



Contemporary Changes in the Concept of Inheritance in the Context of New Family Structures

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Abstract: *This article explores how modern family structures, such as cohabitation and same-sex partnerships, challenge the traditional concept of legal inheritance in Romania. It points out that Romanian inheritance law currently recognizes only blood relatives and surviving spouses, leaving unmarried partners without inheritance rights in the absence of a will. The paper details the legal vacuum and inequities created for these new family forms, contrasting the situation in Romania with European models that have introduced civil partnerships to provide legal protection and inheritance rights. Finally, it argues the need for a legislative reform in Romania, based on ECHR case law and the principles of equality and protection of family life, suggesting the adoption of civil partnership as a solution to bring domestic law in line with social realities and European norms.*

Keywords: *legal inheritance; testamentary inheritance; cohabitation; civil partnership*

1. Introduction

The traditional concept of inheritance (succession) is being challenged by transformations in contemporary family structures. An important social reality is the increase in the number of couples who choose to live together without marriage, as well as in the number of children born out of wedlock (about 31% in Romania in

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2015)¹. These realities make it necessary to adapt inheritance law to the new patterns of family life. In the Romanian legal system, legal inheritance recognizes only blood relatives and spouses as legal successors, excluding de facto partners (cohabiting partners). This situation creates inequalities for new families (cohabitation, informal partnerships, same-sex couples) which, although functioning as a de facto family, do not benefit from legal protection upon the death of one of the partners. The subject is a topical one, at the crossroads between legal tradition (which favors marriage) and the demands of regulatory reform imposed by social developments and European standards on family life.

The conceptual framework of "new family structures" includes heterosexual unmarried couples, same-sex couples, single-parent and extended families, with the focus of the report being on non-registered couples and the implications for inheritance law.

2. Fundamentals of Romanian Succession Law

The current regulatory framework of succession is presented by the Romanian Civil Code, emphasizing the basic principles. According to the Civil Code, the legal heirs upon the death of a person are his/her relatives (grouped in four classes) and the surviving spouse. The law only calls only blood relatives and the spouse to inherit, not affinities or cohabitants. The relevant articles of the Civil Code are Art. 963-964 (category of legal heirs), Art. 971 (inheritance rights of the surviving spouse), Art. 972 et seq. (devolution of inheritance according to the existence of the deceased's relatives).

The difference between the legal devolution (*intestate* inheritance) and testamentary devolution shows how the Romanian Civil Code recognizes the freedom to will as well as the existence of the institution of the reserved portion of the estate - the part of the inheritance that is compulsorily reserved to the reserved heirs (descendants, privileged ascendants, surviving spouse - Art. 1086-1088 Civil Code). It should be emphasized that, under Romanian law, the cohabitee (unmarried partner) is not entitled to the legal inheritance of the deceased, regardless of the duration of cohabitation. The only way to inherit the partner is by being designated legatee in the will. There are limitations even in a will: if the deceased has reserved heirs (e.g. children or surviving spouse from a previous marriage), the bequest in favor of the cohabitant cannot affect the reserved portion of the estate guaranteed to them.

¹ National Statistical Institute (NSI). *Demographic events in 2015*. Bucharest, 2016. Available at: https://insse.ro/cms/sites/default/files/field/publicatii/evenimente_demografice_in_anul_2015.pdf

The Romanian legislator's traditional rationale in matters of succession is to protect the legitimate family and kinship. In the past, children born out of wedlock had limited inheritance rights; today, the Civil Code and the Romanian Constitution enshrine the equality of children, regardless of parentage (Art. 260 Civil Code, Art. 48 para. (3) of the Constitution), showing a tendency to eliminate discrimination based on the civil status of filiation. By analogy, this raises the question of reconsidering the status of cohabitants in matters of succession, given that current legislation treats them as legal strangers. The current legal context of cohabitation in Romania, which treats unmarried partners as legal strangers in the absence of a will or special contract (the surviving partner has no right to inheritance), calls for an analysis of new family realities that go beyond the classic marriage pattern.

3. New Family Realities and their Legal Implications

Consensual cohabitation (concubinage) in Romania is a widespread sociological reality, with more heterosexual couples choosing to live in a consensual union without getting married. This reality does not, however, legally produce the effects of marriage. The Romanian Civil Code only recognizes marriage (Article 259 of the Civil Code) and confers no legal status on cohabitation. There is no law on "consensual unions" or civil partnership (regardless of sex), and concubines are not recognized any legal inheritance rights, regardless of the duration of the relationship or the resulting children. This lack of legal recognition also extends to other areas such as parental authority, social security (survivor's pension) or representation in emergency medical situations. There are statistical data and sociological studies on the incidence of cohabitation in Romania and society's attitudes, highlighting the contrast between the prevalence of informal cohabitation and the vacuum of legal protection (Stoica, 2025). Concubinage remains a "state of fact, not of law", leaving partners without legal protection (Apostu, 2022, pp. 313-334). The division of joint property accumulated in cohabitation is based on the general rules of co-ownership, not on a legal matrimonial regime. Mentions should also be made here of the special presumption of paternity laid down by the Civil Code (Article 426) for the situation of cohabitation, a provision which shows that the legislator *de facto* recognized the existence of this form of cohabitation only for filiation, not for other family rights.

