

# THE INFLUENCE OF EUROPEAN CONVENTION FOR THE PROTECTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS UPON ROMANIAN SUCCESIONAL LAW RELATIONS

*Ioana Gelei, PhD Candidate*

Member în the Law Doctoral School Council in Law Faculty of University of Bucharest, Romania

---

## **Abstract:**

The paper is reviewing the influence of European Convention on Human Rights upon Romanian succesional law from several terms or ways of :

This one is reviewed in term of principles of rule of law and subsidiarity, two important principles in European Protection of Human Rights Law , the first one being close connected to rule of law state and authentic democracy and the second one being close connected to state's involvement in legislative cadre of human rights creation and their respect's controle, in term of right to respect private and family life, a conditional and interdependent with liberalities and legal and testamentary successions matter right and in term of protection of property , which is including the general principle of right of property 's respect , a real principal right.

This one is reviewed by way of right to marry, which means also right to marry for that matter and to found a family of man and woman which have legal age , by way of equality between spouses , which is gathering way in civil rights and obligations field and by way of general principle of prohibition of discrimination, an european and international principle, too.

The paper is studying the relations between national law and european human rights protection law, a matter mainly regulated in internal law by Romanian Constitution and res interpretata of European Court of Human Rights decisions , which are producing in that term effects erga omnes.

We are suggesting the amendment of European Convention on Human Rights by an Additional Protocol, which is regulating the right to inherit of persons , as a human and a civil right, too

---

**Key Words:** European Convention on Human Rights succesional law will family life property right to marry equality between spouses

## **Introduction**

After the Second World War, the concern for protection of human rights in Europe became a major one.

The Western Europe States stood on civil and political rights and the Eastern Europe States stood on economic and social ones.

The Council of Europe had a major role in protection of human rights , which has the purpose "to realize a bigger unity between his members for their ideals protection and fulfillment which are their comun inheritance and to facilitate their economic and social progress " , according to Art.1 Letter a from its Statute.

## **European Convention for the Protection on Human Rights and Fundamental Freedoms and Protocols to the Convention**

European Convention for the Protection on Human Rights and Fundamental Freedoms was signed beginning from November 4th 1950, in Rome and came into effect on September 3rd 1954.

The Convention was amended by fifteen Protocols : fourteen Protocols and Protocol No.14 bis , pursuant to national law in the Contracting Parties States and human rights and fundamental freedoms development.

From these , there are relevants in succesional matter : Protocol No.1 to the Convention opened for signature în Paris, on March 20th 1952, which is stipulating in Art.1 the protection of property, Protocol No.7 to the Convention opened for signature în Strasbourg, on November 22th 1984, which is stipulating in Art.5 the equality between spouses and Protocol No.12 to the

Convention opened for signature in Rome, on November 4th 2000, which is stipulating in Art.1 the general prohibition of discrimination.

Protocol No.1 was ratified by Romania by Law nr.30 from 1994 published in Romania's Official Gazette No.135 from May 31st 1994 and amended by Protocol No.11 opened for signature in Strasbourg, on May 11th 1994 and ratified by Romania by Law nr.79 from 1995 published in Romania's Official Gazette No.147 from July 13th 1995.

Protocol No.7 was also ratified by Romania by Law nr.30 from 1994 and amended by Protocol No.11 and ratified by Romania by Law No.79 from 1995.

Protocol No.12 was ratified by Romania by Law No.103 from 2006 published in Romania's Official Gazette No.375 from May 2nd 2006.

### **Romanian legislation in succesional matter**

The succesional matter is subject to the following Romanian legislative acts:

Romania's Constitution from 1991, which is the fundamental law, was amended and completed by Romania's Constitution Revision Law No. 429 from September 18th 2003 published in Romania's Official Gazette No.669 from September 22th 2003, republished in Romania's Official Gazette No.767 from October 31th 2003.

From ordinary laws there are:

Civil Code from November 26th 1864, which came into effect on December 1st 1865, that means Ancient Civil Code, which is also named Code Alexandru Ioan Cuza was published part by part: Art.1-347 in the Official Gazette No.271 from December 4th 1864 and Art.348-1914 in the Official Gazette No.7,8,9,11 and 13 from 1865 and its model is Napoleon Civil Code from 1804.

Law No.319 from June 10th 1944 concerning succesional right of survivor spouse, named also Decree-Law, was published in Romania's Official Gazette No.133 from June 10th 1944 and rectified in Romania's Official Gazette No.142 from June 21th 1944.

Civil Code from 2009-Law No.287 from 2009 concerning Civil Code, published in Romania's Official Gazette No.511 from July 24th 2009, amended by Law No. 71 from 2011 and rectified in Romania's Official Gazette No.427 from June 17th 2011 and Romania's Official Gazette No.489 from July 8th 2011, that means New Civil Code, was applied in basis of Law No. 71 from 2011 concerning applying Law No.287 from 2009, published in Romania's Official Gazette No.409 from June 10th 2011 and amended by Law No. 60 from 2012 concerning approval Government Urgency Ordinance No.79 from 2011 concerning regulating necessary measures for Law No.287 from 2009 regarding Civil Code entry into force, published in Romania's Official Gazette No.255 from April 17th 2012. It has in succesional matter two models: French Civil Code and Quebec Civil Code.

