

Improving efficiency and quality of the Judiciary, with a focus on a balanced resources allocation through a sound judicial management



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REPORT – FINAL CONFERENCE

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I. **Balanced allocation of resources with a focus to improve the efficiency and quality**

1. **Context**

On the threshold of Romania's entry in the European Union, the Romanian justice system underwent large transformations, institutional structuring and restructuring, a process named at that time *reform*. This process continued until 2014, when all 4 codes (civil, civil proceedings, criminal and criminal proceedings) were changed.

In time, under the effect of these changes for the Romanian justice system, but also due to the exchange of ideas, experiences, models with the legal systems in the States of the European Union, the Romanian judiciary and the Romanian justice system components have become aware that the main mission of the judiciary is to satisfy the public interest of the citizens and to defend the human rights and their fundamental freedoms.

The primary means to this aim is, of course, the use and implementation of the justice principles and values, namely the **independence and impartiality of justice** and of judges, as well as **their efficiency** in carrying out the act of justice.

The Superior Council of Magistracy (SCM) in Romania set up a working group to elaborate qualitative indicators for the assessment of the effectiveness of efficiency of courts. The objectives were:

- monitoring the functioning of courts as regards the reasonable length of proceedings;
- establishing uniform standards for the whole system;
- enabling regular analysis at the level of the judicial system and of the courts, at different jurisdictions;
- identifying the causes of delays in handling the complaints;

Efficiency indicators

As a result of the working group's work the following indicators for efficiency and effectiveness of courts' activity were established.¹

1. Clearance rate (calculated exclusively in relation to new incoming cases) – it is calculated as the ratio between closed cases and new incoming cases during a one year time frame, shown as a percentage.²

2. Pending cases (exceeding one year/1 year and 6 months) – the pending caseload is calculated as the sum of all pending and unresolved cases at the end of the time frame, exceeding 1

¹ Efficiency is defined as the ratio between the achieved results and the efforts made on institutional level; Effectiveness – the institutional efforts made which provide a positive outcome and may be brought up in the institutional assessment of performance.

² The efficiency scores are: More than 105% = very efficient; between 100% and 105% = efficient; Between 90% and 100% = satisfactory; Less than 90% = inefficient.

year for the courts of appeal and High Court of Cassation of Justice and exceeding than 1 year and 6 months for the other courts.³

3. Rate of cases closed in one year – it is the sum of all cases closed in less than 1 year from the registration in relation to the sum of all cases resolved in the time frame of a certain court, shown as a percentage.⁴

4. Average length of proceedings, according to the legal matters and subjects on the level of each court and on national level (only for the proceedings on the merits) – it is the average time elapsed between the date of the case registration date (“File date” in ECRIS application) and the issue date of the final document – drafting of the decision (the last document, if there are several). This indicator takes into account the average value of all matters shown below (non-criminal/criminal) and it results from the arithmetic mean of all values of the respective legal matters.⁵

5. Drafting the reasoning of judgments within the legal time limit – it is the the rate of judgments drafted within a period exceeding the legal limit (30 days) pursuant to Romanian legislation. The legal time limit for drawing up judgments is the one set in the ECRIS application.⁶

Monitoring and analysis of efficiency indicators through STATIS

The **application StatisEcris** is a software developed by the Superior Council of Magistracy (SCM) in cooperation with Arges Tribunal - software which uses statistical information from every court, without any additional efforts of court clerks. In 2014 the SCM Judges Section decided that the software is implemented at the national level and will centralise the data from the courts.

The purpose of developing the application is to generate statistical reports for each performance indicator as well as the internal ranges of these indicators. For example, the software generates structured information on sections, stages of the proceedings, legal matters, items, judges concerning new incoming cases, resolved cases, caseload, suspended cases, average length of proceedings. The courts report monthly, at half-year and yearly and more often if needed. The software can also provide dynamic information on a particular sector of interest, e.g. developments for each month in a year, quarterly or half-yearly and comparisons between several years. Identifying reasons for delays enables those involved in the management of the judicial system and courts to take actions in order to improve efficiency.

Monitoring and **analysis of the data can be performed at different levels** within the judicial system:

- At the *level of individual courts*: the management structures (Presidents/Vice-presidents, courts’ management councils, courts’ general assemblies) can use the tool to gain insight into the court's

³ The efficiency scores are: Less than 5% = very efficient; Between 5% and 10% = efficient; Between 10% and 15% = satisfactory; More than 15% = inefficient

⁴ The efficiency scores are: More than 80% = very efficient; Between 70% and 80% = efficient; Between 65% and 70% = satisfactory; Less than 65% = inefficient

⁵ The efficiency scores non-criminal/criminal: Less than 11 months/5 months = very efficient; Between 11 months – 1 year/5 months – 6 months = efficient; Between 1 year – 1 year and 6 months/ 6 months – 1 year = satisfactory; More than 1 year and 6 months/1 year = inefficient.

⁶ The efficiency scores are: Less than 5% = very efficient; Between 5% and 10% = efficient; Between 10% and 20% = satisfactory; More than 20% = inefficient.

activity. As the performance of the court for each indicator can be compared over time, concrete measures for improvement could be taken where necessary.

- The *Superior Council of Magistracy* (SCM): SCM Section for Judges and the Judicial Inspection proceed to the analysis of courts which have a degree of efficiency and effectiveness "satisfactory" or "inefficient" at the end of each statistical year. The analysis should provide a perspective on the deficiencies/issues which a certain court, several courts or even the judiciary faces. The results of the analysis are discussed with the management of the courts and that of the hierarchically superior courts to remedy the dysfunctions. Court management shall apply the improvement measures. In addition, the courts which have had for a long period of time the assessment "very efficient" are analysed, in order to highlight the advantages of the type of management and the measures put in place at these courts and which of these may be used as examples by other courts. The SCM publishes half-yearly and yearly the results of the aggregated indicators, highlighting the strong points, the weak points and the measures to be implemented by certain courts. The Judicial Inspection may also use the analysis tool for a court's management performance, taking into account the verification competencies which the Inspection has.

- The result of adding/aggregating these indicators may become a guide or an instrument for the *Ministry of Justice and the National Institute of Magistracy* in developing human resource policies and professional areas (where, for instance, issues show up on system level in managing certain cases, especially in new fields of expertise etc.).

Following the Decision 1316/ 25 October 2016 of the Section for judges of SCM, performance indicators for **individual judges** were established and will be implemented as of the first half of 2017.

Benefits of the measuring system in Statis

Both the efficiency indicators and the StatisEcris application ensure that the analysis of efficiency in courts is based on objective indicators. Moreover, the **objectiveness of the analysis** is reinforced by the underlying methodology. It enables a comparison with other courts of the same rank concerning the result shown by the indicators (workload, organisational charts etc.); a temporal comparison at the same court on each individual indicator and on their aggregation (the indicator analysis on their multiannual development); identifying the cases on which the result based on the indicators were obtained (both aggregated and individually); the debate together with the court's staff, the hierarchically superior court's management, SCM, Ministry of Justice, National Institute of Magistracy etc. of the results and finding the measures for their improvement.

The implementation and use of StaticEcris⁷ may facilitate an **accurate calibration and promotion of human resource policies**, as well as other policies depending on SCM management decisions. Moreover, it may become a guide for finding means, together with the courts' management, to act where concrete efficiency and effectiveness issues arise. The horizontal comparison between courts with the same activity dynamics is a useful analysis instrument for SCM, the comparison followed by an analysis, being able to reveal management, staff, financial resources or materials, massive increases

⁷ Besides the efficiency module (for courts and for judges), Statis IT tool encompasses a statistical component, designed to issue over 200 types of reports, each of them with a graphical representation. Furthermore, each court has a "semicentral Statis" that may be updated on a weekly basis, but there is also a "central Statis" that may be updated on a quarterly basis used mainly by SCM, MoJ and other central institutions.

or decreases in the overall number or specific types of cases at the courts. It provides the basis for developing measures for courts or for the entire system in cooperation with the courts' management, the Judicial Inspection, the Ministry of Justice. SCM may develop concrete proposals for legal amendments based on such an analysis.

Uniform reporting and **communication of the results** and analysis is another useful tool that is to be put into practice by the courts and SCM (Section for Judges). Reporting may be made both for the respective courts' staff, but also for SCM (in order to centralize all these analyses), and, last but not least, a reference to the public, given the specificity of public service of the Justice and reflection of the activity of this public service⁸.

Complexity points

The project made use of previous experience of the SCM in measuring the volume of work.

By Decision no. 2119/2009 of the SCM Plenum approved⁹ the programme of ***Determining and implementing the optimal volume of work and ensuring the quality of the courts' activity – analysis of the operation and the effects of this programme up to date.***

The programme aimed to limit the number of complexity points of (caseload points) that can be allocated annually to a judge by the assignment of cases in the first court hearing.

The complexity points taken into account in this programme are those assigned to each ECRIS item (type of case). The points or complexity scores are unique on national level being established by the Superior Council of Magistracy.¹⁰

By the decisions no 609 of 7 June 2016 and 945 of 6 September 2016 of the Section for judges, SCM has amended the system of establishing the complexity points and has set up a new formula of calculation.

