

LET THE CHILDREN COME FORWARD – POSITIVE LEGAL INDUCEMENTS FOR FAMILY GROWTH IN ROMANIA

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ABSTRACT

Historically, Romanian law provides few incentives to family growth. The most significant statutory intervention in the demographic issues of the previous century was an abortion ban, which was in effect from 1966 to 1990; however, this punitive approach had short-lived positive demographic effects.

The demographic crisis that has affected Romania since the 1990s has caused the successive political leaderships of the previous decade to use all the normative tools at their disposal to promote family growth and child-rearing. Accordingly, today, even some types of non-traditional families, such as single-parent and nonmarried heterosexual couples, which do not have any clearly defined status in Romanian private law, can avail of all the social protection benefits for their children. However, private law and tax law are much less accommodating to the situations faced by new family types. Furthermore, although medically assisted reproduction is endowed with a family law framework, it is plagued by a lack of detailed follow-up legislation.

This paper presents an overview of all the positive law inducements to family growth in Romania by using a ‘black letter law’ approach. Further, it clarifies some considerations about the future changes in law, particularly those regarding the discrepancies between the very conservative vision of family law and more progressive family approach of social law. Finally, the study presents some recent family law-related European Court of Human Rights and European Court of Justice decisions pertaining to Romania, together with their statute-altering consequences.

KEYWORDS

children
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leave
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1. History of Legal Inducements to Family Growth in Romania

| 1.1. *Ban of abortions in the post-war period*

In 1957, following World War II, abortion was legalised in Romania by Decree no. 463 of the steering committee of the Great National Assembly. Subsequently, abortion became the preferred contraceptive method, and the total number of abortions increased from 112,000 in 1958 to 1,115,000 in 1966, which was four times more than the total number of births at the time.³

In 1966, the prior permissive legislation was abolished by Decree no. 770/1966 of the State Council⁴, and abortion was banned, in general, with the following exceptions: Pregnancy endangers the mother's life, one of the parents has a serious transmissible hereditary disease, the pregnant woman has a serious mental or physical disability, the woman is over 45 years of age, she has already given birth to four children whom she cares for, and the pregnancy is the result of rape or incest⁵. These exceptions are applicable only during the first three months of pregnancy, with abortions justified by an exceptional pathological condition being accepted only till the sixth month of pregnancy⁶. The limited permissible abortions could be carried out only by specialist physicians in specialised medical institutions following the prior authorisation of a county- or town-level medical committee⁷.

As there were no other readily available contraceptive methods, this abortion ban caused a rapid, but short-lived increase in the number of births, which doubled in two years. However, by the 1980s, clandestine abortions and improvised contraception became widespread, and the poor economic outlook of the time led to a decrease in the number of live births. By 1983, birth rates and fertility rates were close to the levels recorded in 1966 immediately before the adoption ban.

| 1.2. *Material benefits enjoyed by large families during the Communist regime*

Before 1989, childcare state allowance was paid only to children below 16 years of age⁸ and it was differentiated according to the total number of dependent children within a family, recipient parent's income, and family's rural or urban domicile⁹. The allowance varied from a minimum of 130 lei for an only child in a rural domicile and having a high-income parent to a maximum of 500 lei for each child in a family having four or more children in an urban domicile and having a low-income parent¹⁰. The highest possible individual allowance was only approximately 20% of the low-income threshold, whereas

3 | Cârstea and Domnariu, 2021, p. 4.

4 | State Council Decree no. 770 of 1 October 1966 [Online]. Available at: <https://legislatie.just.ro/Public/DetaliuDocument/177> (Accessed: 28 October 2023).

5 | Article 2 of State Council Decree (SCD) no. 770/1966.

6 | Article 3 SCD no. 770/1966.

7 | Article 4 and 5 SCD no. 770/1966.

8 | Article 1 SCD no. 410/1985 [Online]. Available at: <https://legislatie.just.ro/Public/DetaliuDocument/637> (Accessed: 28 October 2023).

9 | Article 2 SCD no. 410/1985.

10 | Article 3 SCD no. 410/1985.

the lowest was less than 3% of the highest income threshold for which a childcare allowance could be paid.

In the 1980s, state childcare allowance was not universally applicable because it was awarded only when one or both parents were state enterprise employees for an indefinite period, in the military, teachers hired on one-year contracts, full-time university students, or pensioners¹¹. Special exceptions were made for cooperative workers, artists, and lawyers, for whom allowance was paid by their organisations, rather than the state¹². There were some strange restrictions to receiving the allowance: For instance, it was first paid to the husband, and it was paid to the wife only if he was not eligible¹³; further, the parent lost the allowance once they became unemployed¹⁴.

Besides the state childcare allowance, mothers caring for three or more underage children received additional benefits of 400 lei for three or four children and 500 lei for five or more children¹⁵. This benefit was available when the descendants were students between 18 and 25 years of age, but it did not consider the children who were in foster care or were adopted out¹⁶.

Furthermore, the wives of men doing military service enjoyed additional benefits. These benefits were 500 lei per month for those domiciled in cities or towns and 350 lei for those living in rural areas if the wives were pregnant at least in the fifth month and had a child who was below 8 years of age or with severe disabilities¹⁷. Finally, mothers giving birth to more than one child were entitled to a 'birth indemnity' of 1,500 lei, equivalent to approximately half the average monthly wage at the time, for each of the second and subsequent children¹⁸.

1.3. Maternity leave before 1989 and day-care facilities

Prior to 1989, maternity leave alone was regulated in Romania, and it could not exceed 112 days, which was very low compared to the leave allowed in the other socialist countries of Eastern and Central Europe; some countries had been allowing even up to three years of parental leave since the 1970s.¹⁹ To enable women's full participation in the workforce, a system of widely accessible public nurseries was made available, particularly in towns and cities. In 1989, 47,239 children were enrolled in 840 such establishments.²⁰

2. Family Law and Civil Law

Romania's private law regulations can be considered neutral with respect to the growth of families and improvement of the demographic situation. Private law maintains

11 | Article 5 para. 1 SCD no. 410/1985.

12 | Article 28 SCD no. 410/1985.

13 | Article 5 para. 2 SCD no. 410/1985.

14 | Article 7 and 8 SCD no. 410/1985.

15 | Article 19 para. 1 SCD no. 410/1985.

16 | Article 19 para. 2 and 3 SCD no. 410/1985.

17 | Article 22 SCD no. 410/1985.

18 | Article 25 SCD no. 410/1985.

19 | Băluță, 2014, p. 232.

20 | Ibid., pp. 232–233.

a very traditional perspective on marriage and family. Although this traditional view of the family, which is based solely on heterosexual marriage, does not hinder families' growth, it does not provide a comprehensive private law framework for non-traditional families, involving single parents, consensual couples, or other living situations where related or nonrelated individuals live together in the same dwelling.

Although Romanian family law regulates only the traditional heterosexual marriage, bans same-sex marriages, and fails to recognise registered partnerships for any couple, it includes a well-established and significantly progressive perspective toward children, irrespective of whether they are born or conceived during or outside marriage. Hence, the law treats all children equally regardless of their birth status, the treatment differing only slightly in the establishment of paternity. Family law accommodates non-traditional families by allowing exceptions for the exclusive or unilateral exercise of parental authority by a single parent, the joint exercise of parental authority by nonmarried parents, the subsequent adoption of a child by a consensual partner of the adoptive parent, and several common law provisions pertaining to the joint ownership of assets.

| 2.1. *Concept of family in private law*

2.1.1. *Definition of marriage*

Romanian law defines spouses as a man and a woman joined together in marriage²¹. Moreover, marriage is the free consenting union between a man and a woman formalised according to law.²²

Romanian family law explicitly forbids and denies any recognition of same-sex marriages²³, including those formalised abroad or involving foreign citizens.²⁴ The same position on nonrecognition applies to civil partnerships contracted abroad that involve same- or different-sex partners. These civil partnerships are not expressly forbidden in domestic law; however, they are not regulated. The nonrecognition of such unions is considered a matter of public order in international private law.²⁵

Even the preliminary stage of 'engagement' is specifically regulated only between a man and a woman²⁶. The only area where Romanian law recognises certain effects of foreign same-sex marriages or foreign civil partnerships is the free movement of individuals, according to E.U. law.²⁷

In this respect, the European Court of Justice case C-673/16 deserves mention: Coman and Hamilton, a Romanian citizen and an American citizen, respectively, got married in Belgium in 2010; however, their same-sex marriage was not recognised by the Romanian authorities with respect to Mr. Hamilton's immigration status. The E.C.J. decision, which came on 5 June 2018, states that the term 'spouse' has a specific meaning in EU law, with no reference to internal law, with respect to freedom of movement. The regulation of marriage in all other aspects should be a matter for member states, and the issue of same-sex

21 | Article 258 para. 3 Civil Code.

