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ESTABLISHING THE CHILD'S RESIDENCE, TAKING INTO ACCOUNT THE CHILD'S BEST INTEREST

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Abstract

The Civil Code in force brought some changes in the matter of parental authority, the establishment of the child's residence and other measures that can be taken with regard to children, changes that brought to light a universally applicable rule: the principle of the best interest of the child. The transition from a divided parental authority to a parental authority exercised jointly and equally raised a series of problems. Both the legal subjects involved, mainly the parents, as well as the Courts constantly appealed to the best interest of the child, adopting different solutions from case to case.

Key words: *parental authority, the best interest of the child, the child's home.*

INTRODUCTION

From a constitutional point of view, the legislator sought to protect the family and particularly children and teenagers. Thus, by art. 48 para. (3) and art. 49 (1) of the Romanian Constitution, the foundations of the principle of protecting the interests of the child were laid. (*Cercel, Ghita, 2018, pp.1*).

Also, the common law by art. 263 of the Civil Code, establishes that any measure regarding the child, regardless of its author, must be taken with respect for the child's best interests. The legislator provides that "parents exercise parental authority only in the best interest of the child, with the obligation to respect his person, and associate the child to all decisions that concern him, taking into account his age and degree of maturity" [art. 483 para. (2) Civil Code from 2009 -

Law no. 287/2009][1]. The legislator's concern for this principle is also highlighted in other texts within the same act. Thus, according to art. 262 para. (2) of the Civil Code, the parent separated from the child may have personal ties with him and his right may be limited only by respecting the best interests of the child.[2] (Civil Code from 2009 - Law no. 287/2009]

The doctrine says that although there is no clear definition of the "best interest of the child" principle, we can identify a "series of criteria according to which it can be determined." (*Cercel, Ghita, 2018, pp. 1*). Thus, three categories were identified according to which decisions regarding children should be made: "the child's needs, his opinion, depending on age and maturity, and the ability of the parents to respond to the child's needs. In order to determine the best interest of the child, several aspects must be taken into account to ensure a harmonious physical, moral and intellectual development. In the decision making progress, one should take into consideration the child's age, the behavior of the parents before and after the separation, as well as the degree of attachment and concern they showed towards the child." (*Cercel, Ghita, 2018, pp. 1*). This principle, which can overturn a series of rules, will prevail in any measure or decision taken by a public authority, by an authorized private body, by the Guardianship Court, but especially by parents, relatives, persons towards whom the child presents attachment or any adult who is placed in the position to make such a decision. To these criteria, we can also add the importance of establishing the child's home.

The legislator defined the child's home under the art. 496 of the Civil Code, as the home where the minor lives with his parents, thus creating a suitable environment for the exercise of parental authority. At the same time, the Civil Code provides that "if the parents do not live together, they will determine, by mutual agreement, the child's residence. In case of disagreement between the parents, the Guardianship Court decides, taking into account the conclusions of the psychosocial investigation report and listening to the parents and the child, if he has reached the age of 10, the provisions of art. 264 remain applicable."3 (art. 496(3) Civil Code from 2009 - Law no. 287/2009)

This text represents a transposition of art. 100 of the Family Code, which ordered that "if the parents do not live together, they will decide, by mutual

[1] art. 483 para. (2) Codul Civil din 2009 (Legea nr. 287/2009) - Republicare, Monitorul Oficial nr. 505 din 2011, cu modificările şi completările ulterioare, art no.483 of the Civil Code of 2009 (Law no. 287/2009) - Official Publication no. 505 of 2011, with subsequent amendments and additions

[2] Art.262 para (2) din Codul Civil din 2009 (Legea nr. 287/2009) - Republicare, Monitorul Oficial nr. 505 din 2011, cu modificările şi completările ulterioare [art 262 (2)The Civil Code of 2009 (Law no. 287/2009) - Official Publication no. 505 of 2011, with subsequent amendments and additions]

