

Child Discernment, a Global Problem

PhD. student **Lenuța GIURGEA**¹

Abstract

The United Nations Convention on the Rights of the Child (UNCRC) related to the rights of the child, on the one hand, in articles 12, 13, 14 and 15, regulates the freedoms of thought, opinion, conscience and religion, as well as association and free expression, on the other hand. Objectives: also, the holders of obligations for the child's best interest have the duty to turn these rights into reality as a direct guarantee of respecting their interests. Therefore, the state has an obligation to create the possibility that no child is marginalized in the realization of these fundamental freedoms through all possible measures. Research methods: right compared to the position in Rep. Moldova, USA, Georgia, etc. in relation to legislative changes, jurisprudence with special regard to the cases resolved by the ECHR in the field, theoretical methods such as the comparative, historical, sociological method of course regarding the discernment of the child, because the methods used are strictly subordinate to the proposed purpose. Results and implications of the study: the Committee on the Rights of the Child (CRC), in its general comment no. 12 (2009), shows that the practices through which the contribution of children is required to rise to certain levels of honest and moral participation of children.

Keywords: consent, child, responsibility, rights, hearing, ethics.

JEL Classification: K14, K15, K33, K36, K38

DOI: 10.62768/PLPA/2024/13/1/19

Please cite this article as:

Giurgea, Lenuța, „Child Discernment, a Global Problem”, *Perspectives of Law and Public Administration* 13, no. 1 (March 2024): 174-183

Article History

Received: 9 October 2023
Revised: 14 December 2023
Accepted: 12 January 2024

1. Introduction

From the legislative provisions of the EU, it follows without doubt that all children are free to express their opinions regarding themselves, in relation to their age and maturity². This rule applies generally and is not limited to specific regulations. There is also an interpretation of the CJEU in the sense of this provision in the Brussels II bis Regulation.

The provisions of international law, i.e., in article 12 paragraph 1 of the United Nations Convention on the Rights of the Child (UNCRC)³, state the fact that a child who can have his own opinion also has the right to express it freely in all related issues. But, at the same time, the opinion, age, and maturity of the child must be taken into consideration. In addition, article 12 paragraph 2 of the UNCRC - on the rights of the child⁴ provides that a child could be heard directly or through a representative or agency in any non-contentious or contentious proceeding with which it is related, in accordance with the procedural rules, respectively the provisions of national legislation. The United Nations Committee on the Rights of the Child has stated that all states that are parties to the Convention must directly ensure this right or adopt or revise laws to ensure that children can fully benefit from this situation. Moreover, it is imperative to ensure that the child receives all the necessary information and guidance sufficiently to make decisions that serve their best interest. The same institution must find that the child has the right not to use it; the way a child behaves in their

¹ Lenuța Giurgea - University of European Studies from Moldova, Republic of Moldova, elen_giurgea@yahoo.com.

² Brandstädter, K., Harms, U., and Grosschedl, J., *Assessing System Thinking Through Different Concept Mapping Practices*, „International Journal of Science Education”, vol. 34, no. 14, 2012, p. 2147–2170, <https://doi.org/10.1080/09500693.2012.716549>.

³ The document can be consulted on <https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child>, accessed on 04.11.2023.

⁴ Von Suchodoletz, A., Gestsdottir, S., Wanless, S. B., Mc Clelland, S. B., Birgisdottir, F., Gunzenhauser, C. and Ragnarsdottir, H., *Behavioral self-regulation and relations to emergent academic skills among children in Germany and Iceland*, „Early Childhood Research Quarterly”, vol. 28, no. 1, 2013, p. 62–73, <https://doi.org/10.1016/j.ecresq.2012.05.003>.

own choice, and not an obligation on them.

It is essential to note the importance of the subject addressed in the idea of conferring the child all the rights enjoyed by an adult, without discrimination, and at the same time placing the best interest of the child at the top of the list to be respected, as a principle of law.

2. The purpose of the research

In administrative or judicial matters involving a child, children who are already 10 years old must be heard. But there is also the possibility that a child under this age can be heard under the conditions in which the competent authority considers it necessary to solve the problem.

