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ANALYSIS OF THE PLACE AND DATE OF THE OPENING OF SUCCESSION UNDER THE CIVIL CODE OF THE REPUBLIC OF MOLDOVA. COMPARATIVE LAW ASPECTS

ANALIZA LOCULUI ȘI A DATEI DESCHIDERII MOȘTENIRII ÎN REGLEMENTAREA CODULUI CIVIL AL REPUBLICII MOLDOVA. ASPECTE DE DREPT COMPARAT

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Abstract: *The opening of succession triggers the transmission of the estate. Its date determines the circle of heirs and the law applicable ratione temporis, while its place, a notion of substantive law, must be distinguished from international jurisdiction, territorial competence and the law applicable to the succession, even where habitual residence serves as the connecting factor for several of them. Three successive and insufficiently coordinated reforms in the Republic of Moldova (Laws No. 133/2018, No. 134/2024 and No. 251/2025) have affected these coordinates. Using the comparative, historical and systemic methods, the study examines the Civil Code of the Republic of Moldova against Romanian, German, French, Russian and Ukrainian law, Regulation (EU) No 650/2012 and the 1996 Treaty between the Republic of Moldova and Romania on Legal Assistance, testing each alleged gap against a concrete legal situation and the rules in force. The*

date of opening has acquired new functions, whereas the place of opening no longer determines the competent notary and survives mainly as the criterion of the international jurisdiction of the courts. Several apparent gaps are filled by existing rules, notably as regards the representation of the descendants of a commoriens and the successions of persons habitually resident abroad. Narrower deficiencies remain: a possible artificial order of deaths for persons declared dead after disappearing together; the lack of a specific procedure for rectifying the date of death; the misalignment of Art. 80(2) of Law No. 246/2018 with the Civil Procedure Code; conflicting transitional rules for successions opened in the first quarter of 2026; and the silence of the 1996 Treaty on dual nationality. Targeted de lege ferenda proposals are formulated.

Keywords: *opening of succession, habitual residence, international jurisdiction, commorientes, declaration of death, acceptance of succession.*

Abstract: *Deschiderea moștenirii declanșează transmiterea patrimoniului succesoral. Data deschiderii determină cercul moștenitorilor și legea aplicabilă în timp, iar locul deschiderii, noțiune de drept material, trebuie delimitat de competența internațională, de competența teritorială și de legea aplicabilă succesiunii, chiar dacă reședința obișnuită servește drept criteriu de legătură pentru mai multe dintre acestea. Trei reforme succesive și insuficient corelate, operate în Republica Moldova prin legile nr. 133/2018, nr. 134/2024 și nr. 251/2025, au afectat aceste coordonate. Utilizând metoda comparativă, istorică și sistemică, studiul analizează Codul civil al Republicii Moldova prin raportare la dreptul român, german, francez, rus și ucrainean, la Regulamentul (UE) nr. 650/2012 și la Tratatul din 1996 dintre Republica Moldova și România privind asistența juridică în materie civilă și penală, verificând fiecare pretinsă lacună pe o situație juridică concretă și în raport cu normele în vigoare. Data deschiderii a dobândit funcții noi, în timp ce locul deschiderii nu mai determină competența notarului și se menține, în principal, ca criteriu al competenței internaționale a instanțelor. Mai multe aparente lacune sunt acoperite de normele existente, în special reprezentarea descendenților unui comorient și moștenirile persoanelor cu reședința obișnuită în străinătate. Rămân deficiențe mai restrânse: posibila ordine artificială a deceselor persoanelor declarate decedate care au dispărut împreună, lipsa unei proceduri specifice de rectificare a datei decesului, necorelarea art. 80 alin. (2) din Legea nr. 246/2018 cu Codul de procedură civilă, normele tranzitorii contradictorii pentru moștenirile deschise în primul trimestru al anului 2026 și tăcerea Tratatului din 1996 cu privire la dubla cetățenie. Sunt formulate propuneri de lege ferenda punctuale.*

Cuvinte-cheie: *deschiderea moștenirii, reședința obișnuită, competența internațională, comorienții, declararea decesului, acceptarea moștenirii.*

1. Introduction

Article 2162(1) of the Civil Code of the Republic of Moldova (hereinafter, CC RM) defines succession as the transfer of the patrimony of a deceased natural person to one or more persons. As long as a person is alive, there is no succession (*nulla viventis hereditas*), only potential entitlements. The legal fact that turns these entitlements into rights

is the opening of succession, which is fixed by two coordinates: the moment, which determines the circle of heirs and the law applicable *ratione temporis*, and the place, which has traditionally served to designate the competent authority. Throughout the article, the terms "date" and "moment" of the opening of succession are used interchangeably, except in section 4.2.1, where the distinction between the day and the moment of death is the very object of the analysis.

The place of opening must also be distinguished from three neighbouring notions, all the more so as habitual residence serves as the connecting factor for several of them. In this article, the "place of opening" is the notion of substantive succession law defined by Art. 2166 CC RM; "international jurisdiction" is the power of the authorities of the Republic of Moldova, as opposed to those of another State, to deal with a succession; "territorial competence" is the allocation of a succession among domestic notaries and courts; and the "applicable law" is the law governing the succession under the conflict-of-laws rules or a treaty (section 4.3.1).

