



PSYCHOLOGICAL ASSESSMENT OF MINORS INVOLVED IN CIVIL AND CRIMINAL PROCEEDINGS, THROUGH PROJECTIVE TECHNIQUES

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ABSTRACT

In protecting the rights of children, the courts have an extremely important role, that of promoting and guaranteeing these rights regarding personal identity, family life, protection against violence, and ensuring the realization of their rights. As practitioners of law and psychology, we highlighted the opportunity and necessity of relaunching the discussions between specialists: magistrates/judges and prosecutors, psychologists, in the context where the courts are an unknown and authoritarian environment for children, and the multidisciplinary approach would contribute to the realization of an act of justice appropriate to the needs of children and can be a premise that can lead the courts and prosecutors to adopt a new way of solving such cases. This article supports the importance of the psychological assessment in the decision of the magistrate, considering the best interest of the minor. From the children's perspective, the courts are unfamiliar and intimidating places, which is why it is necessary to collaborate between specialists: magistrates, psychologists, social workers, counselors, and medical personnel to contribute to the achievement of a specific, qualitative act of justice appropriate to the particularities of children.

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Introduction

Considering the increasing number of divorce cases registered in Romania, the need arose to carry out psychological expertise, hearing minors in the presence of a psychologist and corroborating the conclusions of psychological experts with all the evidentiary material administered in the cases brought to trial in the family law material.

Family relationships involve deep psychological ties, these being replicated as specific particularities of the legal relationships born from them, and from this point of view, the cases brought to judgment, having as their object the marriage dissolution in which the parties also have minor children, become complex from the psychological point of view.

According to articles 483 and 484, "Parental authority is the set of rights and duties that concern both the person and the property of the child and belong equally to both parents, who exercise it until the child acquires full exercise capacity" [1].

Parental authority is not a novel concept in Romanian civil law, but rather the new name of the same institution, whose objective is to secure the child's protection by its parents [2].

Starting from this definition of the institution of parental authority, we will analyze how the courts, in the cases whose object is "exercising parental authority" assess that it must be granted to one or the other of the parents, or even jointly when this is required with priority and it is the goal of protecting the best interests of the child.

Married parents exercise parental authority jointly and equally, being jointly responsible for all rights and duties concerning minors.

Art. 483 para. (3) The Civil Code establishes the rule that "both parents are responsible for the upbringing of their minor children", and the exceptional situation is that of exercising parental authority only by one of the spouses [1].

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Parental power includes rights concerning the child's person such as his care, maintenance of personal relationships, upbringing, education, and maintenance, as well as rights regarding assets, as well as the right to legally represent the child and manage his assets.

Art. 397 of the Civil Code, governs the fact that, upon divorce, parental power resides jointly to both parents, unless the court determines differently [1, 3].

The application of the exception to the mentioned rule thus requires proving the incidence of exceptional circumstances, in the sense that the joint exercise of parental authority would harm the child's interest.

In the case of parents' divorce, parental authority is exercised according to the provisions of the code regarding the effects of divorce on the relations between parents and children.

The exercise of parental authority belongs, as a rule, to both parents, equally and jointly, regardless of whether they are married or divorced parents (art. 503 para. (1), in conjunction with art. 505 para. (1) of the new Civil Code.), the existing provision in art. 31 of Law no. 272/2004 or in art. 98 para. (1) the former Family Code. If the parents divorce, the parental authority will be exercised pursuant to the regulations concerning the implications of divorce in the interactions between parents and children (art. 396-403, in conjunction with Art. 262 of the new Civil Code), except in unusual instances, not being split by the parental authority, when the court, as the protective guarantor of the rights and interests of minor children, will declare, for good reasons, in the best interest of the child, its exercise by one parent. (art. 398, in conjunction with Art. 507 of the new Civil Code; see also Art. 98 paragraph (2) of the old Family Code.).

The Civil Code establishes the presumption of joint parental authority that can be overturned by an extremely serious argument. The legislator shows in the content of Art. 507 Civil Code the genuine exceptional situations, of restrictive interpretation, in the hypothesis where one of the parents is unable to express his will in the context of the death of one of the parents, the declaration of death by a court sentence, the placing under prohibition, the lapse from the exercise of parental rights or any other reasons that place him in the impossibility of expressing his will, the exercise of parental authority rests with the other parent, who alone will protect the minor.

What is not accounted for in the language of the legislation are instances in which the exercise of parental authority rests solely with one of the parents, leaving it up to the judge to analyze whether the parties' motivations come within the essential criteria that would justify the exercise of parental authority solely by a parent.

The Civil Code does not identify the situations that render one of the parents incapable of expressing their will; nonetheless, doctrine and court practice have found that these reasons can be: the disappearance of a parent, the deprivation of liberty of one of the parents, the definitive abandonment of the minor by one of the parents, the poor, even serious state of health that prevents the expression of consent regarding the minor's situation.

