Chapter 15

Romania: Positive Law and Top-Down Social Engineering of Families Through Legal Means

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Abstract

Like most of Central Europe, Romania has observed a steady demographic decline since the 1990s due to extensive emigration and a decrease in the total fertility rate. Attempts have been made, particularly since 2010, to reverse this decline and increase the total birth rate. A very generous child-rearing leave and corresponding child-rearing allowance contributed to a slight increase in the number of live births per woman, which became one of the highest in the European Union (EU) in the late 2010s. Although the improved economic outlook since joining the EU was also a factor, this chapter aims to identify all the domestic legal norms that promote family growth. The chapter looks at the broad picture of governmental family policy in Romania, taking into account the differences between its relatively conservative family law and its more progressive social law, the latter of which offers a wide array of benefits and maintains a broad definition of families. Non-traditional methods of increasing childbirths, such as surrogacy and fertility treatments, are also considered, and the normative deficiencies in this regard are exposed. The chapter focuses on the positive law, with very brief incursions into prior legal norms insofar as they are relevant to show the durable trends in public policy.

Keywords: family, spouse, children, allowance, accommodation, fertility

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1. Family policy in Romania

1.1. Demographic data

1.1.1. Population pyramid in the after-war period and since the 1990s

Since 2011, the population pyramid in Romania has seen a substantial increase in the percentage of the population aged 65 and over, from 15.97% in 2012 to 18.64% in 2022. There has also been a corresponding decrease in the percentage of the adult population aged 15–64 years, from 68.18% in 2012 to 65.44% in 2022, and a very slight increase in the proportion of children below 15 years from 15.85% in 2012 to 15.923% in 2022.[1]

1.2.1. Fertility in Romania in the after-war period and since the 1990s

The highest fertility rate in Romania in the after-war period was during the 'little baby boom' of 1948–1955, when the average rate was 3.23 births per woman. This fertility rate began to fall quickly to below 3.0 in 1955 and, thereafter, to below the replacement level of 2.1 (2.0 in 1962, 1.9 in 1966). The 1966 ban on abortions led to a short-term doubling of the fertility rate (3.7 in 1966, 3.6 in 1968). Nevertheless, despite the repressive abortion policies, the fertility rate fell slowly to 2.2 in 1989. In the 1990s, the lifting of the ban on abortions and the socioeconomic upheaval of the time led to a dramatic decrease in the total fertility rate from 1.8 live births per woman in 1990, to 1.5 in 1992, and 1.3 in 1995, a level that remained basically unchanged until 2010. [2]

In 2022, the total fertility rate in Romania was 1.74, which was among the highest in Europe and the third highest in the European Union (EU), slightly below that of France (1.79) and Ireland (1.76).[3] The total number of births in 2021 was 178,496, representing the seventh largest number in the EU.[4] The total fertility rate has been steadily increasing since 2011, with the average live births per woman rising from 1.47 in 2011, to 1.62 in 2015, and over 1.71 from 2017 onwards, plateauing at around 1.8 in the 2020s.[5]

Nevertheless, the crude rate of birth in Romania (birth rate per thousand population) has been decreasing since the 1970s. This rate was 19.1% in 1960, 21.1% in 1970, 18% in 1980, and around 10% (intervals between 9.4% and 10.5%) since 2000.[6] Historically, the highest birthrate post-war was observed in the 1950s (25.6‰

1 Statista, 2024.
2 Romanian National Institute of Statistics, 2012, p. 23.
3 Statista, 2022.
4 Ibid., p. 16.
5 Statista, Countries and Regions – Romania, p. 6.
6 Ibid., p. 7.

in 1955), although this had rapidly decreased from 1956 (24.2‰) to 1965 (14.3‰).[7] The extensive ban on abortions at the end of 1966 led to a rise in the rate of births to 27.4‰ in 1967 and 26.8‰ in 1968; however, this boost was short-lived, and the crude birthrate levelled off in the 1980s to between 14‰ and 18‰.[8]

1.2. Institutional framework for family policy

1.2.1. Family courts

The 2009 Civil Code, which came into force on 1 October 2011, and its implementing statute Law no. 71/2011 ruled that all judicial matters regarding family litigation and the protection of natural persons would be tried before the guardianship courts (*instanța de tutelă*). Until these guardianship courts are organised by special statute, their judicial tasks are still carried out by the pre-existing courts, court divisions, or specialised judicial panels for underage children and families (Art. 229, para. 2 L. 71/2011). At present, most family trials are litigated in front of the lowest-level courts (*Judecătorie*), with only the largest such courts having specialised panels. Appeals on family matters and first instance trials regarding adoption and child protection measures are decided by the second-level county courts (*Tribunal*), which often have specialised panels in their civil divisions. Third-level courts (*Curte de apel*) and the Romanian Supreme Court rarely hear matters regarding family law issues.

1.2.2. Central executive authorities with family policy prerogatives

Family policy prerogatives in the Romanian government are unevenly split between several departments: the recently established Ministry of Families, Youth and Equal Opportunities, and the Ministry of Work and Social Solidarity, Ministry of Justice, Ministry of Education, and Ministry of Health. The Ministry of Families, Youth and Equal Opportunities was only established in late 2021 and ensures the coordination of the implementation of the government's strategy and policies in relation to families, youth, the protection of children's rights, adoption, domestic violence, and equal opportunities for women and men.[9] The Ministry of Labour and Social Solidarity has prerogatives that relate to families because it designs policies on work and social protection.[10] The Ministry of Justice drafts all regulations in regard to the justice system, including family courts, and gives its advisory opinion on any draft statute or lower-level government regulation initiated by other ministries.[11]

7 Romanian National Institute of Statistics, 2012, p. 11.
8 Ibid.
9 Art. 1, para. 2, Government Order No. 22/2022.
10 Art. 3, para. 1, G.D. No. 23/2022.
11 Art. 5, G.D. No. 652/2009.

The Ministry of Education can influence family policy by the way in which it organises the education system, from early education to university education and professional training.[12] Finally, the Ministry of Health has prerogatives on public health policy[13], including relevant regulations on medical care for pregnancies, newborns, and infertility treatment issues.

1.2.3. Family support benefits

1.2.3.1. Universal child allowance (Law no. 61/1993)

For more than three decades, Romania has had a universal child allowance for all children below 18 years of age, and for children between 18 and 26 years who are still in high school, trade schools, or other forms of secondary (non-university) education (Art. 1 L. 61/1993). This allowance is available even for children who are foreign citizens if they reside together with their parents in Romania (Art. 2 L. 61/1993).

The amount of universal child allowance differs for children between 2 and 18 years of age, while a higher amount is provided for children under 2 and children with disabilities (Art. 3 L. 61/1993). Up until 2019, the allowance for children aged between two and 18 was relatively symbolic, being 84 lei (20 Euros) in 2015, 150 lei (32 Euros) in 2019, and 256 lei (52 Euros) in 2023. For children below the age of two and children with disabilities, the universal child allowance rose from 200 lei (55 Euros) in 2008 to 300 lei (63 Euros) in 2019 and 631 lei (127 Euros) in 2023.

1.2.3.2. Allowance for child-rearing and work return allowance (Government Emergency Ordinance no. 111/2010)

One of the most generous family benefits in Romanian law is the allowance for child-rearing, paid during the corresponding leave. These provisions date back to 2010, and any changes in the intervening years have been insubstantial.

The allowance for child-rearing can be paid to either the biological mother or biological father of the child, either adoptive parent, legal guardians, or non-professional foster parents if they fulfil the taxable income requirements.[14] The person demanding this allowance can be either a Romanian or foreign citizen, although they must reside in Romania together with the child and effectively care for the child directly.[15]

The allowance is paid if the person claiming it had taxable income (salary, independent contractor or freelance revenues, intellectual property royalties, agricultural

12 Art. 3, G.D. No. 369/2021.
13 Art. 4, G.D. No. 144/2010.
14 Art. 8, G.E.O. No. 111/2010.
15 Art. 12, para. 1 G.E.O. No. 111/2010.

revenues) for at least 12 months in the 2 years before the child's birth.[16] However, this income requirement has several broad exceptions, which renders the allowance almost universal (for example, the 12 months of taxable income also include the duration of unemployment benefits, paid medical leave, childcare leave, and studies from high school up to doctoral level).[17]

The allowance for child-rearing is 85% of the average after-tax income gained in the last 12 months before the child's birth[18] not exceeding 8,500 lei (1,700 Euros) per month. There is also a guaranteed minimum allowance threshold of 2.5 times the Social Reference Indicator (SRI; 598 lei/120 Euros in 2023), meaning the allowance totals between 300 and 1,700 Euros at 2023 levels. If the event of twins or other forms of multiple pregnancy, the standard allowance of 85% of the previous 12 months' income is supplemented with 300 Euros (2.5 times the SRI) for each additional child.[19] 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 the maternal childbirth leave, which is a minimum of 42 days after birth, up until the child is 2 years old, or 3 years old for children with disabilities.[20] If both parents fulfil the conditions for receiving the child-rearing allowance, the second parent must take at least 2 months off to receive this allowance, otherwise, those 2 months are lost and not transferable to the other parent.[21]

For parents who choose not to take leave for child-rearing and instead earn taxable income, there is a monthly bonus of 1,500 lei (300 Euros) until the child is 6 months old, or 1 year old for a child with disabilities.[22] This bonus is later reduced to 650 lei (130 Euros), paid from when the child is 6 months to 2 years old, or from 1 year to 3 years old for a child with disabilities.[23]

Parents who have finished their child-rearing leave and returned to earning taxable income can also receive a work return allowance of 650 lei (130 Euros) for 1 year, between either the child's second and third birthday or the third and fourth birthday for a child with disabilities.[24]

1.2.3.3. Allowance for limited-income families with underage children

To support families with a limited income and underage children, since 2010, Romania has established a special allowance designed to supplement the family's

16 Art. 2, para. 1 G.E.O. No. 111/2010.
17 Art. 2, para. 5 G.E.O. No. 111/2010.
18 Art. 2, para. 1 G.E.O. No. 111/2010.
19 Art. 5, G.E.O. No. 111/2010).
20 Art. 16, G.E.O. No. 111/2010.
21 Art. 11, para. 1, G.E.O. No. 111/2010.
22 Art. 7, para. 1a, G.E.O. No. 111/2010.
23 Art. 7, para. 1b, G.E.O. No. 111/2010.
24 Art. 7, para. 2, G.E.O. No. 111/2010.

income, ensure better living conditions for the children, and promote their school attendance.[25] This law defines recipient families as either composed of a husband, a wife, and their dependent children living together;[26] single-parent families comprising a single adult and their dependent children living together (Art. 2, para. 1b L. 277/2010); or an unmarried man and woman living together with either of their children.[27] Families also include soon-to-be adopted children placed with the future adopting parents by the court, foster children placed with unpaid foster parents, and children under guardianship.[28]

The family's income and the corresponding allowance are appraised according to the variable SRI, which was 598 lei (120 Euros) in 2023. Two-parent families with an average after-tax monthly income per person that is less than 40% of the SRI (less than 48 Euros/month/person) receive an allowance of between 16.4% of the SRI (20 Euros/month) for one child and 65.6% of the SRI (80 Euros/month) for four or more children.[29] Families with a mean after-tax monthly income per person that is between 40% and 106% of the SRI (between 48 and 126 Euros/month/person) receive an allowance of between 15% of the SRI (18 Euros/month) for one child and 60% of the SRI (72 Euros/month) for four or more children.[30]

Single-parent families with a mean after-tax monthly income per person that is less than 40% of the SRI (less than 48 Euros/month/person) receive an allowance of between 21.4% of the SRI (26 Euros/month) for one child and 85.6% of the SRI (104 Euros/month) for four or more children.[31] Single-parent families with a mean after-tax monthly income per person that is between 40% and 106% of the SRI (between 48 and 126 Euros/month/person) receive an allowance of between 20.4% of the SRI (24.5 Euros/month) for one child and 81.6% of the SRI (98 Euros/month) for four or more children.[32]

This family allowance is provided for Romanian legal residents, without regard to citizenship. It is also provided for homeless people if they have not received this allowance from other local authorities.[33] The family support allowance is conditional upon school attendance for school-age children, with accommodations being made for medical reasons or for children with disabilities.[34]

25 Art. 1, L. 277/2010.
26 Art. 2, para. 1a L. 277/2010.
27 Art. 2, para. 1c, L. 277/2010.
28 Art. 4, para. 1, L. 277/2010.
29 Art. 5, para. 1, L. 277/2010.
30 Art. 5, para. 2, L. 277/2010.
31 Art. 6, para. 1 L. 277/2010).
32 Art. 6, para. 2, L. 277/2010.
33 Art. 7, L. 277/2010.
34 Art. 8, L. 277/2010.

1.2.3.4. Guaranteed social minimum income

The social minimum income has been provided since 2001 for families and single individuals who either have Romanian citizenship,[35] domicile, or legal residence in Romania.[36] The definition of families for this minimum income is the broad one specific to Romanian social law and includes married different-sex spouses, with or without dependent children; single parents with children; adult childless siblings living together separately from their parents; and cohabiting different-sex couples with dependent children.[37]

The level of the guaranteed social minimum income is adjusted to the SRI (which was 598 lei/120 Euros in 2023) and also depends on the number of cohabiting family members. It varies between 28.3% of the SRI (62 Euros) for a single-person household and 105.4% of the SRI (127 Euros) for a five-person household, with an extra 7.3% of the SRI (9 Euros) for each additional family member.[38]

1.2.3.5. Minimum income for social inclusion

Since 2016, Romania also has a so-called 'minimum income for inclusion'. This is a selective social benefit for families and single persons who find themselves in dire situations during their lifetime for socioeconomic, health, or social environment reasons and who have lost or have a diminished capacity to be socially integrated.[39] The financial support is provided by the state to prevent social exclusion and poverty and enhance the affected children's participation in the education system.

In this case, families are broadly defined by the law as including both traditional families with married spouses, either childless or with underage or dependent children; single-parent families; and informal cohabiting different-sex partners, with or without underage or dependent children.[40] The benefits for social inclusion are means-tested and, in order to qualify, the beneficiary's monthly after-tax income must be less than 700 lei (140 Euros) for a single person, with 350 lei (70 Euros) added for each additional family member.[41] The minimum income for social inclusion is actually a broad array of social benefits, comprising financial aids, including the aid for social inclusion and the aid for families with children, and other complementary measures such as in-work stimulus and contribution exemptions.[42] The aid for families with children is two-tiered.[43] The first tier is available for families earning

35 Art. 1, para. 1, L. 416/2001.
36 Art. 2, para. 7, L. 416/2001.
37 Art. 2, L. 416/2001.
38 Art. 4, L. 416/2001.
39 Art. 1, Law 196/2016.
40 Art. 6, L. 196/2016.
41 Art. 9, L. 196/2016.
42 Art. 3, L. 196/2016.
43 Art. 18, L. 196/2016.

less than 275 lei/month (55 Euros) for the first person and 50% of that figure for each subsequent person; the aid for two-parent families is between 107 lei (22 Euros) for one child and 428 lei (88 Euros) for four or more children, whereas the aid for single-parent families is slightly larger at between 120 lei (24 Euros) and 480 lei (96 Euros). The second tier is for families earning a monthly income of between 276 lei (55 Euros) and 700 lei (140 Euro) for the first person and 50% of that for each subsequent person; the aid for two-parent families is between 85 lei (17 Euros) for one child and 340 lei (68 Euros) for four or more children, whereas the aid for single-parent households is between 110 lei (22 Euros) and 430 lei (86 Euros).

