



**HIGH COURT
OF CASSATION AND JUSTICE
ACTIVITY REPORT
2019**

High Court of Cassation and Justice

Activity report 2019

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Preamble

The High Court of Cassation and Justice in 2019

Our intentions for the future

According to the Constitution, the High Court of Cassation and Justice performs two fundamental social functions – carrying out justice just like the other courts of law in the country and providing a uniform interpretation and application of the law using the mechanisms for jurisprudence unification. The latter constitutional role is unique and exclusive to it and is one of the keystones of the rule of law state, which must be established based on predictability and accessibility of the law. This reality has been recognized by the lawmaker and arises from the very name of the supreme court, which establishes its function as primarily a court of cassation, the supreme forum that ensures the interpretation of the law.

However, the current reality strongly contradicts the above conclusion. In the year 2019 the workload per judge of the High Court of Cassation and Justice remains comparable to that of a judge at a district court, and in terms of statistics the High Court of Cassation and Justice cannot even be compared to a Court of Appeals, never mind a supreme court. In the circumstances where the number of new-entry cases is roughly the same as the number of cases that can be disposed of during a calendar year (approximately 14,000), and the total number of cases worked (28,950) is more than double that figure, it is evident that the overload of the High Court of Cassation and Justice has already become chronic and that the progress that can be derived from purely administrative measures can only be decisive in the conditions of a new concept instated by the lawmaker concerning the role of the supreme court, especially in terms of redefining its jurisdiction. For instance, in the matter of administrative and tax litigations alone, in 2017- 2019 the number of cases increased by one-fifth, from 13,884 to 16,732.

The fact that this situation has become permanent has a fundamental impact on the role of the High Court in the matter of providing a uniform interpretation of the law and unifying jurisprudence, and forces both the institutional limits until which

the High Court of Cassation and Justice can function effectively and the ability of its judges, assistant magistrates and clerks to manage the situation and the workload, thus impacting the fundamental rights of citizens who are using justice as a public service; it is physically impossible to issue decisions quickly in all cases brought before the Court. So while the High Court preserves its high standards for the issued decisions and its judges are an elite in terms of professional skill and ethics, the quality of the act of justice and the public perception of the institution are suffering because in a wide range of litigations, from disputes between professionals to administrative litigations, the need to receive a disposition of the matter in proper time as a result of a transparent and accelerated procedure is sometimes just as important as receiving a judgment that properly reflects the facts in the matter with correct application of the relevant legal provisions.

The High Court remains committed to ambitious goals related to improving its efficiency, reducing the average time of disposition of a case and the number of situations where the full written judgment and rationale is provided later than the deadline, but the chronic presence of all the negative factors demonstrates that a sustainable solution for such issues depends on a loyal cooperation with the other powers in the State so as to properly redefine the role of the supreme court as a *primus inter pares* within the range of courts of law; this could be done primarily by redefining jurisdictions, providing a proper ratio of the so-called support staff (assistant magistrates and clerks) to one judge, and guaranteeing proper logistics. As to the latter, it only took two preliminary-chamber hearings in the Revolution Case to once again demonstrate the imperative need of a proper building for the Court, even though this situation has been improved by transferring the Chamber for Administrative and Tax Litigations and some auxiliary services to a rented space.

In spite of the difficulties, the efforts and commitment of the judges of the High Court maintained the jurisprudence unification activity within the proper parameters in 2019, ensured continued operation of the panels for appeals in the interest of the law and for preliminary ruling on questions of law, the regular participation of supreme court representatives in meetings devoted to discussing non-uniform jurisprudence at the Courts of Appeals, the constant information and continuous training of judges and assistant magistrates of the supreme court.

A prompt provision of uniform solutions for controversial legal matters pending of courts of law remains in 2020 a crucial mechanism for superior quality of the act of justice and for increasing public confidence in the justice system.

Nevertheless, disseminating judgments issued in such matters only in the ranks of professionals within the judicial system or whose work is directly connected to it – judges, prosecutors, solicitors, legal counsels, etc. – is not sufficient.

Both the appeals in the interest of the law and the judgments issued in preliminary ruling on questions of law procedure, as well as in the case-by-case jurisprudence of the supreme court, should also constitute a mechanism that prevents disputes in society, especially those that oppose private individuals, citizens, to the State or public entities. The need to connect administrative practices to a uniform jurisprudence that makes the law predictable and accessible was also noted by the Mechanism of

Cooperation and Verification as a crucial approach to prevent corruption. At the same time, attaining such a goal would also lead to decreasing the number of litigations in this matter, just like the possibility to reasonably anticipate the result of a legal action owing to uniform treatment of similar cases would be of a nature to reduce the number of litigations, including between private individuals, and also reduce the negative effects of court overloading in the medium and long term.

In this context, posting all judgments in the matter of appeals in the interest of the law and in the matter of preliminary ruling on questions of law on the website of the High Court of Cassation and Justice, as well as another approximately 5,500 decisions seen as most relevant in terms of the examined points of law – in summary and over 140,000 judgments in full anonymized text creates the basis for the dissemination of the jurisprudence of the High Court not only within the judicial system but also and especially outside this system, to the final benefit of the citizens who are served by this public service. It remains as a challenge for 2020 to consolidate the jurisprudence of the supreme court and make available to the public compendia per matters of law or matters of high interest, using the website, the High Court's own publications or social networks insofar as such undertakings logistically feasible, especially by properly resizing the organization chart of the supreme court in terms of number of assistant magistrates and clerks, which would make possible the undertaking of new responsibilities in the Department for Legislation, Research, Documentation and Legal IT.

The High Court of Cassation and Justice remains the institution that ensures the consistency and balance of the judicial system, even in less fortunate circumstances. Emblematic to this effect in 2019 was the work of the Criminal Chamber. Faced with great difficulties, mainly generated by the administrative changes brought by the adoption of laws of the judiciary and decisions by the Constitutional Court in matters related to jurisdictional conflicts, the Criminal Chamber was able to maintain its pace, provide prompt and effective measures to reorganize the work and respond to external realities by maintaining the functionality and efficiency parameters of its work and also gave an example of how to manage and work cases, by relying on high professional skill and balance and detachment from the "storm" that was raging in the public space. The fact that various judges and various judgments issued by the High Court were criticized from every direction of the political spectrum demonstrates, maybe paradoxically for some, that equality before the law and the principle that no one is above the law are values that have become axiomatic and irreversible at the supreme court, and that any interference with the work of its judges is out of the question. At the same time, a cursory look at the Court's jurisprudence shows the attention attached to observing the parties' fundamental rights, especially the right to defense, at the same time as fully connecting to the practice of the European Court of Human Rights and the Court of Justice of the European Union.

In all the Civil Chambers too, especially the Administrative and Tax Litigations Chamber, which are seeing a constant increase of the work volume, constant overload continues to affect the work of the supreme court judges; functioning as a regular court of law has overwhelmed the High Court's functioning in the matter of uniform interpretation of the law and unification of the jurisprudence, which has consequences on celerity of the trials and the quality of the act of justice not only at the High Court but in the entire judicial system, as the phenomenon inevitably propagates to the other courts of law which are also faced with the same negative factors.

As it is first among equals in the architecture of courts of law, the High Court of Cassation and Justice undertook in 2019 too its constitutional and legal role in defending the independence of the judiciary overall, including in the matter of the status of judges, and will continue to firmly exercise its legal jurisdiction in this matter during this year. The supreme court will always take action in such cases to ensure observance of the legitimate interests of the beneficiaries of justice and in ways that better protect their rights as well. In the same context we nevertheless need to note that the guarantees for the independent status of judges – including financial but also in terms of constitutionality and quality of regulations, compliance with the principle of the precedence of the Constitution and laws, the fundamental principles and values of the rule of law in the matter of lawmaking, organizing enforcement of the law and finally application of the law to a specific case – are not established in order to protect judges but precisely to protect the persons who use justice as a public service and who have the fundamental right to appear before a court of law that is independent and impartial from every point of view. In that context we continue to have issues with the minimizing of the social function performed by the judiciary, including their service pension rights, as well as public attacks on the judicial system, “media trials” or abrupt and uncorrelated changes to the laws. In 2020 the supreme court and the overall judicial system must provide proper responses to such challenges, while never losing sight of the fact that the role of any public service is primarily to serve society and the citizens.

Justice is not designed to be popular, as there will always be at least one dissatisfied party at the end of any trial, and this is possibly even more visible at the level of the highest court. Nevertheless this is not to say that the High Court of Cassation and Justice should not organize itself better, communicate better and “show” that it is providing justice in accordance to the fundamental values of a rule of law state. Quite to the contrary, as the current public perception of the judiciary requires progress to be made under all those aspects and the High Court remains ready to do everything in its power in that direction.

At the same time the supreme court invites the other branches of power to sincere and in-depth cooperation in the systemic, integrated addressing of the overall vulnerabilities of the judicial system. In 2019 the Romanian nation showed by referendum its unequivocal attachment to the values of the rule of law and an independent judiciary.

The Romanian nation should also receive a faster, more efficient justice as a public service. The High Court of Cassation and Justice invites every colleague judge to give thought to how their own activity can bring improvements in this line, invites the other branches of power to dialog and cooperation in the matters that need to be improved, and assures the Romanians that it is committed to attaining those goals and observing those values.

Bucharest, February 2020

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



Chapter I

A general overview of the High Court of Cassation and Justice

■ I.1. THE ROLE AND STRUCTURE OF THE HIGH COURT OF CASSATION AND JUSTICE – GENERAL PRESENTATION

The High Court of Cassation and Justice is the supreme court in the hierarchy of Romanian courts of law and in the institutional architecture of the Romanian State plays the primary role in exercising the judicial power.

Thus, under Art. 126 para. (1) and (3) of the Constitution of Romania, justice in Romania is provided through the agency of the High Court of Cassation and Justice and the other courts of law that are legally established; also, the High Court of Cassation and Justice provides the uniform interpretation and application of the law on the entire territory of the country by the courts of law – the crucial premise for performing justice at parameters of quality and efficiency that ensure legal security for persons and their assets.

In exercising these two Constitutional functions the High Court of Cassation and Justice is organized, under Art. 19 para. (2) and (2¹) of Law no. 304/2004 as republished with subsequent amendments and supplements, into 4 Chambers – 1st Civil Chamber, IInd Civil Chamber, Criminal Chamber, Chamber for Administrative and Tax Litigations – and the Joined Chambers which has its own jurisdiction.

Also operating as part of the High Court of Cassation and Justice are:

- the Panel for Appeals in the Interest of the Law;
- the Panel for Preliminary Ruling on Questions of Law;
- the Panels of 5 Judges.

■ I.2. MANAGEMENT OF THE HIGH COURT OF CASSATION AND JUSTICE

According to Art. 28 para. (1) of Law no. 304/2004 as republished with subsequent amendments and supplements, the management of the High Court of Cassation and Justice shall be exercised by the President, two Vice-presidents and the Leading Board.

1.2.1. *The President of the High Court of Cassation and Justice*

In 2019 the position of President of the High Court of Cassation and Justice was exercised by **Judge Cristina Iulia Tarcea** (between January 1st and September 14th, 2019) and **Judge Corina-Alina Corbu**, as of September 16th, 2019.

The President of the High Court of Cassation and Justice provides the general management of the supreme court, sits in court for trials, is the representative of the judiciary as a power and a lawful member of the Superior Council of Magistracy. The responsibilities of the President, in Romania and abroad, are exercised in accordance with the provisions of Law no. 304/2004, Law no. 303/2004, Law no. 317/2004 and the Regulation on Administrative Organization and Functioning of the High Court of Cassation and Justice.



1.2.2. The Vice-presidents of the High Court of Cassation and Justice

In 2019 the position of Vice-president of the High Court of Cassation and Justice in charge of civil matters was exercised by **Judge Gabriela Elena Bogasiu**, and the position of Vice-president in charge of criminal matters was exercised by **Judge Ilie Iulian Dragomir**.

In 2019 the Vice-presidents of the High Court of Cassation and Justice exercised coordination responsibilities as stipulated in the Regulation on Administrative Organization and Functioning of the High Court, represented the supreme court in meetings for the unification of jurisprudence organized at national level by the National Institute of Magistracy and also sat in court.

1.2.3. The Leading Board of the High Court of Cassation and Justice

Under Art. 28 para. (3) of the Law for the Organization of the Judiciary the President, the Vice-presidents and two judges from each Chamber, elected for a tenure of 3 years by the General Assembly of Judges, will constitute the Leading Board of the High Court of Cassation and Justice.

In 2019 the Leading Board of the High Court of Cassation and Justice was mainly called upon to engage in discussing and approving the organizational steps required primarily by implementation of the new amendments to the laws of the judiciary and the decisions issued by the Constitutional Court.

Thus in 2019 the Leading Board was called for 34 meetings and adopted 266 decisions on the activity of the Chambers of the High Court of Cassation and Justice, the activity of the Panels of 5 Judges and also general matters concerning the functioning of the Court.

1.2.4. The General Assembly of Judges of the High Court of Cassation and Justice

The General Assembly of Judges is constituted by all the judges in office with the High Court of Cassation and Justice.

In 2019 the General Assembly of Judges of the High Court of Cassation and Justice adopted 3 decisions. The President of the High Court of Cassation and Justice called General Assembly of Judges to:

- approve the Activity Report of the High Court of Cassation and Justice for 2018;
- approve the budget of the High Court of Cassation and Justice for 2019;
- elect the members of the Leading Board of the High Court of Cassation and Justice.

1.2.5. The Management of the Chambers of the High Court of Cassation and Justice

Ist Civil Chamber – in 2019 the position of President of the Ist Civil Chamber was exercised by **Judge Laura Mihaela Ivanovici**;

IInd Civil Chamber – in 2019 the position of President of the IInd Civil Chamber was exercised by **Judge Eugenia Voicheci** between 1 January and 10 December 2019 and then by delegate **Judge Marian Budă** between 11 and 31 December 2019;

Criminal Chamber – in 2019 the position of President of the Criminal Chamber was exercised by **Judge Daniel Grădinaru**;

Chamber for Administrative and Tax Litigations – in 2019 the position of President of the Chamber for Administrative and Tax Litigations was exercised by **Judge Corina Alina Corbu** between 1 January and 15 September 2019 and then by delegate **Judge Ionel Barbă** between 16 September and 1 December 2019. Between 1 and 31 December the position was exercised by **Judge Angelica Denisa Stănișor**.

■ I.3. THE HIGH COURT OF CASSATION AND JUSTICE IN FIGURES

I.3.1. Human and Financial Resources in figures

HCCJ Budget 150.352.000 ron	Judicial fees received 3.337.662,16 ron
109 Judges in office	119 Assistant magistrates
169 Specialist ancillary staff	126 Other categories of personnel

ACTIVITY AS A COURT OF LAW IN FIGURES

GENERAL VOLUME

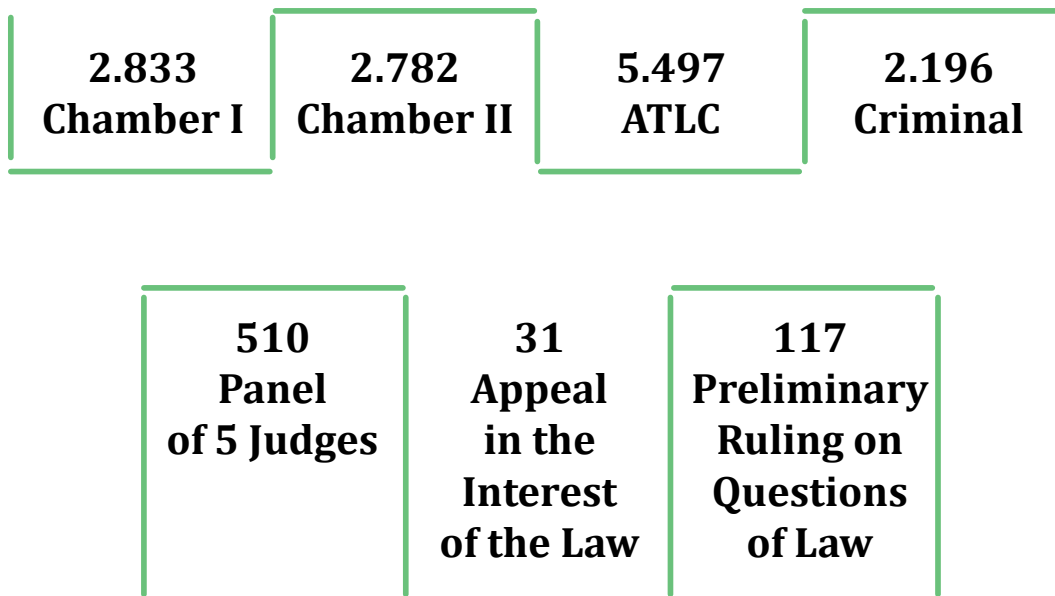
28.950

Cases on the docket

4.026 Chamber I	4.560 Chamber II	16.732 ATLC	2.709 Criminal
745 Panel of 5 Judges	40 Appeal in the Interest of the Law	138 Preliminary Ruling on Questions of Law	

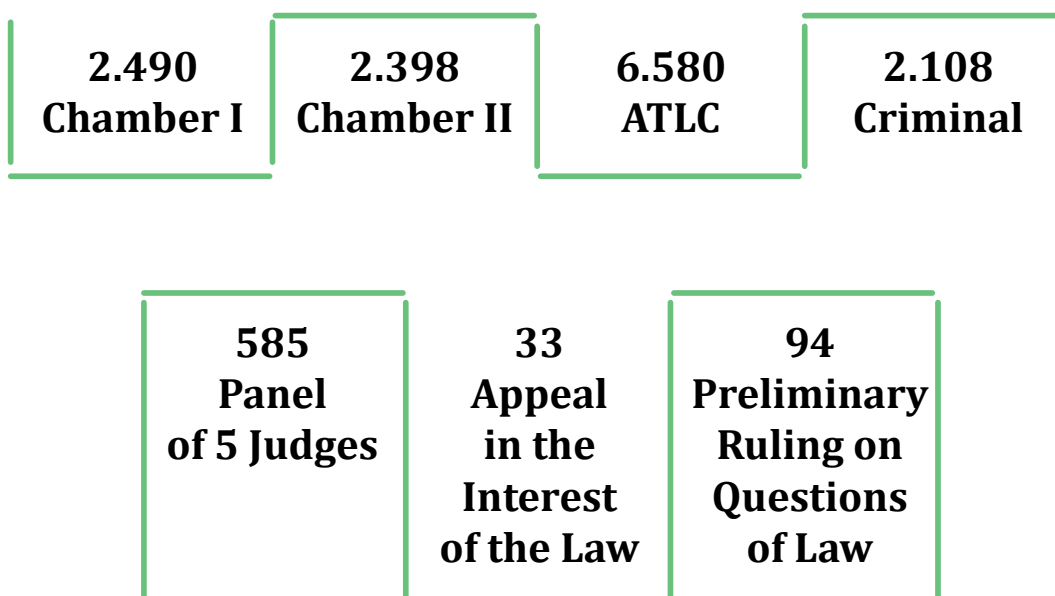
13.966

NEW-ENTRY CASES



14.286

CASES DISPOSED OF



1.3.2. General volume of activity at the supreme court

In 2019 the docket of the High Court of Cassation and Justice had **28,950** cases, as compared to **32,431** in 2018, therefore a decrease by **3,481** cases.

As for the number of new-entry cases in 2019 the High Court of Cassation and Justice registered **13,966** cases as compared to **19,723** in 2018, therefore an increase of **5,757** cases.

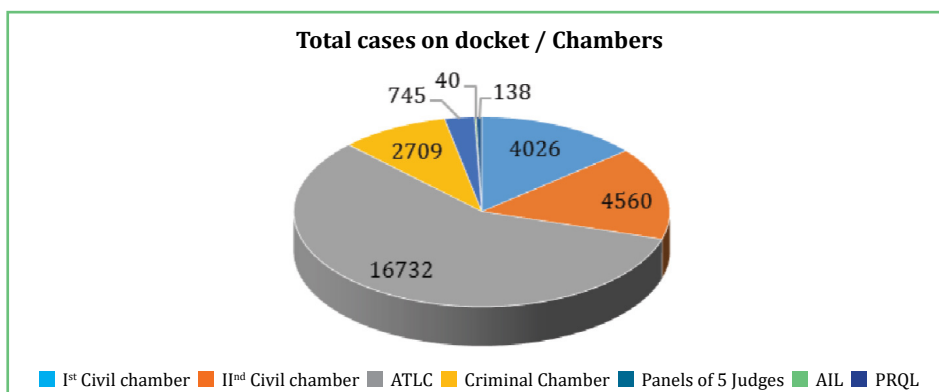
As for the number of cases disposed of in 2019, it is noted that the High Court of Cassation and Justice disposed of **14,286** cases.

The cases remaining on the docket of the High Court of Cassation and Justice at the end of 2019 amounted to **14,664**.

Structure of the volume of activity per Chambers

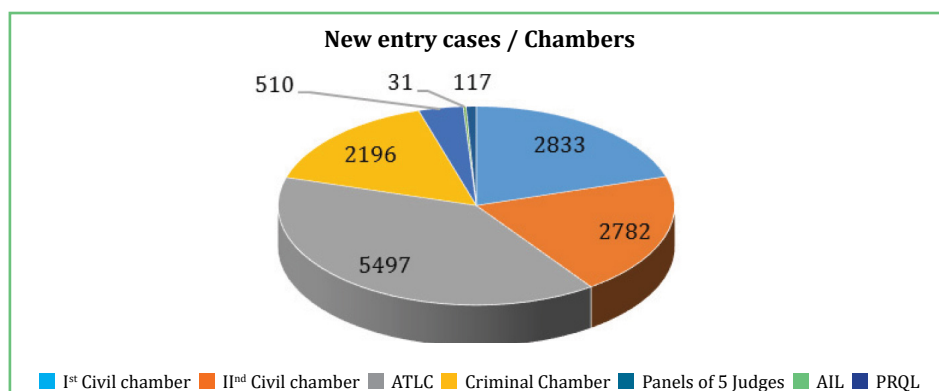
Cases on the docket

Of the total number of cases on the docket of the High Court of Cassation and Justice in 2019, **4,026** were at the Ist Civil Chamber, **4,560** were at the IInd Civil Chamber, **16,732** were at the Administrative and Tax Litigations Chamber, **2,709** were at the Criminal Chamber, **745** were at the Panels of 5 Judges, **40** were at the Panels for Appeals in the Interest of the Law and **138** were at the Panels for Preliminary Ruling on Questions of Law.



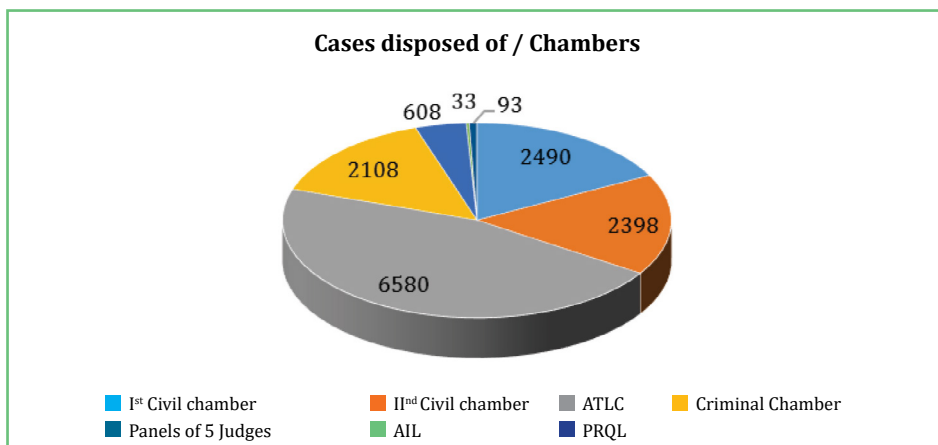
New-entry cases

Of the total number of new-entry cases in 2019, **2,833** were registered with the Ist Civil Chamber, **2,782** with the IInd Civil Chamber, **5,497** with the Administrative and Tax Litigations Chamber, **2,196** with the Criminal Chamber, **510** with the Panels of 5 Judges, **31** with the Panels for Appeals in the Interest of the Law and **117** with the Panels for Preliminary Ruling on Questions of Law.



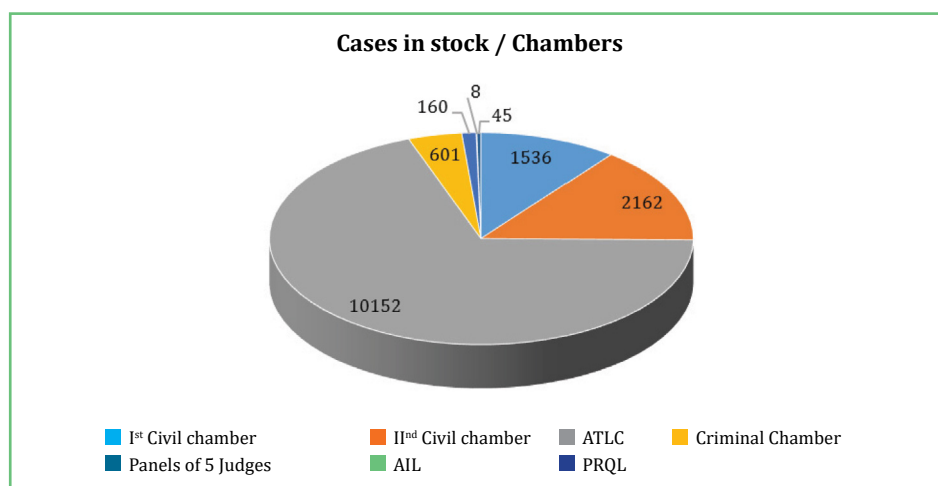
*Cases disposed of**

Of the total number of cases disposed of in 2019, **2,490** were disposed of by the Ist Civil Chamber, **2,398** by the IInd Civil Chamber, **6,580** by the Administrative and Tax Litigations Chamber, **2,108** by the Criminal Chamber, **608** by the Panels of 5 Judges, **33** by the Panels for Appeals in the Interest of the Law and **93** by the Panels for Preliminary Ruling on Questions of Law.



Cases in stock

Of the total number of cases remained in stock at the end of 2019, **1,536** were on record with the Ist Civil Chamber, **2,162** with the IInd Civil Chamber, **10,152** with the Administrative and Tax Litigations Chamber, **601** with the Criminal Chamber, **160** with the Panels of 5 Judges, **8** with the Panels for Appeals in the Interest of the Law and **45** with the Panels for Preliminary Ruling on Questions of Law.



* For a relevance of comparisons with previous years, the collection of statistical data at the High Court of Cassation and Justice is not performed using the STATIS application. The difference between the statistical data collected by the Superior Council of Magistracy and the reports issued by the High Court of Cassation and Justice is caused by the difference in meaning of certain statistical indicators. For instance, in this Report “cases disposed of” means cases in which the High Court of Cassation and Justice issued a judgment in 2019. It is necessary to note that the Superior Council of Magistracy, that consolidates data from the entire judicial system, understands “cases disposed of” as cases closed in the ECRIS system (see Decision no. 1305/2014 of the Superior Council of Magistracy – Chamber of Judges which approved the report of the Working Group on the Efficiency of Court Activities, page 15 – www.csm1909.ro). Thus, the different way to collect statistical data can cause changes in relevant indicators for the evaluation of activities (cases on the docket, stock, efficiency, et. al.).



Chapter II

Ist Civil Chamber

■ II.1. JURISDICTION

Under Art. 21 para. (1) of Law no. 304/2004, the Ist Civil Chamber tries appeals on law brought against judgments issued by Courts of Appeal and other judgments as well in cases stipulated by law, and appeals on law brought against judgments that are not final or judicial acts of any nature that cannot be challenged any other way and the trial itself was interrupted before Courts of Appeal.

Also, under Art. 23 para. (1) of the same law, the Ist Civil Chamber shall dispose of: review requests in cases stipulated by law, contestations for annulment, requests for transfer of the trial, for the grounds provided by the Code of Civil Procedure; conflicts of jurisdiction in cases stipulated by law, and any other requests ascribed to its jurisdiction by law.

Under Art. 21 para. (2) and (3) of Law no. 304/2004, a judgment rejecting a request to file an unconstitutionality claim, issued by the last court of law, can be challenged by appeal on law.

■ II.2. ACTIVITY VOLUME

a) *Case stock in January 2019*

In the beginning of January 2019, the Ist Civil Chamber stock amounted to **1,193** cases, as compared to **1,077** in the beginning of 2018, thus showing a rising trend.

b) *New-entry cases in 2019*

In 2019 a number of **2,833** new-entry cases were registered, a decrease from **4,367** cases in 2018. Of the total number of cases registered in 2019, 86% were registered in on the basis of the New Code of Civil Procedure and 14% on the basis of the Former Code of Civil Procedure.

The structure of new-entry cases registered on the docket of the Ist Civil Chamber in 2019, examined per stages of the trial, shows that of the total **2,833** new-entry cases, **1,616** were at the stage of appeal on law, **415** at the stage of contestation for annulment and review and **802** at the stage of trial on the merits (conflicts of jurisdiction, requests for transfer of the trial and other cases).

c) *Cases on the docket in 2019*

The Ist Civil Chamber had a total of **4,026** pending cases in 2019, a volume resulting from adding up the new-entry cases for 2019 (**2,833**) and the number of cases not finalized at the end of 2018 (**1,193**).

