

PARENTS' RIGHT AND DUTY TO CARE FOR THE CHILD

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Abstract

In order to fulfill the obligation to raise the child, parents have a series of rights and duties, among which, the right and duty to care for the child. Both internationally and Europeanly or in national law, the fundamental right of the child to maintain regular personal relationships and direct contacts with both parents, as well as that of the parent of having personal connections (relations) with the minor, his/her child is provided. At the same time, the child has the right to grow up with his/her parents. In this respect, the law provides the rule according to which the minor child lives with his/her parents but does not distinguish between how the parents are married with each other or not.

The forms of accomplishment of the right to have personal relations with the minor child are complex, these being detailed as an example in the laws in this field, among them the right to visit being specified. In the event that the parents do not live together, they will, by mutual agreement, establish the child's home and in case of disagreement between them, the child's home will be established by the decision of the guardianship court, taking into account the best interests of the child. As this study will show, it is in the child's best interest to maintain and consolidate personal relations, not only with the parent at which child does not live permanently, but also with other family members, in a broader sense, with all persons who descend from one another or from one common author, among whom there is a blood community, such as grandparents.

Keywords: *child's right, parents' right, parents' duty, right to have personal relations with the child, best interests of the child, right to visit, family home.*

1. Introduction

Video provides a powerful way to help you Internally, the child's right are observed and guaranteed pursuant to the provisions of the Civil Law and of the Law no. 272/2004 **on safeguarding and promoting the child's rights, republished¹, a normative act regarded as "an actual code of the child's rights"² because it transposed in the Romanian law many of the provisions in the UN Convention regarding the child's rights³.**

The Civil Law regulates the *parental authority* under Title IV, Book II (On Family), Chapter I (General Provisions), art. 487-502; in Chapter III (The Exercise of Parental Authority), in art. 503-507 and in Chapter IV (Termination of Parental Rights), art. 508-512.

At an international and European level⁴, the most significant acts regarding the promotion and safeguarding of the child's rights that Romania is a party to, are the UN Convention of 1989 on Rights of

the Child, regarded as "*the act of birth of the protection of the rights of the child*"⁵ and the European Convention on the fundamental rights and freedoms⁶.

One of the most important components of the protection of the child is the *parental authority*⁷, because this protection must be guaranteed, first and foremost, by the *parents*. In this respect, art.487 of the Civil Law stipulates that "parents hold the right and the duty to raise the child, fostering their health and physical, mental and intellectual development, education, learning and professional training, according to the child's own options, treats and needs; they are bound to offer the child the guidance and advice required for a proper realization of the rights granted to the same under the law".

Moreover, art. 36(1) of the Law no. 272/2004 on the safeguarding and promotion of the rights of the child, as republished, stipulates that "both parents are responsible for the raising of their child", while paragraph (2) of the same article states that "the exercise of the rights and the fulfilment of the parental duties should take into account the higher interest of the

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¹ Republished in the Official Gazette no.607 of September 30th 2013, with the renumbering of the texts.

² Marieta Avram, *Drept civil. Familia*, 2nd issue, revised and supplemented, Hamangiu Printing House, Bucharest, 2016, p. 476.

³ Adopted by the General Assembly of the United Nations on November 20th 1989 and ratified by Romania by Law no.18/1990, republished in the Official Gazette no.109 of September 28th 1989.

⁴ At a European level, the Recommendation no. R (84) 4 of the Member State Committee of Ministers on parental responsibilities adopted by the Committee of Ministers of the Council of Europe on February 28th 1984, upon the 367th reunion of the minister delegates was the first European instrument specifically addressing the parental rights and, especially, the responsibilities. For an unofficial translation of the document, see <https://crisidanilet.wordpress.com/> (accessed on 19.12.2020).

⁵ Marieta Avram, *op. cit.* (2016), pp. 475-476.

⁶ The Convention was concluded on November 4th 1950 in Rome and ratified by Romania by Law no. 30/1994 on ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms and of the Additional Protocols thereto, published with the Official Gazette no. 135 of May 31st 1994.