The rules of the new Civil Code concerning the impact of divorce on relationships between children and parents corroborate the rights of the child provided by Law no. 272/2004 on the protection and promotion of children's rights [4], the Convention on the Rights of the Child of November 20, 1990 [5], the Convention for the Protection of Human Rights and Fundamental Freedoms from Rome 1950 and other international laws and treaties.

Art. 400 para. (1) The Civil Code establishes that if there is no agreement between the parents or if it is not in the child's best interest, the guardianship court determines the minor child's permanent residence with the parent after the divorce is finalized. Additionally, paragraph (2) of the same article states that if the child lived with both parents before the divorce, the court will determine the child's residence with one of them while considering the child's best interests [1].

According to Art. 2 of Law no. 272/2004 [4]:

(2) The child's entitlement to a typical family life, socio-affective balance, and physical and moral growth are the only things that fall under the purview of the best interests of the child.

(3) The best interest of the child is the guiding concept that governs the rights and responsibilities of the kid's parents, any legal representatives, and everyone else to whom the child was lawfully entrusted.

(4) The best interest of the child will always come first in all decisions and actions pertaining to children made by authorized private organizations, governmental agencies, and courts."

The definition of the best interest of the child is outlined in this way, in the sense that it represents the set of norms, precepts, and concepts of the minor's life subordinated to morals, ethics, culture, the social and aptitude balance that parents must create and perpetuate in the minor's life and subconscious.

Also, in Art. 2 of Law no. 272/2004 para. (6), the legislator understood to specify even by way of example the criteria for determining the best interest of the child as follows:

- a. "the needs of physical, psychological, education and health development, security and stability and belonging to a family;
- b. the child's viewpoint, based on their age and level of maturity;
- c. the kid's past, including specifically any instances of abuse, neglect, exploitation, or other violence against the child, as well as any possible risk circumstances that might arise in the future;
- d. the capacity of the child's parents or other caregivers to meet his unique demands and provide for his upbringing;
- e. maintaining personal relationships with people with whom the child has developed attachment relationships"[4].

All these criteria and others like them will be taken into account by the guardianship court when pronouncing the most suitable solution regarding the exercise of parental authority.

In these cases, the evidence to be administered must meet several cumulative elements.

Thus, the burden of the plaintiff parent is to prove the suffering of the child who is under the parental authority of both parents, it being necessary to establish a causal link between this suffering of the minor child and joint parental authority, as well as the proof of the fact that the exercise of parental authority exclusively by a parent is the appropriate solution.

The magistrate-judge invested in the resolution of these files has the possibility of approving psychological expertise - art. 330 Civil Procedure Code - because the facts and circumstances that tend to be proven exceed the possibilities for the judge to establish certain data from the psychological sphere and in this context the need to collaborate with specialists in the field of psychology to establish the truth and identify the most suitable solutions for children.

Magistrates need a special set of notions, knowledge, and methods in the field of psychology necessary in civil and criminal cases, techniques to approach a sexually abused victim, or a child subject to parental alienation.

It is necessary to formulate clear objectives by the parties and the court panel, to which the psychological expert is called to answer, and these refer to the assessments made to all those involved in the process of parental alienation: minor/s and parents. Through the conclusions of psychological expertise, it can be established whether minors are emotionally abused by one or both parents, if the profile of a victim of parental alienation is outlined, with the indication of the methods and tests used by the psychologist to identify the abuse.

The specialized technical work that contains both proposals for removing the abusive and alienating actions to which the minors are subjected is important for the resolution of the cases in which such a psychological expert report was ordered; as well as recommendations for stopping the development of this phenomenon.

For the case judge, it is also useful to indicate proposals regarding the optimal residence for the child and to formulate concrete measures to mitigate and eliminate the effects of parental alienation.

Following the provisions of Art. 2 of Decision no. 36/2021 regarding the approval of the Standards for the activity of psychological expertise [6] and the Registration Procedure in the Register of Psychological Experts [7], in the activity of psychological expertise/judicial evaluation, the psychologist may be appointed as an expert by the judicial bodies or may participate as an expert party/counselor, by their consent, at the request of the parties or their legal representatives.

The expertise is carried out at the request of the judicial body or the owner - through a lawyer, but there is a distinction here. Psychological expertise can be requested or approved by a judicial body, in which case we are talking about judicial psychological expertise, or it can be requested by the parties involved, directly or through defense counsel, in this case, it is extrajudicial psychological expertise - art. 2 of the Decision no. 32/2021 [6].

The processes of entrusting the minors and establishing the visitation schedule are most often a struggle, in the war waged by the parents, one against the other, the children often having the sad and unfair role of "weapon".

In front of the judicial bodies, the best interest of the child takes precedence and that is why this must be established by a competent and certified specialist, who uses methods and techniques specific to the evaluation for the parental authority, with the purpose of the expert opinions within psychological expertise report.

Psychological expertise is a necessary step that will support the panel of judges in the formation of intimate conviction based on which it will adopt the optimal, responsibly assumed decision.

