

THEORETICAL AND PRACTICAL ISSUES REGARDING THE CHILD'S CARE

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Abstract

Following the entry into force of Law No. 257/2013 for the amendment of Law No. 272/2004 on the protection and promotion of the child's rights new provisions were adopted in relation with the child's protection whose parents work abroad. This regulation was necessary in view of the increasing number of parents who, due to the need to ensure a decent living for the dependent children, are forced to work outside of Romania, but for this reason they neglect to raise and to care for them. The study examines theoretical issues of the child's care that raise some debates in the doctrine. The research also consists in the analysis of the new regulation related to the child's care both from theoretical and practical perspectives. The authors intend to carry out an analysis of the relevant case law of the courts of law in the matter of child's care. From this perspective, there are some issues in relation to a child's dwelling when his parents do not live together anymore. As far as the change of the child's dwelling is concerned, we have to distinguish between the children entrusted to one of the parents according to the Family Code and the children for whom the parental authority has been ordered to be jointly exercised and to have their place of residence with one of their parents, according to the provisions of the Civil Code. With respect to the child's dwelling, both within the doctrine and the case law, it has emerged the notion of alternative or sharing dwelling of the child.

Keywords: *child's care, child's protection, child's dwelling, custody authority, parental authority.*

1. Introduction

This paper intends to clarify a few issues related to the child's care that raise some debates in the doctrine.

Two years after the entry into force of the Civil Code (Law no. 287/2009, republished)¹, it was adopted the Law no. 257/2013 on the amendment and addition of Law no. 272/2004 on the protection and promotion of the rights of the child, which

governed for the first time within our legislation the child's protection whose parents are working abroad. After two more years from the entry into force of the Law no. 257/2013, it was adopted the Government Decision no. 691/2015 approving the Procedure of monitoring the way of raising and caring for the child with parents abroad and the services they can benefit from, as well as approving the Working Methodology on Collaboration between the general directions of social assistance and child protection and public

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¹ Published in the Official Journal of Romania no. 505 of July 15, 2011 as further amended.

social services and the standard model of documents developed by them. Therefore, a thorough analysis of these provisions regulating the child's protection whose parents work abroad is important not only for the authors of family law, but also for the legal practitioners.

Additionally, our intention is to examine some main theoretical issues of the child's care and the main authors' opinions of family law already expressed in doctrine.

This paper will provide an analysis of the relevant doctrine, of the main legal provisions and of the jurisprudence in order to outline some options to be considered both by the authors of family law and by the legal practitioners.

2. Content

2.1. The child's protection whose parents work abroad

As of the 3rd of October 2013, it was brought under regulation this new maintenance obligation category, as a novelty, through the last amendments to the Law no. 272/2004 on the protection and promotion of the rights of the child, republished², with the following amendments and supplements³.

As per article 104 paragraphs (1), (2) and (4) of Law no. 272/2004 on the protection and promotion of the rights of the child, the parent who solely exercises the parental authority or with whom the child is

living, or the parents, who are about to go work abroad, have the obligation to notify this intention to the public social service from their domicile with at least 40 days before leaving the country, with the mandatory indication of the appointed individual who shall take care of the child during their absence.

According to this provision, the obligation to notify the intention of working abroad shall be beared by the following: either by (i) the parent who solely exercises the parental authority or with whom the child is living, or by (ii) both parents, should the parental authority is jointly exercised or by (iii) the tutor.

These individuals have the obligation to duly notify such intention with at least 40 days prior to leaving the country to the public social service in whose division they are domiciled.

Said notification must comprise all identification data of the individual who shall take care of the child during the parents' absence or of the tutor.

In order to be appointed for the temporary exercise of the parental authority with respect to a child, an individual must cumulatively fulfill the following conditions:

- a) to be part of the extended family⁴;
- b) to be at least 18 years old;
- c) to meet all material conditions and moral guarantees necessary for the raise and care of a child⁵.

² Republished in the Oficial Journal of Romania, Part I, no. 159 of March 5, 2014 under article V of Law no. 257/2013 on the amendment and addition of Law no. 272/2004 on the protection and promotion of the rights of the child, published in the Oficial Journal of Romania, Part I, no. 607 of September 30, 2013, giving the text a new numbering.

³ As amended and supplemented by Government Emergency Ordinance no. 65/2014 for amending and completing certain normative acts, published in the Oficial Journal of Romania, Part I, no. 760 of October 20, 2014 and Law no. 131/2014 for the amendment of paragraphs (1) and (2) of article 64 of the Law no. 272/2004 on the protection and promotion of the rights of the child, published in the Oficial Journal of Romania, Part I, no. 740 of October 10, 2014.

