

Theoretical and practical considerations about the application of the principle of superior interest of the child

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Abstract: - The exercise of parental rights is subordinated to the general principle of superior interest of the child, provided by article 2 paragraph 3 of the Law no. 272/2004 on the Protection and Promotion of the Rights of the Child according to which "the principle of the best interests of the child shall prevail in all the approaches and decisions concerning the children, undertaken both by the public authorities, as well as in the cases solved by the courts".

Key-Words: - Parental rights, parental authority, principle, superior interest, plaintiff, defendant

1 Introduction

According to article 2 paragraph 4 of Law no. 272/2004 on the protection and promotion of the rights of the child, the principle of the superior interest of the child shall prevail in all matters and decisions concerning children, undertaken by the public authorities and authorized private entities, as well as in the cases solved by the courts. In the light of this principle, any measure that interests the minor child must be viewed from the perspective of the best possible development that can be provided in the given context. [1]

At the same time, according to paragraph 6 of the above-mentioned article, the criteria for determination of the child's superior interest shall prevail in the needs of physical, psychological, education and health development, security and stability and belonging to a family, are the child's opinion, age and maturity; the child's history, especially with regard to situations of abuse, exploitation or any other form of violence against the child, as well as the potential risk situations that may occur in the future; the capacity of parents or other persons to deal with raising and caring for the child to meet his/her concrete needs and maintaining personal relationships with the person to whom the child has developed attachment relationships. [2]

When a child is entrusted to one person, the child's best interest has to be taken into account. This aspect is imposed by the provisions of article 2 and followings of Law no. 272/2004. The best

interest of the child is determined by taking into account the criteria regarding the material possibilities of the parents, the age of the child, the degree of attachment and the interest expressed by the parents towards the child, the emotional bonds established between them and the child.

2 Case under discussion

2.1. Presentation of the case

By the application filed to the Giurgiu City Court under no. 7430/236/2011, the applicant CI sued the defendants CD, her son and MMI, her granddaughter's mother, demanding for the court to order in her own favor the custody of the minor girl CAA, born on 21st of October 2008 who, from the age of three months, lived with her at their home in Giurgiu and is in her care at the present moment, while her parents left Romania immediately after her birth, leaving the little girl in the care of her grandmother.

The plaintiff also stated that the mother of the minor, the defendant MMI, visited her only for a few days around six months of age and, at the beginning of the year 2011, the minor was in Italy, where she was spending some time with her father, the defendant CD, who, at that moment, was at house arrest in Milan home for about a year, being convicted for the offense of pimping.

It was also said that the minor's parents are actually separated, and because the father has been convicted for pimping, while the mother has been fined several times for prostitution, none of them can handle with the growth and proper care of a 2-3 years old child.

The applicant also considered that it is in the best interests of the minor that the grandmother to be entrusted to raising and educating her, because she is very attached to her and also she can provide the material and spiritual framework for an appropriate growth and education. The request was grounded on the provisions of article 42 from the previous Romanian Family Code. [3]

The mother MMI sued the defendants CI, being the grandmother and CD, being the father, requesting for the court that, through the decision to be pronounced, the mother should be entrusted to raising and educating the minor CAA, born on 21st of October 2008. It was also requested for the court to order the defendant CI to return the minor to her mother. The case was filed under no. 10138/236/2011.

In essence, it was shown that from the concubinage relationship between the applicant and the defendant CD, the minor was born. The parents were separated as a result of the fact that the father has committed several crimes in Italy, for which he has been convicted to serve a custodial sentence by house arrest and because of frequent quarrels, followed by marital violence and abuse. However, both parents decided that the minor would live alternately to each one of them until their personal situation will be resolved. On 25th of May 2011, when she went to the home of the father to see her daughter, she found out that the girl has gone to Romania, despite the fact that the mother was not announced in any way of her daughter's departure to Romania. Since that day, the girl is with the mother of the defendant, namely the applicant CI, while the mother was unable to even get in touch with the child.

The applicant MMI considered that, as long as a child's mother shows love and interest for her, she has all the means to raise and educate her, there is no reason for the child to be entrusted to raising and educating to another person.