The obligation provided for in art. 264 of the Romanian Civil Code (C. civ.) was criticized as unconstitutional, as these provisions subject to criticism would make a child's right, namely, to be heard, a real diversion of meaning for him, turning it into an obligation. The author of this exception claimed that his son had in fact been tried several times, which constituted an abuse against him. According to this author of the exception of unconstitutionality, what he subjected to criticism would be contrary to the constitutional provisions found in art. 11 but also the provisions of international law and domestic law, such as the provisions related to the family of international treaties on human rights, as well as the rules from a child's perspective on the UN Convention on the Rights of the Child.⁵

The legislator specified that the minor must be heard in important matters related to the establishment of his best interest in relation to the establishment or change of the minor's domicile, the appointment of a guardian, the establishment of the family council, etc. Therefore, it is imperative to listen to the child in order to solve the problems that have arisen between the parents regarding the possibility of exercising parental authority in the light of the provisions of art. 486 Civil Code. In order to resolve disputes regarding the limitation of the child's right to maintain relations with other persons with whom he has family ties, such as grandparents - art. 494 Civil Code, in the case of a request to return the child to any person who holds it without the right provided for in art. 495 Civil Code, but in case of dissonance between the legal supporters of the child, regarding the establishment of his residence (as provided in the articles of the Civil Code) as for example in the case of changing the type of education or professional training, as is provided in art. 498, but also in all situations where the parental authority - article 506 of the Civil Code - is confirmed by the court between the parents who are no longer together and their children, the parent who is separated from the child, can establish the modalities of carrying out personal relations with him afterwards or during the divorce - art. 401 C. civ.

As a procedural guarantee for the protection of the child's interests, it is provided in the Code of Civil Procedure in art. 226, that then: "When the minor is tried according to the law, the meeting is held in the council chambers. Considering the circumstances of the case, the court decided that the parents, guardian or other persons will be present at the hearing of the minors."

As regards contentious proceedings, the child may appear before the competent authority without having any obligation to do so. However, the authorities have a duty to listen to him. This obligation of the authorities fulfills a beneficial obligation to provide a procedural and procedural framework necessary for the expression of the child's views, in accordance with the implied obligations, and it does so by establishing an age limit, the mandatory hearing of the minor, 10 years and the hearing in the council chamber (within the judicial procedure). In addition, hearings for children under the statutory limit are left to the discretion of the court. A child will escape punishment if he refuses the hearing. Therefore, the current court says that the child refusal to communicate with the court in contentious or judicial proceedings concerning him will not be

⁵ O'Toole, L., *Cultivating Capacities: a Description of the Learning for Well-Being Approach To Core Practices* in M. Matthes, L. Pulkkinen, B. Heys, C. Clouder, and L. M. Pinto (eds.), *Improving the Quality of Childhood in Europe*, Volume 6, 2016, pp. 14–29. the document is available online at <https://www.learningforwellbeing.org/wp-content/uploads/QoCBook-6-Chapter-2-Cultivating-Capacities.pdf>, accessed on 04.11.2023.

sanctioned, because the child has the right, but not the obligation, in this matter, to testify before a judge.

The European Court of Human Rights emphasized the best interest of the child in its jurisprudence. State-authorized bodies to ensure the conduct of processes in good conditions when procedures are undertaken to interfere with family life, to ensure that the decision-making process is fair and respectful considering the interests protected by the provisions of the Convention on respect for family life. It is distinguished, however, that the most important interest is that of the minors' best interest⁶.

In 2003, the European Court of Human Rights, through its judgment against Germany announced on July 8, 2003, found that Germany had violated the provisions of the European Convention on Human Rights. The child did not go to the juvenile court hearing, given the opinion of the psychologist⁷. However, in the parent-child relationship, the child hearing is an integral tool in determining the true needs of the child, and without adequate information, the court cannot decide that properly balances the wishes of those involved. In as far as the aforementioned case is concerned, the rejection by the national courts of the end of the application regarding the right to visit one's children out of wedlock is the point of interest. Under the law at the time, biological parents could only obtain visitation rights if a court determined it was in the child's best interest. In this case, the referring court concluded that the five-year-old child had not been heard, to establish how much he wanted to see his father, to be with him, and whether such meetings were the child's⁸ best interest.

This error demonstrates that petitioner did not play an adequate role with respect to his child's visitation rights, reminding the court that the court must not accept the expert's ambiguous findings regarding the child's hearing danger.

The Strasbourg Court ruled in its decision of 21 June 2007 against *H. et al.*⁹ In the Czech Republic, direct disobedience to the court for children aged 13, 12 and 11, by the social agency or by the protection agency (considering the duty of their guardians) which formulated the request to place the children in the protection institution of state, requires the omission of ensuring applicants the protection required by their own interests in the decision-making process.

Through its decision of February 2, 2016, given in the case of *N.T. and others v. Georgia*, the Strasbourg Court condemned the state for violating the family life provisions of the Convention, because the children were not heard by any of the national courts when it came to determining the place of residence of children whose mother died and whose father had a drug problem in their domestic affairs, so the authorities had to choose between the children's father, who was receiving medical treatment, and their mother's parents, that is, their maternal grandparents¹⁰.

