

# ***Pro Bono Practices and Opportunities in Romania***

## ***Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions***

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In Romania, few lawyers engage in *pro bono* work. The country's communist/socialist history is in part responsible for the culture of civic disengagement.<sup>1</sup> Despite the fall of socialism in 1989, Romanians still foster feelings of distrust towards unpaid community work. Things are nevertheless changing, especially since Romania's accession to the European Union in 2007. With increased competition in the legal profession, the proliferation of law firms, and the arrival of several international law firms, Romania's legal community is increasingly recognizing the value of *pro bono* services. As such, the infrastructure supporting *pro bono* opportunities and lawyers who perform this work is improving. This chapter describes the current framework governing the provision of legal services, reviews the legal aid system, and discusses *pro bono* opportunities in Romania.

## **I. Legal Services and the Legal Profession in Romania**

### **A. General Framework for Legal Services**

In order to be allowed to practice law in Romania, a person must have graduated from a law school and must have successfully passed the bar examination administered by the National Association of the Romanian Bars ("UNBR").<sup>2</sup> Following the passing of the bar examination, the candidate registers with one of the forty-one local Romanian Bars (which correspond to Romania's forty-one counties) and becomes a trainee lawyer. After two years of training under the supervision of a fully qualified lawyer, a trainee lawyer takes the second bar examination. If successful, the trainee lawyer becomes a fully qualified lawyer and is allowed to argue cases in front of most Romanian courts (subject to certain exceptions) and to work on his own.

The number of law schools and lawyers in Romania has increased dramatically with the onset of privatization. The number of law schools increased from three in 1989 to twenty-six in 2000<sup>3</sup> and thirty-nine in 2009 (of which seventeen are state law schools and twenty-nine are accredited private law schools).<sup>4</sup> The number of law students went from 3,975 (314 graduates) in 1990-1991 to 53,445 (9,624 graduates) in 1997-1998 and to 82,696 (12,568 graduates) in 2006-2007.<sup>5</sup> The number of lawyers admitted to practice law similarly went up from 12,880 in 2003 (including 10,488 fully qualified lawyers and 2,392 trainee lawyers)<sup>6</sup> to 25,789 in 2010 (including 22,141 fully qualified lawyers and 3,648 trainee lawyers).<sup>7</sup>

Lawyers from member states of the European Union<sup>8</sup> can practice law in Romania as foreign lawyers simply by requesting to be registered on the Special List of Foreign Lawyers

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<sup>1</sup> Kandis Scott, *Decollectivization and Democracy: Current Law Practice in Romania*, 36 Geo. Wash. Int'l L. Rev. 817, 817 (2004).

<sup>2</sup> Law No. 51/1995 regarding the organization of law offices and the practice of law, republished in 2001 in Monitorul Oficial No. 113 of March 6, 2001, as further amended (hereafter, "Law No. 51/1995"), Articles 11 and 16, and the Regulations regarding the practice of law adopted by the UNBR, published in Monitorul Oficial No. 45 of January 13, 2005, as further amended (hereafter, the "UNBR Regulations"), Articles 33-37.

<sup>3</sup> Scott (2004) at 834.

<sup>4</sup> Government Decision No. 749/2009, published in Monitorul Oficial No. 465 of July 6, 2009.

<sup>5</sup> *Romanian Statistical Yearbook 2008*, published by Institutul National de Statistica (National Institute of Statistics), available at: [www.insse.ro/cms/files/pdf/ro/cap8.pdf](http://www.insse.ro/cms/files/pdf/ro/cap8.pdf).

<sup>6</sup> Scott (2004) at 818.

<sup>7</sup> 2010 Report of the *Uniunea Nationala a Barourilor din Romania* (National Association of the Romanian Bars), available at: [www.unbr.ro/Brosura\\_Congres\\_2010.pdf](http://www.unbr.ro/Brosura_Congres_2010.pdf), page 37 and Annex 26.

<sup>8</sup> Law No. 51/1995, Articles 12 and 80<sup>1</sup> - 80<sup>16</sup>; UNBR Regulations, Articles 17, 23-26, 44-45 and 314<sup>1</sup>-314<sup>4</sup>.

maintained by each local bar. They can represent clients before Romanian courts and can provide legal advice regarding Romanian law, European Union law, international law and the law of the country where they are registered as lawyers. Lawyers from member states of the European Union (as well as lawyers from countries that have bilateral conventions with the UNBR) can also request to practice law in Romania and to be admitted to a Romanian local Bar. In order to be admitted to the Bar, foreign lawyers must (a) request the UNBR to recognize their professional title and (b) either complete a three-year training period with a Romanian attorney or pass an examination in Romanian law (except if they have practiced Romanian law as foreign lawyers in Romania continuously for at least 3 years).

