THE ATTRIBUTIONS OF THE FAMILY COUNCIL

PhD. student **Mihai-Adrian DAMIAN**[1]

Abstract

The Civil Code provides for the attributions for the family council a framework provision which is comprised in one article, namely Art 130. The legal text is complex, being structured of 4 paragraphs creating an image of ensemble over the role fulfilled by this guardianship organ, as well as over its specific means of functioning. The current paper aims to approach this issue starting from this framework regulation, but in the same time to consider each legal provision through which the legislator sets tasks for the family council converging towards its role of supervision of the guardianship.

Keywords: *guardianship, family council, council member, advisory opinions, decisions.*

JEL Classification: K36

1. General provisions

In this section we shall debate upon the first three paragraphs of Art. 130 of the Civil Code, whose marginal name is "Attributions" and which contains provisions related to the type of the documents which could be issued by the family council and the procedure for their adoption.

Beside the competence attributed by the legislator in order to issue advisory opinions and decisions for the cases in which are necessary according to the law, the family council may stand in justice as plaintiff for the litigations for which the Code states his active procedural quality[2].

2. The documents issued by the family council

The supervision of the guardianship is fulfilled by the family council through opinions and decisions that this collegial organ issues in accordance with the law. Thus, the Civil Code states two categories of documents in the competence of the council: advisory opinions and decisions. The advisory opinions are to be issued upon the request of the guardian or of the guardianship court and have the role to emphasize the perspective of the council towards a legal operation with effects against the protected person or his assets. As the legal text states, their legal force is reduced, for as long as they have an advisory feature, thus the guardian or the court shall have the freedom to decide without taking into consideration the advisory opinion favorable or not for a certain legal operation.

Though the current Civil Code states for the family council the competence to issue both opinions and decisions we need to mention that the powers of the council are considerably diminished in relation to the importance given by the legislator in 1864. One can state that the statement of this legal institution is found in the new codification of the private law only because the legislator aimed to be in line with the other legal systems of reference for the Roman-Germanic law, without the real purpose of transforming the council into a valid organ of the guardianship. The doctrine subsequent to the former code[3] describes the family council as being the organ which empowers the guardian to conclude different documents on behalf of the protected person, while the guardian simply resumes in carrying out the decisions of the council.

Despite the fact that the advisory opinions are preponderant if we not the regulation of guardianship in its ensemble, the family council has the ability to decide in certain cases for which the law considers that the protected person's interest is better protected if the council's opinions will

---

[1] Mihai-Adrian Damian - Doctoral School of the Faculty of Law, University of Craiova, Romania, damian_mihai_adrian@yahoo.com.

[2] We are talking about the action for annulment of the legal acts concluded with the non-compliance of the provisions stated by Art 144 and 146 and about the complaint against the acts and offences of the guardian.

[3] Constantin Hamangiu, Ioan Rosetti Bălănescu and Alexandru Băicoianu, *Tratat de drept civil român*, 1st Volume, All Beck, Bucharest, 2002, p. 410.

have a mandatory force and can be imposed to the guardian[4].

We consider that these documents, either decisions or advisory opinions are limited by the law[5], but this does not prevent the legislator from assigning new powers to the council whenever he deems such legislation appropriate[6].

Under the empire of the former Civil Code was found the same differentiation between the acts of the family council starting from their legal force[7]. It could be about advisory opinions informing the court or debates after which the guardian was empowered to conclude legal acts with effects upon the patrimony of the minor[8]. Unlike the current regulation, even some of the decisions of the family council could have been applied in order to generate effects, only after their homologation by the court[9]. The procedure for the homologation of the council's decisions was justified by the doctrine by being too risky to give discretionary power to the family council regarding the acts that it could conclude by itself. Therefore, the decisions had to be examined by a superior organ entrusted with control competences[10].

Even if the homologation in most cases[11] is made through a non-contentious procedure which did not allowed the court to rephrase or partially homologate the decisions of the council, we consider that waiving this phase in our current law is preferred, because the council receives a true autonomy of decision, even if the consequences are serious, thus the members being responsible.

