



IMPROVING INSTITUTIONAL FRAMEWORK OF FAMILY COURTS IN ROMANIA

- PROJECT -

Cooperative Agreement No. 186 A 00 03 00103 00

CLOSED FILES REVIEW

- ABSTRACT -

August 2007

In late 2006, the US Agency for International Development (USAID) asked the Romania office of ABA/CEELI to “help improve the institutional framework of family courts in Romania” with specific attention to cases affecting children’s welfare. The nine month project (January 1-September 30, 2007) was to include: research and discussions with judges from two pilot courts to determine what reforms might be initiated under the project; judicial seminars to familiarize magistrates with project findings and basic principles of case management; and recommendations to the Government of Romania (GOR) for long-term reforms of the legal and policy framework. Following an initial discussion with the president of the Superior Council of Magistrates (SCM), Judge Anton Pandrea, and with approval from USAID, two courts were selected to participate in the project, e.g. Bucharest and Ploiesti¹.

The research was conducted in two phases (January-April, and May-July): in view of the findings from the research into the closed files of family cases, ABA/CEELI recommended that the workplan be modified to document in a second phase reasons for adjournments in civil litigation. The two reports, which follow, detail project methodology, analyze the data, and outline questions that surfaced from the research and discussions with judges in the two pilot courts. The second report (June 2007) lists issues that the Commission on Revision of Civil Procedures, the Ministry of Justice (MOJ), and the SCM may wish to address – both within and across institutions – to improve the efficiency of civil litigation.

Since the drafting of the second report, ABA/CEELI was made aware of two separate documents, one on a review of “old cases” drafted by the Inspection Division of the Superior Council of Magistrates (SCM)², and one on court experts circulated internally by the Ministry of Justice (MOJ). Both confirm, for the most part, the ABA/CEELI findings.

PHASE I – CLOSED FILES REVIEW OF FAMILY CASES (DIVORCE WITH CHILDREN, SEPARATION OF ASSETS, ADOPTION).

ABA/CEELI documented, early on in the project, that there existed no national specialized family courts system *per se*, except for a few court units (see Phase I report, pages 5 to 6). A review of national statistics provided by the SCM showed that the majority of “family” cases (civil docket) were disposed of at the trial level in less than six months.

¹ Specifically, the first instance courts in Ploiesti and Bucharest (Second Sector), and the tribunal in both cities.

² http://www.csm1909.ro/csm/linkuri/10_07_2007_10824_ro.zip

This was confirmed by the ABA/CEELI analysis of randomly selected closed files of cases dealing with divorce with children, separation of assets and adoptions (see Phase I report, methodology – pages 15 to 20; and findings - pages 20 to 28). Judges had indicated that divorce with children and separation of assets were among the more problematic cases in their courts (first instance), the former due to the sensitivity of some cases and the latter due to length of trials and multiple adjournments. Adoption cases (tribunal) were researched when the ABA/CEELI team learned that – contrary to widespread belief – the final disposition of these cases in courts was exceedingly quick (generally within one hearing for each adoption phase – and there were no appeals).

Family cases findings confirmed national statistics: Romanian cases are disposed of swiftly, for the most part. Some cases, however – such as separation of assets, when contested by the parties – take an inordinate amount of time (the random sampling showed as many as 40 adjournments for a single case), and displace judicial time that should be devoted, preferably, to handling in depth sensitive or complex situations. In short, the documentation of reasons for adjournment appeared to be a more fruitful avenue for further research and for developing legal, procedural and operational recommendations.

PHASE II – CLOSED FILES REVIEW OF CIVIL CASES (INHERITANCE CASES)

The second set of closed files researched focused on inheritance cases – another case type that showed considerable delays per local and national statistics.³ The data showed similar results for contested separation of assets cases, e.g. that the majority of adjournments were due to 1) lack of preparation by parties and attorneys, and inefficient discovery practices; 2) delays caused by experts' reports or lack of submission thereof; 3) no-shows (litigants, witnesses, others). Some delays were due to time requested to hire legal representation, or for review of the claims/counterclaims or experts' reports, and delays in obtaining proper summons; but these comprised a small proportion of the total number of adjournments.

Judges from the tribunals and first instance courts in Bucharest and Ploiesti validated these findings, based upon their personal experience in court. They noted however that desirable reforms exceeded their individual or institutional capacity at the court level. Specifically:

- Amendments to the Code of Civil Procedures would be desirable, to abrogate some processes that the courts must now follow but which may be counter-productive to the efficient handling of cases and are not necessary to the act of justice.
- “Tools” that should enable judges to have greater control over their cases – such as applying sanctions to delinquent parties, attorneys or experts – are seldom used for a variety of reasons.
- Procedures that would permit more efficient and timely discovery of evidence are at the discretion of attorneys, not an option available to judges.
- An insufficient number of (qualified) experts, inadequate expertise reports, lack of guidelines enabling judges to set reasonable fees when experts ask for more money at the time of report submission, inability (or refusal) by parties to pay the expert, out of date listings, were but some of the reasons cited to explain the “problems with experts”.

A more detailed discussion of these questions can be found in the Phase II report, pages 6 to 7.

³ Another case type (claims between individuals or with legal entities) could not be researched due to limitations of the ECRIS system, and of available records.

CONCLUSIONS:

Objective data, resulting from closed files reviews, and observations from judges in the two pilot courts⁴, are the basis for a set of questions which the Phase II poses for consideration by the Commission of Civil Procedures, the MOJ and the SCM (pages 7 to 8). ABA/CEELI respectfully recommends that each institution reflects on these questions to improve case preparation, the effectiveness of the experts' process, and the ability for judges to exercise more effective control over their cases. For instance:

- The Commission on the Revision of Civil Procedures might set timelines for hearing dates that take into consideration the complexity of expertise, and give judges the option to set a calendar for cases (scheduling conference). The Commission might also permit judges to adjourn a case on their own motion without holding a public hearing, particularly when the court knows in advance that there will be (legitimate) no-shows at the scheduled hearing, and to give judges the option to waive expertise reports under specific circumstances (such as low threshold values) for contested cases.
- The Ministry of Justice can play an important role in reshaping the sector of experts, including re-assessing guidelines for courts to set up appropriate expert fees, looking into the problem of non-payment by parties particularly in the situation of indigent defendants, and possibly setting more rigorous standards for expertise reports and for the profession. The MOJ initiative to conduct an audit of this sector demonstrates that it, along with the SCM which has transmitted the document to courts, is concerned by its impact on court efficiency⁵.
- The Superior Council of Magistracy might develop more visible processes to reassure judges that they will be protected against harassment complaints, should these materialize.⁶ It might also conduct further fact based, systemic inquiries about the enforcement of sanctions to assess the potential responsibility of bar associations, local experts committees, or the financial authorities in the case of non-enforcement.

ABA/CEELI further stresses the inter-institutional cooperation necessary if the management of cases is to improve in Romanian courts. For example:

- The justice system stands to benefit from conducting fact based research on various policy questions that require a rigorous research capability and analytical capacity. Analysis of case flow, differentiated case management⁷, and calendaring options are but a few areas that stand to benefit from this level of institutional inquiries. The research would also help point objectively to infrastructural gaps, such as the lack of courtroom space which require judges, in some courts, to juggle hearing schedules. Finally, an identification of information needs that are critical to the development of good management policy that would guide necessary revisions to the case management software (ECRIS) and record keeping capabilities.

⁴ The Phase II report and its findings/recommendations was discussed further in July-mid August 2007 with a number of individuals familiar with the Romanian justice system, including attorneys, magistrates, officials, in order to "vet" the recommendations against their professional experience.

⁵ Note: When it drafted this report/discussed these issues with Bucharest and Ploiesti judges, ABA/CEELI was not aware that an audit about expertise related problems had been commissioned by the Ministry of Justice. The report has been forwarded by the SCM to courts with request for comments by September 7, 2007.

⁶ Further discussions with justice sector officials indicate that few complaints have been filed by attorneys or experts against judges who imposed sanctions. However, judges appear to be somewhat concerned about unwarranted complaints, because they view these as possibly harmful to their reputation or career paths. Further, their current perception is that if they are attacked, the SCM will not be in a position to protect them.

⁷ E.g. management of a case that factors the degree of complexity of the case and thus places some cases on a fast track for disposition.

- Judicial and justice system authorities may need to collaborate if they find that a large number of judicial sanctions are not enforced. The remedies may be found in changing existing regulations (for instance, stipulating that addresses, rather than personal identification numbers of attorneys or experts, will suffice for fiscal authorities purpose), or in holding negotiations with legal profession representatives to explain new rules of discovery and clarify under what circumstances sanctions would apply.
- An inter-institutional protocol could lead to the training of court administrative staff that would assist and provide information to *pro-se* litigants, thus relieving judges from the task of providing legal counseling to such litigants.

In summary, adjournments that could be avoided capture disproportionate amounts of judicial time away from cases that merit singular attention from judges. A significant reduction of adjournments for those case types which take up months or years to be adjudicated offer the possibility of significantly reducing the number of cases judges must hear in each session⁸ – a source of major grievance from the judiciary when it complains about unmanageable workload. Each institution, whether the Commission in charge of the Code of Civil Procedures, the Ministry of Justice or the Superior Council, has a special responsibility in addressing the problems and in collaborating to find comprehensive and complementary solutions.

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⁸ For instance - assuming a caseload of 700 cases /year: a) if 60% of the cases require 2 adjournments (420x2=840 hearing settings), and 40% require 10 adjournments (280x10=2,800 hearing settings), on the basis of 40 weekly court sessions per year, the judge will have over 90 cases on the court session docket (3,640:40). By contrast, an average of 2 adjournments per case (700x2=1,400) would lead to 35 cases per court session.



IMPROVING INSTITUTIONAL FRAMEWORK OF FAMILY COURTS IN ROMANIA - PROJECT -

Cooperative Agreement No. 186 A 00 03 00103 00

PHASE I – CLOSED FILES REVIEW OF FAMILY CASES (DIVORCE WITH CHILDREN, SEPARATION OF ASSETS, ADOPTION) - PROGRESS REPORT - May 2007

I. INTRODUCTION

This progress report covers project activities and findings from project inception (January 2007) through end of May 2007. A second project phase is to take place during the June – September 2007 period, as outlined in the request for modification of the work plan submitted to and approved in May 2007 by the US Agency for International Development (USAID) Mission in Romania.

The ABA/CEELI “family courts” initiative was launched in response to concerns that Romanian courts in general, and court units handling family and juvenile cases in particular, are slow and possibly ineffective. Further, the law on judicial organization (Law no. 304/2004) had established a mandatory legal framework for a range of specialized courts, including the creation of “family and juvenile courts”. The mandatory stipulation was removed when the law was amended in 2005 (Law no. 247/2005), leaving it up to individual courts to determine whether to set up such specialization. However, it was unclear to what extent such specialization exists, where, and with what results.

A. PURPOSE OF THE PROJECT

- Describe the current structure of the Romanian court system in the areas of juvenile and family cases
- Explore, with two pilot courts (Bucharest and Ploiesti¹), what type of reforms might help increase quality and efficiency of family/juvenile cases resolution
- Monitor such reforms and provide mid-long term recommendations to the Government of Romania (GOR) justice institutions

¹ The two court systems were selected, with approval from USAID, for reasons of representativeness (one large urban system, one medium size). In consultation with Ministry of Justice representatives, it was also decided that “pilot” courts in this area should not be part of the research, because they are atypical of current court operations and norms.