The aid for families with children is contingent on regular school attendance, with the exception of absence for medical reasons.[44] Unjustified truancy leads to financial penalties that go upwards from 50% of the monthly aid for each child who misses more than 15 classes per month.[45]

1.3. Other tax and contribution benefits

1.3.1. Tax and contribution benefits

The Romanian Tax Code allows employers to give away cash gifts or gift certificates for their employees' children, with the incurred 'social' expenses being tax-deductible for profit-tax purposes for the employer, up to the limit of 5% of the employer's entire payroll expenses.[46]

A 2020 Tax Code modification was supposed to allow employers to make deductible expenses for early education of up to 1,500 lei per child per month (300 Euros/child/month), with the deduction being possible first directly from profit taxes and, if the payable profit-tax level is surpassed, the expenses could subsequently have been deducted from the payroll taxes, value-added taxes, and excise duties.[47] Unfortunately, this generous family support benefit, adopted in 2020 and which should have come into force on 1 April 2021, has yet to be implemented and has been repeatedly delayed (the latest announced delay being until the end of 2023). While the early education tax deduction continues to be postponed, the Tax Code allows, as a partial replacement, for employers to deduct (for profit-tax purposes) the expenses for running their own day-cares and kindergartens, with these 'social' deductible expenses capped at 5% of total payroll expenses.

The allowances for pregnancy risk, maternity leave, child-rearing, and caring for a sick child are all exempted from income tax[48] and social security contributions.[49] Other allowances and material benefits related to children and families are

44 Art. 19, para. 1, L. 196/2016.
45 Art. 19, para. 2, L. 196/2016.
46 Art. 25, para. 3b sec. 3 Tax Code, hereinafter, 'TC'.
47 Art. 25, para. 4i[2] TC.
48 Art. 62c, TC.
49 Art. 142b, TC.

also exempted from income tax and social security contributions, including birth or adoption bonuses, and cash gifts or gift certificates for employees' underage children if they do not exceed 300 lei (60 Euros) per person per event such as Christmas, Easter, or other equivalent major religious holidays, 1 June.[50] Payments made by an employer for the early education of its employees' children do not give rise to income tax or social security contribution liability for the receiving employee.[51]

Employees can receive a 'personal tax deduction', taking into account each of their dependent family members, including their spouses, children, close relatives, or in-laws, whose monthly income does not exceed 20% of the national minimum wage.[52] This tax deduction is available only for one of the parents or caregivers of other family members and only in regard to salary income taxes.[53] The basic personal tax deduction is available only for caregiving employees whose monthly income exceeds the gross national minimum monthly wage (which was 3,000 lei/600 Euros in 2023) with up to 2,000 lei (400 Euros), according to Art. 77, para. 3 of the Tax Code. This is a regressive benefit, deducted from employees' pre-tax wages, depending on the level and number of their dependants, which oscillates between 45% of the gross national minimum monthly wage (for a person earning the minimum monthly wage with four or more dependents) and 0% for a person earning slightly below 5,000 lei per month (1,000 Euros) but with no dependents.[54]

There is another, more limited 'supplemental personal tax deduction' available for all parents with underage children attending school, but it is only 100 lei per child per month (20 Euros), which are deducted from the parents' pre-tax gross wages.[55] Young employees below 26 years of age receive a supplemental tax deduction for themselves, which is 15% of the gross national minimum monthly wage (450 lei/90 Euros in 2023), but only if their pre-tax income is less than 5,000 lei (1,000 Euros) per month.[56]

One of the most universal family support benefits is the exemption from health insurance contributions for a wide array of individuals, including all children below the age of 18 and young people aged between 18 and 26 years if they are studying, undertaking an apprenticeship, or are soldiers-in-training.[57] Those aged between 18 and 26 years who are coming out of the child protection system are exempt from health insurance contributions even if they do not qualify as studying or following professional instruction, but only if they are not employed, independent contractors, or agricultural workers.[58] Dependent spouses or parents with no income are also

50 Art. 76, para. 4a, and Art. 142b, TC.
51 Art. 76, par 4x, Art. 142z, TC.
52 Art. 77 par. 5, TC.
53 Art. 77 par. 6, TC.
54 Art. 77, para. 4, TC.
55 Art. 77, para. 10b, TC.
56 Art. 77, para. 10a, TC.
57 Art. 154, para. 1a, TC.
58 Art. 154, para. 1b, TC.

exempt from health insurance contributions.[59] A distinct category of exemptions from health insurance contributions is reserved for those on post-adoption leave or child-rearing leave.[60]

1.3.2. Social and merit-based public scholarships

Romania has several types of public scholarships for primary school, middle school, high school, trade school (Education Minister's Order no. 5379/2022), and university students. These scholarships are either merit-based or awarded for social reasons, including health. Merit-based scholarships are awarded for results in school competitions or for very good results in everyday learning.

In the 2022–2023 school year, the merit-based scholarship for non-university students was either 200 lei (40 Euros) monthly for good results at the school- or county-level or 500 lei (125 Euros) monthly for achieving first place in a national school competition. The social scholarships were either 150 lei (30 Euros) monthly for decent school results and an average monthly income per family member lower than the national minimum wage, or 200 lei (40 Euros) monthly for those students who either had an average monthly income per family member lower than half the national minimum monthly wage, were orphans, lived in single-parent households, or suffered from serious functional afflictions. Art. 108 of the new Law no. 198/2023 on pre-university education, which came into force in September 2023, increased the merit-based scholarships to 450 lei (90 Euros) and social scholarships to 300 lei (60 Euros).

Scholarships for university students are decided by the universities themselves and fall broadly into the merit-based and social scholarship categories. For example, Babeș-Bolyai University in Cluj County divides its state-financed scholarship fund as follows: 70% for different types of merit-based scholarships, and 30% for social scholarships. The most common types of scholarships are awarded each semester and amount to between 700 lei/month (140 Euros) and 1,000 lei/month (200 Euros) for merit-based scholarships, and 580 lei/month (116 Euros) for most social scholarships.[61]

1.4. 'Family-type' units in Romanian law

1.4.1. Families according to Romanian private law

Romanian private law is relatively conservative in defining families, although it tacitly recognises legal consequences for some types of non-traditional families. Art. 258, para. 1 of the Civil Code states that the family is based upon a freely consented

59 Art. 154, para. 1c, TC.

60 Art. 154, para. 1k, TC.

61 Rules for awarding scholarships for undergraduate and graduate students at the Babeș-Bolyai University, available at: https://www.ubbcluj.ro/ro/studenti/files/burse/2022-2023/Regulament-de-burse-pentru-studenti-modificat-prin-HS-49.pdf (Accessed: 26 February 2024).

marriage between spouses and upon the parents' right and duty to ensure the raising and education of their children. Further provisions[62] clarify that 'spouses' can only be a man and a woman who have freely consented to a legal marriage.

The Civil Code also recognises single-parent households by allowing parental authority to be either exercised jointly by parents living separately[63] or exercised fully by a single parent if the court decides that this would be in the best interests of the child,[64] or if the other parent is either deceased, under guardianship, has lost the exercise of parental rights, or cannot give their consent for various reasons.[65]

Another atypical 'family-type' unit recognised by Romanian private law, known as a 'substitute family'[66], is one in which the parental authority is exercised by a third-party (e.g. a legal guardian or foster parent) and the child lives with this person.[67]

The most forward-thinking private law statute is the one concerning adoption. In addition to recognising adoptive families as fully-fledged families with all the rights and duties of a biological family, this statute also acknowledges the possibility for the cohabiting unmarried and different-sex partner of a single adoptive parent to subsequently adopt the same child if he or she has directly taken part in raising the child for an uninterrupted period of at least five years (Art. 6, para. 2c L. 273/2004).[68]

Romanian law also defines 'extended family' in relation to a child as including the child's relatives up to and including the third degree (i.e. up to aunts/uncles or great-grandparents) with whom the child or their family maintain personal relations and direct contact;[69] however, the status of an extended family does not imply nor exclude living together.

Conversely, Romanian family law does not recognise registered civil partnerships, either between same-sex or different-sex partners, and does not allow same-sex marriages.[70] The non-recognition of such unions is deemed a matter of public order of international private law.[71]

Although there is no specific regulation on consensual unions in Romanian private law, they are not expressly forbidden and are a fact of life. As such, private law incidentally recognises some effects of such unions: cohabitation between a man and a woman during the time when conception is plausible leads to a simple (rebuttable) presumption that the man is the father of the child conceived during this

62 Art. 259, para. 1 Civil Code, hereinafter 'CC'.
63 Arts. 397, 505 CC.
64 Art. 398 CC.
65 Art. 507 CC.
66 Art. 4d L. 272/2004
67 Arts. 399, 137 CC, Art. 63, L. 272/2004.
68 Florian, 2022, pp. 509–510; Avram, 2022, pp. 26–27.
69 Art. 4c, L. 272/2004.
70 Avram, 2022, p. 25.
71 Art. 277, CC.

union.[72] In addition, human assisted reproduction with a third-party donor is specifically allowed for consensual different-sex couples (Art. 441 CC).[73]

1.4.2. Families in Romanian social law

Romanian social law, which we consider to be part of public law, adopts a much broader and pragmatic definition of family and household than the family law.[74] While it still does not take into account same-sex couples, it covers most other living situations that involve families in the sociological sense.

The law regarding the allowance for families with limited income defines recipient families as either composed of a husband, a wife, and their dependent children living together;[75] single-parent families comprising a single adult and their dependent children living together;[76] or an unmarried man and woman living together with either of their children.[77] Families also include soon-to-be adopted children provisionally placed with the adopters by the court, foster children placed with unpaid foster parents, and children under guardianship.[78]

The definition of families in regard to the minimum social income is the same broad one specific to Romanian social law: married different-sex spouses, with or without dependent children; single parents with children; adult childless siblings living together separately from their parents; and cohabiting different-sex couples with dependent children.[79] Families are also broadly defined by the law on the minimum income for inclusion as comprising both traditional families with married spouses, either childless or with underage or dependent children; single-parent families: informal cohabiting different-sex partners, with or without underage or dependent children; and adult childless siblings living together separately from their parents (Art. 6 L. 196/2016).[80]

From all these social law definitions we can conclude that, for the sake of social benefits, families can be construed as either different-sex couples with or without dependent children, single parents with dependent children, or adult childless siblings living together separately from their parents. Same-sex couples do not qualify for social benefits as such, although they could indirectly receive such benefits if either of the partners is a single parent with dependent children.

72 Art. 426, CC.
73 Avram, 2022, p. 26.
74 Avram, 2022, pp. 25–28.
75 Art. 2, para. 1a, L. 277/2010.
76 Art. 2, para. 1b, L. 277/2010.
77 Art. 2, para. 1c, L. 277/2010.
78 Art. 4, para. 1, L. 277/2010.
79 Art. 2, L. 416/2001.
80 Avram, 2022, pp. 28–29.

1.5. Family and work allowances

1.5.1. Childcare leave

Romanian labour law allows employees to take paid child-rearing leave up until the child is 2 years old or, if the child has disabilities, up until the age of three.[81] It also allows employees to take a maximum of 45 days per year of medical leave to care for a sick child up until the age of seven or, for a child with disabilities and intercurrent afflictions, up until the age of 18.[82] During this work leave, the employment contract is suspended,[83] but it cannot be terminated by the employer[84]. A 2023 change to the medical leave law[85] allows parents to benefit from medical leave to care for a sick child up until the child's 12th birthday or up until 18 years of age for children with serious disabilities.[86]

Though this paid medical childcare leave is usually granted up to 45 days per year for each child, this number can be surpassed if the child has a contagious disease, is immobilised, or has surgery. In these situations, a specialist physician determines the necessary amount of childcare leave based on the evolution of the disease.[87]

1.5.2. Maternity leave

Paid maternity leave in Romania lasts up to 126 days, including pregnancy leave and childbirth leave.[88] The mother's income for the duration of the maternity leave is 85% of her average pre-tax income during the prior 6 months, capped at a maximum of 12 gross minimum wages per month,[89] which was 36,000 lei in 2023 (7,200 Euros). Maternity leave is paid for out of the National Health Insurance Fund.[90] Pregnancy leave and childbirth leave are usually 63 days each; however, the mother can choose, based on a physician's advice or her personal choice, to adjust between the two types of maternity leave, as long as she takes at least 42 days for childbirth leave and the total remains below 126 days.[91]

81 Art. 51, para. 1a, Labour Code.
82 Art. 51, para. 1b, LC.
83 Art. 51, para. 1, LC.
84 Art. 60, paras. 1 e and f, LC.
85 Art. 26, para. 1, Government Emergency Ordinance [hereinafter 'GEO'] 158/2005.
86 Art. 26 GEO 158/2005.
87 Art. 29, para. 1, GEO 158/2005.
88 Art. 23, para. 1, GEO 158/2005.
89 Art. 25 and Art. 10, para. 1, GEO 158/2005.
90 Art. 25 para. 2, GEO 158/2005.
91 Art. 24, GEO 158/2005.

1.5.3. Paternity leave

Law no. 210/1999 on paternal leave allows the father to take 10 paid working days off during their child's first eight weeks of life if paternity is legally established and can be proven with a birth certificate.[92]This leave is available for all types of workers, public officials, policemen, soldiers, and prison guards. The paid paternal leave can be extended to 15 working days if the father has a graduation certificate from a child-rearing course.[93] If the mother dies during childbirth or her own paid time off after childbirth (usually 63 days), the father has the right to the remainder of the mother's paid time off as supplemental paternal leave.[94]

1.5.4. Parental leave for child-rearing

The law on the child-rearing leave allows for either parent to take paid time off for child-rearing, which can be granted only after the mother's minimum compulsory 42 days maternity leave after childbirth have elapsed. This parental leave lasts until the child is 2 years old, or 3 years old for a child with disabilities.[95] This leave is available for either biological parent, adoptive or future adoptive parents after the court has entrusted the child to them, foster parents, legal guardians, and emergency foster parents with the exception of paid maternal assistants.[96]

The 2023 update to the law compels the parent who has not taken the paid time off for child-rearing to take at least 2 months off if they qualify.[97] The penalty for both parents not sharing the child-rearing leave is losing the benefit of the last 2 months of paid time off.

