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## To the European Association of Judges – EAJ-AEM

**THE ROMANIAN MAGISTRATES' ASSOCIATION (AMR)**, a professional, national and apolitical non-governmental organization, stated to be of “public utility” by way of Government Decision no. 530/21 May 2008, member of the INTERNATIONAL ASSOCIATION OF JUDGES (IAJ-UIJ) and the EUROPEAN ASSOCIATION OF JUDGES (EAJ-AEM) since 1994 – with its headquarters in Bucharest, Regina Elisabeta Boulevard no. 53, District 5, tel./fax. 0214076286, e-mail amr@asociatia-magistratilor.ro, tax registration code 11760036, bank account RON IBAN RO37RNCB0090000508620001, opened at the Romanian Commercial Bank (BCR) - Lipscani branch – legally represented by Judge dr. Andreea Ciucă - President,

Sends the following

### ANSWERS TO THE QUESTIONNAIRE

regarding the impact of COVID-19 on the rule of law and on judicial activity

*1. What are the main problems the Judiciary experienced at a general level in your country as a consequence of the legal reforms approved in order to cope with the COVID-19 pandemic?*

As a consequence of the establishment of the state of emergency by the Decree of the President of Romania no. 195/6.03.2020, the courts' management departments were obliged to adopt decisions and to order urgent and precise measures, in order to respond as soon as possible to the legal provisions applicable during the state of emergency. This activity was demanding, all the more so as the decisions and measures were aimed not only at protecting the health of the judges and of the courts' staff, but also at protecting the health of the participants in the judicial proceedings.

An important aspect was the need to inform the public, clearly and in a timely manner, of the measures taken by the courts in the following areas: the restriction of the judicial activity and of the activity with the public; the categories of cases that continued to be tried during the state of emergency; the existing possibilities of sending the documents to the courts by parties and lawyers; the conditions under which access and movement in the courts' premises were permitted.

Another essential problem was the need for the funds of the courts to be supplemented by the main credit authority (the Minister of Justice) for the rhythmic purchase of protective equipments, disinfectants and products necessary for the frequent sanitizations of the courts' premises. In this regard, we mention that the requests of the courts received a positive response from the main credit authority.

*2. Did the legal reforms approved in your country in order to cope with the COVID-19 pandemic affect Rule of Law and Human Rights principles? If any, pls. enumerate them.*

The Constitutional Court of Romania decided that some provisions from the Government Emergency Ordinance no. 1/1999 were unconstitutional, on the grounds that they were not clear

enough to allow citizens to regulate their conduct in accordance with the law. Over 300,000 contravention fines have been applied based on these unconstitutional provisions during the state of emergency.

Immediately after the ruling, the Constitutional Court became the target of extremely aggressive and devoid of merit attacks, starting with the President and the Prime Minister, then continuing with other political leaders and many others, which proves that the frequently invoked rule of law principles, which they claim to respect and defend, are mere slogans.

The Romanian Magistrates Association (RMA) together with the National Union of the Romanian Judges (UNJR), the Association of Judges for the Defense of Human Rights (AJADO) and the Romanian Prosecutors Association (APR) issued a press release outlining the following:

«The recent attacks against the Romanian Constitutional Court, of an extraordinary gravity, coming from some political leaders, journalists, commentators or representatives of some NGO's, prove that, 30 years after the fall of the communist dictatorship, autocratic reflexes still persist in the Romanian society, violations of the Constitution being excused in the name of security and the "interest of the people". This justification has always been used by autocrats in the dark times of history to seize more and more power.

The ease with which the violation of rights and freedoms in Romania is argued and justified by various authorities and opinion leaders brings back into actuality the words of the former US President Ronald Reagan, who said that "freedom is a fragile thing and is never more than one generation away from extinction".

(...)

The Constitutional Court has given a predictable decision, anticipated by a number of legal professionals, through articles or specialized annotations.

