

Brief Considerations on Perfecting and Super-Specialization in Juvenile and Family Cases

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Abstract

The main objective of the pending study is to highlight the fact that legal assistance and representation carried out by lawyers, as conventional representatives of litigants, in the field of family law is a stressful activity, both from a legal perspective and especially from a psychological perspective. Neither in law school, nor during continuing professional training, does the lawyer learn how to manage social phenomena and particular emotional situations, respectively how to approach a case without emotional involvement, in a detached, purely legal way. Specifically, the author discovers that undoubtedly, individual interdisciplinary studies in the field of couple psychology, respectively child psychology, are beneficial in the assumption of taking over files in which the status quo changes day by day, hour by hour, minute by minute and involves a situation that generates emotions and feelings, not just facts or legal acts. In the same sense, the author observes that, of course, emotions, rational or not, are very important for the litigant seeking support, and ignoring them or expressing biases would lead to the loss of trust in the lawyer. On the other hand, most of the time, the lawyer is asked to transform into a psychologist, to offer therapy as well, not just legal consultation/assistance and legal representation. The research methods to achieve the proposed objectives are varied, taking into account the comparative method, interdisciplinary aspects between administrative law and civil law are exposed, respectively the judicial organization, the logical method, which tends to outline a more rigorous legislative exposition, the critical method, with the purpose of presenting the current legislative deficiencies, as well as the systemic method, which tends to the possibility of bringing scientific research a cardinal importance. The results and implications of the study will be major from the perspective of law enforcement and the interpretation of legal provisions, since in corollary, de lege ferenda proposals will be expressed to include interdisciplinary discussion and courses sessions within the continuous training of lawyers – indispensable partners of the act of justice, active in Family Law cases, with sociologists, psychologists, anthropologists and other professionals involved in family relation, with the major involvement of the assimilated administrative authority, the National Union of Romanian Bar Associations.

Keywords: *super-specialization, lawyers, emotions, family law cases, family law, couple psychology, child psychology.*

JEL Classification: K15, K41

1. Prolegomena – current regulatory framework

De lege lata, within the framework of Law no. 304/2022 regarding judicial organisation,² the phrase ‘minors and family’ can be found in the following provisions:

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² Published in the Official Gazette, Part I no. 1104 of November 16, 2022, in force from December 16, 2022. It abrogated Law no. 304/2002, which was in force from September 27, 2004, until March 15, 2023. On the official website of the Superior Council of the Magistracy, it is mentioned that the principles,

Art. 43. (1) In relation to the nature and number of cases specialized departments or courts may be established within the courts. (2) Within the courts, specialized departments or courts for minors and family will be organized.

Art. 44. (1) The panels and specialized sections for minors and family, as well as specialized courts for minors and family judge both crimes committed by minors and crimes committed against minors. (2) When in the same case there are several defendants, some minors and other adults, and dissociation is not possible, the jurisdiction belongs to the specialized court for minors and family. (3) The provisions of Law no. 135/2010 on the Code of Criminal Procedure, with subsequent amendments and additions, shall be applied accordingly.

The rest of the provisions in which we find the phrase ‘minors and family’ in this normative act refers to the Prosecutor’s Offices attached to the courts for minors and family, respectively in their management.³

Continuing the research regarding the sections or panels that judge cases with minors and family cases, we mention that according to Art. 76 of the Law no. 76/2012 for the implementation of Law no. 134/2010 regarding the Civil Procedure Code, with subsequent amendments and additions⁴: *until the organization of guardianship and family courts, the courts or, as the case may be, the courts or specialized courts for minors and family will fulfill the role of guardianship and family courts, having the competence established according to the Civil Code, the Code of Civil Procedure, this law, as well as special regulations in force.*

In the same sense, without pretending to be an exhaustive enumeration, we specify that among the cases that are judged by the sections or panels specialized in this matter are:

- adoption,
- contesting paternity,
- contesting recognition of paternity,
- opening adoption proceedings,
- divorce by agreement,

structure and organization of the Romanian judicial system are enshrined in the Romanian Constitution and Law no. 304/2004 on judicial organization republished and not according to Law no. 304/2022 regarding judicial organization. <https://www.csm1909.ro/PageDetails.aspx?PageId=271&FolderId=3590&FolderTitle=Sistemul-judiciar-rom%C3%A2n>, accessed at 27.04.2024. <https://www.csm1909.ro/Pages.aspx?PageId=271&PageTitle=Prezentarea-sistemului-judiciar>, accessed at 27.04.2024.

³ Within the Regulation on the evaluation of the professional activity of judges, dated 07.10.2021, an integral part of Decision 1113/2021, published in the Official Gazette, Part I no. 988 bis of October 15, 2021, it is stipulated that in assessing the efficiency indicators, we will start from the values provided, for each of these indicators, by the StatisEcris program. Under no circumstances can the assessment of these indicators be made exclusively on the basis of the data provided by the StatisEcris program, but they will be taken into account depending on: The volume of activity of the court in the field of specialization of the evaluated judge, the volume of activity of the evaluated judge, the complexity of the cases with which he was entrusted and the average effective load per country in the same field of specialization. When establishing the ‘field of specialization’ it is advisable to take into account the following main fields: civil, criminal, administrative and financial tax litigation, labor and social insurance disputes, insolvency cases. To an equal extent, the evaluation commissions can also consider sub-fields of specialization (e.g. disputes with minors and family disputes, disputes with professionals, etc.) if they consider that reporting to these sub-fields of specialization has a higher relevance in the evaluation process.

