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## CONCEPTUAL LANDMARKS OF RESEARCH

*The topicality and importance of the topic addressed.* Respect for the rights of the child is essential for ensuring the protection of his or her best interests, for guaranteeing his or her harmonious development and for preventing any forms of abuse or discrimination, thus contributing to the consolidation of an effective legal framework for child protection.

The regulation of a person's domicile or residence is required by the fundamental need to identify the individual in space. In a legal sense, the identification of a natural person involves establishing his or her identity, that is, his or her individualization within society and the set of social relations in which he or she is involved.

In the context of contemporary society, the need to identify the individual is justified for both general and individual reasons. From a general perspective, society has a direct interest in each member being able to be recognized and located within the multiple legal relationships in which they participate. As regards individual reasons, identification responds to the interest of each person to be individualized and recognized as a subject of law within the various legal relationships, thus guaranteeing their effective participation and protection within the legal system.

In particular, the analysis of the concept of the child's habitual residence and the legal consequences of the violation requires, as a matter of urgency, the mention of the legal institution that regulates the return of the child to the State of his or her habitual residence. The procedure is based on a clear international and national regulatory framework: the 1980 Hague Convention on the Civil Aspects of International Child Abduction, Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility and on international child abduction (recast)<sup>1</sup>, the provisions of the Civil Procedure Code of the Republic of Moldova<sup>2</sup> and Law No. 292 of 13.12.2024 on the special protection of children against travel abroad or unlawful detention<sup>3</sup>, which establishes aspects particularly related to the examination of

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<sup>1</sup> Regulamentul (UE) 2019/1111 al Consiliului din 25 iunie 2019 privind competența, recunoașterea și executarea hotărârilor în materie matrimonială și în materia răspunderii părintești și privind răpirea internațională de copii (reformare). În: *Jurnalul Oficial al Uniunii europene* L 178, 02.07.2019, pp.1-115. Disponibil: <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:32019R1111>

<sup>2</sup> Codul de procedură civilă al Republicii Moldova, nr. 225 din 30.05.2003. În: *Monitorul Oficial* nr. 285-294 art. 436 din 03.08.2018. Disponibil: [https://www.legis.md/cautare/getResults?doc\\_id=150766&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=150766&lang=ro#)

<sup>3</sup> Legea nr. 292 din 12.12.2024 privind protecția specială a copiilor împotriva deplasării în străinătate sau reținerii ilicite. În: *Monitorul Oficial* nr. 556-559 art. 760 din 27.12.2024 Disponibil: [https://www.legis.md/cautare/getResults?doc\\_id=146474&lang=ro](https://www.legis.md/cautare/getResults?doc_id=146474&lang=ro)

cases regarding the return of children under the age of 16, who have been wrongfully removed or detained, to their habitual residence.

Although the term "habitual residence" was initially used mainly in an international context, referring to child return procedures, the national regulatory framework has evolved. Thus, currently, the Civil Code of the Republic of Moldova<sup>4</sup> uses this term also to define domicile, extending its applicability to the sphere of domestic law and giving a broader meaning to the concept of stability of the child's residence.

Child protection in the Republic of Moldova is largely harmonized with international norms on the rights of the child. The foundation of the system of protection of minors is the Constitution of the Republic of Moldova<sup>5</sup>, which recognizes the right of the family and the child to defense and support, including by ensuring the right to life, bodily and psychological integrity, guaranteeing social assistance and protection, as well as the right to medical care and to living in a secure environment. In addition, Law no. 140/2013 on the special protection of children at risk and children separated from their parents<sup>6</sup>, establishes the legal framework for the protection of minors and determines the attributions of guardianship authorities at local and district level, child safety measures and the modalities of intersectoral collaboration in the field of child protection.

The national legislation of the Republic of Moldova also enshrines the fundamental right of individuals to free movement and to establish residence.

As a fundamental right, freedom of movement is a relatively recent notion, representing the freedom of a citizen to move without arbitrary restrictions. This freedom is protected at the international level through a set of legal instruments. Thus, the Universal Declaration of Human Rights provides in art. 13, that "everyone has the right to leave any country, including his own, and to return to it according to his will."

In the same sense, the International Covenant on Civil and Political Rights deals in art. 12 with "the right of everyone lawfully within the territory of a State to freedom of movement and to choose his

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<sup>4</sup> Codul Civil al Republicii Moldova nr. 1107 din 06.06.2002. În: *Monitorul Oficial nr. 66-75 art. 132* din 01.03.2019. Disponibil: [https://www.legis.md/cautare/getResults?doc\\_id=149719&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=149719&lang=ro#)

<sup>5</sup> Constituția Republicii Moldova din 29.07.1994. În: *Monitorul Oficial al Republicii Moldova*, nr.1 din 12.08.1994; Republicat: *Monitorul Oficial al Republicii Moldova*, nr. 78/140 din 29.03.2016. Disponibil: [https://www.legis.md/cautare/getResults?doc\\_id=145723&lang=ro](https://www.legis.md/cautare/getResults?doc_id=145723&lang=ro)

<sup>6</sup> Legea nr. privind protecția specială a copiilor aflați în situații de risc și a copiilor separați de părinți nr. 140 din 14.06.2013. În: *Monitorul Oficial nr. 167-172 art. 534* din 02.08.2013. Disponibil: [https://www.legis.md/cautare/getResults?doc\\_id=139010&lang=ro](https://www.legis.md/cautare/getResults?doc_id=139010&lang=ro)

residence, and to freedom to leave any country, including his own, without being subject to arbitrary restrictions”.

In addition, Protocol No. 4 to the European Convention on Human Rights reaffirms these principles, establishing that “everyone lawfully within the territory of a State has the right to freedom of movement and to choose his residence, and to freedom to leave any country, including his own.”

Article 27 of the Constitution of the Republic of Moldova establishes that “every citizen of the Republic of Moldova has the right to establish his domicile or residence in any locality in the country, to leave the country, to emigrate and to return to it.”

Thus, the analysis of the legal regime of the minor’s residence derives from its role as an essential element of identifying the person. This allows the individualization of the child, relating him to the family and social framework, through specific means that facilitate the establishment of his position in legal relations. Traditionally, the main attributes by which a person is identified are the name and domicile, the latter indicating his location in space.

Similar to adults, the child possesses elements that give him/her his/her own individuality and certain special rights, including in relation to his/her parents. Among the fundamental benefits offered by habitual residence is the right not to be moved or detained illegally in another state. From this perspective, the importance of studying the method of establishing habitual residence, the identification criteria and the procedure for changing it results, taking into account the enshrinement of the principle of the best interests of the child.

This study clarifies and defines the notions of "domicile" and "temporary residence", both from the perspective of national legislation and in light of the applicable international legal framework. In parallel, the research examines the scope of the legal effects generated by domicile and temporary residence, identifies the concept of habitual residence, alternating in international practice, the jurisprudence of the CJEU, the ECtHR, aspects related to the unlawful detention of a minor, international cooperation mechanisms in order to ensure the best interests of the child.

***Framing the topic within the international, national, regional concerns of the research team and in an inter- and transdisciplinary context.*** According to Art. 2 para. (1) of the Association Agreement between the Republic of Moldova, on the one hand, and the European Union and the European Atomic Energy Community and their Member States, on the other hand, it was concluded on "respect for democratic principles, human rights and fundamental freedoms, as proclaimed in the Universal Declaration of Human Rights and regulated in the European Convention for the Protection of Human

Rights and Fundamental Freedoms, in the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe, as well as in the Charter of Paris for a New Europe of 1990 (...).”<sup>7</sup>

Also, Chapter 27 of the Association Agreement regulates “cooperation in the field of protection and promotion of the rights of the child.”

