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Application of disciplinary measures to minors. Civil sanctions.

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Abstract: *Parental authority represents one of the most complex legal concepts in family law, which encompasses the rights and obligations of parents, in relation to their minor children, being a legal institution regulated in accordance with the principle of the best interests of the child. Within the framework of parental rights and obligations regarding the child, an important component consists of regulating the aspects regarding disciplinary measures that can be applied to minors, namely the prohibition of using physical punishments, which are likely to affect the physical, mental or emotional development of the child. The article analyzes the civil implications determined by the application of discriminatory measures that affect the development of the child, by exposing both theoretical aspects and relevant national jurisprudence, in order to outline the importance of the harmonious development of minors and to understand the complexity of respecting the rights of the child. The main objective is related to the exposure of civil sanctions that may occur in the case of disciplinary measures applicable to minors, with an emphasis on the issuance of a protection order and the termination of parental rights, and the purpose of the research is related to the recognition of the importance of respecting the rights of the child and his harmonious development, as well as to the analysis of the need for strict legal regulation of all legal consequences that occur in the case of the application of disciplinary measures on minors in conditions that violate the legal provisions of art. 489 of the Civil Code.*

Keywords: *disciplinary measures; minors; sanctions; protection order; termination of parental rights;*

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Introduction

One of the essential components of parental authority, considered the core of the protection of children's rights (Avram, 2022, p.399), is the obligation of parents to ensure the upbringing of minors in conditions that ensure their physical, mental, spiritual, moral and social development in a harmonious manner, respecting the best interests of the child; this legal duty, established by the provision of art. 488 of the Civil Code, is not absolute, but must be analyzed in relation to the obligation to respect the dignity of the child.

The principle of respecting the rights of minors is enshrined at the international level by the 1989 United Nations Convention on the Rights of the Child, which focuses on analyzing the importance of the existence of the dignity of the child, as an indispensable element for his or her harmonious growth and development, which is incompatible with the exercise of forms of violence or the application of disproportionate disciplinary measures, the role of national courts being to sanction any form of punishment applicable to minors, which does not comply with the criteria established by the provision of art. 489 Civil Code.

National legislation, in conjunction with recent case law, provides a restrictive interpretation of the possibility of applying disciplinary measures against minors, with any excessive disciplinary measure being severely sanctioned, an aspect that is carried out in accordance with international standards in the field of children's rights, set out in the UN Convention on the Rights of the Child, which obliges state parties to adopt appropriate measures to protect the child against all forms of violence, injury or physical or mental abuse, abandonment or neglect, maltreatment or exploitation, during the period in which he is in the

care of his parents or one of them, of his legal representative or representatives or of any person to whom he has been entrusted.

The prohibition of applying disciplinary measures to children is regulated in national legislation by the provisions of art. 489 of the Civil Code, which states that these measures may be applied only subject to respect for the dignity of minors, and the application of physical punishments that may affect the physical, mental or emotional development of the child is expressly prohibited; the analysis of the concept of disciplinary measures is closely connected with the evolution of the concept of the relationship between parents and children and the possibility of applying corporal punishment to minors, a concept that is currently incompatible with any form of physical or mental violence, otherwise forms of criminal and civil liability may arise, and the provisions of the Civil Code on disciplinary measures applied to minors correlate with the provisions of Law no. 272/2004 on the protection and promotion of the rights of the child, which states in art. 28 the right of the child to respect for his or her personality and individuality and the prohibition of being subjected to physical punishment or other humiliating or degrading treatment.

Thus, current national legislation does not prohibit the application of disciplinary measures by parents towards their minor children, but their application must be carried out in compliance with two conditions, namely to respect the dignity of the child, appreciated in the specialized literature (Ungureanu, 2013, p. 72) as the basis of fundamental human rights and not to involve the application of physical punishments that may affect the physical, mental or emotional development of the child, relevant in this regard being the decision pronounced by the European Court of Human Rights in the case of Scozzari and Giunta v. Italy, in which the European court showed that parental rights must be exercised in a manner that does not prejudice the fundamental rights of the child or contravene his or her best interests; Disciplinary measures must be exercised for the exclusive purpose of educating the child and imposing discipline rules, necessary for the harmonious development of minors, subject to being proportional to the misconduct committed by the child, appropriate to his/her age and level of development, and may consist of verbal reprimands, temporary restriction of privileges or activities, but it is prohibited to violate the fundamental rights of the child.