Both coordinates have been affected by three legislative interventions in only seven years. Law No. 133/2018 replaced, from 1 March 2019, the criterion of the last domicile with that of habitual residence. Law No. 134/2024 abolished, from 20 July 2024, the exclusive territorial competence of the notary in succession proceedings. Law No. 251/2025 reintroduced, from 1 April 2026, the acceptance of succession within twelve months of the date of its opening. The research question is whether these interventions have preserved the coherence of the legal framework and, where they appear not to have done so, whether the resulting gaps are real or are already filled by other provisions in force. The article presents the state of the art and the research aim (section 2), the materials and methods (section 3), the results and their discussion (section 4) and the conclusions (section 5).

2. State of the Art and Research Aim

In the legal scholarship of the Republic of Moldova, the place and moment of the opening of succession were analysed under Arts. 1440 and 1443 of the Civil Code in its original version (Bănărescu, 2017). A commentary on the 2019 provisions annotates them article by article, identifying their German source and the case law of the Court of Justice of the European Union (hereinafter, CJEU) on habitual residence

(Cazac, n.d.). Conflicts of jurisdiction in successions with a foreign element were examined after the 2019 reform (Șeremet, 2020), and Law No. 251/2025 has been severely criticised (Cazac, 2025). Our previous research addressed the principles of intestate succession, the classes of heirs and the status of the surviving spouse (Chironachi, 2025; Mihalache & Chironachi, 2026; Voicu & Chironachi, 2025a, 2025b).

In Romanian legal scholarship, the relationship between the place of the opening of succession and notarial competence has recently been re-examined (Boar & Boar, 2025), while the capacity to inherit is treated as a general condition of the right to inherit (Bob-Bocșan, 2025, p. 43). The international literature has described habitual residence as an unstable connecting factor (Atallah, 2015; Pfeiffer, 2016), discussed the possibility of dual habitual residence (Pazdan & Zachariasiewicz, 2021) and reported errors by national authorities in applying it (Krūmiņš, 2019). Rules on commorientes have been examined both formally (Wang, 2022) and comparatively (Hammond & Batariwah, 2024), and the declaration of death in the context of armed conflict has prompted recent research (Uhrynovska & Onyskiv, 2022).

None of these works examines the effects of Laws No. 134/2024 and No. 251/2025 on the two coordinates together. The aim of the research is to assess the current regulation of the moment and place of the opening of succession in the law of the Republic of Moldova and to compare it with the solutions of other legal systems. The working hypothesis is that the two coordinates have evolved in divergent directions: the importance of the date has increased, while the domestic procedural role of the place has diminished, without the legislature having aligned all the affected provisions.

3. Materials and Methods

The research material consists of the legislative texts in their consolidated versions in force on 5 October 2026, their earlier versions (used to establish the exact moment of each amendment), the case law of the CJEU and the legal scholarship cited. The comparative method takes Romanian law as its main comparator and, as secondary comparators, German law, the source of the 2019 provisions; French law, as a representative of the Romanist tradition; and Russian and Ukrainian law, which share the tradition of the Soviet codifications of 1963-1964. Regulation (EU) No 650/2012 (hereinafter, the Regulation)

and the 1996 Treaty between the Republic of Moldova and Romania on Legal Assistance in Civil and Criminal Matters (hereinafter, the 1996 Treaty) serve as systemic benchmarks. The historical method was used to reconstruct the stages of the legal framework on the basis of the original texts in force in the Republic of Moldova, namely the Civil Code of 1964 and the Civil Code of 2002 in its original version, and systemic analysis and teleological interpretation were used to identify inconsistencies between the Civil Code, procedural legislation and transitional rules. To avoid overstating the deficiencies, each apparent gap was tested against a concrete legal situation and examined in the light of the solutions already offered by the provisions in force, including procedural and transitional ones; only the gaps that withstand this test give rise to de lege ferenda proposals. Quotations from the legislation of the Republic of Moldova are the authors' translations.

4. Results and Discussion

4.1 Evolution of the Legal Framework in the Republic of Moldova

The Civil Code of 26 December 1964, which remained in force in the Republic of Moldova until 12 June 2003 (Art. 3(a) of Law No. 1125/2002) and was modelled on the Civil Code of the RSFSR (Civil Code of the RSFSR, 1964, Arts. 528-529), regulated succession in its Section VII (Arts. 561 et seq.). Succession opened on the day of death of the deceased and, for a person declared dead, on the day determined under Art. 21(3) (Civil Code of 1964, Art. 562), namely the day on which the judgment became final or, where the person had disappeared in circumstances posing a threat of death, the day of presumed death, which the court "may" recognise as the day of death. The place of opening was the deceased's last permanent place of residence, defined as the place where a person "permanently or predominantly" resides (Art. 17), and, if that place was unknown, the location of the property or of its main part (Art. 563). The Code contained no rule on commorientes. Civil Code No. 1107/2002, in its original version, refined the temporal criterion: the moment of opening was that of death or the date on which the judgment declaring death became final (Art. 1440(2)). The place was the last domicile and, failing that, the location of the assets, with priority given to the most valuable part of the immovables (Art. 1443). Article 1441 regulated commorientes, and Art. 1442 applied the same rule to persons declared dead following

their disappearance in the same circumstances, regardless of when the respective judgments became final.