Law No.36 from May 12th 1995 concerning public notaries and notarial activity was published in Romania's Official Gazette No.92 from May 16th 1995, amended by Law No.267/2003 concerning amendment of art.3 Government Urgency Ordinance No.24 from 1992 regarding establishment consular services and fees for these services and art.13 Law No.36 from 1995, published in Romania's Official Gazette No.424 from June 17th 2003, by Government Urgency Ordinance No.25 from 2005 for abrogating art.31 Law No.36 from 1995, published in Romania's Official Gazette No.278 from April 4th 2005, approved by Law No. 178 from 2005 for approval of Government Urgency Ordinance No.25 from 2005 for abrogating art.31 Law No.36 from 1995, published in Romania's Official Gazette No.499 from June 13th 2005, amended by Government Urgency Ordinance No.166 from 2008 for amendment of art.16 letter a Law No.36 from 1995, published in Romania's Official Gazette No.789 from November 25th 2008, approved by Law No. 298 from 2009 for approval of Government Urgency Ordinance No.166 from 2008 for amendment of art.16 letter a Law No.36 from 1995, published in Romania's Official Gazette No.645 from October 1st 2009, amended by Law No. 71 from 2011 and republished in Romania's Official Gazette No.72 from February 4th 2013.

From other legislative acts there are Regulations for applying Law No.36 from 1995 concerning public notaries and notarial activity, approved by Ministry of Justice Order No. 710/C/1995, published in Romania's Official Gazette No.176 from August 8th 1995, amended by Ministry of Justice Order No. 1410/C/1996 for amendment of Regulations for applying Law No.36 from 1995 concerning public notaries and notarial activity, published in Romania's Official Gazette No.25 from February 15th 1995, amended by Ministry of Justice Order No. 2730/C/2008 for

amendment of Regulations for applying Law No.36 from 1995 concerning public notaries and notarial activity, published in Romania's Official Gazette No. 731 from October 29th 2008 , by Ministry of Justice Order No.962/C/2009 for amendment of Regulations for applying Law No.36 from 1995 concerning public notaries and notarial activity and Regulations for public notary exam for deb notaries and the proof for public notaries, published in Romania's Official Gazette No. 235 from April 9th 2009 , by Ministry of Justice Order No.2910/C/2009 for amendment of Regulations for applying Law No.36 from 1995 concerning public notaries and notarial activity, published in Romania's Official Gazette No. 729 from October 28th 2009 , by Ministry of Justice Order No. 2922/C/2010 for amendment of Regulations for applying Law No.36 from 1995 concerning public notaries and notarial activity, published in Romania's Official Gazette No. 19 from January 10th 2011 , by Ministry of Justice Order No. 2923/C/2010 for amendment of Regulations for applying Law No.36 from 1995 concerning public notaries and notarial activity, published in Romania's Official Gazette No.15 from January 7th 2011, by Ministry of Justice Order No. 81/C/2011 for amendment of Regulations for applying Law No.36 from 1995 concerning public notaries and notarial activity, published in Romania's Official Gazette No. 59 from January 24th 2011.

Civil Code from 1864 was abrogated on October 1st 2011, excepted art. 1169-1174 and 1176-1206 which were abrogated when Law No. 134 from 2010 concerning Civil Procedure Code, entered into force, on February 15th 2013, by Law No.71 from 2011.

Law No.319 from June 10th 1944 is complexe, even if it is brief.All this law is regulating succesional matter.Civil Code from 1864 did not acknowledged for the survivor spouse an equal legal regime with deceased's relatives.He or she came to inheritance after 12th degree relatives , before entering into force of Law No. 3581 from 1921 concerning progressive tax on inheritances and after 4th degree relatives , after entering into force of Law No. 3581 from 1921.Survivor spouse had an uncertain and unfavourable situation.By exception poor widow who came to inheritance in concurrence with the descendants had an undivided usufruct right for life, or an undivided quota of ¼ in undiminished property, when she came to inheritance in concurrence with the other deceased's relatives. Law No.319 from 1944 had improved survivor spouse's legal situation.

Law No.319 from 1944 was also abrogated on October 1st 2011, by Law No.71 from 2011.

Civil Code from 2009 came into effect on October 1st 2011.According to Art.91 Law No.71 from 2011 , New Civil Code is applied on successions opened after entering into force of this New Civil Code, that means October 1st 2011.Conditions to inherit , general principles of succesional devolution , rights of inheritance including heirs number and quality, succesional quotas, right of succesional option, including succesional option term, succesional transmission and all the others legal institutions of substantial law applied to successions opened before October 1st 2011 are subjects to law which is into force on date when succession is opened and the competence is the subject to new law.

