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FEATURE ARTICLE

**NO LONGER “FORGOTTEN”:
SPECIALIZED JUDGES TO
GUARANTEE RIGHTS OF
ROMANIAN CHILDREN**

by MELINA ROZZISI

In 1990, the world was appalled by vivid images of the “forgotten children” of Romania.¹ These images depicted malnourished orphans, tied to steel cribs and stacked on steel carts, living in squalor in Romanian orphanages.² At that time, over a hundred thousand Romanian children lived in these orphanages—abandoned by parents who were too poor to support them after Communist policies banned abortion and contraceptives.³



Under the world's watchful eye, the new Romanian government invested significantly in reforming the child welfare system.⁴ The government adopted the United Nations Convention on the Rights of the Child in 1990⁵ and later created the National Committee for Child Protection, a committee responsible for enacting the National Plan of Action legislation to protect children's rights.⁶

Twenty years later, as Romania continues to undergo massive legislative reform, the government continues to address the rights of children.⁷ With new legal procedures in place, most notably specialized judges who focus exclusively on matters involving children, Romania is positioned to better serve the needs of their children.⁸

ROMANIA'S LEGISLATIVE REFORM

Operating under the same Civil Code from 1864 until 2011⁹, the Romanian legal system has long been out of touch with modern issues¹⁰ and has become increasingly fragmented with conflicting code provisions.¹¹

Recognizing the need to modernize substantive law and to create clear and efficient judicial procedure, the Romanian Legislature repealed the old Civil Code in 2007 and wrote the New Civil Code ("NCC"), which went into effect

October 2011.¹² The legislature also plans to enact a New Code of Civil Procedure ("NCPC") in February 2013¹³, which amends the procedural institutions that enforce the Civil Code.¹⁴

Both the NCC and NCPC introduce new social, moral, cultural, economic and technical-scientific values, which provide greater flexibility and clarity for the legal norms.¹⁵ Included among those values is a desire to continue developing and improving the rights of children.¹⁶

While Romania's former Civil Code, Constitution, and supplemental regulations recognized children's right, there was minimal protection of these rights.¹⁷ Children's rights, available in theory, went unrecognized in reality.¹⁸ Maria Roth and Mihai Bogdan Iovu, coordinators for the Children's Rights and the Social Context at the Romanian Sociological Association International Conference, explained that, "although social actors at several levels are committing themselves to generous initiatives in child welfare, indicators demonstrate that the measures taken have not led to the expected improvements in frontline practice."¹⁹

Similarly, the legal process itself did not protect the rights of children. Andrei Vartires, a law student in his final year at the University of Bucharest in Romania, indicated the "in general, there were a lot of laws that gave children rights, and the rights exist, but a child's right was not protected as it should be by the procedural system,"²⁰

SPECIALIZED JUDGES TO PROTECT THE SUPERIOR INTEREST OF THE CHILD

Under the NCC and NCPC, the Romanian legislature attempts to implement procedures that will help safeguard children's rights during legal proceedings.²¹ Under the new codes, "the rights are more or less the same, yet *how* the rights are granted is changing; the new laws are working to ensure that the rights are actually recognized," Vartires notes.²²

To ensure that the "superior interest of the child" is the guiding principle in child law matters, the NCC creates new institutions that will provide enhanced procedural guarantees.²³ Guardianship courts are one such institution, given authority in Article 107 of the NCC.²⁴

Judges who choose to specialize in children and family cases will lead the Guardianship courts.²⁵ These specialized judges will concentrate on child related matters and will undergo continuous training that focuses on this area of law.²⁶

Because prior judicial decisions do not have a binding effect in Romania's civil law system, dedicated and well-trained judges will help guarantee that the child's superior interest is the primary concern in cases involving children.²⁷ Magistrate Madalina Jebelean further explained that guardianship courts and specialized judges eliminate the potential that an unprepared or insensitive judge will decide important matters for children.²⁸ The judge will remain with the child throughout the entire case, as well as any and all matters the child has in court.²⁹

"These steps will help the judge develop a stronger bond with the child," Magistrate Madalina Jebelean emphasized, and in turn, "the judge has a better and more continuous grasp of the evolution of the child, and can ensure the child's best interest is met in the decision making process."³⁰