According to Art. 137 of the Agreement, the parties agreed “to cooperate to ensure the promotion of the rights of the child in accordance with the legislation and international norms, in particular the 1989 United Nations Convention on the Rights of the Child, taking into account the priorities identified in the specific context of the Republic of Moldova, in particular for vulnerable categories.”

Under Article 138 of the Agreement, the cooperation of the Parties shall include, in particular: “a) preventing and combating all forms of exploitation (including child labour), abuse, neglect and violence against children (...);” “b) improving the system of identification and assistance provided to children in vulnerable situations, including increased participation of children in decision-making processes and the implementation of effective mechanisms aimed at resolving individual complaints made by children;” “e) accession to, ratification and implementation of relevant international instruments, including those developed within the framework of the United Nations, the Council of Europe and the Hague Conference on Private International Law, with the aim of promoting and protecting the rights of children in accordance with the highest standards in this field.”

In the process of accession to the European Union, the Republic of Moldova has undertaken to harmonize its national legislation with *the acquis* communautaire, by adapting its internal regulatory framework to European legal standards and principles, in order to strengthen the rule of law and the effective protection of fundamental rights.

We note that the Republic of Moldova has made significant progress in developing the child protection system. However, aligning the regulatory framework and practices in the field with the provisions of the UN Convention on the Rights of the Child remains a challenge.

Child protection in the Republic of Moldova is largely harmonized with international standards and instruments on the rights of the child. The foundation of the national child protection system is the Constitution of the Republic of Moldova, which enshrines the right of the family and the child to protection by the state, guaranteeing, among other things, the right to life, to physical and mental integrity, access to social assistance and protection, the right to health care, as well as the right to live in a safe and development-friendly environment.

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<sup>7</sup> Acordul de asociere între Republica Moldova, pe de o parte, și Uniunea Europeană și Comunitatea Europeană a Energiei Atomice și statele membre ale acestora, pe de altă parte. [online] [citat: 01.02.2025]. Disponibil: <https://mecc.gov.md/sites/default/files/acordul-de-asociere-rm-ue.pdf>

In this context, in 2023 the legislative framework on the protection of children's rights was revised, with Law no. 338/1994 on children's rights being repealed and Law no. 370/2023 on children's rights being adopted<sup>8</sup>, which reflects to a greater extent the principles and standards enshrined in international instruments in the field of children's rights. The new regulation aims to strengthen child protection mechanisms and ensure better compliance of national legislation with the conventional provisions.

We emphasize that the Republic of Moldova has committed to establishing, within the framework of national legislation, prompt and effective intervention mechanisms of the protection system, adapted to the needs of each child, in accordance with the provisions of the UN Convention on the Rights of the Child, the Association Agreement and other international mechanisms to which the Republic of Moldova has adhered, by fully implementing the respective recommendations.

Thus, the Republic of Moldova ensured the development and adoption of the law aimed at ensuring the application of the Hague Convention on the Civil Aspects of International Child Abduction, of October 25, 1980, through the new Law No. 292 of 13.12.2024 on the special protection of children against wrongful removal or retention abroad<sup>9</sup>, which establishes aspects particularly related to the examination of cases regarding the return of children under the age of 16, who have been wrongfully removed or detained, to their habitual residence, comes to implement the provisions of international acts on the international protection of children.

The Republic of Moldova is also a party to several international legal instruments adopted under the auspices of the Hague Conference, including the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, adopted at The Hague on May 29, 1993<sup>10</sup>, Convention on the Civil Aspects of International Child Abduction, done at The Hague on 25 October 1980<sup>11</sup>, and the European Convention on the Recognition and Enforcement of Decisions Concerning the Custody of Children and the Restoration of Custody of Children, adopted in Luxembourg on 20 May 1980<sup>12</sup>.

By adhering to these international instruments, the Republic of Moldova has assumed the obligation to ensure effective mechanisms of international cooperation in the field of child protection, especially in

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<sup>8</sup> Legea privind drepturile copilului nr. 370 din 30.11.2023. În: *Monitorul Oficial Nr. 488-491 art. 864* din 21.12.2023. Disponibil: [https://www.legis.md/cautare/getResults?doc\\_id=153186&lang=ro](https://www.legis.md/cautare/getResults?doc_id=153186&lang=ro)

<sup>9</sup> Legea nr. 292 din 12.12.2024 privind protecția specială a copiilor împotriva deplasării în străinătate sau reținerii ilicite. În: *Monitorul Oficial nr. 556-559 art. 760* din 27.12.2024 Disponibil: [https://www.legis.md/cautare/getResults?doc\\_id=146474&lang=ro](https://www.legis.md/cautare/getResults?doc_id=146474&lang=ro)

<sup>10</sup> Convenția asupra protecției copiilor și cooperării în materia adopției internaționale, încheiate la Haga la 29 mai 1993, ratificată de Republica Moldova prin Hotărârea Parlamentului nr. 1468-XIII din 29.01.1998, În: *Monitorul Oficial al Republicii Moldova*, nr. 14-15 art. 79 din 26.02.1998. Disponibil: [https://www.legis.md/cautare/getResults?doc\\_id=4314&lang=ro](https://www.legis.md/cautare/getResults?doc_id=4314&lang=ro)

<sup>11</sup> Convenția de la Haga asupra aspectelor civile ale răpirii internaționale de copii, 1980. În: *Tratate Internationales Nr. 15 art. 67*.

<sup>12</sup> Convenția europeană asupra recunoașterii și executării deciziilor privind supravegherea copiilor și restabilirea supravegherii copiilor, adoptată la Luxemburg la 20 mai 1980. În: *Monitorul Oficial Nr. 170 art. 701*.

situations involving international adoption, international child abduction or the recognition and enforcement of decisions regarding the custody and supervision of minors.

Therefore, the process of harmonizing the regulatory framework and institutional practices with the standards established by the UN Convention on the Rights of the Child, and other international instruments that ensure the best interests of the child, continues to unfold in a dynamic manner in the Republic of Moldova, aligning with the European *acquis*.

Based on the reasoning outlined above, it is absolutely imperative to conduct a complex and extensive research into the legal regime of the minor's domicile and residence, the legal consequences of the violation and the protection mechanisms, the overlap with national and international judicial practice and the formulation of pertinent proposals and recommendations for adjusting the existing legal framework, but also the standardization of administrative and judicial practice.

***The purpose*** of the research is to conduct a multidisciplinary study on the legal regime of the minor's domicile and residence, as well as the legal consequences and their protection mechanisms, in order to justify the standardization of legal concepts and judicial practice involving minors.

***The proposed objectives*** lie in:

- - determining the content of the guiding principles for establishing the domicile and residence of the minor child;
- - analyzing the notions of family and child housing;
- - identifying the concept of habitual residence, temporary residence, alternating residence through the analysis of the legal framework, the jurisprudence of the ECtHR, CJEU;
- - determining the content of the notion of habitual residence in international practice; researching the legal regime of changing the domicile of the minor child, the conditions of his/her illegal detention, through the analysis of the effects on family relations;
- - researching aspects regarding the cooperation of state authorities in order to establish the domicile of the minor child, return in case of abduction or illegal detention;
- - formulating recommendations and proposals *de lege ferenda* aimed at contributing to the efficiency of judicial practice and to make national legislation compatible with the standards of the European community.

