting family and guardianship judge . Some specific adaptations were analyzed at the end.

The exercise of parental authority varies depending on how it is done . Each is specific . And each comes with different rights . Among parents, there are two ways ( joint exercise and exercise unilateral ) , completely opposite . The intervention of a third party introduce a third way marginal . However, none of these methods is not absolute. Today, as in the past , each of them has its element moderator: joint exercise , its corollary , exercise unilateral his temperament , the intervention of outsiders , its limits.

a) . Joint exercise . The principle underlying the work is that parents dispersed , each to his side , but in concert . Need to work together to develop an action overall.

Not only co-owners of parental authority , but also co- directors (co - executive ) , they jointly exercise parental authority , so we can talk about joint exercise . Are associated in performing acts of authority . Authority is based on both wills . In this respect art . 503 para. ( 1 ) Civil Code . provides that parents jointly and equally exercise parental authority . Moreover, parental authority after divorce joint returns both parents unless the court decides otherwise (art. 397 Civil Code . ) .

Exercise parental rights and duties must be in the best interests of the child and ensure its material and spiritual welfare , particularly through his care by maintaining personal relations with him , ensuring growth, education and its maintenance , and the representation legal and manage its assets . Moreover, in the ideal situation of marital harmony , parents must cooperate and inform children about all acts and deeds which might affect consider his opinion [ art . 488 para. ( 2 ) Civil Code . and art . 32 of Law no. 272/2004 ] . Amid the responsibility of both parents for child [ art . 31 para. (1) of Law no. 272/2004 ] , the protection measures are taken by mutual agreement; emphasize that this is not a competition between two parental authority - the mother or the father - but an exercise that involves , in principle, parental consent . The agreement of the parents must be understood not in the sense of freedom of contract , ie the possibility of parents to agree on the exercise of parental authority as a whole , as this mode is imperative regulated by law, but in the sense that between parents must be consensus on concrete measures they take concerning the child . And this agreement must be made with respect to each act in part because only in this way can achieve a mutual control over each specific measures to person and property of the child .

The fact that parents must agree on the measures to be taken regarding the person and property of the minor child does not mean they can take any action they desire , outside the legal framework , but only those that are consistent with the law.

We believe that the legislature has placed parents in equal ratios in a cooperative relationship , based on the premise - the ideal of marital harmony and therefore has parental consent . Just wish that reality contradicts the legislature. Starting on equal terms , the veto of any of the parents is likely to paralyze the consistent exercise of parental care , a source of misunderstanding and disputes .

This way is fundamental postulate : the legislature has determined that parents be in this situation of equality and cooperation on the assumption - Ideal -

an agreement between the parents. He started from the presumption of parental consent . To facilitate joint exercise game everyday life , the legislature having rounded principle of presumption of parental agreement to facilitate individual initiatives .

Basic materials , art. 503 para. ( 2 ) Civil Code . provides the pragmatic rule " against third parties in good faith , any single parents who meet current act to exercise parental rights and duties is presumed to have the consent of the other parent ." Legal presumption of parental understanding finds its scope , which determines and justifies it : with a rule of evidence , it is based on a legal foundation checking individual action of each parent , thus ensuring third parties .

It is a facility provided to each parent. The law favors the individual action of each of them. When one of them is alone in front of a third party ( management , co -contractor ) to perform an act , the law exempting it from the requirement to justify , before the third , the agreement of the other parent , by presenting a consent. The law endows each with a presumed consent : makes carrying the approval of the other , each parent representing both when acting alone.

The real advantage of the legal exemption appear : the couples together , the parents will not have to bother each other , and separated couples , the parent isolated remaining children will not suffer - at least from this point of view - the lack of the other. Presumption is one versatile .

Presumption is a mutual one : her mother and father is provided without any distinction. Although , ultimately , its application as a substitute for the joint management rules offer competitive management .

It is a guarantee to a third party. Although legal presumption is a relative : it applies only to bona fide third parties . Where does a double restriction : 1) the presumption of bad faith does not cover third parties , 2) the presumption is limited in terms of acts : individual initiative concurrent coverage extends not only to the current provisions , the usual parental authority .

a) . Unilateral exercise . On the one hand , unilateral exercise is exceptional if both parents are able to exercise parental authority [ Art. 398 para. ( 1 ) Civil Code . ] . Furthermore, it carries only one parent in the cases provided by law when one of the parents of objective reasons , can not be exercised (Art. 507 Civil Code . ) .

