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Remedies available in the event of a voluntary and widespread interruption of public justice services[2]

Outline

Introductory remarks

Romania has experienced several voluntary and widespread interruptions in public justice services, decided by magistrates in protest against certain decisions or draft decisions affecting their remuneration or retirement conditions.

The purpose of this article is not to analyze the merits of the magistrates' demands or the legality of their action leading to the interruption of the public service of justice, but to determine whether or not litigants have effective remedies to protect their rights.

Article 6 of the European Convention on Human Rights[3] enshrines the right to a fair trial. *Ratione materiae*, it applies to "civil" and "criminal" matters, which are autonomous European concepts, and, in criminal matters, it applies *ratione personae* only to the "accused." This right includes, *inter alia*, on the one hand and according to the case law of the European Court of Human Rights[4], the right of access to a court (in civil matters) and the right to have the trial take place within a reasonable time frame[5].

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[2] This article has been written and published in my capacity as a university professor, in accordance with academic freedom and independence, and does not express the position or engage the responsibility of any State, Government, or public authority.

[3] Hereinafter, *the Convention*

[4] Hereinafter, *the Court*

[5] See also: Corneliu BÎRSAN, *Convenția europeană a drepturilor omului; Comentariu pe articole [European Convention on Human Rights. Commentary on Articles]*,[2nd]ed., C.H.Beck, Bucharest, 2010, pp. 425-468 and 521-531; Luc GONIN, Olivier BIGLER, *Convention européenne des droits de l'homme (CEDH). Commentaire des articles 1 à 18 CEDH* [European Convention on Human Rights (ECHR). Commentary on Articles 1 to 18 ECHR], Stämpfli Edition &

In turn, Article 21 of the Romanian Constitution enshrines the right of access to justice and the right to a reasonable trial time[6]. Under the principle of subsidiarity between international human rights law and domestic law, enshrined in Article 53 of the Convention[7] and Article 20(2) *in fine* of the Constitution[8], as Article 21 of the Constitution enshrines the right without material or personal limitations, and is therefore more favorable, it is this broader dimension that will apply in Romanian law.

Since this is a Convention right, Article 13 of the Convention requires the existence, in domestic law, of an effective remedy to protect the right of access to a court and the right to a reasonable time limit for the trial, as dimensions of the right to a fair trial. According to the Court's case law, the effectiveness of the remedy requires that the alleged victim be the holder of the right, that the remedy is able of producing a useful effect, i.e., capable of remedying the violation, and that the proceedings be fair[9].

We ask ourselves whether Romanian law provides an effective remedy to protect the right of access to a judge and the right to a trial within a reasonable time frame, which may be affected by the voluntary and widespread interruption of the public service of justice by magistrates.

Our analysis covers both judicial remedies (I) and non-judicial remedies (II).

I. Legal remedies

Romanian law provides for certain legal remedies aimed at protecting either the right of access to a court or the right to a reasonable trial time.

These remedies before the courts may be direct (A) or indirect (B).

A. Direct remedies

Direct legal remedies are those that can be used directly and personally by the

LexisNexis, Bern & Paris, 2018, pp. 303-317 and 351-357; Ludovic HENNEBEL, Hélène TIGROUDJA, *Treatise on International Human Rights Law*,[2nd]ed., Pedone, Paris, 2018, pp. 1330-1335 and 1341-1343; Jean-François RENUCCI, *Treatise on European Human Rights Law*, 2nd[e] ed., L.G.D.J., Paris, 2012, pp. 404-409 and 509-519; Jean-Claude SOYER, Michel de SALVIA, *Article 6 [of the Convention]*, in Louis-Edmond PETTITI, Emmanuel DECAUX, Pierre-Henri IMBERT (eds.), *The European Convention on Human Rights. Article-by-article commentary*,[2nd]ed., Economica, Paris, 1999, pp. 256-259 and 267-269; Frédéric SUDRE, Laure MILANO, Béatrice PASTRE-BELDA, Aurélia SCHAHMANECHE, *European and International Human Rights Law*,[16th]ed., P.U.F., Paris, 2023, pp. 591-594 and 649-652.