Of the **4,026** cases to try, **2,633** were at the stage of appeal on law, **488** at the stage of contestation for annulment and review and **905** at the stage of trial on the merits (conflicts of jurisdiction, requests for transfer of the trial and other cases).

d) *Cases disposed of in 2019*

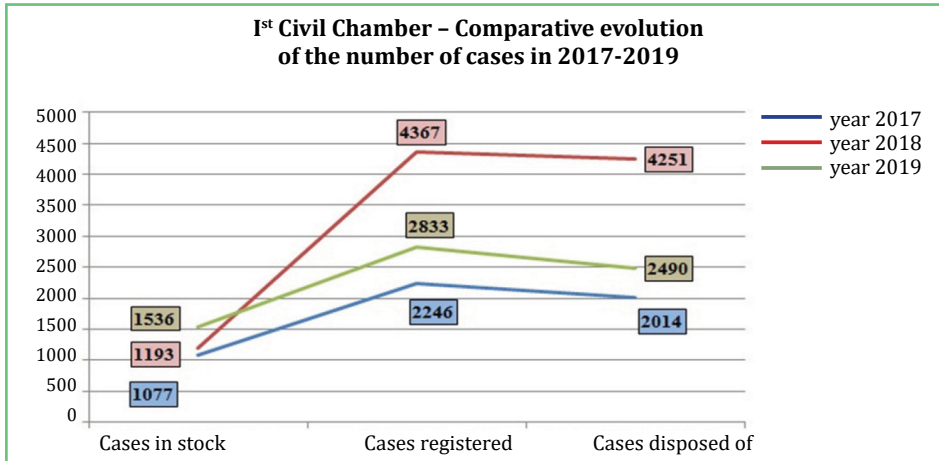
The statistics show that in 2019 a number of **2,490** were disposed of, of which **1,372** at the stage of appeal on law, **304** at the stage of contestation for annulment and review and 814 at the stage of trial on the merits (conflicts of jurisdiction, requests for transfer of the trial and other cases). Of the total number of cases disposed of, 81% were disposed of on the basis of the New Code of Civil Procedure. Also disposed of were **683** associated cases, resulting a total amount of **3,173** cases disposed of in 2019.

e) *Cases on the docket at the end of 2019*

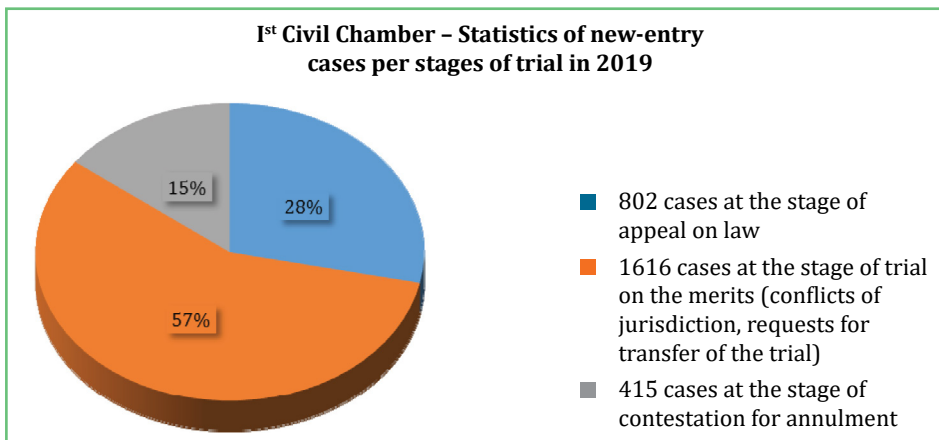
At the end of 2019 the docket of the Ist Civil Chamber still held **1,536** cases, as compared to **1,193** at the end of 2018, thus showing an increase.

Also, at the end of 2019 a number of **95** cases were suspended, a decrease from **213** at the end of 2018.

The evolution of the indicators pertaining to the Ist Civil Chamber in the past 3 years is available in the chart below:



The structure of *new-entry cases* registered on the docket of the Ist Civil Chamber in 2019, examined per stages of the trial is available in the chart below:



■ II.3. WORKLOAD PER JUDGE*, ASISTANT MAGISTRATE AND CLERK

A. *Workload per judge in the various Chambers and Panels*

In 2019 the judges of the 1st Civil Chamber sat in various trials as follows:

- a) ***As part of the panels of 3 judges*** (workload calculated for the number of 20 judges, including the President of the Chamber, who worked throughout the year):
 - workload per judge in terms of the number of cases disposed of by decisions and resolutions – final documents to divest the Court: **420** cases on average out of an average of **539** on the docket;
 - in terms of the number of decisions issued, the workload per judge was an average of **340**.
- b) ***As part of the Panels of 5 Judges***, 22 judges from the 1st Civil Chamber participated, 4 judges as full members and 18 as substitutes.
- c) ***As part of the Panels for Appeals in the Interest of the Law***, 26 judges participated, including the President of the Chamber, and 15 judges were appointed rapporteurs.
- d) ***As part of the Panels for Preliminary Ruling on Questions of Law***, 26 judges participated, including the President of the Chamber, and 25 judges were appointed rapporteurs.

B. *The workload per assistant magistrate in the establishing of panels of 3 judges* (workload calculated for the number of 17 assistant magistrates, including the chief assistant magistrate, who worked throughout the year).

In 2019 the assistant magistrates:

- handled an average of **273** cases;
- participated in the pronouncement of **227** judgments on average and also on average wrote the text of **106** decisions and **121** resolutions;
- on average wrote **75** reports on the admissibility in principle of appeals on law in the cases where they were appointed rapporteurs, according to Art. 493 para. (2) of the Code of Civil Procedure.

C. *Workload per session clerk* (calculated for the number of 14 session clerks who worked throughout the year).

In 2019 the session clerks:

- handled an average of **312** cases;
- on average wrote **171** procedural documents (session reports and others).

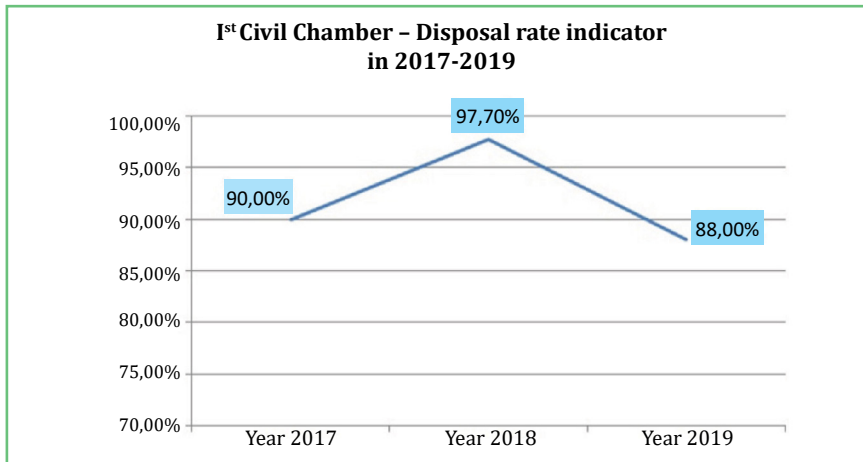
* In the reports of the High Court of Cassation and Justice the workload per judge is traditionally calculated by dividing the total number of cases handled by each Chamber by the number of judges who worked in such Chamber. For a relevance of the comparisons with the previous year it was preserved the same calculation method in this Report as well. It is nevertheless necessary to note that the Superior Council of Magistracy, that consolidates data from the entire judicial system, calculates workload per judge starting from “the number of cases brought before the supreme court on the basis of its functional jurisdiction, in the sense of trials on the merits, on appeal on law, in the panel of 3 judges or the Panel of 5 Judges, with the consequence of a multiplication of the number of cases by the number of panels of judges” (see for example the Report on the State of the Justice for 2018, page 35 - www.csml909.ro). In practical terms this means that since every member of a panel of judges is effectively undertaking, in parallel with the others, the same work for research, analysis, administration and deliberation in a case on the docket of that panel, the workload per individual judge is much higher that would result from a basic division of the number of cases by the number of judges. And indeed, at the High Court of Cassation and Justice the greater part of cases is tried by panels of judges.

■ II.4. EFFICIENCY INDICATORS

1. **Disposal rate indicator – efficiency** (ratio between the number of cases disposed of in the period of reference and the new-entry cases in the same period, expressed in percentage points).

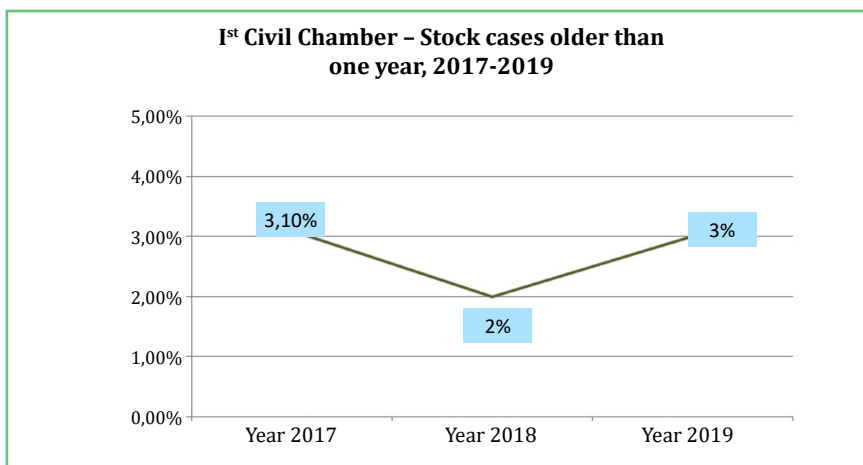
In 2019 this indicator's value was 88%, which corresponds to a score of "inefficient" (according to the score grid established by Decision no. 1305/9 December 2014 of the Superior Council of Magistracy).

The evolution of the "disposal rate indicator" in the past 3 years is shown in the chart below:



2. **Stock cases older than one year** (the number of cases on the docket at the end of the year and unfinished, older than one year, expressed in percentage points).

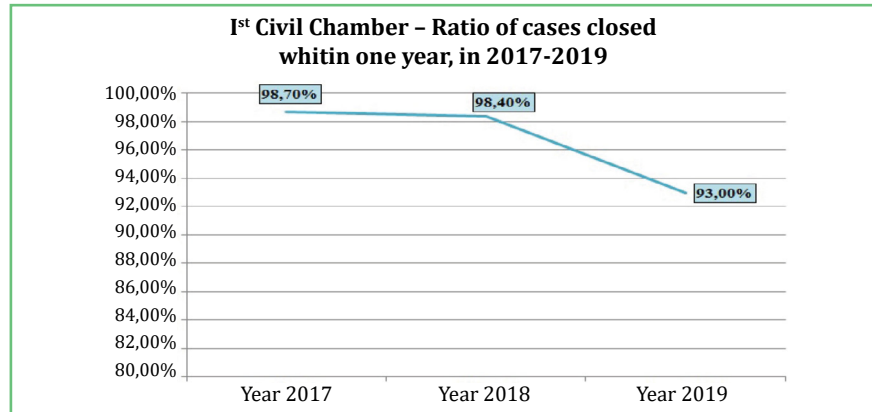
In 2019 this indicator's value was 3%, which corresponds to a score of "efficient."



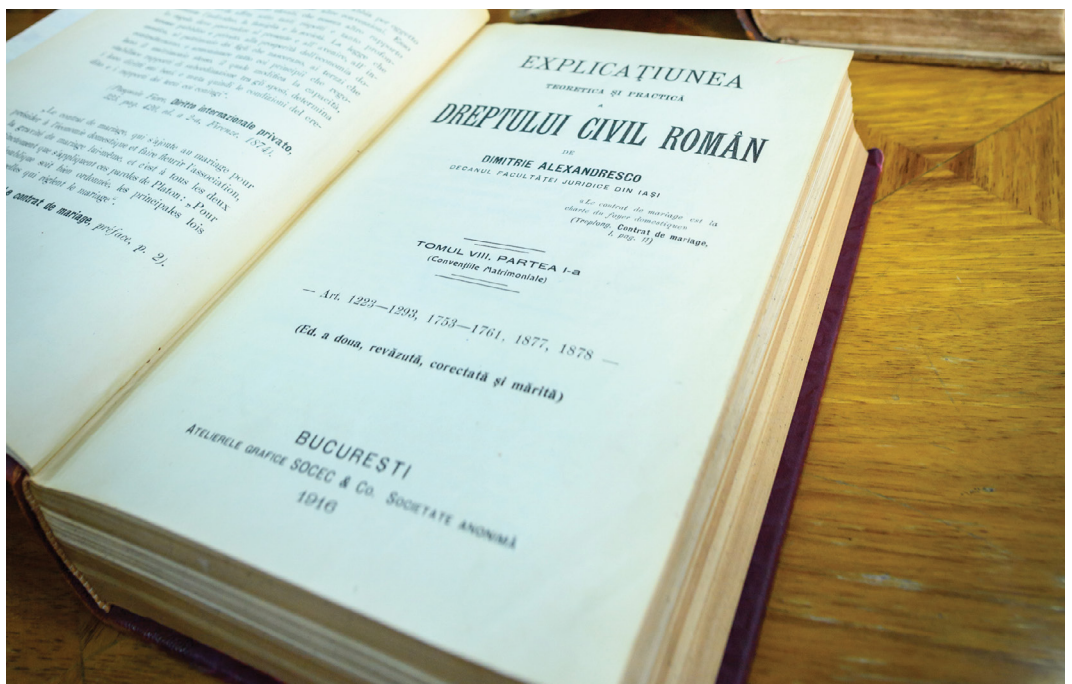
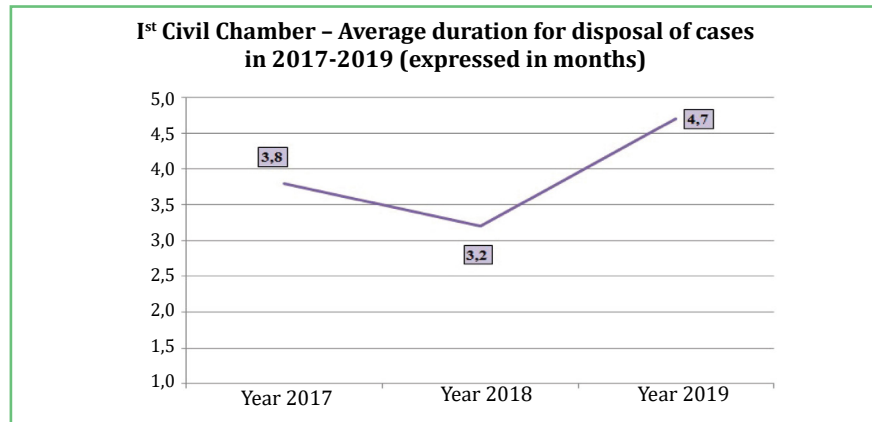
3. **The ratio of cases closed within one year** (total number of cases disposed of within one year from date of registration, compared to the total number of cases closed within one year, expressed in percentage points).

In 2019 this indicator was at 93%, which is rated as very efficient, and stays at a high level comparable with that of the previous years (98.40% in 2018 and 98.70% in 2017).

The evolution in the past 3 years of the indicator “Ratio of cases closed within one year” is shown in the chart below:



4. Average duration for disposal of cases (average time elapsed between the date of registration of the case and the date the final document is closed).
The value of this indicator for 2019 is 4.7 months, which is rated as very efficient.
The evolution of this indicator in the past 3 years is shown in the chart below:



■ II.5. STATISTICS ON THE HUMAN RESOURCES AVAILABLE TO THE 1ST CIVIL CHAMBER IN 2019

a) Judges

In the beginning of 2019, the 1st Civil Chamber had a number of 29 positions available, with nine positions vacant between 1 January and 1 June 2019 and five of those nine vacancies filled as of 1 June 2019 following the competitive examination for promotion to the High Court of Cassation and Justice.

By Decision of the Leading Board of the High Court of Cassation and Justice no. 138 of 4 June 2019, the four remaining vacancies at the 1st Civil Chamber were distributed between the other Chambers (1 position for the Criminal Chamber, 1 position for the IInd Civil Chamber, 2 positions for the Administrative and Tax Litigations Chamber).

Between 14 September 2019 and 31 December 2019, the 1st Civil Chamber had a number of 26 judges (one judge position was allocated to it temporarily in September 2019).

b) Assistant magistrates

In the beginning of 2019, the 1st Civil Chamber had a number of 22 positions for assistant magistrates, including the Chief Assistant Magistrate.

Between 4 June 2019 and 31 December 2019, the 1st Civil Chamber had a number of 19 assistant magistrates, including the Chief Assistant Magistrate.

c) Clerks

The cadre of clerks in 2019 remained constant, with a number of 34 positions.

■ II.6. PROFESSIONAL TRAINING OF THE PERSONNEL

a) Judges

In 2019 a number of nine judges attended various professional-themed activities organized by the National Institute of Magistracy and other national or international entities.

Such examples are: the conference "*The Future of Europe Based on the Rule of Law*," the seminar "*The General Court of the European Union in the Digital Era*," the activity as part of the EuRoQuod Network titled "*XIIIth National Conference of the Contact Points of the National Network*," the Forum of national magistrates from supreme courts, the conference "*Bucharest Arbitration Days*" organized by the International Commercial Arbitration Court attached to the Chamber of Commerce and Industry of Romania.

Within the Chamber seven sessions were organized with the judges, which discussed matters of law that are relevant for achieving uniform practice.

b) Assistant magistrates

The assistant magistrates joined the judges in sessions organized within the Chamber and which discussed various professional matters. Also, periodical

training was ensured during sessions with the magistrates concerning aspects of civil procedure as impacted by the new amendments and supplements brought by Law no. 310/2018 to the Law no. 134/2010 on the Code of Civil Procedure, legal novelties, matters regarding unification of practice. Three internal working sessions were held within the Chamber attended by all its assistant magistrates.

c) *Clerks*

Periodical training was ensured in the meetings with the clerks on aspects of civil procedure as impacted by the new amendments and supplements brought by Law no. 310/2018 to the Law no. 134/2010 on the Code of Civil Procedure.

Also, the standard-form resolutions were implemented, as well as judicial fee forms, standardized forms for various procedural acts, and discussions were held with the clerks during the meetings concerning the use of the new proposed working instruments.

In 2019 professional training was given to this Chamber's clerks using the National School for Clerks, in the form of eLearning – such as “*Romanian Language. Current Romanian word usage. Types of lexical and semantic mistakes – 2019,*” “*Case management in the civil trial,*” sessions which were attended by 8, and respectively 7 clerks, as well as in the form of seminars at training centers in the country on topics such as “*Non-legal Skills,*” which was attended by 1 clerk.

■ II.7. CHAMBER MANAGEMENT

1. *Qualitative analysis of the activity*

A first observation as regards the activity of the Chamber is that the case stock was higher at the end of the year 2019 – 1,536 cases as compared to 1,193 in 2018, a growth of 343 cases which shows that the efficiency of work in the Ist Civil Chamber was impacted by a number of objective factors presented below.

Also to be noted is that the volume of work in 2019 was lower than in 2018, with a drop in the number of new-entry cases (2,833 in 2019 as compared to 4,367 in 2018), a volume comparable to that of 2017, respectively 2,246 new-entry cases.

In 2019 a number of 2,490 cases were disposed of, less than the 4,251 of 2018. The number of cases disposed of in 2019 is close to that of 2017 – 2,014 cases. It must be emphasized that efficiency in 2019 was reduced by a significant number of cases being brought back on the docket, a smaller number of judges and assistant magistrates and a large number of cases subject to the admissibility procedure.

Also to be noted is that one of the consequences of Constitutional Court Decision no. 369 of 30 May 2017 which found unconstitutional the phrase: “as well as other requests that can be expressed in monetary form and in an amount of up to and including 1,000,000 RON” – was that the docket of the supreme court received a very wide variety of appeals on law in cases with disputes in very different legal matters and which require an in-depth study of the applicable doctrine and jurisprudence.

The reasons mentioned above are mainly the result of the admissibility procedure provided by Art. 493 of Law no. 134/2010 on the Code of Civil Procedure, which

means the duration needed to dispose in such matters is subject to performance of all procedural steps required by law.

It is necessary to make this point because in 2018 a number of 1790 were devolved to Courts of Appeal, and that means very high efficiency since they were all disposed of at the first hearing. This happened as a result of a judgment issued by the High Court of Cassation and Justice – Panel for Preliminary Ruling on Questions of Law, no. 18 of 1 October 2018, which stated that:

“For an uniform interpretation and application of the provisions of Art. 96 item 3, Art. 97 item 1 and Art. 483 of the Code of Civil Procedure, jurisdiction for the trial of appeals on law against judgments issued by Tribunals in cases on requests that can be expressed in monetary form and in an amount of up to and including 200,000 RON, as a result of the Constitutional Court Decision no. 369 of 30 May 2017, published in the Official Journal of Romania, Part I, no. 582 of 20 July 2017, belongs to Courts of Appeal.”

An important trend at the 1st Civil Chamber is that in 2019 its docket held 19 cases disposed of by the Panel for Preliminary Ruling on Questions of Law – which means that additional to sitting in their cases the judges had to elaborate 19 reports. Moreover, the 1st Civil Chamber judges were also appointed to take part in the Panel for Appeals in the Interest of the Law and the Panel for Preliminary Ruling on Questions of Law, thus having also to write a significant number of reports there too – 57 reports elaborated by the 1st Civil Chamber judges, for a total of 76 reports elaborated by the 1st Civil Chamber judges.

2. Steps taken in 2019

The goals set for 2019 in the 1st Civil Chamber were: improving efficiency in the work of the 1st Civil Chamber, unifying jurisprudence and administrative practices, improving professional skills for the assistant magistrates and clerks, an integrated approach to activities by achieving the goals of the High Court leadership (President and Vice-presidents) and cooperation with the other Chambers of the Court.

The managerial steps to achieve those goals in 2019 were:

- introduction of standard forms for repetitive procedural acts such as: resolutions of acceptance, the admissibility report and the introductory part of judgments and resolutions so the work of assistant magistrates and clerks is simplified – with effects upon the requirement of an accelerated trial;
- the Chamber discussed the need to streamline certain procedural acts, especially the admissibility report – a step that cuts down the time needed for the disposition of cases as it is important for the judgment to be issued in reasonable time and the full text be written within the deadline required by law;
- identification of non-uniform practice and bringing it to the discussion of the Chamber;
- posting a significant number of judgments in summary format on the High Court website, which are representative for the activity of the 1st Civil Chamber;
- a number of instruments were created to aid judges and assistant magistrates in avoiding non-uniform jurisprudence: consolidation of the jurisprudence per matters of law and developing jurisprudence sheets, creating an index of conflicts of jurisdiction that would allow a quick identification of the Chamber’s jurisprudence

in a matter, as well as other instruments that provide quicker access to judgments issued previously;

- establishing a team of assistant magistrates and supervised by the President of the Chamber who would update instruments already developed and present them in electronic format;
- training sessions for clerks and assistant magistrates needed for appropriate skills to perform procedural acts so as to improve the quality of the act of justice.

3. *Goals 2020*

The greatest desire is to increase the quality of the act of justice so the supreme court can achieve its purpose as a public service for the Romanian citizens and society.

Increasing the quality of the act of justice means ensuring observance of the lawful order, fundamental freedoms, the legitimate rights and interests of individuals and legal entities, application of the law and ensuring its supremacy.

This also involves unification of the jurisprudence, but also better communication with the other courts of law so as to orient judicial practice, both via the formal mechanisms stipulated by the Code of Civil Procedure and via meetings to identify difficulties the Courts of Appeal have come across and the use of instruments to systematize the Chamber's jurisprudence so it will be known by all judges in the country as well as by legal professionals and parties in legal actions. Achieving this goal would also contribute the transparency and predictability of the act of justice as well as to the security of the civil circuit and observance of the lawful order.

It is important to emphasize that the reasonable duration for disposition of a case and the quality of the act of justice depend on the time allocated to studying the case and to researching the doctrine and jurisprudence, to analyze the changes occurred in the law, so that judges can fulfil their jurisdictional responsibilities efficiently and professionally.

Such requirements are becoming increasingly difficult to meet in the context where the supreme court is overcrowded as a result of the lawmaker's choice to assign it first-instance jurisdiction over a very wide range of appeals on law, which occurs in parallel with another three types of procedures specific to High Court: taking part in Panels of 5 Judges in civil matters, taking part in Panels for Preliminary Ruling on Questions of Law and taking part in Panels for Appeal in the Interest of the Law.

A wider jurisdiction of the High Court requires assignment of additional human and material resources in the medium and long term, and wide-scope short-term efforts to be able to deal with the large number of cases, and that is why legal initiatives must be put forth to amend the jurisdiction of the supreme court in the sense of making it less encompassing.

In the context where its role of achieving unification of the jurisprudence is what should be taking precedence, the supreme court must propose steps to ensure performance of this responsibility which is of crucial importance for increasing the quality of the act of justice to the benefit of the citizen and society in its totality. The goals established for 2020 involve continuity from 2019, but also compliance with the requirements of current work, legal development, the requirements of society and constant adjustment to the jurisprudence developments coming from the Constitutional Court and the EU Courts.



Chapter III

IInd Civil Chamber

■ III.1. JURISDICTION

Under Art. 21 para. (1) of Law no. 304/2004, the IInd Civil Chamber tries appeals on law brought against judgments issued by Courts of Appeal and other judgments as well in cases stipulated by law, and appeals on law brought against judgments that are not final or judicial acts of any nature that cannot be challenged any other way and the trial itself was interrupted before Courts of Appeal.

Under Art. 21 para. (2) and (3) of Law no. 304/2004, a judgment rejecting a request to file an unconstitutionality claim, issued by the last court of law, can be challenged by appeal on law. The IInd Civil Chamber of the High Court of Cassation and Justice shall try, in a different panel, appeals on law brought against judgments issued by this Chamber and whereby the request to refer the case to the Constitutional Court was rejected.

Under Art. 23 para. (1) of the same law the IInd Civil Chamber shall dispose of: requests for transfer of the trial, for the ground provided by the Procedure Codes; conflicts of jurisdiction in cases stipulated by law; any other requests ascribed to its jurisdiction by law.

Another area of jurisdiction of the IInd Civil Chamber arises from the provisions of Art. 97 of Code of Civil Procedure [Law no. 134/2010], according to which the High Court of Cassation and Justice shall try appeals on law brought against judgments issued by Courts of Appeal as well as other judgments as stipulated by law; appeals in the interest of the law; requests for a preliminary ruling on questions of law and any other matters ascribed by law as part of its jurisdiction.

■ III.2. ACTIVITY VOLUME

At the end of 2019 the stock of cases was 1778 as compared to 1230 at the end of 2018, an increase of 44.55%.

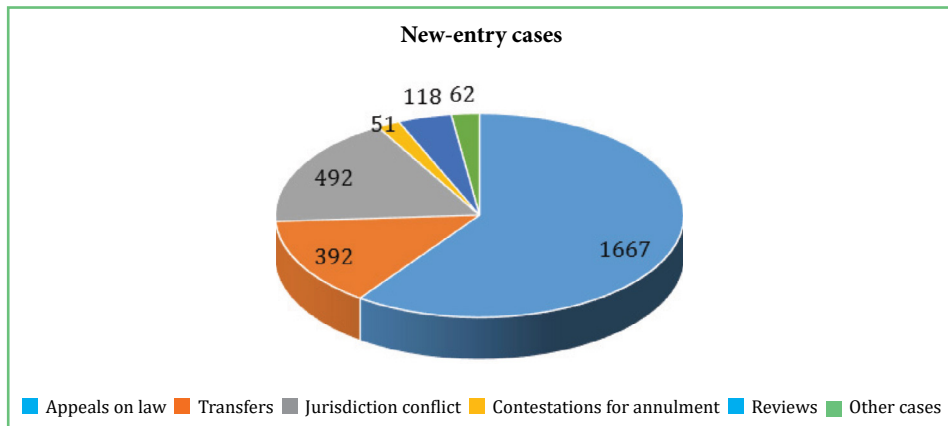
The new-entry cases at the end of 2019 numbered 2782, as compared to 5903 at the end of 2018, a decrease of 52.87%.

In 2019, 87.88% of the total registered cases were dealt under Law no. 134/2010 on the Code of Civil Procedure, as compared to 93.44% in 2018.

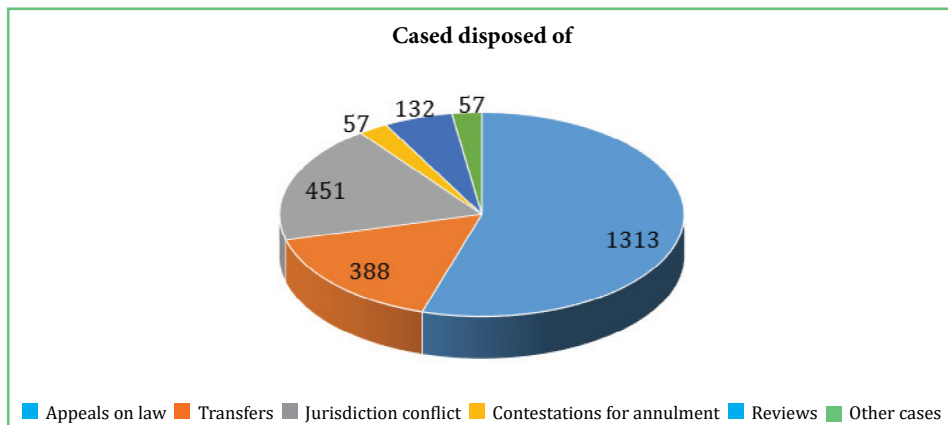
The indicator on cases disposed of amounted to 2398 in 2019 as compared to 5355 in 2018, a decrease of 55.21%.

In 2019, 83,44% of the total cases disposed of were dealt under Law no. 134/2010 on the Code of Civil Procedure, as compared to 89.46% in 2018.

The structure of new-entry cases registered on the docket of the IInd Civil Chamber in 2019 is the following:



The structure of cases disposed of in 2019 is the following:



Of the total 1313 appeals on law disposed of, 160 were sustained, 604 were rejected; in 18 cases the appeal was dropped by the plaintiff; in 228 cases the appeal was nullified; one case was taken off the docket; in 233 the Court devolved jurisdiction; in 69 other measures were ordered.

As for contestations for annulment, of the total of 57 cases, 41 were rejected and in 16 of them other measures were ordered.

Of the 132 cases of review, 87 were rejected and in 45 other procedural measures were ordered.

■ III.3. WORKLOAD FOR JUDGE*, ASSISTANT MAGISTRATE AND CLERK

A. *Workload per judge*

- a) The workload per judge in the panels of 3 judges for a total of 18 judges who worked constantly in the Chamber throughout 2019:
 - an average of 551 cases per judge as regards the number of cases disposed of by decisions and resolutions to divest the Court of the case;
 - as regards the number of decisions issued, an average of 321 cases out of a total of 987 cases handled on average;
- b) as part of the Panels of 5 Judges, 5 judges participated as full members and 15 as substitutes;
- c) as part of the Panels for Appeals in the Interest of the Law:
 - 20 judges participated as full members including the President of the Chamber;
 - 13 judges were appointed rapporteurs;
- d) as part of the Panels for Preliminary Ruling on Questions of Law:
 - 22 judges participated as full members including the President of the Chamber;
 - 20 judges were appointed rapporteurs.

B. *Workload per assistant magistrate*

- a) The workload per assistant magistrate in the establishing of the panels of 3 judges, calculated for the number of 14 assistant magistrates who worked throughout the year 2019:
 - participated in the pronouncement of **236** judgments on average and also on average wrote the text of **125** decisions and **99** resolutions to divest the Court;
 - were appointed rapporteurs in an average of 97 cases.

C. *Workload per clerk*

In the period 01 January – 30 June 2019 a number of 15 clerks worked with the Chamber, assigned to 6 panels, and in the period 1 July – 31 December 2019 they were assigned to 7 panels.

* In the reports of the High Court of Cassation and Justice the workload per judge is traditionally calculated by dividing the total number of cases handled by each Chamber by the number of judges who worked in such Chamber. For a relevance of the comparisons with the previous year it was preserved the same calculation method in this Report as well. It is nevertheless necessary to note that the Superior Council of Magistracy, that consolidates data from the entire judicial system, calculates workload per judge starting from “the number of cases brought before the supreme court on the basis of its functional jurisdiction, in the sense of trials on the merits, on appeal on law, in the panel of 3 judges or the Panel of 5 Judges, with the consequence of a multiplication of the number of cases by the number of panels of judges” (see for example the Report on the State of the Justice for 2018, page 35 - www.csm1909.ro). In practical terms this means that since every member of a panel of judges is effectively undertaking, in parallel with the others, the same work for research, analysis, administration and deliberation in a case on the docket of that panel, the workload per individual judge is much higher than would result from a basic division of the number of cases by the number of judges. And indeed, at the High Court of Cassation and Justice the greater part of cases are tried by panels of judges.

