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To:

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**THE ROMANIAN MAGISTRATES' ASSOCIATION (AMR)**, professional and national, apolitical, non-governmental organization, stated to be of „public utility” through the Government Decision no. 530/2008, member of the International Association of Judges (IAJ-UIM) and of the European Association of Judges (EAJ-AEM) since 1994 – with the headquarter in Bucharest, Regina Elisabeta Boulevard no. 53, District 5, e-mail amr@asociatiamaagistratilor.ro, legally represented by Judge dr. Andreea Ciucă - President,

Sends the following **answers on the topic of resources on magistrates' workload in Romania:**

### **1. The workload of the courts**

In 2009, the Superior Council of Magistracy (SCM) launched the Program for establishing the optimal volume of work and ensuring the quality of activity. The Council stressed that the judge can perform a quality act of justice to the extent that they have the time to study the case thoroughly and the applicable law. Also, for a quality act of justice, it is necessary for the judge to have the time to listen sufficiently to the parties and to investigate their defences, as well as to draft the ruling in optimal conditions.

One of the main objectives of the program was to establish a maximum number of cases per court hearing, depending on their complexity. Thus, an annual score was fixed per panel of judges. However, this score was increased year by year by the Superior Council of Magistracy (SCM). Even so, the courts had to exceed the annual score in order not to lead to a noticeable increase in the average duration of cases.

Therefore, the determination of the optimal workload remained at the trial stage, and in the years that followed, the initial scores were exceeded year by year. The actual workload of the judges has clearly increased, resulting in them being overloaded.

At the same time, the increasing complexity of the cases was a reality in the courts. This led to an increase in the time that had to be allocated to the drafting of court decisions that would meet the quality criterion. At the same time, the judges had to allocate the necessary time to study the court hearings, doctrine and jurisprudence.

The large workload of judges is reflected by the figures contained in the reports on the state of justice, drawn up annually by the Superior Council of Magistracy:



- Ⓞ in 2019, the volume of activity of the courts was over 2,919,000 cases, and the total number of judges was 4,600. At the courts of appeal, the average load per judge was 544 cases, at the tribunals it was 654 casefiles, and at the judges it was 1,159 cases<sup>1</sup>;
- Ⓞ more than 2,100,000 cases were solved in 2019, more precisely a percentage of 72%; the level of stocks decreased compared to 2018 with 55,033 files, which represents a decrease of 6.29%, and compared with the year 2015 it decreased by 184,658 files which represents a decrease with 18.39%; taking into consideration that the number of cases newly registered in 2019 increased compared to 2018 by 28,475 cases, but the stock of files decreased in 2019 compared to 2018, a reduction of the lengths of the proceedings can be observed;
- Ⓞ in 2020, the volume of activity of the courts was over 2,722,000 cases, and the total number of judges was 4,570. At the courts of appeal, the average load per judge was 523 cases, at the tribunals it was 640 cases, and at the judges it was 1,029 cases<sup>2</sup>.

## 2. Assessment of performance degree

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 (SCM) and are based on the statistical data contained in the ECRIS software 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.

The ECRIS software is implemented at national level, since 2007, to handle the cases from a statistic point of view. More precisely, this software allows the verification of the registration date with the court of each case, its object, stage of the procedure, the measures ordered by the court at each hearing, the date the decision is pronounced, the appeals filed, the date the file has been sent to the hierarchical superior court to deal with the appeal, the date the decision is pronounced, the date the file has been returned to be kept in the archives (in the first degree court).

The courts, the Superior Council of Magistracy, the Judicial Inspection and the Ministry of Justice are all connected to the ECRIS software.

The data from the ECRIS software placed at the public's disposal are automatically displayed on the portal of each court. By accessing the portal ([www.portal.just.ro](http://www.portal.just.ro)) the public may obtain information on number of the case file, date of registration with the court, date of last modification of the recorded data in the ECRIS software, section of the court where the case

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<sup>1</sup> State of Justice Report 2019 (<https://www.csm1909.ro/PageDetails.aspx?PageId=267&FolderId=3570&FolderTitle=Rapoarte-privind-starea-justi%C5%A3iei>)

<sup>2</sup> State of Justice Report 2020 (<https://www.csm1909.ro/ViewFile.ashx?guid=a16b26f8-b678-41f9-a7ab-8aed0f11ce5f-InfoCSM>)



was assigned, the stage of the procedure, the hearings that took place and measures ordered by the court (in short), the appeals which have been filed.

