

TERMINATION OF PARENTAL RIGHTS – GENERAL VIEW

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Abstract: *The current article aims to analyze the institution of termination of parental rights, an extremely serious sanction which can be applied by the tutelage institution, in case the parent does not exercise parental protection, thus committing serious deeds, like those stated by the lawmaker in article 508 first alignment of the Civil Code. Previous to the coming into force of the current Civil Code, this institution was regulated by the Family Code. At the beginning of this paper we will study some general notions regarding the protection of minors also pointing out the principles which govern the exercise of parental authority. The analysis will continue with the presentation of the institution of termination of parental rights in regard to regulation and content.*

Key words: *termination, parental rights, parental authority, obligation to provide, child protection, principals.*

1. Protection of the minor – general aspects

The protection of any human being is defined by doctrine as the “ensemble of civil law means through which the acknowledgement and protection of civil subjective rights and interests of the person are ensured, as well as the means needed to protect the person as a participant to the civil circuit” [11]; parental protection is thought to be “the normal most common way to protect the minor” [10].

These are both institutions which can't be ignored in the context of analyzing the sanction of termination of parental rights.

As for the content of parental authority [9], this is regulated in article 487 of the Civil Code, according to which “parents have the right and duty to raise the child,

caring for the child's health, mental, physical and intellectual development, his education and studies, his professional training in accordance with their own beliefs and the child's needs; they are also accountable for providing the child with orientation and necessary advice for him to exercise his legal rights”.

This institution is governed by a series of principles:

- *Exercise of parental authority in the best interest of the minor.* We must mention article 483, second alignment of the Civil Code which states the following “parents exercise parental authority only in the best interest of the child, treating him with respect and involving the child in all decisions that concern him, in accordance with his age and maturity”.

- *Exercising parental authority together and equally by both parents.*

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Relevant in this matter is article 486 first alignment of the Civil Code according to which “Parental authority is the ensemble of rights and duties which concern the person and the goods of the child and it must be exercised by both parents” and [14] according to which “both parents are responsible for raising their minor children”.

- *Children have the same rights regardless of whether they come from marriage or outside of marriage or adoption.* According to article 260 of the Civil Code “children from outside of marriage are equal in rights to those who come from inside a marriage or those who are adopted”.

- *Parental protection is exercised in conditions of patrimonial independence,* thus “the parent has no right over the goods of the child and the child has no rights over the goods of the parents” (article 500 of the Civil Code).

- *The principle of involving the child in all decision that concern him considering his age and maturity,* as stated by article 483 second alignment of the Civil Code [8].

2. Termination of parental rights – notion and regulation

An extremely serious sanction to be applied by the tutelage institution against the parent/parents who commit deeds as those listed in article 508 first alignment of the Civil Code is the termination of the parents’ parental rights.

Currently regulated by the Civil Code, the institution of termination of parental rights was introduced prior to this legislative change, in the Family Code, which stated, in article 109 first alignment that “if the health or physical development of the child is endangered by the way the parental rights are exercised, by abusive behavior of by seriously neglecting

parental duties or if the education, studies or professional training of the child is not done according to the principle of commitment and loyalty to Romania, than the court, by request of the tutelage authority, will terminate the parental rights of the parents”.

This measure is applied by the authorities of public administration with duties in child protection, when the parent endangers the life, the health or the development of the child by:

- treating the child in a bad manner;
- consumption of alcohol or drugs;
- abusive behavior;
- serious negligence in fulfilling parental duties;
- not considering the best interest of the child.

From the previous citation we can see that the situations in which this measure can apply are quite numerous, but the courts are at liberty to decide how serious the deeds which require such a sanction are.

Otherwise “the area of situations which compromise the idea of protecting the child is illustrated in some court decisions (...)” [4].

Doctrine has stated that while “the lawmaker makes no distinction (...) hence abusive behavior, serious negligence in fulfilling parental duties or not considering the best interest of the child, are all part of the rights and duties which come from a patrimonial or non patrimonial side of parental authority” [3].

Another opinion argues that “as it is an exception, termination is applied only for serious deeds regarding the child, thus it is not possible to apply such a sanction for not fulfilling the duties regarding the goods of the child” [2].