Law No. 133/2018 recast Book Four of the Civil Code, modelling it on the German Civil Code (Cazac, n.d.). Under Art. 2165 CC RM, "succession opens at the moment of death of the deceased, whether physically established or declared by a final court judgment". Article 2166 replaced domicile with the place where the deceased "had his or her habitual residence at the time of death and, if that habitual residence is not known, the place where the assets, or the principal part of them by value, are located". The explanatory note to the 2016 draft announced a rebuttable presumption, conceived as a transitional rule to be repealed once the Regulation became binding on the Republic of Moldova, that the last habitual residence was located at the last domicile (Ministry of Justice of the Republic of Moldova, 2016), but the adopted text did not retain it. The commorientes rule was carried over into Art. 2168, whereas former Art. 1442 was not.

Law No. 134/2024 repealed Art. 11(3)(a) and (b) of Law No. 246/2018 on notarial procedure, provisions that reserved succession proceedings for the notary of the place where the succession opened. Under the new Art. 69(1), the application to open proceedings may be filed "with any notary", and competence belongs to the first notary seised who has registered the file in the Electronic Register of Succession Files and Wills. The same law replaced, in Art. 41^1(1) of the Civil Procedure Code of the Republic of Moldova (hereinafter, CPC RM), the court "of the place where the succession opened" with the court "of the place where the succession proceedings are conducted". Article 462^1 CPC RM, however, continues to tie the international jurisdiction of the courts to the place of opening. Finally, Law No. 251/2025, whose entry into force was postponed to 1 April 2026 by Law No. 330/2025, abandoned the acquisition of the estate by operation of law and reintroduced acceptance within twelve months (Art. 2391(1) CC RM).

4.2 The Moment of the Opening of Succession

4.2.1 Established Death and Declared Death

Article 2165 CC RM assimilates declared death to physically established death, a solution confirmed by Art. 168(4). For a person declared dead, however, Art. 168(3) establishes only the "day of death": the day on which the judgment becomes final or, if the person disap-

peared in circumstances posing a threat of death or giving grounds to presume death in an accident, the day of presumed death, which the court "may", but is not required to, declare as the date of death. In this situation, the criterion of the "moment" is thus reduced to a calendar day. The wording reproduces almost literally Art. 21(3) of the 1964 Code (section 4.1), so that the calendar criterion for declared death is a legacy of the Soviet codification that survived the transition from the "day" to the "moment" of death. The Romanian Civil Code (hereinafter, CC RO) deems the person, where no hour is indicated, to have died in the last hour of the established day and allows the date of death to be rectified (Art. 52(1) and (3)). German law, for its part, applies the presumption of simultaneous death both to deceased persons and to those declared dead (§ 11 Verschollenheitsgesetz).

As a rule, the compared systems link the opening of succession to the moment of death (Art. 954(1) CC RO; § 1922 BGB; Art. 720 of the French Civil Code). Ukrainian law, however, has retained the calendar criterion of the Soviet codifications: succession opens on the day of death or on the day from which the person is declared dead (Art. 1220(2) of the Civil Code of Ukraine). Russian law has replaced it with the moment of death but, as a rule, still uses the day on which the judgment becomes final for a person declared dead (Art. 1114(1) of the Civil Code of the Russian Federation). The Regulation does not fix the moment of opening but subjects it to the law applicable to the succession (Art. 23(2)(a)).

The consequences of reducing the moment to a day must be assessed together with Art. 2168 CC RM. If a father (F), who disappeared in a flood on 10 March 2025, is declared dead with that day as the day of his presumed death, while his son (S) died in hospital on the same day, the order of deaths cannot be established. No gap arises: Art. 2168 presumes that they died simultaneously and excludes each from the succession of the other. The Romanian fiction of the last hour would instead make F survive S and inherit from him, creating an order of deaths that corresponds to no established fact; the solution of the law of the Republic of Moldova is the more coherent one (section 4.2.2) and requires no such borrowing.

A genuine difficulty arises where spouses A and B disappear together on 1 June 2024 and their deaths are declared in separate proceedings. If the circumstances of the disappearance did not pose a

threat of death or, although they did (for example, a shipwreck), the courts do not use the option provided in the second sentence of Art. 168(3), the days of death are those on which the two judgments became final, for example 10 September and 20 November 2026. The order of deaths is then fixed by the dates on which the judgments became final, Art. 2168 no longer applies, and B inherits from A, although nothing shows that B survived A. Former Art. 1442 excluded this result; following its abandonment, the outcome depends on the pace of the two cases and on judicial discretion, the only remedy being an appeal seeking to have the day of presumed death set (Art. 300(3) CPC RM), which is available only where the circumstances posed a threat of death.