At the moment of the registration of a file, a certain number of complexity points is established by the clerks for the random allocation system. At a later stage, this number may remain the same until the end of the file or may vary according to later changes of the complexity of the file.

Current project

The project *Improving the efficiency and quality of the Judiciary in Romania, with a focus on a balanced resources allocation through a sound judicial management* was carried out in 2015 and 2016 and it was aimed at improving the efficiency and the quality of the activity within the courts in Romania by determining and implementing a type of judicial management focused on a balanced allocation of resources. For this purpose, the Court of Appeal in **Bucharest** and the District Court of **Rotterdam, the Netherlands**, have worked closely together within this project.

⁸ Note – besides the efficiency module (for courts and for judges), Statis IT tool encompasses a statistical component, designed to issue over 200 types of reports, each of them with a graphical representation. Furthermore, each court has a “semicentral Statis” that may be updated on a weekly basis, but there is also a “central Statis” that may be updated on a quarterly basis used mainly by SCM, MoJ and other central institutions.

⁹ Subsequently, its applicability was extended according to the Plenum Decisions no.: 945/2010, 976/2012, 161/2013

¹⁰ For example, a case involving an estate claim has 10 complexity points, a case involving the offence of perjury has 7 complexity points etc.

In terms of efficiency, the Romanian judiciary intended to learn from the best practices applied in the courts in Netherlands in implementing the indicators for allocation of financial resources. The results were expected to be reflected in a higher number of cases closed in courts in a determined period of time, measured in the Romanian Judiciary through the STATIS database.

In terms of quality, indicators will be established in order to have an assessment of the quality of the act of justice in the same courts. The measurement of these indicators is achieved by assessing the number or reviewed closed cases.

Nevertheless, all these results will be noticed on a longer term, starting with the first year after the implementation.

The project represents a first step in the way of improving the management of the courts and setting up a result-based management.

Having in mind the Dutch model and the challenge of how to use existing resources to produce more valuable services, the SCM of Romania was looking forward to answer the question of what Romania could learn from the Dutch financing structure.

In the Netherlands the Council for the Judiciary plays a key role in financing the Judiciary, being responsible for the annual budgets and annual reports of the Judiciary as a whole. The Council prepares solid annual plans to ensure that the Judiciary receives sufficient financial resources to be able to perform its work effectively. Additionally, it is also responsible for distributing funds among the courts. This financing is based on an output-based financing system.

2. Objectives and description of the activities within the project

The overall purpose of the project was to find the best practices in the administration and management of courts in order to achieve better results in terms of efficiency and allocation of resources.

The presidents of the Court of Appeal of Bucharest and the District Court of Rotterdam appointed two teams of Romanian and Dutch judges in order to share their experience in terms of functioning and administration of court, case management etc.

In the first phase, there was an exchange of information and documents between the judges of the two courts on the organization of the judicial systems, methods of measuring the efficiency and quality.

On 26-29 October 2015 and 11-14 April 2016, exchange visits were organized of the Dutch judges to Bucharest and of the Romanian judges to Rotterdam and The Hague (seat of the Dutch Council for the Judiciary). On these occasions, the two courthouses were visited, discussions were held on the methods of measuring the efficiency of the courts, of allocation of resources, cultural and leadership aspects of managing courts, drafting sentences/decisions and delegation from judges to the legal staff etc., with a focus on efficiency and quality. At the end of the meeting in April the two teams decided to focus on two main topics for the final conference: finances and delegation. The teams agreed on pilots per topic to be carried out in September and October 2016 and formulated goals and steps per topic/pilot.

A preparatory meeting took place on 13 June 2016, when delegations of the two teams met in Bucharest. At that time progress and framework of the (preparation of the file) pilots as well as the agenda for the final conference were discussed.

The pilot on Finances had the following goals:

- Efficient allocation of resources
- Develop a mechanism to measure the time and cost per case
- Develop budget projecting

The following activities were carried out:

Step 1: Specify categories of cases (Criminal, Civil, Commercial, Contentious and Social Security and Labor) (SCM + CAB)

Step 2: Time needed by judges and clerks per category of case (CAB /input from judges and clerks – September/October)

Step 3: Calculation of the budget (number of cases) for the past 2 years (SCM)

Step 4: Ratio time and price – price for each category (SCM)

Step 5: Drafting of the results for the final report by the participating judges (SCM + CAB)

Step 6: Feedback on the results by the Dutch Council for the Judiciary

Step 7: Present results at final conference (SCM + CAB)

Step 8: Revision of time if needed

On the subject of Delegation, the following goal was defined:

- Better results in terms of efficiency
- Proper delegation will result in more time for judges

Pilots were carried out in the Court of Appeal of Bucharest and the Court of first instance of District 6, Bucharest, with the following steps:

Step 1: Establish participating courts and judges

Step 2: Set up a method of delegation (what and how to delegate)

Step 3: Drafting of the results from the 2 month pilot by the participating judges

Step 4: Feedback on the results by the District Court of Rotterdam

Step 5: Present results at final conference

A constant dialogue was held between the Courts and the SCM of Romania during the implementation of the pilot. The District Court of Rotterdam was available before, during and after the pilot to assist and help analysing the results.

Steps 2, 3 and 4 of the pilot on Finances and step 2 from the pilot on Delegation are detailed in the chapters below.

STATIS indicators at the Court of Appeal of Bucharest

In order to keep the coherence with the Statist application, SCM has inquired the application in order to obtain concrete information on the five indicators of efficiency for the **Court of Appeal of Bucharest** for the same period when the pilot was carried out.

The results on these indicators may be subject to further analysis in relation to the ratio of time per file and cost per files between the Court of Appeal of Bucharest and the national average.

The five indicators, as described above, are noted in the table below for the Court of Bucharest, where the scores range ascending: red (inefficient), orange (satisfactory), yellow (efficient), green (very efficient). The relevant Sections of the Court are the Sections I-VIII, at positions no 4, 5, 6, 7, 9, 10, 11, 12 in the table below.

E01 - Clearance rate (calculated exclusively in relation to new incoming cases)¹¹

It may be noticed that the overall indicator for the court is scored in orange and it is the average of E01 indicators from all sections which are red (3 Sections), orange (2), yellow (1) and green (2 of the Sections).

E02 – Pending cases (exceeding one year/1 year and 6 months)¹²

The overall indicator for the Court of Appeal of Bucharest is green and it is the average of green (4 Sections) and yellow (3 Sections).

E03 – Rate of cases closed in one year¹³

The overall indicator for the Court of Appeal of Bucharest is green as this indicator is green for all relevant sections.

E04 - Average length of proceedings, according to the legal matters and subjects on the level of each court and on national level (only for the proceedings on the merits)¹⁴

The overall indicator for the Court of Appeal of Bucharest is green as this indicator is green for all relevant sections.

¹¹ It is calculated as the ratio between resolved cases and new incoming cases during a one year time frame, shown as a percentage. The efficiency scores are: More than 105% = very efficient; between 100% and 105% = efficient; Between 90% and 100% = satisfactory; Less than 90% = inefficient.

¹² The pending caseload is calculated as the sum of all pending and unresolved cases at the end of the time frame, exceeding 1 year for the courts of appeal and High Court of Cassation of Justice and exceeding than 1 year and 6 months for the other courts. The efficiency scores are: Less than 5% = very efficient; Between 5% and 10% = efficient; Between 10% and 15% = satisfactory; More than 15% = inefficient

¹³ It is the sum of all cases resolved in less than 1 year from the registration in relation to the sum of all cases resolved in the time frame of a certain court, shown as a percentage. The efficiency scores are: More than 80% = very efficient; Between 70% and 80% = efficient; Between 65% and 70% = satisfactory; Less than 65% = inefficient

¹⁴ It is the average time elapsed between the date of the case registration date ("File date" in ECRIS application) and the issue date of the final document – drafting of the decision (the last document, if there are several). This indicator takes into account the average value of all matters shown below (non-criminal/criminal) and it results from the arithmetic mean of all values of the respective legal matters. The efficiency scores non-criminal/criminal: Less than 11 months/5 months = very efficient; Between 11 months – 1 year/5 months – 6 months = efficient; Between 1 year – 1 year and 6 months/ 6 months – 1 year = satisfactory; More than 1 year and 6 months/1 year = inefficient.

E05 – Drafting the reasoning of judgments within the legal time limit¹⁵

The overall indicator for the Court of Appeal of Bucharest for this indicator is red and it is the average of red (5 Sections) and yellow (2 Sections).

One may notice that, according to the Statis tool, further attention should be offered for the orange indicator of clearance rate (ratio between resolved cases and new incoming cases during a one year time frame, shown as a percentage) and to the red indicator of time of drafting the reasoning of judgements within the legal time limit. Furthermore, one may notice which is the Section of the court that is at risk. At a later stage, according to the development of Statis, more in-depth information will be available on the judges/panels that have low scores.

The image bellow, reflects the efficiency of the Court of Appeal of Bucharest, according to Statis application for the two months during which the pilot was carried out. At point 4 and 5 one can see the results of the sections on criminal matters (I), at 6 and 7 for sections on the civil matters (II), at 9 and 10 for sections on commercial matters (III), at 11 for sections on labour and social security (IV) and at 12 for section on administrative matters(V).