The cases listed above provide a serious violation of the duties of parents, as regulated by article 487 of the Civil Code:

- the obligation to care for the health

as well as for the physical, mental and intellectual development of the child;

- the obligation to care for the education, study and professional training of the child, according to their own beliefs and the child’s needs;
- the obligation to provide
- orientation and necessary advice to the child in order for him to exercise his legal rights.

Similar provisions are found in article 488 first alignment of the Civil Code which states that “parents have a duty to raise the child in harmony and ensure proper conditions for his physical, mental, spiritual, moral and social development”.

Also to be considered are the provisions of article 89 first alignment of Law no 272/2004 regarding the protection and the promotion of children’s rights, according to which “the child has the right to be protected against abuse, negligence, exploitation, trafficking, illegal immigration, abduction, violence, internet pornography, as well as any form of violence, regardless of the environment the child is in: family, school, medical facilities, protection institutions, detention or rehabilitation facilities, internet, the media, workplace, sports environments, community and so on”.

Ruling on whether a person’s parental rights should be terminated is done urgently, by calling both parties and with the mandatory participation of the prosecutor; at the same time, a psychosocial investigation will take place and all conclusions of this investigation will be written in a report.

According to the Quebec Civil Code, which served as inspiration for the current Romanian Civil Code, the court can, for very serious reasons and if it is in the best interest of the child, to declare the parents or the legal guardian’s parental rights terminated.

Thus, in order for this measure to be taken, the following conditions must be met:

- a serious reason and
- the best interest of the child.

We notice that, in regard to causes which might justify this measure, the Quebec lawmaker states only that there must be a serious reason, without providing explanation to clarify, thus leaving it to the court to appreciate if a certain situation qualifies as serious reason.

However, the Romanian lawmaker thought it was necessary to regulate this matter more clearly, as we have seen above.

This measure can be taken not only against parents, but also against a third party who was responsible for exercising parental authority.

As a rule, termination of parental rights is total and its effects will extend to all children born at the date of applying this sanction.

Similar provisions are found in article 608 of the Quebec Civil Code, which states that “termination of parental rights extends to all minor children born at the date the decision was pronounced, except if the court decides otherwise”.

By exception, termination of parental rights can be applied only in regard to some parental rights and in regard to some of the children. Such an exception can be applied only if the growth, education and professional training of the children are not affected, according to the provisions of article 509 second alignment of the Civil Code.

This subject raises some rather sensitive issues, as the court must verify whether exercising only some parental rights can impair the child’s/children’s development.

Similar to the civil law in Quebec, we must notice that article 606 of the Quebec Civil Code states that if termination of parental rights is not requested by a certain

situation, the court can rule on partial termination or forbid the parents from exercising parental authority.

This is also a partial termination of parental rights.

In case the parental rights of both parents are terminated, the child will be provided with a legal guardian.

All these legal provisions must be analyzed and corroborated with the special law in this domain - Law no 272/2004 regarding the protection and promotion of the child's rights, which, in article 89 first alignment states the following: "the child has the right to be protected against abuse, negligence, exploitation, trafficking, illegal immigration, abduction, violence, internet pornography, as well as any form of violence, regardless of the environment the child is in:

- family,
- school,
- medical facilities,
- protection institutions,
- detention or rehabilitation facilities,
- internet,
- the media,
- workplace,
- sports environments, community and so on".

3. The parent's obligation to provide for the child in case of termination of parental rights

Expressly regulated by the lawmaker, the legal obligation to provide is defined by the doctrine as "the legal expression of solidarity which must exist between members of a family and which implies ensuring all necessary means for a decent living for a person in need" [5].

According to another doctrine definition, the legal obligation to provide is "the duty of a person to ensure the means necessary for survival from a material and spiritual point of view for another person" [1].

As a supplementary measure for the protection of the child, the lawmaker has expressly regulated the parent's obligation, in spite of the termination of their parental rights, to continue to provide for his child [7].

The Civil Code states that "the mother and father are held together to provide for their minor child, ensuring the necessary means for survival, as well as education, studies and professional training" (article 499, first alignment of the Civil Code).

