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To:

The European Association of Judges – EAJ-AEM

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, legally represented by Judge Andreea Ciucă, PhD, as President, sends the following

OPEN LETTER

regarding the disastrous effects of the bill amending the retirement pensions of magistrates

The new Laws of Justice entered into force on 16.12.2022¹. The draft law on the status of judges and prosecutors **did not contain amendments regarding the conditions of retirement of judges, nor on the amount of the service pension**. Therefore, after debates in the two Chambers of the Parliament, provisions similar to those of the previous Law (from 2004) were voted regarding the service pension of judges. However, after only 3 days from the entry into force of the new law on the status of judges and prosecutors, the Superior Council of Magistracy was sent the draft law on the modification of service pensions, which **dramatically changes the procedure, the conditions of granting and the amount of the service pension of judges**.

The fact that this draft law **raises serious issues of unconstitutionality was revealed both in the Opinion of the Legislative Council of 28.12.2022 and in the Address of the Ministry of Justice of 23.12.2022**. In these documents, reference was made to the jurisprudence of the Constitutional Court, which expressly held that the recalculation of service pensions represents an impairment of the principle of non-retroactivity of the law and, implicitly, of the principle of *tempus regit actum*. It was stressed that **the new law could not affect the amount of service pensions established before its entry into force**².

Contrary to the statement of the labour minister who said that the changes regarding the service pensions of magistrates were made after consultations with representatives of the judiciary³, **the professional associations of magistrates were not consulted**.

The registration with the Senate, in 2023, of the draft law on the modification of service pensions was an element of instability, by reference to the "legitimate hope", materialized in the principle specific to any state governed by the rule of law, regarding the supremacy of the law. **This instability has led to a wave of retirements that are seriously affecting the judiciary**. 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 retired, in just 3 months after the registration of the bill in the Senate, 335 magistrates submitted applications for retirement!

The Romanian Magistrates' Association (AMR) has taken a series of concrete, repeated and punctually substantiated steps in order to obtain the respect of the status of magistrates and the independence of the judiciary – including financial independence. During the dialogue with the President of the Chamber of

¹ We are referring to Law no. 303/2022 on the status of judges and prosecutors, Law no. 304/2022 on the judicial organization and Law no. 305/2022 on the Superior Council of Magistracy.

² Such a decision was also included in the recent jurisprudence of the Constitutional Court: Decision no. 343/2020, para. 21; Decision No. 810/2019, para. 51 and 57.

³ <https://www.luju.ro/draft-final-pentru-pensiile-magistratilor-primele-informatii-concrete-despre-noile-conditii-de-pensionare-pentru-judecatori-si-procurori-vechimea-in-specialitatea-studiilor-sa-fie-cel-putin-vechimea-din-sistemul-public-de-pensii-si-anume-de-15-ani-intr-ad>



Deputies (decision-making chamber on this draft law), in April 2023, he claimed that the measures to be adopted will take into account the need to ensure human resources in the judicial system. In other words, we were led to believe that the bill will not be adopted in a form that would cause judges to continue to leave the judiciary.

Unfortunately, however, at the beginning of this week, there was an escalation of the situation that created a state of panic in the judiciary. More specifically, hasty changes to the draft law on the modification of the service pensions of magistrates have been announced in the public space, which are to be adopted in the short term. The launch of the amendments was accompanied by a message posted on the Prime Minister's Facebook page. **As our professional association, together with 3 other associations, mentioned in the press release of yesterday, 30.05.2023, the hasty changes made to this draft law are tantamount to the "assisted suicide" of a system already in the most serious personnel crisis.**

In essence, the amendments relate to the following aspects:

- Raising the retirement age to 65 years → The amendment ignores the fact that Romanian judges enter the system at 25 and face, year after year, a large amount of work that they have to manage at a rapid pace. It also ignores the fact that judges have to go through recruitment and promotion competitions that are very long and difficult.
- Calculation of the pension based on the average income of 25 years of work → The amendment ignores the fact that, since 2007 until now, the service pension of judges has been calculated and is calculated on the basis of the income from the last month of activity. This level of the judge's income is the significant one, being obtained after a career in the magistracy.
- Over-taxation of magistrates' pensions by 30% for the part of the pension that is not covered by the contribution to the social insurance system → The amendment will lead to a clear decrease of the pension, compared to the present situation. At the same time, the amendment ignores the very strict regime of prohibitions and incompatibilities applicable to Romanian magistrates. Through recent jurisprudence, the Constitutional Court has reconfirmed this severe regime, making comparisons with other legal systems, for example, Germany or Sweden⁴, which are more permissive in terms of the compatibility of the office of judge with other public offices. However, in our constitutional system, the rules are very strict about the incompatibilities that accompany the position of judge/prosecutor⁵.
- Recalculation of all pensions of magistrates in payment → As a result of the expected recalculation system, these pensions will decrease drastically. Such an approach violates the constitutional principle of non-retroactivity of the law, provided by the Constitution, as well as the right to a pension, "according to the law" in force at the time of the capitalization of this right, as guaranteed by the Constitution.

The courts are depopulated, with 1,129 judge positions currently vacant⁶ – with some of the courts operating with more than half of the staff missing. All the surplus cases are managed through additional efforts by the judges who are still in activity. The consequences of overburdening and agglomeration with cases, resulting in an increase of the deadlines for solving cases and with the decrease in the quality of the act of justice, will be, in the end, borne by the Romanian citizens.

The disregard of the judiciary, its negotiation at the political table, the manifest weakening of the status of magistrates have led to massive departures from the system. These are correlated with the dramatic decrease in the professionalism of the candidates in the competitions for admission to the magistracy. This is how it came to be that, for example, out of the 580 positions put up for competition in 2022, 141

⁴ See Opinion No. 806/2015 on the freedom of expression of judges, adopted by the Venice Commission, at its 103rd plenary meeting of 19-20 July 2015.

⁵ Decision no. 45/2018 of the Constitutional Court, para. 169.

⁶ Of the total number of 4,946 posts of judge existing in the structure of Romanian courts.



positions remained unoccupied, i.e. almost 25%, even if the minimum entry mark dropped to six (the maximum mark being ten).

The representatives of the other two powers tried to justify the draft law by referring to the National Recovery and Resilience Plan, according to which steps must be taken for the entry into force of the legislative framework for the reduction of expenditures on special pensions. **The problem is approached in a totally false way.** Firstly, in line with the case-law of the Constitutional Court, the service pensions of magistrates cannot be treated as 'special pensions'⁷. Secondly, the reduction in the pensions of magistrates will not lead to a real reduction in pension expenditure. In July 2019, the number of retired magistrates was only 3,814⁸, and in January 2023 their number was only 4,468⁹. Given that the Constitutional Court has revealed the existence of a number of 198,559 beneficiaries of special and service pensions, at the level of 2019-2020, compared to a number of only 3,814 magistrates who are beneficiaries of service pensions¹⁰, i.e. only 1.92%, the goal of the reduction of pension expenses will not be reached by drastically modifying, to the detriment of magistrates, the conditions of retirement and the amount of their service pensions.

Consequently, **given the disinterest shown by the executive and the legislative regarding the status of magistrates, we publicly support the adoption of all legal measures necessary for its defence, in order to ensure an efficient and high-quality act of justice.**

In this context, we need the urgent support of the European Association of Judges, through a resolution to be sent to the Prime Minister (pm@gov.ro), the President of the Romanian Senate (cabinet.presedinte@senat.ro) and the President of the Chamber of Deputies (cabinet.presedinte@cdep.ro).

Judge Andreea Ciucă, PhD,
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⁷ See the previous explanation regarding the severe regime of interdictions and incompatibilities applicable to magistrates.

⁸ <https://www.mediafax.ro/social/pensia-medie-pentru-magistrati-este-de-peste-18-300-lei-cate-pensii-de-serviciu-se-plateste-in-romania-18298364>.

⁹ <https://www.agerpres.ro/economic-intern/2023/01/18/cnpp-9-680-beneficiari-de-pensii-de-serviciu-in-ianuarie-2023--1045191>.

¹⁰ Decision no. 900/2020 of the Constitutional Court, para. 47, 50, 51, 52, 55, 56, 57.