Lawyers from non-European Union countries<sup>9</sup> can practice law in Romania as foreign lawyers simply by requesting to be registered on the Special List of Foreign Lawyers maintained by each local Bar, but they cannot represent clients before Romanian courts (they can, however, represent them before international arbitration tribunals) and they cannot give advice regarding Romanian law (unless they pass an examination in both Romanian law and Romanian language). Unless there is a bilateral convention between the UNBR and the foreign bar where they are registered to practice, lawyers from non-European Union countries cannot become admitted to a Romanian local Bar.

## B. Legal Aid

Though many Romanians are poor, few are destitute. Most are able to afford the relatively low fees for legal representation and/or legal advice.<sup>10</sup> Additionally, due to the surge in the number of lawyers, many are willing to negotiate their fee (or to accept installments) in order to secure more business. Nonetheless, Romania also maintains a legal aid system.

The Romanian Constitution provides the right to representation by a lawyer (selected by the person or appointed by the State) during any judicial proceeding.<sup>11</sup> As discussed in more detail below, legal representation is mandatory in certain cases where a lawyer will be appointed by the State if the person does not have one. In other cases, indigent persons may request and be granted legal aid (either in the form of legal representation or legal advice). Lawyers interested in providing legal aid must make a request to be included in the Legal Aid Registry (*Registrul de Asistentă Juridică*) maintained by each local Bar.<sup>12</sup> If the number of attorneys listed in the Legal Aid Registry is insufficient, the local bar may designate other lawyers to provide legal aid. Failure to provide legal aid by an attorney who is so designated is subject to disciplinary sanctions.<sup>13</sup> Each local Bar maintains a Legal Aid Registry and has created a Legal Aid Bureau (“SAJ”) responsible, among other things, for designating the lawyers who provide legal aid.

### 1. *State-Sponsored Legal Aid For Criminal Proceedings*

The Romanian State must ensure that any criminal defendant is represented by a lawyer, either of his or her choice or appointed by the State (via the SAJ infrastructure described above),

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<sup>9</sup> Law No. 51/1995, Article 12; UNBR Regulations, Articles 17 and 44-45.

<sup>10</sup> Scott (2004) at 831-32.

<sup>11</sup> Constitution of Romania (2003), Article 24.

<sup>12</sup> Framework Regulations regarding the organization of the Legal Aid Bureaus (*Servicii de Asistentă Juridică*) of the Romanian Bars, adopted by Decision No. 419 of September 27, 2008 of the UNBR Council, as further amended (hereafter, “Legal Aid Framework Regulations”), Article 1.

<sup>13</sup> Legal Aid Framework Regulations, Articles 1, 70 and 71.

throughout all stages of the criminal proceedings, but only in the following circumstances: (a) the defendant is a minor; (b) the defendant is detained in a rehabilitation center or in an educational medical institution; (c) the defendant is detained or arrested (even in connection with another case); (d) the defendant, as a preventive measure, is detained in a medical institution or is obliged to receive medical treatment (even in connection with another case); (e) the prosecutor or the court determines that the defendant is not capable of defending himself or herself; or (f) the defendant is facing a charge for which the sentence is imprisonment for five years or more (but, in the case of this clause (f), only during the trial proceedings and not throughout all stages of the criminal proceedings).<sup>14</sup> The provision mandating that the court or the prosecutor appoint a lawyer if the defendant is not capable of defending himself or herself is rarely put into practice, except in the case of mentally disabled, sick or handicapped defendants. It is still debated whether this provision also covers indigent defendants.<sup>15</sup> Moreover, defendants accused of a crime for which the maximum sentence is less than five years of imprisonment are not automatically entitled to free legal representation.<sup>16</sup>

The Romanian State must also ensure that a person is represented by a lawyer, either of his or her choice or appointed by the State (via the SAJ infrastructure described above), in the following circumstances: (a) the prosecutor or the court determines that the victim, the civil party or the civilly responsible defendant in a criminal proceeding is not capable of defending himself or herself<sup>17</sup> (for example, when the person is a minor or has been declared mentally incompetent by court order); (b) the beneficiary is a victim of the crime of trafficking in persons;<sup>18</sup> (c) upon request, when the person being represented is (i) a victim of a serious crime (such as murder, attempted murder, physical bodily harm, rape or sexual perversion), (ii) a close family member of a victim who has died as a consequence of a violent crime committed with intent, or (iii) a victim of a less serious crime or a close family member of such a victim, if the income of the victim's family is under the minimum wage, provided, in all cases, that the crime was promptly reported to the authorities;<sup>19</sup> (d) during extradition proceedings, international transfer proceedings, and execution of European arrest warrants;<sup>20</sup> and (e) other circumstances expressly set forth by the law which require that a person be represented by an attorney.