[6] See also: Mihai Constantinescu, Ion Deleanu, Antonie Iorgovan, Ioan Muraru, Florin Vasilescu, Ioan Vida, *Constituția României - comentată și adnotată [Constitution of Romania - commented and annotated]*, R.A. Monitorul Oficial, Bucharest, 1992, pp. 50-51; Victor Duculescu, Constanța Călinoiu, Georgeta Duculescu, *Constituția României - comentată și adnotată [Constitution of Romania - commented and annotated]*, Lumina Lex, Bucharest, 1997, pp. 89-94; Mihai Constantinescu, Ioan Muraru, Antonie Iorgovan, *Revizuirea Constituției României - explicații* și comentarii [Revision of the Constitution of Romania - annotations and comments], Rosetti, Bucharest, 2003, pp. 17-18; Mihai Constantinescu, Antonie Iorgovan, Ioan Muraru, Elena Simina Tănăsescu, *Revised Constitution of Romania - comments and annotations*, All Beck, Bucharest, 2004, pp. 32-35

[7] C. BÎRSAN, *op. cit.*, pp. 1601-1604; Emmanuel DECAUX, *Article 60 [of the Convention]*, in L.-E. PETTITI, E. DECAUX, P.-H. IMBERT (eds.), *op. cit.*, pp. 897-903.

[8] See also: M. Constantinescu, I. Muraru, A. Iorgovan, *op. cit.*, p. 17; M. Constantinescu, A. Iorgovan, I. Muraru, E.S. Tănăsescu, *op. cit.*, pp. 30-32.

[9] C. BÎRSAN, *op. cit.*, pp. 921-947; Andrew DRZEMCZEWSKI, Christos GIAKOUMOPOULOS, *Article 13 [of the Convention]*, in L.-E. PETTITI, E. DECAUX, P.-H. IMBERT (eds.), *op. cit.*, pp. 455-474; L. GONIN, O. BIGLER, *op. cit.*, pp. 683-699; L. HENNEBEL, H. TIGROUDJA, *op. cit.*, pp. 1294-1312; J.-F. RENUCCI, *op. cit.*, pp. 415-423; F. SUDRE, L. MILANO, B. PASTRE-BELDA, A. SCHAHMANECHE, *op. cit.*, pp. 683-695.

litigant, as the alleged victim of a violation of their rights of access to a court and/or to a reasonable trial time, and can lead to direct redress for the violation found.

First, both the Code of Criminal Procedure and the Code of Civil Procedure provide for the existence of a specific remedy, namely a challenge concerning the delay in the trial or a challenge concerning the length of the criminal trial, respectively.

In civil matters,[10] any party to a lawsuit may file a challenge regarding the delay of the proceedings, alleging a violation of the right to a trial within a reasonable time, and requesting that legal measures be taken to remedy the situation. Jurisdiction lies with the higher court, which shall issue a final judgment.

In criminal matters,[11] the available remedy is to challenge the length of the criminal trial, which may be used if the criminal investigation or trial does not take place within a reasonable time. The challenge may be brought by the parties (*lato sensu*) to the criminal trial, including the parties to the civil action brought in the criminal trial. Jurisdiction lies, where applicable, with the judge of rights and freedoms (during the criminal investigation) or the higher court (during the trial), which have the power to set time limits for judicial proceedings by means of a final judgment.

Theoretically and in principle, challenges concerning the delay of civil proceedings and challenges concerning the length of criminal proceedings are effective remedies, as the potential victim is the holder of the right and the use of either of these remedies is likely to have a useful effect.

However, applying a very important method of interpretation used by the Court, that of real and effective rights, rather than theoretical or illusory rights, it can be seen that this challenge is not a real effective remedy in the event of a voluntary and widespread (or quasi-widespread) interruption of the public service of justice decided by the magistrates. This challenge falls within the jurisdiction of the courts, so if they have voluntarily suspended their activities, it is not possible to rule on this challenge during the voluntary interruption of the public service of justice.

Secondly, the High Court of Cassation and Justice has jurisdiction to rule on appeals alleging interruption of judicial activity.

