

MULTIANNUAL DYNAMIC INDICATORS FOR HUMAN RESOURCES MANAGEMENT PLANNING IN JUDICIAL SYSTEM

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ABSTRACT

Romanian Judicial system is often affected by legislative changes and external factors weighing upon its capacity to deliver justice as a public service. Prognosis is a key factor to determine the mid-term strategy of human resources given the natural internal dynamics and standard external factors. These are comprised in a list of specific influencing factors as well as quantification formulas to assess and use them. Their conjunction is reflected in DPF (Dynamic Ponderation Factor) for planning in judiciary.

***Keywords:** judiciary, influencing factors, indicators, management of human resources, statistic indicators*

Chapter 1: General aspects concerning efficiency of personnel policies in the judiciary and current developments

The judiciary is one of the powers in a State and therefore it should be analysed in light of both its role and its capacity to ensure and manage resources. The principles used to evaluate public services cannot be directly applied here (except for the delivery indicators), as the KPI (key performance indicators) cannot be used to estimate the judiciary's constitutional role as they are used for the other public services.

The international norms and standards set out coordination framework [Cocosatu, M. 2016] for national developments with respect of fundamental principles of law. Common base ensures on one hand common grounds for democratic standards and role of law, and on the other hand capacity of international legal cooperation.

The factors influencing the ability of the judiciary to fulfil its mission are internal factors regarding the planning of resources, and external factors regarding the dynamics of legal regulations and conflicts.

The delivery indicators should always be defined in such a way as to avoid any alteration of the role justice plays in society. For instance, the speed in solving cases, when used as indicator, should take into account the balance between two

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risks: a) the risk of a lengthy solving of a case, which would void the law of its efficient application, and b) the risk of a too short solving of a case, which might lead to a superficial judgement.

In our opinion, the indicators used to estimate the efficiency of the judicial authorities should not be financially quantified, as in the case of the classic public services, as the concept of investment recovery cannot be applied here. In this respect it is important to underline the general context of professional skills in Romanian public sector [Carausan, M. 2010].

The aim of justice is to ensure social organization from the point of view of stable judicial rules, irrespective of the sector – public or private. Therefore, it would be wrong to estimate the financial resources against investment recovery, considering the role of justice as fundamental component of the social establishment.

The Romanian judiciary has four degrees of jurisdiction, which are, from the lowest to the highest: district courts, tribunals/county courts, Courts of Appeal and the Supreme Court, with hierarchical role of judicial control. The prosecutors' offices are symmetrically organized beside these courts.

Chapter 2: Design and management of magistrates career as a tool for enabling proper capacity of judiciary

The ability of the judiciary to meet optimum standards in public service exercise [Barac, L. 2009] (for example: duration of trials, quality of procedure application or access to justice) or to fulfil its role of ensuring the stability of laws (for instance: unitary practice, quality and clarity of decisions or non-selective approach) is determined by several categories of factors of influence:

1. Internal factors: personnel management that allots resources according to the needs;

2. External factors: changes of the regulations governing the solving competences or changes of the rights and liberties, able to generate legal conflicts (for example, the properties retrocession laws, the pensions and social benefits laws, or the regulations regarding administrative jurisdictions, whose decisions are censured by courts).

Capacity criterion	Internal factors	Remedies	External factors	Remedies
1. Duration of trials	Lack of sufficient personnel in some courts	Forward looking planning of the pyramidal career (A)	Legislative changes regarding procedure	Including in the ex-ante evaluation the criterion of quantitative impact on the degrees of jurisdiction ²

² A similar mechanism exists in the Republic of Moldova, but concerning the legal risk of generating corruption. Romania should complete the methodology necessary to draw up the public policy file accompanying the regulations.

2. Quality and predictability of decisions	Lack of consequences for the wrong or incomplete decisions	Introducing in the professional evaluation criteria the annulments to be imputed as errors of judgement (B)	Over-specialisation of legal conflicts and emergence of new technological approaches	Specialisation of courts and extended promotion term, seniority principle
3. Non-unitary practice generating litigations during the appeal phases	Approaching independence as arbitrary right of decision	Introducing in the professional evaluation criteria the annulments to be imputed as errors of judgement (C)	Unclear or contradictory legislation	Increased ability of the Supreme Court to issue decisions with interpretation and guidance role ³
4. Over-burdening magistrates with cases	Unidentified	Unidentified	Laws generating huge numbers of litigations ⁴	Introducing pilot decisions of the courts ⁵

It is therefore only natural that the design of the career steps and the mobility within the system should answer the factors of influence, allowing the judiciary to accomplish its social role. The career structure in the Romanian judiciary is a pyramidal one with hierarchical organization of the degrees of jurisdiction, but it has certain peculiarities with unpredictable effects on the equity, balance and predictability, both of the individuals and the system as a whole.

