

## EXAMINATION OF JUDICIAL PRACTICE ON THE EXERCISE OF PARENTAL AUTHORITY BY A SINGLE PARENT

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*The specific objective of the present study lies in identifying how respected the principle of joint exercise of parental authority, enshrined in the Romanian legislature. The aim of Civil fundamental rule is to recognize the active participation regarding compliance by the parents of the right to psychological and physical welfare of their children, growth, education, training and their health. Analysis interests of the child enshrined rule that parental rights are not only father but also parental duties so that this breach legal obligations should be duly reasoned. This paper contains the knowledge of basic civil complying with the requirements resulting from commitments made by Romania in the European integration process and the new status of our country's membership of the European Union. Jurisprudence should share the idea that joint parental authority is the rule and the exception exclusive. The availability principle in subsequent civil trial must be the protection of the interests of the child. Just this social reality we can talk about a Europe constituted by and for children.*

INTRODUCTION.....	1
I. INTRODUCTORY JUVENILE RIGHTS IN A “BUILT EUROPE FOR AND WITH CHILDREN” .....	2
II. VULNERABLE CHILDREN, EVALUATION OF THE CHILD’S SITUATION .....	4
III. RESPECT DUE TO PARENTS.....	5
IV. NATIONAL JUSTICE IN THE BEST INTERESTS OF THE CHILD.....	8
V. JURISPRUDENTIAL SOLUTIONS ON THE EXERCISE OF PARENTAL AUTHORITY EXCLUSIVELY, BY A PARENT.....	10
CONCLUSION.....	12

### INTRODUCTION

The main concern of the Romanian legislator has been to defuse

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relations between spouses and their minor children, the principal purpose the minor to suffer as little as possible from the effects of divorce of the parents and also the divorced wife to jointly exercise parental authority. Interests of the child are the only purpose of joint actions of the parents and the only reason that justifies state intervention in the relations between parents and children. However, if this “war” can identify a single culprit, which enhances and maintains the conflict, who do not seek the smooth, showing a behavior absurd, childish, rude, uncivil or overtly impregnated in bad faith, with the intent to injure, then the rule must give way, granting him the exclusive authority of the other parent.

#### I. INTRODUCTORY JUVENILE RIGHTS IN A “BUILT EUROPE FOR AND WITH CHILDREN”<sup>1</sup>

The scientific approach presents an approach to juvenile rights from a multidisciplinary approach<sup>2</sup>. It also proposes that Romania<sup>3</sup> professionals to realize the place, role, rights and interests of children from different perspectives.

By convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1950, it was consecrated a fundamental principle: Access to justice and fair trial of any person he arising such as the right of every child to be informed, treated with dignity, psychological assistance and legal representation or heard according to its degree of discernment.

Convention on the Rights of the Child adopted<sup>4</sup> in 1989 by the United Nations General Assembly, would enjoy the widest possible ratification of human rights in history, since its standards require a focused regulatory system for the benefit of the child<sup>5</sup>. This “holder of rights and fundamental freedoms” is protected and guaranteed in all actions concerning him, as they

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<sup>1</sup> See “Guidelines Committee of Ministers of Council of Europe on Child-Friendly Justice” adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, [www.coe.int/children](http://www.coe.int/children), document accessed on 11.10.2016. It frequently uses the terms “holder of rights and fundamental freedoms” and “best interests of the child”.

<sup>2</sup> For analytical documentation, see “Manual pilot course on child rights for professionals in Romania”—Matra-KAP Embassy of the Netherlands by the Association for European Integration EURO CART (Manuela Palamari ed., Braşov, 2007).

<sup>3</sup> Under art. 3 paragraphs. 2 of the Civil Code, republished, “professional” is operating a business, in the exercising systematically related activities consisting of production, administration or alienation of goods or services, whether or not for profit. In the present study “professional” is the qualified person circumstantial intervening in the enforcement or administration of juvenile justice, such as lawyer, public servant, psychologist, social worker, prosecutor, police etc.