22 | Florian, 2022, pp. 6–7; Florian, 2021, pp. 325–327; Hageanu, 2023, p. 6.

23 | Article 277 para. 1 Civil Code.

24 | Article 277 para. 2 Civil Code.

25 | Popescu and Oprea, 2023, pp. 365–366.

26 | Article 266 para. 5 Civil Code.

27 | Florian, 2022, pp. 7–8; Baiaș, 2021, pp. 359–360.

couples is deemed a matter of the right to private or family life, not giving way to a specific right to marriage.²⁸

Romanian legal doctrine notes that the sociological definition of a family is broader than the narrow legal definition of a family based on marriage and includes other criteria such as cohabitation and maintaining a joint household.²⁹ However, the law is yet to fully encompass this notion, only recognising an equal status in relation to the children, including those born and conceived outside marriage or those adopted, after the Second World War.³⁰

On 23 May 2023, the European Court of Human Rights found in Case no. 20081/19 *Buhuceanu and others*³¹ that Romania had violated the rights to family and private life of the plaintiffs (21 same-sex couples) enshrined in Article 8 of the European Convention on Human Rights by not providing any form of legal status or recognition for same-sex couples. This decision foretells some legal upheavals, with a probable future statute on civil partnerships, both for same-sex and heterosexual couples, which will broaden the landscape of legally recognised family types. In the preceding, several attempts were made to adopt a statute on civil partnerships. However, the Parliament rejected two of these initiatives in 2014³² and 2015³³ after another similar bill, which was introduced in 2010, was withdrawn in 2012.³⁴ The fourth recorded initiative, promoted in 2016,³⁵ was rejected by the Senate in October 2016; ever since, it has been entangled in never-ending parliamentary procedures in the Chamber of Deputies (the Lower House of Parliament), lacking any noticeable political support. Another law project regulating civil partnerships was registered in Parliament in June 2018³⁶; however, it was rejected by the Senate in October 2018, as well, immediately after the failed referendum of 2018 regarding the narrow and traditional constitutional definition of marriage. Subsequently, on 28 September 2021, the project was rejected by the Chamber of Deputies, with 226 votes against and only 57 in favour.

28 | Popescu and Oprea, 2023, p. 366.

29 | Motica, 2021, p. 14.

30 | Avram, 2022, pp. 17–18.

31 | Cases nos. 20081/19 and 20 others *Buhuceanu and others v. Romania* [Online]. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-224774%22%5D%7D> (Accessed: 26 May 2023).

32 | Law Project Pl-x 670 of 23 December 2013, rejected on 11th June 2014 [Online]. Available at: https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=13901 (Accessed: 14 August 2023).

33 | Law Project Pl-x 340 of 7 April 2015, rejected on 9th December 2015 [Online]. Available at: https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=14867 (Accessed: 14 August 2023).

34 | Law Project BP 855 of 13 October 2010, withdrawn on 23rd February 2012 [Online]. Available at: https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=11483 (Accessed: 14 August 2023).

35 | Law Project PL-x 498 of 31 October 2016. [Online]. Available at https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=16017 (Accessed: 14 August 2023).

36 | Law Project PL-x 662 of 31 October 2018. rejected on 28th September 2021. [Online]. Available at: https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=17482 (Accessed: 14 August 2023).

2.1.2. *Relatives by blood*

Romanian family law attributes considerable significance to blood relationships. It considers relationships defined by blood to be 'standard' or 'normal' as opposed to those originating from a lawful act and are called 'civil' relationships. Accordingly, article 405 para. 1 Civil Code defines blood relatives as individuals based on the descendancy of a person from another person or on several persons having a common ancestor, whereas civil relatives result from adoptions.³⁷

Further, blood relatives are classified into two: Direct-line relatives occur when a person is a descendant of another³⁸: parent–child, grandparent–grandchild, and so on. Collateral relatives³⁹ are individuals having a common ancestor: siblings, uncle/aunt–nephew/niece, cousins, and so on.⁴⁰ In such relationships, intestate inheritance is received mainly by blood relatives, apart from surviving spouses and adoptive relatives.

2.1.3. *Family by consent – adoption and medically assisted reproduction*

2.1.3.1. Adoption

Romanian law generally reserves adoption for children who are yet to reach full legal capacity⁴¹. It allows the adoption of individuals with full legal capacity only for those raised by adoptive parents during childhood.⁴²

Further, legal doctrine clarifies the following conditions of adoption for children: A child lacks, temporarily or permanently, the protection of his or her biological parents, or it is in the child's best interests not to be left in the parents' care. Although relevant special legal provisions are lacking, a child's right to be brought up by his or her biological parents is a fundamental one, and an 'acceptable' level of parental protection cannot give way to adoption.⁴³ Further, the adoption process requires the consent of the child's biological parents or legal guardian, adopted child if he or she is at least 10 years old, single adopter or adoptive couple, and adopter's spouse who does not join the adoption process.⁴⁴

Adoptive parents should be single individuals or married couples who have complete legal capacity and do not have any psychiatric afflictions or mental handicaps⁴⁵. In general, they must be at least 18 years older than their prospective adoptees; however, for well-grounded reasons, the guardianship court can allow adoptions to proceed even when the age gap is at least 16 years between adoptive parents and adopted children⁴⁶. Romanian law does not stipulate a maximum age for adoptive parents.⁴⁷

37 | Avram, 2022, p. 240.

38 | Article 406 para. 1 Civil Code.

39 | Article 406 para. 2 Civil Code.

40 | Avram, 2022, pp. 240–241.

41 | Article 455 para. 1 Civil Code.

42 | Florian, 2022, pp. 492–494.

43 | Ibid., pp. 494–495.

44 | Ibid., pp. 496–498; Avram, 2022, pp. 332–336.

45 | Article 459 Civil Code.

46 | Article 460 Civil Code.

47 | Florian, 2022, pp. 502–503, 508.

However, prospective adopters must provide both moral and material guarantees to raise, educate, and ensure the adopted child's development. These conditions are verified and certified by state authorities.⁴⁸

In general, simultaneous or successive adoptions by two different individuals are not allowed, the only exceptions being married couples⁴⁹ and stable consensual heterosexual couples who raised the adopted child together for at least five years⁵⁰. Additionally, successive adoptions are allowed following the cessation of the previous adoption process for any reason or the death of the previous adoptive parents followed by the authorisation of a new adoption⁵¹. Further, two people of the same sex cannot adopt the same child together⁵² or adopt the biological or previously adopted child of another same-sex parent.⁵³

Further, brothers and sisters cannot adopt one another under any circumstances⁵⁴, however, when they are adoptees themselves, they must be adopted together, except when this is not in their best interests⁵⁵. Moreover, Romanian law forbids the adoption of spouses or former spouses together by the same adoptive parent, as well as adoptions among spouses or former spouses when one current or former spouse becomes the adoptive parent of the other.⁵⁶

2.1.3.2. Paternity and maternity issues arising from legal human reproductive procedures

The gamete 'donor' can be the parent of a child conceived through assisted reproductive procedures (ARPs) only when there occurs a reproductive cell 'transplant' between partners, which is called in-vitro fertilisation (IVF). Third-party donations of gametes, either male or female, do not result in legal parenthood because maternal filiation depends solely on giving birth, in a similar manner to natural motherhood.⁵⁷ However, the law specifically excludes the fatherhood of the third-party donor, or genetic father⁵⁸. It broadly states that medically assisted reproduction with a third-party donor gives rise to filiation between the child and donor.

ARPs do not involve any special presumptions of parenthood; the mother is the person giving birth, and the father is presumed to be the mother's husband at the time of birth,⁵⁹ former husband at the time of conception, or mother's cohabiting partner at the time of conception (the latter presumption is applied only during paternity trials).