From the ECRIS software the statistical data are automatically extracted, by means of another software named StatisECRIS, implemented at a national level. This allows recognition and monitoring of more markers at the level of each court on efficiency of the activity such as:

- the workload of a court in relation to the number of judges who are effectively active at that court;
- the workload of each panel of judges and of each judge;
- the rate of settlement (efficiency), calculated exclusively in relation to the newly entered files and those finalised, in the reference period, expressed in percentage;
- the stockpile of files, calculated as the sum of the cases pending at the end of the reference period and which are not finalised, older than one and a half years;
- the number of the cases finalised in less than 1 year since registration, divided by the total number of cases settled in the reference period, expressed in percentage;
- the average length of procedures;
- non-compliance with the deadline due to a delay in writing the reasons for judgement.

We mention that, for example, in 2022, the average length of proceedings as far as courts of appeal are concerned was usually short (3.3 to 5 months).

Maintaining a short duration of proceedings is possible by the effort of judges who agree to work in weekends and holidays. Also, the judges increased the number of cases per court hearing and granted short time-limits, taking into consideration the circumstances of each case. These measures have certainly increased the workload of judges.

### **3. Allocation of cases in courts**

The principle of the random assignment of cases is specifically provided in Law no. 304/2022 on judicial organisation (before, in Law no. 304/2004) and must be observed at the level of each court. Among the management prerogatives of the presidents of the courts are the organisation and coordination of the activity of random assignment of cases (according to the Interior Regulation of the Courts, approved by Decision of the Superior Council of Magistracy).

The random assignment is done by the ECRIS software, based on the objective criterion of order of registration with the court. We would like to note that the petitions addressed to the court can be communicated in a traditional manner (by mail), or by modern means (e-mail, fax).

As a rule, the random assignment of cases is done on the day they were filed in court. As a rule, for random assignment of case in the ECRIS software one or more persons are designated in each court, depending on the volume of activity, to oversee the randomization process. These persons are designated at the beginning of each year by decision of the president of the court. They are the only ones that have access to the random assignment module, using their own password.

The legal provisions regarding the use of the ECRIS software at a national level have uncontested advantages because they take into consideration objective criteria regarding case



management, leading to observation of a reasonable duration of legal procedures. One of the main objectives of the case management is random assignment of the cases, based on an objective criterion using computer software.

The Judicial Inspection has the legal attribution to verify compliance with the provisions regarding the random assignment of cases by courts.

In accordance with Law no. 303/2022 on the statute of judges and prosecutors (before, Law no. 303/2004), serious or repeated breaches of the provisions on random assignment of cases represent a disciplinary offense.

#### **4. Use of assessment tools and standards. Length of proceedings**

**4.a.** Case management is an important tool in the activity of the courts at all levels, a series of programs and measures being implemented to insure the effectiveness of the management. The objectives of the case management are the followings:

- ✚ reasonable length of the proceedings;
- ✚ monitoring the length of the proceedings;
- ✚ reduction of the length of the proceedings by concrete measures;
- ✚ monitoring the workload of the courts, of the panels of judges and of every judge;
- ✚ random assignment of the cases, based on an objective criterion using a computer software; issuing and communicating to the parties and/or lawyers of notifications and other documents in respect of the right to defence and the principle of adversarial process;
- ✚ computerised data base of cases through a national computer software, starting on the date of filing the case in court until the final decision;
- ✚ the possibility of parties to access their own files electronically, in order to take note of the documents of the file without making a trip to the court;
- ✚ the possibility to identify a case file by the name of a party, by accessing the court's portal.

**4.b.** Using the rules and the computer software for the case management is no longer a possibility left to the decision of the courts, but is an obligation. The Internal Regulation of the Courts approved by Decision of the Plenum of the Superior Council of Magistracy provides a series of attributions as tasks of the management of the courts. The Boards of the courts must communicate to the Judicial Inspection the data needed to make evaluation structured on three domains: monitoring the cases pending with a span of more than 10 years, monitoring the pending high-level corruption cases and monitoring the compliance with legal deadlines into writing court decisions.

