Parental responsibility - child custody and contact rights

Romania

1 What does the legal term "parental responsibility" mean in practical terms? What are the rights and obligations of a holder of parental responsibility?

The Romanian Civil Code (*Codul Civil*) uses the concept of **parental authority**. **Parental authority means** all the rights and duties concerning both the child and his/her assets. The rights and duties belong equally to both parents and are exercised in the best interests of the child. Parental authority shall be exercised until the child reaches full legal capacity.

The parental rights and duties (provided for in Article 487-499 of the Civil Code and Law No 272/2004 (*Legea nr. 272/2004*) on the protection and promotion of children's rights) with regard to the child include:

the right and duty to establish and preserve the child's identity. The child shall be registered immediately after birth and shall have the right to a name and citizenship. Parents shall choose the first and last name of the child.

the right and duty to raise the child. Parents have the right and duty to raise the child, to care for the health and physical, psychological and intellectual development of the child, of his/her education, studies and professional training, according to their own beliefs, characteristics and needs of the child.

the right and duty to provide child supervision.

the right and duty to provide child support. Parents are obliged, jointly and severally, to provide maintenance for their minor child. Parents are obliged to support their grown-up child until graduation if s/he is pursuing his/her studies but no later than by the age of 26 years.

the right to take certain disciplinary measures against the child. It is forbidden to take certain measures, such as some physical punishment that would impair the physical, mental or emotional state of the child.

the right to ask for the return of the child from any person who holds him/her with no right.

the right of the parents to reunite with their child. This right is correlated with the right of the child to not be separated from his/her parents other than for exceptional and temporary reasons (e.g. placement measures).

the right of the parent to have personal links with his/her child. The methods of having personal links with the child are, *e.g.*: visiting the child in his/her home, visiting the child while s/he is in school, the child spending holiday with each of his/her parents.

the right to determine the child's home. The minor child shall live with his parents. If the parents do not live together, they shall decide the child's home by mutual agreement. In case of disagreement between the parents, the Guardianship Court (*Instanţa de tutelă*) shall decide.

the right to consent to the engagement and marriage of the child in the case of minors who have reached 16 years of age; the right to consent to the adoption of the child.

the right to appeal against the measures taken by the authorities with regard to the child and to make requests and actions in their own names and on behalf of child

The parental rights and duties (provided for in Article 500-502 of the Civil Code) as regards the child's assets may include:

management of the child's assets. The parent has no right over the assets of the child, nor has the child over the assets of the parent, apart from the right to inheritance and maintenance. Parents have the right and duty to manage the assets of their minor child and to represent him/her in legal civil acts or to give their consent to these acts. After the age of 14, the minor shall exercise his/her rights and shall execute his/her duties alone, however, with the consent of the parents and of the Guardianship Court, where appropriate.

the right and duty to represent the minor in civil acts or to give one's consent to such acts. Up to the age of 14, the child shall be represented by the parents in civil acts as s/he lacks legal capacity entirely. From the age of 14 to 18, the child shall exercise his/her rights and shall execute his/her duties alone, however, the prior consent of the parents is required as s/he has limited legal capacity.

2 As a general rule, who has the parental responsibility over a child?

The rights and duties belong equally to both parents (Article 503(1) of the Civil Code): if the parents are married; after divorce (Article 397 of the Civil Code); to the parent whose filiation has been established if the child was born out of wedlock, and to both parents if the parents live in domestic partnership (Article 505(1) of the Civil Code).

Parental authority shall be exercised unevenly by (separated) parents: in the case of the dissolution of marriage by divorce if the Court considers that it is in the interest of the child for parental authority to be exercised by one parent only (Article 398 of the Civil Code); in the case of the dissolution of marriage (Article 305(2) of the Civil Code); if the child was born out of wedlock where the parents do not live in a domestic partnership (Article 505(2) of the Civil Code).

Parental authority shall be exercised by one of the parents according to Article 507 of the Civil Code when the other parent is deceased, or has been deprived of his/her parental rights, or is placed under interdiction etc.

Parental authority shall be exercised by the parents in part when the rights and duties belong to a third party or to a care institution (Article 399 of the Civil Code).

3 If the parents are unable or unwilling to exercise parental responsibility over their children, can another person be appointed in their place?