1.5.5. Special family-related work leaves in labour law

There are two other special family-related work leaves: the leave for caring for a cancer patient and the leave for maternal risk.[98] The leave for caring for a cancer patient is granted to any person, not necessarily a family member, who accompanies a cancer patient over 18 years of age, with the latter's consent, to surgery or specialist treatments. The maximum duration of this medical leave is 45 days per year for a cancer patient. The patient can choose only one companion per treatment or surgery. The companion is also entitled to one free psychological evaluation and

92 Art. 2, L. 210/1999.
93 Art. 4, L. 210/1999.
94 Art. 5, L. 210/1999.
95 Art. 2, para. 1, GEO No. 111/2010.
96 Art. 8, GEO 111/2010.
97 Art. 11, para. 1, GEO 111/2010.
98 Art. 2, para. 1d[1] and 1e, GEO 158/2005.

five free psychological counselling sessions each year that they receive this special medical leave.[99]

Pregnant employees or recent mothers have the right to a supplemental work leave of up to 120 days[100] for maternity risk.[101] This supplemental leave can be used before the regular maternity leave (which is usually 63 days before birth) or after the regular leave for giving birth (which is usually 63 days after birth) if the employer cannot accommodate the risks to the health and safety of the mother or negative consequences for the pregnancy or breastfeeding by changing the working conditions, work schedule, or place of work.[102] The leave for maternity risk is also available for pregnant employees, recent mothers, or breastfeeding mothers who cannot be transferred from night work to daytime work for objective reasons (Art. 19, para. 4 GEO 96/2003),[103] as well as for those that cannot be transferred from working in dirty or difficult environments.[104]

1.5.6. Day-care provisions

Day-cares (*creșe*) in Romania are considered to be part of the educational system and benefit children below the age of three. Kindergartens are institutions for the education of children between the ages of three and six. The new law on the pre-university education system,[105] which came into force on 3 September 2023, specifically mentions day-cares as educational institutions for children between 3 months and 3 years old that can function either independently as legal persons or as part of another educational institution that is a legal person.[106]

Villages, towns, or cities in which there are no day-cares/kindergartens or in which the number of available places in day-cares/kindergartens is less than the number of children below the age of three or between 3 and 6 years, respectively, can develop complementary early education services such as organised playgroups or community kindergartens.[107]

Employers can establish early education institutions mainly for their employees. Employers can receive financial benefits from the government for these institutions or can opt for partial tax deductions for the funds they provide to their employees for early education.[108]

99 Art. 30[1] GEO 158/2005.
100 Art. 10, GEO 96/2003.
101 Art. 31, GEO 158/2005.
102 Dub, 2017, p. 11.
103 Dub, 2017, pp. 11–12.
104 Art. 20, para. 4, GEO 96/2003.
105 Law No. 198/2023.
106 Art. 30, L. 198/2023.
107 Art. 30, para. 3, L. 198/2023.
108 Art. 30, para. 6, L. 198/2023.

The current regulation on day-cares (Methodology on day-cares and early pre-school education, approved by G.D. No. 566/2022; hereinafter 'the Methodology') specifies that these centres can be either educational institutions or so-called 'day centres' (*centre de zi*), operating as social services that provide care, education, and counselling for children during the daytime in order to prevent their separation from their parents.[109]

Day-cares can be either public or private and can provide either a standard programme (5 hours/day), extended programme (10 hours/day), or both[110]. Day-cares use a 'group' system that divides children according to their age as either small (below 12 months), medium (between 13 and 24 months), or big (between 25 and 36 months). There should be an average of seven children (between five and nine children) in the small group, 12 children (between 8 and 15 children) in the medium group, and 12 children (between 8 and 20 children) in the big group[111]. Extended programme day-cares must be open year-round, including during school holidays, but they can provide restricted services during that time based on demand and staff holidays.[112]

1.6. Generational policy

In relation to the youth, Romania's Law on Young People no. 350/2006 was meant to ensure the conditions for the proper social and professional integration of young people between 14 and 35 years old, according to their needs and aspirations.[113] Nevertheless, besides good intentions and broad policy desires, this law does not provide many particular benefits to young people, with the notable exception of some general entrepreneurial support for starting up small and medium enterprises,[114] free access to public libraries, and exemptions from admission fees in state universities for young people coming out of the child protection system or from a family with limited means.[115]

There are more benefits available for older adults and pensioners at all levels of society. For example, because there were millions of pensioners with very small pensions, a 2009 regulation (GEO no. 6/2009) established the 'minimum social pension', later known as 'social indemnity for pensioners'. The level of this social benefit is modified each year by the law on the state budget. Pensioners whose pension is less than the social indemnity receive the difference, paid from the state budget.[116] In 2023, the level of this social indemnity was 1,125 lei (227 Euros).

109 Art. 1, para. 4, Methodology.
110 Art. 8, paras. 3 and 4, Methodology.
111 Art. 10, Methodology.
112 Art. 14, paras. 1 and 3, Methodology.
113 Art. 1, L. 350/2006.
114 Art. 17, L. 350/2006.
115 Art. 18, L. 350/2006.
116 Art. 2, L. 350/2006.

Pensioners also have some tax benefits: the first 2,000 lei (400 Euros) of the monthly pension is exempted from income tax,[117] and pensions are totally exempt from health insurance contributions.[118] Pensioners are also exempt from social security contributions for freelance work and royalties.[119]

1.7. Family-friendly provisions in the pension system

1.7.1. Survivor benefits for dependent children and spouses (Law no. 263/2010)

The current Romanian public pension Law no. 263/2010, as well as the laws that preceded it, provides a 'survivor pension' for children and spouses of deceased providers who were either already retirees or fulfilled the conditions to receive a pension.[120] Children can receive the survivor pension following their parent's death if they are below 16 years of age (with no further conditions to fulfil), between 16 and 26 years of age only if they attend some form of organised studies, or for the duration of their disability if they become disabled during the previous two situations.[121]

The surviving spouse can receive the survivor pension for the duration of their life if they have reached the retirement age and if the marriage lasted for at least 15 years[122]. If the marriage lasted between 10 and 15 years, the survivor pension is diminished by 0.5% for each month under the required 15-year duration[123]. A spouse may still receive the survivor pension even for marriages of less than 10 years in special circumstances, such as if they have a severe disability, if the marriage lasted for at least 1 year, if the survivor's own income is less than 35% of the monthly national average pre-tax wage, if the deceased died either in a work-related accident or as a consequence of a work-related illness,[124] or if the surviving spouse has one or more dependent children below the age of seven[125]. A surviving spouse with no income or with an income of less than 35% of the national average monthly pre-tax wage can receive a survivor's pension for 6 months if they do not fulfil the other conditions for this type of pension.[126]

The survivor pension is calculated based either on the pension that the deceased was receiving or was entitled to receive or based on the pension for a person with severe disabilities if the provider died before reaching the standard retirement

117 Art. 100, para. 1, TC.
118 Art. 154, para. 1 h, TC.
119 Art. 150, para. 1, TC.
120 Art. 83, L. 263/2010.
121 Art. 84, L. 263/2010.
122 Art. 85, para. 1 L. 263/2010.
123 Art. 85, para. 2 L. 263/2010.
124 Art. 86, L. 263/2010.
125 Art. 88, L. 263/2010.
126 Art. 87, L. 263/2010.

age[127]. The survivor pension is 50% of the deceased person's pension if there is one recipient, 75% if there are two recipients, and 100% for three or more recipients[128].

1.8. Social security institutions supporting families

The Ministry of Labor and Social Solidarity and its subordinates, the National Agency for Payments and Social Inspection (GEO 113/2011) and National House of Public Pensions, pays most family allowances, benefits, and indemnities from the national budget or pensions budget, monitors local social services, and inspects employers' compliance with relevant regulations on family leave and worker accommodations.

County-level General Directorates for Social Assistance and Child Protection are local institutions belonging to each county's council. They receive applications for social benefits, check the fulfilment of requirements for social assistance, identify families and persons in social distress, and provide social services for children, families, persons with disabilities, and older adults, financed from the county budget (Art. 3 of the Model Regulation on General Directorates for Social Assistance and Child Protection, approved by G.D. 797/2017).

City- or town-level Directorates for Social Assistance have similar prerogatives to the county-level Directorates, but they provide social services to families funded by the city or town budget, if applicable (Art. 3 of the Model Regulation on Local Social Assistance Directorates approved by G.D. 797/2017).

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2. Family law instruments to support families, parents, and children in Romania

2.1. The importance of family law principles

2.1.1. The principle of the protection of marriage and family

Art. 26, para. 1 of the Romanian Constitution states that public authorities must respect and nurture private and family life. The family is defined in Art. 48, para. 1 of the Constitution as being founded upon the freely consented marriage, spousal equality, and the right and duty of parents to rear and educate their children (also Art. 258, para. 1 CC).[129]

127 Art. 89, para. 1, L. 263/2010.
128 Art. 89, para. 2, L. 263/2010.
129 Florian, 2022, pp. 6–7; Florian, 2021 in Baias et al. (eds.), p. 325.

Spouses are legally defined as being a man and a woman joined together in marriage[130]. Families have a right to be protected both by the state and by society at large[131]; this includes the state's duty to support, through both economic and social measures, marriages and the development and consolidation of marriages.[132] Marriage is the freely consented union between a man and a woman, formalised according to the law (Art. 259, para. 1 CC).[133] In relation to children, even some non-traditional types of families involving either children born and conceived out of wedlock or adopted children have an equal status because all children are equal before the law, no matter the source of their parental status (Art. 260, Art. 448 CC).[134]

Romanian family law forbids same-sex marriages[135] and denies the recognition of these types of marriage, even if they are concluded abroad and even if they involve foreign citizens[136]. The same non-recognition is applied to civil partnerships contracted abroad, involving either same-sex or different-sex partners, even if they are not expressly forbidden in domestic law but merely not regulated.[137] Even engagement is specifically regulated only between a man and a woman (Art. 266, para. 5 CC). The only area where Romanian law recognises certain effects of same-sex marriages and either type of civil partnership is the free movement of persons according to EU law (Art. 277, para. 4 CC).[138]

Legal doctrine notes that the sociological definition of a family is broader than the narrow legal definition of a family based on marriage, including other criteria such as cohabitation and keeping a joint household.[139] However, the law has been indirectly catching up for decades by recognising an equal status in relation to all children, including those born and conceived outside marriage or adopted.[140] On 23 May 2023, the European Court of Human Rights found in Case no. 20081/19 *Buhuceanu and others* that Romania had violated the plaintiffs' (21 same-sex couples) rights to family and private life, which is enshrined in Art. 8 of the European Convention on Human Rights, by not providing any form of legal status or recognition for same-sex couples.[141]

130 Art. 258, para. 3, CC.
131 Art. 258, para. 2, CC.
132 Art. 258, para. 3, CC.
133 Florian, 2022, pp. 6–7; Florian, 2021, pp. 325–327.
134 Florian, 2021, pp. 328, 602–603.
135 Art. 277, para. 1, CC.
136 Art. 277, para. 2, CC.
137 Art. 277, para. 3 CC).
138 Florian, 2022, pp. 7–8; Florian, 2021, pp. 359–360.
139 Motica, 2021, p. 14.
140 Avram, 2022, pp. 17–18.
141 ECHR Case nos. 20081/19 and 20 others *Buhuceanu and others v. Romania,* Judgement 23 May 2023. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-224774%22]} (Accessed: 26 May 2023).

2.1.2 The principle of equality between spouses

Spousal equality is defined as both a constitutional principle (Art. 48, para. 1 Constitution) and a legal principle[142]. It is considered a mere practical application of the principle of equality between men and women in all areas of social life, including the same rights and duties between spouses and in relation to their children, be they offspring resulting from a marriage, from outside the marriage, or adopted.[143] The equality between men and women is derived from international human rights law and has specific consequences in family law.[144]

There is also a specific legal principle of parental equality, in regard to both the person and the assets of the child, because parental authority is held jointly and equally by both parents, and they are both responsible for raising their underage children (Art. 483 CC).[145]

2.1.3 The primacy of the best interests of the child

The primacy of the best interests of the child is regulated both by the Civil Code, which came into force in 2011, and Law no. 272/2004 on the protection and furthering of the rights of the child. The best interests of the child include the child's rights to a normal physical and moral development, socio-affective balance, and family life[146]. The primacy of the best interests of the child is compelling even in relation to the rights and duties of parents, other legal representatives of the child, or any other person with physical custody of the child (Art. 2, para. 3 L. 272/2004).[147]

This primacy of the best interests of the child will prevail in any decisions and undertakings regarding children by public authorities, private authorised service providers, and cases before courts[148]. The child's family must be involved in any decisions, actions, and undertakings regarding the child, while public authorities and private service providers must support the caretaking, growth, development, and education of the child within the family[149].

The criteria for evaluating the primacy of the best interests of the child are detailed in Art. 2, para. 6 of Law no. 272/2004 and include the child's needs for physical and psychological development, health, education, security, stability and belonging to a family; the opinion of the child according to his or her age and maturity; the history of the child with special regard to abuse, neglect, exploitation, or any form of violence against him or her, as well as future potential risks; the

142 Art. 258, para. 1, CC.
143 Florian, 2022, pp. 11–12.
144 Avram, 2022, pp. 47–48.
145 Motica, 2021, pp. 17–18.
146 Art. 2, para. 2, L. 272/2004.
147 Florian, 2022, pp. 18–20.
148 Art. 2, para. 4, L. 272/2004.
149 Art. 2, para. 5, L. 272/2004.

capacity of the parents or other caregivers to meet the specific needs of the child; and maintaining personal relations with any people to whom the child had previously developed attachment.