⁴ Published in the Official Gazette, Part I no. 365 of May 30, 2012, with the last amendment in 16.03.2023.

- divorce,
- divorce with minors,
- disclosure of the identity of the natural parents,
- nullity of marriage,
- placement,
- emergency placement,
- extension of trust for adoption,
- recognition of paternity,
- revocation of trust for adoption,
- establishment of a minor domicile,
- establishment of paternity,
- denial of paternity,
- modification of minor measures.

In all these types of litigation, litigants can be assisted or represented by one or more lawyers, pursuant to Law no. 51/1995 for the organization and exercise of the lawyer profession⁵, taking into account the provisions of the Statute of the lawyer profession from 03.12.2011, an integral part of UNBR Decision no. 64/2011⁶, which regulates: *Art. 2. (1) The purpose of exercising the profession of lawyers is to promote and defend the rights, freedoms and legitimate interests of natural persons and legal persons, under public law and under private law. (2) In exercising the right to defense recognized and guaranteed by the Constitution of Romania, republished, by the law, by the pacts and treaties to which Romania is a party, the lawyer has the right and the obligation to insist, by all legal means, for the achievement of free access to justice, for a fair process and resolved within a reasonable term, regardless of the nature of the case or the quality of the parties.*

2. General considerations regarding the management of particular emotional situations

In accordance with Art. 12 of the Statute of the lawyer profession:

(1) The bodies of the lawyer profession have the permanent task of ensuring the qualified exercise of the right of defense, properly organizing the admission to the profession, the initial professional training and the continuing training of lawyers, the strict observance of professional ethics and discipline.

(2) All lawyers have the right and the duty to participate in the forms of professional training established by the bodies of the profession.

(3) Bars and U.N.B.R. they have the obligation, ex officio or upon request, to act by all legal means for the protection of the profession, the dignity and the honor of the lawyers' body.

Specifically, CHAPTER V of the State, marginally instituted Training and professional development of lawyers, which includes 3 sections, the last of them referring to Continuous Professional Training.

Thus, in article 314 we observe the fact that:

- 1) Lawyers are obliged to permanently update their professional training, by

⁵ Republished (r3) in the Official Gazette, Part I no. 440 of May 24, 2018.

⁶ Published in the Official Gazette, Part I no. 898 of December 19, 2011.

maintaining and diversifying their knowledge in the fields in which they practice their profession, and, for this purpose, attend the forms of continuous professional training organized by the bar, I.N.P.P.A. or the forms of exercising the profession, according to the provisions of this section.

2) Continuing professional training involves broadening knowledge and skills in new areas of law, broadening knowledge in the field of procedures and laws applied in the European Union, as well as acquiring the certification of continuing professional training to standards compatible with the professional training of lawyers from the other member states of the European Union.

3) Continuous professional training is also achieved through the specialization imposed by the diversification and expansion of the application of law in relation to the evolution of contemporary social-economic relations.

Moreover, article 316 of the Statute stipulates the methods of continuing professional training, in an organized framework, respectively:

a) the activities coordinated and guided by the Department of Continuing Professional Training of I.N.P.P.A.;

b) assistance at courses, seminars, meetings, conferences, congresses and any other form organized to update the knowledge and techniques of practicing the profession;

c) online training;

d) writing and publishing notes, articles, essays, studies on legal issues;

e) specific activities in study circles organized by bar associations;

f) activities organized in cooperation with educational institutions or professional training institutions in fields related to the specific activity of the lawyer profession.

g) any other activity recognized by the professional bodies.

Ab initio, we observe the fact that during continuous professional training, the lawyer does not learn how to manage social phenomena and particular emotional situations, respectively how to approach a case without emotional involvement, in a detached, purely legal way.

Currently, the awareness and management of emotions from an early age⁷ cause a lot of ink to flow, which is why an interdisciplinary research is necessary when we approach cases that are the competence of the juvenile and family departments or units, given the fact that public authorities and institutions are made up of people, not robots, and technology and digitization are perceived to be beneficial.⁸

⁷ Anna Llenas (2019), *Color Monster*, translation and adaptation by Sânziana Covaliu and Oana Ursache, Nomina Publishing House, Pitesti, p. 75; Ioana Chicet-Macoveiciuc (2020), *What, how and why do I feel? Ema and Eric discover emotions*, D.P.H. Didactica Publishing House, Bucharest, p. 43 et seq.

⁸ Yuval Noah Harari (2018), *21 Lessons for the 21st Century*, chap. 5 Online versus offline, Jonathan Cape Publishing – Penguin Random House UK, London, pp. 88–92. According to the historian, people alienated from their bodies, senses, and physical environment are likely to feel alienated and disoriented. It lays out Mark Zuckerberg's opinion, which suggests that 'the best solutions for improving discourse can come from getting to know each other as whole people, instead of just opinions – something Facebook may be the only platform to do. If we connect with people, we have something in common with – sports teams, TV shows, interests – it's easier to have a dialogue about what we disagree with.' Mark Zuckerberg, *Building Global Community*, Facebook, 16 February 2017. On the ability to be present, see Olivia Fox Cabane (2019), *The Charisma Myth – Master the Art of Personal Magnetism*, Penguin Business Publishing, pp. 13–18. Regarding common sense, politeness, kindness, courtesy, see Alexander von Schonburg (2019),

Legal issues are considered unemotional⁹, but certainly, individual interdisciplinary studies in the field of couple psychology, respectively child psychology, are beneficial in the assumption of taking over files in which the state of affairs changes day by day, hour by hour, minute by minute and involves a situation that generates emotions and feelings, not just facts or legal acts.