[3] Art. 496(3) din Codul Civil din 2009 (Legea nr. 287/2009) - Republicare, Monitorul Oficial nr. 505 din 2011, cu modificările şi completările ulterioare [art 493 (3) of The Civil Code of 2009 (Law no. 287/2009) - Official Publication no. 505 of 2011, with subsequent amendments and additions]

agreement, with which of them the child will live. In case of disagreement between the parents, the Court, after hearing the guardianship authority, as well as the child, if he has reached 10 years of age, will decide, taking into account the interests of the child".[4] Therefore, as it was also shown in the doctrine that "both before and after the new Civil Code entered into force, the residence of the child, from marriage or not, was and is, in principle, with his parents, without any distinction of their marital status; if the parents did not live or do not live together, the decision regarding the child's residence belongs to them and only in case of disagreement, the Court would intervene." *(Florian, 2015, pp.2)*

The problem that has arisen is how can the Court assess what is the "best interest of the child" when it comes to establishing his home? What does this principle entail and what must the judge take into account?

The starting point was the Convention on the Rights of the Child adopted by the United Nations Organization in 1989 (entered into force in 1990) and which states four governing principles: non-discrimination, the best interests of the child, the survival and development of the child as well as the participation of the child in decisions which concern him. According to one opinion, the Convention played a fundamental role in the recognition of certain rights of the child as well as the establishment of measures to protect them. (Couzens, 2013, pp.64). Thus, according to art. 3 of the Convention "in all actions concerning children, undertaken by public or private social assistance institutions, by Courts, administrative authorities or legislative bodies, the interests of the child shall prevail. The member states of the Convention undertake to provide the child with the protection and care necessary to ensure his well-being, taking into account the rights and obligations of his parents, his legal representatives or other persons to whom he has been legally entrusted, and for this purpose they shall take all appropriate legislative and administrative measures. The member states of the Convention shall ensure that the institutions, services and establishments responsible for the protection and care of children comply with the standards established by the competent authorities, in particular those relating to security and health, the number and qualification of staff in these institutions, as well as ensuring competent supervision." (Convention on the rights of the child adopted by the United Nations)[5]. A study has shown that some authors believe that "ensuring the best interests of the child means the meeting of the individual needs of the child according to his age, sex, health, development, life experience, family,

[4] The Family Code was adopted by Law no. 4 of January 4, 1953, amended and supplemented by Law no. 4 of April 4, 1956 and republished in B. Of. no. 13 of April 18, 1956, expired on October 1, 2011, by Law 71/2011 for the implementation of Law no. 287/2009 regarding the Civil Code, Official Gazette no. 409 of 2011, with subsequent amendments and additions.

[5] Conventie din 1989 cu privire la drepturile copilului - Republicare, Monitorul Oficial nr. 314 din 2001, cu modificările şi completările ulterioare. [Convention from 1989 on the rights of the child - Republication, Official Journal no. 314 of 2001, with subsequent amendments and additions.]

cultural and ethnicity, taking into account the views of the child. This statement seems reasonable; however, it also seems that it does not fully characterise the best interests of the child." (*Fursa Yaroslavivna S., Bordiuh Oleksandrivna T., & Fursa Yevhenovych Y. 2022, pp. 217)*

It was argued that the best interest of the child was a principle found in most family law cases. However, in a Court decision, it was stated that this principle can also govern other law, therefore it is essential that when a custodial sentence is ordered for one of the parents it should be taken into account the effects that such sanction would have on minors. *(Couzens, 2013, pp. 62)*

Another case, relevant to the present analysis, is the solution that was given in Van der Burg and Another v. National Director of Public Prosecutions and Another 2012 (2) SACR 331 (CC) (Van der Burg). In the decision given in S. v M., the Court was once again faced with the application of the principle of the best interests of the child in relation to coercive measures. From the facts it appears that from 2000 to 2008, the parents of three minor children, illegally sold alcohol in the house that was the family's residence. The house also served as a place for the consumption of alcoholic beverages by the parties' customers. Despite the repeated warnings and other measures taken by the law enforcement, the parties did not stop carrying out the illegal activity. Given that the measures taken against the parties were unsuccessful, the prosecutors asked the Court to confiscate their family home, a request that was favourably resolved by the Trial Court. The parties appealed against the decision to the Constitutional Court. In the grounds of the appeal, the appellants argued that the legislation on the basis of which the confiscation was ordered was not applicable in the case and that the measure of confiscation was not proportional to the criminal offence committed. *(Couzens, 2013, pp. 63)*