B. FOCUS, PRIORITIES AND SCHEDULE OF ACTIVITIES

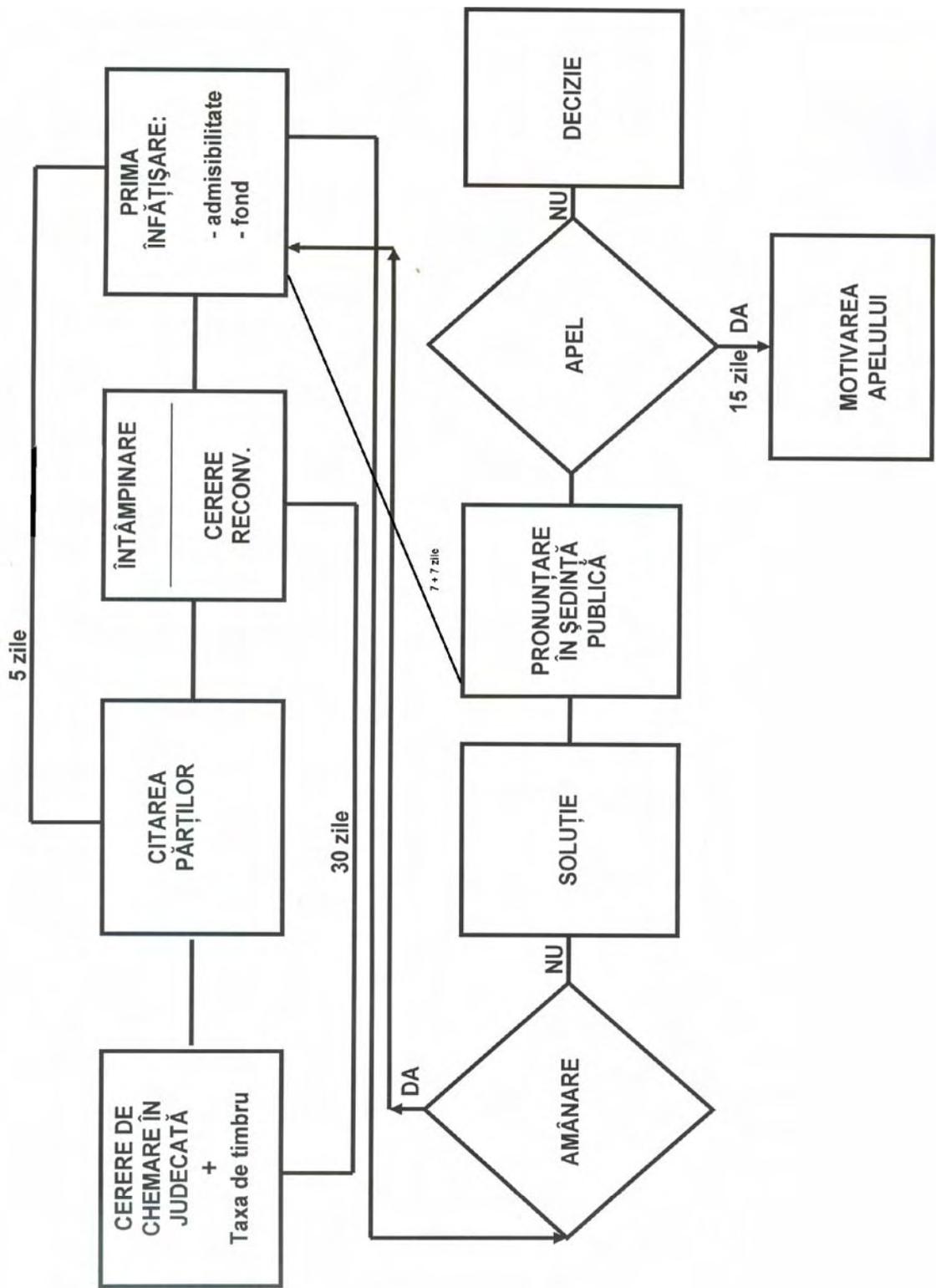
Early project research showed that combining “minors (juveniles)” cases (criminal docket), and “family” cases (civil docket) appeared to be the exception, rather than the rule in most Romanian courts. Further, it was difficult and possibly inappropriate to develop initiatives in the juvenile justice area: a multi-year EU PHARE project focusing principally on juvenile justice reform (criminal) had been recently completed, but no policy decision had been made by the GOR on how to follow up on the initial experiment². On the other hand, the civil docket (family cases including those involving minors) was of interest since it had received relatively little attention to-date.

As a result, CEELI decided to focus on the below civil cases involving family and juvenile issues³.

FAMILY AND PERSON LAW DISPUTES - judecatorie	7 Actions regarding separation of joint assets between spouses (without a divorce)	2.1 a. Law 273 /2004 -requests to initiate adoption procedures
1. Establishing paternity	8 Actions regarding the joint living space filed by spouses during marriage	2.1b. Law 273/2004 - requests to grant child custody for the purpose of adoption
2. Denying paternity	9 Marriage annulment	2.1 c Law 273/2004 - requests to approve adoption
3. Obligation to support minor children (without a divorce)	10. Deprivation of parental rights	2.2 International adoptions, out of which:
4. Establishing a minor child's domicile	11. Establishing restrictions	2.2.a. Law 273 /2004 -requests to initiate adoption procedures
5 Granting child custody, including:	12. Recording a person's death or disappearance	2.2.b. Law 273/2004 - requests to grant child custody for the purpose of adoption
5.1 Re-granting child custody as a result of divorce	13. Other family law actions	2.2.c. Law 273/2004 - requests to approve adoption
5.2 Granting child custody in cases with unmarried parents	III.FAMILY AND PERSON LAW DISPUTES - tribunal	3. Other family and person law disputes
6. Divorce cases,including:	1.Actions filed under Law no. 272/2004 on Children Placement	
6.1 With minor children	2. Total adoptions, including:	
6.2 Without minor children	2.1 Domestic adoptions, including:	

² Upon pilot project completion in November 2006, project leaders recommended that all juvenile justice cases be handled at the level of Tribunals as courts of first instance. This and other recommendations require jurisdictional changes, as well as re-allocation of resources and other major operational decisions. At inception of the CEELI project, no final decisions had been reached on these matters.

³ This list is drawn from that established by the SCM for the purpose of statistical reporting.



Using this list of cases as a basis for project activities, CEELI:

- Conducted research at the Superior Council for Magistrates to collect 2006 national statistics (volume, disposition time) for these cases, and compile information on court structures (at the *judecatorie*, tribunal, and court of appeal levels) that handle those cases nationwide.
- Convened judges from the two pilot sites (3 representatives each) to discuss these cases as a whole and individually, determine which case types are problematic and for what reasons, and identify options for desirable reforms.
- On the basis of these discussions, and in consultation with the leadership of the two pilot court systems, decided to conduct research on three case types:
 - a) divorce with children and separation of assets (*judecatorie*), both listed by the discussion group as among the more problematic cases;
 - b) adoption (tribunal), because discussion group judges provided surprising information on this case-type, e.g. that they are disposed quickly.
- Developed a caseflow chart in collaboration with judges (opposite page).
- Conducted closed files research at the two sites.
- Presented findings and basic principles of caseflow management at two seminars (April 16 – Ploiesti; April 17 – Bucharest)

C. PROJECT TEAM

Romanian consultant, **Adrian Baboi- Stroe**, conducted the initial research, to document how the Romanian court system currently handles family and juvenile cases (see **II. JUVENILE AND FAMILY JUSTICE SYSTEM IN ROMANIA**), led discussions with pilot court judges (two sessions in March 2007), assisted in testing how the court system software (ECRIS) could produce the required information, and participated in the follow up seminar held in Ploiesti.

US Court Administration consultant, **Donald Cullen**, helped design the closed files research methodology, oversaw the data retrieval at both sites and assessment of findings, conducted the two training seminars, and contributed to the drafting of this progress report, development of conclusions and design of project next steps.

Other project team members included CEELI staff attorney **Raluca Stancescu**, program coordinator **Genoveva Bolea**, Financial Manager **Adina Edu**, and Country Director **Madeleine Crohn**.

Interpreter **Delia Gheorgiu** provided translation and assisted the team in the closed files research.

II. THE JUVENILE AND FAMILY JUSTICE SYSTEM IN ROMANIA

The legal framework for the system of juvenile and family justice system in Romania is provided by the Law no. 304/2004 on judicial organization, as amended by the Law no. 247/2005, which states at art. 35 (2), 36 (3), and 39 that specialized sections or panels can be organized in the first instance courts (*judecatorie*), tribunals and courts of appeal. The law also provides that tribunals specialized in juvenile and family cases can be established at county level or in the municipality of Bucharest.

This report provides a factual description of the current situation of juvenile and family justice system in Romania, based upon data collected from the Superior Council of Magistrates (SCM) in March 2007. Data collection focused on two main objectives: (1) to find out how many court

units specializing in juvenile and family cases exist in Romania; (2) analyze the activity of Romanian courts related to juvenile and family cases as reflected by judicial statistics on volume of civil cases. The documentation was also informed by discussions with judges from the Bucharest Tribunal and from three courts in Ploiesti (first instance court, Prahova county Tribunal and Court of Appeal)⁴ and by interviews with public officials and technical assistance experts. The report focuses on the civil docket, as this aspect of the juvenile and family system in Romania has received less attention from similar projects.

1. Types and distribution of specialized court units

Romania has a total of 178 first instance courts (*judecatorii*), 41 tribunals⁵ and 15 courts of appeal. In Romania, the term “specialization” is generally used to differentiate panels or sections that handle exclusively criminal, labor, administrative or commercial cases. Sub-specializations also exist, for example to create units that specialize in intellectual property.

In 2003, the government of Romania (GOR) decided to create “family and juvenile courts”, first as a mandatory measure, then as an option for individual courts. Under an EU Phare project that focused on the juvenile justice system (juveniles as victims or defendants), one such “specialized” court was established in Brasov in November 2004. However, this “specialized Tribunal” handles exclusively all cases – whether civil or criminal – that deal with juveniles, family matters, and litigation with juvenile(s) as one of the parties.⁶

Other court systems decided to create specialized sections that handle juvenile justice and family cases, including five courts of appeal (Alba Iulia, Craiova, Galati, Iasi and Suceava), and one tribunal (Dolj). There exists not such section at the level of first instance court.

Finally, most courts have opted for the creation within criminal or civil sections, of specialized panels that deal with juvenile justice matters (criminal docket), or family cases – some of which involve minors (civil docket), for a total of 59 such panels in seven courts of appeal, 299 in 30 tribunals, and 854 in 165 first instance courts. Those panels, however, do not hear those cases exclusively. Rather, they handle them as part of their civil or criminal caseloads.

Table 1: Data on court sections and panels specialized in juvenile and family cases

	Specialized sections	Specialized panels	Specialized “court”
In first instance courts (<i>judecatorii</i>)	0	854	
In tribunals	1	299	1
In courts of appeal	5	59	
Total	6	1212	1

Source: Superior Council of Magistrates, Human Resources Directorate (March 21, 2007)

⁴ From the Bucharest Tribunal: Judge Andreea Tomescu (3rd Civil Section);
Judge Mari Ilie (4th Civil Section);
Judge Marcel Gavris (5th Civil Section).

From the Ploiesti Court of Appeal: Judge Adriana Secreteanu.

From the Prahova Tribunal: Judge Cristina Roman.

From the Ploiesti First Instance Court: Judge George Alexe.

⁵ **Exclusive** of the Brasov specialized tribunal which is not a legal entity.

⁶ This pilot was supposed to serve as a “model”, toward national replication; but a number of jurisdictional, legal, and operational issues need to be resolved before such replication can take place. The specialized tribunal in Brasov is not a separate legal entity.

As demonstrated in Table 2 (below) which covers Court of Appeals, a “specialized family and juvenile” court system does not exist in Romania⁷. The same applies to most Tribunals and first instance courts. With the exception of the seven (7) court units shown in Table 1 (specialized panels in 6 courts, and 1 specialized court in Brasov), the rest of the Romanian court system follows the below organizational structure:

- Does not “specialize” exclusively in juveniles or family cases; civil docket judges handle as well regular civil litigation such as property/land restitution⁸, and criminal docket judges handle adult cases.
- Does not combine civil and criminal dockets to create a “family courts” type of structure.

*Table 2: Court of appeal sections dealing with juvenile and family cases
(specialized sections are marked with grey)*

No.	Court of appeal	Type of section
1.	Alba Iulia	Section specialized in juvenile and family cases (both civil and criminal)
2.	Bacau	Civil section for labor and social insurance litigations, also for juvenile and family cases Criminal section, also for juvenile and family cases
3.	Brasov	Civil section, also for juvenile and family cases Criminal section, also for juvenile and family cases
4.	Bucuresti	3 rd civil section, also for juvenile and family cases 2 nd criminal section, also for juvenile and family cases
5.	Cluj	Civil section for labor and social insurance litigations, also for juvenile and family cases Criminal section, also for juvenile and family cases
6.	Constanta	Civil section for labor and social insurance litigations, also for juvenile and family cases Criminal section, also for juvenile and family cases
7.	Craiova	Section specialized in juvenile and family cases (both civil and criminal)
8.	Galati	Section specialized in juvenile and family cases (both civil and criminal)
9.	Iasi	Section specialized in juvenile and family cases (both civil and criminal)
10.	Oradea	Civil section for labor and social insurance litigations, also for juvenile and family cases Criminal section, also for juvenile and family cases
11.	Pitesti	Civil section for labor and social insurance litigations, also for juvenile and family cases Criminal section, also for juvenile and family cases
12.	Ploiesti	Civil section, also for juvenile and family cases Criminal section, also for juvenile and family cases
13.	Suceava	Section specialized in juvenile and family cases (both civil and criminal)
14.	Targu Mures	Civil section for labor and social insurance litigations, also for juvenile and family cases Criminal section, also for juvenile and family cases
15.	Timisoara	Civil section, also for juvenile and family cases Criminal section, also for juvenile and family cases

2. Volume of civil family-related cases in 2006

2.1. Activity of first instance courts (judecatorii)

In 2006, first instance courts (*judecatorii*) heard a total of 157,354 civil family-related cases, out of which 34,919 cases carried over from the previous year and 122,435 were new cases. The

⁷ This issue is further elaborated upon in section 3.2, where working group sessions with judges are reviewed.

⁸ In some first instance courts, particularly in courts with a limited number of available judges, judges may be asked to handle commercial and labor litigation as well. Judges who participated in two working group sessions on March 14 and March 21, 2007 elaborated on this point.

number of disposed cases was 117,899 (96.3% clearance rate⁹), out of which 101,134 cases have been disposed within six months (85.78%) and 9,195 cases within 6-12 months (7.8%).