The non-contentious feature of the procedure for homologation necessary under the ruling of the former Civil Code was mentioned also by the jurisprudence: "The conclusions of the court related to the homologation of the family council's advisory opinions are graceful acts of judicial oversight in the interest of the minor, which does not contain a contentious decision, stating any request that might raise any opposition or encounter any adversary, hence that such judgments have the character of *res judicata* and cannot remove the defect of form or substance which would contain both the conclusion itself and the opinion of the family council to which it is given nor to ensure the validity of the act done on behalf of minors in the power of a conclusion"[12]. In other words, for as long as the homologation is made in the absence of any contradiction, the court's

---

[4] In relation to the legal force of the acts issued by the family council, the doctrine based on the new regulation states that their feature is advisory, which refers to the fact that the court is not compelled to take into consideration the recommendations of the council, the consequence being that the guardianship court is, *de facto*, the one deciding upon its own criteria the authorization of the conclusion by the guardian of the documents which according to the law must be subjected to the authorization of other guardianship organs in order to be valid. See also, Cristina-Mihaela Crăciunescu, Dan Lupașcu, *Unele acțiuni aflate în competența instanței de tutelă în reglementarea Noului Cod Civil*, "Pandectele Române", no. 7/2010, p. 19.

[5] Our opinion is supported by Art. 233 of the Quebecoise Civil Code, which states that "The guardianship council shall issue opinions and decisions for all cases stated by the law".

[6] We mention that the French classic authors, in a legal system in which the legal force of the council's opinions is mandatory, considered that the guardian may request an opinion in relation with its management and for other cases than the ones mentioned by the Civil Code. For these cases, the council had the possibility to deny the issuance of such point of view or if it had issued an opinion this could have not been imposed to the guardian, this time the opinion being optional. Nevertheless, when the guardian adopted a certain measure compliant with the opinion received, his liability was not removed, but mitigated. See also: Aubry et Rau, *Cours de droit civil français d'après la méthode de Zachariae*, 1st Volume, 5th edition, Imprimerie et Librairie Générale de Jurisprudence Marchal et Billard, Paris, 1922, p. 613.

[7] Marcel Planiol shares the decisions adopted by the family council in simple opinions, without having the legal nature of deliberations and to which the court is not bound, having only the role to provide clarifications and the real deliberations. See: Marcel Planiol and Georges Ripert, *Traité pratique de droit civil français, Tome I, Les personnes, état et capacité*, LGDJ, Paris, 1925, p.504.

[8] Hamangiu, Bălănescu and Băicoianu, *op. cit.*, p. 404.

[9] Given the exclusive advisory nature of the opinions issued by the council under the current law, we believe that doubling them with a license from the tutelage court, when required by law, does not have the role of homologation, but should be regarded as another consent to the guardian to conclude a certain legal act of disposal. When it is not invested with such case, the court shall use its own criteria in deciding whether or not to grant a license without taking into consideration the council's opinion in the meaning of confirming or denying it.

[10] Hamangiu, Bălănescu and Băicoianu, *op. cit.*, p. 407.

[11] The contradiction was not excluded *de plano* and could have interfered if there were reclamations against a certain decision.

[12] Iași Court, Section III *apud* Mona-Maria Pivniceru, Pavel Perju, Corina Voicu, *Codul civil adnotat. Volumul I. Articolele 1-257. Despre legea civilă. Despre persoane*, Hamangiu Publishing House, Bucharest, 2013, p. 207; on the contrary we need to mention a decision of the Court of Cassation according to which the forms related to the composition of the family council are not stated under the sanction of nullity and, moreover, if an opinion issued by it was homologated by the court, and the guardian did not invoked any cause for nullity, any vice of form related to the summoning of the council to that meeting is covered. Cas. 1 January 126/90 B., p.15 *apud* Constantin Hamangiu, *Codul civil adnotat, cu textul articolului corespunzător francez, italian şi belgian, cu trimiteri la doctrina franceză şi română şi jurisprudenţa complectă de la 1868-1925. 1st Volume: (Art. 1-643)*, All Beck, Bucharest, 1999, p.463.

decision does not cover the formal or fundamental flaws of the homologated decision and as consequence it could be appealed if its issuance violates the law.

