PARENTAL AUTHORITY VERSUS COMMON CUSTODY

Anca Magda VOICULESCU*

Abstract

The notion of parental authority introduced to Romanian legislation by the New Romanian Civil Code is totally distinct from the notion of custody specific to other domestic legislations both in theory, as in practical consequences implied.

The purpose of the article is to make a comparative presentation of the two different notions mentioned above, as they are (still) constantly confused, even though a significant period of time has elapsed since the New Romanian Civil Code entered into force. Confusion comes mainly from the fact that Romanian Civil Code was inspired from Quebec Civil Code, where the legislation formally refers to the notion of parental authority, but in substance this notion presents nevertheless the caharacteristics of the concept of custody.

Therefore, the objectives of the present study are to identify the content and forms regulated in legislation for each of the notions, by studying legal provisions relevant for parental authority in Romanian legislation, respectively custody in national legislations of other states. As a result, the main theoretical resemblances and differences between the two concepts will be decelated.

Furthermore, the study will identify the practical consequences generated by their common points (important decisions are to be taken by agreement of both parents, whereas routine decisions can be made individually) and main differences (domicile of the child/alternate domicile and rights of access).

Keywords: *parental authority, custody, domicile of the child, rights of access, best interests of the child.*

1. Introduction

The present study aims to make a comparative presentation of two different notions – parental authority and custody – by identifying from a theoretical point of view their content and forms prescribed in legislation, but also the practical consequences generated by their differences.

The subject has great importance, as the two notions are still confused by practitioners of law, although a significant period has elapsed since Romanian Civil Code[1] (which introduced to our domestic legislation the concept of parental authority) entered into force.

To reach this aim, the study will identify legal provisions relevant for parental authority in Romanian legislation and custody in national legislation of other states. Furthermore, it wil concentrate on clarifying the content and forms regulated in legislation for each of the notions.

* PhD, Judge at Bucharest Tribunal, trainer in family law at Romanian National Institute of Magistracy, Romanian designated judge in International Network of Hague Judges for 1980 Hague Convention on the Civil Aspects of International Child Abduction (e-mail: ancamagda.voiculescu@gmail.com).

[1] Law no. 287/2009 concerning Romanian Civil Code, published in the Oficial Journal of Romania no. 511/24.07.2009 and republished per Article 218 from Law no. 711/2011, published in the Oficial Journal of Romania no. 409/10.06.2011, in force from 01.10.2011.

Also, case – law relevant for the subject will be presented, both domestic and foreign, as it reflects how these notions were understood and applied in practice.

Doctrinal opinions will also be identified and systematized, with the necessary mention that preponderence goes to studies from abroad, as in Romanian juridical literature the subject has scarcely been discussed.

Coroborating all these different, but interconnected perspectives, the article will conclude over the main theoretical resemblances and differences between the two concepts.

At the same time, it will point out practical aspects reflected in case – law in close connection to parental authority and common custody (specially domicile of the child /alternate domicile and rights of acces/„equal time" for the child with both parents).

2. Content

2.1. Content and forms of parental authority in Romanian legislation

Article 483 of Romanian Civil Code („Parental Authority") provides the definition and main characteristics of the notion of parental authority[2].

According to the above-mentioned article: „ (1) Parental authority is the set of rights and obligations concerning both person and property of the child which belong equally to both parents. (2) Parents exercise parental authority only in the best interests of the child, with due respect to his person, and associate the child in all decisions affecting him, considering the age and maturity of the child. (3) Both parents are responsible for bringing up their minor children." (our underline)

Subsequently, Article 487 of Romanian Civil Code („Content of parental authority") offers details about the content of the concept of parental authority in our domestic law: „Parents have the right and duty to raise the child, taking care of the child's health, physical, mental and intellectual upbringing, and also the child's education and training, according to their own beliefs, characteristics and needs of the child; they are bound to give the child guidance and advice needed in order to properly exercise the rights granted by the law".

