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PARENTAL PLAN – QUO VADIS?

Raluca Laura DORNEAN PĂUNESCU¹

Abstract

The present study aims to analyze the content of the parental plan in the divorce action by spouses' consent and the doctrinal and jurisprudential controversies regarding the use of such a concept in the divorce judicial process.

In addition, it also highlighted the concern (or ignorance) of the legislator, public authorities and non-governmental organizations to introduce a parental plan into legislation, a plan of overwhelming importance regarding the joint exercise of parental authority, which means collaboration with good faith for raising and educating children, so that their life after the parents' divorce is a harmonious continuum.

Keywords

Parental plan; divorce action; joint exercise of parental authority.

1. Introductory aspects regarding divorce action by spouses' consent

The dissolution of the marriage through the divorce through the agreement of the spouses can be done at present by different means, respectively by the notarial procedure, by administrative way, as well as by judicial way, these possibilities of realization being expressly regulated

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in the Civil Code² and the Code of Civil Procedure³. (Emese, 2016, pp. 288-297); (Anitei, 2012, pp. 96-139)

Specifically, the divorce through the agreement of the spouses by administrative means or by a notarial procedure, regulated by art. 375-378 of the Civil Code, it is possible to have a rule if *"the spouses are in agreement with the divorce and they do not have minor children, born from the marriage, outside the marriage or adopted, ..."*.

By way of exception, the civil code states that *"divorce by agreement of the spouses can be ascertained by the notary public even if there are minor children born out of wedlock, out of wedlock or adopted, if the spouses agree on all aspects regarding the surname he/she wears after the divorce, the exercise of parental authority by both parents, the establishment of the children's home after the divorce, the way of maintaining personal ties between the separately parent and each of the children, as well as establishing the parents' contribution to the expenses of raising, educating, teaching and professional training children."*

Regarding the divorce through the agreement of the spouses by judicial means⁴, the provisions of art. 374 of the Civil Code stipulate the conditions in which the divorce can be pronounced, provisions that will be corroborated with art. 929-932 of the Code of civil procedure in which the scope of application, the filing of the divorce application, the settlement procedure, as well as the situation of the application accepted by the defendant are pointed out.

Considering that there is no clear and exhaustive regulation regarding the content of the divorce application through the agreement of the spouses, with special reference to the solution of the accessory requests for divorce, namely the exercise of parental authority, the

²² Law no. 287/2009 regarding the Civil Code, republished in the Official Monitor no. 505 of July 15, 2011, regulates in art. 373-381 four cases of divorce: divorce by agreement of the spouses by judicial means, divorce by agreement of the spouses by administrative or notarial procedure, divorce by guilt and divorce due to the health status of a spouse.

³ Law no. 134/2010 regarding the Civil Procedure Code, republished in the Official Monitor no. 247 of April 10, 2015, amended by Law no. 310/2018 for the modification and completion of the New Civil Procedure Code, regulates the divorce through the agreement of the spouses (category of the remedial divorce) in art. 929-932. Under the old regulations, respectively the Family Code, stipulated in art. 38 paragraph 2 that the divorce through the agreement of the spouses was strictly admissible subject to the cumulative fulfillment of two conditions, namely the marriage lasted at least 1 year and no marriage resulted in minor children at the date of the divorce application..

⁴ According to art. 373 lit. a) of the Civil Code, *"the divorce may take place by agreement of the spouses, at the request of both spouses or of one of the spouses accepted by the other spouse."*

contribution of parents to the expenses of raising and educating children, of the child's home, as well as the right of the parent to have personal ties with him, a series of controversies have arisen in the case law regarding the content of the transaction that will make up the disposition of the court decision⁵. (Emese, 2016, pp. 295-297).

2. Regarding the legal institution of the judicial transaction

According to art. 2.267 of the Civil Code, the transaction is the contract by which the parties prevent or settle a dispute, including in the phase of enforced execution, through concessions or mutual waivers of rights or by the transfer of rights from one to the other.

In other words, the judicial transaction is a bilateral legal act elaborated under the auspices of the justice by which the litigating parties agree, through mutual concessions, to either end an pending litigation or prevent the initiation of a trial.