Nor is there a specific procedure for correcting the date where evidence later shows that the person died on another day. Article 301 CPC RM regulates only the annulment of the judgment where the person reappears or his or her whereabouts are discovered, and it is doubtful whether the establishment of a death "at a certain date and in certain circumstances" (Art. 281(2)(e) CPC RM) may contradict a final declaratory judgment. Revision for newly discovered essential circumstances (Art. 449(b) CPC RM) allows the judgment to be reopened, but only within three months of the discovery and no later than five years after the judgment became final (Art. 450), whereas evidence of the actual date of death, such as the discovery of remains, may emerge much later. The date may be decisive: if a person declared dead with a day of death set in 2026 actually died in 2024, he or she could not have inherited from a parent who died in 2025. Romanian law provides for rectification in such cases (Art. 52(3) CC RO).

In relations with Romania, death is declared by the courts of the State of which the person was a national when the last news of him or her was received, under their own law (Art. 38 of the 1996 Treaty), so that the date of death of a Romanian national living in the Republic of Moldova is set under Romanian law; this follows from the Treaty rather than from a gap in domestic law. Finally, a person who reappears is protected by the restitution rules of Art. 169 CC RM, whereas Ukrainian law also prohibits the heirs of a person declared dead from alienating, for five years, the immovables acquired by succession (Art. 47(2) of the Civil Code of Ukraine; Uhrynovska & Onyskiv, 2022).

4.2.2 Commorientes and Co-deceased Persons

Article 2168 CC RM presumes that persons with reciprocal or unilateral succession rights, where it cannot be established that one survived the other, died simultaneously, and provides that the estate of each passes to his or her own heirs. The provision also covers deaths occurring in different circumstances (co-deceased persons) and is therefore broader than Art. 725-1 of the French Civil Code, which applies only to persons who die in the same event.

The compared systems reach the same result by different routes. Romanian law provides that such persons lack the capacity to inherit from each other (Art. 957(2) CC RO), and German law establishes a presumption of simultaneous death (§ 11 Verschollenheitsgesetz). Russian law deems persons who died on the same day to have died simultaneously where the moment of each death cannot be established (Art. 1114(2) of the Civil Code of the Russian Federation), and Ukrainian law opens their successions simultaneously and separately (Art. 1220(3) of the Civil Code of Ukraine). The Regulation excludes reciprocal inheritance only where the successions are governed by different laws that regulate the situation differently or not at all (Art. 32), and the 1996 Treaty contains no rule on the matter. The rule that neither person inherits from the other has been formally demonstrated to be the only one compatible with elementary requirements of coherence in devolution (Wang, 2022). By contrast, the age-based survivorship presumptions of the common-law tradition have been criticised as inequitable (Hammond & Batariwah, 2024).

The systems differ, at least in their wording, as regards the descendants of a commoriens. If a father (F) and his son (S) die in the same accident and S leaves a child (G), French law allows G to inherit from F by representing S (Art. 725-1(3) of the French Civil Code), and Romanian law reaches the same result, since a person lacking the capacity to inherit may be represented (Arts. 957(2) and 967(1) CC RO). The law of the Republic of Moldova has no equivalent express rule, but its provisions lead to the same solution. Only natural persons alive at the moment of the opening of succession may inherit (Art. 2167(3) CC RM), and S, presumed to have died at the same moment as F (Art. 2168), is not alive at that moment. Article 2178 CC RM draws the same distinction: a descendant "who is alive at the moment of the opening

of succession" excludes his or her own descendants (para. 2), whereas the place of a descendant "who is dead at the moment of the opening of succession" is taken by his or her descendants (para. 3). G therefore inherits from F by representation, as our previous research has suggested (Chironachi, 2025, p. 33; Mihalache & Chironachi, 2026, p. 73). The abandonment by Law No. 251/2025 of the substitution of the unworthy heir by his or her descendants (Cazac, 2025) does not alter this conclusion, since the unworthy heir is alive at the opening of succession and the rule on his or her share (Art. 2174(2) CC RM) cannot be transposed to a commoriens. The absence of an express rule is thus not a gap; an express mention would merely confirm the solution.

4.2.3 Functions of the Date of Opening after Law No. 251/2025

The date of opening determines the circle of heirs (Art. 2167(3) and (4) CC RM) and the moment from which acceptance or renunciation takes effect (Art. 2389(2)). Law No. 251/2025 has added two further functions. The first is to serve as the starting point of an objective time limit: the twelve-month period for acceptance runs from the opening of succession, regardless of whether the potential heir knew of the death, with four exceptions (Art. 2391(3)) that almost literally reproduce Art. 1103(2) CC RO. The borrowing is incomplete, since Art. 2391(3)(b) omits the Romanian rule that, in the case of declared death, the period runs from the date on which the heir learned of the death where that date precedes the registration of the judgment; the omission has little practical effect, because the court itself transmits the final judgment declaring death for registration (Art. 300(4) CPC RM). The objective time limit has been criticised as disadvantaging heirs living abroad and vulnerable heirs (Cazac, 2025). This effect is attenuated by the rule that makes the period run from the date on which the heir learned or should have learned of the kinship on which the entitlement is based (Art. 2391(3)(d)), by the power of the notary or, failing agreement among the heirs, of the court to extend the period or set a new one for good reasons (Art. 2391(4) and (5)) and, in relations with Romania, by the obligation to notify the diplomatic mission or consular office (Art. 44(3) of the 1996 Treaty). The residual risk lies in the discretionary nature of the extension.