⁴ According to article 4 letter c) of Law no. 272/2004 on the protection and promotion of the rights of the child, republished, extended family means "the relatives of the child up to the fourth degree inclusive".

⁵ Article 105 paragraph (1) of the Law no. 272/2004 on the protection and promotion of children's rights, republished.

The public social services organised at the level of municipalities, cities, communes assure to the appointed individuals guidance and information with respect to the liability of the growth and development of the child on a period of time of 6 months⁶.

The confirmation of the individual that shall take care of the child shall be made by the custody court⁷.

The custody court shall rule the temporary delegation of the parental authority with respect to the child, during the parents' absence, but no longer than one year, to the appointed individual⁸. Therefore, said delegation shall regard only the personal aspect of the child's care, and not the parental authority exercise with respect to the child's assets. As far as the child's assets are concerned, as long as the law does not regulate anything, we consider that the custody court shall render, depending on the circumstances, either the joint exercise by both parents or the exercise by one of them, as in the other cases of parental authority delegation to a third person (as in the case of a divorce, the nullity of a marriage etc.).

The individual to whom the parental authority is to be delegated must express his/her personal consent in front of the custody court⁹.

At this request shall be annexed documents attesting the fulfillment of the above-mentioned conditions with respect to the appointed individual¹⁰.

The request of parental rights and duties delegation shall be settled in a non-contentious procedure, as per the Civil

Procedure Code, in a 3 days term as of its registration to the custody court¹¹.

The rulling shall comprise the express mention of the rights and duties to be delegated and the period of time for which the delegation takes place, which, as we have already provided hereinabove, can not exceed one year¹².

Once the custody court decides to delegate the parental rights, the individual responsible for the childcare must follow a counseling program in order to prevent conflictual situations, misconduct, or negligence in the relationship with the child¹³.

The court shall communicate a copy of the delegation ruling to the mayor from the parents' or guardian's domicile, as well as to the mayor from the domicile of the individual to whom the parental authority has been delegated¹⁴.

As per article 106 of the Law no. 272/2004 on the protection and promotion of the rights of the child, republished, the local authorities through the public social security services can initiate, within the state or local budget provisions and within the revenue and expenditure budget having this destination, information campaigns for parents, in order to:

- a) parenting awareness of the risks assumed by going to work abroad;
- b) inform the parents with respect to their obligations in case they intend to leave abroad.

Two years after the entry into force of the Law no. 257/2013, the Government

⁶ Article 105 paragraph (2) of the Law no. 272/2004 on the protection and promotion of children's rights, republished.

⁷ Article 104 paragraph (3) of the Law no. 272/2004 on the protection and promotion of children's rights, republished.

⁸ Article 105 paragraph (3) of the Law no. 272/2004 on the protection and promotion of children's rights, republished.

⁹ Article 105 paragraph (4) of the Law no. 272/2004 on the protection and promotion of children's rights, republished.

¹⁰ Article 105 paragraph (5) of the Law no. 272/2004 on the protection and promotion of children's rights, republished.

¹¹ Article 105 paragraph (6) of the Law no. 272/2004 on the protection and promotion of children's rights, republished.

¹² Article 105 paragraph (7) of the Law no. 272/2004 on the protection and promotion of children's rights, republished.

¹³ Article 105 paragraph (8) of the Law no. 272/2004 on the protection and promotion of children's rights, republished.

¹⁴ Article 105 paragraph (9) of the Law no. 272/2004 on the protection and promotion of children's rights, republished.

Decision no. 691/2015¹⁵ approving the Procedure of monitoring the way of raising and caring for the child with parents abroad and the services they can benefit from, as well as approving the Working Methodology on collaboration between the general directions of social assistance and child protection and public social services and the standard model of documents developed by them¹⁶ was adopted.

2.2. The child's dwelling

As per the provisions of article 496 paragraphs (1) and (2) of the Civil Code, the child lives with his parents, and when his parents are not living together, they shall mutually agree upon the child's dwelling.

Therefore, the rule in relation with the child's dwelling is that the child shall live with his parents and the exception shall be the situation when the parental authority is split, when the child's dwelling shall be established at one of the parents.

According to paragraph (3) of article 496 of the Civil Code, when the parents do not agree upon the establishment of the child's dwelling, the custody court shall decide, taking also into consideration the finding of the psychosocial inquiry report and listening of the parents and the child, in case the latter is 10 years old.