In terms of statistics, in 2019 the session clerks:

- wrote an average of 60 draft resolutions to divest the Court;
- wrote an average of 210 draft session reports concerning: orders for continuance, communication of the report, acceptance in principle of an appeal on law, suspension of a case, etc.
- sent the communication documents specific to the procedure prior to establishing the first hearing in a case, as well as those stipulated in the procedures for admissibility of appeals on law, in an average of 90 cases.

■ III.4. EFFICIENCY INDICATORS

Statistics on the duration for the disposal of cases

In the Table below please find the statistics on the duration for the disposal of cases registered with the IInd Civil Chamber.

Nature of cases	Up to 2 months	2-4 months	4-6 months	Over 6 months	TOTAL
Appeals on law	165	157	61	930	1313
Transfers	246	106	26	10	388
Jurisdiction conflict	312	124	15	0	451
Contestations for annulment	24	14	7	12	57
Reviews	56	35	15	26	132
Other cases	50	5	2	0	57
TOTAL	853	441	126	978	2398
Associated cases	747	121	20	20	908
TOTAL	1600	562	146	998	3306

Please note the effort made to increase the number of cases disposed of within 0-6 months, with a number of 1420 cases disposed of within this time-frame out of the total 2398.

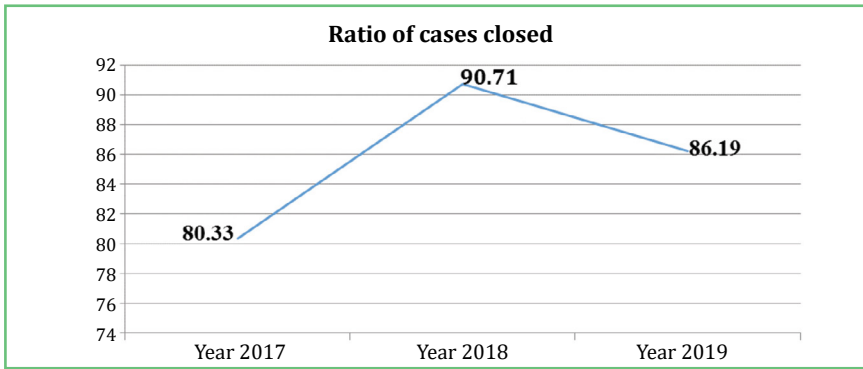
Efficiency indicators – according to the STATIS application on 31 December 2019

The result of the 5 efficiency indicators for the activity of a court of law in 2019, as resulting from the STATIS application, is the following:

1. Ratio of cases closed

In 2019 a number of 2398 cases were disposed of, which gives a ratio of 86.19%, calculated by correlating the number of cases disposed of and the number of new-entry cases in the reference period. The value of the indicator is slightly lower than in 2018, when it was 90.71%.

The evolution in the past 3 years of the indicator “Ratio of cases closed” is shown in the chart below:



2. Case stock

On 31 December 2019, of the total 2953 cases in stock a number of 981, or 33.2% of the stock, were older than 1 year and 1 year and 5 months.

Consequently the IInd Civil Chamber gets a score of “inefficient” for this indicator, according to the score grid established by Decision no. 1305/9 December 2014 of the Superior Council of Magistracy.

3. Ratio of cases closed within one year

In the period 01 January – 31 December 2019, out of a total of 3201 cases disposed of, a number of 2521 cases were disposed of within one year, accounting for 78% of the total.

Consequently the IInd Civil Chamber gets a score of “efficient” for this indicator, according to the score grid established by Decision #1305/9 December 2014 of the Superior Council of Magistracy.

4. Average duration for disposal of cases

The average duration for the disposal of cases was approximately 7-8 months (7.7), with the Chamber scoring as “very efficient” according to the score grid established by Decision no. 1305/9 December 2014 of the Superior Council of Magistracy.



■ III.5. HUMAN RESOURCES

Staffing on 01 January 2019

	Total positions	Positions filled	Positions vacant
Total, out of which:	73	68	5
Judges	23	20	3
Assistant magistrates	17	17	0
Ancillary staff	30	28	2
Other staff	3	3	0

Staffing on 31 December 2019

	Total positions	Positions filled	Positions vacant
Total, out of which:	76	75	1
Judges	23	22	1
Assistant magistrates	20	20	0
Ancillary staff	30	30	0
Other staff	3	3	0

■ III.6. PROFESSIONAL TRAINING OF THE PERSONNEL

a) Judges

The Chamber's judges attended the following seminars and conferences organized by S.C.M – N.I.M. in the reference period: seminar on International Contracts; meeting of the Presidents of Specialist Chambers in Ploiești, Conference on training the members of the EuRoQuod network; seminar on the New Civil Code and New Code of Civil Procedure; Magistrates' Forum organized by the Court of Justice of the European Union; seminar on Judicial Ethics.

b) Assistant magistrates

Some of the Chamber's assistant magistrates attended the following events organized by S.C.M – N.I.M.: conference on *Aspects of non-uniform jurisprudence in disputes involving banks, in the matter of the relationship between consumer and professional*.

Please also note that the Chamber's assistant magistrates joined the judges in the periodical meetings to discuss jurisprudence and ensure uniform practice. Not lastly, the assistant magistrates take part in non-formal meetings that discuss matters of law that are of importance for their professional skills and the Chamber's activity.

c) Clerks

As for the clerks, some of them attended the following seminars organized by the National School for Clerks: seminar on Professional ethics; eLearning seminar on *Romanian Language. Current Romanian word usage. Types of lexical and semantic mistakes*.

■ III.7. CHAMBER MANAGEMENT

1. *Qualitative analysis of the activity in the Chamber*

Notable in 2019 was a variety of legal regulations concerning economic activities, a multitude of applicable domestic and international regulations, amendments brought to such acts by the lawmaker, as well as interpretations issued in preliminary ruling procedures or by way of the constitutionality check, all of these being aspects that required increased attention and constant information updating on the part of judges, assistant magistrates and clerks.

Even while the Commercial Code of 1887 and the Civil Code of 1864 were specifically repealed, the lawmaker stipulates a continued applicability of those acts to disputes that were pending in court at the date the New Civil Code was enacted; the principle *tempus regit actum* requires their applicability to all legal relationships occurred while they were still in force.

This part is especially to be found in the matter of long-term lending contracts; Art. 223 of Law no. 71/2011 for the enactment of Law no. 287/2009 on the Civil Code specifically stipulates that civil and commercial disputes and proceedings that were still pending on the date the New Civil Code was enacted shall be tried by the legally jurisdictional courts based on the legal, material and procedural regulations in force at the date when they originated.

Also significant in procedural terms are the stipulations of Art. 225 of Law no. 71/2011, according to which civil and commercial disputes that were pending on the date the New Civil Code was enacted shall continue to be tried by the same judicial panels, in observance of the principle of continuity.

Though specifically repealed, the Commercial Code of 1887 and the Civil Code of 1864 continued to be applied throughout 2019 in disputes originating before the enactment of the New Civil Code, alongside the disputes originating after the enactment of the new law. One novelty was the disputes started and disposed of under Law no. 134/2010 on the Code of Civil Procedure, but with applicability of substantial law stipulations that preceded the New Civil Code.

Another instance of parallel applicability of two regulatory acts is found in the matter of insolvency, where procedures started before 28 June 2014 are governed by Law no. 85/2006 on the insolvency procedure, as stipulated by Art. 343 of Law no. 85/2014 on insolvency and procedures to prevent insolvency.

A continued major impact on the activity of the IInd Civil Chamber came from Decision no. 369 of 30 May 2017 by the Constitutional Court under which it sustained the exception of unconstitutionality brought against the phrase “as well as other requests that can be expressed in monetary form and in an amount of up to and including 1,000,000 RON,” found in Art. XVIII para. (2) of Law no. 2/2013 on measures to decongest courts of law and to prepare for the enactment of Law no. 134/2010 on the Code of Civil Procedure.

It should be also recalled Decision no. 874 of 18 December 2018 of the Constitutional Court of Romania which found unconstitutional Art. 27 of the Code of Civil Procedure in the interpretation this text received in Decision no. 52 of

18 June 2018, issued by the High Court of Cassation and Justice – Panel for Preliminary Ruling on Questions of Law.

This Decision's consequence was to open the avenue of the appeal on law in disputes that can be expressed in monetary form and in an amount ranging between 200,000 RON and 1,000,000 RON, in case the challenged decision had been issued after 20 July 2017, irrespective of the date the trial had started.

Another result of those Constitutional Court Decisions was an increase in the stock of cases in the beginning of 2019, because as compared with the situation before 20 July 2017 when Decision no. 369 of the Constitutional Court was published in the Official Journal the number of appeal on law cases that had to be tried in first instance increased. They increased by the number of disputes that could be expressed in monetary form and in an amount ranging between 200,000 RON and 1,000,000 RON, on the one hand, and on the other hand by the reintroduction on the docket, also for trial in first instance, of the same type of cases that had been suspended after the Decision no. 52/2018 by the Panel for Preliminary Ruling on Questions of Law, pending the publication in the Official Journal of Decision no. 874/2018 of the Constitutional Court.

Another reason for the increase of the number of cases in stock in 2019 was the increase in the number of cases suspended until a decision was issued by the CJEU concerning abusive clauses in credit contracts, and respectively clauses related to currency risks in contracts for credits in Swiss francs.

Thus out of a total 378 cases suspended in 2019 a number of 263 were suspended for the above-mentioned reason.

Another impact on the Chamber's work came from Decision no. 18 of 1 October 2018 issued by the High Court of Cassation and Justice – Panel for Appeals in the Interest of the Law, published in the Official Journal of Romania, Part I, no. 965 of 14 November 2018, as well as no. 2 of 14 January 2019 issued by the High Court of Cassation and Justice – Panel for Preliminary Ruling on Questions of Law, published in the Official Journal of Romania, Part I, issue no. 157 of 27 February 2019.

Those Decisions were used by the lawmaker in the text of Law no. 310/2018 which amended the Code of Civil Procedure. This means that the Civil Chambers of the supreme court now have jurisdiction to try appeals on law in disputes that could be expressed in monetary form and in an amount ranging between 200,000 RON and 1,000,000 RON.

Other types of activities

- a. Research for and writing reports in cases on preliminary ruling on questions of law and in appeals in the interest of the law.
- b. Work towards uniformity of judicial practice and prevention of non-uniform jurisprudence using the two mechanisms stipulated by the rules of procedure and characteristic of the High Court of Cassation and Justice primarily requires a research effort on the part of the judges of the Civil Chamber who are randomly-appointed members for disposition of such cases, given the complexity of the facts in such cases on the one hand and the fact, on the other hand, that such issues frequently exceed the specialization of such judges who are called upon to return a pronouncement in cases outside their regular activity such as labor cases, social insurance cases, criminal cases. etc.

2. Steps taken in 2019

In the above context, the Chamber's management focused on neutralizing the negative effects generated by the overloading of all categories of staff, delays in writing the full text of the judgments, excessive volume of activity and insufficient logistical resources. An immediate impact came from legal instability coupled with legislative inflation, with the national legal framework frequently subject to changes which have a significant influence on activities to apply and interpret the law.

In the previous period of activity the main goals of the Chamber were implementing the New Code of Civil Procedure, identifying and implementing steps for a uniform management of a large number of cases, reducing the duration needed for disposal of a case, nominations for the filling of vacancies, increasing the number of available positions, unification of the jurisprudence and maintaining a quiet climate needed for proper activity in the Chamber.

Given the hierarchical structure of the court, the management of the IInd Civil Chamber has the task to organize its own activities by putting in place an efficient style of participative management, which involves vertical cooperation – President of the Court, Vice-presidents – and horizontal cooperation, between the members of the Chamber, so as to attain shared goals under the general drive to increase the quality of the act of justice as a public service.

3. Goals for 2020

a) *Action lines to maintain the professional skill standards of the staff*

The steps required for increasing the quality of the act of justice follow these coordinates: maintaining high professional skill standards among judges, assistant magistrates and clerks, working towards unification of the jurisprudence and reducing the duration needed for disposal of a case.

Maintain the quality standards professional training of the staff.

In terms of the needs and identifying the most suitable steps for professional training it is necessary to have genuine involvement on the part of the judges in setting the lines for the professional training of assistant magistrates and to an equal extent of the assistant magistrates in setting the lines for the professional training of session clerks. Generalizing a system with stable teams of judges, assistant magistrates and session clerks also has the benefit of identifying coordinates for a genuine professional training which will increase the quality of activities undertaken by each of those professional categories.

In the case of judges maintaining the professional standards largely relies on individual studying. To that effect the necessary conditions must be put in place by relieving them of extra-professional duties and thus facilitate their involvement in training activities organized by the N.I.M. or other education facilities.

Professional training of the staff should be given on the basis of an annual plan that reflects the real needs to improve for each magistrate, as resulting from discussions by the Chief Assistant Magistrate with each assistant magistrate and from recommendations from the judges the assistant magistrate or clerks works for directly.

b) Lines to unify the Chamber's jurisprudence

To ensure continued legal certainty and predictability of issued judgments, compliant with the jurisprudence of ECHR and CJEU, the IInd Civil Chamber will develop and observe action lines for an improvement of the strategy to unify the jurisprudence, as follows:

- Involving the Chief Assistant Magistrate in a monthly identification of repetitive cases and informing judges and assistant magistrates as soon as the data is consolidated, at a stage prior to the final judgment.
- Involving the Chief Assistant Magistrate in identifying and presenting the jurisprudence of the Chamber in situation of similar cases on the docket of each panel so as to have compliance with the applicable jurisprudence.
- Consolidating decisions viewed as relevant right after they are issued, which requires strong cooperation with the Chamber's judges in terms of exercising the responsibility regulated under Art. 45 para. 1 item 4 letter b) in RAOF, a task that belongs to the president of the panel and consisting of highlighting in the ledger of the Chamber the decisions that are more significant or on principle as well as the legal basis for such decisions, or appointing another member of the panel or the assistant magistrate for this purpose.
- To ensure the uniform character of the Chamber's jurisprudence monthly meetings will be organized to discuss aspects of the non-uniform jurisprudence in the Chamber and the points of law that are likely to generate such practice; this way the judges' discussions can play a preventive role and shape a uniform jurisprudential vision.
- To inform the other courts in the judicial system, it is necessary to consolidate, systematize and post, in the internal computer network, the solutions of principle and for the uniformity of the judicial practice, as well as the solutions for uniform practice adopted by the Plenum of the Chamber's Judges, the similar Chambers of the Courts of Appeal.
- It is also necessary to select the more relevant decisions every quarter and to transmit them, under the supervision of the Vice-president of the Court, to S.C.M., N.I.M. and Courts of Appeal, as well as posting them on the Court's website so they are available to all judges in the country.
- It is important to select those decisions that clarify points of law and post them timely on the Court's website.
- The Chamber's President, joined by specially appointed judges, should continue attending meetings organized by the N.I.M., and the quarterly meetings organized by the Courts of Appeal to discuss points of law that generate non-uniform practice, in agreement with the Decision of the Chamber for Judges of the Superior Council of Magistracy no. 148/19 March 2015.
- It is important to have specially designated judges attend the judicial practice meetings organized every quarter by each Court of Appeal, after a prior consultation and distribution of judges per Court of Appeal.



Chapter IV

The criminal chamber

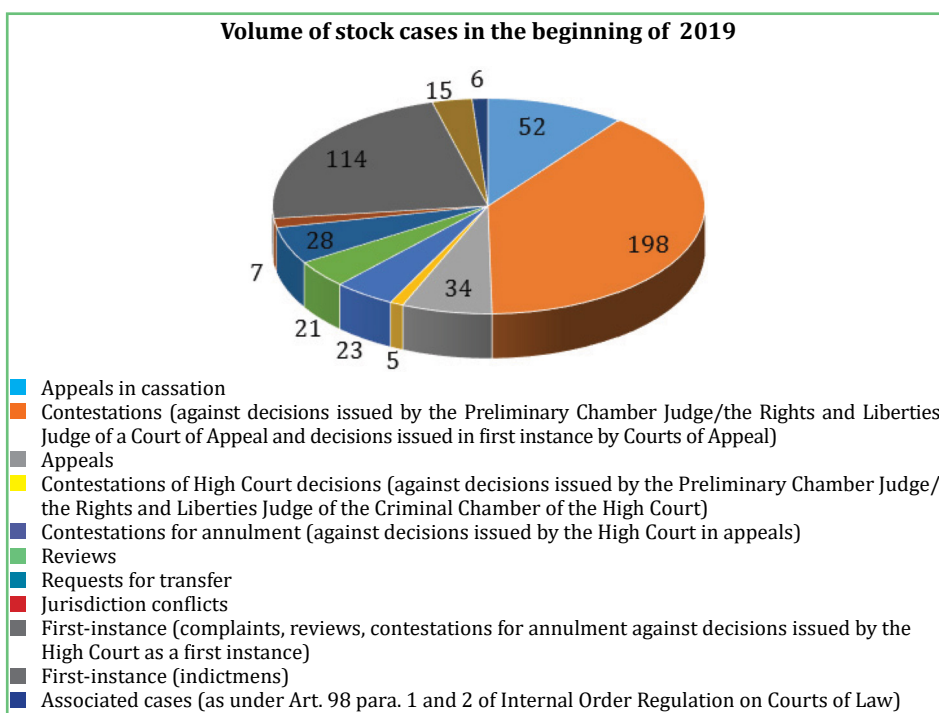
■ IV.1. JURISDICTION

Under Art. 22 of Law no. 304/2004, the Criminal Chamber of the High Court of Cassation and Justice tries: as a court of first instance, the cases and requests ascribed by law to the High Court of Cassation and Justice as a court of first instance; appeals brought against criminal judgments issued by Courts of Appeal and the Military Court of Appeal as courts of first instance; contestations brought against criminal judgments issued by Courts of Appeal, the Military Court of Appeal and the Criminal Chamber of the High Court of Cassation and Justice as courts of first instance; appeals brought against non-final judgments or judicial acts of any nature that cannot be challenged any other way and the trial itself was interrupted before a Court of Appeal; appeals in cassation brought against final judgments in the terms defined by law; requests for a preliminary ruling on questions of law.

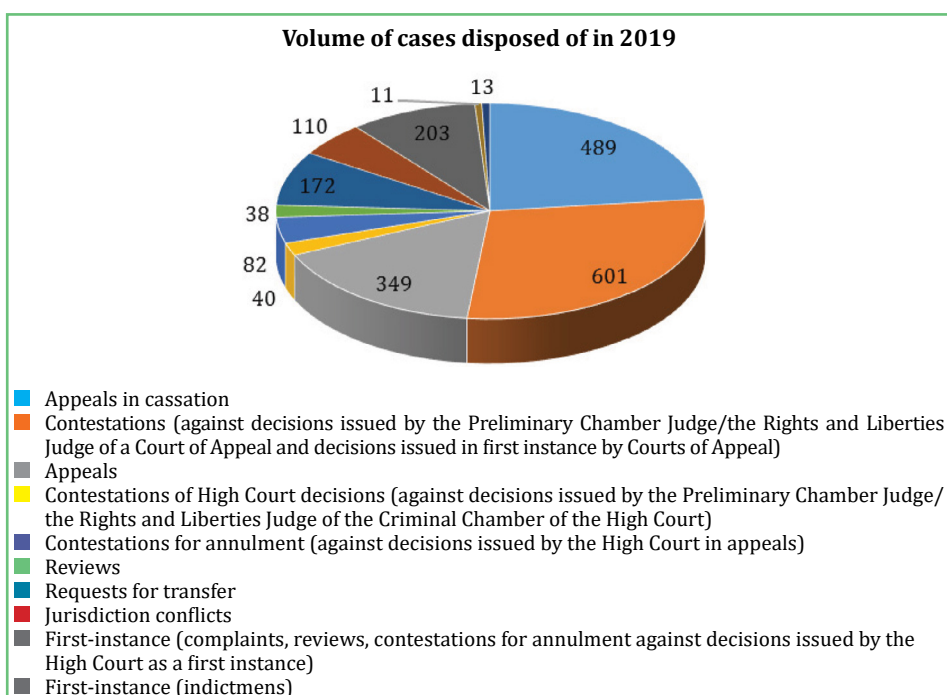
Also, under Art. 23 of the same law it settles jurisdiction conflicts in case it is the common higher court for the courts in conflict; requests for transfer of a case from the jurisdictional Court of Appeal to a different Court of Appeal; other cases specifically stipulated by law.

■ IV.2. ACTIVITY VOLUME

In the beginning of 2019 the Criminal Chamber of the High Court of Cassation and Justice had **513** cases on its docket, as compared to **512** in the beginning of 2018. In 2019 a number of **2196** cases were registered as compared to **2629** new-entry cases in 2018. The total number of cases on the docket in 2019 was **2709**, as compared to **3141** in 2018.



Statistics show that in 2019 there was a decrease in new-entry and disposed of cases as compared to 2018 – **bases on the number of new-entry cases.**



■ IV.3. WORKLOAD PER JUDGE*, ASSISTANT MAGISTRATE AND CLERK

A. Workload per judge

In the period of reference the judges of the Criminal Chamber sat in **905 appeals/contestations** sessions and **290 first-instance sessions**, which means an *average of 40 sessions*; in a total of 2709 cases out of which 2108 were disposed of, *the average workload per judge was 289 cases handled and 181 cases disposed of*.

Comparatively, in 2018 the judges of the Criminal Chamber sat in **986 appeals/contestations** sessions and **474 first-instance sessions**, which means an average of 49 sessions a year for each judge. In a total of 3141 cases out of which 2628 were disposed of, *the average workload per judge was 322 cases handled and 206 cases disposed of*.

Also for comparison, in 2017 the judges of the Criminal Chamber sat in **926 appeals/contestations sessions** and **675 first-instance sessions**, which means an *average of 55 sessions a year for each judge*. In a total of 3581 cases out of which 3069 were disposed of, *the average workload per judge was 350 cases handled and 229 cases disposed of*.

It is noted a constant in terms of the number of working in appeals/contestations sessions and a significant decrease in terms of cases in first instance. Additionally, in 2019 the judges of the Criminal Chamber issued 77 resolutions in cases on requests for technical surveillance measures and for home/cyber search warrants. Activities in the jurisdiction of the High Court of Cassation and Justice under Law no. 535/2004 on the prevention and combating of terrorism and Law no. 51/1991 on the national security of Romania also took place in 2019, performed by judges and assistant magistrates of the Criminal Chamber, and the urgent character of those procedures led to a further load of their existing activity in the circumstances where they amounted to a total of 2.572 requests.

B. Workload per assistant magistrate

In 2019 the assistant magistrates attended **287 appeals/contestations sessions** and 121 first-instance sessions, which is an average of **16 sessions/assistant magistrate**, of which **11 appeals/contestations sessions** and **5 first-instance sessions**.

On average those sessions handled **185 cases**, of which **89** were disposed of on average, and each assistant magistrate was assigned to write an average of **76 judgments with a number** plus some judgments without a number (**on average 9 per person**).

* In the reports of the High Court of Cassation and Justice the workload per judge is traditionally calculated by dividing the total number of cases handled by each Chamber by the number of judges who worked in such Chamber. For a relevance of the comparisons with the previous year it was preserved the same calculation method in this Report as well. It is nevertheless necessary to note that the Superior Council of Magistracy, that consolidates data from the entire judicial system, calculates workload per judge starting from "the number of cases brought before the supreme court on the basis of its functional jurisdiction, in the sense of trials on the merits, on appeal on law, in the panel of 3 judges or the Panel of 5 Judges, with the consequence of a multiplication of the number of cases by the number of panels of judges" (see for example the Report on the State of the Justice for 2018, page 35 - www.csml909.ro). In practical terms this means that since every member of a panel of judges is effectively undertaking, in parallel with the others, the same work for research, analysis, administration and deliberation in a case on the docket of that panel, the workload per individual judge is much higher that would result from a basic division of the number of cases by the number of judges. And indeed, at the High Court of Cassation and Justice the greater part of cases are tried by panels of judges.

Comparatively, in 2018 the assistant magistrates attended **334** appeals/contestations sessions and **205** first-instance sessions, which handled an average of **151 cases**, of which an average of **102** were disposed of and they were assigned to write an average of **87 judgments with a number** plus some judgments without a number (on average 10 per person).

Also for comparison, in 2017 the assistant magistrates attended **308** appeals/contestations sessions and 287 first-instance sessions, which handled an average of **153 cases**, of which an average of 108 were disposed of and they were assigned to write an average of **97 judgments with a number** plus some judgments without a number (**on average 11 per person**).

It is noted that the numbers from previous years have stayed within roughly the same range.

C. Workload per clerk

In 2019 a session clerk attended an average of **21 sessions** (both appeals/contestations and first-instance sessions), which handled **197 cases**.

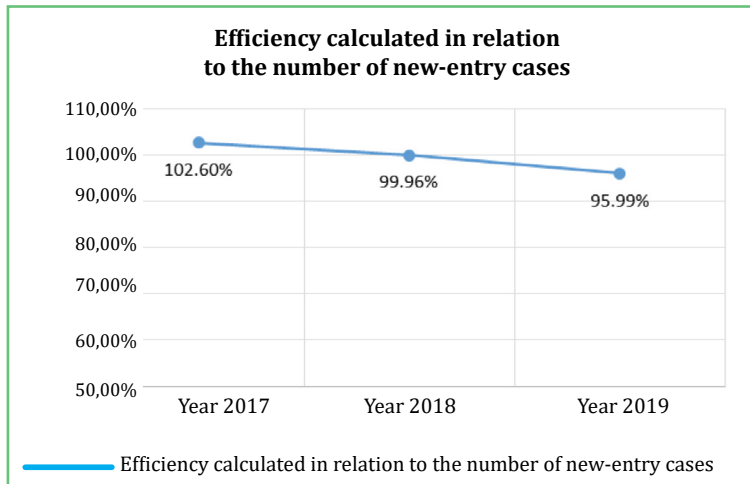
Comparatively, in 2018 a session clerk attended an average of **31 court sessions**, which handled approximately **260 cases**. We It is noted a decrease in the session clerks' activity in terms of both sessions and cases handled.



■ IV.4. EFFICIENCY INDICATORS

1. *Disposal rate indicator – efficiency in case disposal calculated exclusively in relation to new-entry cases*

Efficiency calculated in relation to the number of new-entry cases in 2019 was 95.99%, but nevertheless decreased as compared to 2018 when it was 99.96% and 2017 when it was 102.60%.

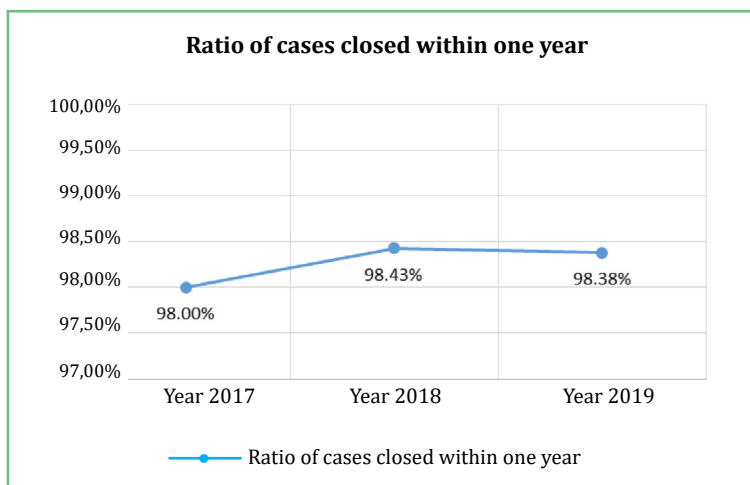


2. *Stock cases older than one year*

The value of this indicator (the number of cases on the docket at the end of the year and unfinished, older than one year) for the year 2019 is 3.8%, which corresponds to a score of “very efficient.”

3. *Ratio of cases closed within one year*

This indicator, which is the total number of cases disposed of within one year from date of registration, compared to the total number of cases closed within one year, is 98.38% and remains at a high level as compared to 2018 (98.43%) and 2017 (98.00%).



4. Average duration for disposal of cases

For the 2108 cases disposed of in 2019 the average duration was:

Procedure stage/object of cases	Cases disposed of within () months from registration						Total
	0-2	2-4	4-6	6-9	9 months -1 year	>1 year	
Appeals in cassation	222	180	66	15	3	3	489
Contestations (against decisions issued by the Preliminary Chamber Judge/the Rights and Liberties Judge of a Court of Appeal and decisions issued in first instance by Courts of Appeal)	507	71	19	4	-	-	601
Appeals	249	28	17	20	11	24	349
Contestations of High Court decisions (against decisions issued by the Preliminary Chamber Judge/the Rights and Liberties Judge of the Criminal Chamber of the High Court)	34	5	-	1	-	-	40
Contestations for annulment (against decisions issued by the High Court in appeals)	35	28	12	5	2	-	82
Reviews	19	14	3	1	1	-	38
Requests for transfer	149	21	2	-	-	-	172
Jurisdiction conflicts	110	-	-	-	-	-	110
First-instance (complaints, reviews, contestations for annulment against decisions issued by the High Court as a first instance)	130	44	20	7	2	-	203
First-instance (indictments)	1	1	1	1	1	6	11
Associated cases (under Art. 98 para. (1) and (2) of Internal Order Regulation on Courts of Law) - first instance	8	3	1	-	-	1	13
TOTAL	1464	395	141	54	20	34	2108

■ IV.5. RATE OF APPEALING AND REVERSAL FOR JUDGEMENTS

1. Indicator for challenged judgments

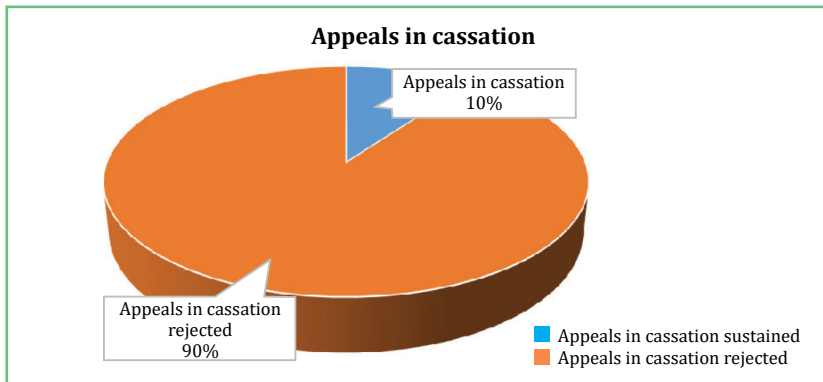
Concerning the cases brought before by the Criminal Chamber as a court of first instance the challenge indicator is 7.66%.

Concerning the cases brought before the Judge for Rights and Liberties and the Preliminary Chamber Judge as a court of first instance the challenge indicator is 18.34%.

Concerning the cases brought before by the Criminal Chamber as an appellate court the challenge indicator is 50.87%.