## 2. *State-Sponsored Legal Aid For Non-Criminal Matters*

Before 2008, State-sponsored legal aid for non-criminal matters was only available to a few categories of persons, in each case, according to a separate law: victims of domestic violence, children, refugees and asylum seekers, persons petitioning to obtain or re-obtain Romanian citizenship, persons whose properties were expropriated during the period of 1945-1989, heroes of

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<sup>14</sup> Code of Criminal Procedure, Article 171.

<sup>15</sup> Cozmin Obancia, Marinela Cioroaba, and Andrei Savescu, *Access to Justice in Central and Eastern Europe Country Reports: Romania* (2003), available at: [www.pili.org](http://www.pili.org), at 16.

<sup>16</sup> Jill Parker, *Comment: West Meets East: A Discussion of European Union Enlargement and Human Rights*, 11 Tulsa J. Comp. & Int'l L. 603, 625 (2004).

<sup>17</sup> Code of Criminal Procedure, Article 173(3).

<sup>18</sup> Law No. 678/2001 regarding the prevention of and fight against trafficking in persons, published in Monitorul Oficial No. 783 of December 11, 2001, as further amended, Articles 43 and 44.

<sup>19</sup> Law No. 211/2004 regarding certain measures for the protection of crime victims, published in Monitorul Oficial No. 505 of June 4, 2004, as further amended.

<sup>20</sup> Law No. 302/2004 regarding international judicial cooperation regarding criminal proceedings, published in Monitorul Oficial No. 594 of July 1, 2004, as further amended.

the 1989 Romanian revolution or citizens of a foreign state (“special legal aid matters”).<sup>21</sup> The special legal aid matters are still applicable but a 2008 Emergency Ordinance (the “Ordinance”) has created a general mechanism for providing indigent persons with State-sponsored legal aid for all non-criminal matters.<sup>22</sup>

According to the Ordinance, legal aid is provided for any civil, commercial, administrative, labor, social security and other matters and proceedings, upon request, if the applicant: (a) is a natural person; (b) resides in Romania or in a member state of the European Union; (c) has a net income per household member of less than 500 RON (subject to certain exceptions); and (d) the costs related to legal proceedings or for obtaining legal advice in order to defend a legitimate right are sufficiently high to jeopardize the applicant’s financial means necessary to provide for his or her family. The maximum amount of legal aid that a person may receive during the course of one year is equal to 12 national minimum net monthly salaries.<sup>23</sup>

Legal aid can be granted in one of the following forms: (a) legal representation and/or legal advice from a lawyer, either appointed by the relevant authority or selected by the applicant (with the lawyer’s consent); (b) payment for the fees charged by an expert, translator or interpreter during a judicial proceeding; (c) payment for the fees charged by a marshal to enforce a judicial decision; and (d) an exemption, reduction, installment or deferral of payment of court taxes, including any court fees for the enforcement of judicial decisions.<sup>24</sup>

### 3. *Procedural Aspects Regarding Legal Aid*

In all cases of State-sponsored legal aid, the fees of the lawyer are paid by the State from the budget of the Ministry of Justice. The compensation is set forth in a Protocol between the Ministry of Justice and the UNBR (the “Protocol”),<sup>25</sup> as a flat fee for each type of legal aid service. The compensation is not adjusted to take into account the time spent on the case or the outcome of the case, which does little to advance zealous and committed representation.

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<sup>21</sup> See, for example, Law No. 217/2003 regarding the prevention of and fight against domestic violence, published in Monitorul Oficial No. 367 of May 29, 2003, as further amended, Articles 23 and 24; Law No. 272/2004 regarding the protection and promotion of children’s rights, published in Monitorul Oficial No. 557 of June 23, 2004, as further amended, Articles 37, 57; Law No. 105/1992 regarding international private law, published in Monitorul Oficial No. 245 of October 1, 1992, as further amended, Article 163; Ordinance, Articles 41-49; Law No. 122/2006 regarding asylum, published in Monitorul Oficial No. 428 of May 18, 2006, as further amended, Article 17; Law No. 42/1990 regarding the honoring of and the granting of certain rights to the heroes of the Romanian Revolution of December 1989 and their families, republished in Monitorul Oficial No. 198 of August 23, 1996, as further amended, Article 10.

<sup>22</sup> Emergency Ordinance No. 51/2008 regarding judicial public help with respect to civil matters, published in Monitorul Oficial No. 327 of April 25, 2008. The provisions of the Ordinance have not yet been properly transposed into Law No. 51/1995 because Emergency Ordinance No. 159/2008, published in Monitorul Oficial No. 792 of November 26, 2008 (amending Law No. 51/1995 to integrate the provisions of the Ordinance) was rejected by Law No. 81/2010, published in Monitorul Oficial No. 300 of May 10, 2010, following a ruling of the Romanian Constitutional Court that Emergency Ordinance No. 159/2008 was unconstitutional.