We shall limit our analysis to measure (A) of remedy, pertaining to the ability of the judiciary to promptly answer challenges 1, 2 and 4 in the table above.

A strict management of the judiciary's capacity to fulfil its mission should start with a right allocation of the resources to the different degrees of jurisdiction, according to objective criteria. In Romania, the Higher Magistracy Council operates with the following objective factors:

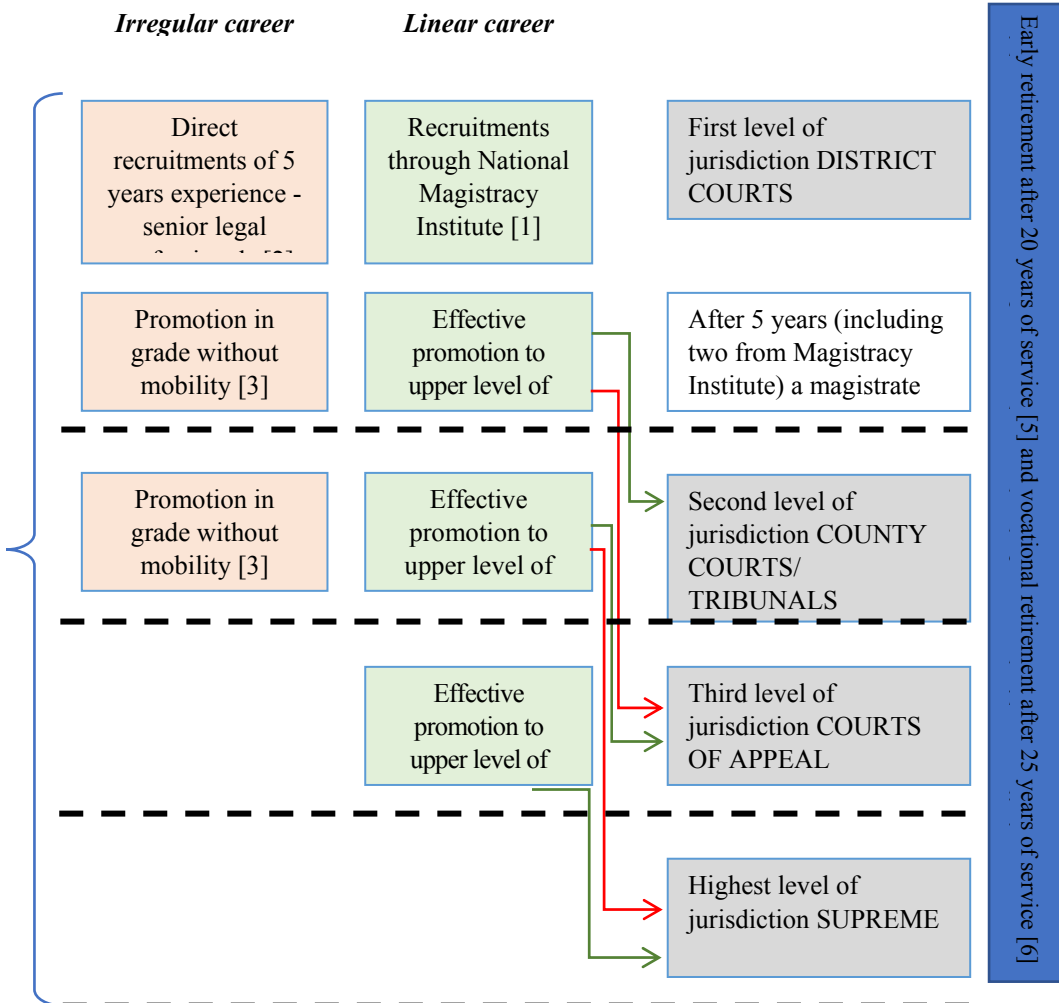
³ This provision is included in the civil procedure, but its application is limited and inefficient and cannot be applied in the penal procedure.