From a substantial point of view, the regulation of the transaction contract can be found in the provisions of art. 2.267-2.278 NCC, norms that have the conditions of form and substance, and from the procedural point of view, the provisions of art. 438 - 441 NCPC establishes the conditions under which the transaction document, the form of the transaction, the appeal path and the scope can be taken, in section 3 entitled "*The decision by which the parties' agreement is approved*" in Chapter IV "*Judgments*".

In such a case, it is required that the provisions of the codes of civil procedure be corroborated with the provisions of the civil codes, in order to observe the preconditions, the conditions of form, the conditions of validity, the indivisibility of the transaction, as well as the nullity clauses from which it may be transaction affected (Patancius, 2013).

3. Regulation of the parental plan

According to art. 506 NCC, with the approval of the guardianship court, the parents can agree regarding the exercise of the

⁵The decision approving the sending of the parties is regulated in art. 438-441 of the Civil Procedure Code and expressly reviews the conditions under which the transaction document can be taken, the form of the transaction, the remedy and the scope.

parental authority or about taking a child protection measure, if the best interest of the child is respected.

Ab initio, we note that the notion of parental plan is not regulated *expressis verbis* in the civil code, but it is mentioned in art. 506 about the understanding of parents regarding the exercise of parental authority, which is why we consider that the institution of the parental plan is tacitly regulated, leaving the exact content of the plan to the parents.

Prior to the adoption of the new Civil Code, the parental plan was tangentially regulated in art. 64 of the Mediation Law no. 192/2006, which states the following:

"(1) Can be resolved through mediation the disagreements between spouses regarding:

- a) the continuation of the marriage;
- b) sharing of common goods;
- c) the exercise of parental rights;
- d) establishing the domicile of the children;
- e) the parents' contribution to the maintenance of the children;
- f) any other misunderstandings that arise in the relations between spouses regarding the rights they may have under the law.

(1.1) The mediation agreements concluded by the parties, in the cases / conflicts that have as their object the exercise of parental rights, the contribution of the parents to the maintenance of the children and the establishment of the domicile of the children, take the form of a file decision.

(2) The understanding of the spouses regarding the dissolution of the marriage and the resolution of the accessory aspects of the divorce shall be submitted by the parties to the competent court to pronounce the divorce. "

Relatively recently, the Romanian Association for Common Custody - a non-governmental association, proposed the implementation of a minimal parental plan, respectively the adoption of this plan in the legislation built in the field of family law, taking into account the opinion of the practitioners.⁶

⁶ "The judges will have a very important role in convincing the parties that the child's interest should be pursued at all times and to propose, if necessary, including the mediator, to establish a parental plan. This is an understanding of the resident parent where the minor will have the home, the expenses and personal relations program of the non-resident parent, how to access information about the minor, but also how the parents will determine how the good child engages, how to choose the kindergarten ,

Specifically, the ARPCC has developed a standard parental plan for amicably establishing the manner of exercising parental authority, parents can be assisted by either lawyers or mediators, starting from a questionnaire that guides parents step by step in order to see correct completion of the document (Twelfth Judicial Circuit Court, 2020).⁷

A first effort of this organization took place in 2012, when the mandatory introduction of a minimal parental plan in the legislation was tried, the proposal receiving favorable opinion from the Superior Council of Magistracy, as well as the other ministries involved, but finally the proposal was rejected by the Ministry of Justice with the argument that, at present, the Civil Code refers to understandings of parents and not to the concrete idea of a parental plan to be included in a judicial transaction.

In fact, the parenting plan proposed by this nongovernmental organization, although at first glance it seems a very large and difficult to complete document, it contains elements relevant to the minor's best interest, as it addresses 15 points structured as follows:

1. Identify parenting plan;
2. The proposed mode of exercising parental authority;
3. General principles regarding information and decisions related to the child:
 - A. The principle of joint decision making by both parents;
 - B. Ways of resolving differences of opinion regarding important decisions;
4. The rights of the child in relation to his parents;⁸

who carries and bears the costs for the child's sports or meditation hours, or how and where the child will spend the holiday.”- Cristi Danileț - judge

⁷ The plan is based on the basic parental plan used by Florida courts, which also uses other types of parental plans, such as the Parental Plan of the remote parents, the Parental Safety Plan, the detailed structural Parental Plan, the Parental Plans approved by The Supreme Court.