The obligation continues to exist even if the child becomes of age, as long as he is still continuing to study and is not over 26 years of age.

This measure is completely justified, as the crimes committed by the parent cause serious prejudice to the child, as well as suffering which causes serious trauma for the child, some even impossible to overcome.

As stated in the doctrine "the obligation to provide stands on the material act of procreation and the connection between a parent and his child" [6] as it is independent from applying a measure such as termination of parental rights.

The opinion of French legal adviser Loysel appears to be quite appropriate "He who has a child must feed it".

Even more to the point, the obligation to provide has a personal character, thus being inaccessible.

Finally, we must mention that, in addition to the obligation to provide, the parent whose rights have been terminated, still maintains the right to agree to adoption.

4. Aspects of comparative law - French law

The French lawmaker regulates in article 378 and 378-1 of the Civil Code, the hypothesis according to which parental authority can be withdrawn from the parent.

Thus, according to article 378 of the French Civil Code “parental authority can be withdrawn from the mother or father who is proved to be an author, co author or accomplice to a crime against the child or the other parent.

This withdrawal is to be applied to all ascending relatives for the part of the parental authority which they might become responsible for”.

The court can withdraw parental authority in one of the following situations:

- the parent is sentenced as author, co author or accomplice to a crime against his child;
- the parent is sentenced as author, co author or accomplice to a crime committed by his child;
- the parent is sentenced as author, co author or accomplice to a crime against the other parent;

It is quite obvious that these are all serious crimes, thus the termination of parental rights is completely justified.

Independently from the existence of a sanction decision for the parent for either of the facts stated above, the court can withdraw parental authority completely or partially in case the mother or the father endangers the security, health and morals of the child by treating the child badly, by drinking or doing drugs, by misbehaving or committing crimes, by not providing care and guidance (article 378-1 of the French Civil Code).

The lawmaker expressly regulates all situations in which such a measure can be applied:

- treating the child badly;
- drinking or doing drugs;
- misbehaving;
- committing crimes;
- not providing care and guidance.

Any of the facts listed above can justify the measure of withdrawal of parental authority, provided this kind of behavior

endangers the security, health or morality of the child.

Continuing this regulation (article 378-1 of the French Civil Code) there is yet another case in which parental authority is completely withdrawn: in case the mother or the father do not fulfill the obligations stated by articles 375-7 for two years or in case the child is placed under assistance.

The people who have the right to ask for complete withdrawal of parental authority are:

- the prosecutor,
- a member of the family,
- the child’s guardian.

The measure will be applied by the tribunal.

5. Court case

Unlike the law of other states where any interested person can ask for termination of parental rights (Quebec) as well as the prosecutor/member of the family/legal guardian, in our law, the right to file such a complaint is given to authorities from public administration with duties in child protection services.

We will provide the following example:

By filing complaint no 902/101/2011 to Mehedinti County Court, the plaintiff BL sued the defendant BIC and the Tutelage Authority and requested the defendant’s termination of any parental rights she holds over the minor child IMV.

The reasons for this complaint show that by the civil sentence no 111/16.01.2009 pronounced by Dr. Tr. Severin Courthouse, the minor IMV was placed in the care of the plaintiff who is also the maternal grandmother of the child.

The plaintiff explained that she had been the one to provide for the minor since birth as the child’s mother was living with II and was absent most of the time; also, the defendant did not contribute to the upbringing and education of the minor.

Also, the minor's father was completely uninterested in raising and providing for the child.

At present, the defendant is living with another man and is threatening the plaintiff that she will take the child under her care.

The minor has a serious physical disability (paralysis on the right side, her walking is impaired, as well as the use of her arm).

After a series of medical procedures, the minor's condition was visibly improved and she is currently a student of the Mehedinti Primary School.

In all her efforts, the plaintiff was supported by her husband BI, thus the minor is very attached to both grandparents.