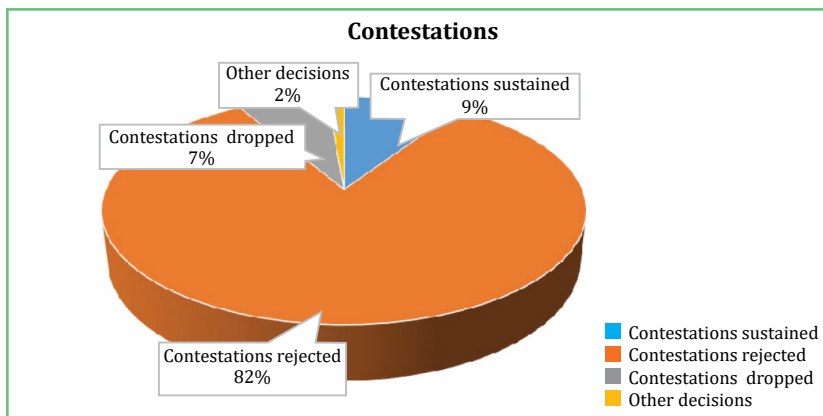
2. Indicators for the reversal of judgments

In the 489 cases with appeals in cassation, a decision to sustain was issued in 49 cases (after acceptance in principle of the request for appeal in cassation), a decision to reject was issued in 438 cases and other decisions were issued in 2 cases.



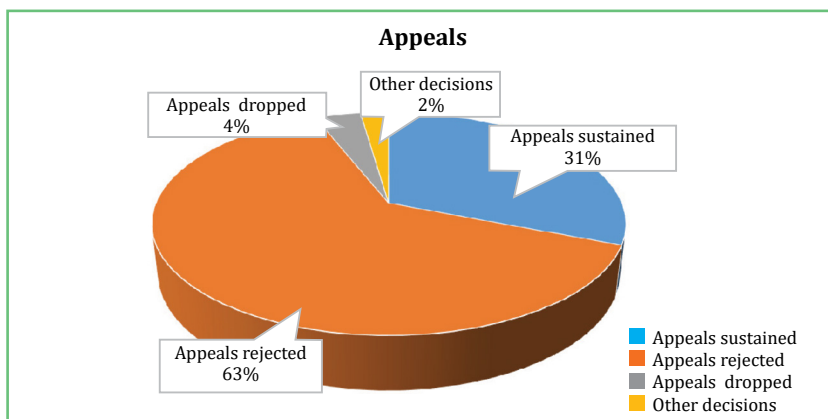
As compared to 2018, when out of 455 cases with appeals in cassation 216 requests for appeal in cassation were accepted in principle, in 2019 out of 489 cases with appeals in cassation 200 requests for appeal in cassation were accepted in principle. In the 601 cases on contestations, a decision to sustain was issued in 56 cases and 494 were rejected.

In 43 cases the contestations were dropped and in 8 cases other decisions were issued.

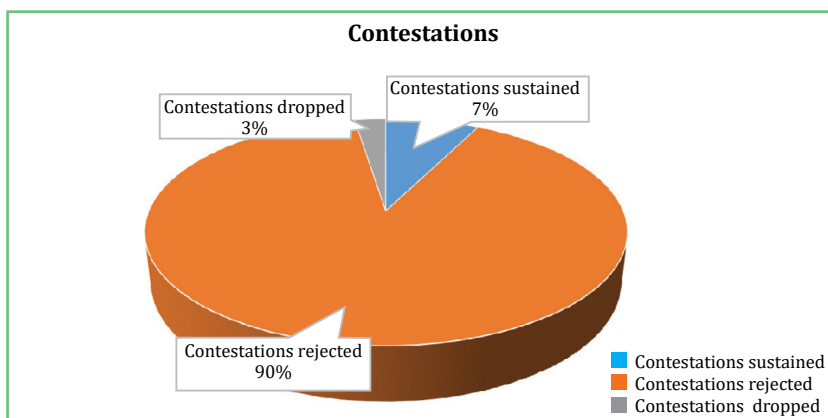


In the 349 cases on appeals a decision to sustain was issued in 108 cases and 220 were rejected.

In 13 cases the appeals were dropped and in 8 cases other decisions were issued.

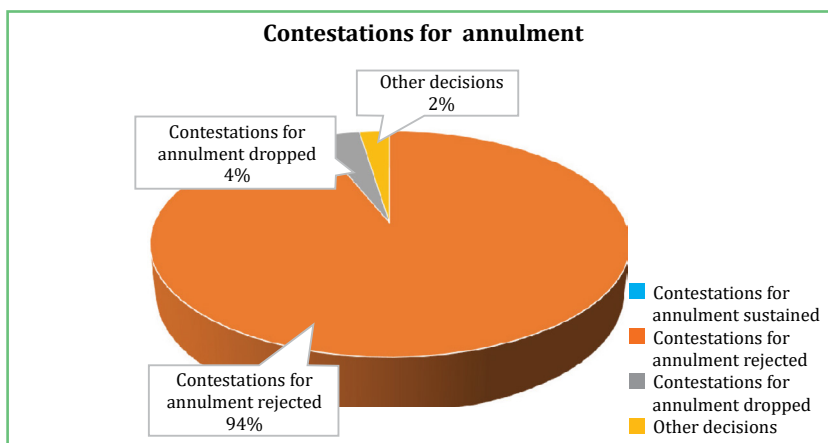


In the 40 cases of contestations brought against decisions issued by the Judges for Rights and Liberties and the Preliminary Chamber Judges of the Criminal Chamber, a decision to sustain was issued in 3 cases and 36 were rejected.

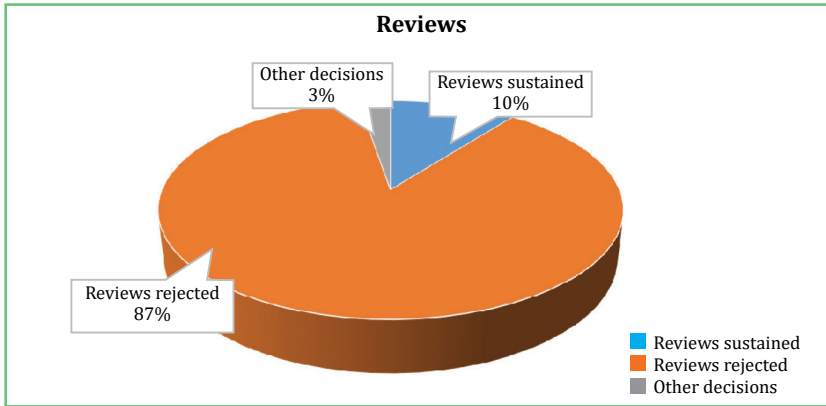


In the 82 cases on contestations for annulment, a decision to reject was issued in 77 cases.

None of the cases received a decision to sustain, in 3 cases the contestation for annulment was dropped and in 2 cases other decisions were issued.

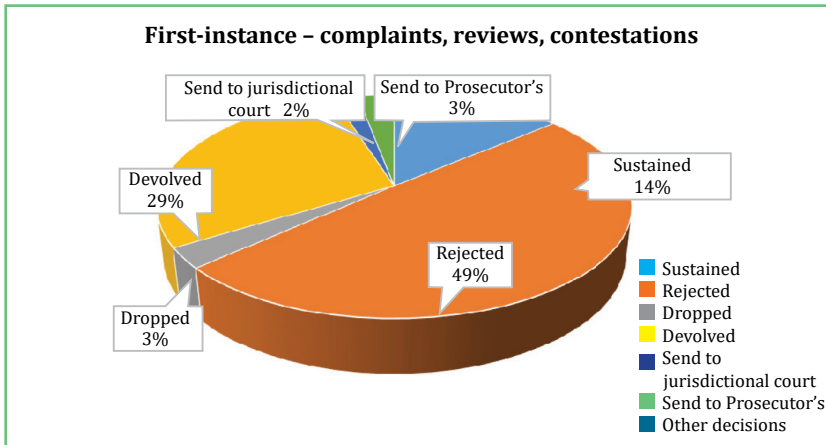


In the 38 cases on reviews, a decision to sustain was issued in 4 cases, a decision to reject was issued in 33 cases and other decisions were issued in 1 case.

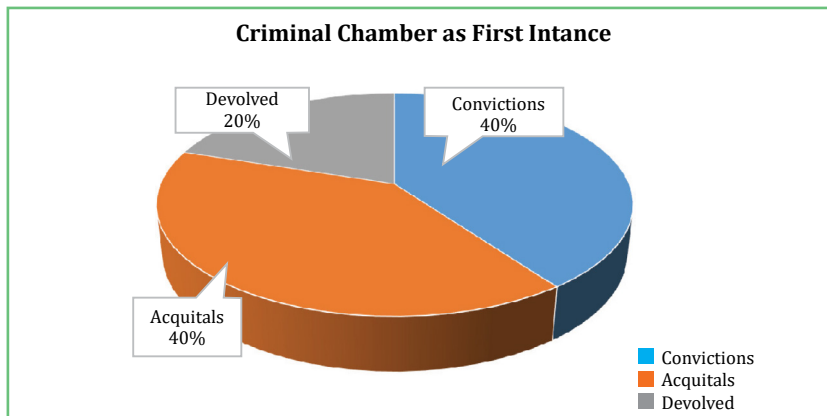


In the 203 cases tried as a court of first instance (complaints, reviews, contestations), decisions to sustain were issued in 28 cases, with 100 cases rejected and 6 cases of drop of action.

In 58 instances, the court devolved the cases, in 4 instances the complaints, reviews and contestations were sent to the jurisdictional courts of law, in 6 instances the actions were sent to the Prosecutor’s Office and in 5 cases other decisions were issued.

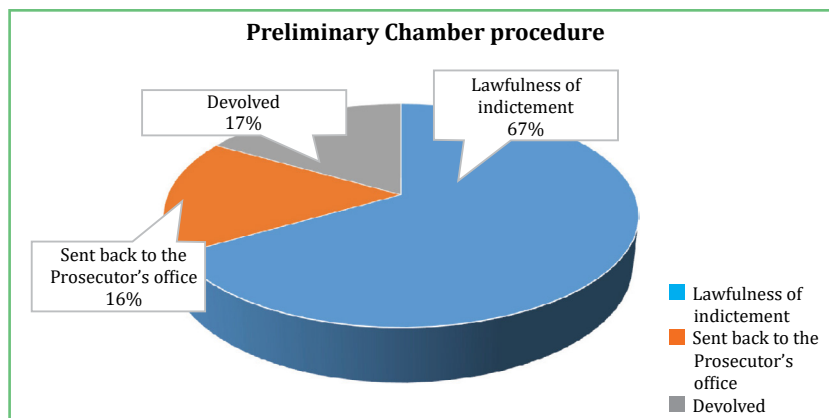


In the 11 cases brought before the Criminal Chamber of the supreme court as a court of first instance, with 32 defendants and a total complexity score of 689 points, convictions were pronounced in 4 cases and acquittals were pronounced in 4 cases, while in 2 cases the court devolved its jurisdiction.



In the Preliminary Chamber procedure decisions to establish the lawfulness of the indictment were issued in 4 cases.

In one case the court devolved the case to the jurisdictional court of law while one other case was sent back to the Prosecutor's Office.



■ IV.6. HUMAN RESOURCES AVAILABLE TO THE CRIMINAL CHAMBER IN 2019

In the beginning of 2019, the Criminal Chamber of the High Court of Cassation and Justice had a number of 115 positions available for judges/assistant magistrates/specialist ancillary staff/other staff and at the end of the year it had 112 positions. Just like in previous years, there was staff turnover at the Criminal Chamber, as follows:

a) Judges

Of the total 33 positions for judges allocated to the Chamber in the beginning of 2019, in the period 1 January – 31 May 2019 a number of 31 judges were employed (including the President of the Chamber), and two vacancies were still available. Starting 25 November 2019, out of the total of 34 positions for judges (including the President of the Chamber) only 29 were still filled following the retirement of one more judge and 5 positions remained vacant, a situation that remained unchanged by the end of 2019.

b) Assistant magistrates

On 1 January 2019 the Criminal Chamber was staffed with 37 positions (including the Chief Assistant Magistrate), out of which 28 were filled and 9 remained vacant. At the end of 2019 the Criminal Chamber had been left with 33 positions for assistant magistrates (including the Chief Assistant Magistrate), 30 positions were filled and 3 were vacant.

It must be mentioned that in the time period between 15 May and 31 December 2019 two assistant magistrates of the Criminal Chamber were appointed to work with the Panels of 5 Judges in criminal matters.

c) Clerks

In the beginning of 2019, out of the 41 positions allocated to the Chamber (which included the 3 positions of Chief Clerk) 39 were filled and 2 were vacant.

At the end of 2019 all 41 positions for specialist ancillary staff were filled.

Also in 2019 the Criminal Chamber was staffed with 2 ushers and 2 bailiffs, all positions filled.

■ IV.7. PROFESSIONAL TRAINING OF THE PERSONNEL

In 2019 the judges, assistant magistrates and ancillary staff of the Criminal Chamber showed a constant drive to improve their professional performance, using individual study as well as continuous training programs.

The judges and assistant magistrates attended seminars and conferences on topical subjects in criminal matters organized by the National Institute of Magistracy and the National School for Clerks, as well as the in-Chamber professional meetings that discussed subjects like non-uniform practice, legal amendments and decisions of the Constitutional Court to sustain exceptions of unconstitutionality. (As an example the assistant magistrates were given training in the seminar “*Personal development and neuro-linguistic programming*”).

The clerks of the Criminal Chamber attended continuous training sessions at the National School for Clerks as well as periodical training sessions within the Court.

In 2019 professional training for clerks was given through the National School for Clerks, in the form of eLearning such as “*International Judicial Cooperation in Criminal Matters*,” “*Case Management in the criminal Trial*,” “*Romanian Language. Current Romanian word usage. Types of lexical and semantic mistakes – 2019*.” Those sessions were attended by 9 clerks, and there were also seminars organized at the training centers in the country on topics such as “*Case management in the criminal trial*,” and “*Professional Ethics*,” those seminars were attended by 2 clerks.

■ IV.8. CHAMBER MANAGEMENT

1. *Difficulties in activity encountered in 2019*

In 2019 the Criminal Chamber of the High Court was faced with a number of difficulties and had to deal with challenges arising from a lack of sufficient space for work (offices, court rooms, archives ...), and from the need to identify solutions to ensure continuity and celerity in disposing of its cases in the context of a Constitutional Court Decisions. We shall not dwell on matters of logistics since they are well-known but we will present the effects of certain Decisions issued by the Constitutional Court.

The activity of the Criminal Chamber was primarily impacted by the effects of Decisions no. 685/2018 and no. 417/2019 issued by the Constitutional Court.

We recall that **Decision no. 685/2018 of the Constitutional Court** sustained the challenge brought by the Prime Minister of the Romanian Government and found that a legal conflict of a constitutional nature existed between Parliament on the one hand and the High Court of Cassation and Justice on the other hand, generated by decisions of the Leading Board of the High Court of Cassation and Justice, beginning with Decision no. 3/2014, *according to which only 4 of the 5 members of the Panels of 5 Judges were appointed randomly*, contrary to the provisions of Art. 32 of Law no. 304/2004 on Judicial Organization, as amended and supplemented by Law no. 255/2013.

It is true that adopting the above-mentioned decisions directly influenced the activity of the Panels of 5 Judges but, given that the Panels of 5 Judges are staffed only with judges working for the Criminal Chamber and that all of this Chamber's judges were directly involved on cases handled by the Panels of 5 Judges, either as full members or as substitutes, the effects were also present in the Criminal Chamber. We recall among other things the difficulties to plan sessions in the available courtrooms, with sessions being moved from Mondays to Thursdays, the difficulties in scheduling the assistant magistrates per sessions, and difficulties with other activities (e.g. as arising from applicability of Law no. 51/1991), as a result of the delegation of two assistant magistrates of the Criminal Chamber until the end of 2019.

Decision no. 417/2019 of the Constitutional Court sustained the challenge brought by the President of the Chamber of Deputies and found that a legal conflict of a constitutional nature existed between Parliament on the one hand and the High Court of Cassation and Justice on the other hand, generated by the latter's failure to establish the specialized panels for trials on the merits of offences provided by Law no. 78/2000 on the Prevention, Detection and Punishing of Acts of Corruption, contrary to the provisions of Art. 29 para. (1) of Law no. 78/2000, as amended and supplemented by Law no. 161/2003.

It was also decided that all cases registered on the docket of the High Court of Cassation and Justice and disposed of by the latter as a court of first instance prior to the Decision of the Leading Board of the High Court of Cassation and Justice no. 14 of 23 January 2019, insofar as such had not become final, should be re-tried as regulated by Art. 421 item 2 letter b) of the Code of Criminal Procedure by specialized panels established under Art. 29 para. (1) of Law no. 78/2000, as amended by Law no. 161/2003.

While apparently this Decision also involves the activity of the Panels of 5 Judges, in reality its effects would be visible in the activity of the Criminal Chamber as well. As a result of this Decision all corruption cases brought on charges under Law no. 78/2000 on the Prevention, Detection and Punishing of Acts of Corruption disposed of prior to 23 January 2019, and which were not disposed of by final judgments at the date the Decision was issued, were to be sent for re-trial at the Criminal Chamber of the High Court of Cassation and Justice, which increased the number of cases to be handled by this Chamber.

Other Decisions of the Constitutional Court issued in 2019 that had an impact on the activity of the Criminal Chamber were:

Under Decision no. 26/2019 the challenge was sustained to find that a legal conflict of a constitutional nature existed between the Public Ministry – Prosecutor’s Office attached to the High Court of Cassation and Justice and the Parliament of Romania on the one hand and the High Court of Cassation and Justice and the other courts of law on the other hand, generated by the signing between the Public Ministry – Prosecutor’s Office attached to the High Court of Cassation and Justice and the Romanian Intelligence Service of Protocol no. 00750 of 4 February 2009, and the improper exercise of parliamentary oversight of the activity of the Romanian Intelligence Service.

A motion was also sustained to find that a legal conflict of a constitutional nature existed between the Public Ministry – Prosecutor’s Office attached to the High Court of Cassation and Justice and the Parliament of Romania on the one hand and the High Court of Cassation and Justice and the other courts of law on the other hand, generated by the signing between the Public Ministry – Prosecutor’s Office attached to the High Court of Cassation and Justice and the Romanian Intelligence Service of Protocol #09472 of 8 December 2016, only in terms of the stipulations of Art. 6 para. (1), Art. 7 para. (1) and Art. 9, as well as the improper exercise of parliamentary oversight of the activity of the Romanian Intelligence Service.

It was also required that the High Court of Cassation and Justice and the other courts of law, as well as the Public Ministry – Prosecutor’s Office attached to the High Court of Cassation and Justice and its subordinated offices should examine their pending cases and find to what extent a violation of the provisions on material jurisdiction and on the capacity of the person jurisdiction of the criminal investigation bodies had occurred, with the necessary legal steps having to be taken consequently.

Under Decision no. 87/2019 the unconstitutionality exception was sustained concerning the provisions of Art. 174 para. (1) of the Code of Criminal Procedure, which does not stipulate applicability of the cases of incompatibility provided by Art. 64 of the same law to the specialist who works within judiciary bodies or outside such bodies and who performs the reports as under Art. 172 para. (10) of the Code of Criminal Procedure and is as such unconstitutional.

Essentially the Constitutional Court found that as regards the specialist who performs technical and scientific (forensic) reports the lawmaker had not provided any situation of incompatibility. This means that the specialist tasked with issuing a technical and scientific report can, at the time of doing the report, be in any of the situations provided by Art. 64 without this aspect being subject to a challenge. Thus the specialist appointed to issue a technical and scientific report can, for instance, have performed acts of criminal investigation, can be the legal guardian or curator of one of the parties or one of the primary subjects in the case, can have been a legal representative or solicitor of one of the parties or one of the primary

subjects in the case, albeit maybe in a different case, can be a relative or in-law up to and including the 4th degree, or can be in any other of the situations provided by Art. 177 of the Code of Criminal Procedure with one of the parties, with a primary subject, their solicitor or legal representative in the case they are appointed in, etc. Therefore, in the circumstances where the lawmaker stated absolutely that such situations measure the impartiality of individuals involved in criminal proceedings, with effects upon the fairness of the trial, it is evident that the existence of such situations for one appointed as specialist will cause the same effects.

Under Decision no. 88/2019 an unconstitutionality exception was sustained in finding that the provisions of Art. 281 para. (4) letter a) of the Code of Criminal Procedure, correlated with Art. 281 para. (1) letter f) of the same law, were unconstitutional.

The Court found that finishing a case within a reasonable term is part of the legitimate goal, and regulating a new structure of the criminal proceedings can cause and justify certain legislative options. The court held however that in its jurisprudence it had found that the result of the Preliminary Chamber procedure in terms of establishing the lawfulness of evidence brought in a case and of the actions undertaken by the criminal investigation bodies has a direct influence upon the trial on the merits and can be decisive in finding the guilt/innocence of the defendant. So given the importance of this stage and the fact that in cases where the law requires obligatory legal assistance the right to a defense can only be exercised effectively in the presence of a defender, the Court found that the introduction of a new stage in the criminal proceedings does not constitute sufficient grounds to justify a procedural date (finalization of the Preliminary Chamber procedure) by which a violation of the legal requirements on obligatory legal assistance of the defendant can be raised.

Under Decision no. 248/2019 the Constitutional Court sustained an unconstitutionality exception concerning the provisions of Art. 126 para. (6) of the Code of Criminal Procedure, finding them unconstitutional.

In the rationale for this Decision it was held that, considering the requirements of Art. 21 para. (3) corroborated with Art. 24 para. (1) of the Constitution, the provisions of Art. 126 para. (6) of the Code of Criminal Procedure which require maintaining, throughout the trial, of the protection measures ordered by the prosecutor during the criminal investigation are in fact regulating a maintaining, throughout the trial, of a non-ordinary restriction of the defendant's exercise of their right to a defense, without mention of the procedure for the verification of the need to maintain such measure, the conditions under which it can be discontinued and the judicial body responsible for such verification; maintaining such restriction in the absence of a specifically-regulated procedure whereby it can be discontinued when applicable conditions no longer warrant its existence is equivalent to an unlawful restriction of the exercise of the fundamental right under analysis. Moreover, using testimonial evidence in court in conditions of maintained protection measures for witnesses ordered during the criminal investigation even though the need to keep such measures in place is no longer there, can cause relative nullification of evidence thus obtained, as under Art. 282 of the Code of Criminal Procedure.

Under Decision no. 250/2019 the Constitutional Court sustained an unconstitutionality exception and found that the provisions of Art. 377 para. (4) First Thesis and Art. 386 para. (1) of the Code of Criminal Procedure were

constitutional insofar as a court of law rules on a change of the charges in a case brought before it by indictment, in a judgment that does not address the merits of the case. According to Art. 31 para. (2) of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, once the latter sustained the exception of unconstitutionality concerning Art. 386 para. (1) of the Code of Criminal Procedure, it also had to rule on the constitutionality of Art. 377 para. (4) First Thesis of the Code of Criminal Procedure, according to which “When it finds, ex officio, based on the request of the prosecutor or of the parties that the legal charges for the act in the bill of indictment must be changed, the court is under an obligation to have the new charge debated and draw the attention of the defendant that he has the right to ask for his case to be tried later [...]”.

Under Decision no. 243/2019 the Constitutional Court sustained an unconstitutionality exception and found the legislative solution given by Art. 341 para. (9) of the Code of Criminal Procedure, which excludes the contestation against the decision of the Preliminary Chamber Judge to proceed with the trial concerning the facts and individuals against whom the criminal investigation started, pronounced on the basis of Art. 341 para. (7) item 2 letter c) of the Code of Criminal Procedure, was unconstitutional.

2. Qualitative analysis

First of all, it must be noted that in 2019 the management of the Chamber attached great importance to the unification of jurisprudence but also to the administrative tasks.

As regards the work towards *unification of the jurisprudence*, it was primarily done via the President and other judges of the Chamber participating in the Panel for Appeals in the Interest of the Law and the Panel for Preliminary Ruling on Questions of Law, as can be seen from the attached statistics.

Another important mechanism in the work towards unification of the jurisprudence is publication of the relevant decisions issued by the Criminal Chamber and the Panels of 5 Judges that tries criminal cases. In 2019, as part of the normally-monthly meetings, several judgments were put to a vote after discussions and eventually 8 sets were posted as summaries containing 51 judgments.

Also, the President of the Criminal Chamber attended the meeting with the Presidents of the Criminal Chambers of the Courts of Appeal, where he presented the jurisprudence of the High Court of Cassation and Justice in the legal matters under discussion.

As regards the *administrative tasks*, it must be underlined that several proposals were submitted to the Leading Board for the unification of procedures at the level of the Court’s Chambers. By way of example, there was the proposal to approve all the parameters for the configuration of judicial panels.

Inventorizing and moving case files from the archive in the basement of the primary headquarters building of the supreme court to the General Archives of the High Court of Cassation and Justice. On the one hand this activity involved inventorizing and transmitting the documents that had exceeded the mandated storage duration (according to the National Archive Classification Guide), and on the other hand moving the documents – ledgers, folders with decisions, case files – that had not exceeded the mandated storage duration. This was a laborious activity performed by the specialist ancillary staff, starting in February 2019, and involved documents created between 1952 and 2011. Doing so made it possible to move the current

archive to the basement of the building, from its previous storage which had been in dozens of filing cabinets lining the main lobby on the ground floor of the building.

Reorganizing activity in the offices and divisions of the Criminal Chamber. Along this line, from the beginning of 2019 several clerks were transferred from the criminal bailiff's office, the archives and the registrar's offices and transformed into session clerks. This reorganization was primarily aimed at balancing out the work of the session clerks so that each of the 9 panels of judges would get 2 session clerks, at the same time ensuring their stability in those panels.

Another step was that the administrative correspondence was taken over by the two clerks who work in the Chamber President's office (one chief-clerk and the statistician clerk), under the President's supervision, while the clerk from the registrar's office who was previously in charge of this task was assigned to scanning and archiving in the ECRIS program all registered documents in relation to pending cases. This was done to ease the workload of the session clerks, who no longer have to scan and print registered documents because the members of the panel now have access to those documents in electronic format.

3. Goals for 2020

The priorities for 2020 are mainly an intensification of the activity towards unification of the jurisprudence and continuing the work to implement the electronic case file application as well as the one for the Secure Transmission of Documents (S.T.D.).

Unification of jurisprudence

In this line we will continue the meetings at the Criminal Chamber, according to Art. 33 of RAOF, to discuss which judgments issued by the Criminal Chamber and the Panels of 5 Judges in criminal matters are relevant for posting.

We will also ensure participation in the meetings with the Presidents of the Criminal Chambers of the Courts of Appeal, as well as with the Section Chief Prosecutors from Prosecutor's Office attached to the High Court of Cassation and Justice and from the Prosecutor's Offices attached to the Courts of Appeal.

A scheduling will also be developed for the Criminal Chamber judges, based on their expressed options, for attendance in the quarterly non-uniform jurisprudence meetings organized by the Courts of Appeal. In those meetings the jurisprudence of the High Court will be presented as regarding the matters of law under discussion.

The electronic case file and the application for Secure Transmission of Documents (S.T.D.)

Steps will continue to implement the program for the electronic case file and Secure Transmission of Documents, as decided by the management of the supreme court. For that it will be necessary to continue scanning and archiving all documents registered in relation to cases pending in the Court, and also to establish ways to accept a digital format of the documents developed in the criminal cases brought before the High Court by the criminal investigation bodies. Completing this goal would be a genuine benefit, first of all for the parties in the cases, who will be able to access the electronic version of cases pending in court, at the same time having a secure case management system.

On the other hand, this will also take some of the workload off the staff in the archives division, because there will be a significantly smaller number of persons reading the case files in the physical archives.

Adopting the Secure Transmission of Documents system will ease the work of the registration office clerk and the session clerks, as subpoenas and other documents will be sent electronically thus eliminating many of the operations required by sending communications in paper form via bailiff or regular mail.

This will also decrease the expenses generated by communicating paper form documents that way.





Chapter **V**

The Administrative and Tax Litigations Chamber

■ **V.1. JURISDICTION**

Under Art. 21 para. (1) of Law no. 304/2004, the Administrative and Tax Litigations Chamber of the High Court of Cassation and Justice will try appeals on law brought against judgments issued by Courts of Appeal and other judgments in cases stipulated by law, as well as appeals on law brought against non-final decisions or judicial acts of any nature that cannot be challenged any other way and the trial itself was interrupted before a Court of Appeal. Also, under para. (3) of the same text, the three non-criminal Chambers will try, in a distinct panel, appeals on law brought against judgments issued by those Chambers that rejected a request to refer the case to the Constitutional Court. Art. 23 para. (1) of the same Law stipulates that the Chambers of the High Court of Cassation and Justice, therefore including the Administrative and Tax Litigations Chamber, according to their own jurisdiction, will try requests for transfer of the trial, on grounds provided by the Procedure Codes, *conflicts of jurisprudence*, in cases stipulated by law, and any other requests stipulated by law.

The material jurisdiction of the Administrative and Tax Litigations Chamber of the High Court of Cassation and Justice is primarily established by the framework law, namely the *Law of Administrative Litigations no. 554/2004* – a special law as to the procedural stipulations that regulate the jurisdiction of courts in matters of regular law – and by other regulatory acts that specifically appoint the administrative litigations Chamber’s jurisdiction in various matters, either as a court for appeal on law or as a court of first instance (around 170 regulatory acts: Laws, Emergency Ordinance of the Government and Ordinance of the Government).

As a court for appeals on law the Administrative and Tax Litigations Chamber of the High Court of Cassation and Justice will try, as under Art. 10 para. (1) of *Law no. 554/2004*, appeals on law brought against judgments issued by the Administrative and Tax Litigations Chamber of the Courts of Appeal when the object is nullification of administrative acts issued by central public authorities and administrative/tax acts regarding taxes and dues, contributions, customs duty and accessories in an amount exceeding 3,000,000 RON.

In the case of certain administrative acts, the special Law stipulates the jurisdiction of the High Court of Cassation and Justice as both first and last instance.

Thus the Administrative and Tax Litigations Chamber has jurisdiction to try:

- contestations brought against decisions of the Plenum of the Superior Council of Magistracy concerning the career and rights of judges and prosecutors (Art. 29 para. (7) of Law no. 317/2004 on the Superior Council of Magistracy);
- appeals on annulment brought against decisions to remove members from the Board of Directors of the National Bank of Romania (Art. 33 para. (9) of Law no. 312/2004 on the Status of the National Bank of Romania);
- appeals on annulment brought against decisions of the Board of Directors of the National Bank of Romania concerning a credit institution (Art. 275 para. (2) of Emergency Ordinance of the Government no. 99/2006 on credit institutions and proper capital);
- disputes arising from an unjustified refusal by the National Bank of Romania to reply, within the legal deadline, to a license application that contains all the data and information required under applicable law (Art. 276 of Emergency Ordinance of the Government no. 99/2006 on credit institutions and proper capital).