SITUATIE STATISTICA	
E06.Q09 Indicatori Eficienta, analiza Sectie in Instanta.	
CRITERII DE CAUTARE	
Perioada analizata: {01.09.2016 - 31.10.2016} Dosar arhivat: {nu} Instanta: {Curtea de Apel BUCURESTI} Criteriu ordonare: {alfabetic} Directie ordonare: {crescator}	
Export Excel	
GRAD DE EFICIENTA	
F	E S I
	E01 E02 E03 E04 E05
Persoana conectata: Narcis Moisescu	
LISTA REZULTATE	
ORDINE	DENUMIRE SECTIE
	F E S I
4	Sectia I penală
	E01 E02 E03 E04 E05
5	Sectia a II-a penală
	E01 E02 E03 E04 E05
6	Sectia a III-a civilă și pentru cauze cu minori și de familie
	E01 E02 E03 E04 E05
7	Sectia a IV-a civilă
	E01 E02 E03 E04 E05
9	Sectia a V-a civilă
	E01 E02 E03 E04 E05
10	Sectia a VI-a civilă
	E01 E02 E03 E04 E05
11	Sectia a VII-a pentru cauze privind conflicte de muncă și asigurări sociale
	E01 E02 E03 E04 E05
12	Sectia a VIII-a contencios administrativ și fiscal
	E01 E02 E03 E04 E05

¹⁵ The ratio of judgments drafted within a period exceeding the legal limit (30 days) pursuant to Romanian legislation. The legal time limit for drawing up judgments is the one set in the ECRIS application. The efficiency scores are: Less than 5% = very efficient; Between 5% and 10% = efficient; Between 10% and 20% = satisfactory; More than 20% = inefficient.

The table below reflects the situation of the same indicators for the other Courts of Appeal and their averages.

Perioada analizata: {01.09.2016 - 31.10.2016} Dosar arhivat: {nu} Criteriu ordonare: {alfabetic} Directie ordonare: {crescator}

Export Excel

One may notice that the average of the indicators E1, E2, E3, E4, E5 for the Court of Appeal of Bucharest is almost equal to the average of all the Courts of Appeal, except for E5, on drafting the reasoning of judgments within legal time limit. This may be important for the further analysis on the balanced allocation of resources and delegation.

3. Measurement and calculation of practical time needed to close the files within the pilot in the Court of Appeal of Bucharest

In the second stage of the project, the judges and clerks in the Court of Appeal of Bucharest have carried out a pilot in order to measure the concrete times needed to deal with cases.

The pilot started September 1st 2016 and had to be carried out within a period of two months (September, October). The Court of Appeal of Bucharest collected the data and the SCM processed the data.

In this respect, a timesheet was drafted by the Court and SCM (see the end of the document) to be used to measure times needed for judges and clerks in different types of cases.

It was agreed to measure time in the following categories of cases: 1. Criminal, 2. Civil, 3. Commercial, 4. Labour and social security and 5. Administrative.

For each of the categories a panel of judges within the Court of Appeal of Bucharest was appointed a panel to measure the time needed to close a case (point 2 in table below). As it was difficult to measure the time needed to close complex cases in only two months, a specific mechanism was created.

During the dialogue between the representatives of the two Councils for Judiciary, it was recommended to split the time of judges and clerks into sequences that could be measured in two months. Then, by summing up the average time needed for these sequences, an average on the length of the file could be obtained.

The file was divided in several phases and activities and these activities were measured by the participants in the pilot, as follows:

Activities for judges

- Phase 1:*
 - study of the file
 - search for case law and doctrine
 - preliminary procedure
 - incidental procedure
- Phase 2:*
 - postponement of the case
 - administration of evidence (cercetarea judecătorească)
 - debates
- Phase 3:*
 - deliberation
 - drafting of the minutes
 - individual study of the file or in multiple judge panel
- Phase 4:*
 - drafting of the decision
 - verifying and drafting of the decision (by the members of the panel of judges)

Activities for clerks

- Phase 1:*
 - session list
 - preparations for the hearing
 - preliminary procedure
- Phase 2:*
 - postponement of the case

- administration of evidence (cercetarea judecătorească)

- debates

- before the hearing

Phase 3: - printing of the registry of the minutes and having the signature of the president

- receiving the files decided by the panel

- transfer of the decision in ECRIS application and other operations

Phase 4: - preparing and signing of the decision (by the judge that had drafted the decision)

- communication of the decision (includes the communication of the minutes and the communication of the entire decision)

- drafting the communications and of the minutes of the hearing (for postponements, debates etc.)

- writing the draft of the decision

- sending the file to the archives (including numbering of the pages, sewing the file etc.)

Each of the phases had one more field “other” where there was counted any other activity that didn’t fit in the fields mentioned above was counted.

The Dutch council for the Judiciary also shared its experiences in relation to the survey among judges and clerks aiming to determine the average time spent for the categories of cases; the exercise was implemented during one year. It was agreed that, because of the limited time, the Romanian judiciary could make use of the complexity points and to make measurements only in some relevant cases in order to determine the relevant time. Having only some of the categories in the pilot, this could offer the possibility to focus on the correct measurement.

Measurement of the activity of judges

Total number of files managed	992
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Matters	No of files	Average time in minutes for a complexity point for all the matters
Penal	118	27.37121973
Civil	116	
Commercial	181	
Labour and social security	319	
Administrative	258	

Matters	Total points of complexity	Average complexity per file	Average time for a complexity point
Penal	2101.09	17.81	26.12

Civil	1964.9 9	16.94	16.74
Commercial	2878.9 8	15.91	24.27
Labour and social security	4263.4 3	13.36	38.26
Administrative	2762.8 5	10.71	31.46

Matters	Phase	Type of activity	No of files	Total no of minutes	Minutes per activity	Total minutes per phase
Penal	1	1 - other	4	140	1.794871795	
Penal	1	1 - study of the file	69	3060	44.34782609	
Penal	1	1- search for case law and doctrine	4	105	26.25	
Penal	1	1- preliminary procedure	5	35	7	
			78			79.39
Penal	2	2 - other	2	65	0.524193548	
Penal	2	2 - postponement of the case	22	245	11.13636364	
Penal	2	2 - administration of evidence (cercetarea judecătorească)	21	1550	73.80952381	
Penal	2	2 - debates	81	1710	21.11111111	
			124			106.58
Penal	3	3 - other	1	20	0.141843972	
Penal	3	3 - deliberation	72	1235	17.15277778	
Penal	3	3 - drafting of the minutes	52	900	17.30769231	
Penal	3	3 - individual study of the file or in multiple judge panel	16	480	30	
Penal	3	3 - verification and signing the registry of the minutes	1	15	15	
			141			79.6
Penal	4	4 - other	2	40	1.290322581	
Penal	4	4 – drafting of the decision	31	6150	198.3870968	
			31			199.68
	Total minutes per matter					465.25
	Minutes per complexity points					26.12
Civil	1	1 - other	6	35	0.168269231	

Civil	1	1 - study of the file	85	1860	21.88235294	
Civil	1	1- search for case law and doctrine	83	1421	17.12048193	
Civil	1	1- preliminary procedure	34	191	5.617647059	
Civil	1	1- incidental procedures	6	33	5.5	
			208			50.29
Civil	2	2 - other	5	10	0.1333333333	
Civil	2	2 - postponement of the case	24	131	5.458333333	
Civil	2	2 - administration of evidence (cercetarea judecătorească)	11	287	26.09090909	
Civil	2	2 - debates	40	392	9.8	
			75			41.48
Civil	3	3 - other	18	217	1.476190476	
Civil	3	3 - deliberation	42	697	16.5952381	
Civil	3	3 - drafting of the minutes	39	54	1.384615385	
Civil	3	3 - individual study of the file or in multiple judge panel	46	1224	26.60869565	
Civil	3	3 – verification and signing the registry of the minutes	20	20	1	
			147			47.06
Civil	4	4 – preparing and signing the decision (by the judge that has drafted the decision)	10	136	13.6	
Civil	4	4 - concept	18	1493	82.94444444	
Civil	4	4 – finalizing the concept (drafted by the clerk)	12	478	39.83333333	
Civil	4	4 - verifying and drafting of the decision (by the members of the panel of judges)	5	42	8.4	
			45			144.78
	Total minutes per matter					283.61
	Minutes per complexity point					16.74
Commercial	1	1 - study of the file	122	3969	32.53278689	
Commercial	1	1- preliminary procedure	22	174	7.909090909	
Commercial	1	1- incidental procedures	3	43	14.33333333	
			147			54.78
Commercial	2	2 - other	19	131	1.139130435	
Commercial	2	2 - postponement of the case	24	241	10.04166667	
Commercial	2	2 - administration of evidence (cercetarea judecătorească)	20	251	12.55	