The application of disciplinary measures on the child in a manner other than that regulated by the provisions of art. 489 of the Civil Code predominantly generates civil sanctions, given that it represents an essential component of the duties of parents towards their minor children, regulated under civil law, so that the main implications in the event of a violation of the provisions of art. 489 of the Civil Code also occur in the same field, within the framework of the paper we will analyze the issuance of a protection order against the aggressor parent and the loss of parental rights.

Issuance of the protection order

One of the possible ways to sanction the application of disciplinary measures against minors in conditions contrary to the law is to apply the provisions of Law No. 217/2003 on the prevention and combating of domestic violence, which prohibits domestic violence between family members, the forms of violence that are regulated being multiple in order to cover the complexity of situations that arise in practice; thus, in addition to physical violence, the law also sanctions verbal, psychological, sexual, economic, social, spiritual and cyber violence, and, as mandatory conditions, it is noted that the violence must occur between family members, in the case of disciplinary measures applied against minors becoming an incident of art. 5, paragraph 1, letter a of the law, respectively forms of violence committed against descendants, the act of violence must be committed intentionally and be of a nature to endanger the life, physical or mental integrity or freedom of the victim.

Regarding the mutual quality that the aggressor and the victim must have, another important aspect is related to the fact that the legal provisions do not require that violence be applied by an ascendant who lives with the minor, so the normative provisions of Law No. 217/2003 also come into play in the situation in which the acts of violence are applied by the parent who does not live with the minor, for the hypothesis in which the parents have divorced or the minor was born from a cohabitation relationship, with filiation established towards both parents, the prohibitions to which the aggressor is subject being adapted accordingly.

It should be noted that, if the conditions provided for by Law No. 217/2003 are found to be met, a protection order against the aggressor may be issued, as a measure taken exclusively to protect the victim (Iacuba, 2019, p. 173), with a maximum duration of up to 12 months, and, as sanctions, the following are essentially ordered: the eviction of the aggressor from the shared home, the reintegrating of the victim into the shared home, the prohibition of contact with the victim, by any means, the obligation of the aggressor to maintain a certain distance from the victim, from the residence, workplace or educational unit of the protected person, the prohibition for the aggressor to travel to certain localities or specific areas that the protected person frequents or visits periodically, as well as the obligation of the aggressor to permanently wear an electronic surveillance device.

In addition, in situations requiring maximum urgency, the legal regulation provides that a provisional protection order may also be established for a maximum duration of 5 days, which is issued by the police authorities in order to protect the victim if an imminent risk is found for the life or integrity of the victim, who is seriously endangered, the measure being ordered to protect the victim between the moment of notification of the acts of violence and the judgment by a court of the request made by the victim regarding the issuance of the protection order (Manea, 2021, p. 77).

By Civil Decision no. 250A/30.03.2020 of the Bucharest Court, 4th Civil Section, the court issued a protection order for a period of 2 months, during which the aggressor defendant was prohibited from approaching within 250 meters of his minor son, his domicile and the educational institution, and was also prohibited from any kind of contact, including by telephone, by correspondence or in any other way, with the minor plaintiff, the factual situation that determined the admission of the request being based on the application of disciplinary measures applied to minors, which violates the provisions of art. 489 of the Civil Code.

In the court's reasoning, it was noted that the father used offensive and humiliating words, trivial language, and threats towards his minor son, while also physically assaulting him, aspects proven both with medical documents and audio recordings, the court noting that any form of physical punishment, as well as any other type of humiliating or degrading disciplinary measure exercised on a minor are expressly prohibited by art. 33 of Law 272/2004, on the protection and promotion of the rights of the child, and physical punishment or other humiliating or degrading treatments cannot be applied.

In addition, the court pointed out that physical violence does not have to be of a certain severity to be unjustified, so it is not important how serious the acts of violence were or whether they produced visible marks on the victim's body, as long as there is evidence confirming the physical aggression; in addition, it was noted that acts of physical aggression against a minor implicitly cause an extremely vulnerable emotional state, which also endangers the minor's mental integrity, exposing him to a state of fear and suffering, which his father was not aware of.