■ V.2. ACTIVITY VOLUME

The activity volume of the panels of 3 judges

In 2017 the docket of the Chamber had **13,884** cases, in 2018 a number of **15,891** cases and in 2019 a number of **16,732** cases, the largest number of cases in the past 25 years.

a) *Stock cases in January 2019*

In the beginning of January 2019, the ATLC had a number of **11,235** registered cases, which was **1,523** cases more than the stock in the beginning of 2018 and **3,423** more than the stock of 2017.

b) *New-entry cases in 2019*

The analyzed statistics show that in 2019 a number of **5,497** new cases were registered at the Administrative and Tax Litigations Chamber, 682 less than in 2018 and 575 less than in 2017.

The structure of new-entry cases at the Administrative and Tax Litigations Chamber in 2019, per stages of proceedings, shows that out of the total 5,497 new entries a number of 4,148 cases were appeals on law, and the rest of **1,349** cases were contestations for annulment, reviews, first-instance cases (jurisdiction conflicts, transfers, magistrate disputes) or other cases.

There was a decrease in the number of new-entry cases for appeal on law tried on the basis of the Former Code of Civil Procedure, as out of the total **4,148** cases, a number of **4,042** were registered on the basis of the New Code of Civil Procedure and the remaining **106** on the basis of the Former Code of Civil Procedure; nevertheless the number of appeals on law registered at the Administrative and Tax Litigations Chamber continues to be high as compared to the human and material resources currently available to the Chamber.

c) *Cases on the docket in 2019*

As regards the number of cases to handle, as resulting from adding the number of new entries and the number of stock cases from the previous year, in 2019 the Administrative and Tax Litigations Chamber had to handle a number of **16,732** cases, a rise of 841 from 2018 and **2,848** from 2017.

Of the total **16,732** cases a number of **15,074** were appeals on law, and the remaining **1,658** cases were: 607 jurisdiction conflicts, 365 transfers, 77 magistrate disputes, 230 contestations for annulment, 224 reviews and 155 other cases.

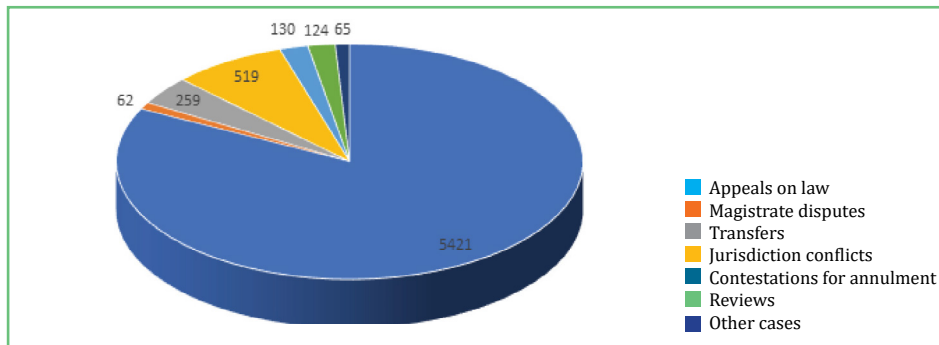
d) *Cases disposed of in 2019*

The number of cases disposed of at the end of 2019 is shown by statistics to be **6,580**, an increase by **1,924** from 2018 and **2,408** from 2017.

It may be noted a significant increase of the number of cases disposed of, which was an effect of both the Decision of 13 September 2018 of the Plenum of the Judges of the Administrative and Tax Litigations Chamber, and the remarkable effort of the judges and assistant magistrates of the Administrative and Tax Litigations Chamber, which made it possible to sustain the operation of 10 panels of judges throughout 2019.

Of the total **6,580** cases disposed of, a number of 5,421 were appeals on law, and the remaining **1,159** were other cases (519 jurisdiction conflicts, 259 transfers, 62 magistrate disputes, 130 contestations for annulment, 124 reviews and 65 other cases), **389** were associated cases and the total number of judgments issued was **6,580**.

Chart of the number of cases disposed of in 2019 in relation to the stage of proceedings is the following:



e) Cases still on the docket at the end of 2019

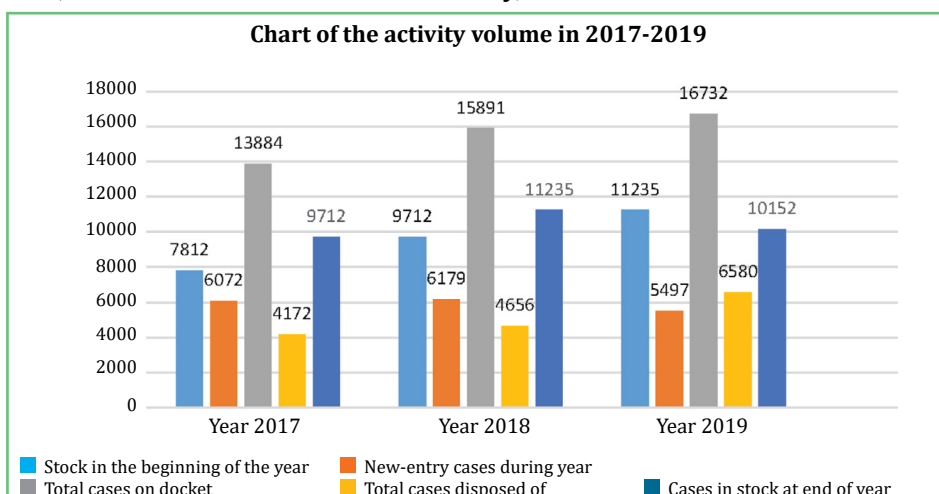
Remaining on the docket of the Administrative and Tax Litigations Chamber at the end of 2019 was a number of **10,152** cases, which is **1,083** less than in 2018 and only 440 more than in 2017.

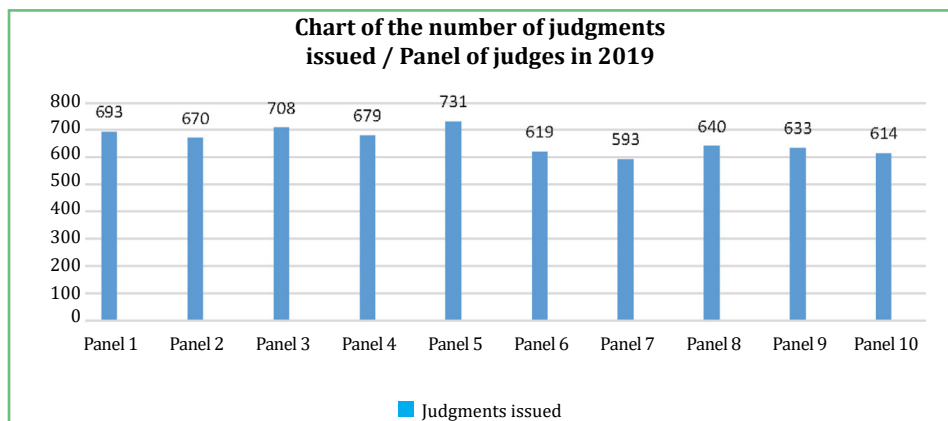
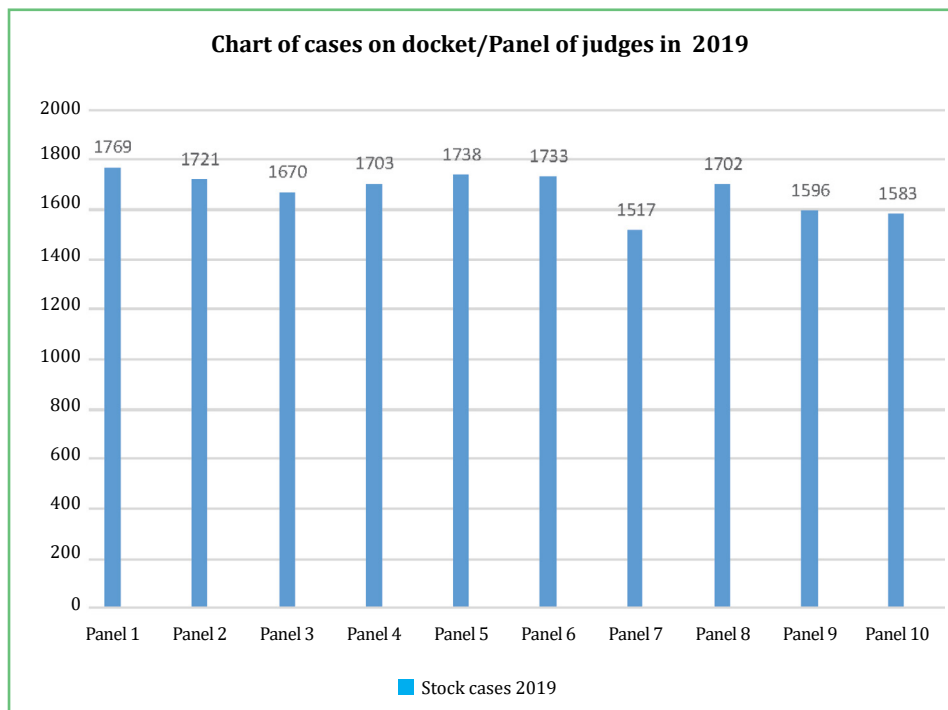
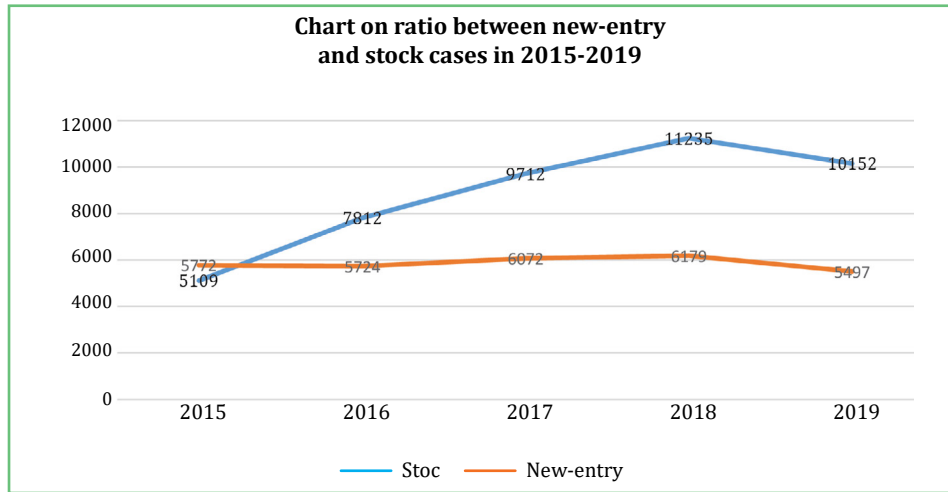
Of the total **10,152** cases remaining on the docket a number of **9,653** are appeals on law and the remaining 499 are other cases (88 jurisdiction conflicts, 106 transfers, 15 magistrate disputes, 100 a contestations for annulment, 100 reviews and 90 other cases), plus 35 associated cases.

It is easy to see that the number of cases disposed of is higher than that of the new-entry cases, which logically led to a decrease in the stock cases that existed in the beginning of 2020 and was the result of the human and managerial effort made throughout 2019.

An analysis of the statistics shows that as compared to 2018 activity improved in 2019: a 5% increase of cases on the docket, a 41% increase in cases disposed of, a 10% drop in the final stock

The evolution over the past 3 years of the indicators relative to the Chamber’s cases, based on data collected manually, is shown in the charts below.





■ V.3. WORLOAD PER JUDGE*, ASSISTANT MAGISTRATE AND CLERK

A. *Workload per judge as part of the various judicial panels*

In the year of reference 2019 the Administrative and Tax Litigations Chamber continued to be impacted not just by an increase in the volume of work but also by staff turnover in terms of judges, which required organizational steps to be taken, with an effect on the management of the act of justice at several times in 2019.

On average, in 2019 the judges of the Administrative and Tax Litigations Chamber worked as follows:

- a) as part of the panels of 3 judges (workload calculated for the number of **28** judges, including the President of the Chamber, as an average between the maximum number of 30 judges and the minimum number of 26 judges who actually worked throughout 2019):
 - sat in an average of **19** sessions (as per the scheduling approved by the Leading Board);
 - handled an average of **1,294** cases in public session and in council chamber;
 - issued an average of **235** judgments;
 - wrote an average of **57** full decisions.
- b) as part of the Panels of 5 Judges 26 judges of the Chamber participated as follows:
 - 6 judges as full members and 20 as substitutes.
- c) 27 judges sat as part of the Panels for Appeals in the Interest of the Law. The judges of the Chamber sat in these panels for unification of the jurisprudence a number of 180 times.
- d) 29 judges sat as part of the Panels for Preliminary Ruling on Questions of Law. The judges of the Chamber sat in these panels for unification of the jurisprudence a number of 300 times.

B. *The workload per assistant magistrate in the establishing of panels of 3 judges*

In 2019, the 25 assistant magistrates effectively working (including the Chief Assistant Magistrate):

- wrote 4,978 judgments issued in public sessions, for an average of 199 judgments/assistant magistrate;
- wrote a total of 12.089 procedural documents (decisions, sessions reports and others), for an average of 484 de procedural documents/assistant magistrate.

* In the reports of the High Court of Cassation and Justice the workload per judge is traditionally calculated by dividing the total number of cases handled by each Chamber by the number of judges who worked in such Chamber. For a relevance of the comparisons with the previous year it was preserved the same calculation method in this Report as well. It is nevertheless necessary to note that the Superior Council of Magistracy, that consolidates data from the entire judicial system, calculates workload per judge starting from "the number of cases brought before the supreme court on the basis of its functional jurisdiction, in the sense of trials on the merits, on appeal on law, in the panel of 3 judges or the Panel of 5 Judges, with the consequence of a multiplication of the number of cases by the number of panels of judges" (see for example the Report on the State of the Justice for 2018, page 35 - www.csm1909.ro). In practical terms this means that since every member of a panel of judges is effectively undertaking, in parallel with the others, the same work for research, analysis, administration and deliberation in a case on the docket of that panel, the workload per individual judge is much higher that would result from a basic division of the number of cases by the number of judges. And indeed, at the High Court of Cassation and Justice the greater part of cases is tried by panels of judges.

C. *Workload per session clerk*

In 2019, an average number of **15** clerks attended court sessions and also performed preliminary procedure acts for the panels they were assigned to, while another **4** only performed preliminary procedure acts in new-entry Chamber cases for the panels they were assigned to.

The session clerks

- attended an average of **12** sessions in 2019 (public sessions as per schedule);
- handled an average of **806** cases in public sessions;
- performed an average of 806 procedural documents (sessions reports and others).

Clerks who have responsibilities related to the preliminary procedure prepared the 5,497 new-entry cases for the docket of the Administrative and Tax Litigations Chamber in 2019.

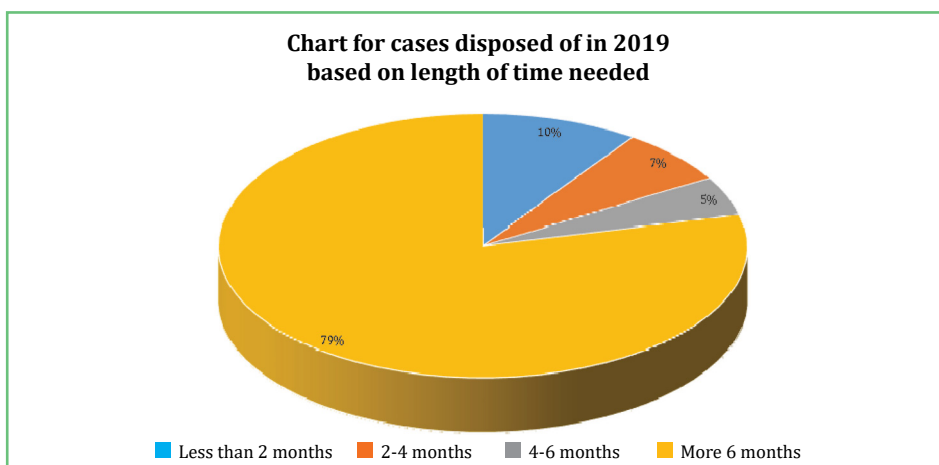
■ V.4. EFFICIENCY INDICATORS

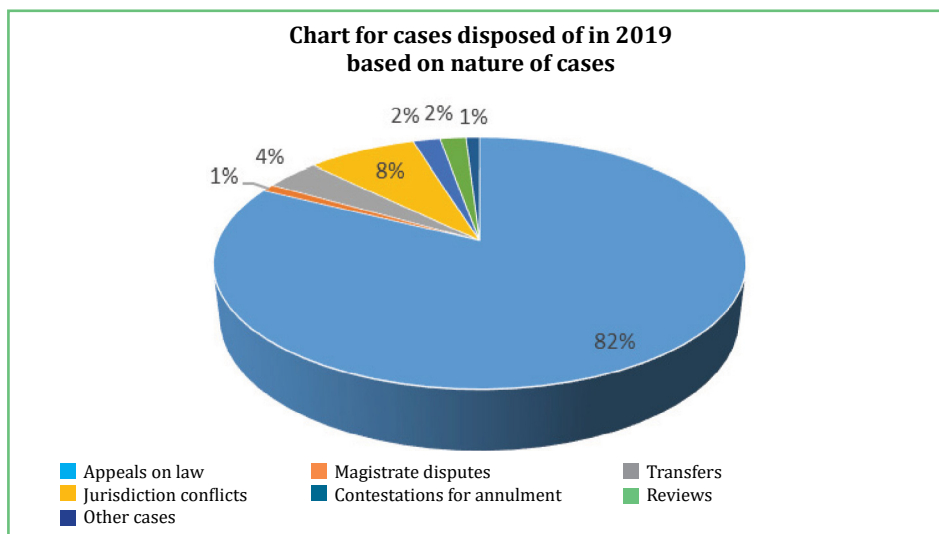
1. *Disposal rate indicator – average time elapsed between the date the cases were registered and the date the final judgment was issued*

The statistics show that 79% of the total cases brought before the Administrative and Tax Litigations Chamber in 2019 were disposed of within **more than 6 months**, while in the case of appeals on law – which account for **82%** of the total cases registered – the number increases to **96%**.

The situation on length of time needed for case disposition in 2019 based on the nature of those cases is shown in the charts below.

The situation would be much more worrisome if the percentage of disposals were followed at intervals of 1 year, 1.5 years and even 2 years, because **at the end of 2019 five of the 10 panels were scheduling the first hearing of those cases for January 2022.**





In this context it is extremely relevant to look at the statistics developed on 31 December 2019 which show the docket of the 10 panels of the Administrative and Tax Litigations Chamber in 2019 registered a total of **16,732** cases.

The difficult situation occurs in the case of the appeals on law, and not the others that are contestations for annulment and reviews or at the stage of trial on the merits (jurisdiction conflicts, transfers, magistrate disputes) and which account for **18%** of the work at the Administrative and Tax Litigations Chamber, in whose case the percentage of cases that go beyond 6 months is **16%**.

2. Stock cases – calculated as the sum of cases on the docket at the end of the reference period and not disposed of, expressed in percentage points

Comparing the number of cases on the docket of the Administrative and Tax Litigations Chamber in 2019 – **16,732**, with the number of cases disposed of by the end of 2019 – **6,580**, it results a stock of **10,152** cases representing **60.67%** (**the stock accounts for approx. 61% of the total cases on the docket**).

A stock of **10,152** cases has to represent a genuine reason for concern, which should cause steps to be taken from now on at all levels to reestablish the balance between available human resources and the actual volume of work, to the efficiency and effectiveness of the Administrative and Tax Litigations Chamber of the High Court of Cassation and Justice can no longer be questioned.

The increase in the number of stock cases was caused primarily by the impact of the New Code of Civil Procedure on the duration needed to dispose of a case, as a result of the preparation work in the cases and the admissibility of appeals on law as under Art. XVII of Law no. 2/2013 and Art. 493 of the New Code of Civil Procedure until the month of September 2018, but also by the undersized staffing of this Chamber in the context of a constant rise in the number and complexity of cases registered on the docket of the Administrative and Tax Litigations Chamber; this situation also affected the work performed in 2019.

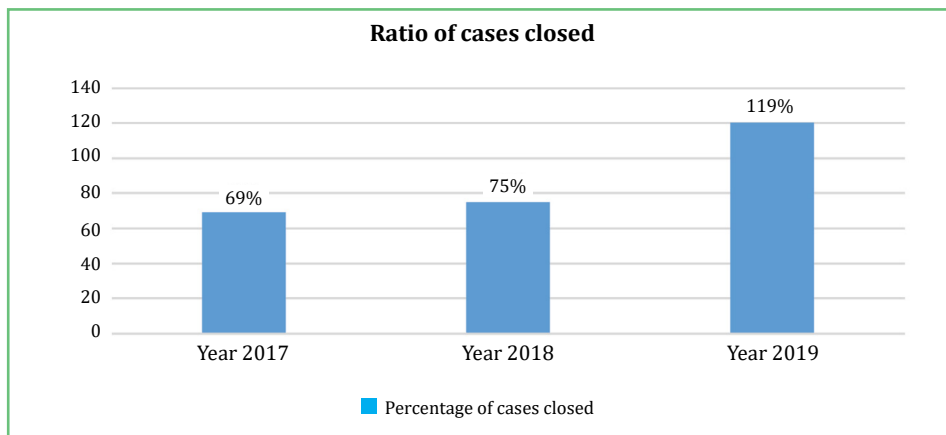
3. The ratio of cases closed

The indicator *Ratio of cases closed (efficiency)* is calculated exclusively in relation to new-entry cases – a ratio between new-entry cases in the reference period and cases disposed of in the same reference period, expressed in percentage points.

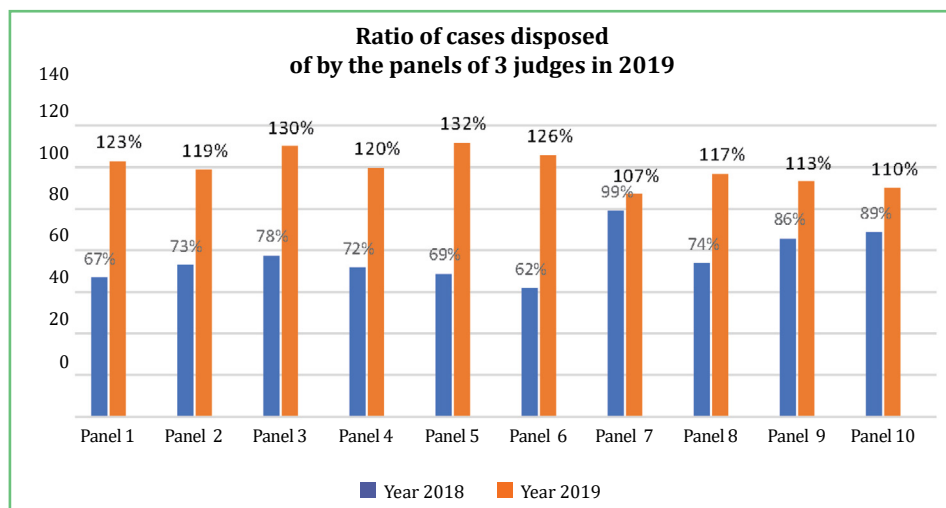
The ratio between new-entry cases – 5,497 and the number of cases disposed of within the same period – 6,580 shows an efficiency of 119.70%, which would put the court in the top degree of efficiency in the range established by Decision no. 278/2017 of the Superior Council of Magistracy – Chamber for Judges, which is something to be glad for in managerial terms and at the same time consistent with the efforts made by the Administrative and Tax Litigations Chamber in 2019.

Under this indicator it is noted a significant increase from 2018, from 75.30% to 119.70%.

The evolution over the past 3 years of the indicator “Ratio of cases closed” is shown in the chart below.



The ratio of cases disposed of by the panels of 3 judges in 2019 is shown in the chart below:



■ V.5. STATISTICS ON THE HUMAN RESOURCES

On 1 January 2019 the Administrative and Tax Litigations Chamber was registered in the organization chart of the High Court of Cassation and Justice with a total of 93 positions (5 managerial positions: President of the Chamber, Chief Assistant Magistrate and 3 chief clerks; and 88 execution positions: 33 judges, 24 assistant magistrates and 31 clerks).

a) Judges

In the beginning of 2019, 30 judges were working at the Administrative and Tax Litigations Chamber, including the President of the Chamber; 4 positions as judge were vacant.

The personnel turnover in the ranks of the judges continued in 2019, when the number of judges working at the Administrative and Tax Litigations Chamber varied between 29 (highest number) and 27 (lowest number).

b) Assistant magistrates

In the beginning of 2019, 25 de assistant magistrates including the Chief Assistant Magistrate were working at the Administrative and Tax Litigations Chamber.

Following some redistribution of positions, on 31 December 2019 the Administrative and Tax Litigations Chamber had 29 assistant magistrate positions approved, out of which 29 positions were filled (including the Chief Assistant Magistrate) and 0 vacancies.

c) Clerks

In the beginning of 2019, 33 clerks including the 3 chief clerks were working at the Administrative and Tax Litigations Chamber, with one vacancy and one temporary vacancy.

In 2019 the organization chart of positions for ancillary and other staff at the Administrative and Tax Litigations Chamber underwent successive changes so that on 31 December 2019 the Administrative and Tax Litigations Chamber had 35 positions for clerks approved, out of which 34 positions were filled (including 2 chief clerks) and one vacancy remained for a chief clerk (following a competitive examination for the promotion of clerks to managerial positions at the High Court of Cassation and Justice between 01 November 2019 and 20 December 2019).

■ V.6. PROFESSIONAL TRAINING OF THE PERSONNEL

a) Judges

The Chamber's judges attended (and in some of the cases were even trainers) seminars organized by the National Institute of Magistracy, on subjects such as: *“Communication in the Courtroom,” “International Conference on Supporting Transnational Cooperation and Training in Competition Law,”* the 12th Annual Conference of the Academic Society for Administrative Science, on *“Transformations of the administration and public law in the national and European space after 1989,”* *“National Conference of the Contact Points in the National Network of Coordinator*

Judges in the matter of EU Law – EU RO Quad,” “*Legality Check of Administrative Acts – jurisprudential approaches in cases that generated different interpretations from administrative and tax litigation courts*,” organized by the National Institute of Magistracy and the Bucharest Court of Appeal as part of the joint Program for continuous training at de-centralized level (FCD).

Also to be noted is the participation of judges abroad in conferences, trainings, working visits and seminars (in some situations even as speakers) such as: Congress of the Association of Francophone Supreme Courts, project “*Promotion of the Rule of Law and Strengthening Integrity in the Republic of Moldova*,” devoted to legal professionals in Romania and the Republic of Moldova, funded by the Embassy of the Netherlands to Romania and organized by the Expert Forum Association in cooperation with the Center for Legal Resources in Moldova, in the Republic of Moldova, Chişinău; workshop for integrity inspectors in the Republic of Moldova on the Romanian jurisprudence in the matter of conflicts of interests, incompatibilities and inspection of unlawful assets; Forum of Member State Magistrates, organized by the Court of Justice of the European Union.

b) Assistant magistrates

Professional training for assistant magistrates at the Administrative and Tax Litigations Chamber is dual, in the sense that *on the one hand* it means participation in the continuous training sessions given by the National Institute of Magistracy, and *on the other hand* it is something that takes place constantly using the activities they perform in the exercise of their work-related responsibilities.

For example, as part of the continuous training given by the National Institute of Magistracy, in 2019 it must be mentioned the participation of the assistant magistrates in seminars on topics such as: “*Non-Uniform Jurisprudence in disputes involving banks in the matter of relationship between consumer and professional*,” “*The challenges of Regulating and Enforcing competition law*,” “*Exchange of best practices in the matter of protecting the financial interests of the European Union in Romania – an administrative approach*.”

The Chamber gives briefings via the Chief Assistant Magistrate on its jurisprudence, working procedures, best practices looked upon favorably within the Chamber.

Starting from the *Internal Memo no. 4 of 15 February 2019 issued by the President of the Administrative and Tax Litigations Chamber* concerning organizing continuous professional training activities for the assistant magistrates and clerks, in a decentralized format, within the Chamber, in 2019 a professional training program was developed containing subjects to be approached in 2019, persons in charge and the activity schedule.

c) Clerks

In the case of this Chamber’s clerks, professional training is also dual, in the sense that on the one hand it means participation in the continuous training sessions given by the National School for Clerks and on the other hand it is something that takes place constantly using the activities they perform in the exercise of their work-related responsibilities.

In 2019 professional training for this Chamber’s clerks was given by the National School for Clerks, in the form of e-learning with sessions such as “*Romanian*

Language,” and in the form of seminars given in various training facilities in the country, such as “*Professional Ethics*” and “*Civil Procedural Law.*”

Just like in the case of the assistant magistrates, starting from the *Internal Memo no. 4 of 15 February 2019 issued by the President of the Administrative and Tax Litigations Chamber* concerning organizing continuous professional training activities for the assistant magistrates and clerks, in a decentralized format, within the Chamber, in 2019 a professional training program was developed for clerks containing subjects to be approached in 2019, persons in charge and the activity schedule.

As part of this program the clerks attended training that included IT-specific topics given by the specialists from the IT Department.

■ V.7. CHAMBER MANAGEMENT

Difficulties encountered in 2019

Though in 2019 activity at the Administrative and Tax Litigations Chamber of the High Court of Cassation and Justice was influenced positively by legal changes, decisions by the Plenum of the Judges at the Administrative and Tax Litigations Chamber and managerial steps, an example of which is amendment brought to Law no. 554/2004 on Administrative Litigations and Law no. 212/2018, the renouncing to the procedure of admissibility of appeals on law as an effect of the Decision of 13 September 2018 of the Plenum of the Judges at the Administrative and Tax Litigations Chamber and consequently the setting, in the last quarter of 2018, of the first hearing date for the approximately 10,000 appeals on law on the Chamber’s docket and the moving of the headquarters of the Administrative and Tax Litigations Chamber to the secondary building contracted by the High Court of Cassation and Justice, in 2019 the Chamber continued to have **vulnerabilities on three levels**:

7.1. *The activity volume of the Administrative and Tax Litigations Chamber of the High Court of Cassation and Justice, which continued to grow significantly as compared to 2017 and 2018*

Beyond the aspects having to do with the complexity of the cases brought before the Administrative and Tax Litigations Chamber, the statistics are also relevant as submitted to the Leading Board of the High Court of Cassation and Justice and which show that in the reference period 1 January 2019 – 31 December 2019 the activity volume of the Administrative and Tax Litigations Chamber continued to grow significantly as compared to 2017 and 2018.

The growing trend that became constant in the past two years continued in 2019, with the statistics showing that 2019 saw the largest number of cases on the docket of the Chamber in 25 years, namely 16,732 cases, a number which also gave rise to a stock which, at the end of 2019, reached 10,152 cases.

One important aspect needs to be noted, namely that **while the activity volume remained high the stock decreased from 11,235 cases in 2018 to 10,152 cases**

in 2019 (a decrease of 1,083 cases, or 9.64%), as a result of the sustained effort of the team at the Administrative and Tax Litigations Chamber.

The rising trend in the number of cases at the Administrative and Tax Litigations Chamber, brought about by an increasingly wide jurisdiction created by Law no. 554/2004 and the increasing number of special laws applicable in the administrative and taxation domains, was a constant in the past years (2010-2019), and generated many discussions both within and outside the Chamber (Superior Council of Magistracy, Ministry of Justice, Government) about resizing the staffing of the Chamber so as to provide an adequate response both to the challenges brought by the New Code of Civil Procedure and to the desire to provide quality justice within a reasonable time frame.

