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To the International Association of Judges – IAJ-UIM

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 – with the headquarter in Bucharest, Regina Elisabeta Boulevard no. 53, District 5, e-mail amr@asociatia-magistratilor.ro, tax registration code 11760036 – legally represented by Judge dr. Andreea Ciucă - President, sends the following

ANSWERS TO THE SECOND STUDY COMMISSION QUESTIONNAIRE “VIRTUAL TRIALS IN CIVIL PROCEEDINGS”

1) Did your jurisdiction offer complete or partial virtual civil trials or hearings before the Pandemic? If yes, please describe what was offered and how often the offer was exercised?

Even before the pandemic, the vast majority of courts were using computer applications related to the electronic file. Specifically, these are two computer applications created by the own effort of a court of appeal and a court: "Electronic File" and "TDS" (Secure Document Submission). These applications have been taken over, implemented and developed by many courts in the country since 2013.

The electronic file gives access for judges, parties and lawyers to all the documents in the file, electronically, by using a password allocated for this purpose by the court, under data security conditions. The electronic file ensures the decongestion and streamlining of the court's activity and creates the premises for the speedy adjudication of the cases. The parties or their lawyers may also submit documents to the file online.

Searching by the file number, the parties and their lawyers can obtain information about its route, the date of registration of the file, the subject matter, the procedural stage, the trial terms and the measures ordered by the court. Therefore, the electronic file allows the visualization of the documents in the file, including those drawn up by the court.

Thus, the electronic file ensures a greater efficiency of access to justice and of the right to defence, without the parties and their lawyers having to go to court to study the file.

One of the two computer applications created and implemented by the courts allows, in addition, the summoning and service of procedural documents by e-mail. This application is commonly used by instances in daily activity. Thus, there is a rapid and efficient communication with the parties, with positive effects on the speedy adjudication of cases. The use of the application effectively contributes to the reduction of the time allocated for the issuance of procedural

documents, as well as to the reduction of the consumables used (paper, toner), as well as of the postal fees related to the dispatch.

Concrete instructions for the operation of the two computer applications regarding the electronic file are published on the websites of the courts that use them. These instructions shall also include information on the use of computer applications by the parties¹.

Another aspect is the use of the videoconferencing system in civil cases, to the extent that the parties agreed and if the judge considered that this modality ensured compliance with the principles governing the civil process.

2) Did your jurisdiction offer civil virtual trials or hearings during the Pandemic? If yes, was there a change in how, what and when it was offered? Were protocols published? Also, if yes, when were the virtual trials/hearings offered and what was the uptake?

It should also be noted that in April, 2021 a separate law was adopted for the judiciary on some measures in the field of justice in the context of the COVID-19 pandemic. It is about Law no. 114 which regulates the possibility of taking / disposing of measures necessary for the functioning of justice as a public service in order to prevent and combat the effects of the COVID-19 pandemic.

The courts have used many times the videoconference systems for court hearings. In civil cases it is possible with the approval of the parties or of their representatives.

There have been also used fast means of communication, through the electronic file.

All these steps had an effect, in the sense that there were no significant negative changes regarding the length of proceedings during the pandemic.

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).

As we mentioned below, there are a large number of courts that use a software 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.

¹ The documents published on the websites of the courts using the electronic file are entitled "Instructions for use of the Electronic File application".

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. 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.

In some courts it has been recommended, by the management board 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.

The activity of the courts continued during the state of emergency in the manner recommended by the European Association of Judges², i.e., through electronic means. This situation was obviously facilitated by the use of the two computer applications regarding the electronic file, mentioned in the answer to question no. 1. The courts continued to receive, in this way, summonses, requests for appeals, documents in cases, requests, etc.

These measures have had the effect of improving communication, transparency and access to justice. The use of IT applications regarding the electronic file implied a minimum consumption of resources and time, no longer being necessary to move the parties and lawyers to the court in order to consult the file in the archive and/or to request copies of the documents in the files. At the same time, the use of the electronic file ensured both the decongestion and streamlining of the activity in the archives during the pandemic, as well as the avoidance of the increase of the average duration of solving the cases.

