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*This project is funded by the European Union*

**ENHANCE TRANSPARENCY, ACCOUNTABILITY OF AND ACCESS TO THE JUDICIARY SYSTEM (ETAAJS)**

**REPORT ON COURT MONITORING DATA ANALYSIS**

*including explanations and insights of the monitoring data and suggesting concrete recommendations regarding identified shortcomings of adherence to basic rights in judicial proceedings*

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# 1. INTRODUCTION

The First Component of the European Union-funded project, 'Enhance Transparency, Accountability of and Access to the Judiciary System' was conducted in Moldova between 2022 and 2023. The primary objective of this report is to provide a comprehensive overview of the monitoring activities carried out to assess the adherence to basic rights in court proceedings within the Moldovan judicial system.

Our approach to this end has been to conduct a thorough and systematic analysis, focusing on various key areas of the administration of justice. These areas encompass fundamental principles such as fair trial rights and the overall quality of judicial decisions. Through a shared commitment to addressing issues related to accessibility, quality, and trust in the justice system, this Project aims to contribute to the enhancement of Moldova's judicial system.

The monitoring process is designed to be both evidence-based and comprehensive, ensuring a holistic examination of the entire justice process. This includes assessing access to courts, evaluating the conduct of court proceedings, and scrutinizing the rendering of judicial decisions across a spectrum of case types, including civil, criminal, administrative, and administrative offenses cases.

Furthermore, our monitoring efforts extend beyond the general examination of justice proceedings. We delve into specific case types, each with its unique set of peculiarities. These specific case categories include data protection, domestic violence, environmental protection, legal aid provision, and non-contractual state liability. Through this multifaceted approach, we aim to gain a deeper understanding of how particular rights intersect within specific contexts and the relationships between process rights developed in general cases and pre-selected specific types of cases.

This report marks the conclusion of our monitoring efforts, presenting valuable insights and recommendations drawn from our assessments. It illuminates both the strengths and weaknesses of the Moldovan judicial system, all in pursuit of our overarching objective: fostering transparency, accountability, and enhanced access to justice for all.

The analysis of monitoring results is based on multiple sources, including the Results of *Trial Monitoring* (referred to as ***Trial Monitoring***), the Results of Court Users Surveys (referred to as ***Court Users Surveys***), the Report on the Preliminary Analysis of the Data Collected via Distribution of Questionnaires for Focus Group Surveys (referred to as ***Focus Group Surveys for Private Lawyers, State-Funded Lawyers, and Judges and Judicial Personnel***, as applicable), the Report of Qualitative Expert Interviews (referred to as ***Expert Interviews***), and the Results of the Monitoring of the Quality of Judicial Decisions (referred to as ***Monitoring of Judicial Decisions***).

The results are presented in percentages, and there may be slight inaccuracies in the totals due to rounding. It should also be noted that not all of the monitored cases were equally relevant to the specific aspect under monitoring. Therefore, where applicable, the total number of monitored relevant cases may vary from the overall total of monitored cases. Such instances are indicated in the text.

# 2. METHODOLOGY

The implementation of the First Component of the European Union-funded project 'Enhance Transparency, Accountability, and Access to the Judiciary System' is based on a methodology that presents an integrated approach consisting of two models: (1) Trial monitoring methodology and (2) Methodology for monitoring the quality of court decisions.

The right to a fair trial is rightly regarded as central to an effective justice system. Bearing this in mind, the Trial monitoring methodology focuses on creating a framework to observe the compliance of procedural rights and case-specific legislation (procedural codes), as well as the professionalism of law-related actors present during the trial. It sheds light not only on the implementation of individual procedural rights but also provides a broader perspective on judicial review. Concurrently, it helps us understand whether sufficient consideration is given to the widely shared EU approach that the administration of justice is a form of state service to citizens.

Meanwhile, the Methodology for monitoring the quality of court decisions covers all aspects that have or can have significant impacts on the quality of reasoning, such as whether court decisions are legally comprehensive, easy to read, clear, consistent, materially and procedurally accurate.

Consequently, the overall Methodology is designed to provide access to information regarding three key aspects of court monitoring architecture, focusing on accessibility, quality, and trust in the judicial system.

### 2.1. Scope, Directions and Objective for Monitoring

Court monitoring is based on the collection and systematic evaluation of up-to-date information and data on key developments in the sphere of justice. The blueprint for court monitoring is grounded in the principles of continuity from earlier conducted trial monitoring and an orientation towards decisions that can significantly improve the existing situation.

The court monitoring mechanism is developed based on the concept of multi-centre monitoring of the entire justice system. With this in mind, the monitoring methodology is continuously and specifically tailored to assess relevant elements of access to justice, including access to court, conduct of court hearings, the quality of judicial decisions and their reasoning, as well as the provision of legal aid.

The court monitoring methodology, as the entire monitoring mechanism, consists of two main models, both of which are based on empirical data and input from a variety of stakeholders:

**1. The Methodology for *Trial Monitoring*** is aimed at due process monitoring and is implemented to observe fair trial rights in practice and professionalism in conducting court hearings. It focuses on indicators related to civil, criminal, and administrative cases, as well as administrative offenses cases, and certain pre-selected types of cases:

(1) Provision of legal aid in connection with judicial proceedings

(2) Access to justice in environmental matters

(3) Cases concerning data protection

(4) Domestic violence cases

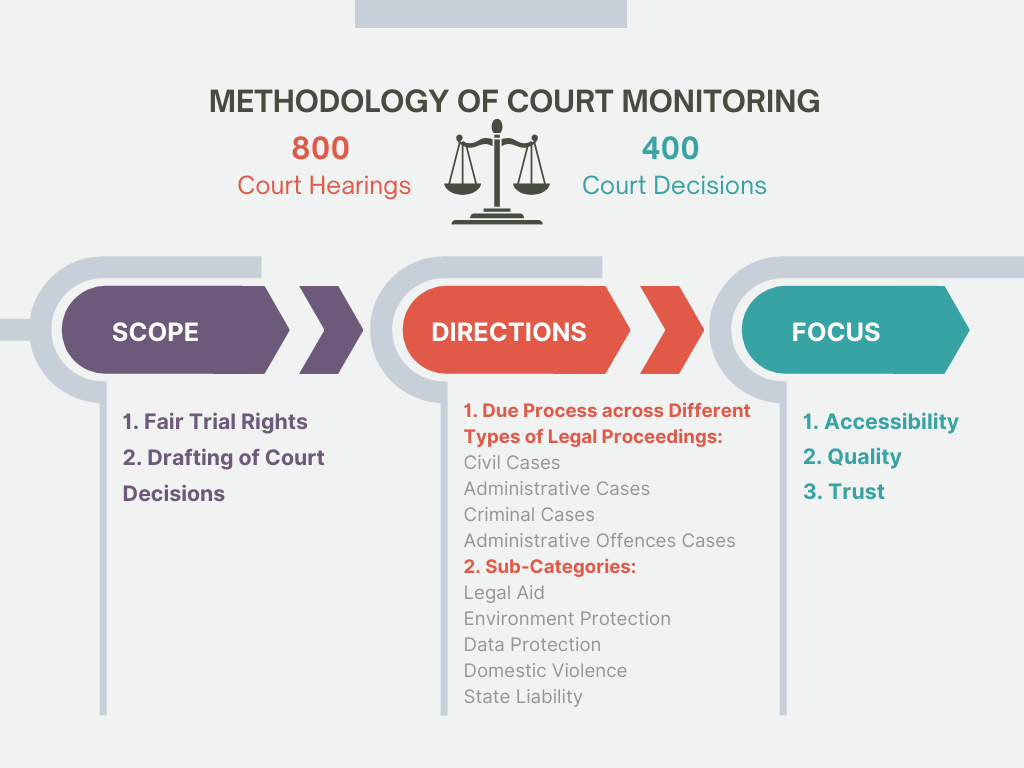
(5) Access to justice concerning non-contractual liability of the state

The integrated monitoring activities, ranging from general matters in civil, administrative, administrative offenses, and criminal cases to specific types of cases, seek to achieve all-inclusive and comparable results, particularly in areas where access to justice for vulnerable groups remains a concern. The list of pre-selected specific categories of cases is designed with consideration for matters that have given rise to growing societal concerns for citizens and businesses, as well as Partners' concerns.

**2. The Methodology for Monitoring the Compliance with Quality Standards of Court Decisions** is dedicated to monitoring the drafting of judicial decisions. The right to a public and reasoned judgment is a central aspect of access to justice. Therefore, special attention is paid to monitoring the quality of judicial drafting and its compliance with respective standards for the reasoning of judgments, such as clarity, comprehensibility, regularity, and completeness. In terms of the scope of cases chosen for monitoring, the activities under this Methodology follow the algorithm predetermined under the Methodology for fair trial monitoring. That is, it seeks to gather information concerning the compliance with respective quality standards in randomly selected civil, administrative, and criminal cases, as well as specific pre-selected types of cases.

The results of the information gathered under both Methodologies are considered together, as both elements are interlinked in the chain of justice delivery. Initiatives aimed at improving one aspect may have an influence on another. In doing so, it presents more comprehensive and up-to-date information necessary for defining future evidence-based reform policies and ensuring their compliance with European standards of access to justice.

Overall, this combined methodology aims to provide reliable and up-to-date insight into remaining bottlenecks in the justice domain and lead to recommendations on actions to be taken to improve accessibility, quality, and trust in the justice system.



### 2.2. Object of Monitoring

The monitoring includes court hearing and judicial drafting observation in civil, criminal, administrative, and administrative offenses cases at first instance courts and appeal proceedings. To this end, 75% of the monitoring activities were implemented in the premises of the Chisinau court, including the Chisinau Court of Appeal, while the remaining 25% were carried out in regional courts of the first level and regional appeal courts. The assessment of the quality of court decisions also includes cassation proceedings (10%).

For the observation of court hearings and assessment of the reasoning of court decisions, the cases are randomly selected. The selection is based on a random sample to ensure as objective a monitoring system as possible. In turn, random selection provides comprehensive data and information concerning the overall justice system. This approach applies to both the selection of civil, criminal, administrative, and administrative offenses cases and the selection of sector-specific cases (cases concerning environmental issues, data protection, domestic violence, non-contractual liability of state matters). In addition to this, the selection criteria take into account an interest in monitoring judicial proceedings for specific events that have strong public interest. Therefore, so-called high-profile cases, which can be seen as 'stress-tests' exposing the key strengths and weaknesses of a criminal justice system, are also included in the scope of the monitoring.

Except for high-profile cases, the case-selection methodology is based on an *ad hoc* monitoring concept, which essentially focuses on a single court hearing rather than a set of trials in one case or the entire judicial process of respective cases. The approach is to monitor multiple court hearings to cover a diverse caseload and to avoid dependence on external circumstances specific to one particular case.

### 2.3. Scale and Duration of Monitoring

The scale of monitoring and the distribution of monitoring directions regarding specific cases in different proceedings take into account the overall objective of the Project, which is to monitor the entire judicial system. This includes starting with access to courts and ending with judicial decision-making in civil, criminal, administrative, and administrative offenses cases.

Furthermore, it was equally important to monitor and consider selected parameters from a different perspective, that of sector-specific cases. Therefore, the methodology includes a comparative approach that seeks to establish how particular rights fit together within a specific context and the interrelationship between procedural rights as developed in the category of general cases and pre-selected specific types of cases. The monitoring direction towards the pre-selected types of cases, compared to the broader perspective in civil, administrative, and criminal cases, is based on a logical intervention that has been articulated as giving rise to growing societal and stakeholders' concerns. Cases requiring a distinguished approach due to the vulnerability of litigants, such as victims of domestic violence, make the procedure before the court more demanding in terms of coordination and cooperation between representatives of the parties and the court. Meanwhile, considering the importance of cases concerning environmental matters or data protection, the community needs to accommodate competing interests, certain peculiarities should be justified and should not be brushed aside through the homogenization of proceedings.

For practical reasons, particularly the time required to collect and compile a large volume of data, the monitoring activities were carried out in 2022 and 2023.

***Trial Monitoring*** took place 15 July 2022–30 May 2023. Taking into account the statistical data provided by the Agency for Court Administration of Moldova[[1]](#footnote-1), the initial monitoring activities aimed to observe 800 court proceedings[[2]](#footnote-2) in varying proportions[[3]](#footnote-3).

The general sample of monitored court hearings included 800 court hearings, of which:

* Court hearings in civil cases – 281 (36%)
* Court hearings in administrative cases – 112 (14%)
* Court hearings in criminal cases – 281 (34%)
* Court hearings in administrative offences cases – 126 (16%)

Including the following subtypes of cases:

* Court hearings in cases in which legal aid is provided – 76 (10%)
* Court hearings in cases relating to environmental matters – 19 (2%)
* Court hearings in cases concerning data protection – 43 (5%)
* Court hearings in cases concerning domestic violence – 52 (7%)
* Court hearings in cases on non-contractual liability of state – 52 (7%)
* Court hearings in set of trials concerning high-profile cases – 70 (9%)

25% (198) of the total monitored hearings took place in the appellate courts.

The data for further analysis was prepared by the Centre for the Analysis and Prevention of Corruption (CAPC) in order to implement the action "Court Monitoring of the Moldovan Justice System" (contract number: ENI/2021/428-550-0001).

*Trial Monitoring* also presented data regarding the ***Court Users Surveys*.** There was a total of 155 respondents in this survey. The distribution of case types in which respondents were involved revealed that civil cases accounted for the largest portion (37%). Administrative cases followed closely at 19%, while criminal cases and administrative offenses cases represented 29% and 15% respectively.

***Focus Group Surveys*** were conducted between 22 September 2022 – 31 October 2022. The Surveys of Lawyers were completed by 78 respondents within the group of private lawyers and the Surveys for Lawyers Providing State-guaranteed Legal Aid (referred as *Survey for State-Funded Lawyers*) – by 88 respondents within the group of state-appointed lawyers. The Survey for Judges and Judicial Staff was distributed to judges and judicial staff with support of the Agency for Court Administration and filled by them between 22 September 2022 – 31 October 2022. 133 judges and judicial personnel participated in the Survey. 69% of respondents work at the court of first instance, and 31% – at the court of appeal.

***Expert Interviews*.** Twenty-one interview was conducted in the framework of the monitoring in October 2022–March 2023. Experts were invited to participate in the interviews having regard to their recognized competences and experience developed in different areas of specialization

|  |  |  |  |
| --- | --- | --- | --- |
| Interview No. 1 | *Lawyer, Legal expert at a law firm* | Interview No. 12 | *Lawyer, Advocate, Program Director at NGO* |
| Interview No. 2 | *Judge, Court of First Instance, outside Chisinau* | Interview No. 13 | *Lawyer, Advocate, Head of NGO* |
| Interview No. 3 | *Judge, Court of First Instance, Chisinau* | Interview No. 14 | *Judge, Supreme Court of Justice* |
| Interview No. 4 | *Judge, Court of First Instance, Chisinau* | Interview No. 15 | *Lawyer, Advocate, former Justice Minister* |
| Interview No. 5 | *Judge, Court of First Instance, Chisinau* | Interview No. 16 | *Lawyer, Advocate, Professor of Law* |
| Interview No. 6 | *Lawyer, Advocate, Head of NGO* | Interview No. 17 | *Judge, Appeal Court, Chisinau* |
| Interview No. 7 | *Lawyer, Advocate* | Interview No. 18 | *Lawyer, Advocate providing private and state-guaranteed legal aid* |
| Interview No. 8 | *Lawyer, Advocate, former Justice Minister* | Interview No. 19 | *Judge, Appeal Court, Chisinau* |
| Interview No. 9 | *Lawyer, former Deputy Minister of the Ministry of Justice* | Interview No. 20 | *Judge Assistant, Court of First Instance, Chisinau* |
| Interview No. 10 | *Judge, Court of First Instance, Chisinau* | Interview No. 21 | *Lawyer, Advocate* |
| Interview No. 11 | *Lawyer, Advocate, Program Director at NGO* |  | |
| ***\* In the interest of the brevity and clarity and having regard to the position held by an expert, hereinafter referred to as "judge" or "lawyer"*** | | | |

***The Monitoring of the Quality of Judicial Decisions***contains structured information and statistical data for the assessment of the quality of court decisions, collected in the process of monitoring of 400 court decisions issued by the courts of the Republic of Moldova during the years 2020-2022. The data for further analysis was prepared by the Centre for the Analysis and Prevention of Corruption (CAPC) in order to implement the action "Court Monitoring of the Moldovan Justice System" (contract number: ENI/2021/428-550-0001).

Most of the monitored judgments were handed down by national courts during 2020 (39% or 156 judgments), 33% (130) in 2021 and 28% (114) in 2022.

The general sample for monitoring the quality of court decisions included, in total, 400 court decisions, of which 72% (287) were issued by the first instance, 15% (60) on appeal and 13% (53) on cassation.

The distribution of decisions was as follows:

* Civil cases – 130 (33%)
* Criminal cases – 95 (24%)
* Administrative cases – 90 (22%)
* Administrative offences cases – 85 (21%)

At the same time, the monitoring sample also included the decisions given in certain sub-types of cases (134 in total), as follows:

* Decisions in cases in which legal aid is provided – 16 (4%)
* Decisions relating to environmental matters – 26 (6%)
* Decisions concerning data protection – 32 (8%)
* Decisions in domestic violence cases – 35 (9%)
* Decisions on non-contractual liability of state – 25 (6%)

### 2.4. Focus Groups

The monitoring is directed at gathering insights of individuals and actors who are involved in the justice system. Its aim is not to carry out surveys of representative samples of the population but rather to reach out for groups which have actual contact with court services. In order to observe the conduct of law-related actors that are present at the trial, assess the clarity of the proceedings and the quality of judicial services to the citizens and businesses, the target group of monitoring consists of court users with experience of a court case and law-related actors that are present at the trial.

*Court users with experience of a court case:* The accessibility of justice for citizens and businesses is a cornerstone of the right to a fair trial. Evaluating how the justice system operates from the perspective of court users who have actually come into contact with judicial services is essential. Satisfaction reviews of court users regarding the conduct of court hearings and court decisions, their awareness of procedural rights, as well as overall confidence in the justice system, provide up-to-date information regarding the quality of customer service in the courts and the accessibility and quality of court services.

*Legal professionals:* Legal professionals play a crucial role in the administration of justice, and their performance of responsibilities contributes to fair justice. Lawyers, as essential agents of the administration of justice, come into frequent contact with courts. Therefore, their reviews and feedback concerning the general state of the justice system, their role, the clarity of judicial decisions, and judicial independence are important sources for evaluating the quality of the entire justice system.

*State-appointed lawyers:* The monitoring seeks to consider the views and concerns of state-appointed lawyers to gather more accurate insight into the rights of vulnerable people and how their interests are ensured when they come into contact with courts. This also provides access to information concerning the protection of the public interest and the efficiency of state-guaranteed legal aid, ensuring that everybody has equal access to the courts, irrespective of their initial disadvantage in relation to other parties to the proceedings.

*Judges and judicial personnel:* The proper performance of judicial duties while maintaining independence and impartiality contributes significantly to public confidence in the entire justice system. Therefore, without a doubt, observing court hearings and the judicial drafting process provide relevant data on the fairness of procedural justice and the quality of judicial decisions.

Meanwhile, the surveys for judges and judicial personnel address their opinions on the prioritization of quality standards for judicial decisions (clarity of reasoning, validity, transparency, and consistency in the examination of evidence, etc.), as well as the need to approve Quality Standards for Judicial Decisions for all courts in Moldova.

### 2.5. Key Aspects Monitored in the Proceedings and Judicial Drafting

Having committed to monitoring the entire case journey, the methodology builds on significant elements of fair trial rights at various stages of the legal process, i.e., starting with access to courts and ending with judicial decision making in civil, criminal, administrative, and administrative offenses cases, as well as sector-specific cases. The following aspects are key elements for the monitoring activities:

DUE PROCESS FROM PERSPECTIVE OF ACCESSIBILITY

* Effective access to a competent, independent and impartial court
* Right to information about case at trial
* Right to a public trial
* Right to a legal counsel
* Right to equal access for vulnerable groups
* Specific issues of NGO's access to court, in particular in cases concerning the protection of public interest

COURT HEARING

* Right to a competent, independent and impartial court
* Comprehensibility of procedural rights and duties
* Right to be heard
* Equality of arms
* Right to a legal counsel at trial
* The role of the judge
* Professionalism and performance issues related to legal practitioners
* Specific rights of vulnerable groups
* Presumption of innocence, where applicable
* Adequate time and facilities for the preparation of the defence, where applicable

DELIVERY OF THE JUDGMENT

* Right to a public and reasoned judgment
* Accessibility to the case-law

OTHER ISSUES TO BE MONITORED

* Perception of the justice system by court users
* Effectiveness of court administration
* The payment of costs and other legal expenses related to the proceedings
* Specific issues regarding high-profile cases

### 2.6. Monitoring Methods

In order to observe the entire chain of judicial services, the monitoring is using multiple methods of data collection. Due to the different nature of the proceedings, the monitoring adjusts respective indicators for data collection depending on the type of the case. Combining qualitative and quantitative trial monitoring data sought to achieve the greatest possible detail and most comprehensive coverage of judicial proceedings. Hence, the trial monitoring activities draw on a range of information sources:

*1. Court hearing observation in civil, administrative, administrative offences and criminal cases*

Court hearing observation forms consisted of on-the-spot observation questions designed to reflect procedural peculiarities of civil, administrative, administrative offences and criminal cases. This method is employed for both the relatively simple and quantifiable aspects of a service (waiting times, signposting, facilities available, etc.) and the observation of conduct of court hearing, including the exercise of most procedural rights set out in the procedural codes and professionalism of law-related actors.

*2. Court Users Surveys addressed to non-legal participants to the proceedings*

The *Court Users Surveys* are self-completion questionnaires which were provided by the group of monitors for court hearing observation immediately after the close of court hearing. They are designed to capture the views and experiences of individual non-legal participants to the proceedings. This approach reflects a concept that is focused on users of the service. The questionnaires included mostly closed questions with several open spaces for comments to have more elaborate reviews on issues. One should in particularly note that the *Court Users Surveys* contain and integrate several aspects of model questionnaire, drawn by the CEPEJ's Working Group on the quality of justice (CEPEJ-GT-QUAL). Subject to certain adjustments, the *Court Users Surveys* build on a methodological Handbook for Conducting Satisfaction Surveys Aimed at Court Users in Council of Europe Member States.[[4]](#footnote-4)

*3. Focus Group Surveys addressed to Private Lawyers, State-Funded Lawyers, Judges and Judicial personnel*

*Focus Group Surveys* are chosen to expand the coverage of judicial services for monitoring and to reach a wider target group. As assessment tools, these surveys have important advantages as they are able to cover multiple topics that would otherwise require extensive meetings. In addition to this, they are able to reach target groups that serve in remote courts.

Surveys for legal professionals and judicial officials present significant means of gaining insight on the strengths and weaknesses in the sphere of judicial services. Legal professionals are in most frequent contact with the court concerned. The questionnaires included mostly closed questions with several open spaces for comments to have a more elaborate reviews on issues. Similarly to *Court Users Surveys*, they integrate several aspects of model questionnaire, drawn by the CEPEJ's Working Group on the quality of justice (CEPEJ-GT-QUAL).

Surveys for lawyers providing state-guaranteed legal aid were meant to provide unique insights into aspects of the accessibility to justice system and problems while presenting a case, where imbalances or vulnerabilities of individuals are present or otherwise disadvantaged.

Surveys addressed to judges and judicial personnel focused on information on judges’ opinion related to main quality standards every court decision should meet, as well as on how judges and judicial staff assess the need to approve the Quality Standards for Judicial Decisions and what additional measures should be taken to make the implementation of Quality Standards of Judicial Decisions efficient and effective.

*4. Analysis of Quality of Court Decisions*

The analysis of the quality of randomly selected cases from various court instances and categories (civil, criminal, administrative, and administrative offenses) reveals important issues related to judicial decision-making. This method was intended to examine final court decisions on the merits of disputes. While there is no dispute that the timeliness of judicial decisions is essential to ensure the smooth functioning of the judiciary, today's efficient courts promise more than just mechanically closing an increased number of cases. The quantity of closed cases and the reduction in the duration of proceedings should not be the sole focus of judicial policy; it may bring long-term benefits to the judicial services only if it does not compromise the quality of decisions. In order to assess whether the courts continue to be an authoritative institution delivering readable, prompt, and consistent decisions as a public service to citizens and businesses, the analysis of court decisions included seven key criteria against which compliance with quality standards was assessed:

THE QUALITY STANDARDS OF COURT JUDGMENTS UNDER OBSERVATION

* Legality
* Persuasiveness
* Transparency (consistency of the investigation of facts and reasoning, sufficiency of reasons)
* Linguistic correctness
* Clarity
* Structure and form
* Peculiarities concerning reimbursement of litigation costs

The questionnaire on the quality of randomly selected judgments is based on a methodological matrix that includes optional answers. Among other things, the questionnaire addresses the most common inconsistencies that may occur in the preparation of judgments. Additionally, the questionnaire incorporates respective open-ended questions where specific examples from the text of the court decision can be recorded. This allowed the monitoring results to be supplemented with authentic examples.

Under these circumstances, it should also be clarified that the question of the duty to provide reasons, which concerns an essential procedural requirement, is separate from that of the evidence of alleged conduct, which concerns the substantive legality of the act in question and involves assessing the truth of the facts set out in that act. Therefore, it allows for monitoring and assessment without prejudicing judicial authority and independence. It is in this context that the quality of judicial decisions is linked to the observance of any regulatory or soft law measures aimed at ensuring the quality of court decisions are implemented in practice. This involves assessing whether the drafting of court decisions ensures that they are accepted by the addressees because they are reasoned, predictable, concise, and in compliance with legal certainty.

*5. Qualitative Expert Interviews with Lawyers and Judges*

It was rightly presumed that meetings with prominent lawyers and judges might provide a wealth of information not easily accessed through other assessment tools, such as court hearing observations and court users surveys. Therefore, open-ended interviews with attorneys and judges were included in the monitoring methods to better understand the reasons behind court users' responses and other aspects detected during court hearing observations. Judges and lawyers offered a clearer picture of the extent to which systemic shortcomings related to the compliance with fair trial rights exist and provided a better basis for considering effective ways to address these problems. Additionally, collecting this data benefited from insights into natural working conditions and constraints specific to the judicial system, particularly when it came to identifying the roots of the identified problems. Their views shed light on challenges they encounter that may be difficult to discern otherwise.

Disproportionately intense workloads, the absoluteness of positive law, the lack of clear roles for judges, and national peculiarities regarding the preparation of court decision reasoning are specific areas that were more intensively researched during the interviews.

### 2.7. Principles of Monitoring Activities

The key principles on which the monitors operate include objectivity, confidentiality, quality, and non-intervention. These operating principles are necessary to provide access to relevant, objective, comparable, and reliable data regarding various aspects of the administration of justice under observation.

Under the principle of non-intervention, the integrity of judicial proceedings for observation remains unaffected, and the monitors avoid any direct contact with members of the judiciary (e.g., there are no discussions on the merits of the cases being monitored).

Closely related to the duty of non-intervention is the duty of monitors to carry out their responsibilities in an objective and impartial manner, as well as to avoid the appearance of doing otherwise.

The quality principle specifies that data collection shall allow for adequate, comprehensible, relevant responses and feedback when any inconsistencies in related data are identified and reduced. These standards are applicable at all stages of monitoring activities, from case identification to data collection form completion.

Quality Requirements for the Monitors: *Trial Monitoring* and *Monitoring of Judicial Decisions* was carried out by monitors who have extensive experience in their field (minimum professional qualifications required include a master's degree in law and at least 3 years of legal experience as a practitioner, such as a lawyer, judges or judge's assistant. Monitors who carried out the *Monitoring of Judicial Decisions* were also the PhD students).

# 3. ACCESS TO JUSTICE

This Section provides a comprehensive overview of the state of access to justice in Moldova, encompassing both the general situation and specific aspects of legal services, litigation costs and related issues.

In the following subsections, we first focus on the accessibility of legal assistance. For this purpose, we analyse monitored court hearings, assess public perceptions of legal assistance quality in Moldova, and discuss the evolving dynamics of legal services quality. We then shift our focus to the availability and quality of state-funded legal aid, shedding light on the constraints and challenges faced in ensuring its effectiveness. Additionally, we examine the mechanisms for evaluating legal aid quality, which is crucial in maintaining high standards.

Later on, a separate subsection is dedicated to litigation costs and their recovery, addressing the financial aspects of pursuing justice in Moldova. We consider the complexities of legal representation costs and their reimbursement, offering insights into the practicalities of the legal system. Finally, recognising the importance of protecting vulnerable groups, we address the peculiarities of their experiences within the Moldovan legal landscape and analyse how vulnerable groups navigate the legal system, the legal aid available to them, and the challenges they face in accessing justice.

In conclusion, this section provides a comprehensive assessment of access to justice in Moldova. It serves as a foundation for the recommendations presented in the closing section, aiming to enhance the legal framework, promote fairness, and ensure equal access to justice for Moldovan citizens.

The insights and findings of the Section is based on the monitoring questions presented in the *Trial Monitoring*, *Focus Group Surveys*, *Expert Interviews*, and *Monitoring of Judicial Decisions*.

## 3.1. LEGAL ASSISTANCE

The right to a lawyer is a fundamental pillar of each just legal system, ensuring that individuals have access to proper legal representation and a fair trial. A lawyer plays a vital role in protecting an individual's rights, offering legal advice, defending before the court, and navigating the complexities of the law. In Moldova, the right to be represented by a lawyer is fully recognised in the legal acts and is established in practice. However, certain shortcomings and particularities of practical implementation of this right were noted in the Project activities, and in particular, during the interviews, surveys and monitoring of the court hearings.

### 3.1.1. General Situation with Regard to Legal Assistance in Monitored Court Hearings

When analysing the data of the *Trial Monitoring* conducted in the context of the Project, it can be noted that in most of the monitored cases the parties were assisted by privately hired lawyers.

In **civil cases**, in most cases, litigants used the services of privately hired lawyers (247 or 88% of the total 281 monitored court hearings). The representation provided by public and private lawyers was treated similar, and only in one case did the monitors consider that there was evidence of differential treatment between state-funded and private lawyers.

Naturally, as in all types of cases, as revealed by the comments of the monitors, in **civil cases** sometimes a lawyer of one of the parties (both privately funded and state-funded) was more prepared than the other, and the lawyers who were engaged for the case recently in some cases asked for the meeting to be adjourned so that they could get familiar with the case (e.g., in one case the monitor noted that one of the lawyers was on the file for the first time and requested time to study the file). However, no major problems with regard to legal assistance were noted by the monitors.

The same trends were noted in **administrative cases**. In the majority of court hearings in administrative cases (79 (70%) out of the total 112 monitored court hearings) the parties were represented by a lawyer, and the public authority was represented by its representative in 100 (89%) cases. The monitors marked just 3 cases where the lawyers were not closely familiar with the case materials.

In **administrative offences cases**, in most cases (85 cases or 68% of the total 126 monitored court hearings), defendants used the services of lawyers of their choice. In 41 cases (33%) they used the state-guaranteed legal aid. The survey did not disclose a difference in the treatment of state-funded and private lawyers. In 1 case only, the monitors considered that there was a differential treatment in this respect. In 3 cases (2%) only, the monitors considered that the lawyer was not closely familiar with the case materials.

Compared to the other types of cases discussed above, state-funded lawyers were more often present in **criminal cases**. The results of the monitoring of court hearings show that in most criminal cases, defendants used state-guaranteed legal aid (180 cases or 64% out of the total of 281 monitored court hearings). In 101 cases (36%), they used the services of privately hired lawyers. The monitors did not note a difference in the treatment of state-funded and private lawyers, as only in 2 cases the monitors considered that there was a differential treatment in this respect. The lawyers were mostly well prepared, and in six cases (2%) only, the monitors considered that the lawyer was not closely familiar with the case materials.

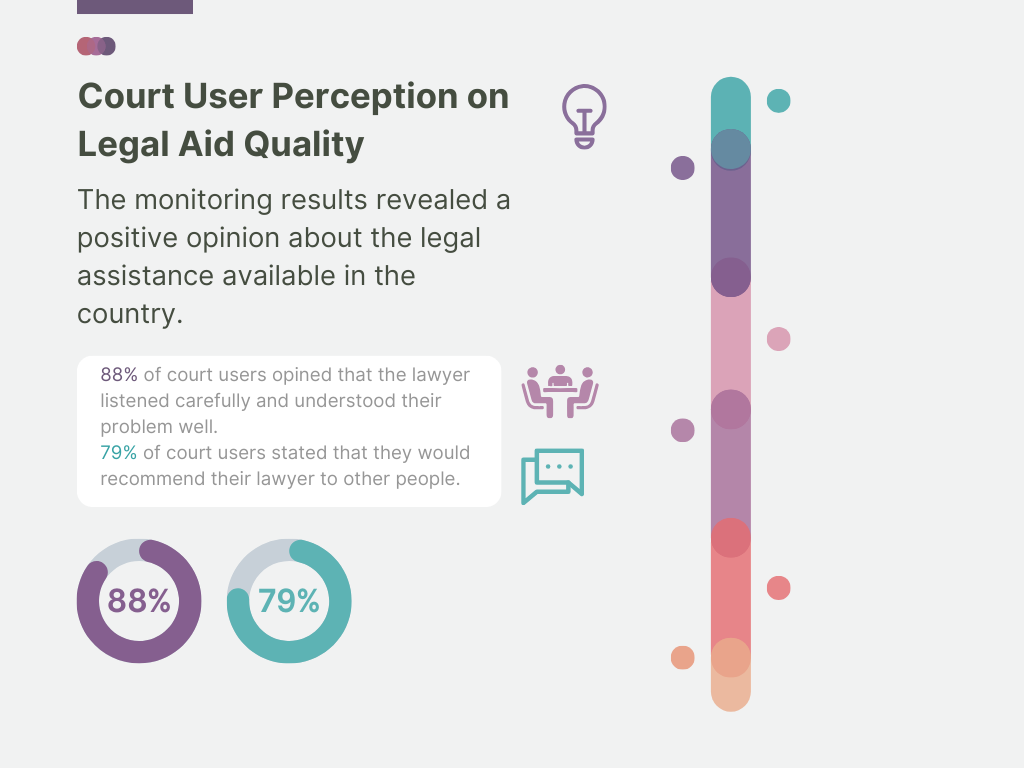
On the other hand, in some cases, when providing comments, the monitors marked that the lawyer was absent, asked to postpone the hearing due to a personal situation or due to additional time needed by the lawyer to get familiar with the case, or were not too actively involved in the proceedings. Whenever the defence attorney did not appear at the court hearing, most of the time the courts took the decision to postpone the hearing for a later date in order to guarantee the right to defend oneself in person or through counsel of one’s choice. It can also be noted, as confirmed by the monitors’ comments included in *the Trial Monitoring* results, that in some cases, the state-funded lawyer was appointed to replace the privately funded lawyer who repeatedly did not appear in the court hearing. For instance, in one of the criminal cases, the prosecutor requested the appointment of an *ex officio* attorney following the defendant's attorney's request for several hearings to be postponed. In another case, the prosecutor requested the provision of a state-funded lawyer for the next hearing in connection with the absence of lawyers.

### 3.1.2. Public Perception of Legal Aid Quality in Moldova: A Positive Overview of Court Users

The questions on the quality of legal aid were also posed to court users during *the Trial Monitoring*. Overall, the results revealed quite a positive opinion about the legal assistance available in the country.

Out of a total of 155 people were questioned, 93 people questioned were represented by a lawyer. Most of them, 72, were represented by a privately hired lawyer and 21 by a state-funded lawyer. In general, the people were positive about their lawyer and his/her efforts: 82 people (88%) opined that the lawyer listened carefully and understood the problem well.

This was also confirmed by the fact that 73 people (79%) out of the total number of people who benefited from the assistance of a lawyer stated that they would recommend their lawyer to other people.



It should be noted that such opinions correspond to the opinions of the monitors of the court hearings who monitored the court hearings in the context of this Project. As noted above, according to the monitors, in most monitored cases, the monitors considered that the lawyers were mostly well prepared.

### 3.1.3. Evolving Dynamics of Legal Services Quality in Moldova

Overall, discussing the question of legal assistance in the country (both, privately and state-funded), the vast majority of respondents in *the Expert Interviews* were of the opinion that the quality of legal services in Moldova has recently improved. The improvement in quality was explained by many factors. Some interviewed persons pointed out higher requirements regarding entrance to the profession. Expert 10 (judge) pointed out that the lawyers are very well trained, professional, prepared for their cases and punctual. The improvement was also viewed in the context of better and continuing training for lawyers. Indeed, higher requirements for entrance to the Bar, such as more stringent examinations, contribute to enhancing the quality of legal services provided by lawyers. These stringent entrance requirements help ensure that only the most competent and qualified individuals are admitted to practice law, thereby elevating the overall proficiency and competence of legal practitioners.

Many interviewed experts found that the fact that the profession was accessed by young professionals considerably affected the quality of legal services. As noted by one interviewed lawyer: *“<…> over the past 5 years, the quality has improved, because [of] <…> a new generation. A lot of very young people enter the bar, and they have a slightly different mindset than the classical one.”* On this point, it was added that *“<...> most young lawyers are quite good, they are new, innovative and working quite effectively”* (Expert 13, lawyer). The standard of work provided by young lawyers was well appreciated in comparison to the methods of work provided by lawyers having previous experience: *“<...> earlier there were quite “experienced”, so to speak, democratically, lawyers who worked 15-20 years ago in the old-fashioned way. The quality was so-so. Of course, now there are more young people who have slightly different standards. Quality has improved.”* (Expert 11, lawyer). It was also suggested that the improvements were driven by higher competition. Expert 2 (judge) noted that *“<...> young lawyers do many things; there's even competition in big cities where there are many lawyers.”*

It is essential to acknowledge that drawing broad conclusions about young and older lawyers can be overly simplistic. Both groups bring distinct strengths and experiences to the legal profession, and their contributions should be evaluated within the specific context and based on individual attributes.

The observations made by the interviewed professionals likely relate to the fact that young lawyers have recently completed their legal education and training, making them well-informed about the latest developments in law and legal practice. This underscores the importance of ongoing training for all legal professionals to ensure that their knowledge remains up-to-date.

Additionally, it is reasonable to assume that young lawyers often exhibit high levels of energy and enthusiasm in their work, which can be motivating for both themselves and their colleagues. On the other hand, older lawyers typically possess years of practical experience, having encountered a wide array of cases and situations. This wealth of experience provides them with a unique perspective on legal matters.

## 3.2. LEGAL AID

Access to justice is a fundamental human right and a cornerstone of a fair and just society. A necessary prerequisite to ensure access to justice is legal aid. Legal aid helps level the playing field by providing representation and support to those who would otherwise be unable to afford it, ensuring that everyone has an equal opportunity to defend their rights and interests in the legal system. Therefore, access to legal aid and the costs associated with litigation are critical factors that significantly influence access to justice. While a legal system may possess robust judicial mechanisms, if access to courts is excessively restricted, the possibility of obtaining quality justice becomes relatively limited.

In this Section legal aid is mostly analysed in a narrow sense[[5]](#footnote-5), focusing on the so-called second-line[[6]](#footnote-6) legal aid – state-financed legal representation in pre-trial and court proceedings.

### 3.2.1. Availability of Legal Aid in Moldova

The right to legal aid in Moldova was first recognized in 1994 when the Parliament adopted the current Constitution of Moldova. Article 26 of the Constitution guarantees the right to be assisted by a lawyer, either chosen or appointed *ex officio*. In 2007, the legal aid system in Moldova underwent a redesign with the adoption of the Law on State Guaranteed Legal Aid No. 198/2007[[7]](#footnote-7). This law was grounded on the principle that effective legal aid is a vital aspect of ensuring access to justice. The current state-guaranteed legal aid mechanism seeks to uphold the right to a fair trial, as established by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). With several changes and amendments, this law continues to serve as the primary legal document that governs the crucial aspects of legal aid in Moldova.

In Moldova, the law establishes provisions for both first-line legal aid and second-line legal aid. Second-line legal aid, also known as qualified legal assistance, is offered by public defenders who are full-time lawyers providing legal aid and receiving a fixed salary for their services. Additionally, private practitioners are also assigned to represent individuals eligible for legal aid. In Moldova, legal aid can be provided in criminal, administrative and civil cases, as well as cases of administrative offences (misdemeanours). However, there is no possibility of legal aid in mediation proceedings.

As indicated in the Annual Report of the National Legal Aid Council[[8]](#footnote-8), during 2021, a total of 61,354 cases of state-guaranteed legal aid were recorded. Out of the total 61,354 cases, 47,990 were qualified legal aid cases, and 13,364 were primary legal aid cases. Overall, there is a steady increase in the number of legal aid applications in the country. Out of the total number of cases involving the granting of qualified legal assistance, emergency legal assistance[[9]](#footnote-9) was provided in 3,524 cases. In the remaining 44,466 cases, qualified legal assistance was granted in criminal, administrative offense, and civil cases. Traditionally, criminal cases accounted for the majority, comprising approximately 82% of the total. Therefore, out of the total, 36,461 cases (82%) were criminal, 4,133 cases (9%) were civil, and 3,872 cases (9%) were administrative offense cases.

During 2022, according to the Annual Report of the National Legal Aid Council[[10]](#footnote-10), a total of 64,132 cases of granting state-guaranteed legal aid were registered, which is 2,778 more cases than in 2021. Out of the total number of 64,132 cases, 50,360 were cases of provision of qualified legal assistance, and 13,772 were cases of provision of primary legal assistance. Thus, the share of qualified legal assistance was 79% of the entire volume, and primary legal assistance accounted for 21%. Similar to 2021, a considerable number of cases were emergency legal assistance. In the other cases, namely in 46,359, ordinary qualified legal assistance was granted in criminal, administrative offences and civil cases. Same as earlier year, criminal cases predominated: 38 297 cases (82 %) constituted criminal cases, 3 975 (9 %) civil cases and 4 087 (9 %) were administrative offense cases. It can be seen, that the numbers of legal aid cases increased as compared 2021 and 2022, however, the trends remained the same.

Under Article 19 (Persons entitled to qualified legal assistance) of the Law on State Legal Aid, the following persons are entitled to second line legal aid:

* Persons who need legal aid in criminal cases where the interests of justice so require, but do not have sufficient means to pay for such services;
* Persons who need urgent legal assistance in case of application for protection measures under Article 2786 of the Code of Civil Procedure of the Republic of Moldova or Article 2151 of the Code of Criminal Procedure of the Republic of Moldova or in case of a complaint of domestic violence or sexual offence;
* Persons who are entitled to compulsory legal assistance on the basis of paragraphs (2) to (13) of paragraph (1) of Article 69 of the Code of Criminal Procedure of the Republic of Moldova;
* Persons who are entitled to compulsory legal assistance under Article 77(a) and (c) of the Code of Civil Procedure of the Republic of Moldova, as well as Article 151 of the Civil Code of the Republic of Moldova
* Persons who are in need of legal assistance in administrative, civil and administrative cases, but do not have sufficient means to pay for such services, even if the cases are legally or procedurally complex.
* Children who are victims of crime, victims of domestic violence, and victims of sexual offences are entitled to qualified legal aid, regardless of their income level.

In certain cases, provided by law, the legal aid is assigned without assessing the financial situation of the person in question. In other cases, the means criteria are applied, and a person has to show that his/her family income is below the set criteria. For instance, whenthe participation of a defence lawyer in the proceedings is mandatory, no means test is applied.

### 3.2.2. Quality of State-funded Legal Aid: Overview

One of the questions that is frequently raised regarding state-funded legal aid is the quality of services provided by lawyers who work on public funding. It should be noted that the quality of legal aid is an important international and European standard. The requirement that legal aid should be not only free but also effective started appearing in the 1990s. For example, the Basic Principles on the Role of Lawyers[[11]](#footnote-11), adopted in 1990, refers to the provision of effective legal assistance without charge for individuals who lack sufficient means to pay for such services. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems[[12]](#footnote-12), adopted in 2012 (the first international instrument entirely dedicated to the right to legal aid), emphasizes that legal aid should be accessible, effective, sustainable, and credible.[[13]](#footnote-13) In the European context, the right to legal aid was elaborated by the European Court of Human Rights (interpreting Article 6 ECHR), which also drew some guiding standards for the quality of legal aid.[[14]](#footnote-14) Moreover, the EU Directive 2016/1919 on legal aid in has dedicated Article 7 to the quality of legal aid services and training.[[15]](#footnote-15)

The quality of legal aid in Moldova was one of the questions analysed in more detail when evaluating access to justice in the country. For this purpose, a set of questions on legal aid quality was included in the *Focus Group Surveys and Expert Interviews* conducted by the Project team; legal-aid-related questions also appeared in the *Trial Monitoring* questionnaire. The objective of this set of questions was to determine whether the quality of legal aid was comparable when comparing services provided by private lawyers and state-funded lawyers and what could be done to improve it. The surveys and interviews aimed to gather insights and opinions from participants regarding their experiences with legal aid services. By comparing the quality of services provided by private lawyers and state-funded lawyers, the project sought to gain a deeper understanding of the elements of effectiveness and efficiency of legal aid and the ways to improve it in the context of Moldova.

#### 3.2.2.1. Stereotypes regarding the Quality of Legal Aid Lawyers’ Work

Societies often preserve stereotypes regarding private lawyers and state-funded lawyers in terms of their work and the quality of services they provide. Private lawyers are sometimes seen as offering higher quality services and personalized attention to their clients, as their business depends on building and maintaining a positive reputation. On the other hand, state-funded lawyers, are assigned by the state to represent individuals who cannot afford private legal representation; this assignment often happens automatically; legal aid lawyers are assigned clients mostly focusing on the workload or assignment is done on the initiative of legal aid administrator. Due to high caseloads and lower salaries, as well as arguably less pressure from the competition and less motivation, state-funded lawyers are sometimes stereotyped as having less willingness, time and resources to devote to each case compared to their private counterparts. However, these stereotypes are actively targeted by most European states seeking to ensure the quality of legal and such prejudices are being negated.

During the interviews conducted by the Project’s team in Moldova, some experts pointed out the above-noted phenomenon that state-guaranteed legal aid is still likely to be subject to negative stereotypes. One of the experts stated that *“people think that a free lawyer is a person who does not receive money and who is not interested”* (Expert 18, lawyer); another noted that *“the quality of public lawyers is lower because they do it as it was an office work. Well like any civil servant on the principle - a soldier sleeps and the service goes.”* (Expert 16, lawyer); it was even stated that *“usually the best doesn’t go there”* (Expert 8, lawyer; Expert 13, lawyer). However, it was also noted that this assessment may be peculiar only to Chisinau, where the number of businesses and private clients allows for the lawyers to focus only on privately funded cases. In smaller towns, due to a lack of businesses and financially well-established private persons, the lawyers have fewer possibilities to work only as commercial lawyers. As one expert during the qualitative interviews noted: *“Good lawyers are not looking for clients, young lawyers are enrolled there (this does not mean that they are unprepared), and this is for practice. But I proceed from the situation in Chisinau, and in the districts, there is probably everyone, because the choice of customers is not so great and the possibility of paying for services is also different*.*”*

Addressing stereotypes requires a multi-faceted approach. For this purpose, several strategies could be employed to tackle the stereotype that private lawyers offer higher quality services than state-funded legal aid lawyers. It is important to educate the public about the importance and role of state-funded legal aid lawyers in providing access to justice for those who cannot afford privately funded legal assistance. This should be done highlighting the training, qualifications, and dedication of legal aid lawyers. Sharing success stories of state-funded legal aid lawyers who have achieved positive outcomes for their clients, would also be of value.

#### 3.2.2.2. Opinions Regarding the Quality of Legal Aid Lawyers’ Services

In Moldova, a difference in work between private lawyers and state-funded lawyers was noted during the *Focus Group Surveys*. Firstly, the *Focus Group Surveys* sought to find out whether the quality standards of legal aid are similar when one compared service provided by a private lawyer and a state-funded lawyer. The results of the surveys showed a difference in attitude which is statistically significant. A large number of respondents (38%) within the group of private lawyers considered that the quality standards of legal aid similar *to a small extent*. Conversely, a large number of respondents to the survey among the lawyers providing state-guaranteed legal aid (65%) believed that the quality standards of legal aid are similar *to a large extent*.

Moreover, in the *Focus Group Surveys*, a substantial number of respondents within the group of private lawyers expressed concerns about the adequacy of representation provided to individuals who cannot afford to pay for litigation themselves. Among these respondents, 38% believed that the system provides adequate representation to some extent, while 36% believed it provides adequate representation to a small extent. This stands in contrast to the results of the survey conducted among respondents working as state-appointed lawyers. In that group, 66% of respondents believed that the system provides adequate representation to a large extent. Additionally, 28% of respondents believed it provides adequate representation to a moderate extent, and 6% believed it provides adequate representation to a small extent.

During the *Expert Interviews*, however, the experts were more moderate. Many considered that the quality of state-guaranteed legal aid has recently improved (Expert 2, judge; Expert 9, lawyer; Expert 18, lawyer; Expert 21, lawyer). Part of the experts claimed that one cannot tell the difference between a private and state-financed lawyer’s performance (Expert 17, judge). Expert 13 (lawyer) noted that *“<...> lawyers who, even if they were not contracted, represented their clients pretty well, so they broke the stereotype that if help is guaranteed, they're bad, they don't represent clients in good faith <...>.”* It should be noted that such overall positive opinions correspond to the opinions of the monitors of the court hearings who monitored the court hearings in the context of this Project. For instance, according to the monitors, in monitored civil cases where the party was represented by a state-funded lawyer (in total, 8 such cases were monitored), in general, the lawyers were closely familiar with the case materials ("fully" in 4 meetings; "partially" and "sufficiently" in 2 hearings each). In criminal cases, out of total of 68 cases where legal aid was provided, in 2 cases (3%) only, the monitors considered that the lawyer was not closely familiar with the case materials.

During the interviews, Expert 18 (lawyer) suggested that the lawyers working within the system of state-guaranteed legal aid and lawyers working on a contract basis are on parity because of a considerable number of young lawyers: *“<…> senior lawyers, with practice, are not very fond with the system and the young ones quickly catch up with the senior ones. Therefore, the overall level is increasing <...> “.* Expert 21 (lawyer) noted that a lawyer who works with state-guaranteed legal aid is more responsible in the case: *“<…> when we conclude contracts, we talk / bargain with the client, we can agree that I do only this and this, up to this stage. In the state-guaranteed legal aid system there is a contract with the state, there are regulations on what actions they must do and what the state will pay them for. And I will tell you, that the quality of guaranteed assistance has increased significantly in the last 5-10 years. <...>, I tell everyone that a state lawyer has a very high-quality approach and we have criminal cases where they seek an acquittal*.*”*

Since the state-guaranteed legal aid system is an attractive option for young lawyers, it was also noted that the young lawyers demonstrated genuine concerns with the defence of their clients. Expert 21 (lawyer) noted that *“And those who start working, young lawyers somehow created a name for themselves and between their colleagues, but also before the court. I still remember the names of all the people who were very worried about their clients, even though they were government attorneys. Progress is felt from this side. Probably, in the first instance, this is more visible <...>. “*Indeed, for young lawyers, choosing to work as state-funded legal aid attorneys offers a unique set of challenges and rewards. The caseloads of state-funded lawyers are often demanding and the portfolio includes a variety of cases and clients, which means that young lawyers have the opportunity to gain invaluable courtroom experience and sharpen their legal skills quickly.

Finally, during the interviews, the state-guaranteed legal aid lawyers were noted to ensure better organizational capacities: *“If we talk about the whole system, it's very well built by the state. I think because it goes quickly and you can be there when the law provides for the involvement of lawyers. They always come, cases do not linger and there are no problems.”* (Expert 21 (lawyer)).

However, it should also be noted that during the interviews, the passive role of the lawyers working within state-guaranteed legal aid was pointed out as a significant factor affecting the quality of legal aid by many experts (Expert 2, judge; Expert 3, judge; Expert 6, lawyer; Expert 10, judge). Expert 10 (judge) noted that *“<…> mostly those who are appointed come to the meeting unprepared and come only formally, especially in cases of domestic violence”*. Expert 3 (judge) pointed out that *“Here we have to make a distinction, that is, to analyse the cases that were with the lawyers appointed and the chosen lawyers, obviously those who are chosen have better representation. The quality of lawyers from the guaranteed assistance is generally weaker, but we must accept the fact that many defendants confess to their crime, some defendants abuse and do not work with a lawyer by appointment, and in addition, there is also the passivity of the lawyer, he has no interest, maybe of a material nature*.*”*

All this reveals that the opinions on the quality of legal aid in Moldova differ, and there is no single conclusion that could be made. Such difference of views also reflects the need to initiate a dialogue with actors across the justice system, as any diverging approach potentially signals that the level of quality and expectations in connection with the role of state-appointed lawyers is not consistent or understood in a uniform manner. It is essential to recognize that many state-funded lawyers are dedicated professionals who work diligently to provide the best possible defence for their clients.

Further efforts should be made to bridge the gap between private and state-funded legal services to ensure equal access to justice for all individuals. Firstly, as noted above, it is important to invest in continuous professional development for legal aid lawyers to keep their skills and knowledge up-to-date. This can help enhance the overall quality of services they provide. Moreover, to ensure that state-funded legal aid programs maintain high-quality standards and accountability, the legal aid administrator could implement regular evaluations and feedback mechanisms, as this helps enhance the effectiveness of legal aid services. Improving the funding and resources available to state-funded legal services are some other steps that could be taken to enhance the quality of legal representation for those who cannot afford private representation.[[16]](#footnote-16)

Quality of practice should be maintained by all lawyers, both, working as private practitioners and state-funded lawyers. In this regard, one of the respondents in the *Focus Group Surveys* remarked: *“I don’t really understand the difference in quality as it is explained; I try hard to take into account humanity, code of ethics, the law regarding the lawyer, the law regarding state defence. If I can do something more <…>, I do it.”*

### 3.2.3. Constraints to the Quality of Legal Aid

In general, the quality of legal aid may face several constraints that hinder its effectiveness in providing comprehensive legal support to those in need. One significant constraint is the limited funding and resources allocated from the state budget to legal aid provision. Moreover, legal aid lawyers may face heavy caseloads, leaving them with little time to devote to each case, potentially affecting the quality of representation. Lack of motivation and inadequate training may also impede the quality of legal aid services.

Similar concerns were noted during the interviews conducted with the Experts in Moldova. While discussing the constraints that are essential to the quality of state-guaranteed legal aid, experts were asked to assess the following factors: limited time to prepare the case; lack of financial motivation; the absence of a different approach to calculating the workload depending on the complexity of the case; lack of opportunity to work in the field of specialization; weak mutual trust between the lawyer and the client. Their opinions are discussed below.



#### 3.2.3.1. Reasonable Workload as a Condition for Legal Aid Quality

In the *Focus Group Surveys*, when assessing the quality of the legal aid system, the respondents within the group of state-appointed lawyers stressed that the legal aid system must ensure that the conditions exist, or are created for the maintenance of legal aid quality standards. Among the concerns about the effectiveness of the legal aid system, the lack of different approach towards a workload calculation with regard to the complexity of the case and limited time to prepare a case were the most stated reasons (*Focus Group Surveys for State-Funded Lawyers* shows that 49% and 39% of respondents, respectively, selected the above-mentioned reasons). During the interviews, similarly, most experts mentioned time constraints (e.g., Expert 6, lawyer; Expert 7, lawyer; Expert 16, lawyer) as a hurdle in delivering better quality legal aid.

A reasonable workload is a critical condition for maintaining the quality of legal aid services. An excessive caseload can significantly impact the ability of legal aid lawyers to deliver legal assistance of appropriate quality. When legal aid lawyers are burdened with an overwhelming number of cases, they may struggle to allocate sufficient time and attention to each client, which might potentially negatively affect the quality of representation. On the opposite, a reasonable workload allows legal aid lawyers to thoroughly analyse the complexities of each case, conduct legal research, and develop legal strategies to defend the client’s interests. It also enables legal aid lawyers to dedicate time to communication with clients, fostering a stronger attorney-client relationship and ensuring higher confidence in legal aid provision.

To ensure a reasonable workload for legal aid lawyers, various steps could be taken. From the point of administration of legal aid, it is necessary to allocate sufficient funding to the legal aid system so it can hire an adequate number of qualified lawyers. In Moldova, information regarding the number of cases in which qualified legal assistance was provided is collected for many years, and this allows for establishing the number of lawyers needed to ensure a proper workload. In addition to this, as a connected measure, it would be advisable to establish clear guidelines for determining a reasonable caseload for legal aid lawyers (a maximum number of cases one lawyer can handle in a selected time unit). These guidelines should consider various factors such as case complexity (in terms of the case volume and difficulty of legal questions it raises), the level of the court (first instance, appellate court), and the type of the case (civil, administrative, criminal). The data on the number of cases being handled by legal aid lawyers could be held in digital form, which allows legal aid administrators to check the caseload of any legal aid lawyer. The legal aid administrator should then conduct regular assessments of legal aid lawyers' caseloads to identify any excessive workloads and to avoid assigning additional cases to legal aid lawyer who has reached the maximum number of caseload.

#### 3.2.3.2. Mutual Trust between a Legal Aid Client and a Legal Aid Lawyer

Another point to be mentioned is mutual trust between a legal aid client and his/her lawyer. Mutual trust between a legal aid client and a legal aid lawyer holds significant importance in ensuring effective legal representation and directly affects overall trust in legal aid quality and the legal aid system in general. When a legal aid client trusts their legal aid lawyer, they are more likely to provide all the relevant information and details crucial to the case, and cooperate with the lawyer. This enables the lawyer to develop a comprehensive understanding of the client's situation and build a robust defence strategy. Moreover, when clients have confidence in their lawyer's abilities and commitment, they are more likely positively evaluate legal aid system in general.

In the *Focus Group Surveys for State-Funded Lawyers* conducted in the framework of the Project, 36% of respondents expressed concern that in the case of a state-appointed representation, the mutual trust between a lawyer and a client may be weak. This warns against the risks of barriers to the quality legal aid where it is provided by the state. Indeed, trust, which is at the centre of the protection of confidentiality in a lawyer-client relationship, serves the interest of the administration of justice as well as the interest of the client. This also seems to be connected with the fact that 27% of respondents indicated that there is a difference in attitude where the state-funded lawyers are mostly expected to take up a passive role.

Creating mutual trust between a legal aid client and a legal aid lawyer requires effort and commitment from both parties; however, the main role should be taken by the legal aid lawyer. In fact, it requires time and effort from a lawyer. To build client’s trust, lawyers should take time communicating with legal aid clients, communicate openly, be detailed in explaining the legal process, potential outcomes, and any challenges they may face. Clients should be allowed and encouraged to ask questions on the issues they do not understand.

To strengthen mutual trust, the legal aid client should be granted an opportunity to choose a lawyer. For instance, in Lithuania, a beneficiary has the possibility to choose a counsel he/she prefers. If a beneficiary wishes to have a counsel who is not on the list of legal aid providers, he/she should obtain permission from that counsel and submit it to the investigation officer, prosecutor, or court. In other words, a beneficiary can select any attorney-at-law in Lithuania. Regarding the scenario where the legal aid client fails to exercise their right to select a specific lawyer, the legal aid administrator should take a decision selecting the lawyer, based on the principle of equal treatment, caseload of legal aid lawyers, client’s needs (the lawyer's particular expertise, language proficiency, etc.).

#### 3.2.3.3. Remuneration of Legal Aid Lawyers

In a number of countries, legal aid lawyers receive relatively low compensation for their work (as compared to private lawyers), and such lower remuneration of legal aid lawyers poses a significant hurdle to the quality of legal aid services. This can lead to several negative consequences. Firstly, low pay discourages experienced and skilled lawyers from taking up legal aid cases. Secondly, lower pay may lead legal aid lawyers to dedicate less time to legal aid clients, as a result, this can compromise the quality of legal aid.

In the *Focus Group Surveys for State-Funded Lawyers* conducted in Moldova, the question of financial motivation turned out to be important but not decisive when one considers the most significant constraints of the efficiency of the legal aid system. Financial motivation was indicated by 30% of respondents as “very important” and by 26% – as “important”.