<sup>4</sup> By resolution UNO no. 44/25 of 20 November 1989, which came into force on September 2, 1990 was ratified by Romania on September 28, 1990, and in 2005 was ratified by 192 countries.

<sup>5</sup> See Catarina de Albuquerque, *Child Rights and the Administration of Justice- Judges What Role?*, available on [www.drepturilecopiilor.ro](http://www.drepturilecopiilor.ro) (last visit 11/10/2016).

have subsumed respect the “interests of the child”.

Essential legal instruments on the matter, adopted by the United Nations and ratified by our country are: Rules of Beijing in 1985 on the administration of justice, Guidelines from Riyadh, 1990 for the prevention of juvenile delinquency rules in Havana in 1990 on the Protection of Minors deprived of freedom, ECOSOC rules on justice for children, victims and witnesses of crime, the guidelines adopted in 2009 regarding the appropriate use and conditions of alternative care for children.

At the European level, “child-friendly justice” would manifest itself through harmonization of national legislation with the transposed by the 1996 Convention relating to the exercise of children’s rights and the European Social Charter, revised Council of Europe Convention on personal relations concerning children in 2003 Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse-2007 European Convention on child adoption in 2008.

Respecting the guidelines previously mentioned, Romania will adopt the two regulations namely revolutionary, Law no. 272/2004 on the protection and promotion of children’s rights<sup>6</sup> and Law no. 273/2004 on the procedure of adoption<sup>7</sup>.

Romanian legislature would establish principles on the status and functions of national institutions for protection and promotion of children’s rights and the conditions of alternative care. These principles are followed: The right to a fair trial, the right to participate in judicial proceedings and to understand them, the right to private and family life, the right to integrity and dignity.

Teleological purpose of the provision contained in the current provisions was grafted on the need to prevent victimization of children by the judiciary in proceedings which aimed directly or indirectly.

“Justice in the interest of the child” aimed at protecting the interests of children in proceedings to which they became active participants or passive, which required that the following rights: Right to information of every child’s<sup>8</sup>, right to physical and psychological

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<sup>6</sup> Published in the Official Gazette of Romania, Part I no. 159 of March 5, 2004, subsequently amended by Law no. 52/2016.

<sup>7</sup> Republished with amendments and supplements under art. X of Law no. 57/2016 in the Official Gazette of Romania, Part I no. 283 of April 14, 2016, the texts shall be renumbered.

<sup>8</sup> For the purposes of the provisions of the “Guidelines Committee of Ministers of Council of Europe on Child-Friendly Justice” adopted by the Committee of Ministers of the Council of Europe on November 17, 2010, the term “child” means “any person under the age of 18”, and a “parent” means the “person or persons exercising parental responsibility under national law. Where parents are absent or no longer exercise parental responsibility, in this respect will appoint a legal guardian or designated representative.”

welfare<sup>9</sup> and respect economic, social and legal<sup>10</sup> aspects of the child. Thus, every child who attains the right to information, given the opportunity to be heard as a party to proceedings the opportunity to express their views freely, the power to exercise the right to physical and mental integrity right to dignity, the right to be assisted and represented legal right to protection during legal proceedings, the legal right to equal treatment without discrimination.

Since the first contact with the justice or other authorities or competent institutions of the state, in the course of judicial or non-judicial having the capacity of participants, both parents and children need to be informed and to know the specific rights they enjoy that proceeding, to know the possibility of access to remedies and mechanisms of formulation and submission of applications or complaints. Exercising the right to information also requires precise knowledge of the role and place the child at a time determined that the right to advice and considering the circumstances, “in her age and maturity of the child appropriate manner in a language easily understand and take into account cultural differences and equality”.

