



# The New Civil Code for Everyone

## EXERCISING PARENTAL AUTHORITY AFTER DIVORCE

**Parental authority** is the body of rights and duties which concern both the person and the assets of the child and belong equally to both parents.

Married parents exert parental authority together and on equal footing. In case of divorce of the parents parental authority is exerted according to the provisions of the code referring to the effects of divorce on the relations between parents and children. These provisions also apply in case the matrimony of the parents of the minor child was annulled or ceased as a result of the celebration, on good faith, of a new marriage by the spouse of a person declared dead but which later proves to be alive.

In common language we use the phrase „*custody on children*”, a term borrowed from other law systems, which does not match exactly the exertion of parental authority after divorce, but which is also used in a series of international documents, such as the *European Convention on Recognition and Enforcement of Decisions concerning the Custody of Children and on Restoration of Custody of Children*.

Along the **provisions of the New Civil Code** on the effects of divorce on the relations between children and parents, one must also take into account the rights of the child as provided by Law no. 272/2004 on the protection and promotion of the rights of the child.

### Effects of divorce on the relations between parents and their minor children

#### **Exertion of parental authority by both parents**

- **the rule** is that after the divorce the parental authority is exercised jointly by both parents (in ordinary language - "joint custody").
- **exception**: when there are justified reasons, considering the superior interest of the child, the court rules that parental authority is to be exerted **only by one of the parents** (custodian parent). In this situation, the other parent (non-custodian parent) still has the right to supervise the way in which the child is raised and educated, as well as the right to consent to his/her adoption.
- **in rare and absolutely exceptional case**, the guardianship court may decide to place the child with a relative or another family or person or in a welfare institution. These will then exert the rights and duties incumbent to the parents regarding the person of the child. In this case, the court rules whether the rights regarding the assets of the child are to be exerted by the parents jointly or by one of them.

#### **The child's dwelling after the divorce**

- **the parents can agree** on the dwelling of the child after the divorce;
- if the parents do not agree and decide against the superior interest of the child, the guardianship court rules, at the same time with the pronouncement of the divorce, that the dwelling of the minor child be at the parent with whom he/she lives steadily (resident parent). If until the divorce the child used to live with both parents, the court establishes the dwelling with one of them, taking into account his/her superior interest.
- exceptionally, and only if this is in the superior interest of the child, the court may rule that the latter should live with his/her grandparents or with other relatives or persons, with their consent, or in a welfare institution. These supervise the child and do whatever is necessary for his/her health, education and studies.
- If this is detrimental to the exertion of authority or other parental rights, the dwelling of the minor cannot be changed without the consent of **both** parents. In case the parents do not agree on these aspects, the court shall decide whether a change of dwelling is advisable or not.

## Project „The Codes Are Coming!”

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### **Personal relations of the child with the parents and other significant persons in his/her life**

- the child has the right to maintain personal relations and direct contacts with his/her parents, relatives, as well as with other persons for which the child has developed affection connections.
- the parent or, as the case may be, the parents separated from their child have the right to maintain personal relations with the latter;
- in case of disagreement between the parents, the guardianship court decides on the manners of exertion of that right.
- the child is entitled to know his/her relatives and to maintain personal relations with them, as well as with other persons together with whom the child enjoyed his/her family life
- the parents or another legal representative of the child cannot prevent their personal relations with grandparents, brothers or sisters or other persons together with whom the child enjoyed his/her family life, unless in cases when the court so rules, considering there are serious reasons which may endanger the physical, psychic, intellectual or moral development of the child.

### **Personal relations** may take place by:

- a) meetings of the child with the parent or another person entitled to personal relations with the child;
- b) visitation of the child at his/her domicile;
- c) hosting the child on a period established by the parent or by another person where the child does not live usually;
- d) correspondence or another form of communication with the child;
- e) transmission of information to the child concerning the parent or other persons entitled to personal relations with the child;
- f) transmission of information concerning the child, including recent photographs, medical or school evaluations, to the parent or to other persons entitled to personal relations with the child

### **Contribution of the parents to the expenses for the raising, education, studies and professional training of the children**

- parents **can agree** on their contribution to the expenses for the raising, education, studies and professional training of the children, an agreement which may also be notified to the notary in case notary divorce or to the guardianship court, by the divorce decree,
- in case of disagreement, the guardianship court establishes the contribution of each parent to the expenses for the raising, education, studies and professional training of the children;
- the alimony obligation is paid **in kind**, by providing for the things necessary for the living and, as the case may, for the expenses for education, studies and professional training.
- only if the alimony obligation is not fulfilled willingly, in kind, the guardianship court orders its enforcement by the payment of an alimony, established in money. The alimony may represent a fixed amount or a percentage of the monthly income of the person who owes the alimony. The alimony established as a fixed amount is to be indexed by law, quarterly, depending on the inflation rate.
- the alimony due by a parent is established up to a quarter of their monthly net income for a child, a third for 2 children and half for 3 or more children. The amount of alimony due to the children, together with the alimony due to other persons, according to the law, cannot exceed half of the monthly net income of the obliged person.
- the alimony is to be paid in **periodic installments**, on agreed deadlines or, by default of agreement, on those established by judicial decree.
- the parties may agree or, if there are solid reasons, the guardianship court may decide that the alimony be paid by **advance payment of a lump sum** to cover the maintenance needs of the entitled person on a longer period or on the entire period for which alimony is due, as far as the debtor of the alimony enjoys the necessary means in order to cover this obligation.
- if a change occurs concerning the financial possibilities of the parent paying the alimony or the need of the child receiving it, the guardianship court, depending on the circumstances, may increase or reduce the alimony or may order the discontinuance of its payment.

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