The second is to serve as an intertemporal criterion. Under

Art. 48(1) of Law No. 1125/2002, the amendments made by Law No. 251/2025 apply to the successions of persons who died on or after 1 January 2026, the date originally set for its entry into force; the provision was not adjusted when the entry into force was postponed to 1 April 2026. Where a person died on 15 February 2026, the heirs acquired the estate by operation of law, yet from 1 April 2026 Art. 48(1) requires acceptance within twelve months. Article 50(2) of the same law, however, subjects the manner and the time limit of the succession option to the law in force at the date of the opening of succession, that is, to the earlier law. The two provisions thus point to different laws for successions opened in the first quarter of 2026, and the principle of non-retroactivity (Art. 7(1) CC RM) supports the precedence of Art. 50(2). Even if Art. 48(1) prevailed, the practical risk would be limited, since at least nine months of the acceptance period remained on 1 April 2026.

For successions opened between 1 March 2019 and 31 December 2025 in which no option has been expressed, heirs whose identity or whereabouts cannot be established may be summoned and, if they do not accept within one year of the publication of the summons, are deemed to have forfeited their right to inherit (Art. 50(3)-(5) of Law No. 1125/2002). The rule requires the acceptance of estates already acquired by operation of law and has been described as an expropriation without compensation, contrary to Art. 46 of the Constitution (Cazac, 2025). Its scope is, however, narrower than this qualification suggests: it does not apply to heirs notified by the notary before 31 December 2025, and it does not affect heirs who establish their status in court (Art. 50(6) and (7)). Its constitutionality falls outside the scope of this study.

4.3 The Place of the Opening of Succession

4.3.1 Place of Opening, International Jurisdiction, Territorial Competence and Applicable Law

The four notions defined in the Introduction are governed by different rules, even where they share a connecting factor. Under the Regulation, the place of the opening of the succession is governed by the law applicable to the succession (Art. 23(2)(a)), whereas jurisdiction and the applicable law are determined by autonomous rules (Arts. 4, 10 and 21). The law of the Republic of Moldova follows this sepa-

ration only in part. The applicable law is determined directly by the deceased's habitual residence at the time of death, subject to a manifestly closer connection and to a choice of law (Arts. 2657 and 2658 CC RM), without reference to Art. 2166. Territorial competence has been detached from the place of opening for notaries (Art. 69(1) of Law No. 246/2018) and, for most succession claims, for courts (Art. 41^{1}(1) CPC RM). International jurisdiction, by contrast, remains tied to it: the courts of the Republic of Moldova have jurisdiction in succession matters "if the place of the opening of succession, under the Civil Code, is located in the territory of the Republic of Moldova" (Art. 462^{1} CPC RM), and subsidiary jurisdiction applies where the deceased's habitual residence was not in the Republic of Moldova (Art. 462^{6} CPC RM).

Two consequences follow. First, Art. 2166 CC RM has a dual function: it is a substantive rule, relevant as such only where the law of the Republic of Moldova governs the succession, and, through Art. 462^{1} CPC RM, a jurisdictional connecting factor applied whatever the applicable law; any amendment of it therefore alters the international jurisdiction of the courts. Second, the shared connecting factor does not make the place of opening a criterion of the applicable law: Arts. 2166 and 2657 CC RM diverge in two cases: where the habitual residence is unknown (only Art. 2166 refers to the location of the assets) and where the 1996 Treaty displaces Art. 2657 (section 4.3.4).

4.3.2 The Habitual Residence Criterion

Article 2166 CC RM borrows the notion of habitual residence from Arts. 4 and 21 of the Regulation (Fuchs, 2015). It is consistent with Art. 38 CC RM, which defines domicile as the place where a person "has his or her habitual residence" (para. 1) and requires habitual residence to be determined in the light of all relevant facts, in particular the duration and regularity of the person's presence and the conditions and reasons for it (para. 2). Among the national systems compared, only German law also uses habitual residence, and only to determine the local jurisdiction of the probate court (§ 343(1) FamFG), since the BGB has no concept of a place of opening. Romanian, French, Russian and Ukrainian law retain the deceased's last domicile or last place of residence (Art. 954(2) CC RO; Art. 720 of the French Civil Code; the first paragraph of Art. 1115 of the Civil Code of the Russian Federation; Art.

1221(1) of the Civil Code of Ukraine).