Commercial	2	2 - debates	71	111 9	15.7605633 8	
			115			39.49
Commercial	3	3 - deliberation	102	152 5	14.9509803 9	
Commercial	3	3 - drafting of the minutes	98	265	2.70408163 3	
Commercial	3	3 - individual study of the file or in multiple judge panel	1	139	139	
			201			156.66
Commercial	4	4 - other	22	102 5	17.0833333 3	
Commercial	4	4 – drafting of the decision	50	562 4	112.48	
Commercial	4	4 – verifying and signing the decision (by the other members of the panel)	10	56	5.6	
			60			135.16
	Total minutes per matter					386.09
	Minutes per complexity point					24.27
Labour and social security	1	1 - other	1	15	0.05703422 1	
Labour and social security	1	1 - study of the file	157	792 1	50.4522293	
Labour and social security	1	1- search for case law and doctrine	2	370	185	
Labour and social security	1	1- preliminary procedure	97	310	3.19587628 9	
Labour and social security	1	1- incidental procedures	7	54	7.71428571 4	
			263			246.42
Labour and social security	2	2 - other	19	149	0.93125	
Labour and social security	2	2 - postponement of the case	10	29	2.9	
Labour and social security	2	2 - administration of evidence (cercetarea judecătorească)	17	187	11	
Labour and social security	2	2 - debates	133	552	4.15037594	
			160			18.98
Labour and social security	3	3 - other	1	18	0.06741573	
Labour and social security	3	3 - deliberation	132	101 5	7.68939393 9	
Labour and social security	3	3 - drafting of the minutes	133	191	1.43609022 6	
Labour and social security	3	3 - individual study of the file or in multiple judge panel	2	85	42.5	
			267			51.69
Labour and social security	4	4 - other	5	5	0.125	

Labour and social security	4	4 – drafting of the decision	39	717 5	183.974359	
Labour and social security	4	4 - verifying and drafting of the decision (by the members of the panel of judges)	1	10	10	
			40			194.10
	Total minutes per matter					511.19
	Minutes per complexity point					38.26
Administrative	1	1 - study of the file	179	421 8	23.5642458 1	
Administrative	1	1- preliminary procedure	77	108 4	14.0779220 8	
Administrative	1	1- incidental procedures	8	155	19.375	
			264			57.02
Administrative	2	2 - other	1	15	0.6	
Administrative	2	2 - postponement of the case	5	30	6	
Administrative	2	2 - administration of evidence (cercetarea judecătorească)	1	15	15	
Administrative	2	2 - debates	19	153	8.05263157 9	
			25			29.65
Administrative	3	3 - deliberation	37	126 1	34.0810810 8	
Administrative	3	3 - drafting of the minutes	1	30	30	
Administrative	3	3 - individual study of the file or in multiple judge panel	5	341	68.2	
			43			132.28
Administrative	4	4 - other	1	5	0.2	
Administrative	4	4 – drafting of the decision	25	294 5	117.8	
			25			118
	Total minutes for the matter					336.95
	Minutes per complexity point					31.46

Measurement of the activity of clerks

Total no of files managed	1141
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Matter	Total no of files	Average time for a complexity point in all matters - minutes
Penal	174	13.55719294
Civil	203	
Commercial	267	
Labour and social security	247	
Administrative	250	

Materia	Total complexi ty	Average complexity per file	Average time for complexi ty point
Penal	5799.61	33.33	16.00
Civil	3144.7	15.49	21.33
Commercial	3686.29	13.81	12.02
Labour and social security	3640.9	14.74	9.31
Administrative	2751.89	11.01	9.13

Matter	Phase	Type of activity	No of files	Total minutes allocated	Minute s per activity	Total minutes per phase
Penal	1	1 - other	30	908	4.1651 37615	
Penal	1	1 – hearing list	104	248	2.3846 15385	
Penal	1	1 - preparations for the hearing	102	2996	29.372 54902	
Penal	1	1- preliminary procedure	12	320	26.666 66667	
						62.59
Penal	2	2 - other	2	50	0.2283 10502	
Penal	2	2 – postponement of the case	38	263	6.9210 52632	
Penal	2	2 - administration of evidence (cercetarea judecătorească)	5	785	157	
Penal	2	2 - debates	71	1239	17.450 70423	
Penal	2	2 – before the hearing	105	762	7.2571 42857	
						188.86
Penal	3	3 - other	13	220	0.7586 2069	
Penal	3	3 - printing of the registry of the minutes and having the signature of the president	105	434	4.1333 33333	
Penal	3	3 - receiving the files decided by the panel	80	558	6.975	
Penal	3	3 - transfer of the decision in ECRIS application and other operations	105	1047	9.9714 28571	
						21.84
Penal	4	4 - other	20	877	2.8566 77524	
Penal	4	4 - preparing and signing of the decision (by the judge that had drafted the decision)	46	270	5.8695 65217	
Penal	4	4 - communication of the decision (includes the communication of the	36	778	21.611 11111	

		minutes and the communication of the entire decision)				
Penal	4	4 - drafting the communications and of the minutes of the hearing (for postponements, debates etc.)	56	8740	156.07 14286	
Penal	4	4 - writing the draft of the decision	62	3750	60.483 87097	
Penal	4	4 - sending the file to the archives (including numbering of the pages, sewing the file etc.)	107	1384	12.934 57944	
						259.83
Total minutes per matter						533.12
Minutes per complexity point						16.00
Civil	1	1 – hearings list	126	713	5.6587 30159	
Civil	1	1 - preparing the list of the hearing	112	2413	21.544 64286	
Civil	1	1- preliminary procedure	63	3943	62.587 30159	
						89.79
Civil	2	2 – postponement of the case	30	455	15.166 66667	
Civil	2	2 - administration of evidence (cercetarea judecătorească)	30	254	8.4666 66667	
Civil	2	2 - debates	47	607	12.914 89362	
Civil	2	2 – before the hearing	101	726	7.1881 18812	
						43.74
Civil	3	3 - other	1	15	0.0545 45455	
Civil	3	3 - printing of the registry of the minutes and having the signature of the president	67	235	3.5074 62687	
Civil	3	3 - receiving the files decided by the panel	101	400	3.9603 9604	
Civil	3	3 - transfer of the decision in ECRIS application and other operations	107	1107	10.345 79439	
						17.87
Civil	4	4 - other	9	285	1.3443 39623	
Civil	4	4 - preparing and signing of the decision (by the judge that had drafted the decision)	42	640	15.238 09524	
Civil	4	4 - communication of the decision (includes the communication of the minutes and the communication of the entire decision)	25	715	28.6	
Civil	4	4 - drafting the communications and of the minutes of the hearing (for postponements, debates etc.)	82	8885	108.35 36585	

Civil	4	4 - sending the file to the archives (including numbering of the pages, sewing the file etc.)	63	1600	25.396 8254	
						178.93
Total minutes per matter						330.33
Minutes per complexity point						21.33
Commercial	1	1 - other	40	193	0.5482 95455	
Commercial	1	1 – hearing list	130	1083	8.3307 69231	
Commercial	1	1 - preparations for the hearing	100	941	9.41	
Commercial	1	1- preliminary procedure	122	2213	18.139 34426	
						36.43
Commercial	2	2 - other	1	3	0.0245 90164	
Commercial	2	2 – postponement of the case	9	76	8.4444 44444	
Commercial	2	2 - administration of evidence (cercetarea judecătorească)	1	10	10	
Commercial	2	2 - debates	105	1119	10.657 14286	
Commercial	2	2 – before the hearing	7	41	5.8571 42857	
						34.98
Commercial	3	3 - other	5	131	0.3786 12717	
Commercial	3	3 - printing of the registry of the minutes and having the signature of the president	103	362	3.5145 63107	
Commercial	3	3 - receiving the files decided by the panel	130	1314	10.107 69231	
Commercial	3	3 - transfer of the decision in ECRIS application and other operations	113	544	4.8141 59292	
						18.82
Commercial	4	4 - other	16	70	0.1790 28133	
Commercial	4	4 - preparing and signing of the decision (by the judge that had drafted the decision)	47	364	7.7446 80851	
Commercial	4	4 - communication of the decision (includes the communication of the minutes and the communication of the entire decision)	77	566	7.3506 49351	
Commercial	4	4 - drafting the communications and of the minutes of the hearing (for postponements, debates etc.)	85	2580	30.352 94118	
Commercial	4	4 - writing the draft of the decision	49	1315	26.836 73469	
Commercial	4	4 - sending the file to the archives (including numbering of the pages, sewing the file etc.)	133	447	3.3609 02256	
						75.82

Total minutes per matter						166.05
Minutes per complexity point						12.02
Labour and social security	1	1 - other	78	926	2.3383 83838	
Labour and social security	1	1 – hearing list	143	1003	7.0139 86014	
Labour and social security	1	1 - preparations for the hearing	143	1080	7.5524 47552	
Labour and social security	1	1- preliminary procedure	110	1870	17	
						33.90
Labour and social security	2	2 – postponement of the case	7	58	8.2857 14286	
Labour and social security	2	2 - administration of evidence (cercetarea judecătorească)	7	110	15.714 28571	
Labour and social security	2	2 - debates	84	473	5.6309 52381	
Labour and social security	2	2 – before the hearing	143	604	4.2237 76224	
						33.85
Labour and social security	3	3 - receiving the files decided by the panel	97	349	3.5979 38144	
Labour and social security	3	3 - transfer of the decision in ECRIS application and other operations	97	401	4.1340 20619	
						7.73
Labour and social security	4	4 - other	97	990	3.4020 61856	
Labour and social security	4	4 - communication of the decision (includes the communication of the minutes and the communication of the entire decision)	97	990	10.206 18557	
Labour and social security	4	4 - drafting the communications and of the minutes of the hearing (for postponements, debates etc.)	15	370	24.666 66667	
Labour and social security	4	4 - writing the draft of the decision	82	1590	19.390 2439	
Labour and social security	4	4 - sending the file to the archives (including numbering of the pages, sewing the file etc.)	97	401	4.1340 20619	
						61.80
Total minutes per matter						137.28
Minutes per complexity point						9.31
Adminsitrative	1	1 - other	5	16	0.0414 50777	
Adminsitrative	1	1 – hearing list	142	164	1.1549 29577	
Adminsitrative	1	1 - preparations for the hearing	141	432	3.0638 29787	
Adminsitrative	1	1- preliminary procedure	103	906	8.7961 16505	
						13.06