***Research hypothesis.*** To the extent that the theoretical and normative foundations of the legal regime of the minor's domicile and residence are clarified, the objective criteria and applicable conditions for determining the child's place of residence are established, as well as the procedures by which the protection of his or her fundamental rights and interests is achieved, and the justification and

proportionality of protection measures are developed both theoretically, then the coherent application of these principles will contribute to the consolidation of legal guarantees and the efficiency of the minor's protection mechanisms, ensuring the necessary balance between the interests of the child and the rights of the parents or other persons involved in the exercise of parental responsibilities and guardianship authority.

***Synthesis of research methodology and justification of chosen research methods.***

Synthesis of the research methodology and justification of the chosen research methods: for the realization of scientific research on the complex theme, the established methods were used, namely: historical analysis, logical analysis, systemic analysis, comparative analysis, synthesis.

The method of historical analysis was the basis for the research of fundamental principles starting from the first philosophical interpretations from the Roman period to the present day, referring to the understandings between states with reference to the resolution in the best interest of the minor of the situations arising in his free movement. The logic and its methods are inextricably linked to the study and research itself of all aspects of judicial practice in the matter, hence the need to use this research method.

The systemic analysis allowed for an in-depth understanding of the phenomenon that affected the approach to problems that harm the respect for the fundamental rights of the child and hence the possibility of finding the solutions that are required to overcome this situation.

The comparative analysis method, a true legal method, has proven to be the most useful method, being also the most used, because it creates the possibility of seeing how different states have approached the problems of minors, starting from the member states and extrapolating to states that have a different type of procedure, but which are based on the same substantial context. This method created the possibility of explaining the globalization of the analyzed situation.

The synthesis method also played an essential role because disparate data viewed differently, if not properly synthesized, will never form a whole. The synthesis of data collected from the judicial practice of the Republic of Moldova made it possible to highlight situations that can be resolved in the same manner as, for example, the member states of the European Union, given the desire to align with European legislation.

The use of these methods allowed for in-depth research into the fundamental rights of the child, their respect in the existing judicial system, an analysis that allowed for the suggestion of structural changes in the codification and implementation of European provisions through proposals for *the lege ferenda*.

***The empirical basis of the research*** is formed by the pertinent jurisprudence of the ECtHR, the CJEU, the Constitutional Court of the Republic of Moldova, Romania, cases from the jurisprudence of the courts of the Republic of Moldova, as well as Romania. The research presented and researched legislative acts from the Republic of Moldova, Romania, European Union Directives, UN Directives, and other international instruments relevant to the complex and objective research of the topic.

***The scientific novelty*** consists in the complex and multidisciplinary analysis of the legal regime of the minor's domicile and residence and the contribution to solving important problems faced by the Republic of Moldova, namely the identification of legislative problems of the Republic of Moldova in dissonance with the legal provisions proposed at the European level, with their solution through a proposal *of lege ferenda*.

***The theoretical importance and practical value*** of the work is given priority by the legal and social importance of the institution of the best interests of the child, through the analysis of the most relevant opinions and doctrinal concepts that formed the basis of this research. The research carried out in this work is a pragmatic and comparative one of the main evidence, both doctrinal and practical, in the matter of respecting the minor's domicile.

To the same extent, we believe that this scientific work will be of real help to civil law practitioners, but also to theorists, as a starting point for research in the above-mentioned subject and beyond. The results obtained from the research can serve to improve current legislation by amending some normative acts, but also by developing new normative acts, since existing deficiencies can only be eliminated by legislative reconceptualization of the institution of the best interests of the child. In another vein, the research results can be the subject of the university curriculum, cycle I, bachelor's degree and cycle II, master's degree, when developing courses.

The scientific results will be useful in several aspects: in the legislative process, in the practical activity of lawyers, judges, specialists, as well as in the didactic process. Also, solutions and hypotheses for converting the Civil Code of the Republic of Moldova to meet the requirements of judicial practice in European and international relations in order to resolve issues regarding the determination of the minor's domicile were identified.

***Approval of the results.*** The results of the research conducted have been presented at national and international conferences, especially abroad, and are reflected in major scientific publications and articles.

## THESIS CONTENT

Chapter 1, entitled *Analysis of the situation in the matter of the legal regime of the minor's domicile and residence, legal consequences and protection mechanisms*, examines the relevant scientific literature in the field, including monographs, manuals and articles published in Romania, the Republic of Moldova and other states. At the heart of the analysis are the concepts and visions of prestigious doctrinaires who continue to show interest in the legal regime of the minor's domicile and residence.

The research studied the works of the authors: A.-G. Gavrilesco, C.C. Hageanu, I. Bîtcă, S. Baieş, N. Roşca, V. Cebotari, V.L. Coman, G.B. Spîrchez, M. Eliescu, C. Hamangiu, I. Rosetti-Bălănescu, Al. Băicoianu, R. Costache, C. Bichescu, D. Alexandrescu, I. Filipescu, C. Bîrsan, D. Doroş, R. Curchin, S. Cercel, L. Țaranu, G. Ardelean, O. Miron, V. Doni, I. Frunze and others, whose works constitute the theoretical basis of this research.

The analyzed publications, produced in a recent period, are recognized and appreciated by the academic community and have provided considerable support in the study of the legal regime of the domicile and residence of the minor. The topic was mainly addressed in the context of doctoral theses in civil law and family law, as well as in theoretical and practical articles intended for conferences and specialized journals. However, the problem was not treated as a stand-alone topic, but in connection with other legal institutions.

The doctrinal analysis conducted allowed identifying the level of existing research on the topic, formulating the central scientific problem, as well as establishing the objectives of this thesis. The results of this chapter provide the theoretical foundation necessary for investigating the legal consequences of the minor's domicile and residence regime, as well as for identifying adequate protection mechanisms.

In Chapter 2, entitled *The legal regime of the minor's residence in the legislation of Romania, the Republic of Moldova and other states*, the following were analyzed: 2.1. The principles of law applicable to the child's right to a stable domicile; 2.2. The notion of habitual residence and temporary residence in national legislation; 2.3. The legal regime of the home and its domicile in the legislation of Romania, the Republic of Moldova, and other states; 2.4. The concept of habitual residence or alternating residence of the minor in the legislation and jurisprudence of the ECtHR and the CJEU; 2.5. The notion of habitual residence in international practice.

At the Council of Europe level, the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (The Hague 1993) was adopted, which enshrined the "principle of the best interests of the child", imposed also in relation to the rights and obligations of the child's parents, other legal representatives, as well as any persons to whom the child has been legally placed.