General provisions of Romanian Civil Code must be corroborated to special legislation, respectively Law no. 272/2004[3] (Article 36), according to which: „(1) Both parents are responsible for raising their children. (2) *Exercise of parental rights and obligations must be in the best interests of the child and ensure material and spiritual welfare for the child, especially by providing care, maintaining personal relationships and providing growth, education and maintenance, as well as legal representation and administration of patrimony*" (our underline).

[2] References to parental authority are to be found also in other legislations, e.g. Articles 371-373 of French Civil Code or Articles 597-612 of Quebec Civil Code. Despite of the formal title ("parental authority"), the concept corresponds more to the notion of custody, whereas parental authority and custody cannot be assimilated in substance. Likewise, Civil Code of Luxemburg (Title IX) refers to "parental authority". Therefore, this notion is not new in Romanian law (details to this respect in A.-G. Gavrilescu, *Drepturile și obligațiile părinteşti. Drept român și comparat*, Universul Juridic Publishing House, 2011, p. 242).

[3] Law no. 272/2004 concerning protection and promotion of children's rights, published in the Oficial Journal of Romania no. 557/23.06.2004, successively modified and lastly republished in the Oficial Journal of Romania no. 159/05.03.2014.

In case of divorce, the general rule is common parental authority[4], whereas sole/exclusive parental authority is the exception, in cases stipulated both by Romanian Civil Code (objective exceptions[5]), respectively Romanian Civil Code and Law no. 272/2004 (subjective exceptions[6]).

In each of the cases, the decision to grant exclusive parental authority belongs to the court, which will establish, considering the specificities of the case, if the best interests of the child recommend common or sole parental authority; in the latter case, it is also for the court to choose the parent who presents the guarantees for exercising sole parental authority.

From corroboration of legal provisions detailed above, it results that parental authority (either joint or sole), deals with rights and obligations of the parents that must be exercised only in the best interests of the child[7]. To reach this aim, parents take decisions on behalf of the child, by common consent or unilaterally (depending on exercise of parental authority - joint or exclusive).

In this context, it is important to underline a major distinction between the notion of parental authority introduced by Romanian Civil Code and the notion of „*încredinţare*" legiferated by the former Romanian Family Code[8].

The notion of „*încredinţare*" implied both domicile of the child and right to make unilaterally decisions for the parent who had the domicile[9]. According to actual legislation, the notion of parental authority encompasses the right to make decisions (jointly or exclusively)[10], but does not include domicile of the child (which is to be

[4] Per Article 397 of Romanian Civil Code: "After divorce, parental authority rests jointly to both parents, unless the court decides otherwise".

[5] Article 507 of Romanian Civil Code ("Exclusive parental authority") provides an exhaustive list of objective exceptions: "If one parent is *deceased*, *declared dead* by judgment, under *interdiction*, *deprived of the exercise of parental rights* or if, for any reason, it is *impossible* for him or her to express his or her will, the other parent exercises parental authority alone". (our underline).

[6] Article 398 of Romanian Civil Code ("Exclusive parental authority") opens the possibility for the court to appreciate in favour of sole parental authority in subjective situations, depending on circumstances specific to each case: "For *serious reasons*, given the interests of the child, the court decides that parental authority is exercised exclusively by a parent. (2) The other parent retains the right to watch over the child's care and education and the right to consent to adoption" (our underline). Subsequently, Article 36 para. 7 of Law no. 272/2004 exemplifies in a nonexhaustive list the subjective reasons mentioned by Civil Code in a general manner, as follows: "There are considered serious grounds for the court to decide that parental authority is exercised by a single parent *alcoholism*, *mental illness*, *drug addiction* of the other parent, *violence* against children or against the other parent, *convictions* for human trafficking, drug trafficking, crimes concerning sexual life, crimes of violence, as well as *any other reason related to risks for the child* that would derive from the exercise by that parent of parental authority." (our underline).

[7] M. Welstead & S. Edwards, *Family Law*, Oxford University Press, 2nd Edition, 2008, p. 242: " (…) parental rights and parental responsabilities (…) have been displaced in favour of the responsabilities of parents towards their children, and (…) under certain circumstances the rights of children prevail. Parental rights have been reframed as responsabilities (…)".