## II. VULNERABLE CHILDREN, EVALUATION OF THE CHILD’S SITUATION

Special attention requires a “vulnerable children”, such as migrant children, refugees, homeless, unaccompanied, disabled, Roma street children. The judiciary must confer, especially, those social groups, protection and support increased attention directed to the personal situation of each child, taking into account their specific needs, following their physical and psychological well-being.

Thus, national laws should be circumscribed to satisfy the needs and interests of specific, individualized.

Professionals working with children and their interests must be subjected to regular checks for discerning opportunity to analyze the consequences of judicial and extrajudicial procedures involving children. Providing training requires specialist training needed to communicate effectively and coherently in legal proceedings. This communication should

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<sup>9</sup> Compliance with this law requires special attention to the personal situation of each child, taking into account the specific needs of the situation they are in at any given time. Eventually, the child’s psychological assistance when its participation in judicial proceedings.

<sup>10</sup> It will be analyzed by case, the appropriateness and consequences of judicial or extra involving a minor, so not harmed the social, economic and legal aspects of it. It will seek privacy and family life, dignity and integrity of the child. Thus, these rights should not compromise or damage the rights of other parties.

be carried out according to the age and development of the child involved in the justice with his or her parents wanted.

Evaluation specialists (lawyers, doctors, psychologists, police officers, social workers, magistrates) should enforce common rules, a common assessment framework, which would provide a guarantee that they are able to work with each child individually, case on a case. On the other hand, assessing each child should respect the rights and needs, regardless of the motives and ability to interact with bodies and judicial institutions involved so that the evaluation of the child's situation as a complex one: Psychological, social, emotional, physical, legal, cognitive.

The child subjected to judicial proceedings in general and, more so, vulnerable children, as holders of full rights should be protected in proceedings customized, individualized, which ensure respect for the right to dignity and freedom expression without any fears. Every child should be treated especially carefully, with sensitivity and fairness, without discrimination, respecting the physical and mental integrity of everyone. Magistrates and all professionals involved in the administration of justice must provide proof of respect and sensitivity in interacting with each child, using adequate spaces obedience child's opinion and providing assistance and representation of their interests. Also, child image protection, privacy, family and personal data disclosure or non-disclosure by the media should be the paramount aims in the administration of judicial or non-judicial proceedings involving children.

A judicial system accessible is accessible only when the participant age, when focused on the rights holders and adapted to the needs and welfare of everyone. Avoid undue delays, giving some provisional judgments, prompt, verifiable later in a reasonable period of time, would be likely to create and ensure "justice in the interest of the child".

### III. RESPECT DUE TO PARENTS<sup>11</sup>

The main concern of the Romanian legislator has been to defuse relations between spouses and their minor children, the principal purpose the minor to suffer as little as possible from the effects of divorce of the parents and also the divorced wife to jointly exercise parental authority<sup>12</sup>.

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<sup>11</sup> See Valeria Gheorghiu, *Parental Authority between Doctrine and Jurisprudence* in PRO PATRIA LEX 164—166 (Juridical Universe Publishing House, no. 2/2015).

<sup>12</sup> See M. AVRAM, CIVIL LAW FAMILY 157 (Hamangiu Publishing House, Bucharest, 2013); Art. 9 of the Convention on the Rights of the Child states: "1. States Parties shall ensure that a child shall not be separated from their parents against their will, except when competent authorities decide, subject to judicial review and compliance with applicable laws and procedures, that such separation is in the

The principle of “respect due to the other parent”<sup>13</sup> according to which every other parent due respect for the juvenile to feel protected, safe, and emotional development not to be impaired and was sanctioned under the laws of art. 497 par. 1 Civil Code reprinted.