By the closing of the meeting dated on March 8, 2012, the two cases were joined together, the file being filed under no. 7430/236/2011, the parties having the capacity from the original file, namely the plaintiff CI and the defendants MMI and CD.

During the trial, as a result of the entry into force of the new Romanian Civil Code and the abolition of Family Code, the defendant MMI filed a petition, requesting that by the court decision that the parental authority should be exercised exclusively by the mother, that the home of the minor to be established at her home, taking into account the superior interest of the child and to order the defendant CD to pay a monthly contribution for the maintenance of the minor, according to his income. She also requested from the court to order the defendant CI to return the child to her mother, because she is held without her mother's consent.

In law, the precise application of the main action was based on the provisions of article 398, 400, 495, 496, paragraph 3, 499 of Civil Code. [4]

The plaintiff CI also filed a petition for the main action in accordance with the new provisions of the Civil Code, requesting the exclusively exercise of the parental authority over the minor CAA and to establish the domicile of the minor at his current residence.

In law, the request was based on the provisions of article 398, 399, 400 paragraph 3, 402, 529 and 530 paragraph 2 and 3 of Civil Code. [5]

2.2. The decision of the first court of instance

By the civil decision no.7110/14.10.2013, the Giurgiu City Court rejected the action formulated by the plaintiff CI in contradiction with the defendants MMI and CD and admitted the action formulated by the defendant MMI. Based on the provisions of article 496 paragraph 3 of Civil Code, it was established the residence of the minor CAA at her mother, respectively in Milan - Italy. Based on the provisions of article 486 and 398 of Civil Code, the court ordered that the parental authority to return exclusively to the defendant mother. Under the force of the provisions of article no. 495 paragraph 1 of Civil Code, the plaintiff CI was obliged to return to the defendant MMI the minor child CAA. Under the force of the provisions of article no. 529 paragraph 2 of Civil Code, the court obliged the defendant CD to give a monthly contribution to the maintenance of the minor.

In order to decide so, the court of first instance held that from the relationship between the two defendants a girl was born. Three months after the birth, her parents went to Italy, while the child

remained in the care of her paternal grandmother, applicant CI, where she still lives in present.

On the territory of Italy, the father carried out illegal activities and he was sentenced in October 2010 to a three-years and ten-months conviction, that he executed at his home in Milan. In the meantime, the mother was punished twice for prostitution activities. The two persons being separated, the defendant MMI began a concubinage relationship with another man with whom she currently has a child.

In the first half of year 2011, the minor was brought to Italy, where she spent time alternately with each one of the parents. In May 2011, she was taken by the plaintiff CI into Romania without the defendant's consent.

From the answer of the defendant CD to the questioning proposed by the defendant MMI, it is stated that the minor was taken by the defendant's mother and his brother to Romania without the defendant's consent.

From the statement of the witnesses SC and MT, proposed by the defendant MMI, it was stated that she was forced to prostitute; when the defendant got pregnant, she came to Romania to give birth, after that being forced by her concubine to return to Italy to practice prostitution again. In the present, the defendant MMI is involved in a serious relationship with another man, with whom she has a small child and she strongly desires to take her little girl, whom she loves very much.

A social inquiry was carried out at the home of MMI in Italy, Milan, from which it emerged that she founded a family, being married to the Italian citizen SM with whom she has a child of about one year, living with her new family in a building composed of 3 spacious rooms, where it was set up a special room for bringing the daughter. The relationships between the two husbands are based on mutual respect and affection.

The court took into account that the principle of superior interest of the child, expressed so by the provisions of Law no. 272/2004, is equally found in the Civil Code, circumscribing the child's right to normal physical and moral development, to a socio-emotional balance, to a family life, as also is stated by article 8 of the European Convention on Human Rights.

Consequently, in this analysis, whenever the interests of the parents are in conflict, the child's rights and priority interests must be promoted by the provisions of article 8 of the European Convention

on Human Rights, rights which are to be enjoyed not only by the parents but also by the child.

Although the court found out that the applicant CI and the minor have a strong relationship of affection, motivated primarily by the long period of time between the two and the fact that the minor remained in the care of the applicant from the age of three months, the court also could not ignore the unfortunate circumstances that led to this solution, nor the attitude of the defendant mother who, after understanding the big mistake she has made by living an immoral life, tried and found the power and the means to radically change this existence, in the present having an honorable family that she wants to accomplish with her daughter.