<sup>23</sup> Ordinance, Articles 2, 3, 4, 7 and 8.

<sup>24</sup> Ordinance, Article 6.

<sup>25</sup> Protocol between the Romanian Ministry of Justice and the National Association of the Romanian Bars No. 1/3928/2008 effective December 1, 2008, *available at*: [www.unbr.ro](http://www.unbr.ro).

Moreover, the fees are relatively small, therefore discouraging many experienced lawyers from pursuing these *pro bono* opportunities. As a result, and because legal aid assignments provide an opportunity to gain experience, young lawyers typically volunteer to take them on.<sup>26</sup> In fact, the relevant regulations state that legal aid in non-criminal matters will be primarily assigned to young lawyers.<sup>27</sup>

The request for State-sponsored legal aid in the form of legal representation in judicial proceedings must be presented to the court or the prosecutor (except where the appointment of a lawyer is directly ordered by the court or the prosecutor, such as in criminal cases where representation of the defendant is mandatory). The court or the prosecutor must approve the request and send it to the SAJ of the relevant local Bar, which then designates a lawyer to handle the legal proceedings. The lawyer's fee is established by the court or by the prosecutor pursuant to the Protocol. The request for State-sponsored legal aid in the form of legal advice is filed directly with the SAJ, which then designates a lawyer and establishes the fee to be received by the lawyer pursuant to the Protocol.

As discussed above, prior to 2008 there was no State-sponsored legal aid for non-criminal matters (except for special legal aid matters) and, even in criminal matters, legal aid was limited to those circumstances where the State had the express legal obligation to ensure that a person was represented by a lawyer. For all other situations, a person could petition the Dean of the local bar and request free legal services (legal representation and/or legal advice in any case or matter). That possibility still exists but is of less importance given that the scope of State-sponsored legal aid has expanded to cover non-criminal matters (subject to the conditions described above). Additionally, due to the lack of publicity, many indigents are unaware of the opportunity to receive free legal assistance directly from their local Bar.

To receive legal aid from the Dean, the petitioner must demonstrate that (i) he or she lacks financial means and (ii) his or her rights would be prejudiced by delay.<sup>28</sup> There are no set criteria to guide or restrict the Dean's decision to grant or deny assistance, no clear financial or other criteria to establish the lack of financial means and no clear rules regarding the evidence that should be produced in support of the petition. If the request is granted, the Dean then designates a lawyer to provide the requested legal services. It is unclear whether the lawyer must be designated from those listed in the Legal Aid Registry or from among the other lawyers. However, in practice it appears that the Dean only appoints lawyers with their consent and that the applicant usually indicates on the petition the name of the lawyer who will provide legal assistance.<sup>29</sup>

## **II. *Pro Bono Opportunities in Romania***

### **A. Issue-Based Organizations**

There are a number of international and local issue-based NGOs that provide Romanians with free legal assistance. These organizations are always in need of help from lawyers, as the

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<sup>26</sup> Cozmin Obancia, Marinela Cioroaba, and Andrei Savescu, *Access to Justice in Central and Eastern Europe Country Reports: Romania* (2003), available at: [www.pili.org](http://www.pili.org), at 16.

<sup>27</sup> Legal Aid Framework Regulations, Article 27; UNBR Regulations, Article 217.

<sup>28</sup> Law No. 51/1995, Article 68; UNBR Regulations, Articles 156, 157, 161.

<sup>29</sup> Cozmin Obancia, Marinela Cioroaba, and Andrei Savescu, *Access to Justice in Central and Eastern Europe Country Reports: Romania* (2003), available at: [www.pili.org](http://www.pili.org), at 21.

demand for legal aid is generally greater than the available resources. In fact, some NGOs hire outside counsel to provide advice to, and make court appearances on behalf of, their beneficiaries because they lack an adequate number of in-house counsel or volunteer lawyers. Below is a brief overview of some of the issues that currently command the attention of such NGOs.

## 1. *Protection of Roma Rights*

As in other Eastern European nations, there is widespread discrimination against Roma in Romania. Romania has the largest Roma minority in Europe, with approximately 1 million Roma living in Romania (approximately 5% of its total population).<sup>30</sup> In Romania, the Roma are impoverished, vulnerable communities who face discrimination and exclusion across all spheres of society, including education, housing, health care and employment.<sup>31</sup> According to the 2007 Roma Inclusion Barometer, 23% of Roma were illiterate and 95% did not complete high school.<sup>32</sup> Additionally, ethnic violence against Roma has been reported, prompting many NGOs to focus on promoting and protecting Roma rights in Romania. Following Romania's accession to the European Union, a new issue appeared because many Romanian Roma left Romania and established themselves in other member states of the European Union. In September 2010, France publicly announced plans to dismantle Roma camps and to deport back to Romania the Roma living in the camps. This announcement steered political discussions, as it appears to be in violation of European law regarding the freedom to travel and live within the European Union.<sup>33</sup>