⁸ Specifically, the plan states that "every child has the right:

- * to have two parents who should be allowed to love without fear or feeling guilty towards the other parent,
- * to independently develop a quality relationship with each of the two parents and to respect them and the homes they offer,
- * not to be exposed to the conflicts or the conflicting discussions between the two parents respectively, not to have been chosen to choose which of the two parents is right,
- * not to be exposed to negative comments or behavior from one parent regarding the other parent,

5. Education:

- A. Regarding the school / kindergarten;
 - B. Regarding the after-school / before-school program;
 - C. Regarding school meditations;
 - D. Regarding extracurricular activities;
6. Medical care;
7. religion;
8. The calendar used;
9. The distance communication between the child and the parent;
10. Remote communication between the two parents;
11. Good and specialized caregivers (other than the child's relatives) and care by extended family members;
12. Resolving conflicts related to the interpretation of the terms of the parenting plan;
13. Changes to the parenting plan;
14. Details on transfer and return of children;
15. The program that the children will follow during the school period.

Regarding the use of such a parental plan by the national courts, we observe a non-unitary practice in accepting a parental plan with important details of the life of the minor child after the parents' divorce, since on the one hand, there are civil courts that accept the parental plans elaborated by lawyers / mediators and transpose them in the court decision device, but on the other hand, there are civil courts that interpret restrictively the civil and civil procedure codes and accept only minimal transactions in which to find brief details on the exercise of parental authority, the parents' contribution to the expenses of raising and educating the children, the child's home, as well as the right of the parent to have personal connections with him / her (Wikimanuale, 2020).

4. The content of the parenting plan

* to be protected from derogatory or alienating remarks about the other parent, as well as from gestures or attitudes that disregard the other parent's parenting abilities,

* not to be obliged to tell about the activities that they carry out with the other parent, respectively to be forced to spy on the other parent, or the new family of the other parent,

* not to be used as a messenger in communications between the two parents. ”

In Book II *About the family*, Title IV *Parental authority*, the Civil Code regulates the general provisions regarding this institution, the parental rights and duties, the exercise of parental authority, as well as the lapse from the exercise of parental rights.

According to art. 483 NCC, parental authority is the set of rights and duties that concern both the person and the goods of the child and belongs equally to both parents.⁹ The content of parental authority refers to the right of the parents and the duty to raise the child, taking care of his physical, mental and intellectual health and development, of his education, teaching and professional training, according to his own convictions, characteristics and needs of the child; parents are responsible for giving the child the guidance and advice necessary for the proper exercise of the rights the law recognizes.

In the same register, we remind that the parents exercise the parental authority equally and, with the approval of the guardianship court, the parents can be understood regarding the exercise of the parental authority, if the best interest of the parent is respected, the child's listening being compulsory.

Thus, as a matter of priority, the parental plan must decide on the exercise of parental authority, but it is also necessary to have references regarding the parents' contribution to the ***expenses of raising and educating the children***, the child's home, as well as the right of the parent to have personal connections with him. .

In drawing up a parental plan, the specific duties of the parents regarding the way of raising the child will be taken into account in conditions that will ensure its physical, mental, spiritual, moral and social development in a harmonious way, since the parents are obliged:

a) to cooperate with the child and to respect his intimate, private life and dignity; In this regard, a conflict resolution strategy between both the child and the parents must be considered through gentle and calm explanations, as well as a conflict resolution strategy between parents, which, although no longer forming a couple, must be aware that

⁹ According to art. 483 para. 2 NCC parents exercise parental authority only in the best interests of the child, with due respect to the person, and associate the child in all decisions concerning him, taking into account his age and his degree of maturity. Paragraph 3 states that both parents are responsible for raising their minor children.