We consider the most important sources of succesional law are Civil Code from 1864, Law No.319 from 1944 and Civil Code from 2009.

### **The influence of European Convention on Human Rights upon Romanian succesional law relations in terms of principles of rule of law and principles of subsidiarity**

Principles of rule of law are mentioned in Preamble of Convention , but this one does not define it.

These principles are also specified in Preamble and Art.3 from Statute of the Council of Europe, but this one either does not define it.

Rule of law is sitting on comun patrimony of Member States of Council of Europe of moral, legal, political and social values.

Closely linked to state of rule of law and genuine democracy, these principles are a national and european value, without which protection of human rights and fundamental freedoms could not be achieved.

Even if these are not included in Convention's object and purpose, these are "constitutive elements of moral comun patrimony of Member States of Council of Europe."<sup>1</sup>

Rule of law involves authorities constitution and working according to law, respect of law by public authorities and citizens and respect of court orders which are applying the law.

In a word rule of law involves reign of law, where law has the sense of legislation, that means ensemble of legislative acts adopted, entered into force and applied on a state territory.

In terms of rule of law we must review law as source of succesional right.

According to Art.1 Romanian State Aligement 3 of Title I General Principles of Romania's Constitution, Romania is a rule of law , democratic and social state, where human dignity, citizens rights and freedoms , free development of human personality, justice and political pluralism are supreme values.

According to Art.1 Romanian State Aligement 5 of Title I General Principles of Romania's Constitution, in Romania respect of Constitution, of its supremacy and laws supremacy are obligatory.

Principles of subsidiarity is resulting from Art.1 of European Convention concerning the acknowledging by Parties States for each person who is subject to their jurisdiction of rights and freedoms regulated by Convention.

These principles involve there are States who must first of all take measures on creation of framework of human rights and fundalemntal freedoms and of controle of these rights and freedoms respect by national public authorities.

European Court of Human Rights is exercising a subsidiary controle on taking and applying these measures on national level.

According to Art.11 International Law and National Law Aligement 1 of Title I General Principles of Romania's Constitution, Romanian state is obliged to execute exactly and with good faith his obligations corresponding to treatees to which is part in.

We consider the european controle is a corollary of national controle.

Controle on national level concerning respect of these rights is exercised by national courts, according to internal law.

Controle on european level concerning protection of these rights is exercised by European Court of Human Rights, corresponding to European Convention on Human Rights and Rules of Court from Strasbourg which incorporate the amendments made by the Plenary Court on April 2nd 2012 and entered into force on September 1st 2012.

In succesional right they have taken measures concerning regulating human rights which are connected with succesional matter.

The fundamental principles of civil law connected with the succesional matter are:

Principle of property involve the respect of it and this one is the most important real right of human beeing.

Principle of equality in front of law involve all the persons are peer subjects to the law.

### **The influence of European Convention on Human Rights upon Romanian succesional law relations by way of right to respect for private and family life**

Art.8 of Convention is regulating right to respect for private and family life.This article must be corroborated with Art.12 of Convention and Art.14 of Convention.

The protection is concerning private life, family life, domicile and correspondence of right 's titular.

This right has a limit stipulated by Convention: the authorities implication is allowed only in specilally conditions expressly stipulated : the involvement must be regulated by law , the measures must be necessary in a democratic society for national security, public safety, economic country prosperity, order's defense and criminal offence's prevention, health and morality 's protection, or other persons rights and freedoms protection.

Right to respect for private and family life is a conditional right , not a intangible one.

The "private life" term is an european autonomous notion.Its sense is compelxe and is including the following:

First of all it is entering in that concept "physical and moral person's integrity"<sup>2</sup>.

Secondly it is including "person's right to establish and to develop relations with his fellow creatures"<sup>3</sup>.

Its first component is personal life and the second one is social life, and both of them are lying in close connection.

They are adding a third component –right to a healthy environment.

There are right to private life and right to personal life which are interdependent with succesional matter, by person's right to identity.

This one is including the person's right to meet his or her ascendants, which is very important in ability to inherit and title to inheritance field.

Establishment of filiation is determining ability to inherit and title to inheritance of persons towards their ascendants and contestation of filiation is determining inability to inherit and lack of title to inheritance towards them.

The Convention does not define family life.

This notion is including personal connections between parents and their children, only biological connection between them being insufficient.

"Child's interest is primary important respecting all problems concerning children committing"<sup>4</sup> in case of parents divorce or of special situations.

There are also subjects of Art.8 from Convention adopted children and adoptive parents.

In the Case Pini and Bertani and Manera and Atripaldi versus Romania, by Decision from June 22th 2004, European Court of Human Rights reminded that adoption relations are subjects to Art.8 from Convention and a legal and real adoption is protected by this text. This is a just and equitable opinion, which is permitting to respect equality between natural and adopted children.

In the Case Marckx versus Belgium, by Decision from June 13th 1979, European Court of Human Rights established that successions and liberalities field has a close connection with family life, which has a material component. This is the base created by case-law way, for the succesional matter to be subject of Art.8 of Convention.