The European Roma Rights Center ("ERRC") is an international public interest organization aimed at combating anti-Roma racism and human rights abuses of Roma in Eastern European nations, including Romania. The approach of the ERRC involves strategic litigation, international advocacy, research and policy development, and human rights training of Roma activists. Since its establishment in 1996, ERRC has set in motion more than 500 court cases in fifteen countries to bring to justice State and non-State actors who have discriminated against Roma individuals or have committed violence against them. The ERRC is active in both domestic and international litigation. The ERRC supports local lawyers in domestic legal proceedings both professionally and financially. When domestic remedies are exhausted, the ERRC prepares legal submissions to international tribunals, including the European Court of Human Rights, the European Committee of Social Rights and UN treaty bodies. For example, following an application to the European Court of Human Rights by ERRC on behalf of 21 Roma victims of a 1993 pogrom incident in Hadareni, Romania, in July 2005 Romania was found in violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") and agreed to pay compensation and undertake positive steps to resolve discrimination against the Roma.<sup>34</sup> The Romanian government undertook to initiate community development projects to improve living conditions and inter-ethnic relations. However, little progress has been made since then to improve the condition of the Roma. In October 2009, a member of the National Council for Combating Discrimination ("CNDC") went on a hunger strike over the failure by the

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<sup>30</sup> *Health and the Roma Community, analysis of the situation in Europe: Bulgaria, Czech Republic, Greece, Portugal, Romania, Slovakia, Spain* (2009), available at: [www.romanicriss.org](http://www.romanicriss.org).

<sup>31</sup> *At Risk: Roma and the Displaced in Southeast Europe*, United Nations Development Program (2006); *Roma: The Plight of Europe's Largest Minority* (2008), available at: <http://meero.worldvision.org>.

<sup>32</sup> *2009 Human Rights report: Romania*, U.S. Department of State, available at: [www.state.gov/g/drl/rls/hrrpt/2009/eur/136053.htm](http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136053.htm).

<sup>33</sup> See Judy Dempsey and Stephen Castle, *France and Germany Spar Over Policies on Roma*, The New York Times, September 18, 2010.

<sup>34</sup> For more information regarding ERRC, see [www.errc.org](http://www.errc.org).

government to implement the measures promised in the wake of the ECHR Hadareni decision. He ended his hunger strike after eight days following assurances by the government that it would not obstruct funding for the Hadareni community projects.<sup>35</sup>

The Roma Center for Social Intervention and Studies (“Romani CRISS”)<sup>36</sup> and the Roma Center for Public Policies (“Aven Amentza”)<sup>37</sup> are two local NGOs that also advocate for Roma rights and provide free legal aid to victims of discrimination based on ethnicity. Romani CRISS also monitors the implementation of a 2007 regulation<sup>38</sup> forbidding segregation of Roma students.

The NGO Ovidiu Rom<sup>39</sup> also works to assist and encourage Roma children in the school enrollment process and conducts a national public awareness campaign entitled “School Makes You Great” to promote the importance of school enrollment to families and children.<sup>40</sup>

## 2. *Discrimination Based on Sexual Orientation and HIV Positive Status*

Despite having some of the harshest anti-homosexual laws approximately a decade ago,<sup>41</sup> Romania has since made important progress in protecting the rights of its LGBT citizens, especially after its accession to the European Union. In 2000, Romania enacted regulations that outlawed discrimination on the basis of sexual orientation in a variety of fields, including employment, the provision of and access to goods and services, housing, education, health care, audiovisual programming, the justice system, social security and other public services, which were thereafter further enhanced following Romania’s accession to the European Union in 2007.<sup>42</sup> In 2001, Romania repealed the last of its anti-gay laws, Article 200 of the Criminal Code, which criminalized public manifestations of homosexuality.<sup>43</sup> The CNDC is the Romanian public authority that is empowered to, among other things, prevent, monitor and investigate any forms of discrimination. The CNDC has successfully filed cases against and fined individuals and firms due to discrimination based on sexual orientation.<sup>44</sup> Nevertheless, discrimination and persecution based on sexual orientation still continue in Romania<sup>45</sup> and much remains to be done.<sup>46</sup>

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<sup>35</sup> *Human Rights in Romania*, Amnesty International Report 2009, available at: [www.amnesty.org](http://www.amnesty.org).

<sup>36</sup> For more information regarding Romani CRISS, see [www.romanicriss.org](http://www.romanicriss.org).

<sup>37</sup> For more information regarding Aven Amentza, see [www.romanothan.ro](http://www.romanothan.ro).