It is generally accepted that when the state imposes a sanction, the state must also indicate precisely, in a clear legal norm, the conduct that the person is allowed or not allowed to adopt. Specifically, the unconstitutional articles did not contain such a description, but defined, without distinguishing, as contraventions any violations of any measures "established in this emergency ordinance, in related normative acts, as well as in military ordinances or in orders, specific to the established state of emergency" .

According to any domestic and international standards, such a rule of incrimination could not be considered "clear and predictable", which is why it was declared unconstitutional.

The court adopted its decision UNANIMOUSLY, which simply makes the accusations of political partisanship directed against the Court's judges ridiculous and demagogic.

(...)

By its decision, the Constitutional Court held a mirror up to the institutions and showed them their weaknesses in knowing their own competences and limits: The Government, in the middle of a pandemic, adopted an unconstitutional GEO and failed to establish legal sanctions for those who do not respect the rules; The President legislated by the decree establishing the state of emergency, violating the exclusive competence of the Parliament; in its turn, the Parliament left the President's conduct unsanctioned, fully ratifying his decree.

The decision of the Constitutional Court should have had the effect of a cold shower for all these state authorities, which should be concerned with restoring the balance between the powers, for the good of the citizens. When an institution or authority goes beyond the constitutional

framework, the normal reaction is to correct the mistake and solve the problem, not to attack those who expose it.

It is important for all political forces and various commentators who encourage autocracy to know that the rule of law is not suspended during the state of emergency. This is emphasized by all international institutions, which draw attention to the possible autocratic tendencies that may appear during such periods.»

*3. As to the judicial organisation of your country, what impact had the legal reforms approved in order to cope with the COVID-19 pandemic? More specifically, what were their effects on the powers of the Minister of Justice, Council for Judiciary, Heads of Courts, Heads of Prosecution Services, Judges, Prosecutors, Court Administrators, Court Managers?*

3.1. The management department of the High Court of Cassation and Justice had the competence to establish the list of especially urgent cases which were to be tried by this court during the state of emergency established due to the COVID-19 pandemic. The competence of the management department of the High Court of Cassation and Justice was established by article 42 para. (1) of Annex 1 to the Decree of the President of Romania no. 195/16.03.2020.

3.2. In Romania, there are 16 courts of appeal, 42 tribunals, 4 specialized tribunals and 177 district courts. In the area of jurisdiction of each court of appeal, there are two or more tribunals (possibly a specialized tribunal also), as well as several district courts.

According to article 42 para. (1) of Annex 1 to the Decree of the President of Romania no. 195/16.03.2020, the management departments of the courts of appeal received the competence to establish the list of especially urgent cases which were to be tried during the state of emergency. This list concerned both the cases within the jurisdiction of the courts of appeal and the cases within the jurisdiction of the courts operating in their territorial district (tribunals, specialized tribunals and district courts).

3.3. According to article 42 para. (1) of Annex 1 to the Decree of the President of Romania no. 195/16.03.2020, the Superior Council of Magistracy (SCM) had the competence to give guidance to the management departments of the courts of appeal in order to ensure a uniform practice regarding the way of determining the list of cases which were to be tried during the state of emergency.

Specifically, after the management departments of the courts of appeal established the list of especially urgent cases, the Superior Council of Magistracy – the Section for Judges analyzed this list and adopted Decision no. 417/24.03.2020 regarding the categories of cases which were to be tried during the state of emergency, according to the competence of the courts, on hierarchical levels.

3.4. The presidents of the courts issued a series of decisions and orders containing specific measures for the organization of the judicial activity and the administrative activity, in order to ensure the protection of the courts' staff, but also of the persons involved in the especially urgent judicial procedures. The competence of the courts' presidents to issue decisions and orders is provided for in the Internal Regulations of the courts, but the conduct of judicial activity in the context of the COVID-19 pandemic caused a more frequent exercise of this power than under normal conditions.

3.5. The economic managers (who are the heads of the financial economic and administrative departments of the courts of appeal and of the tribunals) did not receive new



competences, but their existing competences were emphasized. We refer to the fact that a series of steps had to be taken, as a matter of urgency, to request the allocation of funds by the Ministry of Justice, as well as to purchase protective equipments, disinfectants and products necessary for sanitizing the courts' premises in the context of the COVID-19 pandemic.