The Van der Burg case confirms the previous position of the Court, in the sense that parents are primarily responsible for ensuring the daily needs of their children, including their residence, and that the State only acts as a guarantee for the parental duties, intervening when they are not exercised according to the law. The requirement that the assessment of the child's best interest must be made based on concrete elements presented to the Court. This way, at least partially, the possibility of manipulating the child's best interests by other participants in the litigation is removed.

Last but not least, the Court must ensure that the parents and the minor are listened to, an aspect expressly regulated in art. 496 of the Civil Code. The reason for listening to the minor is to establish the appropriate environment for his education, so that they meet his needs. Therefore, it has been shown that "respect for children's opinions is also one of the general principles for creating child welfare. Even though they are minors, every child has the right to express their opinions about what they want what they like, and what they dislike." *(Mustika, Rizky, 2023, pp.23).* However, the judge must be cautious in determining the

child's best interests, especially since they, due to their age or lack of experience, can be easily influenced in choosing to live with one of their parents. (*Nicolae, 2018, pp. 24).* Thus, it has been argued that "studies have found that children and adolescents are likely to feel caught between parents if there is severe conflict, which increases the risk for children's behavioural and psychosocial problems." *(R. Berman, K. Daneback, 2020, pp.7).*

I. THE CHILD'S RESIDENCE PROVIDED BY THE CIVIL CODE

The placement of article 496 of the Civil Code within Chapter II of Title IV of Book II of the new Civil Code is important, since establishing the child's residence is one of the parental duties, and, as a result, represents an attribute of the parental authority. Thus, it was argued that "under the new provisions, the parental authority implies that parents have both rights and obligations towards their child, regardless of the evolution of the relations between them (art. 397 NCC regarding divorced parents, art. 505 NCC for the situation of the child out of wedlock). In essence, the gap between the capacity of holder of parental rights and duties, on the one hand, and the power to exercise/fulfil the rights, and parental duties, on the other hand, has been eliminated." (*Florian, 2013, pp.147)*

In the doctrine it was shown that "the joint exercise of authority does not necessarily imply that the parents and the child share the same living space. The fact that the minor lives with one of the parents is a sign that this parent holds the exercise of parental authority, but does not exclude the collegial formula for the exercise of parental rights and duties." *(Florian, 2013, pp. 147).* However, in the exercise of parental authority, spouses are entitled to establish the child's residence, either by agreement or by means of a Court decision.

According to art. 503, 504, 505 Civil Code, parental authority is exercised as follows: as a general rule, "parents exercise parental authority jointly and equally; towards third parties in good faith, any of the parents, who alone executes a current act for the exercise of parental rights and duties, is presumed to have the consent of the other parent".[6] By way of exception, if the parents are divorced, art. 504 of the Civil Code shows that "parental authority is exercised according to the provisions regarding the effects of divorce in the relations between parents and children."[7]

If the child is out of wedlock, we note that the legislator institutes the same regime as the child from a validly concluded marriage, in the sense that parental

[6] Art. 502,503,504, din Codul Civil din 2009 (Legea nr. 287/2009) - Republicare, Monitorul Oficial nr. 505 din 2011, cu modificările și completările ulterioare [art. 502, 503, 504, of The Civil Code of 2009 (Law no. 287/2009) - Official Publication no. 505 of 2011, with subsequent amendments and additions]

[7] Art. 504 din Codul Civil din 2009 (Legea nr. 287/2009) - Republicare, Monitorul Oficial nr. 505 din 2011, cu modificările și completările ulterioare [art. 504, of The Civil Code of 2009 (Law no. 287/2009) - Official Publication no. 505 of 2011, with subsequent amendments and additions]

authority is exercised jointly and equally by both parents, when they live together. In the situation where the parents of the child out of wedlock do not live together, the manner of exercising parental authority is established by the Court, the provisions regarding divorce being applicable by analogy.