During the interviews, however, the vast majority of experts focused on the factor related to the insufficient pay of state-guaranteed legal aid lawyers (e.g., Expert 3, judge; Expert 4, judge; Expert 15, lawyer; Expert 16, lawyer; Expert 21, lawyer). Expert 18 (lawyer) emphasized the responsibility of the state before aggrieved individuals and legal professionals involved in the state-guaranteed legal aid system and its long-term impact on the quality of legal aid: *“*<...> *if we take a lawyer by appointment, this is a lawyer who is elected by the state to ensure the right to justice of the beneficiary and the right to a defence. <...>. But not always the system provides fair wages. <...> [the system] should help lawyers organize the process properly and fairly receive compensation for their work. Lawyers have no other income, and if he recently came to the system, then this is generally his only income and therefore, it is very important that it is fairly paid and then the system will have the moral and material right to select the best.”* A more cautious approach was presented by Expert 12 (lawyer): *“I must say that the system of guaranteed assistance should not be comfortable, it should constantly change and be equal to the changes that are taking place and adapt. Pumping a lot of money into this system, without revising the qualitative indicators, should not happen. The Council does not correspond to its role as a devotee of reforms in justice, and this is scary. Formally, everything is there: both membership and regulations on the regulations, but here's a discussion to reconsider based on what has been done, that something needs to be removed.”*

One should admit that fair remuneration is a fundamental precondition for legal aid providers' work, and the above-noted voiced concerns may be a serious barrier to the smooth functioning of the state-provided legal aid system. Many lawyers seek to ensure quality legal aid services not because of the income they receive, but because poor representation would harm the lawyer's reputation. However, low remuneration means that a large number of highly qualified lawyers refuse to provide legal assistance at all, and that at least part of the lawyers will indeed dedicate less time to poorly paid cases. In Moldova, despite different opinions provided, the remuneration of legal aid lawyers appears to be an issue of concern. As was pointed out by one of the respondents in the *Focus Group Surveys for State-Funded Lawyers*, “*Lawyers who provide state-guaranteed legal aid are poorly remunerated, respectively the quality of services can be poor. There is no predictability in terms of the work you do and the remuneration you will get, for the reason – consultants can write off certain actions and not pay them. The workload can be excessively high compared to the payment (example: studying a file of 20 volumes – remuneration 150 lei*)”.

The above-provided information reveals that the efficiency of the legal aid system could benefit from an individual approach and greater awareness of the complexity of the case when assigning cases to the lawyers and when establishing proper remuneration for legal aid lawyers. While in Moldova, there is a standard remuneration system for legal aid lawyers (established in the “Decision approving the Regulation on the amount and manner of payment for the services of lawyers providing qualified legal assistance guaranteed by the state” (No. 22 of 19 December 2008), adopted by the National Legal Aid Council), it could be additionally revised to ensure that the complexity of the case is properly taken into account and the lawyers receive adequate pay for their services.

#### 3.2.3.4. Specialization of Legal Aid Lawyers

In some countries in Europe, national legal acts in force require specialisation for legal professionals working with certain cases (criminal / civil/ administrative cases) or with certain vulnerable groups (e.g., children in conflict with the law). No such legal requirement for specialisation exists in Moldova with regard to legal aid lawyers.

In the *Focus Group Surveys for State-Funded Lawyers* conducted in Moldova, legal aid lawyers’ specialization was selected as a “very important” factor in ensuring quality legal aid by 25% of respondents and as “important” – by 31%. During the interviews, the experts also could not see much negative impact related to the lack of specialization, noting that even private lawyers rarely specialize (Expert 1, lawyer). It was also highlighted that when a country is very small, it is very difficult to specialise (Expert 13, lawyer).

It has to be acknowledged that specialization of legal aid lawyers could be an advantage for delivering effective and high-quality legal aid services. When legal aid lawyers focus on specific areas of law, they can develop deeper expertise, knowledge, and experience. However, implementing specialisation of legal aid lawyers can be challenging, particularly in small countries with limited resources, a smaller pool of legal professionals, or a relatively small number of specific cases (e.g., to specialize in legal aid for of children in conflict with the law is reasonable in larger countries and cities, however, would be complicated in smaller towns).

#### 3.2.3.5. Abuse of Legal Aid as A Hurdle to an Effective Legal Aid System

The abuse of the right to legal aid presents a significant hurdle to the effectiveness of the legal aid system. While legal aid is intended to provide access to justice for those who cannot afford legal representation, some individuals may exploit this system for personal gain or other reasons.

In this regard, during the interviews conducted while implementing the Project, experts questioned the wide access to the state-guaranteed legal aid (e.g., Expert 11, lawyer; Expert 12, lawyer; Expert 14, judge). They pointed out that there are people who use the service constantly and abuse the system (Expert 11, lawyer). Expert 14 (judge) noted that there are categories of cases where a person really needs legal assistance (victims of domestic violence or children) but the inaccurate definition of people who truly needs help fails the system: *“<...> it seems to me that the cases when people need this help should be somehow distinguished from <...> [cases] where one sues a trolleybus, and we have a lot of such cases”*. It was also noted by Expert 12 (lawyer) that *“<...> there are people who paranoidly go to courts, and they take a huge amount of time from everybody. “*

To enhance the accessibility of the legal aid system for vulnerable groups and prevent instances of abuse, it is essential to strengthen the implementation of merit-based assessments to determine eligibility for legal aid. This approach aims to ensure that those genuinely in need of legal assistance receive the support they require while deterring potential misuse of the system. Various measures can be employed to achieve this goal. For instance, the Law on Legal Aid can include a provision stating that legal aid will not be granted if the cost of providing assistance is disproportionately high compared to the claim amount (a provision found in Latvia, Sweden, and the United Kingdom (England and Wales) legal frameworks). Another effective tool is to assess the viability of legal representation in the proceedings. Viability criteria can be established by seeking the opinion of a state-funded lawyer to ascertain if the applicant's claims are not manifestly unfounded or by checking for any obvious procedural violations (e.g., expired time limits for lodging complaints). When deciding on granting secondary legal aid, the National Legal Aid Council should have the authority to request a public defender's opinion on whether there are grounds for denying secondary legal aid based on the aforementioned considerations. Moreover, legal regulations may limit legal aid in situations where the applicant is claiming non-pecuniary damage to their honour but has not suffered any pecuniary damage (an example from Lithuania). By implementing these measures, the legal aid system can better serve those in need and maintain the integrity of the assistance provided.

Moreover, as recommended in Component 2 of this Project, a law-based model for dealing with situations where a person applies for legal aid in multiple cases should be considered. In this regard, please refer to the Report with Recommendations on Setting up the Mechanism of the Partially Financed State Legal Aid in Moldova[[17]](#footnote-17), and the respective drafts of national acts that were elaborated in Component 2.

### 3.2.4. Evaluating Legal Aid Quality

The state-guaranteed legal aid relationship is specific: it involves the legal aid client, the legal aid lawyer and the state represented by the delegated authority. In this relationship, entities that are guided by different and even contrasting principles in their activities come into contact. In particular, this issue becomes apparent when the principles of independence and autonomy of lawyers, the confidentiality of the client-lawyer relationship on one side and the principle of public interest on the other side compete. Such a competition between these principles is especially relevant when we talk about the evaluation of the quality of lawyers' legal assistance.[[18]](#footnote-18)

Assessment of the quality of legal aid is one of the main methods of ensuring the effectiveness of legal aid. European states apply various mechanisms for evaluating the activities of lawyers in providing legal aid, including, but not limited to, analysis of complaints, surveys, and peer review. While probably the most common tool for quality review is complaints of legal aid recipients, the most advanced is, allegedly, the individual performance audit of lawyers’ work (peer review).[[19]](#footnote-19) On the other hand, a detailed assessment of lawyers' activities inevitably raises questions as to whether monitoring their activities is not an intervention that violates the independence of lawyers and the confidentiality of the client-lawyer relationship. In the first case, at least in the majority of countries with continental law, the principle prohibiting the intervention of external entities in the activities of lawyers is strictly observed, in the second case, any detailed individual assessment of the case of the lawyer's activity is inevitably related to the client interests and sensitive information provided by the client to the lawyer. [[20]](#footnote-20)

The questions on monitoring of quality requirements of legal aid were also included in the interviews conducted by the Project team. The experts have expressed their views with regard to existing monitoring and quality evaluation mechanisms which also reflect the above-noted need to balance the principles of a lawyer’s independence and confidentiality of the client. In particular, this question is regulated in the “Resolution approving the Regulation on monitoring the quality of state-guaranteed qualified legal assistance provided by lawyers” (No. 20 of 25 June 2015) adopted by the National Legal Aid Council.

According to Expert 18 (lawyer), the monitoring measures taken in the past proved to be successful: *“We conducted monitoring of the quality of advocacy, within the framework of which we monitored the implementation of mandatory standards, we did not delve into the tactics, each lawyer decides for himself how to act. But if he does not take certain measures (mandatory), then this indicates violations, for example, <...> whether the lawyer was at that hearing or not. Additionally, the monitoring checked how the defence case is drawn up, that is, the papers that the lawyer himself collects: requests, statements, notes, etc. This monitoring was done about 4 years ago, then similar checks were not carried out. But it was a tough push for all lawyers to bring order to their cases <...>.”*

Currently, in Moldova, the supervision of legal aid quality remains relevant and necessary. However, there appears to be some uncertainty as regards the competence of institutions to supervise the provision of legal aid. Moreover, there are also signs that a more robust approach towards quality review is needed. For instance, Expert 21 (lawyer) noted that the complaints about the quality of lawyers' services for guaranteed assistance should not be overlooked: *“<...> [they] need to be carefully considered, because sometimes they do not like the way the application was written or that they did not ask a question at the hearing. These are the quality issues that the National Council for Guaranteed Assistance should consider, and other ethical violations are already within the competence of the disciplinary and ethical commission of the Union of Lawyers. And unfortunately, recently, we have been receiving replies from them that the Council may not interfere in the activities of lawyers. Yes, it is prohibited, but you have a contract with the state and it states what a lawyer should do and you should monitor this, monitor the quality.”*

In order to ensure the balance of the above-discussed principles of lawyer’s independence, confidentiality of the client-lawyer relationship, and the need to ensure the quality of legal aid and its monitoring, it is recommended to evaluate the national legal regulation of the confidentiality principle in terms of protection and, if necessary, to establish legal mechanisms for the protection of confidentiality, making it possible to implement measures for the evaluation of lawyers' performance (for example, to provide for conditions such as the client's consent, the decision of the Bar, as well as clear and objective evaluation criteria and mechanisms). As regards lawyers’ independence, when improving the legal aid quality monitoring mechanisms, it is advisable to seek consensus and compromise with the Bar. It is most appropriate that the more robust legal quality review is implemented by the community of lawyers (the Bar) themselves. Alternatively, the Bar should be included with equal decision-making rights in the process of ensuring and evaluating the quality of legal aid.[[21]](#footnote-21) It should be noted that the current legal framework in Moldova provides the legal basis for the involvement of the Bar (Article 10 of the Law on Legal Assistance of Moldova provides that the Union of Lawyers from the Republic of Moldova and the Bar Associations participates in establishing the criteria for evaluating the quality of legal assistance, and participates in monitoring the activity of lawyers who provide such assistance).[[22]](#footnote-22)

## 3.3. LITIGATION COSTS AND THEIR RECOVERY

Access to justice is not solely about having rights established in legal acts – it also involves the practical ability to enforce those rights. Litigation costs and their recovery are important elements when analysing access to justice as they can significantly impact an individual's ability to pursue their legal rights in courts. Litigation can be expensive, involving court fees, lawyer’s fees, expert witness costs, and other expenses. For many individuals, especially those with limited financial resources, these costs can act as significant barriers, preventing them from seeking legal redress.

Recovering litigation costs, particularly from the losing party, can help level the playing field and ensure that the prevailing party is not burdened with the entire financial cost of the legal proceedings. This can encourage individuals to assert their rights and seek justice, knowing that they will not be left with legal expenses if they win their case. Additionally, cost recovery mechanisms can deter frivolous claims, preventing abuse of the legal system and promoting the fair administration of justice. By carefully balancing the recovery of litigation costs and providing access to legal aid, the legal system can uphold the principle of access to justice and protect the rights of all individuals, regardless of their financial means.

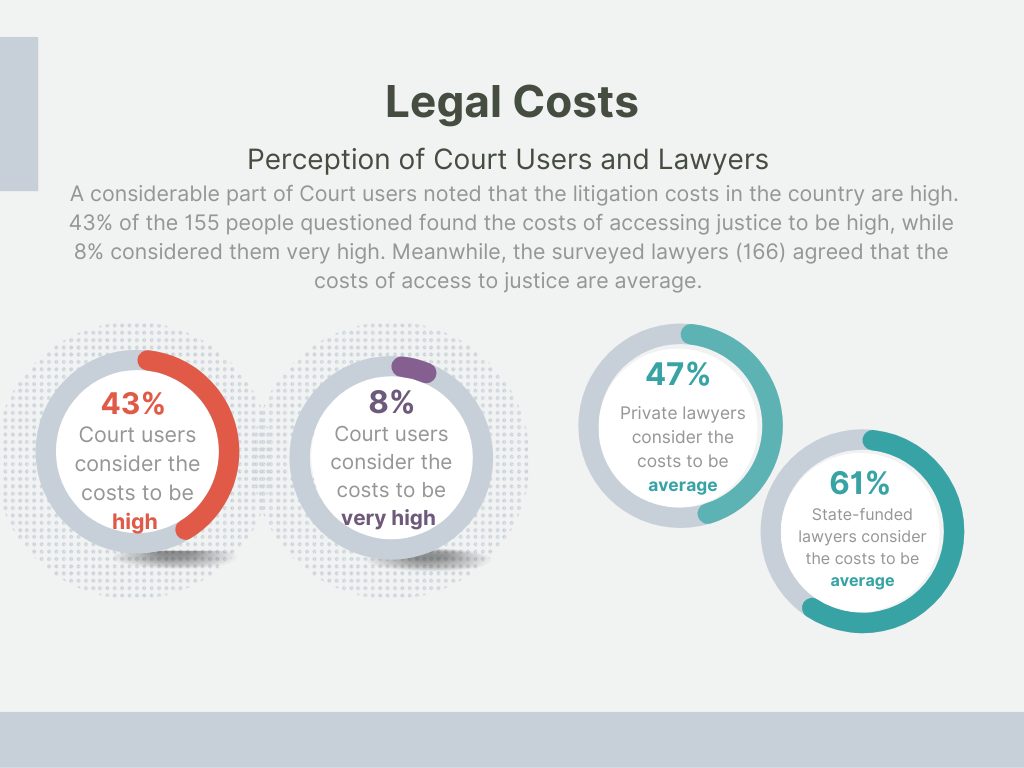
### 3.3.1. Litigation Costs

Legal costs in litigation are often significant and can be the cause of real concern for access to justice. Litigation costs might create financial barriers, imbalances of power, and a chilling effect, deterring individuals with limited resources from seeking legal remedies. The amount of costs assessed in the light of the particular circumstances of a given case is a material factor in determining whether or not a person enjoys the right of access to a court. What is more, where the case law on costs awards is not sufficiently clear, it may also have an adverse effect discouraging potential litigants from bringing actions before the courts.

The views towards legal costs in Moldova were assessed in the Project. Questions on legal costs were posed to participants of the *Focus Group Surveys*, to court users, during the interviews, as well as monitored analysing court decisions.

In the *Focus Group Surveys*, the surveyed lawyers agreed that the costs of access to justice are average. This was noted by 47% of respondents within the private lawyers’ group (78 private lawyers participated in the survey), and 61% of respondents within the state-appointed lawyers’ group (88 state-appointed lawyers participated in the survey). As a result, at this point, the results did not warn against risk where high litigation costs may hinder access to justice. Only 6% of respondents within the private lawyers’ group and 3% of respondents within the state-appointed lawyers’ group considered the costs of access to justice to be high.

The questions on the litigation costs were also posed to court users during *the Trial Monitoring*. Overall, a considerable part of respondents noted that the litigation costs in the country are high. In particular, in the opinion of 43% of the people questioned (in total, 155 persons were questioned), the costs of access to justice are high.



According to the respondents (*Court Users Surveys*), lawyer expenses (39%) and travel expenses (33%) affected access to justice the most (5 on a scale of 1 to 5, with 5 indicating "To a very large extent" and 1 indicating "To a small extent."). Based on the data collected regarding the impact of various costs on access to court, several additional conclusions can be drawn:

**1. Court Fees.** A significant portion of respondents (21%) indicated that state taxes had a substantial impact on their access to court. This suggests that the financial burden imposed by state taxes is a concern for a substantial portion of court users.

**2. Lawyer Fees.** Lawyer fees were perceived as a significant barrier to access to court, with 39% of respondents rating them as having an impact to a very large extent. This underscores the importance of addressing the affordability of legal representation for court users.

**3. Evidence Collection Costs**. The costs associated with evidence collection were rated as having a substantial impact by 14% of respondents. This highlights the financial challenges individuals face when gathering evidence to support their cases.

**4. Travel Expenses.** Travel expenses were another significant concern, with 33% of respondents rating them as having an impact to a very large extent. This indicates that the geographic accessibility of court facilities is a consideration for many court users.

In summary, the data reveals that a substantial number of court users face financial barriers when seeking access to justice, particularly concerning state taxes, lawyer fees, evidence collection costs, and travel expenses. These findings underscore the importance of addressing these cost-related challenges to ensure equitable access to the legal system.

A directly related question is the recovery of legal costs, which is analysed in the following section.

### 3.3.2. Recovery (Reimbursement) of Legal Representation Costs

To shed light on the frequency and patterns of recovery of legal representation costs before the courts, this sub-section presents an analysis of relevant data. This analysis focuses on first-instance, appellate, and cassation cases, offering insights into the diverse landscape of reimbursement requests across different types of legal proceedings.

#### 3.3.2.1. Frequency of Applications Submitted to Reimburse Legal Costs

To establish how often the question of recovery (reimbursement) of legal representation costs is analysed before the courts, respective questions were included in the *Monitoring of Judicial Decisions.*

Regarding the reimbursement of legal representation costs, it was established, that in most first-instance cases (228 cases or 79% out of the total of 287 analysed court decisions), the parties did not request reimbursement of representation costs. In 59 (21% out of the total of 287 analysed court decisions) cases, the parties requested reimbursement of representation costs.

The data reveals significant variations in the application for reimbursement of legal representation costs across different types of cases. While a notable portion of parties in civil cases pursued reimbursement, the rates were considerably lower in criminal, administrative, and administrative offenses cases:

**1. Civil Cases.** In civil cases, 43 parties out of a total of 99 (43%) applied for reimbursement of legal representation costs. This indicates that a notable portion of parties involved in civil litigation sought to recover their legal expenses.

**2. Criminal Cases.** In criminal cases, only 3 out of 63 parties (5%) applied for reimbursement of legal representation costs. This suggests that the majority of parties involved in criminal proceedings did not pursue reimbursement of their legal expenses.

**3. Administrative Cases.** In administrative cases, 12 out of 61 parties (20%) applied for reimbursement of legal representation costs. This indicates that a minority of parties involved in administrative cases sought to recover their legal expenses.

**4. Administrative Offenses Cases.** In administrative offenses cases, only 1 out of 64 parties (2%) applied for reimbursement of legal representation costs. This reflects a very low rate of application for reimbursement in this category of cases.

As to the appellate courts, the numbers were similar. In most cases (48 cases or 80% of the total of 60 analysed court decisions), the parties did not request reimbursement of representation costs; and only in 12 (20%) cases, the parties requested reimbursement of representation costs.

In cassation cases, in most cases (43 cases or 81% of the total of 53 analysed court decisions), the parties did not request reimbursement of representation costs; and only in 10 (19 % of the total of 53 analysed court decisions) cases, the parties requested reimbursement of representation costs.

It can be seen that the number of cases in which recovery of legal representation costs is sought is small. While in civil cases, the number is slightly higher, in other types of cases requests to recover legal costs are relatively rare. It is thus likely that part of requests to recover legal representation costs are submitted as separate claims before the courts. Such an approach might result in a significant burden on the already strained judicial infrastructure, increasing caseloads and delays, and placing added pressure on court resources. It is thus advisable to re-evaluate the current practice and put efforts into solving the question of recovery of legal costs in the main cases.

#### 3.3.2.2. Overview of Outcomes of Applications to Reimburse Legal Costs

Regarding the granting of legal representation costs by the courts of first instance, in 32 cases (54% out of the total of the 59 court decisions where the parties asked for reimbursement of litigation costs) the lawyer's fee was granted; in 12 (20%) cases, the judge did not reimburse the representation expenses; in 15 (25%) cases – other requests were made. 228 (80%) of the monitored decisions were irrelevant, as no reimbursement was asked.

In the appellate instance, if the parties have requested the reimbursement of representation expenses: in 9 (75% out of the total of 12 court decisions where the parties asked for reimbursement of litigation costs) cases, the lawyer's fee was granted; in a single case (civil file), the judge did not reimburse the representation expenses. 48 (80%) of the monitored decisions were irrelevant as no reimbursement was asked.

In cassation cases, if the parties have requested the reimbursement of representation expenses: in 6 (60% out of the total of 10 court decisions where the parties asked for reimbursement of litigation costs) cases the lawyer's fee was granted; and in 4 (40%) cases, the judge did not reimburse the representation expenses. 43 (81%) of the monitored decisions were irrelevant, as no reimbursement was asked.

In the *Focus Group Surveys*, the views of the legal aid lawyers (88 private state-appointed lawyers participated in the survey) and private lawyers (78 private lawyers participated in the survey) were similar, and they expressed similar views with regard to recovery of litigation costs. In particular, 73% of respondents among private lawyers and 74% of respondents among state-appointed lawyers mentioned that the winning party can partially recover the legal fees. Nevertheless, only 9% of respondents within the group of private lawyers and 8% of respondents within the group of state-appointed lawyers indicated that the courts’ practice on the recovery of litigation costs is foreseeable and transparent while 38% of respondents among private lawyers and 48% of respondents among state-appointed lawyers believed that the practice needs to be improved.



#### 3.3.2.3. Court Reasoning for Addressing the Question of Legal Costs

To receive more detailed and specific comments, in the *Expert Interviews*, the experts were asked to discuss how the “loser pays” rule is implemented in the judicial practice and whether an award of costs in litigation for the winner is always at the discretion of the court. The experts were asked about the formal (e.g., conduct of the parties, the complexity of the case) and informal (e.g., remuneration scale for legal professions) factors in deciding what costs should be reimbursed (*Expert Interviews*).

Starting with the legal framework, it should be noted that Article 96 of the Code of Civil Procedure of the Republic of Moldova establishes that only real and necessary expenses should be compensated. It was pointed out that Article 90 of the Code of Civil Procedure, which provides for the court's right to reduce the compensation of legal expenses, is a central factor for discussions. Expert 16 (lawyer) noted that this Article *“*<...> *is an inexhaustible source of interpretation. Everyone disagrees with it, and each judge has his own assessment. That's why there are no criteria, and they remain at the discretion of the judge. We thought to set some percentage quota - no more than 50 percent, but it can still be very much, and it can be unfair to the losing party. Why? Because the freedom to pay for the services of a lawyer is a contractual freedom. And there are no limits, and if I want to come to court in such an expensive car and with such an expensive lawyer, this is my problem. It shouldn't be the problem of the one I'm narrowing down on because the roof has leaked and the price of the lawsuit is proportionately less. So, I guess the lawyers are a little disingenuous here too.”*

The costs of legal services are further regulated by the recommendations adopted by the Union of Lawyers of Moldova – the “Decision of the Council of the Union of Lawyers No. 19-02 / 27.05.2022 on recommendations on the amount of fees for lawyers and compensation by the courts for the costs of legal assistance”. Nevertheless, their application in judicial practice is criticized, noting that the time before the hearing and the time for drafting the request is not taken into account.

In this regard, the Expert 18 (lawyer) proposed to introduce a respective regulation at the governmental level: *“We also very systematically issue a recommendation on the fees, how much an hour costs, a ban on the success fee, the minimum cost of the contract (5000 lei), but no judge will award such an amount. If there was a recommendation for judges: follow the recommendation on the fees of lawyers and so charge or make a system similar to bailiffs who have prices indicated at the level of government resolutions, they make an inventory (list) of actions and their cost, and they review tariffs every year or every 2 years, and no one can award them less. Maybe the Department of Justice could make such a recommendation for lawyers and specify a lower limit of tariffs so that judges cannot lower below the lower limit.”.* Similar approach was suggested by Expert 21 (lawyer): *“Many agree [on] some minimum amount (this is like in Romania) <...> established by the government <...>. “*

Against this background, it was noted that Moldovan judges make “*absolutely discretionary reimbursement of expenses, especially on lawyer's fees*” (Expert 8, lawyer). According to Expert 11 (lawyer), *“<...> we do not have a fairly clear concept of how to calculate court costs, and the fact that I see is that the judge does it by personal discretion*.*”* Experts practising as lawyers pointed out that the reasoning of the assessment regarding the compensation of litigation expenses is often insufficient. This adds up to the dissatisfaction of both clients and lawyers providing them with legal services. As explained by the Expert 21 (lawyer), often the judges raise abstract ground to reduce the legal expenses: *“We already have problems where one writes complaints against a lawyer so that the lawyers return the difference. Because the judge decided that “enough was enough.”* Moreover, this leads to further judicial proceedings: *“I have seen such situations when an appeal is filed only because legal costs are not fully reimbursed”* (Expert 11, lawyer).

Among informal factors impacting the amount of recovered costs, experts highlighted the subjectivism driven by the comparison of salaries received by the legal professionals across the system of justice (Expert 8, lawyer; Expert 15, lawyer). Expert 18 (lawyer) explained: *“A judge cannot admit that a lawyer can get more. He has a higher qualification being a judge, this is the pinnacle of the legal profession; how can some lawyer, also a young one, get more”*. The same approach was highlighted by Expert 13 (lawyer), noting that *“judges always compare the lawyer's salary with their salary”*. Expert 11 (lawyer) pointed out that *“*<...> *judge does not understand that from this fee the lawyer must pay himself for a secretary, an accountant, they constantly pay taxes, pay rent, pay for their training and so on*.*”*

Interviews also revealed that there is no single approach to the standard of documentation capable of proving the expenses. In this regard, experts pointed out that there are no guarantees even in the cases where they show expenses and attach detailed reports (Expert 13, lawyer; Expert 21, lawyer). On the one hand, it leads the lawyers to adopt a position, *“Let's ask for more; they will give less anyways”* (Expert 12, lawyer; Expert 19, judge). On the other hand, it was noted that the lawyers fail to document the expenses adequately: *“<...> we don't have a culture of documenting the services that are provided”* (Expert 11, lawyer).

Under these circumstances, it seems that the question of recovery of litigation costs often is followed by implicit reasoning. The representatives of the judiciary explained that among many other factors (complexity, volume, attendance, category of the case, number of mistakes, inflation), they take account of a respective standard of living: *“<...> if a person wants to pay 2000 Euro for a case, this is his decision, but we know what category of complexity this case belongs to*.*”* (Expert 14, judge).

Concerns related to the unfair treatment of losing party and difficulties in recovering large sums were voiced by many experts. The Expert 12 (lawyer) explained: *“They ask for this money from the losing side, so why do you think that the losing party has such money? And in that sense, I understand the judges; they can't award big ones without being sure that the other side will be able to pay.”*

Experts were also asked to share their opinion and experience on the stability and predictability of judicial practice insofar that potential litigants may reliably envisage the financial burden after the conclusion of proceedings. Experts admitted that the judicial practice is not stable (Expert 1, lawyer; Expert 3, judge; Expert 8, lawyer; Expert 10, judge) and is underdeveloped, especially in the sphere of criminal law (Expert 3, judge). One expert ironically pointed out that the predictability is of a relative nature: *“I think [the practice] is predictable for a lot of attorneys. There is a high probability that you will not be satisfied with the decision.”* (Expert 6, lawyer). According to Expert 10 (judge), *“[the practice] can't even be unified, because every judge, you know, evaluates based on the situation, on the circumstances, on certain circumstances, and even if the cases are similar, some of the circumstances may be different, and you see that the colleagues in the Court of Appeal are also different, and the judges in the Supreme Court also think differently*.*”*

It should be noted that the lack of clarity of establishing **the legal basis for the reimbursement of representation costs and argumentation** of the courts were also analysed in the *Monitoring of Judicial Decisions*. Below, the outcome of the analysis of first-instance courts’ and appellate courts' decisions’ is presented separately.

As regards the first instance courts’ decisions, in most cases where reimbursement of costs was asked (in 31 cases), the court specified the rules of procedural law, according to which the specific amount is reimbursed. In 4 cases, the court indicated the recommendations, according to which the specific amount is reimbursed. However, in 3 cases (1 civil case and 2 administrative), the court did not specify the concrete legal basis. In 4 cases – other reasons appeared. It has to be noted that 245 of the monitored decisions (85% out of the total of 287 analysed court decisions) were irrelevant in this case as no reimbursement was asked. Moreover, this analysis does not allow to evaluate to what extent the reference to the legal act was enough to explain if and to what extent the legal costs were reimbursed.

As to appellate courts’ decisions, in 8 cases, the court specified the rules of procedural law, according to which the concrete amount is reimbursed; in one case (civil file), the court indicated the recommendations, according to which the specific amount is reimbursed. Only in one case (criminal case), the court did not specify the concrete legal basis; In 1 case – other reason was noted. 49 of the monitored decisions (82% out of the total of 60 analysed court decisions) were irrelevant in this case.

Similarly, in cassation, in most cases where reimbursement of costs was asked, the court specified the rules of procedural law. This happened in 4 cases, where the court specified the rules of procedural law, according to which the concrete amount is reimbursed; in one case (civil file), the court indicated the recommendations, according to which the specific amount is reimbursed; and in one case (1 criminal case), the court did not specify the concrete legal basis. 47 of the monitored decisions (89% out of the total of 53 analysed court decisions) were irrelevant for this question.

#### 3.3.2.4. Calculation of Legal Costs to be Reimbursed

The analysis in *the Monitoring of Judicial Decisions* also allowed to verify for what **type of claims the costs were reimbursed**. It was noted that in most cases, reimbursement was made for a claim or a counterclaim, for an appeal and for hours of compensation.

Based on the analysis of the reimbursement of legal representation costs in different types of courts, it should be noted that in the majority of first instance cases across civil, criminal, administrative, and administrative offenses, the reimbursement of legal representation costs was deemed not relevant to the specific case. This accounted for 91% of cases in total. Only a small percentage of cases (3%) involved the reimbursement of costs for a claim or a counterclaim, appeal (3%) and in few cases reimbursement of costs for the objection to the claim and for appeal, if the same lawyer has appeared before the court of first instance.

Similar to first-instance courts, in appellate courts, the majority of cases (82%) did not involve the reimbursement of legal representation costs as it was considered not relevant to the specific case. A small percentage of cases (5%) in appellate courts resulted in the reimbursement of costs related to legal consultations, representation in court, preparation for court proceedings, and similar services. Additionally, 6% of cases involved reimbursement for other types of costs.

In cassation courts, the majority of cases (89%) did not lead to the reimbursement of legal representation costs, as it was deemed not relevant to the specific case. A small percentage of cases (6%) in cassation courts resulted in the reimbursement of costs related to legal consultations, representation in court, preparation for court proceedings, and similar services. Additionally, 2% of cases involved reimbursement for other types of costs.

In summary, the analysis shows that the reimbursement of legal representation costs varies across different types of cases and courts. In the majority of cases, such reimbursement was considered not relevant. However, in a small percentage of cases, costs related to legal consultations, representation, and preparation for court proceedings were reimbursed, along with some cases involving other types of costs.

As regards the **calculation of the amount of legal costs**, in all cases where reimbursement of costs was asked (30 cases), the first instance court did not calculate the exact duration of the legal assistance provided and only indicated the amount to be granted to the lawyer.

In appellate courts, in all 9 cases where reimbursement of costs was asked, the court did not calculate the exact duration of the legal assistance provided and only indicated the amount to be granted to the lawyer.

In cassation, the same trend appeared. In all 4 cases where reimbursement of costs was asked, the court did not calculate the exact duration of the legal assistance provided and only indicated the amount to be granted to the lawyer.

Having in mind the critics expressed by the experts during the interviews that was discussed above, an interesting point included in the courts’ cases analysis was the indicators that the court took into account when determining the amount of reimbursement for legal assistance.

Based on the analysis of the **factors considered by the court in determining the amount of reimbursement for legal services**, it should be noted results demonstrated similar trends across first instance courts, appellate courts and cassation court.

The analysis of 61 relevant decisions[[23]](#footnote-23) reveal that the courts of first instance took into factors such as the complexity of the case, legal services, special knowledge, previous lawyer involvement, amount of the dispute, and other relevant circumstances were considered by the court in determining the reimbursement for legal services:

*1. Complexity of the Case.* In 15 cases, the complexity of the case was taken into account as a factor in determining the reimbursement amount.

*2. Complexity of Legal Service.* Similarly, in 7 cases, the court considered the complexity of the legal services provided as a relevant factor in determining the reimbursement.

*3. Special Legal Knowledge.* The need for special legal knowledge was considered in 3 cases as a factor affecting the reimbursement amount.

*4. Previous Involvement of the Same Lawyer.* In 1 case, the court took into account the previous (repeated) involvement of the same lawyer in the case as a factor influencing the reimbursement.

*5. Amount of the Dispute.* In 3 cases, the amount of the dispute was considered by the court when determining the reimbursement amount.

*6. Continuity and Nature of Legal Services.* The continuity and nature of the provision of legal services were considered in 2 cases as factors affecting the reimbursement.

*7. Novelty of Legal Issues.* In 4 cases, the novelty of the legal issues to be addressed was taken into account by the court.

*8. Conduct of the Parties.* In 1 case, the court considered the conduct of the parties in the proceedings as a relevant factor influencing the reimbursement.

*9. Lawyers' Working Time.* The working time of lawyers was considered in 7 cases as a factor affecting the reimbursement amount.

*10. Other Relevant Circumstances.* In 18 cases, other relevant circumstances not specified in the listed indicators were taken into account by the court in determining the reimbursement.

In the appellate instance courts decisions, out of 19 relevant court decisions, in 5 cases, the complexity of the case was taken into account. In 3 cases, the complexity of legal services was taken into account; in one case, the need for special legal knowledge (civil file), the continuity and nature of the provision of legal assistance (civil file), the novelty of the legal issues addressed (civil file) and the working time of the lawyers were taken into account; In 7 cases, other relevant circumstances were taken into account. 41 (68% out of the total of 60) of the monitored decisions were irrelevant in this case.

In cassation, out of 10 relevant court decisions, in 2 cases each (civil and criminal file), the complexity of the case and the complexity of the legal services were taken into account. In one case (civil files), the value of the litigation and the working time of the lawyers were taken into account. In 4 cases, other relevant circumstances were taken into account.

*Overall,* the analysis presented above reveals the need to improve the litigation costs’ recovery mechanism in Moldova. The lack of clarity adversely affects both parties involved in legal proceedings, as the ambiguity surrounding the process of recovering litigation costs creates uncertainty and insecurity for litigants. This might result in a situation where the plaintiffs may be hesitant to pursue valid claims if they are unsure about the potential financial implications of an unsuccessful case, while defendants might be deterred from defending their rights due to fears of incurring substantial costs.

Additionally, the problematic nature of the current litigation costs recovery mechanism extends to lawyers representing their clients. Uncertainty regarding the potential recovery of costs can complicate fee arrangements and make it difficult for lawyers to provide accurate cost estimates to their clients. Moreover, this lack of clarity can lead to disputes between lawyers and clients over fees and payment arrangements, hindering the provision of legal services.

To ensure a fair and transparent process, there is a need for clearer and more well-defined principles guiding the recovery of litigation costs in Moldova. While judges should have some margin of appreciation to consider the specifics of each case, establishing and adhering to consistent and understandable principles would enhance predictability and fairness, promoting access to justice for all parties involved in legal disputes. In this regard, guidelines adopted by the Supreme Court could be particularly useful as they are a powerful tool to ensure unified practice across the country.

## 3.4. PECULIARITIES OF THE PROTECTION OF VULNERABLE GROUPS

Vulnerable groups before the courts refer to segments of the population that are more susceptible to experiencing disadvantages, discrimination, and unequal treatment within the legal system. Vulnerable groups, such as minors, minorities, people with disabilities, immigrants, underprivileged individuals, and victims of domestic violence, often encounter systemic barriers that hinder their ability to navigate the legal system effectively. These individuals may lack the financial means to afford legal representation, may have a limited understanding of their rights and legal processes, or may fear retaliation or discrimination. They often face barriers that hinder their ability to access justice, receive fair treatment, and fully exercise their rights within the court system.

### 3.4.1. Vulnerable Groups before the Courts

When analysing the data of *the Trial Monitoring* conducted in the context of the Project, it can be noted that only a minor part of monitored court hearings included the direct participation of vulnerable persons with physical disability[[24]](#footnote-24). In the overwhelming majority (273 (97%) out of the total 281 monitored cases) of the court hearings in the monitored civil cases, no such vulnerable persons participated. In the monitored administrative cases, in 109 (97% out of the total of 112 monitored cases) of the court hearings vulnerable persons did not participate. Likewise, in the majority (124 (98%) out of the total 126 monitored cases) of the court hearings in the monitored administrative offences cases, no vulnerable persons participated. Similar trends were noted in criminal cases: in the majority (269 (96%) out of the total 281 monitored cases) of the court hearings in the monitored criminal cases, no vulnerable persons participated.

When people with physical disabilities and other vulnerable individuals participated in court hearings, in some monitored cases, assistance was provided to them. In civil cases, in one case, assistance was provided to a vulnerable person to enter the courtroom and join the proceedings (on request); in 5 cases the procedural rules were adjusted to ensure the effectiveness of the right to be heard. In the monitored administrative cases, in 2 cases no assistance was provided to enter the courtroom and join the proceedings; in 2 cases the procedural rules were adjusted to ensure the effectiveness of the right to be heard. In administrative offences cases, in 5 cases the procedural rules were adjusted to ensure the effectiveness of the right to be heard. In the court hearings in criminal cases, assistance was provided to enter the courtroom and join the proceedings in 12 cases. In 29 cases the procedural rules were adjusted to ensure the effectiveness of the right to be heard.

#### 3.4.1.1. Physical Obstacles to Access to Court Rooms

Physical obstacles to accessing courtrooms pose a significant challenge to people with physical disabilities. Inadequate facilities, lack of ramps or elevators for individuals with mobility impairments, and inaccessible entrances can create barriers that hinder the participation of people with disabilities. Whether such obstacles exist and what efforts are taken to ensure access to court hearing for all, was analysed in the monitoring of court hearings.

As regards physical entering the courtroom, some courts in Moldova had a ramp at the entrance to the building to enable people with moving disabilities to enter. However, in many cases access to the meeting room for wheelchair users was difficult due to the hearing being held on the second or higher floors, non-ramped stairs and obstacles such as thresholds and narrow doors. For instance, in one situation, the monitor noted that the meeting room was situated within a building block with two entrances; the primary entrance had stairs, rendering it unsuitable for individuals with disabilities; the second entrance from the courtyard was accessible via a slope up to the first floor, but the corridors were narrow, posing challenges for wheelchair movement. In several other situations, the monitors highlighted that access to the second floor was not provided for people with locomotor impairments, but access was also difficult for other people due to narrow, steep stairs, narrow and dark corridors; buildings, where the hearings were held, were not adapted to the needs of the visually impaired. Overall, in a considerable number of monitored cases, it was noted that there was no elevator, and the court hearings were held on the second or higher floors. In addition, in some cases, the elevator was not properly adapted, as the wheelchair-accessible elevator stopped on each floor of the building, but led into hallways that had locked doors and did not allow access to the court corridor.

In addition to access to premises where the court hearings are held, some monitors have also noted the shortcomings related to the courtrooms themselves. For instance, one monitor noted that if the presence of a person in a wheelchair had been required in the courtroom, he/she would not have had the space, as the courtroom was very small, and the distance between the parties to the trial and the judge was minimal. Furthermore, in some cases, it was also noted that the corridors of the court were narrow and access to the sanitary block was difficult for those with physical disability.

#### 3.4.1.2. Adjusting Procedural Rules for Vulnerable Groups in Court Hearings

Adjusting procedural rules in court hearings to accommodate vulnerable groups is often necessary to ensure the meaningful participation of these persons in court proceedings. Recognizing the diverse needs and challenges faced by these groups, including, but not limited to, individuals with physical and mental disabilities, children, the elderly, and those lacking proficiency in the language of the court, necessitates tailored adaptations.

When monitoring court hearings in Moldova, the monitors were asked to mark what measures were taken by Moldovan judges and other professionals to accommodate the needs of various vulnerable individuals that were present in court hearings. The monitors were asked to evaluate a number of aspects and to mark whether the court hearing was attended by psychologist, social worker, representative of the school in case concerning minors, interpreter, public authorities or associations working in the sphere concerning the rights of vulnerable people; whether the legal language was simplified; whether extra time was taken to explain procedural rules in a comprehensible manner; the time for debates or interviews was reduced to adjust to the position of the vulnerable people; whether special communication needs were addressed (e.g. child-friendly language used, questions put and answers submitted in writing); special physical needs were addressed (e.g., permission to sit for elderly at all times, the judge adjusted the voice tone etc.); vulnerable people attended only respective parts of the hearing; children were heard in child-friendly specialized settings or other measures were taken.

In civil cases, when the procedural rules were adjusted, the following measures were used: a psychologist (1 case), social worker (1 case), interpreter (3 cases) participated in the court session; the legal language was simplified (4 cases); additional time was given to explain procedural rules in an understandable manner (2 cases); special methods of communication were addressed (1 case); special physical needs were taken into account (3 cases); vulnerable people participated only in the respective parts of the court session (1 case); children were interviewed in a specialized, child-friendly setting (2 cases). For instance, in one case the monitor noted that the court adjusted the tone of the voice, at the request of the vulnerable person; in another case the language was simplified only after the court was amused by the defendant's wrong answer.

In the monitored administrative cases, when the procedural rules were adjusted, the following measures were used: the legal language was simplified (3 cases); additional time was given to explain procedural rules in an understandable manner (2 cases); special physical needs were taken into consideration (1 case).

In administrative offences cases, when the procedural rules were adjusted, the following measures were used: an interpreter participated in the court session in 7 cases; public authorities or associations working in the sphere concerning the rights of vulnerable people attended the court hearing in 1 case, the legal language was simplified (8 cases), extra time was taken to explain procedural rules in a comprehensible manner in 2 cases, special physical needs were addressed in 2 cases, and vulnerable people attended only respective parts of 1 hearing.

In the monitored criminal cases, when the procedural rules were adjusted, the following measures were used: remote questioning (11 cases), a psychologist (2 cases), social worker (1 case), an interpreter participated in the court session in 18 cases; the legal language was simplified (8 cases), the time for debates or interviews was reduced to adjust to the position of the vulnerable people in 1 case, special communication needs were addressed in 1 case, vulnerable people attended only respective parts of 1 hearing. In the opinion of the monitors, in general, the procedures were partially adapted for vulnerable people (120 (47%) out of the total of 281 monitored criminal cases), with the majority monitors’ comments relating to problematic physical access to courtroom.

The results of the monitoring of court hearings in which legal aid was provided (76 such cases were monitored) were comparable. The monitoring results revealed that in civil cases no vulnerable persons[[25]](#footnote-25) participated in any of the monitored court hearings. Only 3 cases, the monitors opined that the procedures are adapted for vulnerable people, for the most part. Similar to what was discussed above, the monitors noted the physical barriers to access the courtroom, such as access to the floor was not ensured for people with physical disabilities; there was no elevator; the courthouse had a ramp at the entrance to the building, but there was no elevator. In criminal cases where legal aid was provided the situation was similar. In the overwhelming majority (64 (94%) out of the total of 68) of the court hearings in the monitored criminal cases in which legal aid was provided, no vulnerable persons participated. However, assistance was provided to enter the courtroom and join the proceedings in 4 cases. In 7 cases, the procedural rules were adjusted to ensure the effectiveness of the right to be heard. When the procedural rules were adjusted, the following measures were used: remote questioning (4 cases), a psychologist (2 cases), social worker (1 case), an interpreter participated in the court session in 3 cases, and the legal language was simplified in 4 cases.

Although the instances of monitored cases involving vulnerable individuals might have been limited in number, they unveil systemic deficiencies within the judicial system that demand attention. A critical issue that stands out is the accessibility of courtrooms for individuals with motoric disabilities. The challenges that people with motoric disabilities encounter when trying to access courtrooms highlight a lack of awareness and proactive measures to ensure inclusivity. The existing court physical infrastructure often falls short in providing the necessary accommodations, thereby restricting the participation of these individuals in a fair and equal manner. In this regard, on the state level, it is advisable to implement necessary architectural modifications. This might involve installing ramps, elevators, accessible entrances, and adequate signage to guide individuals with disabilities.

Additional efforts should also be taken to address the needs of vulnerable groups when adapting procedural rules and conducting court hearings. While modifying physical infrastructure is crucial, it is equally vital to consider the procedural aspects that impact individuals with physical (e.g., hearing) or mental disabilities, children, the elderly, and those facing language barriers. This might entail providing information and posing questions in a simplified, slower, more clear manner, ensuring the availability of trained interpreters and support personnel. In this regard training of judges is of particular importance. Such training should be designed to equip judges with the necessary legal knowledge to uphold the rights of vulnerable individuals, adapt communication to their needs, prevent bias, and make well-informed decisions.

### 3.4.2. Legal Aid to Vulnerable Groups

Specific attention should be given to legal assistance for vulnerable groups before the court due to the specific challenges they face in accessing justice. Legal representation and support for vulnerable groups are essential to level the playing field and ensure that their rights are protected. However, in the case of vulnerable groups, the quality of legal assistance is even more important. Lawyers often need to spend more time and effort on cases involving vulnerable groups as they should help these individuals understand their legal rights, explain court procedures in accessible terms, and guide them through the complexities of the legal process. Moreover, often, to provide quality legal assistance, the lawyer needs to have specific legal knowledge, such as an understanding of migration law or juvenile justice.

In Moldova, in line with Article 19 of the Law on Legal Assistance, children who are victims of crime, victims of domestic violence, and victims of sexual offences are entitled to qualified legal aid, regardless of their income level. Moreover, some additional vulnerable groups (e.g., children in conflict with the law, and blind or deaf persons) have the right to mandatory legal assistance based on the Criminal Procedure Code of the Republic of Moldova. Nevertheless, the content of the legal aid in case of vulnerable groups, or specific quality criteria are not established, and, as noted above, no lawyers’ specialisation in this regard exists. The experts of this Project also did not establish the existence of comprehensive training of lawyers that would allow gaining systemic knowledge in the areas relevant to protecting vulnerable groups (it has to be admitted, though, that some specific training is provided; however, they are relatively random and just part of the lawyers follow the courses that would be relevant when protecting vulnerable clients).

In the *Focus Group Surveys for Private Lawyers and State-Funded Lawyers*, the surveys also sought to assess the procedural particularities related to the vulnerable litigants. The surveys were drafted taking considering that vulnerable groups include, but are not limited to, children, children in conflict with the law, elderly people, minorities, victims of gender-based violence, indigent persons, and people with disabilities. The analysis of the answers to the questionnaires revealed that a larger number of respondents in both groups did not believe that the national system provided for adequate procedural accommodation of vulnerable people. 58% of respondents within the private lawyers’ group (78 private lawyers participated in the survey) and 33% of the respondents within the state-appointed lawyers’ group (88 state-appointed lawyers participated in the survey) remarked that the system is adapted *to a small extent*. In general, the state-appointed lawyers provided more positive views on the matter, with 58% of respondents believing that the system is adapted to a moderate extent. In comparison, 32% of respondents within the private lawyers’ group agreed with the same statement.

Improving legal aid for vulnerable groups requires a combination of initiatives.[[26]](#footnote-26) Firstly, many vulnerable individuals may be unaware of the legal aid services available to them. Therefore, efforts should be made to inform these groups about their rights, and how to access legal assistance. Moreover, tailored training programs should be developed to address the specific needs of different vulnerable groups. Finally, during the interviews, some experts suggested that the participation of NGOs is a fine measure where the interests of vulnerable people are concerned. The Expert 3 (judge) commented that “*In my opinion, NGOs should be allowed in some more sensitive areas, such as environmental crimes, child protection, domestic violence, for these cases to be represented by these organizations, but at the moment, there is no such thing*”.

## 3.5. CONCLUSIONS AND RECOMMENDATIONS

Based on the discussions regarding access to justice within the selected areas of monitoring and evaluation, in accordance with the monitoring criteria, this section presents the overall conclusions and proposes policy recommendations.

*Legal Assistance*

**Recommendation 1:** *Implement a System of Continuous Training for Lawyers.* To ensure the quality of legal assistance and uphold the standards of the legal profession, it is recommended that a comprehensive system of continuous training for lawyers (advocates) be implemented. This system should encompass various aspects, such as legal updates, communication skills with clients, handling vulnerable groups, and other pertinent subjects. Currently, the Law on the Bar of the Republic Moldova stipulates that lawyers must dedicate a minimum of 16 hours annually to continuous learning, however, the existing control mechanisms for verifying compliance with this obligation are limited in their effectiveness. Therefore, establishment of more rigorous and effective control measures should be considered.

*Quality of Legal Aid*

**Recommendation 2:** *Raise Awareness about the Role of State-funded Lawyers.* In Moldova, stereotypes regarding the quality of legal aid were noted. Addressing such stereotypes requires a multi-faceted approach. For this purpose, it is crucial to educate the public about the importance and role of state-funded legal aid lawyers in providing access to justice for those who cannot afford privately funded legal assistance. This should be done by highlighting legal aid lawyers' training, qualifications, and dedication. Sharing success stories of state-funded legal aid lawyers who have achieved positive outcomes for their clients, would also be of value.

**Recommendation 3:** *Balance the Workload and Remuneration of Legal Aid Lawyers.* To ensure a reasonable workload for legal aid lawyers, which is important for legal aid quality, various steps could be taken. From the point of administration of legal aid, it is necessary to allocate sufficient funding to the legal aid system so it can hire an adequate number of qualified lawyers. In addition to this, as a connected measure, it would be advisable to establish clear guidelines for determining a reasonable caseload for legal aid lawyers (a maximum number of cases one lawyer can handle in a selected time unit). These guidelines should consider various factors such as case complexity (in terms of the case volume and difficulty of legal questions it raises), the level of the court (first instance, appellate court), and the type of the case (civil, administrative, administrative offence, criminal). The data on the number of cases being handled by legal aid lawyers could be held in digital form, which allows legal aid administrators to check the caseload of any legal aid lawyer. The legal aid administrator should then conduct regular assessments of legal aid lawyers' caseloads to identify any excessive workloads and to avoid assigning additional cases to a legal aid lawyer who has reached the maximum number of caseload. The complexity of the case could also be taken into account in legal aid lawyers’ remuneration system.

**Recommendation 4:** *Strengthen the Trust in Legal Aid Service.* To strengthen mutual trust, the legal aid client should be granted an opportunity to choose a lawyer. Regarding the scenario where the legal aid client fails to exercise their right to select a specific lawyer, the legal aid administrator should take a decision selecting the lawyer, based on the principle of equal treatment, caseload of legal aid lawyers, client’s needs (the lawyer's particular expertise, language proficiency, etc.).

**Recommendation 5:** *Enhance the Quality and Independence of State-Funded Legal Aid Programs.* To ensure that state-funded legal aid programs maintain high-quality standards and accountability, the legal aid administrator could implement regular evaluations and feedback mechanisms, as this helps enhance the effectiveness of legal aid services. As regards lawyers’ independence, when improving the legal aid quality monitoring mechanisms, it is advisable to seek consensus and compromise with the lawyers’ professional organisations (the Bar, the Union of Lawyers). It is most appropriate that the more robust legal quality review is implemented by the community of lawyers themselves. Alternatively, the community should be included with equal decision-making rights in the process of ensuring and evaluating the quality of legal aid.

**Recommendation 6:** *Advance Data Collection for In-Depth Analysis of Legal Aid Provision.* Data collection for the situations where legal aid was provided should be further developed. This development would enable a nuanced analysis of the specific contexts in which legal aid is sought and provided, offering insights into the demographics, types of cases, geographic distribution, and outcomes of those who access these services. A robust data collection framework can assist in identifying trends, gaps, and areas for reform, ultimately facilitating evidence-based decision-making and the allocation of resources.

**Recommendation 7:** *Strengthen Merit-Based Assessments for Legal Aid Eligibility.* To enhance the accessibility of the legal aid system for vulnerable groups and prevent instances of abuse, it is essential to strengthen the implementation of merit-based assessments to determine eligibility for legal aid. Various measures can be employed to achieve this goal. For instance, the Law on Legal Aid can include a provision stating that legal aid will not be granted if the cost of providing assistance is disproportionately high compared to the claim amount. Another effective tool is to assess the viability of legal representation in the proceedings. Moreover, legal regulations may limit legal aid in situations where the applicant is claiming non-pecuniary damage to their honour but has not suffered any pecuniary damage. Furthermore, as recommended in Component 2 of this Project, a law-based model for dealing with situations where a person applies for legal aid in multiple cases should be considered.

*Recovery of Litigation Costs*

**Recommendation 8:** *Establish Clear and Transparent Principles for Litigation Cost Recovery.* To ensure a fair and transparent process, there is a need for clearer and more well-defined principles guiding the recovery of litigation costs in Moldova. While judges should have some margin of appreciation to consider the specifics of each case, establishing and adhering to consistent and understandable principles would enhance predictability and fairness, promoting access to justice for all parties involved in legal disputes. In this regard, guidelines adopted by the Supreme Court could be particularly useful as they are a powerful tool to ensure unified practice across the country.

**Recommendation 9:** *Re-evaluate the Recovery of Legal Representation Costs in Main Cases to Alleviate Judicial Burden.* Currently, the number of cases in which recovery of legal representation costs is sought is small. It is thus likely that part of requests to recover legal representation costs are submitted as separate claims before the courts. Such an approach might result in a significant burden on the already strained judicial infrastructure, increasing caseloads and delays, and placing added pressure on court resources. It is thus advisable to re-evaluate the current practice and put efforts into solving the question of recovery of legal costs in the main cases.

*Protection of Vulnerable Groups*

**Recommendation 10:** *Implement Necessary Modifications to Enhance Access for Individuals with Disabilities.* The existing court's physical infrastructure often falls short of providing the necessary accommodations, thereby restricting the participation of these individuals in a fair and equal manner. In this regard, on the state level, it is advisable to implement necessary architectural modifications. This might involve installing ramps, elevators, accessible entrances, and adequate signage to guide individuals with disabilities.

**Recommendation 11:** *Provide Specialized Training for Judges to Address the Needs of Vulnerable Groups in Court Proceedings.* Additional efforts should also be taken to address the needs of vulnerable groups when adapting procedural rules and conducting court hearings (e.g., for individuals with physical (hearing/visual) or mental disabilities, children, the elderly, and those facing language barriers. This might entail providing information and posing questions in a simplified, slower, more clear manner, ensuring the availability of trained interpreters and support personnel. In this regard training of judges is of particular importance. Such training should be designed to equip judges with the necessary legal knowledge to uphold the rights of vulnerable individuals, adapt communication to their needs, prevent bias, and make well-informed decisions.

**Recommendation 12:** *Develop Outreach Programs and Tailored Training for Vulnerable Groups to Enhance Awareness and Access to Legal Aid.* Improving legal aid for vulnerable groups requires a combination of initiatives. Firstly, many vulnerable individuals may be unaware of the legal aid services available to them. Therefore, efforts should be made to inform these groups about their rights, and how to access legal assistance. Moreover, tailored training programs should be developed to address the specific needs of different vulnerable groups.

# 4. ADHERENCE TO FAIR TRIAL RIGHTS

This section delves into the critical aspects of ensuring fair trial rights within the judicial system. This comprehensive examination covers various dimensions of fair trial rights, ranging from civil to criminal cases, administrative offenses, and administrative proceedings.

In the following subsections, we explore key facets of these rights, shedding light on accessibility, transparency, and procedural fairness within the legal system. This analysis extends to both the conduct of oral proceedings and the overall professionalism exhibited by the courts.

As we delve into each subcategory, we explore how adherence to scheduled times, the duration of proceedings, the right to be heard, and other fundamental aspects contribute to the fairness of the trial process. Additionally, we assess the role of presiding judges and the significance of judicial deliberations, as well as the crucial phase of delivering and publishing court decisions.

Finally, this section presents respective insights in an examination of the overall effectiveness of the trial process organization, shedding light on key areas where improvements may be needed.

Through this extensive analysis, we aim to provide valuable insights and recommendations to enhance the fairness and effectiveness of the judicial system across civil, criminal, administrative offenses, and administrative cases.

The data used to evaluate the selected group of cases is drawn from *Trial Monitoring*, *Court Users Surveys*, and *Expert Interviews*. Only indicators that exhibit significant positive or negative deviations from the overall average within the respective court instance, whether at the courts of first instance or appellate instance, are incorporated into the assessment's conclusions.

## 4.1. FAIR TRIAL RIGHTS IN CIVIL CASES

This Section comprehensively analyses the critical aspects of upholding fair trial rights within civil cases. Our examination delves into various dimensions of accessibility and transparency within civil proceedings, placing special emphasis on aspects like public access, equal access, and the participation of non-governmental organizations (NGOs) in civil proceedings. Furthermore, assessment of the conduct of oral proceedings is provided, analysing factors such as timeliness, the implementation of procedural rights, and the presiding judge's role in conducting court hearings. This is followed by the monitoring analysis regarding judicial deliberations, the process of delivering and publishing court decisions, and provide certain insights about the court's professionalism in the cases under review.

*The Trial Monitoring* encompasses a sample of 281 court hearings. Out of the overall monitored hearings, a predominant majority, specifically 221 sessions (equivalent to 79%), were conducted in courts of first instance, while the remaining 60 sessions (21%) were held in appeal courts. Significantly, the bulk of these hearings, totalling 246 or 88%, took place in the courtroom.

Regarding court composition during these sessions, a significant 220 hearings (or 78% of the total) had the cases examined by single judges. In terms of experience, 184 judges (47%) had up to 10 years of tenure in their role, 114 (29%) had a tenure extending up to 20 years, and 92 (24%) had more than 20 years of experience.

Every monitored civil case hearing, all 281 of them, was conducted publicly. Additionally, a predominant 277 of these hearings adhered to a standard procedure. As for the hearings' stages, they were distributed as follows: 138 (49%) were at the examination of merits or appeal stage, 104 (37%) were at the preparatory stage, and 39 (14%) reached the pronouncement of judgment phase.

### 4.1.1. Accessibility and Transparency in Civil Cases

This Section analyses civil court proceedings with a particular focus on four critical aspects: (1) Access to Court Information; (2) Public Access to Court Hearings; (3) Equal Access ensuring Fair Treatment; and (4) NGOs Access to Courts. Each of these criteria sheds light on the state of transparency and openness within the civil proceedings, offering valuable insights into areas that require improvements.

#### 4.1.1.1. Access to Court Information

The effectiveness of the judicial system depends on its transparency and the assistance it provides to court users. This comprehensive analysis examined court schedules, the clarity of information, and staff engagement in both first instance and appellate courts. The goal was to assess current transparency standards and identify areas for improvement.

When evaluating the clarity of summonses and court information, feedback from 57 court users was collected (*Court Users Surveys*). Only 2% of participants reported being "very satisfied," while 37% were "satisfied," 53% were "average," and 7% found it "not very satisfactory." Notably, no participants were "not satisfied," and 2% marked "N/A," indicating they either lacked specific experience or chose not to provide an opinion.

Out of 281 cases analysed, 99% provided clear hearings timings, 98% identified the courtroom and involved parties, and 96% included subject matter and the presiding judge. From a court user's perspective, 46% delivered unambiguous practical information, and 49% presented primarily transparent data. However, the role and proactive engagement of court personnel require further attention. In 14% of cases, court staff initiated unsolicited guidance, while in 13% of cases, staff was absent to address potential queries.

