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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 Andreea Ciucă, PhD - President, sends the following

ANSWERS TO THE SECOND STUDY COMMISSION QUESTIONNAIRE
"Written submissions – when do they turn from a help to a hindrance?"

1. Are there limits for written submissions in civil litigations in your jurisdiction in terms of the maximum length?

The Civil Procedure Code stipulates that the subject matter and the limits of the lawsuit are determined by the parties' claims and defences (Article 9(2) Civil Procedure Code). However, it does not provide for limits on the number of pages of documents submitted by the parties to the file, nor on the number and extent of the attached documents.

As regards applications addressed to the court in person or through a representative, the law provides only that they may also be submitted in electronic form, if the conditions provided by law are met (Article 148(2), (3) Civil Procedure Code). These provisions apply accordingly also in cases where the Code of Civil Procedure stipulates that the written form of the pleadings, defences or submissions of the parties or other pleadings addressed to the court must be submitted in writing.

If the hearing of the merits has been ordered to take place at a different time, the judge may ask the parties to draw up notes on their arguments and submit them to the file at least 5 days before the time set for the hearing of the merits, without prejudice to their right to make oral submissions (Article 244 of the Civil Procedure Code). If it deems it necessary, the court may ask the parties, at the close of the hearing, to submit additions to these notes. The parties may also file such supplements if they have not been requested to do so by the court (Article 394(2) Civil Procedure Code).

According to Article 383 of the Civil Procedure Code, after the administration of all the evidence authorized by the court, the plaintiff, through his lawyer, shall draw up written pleadings in

support of his claims, which he shall send or hand them directly, under signature, to the other parties in the proceedings and, where appropriate, to the Public Prosecutor's Office. After receipt of the written submissions of the claimant, each party, through its lawyer, shall draw up its own written submissions and communicate them to the claimant, to the other parties and, where appropriate, to the public prosecutor.

Also, when the court rejects the party's request to adjourn the case for lack of defence, it will postpone the judgment, at the party's request, in order to give him the opportunity to submit written notes (Art. 222 (2) of the Civil Procedure Code).

The Civil Procedure Code stipulates that the judge has the duty to endeavour, by all legal means, to prevent any error in ascertaining the truth of the case, on the basis of the establishment of the facts and the correct application of the law, in order to render a thorough and lawful judgment. To this end, the judge has the right to ask the parties to present explanations orally or in writing with regard to the factual situation and the legal grounds on which the parties rely (Art. 22 of the Civil Procedure Code).

It follows, therefore, that there is no limit on the extent of the claims, pleadings, notes, written submissions of the parties or explanations required by the court.

Moreover, in accordance with Art. 5(1) of the Civil Procedure Code, the court is obliged to receive and record in the case file any request made by the parties (thus including the written pleadings, written submissions and notes that they intend to formulate with regard to their oral submissions in a particular hearing).

These documents are a tool for summarizing and structuring the arguments by which the parties support the correct and coherent conduct of the civil proceedings[1].

However, as there is no limit to the length of applications, pleadings, written submissions, notes and explanations, in many cases the volume of these documents is large or very large. And the fact that documents can also be sent to the court in electronic format encourages the parties to detail their arguments, even if sometimes excessively and/or with repetition of the same points.

In addition, colour scanned documents with a high scanning resolution are often attached, which leads to overloading the ECRIS national electronic database that all courts work with.

All documents in each file are entered into the ECRIS database.

There courts use a computer program 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

[1] Mihai Dinu, The written notes in the New Code of Civil Procedure, between actuality and obsolescence, https://www.juridice.ro/279413/notele-scrise-in-ncpc-intre-actualitate-si-desuetudine.html

and entered in the ECRIS software, from where they are automatically taken and included in the electronic file.

When the documents attached by the parties to the pleadings, written submissions, notes or explanations take up a large amount of space (we are referring in particular to colour scanned, high-resolution documents), this situation creates difficulties for the courts. Thus, in the situation of electronic transfer of the case file, which has to be done in the ECRIS application, from the database of the first court to the database of the appellate court, very large attachments cannot be transferred (because they overload the database), requiring the intervention of IT specialists.

That is why several courts have brought this fact to the attention of bar associations, asking lawyers to have the documents they attach to pleadings, written conclusions, notes or explanations scanned in black and white and with low scan resolution.

2. Are there time limits for filing written submissions?

As stated above, the notes relating to the parties' submissions must be lodged at least 5 days before the time-limit set for the hearing on the merits of the case. The court may require the parties to file additional notes. The parties may file such supplements even if they have not been requested by the court.

The explanations requested by the judge as to the facts of the case and the pleas of law relied on by the parties shall be submitted by the time-limit set by the court.

The written statements in support of the parties' claims shall be drawn up after all the evidence accepted by the court has been heard.