The true source of paternal filiation in cases of medically assisted reproduction with a third-party donor is the consent provided by the mother's husband or consensual partner to undergo the procedure. Paternal filiation can be contested only for any lack of previous

48 | Florian, 2022, pp. 503–504; Avram, 2022, pp. 337–338.

49 | Article 462 para. 1 Civil Code.

50 | Article 6 para. 2c Law no. 273/2004 on adoption procedure [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/52896> (Accessed: 1 May 2023).

51 | Article 462 para. 2 Civil Code.

52 | Article 462 para. 3 Civil Code.

53 | Florian, 2022, pp. 508–509.

54 | *Ibid.*, p. 507.

55 | Article 456 Civil Code.

56 | Florian, 2022, pp. 507–508.

57 | *Ibid.*, p. 475.

58 | Article 441 para. 1 Civil Code.

59 | Florian, 2022, p. 475.

consent from the father or if the pregnancy does not involve any medically assisted procedure.⁶⁰ A consensual partner who gives his consent to this procedure is liable to recognize paternal filiation after birth⁶¹ if there is no intervening marriage between parents.

2.1.4. *Diminished importance of in-laws in contemporary law*

Contemporary law⁶² defines in-laws as the relatives of one's spouse; they can be fathers-in-law, mothers-in-law, sons-in-law, daughters-in-law, stepparents, brothers, or sisters-in-law. The in-laws' degrees are matched to the relatives' degree to the spouse⁶³. The in-laws remain as they are for the duration of the marriage unless an individual's blood or civil relationship with one of the spouses ceases prior to the end of the marriage due to adoption.⁶⁴

The older Romanian laws emphasised the situation of in-laws, often even hindering the marriage between a former parent-in-law and their former children-in-law or other relatives of their former spouse⁶⁵. For instance, provisions of the old Romanian Civil Code of 1864⁶⁶ forbade the marriage between a former spouse and the other spouse's direct descendants or ascendants or even the direct relatives of a former cohabiting partner.⁶⁷ The prohibition of marriage extended even to the former spouse's collateral relatives up to the fourth degree, such as their siblings, aunts, uncles, nephews, nieces, and first cousins.⁶⁸

Currently, being someone's in-law has very limited practical importance in private law. For example, in-laws up to the third degree (such as the spouse's aunts, uncles, or nephews/nieces) cannot be witnesses⁶⁹ in a civil trial that their in-law is a party to unless the other party agrees to it or the trial pertains to family issues, such as a divorce or filiation⁷⁰.

2.2. *Parental authority and children's rights in Romania*

In Romania, parental authority and children's rights are primarily regulated by the Civil Code of 2009⁷¹ and the Law no. 272/2004 on the protection and furthering of children's rights⁷². Parental authority is legally defined as the ensemble of rights and duties that is applicable to both the person and assets of the child and is the responsibility of both

60 | Ibid., pp. 476–477; Motica, 2021, p. 228.

61 | Florian, 2022, pp. 478–480.

62 | Article 407 para. 1 Civil Code.

63 | Article 407 para. 2 Civil Code.

64 | Avram, 2022, p. 241.

65 | Alexandresco, 1906, pp. 583–590.

66 | Civil Code of 26 November 1864 [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/1> (Accessed: 28 April 2023).

67 | Article 143 of the Civil Code of 1864; Alexandresco, 1906, p. 586.

68 | Alexandresco, 1906, p. 589.

69 | Article 315 para. 1 section 1 Code of Civil Procedure of 2010.

Code of Civil Procedure – Law no. 134 of 1 July 2010 [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/140271> (Accessed: 2 May 2024).

70 | Article 316 Code of Civil Procedure of 2010.

71 | Civil Code – Law no. 287 of 19 July 2009 [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocumentAfis/288566> (Accessed: 29 April 2023).

72 | Law no. 272 of 21 June 2004 on the protection and furthering of the rights of the child [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/52909> (Accessed: 2 May 2023).

parents equally.⁷³ Parents can exercise their parental authority only in the best interests of their child, respecting the child's person and associating the child with any decision that concerns them according to their age and maturity⁷⁴. Parental authority lasts until the child becomes fully legally capable⁷⁵. Although full civil capacity is generally achieved at the age of 18 years, it can be achieved earlier in some cases through either civil emancipation or underage marriage.⁷⁶

Any disagreements between parents regarding their exercise of parental authority are settled by the guardianship court, which must hear the parents' explanations, consider the results of the psychosocial enquiry made by local authorities, and hear the child if they are at least ten years old⁷⁷. Finally, any court decision is rendered according to the child's best interests.⁷⁸

Usually, parents jointly exercise their parental authority as soon as filiation is established toward both, even if they are not married or living together. The parents who do not live together but are required to exercise their joint parental authority must make major decisions concerning the child together, such as choosing a type of education or professional training for the child, agreeing to complex medical treatments or surgery, choosing the child's residence, and managing the child's assets.⁷⁹ If, for any reason, one parent does not express an opinion on the major child-related decisions, the parent with whom the child resides must make the decision, except when this contravenes the child's best interests⁸⁰.

The valid reasons that justify the permanent unilateral exercise of parental authority by only one parent include the other parent's alcoholism; psychiatric illness; drug addiction; violence towards the child or the other parent; criminal convictions for people trafficking, drug trafficking, sex offences, and violent offences; and any other reason related to the risks for the child derived from this parent's exercise of parental authority⁸¹. Further, parental authority is exclusively exercised by only one parent by default when the other is deceased, legally incapable, or stripped of parental rights by the court.⁸²

Romanian law specifically regulates a vast array of children's rights, such as the right to establish and maintain their identity⁸³; maintain personal relations and direct contacts with parents, relatives, and any other individual to whom the child has an attachment⁸⁴; protection of their public image, as well as their intimate, private and family life⁸⁵; freedom of expression⁸⁶; freedom of thought, conscience, and religion⁸⁷; and freedom

73 | Florian, 2022, p. 547; Avram, 2022, pp. 411–412.

74 | Article 483 para. 2 Civil Code.

75 | Article 484 Civil Code.

76 | Florian, 2022, pp. 552–553; Avram, 2022, pp. 421–422.

77 | Article 486 Civil Code.

78 | Florian, 2022, pp. 575–576; Avram, 2022, pp. 530–531.

79 | Avram, 2022, pp. 428–429.

80 | Article 36 para. 4 Civil Code.

81 | Article 36 para. 6 Law no. 272/2004.

82 | Florian, 2022, pp. 576–579; Avram, 2022, pp. 431–436.

83 | Article 9 Law no. 272/2004.

84 | Article 17 Law no. 272/2004.

85 | Article 27 para. 1 Law no. 272/2004.

86 | Article 28 para. 1 Law no. 272/2004.

87 | Article 30 para. 1 Law no. 272/2004.

of association⁸⁸. Some other rights are as follows: the rights of children belonging to ethnic minorities to preserve their cultural life, language, religion, and ethnicity⁸⁹; right to respect for their personality and individuality; right to be safeguarded from physical punishment and humiliating or degrading treatments⁹⁰ and to be raised alongside their parents⁹¹; right to health and healthcare⁹²; right to social assistance⁹³; right to education⁹⁴; and right to rest and holidays⁹⁵.

| 2.3. Property, liability, and maintenance aspects in relation to nuclear and extended families

The only legally joint property of a family is the one belonging to the spouses choosing a community property regime. Matrimonial community property is both the default legal regime and a contractual regime, and some limited alterations can be made to the default regime.⁹⁶ Further, spouses can choose a separation of assets regime, which can also be judicially established if one of the spouses abuses any type of community property regime.⁹⁷

Romanian law ensures patrimonial independence between parents and children, as well as other family members, with parents having no rights on their child's assets and children having no rights on their parents' fortune⁹⁸. The only exceptions to this rule are related to maintenance and inheritance rights.

