



Re-married couples to be able to renounce inheritance in favour of their children

The Socialist Party has submitted a bill to amend the Civil Code that would allow a new marriage without the new spouses automatically becoming heirs of one another. The amendment aims to safeguard the patrimonial interests of the children from previous marriages while avoiding opposition from children to a new marriage of a divorced or widowed parent.

The draft law of the PS provides for "mutual renunciation" of the status of an heir, via a prenuptial agreement, provided that the marriage is subject to the *separate property regime*. If the adopted matrimonial property regime is that of *community property*, this proposed option would no longer be possible.

According to the bill's authors, the current legal framework ends up functioning as an impediment to the realisation of second marriages due to the effects on succession rights. There has always been a practical problem for those who intend to remarry and already have children from a previous union. Presently, it is not possible to contract a marriage without a spouse becoming a legitimate heir and, therefore, without prejudice to potential interests of the children.

An "obstacle" to marriage

In a typical case, two people who want to marry but who have children from previous marriages cannot do so without the union potentially harming the interests of the existing children. Under present legislation, the new spouse necessarily becomes heir to the other when one of them dies. As a result, the new spouse and existing children compete for the inheritance. This prospective situation can be an obstacle to a second marriage, or to the first if there are children out of wedlock. In many cases, each may already be financially independent and may not want their new relationship to hurt the interests of their offspring.



The intention of this legislative initiative is to "open an area of freedom" that does not currently exist. The measure is optional and will only apply to those who so choose.

Today, the impact of succession is the most significant legal difference between married and “*de facto*” cohabiting couples. In the latter, the partners in cohabitation are not heirs. Spouses are among the first line of legitimate heirs. They cannot be disinherited, except in exceptional situations. The part of the assets destined to these heirs varies. The most common case - spouse and children - represents two-thirds of the inheritance. Like any other heir, the spouse may waive inheritance, but only at the time of the division of the estate.

The property regime stipulated in a marriage - *common, community or separate property* - does not affect inheritance rights. The spouses remain as mutual heirs in any of these situations. The most common is *community property*, the regime assumed when there is no prior contract. In the case of the Socialist proposal, it will be necessary for the future couple to opt for the separate property regime in a prenuptial agreement.

The third amendment to the Civil Code

The draft law joins two other legislative initiatives to amend the Civil Code already under discussion in parliament. One is also about marriage: the end of the waiting period between a divorce and a second marriage, currently 180 days for men and 300 days for women.