In criminal matters, the Code of Criminal Procedure[12] provides, without further detail, that the High Court of Cassation and Justice shall rule in cases where judicial activity is suspended.

In civil matters, according to Law No. 304/2002 on the organization of the judiciary[13], the High Court of Cassation and Justice rules on appeals in cassation against judicial acts that are not subject to any other appeal, as a result of which judicial activity has been interrupted at the level of the courts of appeal. Separately, the Code of Civil Procedure[14] provides that if a court of law is prevented from functioning for a long period of time due to exceptional circumstances, the High Court of Cassation and Justice shall, at the request

[10] Code of Civil Procedure, Art. 522 et seq.
[11] Code of Criminal Procedure, Art. 488[1] et seq.
[12] Code of Criminal Procedure, Art. 40, paragraph (4).
[13] Law No. 304/2002 on the organization of the judiciary, Art. 23, paragraph (1[1]).
[14] Code of Civil Procedure, Art. 147.

of the interested party, designate another court of law of the same rank to hear the case.

Appeals in cassation in civil matters of a special nature, targeting judicial acts by which judicial activity has been interrupted, are only useful if the interruption of judicial activity occurs at the level of the courts of appeal, and not at lower levels.

If the High Court of Cassation and Justice continues its judicial activity, the request based on the Code of Civil Procedure or the Code of Criminal Procedure allows the High Court to issue an injunction to the criminal court to resume judicial activity in the specific criminal case, or to a civil court of the same rank to resume its own judicial activity in order to rule on the specific civil case.

However, it is clear that all these avenues of appeal are illusory if the High Court of Cassation and Justice itself suspends its activity by decision of its judges.

Thirdly, it should be noted that the voluntary suspension of judicial activity is decided through resolutions adopted by the general assemblies of the judges of each court. The powers of the general assemblies of the courts are laid down by Law No. 304/2002 on the organization of the judiciary[15], and they are non-judicial, and therefore administrative, powers. As a result, the resolutions of the general assemblies of the judges of each court are administrative acts.

That being the case, the resolutions of the general assemblies of the judges of the courts deciding to suspend judicial activity may be censured by the administrative and tax chambers of the courts (at first instance by the administrative and tax chambers of either the district courts or the courts of appeal, and in cassation by the administrative and tax chambers of either the courts of appeal or the High Court of Cassation and Justice), pursuant to Law No. 554/2004 on administrative litigation.

According to Law No. 554/2004 on administrative litigation[16], the administrative and tax chambers of the courts have jurisdiction to annul administrative acts (annulment proceedings) and award damages (full jurisdiction proceedings for compensation) if they find that the resolutions of the general assemblies of the judges of the courts of law are illegal and violate the right of access to a court and/or the right to a reasonable trial time. However, in this case, the administrative and tax chambers of the courts cannot order the resumption of judicial activity, as injunction proceedings only exist to compel a public authority to issue an administrative act or perform an administrative activity, concepts that do not cover judicial decisions and judicial activity.

The effectiveness of administrative litigation in cases of voluntary interruption of public justice services is therefore questionable, due to both the lack of power to issue an injunction for the resumption of judicial activity and the relatively long duration of the proceedings (a judgment in the court of first instance and a judgment in cassation) required to obtain a final and enforceable judicial decision.

Difficulties also arise with regard to the fairness of the trial, as jurisdiction may lie either with the same court that decided to suspend judicial activity or with a lower court (which will rule in the second and final instance).

Furthermore, it is certain that the general interruption of public justice services,

[15] Law No. 304/2002 on the organization of the judiciary, Art. 32 and Art. 56.
[16] Law No. 554/2004 on administrative litigation, Art. 8(1) and Art. 18.

decided by all courts (even without the participation of the High Court of Cassation and Justice, which never has jurisdiction in the first instance in administrative disputes to annul administrative acts), makes this appeal completely illusory, as there is no court in session to rule on it.

It is therefore clear that no direct judicial remedy is effective in reality.

