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Improving And Strengthening The Effectiveness Of The Institutional Capacity Of The Judicial System[1]

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Abstract

The purpose of this paper is to present how overcrowding of the courts is a recurring and persistent problem of the judicial system in Romania. The problem is given on the one hand by the causes that have similarities between them but are not necessarily identical and which have their origin in a deficient regulation or a lack of correlation between the different normative acts, primary and / or secondary regulation, and on the other hand, by those identical, repetitive causes, usually triggered by a systemic problem. By using statistics, the paper aims to reflect the gravity of the situation regarding the activity in a busy court. The solution could be given by the implementation of some sort of standard system that comes with modern and efficient management tools existent in each institution regarding the justice system.

Keywords: *public law, judicial system organization, effectiveness, institutional capacity, inflation of cases.*

1. Introduction

The courts' overcrowding is a recurring and persistent problem that affects the proper functioning of the judiciary system in Romania. In order to reestablish an adequate level of activity, a judiciary system must, by all means, prove to have the ability to constantly evaluate the efficiency of the system in relation to the duration of the procedures and the uniformity of the jurisprudence. Also, another factor in evaluating such a system, that simply cannot be ignored, is the correlation of the lawmaking factors with the factors of law application through judicial decisions and the elimination of the causes of non-unitary and

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unpredictable application of the regulatory framework or the elimination of the deficiencies in the elaboration of norms that lead to difficulties of application in the judicial system. The systemic problem of the judiciary system consists in the agglomeration of the activity of the court rooms with legal cases, both those which have similarities between them but are not necessarily identical and which have their origin in a deficient regulation or in a lack of correlation between the different normative acts, as well as with the identical, repetitive cases.

In order to indicate the gravity of the issue, I have chosen to portray the general activity of the court that is presented in the Bucharest's 4th District Court's annual activity report on the year 2019 (Fig. 1), as well as the volume of activity by subjects in 2017 (Fig. 2), the volume of activity by subjects in 2017 (Fig. 3) and the volume of activity by subjects in 2017 (fig. 4). Therefore, the following tables indicate a general image regarding the activity of one of Romania's most busy courts. In this regard, the Annual activity report states on the third page that: "*compared to other courts in the country that are equal in rank, the Bucharest's 4th District Court is a court with a high level of activity, a conclusion that can be drawn from the analysis of the annual activity report (36,376 new entry files in 2019), by reference to the scheme staff of 54 judges. The volume activity is constantly increasing, with upward trends and for the future, mainly due to cases involving enforcement, confirmation of involuntary medical admission and requests regarding the people in detention in Jilava Penitentiary and Jilava Hospital Penitentiary.*" [1]

Also, the report also indicates at page 10 that: *regarding the number of new cases entered in 2019, the court is on the 3rd place between the courts in Bucharest, after Bucharest's 1st District Court (42,073 cases) and Bucharest's 3rd District Court (36,948 cases).*[1] Needless to say, it is not the only available example regarding the issue.

Fig. 1

General activity of Bucharest's 4th District Court [1]

Year	New entry files	Stock of files at the beginning of the year	Pending files	Pronounced files	Stock of files at the ending of the year	Suspended files
2019	**36.376**	**4.624**	**41.000**	**36.256**	**4.744**	**843**
2018	34.052	5.431	39.483	34.859	4.624	868
2017	34.055	6.462	40.517	35.086	5.431	1.123
2016	35.075	7.152	42.227	35.765	6.462	1.340
2015	46.220	9.618	55.838	48.686	7.152	1.613
2014	39.148	11.346	50.494	40.876	9.618	1.764
2013	35.268	12.211	47.479	36.133	11.346	2.113
2012	41.488	7.028	48.516	36.305	12.211	1.773
2011	33.500	6.485	39.985	32.957	7.028	1.704

2010	26.547	7.420	33.967	27.482	6.485	1.539
2009	21.318	3.767	25.085	17.665	7.420	1.422
2008	11.669	2.965	14.634	10.867	3.767	1.342
2007	11.902	2.795	14.697	11.732	2.965	1.065

Fig. 2
The volume of activity by subjects in 2017 [1]