Regarding the situation of the minor in case of divorce, a methodological analysis based on sociological investigations was required, considered in another work.<sup>13</sup>, precisely to "see its impact on the best interests of the minor. It was based on the fact that the family comes first when addressing relationships between parents and children, not being able to discuss these major issues separately."<sup>14</sup>

Analyzing the jurisprudence on the topic of divorce, sociological investigations in the field show that "the desire of children, regardless of age, is for the family not to fall apart, to remain in communion because that is where they find their balance, considering that a divorce is devastating for them. However, when the situation degenerates, and the family environment becomes toxic for the child, the separation of the two parents through divorce is inevitably required. However, the desire of children is not always taken into account, starting from the fact that under a certain age children are not asked what their desires are, the fact in itself thus acquiring a relative character."<sup>15</sup>

The principle of the best interests of the minor interacts with other universal principles of the UN Convention on the Rights of the Child, such as: "the right to non-discrimination (art. 2), the right to life, the right to development and survival (art. 6), the right to be heard (art. 12), and signatory states must adopt all necessary measures, even with regard to representation, if necessary, to assess the best interests of these children, the same being valid for children who cannot or do not consider that they should express their opinions."<sup>16</sup>

In the current Romanian regulation (art. 264 of the NCC<sup>17</sup>), listening to the child is carried out in order to protect the best interests of the child, which from this perspective must be understood as a general principle, to which a set of sub-principles and fundamental rights of the child are subordinated.

According to the provisions of the UN Convention on the Rights of the Child, the child's fundamental rights include: the right to identity; the right to non-discriminatory education and to the development of skills and personality; the right to health and access to necessary medical services; the right to a decent living that allows for physical, intellectual, moral and social development; the right to be protected from exploitation, hazardous work or work that interferes with his/her education; the right to protection of his/her own personality and physical and mental integrity; the right to rest and liberty; the

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<sup>13</sup>GIURGEA, L. Children a Decisive Factor in Choosing the Form of Divorce; Judicial Versus Administrative. În: *Revista Intellectus*, Chișinău, 2022, p.160. [online] [accesat 20.01.2026]. Disponibil: <https://doi.org/10.56329/1810-7087.22.2.17> .

<sup>14</sup>BODOAȘCĂ, T., DRĂGHICI, A., PUIE, I. *Dreptul familiei*. București: Ed. Universul Juridic, 2012, p. 57

<sup>15</sup>GRAHAM, ALL., GRAHAM, CROW. *Families, Households and Society*. Palgrave, 2001, p. 33-46

<sup>16</sup>Convenția cu privire la drepturile copilului adoptată de Adunarea Generală a Națiunilor Unite la 20 noiembrie 1989. [online] [accesat 01.02.2026]. Disponibil: <https://www.unicef.org/moldova/media/1401/file/Conventia-cu-privire-la-drepturile-copilului.pdf>

<sup>17</sup> Codul Civil al României din 17 iulie 2009. Republicat în: *Monitorul Oficial*, Partea I nr. 505 din 15 iulie 2011. Disponibil: <https://lege5.ro/Gratuit/gi2tsmbqhe/codul-civil-din-2009>

right to be protected from neglect, abuse or violence; the right to be raised with love and appropriate care; the right to social assistance and protection from drugs or exploitation; the right of children with disabilities to special assistance; the right to private life and protection of image; the right to freely express his/her opinions and religious beliefs; the right to freedom of association and peaceful assembly; the right of minors from ethnic, religious or linguistic minorities to preserve their cultural and linguistic identity; the right to file complaints for violations of fundamental rights.

The Civil Code (NCC) enshrines the principle of the best interests of the child, which must be respected in all cases concerning minors, including in the context of increased mobility in the European Union.

The research analyzed notions such as “habitual residence” and “temporary residence” in national legislation, as well as “alternating residence” or “shared residence” in the case law of the ECtHR and the CJEU. The study addresses both the general legal situation of the minor and the legal regime applicable in cases where the minor moves with the parent with whom he does not have a permanent residence.

The legal implications of Article 8 of the ECHR are analysed in Chapter 2, including the situations that allow public authorities to limit the exercise of rights, for the protection of state security, public order, health, morals or the rights and freedoms of others. The exercise of the right to family life and home generates multiple legal consequences, especially in situations of divorce or separation of parents.

Chapter 3 entitled *The legal regime of change of domicile and illegal detention of a minor: effects on family relations and international cooperation mechanisms* discusses: 3.1. Obstacles to maintaining the child's ties with the other parent, in international practice; 3.2. Legal consequences of failure to comply with measures regarding the minor's domicile; 3.3. Legal detention of the minor; 3.4. Cooperation of state authorities in order to re-establish the minor's domicile and return him in case of abduction.

The analysis focuses on situations where the measures regarding the child's residence are modified, with an emphasis on cross-border cases where the minor is illegally removed or retained by one of the parents. The study highlights the importance of adopting rapid and effective measures to return the child to his or her habitual residence and to protect his or her best interests. The lack of legislative and institutional correlation between states may lead to the inapplicability of measures adopted in one state in another, affecting the right to residence, the child's reintegration, the maintenance of personal ties and appropriate placement.

The unlawful detention of a minor has significant consequences for his or her psychological, emotional and social development, as well as for his or her relationships with both parents. Case studies and the ECtHR case law indicate that unjustified restrictions on contact with the parent with whom the

child has his or her habitual residence may be considered a violation of the right to family life (Article 8 ECHR). The same principles are reflected in the case law of the CJEU, which emphasises the need to respect habitual residence and effective coordination between judicial authorities in the Member States.

The chapter highlights the essential role of international cooperation between central authorities designated by signatory states to international instruments. The 1980 Hague Convention on the Civil Aspects of International Child Abduction establishes the obligation of authorities to cooperate in restoring the child's domicile and protecting parental rights. The Republic of Moldova acceded to the convention in 1998, and Romania, as an EU Member State, also applies Regulation (EU) 2019/1111 on jurisdiction, recognition and enforcement of decisions in matters of parental responsibility and international child abduction. This regulation strengthens cross-border cooperation, ensures legal certainty, access to justice and the efficiency of child return procedures.

The concept of 'habitual residence' is the central element in child protection mechanisms. The competent authorities determine residence according to the specific circumstances of each case, in line with the objectives of international conventions and not strictly according to national law. In situations where a minor is wrongfully removed to another EU Member State, the courts of the receiving State cannot resolve claims for custody or maintenance, except with the consent of the parent of residence or in the absence of a request for return.

The chapter analyses conflicts of jurisdiction and conflicts of substantive law, which are frequently encountered in cross-border cases. Conflicts of jurisdiction determine which court has jurisdiction to resolve the dispute, while conflicts of substantive law may result in the simultaneous application of several legal systems. Prioritising the resolution of conflicts of jurisdiction is essential to protect the rights of the minor and prevent the violation of his or her best interests.

The comparative analysis of the legislation in Romania and the Republic of Moldova shows that, although the national regulatory framework is consolidated, there are discrepancies at the international level that require harmonization. It is essential to implement clear regulations on cross-border cooperation, recognition and enforcement of decisions on the residence of minors and the prevention of international abductions. The adoption of efficient mechanisms, interoperable with European and international systems, allows for the real protection of the best interests of the child and respect for the rights of both parents.

Chapter 4 of the thesis, entitled *Restoring the minor's domicile and his legal protection: legislative measures, psychological counseling and combating parental alienation*, analyzes: 4.1. Regulation of a regulatory framework regarding the situation of the parent obliged to undergo psychological counseling; 4.2. Forms of abuse that determine the change of domicile or residence of the minor; 4.3. The need to

regulate mandatory psychological counseling in cases with a history of violence; 4.4. The phenomenon of parental alienation and the need for its legal regulation in order to protect the interests of the minor through the respect of his or her domicile.

The main objective of this chapter is to highlight the need for an integrated approach, combining legislative regulation with psychological counseling and measures against parental alienation, in order to guarantee the stability of the minor's domicile and the maintenance of personal relationships with both parents.