Interests of the child are the only purpose of joint actions of the parents and the only reason that justifies state intervention in the relations between parents and children<sup>14</sup>. After the divorce, parental authority is split not between parents, but they exercised together. So, “termination of spouse does not attract termination of parent that he has a personal obligation of diligence, but can also enjoy an absolute right exercise by performing charge of parental authority.”<sup>15</sup>

The principle of “respect due to the other parent”<sup>16</sup> is also found consecrated by constitutional judge who stated<sup>17</sup>: “Divorced parent who was not custody retain the right to have personal links with the child and to ensure the growth, education, teaching and training of teachers, and father entrusted the child being taken to ensure his former spouse, who has kept parenthood, effective realization of the rights conferred by law. Such

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best interests of the child. Such determination may be necessary in particular cases such as, for example the situation of children abused or neglected by parents or if the parents live separately and a decision must on the place of residence of the child. 2. In all cases the provisions of paragraph 1 of this article, all interested parties should be able to participate in debates and to make their views known. 3. States Parties shall respect the right of a child who has been separated from both parents or one of them, to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the interest of supreme of child. 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile or death of both parents or one of them or the child, that State Party shall provide, on request, the parents, the child or, if appropriate, to another family member, essential information about the location of the family member or members, unless such disclosure would harm the child’s welfare. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the person himself or persons.”

<sup>13</sup> California Code influences in this direction, obliged since 1988 that the parent with whom the child lives, notify the former spouse any movement more than a month with 45 days in advance. Also, Californian court to rule in favor of the parent who was most apt to maintain relations with the child’s other parent; *See* F. Dekeuwer-Defossez, C. Choain, *L’autorité parentale en question*, (Presses Universitaires du Septentrion, 2003 cited); B. Ionescu, *Op. Cit.*, at 70.

<sup>14</sup> For the same view, *see* C. C. HAGEANU, *FAMILY LAW AND CIVIL STATUS* 171 (Hamangiu Publishing House, Bucharest, 2012).

<sup>15</sup> Unlike the statutory old Family Code, the current Civil Code, republished, introduces a radical vision diferită. *See* F. A. Baias, E. Chelaru, Constantinovici R., I. Macovei, *The New Civil Code*. Comment on articles, 433—434 (Publisher C. H. Beck, 2012) commentary on art. 397 Civil Code, prof. Dr. Flavius Antony Baias.

<sup>16</sup> Under Art. 497 par. 1 Civil Code reprinted, “If affect the exercise of parental authority or of parental rights, child moving house, along with the parent to whom he lives, can take place only with the prior consent of the other parent.”

<sup>17</sup> Constitutional Court Decision no. 133/2009 published in the Official Gazette of Romania, Part I no. 318 of 13 May 2009.

conduct cooperative is imposed by the fact that the rights mentioned as means to fulfill the obligations they have any parent to his child and subsisting as long as the parent has not been deprived of parental rights". However, if this "war" can identify a single culprit, which enhances and maintains the conflict, who do not seek the smooth, showing a behavior absurd, childish, rude, uncivil or overtly impregnated in bad faith, with the intent to injure, then the rule must give way, granting him the exclusive authority of the other parent<sup>18</sup>.

And if the mediation agreement is the agreement concluded between the parents<sup>19</sup>, which states that parental authority is exercised by a single parent, the president of the court, will check on a case by case basis, if damaged interests of the child<sup>20</sup>.

We appreciate that case the judge must consider carefully the agreements presented to parents containing one of the parents the option to opt voluntarily to parental authority. The court has to approve such a transaction, unless there are good reasons in terms of the best interests of the minor, to make her believe that preserving parental authority by that parent

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<sup>18</sup> See B. IONESCU, THE EXERCISE OF PARENTAL AUTHORITY AFTER DIVORCE 71 (Legal Publishing House, Bucharest, 2012). In the same vein is the jurisprudence C.A. Brussels, Case no. 200/KR/108 of 15 December 2008, <http://jure.juridat.just.fgov.be>.

<sup>19</sup> This is only their faculty there being no legal obligation to contract. See, for example, V. Stoica, L. Dragu, right dispoziție-legal expression of free will (I), *Pro Patria Lex* 1/2010, 125—126.