The Second Book of the Civil Code, titled 'About Family', contains rules on the primacy of the interests of the child. The Civil Code provisions only mention the necessity of taking into account the primacy of the interests of the child in different areas of family law, without defining the concept itself:[150] the possibility of limiting parent-child relationships if the child does not reside with said parent[151], any measures or procedures concerning the child[152], the possibility for the guardianship court to authorise underage marriage if there is disagreement between parents[153], the awarding of the benefit of continuing to reside in the former family home in cases of divorce[154], the possibility for the divorce court to authorise one spouse to keep the family name despite the other's disagreement[155], the divorce courts' decisions on the relationship between the divorcing parents and their underage children[156], the exercise of parental authority by only one parent in cases of divorce,[157] the issue of the child's residence after the parents' divorce if there is parental disagreement on the matter[158], adoption[159], the adoption of siblings by different families[160], overcoming the biological parents' refusal to agree to their child's adoption[161], instituting guardianship or other protective measures if the adopter loses the exercise of parental authority[162], the dissolution of an adoption if the adopted child needs protective measures[163], fictitious adoptions[164], the necessity of guardianship or other protective measures after the termination of adoption[165], the exercise of parental authority[166], court decisions in cases of parental disagreement on the exercise of parental authority[167], the possibility for the guardianship court to reject the parents' demand for the return of their child from third parties[168], the possibility to limit the exercise of

150 Avram, 2022, pp. 50–51.
151 Art. 263, para. 2, CC.
152 Art. 264, CC.
153 Art. 272, para. 2, CC.
154 Art. 324, para. 1, CC.
155 Art. 383, para. 2, CC.
156 Art. 396, para. 1, CC.
157 Art. 398, para. 1, CC.
158 Art. 400, CC.
159 Art. 452, Art. 454, CC.
160 Art. 456, CC.
161 Art. 467, CC.
162 Art. 472, CC.
163 Art. 476, CC.
164 Art. 480, CC.
165 Art. 482, CC.
166 Art. 483, para. 2, CC.
167 Art. 486, CC.
168 Art. 495, para. 2, CC.

parent-child relations with the non-resident parent[169], court decisions on the child's change of residence in cases of parental disagreement[170], parental court-sanctioned agreements on the exercise of parental authority[171], the withdrawal of the exercise of parental authority[172], and the provisional authorisation of parent-child relations in cases where the restoration of the exercise of parental authority is demanded by the affected parent[173].

2.1.4. Principle of fairness and the protection of the weaker party

The principle of fairness and the protection of the weaker party is not formally recognised as a family law principle in Romania,[174] not even in the statute concerning domestic violence[175]. Notwithstanding this doctrinal deficiency, there are legal rules in place for the prevention of and fight against family violence, which are mostly ascribed to Law no. 217/2003 for the prevention and suppression of family violence.[176]

These provisions have a very nuanced approach to family violence, which is broadly defined as including all types of verbal, psychological, physical, sexual, economic, social, spiritual, and cyber violence,[177] with a complete disregard for defences like custom, culture, religion, tradition, and honour.[178] This statute regulates temporary restraining orders against aggressors, which are issued by the police for a maximum duration of 5 days in cases of domestic violence, as well as the standard restraining order, which can be issued by the courts for a maximum duration of 6 months at a time.

2.2. Civil law provisions protecting the family and children, family property law, and other proposals

2.2.1. Management of children's property

There are two broad situations with regards the legal capacity of children to agree to contracts about their property in Romanian law: children under 14 years of age have no contractual capacity whatsoever[179], whereas children between 14 and 18 years of age have a so-called 'limited contractual capacity' (Art. 41, para. 1 CC).[180]

169 Art. 496, para. 5, CC.
170 Art. 497, para. 2, CC.
171 Art. 506, CC.
172 Art. 508, para. 1, CC.
173 Art. 512, para. 2, CC.
174 Florian, 2022, pp. 6–21; Avram, 2022, pp. 47–52; Motica, 2021, pp. 17–19.
175 Art. 2, L. 217/2003.
176 Avram, 2022, pp. 54–60; Florian, 2022, pp. 98–100.
177 Art. 4, para. 1, L. 217/2003.
178 Art. 4, para. 2, L. 217/2003.
179 Art. 43, para. 1a, CC.
180 Diaconescu and Vasilescu, 2022, pp. 101–112.

Married underage children (children can exceptionally marry from 16 years of age) or emancipated minors (emancipation is also possible from the age of 16 for 'well-grounded' reasons) have full contractual capacity, in the same way as an 18-year-old person.

Contracts and unilateral acts concerning children's property are concluded by their legal guardians[181], who is either a parent or a court-appointed guardian. Legal guardians act on children's behalf, either alone for acts regarding the preservation or the current management of rights and assets, as well as for sales or exchanges of deprecating or useless assets,[182] or with the prior authorisation of the guardianship court (*instanța de tutelă*) for normal sales and exchanges, estate divisions, and mortgages on the children's assets (Art. 144, para. 2 CC).[183] A legal representative cannot donate the child's assets, with the exception of small socially acceptable gifts, and cannot guarantee for the obligations of another person with the child's estate.[184]

A child's legal guardians must act in good faith in managing the child's estate.[185] Guardians are under the supervision of the guardianship court. An optional supervisory 'family council', comprised of three relatives or in-laws of the child,[186] advises the guardianship court regarding significant contracts if the legal guardian is not a parent. Legal guardians must provide a yearly report to the guardianship court about their care for the minor and the management of the child's estate,[187] as well as a final report at the end of their assignment.[188] Legal guardianship is an unpaid task[189] and can be performed either by a single guardian or by a married couple,[190] who will be held jointly liable for the guardianship duties.[191]

Children between 14 and 18 years of age have a limited contractual capacity. For most contracts or unilateral acts, these minors need the consent and approval of their parent or legal guardian and the authorisation of the guardianship court for major sales, exchanges, mortgages, or estate divisions[192]. For children aged 14 or older, the parent or legal guardian is no longer considered a legal 'representative' but a mere supervisor of the child's acts[193]. These children also cannot donate their assets under any circumstances, with the exception of small socially acceptable gifts, and

181 Art. 143, CC.
182 Art. 142, para. 1, Art. 144 para. 4, CC.
183 Diaconescu and Vasilescu, 2022, pp. 110–111.
184 Art. 144, para. 1, CC.
185 Art. 142, CC.
186 Arts. 124–125, CC.
187 Art. 152, CC.
188 Art. 153, CC.
189 Art. 123, CC.
190 Art. 112, para. 1, CC.
191 Diaconescu and Vasilescu, 2022, 117–118.
192 Art. 41, para. 1, CC.
193 Art. 146, para. 1, CC.

they cannot guarantee for the obligations of another person with their estate (Art. 146, para. 3 CC).[194]

2.2.2. Independent legal declarations of incapacitated children or children who have limited capacity to act

Even fully 'incapacitated' children under the age of 14 can still legally consent by themselves to two types of contracts: contracts that ensure the preservation of their rights or assets, such as contracting repairs for a building that is in imminent danger of collapsing, and 'current' contracts for disposing of assets of limited value with prompt execution, such as buying candy or a bus ticket (Art. 43, para. 3 CC).[195] Children between 14 and 18 years of age can conclude by themselves the same contracts that are allowed for their younger peers, such as contracts for the preservation of rights or assets, current sales, or exchanges of limited value with prompt execution; however, they can also independently conclude contracts for the management of their estate if these contracts are not prejudicial to him or her, for example, renting out property that they do not currently use.[196]

2.2.3. Privileged status of the family home property in the family (matrimonial) property law

The family home has had a special legal status in Romanian law since 2011, which is the same no matter the choice of the spouses' matrimonial property regime. A family home is defined as the joint dwelling of the spouses and, if they do not live together, the dwelling where the children reside[197]. Even a rented house or apartment can have the status of a family home, although this status is most significant for dwellings that belong to either one or both spouses. This special legal status of the family home is available only for married couples and only for their main residence, not for a secondary dwelling. Difficulties in determining a family home arise when the spouses live separately and do not have children or both of them have children residing with them.[198]

Even if they are the sole owner, neither spouse can transfer their rights to the family home or conclude any contracts that could affect the use of said home without the written consent of the other.[199] A spouse also may not move furniture or decorations out of the family home without the written consent of the other spouse. If consent is refused without a valid reason, the aggrieved spouse can require the prior

194 Diaconescu and Vasilescu, 2022, pp. 101–105.
195 Diaconescu and Vasilescu, 2022, p. 111.
196 Diaconescu and Vasilescu, 2022, pp. 102–103.
197 Art. 321, CC.
198 Florian, 2022, pp. 127–131; Avram, 2022, pp. 624–625; Nicolescu, 2021, in Baias et al. (eds.), pp. 418–420.
199 Art. 322, para. 1, CC.

authorisation of the family court to act alone. All acts concluded in defiance of the special family home regime are either voidable (if the third party with whom the contract is executed is aware of the special status of the home) or can lead to liability for civil damages from the contravening spouse.[200]

2.2.4 The right of the (minor) child to use his or her own home

The issue of the minor child's residence is extensively regulated in Romanian law, both in the Civil Code and in Law no. 272/2004. The basic rule is that underage children reside with their parents;[201] if the parents do not live together, they jointly decide the child's residence[202]. If the parents disagree about the child's residence, the guardianship court makes the decision after hearing the opinions of the parents, children above 10 years of age, and the 'psycho-social' investigation of the local authorities (Art. 496, para. 3 CC; Art. 21, para. 1 L. 272/2004).[203] Changes in a child's habitual residence made by one parent require the other parent's prior consent if this affects parental authority or the exercise of parental rights (Art. 497, para. 1 CC).[204]

The legal criteria for choosing a child's residence at one of his or her parent's houses are spelled out in Art. 21, para. 1 of Law No. 272/2004, which also stipulates the general criteria for the primacy of the best interests of the child. These criteria comprise the availability of each parent to involve the other in the decisions regarding the child and to respect the other's parental rights, the availability of each parent to allow the other to maintain personal relations with the child, the habitation status of each parent for the 3 years prior, the history of parental violence toward the child or other people, and the distance between each parent's residence and the child's educational institution.[205]

In divorce proceedings, a minor child's residence is one of the issues that must necessarily be resolved simultaneously with the dissolution of marriage itself, both in divorces at the notary's office[206] and judicial divorces.[207] In the absence of parental agreement upon the child's future residence after a divorce, the criteria for establishing the child's stable residence at one of his or her parents' dwellings is the generic 'best interests of the child' (Art. 400, para. 2 CC).[208]

The primacy of the best interests of the child also becomes relevant in adjudicating disputes between divorcing spouses about awarding the benefit of the rental agreement or the continued use of the jointly owned former matrimonial

200 Florian, 2022, pp. 131–137; Avram, 2022, pp. 631–639; Nicolescu, 2021, pp. 422–427.
201 Art. 496, para. 1, CC.
202 Art. 496, para. 2, CC; Art. 36, para. 3, Law No. 272/2004.
203 Florian, 2022, pp. 556–557; Avram, 2022, pp. 441–444.
204 Florian, 2022, pp. 558–559.
205 Florian, 2022, pp. 370–371; Avram, 2022, pp. 445–448.
206 Art. 375, para. 2, CC.
207 Art. 919, para. 2, Code of Civil Procedure.
208 Avram, 2022, p. 237.

residence. Art. 324 of the CC stipulates that the best interests of underage children are the foremost criteria for awarding the right to continue to reside in the former matrimonial home, which may be either rented from a third party or jointly owned, to one of the spouses after the divorce. If this former matrimonial home is jointly owned, the right to the exclusive use of this property, which is granted to one of the spouses, lasts until the final division of communal property by judicial decision.[209]

2.2.5 Consideration of movable property in a child's sole ownership or use in property division disputes between former spouses or partners

Contemporary Romanian law, including the prior family law regulations of the post-war period, has always regarded the independence of the parents' and children's estates as a private law principle. The current Art. 500 of the Civil Code stipulates that a parent has no right upon the assets of a child and that a child has no right upon their parents' assets, with the sole exceptions of the (reciprocal) right to inheritance and the right to receive maintenance.[210] Bearing in mind this principle of estate separation between parents and children, movable property in the sole ownership of the child can play no part in property division disputes between parents, whether they are married or in a consensual life partnership.

On the other hand, movable assets that are not the property of the child but only in his or her use could be entangled in property division disputes between parents. Nevertheless, their fate will be decided with scant regard to their usefulness for the child because Art. 988 of the Code of Civil Procedure includes only the following criteria for asset division: the parties' agreement, share size, the nature of the assets, the parties' domicile and occupation, and prior improvements to the property. As both parents have a duty to provide for their children, the final outcome of a property division dispute should have no negative influence on the child as long as the relevant movable asset merely becomes the exclusive property of one, instead of both, parents.

2.2.6 Costs and expenses for the care and maintenance of a minor child in the property contracts of parents who have agreed on a total separation of property

Romanian family law recognises only three matrimonial property regimes, one of which is the separation of property between spouses. Even if this regime implies the least solidarity between spouses, with usually no common assets, the law still provides for some joint liabilities as an exception to the general rule encompassed in Art. 364, para. 1 of the Civil Code that neither of the spouses is liable for debts incurred by the other. Para. 2 of the same provision stipulates that spouses are jointly

209 Florian, 2022, p. 138.
210 Florian, 2022, pp. 551, 566.

liable for debts incurred by either of them in regard to 'usual matrimonial expenses' and 'expenses for child-rearing and education'.[211]

This chapter of the Civil Code lays out other provisions in the same vein regarding parental rights and duties. Art. 499, para. 1 of the Civil Code states that both parents are jointly liable for their child's maintenance, including his or her upkeep, education, learning, and professional training. Even parents who have lost the exercise of their parental rights as punishment for mistreating the child must still provide maintenance for said child (Art. 510 CC).[212]

2.3. Family law issues relating to the establishment of family status, with particular reference to the interests of the child

2.3.1. Legal facts giving rise to paternity status

2.3.1.1. Presumption of paternity based on marriage

Given that marriage as a legal construct in Romania has always implied a duty to be faithful to one's spouse[213], paternity is legally attributed to the mother's spouse. This marriage-based legal presumption of paternity is two-pronged: a child either born or conceived during marriage is presumed to be the offspring of the mother's husband (Art. 414, para. 1 CC).[214]

The presumption based on conception during marriage must be corroborated with another legal presumption regarding the timeframe of conception. Art. 412, para. 1 of the Civil Code states that a child is presumed to have been conceived between the 300th and 180th day before birth. The law allows for rebuttal or narrowing down the timeframe of conception only by means of scientific proof.[215] This prong of the legal presumption means that, no matter what happens to the mother's marriage after the timeframe when conception is possible, (e.g. divorce, annulment, or the husband's death), the child is considered to be the (former) husband's offspring.[216]

If the child is born during his or her mother's marriage, the mother's husband is presumed to be the father. This is the case even if the marriage is not valid (either void or voidable) because this lack of validity does not affect any children born[217] as the rights and duties between parents and children of an invalid marriage are similar to those in the case of divorce (Art. 305, para. 2 CC).[218]

211 Florian, 2022, p. 275; Avram, 2022, p. 763.
212 Florian, 2022, p. 562; Motica, 2021, p. 303.
213 Art. 309, para. 1, CC.
214 Florian, 2022, p. 413.
215 Art. 414, para. 2, CC.
216 Florian, 2022, pp. 412–414; Motica, 2021, pp. 200–201.
217 Art. 305, para. 1, CC.
218 Florian, 2022, pp. 92–93.