Maintenance obligations involve family members such as spouses, direct relatives (parents and children and, grandparents and grandchildren), and siblings⁹⁹ and include a special provision for stepparents who voluntarily provide maintenance to their spouse's children and can be compelled to continue providing for them if the child is underage and their natural parents are deceased, have disappeared, or are in need themselves.¹⁰⁰ Legal maintenance must be provided only to those in need, that is, individuals who cannot use their assets and income to provide for themselves.¹⁰¹ Underage children can request maintenance from their parents when they cannot provide for themselves with their own income, disregarding their assets.¹⁰²

Legal inheritance or intestate inheritance is applicable to spouses and extended families to the fourth degree. Spouses inherit jointly with any relatives of the deceased without excluding the latter and without being legally excluded¹⁰³. Spouses inherit one quarter of the deceased's estate if there are descendants, one third if there are both

88 | Article 31 para. 1 Law no. 272/2004.

89 | Article 32 para. 1 Law no. 272/2004.

90 | Article 33 para. 1 Law no. 272/2004.

91 | Article 35 para. 1 Law no. 272/2004.

92 | Article 46 para. 1 Law no. 272/2004.

93 | Article 48 para. 1 Law no. 272/2004.

94 | Article 51 para. 1 Law no. 272/2004.

95 | Article 53 Law no. 272/2004.

96 | Florian, 2022, pp. 193–273; Avram, 2022, pp. 657–768.

97 | Florian, 2022, pp. 274–289, 294–297; Avram, 2022, pp. 759–766.

98 | Article 500 Civil Code.

99 | Article 516 para. 1 Civil Code.

100 | Florian, 2022, pp. 600–601; Avram, 2022, pp. 516–517.

101 | Florian, 2022, pp. 604–606; Avram, 2022, pp. 519–521.

102 | Florian, 2022, pp. 625–629; Avram, 2022, pp. 537–542.

103 | Article 917 para. 1 Civil Code.

surviving parents and siblings or nephews, one half if there are only surviving parents or siblings/nephews, and three quarters if the only inheriting relatives are distant ascendants (grandparents or great-grandparents) or cousins¹⁰⁴. The existence of close relatives, particularly descendants, cancels the other relatives' effective inheritance rights¹⁰⁵.

| 2.4. New legislation on the prevention of parents' separation from their children

In summer 2023, a new law no. 156/2023 was introduced to prevent children's separation from their families. The law establishes obligations for local public authorities, particularly public social assistance services, to identify and provide support services to vulnerable children and families in areas with increased risk of family separation. This new regulation is not revolutionary because the Law on the protection and furthering of children's rights no. 272/2004 already stipulated in 2004 that absolute priority should be assigned to raising children in their natural families, and these families should receive comprehensive support from local authorities to prevent the separation of children.

3. Social, Work, and Pension Benefits for Child-Rearing

| 3.1. Law on universal child allowance

For more than three decades, Romania has been maintaining a universal child allowance for all children below 18 years of age; it even considers as children the individuals between 18 and 26 years of age who are still in high school, attend trade schools, or pursue other forms of secondary (non-university) education (article 1 L. 61/1993). Moreover, this allowance is available to children with foreign citizenship, as well, provided they are residing with their parents in Romania (article 2 L. 61/1993).

The universal child allowance differs for children between 2 and 18 years of age, a higher amount being offered to children under 2 years or those with disabilities (article 3 L. 61/1993). Until 2019, the allowance was mainly symbolic for children between 2 and 18 years of age, with the amounts being 84 lei (20 Euro) in 2015, 150 lei (32 Euro) in 2019, and 256 lei (52 Euro) in 2023. For children below 2 years or children with disabilities, the universal child allowance increased from 200 lei (55 Euro) in 2008 and 300 lei (63 Euro) in 2019 to 631 lei (127 Euro) in 2023.

| 3.2. Allowance for child-rearing

One of the most generous family benefits ensured by Romanian law is the allowance for child-rearing, which is paid during the corresponding leave for child-rearing. This provision, which dates to 2010, has not undergone substantial changes over the years.

The allowance for child-rearing can be paid to either the biological mother or biological father of the child or to the adoptive parent, legal guardians, or nonprofessional foster

104 | Article 972 para. 1 Civil Code.

105 | Article 975 para. 2 Civil Code.

parents who fulfil taxable income requirements¹⁰⁶. Although the person demanding this allowance can be a Romanian or foreign citizen, they must reside in Romania with the child and effectively care for the child directly¹⁰⁷.

The allowance is paid if the claimant has taxable income (salary, independent contractor or freelance revenues, intellectual property royalties, or agricultural revenues) for at least 12 months in the two years before the child's birth¹⁰⁸. However, this income requirement has several broad exceptions, rendering the allowance almost universal (e.g. the 12 months of taxable income also include the durations of unemployment benefits, paid medical leave, childcare leave, and studies from high school to the doctoral level¹⁰⁹).

The allowance for child-rearing is 85% of the average after-tax income gained in the last 12 months before the child's birth¹¹⁰. It should not exceed 8,500 lei (1,700 Euro) per month; however, it should maintain a guaranteed minimum allowance threshold of 2.5 times the Social Reference Indicator (SRI; 598 lei/120 Euro in 2023). Hence, this allowance is between 300 and 1,700 Euro at 2023 levels. If twins or other forms of multiple pregnancies occur, the standard allowance of 85% of the previous income is supplemented with 300 Euro (2.5 times the SRI) for each supplemental child¹¹¹. A 2022 change to this provision states that the supplemental allowance will be 50% of the standard allowance without falling below 2.5 times the SRI.

The allowance for child-rearing is paid from the end of maternal childbirth leave (which is a minimum of 42 days after birth) to when the child is two years, three years old for children with disabilities, of age¹¹². If both parents fulfil the conditions for receiving the allowance, the second parent must take at least two months off and receive this allowance; otherwise, the two months are lost and non-transferrable to the other parent¹¹³.

The parents who choose not to take the child-rearing leave and, instead, earn taxable income receive a monthly bonus of 1,500 lei (300 Euro) until the child is six months old, or one year old for a child with disabilities¹¹⁴. Later, the bonus is reduced to 650 lei (130 Euro), which is paid from six months to two years old (one year to three years old for a child with disabilities)¹¹⁵.

The parents who return to earning taxable income after finishing their child-rearing leave can receive a work return allowance of 650 lei (130 Euro) for one year, between the second and third birthdays of the child (the third and fourth birthdays of the child with disabilities)¹¹⁶.

106 | Article 8 Government Emergency Decree (GED) no. 111/2010 on the allowance and leave for child rearing [Online]. Available at: <https://legislatie.just.ro/Public/DetaliuDocument/124331> (Accessed: 28 October 2023).

107 | Article 12 para 1 GED no. 111/2010.

108 | Article 2 para. 1 GED no. 111/2010.

109 | Article 2 para 5 GED no. 111/2010.

110 | Article 2 para. 1 GED no. 111/2010.

111 | Article 5 GED no. 111/2010.

112 | Article 16 GED no. 111/2010.

113 | Article 11 para. 1 GED no. 111/2010.

114 | Article 7 para. 1a GED no. 111/2010.

115 | Article 7 para. 1b GED no. 111/2010.

116 | Article 7 para. 2 GED no. 111/2010.

| 3.3. Allowance for families with underage children and limited means (Law no. 277/2010¹¹⁷)

To support low-income families with underage children, Romania has, since 2010, been providing a special allowance to supplement the family's income to provide better living conditions for and promote the school attendance of children¹¹⁸. This law defines recipient families as those composed of a husband, wife and their dependent children living together; those comprising a single adult and their dependent children living together; or families where an unmarried man and woman live together with either of their children¹¹⁹. Additionally, families include soon-to-be adopted children who are placed with their adoptive parents by the court, foster children who are placed with their unpaid foster parents, and children under guardianship¹²⁰.

Further, the income and corresponding allowance of families were appraised using SRI, which was 598 lei (120 Euro) in 2023. Two-parent families with an average after-tax monthly income per person less than 40% of the SRI (less than 48 Euro/month/person) receive an allowance between 16.4% of the SRI (20 Euro/month), for one child, and 65.6% of the SRI (80 Euro/month), for four or more children¹²¹. Families with a mean after-tax monthly income per person between 40% and 106% of the SRI (between 48 and 126 Euro/month/person) receive an allowance between 15% of the SRI (18 Euro/month) for one child and 60% of the SRI (72 Euro/month) for four or more children¹²².