The most frequent five case types comprising 70% of cases heard in 2006 by the first instance courts have been:

1. *Divorce*: 59,653 disposed cases (50.6% of total disposed cases);
2. *Child support allowance (without divorce)*: 10,916 disposed cases (9.26% of total disposed cases);
3. *Division of common assets between spouses (without divorce)*: 5,969 disposed cases (5.06% of total disposed cases);
4. *Child custody*: 4,581 disposed cases (3.89% of total disposed cases);
5. *Determining filiation*: 2,000 disposed cases (1.7% of total disposed cases).

Division of common assets between spouses (without divorce) is the slowest to be disposed of among these most frequent case types (only 56.83% of these cases are disposed within 6 months, as compared to an average of 85% for the other four case types).

Table 3: Most frequent types of civil family-related cases disposed by the first instance courts (judecatorii) in 2006

Case type	Total no. of cases filed for this case type	No. of disposed cases for this case type	% of total family law cases handled in 2006	No. of cases disposed in 0-6 months	% of case type disposed in 0-6 months	No. of cases disposed in 6-12 months	% of case type disposed in 6-12 months	No. of cases disposed in more than 1 year	% of case type disposed in more than 1 year
Divorce	62,516	59,653	50.6	50,496	84.65	4,949	8.3	4208	7.05
Child support allowance (without divorce)	11,174	10,916	9.26	10,128	92.78	499	4.57	289	2.65
Division of common assets between spouses (without divorce)	6,412	5,969	5.06	3,392	56.83	1,354	22.68	1223	20.49
Child custody	4,885	4,581	3.89	3,846	83.96	404	8.82	331	7.23
Determining filiation	2,040	2,000	1.70	1,580	79	242	12.1	178	8.90
Total	87,027	83,119	n/a	69,442	84%	7,448	9%	6,229	7%

Source: Superior Council of Magistrates, Human Resources Directorate (March 21, 2007)

2.2. First instance activity of tribunals

Romanian tribunals have first instance jurisdiction primarily over child placement and adoption cases, as well as over a set of other category of litigations grouped under the denominator “other family and person law litigations” in the SCM statistical reporting standard. In 2006, tribunals heard 21,158 civil family-related cases, out of which 2,402 cases carried over from the previous year and 18,756 new cases. The number of disposed cases was 19,211 (102.34% clearance rate), out of which 18,751 cases have been disposed within six months (97.61%) and 411 cases within 6-12 months (2.14%).

⁹ Clearance rate is calculated by the formula:
$$\frac{\text{Number of cases disposed during the year}}{\text{Number of cases filed during the year}}$$

Table 4: Most frequent types of civil family-related cases disposed by the tribunals in 2006 (first instance activity)

Case type	Total no. of cases filed for this case type	No. of disposed cases for this case type	% of total family law cases handled in 2006	No. of cases disposed in 0-6 months	% of case type disposed in 0-6 months	No. of cases disposed in 6-12 months	% of case type disposed in 6-12 months	No. of cases disposed in more than 1 year	% of case type disposed in more than 1 year
Litigations regarding Law 272/2004 (child placement)	14,592	15,152	78.87	14,851	98.01	292	1.93	9	0.06
Adoptions:	3,343	3,240	16.87	3,123	96.39	99	3.06	18	0.56
<i>national adoptions</i>	<i>3,341</i>	<i>3,229</i>	<i>16.81</i>	<i>3,119</i>	<i>96.59</i>	<i>98</i>	<i>3.03</i>	<i>12</i>	<i>0.37</i>
<i>adoptions with parties from abroad</i>	<i>2</i>	<i>11</i>	<i>0.06</i>	<i>4</i>	<i>36.36</i>	<i>1</i>	<i>9.09</i>	<i>6</i>	<i>54.55</i>
Other family law litigations	821	803	4.18	777	96.76	20	2.49	22	2.74
Total	18,756	19,195	n/a	18,751	97.7%	411	2%	67	0.35%

Source: Superior Council of Magistrates, Human Resources Directorate (March 21, 2007)

Child placement had the largest share of the cases heard by tribunals in their first instance activity in 2006 (over 78% of the disposed cases). Over 99% of adoption cases disposed in 2006 have involved national parties. The speed of trial is high (on average, over 97% of cases were cleared within six months or less), exception made by cases of adoption with parties from abroad, where the share of cases disposed within 6 months is much lower (36.36% - given the low number of cases handled, the statistic is not significant).

2.3. Appeal activity of tribunals

In 2006, the tribunals heard 8,089 appealed civil family-related cases coming from first instance courts, out of which 2,181 cases carried over from the previous year and 5,908 new cases. The number of disposed cases was 6,277 (106.25% clearance rate), out of which 5,368 cases have been disposed within six months (85.52%) and 660 cases within 6-12 months (10.51%).

The most frequent five case types comprising over 83% of cases heard in 2006 by the tribunals in their appeal activity have been:

1. *Divorce*: 3,547 disposed cases (56.51% of total disposed cases);
2. *Division of common assets between spouses (without divorce)*: 839 disposed cases (13.37% of total disposed cases);
3. *Child custody*: 493 disposed cases (7.86% of total disposed cases);
4. *Determining filiation*: 283 disposed cases (4.51% of total disposed cases);
5. *Determining child domicile*: 104 disposed cases (1.66% of total disposed cases).

Table 5: Most frequent types of civil family-related cases disposed by the tribunals in 2006 (appeal level activity)

Case type	Total no. of cases filed for this case type	No. of disposed cases for this case type	% of total family law cases handled in 2006	No. of cases disposed in 0-6 months	% of case type disposed in 0-6 months	No. of cases disposed in 6-12 months	% of case type disposed in 6-12 months	No. of cases disposed in more than 1 year	% of case type disposed in more than 1 year
Divorce	3,393	3,547	56.51	3124	88.07	323	10.34	100	2.82
Division of common assets between spouses (without divorce)	696	839	13.37	631	75.21	148	17.64	51	6.08
Child custody	508	493	7.85	440	89.25	34	6.90	19	3.85
Determining filiation	245	283	4.51	222	78.45	49	17.31	12	4.24
Determining child domicile	98	104	1.66	97	93.27	5	4.81	2	1.92
Total	4,940	5,266	n/a	4514	97.8%	559	1.3%	184	0.4%

Source: Superior Council of Magistrates, Human Resources Directorate (March 21, 2007)

Division of common assets between spouses (without divorce) and determination of filiation are relatively slower to be disposed of among these most frequent case types heard by the tribunals in their appeal activity, (less than 80% of these cases are disposed within 6 months, as compared to an average of 90% for the other three case types).

2.4. Second appeal (*recurs*) activity of the courts of appeal

In 2006, the courts of appeal heard 3,339 appealed civil family-related cases coming from tribunals and first instance courts, out of which 707 cases carried over from the previous year and 2,632 new cases. The number of disposed cases was 2,935 (111.51% clearance rate), out of which 2,819 cases have been disposed within six months (96.05%) and 62 cases within 6-12 months (2.11%).

The most frequent five case types comprising over 66% of cases heard in 2006 by the courts of appeal in their second appeal (*recurs*) activity have been:

1. *Divorce*: 832 disposed cases (28.35% of total disposed cases);
2. *Division of common assets between spouses (without divorce)*: 671 disposed cases (22.86% of total disposed cases);
3. *Child custody*: 213 disposed cases (7.26% of total disposed cases);
4. *Litigations regarding Law no. 272/2004 (child placement)*: 184 disposed cases (6.27% of total disposed cases);
5. *Determining filiation*: 110 disposed cases (3.75% of total disposed cases).

All the cases within these case types are promptly disposed of, an average of 96% of these being disposed within six months. Out of the five most frequent case types, only the litigations

regarding the Law no. 272/2004 (child placement) come from the level of tribunals¹⁰, the rest originating from the first instance courts (*judicatorii*).

Table 6: Most frequent types of civil juvenile and family-related cases disposed by the courts of appeal in 2006: second appeal (recurs) activity

Case type	Total no. of cases filed for this case type	No. of disposed cases for this case type	% of total family law case handled in 2006	No. of cases disposed in 0-6 months	% of case type disposed in 0-6 months	No. of cases disposed in 6-12 months	% of case type disposed in 6-12 months	No. of cases disposed in more than 1 year	% of case type disposed in more than 1 year
Divorce	723	832	28.35	795	95.55	21	2.52	16	1.92
Division of common assets between spouses (without divorce)	595	671	22.86	649	96.72	10	1.49	12	1.79
Child custody	182	213	7.26	201	94.37	5	2.35	7	3.29
Litigations regarding Law 272/2004 (child placement)	211	184	6.27	184	100.00	0	0.00	0	0.00
Determining filiation	95	110	3.75	106	96.36	2	1.82	2	1.82
Total	1,806	2,010	n/a	1,935	96.27%	38	1.9%	37	1.83%

Source: Superior Council of Magistrates, Human Resources Directorate (March 21, 2007)

3. Review of the working group sessions¹¹

The research has also involved two working group sessions¹² attended by six judges¹³ from the Bucharest Tribunal, the Ploiesti Court of Appeal, the Prahova Tribunal and the Ploiesti first instance court (*judecatorie*). The purpose of these working group sessions has been to generate in-depth information about the problematic aspects encountered by judges dealing with civil cases related to juvenile and family matters. The group discussions were necessary and helpful as such aspects are difficult or impossible to detect when relying exclusively on judicial statistics.

3.1. Main case types and average duration of trial

Information provided by judges participating in the working groups about most frequent types of cases or average duration of trials have generally been consistent with the statistical data. When asked about the most frequent case types in their practice, judges have to a large extent confirmed the findings from data collected throughout the project. The judge from the Ploiesti first instance court indicated divorce, determining filiation, child support allowance, and division of common assets between spouses as the most frequent case types at this level of jurisdiction. Judges from the tribunals have confirmed that child placement cases based on the Law no. 272/2004 provide the largest share of juvenile and family cases heard by their courts during their

¹⁰ Child placement and adoptions can be challenged only through a second appeal (*recurs*).

¹¹ See footnote 1, above

¹² The working group sessions have taken place on March 14 and March 21, 2007, at the ABA-CEELI premises.

¹³ From the Bucharest Tribunal: Judge Andreea Tomescu (3rd Civil Section);

Judge Mari Ilie (4th Civil Section); Judge Marcel Gavris (5th Civil Section)

From the Ploiesti Court of Appeal: Judge Adriana Secreteanu

From the Prahova Tribunal: Judge Cristina Roman.

From the Ploiesti First Instance Court: Judge George Alexe.

first instance activity. The judge from the Ploiesti Court of Appeal indicated the largest share of juvenile and family cases at this jurisdiction level as being related to placement, adoption, divorce and child custody. As regarding the average speed of trials for first instance cases, judges confirmed the 6-month time span that was indicated by the data collected from the SCM.

3.2. The issue of specialization in juvenile and family cases

As far as panels are concerned, there is a consensus among participant judges that specialization is purely formal, because, during one court session, the same panel will review both general civil cases and the ones related to juvenile and family matters. In other words, panels are “specialized” only to the extent that they hear juvenile and family cases, but they are not specialized in the sense that they deal exclusively with such cases. **In the judges’ opinion, the main obstacle to specialization understood as exclusive focus on juvenile and family cases is the insufficient number of judges, which would create a caseload imbalance that cannot be sustained under current staffing levels.**

The Ploiesti Court of Appeal has also provided an illustration of a recent tendency for specialized sections to be dismantled upon the request of the courts themselves. Until January 2007, there existed a section specialized in juvenile and family cases in this court. The court requested its dissolution to the SCM, the official reason being the low number of cases pending with this section. However, other considerations seem to have also influenced this outcome, according to interviewed judges. Thus, judges were avoiding this specialized section, only two of them being genuinely interested in working there. **Apparently, to most judges, working with that section proved to be less appealing since this required a double specialization in both criminal and civil law.**

This is consistent with information from SCM representatives, who mentioned that most judges who received training in the area of juvenile and family cases, have not been inclined to work with specialized sections afterwards. According to the account of judges participating in the working groups, obstacles to a real specialization of court units in juvenile and family cases stem from a combination of factors related to understaffing, caseload management and career concerns. Data presented in Table 2 also show that two thirds of the Romanian courts of appeal prefer to deal with juvenile and family cases by means of two distinct sections, civil and criminal respectively, rather than through a single specialized section covering both criminal and civil cases. **Both statistical data and judges’ accounts during the working group’s sessions concur that specialization of court units in juvenile and family cases faces serious difficulties under current circumstances of Romanian courts, marked by an insufficient number of judges and unsatisfactory case management.** Further research into what organizational factors (if any) would make such specialization work is essential in order to assess whether this model is a feasible and sustainable goal of judicial public policy in Romania.