⁷ It should be highlighted that the notion of *parental authority* is distinct from that of *parental rights and duties*, which, even though encompassed by this notion, are independent and have a distinct structure [Adina R. Motica, *Aspecte generale privind autoritatea părintească*, in Emese Florian, Marieta Avram (coord.), *Dreptul familiei. Fișe de drept civil*, Universul Juridic Printing House, Bucharest, 2018, p. 221].

child and guarantee the material and spiritual welfare of the child, especially through the care provided, through the maintenance of the *personal relations* with the child, the assurance of the raising and education of the child, as well as through the legal representation and management of their patrimony” (emphasis added)⁸.

The interpretation of these legal provisions, as well as the review of the various opinions expressed in the specialized literature published after⁹ or before¹⁰ the adoption of the Civil Law currently in force it follows that, in order to fulfill their obligation to raise the child, the parents have several rights and obligations (duties), including the right and duty of the parents to care for the child¹¹, which we will analyze in theoretical and practical terms herein below.

2. The Child's Residence

According to the provisions in art. 35(1) of the Law no. 272/2004, republished, the child is entitled *to grow up with his parents*. In this respect, as stipulated in art. 496(1) of the Civil Law, the minor child *resides with the parents*.

Hence, as stipulated in the specialized literature¹², this *is the rule* that applies and, as it may be noticed, the law does not distinguish as to whether the parents are married or not.

In case the parents do not reside together, they will jointly agree on the **child's residence** [art. 496(2) of the Civil Law]. In case the parents are unable to agree on the matter, paragraph (3) of the same article stipulates that the child's residence is established by the custody court's order, after hearing the parents and the child, if the latter is 10 years of age, and subject to the conclusions of the psychological and social security investigation report. Moreover, according to art.2(6) of the Law no.272/2004, republished, in determining the higher interest of the child, the court shall take into account “the child's physical and psychological development, education and health, security and

stability, and family belonging needs; the child's opinion, depending on their age and degree of maturity; the child's history, especially considering the situations of abuse, neglect, exploitation or any other forms of bodily violence, as well as the potential risk situations that may occur in the future; the ability of the parents or of the persons undertaking the raising of and caring for the child to respond to the latter's concrete needs; the maintenance of the personal relations with the persons the child is attached to”.

Similarly, in a case¹³, the court stated that “The decisions made with regards to the minor child must consider the latter's higher interest, stated as a legal principle in Law no. 272/2004. The purpose of the notion is “the full and harmonious development of the personality” of the child, the provision of a “family environment, in a happy, loving and harmonious atmosphere”, the preparation for an “independent life in society” and the education in the spirit of the ideals of “peace, dignity, freedom, tolerance, equality and solidarity”, principles deriving from the recitals to the UN Convention on the child's rights, ratified pursuant to the Law no. 18/1990”.

At the same time, as stipulated in art. 21(1) of the Law no.272/2004, as republished, in addition to the elements stipulated under art. 2(6), the court will also consider aspects such as:

- a) each parent's willingness to involve the other parent in the decisions affecting the child and to observe the other parent's parental rights;
- b) each parent's willingness to allow the other one to maintain personal relations;
- c) the residential status of each of the parents over the past 3 years;
- d) the history regarding the parents' acts of violence against the child or other persons;
- e) the distance between each dwelling and the educational institution the child attends.

⁸ For further information on the higher interest of the child, see Cristiana Mihaela Crăciunescu, *Interesul superior al copilului în exercitarea autorității părintești exclusive de către unul dintre părinți*, in Marieta Avram (coord.), *Autoritatea părintească. Între măreție și decădere*, Solomon Printing House, Bucharest (2018), pp. 10-23.