In family life field, title to inheritance, ability to inherit and survivance right are subjects to Art.8 from Convention.

Art.957 Ability to Inherit from Title I General Disposals Concerning Inheritance from Book IV About Inheritance and Liberalities from New Civil Code is regulating in Alignment 1 ability to inherit. The person who exist on date of inheritance's opening death has the ability to inherit. The conceived unborn child has the right to inherit, with the single condition to born alive, not viable, according to Art.36 of New Civil Code. There is a difference between this rule and the similar rule of French Law, regulated by Art.725 The Qualities Requested to Inherit from Chapter II The Qualities Requested to Inherit: About Proof of Heir Quality from Title I The Inheritances from Book III About Different Ways to Acquire the Property from Civil Code, where there is other single condition- to born viable. Of course this condition to be born viable involves to be born alive, but the condition to be born alive does not involve to be born viable. We consider that the French Law is more rigorous than the Romanian Law. According to Alignment 2 the deceased persons whom moment of death we can not establish do not have the ability to inherit. By logical interpretation of this legal text, according to rule *Ubi lex non distinguit, nec nos distinguere debemus*, we consider there are also subjects of this article the commorients and the codeceased.

Art.962 Title to Inheritance from Title I General Disposals Concerning Inheritance from Book IV About Inheritance and Liberalities from New Civil Code is regulating title to inheritance. A person must have the quality requested by law or designation by legacy to inherit. This incidence is gathering way in legal inheritance field, but also in testamentary inheritance field, in case legatees are also defunct's relatives which have also legal title to inheritance and in case there are reservatory heirs and legatees are persons out of family.

Art.654 from Chapter I About Qualities Required to Inherit from Title I About Inheritances from Book III About Different Ways to Acquire the Property from Ancient Civil Code is regulating ability to inherit of persons who exist, including ability to inherit of unborn conceived child born alive and inability to inherit of persons who does not exist. There is no change of this rule.

"Family life has a close connection with succesional and liberalities between germane relatives field"<sup>5</sup>.

Art.986 Legacy from Section 1 from Chapter I Commun Disposals from Title III The Liberalities from Book IV About Inheritance and Liberalities from New Civil Code is defining the legacy: it is the liberality whereby the testator is disposing that to his death one or more legatees acquire all his patrimony, a part of it or some special goods. From this definition are resulting the unilateral, personal and *mortis causa* legacy characters, its beneficiaries and its object.

Art.802 About Donations and Wills from Chapter I from Book III About Different Ways to Acquire the Property from Ancient Civil Code is defining the will, as the revocable, *mortis causa* act

, whereby testator dispose on his patrimony or goods. From this definition are resulting revocable, unilateral and *mortis causa* will's characters and its object.

Successional reserve , excessive liberalities reduction and return of gifts and legacies are interdependent with family life .Reservatory heirs are always close relatives of defunct, from his founded family or his family of origin.Establishment of reserve , excessive liberalities reduction and return of gifts and legacies are in favour of reservatory heirs.

Art.1086 Notion of Successional Reserve from Section 1 Successional Reserve and Available Quota from Chapter IV Successional Reserve, Available Quota and Excessive Liberalities Reduction from Title III The Liberalities from Book IV About Inheritance and Liberalities from New Civil Code is defining the reserve.This is a direct definition.

Art.1089 Notion of Available Quota from Section 1 Successional Reserve and Available Quota from Chapter IV Successional Reserve, Available Quota and Excessive Liberalities Reduction from Title III The Liberalities from Book IV About Inheritance and Liberalities from New Civil Code is defining the available quota. This is also a direct definition.

The Ancient Civil Code did not define the reserve and the available quota , but only by doctrinary way we had the definitions, which are used in the New Civil Code.

Successional reserve , excessive liberalities reduction and return of gifts and legacies are all of them institutions that are protecting rights to inherit of reservatory heirs and respect of reserve constitution.

Art.841 and 843 from Ancient Civil Code amended by Law No.319 from 1944, Art.2 from Law No.319 from 1944 and Art.1087 from New Civil Code are regulating the same reservatory heirs: the survivor spouse, the descendants and the parents of defunct. They are all of them close members of deceded's family.

“Art.8 from Convention does not impose that a child have the right to a special part of his authors or close relatives inheritance”<sup>6</sup>.

Convention “is prohibiting discriminatory treatment between same person's children”<sup>7</sup>.

Whether if same person's children are resulted from the same marriage, from different marriages or outside of marriage , they have equal rights to their parents inheritance.

In this field children from natural filiation, resulted from marriage or outside of marriage, have the same equal rights as children from civil filiation, that means from adoption, who have been adopted by *de cuius*.

According to Art.448 from New Civil Code the children outside of marriage who have the filiation established according to law have the same equal rights towards their parents as the children resulted from marriage.

The situation was the same after Art.678 from Ancient Civil Code 's amendment by Art.63 from Family Code abrogated by Law No.71 from 2011.