Of course, emotions, rational or not, are very important for the litigant seeking support, and ignoring them or expressing prejudices would lead to the loss of trust in the lawyer. On the other hand, most of the time, the lawyer is asked to turn into a psychologist, to offer therapy as well, not just consultation/assistance and legal representation.

3. The role of public administration authorities in managing problems concerning minors and the family

In order to observe the role of the public administration authorities in the management of issues concerning minors and the family, it is necessary ab initio to detect the protection offered to the family and young people by the fundamental law of Romania, respectively the Constitution of Romania¹⁰ which contains the following relevant provisions: *Article 48. Family: (1) The family is based on the freely consented marriage between the spouses, on their equality and on the right and duty of the parents to ensure the growth, education and training of the children. (2) The conditions for the conclusion, dissolution and annulment of marriage are established by law. The religious marriage can only be celebrated after the civil marriage. (3) Children out of wedlock are equal before the law to those in wedlock. Article 49. Protection of children and young people:*¹¹ *(1) Children and young people enjoy a special regime of protection and assistance in realizing their rights. (2) The state grants allowances for children and aids for the care of sick or disabled children. Other forms of social protection of children and young people are established by law. (3) Exploitation of minors, their use in activities that would harm their health, morals or endanger their life or normal development are prohibited. (4) Minors under the age of 15 cannot be employed as employees. (5) Public authorities have the obligation to contribute to ensuring the conditions for the free participation of young people in the political, social, economic, cultural and sports life of the country. (6) Public authorities respect and protect intimate, family and private life. (7) The natural person has the right to dispose of himself, if he does not violate the rights and freedoms of others, public order or good morals.*

By law, art. 258 of the Civil Code provides: *(1) The family is based on freely*

The art of virtues – the art of decency or 27 virtues, between nobility and nonchalance, Baroque Books & Arts Publishing, Bucharest.

⁹ About emotions and needs, see Yuval Noah Harari, (2016), *Homo Deus, A Brief History of Tomorrow*, Vintage Publishing – Penguin Random House UK, London, (Organism is Algorithms) pp. 96–105.

¹⁰ The Constitution of Romania Published in the Official Gazette, Part I no. 767 of October 31, 2003.

¹¹ The protection of children and young people is achieved through legal regulations in the matter, through legal acts issued or concluded, through the exercise of parental rights and the fulfillment of parental obligations, through the decisions or actions undertaken by public authorities or authorized private bodies or through the solutions pronounced by courts. Of course, both the child and the young person will be involved in making every decision that concerns them, in a manner adapted to their age and level of maturity.

consented marriage between spouses, on their equality, as well as on the right and duty of parents to ensure the growth and education of their children. (2) The family has the right to protection from society and the state. (3) The state is obliged to support, through economic and social measures, the conclusion of marriage, as well as the development and consolidation of the family.

According to the legislation in the field, art. 5 para. (2) from Law no. 272/2004 on the protection and promotion of children's rights, republished, regulates:

The responsibility for raising and ensuring the child's development falls primarily to the parents, who have the obligation to exercise their rights and fulfill their obligations towards the child, taking into account the child's best interests as a priority.

In the same sense, the public authorities will respect the principle of respecting and promoting with priority the best interest of the child, a principle which is enshrined in art. 263 para. (1)–(4) of the Civil Code, according to which: *(1) Any measure concerning the child, regardless of its author, must be taken with respect for the child's best interests. (2) In order to solve the requests that refer to children, the competent authorities are obliged to give all the necessary instructions for the parties to resort to the methods of resolving conflicts amicably. (3) The procedures related to the relations between parents and children must guarantee that the wishes and interests of the parents regarding the children can be brought to the attention of the authorities and that they take them into account in the decisions they make. (4) Procedures regarding children must be carried out within a reasonable time, so that the child's best interests and family relationships are not affected.*

In the procedure of hearing the minor, the provisions of art. 264 of the Civil Code, according to which: *(1) In the administrative or judicial procedures that concern him, the hearing of the child who has reached the age of 10 is mandatory. However, the child who has not reached the age of 10 can also be heard, if the competent authority considers that this is necessary for the resolution of the case. (2) The right to be heard implies the possibility of the child to ask for and receive any information, according to his age, to express his opinion and to be informed about the consequences that this may have, if it is respected, such as and on the consequences of any decision that concerns him. (3) Any child can ask to be heard, according to the provisions of para. (1) and (2). The rejection of the application by the competent authority must be motivated. (4) The opinions of the heard child will be taken into account in relation to his age and level of maturity. (5) The special legal provisions regarding the consent or presence of the child, in the procedures concerning him, as well as the provisions regarding the appointment by the court of a representative in case of conflict of interests remain applicable.*

Thus, the extent to which children can be sources of relevant and credible information depends more on the skills of the interviewer than on those of the child. It should be noted that protecting the interests of minor children does not mean disregarding the interests of the parents, because there should be no contradictions in the family. The interests of the family members are in full agreement and have a precise purpose – strengthening the family.