[8] Law no. 4/1953, published in the Oficial Journal of Romania no. 4/04.01.1954, amended by Law no. 4/1956 published in the Oficial Journal of Romania no. 11/ 04.04.1956, republished in the Oficial Journal of Romania no. 13/18.04.1956, succesively amended, lastly by Law no. 59/1993, published in the Oficial Journal of Romania no. 177/26.07.1993.

[9] M. Avram, *Drept civil. Familia*, 2nd Edition revised and completed, Hamangiu Publishing House, 2016, p. 152.

[10] M. Avram, *op. cit.*, p. 160: " (…) exercise of parental authority does no longer split by entrusting the child to one of the divorced parents, situation which does not exclude the possibility for the court to decise otherwise, but nevertheless these measures of splitting parental authority operate only in exceptional situations".

decided over different criteria from parental authority[11]).

Although common parental authority was introduced to our domestic legislation to encourage maintenance of parental responsibility after divorce, in certain cases it may give rise to abuses/perpetuate the conflict between parents, and the consequences are inflicted directly and primarily on the child.

In this case, we consider that the recommended solution is sole parental authority. Despite a significant resistance against exclusive parental authority in the beginning (save for the objective situations limitedly prescribed by Article 507 of Romanian Civil Code), present case-law[12] accepts exclusive authority.

A parent who, by his own behavior, comes to present a significant risk for the child (even appreciated by subjective standards offered by Article 398 of Romanian Civil Code and Article 36 para. 7 of Law no. 272/2004), must not be allowed to exercise parental authority.

Also, not all parents are suitable for joint authority. Parents should respond in an analogous way to the child's needs (physical, material, emotional, spiritual, etc.) and must be able to handle a functional and non-conflictual communication.

We consider that at least the following criteria are important in deciding over exercise of parental authority: parents have no difficulty in working together; they both agree on joint parental authority and take their share of responsibility; there is no violence, resentment or revenge between the parents; they agree on domicile of the child; they have similar style education and values; in case of divergence, they are ready to negotiate and give in; they are supporting each other as partners equal to raise and educate the child; they are able to maintain a stable environment including extended family (grandparents, uncles, aunts, cousins) and even reconstituted families (stepmothers or stepfathers may represent distinct forms of attachment for children).

If these criteria are not met, we consider that joint parental authority becomes only the means to continue and expand after divorce the conflict between parents and child is caught between different (even opposite) systems of education and values.

2.2. Content and forms of custody

By contrast to Romanian legislation which recognizes the notion of parental authority, domestic legislations of other states refer to the notion of custody[13], which encompasses two forms (legal custody and physical custody).

Legal custody considers the authority to make major (important) decisions on behalf of the child and includes sole legal custody and common (joint) legal custody.

The parent who has sole legal custody is the only person who has legal authority to make major decisions concerning the child.

On the contrary, joint legal custody means that both parents have legal authority to make important decisions for the child.

There are certain advantages of sole legal custody, such as: it is easier to make

[11] For the same conclusion, F. Emese, *Dreptul Familiei. Căsătoria. Regimuri matrimonial. Filiaţia,* 5th edition, C.H. Beck Publishing House, Bucharest, 2016, p. 521.

[12] Bucharest Tribunal, Fourth Civil Section, decision no. 938/A pronounced on 22.10.2012 (the court appreciated that exclusive parental authority was justified in the situation where one of the parents encountered real difficulties to obtain the consent of the other parent for important decisions concerning the child, such as participation of the child in crossborder sport competitions with the national team).

[13] S.P. Gavrilă, *Instituţii de dreptul familiei în reglementarea Noului Cod Civil*, Hamangiu Publishing House, 2012, p. 205: "(…) notion borrowed from other legal systems, which does not overlap identically to exercise of parental authority (…)".

major decisions when there is only one parent legally responsible; it may result in greater consistency for the child; for situations when one parent is completely absent, it is necessary for the other (present) parent to be able to make important decisions without having to consult and decide with a parent who is not available.