The will may include disposals that in many cases , are concerning family life: legacies in favour of family members, , division, removal of former testamentary disposals, disinheritances, assignments to burden to members of family , disposals about obsequies, disposals concerning a child 's recognition.

Art.1035 Will's Content from Section 1 General Disposals from Chapter III The Will from Title III The Liberalities from Book IV About Inheritance and Liberalities from New Civil Code is stipulating the will 's content.The enumeration is sample, not restrictive.The principal testamentary disposal remains the legacy.

Art.802 from Ancient Civil Code was stipulating only the content of will which concerned defunct 's patrimony.

### **The agency of European Convention on Human Rights upon Romanian succesional law relations by way of protection of property**

Protection of property is stipulated by Art.1 from Protocol No.1 to the Convention .

This article is comprising three norms:

The first norm is stipulating “general principle of respect of property right”<sup>8</sup>.It is instituting the correlative obligation of State not to disfranchise the property right titular of his right.

The second norm is instituting special limits to property right , which are “possibility to incapacitate the property right titular (...) of his right”<sup>9</sup>, but in certain conditions which are: in the

public interest and subject to the conditions provided for by law and by the general principles of international law. These conditions provided by Convention are cumulative.

The third norm is stipulating “the way to use goods which are the object of property right”<sup>10</sup>. This one is instituting other limits of property right, but these are conditions towards it according to the public interest or payment of taxes and duties or of other contributions too. These conditions are alternative.

The notion of “good” has “an autonomous sense”<sup>11</sup>. *Lato sensu* it is comprising corporeal and incorporeal, movable and immovable goods, real rights, inclusive property right, usufruct right. We consider thereby it is comprising other dismemberments of property right, beside usufruct: use right, habitation right, which are rights with the similar legal nature as usufruct, superficies right and servitude right. This one is comprising right of possession, right of concession, full and by real principal and accessory rights. It is comprising claim rights and patrimonial intellectual creation rights too.

Connection between property field and successional matter is gathering way thereby:

In revendication and restitution of goods field which communist states made itself masters of them, claimants had asked for revendication and restitution in their quality of heirs of goods former owners and in case of admission of their requests, the courts established their quality of goods owners, as heirs of their authors.

In the Case *Brumărescu versus Romania*, by Decision from October 28th 1999, European Court of Human Rights established that acknowledged by justice and indefeasible property right can not be avoided. This opinion is in accordance with respect of juridical relations security and property right.

Intestate succession and legacy are some of the ways of acquisition of property right.

They are stipulated by Art.557 Alignment 1 of New Civil Code and Art.644 of Ancient Civil Code.

Intestate succession is an universal title or by universal title way of property right acquisition and testate succession is an universal title or by universal title or by particular title way of property right acquisition. Both of them are a derived and *mortis causa* and by gratuitous title way of property right acquisition.

The legacy object may be property rights, other real rights and claim rights.

There may be in the successional mass in the intestate succession and in the testate succession property rights, other real rights and claim rights too.

### **The agency of European Convention on Human Rights upon Romanian successional law relations by way of right to marry**

Right to marry is regulated by Art.12 of Convention which is acknowledging right to marry and to found a family of men and women of marriageable age. This article must be corroborated with Art.8 and Art.14 of Convention. The Convention does not apparently limitate this right to marry, but in fact its limit exist by reference to national legislation. This is the one to stipulate marriage conditions. Convention is acknowledging two rights: to marry and to found a family. It is acknowledged only traditional marriage, because this right's titulars are man and woman, so different biological sex persons.

Only monogamous and civil, not religious marriage is subject of Art.12 of Convention, according to states parties tradition.

Marriage is producing effects in ability to inherit and title to inheritance field.

The survivor spouse has ability to inherit and title to inheritance, according to Art.970-971 from Section 1 The Survivor Spouse from Chapter III Legal Heirs from Title I General Disposals Concerning Inheritance from Book IV About Inheritance and Liberalities from New Civil Code and Art.1 and 2 from Law No.319/1944.

Art.12 of Convention is influencing concerning right to inheritance too.

The survivor spouse has ability to inherit and title to inheritance, according to Art.972 from Section 1 The Survivor Spouse from Chapter III Legal Heirs from Title I General Disposals Concerning Inheritance from New Civil Code and Art.1 and 2 from Law No.319/1944.

Art.12 of Convention is influencing concerning liberalities field too, the legatee may be the survivor spouse.

Art.12 of Convention 's agency exist both in intestate and testate succession.

In the Case Johnston and others versus Ireland, by Decision from October 28th 1999, European Court of Human Rights repeated that evolutive interpretation of Convention must be limited to rights stipulated by this text and must not create new rights which are not regulated by it. This praxis may maintain the balance between text and social and juridical relations evolution.

### **The agency of European Convention on Human Rights upon Romanian succesional law relations by way of equality between spouses**

Equality between spouses is regulated by Art.5 from Protocol No.7 to Convention.

This is spouses right which is subject to civil rights and obligations field and exist in spouses relations and spouses and their children relations.