A minor must be heard to establish the truth or factual circumstances necessary for the possibility of deciding.

The form and way a minor is heard in a litigation are regulated by Romanian law and reflect certain features of civil and criminal law¹¹.

All civil cases involving minors (divorce, child support, guardianship, or annulment, etc.) do not involve hearing them directly at trial.

⁶ Haslam, D., Mejia, A., Thomson, D. and Betancourt, T., *Self-Regulation in Low- and Middle-Income Countries: Challenges and Future Directions*, „Clinical Child and Family Psychology Review”, vol. 22, no. 1, 2019, p. 104–117, <https://doi.org/10.1007/s10567-019-00278-0>.

⁷ Gathercole, S. E., Pickering, S. J., Ambridge, B. and Wearing, H., *The structure of working memory from 4 to 15 years of age*, „Developmental Psychology”, vol. 40, no. 2, 2004, p. 177–190, <https://doi.org/10.1037/0012-1649.40.2.177> 23.

⁸ Flouri, E., Papachristou, E., and Midouhas, E., *The role of neighbourhood greenspace in children's spatial working memory*, „British Journal of Educational Psychology”, vol. 89, no. 2, 2018, p. 359–373, <https://doi.org/10.1111/bjep.12243>.

⁹ Finch, E., J., *Do Schools Promote Executive Functions? Differential Working Memory Growth Across School-Year and Summer Months*, „AERA Open”, vol. 5, no. 2, 2019, p. 1–14, <https://doi.org/10.1177/2332858419848443>.

¹⁰ Eisenberg, N., Spinrad, T. L., and Eggum, N. D., *Emotion-related self-regulation and its relation to children's maladjustment*, „Annual Review of Clinical Psychology”, vol. 27, no. 6, 2010, p. 495–525, <https://doi.org/10.1146/annurev.clinpsy.121208.131208>.

¹¹ Eisenberg, N., Fabes, R. A., Guthrie, I. K., and Reiser, M., *Dispositional emotionality and regulation: Their role in predicting quality of social functioning*, „Journal of Personality and Social Psychology”, vol. 78, no. 1, 2000, p. 136–157. <https://doi.org/10.1037/0022-3514.78.1.136>.

It cannot be decided without hearing a minor over 10 years old. Therefore, according to the provisions of art. 139 together with art. 264 C. civ., a court that establishes guardianship, as it is called in the case, will resolve a civil case only after the minor has been heard at the competent court, under the safety conditions required by law.

In some cases, a minor under the age of 10 years may also be heard if the competent authority (judicial or administrative) considers it necessary to resolve the matter. In this situation, unlike the hearing of a minor who is under 10 years of age, a hearing of minors is mandatory, and it is up to the competent authority to determine whether it is imperative or not.

According to art. 264 para. 2 Civil Code, the child's right to be heard means the right to any information suitable to his development, to pronounce himself in the situations that concern him and to communicate the possible consequences, respected, as well as to the consequences of any decision that refers to him.

Moreover, the minor can request to be heard, and the rejection of this request must be encouraged by the competent authority. Of course, anything a child says will be considered based on their age and maturity level.

The Civil Procedure Code regulates the hearing of the minor in court, with or without the presence of a parent, guardian, or other person, depending on the circumstances of the case. The court has the right to decide whether other people will be present at the child's hearing.

The hearing of minors is not provided for in the articles of the Civil Code relating to divorce by another authority, and although it is not provided for in art. 375 Civil Code, the child will be heard in accordance with the provisions above, but in this case the competent authority will be represented by the notary. The question is whether the notary can determine what is best for the child and thus protect his rights. In this case, wouldn't it be appropriate to determine how parental authority is exercised by child protection specialists?

A minor can be heard as a witness, suspect, or accused in a criminal trial.

Any person with knowledge of the facts or circumstances, including minors, may be heard as a witness in criminal proceedings. The hearing of a witness younger than that provided by law takes place in the presence of those who take care of him according to the law or of a person or representative of the institution responsible for the development and growth of the minor, as it results from art. 124 para. 1 of the Criminal Procedure Code.

If it deems necessary, the investigative body or the court, upon request or official submission, establishes the presence of a psychologist at the hearing of the minor witness.

Pursuant to art. 481 of the Criminal Procedure Code, when the accused or the suspect is under 16 years of age, at each meeting of the Prosecutor's Office, if deemed necessary, a representative of the guardianship authority, the parents, the guardian, the curator, or another person who legally protects the minor.

In the criminal process, if the suspect is under 16 years of age, the court may order his removal from the assembly after the conclusion of the trial if it considers that the investigation and deliberations could harm the minor.