In case of joint legal custody, the major disadvantage is that, when disagreements arise over various decisions, it is often the case that neither of the parents compromises on his or her convictions, and the court must be seized to take the decision for them. The inevitable consequence is that decisions cannot be taken but at the end of litigation, whereas it is well known that celerity is very important in taking decisions concerning children[14].

Physical custody refers to the aspect where the child lives most of the time (it is sometimes referred to as „residential custody").

Similar to legal custody, physical custody encompasses two forms: sole physical custody **and joint physical custody.**

In case of sole **physical custody,** the child physically resides in one location (with „custodian parent"). In most cases, „non-custodial" parent is awarded generous visitation rights, including sleepovers.

In case of joint **physical custody (**also called „shared custody", „shared parenting" or „dual residence"), the child lives with one parent for part of the week (or month/even year), and with the other parent during the remaining time. The division of time spent at each location is approximately equal.

It is important to note that parents can potentially share joint legal custody without having joint physical custody.

There is also a third option, called „**bird's nest custody**". This appears when the children live in one central location, and the parents rotate in and out of the children's home on a regular schedule[15].

While this child-centered approach can ease transitions for the children, it can be costly (too impossible) to maintain three separate residences and difficult for parents to constantly move from one residence to another[16] (this type of custody remains just a proposal that we have never met in practice).

2.3. Important decisions/routine decisions

As a common point between parental authority and custody (when they are jointly exercised, and in addition custody encompasses the form of joint legal custody[17]), major decisions concerning the child are to be taken by agreement of both parents.

On the contrast, decisions concerning routine aspects of the child's every day life can be made individually by the parent who

[14] This might be the reason why some legislations prescribed an original (and very practical) solution for situations where parents cannot reach an agreement concerning a certain type of important decisions. According to B. D. Moloman, L.-C. Ureche, *Noul Cod Civil. Cartea a II-a. Despre familie. Art. 258-534. Comentarii, explicații și jurisprudență*, Universul Juridic Publishing House, Bucharest, 2017, p. 671, Article 1628 of German Civil Code stipulates that in such situations, at the request of parent(s), the court may transfer authority to take that type of decisions to one of the parents. Romanian legislation does not have such a solution, and thus it is necessary to seize the court every time parents do not agree over an important decision (even if the situation is repetitive) - Article 264 of Romanian Civil code and Article 36 para. 8 of Law no. 272/2004.

[15] For example, parents spend alternate weeks at the children's home.

[16] Nevertheless, it is far more difficult for children to move from one location to another in case of alternate domicile (joint physical custody).

[17] Physical custody, as already pointed out, does not deal with making decisions on behalf of the child, but with periods of time spent by the child with each of the parents.

is currently exercising his or her parenting time.

In this context, it is of high importance to identify if a decision is major or merely routine.

If not prescribed by the domestic law or clarified in the judgment governing parental authority/custody, it can sometimes be difficult to determine whether a specific decision is important or routine.

As a general rule, major decisions are distinguished from day-to-day decisions by their importance and their nonrepetitive nature[18]; likewise, major decisions are those which „exceed daily needs of the child"[19].

Important decisions are, in general, decisions regarding education, religion, and healthcare.

Examples of major decisions include e.g., where the child should go to school, what type of religious upbringing he or she will have, non-emergency medical decisions.

As consequence, routine decisions encompass all the other aspects that do not enroll in the area of major decisions.

This type of decisions is to be taken individually and the other parent cannot interfere[20].

In conclusion, the general rule is that important decisions shall be made jointly by applying what was called „principle of codecision"[21] and routine decisions shall be made individually.

Should both parents not agree on an important issue, one parent will have to petition the court to make the decision for them, based on the child's best interests.

If important decisions are made unilateraly by one parent or if a parent believes that the other parent is engaging in harmful routine decisions regarding the child, he or she may ask the court to modify rights of access (parenting time) or even the domicile of the child (or custody).

In Romanian legislation, the initial form of Law no. 272/2004 did not prescribe which types of decisions were important. Therefore, it was often the case that parents seized courts to decide over this aspect and the case-law was quite diverse, generated by lack of even general criteria that at least should have been regulated by the legislator.