Also, considering the age of the child, 5 years old at that moment, the fact that she was in the middle of a process of affective, emotional and psychological development of her personality, her affective needs, a socially stable environment without changings, the court stated it is notorious the mother's necessity in the life of the child, especially when this child is a girl, the mother assuring physical and emotional stability for all her life.

The fact that the minor was currently living with her father was, from the point of view of the court, not a good fact, the father being a substantial immoral example, especially that the minor's mother was also his victim.

The court also found that the minor's position, expressed within her hearing to the judge, in which she said that she wanted to stay with her grandmother and not with her mother because the latter did not love her, was irrelevant, because of two reasons. On one hand, the court, without pretending to be a psychologist, noticed, in common sense, a certain influence (without being pressure) due to the minor's non-disclosure and, on the other hand, the fact that she did not live with his mother enough time to develop a strong attachment.

According to article 505 paragraph 1 of Civil Code, in the case of a child born outside marriage whose affiliation has been established concurrently, or, as the case may be, successive to both parents, the parental authority is exercised jointly and equally by both parents, if they live together. Paragraph 2 of the same article states that, if the parents of the child outside the marriage do not live together, the exercise of the parental authority is established by the court, and according to article 399 paragraph 1 of Civil Code, only

exceptionally the court can decide that the parental authority will be exercised by other people.

Also, according to the provisions of article 483 of Civil Code, the parental authority is the ensemble of rights and duties that concern both the person and the property of the child and belong equally to both parents.

The court stated that, while the relations between the parties were tense and unnatural and, because the place of residence of the minor would be established in Italy, the parental authority would rely exclusively on the defendant mother, while the defendant father retained the right to watch over how to raise and educate the child.

According to article 495 paragraph 1 of Civil Code, the parents may at any time request the court to return the child from any person who holds him/her without right and according to paragraph 2 of the same article, the court may reject the application only if the return is obviously contrary to the best interests of the child.

The court also held that both parents have the same rights and duties towards their minor children, without distinction afterwards, if they are born from marriage, outside marriage or adopted. In the same sense are the provisions of article 487 of Civil Code, according to which the parents are obliged to raise the child, taking care of his/her physical health and development, education, teaching and professional training, according to his/her own skills.

For the reasons presented above, the first court of instance rejected the application formulated by the plaintiff CI and admitted the application formulated by the defendant MMI, deciding that the parental authority will be exercised exclusively by the mother, that the child's domicile will be with her and that the grandmother will give back the child to the mother. [6]

2.3. The decision of the second court of instance

Against the civil sentence pronounced by the Giurgiu Court of Instance filed for appeal the plaintiff CI, criticizing it as being against law and justice.

In the statement of reasons, the appellant requested the admissibility of the appeal, the rejection of the action filed by the defendant MMI and the admission of her own the action, as

grounded.

Within the motivation of the appeal, it was shown that the minor CAA is strongly attached to her, the attachment being created over time, from birth to the present; between them there is a relationship of parent-child affection, the grandmother being the only family the minor ever had. In the present, her family has also been completed by the presence of her father who has tried to reintegrate into her life and to be able to form a small family in the near future.

The plaintiff CI considered that the first court of instance had pronounced an ungrounded decision, without really taking into account the minor's interest, which was to benefit from the emotional stability provided by the grandmother. She showed that she was the real family who has taken care of the girl since birth and has given her endless affection, so necessary for a good living.

By establishing the domicile at her mother's home - a person she knows very little -, in a foreign country, changing not only the environment, but also the customs, the tradition, the language, may create psychological traumas for a child.

In the plaintiff's opinion, the court did not take into account the fact that the child is very attached to her grandmother and father, and moreover found that the position and desire of the minor was irrelevant at the hearing of the child in which she claimed that she wanted to live with the grandmother and not with her mother, because she does not love her.

The court of first instance examined the evidence presented in the case superficially and interpreted it against the interests of the minor, thus conducting to an unlawful and ungrounded decision.