As far as specialization is concerned, the upshot of this research is that real, functional specialization in juvenile and family courts exists to a very limited extent, under the form of six specialized sections (in the Alba Iulia, Craiova, Galati, Iasi and Suceava courts of appeal and in the Dolj tribunal), and of one specialized tribunal in Brasov. At the same time, the notion of a “specialized panel” is to a large extent a misnomer; such panels do not display any distinct mark of specialization during the processing of juvenile and family cases, as the judges who hear them also deal with other case-types during the same hearing session.

3.3. Main types of cases and associated issues

1. Establishing and denying paternity:

- producing the evidence: a party against whom an action has been filed may refuse to be subjected to expertise and there are no legal constraint means; expertise implies costs which are met by the parties; availability of chemical reactive (in a case with the Ploiesti Tribunal, an expertise lasted two years, because the Legal Medicine Service did not have the necessary chemical reactive);
- in the area of paternity denial, there is a legal issue: only the child's mother is the active party in a case, and this provision was found unconstitutional in 2001 on equality grounds as the child's father and the child need also to be active parties in the case); however, the Family Code was not amended to comply with the decision of the Constitutional Court.

2. Establishing child support allowance for under-age children:

- Problems occur when a debtor has no income. In this hypothesis, support obligations are established depending on the minimum salary per economy, which is unfair to a debtor who benefits from social assistance, which represents an income, but which amount is significantly lower than that of a minimum salary.
- In cases where a debtor has no incomes, enforcement is impossible.
- Judges have no possibility to deal with situations when a debtor works illegally;
- Judges do not have the possibility to verify how the allowance is used. When the allowance amount is very high, there is a risk that the parent having the child custody unjustifiably takes advantage of such allowance. Participants had diverging opinions regarding the possibility to deposit part of such allowance in a bank account, which would be made available to the under-age child when he/she reaches the majority age.
- Judges are affected by the absence of a way to verify the parties' incomes, as well as by fairness issues when establishing the amount of allowance for parents with big incomes.

3. Establishing an under-age child's domicile:

- In fact, such an action represents a "masked custody" because it implies a *de facto* separation of the spouses (and, consequently, the absence of a pending divorce procedure), and a dispute between them regarding the child's upbringing;
- Problems may occur only in the area of enforcement of the court's decision.

4. Granting under-age child custody:

- Problems may occur only in the area of enforcement of the court's decision.

5. Divorce cases

5.1. Divorce with under-age children:

- This type of cases generates most problems in practice, due to the psychological implications on parties and in particular, on under-age children. Parties do not resort to psychological counseling, and psychologists do not participate, as a rule, in such cases (even though their presence seems necessary);
- Hearings with under-age children raise special problems from a psychological viewpoint. In the absence of a proper specialization and training of judges, such hearing may have harmful consequences on an under-age child (if asked to chose between the two parents, an under-age child may believe that he/she is responsible for the divorce trial).

5.2. Divorce without under-age children:

- There are difficulties when a defendant's address is not known. The law requires judges to make investigations in order to summon the defendant (in practice, judges resort to the Population Record Service, which does not have many legal possibilities to find out where a defendant lives and most of the times, it answers that the defendant no longer lives at his/her latest known address). As a result, case duration can be excessively extended;
- Recently, this problem has become even more difficult to solve in the situation where a defendant lives abroad. Procedures have been simplified upon Romania's accession to the EU (summoning/verifying a defendant domicile are no longer done through the Ministry of Justice) but only for the EU member states. (Within this space, a liaison judge is appointed through whom summoning procedures is fulfilled). This rule is also valid for the countries with which Romania concluded bilateral conventions.

6. Actions for the separation of joint assets during marriage:

- This type of cases rarely occurs in practice and is decided upon, as a rule, in just one court session. Even though the law specifies that such separation of assets may take place only for solid grounds, most of the petitions of this kind are of connivance and seek to avoid seizure of a joint asset in criminal proceedings.

7. Actions regarding the dwelling space filed by spouses during their marriage:

- Such cases are more frequent in Bucharest (domestic violence being the most frequently invoked reason), and less frequent in Ploiesti. Such cases occur when spouses are holders of a rental contract, not when they are owners (see point 6).

8. Marriage annulment:

- Such cases occur very rarely in practice (for example, last year, in the 6th Sector First Instance Court in Bucharest just two (2) cases were filed.)

9. Deprivation of parental rights:

- The legislation is incomplete in this area (Article 109 of the Family Code being the general provision, special laws make reference also to this provision). Since it restricts a right, this procedure should be regulated more rigorously.
- The general problems regarding court review and producing evidence apply.

10. Interdiction:

- Court contact with the person is very difficult since he/she generally has psychological problems.
- A medical examination is difficult to conduct.

11. Declaration of death or disappearance:

- Such a procedure is rare and onerous. Many adjournments are involved.

12. Other family law actions:

- Late recording of birth;
- Actions generated by new social realities related to external migration (ex., a parent's consent to his/her under-age child traveling abroad).

13. Placements and adoptions:

- The large caseload does not allow judges to go deeper into a case, to get to know the parties, and especially the situation of the under-age children;

- Time extensions in the special laws are very short (10 days). In general, the laws do not take into account the daily reality of Romanian courts;
- The Department for Child Protection cannot assume its role that is established by law for various reasons (workload, lack of funds). Its prerogatives and those of the Guardianship Authority are not clearly defined by the law;
- Adoption raises few specific problems (ex., the biological parents must be identified in order to give their consent to adoption). Adoption does not necessarily require a declaration of abandonment. Most often, the courts' role is to verify the regularity of previous administrative procedures.
- The longer legal timeframe for confirmation of an adoption must be regarded as necessary in order to allow the future parents and the child to develop personal relationships.

3.4. Problematic situations

Judges participating in the working groups have identified a number of factors that, in their opinion, affect their ability to deal efficiently with juvenile and family cases. Some of these problematic situations can be described as systemic problems affecting the Romanian judicial system as a whole:

- high caseloads;
- shortage of judges (particularly after some of them have been temporarily transferred in administrative positions to central institutions such as the Superior Council of Magistrates and the Ministry of Justice);
- shortage of court clerks;
- poor infrastructure and working conditions in certain courts (including lack of access to computers and internet);
- a computer system that needs improvement.

Participating judges have also indicated some problematic situations specifically related to juvenile and family cases:

- The workload does not allow for a proper and thorough review of cases by taking into account all relevant psychological or educational aspects. At the Bucharest Tribunal, psychologists from the Department for Social Assistance and Child Protection assist in hearing minors in specific types of cases involving juveniles, while in Ploiești such thing does not happen;
- Enforcement of final decisions regarding the awarding of child custody proves to be difficult in practice;
- Because of the legal limitation of their mandate, the role of the judges ends once they delivered a decision;
- Specialization in juvenile and family cases implies special training and propensity. In practice, many judges often avoid specialization in this area;
- Lack of legal assistance in the case of economically disadvantaged litigants;
- Expertise procedures are difficult to conduct when parties do not consent to it;
- Parties often use their procedural rights in an abusive manner, which leads to unnecessary delays.

3.5. Judges' recommendations

Actions recommended by judges vary from ones involving legislative change to ones asking for procedural changes and work rationalization at the court level.

- Balancing the assignment/number of judges, and increasing the number of judges, because the caseload is too large in certain courts while some first instance courts (*judicatorii*) have a small number of cases;
- Creating separate civil and criminal panels (the major impediments are the lack of space and the insufficient number of judges);
- Rate setting and increasing work efficiency (a court hearing involving a high number of cases makes it impossible to adequately decide all of them);
- Simplifying procedures, especially the summoning process;
- Preventing parties from abusing their procedural rights by a more extended use of fines;
- Introducing alternative dispute resolution such as mediation (unlike the above recommendations, judges were not unanimous on merits of mediation).

4. Preliminary Conclusions

From the collection of data and practitioners' views, the declared goal of the Romanian authorities¹⁴ to create a specialized juvenile and family justice system has not been reached. In 2007 there is only one specialized tribunal in Brasov, while specialized sections exist only in five out of 15 courts of appeal and in one tribunal. Moreover, officials from the Superior Council of Magistrates and the Ministry of Justice indicate a tendency for these sections to be dismantled upon the request of the courts themselves. Interviewed judges pointed out that the specialization of the specialized panels is purely nominal, as the same judges who are members of the panels also hear other types of civil and criminal cases (besides juvenile and family) during the same hearing session.

Data indicates that juvenile and family cases in the civil docket were generally disposed with **no significant delays** at all jurisdiction levels in 2006. This confirms the view expressed by judges participating in the working groups that, on average, these cases do not take longer than six months until a decision is made. Exception is made by the few cases of adoptions involving parties from abroad (six of eleven cases were disposed in more than one year).

Divorce is the most frequent case type at all relevant jurisdiction levels, except the tribunals, where **child placement** has the largest share. Contrary to the view of interviewed judges that **division of common assets between spouses (without divorce)** is a rare case, this appears to be among the three most frequent case types at all jurisdiction levels. The judges also expressed the view that this is often a collusive practice through which spouses attempt to conceal the real scope of family assets. However, this element of connivance between spouses seems to be disproved by the fact that this is also one of the most appealed litigation types.

III. CLOSED FILES RESEARCH

A. METHODOLOGY¹⁵

The following methodology was used in the collection and analysis of the several case types identified for the ABACEELI Project entitled: *“Improving Institutional Framework of Family Courts in Romania”*.

¹⁴ The Minister of Justice Cristian Diaconescu declared during the press conference following the opening of the Brasov tribunal specialized in juvenile and family cases that a system of such specialized tribunals would be implemented nationwide by 2007 (*Adevarul*, 23 November 2004).

¹⁵ CEELI decided to document the methodology in order to provide it to Romanian justice system institutions interested – at some future point – in compiling similar data and conducting similar research.

The below methodology was used in the Ploiesti and Bucharest First Instance and Tribunal Courts. *While the methodology applied did not meet fully the scientific process in all aspects of the study due to the lack of availability of all information needed, random sampling was strictly adhered to for all case types. There was no attempt on the part of the project team to color or sway the data in any fashion.*

1. Definitions:

RANDOM SAMPLE: A sample chosen that minimizes bias in the selection process. A random sample of case files is typically generated by a computer or selection from a random number table. Systematic samples require a selection starting point, then the taking of every “Nth” case thereafter. (i.e. if the total number of adoption cases in a court is 300, every tenth case [300 divided by 30 = 10] is selected). In this example the number 10 is the interval.

UNIVERSE: The total number of cases in a target case type being reviewed.

MASTER LIST: When the universe can not be determined a list of cases smaller than the universe is created. It is from this list that the sample size can be taken.

SAMPLE SIZE: A pre-determined number of cases to be reviewed within the known universe of cases.

START NUMBER: A number randomly selected (i.e. 1 to 5) to start the pulling of cases. If the start number (3) is selected then the third case on the list is the start point.

INTERVAL: A number that dictates the series of cases to be pulled once the start number has been determined.

2. How the Research Was Conducted:

The following steps were taken to achieve a confidence level sufficient for the project given the lack of information available from the automated system serving the courts. (The automated system used by the Romanian courts is called, “ECRIS”) This system is basically a filing system registering cases by case number. The system has limited ability to manipulate data in order to call up specific management reports. Given the limitations of ECRIS the following steps were used to capture the sample size desired.

1. Identified the **case types** to be used in the study:
 - a. adoptions
 - b. divorce with children
 - c. separation of assets after divorce
2. Determined that the project would only use where possible disposed cases from the year **2006**. The year 2006 was selected because it was the latest information and it gave the project team the ability to target a year where data was accessible in the archives.
3. Determined the universe or inventory of the mainly 2006 disposed cases, although other years were used when the universe could not be determined for 2006.
4. Created a master list of cases numbering less than the universe.

5. Determined the sample size to be used when pulling cases for review. This number should be large enough to give the sample size reliability and small enough to be manageable. For the above two reasons a target sample size of “30”¹⁶ cases was used for the review.
6. Determined the interval number between cases that would serve as the method of covering the whole universe and produce a sample size.
7. Randomly selected a start number (between 1 and 5) in order to begin the interval.
8. Had archive staff pull cases by pre-determined interval in the universe.
9. Posted cases on a spreadsheet up to the number selected for the sample size (usually 30 cases).
10. Analyzed cases and summarized results with accompanying conclusions.

METHODOLOGY APPLIED - PLOIESTI

(A) ADOPTIONS:

1. ECRIS printed out a list of intake for Adoption cases for the year 2006¹⁷, the list produced was random with no particular order of the case files
2. Determined the universe was 228 cases, the print out covered the years 2005 thru 2007
3. Used a sample size of (30) cases for Phase I¹⁸ and (45) cases for Phase III¹⁹
4. An interval number of (3) was randomly selected
5. The start number (1) was selected; hence, every 3rd case from the beginning of the inventory was pulled from the archives. This yielded 75 cases (228 divided by 3). From these 75 cases a sample size of (30) for Phase I, and (45) for Phase III was posted on the spreadsheet
6. For Phase I cases (opening the adoption process), a distinction was made on the spreadsheet indicating whether or not the case was processed under the old procedures or under the new adoption law (no. 273/2004)

(B) DIVORCE WITH CHILDREN:

1. For this case type, ECRIS was unable to produce a list of disposed cases as it did for Adoption cases. The automated system could only generate a report that listed the total cases in the case type. It was not possible to distinguish cases per year of disposition or status

¹⁶ In a couple of instances, the sample was increased in order to find a sufficient number of matching cases (such as Phases I or Phase III for adoptions – see report findings at III).