Differentiating between first instance and appellate courts, there are notable differences. First instance courts displayed schedule information in 89% of cases, while appellate courts achieved 100% result. In terms of court hearing timings, courtroom allocation, and participant information, first instance courts provided clear details in 90% of cases, while appellate courts provided clear information about session timings at all times (100% of cases), courtroom indication – in 95% of cases, and involved parties – in 98% of cases.

However, the clarity of technical information shows room for improvement in both court categories. Among first instance courts, 43% had clear signposting, 43% found the data mostly clear, but 45% had reservations about clarity. In appellate courts, 68% affirmed clear signposting, 55% considered it mostly clear, and 7% expressed clarity concerns.

In examining 281 cases across first instance and appellate courts, a commitment to transparency is evident, but nuances emerge. These nuances suggest areas for enhancement to ensure a harmonious and efficient user experience within the judiciary, ultimately strengthening the provision of administrative or technical information to court users.

#### 4.1.1.2. Public Access

Regarding the public involvement in courtroom proceedings, it should be noted that out of the 281 observed hearings, 129 (46%) imposed no restrictions on public access. In contrast, 115 (41%) required attendees to state their reason for being present, and in 31 hearings (11%), attendees needed to provide identification.

Regarding the specifics of first instance courts among the 221 cases, 32 cases (15%) allowed unrestricted public access. However, 14 cases (6%) required attendees to show identification, and a significant number, 52 cases (24%), asked attendees to explain their purpose for attending. Regarding the appellate courts, out of the 60 cases, 58 (or a substantial 97%) had unrestricted access, while only one case required clarification of the attendee's intent for being there.

In conclusion, the significant majority of cases allow for unrestricted public access. First instance courts, which at times require identity verification, tend to exercise a more cautious approach. Meanwhile, appellate courts, by allowing open access, underscore their commitment to public transparency.

#### 4.1.1.3. Equal Access

Striking a balance between upholding courtroom solemnity and ensuring equal access for all parties is crucial.

When analysing interactions between litigants and judges, it is noteworthy that 245 hearings (87%) refrained from discussions before the official start, and this trend continued post-session, with 253 hearings (90%) avoiding unnecessary contacts. In terms of preliminary dialogues between opposing representatives, 140 hearings (50%) showed no such interactions. The data demonstrated that in 211 hearings (75%) both parties entered and left the courtroom at the same time.

Regarding courtroom ethics, 166 sessions (59%) upheld strict professional conduct, with only six hearings (2%) showing potential deviations from these norms. However, minor differences emerged across different court instances. When it came to talking to judges before hearings, first instance courts had a few instances (about 2%), while appellate courts had none at all. Talking between lawyers before a hearing happened more often in first instance courts (about 8%) compared to appellate courts (about 2%). But both court types were similar in maintaining high standard of ethics, with only about 2% of cases showing potential issues.

#### 4.1.1.4. NGOs Access to Court

Civil society's role in judicial proceedings, particularly the involvement of NGOs, has always been a pivotal discussion point in legal academia. Given the significant role of NGOs in championing the rights of marginalized groups and advocating for broader societal issues, their active participation in legal proceedings often becomes a crucial factor for understanding the accessibility and inclusivity of the judicial system.

Under a general rule, in Moldova, access to justice is limited to the persons whose rights are directly affected by a decision. Together with this general rule setting out that applicants must maintain the impairment of an individual right, Article 71(2), Article 55 and Article 73 of the Code of Civil Procedure also provide an exception in favour of persons and organizations defending public interest.

Within the 281 monitored hearings, the involvement of NGOs was remarkably rare and was peculiar only to the hearings at the first instance courts. Only one case involved the participation of an NGO for protecting public interests. Furthermore, merely 2 out of the 281 hearings had NGO representatives in attendance, assuming a strictly observational role. It's noteworthy that in this extensive range of cases, there were no instances where NGOs contributed as third interested parties, submitted 'amicus curiae' briefs, or acted as non-legal advocates, despite the potentially profound influence of such contributions. The prevailing trend, observed in 278 out of the 281 hearings (or 99%), either indicated a complete absence of NGO involvement or a possible role as observers.

### 4.1.2. Conduct of Oral Proceedings

In this section, we analyse various aspects concerning the conduct of oral proceedings in civil cases. Each subheading explores a distinct procedural aspect of these proceedings, shedding light on their significance and the standards upheld within the group of civil cases. From punctuality in court hearings to the delivery and publication of court decisions, *the Trial Monitoring* data and *Expert Interviews* describe critical elements that contribute to the overall transparency, fairness, and efficiency of civil case proceedings.

#### 4.1.2.1. Punctuality in Court Hearings: Adherence to Scheduled Times

The efficiency of legal proceedings significantly relies on adherence to trial calendars. The following paragraphs reveal how courts follow trial calendars and how they communicate when deviations occur.

Out of the 281 observed hearings, 221 cases (79%) proceeded as scheduled according to the trial calendar. However, in the remaining 60 cases (21%), there were deviations from the planned timeframe. Regarding the communication of reasons for delays, it should be noted that only 7 of these 60 cases (about 12%) were accompanied by explanations for the delay. Furthermore, apologies for such delays were limited to 6 cases.

When we examined this data by type of court instances, a more nuanced context emerged. In first instance courts, a substantial 188 out of 221 examined cases (85%) adhered to the trial calendar. However, of the 33 delayed cases in this jurisdiction, only 7 (21%) were provided with justifications for the delay, and merely 6 (18%) received apologies. On the other hand, appellate courts present a more concerning background. Out of 60 cases, only 33 (55%) adhered to the predetermined calendar. Notably, all 27 delayed cases in this segment (45%) lacked any explanations or apologies.

Considering feedback from court users (*Court Users Surveys*) on the punctuality of hearings, the data provides a nuanced view of user satisfaction. Specifically, 3 respondents (about 5%) expressed high satisfaction with the punctuality of hearings. This positive aspect is reinforced by 23 respondents, constituting approximately 40% of the total, who indicated general satisfaction with the timeliness of proceedings. In contrast, 15 individuals (about 26%) expressed neutrality. More critically, 12 participants (about 21%) expressed dissatisfaction with punctuality, while an additional 3 individuals (about 5%) conveyed pronounced discontent. In summary, while a majority of court users leans towards satisfaction with the punctuality of hearings, a significant subset has voiced concerns, highlighting room for improvement in maintaining scheduled timings within court proceedings.

#### 4.1.2.2. Duration of Proceedings

In terms of time allocation, the most prevalent durations for these civil case hearings were either brief, lasting up to 15 minutes, which accounted for 102 hearings (36%), or slightly longer, up to 30 minutes, which applied to 94 hearings (34%).

For hearings at the *first instance level*, the distribution of durations was monitored as follows: approximately 35% (or 77 hearings out of 221 cases) concluded swiftly within 15 minutes or less, roughly 34% (or 75 hearings) fell within the 15-to-30-minute range, about 25% (or 56 hearings) extended from 30 minutes to an hour, and a smaller fraction of around 6% (or 13 hearings) exceeded the one-hour mark.

Turning our attention to *appeal hearings*, 25 of them, constituting about 42%, were concluded in a brief manner within 15 minutes or less. Another approximately 32% (or 19 hearings) occupied the 15 to 30-minute timeframe, while approximately 13% (or 8 hearings) each fell into the categories of 30 minutes to an hour or extended beyond an hour.

#### 4.1.2.3. Postponement of Court Hearings

The *Trial Monitoring* established that 25% of the overall hearings, translating to 70 cases out of 281 monitored cases, were postponed. A closer look at the reasons for these delays revealed that in 22 instances (31% of postponed cases), the defendant initiated the delay, while in 19 cases (27% of postponed cases), the plaintiff was responsible for the delay. Interestingly, a significant 73% of these delays, totalling 51 cases, were attributed to "other reasons" as the primary cause. Various laws, including articles 191 and 207 of the Code of Civil Procedure, outline specific grounds for these interruptions.

Nevertheless, the vast majority of Experts (data provided by *Expert Interviews*) noted that in fact, Moldova does not have a systemic issue of lengthy proceedings. Expert 4 (judge) pointed out that *“In our country, cases are considered faster even in comparison with different countries. <...> I'm talking about administrative cases; it's happening very quickly. <...> In administrative cases, it is possible to hold a hearing even after six months”*. Expert 11 (lawyer) reiterated that *“<...> our deadlines are quite fast, and based on this, we have poor quality”*.

While discussing the preparation for court hearings *Expert Interviews* highlighted another problem – the lack of continuity in procedural actions. It appears, the efficiency of proceedings suffers from various different interruptions.

First, the set of hearings is often interrupted by lengthy breaks due to organizational aspects (e.g., there is no shared access to lawyer's schedules; multiple short hearings are set at the same day). In this regard, Expert 3 (judge) emphasized the importance of continuity and sequence of hearings: *“I don't really believe that the judge who heard the case in April will remember all the details in the hearing a month from now.”* It appears, same holds true when the time comes to prepare the motives of the decision: *“<...> I have 45 working days to describe the motivated part <...> But after 45 days he [judge] forgets what was there”*.

Second, interviews highlighted the need for enhanced preparedness and cooperation between all actors involved. While discussing the timeliness of proceedings, Experts paid attention not only to the role of judges but also to the role of lawyers. and in particular, prosecutors. Expert 21 (lawyer) further explained: *“It's not just lawyers who are asking for cases to be postponed. For example, the Appeals Chamber postponed the case to October last month, that is, it was not me who asked, but the judges who are loaded with cases and we rarely have cases when he appointed a case in a month, basically in 3, in six months.”*

Third, it is s worth noting that the admissibility of evidence did not appear to be a primary reason for these delays. Issues related to the admissibility of late evidence by experts were confirmed to be problematic only partially (Expert 8, lawyer; Expert 16, lawyer). Out of 281 hearings, 17 cases (or 6% of the total) involved the introduction of evidence beyond the customary deadlines. Exploring the causes, 7 cases (or about 41% of the cases involving late evidence) failed to meet the preparatory phase deadlines. In contrast, 10 instances (or 59% of such cases) introduced delayed evidence without causing any disruptions to the court proceedings. A noteworthy observation was that in 94% of these cases (16 out of 17), the judges made a concerted effort to ensure that the opposing party's perspective was acknowledged and considered.

The 60 cases examined in the appellate jurisdiction displayed distinct characteristics. These courts, positioned higher in the judicial hierarchy, demonstrated a strong commitment to procedural standards comparing to the first instance courts. There was a decreased tendency for case postponements. Based on the provided monitoring data, the court hearings were postponed in 10% of the cases (6 out of 60). Accordingly, in the majority of cases, 90% (54 out of 60), the court hearing was not postponed. If the hearing was postponed, the reasons for the postponement varied. In one case, the postponement occurred due to a party's inability to appear in court on the set date for reasons beyond their control, as outlined in Article 191 of the Code of Civil Procedure. In five cases, other factors, such as the judge's sick leave, led to the postponement.

#### 4.1.2.4. Explanation of Procedural Rights and Obligations

Among the 230 of monitored cases where the question was applicable, a notable 114 cases (50%) demonstrated the court's commitment to explaining the procedural rights and obligations outlined in Article 56 of the Code of Civil Procedure. Conversely, an equal number of 116 cases (50%) lacked such explanation. Additionally, in a slightly smaller subset of 100 cases (43%), the court provided a comprehensive overview of all the rights and obligations detailed in Article 56.

Regarding Article 60 of the Code of Civil Procedure, a similar pattern emerged. In 120 cases (43%), participants were informed about their procedural rights and responsibilities under this article. Notably, a significant majority of 241 observed hearings (86%) featured the presiding judge articulating the right to challenge the court's composition. However, in 2 instances (1%) where such challenges were raised, they were subsequently dismissed.

When we shift our focus to the appellate jurisdiction, which encompasses 51 applicable cases within the overall dataset, a unique pattern emerges. In this context, only 13 of these hearings (26%) witnessed the judge providing a detailed explanation of the rights outlined in Article 56. Additionally, in a significant number of 31 cases (52%), there was a notable lack of information provided to the parties concerning their rights as outlined in Article 60. However, it is noteworthy that in a significant majority of 46 appellate cases (84%), judges took the time to explain the right to challenge the composition of the court, even though no actual challenges were raised during these proceedings.

*Expert Interviews* also revealed that the explanation of procedural rights and duties is done in a formal way. According to Expert 18, *“No one ever explains normally. Reading what is written in the code is not an explanation. If you just give a signature in a printed clipping from the article of the code of rights, then this is not an explanation of rights, it should be completely different. Very rarely, but there are judges who clearly explain to the parties their rights (not lawyers, who already know). And this is done for a person who must understand what he can.”*

#### 4.1.2.5. The Role of Presiding Judge

While discussing the role of the presiding judge in civil cases, it is important to note that the level of judicial activism varies and is not consistently practiced. According to the majority of experts (*Expert Interviews*), this variance often depends on the personal qualities and disposition of the judge. As one expert (Expert 5, judge) mentioned, *"The active role of the judge, it seems to me, depends on the judge, on good faith."* Another expert (Expert 16, lawyer) emphasized that *"If we are talking about bona fide judges, then he is the master of this case even in relation to the evidence and to the participant in the case."* Additionally, another expert (Expert 13, lawyer) noted, *"It depends on the character of the people and the judges."*

Furthermore, an interesting observation arises when considering how the individual characteristics of court attendees are addressed. Only a minimal 11 cases reflected the presiding judge's acknowledgment of factors such as age, capacity, and physical or mental condition; while in 16 cases these circumstances were not taken into account. In interpreting these results, it should also be noted that the in the majority of cases, the question under the consideration was not applicable (254 cases).

Moreover, the imposition of fines as punitive measures for procedural infractions was a rare occurrence. Among the entire sample, only 3 hearings witnessed the imposition of financial penalties, primarily for procedural missteps.

#### 4.1.2.6. The Right to be Heard

Of the 156 monitored cases where the question under consideration was applicable, 121 (76%) hearings featured judges delivering comprehensive reports on cases, in accordance with the principles delineated in Article 211(2) of the Code of Civil Procedure. This involved a detailed extraction of claims, arguments, and evidence from applications and references. Further delving into the numbers, within the realm of first instance courts, 86 out of 107 applicable cases (80%) adhered to the benchmarks set by Article 211(2) of the Code of Civil Procedure. The appellate courts demonstrated a similar adherence, with 35 out of 49 applicable cases (71%) meeting the stipulated requirements.

Where the question was applicable, it is worth commending that in 187 (96%) of the sessions, parties were afforded the opportunity to present their crucial arguments in-depth.

In the realm of evidence examination, 63 sessions (55%) from the entire sample showcased the courts making detailed references to evidence during inquiries. The issue was especially pronounced in the appellate courts, where 17 cases (60%) showed a lack of thorough investigation into the precise origins or whereabouts of the presented evidence.

When assessing the satisfaction of court users (*Court Users Surveys*) with the time allocated for presenting arguments during hearings, a distinct perspective emerges. Among the respondents, a modest 3 (5%) expressed being "very satisfied" with the provided duration. In comparison, 16 (28%) were "satisfied," indicating a general acceptance. Interestingly, the largest segment, 20 (35%), perceived the allotted time as yielding "average satisfaction," suggesting a potential area for enhancement. On the more critical side, 16 respondents (28%) felt the time was insufficient, indicating they were "not very satisfied." Notably, 2 individuals (4%) expressed explicit discontent, rating themselves as "not satisfied."

It is noteworthy that some *Expert Interviews* noted on the problem and held that judges should not deprive the participants of proceedings the right or desire to explain, even when the case is presented emotionally. They emphasized the importance of attentive listening, regardless of the emotional context: *“It's emotional, they try to present their pain as an argument”* (Expert 4, judge); *“They don't even care about the decision, it's important to them to be listened <...> “*(Expert 5, judge); *“In my experience, judges are very empathetic, listen to the participant, with or without education <...>“* (Expert 20, judge assistant). It was also pointed out that much depends on the concrete judge and even lawyer: *“<...>I have one tactic to make him listen: sometimes I joke to interest <...>; sometimes I say “this is important, listen, please!” and so on.”* (Expert 13, lawyer); *“<...> one will come prepared and you listen to them with interest, and the other – to impress the client, it will be pointless and long read of statement.”* (Expert 17, judge).

When discussing the implementation of the right to be heard at the appellate instance, Experts pointed out that judges are less attentive at the appellate instance (Expert 5, judge; Expert 12, lawyer; Expert 15, lawyer; Expert 19, judge; Expert 20, judge assistant) or even refused to comment on the matter (Expert 4, judge). In this regard, Expert 19 (judge) noted on the frustration created by the high workload: *“On the one hand, we are beaten so that we listen to everyone carefully, and on the other hand, they beat us so that we would consider it [cases] faster. And we can't reconcile that with this procedure”.* Expert 8 (lawyer) also suggested that judges are less inclined to listen when the person is not represented by a lawyer: *“<...> in front of me there were people who did not have lawyers, so they did not listen to them at all: “What do you want?” A person begins to speak, and they stop him and say: “no, no, we understand everything from materials <...>“*. The lack of attention, it seems, is more visible when the case is heard by the panel of judges: *“You can see from the questions in the meeting that only the reporting judge knows what the case is about, and that's evident in the behaviour and attitude of the other judges in the panel. Yes, there are a lot of cases, but that doesn't excuse their inertia.”* (Expert 15, lawyer).

#### 4.1.2.7. Closing of the Hearing the Case on the Merits

*The Trial Monitoring* also looked into the extent to which both first instance and appellate courts adhere to specific legal provisions, specifically Article 232 (which outlines the court's obligation to inquire about all possible statements from the parties) and Article 1191(4) of the Code of Civil Procedure (which mandates the court to allow parties to present all relevant arguments concerning requests for new evidence).

Of the 96 of monitored applicable court hearings, 62 (65%) adhered to the provisions outlined in Article 232 of the Code of Civil Procedure. This article underscores the significance of courts engaging in comprehensive discussions with the involved parties. Additionally, in 40 of these court hearings (83%), courts demonstrated a commendable commitment to upholding the rights of parties in cases involving new evidence, as mandated by Article 1191(4) of the Code of Civil Procedure. In conclusion, although courts exhibit diligence in their efforts to comply with the rules, at times it lacks consistent practice.

#### 4.1.2.8. Judicial Deliberations

The data shows that there is a roughly equal distribution between cases where the court retires to the deliberation chambers at the conclusion of the hearing and cases where they do not. This indicates that the practice of deliberating in chambers varies.

When the court does retire for deliberations, the majority of cases have relatively short deliberation times of 15 minutes or less. Longer deliberations, exceeding 1 hour, are relatively rare.

A significant number of cases involve judges having deliberations during the court hearing without going to the deliberation chambers. This suggests that some decision-making discussions occur openly in court proceedings.

Deliberation processes within courts play a vital role in the judicial decision-making. Out of the 164 court sessions observed where this question was relevant, 89 instances (54%) involved the court withdrawing to a secluded deliberation room after the hearing. Surprisingly, a majority of these court hearings, represented by 49 cases, were notably brief, lasting less than 15 minutes. This raises legitimate concerns about the depth of consideration given to these cases. Meanwhile, in 75 sessions (46%), judges preferred in-session deliberations, indicating a preference for an open and immediate contemplative process during ongoing court proceedings.

#### 4.1.2.9. Delivery and Publication of Court Decisions

While the majority of judgements were pronounced publicly, explanations of decision reasons and the distribution of litigation costs are infrequent. When explanations are provided, they tend to be clear and sufficient.

18 out of 89 judgments (20%) were pronounced publicly in full, while 68 had the operative part of the judgment pronounced publicly. In two out of 89 cases, the judgment was not pronounced publicly, and in one case out of 89, the judgment was not pronounced publicly, but information was available from the court registry.

86 out of 89 judgments (97%) were pronounced publicly on the indicated date. In one case out of 89, the judgment was not pronounced on the indicated date, and no new date was set for pronouncement. In two cases, the proceedings on the substance were reopened, and a new date was set for the court hearing, but in both cases, no new date was set for the judgment pronouncement.

In most cases, judges did not explain the reasons for the decision after announcing the judgment. Only one case out of 86 had the reasons for the decision explained by the judge after announcing the judgment. Thus, in 99% of cases (85 out of 86), the reasons for the decision were not explained by the judge after announcing the judgment.

Regarding the explanation of the distribution of litigation costs, two out of 89 cases (approximately 2%) had the distribution of litigation costs explained by the judge after announcing the judgment. In 35 out of 89 cases (39%), the distribution of litigation costs was not explained by the judge after announcing the judgment. In six cases (7%), the judge provided some explanation, but it was not entirely clear.

In a significant number of cases, the judge informed the parties in a clear manner about how to appeal (73%) and the time-limits for appeal (73%). However, a minority of cases (18%) did not receive clear information on how to appeal and the associated time limits.

Comparisons of practices does not highlight substantial differences in the pronouncement of judgments and explanations provided between appellate and first instance courts. In both court types, judgments are often announced in their operative part, while the explanation of reasons for decisions remains a rare case. The distribution of litigation costs is also infrequently explained in both contexts.

In summary, the data indicates that while there is a high level of timeliness in the public pronouncement of judgments, there is a lack of explanations for reasons and the distribution of litigation costs. Additionally, there is room for improvement in providing clear information to parties about the appeal process and time limits.

Regarding the timeframe for the delivery of the final judgment, a majority of respondents (58% or 33 cases) did not offer any feedback (*Court Users Surveys*), possibly indicating that the question was not applicable to their experience. Among those who responded, 16% (9 cases) expressed satisfaction, while a combined 9% (5 cases) showed an average level of contentment. On the other hand, 14% (8 cases) displayed discontent, and a minority of 4% (2 cases) indicated explicit dissatisfaction. Notably, none of the participants reported a high degree of satisfaction in this domain.

From the presented *Trial Monitoring* data, it is clear that there is a clear inclination towards due online publication of court decisions. In 57% of cases (16 out of 28), decisions were promptly available on the court's website within a timeline of 30 days. However, it is noteworthy that not all decisions are published in a timely fashion. The fact that 32% (9 out of 28 cases) remained unpublished draws attention to possible gaps or inconsistencies in the online dissemination of judgments.

### 4.1.3. Overall Professionalism of the Court

Within the context of the effective functioning of the judicial system, the behaviour and courtesy by courts not only mirror the inherent values of the legal process but also significantly impact public trust in the system. The review of professional standards aims to provide an overview of decision-making processes and operational tendencies observed in both first instance and appellate courts across civil cases.

A consistent pattern of professionalism emerged in the data. Judges, whether presiding individually or as part of a panel, maintained a strong presence throughout the entirety of the trial in 98% of cases.

Furthermore, judges exhibited a high level of solemnity, with 99% of cases showing no distractions like mobile phone use during sessions. In 98% of cases, the court maintained a professional atmosphere, devoid of any inappropriate remarks or conduct. These statistics highlight the court's commitment to maintaining a respectful and focused environment.

In terms of deliberations, judges in 99% of cases ensured that their discussions remained directly related to the core subject matter of the case. This focus on the essential issues at hand contributed to the efficiency and fairness of the proceedings. Additionally, relevant questions were posed in 99% of cases, indicating a focused examination of the evidence and arguments presented.

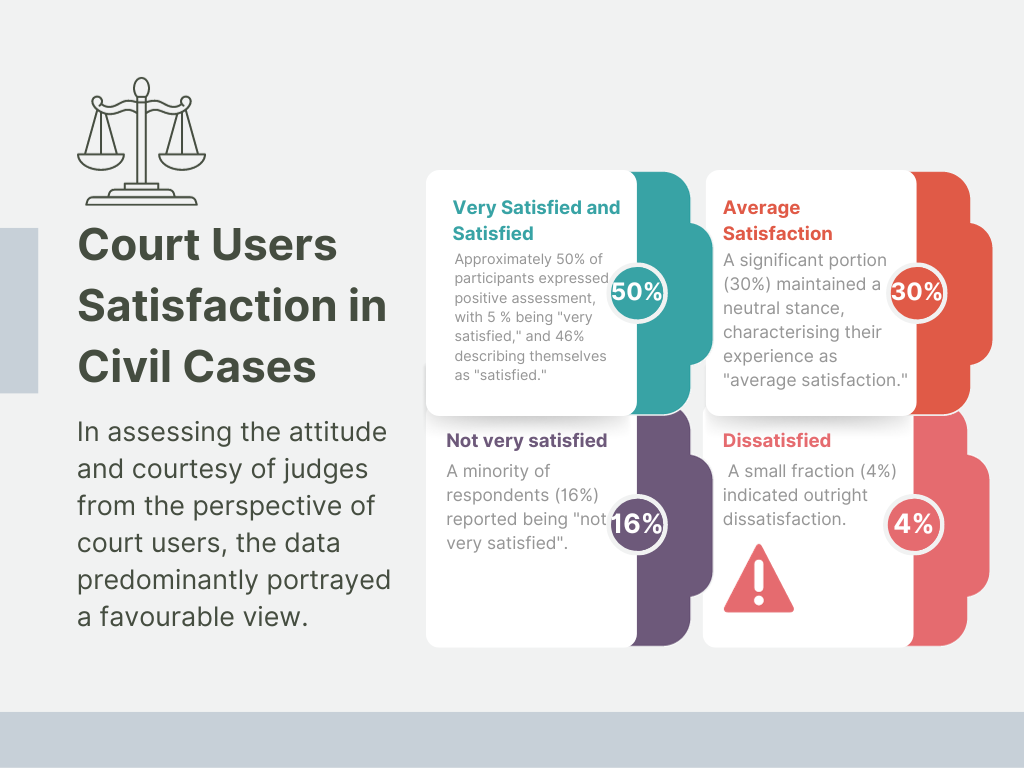
Importantly, *the Trial Monitoring* found no breaches in judicial impartiality across all cases.

There were also no instances of premature disclosures or decisions influenced by gender biases, further affirming the commitment to fair and unbiased judgment.

When monitoring court hearings at first instance courts (221 cases), it was observed that it was the evidence that made background for decision-making. This trend was observed in 60% of cases (133 cases). On the other hand, interruptions, often due to the absence of key participants or pending crucial evidence, occurred in 30% of cases (66 cases).

The monitoring data consisting of 60 cases at the appellate courts provided further insights on the matter. Documentary evidence or references from key offices played a significant role in 24 cases (40%). Additionally, challenges such as the absence of crucial representatives, from entities like the Ministry of Justice or the Ministry of Finance, were adeptly handled in 15 cases (25%).

In assessing the attitude and courtesy of judges from the perspective of court users, data collected via *Court Users Surveys* completed by 57 participants to the proceedings is particularly useful. The feedback predominantly portrayed a favourable view. Approximately 50% of participants expressed positive assessment, with 5 % being "very satisfied," and 46% describing themselves as "satisfied." A significant portion (30%) maintained a neutral stance, characterizing their experience as "average satisfaction." However, a minority of respondents (16%) reported being "not very satisfied," and a small fraction (4%) indicated outright dissatisfaction.



In the evaluation of other court-related aspects, the focus was also shifted to the attitude and courtesy of court staff. The results indicated that approximately 44% of respondents perceived the attitude and courtesy of court staff as satisfactory, while around 39% expressed their satisfaction with the professionalism of court staff. However, about 12% were not very satisfied with the behaviour of the staff.

Staff engagement and assistance varied between first instance and appellate courts. In first instance courts, 14% of cases (30 out of 221 cases) reported proactive information dissemination by staff. Similarly, 14% of cases (8 out of 60 cases) in appellate courts mentioned this level of assistance. It is interesting to note that the absence of guidance was slightly more prominent in appellate courts (18%) compared to first instance courts (11%), indicating potential uncertainty among court users in seeking assistance at the appellate courts.

## 4.2. FAIR TRIAL RIGHTS IN ADMINISTRATIVE CASES

This Section delves into various aspects of the procedural legal framework surrounding administrative proceedings. It explores fundamental features, such as the role of the presiding judge, procedural rights and obligations, the right to objective and comprehensive evidence evaluation, the right to be heard, legal debate, the closing of case hearings, judicial deliberations, judgment delivery, and the reasoning behind court decisions. Additionally, this section assesses the overall professionalism of the court and examines the application of innovative provisions within the administrative court system. Ultimately, it concludes with key insights and recommendations based on the findings and observations made throughout this comprehensive exploration of administrative case procedures.

Upon evaluating the monitoring results and providing recommendations, our intention is not to negate all the positive progress already achieved in the advancement of administrative justice in Moldova. Instead, our aim is to highlight the directions through which courts can comprehend the fundamental attributes of administrative disputes in contrast to civil legal disputes. By utilizing the diverse range of procedural tools established in the Administrative Code, courts can strengthen the effective protection of individuals' rights.

The insights and findings of the Section is based on the monitoring questions presented in *Trial Monitoring*, *Expert Interviews,* and *Monitoring of Judicial Decisions*.

*Trial Monitoring* encompassed a comprehensive sample of **112 court hearings** within the realm of administrative cases. This was further categorized, with 17 hearings addressing administrative cases related to environmental matters, 15 focusing on data protection matters, and an additional 3 dedicated to cases involving the non-contractual liability of the state. Of the monitored hearings, 85 took place at the courts of first instance, while the remaining 27 unfolded within the jurisdiction of the appeal courts.

In the majority of monitored court hearings (84 (75%)), the cases were examined by judges in the composition of the court – a single judge. Among the total number of judges (167) who presided over the administrative cases in the monitored court hearings, 89 (53%) had up to 10 years of experience as a judge, 54 (32%) had up to 20 years of experience, and 24 (15%) possessed an experience as a judge for more than 20 years.

With the exception of one closed court hearing, 111 monitored sessions in administrative cases were held publicly. Out of the observed hearings, 60 (54%) were devoted to the examination of merits or the appeal process. Additionally, 33 hearings (29% of the total) were monitored during the preparatory stage, while the pronouncement of judgment was observed in 19 hearings, representing 17% of the cases.

Regarding access to professional legal representation, the results of the monitoring of court hearings revealed that in the majority of court hearings in administrative cases (79 (70%)), the private parties were represented by a lawyer, while the public authority was represented by its employees in 100 (89%) cases.

*Expert Interviews* provided valuable comments on the role of the judge in the judicial process in administrative cases. In this regard, the monitoring results demonstrated whether judges usually take measures to play an active role. Explanation of procedural rights to the parties was also placed in discussions as an aspect revealing activism of a judge in proceedings.

*Monitoring of Judicial Decisions* revealed distinct features of reasoning of court decisions adopted in administrative cases, particularly with regard to legal certainty.

### 4.2.1. Principal Features of the Procedural Legal Framework for Administrative Proceedings

In 2018, the Administrative Code of the Republic of Moldova was enacted. Given its foundation on the administrative law principles of the Federal Republic of Germany, the focus of monitoring was directed towards the implementation of innovations in procedural administrative justice.

It's noteworthy to consider the pertinent norms within this Code that hold specific practical interest, as judges apply them in conjunction. In accordance with Article 22(1) of the Code, competent courts investigate the circumstances of the case on their own initiative. They determine the manner and scope of the investigation and are not bound by the arguments of the participants or their requests for evidence. Meanwhile, the Article 43 of the Code provides that the consideration of cases in the order of administrative proceedings is carried out on the basis of the adversarial principle and procedural equality of participants in legal proceedings.

These rules create a situation of legal contradiction in practical terms. On the one hand, the adversarial principle means that the court has a duty to act only within the limits of the dispute as defined by the parties and to be completely neutral, an arbitrator without initiative. On the other hand, Article 22(1) of the Code obliges the court to be active and does not restrict the court from any arguments or evidence from the parties. It is absolutely clear that such regulation creates a dilemma for the judge regarding whether they must be active in the administrative proceedings and what the limits of that activity are.

In any case, it follows from the provisions of these articles that the principle of an active judge in the administrative process and the implementation of the principle of competition (adversarial principle) as declared in the Code must be in harmony with each other. This harmony should be structured in a way that assists the participants in the process to defend violated rights and legitimate interests, while also ensuring effective judicial oversight of the activities of public administration entities.

The harmony between the principle of an active judge in the administrative process and the adversarial principle is clearly demonstrated by the provisions established in the Code, which specifically regulate the role of the judge in the stage of preparation of the case. Article 216 *Preparation of a Case for Trial* of the Code, among other things, provides:

*Unofficial translation*

*(1) When preparing a case for trial, a judge, and in the case of a collegiate court, a rapporteur judge must perform the following actions:*

*<...>*

*b) find out the circumstances that must be confirmed by evidence, and indicate additional evidence that must be presented by the participants within the time period directly established by the court;*

*c) by a ruling setting a deadline for submission, to request, upon application or on their own initiative, the evidence necessary for the full consideration and fair resolution of the case in administrative proceedings <...>.*

These provisions of the Code ensure that the judge is actively involved in the resolution of the dispute and in the administration of justice, without favouring any of the parties involved in the dispute. This principle is further exemplified by the legal regulation outlined in Article 219, which focuses on *Ensuring Effective Protection of Rights* within the Code:

*Unofficial translation*

*(1) The court is obliged, on its own initiative, to investigate the circumstances of the case on the basis of all legally accepted evidence, without being bound either by statements made or by petitions for the elicitation of evidence by the participants.*

*(2) The court takes measures to correct formal errors, clarify vague statements, submit necessary statements, supplement incomplete factual data and make all statements necessary to establish and assess the circumstances of the case. The court draws the attention of the participants in the proceedings to the factual and legal aspects of the dispute that they have not discussed.*

*(3) The court is not entitled to go beyond the scope of claims, but it is not bound by the text of the statements made by the participants in the proceedings.*

*(4) The court may conduct a legal discussion with the participants in the proceedings or may issue written instructions regarding the legal status of the case under consideration.*

The legal regulation enshrined in Article 219(4) of the Administrative Code is an innovation in Moldova's procedural legal framework. Therefore, the monitoring aimed to ascertain whether this provision is being applied by judges in practice and the manner in which it is being implemented. It is evident that this norm was not initially expected to have widespread applicability, as the responsibility for interpreting and applying the law in the context of dispute resolution lies with the court. Nevertheless, there are areas of law where representatives of both applicants and public authorities with specialized knowledge can offer insights to the court regarding the interpretations and goals of legal regulation, as well as the nature of legal relationships. This becomes particularly pertinent in fields like environmental protection law, energy law, and construction law, where a multitude of legal mechanisms stemming from secondary legislation are employed.

It is noteworthy that the Administrative Code establishes certain essential features for the judicial examination of administrative cases. However, it also follows a principal rule that administrative cases are examined as outlined in the requirements of the Civil Procedure Code (Article 218 of the Administrative Code). With this in consideration, the monitoring of court proceedings primarily concentrated on the following aspects of the Administrative Code:

*1. Investigation of Circumstances (Article 219(1) of the Administrative Code)*. In an administrative case, the court is obliged, on its own initiative, to investigate all circumstances relevant to the case under consideration based on the evidence legally collected in the case, regardless of the parties' arguments and requests for the presentation of evidence.

*2.* *Correction and Clarification (Article 219(2) of the Administrative Code)*. The court is obliged to take all measures not only to correct formal errors and clarify unclear statements but also to make necessary requests (statements) and supplement incomplete factual data.

*3. Limits of Claim (Article 219(3) of the Administrative Code)*. The court does not have the right to exceed the limits of the claim, but it is not bound by the text of the statements of the participants in the process to the court.

*4.* *Legal Discussion (Article 219(4) of the Administrative Code)*. The court has the right to engage in a legal discussion with the participants in the process, either orally or in writing.

*5.* *Rejecting New Evidence (Article 220(2) of the Administrative Court)*. Requests for demanding new evidence during the trial of the case are rejected by a decision at an oral court session. The main arguments are noted in the minutes of the court session.

*6.* *Evidentiary Value (Article 220(3) of the Administrative Code)*. Evidence collected in violation of the law has no evidentiary value and cannot be used as a basis for a court decision.

*7.* *Announcing Decisions (Article 226(1) of the Administrative Code)*. When announcing a decision in an administrative case, the court has the right to explain it orally and briefly.

Some of these features of the Administrative Code served as the direct focus of the monitoring, and they became components of the questionnaires. Others fell within the scope of the monitors' attention and, if deemed necessary, could be marked as significant during the monitoring of various court processes. It should also be noted that monitoring the compliance with general procedural requirements, such as clarifying procedural rights for the parties, ensuring the right to speak, be heard, and ask questions to other participants in the process, was also applied during the monitoring of administrative case processes.

### 4.2.2. Upholding Fair Trial Rights in Administrative Proceedings

The conduct of proceedings holds a pivotal role within the realm of administrative proceedings. These proceedings encompass a platform through which legal matters are deliberated, clarified, and adjudicated. This section delves into the significance of fair trial rights within administrative cases, shedding light on the role of judges, procedural rights and obligations, including the right to be heard, legal debate, judicial deliberations, delivery of the judgment and overall professionalism of the court.

#### 4.2.1. Accessibility and Transparency in Administrative Cases

The results of the monitoring of court hearings in administrative cases reveal that in a majority of hearings, information about the court hearings was available in the court schedule (111 cases, 99%) and/or at the court premises (104 cases, 93%).

In general, in the monitored hearings, practical (signalling) information for litigants was either clear (59 cases, 53%) or mostly clear (47 cases, 42%).

In most cases, the public was unconditionally accepted in the courtroom (54%, 60 cases). However, in 37 court hearings (33%), the public was accepted after explaining the reasons for attending the court hearing, and in 13 court hearings (12%), after requesting an identity document. The courts of first instance were responsible for the latter results. The monitoring did not indicate any restrictions on public attendance with regard to appellate courts. Furthermore, with respect to equal access, the monitoring data indicated that in the vast majority of administrative court hearings (87 cases, 78%), litigants entered and left the courtroom at the same time. There were no discussions between the litigants and the judge before the actual start of the hearing (97 cases, 87%), and there were no discussions between the litigants and the judge after the actual end of the hearing (102 cases, 91%).

Regarding the access of NGOs to the court, the results of the monitoring of court hearings allow us to find that procedures were initiated on behalf of the community or the groups represented in 2 cases. In another case, NGO representatives acted as non-legal advocates in support of vulnerable groups or people with disabilities.

#### 4.2.2. The Role of Presiding Judge

The president fulfilled his procedural duty to explain all actions in 75 out of 112 cases (67%) of court hearings.

In 39 (61%) out of 64 applicable cases, the court did not clarify to the parties that all the circumstances of the case would be examined ex officio. In 30 cases, this was not explained to the parties even at the stage of examining the evidence. In situations where the court clarified to the parties (25) that all the circumstances of the case would be examined ex officio, in 23 cases, the court indicated this when explaining the procedural rights and duties to the parties.

A total of 32 (29%) out of 112 court hearings were postponed. The postponement took place at the request/initiative of the public authorities in 11 cases, the natural/legal person in 10 cases, the person involved in the trial by the court in 3 cases, another subject in 2 cases, and the judge in 8 cases. The reasons for the postponement were as follows: the impossibility of the party to appear in court on the set date for reasons that do not depend on their will (Article 191 of the Code of Civil Procedure) in 7 cases; non-appearance of the witness, expert, specialist, or interpreter at the court hearing (Article 207 of the Code of Civil Procedure) in 1 case; and other reasons in 24 cases.

In 9 court hearings, the judge accepted the evidence presented after the deadline established in the preparation phase for the substantive examination of the action in administrative litigation (Article 218(b) of the Administrative Code). In 6 cases out of the total, the participants in the trial justified the presentation of new evidence, and in 3 cases, the participants in the trial demonstrated the impossibility of presenting the evidence within the term set by the court. Concurrently, in 9 cases where new evidence, presented after the deadline established in the preparation phase for the substantive examination of the action, was admitted, the judge applied one of the following reasons: the participants in the trial justified the presentation of new evidence in 6 cases; the trial participants proved the impossibility of presenting the evidence within the term set by the court in 2 cases; other reasons in 1 case. The judge heard and considered the opinion of the other side in 7 cases.

In 11 cases, the judge explained to the parties that according to Article 219(2) of the Administrative Code, the court makes efforts to rectify formal mistakes, clarify unclear requests, correctly formulate submissions, fill in incomplete data, and submit all statements necessary to establish and assess the state of facts. However, in 31 cases, they did not do so, even though there was a reason for it.

In 15 hearings, the judge explained to the parties that, according to Article 219(2) of the Administrative Code, the court is obligated to indicate the factual and legal aspects of the litigation that were not discussed by the participants in the trial. However, in 36 cases, this was not done, even though there was a reason for it.

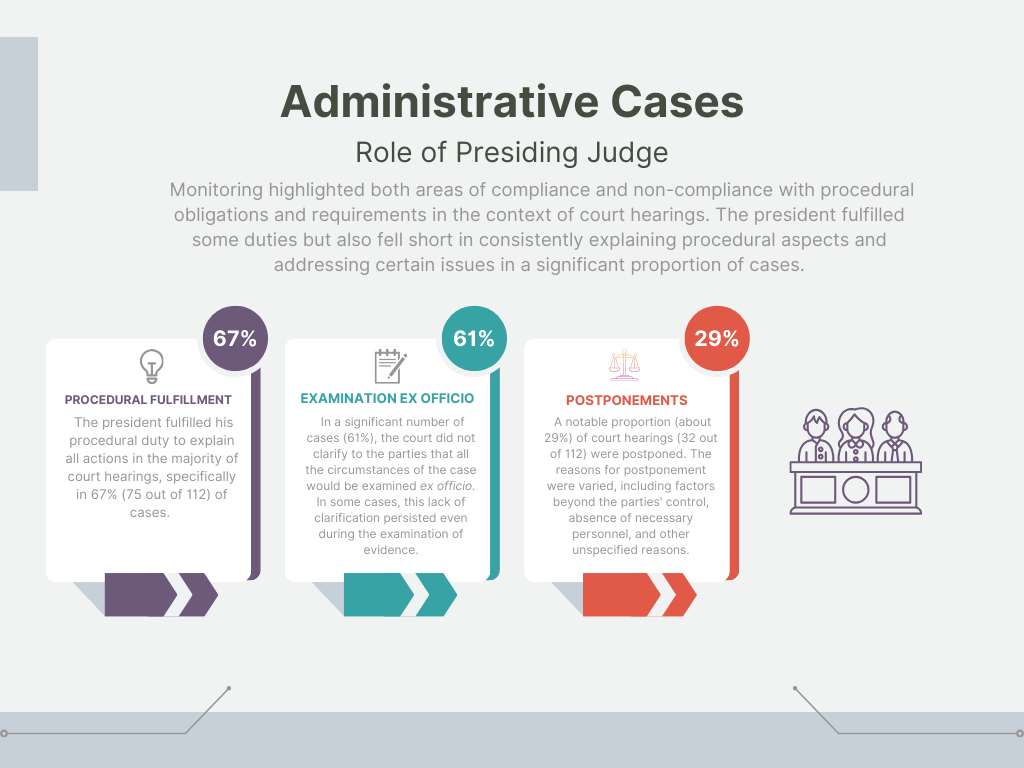
In 10 hearings, the court undertook the following procedural steps provided for in Article 219(2) of the Administrative Code: made efforts to rectify form mistakes in 1 case; made efforts to clarify unclear requests in 5 cases; made efforts for the correct submission of applications in 1 case; made efforts to complete the data in 3 cases; made efforts to submit all the statements necessary to establish and assess the state of facts in 4 cases; and indicated the factual and legal aspects of the litigation that were not discussed by the trial participants in 1 case. However, in 36 cases, this was not done, even though there was a reason for it.

In addition to this, it should be noted that the first instance courts demonstrated a more consistent procedural clarity. Examining the specific aspects of first instance courts, encompassing a total of 85 hearings, reveals that judges provided explanations for their actions in a substantial majority of cases, totalling 79% (67 cases). In contrast, 21% (18 cases) lacked this explanatory practice. It is noteworthy that in 23 cases (50% of applicable cases) there was a mentioning of case circumstances ex officio (i.e., without a specific request). Additionally, hearings were postponed in 32% (27 cases).

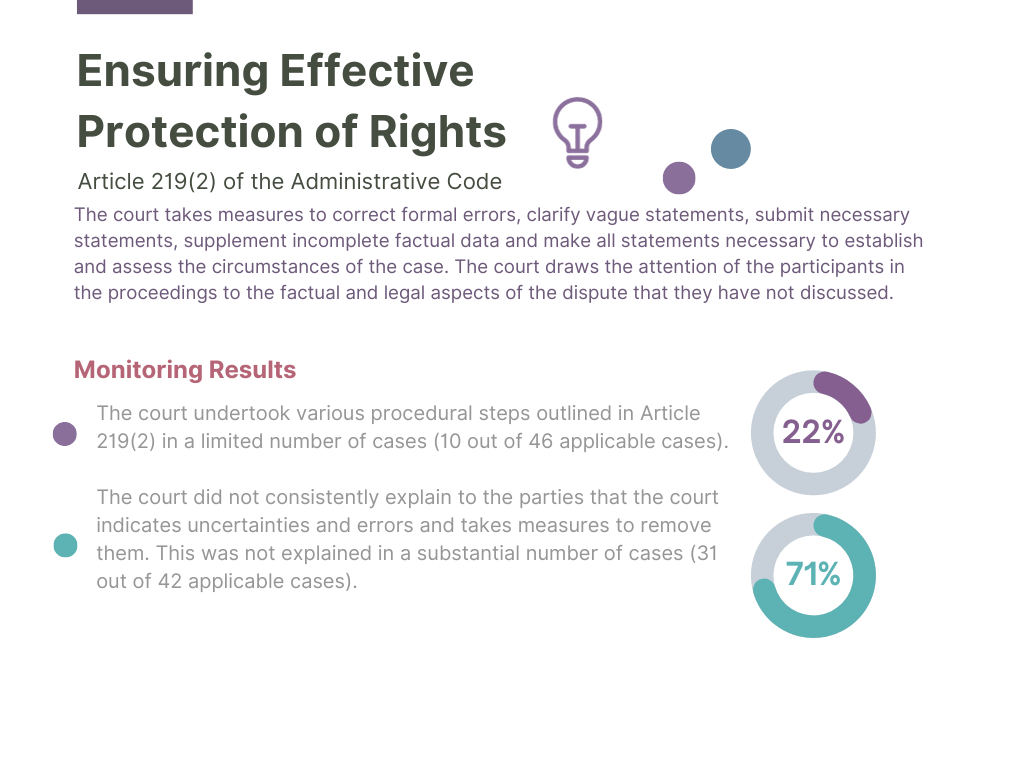
However, the situation in appellate courts, comprising 27 hearings where questions under this discussion are applicable, presents a notable contrast. In these settings, a significant 70% (19 cases) witnessed a deficiency in judges providing explanations for their actions. Furthermore, clarity in the examination of case circumstances was rarely observed, with only 2 cases offering such details. Hearings were postponed in 5 cases of the appellate hearings. Unfortunately, there was a marked deficiency in explaining the guidelines outlined in Article 219 of the Administrative Code, with adherence to procedural directives contained in its second paragraph observed in merely 1 case.

Based on the provided information, we can draw the following conclusions:

*First,* the evaluation of the president's procedural fulfilment reveals that they successfully discharged their duty to explain all actions during the majority of court hearings, specifically in 67% (75 out of 112) of cases; nevertheless, instances of non-compliance with this obligation were noted. Regarding the clarification of *ex officio* examination, a substantial proportion of cases (39 out of 64 applicable, constituting 61%) witnessed the court's omission to inform the involved parties about the comprehensive *ex officio* scrutiny of case circumstances, and this lack of explanation persisted in some instances even during examination of evidence. The issue of postponements and associated rationales emerged significantly, with approximately 29% of court hearings (32 out of 112) being deferred due to a spectrum of reasons, including actors beyond the parties' control, absence of necessary personnel, and other unspecified reasons. In addition to this, the court, in 9 cases, admitted newly presented evidence that surpassed stipulated deadlines. Justifications provided by trial participants played a role in the admission of such evidence.



*Second*, efforts aimed at rectifying errors and delivering clarifications were observed as the court engaged in a select number of procedural actions delineated in Article 219(2), accounting for 10 (22%) out of 46 monitored cases where, according to monitors, this question was applicable. These measures encompassed the rectification of formal mistakes, clarification of ambiguous requests, ensuring accurate application submissions, data completion, and highlighting unattended factual and legal facets within the litigation. However, the consistent application of these endeavours remained uneven across cases. Conversely, the consistent adherence to the provisions of Article 219(2) of the Administrative Code was lacking. The court did not consistently explain and fix formal mistakes, unclear requests, missing information, and unaddressed legal and factual aspects in a significant proportion of cases, i.e., in 31 (74%) out of 42 of monitored cases where this question was applicable. This shows that the court's adherence to the rules in Article 219(2) was uneven – although it sometimes followed them, there were also cases where it did not, affecting both the clarification of procedural details and the resolution of unresolved legal matters.



#### 4.2.3. Explanation of Procedural Rights and Obligations

The monitoring data unveils a mixed overview of the adherence to procedural rights and obligations within court hearings. While certain positive practices are evident, including most judges explaining the right to challenge the court's composition and some courts actively scrutinizing case details, substantial deficiencies arise in adequately informing parties about their rights and duties. The findings highlight the need for greater consistency and attention to procedural fairness to ensure a more just legal process.

The court's adherence to explaining procedural rights and obligations showcases inconsistency. In 38 out of 85 cases where the question under consideration was applicable (45%), the court appropriately explicated the procedural rights and obligations, as stipulated in Article 56 of the Code of Civil Procedure, to the parties. Nevertheless, in 47 cases (55%), such explanations were lacking. This points to a lack of uniformity in ensuring parties are fully cognizant of their rights and obligations during proceedings.

Procedural rights and obligations are often incompletely delineated. In 47 out of 85 cases (55%), the court failed to comprehensively specify all the procedural rights and obligations mandated by Article 56 of the Code of Civil Procedure. This underscores the need for enhanced communication during court proceedings to ensure all pertinent information is conveyed to involved parties.

Out of the monitored sessions, in 67 (60%), parties were not informed about their procedural rights and obligations under Article 60 of the Code of Civil Procedure. This highlights a significant gap in the court's adherence to explaining parties about their rights and responsibilities throughout the legal process.

Meanwhile, the right to challenge the court's composition was explained in the majority of instances. The data reveals that the right to challenge the court's composition (potentially based on bias or other legitimate grounds) was explained in 93 cases, constituting 90% of the monitored court hearings. It's worth noting that only one challenge was filed and subsequently dismissed.

Regarding whether the court duly considered participants' circumstances, it's noteworthy that in only 9 out of 13 hearings where the question was applicable did the judge incorporate factors like age, general capacity, and physical and mental condition of the trial participants while explaining procedural rights. In 4 cases this was not taken into account.

In 44 out of the total 83 applicable cases (53%), the parties were asked if they understood their procedural rights and obligations, with their responses heard. However, in 39 cases (47%), this practice was absent. This suggests some courts make an effort to gauge party comprehension, albeit inconsistently.

According to the monitors, the court could be considered active in *ex officio* examination of all case circumstances in 54 out of 77 applicable cases (70%), while in 23 cases (30%) it was not, and in the remaining instances, assessment was inconclusive. These findings underscore the call for a more uniform and comprehensive approach to ex officio examination in the judicial process, aiming for equitable and thorough consideration of all case circumstances.

#### 4.2.4. The Right to Objective and Comprehensive Evaluation of Evidence

The monitoring process has also given us information about the importance of objective and comprehensive evaluation of evidence in administrative proceedings:

* **Procedural Debate on New Evidence**: In nearly a quarter of the cases (26 out of 37 applicable cases or 70%), there was no procedural debate regarding requests to obtain new evidence. Only in 11 cases was such a procedural discussion held. This suggests that in a significant number of instances, the court did not engage in a thorough discussion or examination of the requests to bring in new evidence.
* **Rejection of New Evidence**: In 12 cases no new evidence was accepted by the court.
* **Verbal Denial of Evidence Requests and Legal Arguments for it**: There were 2 cases where requests for new evidence were denied by a verbal order. In both of these cases, the court presented clear legal arguments to justify its decision. On the other hand, there were also 2 cases where the court denied requests for new evidence without presenting any clear legal arguments. This suggests that in some instances, the court might have made decisions without providing a proper explanation or justification, potentially raising concerns about transparency and fairness in those particular cases.

In conclusion, the data indicates that there is room for improvement in ensuring the right to objective and comprehensive evaluation of evidence in the legal process. Some cases lack proper procedural debate on new evidence, while others show disparities in the court’s handling of evidence requests, with varying degrees of transparency in the decision-making process. It highlights the importance of maintaining fair and transparent procedures to uphold the principles of justice and ensure a proper evaluation of evidence in cases.

#### 4.2.5. The Right to be Heard

In 71 out of 72 cases where the question under consideration was applicable (99%), the parties were given the opportunity to explain all the essential arguments. This indicates that, in the majority of instances, the right to be heard was respected, and the parties had a chance to present their case fully.

In 36 cases (72%), the judge’s report on the case included the brief claims, arguments from the summons and reference, as well as the evidence presented by the trial participants. This suggests that the court considered the submissions and evidence provided by the parties, contributing to a fair trial.

In 31 cases (68%), the court clarified the real limits of the claims in the application during the hearing on the merits. This indicates that the court was proactive in ensuring that the parties understood the scope of their claims and was willing to clarify any uncertainties.

In 28 of the court hearings (100%), the court relied on specific references to the evidence in question when asking questions. This suggests that the court was thorough in its examination of the evidence and sought to clarify the issues using specific references.

In only 2 court hearings, the court negatively affected the right to be heard by unreasonably limiting the duration of the parties' speeches. While this indicates that such incidents were rare, it highlights the importance of ensuring sufficient time for parties to present their arguments adequately.

In 2 hearings, the court asked where the evidence on which the party was based was located in the case file. This indicates the court's attention to the evidence presented and its effort to understand and verify the basis of the party’s claims.

Overall, the conclusions drawn from the data suggest that the right to be heard was generally respected in the majority of cases, with the court actively engaging with the party’s arguments and evidence. However, there were a few cases where limitations on speech duration were observed, which may require further attention to ensure a fair trial process.

#### 4.2.6. Legal Debate

According to Article 219(4) of the Administrative Code, the court may conduct a legal discussion with the participants in the proceedings or may issue written instructions regarding the legal status of the case under consideration.

The results of the monitoring demonstrated that the court engaged in legal discussions with trial participants only in 7 out of 51 applicable cases (14% of the cases). These discussions were primarily conducted verbally, indicating active exchanges of legal arguments and viewpoints during the proceedings.

The court did not provide written instructions regarding the legal situation of the cases, suggesting that the legal discussions were likely conducted through oral communication and not documented in written form.

Both the judge (7 cases) and the lawyer (3 cases) initiated the legal discussions in different cases, indicating active participation from both parties in the legal debates. The legal discussions involved various participants, including both parties (2 cases) and other relevant stakeholders (5 cases).

In 6 cases (100 % of cases where the question was applicable), the court applied the principle of equal treatment by allowing access to qualified legal assistance for applicants with no legal knowledge. However, even in 106 cases, the monitors could not perform any assessment of the given situation, and therefore conclude that the court demonstrated effort to provide a fair opportunity for all parties to present their cases effectively, even if they lacked legal expertise.

Based on these results, it can be inferred that the court exercises its discretion under Article 219(4) of the Administrative Court to have legal discussions in a relatively small proportion of cases. However, when such discussions take place, they involve active and verbal exchanges of legal arguments and perspectives between the participants. In some categories of cases, the court should be interested in widely applying the provisions of Article 219(4) of the Administrative Code as an effective instrument to assist the court in interpreting and applying the law.

#### 4.2.7. Closing the Hearing of the Case on the Merits

In 33 out of 41 applicable (80%) the monitored court hearings, the court appropriately applied the requirements of Article 232 of the Code of Civil Procedure. This Article establishes the court's duty to ask the parties involved in the case about all possible statements. This shows that in these cases, the court was diligent in ensuring that all relevant information and statements from the parties were considered and addressed.

In 13 the monitored court hearings (76%), the court respected the right of the other party to present all relevant arguments. This respect was demonstrated when one of the parties requested the completion of the materials in the file under the terms of Article 119(1)(4) of the Code of Civil Procedure. This particular article refers to the right of a party to request additional materials or evidence to be included in the case file, which the court acknowledged in these instances.

Overall, the results indicate that there is room for improvement in ensuring that the court consistently applies the requirements of Article 232 of the Code of Civil Procedure and respects the right of parties to present relevant arguments under Article 119(1)(4) of the Code of Civil Procedure. It suggests that there might be a need for better adherence to these procedural rules in court hearings to enhance the fairness and completeness of the legal process.

#### 4.2.8. Judicial Deliberations

The monitoring results demonstrate that the court employed two different approaches to judicial deliberation: private deliberations in the deliberation room, where the judge individually reached decisions, and in-court deliberations, where the judges made decisions in the presence of the parties. The brevity of some deliberations suggests that the judges may have made relatively quick decisions in certain cases:

* **Deliberation Room Usage**: In 27 out of the total number of 45 of applicable cases (60%), the court retired to the deliberation room at the end of the court hearing.
* **Deliberation Duration**: Among the cases where the court retired to the deliberation room, the majority of deliberations (15 cases) were relatively short, lasting less than 15 minutes. Additionally, 12 cases had deliberations that took between 15 minutes and 30 minutes. The brevity of the deliberations indicates that the judges may have reached swift decisions in many instances.
* **Individual Deliberation**: During these deliberations in the deliberation room, it is mentioned that only the judge went into the room.
* **In-court Deliberations**: In 49 hearings (57% of monitored cases where the question was applicable), the judges held deliberations during the court session itself, without going to the deliberation rooms. This means that in these cases, the judges made their decisions in open court or in front of the parties involved in the case.

#### 4.2.9. Delivery of the Judgment

In the majority of monitored cases where the question was applicable (22 out of 23 cases), the decisions were pronounced publicly on the indicated date. There was only one instance where the decision was not pronounced publicly.

In two cases, the court set a new date for the ruling on the same day the ruling was initially intended. This could be due to specific circumstances or complexities in those cases.

In two cases, the procedure on the merits was reopened without setting a new date for the court session.

After the judgment was pronounced in all cases, the judge did not explain the reasons for the decision taken. As regards explanation of court costs, in only one case, the distribution of court costs was explained by the judge after the decision was announced. It seems that the practice of explaining court costs is rare.

In the majority of cases (20 out of 23), the judge clearly informed the parties about the appeal process and the appeal deadlines. For example, the monitor gave an example of how the court explained to the parties the right to a reasoned decision and the exercise of the right to appeal: "*The court explained to the parties that the court will draw up the full judgment if the participants in the trial, within 15 days from the pronouncement of the ruling, expressly request this. The 15-day period is a statute of limitations. The court also explained that the decision can be appealed to the Chisinau Court of Appeal within 30 days, from the date of the pronouncement of the decision, through the Hîncești Court, Ialoveni headquarters. The reasons for the appeal shall be submitted to the court of appeal within 30 days from the date of notification of the reasoned decision. If it is submitted together with the appeal, the reasons for the appeal are submitted to the court that issued the contested decision."* This indicates that the court is generally transparent about the steps for appeal.

As for access to jurisprudence, in 16 cases the decision was available on the court's website in less than 30 days. During monitoring, it was not possible to determine why some decisions on the court's website are not published.

Overall, the data suggests that the court system generally adheres to publicly pronouncing decisions on time and provides information on the appeal process in most cases. However, legal regulation that does not establish the court's obligation to at least verbally state the main reasons for the decision made during the announcement of the decision does not ensure legal certainty for the participants in the process and at the same time encourages the exercise of the right to appeal.

#### 4.2.10. Reasoning of Court Decisions

Within the scope of this project, the Quality of Court Decision Monitoring focused on 61 court decisions made in administrative cases at the first instance courts, 12 decisions made in appellate courts, and 17 decisions made in cassation, particularly with regard to legal certainty.

It was demonstrated that when assessing whether the decision deviates from prevailing court practice in identical or similar cases, the first and appellate instance courts did not clearly provide motivation for such deviations from the practice, nor did they indicate the arguments justifying those deviations.