By the civil decision no. 311/14.11.2014, the Giurgiu County Court admitted the appeal filed by the plaintiff CI against the civil decision no. 7110/14.10.2013 pronounced by the Giurgiu City Court. Consequently, the whole sentence was changed in this way: it was partially admitted the applicant's request CI; based on the provisions of article 505 paragraph 2 and article 400 paragraph 3 of Civil Code, it was established the residence of the minor CAA at her paternal grandmother CI; it was ordered, according to article 505 paragraph 1 of Civil Code, that parental authority will be exercised jointly by the parents CD and MMI; both mother and father were obliged to give a monthly contribution for the maintenance of the minor child.

Although the first court of instance, in the

light of the legal criteria, was concerned about determining the best interests of the child, pronounced an ungrounded decision, because both parents are not good examples, the mother practicing prostitution in the past and the father being convicted for the offense of pimping.

From this point of view, the court, on the basis of the provisions of article 264 paragraph 1 of Civil Code, considered to be necessary the hearing of the child, even if she was not 10 years old, in the presence of two psychologists agreed by the parties.

By correlating the evidence administered and the child's best interest, the second court of instance established that the domicile of the minor should be settled with the paternal grandmother, a person to whom the child developed a particular attachment, moreover because until the present moment she had not lived with none of her parents steadily.

As regarding the exercise of parental rights and duties, the court considered that the superior interest of the minor is that the parental authority should be exercised by the two parents, this being the reasonable way by which can be created adequate bonds, corresponding to the degree of mutual affection, of which the child has been deprived so far. [7]

2.4. The decision of the third court of instance

Against the second's court of instance decision filed for appeal the plaintiff MMI, criticizing it for being against law and ungrounded, requesting the admittance of the appeal, the amendment of the criticized decision and consequently the rejection as unfounded of the declared appeal and the maintaining of the decision pronounced by the first court of instance as grounded and legal, for the following reasons:

The Giurgiu County Court of Appeal committed an error in corroborating - in its opinion - the administered evidence and referring to the superior interest of the child, that it is necessary to establish the minor's domicile to the paternal grandmother, ignoring all the facts that were actually the result of the probationary proceedings and which should have lead to a contrary solution.

In the matter of custody of the child, the court of first instance considered the child's best interests, which in this case was determined by taking into account the criteria regarding the material possibilities of the parents and the paternal

grandparents, the age of the child, the degree of attachment and the interest that the parents have manifested for the child, the affective bonds that have settled between them and the child.

Consequently, the superior interest of the child, interpreted in the sense of Law no. 272/2004, which is equally found in the Civil Code, circumscribes the child's right to a normal physical and moral development, to a socio-emotional balance, to the family life, as affirmed by article 8 of the European Convention on Human Rights.

By correctly applying this principle, although the court found that the applicant and the minor had linked a relationship of affection motivated primarily by the long period of time when the two were together, it could not ignore the unfortunate circumstances which led to this solution, nor the attitude of the defendant mother who, having understood the mistake she had made by living an immoral life, tried and found the power and means to radically change her existence by establishing an honorable family, that she wants to complete with her daughter.

The mother demanded for the Court to observe that she has done everything in her power to recover her child, that she has taken all the necessary steps and has appealed to the authorities, in order to be with her child again.

Moreover, since the beginning of the proceedings, the appellant - defendant - plaintiff was left to see her little girl only a few times, always in the presence of her grandmother, other relatives and even her father after his return in Romania after the release from custody. Most of the time, these visits took place after the hearing, following the insistence of the appellant's lawyer.

Even if after the birth the child was left for a while in the care of her grandmother, this thing happened with the appellant's agreement. But it was not the same situation in May 2011, when the girl was in Italy, where, according to the agreement between the mother and her father, the girl lived alternately with each one of them. The paternal grandmother took the children out of Italy without her mother's consent, as even the father, the defendant CD admitted by answering the questioning in front of the court. As soon as the mother found out about the "kidnapping" of the girl, she came to Romania to recover her and has been fighting for her daughter since then.

In fact, it is clear from the photos presented the file that the little girl is happy in the presence of her mother, who loves her and who has made many efforts and struggles to recover her.