The legislator's reference to "current acts" in the regulation of the exercise of parental authority caused controversy in the identification of "usual acts" or "unusual" ones that can be concluded by parents. Thus, in the matter of customary documents, it is presumed that "there is the consent of the other parent" *(Florian, 2013, pp.147). Per a contrario*, non-usual acts cannot be concluded without the consent of both parents. In case of misunderstanding, the parents are obliged to address the Court in order to resolve the dispute. However, there is also a situation in which one of the parents abusively refuses to conclude a legal act, thus harming the interests of the minor. Thus, it was concluded that "the abusive exercise of parental rights and duties in relation to the other co-holder of the authority, can justify the reconfiguration of the parental authority, putting an end to its joint exercise in favor of the unilateral exercise of parental authority". *(Florian, 2013, pp.147)*

The imperative provisions regarding the child's home lead us to consider that the choice of home falls into the category of non-usual acts, mentioned. This is because, in the absence of an agreement between the parents, the Court will establish the residence of the minor taking into account both the position of the parents and of the minor.

A first amendment of art. 496 of the Civil Code, more precisely "the minor child lives with his parents", was in the sense that "the *ad literam* interpretation of the text would be unrealistic and excessive, the child's residence could also be established at a third person." *(Florian, 2013, pp. 148-149).* Therefore, in the presence of the agreement between the parents, the child's residence could even be established at a third person's residence, when the best interest of the child is taken into account. This opinion is argued and supported by art. 498 of the Civil Code, which provides that "the child who has reached the age of 14 can ask his parents to change the type of education or professional training or the residence in order to complete his education or professional training. If the parents refuse, the child can notify the Court, which decides on the basis of the psychosocial investigation report. The hearing of the child is mandatory, as is shown by the art. 264 of the Civil Code."*(Florian, 2013, pp.148)*

Regarding the establishment of the minor's residence through the agreement of the parents, we note that the legal text does not impose a judicial control. (art. 496 (2) Civil Code of 2009 - Law no. 287/2009)[8]. The majority opinion is in the

8 Art. 496 (2) din Codul Civil din 2009 (Legea nr. 287/2009) - Republicare, Monitorul Oficial nr. 505 din 2011, cu modificările și completările ulterioare [art 496 (2) The Civil Code of 2009 (Law no. 287/2009) - Official Publication no. 505 of 2011, with subsequent amendments and additions]

sense that "the child's residence, established by the consent of the parents, regardless of whether the agreement is for the minor to live together with both parents, with one of them or with a third person, does not require judicial control, since the provisions of art. 496 para. (3) of the Civil Code, referring to the residence established by the decision of the Guardianship Court, has in mind, express verbis, those situations in which there is a lack of agreement between the parents". *(Florian, 2013, pp.149).* The point of view is also supported by other legal texts. Thus, specialized literature advanced the idea that "if in the context of consensual divorce by notarial procedure, one of the requirements for the admissibility of the dissolution of the marriage carried out in this way is the existence of an agreement of the spouses regarding the child's residence [art. 375 para. (2) Civil Code from 2009 - Law no. 287/2009), whatever the terms of the agreement - and the agreement on the matter is obviously not subject to Court censure - all the more it must be accepted that parents who are not yet divorced, have the right to decide the child's residence extrajudicially."[9] *(Florian, 2013, pp. 149).*

However, our opinion is that the agreement between the parents can be subject to control, in order to respect the best interest of the child. In support of this point of view, we recall the fact that, within the notarial divorce procedure, it is necessary to draw up a social investigation report. Thus, when we discuss the establishment of the minor's home after the divorce in the framework of a notarial procedure (non-contentious), a social investigation report will be drawn up to establish whether, by their agreement, the parents pursued the child's best interests. But what happens when the parents do not choose the divorce procedure, being only *de facto* separated or, if it is not a *de facto* separation, they choose not to live together (e.g. carrying out a work contract in another locality/country). According to a doctrinal opinion, in this case too, a control by a competent authority would be necessary, in order to respect the principle of the best interest of the minor. *(Nicolae, 2018, pp.28)*

The rule according to which "the exercise of parental authority is shared and the minor lives with his parents" has an exception in the sense that when one of the parents is under a Court ban, deprived of parental rights or is, for any reason, unable to - manifests his will, the Court will not be able to establish the residence of the child with the parent who does not have the exercise of parental rights, even if, possibly, there was an agreement in this sense between the child's parents in this regard.