Subject	Existing files on the 1st of January 2017	New entry files	Pending files	Solved	Existing files on the 31st of December 2017	Percentage of subjects in relation to pending files
Civil law	2.835	16.263	19.098	16.483	2.615	47,76%
Criminal law	565	6.720	7.285	6.840	445	19,73%
Administrative disputes	1.171	2.705	3.876	2.836	1.040	7,94%
Ommercial law disputes	1.220	1.063	2.283	1.528	755	3,12%
Cases regarding minors and families	566	7.297	7.863	7.304	559	21,43%
Labor law disputes	105	7	112	95	17	0,02%

Fig. 3
The volume of activity by subjects in 2018 [1]

Subject	Existing files on the 1st of January 2018	New entry files	Pending files	Solved	Existing files on the 31st of December 2018	Percentage of subjects in relation to pending files
Civil law	2.615	14.317	16.932	15.126	1.806	42,04%
Criminal law	445	6.846	7.291	6.800	491	20,10%
Administrative disputes	1.040	2.228	3.268	2.485	783	6,54%
Commercial law disputes	755	1.900	2.655	1.575	1.080	5,58%
Cases regarding minors and families	559	8.758	9.317	8.858	459	25,72%
Labor law disputes	17	3	20	15	5	0,01%

Fig. 4
The volume of activity by subjects in 2019 [1]

Subject	Existing files on the 1st of January 2019	New entry files	Pending files	Solved	Existing files on the 31st of December 2019	Percentage of subjects in relation to pending files
Civil law	1.806	15.008	16.814	15.177	1.637	41,26%
Criminal law	491	6.586	7.077	6.721	356	18,10%
Administrative disputes	783	3.084	3.867	2.527	1.340	8,48%
Ommercial law disputes	1.080	2.203	3.283	2.269	1.014	6,06%
Cases regarding minors and families	459	9.483	9.942	9.548	394	26,07%
Labor law disputes	5	11	16	14	2	0,03%
Social insurance disputes	0	1	1	0	1	0,003%

How could this issue be resolved? The answer relies on the construction of a permanent mechanism involving the development of comprehensible and sustainable methodologies capable of signaling and leading to mechanisms to remedy such situations. In the present, the state's capacity to prevent dysfunctions and to apply through inter-institutional cooperation the conditions of the good functioning of the judicial system can be enhanced through a set of mechanisms and tools appropriate to the need to relieve the activity of the courts. Through this innovation, the judicial system would acquire value by creating an operational framework necessary to efficiently resolve on the one hand legal cases that have an impact on the rate and duration of their resolution, and on the other hand legal cases that have an impact on the ability of the judicial system to specifically process disputes concerning the protection of the financial interests of the European Union by increasing the overall operability.

2. Possible solutions

The aforementioned issue can be highlighted by the deficiency of the law no. 263/2010 regarding the unitary system of public pensions published in the Official Gazette of Romania no. 852 of December 20, 2010, which established that the pension is based on the principle of contribution [2]. The problem arises from

the fact that the secondary lawmaker established that the calculation of the pension point does not take into account the non-permanent increases although, for many beneficiaries, those increases were the subject of withholding the Social Security Contribution (SSC) and the Social and Health Insurance Contribution (SHIC). Specifically, these increases cannot be renounced, they can only be removed only by a court's decision. Thus, tens of thousands of cases had to be tried for a foreseeable solution, which obviously leads to a crowding of the court for the same solution in cases that are practically identical.

Such situations bring forth the necessity to come to the aid of the court in order to streamline the justice process, and to ensure compliance with article 6 of the European Convention of Human Rights [3] which regulates the Right to a Fair Trial and states that "*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within* ***a reasonable time*** *by an independent and impartial court established by law.*" [3] To solve the problem, there are three possible levers.

The first leverage, theoretically speaking, would consist of the secondary lawmaker to intervene to correct the error, so that it does not generate any more litigation.

The second leverage for defrauding the litigation phenomenon is the introduction in the Romanian civil procedure of the pilot decision [4]. In this sense, it must be identified in what manner the normative framework regarding civil procedure in Romania allows those cases, which have the same object, in which one of the parties is the same, which establishes the claim on a subjective right which is governed by the positive law, could be judged in a pilot procedure with value of *res judicata* for all similar cases in which the defendant is the same person.