⁴ The laws regarding the property retrocession required the courts intervention in order to certify the right of property, and the laws regarding pensions required the courts intervention to annul the unlawful application of the legal provisions by the administrative bodies.

⁵ The pilot decisions of the ECHR could be models for the cases where there are several similar litigations. An example is that of the work conflicts in an oil company, when the employees demanded pay rights in over 10,000 individual trails; other examples are the over 18,000 cases of litigations in a 12 months period concerning banks and their clients, regarding similar contract clauses.

Existing factor	Existing indicator	Proposed intervention tool
Optimum number of cases	Court average number of cases/judge in given courts vs. national average no of cases/judge	Dynamic of recruitments, dynamic of promotions, time frame per career step
Understaff grade	Number of vacancies	Order of career steps, direct recruitment from other legal professions

Career path in Romanian judiciary⁶



⁶ This career steps are regulated in law 303/2004 regarding status of judges and prosecutors into force in November 2017.

As far as the career steps are concerned, they have good or bad effects, according to the time and manner they occur. The statistical data regarding the evolution of human resources and the system needs showed that, during a ten years period (2007-2017), disturbances appeared in the system due to the lack of coordination or the lack of strategic use of these career tools.

Career step	Positive impact	Negative impact	Remedies and recommendations
[1] Magistracy Institute recruitment	Assures the early selection of best talents	It is a lengthy mechanism (2 years) till the use of the resource. Low level of life experience.	Complementary judicial practice in related professions
[2] Direct recruitment	Assures the immediate use of the resource, brings seniority into the judiciary, as well as trans-judicial abilities.	Not identified for the system	Equal share (50-50%) for entrances into the system
[3] Promotion on the spot	Financially motivates the human resource. Assures seniority and increased experience for the level of jurisdiction.	Undermines the selection basis for the necessary human resource for higher levels of jurisdiction. Leads to discriminations among judges of the same court.	Renounce this career tool pending the recommendations for step [4] or condition the next step on good performance in the acquired step during maximum 2 years.
[4] Effective promotion	Assures predictability and regularity of career within the system. Generates continuous flow and balance between new entries into the system and retirements.	Depletion of lower cours of human resource, at a faster pace than the Magistracy Institute ability to prepare people.	Extend the promotion term to minimum 6 years from the time a judge is appointed, for each level of jurisdiction.
[5] Early retirement	Not identified for the system.	Creates positive discrimination compared to the other categories.	Renounce this means of exiting the system.
[6] Vocational retirement	Offers an incentive to recruit talents due to vocational benefits.	Greatly reduces the principle of seniority and entices experienced magistrates to leave higher levels.	Introduce the condition of minimum age (60 years)

The following highlights are valid theoretically and proven by practice in the Romanian judiciary⁷:

⇒ The minimum age for becoming full judge is 24 (including the 2 years at the National Magistracy Institute);

⇒ The minimum age for becoming judge at the High Court of Cassation and Justice is 38 years;

⇒ The minimum age for early retirement with 90% of the vocational pension is 42 years (including the 2 years at the National Magistracy Institute);

⇒ The minimum age for retirement with full vocational pension (frequently higher than the last salary) is 47 years (including the 2 years at the National Magistracy Institute).

These elements, plus the practice of promotion up to the maximum professional level, without mobility in the career are internal factors significantly influencing the capacity of personnel management within the judiciary.

The table below, showing the evolution of personnel management decisions in the last four years concerning the promotion of judges from district and county courts to higher courts, supports the recommendations for the career steps [3] and [4]:

Carer and mobility		Effective promotion			Promotion in grade without mobility		
Year	Court level	Advertised positions	Occupied positions	Balance	Advertised positions	Occupied positions	Balance
2014	Total	96	80	-16	0	0	0
	Tribunals	81	57	-24	-	-	-
	Court of appeal	15	23	+8	-	-	-
2015	Total	81	103	+22	164	164	0
	Tribunals	63	73	+10	103	103	0
	Court of appeal	18	30	+12	61	61	0
2016	Total	81	110	+29	150	160	+10
	Tribunals	58	77	+19	100	108	+8
	Court of appeal	23	33	+10	50	52	+2
2017	Total	259	218	-41	300	218	-82
	Tribunals	187	148	-39	200	148	-52
	Court of appeal	72	70	-2	100	70	-30

Data source: 2014, 2015, 2016, and preliminary 2017 reports of the Higher Magistracy Council on the state of justice www.csm1909.ro

As the data show, the ability to efficiently manage the necessary human resource is affected by discontinuities and the disproportion among the career tools. In 2017 there is a deficit of positions for the intermediary levels of jurisdiction, that

⁷ Mention should be made that this article used the provisions of Law 303/2004 regarding the statutes of judges and prosecutors still in force (November 2017), as the modifications meant to correct the errors concerning the personnel policy within the judiciary, put forward by the Government, have not been yet adopted by the Parliament.

was not covered by either the valorisation of the degrees obtained in previous years or by effective promotion.