<sup>38</sup> Order of the Ministry of Education No. 1540/2007 in respect of forbidding segregation of Roma children in schools and the approval of the methods for preventing and eliminating the segregation of Roma children in schools, published in Monitorul Oficial No. 692 of October 11, 2007.

<sup>39</sup> For more information regarding Ovidiu Rom, see [www.ovid.ro](http://www.ovid.ro).

<sup>40</sup> *Human Rights in Romania*, Amnesty International Report 2009, available at: [www.amnesty.org](http://www.amnesty.org).

<sup>41</sup> See Adrian Bridge, *Gay Call to Boycott Wine from Romania Wines*, The Independent, January 22, 1997; Bruce Benderson, *Out of Darkness – Minor Change in Romania’s Sodomy Law*, The Advocate, June 20, 2000.

<sup>42</sup> Ordinance No. 137/2000, republished in Monitorul Oficial No. 99 of February 8, 2007, as further amended.

<sup>43</sup> See *Romania Steps Closer to EU after Article 200 Eliminated*, The Washington Blade, February 15, 2002.

<sup>44</sup> For example, in 2005, the CNCD fined TAROM, the national air carrier, for its refusal to allow gay partners to take advantage of its Valentine’s Day couples discounts. See *Airline Fined for Anti-Gay Offer*, The Independent, March 2, 2005; *Valentine’s Deal ‘Left Out Gay People,’* The Guardian, March 1, 2005.

<sup>45</sup> For example, protestors hurled stones and fireworks at the participants of the 2007 Gay Parade in Bucharest and, the night after the Parade, two men were beaten by eight attackers upon leaving the Bucharest cinema which hosts



Discrimination based on HIV-positive status is also widespread in Romania. Thousands of Romanian children and youth are living with HIV and face discrimination that keeps them from attending school, obtaining necessary medical care, working, or even learning about their medical condition. The few affected children who attend school are relegated to special schools with inferior resources, or barred from attending vocational programs in fields such as food service and hairdressing, for which Romanian law requires mandatory HIV testing. HIV-positive youth may be denied jobs because Romanian law mandates medical testing for a wide variety of jobs in which the risk of HIV transmission is minimal, and fails to protect individuals from HIV tests performed without informed consent by public and private employers. Such discrimination cases are difficult to litigate and may draw further attention to plaintiffs' HIV status because court documents are not private.<sup>47</sup>

ACCEPT is an NGO that deals with both of these issues at a national level through awareness campaigns and advocacy. Founded in 1994, ACCEPT was the leading advocate of the repeal of Article 200 of the Criminal Code. ACCEPT provides free legal assistance to people discriminated against on account of their sexual orientation, gender, or HIV positive status. ACCEPT also assists gay and gay-friendly NGOs with the legal paperwork and filings required for an organization to be registered with the State.<sup>48</sup>

With press reports placing Romania on the eve of an HIV epidemic and UNICEF, the Open Society Institute and the Global Fund to Fight AIDS, Tuberculosis and Malaria having all withdrawn funding for Romania's HIV program since June 2010,<sup>49</sup> the situation is likely to worsen. Other Romanian NGOs, such as the Romanian Association Against AIDS ("ARAS"),<sup>50</sup> are both leading an awareness raising and prevention campaign and providing advocacy help for vulnerable groups.

### 3. *Treatment of Adults with Mental Health Problems*

Several NGOs have publicly reported the involuntary placement of citizens in psychiatric hospitals for treatment (even where they had not been charged with any criminal offense), the inadequate living conditions in many of the psychiatric wards and hospitals in Romania, the ill-treatment of patients, methods of restraint and enforcement of seclusion, the lack of adequate habilitation and rehabilitation or adequate medical care as well as the failure to investigate impartially and independently reports of ill-treatment.<sup>51</sup> The Estuar Foundation ("*Estuar*") aims to combat these problems and to provide basic protection for adults with mental health problems.

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the annual "Gay Fest" festival. See *Protesters Clash With Police At Romania Gay Parade*, Reuters, June 9, 2007; *Attackers Stone Romania Gay Rights March*, The Associated Press, June 9, 2007.

<sup>46</sup> For example, as of October 1, 2011 when the New Civil Code will come into force, the definition of marriage will be amended to refer to marriages "between a man and a woman" (whereas before the reference was to "between spouses") and the New Civil Code will state expressly that Romania does not recognize foreign same-sex marriages. See Articles 258 and 277 of the New Civil Code.

<sup>47</sup> *Romania: Discrimination Closes Doors for Children with HIV*, Human Rights Watch (2006).

<sup>48</sup> For more information regarding ACCEPT, see [www.accept-romania.ro](http://www.accept-romania.ro).