¹⁷ Since ECRIS was installed recently in Ploiesti, there had been no time to enter all data and the system could not produce closed dates (see footnote 20 – Bucharest).

¹⁸ Phase I: court approved opening of adoption process.

¹⁹ Phase III: court approved validation of the adoption.

2. Project team went to the archive to review the filing system used in the court to determine how it was organized. Cases were placed in the storage bins by case type in case number order. There was no separation or distinction between pending or disposed cases, all were filed in the same bins.
3. Upon reviewing the archive, project team determined the parameters of the universe of the 2006 disposed cases for Divorce with Children case type.
4. Universe was determined to be 238 cases for 2006.
5. A master list was created.
6. Determined that the sample size of 30 cases was to be used.
7. Randomly selected the start number of “1”.
8. An interval number of (5) was randomly selected, (238 divided by 5) this would yield 47 cases from which the sample size of 30 would be drawn.

(C) SEPARATION OF ASSETS AFTER DIVORCE:

1. ECRIS was unable to provide a list of all disposed cases for this case type. As in the situation of the Divorce with Children case types, ECRIS could not generate a report separating disposed cases by year.
2. Project team viewed the filing system in the archive. It was determined that due to the size of the universe of this case type it was not practical to randomly pull cases that were not separated by status or year. However, the information sought was contained in the “Register for the Evidence of First and Second Appeal Practices”. By going through the registers it was easy to determine the year and disposition of these cases.
3. An interval or start number was not selected as it could not be determined how many cases comprised the universe.
4. The sample size was increased from 30 to 58 to make up for the lack of knowing the specific number of cases in the universe. Since the team could not determine the universe size the project team increased the sample size in order to err on the side of over sampling. The larger the sample size the better or safer are the results.
5. Thirty-seven (37) cases were pulled and entered on the spreadsheet.

METHODOLOGY APPLIED - BUCHAREST

(A) ADOPTION:

1. ECRIS provided a print out of all adoption cases disposed in 2006²⁰.
2. It was determined that the universe was 228 cases.

²⁰CEELI staff used an option in the ECRIS system called “reports” that showed disposition dates. Court officials indicated however that additional cases may have been concluded but not yet recorded in the system.

3. Fifty (50) cases were pulled initially; however project team had to go through a second and third pull of cases in order to obtain enough files to achieve the desirable sample size for Phase I cases. Eventually, the sample size of (30) cases was used for Phase III, (22) cases were used for Phase I.
4. An interval number of (5) was randomly selected
5. The start number of (4) was randomly selected, this yielded approximately 50 cases (250 divided by 5); as noted above, additional cases had to be pulled to obtain a sufficient sample size for both Phase I and Phase III cases.
6. For Phase I, cases were posted on a spreadsheet with indications of whether or not the procedures were under the old procedures or new law.
7. Having gone through the first group of cases, it was necessary to have the archives pull a second and third group of cases to fill out our sample size in the Phase I part of the proceedings

(B) DIVORCE WITH CHILDREN:

1. ECRIS was not able to provide a list of the disposed cases for 2006 for this case type. This case type was handled in three different sections of the Bucharest court; each section contained a number of these cases. It was not possible to randomly draw from a single filing system as was done in Ploiesti.
2. After a discussion with the Vice President of the First Instance Court, it was decided to use the “General Register” for the files to identify divorce with children. Since there were multiple registers a random selection was used to pull (2) registers each from the years 2004, 2005 & 2006.
3. A master list of 60 cases was created.
4. No interval or start number was selected as the whole master list containing 60 cases was used. There was no need to break down the list any further, so the whole list of 60 cases was reviewed.
5. From the 60 cases the sample size of 30 was posted to the spreadsheet. Upon reviewing the list, once the sample size of 30 cases was reached and posted to the spreadsheet the review stopped.

(C) SEPARATION OF ASSETS AFTER DIVORCE:

1. ECRIS was unable to generate a list of disposed cases, so the years 2003, 2004 & 2005 were reviewed (these years were selected due to the length of time this case type takes to complete, and sample size only included disposed cases thereby requiring the sample size to go back several years to get the claim date).
2. The process used for Divorce with Children as outlined above was used for this case type as well (see B. 2 above).
3. A master list of cases was developed from the 2003, 2004 & 2005 registers.

4. An interval of (2) was randomly selected which yielded 68 cases to be pulled.
5. The sample size of 30 cases was selected and posted to the spreadsheet.

B. FINDINGS

Under the project, and following discussions with judges from the Bucharest Tribunal, and those from the first instance, tribunal and court of appeal in Ploiesti²¹, CEELI decided to analyze 3 types of cases related to the category of family or juvenile disputes (civil), including adoptions (at the tribunal level); divorce with children and separation of assets, following divorces (at the 1st instance level).

I. DESCRIPTION OF CASES

• Adoption

The law on adoption (no. 273/2004) calls for three separate interventions by the court: a) approve initiation of the adoption procedure (Phase I); b) approve placement with a family that has expressed intent to adopt a child (Phase II); c) make final decision/validate the adoption (Phase III).

Prior to its submission of the case in court, and between each court decision, the local administration authorities (General Directorate of Social Assistance for the Protection of Children [DGASPC]) conduct a variety of tasks such as:

- Prior to Phase I: identifying biological parents to obtain consent of adoption, placing the child with an institution or in foster care, tracking documents (such as the child's birth certificate when necessary), conducting a social services assessment and developing a care plan for the child (i.e. "Individualized Plan for Protection - PIP).

- Prior to Phase II: finding a family interested in adopting the child and, through the necessary investigations, assessing that the family is able to adopt. Court intervention is sometimes not necessary at this stage, because some foster care parents, or tutors/guardians in charge of the child express interest in adopting the child.

- Prior to Phase III: assessing over a set period of time (90 days minimum) how well the child is adapting to his/her new environment.

Before law 273/2004 came into force, the administration and the courts followed a different set of procedures: the courts were less involved except to determine that the child had been "abandoned"²², and eventually approving an adoption (the two actions are not necessarily related, since all "abandoned" children are not necessarily put up for adoption).

This report lists time disposition rates collected through reviews of closed case files, randomly selected, that cover three areas of information:

A. Average time for disposition of Phase I (for cases handled by the administration prior to law 273/2004, and for cases that began after implementation of the new law)

B. Average time for disposition of Phase III (for all cases, whether begun under the former procedures or under the new law); and

C. Average time for disposition of adoption cases under the new law (Phase I-III).

²¹ See II. Above: "The Juvenile and Family Justice System in Romania (April 2007)"

²² This separate procedure is no longer used, and has been replaced under Law no.273/2004 by a transfer of custodial rights to government authorities (part of Phase I court decisions).

It indicates also whether there were adjournments (average per case), and whether the tribunal decisions were appealed (recurs).

- **Divorce with children**

According to Article 37 of the Romanian Family Code, marriage may come to an end when one of the spouses is deceased, or is declared officially deceased, or through divorce. One of the spouses or both of them may file for divorce at the first instance courts if, for grounded reasons, relationships between the spouses are severely damaged and continuation of marriage is impossible (Article 38 of the Family Code). The divorce procedure will therefore require administration of evidence (written evidence or witnesses) to prove that the relationship between the spouses is severely damaged, and the court will assess whether either one of the spouses or both of them are guilty for the disintegration of the marriage. The court will also rule on the custody of under-age children, if any, and on alimony or child support, if requested. In one specific instance, if the marriage lasted less than one year, and there were no under-age children, divorce may be granted upon agreement of the parties (Article 38 of the Family Code).

This report shows how long cases took from submission of claim to first hearing, from first hearing to final disposition of the case (communication of the written decision), and total court time (from claim to communication).

Note: The Code of Civil Procedures calls for a “public communication”, e.g. announcement of the decision during a public hearing. The project team learned however that, in Bucharest, the method of communication varied, ranging from announcement during sessions, to posting on bulletin boards, depending on practicalities.

- **Separation of assets**

The Romanian Family Code sets up a single matrimonial regime and spouses are co-owners of all assets acquired during marriage. In exceptional circumstances, and for grounded reasons, the Code allows for the separation of assets during marriage (Article 36 par. 2). The general rule is that the separation of common assets is a consequence of divorce. According to Article 36 par. 1 of the Family Code, spouses can divide the assets themselves, and only in case of disagreement they may resort to the courts. Practice in this matter varies between different courts of appeal. Some court will judge on the separation of assets only after the decision for divorce becomes final. Other courts will judge divorce and separation of assets simultaneously, but will give their ruling on divorce first and on separation of assets only thereafter.

The procedure for separation of assets has two steps:

- (i) First, the court will rule on the patrimony to be divided (all assets that were acquired by the spouses during the marriage), the contribution of each spouse to the acquisition and the percentage of all assets that each spouse is entitled to. The court will give a provisional ruling (*incheiere de admitere in principiu*) for this purpose.
- (ii) Then, the court will resort to experts who evaluate the assets and propose different options/formulas for their division. The court will choose one of the formulas, and give a final decision (*sentinta*).

According to the Code of Civil Procedures, the provisional ruling cannot be appealed separately, only with the final ruling. Before the Code was amended in 2004, the provisional ruling could be subjected to appeal and recurs (second appeal), which meant that the procedure underwent two separate sets of appeals (one for the provisional ruling, and another for the final decision).

This report provides information on cases that 1) were “not contested” – e.g. decisions concerning separation of assets were taken beforehand by the parties, but must then be validated in court; and 2) appeared to be contentious. The format of this report will specify in averages the time between submission of claim and first hearing, first hearing to final hearing, claim to final disposition, appeals (first and second), and average number of adjournments.

2. RESULTS

Note: All numbers below are computed calendar days (not workdays) – the acceptable computation for determining averages.

A. PLOIESTI

1. ADOPTIONS – total 75 files reviewed

In 2006, 171²³ adoption cases were filed at the Prahova Tribunal, including 57 (phase I), 49 (phase II), 60 (phase III)²⁴. The tribunal IT manager provided a list of 228 adoption cases closed (in 2005-2007²⁵), from which the project drew on a random basis a total of 75 files.

- **Average time for Phase I – 30 closed cases**
(Court decision to open adoption procedure)

a.	<u>OLD LAW</u> ²⁶	AVG DAYS	AVG MOS.	Total: 20 cases
	ADMIN	1501	48	
	COURT	31.7	1	
b.	<u>NEW LAW</u> 27	AVG DAYS	AVG MOS	Total: 10 cases
	ADMIN	58.9	1.9	
	COURT	20.7	.66	

There were a total of 4 adjournments (0.13 per case). Two cases involved an oddity, e.g. a repeat event, ~one year apart, to approve the opening of the adoption process.

²³ Per SCM statistics
²⁴ For a total of 166. These are domestic adoptions; the balance includes other cases such as adoptions by foreigners, etc.
²⁵ It was not possible to determine whether these are 3 full years, or not, since the system does not provide for a chronological list.
²⁶ For administration: the start date was determined from records in the file indicating the first event when the administration took over care of the child. Under the former procedures, courts heard cases to approve abandonment, and/or to approve placement(s) – generally with a family assistant, sometimes with a tutor or guardian. Court time is calculated from date of filing claim to date of issuing/communicating written decision.
²⁷ Same as above: however, all of the cases reviewed originated following application of the new law on adoption (from 2004 on).

- **Average time for Phase III²⁸ - 45 closed cases**
(Court decision to approve adoption)

AVG DAYS	AVG MOS.
28.6	.92

Four of the forty five cases involved one adjournment (0.8 per cases average). There were no appeals.

- **Average time Phase I-Phase III (cases handled under law 273/2004)**
17 closed cases (drawn from the 45 above)

Note: Among the 45 phase III cases, 17 files reflected dates (submission, final hearings) for the previous two phases.

	AVG DAYS	AVG MOS
PHASES I & II ²⁹	23.2	.74
PHASE III	28.6	.92
<u>TOTAL TIME</u>	<u>51.8</u>	<u>1.67</u>

Observations:

- Most cases (whether in Phase I, II or III) were heard in a single hearing. None of the cases were appealed. In the sample above, all requests to initiate the adoption process or to finalize it were approved by the court.
- It appears that under the new law, the adoption procedure (phase I – III) is expedited in less than two months (court time). As noted above, some administrative time accrues in between, in order for the social services authorities to conduct necessary investigations and other duties. Since the date of administrative start up was not included in Phase III files, it was not possible to calculate the total administrative time.

2. DIVORCE WITH CHILDREN – total 30 files reviewed

Note: in 2006, 639 “divorce with children” cases were filed at the Ploiesti First Instance Court. Since lists could not be obtained from the case tracking software (ECRIS), the first instance archivists selected randomly from among 238 closed files (in 2006) a total of 30 files closed in 2006.