In another case pending before the courts, in which the Civil Sentence no. 3391/23.12.2022 of the Hunedoara Court was pronounced, final by non-appeal, a protection order was issued for the exercise of acts of verbal, physical and psychological violence against a minor, the son of the aggressor, consisting in the fact that the father repeatedly threatened him with acts of verbal violence, and the child was also hit, acknowledged by the aggressor and

justified by the fact that the minor had smoked. His father stated that, as a parent, he considers that he has the right to educate the minor implicitly by using violence, if necessary, an attitude with which he will continue if his son does not listen to him; In addition, the minor stated before the court that his father is aggressive towards him, most of the time being verbally violent, but there were also situations in which he was hit with a palm or a foot, this whole situation affecting him psychologically, the father forbidding him to stay with his brother, forcing him to go to church, and the stress caused by the parent's attitude determined the appearance of some physical signs, and, following the dermatological medical consultation, it was confirmed that the psychological pressure placed on the minor by his father caused the appearance of rashes on the skin.

The court accepted the request for a protection order for a period of one month, during which the minor's father was required to maintain a minimum distance of 50 m from his son, his home, and the child's educational institution, and was prohibited from any contact, including by telephone, correspondence, or in any other way, with the plaintiff; in its reasoning, the court indicated that the father has feelings of affection for his son, but the child's education cannot be achieved by exercising violence, especially since the consequences of his actions can be explained to the minor according to his age, and a dialogue between him and his father is indispensable in which each party can express his reasoned opinion, and the child can understand whether his conduct is appropriate or not.

In conclusion, the court held that the acts of domestic violence committed by the defendant created a state of danger for the physical and psychological integrity of the minor plaintiff, so that urgent measures were required to combat this violence and protect the victim of the violence, the one-month period being sufficient, but necessary for the defendant to correct his behavior and to realize the consequences of persisting in such behavior.

The issue of applying disciplinary measures to minors was also analyzed by the Suceava Court, in the content of Civil Decision no. 379/28.03.2022 of the Civil Section I, which established that the mother of the minors had physically and verbally violent behavior towards her children, which she justified by the need to discipline them, which determines the existence of a state of danger and the lack of a social, emotional and moral balance, indispensable for the normal development of a minor; following the administration of evidence, a protection order was issued against the mother for a period of 21 days, she being obliged to temporarily leave the family home, to keep a distance of 50 meters from her children and to undergo psychological counseling.

We show that the excess in the exercise of the right of parental correction by applying disciplinary measures may result in the aggressor parent being obliged to undergo psychological counseling, through the General Directorate of Social Assistance and Child Protection, which is obliged, after the completion of the counseling period, to draw up an information report, which is communicated to the court; in this regard, Judgment no. 1/04.01.2021 pronounced by the Buftea Court, final by rejecting the appeal by the Ilfov Court, in which the defendant-aggressor was recommended to undergo psychological counseling, psychotherapy, in order to become aware of the harmful effects that domestic violence has on children, the file finding the existence of physical violence by the father towards his minor children, he justifying his actions regarding one of the children by the fact that he wanted to hold him accountable, the blows being applied due to the fact that he did not do his vacation homework.

Also, acts of violence committed against minors may result in the notification of the DGASPC, through emergency intervention services, which can be called even by minors, the institution taking specific measures when it finds that the discipline of the child has exceeded reasonable limits, endangering his or her development or integrity, the at-risk minor being taken into account if the existence of a risk situation is found, in accordance with art. 50 of Law no. 217/2003.

To summarize, by issuing a protection order, the legislator sanctions forms of domestic violence committed between family members, being also applicable in situations of violence exercised by parents against their minor children, when the limits of disciplinary measures are exceeded, as provided for by art. 489 of the Civil Code; although the protection order is a civil law sanction applied to aggressors, we cannot omit the fact that it has a mixed legal regime, including specific elements of criminal law and criminal procedure, which aim to sanction any form of aggression with speed (Stănescu, 2025, p. 160).