they want to it remains forever the parents of the children and to understand that they must work together to raise and educate them;¹⁰

b) to present and allow the child to be informed and clarified about all the acts and facts that might affect him and to take into account his opinion; thus, communication with the child is of overwhelming importance, parents can use to explain the child from the beginning of each step, phenomenon, action and approach, thus stimulating the child's vocabulary and imagination (Tsabary, 2015).

c) to take all necessary measures to protect and realize the rights of the child; In this sense, since the physical and mental health of the child is very important, the parents will jointly determine the manner of child care, feeding, clothing, taking into account the child's choice depending on his age and maturity. Thus, parents will be able to detail in detail the body care products used (without / with parabens, bio products), its food (fruits, vegetables, meat intake), possible dietary supplements (vitamin D, fish oil, vitamins and minerals), respectively the manner in which the child will sleep (will be considered co-sleeping or not) (Ockwell-Smith, 2015). If the child is a breastfed baby (Newman, 2-14), the parents will be able to agree if they will resort to self-diversification, respectively self-weaning, respectively that until the age of 2 years the child will not receive a spicy food (avoiding foods containing sugar, salt, pepper). Regarding the transport of children, parents will state that the proper use of the child seat is required when traveling with the car, ie wearing protective equipment suitable for travel with other vehicles / wheelchairs;

d) to cooperate with natural persons and legal persons with attributions in the field of child care, education and training; In this respect, the parents will jointly choose the family doctor / pediatrician, taking into account different scientific arguments approved by the doctor, while also determining whether they will agree with the child's vaccination according to the national vaccination scheme.

¹⁰ For a study containing chapters with practical and inspirational tips on emotion regulation, connection and guidance see Dr. L. Markham, *Peaceful parents, happy children - how to replace the screams with connection*, Multi Media est Publishing House, Bucharest, 2015, translation from English S. Watt. Dr. Laura Markham is a clinical psychologist specializing in child development and growth. See also C. Kutik, *The Power of Example in Forming the Character of Children*, Universe Enciclopedic Gold Publishing House, Bucharest, 2016, a monograph that addresses compassion, self-esteem, respect, sense of beauty, love for nature.

Also, it will be stated that the *disciplinary measures* can be taken by the parents only with respect for the dignity of the child, being forbidden to take measures, as well as the application of physical punishments, which may affect the physical, mental or emotional state of the child. Specifically, in the parenting plan it will be possible to specify that any punishment of a physical nature on the child is strictly forbidden, as well as any verbal aggression that would certainly affect the child's self-esteem. Moreover, parents can stipulate that the emotional blackmail applied to the child, as well as any punishments or rewards, are forbidden.¹¹

In addition, it should be taken into account that the parents guide the child, according to their own beliefs, in *choosing a religion*, according to the law, taking into account his opinion, age and degree of maturity, without being able to force him to adhere to a certain religion. or to a certain religious cult, but once the child reaches the age of 14, he will have the right to freely choose his religious confession.

The parental plan will also state the legal aspects regarding *the name of the child* after the divorce of the spouses, considering that according to art. 492 NCC the parents choose the first name and, where appropriate, the child's last name, according to the law.

With regard to the *social relations of the child*, the parents or legal representatives of the child can, only for good reasons, prevent the correspondence and personal ties of the child up to 14 years, which can be detailed in the parental plan.¹²

¹¹For observing the disadvantages of widely accepted disciplinary practices, respectively the effective alternatives that allow children to develop depth in thinking, see A. Kohn, Unconditional parenting: from rewards and punishments to love and understanding, Multia Media Est Publishing, Bucharest, 2013 , CM translation Loșonți. In the same sense, A. Koo, Punished by rewards: the problem of red bullets, financial reward plans, ten notes, praises and other kinds of bribes, Multia Media Est Publishing, Bucharest, 2014, Ina Elena Irimia translation , represents an in-depth research on rewards and punishments that refers in an interesting way to Skinner's box - inheritance of behaviorism, false efficiency of rewards, periculum and change of behavior through rewards.