In civil and criminal cases, minors do not take an oath, and in criminal cases only persons under 14 years are warned to tell the truth.

The hearing of minors in the indicated procedures must avoid negative effects on their mental state and, to comply with this, it is the duty of the competent authorities to take all necessary measures to guarantee the mental integrity of the child.

For these reasons, the court considers the child's needs and interests, and not necessarily his points of view at the hearing. For example, a child may perceive one parent as "better" than the other through the lens of implicit permissiveness —"Mom is nice and I want to live with her because she always lets me play on the computer and go to the park and Dad is angry because he makes me do my homework". In such a situation, the court may consider the position of the nearest custodial parent along with other evidence.

Due to the lack of sufficient evidence, it was decided that the child's words spoken in the

hearing cannot constitute a sufficient basis for the sentencing.¹²

3. Research objectives, novelty, and scientific originality

When referring to the subjective situation, which refers to the psychological attitude of the attacker towards the minority of the victim, this concept is created, according to which the sentence implies that the perpetrator is clearly aware of the quality, condition, or age of the victim¹³. In this sense, it should be noted that the presumption of kidnapping of a minor excludes the use of the aggravating factor analyzed, the fact that the perpetrator does not know or admits the minority of the victim, since the principle of subjective accusation operates according to Article 6 of the Criminal Code of the Republic of Moldova. So, if the perpetrator mistakenly believes that he is kidnapping a minor, the provisions of Article 16 letter c) from the provisions of the current Criminal Code of the Republic of Moldova. This is because when the aggravating circumstance analyzed as it results from art. 27 of the Criminal Code of the Republic of Moldova, the offender had taken all measures for the willful kidnapping of a minor, but the crime is affected by the fact that the victim does not have this quality in the perception of the perpetrator. The explanation given is questionable. This attempt must be made with the intent to punish, otherwise the instance will be a failed and canceled attempt.

Thus, any crime involving minors, such as kidnapping, is criminalized without age discrimination. There is a need for a unique and clear regulation of age, at least as far as substantive laws are concerned.

Although in the civilized world it is known that victims of sexual violence do not speak because they are ashamed or afraid, the case in Romania shows the opposite. According to the decision of the European Court of Human Rights of March 15, 2016, *M.G.C. against Romania*, the dignity of a 10 - and 8-month-old girl who was repeatedly raped by several elders was restored. According to the ECHR decision, the first instance court considered it important that the victim be the least important. As a result, the offender was sentenced to a custodial sentence to the special minimum prescribed by law for committing the crime of "sexual contract with a minor" in article 198 of the Romanian Criminal Code. In addition, the Alba Iulia Court of Appeal explained that rape is non-consensual sex and that sexual intercourse with a minor presupposes that the victim has given consent, as well as a lack of understanding, since the existence of consent does not apply to victims but applies only to minors under 14 years and delinquent minors. In fact, the Court of Appeal made an interesting assumption that a juvenile offender under 14 years who committed an unlawful act lacks discernment and, in the case of a juvenile victim, being under 14 when she was 10, cannot be given the lack of discernment. This court has established state policy in 12 similar national decisions, which state that the validity of rape victim consent is determined on a case-by-case basis, and that courts have held that 10 - and 14-year-old girls have consented. Acting with elderly people, he did not tell his parents, call for help or agree to go to the place where the acts took place. In the case of sexual intercourse with a person under the age of 16 (in the Republic of Moldova), the protection of the minor's consent is preferred. With respect, even if a minor can express his will at the age of 10, that does not mean that he has the capacity to determine, weigh, evaluate the situation at its fair value. Also, let's not forget the vulnerability of adolescence, aggravated by the physical, hormonal, and intellectual changes that occur during this period¹⁴. Mutual consent is appreciated in doctrine, but also in jurisprudence: Mutual consent refers to the notion that the victim may have a familiarity, a financial interest, or a sexual attraction, which the court applies to the crimes specified in the provisions of art. 174 of the same Code. Apparent

¹² Bandura, A., *Exercise of human agency through collective efficacy*, „Current Directions in Psychological Science”, vol. 9, no. 3, 2000, p. 75–78, <https://doi.org/10.1111/1467-8721.00064>.

¹³ Atherton, O. E., Lawson, K. M. and Robins, R. W., *The development of effortful control from late childhood to young adulthood*, „Journal of Personality and Social Psychology”, vol. 119, no. 2, 2019, p. 417–456, <https://doi.org/10.1037/pspp0000283>.