B. Indirect remedies

Indirect judicial remedies are those used by legal entities other than the alleged victim and/or which cannot directly lead to redress for the established violation of the right of access to a court and/or the right to a trial within a reasonable time.

First, some of the direct remedies mentioned above may also be exercised by persons other than the alleged victim.

These are:

- challenges concerning the delay of civil proceedings, which may also be brought by the prosecutor, according to the Code of Civil Procedure[17];
- challenges concerning the length of the criminal trial during the judgment phase, which may also be brought by the prosecutor, according to the Code of Criminal Procedure[18];
- requests in cases where judicial activity is suspended, which may also be filed by the prosecutor, according to the Code of Criminal Procedure[19];
- appeals in cassation against judicial acts that are not subject to any other appeal, whereby judicial activity has been suspended at the level of the courts of appeal, which may also be filed by the prosecutor, in accordance with Law No. 304/2002 on the organization of the judiciary[20];
- administrative appeals for annulment, which may also be brought by the People's Advocate (ombudsman) and by the public prosecutor, in accordance with Law No. 554/2004 on administrative litigation[21] and Law No. 35/1997 on the organization and functioning of the People's Advocate[22].

We have already demonstrated above that these remedies are only theoretical and illusory if the public service of justice is suspended. Furthermore, these remedies are not effective because the alleged victim is not the litigant.

Secondly, the alleged victim may consider that the voluntary interruption of the public service of justice constitutes a criminal offense, and may therefore file a criminal complaint with the prosecutor, pursuant to the Code of Criminal Procedure[23], and may also

[17] Code of Civil Procedure, Art. 522, paragraph (1).
[18] Code of Criminal Procedure, Art. 4881 paragraph (2).
[19] Code of Criminal Procedure, Art. 40(4).
[20] Law No. 304/2002 on the organization of the judiciary, Art. 23(1).
[21] Law No. 554/2004 on Administrative Litigation, Art. 1 paragraphs (3) and (5).
[22] Law No. 35/1997 on the organization and functioning of the institution of the People's Advocate, Art. 15, paragraph (1) (m).
[23] Code of Criminal Procedure, Art. 289.

become a party to the proceedings[24].

This remedy is not effective in protecting the right of access to a court and the right to a reasonable trial time, at least because criminal proceedings are lengthy before a final decision is reached. In addition, the potential victim cannot directly refer the matter to a court, but only to the Public Prosecutor's Office. Finally, the interruption of the public service of justice has affected not only the activity of the courts, but also that of the public prosecutor's offices.

Thirdly, the alleged victim may bring a civil liability action against the State for the malfunctioning/interruption of the public service of justice, pursuant to the Civil Code[25].

This remedy is not effective in any way. In addition to the fact that it still falls within the jurisdiction of the courts, which, hypothetically, have suspended their activities, the procedure is lengthy before a final court decision is obtained and, through this decision, the victim can only obtain compensation, which is not always an appropriate remedy for the violation of the right of access to justice and/or the right to a reasonable trial time.

Fourth, under Law No. 367/2022 on social dialogue[26], the district court (at first instance, with the judgment subject to appeal to the court of appeal), at the request of the employer, may rule on the legality of a strike and order, where appropriate, its cessation, which means that it also has jurisdiction to classify as a "strike" the voluntary interruption of judicial activity decided by the magistrates.

However, the alleged victim does not have the right to bring this action, so it is not effective. In principle, the procedure would lack impartiality, as the court called upon to rule could be the one that decided to cease activity. In addition, this remedy remains theoretical and illusory if the judicial activity is interrupted due to the lack of a functioning court to rule on the matter.

Fifth, the High Court of Cassation and Justice may be notified, in both civil and criminal matters, either with a request for a preliminary ruling to clarify a question of law, or with an appeal in the interest of the law, pursuant to the Code of Civil Procedure[27] or the Code of Criminal Procedure[28].