The appellant-defendant MMI asked the second court of appeal to observe that, if the exercise of parental authority will be in the future made by both parents, but the residence of the child will be together with the grandmother, the father having the same residence, in fact the only one parent who will take the decisions concerning the minor will be the father, the mother not being able to express her opinion at all. Under these circumstances, it is not for the child's benefit that the child's residence should be the grandmother's, because in fact the parental authority will be exercised exclusively by the father and the grandmother, the mother being excluded.

Perhaps it would seem difficult at first for the little girl to readjust to the Italian environment, although a few years ago she has lived there. However, at least from a psychological point of view, it is anyway easier to adapt to a new environment at a younger age, which leads to the idea that the minor is preferable to change the environment at this time of her life and not later.

The defendant CD filed a complaint, claiming that the appeal should be rejected as ungrounded. In his opinion, the first court of appeal pronounced a legal and founded decision, making a fair and balanced assessment of the evidence in the file and of the laws governing this matter.

The superior interest of the minor is to live and develop herself in a family environment with which she is accustomed from birth, where she has all the material and moral conditions for a proper development, especially when this is the wish of the child, expressed at the hearings that took part in the council chamber, in the presence of the psychologist, both in front of the court of first instance and the court of first appeal.

In her opinion, it is hard to believe that a 7 years old child can live comfortably and by respecting her superior interest in another country except Romania where she would have the disability of an unknown language and a totally new family, consisting of from a mother with old states in prostitution, a stepfather and a foreign brother.

The father also sustained that the superior interest of the minor is satisfied by maintaining the same familiar and family environment, being held in the care of her parental grandmother. It is also better, in his opinion, that the parental authority to be exercised jointly by both minor's parents, with the obligation for each one of them to pay a monthly material contribution for the child.

For all the reasons presented before, the defendant requested that the appeal brought into justice by the appellant MMI to be rejected as

unfounded and that the contested decision to be upheld as lawful and grounded.

The Bucharest Court of Appeal, being the second court of appeal, found that it was legally competent to resolve the second appeal, under the force of the provisions of article 299 of Civil Procedure Code.

On a first preliminary point of view, the Bucharest Court of Appeal observed that in the present litigation, the persons in dispute about the parental authority and the dwelling of the minor are the biological mother, the appellant-defendant MMI and the paternal grandmother, the complainant defendant CI, the father CD having only the procedural quality of the defendant, not formulating personal reasons against the substantive civil sentence and not appealing against the decision of the first court of appeal.

In this context, the question of law brought into justice and deducted from the above judgment seeks to establish the principle of resolving the disputes regarding parental matters between parents and third parties. This is because, although a grandfather is a closer relationship with his grandson than a person who is usually just a simple third party, however, this is the position of the grandfather, as a third party, when his interest is contradictory to the interest of the parents.

By addressing this issue of law, the Court noted that the observation of the principle investigated must be carried out by reference to the broad-based law.

Thus, at internal level, there were observed the provisions of article 399 of Civil Code, referring to the exercise of parental authority by other persons: "(1) Exceptionally, the court may decide the placement of the child to a relative or to another family or person, with their consent, or in a protection institution. They exercise the rights and duties of parents with respect to the child. (2) The court shall determine whether the rights in respect of the child's property are exercised by the parents jointly or by one of them."

Subsequently, article 400 paragraph 3 of Civil Code stipulates about the child's habitual residence after divorce: "(1) In the absence of agreement between the parents or if it is contrary to the best interests of the child, the court establishes the home of the minor child to the parent with whom he resides. (2) If, until the divorce, the child has lived with both parents, the court shall settle his residence with one of them, taking into account his or her superior interest. (3) Exceptionally, and only if it is in the best interest of the child, the court may establish his/her home to grandparents or other

relatives or persons, with their consent, or to a protection institution. They exercise custody of the child and carry out all the usual acts of health, education and teaching."