Among the cases reviewed by the Court of Cassation, two cases (out of 17 decisions) were identified where the court provided motivation and justification for deviating from judicial practice.

However, there were instances where a deviation from prevailing court practice was established, but the deviation was not explained, and arguments justifying the deviation were not presented (1 case in the appellate court and 1 case in the cassation court).

In summary, the Project's monitoring of judicial decisions in administrative cases revealed a lack of clear motivation and justification for deviations from prevailing court practice, particularly in lower courts. This underscores the importance of promoting accountability, transparency, and consistency in judicial decision-making processes at all levels.

#### 4.2.11. Overall Professionalism of the Court

The court demonstrated a high level of professionalism in the overwhelming majority of court hearings. The judge or panel of judges was present throughout the trial in 109 of the cases (97%), indicating a commitment to the proceedings.

The judges also maintained ethical standards during the court hearings. In 110 of the cases (98%), judges did not use their mobile phones or engage in any distracting behaviour, ensuring their focus on the proceedings. Furthermore, in 111 out of 112 of the cases, judges avoided making tactless or unethical statements or actions toward any of the trial participants, promoting a respectful and fair environment in the courtroom.

In 109 out of 112 court hearings (97%), judges stayed focused on the core issues of the case, avoiding unnecessary deviations. This suggests a commitment to understanding and addressing the key legal matters at hand. Judges asked parties questions that were relevant to the case in 110 of hearings, demonstrating their efforts to gather the necessary information and evidence without delving into unrelated matters. In 111 of cases, judges did not disclose their positions regarding the finality of the case, indicating their impartiality and commitment to considering all evidence and arguments before reaching a decision.

Notably, there were no recorded instances of the court using sexist language or displaying gender bias in decision-making. This indicates a commitment to ensuring fairness and equality in the courtroom, promoting a respectful and unbiased environment for all trial participants.

Regarding participants' perceptions of the attitude and courtesy exhibited by court staff, the results of the *Court Users Surveys* indicated generally favourable responses. A significant proportion of respondents, 50% or 15 individuals, expressed average satisfaction with the demeanour of court personnel. Additionally, 43% or 13 respondents reported being satisfied, further highlighting the positive sentiment toward staff interactions.

Overall, these conclusions indicate that the court, as observed in the monitoring of administrative case hearings, demonstrated professionalism, ethical conduct and impartiality, while also avoiding gender bias and maintaining a focus on the relevant legal issues.

### 4.2.3. Application of Innovative Provisions of the Administrative Court

This analysis delves into the alignment between the outcomes of the monitoring process and the expert opinions concerning the implementation of innovations introduced by the Administrative Code. The examination aims to shed light on whether the actual practice in administrative cases resonates with the insights shared by legal experts. In particular, it explores the extent to which the innovative provisions of the Administrative Code are reflected in judicial proceedings within the courtroom.

Experts were asked to comment on the role of the judge in the judicial process in administrative cases. In this regard, it was discussed whether judges usually take measures to play an active role. Explanation of procedural rights to the parties was also placed in discussions as an aspect revealing activism of a judge in proceedings (data provided by *Expert Interviews*).

Expressing his opinion on the activity of judges in the administrative process, the Expert 7 (lawyer) explained that, in his opinion, there is a fear that the parties would not suspect the bias of the judge: *“They don't want to be the master of the process because they don't want to be accused of a lack of impartiality”.*

This opinion was partially confirmed when evaluating the monitoring results, based on which even in 39 (35%) cases the court did not clarify to the parties that all the circumstances of the case will be examined *ex officio*.

The vast majority of Experts noted the activism of the court is not an established and consistent practice and much depends on the personal qualities of a judge: *“<...> the active role of the judge, it seems to me, depends on the judge, on good faith.”* (Expert 5, judge); *“If we are talking about bona fide judges, then he is the master of this case even in relation to the evidence and to the participant in the case.”* (Expert 16, lawyer); *“It depends on the character of the people and the judges.”* (Expert 13, lawyer). According to Expert 14 (judge), *“<...> it seems to me that an active role makes it possible to consider cases faster. <...> If we want to resolve the case correctly, it is easier when you can ask, as in an administrative case”.*

As the monitoring showed, only in rare cases do judges use all the procedural tools intended to consolidate the procedural position of an active judge:

* In 11 court hearings, the judge explained to the parties, that according to Article 219(2) of the Administrative Code, the court makes efforts to remove formal mistakes, explain unclear requests, correctly submit requests, fill in incomplete data and submit all statements necessary to establish and assess the state of facts;
* In 15 court hearings, the judge explained to the parties, that according to Article 219(2) of the Administrative Code, the court indicates the factual and legal aspects of the litigation that were not discussed by the participants in the trial;
* In 10 court hearings, the court undertook the following procedural steps provided for in Article 219(2) of Administrative Code: made efforts to remove form mistakes – 1 case; made efforts to explain unclear requests – 5 cases; made efforts for the correct submission of applications – 1 case; made efforts to complete the data – 3 cases; made efforts to submit all the statements necessary to establish and assess the state of facts – 4 cases; indicated the factual and legal aspects of the litigation that were not discussed by the trial participants – 1 case.

Thus, the experts' opinion is thoroughly validated, asserting that the court's procedural efficiency relies on the judge's attitude, their willingness to embrace innovations, and their understanding that the primary goal of the judge's procedural work is to expedite the delivery of justice.

Experts also pointed out that the explanation of procedural rights and duties is done in a formal way: *“Too formal. The attitude is very formal to all this. <...> The judge reads out the rights from the Code of Civil Procedure. <...> This is not done for the person, but for the record.”* (Expert 11, lawyer); *“This is done formally and sometimes even said “well, the lawyer told you, explained”* (Expert 6, lawyer). In this regard, Experts also distinguished between two situations: cases where the participants to the proceedings are represented by lawyers (*“These declarations are formal, always. If a lawyer is involved, the court will not even read”* (Expert 7, lawyer); *“To lawyers, I never explain anything, I don't read from the code.”* (Expert 5, judge)) and cases where the person is not professionally represented. It is only in the latter, where some explanation, preferably in accessible language takes place: *“I explain in clearer, more accessible language.”* (Expert 14, judge); *“I have adopted the practice of more experienced judges who do not ask “Is there a recusal?” but ask “Do you trust the court?”* (Expert 19, judge). Still, this practice seems to be the exception rather than the general rule.

The *Trial Monitoring* results also show, that in 55% of the cases, the court did not specify all the procedural rights and obligations as required by Article 56 of the Code of Civil Procedure. In 60% of the monitored hearings, the parties were not informed about their procedural rights and obligations under Article 60 of the Code of Civil Procedure.

This confirms not only the opinion of experts regarding the formal interpretation of procedural rights, but also an extremely negative trend in the procedural activities of courts. In these instances, courts fail to fulfil procedural obligations that have a substantial bearing on individuals' right to a fair trial.



When the experts evaluated the effect of the Administrative Code in a broader perspective, the opinions on the Administrative Code and its procedural innovations differ. The difficulties encountered by the legal professionals are related to (1) the alien nature of the provisions: *“<...> I admit that when they talked about it during the development of the Administrative Code, my brain also exploded. I didn't perceive it, but then I saw how it worked <...> “* (Expert 16, lawyer) and (2) the lack of settled practice in their application: *“The new code is good, but the judges do not understand it too much, do not understand the principles and even some of the norms of the code they do not interpret through the prism of principles”* (Expert 15, lawyer);*“Judges still <...> cannot agree themselves on the practice [in applying the Administrative Code]”* (Expert 13, lawyer).

The results of the monitoring confirm that there is no uniform practice among the courts in implementing the innovations outlined in the Administrative Code, and the role of an active court is understood rather conservatively. We concur with the experts' perspective and emphasize that the long-term practice of courts in applying this code is a crucial tool for reshaping judges' attitudes toward the court's role in the administrative process. The dissemination of best practices in Administrative Code application and targeted training for judges would expedite the accumulation of judicial experience.

The necessity to promote the adoption of best practices in applying the Administrative Code and to organize training for judges and representatives of related legal professions, in order to comprehend the true significance of the innovations introduced by the Administrative Code in shaping modern administrative justice, is further underscored by the following expert opinions: *“*<...> *the old system was much, I think, effective. And no one understood why, why this code is administrative but I talk to lawyers, to people who go to our colleagues and they have so many questions about this code.”* (Expert 5, judge); *“<...> now after the adoption of the Administrative Code everything has become very complicated, and I do not have time to just keep track.”* (Expert 18, lawyer);

Some Experts noted that the public authorities do not demonstrate supportive attitudes towards the new Code and are already looking for ways to amend it: *“<...> a significant proportion of judges of specialized court (administrative) took this role seriously, but I do not know what happens in hierarchically higher courts, many lawyers specializing in this matter are satisfied with the quality of the hearings, but on the other hand, the state bodies are dissatisfied”* (Expert 3, judge); *“Many authorities want to change the Administrative Code, to adjust it to all authorities because it does not suit them”* (Expert 4, judge).

Despite that, some legal professionals considered the Administrative Code to be very progressive: *“In general, the Administrative Code at first seemed very strange to everyone. But this is a godsend for us and it comes to the aid of citizens in the first place. <...> It forces the authorities to discipline first of all because in the Code there are very clear lines and very clear duties <...>“* or even ahead of time: *“<...> I think that this Code is not for our country until we have grown up because there is a lot of discretion for the judge“* (Expert 2, judge).

## 4.3. FAIR TRIAL RIGHTS IN CRIMINAL CASES

In Section 4.3, we delve into the fundamental aspects of fair trial rights in criminal cases, examining key dimensions that impact the justice system's transparency and integrity. This comprehensive analysis is divided into several subsections, each focusing on distinct elements crucial to ensuring a fair and equitable judicial process. We explore accessibility, transparency, and equal access to court information, as well as the involvement of NGOs in criminal cases. Additionally, we scrutinize the conduct of oral proceedings, including the right to legal representation, court hearing procedures, explanations of procedural rights, the role of the court, charge presentation, testimonies, evidence evaluation, defendant rights, judicial deliberations, and the delivery and publication of judicial decisions. Furthermore, we assess the overall professionalism of the court, providing insights into the complex dynamics that shape fair trial rights within the criminal justice system.

In a study of 281 criminal court hearings, 183 hearings (68%) were monitored in the courts of first instance and the remaining 88 (32%) in the court of appeals[[27]](#footnote-27). A significant 278 hearings (99%) took place in courtrooms, with the vast majority being public.

Judicial composition was noted, with 153 hearings (54%) presided over by a singular judge, while 128 hearings (46%) had a panel of judges. In 148 (37%) cases, judges had up to 10 years of experience as a judge, 219 (55%) were presided by judges with up to 20 years of judicial experience, and 156 (39%) cases were decided by judges with an experience of in a judicial position for more than 20 years. A significant 197 hearings (70%) were dedicated to examination or appeal. On the date of the monitored court hearing, the stage reached in the process was: the examination of the merits or the appeal in 197 (70%) court hearings, the preparatory stage in 50 (18%) court hearings and the pronouncement of judgment in 34 (12%) court hearings.

Most often, court hearings in criminal cases last up to 15 minutes (103 (37%)) or up to 30 minutes (76 (27%)).

### 4.3.1. Accessibility and Transparency in Criminal Cases

In this sub-section, we delve into the critical aspects of accessibility and transparency within criminal cases. Through an analysis of 281 monitored court hearings, we explore how courts provide information, allow public access, ensure equal participation, and engage with non-governmental organizations (NGOs). This comprehensive examination offers insights into the strengths and areas for improvement within the justice system, facilitating discussions on enhancing its integrity and fairness.

#### 4.3.1.1. Access to Court Information

Out of the 281 monitored court hearings, the vast majority of cases, 96% (or 269 cases), and 99% (or 279 cases) displayed their details in the court's schedule and premises, respectively. Only two hearings were noted as deviating from this practice. Hearing timings were available in 99% (or 278 cases). The designated courtroom, parties involved, the core subject of the dispute, and the presiding judge's identity were comprehensively presented in 98% (or 275 cases). Only a minimal 1% (or 3 cases) refrained from providing such detailed information.

When assessing the clarity of information, the monitors found that for 38% (or 106 cases), the details were very clear, and for a substantial 54% (or 151 cases), the information was predominantly unambiguous. However, a small 3% (or 8 cases) offered confusing information.

Regarding the clarity of summonses and other informational documents, feedback from respondents indicated varying satisfaction levels (*Court Users Surveys*). A majority of 48% (22 individuals) expressed average satisfaction with the clarity of provided information. Meanwhile, 30% (or 12 respondents) were satisfied, offering a relatively positive assessment. In contrast, 13% (or 6 respondents) were not very satisfied. Notably, none of the participants indicated extreme dissatisfaction, but 9% (or 4 respondents) marked their feedback as not applicable, suggesting limited experience with court informational provisions.

First instance and appellate courts demonstrated high levels of transparency, with 97% (or 178 cases) and 92% (or 81 cases) in informational clarity, respectively. However, both instances faced certain challenges. First instance courts encountered issues like outdated schedules and courtroom mismatches, while appellate courts experienced reliance on non-court personnel and unexpected panel alterations.

#### 4.3.1.2. Public Access

Out of the 281 hearings, 59% (165 cases) allowed unrestricted public access. It is interesting to note that access conditions varied between different court levels. In first instance courts (183 cases), 43% (78 cases) permitted attendees without reservations. In contrast, a higher percentage of unconditional access was observed in appellate courts, with 88% (77 cases out of 88) allowing attendees to freely observe. This significant difference suggests a potentially more open approach by appellate courts.

However, in 34% (95 cases) of the total instances, the court requested explanations from attendees. Occasionally, attendees were required to provide reasons for their presence. This requirement was more prevalent in first instance courts, where 46% (85 out of 183 attendees) had to clarify their intent, compared to only 11% (10 out of 88 attendees) in appellate courts. In other cases, the court took initiative to verify the identity of attendees, with 4% (12 cases) of attendees having to provide identity documentation, including 7% (12 out of 183) in first instance courts.

Furthermore, in 1% of cases (2 out of 281), the public was entirely excluded. The reasons for these exclusions varied, but the lack of clarification in one case raised concerns about the transparency of certain judicial proceedings. In the context of first instance courts, 2% (3 out of 183 attendees) were denied access for various reasons, while in appellate courts, 1% (1 out of 88 attendees) faced a similar approach.

#### 4.3.1.3. Equal Access

One of the critical underpinnings of impartial courts lies in limiting unnecessary or informal interactions before and after hearings. A total of 88% (216 out of 246 court hearings) saw no discussions between court users and judges prior to the hearings. Breaking down these figures, only 4% (8 out of 183) in the courts of first instance and 8% (7 out of 88) in appellate courts observed pre-hearing discussions. Post-hearing interactions were similarly limited, with 92% (239 out of 259 sessions) exhibiting no such dialogues.

Out of the 281 monitored court hearings, 80% (226 cases) noted that participants entered and exited the courtrooms simultaneously. Furthermore, in 52% of the sessions (75 cases out of 145), no discussions occurred between opposing parties before the hearings. This trend was especially pronounced in appellate courts, where only 4% (4 out of 88) witnessed such interactions, compared to 20% (37 out of 183) in first instance courts.

In the broader context of inappropriate interactions, 53% (or 150 out of 281 sessions) reported no inappropriate behaviour. Nevertheless, in the first instance courts, monitors noted uncertainty about inappropriate contacts in 39% (72 out of 183) of cases. This suggests that monitors may have interpreted these aspects as occurring within a broader context, possibly including out-of-court contacts.

#### 4.3.1.4. NGOs Access to Court

An examination of 281 monitored court hearings provides some insights into the extent of NGOs involvement in criminal cases.

Within the 281 monitored hearings, NGO involvement was notably minimal. Notably, there were no instances of NGOs initiating legal proceedings on behalf of represented groups. Only in a single case did an NGO participate as a third interested party, while their advisory role manifested in just two cases where they submitted *amicus curiae* briefs. Their supportive role as non-legal advocates was slightly more visible, emerging in four cases. Thus, a majority of 274 hearings, or approximately 98%, saw no participation from NGOs at all.

Breaking down the data by court level, within the 183 hearings at the courts of first instance, NGOs played various roles, albeit on a limited scale. They acted as direct representatives in five cases, representing 3% of the total, and contributed *amicus curiae* briefs in two hearings, accounting for 1%. In contrast, the appellate courts, with 88 monitored hearings, showed a complete absence of NGO involvement.

### 4.3.2. Conduct of Oral Proceedings

In this Sub-Section, we delve into the essential aspects of oral proceedings in criminal cases, drawing insights from the monitoring of 281 court hearings. This analysis encompasses various critical elements, including the safeguarding of the right to legal representation, punctuality within courtrooms, the clarity of procedural explanations, the role of courts, charge presentation, testimonies, evidence evaluation, defendant rights, judicial deliberations, and the delivery of judicial decisions. By examining these elements, we aim to offer a comprehensive understanding of the dynamics shaping courtroom proceedings and their impact on transparency and fairness in criminal cases.

#### 4.3.2.1. Right to Defend Oneself in Person or Through Counsel

In the context of the right to defend oneself in person or through counsel, it is evident that the judiciary is committed to upholding this fundamental principle. When defence attorneys were absent from court hearings, the courts consistently opted to safeguard the right to legal representation. The overwhelming majority, 92% (259 cases), did not experience disruptions related to the absence of defence counsel. Out of the total of 281 monitored court hearings, 14 cases (5%) were postponed when the defence attorney did not appear. In one case, the court proactively addressed the absence of the defence attorney by offering the defendant the option of state-appointed legal aid. Additionally, 7 cases witnessed courts making other unspecified decisions when defence attorneys were absent.

#### 4.3.2.2. Opening of the Court Hearing

In the realm of the legal system, the precise management of time and the spatial layout within courtrooms are pivotal elements in upholding the principles of justice and procedural fairness. This analysis meticulously examines a total of 281 court hearings, with a focus on evaluating both the punctuality of proceedings and the spatial dynamics within the courtroom.

The monitoring results demonstrated that the majority of criminal cases, specifically 204 out of 281 (73%), adhered diligently to their predetermined schedules. However, a noteworthy proportion, encompassing 77 hearings (27%), deviated from the schedule. Upon delving into the root causes of these delays, an issue emerged related to the lack of communication about the delays. More precisely, 66 of the delayed cases (86%) lacked any form of communication from the court explaining the reasons behind the delays. In 9 hearings (12%) explanations for the delays were provided, whereas 2 cases presented some but unclear communication in this regard. Furthermore, it is worth noting that in only a minority of cases, specifically 5 hearings (7%), did the judges take the initiative to acknowledge and apologize for the delays.

A closer examination of the courts of first instance, comprising 183 cases, revealed that 145 of them (79%) commenced on time, leaving the remaining 38 hearings (21%) with various degrees of delays. Among these delayed cases, explanations were proffered for merely 29 hearings, constituting 16% of the total instances, while a substantial 149 cases (82%) proceeded without any form of explanation for the delays. Notably, judges in the first instance extended apologies in 19 cases (11%).

In contrast, the appellate courts portrayed a different situation, with 49 hearings commencing punctually out of 88 cases (56%), while the remaining 39 court hearings faced varying degrees of delays (44%). Only 7 hearings (8%) received an explanation for the delay, and a mere 2 cases witnessed a judge offering an apology in this context.

Concerning the satisfaction ratings of participants with regard to the punctuality of hearings, responses varied. Notably, none of the respondents expressed being "very satisfied." However, 11 participants (constituting 24% of the sample) were satisfied, whereas 20 individuals (44%) demonstrated an "average level of satisfaction." Conversely, 9 respondents (20%) leaned towards expressing "not very satisfied" attitudes, and 5 individuals (equivalent to 11% of the sample) indicated that they were "not satisfied" at all with the punctuality of the proceedings. Only one respondent found the question to be not applicable to their experience. This distribution underscores a moderate level of satisfaction overall.

Out of the total hearings, a significant majority of 248 cases (equivalent to 88%) maintained an impartial setting, ensuring that both the defence and prosecution were positioned equally away from the judge. In a limited number of instances, namely 13 hearings (5%), the defence was positioned closer to the judge, while in 20 hearings (7%), the prosecution enjoyed this closer proximity.

#### 4.3.2.3. Explanation of Procedural Rights and Obligations

In a comprehensive analysis encompassing 281 hearings across both first instance and appellate courts, the explanation of participants' rights and court proceedings unveils varying degrees of effectiveness.

It appears that the explanation of the rights of participants by the court was generally clear to a majority of respondents, with 121 cases, representing approximately 57% of the total responses. However, it is worth noting that there were 93 instances, accounting for approximately 43 % of the total responses, indicating that there is room for improvement in ensuring clarity in the court's presentation of participants' rights.

Regarding the cases in first instance courts, 84 cases (59%) demonstrated a clear and comprehensive presentation of participants' rights, while 59 cases (41%) displayed elements of ambiguity in this regard. In contrast, out of the 88 cases in appellate courts, clear explanation of rights was provided in 31 cases (48%), but a higher degree of uncertainty was observed in 34 cases (52%).

The first instance courts explained the right to challenge court composition clearly in 152 cases (91%), with reservations noted in 16 cases (9%). Similarly, in appellate courts, 73 cases (94%) provided clear explanations, while uncertainties were expressed in only 5 cases (6%). Notably, challenges to court decisions were infrequent in the first instance, with only 1 case recorded, whereas the appellate courts reported 6 cases, suggesting heightened contention at the appellate level.

Regarding the understanding of procedural rights, 58 cases (69%) in first instance courts made sure that defendants understood their rights, while 26 cases (31%) noted a lack of this inquiry. The corresponding figures for appellate courts were 16 cases (40%) and 24 cases (60%), respectively. These statistics indicate a more proactive stance in first instance courts concerning the assurance of defendants' understanding of their rights.

Regarding the briefing of victims on their procedural rights, in first instance courts, approximately 73% of cases (30 out of 41, where applicable) adequately informed victims about their procedural rights, while in approximately 27% of cases (11 out of 41), they were not adequately informed. In appellate courts, victims were informed about their procedural rights in approximately 65% of cases (11 out of 17), with adequate informing lacking in approximately 35% of cases (6 out of 17).

While explaining the procedural rights, the first instance courts appear to place a greater emphasis on considering individual situation when one conducts a court hearing. Personal attributes such as age, capacity, and other conditions were taken into account in 35 cases (19%) in first instance courts, with 8 cases (4%) not taking into account that the said circumstances require some procedural accommodation. In appellate courts, 6 cases (7%) affirmed the importance of such factors and respective procedural accommodation, while 8 cases (9%) contradicted this perspective.

#### 4.3.2.4. The Role of the Court

In criminal cases, the court's role can vary significantly, ranging from active to passive, with a notable portion of cases falling into a mixed category where the court's role depends on the specific stage of the hearing. This adaptability reflects the nuanced nature of legal proceedings and the court's capacity to tailor its involvement accordingly.

In a significant portion of cases, the court takes an active stance. Based on the monitoring data regarding the court's role, in approximately 38% of the cases (94 out of 248), the court played an active role in the case.

In approximately 27% of the cases (66 out of 248), the court had a passive role, indicating that it may adopt a more observant and less interventionist approach, allowing the parties to play a more prominent role in the proceedings.

In approximately 36% of the cases (88 out of 248), the court's role depended on the stage of the hearing, making it a mixed role. This flexibility in the court's role suggests adaptability to different phases of the case and a willingness to adjust its level of involvement as needed.

When comparing the role of appellate courts with that of first instance courts based on the monitoring data, some key observations and differences emerge. First instance courts tend to have a higher percentage of active roles compared to appellate courts, suggesting that they are more actively involved in shaping the direction of cases at the initial stage. In approximately 44% of cases (79 out of 162), first instance courts played an active role. In approximately 20% of cases (15 out of 76), appellate courts played an active role, which is notably lower than the active role percentage for first instance courts.

Under these circumstances, it is crucial to understand that the varied involvement of courts might not only be based on court hierarchy but also contingent upon the nature of individual cases, the courtroom's dynamics, and the personalities of the presiding judges. As mentioned previously, the vast majority of experts (data from *Expert Interviews*) noted that the level of judicial activism is not an established and consistent practice, and much depends on the personal qualities of a judge.

#### 4.3.2.5. Presentation of the Charges

One crucial aspect within this framework is the presentation of charges in court and the defendant's comprehension of these charges.

The presentation of charges by prosecutors displayed diverse approaches. In first instance courts, a detailed presentation of charges was observed in 45 cases (66%) out of 68 applicable cases, while a shortened version was presented in 23 cases (34%).

Conversely, in the appellate courts, out of 45 cases, a comprehensive presentation of charges occurred in only 11 cases (24%), with a summarized presentation being prevalent in 34 cases (76%).

Equally vital is the defendant's comprehension of these charges. In the analysis of 64 cases within the 281 monitored court sessions, where this aspect was applicable, it was evident that in a substantial proportion of instances, defendants were asked if they understood the charges and their position regarding those charges. Specifically, in 58 cases (approximately 91%), judges actively ensured that defendants fully comprehended the charges and elicited their positions. Conversely, in only 6 cases (approximately 9%), this crucial inquiry was omitted.

In the analysis of 35 cases within the 88 monitored court sessions in the appellate courts, where this aspect was applicable, it was evident that in a substantial proportion of instances, defendants were asked if they understood the charges and their position regarding those charges. Specifically, in 27 cases (approximately 77%), judges actively ensured that defendants fully comprehended the charges and elicited their positions. Conversely, in 8 cases (approximately 23%), this crucial inquiry was omitted.

#### 4.3.2.6. Testimonies

In the analysis of 98 cases within the 281 monitored court sessions, where the question of whether the defendant was asked when they wanted to testify was applicable, it was evident that in a substantial proportion of instances, defendants were indeed asked about their preferred timing for testifying. Specifically, in 62 cases (approximately 63%), judges proactively inquired about the defendant's preferred testimony schedule, ensuring that the defendant's wishes were taken into account. In contrast, in 36 cases (approximately 37%), this aspect was not addressed, indicating some room for improvement in consistently eliciting the defendant's preferences regarding their testimony timing.

In the analysis of 64 cases within the 281 monitored court sessions in the first instance courts, where this aspect was applicable, it was found that in a significant proportion of instances, judges actively inquired about when the defendant wanted to testify. Specifically, in 58 cases (approximately 91%), defendants in first instance courts were given the opportunity to express their preferences regarding the timing of their testimonies. Conversely, in only 6 cases (approximately 9%), this inquiry was omitted, indicating a generally consistent practice in the first instance courts.

However, when examining the same aspect in the appellate courts, where the analysis included 34 cases within the 88 monitored court sessions, differences in practice become apparent. In approximately 59% of cases (20 out of 34), judges in appellate courts actively asked defendants about their preferred timing for testifying, giving them the opportunity to express their preferences. In contrast, in approximately 41% of cases (14 out of 34), this inquiry was omitted. This suggests a greater variability in addressing this aspect of the proceedings at the appellate level.

In conclusion, while first instance courts generally exhibit a consistent practice of asking defendants about their preferred timing for testifying, there is room for improvement in ensuring similar consistency at the appellate level. Standardizing procedures across both tiers can contribute to a more uniform and equitable judicial process.

#### 4.3.2.7. The Right to Objective and Comprehensive Evaluation of Evidence

In the realm of jurisprudence, the manner in which evidence is presented and sought can significantly influence the course and outcomes of trials and prolong them. Based on the monitoring data, it can be concluded that in the majority of cases, which is approximately 89% (195 cases out of 220), additional evidence was not presented by the parties. Conversely, in approximately 11% of the cases (25 cases), parties did present new evidence. Where the question was applicable, in 15 out of 217 cases (approximately 7%), parties asked for the gathering of additional evidence. In the remaining 202 cases (approximately 93%), parties did not request the gathering of additional evidence. Therefore, the majority of cases did not involve requests for gathering additional evidence, with only a small percentage of cases where such requests were made.

The monitoring data also indicates that first instance courts are more likely to see the presentation of additional evidence compared to appellate courts. In the first instance courts, approximately 12% of cases (21 out of 183) involved the presentation of additional evidence by the parties. In a very small percentage of cases, approximately 3% (2 out of 71), additional evidence was presented by the parties at the appellate courts. Additionally, while requests for gathering additional evidence are relatively infrequent in both levels of courts, first instance courts have a slightly higher percentage of such requests. In the first instance courts, approximately 7% of cases (12 out of 183) saw parties requesting the gathering of additional evidence. In a similarly small percentage of cases, approximately 4% (3 out of 69), parties asked for the gathering of additional evidence at the appellate level. Overall, this duly reflects differences in the nature and focus of proceedings at these two court levels.

#### 4.3.2.8. The Right to be Presumed Innocent and the Right not to be Compelled to Testify or Confess Guilt

Among the 281 trials examined, the incidence of moral or other non-physical pressures exerted on defendants was minimal. Only 2 cases displayed such pressures, highlighting the rarity of this issue. However, of notable concern was a solitary case wherein a judge seemingly induced a defendant towards a guilty plea. While this represents a minute fraction of the cases, it underscores the necessity for judicial neutrality. On a more detailed level, the first instance courts were suggested to have exerted such undue pressures in 2 out of the 183 cases. Contrarily, no such occurrences were observed in the 88 cases monitored at the appellate courts.

The data suggests that in a significant majority of cases, the prosecutor performed their function without apparent personal bias or undue influence, which is a positive indicator of fair legal proceedings. In the vast majority of cases, approximately 91% (63 out of 69), where the question was relevant, the prosecutor exercised their function without apparent personal bias or undue influence. In only a small number of cases, approximately 9% (6 out of 69), there were concerns about the prosecutor's function being influenced by personal bias or undue influence.

On the other hand, the monitoring data also indicated that in a notable percentage of cases, the defendant was not informed about their right not to answer questions without adverse consequences, which raises concerns about ensuring the defendant's rights in those instances. In only a small number of cases, where the question was relevant, approximately 11% (4 out of 35), was it explained to the defendant that they are not bound to answer questions, and that the refusal to answer cannot be held against them. In the majority of cases, about 89% (31 out of 35), this explanation was not provided to the defendant.

#### 4.3.2.9. Judicial Deliberations

The monitoring data offers valuable insights into the process of judicial deliberations in criminal cases, shedding light on aspects such as the duration and location of these deliberations.

The data reveals that there is an approximately equal distribution between cases where the court retires to the deliberation chambers at the conclusion of the hearing and cases where they do not. When the court does retire for deliberations, the majority of cases have relatively short deliberation times of 15 minutes or less, accounting for approximately 61% of cases (48 out of 79). About 29% of cases (23 out of 79) had deliberations lasting between 15 minutes and 30 minutes. Longer deliberations, exceeding 1 hour, are relatively rare, occurring in only two cases among those monitored in criminal proceedings.

#### 4.3.2.10. Delivery and Publication of Judicial Decisions

In the assessment of the examined judicial cases, which totalled 70 cases, several key findings have emerged, each represented by case numbers and the corrected corresponding percentages:

Regarding public pronouncement of judicial decisions in criminal cases, the monitoring data revealed that a significant proportion of cases, accounting for 79% (55 cases), featured the operative part of the judgement being publicly pronounced. Moreover, 20% (14 cases) of cases had the entire judgement pronounced publicly. However, there were some instances where the public pronouncement was not comprehensive, with one case lacking any public pronouncement. Nevertheless, it is noteworthy that in all cases, some information was made available from the court registry, thus maintaining a degree of transparency.

Regarding the timing of public pronouncement, a substantial majority, encompassing nearly 90% (57 cases) of cases, were pronounced publicly on the initially indicated date. In a few instances, adjustments were made to the pronouncement schedule, with about 2 cases necessitating a new date for pronouncement and a similar percentage not having a new pronouncement date set on the originally intended day. Additionally, 1 case experienced the reopening of proceedings on the substance.

The monitoring also delved into the provision of reasons for the judge's decision. It was found that in a very limited number of cases, only 2 cases, the judge provided reasons for the decision after announcing the judgment. However, in the vast majority of cases, amounting to approximately 97% (68 cases), there was a notable absence of explanations for the decision.

The distribution of litigation costs was another area of interest. Where the question was applicable it was found that in a minority of cases, specifically about 14% (5 cases), the judge offered an explanation regarding the distribution of these costs. In contrast, the majority, comprising approximately 84% (31 cases), did not include an explanation.

Where the information on how to appeal and time-limits had to be provided, in about 75% (45 cases) of monitored cases, the judge clearly informed the parties about how to appeal, whereas in about 25% (15 cases), this information was not clearly provided. Similarly, in terms of time-limits for appeal, approximately 76% of cases included clear information, while about 24% lacked such clarity.

Finally, the accessibility of case-law on the court's website was evaluated. It was found that about 53% (26 cases) of cases ensured that the judgment was available in less than 30 days, reflecting promptness. In one case, the judgment was accessible in less than 60 days, while in about 45% (22 cases) of cases, judgments remained non-published on the court's website.

While there are commendable aspects such as public pronouncement and timely accessibility of judgments, opportunities for enhancement exist in providing comprehensive explanations for decisions, clarifying the distribution of litigation costs, guiding parties on the appeals process, and further improving the accessibility of case-law on the court's website.

### 4.3.3. Overall Professionalism of the Court

In both the courts of first instance and appellate courts, a substantial majority of judges maintained a commendable level of professionalism throughout the trial.

In 98% of monitored cases (281 cases in total for courts of both instances) judges were consistently present in the courtroom for the entire duration of the trial. There were minor instances of observed distractions. In the first instance courts, cell phone usage was noted in 6 cases, while in the appellate courts, it was identified in 4 cases.

An encouraging trend in both court instances was the adherence to the merits of the cases. In the courts of first instance, 99% (278 cases) remained firmly focused on the case's subject matter. The courts of first instance encountered a solitary instance of unrelated questioning, whereas the appellate courts reported none. Slightly concerning, in the first instance courts, were 2 cases that appeared to reveal potential bias toward the case's outcome. In contrast, the appellate courts maintained neutrality across all cases. Gender sensitivity was consistently upheld in both court types, with no instances of sexist language or behaviour observed.

In evaluating participants' satisfaction with the attitude and courtesy of judges during the hearings, the data reveals a generally favourable inclination. Of those surveyed, 15 respondents, constituting 33%, expressed satisfaction with the judges' demeanour. A significant proportion, 22 individuals or 48%, indicated an average level of satisfaction, suggesting a neutral perception or room for improvement. Conversely, 7 participants (15%) were not very satisfied.

Considering perspectives on court staff's attitude and courtesy, the *Court Users Surveys* data provided nuanced insights into respondent satisfaction. A significant majority, comprising 56% (26 individuals), expressed average satisfaction with the courtesy of court staff. Additionally, 33% (or 15 respondents) indicated satisfaction, reflecting a generally positive sentiment. In contrast, a minor 7% (or 3 respondents) were not very satisfied. In addition to this, the *Trial Monitoring* established that in 21% (or 59 cases) of hearings, staff proactively provided unsolicited assistance.

**4.4. FAIR TRIAL RIGHTS IN ADMINISTRATIVE OFFENCES CASES**

In this section, similarly to the analysis presented for civil, administrative, and criminal cases, we begin by exploring the critical aspects of accessibility and transparency within administrative offences cases. Following this, we proceed to examine the conduct of oral proceedings, including the right to defend oneself, procedural rights and obligations, the role of the court, and other key elements related to fair trial rights. Lastly, we assess the overall professionalism of the court, providing a comprehensive overview of key aspects that contribute to a quality and efficient judicial process.

*The Trial Monitoring* provides an overview of court hearings concerning administrative offenses—126 court hearings in total. Among these, a substantial 82% (or 103 hearings) were observed at the courts of first instance, while the remaining 18% (or 23 hearings) took place in appeal courts.

Of the 82% of cases (103 in total) presided over by individual judges, the remaining 18% (or 23 cases) were heard by a panel of three judges. Among the judges, 34% (or 59 judges) had ten years of experience, 51% (or 87 judges) had served up to 20 years, and 15% (or 26 judges) had more than twenty years of professional experience.

All the monitored hearings were public and followed a regular procedure. The majority, 62% (or 78 cases), were either focused on examining the case's merits or were related to appeals. The preparatory stage was the focal point in 16% (or 20 cases), while the pronouncement of judgment was observed in 22% (or 28 cases).

Another significant observation concerns the duration of these court sessions. Most hearings, specifically 48% (or 60 cases), concluded within 15 minutes. An additional 34% (or 43 cases) extended to 30 minutes. A smaller fraction, 15% (or 19 cases), ranged from 30 minutes to an hour, and only 3% (or 4 cases) lasted more than an hour*.*

The analysis of the results provided by *the Trial Monitoring* is read together and further supplemented with the results of *Court Users Surveys*.

### 4.4.1. Accessibility and Transparency in Administrative Offences Cases

As part of this analysis regarding administrative offences cases, we first of all explore several key aspects of access to court information, entry requirements for attendees, the conduct of participants, and the role of NGOs.

4.4.1.1. Access to Court Information

The monitoring of 126 cases revealed that in 97% (or 122 cases), comprehensive data was provided within the court's docket. Approximately 99% (or 125 cases) offered clear details such as timing, involved parties, the nature of the case, and the identity of the presiding judge.

Nevertheless, the availability of courtroom information appeared less consistent, especially within the appellate courts, where approximately 61% or 14 out of the 23 cases had such details accessible. Both courts grappled with the mismatch between scheduled and real-time room allocations. For instance, in these cases, the courts of first instance did benefit from proactive assistance from court guards in 7 cases.

Regarding the clarity of summonses and other information provided by the court, a majority of respondents expressed a moderate level of satisfaction (*Court Users Surveys*). Specifically, approximately 65% (or 15 cases) indicated an average level of satisfaction with the clarity of the information. Meanwhile, approximately 26% (or 6 cases) expressed satisfaction, suggesting an overall positive trend.

4.4.1.2. Public Access

Among the total hearings observed, it is notable that in approximately 48% of cases (60 out of 126), attendees were required to provide a rationale for their presence. Conversely, a substantial approximately 36% of hearings (45 out of 126) adopted an unconditional access policy. Nonetheless, in approximately 15% of cases (19 out of 126), entry depended upon the presentation of an identity document. This emphasis on identity verification could be attributed to security imperatives or may be context-specific, tailored to the nature of the cases under consideration. It is noteworthy that this practice is distinct to the courts of first instance, whereas in the appellate courts, approximately 96% of cases (22 out of 23) offered unrestricted access.

4.4.1.3. Equal Access

The majority of hearings adhered to formal and impartial judicial proceedings.

In 88 hearings, representing approximately 70% of the total cases, the parties left the courtroom at the same time. A substantial 100 hearings, or approximately 79%, demonstrated no preliminary exchanges between court users and the judges. This trend was also observed post-session, with limited engagements observed in only about 18% of the total cases. Interactions between opposing parties generally remained neutral.

Ethically, inappropriate exchanges were minimal, with only one instance occurring in the first instance courts, and none in the appellate courts.

4.4.1.4. NGO's access to court

Among the 126 hearings observed, only a single case featured an NGO assuming a distinctive role as a non-legal advocate within the first instance courts. The limited engagement of NGOs in the first instance courts, coupled with the complete absence of such engagement in the appellate courts, underscores potential barriers and missed opportunities.

### 4.4.2. Conduct of Oral Proceedings

This sub-section delves into various critical aspects of courtroom proceedings, providing insights derived from the observation of 126 court hearings in administrative offences cases. Following a similar pattern as in other types of proceedings, this analysis explores how courts address instances of non-appearance of parties' representatives, punctuality, explanation of procedural rights, the role of the court, presentation of charges, testimonies, evaluation of evidence, judicial deliberations, and the delivery and publication of judicial decisions.

4.4.2.1. Right to Defend Oneself in Person or Through Counsel

In the analysis of 126 court hearings, the manner in which the courts addressed instances of non-appearance, whether by defence attorneys or representatives from competent institutions, provides valuable insights into the judiciary's commitment to upholding due process.

In cases of the absence of a defence attorney, the court chose to postpone proceedings in 8 cases, accounting for approximately 6% of the total. Among these postponements, the courts of first instance accounted for 7 cases, while the appellate courts recorded a postponement in just 1 out of the 23 cases. However, it is noteworthy that appellate courts proceeded with the hearing in the absence of a defence attorney in 4 cases, while the courts of first instance did so in 11 cases.

Regarding the absence of representatives from competent institutions, a total of 13 cases were postponed due to this absence, with all of them originating from the first instance court. In contrast, the appellate courts did not opt for any postponements in such situations. The decision to proceed with proceedings despite the absence of the representative was followed in all 23 cases. In the first instance courts, approximately 86% (89 out of 103 cases) chose to proceed without the representative. In a single occurrence within the first instance courts, a newly assigned representative was not granted time to familiarize themselves with the case specifics.

4.4.2.2. Opening of the Court Hearing

A significant majority of court proceedings, approximately 73% or 92 cases, adhered strictly to the established schedule. Notably, the first instance courts demonstrated consistent adherence in this regard, with 82% or 84 out of 103 cases adhering to the prescribed timelines. In contrast, in the appellate courts, around 35% or 8 out of 23 hearings maintained the specified schedule.

The majority of court users (according to *Court Users Surveys*) characterized the punctuality of hearings as average. In this context, when assessing the punctuality of these hearings, court users, approximately 22% or 5 respondents, reported being 'satisfied' with the punctuality, with approximately 44% or 10 noting 'average satisfaction.' Nevertheless, there was a notable segment of respondents, comprising approximately 6 individuals, who were 'not very satisfied' and 'not satisfied' with the punctuality.

A more significant concern arises from the evident lack of communication surrounding these delays. Among all hearings that experienced deviations from the schedule, only a single case provided reasons for such delays.

4.4.2.3. Procedural Rights and Obligations

In a majority of hearings, specifically 68 (69%), the rights of participants were explained clearly. Nonetheless, a significant 31 cases (31%) fell short in this regard. The significance of the right to challenge the composition of the court was underscored in 98 cases (78%). It is worth noting that, despite frequent articulation, no challenges were made.

Further examination of the comprehension of procedural rights reveals that only in 42 cases (or 75%) was there an additional step taken to confirm participants' understanding of these rights. Although both first instance courts and appellate courts predominantly experienced no challenges to the court's composition, the inquiry into whether the parties understood their procedural rights was more frequent in the first instance courts.

4.4.2.4. The Role of the Court

In approximately 42% of the hearings, precisely 49 out of 117 applicable cases, the court assumed an active role, demonstrating a heightened sense of engagement and initiative. This proactive involvement is characterized by the court's vigorous questioning, thorough interaction with case particulars, and a hands-on approach to unfolding events. This significant inclination toward an active role underscores the court's commitment to a comprehensive examination of cases.

Conversely, a more reserved or passive stance was observed in 38 court hearings, comprising 32% of the observed cases. A dynamic and adaptable stance was evident in 30 hearings, or 26% of the cases. Termed as a "mixed role," this modality indicates the court's flexibility, showcasing a blend of active and passive engagement contingent upon the specific stages of the hearing.

When analysing the role of courts in both the first instance and appellate instance, distinct patterns of engagement emerge. In the courts of first instance, out of 96 applicable cases reviewed, the court played an active role in 45, or 47%. Conversely, a more passive stance was adopted in 24 cases, accounting for 25%. In 27 cases, equivalent to 28%, the court's involvement varied based on the specific stage of the hearing. In contrast, the appellate instance demonstrated a different dynamic. The court was actively involved in a mere one case. A more passive stance was predominant, with 78% or 14 cases leaning this way. Mixed engagement was observed in 3 cases, making up 17%, where the court's role was described as mixed.

4.4.2.5. Presentation of the Charges

In 35 cases (approximately 38%), charges were presented in a comprehensive and detailed manner. Conversely, a majority of cases, specifically 56 hearings (approximately 62%), witnessed a shortened presentation of charges. In 33 cases, the defendant was asked whether they understood the charges and their position, including whether they confessed or not. Courts of first instance presented charges comprehensively more often, in 35 cases (47%), whereas in appellate courts, shortened presentations were presented in all monitored instances.

4.4.2.6. Testimonies

In conclusion, in the majority of cases, comprising 21 out of 38 applicable cases (approximately 55%), the defendant was asked about their preference regarding when they wanted to testify. In the first instance courts, this practice varies. Specifically, in 20 out of 30 instances (approximately 67%), the defendant was asked about their preference regarding when they wanted to testify. In a smaller subset of cases, accounting for 10 out of 30 (approximately 33%), this specific inquiry was not made. Meanwhile, at the appellate courts, the defendant was asked when they preferred to testify in a single case (out of 8 applicable monitored instances).

4.4.2.7. The Right to Objective and Comprehensive Evaluation of Evidence

*The Trial Monitoring* results indicate that in a limited number of cases, specifically 18 out of 89 applicable instances (approximately 20%), additional evidence was presented by the parties. Conversely, in the majority of cases, accounting for 71 out of 89 (approximately 80%), no additional evidence was presented by the parties. This suggests a prevailing trend of reliance on existing evidence or a lack of need for additional evidentiary submissions in the examined legal proceedings.Top of Form

4.4.2.8. Judicial Deliberations

Regarding the question of whether the court retired to the deliberation chambers at the conclusion of the hearing, the *Trial Monitoring* data shows that in 46 instances (approximately 54%), the court opted for this traditional practice, reflecting a commitment to structured and private deliberations. Conversely, in 39 cases (approximately 46%), the judges chose not to adjourn to chambers, possibly influenced by the urgency or specific characteristics of the cases.

When examining the duration of deliberations, a majority of cases, specifically 29 out of 46 (approximately 63%), were resolved within a concise timeframe of 15 minutes or less. In 12 cases (approximately 26%), deliberations extended up to 30 minutes, while in 3 cases (approximately 7%), they stretched to one hour. Only 2 cases (approximately 5%) required deliberations exceeding one hour.

4.4.2.9. Delivery and Publication of Judicial Decisions

When examining the aspects of pronouncement of judicial decisions and their subsequent explanation, there are two notable trends:

1. Regarding the question of whether the judgment was pronounced publicly, 42 cases (approximately 88%) saw the judges announcing the operative part of the and only in a smaller subset of 6 cases (approximately 13%), the judges opted for a more detailed approach by announcing the judgment in full.

2. Concerning the explanation of the reasons for the decision by the judge after announcing the judgment, *the Trial Monitoring* data indicates that in the majority of cases, specifically 46 out of 47 applicable instances (approximately 98%), no detailed reasons were provided immediately following the judgment. In contrast, in only one case the judge did offer an explanation for the decision. Similarly, when evaluating the explanation of reimbursed litigation costs, the communication of these costs by the judge is minimal. Only a limited number of cases, specifically 3 out of 24 applicable instances (approximately 13%), received a clear explanation. In the majority of cases, comprising 17 out of 24 (approximately 71%), no such explanation was provided immediately following the judgment.

When it comes to informing the parties about the procedure for appeal, the data indicates that in the majority of cases, specifically 32 out of 43 applicable instances (approximately 74%), the judge did provide clear instructions to the parties on how to initiate an appeal. Similarly, regarding the communication of the time limits for appeal, the judge informed the parties in a clear manner in most cases, with 31 out of 41 instances (approximately 76%) receiving such information.

The availability of judgments on the Court's website varied within the dataset, reflecting different timelines and publication practices with slightly better results showed at the appellate instance:

- In 26 cases (approximately 61%), judgments were made available on the Court's website within 30 days of the decision;

- In 7 cases (approximately 16 %), judgments were accessible on the website within 60 days of the decision.

- In 12 cases (approximately 23%), judgments were not published on the website.

These findings underscore the diversity in the timing and extent of online access to court judgments, which can have implications for transparency and public access to legal decisions.

### 4.4.3. Overall professionalism of the Court

The *Trial Monitoring* of administrative offenses cases not only observed the implementation of procedural rights but also noted certain results concerning the conduct of judges and other participants during courtroom proceedings.

In the overwhelming majority of cases, precisely 120 cases (or approximately 95%), the judge or panel of judges consistently remained present in the courtroom, demonstrating impartiality and a focus on the case at hand. Only in one case was it noted that a judge was using a cell phone. Furthermore, a high standard of professional behaviour was maintained in 125 cases (or approximately 99%), with judges refraining from any inappropriate comments or actions. Their unwavering commitment to relevance and impartiality was also prominently displayed, as evidenced by 122 cases (or approximately 97%) avoiding unrelated questions. In 125 cases (or approximately 99%), judges showed impartiality, refraining from revealing their personal inclinations. There were only isolated instances of potential deviations in one appellate case, which raised concerns about undue pressures on the accused and adherence to gender-sensitive norms.

Furthermore, according to *Court Users Surveys*, a notable 30%, equivalent to 7 participants, reported satisfaction with the attitude and courtesy displayed by the judges. Nevertheless, concerns arise as 2 respondents expressed dissatisfaction with the judges' attitudes, hinting at isolated incidents of potentially unfavourable behaviour. Additionally, one respondent expressed outright dissatisfaction with the judges' attitude. These responses underscore the importance of maintaining a consistently professional and respectful judicial environment to ensure the satisfaction of all court users.

When analysing the attitude and courtesy of court staff, the responses from participants in the proceedings (*Court Users Surveys*) reveal a diverse spectrum of satisfaction levels. Nevertheless, a substantial majority, constituting approximately 57% or 13 out of 23 respondents, expressed an average level of satisfaction.

**4.5. EFFECTIVENESS OF THE TRIAL PROCESS ORGANIZATION**

In 2008, the European Commission for the Efficiency of Justice (CEPEJ) developed the *Checklist for promoting the quality of justice and the courts*[[28]](#footnote-28) (CEPEJ-GT-QUAL, Checklist for promoting the quality of justice and the courts, Strasbourg, 2-3 July 2008, CEPEJ (2008)2E.). The document relates to both judiciary in general and individual courts and judges in particular. It is intended for the managing bodies of the State authorities whose jurisdiction covers the issues of policy in the area of justice (Ministry of Justice, courts, etc.). Among many other questions, the document encompasses the relevant issues of justice such as improvement of the hearing performance, etc. In relation to this, the main aspects of proper and efficient trial process organization questions were included to respective sources of monitoring activities (*Trial Monitoring, Focus Group Surveys*, and *Expert Interviews*). The results are discussed in this section.

Effective preparation for court hearings, which encompasses the coordination of hearing schedules, the management of court hearing delays, and the implementation of efficient work-load management solutions, all contribute significantly to the quality of a justice system. Unfortunately, the monitoring results reaffirm that the substantial judicial workload and organizational shortcomings in Moldova's courts severely impact access to justice, procedural rights, and the quality of judicial decisions.

### 4.5.1. Organizational Arrangements of Court Services

*The Trial Monitoring* revealed that the majority of court hearings across different types of cases demonstrated a high level of compliance with transparency and clarity standards. Details such as hearing timings, designated courtrooms, parties involved, subject matter, and the presiding judge's name were comprehensively provided in the vast majority of cases (for more details, please refer to Sub-Sections 4.1.1, 4.2.1, 4.3.1, and 4.4.1).

*Court Users Surveys* data indicated that many respondents expressed satisfaction with certain administrative aspects. The majority, 41%, indicated they were "satisfied" with waiting conditions and courtroom furnishing. A substantial 42% expressed "average satisfaction.". The majority, 41%, expressed being "satisfied" with conditions of access to the court building. A substantial 46% reported "average satisfaction."

Professional lawyers who are in regular and often contact with courts presented even a more critical view. Via *Focus Groups Surveys*, private and state-funded lawyers were asked to share their experience in connection with such organizational aspects as signposting in the court buildings, waiting conditions, and courtroom furnishings. They were also asked to assess the communication aspects between the court and lawyers and the possibilities to use computerized management of proceedings. Regarding satisfaction with the organizational aspects, around one-third of respondents indicated that they are very satisfied or satisfied with them.

In this regard, a telling example was provided by a respondent within the group of state-appointed lawyers: *“Everything is restricted. The time of receiving requests, of resolving requests. Any simple thing to be done by the clerks or the chancellery, they don’t want to do it just because they want requests, requests for everything. The parking spaces are only for [important ones] in the courts, the public spaces being fenced off with unauthorized gates. Lawyers have to break traffic laws and park on sidewalks <…>. In the end, you may not even make it to the meeting. Or, better yet, you don’t even get there. <…>”*.

### 4.5.2. Setting Hearing Times and Managing Delays

While a majority of court users (as per the *Court Users Surveys*) indicated satisfaction with the punctuality of hearings (with a substantial 32% expressing "satisfaction" and a significant 39% reporting "average satisfaction" in this regard), the persistent issue of punctuality in court sessions remains a concern.

*The Trial Monitoring* revealed that out of the 281 observed civil cases hearings, 221 cases (79%) adhered to the case trial calendar. However, in the remaining 60 cases (21% of the total), deviations from the scheduled timeframe were observed. A significant lack of communication becomes apparent: only 7 of these 60 cases (approximately 12%) were accompanied by explanations for the delays. Apologies from the judges for such delays were limited to just 6 cases, highlighting a clear communication gap during procedural inconsistencies.

In the case of the 281 total criminal cases hearings, 77 hearings (27%) experienced deviations from their scheduled timings. A notable 66 of these delayed cases (86%) did not receive communication from the court regarding the reasons for the delay, and judges offered apologies for the delay in only 5 cases.

The evident lack of communication regarding delays in court hearings also raises concerns in administrative offenses cases, where reasons for delay were provided in only one case.

It is not only the punctuality that raises concerns but also the question of postponements once the court hearing starts. The analysis of monitoring data further suggests that the postponement of the court hearings is one of the key factors responsible for the lack of good perception of judicial services. *Focus Group Surveys* showed that coordinating in setting hearing times and punctuality of hearing are among major reasons for the lack of satisfaction with the quality of judicial system in Moldova. Accordingly, less than one third of respondents within the group of private lawyers indicated that they were satisfied or very satisfied with the punctuality of hearing (28%, respectively).

It appears that the efficiency of court proceedings is hindered by various interruptions. In a significant number of cases, hearings are often disrupted by lengthy breaks due to organizational factors, such as the absence of shared access to lawyers' schedules and the scheduling of multiple short hearings on the same day.

Furthermore, during discussions about the reasons for delays in *Expert Interviews*, a significant issue emerged – the lack of continuity in procedural actions. Expert 8 (lawyer) aptly noted, *“If I were a judge, I would program the stages differently, I would <...> link all stages”.*

Many Experts pointed out the fact that too many hearings are set for the same day.Expert 6 (lawyer) commented that *“This problem comes from judges, they cannot or do not want to organize their work for people, they organize it for themselves”.* As pointed out by Expert 8, *“<...> [judges] don't take into account the specifics of the hearing, if this is the first meeting, okay, let it be half an hour. But if the hearing is on the merits, let it be 2 hours or 3 hours. [Otherwise] <...> the plaintiff presents his position, and the judge looks at the clock and says “all for today, time is up, the rest of the questions are at the next meeting.”* Case complexity assessment, as it is set now, seems not to offer a sufficient guidance: *“Cases are very different. When cases are registered, they put complexity <...>. Nobody can determine it and the program determines. Stupidly, but it defines. It's also kind of fiction because it can't be that simple. Simple math: I can read a maximum of 200 pages a day. I can write one reasoned decision and hold 5 more hearings. <....> If someone makes simple mathematics <...> then I think that all our decisions can be safely annulled because physically you cannot listen to a transcript of two weeks in 2 hours”* (Expert 4, judge).

Additionally, the excessively short duration of court hearings is a significant concern. Statistical data illustrates that, for example, the most common duration for civil case hearings was either up to 15 minutes (36% of cases) or up to 30 minutes (34% of cases). A similar trend is observed in administrative cases, with a significant number of hearings being brief. Most hearings in the administrative, with 36% (or 40 cases) lasted up to 15 minutes, 34% (or 38 cases) between 15 to 30 minutes, 24% (or 27 cases) spanning between 30 minutes to an hour. A similar trend is observed when analysing the duration of criminal or administrative offences case sessions. The most hearings in administrative offences cases, specifically 48% (or 60 cases), concluded within a span of 15 minutes.

Moreover, the lack of specialized training for judges in the management of hearings and working time was consistently raised as an issue. The acquisition of institutional know-how does not necessarily mean that positive experience will be adopted. As emphasized by Expert 19 (judge), “*The National Institute of Justice does not have courses on the organization of work processes and working hours, either at the initial training stage or at the subsequent training stage. There's a course on time management, but it's a general course, and it's not related to refereeing, it's interesting, but it's general”.*

The lack of training was consistently regarded as an issue that should be considered when one seeks solutions to better organization of court work: *“The National Institute of Justice doesn't have courses like that, and that's a problem. When future judges come to practice, we do not have time to train them. We tell them to help me motivate it because it's more important to us. No one teaches the organization of work, and it is impossible, it all depends on everyone. Everyone must find their own rhythm and follow the general rules.”* (Expert 14, judge).

Coordinating hearing times and cooperating with lawyers were identified as additional challenges. There is currently no system in place for judges to determine the availability of legal representatives for the parties involved. Many experts proposed the implementation of an online communication system to address this issue. Expert 19 (judge) noted: *“We could coordinate and set a suitable time for everyone. There is no coordination. A shared online calendar for everyone would help a lot.”* System for online communication was a solution proposed by many Experts. In this regard, Expert 17 (judge) explained: *“We don't have problems with prosecutors, but we have problems with lawyers regarding coordination, but we understand that they have to work on different cases and sometimes they coincide. It would be good to have this system of online communication between lawyers and judges when assigning cases, so that everything in the case and the hearings do not coincide, so that there is an electronic notification system (now notices to lawyers are sent by e-mail, and this is not a problem)”.* Similarly, Expert 2 (judge) pointed out that *“It would be easier if there was some kind of electronic system. I mean if there was some kind of integrated system for lawyers, and in this case, I don't have to warn/call anybody, I just log in to the system, look, he's free there.”*

*Focus Groups Survey* results on the coordinating in setting hearing times warn against risks related to the lack of cooperation between actors across justice system too, with more than one third of respondents (35%) indicating their satisfaction level being below average.

Another unusual practice is scheduling court sessions every half hour with the expectation that some may not take place due to participants not showing up. This creates uncertainty for all parties involved and places an additional burden on judges. It's a kind of "live queue".

In addition, the mismatch between scheduled and real-time room allocations in both first instance and appellate courts dealing with administrative offenses cases poses some challenges. While first instance courts received certain proactive assistance from court guards in 7% of cases, appellate courts occasionally faced issues with room allocations.

### 4.5.3. Work-Load Management Solutions

#### 4.5.3.1. Organizational Arrangements Creating Administrative Framework for Working Conditions

In Moldova, the issue of high workload in the justice system has been a long-standing concern. Organizational and performance factors have often been affected by inertia, with a focus on maintaining stability rather than adopting new working methods. In this regard, Expert 17 (judge) noted that *“Methods of organizing work, establishing hearings have not been discussed for a long time. Previously, they tried to talk about this, but since the amount of work is large, everyone is glad that the work is going as it is.”*

High workload naturally presents significant organizational challenges. It appears that practices for balancing staff and workload vary, with some judges managing their caseloads effectively while others struggle: *“There are some judges who have cases laid out like a pharmacy with the same amount of work and there are judges who constantly do not have time for something. <....> Discipline is important here, it should be like in the army, because there is a large amount of work.”* (Expert 14, judge).

While decisions about organizational aspects are typically made individually by each judge, there seems to be a lack of specialized training in managing hearings and working time. Judges often rely on the knowledge and advice of more experienced colleagues. This informal knowledge sharing helps some judges improve their organizational skills: *“We, the judges, talk among ourselves, someone adheres to the advice of colleagues on the organization of work and someone does not. I <...> listened to more experienced judges, watched how they work, learned something from one, something from another what I thought was better. But there’s no obligation here and that's where we work sometimes for statistics.”* (Expert 19, judge).