This right's titulars are consorts, so persons who have a marriage relation between them.

Equality exist on two levels: concerning consorts rights and obligations and their parental rights and obligations.

Art.5 from Protocol "is applied as additional text to Convention"<sup>12</sup> and must be corroborated with Art.8 and Art.12 of Convention.

This article is establishing superior interest of child which we consider an european and international principle.

In succesional matter there are ability to inherit and mutual title to inheritance of consorts and parents towards their children subjects to this text.

Liberalities matter is subject to this article too: spouses may legate by mutual wills one in favour to other or both of them in favour of a third person.

Art.1036 Mutual Will from Section 1 General Disposals from Chapter III The Will from Title III The Liberalities from Book IV About Inheritance and Liberalities is prohibiting mutual testamentary disposals or in favour of a third person in the same will of two or more testators. By logical interpretation by argument *per a contrario*, it is permitted for two or more person to legate by different personal individual wills mutually or in favour of a third person.

Both intestate and testate successions are subjects to Art.5 from Protocol.

In the Case Hoffman versus Austria, by Decision from June 23th 1993, European Court of Human Rights prohibited treatment inequality between spouses on ground of religious orientation of parents, which has a general and abstract character. This praxis is according to non-discrimination right.

### **The influence of European Convention on Human Rights upon Romanian succesional law relations in terms of general principle of prohibition of discrimination**

Prohibition of discrimination is regulated by Art.14 of Convention. This one must be corroborated with Art.8 and Art.12 of Convention.

Prohibition of discrimination is an european and international principle.

This text is enumerating the grounds of persons discrimination: sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The enumeration is for example, not a limiting one.

Non-discrimination "is a substantial (...) right"<sup>13</sup>.

Prohibition of discrimination is concerning rights and freedoms acknowledged by Convention.

Right to non-discrimination has a connection with succesional field in ability to inherit and title to inheritance matter, different heirs right to inherit, testamentary ability too, both in intestate and testate succession.

An important principle of Romanian Civil law is the equality before the civil law, according to Art.30 The Equality before the Civil Law from Title I General Disposals from Book I About Persons from New Civil Code.

In the Case Belgian Linguistic Affair, by Decision from July 23th 1968, European Court of Human Rights fixed that non-discrimination is connected by rights protected by Convention, it is not independent. This praxis is demonstrating that non-discrimination is general, but limited to the rights regulated by this text.

### **The relations between national law and european human rights protection law**

According to Art.20 Alignment 1 from Chapter I Commun Disposals from Title II Rights, Fundamental Freedoms and Obligations from Constitution constitutional disposals concerning rights

and freedoms of citizens will be interpreted and applied in accordance to Universal Human Rights Declaration and conventions and treaties in whom Romania is part.

According to Art.20 Alignment 2 from Chapter I Common Dispositions from Title II Rights, Fundamental Freedoms and Obligations from Constitution in case of no accordance between conventions and treaties in whom Romania is part and national law, the international rules have priority, excepted the situation Constitution and national laws are more favourable.

According to Art.11 Alignment 2 from Chapter I Common Dispositions from Title I General Principles from Constitution treaties ratified by Parliament are sitting in internal law.

These dispositions of Art.20 and Art.11 of Constitution must be corroborated.

There are the same dispositions concerning Civil Code in Art.4 from Chapter I General Dispositions from Preliminary Title About Civil Law from New Civil Code.

There are the following important rules: there must be accordance between internal law and international law, the internal law must be interpreted and applied according to international law, but if the accordance does not exist, the international law has priority before the national law and the treaties ratified by Parliament are sitting in national law.

### **Res interpretata of European Court of Human Rights decisions**

In the Case Dumitru Popescu versus Romania, from European Court of Human Rights Decision from April 4th 2007 is resulting the primordial role of national judge to take necessary measures for Convention's applying and its priority before the internal law and no applying the internal laws which are not in accordance with it. It is a principle of subsidiarity setting off.

The decisions pronounced by European Court of Human Rights have declarative character and "*res judicata*"<sup>14</sup> between parties.

By way of *res judicata* they are producing effects only *inter partes*. But they also "have *res interpretata*"<sup>15</sup>.

By way of *res interpretata* they are producing effects *erga omnes*.

According to Art.1 of Convention The States parties are obliged to take "general measures to forbid in the future the repeating of infractions of the Convention"<sup>16</sup>.

### **Proposal of amendment to European Convention on Human Rights**

By this way we are suggesting the amendment of European Convention on Human Rights by an Additional Protocol, which is regulating the right to inherit of persons, as a human and a civil right.

In case of deceased persons who had goods it is important to regulate their juridical situation.

By succession, *de cuius* patrimony is transmitted to their legal heirs, in the intestate succession or to the testamentary heirs, in the testate succession, or to the state in the vacant succession.

In practice, the problem that faced them it was the right to inherit and by case-law's way, European Convention on Human Rights acknowledged this right.

That is why we consider it is necessary the *expressis verbis* regulation of right to inherit on the level of European human rights law.