The legal framework regarding the parent's obligation to benefit from psychological counseling is analyzed, especially in situations where there were prior conflicts or a history of domestic violence. The comparative study between the legislation of Romania and the Republic of Moldova shows that, although there are general provisions on child protection and measures assisted by the authorities, the implementation of mandatory psychological counseling is not uniformly regulated.

Psychological counseling of the parent can prevent custody conflicts and illicit movements of the minor, contributing to compliance with the principle of stability of the child's domicile and to the strengthening of family relations. This measure may be ordered by the court or the competent authority at the request of the interested parent or other entitled persons, and may be supplemented by pecuniary sanctions or precautionary measures for non-compliance.

The analysis of the forms of abuse shows that the change of domicile of the minor is frequently determined by domestic violence, serious negligence, emotional abuse or parental alienation. In practice, these situations generate complex legal difficulties, since the minor must be protected without being deprived of the emotional bond with the parent with whom he or she has a stable domicile.

This segment highlights the need for clear procedures for psychological and social assessment of the family, which support judicial decisions and ensure appropriate protective measures, including temporary placement or parental supervision, without compromising the rights of the child.

Mandatory psychological counseling becomes an essential tool in situations where there is a history of domestic violence. It targets both the abusive parent, to reduce the risks of aggressive or manipulative behavior, and the child, to manage trauma and strengthen the capacity to adapt.

Integrating mandatory psychological counseling into judicial procedures can prevent illicit movements of minors, reduce the risk of parental alienation, and facilitate the child's return to their legal residence, in conditions of safety and emotional stability.

The phenomenon of parental alienation represents a subtle form of abuse, which affects the child's relationship with the parent with whom he or she has permanent residence. The chapter highlights the

importance of explicit legal regulation of parental alienation, in order to prevent manipulation of the minor and to guarantee respect for the legal residence.

It is proposed to establish judicial and psychological mechanisms to identify and combat parental alienation, including periodic psychological assessments, parental mediation programs and sanctions against abusive behavior of the parent who manipulates the child.

It is emphasized that the European dimension of the right to a child, reflected in Art. 8 of the ECHR, guarantees the right to family life and a stable home, and the application of these principles must be supported by harmonizing national legislation with international standards and good European practices.

The chapter also highlights that in the context of increased family mobility and social changes, the concept of "child's home" must be perceived as a protected right, which ensures stability, belonging and continuity of family relationships, regardless of complex legal situations or parental conflicts.

## GENERAL CONCLUSIONS AND RECOMMENDATIONS

Research into the legislation of Romania and the Republic of Moldova, compared to European Union standards, reveals significant progress in defining and applying the concepts of domicile, residence, best interests of the child and freedom of movement. However, there remains a need for normative clarifications and efficient implementation mechanisms, aimed at guaranteeing uniform and effective protection of minors' rights.

In this study, the content of the guiding principles for establishing the domicile and residence of a minor child was determined (199, 132-160); the content of the notion of habitual residence in international practice was determined (200, 58-61; 201, 373-376); the legal regime of changing the domicile of a minor child, the conditions of his/her illegal detention were investigated, through the analysis of the effects on family relations; aspects regarding the cooperation of state authorities in order to establish the domicile of a minor child, return in case of abduction or illegal detention were studied (183, 174-183; 187, 443-447); recommendations and proposals *of lege ferenda* were formulated aimed at contributing to the efficiency of judicial practice, and to make national legislation compatible with the standards of the European community (189).

**Following the multi-aspect analysis of the topic of the doctoral thesis, the important scientific problem was solved**, which consists in clarifying and systematizing the legal regime of the minor's domicile and residence, as well as the mechanisms for its protection, by analyzing the national legal framework, the case law of the ECtHR and the CJEU and international practice, which allowed the definition of objective criteria and applicable procedures for establishing the child's place of residence, ensuring the balance between the fundamental interests of the minor and the rights of the parents and the substantiation of some recommendations *of lege ferenda* for the standardization of judicial practice and the alignment of national legislation with European standards.

The solution of the important scientific problem was demonstrated by **the conclusions** developed based on the research hypothesis, as follows::

1. The need to establish the child's domicile, in the situation where the parents are separated, constitutes an essential pillar of major interest, both in the domestic procedural system, but also in the European systems, and the fact that Romania is a member of the European Union and the free movement of persons, in addition to the value contribution it has brought, has inevitably created a lot of problems related to the norms involved in resolving conflicts related to family law. Romanian legislation has undergone remarkable transformations, by bringing together in a single code, the NCC, several regulations and codes, with different initial terminologies and

meanings. Thus, the Family Code has been perfectly integrated into the NCC and thus there are no longer different definitions regarding the same phrases, as we encounter in the Republic of Moldova. (See Chapter 2 Subchapter 2.3.).

2. The issuance of court decisions in cases involving measures regarding minors (establishing the minor's residence, placing them in foster care, returning the minor by the person who is holding them without right, exercising the right to have personal contact with the minor, as well as other measures provided for by law), without the administration of evidence based on a specialized analysis by a body/institution or authority in the field of protection of the rights and interests of the child, may generate contradictory solutions, in disagreement with the best interests of the child. (See Chapter 2 Subchapter 2.1.).
3. The phenomenon of parental alienation is viewed differently by the member countries of the European Union and of course solved differently by each state, either starting from the idea that this phenomenon does not exist in its materiality, or ignoring it or considering it a natural thing, given the position of the parents, one towards the other. Romania is currently the only state in the European Union that has regulated the phenomenon of parental alienation through Law no. 123/2024 amending and supplementing Law no. 272/2004 on the protection and promotion of the rights of the child, although this phenomenon has been recognized in the practice of the courts for at least 10 years. (See Chapter 4 Subchapter 4.4.).
4. Regarding the phenomenon of parental alienation, the social reality, which indicates countless abuses against minors, is not always reflected at the legislative level, most European states being cautious in legally regulating a minor's behavior as the result of parental alienation. With all that stated, as we have previously shown, in the judicial practice of the last 10 years we have encountered decisions by which the courts have found parental alienation of a child, based on psychological reports, without there being a specific legal framework. Given the practice and experience of Romania, we believe that the Republic of Moldova can take important legislative steps to regulate this phenomenon, since the recent practice of the courts in Romania highlights serious phenomena of parental alienation among minors, even from a very young age. (See Chapter 4 Subchapter 4.4.).
5. A measure which creates impediments for a child to maintain regular personal relations and direct contact with both of his or her parents cannot be justified unless there is another interest of the child which is of such overriding importance. Thus, all the interests concerned must be given an appropriate and balanced assessment, which is based on objective considerations and