According to article 495 of Civil Code, "(1) Parents may at any time request the tutelage court to return the child from any person who holds it without right. (2) The court may reject the application only if the return is manifestly contrary to the best interests of the child. "

The provisions of article 496 are as follows: "(1) The minor child lives with his parents. (2) If the parents do not live together, they will jointly determine the child's home. (3) In the event of a misunderstanding between parents, the court decides, taking into account the conclusions of the psychosocial inquiry report and listening to the parents and the child if he or she has reached the age of 10 years. The provisions of article 264 remain applicable. (4) The child's dwelling, established in accordance with this article, cannot be changed without the consent of the parents except in cases expressly provided for by law. (5) The parent to whom the child does not live permanently has the right to have personal connections with the minor at his home. The tutelage court may limit the exercise of this right if it is in the best interests of the child."

The Court observed that the principle to be followed in disputes relating to the custody and/or housing of the child, between parents and other persons is that a parent is entitled to parental authority over his child and the establishment of his /her home to him/her, rather than a third party, unless there are exceptional circumstances which, in view of safeguarding the best interests of the child, justify granting parental authority and/or (subsequent) the establishment of the child's home in favor of someone else than the parent.

This right of being together, belonging to the parent, but also to his/her child, (aspect transposed in the legal field, including its components represented by the attribution of parental authority to the parent and the establishment of the child's dwelling), corresponds equally to the provisions of Article 2 of the European Convention on Human Rights and Fundamental Freedoms: "1. Everyone has the right to respect for his private and family life. 2. The interference of a public authority with the exercise of that right is only admissible in so far as such interference is provided by the law and whether it constitutes a measure which, in a democratic society, is necessary for national security, public security, the country's economic well-being, the defense of order and the prevention of criminal

deeds, the welfare of health or morals or the protection of the rights and freedoms of others."

It is certain that the transfer of parental authority from a parent to a third party does not due to the end of parental rights. Thus, the attribution of parental authority may only concern a temporary arrangement that theoretically could be changed if future circumstances require so. However, the same award may cause a parent-minor relationship to be broken, as in the case of the child's adoption. The day-to-day contact between the child and the person exercising his custody or with whom he usually lives can create a relationship in which the biological parent can even become an intruder. Practically, all the daily interactions between a parent and his child are diminished, if not eliminated, in most of the cases in which the parent "only enters into scene" as a visitor admitted by the court.

For all these reasons, the court concluded that the principle to be followed in case of disputes over parental authority and children's homes between parents and third parties, is that a parent is entitled to custody and, moreover, the housing of his children, except the cases when the parent is inappropriate or in any type of incapacity.

According to the jurisprudence of the European Court of Human Rights on the right to reunion, a fair balance must be struck between the child's interest in staying in the familiar place (situation similar to the one in the present case) and that of the parent being reunited with the child (*Ollson v. Sweden*, judgment of 27 November 1992).

The Court noted that the first court of appeal based its decision on the establishment of the girl's home with paternal grandmother and refusal the return her to the mother on two grounds: the development of a particular attachment of the child to that person and raised her and not living with any of the parents steadily. But this is against the principle of the superior interest of the minor.

Moreover, after the hearing of the minor by the judges in the second appeal, there were took into account factual aspects expressed by the child herself (even if there were taken into account facts as the lack of maturity of the minor, the lack of a discernment formed of age), which illustrated the existence of personal bonds between the minor and her mother over time, even if not with the intensity of a typical mother-daughter relationship. Thus, the girl showed, in the presence of a psychologist who attested that his accounts were sincere, that: "my mom sometimes calls and wants to take to me (...) my mother visited me a few times (...) when my

mother brings me toys and sweets (...) my mother invited me for a walk.". All these accounts illustrated the existence of a family bond between the two, even if not by the intensity of a mother-daughter relationship, the more attenuated character being explained at least from the point of view of the mother's residence in another country and from the lack of a constant presence in her daughter's life, against her will.

The right of the child to express its views on any matter concerning him is the most important innovation brought about by the O.N.U. on the Rights of the Child. However, this does not mean an absolute the protection of the child's right to decide as an adult, but only to be involved in any proceedings that concern him. [8]

3 Problem Solution

From this perspective, the first court of appeal's decision to establish the child's home with her grandmother, while conferring parental authority at the same time, suffers logically and legally from the lack of correlation. In other words, given that the court has (implicitly) determined that parents are fit to exercise their parental authority over their child and that there are no compelling grounds for assigning parental responsibility to the grandmother, it follows that the return of the child and the subsequent establishment of the minor's home to them cannot be judged - in the light of the factual situation which the appellate court has itself set - in any case as "obvious" contrary to the superior interest of the child, within the meaning of the provisions of article 495 paragraph 2 of Civil Code.