According to Law no. 304/2022 on judicial organisation (before, Law 304/2004), the verifications must observe the principles of the independence of judges and of their subjection only to the law, as well as the authority of *res judicata*. As a result, the court decision and the reasons for judgement cannot make the object of these verifications.

**4.c.** In order to ease access of parties to the case file, many courts have implemented a software named “Info dosar” (File Info). The software has had positive effects on the efficiency of case management, granting parties the possibility to access documents in their case files. Parties can access it by logging onto court's address with a confidential password issued to them at the beginning of the procedure. After selecting the court and the case file number and after



authentication of the confidential password received, the documents of the file may be viewed, including court drafts, witness statements etc.

In order to use the software in an efficient manner, the court scans the documents which are not received in digital format, uploading them to the electronic file which can be seen by the parties. For the scanning activity employees of the court are designated by the decision of the president of the court.

**4.d.** The possibility to send documents to and from the court via e-mail or fax is provided by law (Civil Procedure Code and Criminal Procedure Code) under the name "fast means of communication". The courts constantly use these tools of communication.

**4.e.** The New Civil Procedure Code, which has been effective since February 15<sup>th</sup>, 2013, introduced a procedure prior to the judgement stage, in order to reduce the lengths of the proceedings. During this procedure, the panel of judges assigned with the case verifies, immediately after the case is filed, its competence to deal with the respective case. Also, the panel verifies if the complaint meets the formal requirements provided by law. If the complaint does not meet the legal requirements, the plaintiff is notified about the inadequacies and about the obligation to make the amendments/ supplements ordered by court, under sanction of annulment of the complaint. The plaintiff is informed of the term in which they must fulfil these obligations.

In addition, the Civil Procedure Code establishes the term in which the defendant must file the statement of defence (25 days from communication of the summons), as well as the term in which the plaintiff must file the reply to the statement of defence (10 days since communication of the statement of defence). Also, in 3 days' time from the date the statement of defence is filed, the judge must set the first hearing to be within 60 days from finalisation of the "prior procedure" mentioned above. If the defendant lives abroad, the judge will set a term further in time, a more reasonable term depending on the circumstances of the case.

In case of urgent procedures, the terms mentioned above may be reduced by the judge according to the circumstances of the case.

The law placed at the disposal of parties an instrument to avoid excessive lengths of proceedings. Any of the parties may file an appeal invoking infringement of the right to settle the case in an optimum and foreseeable term. By means of this appeal it can be requested that effective legal measures be ordered. The Civil Procedure Code states the situations when such an appeal may be filed, as well as urgent terms for its settlement.

## **5. Human resources of the judiciary**

**5.a.** At the beginning of 2019, over 4,500 judge positions and over 2,500 prosecutor positions were filled. During the year 2019, almost 300 vacant judge positions and 200 vacant prosecutor positions were filled.

Insufficient human resources in relation to the workload have been a problem of the judiciary for many years. Even in present day we are in short supply of human resources in courts and prosecutor's offices.



The year 2020 has been the first year when no admission contest to magistracy has been organized, a fact that has increased shortage of human resource.

In March 2020, through Decision 121/2020, the Romanian Constitutional Court (CCR) has held as unconstitutional the provisions of art. 106 letter d) of Law no. 303/2004 regarding the statute of judges and prosecutors, on the ground that *“it does not provide the key aspects concerning the admission contest to magistracy, such as the contest stages and exams, the method for establishing the results and the possibility to challenge each exam”*.

On July, 2021, the Superior Council of Magistracy (SCM) has approved the organizing of the contest for admission into National Institute of Magistracy and the contest for (direct) admission into magistracy. These contests were organized during the period of time July 2021 – April 2022. There was approved a total number of 458 positions, consisting in 273 for judges and 185 for prosecutors.

In March 2022, the competition for admission into National Institute of Magistracy was completed and also, in April 2022, the competition for (direct) admission to the magistracy was completed. Over 400 judge and prosecutor positions were filled in these contests.

Starting from July 2022, the Superior Council of the Magistracy initiated a new competition for admission into National Institute of Magistracy and a new competition for (direct) admission into the magistracy. In addition, starting from October 2022, the Council initiated a third competition for (direct) admission to the magistracy. These 3 contests were organized to fill 580 positions of judges and prosecutors.