This technical test administered in the civil process has an analytical and scientific character and constitutes a complex approach in which standardized tests are used as tools - which highlight elements of psychopathology; the projective tests - which highlight drives or experiences repressed by fear or fear of punishment [8].

It is very important that the psychological expert also uses appropriate and well-argued psychological methods or techniques in the judicial field, whereby the psychological expertise is a specific act adapted to the needs of justice, to analyze psychological elements when hearing the parties or witnesses proposed in the case, to investigate feigned or dissimulated behaviors, temperaments, attitudes, aptitudes, mental capacity, people's character and judgment. It is important to have the ability to approach and communicate with a victim who is sexually abused, to identify if a parent is parentally alienating the child so that they no longer want to visit their other parent [6].

Case Study

We present below the results obtained by a 13-year-old minor in the Family Test. The psychological evaluation was carried out at the request of a legal person in the court of law - a civil case with the object of establishing parental authority and the domicile of the minor with the plaintiff's father. The evaluation's objective was to identify the relationships between the family members, the positioning of the subject within the family, and the identification of possible elements of abuse.



Figure 1. Family Drawing

During the testing session, the Family Test [7] and the Child Abuse Assessment Questionnaires [9] were applied. According to Abraham, the location of the character on the paper indicates introversion, and according to Kim Chi (1989) and Buck, the graphic made in the lower area of the graphic space evokes the presence of a depressive tendency. The alignment of the drawing on the sheet gives the subject a form of security against the tension and instability he experiences within the family. Drawing the person with the highest height refers to the feeling of power and dominance that the subject has [7], and the more pressed drawing indicates an energetic and self-confident person [7]. The portions of the sheet left free suggest prohibitions and keeping at a distance [7]. According to Aubin [7], the fact that the subject draws his father close suggests that he gives the child security. The use of the color red in making your clothing is assimilated to intensity, passion, love, aggression, and dynamism. The mother's clothing is made using purple colors (the sign of mourning, sadness, mystery, and aberrant imagination) and to a lesser extent green (the color of rebirth, and hope, but can also evoke bitterness or anger) [7]. The father's attire is achieved by using black pencil (referring to anxiety, mourning, and guilt) and brown (an indicator of constraint, inhibition, and seriousness). The smiling expression of the drawn characters represents the feelings of the one drawing [7]. The subject does not draw his legs, unlike those of his parents, this aspect may indicate (in Machover's view) depressive, discouraging tendencies. Valuing your character's gender is achieved by adding details (bracelet, watch, chain). These can be the sign of coquetry and narcissism [7]. The realization of a house and a tree to complement the family drawing indicates (according to Lafrance) that the subject has a heightened social consciousness or feels the need to make his environment more secure. Filling the drawing with elements (house, tree, sun, clouds) reflects the fear of emptiness and isolation. After the age of 10, it can mean insecurity and an overly intense imaginary life. In Royer's conception, a decorative environment can signify the need for security or the lack of a supportive paternal image. Drawing one's character as the first element of the picture can be attributed to a narcissistic problem related to the difficulty of investing in parental figures. The closeness of one's father figure reveals an increased attachment to him (Corman, 1970) and the fact that he accepts and supports her effectively (Reynolds, 1978). Regarding the Child Abuse Assessment Questionnaire, the minor's responses to the emotional abuse, sexual abuse, physical abuse, and neglect sections were recorded. Regarding emotional abuse [9], two elements are evoked: excessive screaming and intimidation through physical threats by the mother. No elements of sexual abuse were identified. Regarding the physical abuse [9], the minor declares that she was slapped and hit by her mother, from the age of 8, almost daily. The period between the most recent episode of physical abuse and the present report is 30 days. No signs of neglect were identified [9], except that the minor claims that the mother did not provide her with a quiet environment in which the child could focus on school activities (doing homework). Regarding the psychological state of the child, no concentration difficulties or loss of interest in the activities they usually carry out were identified [10-14]. The minor invokes the presence of sadness, lack of appetite, and occasionally somatic symptoms (stomach aches and headaches) [11-26]. Regarding behavior problems, running away from home was mentioned.

Conclusion

The solution handed down by the panel charged with resolving the case, by corroborating all the administered evidence, consisted of establishing the minor's domicile with the plaintiff's father and exercising joint parental authority.

Courts have an extremely important role, as the guarantor of children's rights, in terms of respect for family life, privacy and personal identity, protection against violence, as well as in terms of ensuring the realization of social, cultural, and economic rights of minors.

From the children's perspective, the courts are unfamiliar and intimidating places, which is why it is necessary to collaborate between specialists: magistrates, psychologists, social workers, counselors, and medical personnel to contribute to the achievement of a specific, qualitative act of justice appropriate to the particularities of children.

Teamwork is a necessity for establishing the truth and identifying the most suitable solutions for children and an approach from several perspectives and disciplines can be an axiom that could positively influence the judicial bodies to configure a new model for solving such cases.

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