According to the CJEU, the deceased's habitual residence results from an overall assessment of the circumstances and can be located in only one State (Carrillo Pozo, 2021; CJEU, C-80/19, 2020); the criterion has been described as unstable (Atallah, 2015; Pfeiffer, 2016) and has been misapplied by some national authorities (Krūmiņš, 2019). Unlike Romanian law, in which the last domicile is proved by the death certificate or by the judgment declaring death (Art. 954(2) CC RO), the law of the Republic of Moldova has no specific evidentiary rule, but it does provide means of proof: the declarations made to the competent authorities prove the intention to establish a domicile (Art. 38(4) CC RM), and the place of the opening of succession may be established by a court as a fact of legal significance (Art. 281(2)(f) CPC RM). The real difficulty is the possible divergence between the registered domicile and the actual habitual residence, a question also debated in Romanian law (Boar & Boar, 2025). A person who has lived and worked in Italy for ten years while keeping a registered domicile in Cahul will in principle be habitually resident in Italy (Art. 38(2) CC RM). A notary who relies on the "last domicile" (Art. 70(3) and (9) of Law No. 246/2018) without verifying the actual habitual residence may wrongly locate the habitual residence in the Republic of Moldova and, as a result, both treat the succession as having opened there (Art. 2166 CC RM) and apply the law of the Republic of Moldova instead of Italian law (Art. 2657 CC RM). The risk thus lies in the application of the rules rather than in a gap.

4.3.3 Habitual Residence Located Abroad

Article 2166 CC RM refers to the location of the assets only if the habitual residence "is not known"; where it is known but located abroad, the place of opening is abroad, and the Civil Code provides no domestic place of opening. Take the person in the previous example, a national of the Republic of Moldova habitually resident in Italy who leaves an apartment in Cahul and a bank deposit in Chișinău. Article 462^{1} CPC RM does not apply, but the courts of the Republic of Moldova have subsidiary jurisdiction over the succession because the deceased was a national of the Republic of Moldova and left assets there (Art. 462^{6}(1)(a) CPC RM); for a foreign national whose habitual residence had moved abroad more than five years before the court was seised,

the jurisdiction of the courts would be limited to the assets located in the Republic of Moldova (Art. 462[6](1)(b) and (2)). This mechanism, modelled on Art. 10 of the Regulation, has been criticised for the risk of fragmenting the succession (Marongiu Buonaiuti, 2016). Succession claims are brought before the court of the place where most of the assets in the Republic of Moldova are situated (Art. 41[1](4) CPC RM), the proceedings may be opened before any notary (Art. 69(1) of Law No. 246/2018), and the succession is governed by Italian law (Art. 2657(1) CC RM), unless a choice of law has been made (Art. 2658 CC RM).

The absence of a domestic place of opening is therefore not a gap as regards the courts: the procedural rules supply the connecting factors that Art. 2166 does not provide, including for creditors' claims, to which Art. 41[1](4) CPC RM also applies. Two qualifications are necessary. First, Art. 69(1) of Law No. 246/2018 allocates cases only among domestic notaries, so that whether a notary of the Republic of Moldova may deal with the succession of a person habitually resident abroad is a question of international competence, to be answered by the rules governing notarial activity rather than by Art. 2166 CC RM. Second, Art. 80(2) of Law No. 246/2018, which refers to the court of the place of opening, designates no domestic court in this situation (section 4.3.4). Subject to these qualifications, the current solution is preferable to the alternative. Because Art. 462[1] CPC RM refers to the place of opening "under the Civil Code", a rule locating in the Republic of Moldova every succession that includes assets situated there would give the courts of the Republic of Moldova general jurisdiction over the whole succession of any such person, circumventing the conditions of nationality or recent habitual residence laid down in Art. 462[6] CPC RM.

Romanian, Russian and German law regulate this situation expressly, but in order to allocate domestic competence. Under Romanian law, if the last domicile is unknown or is not in Romania, succession opens in the district of the first notary seised, provided that an immovable or, failing that, a movable of the deceased is located there, and, where there are no assets in Romania, in the district of the first notary seised (Art. 954(3) CC RO); the rule is needed there because the place of opening determines the competent notary. Russian law locates the opening at the place of the assets in the country, giving priority to immovables or to their most valuable part (second para-

graph of Art. 1115 of the Civil Code of the Russian Federation), and German law refers to the last habitual residence in Germany or, failing that, to a central court where the deceased was a German national or left assets in Germany (§ 343(2) and (3) FamFG). Ukrainian law refers to the location of the assets, with priority for immovables, only where the place of residence is unknown (Art. 1221(2) of the Civil Code of Ukraine), a solution close to that of Art. 2166 CC RM, and the French Civil Code does not address the situation. Since the law of the Republic of Moldova no longer uses the place of opening to designate the competent notary, the rationale of Art. 954(3) CC RO does not apply to it. A distinct issue concerns the subsidiary criterion applicable where the habitual residence is unknown: Art. 2166 no longer gives priority to immovables, as former Art. 1443 did, but refers to the principal part of the assets by value, a formula closer to Art. 563 of the 1964 Code. If a house in Cahul is worth less than a deposit held abroad, the place of opening is located abroad, so that the general jurisdiction of the courts of the Republic of Moldova under Art. 462[1] CPC RM depends on a valuation of the whole estate.