*4. As far as Court activity, Court proceedings and trials are concerned, what was the impact of the legal measures adopted? Pls. provide relevant information distinguishing between civil, criminal and administrative cases.*

4.1. During the state of emergency, only the especially urgent cases were tried, according to the list established by Decision no. 417/24.03.2020 of the Section for Judges of the Superior Council of Magistracy (SCM), on the basis of the decisions adopted by the management departments of the courts of appeal. The list of cases was established by the SCM separately in criminal and non-criminal matters (civil, administrative), according to the competence of the courts, on hierarchical levels (district courts, tribunals/specialized tribunals, courts of appeal).

4.2. The trial of the cases which were not especially urgent was suspended by law during the state of emergency, the measure of legal suspension being provided by the Decree of the President of Romania no. 195/2020, both for criminal cases [article 43 para. (2)], as well as for non-criminal cases [article 42 para. (6)].

By decisions of the management departments of the courts or by decisions of the presidents of the courts, practical ways for the implementation of the legal suspension of the cases which were not especially urgent were established. This measure also required operating in the computerized database which manages the files, database which exists at each court and which is part of the national computer program ECRIS. Also, the legal suspension of some cases required a strict record of the cases to which this measure was applied.

4.3. During the state of emergency, the activity of writing court decisions (the reasoning of decisions) continued, regarding both the decisions pronounced before the establishment of the state of emergency and those pronounced during the state of emergency (in especially urgent cases). Also, the activity of communicating the court decisions to the parties continued, the time-limits for lodging appeals being interrupted during the state of emergency [article 42 para. (7) of Decree no. 195/2020].

*5. Did "urgent" cases receive a different treatment and in this framework was a special legal definition or specification of "urgency" introduced for Court proceedings and trials?*

5.1. In the Decree of the President of Romania no. 195/2020, which established the state of emergency, and in the Decree of the President of Romania no. 240/2020, which extended the state of emergency, express reference was made to "especially urgent cases", when establishing that they will continue to be tried during the state of emergency. The special urgency was not defined in these decrees, nor in other acts adopted by the Parliament or the Government during the state of emergency.

As explained at points 3.2., 3.3. and 4, the categories of especially urgent cases which continued to be tried during the state of emergency were established by the Superior Council of Magistracy – the Section for Judges. When adopting the decision, the Section for Judges took into account the need to ensure a uniform practice regarding the way of determining the cases which were to be tried during the state of emergency. To that end, it analyzed the decisions of the management departments of the courts of appeal, adopted in application of article 42 para. (1) and article 43 of the Decree of the President of Romania no. 195/2020.



5.2. As an example, we mention that the list of especially urgent cases in non-criminal matters (civil, administrative) included: the protection order; emergency placement of minors; guardianship/curatorship; asset freezing measures; provisional measures (the presidential ordinance); public procurement disputes concerning medical products and other procurements in the field of emergency; disputes regarding the aliens' regime.

5.3. We also mention that by Decision no. 417/2020 of the Section for Judges of the Superior Council of Magistracy, the judge was given the opportunity to decide upon other requests concerning exceptional situations and which could be considered of special urgency. Thus, the judge was given the opportunity to assess whether other cases, apart from those enumerated in the SCM list, are especially urgent.

5.4. In criminal matters, the especially urgent criminal cases which were to be tried during the state of emergency were established in the Decree of the President of Romania no. 195/2020 [article 43 para. (1)]: the cases in which preventive or protection measures of the victims and witnesses have been ordered or were proposed; cases concerning the provisional application of medical safety measures; cases with minors as victims; cases in which the urgency is justified in light of the purpose for which the state of emergency was established at a national level; cases of flagrant offenses; cases in which preventive measures have been ordered; appeals against asset freezing measures; cases concerning international judicial cooperation in criminal matters; cases concerning measures to protect victims and witnesses; cases concerning the provisional application of medical safety measures; cases concerning crimes against national security; cases regarding acts of terrorism or money laundering.