Administrative	2	2 - other	43	99	0.4057 37705	
Administrative	2	2 – postponement of the case	31	186	6	
Administrative	2	2 - administration of evidence (cercetarea judecătorească)	27	193	7.1481 48148	
Administrative	2	2 - debates	50	398	7.96	
Administrative	2	2 – before the hearing	136	346	2.5441 17647	
						24.06
Administrative	3	3 - other	3	13	0.0351 35135	
Administrative	3	3 - printing of the registry of the minutes and having the signature of the president	131	154	1.1755 72519	
Administrative	3	3 - receiving the files decided by the panel	102	128	1.2549 01961	
Administrative	3	3 - transfer of the decision in ECRIS application and other operations	137	409	2.9854 0146	
						5.45
Administrative	4	4 - other	42	156	0.8041 23711	
Administrative	4	4 - preparing and signing of the decision (by the judge that had drafted the decision)	3	16	5.3333 33333	
Administrative	4	4 - communication of the decision (includes the communication of the minutes and the communication of the entire decision)	28	387	13.821 42857	
Administrative	4	4 - drafting the communications and of the minutes of the hearing (for postponements, debates etc.)	107	3685	34.439 25234	
Administrative	4	4 - sending the file to the archives (including numbering of the pages, sewing the file etc.)	56	198	3.5357 14286	
						57.93
Total minutes per matter						100.50
Minutes per complexity point						9.13

Data analysis

From the measured results one can see that one complexity point has been allocated an average work time of 27,37 minutes by the judge, while the clerk has spent an average of 13,55 minutes on one complexity point.

It is important to underline that the measurement results are influenced by subjective factors (i.e. the work routine of each person, the rate of task fulfilment, the performance, which varies according to personal circumstances), but also that by calculating an average of the results registered by the different subjects of the pilot during the two months time frame and respectively an average

between the results in different categories of cases, those figures represent a reasonable degree of objectivity.

The differences between the categories of cases (civil, criminal, commercial, etc) are caused by the characteristics of each specialisation and by the different number of cases seen in the time frame.

Regarding the judge's activity, one may notice that, although the biggest weight goes on the study of the file (either before the court session or when the final decision on the case is issued) and on the drafting of the decision, an important period of time is allocated to activities that are mainly administrative, such as written procedure, which in the particular case of the appeal (where most of the cases at the Court of Appeal are dealt with) consists of formal verification of written pleas and the order to deliver to the parties different documents filed before the oral hearings – appeals, defence documents, etc.

It is also important to notice that, when drafting the decision, the judges have mostly written the whole decision themselves on the computer (instead of using the alternatives which are working on a draft written up front by the clerk or handwriting the decision for the clerk to type), and this stage has taken the longest period of time in the timeframe (approximately 183 min in labour cases, 112 min in commercial matters, 117 min in administrative cases and 198 min in criminal cases).

Such a work algorithm is certainly able to bring a negative effect on the judge's efficiency, and that can be changed noting that the Romanian procedural law requires for the court's decision to consist of a descriptive part, where the case context and the parties' reasoning are shown, noting that this part of the court decision does not demand the use of the judge's abilities, but only the specific capabilities of the clerk.

A clear conclusion of this analysis is that it is necessary for this task (drafting the descriptive part of the decision) to be fulfilled by the clerk and not by the judge, which would allow the latter to spend more time studying the case and issuing the decision, followed by the writing of the relevant part of the decision, comprising of the legal (and factual, if necessary) evaluation of the case.

Unfortunately, we can say that such a purpose cannot be achieved with the current number of clerks in our court, which is not sufficient given the present configuration of the judges' and clerks' attributions.

4. Calculation of the hypothetical / theoretical time per file

A. Calculation of average time per file for 2015

The calculation of the average time per file reflects the needs for the average resources measured in minutes for a file. It should not be confused with the length of the proceedings. The average time is considered as a resource and it is composed per a file of the time of the judge, time invested by clerks and administrative time.

For the calculation of the average time needed to close a case, the following data were used: total available time in the court (for judges, for clerks and for administrative tasks) and total number of files.

Total available the time for judges and for clerks was obtained from the number of working days during a year, excluding the annual leave. It does not include the time spent on work that goes beyond the hours of the appointment and it does not take into consideration any exceptional situations when the person is not in court (e.g. medical leave).

Accordingly, the total amount of available time during a year - **218 working days** for judges (253 legal working days in 2015, minus 35 days of annual leave for judges) and **223 working days** for clerks (253 legal working days in 2015, minus 30 days of annual leave for clerks), respectively **1744 hours for judges and 1784 for clerks**, represents the available time for human resources.

As for the administrative time in the court, this is difficult to measure, so the project team agreed to take into consideration the ratio between the administrative time and the total time calculated as a ratio between the administrative costs in the court (administration of the building, drivers etc.) and the total budget of the court. The most convenient way is to keep the same ratio for costs and time and that is 17.21% out of the total (for details, see ratio of the administrative costs in the Chapter 6.A. below).

The common nominator for the ratio is the *total number of files* of the Court of Appeal of Bucharest during one year (calculated as stocks at the beginning of the year and new entered cases during the relevant year).

The following formula was used in order to determine the total time available:

$$T_{a.t.} = 1744 \text{ hours} \times A \text{ judges} + 1784 \text{ hours} \times B \text{ clerks} + C \text{ administrative tasks,}$$

$$T_{f.} = \frac{1744 \text{ hours} \times A \text{ judges} + 1784 \text{ hours} \times B \text{ clerks} + C \text{ administrative tasks}}{\text{Total number of files}}$$

where:

T a.t – total available time

A – number of judges in court in 2015

B – number of clerks working on the files in court in 2015

C - fixed time needed to carry out administrative tasks, as a fixed ratio of 17.21%.

Accordingly:

T a.t. 2015 = 1744 hours x 194 judges + 1784 hours x 98¹⁶ clerks + 17.21% administrative tasks,

T a.t. 2015 = (338,336 hours for judges + 174,832 hours for clerks) + 17.21% = 619,843 hours

Total number of files = *stocks* + *new files* = 24,274 + 38.689 = 62,963

$$T_{f.} \text{ CAB 2015} = \frac{(338,336 \text{ hours for judges} + 174,832 \text{ hours for clerks}) + 17.21\%}{62,963 \text{ files}}$$

¹⁶ We have taken into consideration the number of clerks who perform duties directly linked to solving the cases; meanwhile, the activity of the other clerks of the court, involved in the administrative departments as archive, registrar, random allocation operations, etc, is reflected in the fixed ratio of the administrative tasks.

$$\textbf{T f. CAB 2015} = 5.37 \text{ hours for judges} + 2.78 \text{ hours for clerks} + 1.69 \text{ admin hours} = \textbf{9.84 hours}$$

From this perspective, using a simple method of calculation (dividing the available time within a year with the total number of complexity points in the court), there may be obtained the time needed to deal with 1 point of complexity. All other times may be establish by multiplying this time with the number of points of complexity.

Knowing that the total number of complexity points in 2015 for the Court of Appeal of Bucharest was 931,285, then:

$$1 \text{ complexity point} = 0.363 \text{ hrs judges} + 0.188 \text{ hrs clerks} = \textbf{21.80 min judges} + \textbf{11.26 min clerks}$$

One may notice that according to the pilot, one complexity point for judges needs **27.37 min** and one complexity point for clerks needs **13.56 min** to be dealt with.

The difference between the judges' and the clerks' measurements comes from the specific tasks provided for them by the primary and secondary legislation, their duties comprising of different operations with a distinct degree of difficulty. Therefore, it is wrong to assume that the time allocated to one complexity point by the judge can or should be equal to the time allocated by the clerk.

Moreover, if we have to compare the time for one point of complexity from the practical exercise with one point of complexity in theory, the ratio between theoretical time and practical time from the pilot is 79.64% for judges and 83.04% for clerks.

The difference between the theoretical time and the one that came out of the practical measurements reveals that the current human resources do not allow solving our cases within the legal work time, so that the tasks can be carried out only by using the personal time of the judges and clerks.

Therefore, the analysis revealed that it is necessary to cover approximately 20% more of judges' work than the current work time, meaning 67.667 hours, and approximately 17% more of clerks work.