A series of institutions and bodies of the public administration that have attributions in the application of the regulations regarding family law institutions present an overwhelming role in the management of issues concerning minors and the family.

For example, monitoring compliance with the principles and rights of the child established by Law no. 272/2004 on the protection and promotion of the rights of the child and the Convention on the rights of the child, as well as the coordination and control of the activity of protection and promotion of the rights of the child is carried out by the General Directorate for Child Protection, a specialized department within the Ministry of Labour, Family and Social Protection.

According to the framework regulation for the organization and operation of the General Directorate of Social Assistance and Child Protection of 08.11.2017, an integral part of Decision NO. 797/2017, published in the Official Gazette, Part I no. 920 of November 23, 2017, the General Directorate of Social Assistance and Child Protection, hereinafter referred to as the General Directorate, is the public institution with legal personality established under the subordination of the county councils/local councils of the sectors of the city of Bucharest with the aim of ensuring the application of social policies in the field of protection to the child, the family, the elderly, the disabled, as well as other persons, groups or communities in social need, with a role in the administration and granting of social assistance benefits and social services.

The general management fulfills the following main attributions, according to art. 10 of the aforementioned normative act:

- a) in the field of protection and promotion of children's rights:
 1. draws up the initial assessment report of the child and his family and proposes the establishment of a special protection measure;
 2. quarterly monitors the implementation activities of the decisions establishing special protection measures for the child;
 3. identify and evaluate the families or persons who can take in children in foster care;
 4. monitors the families and persons who received children in foster care, throughout the duration of this measure;
 5. identifies, evaluates and prepares people who can become professional foster carers, under the law; conclude individual employment contracts and ensure continuous training of certified professional foster carers; evaluate and monitor their activity;
 6. provides assistance and support to the parents of the child separated from the family, with a view to reintegration into his family environment;
 7. reevaluates, at least once every 3 months and whenever necessary, the circumstances that were the basis for the establishment of special protection measures and proposes, as appropriate, their maintenance, modification or termination;
 8. fulfills the steps aimed at opening the internal adoption procedure for the children in its records;
 9. identify the families or persons domiciled in Romania who wish to adopt children; evaluates the material conditions and the moral guarantees they present and issues the certificate of family or person capable of adopting children;
 10. monitors the evolution of adopted children, as well as the relations between them and their adoptive parents; supports the child's adoptive parents in fulfilling the obligation to inform them that they are adopted, as soon as the child's age and degree of maturity allow it;
 11. fulfills other duties that fall to him in the field of adoption, according to the legal provisions in force;

12. creates at the county level, respectively at the level of the sectors of the city of Bucharest, the database on children in the special protection system, children and families at risk and reports this data quarterly to the National Authority for the Protection of Children's Rights and Adoption;

13. ensures the organization, administration and financing of social services intended to prevent the separation of the child from the family and those intended for the child temporarily or permanently deprived of his parents, in accordance with the law;

b) in the field of preventing and combating domestic violence:

1. ensures the necessary measures for the implementation of activities to prevent and combat domestic violence, as well as for the provision of services intended for victims of domestic violence and family aggressors;

2. monitors the necessary measures to carry out activities to prevent and combat domestic violence, as well as to provide services intended for victims of domestic violence and family aggressors;

3. develops partnerships and collaborates with non-governmental organizations and other representatives of civil society in order to provide and diversify services aimed at preventing and combating domestic violence;

4. substantiates and proposes to the county council, respectively to the local council of the sector of the city of Bucharest, the establishment, financing, respectively co-financing of public institutions that offer services aimed at preventing and combating domestic violence;

5. supports and develops information and consultation system accessible to victims of domestic violence, in order to exercise all the rights provided by the normative acts in force;

6. monitors cases of domestic violence in the administrative-territorial unit in which it operates;

7. identifies risk situations for the parties involved in domestic violence situations and directs the parties to specialized/mediation services;

8. creates at the county level, respectively at the level of the sectors of the city of Bucharest, the database on cases of domestic violence and reports these data quarterly to the National Agency for Equality of Chances between Women and Men;

c) in the field of adults with disabilities:

1. promotes and ensures respect for the rights of adults with disabilities, in accordance with Law no. 448/2006 regarding the protection and promotion of the rights of persons with disabilities, republished, with subsequent amendments and additions, and with Law no. 221/2010 for the ratification of the Convention on the Rights of Persons with Disabilities, adopted in New York by the United Nations General Assembly on December 13, 2006, opened for signature on March 30, 2007, and signed by Romania on September 26, 2007, with subsequent amendments;

2. ensures the organization, administration and financing of social services intended for people with disabilities, in accordance with the law, based on the annual county strategies, in the medium and long term, for the restructuring, organization and development of the social assistance system for people with disabilities;

3. act to promote alternatives to the institutionalized protection of persons with disabilities;

4. ensures the assessment of the individual needs of the disabled person,

proposes the inclusion in the degree of disability, respectively the maintenance of a person in the degree of disability, as well as the individual rehabilitation and social integration program of the person, approves the individual service plan of the person with a disability drawn up if needed by the case manager, recommends protection measures for the disabled adult, evaluates the fulfillment of the necessary conditions for attestations as a professional personal assistant, through the complex evaluation service, and monitors his activity;