¹⁴ Bull, R., Espy, K. A., and Wiebe, S. A., *Short-term memory, working memory, and executive functioning in preschoolers: longitudinal predictors of mathematical achievement at age 7 years*, „Developmental Neuropsychology”, vol. 33, no. 3, 2008, p. 205–228, <https://doi.org/10.1080/87565640801982312>.

consent is related to the victim's lack of awareness of non-resistance, as young children do not understand the meaning of what is happening to them. However, a child's consent is legally irrelevant at the age of 10, and the perpetrator knows this fact, and takes advantage.

4. Theoretical significance

Therefore, the responsibility always rests with the adults who are considered to be informed, experienced and responsible for the development of things in society, the fate and upbringing of children. We cannot ask more of a child than of an adult. That is, in order to fulfill the legislative provisions of the Republic of Moldova, it is necessary to comply with the provisions of the Guide of the Ministerial Committee of the Council of Europe on Justice for Children, etc.

Regarding the legal aspect, we do not find a uniform practice regarding the age limit for which minors can express their desires sexually, although the age of the victim in relation to the age of the aggressor must be considered. Our interest is to find that it is a form of vulnerability that serves to shape the autonomy of the minority will and is an essential element for the annulment of consent by biological, social, cognitive, and moral immaturity. This is not about the idea that children cannot consent to sexual relations with adults, but about the end of early childhood and the classification of certain subjects as children.¹⁵ We have a moral imperative to preserve the ideal of childhood, to be recognized and legally protected as children, and to maintain some order in this society.

Although the present Code, which regulates this issue of Romanian origin, takes over a significant part of the provisions of the legislation in the family field, regarding the regulations of the child's life, I understand that the current provisions are superior from many points of view. In my opinion, the most important aspect of the development of the regulation is that the provisions of the Civil Code comply with all the requirements of international and European regulatory actions related to the issue subject to debate soon and which I have addressed in the paper. After the year 2000 by promoting a special law that approaches the legal situation of the child from all angles. Due to the way of creation, the provisions of the Civil Code are intended to show that, according to the constitution, children benefit from a special rule of law to protect their rights with the principle of protecting their interests. It is the basis of any adopted legal norm and analyzing them.

However, it is disputed and continues because of the idea that the legislator chose to express parental authority when its purpose refers to the promotion of the best interest of the child, that it does not reflect the current regulatory reality, as well as the unauthorized regulatory past. As the doctrine shows, despite the clear legal shadow, the authors of the current Civil Code do not include the possibility of parents to concretize rules for their children to respect, considering this fact a duty. In practice, the Civil Code uses the power of filiation, which is not an essential part of any legal relationship.

An analysis of the provisions of the Civil Code devoted to parental authority shows that some provisions, few, insufficiently founded from a logical and legal point of view, primarily refer to the requirements of some constitutional principles. In this context, I mention below some situations that should also be considered by the legislator of the Republic of Moldova in order to avoid inconsistency or inadequacy of the laws in the legal provisions regarding the protection of children:

- art. 40 Civil Code provides the circumstances in which a specialized court can determine that a minor under 16 years has full legal capacity. Art. 40 of the Civil Code, the right to act for the recognition of the expected full exercise capacity applies only to the child. Because we refer to people with limited exercise capacity, and because he is a minor who wants to emancipate himself, he can start with the consent of his legal guardian (parent or guardian) according to the provisions of the Code in force. According to what is written in the specialized studies, without a legal

¹⁵ Brandstadter, K., Harms, U. and Grosschedl, J., *Assessing System Thinking Through Different Concept Mapping Practices*, „International Journal of Science Education”, vol. 34, no. 14, 2012, p. 2147–2170, <https://doi.org/10.1080/09500693.2012.716549>.

specification, the guardianship court can appoint a special guardian or curator at the request of the minor with the consent of the legal guardian. However, according to the provisions of the Civil Code, it is stated that "the protection of persons through guardianship takes place only in the cases and conditions provided for by law", which does not intervene in the analyzed situation. In practice, we face a legal loophole that affects the right of young people under 16 to request their emancipation. For these reasons, I believe that legislative intervention is necessary.

- according to art. 488 para. 1 Civil Code, "parents are obliged to raise their children in situations that guarantee their harmonious physical, mental, spiritual, moral and social growth". Underlining this, art. 487, sentence I of the Civil Code, also applies to the child's education, unlike art. 488 para. 1 defines the rights and duties of parents. It is also against the provisions of art. 487 para. 1 Civil Code which includes possibilities and obligations to ensure the health and physical, mental, and intellectual development of the child, education, training and professional training, art. 488 para. 1 of the Civil Code refers only to the physical, mental, spiritual, moral, and social development of the child. Thus, the child's education, training and vocational training are not taken into account. In addition, the mental and intellectual development of the first text is replaced by the mental, spiritual, moral and social development of the child in the second text.