At the same time the ratio between the time resource for judges and time resource for clerks in theory and in practice per file is the following:

Theory CAB

$$\frac{\text{Time for judges}}{\text{Time for clerks}} = \frac{5.73 \text{ hrs}}{2.78 \text{ hrs}} = 1.93$$

Practice CAB

$$\frac{\text{Time for judges}}{\text{Time for clerks}} = \frac{6.58 \text{ hrs}}{4.22 \text{ hrs}} = 1.55$$

The first conclusion that may be drawn is the fact that this instrument may be used in order to highlight the allocation of resources judges and clerks and ratio between the time as resource needed for judges and time for clerks. There should be a balance between those two resources and the methods of striking this balance is by delegating several tasks from judges to clerks.

Furthermore, from the difference of the two results in theory and in practice, it may be noticed that the clerks, in practice, take over some of the activity of the judges, but there is still the need to delegate more in order to keep the balance between the work of the judges and the work of the clerks and to use each of the resources in the most efficient manner.

B. Calculation of average time per file for 2015 on types of cases

Using the same instruments, the calculation may be carried out for each of the matters / sections of the court in order to highlight the balanced allocation of resources between the sections of the court, according to their needs.

C. Calculation of time for 2015, 2014 and 2013. Complexity points

Using the same formula as at point 4.A, the same data may be obtained for the previous years in order to notice a trend. However, in the present case, this calculation was available only for judges, because of the difficulty in determining the number of clerks in the Court of Appeal of Bucharest that have carried out activities strictly related to the files and not other administrative activities.

Accordingly, the total amount of available time in 2014 - **216 working days** for judges (251 legal working days in 2014, minus 35 days of annual leave for judges), respectively **1728 hours** represents the available time for human resources judges. The working time for 2013 is of **1744 hours for judges**.

$$T f. judge CAB 2014 = \frac{(1,728 \text{ hours} \times 194 \text{ judges})}{67,256 \text{ files}} = 4.98 \text{ hours}$$

$$T f. judge CAB 2013 = \frac{(1,744 \text{ hours} \times 190 \text{ judges})}{66,424 \text{ files}} = 4.99 \text{ hours}$$

	Practice pilot CAB	Theory CAB	National level
Time per file 2016	6.58 hrs		
Time per file 2015		5.73 hrs	5.76 hrs
Time per file 2014		4.98 hrs	4.56 hrs
Time per file 2013		4.99 hrs	3.67 hrs
Time per complexity point 2016	27.37 min		
Time per complexity point 2015		21.80 min	28.09 min

Time per complexity point 2014		19.39 min	24.75 min
Time per complexity point 2013		20.54 min	20.98 min

Complexity points per file

5. Calculation of the hypothetical / theoretical costs of the files

A. Calculation of average cost per file for 2015

In order to determine the average costs per file for 2015, the budget of the Court of Appeal of Bucharest allocated for the activity of the court was divided by the total number of closed files in 2015 according to the following formula:

$$P \text{ per file} = \frac{\text{Budget for the activity of the court}}{\text{Total number of cases}}$$

The *budget* that was taken into consideration encompasses salaries, other human resources expenses, maintenance and administration, but not the budget allocated for investments or legal aid. The budget for 2015 was made available by the Court of Appeal of Bucharest.

The *number of cases* encompasses the number of stocks at the beginning of the year and the number of incoming cases during the referred year.

Accordingly the average *price per file for 2015* was the following:

$$P \text{ per file 2015} = \frac{71,624,449 \text{ RON}(15,916,544.2 \text{ EUR})}{62,963 \text{ files}} = 1,137.56 \text{ RON}(252.79 \text{ EUR})$$

The average price per file is composed of the following elements:

$$P \text{ per file}(252.79 \text{ EUR}) = \text{Exp jud}(167.32 \text{ EUR}) + \text{Exp clk}(41.96 \text{ EUR}) + \text{Exp adm}(43.51 \text{ EUR})$$

Where: *P per file* – average price per a file in 2015

Exp jud – average expenses with judges per file

Exp clk – average expenses with clerks per file

Exp adm – average administrative expenses per file.

One can notice that out of the total expenses per file in 2015, 66.19% were expenses for judges, 16.60% expenses for clerks and 17.21% were administrative expenses.

$$P \text{ per file} = Exp \text{ jud} (66.19\%) + Exp \text{ clk}(16.60\%) + Exp \text{ adm}(17.21\%)$$

While the administrative expenses are relatively fixed, it may be relevant from the point of view of the efficiency to give more attention, within the cost of file, to the ratio between the expenses incurred by judges and the expenses incurred by clerks, which is now around 3-1.

If we take into consideration the total number of complexity points for the Court of Appeal of Bucharest, 1 point of complexity = 76.91 RON (17.09 EUR).

B. Calculation of average costs per file for 2015 on types of cases.

The participants in the project felt the need to go more into details and to establish the average cost of the file in different matters dealt with by the court.

Using as model the system implemented in the Judiciary in the Netherlands that aims to measure the need for resources within the budgeting process, the Romanian and Dutch judges agreed to follow five categories of cases: a) criminal law; b) civil and family law; c) commercial and insolvency; d) labour and social security and e) administrative law.

The data for 2015 on each category of cases is the following:

a) Criminal matters

$$P \text{ crim file} = \frac{18,521,337 \text{ RON}(15,916,544.2 \text{ EUR})}{13,212 \text{ files}} = 1,401.86 \text{ RON}(311.52 \text{ EUR})$$

$$P \text{ crim file} = Exp \text{ jud} (63.33\%) + Exp \text{ clk}(25.34\%) + Exp \text{ adm}(11.33\%)$$

b) Civil and family law

$$P \text{ civ file} = \frac{13,516,547 \text{ RON}(15,916,544.2 \text{ EUR})}{6,707 \text{ files}} = 2,015.29 \text{ RON}(447.84 \text{ EUR})$$

$$P \text{ civ file} = Exp \text{ jud} (70.16\%) + Exp \text{ clk}(19.75\%) + Exp \text{ adm}(10.09\%)$$

c) Commercial and insolvency

$$P \text{ com file} = \frac{13,282,029 \text{ RON}(15,916,544.2 \text{ EUR})}{9575 \text{ files}} = 1,387.16 \text{ RON}(308.26 \text{ EUR})$$

$$P \text{ com file} = Exp \text{ jud} (71.39\%) + Exp \text{ clk}(16.17\%) + Exp \text{ adm}(12.44\%)$$

d) Labour and social security

$$P \text{ labour file} = \frac{9,902,977 \text{ RON}(15,916,544.2 \text{ EUR})}{12,800 \text{ files}} = 773.67 \text{ RON}(171.93 \text{ EUR})$$

$$P \text{ labour file} = \text{Exp jud} (65.52\%) + \text{Exp clk}(16.08\%) + \text{Exp adm}(18.40\%)$$

$$P \text{ per labour file} = \frac{16,401,559 \text{ RON}(15,916,544.2 \text{ EUR})}{15,522 \text{ files}} = 1,056.67 \text{ RON}(313.44 \text{ EUR})$$

e) Administrative law

$$P \text{ adm file} = \frac{16,401,559 \text{ RON}(3,644,790.9 \text{ EUR})}{20,059 \text{ files}} = 809.59 \text{ RON}(179.91 \text{ EUR})$$

$$P \text{ adm file} = \text{Exp jud} (62.37\%) + \text{Exp clk}(21.95\%) + \text{Exp adm}(15.68\%)$$

C. Calculations for costs for 2015, 2014 and 2013

$$P \text{ per file 2015} = \frac{71,624,449 \text{ RON}(15,916,544.2 \text{ EUR})}{62,963 \text{ files}} = 1,137.56 \text{ RON}(252.79 \text{ EUR})$$

$$P \text{ per file 2014} = \frac{83,688,095 \text{ RON}(18,597,354.44 \text{ EUR})}{67,256 \text{ files}} = 1,244.32 \text{ RON}(276.51 \text{ EUR})$$

$$P \text{ per file 2013} = \frac{61,187,251 \text{ RON}(13,597,166.9 \text{ EUR})}{66,429 \text{ files}} = 921.09 \text{ RON}(204.68 \text{ EUR})$$

	P per file CAB	Avg compl CAB	Avg compl Nat
2015	252.79 euro	14.82	12.30
2014	276.51 euro	13.54	11.06
2013	204.68 euro	13.03	10.48

II. Delegation

1. Context

Based on the discussions during the two preparatory meetings (26-29 October 2015 and 11-14 April 2016), the Romanian and the Dutch teams agreed, at the meeting in April 2016, that the delegation of activities to legal staff is an important mean of improving efficiency.

The two delegations presented how activities are transferred from judges to court clerks in practice in their two judicial systems (what and how to delegate) and exchanged views and ideas on what can be improved in the Romanian judicial system using the practices in the Dutch judicial system.

It is believed that delegation could be used for activities such as: preparing the case/file, fiche of the file, drafting minutes of the hearings, intermediate decisions, participation in deliberation, drafting the decisions. Also, it is believed concluded that delegation can be successfully implemented in family, administrative, social security cases as well as in less complex commercial and criminal cases.