A minor parent who reached the age of 14 has only personal parental rights and duties with regard to the child. The rights and duties with regard to the assets of the child belong to the guardian or to another person.

The guardianship of minors shall be established when both parents are deceased, are unknown, are deprived of the exercise of parental rights or have been charged with criminal penalty to deprive them of the parental rights, are placed under judicial interdiction, are missing or are declared dead, and the Court decides upon the termination of the adoption that it is in the interest of the minor to establish a guardianship.

Guardianship is established if the child lacks the care of both parents, after they have been deprived of the exercise of parental rights.

Exceptionally, the Guardianship Court may decide on the placement of the child to a relative or to another family or person, with their consent, or into a care institution.

4 If the parents divorce or split up, how is the question of parental responsibility determined for the future?

In principle, parental authority lies with both parents jointly after divorce, or with one of the parents only if there are well-grounded reasons, regarding the best interest of the child. The other parent shall retain the right to watch how the child is raised and educated, and the right to consent to his/her adoption.

Exceptionally, the Guardianship Court may decide on the placement of the child to a relative or to another family or person, with their consent, or into a care institution. They shall exercise the rights and duties of parents with regard to the child (Article 399 of the Civil Code).
When a child is born out of wedlock whose filiation was established to both parents, parental authority shall be exercised jointly and equally by the parents if they live in a domestic partnership. If the parents of the child born out of wedlock do not live in a domestic partnership, parental authority shall be exercised by one of the parents only.
Divorce with the consent of the spouses may be established by a notary public even if there are minor children born in wedlock, out of wedlock or adopted, or if the spouses agree on all the aspects regarding the surname used after divorce, the exercise of parental authority by both parents, the establishment of the home of the children after divorce, the method of how personal ties are preserved between the separated parent and each child, as well as the establishment of the parents' contribution to the costs of child rearing, the education, studies and professional training of children. If the report of the social inquiry shows that the agreement of the spouses on the joint exercise of parental authority or on the establishment of the children's home is not in the interest of the child, the notary public dismisses the application for divorce and guides the spouses to address to the Court.

5 If the parents conclude an agreement on the question of parental responsibility, which formalities must be respected to make the agreement legally binding?

Parents may agree on the exercise of parental authority or as regards the measures taken to protect the child with the consent of the Guardianship Court, if it is in the best interest of the child (Article 506 of the Civil Code).
The Parties may appear at any time during judgement, even without having been summoned, in order to request a ruling that legalises their transaction, by giving a consent judgement. The consent judgement is final and shall be enforceable.

6 If the parents cannot come to an agreement on the issue of parental responsibility, what are the alternative means for solving the conflict without going to court?

Mediation is optional before the referral to the Court. During the resolution of the trial, the judicial authorities are obliged to inform the Parties about the possibility and advantages of using mediation. If mediation does not result in an agreement, the disputed issues shall be settled in Court.

7 If the parents go to court, what issues can the judge decide upon relating to the child?

See the answer to question 1.

8 If the court decides that one parent shall have sole custody of a child, does this mean that he or she can decide on all matters relating to the child without first consulting the other parent?

If the Court decides that parental authority shall be exercised by one of the parents only, that parent shall decide alone on all the matters related to the child. The other parent shall retain the right to check how the child is raised and educated, as well as the right to consent to his/her adoption.

9 If the court decides that the parents shall have joint custody of a child, what does this mean in practice?

Parents shall exercise parental authority jointly and equally. With regard to third parties in good faith, if either of the parents carries out an everyday legal act on their own for the exercise of parental rights and fulfilment of parental duties, it is presumed that s/he also has the consent of the other parent.

10 To which court or authority should I turn if I want to lodge an application on parental responsibility? Which formalities must be respected and which documents shall I attach to my application?

The applications for the protection of individuals in the competence of the Guardianship and Family Court (*the District Court or, where appropriate, the Tribunal specialised for minors and families*) are settled by the Court in the territorial jurisdiction of which the protected person has his/her domicile or residence (Article 94 of the Code of Civil Procedure (*Codul de Procedură Civilă*)).
The Court at the plaintiff's domicile is competent for the petitions regarding the establishment of filiation, the Court, in the jurisdiction of which the plaintiff resides, is competent for the petitions regarding maintenance duties (including state allowances for children).
The documents required to be attached to the application for summons are the copy of the minor child's birth certificate, the copy of the identity card, the copy of the judgement of divorce, the mediation agreement (if any) and any other documents deemed useful in settling the case. The petition is exempt from stamp duty.