Further, single-parent families with a mean after-tax monthly income per person less than 40% of the SRI (less than 48 Euro/month/person) receive an allowance between 21.4% of the SRI (26 Euro/month) for one child and 85.6% of the SRI (104 Euro/month) for four or more children¹²³. Similarly, single-parent families with a mean after-tax monthly income per person between 40% and 106% of the SRI (between 48 and 126 Euro/month/person, respectively) receive an allowance between 20.4% of the SRI (24.5 Euro/month) for one child and 81.6% of the SRI (98 Euro/month) for four or more children¹²⁴. This family allowance is provided to Romanian legal residents irrespective of their citizenship and the homeless people who have not received this allowance from other local authorities¹²⁵. The family support allowance is conditional on school attendance for school-age children, with special accommodations being made for medical reasons or to include children with disabilities¹²⁶.

117 | Law no. 277 of 24 December 2010 on the allowance for family support [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/124905> (Accessed: 28 October 2023).

118 | Article 1 Law no. 277/2010.

119 | Article 2 para. 1 Law no. 277/2010.

120 | Article 4 para. 1 Law no. 277/2010.

121 | Article 5 para. 1 Law no. 277/2010.

122 | Article 5 para. 2 Law no. 277/2010.

123 | Article 6 para. 1 Law no. 277/2010.

124 | Article 6 para. 2 Law no. 277/2010.

125 | Article 7 Law no. 277/2010.

126 | Article 8 Law no. 277/2010.

| 3.4. *Guaranteed minimum income (Law no. 416/2001)*¹²⁷

Since 2001, Romania has been providing social minimum income to families and single individuals having either Romanian citizenship¹²⁸ or domicile or legal residence in Romania¹²⁹. Romanian social law provides the following broad definition of families: married different-sex spouses with or without dependent children, single parents with children, adult childless siblings living together separately from their parents, and different-sex couples cohabiting with dependent children.¹³⁰

The level of guaranteed social minimum income is adjusted to the SRI (which was 598 lei/120 Euro in 2023) and depends on the number of cohabiting family members. It varies between 28.3% of the SRI (62 Euro) for a single-person household and 105.4% of the SRI (127 Euro) for a five-person household, with an additional 7.3% of the SRI (9 Euro) for each supplemental family member¹³¹.

| 3.5. *Minimum income for inclusion (Law no. 196/2016)*¹³²

Since 2016, Romania has been offering the so-called 'minimum income for inclusion', a selective social benefit for families and single persons who experience dire situations during their lifetime for socioeconomic, health, or social environment reasons and have no or diminished capacity for social integration¹³³. The state provides this financial support to prevent social exclusion and poverty and enhance the affected children's participation in the education system.

Families are broadly defined by this law as follows: both traditional families with married spouses who either are childless or have underage or dependent children, single-parent families, families comprising individuals who informally cohabit with different-sex partners and may or may not have underage or dependent children.¹³⁴ The benefits of social inclusion are means-tested and, to qualify for these benefits, the beneficiary's monthly after-tax income must be less than 700 lei (140 Euro) for a single person, with 350 lei (70 Euro) being added for each additional family member¹³⁵.

The minimum income for social inclusion offers a broad array of social benefits: financial aid, including that for social inclusion and families with children and other complementary measures such as in-work stimulus and contribution exemptions¹³⁶. The aid provided to families with children is two-tiered¹³⁷. The first tier is for families earning less than 275 lei/month (55 Euro) for the first person and 50% of that amount for each subsequent person. The aid for two-parent families is between 107 lei (22 Euro) for one child and 428 lei (88 Euro) for four or more children, whereas the aid for single-parent

127 | Law no. 416 of 18 July 2001 on the guaranteed minimum income [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/29731> (Accessed: 28 October 2023).

128 | Article 1 para. 1 Law no. 416/2001.

129 | Article 2 para. 7 Law no. 416/2001.

130 | Hageanu, 2023, p. 8.

131 | Article 4 Law no. 416/2001.

132 | Law no. 196 of 31 October 2016 on the minimum income for social inclusion [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/183328> (Accessed: 28 October 2023).

133 | Article 1 Law no. 196/2016.

134 | Hageanu, 2023, p. 8.

135 | Article 9 Law no. 196/2016.

136 | Article 3 Law no. 196/2016.

137 | Article 18 Law no. 196/2016.

families is slightly larger, between 120 lei (24 Euro) and 480 lei (96 Euro). The second tier is for families earning between 276 lei (55 Euro) and 700 lei (140 Euro) monthly for the first person and 50% of this amount for each subsequent person; the aid for two-parent families is between 85 lei (17 Euro) for one child and 340 lei (68 Euro) for four or more children, whereas that for single-parent households is between 110 lei (22 Euro) and 430 lei (86 Euro).

The aid for families with children is contingent on the children's regular school attendance, except for medical reasons¹³⁸. Further, unjustified truancy leads to financial penalties that increase from 50% of the monthly aid for each child who misses more than 15 classes per month¹³⁹.

| 3.6. Medical, social, and merit-based public scholarships

Romania offers several types of public scholarships for primary-, middle-, high-, trade-school students¹⁴⁰, as well as university students. These scholarships either are merit based or focus on social reasons, including healthcare. Merit-based scholarships are awarded for either results in school competitions or very good results in everyday learning.

In the 2023–2024 school year, merit-based scholarships for non-university students were at least 450 lei (90 Euro) monthly for good results in everyday learning and being in the top 30% of each class, at least 700 lei (140 Euro) monthly for good results in national school competitions, and the equivalent of the minimum monthly wage (3,000 lei or 600 Euro) for coming first in international school contests¹⁴¹. Social scholarships are 300 lei (60 Euro) monthly, with the same minimum amount being stipulated for the scholarships awarded to trade-school students. Further, special monthly scholarships of 700 lei (140 Euro) are granted to underage mothers who attend school¹⁴²; however, they have compulsory attendance requirements.

Decisions regarding the scholarships for university students, which are broadly classified into merit-based and social categories, are made by the universities themselves and their senates. For example, in 2023, Babes-Bolyai University in Cluj County, Romania, divided its state-financed scholarship fund into 70% for different types of merit-based scholarships and 30% for social scholarships. The most common types of scholarships, which are awarded every semester, are between 700 lei/month (140 Euro) and 1,000 lei/month (200 Euro) for merit-based scholarships and 580 lei/month (116 Euro) for most social scholarships.

| 3.7. Maternity leave

In Romania, paid maternity leave is up to 126 days and includes pregnancy and childbirth leave¹⁴³. The mother's income during her maternity leave is 85% of her average pre-tax income for the preceding six months, capped at a maximum of 12 gross minimum

138 | Article 19 para. 1 Law no. 196/2016.

139 | Article 19 para. 2 Law no. 196/2016.

140 | Law no. 198/2023 on pre-university education [Online]. Available at: <https://legislatie.just.ro/Public/DetaliuDocument/271896> (Accessed: 28 October 2023).

141 | Article 108 Law no. 198/2023.

142 | Article 108 para. 19 Law no. 198/2023.

143 | Article 23 para. 1 GED no. 158/2005 on social health insurance leaves and allowances [Online]. Available at: <https://legislatie.just.ro/Public/DetaliuDocument/66305> (Accessed: 3 May 2023).

wages per month¹⁴⁴, which was 36,000 lei in 2023 (7,200 Euro); further, it is paid out of the National Health Insurance Fund¹⁴⁵. Usually, both pregnancy leave, and childbirth leave are 63 days; however, the mother can choose, based on a physician's advice or her personal choice, to adjust the two types of maternity leave, while taking at least 42 days for childbirth leave and keeping the total below 126 days¹⁴⁶.

| 3.8. Parental leave for child-rearing

The law on child-rearing leave allows either parent to take paid time off for child-rearing; however, this can only be granted after the mother's minimum compulsory 42 days of maternity leave after childbirth. This parental leave is continued until the child is two years old (three years old for a child with disabilities¹⁴⁷. This leave becomes available to biological, adoptive, and future adoptive parents, after the court entrusts the child to them, as well as foster parents, legal guardians, or emergency foster parents but not to paid maternal assistants¹⁴⁸.