Under the aspect of the extent of the power entrusted to the court during the procedure of homologation of the family council' advisory opinions we see relevant a decision of the Tecuci Court, because it is different than the ones above-mentioned, stating that: "Although it is in principle that, at the time of approval, the tribunal is asked to approve or reject the conclusion of the family council without amending it, for then it would replace the family council and commit an excess of power, yet given the role that the tribunal has in such matters, to ensure that the interests of the minor are not endangered, he can supplement the opinion in the sense of satisfying the requirements of the law, which through the formation of the family council and court control sought to ensure as much as possible the preservation of the wealth under guardianship"[13].

Regarding the compared law, we need to mention that the French legal system has waived the procedure for homologation of the family council's debates[14], while the Quebecoise Civil Code does not state such legal provisions, being a brand-new normative act[15]. The mandatory decisions belonging to the collegial guardianship organ are enforceable through themselves. This does not mean that they are un-appealable, which raised multiple debates in doctrine, fact upon which we shall return in the final section of this chapter[16].

Nevertheless, we need to mention that regarding the nature of the council's debates, the French doctrine[17] states that their nature is mixt, being at the same time civil legal acts subjected to cancelation when the conditions for validity are violated and decisions susceptible of appeal questioning the opportunity of the challenged act.

Other aspects debated by the French authors in relation to the family council's debates consider the freedom of the issuing organ to interpret them whenever they are equivocal or contain material errors, or even to modify an authorization given to the guardian with the condition that the conclusion of the authorized act has not yet occurred[18]. From our point of view related to the vision of our legislator is of relevance only the competence of the interpretation of the acts by the council as issuing organ, as well as the ability of its members to correct the possible material errors.

3. The family council's meetings

The same legal provision above-mentioned in the beginning of this chapter states detailed provisions about the specific means in which the family council's meetings summoned for the purpose of debate are conducted. In our legal system, the meetings of this collective organ are presided by the eldest member, as stated by the first paragraph of Art. 130 of the Civil Code. By stating so, the legislator choses to move away from the French vision on this aspect, which chooses that the meetings be presided by the guardianship judge[19]. From our perspective, the choice of the Romanian law answers the need for autonomy of the council in decision-making, thus of a desiderate of non-interference of the judicial power in the mechanism of the guardianship, for as long as its role is to oversee the guardianship organs.

Another opinion[20] states that when the family council is summoned at the initiative of the guardianship court, the meeting taking place at its headquarters, the meeting shall be presided by

---

[13] Tecuci Court, March 1914, Dreptul 1914, p.508 *apud* Pivniceru, Perju and Voicu, *op. cit.*, pp. 207-208.

[14] There is one exception which the legal literature clearly emphasizes it, namely the homologation of the family council's deliberation given in relation to the approval of a voluntary separation in which one of the parties is the protected person. See also: Bernard Teyssié, *Droit Civil. Les personnes, sixième édition*, Litec, Paris, 2001, p. 231.

[15] Civil Code of Quebec has entered into force in 1991.

[16] Yvaine Buffelan-Lanore, *Droit civil. Premiere anne*, 12th Edition, Paris: Armand Colin, 2001, p. 246; it is mentioned that all decisions issued by the family council are enforceable, but the term of appeal is suspensive from enforcement.

[17] Jean Carbonnier, *Droit civil 1. Les personnes. Personalité, Incapacités, Personnes morales*, PUF, Paris, 2000, pp. 271-272.

[18] Armand Dalloz Rèp suppl. Minor-tutelle, No. 167 *apud* Constantin Hamangiu and Nicolae Georgean, *Codul civil adnotat cu textul articolului corespunzător francez, italian și belgian, cu doctrina franceză și română și jurisprudența complectă de la 1868-1927, volumul V: Doctrina franceză și română (Articolele 1-460)*, Bucharest: Alcalay & Co Universal Library, 1928, p. 558.

[19] Art. 400 former Art. 415 of the French Civil Code.