In response to the challenges posed by excessive workload, experts advocated for better teamwork and constructive cooperation on case files (Expert 4, judge; Expert 5, judge; Expert 14, judge; Expert 18, lawyer; Expert 19, judge). Expert 18 (lawyer) highlighted the importance of having capable assistants and court clerks but noted challenges related to turnover and low salaries: *“If a judge has a good assistant and court clerk, you can hope for good organization. But they have a large turnover, salaries are very small, and they also need higher education, so they do not linger.”* Under those circumstances, trust in the teamwork is crucial, as explained by Expert 14 (judge), who emphasized the need for judges to trust their support staff to ensure efficient case management: *“<...> [the judge] didn't trust either the secretary or the assistant, and he took over all the work: he laid out mail, wrote notices, and even filed cases. But you take someone else's amount of work, and you don't have time to do your work as a judge. You have to teach, you have to check, but you still have to trust, otherwise you can't motivate.”* Failures also happen in unforeseen circumstances because there are no risks assessment and alternative solutions which guarantee the continuity of activities. This, in turn, leads to some improvisations: *“Yeah, I didn't have a secretary, but I took both my daughter and my son, I knew they could file, and I gave them 25 pages of the case to file and to inventory the case file. When I saw that the secretary didn't have time, I connected the trainees. Failures happen if the judge or secretary is on sick leave, then it is very difficult to recover.”* (Expert 14, judge).

In this context, it is also worthy to note the institutional fatigue. There is a call for a focus on making existing systems work rather than constantly introducing new reforms and changes, as the latter can signal instability and hinder the implementation of existing initiatives. This was interestingly pointed out by Expert 9 (lawyer): *“In Moldova, as a state-owned legal system, there is basically everything but nothing works. It's like an upset piano, because nothing fundamentally new is needed in Moldova. I think we need to focus on making sure that, what's there works, because we're always trying to assume, “Let's add something,” but nothing works. And the saddest thing is that we don't understand that we don't have to fundamentally change everything, the concept once went one way. <...> Even if you think it's wrong, you can't change the concept. <...> On the one hand, I am very liberal for everything new, but on the other hand, we must stop with all new reforms, changes, because this does not give the opportunity to begin to implement what we have done. The main thing is that it sends a signal of instability and everyone thinks “why should I do this, because tomorrow it will change <...>.“*

#### 4.5.3.2. Personnel Management

While discussing the efficiency of the case-management, concerns about the ongoing pressure faced by judges due to limited personnel, which necessitates the implementation of exceptional measures to cope with the high workload were voiced. *Expert Interviews* emphasized the need to strengthen the justice system by providing proper remuneration for judicial personnel. This would facilitate the smooth functioning of the justice system and ensure that the judiciary can effectively fulfil its role as an arbitrator.

The issue of small salaries for judicial personnel was repeatedly raised, resulting in a high turnover of staff and significant impacts on the organization and quality of work. This concern was voiced by multiple experts, including Expert 1, lawyer; Expert 4, judge; Expert 5, judge; Expert 6, lawyer; Expert 10, judge; Expert 14, judge; Expert 18, lawyer; Expert 19, judge. The situation was described as a *“Personnel crisis.”* (Expert 1, lawyer);a *“Critical shortage of personnel because of wages”* (Expert 20, judge assistant);and a lack of interest in working in the system:*“<...> there is no staff and there is not even an interest now, there is no one to work”* (Expert 4, judge).

Expert 14 (judge) highlighted the challenges of retaining personnel, particularly young professionals, who often leave for higher-paying positions after gaining experience within the judicial system: *“I'm constantly paying if my employees leave. I choose students who are doing an internship with us, so that they are nimble, so that they trust me, and I trust them that we are rooting for each other. We have them working for 3-4 years, developing and then going where they receive a salary 2-3 times more. And I always have pain for everyone. Investing in them, teaching them is worth a lot of health, and then...<...> They have a very small salary, and the work is very serious, they work with complex cases, criminal cases, where they can transfer information from the case to someone.”* The salaries of the secretaries are pointed out as extremely low in comparison to their workload and stress levels: *“Our secretaries get paid less than a waiter across the street. After the hearings, they still have to work and file, be sure to put everything in the program etc.”* (Expert 4, judge). Expert 5 (judge) further explained: *“The secretary receives 5000 lei [257 Eur] salary, assistants 7000 [365 Eur]. What is the salary, what is the quality. As far as I know, when there's a good assistant, it's very rare because you can't bring good people into the system. Give them a salary to attract”.* In addition to this, Expert 10 (judge) pointed out that the work at the courts is not stress free: *“<...> the way they come <...> they are not ready for this amount of work and they are not prepared for this psychological stress”.*

In addition to the financial concerns, Experts underscored the lack of timely training for judicial personnel. They highlighted that assistants and secretaries often receive training after starting their roles, leading to challenges in their initial responsibilities: *“We also have a problem here. Assistants are not trained, no one trains them, including secretaries, no one prepares them. This is the role of the National Institute of Justice, but, for example, in the case of the secretary, he is first invited to work, he comes and immediately he must participate in the hearings, and then two or three months later the secretary is summoned there for a seminar. Who prepares them? It's still up to the judge. I have to come to work on Saturday and explain to him how to make a protocol. How to enter data into a computer, how to formulate, how to stitch and so on. No one pays me for it, it's a huge amount of work, I have to teach him, I have to teach him how to talk to people, how to talk on the phone, many, many, many other things. So instead of focusing on the act of justice, the motivation, I have to teach them <...>. It's the same with assistants. Assistants aren't trained, and you have to intervene.”* (Expert 10, judge).Expert 19 (judge) similarly commented pointing out the lack of preparation for a new role: *“I can't tell you what it is like if the secretary leaves and another one comes, so we have 2 weeks - it's a complete nightmare. It is good if the one that leaves and the one that comes in good faith, there is a connection between them. I had only one assistant with whom I worked for more than 5 years, the rest did not work for more than a year, a year and a half: some went to Parliament, or to another job or abroad.”*

The role of qualified judicial personnel was highly praised by experts. Expert 16 (lawyer) noted that *“A good assistant is worth their weight in gold <...>“*. Expert 4 (judge) emphasized that *“Without judicial staff, even the smartest judge on the planet will not be able to do anything. They have a huge amount of work; I know guys who write better than judges. A very good thing was done when assistants were introduced. I can say that we are working on administrative cases, and our guys, they are very much in demand, that is, all the authorities or even various legal companies are looking for and want to take them to them”.* A similar position was expressed by Expert 10 (judge) noting the poaching of workers: *“It's very important to pay the secretaries, the assistants, and the judges well. This salary of the secretary and the assistant will encourage them to work harder and try harder. We train the staff, and other government agencies take them from us.”*

Several experts pointed out a practice where some judges provide additional compensation to their personnel: *“Yes, I've heard that some judges pay extra to assistants but I don't know where they got the money for that.”* (Expert 19, judge); *“There are judges who pay extra to their secretaries but this indicates some kind of corruption, from what money?”* (Expert 18, lawyer); *“<...> there is again a question of integrity of how some judges pay assistants, i.e., assistants, and not their own, to motivate decisions in other cases because judges probably do not have time.”* (Expert 13, lawyer); *“They are paid extra so that they do not leave.”* (Expert 16, lawyer). Some apply additional motivational measures: *“We try to be more flexible, not so strict in terms of compliance with the work schedule (they can ask for half of the day).”* (Expert 19, judge).

Overall, it appears that the primary motivation for judicial personnel is the prospect of advancing their careers within the judicial system: *“Assistants <...> they hope to become judges themselves.”* (Expert 19, judge). In this regard, Expert 5 (judge) noted that *“The only motivation that there is for an assistant is that he can go further into the judicial system and that's it. <...> We must first involve professionals and specialists in the judicial system so that they grow in the court, so that they stay later. And now <...> it is necessary that at least they have salaries, well, more, so that they stay with us. At the moment, we are far from it.”*

Working conditions of justice actors must not go unstated in a long term. Experts raised concerns about the sustainability of the justice system in Moldova, given the high workload, the shortage of well-trained staff, and organizational challenges. In this regard, Expert 12 (lawyer) warned against serious risks: *“And I can't understand how all this can work in a country like Moldova, when a large, huge number of thinking people have left or are going to leave and categorically refuse to go into the state system. I understand that there are enthusiasts in the system, but you can't build the system on enthusiasm.”*

#### 4.5.3.3. Procedural Framework Impacting Work Management Solutions

In addition to the concerns regarding institutional resources and arrangements, the monitoring activities have taken into account the procedural framework that could contribute to the high workload and the necessary measures to address it. The efficiency of trial process organization is substantially influenced by the procedural tools specified in procedural codes and their practical implementation.

To begin, should be noted that the application of the simplified procedure in civil cases is not popular in Moldova. One of the experts (Expert 19, judge) pointed out the reasons why the simplified procedure lacks efficiency in practice: *“<...> we have situations where we can apply a simplified procedure, but we are all afraid for objective and subjective reasons. How this happens: the creditor presented the documents, the judge looks only according to the documents that there is a debt of 5000 lei for electricity, and this amount is indisputable and gives an order to recover the amount. If the debtor does not challenge within 10–15 days, then this order comes into force and you can go to the bailiff. Immediately this procedure was met with hostility, negatively by the judges, but then they gradually started to apply it. And then there was this “Laundromat”* *incident (the creditor presented photocopies of documents about the shares of imaginary debtors who did not file objections within 10 days and these documents entered into force, were presented to commercial banks and recovered everything). And since then, they have been afraid. Although the procedure for this is envisaged in order to remove the burden and simplify the work”.*

Expert 19 (judge) mentioned another barrier to simplified proceedings related to the lack of relevant protection in cases of abuse: *“According to the provisions of the law, all debts up to $ 2,000 are necessarily considered in this [simplified] procedure. But there can still be abuse. But there were problems with this procedure: the creditor appealed, the debtor did not challenge, but at the stage of execution the debtor's speeches begin, that he does not agree and again goes to court. Even the creditors themselves began not to apply through this procedure (simplified / in an orderly manner): why, if in a year, the debtor appeals and cancels this order”;*

It was suggested that perhaps this problem could be suitably solved by strengthening instruments permitting enforcement. Expert 5 (judge) pointed out that *“<...> [on collection of debts], why if this invoice is signed and agreed, do they come to the court. They should not and immediately go to the bailiff”.* Expert 14 (judge) further explained: *“<...> there is, for example, an invoice / receipt for utilities - this is about 40% of the work of the courts and no one protested it, for example, why with this invoice a person cannot go to the bailiff and execute it? And let them come to court only if it is appealed, but it will be 1% or 4%, but not all 40% of the cases that are now in the courts on debts. I assure you that this can be done by bailiffs, why do you need a decision for us to confirm what is already indicated in these receipts and which no one has appealed. I met with bailiffs from Sweden and I realized that this method works for them, and they are very satisfied and there is not so much work for the courts. Accordingly, why not give an executive character to this document, which no one appealed, and they agree”*. Same position was supported by Expert 19 (judge): *“Giving an executive character to some documents (for example, on debts for utilities) and transferring them to executors can improve the situation”.*

Encouraging private individuals and businesses to use alternative modes of dispute resolution, such as mediation, could reduce the workload of court officials. Moreover, for certain types of cases (for example, family, labour cases), mandatory mediation should generally be provided. Nevertheless, despite the fact that Moldova shows efforts to promote the use of alternative dispute resolution methods, the views on their efficiency vary depending on the area of law: *“<...> mediation should be used more at the stage of criminal investigation”* (Expert 3, judge); *“<...> family cases <...> have to go to a psychologist or a mediator first.”* (Expert 5, judge); or depending on the type of mediation: *“In some categories of civil cases mandatory mediation should be introduced but not judicial mediation.”* (Expert 11, lawyer).

Expert 17 (judge) explained to a greater extent the possible reasons for the lack of interest in mediation: *“I'm all for mediation, but for some reason it's hard for us. I was once, in 2010, in the United States on a professional exchange program, and I saw mediation there, we were present at the meeting. There the judge has the right to conduct mediation at the preparatory stage, and I saw how the labour judge offered the victim certain amounts, and they agreed and at the end came to a certain amount and it was over. If this happened, we would all be surprised: how can a judge bargain on these sums, but there it is considered normal, because it is done with a certain intention: to solve the problem, and not to do something “in a black way” (by collusion). We probably have not yet had the mentality to work this mediation well, and maybe something needs to change.”* This was also echoed by Expert 13 (lawyer) who explained that in Moldova, *'There's no culture of mediation. Even if we have mediation advice, there are no people. Nobody takes them seriously <...>, although mediation may be an opportunity to reduce the workload.”*

Finally, court fees should be reviewed so that it would not be worth going to court over a trivial matter or a matter of personal principle. Experts pointed out large groups of so-called repetitive cases, especially concerning debt issues in civil cases and certain matters in administrative offenses cases. In response to the high court workload, they proposed, among other things, a revision of the court fees. As noted by Expert 14 (judge), *“<...> a divorce case in court costs 40 lei, and if you go to the Public Services Agency to get a divorce costs 200 lei, then a person comes to where it is cheaper <...>“.* Similarly, Expert 5 (judge) mentioned that *“We have a lot of cases where if a person has a debt, 500 lei, then he goes to court, but he sues because of 500 lei, this is not profitable for the state. There has to be a ceiling.”*

## 4.6. OVERALL CONCLUSIONS AND RECOMMENDATIONS

The proposals are structured into two primary categories, each addressing specific aspects of judicial activities. The first set of proposals pertains to the effectiveness of the trial process organization, dealing with concerns arising from the high caseload and the organization of court proceedings. The second set focuses on enhancing access to justice, encompassing issues related to procedural rights, communication of judicial decisions, transparency, NGO involvement, and other relevant considerations. The proposals primarily adopt a general approach, as the monitoring across different types of cases revealed common issues and minimal significant differences.

**4.6.1. Proposals for Effectiveness of the Trial Process Organization**

The majority of the problems identified in the analysis of trial monitoring results across all types of cases arise from the high workload of the courts. However, the way in which judges plan and organize the trial process not only extends the duration of the proceedings but also hinders the efficient use of available resources. Additionally, the organization of court proceedings is complex, and the postponement of cases is often due to the lack of efficient methods in coordinating the calendars of trial participants. Addressing these organizational and procedural challenges, improving training of judges, and implementing modern communication systems can contribute to a more efficient and effective judicial system in Moldova.

**Recommendation 1:** Addressing the challenges associated with the high workload in Moldova's justice system will require an improved **application of available** **procedural tools** within the judicial process. To this end, the following measures could be considered:

- *Promote Alternative Dispute Resolution (ADR):* Increase the emphasis on mediation and other ADR methods to reduce the burden on the courts. Mandatory mediation before applying to the court in certain groups of cases, especially in areas like family and labour law, should be considered. Educational programs to shift the legal culture and promote mediation are highly recommended. International collaboration and exchange programs can also be beneficial in integrating effective mediation practices observed in other countries.

- *Review Court Fees*: The court fees should be reconsidered to discourage frivolous lawsuits. Implementing a minimum claim amount for certain types of cases might help alleviate the court's caseload. Fees for alternative methods of resolving disputes, such as mediation, should be incentivized to promote their usage.

- *Promote Simplified Procedures:* Raise awareness about simplified procedures among lawyers and judges through seminars and workshops. Highlight the advantages of using such procedures for eligible cases. Strengthen the legal framework to mitigate the risks observed in the "Laundromat" incident. This may involve establishing clear criteria for documents that can be accepted in this procedure and incorporating safeguard mechanisms to prevent fraud.

- *Establish Streamlined Debt Collection Process:* Consider amending the legislation to grant specific documents, such as utility bills, an executive character, allowing them to proceed directly to bailiffs without requiring court intervention unless contested. Provide training and capacity-building for bailiffs to handle these direct enforcement cases, ensuring they possess the necessary tools to execute these orders quickly and fairly.

*- Consider Adoption of Written Procedures for Appellate Courts:* Given the excessive workload of judges, adopting a predominantly written procedure could ensure a more systematic and comprehensive review of cases. A maximum duration for written procedures, such as six months, should be established to prevent undue delays and ensure timely justice.

**Recommendation 2:** Addressing the challenges associated with high workload may require **a combination of improved organizational practices and specialized training**:

- *Provide Judges with Formal Training and Clear Guidelines for Allocating Appropriate Time to Different Types of Hearings*. To achieve this, initial meetings may be kept relatively shorter, while hearings focused on discussing the merits of a case should be allocated longer durations to ensure a thorough and comprehensive review.

*- Establish a Mentorship Program within the Judicial System.*Judges with exemplary procedural practices can act as mentors to less experienced judges, offering guidance and promoting the dissemination of good practices.

*- Establish a Centralized and Shared Online Access System for Lawyers' Schedules*. Such a system would streamline communication and scheduling among legal professionals, fostering greater efficiency within the judicial process and ultimately improving the quality of proceedings.

**Recommendation 3:** Regarding Organizational Arrangements, a Feedback and **Quality Assurance Mechanism** should be established, potentially through the introduction of an ISO-based Quality Management System.

- *Implement a Quality Management System where Litigants can Provide Feedback* on the punctuality, accessibility, and organization of hearings. This will assist the court administration in identifying areas for improvement.

*- Enhance Court Communication Protocols.* Whenever there are delays or changes in court proceedings, clear reasons must be provided to all stakeholders to ensure transparency.

**Recommendation 4:** *Address the Need for Improved Salaries and Working Conditions to Retain Talented Personnel within Judicial System*. Better remuneration, reduced staff turnover, and enhanced training for judicial personnel are proposed measures to address the systemic challenges and workload issues within the Moldovan justice system.

**4.6.2. Proposals for Improving the Access to Justice**

A comprehensive monitoring of civil, administrative, criminal and administrative offences cases, based on the analysis of 800 cases, has revealed several significant findings and insights. It was evident that the Moldovan judiciary exhibits strengths in timeliness, judge's professionalism, and impartiality but faces challenges related to explanation of procedural rights, communication of judicial decisions, clarity of information, NGO involvement and other issues. The following list outlines the issues that need to be addressed:

**1. Punctuality and Communication Challenges.** While there is a commitment to follow scheduled timetables for court hearings, issues related to punctuality and communication regarding case schedules delays require improvement. 26% of all monitored hearings started with a delay, with no explanations provided for the majority of these delays.

**2. Challenges in Court Hearings Planning and Time Allocation.** The most prevalent durations for all case hearings were either brief, lasting up to 15 minutes, accounting for 305 hearings (38%), or slightly longer, up to 30 minutes, which applied to 251 hearings (31%).

**3. Lack of Explanation of Procedural Rights and Duties.** The monitoring data unveils a mixed overview of the explanation of procedural rights and obligations within court hearings. While most judges explain the right to challenge the court's composition and some courts actively scrutinize case details, substantial deficiencies arise in adequately informing parties about their rights and duties. Such explanations were lacking in 50% of civil cases, 55% of administrative cases, 53% of criminal cases, and 31% of administrative offenses cases. This indicates a lack of uniformity in ensuring parties are fully aware of their rights and obligations during proceedings.

**4. Inconsistent Practices in the Course and Conduct of Court Hearings.** Inconsistencies and discrepancies in defendant testimony timing, presentation of additional evidence, and judicial neutrality were observed. Addressing these issues requires training for legal professionals and the implementation of standardized procedures to uphold judicial impartiality and fairness.

**5. Diversified Deliberation Approach.** The analysis highlights a diversified approach to deliberations, with 54% of observed sessions opting for secluded deliberations post-hearing, while 46% choose immediate in-session judicial deliberations in civil cases. In criminal cases, this ratio was 48%:52%, in administrative cases 60%:40%, and in administrative offenses cases 54%:46%. This distinction warrants further investigation to understand its impact on judgment quality and consistency.

**6. Lack of Explanation of Judicial Decisions.** A significant shortfall is observed in the explanation of judicial decisions, with inadequate explanation of judgments and litigation cost allocations in 98% of cases (287 out of 293 cases). This underscores the need for greater transparency and clarity in decision rationale and cost distribution.

**7. Inconsistent Practices of Online Publication of Judicial Decisions.** There is a clear inclination towards online publication, as 57 % of decisions in civil cases, 64% in administrative cases, 53% in criminal cases, and 61% in administrative offences cases were available within a 30-day window. However, a significant percentage of judicial decisions are published with delays or not published at all, underscoring the need for consistent and enhanced efforts in online dissemination to build and maintain public trust.

**8.** **Limited NGO Involvement.** The absence of NGOs in 98% of monitored hearings is a significant representation gap within the legal system. Increasing the integration of NGOs in legal proceedings is crucial for enhancing public representation and observational efforts.

These challenges can be addressed through the following suggestions. It should be noted that implementing these tailored recommendations with due diligence and careful consideration to Moldova's unique socio-legal context is imperative for addressing the identified inefficiencies, fortifying the legal framework, and enhancing public trust and satisfaction in Moldova's judiciary. This adaptive and informed approach is necessary for accepted solutions.

**Recommendation 1:** *Enhance Availability and Consistency of Courtroom Information*. It is recommended that the judicial system works towards ensuring the availability and consistency of courtroom information, especially within the appellate courts. Efforts should be made to bridge the gap between scheduled and real-time room allocations to avoid any confusion among attendees. Proactive assistance from court staff can be expanded to maintain a smooth flow of information.

**Recommendation 2:** *Improve Clarity and Comprehensiveness in Legal Proceedings Regarding Explanation of Procedural Rights and Duties*. To address the variability observed in explaining participants’ rights and court proceedings, Moldova should develop guidelines aimed at enhancing the clarity and comprehensiveness of legal proceedings. These guidelines should also establish uniformity in the presentation of charges and ensure defendants' understanding of their charges.

**Recommendation 3:** *Ensure Judicial Neutrality and Professionalism.* Continuous training and awareness programs aimed at fostering impartiality and neutrality play a vital role in upholding unbiased legal proceedings and maintaining the highest standards of judicial professionalism. Moldova should consistently reinforce the importance of focus and professionalism among judges and ensure the unwavering commitment to judicial neutrality and impartiality at all levels of the judiciary. To uphold judicial neutrality and professionalism, Moldova could take into consideration the following actions:

- Implement regular and comprehensive training programs for judges that specifically address the principles of impartiality and neutrality. These programs should include case studies, ethical dilemmas, and practical exercises to reinforce these principles;

- Analyse and prepare regular reports regarding activities of ethics committees or bodies within the judiciary responsible for overseeing and promoting judicial ethics, impartiality, and professionalism;

- Prepare Guidelines to the Code of Conduct. Develop and enforce a clear and comprehensive explanatory guideline regarding the conduct for judges that explicitly outlines expectations regarding impartiality, neutrality, and professional behaviour;

- Implement transparent and standardized procedures for assigning cases to judges to minimize any potential biases in case allocation. Publicly document and communicate these procedures to enhance transparency;

- Promote public awareness about the importance of judicial neutrality and impartiality through educational programs, public campaigns, and information dissemination. Encourage citizens to report any concerns regarding judicial conduct.

**Recommendation 4:** *Standardize the Practices regarding the Deliberation Procedures.*A consistent review and subsequent standardization of deliberation processes are imperative to harmonize the diversified approaches observed. This standardization aims to enhance the integrity, consistency, and quality of judgments, which is essential for fostering public confidence in the judiciary.

**Recommendations 5:** *Enhance Judicial Transparency by Adopting Rules for Explanation of Judicial Decisions upon Delivery.* Moldova should implement precise rules mandating explanations of reasons for the adopted judgments and detailing the allocation of litigation costs. This will address the current shortfalls in detail and foster increased transparency and justifiability in judicial decisions.

**Recommendation 6:** *Strengthen Online Publication Mechanisms.*Moldova should prioritize the consistent implementation of online publication rules and maintain a regularly updated, user-friendly database. This effort aims to ensure that every judgment is promptly and reliably available online, addressing the existing deficit in online publications and fostering public scrutiny and trust.

**Recommendation 7:** *Enhance Integration of NGOs in Legal Proceedings*. Given the significant representation gap, fostering a more inclusive legal culture through enhanced and more clear procedural roles of NGOs is crucial. Such integration will facilitate NGO contributions to public advocacy and legal reforms, aligning legal processes with democratic ideals. Clear procedural roles for NGOs, such as third-party involvement, 'amicus curiae' contributions, and non-legal advocacy, should be established to promotepublic advocacy and legal reforms.

In the evolving landscape of Moldova's legal system, the effective application of the new Administrative Code is crucial in safeguarding individuals' rights in disputes with public administration entities. Through a comprehensive analysis of administrative cases, interviews with experts, and monitoring of court proceedings, we have identified several additional recommendations to enhance the efficiency and fairness of administrative justice. These proposals aim to address key aspects of **administrative cases**, including procedural stability, appellate procedures, explanation of judicial decisions, and the role of judges in administrative proceedings.

**Recommendation 1:** *Maintain the Stability of Procedural Legal Regulation, Particularly in Regard to the Administrative Code.* The stability of procedural legal regulation is an essential aspect derived from the principle of the rule of law. It also indicates that the new Administrative Code has gained momentum and is considered an effective mechanism by the judicial system for safeguarding individuals' rights in disputes with public administration entities. Therefore, we propose refraining from making fundamental amendments to the Administrative Code that would alter the procedures outlined within it concerning the execution of public administration actions.

**Recommendation 2:** *Consider Amending the Administrative Code to Introduce a Procedural Change Specifically for Administrative Cases in the Appellate Procedure to be Heard in Written Procedure.* The results of interviews with experts and monitoring of court proceedings have indicated that first-instance courts effectively implement procedural measures to collect, examine, and evaluate all relevant evidence in cases. Considering the procedural specifics of administrative cases, where the nature of the proceedings is documentary, we propose an amendment to the Administrative Code. This amendment suggests that administrative cases in the appellate procedure should, as a rule, be examined through written proceedings, without the participation of the parties in the dispute. Oral examination of administrative cases could be considered when the court deems it necessary, either on its own initiative or upon the request of the involved parties. Furthermore, it is important to highlight that all experts who participated in the surveys unanimously acknowledged the significant workload of judges, both in first-instance and appellate courts. Written proceedings in the court of appeal are one of the procedural measures that alleviate this heavy procedural workload for judges.

**Recommendation 3:** *Consider Amending the Administrative Code to Establish a General Rule that Requires to Explain Primary and Essential Reasons when Delivering the Judicial Decisions.* The nature of administrative disputes also dictates that the Administrative Code should establish a general rule mandating that, when delivering a decision, the court must state the primary and essential reasons upon which it grounds its judgment.

**Recommendation 4:** *Harmonize Active Judicial Role with Adversarial Principle.* When it comes to the application of the Administrative Code and the responsibilities of the court in the administrative process, special attention must be given to the thoughts and considerations expressed by the experts who participated in the interviews on this topic. Therefore, our proposals in this regard primarily focus on shaping the attitudes of judges.

This encourages us to emphasize that:

1. The principle of an active judge in the administrative process and the implementation of the principle of competition (adversarial principle) declared in the Code must be in harmony with each other in such a way as to help the participants in the process to defend the violated rights and legitimate interests and to ensure effective judicial control of the activities of public administration entities;
2. According to the Administrative Code, an active judge is one who engages in activism during the resolution of a dispute and in the administration of justice. However, this activism is directed towards the process of resolving the dispute and ensuring justice is served, rather than displaying bias or favouritism towards any party involved in the dispute.

In essence, an active judge in this context is one who takes a proactive role in seeking a fair and just resolution to administrative disputes, rather than merely adhering to formal procedures. The goal is to uphold the principles of justice and fairness in the administrative court's decisions without showing partiality toward any specific party.

If judges adhere to these provisions in their procedural conduct, over the extended period of the application of the Administrative Code, everyone, including judges and parties to the process, will gain a clear understanding of the significance of the active role of the judge in administrative disputes.

Regarding the application of the provisions of the Administrative Code, as established in Article 219(4) which states that "The court may conduct a legal discussion with the participants in the proceedings or may issue written instructions regarding the legal status of the case under consideration," it is evident that the court has a duty to interpret and apply the law in the case under consideration. However, this tool should be widely employed by judges in resolving disputes related to legal relationships governed by legal mechanisms requiring specialized knowledge and involving numerous secondary legal regulations. These areas may include, for example, environmental protection law, energy law, and construction law. Such an approach would not only assist the court in comprehending the specific aspects of the legal regulations applicable to the case but also in gaining a deeper understanding of their objectives and the rationale for their application in a particular situation, which is the subject of the dispute.

The peculiarities of administrative justice require not only the specialization of judges in this field but also continuous, long-term practice in examining administrative cases. This practice not only contributes to the development of a consistent approach to interpreting and applying the law in analogous or very similar cases but also has a positive impact on managing the workload of judges. Therefore, there is reasonable doubt about the justification of a system that rotates judges annually between handling civil and administrative cases.

In this context, it is worth noting that in a legal system that does not recognize the power of court precedent, the principle of legal certainty takes on great significance as an essential principle of the rule of law. Consequently, the continuous and long-term application of the Administrative Code plays an important role in ensuring the establishment of a uniform judicial practice in the interpretation and application of administrative law, all while taking into consideration the imperatives of the principle of legal certainty.

**Recommendation 5:** *Implement Ongoing Training Programs for Judges, Civil Servants Representing Institutions in Court Proceedings, and Lawyers Regarding Active Role of Judge in Administrative Proceedings.* Given the aforementioned points, we firmly believe that there is a need to alter the perception of judges and professionals in related fields regarding the role of the court in administrative disputes. Therefore, we propose the implementation of ongoing training programs for judges, civil servants representing institutions in court proceedings, and lawyers.

**Recommendation 6:** *Establish a Mentorship Program within the Judicial System.*In addition to the aforementioned points, the monitoring of court proceedings has distinctly revealed the presence of effective procedural practices that should be shared to encourage other judges to adopt them. Judges with exemplary procedural practices can act as mentors to less experienced judges, offering guidance and promoting the dissemination of good practices through interactive communication tools.

# 5. EVALUATION OF ACCESS TO JUSTICE IN PRE-SELECTED TYPES OF CASES

The reason for focusing the monitoring on pre-selected types of cases in comparison to broader perspective in civil, administrative and criminal cases, was to enable a targeted assessment of specific issues pertaining to access and quality of justice services. Additionally, this approach aimed to uncover trends and developments in certain systemic issues that had previously been identified as areas lacking attention within the Moldovan justice system. The list of pre-selected types of cases was made by a well-defined intervention logic, which was rooted in the increasing societal and partners’ concerns:

1. Cases involving the Provision of Legal Aid

2. Environmental Cases

3. Data Protection Cases

4. Domestic Violence Cases

5. Cases involving Non-contractual Liability of the State

The data used to evaluate the pre-selected group of cases is drawn from the *Trial Monitoring, the Monitoring of Judicial Decision, Focus Group Surveys (if applicable), and Expert Interviews.* Only indicators displaying significant positive or negative deviations from the overall average within the case type are included in the conclusions of assessment. When assessing the trial monitoring results, the data pertaining to a specific case category and its type (e.g., criminal domestic violence case) will be compared with the overall data for that specific case type (e.g., all criminal cases). Indicators with a magnitude exceeding 10% from the average are deemed substantial enough to draw conclusions regarding deviations from the typical pattern. For each case type, distinct issues and recommendations will be presented, highlighting specific problems uncovered during the evaluation. This does not imply that general recommendations concerning judicial decision quality and court proceedings should be disregarded; rather, these specific suggestions should be read together and complement the broader guidance on court hearings and judgment quality, among other factors.

It should be mentioned, that monitors encountered search complexities when selecting cases of pre-selected types. Currently, searching for specific case categories relies solely on relevant legal provisions, lacking the option to use criteria like case type and category. To enhance search efficiency, it's crucial to integrate case types and categories into the judgments’ database as search criteria. This can be achieved by establishing a structured system of case categories and mandating the inclusion of specific category information in each judgment, feeding this data into the database. Such an approach would not only enhance statistical data collection and case monitoring but also aid participants and judges in tracking case law trends within distinct categories, contributing to the development of uniform case-law.

## 5.1. ACCESS TO JUSTICE IN CASES INVOLVING THE PROVISION OF LEGAL AID

The Law on State Guaranteed Legal Aid was passed in 2007 and came into effect on July 1st, 2018. The fundamental concept behind this law is to ensure effective access to justice by providing legal aid to individuals who lack the financial means to hire a licensed lawyer. The state guaranteed legal aid mechanism aims to uphold the right to a fair trial, as established by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Its objective is to reduce economic and financial barriers, making legal aid accessible to all individuals in a cost-effective, non-discriminatory manner.

Examining the trend of state legal aid cases over the past six years, there was a consistent rise in the number of cases until 2017, reaching a peak of 65,322 cases. However, from 2018 to 2020, the number of cases declined, but it started increasing again in 2021 (47,990 cases). In 2020, the scope of beneficiaries was expanded to include victims of domestic violence, human trafficking, torture, ill-treatment, and asylum seekers, regardless of their income level.

Despite the existence of the state legal aid mechanism, it still faces challenges, such as unclear responsibility for ensuring access to and the quality of legal aid, poorly defined eligibility criteria, lack of admission criteria for lawyers providing aid, and the absence of a mechanism to monitor service quality. Amendments to the Law on Legal Aid have been introduced to address these shortcomings, establishing clear responsibilities for managing and delivering legal aid, setting requirements for lawyers' admission to the system, and implementing a mechanism for monitoring service quality and transitioning to a digital environment.

The quality of the state-guaranteed legal aid system significantly influences the overall quality of justice. Some beneficiaries have lodged complaints regarding lawyers' actions and inactions, leading to certain claims being addressed by the Commission for Ethics and Discipline within the Moldovan Bar Association. Despite efforts to enhance quality, there is still a lack of standards for services provided by lawyers in non-criminal cases. It is essential to closely monitor and address any inconsistencies in these types of cases.

### 5.1.2. Fair Trial Rights in Criminal Cases where Legal Aid was provided

The general monitoring sample of court hearings in criminal cases where legal aid was provided consisted of 68 court hearings. Slightly less than two-thirds of the monitored hearings (42) took place in the first instance courts, and over a third of them (26) were held in the appeal courts. All monitored hearings occurred in the courtroom.

This section provides a snapshot of key findings derived from monitoring criminal cases where legal aid was provided. These findings offer valuable insights into the procedural nuances and dynamics within criminal cases where legal aid is provided, highlighting areas of strength and potential areas for improvement within the justice system:

*1. Duration of Court Hearings.* The duration of the hearings in this type of cases corresponds to the average pattern in criminal cases. Most often, court hearings in criminal cases where legal aid is provided lasted up to 15 minutes (46%, compared to the average percentage of 37%) or up to 30 minutes (24%, compared to the average percentage of 27%). With the exception of one case, all monitored court hearings were public.

*2. Participation of NGOs.* NGOs were not involved in court proceedings for criminal cases where legal aid was provided, based on the monitoring results.

*3. Quality of Representation*. In all criminal cases of this type, defendants used state-guaranteed legal aid. Only in 2 cases (3%), the monitors considered that the lawyer was not closely familiar with the case materials.

*4. Professionalism.* Overall, in the majority of cases (99%), the respondents considered that the judges acted professionally in the courtroom, refrained from using cell phones (97%), and acted ethically (97%). The judges did not deviate from the merits of the case, did not ask parties questions unrelated to the case, and refrained from revealing their positions on the outcome of the cases in most instances (98–100%).

*5. Judicial Deliberations.* After the conclusion of the hearing, the court retired to the deliberation rooms in more cases (79%), compared to the average of 50%. In 80% of this type of cases, the deliberation took up to 15 minutes, while in the average, such duration occurred in 62% of cases.

*6. Delivery of the Judgment.* All decisions were pronounced publicly, and in 22 from 24 applicable cases (92%), the decision was pronounced on the indicated date. The judge did not explain the reasons for the decision made after announcing in any of the hearings. In 19 cases (79%) and 20 cases (80%), respectively, the judge clearly informed the parties about how to appeal and the appeal deadlines, whereas the average percentage for both criteria is lower at 75%.

### 5.1.2. Fair Trial Rights in Civil Cases where Legal Aid was provided

The general sample for monitoring court hearings in civil cases, where legal aid was provided, consisted of 8 court hearings. All monitored court hearings were held in the courts of first instance. Five out of the eight hearings took place in the courtroom. Approximately 50% of the monitored civil hearings, where legal aid was provided, lasted between 30 minutes and 1 hour. Two hearings lasted up to 15 minutes, and two others lasted between 15 to 30 minutes. All monitored court hearings in civil cases, where legal aid was provided, were open to the public.

Regarding the involvement of NGOs in court hearings, the monitoring results indicate that civil society groups and organizations did not participate in any of the monitored court hearings.

There was only one case where the president did not fulfil procedural duty to explain all actions, and two court hearings were postponed. The postponement occurred at the request or initiative of the defendant and the judge due to the lack of evidence of the summons for the defendant. In none of the monitored court hearings, the judge accepted evidence presented after the court's specified deadline during the phase of preparing the case for judicial debates. In all cases, the court explained the procedural rights and obligations to the parties, as provided in Article 56 of the Civil Procedure Code.

Regarding the general professionalism of the court, the monitoring results show that in the overwhelming majority of court hearings (7 out of 8), the judge was present in the courtroom throughout the process. In all court hearings, the judge did not use a mobile phone and did not act tactlessly or make unethical statements or actions regarding any trial participants. Additionally, in none of the monitored hearings, the judge deviated from the substance of the case or asked unrelated questions to the parties. There was no court hearing in which the judge disclosed their position on the finality of the case, used sexist language or behaviour, or made decisions based on gender stereotypes or preconceived notions of gender roles and responsibilities.

In all cases, the decisions were pronounced publicly, either in full (1 out of 8) or partially (3 out of 8), and they were pronounced on the indicated date. However, the judge did not explain the reasons for the decisions made after the judgments were pronounced in any of the monitored hearings.

The results of the *Court Users Surveys* clearly indicated that individuals involved in legal proceedings assess the legal support provided by lawyers (irrespective of whether they are publicly funded or privately retained) in a highly positive manner. According to the survey results, 88% of respondents feel that their lawyers dedicated sufficient time to actively listen and comprehend their concerns, while 79% would recommend their legal counsel to others.

### 5.1.3. Reasoning of Court Decisions where Legal Aid was provided

The monitoring of judgments’ quality covered 16 **civil and criminal cases** where legal aid was provided: 14 from the first instance court and 2 from the Appeal court. Certain figures from the Report on Judicial Decisions’ Quality stand out significantly when compared to the average. For example, in deciding the establishment of facts, the court did not state reasons for rejecting certain evidence in 88% of this type cases (compared to the average of 59%). The court partially explained the reasons for rejecting evidence only in one criminal case at the appeal instance. Courts of first instance did not provide reasons at all in civil cases and in 88% of criminal cases where legal aid was provided. On average, courts stated reasons for rejecting certain evidence in 31% of cases fully and partially in 10%. In the reasoning part of the judgment, there was insufficient attention paid to the assessment of the unsuccessful party's arguments in more cases, where legal aid was provided, 38% compared to the average of 22%. Additionally, the court did not indicate reasons for rejecting certain arguments of the parties in 44% of such cases, while the average is 33%.

It is worth noting that all court judgments in these cases specified the relevant article or section of the law or other legal act on which the judgment was based, which is higher than the average of 91%. However, none of the cases were relevant for assessing any deviation from prevailing case law, which could imply that none of the judgments were based on prevailing case law. This indicator differs from the average, which stands at 25% for all cases. The court applied the case law of the European Court of Human Rights or other international treaties and conventions on fundamental human rights in 25% of the cases: directly just in one case and indirectly in others, which is less than the average of 44% for such application. Interestingly, in none of the cases did any party raise doubts about the compatibility of applicable law with supreme law, as none of the cases met these criteria, which has a low value overall at 6%.

Regarding the structural parts of judgments, they were better in this type of cases compared to the average. For instance, facts established by the court were set out in a separate part of the judgment in chronological order in 75% of cases (compared to the average of 58%), and in 19% partially. The courts' reasons/motives were clearly distinguished from the parties' explanations, assessments, arguments, or evidence in 63% of cases (compared to the average of 47%), with 31% partially distinguishing them, while the average is 44%. However, the pages of the judgment were not numbered in all cases, while the average is 74%. Parties applied for reimbursement of legal representation costs in fewer cases (12%) compared to the average (18%), but the judge reimbursed the attorney's fee in all cases.

### 5.1.4. Perception of Quality in Legal Assistance

*The Focus Group Surveys for Private Lawyers and State-Funded Lawyers* sought to determine whether there are comparable levels of quality standards between legal assistance services offered by private lawyers and those funded by the state. The survey results underscore a significant statistical difference in viewpoints. Around 38% of private attorneys perceive the quality standards of legal aid as somewhat comparable. In contrast, a significant majority (65%) of surveyed lawyers providing state-funded legal aid believe that the quality standards of such assistance exhibit a considerable resemblance. It is important to note that this distinction in assessment does not become apparent during the interview phase.

Despite variations in viewpoints, *Expert Interviews* generally present a positive evaluation of legal assistance offered by state-funded lawyers (Expert 2, judge; Expert 9, lawyer; Expert 18, lawyer; Expert 21, lawyer). Expert 17 (judge) highlighted enhanced preparation and responsibility exhibited by state-funded lawyers. Expert 13 (lawyer) challenged the notion that guaranteed assistance equates to inadequate representation, noting effective client representation by some non-contracted lawyers. However, experts acknowledged disparities in the quality of state-guaranteed legal aid, with certain experts highlighting unpreparedness among appointed lawyers (Expert 16, lawyer) and issues related to the passive role of lawyers within the system (Expert 2, judge; Expert 3, judge; Expert 6, lawyer; Expert 10, judge). Furthermore, concerns centre around insufficient remuneration for state-guaranteed legal aid (Expert 11, lawyer; Expert 12, lawyer; Expert 14, judge) and the system's accessibility, with potential instances of abuse (Expert 11, lawyer). The challenge of distinguishing genuine cases in need from those straining resources emerged (Expert 14, judge). Insufficient clarity on quality monitoring requirements also emerged as a concern in assessing the effectiveness of state-guaranteed legal aid.

## 5.2. ACCESS TO JUSTICE IN ENVIRONMENTAL CASES

The Law on Environmental Protection, adopted on June 16, 1993, serves as the primary legal framework for environmental protection in the Republic of Moldova. This law is aimed at ensuring the ecological security of the population, promoting the rational use of natural resources, and conserving the environment. The Environmental Strategy for the years 2014-2023, along with its Action Plan, approved by the Government's Decision No. 301 of April 24, 2014, seeks to align Moldova's environmental policies with European Union standards and regulations. The formulation of the Environmental Strategy is driven by the country's European integration goals, the need to comply with EU directives in national legislation, and the promotion of sustainable development through a green economy approach. The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter - Aarhus Convention) was signed on 25 Jun 1998 and ratified on 9 Aug 1999 by the Republic of Moldova.

It is important to mention that the Criminal Code of the Republic of Moldova includes provisions that criminalize various environmental violations. Chapter IX of the Code specifically addresses ecological offenses, such as breaching environmental safety requirements, falsifying or disclosing inaccurate data on environmental pollution, and failing to fulfil obligations related to the mitigation of environmental violations, among others.

Similar to other countries in the region, Moldova faces significant environmental challenges. The role of the court in striking a balance between private and public interests presents an intriguing and important area for research, as it reflects the maturity of the judicial system in delivering substantive justice, not just formal decisions. Interpreting and applying the numerous and technical legal provisions in environmental protection can be challenging, leading to ambiguity even for legal professionals. This ambiguity may significantly hinder effective judicial oversight. Therefore, assessing the quality of judgments is essential for safeguarding the interests of society as a whole and ensuring the effective protection of individuals' human rights.

### 5.2.1. Fair Trial Rights in Environmental Cases

The monitoring of court hearings in environmental cases covered a total of 19 hearings: 17 in administrative cases and 2 in criminal cases. The limited number of monitored hearings is due to the relatively small number of cases related to environmental matters.

Specifically, the monitoring of **administrative cases** concerning environmental matters included 15 court hearings, with 12 of them held in first-instance courts and 3 in the Chisinau Court of Appeal. All hearings took place in the courtroom.

Within this context, we will delve into several key aspects that emerged during our monitoring of these administrative cases:

*1. Duration of Court Hearings.* In terms of duration, the majority of court hearings in administrative cases relating to the environment lasted between 15 and 30 minutes (47%), slightly higher than the average of 34%. Hearings lasting up to 15 minutes were reported in 35% of cases, which is close to the average percentage of 36%.

*2. Participation of NGOs.* Regarding the involvement of NGOs in the court proceedings, procedures were initiated on behalf of the community or represented groups only in 2 cases, and NGO representatives participated in another case. One instance involved an NGO initiating action as successors in rights to a Soviet structure that previously administered water basins and forest strips in the republic.

*3. Legal Representation*. In 47% of cases, private parties were represented by a lawyer, significantly lower than the average of 70% in all administrative cases.

*4. Postponement.* Court hearings were postponed in 35% of cases, which is similar to the average of 29%. The reasons for postponement varied, including parties unable to appear in court due to reasons beyond their control, non-appearance of witnesses, experts, specialists, or interpreters, and other reasons.

*5. Professionalism.* The overall professionalism of the court was evident in most monitored hearings. The judge or full set of judges remained present throughout the trial (15 hearings) and did not use a cell phone during proceedings (16 hearings). No instances were recorded where the judge behaved tactlessly or made unethical statements or actions towards trial participants. In the majority of court hearings, the judge stayed focused on the substance of the case (16 hearings) and refrained from asking unrelated questions to the parties (16 hearings).

The available information regarding the **two criminal cases** involving environmental issues is insufficient to formulate comprehensive findings when compared to the average. These statistics may indicate potential issues, such as a lack of initiation of such cases by prosecutors. However, it should be noted that in these criminal cases, NGOs did not appear to be involved based on the monitoring results.

### 5.2.2. Reasoning of Court Decisions

The Monitoring of Judicial Decision encompassed 26 cases related to environmental matters, comprising 17 decisions issued by first-instance courts (11 in criminal cases and 6 in administrative cases), 4 by appeal court (2 each in both case types) and 5 by cassation court in administrative cases.

Based on the results of the Monitoring on judicial judgments quality, there are no significant indications that the quality of decisions in environmental cases differs from the average. While there are some differences, they are not substantial enough to draw definitive conclusions on major disparities. Certain figures do highlight some aspects of the judgments that are either better or worse compared to the average situation.

For instance, judgments in environmental cases consistently specify the relevant article, part of the article, or other structural part of the law or legal act on which the court bases its judgment, reaching 100% compliance, whereas the average is 91%. In a larger percentage of cases relating to environmental matters (81% compared to the average of 66%), the descriptive/reasoning part of the judgment addresses all the requests presented by the parties to the court. Additionally, in all relevant cases, the court clearly or partially identifies the obligated party, the specific actions to be taken, and the timeframe within which the court's obligation must be fulfilled in the operative part of the judgment, which is not observed in 7% of all cases on average.

On the other hand, some aspects show worse results. For instance, a higher percentage of cases (30% compared to the average of 22%) lack sufficient attention to the assessment of the unsuccessful party's arguments in the reasoning part of the judgment. The judgment in environmental cases presents all the reasons behind the court's decision, even if they are not purely legal arguments (e.g., economic, social, etc.) fully in 46% compared to the average of 59%. However, the percentage of cases where no reasons are provided at all is quite similar (12% in environmental cases and 10% on average).

Regarding reimbursement of legal representation costs, parties apply for it in 12% of environmental cases, lower than the average of 18%, and the judge's rejection rate is 4%, which aligns with the average.

### 5.2.3. Addressing Silence in Environmental Cases: Insights and Recommendations for Action

Insufficient data from interviews hinders a comprehensive understanding, yet the insight shared by Expert 5 (judge) is revealing: "*I haven't observed any environmental cases either. They simply don't exist. Typically, such lawsuits arise only when a significant issue emerges, grabbing people's attention. Until then, it remains overlooked. Nevertheless, it could prove highly beneficial if these public organizations took on such cases*." Expert 3 (judge) also stressed: "*In my view, there should be allowance for NGOs to handle more sensitive domains like environmental offenses, child protection, and domestic violence. However, this isn't the current practice*."

In conclusion, the most significant problem associated with environmental cases is the lack of environmental cases. The relatively low number of monitored environmental cases suggests a potential lack of attention and legal action towards addressing environmental concerns. This could be attributed to insufficient NGO participation and inadequate environmental education among both legal professionals (prosecutors and judges) and society as a whole. It calls for efforts to encourage and support NGOs to actively participate in environmental cases, providing them with resources and platforms to advocate for environmental protection and sustainable practices. Moreover, there is a need to promote environmental education and awareness at all levels of society, including schools and public awareness campaigns, to foster a culture of environmental responsibility.

Given that the involvement of Non-Governmental Organizations (NGOs) was a topic of assessment during *Trial Monitoring* and *Expert Interviews* and considering the results revealing an issue of insufficient involvement, further analysis is needed. The absence of active participation by NGOs in legal proceedings is evident in both monitoring outcomes and *Expert Interviews*. Only a limited number of cases witnessed NGO engagement, particularly in administrative matters pertaining to data protection and environmental concerns. Experts underscored the advantages of NGO involvement, especially in such areas as environmental crimes and domestic violence. Nonetheless, they expressed the view that the current legal framework and its interpretations restrict their engagement. The lack of well-defined norms results in inconsistent application by judges, giving rise to challenges in terms of access to justice and representation (Expert 17, judge; Expert 13, lawyer).

According to Article 7(f) of the Law on Non-Commercial Organizations, NGOs have the right to represent and protect the legitimate interests of their members and, in accordance with the law, other individuals before public authorities for the implementation of statutory goals. The main point of discussion and a source of disparity in case law and legal opinions is whether NGOs have the right to represent not only their members but also other individuals in specific cases. This right is abstract in the Law on Non-Commercial Organizations and its implementation should be detailed in special legal acts or procedural codes.

However, other legal acts do not provide any clarification. For instance, Article 73(1) of the Code of Civil Procedure states that: “In cases provided for by law, public authorities, organizations, and individuals may file a lawsuit (petition) to protect the rights, freedoms, and lawful interests of other individuals upon their request or to protect the rights, freedoms, and lawful interests of an indefinite group of individuals. A lawsuit to protect the interests of a person subject to a judicial protection measure (temporary protection, guardianship, or custody) may be filed independently of the request of the interested party or their legal representative.” This rule can be seen as referring back to the Law on Non-Commercial Organizations without explanations of the meaning “in accordance with the law”.

Another illustrative instance can be found in Article 30(g) of the Environmental Law, which stipulates: "The state recognizes the right of all individuals to a healthy environment and, for this purpose, ensures them the right, in accordance with the prevailing legislation, to directly or through organizations, parties, movements, associations, address environmental protection authorities, administrative or judicial bodies with demands to halt activities that harm the environment, regardless of whether economic entities incur direct losses as a result; the right to hold individuals accountable for committing environmental offenses or crimes".

However, this provision is also insufficient in addressing the question of whether NGOs and under what conditions they may bring claims related to environmental matters before a court. It is worth noting that Article 9(2) of the Aarhus Convention states: "Each Party shall, within the framework of its national legislation, ensure that members of the public concerned (a) Having a sufficient interest or, alternatively, (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention. What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above”.

This means that non-governmental organizations dedicated to promoting environmental protection and meeting the criteria specified by national law shall be deemed to possess an interest and be regarded as part of the concerned public with the right to access justice. However, significant doubts persist about whether the current provisions in Moldova's national legal framework sufficiently guarantee this right for NGOs and whether they are adequate to support the conclusion that Moldova's Environmental Law truly acknowledges the right of NGOs to access justice by enabling them to address environmental protection authorities and judicial bodies on behalf of the public concerned.

## 5.3. ACCESS TO JUSTICE IN DATA PROTECTION CASES

Moldova initially enacted a law on personal data protection in 2007-2008. However, on April 14, 2012, this law was repealed, and it was replaced by Law No. 133 of July 8, 2011 on Personal Data Protection, which remains in effect to this day.

In line with international and European instruments, particularly the General Data Protection Regulation, Moldova established the National Centre for Personal Data Protection (NCPDP) as the national data protection authority. The NCPDP is responsible for overseeing compliance with legal requirements and carries out its duties impartially and independently. It issues decisions and instructions on specific personal data protection matters and provides official opinions to the public.

Non-compliance with the legal or regulatory requirements related to personal data processing can lead to various forms of personal and corporate liability. This can involve sanctions specified in the Code of Administrative Offences and the Criminal Code, as well as potential liability for damages under civil law.

According to the latest annual report of the National Centre of Personal Data Protection[[29]](#footnote-29), in 2022, the Centre was involved in 125 litigation cases, acting as a defendant in 118 cases and as a public authority drawing conclusions in 7 cases. The report also indicates that “during 2022 the examination of 35 court files was completed, where the judgements/decisions of the courts remained final and irrevocable, of which 21 judgements/decisions of the court were issued in favour of the NCPDP and 14 cases were unsuccessful for the NCPDP”.

Given the significance of the relatively new data protection rules in Moldova and the extensive powers vested in the NCPDP, legal disputes in this field present an interesting area for investigation. The novelty of the regulatory matter may pose challenges for the courts, not only in interpreting ambiguous data protection laws and principles but also in creating a balanced and fair environment for the parties involved. The qualitative analysis of court judgments in this area can reveal whether the Moldovan judicial system is prepared to apply broadly formulated provisions and the level of scrutiny and argumentation expected from both the parties and the judiciary. It is also worth noting that the experts interviewed did not mention any particular specifics related to data protection cases. The *Focus Group Surveys* was not directed towards exploring the peculiarities of data protection cases.

### 5.3.1. Fair Trial Rights in Data Protection Cases

The monitoring of court hearings in administrative and administrative offenses cases related to data protection was conducted in a total of 43 court hearings in administrative and administrative offence cases.

The overall sample for monitoring **administrative cases** concerning data protection included 15 court hearings, with 12 of them taking place in first-instance courts and 3 in the Chisinau Court of Appeal.

Our analysis of these cases encompasses several key elements that shed light on their characteristics and procedural nuances:

*1. Duration of Court Hearings.* The *Trial Monitoring* Report results indicated a significant difference in the duration of court hearings in these cases, with 73% of the hearings lasting 15 minutes or less compared to the average figure of 36%. None of this type administrative cases lasted more than 1 hour and there were no closed court hearings recorded.

*2. Legal Representation.* In 67% of cases, a party, either a natural or legal person, was represented by a lawyer.

*3. Timeliness.* Regarding adherence to the timetable for case hearings, the court performed better in this type of cases (93%) compared to the average percentage in administrative cases (70%). In the one instance where the trial calendar was not respected, information was provided regarding the reasons for the delay, and the presiding judge apologized to the parties for the delay.

However, the percentage of postponements is higher in this type of cases compared to the average in administrative cases, with 6 monitored court hearings being postponed, constituting 40%, as opposed to the average postponement percentage of 29% in administrative cases. The reasons for postponement varied, including the impossibility of a party to appear in court on the set date due to reasons beyond their control and other reasons: in 2 cases at the request/initiative of the public authority, in 3 cases – of the natural/legal person, other cases on the request of the person involved in the process by the court.

*4. Procedural Rights and Duties.* Regarding the explanation of procedural rights and obligations, in 4 of 9 applicable cases (44%), the court explained the provisions of Article 56 of the Code of Civil Procedure, which is very similar with the average results being 45%. In 11 out of 15 applicable cases (73%), the parties were not informed about their procedural rights and obligations under Article 60 of the Code of Civil Procedure, with the average percentage in administrative cases being 60%.

*5. Judicial Deliberations.* In all 10 applicable cases (or 100%) the judges held deliberations during the court hearing without going to the deliberation rooms, which is above the average percentage of 57%.

*6. Professionalism.* The general professionalism of the court was assessed at 100%, with the judge not deviating from the substance of the case and not asking unrelated questions to the parties in 14 out of 15 cases.

The overall sample for monitoring court hearings in **administrative offense** cases concerning data protection consists of 28 court hearings. The majority of these hearings (23) took place in first-instance courts, while 5 occurred in the appeal court. All monitored hearings were conducted in the courtroom. The results of *Trial Monitoring* in administrative offense cases concerning data protection are largely consistent with the overall evaluation of all administrative offenses cases.

*1. Conducting Hearings.* It was observed that all 28 court hearings in administrative offenses cases concerning data protection were conducted as public hearings, that all 28 court hearings were open to the public. Most frequently, these court hearings lasted up to 15 minutes (46%) or up to 30 minutes (25%), closely aligning with the average figures for administrative offenses cases. Similarly, in the majority of administrative offenses cases (20 cases or 7%), defendants chose to be represented by lawyers of their choice. In 8 cases (29%), they used state-guaranteed legal aid. Only in one case out of 11 applicable the monitors observed that the lawyer was not sufficiently familiar with the case materials.

*2. Professionalism.* Overall, the vast majority of respondents (96%) considered that the judges or the panel of judges, displayed professionalism in the courtroom during 27 cases. The judges did not use a cell phone in any of the 28 monitored cases (100%), and they acted ethically in all 28 cases (100%). Additionally, in the majority of cases (ranging from 96% to 100%), the judges adhered to the merits of the case, refrained from asking questions unrelated to the case, and avoided revealing their positions on the outcome of the cases.

### 5.3.2. Reasoning of Court Decisions

The *Monitoring of Judicial Decisions* covered 32 cases concerning data protection, with 23 decisions issued by first-instance courts, 5 by appeal court and 4 by cassation court in civil, administrative and administrative offences cases. When comparing the overall evaluation of court judgments quality with the characteristics of data protection cases, there were minor differences that cannot be considered significant enough to draw conclusions regarding differences in judgments of this case type. For instance, the judgments in data protection cases were directly based on legal principles and provided their application in specific situations in a smaller percentage of cases (3%, which represents only one case out of the monitored 32 cases) compared to the average percentage in all types of cases, which is 15%. Additionally, in determining the establishment of facts, the court in data protection cases rarely stated the reasons for rejecting certain evidence, only doing so in 28% of cases, whereas in the average situation, courts fully or partially state reasons in 41% of cases. Regarding writing style, a majority of judgments in data protection cases (53%) were only partially written in an easily understandable, common language, without language or spelling errors, and in a consistent, unified style, while fully understandable judgments constituted 44%. In contrast, the general trend shows 56% of judgments as fully understandable and 38% as partially understandable. In 94% of cases, the descriptive and reasoning parts of judgments were not numbered, compared to the average of 73%, indicating that data protection court decisions clearly distinguish between structural parts as required by law or chosen by the court in 69% of cases, while the average is 79%.

Regarding the clarity of judgements, the descriptive/reasoning part of the judgment includes all requests made by parties in only 53% of data protection cases, which is lower than the average of 66%. The court's reasons/motives (reasoning part of the judgment) were clearly distinguished from the parties' explanations, assessments, arguments, or evidence in 47% of cases, partially distinguished in 44%, and not distinguished in 19%, showing a higher figure compared to the average of 9%. Additionally, parties applied for reimbursement of legal representation fees in data protection cases at a lower rate (9%) compared to the average of 18%.

## 5.4. ACCESS TO JUSTICE IN DOMESTIC VIOLENCE CASES

In 2016, the legal framework for preventing and combating violence was improved and amended, introducing various measures such as the emergency restriction order for domestic violence victims, stricter punishment for violators of protection orders, state support for existing and new services for victims, financial compensation for victims, exemption of state fees, and provision of state-guaranteed legal aid. During the period from 2016 to 2018, over 60,000 individuals received free legal aid. The amended criminal offenses code also redefined the seriousness of crimes of violence against women, leading to increased accountability.

Despite the increasing number of domestic violence cases, it should be noted that the number of initiated criminal cases against perpetrators is declining. This trend is attributed to legislative amendments made in 2016, including the inclusion of a new article in the Contravention Code that sanctions minor acts of violence within families with community work or short-term arrest.

Monitoring court procedures in cases of violence against women is essential because it remains a significant issue, with 63 percent of Moldovan women experiencing intimate partner violence at some point in their lives, and 1 in 10 women reporting economic violence. In 2019, there was a slight decrease of 2.5 percent in reported cases of violence against women, and the criminal court dealt with 1,609 cases of domestic violence.

On May 1, 2022, the Republic of Moldova officially entered into the Council of Europe Convention for preventing and combating violence against women and domestic violence, commonly known as the Istanbul Convention. The convention was ratified by the Moldovan Parliament on October 14, 2021, making Moldova the 35th member state to ratify this important treaty.

### 5.4.1. Fair Trial Rights in Cases regarding Domestic Violence

In our comprehensive monitoring of court hearings, we directed our focus toward cases related to domestic violence. The monitoring of court proceedings in cases related to domestic violence involved a total of 52 hearings in administrative offence cases and criminal cases.