<sup>20</sup> The visit program can be established in different ways, depending on the specific situation of the child and the parent (child's age, the distance between the homes of parents, relations between parents, material and moral conditions which parent they offer, etc.). In this respect, the provisions of the Civil Code is supplemented by those of Article 27. 15 of Law no. 272/200415 (art. 18 in the republished version of the law). Thus, depending on the interests of the child, the court may achieve personal relations between the child and the parent with whom it does not live or persons who by law are entitled to a personal relationship with the child, as visiting or hosting child, correspondence or other form of communication with the child transmission of information child on parent or parent about the child, including recent photographs, medical evaluations or school meetings in a neutral place in relation to the child, with or without supervision of the relations personal maintained. The embodiment of personal relationships is different from case to case, depending of the specific folder and is analyzed from the perspective of the child's interest. Thus, for example, a child with a very early age, for several months, it is not possible to call the classic sightseeing, but you can find the appropriate way to create the necessary conditions and father separated child can see it and able to establish a personal relationship with him. As in cases where the parent with whom the child is not living could pose a potential threat to the growth and education of the child due to special circumstances (eg. when parent that is consuming alcohol or drugs, is violent, lives in unsanitary etc.), in which case you should not force your child to walk and stand for long periods or at the parent without proper supervision. However, solutions can be found that, in such situations, the child to achieve a personal relationship with this parent, his interest is to know and to have as close ties with both parents. Obviously, hosting child by the other parent periods widest possible is the most effective way of knowledge and realization of personal relations as ties between parent and child, but when the child's interest requires, we can replace other the achievement of these contacts, leading to avoidance of harm in raising and educating the child.

would prejudice the interests of the child<sup>21</sup>.

#### IV. NATIONAL JUSTICE IN THE BEST INTERESTS OF THE CHILD

Analysis interests of the child enshrined rule that parental rights are not only father but also parental duties so that this breach legal obligations should be duly reasoned. The refusal of a parent to be involved in the growth and formation of the child constitute an impediment to decisions by mutual agreement, the other parent being prevented from exercising his prerogatives effectively parental authority, such an attitude is contrary to the interests of the child<sup>22</sup>.

Often, parents confuse the meaning of the concepts of “parental authority” and “home child” since they are relatively new in the Romanian law<sup>23</sup>. Consequently, the judge returns an obligation to explain the parties, whenever those are important decisions involving joint exercise of parental authority and decisions that are incumbent on the parent the child lives.

So the difference between custody of the child to protection and education (enshrined in previous legislation) and setting the child home is that in the latter case, the father of the child lives has not only the right to raise and educate him. And, setting the child home to one of the parents is not limited to an order that he gives his child a room in which to live, but to accommodate and care for him.

In French law<sup>24</sup>, establishing the house as hosting child means a child-“droit d’hébergement” with all that this entails. However, French law and Belgian<sup>25</sup> regulating the concept of “laying dwelling child from a parent”

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<sup>21</sup> See Civil Sentence no. The Brasov Court 13228/2011, published on the website <http://portal.just.ro/rubrica> case law, where the court held: “The condition pleas needed to be analyzed on a case by case basis in relation to all the state in fact revealing the relationship between the child and each parent, the quality of these relationships, the potential skills of one of the parents that might disqualify the cotitularitatea parental authority or objective circumstances attributable to him, such as poor health, because of which not can exercise parental rights and obligations.”

<sup>22</sup> This issue was governed by the provisions of art. 36 para. 6 of Law no. 272/2004 on the protection and promotion of children’s rights, republished in the Official Gazette of Romania, Part I no. 159 dated 5 March 2014. In this regard, it states: “A parent cannot waive parental authority, but can understand the other parent on how to exercise parental authority, under art. 506 Civil Code”. Also, through art. 36 para. 7 of the same law were established and some circumstances that may constitute grounds for granting the exclusive exercise of parental authority of a parent.

<sup>23</sup> See V. Gheorghiu, *Parental Authority between Doctrine and Jurisprudence* in PRO PATRIA LEX no. 2 (27)/2015, at 157 ff.