[9] Ibidem

II. JUDICIAL DIVORCE PROCEDURE

Establishing the child's residence in the case of divorced parents has raised many question marks in doctrine and practice. Thus, it was considered that although the parental authority is jointly exercised by both parents, concretely, after the divorce, "the premise is that the parent with whom the minor will live should hold the exercise of parental authority." *(Florian, 2013, pp.152).*

At first sight, art. 918(1) of the new Code of Civil Procedure, removes any doubt about the claims that the Court will have to deal with. Thus, the judge will have to rule on some essential elements regarding the exercise of parental authority in relation to the needs of the minor. (art. 918 (1), Civil Procedure Code of 2010 - Republication, Official Journal no. 247 of 2015, with subsequent amendments and additions).[10] Therefore, the divorce Court also pronounces on the parents' contribution to the expenses of raising and educating the children, the child's residence and the parent's right to have personal connections with him, the names of the spouses after the divorce, the family residence, the claimed compensation for material damages or moral damages suffered as a result of the dissolution of the marriage, maintenance obligation, termination of the matrimonial regime, etc.

What is subject to discussion, however, on which aspects will the divorce Court be able to rule *ex officio*? At para. 2 of the same art. 918 of the Civil Procedure Code, it is stipulated that "when the spouses have children born before or during the marriage or adopted, the Court will rule on the exercise of parental authority, as well as on the parents' contribution to the expenses of raising and educating the children, even if this was not requested by the divorce petition. Also, the Court will rule *ex officio* on the name that the spouses will bear after the divorce, according to the provisions of the Civil Code."[11] As it can be seen, the main issue raised by the doctrine is that, although it is an attribute of the exercise of parental authority, the Court will not *ex officio* rule on the residence of the minor child. The only claim on which the Court can rule ex officio would be that of the parents' contribution to the expenses of raising and educating the children. Therefore, "since only one of these "derivatives" of parental authority is explicitly qualified as having the status of a mandatory request, we can not derogate from this rule. " *(Florian, 2013, pp.155)*

On the other hand, the Civil Code regulates in art. 400, the obligation of the Court to establish the child's residence after the divorce. Thus, we consider that the provisions of the Civil Procedure Code will be completed with the provisions of the Civil Code.

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[10] Art. 918 (1) of the Civil Procedure Code of 2010 - Republication, Official Journal no. 247 of 2015, with subsequent amendments and additions

[11] Art. 918 (2) of the Civil Procedure Code of 2010 - Republication, Official Publication no. 247 of 2015, with subsequent amendments and addition

III. THE PROCEDURE AT A NOTARY PUBLIC'S OFFICE

The Notary Public can also fulfill the divorce procedure. The finality of this procedure is conditioned, however, by the agreement of the parties regarding the essential elements after the dissolution of the marriage (such as the names of the ex-spouses after the pronouncement of the divorce) but, in particular, regarding the situation of children. In this sense, the legislator regulated the divorce procedure by agreement through several normative acts, among which we mention the Civil Code, Law no. 36/1995 of Notaries Public and notarial activity with subsequent amendments and additions, as well as in the implementing regulation of the latter. Thus, in art. 375 of the Civil Code says that "divorce by the consent of the spouses can be verified by the Notary Public and in the event that there are children born out of wedlock or adopted, if the spouses agree on all aspects related to the surname after the divorce, the exercise of parental authority by both parents, the establishment of the children's residence after the divorce, the manner of preserving the personal ties between the separated parent and each of the children, as well as the establishment of the parents' contribution to the expenses of raising, educating, teaching and professional training of the children."[12]