Under the NCPC, children will have access to "smoother procedural means" which will lead to expedite case settlement.³¹ Specialized judges will be a critical component in the administration of these new procedures. Magistrate Jebelean said, "you can never be 100 percent sure something will turn out well, but having a judge who has special training and experience, and who is familiar with the child, increases the chances that the child will have a good outcome."³²

CHALLENGES FOR THE FUTURE

While massive legislative reform was long overdue, implementation will present a challenge. Vartires notes that, "while there has been huge progress made in the last few years, this is a tricky period in our legal system – things are not yet verified."³³

Once the NCPC is official enacted in February 2013, the cost of the infrastructure needed to implement the new code's procedures is of great concern.³⁴ Varties explains that, "the system *needs* more people so it can work properly – more clerks and more magistrates."³⁵ The new procedural changes that call

for specialized judges and quicker procedures will require approximately 1,391 more judges, 3,883 court clerks, and more court rooms.³⁶ This will require the Institutes that train and educate magistrates to accept more people to handle the new procedural effects.³⁷

Moreover, lawyers will have to learn the new code and will play a significant role in presenting best theories and methods for implementing the new laws.³⁸ Currently, the Society of Legal Sciences is organizing a conference with legal experts to discuss the challenges they see in the various areas of law that will arise with the new codes.³⁹

Romania has used the legislative reform as an opportunity to continue improving children's rights. The Government, however, must react to the potential weaknesses quickly in order to ensure the new codes have the intended positive impact on the lives of children. How judges and lawyers implement these codes with regards to children's matters, and how the State responds to challenges and weaknesses, is crucial to the future of children's rights development in Romania.

NOTES

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2 Nicholas Wood, *Romania Seeks to Reverse a Harsh Era for Its Children*, NY TIMES (Sept. 25, 2005), [http://www.nytimes.com/2005/09/25/international/europe/25romania.ready.html?_r=2&ref=nicolaeceausescu&Inhumane Conditions For Romania's Lost Generation](http://www.nytimes.com/2005/09/25/international/europe/25romania.ready.html?_r=2&ref=nicolaeceausescu&Inhumane%20Conditions%20For%20Romania's%20Lost%20Generation), ABC 20/20 (June 8, 2010), <http://abcnews.go.com/2020/story?id=124078&page=1#.Ullih46hDzK>.

3 *Id.* at 2, 4.

4 *See generally* MINISTRY OF LABOR, FAMILY AND EQUAL OPPORTUNITIES & NAT'L AUTH. FOR PROT. OF CHILD'S RIGHTS. REPORT ON NATIONAL POLICIES FOR THE PREVENTION OF VIOLENCE AGAINST CHILDREN: ROMANIA 2008 12; NATIONAL REPORT ON THE FOLLOW-UP TO THE WORLD SUMMIT FOR CHILDREN: DECEMBER 2000 1-2, UNICEF *available at* www.unicef.org/specialsession/how_country/edr_Romania_en.doc.

5 United Nations Convention on the Rights of the Child, UNITED NATIONS TREATY COLLECTION, *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

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7 *See generally* Iolanda Boti & Victor Boti, *The Best Interest of the Child: Concept Analysis From the Perspective of the Regulations of the New Romanian Civil Code*, JURNALUL DE STUDII JURIDICE

at 277, 278, 281–282 (Dec. 2012), available at http://jls.upa.ro/attachments/064_Jurnalul%20de%20Studii%20Juridice%20%2034%20Dec%202010%20-19.pdf.

8 Skype Interview with Magistrate Madalina Jebelean, Timișoara Court of First Instance (Oct. 23, 2012).

9 Daniel Buda, *The Administrative Reform in Romania: The New Civil Code and the Institution of Marriage* 28 (2012), available at <http://rtsa.ro/en/files/TRAS-36E-2012-3BUDA.pdf>.

10 *Id.*

11 Anamaria Corbescu, *Update: Doing Legal Research in Romania*, HAUSER GLOBAL LAW SCHOOL PROGRAM AT NYU SCHOOL OF LAW (Oct. 25, 2012), http://www.nyulawglobal.org/globalex/romania1.htm#_5.4_Civil_law

12 *Id.*

13 *New Civil Procedure Code to Enter Into Force on 1 February 2013 in Romania*, TPA HORWATH (Oct. 25, 2012), <http://www.tpa-horwath.com/en/New-Civil-Procedure-Code-2013-in-Romania>.