In the divorce matter we have the same regulation, according to which "in the absence of an agreement between the parents or if it is against the best interest of the child, the custody court shall establish, along with the divorce, the child's dwelling with the

parent with whom the child usually resides"¹⁷.

The Civil Code does not define the meaning of the phrase "with the parent with whom the child usually resides". We consider that this phrase should be understood as the situation where the child usually lives with one of his parents until the settlement of the divorce request. Such a situation may arise when the parents are living separately before the divorce is pronounced and the child lives with one of his parents.

In case the child has been living before the divorce with both parents, the court shall establish the child's dwelling at one of them, taking into account the best interest of the child¹⁸.

In assessing the child's interest, the court may also consider aspects such as:¹⁹

- a) the needs of physical, psychological developments, education and health, security and stability and family affiliation;
- b) the child's opinion, depending on his/her age and maturity;
- c) the child's history, taking into consideration, especially, the situations of abuse, neglect, exploitation or any other form of violence against the child, as well as the potential risk situations that may occur in the future;
- d) the parents' capacity or the capacity of the persons that shall take care of the child to meet his concrete needs;
- e) maintaining the personal relationships with the individuals with whom the

¹⁵ Published in the *Official Journal of Romania*, Part I, no. 663 of September 1, 2015.

¹⁶ According to article 107 of Law no. 272/2004 on the protection and promotion of the rights of the child, republished, the procedure for monitoring the way of raising and caring for the child with parents who have left work abroad and the services to which they can benefit is established by a Government decision, at the proposal of the Ministry of Labor, Family, Social Protection and the Elderly, in collaboration with the Ministry of Regional Development and Public Administration.

¹⁷ Article 400 paragraph (1) of the Civil Code.

¹⁸ Article 400 paragraph (2) of the Civil Code. See Court of Appeal of Bucharest, 3rd Civil Section, decision no. 112 of February 1, 2011, in C. Mares, *Family Law*, Second edition, C.H. Beck Publishing House, Bucharest, pp. 217-218.

¹⁹ Article 21 paragraph (1) and article 2 paragraph (6) of Law no. 272/2004 on the protection and promotion of the child's rights, republished.

- child has developed attachment relationships;
- f) the availability of each of the parents to involve the other parent in the decisions concerning the child and to respect the parental rights of the latter;
 - g) the availability of each of the parents to allow the other one to maintain the personal relationships;
 - h) the housing situation of each parent in the last 3 years;
 - i) the history of parental violence against the child or other individuals;
 - j) the distance between the domicile of each parent and the institution providing the child's education.

Although there is no express regulation on the criteria to be taken into consideration when establishing the child's home, it is equally important to maintain the brothers together, by establishing their dwelling at the same parent. The separation of the children is possible in exceptional situations, provided they are in their best interest²⁰.

Article 400 paragraph (3) of the Civil Code stipulates that "exceptionally, and only if it is in the best interest of the child, the court can establish his dwelling at the grandparents or other relatives or individuals, with their consent, or at a care institution. They exercise the child's supervision and undertake all normal acts

with respect to the health, education and teaching of the child".

As previously stated²¹, within the case law of several European countries, the appreciation of the child's best interest in establishing his dwelling is also analysed from the point of view of the so-called "Californian Principle", according to which it represents an advantage the capacity of each parent to allow the other one to exercise his parental rights with respect to the child²².

According to the provisions of article 400 of the Civil Code, the establishment of the child's dwelling must be made at one of the parents, according to his best interest, the law does not foresee whether it is necessary to establish the exact address at which the child will live with the parent. Therefore, it has been considered²³ that, in the silence of law, it is not mandatory to mention the address of the parent with whom the child shall live, given the possibility of changing it even repeatedly²⁴. Nevertheless, changing the child's dwelling must be made with the consent of the other parent, should it affect the parental authority exercise or other parental rights, in case of misunderstandings the custody court having the competence to decide. In this case, however, it has been considered that the court must specify where the new home of the child shall be established, at least in terms of the elements affecting the parental rights exercise, such as the country or locality.

²⁰ See Court of Appeal of Timișoara, 1st Civil Section, decision no. 831/2013, in *Săptămâna Juridică* 8 (2014), p. 23; Court of Appeal of Craiova, Section for children and family, decision no. 9 of January 24, 2007, www.portal.just.ro; Neamț Tribunal, Civil Section, decision no. 345/AC/2008, www.portal.just.ro.