According to art. 270 paragraph 2 of the Project of the new Regulation for the implementation of Law no. 36/ 1995, the divorce application in the notarial procedure must include the agreement of both parents regarding the minor children. Thus, according to the doctrinal opinion "in order to accept the request for divorce if there are minor children, the notary public notifies the competent authority, attaching the draft of the parents' agreement to the request." *(Popa, Moise, 2013, p.324)*

If the social investigation report shows that the agreement of the spouses regarding the joint exercise of parental authority or the agreement regarding the establishment of the children's residence is not in the child's interest, the provisions of art. 376 para. (5) are enforced. In the sense of art. 376 (5) of the Civil Code, it is stated that "if the spouses do not agree on the surname to bear after the divorce or, in the case provided for in art. 375 para. (2) Civil Code, on the joint exercise of parental rights, the civil status officer or, as the case may be, the Notary Public will reject the parties' petition for divorce."[13] Moreover, the spouses will be advised to address the Court, according to the provisions of art. 374. As a consequence of the interpretation of this text, it is concluded that it is

[12] Art.375 Codul Civil din 2009 (Legea nr. 287/2009) - Republicare, Monitorul Oficial nr. 505 din 2011, cu modificările şi completările ulterioare, art no.375 of the Civil Code of 2009 (Law no. 287/2009) - Official Publication no. 505 of 2011, with subsequent amendments and additions

[13] Art. 376 (5) Codul Civil din 2009 (Legea nr. 287/2009) - Republicare, Monitorul Oficial nr. 505 din 2011, cu modificările şi completările ulterioare, art no. 483 of the Civil Code of 2009 (Law no. 287/2009) - Official Publication no. 505 of 2011, with subsequent amendments and additions

imperative to request a social investigation report, which will be drawn up by the specially designated authority. (art. 229 of Law no. 71/2011)[14]

Therefore, when the expert report does not indicate that there is an agreement between the parents regarding the exercise of parental authority or that the establishment of residence with one of the parents is not in the interest of the minor, the Notary Public is obliged to reject the petition and guide the parties to address the Court. *(Popa, Moise, 2013, pp. 324)*

From a doctrine point of view, it was emphasized that "the social investigation reports can sometimes be written in unclear terms". *(Popa, Moise, 2013, pp. 325).* Therefore, in notarial practice there can be two problems:

- the first, refers to the interest of the minor and to what extent the establishment of the child's residence satisfies his interest
- the second, it focuses on the fact that although the social investigation report mentions that all elements of the parties' agreement are in the interest of the minor, the Notary is convinced that this principle is not fully respected.

The solution was in the art. 9 of the Law of Notaries Public that states that "each time the principle of the best interest of the child is not respected by the agreement of the parties, the Notary will issue a ruling of rejection and advise the spouses to address to the Court." *(Popa, Moise, 2013, pp.324).*

We note that while in the non-contentious procedure, through a Notary, the importance of the child's residence can lead to the rejection of the divorce request, if the divorce is pronounced by a judge, the Court must determine the residence of the minor. Moreover, the best interest of the child can only be assessed by the Court, after hearing both the parents and the minor. Therefore, based on article 496(3) of the Civil Code, the Court decides, based on the psychosocial investigation report and taking into consideration the parties' point of view, where the child should live. Therefore, after the divorce, the child's residence will be established according to art. 400 of Civil code.[15]

What happens in the situation where, after the divorce, the parent who lives with the minor changes his residence and therefore wants to change the minor's residence as well? The legislator removed any doubt regarding this situation in the art. 497 (1) of the Civil Code. Therefore, if the parental authority would be

[14] Art. 229 din Legea 71/2011 pentru punerea în aplicare a Legii nr. 287/2009 privind Codul civil, Monitorul Oficial nr. 409 din 2011, cu modificările şi completările ulterioare, organizarea, funcționarea și atribuțiile instanței de tutelă și de familie se stabilesc prin legea privind organizarea judiciară [Art 229 of Law 71/2011 for the implementation of Law no. 287/2009 regarding the Civil Code, Official Gazette no. 409 of 2011, with subsequent amendments and additions, the organization, functioning and powers of the guardianship and family court are established by the law on judicial organization]