2.3.1.3. Presumption of paternity based on human reproduction

Issues regarding paternity in cases of medically-assisted reproduction with a third-party donor are regulated by Arts. 441–444 of the Civil Code. Art. 441 states that no legal filiation and no liability can be established with the third-party donor in cases of medically-assisted human reproduction with a third-party donor.[219] For this procedure, both intended parents, either married or unmarried (but who must be a man and a woman or a single woman) have to consent before a notary (Art. 442, para. 1, corroborated with Art. 441, para. 3 CC).[220] This consent has no legal meaning if one of the parties dies or if they separate or petition for divorce before the medically-assisted conception is carried out (Art. 442, para. 2 CC). The consent to this procedure can be unilaterally revoked, in written form, even in front of the physician tasked to carry out the procedure.[221]

Although there are no direct provisions in this section of the Civil Code regarding the presumption of paternity of the husband, there is a provision that the child's filiation cannot be challenged by anyone for reasons pertaining to the medically-assisted reproduction;[222] thus, it is inferred that regular presumptions of paternity may apply. The mother's husband could challenge the paternity in cases of medically-assisted reproduction only if he did not consent to the procedure,[223] whereas if conception had taken place outside the medically-assisted procedure, the regular provisions regarding paternity challenges would fully apply (Art. 443, para. 3 CC).[224]

If the man consenting to the reproductive procedure is the mother's consensual partner, paternity is established either by extrajudicial acknowledgement from the father or, if the male partner refuses after having previously consented to the procedure, by judicial establishment of paternity,[225] which in this case is based solely on consent, not on the biological facts of conception.[226]

2.3.1.5. Full acknowledgement of paternity

The specific acknowledgement of paternity in Romanian family law is necessary only for children both conceived and born outside of marriage or, for children either conceived and/or born during the mother's marriage, if their paternity had previously been successfully challenged by the mother's husband or former husband. These children are deemed to be 'children born out of wedlock' and, thus, their paternity can be extrajudicially acknowledged by any man by means of a formal declaration

219 Florian, 2022, p. 475.
220 Avram, 2022, p. 310.
221 Art. 442, para. 2, CC.
222 Art. 443, para. 1, CC.
223 Art. 443, para. 2, CC.
224 Florian, 2022, pp. 476–477.
225 Art. 444, CC.
226 Florian, 2022, pp. 478–480; Avram, 2022, p. 311.

either at the civil registrar's office, at a notary's office, or by a declaration contained in their last will and testament but that, exceptionally, has immediate effect (Art. 416, para. 1 CC).[227] Even a deceased child's paternity can be acknowledged, but only when the child had their own biological descendants, thus precluding false acknowledgements made with the sole purpose of inheriting the dead child's estate (Art. 415, para. 3 CC).[228]

As paternity is so easy to acknowledge outside a judicial process, the truthfulness of this acknowledgement can be challenged in court at any time and by any person with a personal interest in the matter.[229] If the parties bringing the challenge are either the mother or the acknowledged child, the usual burden of proof is reversed, and the respondent (the acknowledging father) must prove that his declaration is accurate (Art. 420, para. 2 CC).[230]

2.3.1.6. Judicial establishment of paternity

In Romanian law, the judicial establishment of paternity, in the wider sense, can arise either for children 'born out of wedlock'[231] (directly both born and conceived outside of marriage or with a prior successfully challenged presumption of paternity) or because the challenge to the presumption of paternity itself can lead to a judicial decision about paternity. The narrow meaning of the judicial establishment of paternity is reserved for children 'born out of wedlock' if their father does not voluntarily acknowledge their paternity by an extrajudicial formal declaration[232]. The plaintiff in paternity establishment cases is always the child, who can be represented either by their mother, even if she is a minor, or by any other legal representative, such as a legal guardian appointed by the court.[233] These suits can also be brought or continued by the child's heirs[234] or can be directed against the alleged father's heirs (Art. 425, para. 3 CC).[235]

During such paternity suits, if there is proof that the alleged father cohabited with the mother during the timeframe when conception is considered legally possible, the burden of proof will be reversed from the norm, and the defendant's paternity is presumed.[236] The alleged father can still rebut this presumption during the trial, but only by proving that it is impossible for him to be the father (Art. 426, para. 2).[237]

227 Florian, 2022, pp. 442–446; Avram, 2022, p. 297.
228 Avram, 2022, p. 297.
229 Art. 420, para. 1, CC.
230 Florian, 2022, pp. 448–449.
231 Avram, 2022, p. 298.
232 Art. 424, CC.
233 Art. 425, para. 1, CC.
234 Art. 425, para. 2, CC.
235 Florian, 2022, pp. 451–453.
236 Art. 426, para. 1, CC.
237 Florian, 2022, pp. 454–455.

There is no statute of limitations for the judicial establishment of paternity during the life of the child[238], and only the child's heirs, if he or she died before bringing the suit, have 1 year after the child's death to bring the suit in his or her name[239].

Paternity trials can also arise when the presumption of paternity in favour of the mother's husband or former husband is challenged. The law restricts the ability to bring paternity challenges to the mother, the child, the mother's husband, or the alleged biological father[240]. The defendant in a paternity challenge legal suit is the child or his or her heirs if the alleged father is the plaintiff; the husband or his heirs if the mother or the child are plaintiffs; and the child and the husband or their heirs if the alleged biological father is the plaintiff[241]. The alleged biological father can only challenge the paternity of the mother's husband or former husband if the plaintiff necessarily proves that he is the true father (Art. 432, para. 1 CC).[242] The statute of limitations for paternity challenges is 3 years for the husband and the mother, whereas there is no statute of limitations for the child or the biological father during their lifetimes.[243]

2.3.2. Conflict in presumptions of paternity

The two legal presumptions of paternity regarding the mother's husband at birth or the mother's former husband at the time of conception could collide if the woman giving birth was married for at least 1 day between the 300th and the 180th day before birth and then remarries with a different husband just before the child's birth.[244] Current law does not specifically provide a ranking of paternity presumptions.[245] However, the anti-chronological way in which Art. 414, para. 1 of the Civil Code is written ('The child *born or conceived* during marriage has the mother's husband as a father') and the tradition of the clearer provision in Art. 53 of the former Family Code of 1953 has led some authors[246] to speculate that the presumption of the paternity of the mother's husband at birth is prevalent and more plausible than the presumption concerning the former husband at the time of conception. Other authors have argued that there is simply no legal preference for any of the current paternity presumptions and that such conflicts can (improperly) be resolved only later by judicial challenges.[247]

238 Art. 427, para. 1, CC.
239 Art. 427, para. 2, CC.
240 Art. 429, para. 1, CC.
241 Art. 429, CC.
242 Florian, 2022, pp. 417–433.
243 Arts. 430–433, CC.
244 Florian, 2022, pp. 414–415.
245 Florian, 2022, pp. 415–416; Avram, 2022, pp. 281–283.
246 Lupașcu and Crăciunescu, 2017, p. 404.
247 Florian, 2022, pp. 415–416; Avram, 2022, pp. 282–283.

2.3.3. Maternity status

Maternal filiation is the result of birth itself but can also be established by acknowledgement or judicial decision.[248] The acknowledgement of maternity is available only for children whose birth has never been registered in the official birth registry or who have been registered as having unknown parents (Art. 415, para. 1 CC).[249] Judicial establishment of maternity is permitted only when there is no medical certificate for the birth or when the truthfulness of the contents of the medical certificate of a live birth is challenged (Art. 422 CC).[250]

In Romanian family law, there is also a so-called '*status by habit or repute*'[251], which is basically a set of factual circumstances that demonstrate family connections between a child and the family to whom he or she purportedly belongs. These include the behaviour of the person toward the child by raising and educating him or her as their own and the reciprocating behaviour of the child toward that person (*tractatus*); the recognition of the child by the family, society at large, and public authorities as 'belonging' to the person considered to be the parent (*fama*); and the child effectively using the name of the person considered to be the parent (*nomen*). The value of this status is that, when it is compliant with the birth registration at the civil registrar's office, it is an almost absolute proof of maternal filiation.[252] Coupled with the birth registration, this status can only be challenged in regard to motherhood if there is a prior judicial decision that there had been a substitution of children or that the registered mother was not the woman who gave birth (Art. 411, para. 3 CC).[253]

The extrajudicial acknowledgement of maternity can be carried out by means of a formal declaration either at the civil registrar's office, at a notary's office, or by a declaration contained in their last will and testament but with an immediate effect.[254]

Maternity suits are also brought about when the maternity resulting from the birth registry is challenged because either the status by habit and repute is not consistent with the status resulting from the birth certificate or when a person only has the birth certificate but not the factual status. Any interested party, including the child, any parent, the person claiming to be the mother or the father of the child, and the heirs of any of these persons can challenge the maternity in these situations, and their claim is not subject to the statute of limitations (Art. 421, para. 1 CC).[255]

248 Art. 408, para. 1, CC.
249 Avram, 2022, p. 263.
250 Florian, 2022, pp. 392–403.
251 Art. 410, CC.
252 Art. 411, para. 2, CC.
253 Florian, 2022, pp. 394–395; Avram, 2022, p. 268.
254 Art. 416, para. 1, CC.
255 Florian, 2022, p. 395.

2.3.4. Adoption

2.3.4.1. Substantive law conditions of adoption

Adoption in Romanian law is usually reserved for children who have not reached full legal capacity.[256] The adoption of persons with full legal capacity is allowed only when they have been previously raised by the adoptive parents during childhood (Art. 455, para. 2 CC).[257] As a condition of adoption, legal doctrine has added that the adopted child must be lacking, temporarily or permanently, the protection of his or her biological parents, or for it to be in the child's best interests not to be left in their care. Although there is no special legal provision in this regard, the right of the child 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.[258]

The adoption process involves the consent of the biological parents or the child's legal guardian of an adopted child who is at least 10 years old, of the single adopter or the adoptive couple, and of the spouse of the adopter who is not involved the adoption process (Art. 463 CC).[259] Adoptive parents can only be single persons or married couples who have full legal capacity and no psychiatric illnesses or mental disabilities[260]. They must be at least 18 years older than their prospective adoptees, although, for well-grounded reasons, the guardianship court can allow adoptions to proceed when the age gap is at least 16 years[261] between adoptive parents and adopted children. Romanian law does not have a maximum age for adoptive parents.[262]

In order to adopt, prospective adopters must show both moral and material guarantees for raising, educating, and ensuring the development of the adopted child. These prior conditions are verified and certified by state authorities (Art. 461 CC, Art. 13 L. 273/2004).[263]

Simultaneous or successive adoptions by two different persons are usually not allowed, with married couples[264] and stable consensual heterosexual couples who have raised the adopted child together for at least 5 years[265] being the only exceptions. Successive adoptions are also allowed when the previous adoption ceased for any reason or when the previous adoptive parents have died, and a new adoption is authorised.[266] Two persons of the same sex cannot both adopt the same child

256 Art. 455, para. 1, CC.
257 Florian, 2022, pp. 492–494.
258 Florian, 2022, pp. 494–495.
259 Florian, 2022, pp. 496–498; Avram, 2022, pp. 332–336.
260 Art. 459, CC.
261 Art. 460, CC.
262 Florian, 2022, pp. 502–503, 508.
263 Florian, 2022, pp. 503–504; Avram, 2022, pp. 337–338.
264 Art. 462, para. 1, CC.
265 Art. 6, para. 2c, Law No. 273/2004 on adoption procedure.
266 Art. 462, para. 2, CC.

together,[267] nor can they adopt the biological or previously adopted child of another same-sex parent (Art. 6, para. 2c L. 273/2004).[268]

Brothers and sisters cannot adopt one another under any circumstances (Art. 457 CC);[269] however, when they are the adoptees, they must be adopted together, except in cases when this is not in their best interests.[270]

Romanian law also forbids the adoption of spouses or former spouses together by the same adoptive parent, as well as adoption between spouses or former spouses when one current or former spouse would become the adoptive parent of the other (Art. 458 CC).[271]

2.3.4.2. Types of adoption

Since 1997, adoptions in Romania have exclusively been full-effect adoptions, where biological family links are fully extinguished (with the sole exception of the adoption of the other spouse's biological child, when links to one side of the family endure) and the child becomes related to the adopters' entire family in a similar manner to a biological child. However, from a procedural standpoint, there are different types of adoption: standard adoptions and simplified adoptions, as well as internal and international adoptions.

The standard adoption process involves three judicial stages: authorising the opening of the adoption procedure, granting provisional custody of the adoptee, and final authorisation of the adoption. These stages are intermingled with three administrative stages: drafting the child's individual protection plan, evaluating the general suitability of the prospective adoptive parents, and matching the adoptee with a prospective adoptive family after the procedure is opened.[272] Simplified adoptions involve just the final judicial stage but are reserved only for the adoption of a fully capable person by the person or couple that raised him or her during childhood, for the adoption of the other spouse's biological child, and for the adoption of the other spouse's or long-term, different-sex, consensual partner's previously adopted child.[273]

2.3.4.3 The legal effects of adoption

Adoption in Romania is effective only after the judicial decision authorising the adoption is final.[274] The main effect of adoption is to create familial connections between the adoptee, the adopters, and the adopters' families, while at the same time

267 Art. 462, para. 3, CC.
268 Florian, 2022, pp. 508–509.
269 Florian, 2022, p. 507.
270 Art. 456, CC.
271 Florian, 2022, pp. 507–508.
272 Avram, 2022, p. 348.
273 Florian, 2022, pp. 510–518.
274 Art. 469, CC.

extinguishing the family relations between the adoptee and his or her descendants, on one side, and the biological parents and their relatives on the other.[275] This extinction is partial if the biological or adoptive child of one spouse is adopted by the other spouse, in which case, only the familial connections between the adoptee and one biological parent and their side of the family cease to exist.[276]

An adopter has the same rights and duties toward an adopted child as a biological parent toward their child.[277] Adoptees also have the same rights and duties toward their adoptive parents as any child in regard to his or her biological parents (Art. 471, par. 3 CC).[278] These rights include the reciprocal right to inherit after the other person's death and the reciprocal duty to provide maintenance for the relative in need if they have the means and there are no other priority providers.[279]

Adoption has a consequence for the adoptee's surname because they receive, by default, either the adopter's surname or the adoptive couple's common surname. If the adoptive couple has no common surname, they must decide which of their distinctive surnames will be used for the child.[280] Only for well-grounded reasons, and solely by special request from the adopter or the adoptive couple, can the adoption court authorise a change in the child's given name. If the child is at least 10 years old, his or her consent is needed for any changes to his or her given name (Art. 473, para. 3 CC).[281]

After an adoption is final, the adoptee receives a new birth registration at the civil registrar, where the adoptive parents are written in as biological parents, while preserving the old birth registration with a side note about the issuance of the new one (Art. 473, para. 5 CC).[282]

2.3.4.4. Rights of the birth parent and birth grandparents

Birth parents have legal rights only during the adoption process: their consent is required at the first stage, when the court authorises the beginning of the process (Art. 463, para. 1a CC). Their consent must be freely given, but only after having received counselling about the effects of adoption, especially regarding the end of any familial relations with the child (Art. 465 CC). The biological parents' consent to adoption can be given at least 60 days after the child's birth and can be freely revoked for a maximum of 30 days after it was given (Art. 466 CC). The adoption court can ignore the biological parents' refusal to consent to adoption only in exceptional circumstances when there is proof that their refusal is made in bad faith

275 Art. 470, CC.
276 Florian, 2022, pp. 525–526; Avram, 2022, pp. 361–362.
277 Art. 471, para. 1, CC.
278 Avram, 2022, p. 362.
279 Avram, 2022, pp. 526–527.
280 Art. 473, paras. 1 and 2, CC.
281 Florian, 2022, pp. 528–529; Avram, 2022, p. 362.
282 Florian, 2022, p. 529; Avram, 2022, p. 362.

and without valid reason, but only if the adoption is in the best interests of the child (Art. 467 CC).