⁹ For further details, please see Emese Florian, *Dreptul familiei. Căsătoria. Regimuri matrimoniale. Filiația*, 6th issue, C.H. Beck Printing House, Bucharest, 2018, pp. 538-539; Marieta Avram, op. cit. (2016), pp. 488-497; Dan Lupașcu, Cristiana Mihaela Crăciunescu, *Dreptul familiei*, 4th issue, amended and updated, Universul Juridic Printing House, Bucharest, 2021, pp. 579-586; Teodor Bodoașcă, *Dreptul familiei* (3rd issue, revised and supplemented, Universul Juridic Printing House, Bucharest, 2015, pp. 565-568; Cristina Nicolescu, *Dreptul familiei*, Solomon Printing House, Bucharest, 2020, pp. 520-522; Adina R. Motica, *Dreptul civil al familiei*, 2nd issue, revised and supplemented, Universul Juridic Printing House, Bucharest, 2018, pp. 333-334; Cristina Codruța Hageanu, *Dreptul familiei și actele de stare civilă*, 2nd issue, revised and supplemented, Hamangiu Printing House, Bucharest, 2017, pp. 206-212; Lucia Irinescu, *Curs de dreptul familiei*, Hamangiu Printing House (Bucharest, 2015, pp. 205-207; Bogdan Dumitru Moloman, Lazăr Ciprian Ureche, *Noul Cod civil. Cartea a II-a - Despre familie. Art. 258-534. Comentarii, explicații și jurisprudență*, Universul Juridic Printing House, Bucharest, 2016), pp. 714-721; Bujorel Florea, Vlad Teodor Florea, *Dreptul familiei și actele de stare civilă*, Hamangiu Printing House, Bucharest, 2019, pp. 190-198; Diana Flavia Barbur, *Autoritatea părintească*, Hamangiu Printing House, Bucharest, 2016, pp. 64-67.

¹⁰ For further details, see Ion P. Filipescu, Andrei I. Filipescu, *Tratat de dreptul familiei*, 8th issue, revised and supplemented, Universul Juridic Printing House, Bucharest, 2006, pp. 635-647; Alexandru Bacaci, Viorica Claudia Dumitrache, Cristina Codruța Hageanu, *Dreptul familiei*, 4th issue, All Beck Printing House, Bucharest, 2005, pp. 315-321; Tudor Radu Popescu, *Dreptul familiei. Tratat, vol. II, Didactică și Pedagogică* Printing House, Bucharest, 1965, pp. 281-290.

¹¹ From amongst the wordings of this right available in the specialized literature, we have opted for this one, regarded as the most suitable for our study, mentioned by Professor Emese Florian, op. cit., (2018), pp. 538-539.

¹² Emese Florian, op. cit., (2018), p. 539.

¹³ Cluj District Court, Civil Division, civil decision no. 113/A of 31 January 2020, available [online] at www.rolii.ro (accessed on 10.04.2020).

Last but not least, as shown in a case¹⁴, “from amongst the relevant criteria, the child’s affective relations with each of the parents must be considered, because the parent hosting the child does not simply provide a living area, but must also offer the affective and cognitive environment the child needs. The affective relation between the parent hosting the child and the latter is very important, because the parent is to provide the cognitive, moral and education guidance, which claims for availability, safeguarding, responsibility, attention, valuing, mortal support, affective and intellectual presence”. In a different case, it was stated¹⁵ that “the minor child requires a high level of stability, an organized environment for the deployment of his/her daily activity, and the close relation to the mother must be protected, as she is the person able to promptly and fully respond to the child’s age-inherent needs. Moreover, the mother must observe the father’s connection with the child, which is of essence for the normal development. By establishing the minor’s residence at the mother the court appreciates that the child will benefit from a stable family environment, from proper care and education. Even if there are no clues leading to the conclusion that the father is not a responsible person in this regard, considering the growth and development stage of the minor, his higher interest is to create a stable and organized environment, which, hence, triggers the risk of a possible failure to understand and acknowledge the mother’s authority”.

As stipulated in art. 496(4) of the Civil Law, whether established following the mutual consent of the parents, or through a court order, *the child’s residence*, set according to the provisions herein, cannot be changed without the consent of the parents unless the law specifically stipulates otherwise.