²¹ Dan Lupașcu and Cristiana Mihaela Crăciunescu, *Family Law*, Third edition, Universul Juridic Publishing House, Bucharest, 2017, p. 363.

²² In the French Civil Code this principle was introduced in Art. 373 2 11 (3), which states that the judge shall consider: "The ability of each of the parents to assume their obligations and to observe the rights of the other".

²³ See the Conference of the National Institute of Magistracy of February 20, 2012, entitled Provisions of the New Civil Code in the Field of Family Law - Unification of Practice, page 15 (http://www.inm-lex.ro/fisiere/pag_115/det_1506/8453.pdf).

²⁴ See also Cristian Mareș, *op. cit.*, p. 219; Bogdan Dumitru Moloman, Lazăr-Ciprian Ureche, *The new Civil Code. 2nd Book. About family. Articles 258-534. Commentaries, explanations and jurisprudence*, Universul Juridic Publishing House, Bucharest, 2016, p. 465.

At the same time, it has been shown that the child's dwelling can be also be established abroad, together with one of the parents, if this shall meet the best interest of the child. Whenever possible, it can be decided for a psychosocial inquiry report to be done, in order to know the conditions offered by the parent to whom the child will live.

The change of the circumstances envisaged in the judgment may entail the change of the measure establishing the child's dwelling, which can be settled at the other parent or at other individuals or care institutions if the case may be.

Changing the decision on the child's dwelling can only take place if his interest so requires, that is, only when the parent where the home was established can no longer provide him the necessary conditions for a proper development²⁵.

As far as the change of the child's dwelling is concerned, we have to distinguish between the children entrusted to one of the parents according to the Family Code²⁶ and the children for whom the parental authority has been ordered to be jointly exercised and to have their place of residence with one of their parents, according to the provisions of the Civil Code.

Thus, with respect to the child entrusted to one of the parents according to the Family Code, since the Civil Code provisions regulate the parental authority institution, without the institution of

entrusting a child to one of the parents, it can be at any times requested changing the measure of his custody and, therefore, changing his dwelling from the parent to whom he was entrusted, even if the circumstances taken into consideration by the court at his entrustment have not changed.

As regards a child for whom the custody court has ruled, under the provisions of the Civil Code, that the parental authority shall be exercised jointly by both parents²⁷ or, by way of exception, only by one of them²⁸, being thus established the dwelling at one of the parents, changing said dwelling can only be requested in case the circumstances envisaged by the custody court have changed at the time when the change of the child's dwelling is requested.

Therefore, according to the new regulations, disregard the parent with whom the child's dwelling shall be established, the latter shall benefit from the care of both parents who, in the form of joint parental authority exercise, shall collaborate in taking all important decisions with respect to the child, being actively involved in raising and educating him.

The Family Code provided the possibility of entrusting the child for his raise and education to one of the parents, which implies that the parent ensures the raising and education of the child, the other parent having the possibility to look after the manner in which these obligations are fulfilled. Therefore, the child lived with the

²⁵ See Supreme Court of Justice, Civil Section, decision no. 2448/1993, *Buletinul Jurisprudenței. Culegere de decizii pe anul 1993*, Continent XXI & Universul Publishing House, Bucharest, 1994, pp. 109-112; Court of Appeal of Alba Iulia, Section for children and family, decisions no. 64/R/2008 and no. 35/R/2008, <http://www.jurisprudenta.org/>; Court of Appeal of Cluj, Civil Section, of labour and social securities, for children and family, decisions no. 237/R of January 25, 2008 and no. 1855/R of October 3, 2008, <http://www.jurisprudenta.org/>.

²⁶ Law no. 4/1953 entered into force on the 1st of February 1954, published in the Oficial Journal no. 1 of January 4, 1954, as further amended and supplemented.

²⁷ Article 397 and article 503 paragraph (1) of the Civil Code.

²⁸ Article 398 and article 507 of the Civil Code.

parent to whom he was entrusted for his raise and education, without the court expressly rulling it.

In the application of the previous legislation, when the child was entrusted to be raised and educated by one of the parents, the supreme court has ruled that: “the choice of children to be entrusted to one of the parents does not have a preponderant role in adopting the solution, but can not be disregarded when they are at the age when they can properly appreciate their interest, but must be duly analysed and considered in relation to the other administered evidence”²⁹. In this regard, we consider that the children’s option regarding the establishment of their dwelling, in relation to their age and degree of maturity could also be envisaged in the current legislation (under article 264 of the Civil Code).