Birth grandparents have no specific rights during the adoption process, and all their grandparents' rights cease to exist when the adoption is final. Both the parents and other biological relatives have the right to obtain general information about the adoptee, confirmation about the adoption, the year when it was finalised, whether it was an international or domestic adoption, and whether the adoptee is known by the authorities to be alive or deceased. Any other information can be provided to the biological family only with the consent of the fully capable adoptee or with the consent of the adopters for an underage adoptee (Art. 80 L. 273/2004).[283]

2.3.5.2. Rights of future grandparents

The future grandparents of an adopted child become related to this child after the adoption is finalised. These familial connections imply the reciprocal rights to inherit and to maintenance. In a similar manner to other relatives or unrelated people who have previously factually enjoyed some sort of family life with the adoptive child, grandparents have the right to maintain personal relations with this child. These rights can be terminated only by court decision if there are well-grounded reasons relating to the endangerment of the physical, psychological, intellectual, and moral development of the child (Art. 17, para. 3 L. 272/2004).

Children who are at least 14 years of age must be asked to consent to the programme of maintaining personal relations with these other persons with whom they have previously had a family life. However, the court can overrule the minor's rejection and still order a schedule for personal connections with these people (Art. 17, para. 6 L. 272/2004).[284]

2.3.4.6. The adopted child's right to know his or her parentage

The legal principle stated by Art. 474 of the Civil Code establishes that all the information regarding an adoption is confidential. Law no. 273/2004 on the adoption procedure specifically allows adoptees to know their origins and past and to receive support for contacting their biological parents and relatives (Art. 75 L. 273/2004). The same law states that adoptees who are fully legally capable have the right to obtain information about their place of birth, institutional trajectory, and personal history, without divulging the identity of their birth parents and biological relatives (Art. 76 L. 273/2004). Only once they become fully capable adults do adoptees need specific court authorisation to obtain the available data from the public authorities about the identity of their biological parents and relatives (Art. 77, para. 1), although this access is conditional on attending at least one

283 Florian, 2022, p. 531.
284 Avram, 2022, p. 477.

counselling session and proving that they are emotionally stable (Art. 77, para. 2 L. 273/2004).[285]

Adopters have a duty to gradually inform a child that he or she is adopted, starting as early as possible (Art. 81, para. 1 L. 273/2004). The identity of the biological parents can be revealed prior to full legal capacity only for medical reasons (Art. 81, para. 2 L. 273/2004). Adoptees who already have information about the identity of their biological parents can ask the National Adoption Authority to facilitate contact with their biological parents and relatives (Art. 81, para. 3 L. 273/2004).[286] All the relevant information about the adoption, the child's origin, the biological parents' identity, and the child and his or her family's medical history must be kept for at least 50 years after the judicial decision to authorise the adoption is final (Art. 83 L. 273/2004).[287]

2.3.4.7. Place and role of (social) organisations promoting adoptions

Romanian law authorises private organisations to have a role in the adoption process (Government Ordinance no. 233/2012). These private entities can be any type of not-for-profit organisations, but they must be authorised for 2-year terms by the National Authority for the Protection of the Rights of the Child and Adoption. To exercise their authorised activities, these non-governmental organisations (NGOs) have to work together with the county-level General Directorates for Social Assistance and Child Protection. These private entities can work either for the benefit of the children who were or are about to be adopted, for the adopters, biological parents and the extended family, or the local community at large (Art. 16 G.D. no. 233/2012).

In relation to children who have been or are about to be adopted, these private organisations can provide information and counselling about the adoption process and the child's right to express their consent or opinions about the adoption, facilitate the child's familiarisation with the adoptive family, help children cope with the failure to find suitable adoptive families or the ceasing of an adoption for any reason, and collate informative materials for children about adoption and its effects (Art. 17 G.D. no. 233/2012).

Adoption NGOs can also help adoptive parents by informing them about the paperwork, process, and duration of adoption; preparing them to knowingly assume their parental roles; informing and counselling them about the legal requirements to reveal the identity of the adopted child's biological parents and allow the child to contact his or her biological parents and relatives; and assisting them with the post-adoption follow-up activities required by law. These NGOs can also evaluate adopters or the adoptive family in order to receive the adopter certification (Art. 18 G.D. no. 233/2012).

285 Florian, 2022, pp. 528–529; Avram, 2022, p. 363.
286 Florian, 2022, p. 530; Avram, 2022, p. 364.
287 Florian, 2022, p. 531.

In relation to the biological parents and extended family of an adopted child, private social organisations can provide specialised assistance if the adoption ceases, as well as counselling and preparing the biological parents and other biological relatives to come into contact with the adopted child (Art. 19 G.D. no. 233/2012).

Private social organisations that specialise in adoption can also be an invaluable resource for the community at large, raising awareness and promoting the domestic adoption process and the issues and needs of the parties involved in adoptions, thus helping to increase the number of successful national adoptions. These NGOs can organise meetings, conferences, workshops, media campaigns, printed materials, and any other services to promote national adoptions (Art. 20 G.D. no. 233/2012).

2.3.4.8. Follow-up of adoptions

Regular-type domestic adoptions are monitored for at least 2 years after the judicial decision to authorise the adoption is final. This monitoring aims to follow up on the evolution of the adopted children and their relationships with the adoptive parents in order to fully integrate adoptees in their new families and ensure the early detection of difficulties that might arise. Post-adoption monitoring is not carried out for adoptions by spouses of the biological or adoptive parent or for adoptions by a previous legal guardian, extended family, or former foster parents of at least 2 years (Art. 95 L. 273/2004).[288]

For national adoptions, follow-up is carried out with reports prepared every 3 months by the county-level General Directorates for Social Assistance and Child Protection for at least 2 years. Adopters have a duty to cooperate with the authorities in the creation of these reports and inform them about any change of domicile or structural changes within the family (Art. 96 L. 273/2004). For international adoptions or when children from a national adoption move abroad with their families, post-adoption surveillance is carried out, upon the request of the National Authority on Adoptions, by the authorised foreign social services in the new country of residence (Arts. 97–98 L. 273/2004). Adoption follow-up also involves support activities and specialised assistance for the needs of the adoptee and the adopters, such as providing information, counselling, and training for developing parental abilities; organising support groups for children and parents; supporting parents in informing the child about their adoption; counselling the adoptee in regard to learning the identity of their biological parents and relatives; and counselling and preparing the adoptee and his or her biological parents and relatives prior to meeting (Art. 99 L. 273/2004). The duration of the follow-up monitoring can be extended if the adopters do not attend the support activities or if they do not inform the adoptee about being adopted (Art. 100 L. 273/2004).[289]

288 Florian, 2022, p. 518.
289 Florian, 2022, pp. 518–519; Avram, 2022, pp. 388–389.

2.4. Maintenance of a relative

2.4.1. General conditions for the maintenance of a relative

Family legal maintenance in Romanian law exists between spouses and former spouses, direct blood relations, siblings, and other people specifically required by law (Art. 516 CC). These other persons include stepparents who have previously voluntarily paid for the maintenance of a minor if his or her biological or adoptive parents are deceased, missing, or themselves in need (Art. 517, para. 1 CC); a child who received maintenance from a stepparent for at least 10 years (Art. 517, para. 2 CC); the heirs of a person who has, either voluntarily or by legal duty, paid maintenance for a minor if the parents are deceased, missing, or themselves in need (Art. 518, para. 1 CC); and a person who has taken in a foundling until a more permanent protection measure is established (Art. 16, para. 2 L. 272/2004).[290] Romanian law allows for maintenance from relatives or spouses for people who are considered 'in need' because they cannot support themselves through their work or assets (Art. 524 CC).[291]

In order for a person to be compelled to pay maintenance, they must have the means to provide for another or at least have the capacity to obtain those means (Art. 527, para. 1 CC). Relevant means are incomes and assets, as well as the debtor's potential to obtain income and assets (Art. 527, para. 2 CC).[292] Another implicit requirement is that that there should not be another relative with a higher priority duty to pay maintenance for the same creditor.

2.4.2. Different interpretations of 'dependency' for minors and adults

For adults, 'dependency' or a 'state of need' refers to the person's inability to obtain, by his or her own means, the necessities for daily living such as food, clothing, dwelling, and healthcare. Adults in need are those that have no work income or rent from assets and no disposable assets that can be sold. Current law does not establish a causal connection between dependency and the inability to work. Dependency does not have to be total, and people receiving invalidity or old age pensions can still claim maintenance if these social benefits are insufficient. Adult dependency is still most often the result of the inability to work caused by illness, infirmity, or old age, but the receipt of legal maintenance is also correlated to the creditor's lack of marketable assets.[293]

Underage children receiving maintenance from their parents are considered legally 'dependent' if they cannot support themselves through their work income, without regard to their assets (Art. 525, para. 1 CC). Selling the child's assets in order

290 Florian, 2022, pp. 600–601; Irimia, 2021, in Baias et al. (eds.), pp. 692–694.
291 Irimia, 2021, pp. 698–699.
292 Irimia, 2021, pp. 702–703.
293 Florian, 2022, pp. 604–605; Avram, 2022, pp. 519–521.

to provide for his or her upkeep is permitted only in exceptional circumstances, for non-essential assets and with prior authorisation from the guardianship court, if the parents cannot provide for the child's maintenance without endangering their own existence (Art. 525, para. 2 CC).[294]

Adult children can receive maintenance from their parents for the duration of their studies, be they university, secondary, or any other post-secondary education, but only up to the age of 26 years (Art. 499, para. 3 CC). The implied requirement is that these adult children do not have the necessary means, either income or assets, to support themselves and cannot obtain them by themselves. Working adult children will receive no maintenance payments from their parents even if they are still studying, and adult children receiving full support from their educational establishment (such as boarding, meals, clothes, and scholarships from a military academy) will receive only partial payments from their parents for their unfulfilled needs. Adult children still living with their parents and who are provided with maintenance in kind are not entitled to monetary payments.[295]

In regard to adults, or children requiring maintenance from other relatives or people other than their parents, dependency is a function of both income and assets, with special consideration given to the adult's capacity to work for a living (Art. 524 CC). Both dependency and the means of the debtor can be proved by any means allowed by law (Art. 528 CC).[296]

2.4.3. Different interpretations of 'lack of merit' for minors and adult children

All individuals who fulfil the basic legal requirements to receive maintenance from their relatives, spouses, or other persons can have their demands rejected for 'unworthiness'. Unworthiness to receive maintenance can arise from serious deeds committed against the debtor, which are either against the law or in conflict with good morals (Art. 526, para. 1 CC). Even minors can lose the right to maintenance, but only if they have the mental capacity to be aware of the grievous nature of their deeds. Romanian judicial practice has decided that underage children who refuse to visit their maintenance-paying parent do not lose their maintenance if their tender age, mental capacity, and potential to be swayed by other people preclude the deliberate nature of their deeds. Qualifying grievous deeds would include criminal acts against their debtor, cruelty, or serious defamation or insults.[297]

Adult children are more likely to be disqualified from receiving maintenance if their deeds against their parents are objectively serious, even if they comprise only negligence and not malicious intent.[298] The refusal of an adult child to have personal

294 Florian, 2022, pp. 605–606, 625–626.
295 Florian, 2022, pp. 606, 629–631.
296 Florian, 2022, p. 606.
297 Florian, 2022, pp. 617–618; Avram, 2022, p. 521.
298 Florian, 2022, p. 618.

relations with the parent paying maintenance has not been considered in judicial practice to qualify as grounds for denying maintenance.[299]

A separate tier of limited maintenance, which only covers subsistence, is reserved for those who are in need as a result of their own negligence (Art. 526, para. 2 CC). In this situation, the debtor's right to receive maintenance payments is not completely lost but only severely limited.[300]

2.4.4. Different interpretations of the 'capacity of the parent' as a condition in proceedings to establish the maintenance of a minor or adult child

When the debtor is considered a parent with regard to paying maintenance for a minor or an adult child, their capacity to pay is valued the same way as for other maintenance situations, taking into account both the actual material means and the potential means of the debtor (Art. 527, para. 1 CC). Relevant means include both income and assets, actual and potential. The debtor's other obligations are also taken into consideration (Art. 527, para. 2 CC).[301]

The case law in relation to maintenance has ruled that the income of the debtor refers to work income (salary), other regular wages, pensions, unemployment benefits, and any regular work-related bonuses, but does not include occasional bonuses related to travel, transfer, or difficult work conditions. Some special incomes cannot be legally garnished and are, thus, excluded as means to pay maintenance, including state childcare allowances, maternity allowances, and scholarships. The debtor's means include any assets that are not strictly necessary and can be sold. For those debtors who are capable of working but have no proven work income, their potential income is presumed to be the minimum wage in the country of habitual residence, be it Romania or abroad. The debtor's means do not include his or her spouse's or other relative's incomes.[302] Those parents who lack the means to pay maintenance and have well-grounded reasons not to work, such as a serious illness or full-time studies, cannot be compelled to pay maintenance.[303]

2.4.5. Factors determining the amount of maintenance owed by parents

One of the biggest factors that influence the amount of maintenance payments for children in Romania is the legal limit specified by law for parents paying for their children. This limit is one-quarter of the parent's monthly income, after taxes, for one child; one-third for two children; and one-half for three or more children (Art. 529, para. 2 CC). Maintenance owed by a single person to their own children and any

299 Avram, 2022, p. 522
300 Florian, 2022, p. 617.
301 Avram, 2022, p. 523.
302 Florian, 2022, pp. 606–608; Avram, 2022, pp. 523–525.
303 Florian, 2022, pp. 609–610; Avram, 2022, pp. 524–525.

other entitled persons cannot surpass one-half of their monthly income after taxes (Art. 529, para. 3 CC).[304]

The broad legal criteria for determining the amount of maintenance, in all situations, are both the needs of the creditor and the means of the debtor (Art. 529, para. 1 CC). Maintenance can be either a fixed sum or a percentage of the debtor's income (Art. 530, para. 3 CC). Fixed-sum payments are adjusted every 3 months according to inflation (Art. 531, para. 2 CC). Payments are decided either by the parents' agreement or by court decision. If the court decides the maintenance payments, they are normally owed from the date of filing the court petition (Art. 532, para. 1 CC). Creditors can receive retroactive payments prior to filing the court petition, only if they prove that deceit by the debtor convinced them to delay filing for maintenance (Art. 532, para. 2 CC).[305]

Judicial practice usually decides maintenance payments for children at the maximum legal level for all low- and middle-income debtors. In 2023, the monthly minim wage in Romania, after taxes, was approximately 380 Euros, and the average after-tax salary was around 800 Euros. This totals, for a single child, a monthly maintenance payment of 95 Euros for a minimum-wage parent and 200 Euros for a middle-income parent, both of which are clearly insufficient when adjusted to the normal cost of living. Romanian case law frequently disregards the debtor's other obligations, such as credit card or bank loan payments, with the sole exception of other maintenance payments, when deciding the child's maintenance. Only for high-income debtors is there a certain regard to their other obligations if they can still provide a decent childcare monthly payment of at least 400–600 Euros without using the maximum ratio allowed by law.