Termination of parental rights

The deprivation of parental rights is another way of sanctioning the application by parents of disciplinary measures on their minor children, in violation of the provisions of Article 489 of the Civil Code, carried out in accordance with the provisions of Article 508 of the Civil Code, a procedure that can be ordered when the parent endangers the life, health or development of the minor by applying ill-treatment to him, when he has abusive behavior or in the event that he shows serious negligence in fulfilling parental obligations or harms the best interests of the child.

However, we note that, if the disciplinary measures applied to the minor affect his physical integrity, establishing their intensity is decisive in analyzing whether the parent's act can be sanctioned according to civil law, becoming an incident of the institution of loss of parental rights or can attract criminal law sanctions, in the event that the constitutive elements of the crime of ill-treatment applied to the minor are met, regulated by the provisions of art. 197 of the Criminal Code, which protects social relations with regard to the physical integrity and health of the minor, ensuring his physical, intellectual and moral development (Cioclei, 2022, p. 89).

As a procedure, the law provides that the termination of parental rights can only be ordered by the court, an aspect enshrined both in the provisions of the Civil Code and in the provisions of art. 43 letter c of Law no. 272/2004, the legislator's reasoning considering the serious consequences of the application of this legal institution on the parent-child relationship, which justifies the fact that it is retained only in exceptional, thoroughly proven situations that severely violate the best interests of the minor, a principle that, in accordance with the provisions of art. 2 paragraph (4) of Law no. 272/2004 on the protection and promotion of rights, will prevail in all proceedings and decisions concerning minors, as well as in the pronouncement of solutions concerning minors by the courts.

Regarding the application of disciplinary measures, the deprivation of parental rights can be ordered when crimes of violence are committed against minors, but also when the parents, through their attitude, constitute a risk for the child in relation to the content of the parental authority; we specify that this civil law sanction does not eliminate the application of criminal law sanctions when the acts of violence by the parents constitute a crime, the various ways of sanctioning the aggressors being part of the state's obligation to ensure effective protection of minors against acts of violence and to guarantee their development in an environment in which they can develop harmoniously.

In this regard, we point out that by Civil Sentence No. 4216/28 October 2022 of the Botoșani Court, final by non-appeal, the request for the termination of parental rights for the exercise of psychological, physical, and sexual violence against minors, which seriously endangered their life, health, and harmonious development, was admitted; The court applied the measure to both parents, with regard to the father, holding that he directly exercised acts of violence against the minors, and to his daughter, applying disciplinary measures, in the sense that, when she opposed his requests, he became physically and verbally aggressive and hit her, and, with regard to the mother, the solution was based on repeated negligence in relation to the children, given that she knew of the acts of aggression to which the minors were subjected by

her husband and did not take any action, seriously violating her parental obligations. We note that the case presented is a complex one, given that the total loss of parental rights taken against all the parties' children was not the only measure to sanction the aggressors for the acts committed against the minors, criminal sanctions were also applied by Criminal Sentence no. 292/27 February 2023 of the Botoșani Court, final by Decision no. 627/12 April 2023 of the Suceava Court of Appeal, which rejected the appeals filed in the case, the father of the minors being sentenced to a resulting sentence of 10 years and 4 months for committing three offenses of ill-treatment applied to the minor, three offenses of sexual corruption of the minor, one sexual assault in a continuous form and one offense of attempted rape, and the mother of the minors was sentenced to a sentence of 10 years and 6 months for committing three crimes of ill-treatment of a minor, three crimes of sexual corruption of minors, one crime of complicity in the crime of continuous sexual assault and one crime of complicity in the crime of continuous rape, the facts being the psychological, physical and sexual violence committed against the children, as well as the repeated neglect of the minors, in violation of their best interests.

In Civil Judgment No. 6378/26.05.2014 of the Bucharest 2nd District Court – Civil Section, the issue of the loss of parental rights for the application of disciplinary measures on the minor was raised in a request filed by a father who sued his daughter's mother, showing that, although at the time of the notarized divorce, the parents agreed to the joint exercise of parental authority, establishing the mother's residence, and the father to have a visitation schedule for the minor, after this moment, the mother began to physically, verbally and psychologically abuse her daughter, hitting her, insulting her, manipulating her psychologically, neglecting her, raising her in an inappropriate manner, often leaving the minor alone at night in the home; At the same time, the existence of emotional violence against the little girl was also revealed, the latter being heard at night by neighbors when she was crying in the house, all of this leading, in the plaintiff's opinion, to the existence of behavior that contravenes the legal provisions that the mother has towards her minor daughter, the aspects presented not being recognized by the minor's mother, who requested the rejection of the summons.