Written pleadings are different from defence notes, which are one-off reactions to certain actions of the opposing party or to documents submitted. Written pleadings are also lodged when it is considered that it is necessary to go into a particular matter in greater detail, which is essential for a fair resolution of the case. The drafting of written pleadings begins in the course of the proceedings and is adjusted as the case progresses.

The drafting of the written conclusions is of great help in approaching the case, as new ideas, new arguments may emerge, thus avoiding the emergence of ideas too late or the omission of important aspects[2].

In any event, after the close of the hearing, the parties may not file any further pleading in the case file, under penalty of being disregarded (Art. 394 of the Civil Procedure Code).

[2] Andreea Coman, Permanent drafting of written conclusions, https://www.juridice.ro/669714/redactarea-permanenta-a-concluziilor-scrise.html

Pleadings in which the plaintiff amends his claim or proposes new evidence may be lodged on the case-file, under penalty of preclusion, only until the first time-limit at which the plaintiff is lawfully summoned.

The modification of the statement of claim beyond the above-mentioned time limit may only take place with the express consent of all parties (Art. 204(1), (3) of the Civil Procedure Code). The counterclaim shall be filed, under penalty of preclusion, together with the statement of defence or, if the defendant is not obliged to file a statement of defence, at the latest at the first term of the trial (Art. 209(4) of the Civil Procedure Code).

The defendant is therefore obliged to lodge a response to the application. The statement of defence is the procedural document by which the defendant defends himself in fact and in law. It must be lodged within 25 days of service of the application. In urgent cases, this time limit may be reduced by the judge, depending on the circumstances of the case, and if the defendant resides abroad, the judge will set a longer time limit, reasonable in relation to the circumstances of the case (Art. 201(1), (5), (6) of the Civil Procedure Code).

If the plaintiff amends the statement of claim, the defendant has a new time limit within which to file a statement of defence. It must be lodged at least 10 days before the time-limit set in the case (Art. 204(1) of the Civil Procedure Code).

The Constitutional Court ruled that the latter provisions are constitutional, noting that the principle of equality of arms constitutes a guarantee of the right to a fair trial which aims to create a fair procedural balance between the parties to a dispute. The Court found that the legal provisions relating to the new 10-day time limit (for filing the statement of defence in the case of amendment of the statement of claim) do not infringe the principle of equality of arms. This principle does not imply a formal equality, in the sense of regulating identical procedures regardless of the legal status or procedural quality of the parties, but a substantive equality, in the sense that through procedures, even differently regulated, to achieve procedural fairness between the parties, in other words to achieve equality of result[3].

In appeal, the time limit for filing the statement of defence is 15 days, and in second appeal the time limit is 30 days (Art. 471 para. 5, Art. 490 para. 2 C. proc. civ.).

The plaintiff may submit a reply to the statement of defence within 10 days from the date on which the statement of defence was served to him (Art. 201 para. 1 of the Code of Civil Procedure).

The legal provisions concerning the filing of the above-mentioned documents are aimed both at complying with the procedural guarantees granted by the Civil Procedure Code and at complying

[3] Constitutional Court Decision No 550/12 July 2016, para. 16

with Art. 6 ECHR. In particular, the aim is to ensure adversarial proceedings and the right of defence in civil proceedings.

3. Are there limits in terms of a maximum number of additional submissions in a case?

There are no such limits.

It should be noted, however, that a first limitation results from the parties' obligation to comply with the time limits laid down by law, summarized in point 2. Therefore, even if the parties make use of the right to file several additional submissions, they must comply with the legal time limits.

For example, the rule is that, if the plaintiff wishes to amend his statement of claim by adding additional claims or wishes to propose additional evidence, he may do so only until the first-time limit to which he is lawfully summoned (Art. 204 of the Code of Civil Procedure). By way of exception, the time limit may be exceeded, but only with the express agreement of all the parties (Art. 204(3) of the Civil Procedure Code).

In addition, failure to submit the statement of defence within the time limit provided by law entails the forfeiture of the defendant's right to propose further evidence and to invoke exceptions, except those of public policy, unless otherwise provided by law (Art. 208(2) of the Civil Procedure Code).

Likewise, after the close of the hearing, the parties may no longer submit any pleading on the case file, under penalty of being disregarded (Art. 394(3) of the Civil Procedure Code).

Failure to comply with procedural time limits is punishable by disqualification. Where a procedural right must be exercised within a certain time limit, failure to comply with that time limit entails forfeiture of the right, unless the law provides otherwise. A procedural act made after the time limit is null and void. The nullity cannot be covered if the time has expired (Art. 185(2), Art. 177(2) of the Civil Procedure Code).

Forfeiture occurs in the following cases: a) when the legislator has established a fixed time limit for the performance of a procedural act or for the exercise of a right and the party has allowed that time limit to expire; b) when the legislator has established that the exercise of a right must be made at a certain stage of the process or at a certain procedural moment and the party has not complied with this requirement; c) when the law establishes a certain order in the performance of procedural acts and the party has not complied with it[4].