We additionally mention, as an example, that by Decision no. 417/2020 of the SCM – the Section for judges, the following were also included in the list of especially urgent cases: cases regarding crimes, including flagrant ones, related to the application of the Decree of the President of Romania no. 195/2020 or to the measures to prevent/combat the COVID-19 pandemic; the postponement/interruption of the execution of custodial sentences/custodial educational measures; parole; other types of cases in which the law does not provide for the summoning of the parties.

*6. Did the amount of money and, more generally, the value at stake in the case play a role in the treatment of it?*

No, that was not a criterion for determining the special urgency of the cases.

*7. As far as criminal cases are concerned, did cases concerning arrested defendants receive a different treatment?*

Cases with arrested defendants were tried during the state of emergency, being considered especially urgent cases. Their qualification as especially urgent cases resulted from art. 43 para. (2) of the Decree of the President of Romania no. 195/2020, which established that during the state of emergency, the cases in which preventive measures have been ordered were also to be tried, the cases in which the defendants have been arrested being included in this category.

At the same time, these cases were considered especially urgent by the decisions of the management departments of the courts of appeal, which, according to article 42 para. (1) of Annex 1 to the Decree of the President of Romania no. 195/16.03.2020, established the list of cases to be tried during the state of emergency. As we have shown, the decisions of the management departments constituted the basis for the adoption of Decision no. 417/2020 of the Superior Council of Magistracy – the Section for judges, containing the list of the especially urgent cases which were to be tried during the state of emergency.



Moreover, regarding the cases with arrested defendants, the Superior Council of Magistracy – the Section for Judges had already established by a previous decision (no. 257/18.03.2020) that during the state of emergency the trial activity in criminal matters included the cases provided for in article 43 para. (2) of the Decree of the President of Romania no. 195/2020, which referred to the cases with arrested defendants.

*8. What was the impact of such legal reforms on legal deadlines and procedural timeframes?*

8.1. First of all, we specify that, according to art. 41 of the Decree of the President of Romania no. 195/2020 and art. 62 of the Decree of the President of Romania no. 240/2020, statutes of limitations and mandatory procedural time-limits of any kind did not start to run during the state of emergency, and, if they started to run, they were suspended during the entire state of emergency.

Also, according to art. 42 para. (7) of the Decree of the President of Romania no. 195/2020, the deadlines for lodging appeals which were running when the state of emergency was established were interrupted and new deadlines of the same duration will run from the date the state of emergency ends.

Likewise, according to art. 63 para. 12 of the Decree of the President of Romania no. 240/2020, the deadlines provided by law for carrying out procedural acts or for lodging complaints and appeals, which were running when the state of emergency was extended, were interrupted and new deadlines of the same duration will run from the date the state of emergency ends.

8.2. Secondly, during the state of emergency, the courts had the opportunity to set short time-limits (including from one day to the next or even on the same day) in especially urgent cases, taking into account the circumstances of the case. This possibility was expressly provided for by art. 42 para. (2) of the Decree of the President of Romania no. 195/2020, but, in any case, the judge could proceed in this way even before the establishment of the state of emergency on the basis of the provisions of the Civil Procedure Code and the Criminal Procedure Code.

8.3. Thirdly, the measure of legally suspending the cases which were not especially urgent will lead to an increase in the length of the proceedings and an excessive workload for the courts after the state of emergency ends. In this regard, we specify that by the Decree of the President of Romania no. 195/2020 and by the Decree of the President of Romania no. 240/2020 a short term of 10 days was established for the *ex officio* resumption of the trial of the cases, in which the courts must both establish the dates of the hearings and summon the parties.

8.4. We specify that each court is annually subjected to an assessment of its degree of performance, having regard to efficiency indicators of the activity, which include the length of the proceedings. These indicators were established by the decision of the Superior Council of Magistracy and are based on the statistical data contained in the ECRIS computer program managed by each court and applied at a national level.