While the number of new entries had a slight decrease following the enactment of Law no. 212/2018, the absence of transitory stipulations kept a delicate situation in place in terms of disposing of cases within a reasonable time frame, with negative consequences on providing justice at the quality standards required of any supreme jurisdiction in the European space and implicitly on the public perception of this Chamber.

The activity volume of the Administrative and Tax Litigations Chamber of the High Court of Cassation and Justice remains a major problem, of a nature that genuinely impacts the quality of the courts work, a problem that can only find a solution in a reconfiguration of the jurisdiction of the High Court of Cassation and Justice, which in turn will require the law to be changed; in the adding of positions for assistant magistrates and clerks; in the developing of computer applications that will facilitate not only access to justice but also a decrease in the workload of clerks and assistant magistrates.

7.2. The duration of proceedings needed to dispose of cases in their components, in terms of duration of the trial and that of writing the full judgment text

7.2.1. In 2019, though the duration of the trial was no longer influenced by the procedure of admissibility of appeals on law which had been eliminated starting 13 September 2018 there still existed and still exist hearing dates set for 2 years after registration of the case to the Chamber.

The duration for the disposal of cases remains influenced by the very large number of cases on the docket of each of the 10 panels, an average of 1,673 cases/panel. The current rules of material jurisdiction in administrative and tax litigations, the complexity that the dynamics of social and economic life imparts to disputes in this domain and the impact the procedure of preparation and admissibility of appeals on law under the stipulations of Art. XVII of Law no. 2/2013 and Art. 493 of the Code of Civil Procedure produced upon the duration for the disposition of appeals on law until 13 September 2018 led to a constant increase in the number of cases brought before the Chamber (**a 5% increase of cases on the docket in 2019**).

Nevertheless, as a result of the efforts of the judges, assistant magistrates and clerks together, shown in an increase in the number of cases disposed of by 41.32%

as to the previous year, a decrease of 9.64% occurred in the stock of cases at the end of 2019 (namely 10,152 as to 11,235 at the end of 2018).

7.2.2. The duration of proceedings is equally influenced by a constant delay in the work of writing the full text of the judgments issued by the Administrative and Tax Litigations Chamber, which refers to those judgments assigned for writing to some of the Chamber's assistant magistrates.

While some success has been obtained in the reduction of the number of judgments whose full text was not written within the legal deadline by the judges and assistant magistrates of the Administrative and Tax Litigations Chamber, the Chamber still has a significant number of judgments whose full text has not been written. Thus, the duration of the judicial proceedings is explained by not just the excessive number of cases brought before the Chamber, owed to the considerable extent of the jurisdiction attributed to the Administrative and Tax Litigations Chamber, but also by an insufficient distribution of the resources allocated to case disposal. Thus in this legal matter there is a danger that justice performed over a time span of around 2 years will no longer be able to attain the goal of reinstating the lawful order that was violated by the issuance of an administrative or taxation act that was nullified in consideration of lawfulness grounds by a Chamber judge.

7.3. *The staffing of the Administrative and Tax Litigations Chamber, visibly not correlated with the activity volume of the Chamber*

An efficient handling of the cases on the Chamber's docket requires an urgent increase in the number of judges, assistant magistrates and clerks, because the amendment to its material jurisdiction under Art. 10 para. (1) and (11) of Law no. 554/2004 does not, on the short term and in the absence of transitory stipulations, have any impact on the activity volume, while on the long term the activity volume of the Administrative and Tax Litigations Chamber may decrease by about 10-13 % a year.

The steps initiated in previous years to reduce the workload of the Administrative and Tax Litigations Chamber of the High Court of Cassation and Justice must continue, as it is undeniably the busiest of the four Chambers of the supreme court and with the current human resources available it is extremely difficult to handle all the cases brought before it.

7.4. *Chamber management*

The activity of the Chamber's Management has taken place as under Art. 46 of *Law no. 304/2004*, on the independence of judges and prevention of any interference with the operation of the judiciary.

In 2019 the Chamber's Management took the administrative steps necessary for a good performance of the activities, with a priority attached to organizing work in the sense of efficiently using the human resources both in handling cases and in the administrative activities performed starting with the second half of 2018 and continuing in 2019 concerning the setting of a hearing date in the cases where applicable are the stipulations of the 2010 Code of Civil Procedure and whose numbers are constantly increasing.

In order to harmonize working procedures in all 10 panels of judges and to improve the work of the Administrative and Tax Litigations Chamber, based on Art. 31 of the *Regulation on Administrative Organization and Functioning of the High Court of Cassation and Justice*, **the President of the Chamber issued**, in 2019 and in addition to the steps taken in 2018, **Internal Memos** concerning aspects such as: recording and settling the exceptions of unconstitutionality as well as appeals used against requests to bring cases before the Constitutional Court; procedure to assign cases whose objects are contestations for annulment / reviews brought against judgments issued in the cases of the Administrative and Tax Litigations Chamber of the High Court of Cassation and Justice; steps intended to reduce the number of judgments whose full text has not yet been written; procedure to attach the judgment registration number to cases disposed of; procedure to upload the issued judgments into the ECRIS System; procedure to prepare court sessions and develop session lists; ensuring continuous professional training in 2019 for assistant magistrates and clerks, in decentralized format within the Chamber; procedure for the writing / typesetting of issued judgments, etc.

One of the constant concerns of the Management of the Administrative and Tax Litigations Chamber of the High Court of Cassation and Justice was **dealing with the situation of the writing of the full text of issued judgments**.

Because as of August 2018, when amendments were brought to the Law of Administrative Litigations, the assistant magistrates no longer had to elaborate reports on admissibility in principle, an increase occurred in the number of full-text judgments written by the end of 2019, which shows the negative impact the procedure of admissibility of appeals on law had had on the activity of the assistant magistrates.

In a different line, constant attention was devoted to **taking the necessary steps to fill the vacancies as well as to get additional positions for judges, assistant magistrates and clerks** at the Administrative and Tax Litigations Chamber.

7.5. Primary goals

7.5.1. Reduction of the duration of proceedings, especially in the case of appeals on law

Disposing of cases within a reasonable time frame is the primary requirement in providing the right to a fair trial, as under Art. 6 of the European Convention on Human Rights, Art. 21 of the Constitution of Romania and Art. 10 of Law no. 304/2004 on the Organization of the Judiciary. Also, in the Strategy for the Development of the Judicial System (approved under Government Decision no. 1155 of 23 December 2014) one of the stipulated strategic goals was the reduction of the duration of proceedings.

At present, the duration for the finalization of appeals on law is circa 2 years. Even with the renouncing to the procedure of admissibility, as under Art. 493 of Code of Civil Procedure, the duration between the end of the regularization procedure (1-2 months) and the setting of the first hearing date is unacceptably long.

The duration of proceedings in appeals on law is impacted by the date of the first hearing, which has been pushed constantly farther in the past years because of the

increasing imbalance between the number of judges, assistant magistrates and clerks working at the Administrative and Tax Litigations Chamber and the activity volume brought by the number of cases on the docket.

Under such circumstances it is necessary to have a careful monitoring of the duration needed for disposal of appeal on law cases, by keeping a constant record for each panel and taking steps to remove any subjective factors that might lead to an unwarranted increase of the duration needed for disposal of a case.

Achieving this goal is conditioned to a large extent by ensuring a balanced participation in court sessions as well as the performance of other activities as required by the specifics of the activity of each category of personnel.

The Administrative and Tax Litigations Chamber is leaning towards creating stable teams for each judicial structure, which could lead to a more efficient management of assigned cases, by generalizing the formula 1 judge/1 assistant magistrate/1 clerk; together they would follow and perform in a uniform manner all the stages of the procedure and adequately distribute responsibilities between them.

At this time this goal cannot be attained in full because of the current staffing of the Administrative and Tax Litigations Chamber, and thus the push must continue to bring an appropriate increase of the positions for judges, but especially the number of positions for assistant magistrates and clerks so as to ensure an optimum ratio between them within the Chamber.

The steps that have started in the Chamber for a reconfiguration of the staffing and the filling of vacancies must be backed up by a balanced scheduling of the work for judges, assistant magistrates and clerks per court sessions, since each one of those persons will take part in the sessions they are scheduled to participate in accordance to the scheduling but they are also required to replace the judges who have retired, in those respective panels, or in panels that do not have stable assistant magistrates and clerks.

The efforts made by this Chamber's judges in 2019 were considerable, both in terms of the difficult-to-manage activity volume and in terms of an increase in complexity of the cases, all in the context of a desire to keep up the standards for unification of jurisprudence at the Administrative and Tax Litigations Chamber and an organizational climate based on understanding, communication and respect.

Consequently, besides their regular activity in all types of panels of the High Court of Cassation and Justice (the panels of 3 judges, the Panels of 5 Judges, the Panel for Preliminary Ruling on Questions of Law and the Panel for Appeals in the Interest of the Law, the Joined Chambers), the judges of the Administrative and Tax Litigations Chamber have been constantly working to unify the jurisprudence of the Chamber itself, actively participating in discussing and clarifying the points of law brought up in the meetings of the Plenum of Judges at the Administrative and Tax Litigations Chamber, to increase professional skills both individually by learning the constantly-changing laws, the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union, and to attend various trainings, conferences, international seminars.

Not all the activities undertaken by the judges of the Administrative and Tax Litigations Chamber can be quantified in statistics, but all are reflected directly in the quality of the act of justice at the Chamber, including the component regarding the number of full-text judgments written as well as the short duration for disposal of appeals on law after the first hearing date, which is an average of 115 days.

Increasing the quality of the act of justice involves not only good professional knowledge and skills on the part of the judges, assistant magistrates and clerks but also a compatibility, the existence of elements of cohesion within the judicial teams, complementary personalities that do not generate conflicts outside a difference of professional opinions, a compatibility which should naturally exist.

If stable teams can be established, compatible from a professional point of view, that make it possible to have a realistic transmission of responsibilities from judge to assistant magistrate and from the latter to the session clerk, a favorable basis is formed to readdress, at the Chamber meeting, the need to increase the maximum number of new-entry cases per session to a number ranging between 25 and 35 cases. The professional meetings as well as the individual discussions with judges will stress the importance of shorter hearing dates for older cases, compliance with the requirements of accelerated trial and the principle of reasonable duration, and finding common solutions to improve the existing issues.

Managing the situation of the overdue writing of the full text of issued judgments

Any vulnerability and dysfunction in the circulation of cases will generate delays in the proceedings, consisting of delays in writing the full text of judgments, delayed sending of cases back to the courts of first instance, especially in the situation where the trial of the case is interrupted (nullifications with resending for trial on merits, jurisdiction conflicts, suspended cases). It is therefore necessary to have a monthly preventive check, done by the Chief Assistant Magistrate, to look at compliance with regulation responsibilities concerning the circulation of cases.

Therefore the writing of the full text of judgments within the legal deadline and establishing a maximum time limit for the writing of judgments on nullifications with resending for trial on merits and on jurisdiction conflicts must be a constant concern of the Management of the Administrative and Tax Litigations Chamber.

From this point of view it is necessary to establish exactly which judgment texts have not been written within the deadline, per each judge and assistant magistrate; monthly check done by the Chief Assistant Magistrate, to look at the status of writing in the cases assigned to assistant magistrates who are constantly late in sending the written material; initiating discussions with them to find out the reasons that caused the delay and then taking concrete steps to correct and prevent such situations.

7.5.2. Uniform jurisprudence

Mechanism to achieve unification of jurisprudence

Just like previously, in 2019 the Administrative and Tax Litigations Chamber continued to apply the mechanism to achieve unification of jurisprudence that was instated back in 2006 and consists of the following stages:

- identifying the repetitive cases registered with the Chamber and informing the judges and assistant magistrates of their existence so as to avoid different judgments from being issued;

- identifying situations of non-uniform jurisprudence and submitting them for discussion to the Plenum of Judges with a view to adopting solutions towards uniform jurisprudence;
- adopting solutions in principle and for unification of jurisprudence in the meetings of the Plenum of Judges, which can then be communicated to the relevant Chambers of the Courts of Appeal so as to disseminate the jurisprudence of the supreme court;
- consolidating, systematizing and uploading the solutions in principle and for unification of jurisprudence to the intranet system;
- judges constantly tracking and assistant magistrates presenting the Chamber's jurisprudence in similar cases on the session list, so as to comply with jurisprudence in the matter by virtue of the principle of jurisdictional discipline.

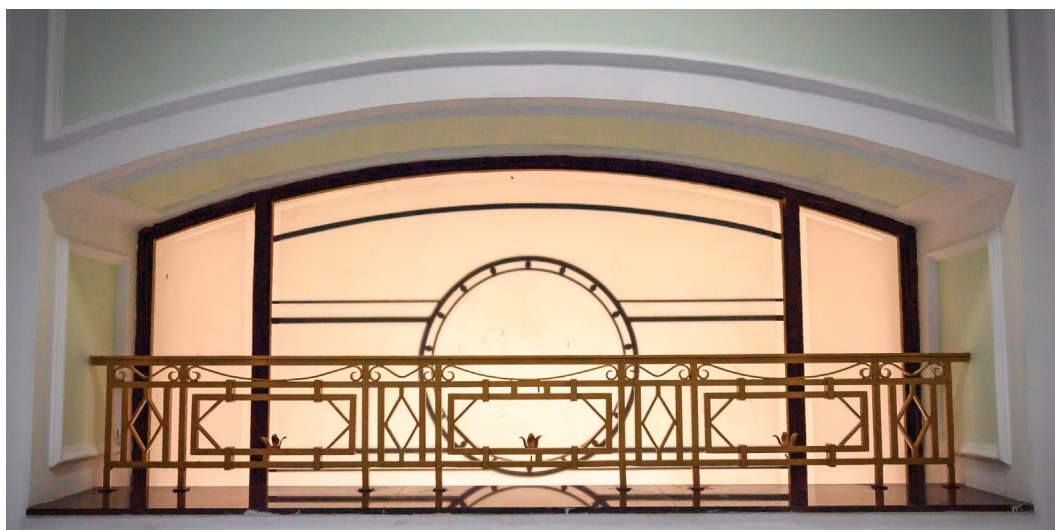
Administrative steps taken at the Chamber to achieve unification of jurisprudence

Of the steps to this effect we recall the following: meetings of judicial practice, solutions in principle, approval for posting on the official website of the High Court of summaries of the most relevant judgments issued by the Chamber in 2019.

Thus, in 2019 the Plenum of Judges of the Administrative and Tax Litigations Chamber had 9 meetings, some of which adopted important solutions for the unification of the Chamber's jurisprudence. The solutions for the unification of jurisprudence are posted on the website of the High Court of Cassation and Justice, in the section assigned to the Administrative and Tax Litigations Chamber, under the heading "*Solutions in principle and for unification of the jurisprudence,*" to ensure transparency of the Chamber's activity and to ensure every stakeholder the effective exercise of their right to be informed of the jurisprudence of the Administrative and Tax Litigations Chamber.

Procedural mechanisms reliant on Art. Of 521 Code of Civil Procedure, for unification of the jurisprudence

As part of the procedural mechanisms intended to ensure unification of the jurisprudence, based on Art. 521 of the Code of Civil Procedure of 2010, the High Court of Cassation and Justice – Panel for Preliminary Ruling on Questions of Law which is made exclusively of judges from the Administrative and Tax Litigations Chamber received 9 requests submitted to the High Court; all requests disposed of in 2019 were rejected as inadmissible.





Chapter VI

Unification of jurisprudence activity

■ VI.1. JURISDICTION OF THE JUDICIAL FORMATIONS

Under Art. 19 para. (2¹) of Law no. 304/2004, within the High Court of Cassation and Justice operate the Panel for Appeals in the Interest of the Law and the Panel for Preliminary Ruling on Questions of Law. The two mechanisms for unification of judicial practice are complementary, as one is aimed at preventing situations of non-uniform practice and the other at reinstating uniformity of the jurisprudence. According to Art. 25 of Law no. 304/2004 on the Organization of the Judiciary, as republished with subsequent amendments and supplements, the High Court of Cassation and Justice gathers in its **Joined Chambers** when examining requests to amend the jurisprudence of the supreme court or requests to file with the Constitutional Court for a constitutionality check of laws before enactment.

Panel for Appeals in the Interest of the Law

“*The Law of the Little Reform*,” no. 202/2010 fundamentally amended and regulated the “*Panel for Appeals in the Interest of the Law*,” as the primary mechanism for unification of judicial practice.

The rules for establishing the panels and the procedure for disposition of requests for appeal in the interest of the law are regulated in the contents of the new codes of civil and criminal procedure under Art. 516 and 517 of the Code of Civil Procedure, and respectively Art. 473 of the Code of Criminal Procedure. Also, the stipulations of Art. 271 and 272 of the Regulation on Administrative Organization and Functioning of the High Court of Cassation and Justice (in the version applicable until 30 December 2019) extensively describe the applicable procedural mechanisms.

Panel for Preliminary Ruling on Questions of Law

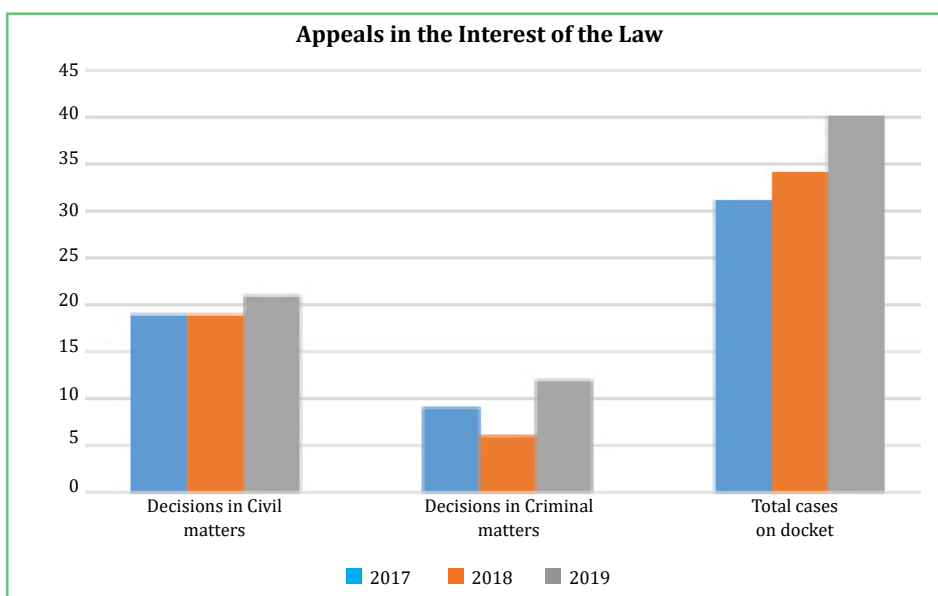
Instated in the context of the enactment of the New Codes, this mechanism for unification of judicial practice is regulated under Art. 520-521 of the Code of Civil Procedure, and respectively Art. 475-4771 of the Code of Criminal Procedure, in terms of both the procedure to handle requests for a preliminary ruling and the rules for establishing the panels. Also, the stipulations of Art. 274 and 275 of the Regulation on Administrative Organization and Functioning of the High Court of Cassation and Justice extensively describe the applicable procedural mechanisms.

■ VI.2. ACTIVITY VOLUME

1. Activity volume at the Panel for Appeals in the Interest of the Law:

Activity volume			Disposed of	Final stock
TOTAL	Of which			
	Initial stock	New entries		
2019				
40	9	31	33 (1 clarification)	8
2018				
34	11	23	25	9

In 2019 the activity volume at the Panel for Appeals in the Interest of the Law was 40 cases, out of which 9 were in stock on 01 January 2019 and 31 were new entries during the analyzed period. **33 Decisions in the Interest of the Law** were issued in 2019 (9 in cases registered in 2018, 23 in cases registered in 2019 and 1 clarification of the orders in a case from 2013), of which 21 Decisions were issued in **civil matters** and **12 in criminal matters**. Of the total number of cases 28 appeals in the interest of the law were **sustained** and **5 rejected**.



Out of the total 31 new entries, the ratio of requests for an appeal in the interest of the law came from the following sources:

- **9 requests** filed by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice;
- **2 requests** filed by the Ombudsman;
- **1 request** filed by the Leading Board of the High Court of Cassation and Justice;
- **19 requests** filed by the Leading Boards of the Courts of Appeal: 5 from Bucharest, 8 from Braşov, 1 from Cluj, 2 from Constanţa, 1 from Craiova and 2 from Timişoara.

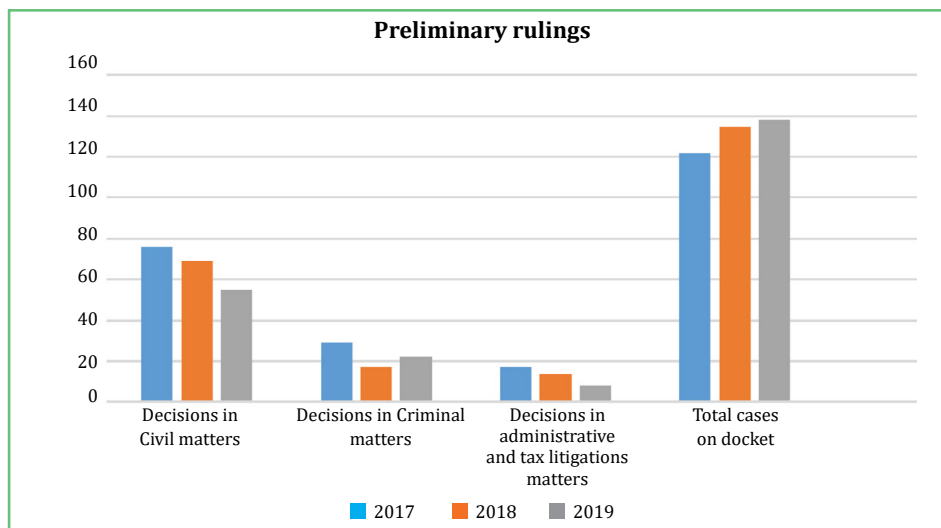
A majority of the appeals in the interest of the law was disposed of within 3 months of the date they were brought. The Decisions in the Interest of the Law were published in the Official Journal and posted on the website of the High Court of Cassation and Justice.

2. Activity volume at the Panel for Preliminary Ruling on Questions of Law:

Activity volume			Disposed of	Final stock
TOTAL	Of which			
	Initial stock	New entries		
2019				
138	21	117	84 + 9 connected + 1 clarification	45 (3 connected)
2018				
135	35	100	104	21

In 2019 a number of **117 requests for preliminary ruling** were filed with the *Panel for Preliminary Ruling on Questions of Law*, of which **77** in Civil matters, **31** in Criminal matters and **9** in administrative and tax litigations matters.

In 2019 the *Panel for Preliminary Ruling on Questions of Law* disposed of 85 requests for preliminary ruling, out of which 63 in Civil and administrative and tax litigations matters and 22 in Criminal matters.



The year 2019 continued to see a significant number of requests rejected as inadmissible, especially on the activity of the Panels for Preliminary Ruling on Questions of Law. Because of this, the High Court decided to help entities that have a legal right to file requests with the High Court as part of the mechanisms for unification of the jurisprudence and released uniform rules on the format and requirements for such requests, and also properly systematized that information on the website of the High Court, thus ensuring the transparency and predictability of these formations' activities.

■ VI.3. JOINED CHAMBERS

In 2019 the High Court of Cassation and Justice gathered in its Joined Chambers only once, to deal with a request filed with the Panels of 5 Judges in criminal matters and the Criminal Chamber for a change in the existing jurisprudence of the Panels of 5 Judges in criminal matters in terms of the interpretation given to, and application of, the principle of continuity of a judicial panel as under the rule of year-long stability that governs the activity of such judicial formations.

The Joined Chambers of the High Court of Cassation and Justice issued a Decision in this matter.

■ VI.4. HUMAN RESOURCES

In 2019, the Joined Chambers were staffed as follows:

- one Prime Assistant Magistrate (1 position filled);
- one Chief Assistant Magistrate (1 vacancy);
- 10 assistant magistrates (9 positions filled and one become vacant in December 2019);
- 1 Chief Clerk (1 position filled);
- 15 clerks (15 positions filled).

a) Assistant magistrates

In the Panel for Preliminary Ruling on Questions of Law and the Panel for Appeals in the Interest of the Law, participation in the sessions was provided by the 4 assistant magistrates appointed to this effect, together with the assistant magistrates appointed for the Panels of 5 Judges in criminal matters, in compliance with the principle of specialization.

b) Clerks

In terms of specialist ancillary staff, in 2019 the Joined Chambers had:

- 1 Chief Clerk;
- 2 clerks in the Panel for Preliminary Ruling on Questions of Law and the Panel for Appeals in the Interest of the Law
- 4 clerks (one clerk with a secondary education degree and three with a law degree) to service the activities of all judicial formations of the Joined Chambers.

■ VI.5. QUALITATIVE ANALYSIS

In 2019 administrative steps were taken at the Joined Chambers to increase efficiency in the trial activity of the *Panel for Preliminary Ruling on Questions of Law and the Panel for Appeals in the Interest of the Law*, given the novelties occurred in the law on the procedure to handle cases brought before these judicial formations for legal disposition.

Those steps were proposed by the Management of the court as part of the participative management mechanism, and in adopting them they considered the stipulations in laws and regulations, and the points of view expressed by the court's Chambers and judges via their representatives in the Leading Board.

The Management of the court continued to monitor the entire activity performed on this tier, and to that effect called organizational meetings with the Presidents of the Chambers, the Prime Assistant Magistrate, the Chief Assistant Magistrates or the Chief Clerks of the Court, and steps were discussed and adopted to streamline the activities or, as needed, correct existing dysfunctions.

The impact of the New Code of Civil Procedure and the New Code of Criminal Procedure continued to be felt in the activity of the *Panel for Preliminary Ruling on Questions of Law* in 2019, and for this reason one of the primary concerns in the management activity at this tier was how to most efficiently organize and optimize this type of activity. To this end the Management of the Court proceeded to adopt a series of steps as follows:

- create the conditions and provide the resources needed for the registration of requests for a preliminary ruling and disposal thereof within the deadline stipulated by law;
- constantly informing the staff involved in this activity of the ways to perform the work, and constant professional training for all categories of personnel;
- constant assessment of the effectiveness of adopted organizational steps so as to be able to correct the possible dysfunctions in activities;
- provide and monitor an optimum balance between work performed by the members of the *Panels for Preliminary Ruling on Questions of Law*, in compliance with the stipulations of procedural law on the establishing of the panels.

As part of the overall set of management steps, the Management continued monitoring and assessing the steps that had been adopted previous to 2019, concerning the procedures to handling appeals in the interest of the law, the collection and recording of statistical information, et. al.

Also, the procedure was preserved for the participation of judges and assistant magistrates in handling appeals in the interest of the law and requests for a preliminary ruling. To that effect, as soon as such legal action was brought before the High Court of Cassation and Justice steps were taken to appoint, randomly, the judges constituting ***the Panel for Appeals in the Interest of the Law and the Panel for Preliminary Ruling on Questions of Law***, the substitutes, the rapporteur judges, as well as the teams of judges in charge of checking the rationales; all of this was recorded in reports.

To ensure a timely return of judgments in appeals in the interest of the law the rapporteur judges were afforded time-frames for research and development of the reports that would be submitted to the other members of the panels for appeals in the interest of the law.

After the Decisions in the Interest of the Law and the Preliminary Rulings were issued and written, designated judges in those teams endorsed the rationales after careful consideration. All those steps allowed for the return and publication in the Official Journal of all those Decisions, within the legal deadline.

A positive impact was seen on the quality of rationales in support of this category of Decisions by the stability of the team of assistant magistrates assigned to the Joined Chambers, but especially by the felicitous contribution of the Law Chairs of prestigious Universities, who responded to requests sent by the High Court by sending points of view concerning points of law.





Chapter VII

The Panels of 5 Judges

■ VII.1. JURISDICTION

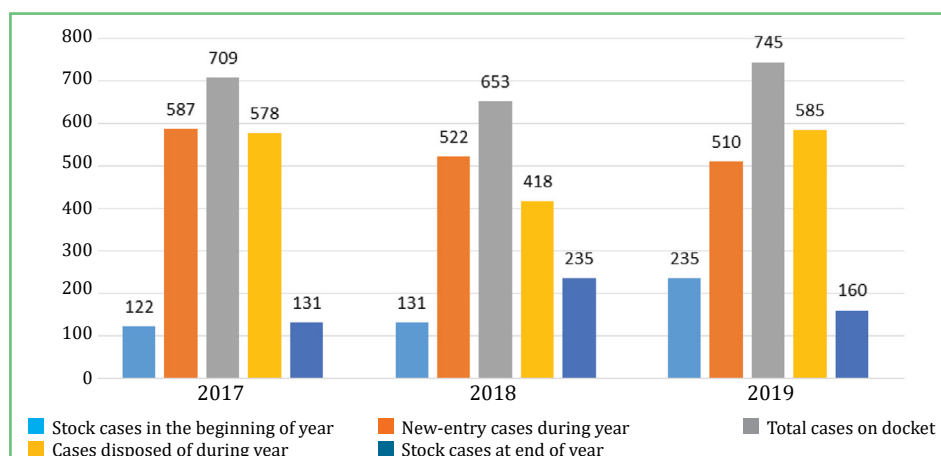
The Panels of 5 Judges operate at the High Court of Cassation and Justice under Art. 19 para. (2¹) of Law no. 304/2004.

Under Art. 24 of Law no. 304/2004 on the Organization of the Judiciary, as republished with subsequent amendments and supplements, Panels of 5 Judges will try appeals brought against judgments issued as first-instance by the Criminal Chamber of the High Court of Cassation and Justice; appeals in cassation brought against judgments issued in appeal by Panels of 5 Judges after admission in principle; contestations brought against resolutions pronounced during cases tried by the Criminal Chamber of the High Court of Cassation and Justice as a court first instance; disciplinary cases as required by law; and other cases assigned in their jurisdiction by law.

Also, under para. (2) of Art. 24 of the above-mentioned law, as introduced by item 9. of Law no. 207/2018 that amended and supplemented Law no. 304/ 2004 on the Organization of the Judiciary, the Panels of 5 Judges will also try the appeals on law brought against decisions rejecting requests to file with the Constitutional Court and issued by a different Panel of 5 Judges.

■ VII.2. NUMBER OF PANELS OF 5 JUDGES ACTIVITY VOLUME

There were six Panels of 5 Judges operating in 2019 at the High Court in civil matters (3 panels appointed for 2019 and 3 panels appointed for 2018 and which continued working the next year) and six Panels of 5 Judges in criminal matters (appointed the same way). This was a premiere in the activity of the High Court, and thus all the judges of the Criminal Chamber were involved in the activity of this judicial formation. There was a consequent significant increase in the activity of the Panels of 5 Judges operating at the Joined Chambers, as follows:



■ VII.3. WORKLOAD PER JUDGE* AND ASSISTANT MAGISTRATE

This subchapter will only show data about the judicial activity of the judges appointed as members on the Panels of 5 Judges and the assistant magistrates in the Joined Chambers (6 panels), given that for the other judges and assistant magistrates, the data is reported by each Chamber.