Civil partnerships, set up in many European countries as an alternative to marriage to provide a legal framework for couples who are unwilling or unable to marry (including same-sex couples), are not yet regulated in Romania. The topic has been intensely debated, especially in the context of LGBT rights and the failure of the 2018 referendum. Failed legislative initiatives on civil partnership have aimed at legally recognizing consensual unions and granting rights like spouses (social, medical protection, inheritance rights). Due to legislative opposition and socio-cultural

sensitivities, civil partnership was not legislated. In the absence of this institution, unmarried couples in Romania remain without explicit legal protection.

The lack of inheritance protection is the main negative legal consequence of the absence of any form of recognized partnership. If an unmarried partner dies intestate (without a will), the other partner has no legal succession rights and is treated as a stranger to the deceased. The property is the property of the biological relatives, and the surviving partner has no right to the reserve quota or to the joint property in the absence of a special regime. Even if jointly acquired property passed into the name of the deceased is passed to the legal heirs, the cohabitee can only claim a claim or a share in court by proving financial contribution (leading to difficult lawsuits). This legal vacuum creates unfair and traumatizing situations for the survivor.

The need to link domestic law with human rights principles is highlighted by the right to family life guaranteed by Article 8 of the European Convention on Human Rights and the case law of the ECHR. The European Court has ruled that stable de facto relationships (including heterosexual cohabitation or same-sex couples) fall under the protection of the notion of "family life". Thus, States have a positive obligation to ensure a minimum of legal recognition and protection of these relationships. The lack of any form of protection in Romania can be analyzed as a legislative gap in relation to European standards. Although the ECHR leaves it up to the Member States to decide on the modality (marriage, civil partnership, etc.), the message is that the current family reality goes beyond the traditional framework and calls for legislative reforms. The need to correlate domestic law with human rights principles, particularly the right to family life protected by Art. 8 ECHR, leads to an examination of court practice, which illustrates the problems generated by the lack of recognition of new family structures.

4. Case Study

The practice of national courts on cohabitation and inheritance shows that, in the absence of express provisions, Romanian courts apply the general framework of succession. Examples are given from court practice in which the surviving partner has been removed from the inheritance; actions in which cohabitants claim a right of succession are usually rejected because the law does not confer on them the status of legal heirs. The surviving partner may seek recognition as a legatee (if there is an informal will) or restitution of contributions (claiming unjust enrichment or silent partnership). Case law has sometimes recognized a right of claim to joint property, but not a right of inheritance as such.

The case law of the Constitutional Court of Romania (CCR) shows that the CCR has ruled on the recognition of same-sex couples (*Coman v. Romania*). The CCR emphasized that the constitutional definition of the family allows the legislator to regulate alternative forms of protection without contravening Article 48 of the Constitution, opening the way for civil partnerships. CCR Decision No. 534/2018 held that family life is not reduced to marriage, suggesting that the legislator has an obligation to fill the legislative vacuum to protect unmarried partners¹. These clarifications by the CCR reinforce the argument for the need for reform.

The ECtHR case-law contains relevant rulings on inheritance rights in atypical family situations.

- *Şerife Yiğit v. Turkey* (ECHR 2010): The case of a woman whose partner died and a religious marriage that was not officially registered resulted in a lack of survivor's pension and inheritance rights. The ECHR ruled that the relationship constituted "family life", but the Turkish state did not violate the Convention by denying inheritance rights, given the state's discretion and the parties' ability to comply with the law (to marry legally). This case illustrates the Court's cautious approach: States are not obliged to grant the same rights to cohabitants as to spouses but must avoid unjustified discrimination.²
- *Mazurek v. France* (ECHR 2006): It concerns discrimination against children out of wedlock in inheritance and contributed to the principle of non-discrimination based on birth. As a result of this case law, European laws (including Romania) have eliminated the differences between children born in and out of wedlock. By analogy, it can be argued that discrimination between spouses and cohabitants regarding inheritance rights should be reassessed in the light of Art. 14 (non-discrimination) combined with Art. 8 (family life) ECHR.³
- *Oliari and Others v. Italy* (ECHR 2015): the Court found a violation of Art. 8 by Italy for not recognizing any legal form of same-sex relationships. The judgment spurred Italy to introduce civil partnership in 2016, which also includes inheritance rights for partners. This example shows how ECtHR case law can incentivize reforms that also cover inheritance issues.⁴
- *Buhuceanu and Others v. Romania* (ECHR 2023): recent judgment in which the ECHR ruled that Romania violates Art. 8 by failing to provide any form of

¹ Constitutional Court of Romania, Decision No 534 of July 18, 2018, on the admissibility of the exception of unconstitutionality of the provisions of Article 277 para. (2) and (4) of the Civil Code. Available at: https://www.ccr.ro/wp-content/uploads/2020/07/Decizie_534_2018.pdf.