<sup>24</sup> N. Massager, *Droit familial de l’enfance. Filiation. Autorité parentale, Hébergement* 252—254 (Bruylant Edition, Brussels, 2009).

<sup>25</sup> The Belgian Civil Code, the rule established in 2006, is the sharing of 50% of the home established for children from two parents. One of the criteria considered by the jurisprudence Belgian granting



has evolved, leading to the concept of “dwelling shared child” which involves setting dwelling child from each parent on timed intervals.

The law in Quebec is a particular emphasis on the notion of “garde”, which is reflected, for instance, the fact that the parent with whom the child is in care must notify and consult permanently the other parent on the child’s condition<sup>26</sup>.

In a situation of this case in the national jurisprudence<sup>27</sup> was imposed change of mentality so far, that the child was entrusted to the mother who makes all decisions.

Unlike other measures that the court guardianship and family have the power to take on the child's situation, on which the law provides for understanding parents, in the exercise of parental authority by a single parent, only the court is what can it has when there is good reason<sup>28</sup>.

So, in the circumstances of the existence of serious difficulties of views and communications between the juvenile’s parents on how specific the upbringing of the child, and the best interests would be prejudiced<sup>29</sup>, then exercise joint parental authority would be inappropriate and order had

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exercise parental authority one parent, the criterion used in determining dwelling child, so-called “principle Californian” which is the ability of each parent to respect parental rights of the other. Also in Belgian jurisprudence crystallized on the exercise of parental authority following rules:

- no argument of principle cannot remove the joint exercise of parental authority (eg. gender, age child);

- circumstances irrelevant does not constitute good reasons for this (for example, a parent is guilty of domestic violence, have a physical disability, the fact that a parent is homosexual, leaving parent abroad) because it is just the contribution of a parent a decision regarding the child. Assuming a conflict situation affecting communication between parents was asked, however, whether it is in the child's interest to have the exercise of parental authority by a single parent.

- to consider only facts that can be proven;

- rules of evidence shall bear the following cumulative elements: evidence by the requesting spouse suffering child who is under the authority of both parents; establishing a causal link between the child and the suffering of the joint exercise of parental authority; demonstrate that the solution lies in exercising parental authority exclusively to the parent requesting.

<sup>26</sup> N. Massager, *Op. Cit.*, at 252—254.

<sup>27</sup> Bacau Court of Appeal, Civil Division I, Decision no. 573/01.04.2013, published.

<sup>28</sup> Even if parents agree on the visitation program configuration, it must be sanctioned by a court whenever the parties so require, to be enforced smoothly and most difficult cases of parents. In the absence of a judgment or parent who wishes to pursue personal relationships with the child visits him without warning or inappropriate times (often watching the life of the other parent under the guise of personal relationships with the child) or father that he lives find different excuses to not allow the other parent to see their child-Decision no. 10837/2014 issued by Bucharest District 3 File no. 46832/301/2014 not published. See Valeria Gheorghiu, *Parental Authority between Doctrine and Jurisprudence* in PRO PATRIA LEX no. 2(27)/2015, at 157 ff.

<sup>29</sup> Sometimes it may happen that relationships between parents who are former spouses to be extremely tense, which makes whenever they meet to achieve the visiting hours to reach the scandal, traumatizing the child.

development considered by the legislator in the legal norm not reached<sup>30</sup>.

#### V. JURISPRUDENTIAL SOLUTIONS ON THE EXERCISE OF PARENTAL AUTHORITY EXCLUSIVELY, BY A PARENT

Art. 487 Civil Code, republished, shows the contents of “parental authority” in terms of the right to decide on everything related to the child’s person and property. The law, however, there is confusion between the concept of “parental authority” and the growth, care and supervision of the daily life of the child. National case<sup>31</sup> law has held that joint parental concerns major decisions in the child’s life, about his upbringing and education, and not the daily, which remains with the parent who has established his residence<sup>32</sup>.