[20] Mihaela-Laura Radu, *Participanții la procedura ocrotirii persoanei fizice prin tutelă în reglementarea noului Cod Civil*, "Revista Română de Jurisprudența", No. 5/2011, p. 233.

the guardianship judge. Regarding this aspect, we believe that though the authority of the guardianship court over the family council is based on Art. 151 of the Civil Code this does not represent enough justification for the latter one to preside or to attend a meeting of the council. The argument is that the family council represents a different guardianship organ whose position is complementary to that of the guardianship court. On another hand, we can appreciate that such norm has a procedural feature, and to the extent to which there is no express contrary statement all council's meetings shall be presided by the eldest of its members. Thus, we consider that the absence of such legal provision is not a gap, but it reflects the will of the legislator to transform the family council into an autonomous organ in relation to the guardianship court, moving away from the vision of the French code upon this matter[21].

For all the three legal systems to which we report during this research there are express legal provisions concerning the necessary vote for the adoption of the acts issued by the family council[22]. The legal texts are similar and refer to the vote of the majority of the members, without any other clarifications.

Given the fact that our new Civil Code, as well as the Quebecoise Civil Code state that the council member has three members, the majority can only be absolute (half plus one of the total number of the council's members)[23]. Also, there would be no quorum if not all were summoned, considering that the substitutes would be called to the assembly only in the absence of full members. Given that in the French system the number of members may vary, the law stating only a minimum number, the French legislator had to establish the quorum for the valid functioning of the council by taking into consideration this minimum threshold[24].

Returning on the type of majority, as in the system of the former Civil Code, the number of council members could be above three persons and could have been an even number, the issue of the majority necessary for the adoption of the council's acts has raised a lot of interest during the doctrinaire debate.

According to the doctrine subsequent to the Civil Code of 1864 the required majority was absolute[25]. The provisions of Art 366 of this normative act stated that "the chords will end with the majority of voices, that is at least one voice more than half the voices of the people present, understanding that the number of present persons is always odd". Due to this fact, the doctrine has specified that if this majority could not be met, the decision voted by a smaller number of persons was not mandatory[26].

On the other hand, Dimitrie Alexandresco considered that for the case in which an absolute majority was not possible, as consequence of the existence of multiple opinions, the members in minority shall subscribe to one of the opinions presented by the larger number of members, so that

---

[21] In addition to the French legal system where the guardianship judge participates, presides the meetings and decides the faith of its deliberations when there is equality of votes, the system of our new Civil Code states that the opinions issued by this organ are advisory for the guardianship court. Moreover, for the conclusion by the guardian of acts of disposal, the advisory opinion shall be doubled by the authorization of the guardianship court. From this perspective, we can state that the guardianship court cannot interfere in the meetings of the family council or with the procedure of deliberation for the adoption of the documents issued by the organ.

[22] Art 130 Para 2 of the Romanian Civil Code, Art 400 of the French Civil Code and Art 234 of the Quebecoise Civil Code.

[23] Given the calculation of the absolute majority, it can be considered that from the perspective of the current code for the adoption of the council's acts would be necessary an unanimity from the three members of the board. However, to avoid a drastic interpretation and to avoid the idea of an unanimity we shall state that our legislator by using the term "majority" did not considered its strict meaning (half plus one of the members of a gathering), by simply pleading with the vote of two of the members for the adoption of an opinion or a decision by the family council. Also, the full half of number three can only be one.

[24] For the French law, such provision is found in the Civil Procedure Code which states that in the case in which the necessary quorum is not fulfilled, the guardianship judge must choose between postponing the meeting and deciding by himself, for urgent cases. Regarding the Quebecoise Civil Code, Art 234 states that for a valid deliberation most of its members must be present.

[25] Matei Cantacuzino emphasizes the fact that the quorum necessary for a deliberation was of least 5 members, the majority being absolute. The absence of the drastic requirement of the unanimity of votes for the adoption of a decision was also signaled by the jurisprudence; Matei B. Cantacuzino, *Elementele dreptului civil*, in the volume by Gabriela Bucur and Marian Florescu, All Educational, Bucharest, 1998, p. 72. A decision belonging to Iasi Courthouse states that: "for the validity of the deliberation of the family council it is not necessary an unanimity, but just a majority", Iași Courthouse, Section III, 52, October 3/86, Dr 29/87, *apud* Hamangiu, *op. cit.*, p.459; Marcel Planiol considers that only the absolute majority can be considered as valid; Planiol and Ripert, *op. cit.*, p. 503.

