

Migration and legal family formats in Romania

by Iustina Ionescu ¹

The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 4 – Migration)

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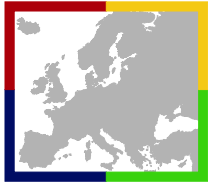
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Disclaimer

This paper and this database contain information with a scientific aim. Nothing in this paper and in this database should be seen as legal advice. Not all nuances and exceptions are included, and there may be errors and further legal developments. The experts, the authors, the editors, the Institut national d'études démographiques and Leiden University cannot be held liable for any inaccurate or incomplete information in this paper or in this database. More particularly, they cannot be held liable for any damage or consequences from the direct or indirect use of contents of this paper or database.

The six sections of the questionnaire

The [interactive LawsAndFamilies Database](#) is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at www.LawsAndFamilies.eu. There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

This website also contains references to publications analysing the results of the project, and to some other legal, sociological and statistical publications about same-sex and different-sex families. And it gives information about the methodology used for this questionnaire and database.

About the questionnaire

The [full text of the questionnaire](#) can be found in the paper:

K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper* 64(2016), www.familiesandsocieties.eu.

The [Guidance document](#) contained in that paper, asked the experts answering the questionnaire to make several assumptions. These included the assumption that the partners have been living together as a couple already for at least two years. Plus the assumption (except for certain questions in Section 4 – Migration) that both partners have the citizenship of the country where they are now both lawfully and habitually residing, and that this is also the country where their relationship would have been formalised and where it would be dissolved.

About the answers

This paper contains the answers, references and explanations – for one jurisdiction – to all questions in one of the six sections of the questionnaire. The answers are presented in columns. Each column is a coloured timeline, representing legal developments for one question for one legal family format.

The year at the top of each coloured timeline is the most recent year for which a question was answered by the author. In the timelines the years given above and below an answer indicate that the answer applied between a certain day in the lower year and a certain day in the higher year. The year "0000" means that the answer applied since an unknown year before 1965. See further the [Guidance document](#).

The following **answer codes and colours** have been used:

Yes	Yes, this is so in the law of this country/jurisdiction, although possibly with a qualifying period of 24 months or less.
Yes, but	Yes, but with exceptions or restrictions, for example a qualifying period of 25 months or more, or only in most parts of the country/jurisdiction, or this is mostly a “dead letter”.
No, but	No, but it may be so exceptionally, or in a very limited way, or in a few parts of the country/jurisdiction, or indirectly, or by using a different legal instrument, or legislation says no while some courts might say yes.
No	No, this is not so in the law of this country/jurisdiction.
Doubt	The law is unclear (the law does not “know” the answer).
?	No information was available.
N/A	Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples).
X	This question was not asked for this legal family format.
Open question	Question without answer codes like Yes and No.
Empty cell	For this year the question was not asked or not answered.

The six papers about Romania

The answers concerning Romania can be found in the [interactive database](#) and in the following six papers (all of which are published in open access in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, www.LawsAndFamilies.eu):

Formalisation of legal family formats in Romania by Iustina Ionescu (Section 1)

Income, troubles and legal family formats in Romania by Constantin Cojocariu (Section 2)

Parenting and legal family formats in Romania by Constantin Cojocariu (Section 3)

Migration and legal family formats in Romania by Iustina Ionescu (Section 4)

Splitting up and legal family formats in Romania by Constantin Cojocariu (Section 5)

Death and legal family formats in Romania by Iustina Ionescu (Section 6)

So this paper is based on **Section 4 (Migration)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

- 4.1 Partner of national citizen
- 4.2 Partner of national citizen (foreign status)
- 4.3 Partner of (non-EU) foreigner
- 4.4 Partner of EU citizen (foreign status)
- 4.5 Foreign status as impediment to marry
- 4.6 Foreign status and inheritance
- 4.7 Citizenship
- 4.8 Recognition of joint adoption
- 4.9 Recognition of second-parent adoption
- 4.10 General background regarding migration

In the following pages of this paper, first the answer to question 4.10 is presented, followed by the answers to questions 4.1 to 4.9.

4.10 - General background regarding migration (Open question)

If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, legal-cultural, etc.) that may be relevant for the understanding your answers above regarding migration, then please do so here.

Nothing to report.

Jurisdiction: **Romania**

Source: I. Ionescu, "Migration and legal family formats in Romania". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-RO-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.01 - Partner of national citizen**

When one partner is a residing national citizen, while the other is a foreigner from another continent, will the foreign partner then have a residence entitlement/eligibility?