In order to obtain the qualification “very efficient” for the indicator “length of proceedings”, it is necessary not to exceed a period of 11 months in non-criminal cases (civil, administrative) and a period of 5 months in criminal cases. The period runs from the date when the case is filed in court, ending on the date when the final document (the court decision) is closed in the ECRIS computer program. We mention that, for example, in 2019, the average length of proceedings as far as courts of appeal are concerned was usually short (3.7 months or 4 months).



However, this period will increase due to the legal suspension during the state of emergency of the cases that were not especially urgent.

*9. What is the role played in your country by IT, e-filing, smart and remote working in the management of cases as an effect of legal measures approved in order to cope with the COVID-19 pandemic? To what extent these measures are applicable also to the activity of Public Prosecutors?*

9.1. During the state of emergency, the courts made an express recommendation to the parties and lawyers, as well as to other participants in civil and criminal proceedings, to send the documents to the files (or in connection with the files) by means of rapid communication provided by law (fax, e-mail).

9.2. There are a number of courts that use a computer program called "File Info", which sets up electronic files for each case. "File info" allows judges, parties and lawyers to access all documents in the files, electronically. To this end, the documents submitted by the parties in paper format are scanned and entered in the ECRIS software, from where they are automatically taken and included in the electronic file.

The parties and lawyers were encouraged, even before the state of emergency, to submit the documents in an electronic format, in order to eliminate or reduce the scanning stage which involved a significant use of human resources. However, in criminal cases, the problem is that the prosecutor's offices send in electronic format only the act referring a case to court (the indictment). The limited human resources of the courts do not allow the scanning of all acts carried out during the criminal investigation, especially since, in many cases, the volume of criminal investigation acts is large or very large.

The parties can view all the documents in the electronic file, by accessing the computer program "File info" on the basis of a password assigned for this purpose. The password is mentioned on the summons/communication, being exclusively intended for the parties in the case. Their lawyers can obtain and use the password from the parties they represent, with their consent.

The courts that use the computer program "File Info" have expressly recommended that the parties and lawyers consult the documents in the files by accessing this program on the basis of passwords in the emergency period. In this way, the presence of the parties and lawyers in the archive department for the study of the files was avoided.

9.3. In the especially urgent criminal cases that were tried during the state of emergency, the hearing of the persons in the custody of prisons, as well as in the custody of other authorities (the police) was carried out, in most cases, through the videoconference system. There are courts in which this system was practiced even before the establishment of the state of emergency, if the person in custody agreed to this method of hearing and insofar as it did not infringe upon his rights and interests.

In some courts it has been recommended, by the management department or by the president, that the court hearings in civil cases be held by videoconference, during the state of emergency, if the parties agreed to it and if the judge considered that this method ensured compliance with the principles governing the civil proceedings.

9.4. Art. 33 of the Decree of the President of Romania no. 195/2020 provided for the possibility to organize work at home. This working method was used by the courts and decisions of the management board of the court and/or decisions of the presidents of courts were issued for

the organization of working from home. This working method was efficient, the judges and clerks having the possibility to access the ECRIS software and the "File Info" software, on the basis of passwords assigned to them in compliance with security rules.

The positions whose responsibilities could be exercised remotely (from home), using the electronic means of work and communication, were established at the level of each court in the Specific Plan regarding the Continuity of Activity. This plan was drawn up at the request of the Ministry of Justice and the Department for Emergency Situations within the Ministry of Internal Affairs, in the context of the COVID-19 pandemic.

*10. What is the role played by your Association in the drafting of such legal reforms? Was your Association consulted by the Government before adoption of the aforesaid measures?*

The Romanian Magistrates' Association (AMR) was not consulted regarding the measures adopted by the Government in the context of the COVID-19 pandemic. However, AMR did not remain passive in the face of situations considered to be prejudicial to the independence of the judiciary and to the rights and legitimate interests of magistrates.