This is the reason why, in 2013, among other modifications, the legislator decided to expressly and limitatively state which decisions are important[22].

Article 36 para. 3 of Law no. 272/2004 (actual form) provides that: „If both parents exercise parental authority, but do not live together, important decisions, such as type of education or training, complex medical treatment or surgery, residence of the child or administration of property shall be taken only with the consent of both parents."

Also, to avoid non-implication/abuse in making important decisions, the legislator stipulated two limits.

The first limit regards the non-responsive parent, who does not provide any answer on important decisions needed to be taken, even specifically asked by the other

[18] J. S. Ehrlich, *Family Law for Paralegals*, 7th edition, Wolters Kluwer Publishing House, New York, 2017, p. 202.

[19] D. Lupașcu, C. M. Crăciunescu, *Dreptul Familiei*, 3rd edition amended and actualized, Universul Juridic Publishing House, 2017, p. 557.

[20] "If the other parent is interrogating you about the way you handle routine matters related to the children, you should feel comfortable politely telling him/her to back off. It is YOUR parenting time. YOUR rules apply. If the court determined you were fit to have parenting time, the court also determined that you were fit to make routine decisions regarding the children without your ex-wife's or ex-husband's unwanted input". (D.M. Germain, *Joint Legal Custody* & *Decision-Making during your visitation*, available on-line at http://www.bestinterestlaw.com/joint-legal-custody, last accession on 28.02.2018; 19:12).

[21] F. Emese, *op. cit.*, p. 523.

[22] Article 31 para. 2^1 of Law no. 272/2004, introduced by Law no. 257/2013, in force from 03.10.2013.

parent. In this case, the decision is to be made by the parent who has been entrusted with the domicile of the child.

The second limit concerns the abusive parent, who makes important decisions that are not in the interests of the child, taking advantage of the non-interested conduct of the other parent. In this case, the decision cannot be taken unilaterally, and most often will be decided by the court[23].

2.4. Alternate domicile

As already pointed out, under Romanian Civil Code, the domicile of the child does not fall in the area of parental authority, and this is the first and most important distinction between parental authority and custody[24].

As consequence, in case of divorce and absence of agreement between parents[25], the court must decide separately and under different criteria on the one hand regarding exercise of parental authority (common or sole) and on the other hand concerning domicile of the child (which is to be established at one of the parents)[26].

According to Article 400 of Romanian Civil Code: „ (1) In the absence of agreement between the parents or if it is contrary to the best interests of the child, the guardianship court shall decide, at the same time with divorce, the domicile of the child to the parent with whom he or she lives constantly. (2) In case that before pronouncement of divorce the child lived with both parents, the court shall establish the domicile of the child to one of them, given the child's best interests."

The criteria under which the court decides which parent should have the domicile of the child are prescribed by Article 21 of Law no. 272/2004:

„ (1) If parents do not agree on domicile of the child, the guardianship court will establish the domicile to one of them, according to Article 496 para. (3) of the Civil Code. In evaluating the interest of the child, the court may consider, in addition to the items stipulated in Article 2 para. (6), issues such as:

c) availability of each parent to involve the other parent in decisions related to child and to respect parental rights of the latter;
d) availability of parents to allow each other to maintain personal relationships;
e) housing conditions in the last three years of each parent;
f) history of parents' violence against children or other persons;
g) distance between the house of each parent and education institution of the child."

[23] The premise for this situation is a non-responsive behaviour of one parent, and therefore the decision cannot be taken in common. At the same time, decision cannot be taken unilaterally by the other parent, as it is against the best interests of the child. By consequence, the only solution is asking the court to make the decision.