As per the provisions of article 496 paragraph (4) of the Civil Code, the “child’s dwelling, established in accordance with this article, cannot be change without the approval of the parents, except in cases expressly provided by the law”.

Moreover, article 497 paragraph (2) of the Civil Code stipulates that changing the child’s dwelling, together with the parent with whom he lives, cannot occur without the prior consent of the other parent, in case it affects the exercise of the parental authority or other parental rights.

In case of misunderstandings between the parents, the custody court shall decide, according to the best interest of the child, taking into account the conclusions of the psychosocial inquiry report and listening to the parents and to the child³⁰.

With respect to the child’s dwelling, both within the doctrine and the case law, it has emerged the notion of alternative or sharing dwelling of the child.

Together with other authors³¹, we consider that the legislator did not regulate the possibility of interchanging the child’s dwelling from one parent to the other. Notwithstanding, should the parents agree with interchanging the child’s dwelling from one to another and should this be considered in the best interest of the child, the court may rule in this respect based on the parents’ mutual agreement and not based on a legal provision that would regulate this. On the contrary, in case the parents do not agree with interchanging the child’s dwelling from one to another or in case this measure would not be in the best interest of the child, the court can not establish an alternative dwelling of a child at both parents.

According to another opinion³², there is accepted the possibility of interchanging the child’s dwelling from one parent to the other in case this is in the child’s best interest and the parental authority is to be exercised by both parents.

We consider that, as per the provisions of article 400 of the Civil Code, it is not possible to establish an alternative dwelling of a child at both parents, the legislator stipulating under the paragraph (1) that, in case of misunderstanding between the parents or if such understanding shall be against the best interest of the child, the custody court shall determine, along with the divorce, the dwelling of the child at the parent with whom he usually lives and, under paragraph (2), that, if prior to the

²⁹ See Supreme Court of Justice, Civil Section, decision no. 1848/1991, in *Probleme de drept din deciziile Curții Supreme de Justiție 1990-1992*, Orizonturi Publishing House, Bucharest, 1993, pp. 217-219; see also Court of Appeal of Iași, Section for children and family, decision no. 140/R of October 23, 2008, www.portal.just.ro.

³⁰ Article 497 paragraph (2) Civil Code.

³¹ E. Florian, *Family law. Marriage. Matrimonial regimes. Filiation*, 5th edition, C.H. Beck Publishing House, Bucharest, 2016, p. 350; M. Avram, *Civil law. Family*, Hamangiu Publishing House, Bucharest, 2013, p. 161.

³² C. C. Hageanu, *Family law and the civil status acts*, Hamangiu Publishing House, Bucharest, 2017, p. 205.

divorce the child lived with both parents, the court shall establish his dwelling at one of them, as per his best interest, excluding the possibility of establishing the alternating dwelling of the child.

At the same time, within the case law³³ it was noted that the principle 3.20 paragraph (2) from the Principles of the European Law on Parental Authority, adopted by the European Commission on the family legislation stipulates that “ the child may alternatively reside with the holders of the parental authority, either as a result of an agreement approved by the competent authority or of a decision taken by the latter”, but this recommendation is not mandatory, by means of a recommendation the institutions disclose their opinion and suggest ways of action, without imposing any legal obligation to the recipients of the recommendation, and the provisions of article 400 Civil Code, under their current form, do not allow the settlement of an alternating dwelling in case of divorce.

2.3. The competent court to settle the request for establishing the child’s dwelling

As per article 107 paragraph (1) of the Civil Code, the proceedings undertaken by the Civil Code with respect to the protection of the individuals fall within the competence of the custody and family court, established according to the law. Moreover, according to article 94 point 1 letter a) of the Civil Procedure Code³⁴, the courts shall rule in trial court the claims provided by the Civil Code under the competence of the custody and family court, unless otherwise expressly provided by law.

Thus, the custody court has the jurisdiction to rule with respect to the relationships between the parents and their children during marriage and also in case of divorce of after their divorce. Furthermore, the court’s jurisdiction shall exist with respect to the relationships between the parents and their children outside of marriage.

From the territorial point of view, according to article 114 paragraph (1) from the Civil Procedure Code, the requests for the individuals’ protection, provided by the Civil Code under the jurisdiction of the custody and family court, shall be ruled by the court in whose territorial jurisdiction the protected individual is domiciled or resided, unless otherwise provided by law.