11 Which procedure applies in these cases? Is an emergency procedure available?

The Court may take provisional measures by presidential order throughout the whole divorce process (special procedure with shorter settlement terms) on setting the home of the minor children, on the maintenance obligation, on the collection of state allowance for children and on the usage of the family home (Article 919 of the Code of Civil Procedure).

12 Can I obtain legal aid to cover the costs of the procedure?

Legal aid may be sought under Emergency Order No 51/2008 (*Ordonanța de Urgență nr. 51/2008*) on public legal aid in civil matters, approved with amendments by Law No 193/2008 (*Legea nr. 193/2008*), as subsequently amended.
Legal aid may be granted separately or cumulatively in the form of assistance by a lawyer; by the payment for an expert, translator or interpreter; the payment for the bailiff's fee; for the exemptions, reductions, rescheduling or delays in payment of the Court fees.
Those persons benefit fully from the legal aid whose monthly net income per family member was below RON 300 in the last two months prior to the petition. If the income is below RON 600, legal aid shall be covered at a rate of 50 %. However, the established conditions do not prevent applicants whose resources exceed the quota from benefiting of legal assistance if they prove that they cannot meet the judicial costs due to the difference between the living standards of the state of domicile or habitual residence and the forum State.

13 Is it possible to appeal against a decision on parental responsibility?

The judgement in the cases related to exercising parental authority (ancillary matters to the divorce or by primary route) is subject to an appeal only, within 30 days from the judgement, or to judicial review only, in the case of a consent judgement that confirms the agreement of the Parties.

14 In certain cases, it may be necessary to apply to a court to have a decision on parental responsibility enforced. Which court should I use in such cases and which procedure applies?

If the person under an obligation does not meet the obligation voluntarily, the person claiming entitlement must notify the bailiff. The bailiff will call on the executing court to consent to enforcement. It is settled in a closed session without summoning the parties.
If the request for enforcement is accepted, the bailiff sends a warrant and a summons to the parent or person with whom the minor is staying, informing him /her of a date on which to appear with the minor in order for the minor to be taken into the charge of the person claiming entitlement, or ordering him/her to allow the other parent to exercise their right to personal relations with the minor.
If the person under the obligation does not meet the obligation, the bailiff will proceed to a forced enforcement in the presence of a representative of the General Directorate of Social Assistance and Child Protection and, if necessary, in the presence of a psychologist and police officers. No one is allowed to bully the minor or to put pressure on him/her to allow the enforcement to be carried out.
If the person under the obligation fails to meet the obligation, the penalty determined by the court lasts until enforcement, and the bailiff will notify the prosecutor to commence prosecution.

If the minor refuses this, the bailiff will communicate the official report to the representative of the General Directorate of Social Assistance and Child Protection, and the competent court will order the minor to undergo a counselling programme, which is followed by a report by the psychologist. If the minor refuses this after enforcement has resumed, the person claiming entitlement may ask the court to apply a penalty.

15 What should I do to have a decision on parental responsibility that is issued by a court in another Member State recognised and enforced in this Member State?

For the recognition of a decision on parental authority, the provisions of Regulation (EC) No 2201/2003 shall apply. The petition is addressed to the Tribunal at the domicile of the defendant or at his/her residence in Romania. The recognition may be appealed at the competent territorial Court of Appeal (*Curtea de Apel*), or challenged by a request for judicial review at the High Court of Cassation and Justice (*Înalta Curte de Casație și Justiție*).

16 To which court in this Member State should I turn to oppose the recognition of a decision on parental responsibility issued by a court in another Member State? Which procedure applies in these cases?

In order to oppose the recognition of a decision on parental authority, the interested person may address to the Tribunal of the defendant's domicile or his/her residence in Romania.

17 Which law does the court apply in a proceeding on parental responsibility where the child or the parties do not live in this Member State or are of different nationalities?

Article 2611 of the Civil Code states that the law applicable to parental authority and the protection of children is determined under the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of parental authority and Measures for the Protection of Children, adopted in The Hague on 19 October 1996, ratified by Law No 361/2007.

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Last update: 16/12/2020
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