4.3.4 Residual Functions of the Place of Opening and the 1996 Treaty

Apart from its definitional role in substantive succession law, the place of opening has retained, since 20 July 2024, three procedural functions: it determines the international jurisdiction of the courts of the Republic of Moldova (Art. 462[1] CPC RM), which is now its principal function; it designates a court before which creditors' claims may be brought, without excluding the courts available under the general rules (Art. 41[1](3) CPC RM); and it designates the court competent to appoint another custodian (Art. 80(2) of Law No. 246/2018). The last provision has not been aligned with Art. 41[1](1)(g) and (4) CPC RM. It designates no domestic court where the succession opened abroad, and it may designate a different court from the one competent for other claims concerning the custodian: where a notary in Chișinău conducts the proceedings concerning a person habitually resident in Cahul, a claim to terminate the custodian's duties falls within the competence of the court in Chișinău, whereas the appointment of a new custodian falls within that of the court in Cahul. The conflict can be resolved by inter-

pretation, but it creates an avoidable risk of disputes over competence. Romanian law has taken the opposite path, retaining the last domicile as the criterion for the territorial competence of both notaries and courts (Art. 15(a) of Law No. 36/1995; Art. 118(1) of the Romanian Civil Procedure Code), even in cross-border successions, since a notary who issues a national certificate at the joint request of the parties is not a "court" within the meaning of the Regulation (Boar & Boar, 2025; CJEU, C-20/17, 2018; CJEU, C-658/17, 2019; Olaru, 2025).

In relations with Romania, the 1996 Treaty takes precedence over the Regulation (Art. 75(1) thereof), over the conflict-of-laws rules of the Civil Code, which refer first to international treaties (Art. 2576(1) CC RM), and over the jurisdictional rules of the CPC RM, which yield to procedural rules laid down by treaty (Art. 2(3) CPC RM). The Treaty establishes a split system: succession to movables is governed by the law of the deceased's nationality, and succession to immovables by the law of the place where they are situated (Art. 40). "The opening of the succession", the succession proceedings and the succession disputes concerning movables fall within the competence of the State of nationality, and those concerning immovables within that of the State where they are situated, unless all the movables are located in the other State and all the heirs agree (Art. 43). In Art. 43, "the opening of the succession" refers to the opening of the proceedings, that is, to a question of competence, and not to the legal fact regulated by Arts. 2165 and 2166 CC RM. The Treaty therefore does not create two places of opening; it allows the same estate to be dealt with by the authorities of two States applying two laws, which departs from the unity of succession (Art. 2163 CC RM). Nor does the Treaty address dual nationality. For a national of both States habitually resident in Iași who leaves movables in both States, the authorities of the Republic of Moldova would treat the deceased as a national of the Republic of Moldova (Art. 2586(3) CC RM), whereas the Romanian authorities would treat the deceased as a Romanian national, Romania being the State of closest connection (Art. 2568(2) CC RO); both would thus claim competence over the movables, a positive conflict that Art. 43(3) avoids only if all the movables are located in one State and all the heirs agree. The bilateral treaties of post-Soviet States use different regulatory methods in this field (Karmaza et al., 2023).

4.4 Discussion

The results largely confirm the hypothesis, but they also show that several apparent gaps are filled by other provisions in force, some of them outside the Civil Code. The date of opening now fixes the period within which the right to accept or renounce the succession must be exercised and serves as an intertemporal criterion, while the place of opening has lost its role in allocating domestic competence and survives mainly as the criterion of international jurisdiction. The 2024 reform should be read in the context of the debate on restrictions on competition in the Latin-type notarial profession (Van den Bergh & Montangie, 2006) and departs from Romanian law, which still links notarial competence to the last domicile; the safeguard against parallel proceedings is the Electronic Register (Art. 70(1) of Law No. 246/2018). Tested against concrete situations, the representation of the descendants of a commoriens (Arts. 2167(3), 2168 and 2178(3) CC RM), the successions of persons habitually resident abroad (Arts. 462[6] and 41[1](4) CPC RM; Art. 69(1) of Law No. 246/2018) and the proof of habitual residence (Art. 38 CC RM; Art. 281(2)(f) CPC RM) do not reveal genuine gaps, and the incomplete borrowing of Art. 1103(2)(b) CC RO has little practical effect (Art. 300(4) CPC RM). The following proposals are therefore limited to the deficiencies that withstand this test:

- supplementing Art. 168(3) CC RM so that, where the disappearance occurred in circumstances posing a threat of death, the court is required to set the day of presumed death, and reinstating the solution of former Art. 1442 for persons who disappeared in the same circumstances, regardless of when the respective judgments become final;
- introducing, on the model of Art. 52(3) CC RO, a specific procedure, subject to a time limit, for rectifying the date of death established by a judgment declaring death where evidence shows that the person died on a different date;
- aligning Art. 80(2) of Law No. 246/2018 with Art. 41[1] CPC RM by referring to the court of the place where the succession proceedings are conducted (para. 1(g)) or, for successions opened abroad, to the court designated under para. 4;
- clarifying the relationship between Art. 48(1) and Art. 50(2) of Law No. 1125/2002 for successions opened between 1 January and 31

March 2026, in accordance with the principle of non-retroactivity (Art. 7(1) CC RM);

- including a rule on dual nationality in any future revision of the 1996 Treaty.