The following general and specific objectives for delegation have been set:

General objectives:

1. Efficiency
2. Quality
3. Personal development

Specific objectives:

- a. How to delegate – which are the activities that are to be carried out only by judges and which are the activities that may be delegated under the responsibility of the judge
- b. Better cooperation judges/clerks
- c. Lower the stocks

The following possible results for the teams have been envisaged:

- a. Decisions drafted within the legal time limit
- b. Better work balance, including more time for judges
- c. Better cooperation between judges and clerks.

The method used to achieve the general and specific objectives was that of two pilots that were to be carried out in September and October 2016:

- one in the Court of first instance of District 6, Bucharest, in criminal cases: judge Bogdan Gavrilă and court clerks Loredana Elena Mocanu and Claudia Oprea;
- another in the Court of Appeal of Bucharest, in commercial cases: judge Speranța Cornea and court clerk Camelia Lupu.

2. Description of the activities

A. The experience of delegation in the District Court of Rotterdam

During the exchange visit in the District Court of Rotterdam (11-14 April 2016), the Dutch team and other judges and court clerks gave extensive presentations on how delegation is carried out in practice in criminal and different types of civil (labour law, family law, small and large civil claims) cases.

After the Dutch experience and the discussions during the meetings in the project, the Romanian team has concluded the following on delegation in the judicial system in The Netherlands:

a. Delegation is driven by cost efficiency reasons: on one hand, costs for legal staff (e.g. salaries) are smaller than for judges; on the other hand, judges are not needed for the entire process of solving the cases.

Instead of having more judges, it is cheaper to have more legal staff and delegate more activities from the judges.

b. Delegation is not performed in a strictly regulated manner, but in a flexible and practical way, established within the organisation.

There are no primary or subsidiary regulations (e.g. regulations from the Council for the Judiciary, as in the Romanian judicial system) on who does what or what activities must be performed only by the judges and those that can be delegated to the legal staff.

This does not mean that competences and duties are not well established between judges and legal staff, but rather that they are developed in the practice of the court, in a clear manner.

Also, in Romania, there are no different categories of legal staff (e.g. court clerks, magistrate assistant etc.) and, thus, activities cannot be delegated to a certain category (e.g. magistrate assistant).

For the Romanian judicial system, this means that it is not necessary to create a new category of legal staff other than the existing court clerk (grefier) – as legal proposals for creating such new category of staff have been made - , but rather just increase the number of court clerks.

The fact that, in the Netherlands, delegation is not carried out under strict primary or subsidiary regulations does not allow the situation in which a member of the legal staff refuses to perform an activity delegated to him by the judge, on the grounds that there is not a legal provision (as it happens sometimes in the Romanian judicial system).

c. Much of the judge's work is delegated to the legal staff, as follows:

The legal staff prepares the cases and the court hearings for the judge by: reading the whole file and all the files, highlighting important documents, summarizing and presenting the case to the judge, writing fiche of the file, drawing the attention on the cases which present certain problems etc.

In this way, judges can attend court hearings with more cases and give decisions, without having to read in detail every file, but rather concentrate on the more difficult cases.

The legal staff participates (not in the legal sense) in deliberation by: giving his view of the case, helping to reach the decision and writing what is discussed during deliberation for later drafting of the decision.

The legal staff drafts the decisions, which are later only slightly reviewed by the judge.

This way, judges have less or no decisions to draft and are able to focus their time on giving the decisions or on drafting the most difficult cases.

d. *At the moment some files (and in the nearby future all files) are converted into digital format when registered in court.* The digital format makes it easier to note, highlight and find documents within, saving time for legal staff and judges.

e. *The number of legal staff is larger than the number of judges,* resulting in one judge having more than one legal staff to work with (legal staff to judge ratio higher than 1).

B. The experience of delegation in the Court of first instance of District 6, Bucharest pilot

The pilot in the Court of first instance of District 6, Bucharest, was carried out from September 5 to October 31 and consisted of:

- Judge Bogdan Gavrilă, with 5 and ½ years' experience in criminal cases;
- court clerk Loredana Elena Mocanu, with a total of 3 years' experience and 1 year in criminal cases
- court clerk Claudia Oprea, with a total of 5 years' experience but no experience in criminal cases.

After the first week (5-11 September) in which several ways of splitting the competences and duties between the members of the team were tested, the following division was agreed:

- first court clerk Claudia Oprea:

- performs all administrative tasks (e.g. written contact with authorities and parties, filling in the internal court application Ecris etc.);
- attends court hearings every week (from September 19 to October 17, in total 5 court hearings) ;
- writes court hearing reports and performs the subsequent administrative tasks;
- helps draft decisions in very simple cases (e.g. decisions ending preliminary chamber procedure, decisions confirming closing a case by the prosecutor, decisions in the procedure for forfeiture or invalidation of a document when a case is closed by the prosecutor);

- second court clerk Loredana Elena Dogaru:

- prepares cases in the preliminary chamber procedure (reads the files, sets the legal measures necessary for completing this procedure, seeks fulfilment of deadlines in this procedure);
- gives a brief description of the case to the judge, the day following the registration of the file, and presents the legal measures set for completing the preliminary chamber procedure;
- presents the case to the judge on the deadlines in the preliminary chamber procedure and proposes the legal measures needed for court hearings;
- attends all court hearings on preventive measures in preliminary chamber procedure and during the trial;
- drafts decisions on preventive measures;
- drafts decisions in more complex cases (e.g. theft, burglary, offenses against public roads safety), but also in simple in very simple cases (when needed);

- Judge Bogdan Gavrilă:

- overviews the administrative tasks performed by the first court clerk;
- reviews all the legal measures set by the second court clerk for completing the preliminary chamber procedure and for the court hearings;
- studies the files for the court hearings;
- reviews all the draft decisions written by both court clerks;
- writes the decision in the cases that have exceeded the legal time limit;

With the above system of competences and duties in place, the pilot included a total number of 20 court hearings (9 in September and 11 in October), of which 9 were planned hearings (every week, on Monday, 4 in September and 5 in October) and 11 were hearings on preventive measures (judicial control, house arrest, pre-trial arrest) and on preliminary chamber procedure (5 in September and 6 in October).

A total number of 103 decisions have been given (56 in September and 47 in October) in the cases in the planned hearings (offenses and other criminal cases¹⁷), on preventive measures and on preliminary chamber procedure. Of these:

- 33 were drafted by the second court clerk Loredana Elena Mocanu (19 decisions on offenses and other criminal cases, 10 decisions on preventive measures and 4 decisions on preliminary chamber procedure);

- 19 were drafted by the first court clerk Claudia Oprea (11 decisions on other criminal cases, 2 decisions on preventive measures and 6 decisions on preliminary chamber procedure);

- 6 were drafted by the judge Bogdan Gavrilă (2 decisions on offenses and 4 decisions on preventive measures).

The resulting decisions have not yet been drafted.

Also, during the 9 planned court hearings, some cases could not be decided and had to be continued (for various reasons). For these cases, the two court clerks had to write court hearing reports (in total, 114 reports) and perform the subsequent administrative tasks (e.g. written contact with authorities and parties, filling in the internal court application Ecris etc.).

Beside the agreed competences and duties, the second court clerk Loredana Elena Mocanu had to overview and guide the work of the first court clerk Claudia Oprea, as she did not have prior experience with criminal cases.

Also, during the pilot period, judge Bogdan Gavrilă had to write decisions in cases that have exceeded the legal time limit and to perform management duties within the Court of first instance of District 6, Bucharest.

¹⁷ E.g. Complaints orders to not start a criminal investigation or to drop charges- Article 340 of the Criminal Procedure Code; Revision of final court rulings- Article 452 of the Criminal Procedure Code; Rehabilitation- Article 528 of the Criminal Procedure Code; Decisions confirming closing a case by the prosecutor- Article 318 of the Criminal Procedure Code; Decisions for forfeiture or invalidation of a document when a case is closed by the prosecutor – Article 549¹ of the Criminal Procedure Code.

C. The experience of delegation in the Court of Appeal of Bucharest pilot

The pilot program within the Court of Appeal of Bucharest was carried out from September 5th till October 31st. 2016, within the Vth Civil Section specialized in the field of litigation and insolvency professionals.

The team was composed of:

1. President of the Vth Civil Section judge Maria - Speranța Cornea, with 33 years of seniority on the bench, serving as judge of the Court of Appeal - Vth Civil Section, from 2001, with a uninterrupted specialization on professionals disputes (commercial law) and insolvency of 18 years, 4 years within the Bucharest Tribunal and 14 years within the Court of Appeal.
2. Mrs. Camelia Lupea, court clerk with higher education degree, with 3 years and 10 months work experience and as many years of litigation with professionals and insolvency.
3. Mrs. Cristina Lale, Registrar with higher education degree, with 3 years of work experience and an equal amount of work experience on litigation with professionals and insolvency. Court clerk Ms. Lale Registrar was delegated for this project for a period of 60 days from Teleorman Regional Court, within the period 1.09.-31.10.2016.

The program included two court hearings, held on 12.09.2016 and 10.10.2016, both conducted by Judge Maria - Speranța Cornea, occasion on which the cases solved were first instance, appeal and appeal on grounds of law (recurs) cases.