Within this context, we examined a sample of 34 court hearings in **administrative offences cases**, providing valuable insights into the dynamics of these specific legal proceedings. Among these, 29 hearings occurred in the courts of first instance and 5 in the appeal courts. All of the monitored hearings took place within the courtroom.

In the subsequent paragraphs, we delve into key aspects that emerged during our monitoring of administrative offenses cases involving domestic violence:

*1. Duration of Proceedings*. In administrative offense cases of domestic violence, the majority of court hearings (65%) lasted up to 15 minutes, which is higher than the average of 48% for all administrative offence cases. Approximately 24% of hearings lasted up to 30 minutes, whereas none of these cases lasted more than an hour.

*2. Participation of NGOs.* Regarding the involvement of NGOs in court proceedings, there was one instance where an NGO acted as non-legal advocates in support of vulnerable groups or individuals with disabilities.

*3. Legal Representation*. In most administrative offenses cases (56%), defendants choose to use the services of private lawyers, while in 44% of cases, they used state-guaranteed legal aid. In comparison, the average figures are 68% for choosing lawyers and 33% for using state-guaranteed legal aid. Only in one case did the monitors note that the lawyer was not adequately familiar with the case materials.

*4. Explanation of Procedural Rights.* The courts explained the participants' rights in only 56% of cases, whereas in administrative offence cases, courts typically do it in 69% of cases.

The monitoring sample for court hearings in domestic violence **criminal cases** included a total of 18 hearings, with 9 in the courts of first instance and 9 in the appeal courts. All of these hearings were held in the courtroom.

Our further analysis of these cases encompasses several key elements that shed light on their characteristics and procedural nuances:

*1. Duration of Proceedings.* In domestic violence criminal cases, 44% of court hearings lasted up to 30 minutes, and 22% extended up to one hour. This differs from the average duration in criminal cases, where mostly (37%) the hearings last up to 15 minutes, 27% between 15 to 30 minutes, 21% up to one hour, and 16% more than an hour.

*2. Participation of NGOs.* As for the involvement of NGOs in criminal domestic violence cases, they participated in one case as a third interested party, submitted amicus curiae in two cases, and acted as non-legal advocates in support of vulnerable groups or individuals with disabilities in four cases. These instances encompass all the types of involvement indicated in the general assessment on criminal cases.

*3. Legal Representation.* In half of the monitored domestic violence criminal cases, defendants used state-guaranteed legal aid and the other half chose to use the services of private lawyers. However, there is a difference in legal representation figures from the average, with a higher percentage of state-guaranteed users (64%). In 2 of 16 applicable cases (13%) the monitors considered that the lawyer was not closely familiar with the case materials, whereas the average evaluation in criminal cases is 2%. In most cases (69%), lawyers were fully prepared, and in 19%, they were sufficiently prepared, which aligns with the average preparation levels in criminal cases.

*4. Explanation of Procedural Rights.* The courts explained the participants' rights in only 56% of cases, whereas in criminal cases, courts typically do it in 57% of cases.

*5. Professionalism.* Overall, most respondents (97%) considered that the judges acted professionally in the courtroom in 33 cases, with none of them using cell phones (100%) or acting unethically (100%). In most cases (97-100%), the judges adhered to the merits of the case, refrained from asking unrelated questions to the parties, and did not reveal their positions on the outcome of the cases.

*6. Presenting Charges.* In 69% of cases, prosecutors presented shortened charges, while only in 31% of cases, the charges were presented in full. The common trend is 49% for full charges and 51% for shortened charges. In 9 of 12 applicable cases (75%), the court retired to the deliberation chambers after the hearing, which is a higher percentage than the average in criminal cases (50%). According to respondents' opinions, the court was more active in 44% of cases, compared to the average of 38% in criminal cases. Overall, monitors considered that the (panel of) judges acted professionally in the courtroom in 18 cases (100%), they did not use a cell phone in 18 cases (100%), and they acted ethically in 18 cases (100%). In all cases (100%), the judges did not deviate from the merits of the case, did not ask parties questions unrelated to the case, and refrained from revealing their positions on the outcome of the cases. All decisions in 8 relevant cases were pronounced publicly (only the operative part), and only half of them were pronounced on the indicated date. In none of the cases, did the judges explain the reasons for the decision made after announcing the judgment. In 7 out of 9 applicable cases (78%), the judge clearly informed the parties about how to appeal and the appeal deadlines, while the average percentage is very similar 75%.

*7. Representation of Victims*. Unfortunately, there is no available data regarding the representation of victims and their rights during the proceedings. Part 5 of Article 11 of the Law on Protection from Domestic Violence stipulates that: "Victims have the right to free primary and qualified legal assistance in accordance with the legislation on state-guaranteed legal aid". However, based on the commentaries in the monitoring report, it can be inferred that conducting hearings in the absence of victims is not uncommon.

### 5.4.2. Reasoning of Court Decisions

The assessment of judgment quality in domestic violence cases involved the analysis of 35 judgments, including civil, criminal, and administrative offenses cases. Out of these, 16 judgments were from first-instance courts, 11 from appeal courts and 8 were cassation judgments. Overall, the evaluation of judgment quality in comparison to the common assessment didn't reveal any significant differences in this type of cases. However, it is worth noting that certain figures indicate some specific aspects related to these cases. For instance, judgments in domestic violence cases consistently specify the relevant legal basis, article, or part of the law on which the court based its decision in all 100% of cases, surpassing the average of 91%. A particular specificity observed in these cases is that none of the parties applied for reimbursement of legal representation costs. However, in 37% of cases, there was an insufficient assessment of the unsuccessful party's arguments in the reasoning part of the judgment, compared to the average of 22%. In domestic violence cases, there is no data available on deviation from established case-law because the courts do not refer to case-law at all.

Moreover, the judges demonstrated a commendable practice of not moralizing or imposing their personal beliefs on the parties in all 100% of cases. Furthermore, in the judgments, there was a lack of insulting, abusive, or patronizing language in 100% of instances, with only 2 cases (6%) not maintaining a restrained and impartial tone.

### 5.4.3. Insights and Challenges in Court Proceedings Related to Domestic Violence Cases

In our exploration of court proceedings related to domestic violence cases, we uncovered a spectrum of insights and challenges, drawing from the perspectives of interviewed experts. These revelations shed light on both the advantages and drawbacks of such cases when compared to other legal contexts.

Our findings are informed by the valuable insights provided by experts, including judges and legal professionals. Expert 10 (judge) expressed concerns about the preparedness of state-funded lawyers, particularly noting instances where they attend hearings in a formal capacity and unprepared, especially in domestic violence cases. Similarly, Expert 20 (judge) highlighted situations where state-funded lawyers lacked adequate preparation due to tight time constraints: “*Appointed lawyers come to us more often, especially when we have a restraining order, and perhaps due to limited time, they are screened within 24 hours, lawyers are not very prepared. Within a few hours, they must attend a court hearing, and this can be the reason why they are not prepared”*.

Moreover, there was a shared sentiment among some experts regarding the need for increased involvement of NGOs in domestic violence cases. However, the current reality does not reflect this potential. Expert 3 (judge) emphasized the benefits of NGO presence, while Expert 5 (judge) observed that victims of domestic violence often attend court hearings without NGO representation: “*<…> we have one public organization that always writes statements for them, but they do not come to the court session*”.

Our examination of court proceedings revealed certain drawbacks when compared to other types of cases, particularly in administrative offense cases of domestic violence, where a relatively high proportion of hearings (65%) lasted up to 15 minutes, exceeding the average observed across all administrative offense cases. Conversely, in domestic violence criminal cases, a positive aspect emerged, with 44% of court hearings concluding within up to 30 minutes and an additional 22% extending to one hour.

However, we also identified challenges, notably the limited provision of explanations of participants' rights in only 56% of cases, falling short of the typical practice in administrative offence cases, where such explanations are given in 69% of instances. Despite this, the court exhibited a higher level of activity compared to the average in criminal cases.

Advantages of judgments in domestic violence cases included consistent specification of legal foundations (100%) and an absence of insulting language (100%). However, shortcomings were identified, including an insufficient assessment of the unsuccessful party's arguments (37% vs. 22% average) and a lack of references to established case law, distinguishing these cases from others.

## 5.5. ACCESS TO JUSTICE IN CASES REFERRING TO NON-CONTRACTUAL LIABILITY OF STATE

According to the latest amendments of the Civil Code of the Republic of Moldova, it is exhaustively regulated in Article 2006 establishing the liability for damage caused by a public authority or by a person with a position with responsibility. The damage could consist in an illegal administrative act or a non-settlement within a legal term a request by a public authority or by a person with a position of responsibility. This person could be jointly and severally liable in case of intent or gross negligence.

If a public authority has an obligation imposed by an act adopted for the purpose of protection against the risk of causing a certain type of damage, it shall be liable for the damage of this kind caused or prevented by the non-performance of the obligation, unless the public authority demonstrates that it has shown reasonable diligence in the execution of the obligation. The public authority would be not liable for the damage caused by the adoption of a normative act or the omission to adopt it.

The Civil Code also regulates in a separate article, namely Article 2007 that the state is liable for damages caused by the actions of criminal prosecution bodies, the prosecutor’s office and the courts. This topic is quite regulated and the damages could be claimed under civil code articles in civil proceedings, but could be also claimed as civil claims within criminal cases. With regard to the latter, the Criminal Code of the Republic of Moldova expressly regulates following infringements: Pronouncing a sentence, decision, conclusion or decision contrary to the law (Article 307); Illegal detention or arrest (Article 308); Disclosure of criminal investigation data (Article 315). In this context, it should be also mentioned that there is a special Law no. 1545/1998 on repair of damages caused by the illicit actions of the criminal prosecution bodies, the prosecutor’s office and the court.

Cases referring to non-contractual liability of state are usually kept on low-profile, and it is quite difficult to follow the judicial practice, and how the main procedural guarantees are ensured. These cases, and the court decisions issued in solving this type of litigation would give a large perspective on impartiality of justice, and how it impacts the final perception of the beneficiary of his/her trust in justice.

### 5.5.1. Fair Trial Rights in Cases regarding Non-contractual State Liability

The monitoring on court hearings included 52 court hearings in cases on non-contractual liability of state, 49 of them in civil cases and 3 in administrative cases.

The general *Trial monitoring* sample included 49 court hearings in **civil cases** on non-contractual liability of state. From the total number of monitored hearings, 33 (67%) court hearings took place in the Central Chisinau Court and 16 (33%) in the Chisinau Court of Appeal. The vast majority of court hearings 46 (94%) took place in the courtroom. All court hearings monitored in the civil cases on non-contractual liability of state (49) were public and were conducted according to a regular procedure.

Within this context, we will delve into several key aspects that emerged during our monitoring of these civil cases:

*1. Duration of Proceedings.* Most often, the duration of the court hearing of the civil cases on non-contractual liability of state is up to 15 minutes (21 or 43%), up to 30 minutes 36%, when the average duration in civil cases distributes slightly different: 36% up to 15 minutes, 34% up to 30 minutes, 23% up to one hour. 8 court hearings the civil cases on non-contractual liability of state lasted more than 1 hour.

*2. Legal Representation.* From the most commentaries on Equal Access, it seems that it is normal that in this type of cases parties rarely participate themselves in the hearing, mostly they are represented by lawyers. In most cases litigants use the services of private lawyers. No case was registered where the lawyers were not intimately familiar with the case materials.

*3. Participation of NGOs.* Regarding the access of NGOs to court, it is stated that in only one case were "procedures initiated on behalf of the community or the groups represented", and in 2 cases NGO representatives participated as a party of the public at the court hearing. These are the sole cases that are also referenced in the assessment of the general civil cases monitoring.

*4. Timeliness.* The court respected the case trial calendar in less percentage of cases (65%) in comparison with average in 79%, therefore in 29% of the cases, where the trial calendar of the case was not respected (according to the monitoring on hearings on civil cases this percentage is lower – only 12%), the information regarding the reasons for the delay of the court session was provided to the parties and the president apologized to the parties for the delay in the start of the court session.

*5. Postponement.* The postponement indicator of the hearings in this type of cases is lower than average: 12% against 25% of average. According to the results of the monitoring: the postponement took place at the request/initiative of: the defendant (2), the plaintiff (3), the judge (1) and/or another subject (1). The reasons for the postponement were: the impossibility of the party to appear in court on the set date for reasons that do not depend on his will (art. 1191 of the Code of Civil Procedure) in 2 cases; other reasons in 4 cases. Only in 5 cases (which constitute 10%), the judge accepted the evidence presented after the expiry of the term established by the court, during the preparation phase of the case for judicial debates (Article 1191 para. (1) and (2) of the Code of Civil Procedure). This indicator is quite close to the average 6% in civil cases.

*6. Professionalism.* As for the general professionalism of the court, the results of the monitoring of court hearings showed that in the overwhelming majority of court hearings: the judge (judge panel) was present in the courtroom throughout the trial (98%); only in one case did the judge talk/use a mobile phone and/or speak/act tactlessly or indulge in unethical statements/actions about any of the trial participants. At the same time in the overwhelming majority of court hearings, the judge did not deviate from the substance of the case during the hearing (98%) and did not ask the parties questions unrelated to the case (98%). There was no court hearing in which the judge disclosed his position on the finality of the case or used sexist language/behaviour or made decisions based on gender stereotypes or preconceived notions of gender roles and responsibilities.

*7. Delivery of Judgment.* The judge did not explain the reasons for the decision taken after the pronouncement of the judgment in any of the 19 cases of the pronouncement of the operative part of the decision. In 15 of 19 applicable (79%) cases the decision was pronounced publicly on the indicated date.

The general monitoring sample of court hearings in **administrative cases** on non-contractual liability of state includes 3 court hearings, which took place in the courtrooms of the Chisinau, Rîscani court. Number of hearings monitored in administrative cases on non-contractual liability of state do not allow to make common conclusions in comparison with the general situation in administrative cases.

In the subsequent paragraphs, we look into key aspects that emerged during our monitoring of administrative cases regarding non-contractual state liability:

*1. Duration of Proceedings.* All court hearings lasted less than 1 hour: 1- till 15 min, 1 – up to 30 min and 1 – up to 1 hour. All court hearings in the administrative cases on non-contractual liability of state were public.

*2. Participation of NGOs.* Regarding the access of NGOs to court, the results of the monitoring of the court hearings in the administrative cases on non-contractual liability of state allow us to state that no NGO representatives participated in these hearings.

*3. Legal Representation.* In 2 court hearings, the parties were represented by a lawyer, and in another – not; the public authority was represented by its representative in all 3 cases. In 2 cases the lawyers were fully and intimately familiar with the case materials, and in 1 case this criterion is inapplicable.

*4. Conducting Court Hearings.* As for the opening of the court hearing, according to the results of the monitoring, the court respected the trial calendar of the case in all 3 cases. The President fulfilled his procedural duty to explain all actions in all monitored court hearings. No records were made regarding the postponement of cases.

*5. Professionalism.* As for the general professionalism of the court, the monitoring results in the administrative cases on non-contractual liability of state show that in all monitored court hearings met the requirements of professionalism indicated in the Monitoring.

*6. Delivery of Judgement.* In 1 case the decision was pronounced publicly in its entirety, and in another case the operative part. In both cases, the decision was pronounced on the indicated date. The judge did not explain the reasons for the decision taken after the judgment in both cases, therefore in both cases the judge clearly informed the parties how to appeal and about the appeal deadlines.

### 5.5.2. Reasoning of Court Decisions

In the *Monitoring of Judicial Decisions*, 25 decisions on non-contractual liability of state were monitored, 15 of them from the first instance court and 5 both from appeal and cassation courts. There are no significant differences in comparison with common conclusions, but there are some specificities which should be mentioned.

The court cites case law relevant to substance of the case more often in 36% of cases then in average 25%. This indicator corresponds with another indicator that the courts in this category of cases apply the case-law of the ECHR or other international treaties and conventions on fundamental human rights directly or indirectly as additional sources of legal reasoning in 56%, when the average is 44%. Therefore, the courts do not rely on sources of doctrine of international or national law as an additional source of legal reasoning at all in this type of cases, noting that the average on non-reliance indicator also is very high (95%), the court’s reasons/motives (reasoning part of judgment) distinguished from the parties’ explanations, assessments, arguments or evidence in the case mostly partially in 64%, while the average value is 44%. According to the common assessment, the court clearly distinguish in 47% and partially in 44%.

In addition there are some negative deviation from the common values on the assessment of the persuasiveness of the court judgment. The court only in 20% of cases states why it rejects certain evidence in deciding the establishment of the facts, bearing in mind that the average value also is not sufficiently high 31%; in line with the sufficient amount of attention is paid to the assessment of the unsuccessful party’s arguments in the reasoning part of the judgment only in 36% of cases in comparison with the average in 47%. It is worth mentioning that mostly court do this partially in 44%, while the percentage of insufficient amount of attention is quite similar to the average: 20 and 22%. As the consequence of that, the results of monitoring show that the judgment fully sets out all the reasons on which the court made decision in less percentage (48%) in comparison with average (59%). Additionally, the judgment of the court clearly and fully answers the essential questions of the case in less percentage of cases (52%) then averagely courts do so in 69% of cases, when not doing it in 12% of cases (all them are administrative ones) and the average is only 5%.

The judgment written in an easy-to-understand, common language, without language or spelling errors, in a consistent, single style only in 32% and partially in 56% of cases while the average indicators respectively are 56% and 38%.

The same problem is indicated as in other type of cases that when the court decision sets out the circumstances which the court itself independently has the power to determine (ex officio) (5 cases were indicated), implementing the judge’s active role, in only one of them the court has partially informed the parties about this aspect and gave them the opportunity to provide the comments on it. This percentage (20%) is even worse than average (42%).

The parties apply for reimbursement of legal representation costs in this type of cases more often in 52%, then average in 18%. Accordingly, the percentage of not reimbursement of these costs is higher 31% than average in 21% and in none of the applicable cases the court calculated the exact duration of the legal services provided and only indicated the amount to be awarded to the lawyer mirroring the common practice.

In summary, the analysis of court hearings involving cases of non-contractual liability of the state has brought to light several key findings. These include:

*1. Legal Sources.* There is a notable higher utilization of relevant case law (36%) and international human rights treaties (56%) compared to the average. This approach contributes to more informed and rights-focused legal reasoning.

*2. Variances in Judgment Quality.* However, there are variances in the quality of written judgments, particularly concerning clarity, language, and addressing essential case questions.

*3. Limited Explanation and Attention.* Furthermore, there are concerns about limited explanations for rejecting evidence (20%) and reduced attention given to assessing the arguments of the unsuccessful party (36%), which undermine comprehensiveness.

*4. Language and Style.* A lower percentage of judgments are written in clear, error-free language (32%) and a consistent style (56%), deviating from typical benchmarks.

*5. Reimbursement Challenges.* Lastly, there are issues related to the reimbursement of legal costs, with both higher application rates (52%) and cases where reimbursement is not awarded (31%). This poses a potential challenge to access to justice.

To sum up, the monitoring analysis of court hearings involving cases of non-contractual liability of the state has revealed a range of strengths and weaknesses in comparison to typical patterns in other types of the cases.

Among the strengths are:

1. A lower rate of court hearing postponements (12% compared to the average of 25%).
2. More frequent applications for reimbursement of legal representation costs (52%) compared to the average (18%), with active lawyer representation enhancing effective argumentation and adherence to legal procedures.
3. Commendable professionalism displayed by the court.

However, these advantages are accompanied by several notable drawbacks:

1. Limited overall access of NGOs to court hearings, indicating potential gaps in public representation and input.
2. Slightly lower consistency in adhering to the trial calendar (65%) compared to the average (79%), potentially leading to delays.
3. Absence of direct party participation, often represented by lawyers, raising concerns about understanding and engagement in the process.
4. Lack of information provided to parties about the court's decision to set out the circumstances that the court itself independently has the power to determine (ex officio), indicating a potential transparency gap.
5. In cases where the operative part of the decision was pronounced, the judge did not provide reasons for the decision taken after the judgment's pronouncement, leading to a deficiency in decision clarity and transparency.

## 5.6. CONCLUSIONS AND RECOMMENDATIONS

The comprehensive assessment of sub-types of cases indicates that there are no substantial disparities when compared to the overall data for all case types. Challenges related to judgment quality, frequent postponements and other trial inefficiencies, including adherence to the trial calendar, unclear practices regarding the reimbursement of legal costs, inconsistent hearing durations and inadequate explanation of participants' rights, are prevalent across all case types, while with varying degrees of ineffectiveness. Nonetheless, specific issues highlighted in each case type, such as the absence of environmental cases, concerns about the accessibility of the legal aid system in cases of domestic violence, inadequate legal representation and limited NGO involvement in most monitored sub-types of cases, lack of a practice of informing parties about the court's active role in determining certain circumstances (*ex officio*) in cases referring to non-contractual liability of state, underscore the necessity for continuous monitoring and assessment of these case categories, with particular attention to these specific concerns.

An initial issue lies in the selection of cases of pre-selected types due to the lack of an efficient search engine. To ensure effective monitoring of distinct sub-types of cases, the establishment of a robust search engine integrated into the judgments’ database, incorporating case types and categories as search criteria, is crucial. This enhancement will facilitate the access of judgments across different case types. Addressing this concern would not only aid in the accumulation of statistical data but also significantly contribute to the development of a more consistent and uniform case-law.

Given the specificity of regulations and the growing societal and Partners' concerns surrounding these particular case subtypes, it is also essential to provide additional and specialized training and workshops for judges, lawyers, prosecutors and court staff. This will help enhance their comprehension of the distinct characteristics associated with these cases.

### 5.6.1. Proposals for Improving the Access to Justice in Cases involving Legal Aid

Despite the significant advancements made by Moldova's state-guaranteed legal aid system in enhancing access to justice, there remains an ongoing necessity to confront challenges, refine procedures, and secure impartial and high-quality legal representation for all individuals.

The monitoring results reveal instances where legal aid lawyers displayed limited familiarity with case materials or insufficient preparedness. There were concerns raised regarding the passive role adopted by legal aid lawyers within the system.

The shortcomings observed in judgments, including the absence of reasons for rejecting certain evidence, assessment of arguments from the unsuccessful party, and references to case law without addressing doubts about the compatibility of relevant laws with higher laws, could also be linked to the quality of legal representation.

Professionals highlighted variations in the quality of legal assistance offered by the state, indicating that certain legal professionals might not meet the expected standards for the level of representation.

To address these pressing concerns, it is suggested to take the following steps:

**Recommendation 1:** *Enhance Quality in Legal Assistance by Providing Comprehensive Training and Continuous Professional Development.* Implement robust training programs and continuous professional development initiatives tailored for legal aid lawyers. These programs should focus on improving legal knowledge, case preparation skills, courtroom demeanour, and ethical obligations. By enhancing the competence of legal aid lawyers, we can ensure more effective representation.

**Recommendation 2:** *Improve Standardized Quality Assurance Measures*. Establish and monitor standardized measures for quality assurance in legal aid services. This entails the formulation of clear directives governing case preparation, courtroom conduct, and adherence to ethical standards. By setting and upholding these standards, we can promote consistency and ensure that legal aid services consistently meet high-quality benchmarks.

**Recommendation 3:** *Address Inadequate Reimbursement and Ensure Fair Remuneration Policies.* To mitigate concerns related to insufficient remuneration impacting the motivation and dedication levels of legal aid lawyers, it is crucial to conduct a comprehensive review of existing remuneration policies. This review should lead to necessary modifications aimed at ensuring that legal aid lawyers are fairly compensated for their services. Fair remuneration not only acknowledges their commitment but also serves as an incentive for delivering quality legal assistance.

**Recommendation 4:** *Streamline Caseloads.* The extensive caseloads they handle can undermine the quality of legal assistance, potentially leading to inadequate support for clients, delays in proceedings, and compromised outcomes. Effectively addressing the issue of overwhelming workloads requires a comprehensive strategy to streamline caseloads and optimize the allocation of resources.

**Recommendation 5:** *Reconsider the Accessibility Criteria for Legal Aid System.*Concerns were raised regarding the accessibility of the legal aid system, with potential instances of misuse and abuse, emphasizing the importance of improved checks and screening procedures. To reinforce the system's credibility, it's essential to fortify the method of choosing beneficiaries of legal aid, making certain that only those truly requiring assistance receive it. The implementation of efficient screening protocols is crucial to prevent potential misuse and guarantee equitable access to legal aid.

### 5.6.2. Proposals for Improving the Access to Justice in Environmental Cases

The ambiguity surrounding regulations pertaining to the procedural roles and rights of NGOs in Moldova's legal system poses significant challenges in environmental cases. This ambiguity is exacerbated by vague conditions such as "in accordance with the law," which hinder the effective implementation of laws related to NGO representation rights. As a result, meaningful involvement of NGOs in legal processes, particularly in cases of public interest, is impeded due to the lack of specificity in regulations. The insufficiency of NGO participation can be traced back to these unclear regulations, leading to inconsistent interpretation and application.

To address this issue and promote a more robust role for NGOs in Moldova's legal proceedings, we recommend the following:

**Recommendation 1:** *Refining Legal Norms.* Undertake a comprehensive review of existing legal norms, specifically those related to the participation of NGOs in legal proceedings. This process should include clarifying and specifying the conditions and procedures under which NGOs can engage in legal actions, especially in cases of public interest and environmental protection.

**Recommendation 2:** *Defining the Role of NGOs.* Clearly define the role of NGOs in legal proceedings, outlining their rights and responsibilities in a transparent and unambiguous manner. This step will provide legal clarity and certainty for both NGOs and the legal system.

**Recommendation 3:** *Providing Clearer Guidelines.* Develop and disseminate clear guidelines that enhance the participation of NGOs in legal proceedings. These guidelines should offer practical instructions on how NGOs can engage in legal actions effectively, ensuring that their contributions are meaningful and aligned with the law.

### 5.6.3. Proposals for Improving the Access to Justice in Data Protection Cases

In conclusion, the identified problems and corresponding recommendations are outlined below to enhance the efficiency and effectiveness of court proceedings in cases related to data protection:

**Recommendation 1:** *Address the Issue of Duration of Court Hearings by Developing Guidelines and Case Complexity Assessment.* The *Trial Monitoring* highlighted significant differences in the duration of court hearings, with 73% lasting 15 minutes or less, raising concerns about the thoroughness of proceedings. To address this issue, guidelines for allocating hearing time should be established to ensure comprehensive case evaluation and fair judgments, as well as a system to assess the complexity of cases prior to scheduling hearings should be developed, allowing allocate appropriate time based on case complexity for thorough examination, presentation of arguments and comprehensive deliberation.

**Recommendation 2:** *Mitigate Frequent Postponements.* The percentage of postponements in administrative cases concerning data protection is higher (40%) than the average (29%), leading to delays and potential inefficiencies. To mitigate this, a robust case management system should be implemented to prioritize efficient handling of administrative cases, reducing postponements and maintaining court schedules.

**Recommendation 3:** *Enhance Explanation of Procedural Rights.* The court's explanation of procedural rights and obligations is inconsistent, affecting litigants' understanding of their legal standing. To enhance transparency and fairness, clear and comprehensive explanations of procedural rights and obligations should be mandated for parties during court proceedings.

**Recommendation 4:** *Improve Quality of Judgments in Data Protection Cases by Developing Guidelines for Writing Judgements and Organizing Specialized Training.* Judgments in data protection cases exhibit variability in writing style, clarity and adherence to legal principles, potentially impacting the overall quality of decisions. To improve the quality of judgments, guidelines for writing judgments that emphasize thorough analysis, clear reasoning and the incorporation of relevant legal precedents are needed, specialized training and workshops for judges, lawyers, and court staff should be organized to enhance their understanding of data protection laws and cases.

### 5.6.4. Proposals for Improving the Access to Justice in Domestic Violence Cases

In light of extensive monitoring and expert insights into court proceedings related to domestic violence cases, a comprehensive set of recommendations has been formulated to address the identified challenges and improve the overall effectiveness and fairness of these legal proceedings. These recommendations emerge from a critical examination of issues related to legal representation, the duration of hearings, explanations of participants' rights, judgment quality, and the involvement of non-governmental organizations (NGOs). Expert insights have underscored the difficulties faced by state-funded lawyers, particularly concerning case preparation within tight time constraints. Furthermore, the potential advantages of increased NGO involvement have been emphasized, highlighting the existing inadequacies in this regard. Additionally, comments have revealed a concerning issue related to the accessibility of legal aid for victims, despite their statutory entitlement to such support.

The following recommendations aim to address these challenges and foster positive developments in domestic violence cases within the legal system. Each recommendation targets a specific area of improvement, ensuring a holistic approach to enhancing the quality, efficiency, and fairness of court proceedings in cases of domestic violence:

**Recommendation 1**: *Reconsider the Duration of Hearings allocated to Domestic Violence Cases.* Implement strategies to optimize the use of court time in domestic violence administrative offense cases, ensuring that hearings are efficiently conducted while allowing sufficient opportunity for parties to present their cases.

**Recommendation 2:** *Enhance Explanation of Procedurals Rights.* Mandate that courts consistently provide comprehensive explanations of participants' rights in domestic violence cases to ensure transparency and fairness.

**Recommendation 3:** *Improve the Quality of Judgments by developing Specialized Guidelines.* Develop guidelines for judges to critically evaluate and address the arguments of the unsuccessful party, while also encouraging the consideration of relevant case law to ensure consistency and alignment with established legal precedents in domestic violence cases.

**Recommendation 4:** *Enhance Preparation for State-Funded Lawyers.* Implement training programs specifically addressing the challenges of case preparation within limited timeframes for domestic violence cases. Additionally, consider the potential benefits of specialization in this particular type of case and create mechanisms to ensure a balanced workload for state-funded lawyers. This will improve the quality of representation and overall effectiveness in court proceedings.

**Recommendation 5**: *Raise Awareness about Available Legal Representation and NGO Engagement.*Ensure the accessibility of legal aid services to the victims in domestic violence cases by establishing and promoting awareness campaigns to inform victims of their right to legal representation and assistance, monitoring the appointment of legal-aid rates in domestic violence cases. Facilitate increased involvement of NGOs in domestic violence cases by creating formal procedures for their participation, thus enhancing the support available to victims.

### 5.6.5. Proposals for Improving the Access to Justice in Cases concerning Non-contractual State Liability

The monitoring analysis of court hearings involving cases of non-contractual liability of the state has provided insights into both strengths and weaknesses within this legal context. These strengths include a lower rate of court hearing postponements, a more extensive utilization of relevant case law and international human rights treaties, frequent applications for legal representation cost reimbursement, limited instances of NGO representation, and commendable professionalism exhibited by the court. However, these advantages coexist with several notable drawbacks, such as limited overall NGO access to court hearings, slightly lower adherence to trial calendars, variances in the quality of written judgments, insufficient explanations for rejecting evidence, a lower percentage of judgments written in clear language, absence of direct party participation, transparency gaps in decision-making, and issues related to the reimbursement of legal costs.

In summary, while there are positive aspects in the handling of non-contractual liability cases involving the state, there is also room for improvement in terms of consistency, transparency, and the quality of judgments to ensure equitable access to justice for all parties involved.

Below are suggestions that aim to tackle the challenges associated with the particular drawbacks observed in cases involving the non-contractual liability of the state:

**Recommendation 1:** *Strengthen Adherence to Trial Calendar.* Implement measures to improve the court's adherence to the trial calendar, minimizing delays and ensuring timely proceedings.

**Recommendation 2:** *Improve Quality of Judgments.* Establish standardized guidelines for structuring judgments to ensure consistent and thorough coverage of relevant aspects, clear reasoning and reliance the relevant case law. Provide comprehensive training programs for judges on judgment writing, emphasizing clarity, language precision and addressing essential case questions.

**Recommendation 3:** *Enhance Transparency and Communication.* Establish a practice of informing parties about the court's active role in determining certain circumstances (*ex officio*), providing an opportunity for input and commentary. Mandate judges to explain the reasons for decisions taken after the pronouncement of the operative part of the decision, ensuring transparency in decision clarity.

**Recommendation 4:** *Address Reimbursement of Legal Costs.* Review and refine the process of reimbursement of legal costs, ensuring clear guidelines and equitable determination of award amounts.

**Recommendation 5:** *Enhance NGO Participation and Community Engagement.* Develop clear procedures to facilitate greater involvement of NGOs in court hearings, ensuring diverse community perspectives are represented. Establish mechanisms for NGOs to initiate procedures on behalf of communities or groups, promoting inclusive access to justice.

# 6. ACCESS TO JUSTICE IN THE HIGH-PROFILE CASES

High-profile cases typically refer to legal cases or situations that have garnered significant attention and media coverage due to their notable or influential nature. These cases often involve prominent individuals, controversial issues, or significant legal implications. The high-profile nature of these cases often influences public perceptions of the judicial system and politics.

For this reason, the public interest (high-profile) cases have been a particular focus of monitoring. The Monitoring Methodology stated, "… *under exceptional circumstances, impacted by the public interest, the selection criteria may be based on an interest to monitor the judicial proceedings of specific events that have strong human rights implications (e.g., application of the presumption of innocence). Therefore, so-called high-profile cases which can be seen as "stress-tests" exposing the key strengths and weaknesses of a criminal justice system are also included in the object of the monitoring"*.

At the pre-monitoring stage, the Project team, together with the NGO partner, agreed on the categories (subjects) of court hearings to be monitored in this cluster:

1. Criminal cases involving persons with positions of public dignity (former-President of the country (Igor Dodon), leader of a political party, deputy, former head of the board of directors of a commercial bank that was robbed and with strong implications in the "*Theft of the Billion*" case (Ilan Shor), suspended General Prosecutor (Alexandr Stoianoglo), former chairman of a parliamentary committee, local councillor, etc.);

2. Criminal cases generically called "*The billion theft*" (subjects - former representatives of the management of the National Bank of Moldova) and "*Laundromat*" (subject - Platon, former representative of the management of a commercial bank).

Subsequently, this list was adjusted after coordination with the Delegation of the European Union in the Republic of Moldova, prioritizing three high-profile cases: Ilan Shor[[30]](#footnote-30), Igor Dodon[[31]](#footnote-31), and Alexandr Stoianoglo[[32]](#footnote-32). The decision took into account the interest of the media and the general public, as well as the views of development partners, considering the impact of these cases on Moldovan society and the legal system.

By derogating from the general rule established in the Methodology, which typically relies on an ad hoc monitoring concept focused on single court hearings rather than on a series of hearings or the entire judicial process for the cases in question, a different approach has been applied to high-profile cases. In these cases, court hearings were consecutively monitored according to a predetermined list, with monitors attending all sessions and documenting significant developments in the high-profile cases, as well as identifying any specific peculiarities when they existed.

Under these circumstances, the data used to evaluate the group of high-profile cases is collected from multiple sources:

The *Trial Monitoring* monitored 70 court hearings in the high-profile criminal cases category, which represented 25% of all monitored court hearings (281) in the criminal cases category. All court hearings took place in the municipality of Chisinau. The court sessions were distributed as follows: 64% in Buiucani court, Chisinau and 36% in the Chisinau Court of Appeal and the Supreme Court of Justice.

In this context, it should be noted that the monitoring of court hearings in the Supreme Court of Justice has been a particular feature of this category of cases. In 2022–2023, the Supreme Court of Justice (SCJ) for the first time examined in the first instance procedure the criminal case of the ex-President of the country, accused of committing the offence of passive corruption (Article 324 of the Criminal Code).

Due to the special nature of monitored cases, the analysis relies to a large extent on the comments provided by the monitors participating at the court hearings.

*Focus Group Surveys* and *Expert Interviews* provided valuable comments on the factors that place pressure on the judicial system, including fear, public opinion, political context, media influence, and communication challenges when a high-profile case is being heard at the courts.

## 6.1. DYNAMICS OF HIGH-PROFILE CASES IN MOLDOVA: A CRITICAL EXAMINATION OF FAIR TRIAL RIGHTS

While adhering to the principles of transparency and impartiality, we focus our attention on several critical aspects of high-profile cases. These include the composition of the court, the publicity of hearings, ensuring equal access to justice, facilitating access to legal aid, maintaining the fairness of court proceedings, and the delivery of judicial decisions. Through the *Trial Monitoring* data and analysis, we describe the findings that shed light on the strengths and weaknesses of the Moldovan justice system in dealing with these complex cases.

### 6.1.1. Court Composition

At first instance, most cases were conducted by a panel of three judges (60%), as was the case for the Court of Appeal and the Supreme Court of Justice (100% of cases heard by a panel of judges). From the perspective of the professional seniority of judges, it was observed that the majority of first instance judges who examined high-profile cases have less than 10 years of professional experience, in contrast to the Court of Appeal and the Supreme Court of Justice, where the panels of these courts are predominantly composed of persons with 20 years or more of professional experience. While this situation can be explained by the fact that the first instance is predominantly staffed by young judges and cases are distributed randomly, it is nevertheless rational that these categories of cases should be presided over by more experienced judges. Such an approach is necessary due to the significant public, media, and even political pressures placed on young judges who may not yet be adequately prepared to communicate and respond appropriately to these pressures. This pressure is on the rise and cannot be avoided, especially given the shortage of professionally trained personnel in the courts responsible for effective communication with the public.

### 6.1.2. Duration of Hearings

29% of hearings in first instance and 6% in higher courts were preparatory hearings, the rest of hearings were case examination of merits/appeal hearings (71% in first instance and 94% in appeal courts). The table below illustrates the average length of hearings at first instance and Court of appeal/SCJ level.

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| **Duration of Court Hearings** | | | | |
| **Instance** | **≤ 15 min** | **15 min ≤ 30 min** | **30 min ≤ 1 hour** | **1 hour ≤** |
| **1st Instance** | 40% | 18% | 20% | 22% |
| **Court of Appeals / SCJ** | 6% | 28% | 28% | 39% |

It can be observed that, in the first instance, approximately 58% of hearings lasted an average of up to 30 minutes, likely due to many hearings being in the preparatory stage. Conversely, in the Court of Appeal and the Supreme Court of Justice (SCJ), the average duration of hearings ranged from 30 minutes to over one hour, with the majority of hearings in these courts involving the examination of the merits of the cases. The data regarding the duration of hearings in high-profile cases aligns with the data on the duration of hearings in all criminal cases, where approximately 66% of hearings lasted up to 30 minutes.

### 6.1.3. Accessibility of the Courts

All the meetings monitored were open to the public, none was declared closed. Information on court hearings was accessible and published both on the court portal and at the court headquarter, with only a few errors detected in the display of data.

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| ***Comments of monitors:***   * *In the web court schedule and on the court board, the courtroom number did not correspond to the one in which the hearing took place;* * *The information on the court schedule on the portal was incorrect, or the meeting room no. 514, although the court session took place on floor 0, room 01. To attend the session, it was necessary to contact one of the defendant's lawyers.* * *I asked the guard at the entrance where Dodon's meeting was held, he indicated with his hand where I should go.* |

Access to the courtroom was allowed in most cases in both: the first instance and Court of appeal/SCJ. The majority of courtrooms allowed members of the public to attend unconditionally, with 70% of cases falling into this category. A smaller percentage, 7%, required attendees to make a request of identification to gain access. Additionally, 23% of cases allowed public attendance upon the explanation of reasons for wanting to be present in the courtroom. Importantly, there were no instances where the courtroom was deemed too small, where the hearing took place in the judge's office, or where the hearing was declared closed. Furthermore, there were no cases categorized as "N/A" or "Other" in relation to public access. These findings reflect a generally open approach to public attendance in the observed courtrooms, promoting transparency and accountability in the judicial process.

However, there have been instances of deviations from the principle of court hearing publicity, notably in the *Shor case*. According to observations made by monitors present during the court hearings, the following was noted:

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| ***Comments of monitors:***   * *Various people (civil servants, businesspersons, teachers and other supporters) who came to show loyalty to the former Head of state and party attended the meeting; also Mr. Dodon's guard.* * *The defendant's lawyers insisted to introduce myself. The judge told me to come forward. I said my name is P.S. The lawyers said that it is not enough and is necessary to present an identity document, because I can be a representative of special bodies (SIS, etc.) or a witness on the case and other such nonsense. The court asked me for an identity card. I presented the ID card. Even that was not enough and one of the defendant's defenders requested the court to warn me of criminal liability (I don't know on what occasion and on what legal grounds). The court rejected that request.*   *- I showed up at the meeting at 14:20 and waited until 14.50. There was no one and the room locked. I checked the national portal of the courts, namely the hearings at the Chisinau Court of Appeal and to my great astonishment I found that after the information on the portal the meeting took place at 10:00, although until the day of the hearing on the portal it was indicated at 2.30 p.m. So physically, I didn't have the opportunity to monitor this meeting.*  *- The meeting started 10 minutes late. The court asked who I am? I said that I wanted to attend. I was allowed with a warning to be quiet. The prosecutor I.G. entered the courtroom at 10.22 min, and the state lawyer B.D. at 10.35 min. MP Marina Tauber walked into courtroom of the Court of Appeal with a megaphone and started chanting in support of Ilan Shor. A policewoman who was ensuring public order and was in the hall of the court tried to stop her from entering the courtroom with the megaphone and insisted that MP stop their actions, but she failed. Ms. Tauber entered the courtroom where the hearing was taking place and began shouting into the megaphone without stopping. When the court tried to calm the situation, she did not react. The court called a recess. After 15 min more police staff arrived and tried to calm the situation and asked the latter to leave the courtroom or turn off the megaphone. They failed. Tauber was shouting that she is a member of the Moldovan Parliament and has immunity. The panel of judges then left the courtroom. Tauber continued shouting mentioning that everyone is corrupt (police, prosecutors, judges, politicians, the President of the State, etc.). The panel of judges returned to the courtroom after an hour and issued a ruling under Article 18(2) of the CPC prohibiting public access to the courtroom throughout the trial for security reasons. Only the parties and the press were allowed access to the courtroom, despite of the trial was public. Myself, several people, supporters and one MP left the courtroom. Marina Tauber continued categorically refusing to leave the courtroom. The head of police of the Botanica sector came to the help the police. Tauber was forcibly removed from the courtroom. After she was taken out behind the door, the latter threatened the policemen, asking for everyone's ID cards and saying they would answer. … I later checked on the court's website when the next court hearing would take place and found no information. Possibly the information about the hearing was entered late evening on 12.04.23 or in the morning of 13.04.23. On 13.04.23 I found the information that the hearing was set for 13.04.23 at 09.30 min.* |

Restricting or conditioning access to court hearings for monitors is not in compliance with the principle of court hearing publicity, as regulated by the procedural codes and the Law on the Courts Organization. These regulations firmly establish that court hearings are to be public, with the trial held in closed session only in cases specified by the law and following the prescribed procedure.

It is also evident that the principle of publicity should not transform the courtroom into a mere showcase or platform for displaying support for defendants, especially when they are politicians. In this regard, it is of paramount importance to have internal court-level mechanisms or protocols that can promptly address such situations without compromising the fundamental principle of court hearing publicity.

### 6.1.4. Equal Access

During the process of monitoring this aspect, the monitors were tasked with identifying any inappropriate communications between the judge and the trial participants, as well as determining whether there were discussions between the defence and prosecution prior to the hearings. The monitoring data reveal that in some cases, discussions between opposing parties about the case occurred before the commencement of the hearing (18%). Additionally, inappropriate contacts between parties were observed in 9% of the monitored hearings. These communications occurred in both the first instance and in the Court of Appeal/SCJ.

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| **Comments of monitors:**   * *Discussions on general topics without reference to the legal case* * *After the meeting, the prosecutor reproached the lawyers for not asking for the indictment beforehand.* * *During the hearing, while the panel had retired to the deliberation room, one of the defendant's lawyers whispered a question/request to the prosecutor to which he reacted with a response like "Don't come to me with such questions. I know that there were also challenges for this cause"* * *The defendant told the prosecutor that today is a big holiday and it would be a shame to work.* * *The prosecutor tried to talk to one of the invited witnesses, and the defendant's lawyer made a remark: you have no right to influence the witness.* * *The defendant (former President) at the end of the session congratulated Judge T. on February 23.* |

These comments emphasize the importance of maintaining professionalism and impartiality within the courtroom, as inappropriate interactions and comments can raise concerns about the fairness and integrity of the judicial process.

### 6.1.5. Access to Legal Aid

In all the monitored cases, the individuals involved received qualified legal assistance. There was only one instance where a participant in the legal proceedings (the prosecutor) requested the appointment of a court-appointed lawyer. This occurred in the *Shor case* at the Chisinau Court of Appeal. The request was based on the argument that the contracted lawyers had repeatedly and unjustifiably postponed the hearings, citing various irrelevant reasons.

Furthermore, in high-profile cases, there is an atypical situation compared to other monitored categories of cases: a significant number of defendants are represented by multiple lawyers.

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| **Comments of monitors**:   * *The prosecutor requested the appointment of an ex-officio lawyer following the defendant's lawyers request the postponement for several hearings;* * *The former Anticorruption Prosecutor employs two lawyers on a contract basis....* * *The defendant was represented by three lawyers under contract* * *Five lawyers: one lawyer from Great Britain, one lawyer from the legal aid state guarantee, and three lawyers under contract* |

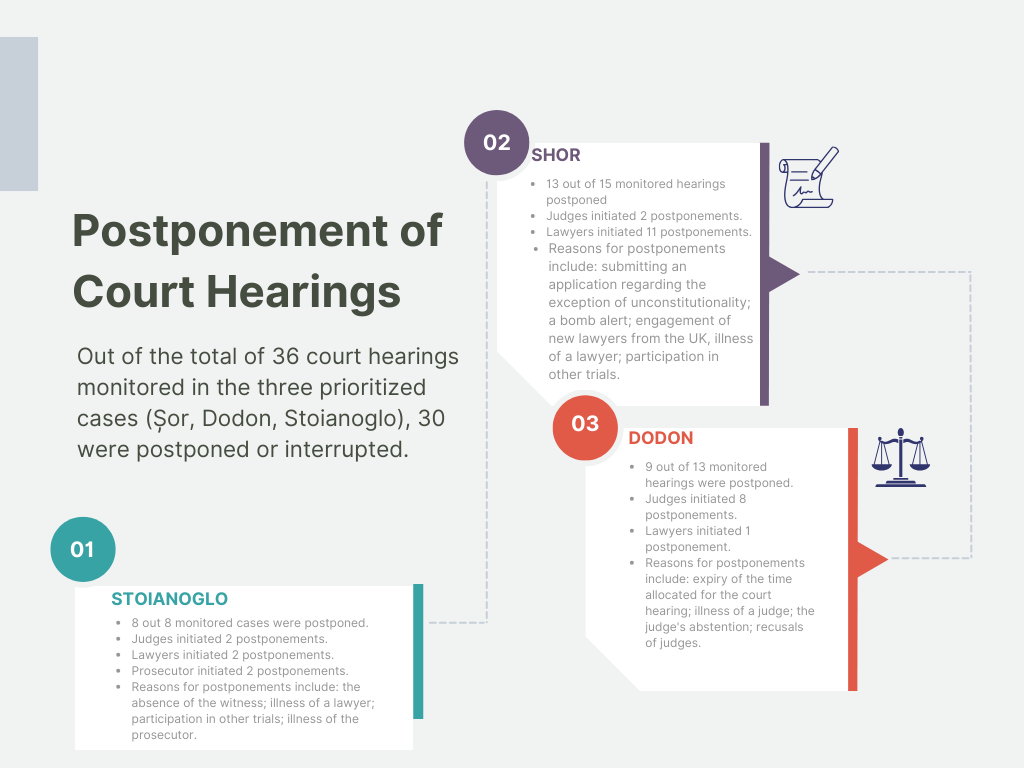
Monitoring data indicates that in over 70% of cases, lawyers were closely familiar with the case materials. In 11% of the monitored hearings, it was assessed that lawyers were sufficiently or partially familiar with the case materials. In cases where a lack of familiarity with the materials was alleged, it was mentioned that lawyers did not have sufficient time to study the case materials. This was either because the materials had not been provided by the prosecutor (in the first instance) or because the lawyers had been recently engaged by the defendant (in the first instance and also in the Court of Appeal in the Shor case when a UK lawyer was engaged).

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| **Comments of monitors:**   * *The lawyers addressed questions to the witness, indicating with great precision the factual circumstances imputed to the defendant;* * *The lawyers requested a deadline to familiarize themselves with the case materials (more than 100 volumes) because the prosecutor submitted the case to the court without offering the opportunity to be acquainted;* * *The trial is apparently being deliberately delayed by lawyers through various procedures, including invoking the need for a deadline to coordinate their positions, despite of the fact that all three lawyers were involved in case during all stages;* * *During his speech, one of the defendant's lawyers expressed that "Prosecutors change their position on the fly, after they make these decisions at the "secret dinner of some prosecutors". Later, the prosecutor and the injured party drew the court's attention to the behaviour of the lawyer who uses inappropriate expressions towards the prosecutor and the injured party.* |

### 6.1.6. Postponement of Judicial Hearings

The monitoring of court hearings in high-profile cases revealed a high rate of postponement or interruption of proceedings. Out of the total 36 court hearings monitored in the three prioritized cases (Șor, Dodon, Stoianoglo), 30 were postponed or interrupted. The suspension of regular sessions occurred due to the expiration of the allotted time for the court session and was initiated by the judges.

The trend of postponing hearings was more pronounced among lawyers, particularly in the Șor case. Lawyers frequently requested postponements, citing various reasons such as illness of one of the three lawyers, their participation in other hearings, the engagement of a UK lawyer, and the need for additional time to study case materials. According to the monitor's observation, "*The court appears not to utilize punitive measures against lawyers, such as imposing fines, and tacitly accepts trial delays."* Prosecutors, on the other hand, sought to expedite the trial process, including the appointment of a court-appointed lawyer. They also requested the imposition of judicial fines on lawyers causing delays in the case (fines were indeed imposed). The matter was referred to the Lawyers' Union for potential disciplinary measures against lawyers involved in misconduct in the Shor case. Notably, in only one instance, judges imposed a fine on all three lawyers (1500 MDL for each lawyer).



### 6.1.7. Punctuality and Conduct of Hearings

The majority of hearings began at the scheduled time, with only 11% experiencing delays (in the first instance). In cases where the hearings started late, the reasons for the delay were not communicated to the parties in 80% of instances. Only once did a judge apologize to the participants, citing the reason as another hearing.

When changes occurred in the composition of the panel, these changes were communicated and explained to the participants in 71% of cases.

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| **Comments of monitors:**   * *The court opened the court session and announced that A. C., as a member of the panel, is not present, due to her emergency departure.* * *The court asked if it was necessary to explain their rights. The parties communicated that they know them.* * *The court did not explain the procedural rights of the parties. The court did not announce the panel. He just mentioned that there are no grounds for recusal.* |

The monitors did not identify any cases where participants' ability to plead was restricted, whether at the first instance level or in higher courts (Court of Appeal/SCJ). While instances of limiting pleadings were rarely mentioned in the monitoring of all categories of cases (only 8 cases), this issue did arise during interviews with justice system professionals conducted by the Project team. Notably, it was observed that such practices were more commonly encountered at the Court of Appeal level.

However, it appears that in high-profile cases, courts tend to be more lenient and allow for extended pleadings (as indicated in monitors' comments). This accommodation may stem from considerations such as the public interest in these cases and the presence of media representatives at the hearings, with judges ensuring adherence to all procedural elements and steps.

In cases where prosecutors presented charges (13% of cases), these presentations were generally comprehensive, including reading the indictment in its entirety. Additionally, when the indictment was read, the court typically asked the defendant whether the charges were clear to them.

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| **Comments of monitors:**   * *The prosecutor read the presentation of charges very quickly and quietly, for people without legal training and without any information about the context of the crime of "bank fraud", it would be very difficult for them to remember the facts and understand the accusation;* * *In the trial, during about 2 hours, the lawyers read the reference.* |

In 7% of all monitored hearings, both at the first instance level and in the Court of Appeal/SCJ, new evidence was presented by the parties, with the majority of it being presented by lawyers (70%).

Interestingly, there were no cases in which prosecutors utilized the provisions outlined in Article 53 of the Code of Criminal Procedure. This includes neither making a motion to interrupt the hearing of the criminal case when the criminal investigation was incomplete, allowing for the submission of new evidence supporting the charges against the defendant, nor requesting that the court bring more severe charges against the defendant and admit new evidence. These requests could have been made in cases where, following a judicial inquiry, it was ascertained that the defendant had allegedly committed other crimes, and that existing evidence was insufficient, or where the legal qualification of the crime committed by the defendant needed to be changed, provided a judicial inquiry confirmed the defendant's involvement in the crime.

### 6.1.8. The Right to be Presumed Innocent. The Right not to be Compelled to Testify or Confess Guilt

There were no instances where trial participants exerted moral or other forms of pressure on the defendant during the proceedings, whether at the first instance or Court of Appeal/SCJ levels. Only one case out of three (at the first instance) was reported, where the defendant was informed that they were not obligated to answer questions, and that their refusal to answer would not be held against them. Similarly, there were no cases where the court attempted to draw adverse inferences from the defendant's exercise of the right to remain silent, nor were there any instances where the judge pressured the defendant to plead guilty.

Regarding the prosecutor's exercise of their functions without apparent personal bias or undue influence, monitors found that in 29 hearings (11 at the Court of Appeal/SCJ level and 13 at the first instance level) out of the 70 monitored, prosecutors did not adhere to the condition of impartiality.

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| **Comments**:   * *The prosecutors behaved unprofessionally. They insulted the lawyers.* |

### 6.1.9 Judicial Deliberations

In the 70 hearings that were monitored, the court, when appropriate, retired to the deliberation chambers at the conclusion of the hearing in 11 hearings and did not retire in 17 hearings. When the court did retire, the majority of deliberations (10 out of 11) lasted an average of up to 30 minutes.

### 6.1.10. Professionalism of the Court

In all the hearings monitored at the first instance, the judges upheld the solemnity and fairness of the process. They remained in the courtroom throughout the hearing, spoke and acted tactfully, and refrained from making unethical statements or engaging in inappropriate actions towards any of the participants. They did not veer off-topic from the merits of the case, avoid asking unrelated questions to the parties, disclose their position on the case's outcome, or use sexist language or behaviour.

In 5 out of the 70 hearings monitored (4 in the first instance and 1 in the Court of Appeal), the use of mobile phones, including telephone conversations, during the court session was reported.

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| **Comments of monitors:**   * *When the lawyer was reading the testimony of the witnesses, the judges were sitting on their mobile phones and exchanging opinions, discussing ... One of the judges answered the call briefly.* |

### 6.1.11. The Role of the Judges

Regarding the role of the court, it was noted that the courts had either an active or mixed role, depending on the stage of the hearing. However, it can be observed that in 11% of the hearings at the first instance level, judges displayed passive behaviour, whereas such an approach from judges was not observed in any hearing at the Court of Appeal/SCJ level.

In the first instance, the court is described as active in 42% of cases, suggesting a proactive role in managing proceedings. However, there is also a notable percentage (27%) where the court's role varies based on the stage of the hearing. Passive roles are observed in 11% of cases, and 20% of cases are categorized as not applicable.

In the Court of Appeal/SCJ, the court's role is seen as active in 44% of cases, indicating a more consistent engagement throughout the process. Notably, no passive role is attributed to the court at this level. Similar to the first instance, 44% of cases involve a mixed role based on the stage of the hearing, and 11% are marked as not applicable.

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| **Comments of monitors:**   * *The court explained to the participants the obligation to exercise their procedural rights in good faith, taking into account that court hearings had previously been postponed, as a result of the defenders' requests.* * *The rapporteur plays an active role, asking questions of the witness. Other 2 judges were passive.* * *One judge was more active, the other two more passive* |

### 6.1.12. Delivery of the Judgment

Delivery of judgments occurred in 5 out of the 70 monitored hearings: 1 in the first instance and 4 in the Court of Appeal/SCJ. Only in one case was the decision delivered in its entirety (Court of Appeal), while in the remaining cases, only the operative part was delivered. In all instances, the judgments were publicly pronounced on the specified date. In only one case (SCJ) out of the five, the judge explained the reasons for the decision made, and these explanations were considered *"somewhat sufficient"* by the monitors.

The parties were clearly informed about how to appeal and the associated time limits for appeal. However, none of the decisions had been published at the time of monitoring.

*Overall,* the summary of the monitoring data on court hearings indicates that, for the most part, fundamental conditions and rules for conducting court hearings are adhered to. This includes the publication of information about court hearings, ensuring public access to the hearings, providing equal access to justice, and respecting the right to defence and the presumption of innocence. However, it's important to note that there are some deviations and concerns within these categories of cases.

## 6.2. NAVIGATING THE COMPLEX LANDSCAPE OF HIGH-PROFILE CASES: INSIGHTS FROM LEGAL PROFESSIONALS AND EXPERT PERSPECTIVES

High-profile cases, marked by their significant public interest and media attention, often present unique challenges within the judicial system. These cases not only capture the attention of the public but also raise pressing concerns for legal professionals involved in their adjudication. To gain deeper insights into the dynamics of such cases, a comprehensive survey was conducted in October 2022 among lawyers (data of *Focus Group Surveys*), including those employed under contract and those providing state-guaranteed legal aid. The survey sought to understand the extent to which judicial decisions with high impact are highlighted by court authorities. *Expert Interviews* further provide valuable insights into the intricate array of factors that place pressure on the judicial system, including fear, public opinion, political context, media influence, and communication challenges.

In this context, this examination explores the survey findings and expert opinions to provide a nuanced understanding of the impact of high-profile cases on the judicial process and the broader legal landscape. It underscores the need for safeguarding judicial independence, transparency, and effective communication.

Based on the presumption that high-profile cases are not only of public interest but also a pressing concern for legal professionals, a question related to these categories of cases was included in the October 2022 Lawyers' Survey. As a reminder, this survey was directed at lawyers employed under contract as well as those who provide state-guaranteed legal aid. Both categories were asked, *"To what extent are judicial decisions with high impact usually highlighted by the court authorities?".*

The survey results indicate that the majority of lawyers consider these categories of cases to be highlighted to a moderate or high extent. Based on the survey results, it appears that judicial decisions with high impact are typically highlighted by court authorities to a moderate extent, as indicated by 51% of respondents within the group of private lawyers. However, a notable percentage, 35%, believed that such decisions are highlighted to a small extent. Only 14% of respondents believed that court authorities highlight these decisions to a large extent. According to state-funded lawyers, judicial decisions with high impact are generally highlighted by court authorities to a moderate extent, as indicated by 59% of respondents. A smaller percentage, 22%, believed that such decisions are highlighted to a large extent, while 19% think they are highlighted to a small extent.

It is important to note that this question was also included in the set of survey questions focused on factors influencing the quality of judicial decisions. Therefore, it is worth mentioning that, in the opinion of lawyers, the 'resonance' of cases could potentially impact not only the course of the trial itself but also the quality of the decisions rendered. It appears that judges may be tempted to make decisions that align with public, political, or media sentiments when cases attract significant public interest. This presumption is further supported by expert opinions expressed during interviews.

Analysis of *Expert Interviews* shows that two significant influences stand out: fear and public opinion when one considers the matters related to high-profile cases:

*1. Fear as a Pressure Factor:* According to Expert 4 and Expert 3 (both judges) fear plays a significant role. They cited social hysteria, concerns about future judges, and the formal nature of judicial independence guarantees as factors contributing to this fear. They also noted that judges may be apprehensive due to the potential for abuse by prosecutors and other repressive bodies.

*2. Impact of Public Opinion:* Expert 21 (lawyer) expressed concern about the adverse effect of public opinion on the administration of justice. Expert 5 (judge) pointed out that in high-profile cases, there is often a tendency to render court decisions that are expected by the public or media, potentially compromising judicial independence.