- reasoning regarding the true identity and social environment of the minor (See Chapter 2 Subchapter 2.1.).
6. The child is capable of forming his or her own opinion, and the right to express it freely in all disputes affecting him or her must be guaranteed and ensured. The child's views must also be given due weight in accordance with his or her age and maturity. It is mandatory that a child over the age of 10 years be heard in administrative or judicial proceedings concerning him or her. However, if the competent authority considers it necessary to resolve the case, a child under the age of 10 may also be heard. (See Chapter 2 Subchapter 2.1.).
  7. Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility and on international child abduction (recast) clarifies the right of the child to be given the opportunity to express his or her views in the context of the proceedings concerning and involving him or her. Subsequently, the provisions of the Regulation complement the Hague Convention, which applies to all Member States of the European Union, and Romania and the Republic of Moldova are signatories to the Convention. The provisions of the Hague Convention apply in situations where a child is wrongfully transferred to another State, being particularly aimed at cases of minors who have not reached the age of sixteen at the time of separation or retention. (See Chapter 2 Subchapter 2.1.).
  8. Parental abduction of a minor occurs when the minor is transported abroad without legal consent or is detained against his/her will, thus being removed from his/her place of habitual residence, or when the parent violates the legal provisions regarding visitation rights or established custody. (See Chapter 3 Subchapter 3.3.).
  9. In order to prevent and punish international parental child abduction, the Republic of Moldova acceded, by Government Decision No. 1468 of 29 January 1998, to the Hague Convention on the Civil Aspects of International Child Abduction. The Convention regulates jurisdiction, recognition and enforcement of decisions on custody and access rights of minors, and is applicable to any child who was habitually resident in a Contracting State prior to the violation of these rights. The applicability of the Convention automatically ceases once the minor reaches the age of 16, according to its provisions. (See Chapter 3 Subchapter 3.3.).
  10. The Hague Convention, 1980 provides an opportunity for a parent who is the victim of abduction to request the return of a minor (for example, when the other parent has abducted the child or is keeping him/her in another country) or to request the restoration of access rights. The objectives

of the Convention are: “a) to secure the prompt return of children wrongfully removed or retained in any Contracting State; b) to ensure the effective observance in the other Contracting States of the rights of custody and access which exist in a Contracting State.” (See Chapter 3 Subchapter 3.3.).

11. The 1980 Hague Convention was followed by the adoption of Regulation No. 2201/2003 of 27 November 2003 on jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, parental child abduction. It was concluded that although this is a well-functioning instrument and has brought many important benefits to citizens, the existing rules could still be adjusted and improved. Thus, the new Regulation (EU) 2019/1111 on jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility and on international child abduction (recast) was adopted at the level of the European Community, which brings additions to the Convention. (See Chapter 3 Subchapter 3.3.).
12. Not every removal or retention of a child is considered wrongful, thus, the Hague Convention, 1980, expressly regulates when a removal or retention of a child will be considered wrongful: a) “when it takes place in violation of a right of custody conferred on a person, an institution or any other body acting alone or jointly by the law of the State in which the child was habitually resident immediately before the removal or retention; and b) if at the time of the removal or retention this right was effectively exercised, acting alone or jointly, or would have been so exercised but for such circumstances.” (See Chapter 3 Subchapter 3.3.).
13. When parents do not get along, there are a number of major consequences for the child. A change in the child’s domicile is made with the prior consent of the parent with whom the child does not live (non-custodial parent). In case of disagreement on these issues, the court will decide on the basis of the best interests of the child, taking into account the parents’ claims and the conclusions of a psycho-social investigation report. Similarly, decisions will be made regarding the child’s travel abroad. In the case of international child abduction, the 1980 Hague Convention on the Civil Aspects of International Child Abduction, which has been ratified by both Romania and the Republic of Moldova, becomes applicable (See Chapter 3 Subchapter 3.4.).
14. Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility and on international child abduction is applicable only to Member States, such as Romania, and not

to the Republic of Moldova, in which context its adoption in domestic legislation would be required (See Chapter 3 Subchapter 3.4.).

15. The principle of the best interests of the child interacts with other fundamental principles enshrined in the UN Convention on the Rights of the Child, such as: the right to non-discrimination (art. 2), the right to life, survival and development (art. 6) and the right to be heard (art. 12). States parties are obliged to take all necessary measures to protect the best interests of the child, including through representation, when the child is unable or unwilling to express his or her views. (See Chapter 2 Subchapter 2.1.).
16. There is a difficulty in establishing the concept of the best interests of the minor, it must be pursued and found not in the immediate benefits that he feels in his daily life, but in a set of factors aimed at ensuring a good and balanced educational, moral, physical and social development of the future adult child. (See Chapter 2 Subchapter 2.1.).
17. Residence provides a geographical location in relation to a person's situation. Thus, habitual residence represents a close and stable connection of the child with the established place. In order to determine the character of habitual residence, those relevant factual elements are taken into account, in particular the time spent and the regularity with which the person is present in that place, as well as the circumstances and reasons for being present in that place. (See Chapter 2 Subchapter 2.3. Sect. 2.3.1.).
18. Habitual residence implies that the place has a stable or regular character. The transfer of habitual residence to another State reflects the intention of the person to establish there the permanent or habitual centre of his interests, thus conferring stability on him (See Chapter 2 Subchapter 2.3. Sect. 2.3.2.).

***Description of personal contributions, emphasizing its theoretical significance and practical value.*** *The personal contributions* of this thesis consist in identifying and clarifying the legal regime of the minor's domicile and residence, through a complex and in-depth analysis of national and international legal norms, as well as of national, Romanian judicial practice, of the Court of Justice of the European Union and the European Court of Human Rights regarding the minor's domicile and residence.

The paper makes an original contribution, both theoretical and practical, by outlining a coherent conception and vision on the legal regime of the domicile and residence of the minor, the associated legal effects, as well as the mechanisms for their protection. The research focuses specifically on the analysis of the notion of the minor's residence in European directives, national and international legislation, as well as through the lens of the case law of the CJEU and the ECHR, including in aspects regarding the re-

establishment of domicile, psychological counseling and the prevention of parental alienation. From a practical perspective, the thesis proposes concrete solutions for adjusting and optimizing the existing legal framework, thus contributing to increasing the efficiency of the mechanisms for the protection of minors' rights.

***The novelty and scientific originality is justified*** by the fact that the theoretical and practical aspects of the legal regime of the minor's domicile and residence, the associated legal effects, as well as the mechanisms for their protection have been comprehensively researched. The study of the particularities of the subject in question, which until now has only been partially investigated in the specialized doctrine, facilitated the identification of essential gaps, problems in the field, and thus contributed to the formulation of findings that bring an impactful contribution, described by novelty and originality. These results are particularly important for improving the existing legislative framework. In this regard, the research carried out complies with the criteria of novelty and scientific originality.

***The legal and empirical*** basis of the study is formed by constitutional norms, civil law norms, norms of international conventions, provisions of EU directives. The research is also based in particular on the relevant jurisprudence of the Romanian and Moldovan courts, the CJEU, and the ECtHR.

***The scientific basis of the research is based*** on the works and studies published by researchers in the field of civil law, family law, civil procedure and human rights, both from the Republic of Moldova and from other states, offering a global and interdisciplinary perspective on the issues addressed. These sources facilitate a rigorous deepening of the understanding of the concept of domicile and residence of the minor and allow the identification of the most effective legal practices applicable in this field.

***Theoretical significance.*** The paper is among the few studies that address the analysis of the legal content of the legal regime of the minor's residence and domicile, highlighting their impact on the essence of the procedure and on the conditions of application, in correlation with the respect for the minor's rights.

***Applicative value.*** The author's proposals will contribute to improving the legislation regarding the domicile and residence of minors, and the recommendations formulated in the content of the work will be useful to practitioners, as well as professionals in the educational process.