- the doctrine also expressed an opinion regarding the rules of art. 501 of the Civil Code that applies to the actions of minors without legal capacity and minors with limited legal capacity. Thus, it is easy to see that they reproduce the rules of art. 41 para. 2 and art. 43 para. 2 Civil Code that also provides for the actions of minors with limited capacity. On the contrary, in this sense, the rules of legislative technique for the drafting of regulatory laws were created in parallel. According to art. 503 para. 1 of the Civil Code provides that "parents exercise parental authority jointly and legally". About "using parental control" in the copied text, the general reference is questionable. I emphasize this according to art. 483 para. 1 of the Civil Code, parental authority is the set of rights and obligations that parents have towards the child's person and property. Thus, the content of parental authority includes rights to be exercised and duties to be fulfilled by parents. Moreover, the expression of parental power shows only one aspect of its content, that is, its active aspect, and its passive aspect, that is, the fulfillment of obligations. Although the expression of parental rights and the fulfillment of parental duties is greater in meaning than the expression of parental authority, it faithfully reflects the essence of parental authority.

- the joint and equal use of parental power is also used in the construction of the rules in art. 503 para. 1 Civil Code is not the best solution for expressing the law, because working together does not mean deciding by consensus. Thus, two legal entities may be involved in the execution of a legal right, but only one decides how to use it, even if the benefits are equal. In this sense, the expression of mutual agreement used in the context of art. 98 para. 1 of the Family Code, although not completely, exceeded the words of art. 503 para. 1 Civil Code. Moreover, it is known that the expression of mutual agreement shows the legal equality of legal subjects in civil law relations. However, legal equality does not mean equality of opportunity. Despite the joint decision of the relevant legal persons to establish a legal act that created a certain legal relationship, there may be inequalities in the rights and obligations that form the content of that legal relationship.

- after all, I show that art. 48 para. 3 of the Constitution provides for the equality of children born out of wedlock with those of married children, art. 505 para. 2 Civil Code establishes another legal norm for the exercise of parental authority over children outside of marriage if the parents do not live together. In practice, it appears that the provisions of art. 505 para. 2 Civil Code are unconstitutional. Thus, although parental authority is a set of rights and obligations of parents in relation to the child's person and assets, it also implies the exercise by the child of the rights recognized by law. The exercise of parental authority only in the interest of the child reflects this fact. In addition, reality shows that there are cases where parents do not live together, even though they are married and have children. This is an example of a couple breaking up for reasons that may or may not be theirs, such as being at work or working abroad.

- the reverse interpretation of the provisions of art. 508 et seq. Civil Code, concluded that once a decision to terminate parental rights has become final and enforceable, the lost parent owes

them parental responsibility. From this point of view, in the specialized literature, at the same time, it was noted that there is a situation of conflict of rights in the matter of parental duties.

- art. 510 of the Civil Code refers to the duty of care, which is included in the provisions on the loss of parental rights. According to this article, "loss of parental rights does not release parents from their obligation to support the child." If the succession property enforces the rights of the parents, such a rule is not justified under art. 508-512 Civil Code. In addition, the common law obligation of parents to include their child is provided for in art. 499 and art. 516 para. 1 and following. Civil Code. regardless of whether the citizen is deprived of the exercise of parental rights. A standard uniform content was also provided for art. 110 of the Family Code.

5. Application value

It would be essential that the minor's periods of discernment be established, starting from the psychological statistical studies, in order to standardize the application situation in material law and so that there are no differences in attitude when solving the civil side in the criminal process, for example. Even if the application of a situation more favorable to the criminal is retained, this does not mean that society accepts that the victim of a crime be disregarded from this point of view. Uniform behavior is also simpler to apply and does not require diverse interpretations in applicability.

Like any presumption, there are realities that combat it and which can be demonstrated by establishing discernment through a specialized expertise, but the same applies to adults, so this presumption once established eliminates discrimination *de plano* regarding the respect of the fundamental rights of people, regardless of age and beyond.¹⁶

It is also essential in the settlement of purely civil cases, as is the case previously discussed regarding the hearing of the minor. Depending on the presumed discernment and cognitive capacity of the child, subjective parental influences, it can be determined what is best for the child in making a decision that can change his life and future.