[26] Hamangiu, Bălănescu and Băicoianu, *op. cit.*, p. 403.

they will form the majority required by the law[27]. Was also taken into consideration the possibility that each member to support his personal opinion, case in which a new meeting was to be set with the presence of a larger number of members and with the exclusion of those who generated the impossibility of stating a majority opinion[28].

A third perspective invokes Art. 367 of the former Civil Code which allowed the guardianship judge to substitute the family council, by deciding all by himself[29].

The issue of the quorum of the family council and the majority[30] required for the validity of its decisions has been mirrored also at a jurisprudential level thus proving the importance of this aspects for the functioning of the family council.

Regarding the number of present members, the Court of Cassation decided that Art. 365 of the Civil Code were clear enough in the meaning that a family council could not have taken decisions without five of its members, reason for which: "the opinion issued by three members of the family council, being contrary with Art. 365, shall not be valid nor homologated by the court"[31]. Thus, the presence of the family council's members was very necessary for the fulfilment of the quorum allowing the adoption of a valid decision (when the council consisted of five members). Regarding this aspect, also the supreme court decided that: "It is not prescribed under the penalty of nullity that all members of the family council take part in the deliberation, but it is enough to be only present. Although two members who were present in the family council refused to deliberate and draw up the minutes, as most of the members were of unanimous opinion, the two members' need to file the minutes could only be considered a separate opinion that does not violate the Council's decision"[32].

All of the above have the purpose of providing a historical perspective over the voting procedure, given the clarity of the legal provisions which are found in the current code and the diminished and invariable number of the family council's members.

With regard to the French law, where the issue of the large number of members is still current, we note the statement of Art. 400 of the Civil Code which refers to the deliberations of the council being adopted by vote. Grammatically interpreting this norm and taking into account that there is no differentiation we can only consider that a relative majority is sufficient for the adoption of the council's acts[33]. In addition, also the French legislation stated provisions applicable for the case in which the necessary quorum was not fulfilled, leaving the guardianship judge with two options: the first was the postponement of the meeting for another date, and the second was to decide independently when the matter was urgent and without delay[34].

Another difference between our national regulation and the French one which has as starting point the number of council members aims the fact that for the French system the vote of the guardianship judge, in his position as president of the council, shall be determinant during the

---

[27] Dimitrie Alexandresco, *Explicaţiunea teoretică şi practică a dreptului civil român în comparaţiune cu legile vechi şi cu principalele legislaţiuni străine*, 2nd tome, 2nd edition, Leon Alcalay Press, Bucharest, 1907, p. 614.

[28] Alexandresco, *op. cit.*, p. 614; Hamangiu, Bălănescu and Băicoianu, *op. cit.*, p. 403; Aubry et Rau, *op. cit.*, p. 611.

[29] Alexandresco, *op. cit.*, p. 614.

[30] The doctrine stated about the quorum necessary for the valid functioning of the family council that the simple presence of its 5 members was enough according to Art 357 of the Code of Cuza, but with the condition of fulfilling the summoning procedure for all members of this collegial organ with deliberative competences; Alexandresco, *op. cit.*, p. 612. Beside it, the legal literature of the past century, both the national and foreign ones, has stated that the legal provisions in force were not to be interpreted in the meaning that required the presence of all members of the family council participating in the meetings to attend the deliberation. It was considered enough their presence to insure the quorum. See: Dalloz Rép. Minor-tutelle No. 230 *apud* Hamangiu and Georgean, *op. cit.*, p. 558.

[31] Cas I, 23 January 22/92 B. p. 40 *apud* Hamangiu, *op. cit.*, p. 465.

[32] Cas I, 8 April 11/88, B. p. 333 *apud* Hamangiu, *op. cit.*, p. 465.

[33] Even if between the material legal provisions, the majority required for the adoption of the deliberations of the family council is not stated, the Civil Procedure Code expressly states that these acts shall be adopted by a simple majority of the votes expressed.