² <https://hudoc.echr.coe.int/eng?i=001-101579>.

³ <https://hudoc.echr.coe.int/eng?i=001-58456>.

⁴ <https://hudoc.echr.coe.int/eng?i=002-10668>.

recognition and protection for same-sex couples. The Court emphasized the obligation of the Romanian state to ensure rights "similar to those of married couples" for these families (leaving it to the authorities to decide how), including inheritance rights (right to inheritance, survivor's pension, etc.), considered an integral part of family life and legal security. This case law puts direct pressure on Romania to legislate on civil partnerships, which would also solve the problem of the succession rights of cohabiting partners who register their relationship¹.

In summary, domestic and European case law shows a trend towards extending legal protection to alternative family forms. Although national courts are bound by the letter of the law and cannot grant cohabitants the status of legal heirs, European courts provide a principled framework that calls for changes in the law to ensure equality and respect for family life. This calls for an examination of legislative models in other European countries.

5. European Models for Regulating Partnerships and Succession Rights

Several European legal systems that have addressed the issue of new family structures are comparatively examined, highlighting the legislative stages and the extension of inheritance rights, with a focus on France, Germany and the Netherlands.

- France: French law traditionally privileged marriage, and cohabitation had no legal effect. In 1999 the Pacte Civil de Solidarité (PACS) was introduced, a civil partnership open to all couples, offering some rights (social protection, taxation) but not legal heirship. Partners registered in a PACS are not automatically legal heirs. A will is required for the surviving partner to inherit. However, they benefit from inheritance tax exemptions, like married spouses. The law on marriage for all (*Mariage pour tous*) was passed in 2013, allowing same-sex couples to marry and benefit from all associated rights, including inheritance. PACS remains an alternative option, also preferred by heterosexual couples. The French model shows a two-step evolution: limited civil partnership (no legal inheritance rights), then extension of rights through access to marriage. Full inheritance rights for unmarried couples were achieved with the granting of the right to marry, with PACS being useful mainly for tax and administrative benefits.²
- In the German situation, prior to the introduction of the Registered Partnership Act (*Lebenspartnerschaftsgesetz*) in 2001, Germany did not legally recognize same-sex partnerships, and cohabitation does not confer inheritance rights even today. With

¹ <https://hudoc.echr.coe.int/eng?i=002-14087>.

² <https://www.connexionfrance.com/practical/discover-the-pros-and-cons-of-french-civil-partnership/>

regard to the right to inheritance, registered partners have gradually been equalized with spouses: according to §10 registered partners have similar inheritance rights as spouses, including the right to a share of the inheritance. Since 2009, they have been exempt from inheritance tax like spouses. As of 1 October 2017, Germany legalized same-sex marriage, and since then no new registered partnerships can be entered into; existing ones can be converted into marriages or continue in their current form. Unregistered heterosexual cohabitation continues to confer no inheritance rights, emphasizing that protection comes with the formal assumption of the relationship. The German model emphasizes the importance of institutionalizing the relationship for the acquisition of succession rights¹.

- Netherlands. The Netherlands is a pioneer in recognizing new family forms. Registered partnerships in the Netherlands offer rights and obligations like marriage, including inheritance². Registered partners are considered as mutual legal heirs, just like spouses. If one partner dies intestate, the other has the same position as a surviving spouse, inheriting the legal share of the estate along with descendants. The Netherlands legalized same-sex marriage in 2001, retaining civil partnership as an alternative. Dutch couples have three options: cohabitation, registered partnership and marriage. The Dutch model shows that the extension of inheritance rights is also possible through an instrument other than marriage, civil partnership being a robust institution. This model may be useful for Romania, suggesting civil partnership as a viable solution to protect unmarried couples.³

Careful comparative observation shows that many other European countries have similar developments (UK, Italy, Hungary, Czech Republic). The trend in Europe is therefore to provide uniform minimum protection for unmarried partners (including inheritance), either by broadening the definition of the family or by creating institutions parallel to marriage. Romania, along with several other countries, has lagged with no form of recognition of consensual unions. From the examples presented, it is possible to draw arguments and solutions for a reform proposal in Romanian law.