According to article 2 of the Law no. 272/2004 on the Protection and Promotion of the Rights of the Child, any legal act issued or concluded in the field of observance and promotion of the rights of the child shall be subordinated to the principle of the best interests of the child. The principle of the best interests of the child shall prevail in all decisions and matters that concern the child. The criteria for assessing the superior interest of the minor consist, according to article 2 paragraph 6 of Law no.272/2004, in the physical, psychological, educational needs and health development, security, stability and belonging to a family; the child's opinion, depending on age and degree of maturity; the history of the child, any situation of abuse, exploitation or any other form of violence against the child, as well as the potential

risk situations that may occur in the future; the capacity of the parents to take care of their children and to fulfill their specific needs; maintaining personal relationships with people to whom the child has developed attachment relationships, all forming a unitary ensemble to be taken into account.

For all these arguments, under the force of the provisions of article 312 of Civil Procedure Code, the Bucharest Court of Appeal admitted the second appeal and partially changed the previous decision in the sense that the grandmother's request was rejected as not grounded. Concluding, the parental authority was established in the favor of both parents, while the child's home was established with her mother.

4 Conclusion

The right of the child and the correlative one of the parent to be together is under international, conventional and intern legal protection. In this way, the importance of family relationships for the individuals involved, but also for the society, derives from the intimacy of the daily family-specific union, from the role that it plays in promoting a certain way of life through education of children, as well as the fact of the blood relationship. No one could, however, seriously argue that a deeply affectionate and interdependent relationship between an adult and a child in his care may also exist in the absence of a blood relationship.

In the contest with other people, parents have a pre-eminent right to granted custody of their children, but only in the absence of any reasons of incapacity or imperative reasons due to the dissolution of the parent-child relationship or the abandonment of parental responsibilities. So, as a general rule, but not invariably, the superior interest of a child will be preserved by living in the same home of his parents (or of one of them). However, if exceptional circumstances leading to another conclusion, the interests of the child and not a presumed right of a parent to have custody, must govern.

Both parents will exercise parental authority only in the best interests of the child with due respect for the person and will associate the child with all the decisions that concern him/her, taking into account age and degree of maturity.

References:

- [1] Article 2 paragraph 4 of Law no. 272/2004 on the protection and promotion of the rights of the child stipulates that *“The principle of the best interests of the child will prevail in all approaches and decisions concerning children, undertaken by public authorities and authorized private bodies, as well as in the cases solved by the judiciary courts.”*
- [2] Article 2 paragraph 4 of Law no. 272/2004 on the protection and promotion of the rights of the child stipulates that *“In determining the best interest of the child, at least the following are considered: the needs of physical, psychological, educational and health development, security and stability and belonging to a family;”*
- [3] Article 42 of the previous Family Code, in force until October 2011, stipulated: *“The court will decide, with the divorce pronouncement, to which the parents will be entrusted to the minor children. To this end, the court will listen to the parents and the guardianship authority and, taking into account the interests of the children, whom they will also listen to if they have reached the age of ten, will decide for each of the children if they are entrusted to their father or mother.”*
- [4] Article 398 paragraph 1 of Civil Code stipulates: *“f there are good reasons, given by the superior interest of the child, the court decides that the parental authority is exercised only by one of the parents.”*
- [5] Article 399 paragraph 1 of Civil Code stipulates: *“Exceptionally, the guardianship court may decide to place the child on a relative or other family or person, with their consent, or in a protection institution. They exercise the rights and duties of parents with respect to the child.”*
- [6] Civil decision no. 7110/14.10.2013 pronounced by the Giurgiu City Court of Justice – Civil Section in the file no. 7430/236/2011
- [7] Civil decision no. 311/14.11.2014 pronounced by the Giurgiu County Court of Justice – Civil Section in the file no. 7430/236/2011
- [8] Civil decision no. 1110/ 27.10.2015 pronounced by Bucharest Court of Appeal – Third Civil Section in the file no. 7430/236/2011