5. ensures the secretariat and the operating conditions of the disability assessment and placement commission, provided for by law;

6. ensures the monitoring of the training of personal assistants of persons with severe disabilities;

7. respects the option regarding personal assistant or allowance, expressed in writing, issues the agreement in this sense and communicates it to the employer, within the term provided by law;

8. takes the necessary measures for planning and ensuring the continuity of the services provided to the young person with disabilities when transitioning from the child protection system to the adult protection system with disabilities, based on his identified individual needs;

9. ensures the preparation of the young person for adult life and independent life;

10. ensures universal design and reasonable adaptation for all the services and programs it runs;

11. ensures the collection and transmission of statistical data, according to the indicators requested by the National Authority for Persons with Disabilities and other institutions with activities in the field;

12. identifies, evaluates and trains people who can become professional personal assistants, under the law; conclude individual employment contracts and ensure continuous training of certified professional personal assistants; evaluate and monitor their activity;

d) in the field of protection of the elderly and other adults in difficult situations:

1. completes the assessment of the socioeconomic situation of the adult in need, of his needs and resources. It ensures the provision of adequate information and services in order to restore and develop the individual and family capacities necessary to overcome difficult situations on their own, after exhausting the measures provided for in the individualized plan regarding social assistance measures;

2. grants the adult person assistance and support for the exercise of his right to free expression of opinion;

3. takes steps to clarify the legal situation of the adult in need, including the late registration of his birth;

4. verifies and reevaluates quarterly and whenever necessary the way of caring for the adult person in need for which a social assistance measure has been instituted in an institution, with a view to maintaining, modifying or revoking the established measure;

5. ensures the necessary measures for the emergency protection of adults in need, including by organizing and ensuring the functioning of specialized centers within their own structure;

6. submits the necessary diligence for the rehabilitation of the adult person, according to the individualized plan regarding social assistance measures;

7. ensures the organization, administration and financing of social services intended for the elderly, as well as for other categories of adults in difficulty, in accordance with the law;

e) other attributions:

1. coordinates and supports the activity of local public administration authorities in the county in the field of social assistance, family protection and child rights, the rights of persons with disabilities, the elderly, prevention and combating domestic violence, etc.;

2. methodologically coordinates the activity of preventing the separation of the child from his parents, as well as that of admitting the adult to institutions or services, carried out at the level of public social assistance services;

3. provides the necessary technical assistance for the creation and formation of community consultative structures as a form of support in the activity of social assistance and child protection;

4. collaborates with non-governmental organizations that carry out activities in the field of social assistance, family protection and children's rights, preventing and combating domestic violence or with economic operators by concluding collaboration agreements with them;

5. develops partnerships and collaborates with non-governmental organizations and other representatives of civil society in order to provide and diversify social services and services intended for family and child protection, prevention and combating domestic violence, depending on the needs of the local community;

6. collaborates on the basis of protocols or conventions with the other general directorates, as well as with other public institutions from the administrative-territorial unit, in order to fulfill the duties assigned to it, according to the law;

7. provides, upon request, free specialist consultancy regarding the granting of social services and social benefits in the field of family protection and child rights; collaborates with other responsible institutions to facilitate people's access to these rights;

8. substantiates and proposes to the county council, respectively to the local council of the sector of Bucharest Municipality, the establishment, financing, respectively co-financing of social services;

9. annually or at the request of the county council, respectively of the local council of the sector of Bucharest Municipality, presents evaluation reports of the activities carried out;

10. ensures the granting and payment of due rights, according to the law, to persons with disabilities;

11. supports and develops information and consulting system accessible to single people, elderly people, disabled people, victims of domestic violence and any people in need, as well as their families, in order to exercise all the rights provided by the normative acts in force;

12. act to promote family-type alternatives to the institutionalized protection of people in need, including home care;

13. organizes the activity of selecting and hiring personnel from its own apparatus and subordinate institutions/services, for its periodic evaluation and

continuous training;

14. ensures the administrative and secretarial services of the commission for child protection, respectively of the evaluation commission for adults with disabilities;

15. creates at the county level, respectively at the level of the sectors of the municipality of Bucharest, the database regarding the beneficiaries of social services as provided for in Law no. 292/2011, with subsequent amendments and additions, and reports quarterly these data to the Ministry of Labor and Social Justice or, as the case may be, to the authorities of the central public administration with attributions in the field of social services subordinate to it;

16. supports the development of volunteering in social services, in compliance with the provisions of Law no. 78/2014 on the regulation of voluntary activity in Romania, with subsequent amendments;

17. fulfills any other attributions stipulated in normative acts or established by decisions of the county council, respectively of the local council of the sector of the municipality of Bucharest.