### **Conclusion**

The influence of European Convention on Human Rights upon Romanian successional law is complex and evolutive. This is interdependent with European Human Rights Law development, Romanian Civil Law upsurge and European Court of Human Rights case law progress.

This influence is gathering way also in European and national legislative field and case law domain.

The context in whom the influence of European Convention on Human Rights upon Romanian successional law is gathering way is the constant development of protection of Human Rights in Europe.

Corneliu Bîrsan –European Convention on Human Rights. Comment on articles. 2<sup>nd</sup> Edition-C.H.Beck Publishing House, Bucharest, 2010, page 7

Corneliu Bîrsan –European Convention on Human Rights. Comment on articles. 2<sup>nd</sup> Edition-C.H.Beck Publishing House, Bucharest, 2010, page 602

Corneliu Bîrsan –European Convention on Human Rights. Comment on articles. 2<sup>nd</sup> Edition-C.H.Beck Publishing House, Bucharest, 2010, page 602

- Corneliu Bîrsan –European Convention on Human Rights. Comment on articles. 2<sup>nd</sup> Edition- C.H.Beck Publishing House , Bucharest, 2010, page 651
- Corneliu Bîrsan –European Convention on Human Rights. Comment on articles. 2<sup>nd</sup> Edition- C.H.Beck Publishing House , Bucharest, 2010, page 670
- Corneliu Bîrsan –European Convention on Human Rights. Comment on Articles. 2<sup>nd</sup> Edition- C.H.Beck Publishing House , Bucharest, 2010, page 670
- Corneliu Bîrsan –European Convention on Human Rights. Comment on Articles. 2<sup>nd</sup> Edition- C.H.Beck Publishing House , Bucharest, 2010, page 671
- Corneliu Bîrsan –European Convention on Human Rights. Comment on Articles. 2<sup>nd</sup> Edition- C.H.Beck Publishing House , Bucharest, 2010, page 1648
- Corneliu Bîrsan –European Convention on Human Rights. Comment on Articles. 2<sup>nd</sup> Edition- C.H.Beck Publishing House , Bucharest, 2010, page 1648
- Corneliu Bîrsan –European Convention on Human Rights. Comment on Articles. 2<sup>nd</sup> Edition- C.H.Beck Publishing House , Bucharest, 2010, page 1648
- Corneliu Bîrsan –European Convention on Human Rights. Comment on Articles. 2<sup>nd</sup> Edition- C.H.Beck Publishing House , Bucharest, 2010, page 1651
- Corneliu Bîrsan –European Convention on Human Rights. Comment on Articles. 2<sup>nd</sup> Edition- C.H.Beck Publishing House , Bucharest, 2010, page 1850
- Corneliu Bîrsan –European Convention on Human Rights. Comment on Articles. 2<sup>nd</sup> Edition- C.H.Beck Publishing House , Bucharest, 2010, page 654
- Silvia Tăbușcă-ECHR and CJEU Decisions Effects in Internal Law- Review on Non-discrimination Right- C.H.Beck Publishing House , Bucharest, 2012, page 75
- Silvia Tăbușcă-ECHR and CJEU Decisions Effects in Internal Law- Review on Non-discrimination Right- C.H.Beck Publishing House , Bucharest, 2012, page 176
- Silvia Tăbușcă-ECHR and CJEU Decisions Effects in Internal Law- Review on Non-discrimination Right- C.H.Beck Publishing House , Bucharest, 2012, page 175

## References:

### Treaties, Books

- Alain Supiot-Homo Juridicus –Essay about Anthropological Function of Law-Rosetti Educațional, Bucharest, 2012
- Corneliu Bîrsan –European Convention on Human Rights. Comment on Articles. 2<sup>nd</sup> Edition- C.H.Beck Publishing House , Bucharest, 2010
- Diana Elena Dragomir- European Court of Human Rights after June 1<sup>st</sup> 2010.Legislative Guide- Nemira , Bucharest, 2010
- Flavius –Antoniou Baias, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei (Coordonatori) , Adriana Almășan, Lacrima Rodica Boilă, Irina Olivia Călinescu, Sevastian Cercel, Mirela Carmen Dobrilă, Nicoleta Rodica Dominte, Honoria Dumitrescu, Emese Florian, Gheorghe Gheorghiu, Decebal-Adrian Ghinoiu, Cristina Irimia, Codrin Macovei, Anda Marina Mitu, Alin-Adrian Moise, Cristina Mihaela Nicolescu , Pavel Perju, Gheorghe Piperea, Alina Rădoi, Claudia Roșianu, Andreea –Teodora Stănescu, Șerban –Alexandru Stănescu, Anișoara Ștefănescu, Viorel Terzea, Anton Trăilescu, Alina Tudorică, Aurelian –Gabriel Uluitu, Diana Ungureanu, Bogdan Vișinoiu, Cristina Zamșa-New Civil Code. Comment on Articles art.1-2664, C.H.Beck Publishing House, Bucharest 2012
- Francisc Deak-Treatise of Successional Law. 2<sup>nd</sup> Edition updated and completed –Universul Juridic Publishing House , Bucharest, 2002
- Henri Oberdorff-Droits de l' homme et libertés fondamentales,Dalloz, Paris, Armand Colin, Paris, 2003
- Ion Gâlea-The Adherence of UE to ECHR.Critical Review- C.H.Beck Publishing House , Bucharest, 2012
- Jean –François Renucci-Treatise of European Human Rights Law, Hamangiu Publishing House , Bucharest, 2009
- Mircea Dan Bob –Problems of Inheritances in Ancient and New Civil Code, Universul Juridic, Bucharest, 2012