²⁸ All cases combined, whether the administrative process began prior to, or followed application of Law no. 273/2004

²⁹ The numbers for Phases I and II include a slight distortion, since time from final hearing to issuing a written decision was not recorded in Phase III files. Given the low average time rates, however, such distortion is not significant.

	AVG DAYS	AVG MOS
1. Claim to first hearing	41.6	1.3
2. First to final hearing	47.6	1.5
3. <u>TOTAL</u> ³⁰	<u>133.6</u>	<u>4.3</u>

There were a total of 39 adjournments for all 30 cases, an average of 1.3 adjournments per case. One case was appealed (appeal time = 116 days from filing to disposition).

Observations:

The number of adjournments was relatively low, and with the exception of one case, there were no appeals. The claim to final disposition time (average of 4.3 months) can be considered as low for a case type that involves potentially contentious issues such as child support, child custody and other controversial questions that the divorcing couple must agree upon.

3. SEPARATION OF ASSETS (POST DIVORCE) – total 37 files

Note: in 2006, 328 cases involving separation of assets (post divorce) were filed at the Ploiesti First Instance Court. Since lists could not be obtained from the case tracking software (ECRIS), court staff provided 2006 registers in which 37 “separation of assets” cases were selected randomly and reviewed.

- “Uncontested”³¹ cases - 18 closed cases

	AVG DAYS	AVG MOS
1. Claim to first hearing	44.7	1.4
2. First to final disposition ³²	74.2	2.4
3. <u>TOTAL</u>	<u>118.9</u>	<u>3.8</u>

With the exception of two cases (2 and 3 adjournments respectively), there were no adjournments for the remaining 16 cases – for an average of 0.27 adjournments per case. None were appealed.

- **Contested cases – 19 closed cases**

a. First Instance

	AVG DAYS	AVG MOS
1. Claim to first hearing	41.8	1.3
2. First to final hearing	588.5	18.9
3. <u>TOTAL</u>	<u>688.3</u>	<u>22.2</u> ³³

(Claim to written decision)

³⁰ Includes time for communication of the written court decision

³¹ “Uncontested” cases in this category include all cases in which parties had reached an agreement prior to court session.

³² Final disposition = date of communication of written disposition

³³ The court took an average of 2 months to communicate a written decision, following the final hearing [22.2-(1.3+18.9)=2]

There were 292 adjournments for the 19 cases reviewed, an average of 15.3 adjournments per case.

b. Appeal

	AVG DAYS	AVG MOS
1. First appeal (all cases)	157.2	5
2. Second appeal (11 cases)	43.3	1.4

Observations:

While “uncontested” cases understandably flowed through the court system quickly, the “contested” cases took an inordinate amount of time, including multiple adjournments, quasi-automatic appeals, and second appeals for 58% of the cases. Principle reasons for multiple adjournments (with a high of 40 adjournments for a single case) were due to experts who had not submitted their reports (with a high of 17 delays due to experts), and litigants’ delays in submitting evidence.

It should be noted that, on second appeal, in 8 out of 11 cases the appeal was not granted because inadmissible or rejected; or the appeal was withdrawn by the parties.

B. BUCHAREST

1. ADOPTIONS – total 52 files reviewed

Note: in 2006, 593 adoption cases were filed at the Bucharest Tribunal, including 245 (phase I), 43 (phase II), 305 (phase III). The ECRIS system³⁴ produced a list of 228 adoption cases closed in 2006, from which 52 files were pulled randomly.

- **Average time for Phase I – 22 closed cases**
(Court decision to open adoption procedure)

a.	<u>OLD LAW</u>³⁵	AVG DAYS	AVG MOS.	Total: 9 cases
	ADMIN³⁶ (6 files)	1327	44	
	COURT (9 files)	73	1	
b.	<u>NEW LAW</u>³⁷	AVG DAYS	AVG MOS	Total: 13 cases
	ADMIN	261	8.6	
	COURT	59	1.9	

³⁴ See Methodology at II.

³⁵ For administration: the start date was determined from records in the file indicating the first event when the administration took over care of the child. Under the former procedures, courts heard cases to approve abandonment, and/or to approve placement(s) – generally with a family assistant, sometimes with a tutor or guardian. Court time is calculated from date of filing claim to date of issuing/communicating written decision.

³⁶ Adm. Start date was recorded in 6 files only.

³⁷ Same as above: however, all of the cases reviewed originated following application of the new law on adoption (from 2004 on).

There were 35 adjournments, for a total of 1.5 average per case. None of the cases was appealed.

- **Average time for Phase III³⁸ - 30 closed cases**
(Court decision to approve adoption)

AVG DAYS	AVG MOS.
69.2	2.2

There were 13 adjournments, an average of 0.4 per case, and no appeals.

- **Average time Phase I-Phase III (cases handled under law 273/2004) – 17 closed cases (drawn from the 30 above)**

Note: Among the 45 phase III cases, 17 files reflected dates (submission, final hearings) for the previous two phases.

	AVG DAYS	AVG MOS
PHASE I ³⁹	67.6	2.2
PHASE III	64.9	2.1
<u>TOTAL TIME</u>	<u>132.5</u>	<u>4.3</u>

Observations:

- In Bucharest, under Phase I, almost all cases were adjourned automatically once⁴⁰ – this presumably in keeping with Law no. 273/2004, art. 16 par. 2 which provides that "the biological parent or the person who has the custody of the child (*tutorele*) can revoke consent within 30 days from the day it was expressed according to the law". According to art. 15 of the law, such consent must be provided before (*in fata*) the court. By contrast, conversations with judges in Ploiesti suggest that this provision can be interpreted in different ways: for instance, if the written consent was dated 30 days or more before the court hearing, such adjournment may not necessary, as long as the biological parents showed at the hearing.
- Otherwise, the data is similar to that in Ploiesti, even if total court time is slightly higher on average.

³⁸ All cases combined, whether the administrative process began prior to, or following application of Law no. 273/2004

³⁹ There were no identifiable records for Phase II. The numbers for Phases I include a slight distortion, since time from final hearing to issuing a written decision during Phase I was not recorded in Phase III files.

⁴⁰ There a few additional adjournments, due to absence of parties (biological parents or tutors) at the hearing.

2. DIVORCE WITH CHILDREN – total 30 files reviewed

Note: in 2006, 490 “divorce with children” cases were filed at the First Instance Court of the Second Sector in Bucharest. Since lists could not be obtained from the case tracking software (ECRIS), court staff provided a number of 2005-2006 registers (drawn from several for the period) in which 30 “divorce with children” cases were selected randomly and reviewed.

	AVG DAYS	AVG MOS
1. Claim to first hearing	34.6	1.1
2. First to final hearing	63.5	2.0
3. <u>TOTAL</u> ⁴¹	<u>119.4</u>	<u>3.8</u>

There were a total of 39 adjournments for all 30 cases, an average of 1.5 adjournments per case. One case was deleted from the calculations, because atypical (418 days total). Three cases (10%) were appealed for a total of 186 days from filing to disposition, and appeal time took an average of 62 days (from submission to disposition).

Observations:

The number of adjournments was relatively low and, with the exception of three cases, there were no appeals. The claim to final disposition time (average of 3.8 months) can be considered as low for a case type that involves potentially contentious issues such as child support, child custody, etc.

3. SEPARATION OF ASSETS (POST DIVORCE) – total 30 files

Note: in 2006, 0 cases involving separation of assets (post divorce) were filed at the First Instance Court of the Second Sector in Bucharest. The vice president of the court reported later that the 2006 intake totaled 176 cases. Lists could not be obtained from the case tracking software (ECRIS), and court staff provided registers dating back to 2003/2004/2005 in which 30 “separation of assets” cases were selected randomly and reviewed.

- “Uncontested”⁴² cases - 7 closed cases

	AVG DAYS	AVG MOS
1. Claim to first hearing	35.8	1.2
2. First to final hearing	47.7	1.5
3. <u>TOTAL</u>	<u>101.4</u>	<u>3.2</u>

⁴¹ Includes time for communication of the written court decision

⁴² “Uncontested” in Bucharest involves cases that were part of the divorce file, even if a separate hearing to discuss assets separation took place

There were 12 adjournments (1.7 per case), and no appeals.

- **“Contested” cases – 23 closed cases**

a. First Instance

	AVG DAYS	AVG MOS
1. Claim to first hearing	67.4	2.1
2. First to final hearing	255.7	8.2
3. <u>TOTAL</u>	<u>336.6</u>	<u>10.8</u>
(Claim to written decision)		

There were 119 adjournments (5.1 per case) and 2 appeals (average 191 days – no decisions).

Observations:

This case type also shows a fairly significant length and number of adjournments. It is not clear however why Bucharest cases tend to be resolved within a period of time shorter than in Ploiesti: in order to understand such difference, a further review of causes of adjournments might be helpful. It is also not clear why the average number of appeals was **greater** in Ploiesti than in Bucharest.

Also, in Bucharest, a spouse may file for divorce and separation of assets at the same time. As a result, when the case is relatively simple, does not require an expert’s report, or parties had reached agreement prior to the court hearing, the judge is able to handle with both actions and issue a single ruling. In contested cases, following ruling on the divorce, a new separation of assets case file is created. The initial filing date for both actions (divorce and separation of assets) was used to calculate the claim to final hearing averages for contested cases.

C. OBSERVATIONS ABOUT ECRIS

During the course of the project, the CEELI team needed to find out certain information in the case files, and accessed ECRIS which is the automated system in place in the court system in Romania. The project called for an analysis of cases from filing to disposition. It was quickly apparent that the specific information needed to do this case study was not available through the automated system. For example, it was not possible to get a full printout of all the cases in the court for a particular case type. Further, the Information Technology staff (IT) in both Ploiesti and Bucharest were unable to provide a print out of cases that were disposed by year distinguished from the total cases in the court’s inventory. This inability to manipulate the data base in order to query the database by case type/ by year/ by disposition required the use of other means to get at the information sought. The team had to isolate the target cases in the archives and pull far more cases than one normally would have had too, in order to achieve the sample size of cases needed for the study.

The inability of ECRIS to fully support this project was not consistent for all case types. For example, in Bucharest, ECRIS was able to provide a printout of the disposed cases in the Adoption category (see Note at page 25). However, it was not able to provide a printout of the

disposed cases for Divorce with Children or for Separation of Assets. Neither was it able to distinguish between years of disposition. This required a review of cases both pending and disposed for several years in order to arrive at the required sample size.

Recognizing that ECRIS was not just created to support projects like this one, it appears that the system was created to list cases by case type in a summary fashion, in case number order, and for reporting purposes only – presumably to the Superior Council of Magistrates (SCM). The system was not created nor does it support a “case management” effort. In order for it to be a case tracking system and allow the court leaders to manage their cases, the software should be able to provide printouts specifying the following:

- a. Pending Cases by Case Type
- b. Pending Cases by Year
- c. Pending Cases by Judge
- d. Disposed Cases by Case Type
- e. Disposed Cases by Year
- f. Disposed Cases by Judge
- g. Status of Cases at any Given Time
- h. Number of Adjournments
- i. Reason for Adjournments
- j. Time to Disposition
- k. Hearing Rates
- l. Scheduling of Hearings by Judge

These and other case management issues are generally what an automated case tracking system provides to the court leaders for use in monitoring the institutional activity and performance of the court.

It is clearly not the purpose of this section of the report to criticize the automated system currently in use in the Romanian Courts. However, the project did reveal the limited use of the system when trying to analyze cases. Court performance and the management of cases should be an ongoing effort by a court system. The tracking of cases through use of an automated system is the tool that the court uses to accomplish its objectives.

III. CONCLUSIONS

The premises of this project were that 1) some type of “family courts” system existed in Romania that specialized in the handling of litigation involving minors and family disputes; and 2) these cases took an inordinately long time to be solved, a situation that could be remedied by case management or other initiatives that would remedy such dysfunctions.

Both premises were reasonable ones. The Government of Romania had announced in 2003 that it would create “family and juvenile courts”, a highly visible EU Phare project had led to the creation of a pilot “family and juveniles” specialized tribunal in Brasov, and the terminology of such specialization was in common usage. So was the second premise: Romania ranks high among countries that are routinely penalized by the European Court of Human Rights for delayed proceedings. The project debunked both premises however.

A. Case Findings

Project staff selected randomly closed files in the two pilot courts (first instance and tribunal in Bucharest and Ploiesti), and documented the timelines (claim to final disposition, including appeals) for three “family” case types (civil docket): divorce with children, separation of assets, adoption. Two of the three case types, e.g. divorce with children and adoption show speedy disposition – generally within one or two hearings, depending upon the local practices, and within 1-2 months. The third case type on the other hand shows considerable delays, with multiple adjournments and quasi-automatic appeals, with some cases lasting as long as 2-3 years.

These findings confirm the national statistics provided by the SCM, e.g. that most cases in Romanian courts are disposed of within 6 months, as well as information provided in previous reports⁴³. Judges from the two pilot courts who met with CEELI representatives in March 2007 had also indicated that case resolution tended to take less than 6 months.