According to article 76 of the Law no. 76/2012 for the implementation of Law no. 134/2010 regarding the Civil Procedure Code³⁵, “until the organization of the custody and family courts, the courts or, as the case may be, the tribunals or specialized tribunals for children and family shall act as custody and family courts, having the jurisdiction as provided by the Civil Code, the Civil Procedure Code, the present law, as well as special regulations in force”.

Therefore, as stated within the practice of the courts³⁶, in accordance with the legal provisions, the jurisdiction for ruling a case having as object the change of the child’s dwelling lies with the court in whose territorial jurisdiction the domicile or residence of the protected individual is located, the exclusive competence regulated by the provisions of article 114 paragraph (1) of the Civil Procedure Code having the character of public order competence in

³³ Bucharest Tribunal, 5th Civil Section, civil decision no. 1282A of March 30, 2016, not published.

³⁴ Law no. 134/2010, republished in the Official Journal of Romania no. 247 of April 10, 2015, as amended and supplemented.

³⁵ Published in the Official Journal of Romania no. 365 of May 30, 2012, as subsequently amended and supplemented.

³⁶ High Court of Cassation and Justice, 1st Civil Section, decision no. 1007 of June 13, 2017, in *Săptămâna Juridică* 41 (2017), pp. 8-9.

relation to the provisions of article 129 paragraph (1) point 3 of the Civil Procedure Code.

2.4. The summons of the custody authority in the lawsuits with children

According to article 396 paragraph (1) and (2) of the Civil Code, the custody court shall rule, along with the divorce, with respect to the relationship between the divorced parents and their children, taking into account the best interest of the children, the conclusions of the psychosocial inquiry report and, if case, of the parents' consent, whom the court shall listen to, but also of the child's opinion, also heard by the court (the provisions of article 264 of the Civil Code being applicable).

We consider that, within such cases with children, involving the parental authority exercise, establishing the child's dwelling, which falls under the jurisdiction of the custody and family court, it is necessary to summon the custody authority, which must draw up a psychosocial inquiry report, duly taken into consideration by the custody and family court when ruling within said case, corroborating it also with the rest of the evidence administered.

As previously stated³⁷, according to the provisions of the Civil Code, which regulates the necessity of a psychosocial investigation in cases concerning the dissolution or nullity of marriage, as well as those concerning the exercise of parental authority over children resulting from a concubinage relationship when the parents do not live together, the hearing of the custody authority and, as a consequence, its summons is necessary. Given that the psychosocial investigation is mandatory in such cases, the custody authority must be

summoned by the court in order to draft the psychosocial inquiry report.

According to another opinion³⁸, based on the provisions of article 396, the custody authority must not be summoned by the court, given that there is no express legal procedural provision in this respect. We consider that without the summons of the custody authority, the psychosocial inquiry report could not be drafted. Therefore, the summons of the custody authority is mandatory in order to inform this authority that a psychosocial inquiry report must be drafted, although a representative of such authority is not necessary to be present in front of the court.

3. Conclusions

In conclusion, the legal provisions on child's care whose parents go to work abroad regulate a social reality with a significant impact on raising and caring for children whose parents are forced to go abroad. This regulation was necessary in view of the increasing number of parents who, due to the need to ensure a decent living for the dependent children, are forced to work outside of Romania, but for this reason they neglect to raise and to care for them. Besides material means of subsistence, a child needs permanent care, which can not be ensured remotely by the parents.

With respect to the child's home, the custody court is obliged to decide where said dwelling shall be established, besides the way of exercise of the parental authority by the parents of a child.

The competent court to settle an application for a child's dwelling is the custody and family court in whose territorial jurisdiction the domicile or residence of the

³⁷ B.D. Moloman, L.-C. Ureche, *op. cit.*, p. 420; B.D. Moloman, L.-C. Ureche, *Ancheta psihosocială a autorității tutelare – personaj special în distribuția cauzelor aflate pe rolul instanței de tutelă. Act administrativ sau simplu mijloc de probă?*, in *Revista Română de Jurisprudență* 3 (2013), p. 151.

³⁸ M. Avram, *Civil law. Family*, Hamangiu Publishing House, Bucharest, 2016, p. 158.

protected individual is located, unless otherwise provided by law.

As regards the evidence to be administered in a case having as object the child's care, the exercise of parental authority, the establishment of the child's home, we consider necessary to summon the

custody authority, given the fact that the court must take into account the conclusions of the psychosocial inquiry report, together with the best interest of the child and, as the case may be, the consent of the parents and the child's hearing.

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