The procedure for admission into magistracy was finally initiated last year, after a two-year delay, both for the National Institute of Magistracy, as well as for those admitted directly into practice.

Thus, after a period of three years in which no admission exams or transfers took place, a crisis of human resources was to be expected, seeing as mounting pressure, combined with an uncertainty regarding the statute, determined many judges to retire.

Such deficiencies cannot be resolved instantly, and it will take at least 5 years for the system to rebalance. As the Romanian Magistrates' Association (AMR) noted many times, the adoption of a law regarding judicial assistants would be a supporting solution for the system, since the selection procedure for this role is much more time-efficient and in tune with the needs of the judicial system.

In these circumstances, the judicial assistants are a real support for the judge, being a solution to avoid increasing the duration of the proceedings. The project "Optimization of the Management of the Judiciary. The Courts" carried out by the Superior Council of Magistracy, until October 2022, is a proof in this respect. The project had the expected success.

After the completion of the project, 165 judicial assistants continued to work at the courts of appeal (15 courts of appeal). In this sense, at the request of the Superior Council of the Magistracy, of the courts and of our professional association, urgent measures were adopted by the Government, which allowed the continuation of the work of the staff of the judge's assistants.





It is, however, necessary to ensure the necessary number of judicial assistant positions at the courts of appeal, tribunals and courts of first instance. At present, the number in question is insufficient.

**5.b.** As for the magistrate retirement, the statements of the Ministry of Justice, at the beginning of 2021, regarding a drastic and untimely modification of the retirement conditions, has led to the decision of a great number of judges and prosecutors, who met the retirement conditions, to leave the system.

It is worth noting that, although the law allows judges to retire when they reach 25 year of magistracy, until now, most of them remained active within the system for a considering period of time.

The untimely modifications of the judge statute have led, though, to a change in attitude; feeling threatened, the judges have begun to leave collectively the system, as soon as they met the retirement conditions.

Although the Minister of Justice has subsequently recalled and reinterpreted his statements, he hasn't been credible anymore, the frequency of retirements staying high in the first part of 2021.

In the context of no access to magistracy and the blocked transfer procedure, the accelerated retirement of the magistrates will have extremely serious effects upon the judicial processes.

For instance, only at the level of the Alba Court of Appeal, on February, 1<sup>st</sup>, 2021, there were 46 vacancies out of 290 judge positions. At the level of the Galati Court of Appeal, there were 55 vacancies out of 271 positions.

On February 1<sup>st</sup>, 2021, there were 557 judge position vacancies at the level of the entire system, which was a negative achievement, from this point of view<sup>3</sup>.

**5.c.** In addition, it is necessary to point out that in the last period of time there has been a wave of retirements of judges and prosecutors, which will create serious problems with regard to the workload of the courts. We have well-founded fears that there will be a crisis in human resources. The main cause of the retirements is the instability created by public statements of the representatives of the other powers and by the appearance of draft laws that modified the conditions of the occupational pension, to the detriment of magistrates.

According to data published by the Superior Council of Magistracy, the number of vacancies in the judiciary has increased compared to last year, reaching 1,000 vacancies for judges and over 800 vacancies for prosecutors, at the beginning of 2023.

The new Laws on Justice, no. 303/2022 on the status of judges and prosecutors, no. 304/2022 on the judicial organization and no. 305/2022 on the Superior Council of Magistracy, entered into force on December, 16<sup>th</sup>, 2022.

The draft Law nr. 303/2022 on the statute of judges and prosecutors, submitted for debate to the Parliament, did not contain changes on the retirement conditions for judges and prosecutors,

<sup>3</sup> [https://www.csm1909.ro/278/8501/Situa%C8%9Bia-posturilor-de-judec%C4%83tor-\(schem%C4%83,-ocupate,-vacante,-vacantabile,-func%C8%9Bii-de-conducere-vacante,-posturi-indisponibilizate\)-la-data-de-01-februarie-2021](https://www.csm1909.ro/278/8501/Situa%C8%9Bia-posturilor-de-judec%C4%83tor-(schem%C4%83,-ocupate,-vacante,-vacantabile,-func%C8%9Bii-de-conducere-vacante,-posturi-indisponibilizate)-la-data-de-01-februarie-2021)



nor on the amount of the public service pension. Therefore, after successive debates by articles on the draft of the three Laws on Justice, in the two Chambers of the Parliament, provisions on the right to retirement pension of judges and prosecutors similar to those of Law no. 303/2004 were eventually voted.