10.1. In this regard, we recall that, during the state of emergency, both the Prime Minister of Romania and members of the Government and politicians made repeated public statements regarding the adoption of a normative act (an emergency ordinance) by which to send persons paid from public funds into "technical unemployment". A number of exceptions to "technical unemployment" were listed in the statements, but the judiciary was not mentioned among those exceptions.

Consequently, the Romanian Magistrates' Association (AMR), together with the Association of Judges for the Defense of Human Rights (AJADO) formulated a detailed point of view in which they argued the importance of the rule of law and of the independence of the judiciary, emphasizing that the judges' immovability precludes them from being sent into technical unemployment. At the same time, the associations pointed out the serious deficiencies that would occur if the court staff was sent, by rotation, into technical unemployment.

The point of view was sent to the Prime Minister, the Superior Council of Magistracy, the Minister of Justice and the Minister of Labor. The document made express reference to the letter of the President of the IAJ-UIM, Tony Pagone, dated April 6<sup>th</sup>, 2020, published on the IAJ-UIM website<sup>1</sup> and to the statement of the President of the EAJ-AEM, José Igreja Matos, published on March 31<sup>st</sup>, 2020 on the UIM-IAJ website<sup>2</sup> and on the United Nations website<sup>3</sup>. An express reference was also made to the article by the President of the EAJ-AEM, José Igreja Matos, "To be a judge in the time of a pandemic"<sup>4</sup>.

The emergency ordinance was not adopted.

10.2. After politicians launched a pressing campaign to drastically reduce the income of retired magistrates, the Parliament adopted a law in January 2020 repealing the magistrates' service pensions, even though they have existed since 1997.

The High Court of Cassation and Justice and the Romanian Ombudsman have challenged the law before the Constitutional Court, arguing that it violates the independence of the judiciary.

<sup>1</sup> [https://www.iaj-uum.org/iuw/wp-content/uploads/2020/04/IAJ-President-letter\\_06.04.20.pdf](https://www.iaj-uum.org/iuw/wp-content/uploads/2020/04/IAJ-President-letter_06.04.20.pdf)

<sup>2</sup> <https://www.iaj-uum.org/iuw/wp-content/uploads/2020/03/Access-to-Justice-Jose%CC%81-Igreja-Matos.pdf>

<sup>3</sup> <https://www.unodc.org/dohadecaration/en/news/2020/03/access-to-justice-in-times-of-judicial-lockdown.html>

<sup>4</sup> <https://eulawlive.com/weekend-edition/weekend-edition-no12/>





The Romanian Magistrates' Association (AMR), together with two other associations of judges (the National Union of Judges in Romania - UNJR, the Association of Judges for the Defense of Human Rights - AJADO) and an association of prosecutors (the Association of Romanian Prosecutors - APR) formulated an extensively argued amicus curiae. The letter of the President of the European Association of Judges (EAJ-AEM), Mr. José Igreja Matos, addressed to the Parliament and the Government of Romania during the EAJ-AEM Meeting in Astana (Kazakhstan) was also invoked<sup>5</sup>. At the same time, the European Charter on the Statute of Judges<sup>6</sup> and other international documents were invoked.

The Constitutional Court set the date for the hearing on March 18<sup>th</sup>, but due to the COVID-19 pandemic, the case was decided on May 6<sup>th</sup> 2020. Meanwhile, during the state of emergency, politicians continued to bring the magistrates' pensions to the forefront. Thus, they made statements by which they presented the magistrates as an unjustifiably privileged category and demanded the abrogation of their service pensions, although according to data provided by the Ministry of Public Finances in 2019, the magistrates receiving service pensions represented only 3% of the total of those who receive special pensions. Politicians have said nothing about the interdictions and incompatibilities that apply to magistrates, about the workload, about the repeated and difficult exams they have to take to advance in their careers.

Top politicians have said they will find another way to drastically reduce the magistrates' pensions, if the Constitutional Court ruled in their favor.

All these statements were made in the fragile context of the pandemic.

On the 6<sup>th</sup> of May 2020, the Constitutional Court sustained the objections of unconstitutionality and found that the Law on the repeal of some provisions regarding service pensions and old-age allowances, as well as on the regulation of measures in the field of service pensions is unconstitutional in its entirety<sup>7</sup>.