In concreto, questions of law concerning the interpretation of the following may be referred to the Supreme Court: the provisions of Law No. 304/2002 on the organization of the judiciary concerning the jurisdiction of the general assemblies of the courts of law[29]; the provisions of the Labor Code on the concept of strike[30]; the provisions of Law No. 367/2022 on social dialogue concerning the prohibition on judges and prosecutors to participate in strikes[31]; the provisions of Law No. 303/2022 on the status of judges and

[24] Code of Criminal Procedure, Art. 84.
[25] Civil Code, Art. 1349.
[26] Law No. 367/2022 on social dialogue, Art. 166 et seq.
[27] Code of Civil Procedure, Art. 519 et seq. and Art. 514 et seq.
[28] Code of Criminal Procedure, Art. 475 et seq. and Art. 471 et seq.
[29] Law No. 304/2002 on the organization of the judiciary, Art. 32 and Art. 56.
[30] Labor Code, Art. 234, paragraph (1).
[31] Law No. 367/2022 on social dialogue, Art. 170.

prosecutors concerning the unjustified refusal of a judge to perform his or her duties[32]. In theory, it is possible that the High Court of Cassation and Justice could rule that the general assemblies of the judges of the courts of law do not have the authority to decide to suspend judicial activity and/or that the suspension of judicial activity constitutes a form of strike, which is prohibited for magistrates.

However, these two remedies are not at all effective. An appeal in the interest of the law can only be brought by parties other than the alleged victim, and the ruling is only valid for the future. A preliminary injunction can only be requested by a court of law, and therefore not by the potential victim, and since judicial activity is suspended, the case cannot be brought before the court. Furthermore, both remedies are decided by the High Court, and are therefore illusory if the Court has also suspended its activity.

It can be seen that, like direct judicial remedies, indirect judicial remedies are also ineffective in providing real and effective protection of the right to fair trial in terms of the two aspects that concern us here, namely the right of access to a court and the right to a reasonable trial time.

II. Extra-judicial remedies

Romanian law also provides for extrajudicial remedies to protect the right of access to justice and the right to a trial within a reasonable time, namely administrative remedies (A) and constitutional remedies (B).

A. Administrative remedies

There are several administrative remedies available to protect the right of access to justice and/or the right to a trial within a reasonable time.

First, before bringing an administrative action, the potential victim may lodge an informal appeal, pursuant to Law No. 554/2004 on administrative litigation[33], with the court that adopted the order suspending judicial activity, requesting the revocation of the administrative act and the resumption of judicial activity.

The appeal is in the hands of the person claiming to be the victim and is likely to be effective, as the general assembly of judges may revoke the order.

However, as this is an informal appeal, which falls within the jurisdiction of the authority responsible for the possible violation of rights, it does not meet the requirement of procedural impartiality.

Secondly, it is possible for the litigant to refer the matter to the Judicial Inspection Authority or the Superior Council of Magistracy, pursuant to Law No. 303/2022 on the status of judges and prosecutors[34] and Law No. 305/2022 on the Superior Council of

[32] Law No. 303/2022 on the status of judges and prosecutors, Art. 271 para. e).
[33] Law No. 554/2004 on administrative litigation, Art. 7.
[34] Law No. 303/2022 on the status of judges and prosecutors, Art. 266, paragraph (1).

Magistracy[35], alleging that by interrupting the public service of justice, the judge has committed a disciplinary offense.

However, this remedy is not capable of remedying a possible violation of the right of access to justice and/or the right to a trial within a reasonable time, as the procedure is lengthy (verifications carried out by the Judicial Inspection, disciplinary action taken by the Judicial Inspection, judgment at first instance by the Judges' Section of the Superior Council of Magistracy, the cassation judgment before the High Court of Cassation and Justice) and can only result in a possible disciplinary sanction against the judge, which does not constitute an adequate remedy for the violation.

Thirdly, as the Superior Council of Magistracy and the Ministry of Justice are competent, pursuant to Law No. 304/2002 on the organization of the judiciary[36], with regard to the proper organization and administration of justice as a public service, any interested person may refer to these two public authorities in the event of malfunctioning or interruption of the public service of justice by means of a petition formulated in accordance with Government Ordinance No. 27/2002 regulating the activity of resolving petitions[37].