[15] Art. 400 Codul Civil din 2009 (Legea nr. 287/2009) - Republicare, Monitorul Oficial nr. 505 din 2011, cu modificările şi completările ulterioare [art 496 (2) of the Civil Code of 2009 (Law no. 287/2009) - Official Publication no. 505 of 2011, with subsequent amendments and additions]

affected by the change of the minor's residence, it can only be made with the express consent of the other parent. (art. 497 (1) Civil Code of 2009 - Law no. 287/2009)[16]. The art. 497 of the Civil Code is placed in the Chapter dedicated to parental rights and duties. Therefore, it has a general rule, that concerns all parents even if they are married or not, separated or divorced.

Although the law does not provide an express sanction for breaching the art. 497 of Civil Code, it was shown that the parent who did not give his consent regarding the change of residence of the child can invoke art. 403 of the Civil Code.[17] Thus, in the event of a change in circumstances, the Court can modify the measures regarding the rights and duties of divorced parents towards their children, at the request of any of the parents or another family member, the child, the protection institution, the institution public specialized for the protection of the child or the prosecutor.

CONCLUSION

The importance of establishing the home of the minor child is based on the principle of his best interest. In assessing this imperative, I stated that the Court must take into account a number of aspects that could influence the growth, development and education of minor children (for example, before starting a procedure of enforced execution on the family home, the child's interest is taken into account which should prevail over other domains).

Establishing the child's residence after divorce is also a topic addressed in this theme because although the marriage ends, the parent-child relationship is ensured by their exercise of parental authority. This includes establishing the child's home/domicile, which most often corresponds to the family home during the marriage.

BIBLIOGRAFIE

1. Popa I., Moise A. A, *Drept notarial. Organizarea activității. Proceduri notariale*. ed. Universul Juridic, București, 2013. [Popa I., Moise A. A, Notary. Activity organisation. Notarial procedures. ed. Universul Juridic, Bucharest, 2013.];

[16] Art. 497 (1) Codul Civil din 2009 (Legea nr. 287/2009) - Republicare, Monitorul Oficial nr. 505 din 2011, cu modificările şi completările ulterioare [art 496 (2) of the Civil Code of 2009 (Law no. 287/2009) - Official Publication no. 505 of 2011, with subsequent amendments and additions]

17 Art. 403 Codul Civil din 2009 (Legea nr. 287/2009) - Republicare, Monitorul Oficial nr. 505 din 2011, cu modificările şi completările ulterioare [art 496 (2) of the Civil Code of 2009 (Law no. 287/2009) - Official Publication no. 505 of 2011, with subsequent amendments and additions] states: In the event of a change in circumstances, the guardianship court can modify the measures regarding the rights and duties of divorced parents towards their minor children, at the request of any of the parents or another family member, the child, the protection institution, the specialized public institution for the protection of the child or the prosecutor.