The 2023 update to the law compels the parent who has not yet taken the paid time off for child-rearing to take at least two months off if they qualify¹⁴⁹. If they do not share the child-rearing leave, both parents lose the benefit of the last two months of paid time off.

| 3.9. Special family-related work leaves incorporated in labour law

Romanian law provides for two special family-related work leaves, which can be considered to help family growth: the paid leave for medical childcare¹⁵⁰ and the one for maternal risk¹⁵¹.

Romanian labour law¹⁵² allows employees to take paid child-rearing leave until the child is two years old; the age is extended to three years old for children with disabilities¹⁵³. Furthermore, it allows the employees to take a maximum of 45 days per year of medical leave to care for a sick child until age seven; for children with disabilities and intercurrent afflictions, the age limit is 18 years¹⁵⁴. For the duration of such work leaves, the employment contract is suspended¹⁵⁵; however, it cannot be terminated by the employer¹⁵⁶. A 2023 change to the medical leave law¹⁵⁷ allows parents to benefit from the medical leave to care for the sick child until the latter's twelfth birthday, provided the child is without disabilities. For children with disabilities or serious afflictions, the age limit is 18 years¹⁵⁸.

144 | Article 25 and Article 10 para. 1 GED no. 158/2005.

145 | Article 25 para. 2 GED no. 158/2005.

146 | Article 24 GED no. 158/2005.

147 | Article 2 para. 1 GED no. 111/2010.

148 | Article 8 GED no. 111/2010.

149 | Article 11 para. 1 GED no. 111/2010.

150 | Article 26 GED no. 158/2005.

151 | Article 2 para. 1d¹ and 1e GED no. 158/2005.

152 | Labour Code – Law no. 53 of 24 January 2003 [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/128647> (Accessed: 28 October 2023).

153 | Article 51 para. 1a Labour Code.

154 | Article 51 para. 1b Labour Code.

155 | Article 51 para. 1 Labour Code.

156 | Article 60 para. 1e and 1f Labour Code.

157 | Article 26 para. 1 GED no. 158/2005.

158 | Article 26 GED no. 158/2005.

This paid medical childcare leave is usually up to 45 days per year for each child; however, this amount can be surpassed if the child has a contagious disease, is immobilised, or has undergone surgery. In these situations, the specialist physician determines the appropriate amount of childcare leave based on disease progression¹⁵⁹.

A pregnant employee or recent mother has the right to avail supplemental work leave for maternity risk¹⁶⁰ for up to 120 days¹⁶¹. This leave can be used before the regular maternity leave (usually 63 days before birth) or after the regular leave for childbirth (usually 63 days after birth) if the employer cannot accommodate the risks to mothers' health and safety or negative consequences for pregnancy or breastfeeding by changing the working conditions, work schedule, or place of work.¹⁶² Moreover, the leave for maternity risk can be availed by pregnant employees, recent mothers, or breastfeeding mothers who cannot be transferred from night-time to daytime work schedules for objective reasons,¹⁶³ as well as those who cannot be transferred from dirty or difficult work environments¹⁶⁴.

3.10. Day-care provisions

In Romania, day cares (*creșe*) are considered a part of the educational system, and they benefit children below the age of three years. Kindergartens are institutions that educate children between the ages of three and six. The new law on the pre-university education system, which was enforced on 3 September 2023, specifically mentions day cares as educational institutions for children between three months and three years old that can function either independently as legal persons or as part of other educational institutions that are legal persons¹⁶⁵.

The villages, towns, and cities where there are no day cares/kindergartens or where the number of day-care/kindergarten places is less than the number of children below the age of 3, respectively between 3 and 6, can develop complementary early education services such as organised playgroups or community kindergartens¹⁶⁶. Further, some employers establish early educational institutions to support their employees; they can either receive financial benefits from the government for such efforts or opt for partial tax deductions for the funds provided by them to their employees to promote early education¹⁶⁷.

According to the current day-care regulations¹⁶⁸, day cares can be either educational institutions or so-called day centres (*centre de zi*); they comprise social services that provide care, education, and counselling to children during daytime to prevent their

159 | Article 29 para. 1 Labour Code.

160 | Article 31 GED no. 158/2005.

161 | Article 10 GED no. 96/2003 on the protection of motherhood in the workplace [Online]. Available at: <https://legislatie.just.ro/Public/DetaliuDocument/47216> (Accessed: 28 October 2023).

162 | Dub, 2017, p. 11.

163 | Ibid., pp. 11–12.

164 | Article 20 para. 4 GED no. 96/2003.

165 | Article 30 Law no. 198/2023.

166 | Article 30 para. 3 Law no. 198/2023.

167 | Article 30 para. 6 Law no. 198/2023.

168 | Methodology on day-cares and early pre-school education, approved by the government order (GO) no. 566/2022 [Online]. Available at: <https://legislatie.just.ro/Public/DetaliuDocument/254657> (Accessed 28 October 2023).

separation from parents¹⁶⁹. Day cares can be either public or private and offer standard programs (5 hours/day), extended programs (10 hours/day), or both¹⁷⁰. These institutions use a 'group' system to divide children according to their age into small (below 12 months), medium (between 13 and 24 months), and big (between 25 and 36 months) groups. On average, the small, medium, and big groups should have 7 (between 5 and 9), 12 (between 8 and 15), and 12 (between 8 and 20) children, respectively¹⁷¹. Extended-program day cares must be open throughout the year, including school holidays; however, they can provide restricted services during the holidays in accordance with demand and personnel holidays¹⁷².

| 3.11. Survivor pension benefits for the deceased provider's dependent children and spouse (Law no. 263/2010173)

Similar to the pension laws enacted previously, the current Romanian public pension law, Law no. 263/2010, provides a 'survivor pension' for the children and spouse of a deceased provider who either was a retiree at the time of death or fulfilled the conditions to receive a pension¹⁷⁴. Children receive the survivor pension following their parent's death if they are below 16 years of age, without fulfilling any further condition. They receive the pension between 16 and 26 years of age only if they attend any type of organised studies or for the duration of their disability, in case they become disabled during their studies or before the age of 16¹⁷⁵.

The surviving spouse receives the survivor pension for the duration of their life if they have reached the retirement age and the marriage had lasted at least 15 years¹⁷⁶. If the marriage's duration is between 10 and 15 years, the survivor pension is diminished by 0.5% for each month that is missing from the required 15-year duration¹⁷⁷. Even for marriages with durations less than 10 years, the spouse can receive the pension in the following special circumstances: They have severe disability, the marriage lasted at least one year, the survivor's personal income is less than 35% of the monthly national average pre-tax wage, and either the deceased died in a work-related accident or due to a work-related illness¹⁷⁸ or the surviving spouse has one or more dependent children below the age of seven¹⁷⁹. A surviving spouse without any income or with an income less than 35% of the national average monthly pre-tax wage can receive a survivor's pension for six months if they do not fulfil the other conditions for this type of pension¹⁸⁰.

169 | Article 1 para. 4 of the Methodology on day-cares.

170 | Article 8 para. 3 and 4 of the Methodology on day-cares.

171 | Article 10 of the Methodology on day-cares.

172 | Article 14 paras. 1 and 3 of the Methodology on day-cares.

173 | Law no. 263 of 16 December 2010 on the unitary system of public pensions [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/262643#A65367497> (Accessed: 28 October 2023).

174 | Article 83 Law no. 263/2010.

175 | Article 84 Law no. 263/2010.

176 | Article 85 para. 1 Law no. 263/2010.

177 | Article 85 para. 2 Law no. 263/2010.

178 | Article 86 Law no. 263/2010.

179 | Article 88 Law no. 263/2010.

180 | Article 87 Law no. 263/2010.

Survivor pension is calculated based either on the pension that the deceased was receiving or was entitled to receive or on the pension for a person with severe disabilities if the provider had died before reaching the standard retirement age¹⁸¹. If the recipient is a single person, their survivor pension is 50% of the deceased person's pension; the pensions are correspondingly 75% and 100% of the same for two and three or more recipients, respectively¹⁸².

4. Tax Benefits for Family Growth

4.1. Fiscal code – limitations in tax credits for parents with children

All the allowances for pregnancy risk, maternity leave, child-rearing, and caring for a sick child are exempted from income tax¹⁸³ and social security contributions¹⁸⁴. Further, all other allowances and material benefits related to children and families are exempted from income tax and social security contributions. They include birth or adoption bonuses and money gifts or gift certificates for employees' underage children not exceeding 300 lei (60 Euro) per person per event, such as Christmas, Easter or other equivalent religious holidays, and 1st of June¹⁸⁵. The payments made by employers for the early education of employees' children do not give rise to income tax or social security contribution liabilities for the receiving employee¹⁸⁶.