¹² Emotional intelligence, positive thinking, self-confidence and "Out of the Box" thinking are exemplified by games and activities in the book prof.dr. F.Colceag, F.Alexandru, Your child is a genius, Tikaboo Romania Publishing House, Bucharest, 2016. In order to maintain healthy relationships and maintain identity after a person becomes a parent see M. Bialik, In my arms and beyond them: a guide to daily life on how to raise loving and self-confident children, Multi Media Est Publishing Publishing House, Bucharest, 2016, IE translation Irimia.

Regarding the *child's home*, if the parents do not live together, they will jointly establish the child's home, and the parent whose child does not live permanently has the right to have personal links with the minor, to his home, but the guardianship court may limit the exercise of this right, if it is in the best interests of the child. Given the importance of the time spent with the child, the civil code regulated the possibility of the parent not living with the child to have personal connections with the child.¹³ In this register, the parental plan will state specifically what are the weekdays that the child will spend with the other parent, the concrete hours at which he will be taken from his home and brought back, if personal ties with the minor will take place at his or her residence or other parent's residence, the possibility of spending holidays with the other parent, the concrete days of religious or other holidays that he will spend with the other parent, as well as the distance communication with the parent with whom he does not live.¹⁴ Moreover,

¹³*The best thing you can spend for your kids is your time. - Louise Hart.*

¹⁴ Art. 18 of Law no. 272/2004 regarding the protection and promotion of the rights of the child reveals that:

(5) If the parent in which the child lives prevents or adversely affects the personal ties of the child with the other parent, by failing to comply with the program established by the court or agreed by the parents, the non-permanent parent may ask the public service to social assistance or, as the case may be, to persons with social assistance tasks in the constituency of which the child's home is located, to monitor personal relations with the child for a period of up to 6 months.

(6) Monitoring allows the representatives of the public social assistance service or, as the case may be, the persons with social assistance attributions to assist in the taking over of the child by the non-permanent parent, upon his return, to interview the parents, the child and of the persons with whom the child lives, as well as of other persons, in order to prepare the monitoring report.

In the same register, the iteration of the provisions of art. 20 of the same normative act, which states that:

(1) In order to ensure the maintenance of the personal relations of the child with his parents or with other persons who have enjoyed the family life, as well as to ensure the return of the child to his home at the end of the visit period, the court may order, at the request of the parent interested party or other entitled person, one or more insurance measures or guarantees.

(2) The measures provided in par. (1) may include:

- a) fine on the day of delay imposed on the person who refuses to implement or respect the program for maintaining the personal relations of the child;
- b) the deposit of a real or personal guarantee by the parent or the person from whom the child is to be taken, in order to maintain personal relationships or, as the case may be, when the visitation program ends;

parents can also establish the rights of the extended family, respectively of the grandparents, to have personal links with the minor and will determine in particular whether he will spend his school holidays / certain days of the week with the grandparents, who will have to follow certain rules or they will be allowed to pamper the child unconditionally.

¹⁵

However, if it affects the exercise of parental authority or rights, the change of the child's home, together with the parent in which he or she lives, can only take place with the prior consent of the other parent.¹⁶

c) submission of the passport or other identity document to an institution designated by the court and, when necessary, a document stating that the person requesting personal relations has notified their submission, during the visit, to the competent consular authority.

¹⁵Article 17 of Law no. 272/2004 regarding the protection and promotion of the rights of the child stipulates the following:

(1) The child has the right to maintain personal relationships and direct contacts with parents, relatives, as well as with other persons to whom the child has developed attachment relationships.

(2) The child has the right to know his relatives and to maintain personal relations with them, as well as with other persons with whom the child has enjoyed the family life, insofar as this does not contradict his best interest. (3) The parents or other legal representative of the child may not prevent his personal relations with his grandparents, brothers and sisters or with other persons with whom the child has enjoyed the family life, except in cases where the court decides in this regard, considering that there are compelling reasons for jeopardizing the physical, mental, intellectual or moral development of the child.

(4) In case of disagreement between the parents regarding the modalities of exercising the right to have personal links with the child, the court will establish a program according to the age of the child, the needs of his / her care and education, the intensity of the emotional connection between the child and the parent to whom he or she does not live, the latter's behavior, as well as other relevant aspects in each case.