[34] The legal ground is represented by the provisions of Art. 1234-3 of the Civil Procedure Code. For the interpretation of these legal provisions, the French jurisprudence concluded which are the conditions necessary to be fulfilled for the guardianship judge to rule in the absence of the council's members. "The foreseen decision can be taken one time personally by the judge when: the council's members are summoned according to the legal procedure, was ascertained a certain absence of the quorum, the emergency appreciated by the guardianship judge being grounded". TGI Paris, 15 December 1995: RTDciv. 1996, p.360, obs J. Hauser *apud* Teyssié, *op. cit.*, p. 230, line 303.

deliberation, if the vote expressed by the other present members does not allow a majority[35]. Or, in our legal system even if the meetings are presided by the eldest person his vote is not exactly the cause of a plurality of opinions with the same number of votes, as long as the majority required for the adoption of opinions is two votes, three votes representing the unanimity of the votes cast. On the other hand, if the president's vote would be preponderant, the essence of the family council as collegial organ of the guardianship would be violated, since its meetings have the purpose of gathering all family members to watch for the protected person together[36].

Until recently, the French Civil Code detailed the way in which the family council meetings were held, including the possibility that decisions could be voted by mail. Thus, Art. 413 gave the guardianship judge the possibility to use such procedure if he considered that the debate can take place without a meeting by communicating only the decision to be voted together with the necessary clarifications; the vote of the council members on such a decision was issued by registered letter within the time indicated by the guardianship judge[37].

Another procedural norm mentioned by the second paragraph of Art. 130 of our Civil Code, is that the legislator makes a general reference regarding the obligation of the council to hear the child aged at least 10 before issuing a decision, for a later reference to Art. 264, which are totally incident. The hearing before the adoption of a decision is natural, for as long as the effects of the current act shall influence it. In other words, this legal provision is an application of Art. 264 which provides for the obligation to listen to the child aged 10 in all administrative or judicial proceedings concerning him. Through the mentioned article, the law expressly states the right of the child to request and receive any information depending on his age, the right to express his opinion and in the same time to be informed about the consequences it may have if fulfilled, as well as on the effects of every decision related to him. Of course the child's opinions shall be taken into consideration depending on his age and degree of maturity, but his right to express a point of view in matters intimately related morally or materially by his person cannot be violated.

Related the hearing of the minor under guardianship, the French law states that the guardianship judge shall hear the minor with discernment before the meeting of the family council[38]. We note the fact that in the French code the obligation to hear the child is not imposed depending on his age, but only on the existence of his discernment as a matter of fact is left to the discretion of the court. Such express provision is no longer found in the regulation on the family council since the obligation has as general background Art. 388-1 of the French Civil Code. Though, as mentioned before, such express norm is just an application of a general principle, it is also found in Art. 1236 of the Civil Procedure Code.

The same substantial code, also in one of its former versions, stated that the minor with discernment could attend the council meeting for consultative purpose, if the judge considered that such participation does not violate his interests. Another case for which the French law stated the presence of the protected person during the sessions of the family council was that in which the

[35] One must mention that though the interwar jurisprudence of the Romanian courts stated in the meaning that the guardianship court could decide alone if the votes of the council members were divided. Thus, the reasoning of a decision relevant under this aspect shows that: "According to Art 357 of the Civil Code and Art 638 of the Civil Procedural Code, in matters of guardianship, for all cases in which is demanded the opinion of the family council, the judicial authorities, having the duty to oversee the administration of the guardianship and even to substitute the family council, doing what is neglected to the loss of minors instead, the court may decide and approve the measure considered as necessary in the interest of the minor", Bucharest Court of Appeal, 1st Section, 12/1 February 1922, „Dreptul" 28/1922; Cas II, 138/9 June 1922, Jur. Rom. 18/922, „Pandectele Romane" 1923, p.137, „Curieru Judiciar" 42/922 *apud* Hamangiu, *op. cit.*, p. 449.

[36] For considerations about the procedure of summoning the family council and the performance of its meetings, see François Terré and Dominique Fenouillet, *Droit civil. Les personnes. La famille. Les incapacités.* 6th edition, Paris: Dalloz, 1996, p. 995.

[37] The legal norms stating this procedure are currently included in Art 1234-4 of the French Civil Procedural Code. The older jurisprudence states that the use of this procedure of deliberation should have allowed the council members to answer aware of this, circumstance left at the discretionary appreciation of the judge of first instance (Cass premiére, 12 March 1975, Bull. Civ I, no 108, p.95, *apud* Terré and Fenouillet, *op.cit.*, p.995, line 4). We note that for the Quebecoise Civil Code the legal provision authorizing the vote by mail within the family council is still in force. Also, we consider that this means of voting could be useful only to the extent to which its usage would not turn into a way of avoiding the debates, which could be in the prejudice of the protected person.