While the closed file reviews may not be absolutely representative of some of the Romanian jurisdictions – for instance, the tribunals in Constanta and Timisoara show slower disposition rates for adoption cases⁴⁴, the findings (pages 20-28) are validated by national statistics and judges’ observations.

As a result, the evidence did not support the development of initiatives geared to increase the celerity of case dispositions. Rather, the data showed that there may be grounds to identify specific case types that experience serious delays (such as separation of assets), and conduct further, targeted research (see Recommendations below).

Further, the project showed that the computerized case tracking system (ECRIS) is not yet able to yield the type of information required for an analysis of case flow, and thus requires additional functional capabilities in order for case management policies to be developed (see pages 28-29).

B. The “family and juvenile” system

As detailed in the first section of the report (pages 4-15), the current justice system in Romania is not structured along the lines of specialized sections or divisions which handle exclusively family or juvenile cases, or both. Some exceptions exist – the “family and juvenile” specialized tribunal in Brasov, the specialized section at the Iasi tribunal which handles juvenile criminal cases, and five (out of fifteen) Courts of Appeal that have set up sections which handle exclusively civil and criminal cases related to family and juvenile litigation⁴⁵.

The majority of Romanian courts handle such cases within their traditional specialization (civil, criminal, etc); further, even if a number of judges are assigned family (civil) or juvenile (criminal) cases, they handle these as part of their regular civil or criminal caseloads, rather than specialize exclusively in this case type.

⁴³ Cf. “Analysis of the system for measuring and monitoring judicial performance in Romania”, Jesper Wittrup, March 2006 – World Bank project. According to the report, 2003 statistics for first instance courts (*judecatorie*) show that 90% of civil and criminal cases are solved within 6 months or less, 8% are solved within 12 months, and 2% are solved within 2 years. Cases taking more than 3 years represent 0.001% (civil) and 0.0002% (criminal) of the yearly case disposition totals.

⁴⁴ Respectively, 20% and 57% of the disposed cases took between 6 months and one year.

⁴⁵ Project staff was not able to locate independent evaluations or documentation of the result of these structures.

As a result:

1) The concept of “children courts” (along the lines of the French system, for instance), or juvenile courts (for criminal cases – as developed in the US), each suggesting exclusive specialization, does not yet exist in Romania. This would require a definition of which case types would be referred to these sections; to what extent the available resources (human, financial) permit such specialization; possible legislation changes; and a definition of the goals sought through such reorganization. The research and analysis required exceed the scope of this project.

2) Judges assigned to family cases (civil) handle regular civil litigation as well, and represent that they face an excessive number of cases during court sessions. The trial docket can reach 70 to 100 cases per session, sometimes even more. They indicate also that, given this volume per session, they are usually not in a position to spend the time necessary for sensitive cases, such as those involving children.

Since the per capita number of judges in Romania, and the annual caseload are reasonably in line with European averages ⁴⁶, the trial docket numbers can be explained, in part, by repeated adjournments – some (many?) of which may not be necessary for the purpose of justice (“finding the objective truth”). This situation points to a need for a separate review, e.g. what are the civil litigation case types which capture an inordinate amount of judicial time and an identification of those which offer opportunities for reforms. Further, study could reveal what delays are legal in nature and therefore necessary or merely procedural and can be reduced by applying case management principles.

In conclusion, initial project results show the desirability of a modification to the initial workplan, so this project may provide the Romanian court system and decision makers with information that can help rationalize the processing of cases.

IV. RECOMMENDATIONS

- The civil docket as a whole, beyond that of “family cases” should be reviewed, in order to identify and document principal causes for case delays. Findings need to be discussed with judges, to determine what reforms are desirable (in the short to long term), feasible (in the short term, given the current justice system context and resources available), and appropriate within a continental system of law.
- Further, these discussions need to include a review and impact of recent amendments to the code of civil procedures (Law no. 219/2005)⁴⁷, specifically those concerning the summoning procedure, judicial fines for non-observance of procedural rules, suspension for unjustified delays caused by plaintiffs, simplification of experts’ appointments⁴⁸, and the new pretrial discovery process (optional)
- Given the apparent misperceptions about case processing delays in Romania, and the need for case management policies grounded in data, it is desirable that the methodology

⁴⁶ See “Study on Romanian Court Rationalization”, Lord and Wittrup, March 2005; “European Judicial Systems”, Edition 2006, European Commission for the Efficiency of Justice (CEPJ); “Benchmarking in an International Perspective”, ECORYS-NEI, May 2004. It should be noted however that there exist wide disparities among some courts – cf Lord and Wittrup,

⁴⁷ Another amendment, Law no. 459/2006 refers to enforcement procedures. Since judges do not control the enforcement process – other than review new actions filed when the enforcement process failed – the project will not address that question.

⁴⁸ CEELI learned that a project was underway to assess potential changes to procedures or legal provisions related to experts, and will seek a discussion with the project leader.

used in this project be replicated. This involves as well an expansion of the ECRIS technical specification capabilities. In particular, the automated system should be able to track a case from filing to disposition with the capability of producing management reports that tell the status of a case at any point in the proceedings. Also, ECRIS should track adjournments for the purpose of identifying how many and why they are being requested.

Other desirable changes that exceed the timelines and scope⁴⁹ of this project include:

- Establishment of time standards or guidelines for the timely disposition of cases. This would help the court manage its cases within an acceptable tolerance of delay.
- Establishment of “benchmarks” for monitoring the performance of a court (i.e. Clearance Rates).
- The court should take a more active role in the encouragement of parties (especially in the separation of asset type of cases) to reach an agreement as the division of the property. This practice would be particularly constructive in contested cases.

As proposed in the workplan modification request, submitted to and approved by USAID (May 2007), project staff will address some of the above questions during the June – September phase of the project.

⁴⁹ A number of initiatives, including those sponsored by the Superior Council of magistrates – through the EU Twinning Project, the World Bank, the British government (bi-lateral projects) have or are dealing with aspects related to case management; there does not exist consensus at this stage on what a “reasonable” time frame should be for cases, nor whether benchmarks for monitoring court performance are desirable.



**IMPROVING INSTITUTIONAL FRAMEWORK OF FAMILY
COURTS IN ROMANIA
- PROJECT -
Cooperative Agreement No. 186 A 00 03 00103 00**

**PHASE II – CLOSED FILES REVIEW OF CIVIL CASES (INHERITANCE CASES)
- PROGRESS REPORT -
June 2007**

I. INTRODUCTION AND PURPOSE

This progress report summarizes findings and recommendations from further case file reviews and analysis conducted in the first instance courts in Bucharest (Sector 2) and in Ploiesti. The previous progress report submitted in May 2007 concluded on the basis of a representative file review that most cases are disposed of within 6 months of filing, or earlier, supporting the national statistics provided by the Superior Council of Magistrates. Analysis of national statistics has revealed, however, that some civil case types, particularly separation of assets, restitution of property under Law 10 of 2001, and inheritance, take longer periods of time to resolve.

Following the recommendation of the May 2007 report, further study was conducted on cases involving inheritance to determine what factors might contribute to longer case resolution timelines, identify possible reasons for adjournments, and reveal practices that improve or inhibit the timeliness of case resolution. Based on consultations with judges it was decided not to include cases involving restitution of property under Law 10 of 2001 in the study. It is likely that over time the number of these claims will diminish and that the limited time available to conduct the study would best be spent on areas where the court will likely see a constant or increasing number of disputes in the future.

To the extent possible this study has taken into account recent amendments to the code of civil procedures (Law 219 of 2005) that may contribute to improved case resolution time lines. This includes changes to the summoning process, court-imposed sanctions for party non-compliance with procedural rules and unjustified delay, simplification of expert appointment, and pretrial discovery. As in the previous study, the enforcement process of judicial decisions was not within the scope of this analysis.

The conclusions reached in this report are based on both case reviews and discussions about the preliminary findings with judicial representatives from the courts included in the study. These discussions offered an opportunity to explore various options for addressing problems and issues identified during the study that contribute to delay. The report also discusses the importance of on-going analysis of court data to improve the administration of justice in Romania.

II. METHODOLOGY

The team¹ identified two sets of target cases, e.g. inheritance (at first instance level) and claims between individuals or with legal entities (at tribunal level).

A. For the reasons stated previously this study focused on inheritance cases filed in the Bucharest Sector 2 and Ploiesti First Instance Courts. SCM statistics reveal that for 2006 the total number of closed inheritance cases was 139 and 388 respectively. In each of these courts a random sample of 30 closed cases were selected for review. Data was collected on the date and reason for each adjournment as well as time frames for the following case events:

- Case filing to First Summons
- First Summons to First Hearing
- First Hearing to Last Hearing
- Last Hearing to Announcement of Decision
- Announcement of Decision to Written Communication of Decision

Additionally, data was collected on appeals that were filed in any of the selected cases, including the outcome and time from filing of appeal in either the first or second level appeal court and the date of the appellate court decision.

In Ploiesti the project team used the Informative Log for 2005 which contains records for each file listed numerically along with first hearing date, adjournment dates, appeals filing and decision dates. Four volumes out of the six available were selected and from each of the volumes all cases which were inheritance were identified. Given that the logs were random in terms of the types of cases entered, the need for selecting an interval and start number was unnecessary. As files were brought from the archives it was determined that some were not closed or were not inheritance cases.

In Bucharest the team used the General Log of Files for 2005 on the advice of Vice President Pavel. Six volumes were selected out of nine, and the team listed cases from each volume that appeared to meet the criteria. From each of these lists every third case was retrieved from the archives. Due to the limited information available in the logs it was found that a number of cases did not meet the selection criteria, so the team continued to pull randomly from the lists until a sample size of 30 closed files was reached.

B. Efforts were made to identify cases with the 1.1.1.1. classification code which are listed in the national statistics as cases which involve claims between individuals or with private legal entities. The 2003 cases pulled for this category included, in fact, cases involving disputes against public agencies, Law 10 of 2001 cases (property restitution) and a large number of cases on appeal from the first instance. It was not possible to obtain a sufficient number of these cases to conduct research.

¹ The team was led by US Court Administration consultant, **Nial Raaen**, who oversaw phase II of the project. He was assisted by CEELI fellow **Ana-Maria Andronic**, consultant **Adrian Baboi-Stroe**, staff attorney **Ramona-Elena Cherciu**, program coordinator **Genoveva Bolea**, Financial Manager **Adina Edu**, and Country Director **Madeleine Crohn**.

III. FINDINGS

1. Case Processing Timelines

The case file review revealed that, overall, more of the inheritance cases are contested than separation of assets cases observed in the previous study. In this study 87% of the 30 cases in Ploiesti were contested and 75% of the 32 cases in the Bucharest sample were contested. Additionally, 15%, or a total of five, of the Bucharest cases were dismissed for no progress under Article 248 and 252.² The data gathered from inheritance files included measures of the intermediate case time frames, in other words the time between various significant events in the life of the case such as filing of the claims, issuance of summons, first and last hearings, and final communication of the court's decision.

The findings are as follows:

1.2. Filing of Claim to Initial Summons – This is a measure of the time from the acceptance of the initial claim by the court to the date that the court issues the summons.

	RANGE (in days)	AVG DAYS³	AVG MOS
Ploiesti	4-73	16.7	.56

	RANGE (in days)	AVG DAYS	AVG MOS
Bucharest	3-14	8.5	.28

1.2. Filing of Claim to First Hearing – The time interval between filing of the claim to the date that the first hearing is held. In most cases this interval is between 30 and 40 days. The higher average in Ploiesti is due to summer vacation delays for cases filed in June. The initial hearing in six Ploiesti cases filed in June were delayed between 92 and 102 days, while in Bucharest two cases filed in June were delayed by 77 and 91 days.

	RANGE (in days)	AVG DAYS	AVG MOS
Ploiesti	30-105	48	1.6

	RANGE (in days)	AVG DAYS	AVG MOS
Bucharest	14-91	35.5	1.18

1.3. First to Last Hearing – These numbers represent the total time for hearings. In most cases the courts also announced a decision on the day of the final hearing. Cases which were suspended and eventually dismissed for no progress were not included in the range and averages.

	RANGE (in days)	AVG DAYS	AVG MOS
Ploiesti	4-652	232	7.7

	RANGE (in days)	AVG DAYS	AVG MOS
Bucharest	3-560	163	5.4

² Per provisions of art. 242-254 of the Code of Civil Procedures, the court may suspend proceedings for “reasons dependent or independent of the parties”. Further, under art. 428 and 252, the court may dismiss the case *de jure*, and notify the parties of such when the parties (generally the plaintiff) fail to proceed with the case over a one-year period.

³ All times are counted in calendar days (not workdays) – the acceptable computation for determining averages

1.4. Claim to Communication of Decision (Total Case Age) – The total case age is calculated as the time from filing of the initial claim to the court’s written communication of the decision.

	RANGE (in days)	AVG DAYS	AVG MOS
Ploiesti	33-774	287	9.6

	RANGE (in days)	AVG DAYS	AVG MOS
Bucharest	63-676	221.4	7.4

Combined results of case processing timelines can be found in Appendix A.