6. Proposal for Reform in Romanian Law

Based on the identified dysfunctions and on European models, a concrete legislative reform in Romanian law is proposed regarding the recognition of new family

¹ https://en.wikipedia.org/wiki/Same-sex_marriage_in_Germany?

² <https://www.government.nl/topics/marriage-cohabitation-agreement-civil-partnership/question-and-answer/what-are-my-rights-and-obligations-within-marriage-and-civil-partnership?>

³ <https://www.delissenmartens.nl/en/the-latest/living-together-pension-equalization-and-inheritance-law?>

structures and the adaptation of inheritance law. The optimal solution is the adoption of a civil partnership law, accessible to all couples who wish to formalize their cohabitation without marriage. Civil partnership should confer on substantial legal protection, close to that of marriage, including mutual property rights and obligations. Essentially, the law should provide that the surviving partner has legal succession rights like those of the surviving spouse. An earlier draft law (USR, 2018) assimilated civil partners to spouses in matters of inheritance, with the possibility of contractually waiving this vocation. Civil partnership would fill the gap in the Civil Code, allowing unmarried couples to regulate their status. Thus, the legally registered surviving partner would have the same rights as a spouse: a share of the inheritance (together with descendants) or the entire inheritance if there are no other legal heirs, right of inhabitation of the common domicile, eliminating unfair situations.

It is necessary to assess the compatibility of such a law with constitutional provisions. The Romanian Constitution (Article 48) defines the family based on marriage and the parent-child relationship but does not prohibit other forms of cohabitation. CCR has suggested that the recognition of civil partnerships does not contravene the Constitution as long as marriage remains distinct. A potential obstacle could be the perception that civil partnerships would compete with marriage, but formulated as a contractual civil union, available to all couples, should not raise constitutional objections. The principle of equality (Art. 16 of the Constitution) and the right to intimate, family and private life (Art. 26) support the need for regulation in order not to discriminate against citizens based on marital status or sexual orientation. The major implication is that Romania would comply with its obligations under the ECHR, according to recent interpretations (which condemned Romania for failing to recognize same-sex couples). The adoption of civil partnerships is not only constitutionally permissible, but even necessary for harmonization with European standards.

An inheritance law reform linked to the new family structures would have social resonance, touching on sensitive issues such as the recognition of unmarried couples, including homosexual couples. The necessary and useful nature of a proposed law should be underlined by arguments such as protecting the children of such unions, eliminating blatant inequalities, aligning with European practices and ensuring dignity and security of family life for all. There is likely to be resistance from conservative groups. A common counterargument is that civil partnerships would undermine marriage, but experience in other countries shows that civil partnerships have met a real need without diminishing the importance of marriage. In Romania, the introduction of civil partnerships would not discourage marriages, but would provide a safety net for those who choose to live together consensually. The expected positive social impacts include increased material security for

vulnerable partners, avoidance of protracted litigation and recognition of pluralism of forms of family life.

In addition to establishing civil partnerships, intermediate steps can be taken. For example, amending the Civil Code to allow joint wills or contracts of inheritance between cohabitants. It would also be possible to legislate a temporary residence for the surviving cohabitant in the common dwelling, like the right of the spouse (1 year, art. 973 Civil Code), even in the absence of a formal partnership. Such measures would be paleative pending comprehensive regulation.

It can be said that the proposal to reform inheritance and family law by recognizing civil partnerships would meet the desires of equity, social justice and international legal requirements.

Conclusion

Contemporary social transformations challenge the traditional concept of inheritance, highlighting the limitations of the current Romanian legal framework, which excludes cohabitants and recognizes only the spouse and blood relatives as legal heirs. This approach is in contrast both with the social reality - marked by the growth of *de facto* families (cohabitation, same-sex couples, single-parent families) - and with international legal developments. Maintaining the status quo creates inequalities and contravenes the principle of equality, which requires similar legal treatment for similar situations. A stable relationship, even without a marriage certificate, deserves minimum legal protection by virtue of the recognition of family life under the Constitution and the ECHR. The lack of inheritance rights for unmarried partners perpetuates discrimination and creates 'second tier' families. While reform must take account of legal tradition, it is not immutable - as the recognition of equality between children has proved. The extension of the concept of the family and harmonization with European rules require the adoption of civil partnerships and the inclusion of new family structures in succession rules. Reform is inevitable, driven by social pressures (approx. 800,000 people live in informal unions), demographic pressures and ECHR case law.

An inclusive legal framework would strengthen social cohesion, provide legal certainty for *de facto* families and show that the state protects not only the form but also the substance of family relationships. In this way, Romanian inheritance law can evolve in line with the social reality and with constitutional and European values, ensuring equal protection for all citizens.

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