Given that neither the Superior Council of Magistracy nor, *a minori*, the Ministry of Justice has any power to order the courts to resume judicial activity, this appeal is devoid of any practical effect.

There is therefore no administrative remedy that cumulatively satisfies the requirements of an effective remedy to protect the right to access to justice and the right to a trial within a reasonable time.

B. Constitutional remedies

The last type of remedy to be analyzed is constitutional remedies.

First, under the Constitution[38] and Law No. 47/1992 on the organization and functioning of the Constitutional Court[39], an interested party involved in ongoing legal proceedings may raise the objection of unconstitutionality of a legal rule contained in a law or government order, if that rule is applicable in their legal case[40].

Thus, the author of the constitutional challenge may argue that the provisions contained in Law No. 304/2002 on the organization of the judiciary[41], in the Labor Code[42], in Law No. 367/2022 on social dialogue[43], and/or in Law No. 303/2022 on the status of

[35] Law No. 305/2022 on the Superior Council of Magistracy, Art. 45, paragraph (1).
[36] Law No. 304/2002 on the organization of the judiciary, Art. 1(3) and Art. 5.
[37] Government Ordinance No. 27/2002 on the regulation of the activity of resolving petitions, Art. 1 and Art. 2.
[38] Constitution of Romania, Art. 146 para. d).
[39] Law No. 47/1992 on the organization and functioning of the Constitutional Court, Art. 29.
[40] See also: M. Constantinescu, I. Deleanu, A. Iorgovan, I. Muraru, F. Vasilescu, I. Vida, *op. cit.*, pp. 308-311; V. Duculescu, C. Călinoiu, G. Duculescu, *op. cit.*, pp. 430-440; M. Constantinescu, I. Muraru, A. Iorgovan, *op. cit.*, pp. 125-128; M. Constantinescu, A. Iorgovan, I. Muraru, E.S. Tănăsescu, *op. cit.*, pp. 320-324.
[41] Law No. 304/2002 on the organization of the judiciary, Art. 32 and Art. 56.
[42] Labor Code, Art. 234, paragraph (1).
[43] Law No. 367/2022 on social dialogue, Art. 170.

judges[44], concerning the powers of the general assemblies of the judges of the courts of law, the prohibition on judges going on strike, the concept of strike action and the obligation of judges to perform their duties, are unconstitutional in relation to the provisions of Article 21 and Article 43(2) of the Constitution, which enshrine the right of access to justice, the right to a trial within a reasonable time, and the functioning of public services essential to society, insofar as they are interpreted to mean that judges have the right and general assemblies of the judges of the courts of law have the power to decide to interrupt the public service of justice, whether or not this interruption is classified as a strike.

A decision of the Constitutional Court, including its reasoning, is binding *erga omnes*, and therefore has practical effect.

However, this remedy is not effective, because it is not the litigant who is the holder of the right (the author of the exception of unconstitutionality does not refer the matter to the Constitutional Court himself), but the judicial court before which the exception of unconstitutionality has been raised, which may refuse to refer the matter to the constitutional judge on grounds of inadmissibility of the request. Furthermore, the procedure is very lengthy, taking on average several years for the Constitutional Court to rule on an exception of unconstitutionality.

Furthermore, this remedy is illusory in the event of a suspension of judicial activity, since the exception of unconstitutionality can only be raised in a case currently before the courts, and referral to the Constitutional Court can only be made by a court that is in session.

Secondly, a similar exception of unconstitutionality may be raised directly by the People's Advocate[45], in accordance with the Constitution[46], Law No. 47/1992 on the organization and functioning of the Constitutional Court[47] and Law No. 35/1997 on the organization and functioning of the institution of the People's Advocate[48].

Given the powers of the Constitutional Court and the scope of its decisions, this remedy is likely to have a real effect. Furthermore, it is not illusory, as the People's Advocate refers cases directly to the constitutional court without the need for ongoing legal proceedings, meaning that the suspension of judicial activity does not prevent cases from being referred. As an additional factor, exceptions of unconstitutionality raised directly by the People's Advocate are analyzed by the Constitutional Court much more quickly than ordinary exceptions of unconstitutionality. Similarly, the judgment procedure is fair.