14 Commission Staff Working Document, Accompanying the Document, EUROPEAN COMMISSION, REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL: INTERIM REPORT ON PROGRESS IN ROMANIA UNDER THE COOPERATION AND VERIFICATION MECHANISM 5 (2012) [hereinafter WORKING DOCUMENT], available at http://ec.europa.eu/cvm/docs/swd_2012_231_en.pdf.

15 Buda, *supra* note 9.

16 *See generally* Boti & Boti, *supra* note 7.

17 *See generally* Ana Elena Benta & Elena Ana Mihut, *Child Rights Protection in Romania's Law System*, AGORA INT'L JOURNAL OF JURIDICAL SCI, 2007, at 30, available at http://www.juridicaljournal.univagora.ro/?page=article_details&id=124 (discussing each right of the child granted by the Constitution and Law No. 272/2004 on the protection and promotion of child's rights).

18 Maria Roth & Mihai Bogdan Iovu, Coordinators, *Children's Rights and the Social Context*, THE ROMANIAN SOCIOLOGICAL ASSOCIATION INTERNATIONAL CONFERENCE: EUROPEAN SOCIOLOGY: NEW CHALLENGES AND OPPORTUNITIES, (Sept. 27-29, 2012), <http://www.conference.arsociologie.ro/Pagina-de-start-a-conferintei>.

19 *Id.*

20 Skype Interview with Andrei Vartires, Law Student, University of Bucharest, Romania (Oct. 19, 2012).

21 Skype Interview with Magistrate Madalina Jebelean, Timișoara Court of First Instance (Oct. 23, 2012); see also Daniela Cret, *Defending the Natural Person in Private Law*, 10-11 (2011) (unpublished Ph.D Thesis Summary, University of Sibiu), available at <http://doctorate.ulbsibiu.ro/obj/documents/rez-cret.pdf>.

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23 *Litigation and Arbitration*, in *DOING BUSINESS IN ROMANIA*, 252, 253 (Musat & Ascoiatii, 9th ed. 2012) available at <http://www.musat.ro/publications/15/Doing-Business-in-Romania-sup-reg-sup.html>.

24 Boti & Boti, *supra* note 7, at 283, 284 (referring to the Tutelage Court, the name of the guardianship court in Romania).

25 Skype Interview with Magistrate Madalina Jebelean, Timișoara Court of First Instance (Oct. 23, 2012) (In some larger courts, there are currently specialized judges that hear family matters; under the New Code of Civil Procedure, these judges will most likely become guardianship specialized judges, and will engage in more strict rules regarding training.)

- 26 Skype Interview with Magistrate Madalina Jebelean, Timișoara Court of First Instance (Oct. 23, 2012).
- 27 *Id.*
- 28 *Id.*
- 29 *Id.*
- 30 *Id.*
- 31 Robert Rosa, *Romania's Civil Code: Where do We Stand After One Hundred and Forty Seven Years?* ȚUCA, ZBĂRCEA & ASOCIAȚII, http://www.legal500.com/assets/images/stories/firmdevs/tuca_zbarcea_asociatii_romantias_civil_code.pdf.
- 32 Skype Interview with Magistrate Madalina Jebelean, Timișoara Court of First Instance (Oct. 23, 2012).
- 33 Skype Interview with Andrei Vartires, Law Student, University of Bucharest, Romania (Oct. 19, 2012).
- 34 *Implementation of the new civil, criminal and procedure codes costs approximately EUR 157 M*, NINE O'CLOCK.RO, (Sept. 17, 2012), <http://www.nineoclock.ro/implementation-of-new-civil-criminal-and-procedure-codes-costs-approximately-eur-157-m/>.
- 35 Skype Interview with Andrei Vartires, Law Student, University of Bucharest, Romania (Oct. 19, 2012).
- 36 *Implementation of the new civil, criminal and procedure codes costs approximately EUR 157 M*, NINE O'CLOCK.RO, *supra* note 34.
- 37 EUROPEAN COMMISSION, REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL: INTERIM REPORT ON PROGRESS IN ROMANIA UNDER THE COOPERATION AND VERIFICATION MECHANISM 2-3 (2012), *available at* http://ec.europa.eu/cvm/docs/com_2012_56_en.pdf.
- 38 Rosa, *supra* note 31.
- 39 Vlad Vrinceanu, *Difficult Issues in Civil Procedure*, ROMANIAN LEGAL WEEK (Sept. 3, 2012), <http://www.legalweek.ro/2012/09/03/difficult-issues-in-civil-procedure-2/>.