2. Adjournment Practices

The primary focus of the research was to understand the frequency and reasons for adjournments in inheritance cases. On average, a contested case in Ploiesti was adjourned 6.8 times, and the maximum number of adjournments observed in a case was 18. In Bucharest the average was 5.5 adjournments, with a maximum of 19. It was noted that cases which took over a year to conclude involved at least 8 adjournments over the life of the case. By comparison, the previous case file review of separation of assets matters revealed an average of 15.3 adjournments for cases in Ploiesti and 5.1 adjournments for cases in Bucharest.

In both separation of assets and inheritance cases adjournments relating to expert reports and presentation of evidence are clearly the leading reasons for delay. This is followed to a lesser degree by failure of litigants, attorneys, and witnesses to appear as scheduled, as well as requests by litigants for time to obtain an attorney. Problems with summons were noted in less than 8 % of the cases pulled for inheritance. These findings are similar to what was observed in the previous study for separation of assets cases, where the submission of expert reports and litigant requests for delays in submitting evidence were the primary causes for adjournments.

Judges noted that there is a general problem with case preparation by attorneys and litigants. Although required documents must be attached to claims and responses, both sides often fail to do so without consequences. The court is also required to accept a claim even though it may be defective or incomplete. The judges observed that this allows lawyers to start a case and figure it out as they go along. Adjournments related to lack of evidence, witnesses, or documents were compiled for both the first hearing and subsequent hearings. The findings support the judges’ observation that this is a significant problem. Over 72% of adjournments for submission of evidence, witnesses, or documents occurred in second or subsequent hearings.

A variety of reasons for delay of expert reports were noted in the case files, including failure of parties to pay the expert or be present at the expert’s inspection, and problems with notification. As a general observation most delays with expert reports were for failure of the report to be submitted on time, requiring additional time by the parties or court to review the report. The judges indicated that current rules regarding adjournments time lines do not allow enough time for experts to prepare their reports in many cases, creating further delay. It appears that the regular practice is for judges to ask experts to submit their reports on the next adjourned date. The result is parties must request another adjournment to study the submitted report. In Ploiesti in particular the judges do not believe the expert lists are current, resulting in improper appointments. The payment of expert fees by indigent parties was also cited as a problem.

In several cases it was observed that the court imposed, or threatened to impose sanctions for non-compliance, primarily against experts for not filing reports. In two Ploiesti cases experts were threatened with penalties. In Bucharest one party was fined for disrupting proceedings, one expert was fined, and two were issued warnings. However, in most cases there was no evidence that sanctions were imposed for delay. Judges indicated that they are reluctant to impose penalties since their actions may result in the filing of complaints against them by the parties, lawyers and experts. While the complaints may be unfounded they create an unwelcome distraction. The judges also assert that when sanctions are imposed against experts or lawyers they often do not comply. From the judges perspective there appears to be deliberate obstruction of sanctions enforcement on the part of various agencies that allow these individuals to hide behind bureaucratic procedures to avoid compliance.

2.1. Number of Adjournments – Contested Cases

Cases were considered uncontested if concluded at the first hearing. In Ploiesti four cases settled without a second hearing, and in Bucharest three cases were settled.

	RANGE (in days)	AVG DAYS	AVG MOS
Ploiesti	1-18	6.8	.23

	RANGE (in days)	AVG DAYS	AVG MOS
Bucharest	1-19	5.5	.18

2.2. Reasons for Adjournment

This chart provides a comparison of the reasons for adjournment between the two courts. The relative ranking is quite similar. The category of “other” includes adjournments by the court to review the evidence or make a provisional decision, time for parties to reach a settlement or pay fees, and requests for case consolidation.

<u>Category</u>	Ploiesti		Bucharest	
	#	%	#	%
Evidence	55	37%	43	28%
Experts	73	28%	33	22%
Attendance	17	9%	28	18.5
Hire Attorney	9	5%	10	7
Summons	17	9%	9	6
Other:	23	12%	28	18.5
TOTAL	194		151	

A more detailed summary of reasons for adjournment is provided in Appendix B.

3. Appeals

The rate of appeals for inheritance cases is relatively low compared to separation of assets where a second level appeal rate of 58% was observed. In Ploiesti, two (2), or less than 7% were appealed, while in Bucharest five (5) cases, or less than 16% were appealed. Both appeals in Ploiesti were filed in the first level and one went on to recurs. In Bucharest only one appeal was filed in the first level and all five were heard in recurs. By contrast, all separation of assets cases in the previous study were appealed at least once.

The length of time to reach a decision in the first level of appeal ranged from 45 to 81 days, while the recurs, with the exception of one recurs decided in 18 days, took between 106 to 378 days to resolve. While recurs add significant delay to the resolution of these cases, the number of appeals appears to be relatively low. However, during our discussion judges from Ploiesti indicated that they believe the rate of appeal is higher for these cases in their court than was observed in our study.

IV. DISCUSSION AND RECOMMENDATIONS

Given the overall findings of the case review the follow up discussion with judges from the participating courts centered on a several key areas, those being case preparation, the expert process, and sanctions. There appeared to be consensus that the lack of preparation by both lawyers and litigants contributes to unnecessary delay in many cases. Judges attribute this to several factors, including lack of understanding by litigants concerning the evidence that needs to be presented, unprepared or poorly trained lawyers, intentional delay to increase legal fees or delay an adverse judgment, and lack of sanctions for failure to prepare.

The group explored how the public might be better educated and counseled to prepare for case presentation without putting the court in the position of providing legal advice. While court public information exists, it may not be detailed enough to ensure that parties are adequately prepared when they present or defend their case. The problem is compounded by the fact that many individuals who appear in court have limited experience with legal proceedings. Pre-hearing checklists could be developed to ensure that necessary documents and evidence are prepared in advance. The Bucharest court previously participated in an EU-funded project, *Assistance to Set up an Efficient Legal Aid System in Romania* to assist indigent defendants. The judges expressed some concern about the accountability of the counselors advising clients in this program. The group was also asked to consider whether improved discovery or the use of scheduling conferences – as used in other legal systems – where parties agree to deadlines for presentation of evidence, early identification of the need for expert reports, and a firm hearing schedule that would increase the productivity of hearings. Clearly, one of the issues is how active a role the judges should have in this process.

The judges indicated that the expert process continues to be a problem despite attempts to reform the system. Many of the problems with experts are outside the direct control of the court, such as the qualifications of experts, access to equipment and facilities to perform their duties, overall quality of reports, and lack of qualified individuals in some areas of the country. Additionally, some parties are unable to pay for expert reports and funding is not available to address the problem. Judges also commented that current practices requiring that cases be adjourned no longer than two weeks in urgent cases and four weeks in all others often do not allow sufficient time for preparation of expert reports, resulting in additional adjournments. It also appears that an adjournment cannot be granted by the court without a public hearing. This means that parties may appear in court just to be informed that an expert report is not available or to request time to review a recently submitted report, or to learn that the opposing party will not appear.

The ability of the courts to impose reasonable and enforceable sanctions for the failure of lawyers, litigants, or experts to fulfill their obligations is a fundamental requirement to improving case preparation and management. The lack of effective enforcement for non-compliance and concerns about related and unwarranted complaints against judges discourage the use of existing sanctions. Given the problems identified by the judges with the enforcement of sanctions, the judiciary or its leadership will need to consult with the bar association and other

governmental agencies to remove these barriers. In addition, further review of the procedures and regulations for experts are needed.

The results of further case reviews have provided information that corroborates the observations of judges regarding case processing and reasons for delays. This type of analysis can be useful in supporting further changes to the rules of civil procedure and experts system. The problems encountered in obtaining case lists and information highlights the need for accurate and reliable statistical information. The apparent limitations of the ECRIS system functionality to provide ad hoc reports and case listings will need to be addressed in future releases.

Based on our file reviews of family and civil cases, as well as follow up discussions with judges, the following recommendations are suggested to further the goals of improving case preparation and the effectiveness of the expert process:

(1) Commission on Civil Procedures

Further revisions to the Code of Civil Procedures should take into consideration these recommendations:

1. Conduct a further assessment to determine if it would be useful to introduce new provisions that would correlate length of adjournments with complexity of expertise, to replace current practices and allow more time for preparation of expert reports.
2. Investigate whether the discovery process, which is initiated by attorneys only and currently optional (art. 241¹-241²²), can be improved to promote earlier and more complete preparation by the parties prior to the commencement of hearings by more active judicial involvement and/or stricter guidelines for its use⁴.
3. Consider the feasibility of using the first hearing as a scheduling conference where parties agree on timelines for submission of evidence, witnesses, and expert reports.
4. Consider rule changes that would allow the court to adjourn on its own motion under certain circumstances with proper notice, without requiring the attendance of the parties.
5. Explore how sanctions could be used more effectively to compel better preparation on the part of parties and experts.
6. Determine if standards or guidelines could be established under certain circumstances so that judges would have the option to determine value, for instance, as a substitute for expert reports.

(2) Ministry of Justice

Discussions with Ministry of Justice representatives should be initiated to:

A. Address issues with the expert process:

1. Determine if certain types of expert reports could be standardized or guidelines established to promote consistency and efficiency in their preparation.

⁴ Further, the Commission might inquire about successful practices in other European countries, such as the “mise en état” used in France to promote, early on, a methodology with timelines to schedule case events.

2. Consider the development of performance standards for experts, re-examine the certification process, and consider whether there should be a process for periodic re-evaluation of expert qualifications.
3. Determine obstacles to enforcement of court-imposed sanctions, including resistance by other agencies and the bar to provide information necessary to fiscal authorities tasked with collecting judicially imposed fines; develop a strategy to eliminate these barriers.
4. Develop criteria to determine value of expert reports and activities.
5. Investigate options for funding or otherwise providing expert resources for indigent litigants.

B. Increase the MOJ capacity to develop fact based policies (potential coordination with the SCM – see 3. below):

1. Develop greater capacity in the MOJ to conduct fact-based research (such as closed file reviews) to improve case-flow management. This would include research, policy development, training, auditing, and improvements to existing manual and automated statistical systems and databases.

(3) Superior Council of Magistrates

The SCM will need to be included in discussions regarding the following:

1. Review current procedures for complaints against judges and determine if further procedural or other changes should be made to reduce nuisance complaints and their impact on judicial performance evaluations, and ensure that magistrates are familiar with the procedures set up by the SCM.⁵ These might include improved screening and review of complaints, limitations on the type of complaints, and sanctions in the most egregious cases where complaints are clearly used as a delay or harassment tactic by litigants.
2. Initiate cooperation between the SCM, the MOJ and the Ministry of Interior, to address responsibility for enforcement of judicial sanctions by bar associations and government agencies, including the fiscal authorities, and ensure that such sanctions are applied in a timely manner in relation to the instant case.
3. Develop greater capacity in the SCM (in potential cooperation with the MOJ – see B.1. above) to conduct fact-based research (such as closed file reviews) to improve case-flow management. This would include research, policy development, training, auditing, and improvements to existing manual and automated statistical systems and databases.
4. Develop intermediate and long-term time standards and/or benchmarks to monitor caseflow management performance.

⁵ While the SCM has set up procedures to evaluate complaints against magistrates, judges involved in this project reported that they did not feel sufficiently “protected” against nuisance complaints.

(4) OTHER

Additionally, the courts are encouraged to:

1. Explore the possibility of developing incentives for notaries to assist litigants with resolution of disputes, such as inheritances or separation of assets, prior to filing of a complaint with the court.
2. Investigate the possibility of developing checklists and special instructions for litigants in specific types of cases. Include this information in court brochures, and allow registry staff to provide non-legal assistance to better prepare litigants.
3. Provide training to the court staff in the handling of practices and procedures when the citizen is not represented by an attorney.

APPENDIX A: Interim Time Lines (days) – Inheritance

	PLOIESTI		BUCHAREST		Combined TOTAL	
	Range	Average	Range	Average	Range	Average
Claim – Summons	4-73	16.7	3-14	8.5	3-73	12.5
Claim – First Hearing	30-105	48	14-91	35.5	14-105	41.6
First – Final Hearing	0-652	201	0-560	145	0-652	174.7
Final Hearing – Panel Decision	0-7	1.2	0-7	1	0-7	1.1
Decision – Communication	0-107	37	2-85	38	0-107	37.7
Claim – Communication	33-774	287.6	63-676	221.4	33-774	256.2

APPENDIX B: Reasons for Adjournment (detail) – Inheritance

	Ploiesti	Bucharest	TOTAL
Submission of evidence – 1 st hearing	14	13	27
Submission of evidence – subsequent	41	30	71
Experts – order/request	27	10	37
- challenge/review (litigant)	14	11	25
- challenge/review (court)	4	2	6
- submission	28	10	38
Obtain attorney	9	10	19
Attorney/party not present	17	28	45
Summons	17	9	26
Other – case consolidation	3	0	3
- time to settle	5	11	16
- court review	6	6	12
- provisional decision	5	3	8
- pay fees	4	8	12
TOTAL	194	151	345