Thus, the hearing held on 12.09.2016 had a total of 33 pending cases, of which 23 were cases of appeal, 7 cases of recourse and 3 first instance cases, making a total of 554 complexity points.

29 of these cases were solved: 22 cases in appeal, out of which 13 cases of insolvency and 9 cases of professionals' litigation, 4 cases of recourse, all covering insolvency and three first instance files, also covering insolvency matters.

On the hearing held on 10.10.2016 there were 21 pending cases, including 16 cases of appeal and 5 cases of recourse, out of which 16 cases were solved, including 14 cases of appeal (11 cases of insolvency and 3 cases on litigation with professionals) and 2 cases of recourse, both insolvency files, making a total of 362 complexity points.

The preparations of the hearings were conducted by registrar Camelia Lupea which, under the guidance of judge Maria - Speranța Cornea:

- ☐ provided, for deliberation purposes, the consultation of the necessary legislation and information regarding the case-law and doctrine;
- ☐ guided the activity of the session court clerk;
- ☐ took measures, on the disposition of the president of the panel, in order for the session registrar and archive registrar to conclude all the attributions necessary for the proper conduct of the hearing;
- ☐ attended the hearings and recorded, for each case, the oral arguments presented by the parties as well as the measures ordered by the court;

- ☐ drafted the minutes of the decisions;
- ☐ participated in the deliberations, with advisory opinions;
- ☐ drafted the decisions recitals as far as the courts analysis;
- ☐ drafted decisions, under the direction and control of judge Maria - Speranța Cornea, within the legal deadlines;
- ☐ coordinated and verified rulings drafted by the session court clerk as well as other procedural documents drawn up by it;
- ☐ checked the records in the informatics system;
- ☐ submitted through the session court clerk the list of pending cases randomly distributed to judges who composed the panel, after preliminary verification thereof;
- ☐ prepared the hearings, studying the files placed on the court session list;
- ☐ checked that all the documents submitted by parties, within the pending cases on the hearings mentioned, as they are highlighted in ECRIS, are on the case file;
- ☐ dropped decisions and closed documents in ECRIS.

The session court clerk, Cristina Lale, completed the following activities:

- ☐ took over and delivered the files from and to the archive;
- ☐ drafted summons, addresses;
- ☐ handed over and the archive files;
- ☐ drafted summons, addresses;
- ☐ checked the regularity of fulfilment of the summoning procedure, submitting proof of payment of court fees, performed communication of the procedural documents;
- ☐ followed the composition of the case file in order for it to comprise archival the evidence of the delivery of summons and correspondence documents, as well as the written notes;
- ☐ produced a list of pending cases;
- ☐ assured the display of the list of pending archive cases at the entrance of the courtroom;
- ☐ performed the required activities for the proper conduct of the hearing, under the guidance of registrar Camelia Lupea;
- ☐ checked the smooth operation of the electronical equipment as well as the recording equipment from the courtroom;
- ☐ enabled the consultation of the files on the lawyers and the parties requests before the commencement of the hearing;
- ☐ made notes in the clerk's notebook, numbered and signed, for each file, the data required for the transcription of the hearing;
- ☐ accomplished all operations in order to enable the use of the hearing recording equipment;
- ☐ transcribed the audio recordings, according to the law;
- ☐ performed the communication of the procedural acts, according to the law;
- ☐ drafted the minute of the session.

3. Conclusions and recommendations for next steps

At the end of the pilot, the members of the teams drew up the following conclusions:

For the Court of First Instance of District 6, Bucharest:

- for sure, there has been a better work balance between judge and court clerk, as some activities that do not necessarily require the attention or contribution of the judge have been taken from him and placed on the court clerk. The most eye-catching of such activities are:

- preparation of cases in the preliminary chamber procedure (reading the files, setting the necessary legal measures, seeking the fulfilment of deadlines, giving a brief description of the case, presenting the file to the judge on deadlines) and

-drafting decisions in simple and even more complex cases (decisions ending preliminary chamber procedure, decisions confirming the closing of a case by the prosecutor, decisions in the procedure for forfeiture or invalidation of a document when a case is closed by the prosecutor, decisions on preventive measures, decisions in theft, burglary, offenses against public roads safety cases).

-the workload of the judge was surely reduced resulting in more time for other professional activities (better study of cases, doctrine and jurisprudence, giving better judgements, focusing on more important cases), as well as that of the second court clerk, whose time consuming administrative tasks (court hearing reports, filling in the internal court application Ecris, written contact with authorities and parties) have been placed on the first court clerk. The workload for the first court clerk remained about the same.

- the pilot resulted in a more interesting work for the second court clerk, as the rather dull administrative tasks have been replaced by intellectual soliciting work and creative thinking.

- not all the decisions given could be drafted by the end of the pilot, but better times for drafting decisions have been achieved and the number of prior overdue decision has been reduced.

- stronger cooperation between the judge and the second court clerk, the second court clerk and the first court clerk, as well as between the judge and first court clerk has been developed. This was due to the fact that the judge and the second court clerk had to cooperate closer to complete the preliminary chamber procedure and to decide on the arguments to be written in the decisions. The second court clerk and the first court clerk had to cooperate closer to carry out the administrative measures required by the cases and to guide the work of the first court clerk, as she did not have prior experience with criminal cases. The judge and the first court clerk had to cooperate closer to prepare the court hearings, to draft the court reports and to decide on the arguments to be written in the decisions.

Although no major difficulties were encountered, some limits to the pilot were determined by the short period of time for implementation (the first week was needed to organize the competences and duties and the last week was needed for the first court clerk to finish all the work before returning the Court of first instance of District 3, Bucharest) and, to a lesser extent, by the fact that the first court clerk had no prior experience with criminal cases.

During the pilot, delegation by means of the court clerk preparing the court hearings (reading the files in detail and presenting the case to the judge) and participation in deliberation could not be achieved. This was due to the workload of both the judge and the court clerk and the fact that these are time consuming activities.

For the Court of Appeal of Bucharest:

It was found that the activities that were distributed to the delegated assistant clerk (file preparation, dossier registration, participation in the debates, and especially drafting the decisions under the guidance and supervision of the judge) had as a result:

- a more effective preparation of the meetings,
- a more operative solving of the causes,
- drafting within the legal deadline of all the decisions,
- a longer time assigned to the judge for studying the case-law and the doctrine and
- the possibility for the judge to perform, in this case, the administrative tasks that usually were fulfilled from the position occupied as section president and member of the Board of Bucharest Court of Appeal.

The purpose is that every judge can work alongside with a session clerk and an assistant registrar clerk, which would lead to:

- more efficient labour,
- solving cases expeditiously
- and within a reasonable time,
- delivering thorough and legal solutions, based on an extensive study of the dossiers, of the case-law, the doctrine and
- drafting them within the legal deadline, eliminating over-schedule drafting.

For this purpose to be achieved, it's imperative to supplement the number of clerks with secondary education degree to effectively deal with the hearings and the number of clerks with higher education degree to whom some previously shown attributions would be delegated to, as was already shown, to ensure adequately training and a proper salary given remuneration.

Last (but not least), it needs to be underlined that, although delegation from judges to court clerks is an important means of improving efficiency, this result will not be achieved as long as the same court clerk receives more activities to perform and becomes overburdened. The key is to increase the number of court clerks so that they can perform the tasks delegated from the judges in a reasonable and realistic manner. Thus, the requirement is a legal staff to judge ratio higher than 1.

III. Conclusions and recommendations for implementation of the results of the pilots

1. The cooperation between the two partners in this project was successful. Lots of information was exchanged and both delegations were prepared to finalize this project with concrete results.

2. The activities within the Project were initiated on the basis of serious systemic problems which have a conjugated effect, namely an acute lack of human resources and excessive regulation, which leads to bureaucracy.
3. The positive results of two pilots provide the Romanian delegation with useful data and arguments to start discussions with the Superior Council of Magistracy on the subject of financing the Court of Appeal of Bucharest, and other courts, and discussions on the time needed per case versus the available time.

An important outcome of the pilot on finances is that it is advisable to have a legal staff/judge ratio which is higher than 1. This outcome matches with the results of the second pilot on delegation. These show that delegation of work from judges to clerks leads to a better workbalance. Stronger cooperation between judges and clerks, non-judiciary tasks being carried out by clerks allowing judges to concentrate on their judiciary tasks and increase of job satisfaction of both clerks and judges. An optimal number of judges and clerks, in which situation the number of clerks should be increased, will allow a better judicial act, and a different approach on the distribution of tasks (as shown, by taking the non-judiciary tasks from the judges to the clerks). This will lead, with similar costs, to a resize of the personnel bodies. It should be emphasized that the judiciary tasks and responsibilities remain with the judge, when using the instrument of delegation.

Therefore, as can be concluded from the pilot in which delegation was done, delegation does not require immediate changes of the law. What the implementation of delegation does require is that the judges and clerks who participated in the pilots act as ambassadors and present their positive experiences and results all over Romania.

4. These goals can only be reached if the Superior Council of Magistracy, the Ministry of Justice and the courts in Romania take responsibility for this, each according to their legal powers.
5. Last but not least, an important pillar supporting these scopes would be the change of our way of thinking, including the better understanding of the huge social responsibility that we carry along with the positions we occupy.