

Romanian family law

particularities & problems

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Particularities

- ▶ 1. Joint custody above everything
- ▶ 2. Presidential ordinance also called as injunction order as special emergency procedure
- ▶ 3. Minor's aversion may lead to non-application of the legislative provision
- ▶ 4. Public legal aid for family law cases
- ▶ 5. Damages and spousal maintenance only in exceptional cases

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Problems

- ▶ • Children left behind while their parents migrated for work abroad
- ▶ • Refusal of Power of attorneys
- ▶ • Child maintenance payment

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Joint custody above everything

- ▶ Romanian legislation enshrines the principle of co-parenting supporting the harmonious development of the child, which in this way can benefit from the education and guidance of both parents.
- ▶ The Law no. 272 on the Protection and Promotion of the Rights of the Child guarantees the right of the child to the family life, having the right to grow up with his parents as well as the fact that he can not be separated from his parents or one of them, against their will, except the cases is required by the best interests of the child.
- ▶ These principles are so firmly established that it is a fierce battle in court to obtain sole custody rights even if the other parent is completely disinterested in the child after divorce or separation.
- ▶ Also, even if we have specific legislation, the termination of parental rights is almost impossible even in a situation where it is proven that the other parent consumes alcohol or even drugs.

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Presidential ordinance as special emergency procedure

- ▶ Presidential ordinance or injunction order procedure can be taken in all cases where interim measures have to be pronounced in order to protect the child's immediate interest.
- ▶ In family law is a procedure often used to replace the consent of the defendant who refuses to give in case the other parent refuses to give his consent for emergency surgeries, enrolling the child in school, granting the passport or other identity documents, for temporary custody until the end of civil or even criminal law cases.
- ▶ These interim measures must be provisional and cannot deal with the substantive merits of the case.

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Minor's aversion may lead to non-application of the legislative provision

- ▶ Article 912 of the Code of Civil Procedure regulates the Minor's refusal in case of foreclosure proceedings
- ▶ If the bailiff during foreclosure, and applying the non-residential parents right for visiting rights, or child abduction procedure finds that the minor himself refuses to leave the debtor or manifests aversion to the creditor, will draw up a record of its findings and will communicate it to parties and to the representative of the General Directorate for Social Assistance and Child Protection.
- ▶ The Social Assistance and Child Protection will ask the competent court to dispose a psychological counseling program, for a period not exceeding 3 months.

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Minor's aversion may lead to non-application of the legislative provision

- ▶ Request is urgently solved in the council chamber, and legal provisions on hearing the child remain applicable.
- ▶ At the end of the counseling program, the psychologist appointed by the court will draw up a report that will be communicated to the court, to the bailiff, and to the General Directorate for Social Assistance and Child Protection. After receiving the report from psychologist, the bailiff will resume the forced execution procedure, and the creditor may refer to the competent court for the purpose of applying a penalty.
- ▶ This procedure grants the child's best interests, but at the same time non-residential parents can see their visiting rights, or their right of child return as impossible to implement even if they have a definitive court decision on their side.

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Public legal aid for family law cases

- ▶ Legal aid may be sought under Emergency Order No 51/2008 and may be granted separately or cumulatively in the form of assistance by a lawyer, 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.
- ▶ Legal aid regarding the assistance from a lawyer, can be granted in all criminal cases. In civil law cases only in specific cases where the defendant cannot be identified by domicile, cannot be summoned or for defending the interests of people with disabilities or limited capacity of exercise.
- ▶ Legal aid is not granted for custody problems, for divorce, for low income parents who would need assistance in their dispute resolution.
- ▶ Exception would be certain child abduction cases when the foreigner notifies the Ministry Of Justice, and the authority requests Bucharest Bar to grant an ex officio lawyer.

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Damages And Spousal Maintenance

- ▶ The general provisions of the Romanian civil code do not foresee maintenance obligation of the spouses after the marriage ends.
- ▶ According to the Civil Code of Romania, the former spouse is entitled to maintenance if he or she is in financial need, due to incapacity to work arising before or during the marriage, or to incapacity arising within a year of the divorce provided this incapacity is due to events relating to the divorce.
- ▶ The former spouse loses the right to maintenance from the other spouse if he or she remarries.
- ▶ If the divorce judgment has found only one of the spouses to be at fault, this spouse is entitled to maintenance from the other spouse for only one year after the divorce, whereas the other spouse is entitled to maintenance for an indefinite period.

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Children left behind while their parents migrated for work abroad

- ▶ The increase of labor force's movement within European borders brought Romania in front of a massive migration, Romanians trying to find job opportunities in countries with a more developed economy. This phenomenon is more characteristic for poor areas of the country, where large communities migrated abroad, leaving behind a high number of children, in the care of grandparents, other relatives or even in no one's care.
 - ▶ Beyond social problems that these children may develop behavioral problems like school dropout and absenteeism, juvenile criminality or even suicide, there are many legal problems as parental consent for important aspects, child custody issues, and in many of these cases grandparents or the sole parent does not have the financial background to hire lawyer for resolving family disputes, child maintenance or habitual residence aspects.
- A recent study indicated more than 200.000 children are in this situation.

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Refusal of Power of attorneys

- ▶ In Romania in case of joint custody all important decisions, emergency surgeries, enrolling the child in school, issuing the passport or other identity documents, permission to leave the country for have to be granted by written consent of both parents.
- ▶ In many cases the non - residential parent is not invested in the child's wellbeing and ignores the power of attorney, refuses or uses this opportunity to blackmail the other parent.
- ▶ In emergency procedures this can be resolved with the presidential ordinance, mentioned above but in daily legal practice this is granted in exceptional, emergent cases like surgery, school application, but not granted when parents want to leave abroad for a better life, sport competitions, family visits, etc.

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Child maintenance payment

- ▶ According to the Romanian Family Code (art. 42), the parent who does not have the custody of the minor child has the legal obligation to support the minor child after divorce, by paying a periodic amount, representing his contribution to the child's maintenance, education, sustenance to assure the child's professional training etc.
- ▶ The maintenance support can be effectively performed in kind or by financial support. The court will decide upon the way of execution, considering the particular circumstances. The amount of the financial maintenance support shall be set to maximum a quarter of the salary of the non-custodial parent - for one child, a third for two children, and one half for three or more than three children. In most of the cases, the court decides the non-custodial parent to pay the maintenance support as a monthly amount.

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Child maintenance payment

- ▶ According to the Romanian Criminal Code (article 305 regarding the family abandonment), in case the non-custodial parent fails to execute his obligation of payment the maintenance support, as set by the court, he shall be subject to imprisonment from 1 to 3 years or to fine.
- ▶ In practice many non-custodial or even nonresidential parents do everything they can in order to not pay the maintenance obligation, they are changing the jobs in order to put the garnishment on the salaries, going abroad and working without proper legal documents or even refuse the payment as they have no regular income, and is almost impossible for bailiffs to proceed in foreclosure proceedings. Not even the criminal charges scare the parent as the criminal investigations have no deadlines.

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Strenght of romanian family law

- ▶ **1. Duration**
- ▶ 3-4 month a custody trial
- ▶ 3-4 divorce trial with minors
- ▶ 3 month a child abduction trial
- ▶ 1 month- presidential ordinance
- ▶ Less than 1 year we have a defintive decision both on the merits and on the appeal
- ▶ **2. Openess toward european law**
- ▶ The primacy of European law is not only a constitutional principle, courts apply european legislation strictly, and each time with conflictual provisions EU legislation prevails.

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Thank you for your attention

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