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<sup>30</sup> In France there are special places by parents’ associations, to achieve personal relations program with the child in such situations. Are buildings with multiple rooms, landscaped, furnished, toys, kitchen equipped with everything needed, the social workers are employed 2-3. Because parents do not meet during the realization of the personal relationships with the child, the parent on which it resides brings child with a quarter of an hour before the start of visiting hours and leaves him in the care of a social worker, and at the time set to start with visitation the other parent comes and takes it. At the end of visiting hours remain the same child social worker where the father takes him to where he lives, a quarter of an hour later. We do not have yet been created such conditions, but we can find other solutions, for example, whether between parents relations are conflicting might have exercise rights of access to the residence grandparents or other people close to the child, where the child is protected from any scenes of verbal or even physical violence.

<sup>31</sup> Legal practice, published by G. C. Frențiu in FAMILY LAW. JUDICIAL PRACTICE UNDER THE NEW CIVIL CODE. JURISPRUDENCE ECHR (Hamangiu Publishing House, Bucharest, 2013) which were retained as “reasons” which justify the granting exercise of parental authority by a single parent following circumstances: neutral attitude of the defendant and the lack of diligence it to develop personal relationships with minor correlated with disinterest obvious to its growth, based on recital played by the defendant, namely that the child is the result of an extramarital affair, which is only a presumptive father just because the minor was born during the marriage (civil sentence no. 354/2012 Bistrita Nasaud Court, *Op. Cit.*, at 108.) lack of application by the defendant of the right to exercise parental authority and establishing his residence to him, the court holding that the applicant has financial possibilities and guarantees moral, giving his son optimal care, protection and education (civil sentence no. 7135/2012 of the Court of District 2 Bucharest, *Op. Cit.*, at 112); that the father was not interested in ever minor, he saw only once, and the juvenile’s mother knowing where the defendant lives and unable to contact them, the court held that in order to avoid the birth of future disputes between the parties, having regard to the provisions of 398 paragraphs. 1 Civil Code, republished, ordered exercising parental authority exclusively by the juvenile’s mother (Civil Sentence no. 7486/2012 of the Court Bistrita Nasaud, *Op. Cit.*, at 110); that the family could not contact the mother minors of 5 years when he left them, neglecting obligations they have towards them, the court holding that parental authority is purely formal and against minors, decided to exercise exclusive by its father (civil sentence no. 847/2012 District Court Beclean, *Op. Cit.*, at 116).

<sup>32</sup> See Civil Sentence no. Sector 3 Court 17639/2012 of the court noted that the major decisions regarding the health, schooling, recreation child. In the same vein, see also P. Neculae, R. Cîrlig, Interpretations of parental authority under the new Civil Code, the Romanian Magazine of law no. 4/2012, at 244; M. Ursuta, exercise parental authority jointly by both parents. The immediate application of the provisions of the New Civil Code, the Judicial Courier no. 10/2011, at 559.

Art. 507 Civil Code, republished, increases the confusion, showing situations where exercising parental authority can be made by single parents, whether the parents are married or cohabiting or divorced. Expression legislator in “clear grounds” is different than those specified in art. 507 Civil Code, republished, potentiates different interpretations, leading consequently to a non-unitary jurisprudence. Such “reasons” were considered: Alcohol, drugs, violence exercised by a parent or establishing one parent abroad, issues backed by medical certificates, statements of witnesses, even recognizing parent who exercised violence etc. But solutions are not uniform jurisprudence so that these reasons were considered as grounds for disposition exercise parental authority by one of the parents.