For proving all this, the plaintiff filed documents from the General Registry, the medical certificate no 331/3.05.2011 provided by the Mehedinti Child Protection Services, the report regarding the psychosocial examination of the child no 1633/15.02.2008 provided by the "Constantin Pufan" Education Facility, the report no 1963/510 provided by the Mehedinti County Hospital, the certificate no 1881/15.03.2011 provided by the City Hall, the plaintiff's work contract no 18/26.05.2009 concluded between the plaintiff and the City Hall, the civil decision no 111/16.01.2009 pronounced by Dr. Tr. Severin Courthouse, the caregiver agreement authenticated by Strehaia State Notary no 345/19.03.1993.

By the civil decision no 222/15.11.2011, the Mehedinti Court declined competence in favor of Vanju Mare court, keeping in mind that the court is not competent to rule in these matters.

The provisions of article 2 point 1, letters a-i of the Civil Procedure Code establishes the matters upon which the court can rule.

Moreover, the provisions of the new Civil Code state that such matters should be ruled upon by the court.

The Vanju Mare court registered the complaint under no 4056/332/2011.

The court stated that the plaintiff was not able to file such a complaint.

By examining all the papers, the court stated the following:

According to the provisions of article 137 of the Civil Procedure Code, the court must first rule on exceptions.

By the present complaint, the plaintiff BL requested that the defendant's parental rights it holds over the minor IMV be terminated.

The reason for this is that, by the civil decision no 111/16.01.2009 pronounced by Dr. Tr. Severin court, the minor was placed in the care of the plaintiff who is also the maternal grandmother of the child who has provided for the child since birth, as the minor's mother was absent most of the time and did not contribute in any way to the raising and education of the child.

Also, the minor's father was completely uninterested in providing for the child.

According to the provisions of article 508 of the Civil Code "[12] The tutelage authority, on request by the Child Protection Services, can terminate parental authority if the parent endangers the life, health or development of the child by treating the child badly, by drinking, doing drugs, misbehaving, by seriously neglecting to fulfill parental duties or by not considering the best interest of the child".

In the present case, the plaintiff, namely the grandmother of the child and the person who provided for the minor, does not have the entitlement to ask for termination of parental rights, as such a complaint can only be filed by the public administration authorities with duties in child protection services.

Thus, the court will grant the exception and will dismiss the plaintiff's request. [16].

6. Restoring the exercise of parental rights

Termination of parental rights is temporary, thus the parent can be granted his rights back when the circumstances that caused such a measure had ceased and the parent no longer endangers the life, health and development of the child, according to article 512, first alignment of the Civil Code.

Also, the court can allow the parent to maintain personal relations with the child until the parent is restored in his parental rights, as long as this measure is in the best interest of the child.

The request for restoring parental rights is ruled by the tutelage court, within an emergency procedure, by calling both parties and the prosecutor.

We must also mention that a psychosocial investigation is needed as the reports will constitute the ground for such a request.

Similar provisions are found in the Quebec Civil Code, which states that “The mother or father who was deprived of parental authority or an attribute of parental authority was withdrawn from him, can gain back these rights provided he invokes new circumstances, except for the provisions which regulate adoption” (Article 610 of the Quebec Civil Code).

7. Conclusion

This paper is divided into eight subchapters, among which can mentioned - Protection of the minor – general aspects; Termination of parental rights – notion and regulation; The parent’s obligation to provide for the child in case of termination of parental rights; Aspects of comparative law - French law; Court case; Restoring the exercise of parental rights – was designed to emphasize the importance of the termination of parental rights’ consequences.

The main legal sources used, were the Romanian civil Code, the French, Quebec civil Code, Law no 272/2004 regarding the protection and promotion of the child’s rights.

In the first section I considered useful to start the analysis by presenting the institution of protecting the minor, focusing on the principles that regulate this institution. The second section deals with general aspects regarding the termination of parental rights, namely its legal definition and regulation.

As regards the third section, it deals with the parent’s obligation to provide for the child when parental rights have been terminated, one of the most important obligation that the parent has to assume in any circumstance, even if their parental rights have been withdrawn.

The fourth section comprises a comparative view over the French law regulating the same issue. In the fifth section I included a short Romanian court case connected to the procedural aspects of the termination of the parental rights institution. The sixth section describes the conditions needed to be fulfilled in order to restore the exercise of parental rights.

The last two sections which conclude the analysis include the conclusions and the bibliography.

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