10.3. The Romanian Magistrates' Association (AMR) has launched a public call for solidarity to magistrates, in office or retired, in order to donate money for protective equipment for hospital staff. Through this call, AMR has been consistent in the attitude it has promoted many times, during over a quarter of a century of existence, through humanitarian programs organized under the auspices of "Magistrates with and for you".

The total amount, of over 10,000 euros, is in the process to be donated to a hospital in an area of the country where the number of coronavirus cases is high (the Botoșani County Clinical Hospital).

*11. Did the Government consult the High Council for the Judiciary and/or other judicial institutional instances or representatives before adoption of the aforesaid measures?*

To our knowledge they have not been consulted.

There is, however, a situation in which the Superior Council of Magistracy and the courts have been consulted, but not on a measure adopted during the state of emergency, but regarding the supplementation of the law on judicial organization. More precisely, the Chamber of Deputies requested the Superior Council of Magistracy an opinion on the legislative proposal for supplementing Law no. 304/2004 on judicial organization. The legislative proposal aimed at

<sup>5</sup> [www.iaj-uim.org/iuw/wp-content/uploads/2019/09/EAJ-letter-Romania\\_Sept-2019.pdf](http://www.iaj-uim.org/iuw/wp-content/uploads/2019/09/EAJ-letter-Romania_Sept-2019.pdf)

<sup>6</sup> adoptată de UIM-IAJ în noiembrie 1999, în Taiwan, și actualizată în noiembrie 2017, în Santiago de Chile

<sup>7</sup> [https://www.ccr.ro/download/comunicate\\_de\\_presa/Comunicat-de-presa-6-mai-2020.pdf](https://www.ccr.ro/download/comunicate_de_presa/Comunicat-de-presa-6-mai-2020.pdf)



establishing a general framework for carrying out judicial activity under the conditions of declaring a state of siege or a state of emergency. The legislative proposal is under consideration in the parliamentary procedure.

*12. What is the attitude of Bar Associations and Lawyers vis-à-vis such legal reforms?*

The decisions of the management departments of the courts and the decisions of the presidents of the courts by which rules were established and measures were taken regarding the organization and conduct of the activity of the courts during the state of emergency were published on the websites of the courts. In this way, the bar associations and the lawyers were able to access them. In addition, the courts communicated these decisions to the bar associations.

The courts also drew up lists including the especially urgent cases that were tried every week during the state of emergency. These lists were published in a timely manner on the websites of the courts and were communicated to the bar associations.

There were dissatisfactions related to the list of especially urgent cases which were to be tried during the state of emergency, established by the decision of the Superior Council of Magistracy – the Section for Judges, on the basis of the Decree of the President of Romania no. 195/2020 and on the basis of the decisions of the management departments of the courts of appeal. The dissatisfaction consisted in the fact that the list was considered to be too limited.

Consequently, four bar associations and the National Union of Romanian Bar Associations requested the Superior Council of Magistracy to extend the list of cases that were to be tried during the state of emergency. SCM - The Section for Judges consulted the courts of appeal which, in turn, consulted the courts from their territorial district (tribunals/specialized tribunals, district courts). The vast majority of the courts of appeal considered that the extension of the list of cases was not justified, given that such a measure appeared to be a violation of the presidential decrees and contravened the purpose for which the state of emergency was established. In this regard, reference was made to the fact that the extension of the list of cases meant an obvious increase in the flow of the persons to the courts, creating an effective risk regarding the spread of the COVID-19 infections.

By Decision no. 707/30.04.2020, the Superior Council of Magistracy – the Section for Judges partially accepted the requests made by the four bar associations and the National Union of Romanian Bar Associations, adding several categories of cases to the list of cases that were being tried during the state of emergency (the most eloquent example being the addition of all the cases which were tried without summoning the parties).

Judge dr. Andreea Ciucă

Romanian Magistrates' Association (AMR)