Often, employees receive 'personal tax deduction', accounting for each of their dependent family members, including spouse, children, close relatives, or in-laws, whose monthly income does not exceed 20% of the national minimum wage¹⁸⁷. This tax deduction is available to only one of the parents or caregivers of other family members and available solely with respect to salary income taxes¹⁸⁸. Basic personal tax deduction is available for only those caregiving employees whose monthly income exceeds the gross national minimum monthly wage (3,000 lei/600 Euro in 2023) by up to 2,000 lei (400 Euro)¹⁸⁹. It is a regressive benefit, which is deducted from pre-tax wages and depends on their level and the number of dependents, oscillating between 45% of the gross national minimum monthly wage for a person earning the minimum monthly wage and having four or more dependents and 0% for a person earning slightly below 5,000 lei (1,000 Euro) per month and having no dependents¹⁹⁰.

Another more limited tax deduction is 'supplemental personal tax deduction', which can be availed by all parents with underage school-going children. However, it amounts

181 | Article 89 para. 1 Law no. 263/2010.

182 | Article 89 para. 2 Law no. 263/2010.

183 | Article 62c Tax Code – Law no. 227/2015 [Online]. Available at: <https://legislatie.just.ro/Public/DetaliuDocument/171282> (Accessed: 28 October 2023).

184 | Article 142b Tax Code.

185 | Article 76 para. 4a and article 142b Tax Code.

186 | Article 76 para. 4x and article 142z Tax Code.

187 | Article 77 para. 5 Tax Code.

188 | Article 77 para. 6 Tax Code.

189 | Article 77 para. 3 Tax Code.

190 | Article 77 para. 4 Tax Code.

to only 100 lei per child per month (20 Euro) and is deducted from pre-tax gross wages¹⁹¹. Further, employees under 26 years of age receive a supplemental tax deduction for themselves, which is 15% of the gross national minimum monthly wage (i.e. 450 lei/90 Euro in 2023), but only if their pre-tax income is less than 5,000 lei (1,000 Euro) per month¹⁹².

Exemption from health insurance contributions is an important universal family support benefit that affects a diverse array of people, including all children under 18 years of age and the youngsters between 18 and 26 years of age who study, follow an apprenticeship, or are soldiers in training¹⁹³. Those between 18 and 26 years of age coming from the child protection system are exempt from health insurance contributions even when they are not studying or following professional instruction, provided they are not employed, independent contractors, or agricultural workers¹⁹⁴. Dependent spouses or parents with no income are exempt from health insurance contributions, as well¹⁹⁵. Finally, a distinct category of exemptions from health insurance contributions is reserved for those on post-adoption or child-rearing leave¹⁹⁶.

| **4.2. Tax benefits for employers providing early education facilities for the employees' children**

A 2020 Tax Code modification was supposed to allow employers to make deductible expenses for early education of up to 1,500 lei (300 Euro) per month per child. This deduction is initially possible directly from profit taxes and on surpassing the payable profit tax level, the expenses can subsequently be deducted from payroll taxes, value-added taxes, and excise duties¹⁹⁷. Unfortunately, the implementation of this generous family support benefit, which was adopted in 2020 and should have been enforced on 1 April 2021, has repeatedly been delayed, the latest announced delay being until the end of 2023. As a partial replacement for this generous early education tax deduction, Tax Code allows employers to deduct (for profit tax purposes) the expenses for running their own day cares and kindergartens, these social deductible expenses being capped at 5% of total payroll expenses.

5. Medically Assisted Reproduction

| **5.1. Private law framework**

The private law framework for medically assisted reproduction is founded on a seven-article section of the Civil Code¹⁹⁸ that regulates only certain aspects of medically assisted reproduction with a third-party donor.¹⁹⁹ Other relevant Civil Code provisions

191 | Article 77 para. 10b Tax Code.

192 | Article 77 para. 10a Tax Code.

193 | Article 154 para. 1a Tax Code.

194 | Article 154 para. 1b Tax Code.

195 | Article 154 para. 1c Tax Code.

196 | Article 154 para. 1k Tax Code.

197 | Article 25 para. 4i² Tax Code.

198 | Dobozi, 2011, pp. 532–535.

199 | Dobozi, 2013, pp. 60–61.

include those pertaining to individuals' rights to life, health, and physical integrity. ARPs are regulated by the Law on Healthcare Reform no. 95/2006, Law on the Rights of the Patient no. 46/2003, and some low-level regulations such as the Health Minister's Order on Therapeutic Transplants no. 1763/2007 and Health Minister's Order no. 377/2017 on the Implementation of National Public Health Programmes.²⁰⁰ The general Civil Code provisions were supposed to be followed by a new detailed law on medically assisted reproductive procedures with a third-party donor, but to no avail even after 13 years.²⁰¹

Articles 441–444 of the Civil Code regulate paternity-related issues in cases of medically assisted reproduction with a third-party donor. In particular, Article 441 states that no legal filiation or liability can be established with a third-party donor in cases of medically assisted human reproduction with a third-party donor.²⁰² For this procedure, both the intended parents, who can be married or unmarried but should be a man, woman, or single woman, have to provide consent before a notary.²⁰³

This consent lacks legal meaning if one of the parties dies or the individuals separate or petition for divorce before the medically assisted conception is carried out.²⁰⁴ Further, the consent to this procedure can be unilaterally revoked, in written form, even in front of the physician carrying out the procedure.²⁰⁵

Although this section does not contain any direct provisions on the presumption of the husband's paternity, it includes a provision stating that the child's filiation cannot be challenged by anyone for reasons associated with medically assisted reproduction²⁰⁶. Hence, it is inferred that regular presumptions of paternity may apply. The mother's husband can challenge paternity in cases of medically assisted reproduction only if he did not consent to the procedure²⁰⁷. However, the regular provisions regarding paternity challenges fully apply when conception takes place outside the medically assisted procedure.²⁰⁸

If the man consenting to the reproductive procedure is the mother's consensual partner, paternity is established by the father's extrajudicial acknowledgement. However, if the male partner refuses to acknowledge the child after having previously consented to the procedure, paternity is established judicially, which in this case is based solely on consent, not the biological facts of conception.²⁰⁹

Because ARPs are not extensively regulated in primary legislation (comprising both laws enacted by the parliament and governmental decrees) or secondary legislation (such as ministerial orders),²¹⁰ we cannot identify any bans on specific ARP techniques. Hence, we conclude that both intracytoplasmic sperm injection and IVF are allowed. Most ARP-related restrictions are the general ones included in the new Civil Code of 2009, which came into force on 1 October 2011. The Civil Code contains a special section on the rights

200 | Motica and Tec, 2019, pp. 358–360.

201 | Florian, 2022, p. 468; Avram, 2022, p. 309.

202 | Florian, 2022, p. 475.

203 | Avram, 2022, p. 310.

204 | Article 442 para. 2 Civil Code.

205 | Ibid.

206 | Article 443 para. 1 Civil Code.

207 | Article 443 para. 2 Civil Code.

208 | Florian, 2022, pp. 476–477.

209 | Ibid., pp. 478–480; Avram, 2022, p. 311.

210 | Dobozi, 2020, pp. 473–474; Irinescu, 2019, pp. 209–210.

to life, health, and physical integrity of natural persons.²¹¹ These provisions ban eugenics; cloning; genetic interventions without a curative purpose; and the use of ARPs for sex choice purposes, with the sole exception of preventative actions for sex-related genetic diseases.

The general provisions of Article 441, Paragraph 3, of the Civil Code specifically clarify that both heterosexual couples and single women have access to medically assisted reproduction with a third-party donor. The law does not distinguish between male and female third-party donors; hence, it can be broadly construed to include both genders, as well as the simultaneous donation of both sperm and oocytes for the same receiving couple or single woman.²¹²

With respect to other reproductive techniques, we indicate only transplant-related secondary legislation (e.g. Health Minister's Order no. 1763/2007) that tangentially references access to these procedures. According to this secondary legislation, only different-sex couples in a declared intimate relationship have access to reproductive cell transplants between partners. No specific legal limitations have been placed on access to ARPs; only the broad Civil Code restrictions on eugenics, in Article 62, and genetic alteration, in Article 63, as well as general transplant regulations and patient consent requirements are established.