3. The right of the child and of the parent to maintain personal relations

Internationally, *the fundamental right of the child* to regularly maintain *personal relations* and direct

contacts with both parents *and of the parent* to maintain *personal relations (connections)* with the minor, who is his/her child, was consecrated by art. 21 of the Hague Convention on Civil Aspects of International Child Abduction, of 25 October 1980¹⁶, according to which “the central authorities are bound by the cooperation obligations stipulated under art. 7, in order to ensure the free enforcement of the visiting right and the fulfilment of all requirements applicable to the exercising of this right and in order to remove, as much as possible, the possible obstacles arising in this respect”¹⁷, and it was also taken over in the Convention on Contact concerning Children¹⁸, which, in art. 4, stipulates that the parents and their child “are entitled to constantly obtain and maintain personal relations. These personal relations can only be restricted or excluded if required for the higher interest of the child”.

At the same time, at a European level, art. 24(3) of the Charter of Fundamental Rights of the European Union¹⁹ stipulates the *right of any child* to regularly maintain *personal relations* and direct contacts with both parents, unless they are contrary to the child’s interest.

In the domestic law, according to art. 496(5) of the Civil Law, the parent the child *does not regularly live with* is entitled to maintain *personal relations (connections)* with the minor, at the respective parent’s residence. Nonetheless, *the custody court may limit* the enforcement of this right, of such limitation is in the child’s higher interest.

In a case²⁰ having as subject the limitation of the parent’s right to maintain personal relations with the child, the court ordered that “the right to personal relations should by no means be regarded as a right exclusively stipulated under the law in favor of the parent who does not have the same residence as the child. Quite on the contrary, the right to personal relations is a right stipulated in the child’s favor, who must be allowed to maintain the personal relations with each of the parents. The refusal of the child as such does not constitute a serious reason for the limitation of the parent’s right to personal relations, if the minor does

¹⁴ Huedin Law Court, civil division, civil decision no.19 of 14 January 2016, unpublished, apud Diana Flavia Barbur, *Divorțul și partajul bunurilor comune. Practică judiciară*, Hamangiu Printing House, Bucharest, 2017, pp. 154-156, case 43.

¹⁵ Cluj District Court, civil division, civil decision no. 354 of 12 March 2020, available at www.rolii.ro (accessed on 10.04.2020).

¹⁶ The Convention was ratified by Romania by Law no. 100/1992, published with the Official Gazette no. 243 of 30 September 1992.

¹⁷ According to art.7 of the Hague Convention on Civil Aspects of International Child Abduction, starting 25 October 1980, “central authorities are to cooperate and promote the collaboration among the competent authorities in their respective states, so as to guarantee the immediate return of the children and enforce the other objectives hereof. Specifically, they are to implement all suitable measures, either directly or through any and all intermediaries: a) to locate children that are illicitly removed or detained; b) to prevent new perils for the child or damages for the interested parties, by implementing or making sure that suitable provisional measures are taken; c) to ensure the willful return of the child or foster amicable settlement; d) for the exchange of information, if found to be useful, regarding the social status of the child; e) in order to provide general information regarding their state’s law as to the enforcement of the Convention; f) in order to lodge or facilitate the lodging of legal or administrative proceedings meant to guarantee the return of the child and, if applicable, allow for the organization or actual exercising of the visiting right; g) on order to grant or facilitate, if applicable, the obtaining of legal and judiciary assistance, including the participation of an attorney; h) in order to ensure, in administrative terms, if necessary and advisable, the peril-free return of the child; i) in order to keep each other up to date on the enforcement of the convention and, if possible, to remove the possible perils triggered by such enforcement”.

¹⁸ The Convention was signed in Strassbourg on 15 May 2003 and it was ratified by Romania by Law no. 87/2007, published with the Official Gazette no. 257 of 7 April 2007.

¹⁹ Published in JOUE no. C -326/391 of 26 October 2012.