<sup>49</sup> William Lee Adams, *Eve of an HIV Epidemic in Romania*, Time Magazine, September 20, 2010, available at: [www.time.com/time/magazine/article/0,9171,2017055,00.html](http://www.time.com/time/magazine/article/0,9171,2017055,00.html).

<sup>50</sup> For more information regarding ARAS, see [www.arasnet.ro](http://www.arasnet.ro).

<sup>51</sup> *Bulgaria and Romania: Amnesty International's Human Rights Concerns in EU Accession Countries*, Amnesty International (2005); Report concerning the observance of the rights and liberties of persons committed to healthcare and social establishments for people with mental disabilities, Center for Legal Resources (2009).

Estuar provides free legal advice and representation for clients discriminated against because of their mental health status, and advocates for the rights of the mentally ill.<sup>52</sup>

#### 4. *Prison Conditions*

Several NGOs reported that prison conditions in Romania are harsh and do not meet international standards. There is abuse of prisoners by authorities and other prisoners. Sanitation, hygiene, medical care and food quality are poor. The Association for the Defense of Human Rights in Romania – Helsinki Committee (“APADOR-CH”) is an NGO focused on changing both the legislation and the perceptions in the field of civil rights, with an emphasis on individual freedom, the right to privacy, access to information and the rights of minorities.<sup>53</sup> APADOR-CH also visits prisons with the Romanian government’s permission and is involved in the government’s efforts to improve prison conditions. In 2009, APADOR-CH reported that prison meals did not provide the minimum necessary calories, water at some prisons was unsuitable for drinking and in many facilities the kitchens were infested with mold. APADOR-CH also stated that daily activities, work opportunities, and educational programs continued to be insufficient. APADOR-CH called for the establishment of a joint medical commission of the Ministries of Justice and Health to investigate the causes of deaths in prison, following the death of a prisoner in 2007 in a case of suspected medical negligence. The practice of labeling certain prisoners as “dangerous” without clear criteria and subjecting them to greater restrictions than the remainder prison population as well as the practice of subjecting prisoners to multiple punishments for a single act of misbehavior were also reported and criticized.<sup>54</sup>

#### 5. *Corruption*

During Romania’s negotiations for accession to the European Union, corruption was one of the most debated topics. Transparency International (“Transparency”) is an NGO that promotes transparency in elections, public administration and business. Transparency utilizes advocacy campaigns to lobby national and local governments to implement anti-corruption reforms, and provides victims of corruption with practical assistance to pursue complaints and address their grievances.<sup>55</sup>

#### 6. *Microfinance*

Romania had the fastest economic growth rates in the European Union until a real estate and credit bubble burst in 2008. It now faces rising unemployment and social unrest against painful spending cuts and tax rises. The economy nudged out of recession in the second quarter of 2010 but is likely to contract again through the rest of the year as higher value added tax crimps spending. Prospects of recovery are undermined by scarce foreign direct investment and a collapse in property prices.<sup>56</sup> In this context, microfinance initiatives are vital for the local small and medium enterprises (“SMEs”). Several Micro Finance Institutions (“MFIs”) are providing loans to SMEs and are an important factor for revitalizing the economy at the SMEs level. Lawyers’ *pro bono* assistance is needed to pair up with MFIs in order to put in place more MFI

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<sup>52</sup> For more information regarding Estuar, see [www.estuar.org](http://www.estuar.org).

<sup>53</sup> For more information regarding APADOR-CH, see [www.apador.org](http://www.apador.org).

<sup>54</sup> 2009 Human Rights report: Romania, U.S. Department of State.

<sup>55</sup> For more information regarding Transparency, see [www.transparency.org](http://www.transparency.org).

<sup>56</sup> Reuters Factbox – Key political risks to watch in Romania, October 1, 2010, available at: <http://www.reuters.com/article/idUSRISKRO20101001?pageNumber=1>.

projects and the related loan documentation, raise awareness of the existence of microfinance solutions, help SMEs apply for loans from MFIs and assist the SMEs with corporate and other legal advice once the microfinance project is under way.

## B. Clinical Programs

In Romania, legal education focuses to a large extent on memorizing statutes and does not invite the breadth of exploration of a problem-solving approach to education.<sup>57</sup> As such, clinical programs are rare in Romanian law schools. Several international organizations, such as the Public Interest Law Institute (“PILI”)<sup>58</sup> and American Bar Association Central European and Eurasian Law Initiative (“ABA-CEELI”),<sup>59</sup> have been involved in an effort to establish clinical education programs at Romanian law schools. Given Romania’s historical background, one of the challenges in setting up such programs is finding mentor lawyers willing to run the legal education clinics on a *pro bono* basis. As such, foreign lawyers who possess the language skills necessary to teach Romanian clinical programs and who would be willing to lecture without compensation could greatly contribute to the reshaping of the legal education system in Romania.