[24] Physical custody implies alternate domicile of the child. Alternate domicile of the child is legiferated, for example, in United Kingdom (Children Act, 1989), Belgium (Law from 18.07.2006), Spain (Law from 08.07.2005), Italy (Law from 08.02.2006). Even in countries where the law allows alternate domicile, this subject generated intense discussion with extensive arguments in favour or against it (L. Briad, *Résidence alternée et conflit parental*, A.J. Famille no. 12/2011, p. 570-573; M. Juston, *De la coparentalité à la déparentalité*, A.J. Famille no. 12/2011, p. 579-583; A. Gouttenoire, *Autorité parentale*, in P. Murat (coord.) *Droit de la Famille*, 5th Édition, Dalloz, Paris, 2010, p. 803-807, in F. Emese, *op. cit.*, p. 532).

[25] Nonetheless, in the light of Article 8 of Law no. 272/2004, agreements between parents must be verified by court as follows: "In all cases concerning children's rights, the court verifies that agreements between parents or concluded by parents with other persons should fulfill the best interests of the child".

[26] By consequence, the other parent has only rights of access.

In conclusion, alternate domicile under Romanian Civil Code is not possible[27].

Nevertheless, a natural question appears: if it were possible (as it is in other national legislations), would it be a satisfactory solution for the child?

Our opinion is that, even in absence of legal arguments presented above which operate in the context of our domestic legislation, alternate domicile is not an option in the best interests of the child.

Juridical literature sustains our opinion: „We doubt that from the child's point of view the idea of alternate domicile is, as a rule, the happiest choice, whatever the rhythm of alternance in hosting child, and even if geographical proximity of the two locations would exempt additional shortcomings"[28].

2.5. Rights of access

According to Article 496 para. 5 of Romanian Civil Code: „The parent with whom the child does not live constantly has rights of access to the child at the latter's domicile. Guardianship court may limit the exercise of this right if it is in the best interests of the child".

Article 17 para. 4 of Law no. 272/2004 states that: „In case of disagreement between parents on exercise access rights to the child, the court will set out a schedule based on the child's age, needs care and education of the child, intensity of affection between child and parent who does not have the domicile of the child, the behavior of the latter, as well as other relevant issues in each case."

Subsequently, Article 18 of Law no. 272/2004 details different forms of rights of access: „a) meetings between the child and parent or other person who, per law, has the right to a personal relationship with the child; b) visiting the child at his domicile; c) hosting child, for a limited period, by the parent or other person with whom the child does not live habitually."

The rights of access as described above by Romanian legislation cannot come to application in practice of the idea of „equal time" of child with both parents, specific to common physical custody and consisting, in reality, in alternate domicile[29].

Also, alternate domicile the child (not allowed by Romanian law) can not be confused with a large programme of personal ties, because the two concepts are distinct and, as a rule, rights of access imply a prior establishment of the domicile of the child (not alternating) to one of the parents.

3. Conclusions

Parental authority legiferated by Romanian Civil Code and (common) custody prescribed by other domestic legislations remain two entirely different concepts[30].

[27] For the same conclusion, M. Avram, *op. cit.*, p. 165; D.F. Barbur, *Autoritatea părintească*, Hamangiu Publishing House, 2016, p. 126 and p. 170; D. Lupașcu, C. M. Crăciunescu, *op. cit.*, p. 568.

[28] F. Emese, *op. cit*., p. 532. The author explains as follows: "Fulfilling parental duties is a daily task, and implies continue and sustained involvement, without the inevitable gaps of "exchange of shifts" between parents. Ensuring stability and continuity in care, upbringing and education of the child (…) cannot be done sequentially (…) we are not of the opinion that the right of the child to be raised by his parents (…) implies alternance of domicile".

[29] For example, case no. 54/4/2013 registered at Bucharest Tribunal, Fourth Civil Section, decision no. 648A/19.05.2014, where the court denied alternate domicile (presented as "equal time" of child with both parents).

[30] Confusion comes mainly from the fact that Romanian Civil Code was inspired from Quebec Civil Code, where the notion of parental authority, as already pointed out, corresponds in substance to the concept of custody. Still, even according to Quebec legislation, common custody implying alternate domicile of the child is considered to be a solution only if it is in the best interests of the child and considering the need of stability, relations between parents are good, the opinion of the child is in favour of this type of arrangement (J. Dutil, *La garde partag**é**e au Qu**é**bec*,

At large, one may consider that parental authority as regulated in Romanian legislation may be approached to legal common custody, where the child lives most of the time with one parent („resident parent") and the other parent („non-resident parent") has right of decision over important matters concerning the child and relatively large rights of access.