²⁰ Satu Mare County, civil division, civil decision no. 1557/23.04.2015, final since no appeal entered, at portal.just.ro, available [online] in summary at <https://www.legal-land.ro/restrangerea-dreptului-parintelui-la-legaturi-personale-cu-copilul/9> (accessed on 04.12.2020).

not yet hold the required maturity to discern between the advantages and the disadvantages of the maintenance of the personal relations between himself and the parent he/she lives with. The failure to observe the obligation to contribute to the expenses for the raising and education of the minor cannot justify the limitation of the parent's right to maintain personal relations with the minor, other legal remedies being stipulated for such cases under the law. Without minimizing the importance of the children's extracurricular activities, they cannot, as such, justify the limitation of the parent's visiting right, respectively the exertion of this right under improper conditions, because, in the light of the provisions in art. 262(2) of the Civil Law, the exertion of this right can only be limited for sound reasons, taking into account the higher interest of the child".

In another case²¹, the court appreciated that "the defendant is not entitled to refuse the relation between the minor and the claimant or to encourage the child's refusal to maintain relations with the claimant, because such relations are entirely natural and, as correctly appreciated by the district court, their absence leads to an emotional unbalance in the child. The defendant's allegations regarding the claimant's ethnicity are both groundless and discriminating, considering that she was married to the claimant and they should together contribute to the cultivation of the minor's personality. The Court reiterated that the divorce of the parties should not affect the relation between the minor and the claimant, in any way whatsoever, and that the claimant's parent capacity is not terminated following the divorce, the latter holding not only the legal obligation to financially contribute to the expenses required for the raising of the child, but also the right and the obligation to be actively involved in the raising of his child and that the cooperation between parents is of essence for the development of a balanced personality of the minor, so that the latter can maintain the natural relations with the father as stipulated under the law".

There are multiple ways in which the *right to maintain personal relations* with the minor child may be realized. They are non-exhaustively detailed in the

provisions of art. 18(1) of the Law no. 272/2004, republished, where it is mentioned that letter b) also stipulates the *visiting right*²². As also shown in the specialized literature²³, in the observance of the higher interest of the child, *the court of law holds sovereignty* in establishing the most suitable alternative for the minor in the realization of the visiting schedule set in the favor of the parent who does not reside with the minor.

In this respect, for instance, in a case²⁴ having as subject the dissolution of marriage, the court established the following *visiting schedule* for the father regarding the minor child: 1). Up to the age of 3: every Sunday starting 10am, the minor being picked up from the residence of the mother, and up to 6pm, the father being bound to bring him back to the mother's residence by the indicated hour.

2). After the age of 3: in the odd weeks of the month: starting Friday 6pm and until Sunday 6pm, the father picking up the minor from the mother's residence, and then bringing him back before the indicated hour.

In the odd years: 1) Holy Week (last one) of the Lent (according to the Christian-Orthodox calendar) and the New Year's Eve week, the father picking up the child at 10am on Monday morning and being bound to bring him back to the mother's residence by 6pm on the Sunday of the respective week; 2) during summers, the month of July, the minor being picked up by the father on the first day of the month at 10am and then bringing him back at 6pm on the last day of July.

In the even years: 1) the week prior to the first Easter Day (according to the Christian-Orthodox calendar) and the Christmas week, the father picking up the child at 10am on Monday morning and being bound to bring him back to the mother's residence by 6pm on the Sunday of the respective week; 2) during summers, the month of August, the minor being picked up by the father on the first day of the month at 10am and then bringing him back at 6pm on the last day of August."

In another case²⁵ where the minors were entrusted to the father for raising and education pursuant to the divorce decision, and the latter did not agree to the mother's travel with the children to her residence

²¹ Timișoara Court of Appeal, civil division, civil decision no.892/F of 25 September 2007, available [online] at www.portal.just.ro, apud Elena Roșu, Daniel Andrei T. Rădulescu, *Dreptul familiei. Practică judiciară*, 2nd issue, Hamangiu Printing House, Bucharest, 2011, pp. 160-162.