The court rejected the request made by the minor's father, based on the fact that he did not prove his claims in the judicial procedure, the relevant being the psychological evaluation report of the minor carried out in the trial, which showed that the minor is developing harmoniously, being attached to both parents and showing positive feelings towards them; at the same time, a psychosocial investigation report was carried out at the mother's home and witnesses were heard, and it did not emerge from the evidence administered that the mother had actually endangered the life, health or development of her daughter.

Even if the court rejected as unfounded the claim regarding the defendant's deprivation of parental rights, we note that this type of lawsuit cannot be filed by one of the parents, but by the local public administration authority with responsibilities in the field of child protection, namely the county General Directorate of Social Assistance and Child Protection; thus, in accordance with the provisions of art. 508 of the Civil Code and art. 41, paragraph 3 of law no. 272/2004, the correct solution that should have been ordered by the court was to invoke the exception of the plaintiff's lack of active procedural capacity, to admit the exception invoked ex officio and to reject the lawsuit as having been filed by a person without active procedural capacity.

We consider that the court could not administer evidence to establish whether the plaintiff's request regarding the disqualification of the minor's mother is well-founded or not as long as the legal provisions did not grant him active procedural capacity, the provisions of Article 36 of the Civil Procedure Code regarding the establishment of procedural capacity having an imperative nature.

As a procedure, the complainant, if he had suspicions that the mother of the minor was putting her life, health or development at risk, could notify the General Directorate of Social Assistance and Child Protection or the guardianship authority, which were obliged to monitor the case, to visit the child at the home of the parent with whom he lives to identify whether the notification was confirmed; in the event that the representatives of the local authority found that there were solid indications that the minor was in danger, they were obliged to notify the General Directorate of Social Assistance and Child Protection within a maximum period of 24 hours.

In the event that the finding is made by the General Directorate of Social Assistance and Child Protection or the representatives of this institution are informed by the guardianship authority about the negative impact on the child by the actions of the parents or only one of them, the fulfillment of the conditions regarding the loss of parental rights will be analyzed, and, if it is assessed that the situation falls within the conditions provided by law, there is an obligation to notify the court.

During the procedure before the court, both parents will be summoned, the minor over the age of 10 or the minor under this age will be heard in the presence of a psychologist from the General Directorate of Social Assistance and Child Protection if deemed necessary, the psychosocial investigation will be carried out at the home of the parent with whom the minor permanently resides, and any means of evidence that are considered useful for the correct establishment of the factual situation and the discovery of the truth will be administered, so that the court decision can be pronounced under conditions of legality and soundness.

It is necessary to note that the loss of parental rights can be total, in the sense of regarding all children of the parent against whom the lawsuit is admitted and all parental rights, or it can be partial, respectively, considering only certain children and clearly individualized rights, under the condition of not affecting the upbringing, education and professional training of the minors.

However, the measure of deprivation of parental rights is not definitive, the provisions of art. 512, paragraph 1 of the Civil Code establishing that the guardianship court may restore the exercise of parental rights in the situation where the circumstances that determined the adoption of this decision have ceased, if it is proven that it no longer endangers the life, health and development of the child and that the decision is adopted in correlation with the principle of the best interests of the minor (Cordoș, 2015, p. 67). It is important to note that, unlike the action for deprivation of parental rights, the request for the restoration of these rights can be filed by any interested person, who proves the existence of a legitimate interest, so it can have active procedural capacity, including the parent deprived of rights (Nicolae, 2019, p. 27).

In conclusion, we note that the loss of parental rights constitutes a civil law sanction that can be adopted if parents apply disciplinary measures to minors that contravene the regulation of art. 489 of the Civil Code, being an incidental measure in the event that the best interests of the child are seriously endangered, the acts of aggression that determine the pronouncement of this solution being repetitive and of high intensity, sometimes even calling into question the existence of discrimination based on gender (Rădulescu, 2021, p. 52), in the sense that girls are more prone to the application of punishments than boys.