A discussion is necessary regarding which are the objective criteria through which one can establish similarities, differences, the effects on access to justice in cases where an automatic verdict given in a similar case is applied through an automatic procedural mechanism.

The pilot-judgments procedure requires the Court to identify, as far as possible, the causes of the structural problem and to analyze the cause from the perspective of the general measures to be taken in the interest of the other persons affected by the same situation [5]. The main objectives of the pilot-judgments procedure are: ensuring a good application of the Court's decisions in the future by determining the states to find a solution to structural or systemic problems serving a number of important interests[5], such as the interests of the states to solve their systemic problems at national level the applicants' interests to obtain a speedy compensation for the violation of the rights guaranteed by the Convention and the interests of the European Court to reduce their workload. A useful advantage to the factual situation in Romania is that the European Court of Human Rights no longer deals with the cases in which it has to repeat the same considerations included in the pilot decision. The indirect beneficiaries of

the general measures imposed on the defendant state are, besides the parties due to the trial, foreign persons concerned, but in an identical or similar situation or who have already filed a complaint to the Court or who do not have an effective appeal to this mechanism of protection of human rights.

There was a situation in which all PETROM employees sued the company regarding the rights related to labor relations between them and the company. All the disputes were judged in substance by the first instance court from Sector no.1, given the fact that the PETROM headquarters was in that sector. Thousands of litigations were thus generated. The substance of the case consisted of the collective labor contract - in such a situation, both the subjective right claimed and protected by the law, the nature of the legal report and the criterion of identity of the defendant party discuss the possibility of avoiding such a situation by introducing a procedure that has the nature of the pilot-judgment regulated by the European Convention of Human Rights [3]. The legal problem here consists in: for the systematic classification of this instrument in the national civil procedure, it is necessary to carry out the analysis of the concordance between the civil procedure institutions of the "*merging between cases*", the "*lis pendence*" and between the effects and the nature of the Preliminary Rulings of the High Court and of the collective causes so that one can avoid the procedural conflicts or the improper transfer of some institutions that have their own legality and impact in the Romanian civil process. On the other hand, it is necessary for the analysis to highlight the best means of convergence between these institutions of Civil procedure.

The third leverage involves the introduction in the civil procedure legislation of filtering mechanisms given by alternative dispute resolutions that have the main purpose to reduce the number of cases with a low value of complexity or whose separation can be realized by the legal will of the parties so that they will no longer be presented to a judge and not to go through the costly and lengthy procedure of the judicial process. Here we need an analysis. It is thus necessary to analyze areas of law, litigious objects and the nature of the causes of the possibility of imposing mechanisms such as mediation, reconciliation or other Alternative Dispute Resolutions - such as banking disputes or obliging the parties to conciliatory conduct object of solving the petition by generalizing instruments such as the pre-litigation procedure, the conciliation from the commercial - determined by the feasibility of the application depending on the domain). As an example, we have disputes in the fiscal financial fields; labor and social insurance disputes.

3. Conclusions

It would be of great use to create and implement a standard system that comes with modern and efficient management tools existent in each institution regarding the justice system so that it would not implicate the courts, but also

institutions that have an administrative role in the judiciary. In order for it to be effective, it must include an inter-institutional form of cooperation that adds value by creating an operational framework necessary to effectively resolve lawsuits that have an impact on the rate and duration of the resolution as well as on the ability of the judicial system to specifically process disputes concerning the protection of the financial interests of the European Union by increasing the overall operability. Three possible leverages have been identified in order to innovate the system. In terms of the pilot-judgment procedure, although very useful in its core, including it in the national civil procedure should not lead to the conclusion that the system will change from a civil law system to a common law system. The mechanism would only rely on borrowing and adapting instruments from the Anglo-Saxon system of justice.

REFERENCES

[1] Bucharest's 4th District Court's annual activity report on the year, 2019.

[2] Law no. 263/2010 regarding the unitary system of public pensions published in the Official Gazette of Romania no. 852 of December 20, 2010.

[3] European Convention on Human Rights

[4] Rules of Court, Registry of the Court Strasbourg, Council of Europe, 1st January 2020.

[5] The Pilot-Judgment Procedure - Information note issued by the Registrar, published by European Court of Human Rights, 2009.