According to art. 2 para. (2) from O.U.G. no. 68/2010 regarding some measures to reorganize the Ministry of Labour, Family and Social Protection and the activity of the institutions subordinated, coordinated or under its authority was published in the Official Gazette, Part I no. 446 of July 1, 2010, the Ministry of Labour, Family and Social Protection reorganizes itself by reducing positions and by taking over the activities of the National Authority for the Protection of the Family and the Rights of the Child, the National Agency for Equal Opportunities between Women and Men, the National Authority for Individuals with Handicap, as well as the activity of the National Institute for the Prevention and Combating of Social Exclusion of Persons with Handicap, public institutions that are being abolished, and according to art. 3 paragraph (5), from the date of entry into force of this emergency ordinance, within the normative acts in force, through the phrases ‘National Authority for the Protection of the Family and the Rights of the Child’, ‘National Agency for Equal Opportunities Between Women and Men’ and ‘National Authority for Disabled Persons’, ‘National Institute for the Prevention and Combating of Social Exclusion of Disabled Persons’ means the phrase ‘Ministry of Labour, Family and Social Protection’.

Currently, the Ministry of Family, Youth and Equal Opportunities is organized and functions as a specialized body of the central public administration, with legal personality, subordinate to the Government, and ensures the coordination of the application of the Government’s strategy and policies in the fields of family policies, youth, protection of children’s rights and adoption, domestic violence and gender equality. The organization and operation of the Ministry of Family, Youth and Equal Opportunities are established by the following normative acts:

- O.U.G. no. 121/2021 regarding the establishment of measures at the level of the central public administration and for the modification and completion of some normative acts, published in the Official Gazette, Part I no. 1127 of November 25, 2021;

- H. G. no. 22/2022 regarding the organization and operation of the Ministry of Family, Youth and Equal Opportunities, published in the Official Gazette, Part I no. 17

of January 6, 2022¹².

An important role is played by the County Directorates for Family and Youth, respectively the Directorate for Family and Youth of the Municipality of Bucharest, which are organized and function as decentralized public services of the Ministry of Family, Youth and Equal Opportunities, having legal personality, financed from their own revenues and subsidies granted from the state budget, pursuant to Decision no. 197/2022 regarding the organization and operation of the county directorates for families and youth, respectively the Directorate for Family and Youth of the Municipality of Bucharest, published in the Official Gazette, Part I no. 146 of February 14, 2022.

According to art. 2 of these normative acts, the County Directorates for Family and Youth, respectively the Directorate for Family and Youth of the Municipality of Bucharest ensure the implementation at the county level and at the level of the Municipality of Bucharest of the Government's strategy and policies in the fields of family and youth and fulfill the following specific attributions:

a) ensures the implementation at the level of the counties, respectively of the municipality of Bucharest, of the Government Program, strategies and programs of the Ministry of Family, Youth and Equal Opportunities in the fields of family and youth;

b) follow the application and control of compliance with normative acts in the fields of family and youth;

c) elaborates, implements, monitors local and municipal strategies in specialized fields;

d) ensures free access to information of public interest according to the provisions of Law no. 544/2001 regarding free access to information of public interest, with subsequent amendments and additions, and Government Decision no. 123/2002 for the approval of the Methodological Norms for the application of Law no. 544/2001 regarding free access to information of public interest, with subsequent amendments and additions;

e) collaborates with the other decentralized institutions, with specialized bodies of the central public administration, with local public administration authorities, with other public institutions, with public or private legal entities, Romanian or foreign, in order to implement policies and programs in the fields of the family and the youth;

f) organize, participate, monitor and evaluate cultural, artistic, educational, touristic, voluntary, sports-recreational and leisure actions and projects, domestic and international, in the fields of family and youth;

g) act, including in collaboration with local public administration authorities, for the development of the material base, modernization and optimization of services for children and youth from tourist bases and leisure centers, using the funds allocated from the Ministry of Family, Youth and Equal Opportunities and other funds;

h) carry out studies and research in specialized fields;

i) collaborates, cooperates and develops partnerships with natural and legal persons, in order to achieve the objectives in the fields of family and youth;

j) administer leisure centers and tourist bases, structures without legal personality that are part of the public domain of the state intended for leisure and youth activities, according to the legislation in force;

¹² <https://mfamilie.gov.ro/1/legislatie/>, accessed at 01.05.2024.

k) organizes national camps, rest camps, social camps, thematic camps for children, students and young people, camps for disabled people, camps for Olympians and other types of camps, in accordance with the law;

l) establish the rates applied in the leisure centers and managed tourist bases;

m) draw up the annual calendar of youth projects, own and in partnership, and submit it to the approval of the leadership of the Ministry of Family, Youth and Equal Opportunities;

n) provides information and provides specialist advice in the fields of family and youth, for the realization of programs and projects by public institutions, non-governmental organizations of and for youth, informal groups of young people and other legal entities;

o) creates and administers the register of non-governmental organizations of and for youth in the county, respectively in the city of Bucharest;

p) ensures quality information of young people and non-governmental organizations by and for youth regarding the activity carried out and existing opportunities, according to the legislation in force;

q) organize and implement social programs for children and young people, especially for the disadvantaged;

r) propose to the Ministry of Family, Youth and Equal Opportunities for the establishment or, as the case may be, the abolition of the youth centers that they coordinate;

s) apply the provisions approved by order of the Minister of Family, Youth and Equal Opportunities regarding ensuring quality standards in youth centers, leisure centers and tourist bases, as well as regarding youth activities;

ș) grants non-reimbursable financing within the allocated budget, in accordance with the law;

t) monitor and evaluate the activity of camps for children, young people and students;