Thus, under Article 400 of Romanian Civil Code and Article 21 of Law no. 272/2004, the court has the obligation to establish the domicile of the child after divorce to one of the parents (different from physical common custody, associated to alternate domicile).

Nevertheless, parental authority in our national legislative system remains different even from legal common custody.

We argue this point of view as, according to clarifications brought by Article no. 36 of Law no. 272/2004, important decisions to be taken by agreement of both parents are limited in number and expressly regulated by our domestic law (and not to be decided from case to case, as in case of common custody).

On the other hand, rights of access for the parent who has not been entrusted with the domicile of the child are to be established, in the light of Article 17 para. 4 of Law no. 272/2004, from case to case, depending on factual circumstances specific to each litigation, and not considered *de plano* to be large (the case of legal common custody).

As a first consequence of this conclusion according to which parental authority and (common) custody are different notions, it results that under parental authority in Romanian law alternate domicile of the child after divorce of parents is not legally possible.

In adition to this legal point of view, alternate domicile is not a solution in the best interests of the child also considering the effort it would impose (only) on the child, forced to adapt and readapt continuously to different environment, rules, etc. and with serious psychological consequences on long term basis.

In conclusion, common parental authority decided/agreed in case of divorce implies only that important decisions are to be taken by mutual consent, whereas the domicile of the child will be established in favour of one parent (and the other parent will have access rights).

A second consequence resides in the fact that rights of access organized on the so-called principle „equal time" also are not possible, mainly because „equal time" means shared residence of the child and is frequently used in practice as a disguised form of alternate domicile.

We identified a single real common point between notions of parental authority and custody, namely that in case they are exercised by both parents, important decisions necessarily imply agreement of both parents, whereas day-to-day decisions are to be taken by the parent who takes care of the child at that moment.

We consider that this firm theoretical distinction between parental authority and custody and its practical consequences reflecting in application of other notions of family law (as detailed above) could help to ensure a unified case-law, most necessary to be reached in an area as sensible as measures concerning children.

A.J. Famille no. 12/2011, pp. 596-597; M. Castelli, D. Goubau, *Le droit de la famille au Québec*, 5ème Édition, Presses Université Laval, 2005, pp. 331-333, as presented by F. Emese, *op. cit.*, p. 531). In a similar manner, French legislation allows alternate domicile of the child only based on agreement of parents or, in absence of it, disposed by the court as a provisional measure for a limited period; at the end of the "trial period" the issue of child domicile should to get a final solution (L. Delprat, L'autorité parentale et la loi, Studyrama, 2006, p. 78, as presented by F. Emese, *op. cit.*, p. 531).

In the light of specificity of issues generated by family law (some of them presented above), given the fact that at present family cases often encompass cross-border implications and necessarily specific training of judges, we consider that the legislator should seriously ponder the idea of a reasonable number of courts in Romania specialised in family law.

To this respect, we argue that there is already such a specialised court, namely Brașov Family and Minors Tribunal.

Also, in the area of international child abductions[31], the legislator unified territorial competence in Bucharest[32].

In both cases, the benefice of unified jurisprudence is evident and immediate and therefore a „network" of family courts should be construed.