Between “reasonable grounds” are appreciated, however, some of those expressly provided by art. 507 Civil Code, republished, such as placing under judicial interdiction or termination of parental rights. But consider that only their existence may determine the exercise sole parental authority in any situation, whether the child is born in wedlock or out of wedlock, when deprived of the care and protection of one parent because of the impossibility its to exercise their rights and fulfill their parental obligations for cases expressly and exhaustively listed by the legislature. In such situations it makes sense, moreover, that did not necessarily need to be a judgment, one of the parents being forced to exercise parental authority alone. But it is possible that one of these reasons arise when parents divorce and then is a good reason for the purposes of art. 398 Civil Code, republished, causing the court's decision to award the exclusive exercise of parental authority of that parent who is unable to express their will.

It has raised the exercise of parental authority by the parent who has not seen the child for a long time because of the refusal of the latter. Thus, if the parent went abroad for a long time, refuses to discuss with the other parent, to give it its relations about the contact, creates a climate that makes communication impossible, and these works him from the other parent to take decisions on urgent and minor flagrantly violating the interests of the child. Or, similarly was conviction raised the issue of a parent to a custodial sentence.

In recent jurisprudence<sup>33</sup> has ruled that this does not constitute, in

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<sup>33</sup> The reasoning customary in the jurisprudence of the Belgian and which was taken by the courts in Romania in assessing the interest of the child requires that the rules of evidence parent seeking exercise exclusive parental authority, to prove the following elements are met: there is suffering child who under the authority of both parents, to establish a causal link between suffering child and exercise jointly by both parents, parental authority and demonstrate that the solution is to exercise parental authority by one of the parent.

themselves grounds for exercising parental authority, exclusively, by the other parent. But solutions are precedents that have held that, in relation to the specific situation of the child and arrangements for penalty interests of the child could be interpreted in this respect.

In our opinion, that parent is incarcerated at the time of solving the request does not automatically lead to depriving him of the exercise of parental authority.

Also, even if one parent is a drug or alcohol is not a reason for exercising parental authority exclusively to the other parent, as long as the discernment of his ability and opportunity to make decisions about the child shall affected. Similarly, the parent with physical disability does not have any problem with the exercise of parental authority.

Under the requirement for parental authority, the parent must prove a good steward of heritage minor.

### CONCLUSION

In our opinion, the result of scientific endeavor undertaken concludes that art. 507 Civil Code, republished, establishes expressly and exhaustively exceptional circumstances where parental authority is exercised by a single parent, the legal text being susceptible restrictive interpretation situations should occur rarely and can be subsumed under the hypothesis in one parent is unable to express their will. This interpretation precludes the possibility of analyzing some false assumptions that come to complete or depreciate order teleological pursued by the legislature, such as: determination of residence of one parent abroad, when, thanks to modern means of communication, can be assured exercising parental authority jointly or situations of violent behavior from a parent or parents who live in a situation of gay couples.

The exercise of parental authority should be shared, as a rule, even after divorce because “divorce is the parents, not the child by one parent”. Parental authority is primarily a moral duty to assume responsibility of the parents “to lead their child to adulthood and independence, ensuring the protection and education, the respect due to his person”<sup>34</sup>.

And let’s not forget that we were children! “Childhood is away, the distant, which, due to the selectivity of memory, remained in our minds a memory luminous but relatively empty of content. Overall impression, we have kept a relatively diffuse a time when there were little worries and

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<sup>34</sup> L. Delpart, *L’ autorité parentale et la loi*, STUDYPARENTS, 2006, at 18 et seq. cited. B. Ionescu, *Op. Cit.*, at 32—33.

responsibilities, we were happy that we could play and they do not concern us care for tomorrow. But we forget the sadness that grips us when we do not feel equally loved, frustration was living when the needs, desires and our hopes remained unnoticed by ‘the great’ drama of existence that we crossed when we are not allowed to express our opinion when we were considered rude and rebellious, although we only tried to draw the attention of those around us that we have grown and we have acquired the ability to decide what concerns us”<sup>35</sup>.

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<sup>35</sup> See *Manual Pilot Course on Child Rights for Professionals in Romania*, Matra-KAP Embassy of the Netherlands by the Association for European Integration EUROCARD (Manuela Palamari ed., Braşov, 2007).