²² According to art.18(1) of the Law no.272/2004, republished, for the purposes of this law, the personal relations may be achieved through: "a) meetings of the child with the parent or with another person holding, according to this law, the right to maintain personal relations with the child; b) the visiting of the child at the latter's domicile; c) the hosting of the child, for a determined period of time, by the parent or by another person the child does not customarily reside with, with or without the supervision of the manner in which the personal relations are maintained, depending on the higher interest of the child; d) correspondence or any other form of communication with the child; e) the transmission of information to the child regarding the parent or other persons who, according to this law, hold the right to maintain personal relations with the child; f) the sharing by the person residing with the child of certain information regarding the child, including recent pictures, medical or school assessments, to the parent or to other persons holding the right to maintain personal relations with the child; g) meetings of the child with the parent or with another person with whom the child developed attachment relations in a neutral location for the child, with or without the supervision of the manner in which the personal relations are maintained, according to the higher interest of the child". (emphasis added).

²³ Gabriela Cristina Frențiu, *Relațiile personale dintre copil și părintele la care acesta nu locuiește*, in Marieta Avram (coord.), *Autoritatea părintească. Între măreție și decădere*, Solomon Printing House, Bucharest, 2018, p. 79 and footnote 30, with the decision mentioned there.

²⁴ Neamț District Court, decision no. 259/AC of 28 May 2015, available [online] at <https://www.jurisprudenta.com/jurisprudenta/speta-vr3p0io/> (accessed on 04.12.2020).

²⁵ Alba Iulia Court of Appeal, minors and family division, civil decision no.24 of 23 February 2009, at www.portal.just.ro, apud Elena Roșu, Daniel Andrei T. Rădulescu, *op. cit.*, pp. 156-159.

abroad, according to the visiting schedule set by the tribunal, “the court appreciated that as long as no evidence was submitted in the case as to the fact that the minors’ travel to the mother’s residence would be detrimental to their interests, she is entitled to maintain personal relations with her children. (...). Hence, the court ordered the defendant to allow the claimant to take the minors to her residence in Spain, between July 1st and 31st during the holidays, as well as to her domicile in Romania during the first winter holiday week. In deciding as such, the court held, in essence, in the light of the evidence submitted in the case, that the claimant does offer the moral and material guarantees required in order for the two minors to spend a month at her residence in Spain during the summer holiday and that the two minors want to visit their mother in Spain, so that the claimant's appeal was judged as grounded”.

However, as stipulated under the Law no. 272/2004 on the safekeeping and promotion of the child’s rights, as republished, it is in *the minor’s interest* to maintain and consolidate his/her *personal relations*, not only with the parent the child does not reside with, but also with the *other members of the family*, and, more broadly, with all the persons descending one from the other or from a common predecessor, with whom they share family relations, such as, for instance *the grandparents*. Similar provisions are included in art.5(1) of the Convention on the personal relations concerning the children of 2003, according to which, “subject to the higher interest of the, personal relations may be established between the child and other parties than the parents, with whom they hold family relations”.

In this regard, in a case²⁶ judged before the court of appeal, the court has shown that “the court on the merits properly concluded that the minor is entitled to maintain personal relations not only with the parent to whom the minor was entrusted, i.e. the mother, but also with the close relatives, by virtue of the family relations, it being in the minor’s interest to maintain and consolidate her family relations and considering that the maternal grandmother is a direct relative (...). This is required the more so since the absence of these relations can actually cause emotional unbalances in the minor and in order to provide her with a balanced and normal environment, by encouraging the relations with the biological family”.

The Court of Justice of the European Union also ruled on the right of the child to keep, maintain and consolidate the personal relations with the other family members, appreciating that the notion of “*visiting rights*” not only concerns the parents’ visiting rights

with regards to the child, but also with regards to other persons with whom it is important for the child to *maintain personal relations*, including the *grandparents*. Thus, in a case²⁷ having as subject a “request submitted by a grandmother in Bulgaria who mentioned that she was unable to maintain quality contact with her grandson, residing at the father’s domicile in Greece, and after she had requested, in vain, the support of the Greek authorities, she informed the Bulgarian courts of law requesting them to establish the manner for her to be able to exert her visiting rights in relation to her grandson. She requested to see him periodically, one weekend a month, and to receive him, at her residence, twice a year for two or three weeks during the child’s holidays. The first degree and appeal competent courts in Bulgarian rejected the request for lack of jurisdiction, because a regulation of the European Union (Brussels Regulation II a)²⁸ stipulates that the competency rests with the courts of the child’s customary residency member state (in this case, the Greek Courts).