These proposals are consistent with the principles on which the study relies. The first two give effect to the principle that succession opens at the moment of death (Art. 2165 CC RM) and to the coherence of devolution expressed by Art. 2168: instead of a date dictated by the pace of the proceedings or by a fiction, they bring the legal date of death as close as possible to the actual one, and, where the order of deaths remains unknown, they lead to the solution that neither person inherits from the other. Since rectification may unsettle a devolution already carried out, the principle of legal certainty requires it to be limited in time and its effects on third parties to be governed by rules modelled on Art. 169 CC RM. The alignment of Art. 80(2) of Law No. 246/2018 follows the logic of the 2024 reform, which concentrates succession disputes before the court of the place where the proceedings are conducted, and serves legal certainty without reintroducing a domestic place of opening. The clarification of the transitional rules gives effect to the principle of non-retroactivity (Art. 7(1) CC RM) and to the protection of property (Art. 46 of the Constitution). Finally, a rule on dual nationality in the 1996 Treaty should rely on the closest connection, in particular habitual residence, which the Civil Code itself uses for persons with multiple nationality (Art. 2586(2) CC RM) and for the applicable law (Art. 2657 CC RM); in relations with Romania, such a rule would prevail over the preference for the nationality of the Republic of Moldova in Art. 2586(3) CC RM (Art. 2576(1) CC RM). It would reduce parallel proceedings and thus bring the Treaty closer to the unity of succession (Art. 2163 CC RM), although a full return to unity would require abandoning the split system, which exceeds the scope of this study.

Conversely, the same principles explain why we do not make two other proposals. Supplementing Art. 2166 CC RM with a domestic place of opening on the Romanian model would, given the reference in Art. 462^{1} CPC RM, extend the general jurisdiction of the courts of the Republic of Moldova beyond the limits set by Art. 462^{6} CPC RM, at the expense of the proximity that the habitual residence criterion expresses. The fiction of the last hour of the day would create an artifi-

cial order of deaths in situations that Art. 2168 CC RM already resolves coherently. The study does not include an empirical examination of notarial practice after 20 July 2024, in particular as regards the verification of habitual residence, and case law on the new Art. 2391 CC RM and on the transitional provisions of Law No. 1125/2002 is still scarce; these limitations point to directions for further research.

5. Conclusions

The research confirms the divergent evolution of the two coordinates of the opening of succession, while showing that the resulting inconsistencies are fewer and narrower than a reading of each provision in isolation would suggest.

The place of opening, international jurisdiction, territorial competence and the applicable law must be kept apart. In the law of the Republic of Moldova, the applicable law follows directly from habitual residence (Art. 2657 CC RM), territorial competence has been largely detached from the place of opening, and the place of opening survives mainly as the criterion of the international jurisdiction of the courts (Art. 462[1] CPC RM). Any amendment of Art. 2166 CC RM must therefore be assessed in the light of its jurisdictional effects.

The temporal criterion has evolved from the "day" of death (Art. 562 of the 1964 Code) to its "moment" (2002, 2019), but, for a person declared dead, Art. 168(3) CC RM still provides only a day, a rule inherited from Art. 21(3) of the 1964 Code. Where the order of deaths cannot be established, Art. 2168 CC RM offers a coherent solution. A risk of an artificial order of deaths remains, however, where persons who disappeared in the same circumstances are declared dead by judgments that do not set the day of presumed death. Moreover, the law provides no specific procedure for rectifying the date of death, revision being subject to strict time limits.

Although Art. 2168 CC RM does not expressly allow the descendants of a commoriens to inherit by representation, this solution, accepted in French and Romanian law, follows from Arts. 2167(3) and 2178(3) CC RM.

Law No. 251/2025 has made the date of opening the starting point of an objective twelve-month time limit, whose effects are attenuated, but not eliminated, by Art. 2391(3)(d), (4) and (5) CC RM. For

successions opened in the first quarter of 2026, Arts. 48(1) and 50(2) of Law No. 1125/2002 point to different laws, and the principle of non-retroactivity favours the law in force at the date of the opening of succession; the forfeiture rule for earlier successions is narrower than it may appear (Art. 50(6) and (7)).

The habitual residence criterion is consistent with Art. 38 CC RM and with Regulation (EU) No 650/2012. The absence of a domestic place of opening where the habitual residence is known but located abroad is not a gap, since the procedural rules supply the necessary connecting factors; the main practical risk lies in equating the registered domicile with habitual residence. In relations with Romania, the habitual residence criterion is displaced by the split system of the 1996 Treaty, which does not resolve the issue of dual nationality.

The three reforms were insufficiently coordinated, but the remaining misalignments concern specific provisions (Art. 168(3) CC RM, Art. 80(2) of Law No. 246/2018 and Arts. 48(1) and 50(2) of Law No. 1125/2002) rather than the structure of the regulation. The proposals put forward are correspondingly limited and are consistent with the principles invoked in the study, namely the opening of succession at the moment of death, the coherence of devolution, legal certainty, non-retroactivity and the unity of succession; until the legislature intervenes, the interpretative solutions identified may guide courts and notaries.

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