Father entrusted with this mission is the sole holder of parental authority credentials both in terms of the child's person and in terms of its heritage . He is



one who cares . When he has child residence and domicile . His legal and management belong obvious benefit attached to this task. From all these points of view , authority is single parent organization . But it is so absolutely. Even so , the law provides for the participation of the other parent . Its duties are set out in the first place , the proportion contributed by the other parent and their resources to the maintenance and education of the child , according to his needs . However, relating to the duties , the law and their rights :

- Retain their right and duty to supervise the maintenance and education of children and the right to consent to its adoption [ art . 398 para. ( 2 ) Civil Code . ]
- As a corollary , set his right to be informed about important choices about the lives of children ( educational and vocational guidance , or simply changing the region or family life ) . Thus informed , the other parent will be able to materialize its right of supervision , challenging choice for the child;
- The right to correspondence , visitation and accommodation may not be refused only for serious reasons ;

c ) . The intervention of a third party and its limits [ art . 399 para. ( 1 ) Civil Code . ] (Third way ) . It is a situation where the child is entrusted to a third judge , preferably a relative of the child , a foreign individual or family protection institution . Article above states that indicated exceptionally guardianship court may decide placement of the child in a sibling or another family or person , with their consent , or in a care institution . They exercise the rights and duties of the parents of the child.

We mention in this chapter section on guardianship court intervention where (a third ) in which they were exposed : soluționrea substantive jurisdiction and territorial disagreements between parents on the exercise of parental responsibility , the judge's intervention in relation to a convention between the parents , judge's intervention in a conflict (art. 486 Civil Code . ) , the provisional nature of resolving issues parental and judicial review . Just remember that the issue of court proceedings did sense a bill ferend that the introduction of a counseling procedures (mediation ) prior the spouses to try to reach an agreement , following the deadline set by the judge to file advisory report prepared by court appointed mediator in question. Without such Inquisitor (the term would be excessive , and the interventionism would be derogatory ) , in mediation , should, in our opinion, for the judge to have not only the power of motion , but also the power ordering . There would be only a college 's exercise of which would be left at its discretion .

But in this case, it may order the parents to meet with a mediator. They would be required to make an approach to arrive at a meeting . In this respect, it would have required a mediator, but would not be required reconciliation ( which does not depend only of themselves ) , much less dispute as mediator having , unlike the arbitrator, any legal power has no power to resolve the dispute . Road forced mediation is reduced to a measure of information as mediator mission is to enlighten parents on the subject and conduct a mediation (ie the very limits of that of court ) .

The purpose of mediation would be to allow the peaceful resolution of the dispute, thanks to a compromise or a solution to a certain extent , would satisfy both parents .. Regarding the criteria for resolving conflicts between parents , we exposed : hearing parents and hearing children's psychosocial investigation .

In Chapter VI we developed parental responsibility that is engaged either person Failure duties to the minor child or to his property . Depending on the nature and seriousness of parental liability may be criminal , civil or administrative ( contravention ) . Of course a larger space we allocated parental responsibility for their child's minor harmful event .

The current Civil Code in art . 1372 par. ( 1 ) Civil Code . expand this responsibility : on the one hand, it applies to all be called upon to supervise a minor oversight that this is established by law , contract or judgment and , secondly, it is also the responsibility for the act under interdiction . Moreover, para. (2), art . 1372 provides that the liability subsists even when the perpetrator , lacking discernment , not responsible for his own act .

Parental responsibility for the actions of their children, as enshrined in Art. 1372 of the Civil Code , it is a liability , meaning that the person responsible is protected prosecution. All you can take is to repair the damage, which is the essence of a pecuniary nature , the criminal sanction can not be imposed unless the offender . It is also observed that parental responsibility is a vicarious liability in that it will be set in motion only if and to the extent that the juvenile has committed an unlawful act causing injury .