Additionally, we have observed the following relevant statements made during the interviews:

*3. Political Context and Lengthy Proceedings:* Expert 11 (lawyer) suggested that political context can influence the length of proceedings in particular cases. Judges may postpone decisions due to political considerations: *"Improve the independence of the judiciary, because the judges (in high-profile cases) understand everything very clearly, they understand everything, and they postpone the decision on the case."*

*4. Pressure from Society and Journalists:* Expert 19 (judge) highlighted the pressures felt from society and journalists as particularly challenging and that judges often feel vulnerable to constant public criticism and the absence of strong support mechanisms: *"The pressure of society and journalists is felt, this is a great pressure and the most dangerous. When there is pressure from a certain person (prosecutor, politician), you can protect yourself from him (do not meet, do not answer the phone, you can write to the Anti-Corruption Prosecutor's Office, to the Judicial Council) but here what can you say? That from morning to night everyone says that the judges are bad? The postponement of hearings on high-profile cases is being made because we are not independent enough. We do not have a feeling that someone will protect us: neither the Judicial Council nor anyone, because they made such a horror story out of us that even if someone stands up for the defence, he will automatically be equated with bad ones"*.

*5. Influence of the Media:* Several experts, including Expert 15 (lawyer) and Expert 21 (lawyer), emphasized the significant influence of the media. They noted that media attention can make judges hesitant to handle high-profile cases due to personal safety concerns and the politicization of such cases. For example, Expert 15 (lawyer) noted that *"The press has a very strong influence and judges are also very afraid"*. In addition to this, Expert 21 (lawyer) explained the problem related to high-profile cases: *"<...> the problem with high-profile cases is that we ourselves make them resonant. And one of the problems I will tell you frankly, is that there is too much mediatization and on TV all this is said by deputies and ministers. Judges are afraid to work on such cases, this is my feeling, because everyone has families, everyone has children. And when they mediatize, they translate these cases into a political perspective, because of this, we have protests."*

*6. Proposed Moratorium on Public Statements:* Expert 14 (judge) proposed the idea of a moratorium on public statements against the judicial system. It is believed that eliminating public criticism and shifting the narrative is crucial for rebuilding trust in the judiciary. According to Expert 14 (judge), *"We will not be able to eliminate mistrust until we establish a moratorium on public speaking against the system. Even if we change all the judges, but everyone has heard for 100 years only nasty things about judges. And that's not going to change if they keep talking about it. <...> I will say from my own experience: a politician came out and said "here we appointed her, and she is good." So, I was bullied for 1.5 years, I do not know this person, I have never spoken to him in my life!!!! I suffer because of his words, to this day, and I do not need this! For someone to say I'm good or bad. Everybody has to abide by this moratorium! Too much has been said...".*

*7. Communication Challenges:* Several experts, including Expert 3 (judge), Expert 6 (lawyer), and Expert 15 (lawyer), pointed out communication issues. They suggested that judges should explain their decisions in high-profile cases to the public to increase transparency and build trust. Expert 17 (judge) noted that *"<...> after making a decision on a scandalous, high-profile case, you need to go out and explain to people why you made such a decision, this will also add people's confidence, increase trust.".*

In conclusion, the insights gathered from *Expert Interviews* underscore the pivotal role of fear and public opinion as influential factors within the realm of high-profile cases. These factors not only shape the decision-making process but also raise critical questions about the quality of decision making and preservation of judicial independence and impartiality.

## 6.3. CONCLUSIONS AND RECOMMENDATIONS

The data collected and analysed during the monitoring process reaffirms the methodology's underlying assumption that high-profile cases serve as "stress-tests," revealing both the strengths and weaknesses of a criminal justice system. These cases continue to present significant challenges to the functioning of the justice system in the Republic of Moldova. The scrutiny placed on these cases by the public and political entities has a direct impact on the quality of judicial processes and the resulting decisions.

### 6.3.1. Proposals for Improving the Access to Justice in High-profile Cases

It is noteworthy that, by and large, the participants in these processes adhere to the fundamental rules and principles of justice. However, it's important to acknowledge that this state of affairs may partly be attributed to the presence of monitors. As demonstrated earlier, the presence of monitors effectively encourages judges and the involved parties to uphold established standards of conduct.

Upon analysing the data and information presented in the preceding sections, several problems inherent to high-profile cases become apparent. Consequently, this analysis provides a basis for generating recommendations aimed at addressing or mitigating these issues.

**Recommendation 1:** *Enhance the Impartiality and Professionalism of Judicial Proceedings in High-profile Cases*.As previously mentioned, the majority of cases at the first instance level are presided over by young judges with less than 10 years of professional experience. While this is not to question the competence of young judges in professionally handling these case categories, it is crucial to recognize that the heightened public pressure and increased interest in these cases can potentially influence the objectivity of the process and the resulting decisions. Judges may be tempted, as highlighted in interviews, to deliver judgments that align with public expectations (*"court decisions that are expected in principle,"* as mentioned by Expert 5 (judge)).

Judges with substantial professional experience are generally better equipped to withstand such pressures, having developed the skills and abilities to respond effectively. Consequently, it is recommended:

a) to integrate criteria for determining the high-profile nature of a case, considering both its subject matter and public interest, as part of the random case distribution system within the courts.

b) to establish clear guidelines stipulating that high-profile cases, as determined by these criteria, should be assigned to judges with more than 10 years of judicial service.

**Recommendation 2:** *Ensure Open Court Hearings in High-Profile Cases.* The monitoring of court hearings reveals that, in general, the principle of publicity is upheld, although certain deviations from this principle have been documented. These deviations include inaccuracies in the publication of information regarding court hearings and conditional access for monitors, requiring the presentation of identity documents and specifying the purpose of monitoring. Conversely, some cases witnessed a positive reception of monitors by participants who welcomed their presence, emphasizing their role in ensuring adherence to procedural rules.

A notable characteristic of high-profile cases, particularly the Dodon and Shor cases, is the presence of "supporter teams" within the courtroom and in proximity to the courts. While the presence of these supporters aligns with the principle of open court hearings and complies with the Law of the Republic of Moldova on assemblies, certain incidents observed during court hearings, such as the disruption caused by a Member of Parliament during the Shor case, highlight the necessity for responsive measures.

Therefore, it is recommended to develop and implement internal mechanisms and protocols at the court level to enable prompt responses to such situations, safeguarding the principle of open court hearings without compromise.

**Recommendation 3:** *Enhancing Coordination in Scheduling and Conduct of Court Hearings.* The issue of optimal organization of court hearings applies to all categories of cases. However, in the case of hearings in high-profile cases, typically criminal cases, this problem becomes more prominent, with lawyers often tempted to delay proceedings in anticipation of the expiration of the limitation period for criminal liability or other favourable events for their clients. Monitoring has revealed numerous instances of hearings being postponed by lawyers and prosecutors, often due to their simultaneous obligations in other court hearings. This highlights the lack of proper and consistent coordination among all participants in the legal process, resulting in delays in case examination and raising concerns about the process's objectivity.

In this context, we recommend to establish a common electronic system, facilitating communication between judges, prosecutors, and lawyers. This system should allow for the scheduling of court hearings and real-time coordination to prevent situations where prosecutors attend hearings without the presence of lawyers or absent judges, ensuring greater efficiency and fairness in the legal process.

**Recommendation 4:** *Foster Collaboration among Legal Stakeholders to Address Trial Scheduling Challenges.* Monitoring data shows that lawyers have excelled in postponing court hearings in high-profile cases, especially in the Shor case. We recognize that lawyers can use various tactics and tools to defend their clients' interests. However, repeatedly invoking similar reasons for postponing the trial (e.g., attending other court hearings or missing one lawyer from the defendant's defence team, etc.) undermines confidence in the entire criminal justice system and the speed of the trial process. Not always, courts apply procedural sanctions to participants in the trial who invoke repeated and unjustified reasons for postponing the trial. At the same time, the courts themselves invoke the need for postponement on the grounds of scheduling other hearings, or illness or leave of absence of judges. Lack of synchronization and repeated postponement fuel the mutual mistrust of the participants in the process and the mistrust of the public who monitor these trials. For this reason, we recommend:

The creation of common platforms (regular meetings) between the administrative bodies of judges, prosecutors and lawyers in order to discuss the problems of organization and conduct of court hearings, methods of response, taking into account that the act of justice is a concentrated effort of all actors.

**Recommendation 5:***Enhance Public Communication Capacities in the Courts.* The survey and interviews with legal professionals shed light on the existence of presumptive pressures in high-profile cases. Beyond the challenge of judges feeling tempted to render decisions that align with public expectations, there is a clear lack of effective communication regarding the court proceedings and decisions made. Several interviewees emphasized the importance of post-decision communication to provide clarity and transparency.

To address this issue and reduce public distrust in the justice system, we recommend to strengthen the public communication capabilities of the courts by either establishing the role of a professionally trained communicator or appointing a judge within the court responsible for public communication.

# 7. PROFESSIONALISM OF LAW-RELATED ACTORS

The issues related to the overall quality of the judicial system can be categorized into three distinct sections: organizational aspects of the court services, the professionalism of different actors within the justice system and the narrower scope of administering justice, particularly concerning court judgements. The central idea that brings together all law-related actors is the strong need for consistent professionalism. While judges, prosecutors, lawyers, and court staff occupy distinct roles within legal proceedings, their collective commitment to professionalism is fundamental for the effective functioning of the justice system and the protection of justice, fairness, and human rights. Professionalism in the judiciary is crucial for maintaining public trust and confidence in the legal system and for safeguarding the rights and freedoms of individuals. Professionalism ensures that judges, prosecutors, and other legal professionals uphold their duty to act impartially and independently, free from external influence or bias. Independence and impartiality of all actors in judicial system is emphasised in the Rule of Law Check List of Venice Committee (Part II.E)[[33]](#footnote-33).

Irrespective of their roles, all judicial actors are bound by a common purpose: the pursuit of justice. Judges, prosecutors, lawyers and court staff play unique but interconnected roles in safeguarding the rights and liberties of individuals. Their professionalism ensures that justice is administered fairly and impartially, upholding the rule of law. Judicial professionals contribute to the rule of law by interpreting and applying laws consistently and fairly. Judges, prosecutors, lawyers and court staff are bound by a common code of ethics that transcends their individual roles. Upholding these ethical principles enhances the credibility of the justice system and underscores its dedication to the principles of justice.

Various dimensions of professionalism among law-related actors are encompassed within the instruments employed for monitoring under this Project. The insights and data used to formulate conclusions and recommendations regarding professionalism are drawn from the *Trial Monitoring*, the *Monitoring of Judicial Decisions*, as well as findings derived from *Focus Group Surveys* and *Expert Interviews*. Conclusions and recommendations will be provided at the end of the section dedicated to each role of law-related actor: judges, court staff, lawyers, and prosecutors.

## 7.1. PROFESSIONALISM OF JUDGES AND JUDICIAL PERSONNEL

In this section, we explore various aspects of professionalism demonstrated by judges and judicial personnel, focusing on respective elements of conducting the proceedings, ethical behaviour, courtesy, and the perception of professionalism by law-related actors. In the following sections, we will delve deeper into each of these topics, providing insights and recommendations to promote a fair and effective judicial system.

Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities[[34]](#footnote-34) emphasizes the crucial role of judicial efficiency in safeguarding individuals' rights, upholding Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, ensuring legal certainty and maintaining public trust in the rule of law (Article 30). Efficiency, as defined in the recommendation, involves delivering quality judgments within a reasonable timeframe following a fair consideration of the issues. According to the Article 31, individual judges are obliged to manage cases efficiently, including the enforcement of decisions within their jurisdiction. Furthermore, the authorities responsible for organizing and overseeing the judicial system are obligated to provide judges with conditions that enable them to fulfil their mission effectively. This obligation is outlined in Article 32 and it emphasizes the importance of achieving efficiency while upholding and respecting judges' independence and impartiality.

In accordance with the analytical document "Moldovan Justice in Figures – A Comparative Perspective," as concerns the effective number of judges per capita, in 2020 the Republic of Moldova evened with the median of the CoE member countries. At that time, there were 17.5 active judges per 100,000 inhabitants in Moldova and the median of CoE member countries was 17.6. At the end of 2021, in Moldova, this indicator decreased to 15.4, most likely due to many newly appointed judges whose initial five-year mandate had expired and in respect of whom the President had not yet decided to reconfirm[[35]](#footnote-35).

The assessment of judges' professionalism in Moldova draws from a comprehensive analysis, combining findings from the *Trial Monitoring*, the *Monitoring of Judicial Decisions*, the *Focus Group Surveys* and *Expert Interviews*. This evaluation encompasses not only the judges' proficiency in legal matters but also factors related to court proceedings and organizational aspects.

### 7.1.1. Professional Conduct in Proceedings

The *Trial Monitoring* covered various quality aspects related to the assessment of court hearings and access to court information. It included indicators concerning the court's trial management, judges' preparedness for case hearings, adherence to schedules, the right to be heard, and other relevant factors. Conclusions drawn from the *Trial Monitoring* Report's results pertain to the overall situation in civil, administrative (including administrative offense cases), and criminal cases. Specific emphasis will be placed on any disparities observed within these case types.

In relation to oral proceedings, the *Trial Monitoring* findings indicated that the majority of court hearings (approximately 70% to 79%) adhered to the scheduled timetables. However, in around 90% of cases, where the trial calendar was not followed, the presiding judge did not provide any explanations for the delays or offer apologies. It is noteworthy that the court schedule typically offered comprehensive information, and the practical details accessible to litigants were deemed clear in 95% of cases, with criminal cases being slightly lower at 91%.

An important observation from the *Trial Monitoring* Report revealed that court hearings in all types of cases usually lasted either 15 or 30 minutes. In civil cases, 36% lasted up to 15 minutes and 34% up to 30 minutes; in criminal cases, approximately 37% lasted up to 15 minutes, and 27% up to 30 minutes; administrative cases followed a similar pattern, with roughly 36% lasting up to 15 minutes, and 34% up to 30 minutes; in administrative offense cases, about 48% lasted up to 15 minutes, and 34% up to 30 minutes. Cases lasting over one hour accounted for only 3-7%, except for criminal cases, where the percentage was 16%.

The issue of frequent postponements of hearings, highlighted in various sources within this Project, was also addressed in the *Trial Monitoring* Report. It is noted that 25% of civil cases and 29% of administrative court hearings experienced postponements, usually at the request of the parties involved (no data was provided for criminal cases and administrative offense cases). Postponements were due to various reasons, such as parties' unavailability, attempts at mediation (in civil cases), and absence of witnesses. Postponement initiated by the judge was relatively low, accounting for only 5% in civil cases and 7% in administrative cases. Evidence submitted after the designated deadline occurred in only 6% of civil cases and 8% of administrative cases. It's uncommon to impose fines for delays in proceedings due to improper behaviour of litigants.

Monitors also examined how judges fulfil their duty to explain procedural rights and obligations. Explanations were provided in varying percentages: in 50% of civil cases, 57% of criminal cases, 45% of administrative cases, and 69% of administrative offense cases. However, in some hearings, specifically 16 involving civil and criminal cases, 4 in administrative cases, and 2 in administrative offenses cases, the judge neglected to consider the age, general level of capacity, physical, and mental condition of the trial participants while explaining their procedural rights.



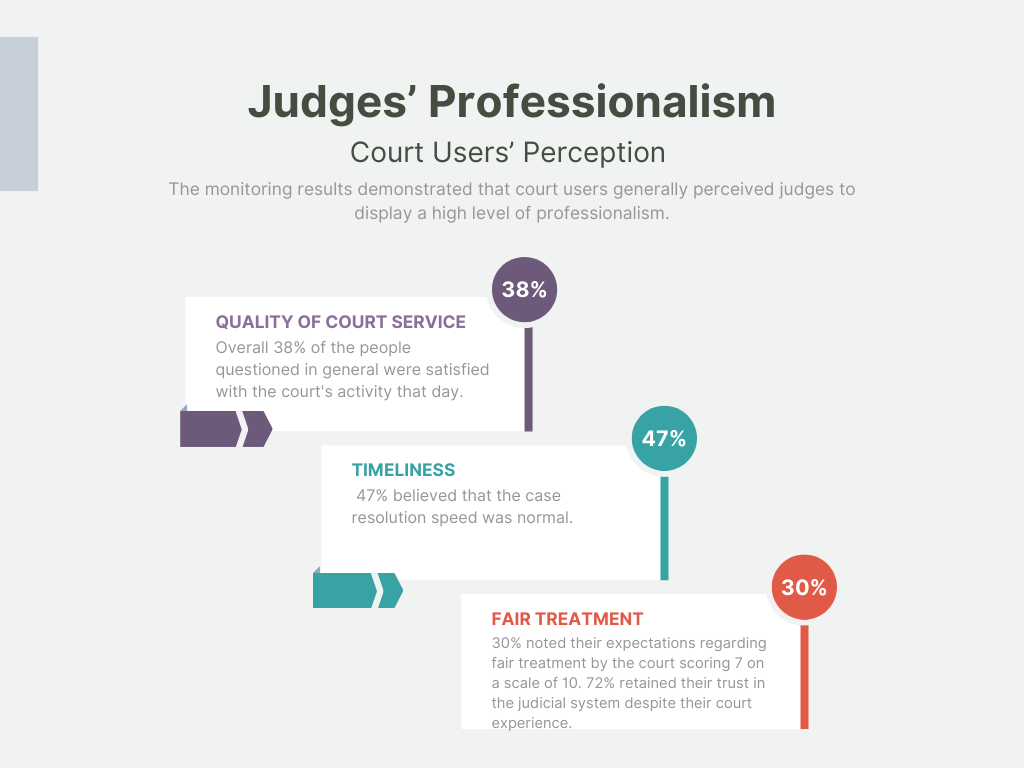
The length of deliberation mostly lasted less than 15 minutes (13-23% of cases), with judges deliberating during the session, without going to the deliberation rooms, in about 40% of cases.

Usually judges publicly pronounced only the operative part of judgments, with very few cases providing explanations for the reasons behind the decision (only in one civil case and one administrative offense case, along with two criminal cases). Typically, judgments were pronounced publicly, but exceptions occurred in a small number of cases. Regarding informing parties about the appeal process and deadlines, judges provided clear information in varying percentages: 80% of applicable civil cases, 78% of criminal cases, 77% of administrative cases and 74% of administrative offense cases.

### 7.1.2. Ethical Behaviour, Communication and Courtesy

It should be noted that the monitors generally perceived judges to display a high level of professionalism. Ratings ranged from 96% to 99%. This assessment was based on several factors, including judges' active participation in court proceedings, refraining from using phones during hearings, ethical behaviour, staying focused on case merits, avoiding irrelevant questions, and not expressing personal opinions on case outcomes. An exception was noted in the only administrative offense case involving inappropriate language and behaviour of judge.

The results of the *Court Users Surveys*, involving mainly litigants in civil cases (37%), also provide insights into the perceptions of the quality of judicial services, including the assessment of judges' professionalism. Responses of court users indicated that only 27% believed the judge carefully considered their case (with such comment as: *“I think the judges did not listen to my position. And I think they didn't even study the file”)*; 64% were uncertain about the fairness of case resolution and 14% lacked trust in correct case resolution (with comment: “*I do not find that the judge explained the reasoning properly*”. The reasons for distrust included perceived lack of judge's independence (5 cases), inadequate preparation (4 cases), unclear procedure explanation (2 cases), and other. Repeated case postponements were also highlighted in the users’ survey with comments such as: “*Repeatedly postponed”; “The meeting was postponed, the absence of a defendant. The criminal case has been ongoing since 2018.”; “The meeting did not take place due to the lack of preparation of the prosecutor”.* Overall, 38% of the people questioned in general were satisfied with the court's activity that day; 47% believed that the case resolution speed was normal, 30% noted their expectations regarding fair treatment by the court scoring 7 on a scale of 10, 72% retained their trust in the judicial system despite their court experience.



The highest percentage of satisfaction was reported by respondents for the "Attitude and courtesy of judges," with 37% indicating they were satisfied and 3% very satisfied, resulting in an overall average satisfaction of 44%. A similar trend is observed for the attitude and courtesy of court staff, where 1% expressed very satisfied, 36% satisfied, and 53% averagely satisfied. Notable levels of negative satisfaction were recorded for elements such as: "Time lapse between the summons and the hearing" (24%), "Punctuality of the hearing" (26%) and "Time allowed to set out your arguments at the hearing" (26%). A consistent distribution of responses was observed for the "Clarity of reasons for the decision made," with similar percentages of participants being satisfied, averagely satisfied, and not very satisfied.

At the same time, it's worth noting that in civil cases, 46% of users expressed satisfaction with the judges' attitude and courtesy, exceeding the proportion of those who are moderately satisfied (30%). This stands in contrast to other types of cases, where the same ratio between satisfied and moderately satisfied is inverted. For instance, in criminal cases 33% are satisfied while 48% are moderately satisfied. Similarly, in administrative cases, the figures range from 30% to 57%, and in administrative offense cases, from 30% to 53%. A similar positive discrepancy is observed in terms of punctuality of hearings, where satisfaction is highest in civil cases at 40%, compared to an average satisfaction rate of 26%. Notably, 30% of administrative offenses users are content with punctuality, while only 3% are moderately satisfied. Conversely, in other case types, there is a prevalence of users with average satisfaction compared to those who are satisfied. For example, in criminal cases, the figures are 44% to 24%, and in administrative cases, they range from 44% to 22%.

### 7.1.3. Perceived Professionalism of Judges by Law-related Actors

The *Focus Group Surveys* provide comprehensive data encompassing the entire spectrum of the justice administration chain in Moldova, including key aspects related to the judicial independence, the court proceedings, legal aid provision, effective opportunity to present a case, clarity of judicial decisions and other issues surrounding the quality of court services. Moreover, the *Focus Group Surveys* explore various dimensions of judges' professionalism, encompassing aspects such as procedural rights adherence. This includes indicators related to court trial management skills, judges' readiness for case hearings, adherence to schedules, the right to be heard, and other relevant factors. The data collected from the targeted groups, primarily through clusters of questions addressing general aspects and the quality of court services, reveal the essential factors contributing to the comprehensive assessment of judges' professionalism.

Respondents (lawyers) were asked to evaluate the importance and their satisfaction levels concerning the professional competence, attitude, and courtesy of judges, prosecutors, opposing party lawyers, and court staff. The results clearly acknowledged judges as central figures in ensuring the quality of the judicial system. Their competence was most valued and subjected to the highest expectations. For example, within the group of private lawyers, 96% of respondents attributed the utmost importance to judges' professional competence, compared to 81% of lawyers providing state-guaranteed legal aid. Accordingly, they provided positive assessments of judges' professionalism (*Focus Group Surveys for Private Lawyers and State-Funded Lawyers*). It's worth noting that there is a slight difference in satisfaction figures between private lawyers and state-funded lawyers, with the latter showing a higher percentage of satisfaction. Specifically, 13% of private lawyers are very satisfied, 24% are satisfied, and 36% have average satisfaction. In contrast, 13% of state-funded lawyers are very satisfied, and a significant 48% express satisfaction, along with 24% having an average satisfaction level. In contrast, 13% of state-funded lawyers were very satisfied, and a significant 48% expressed satisfaction, while 24% reported an average level of satisfaction. These figures remain quite similar when evaluating judges' attitude and courtesy. These variations in dissatisfaction criteria may indicate distinct standards and attitudes toward the quality of legal aid.

Importantly, both private lawyers and lawyers providing state-guaranteed legal aid identified the same most crucial elements for judicial system quality in the *Focus Group Surveys for Private Lawyers and State-Funded Lawyers*. These elements include judges' professional competence, coordination in setting hearing times, punctuality of hearings, clear and understandable judgments, prosecutors' professional competence, and communication between the court and lawyers. Among these highlighted essential elements, private lawyers exhibit the highest level of dissatisfaction with:

1) Punctuality of hearings (23% not very satisfied and 15% not satisfied).

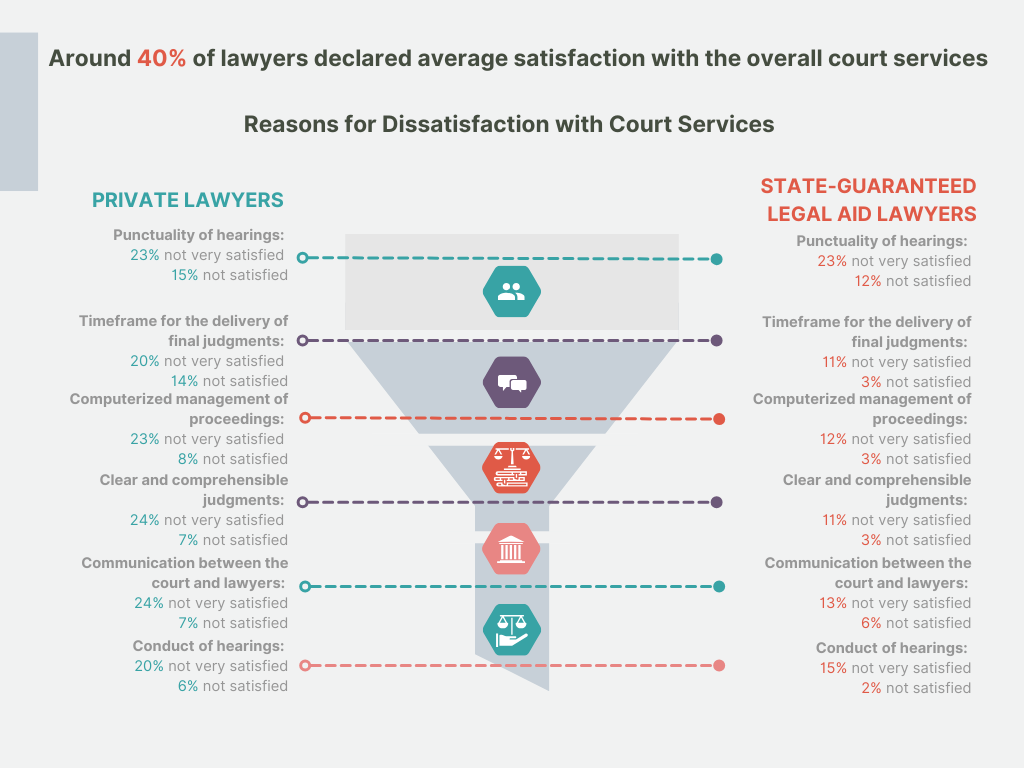
2) Timeframe for the delivery of final judgments (20% not very satisfied and 14% not satisfied).

3) Computerized management of proceedings (23% not very satisfied and 8% not satisfied).

4) Clear and comprehensible judgments (24% not very satisfied and 7% not satisfied).

5) Communication between the court and lawyers (24% not very satisfied and 7% not satisfied).

6) Conduct of hearings (20% not very satisfied and 6% not satisfied).



Among state-funded lawyers, the highest level of dissatisfaction relates to coordination in setting hearing times (28% not very satisfied and 3% not satisfied) and punctuality of hearings (23% not very satisfied and 12% not satisfied). Furthermore, 39% of lawyers stated satisfaction with the courts' performance, 37% reported average satisfaction, 17% were not very satisfied, and 6% were not satisfied. A mere 1% of lawyers expressed being very satisfied.

Going deeper into the details, the data indicates a significant number of lawyers hold the view that judges are adequately prepared for the disputes they preside over. Among the private lawyers, 22% expressed that judges were suitably prepared for court hearings at a rate of 60% or more (*Focus Group Surveys for Private Lawyers*). In contrast, 40% of respondents believed judges were prepared for less than 60% of the time.

Notably, the data from lawyers providing state-guaranteed legal aid, primarily involved in criminal cases (*Focus Group Surveys for State-Funded Lawyers*), displayed even more favourable attitude compared to private lawyers. Just 26% of these respondents perceived judges as prepared for less than 60% of the time, with the majority indicating that judges were prepared for 60% or more of the time. These findings suggest a more favourable perception of judges' preparation for hearings in criminal cases.

During the earlier stages of monitoring, representatives from various institutions frequently highlighted the tendency to postpone proceedings due to the significant judicial workload. This was attributed to judges' limited time for proper case file review and procedural preparations for evidence collection. *Focus Group Surveys*’ results indicate that postponed court hearings play a pivotal role in shaping the negative perception of judicial services. Coordinating hearing times and punctuality were major reasons behind dissatisfaction with the quality of the lawyers. Specifically, only 28% of private lawyers expressed satisfaction with the punctuality of hearings, while satisfaction among state-appointed lawyers was slightly higher at 38%.

Furthermore, the satisfaction level concerning the conduct of court hearings was distributed fairly evenly among respondents. Within the private lawyers' group, 24% were satisfied, 32% indicated average satisfaction, and 26% were not very satisfied (*Focus Group Surveys for Private Lawyers*). The situation was slightly better for lawyers providing state-guaranteed legal aid, with 38% expressing satisfaction, 32% average satisfaction, and 17% dissatisfaction. These results suggest inconsistency and variability in maintaining uniform quality standards during court hearings.

*Focus Group Surveys for Private Lawyers and State-Funded Lawyers* also delved into the lawyers' ability to present their cases before judges. It is noted that 45% of private lawyers believe judges carefully listen to case arguments less than 60% of the time. In comparison, 41% of state-guaranteed legal aid lawyers held the same view.

These findings are complemented by the assessment of time allocated for argument presentation during hearings. While adequate time for arguments was deemed "very important" by 65% of respondents, 41% expressed only average satisfaction. Notably, state-guaranteed legal aid lawyers showed more positive developments, with 33% indicating average satisfaction and 57% being either "very satisfied" or "satisfied". However, these results should be considered alongside concerns about judges' attentiveness, as observed in the *Focus Group Surveys*.

Around two-thirds of respondents highlighted the importance of clear and comprehensible court decisions. The assessment of final judgment delivery time revealed dissatisfaction, with 44% of private lawyers evaluating it below average satisfaction. Conversely, in the group of state-appointed lawyers primarily dealing with criminal cases, only 10% expressed below-average satisfaction.

The surveys also examined organizational aspects of court services, such as signs, waiting conditions, courtroom furnishings, communication with lawyers, and computerized proceedings management. Except for communication with the court, these indicators were secondary to the professionalism and court decision quality. Around one-third of respondents expressed being either "very satisfied" or "satisfied" with these organizational aspects, with state-appointed lawyers generally displaying more positive views.

While differences emerged in specific indicators between private lawyers and state-appointed lawyers, overall satisfaction levels with court services appear quite similar. Approximately 40% of respondents indicated average satisfaction with the overall court services.

The findings from the *Trial Monitoring* Report and *Focus Group Surveys* are echoed in the insights shared by experts during interviews. They highlighted similar issues concerning judges' professionalism, particularly in relation to conducting court hearings, delivering judgments, communication with other stakeholders in the judicial system, while also offering explanations for these shortcomings.

Discussing the preparation for court hearings, a problem of the lack of continuity in procedural actions was highlighted: “*Let's return to the need for establishing continuity or a sequence of hearings. I don't quite believe that a judge who reviewed a case in April will remember all the details in a hearing a month later. This is even considering if they read the case, not just signing what the assistant wrote. Setting a deadline for issuing a reasoned decision. Although this deadline exists, it is not adhered to. And this is a rule, not an exception, unfortunately*” (Expert 3, judge). Experts noted that the set of hearings is often interrupted by lengthy breaks due to organizational aspects. Judges themselves admit the problem of communication and coordinating with other actors in setting hearing times: “*We don't have issues with prosecutors, but with lawyers, we have problems regarding coordination, but we understand that they need to work on various cases, and sometimes they coincide. It would be good to have an online communication system between lawyers and judges when assigning cases, so that everyone can see and sessions don't overlap, and there could be an electronic notification system (now notifications to lawyers are sent by email, and that's not a problem). Sometimes judges call to notify, to increase accountability*” (Expert 17, judge).

Many Experts pointed out the fact that too many hearings are set for the same day (Expert 6, lawyer; Expert 8, lawyer). The explanation from Expert 17(judge) described the short duration of trial hearings, which was indicated in the *Trial Monitoring* Report, and reasons for frequent postponement in the Appeal Court: “*For example, regarding appeals, we schedule several cases for 9:30 AM. We work as a panel of judges, three judges in total, and each of us assigns two cases for that hour. This means that we have a total of six cases scheduled for the same time, some of which may be rescheduled due to reasons such as the lawyer falling ill, the defendant or victim not being available, and so on*”.

Experts also revealed that the explanation of procedural rights and duties is done in a formal way. Expert 18 (lawyer) providing private and state-guaranteed legal aid, expressed that: "*No one ever explains properly. Reading what is written in the code is not an explanation. If they simply provide a signed excerpt from the legal code about rights, it's not an explanation of rights; it should be done completely differently. Very rarely, there are judges who explain the parties' rights understandably (not to lawyers, who already know)*." In this regard, experts also distinguished between two situations: cases where the participants in the proceedings are represented by lawyers (“*These declarations are formal, always. If a lawyer is involved, the court will not even read.*” - Expert 7, lawyer); and cases where the person is not professionally represented. Additionally, poor listening was recognized by Expert 3, judge; Expert 9, lawyer; and Expert 15, lawyer.

The vast majority of experts confirmed that predicting the application of the law in a particular case is very difficult, often impossible, and there are no guarantees that identical cases will be dealt with in the same way (Expert 1, lawyer; Expert 3, judge; Expert 6, lawyer; Expert 7, lawyer). There is no database for all judgments and decisions to make them public; therefore, deviation from the practice is very possible (Expert 1, lawyer). The Expert 4 (judge) noted: “*We have a big problem, because the case law is not recognized as a source of law. Of course, it raises questions if the same judge makes different decisions on the same issues. But imagine, since 2019, the Supreme Judicial Chamber has not been able to convene its Plenum to decide”*. Expert 11 (lawyer) explained: “*There are instructions from the Supreme Court not to cite their jurisprudence. Did someone tell you about this? The Supreme Court forbids judges to refer to their decisions or to the decisions of the Plenum of the Supreme Court*”.

The problem of unmotivated judgments is illustrated by the comment of lawyers: "*Well, in judicial decisions, they usually do copy and paste, arguments from one side and the other side. It's really copy and paste without adapting to the judge's decision style. The reasoning part usually takes up half a page, and in principle, it seems that the court will never go through or detail the arguments of the losing party. The judicial decision is usually the last paragraph where, again, nothing is said <…>” (*Expert 6, lawyer)." Expert 21 (lawyer) added: "*The quality of the decisions is poor; the judges do not thoroughly examine the details. When I read a decision, I feel a coldness from it. I cannot see the judge thoroughly considering all the arguments or conducting a proper analysis. Instead, they merely copy the prosecutor's conclusion, treating everything as already proven* <…> "

When discussing the implementation of the right to be heard at the appellate instance, experts pointed out that judges are less attentive at the appellate instance (Expert 5, judge; Expert 12, lawyer; Expert 15, lawyer; Expert 19, judge; Expert 20, judge assistant), or even refuse to comment on the matter (Expert 4, judge). “*Judges do not listen to the parties at the appellate court*” (Expert 1, lawyer). “*There is also an issue of changing panels in the Court of Appeals every year. When a new composition comes in at the beginning of the year, they start reviewing your case from scratch. Is that normal? No. And this prolongs the processes. In the appellate instance, a judge doesn't give you the right to speak out, in any situation, ever*” (Expert 7, lawyer).

Expert 17 (judge) added: “*And another issue is: very often, cases are sent for reconsideration, the case reaches the Supreme Judicial Chamber, and they send it back to the Appellate Chamber or even to the first-instance court. And imagine, the case goes through one round, then a second round, and maybe even a third, and it turns out that cases can be under review for 10 years or more. This is a problem, and the procedure for sending cases for reconsideration needs to be reviewed. Perhaps it should only be allowed once, and the case should move forward*”.

Interviews revealed that the high workload is a long-standing question. This problem affects not only judges but also court staff (assistants, secretaries). Workload, a shortage of qualified personnel, a lack of organizational tools and reluctance to embrace electronic methods in proceedings are mostly mentioned by judges-experts as the main problems affecting the lower quality of court service. In this regard, Expert 17 (judge) noted that: “*Methods of organizing work, establishing hearings have not been discussed for a long time. Previously, they tried to talk about this, but since the amount of work is large, everyone is glad that the work is progressing as it is*.” While the decision about organizational aspects is taken individually by each judge, it appears that judges may lack specialized training in the management of hearings and working time. This was emphasized by Expert 19 (judge), noting that: “*The National Institute of Justice does not have courses on the organization of work processes and working hours, either at the initial training stage or at the subsequent training stage. There's a course on time management, but it's a general course and not related to refereeing; it's interesting, but it's general.”* The lack of training was consistently regarded as an issue that should be considered when seeking solutions for better organizing court work: “*The National Institute of Justice doesn't offer courses like that, and that's a problem. When future judges come to practice, we do not have time to train them. We tell them to help me motivate it because it's more important to us. No one teaches the organization of work, and it is impossible; it all depends on everyone. Everyone must find their own rhythm and follow the general rules*” (Expert 14, judge).

### 7.1.4. Professionalism of Judicial Personnel

As previously stated, Recommendation CM/Rec(2010)12 from the Committee of Ministers highlights the importance of member states allocating sufficient resources, facilities and equipment to their courts. This also includes ensuring an adequate number of judges and appropriately qualified support staff[[36]](#footnote-36).

Although the comparative analysis[[37]](#footnote-37) indicates a higher ratio of personnel positions per 100,000 inhabitants assisting judges (682 in 2020, slightly reducing to 68.1 by the end of 2021) compared to the CoE median (56.1), the results of monitoring within this project reveals distinct challenges concerning court personnel in Moldova's judicial system.

The analysis of court users' perspective from the *Trial Monitoring* Report shows overall helpfulness of the staff. However, instances were noted where specific individuals weren't designated to address questions during proceedings in civil, administrative, administrative offense, and criminal cases. Court staff's attitude and courtesy collected 36% satisfaction among court users in common, with an average satisfaction level of 53% across and 10% of not-satisfied all case types, notably higher percentage of satisfied in administrative offense cases (43%) and lower percentage in administrative cases (17%).

Regarding the competence and professionalism of law-related actors, *Focus Group Surveys for Private Lawyers and State-Funded Lawyers* illustrate the significance of court staff, although their role appears relatively less visible. 59% of state-funded lawyers and 51% of private lawyers emphasized the importance of court staff in providing quality court services. The professionalism, approachability, and courtesy of court staff are well-regarded by over half of state-funded lawyers (11% very satisfied, 45% satisfied, 5% not very satisfied, 7% not satisfied), while private lawyers express slightly lower levels of satisfaction (6% very satisfied, 32% satisfied, 20% not very satisfied, 9% not satisfied).

Experts interviewed almost unanimously recognized the pivotal role of judge assistants and secretaries in court proceedings, attributing substantial influence on case outcomes (Expert 16, lawyer; Expert 4, judge; Expert 10, judge). Notably, Expert 3 (judge) emphasized: "*Assistants play a very important role; I believe they motivate 70-80% of cases. The quality of a judicial act depends on assistants and secretaries to the extent of 60%*". However, the consensus among the majority of experts is that there is a shortage of qualified personnel, leading to a negative impact on the quality of judicial services (Expert 1, lawyer; Expert 4, judge; Expert 5, judge; Expert 6, lawyer; Expert 10, judge; Expert 14, judge; Expert 18, lawyer; Expert 19, judge).

Salary disparities and a heavy workload compound the issue, leading some experts to term it as a personnel crisis (Expert 1, lawyer; Expert 4, judge; Expert 5, judge; Expert 6, lawyer; Expert 10, judge; Expert 14, judge; Expert 18, lawyer; Expert 19, judge). For instance, Expert 5 (judge) pointed out: "*The secretary receives a salary of 5000 lei, while assistants receive 7000 lei. What salary, what quality?... Let's offer them a salary that will attract them. The only motivation for an assistant is that they can advance further in the judicial system, and that's it*." The continuous turnover of personnel is also a notable issue.

Judges underscore the importance of well-trained staff and express the need for timely training, emphasizing the role of the National Institute of Justice in this regard (Expert 16, lawyer; Expert 4, judge; Expert 10, judge). This training gap becomes glaring when newly appointed staff are required to participate in hearings without proper preparation (Expert 16, lawyer; Expert 4, judge; Expert 10, judge).

### 7.1.5. Key Monitoring Findings

Overall, the satisfaction among court users regarding court services encompassing various factors of the judicial process, including facilities, waiting conditions, judge conduct and communication clarity, is generally positive. The trial monitors highlighted issues related to judges' procedural conduct throughout cases, starting from the commencement of hearings to the delivery of judgments. The surveys of legal professionals delve into the professionalism of judges, focusing factors as preparation, attentiveness and clarity of judgments. *Expert Interviews* further reinforce and elaborate upon these findings, highlighting the complexity of maintaining uniform case-law and the influence of heavy workloads on court service quality. While overall professionalism of judges is acknowledged, the surveys identify areas for improvement, particularly in case examination and the motivation of judgments. Challenges encompass time allocation for arguments, inconsistent hearing durations and the maintenance of consistent quality during proceedings. Communication and coordination challenges among legal actors are emphasized, along with the importance of incorporating electronical means into legal processes.

To address these challenges, a series of recommendations should be outlined. These encompass optimizing case allocation to prevent excessive burdens on judges, promoting alternative dispute resolution methods and augmenting judicial resources. The suggestions include the implementation of case complexity assessments and the enhancement of calendar management practices to ensure adequate time for comprehensive case examination. The proposals advocate for clearer explanations of procedural rights and the establishment of guidelines for composing judgments to improve judgment quality. The encouragement of active case management and the introduction of improved judicial training programs are recommended to elevate overall professionalism and case handling. Measures to establish panel stability and refine scheduling and time management are also advised to streamline proceedings and minimize delays.

The importance of court staff's professionalism also needs proactive measures. Under these circumstances, the recommended actions should aim to tackle the challenges arising from a shortage of qualified personnel within the Moldovan judicial system. These challenges, encompassing low salaries, heavy workloads and insufficient training, have been identified as detrimental factors impacting the professionalism and efficiency of court staff. The suggested approaches, such as enhancing recruitment and retention conditions, investing in comprehensive training programs, implementing workload management strategies and exploring technological solutions, collectively aim to alleviate these issues and elevate the overall quality of court proceedings. Through the implementation of these measures, the Moldovan judicial system can cultivate a more conducive working environment, elevate professionalism and ultimately provide enhanced court services.

## 7.2. PROFESSIONALISM OF LAWYERS

In accordance with the analytical document "Moldovan Justice in Figures – A Comparative Perspective," in 2020, the Republic of Moldova had 79.4 active lawyers per 100,000 inhabitants, which represents only 58,4% of the CoE median (136 lawyers per 100,000 inhabitants). Their small number is probably determined by the limited ability of the population to pay for their services and the limited attention given by judges and prosecutors to the arguments of lawyers. This indicator decreased at the end of 2021 to 77.7, apparently due to the non-organisation of the bar admission exams and the high social contributions that liberal legal professionals must pay[[38]](#footnote-38).

From the results of the *Trial Monitoring* Report, it is evident that in the majority of civil cases, litigants opt for the services of commercial lawyers. Similarly, 70% of administrative cases involving private parties also used private lawyers. However, the situation differs in criminal cases, where the majority of accused individuals (64%) use state-guaranteed legal aid. The usage of state-guaranteed legal aid in cases of administrative offenses is lower, at 33%.

Monitors have noted that in most cases, regardless of whether the lawyers were state-funded or private, they were familiar with the case materials. This familiarity was complete in 70% of cases. An exception can be observed in administrative cases, where this percentage was higher 77%, in comparison to 65% in civil cases, 64% in criminal cases, and 73% in administrative offence cases. Specific instances arose where lawyers were not sufficiently acquainted with the case materials, particularly in one civil case, six criminal cases, and three administrative cases, alongside three administrative offense cases. The observations made during trial monitoring do not show any differentiation in the treatment of state-funded and private lawyers across various case types by the courts.

The results of the *Court Users Surveys* clearly show that litigants themselves assess the legal assistance of lawyers (regardless of whether they are state-funded or private) very positively: 88% of those surveyed believe their lawyers devoted enough time to listen and understand their problems, and 79% would recommend their lawyer to others.

The *Focus Group Surveys for Private Lawyers and State-Funded Lawyers* present findings concerning the competence and professionalism of law-related actors. Participants were asked to evaluate and express their satisfaction regarding the professional competence, attitude, and courtesy of judges, prosecutors, lawyers representing the opposing party, and court staff. Among the surveyed lawyers, the utmost importance was attached to the professional competence of judges and prosecutors. Notably, while the significance of the attitude and professionalism of lawyers representing the opposing party did not rank among the top six elements deemed crucial for the quality of the judicial system, it was still highly regarded, receiving a "very important" rating from 56% of state-funded lawyers and 70% of private lawyers. The *Focus Group Surveys*’ outcomes concerning the attitude and professionalism of lawyers representing the opposing party reflect a predominantly positive evaluation of these legal professionals by their counterparts on the opposing side. A substantial majority of legal-aid providing lawyers (61%) expressed satisfaction, and 8% reported high satisfaction (thus, overall of 69% of satisfaction), while only 3% were not very satisfied, and 1% were dissatisfied with colleagues’ professionalism. In comparison, private lawyers displayed slightly lower satisfaction levels, with 9% indicating high satisfaction and 41% expressing satisfaction (thus, overall of 50% of satisfaction), alongside 9% not very satisfied and 3% dissatisfied. This overall assessment also leans towards the positive.



Furthermore, the *Focus Group Surveys* aimed to determine whether similarities in quality standards exist between legal aid services offered by private and state-funded lawyers. The survey findings highlight a statistically significant divergence in viewpoints. Regarding the question if the quality standards of legal aid are similar, when one compares services provided by a private lawyer and a state-funded lawyer, a notable proportion (38%) of private lawyers consider that the quality standards of legal aid are similar to a small extent and 34% consider that they are similar to moderate extent. Conversely, a significant majority (65%) of surveyed lawyers providing state-guaranteed legal aid believe that the quality standards of legal aid are similar to a large extent, 28% consider that they are similar to moderate extent and 7% of respondents consider that legal aid are similar to a small extent. Notably, this contrast in assessment is not evident in the qualitative interviews, which are analysed below.

The analysis of data collected through qualitative (in-depth) interviews with judges, court staff, and lawyers confirms that, in terms of the overall situation, the majority of respondents affirmed that the quality of legal representation is better (e.g., Expert 4, judge; Expert 6, lawyer; Expert 7, lawyer; Expert 15, lawyer; Expert 17, judge; Expert 18, lawyer; Expert 19, judge; Expert 20, judge assistant; Expert 21, lawyer). As noted by Expert 21 (lawyer): "<...> *over the past 5 years, the quality has improved, because [of] <...> a new generation. A lot of very young people enter the bar, and they have a slightly different mindset than the classical one.*" Judges also provide a positive assessment: "*I can say that highly prepared, professional lawyers attend the proceedings; they prepare their cases and are punctual*" (Expert 10, judge). It appears that the same holds true when considering the quality of state-guaranteed legal aid (Expert 2, judge; Expert 9, lawyer; Expert 18, lawyer; Expert 21, lawyer). According to Expert 17 (judge): “*Even state-funded lawyers are better prepared, exhibit a greater sense of responsibility and are subject to greater supervision*”. Expert 13 (lawyer) noted that: “<...> *lawyers who, even if they weren't contracted, represented their clients pretty well, so they broke the stereotype that if help is guaranteed, they're bad, they don't represent clients in good faith* <...>.

Nevertheless, some experts held differing viewpoints and highlighted issues with the quality of legal representation services. Expert 5 (judge) said: "*It's difficult for me to say, but it seems to me that out of 100% of the lawyers who come to my session, only 10 are prepared for the case; the rest do not prepare for the case. <...> They make statements, responses, prepare documents, but they don't delve into the essence*". Expert 10 (judge) emphasized: "*We have another problem as well. Lawyers file lawsuits unprepared, without attaching evidence, and then they come after the preparation stage and start presenting evidence. Consequently, the defendant requests an extension to prepare, and based on the principle of adversarial proceedings and the right to defence, it's impossible not to grant them an extension. As a result, the proceedings are prolonged, and there is something else going on*". Some experts noted diverse quality in state-guaranteed legal aid services, with one expert stating: "*The quality of public lawyers is lower because they approach it as if it were office work, as though they're civil servants – a soldier sleeps and the service goes*" (Expert 16, lawyer). Another expert, Expert 10, Judge, observed: "*I notice that those who are appointed come to the hearings unprepared and attend only formally, especially in cases related to domestic violence*." It is acknowledged that these situations of unpreparedness are not solely the result of the lawyer's responsibility: “*We, judges react when a lawyer is unprepared: we make comments, but rarely resort to sanctions. However, if a state-appointed lawyer arrives at the session and states that they are unprepared, we understand the situation (if they were assigned the case yesterday), but if the case was scheduled a month ago and the lawyer claims they are unprepared, that's not normal, and we take action on that”* (Expert 17, judge).The passive role of lawyers working within state-guaranteed legal aid was also emphasized as a significant factor affecting the quality of legal aid by many Experts (Expert 2, judge; Expert 3, judge; Expert 6, lawyer; Expert 10, judge). The majority of Experts also focused on the factor of insufficient pay for state-guaranteed legal aid lawyers and the huge workload (e.g., Experts 3, judge; Expert 4, judge; Expert 15, lawyer; Expert 16, lawyer; Expert 21, lawyer).

Judges also addressed the issue of trial postponement due to lawyers' non-attendance on multiple occasions (Expert 2, judge, Expert, 17, judge, Expert 19, judge).Expert 19 (judge) suggested: *“We could coordinate and set a suitable time for everyone. There is no coordination. A shared online calendar for everyone would help a lot”.*

In addition to this, the majority of experts shared their perspectives on the issue of reimbursement of representation fees: lawyers highlighted the unpredictability to reimburse fees for the prevailing party, primarily due to judges exercising complete discretionary authority over expense reimbursement. As noted by Expert 11 (lawyer): “<...> *we do not have a fairly clear concept of how to calculate court costs and the fact that I see is that the judge does it by personal discretion*”. At the same time judges emphasised the lack of documents which could prove the exact paid amount and the excessive amounts of fees in comparison with the average living level in Moldova. “*Lawyers say that we should not delve into their fees, but we DO delve into it, because we have Article 96 of the Code of Criminal Procedure, which states that these expenses must be real and necessary”* (Expert 5, judge).

*Overall,* the assessment of lawyers' activities highlights the complex interplay between trust, satisfaction and professionalism of lawyers within Moldova's legal system. Divergent perspectives between state-funded and private lawyers on the quality of legal aid services underscores the need for standardized guidelines. The assessment also emphasizes the significance of improving the preparedness of lawyers, especially in administrative offence cases. This could be achieved through mandatory training programs that enhance lawyers' preparedness for cases. Additionally, a uniform framework of quality standards for legal aid services is recommended to ensure consistent representation quality. The issue of trial postponements due to lawyer absence brings to light the necessity for streamlined trial scheduling mechanisms that consider lawyers' availability. Addressing excessive workload and inadequate compensation for state-guaranteed legal aid lawyers is vital for sustaining professionalism and commitment. Furthermore, transparent fee reimbursement criteria are vital to uphold fairness and integrity, aligning the compensation with the quality of legal services provided. Creating clear guidelines for judges to determine representation fee reimbursements can alleviate ambiguities and ensure consistency. Overall, cultivating a climate of trust and collaboration among legal actors can significantly enhance the Moldovan judicial process. By establishing regular communication platforms, mutual understanding, cooperation, and respect can be fostered, elevating professionalism and ensuring effective, fair legal representation for all litigants.

## 7.3. PROFESSIONALISM OF PROSECUTORS

In accordance with the analytical document "Moldovan Justice in Figures – A Comparative Perspective," the Republic of Moldova has a prosecutor-to-population ratio that is twice as high as the CoE median, making it one of the countries with the highest number of prosecutors per capita. Remarkably, the number of prosecutor positions (720) exceeds the number of judge positions (504) by 43%, a departure from the norm observed in countries with advanced democracies where the number of judges typically surpasses the number of prosecutors.

The prosecutor plays a crucial role as one of the main actors in legal proceedings, mainly in criminal cases. In the context of the *Focus Group Surveys*, participants were tasked with assessing the importance of sixteen factors that contribute to the quality of the judicial system. Among these, the professional competence of prosecutors emerged as one of the top six elements, garnering recognition from 72% of legal aid lawyers and 76% of private lawyers. The competence of prosecutors’ ranks second in importance among the professionalism of law-related actors, with judges holding the top position. This is underscored by the fact that 96% of private lawyers and 81% of legal aid lawyers indicated judges as the primary factor, thus placing prosecutors' competence in a significant role.

However, the results of the *Focus Group Surveys* reveal a notable divergence in satisfaction levels among lawyers, notably regarding prosecutors' professional competence. This discrepancy implies that prosecutors' professional competence was perceived less favourably in comparison to other legal actors such as judges and lawyers. Among the respondents who were private lawyers, 31% expressed an average level of satisfaction with prosecutors' competence, while only 18% reported being satisfied, and 9% indicated being very satisfied *(Focus Group Surveys for Private Lawyers)*. Conversely, 28% were not very satisfied, and 14% were not satisfied, with similar sentiments pertaining to prosecutors' attitude and courtesy.

In contrast, a comparison of these indicators with the evaluation provided by legal aid lawyers reveals a higher level of satisfaction within this group. Specifically, 35% of state-guaranteed lawyers reported being satisfied, 36% expressed an average level of satisfaction, and 10% were very satisfied. In contrast, only 16% were not very satisfied, and 5% were not satisfied *(Focus Group Surveys for State-Funded Lawyers)*.

Furthermore, the findings from the results of the *Court Users Surveys* highlighted that a majority of respondents (13%) expressed a lack of satisfaction, and 3% were dissatisfied with the "attitude and courtesy of prosecutors." In contrast, only 6% reported being satisfied and 8% expressed average satisfaction. Meanwhile, the evaluation of prosecutors' competence can be partially derived from the results of the *Trial Monitoring Report*. Out of various indicators, only three pertain to prosecutor competence assessment: firstly, the application of Article 53 of the Code of Criminal Procedure, allowing prosecutors to request the interruption of a criminal case hearing for the submission of new evidence supporting the charges against the defendant, which was employed in only 3% of monitored criminal cases; secondly, the application of Article 53 to request the court to bring more severe charges against the defendant and admit new evidence, used in 7% of the cases; third, the percentage of charges presented by prosecutors, with 49% being presented fully and 51% in a shortened manner. Notably, the implementation of rights outlined in Article 53 often results in trial postponements. The monitoring results suggest that such postponements requested by prosecutors are relatively infrequent.

The reasons behind the expressed dissatisfaction with prosecutors' competence become evident through interviews with experts. The assessment of prosecutors' performance varies between interviewees, with judges generally offering more positive evaluations compared to lawyers. Expert 2 (judge) remarked: "*Well, I have a good, sort of, relationship with prosecutors, and they consult with me sometimes. They understand that if there is justification, they won't protest* <…>". Similarly, Expert 5 (judge) stated: "*To be honest, it seems to me that prosecutors are more prepared than lawyers. This is a certainty. There are exceptional prosecutors among them, but generally, they possess legal knowledge, they know what they want*". Expert 17 (judge) noted: "*We have district prosecutors who are very competent. The issue of prosecutor preparedness is more evident in the first instance, and I encountered this when I worked in the court* <…>".

In contrast, lawyers present a less favourable perspective, asserting that prosecutors are often ill-prepared and rely on templates to generate procedural documents. One lawyer, Expert 16, expressed: "*It is evident that this is a copy-paste from other cases and is not related to the specific circumstances of the current case*". Expert 13 (lawyer) expressed a similar viewpoint: "*We have beautiful arrest orders, lengthy orders, but it's all just copy-paste*". Expert 6 (lawyer) criticized: "*Prosecutors are practically invisible in terms of their contribution to the process. They don't play a significant role in the process. They are invisible".* Expert 13 (lawyer) also observed a distinct behaviour among anti-corruption prosecutors, describing them as acting "*rudely and arrogantly with lawyers during the phase of criminal prosecution, considering themselves superior to lawyers and the parties involved*."

In the view of experts dealing with criminal cases, the accusatory bias prevalent in the criminal proceedings poses a significant hindrance to the efficiency of the system. As put forth by Expert 15 (lawyer): "*They take advantage of the accusatory bias in Moldovan justice. They use the fact that judges rule in favour of the prosecutor's wishes in 90% of cases, even if the defence lawyer is right*". The system is structured in a way that requires prosecutors to appeal if the court does not precisely impose the punishment as requested by the prosecutor. Moreover, the system is burdened by an overload of cases, which could potentially be categorized as administrative offenses. As emphasized by Expert 2 (judge): "*In criminal cases in Chisinau and throughout Moldova in general, a majority of cases involve drunk driving. If you requalify these cases as administrative, it could alleviate the judicial burden by 50%*".

Additionally, the reluctance of prosecutors to use remote hearings was identified as a significant factor contributing to procedural slowdowns. For instance, Expert 19 (judge) highlighted an established practice wherein victims of crimes residing abroad are only interviewed during holiday periods upon their return to the country. This waiting leads to unnecessary time wastage.

Experts, including lawyers and judges (Expert 8, lawyer; Expert 12, lawyer; Expert 18, lawyer), underscored a concern arising from the division of responsibilities among prosecutors. According to this division, one prosecutor handles the case while another represents it in court, each at a different instance, leading to multiple prosecutors being involved at different stages of the proceedings – in total four prosecutors. Consequently, if a criminal case is inadequately prepared with weak evidence, the prosecutor in court is compelled to "*improvise, manoeuvre, and work with what they have, trying to build something from what's available."* Expert 18 (lawyer) offered a similar perspective, remarking: "*I think that it's a mistake for the case not to be presented in court by the prosecutor who led the investigation”*.

Addressing the broader landscape of criminal cases, the experts recommended the development of streamlined procedures and regulations that entail less bureaucracy and are less susceptible to corruption. One expert stressed the need to reduce the excess bureaucracy inherent in the Moldovan criminal process, which has accumulated due to historical circumstances and diverse reasons. This overburdened process often requires repetitive actions that breed frustration and corruption. The expert further elaborated: "*In criminal cases, I believe it's essential to minimize the number of court cases, be they criminal or otherwise. Supporting quality legal services always comes at a cost. We have two options: either we reduce the overwhelming volume of criminal cases while maintaining quality, or we persist with the current caseload that merely caters to the minimum salary requirements of lawyers*" (Expert 12, lawyer).

*Overall,* the examination of the provided monitoring data regarding the performance of prosecutors in their duties highlights several challenges related to their professionalism, impacting their role and effectiveness within the legal process. These challenges include divergent levels of satisfaction with prosecutors' competence, concerns about the quality of their work and contributions to proceedings, procedural inefficiencies and issues related to shared responsibilities among multiple prosecutors. To address these issues, the following measures may be suggested to enhance the professionalism and efficacy of prosecutors in the legal system: comprehensive training programs, streamlining of procedures, adoption of remote hearings and considering a system of single prosecutor responsibility. Additionally, experts' concerns about potential accusatory bias in criminal proceedings and court overload due to cases resembling administrative offenses highlight the need for broader reforms in the judicial system. The high number of prosecutors should also be examined to effectively address the ratio of prosecutors to the population.

## 7.4. CONCLUSIONS AND RECOMMENDATIONS

The monitoring conducted within this Project offers a comprehensive insight into the quality and effectiveness of the Moldovan judicial system from the perspectives of both participants and experts. The comprehensive assessment of the professionalism among the law-related actors reveals both commendable attributes and areas in need of enhancement. Addressing these concerns and implementing the recommended measures holds the potential to significantly enhance the quality, efficiency and fairness of Moldovan judicial proceedings, thus ensuring equitable access to justice for all individuals.

### 7.4.1. Proposals for Improving the Professionalism of Judges and Judicial Personnel

Participants in the *Trial Monitoring* revealed varying degrees of satisfaction, highlighting factors such as access to court premises, waiting conditions, judges' courtesy, and communication clarity. The satisfaction ratings varied across case types, with civil cases showing higher approval of judges' attitudes and punctuality compared to other types. The results of the monitoring underscore judges' professionalism, with respondents emphasizing the importance of judges' preparation, attentiveness and clarity of judgements. However, issues such as insufficient time allocation for arguments and inconsistency in maintaining quality standards during hearings were noted. The feedback from *Expert Interviews* echoed and expanded upon these findings. Experts underlined challenges in ensuring judicial continuity, the need for better communication and coordination, and the impact of high workload on the quality of court services. Unmotivated judgments highlighted the complexities of ensuring consistent professionalism.