Since 2011, publicly funded IVF with embryo transfer has been the subject of a national public health subprogram,²¹³ with funding being extended from 2022 onward. The procedure is restricted to infertile heterosexual couples. A certified specialist Doctor of Medicine should diagnose such couples as having an affliction that is incompatible with natural reproduction or as being unable to reproduce after one year of unprotected sexual relations in the absence of any third-party sperm or oocyte donations. Surrogacy is specifically excluded in (probably) the only specific mention of this procedure in Romanian domestic law.²¹⁴ To receive public funding for IVF, both partners must have public health insurance, and the woman must be 24–40 years of age, have a body mass index range of 20–25, and have an ovarian reserve that is determined to be within normal limits.²¹⁵

Article 441, Paragraph 3, of the Civil Code defines parents for the purposes of ARPs with third-party donations as either a couple or a single woman. This provision is not restricted to married couples but specifically refers to heterosexual couples (including a man and a woman).²¹⁶ The legal doctrine debates whether a single woman refers only to those women who do not have a partner or if it encompasses women whose partners are yet to consent to the medical procedure. Further provisions allowing the husband to deny paternal filiation if he had not previously agreed to medically assisted reproduction with a third-party donor suggest that this procedure is available for women who are not technically single but have partners who do not agree to such procedures.²¹⁷

211 | Diaconescu and Vasilescu, 2022, pp. 303–307.

212 | Motica, 2021, p. 224.

213 | Brodeala, 2016, p. 64.

214 | Brodeala, 2016, pp. 64–65; Florian, 2022, p. 473.

215 | Florian, 2022, p. 473.

216 | Motica, 2021, p. 224.

217 | Florian, 2022, pp. 474–475; Avram, 2022, pp. 310–311.

| 5.2. Failed attempts to establish a detailed regulation

Since 2011, at least two attempts have been made to establish a detailed regulation. The efforts were in vain because all the law projects were rejected, even those initiated by the government or a cross-party private member's bill. The first project to be promoted after the enactment of the new Civil Code was established by the government in 2012 (PL-x no. 63/2012) and finally rejected by the lower house of parliament in 2016 because the draft was poorly written from a technical perspective, the rejection report of the parliamentary commission being drawn from the Legislative Council's objections. This project was considered too vague and incapable of offering practical solutions to a delicate and important societal issue.

Later, another project²¹⁸ called the cross-party private members' bill PL-x no. 462/2013 (rejected in 2022) was also rejected by the lower house of parliament with a similar reasoning (too vague, elliptically written, the absence of practical solutions to a delicate social problem, and the lack of resources to meet stipulated expenses).

6. Law's Limitations with Respect to Family Growth

| 6.1. Gap between the end of regular time off for child-rearing and onset of early education

The availing of parental leave and paid time off for a child without disabilities ends when the child becomes two years old. The kindergartens, which are more widely available than day cares, admit only children aged three years or older²¹⁹. For children below the age of three, the law allows day-care facilities alone from the age of three months; however, public day cares are very limited in number, and private day cares are expensive.

One reason why France has probably the highest fertility rate in the European Union (1.79 in 2022) is that it has an excellent day-care system (*crèches*). Parents who experience difficulties in raising and caring for their first child, due to the scarcity, unavailability, or cost of day cares, generally avoid having a second or third child.

Romanian legislation provides only partial relief for the parents of children between two and three years of age when they have no access to day-care facilities or other private childcare arrangements. Labour laws and medical leave provisions allow employees to take a maximum of 45 days of medical leave per year to care for a sick child²²⁰. During such work leaves, the employment contract can be suspended²²¹ but not terminated by the employer²²². The amount for 45 days per year for each child can be surpassed if the child has a contagious disease, is immobilised, or has undergone surgery. In these situations, the specialist physician determines childcare leave based on disease progression²²³.

218 | Irinescu, 2014, pp. 16–18.

219 | Article 30 para. 1 Law no. 198/2023.

220 | Article 51 para. 1b Labour Code.

221 | Article 51 para. 1 Labour Code.

222 | Article 60 para. 1e and 1f Labour Code.

223 | Article 29 para. 1 GED no. 158/2005.

| **6.2. Lack of family-centred tax facilities**

The Tax Code provisions include very limited tax deductions for family providers. Further, personal tax deduction, whose amount is very low, targets low-income parents. Moreover, middle- and high-income families receive almost no tax benefits associated with having children or large families.

| **6.3. Scarcity of medically assisted reproduction provisions**

Since 2011, Article 447 of the Civil Code has required a special detailed statute regarding medically assisted reproduction with a third-party donor.²²⁴ However, the government and parliament have consistently failed to approve such regulations. To date, the general provisions of the Civil Code in this respect, as well as its section on the natural person's rights to life, health, and physical integrity, remain unsupported by more detailed statutory rules.²²⁵ Currently, health law lacks specific provisions regarding medically assisted reproduction, in general, the only relevant statutes being the one concerned with patients' rights, Law no. 46/2003, and a series of adapted human transplant provisions related to cell- and tissue-level transplants such as Law no. 95/2006 on health reform and its accompanying secondary legislation.²²⁶

| **6.4. Lack of regulation of surrogacy**

The concept of surrogacy is almost non-existent in Romanian positive law.²²⁷ The concept is mentioned only with respect to concerns such as the non-funding of surrogacy procedures using public funds. However, discussions on surrogacy are plentiful in legal doctrine.²²⁸

General family law provisions are largely hostile towards surrogacy because they tie maternal filiation exclusively to giving birth and do not allow voluntary transfers of parental authority. Hence, there needs to be statutory clarity such that surrogacy is either accepted, at least in its altruistic form, or forbidden it in no uncertain terms. Legal doctrine and case law are unclear in this respect, and isolated voices and cases claim that surrogacy is allowed even by current law as part of upholding fundamental rights to private and family life.²²⁹

7. Conclusions

Romanian private law has no specific and detailed regulations on consensual couples and other non-traditional family structures (single-parent families, same-sex couples, couples cohabiting with children from different marriages, and stepparents). However, international private law expressly forbids the recognition of foreign same-sex marriages and all types of foreign registered partnerships. Simultaneously, social law supports a

224 | Tec, 2017, pp. 235–236.

225 | Sztranyiczki, 2021, pp. 398–399.

226 | Dobozi, 2013, pp. 60–61.

227 | Dobozi, 2020, p. 474.

228 | Predescu, 2020, pp. 476–481.

229 | Dobozi, 2013, pp. 64–67.

wide array of family structures. The need to incorporate a consistent vision on families in all aspects of current legislation requires private law to provide detailed regulations for extant family structures, particularly in conformance with Article 8 of the European Convention of Human Rights definition and the recent case law pertaining to the rights to family life and private life.

Currently, Romanian social protection law maintains a progressive view of family structure. Benefits are provided to families comprising a husband, a wife, and their dependent children living together; single-parent families comprising a single adult and their dependent children living together; or an unmarried man and woman living together with either of their children. Moreover, families include soon-to-be adopted children placed with their future adoptive parents by the court, foster children placed with unpaid foster parents, children living under guardianship.

A broad definition of families is provided by Law no. 416/2001 on guaranteed social minimum income, as well: married different-sex spouses with or without dependent children, single parents living with their children, adult childless siblings living together separately from their parents, and different-sex couples cohabiting with their dependent children. Further, families are broadly defined by Law no. 196/2016 on the minimum social income for inclusion as comprising traditional families with married spouses, either childless or with underage or dependent children; single-parent families; and the informal cohabitation of different-sex partners, with or without underage or dependent children.

Romanian tax law has always been frugal with respect to tax law deductions for children and families. Personal tax deductions for dependents have always been limited and targeted, particularly for low-income employees. Further, day care and early education deductions for employers and employees are poorly implemented and very limited in scope. The immediate purpose of positive law inducements on family growth is to allow families to have as many children as they want by alleviating their material concerns regarding childcare. Finally, childbirth and child-rearing should not result in poverty for working- and middle-class families.

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