The current use of the electronic file has received very good feedback, both from judges and court staff, as well as from lawyers, as it has contributed to the observance of social distancing, in the context of measures to limit the spread of COVID-19 infection.

3) Presuming that civil virtual trials were offered, was there any improvements made in the technology/software that the government provided? How were documents and exhibits managed?

² see, Jose Igreja Matos, President of the European Association of Judges (EAJ-AEM), article "Being a judge in times of pandemic" (<https://eulawlive.com/weekend-edition/weekend-edition-no12/>)

The Superior Council of Magistracy (SCM) carried out a project regarding professional training and consolidating the capacity at the level of the judiciary, financed within the Norwegian Financial Mechanism 2014-2021, intended for consolidating the administrative capacity and the efficiency of the judiciary by developing the technical and IT infrastructure. Within this project, the courts benefited from 100 videoconference integrated systems in 2021.

A significant development is that **more and more courts have implemented and use the electronic file created and implemented exclusively through the efforts of the courts**. This software allows the parties and lawyers to access the file using the password granted by the court for this purpose. Therefore, the parties and lawyers no longer have to go to court to study the files. The software offers also the possibility of quickly communicating the notifications and others documents by the court, via e-mail, with receipt acknowledgement.

As already pointed out, both the judges and the parties have access to all the documents in the electronic file, that is, to the documents submitted by each of the parties and to the documents issued by the court. So, evidence with documents submitted by one party is accessible to all the other parties in the file, based on the access password assigned by the court. Also, the statements of the witnesses, as recorded in the public hearing, can be found in the electronic file. As well as the expert reports, etc.

Summoning the parties and serving procedural documents is also done electronically, through the computer application "TDS" (Secure Document Reference), which the registrar uses. The email through which the document is sent contains a link that the party must access in order to actually see the document sent. Accessing the link generates at the same time a message sent to the application used by the clerk, in the sense that the link has been accessed. This implicitly signifies that the document was opened by the party and that it became aware of its existence.

Also, the parties have the possibility to request and obtain, electronically, certified copies of court decisions, signed electronically, without having to appear before the court for this purpose.

As some concrete problems have been reported regarding the use of the computer applications "Electronic File" and "TDS" (Send Secure Document), the IT specialists from the courts have found technical solutions to eliminate these problems. In this respect, corrections were made to the IT applications, as a result of the legal solutions given by the court managements, after consulting the judges and clerks.

For this purpose, there were also consultations between the IT specialists from the courts that use these applications. At the same time, online meetings were organized between the courts, especially with the participation of judges and IT specialists from the two courts who created the two IT applications above. They discussed the punctual malfunctions of the software and debated the possible solutions, which were then developed by the IT specialists.

In this way, court managements, judges, clerks and IT specialists have effectively contributed to the development of software on virtual civil processes. We also mention that the National School of Clerks has organized seminars for clerks from courts across the country, with the theme "Taking over and using records in the TDS (Send Secure Document) application"³.

4) *What does the future hold in your jurisdiction with respect to the continuation of virtual trials? What are the issues and or benefits that have arisen?*

● On the occasion of the meetings held with the leadership of the Ministry of Justice and with the representatives of the legislative power, the Romanian Magistrates' Association (AMR) requested the taking of the necessary measures for the national extension of the electronic file software.

AMR presented the existing factual situation in the courts and pointed out that **the electronic file software was created and implemented exclusively through the efforts of the courts, given that the Ministry of Justice did not provide support in this regard**. Many courts of appeal use this software. In fact, two such software have been created and developed across the country.

However, as AMR pointed out a unified approach is needed at the national level and the Ministry of Justice must take action as soon as possible. Such an approach is both in the interest of the judiciary as well as in the interest of the citizens. The mission of the Ministry of Justice is largely simplified thanks to the effort and dedication of the staff of the courts of appeal who created and implemented the electronic file.

Although at the beginning of 2021, the Ministry of Justice announced that until the end of the year we will have the electronic file at national level, the measure remained a statement only.