There are two main career tools defined by law and able to adjust the imbalances within the system:

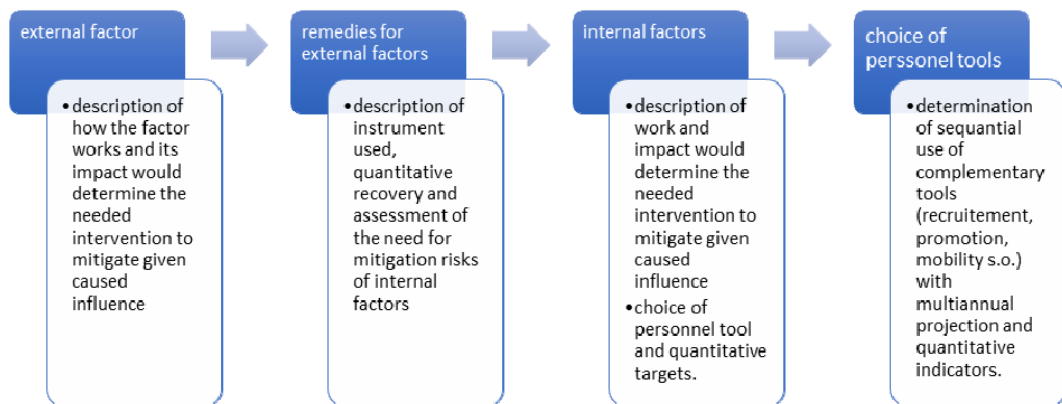
a) The existence of a system of reserve positions, at the Ministry of Justice disposal and managed by the Higher Magistracy Council, to be used to cover the needs of transfer or appointment, when several magistrates meet the promotion requirements (Example of use in 2014).⁸

b) The possibility to promote from a lower to a higher level of jurisdiction, but without effective appointment to the higher court. This career tool can be used to motivate judges with higher salaries, but it could have negative effect on the system, as it breaks the predictable flow of personnel on levels of jurisdiction. This is one of the reasons why the linear system of career is avoided, which affects the multiannual dynamic planning of human resources for courts.

The process elements needed to reach the strategic goal of ensuring the necessary number of judges and prosecutors in view of optimum functioning of courts and prosecutors' offices [Superior Council of Magistracy The Strategy concerning human resources for the judiciary 2010-2015] required a set of integrated measures, that had not been taken in the process of planning the necessary resources and its dynamics monitoring.

Chapter 4: Conclusions and recommendations

For the development of a set of indicators it is important to determine predictable impact for each use of personnel tools with clear quantitative formula as compared to the other tools. The optimum planning process needs to start gradually with external factors of influence, internal factors of influence, reducing gaps through other personnel tools resulting into final estimation of each intervention's instruments.



⁸ Law 304/2004 for judiciary organisation Article 134¹ provides reserves of budgeted positions to be allocated according to concrete needs. For 2017 the total number of positions available was approximately 130 positions.

Besides the fact that any career tool should be used after an ex-ante analysis as the one shown above, some concrete adjustments are needed in order to ensure the management capacity of the judiciary:

1. Increase the ability to resist the influence of the external factors:

⇒ Include in the ex-ante evaluation the criterion of quantitative impact on the levels of jurisdiction;

⇒ Assure specialisation of courts and extend the promotion term;

⇒ Introduce pilot decisions of courts.

2. Increase the ability to resist the influence of the internal factors:

⇒ Increase seniority within the courts by extending the promotion term to minimum 6 years for each level of jurisdiction, from the time of appointment as full judge;

⇒ Use in equal share of the two mechanisms to enter the system, for a better flexibility of the personnel policy from the very beginning;

⇒ Renounce the mechanism of promotion on a higher position, granting instead the degree equivalent to a higher level of jurisdiction, without occupying de facto a position in that higher court.

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