Notified as last instance, Varhoven kasatsionen sad (The Supreme Court of Cassation, Bulgaria) holds that, in order to determine the competent court, it must be set whether the Regulation Brussels II a applies to the grandparents’ visiting rights.

In the decision passed, the Court of Justice first finds that the notion of “visiting right” according to the provisions in the Regulation Brussels II, a should be autonomously construed. After reminding that this regulation concerns all the decisions in the field of parental responsibility and that the visiting right is regarded as a priority, the Court shows that the EU legislator choose not to restrict the number of persons susceptible of exerting the parental authority or of benefiting from visiting rights. Thus, according to the Court, the notion of “visiting right” concerns the visiting right not only of the parents in relation to the child, but also of other persons it is important for that child to hold personal relations with, including the grandparents.

The Court further mentions that, in order to avoid the adoption by the various courts of contradictory measures and in the higher interest of the child, the same court should also rule on the visiting right, in principle, the one at the customary residence of the child.”

4. Conclusions

To conclude, we emphasize that the *personal relations* between the minor and the parent the child does not customarily live with should always place the

²⁶ Craiova Court of Appeal, 1st Civil division I, civil decision no. 24 of 21 January 2009, at www.portal.just.ro, *apud* Elena Roșu, Daniel Andrei T. Rădulescu, *op. cit.*, pp. 167-168.

²⁷ The Decision of the European Court of Justice of 31 May 2018, case C-335/17, Valcheva/Babarakis, in “Press Release no. 78/18”, available [online] at <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-05/cp180078ro.pdf> (accessed on 03.12.2020).

²⁸ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (JO 2003, L 338, p. 1, Special edition, 19/vol. 6, p. 183).

higher interest of the minor first. This means that the minor must have *balanced relations with both parents*, so that their separation and the possible tensions between them affect him as little as possible. Each parent is under the obligation to place the *higher interest of the child first* when exerting the right, respectively the obligations deriving from the same.

The European Court of Human Rights²⁹ ruled in a similar way, showing, in the case *Monory v. Romania and Hungary* “the possibility of the parent and of the child to mutually enjoy each other’s company is a fundamental element of the family life, and the national measures restricting this possibility represent an interference with the right to family life protected by art.8, the states being bound to guarantee the reunion between the children and their parents”.

Moreover, in the case *Mustafa and Armağan Akin/Turkey*, no. 4694/03, of 6 April 2010³⁰, ECHR

held that “the claimants – father and son – stated that the terms of an entrusting decision passed by the national court infringed their rights granted under article 8 of the Convention. These terms hindered the son’s contact with his sister, who was entrusted to the mother. Moreover, the father was unable to maintain personal relations with both his children together, because the period spent by his son with the mother coincided with the period he spent with the daughter. ECHR regarded the decision of the court to separate the two siblings as an infringement of the claimants’ entitlement to the observance of their family right, because it not only prevented them from seeing each other, but it actually made it impossible for the father to enjoy the company of both of his children at the same time”.

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²⁹ CEDO, *Monory v. Romania and Hungary* in <https://jurisprudentacedo.com/Monory-contra-Romania-si-Ungaria-Rapire-internationala-Pierderea-legaturilor-cu-un-copil.html> (accessed on 04.12.2020).

³⁰ See, European Union Agency for Fundamental Rights and the Council of Europe, *Handbook on the European Law on the Rights of the Child*, Luxembourg, 2015, p.86, available [online] at fra.europa.eu (accessed on 10.12.2019).