(Please assume that they married/registered/cohabited in the country where they now want to reside. As to the meaning of 'residing', see section c of the [Guidance for experts answering questions in the questionnaire](#).)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 2002	2015 N/A 0000	2015 N/A 0000	2015 N/A 0000	2015 Yes, but 2002	2015 No 0000
? 0000				? 0000	
References to legal sources: Art. 46(16) of Government Emergency Ordinance No. 194 of 2002 on the status of foreigners in Romania.		References to legal sources:		References to legal sources: Art. 46(16)(b) of Government Emergency Ordinance No. 194 of 2002 on the status of foreigners in Romania.	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances: Cohabitation partners have this right if they live together and have at least one child together.	

Jurisdiction: **Romania**

Source: I. Ionescu, "Migration and legal family formats in Romania". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-RO-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.02 - Partner of national citizen (foreign status)**

When one partner is a residing national citizen, while the other partner is a foreigner from another continent, and this couple married/registered in the country of the foreigner, will the foreign partner then have a residence entitlement/eligibility?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 2002	2015 No 2002	2015 No, but 2002	2015 No, but 2002	X	X
? 0000	? 2001	? 1998	? 1989	X	X
	N/A 0000	N/A 0000	N/A 0000	X	X

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Art. 46(16)(a) and Art. 46(17) of Government Emergency Ordinance No. 194 of 2002 on the status of foreigners in Romania.</p> <p>Art. 277(2) Civil Code of 2009.</p> <p>Art. 41(7) of the Law 119 of 16 October 1996 on the civil status documents.</p>		<p>References to legal sources: Art. 46(16)(c) and Art. 46(17) of Government Emergency Ordinance No. 194 of 2002 on the status of foreigners in Romania.</p> <p>Art. 277(3) Civil Code of 2009.</p>			
<p>Explanations and nuances: Art. 277(2) of the Civil Code of 2009: "Marriages between same sex persons concluded or contracted abroad by Romanian citizens or by foreigners are not recognized in Romania."</p>		<p>Explanations and nuances: No, but only if they have at least a child together.</p> <p>Art. 277(3) of the Civil Code of 2009: "Civil partnerships between different sex or same sex persons concluded or contracted abroad by Romanian citizens or by foreigners are not recognized in Romania."</p> <p>The text of the law on foreigners does not refer to the legal format the couple lives in abroad, but to the de facto situation of them living together; this de facto relationship is acknowledged only for the purposes of immigration.</p>			

Jurisdiction: **Romania**

Source: **I. Ionescu**, "Migration and legal family formats in Romania". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-RO-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.03 - Partner of (non-EU) foreigner**

When both partners are foreigners from another continent, and one of them is residing in the country, will the other partner then have a residence entitlement/eligibility?

(Please assume that they married/registered/cohabited in the country where they now want to reside.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 2002	2015 N/A 0000	2015 N/A 0000	2015 N/A 0000	2015 No 2002	2015 No 2002
? 0000				? 0000	? 0000
References to legal sources: Art. 46(1) of Government Emergency Ordinance No. 194 of 2002 on the status of foreigners in Romania.		References to legal sources:		References to legal sources: Art. 46(1) of Government Emergency Ordinance No. 194 of 2002 on the status of foreigners in Romania.	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances:	

Jurisdiction: **Romania**

Source: I. Ionescu, "Migration and legal family formats in Romania". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-RO-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.04 - Partner of EU citizen (foreign status)**

When one partner is a foreign EU citizen who is residing in the country, while the other is a foreigner from another continent, and this couple married/registered/cohabited in the country of the EU citizen, will the non-EU partner then have a residence entitlement/eligibility?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 2005	2015 No 2005	2015 Yes 2005	2015 Yes, but 2005	2015 Yes 2005	2015 Yes, but 2005
? 0000	? 2001	? 1998	? 1989	? 0000	? 0000
	N/A 0000	N/A 0000	N/A 0000		