[38] It must be noted that the provisions of Art 130 of our Civil Code consider the hearing of the minor during the meeting and not before the meeting of the members because in our legal system the guardianship court does not have the same role as for the French, and under these conditions the judge shall not proceed to hear the protected person.

council gathered upon his request[39].

We need to say that according to the French law, the guardian, though a member of the family council participating during the meetings of this guardianship organ, does not have the right to vote during the procedure of decision-making[40]. Neither the subrogated guardian will be able to vote if he attends the meeting in the name of the tutor. The circumstance that the guardian does not have the power to vote the decisions of the council is the consequence of the fact that these decisions specifically refer to his authorization and state guidelines on how he should fulfil his guardianship duties. The mechanism of control performed by the family council refers precisely to certain guidelines within which the guardian is advised to act in order not to harm the interests of the protected person.

Under the aspect of the guardian's participation in the meetings of the collegial organ we can add the fact that the Quebec Civil Code states for the council the obligation to invite the guardian to attend its meetings[41].

From our point of view, even in the system of our Civil Code, we cannot exclude the participation of the guardian in the meetings of the family council, as long as there is no law prohibiting his presence, but only at the request of the members of the board if they need clarification, and the presence of the latter proves useful for the decision making by this tutelary.

Regarding the frequency of the council's meetings one must say that they take place every time it is summoned according to the procedure established by the law. Thus, we note that the Romanian legislator does not state a certain calendar for the council's activities, since the Quebecoise Code states the obligation for at least one annual meeting[42].

4. The decisions of the family council

The framework regulation of the family council's attributions also states provisions regarding the background and form of its decisions. Thus, Para. 3 of Art. 130 of the Romanian Civil Code states that: "The decisions of the family council shall be reasoned and registered in a special register, kept by one of the members, entrusted with this task by the guardianship court".

First of all, we need to mention that though the Code refers to the decisions of the family council, without any doubt the legislator used this term *de lato sensu*, so that it would aim both the advisory opinions as well as the mandatory decisions issued by this organ in the performance of his attributions[43].

On the other hand, the obligation to reason and record all acts issued by the council was stated by the legislator to be sure that the role of this organism within the mechanism of performance is fulfilled really and efficiently. In other words, in the absence of a registration and reasoning of the decisions, the performance of its attributions would resume to the issuance of a perspectives without specific support or practical consequences for the guardian's activity.

Therefore, we consider that the choice of the legislator to expressly state the obligation to reason and record the council's decisions in a special register is the correct one[44]. This while, on the

[39] Even if the possibility of summoning the family council by the minor aged 16 is still stated by the French procedural law, his participation during the meetings which he summons is no longer stated by the law but can be allowed with the argument *a fortiori* considering that he may attend for a consultative purpose to all the meetings of the council. Regarding the attribute of the minor with discernment to summon the family council must be mentioned that in order to avoid the responsibility of the minor for every damage caused by his decisions, the provisions of the Civil Code expressly stated that under no circumstances would his agreement on a matter under discussion remove the liability of the guardian or other guardians (former Art. 415 of the French Civil Code).

[40] According to Art. 400 of the French Civil Code.

[41] We are talking about the legal norm found in Art. 230 of the Quebecoise Civil Code. The same legal text leaves at the disposal of the guardianship court the option to invite or not the minor during its gatherings.

[42] Art. 234 of the above-mentioned normative act.

[43] In the meaning of the above-mentioned ideas, one can invoke Art. 234 of the Quebecoise Civil Code which refers both to opinions and decisions of the family council.

[44] The compulsoriness of reason the acts issued by the family council is expressly stated by the Quebecoise Civil Code, but also by the French legislation. Because of the large number of the family council's members in the French legal system by a norm of the Civil Procedural Code was required that in the absence of an unanimous vote, each of the votes of the members be registered with motivation in the meeting minute.

one hand, is responsible for the members of the council and, on the other hand, assists the guardianship court in exercising its powers of control over the activity of both organs of guardianship. Beside the reasoning of the deliberations the old French jurisprudence stated that the peace judge's clerk must conclude after each meeting a minute mentioning all information necessary to ascertain the valid composition of the council[45].