ț) elaborates, accesses and implements projects financed from European funds or from other sources;

u) collaborates with the county school inspectorates and other specialized bodies of the local public administration in order to implement programs aimed at ensuring/developing early education services, respectively nurseries and other complementary services, as well as those of the 'school after school' type Program;

v) organize and implement family planning programs and to improve the quality of life;

w) collaborates with the county school inspectorates/educational units in order to organize information and awareness events regarding the risk of family abandonment, children affected by parental work migration and remigrant children;

x) collaborates with the county educational resources and assistance centers (CJRAE)/Bucharest Municipal Center for Educational Resources and Assistance (CMBRAE) or with other institutions in the field of education, health, social protection in order to implement programs regarding the provision of school counseling services and professional guidance, psychological counseling;

y) organizes and implements parental education programs intended for the parent remaining in the country, respectively for the persons in charge of raising and caring for the child;

z) organize and finance programs for the family;
aa) act, in collaboration with local public administration authorities, to develop the material base, modernize and optimize services for youth in youth centers, using the funds allocated from the Ministry of Family, Youth and Equal Opportunities and other funds.

4. Perfecting and super-specialization in juvenile and family cases

According to the law in force, the lawyer is not obliged to be specialized or over-specialized in certain areas of law, such as the civil one – minors and family litigation, but we observe at the European level a tendency of lawyers to over-specialize in litigations regarding minors, their improvement being multidisciplinary.

According to the Basic Principles on the Role of Bars adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Prisoners, Havana, Cuba (August 27 – September 7, 1990), legal professionals have the following duties and responsibilities:

12. Lawyers, in their capacity as essential agents of the administration of justice, shall at all times preserve the honor and dignity of their profession.

13. Lawyers have the following duties towards their clients:

(a) Advising customers on their legal rights and obligations and regarding the operation of the legal system to the extent that this has relevance to the aforementioned legal rights and obligations;

(b) assisting customers using all appropriate means and taking legal measures to protect their interests;

(c) assisting customers before courts, tribunals or administrative authorities, as appropriate.

14. In protecting the rights of their clients and promoting the cause of justice, lawyers promote respect for fundamental human rights and freedoms recognized by national and international law and act at all times freely and diligently in accordance with recognized law and regulations, as well as with ethics the profession of a lawyer.

15. Lawyers must always loyally defend the interests of their clients.

In the recent doctrine, it was proposed that at the bar association level, groups of lawyers specialized in the problems of minors of criminal origin should be established, specialized lawyers being able to periodically discuss the situation of the files in which they provide legal assistance.¹³

Thus, lawyers engaged in juvenile and family cases should attend continuing education courses, as legal assistance and representation in such litigation involve not only understanding the relevant procedures and legislation, but also a high degree of commitment and motivation.

Legal professionals who provide legal assistance and representation in juvenile and family matters should:

1. To know thoroughly the legislation in the field of Family Law, including the

¹³ Raul Alexandru Nestor, *The need to specialize the lawyer called to provide legal assistance in criminal trials involving injured persons or minor defendants*, November 2, 2021, <https://www.juridice.ro/695294/necesitatea-specializarii-avocatului-chemat-sa-acorde-asistenta-juridica-in-procesele-penale-implicand-per-soane-vatamate-sau-inculpati-minori.html>, accessed at 27.04.2024.

provisions of the United Nations Convention on the Rights of the Child¹⁴, the rights of the child set out in the European Charter of Human Rights¹⁵, as well as provisions from the field of Private International Law;

2. To know and understand the Civil Code¹⁶ – Book II About the Family and Law no. 272/2004 regarding the protection and promotion of children’s rights¹⁷, as well as the legislation regarding the organization and operation of public social assistance services;

3. To know and understand Law no. 217/2003 for the prevention and combating of domestic violence¹⁸, respectively, the dichotomy temporarily protection order – protection order;

4. To request specialized support from various professionals, psychologists, sociologists, anthropologists;

5. To know information from the field of couple psychology and child psychology;

6. To know the stages of children’s physical, cognitive, emotional and social development.

5. Analysis of the problem in comparative law

In Belgium, the Code of Ethics of the French- and German-speaking Bar Order stipulates that, in order to be entered on the list, the lawyer must:

1) to have been recognized as a specialist in child rights or

2) to have successfully completed the child law courses of the ‘Certificate of Aptitude for the Profession of Lawyer’ (CAPA) by obtaining a grade of 14/20 or

¹⁴ Published in the Official Gazette no. 109/28 Sep. 1990.

¹⁵ <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:12012P/TXT>, accessed at 27.04.2024.

¹⁶ An integral part of Law 287/2009, republished (r1) in the Official Gazette, Part I no. 505 of July 15, 2011. Regarding parental rights and obligations, see Elisabeta Slabu, *Exercise of Parental Rights and Obligations in Romania*, Jurnalul de Studii Juridice XV (1–2), 2020, <https://lumenpublishing.com/journals/index.php/jls/article/view/3053> accessed at 27.04.2024; Elisabeta Slabu, *Brief Considerations as to the Joint Exercise of Parental Authority After Divorce*, Law Review, special issue, December 2019, pp. 202–210, <http://www.internationallawreview.eu/article/brief-considerations-as-to-the-joint-exercise-of-parental-authority-after-divorce>, <https://www.ceeol.com/search/article-detail?id=1035720>.