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Art. 2(1)(3a) of Government Emergency Ordinance No. 102 of 14 July 2005 on the freedom of movement in Romania of the EU Member States citizens and the citizens of the EEA and of the Swiss Confederation.</p> <p>Art. 277 of Law 287 of 17 July 2009 regarding the Civil Code. The new Civil Code entered into force on 1 October 2011.</p> <p>Art. 277(2) and (4) Civil Code of 2009.</p>		<p>References to legal sources: Art. 2(1)(7) of Government Emergency Ordinance No.102 of 14 July 2005 on the freedom of movement in Romania of the EU Member States citizens and the citizens of the EEA and of the Swiss Confederation.</p> <p>Art. 277 of Law 287 of 17 July 2009 regarding the Civil Code. The new Civil Code entered into force on 1 October 2011.</p> <p>Art. 277(4) Civil Code of 2009.</p>		<p>References to legal sources: Art. 2(1)(7) of Government Emergency Ordinance No.102 of 14 July 2005 on the freedom of movement in Romania of the EU Member States citizens and the citizens of the EEA and of the Swiss Confederation.</p> <p>Art. 277(4) Civil Code of 2009.</p>	
<p>Explanations and nuances: The Ordinance simply states that "spouses" are family members in the understanding of the law, without differentiating between same-sex or different-sex spouses. Moreover, article 277 of the Civil Code, forbidding the recognition of same-sex marriage concluded abroad, explicitly stipulates in its fourth paragraph that the provisions regarding the freedom of movement of EU citizens on the territory of Romania remain applicable despite the interdiction regarding recognition. However, in practice, the General Inspectorate of Immigration does not acknowledge that same-sex spouses qualify for freedom of movement entitlements. For example, it refused a same-sex married couple who got married in Belgium to establish residence in Romania based on Directive 38/2004.</p>		<p>Explanations and nuances: The Ordinance states that "partner" is the person that lives together with the EU citizen, if the partnership is registered according to the law of the Member State of origin or residence or, when the partnership is not registered, if their relationship can be proven. The law does not differentiate between same-sex or different-sex partners. Moreover, article 277 of the Civil Code, forbidding the recognition of same-sex marriage or partnership concluded abroad, explicitly stipulates in its fourth paragraph that the provisions regarding the freedom of movement of EU citizens on the territory of Romania remain applicable despite the interdiction regarding recognition. Nevertheless, the expert is not aware what the practice of the General Inspectorate for Immigration is in cases of same-sex partners.</p>		<p>Explanations and nuances: The Ordinance states that "partner" is also the person that lives together with the EU citizen, when the partnership is not registered but their relationship can be proven. The law does not differentiate between same-sex or different-sex partners. Moreover, article 277 of the Civil Code, forbidding the recognition of same-sex marriage or partnership concluded abroad, explicitly stipulates in its fourth paragraph that the provisions regarding the freedom of movement of EU citizens on the territory of Romania remain applicable despite the interdiction regarding recognition. Nevertheless, the expert is not aware what the practice of the General Inspectorate for Immigration is in cases of same-sex partners.</p>	

Jurisdiction: **Romania**

Source: I. Ionescu, "Migration and legal family formats in Romania". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-RO-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.05 - Foreign status as impediment to marry**

When the couple got married or registered abroad, will this relationship then be recognised as an impediment to marry someone else?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 No, but 2001	2015 No, but 1998	2015 No, but 1989	X	X
	N/A 0000	N/A 0000	N/A 0000	X	X
<p>References to legal sources: Art. 31 of Law No. 119 of 16 October 1996 on civil status documents.</p> <p>Art. 44(1)f) of Government Decision No. 64 of 26 January 2011 on the Methodology for the unified application of the law in the field of civil status.</p> <p>Art. 273 and 277 Civil Code of 2009.</p>		<p>References to legal sources: See under Marriage.</p>			

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Art. 273 of the Civil Code of 2009 prohibits bigamy. However, art. 277(2) and (3) of the Civil Code states that same-sex marriage or partnership concluded abroad is not recognised in Romania. Therefore, a man who abroad got married with another man (or registered as partners) may probably come and get married with a woman in Romania.</p>		<p>Explanations and nuances: See under Marriage.</p>			

Jurisdiction: **Romania**

Source: I. Ionescu, "Migration and legal family formats in Romania". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-RO-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.06 - Foreign status and inheritance**

When the couple got married or registered abroad, will this relationship then be recognised as regards inheritance in the absence of a testament?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 0000	2015 No 2011	2015 No 2011	2015 No 2011	X	X
	? 2001	? 1998	? 1989	X	X
	N/A 0000	N/A 0000	N/A 0000	X	X
References to legal sources: Art. 41 of Law No. 119 of 16 October 1996 on civil status documents. Art. 277(2) Civil Code of 2009.		References to legal sources: Art. 277(3) Civil Code of 2009.			
Explanations and nuances: Same-sex marriage concluded abroad is not recognised in Romania.		Explanations and nuances: Different-sex and same-sex partnerships concluded abroad are not recognised in Romania.			