Although, in theory, all the means available to the creditor are relevant in deciding the debtor's obligations, the modest amount of childcare tax credits, social benefits, and state child allowance (usually less than 60 Euros per month after 2 years of age for the latter) make them frequently irrelevant in judicial practice when compared to the cost-of-living expenses in the country.

2.4.6. Recovery of maintenance

Maintenance can be recovered if it is proven that previously paid maintenance, whether it was voluntarily paid or judicially enforced, was not actually owed for any reason. Recovery can be demanded from the individual who received it, as well as the person who had the actual duty to pay on the basis of unjust enrichment (Art. 534 CC).[306] These types of cases fall into two broad categories: when the creditor is later found not to be legally entitled to receive maintenance from any person (an 'undeserved' payment) or when the creditor has received payment from the wrong

304 Florian, 2022, pp. 612, 626; Avram, 2022, pp. 525–526.
305 Florian, 2022, pp. 612–613, 626–628.
306 Florian, 2022, p. 619; Irimia, 2021, pp. 707–708; Avram, 2022, p. 528.

debtor, usually because there was another person with a higher priority duty to pay. Recovery is not owed when maintenance was paid as a gift, without considering it a legal obligation.[307]

Cases of maintenance recovery are extremely rare in judicial practice, one of the reasons being that the person who must pay back the maintenance is usually an underage child who is practically insolvent and, therefore, lacks the financial means to make restitution.

As maintenance is also owed according to the debtor's material status, when it has been wrongly paid for another person of lesser means, restitution would only be to the amount that the 'true' debtor would have been compelled to pay, according to his or her unjust enrichment. This means that a person of higher means will only partially recover what they have paid.[308]

2.4.7. Maintenance and grandparents

In regard to maintenance between grandparents and grandchildren, the obligation is reciprocal in Romanian law because they are direct-line descendants and ascendants (Art. 516, para. 1 CC). Grandchildren can seek maintenance from their grandparents if the creditors have no spouses or their own descendants who can pay, but only if their parents and siblings are also non-existent or unable to pay for their maintenance (Arts. 519, 522 CC). Grandparents, in contrast, can demand maintenance from their own grandchildren only if their spouse or children cannot provide it.[309]

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3. Importance of assisted reproductive technologies in solving demographic problems in Romania

3.1. The rapid increase in the number of infertile couples in Romania – facts and trends

Infertility statistics in Romania have been collected in two sampling/polling studies, which were carried out in 2018 and 2023 by the Romanian Association for Human Reproduction. The 2018 poll was conducted online with 4,680 respondents. Among them, 3,331 were considered the fertile demographic contingent, including women between 25 and 45 years of age and men between 25 and 60 years of age who were in relationships with partners in the appropriate age range. Of these,

307 Irimia, 2021, p. 708.
308 Ibid.
309 Florian, 2022, pp. 600–602; Irimia, 2021, p. 692; Avram, 2022, p. 516.

16.8% were affected by infertility, either at the time of the survey or previously. Taking into account only those who wanted children as soon as possible (29.1%), the percentage of couples who had failed to have a child despite trying for 1–5 years was 27%, and a further 11% had been trying for a child for more than 5 years. [310]

The 2023 follow-up study on infertility in the urban environment reached similar conclusions. Among the respondents, 18% of pregnancies between 2018 and 2023 were the result of some form of fertility treatment. Further, 17.1% of the responding couples either were still or had been in an infertility situation. Only 21% of the interviewed couples wanted a child as soon as possible. Of these, 40% had been trying unsuccessfully for children for 1–5 years, and 10% had been trying for more than 5 years. Between January and February 2023, 23% of extant pregnancies were the result of fertility treatments. From 2018 to 2023, there were about 102,000 successful fertility treatments.[311]

3.2. Causes of infertility

Infertility is caused by factors affecting both women and men. For women, the most common medical issues causing infertility are vaginal infections, endometriosis, obstructed or surgically removed tubes, lack of ovulation, a high level of prolactin, polycystic ovaries, uterine fibrosis, side effects of medication, and thyroid issues. For men, the medical issues relate to a lack of sperm cells, a reduced number of sperm cells, reduced mobility or structurally deficient sperm cells, and genetic disease. Other issues affecting fertility are related to lifestyle, such as nutrition, stress, radiation exposure, or exposure to toxic factors.[312] For women below 35 years of age, infertility is medically defined as not having conceived after 1 year of vaginal sexual activity without contraception.[313]

3.3. Treatment of infertility

In Romania, assisted reproductive procedures (ARPs) are disparately regulated mainly by the Civil Code of 2009, the Law on Healthcare Reform no. 95/2006, the Law on the Rights of the Patient no. 46/2003, and lower-level regulations such as the Health Minister's Order on Therapeutical Transplants no. 1763/2007 and the Health Minister's Order No. 377/2017 on the Implementation of National Public Health Programmes.

As ARPs are not extensively regulated in the primary legislation (which comprises laws enacted by the parliament and governmental ordinances) or in secondary

310 Asociația pentru reproducere umană din România (2018), *Primul studiu de analiză a problemelor de infertilitate din România*, Bucharest, self-published.
311 Neagu, 2023.
312 Iordăchescu, 2020, p. 169.
313 Vlădăreanu and Onofriescu, 2019, p. 8.

legislation (such as ministerial orders), we could not identify any bans on specific ARP techniques. We can, thus, conclude that both intracytoplasmic sperm injection and *in vitro* fertilisation (IVF) are allowed. Most restrictions pertaining to ARPs are the general ones included in the new Civil Code of 2009, which came into force on 1 October 2011. The Civil Code has a special section on the rights to life, health, and physical integrity of natural persons.[314] These provisions ban eugenics, cloning, genetic interventions without a curative purpose, and using ARPs for the purposes of choosing the sex of a child, with the sole exception of preventative action for a sex-related genetic disease.

The Civil Code of 2009 includes a seven-article section on ARPs with a third-party donor. These general provisions were supposed to be followed by a new, special, and detailed law on medically-assisted reproductive procedures with a third-party donor; however, 11 years have now passed to no avail.[315] Although there have been at least two attempts since 2011 to regulate this area in more detail, all the proposed law projects have been rejected, even if they were initiated by the government or as a cross-party private members' bill. Following the new Civil Code, the first project to be promoted originated from the government in 2012 (PL-x no. 63/2012). This project was finally rejected by the lower House of Parliament in 2016 because the draft was considered poorly written from a technical viewpoint, with the rejection report of the Parliamentary Commission drawing from the objections of the Legislative Council. This project was considered too vague and to not offer practical solutions to a delicate and important societal issue. A later project, the cross-party private members' bill PL-x no. 462/2013 (finally rejected in 2022) was also rejected by the lower House of Parliament with similar reasoning (i.e. for being too vague, elliptically written, not offering practical solutions to a delicate social problem, and lacking resources for the stipulated expenses).

The general provisions of Art. 441, para. 3 of the Civil Code specifically determine that both heterosexual couples and single women have access to medically-assisted reproduction with a third-party donor. The law does not distinguish between a male or female third-party donor, so it can be broadly construed to include both types, as well as simultaneous donations of both sperm and oocytes for the same receiving couple or single woman.[316]

In regard to other reproductive techniques, we could identify only secondary legislation concerning transplants (such as the Health Minister's Order No. 1763/2007) that tangentially references access to these procedures. This secondary legislation only mentions different-sex couples in a (declared) intimate relationship as having access to reproductive cell 'transplants' between partners.

Romanian legislation is very traditional and restrictive in regard to civil partnerships or same-sex marriages. The Civil Code only recognises the 'traditional'

314 Diaconescu and Vasilescu, 2022, pp. 303–307.
315 Florian, 2022, p. 468; Avram, 2022, p. 309.
316 Motica, 2021, p. 224.

marriage between a man and a woman and, in Art. 277, specifically bans the recognition in Romania of any effects of a foreign civil partnership of any kind or a foreign same-sex marriage, with the exception of the freedom of movement provisions that derive from EU law.

There are no specific legal limitations on access to ARPs, only the broad Civil Code restrictions on eugenics (Art. 62) and genetic alteration (Art. 63), and the general transplant regulation and general patient consent requirements.

Publicly funded IVF with embryo transfer has been subject to a national public health subprogramme since 2011,[317] with extended funding from 2022. This procedure is restricted to infertile heterosexual couples, defined as couples who have been diagnosed by a certified specialist medical doctor with an affliction incompatible with natural reproduction or who have been unable to reproduce after 1 year of unprotected sexual relations. No third-party donations are allowed for sperm or oocytes, and surrogacy is excluded in what is perhaps the only specific mention of this procedure in Romanian domestic law.[318] To receive public funding for IVF, both partners must have public health insurance, the woman must be between 24 and 40 years of age, have a body mass index of between 20 and 25, and have an ovarian reserve determined to be within the normal limits.[319]

For the purposes of ARPs with third-party donations, Art. 441, para. 3 of the Civil Code defines 'parents' as either a couple or a single woman. This provision is not restricted to married couples but specifically refers to 'heterosexual' couples (a man and a woman).[320] The legal doctrine debates whether a 'single woman' refers only to women who do not have a partner whatsoever or if this definition also includes women whose partner has not consented to the medical procedure. Further provisions that allow the husband to deny paternal filiation if he did not previously agree to the medically-assisted reproduction with a third-party donor tend to suggest that this procedure is also available for women who are not technically 'single' but whose partner does not wish to agree to such procedures.[321]

3.4. Paternity and maternity resulting from legal human reproductive procedures

The gamete 'donor' can only be the parent of a child conceived through ARPs if there is a reproductive cell 'transplant' between partners, which can be construed as the *in vitro* fertilisation. Third-party gamete donations, either male or female, do not give rise to legal parenthood because maternal filiation depends solely on giving birth to the child, in a similar manner to 'natural' motherhood.[322] The 'fatherhood'

317 Brodeala, 2016, p. 64.
318 Brodeala, 2016, pp. 64–65; Florian, 2022, p. 473.
319 Florian, 2022, p. 473.
320 Motica, 2021, p. 224.
321 Florian, 2022, pp. 474–475; Avram, 2022, pp. 310–311.
322 Florian, 2022, p. 475.

of the third-party donor (the 'genetic' father) is specifically excluded by Art. 441, para. 1 of the Civil Code, which states in broad terms that medically-assisted reproduction with a third-party donor does give rise to filiation between the child and the donor.

There are no special presumptions of parenthood for ARPs: the mother is the person giving birth, and the father is presumed to be the mother's husband at the time of birth,[323] the former husband at the time of conception, or the 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 the case of medically-assisted reproduction with a third-party donor is the consent given by the mother's husband or consensual partner to undergo the procedure. Paternal filiation can be contested only when there is a lack of previous consent from the father or if the pregnancy did not arise from the medically-assisted procedure.[324] A consensual partner who gave his consent to this procedure is liable to recognise paternal filiation after birth[325] if there is no intervening marriage between parents.

3.5. Regulation of surrogacy in Romania

In Romania, surrogacy is not expressly forbidden nor is it specifically allowed or regulated. The provisions stating that the mother is the woman who gives birth (irrespective of the genetic relationship), even in medically-assisted reproductive procedures,[326] and that parental authority cannot be voluntarily transferred to another person, make surrogacy legally difficult.[327] Both gestational and traditional surrogacies[328] are equally impeded by the legal provisions on birth motherhood and the impossibility of voluntarily relinquishing or transferring parental authority.

Altruistic surrogacy is not explicitly banned, although it is heavily impeded. However, commercial surrogacy falls foul of multiple legal bans on trading the products of the human body, trading biological products, and human trafficking. Though surrogacy is heavily impeded in all cases, medical infertility or gestational difficulties sometimes garner undeclared 'sympathy' from the courts in trying to overcome the legal hurdles to its recognition.

There are a few published court cases where the effects of surrogacy have been recognised[329] with a circumvented legal reasoning. Usually, the paternal filiation (fatherhood) is voluntarily recognised by the genetic parent, and maternal filiation (motherhood) is recognised, on demand, as an effect of *possession of civil status (status by habit and repute)* and genetic filiation, with a special regard to the provisions of

323 Ibid.
324 Florian, 2022, pp. 476–477; Motica, 2021, p. 228.
325 Florian, 2022, pp. 478–480.
326 Florian, 2022, p. 469.
327 Dobozi, 2013, pp. 64–65.
328 Predescu, 2020, p. 477.
329 Brodeala, 2016, pp. 70–73.

Art. 8 of the European Convention of Human Rights in regard to the right to private and family life.[330]

3.6. Posthumous fertilisation

Romanian legal doctrine has discussed the legal implications of the technically possible posthumous IVF.[331] Posthumous fertilisation can be either carried out with seminal fluid obtained prior to the father's death or with posthumous semen retrieval.[332] Romania has not regulated posthumous IVF because there is generally no specific statute on medically-assisted human reproduction owing to the repeated failures to adopt several attempted projects in this regard.[333] The lack of specific regulation has led some authors to raise interesting legal questions about a child's legal paternity when there is a lack of consent from the biological father during his lifetime, as well as the inheritance rights of a child conceived by definition after their father's death. Nevertheless, definitive answers to these questions can only be established after a relevant statute is adopted.[334]

3.7. Legal status of so-called 'spare' embryos and genetic material

The cryopreservation of gametes is legally allowed in Romania, although it has been specifically excluded from public funding for national public health programmes that finance IVF with embryo transfer since 2017. In Romania, there are no special legal conditions for the cryopreservation of gametes. The only general conditions are the informed consent of the 'donor' and a contract with the authorised medical institution that harvests and deposits the gametes.[335]

As regards embryos, Romanian legal doctrine and case law has oscillated between considering them merely 'assets' or some kind of 'persons'. One legal case in which cryopreserved embryos were seized by the police in a criminal case and the mother could not retrieve them (case of *Knecht v. Romania,* 10048/10) reached the European Court of Human Rights.[336] The consensus in legal doctrine is that the lack of relevant special legal provisions in Romania can lead to unforeseen consequences, for example, uncertainty over who can inherit or decide the fate of unused 'spare' embryos and what happens when the storage fees are no longer paid.[337]

ARPs are not covered by the regular public health insurance but, since 2011, have been financed intermittently from public funds through special national health

330 Irinescu, 2019, pp. 213–214.
331 Sztranyiczki, 2021, pp. 395–414.
332 Sztranyiczki, 2021, pp. 396–397, 406.
333 Sztranyiczki, 2021, p. 409.
334 Sztranyiczki, 2021, pp. 410–412.
335 Tec, 2017, p. 246.
336 Tec, 2017, pp. 236–239.
337 Tec, 2017, p. 245.

programmes.[338] None of the financing programmes to date have distinguished between public and private health facilities for performing the procedures.