However, after only three days as of the entry into force of Law no. 303/2022 on the statute of judges and prosecutors, the draft law on the modification and completion of certain regulatory acts in the field of public service pensions was submitted to the Superior Council of Magistracy. The draft law was registered with the Senate under no. 4/2023.

This draft contains amendments on the modification of the procedure, conditions for granting and the amount of the public service pension of prosecutors and judges, including of those who are already retired.

In the versions of the draft law on the statute of judges and prosecutors, starting with 2020, on which the courts, prosecutor's offices and professional associations of judges and prosecutors have advanced points of view, no provisions of the kind mentioned in the draft law registered with the Senate under no. L4/2023 were ever included.

The launch in the public area, in October 2022, of a draft emergency ordinance on the modification of the provisions on public service pensions of judges and prosecutors – a draft that was not subsequently confirmed by the executive power – as well as the registration with the Senate of the draft law on the amendment and completion of certain regulatory acts in the field of public service pensions (L 4/2023) represented elements of instability regarding the status of magistrates.

This instability is proved by reference to the "legitimate expectation", a notion in respect of which it has been held, in numerous solutions of the European Court of Human Rights, that it should be understood and interpreted as being grounded in the citizen's right to legislative coherence and security, so that, under the law, they can assert, preserve and defend their rights. It is about the materialization of the constitutional principle, specific to any rule of law, regarding the supremacy of the law.

Consequently, between November 2022 and January 2023, 335 applications for relief of their position by retirement, made by judges (246 applications) and prosecutors (89 applications) were registered with the Superior Council of Magistracy.

The seriousness of the situation is proved by the fact that, if between July 2019 and January 2023, i.e. during 43 months, 654 magistrates were relieved of their position, by retirement, in just three months (November 2022 – January 2023) 335 magistrates submitted applications for relief of their position, by retirement!

In other words, relating to the data published by the SCM on the human resources on February, 1<sup>st</sup>, 2023, the number of magistrates who applied for retirement in only 3 months (November 2022 – January 2023) was equal to the number of judges with nine courts of appeal together or to the number of prosecutors with as many prosecutor's offices attached to the courts of appeal together (it should be noted that in Romania there are 16 courts of appeal and 16 prosecutor's offices attached to the courts of appeal).





The obvious and critical lack of human resources caused by this state of affairs will have a major negative impact on the organization of courts and prosecutor's offices activity, on the celerity and quality of the act of justice, whose beneficiary is the citizen.

It is obvious that the crisis was created by the instability of Law regarding the statute of judges and prosecutors, basically by the endless discussion on the retirement conditions and occupational pensions of judges and prosecutors. The judiciary was defined by stability and the system had no real problem regarding this field – a lot of judges DID NOT retire when they fulfilled 25 years of seniority. It is clear that they did not retired after the reform of the Laws of Justice in 2018, but the wave of retirement started to raise in 2020, and now it seems to become a tsunami.

*The Romanian Magistrates' Association (AMR) had a very active position, both in the public space and in relation to the Superior Council of Magistracy, to the legislative power and the executive power, regarding the issue of the workload of the courts and prosecutor's offices, as well as in relation to the lack of human resources of the judiciary.*

*Also, our association submitted concretely argued points of view, regarding this reality of the Romanian judiciary, to the European Commission, the Venice Commission, the European Parliament, etc. As a member of the European Association of Judges (EAJ-AEM), the Romanian Magistrates' Association (AMR) drew attention on the situation of the huge workload faced by judges in Romania.*

*The Romanian Magistrates' Association (AMR) actively participated in the parliamentary debates regarding the adoption/amendment of the Laws of Justice (Law on the statute of judges and prosecutors, Law on the judicial organisation, Law on the Superior Council of Magistracy), drafting and presenting a series of amendments, in accordance with the needs of the judiciary. The effective actions of our association were aimed at preserving the independence of the judiciary and protecting the statute of judges and prosecutors.*

Judge Andreea Ciucă, PhD,

President of the Romanian Magistrates' Association (AMR)