● Among the effects of working from home, as measure implemented during the pandemic, there is also the acceleration of the demarches regarding the providing of the courts with IT equipment (laptops, computers, printers, videoconference systems etc.). This IT equipment was required for carrying out the specific activities of the courts adapted to the new social reality. For example, we refer to the access of judges to the electronic file for preparing the hearings and for writing the reasoning of the decisions. We also refer to the possibility of organizing the court hearings using videoconference systems or to the possibility organizing professional training activities using videoconference system or online system etc.

● Unquestionably, the use of the electronic means to which we referred have had beneficial effects, both in terms of facilitating the way in which the parties and their lawyers exercise their

³ For example, in 2021, two training sessions were held in this area, aimed at court clerks across the country.



rights, and in terms of simplifying procedures, reducing costs and the length of judicial proceedings.

On the other hand, as our association has repeatedly argued, in order to avoid non-unitary practices in the use of virtual means in the civil process, legislative changes are needed. It is also necessary to extend the IT applications by depriving the electronic file at national level, through the effective involvement of the Information Technology Directorate of the Ministry of Justice.

With regard to the legislative changes, we mention two of them that took place recently:

i) In June 2022, an article was inserted in the Code of Civil Procedure⁴, with the following content: *"The service of rulings will be made, ex officio, by electronic mail if the party has indicated to the court the appropriate data for this purpose directly or at the express request of the court during the trial. The communication will be accompanied by the extended electronic signature of the court (...). Court decisions shall be deemed to have been communicated at the time when they have received a message from the system used that they have reached the recipient according to the data provided by him."*

In fact, the legislator has transposed into law the practice of some courts regarding the electronic communication of court decisions.

ii) In July 2022, a new law⁵ was adopted which in Article 2 paragraph 1 provides the following: *"In civil cases, when possible, with the agreement of the parties, the courts may decide that the hearings shall be conducted by means of audio-visual telecommunication which allow the verification of the identity of the parties and guarantee the security, integrity, confidentiality and quality of the transmission, ordering the necessary measures for this purpose."*

In this situation, too, the legislator took into account the practice of the courts in conducting court hearings in compliance with the principles governing the civil process.

5) *Has or is research being done in your jurisdiction to help ameliorate some of the concerns that have arisen with virtual trials?*

See the answer to question 3.

6) *How did the digitally excluded people in your jurisdictions have access to justice and specifically to virtual trials during the Pandemic?*

⁴ The article in question is art. 154¹, introduced in the Code of Civil Procedure by Law no. 192/2022.

⁵ Law no. 220/2022 on the adapted capitalization of some proven beneficial measures for the institutions in the field of justice established during the declared state of alert in order to prevent and combat the effects of the COVID-19 pandemic.



Digitally-excluded people can lack skills, confidence and motivation, along with having limited or no access to equipment and connectivity. This can create additional layers of social exclusion and exacerbate social and economic problems. Getting online is usually life-enhancing and it can be life-changing!⁶

Specifically, with regard to the communication of documents to the parties by electronic means, several aspects are relevant.

If the party has indicated an e-mail address, he is sent an access link through which he can view the documents served on him by the court. The opening of this link is the confirmation of receipt of the document. The status of sending the document can be viewed from the Transmissions Report - List of referrals generated by the computer application "TDS" (Send Secure Document).

This list shall contain the following information:

- the date and time the document was sent;
- the type of document sent;
- the number of the file for which the document is sent;
- the recipient of the document;
- the date and time when the recipient accessed the document sent. Both the date and time are automatically recorded when the party opens the link sent by e-mail, without the need for a validation from the recipient.

If within 3 days the computer application has not confirmed the viewing of the document by the recipient, the communication by electronic means is not considered fulfilled. In this situation, the electronic means of communication are waived and the document is sent through the postal service or through the procedural agent of the court.

The latter method of service of documents by the court is also used in the situation in which the parties have not indicated an e-mail address, as well as in the situation in which the parties request that the transmission of documents should not be done electronically.

Similarly, if the parties do not have adequate electronic means, the court hearing is not conducted by videoconferencing system. As indicated before, the use of videoconferencing systems in civil proceedings requires the agreement of all parties. If one of the parties does not have the technical means, it shall not give its consent. Therefore, in such cases, civil trials take place at the court premises with the physical presence of the parties and their lawyers.

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⁶ <https://www.citizenonline.org.uk/digital-inclusion/>