¹⁷ Republished (r1) in the Official Gazette, Part I no. 159 of March 5, 2014. Regarding the legislative evolution in the matter of child protection and rights, see Elisabeta Slabu, *Considerations regarding the evolution of the Romanian System for the protection of the Child Rights following 1989 of the rights of the child after 1989*, Academic Journal of Law and Governance. No. 8/2020, <http://tppublishing.eu/files/ajlg-n8special/6.%20AJLG%202020%20Slabu.pdf> accessed at 27.04.2024. Additionally, regarding the protection of children’s personal data, see Elisabeta Slabu, *Protection of personal data of children, according to GDPR provisions*, Journal of Public Administration and Regional Studies, no. 2/2017, <https://www.gup.ugal.ro/ugaljournals/index.php/pars/article/view/5030/4453> accessed at 11.12.2023. See Elisabeta Slabu, *The Role of the National Supervisory Authority for the Processing of Personal Data in ensuring respect for the right to intimate, family and private life. Correlation with the provisions of Chapter VI of Regulation (EU) 2016/679*, in Pandectele Române Magazine no. 1/2018, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/rpanderom2018&div=12&id=&page=>.

¹⁸ Republished (r3) in the Official Gazette, Part I no. 948 of October 15, 2020. For more information, see Elisabeta Slabu, *Violence in the family-current theoretical and practical aspects*, Public Administration & Regional Studies Magazine, no. 1/2014, Galati University Press, pp. 49–60, <https://www.gup.ugal.ro/ugaljournals/index.php/pars/article/view/5679/4926> accessed at 27.04.2024.

higher in the three years prior to his application or

3) to have completed continuous studies in children's law (15 points in the last three years, including at least eight points of legal training).

Regarding lawyers in the Netherlands, in addition to the law courses, which are not specific, if the lawyer in question wants to become a 'youth lawyer', he must take two complementary courses. Priority, through the Bar Order, they must follow the initial course of 80 to 100 hours, which is an interdisciplinary course, which includes very important notions of psychology, sociology and criminology, criminal law, public law, civil law, the exercises of communication with the child and role-playing or even the issue of first dates, meaning that methods are taught on how everything can be explained to the child in the simplest and most appropriate way possible. Secondly, the law also stipulates the obligation of a special three-day course on assisting young people arrested by the police, procedure, jurisprudence and how to win the trust of the incarcerated person. Finally, thirdly, every year juvenile lawyers must renew their application to be listed on the 'youth lawyer' list. There is also an obligation to attend continuing education courses.

In France, in family law and domestic violence cases, specialized lawyers can provide services for the following procedures:

- requesting protection measures, for example protection order in the case of domestic violence; —there are lawyers specialized in cases of domestic violence who help the victim complete and register the request for a 'ordonnance de protection';¹⁹
- requesting the right of residence or asylum and appeals against the administrative authorities;
- filing a divorce action, which also takes into account the petition regarding parental authority, colloquially the custody of minors;
- registration of a criminal complaint, respectively, a legal action following a complaint against the perpetrator of acts of domestic violence.²⁰

Thus, in order to practice as a lawyer specialized in family law, it is necessary to follow a course of legal studies and to pass several exams. Here are the main steps to follow:

1. Get a Masters in Law. The first step to becoming a family law attorney is obtaining a master's degree in law, ideally with a specialization in family law or civil law. This university course, which generally lasts five years, allows you to acquire the legal knowledge necessary to practice this profession.

2. Taking the entrance exam at the Regional Professional Training Center for Lawyers (CRFPA). After obtaining the Master's degree in law, the future lawyer must take the entrance exam at the Regional Professional Training Center for Lawyers (CRFPA). This exam is organized by the Institutes of Judicial Studies (IEJ) and consists of written and oral tests covering various legal aspects.

3. CRFPA training and obtaining the Certificate of Aptitude for the Legal Profession (CAPA) Once admitted to the CRFPA, the future lawyer must undergo

¹⁹ <https://www.womenforwomenfrance.org/ro/our-resources/safety-planning-and-protection-orders/protection-orders/asking-a-judge-to-prevent-an-ex-partner-from-approaching-you>, accessed at 01.05.2024.

²⁰ For Australia, see Jill Howieson, *The Professional Culture of Australian Family Lawyers: Pathways to Constructive Change*, International Journal of Law, Policy and the Family, Volume 25, Issue 1 April 2011, pp. 71–99, <https://doi.org/10.1093/lawfam/ebq017>.

professional training lasting 18 months, including theoretical and practical lessons as well as internships in law firms or in legal services. At the end of this training, he must take the Certificate of Aptitude for Advocacy (CAPA) exam, which validates his professional skills and allows him to register at the bar. Once registered at the bar, the lawyer can choose to specialize in family law by following an additional training, generally provided by law schools or vocational training organizations. This specialization can take the form of a university degree (DU), a specialized master's degree (MS) or a diploma from the Superior Institute of Criminal and Penal Sciences (ISCP).²¹

6. Conclusions

In corollary, *de lege ferenda* we propose the inclusion in the initial and ongoing professional training of lawyers active in Juvenile and Family cases, interdisciplinary discussion sessions within the ongoing training with sociologists, psychologists, anthropologists and other professionals involved in the relations of the family.

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²¹ <https://www.legalitic.fr/devenir-avocat-specialise-en-droit-de-la-famille-le-guide-complet/>, accessed at 01.05.2024.

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