(5) The criteria provided in par. (4) will also be considered when establishing the program of personal relationships with the other persons with whom the child has enjoyed the family life.

¹⁶ Relevant in this situation is art. 21 which shows that:

(1) If the parents do not agree on the child's home, the guardianship court will establish his / her home in one of them, according to art. 496 para. (3) of the Civil Code (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 is 10 years old - s.n.). When assessing the child's interest, the court may consider, apart from the elements provided in art. 2 paragraph (6) of the law (which refers to the elements to determine the best interests of the child - s.n.), and aspects such as:

An important provision is that according to which the child who has reached the age of 14 may ask the parents to change the type of education or vocational training or the home necessary to complete their education or vocational training. On the contrary, until the age of 14, parents will jointly decide on the type of education or professional training, deciding within the parental plan the way in which they will decide the choice of nursery / kindergarten / school by scoring the pros and cons, informing the other parent on the school results of the child. Thus, the choice between state or private institutions accredited and authorized by the Ministry of National Education will be considered, the accepted curriculum, the short or long program, the language of instruction or the foreign languages to be learned, the extracurricular activities in which it will participate for the development. distributive attention, as well as cognitive, artistic and musical skills, the food offered at the main tables, the presence / absence of rewards / punishments, the time spent outdoors, the type of sports you will practice. A very important aspect is to indicate in concrete which parent will enroll the child in extracurricular meditations / activities, respectively what is the percentage of parents' contribution regarding the cost of these activities, respectively who purchases the equipment and the child's uniform.

Mutatis mutandis, the plan will also specify the different activities that the child will have outside the school institution, the different clubs or workshops he will attend, the theater / music / film shows he will watch / listen to. Furthermore, the time allocated to the gadgets represented by the phone / tablet / TV and the permitted content will be specified, in order to prevent delayed development and anxiety / personality disorders caused by the excessive use of the technology. (Gheorghe, 2013).¹⁷

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- a) the availability of each parent to involve the other parent in the decisions related to the child and to respect the parental rights of the latter;
 - b) the availability of each parent to allow the other to maintain personal relationships;
 - c) the housing situation of the last 3 years of each parent;
 - d) the history of the parents' violence against the child or other persons;
 - e) the distance between the home of each parent and the institution providing education to the child.

¹⁷ V. Gheorghe, *The effects of the small screen on the child's mind*, ed. 3rd, Prodomos Publishing House, Bucharest, 2013. According to this research, the state of passivity, non-concentration, and neglect, respectively, captures the mind of young people, so that the left hemisphere of the brain does not develop normally, which leads to deficiencies in thinking, speaking, writing, reading, depression, anxiety, personality disorders, memory loss.

Regarding the *maintenance obligation*, the father and the mother are obliged, jointly to support their minor child, providing them with the necessities for life, as well as their education, teaching and professional training, the parents being obliged to support the grown child, if it is in the continuation of the studies, until the completion of them, but without exceeding the age of 26 years. According to art. 529 NCC, when the maintenance is due by the parent, it is set up to one-fourth of its monthly net income for one child, one-third for 2 children and one-half for 3 or more children. However, we consider that the parents can agree on a larger amount that the parent who does not live with the minor will owe, given the best interests of the minor.

In the event that the parental plan will constitute the transaction established by the court in the decision device, the non-observance of the parental plan can have different consequences, considering that the execution of a court decision is regarded as an integral part of a judicial process. However, the parties may agree to change the parenting plan, and in the event of a disagreement, the parents may ask the guardianship court to rule.

In the corollary, the advantages of a parental plan include the multitude of elements and details that can be inserted, the plans can be customized according to the family / economic / social situation, having the purpose to prevent possible dissensions and misunderstandings between parents regarding the growth. and the education of the child.

Conclusions

Childhood is a carousel with emotions, so the parental plan agreed by both parents in the case of a divorce proves emotional maturity and avoids the imposition by the court of a general parental plan, without details, which does not protect the best interests of the child.

The importance of a parenting plan is undeniable, since it can successfully and specifically regulate aspects of the child's life after the parents' divorce, so that it can be a harmonious continuum.

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