## C. Mediation

While a few years ago the typical present-day lawyer appeared to engage in relatively little work with government agencies or institutions other than the courts, and mediation rarely occurred,<sup>60</sup> there have been several developments since. A law passed in 2006<sup>61</sup> introduced mediation as a dispute resolution mechanism in Romania in practically every type of conflict. Mediation is a dispute resolution mechanism based on the parties’ cooperation, communication and negotiation.<sup>62</sup> The parties may apply for mediation before or after court proceedings have commenced, and they have the right to solve through mediation any conflict (whether in the realm of civil, commercial, family, criminal law, etc.). If the mediation is started after the commencement of court proceedings, such proceedings will be suspended for the duration of the mediation. A recent provision stipulates that law enforcement bodies have a duty to inform the parties of the availability of the mediation process and its benefits.<sup>63</sup> The law also sets out the procedures for qualifying as a mediator, provides for the set-up of a governing body of the mediator profession (the Mediators Council) and introduces mediation training courses.

## III. *Prohibition against Advertising*

One issue that indirectly affects *pro bono* practice in Romania is the restriction on legal advertising coupled with the lack of information regarding legal aid made available by the local

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<sup>57</sup> Kandis Scott, *Decollectivization and Democracy: Current Law Practice in Romania*, 36 Geo. Wash. Int’l L. Rev. 817, 869 (2004).

<sup>58</sup> For more information regarding PILI’s Legal Education Reform program, see [www.pili.org](http://www.pili.org).

<sup>59</sup> For more information regarding ABA-CEELI’s programs, see [www.abanet.org/rol/europe\\_and\\_eurasia](http://www.abanet.org/rol/europe_and_eurasia).

<sup>60</sup> Scott (2004) at 868.

<sup>61</sup> Law No. 192/2006 regarding mediation and the profession of mediator, published in Monitorul Oficial No. 441 of May 22, 2006, as further amended by Law No. 370/2009, published in Monitorul Oficial No. 831 of December 3, 2009, and Government Ordinance No. 13/2010, published in Monitorul Oficial No. 30 of January 30, 2010.

<sup>62</sup> Law No. 192/2006 as amended, Article 50(1).

<sup>63</sup> Zeno Daniel Sustac and Elena Bustea, *Mediation in Romania* (February 2010), available at: [www.mediate.com/articles/sustack75.cfm](http://www.mediate.com/articles/sustack75.cfm).

Bars and the UNBR. Lawyers in Romania are only permitted to advertise their services in order to give the public the necessary information pertaining to the legal practice of the lawyer or law firm and there are important restrictions in place as to the form and means of advertising. The names of past or current clients cannot be publicized, except under certain limited circumstances, if the client consents. Further, it is illegal to solicit legal work in any form, by going to the home of a potential client, in a public place or by sending a personalized unsolicited proposition of potential legal work. All advertisements are susceptible to review by the relevant authorities of the local Bar and infringement of the applicable limitations and prohibitions is subject to disciplinary sanctions.<sup>64</sup>

Because advertising is permitted only for conveying information that is strictly necessary, advertising *pro bono* services in some circumstances may be outside the scope of legally permitted advertising exceptions. As it may be difficult to reconcile the severity of these anti-advertising rules with the well-deserved need to publicize any *pro bono* work, Romanian law firms and attorneys understandably have fewer incentives to attempt to enhance their professional reputation by conducting *pro bono* work.

#### IV. Conclusion

Within the framework of the legal aid system, the mediation mechanism and the programs of the local and international NGOs that operate in Romania, there are several exciting opportunities for international lawyers to engage in *pro bono* work in Romania. Despite the many positive developments in Romania during the past twenty years, the demand for free legal services remains greater than the supply and there continues to exist an overriding hesitation on the part of Romanian lawyers to voluntarily engage in *pro bono* work. International law firms and foreign lawyers can also help make a difference by simply enhancing the perception of *pro bono* work in the Romanian legal community. The effects are appearing already. An initiative launched in May 2010 by a former judge and a professor of corporate law at the University of Bucharest Law School to set up a network of 100 Romanian *pro bono* lawyers is off to a good start with 62 lawyers reported to have joined by September 2010.<sup>65</sup> The local press is starting to report about

cases taken over by the lawyers of the network on a *pro bono* basis, which further raises the Romanian public's awareness of legal *pro bono* work.

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<sup>64</sup> Law No. 51/1995, Article 46; UNBR Regulations, Articles 230-237.

<sup>65</sup> *First Meeting of the Lawyers of Project Piperea: 100 "pro bono" Lawyers for Romania* (September 8, 2010), available at: [www.juridice.ro](http://www.juridice.ro). See also [www.spunesitu.ro/proiect-avocati](http://www.spunesitu.ro/proiect-avocati).