[4] Maria Fodor, Civil Procedural Law, p. 34, https://www.ueb.ro/drept/ebiblioteca/old/sinteza_finala_drept_procesual_civil.pdf

A party who has missed a procedural time-limit will be reinstated only if it proves that the delay is due to well-founded reasons.

There is a second limitation. According to the case law of the High Court of Cassation and Justice, although under Article 244 of the Civil Procedure Code, the parties have the possibility to submit notes on their submissions, these notes may only concern matters that were the subject of the previous adversarial proceedings and not new matters that are additional to those that were the subject of the judicial investigation and the final proceedings of the dispute.

Thus, the defences raised directly only through written submissions cannot be taken into account, as the court cannot examine the case from the perspective of other grounds than those that were raised by the party in compliance with the conditions provided by law[5].

4. Are there rules, including penalties or cost implications, for breaches of these requirements? 5. Are these limits or requirements effective in terms of reducing the number and length of written submission and the time spent preparing for and determining a case?

See answer to question 3.

6. What is the effect of written submissions on any hearing which subsequently takes place?

According to Art. 1 of Law no. 51/1995 for the organization and practice of the legal profession, the lawyer is obliged to thoroughly study the cases entrusted to him, to appear at each term in court, according to the mandate entrusted to him, to show conscientiousness and professional probity, to plead with dignity towards the judges and the parties in the trial, to submit written conclusions or notes of the hearing whenever the nature or difficulty of the case so requires or the court so orders.

The above obligations are part of the general obligations laid down by the Code of Civil Procedure. In this regard, it is stipulated that the parties are obliged to perform the procedural acts under the conditions, in the order and within the time limits established by law or by the judge, to prove their claims and defences, to contribute to the proceedings without delay, and to contribute to the completion of the proceedings (Article 10(1) of the Civil Procedure Code).

If the parties raise claims or objections in their written pleadings, the court must submit them to the parties for discussion and then rule on them. The court shall in all proceedings be required to submit to the parties for examination all the claims, defences and points of fact or law relied on.

[5] High Court of Cassation and Justice - Administrative and Tax Litigation Section, Decision No 6928/17 December 2020

The court shall base its judgment only on factual and legal grounds, explanations or evidence that have been submitted beforehand to the adversarial debate (Art. 14(5), (6), Art. 222 of the Civil Procedure Code).

Such a perspective therefore respects the adversarial principle, which is defined by the following elements:

(a) the parties must make known to each other in due time, directly or through the court, as the case may be, the pleas of fact and law on which they base their claims and defences, as well as the evidence they intend to rely on, so that each of them can organize their defence;

(b) the parties are under an obligation to state the facts to which their claims and defences relate fairly and completely, without misrepresenting or omitting facts known to them;

(c) the parties are under an obligation to set out their own views in relation to the opposing party's assertions of factual circumstances relevant to the case;

(d) the parties shall have the right to discuss and argue any matter of fact or law raised in the course of the proceedings by any participant in the proceedings, including by the court of its own motion.

7. Comments or suggestions as to what could otherwise prove to be effective

As can be seen from the previous answers, although there is no maximum limit to the length of the pleadings, notes, submissions filed by the parties, the short time limits for filing them do not favour repeated pleadings. Likewise, the fact that the law specifically sets out the order and cycle of the parties' pleadings diminishes the possibility of repeated exchanges of pleadings, notes and submissions between the parties. This does not mean, however, that the parties may not make all the defences they consider necessary.

With regard to the sometimes large or very large number of written pleadings of the parties, the most important problem is that of overburdening judges, given the lack of human resources.

According to the Report on the State of Justice drafted by the Superior Council of Magistracy, in 2023, at the national level, there was a total volume of 3,214,079 cases, 8.12% more than in 2022. Of these, 2,077,809 cases were disposed in 2023 or 64.64%. The number of new cases

entered in 2023 reached its highest level in recent years. As of January 1, 2023, there were 4,057 judgeships filled, with 1,018 vacancies[6].

As has been emphasized, the written submissions, although in principle they pursue the points raised during the oral argument on the merits of the case, do not have to be a faithful reproduction in written form of the final pleading, but may be either a summary of it or a development of it. The importance of the written submissions on the case-file lies in the fact that they eliminate the risk that the court may omit defences or arguments set out in the final pleading, thus providing a guarantee and certain proof that the party's view of the case has been presented[7].

See also the answer to question 1 - final part.

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[6] Report on the State of Justice in 2023, p. 1, 69, https://www.csm1909.ro/ViewFile.ashx?guid=ab8ae9f9-cb62-4a9c-8b56-9932fa016648-InfoCSM
[7] Dan Surianu, Written conclusions, https://debanat.ro/2012/04/concluziile-scrise_33435.html