***Indicating the limits of the results obtained, with the establishment of unresolved issues,*** consists in developing and deepening scientific research on the legal regime of the minor's domicile and residence, placing particular emphasis on the analysis of the judicial practice of the courts, as well as the CJEU, the ECtHR. At the same time, the need to study the experience of other states is highlighted, in order to identify the implemented innovations and take over the best practices applicable in the Republic of

Moldova, especially in the perspective of harmonizing national legislation with the legal framework of the European Union.

Given the conclusions stated above, we intend to formulate the following proposals *of lege ferenda*:

1. Amendment to Law No. 71/2011, implementing the New Romanian Civil Code through amending Article 229(2)(b) regarding the need to regulate the obligation to psychosocial assessment reports should be prepared only by qualified personnel, through the introduction of the following regulation:

*"Art. 229, para. 2 (b),.. The psychosocial assessment report provided for in the Civil Code is conducted by the guardianship authority, with the exception of the investigation provided for in Article 508(2), which is carried out by the General Directorate for Social Assistance and Child Protection; **Carrying out psychosocial assessment reports that fall within the purview of specialized services under the jurisdiction of the city hall, is carried out only by qualified personnel who also hold relevant degrees in psychology**".*

2. Regarding the need to regulate the phenomenon of *parental alienation*, we consider it necessary to amend the Family Code of the Republic of Moldova by introducing the following regulation::

*"Art. 1<sup>1</sup>. Definition of terms:*

- a) *Parental alienation – "form of psychological violence by which one of the parents or relatives of the child, up to and including the third degree, with whom the child or his/her family has maintained personal relations and direct contacts, respectively other persons than those mentioned above, including relatives up to and including the third degree, with whom the child or his/her family has maintained personal relations and direct contacts, as well as the person, family or maternal assistant who ensures the upbringing and care of the child, under the conditions of the law, intentionally, pursued or assumed and appropriated, generates, accepts or uses a situation in which the child ends up manifesting unjustified or disproportionate restraint or hostility towards either parent"*
- b) *alienating parent - the parent/person who is responsible/responsible for the existence of a situation of parental alienation;*
- c) *alienated parent - the parent towards whom "the child displays unjustified or disproportionate restraint or hostility."*

*„ Art. 1<sup>2</sup>. In the situation where parental alienation is found by the court, the exercise of parental authority by the alienating parent or the personal contact program established in favor of the alienating person creates the relative presumption that the exercise of parental authority by the alienating parent,*

*as well as the establishment of the child's residence at the residence of this parent, respectively the personal contact program, including by taking the child to the residence of the alienating parent, are not in the best interest of the child. ”*

*„Art. 1<sup>3</sup>. The competence to prepare the psychosocial investigation report in cases of parental alienation lies solely with the DGASPC or with another department or service subordinated to the city hall. The report will be prepared, based on the principle of specific competence, by a staff member with studies in the specialty of psychology..”*

*„Art. 1<sup>4</sup>. After conducting the psychosocial investigation report and if parental alienation of the child is found, the court will mandatorily order a psychological counseling program for the minor, together with the parents or the alienating parent..”*

3. Proposals for a law to amend the Civil Code of the Republic of Moldova regarding the need to establish pecuniary measures and guarantees in the event of the child not being returned to the domicile of the parent where the child's domicile is established, in the following wording:

*„Art. 42<sup>1</sup>. At the request of the parent with whom the child's domicile is established or of the person obliged to return the child, or ex officio, the court may establish for the parent with whom the child does not reside or of the person obliged to return the child, precautionary measures, according to the enforceable title or the agreement of the parties regarding the child's personal relations, until the date of the child's return, namely: the obligation of the parent who is obliged to return the child to present the original passport or another identity document to a specific institution, designated by the court; the obligation to present a specific document showing that the parent obliged to return the child to his domicile has notified the submission of these documents to the competent consular authority, during the visit.”*

*„Art. 42<sup>2</sup>. The court shall order pecuniary measures only at the request of the parent with whom the child's domicile is established, in the form of penalties per day of delay, against the parent or person who refuses to implement or comply with the provisions regarding the establishment of the child's domicile, according to the enforceable title or the agreement of the parties regarding the child's personal relations. The amount of the penalty shall be established by the court, in a percentage ranging between 40% and 80% of the net monthly income of the person obliged to pay it, but not less than 1500 lei per day of delay..”*

*„Art. 42<sup>3</sup>. The court may establish both measures provided for above, under the conditions provided for therein..”*

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## ADNOTARE

### GIURGEA Lenuța. „Regimul juridic al domiciliului și reședinței minorului. Consecințe juridice și mecanisme de protecție.

**Teză de doctor în drept, specialitatea: 553.01– Drept civil. Chișinău, 2026.**

**Structura tezei:** Introducere, patru capitole, concluzii generale și recomandări, bibliografie din 324 de titluri, 266 pagini text de bază, la tema tezei au fost publicate 24 de lucrări.

**Cuvinte-cheie:** copii, familie, părinți, protecție, reședință, domiciliu, minori, drepturi, discriminare.

**Scopul cercetării:** constă în realizarea unui studiu multidisciplinar privind regimul juridic al domiciliului și reședinței minorului, precum și a consecințelor juridice, a mecanismelor de protecție a acestora, pentru justificarea uniformizării conceptelor legale și a practicii judiciare în care sunt implicați minori.

**Obiectivele cercetării:** determinarea conținutului principiilor directoare la stabilirea domiciliului și reședinței copilului minor; analiza noțiunilor de locuință a familiei, a copilului; identificarea conceptului de reședință obișnuită, reședință temporară, reședință alternantă prin prisma analizei cadrului legal, al jurisprudenței CtEDO, CJUE; determinarea conținutului noțiunii de reședință obișnuită în practica internațională; cercetarea regimului juridic al schimbării domiciliului copilului minor, a condițiilor de reținere nelegală a acestuia, prin prisma analizei efectelor asupra relațiilor de familie; cercetarea aspectelor privind cooperarea autorităților statelor în vederea stabilirii domiciliului copilului minor, a returnării în caz de răpire, reținere nelegală; formularea recomandărilor și propunerilor de lege ferenda menite să contribuie la eficientizarea practicii judiciare, și să compatibilizeze legislația națională cu standardele comunității europene.

**Noutatea și originalitatea științifică** constă în analiza complexă și multidisciplinară în materia regimului juridic al domiciliului și reședinței minorului și contribuirea la soluționarea unor probleme importante cu care se confruntă Republica Moldova, respectiv identificarea problemelor legislative ale Republicii Moldova în disonanță cu prevederile legale propuse la nivelul Europei, cu soluționarea lor prin propunere de *lege ferenda*.

**Rezultatele obținute** se concretizează în tezele științifice principale promovate spre susținere și în **problema științifică importantă soluționată** care constă în clarificarea și sistematizarea regimului juridic al domiciliului și reședinței minorului, precum și a mecanismelor de protecție a acestuia, prin analizarea cadrului legal național, a jurisprudenței CtEDO și CJUE și a practicii internaționale, ceea ce a permis definirea criteriilor obiective și a procedurilor aplicabile pentru stabilirea locului de reședință al copilului, asigurând echilibrul între interesele fundamentale ale minorului și drepturile părinților și fundamentarea unor recomandări *de lege ferenda* pentru uniformizarea practicii judiciare și alinierea legislației naționale la standardele europene.

**Semnificația teoretică** rezultă indubitabil din abordarea europeană a legislației substanțiale în sensul alinierii legislației moldovene la legislația și cerințele europene, prin drept comparat.