The national health programmes that have financed IVF with embryo transfer for couples targeted a 30% success rate. Health facilities that had previously received public funding for IVF would continue to be included in the programme only if they achieved a 30% success rate in the previous years when they received public funding. From 2017–2021, public funding was available only for IVF with embryo transfer and only for couples; specifically, no financing was provided for gamete donations or surrogacy.

From 2022, public funding has been available for up to three procedures per year for each couple or single woman, depending on funding availability.[339] Funding was usually limited to 1,000 procedures per year in previous fiscal years; however, for 2022, funding was increased to allow for 2,500 procedures per year and for a further 10,000 procedures per year from 2023 on a 'first come, first served' basis.[340] The 2022–2023 social national health programme for supporting couples and single persons to increase the birthrate was initiated in December 2022. Public funding is limited to 15,000 lei (3,000 Euros) for each beneficiary: 5,000 lei (1,000 Euros) for the medicine treatment and 10,000 lei (2,000 Euros) for the specific medical procedures.[341]

To receive public funding for ARPs, different-sex couples (married or not) or single women must be Romanian citizens, domiciled in Romania, and insured in the Romanian social health insurance system. The woman must be aged between 20 and 45, and the procedure must be carried out in an authorised partner medical facility in Romania.[342]

In regard to the child's right to know their origins, the general regulation on medically-assisted reproduction with third-party donors gives primacy to the principle of confidentiality in all matters relating to medically-assisted reproduction.[343] This confidentiality can be breached by court order, at the request of the interested party, only when a lack of information may give rise to a risk of serious consequences for the health of the conceived child or their descendants (Art. 445, para. 2). The relevant information may only be sent confidentially to a physician or the appropriate authorities. Confidentiality is also regulated as a patient right in all medical procedures, including ARPs (Art. 21 L. 46/2003).[344]

338 Brodeala, 2016, p. 64.
339 Art. 5, para. 3 of the Methodology for the social national health programme for supporting couples and single persons for increasing the birthrate, approved by Joint Ministerial Order No. 2155/20917/2022.
340 Arts. 6 and 7, Methodology.
341 Art. 5, paras. 6 and 7, Methodology.
342 Art. 5, para. 9, Methodology.
343 Art. 445, para. 1, CC.
344 Florian, 2021 in Baias et al. (eds.), p. 601.

4. Other responses to demographic issues

4.1. Raising the retirement age in Romania

The current standard retirement age in Romania is 65 years for men and 63 years for women.[345] These retirement ages have been increasing gradually from 62 years for men and 57 years for women; full implementation was achieved in March 2015 for men and will be attained in January 2030 for women.

The retirement age varies greatly for those with jobs that would impede them for working up until the standard retirement age. Professions with non-standard retirement ages include judges and prosecutors, the military, police, pilots, sailors, and workers in certain dangerous or toxic factories.

In 2022, the average number of retirees in Romania was just over 5 million people,[346] whereas the total number of dependent employees was 5,757,383 on 31 May 2023.[347] Even when including the independent workers and freelancers who were registered with the tax authorities[348] and who, therefore, also contributed to the public pension system, the total number of contributors to this system was approximately 6.5 million. These figures result in a ratio of 1.3 employees to 1 retiree, which is unsustainable in the long term for a pay-as-you-go pensions system. The pay-as-you-go approach is the dominant 'first pillar' of the Romanian pension system and is complemented by a compulsory, privately administered second 'pillar' for younger contributors and an optional private third 'pillar'.

To ensure the sustainability of the public pension system, in 2023, the Romanian government announced future plans to increase and unify the retirement age to 65 years for everybody (including women) and to limit the professional categories that can retire early with full benefits.

4.2. Increasing the number of family-friendly workplaces

The 2020 COVID-19 pandemic brought to the forefront a series of challenges to workplace culture, especially the wide availability of work-from-home and hybrid workplaces. These new challenges were combined with existing issues related to work-life balance and the difficulties faced by working parents in raising a young family. The society-driven challenges were met with both a market-oriented answer (employees' demands for hybrid and work-from-home workplaces have increased the availability of these types of contracts for the existing workforce and are used as perks to attract new employees) and reactions in the form of recent modifications to labour law.

345 Art. 53, para. 1, Law No. 263/2010 on the unitary system of public pensions.
346 Romanian National Statistical Institute, 2023.
347 Ministry of Work and Social Protection, n.d.
348 Agenţia Naţională de Administrare Fiscală (ANAF), 2023.

The Labour Code allows employers to establish individual work schedules for all employees, by the employee's demand or with their consent, permanently or for a limited time.[349] Individual work schedules imply a flexible division of work hours, with a fixed timeframe when all employees are simultaneously onsite and a flexible arrival and departure schedule.[350] The refusal to grant an individual work schedule must be notified in writing by the employer within 5 working days following the employee's demand.[351] Flexible working time includes work-from-home, flexible schedules, individual schedules, and part-time employment.[352]

4.3. Additional labour law benefits

Romania has a statute on the protection of maternity in the workplace.[353] This protection concerns pregnant employees and mothers who have recently given birth or are breastfeeding.[354] The protection of motherhood concerns the health and safety of pregnant women and recent mothers in the workplace (Art. 2a G.E.O. 96/2003).[355] Employers have a legal duty to prevent the exposure of pregnant women and recent mothers to health and safety risks and not to compel them to perform work that is dangerous to their health, their pregnancy, or their newborn child (Art. 4 GEO 96/2003). Employers also have an obligation to not reveal invisible pregnancies to other employees unless they have the pregnant woman's written consent and only if it is in the interest of workplace performance.[356]

All workplace activities that carry a specific risk of exposure to dangerous agents, processes, or work conditions must be evaluated by the employer and the workplace safety physician with regard to the nature, degree, and duration of exposure of mothers or pregnant women.[357] If the evaluation indicates risks to the health and safety of mothers or negative consequences for pregnancy or breastfeeding, the employer must adapt the affected employee's working conditions or schedule in order to avoid exposure to risks, without affecting the employee's income.[358] If changing the working conditions or schedule is not possible for well-grounded reasons, the employer has a duty to change the place of work for the concerned employee, without affecting her income.[359] If neither of these accommodations is possible for objective reasons, the pregnant employee or recent mother has the right to a supplemental

349 Art. 118, para. 1, LC.
350 Art. 118, para. 3, LC.
351 Art. 118, para. 5, LC.
352 Art. 118, para. 7, LC.
353 Government Emergency Ordinance No. 96/2003.
354 Art. 1, para. 1a, G.E.O. 96/2003.
355 Dub, 2017, p. 9.
356 Art. 8, GEO 96/2003.
357 Art. 5, GEO 96/2003.
358 Art. 9, para. 1, GEO 96/2003.
359 Art. 9, para. 2, GEO 96/2003.

work leave for maternity risk of up to 120 days,[360] which can be used before the regular maternity leave (which is usually 63 days before birth) or after the regular leave for giving birth (which is usually 63 days after birth).[361]

Pregnant employees or those who have given birth less than 6 months previously and have returned to work have a right to reasonable accommodations if their work is usually performed only standing up or only sitting down. These accommodations are made upon the advice of the workplace physician so that the employees can have breaks at regular intervals for either sitting down or moving around.[362] If these reasonable accommodations and work schedule changes cannot be allowed for objective technical reasons, the employer has a duty to change the affected employee's place of work (Art. 12, para. 3 GEO 96/2003).[363] Pregnant employees who cannot fulfil their normal work schedule for health reasons are entitled, based on the recommendation of their family physician, to have their work hours diminished by one-quarter while receiving the same monthly pay.[364]

4.4. Additional family support practices

Pregnant employees have a right to receive up to 16 hours per month of paid time off for prenatal medical checks if these can be carried out only during their working hours.[365] After giving birth, for their own health and that of their baby, all new mothers are compelled to take at least 42 days of paid medical leave.[366]

Breastfeeding employees have a right to receive two daily 1-hour 'breastfeeding' breaks during their worktime up until the child is 1 year old.[367] These 1-hour breaks include the travel time to the place where the child is. Upon the mother's request, the 'breastfeeding' breaks can be replaced by a 2-hour reduction to the daily worktime.[368] The breaks or reduction in worktime are included as normal worktime and do not lead to diminished monthly pay.[369] The employer can provide special 'breastfeeding' rooms in the workplace, but they must be hygienically adequate (Art. 17, para. 4 GEO 96/2003).[370]

Pregnant employees, recent mothers, and breastfeeding mothers cannot be compelled to work during nighttime.[371] If the employee's health is affected by night work,

360 Art. 10, GEO 96/2003.
361 Dub, 2017, p. 11.
362 Art. 12, para. 1 and 2, GEO 96/2003.
363 Ibid.
364 Art. 13, GEO 96/2003.
365 Art. 15, GEO 96/2003.
366 Art. 16, GEO 96/2003.
367 Art. 17, para. 1, GEO 96/2003.
368 Art. 17, para. 2, GEO 96/2003.
369 Art. 17, para. 3, GEO 96/2003.
370 Dub, 2017, p. 11.
371 Art. 19, para. 1, GEO 96/2003.

she has a right to be transferred to daytime work with the same basic monthly pay.[372] If such a transfer is not possible for objective reasons, the employee is entitled to the paid maternal risk leave of up to 120 days (Art. 19, para. 4 GEO 96/2003).[373]

Moreover, pregnant employees, recent mothers, and breastfeeding mothers cannot work in dirty or difficult environments.[374] These employees have the right to be transferred to another workplace with the same monthly pay.[375] If a transfer is not possible for objective reasons, the employee is entitled to the same paid maternal risk leave of up to 120 days.[376]

Employers cannot terminate the employment of pregnant employees, recent mothers, or breastfeeding mothers for reasons relating to their condition. They also cannot terminate the employment of workers who are on maternal risk leave, maternity leave, child-rearing leave for children below 2 or 3 years of age, or childcare leave for a sick child.[377] For mothers who have been on maternal risk leave, this protection from termination extends for 6 months after their return (Art. 21, para. 2 GEO 96/2003).[378]

4.5. Role of the father in the family

In Romanian family law, the father has equal rights to the mother (Art. 503, para. 1 CC).[379] The only legal difference is the way in which filiation is established: filiation is based on birth for motherhood, and based on marriage, formal extrajudicial recognition, or judicial decision for fatherhood.[380] The current Civil Code defaults to the joint exercise of parental authority for both married and unmarried couples, whether they are living together or separately, with this joint exercise being attainable as soon as filiation is established in relation to both parents.[381] Although there is no 'black letter' legal provision, judicial practice tends to favour the mother in regard to establishing the child's residence for parents living separately.[382] This bias is more pronounced for smaller children, especially those under 10 years of age, who are also not automatically heard by the judge in regard to parental authority and child residence issues. Social protection law gives equal status to the mother and father of a child, both of whom are equally entitled to receive social benefits in relation to their children.

372 Art. 19, para. 2, GEO 96/2003.
373 Dub, 2017, pp. 11–12.
374 Art. 20, para. 1, GEO 96/2003.
375 Art. 20, para. 2, GEO 96/2003.
376 Art. 20, para. 4, GEO 96/2003.
377 Art. 21, para. 1, GEO 96/2003.
378 Dub, 2017, p. 12.
379 Irimia, 2021, cited in Baias et al (eds.), p. 676.
380 Florian, 2021, p. 550.
381 Irimia, 2021, p. 676.
382 Baias and Nicolescu, 2021, in Baias et al. (eds.), pp. 539–540.

In 1999, Romania initiated a special statute (Law No. 210/1999) regarding paternal leave that allows for a father to take 10 paid working days off from work during the first 8 weeks of his child's life if paternity can be proven with a birth certificate.[383] This right is available for all types of workers, public officials, policemen, soldiers, and prison guards. Paid paternal leave can be extended to 15 working days if the father has a graduation certificate from a child-rearing course.[384] If the mother dies during childbirth or during her own paid time off after childbirth (usually 63 days), the father has the right to take the remainder of the mother's paid time off.[385]

The law on the child-rearing leave and child-rearing allowance (GEO No. 111/2010) allows for either parent to take time off for child-rearing after the mother's compulsory paid time off after childbirth, which is a minimum of 42 days. In addition to giving equal opportunities for both parents to be the child's primary caregiver during the first (usually) 2 years of life (or 3 years for children with disabilities), the latest 2023 update to the law actually compels the other parent (who has not taken paid time off for child-rearing) to take at least 2 months (up from the previous 1 month) of paid time off for child-rearing if they qualify,[386] under penalty of losing this portion of paid time off for both parents. This provision entices fathers to be more involved in child-rearing by giving them at least 2 months of paid time off during their child's early years because the mother is usually the parent taking most of the child-rearing leave, without being able to use all of it if she is not a single parent.

5. Conclusions and suggestions

The fertility rate has increased in Romania in the last decade. However, the total number of births remains low due to high emigration and decades of population decreases. The generous parental leave (up to 2 or 3 years) and allowance for child-rearing (85% of income prior to birth) since 2010 has simplified the economic equation for couples that want to have children. None of the other social benefits for families and children are as generous, and they likely have an insubstantial role in promoting family growth.

There are still deficiencies in day-care and after-school provisions for young school-age children in Romania, especially with regard to their availability and cost. State and local funding to build new day-cares is limited, and the costs associated with private childcare are high. There are few government incentives for enrolling

383 Art. 2 L. 210/1999.
384 Art. 4 L. 210/1999.
385 Art. 5 L. 210/1999.
386 Art. 11, para. 1, GEO No. 111/2010.

children in private day-cares, and the most generous tax deductions in this regard have still not been implemented.

There is also quite limited and restrictive assisted reproduction funding for infertile couples, and there are no detailed legal regulations covering assisted reproduction with third-party donors. While state funding always has its limits, better regulations for assisted human reproduction would be much easier to enact.

The purpose of a demographically rewarding family policy should be to allow and encourage couples and single parents to have as many children as they like by easing any material and legal or social obstacles to parenthood. While we will probably never return to the fertility rates of the early 20th century, allowing more families to easily have two or three children would be a realistic public policy objective.

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