6. Conclusions

When referring to the subjective situation, which refers to the psychological attitude of the aggressor towards the minority of the victim, this concept is created, according to which the sentence assumes that the victim is clearly aware of the quality, status, or age of the victim. In this sense, it should be noted that the hypothesis of the kidnapping of a minor excludes the use of the principle of aggravation in the analysis, that the offender was not aware of the crime or that the victim confessed about his minority. Thus, the subjective accusation operates in accordance with art. 6 of the Criminal Code of the Republic of Moldova. So, if the perpetrator mistakenly believes that he is kidnapping a minor, we even try letter c) of article 16 of the Criminal Code of the Republic of Moldova. This is because, in the case of the aggravating circumstance analyzed in accordance with art. 27 of the Criminal Code of the Republic of Moldova, the criminal took all measures for the deliberate kidnapping of a minor, but the crime did not produce this result because the victim did not have this quality¹⁷. The explanation given is objectionable. Also, the attempt must be made with intent to be punished, the example being otherwise an unsuccessful, failed attempt.

So, not establishing age related to discernment, makes a mockery of any attempt to qualify the commission of any crime related to minors, such as kidnapping. A unique, express regulation regarding age is required, at least regarding the branches of substantive law.

This intervention is necessary due to the presence of art. 40 in the Romanian Civil Code,

¹⁶ Alloway, T. P., and Alloway, R. G., *Investigating the predictive roles of working memory and IQ in academic attainment*, „Journal of Experimental Child Psychology”, vol. 106, no. 1, 2010, p. 20–29, <https://doi.org/10.1016/j.jecp.2009.11.003>.

¹⁷ Brînză, S., *Răspunderea penală pentru omorul prevăzut la lit.e) alin.(2) art.145 C.P. R.M.*, „Revista Națională de Drept”, 2009, no. 4, p. 2-15.

according to which the parents or guardians are heard in this procedure. By law, a new paragraph can be added to the content of art. 40 C. civ., "if the parents or the guardian oppose, the guardianship court appoints a guardian".

Regarding the rules provided in art. 487 and 488 of the Romanian Civil Code should have been more concerned with the legislative succession, as they refer to the same phenomenon, development, and the same objective, namely the adequate implementation of the rights of the child. For these reasons, I suggest that the provisions of art. 488 Civil Code should be repealed, and the rule provided in par. 2 to be absorbed in the scope of art. 487 C. Civ., in a separate line. The text of the current art. 487 para. 1 of the Civil Code, also refers to the moral and social development of the child.

For the reasons set out in the text, according to the provisions of art. 16 by Law 24/2000 regarding the rules of legislative technique for the elaboration of regulatory laws, I propose that the rules created under the conditions of the law in art. 501 Civil Code to deal with the right and duty of parents to represent their child in legal documents or to confirm them. The repeal of these legal provisions may call into question the doctrinal thesis, according to which only the rights and obligations related to the property of the child are subject to the termination of legal actions.

To avoid various misunderstandings, starting from the idea that the general reference to the "exercise of parental authority" in the proposed text may be controversial, I consider it convenient to omit and substitute the expression of parental authority *de lege ferenda*; that is, by fulfilling parental rights and responsibilities. We find the same form in the Family Code of the Republic of Moldova, in art. 16 and 64 where the same measures are taken.

Regarding the construction of the rules of art. 503 para. 1 Civil Code this is not the best solution to express the law and it is necessary to add the phrase "equal" to the phrase "mutual agreement". Considering these observations, according to the law, the provisions of art. 503 of in the. 1 of the Civil Code, "parents exercise their rights and fulfill their parental duties by common agreement and equally" and, consequently, similar provisions of the Family Code of the Republic of Moldova.

Remember that the unconstitutionality of art. 505 para. 2 of the Romanian Civil Code, contrary to art. 48 para. 3 of the Constitution, I consider that the legislative intervention through the provisions of art. 505 Civil Code, in cases where the parents do not live together, the exercise of parental authority will not be different, depending on the status of the children, whether they are married or not.

As I see it, although some rights and obligations are traditional, if they exist in the old rules, they represent real legal anomalies that contradict the logic of primary law.

Thus, any right recognized to subjects or categories of law implies a corresponding obligation for other subjects or subjects of law. To eliminate these situations, I believe that the legislator should decide on a case-by-case basis whether a parent has a right or a duty.

Most likely, as I have shown, by the rules of art. 510 Civil Code, art. 110 of the Family Code. Against the manifest nullity of art. 510 C. civ. I propose its repeal by law, because the rules are totally wrong. Article 511 of the Civil Code, which provides for the organization of guardianship in cases where both parents are unable to exercise parental authority, is equally useless. In this case, the rules of art. 110 C. Civil resolves the legal issue.