**Valoarea aplicativă:** Rezultatele științifice vor fi utile sub mai multe aspecte: în procesul de legiferare, în activitatea practică a avocaților, judecătorilor, specialiștilor, precum și în procesul didactic. De asemenea, au fost identificate soluțiile și ipotezele de convertire a Codului Civil RM pentru a răspunde cerințelor practicii judiciare în relațiile europene și internaționale în vederea soluționării problemelor privind determinarea domiciliului minorului.

**Implementarea rezultatelor științifice:** rezultatele cercetării realizate au fost expuse în cadrul conferințelor naționale și internaționale, în special peste hotare, și se reflectă în articole științifice

## ADNOTATION

### GIURGEA Lenuța. „The Legal Regime of the Minor’s Domicile and Residence. Legal Consequences and Protection Mechanisms.”

PhD thesis in Law, specialty: 553.01 – Civil Law. Chisinau, 2026.

**Structure of the thesis:** Introduction, four chapters, general conclusions and recommendations, bibliography consisting of 324 titles, 266 pages of main text. In addition, 24 significant scientific works have been published on the topic of the thesis.

**Keywords:** children, family, parents, protection, residence, domicile, minors, rights, discrimination.

**Research aim:** to conduct a multidisciplinary study on the legal regime of the domicile and residence of the minor, as well as their legal consequences and protection mechanisms, in order to justify the harmonization of legal concepts and judicial practice in cases involving minors.

**Research objectives:** determining the content of the guiding principles applied in establishing the domicile and residence of the minor child; analyzing the concepts of the family home and the child’s home; identifying the concepts of habitual residence, temporary residence and alternating residence through the analysis of the legal framework and the case law of the European Court of Human Rights and the Court of Justice of the European Union; determining the content of the concept of habitual residence in international practice; examining the legal regime governing the change of the minor child’s domicile and the conditions of unlawful retention of the child through the analysis of its effects on family relations; examining aspects concerning the cooperation of state authorities in establishing the domicile of the minor child and in ensuring the child’s return in cases of abduction or unlawful retention; formulating recommendations and *lex ferenda* proposals aimed at improving the efficiency of judicial practice and aligning national legislation with the standards of the European community.

**Scientific novelty and originality** lies in the comprehensive and multidisciplinary analysis of the legal regime of the minor’s domicile and residence, as well as in contributing to the resolution of significant issues faced by the Republic of Moldova, specifically by identifying legislative gaps in Moldova that are inconsistent with legal standards proposed at the European level, and addressing them through *lex ferenda* proposals.

**The obtained results** are reflected in the main scientific theses promoted for defense and in **the important scientific problem** addressed, which consists in clarifying and systematizing the legal regime of the domicile and residence of the minor, as well as the mechanisms for their protection, through the analysis of the national legal framework, the case law of the European Court of Human Rights and the Court of Justice of the European Union, and international practice. This has allowed for the definition of objective criteria and applicable procedures for determining the child’s place of residence, ensuring a balance between the fundamental interests of the minor and the rights of the parents, and the formulation of law reform recommendations aimed at standardizing judicial practice and aligning national legislation with European standards.

**The theoretical significance** undoubtedly derives from the European approach to substantive legislation, aimed at aligning Moldovan legislation with European legislation and requirements through comparative law analysis.

**Practical value:** the scientific results may be useful in several areas: in the legislative process, in the practical activity of lawyers, judges and specialists, as well as in the educational process. Furthermore, solutions and hypotheses for improving the Civil Code of the Republic of Moldova have been identified in order to meet the requirements of judicial practice in European and international relations concerning the determination of the minor’s domicile.

**Implementation of scientific results:** the results of the research have been presented at national and international conferences, particularly abroad, and are reflected in significant scientific publications and articles.

## АННОТАЦИЯ

ДЖУРДЖА Ленуца. „Правовой режим места жительства и пребывания несовершеннолетнего. Юридические последствия и механизмы защиты”.

Диссертация на соискание ученой степени доктора права, специальность: 553.01 – Гражданское право. Кишинэу, 2026.

**Структура диссертации:** введение, четыре главы, общие выводы и рекомендации, библиография из 324 наименований, 266 страниц основного текста. Кроме того, по теме диссертации опубликована в 24 научных работах значительного объема.

**Ключевые слова:** дети, семья, родители, защита, место пребывания, место жительства, несовершеннолетние, права, дискриминация.

**Цель исследования** заключается в проведении междисциплинарного исследования правового режима места жительства и пребывания несовершеннолетнего, а также их юридических последствий и механизмов защиты с целью обоснования унификации правовых понятий и судебной практики в делах с участием несовершеннолетних.

**Задачи исследования:** определение содержания руководящих принципов при установлении места жительства и пребывания несовершеннолетнего ребенка; анализ понятий жилища семьи и жилища ребенка; выявление содержания понятий обычного места пребывания, временного пребывания, а также чередующегося проживания на основе анализа правовой базы и практики Европейский Суд по Правам Человека и Суд Европейского Союза; определение содержания понятия обычного места пребывания в международной практике; исследование правового режима изменения места жительства несовершеннолетнего ребенка, условий его незаконного удержания через призму анализа последствий для семейных отношений; исследование аспектов сотрудничества государственных органов при установлении места жительства несовершеннолетнего ребенка и его возвращении в случае похищения или незаконного удержания; формулирование рекомендаций и предложений *de lege ferenda*, направленных на повышение эффективности судебной практики и гармонизацию национального законодательства со стандартами европейского сообщества.

**Научная новизна** заключается в комплексном и междисциплинарном анализе правового режима места жительства и пребывания несовершеннолетнего, а также в внесении вклада в решение важных проблем, с которыми сталкивается Республика Молдова, в частности в выявлении законодательных пробелов Республики Молдова, противоречащих нормам, предложенным на уровне Европы, и в их разрешении посредством предложений по законотворчеству (*lex ferenda*).

**Полученные результаты** отражаются в основных научных тезисах, выдвигаемых на защиту, а также в решении **важной научной проблемы**, заключающейся в уточнении и систематизации правового режима места жительства и проживания несовершеннолетнего, а также механизмов его защиты, посредством анализа национального правового регулирования, практики Европейского суда по правам человека и Суда Европейского Союза, а также международной практики. Это позволило определить объективные критерии и применимые процедуры для установления места проживания ребенка, обеспечивая баланс между основными интересами несовершеннолетнего и правами родителей, а также обосновать рекомендации по внесению законов (*law reform*) для унификации судебной практики и приведения национального законодательства в соответствие с европейскими стандартами.

**Практическая ценность:** научные результаты могут быть использованы в различных направлениях: в процессе правотворчества, в практической деятельности адвокатов, судей и специалистов, а также в учебном процессе. Кроме того, были выявлены решения и гипотезы совершенствования Гражданского кодекса Республики Молдова для приведения его в соответствие с требованиями судебной практики в европейских и международных правоотношениях при разрешении вопросов, связанных с определением места жительства несовершеннолетнего.

**Внедрение научных результатов:** результаты проведенного исследования были представлены на национальных и международных научных конференциях, в том числе за рубежом, и отражены в научных статьях.

**GIURGEA Lenuța**  
**LEGAL REGIME OF DOMICILE AND RESIDENCE OF THE MINOR. LEGAL  
CONSEQUENCES AND PROTECTION MECHANISMS**

**SPECIALTY 553.01 – CIVIL LAW**

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