The primary purpose of this case liability is identical to the other derogating responsibilities enshrined in art . 1373 of the Civil Code is protecting the interests of the injured by harmful act . In the absence of regulation mentioned , the victim would find it impossible recovery of damages caused by the wrongful act of the minor child . It would be in front of a child , usually insolvent and often

indiscriminate , so unresponsiveness to the deed . Replacing or putting together the minor's responsibility to his parents - option left to the victim - the legislature last - rite protecting the injured .

It should be emphasized that the new Civil Code establishes , as we have seen, the parents do not respond if they prove that the requirements of the person 's liability was required supervision of the minor and , secondly, that no person other than the principal is not liable for prejudicial act committed by the juvenile who was a servant . However, if the principal is the parent of the minor who committed the unlawful act , the victim has the right to choose on the basis of liability.

Finally, the last chapter of the thesis examines loss and termination of parental authority . I made the distinction between loss and loss of parental authority requires termination because termination - with or without punitive - not necessarily institutional parental authority , but only subject that exercise can be kept , as it concerns the child , which will be under the authority of another holder on the end to the conclusion institutional parental authority , not only for its owner , but for the subject to it . In this logic we treated in the section on adoption loss ( non- punitive loss ) and fall ( punitive ) and dedicated to the termination , we exposed ipso jure termination (death or judicial declaration of death of parents or the child, the age of majority child and the marriage of emancipation ) and termination in court ( emancipation of minors under the age of 16 years for good reasons ) .

The last section of the chapter and the thesis is devoted to parental delegation . In principle, parental authority, the nature of law - based , can be subject to failure from people who have.

However, this rule was altered by art . 506 Civil Code . allowing a voluntary delegation of the exercise of parental authority . The interpretation of this text concludes that it gives parents the opportunity , through their agreement and approval of the guardianship court , delegate the exercise of parental authority to another person or entity , such delegation is provisional and , of course, may be accepted exceptional cases , for example, the long absence from home both parents ( left to work abroad).

In these exceptional cases , the holder or holders of parental authority may delegate this authority voluntarily to the person exercising parental , in fact, the powers of educating the child. However, given the importance of this act , the intervention of the court. The delegation will take effect by the mere act of will of

the owner , requiring instead a declaration of guardianship court granted the joint request of the delegates and those to whom it has delegated parental authority . The effect of this delegation will be that at which delegates rights will be vested with all powers of parental authority on the person of the child and not his property , the latter is exercising jointly by the parents or one of them ( art . 399 Civil Code ) .

However, the right to consent to adoption or marriage shall not be delegated never minor , so it always belong to the original holder of parental authority .

Parents will still have the obligation to keep juveniles obligation which is not necessarily linked to parental authority .

However, delegation can be legal : all exceptionally ruling on parental divorce , nullity or annulment of their marriage or on demand in establishing parentage child outside of marriage , guardianship court may decide the placement of the child in a sibling or a another family or person , with their consent , or in a care institution [ art . 399 para. ( 1 ) , art. 305 para. ( 2 ) , art. 505 para. ( 2 ) Civil Code . ]

Another situation where this approach is that provided legal delegation of art . 490 Civil Code . This text entitling him Father minor who has attained the age of 14 only to exercise parental rights and duties regarding the person the child is the responsibility of the administration of the minor 's guardian or other person . Distinguish this situation from the previous one is that the dismantling of parental authority is held by right and so its reunification takes place once the parent acquires full legal capacity . Also , compared to other types of delegation ( and opposite ) , the father just minor exercise the rights and duties of the delegated , ie concerning the child , temporarily lacking regarding the child's property.

In all cases , the delegation of parental authority has only limited and temporary effects . Besides the fact that only by delegation can not never reach adoption minor as initial holders of parental authority must always consent to adoption [ even if the exercise of parental rights forfeiture art . 464 para. ( 2 ) Civil Code . ] Delegation has , in all cases , a provisional character. The court may at any time terminate or delegation will be able to transfer it to someone else through a new decision if warranted by changing circumstances . Parents can therefore make at any time , an application for refund provided that justify that changed conditions which founded the delegation decision .

Thus, as in the case of unilateral exercise of parental authority , guardianship court may modify the extent of the delegation exercise parental rights and duties , whenever changes have occurred in the facts considered on its decision .