2. Cercel S., Ghita O., *Interesul superior al copilului*, în Revista Romana de Drept Privat nr.3/2018 [CERCEL S, GHITA O., The best interest of the child, in the Romanian Journal of Private Law no. 3/2018];
3. E. Florian, *Consideraţii referitoare la stabilirea locuinţei copilu*lui in Studia Jurisprudentia consultata electronic la adresa http://studia.law.ubbcluj.ro/articol.php?articolId=563 [E. Florian, Considerations regarding the establishment of the child's residence in the Jurisprudence Study consulted electronically at http://studia.law.ubbcluj.ro/articol.php?articolId=563.];
4. M. Couzens, *Interesul superior al copilului ca factor de individualizare a pedepsei aplicate unei persoane condamnate: experienţa sud-africană,* în Studia Iurisprudentia, consultată electronica la adresa :http://studia.law.ubbcluj.ro/articol.php?articolId=490, in data de 20.12.2023, ora 18:03 [M. Couzens, The best interest of the child as a factor in individualizing the punishment applied to a convicted person: the South African experience, in the Study of Jurisprudence, consulted electronically at: http://studia.law.ubbcluj.ro/articol.php?articolId=490 , on 20.12.2023, at 18:03];
5. I. Nicolae, *Consideraţii în legătură cu exercitarea autorităţii părinteşti după divorţ* Revista Universul Juridic nr. 11, noiembrie 2018, pp. 24-31 [I. Nicolae, Considerations regarding the exercise of parental authority after divorce, Universul Juridic Magazine no. 11, November 2018, pp. 24-31];
6. Couzens M., *Aplicarea principiului interesului superior al copilului de către Curtea Constituţională a Africii de Sud în cadrul luării măsurii confiscării unui imobil cu destinaţie de locuinţă ce a servit la săvârşirea unor infracţiuni de către părinţii unor minori: O discuţie a cazului Van der Burg and Another v National Director of Public Prosecutions and Another 2012 (2) SACR 331 (CC),* in Studia Iurisprudentia consultata electronic la adresa http://studia.law.ubbcluj.ro/articol.php?articolId=576. [Couzens M., The application of the child's best interest principle by the Constitutional Court of South Africa in the context of taking the measure of confiscation of a residential building that was used to commit crimes by the parents of minors: A discussion of the Van der Burg case and Another v National Director of Public Prosecutions and Another 2012 (2) SACR 331 (CC), in Study Iurisprudence consulted electronically at http://studia.law.ubbcluj.ro/articol.php?articolId=576.];
7. Fursa Yaroslavivna S., Bordiuh Oleksandrivna T., & Fursa Yevhenovych Y. (2022). *The Principle of Primary Consideration of the Best Interests of the Child in Civil Procedure in Ukraine*. LeXonomica, 14(2), 213-236. https://doi.org/10.18690/lexonomica.14.2.213-236.2022;
8.Mustika, Rizky, Dharsana, *The principle of the best interests implementation of the child in a decision to cancel a child's birth certificate*, Jurnal Pembaharuan Hukum, 2023/03/31,DOI:10.26532/jph.v10i1.30432, https://www.researchgate.net/publication/369721053_the_principle_of_the_best_interests_implementation_of_the_child_in_a_decision_to_cancel_a_child's_birth_certificate

9. Berman, Rakel & Daneback, Kristian. (2020). *Children in dual-residence arrangements: a literature review.* Journal of Family Studies. DOI:10.1080/13229400.2020.1838317,https://www.researchgate.net/publication/345061479_Children_in_dual-residence_arrangements_a_literature_review.
10. Legea notarilor publici si a activitatii notariale nr. 36/1995 republicată in Monitorul Oficial, Partea I nr. 72 din 4 februarie 2013 Law of Notaries Public and notarial activity no. 36/1995 republished in the Official Journal, Part I no. 72 of February 4, 2013;
11. Legea 71/2011 pentru punerea in aplicare a Legii nr. 287/2009 privind Codul civil. Legea de punere in aplicare a noului CodCivil, publicată in Monitorul Oficial, Partea I nr. 409 din 10 iunie 2011 [Law 71/2011 for the implementation of Law no. 287/2009 regarding the Civil Code. The law implementing the new Civil Code, published in the Official Journal, Part I no. 409 of June 10, 2011];
12. Legea 287/2009 privind Noul Cod Civil, republicat în Monitorul Oficial nr. 505/2011, aplicabil din 1 octombrie 2011. [Law 287/2009 regarding the New Civil Code, republished in the Official Journal no. 505/2011, applicable from October 1, 2011.];
13. Ordinul 2333/C/2013 privind aprobarea Regulamentului de aplicare a Legii notarilor publici şi a activităţii notariale nr. 36/1995, Monitorul Oficial nr. 479 din 2013. [Order 2333/C/2013 regarding the approval of the Regulation on the application of the Law on public notaries and notarial activity no. 36/1995, Official Gazette no. 479 of 2013.];
14. Codul de Procedura Civila din 2010 - Republicare, Monitorul Oficial nr. 247 din 2015, cu modificările şi completările ulterioare. [Civil Procedure Code of 2010 - Republication, Official Publication no. 247 of 2015, with subsequent amendments and addition].