Bibliography

1. Alloway, T. P., and Alloway, R. G., *Investigating the predictive roles of working memory and IQ in academic attainment*, „Journal of Experimental Child Psychology”, vol. 106, no. 1, 2010, p. 20–29, <https://doi.org/10.1016/j.jecp.2009.11.003>.
2. Atherton, O. E., Lawson, K. M. and Robins, R. W., *The development of effortful control from late childhood to young adulthood*, „Journal of Personality and Social Psychology”, vol. 119, no. 2, 2019, p. 417–456, <https://doi.org/10.1037/pspp0000283>.
3. Bandura, A., *Exercise of human agency through collective efficacy*, „Current Directions in Psychological Science”, vol. 9, no. 3, 2000, p. 75–78, <https://doi.org/10.1111/1467-8721.00064>.

4. Brandstadter, K., Harms, U. and Grosschedl, J., *Assessing System Thinking Through Different Concept Mapping Practices*, „International Journal of Science Education”, vol. 34, no. 14, 2012, p. 2147–2170, <https://doi.org/10.1080/09500693.2012.716549>.
5. Brandstädter, K., Harms, U., and Grosschedl, J., *Assessing System Thinking Through Different Concept Mapping Practices*, „International Journal of Science Education”, vol. 34, no. 14, 2012, p. 2147–2170, <https://doi.org/10.1080/09500693.2012.716549>.
6. Brînză, S., *Răspunderea penală pentru omorul prevăzut la lit.e) alin.(2) art.145 C.P. R.M.*, „Revista Națională de Drept”, 2009, no. 4, p. 2-15.
7. Bull, R., Espy, K. A. and Wiebe, S. A., *Short-term memory, working memory, and executive functioning in preschoolers: longitudinal predictors of mathematical achievement at age 7 years*, „Developmental Neuropsychology”, vol. 33, no. 3, 2008, p. 205–228, <https://doi.org/10.1080/87565640801982312>.
8. Eisenberg, N., Fabes, R. A., Guthrie, I. K. and Reiser, M., *Dispositional emotionality and regulation: Their role in predicting quality of social functioning*, „Journal of Personality and Social Psychology”, vol. 78, no. 1, 2000, p. 136–157, <https://doi.org/10.1037/0022-3514.78.1.136>.
9. Eisenberg, N., Spinrad, T. L. and Eggum, N. D., *Emotion-related self-regulation and its relation to children's maladjustment*, „Annual Review of Clinical Psychology”, vol. 27, no. 6, 2010, p. 495–525, <https://doi.org/10.1146/annurev.clinpsy.121208.131208>.
10. Finch, E., J., *Do Schools Promote Executive Functions? Differential Working Memory Growth Across School-Year and Summer Months*, „AERA Open”, vol. 5, no. 2, 2019, p. 1–14, <https://doi.org/10.1177/2332858419848443>.
11. Flouri, E., Papachristou, E. and Midouhas, E., *The role of neighbourhood greenspace in children's spatial working memory*, „British Journal of Educational Psychology”, vol. 89, no. 2, 2018, p. 359–373, <https://doi.org/10.1111/bjep.12243>.
12. Gathercole, S. E., Pickering, S. J., Ambridge, B. and Wearing, H., *The structure of working memory from 4 to 15 years of age*, „Developmental Psychology”, vol. 40, no. 2, 2004, p. 177–190, <https://doi.org/10.1037/0012-1649.40.2.177>.
13. Haslam, D., Mejia, A., Thomson, D. and Betancourt, T., *Self-Regulation in Low- and Middle-Income Countries: Challenges and Future Directions*, „Clinical Child and Family Psychology Review”, vol. 22, no. 1, 2019, p. 104–117, <https://doi.org/10.1007/s10567-019-00278-0>.
14. O'Toole, L., *Cultivating Capacities: a Description of the Learning for Well-Being Approach To Core Practices* in M. Matthes, L. Pulkkinen, B. Heys, C. Clouder, and L. M. Pinto (eds.), *Improving the Quality of Childhood in Europe*, Volume 6, 2016, pp. 14–29. the document is available online at <https://www.learningforwellbeing.org/wp-content/uploads/QoCBook-6-Chapter-2-Cultivating-Capacities.pdf>, accessed on 04.11.2023.
15. Von Suchodoletz, A., Gestsdottir, S., Wanless, S. B., Mc Clelland, S. B., Birgisdottir, F., Gunzenhauser, C. and Ragnarsdottir, H., *Behavioral self-regulation and relations to emergent academic skills among children in Germany and Iceland*, „Early Childhood Research Quarterly”, vol. 28, no. 1, 2013, p. 62–73, <https://doi.org/10.1016/j.ecresq.2012.05.003>.