However, despite the fact that this is a real remedy, likely to have a useful effect and analyzed according to a fair procedure, the exception of unconstitutionality raised directly by the People's Advocate is not in the hands of the potential victim of the violation of the right of access to justice and/or the right to a reasonable trial time, therefore there is still

[44] Law No. 303/2022 on the status of judges and prosecutors, Art. 271 para. e).
[45] See also: M. Constantinescu, I. Muraru, A. Iorgovan, *op. cit.*, pp. 125–128; M. Constantinescu, A. Iorgovan, I. Muraru, E.S. Tănăsescu, *op. cit.*, pp. 320–324.
[46] Constitution of Romania, Art. 146 para. d) *in fine*.
[47] Law No. 47/1992 on the organization and functioning of the Constitutional Court, Art. 32.
[48] Law No. 35/1997 on the organization and functioning of the institution of the People's Advocate, Art. 15, paragraph (1) (i).

no effective remedy for the protection of these rights.

Thirdly, given that in practice, whenever the courts have suspended judicial activity, the reason has been to put pressure on the Government and/or Parliament to adopt or not adopt a specific legislative solution concerning the remuneration or retirement of magistrates, this solution can be described as a legal conflict of a constitutional nature between public authorities, as the judiciary power, under the pretext of defending the independence of the judiciary, upset the proper balance between the three branches of government and attempted to impose itself as a supra-power, refusing to exercise its constitutional role in protest.

On the basis of such a *prima facie* qualification, pursuant to the Constitution[49] and Law No. 47/1992 on the organization and functioning of the Constitutional Court[50], it is possible to exercise, as a constitutional remedy, the request to settle the legal conflict of a constitutional nature between the courts and the Government and/or Parliament[51]. Those entitled to bring such a case are the President of Romania, the President of the Senate, the President of the Chamber of Deputies, the Prime Minister, and the President of the Superior Council of Magistracy (in reality, given the reasons for the voluntary and widespread interruptions of judicial activity and the *de facto* and unconstitutional transformation of the Superior Council of Magistracy into a union of magistrates, instead of being the guarantor of the independence of the judiciary as a public service of the State at the service of citizens, it is purely illusory that the President of the Superior Council of Magistracy would refer to the Constitutional Court a request for settleing the conflict).

This appeal is certainly likely to have a useful effect, its exercise is not prevented by the interruption of judicial activity, and a solution will be returned quickly.

However, it is also clear that this is not an effective remedy, as the alleged victim of the violation of the right to justice and/or the right to a trial within a reasonable time is not the holder of this remedy.

It can therefore be concluded that, despite the effectiveness of constitutional remedies that do not involve the intervention of the courts, no constitutional remedy is effective, as the potential victim is never entitled to bring the matter before the constitutional court.

Conclusions

The voluntary and widespread interruption of judicial activity, decided by the judges, constitutes interference and may violate the right to a court and the right to a trial within a reasonable time.

The legal remedies provided for by Romanian law to protect this right are all theoretical and illusory, as they require the courts to be active, while administrative remedies are unlikely to have a real effect or do not guarantee a fair trial.

[49] Constitution of Romania, Art. 146 para. e).
[50] Law No. 47/1992 on the organization and functioning of the Constitutional Court, Art. 34.
[51] See also: M. Constantinescu, I. Muraru, A. Iorgovan, *op. cit.*, pp. 125-128; M. Constantinescu, A. Iorgovan, I. Muraru, E.S. Tănăsescu, *op. cit.*, pp. 320-324.

Only constitutional remedies that do not involve the courts (the exception of unconstitutionality raised directly by the People's Advocate and the request to settle a legal dispute of a constitutional nature) have a real effect and are likely to remedy the violation of the right of access to justice and/or the right to a reasonable trial time, but these constitutional remedies are not available to the alleged victim, so they are not effective remedies either.

In violation of Article 13 of the Convention, Romanian domestic law does not offer potential victims of violations of their rights to access to justice and to a trial within a reasonable time any effective remedy in the event of a deliberate and widespread interruption of the public service of justice.