Mirela Steluța Croitoru-Property Right in ECHR Case-law.Right to a Fair Trial-Hamangiu Publishing House , Bucharest, 2010

Nicolae Purdă, Nicoleta Diaconu-Juridical Protection of Human Rights-2<sup>nd</sup> Edition reviewed and completed, Universul Juridic Publishing House , Bucharest, 2011

Paul Craig, Gráinne de Búrca-UE Law in Comments, Case-law and Juridical Litterature-4<sup>th</sup> Edition Community Law, Hamangiu Publishing House , Bucharest, 2009

Radu Chiriță- European Convention on Human Rights. 2<sup>nd</sup> Edition- C.H.Beck Publishing House , Bucharest, 2010

Silvia Tăbușcă-ECHR and CJEU Decisions Effects in Internal Law- Review on Non-discrimination Right- C.H.Beck Publishing House , Bucharest, 2012

### **Case-Law**

Frédéric Sudre, Jean –Pierre Marguénaud, Joël Andriantsimbazovina, Adeline Gouttenoire, Michel Levinet-Great Decisions of European Court of Human Rights-Rosetti Internațional, Rosetti Educational, Bucharest, 2011

Dragoș Călin (Coord.), Mihaela Vasiescu, Ionuț Militaru, Serena Militaru, Bianca Țândărescu, Roxana Lăcătușu, Paula –Andrada Coțovanu, Alexandra Lăncrănjan, Beatrice Ramașcanu, Lucia Zaharia, Lavinia Cîrciumaru-ECHR Decisions In Cases versus Romania .Review.Consequences.Potentially Responsible Authorities–Volumes I-V, Universitary Publishing House , Bucharest, 2010

Dragoș Călin (Coord.), Mihaela Vasiescu, Paula –Andrada Coțovanu, Florin Mihăiță, Ionuț Militaru, Lucia Zaharia, Elena Blidaru, Roxana Lăcătușu, Lavinia Cîrciumaru, Cristina Radu-ECHR Decisions In Cases versus Romania . Review.Consequences.Potentially Responsible Authorities –Volume VI, Universitary Publishing House , Bucharest, 2011

Dragoș Călin (Coord.), Mihaela Vasiescu, Paula –Andrada Coțovanu, Florin Mihăiță, Cristinel Ghigheci, Ionuț Militaru, Lucia Zaharia, Cristina Radu, Roxana Lăcătușu, Lavinia Cîrciumaru, Petrică Ghergheșanu, Constanța Balaci-ECHR Decisions In Cases versus Romania . Review.Consequences.Potentially Responsible Authorities –Volume VII, Universitary Publishing House , Bucharest, 2012

### **Articles**

Corneliu Bîrsan-European Union and European Convention On Human Rights: Unity or Duality in European Protection of Human Rights? -in Romanian Community Law Review No.1/2003, pages 18-36

Sandra Gătejanu-Right to Respect of Family Life and Successions- in Romanian Case-law Review No.2/2012, pages 246-252

### **Legislation**

European Convention On Human Rights and Additional Protocols.Rules of ECHR.Practical Instructions , Request Form to the Court and Explanation Notes.GO No.94/1999 concerning Romania's Participation to Trials before ECHR , European Agreement concerning Persons Participating in Trials before EGHR-Pilot-Judgement Procedure .Updated November 1st 2011-Hamangiu Publishing House, Bucharest, 2011

French Civil Code

Mănescu Dumitru Viorel, Dunca Doina (Coordonatori)-Documents-legislative acts from 1874 to 1995, NOTAROM, Bucharest, 2006

New Civil Code and Law for Application.Correlations with Ancient Regulatings .Connected legislation.Alphabetical Index. Edition 2012, Hamangiu Publishing House, Bucharest , 2012

Oprișan Costică, Hatmanu Ioan, Gonciulescu Alex.(Gonciulescu Alexandru), Iacovescu Ana, Raba Emil, Ilie Ruxandra, Ninosu Petre și Duță Adrian, who tended about publishing of Civil Code –Civil Code published under the aegis of Justice Department, Bucharest , 1981

### **Quebec Civil Code**

**Romania 's Constitution-amended by Law No.429/18.09.2003, republished**

### **Sites**

<http://www.successions-europe.eu/>

<http://www.echr.coe.int/ECHR/>