Conclusions

The best interests of the child constitute a fundamental principle of family law which states that any measure regarding minors must be taken in accordance with this concept, the law providing for multiple criminal and civil sanctions in case of non-compliance; thus, in the situation where disciplinary measures are applied to minors, it is imperative to respect the dignity of the child, intervening legal sanctions for the exercise of physical punishments, likely to affect the physical, mental or emotional development of the minor.

In this research, the possibility of issuing a protection order and the loss of parental rights were analyzed, as the main civil law sanctions that intervene in the case of applying disciplinary measures against minors in a manner that does not comply with legal norms, highlighting multiple forms of violence that can be committed against minors, justified by the aggressor as ways of disciplining the child, which outlines the legal importance of the detailed and interdisciplinary regulation of the sanctions that apply in the case of committing forms of aggression against minors.

Also, within the scientific research carried out within the framework of this approach, it was proven that the methods of sanctioning the application of disciplinary measures that exceed the provisions of Art. 489 of the Civil Code can be applied cumulatively, thus for the same disciplinary measures taken by the parent, which materialize in acts of aggression with increased intensity against the minor, a protection order can be issued against the parent, he can be deprived of his parental rights and, at the same time, criminal penalties can be applied to him if the constitutive elements of a crime are met, an aspect that outlines the importance of promptly taking multiple measures to guarantee the effective protection of the victim.

References

Avram, M. (2022). *Drept civil. Familia* (Ediția a 3-a revizuită și adăugită) [*Civil Law. The Family* (3rd revised and expanded ed.)]. Hamangiu.

Cioclei, V. (2022). *Drept penal. Partea specială I. Infracțiuni contra persoanei și contra patrimoniului* (Ediția a 7-a revăzută și adăugită) [*Criminal Law. Special Part I: Offenses Against the Person and Against Property* (7th revised and expanded ed.)]. C. H. Beck.

Cordoș, A. M. (2015). Reflecții privind decăderea din exercițiul drepturilor părintești [Reflections on the Withdrawal of Parental Rights]. *Annals of Constantin Brâncuși University of Târgu Jiu, Legal Sciences Series, 1*, 53–70.

Iacuba, A., & Diaconu, E. (2019). *Combaterea violenței domestice. Legea nr. 217/2003 privind prevenirea și combaterea violenței domestice și instrumente europene privind ordinul de protecție. Comentarii și explicații* [*Combating Domestic Violence. Law No. 217/2003 on the Prevention and Combating of Domestic Violence and European Instruments on Protection Orders. Comments and Explanations*]. C. H. Beck.

Manea, T., & Șologon, G. (2021). Ordinul provizoriu de protecție, ordinul de protecție și asigurarea respectării acestora. Scurte considerații referitoare la protejarea membrilor familiei în legislația națională [The Interim Protection Order, the Protection Order, and Ensuring Their Enforcement. Brief Considerations Regarding the Protection of Family Members in National Legislation]. *Legal Universe Magazine, 11*, 74–98.

Nicolae, I. (2019). Considerații privind exercitarea autorității părintești și decăderea din exercițiul drepturilor părintești [Considerations Regarding the Exercise of Parental Authority and the Withdrawal of Parental Rights]. *Legal Universe Magazine, 5*, 22–27.

Rădulescu, D. L. (2021). *Raporturile juridice de muncă: discriminarea etnică. Legislație internațională și europeană* [*Employment Legal Relations: Ethnic Discrimination. International and European Legislation*]. Didactică și Pedagogică SA.

Stănescu, C. T. (2025). Posibilitatea reținerii instigării sau complicității victimei la infracțiunea de încălcare a măsurilor dispuse prin ordinul de protecție comisă de agresor [The Possibility of Retaining Victim Instigation or Complicity in the Offense of Breaching Protection Order Measures Committed by the Aggressor]. *Annals of the University of Bucharest – Law Series, 2*, 160–172.

Ungureanu, O., & Munteanu, C. (2013). *Drept civil. Persoanele în reglementarea noului Cod Civil* (Ediția a 2-a revizuită și adăugită) [*Civil Law. Persons in the Regulation of the New Civil Code* (2nd revised and expanded ed.)]. Hamangiu.