Indicator	Judge	Assistant magistrate
Cases handled/percent of the total number of cases handled	745	745
Cases disposed of/ percent of the total number of cases disposed of	608	608
Judgment text written/ percent of the total number of judgments	3	605
Resolutions written (with a number)	-	20

* In the reports of the High Court of Cassation and Justice the workload per judge is traditionally calculated by dividing the total number of cases handled by each Chamber by the number of judges who worked in such Chamber. For a relevance of the comparisons with the previous year it was preserved the same calculation method in this Report as well. It is nevertheless necessary to note that the Superior Council of Magistracy, that consolidates data from the entire judicial system, calculates workload per judge starting from “the number of cases brought before the supreme court on the basis of its functional jurisdiction, in the sense of trials on the merits, on appeal on law, in the panel of 3 judges or the Panel of 5 Judges, with the consequence of a multiplication of the number of cases by the number of panels of judges” (see for example the Report on the State of the Justice for 2018, page 35 - www.csm1909.ro). In practical terms this means that since every member of a panel of judges is effectively undertaking, in parallel with the others, the same work for research, analysis, administration and deliberation in a case on the docket of that panel, the workload per individual judge is much higher that would result from a basic division of the number of cases by the number of judges. And indeed, at the High Court of Cassation and Justice the greater part of cases is tried by panels of judges.

■ VII.4. EFFICIENCY INDICATORS

Statistical indicators of efficiency at the la Panels of 5 Judges:

Entry	Statistical indicator	Valuee
1.	Efficiency indicator for cases handled. Calculation: cases disposed of divided by cases handled	81,61%
2.	Efficiency indicator for total cases. Calculation: cases disposed of/(stock plus new entries minus cases suspended)	84,79%
3.	Efficiency indicator for accelerated disposition of cases. Calculation: cases disposed of within 0-6 months divided by cases disposed of	79,27%
4.	Indicator for reversal. Calculation: appeals on law sustained divided by cases disposed of	0,085
5.	Indicator for sustaining. Calculation: appeals on law rejected divided by cases disposed of	81,08%

Duration of case disposition

For the year 2019 the statistics on duration needed for disposition of cases by the Panels of 5 Judges, depending on procedural stage, is the following:

Proceeding stage of case	Cases disposed of within 0-2 months of registration	Cases disposed of within 2-4 months of registration	Cases disposed of within 4-6 months of registration	Cases disposed of beyond 6 months since registration	TOTAL
Appeals on law	73 + 5 associated	96 + 8 associated	51 + 1 associated	94	314 + 14 associated
Contestation (HCCJ)	30	10	1	-	41
Appeals	9	11	5	16 + 1 asociat	41 + 1 asociat
First instance	8 + 6 associated	4 + 1 associated	-	1 associated	12 + 9 associated
Contestations for annulment	22	67	20	12	121
Review	10	13	9	1	33
Appeals in cassation	17	3	2	1	23
Total	169 + 11 associated	204 + 9 associated	88 + 1 associated	124 + 2 associated	585 + 23 associated

In the context of analyzing the duration needed for disposition of the cases it must be noted that 9 of the cases on the docket of the Panels of 5 Judges in criminal and civil matters were suspended pending a preliminary ruling from the Court of Justice of the European Union.

The statistics for *suspended* cases are:

Cases in criminal matters suspended pending a preliminary ruling from the Court of Justice of the European Union:

- **6 appeals**, out of which 1 at the stage of retrial after a sustained contestation for annulment. Of those 6 suspended appeal cases 4 were registered in 2018 and 2 in 2019 (cases no. 222/1/2018; no. 2506/1/2018; no. 2867/1/2018; no. 3201/1/2018 – appeal under retrial after a sustained contestation for annulment; no. 105/1/2019 – suspended pending a preliminary ruling from CJEU where it is recorded at no. C-811/19; no. 790/1/2019);
- **1 contestation for annulment**, registered on the docket of the Panel of 5 Judges in 2018, suspended on 22 April 2019 (case no. 3089/1/2018).

Cases in **matters other than criminal** suspended pending a preliminary ruling from the Court of Justice of the European Union:

- **2 appeals on law** (case no. 927/1/2018 – registered on the docket of the Panel of 5 Judges in 2018, suspended on 13 May 2019 and case no. 1375/1/2019 – registered on 16 May 2019, suspended on 02 December 2019 pending a preliminary ruling from CJEU in case no. C-547/19).

■ VII.5. STATISTICS ON HUMAN RESOURCES AVAILABLE TO THE PANELS OF 5 JUDGES IN 2019

a) Assistant magistrates

As regards positions for **assistant magistrates**, in 2019 the Panels of 5 Judges in criminal matters operated with a complement of 4 assistant magistrates specialized in criminal matters, and between 15 May 2019 and 31 December 2019, they had an additional 2 assistant magistrates from the Criminal Chamber of the High Court of Cassation and Justice.

Participating in the sessions of Panels of 5 Judges in matters other than criminal in 2019 were the 2 assistant magistrates appointed to this effect as well as the 4 assistant magistrates appointed to the Panel for Appeals in the Interest of the Law and the Panel for Preliminary Ruling on Questions of Law, because of the operation in parallel of both the Panels of 5 Judges established for 2018 and those established for 2019.

b) Clerks

As for the *specialist ancillary staff*, in 2019 the Panels of 5 Judges of the High Court of Cassation and Justice operated with:

- 4 session clerks in the Panels of 5 Judges in civil matters, out of whom one clerk from the IInd Civil Chamber (as of 01 March 2019) and one clerk from the Ist Civil

- Chamber (in February – April 2019), who were appointed temporarily for work with those judicial formations;
- 5 session clerks in the Panels of 5 Judges in criminal matters.

■ VII.6. QUALITATIVE ANALYSIS

Impact of the main amendments brought to laws and regulations in 2019 upon the activity of the Panels of 5 Judges

The legal changes in 2018, specifically the enactment of the laws on the judiciary and application of decisions of the Constitutional court, continued to be a challenge for the supreme court in 2019 as well. These circumstances especially impacted the activity of the Panels of 5 Judges in terms of organizing judicial work at this level. Thus, under Decision no. 685 of 7 November 2018, the Constitutional Court found the existence of a legal conflict of a constitutional nature between the Parliament of Romania and the High Court of Cassation and Justice in terms of the interpretation and application of Art. 32 of Law no. 304/2004 on the Organization of the Judiciary, as amended under Law no. 207/2018, and describing the appointment of the members on the Panels of 5 Judges.

In that context it must also be mentioned the Decision no. 1367 of 5 December 2018 adopted by the Superior Council of Magistracy – Chamber of Judges, to apply the Decision of the Constitutional Court no. 685/2018 and which established the procedure to appoint, randomly, the members of the Panels of 5 Judges for 2018 and judges on the stand-by lists, as well as some rules for the operation of those judicial formations.

In turn the Leading Board of the supreme court adopted a series of steps indented to secure continued operation of judicial work in the cases brought before the Panels of 5 Judges. These were Decisions no. 156/6 December 2018, no. 158/13 December 2018 and no. 172/18 December 2018 (all became applicable in 2019), Decision. no. 3/2019 and no. 4/2019.

Some of the salient features in those Decisions were that they:

- approved the number of panels, established the representation of Chambers in panels formed for matters other than criminal, designated, as established by the Superior Council of Magistracy, the members on the Panels of 5 Judges randomly and the judges on the stand-by lists in 2018, approved the membership of the panels;
- removed all cases from the docket of the Panels of 5 Judges (85 criminal cases and 112 civil cases) and redistributed them to the new panels using the computerized random allocation system;;
- established the rules for the operation of the Panels of 5 Judges, in application of the new regulatory context arising from Art. 32 of the Law on the Organization of the Judiciary no. 304/2004, as amended by Law no. 207/2018;
- - approved steps towards a management of human and material resources for the parallel operation of the six Panels of 5 Judges (3 in criminal matters and 3 in civil matters) pertaining to the year 2018, added to which were the subsequent six Panels of 5 Judges (3 in criminal matters and 3 in civil matters) appointed in the beginning of 2019.

Under Decision no. 417/2019 of the Constitutional Court the request was sustained as filed by the President of the Chamber of Deputies and the existence of a legal

conflict of a constitutional nature between Parliament on the one hand and the High Court of Cassation and Justice on the other hand was found, generated by the failure of the High Court of Cassation and Justice to establish the specialized panels for first-instance trials of offences provided by Law no. 78/2000 on the Prevention, Detection and Punishing of Acts of Corruption, contrary to the stipulations of Art. 29 para. (1) of Law no. 78/2000, as amended by Law no. 161/2003.

The effects of the Constitutional Court's Decisions had a strong impact on the activity of the Panels of 5 Judges, too, especially those established for criminal matters.

For an example we note the situation of high-level corruption cases on the dockets of the Panels of 5 Judges and disposed of between the moment of the publication of Decision no. 685/07 November 2018 of the Constitutional Court of Romania in the Official Journal no. 1021/29 November 2018 and the moment of the publication of Decision no. 417/03 July 2019 of the Constitutional Court of Romania in the Official Journal no. 825/10 October 2019:

13 cases disposed of, as follows:

- 4 appeals sustained, with quashing of the appealed judgment and order for retrial;
- 8 appeals rejected as unfounded;
- 1 appeal withdrawn.

As for the impact of Decision no. 417/03 July 2019 of the Constitutional Court of Romania published in the Official Journal no. 825/10 October 2019, we should mention:

- On 10 October 2019 the Panel of 5 Judges had 14 cases of high-level corruption on the docket.
- After publication of the above-mentioned Decision in the Official Journal of Romania no. 825/10 October 2019 the following took place:

1. cases disposed of:

- **7 appeals sustained**, with quashing of the appealed judgment and order for retrial on the merits by the Criminal Chamber of the High Court of Cassation and Justice or other courts of law, out of which 2 appeals sent for retrial after a sustained contestation for annulment based on Decision no. 685/07 November 2018 of the Constitutional Court of Romania published in the Official Journal of Romania no. 1021/29 November 2018;
- **1 appeal rejected** as unfounded, a judgment resulting from retrial after a sustained contestation for annulment based on the same Decision by the Constitutional Court of Romania as mentioned above.

2. cases suspended: 6 appeals, out of which 1 appeal pending retrial after a sustained contestation for annulment based on the same Decision by the Constitutional Court of Romania as mentioned above;

3. cases pending: 1 appeal, registered after the date of 10 October 2019, when Decision no. 417/03 July 2019 of the Constitutional Court of Romania was published in the Official Journal of Romania no. 825, which however was brought against a judgment issued on 29 June 2018.

The situation of the high-level corruption cases pending on the date Decision no. 685/07 November 2018 of the Constitutional Court of Romania was published in the Official Journal of Romania but disposed of or suspended after 10 October 2019, when Decision no. 417/03 July 2019 of the Constitutional Court of Romania was published in the Official Journal of Romania, was the following:

- 3 appeals sustained with quashing of the appealed criminal judgment and order for retrial at the court of first instance;
- 3 appeals suspended;
- 1 appeal rejected as unfounded.

The legal changes, the decisions of the Constitutional Court and the administrative steps taken to implement them reflected upon the efficiency of judicial work at the Panels of 5 Judges and implicitly at the Chambers of the supreme court, especially at the Criminal Chamber, in terms of an increase in the activity volume per panel and per judge, an increase in the duration needed for disposition of cases and a visible decrease in the rate of disposition.

The activity of the Panels of 5 Judges is not reducible to their jurisdiction in criminal matters. In civil matters, for instance, the Panels of 5 Judges also play the role of the highest disciplinary court as regards decisions issued in first instance by the Chambers of the Superior Council of Magistracy in disciplinary violations that judges and prosecutors are charged with. In that context, securing a uniform and predictable jurisprudence in this matter, and ensuring access for all stakeholders to the principles and rules established under decisions adopted in this matter equally constitutes a way to correct existing shortcomings in the activity of magistrates, in individual cases, and also a prevention mechanism to ensure a high qualitative standard for the professional conduct of magistrates.





Chapter VIII

Activity of study, research and legal informatics

According to Art. 56 of the Regulation on Administrative Organization and Functioning of the High Court of Cassation and Justice, as republished with subsequent amendments and supplements – the Department for Legislation, Study, Research and Legal Informatics operates under the control of the President and the supervision of one of the Vice-presidents of the High Court of Cassation and Justice.

The Department for Legislation provides the scientific and administrative support for the completion of some of the essential responsibilities of the High Court of Cassation and Justice, from the supreme court's role in the *a priori* constitutionality check of laws before enactment or formulation of proposals for improvements to the laws, to sustaining its trial activities by developing reports or syntheses in controversial points of law, aspects of novelty or international jurisprudence and all the way to ensuring lawfulness in the current administrative activity of the High Court of Cassation and Justice. Strengthening the Department's administrative capacity and securing its

staffing with highly-qualified assistant magistrates thus remain in the constant attention of the High Court's Management.

The organization chart of the Department for Legislation, Study, Research and Legal Informatics contains the following:

- a) Service for Legislation, Study and Research, which includes the Library of the High Court of Cassation and Justice;
- b) Service for Legal Informatics.

■ ACTIVITY VOLUME

As in previous years, during 2019 the Department for Legislation, Study, Research and Legal Informatics of the High Court of Cassation and Justice had to deal with a large activity volume because of its responsibilities under Art. 59 – 60 of Regulation on Administrative Organization and Functioning of the High Court of Cassation and Justice as well as all the tasks assigned to it by the President and the Vice-presidents the High Court of Cassation and Justice, as under the law.

- a. Essentially the activity of the Service for Legislation, Study and Research covered the following: formulating points of view, observations and proposals concerning a variety of draft laws submitted for analysis to the High Court of Cassation and Justice; formulating draft laws developed by the High Court of Cassation and Justice; developing points of view on requests to find the existence of legal conflicts of a constitutional nature; selecting and summarizing judgments issued by the High Court of Cassation and Justice, with a view to having them posted on the website and in the Jurisprudence Bulletin; providing improved access to the jurisprudence of the supreme court for purposes of achieving uniformity, by both posting the jurisprudence in the Jurisprudence Bulletin (a yearly compendium of judgments of the supreme court, posted on the website of the supreme court), and by posting the judgments issued by the High Court of Cassation and Justice on its website; notifying the Chambers of the High Court of Cassation and Justice of the existence of situations on non-uniform jurisprudence; providing the ability to peruse the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union and notifying the Chambers of decisions issued by those European courts; developing studies of comparative law so as to identify the legal solutions adopted especially by the Member States of the European Union in regulating certain matters; providing the defense in disputes where the High Court of Cassation and Justice is a party; developing notes, points of view and responses to official letters received from the Foreign Ministry, the Superior Council of Magistracy, the Ministry of Justice, the Ministry of Public Finance, the Ministry of Labor.

With its assistant magistrates appointed by the President of the High Court of Cassation and Justice, it developed the reports on the progress of the High Court of Cassation and Justice under the Mechanism of Cooperation and Verification and the documentation needed for the evaluation missions at the High Court of Cassation and Justice by the European Commission as part of this mechanism.

Also, the Department's assistant magistrates contributed to completing the tasks of the High Court of Cassation and Justice as under Government Decision no. 583/2016 on Approving the National Anticorruption Strategy for 2016-2020, attended programs operated jointly with the Ministry of Justice, developed the reports on the Action Plan for the development of the judicial system in 2015-2020 and developed the documentation resulting from the meetings of the Strategic Management Council (COMS) which is in charge of establishing the medium- and long-term development strategy and vision and the general priorities of the judicial system.

Providing public free access to the jurisprudence of the High Court of Cassation and Justice remained a constant endeavor at the supreme court. The number of full-text judgments posted on the supreme court's website increased considerably: while at the end of 2018 a number of **137,033** judgments were posted in full-text version, at the end of 2019 a number of **144,221** judgments had been posted, out of which 5,422 in summary version.

- b. During 2019 the Service for Legal Informatics under the Department for Legislation, Study, Research and Legal Informatics provided management of the annual contracts for IT technical assistance (equipment and software); the judicial statistics server of the High Court (StatisECRIS); monitored for accuracy and timely the inputting of data in the ECRIS system and the taking of appropriate steps; made available for users and the Management of the Court the necessary statistical information; had a part in increasing the quality of operations performed by the staff of the supreme court in the use of computer systems and software.

The IT specialists of the Department for Legislation, Study, Research and Legal Informatics attended the IT committees, projects and specialist meetings in cooperation with other entities, courts and the Ministry of Justice.

Some of the most important projects were: initiating the implementation of the electronic case file, which is scheduled for finalization in 2020; completion of the secure web system *api.scj.ro*; continuing participation in the project "*Development and Implementation of an Integrated Strategic Management System in the Judicial System – SIMS*" which began to be financed in December 2017 as part of the Operational Program "*Administrative Capacity POCA 2014 – 2020*". The High Court is the beneficiary for two components:

- component for *analysis at macro level in order to develop the new electronic case management system in ECRIS*;
- component SIPOCA 55 – *Development and Implementation of an Integrated Strategic Management System in the Judicial System – SIMS, devoted to developing and implementing the Balanced ScoreCard (BSC) application.*

- c. In 2019 a number of 553 Romanian publications were purchased for the Library of the High Court of Cassation and Justice.

Also, on the initiative of the President of the High Court of Cassation and Justice a comprehensive action started to restore the old books in the collection of the supreme court's Library. This is performed with specialists from the Central University Library.

■ STATISTICS THE HUMAN AVAILABLE TO THE DEPARTMENT FOR LEGISLATION, STUDY, RESEARCH AND LEGAL INFORMATICS IN 2019

The Department for Legislation, Study, Research and Legal Informatics is headed by a Director, appointed by the President of the High Court of Cassation and Justice.

In 2019 the Department was staffed with: 1 Director, 6 assistant magistrates, 4 clerks and 6 IT specialists. Considering the activity volume and the new responsibilities the Department is expected to receive, in order to improve the access to the systematized jurisprudence of the High Court, it will be required additional staff in the future.





Chapter IX

Public communication

■ IX.1. GENERAL ASPECTS

The Office for Public Information and Communication of the High Court of Cassation and Justice operated in 2019 in compliance with the principles instated by the stipulations of Law no. 544/2001 on unrestricted access to information of public interest, the stipulations of Ordinance of the Government no. 27/2002 to regulate the activity of responding to petitions, approved with amendments under Law no. 233/2002, the stipulations of the Regulation on Administrative Organization and Functioning of the High Court of Cassation and Justice as republished with subsequent amendments and supplements, and the stipulations of the Internal Order Regulation on Courts of Law.

In this line it ensured reception and responses to requests for access to information of public interest, provided journalists, promptly and fully, with any information of public interest that regarding the activity of the High Court of Cassation and Justice, granted, in observance of the maximum two-day deadline, accreditation for journalists and representatives of the mass media, ensured periodically or every time the activity of the High Court of Cassation and Justice presented an immediate public interest the dissemination of communiques, press releases, organizing press conferences or interviews.

The Office for Public Information and Communication (OPIC) is subordinated to one of the Vice-presidents of the High Court of Cassation and Justice and acted in compliance with its responsibilities and tasks as established by law, under the leadership of a judge appointed by the President and who was also the spokesperson of the Court.

In 2019 the Office resolved all petitions submitted at the Court in paper form, electronic format or telephone communication in relation to aspects not within the remit of the Chambers or other divisions, developing clear and documented responses in observance of the stipulations of the law.

The Office for Public Information and Communication also worked to implement the communication strategies, thus facilitating an effective relation between the court and the public and mass media, whether national or international, and the process for increasing the efficiency of activity at the Office in the reference period focused on the following **action lines**:

- **improving the relationship with journalists**, whether Romanian or foreign, accredited at the supreme court, based on honesty and reciprocity so as to ensure coherent and quick information about aspects of interest for the public and to avoid any pressures upon proceedings;
- **careful management of the data** resulting from the court's activity, in the sense of transmitting information **in compliance with the rights and values recognized in domestic and international law concerning the right to public image, benefit of the doubt, impartiality of justice, protection of private and family life, as well as protection of personal data** (as under Law no. 190/2018 on steps to implement Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) starting on 31 July 2018;
- establishing permanent contacts between representatives of the Office for Public Information and Communication and journalists, during the Court's work programme, but also outside of this whenever the public shows an increased interest in the Court's activity, by using electronic communication methods;
- developing full responses to requests filed by citizens or mass-media representatives, with constant support and cooperation from the Chambers and other divisions of the Court, so that limitations of access to information arising from institutional activity were always justified and reasonable and in compliance with observance of the legitimate rights and interests of the parties involved in judicial proceedings;
- ensuring a proportionality between limiting public access to information of public interest and protection of the social values placed under legal protection;
- constant monitoring of articles published in the media about the activity of the supreme court or about the person of the magistrates, where there is a possible applicability of the Law of the Audiovisual no. 504/2002 and Decision no. 220/2011 on the Code regulating audiovisual content, so as to be able to inform the Management of the Court or the magistrates in question who can then exercise a possible right to reply or ask for corrections;
- performing any other communication activities required by the Management of the High Court of Cassation and Justice according to legal and regulatory stipulations as well as to the stipulations of the Guide for the Relationship between the Romanian Judicial System and the Mass-Media, as approved by Decision of the Plenum of the Superior Council of Magistracy no. 482 of

1 June 2012, as amended and supplemented, and the Guide for the Relationship between the Romanian Judicial System and the Mass-Media, as approved by Decision of the Plenum of the Superior Council of Magistracy no. 197 of 17 September 2019;

- informing the Management of the High Court of Cassation and Justice about relevant matters that concern the supreme court as well as the overall judicial system;
- identifying the potential shortcomings in communication encountered by litigants in their relation to the supreme court, as well as adopting effective correction measures.

■ IX.2. STATISTICS ON THE ACTIVITY VOLUME

In 2019 the activity of the Office for Public Information and Communication included, besides requests received in paper form and as electronic communications, responses to requests communicated by phone (an average of 25 per day), a majority of those formulated in relation to cases pending on the docket of the Chambers but also for information about various activities of the High Court of Cassation and Justice.

Relevant information about the judicial and administrative activity of the High Court of Cassation and Justice was provided via 62 press releases, as follows:

- 26 press releases about judgments issued by the Panels for Preliminary Ruling on Questions of Law;
- 12 press releases about the appointment of full members on the Panels of 5 Judges in criminal and civil matters;
- 10 press releases about judgments issued by the Panels for appeals in the interest of the law;
- 6 press releases about the meeting between the Management of the High Court of Cassation and Justice and representatives of various European entities;
- 2 press releases about the appointment of judges to the Central Electoral Office for the election of the President of Romania;
- 2 press releases about the appointment of judges to the Central Electoral Office for the election of Romanian members to the European Parliament;
- 1 press release about the position of the President of the High Court of Cassation and Justice concerning the intention of the Romanian Government and Parliament to eliminate service pensions for magistrates;
- 1 press release about the trial on the events in December 1989;
- 1 press release about the organization at the seat of the Court of manifestations to mark European Civil Justice Day;
- 1 press release about the position of the Leading Board of the High Court of Cassation and Justice concerning the procedure to adopt the draft law on amending and supplementing Law no. 227/2015 on the Tax Code.

In 2019 the Office for Public Information and Communication resolved, under Law no. 544/2001 on unrestricted access to information of public interest as well as the stipulations of Ordinance of the Government no. 27/2002 to regulate the activity

of responding to petitions, approved with amendments under Law no. 233/2002, a number of 6,470 requests, presented by subject-matter below:

(figure 1)

Correspondence – paper form		
1	Requests sent to the Office in paper form as under Law no. 233/2002 on approving the Ordinance of the Government no. 27/2002 to regulate the activity of responding to petitions	1168
2	Requests sent to the Office in paper form as under Law no. 544/2001 on unrestricted access to information of public interest	80
	TOTAL	1248

(figure 2)

Correspondence – electronic		
1	Responses to requests sent in electronic format as under Law no. 544/2001 on unrestricted access to information of public interest	126
2	Administrative complaints as under Law no. 544/2001 on unrestricted access to information of public interest – administrative complaints rejected – 2 – administrative complaints sustained in part – 1	3
3	Responses to requests sent in electronic format as under Law no. 233/2002 on approving the Ordinance of the Government no. 27/2002 to regulate the activity of responding to petitions, requests closed	1470
4	Requests sent in electronic format redirected towards the Chambers – an relation to cases on the docket of the HCCJ Chambers and received via e-mail or the contact form	3304
	TOTAL	4903

(figure 3)

Requests formulated by representatives of the mass-media		
1	Requests sent as under Law no. 544/2001 on unrestricted access to information of public interest – in 209 requests formulated by representatives of the mass-media the Office provided the requested information; – in 60 requests formulated by representatives of the mass-media the Office did not provide the requested information (judgments written in full, information that came under Art. 43 of the Guide for the Relationship between the Romanian Judicial System and the Mass-Media, and respectively Art. 53 of the Guide for Best Practices in the Relationship between the Romanian Judicial System and the Mass-Media, judgments issued in cases disposed of in the Preliminary Chamber procedure or by the Judge for Rights and Liberties, etc.)	269
2	Accreditations – 89 journalists at HCCJ	50
	TOTAL	319

(figure 4)

TOTAL requests received in electronic format		
- Requests under Law no. 544/2001 on unrestricted access to information of public interest		395
- Requests under Law no. 233/2002 on approving the Ordinance of the Government no. 27/2002 to regulate the activity of responding to petitions		1470
- Requests in relation to cases on the docket of the HCCJ Chambers or divisions and received via the contact form, etc.		3304
- Accreditations		
- Administrative complaints as under Law no. 544/2001 on unrestricted access to information of public interest		50
		2
	TOTAL	5222

Figure 1 - Type of request - paper form

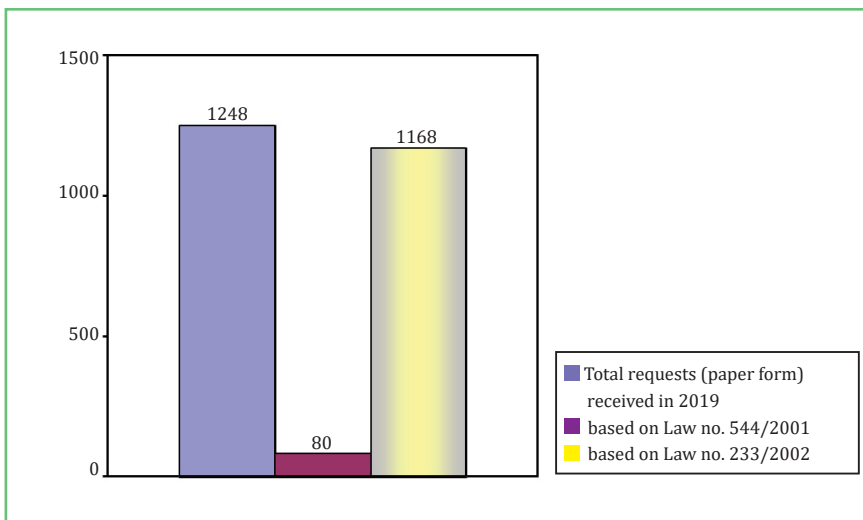


Figure 2 - Type of request (electronic format - individuals)

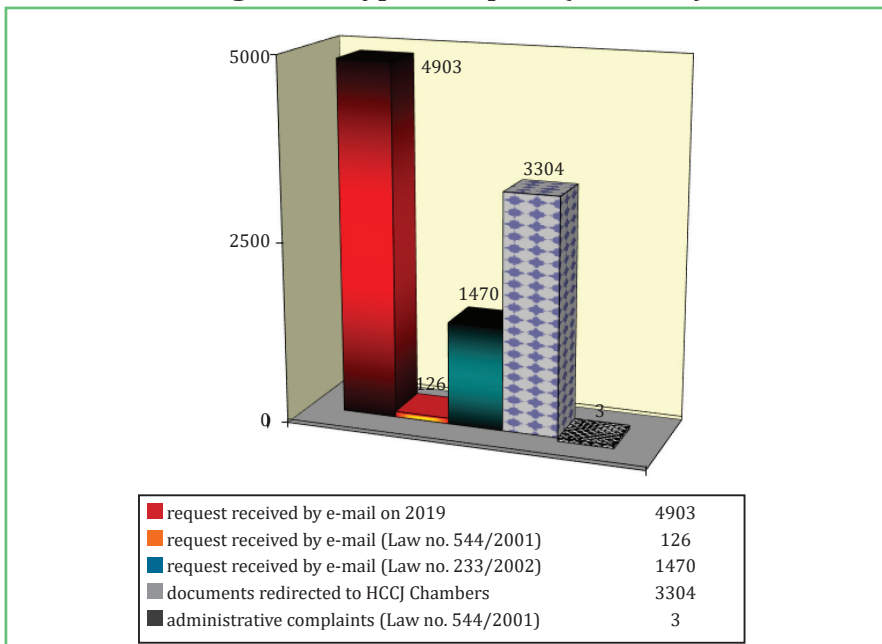


Figure 3 - Type of request (electronic format - mass-media)

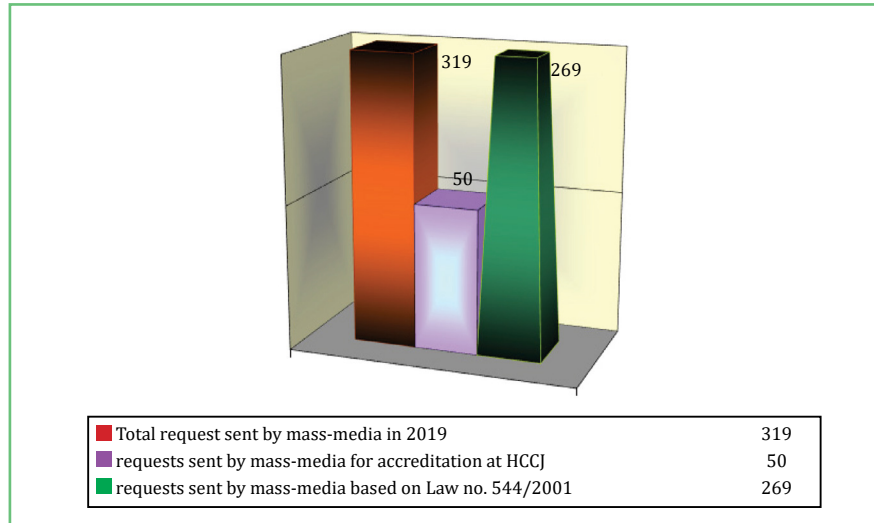


Figure 4 - TOTAL requests electronic format (mass-media and individuals)

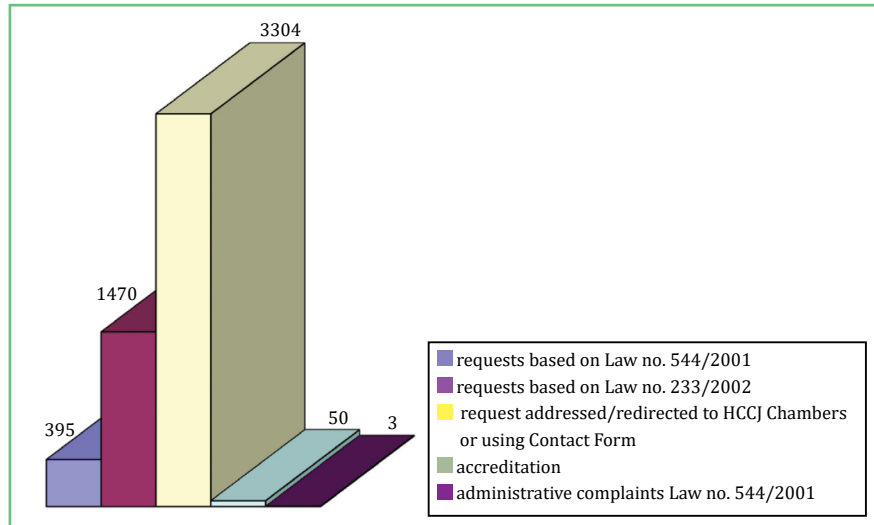
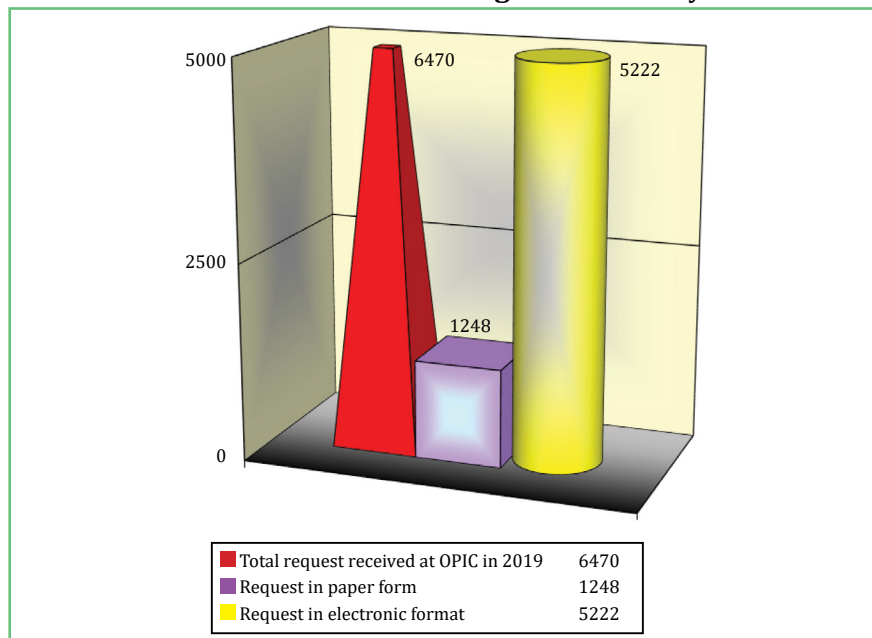


Figure 5 - Activity volume OPIC - 2019



A majority of the requests had as their object **complaints or memoranda concerning the contents of judgments** issued by the High Court of Cassation and Justice or other courts of law in Romania, and the Office for Public Information and Communication (OPIC) informed of the jurisdiction of the supreme court and the fact that judgments issued by the supreme court and other courts of law can only be challenged in the legal appeals.