References

- Avram Marieta, *Drept civil. Familia*, 2nd Edition revised and completed, Hamangiu Publishing House, 2016
- Barbur Diana Flavia, *Autoritatea părintească*, Hamangiu Publishing House, 2016
- Briad L., *Résidence alternée et conflit parental*, A.J. Famille no. 12/2011
- Castelli M., Goubau D., *Le droit de la famille au Québec*, 5ème Édition, Presses Université Laval, 2005
- Delprat L., *L'autorité parentale et la loi*, Studyrama, 2006
- Dutil J., *La garde partagée au Québec*, A.J. Famille no. 12/2011
- Ehrlich J. Shoshanna, *Family Law for Paralegals*, 7th Edition, Wolters Kluwer Publishing House, New York, 2017
- Emese Florian, *Dreptul Familiei. Căsătoria. Regimuri matrimonial. Filiația,* 5th Edition, C.H. Beck Publishing House, Bucharest, 2016
- Gavrilă Simona Petrina, *Instituții de dreptul familiei în reglementarea Noului Cod Civil*, Hamangiu Publishing House, 2012
- Gavrilescu Alin-Gheorghe, *Drepturile și obligațiile părintești. Drept român și comparat*, Universul Juridic Publishing House, 2011
- Germain Dennis M., Joint Legal Custody & *Decision-Making during your visitation*
- Gouttenoire A., *Autorité parentale*, in P. Murat (coord.) *Droit de la Famille*, 5ème Édition, Dalloz, Paris, 2010
- Juston M., *De la coparentalité à la déparentalité*, A.J. Famille no. 12/2011
- Lupașcu Dan, Crăciunescu Cristiana Mihaela, *Dreptul Familiei*, 3rd Edition amended and actualized, Universul Juridic Publishing House, 2017
- Moloman Bogdan Dumitru, Ureche Lazăr-Ciprian, *Noul Cod Civil. Cartea a II-a. Despre familie. Art. 258-534. Comentarii, explicații și jurisprudență*, Universul Juridic Publishing House, Bucharest, 2017
- Welstead Mary & Edwards Susan, *Family Law*, Oxford University Press, 2nd Edition, 2008
- Bucharest Tribunal, Fourth Civil Section, decision no. 938/A pronounced on 22.10.2012

[31] The specific legal instrument in this area is the Hague Convention on the Civil Aspects of International Child Abduction concluded at The Hague on October 25, 1980, during the 14th Session of the Hague Conference on Private International Law. Participation of Romania to 1980 Hague Convention was ensured by Law no. 100/1992 for Romania's accession to 1980 Hague Convention on the Civil Aspects of International Child Abduction, published in the Oficial Journal of Romania no. 243/30.09.1992.

[32] Law no. 369/2004 on the application of 1980 Hague Convention on the Civil Aspects of International Child Abduction, published in the Oficial Journal of Romania no. 888/29.09.2004 and republished in the Oficial Journal of Romania no. 468/25.06.2014 prescribes that international abduction cases are to be solved by Bucharest Tribunal as first instance and Bucharest Court of Appeal as second instance.

- Bucharest Tribunal, Fourth Civil Section, decision no. 648A/19.05.2014, case no. 54/4/2013
- Hague Convention on the Civil Aspects of International Child Abduction concluded at The Hague on October 25, 1980
- Law no. 100/1992 for Romania's accession to 1980 Hague Convention on the Civil Aspects of International Child Abduction, published in the Oficial Journal of Romania no. 243/30.09.1992
- Law no. 272/2004 concerning protection and promotion of children's rights, published in the Oficial Journal of Romania no. 557/23.06.2004, successively modified and lastly republished in the Oficial Journal of Romania no. 159/05.03.2014
- Law no. 369/2004 on the application of 1980 Hague Convention on the Civil Aspects of International Child Abduction, published in the Oficial Journal of Romania no. 888/29.09.2004 and republished in the Oficial Journal of Romania no. 468/25.06.2014
- Romanian Family Code, Law no. 4/1953, published in the Oficial Journal of Romania no. 4/04.01.1954, amended by Law no. 4/1956 published in the Oficial Journal of Romania no. 11/ 04.04.1956, republished in the Oficial Journal of Romania no. 13/18.04.1956, succesively amended, lastly by Law no. 59/1993, published in the Oficial Journal of Romania no. 177/26.07.1993
- Romanian Civile Code, Law no. 287/2009, published in the Oficial Journal of Romania no. 511/24.07.2009 and republished per Article 218 from Law no. 711/2011, published in the Oficial Journal of Romania no. 409/10.06.2011
- French Civil Code
- Quebec Civil Code
- Luxemburg Civil Code
- German Civil Code