

ROMANIA
THE HIGH COURT OF JUSTICE AND CASSATION



Unofficial translation

RESOLUTION

Bucharest, 28 October 2022

Having regard to the provisions of Article 124 parag. (2) of the Romanian Constitution,
Having regard to the provisions of Law no. 303/2004 on the Status of judges and prosecutors,
Having regard to the Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the United Nations General Assembly in Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,
Having regard to Recommendation No. R (94) 12 on the independence, efficiency and role of judges, adopted on 13th October 1994 by the Committee of Ministers of the Council of Europe,
Having regard to the European Charter on the Statute for Judges,
Having regard to the established case-law of the Constitutional Court of Romania on the service pensions of judges and prosecutors,
Having regard to the statements that have appeared in the public arena concerning the need to change the legislative framework on service pensions, including those of judges and prosecutors, in order to meet the objectives set out in Romania's National Recovery and Resilience Plan, Component C8 Tax Reform and Pension Reform, Milestone 215,
Noting the appearance in the press of an alleged draft Government Emergency Ordinance providing for the modification of the conditions for the retirement of magistrates, as well as a change in the way their service pensions are calculated,
Examining the proposal to create a National Network for the Unification of Jurisprudence, which would provide a rapid mechanism for mutual knowledge of the jurisprudence of the courts of last instance (High Court of Cassation and Justice and Courts of Appeal), for the dissemination of decisions handed down by the supreme court and for the earliest possible reporting of situations of non-uniform practice,

We, the presidents of the courts of last instance - the High Court of Cassation and Justice
and the Courts of Appeal - meeting in Bucharest on 28 October 2022,
adopt the following resolution

I. Concerning the stability of the Statute of Magistrates, guarantee of the independence of justice:

1. Any amendment to the statute of judges must be the result of a complex analysis which necessarily must consider the concrete conditions in which the courts operate, in particular working conditions and disproportionate workload, as well as the regime of incompatibilities and prohibitions applicable to judges. In particular, such changes cannot be imposed arbitrarily without an assessment of their impact in terms of the stability of human resources and without broad and effective consultation of the judiciary.

The judiciary is a career profession, so a coherent human resources policy must ensure predictability and stability in the conditions for exercising the profession from the moment of appointment to the moment of leaving the judiciary.

The legislator introduced the service pension for magistrates as early as 1997, and the retirement conditions and the way they are calculated have not changed substantially over time, considering the inadequate/unsuitable working conditions, excessive workload, insufficient funds.

Various international documents mention the need for financial security to ensure the independence of the judiciary, which also refers to pension rights. For example, the Basic Principles on the Independence of the Judiciary, [adopted by the 21st United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, 26 August-6 September 1985) and confirmed by the United Nations General Assembly in Resolutions No. 40/32 of 29 November 1985 and No. 40 /146 of 13 December 1985], expressly provide, in Article 11, that "the term of office of judges, their independence, security, adequate remuneration, working conditions, pensions and retirement age shall be adequately guaranteed by law".

Regarding the amount of the magistrates' pension, as the Constitutional Court indicated in Decision no. 153 of 6 May 2020, "the adequate level of remuneration and the amount of the magistrates' pensions represent a partial compensation for the lack of fundamental rights, in the category of exclusively political rights (the right to be elected to the Chamber of Deputies, the Senate, the office of President of Romania or to local government bodies, and the right to be elected to the European Parliament) and social and economic rights (the right to collective bargaining in labour matters, the right to strike, economic freedom), as well as the incompatibilities laid down at constitutional level throughout their professional career [under Article 125 parga. (3) of the Constitution, the office of judge is incompatible with any other public or private office, with the exception of teaching posts in higher education; a similar provision is laid down for prosecutors in Article 132 parag. (3) of the Constitution]. In addition to these incompatibilities, there are the prohibitions laid down in Law 303/2004 on the status of judges and prosecutors (...), the level of pension shall consider the responsibilities and risks of the profession of magistrate, which concern the entire duration of his or her career".

The retirement age for magistrates is a partial compensation for the working conditions, risks and responsibilities of the profession (e.g. the high number of cases processed in an overcrowded judicial system).

On 17 October 2022, by a large majority, the Romanian Parliament reconfirmed the current rules applicable to the occupational pension scheme within the judicial system, with minor amendments concerning the scope of beneficiaries. However, the need to achieve the objectives set out in Romania's National Recovery and Resilience Plan, Component C8 Tax Reform and Pension Reform, Milestone 215, in terms of promoting a reform of occupational pensions, was already known when the draft legislation was submitted to the Romanian Parliament.

Therefore, a radical and immediate amendment of these rules, such as the one that has been circulated in the public space in recent days, would not only represent a disregard for the principle of loyal cooperation between the powers of the state, but also a disregard for the sovereign will of Parliament. An inconsistent position on the legislative aspect of the

regulations on the status of judges is likely to substantially affect the status and independence of magistrates and justice as a whole, as well as the quality of the act of justice, despite the constitutional protection of judges' occupational pensions.