Other requests concerned **information from cases pending in the Court, or copies from judgments** issued by the Court, and such information was released in anonymized format, while if they already existed on the Court's website the requesters were referred to that website.

In other cases requests were filed for access to cases pending in the Court for study purposes, the object being appeals in the interest of the law in the case of final judgments, statistical data on the Court's activity and other such.

Requests were also filed for **approval to take video** inside the courthouse by representatives of the mass-media in locations other than the one specially set aside for this. There were requests concerning the method the panels of 3 judges are appointed, in the sense of whether they were established randomly (especially in the case of the Criminal Chamber).

There were also requests to sue certain institutions or individuals, which were returned to the requesters who were informed on how to file with the jurisdictional court of law. In other cases the requests concerned the exercise of the administrative oversight of the High Court of Cassation and Justice upon certain central institutions, alleged disciplinary violations by magistrates from other courts of law, complaints against individuals for alleged criminal violations, requests to file action with the Constitutional Court other than those within the remit of the supreme court, requests for legal advice or for a point of view of the Court concerning the interpretation of certain legal texts, requests for information on technical surveillance and declassification of or access to warrants granted by the High Court of Cassation and Justice, requests for information on the allocation of cases as part of the ECRIS system or for proof of random allocation.

As regards the effective communication of public-interest information, in 2019 the High Court of Cassation and Justice **was sued in 14 cases** in the matter of *Communication of public-interest information – Law no. 544/2001*. The information concerned regarded: the method to establish the panels of 3 judges; the membership of the Panels of 5 Judges since 2010 and up to the present day; the data from every inspection by representatives of the High Court of Cassation and Justice at the National Center for Communication Interception since the enactment of Emergency Ordinance of the Government no. 6/2016 and up to the present day, as under Art. 301 of Law no. 304/2004; the period during which Judge Cristina Tarcea occupied the position of Head of the "security division" of the High Court of Cassation and Justice; transmission of a copy from the decision of the Leading Board no. 25/08 December 2016 on the establishment of the panels of 3 judges; transmission of a copy of the indictment in a case that was no longer with the High Court of Cassation and Justice; the name and position of a person who restricted access to the Court on 15 April 2019; complete records of certain cases in the ECRIS system; copies from decisions of the Leading Board on the establishment of the panels of 3 judges at the Criminal Chamber; the sectoral reference value increased by 10% arising from Law no. 293/2015 which amended

Emergency Ordinance of the Government no. 35/2015 concerning magistrates; the granting of wiretap warrants for a certain individual.

The judgments in the 14 cases where the High Court of Cassation and Justice was a defendant were:

- **7 lawsuits were rejected in the court of first instance**, in non-final judgments (*the litigants demanded a nullification of all criminal judgments that had been issued abusively and unlawfully by panels that had been established unlawfully / in breach of the Constitution; the data from every inspection by representatives of the High Court of Cassation and Justice at the National Center for Communication Interception since the enactment of Emergency Ordinance of the Government no. 6/2016 and up to the present day, as under Art. 301 of Law no. 304/2004; the decision of the Leading Board no. 25/08 December 2016 on the establishment of the panels of 3 judges; nullification of decisions of the Leading Board of the High Court of Cassation and Justice; a list of all legal regulations the High Court of Cassation and Justice is bound by; complete records of certain cases in the ECRIS system; nullification of decisions of the Leading Board of the High Court of Cassation and Justice – Decision no. 25/2016, Decision no. 80/2017*);
- **2 lawsuits were rejected in final judgments** (on the sectoral reference value increased by 10% arising from Law no. 293/2015 which amended Emergency Ordinance of the Government no. 35/2015; on the period during which Judge Cristina Tarcea occupied the position of Head of the “security division” of the High Court of Cassation and Justice);
- **3 lawsuits were sustained in part**, in 2 of those by final judgment (on the membership of the Panels of 5 Judges between 2010 and 2013 and the method to establish the panels of 3 judges, whether there existed a randomly appointment and a copy from the Leading Board’s Decision no. 161/17 December 2018);
- **1 lawsuit is still pending and no judgment has been issued yet** (on whether wiretap warrants had been granted for a certain individual),
- 1 lawsuit was sustained in entirety, in a non-final judgment (on the name and position of a person who restricted access to the Court on 15 April 2019).

The information-documentation Point

The Office for Public Information and Communication also has 3 “Info Touch” devices which function as an interface with the ECRIS electronic system, providing litigants and representatives of the media with access to information about cases on the docket of the supreme court.

The Office for Public Information and Communication ensured daily monitoring of the institutional image of the High Court of Cassation and Justice as reflected by the media, and to that effect put together Press Review-type reports, and also provided information and documentation about court activities that might result in public-interest information.

In its activity the Office for Public Information and Communication had a good relationship with the Chambers and other divisions of the supreme court, which supplied data and documents in a complete and accessible format which in turn enabled the elaboration of responses to requesters.

■ IX.3. CONCLUSIONS

As results from the information presented above in summary, the work of the Office for Public Information and Communication at the High Court of Cassation and Justice was an endeavor towards predictable, transparent, accessible, coherent and uniform public communication, since an important component of the judicial system should make public access possible to public-interest information.

At the same time special care was exercised with every type of communication so as to not violate the fundamental values of protection for private and family life, right to public image, the non-public character of the criminal investigation, the benefit of the doubt, the impartiality of the act of justice and protection of personal data.





Chapter X

International relations

Art. 86 of the Regulation on Administrative Organization and Functioning of the High Court of Cassation and Justice regulates the existence of the International Relations Division, which discharges the tasks assigned under Art. 88 of that Regulation.

The High Court of Cassation and Justice is party to numerous international bodies that bring together the most prestigious judicial institutions in the EU Member States:

- Network of the Presidents of the Supreme Judicial Courts of the European Union,
- AHJUCAF (*Association des hautes juridictions de cassation des pays ayant en partage l'usage du français, Association of the High Review Jurisdictions of the Countries Sharing the Use of the French Language – in short, the association of the Francophone Supreme Courts*),
- International Association of Supreme Administrative Jurisdictions (AIHJA),
- Association of Councils of State and Supreme Administrative Jurisdictions of the European Union and
- The Superior Courts Network (SCN) which operates under the ECHR.

Also, representatives of the High Court attend the proceedings of the European Patent Organization, the EU Forum of Judges for the Environment, the Consultative Council of European Judges, the European Expertise & Expert Institute (IEEE), the European Law Institute (ELI) and the European Judicial Network (EJN).

According to its responsibilities, in 2019 the International Relations Division also undertook the following activities: writing correspondence in matters of international relations; writing national reports required of the High Court of Cassation and Justice by international bodies and foreign requests sent by the supreme court; compliance with the international obligation to make the HCCJ jurisprudence available and integrated at European and international level; international participation in seminars and conference; organizing meetings with and reception of international delegations at HCCJ headquarters, translation and interpretation; work as part of the cooperation activity with the other divisions of the Court, as well as on request from the President, the Vice-presidents, Chamber Presidents, judges and as part of cooperation with other entities. In 2019, in the context of cooperation within the EU Network of the Presidents of the Supreme Judicial Courts, 3 questionnaires were sent in the Network.

In 2019 the International Relations Division worked to organize participation in events abroad or at the headquarters of HCCJ, for a general total of 19 delegations as follows: work to prepare travel of HCCJ delegations abroad to participate in international seminars and conferences [14], work to ensure participation of HCCJ delegations in seminars and conferences organized in Bucharest, work to set up meeting with and reception of foreign delegation visits at the HCCJ headquarters.

In 2019 the visit of 13 foreign delegations was received, as follows: 2 visits by delegations from the European Court of Human Rights; visit by a delegation from the Venice Commission; visit by a delegation from the High Judicial Council and High Council of Prosecutors of the Republic of Albania; visit by a delegation from the National Integrity Agency of the Republic of Moldova; 6 visits by delegations from the EJTJ; visit by a delegation from the CJEU; visit by a delegation from OSCE.

Conclusions

In 2019 it is noted an increase in the supreme court's international activity, which recorded important progress as follows:

Working meetings continued between the HCCJ and the Network of the Presidents of the Supreme Judicial Courts of the European Union, AHJUCAF, International Association of Supreme Administrative Jurisdictions, with the High Court being requested to express a point of view, formulate proposal and develop national reports on various matters of law.

Also, the cooperation relations with the European Court of Human Rights acquired new dimensions as several judges of the High Court of Cassation and Justice were invited to attend the proceedings of the ECHR Grand Chamber and a meeting took place between the Management of the supreme court and the President of the European Court of Human Rights. These undertakings will continue in 2020. Also, by participating in the jurisprudence programs, the High Court ensured integration of Romanian jurisprudence in the European and international jurisprudence.

On the other hand the High Court of Cassation and Justice had an important contribution at European level by clarifying matters concerning: the value of the judicial precedent; the relation between supreme courts and constitutional courts; application of comparative law in the national jurisprudence.

In fact the entire international activity of the High Court as part of international associations was intended to promote strengthening of the judicial system's independence and the status of the magistrate profession.



Chapter **XI**

Financial resources and logistics

Under Art. 80 of the Regulation on Administrative Organization and Functioning of the High Court of Cassation and Justice the Economic, Financial and Administrative Department includes:

- Financial and Accounting Service
- Administrative Service (Administrative and Supplies Office and the Car Office);
- Human Resources Office.

The staffing of the Economic, Financial and Administrative Department on 31 December 2019 contained 105 positions, 2 of which were vacant.

■ **XI.1. RESURCE MANAGEMENT**

XI.1. Human Resources

Under Romanian Government Decision no. 486 of 30 June 2015, the High Court of Cassation and Justice operates with a maximum 549 financed positions.

The organization chart for positions and personnel of the supreme court were approved by the Leading Board of the High Court of Cassation and Justice under Decision no. 219 of 06 November 2019.

On 31 December 2019, the High Court of Cassation and Justice was staffed with:

- Judges = 122 positions, of which 109 filled;
- Assistant magistrates = 123 positions, of which 119 filled;
- Specialist ancillary staff = 170 positions, of which 169 filled;
- 1 physician and 1 nurse, of which 1 physician position filled;
- IT specialist = 6 positions, all filled.
- Other staff (ushers, bailiffs) = 10 positions, of which 10 filled;
- Advisors, experts, auditors (public servants + contractors) = 32 positions, of which 27 filled;
- Specialist documenters (public servants + contractors) = 3 positions, all filled;
- Workers = 16 positions (including the 2 car mechanics), all filled;
- Other staff = 47 positions, of which 46 filled;
- Janitors = 18 positions, of which 17 filled;

At the end of 2019 the High Court of Cassation and Justice was staffed with 549 positions, of which 523 positions filled and 26 positions vacant.

It must be noted that in 2019 no disciplinary or criminal action was taken against the supreme court's personnel, no violations of the Code of Ethics or integrity problems were found with any of the personnel categories.

XI.2. Financial resources

In 2019 the budget allocation for the High Court of Cassation and Justice was 150,865 thousand RON, of which it made payments of 150,352 thousand RON, as follows:

Chapter 54.01 – Other general public services

1. Title “Goods and Services” – 96 thousand RON

Chapter 61.01 – Public order and national security

1. Title “Personnel expenses” – 137,106 thousand RON, of which:
2. For Title “Goods and Services “ – 9,283 thousand RON, of which:
3. For Title “Capital expenses” – 1,672 thousand RON, of which:
4. For Title “Transfers” – 30 thousand RON
5. For Title “Other expenditures” – 2,165 thousand RON
6. Payments made in previous years and recovered in current year – 598 thousand RON.

XI.3. Material resources

In 2019 the High Court operated in two distinct locations, its primary headquarters located in Str. Batiștei in Bucharest and a secondary courthouse in a rented building for the Administrative and Tax Litigations Chamber.

In 2019 HCCJ engaged in works for repairs, outfitting and sanitization in the two courthouse buildings so as to ensure operation of current activities and preserve a minimal standard of the solemnity of the act of justice.

Nevertheless the matter of securing a proper headquarters building for the supreme court remains one of the primary goals for 2020. The current insufficient space is having a serious impact on the work done, affecting the timeliness of disposing of cases because of an insufficient number of courtrooms and the discomfort it causes to litigants and the Court personnel.



Chapter **XII**

Relations of the High Court of Cassation and Justice with other institutions

To assess the degree to which it is succeeding in its mission it is necessary that a public authority, as part of its own analysis process, learn the point of view of the institutions and entities it crosses paths with as part of its activity. As part of this self-assessment process the High Court of Cassation and Justice endeavored to learn how its activity was perceived by the entities it encounters in its activity as well as by the accredited representatives of the mass-media, sometimes named “the fourth power” in a constitutional democracy.

Responding to the self-assessment process of the High Court were *the Ombudsman, the National Union of Bar Associations of Romania, the Bucharest Bar Association, the*

Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anticorruption Department, and the Department for the Investigation of Organized Crime and Terrorism.

The opinions sent by the respondents were positive on inter-institutional cooperation, prompt and useful information provided on requests sent to the High Court of Cassation and Justice via administrative channels, openness and attention to issues facing solicitors, and its work towards implementing the electronic case file system.

The negative responses coming from many of those institutions complained that the current headquarters of the High Court of Cassation and Justice provided insufficient or inadequate space for both the solicitors and the prosecutors who provide legal representation in the cases brought before the Court.

Responding to the self-assessment initiative of the High Court were also the accredited representatives of the following media institutions, in alphabetic order: *Adevărul, Antena 3, DIGI24, KanalD, Mediafax, Pro TV, Realitatea, Riseproject, România TV, Societa-tea Română de Radiodifuziune (Romanian Radio Broadcasting Company), Știri pe surse.*

The opinion of the accredited representatives was that in 2019 the High Court of Cassation and Justice's relationship with the mass-media and public relations work were situated at a level characterized as good or very good. In terms of difficulties and, in that context, future efforts to improve this component of the supreme court's activity, the gist of the responses was criticism of the insufficient or inadequate space provided by the current headquarters of the Court, a need for increased speed in communicating the judgments and decisions in cases of public interest and the quasi-unanimous desire to have more permissions to take video/audio of pronouncements in public sessions.





Chapter XIII

Conclusions. Action lines

■ XIII.1.

The Court has a corps of judges who are highly skilled professionally and have a life expertise that justifies their capacity to adapt and properly exercise the act of justice in situations of legal instability, uneven dynamics of the activity, media exposure, and constantly demonstrate concern for uniform interpretation and application of national law, knowledge and use of the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union; it equally has assistant magistrates and clerks who have good professional skills and are open to continuous professional training.

The operation of the Court is characterized by the existence of best practices for case management (registration, archiving, the procedure for the preparation of cases and admissibility of appeals on law) developed by the Chambers, with a standardization of such best practices as have proven their effectiveness and compatibility with the specifics of applicable procedures depending on the type of case in the jurisdiction of each Chamber.

Also noteworthy is an increase in the quality of work in the Divisions that provide the support necessary to the judicial operations of the Court (Department for Legislation, Study, Research and Legal Informatics, Economic, Financial and Administrative Department, Office for Public Information and Communication) and the openness towards earnest public communication, with observance of the right to unrestricted access to public-interest information.

However, it must be noted at the same time that dysfunctions have been identified in the activity of the supreme court and they constituted genuine vulnerabilities, whose effects are of a nature that can impair the quality of the act of justice.

Of the aspects impairing effectiveness of activities, duration of proceedings and quality of the act of justice we can list:

- excessive activity volume considering available personnel resources and which is mainly generated by the way the jurisdiction of the supreme court is regulated;
- the pace and effects of changes on the laws, often enacted without a rigorous impact assessment;
- the high personnel turnover in the past few years, following applications to retire or situations of temporary inability to exercise the activity;
- problems understanding the overall organizational context and a tendency of the Chambers to relate exclusively to their own dynamics of activities and personnel resources, without a rigorous comparative analysis in relation to the other Chambers of the High Court;
- existence of a state of professional dissatisfaction generated by the work overload, by some public attitudes and messages addressed to the High Court and its judges, generalization of isolated deficiencies or conjuncture-based reinterpretation of certain practices;
- the inadequate headquarters building, which made it necessary to move one of the Chambers to a separate building;
- a still-reduced degree of electronic archiving of documents;
- absence of the electronic-case system;
- bureaucratic procedures that are cumbersome and devoid of modernity within some of the Court's Divisions.

■ XIII.2. ACTION LINES OF THE HIGH COURT OF CASSATION AND JUSTICE FOR 2020

The quality of the act of justice will have to remain the most important motivation of the supreme court, as an expression of ensuring compliance with the lawful order, fundamental freedoms, legitimate rights and interests of individuals and legal entities, application of the law and guaranteeing the latter's precedence.

To accomplish that desire it is nevertheless necessary that the Managerial tier develop and make it mandatory to implement action lines aimed on the one hand at correcting the shortcomings identified in the Court's activity and on the other hand at increasing efficiency of the activities and modernizing them, improving the Court's image and regaining society's trust in the act of justice.

a) Redesigning the jurisdictions of the High Court of Cassation and Justice

The reasonable duration for disposal of the cases and the quality of the act of justice depend on the time allocated to the study of the cases, an activity which requires

additional research, study of the doctrine and jurisprudence as well as a constant examination of changes occurred in the laws so that judges can perform their judicial work effectively and professionally.

Those requirements are becoming an increasingly difficult aspiration to attain in the context of a high activity volume of the supreme court, the option of the lawmaker to give the Court jurisdiction to be a court of first instance for appeals on law for a wide range of cases in parallel with another three procedures specific to the High Court of Cassation and Justice – participation in the sessions of the Panels of 5 Judges, the Panels for Preliminary Ruling on Questions of Law and the Panels for Appeals in the Interest of the Law.

Remarkable in this context is the activity volume of the Administrative and Tax Litigations Chamber of the High Court – 16,732 cases on the docket, a number that continues to put that Chamber in a difficult situation in terms of compliance with the principle of cased disposition within a reasonable time frame, which brings negative consequences on achieving an act of justice at the standards required of any supreme jurisdiction in the European space and implicitly on the public perception and that of the litigants involved in the cases brought before this Chamber.

The activity volume of the Administrative and Tax Litigations Chamber of the High Court of Cassation and Justice remains a major problem, of a nature that can genuinely impair the quality of the Court's work and which can only find a solution in the redesigning of the jurisdiction of the High Court of Cassation and Justice.

A suitable solution for a reduction of the number of administrative litigation cases brought before courts of law could be the establishing of a mechanism for a better knowledge and direct applicability of the supreme court's jurisprudence, and not just by the other courts in the judicial system but also by the bodies of the public administration.

A wider jurisdiction of the High Court requires providing human and material resources in the medium and long term and extensive efforts on the short term, to make it possible to deal with the large number of cases. For the same reason, consideration should be given to legal steps to amend the jurisdiction of the supreme court, in the sense of narrowing it down.

It is therefore necessary that the High Court of Cassation and Justice involve itself directly in the process of improving the laws, by establishing and organizing an internal mechanism that would make it possible to identify the domestic laws that are likely to increase the quality of the act of justice. Such identification should be followed by formulating proposed legal amendments as under Art. 27 of Law no. 304/2004 on the Organization of the Judiciary; this is because in the past years the High Court has not made use of this right.

b) Increased quality of the act of justice performed by the supreme court, with a direct impact on image improvement and increasing society's trust in the act of justice

A lack of transparency as a component of the act of justice is one of the main elements that generate mistrust and dissatisfaction in society, and the immediate consequence is impairing the image of the act of justice.

The public messages addressed to the judicial system by society cannot be ignored, so the High Court of Cassation and Justice must take it upon itself to react properly and immediately, with realistic and effective measures.

One of the major goals of the supreme court will therefore have to be increasing the society's trust in the act of justice.

- i) Continuing to release public-interest documents;
- ii) Continuing and improving the work of posting the supreme court's jurisprudence;
- iii) Developing communication strategies to formulate clear and coherent public messages;
- iv) Continuing and improving the work to ensure unrestricted access to public-interest information;
- v) Increasing the transparency of decision-making by using a participative type of management.

c) *Reducing the duration of proceedings in the component concerning the writing of the full text of judgments*

The duration of work devoted to writing of the full text of judgments had gradually become one of the vulnerabilities of the supreme court, against the background of increased activity volume, high complexity of the cases and also lack of sufficient human resources.

Given the visibility and impact of the supreme court's judgments, and also the obligation to dispose of cases within a reasonable time frame, it is evidently necessary to adopt steps towards streamlining that activity, which should result in a reduction of the duration of performance in the writing activity and implicitly an increase in the quality of the documents.

In the ***Chambers*** and the ***Panels of 5 Judges*** action lines could be discussed such as:

- i) standardizing judgments issued in repetitive cases, or cases where jurisprudence in the matter is uniform and solid, by using the same rationale in the considerations for the judgment;
- ii) reducing the format and the exposition part of the judgments issued in cases of appeal on law, as under Art. 499 of the Code of Civil Procedure;
- iii) establishing an in-house procedure for an effective use and application of the stipulations of Art. 426 para. (5) of the Code of Civil Procedure in the situation of complex cases which require additional time for the full rationale to be put on paper;
- iv) working towards a balance of the activity volume in the writing activity.

In the ***Panels for Appeals in the Interest of the Law and the Panels for Preliminary Ruling on Questions of Law*** steps could be take such as:

- i) rethinking the content and structure of the judgments pronounced, based on the nature and purpose of such judgments;
- ii) compliance with the writing form and technique (the language used should be clear, flow properly, intelligible, without syntactic difficulties and obscure or ambiguous passages, while maintaining a form and esthetic of expression that does not impact the legal style).

d) *Unification of the jurisprudence*

Unification of the jurisprudence has been and must remain one of the primary goals of the supreme court. Sustained effort along this line addresses the development of a culture of jurisdictional discipline, increased transparency and accessibility of judgments pronounced, opening a constructive and sustained dialog between the

supreme court and the other courts of law in a joint effort to provide a quality act of justice.

The exercise of the constitutional role of the supreme court, for uniform interpretation and application of the law, should concurrently involve the Chambers and divisions of the supreme court working closely together, as well as with the other courts of law, the Public Ministry and the Ombudsman.

Beyond the crucial role of the High Court of Cassation and Justice in achieving uniformity of the practice at the other courts of law, the supreme court itself has an in-house mechanism to provide uniformity of judgments issued by its Chambers, especially in the form of periodical meetings in every Chamber intended to unify their judicial practice, but also by constant informal discussions on matters of novelty or elements still subject to divergent opinions in the teams of judges. Representatives of the High Court's Chambers also attend meetings organized by Courts of Appeal with help from the National Institute of Magistracy. All those actions come under the general goal of preventing occurrence of non-uniform practice cases at the High Court of Cassation and Justice. In 2020 it is necessary to continue the process of evolution and improvement of such actions, especially because the non-uniform practice cases coming from the High Court carry the risk of propagating in the hierarchical structure of the other courts of law.

Thus, alongside the procedural and internal-administrative mechanisms for unification of the jurisprudence, the supreme court also has the task of developing new avenues to counteract and prevent the formation of non-uniform jurisprudence. To that effect one of the most important steps taken by the Management of the High Court of Cassation and Justice in 2019 was to establish, as part of the Service for Legislation, Study and Research, the Division for the Study and Unification of the Jurisprudence, a division currently regulated under Art. 57 para. (4) of the Regulation on Administrative Organization and Functioning of the High Court of Cassation and Justice, in the version published on 30 December 2019.

Also, to render this division operational, the Management of the High Court of Cassation and Justice started actions to receive additional positions for assistant magistrates and specialist ancillary staff, because of the reduced number of personnel allocated in the Service for Legislation, Study and Research (7 assistant magistrates), and in the specialist division of the Joined Chambers (6 assistant magistrates and 2 clerks).

The responsibilities to be assigned to the staff to be hired at the Division for the Study and Unification of the Jurisprudence will be:

- primarily, systematizing the jurisprudence of the supreme court, to facilitate access to and perusal of the database (from both inside and outside);
- systematizing the jurisprudence of Courts of Appeal, for judgments issued as a court of last instance;
- identifying the possible divergent instances of practice occurred at the HCCJ, at the Courts of Appeal or between the supreme court and the other courts of law;
- reporting divergent instances of practice and formulating proposals for correction via the mechanisms for achieving unification of jurisprudence;
- identifying and reporting the situations where the very evolution of certain laws, the pace and effect of amendments brought to laws constitute a source of non-uniform jurisprudence;

- formulating proposals to improve the laws using the mechanism provided by Art. 27 of Law no. 304/2004 on the Organization of the Judiciary.

e) *Organizational steps to increase the efficiency of the Court's activity*

- ***Human and material resources***

As regards the **human resources** needed to organize judicial activity in conditions of quality and celerity, it is necessary that additional personnel be hired as assistant magistrates and clerks; the existing number of positions is uncorrelated to the high activity volume of the High Court of Cassation and Justice, so action must continue to receive additional positions for these categories of personnel. The creation of stable formations in each judicial structure can lead to a more efficient management of cases allocated to the Chambers, and also useful to this effect would be generalizing a formula in the Chambers whereby each judge receives an assistant magistrate and a clerk.

As regards the **material resources** of the High Court of Cassation and Justice, in 2018 it received a budget of 150,865 thousand RON, which made it possible to perform the current activities specific to the supreme court but, even after moving the Administrative and Tax Litigations Chamber in the new building at 2 Octavian Goga Blvd., the needs of the other 3 Chambers remaining in the main headquarters at 25 Batiștei Street and the Panels of 5 Judges, in terms of courtrooms, offices and archives, continued to be short of satisfied as necessary. The solution of having a secondary courthouse can only be temporary, as it is necessary for all the Chambers and divisions of the High Court to function in the same building. In the current context the judges of the Administrative and Tax Litigations Chamber have to travel periodically to the headquarters in Batiștei Street to write the reports of the Panels for Appeals in the Interest of the Law and the Panels for Preliminary Ruling on Questions of Law, and for the court sessions of those Panels.

f) *Modernizing the Court with a focus on speeding up the computerization process*

The quality of the act of justice is not strictly restricted to the judicial activity as a primary product, it is also about aspects that have to do with a type of efficient organization that is adapted to the technological evolution. For that one needs an approach that considers the needs of the court personnel on the one hand, with investment in new technologies and creation of adequate working conditions, and on the other hand responding to society's expectations by performing an act of justice in conditions of quality and efficiency.

To that effect steps could be taken such as:

- i) developing documents of multi-annual budget planning, based on which annual budget projects can be formulated in agreement with projection and budget execution criteria that are relevant and strictly monitored, which in turn would allow the outlining of investment projects to bring about an institutional development and modernization of the High Court of Cassation and Justice;
- ii) developing a multi-annual strategy for the development of the Court's IT infrastructure, with the possibility of accessing internationally-funded projects because, by developing the IT system, a crucial support comes in place for modernizing the act of justice;

- iii) prompt and exact registration of data in the IT system so that statistical reports generated will contain correct updated information on the circulation of cases and duration for disposition. Such a step would make it possible to take timely action to avoid difficulties with managing a large number of cases allocated to judicial formations and provide a normal celerity;
- iv) developing and implementing the applications Electronic Case and Secure Transmission of Documents (S.T.D.).

Work will continue to implement the program *Electronic Case and Secure Transmission of Documents*, as has been decided by the Management of the supreme court. For that it is necessary on the one hand to continue scanning and archiving all documents registered in relation to the cases on the Court's docket, and on the other hand to establish ways to accept digital-format documents submitted in the cases brought before the High Court.

Attaining that goal would primarily and genuinely benefit litigants, who would be able to consult cases in electronic format that are on the Court's docket while at the same time making sure the case management system is secure. On the other hand, this will also relieve the workload of the Archives division owing to a considerable decrease in the number of persons visiting archives to study case files.

Adopting the system of secure transmission of procedural documents will relieve the workload of the clerks, as subpoenas and other documents will be sent electronically, thus eliminating many of the operations required by communication of documents in paper form via procedural agent or land mail. Decreasing accordingly will also be the expenses involved in communication of documents in this manner.



JUSTITIA DOMINA ET REGINA OMNIUM VIRTUTUM



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