Jurisdiction: **Romania**

Source: I. Ionescu, "Migration and legal family formats in Romania". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-RO-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.07 - Citizenship**

Does a relationship of this type make it easier for a foreign partner to obtain citizenship?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 1991	2015 N/A 0000	2015 N/A 0000	2015 N/A 0000	2015 No 0000	2015 No 0000
?					
<p>References to legal sources: Art.8(1)(a) of Law 21 of 1 March 1991 on Romanian citizenship.</p> <p>Art. 277(2) of Law 287 of 17 July 2009 on the Civil Code.</p>		<p>References to legal sources: Art. 8(1)(a) of Law 21 of 1 March 1991 on Romanian citizenship.</p> <p>Art. 277(3) of Law 287 of 17 July 2009 on the Civil Code.</p>		<p>References to legal sources: Art. 8(1)(a) of Law 21 of 1 March 1991 on Romanian citizenship.</p>	
Explanations and nuances:		Explanations and nuances:		Explanations and nuances:	

Jurisdiction: **Romania**

Source: I. Ionescu, "Migration and legal family formats in Romania". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-RO-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.08 - Recognition of joint adoption**

When the partners have jointly adopted a child while residing abroad, will that foreign adoption then be recognised as regards legal parenthood?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 2011	2015 N/A 0000	2015 N/A 0000	2015 N/A 0000	2015 No 0000	2015 No 0000
?					
References to legal sources: Art. 462 §1, 2586 §1 and 2607 §2 Civil Code of 2009.		References to legal sources:		References to legal sources: Arts. 452-461 and 2607 §1 Civil Code of 2009.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Under art. 2607 §2 of the Civil Code, the national law of the spouses will determine the substantive requirements required for determining the validity of an adoption (whether joint adoption of second-parent adoption). Under art. 2586 §1 of the Civil Code, the substantive requirements for contracting a marriage will be determined in accordance with the national law of the spouses. Accordingly, in the case of an adoption that takes place abroad, the Romanian law will apply. The Romanian law allows joint and second parent adoption by different-sex spouses only (art. 462 §1 of the Civil Code).</p>		<p>Explanations and nuances: Registered partnerships do not exist under Romanian law.</p>		<p>Explanations and nuances: Under art. 2607 §1 of the Civil Code, the national law of the adopter(s) and of the adopted will determine (cumulatively if need be) the substantive requirements required for determining the validity of adoption. Assuming the co-habiting partners adopting are Romanian, the Romanian law would apply. Romanian law does not permit joint adoption by cohabiting partners, same-sex or different-sex (arts. 452-461 of the Civil Code).</p>	

Jurisdiction: **Romania**

Source: I. Ionescu, "Migration and legal family formats in Romania". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-RO-Section4.pdf](#) (please use this full citation when citing any information from this table).

Section: **4 - Migration**

Question: **4.09 - Recognition of second-parent adoption**

When one partner has become the second parent of a child of the other partner, by way of adoption while the partners were residing abroad, will that foreign adoption then be recognised as regards legal parenthood?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 2011	2015 N/A 0000	2015 N/A 0000	2015 N/A 0000	2015 Yes, but 2004	2015 No 0000
?				?	
References to legal sources: Art. 462 §1, 2586 §1 and 2607 §2 Civil Code of 2009.		References to legal sources:		References to legal sources: Art. 462 §1, 2586 §1 and 2607 §2 Civil Code of 2009. Art. 6 §1(c) of Law no. 273/2004 on the legal regime of adoptions.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Under art. 2607 §2 of the Civil Code, the national law of the spouses will determine the substantive requirements required for determining the validity of an adoption (whether joint adoption of second-parent adoption). Under Art. 2586§1 of the Civil Code, the substantive requirements for contracting a marriage will be determined in accordance with the national law of the spouses. Accordingly, in the case of an adoption that takes place abroad, the Romanian law will apply. The Romanian law allows joint and second parent adoption by different-sex spouses only (Art. 462§1 of the Civil Code).</p>		<p>Explanations and nuances: Registered partnerships do not exist under Romanian law.</p>		<p>Explanations and nuances: Under art. 2607 §1 of the Civil Code, the national law of the adopter(s) and of the adopted will determine (cumulatively if need be) the substantive requirements required for determining the validity of adoption. Assuming the co-habiting partners adopting are Romanian, the Romanian law would apply. Article 6 §1(c) of Law no. 273/2004 exceptionally allows the unregistered different-sex partner of an unmarried parent to adopt the latter's biological child if they lived together for an uninterrupted period of at least five years.</p>	