The experience of the previous amendments to the justice laws, which provided, in their initial form, for a reduction in the length of service to 20 years and implicitly in the age at which an occupational pension is granted, as well as the reactions generated by each public statement on a possible increase in one of the two components, show that any sudden change in the provisions on the status of judges must be avoided, as they are likely to lead to major imbalances in the adequate provision of human resources, particularly at the level of the courts of last instance. The authorities should deepen their human resources management policy in order to implement forward-looking management, avoiding any risk of reducing the number of magistrates and the need to manage a large caseload. A change in the retirement age would undoubtedly have repercussions on both the career development of magistrates and the organisation of courts.

Consequently, firmly recalling that the status of judges is of constitutional rank - its benchmarks being enshrined in the provisions of Article 124 parag. (3) and Article 125 of the Romanian Constitution - it is necessary for all the powers of state to assume the principles of stability and predictability of this status, avoiding legislative experiments. Legislative amendments in this area must not lead to the creation of negative discrimination for judges in office. As regards the specific issue of the adoption of the standard retirement age, such a legislative amendment should not affect the rights of serving judges and should be subject to gradual, phased regulation. However, such a gradual increase in the retirement age should be linked to the pace of improvement in working conditions.

The periodic re-examination, at short intervals and in the absence of objective justification, always in a negative way, of the status of judges worsens the human resources situation by increasing the pressure and psychological burden of this function and ultimately has a negative effect on the quality of the judicial process, to the detriment of the citizen.

2. The independence of the judiciary and the independence of the judge, together with the non-interference of other powers in the work of the court, must be guaranteed both by the allocation of sufficient funds for the conduct and administration of judicial activity, by the provision of adequate working conditions, by the existence of a sufficient number of judges to avoid excessive workload and to allow the completion of trials within a reasonable time, but also by the financial security of judges.

In particular, the progressive improvement of working conditions in the courts should be undertaken through a concrete strategy document detailing the investment objectives, deadlines for completion and sources of funding.

II. On the quality of justice and unification of judicial practice:

3. The unity and consistency of case-law is an essential guarantee of the right to a fair trial, ensuring the prestige of justice and the predictability of the outcome of judicial proceedings. In the long term, ensuring uniform case-law is likely gradually to reduce the number of newly registered cases, to increase the speed of judicial proceedings and to reduce the costs of running the courts and those incurred by litigants.

The High Court of Cassation and Justice has the constitutional role of unifier of jurisprudence, which is exercised in partnership with the Courts of Appeal, in areas where they exercise

ultimate jurisdiction. It is therefore appropriate to set up an *informal case-law unification network* to ensure the rapid dissemination and mutual knowledge of case-law, the rapid identification and discussion of issues which may give rise to non-uniform practice, and the rapid resolution of such situations through the mechanisms provided for by law.

Accordingly, with a view to the establishment of the *Network for the Unification of Jurisprudence*, a number of judges will be designated at the level of the High Court of Cassation and Justice and at the level of all Courts of Appeal, on the basis of their prior agreement, as contact points within the Network. Their specific tasks and the functioning of the Network will be laid down in a partnership agreement and the necessary technical support will be provided by the Supreme Court.

Judge Corina-Alina CORBU, President of the High Court of Cassation and Justice

Judge Gabriela Elena Bogasiu, Vice-President of the High Court of Cassation and Justice

Judge Ilie Iulian Dragomir, Vice-President of the High Court of Cassation and Justice

Judge Liviu Gheorghe Odagiu, President of Court of Appeal Alba Iulia,

Judge Maria Violeta Chiriac, Vice-President of the Court of Appeal Bacău,

Judge Daniela Niculeasa, Vice-President of the Court of Appeal Braşov,

Judge Luminiţa Criştiu-Ninu, President of the Court of Appeal Bucureşti,

Judge Dana Gîrbovan, President of the Court of Appeal Cluj,

Judge Alina Gabriela Jurubiţă, President of the Court of Appeal Constanţa,

Judge Adrian Glugă, President of the Court of Appeal Craiova,

Judge Cosmin – Răzvan Mihailă, President of the Court of Appeal Galaţi,

Judge Laura Simona Băican, President of the Court of Appeal Oradea,

Judge Emilia Raluca Trandafir, President of the Court of Appeal Piteşti,

Judge Paul Mihail Frăţilescu, President of the Court of Appeal Ploieşti,

Judge Cristinel Grosu, President of the Court of Appeal Suceava,

Judge Mircea Creţu, President of the Court of Appeal Timişoara,

Judge Andreea Ciucă, President of the Court of Appeal Târgu-Mureş,

Judge General Major Victor Chiţu, President of the Military Court of Appeal Bucharest.