The issue of reasoning of the family council deliberations was seen differently under the ruling of the former regulation which did not stated as general the reasoning of these acts. The reasoning was required by the law only in two express cases[46]. Besides this, the Civil Procedure Code stated that for the case in which the decision of the family council was not adopted by unanimity, the separate opinion was to be drafted and reasoned[47].

Not least, we need to mention that the burden of the reasoning and registration of the acts in the special register prepared for this purpose, belongs to one of the council's members appointed by the guardianship court.

Under the aspect of the compared law, we need to mention that the Quebecoise code stated that the drafting and preservation of the meeting minutes shall be fulfilled by a secretary appointed under the same conditions as the board members but shall not be part of them. This legal text also states the possibility for the assembly of the minor's relatives to decide that it is opportune the remuneration of the person performing the duties as secretary needed for the functioning of the guardianship council[48].

Bibliography

1. Aubry et Rau, *Cours de droit civil français d'après la méthode de Zachariae*, 1st volume, 5th edition, Imprimerie et Librairie Générale de Jurisprudence Marchal et Billard, Paris, 1922.
2. Buffelan-Lanore, Y., *Droit civil. Premiere anne,* 12th edition, Armand Colin, Paris, 2001.
3. Carbonnier, J, *Droit civil 1. Les personnes. Personalité, Incapacités, Personnes morales,* PUF, Paris, 2000.
4. Crăciunescu C.-M. and Lupașcu D., *Unele acțiuni aflate în competența instanței de tutelă în reglementarea Noului Cod Civil*, "Pandectele Române", no. 7/2010.
5. Dimitrie Alexandresco, *Explicațiunea teoretică și practică a dreptului civil român în comparațiune cu legile vechi și cu principalele legislațiuni străine,* 2nd tome, 2nd edition, Leon Alcalay Press, Bucharest, 1907.
6. Hamangiu C, Rosetti-Bălănescu I. and Băicoianu A., *Tratat de drept civil român,* 1st volume, All Beck, Bucharest, 2002.
7. Hamangiu C., *Codul civil adnotat, cu textul articolului corespunzător francez, italian şi belgian, cu trimiteri la doctrina franceză şi română şi jurisprudenţa complectă de la 1868-1925.* 1st volume: (Art. 1-643), All Beck, Bucharest, 1999.
8. Hamangiu, C. and Georgean, N., *Codul civil adnotat cu textul articolului corespunzător francez, italian și belgian, cu doctrina franceză și română și jurisprudența complectă de la 1868-1927, volumul V: Doctrina franceză și română (Articolele 1-460),* Alcalay & Co. Universal Library, Bucharest, 1928.
9. Nacu, C., *Drept civil român*, 1st volume, Socec, Bucharest, 1901.
10. Pivniceru, M.-M., Perju P., Voicu C., *Codul civil adnotat. Volumul I. Articolele 1-257. Despre legea civilă. Despre persoane,* Hamangiu, Bucharest, 2013.
11. Planiol, M. and Ripert, G., *Traité pratique de droit civil français, Tome I, Les personnes, état et capacité,* LGDJ, Paris, 1925.
12. Radu, M.-L., *Participanții la procedura ocrotirii persoanei fizice prin tutelă în reglementarea noului Cod Civil,* "Revista Română de Jurisprudența", no. 5/2011.
13. Terré, F. and Fenouillet, D., *Droit civil. Les personnes. La famille. Les incapacités.* 6th edition, Dalloz, Paris, 1996.
14. Teyssié, B., *Droit Civil. Les personnes*, sixième édition, Litec, Paris, 2001.

[45] Civ. 30 December 1840, D. Jur. Gen. *apud* Planiol and Ripert, *op. cit.*, p. 504.
[46] Alexandresco, *op. cit.*, p. 613, line 3.
[47] C. Nacu, *Drept civil român*, 1st Volume, Bucharest: Socec, 1901, p. 594.
[48] Art 228 of the Quebecoise Civil Code.