Areas for improvement include better case preparation, attentiveness during proceedings, better motivated judgments, and more effective communication. In essence, the assessment of judges' professionalism in Moldova encompasses various aspects, highlighting both positive attributes and areas for improvement. The following list outlines the issues that need to be addressed:

**1.** **Excessive Case Load.** This among Moldovan judges has become a significant challenge, leading to delays in judicial proceedings, potential compromised quality of decisions, and hindered access to justice for litigants.

**2**. **Duration of Court Hearings.** Court hearings lasting either 15 or 30 minutes are prevalent, raising concerns about the adequacy of time for thorough case examination, argument presentation and comprehensive deliberation. This pattern of brief hearings may impact the quality of justice delivered, hinder effective communication between parties, and potentially undermine the fair resolution of disputes.

**3. Punctuality and Scheduling of Court Hearings**. The court hearings often face delays and postponements, impacting the overall efficiency and effectiveness of the judicial process. Instances of trial calendar deviations, lack of adherence to schedules, and frequent postponements contribute to dissatisfaction among participants of litigation.

**4.** **Insufficient Explanation of Procedural Rights**. Judges' explanations of participants' procedural rights and obligations are often formal and inadequate. This hampers clarity and understanding, especially for those not professionally represented by lawyers.

**5.** **Quality of Judgements.** The quality of court decisions is inconsistent, with some judgments lacking thorough analysis and proper reasoning. Judges sometimes engage in copy-pasting arguments from parties without proper evaluation. There is no predictability in the outcomes of cases due to the absence of uniform case law and a lack of practice to refer to prevailing case law. The absence of well-developed arguments and explanations in court decisions at the moment of pronouncement of judgments has an impact on the perception of fairness.

**6.** **Communication and Coordination Issues.** There is a lack of effective communication and coordination between judges, lawyers, and other law-related actors. Coordinating hearing times, setting priorities, and managing workloads contribute to inefficiencies. The resistance to adopting electronic methods in legal proceedings creates complications in the communication and service of procedural documents.

**7**. **Lack of Preparation and Continuity**. Judges' preparation for court hearings is often insufficient, leading to interruptions, delays, and difficulties in maintaining a continuous and coherent judicial process. This impacts the overall quality of case handling.

**8**. **Lack of Training and Standardization**. Inadequate training and standardized practices contribute to the inconsistency of judges' professionalism, organizational skills and courtroom conduct. There is a need for specialized training in managing court proceedings and working time.

These challenges can be addressed through the following suggestions:

**Recommendation 1:** *Optimize case Allocation, Promote Alternative Dispute Resolution, Increase Judicial Resources.* Implement a more efficient case allocation system that considers judges' expertise, workload and availability. This could help distribute cases more evenly and prevent excessive burden on certain judges. Hire additional court staff to handle the increasing caseload. This would help alleviate the strain on existing judges and ensure cases are heard and decided in a timely manner. Encourage the use of alternative dispute resolution methods, such as mediation and arbitration, to reduce the number of cases that require traditional court proceedings.

**Recommendation 2:** *Integrate Case Complexity Assessment into Scheduling of Trials.* Develop a system to assess the complexity of cases prior to scheduling hearings. Allocate appropriate time based on case complexity, allowing for thorough examination, presentation of arguments, and comprehensive deliberation.

**Recommendation 3:** *Enhance Calendar Management.* Establish strict calendar management practices, including fines for delays and postponements. Utilize technology to streamline scheduling and reduce conflicts, ensuring timely and efficient court proceedings.

**Recommendation 4:** *Improve Explanation of Procedural Rights.* Mandate judges to provide clear and accessible explanations of procedural rights and obligations to all participants, using simplified language to enhance understanding.

**Recommendation 5:** *Strengthen Standards on Judgements’ Quality.* Establish guidelines for writing judgments that emphasize thorough analysis, clear reasoning and the incorporation of relevant legal precedents. Encourage judges to provide detailed explanations for their decisions. Establish mechanisms for the development of consistent case law, allowing judges to refer to the precedent and reducing the need to reinvent solutions for similar cases.

**Recommendation 6:** *Improve Scheduling and Time Management.* Implement an efficient case management system that minimizes scheduling conflicts and reduces delays. Consider adopting an online communication platform to coordinate hearing times among judges, lawyers and parties. This could involve a shared online calendar among legal actors or integration into the electronic case allocation system, providing data on the availability of case participants at the proposed hearing time. Invest in digital tools and platforms for electronic filing, case tracking and remote hearings to expedite proceedings and alleviate administrative burdens. Enact regulations that officially authorize the service of legal documents through electronic means, ensuring legal validity and acceptance.

**Recommendation 7:** *Promote Active Case Management.* Encourage judges to play a proactive role in case management, which involves setting realistic hearing schedules, ensuring adequate preparation, and maintaining continuity throughout proceedings. It is essential to address the issue of case overload to prevent judges from rushing through cases.

**Recommendation 8:** *Enhance Judicial Training.* Develop comprehensive training programs for judges that cover case preparation, time management, communication skills and use of technological solutions in proceedings. Training should also focus on explaining procedural rights effectively to participants.

In regard to the professionalism of judicial personnel, it is noteworthy that, despite the paramount importance of court staff's competence and professionalism in providing court services, the Moldovan judicial system is grappling with a shortage of qualified personnel. Very low salaries and a heavy workload have a detrimental effect on the professionalism of the court and result in staff shortages. These challenges can be effectively addressed through the implementation of the following recommendations:

**Recommendation 9:** *Enhance Personnel Recruitment and Retention*. To alleviate the shortage of skilled court staff, it is imperative to re-evaluate recruitment and retention conditions. Efforts should be directed towards offering competitive salaries and benefits that attract capable individuals to the judicial system. Adequate remuneration can significantly contribute to attracting and retaining qualified assistants and secretaries, thereby enhancing the overall quality of court proceedings.

**Recommendation 10:** *Training and Development.* Recognizing the pivotal role of court staff in the judicial process, it is highly recommended to invest in comprehensive training programs. The National Institute of Justice should assume a central role in providing specialized training for assistants and secretaries, equipping them with the necessary skills to effectively contribute to court proceedings before they commence their functions.

**Recommendation 11:** *Workload Management.* It is crucial to implement measures aimed at managing the workload of court staff, allowing them to prioritize quality over quantity. Addressing excessive work pressure and ensuring that staff members have adequate time to prepare for hearings and other tasks can lead to a more conducive working environment.

**Recommendation 12:** *Technology and Automation.* Consider investing in technological solutions and automation to streamline administrative tasks and alleviate the workload on court staff. This strategic move can liberate their time, enabling them to make more substantive contributions to the judicial process.

### 7.4.2. Proposals for Improving the Professionalism of Lawyers

Court users express a high level of satisfaction with the legal assistance provided by both state-funded and private lawyers. Nevertheless, divergent views exist regarding the quality standards of legal aid services between private and state-funded lawyers, with state-funded lawyers tending to see more similarity. The assessment made by monitors of lawyers' familiarity with case materials during trials is generally positive, although exceptions arise, particularly in administrative offense cases. Qualitative interviews with legal professionals offer varied insights into the quality of legal representation. While certain experts observe advancements in the quality of legal services, others draw attention to concerns like lawyers' lack of preparedness and passive involvement within state-guaranteed legal aid. The problem of trial postponements caused by lawyers' absence can be attributed to the lack of a mechanism for judges to determine if the legal representative is occupied with another case. Additionally, the significant issue of insufficient remuneration and the overwhelming workload encountered by state-guaranteed legal aid lawyers is notably emphasized. Simultaneously, an issue arises from the unpredictable and discretionary nature of court decisions concerning the reimbursement of representation fees, resulting in ambiguity in cost calculations. Both judges and lawyers express concerns about the absence of well-defined guidelines and supporting documentation for determining appropriate fees.

To address the indicated issues, the following recommendations are proposed:

**Recommendation 1:** *Enhance Case Preparedness.* There is a need to increase the percentage of lawyers’ preparedness for cases hearing. To address the issue of varying levels of lawyer preparedness and enhance the overall quality of legal representation, it is recommended to establish comprehensive and mandatory continuing legal training programs for both private and state-guaranteed lawyers. Moreover, these programs should address the challenges of workload to help mitigate their impact on lawyers' ability to adequately prepare for cases. Collaborative efforts between legal associations, bar associations and judicial institutions can facilitate the implementation and effectiveness of such education initiatives.

**Recommendation 2:** *Establish Uniform Quality Standards for Legal Representation Services.* Develop comprehensive guidelines and standards for legal aid services that apply uniformly to both state-funded and private lawyers, ensuring consistency in the quality of representation provided to litigants. This can involve standardized training, ongoing professional development and regular assessments of lawyers' performance to maintain a certain level of competence and preparedness.

**Recommendation 3:** *Streamline Trial Scheduling and Adjournments.* Introduce a scheduling mechanism that allows judges to assess lawyers' availability and workload before assigning trial dates, minimizing trial postponements caused by lawyers' absence and optimizing judicial resources.

**Recommendation 4:** *Establish Transparent Fee Reimbursement Criteria.* The connection between the professionalism of lawyers and fair reimbursement of fees lies in the recognition that fair and adequate compensation for legal services is essential to uphold the high standards of professionalism in the legal field. When lawyers are fairly remunerated for their services, it promotes their commitment to providing thorough and effective representation, investing the necessary time and effort into cases, and maintaining a high level of preparedness. To achieve this, clear and transparent guidelines should be developed for judges to determine representation fee reimbursements, taking into account factors such as case complexity and reasonable legal costs, to ensure fair and consistent decisions and alleviate ambiguity in cost calculations.

**Recommendation 5:** *Enhance Trust and Collaboration Among Legal Actors.* Establish regular communication channels and collaborative platforms among judges, lawyers, and court staff to foster better understanding, cooperation and mutual respect, thereby improving trust levels between the law-related actors.

### 7.4.3. Proposals for Improving the Professionalism of Prosecutors

Upon a thorough examination of the data presented, it becomes evident that the professionalism of prosecutors is a subject that warrants careful consideration. The results of the monitoring reveal several critical issues that merit attention:

**1. Divergent Satisfaction Levels with Prosecutors' Competence.** While recognizing the significance of professional competence among prosecutors, there exists a considerable variation in satisfaction levels, particularly among lawyers (especially private lawyers) and court users.

**2. Quality and Role of Prosecutors.** Concerns about the quality of prosecutors' work arise from perceptions of inadequate preparation, reliance on templates and limited contribution to proceedings. These factors collectively undermine the effectiveness of prosecutors in the legal process.

**3. Procedural Challenges.** Reluctance to adopt remote hearings and excessive bureaucratic processes detrimentally affect the efficiency and effectiveness of prosecutors' roles.

**4. Shared Responsibilities and Inadequate Case Presentation by Multiple Prosecutors.** The division of responsibilities among multiple prosecutors contributes to confusion, inefficiency and insufficient case presentation. This fragmented approach can lead to a lack of consistency in court proceedings, potentially resulting in crucial case aspects being overlooked or inadequately represented.

The acknowledged challenges can be tackled by enacting recommendations that provide measures to improve the professionalism and efficacy of prosecutors within the legal system:

**Recommendation 1:** *Enhance Prosecutor Training.*Implement comprehensive training programs aimed at enhancing prosecutors' competence and procedural skills. Address concerns raised by legal professionals regarding the quality of procedural documents prepared by prosecutors.

**Recommendation 2:** *Streamline Procedures.*Undertake a thorough review of procedural rules to simplify and reduce bureaucratic processes. This effort will minimize opportunities for corruption and contribute to the overall efficiency of the criminal justice system**.**

**Recommendation 3:** *Embrace Remote Hearings.*Advocate for the adoption of remote hearing options among prosecutors. This approach minimizes delays, optimizes resource utilization, and improves overall efficiency.

**Recommendation 4:** *Single Prosecutor Responsibility.*Consider introducing a system where a single prosecutor assumes responsibility for managing and presenting a case throughout the entire legal process, from the initial investigation to the trial stage. This strategy ensures continuity, accountability, and a comprehensive understanding of all case details.

**Recommendation 4:** *Sustainable Reform Directions.* Given that various experts have highlighted concerns about accusatory bias of criminal proceedings in Moldova and courts’ overload resulting from cases that could be categorized as administrative offenses, it is crucial to take these matters into account when considering broader reforms aimed at enhancing the efficiency of the judicial system, for example by decriminalization of drunk driving. Additionally, the matter of the high number of prosecutors should be further examined to efficiently address the high ratio of prosecutors to the population.

# 8. CONFIDENCE IN JUDICIAL SYSTEM

The cornerstone of a just and effective legal system is the trust that society places in its ability to uphold the principles of fairness, transparency, and accountability. Confidence in the justice system ensures that individuals perceive their rights as protected and that disputes are resolved impartially. This Section addresses the key aspects that contribute to the public confidence in the justice system. Several essential topics include:

*1. Transparency of Court Proceedings*

Transparency stands as a fundamental pillar upon which the credibility of any justice system is built. In this section, we scrutinize the significance of transparent court proceedings. The openness of court proceedings, equal access to justice, and impartiality of court proceedings all play pivotal roles in fostering public trust. In this Part, we analyse transparency of judicial process across civil, administrative, criminal, and administrative offences cases.

*2. Public Perception of Fairness of Court Proceedings*

The perception of fairness is integral to public trust in the justice system. In this Part, we delve into how the public perceives the fairness of court proceedings. We explore the expectations of actual court users to be treated fairly and their actual experience at the court. Exploring these elements reveals the complex relationship between a general prevailing public opinion about justice system and actual court users' willingness to trust the outcomes of legal processes.

*3. Judicial Independence and Accountability*

Judicial independence, while vital for upholding the rule of law, must be accompanied by accountability to maintain public confidence. In this Part, we delve into the main reasons for the perceived lack of independence and explore directions towards restoring confidence in the justice system. We further analyse how mechanisms of reasoning of court decisions contribute to reinforcing trust in the judiciary.

Throughout these explorations, we navigate and summarize findings on the intricate web of factors that shape confidence in the justice system in Moldova. From the transparency of court proceedings to the public perception of fairness and the delicate interplay of judicial independence and accountability, our study seeks to shed light on the multifaceted nature of building and sustaining public trust in the realm of justice and provide respective recommendations.

The insights and findings of the Section is based on the monitoring questions presented in *Trial Monitoring*, *Focus Group Surveys*, and *Expert Interviews*.

## 8.1. TRANSPARENCY OF COURT PROCEEDINGS

The *Trial Monitoring* data portrays a positive picture of a transparent judicial process across civil, administrative, criminal, and administrative offences cases, promoting confidence among citizens in the integrity of the legal system. The *Trial Monitoring* did not identify any discrepancies that could significantly undermine trust in the justice system. Various questions were employed to confirm this, encompassing different stages of the proceedings.

### 8.1.1. Public Access

Promoting public access to court hearings is crucial for building trust in the justice system. Increased transparency and accountability can help foster confidence among citizens in the fairness and integrity of the judicial process.

The majority of monitored court hearings were open to the public, reflecting a commitment to transparency and accountability. While some hearings required explanations or identity verification for public access, this likely serves to maintain order and protect the integrity of the court process. Overall, the data indicates a significant effort to uphold the principles of open justice in the observed court proceedings.

* As regards civil cases, the data indicates that a majority of the members of the public were accepted in the courtroom, with 46% stating they were accepted unconditionally, 11% upon request of identification, and 41% upon explanation of reasons for attending the courtroom. This demonstrates a positive trend towards openness and transparency in the justice system, as a significant portion of the public had access to court hearings. Additionally, it is noteworthy that no instances were reported where the courtroom was too small, the hearing took place in the judge's office, or the hearing was declared closed, suggesting that there were no significant barriers to public access in these cases.
* As regards administrative cases, a majority of the members of the public were granted access to the courtroom during the monitored instances. Specifically, 68% of respondents reported being accepted unconditionally. Furthermore, 15% of respondents mentioned that access was granted upon request of identification. Additionally, 42% of respondents stated that access was granted upon providing an explanation for attending the courtroom. Notably, the absence of any responses indicating denial of access due to reasons such as the courtroom being too small, the hearing taking place in the judge's office, or the hearing being declared closed is a positive sign. This suggests that there were no significant barriers to public access during the monitored administrative cases.
* As regards criminal cases, the majority of members of the public were accepted in the courtroom during the monitored instances. Specifically, 59% of respondents reported being accepted unconditionally, indicating that a significant number of individuals were allowed to observe court hearings without any restrictions. Additionally, 4% of respondents stated that access was granted upon request of identification. Moreover, 34% of respondents reported that access was granted upon providing an explanation for attending the courtroom. It is worth noting that in a very small percentage of cases (1%) (or 2 cases), the courtroom was deemed too small to accommodate members of the public, and in an equal percentage of cases (1%) (or 2 cases), the hearing was declared closed. In both instances, the number of occurrences is relatively low, indicating that the majority of court hearings were open to the public. Regarding the reasons for a closed hearing, the data shows that the reasons were explained in 1 case. Although this is a small percentage, it still indicates a level of transparency even in situations where the courtroom was closed to the public.
* As regards administrative offences cases, 36% of respondents reported being granted unconditional access, indicating a substantial proportion of individuals observing court hearings without any restrictions. Moreover, 15% of respondents stated that access was granted upon providing identification upon request. Additionally, 48% of respondents mentioned that access was granted upon explaining their reasons for attending the courtroom, highlighting the judiciary's recognition of the importance of public participation in legal proceedings.

In conclusion, the data reveals a positive trend in granting public access to court hearings across different case types. Overall, the data suggests that the justice system made considerable efforts to enable public access to court hearings across different case types, fostering transparency and public engagement. However, continuous efforts should be made to further enhance accessibility and ensure that all members of the public can observe and engage with the justice system effectively. Maintaining transparency and inclusivity is vital in fostering trust and confidence in the fairness and integrity of the legal process.

### 8.1.2. Equal Access

The *Trial Monitoring* reported on a series of questions related to court proceedings and interactions between court users and judges. The focus was on several key aspects: whether court users entered and left the courtroom simultaneously, if there were any discussions between court users and the judge before or after the hearing, and whether representatives of opposing parties discussed the case before the hearing commenced. Additionally, any inappropriate contacts between parties, such as improper relations before or after the court session, personal ties, or invitations to the judge's chambers, were carefully observed. While a fraction of responses expressed uncertainty or lack of awareness (*'I don't know / I didn't notice'*) regarding the aforementioned factors, this is unlikely to impact the validity of the overall results. This is due to the fact that the majority of responses offered clear and consistent information demonstrating the integrity of the observed proceedings was maintained.

* **Timing of Court Users:** The majority of court users (75% of civil cases; 78% of administrative cases; 80% of criminal cases; 70% of administrative offences cases) entered and left the courtroom at the same time, indicating a smooth and orderly process in handling court sessions.
* **Pre-Hearing Discussions:** It was observed that there were no discussions between court users and the judge before the hearing began, suggesting a professional and unbiased approach in conducting the proceedings (87% of civil cases; 87% of administrative cases; 88% of criminal cases; 79% of administrative offences cases).
* **Post-Hearing Discussions:** Similarly, no discussions were reported between court users and the judge after the hearing was over, indicating a focused resolution of cases without unnecessary interactions (90% of civil cases; 91% of administrative cases; 92% of criminal cases; 83 of administrative offences cases). In one of the monitored instances, it was pointed out that *"At the end of the session, a judge and the lawyers tried to defuse the atmosphere by joking, the president of the court panel interrupted the discussion, with an observation about the place where they are and the solemnity of the process that must be taken into account."*
* **Representatives' Discussions:** Only a small percentage (6% of civil cases; 8% of administrative cases; 15% of criminal cases; 5% of administrative offences cases) of representatives of opposing parties discussed the case before the hearing started, indicating that most parties adhere to procedural protocols.
* **Inappropriate Contacts:** There were only a small percentage of (2% of civil cases (or 5 out of 281 cases); 4% of criminal cases (or 10 cases out of 281 cases); 2% of administrative offences cases (or 2 out of 112 cases) or no (0% of administrative cases) reported instances of inappropriate contacts between parties, which is a positive sign of maintaining impartiality and integrity within the court environment. For example, it was reported that *"During the session, while the trial panel had retired to the deliberation room, one of the accused's lawyers whispered a question to the prosecutor to which she reacted with an answer like "Don't come to me with such questions. I know that there were also challenges on this cause."* In another case, it was observed that *"The prosecutor tried to talk to one of the invited witnesses, and the defendant's lawyer made a remark: you have no right to influence the witness."*. Nevertheless, in most instances, discussions on general topics were observed or even attempts to solve the cases in an amicable way: *"The opposing parties discussed after the session ended, trying to identify a solution to resolve the case amicably."*

In conclusion, the monitoring process reflects a generally fair and transparent approach in court proceedings. The lack of inappropriate contacts and the absence of pre- and post-hearing discussions between court users and the judge further contribute to maintaining trust in the justice system. However, continuous vigilance and attention to potential issues are essential to ensure a high level of confidence in the court system.

Overall, the data indicates that there were no discussions between court users and the judge before or after the hearing, which suggests a professional and impartial approach in the court proceedings. Additionally, while there were some discussions between representatives of opposing parties before the hearing, it was not a prevalent occurrence. However, there is room for improvement in terms of the small number of inappropriate contacts reported in monitored instances and some participants being unsure or not noticing certain aspects. This highlights the need for increased attention to ensure transparency and clarity in court proceedings.

### 8.1.3. Procedural Rights

The level of trust in the court system could be assessed by observing the implementation of the right to challenge the court's composition in real-life proceedings. It was expected that in cases where there is a lack of trust in the court, challenges to the court's composition would be more frequent. As a first step, the study aimed to confirm whether the judge explained the right to challenge the court's composition to the participants. Then, it was observed whether there were any challenges made:

* As regards civil cases, **92%** cases reported that the right to challenge the court's composition was explained by the judge. In 8% of cases, it was stated that the right to challenge the court's composition was not explained. Only 2 participants made challenges during the court hearing, both of which were rejected;
* As regards administrative cases, in **90%** of cases it was reported that the judge explained the right to challenge the court's composition during the court hearing. In 10% of cases, it was stated that the right to challenge the court's composition was not explained by the judge and 8% of cases did not provide a response regarding whether the right to challenge the court's composition was explained. Only in one court hearing was a challenge filed by the participant, which was rejected.
* As regards criminal cases, in a significant majority of **92%** of cases it was reported that the judge explained the right to challenge the court's composition during the proceedings 8% of cases it was stated that the right to challenge the court's composition was not explained by the judge. In **12** cases the participants made challenges to the court's composition during the observed court hearings. All challenges were made by the defendant’s lawyer and 11 out of 12 were dismissed.
* As regards administrative offences cases, the majority of **89%** of cases reported that the judge explained the right to challenge the court's composition during the proceedings. In 11% of cases, it was stated that the right to challenge the court's composition was not explained by the judge. None of the participants (**0%**) made any challenges to the court's composition during the observed court hearings.

In conclusion, in the majority of cases it was reported that the judge explained the right to challenge the court's composition, indicating a positive step towards ensuring transparency and fairness in the court proceedings. Only a small number of participants made challenges. This suggests that while most individuals were informed about their right, it was not frequently exercised during the observed court hearings. This may imply a relatively high level of confidence with the court's composition among the participants.

### 8.1.4. Conducting Hearing

The presence of judges in the courtroom throughout the trial reinforces the integrity of the justice system. Based on the data provided, it was reported that the judge or panel of judges were present in the courtroom throughout the trial in the majority of cases:

* In civil cases, 98% of respondents reported that the judge or panel of judges were present in the courtroom throughout the trial, indicating a high level of judicial oversight and engagement in these cases.
* In administrative cases, a similar trend was observed, with 97% of respondents reporting the presence of judges throughout the trial.
* In criminal cases, 98% of respondents reported the continuous presence of judges in the courtroom, showcasing a consistent approach in monitored criminal proceedings.
* In administrative offences cases, 95% of respondents confirmed the presence of judges throughout the trial, reflecting a significant level of judicial engagement in these cases as well.

In addition to this, in all case types, specifically civil, administrative, criminal, and administrative offences cases, the judges did not reveal their position on the outcome of the case. The fact that judges refrained from revealing their position on the outcome of the case in all instances (100%) showcases a dedication to upholding impartiality and preventing any potential biases from influencing the trial. This commitment is crucial for maintaining public trust in the justice system, as it assures citizens that cases are being decided based on the merits of evidence and legal arguments, rather than personal preferences.

Overall, the data underscores the integrity and credibility of the justice system in the surveyed instances. Such adherence to neutrality can significantly contribute to fostering public trust in the judiciary, as citizens perceive that their cases are being heard and decided in an unbiased and equitable manner.

## 8.2. PUBLIC PERCEPTION OF FAIRNESS OF COURT PROCEEDINGS

In Moldova, the public at large has no respect for and confidence in the courts' capacity to fulfil their function. In November, 2022, the Barometer of Public Opinion[[39]](#footnote-39) showed that only 18 % of the public had confidence in the justice system. The Public Opinion Survey (October–November, 2022)[[40]](#footnote-40) similarly demonstrated that 25 % of the public had a positive opinion about the courts and, while the vast majority of 56 % had a negative opinion about the judiciary (18 % did not know or did not provide the answer).

To gain deeper insights into the level of trust within the justice system, the *Trial Monitoring* focused on the experiences of actual court users through the *Court Users Surveys*. The *Trial Monitoring* has brought into focus the level of trust in the justice system, not as a general prevailing opinion among members of society, but as the opinion of actual court users. In other words, it measured how much trust people who come into contact with courts as participants at the proceedings hold based on their own experiences. Before presenting the results in more details, it is noteworthy that the monitoring presented relatively objective data since a vast majority of the court users at the time were not yet aware of the final decision in their cases (59 % of the respondents indicated that the outcome of the case was not yet known and nearly equal parts of responses indicated successful (9 % of the total) and unsuccessful (10 % of the total) outcome in their cases) (*Court Users Surveys*).

The *Court Users Surveys* demonstrated that, in general, the vast majority of court users were satisfied with the services at the court. Specifically, 38% of respondents indicated average satisfaction. This trend was further supported by the data showing that 19% of respondents were satisfied, and 5% very satisfied with the overall services at the court. However, larger levels of dissatisfaction with the court services were documented regarding criminal cases and administrative offences cases. Specifically, 30% of respondents involved in criminal cases and 44% of respondents participating in administrative offences cases indicated that they were not very satisfied with the courts' services.

The *Court Users Surveys* data also showed the responses of court users to the question whether before coming to the court, court users expected to be treated fairly. The respondents were asked to rate their expectations on a scale from 0 to 10, where 10 indicated *"I absolutely expected to be treated fairly"* and 0 indicated *"I did not at all expect to be treated fairly."* The presented data illustrated the varying expectations of court users regarding being treated fairly before coming to court. The majority of respondents (30%) expressed a moderately positive expectation, rating 7 on the scale, indicating a reasonable level of trust in being treated fairly. Similarly, a significant number of respondents (24%) rated 8, suggesting a slightly higher level of positive expectation. Only small proportion of respondents had lower expectations. A combined total of 6% of respondents (1%, 2%, 1%, and 2% for ratings 1 to 4, respectively) expressed lower levels of confidence in being treated fairly.

The data also presented responses to the question of whether trust in the judicial system increased or decreased since coming to court that today. The respondents were given three options: increased (experience was better than expected), decreased (disappointed), and remained unchanged (*the Court Users Surveys*). The findings revealed that the majority of court users (72%) reported that their trust in the judicial system remained unchanged after their court experience. This indicates that a significant proportion of individuals did not have their trust significantly affected, positively or negatively, by their court visit. A smaller percentage of court users (16%) had their trust in the judicial system increased. This suggests that these individuals had a positive experience that surpassed their expectations, leading to an improvement in their trust in the judiciary. A minor fraction of court users (12%) expressed that their trust in the judicial system decreased.

On the whole, the data suggested positive expectations among court users regarding fair treatment before coming to court. A considerable portion of court users remained unaffected in their trust. While these results highlight a stable positive level of satisfaction among court users, it is crucial to address the wider issue of the public's negative perception towards the justice system. The low confidence and respect in the courts' capacity to fulfil their function, as indicated by the public opinion surveys, indicate the need for significant efforts to rebuild public trust. By improving transparency, efficiency, and accessibility within the justice system, Moldova can work towards instilling greater confidence among the public and ensure that the opinion expressed by the majority of public eventually would align with the actual relatively positive experiences of court users.

## 8.3. JUDICIAL INDEPENDENCE AND ACCOUNTABILITY

The assessment of judicial independence and public trust in the judicial system stands as a cornerstone in understanding the efficacy and credibility of justice system. In this pursuit, a comprehensive exploration of legal professionals' perceptions plays a significant role in unravelling the dynamics that shape the interface between the judiciary, legal practitioners, and public confidence.

*The Focus Group Surveys*, presenting lawyers' perspectives, offered a unique point to discern trends and nuances in the perception of judicial independence. Their routine engagement with the courts and judges grants them an intricate understanding grounded in tangible professional encounters. These figures not only shed light on prevailing attitudes but also provided indicators that delve into the potential sources of interference within the judiciary.

Concurrently, *Expert Interviews* offered a systematic approach not only aimed at indicating the barriers for perceived lack of independence but also at restoring public confidence in the judicial system. Acknowledging the multi-faceted nature of diminished trust, these interviews served as a source, illuminating potential pathways towards rebuilding and reinforcing the vital bond between the judiciary and the public.

Through these sources of data, we explore the underpinnings of public perceptions, shedding light on how factors such as transparency, accountability, and access to justice influence the current fragile balance of confidence.

### 8.3.1. Main Reasons for the Perceived Lack of Independence

The figures of the *Focus Group Surveys* showed the trends in the lawyers’ perceptions of judicial independence and also presented respective indicators on the reasons regarding the possible interference within the judiciary.

*Focus Group Surveys*showed that the perception of independence suggests certain shortcomings in the judicial system. Only 13% of respondents within the group of private lawyers believed that *no undue influence ever occurred* when asked if during last three years the judges had been subject to inappropriate pressure or interference. However, compared to the answers submitted by the lawyers providing state-guaranteed legal aid, the perception is more positive. Respectively, 31% of respondents within the group of lawyers providing state-guaranteed legal aid believed that *no undue influence ever occurred*. In this regard, one should note that the latter group mostly work in criminal cases (87% of respondents). The major part of respondents believed that inappropriate influence or interference happens *occasionally* (47% and 40% of all respondents, respectively).

Among **the reasons for the lack of good perception of independence** of courts and judges (*Focus Group Surveys for Private Lawyers)*, multiple answer options could had been selected), nearly half of the respondents (49%) named the parties and their lawyers as subjects possibly exercising improper influence on judicial services. This trend in general coincided with the results that were received from the lawyers providing state-guaranteed legal aid, where 33% of respondents indicated the same answer.

Possible influence of the prosecutors was not overlooked and a large number of respondents (accordingly, 39% of respondents within the group of private lawyers and 61% of respondents within the state-appointed lawyers) selected to point out on the conduct of prosecutors and their possible improper influence.

Further, the surveys suggest the influence of politicians which, in turn, stress the need to observe checks and balances in the administration of the judiciary and warn against the risk of its politicization. A high number of respondents (49% within the group of private lawyers and 36% within the group of state-appointed lawyers, respectively) suggested actions of politicians as a key factor of interference in performance of judicial duties.

The data regarding the possible improper influence exercised within the judiciary itself also underlines the need to strengthen judicial self-governance. In this regard, 31% of respondents within the group of private lawyers and 26% of respondents within the group of lawyers providing state-guaranteed legal aid opted to highlight the influence possibly exercised by the court management. Meanwhile, the improper influence related to the actions of the president of the court, the higher courts or the SCM, when considered on a group basis, suggests fewer risks. In this regard, in both groups of respondents the result stayed below one fourth of all respondents choosing to point out the influence of above-mentioned institutions.

In this context, the influence of the media on the justice system must be pointed out individually. The surveys present that judges may not be free to exercise their judicial powers without interference from the media. 28% of respondents within the group of private lawyers considered that inappropriate pressure or interference is exerted by the media (and 29% of respondents within the group of state-appointed lawyers, respectively).

At this point, the data based on the *Focus Group Surveys* did not reveal the high level of risks related to the powerful individuals or entities coming from businesses. In this regard, it is constituent that the higher risks were documented in analysing the responses submitted by respondents within the private lawyers’ group (19%). Meanwhile, only 8% of respondents within the group of lawyers providing state-guaranteed legal aid named businesses and their possible improper influence. As already indicated, the latter group mostly practice in criminal cases.

Finally, respective comments in open space sections of the surveys also make for sobering listening when one considers the conditions for the performance of judicial duties without interference from litigants, the state or the media. As the results of various indicators on the reasons regarding the possible interference within the judiciary demonstrated, the risk factors remain present causing much tension and anxiety within the system itself. As one respondent stated, *“often, judges make decisions out of fear of an imaginary danger”*. The same issue was further elaborated by the respondent who pointed out that *“at the moment, the judicial system is easily influenced by politics. Worse than before, it listens and is guided by the position of the accuser and/or the state institutions. They are afraid to contradict the position of the accusers and/or the state institutions in order not to defend the perception that they have an “interest”. The judges have developed an enormous fear of the CSM, ANI and the Government. The act of justice has a purely formal character. <…>”*

Furthermore, the data collected *(Focus Group Surveys for Private Lawyers and State-Funded Lawyers)* presents the results of the surveys on how the independence of the justice system is preserved when one considers the roles of different actors across the justice system, including judges, prosecutors and lawyers. On the question of whether, when a lawyer represented the winning party, the court ever asked you to prepare the reasons for the court decision in writing, 70% of respondents within the group of private lawyers stated that they were not requested and would not accept such request. Nevertheless, 12% of respondents stated that they were *occasionally* requested and gave reasons for such a request (44% of respondents have professional experience of 11–20 years, 33% – 5–10 years). Results of the responses submitted by lawyers providing state-guaranteed legal aid showed similar trends (78% of respondents had never been asked to prepare the reasons for the court decision; meanwhile, 3% of the respondents occasionally fulfilled such a request).

Indeed, the shared responsibility between different actors across the justice system is a key requirement for paving the way to a more effective judicial system. It is interesting to note that despite the reservations which the lawyers have on the interferences with the judicial powers, at the same time, the professionalism of judges, prosecutors and lawyers is assessed positively. A large number of respondents (36%) declared average satisfaction regarding the judges’ professionalism, with almost the same number of respondents declaring that they were very satisfied or satisfied with judges’ competence (13% and 24%, respectively). The survey results on the lawyers’ representing the opposite party attitude and professionalism, at this point, did not reveal any significant departure from the standards with only 3% of respondents declaring that they were not satisfied with lawyers’ professionalism. Meanwhile, prosecutors’ professional competence was assessed with less favourable treatment. 31% of respondents indicated average satisfaction with prosecutors’ competence, 28% were not very satisfied and 14% not satisfied.

Finally, *Focus Group Surveys* also provided data on how lawyers’ confidence in the judicial system changed throughout professional experience. Even though the results demonstrated some improvements, it suggests that it was not enough to build on a steady positive confidence in judicial services. The results reveal that 50% of respondents within the group of private lawyers are disappointed in the judicial system and their trust in the judicial system decreased since the beginning of their professional experience. 36% of respondents declared that their trust in the judicial system remained unaffected and only 14% of respondents pointed out that their confidence in judicial system increased. As one of the respondents pointed out, “*<…> obviously, recently, the justice act has generally improved, but that does not mean that everything is fine and many of the objectives have been achieved. It is work and only together, all participants in the act of justice through work and respect for social values ​​can achieve positive results*”. Meanwhile, a vast majority of lawyers providing state-guaranteed legal aid (42%) held unchanged attitude towards the confidence in justice system.

These findings highlight the complex interplay of factors influencing lawyers' perceptions of the judicial system. While progress has been made, the presence of inappropriate influence is also acknowledged to varying degrees.

### 8.3.2. Directions towards Restoring Confidence in the Justice System

Though the reasons for reduced confidence in judicial confidence are necessarily complex, *Expert Interviews* further shed light on what measures they consider relevant in promoting the trust, including transparency and fairness, in judicial system. The data gained through *Expert Interviews* stressed the need for systematic approach on the restoration of public confidence in judicial system.

Experts were asked to comment on the European direction to see the court and the judiciary as a whole as acting in the field of services where the focus is shifted from the judges to the citizens. In this respect, exercising of justice is becoming a form of state service to citizens. Experts were asked to share their views whether the judicial system should be perceived as part of the public services provided to citizens and whether this, in turn, could contribute to increasing the overall confidence in the justice system. In this context, Experts were also invited to share their opinions on what measures are significant to build confidence in judicial system. Concluding question concerned information whether judges and lawyers themselves trust the judicial system.

Interviews provided mixed answers whether the judicial activities should be seen in the broader context of the state service to citizens. On the one hand, a number of Experts shared the view noting that judicial activities should be viewed as a state service to citizens (Expert 4, judge; Expert 8, lawyer; Expert 9, lawyer). For example, Expert 8 (lawyer) noted that *“It's the judges' awareness of their new role, well, I don't know. If they haven't been able to understand what independence is in 30 years, do you think their thinking will change because we'll call it something else? If they demand independence, constantly demand, well, from whom already? What else to write about your independence? Clearly, this is a specific service, this is not like taking a passport. No, this is part of our social contract, we paid with our freedom, because we want roads, police, army and courts from the state. For me, as a citizen, you are a service provider, and the service is called Justice and it must meet the quality requirements”.* On the other hand, some Experts clearly took the view that judicial activities are not the service (Expert 1, lawyer; Expert 2, judge; Expert 3, judge), few of them due to misconception that state service equals to the work carried out by civil servants (e.g., Expert 2, judge; Expert 10, judge). A valuable comment reconciling the different views was provided by Expert 17 (judge): *“There is still a mentality from Soviet times and after the 90s, when the judge is the tsar and God, you came to him (the judge) and he will decide your fate as he sees fit. But probably, the mentality is changing, and you cannot behave as you want, there are certain standards and you must meet them. When I came to the judicial system in 2006 and now judges behave differently, maybe there is no such understanding that this is a public service, but still the judge understands that his place is not a fortress and he must help the people who come to him and provide them with services, preferably high-quality ones. But, I think, we are moving towards this slowly.”* In this context, Experts also emphasized the greater responsibility conferred on the judiciary which derives from the principle of separation of powers. In this regard, Expert 5 (judge) noted that *“<...> if you perceive yourself as part of one of the three powers so then your responsibility is higher”*. In addition to this, Expert 11 (lawyer) explained that *“<...> judges somehow think that they are not accountable to society, but independence always goes hand in hand with responsibility. The more independence, the greater the responsibility to society, to the state, and so on. To the participants in the case.”*

In this context, Experts stressed the need for systematic approach on the restoration of public confidence in judicial system. Though the reasons for reduced confidence in judicial confidence are necessarily complex, interviews shed some light on what measures they consider relevant in promoting the trust in judicial system.

First of all, Experts underlined the importance of respecting judicial role across all state powers and society itself. Expert 17 (judge) suggested actions of politicians as a significant factor for lack of confidence in judicial protection *“<...> politicians should stop dumping all problems on the judicial system. There is no need to accuse the judicial system of all the sins, all the problems that we have in the economy or in the social sphere. Yes, the judicial system can contribute to certain problems (scare away investors but they are more deterred by the ever-changing legislation).”* This view was also shared by Expert 2 (judge) noting: *“What else can we talk about, if a priori in society politicians have created such an image that all judges are like this [corrupt].”*

Second, Expert 9 (lawyer) suggested that the confidence in the judicial system is undermined due to shared responsibility attributed to politicians and in particular, press: *“<...> as long as all politicians are talking and throwing mud at it from morning to night, as long as there are massive press attacks. They're undermining the system; they have to be clear that they have social responsibility (politicians). It's for the press to emphasize the difference between the judicial system in general and the irregularities in a particular case and in this area, we need to work too.”* This trend was further explained in more detail by Expert 19 (judge): *“The pressure of society and journalists is felt, this is a great pressure and the most dangerous. When there is pressure from a certain person (prosecutor, politician), you can protect yourself from him (do not meet, do not answer the phone, you can write to the Anti-Corruption Prosecutor's Office, to the Judicial Council) but here what can you say? That from morning to night everyone says that the judges are bad? The postponement of hearings on high-profile cases is being made because we are not independent enough. We do not have a feeling that someone will protect us: neither the Judicial Council nor anyone, because they made such a horror story out of us that even if someone stands up for the defence, he will automatically be equated with bad ones.”*. The influence of press was repeatedly pointed out by many Experts. For example, Expert 15 (lawyer) noted that *“The press has a very strong influence and judges are also very afraid”*. In addition to this, Expert 21 (lawyer) explained the problem related to high-profile cases: *“<...> the problem with high-profile cases is that we ourselves make them resonant. And one of the problems I will tell you frankly, is that there is too much mediatization and on TV all this is said by deputies and ministers. Judges are afraid to work on such cases, this is my feeling, because everyone has families, everyone has children. And when they mediatize, they translate these cases into a political perspective, because of this, we have protests.”*

A moratorium on public speaking was proposed as means of addressing adverse consequences created by the related actors. According to Expert 14 (judge), *“We will not be able to eliminate mistrust until we establish a moratorium on public speaking against the system. Even if we change all the judges, but everyone has heard for 100 years only nasty things about judges. And that's not going to change if they keep talking about it. <...> I will say from my own experience: a politician came out and said “here we appointed her, and she is good.” So, I was bullied for 1.5 years, I do not know this person, I have never talked to him in my life!!! I suffer because of his words, to this day, and I do not need this! For someone to say I'm good or bad. Everybody has to abide by this moratorium! Too much has been said...”.*

Third, it was also suggested that the judicial system itself at times had failed to promote confidence in administration of justice. Expert 2 (judge) suggested that the reason for this started with shaping priorities as early as at the university: *“If you want more, you have to give them some priorities so that people go into this profession, if you go to university now, ask who wants to be a judge, then no one wants to. Why? They will immediately say: everyone is corrupt there and so on.”.*

Experts named multiple other barriers related to the low confidence in judicial system, such as:

- low salaries (Expert 2, judge: *“So the human resource is the main resource that you need to work with. <...> But our policy is such that everyone is bad, we will not raise salaries, and so on. What incentive is there for someone who has brains?”*);

- insufficient training (Expert 7, lawyer);

- lack of solidarity among judges and their authority (Expert 19, judge: *“There are no judges I would like to look up to, they were there but they left.”*; Expert 21, lawyer: *“We don't even have 1 % of judges with authority in the system”*) with probable exceptions related to the situation in regions (Expert 12 (lawyer): *“But there are judges in the district who are respected, who hold on to their reputation, it is important for them what people say about him. Of course, there are fewer cases there, but there is still this role that he is a leader, enjoys authority.”*);

- lack of partnership with legal professionals involved in the proceedings (Expert 18, lawyer: *“It happens that the lawyer promises, knowing that the case is not winning, time passes, and then he says: see, the judge is bad, corrupt, the prosecutor is guilty, someone else, but not him (the lawyer) I don't do/practice that.”*; Expert 17, judge: *“Communication between lawyers, judges and prosecutors should be more constant. We need to work in this direction. <...> Why not to conduct trainings with lawyers, they are same participants in the proceedings, the justice system?”*) and at times, lack of integrity (Expert 12, lawyer: *“Everyone knows that lawyers are the main tool of average corruption (not a large one) in the judicial system.”*);

- lack of prestige of the profession (Expert 14, judge: *“It's gotten to the point where you are ashamed to admit that you are a judge, even in any village <...> “*);

- lack of transparency (Expert 17, judge: *“I remember when I was in the U.S., we were told that if you're a public figure, you have to have a Facebook profile. But then, I still had a preconceived opinion and doubts, but it was explained to us that it shows your openness to society, so that the person has at least some data about you, what kind of person is going to judge, and I've come to the point where people have to know a minimum of information about you. And that should be. The more transparency, the more trust.”*);

- insufficient attention paid to the ethics and morality during judge selection procedures (Expert 14, judge: *“<...> we do not value honesty and integrity. Having a lot of judges around I see that these are the qualities they lack.”*);

- according to Expert 12 (lawyer), there is also insufficient sense or understanding of free society: *“We have lost the legal system as a highly intellectual system, because we, as a new society after the USSR, did not understand the basics of a liberal society - this is that you as an individual, as a person, you are the most important thing, and not a community of something, not members of the party. No love for a person! A person is not important.”;*

- a large part of Experts pointed out communication issues related to the ways how the public is informed about the judiciary and their decisions (Expert 3, judge; Expert 6, lawyer; Expert 15, lawyer). Expert 17 (judge) noted that *“<...> after making a decision on a scandalous, high-profile case, you need to go out and explain to people why you made such a decision, this will also add people's confidence, increase trust.”.*

Indeed, these insights shared by the Experts on the abovementioned factors offer a panoramic view which barriers to public confidence need to be addressed to embark in rebuilding public trust.

The final question whether judges and lawyers themselves trust the judicial system revealed some interesting results. The vast majority of Experts noted that they did not trust the system (Expert 1, lawyer; Expert 5, judge; Expert 7, lawyer; Expert 8, lawyer; Expert 15, lawyer; Expert 18, lawyer) or they think judges and lawyers themselves do not trust the system (Expert 6, lawyer; Expert 9, lawyer; Expert 11, lawyer Expert 21, lawyer). In many cases, the distrust comes from the lack of predictability how the system will function in particular case (Expert 1, lawyer; Expert 18, lawyer). Some Experts also pointed out the accusatory nature of judicial proceedings: *“We have a 100% punitive system, so I do not cooperate with the system in any way so that my client is punished. I am looking for all legal options to defend: either I am looking for grounds to make the punishment softer or to prove its innocence. <...> our judges are very afraid of acquittals, because it is like a direct indication that he was corrupt.”* (Expert 18, lawyer); *“Social hysteria, evidence, fear of judges of tomorrow, because we must admit that now we have guarantees of the independence of judges are of a formal nature. There is no certainty about the next day, there is a lot of abuse by prosecutors and other repressive bodies.”* (Expert 3, judge).It also appears that the judicial system is over-pressed by *a priori* attributed distrust. As explained by Expert 19 (judge), *“This suspicion is so ingrained in us, in everyone, that, as I tell my friends, “I sometimes suspect myself.” We all suspect each other to a greater or lesser extent: the prosecutor suspects us of colluding with a lawyer, and the lawyer suspects us of colluding with the prosecutor or the injured party. Everyone suspects each other around. Because every day since I became a judge, I hear “you're corrupt, corrupt,” and it's so ingrained that I don't even know how to eradicate it, how to cure it.”*

Fortunately, a significant part of Experts was more confident in the judicial system and its prospects (Expert 3, judge; Expert 4, judge; Expert 10, judge; Expert 17, judge; Expert 20, judge assistant). On this point, Expert 17 (judge) noted that the trust is an inherent part of judges' role: *“And why do you work as a judge if you don't trust?”*.

### 8.3.3. Reasoning Judicial Decisions: Correct Balance in Promoting Accountability

The relationship between judges' independence and the reasoning of court decisions is a crucial aspect of a fair and transparent judicial system. When judges provide clear and well-reasoned explanations for their decisions, it demonstrates their commitment to upholding the rule of law and applying legal principles consistently. A judge's independence allows them to analyse cases objectively, consider evidence and legal arguments without bias, and arrive at a decision based on their interpretation of the law. This independence extends to the way they articulate their rationale in their written judgments. When judges can freely and objectively reason through their decisions, it contributes to a fair and just legal system that promotes public confidence. And conversely, if court decisions lack clear and comprehensive reasoning, it may lead to confusion, misinterpretation, and suspicion about the fairness of the process.

In this context, two particular aspects were addressed during the monitoring: how to enhance the quality of reasoning in court decisions (*Focus Group Surveys*) and specifically, whether the practice in Moldovan courts, where procedural rules do not universally require courts to provide reasons for their decisions, aligns with societal expectations (*Expert Interviews*).

Additional figures of the *Focus Groups Surveys* support the view that the cycle of building trust-based relationships is a continuing process which clearly involves reasoning of court decisions. This is particularly evident when analysing the results of the Survey submitted by the judges and judicial personnel. 65% of respondents believed that the Quality Standards for Judicial Decision could help to increase the trust of the society in the court of Moldova. Indeed, the importance of the transparency as a quality standard for every court decision was acknowledged by a large number of respondents. 74% of respondents believed that every court decision should have no hidden implied grounds, all facts which are relevant to the court decision should be established, all legal issues clearly indicated and addressed.

Nevertheless, in this context, the respondents also stressed the need for systematic approach on the restoration of public confidence in judicial system. One of the respondents, when asked if the Quality Standards for Judicial Decisions could help to increase the trust, remarked that “*If the lack of trust is a direct cause of modest and unclearly reasoned court decisions, then yes. But the lack of trust is a social phenomenon that is based on several aspects, erroneous expectations from the process, the duration, the solution, the concrete negative experience, prejudices and misinformation/manipulation through the media*”. Another respondent provided a valuable explanation of the reasons why the public distrusts the judicial system with respect to the quality of court decisions and, similarly, stressed the need for systematic approach: “*<…> it is unlikely that only the Quality Standards for Judicial Decisions will contribute/help to increase society’s trust in the Moldovan courts, but in order to raise society’s trust in the judiciary, it is necessary to analyse a complex of factors, among which the attitude of the government in relation to the judges, and the judicial system; reduction by government representatives in their public statements of unjustified criticism of judges; also, each judge should respect the law when judging the cases pending before him, and through his behaviour show impartiality and objectivity in resolving the case, regardless of the [social status] of the participants in the process and the social resonance of the case. <…>. The simple Quality Standards for Judicial Decisions are not enough to increase society’s trust in the court, because behind the decision are the actions and behaviour of the judge who adopts the solution, as well as of the legal assistant who writes the draft of the judicial act.*”

Overall, the majority of respondents (judges and judicial staff) (65%) (*Focus Group Surveys for Judges and Judicial Staff*) agreed that the Quality Standards for Judicial Decisions could help to increase the trust of the society in the courts of Moldova. As the respondent from the group of judges indicated, “*Well-structured and reasoned judgments can increase society's confidence in justice. In their decisions, the courts must use language that everyone can understand. A decision that will contain many legal terms will not be deceived by litigants”; “Issuing reasoned decisions with the application of quality standards in the understanding of the citizens, I think would stimulate society's confidence in justice”; “A judicial system acquires legitimacy and respect from citizens as a result of excellent functioning, which results in impartial, clear and well-reasoned court decisions”; “If a decision were qualitatively, clearly and consistently reasoned, then peoples' trust in judges would increase”.*

At the same time, only 10% of respondents did not agree that the Quality Standards for Judicial Decisions could help to increase the trust of the society in courts and 25% of them – were not sure. As one of the respondents from the judges and judicial staff group noted (mentioned before): *“If the lack of trust is a direct cause of modest and unclearly reasoned court decisions, then yes. But the lack of trust is a social phenomenon that is based on several aspects, erroneous expectations from the process, the duration, the solution, the concrete negative experience, prejudices and misinformation/manipulation through the media”* (*Focus Group Surveys for Judges and Judicial Staff*).

The second issue raised in the monitoring concerning the attitudes towards the practice where reasoning of court decisions is not mandatory at all times proved to be more complex. In qualitative interviews, Experts were asked to discuss the practice in Moldova where procedural rules do not establish a court's duty to give reasons for the decision taken at all times. Experts were asked to share their views on the current situation where the decisions are drafted upon request of the parties and how this practice meets the expectations of the parties to the dispute and the legal community (data provided *Expert Interviews*).

The vast majority of Experts noted that the practice and its rules do not necessarily need to be changed pointing out the factors of (1) high workload (Expert 2, judge; Expert 3, judge; Expert 5, judge; Expert 13, lawyer; Expert 14, judge), (2) the statistics of appeals (Expert 4, judge: *“about 20 % or 30 % of those decisions in civil cases are disputed and in administrative cases 99,9 % are appealed.”*; Expert 18, lawyer), (3) the easy choice given to the participants to dispute decisions and therefore ask to motivate (Expert 3, judge; Expert 16, lawyer).

Even though Expert 15 (lawyer) did not agree on the need to change the practice, he noted that the partial interim review of the practice could be initiated, in particular in certain categories of the cases: *“I'm not ready to say if we need to go back to motivating all the decisions, but I think that we can already start discussions and see how this affected the quality of decisions, the unloading of judges, what they lost and what they won. Maybe for certain categories of cases arguments are needed, criteria should be added. After all, there were problems. Someone had a divorce case 5 years ago and now he needed a decision, and the judge who was considering it is no longer there. We need to start discussions.”* Expert 9 (lawyer) also agreed that it is time for a debate: *“I'm not saying that it can't be theoretically changed, you can set a goal to analyse it for 5 years, discuss it and change it. <...> some time should pass, but I think 10 years have passed already (since the date of the changes in the Code of Civil Procedure due to non-motivation of decisions), so, from this point of view, you can go back, say 10 years have passed, we look at what was good, what was bad and can be changed to a diametrical solution. <...> there are many cases when, in principle, the explanation is meaningless, because everything is obvious to the party, and this is in order to reduce the burden on the judicial system. The issue is that a reasoned decision is not only according to the law, but it is a matter of facts. After all, the dispute between the parties is a fact, and it is very important to motivate why you made a decision. <...>**when there is even the slightest case that it will be challenged, it is problematic. Naturally, the whole mechanism of follow-up verification is based on motivation, because the higher court is not sure what it will assess if it is not motivated, and in the case that someone else motivates it. Yes, I have seen that there are some countries where another judge can motivate. In addition, but I believe that this is a sham and a parody of justice, because the judge who accepted and besides, I think that only that judge in the period when he still remembers, and why he made a decision after 2 years I can bet that I go to the judge, give him his case, and he will not remember, that he was considering such a case. Especially on the facts: how do you remember why you believed this witness?”.*

In this context, it was also noted that this practice did not solve the problem with the high workload (Expert 8, lawyer). In addition to this, it is suggested that this practice leaves the participant to the proceedings in legal uncertainty: *“Not only do I have to hear his decision, but I also have to understand why he thought I was right or wrong. If he refuses me, then I have to understand why. And to understand, I have to protest, but if I had read the motivation right away and agreed with the judge, maybe I would not have protested. It's clear that this is not the best construct for achieving the goals of justice. It shouldn't be that way. The person who gets the court decision should immediately understand why that is the case.”* (Expert 8, lawyer). Expert 6 (lawyer) also pointed out that the practice does not meet the expectations of participants to litigation: *“<...> you have to understand the logic of why it's wrong or the other party is right. Basically, that is the goal of justice.”* In this regard, Expert 10 (judge) noted that *“<...> the best solution is that all decisions should be motivated”*, provided that judges were supported by additional legal personnel. Similarly, according to Expert 12 (lawyer), *“there can be no solution without motivation. <...> I cannot understand what a court decision is without motivation, this is the basis of justice! The profession of a judge means to listen and come to an opinion and explain how you came to this.”*

## 8.4. CONCLUSIONS AND RECOMMENDATIONS

Based on the discussions regarding confidence in the justice system within the selected areas of monitoring and evaluation, in accordance with the monitoring criteria, this section presents the overall conclusions and proposes policy recommendations.

### 8.4.1. Overall Conclusions

1. *The Trial Monitoring* data portrays a positive picture across civil, administrative, criminal, and administrative offences cases, promoting confidence among citizens in the integrity of the legal system. The monitoring assessed several crucial aspects of court proceedings, demonstrating the following key findings:

**Openness of Court Proceedings**

* Across civil, administrative, criminal, and administrative offences cases, a commitment to transparency was evident, with the majority of court hearings open to the public.
* While some instances required explanations or identity verification for public access, these measures aimed at maintaining order and safeguarding the court process.
* There were no significant barriers to public access during the monitored cases. Notably, only in a very small fraction of monitored cases the courtroom was closed to the public, there were no responses indicating denial of access due to reasons such as the courtroom being too small, the hearing taking place in the judge's office or similar.

**Equal and Efficient Access**

* The majority of responses offered clear and consistent information demonstrating that the integrity of the observed proceedings was maintained. Judges refrained from revealing their position on case outcomes, reinforcing the perception of impartial decision-making.
* Participants demonstrated satisfaction and confidence with the composition of courts, as challenges to the court's composition were infrequent.
* There were no discussions between court users and judges before or after hearings, emphasizing a professional and unbiased approach. Very minimal inappropriate contacts were noticed among participants to the proceedings, indicating a level of adherence to ethical standards within the court environment.

2. The public's confidence in Moldova's justice system is notably low, as indicated by the Barometer of Public Opinion (November, 2022) and the Public Opinion Survey (October–November, 2022). Only 18% of the public expressed confidence in the justice system. While 25% had a positive opinion about the courts, a majority of 56% held a negative opinion about the judiciary. To delve deeper into the level of trust within the justice system, *the Trial Monitoring* focused on the experiences of actual court users, shedding light on the trust based on personal experiences.

**Public Perception of Fairness of the Court Proceedings**

* The results highlight a stable positive level of satisfaction among court users. A majority of court users (a combined total of 62% of respondents) expressed satisfaction with the court's services. Larger levels of dissatisfaction with the court services were documented regarding criminal cases and administrative offences cases.
* Expectations of fair treatment before coming to court varied among respondents, with the majority expressing moderate to high levels of trust. The majority of court users reported that their trust in the judicial system remained unchanged after their court experience. A small percentage (16 %) saw an increase in trust, likely due to positive experiences. A minor fraction of court users (12%) expressed that their trust in the judicial system decreased. Despite positive interactions among court users, the public's negative perception of the justice system remains a challenge.

3. Judicial independence and the separation of powers are fundamental building blocks of a democratic society. They guarantee that judges are free to exercise their judicial powers without interference from litigants, the state or the media. The observed trends indicated by legal professionals point at the importance and significant shortcomings concerning judicial independence.

**Independence**

* The monitoring results warn against the risks of weakening the already fragile protection of judicial independence. A minority of private lawyers (13%) believe that judges have not been subject to undue influence, compared to state-guaranteed legal aid lawyers (31%). Certain types of situations where independence could be at risk were suggested by the respondents. A large part of respondents (49% of private lawyers) believe that an equal distance is not maintained from the parties to the proceedings and their respective interests with regard to the subject matter of the case. Further, the findings suggest the possible influence of politicians which stresses the need to observe checks and balances in the administration of the judiciary and alerts to the fact of its politicization. In addition to this, almost one third of respondents consider that inappropriate pressure or interference is exerted by the media.
* Several internal concerns were articulated by legal professionals, including the impact of inadequate remuneration and the resulting recruitment and retention challenges. Moreover, the absence of comprehensive training, the lack of solidarity among judges, and the subsequent erosion of authority within the profession emerged as pivotal concerns. Notably, exceptions were highlighted, especially in regional contexts, where judges' reputation and leadership resonate more profoundly.
* Despite the reservations legal professionals may have regarding potential interference with judicial powers, the professionalism of judges, prosecutors, and lawyers is generally viewed positively. It is noteworthy that expectations concerning the independence of the justice system are not excessively high; they are rather realistic. Legal professionals recognize the legal environment and the possibility of situations that could compromise independence. Interestingly, this factor does not appear to impact their perception of judges' professionalism, as no correlations between these two indicators were observed. This level of acceptance demonstrated by experienced individuals within the administration of justice is particularly concerning and could potentially undermine overall trust in the judicial system.
* A unanimous consensus emerged that upholding respect of the judicial role across all state powers and media is the primary avenue for reinstating the confidence in justice system. Increasing the predictability in the system could further strengthen the trust and address the deep-rooted suspicion inherent within the system itself. Rebuilding trust requires addressing these multifaceted barriers and fostering a more positive perception of the judiciary's role.

**Accountability**

* Within the surveyed group of judges and judicial staff, 65% concurred that the implementation of Quality Standards for Judicial Decisions could contribute to enhancing trust in the justice system. However, it is evident that while the impact of Quality Standards for Judicial Decisions on rebuilding trust is acknowledged, it is considered to be just one facet of a broader effort to restore public confidence in the judicial system.
* Non-mandatory reasoning of court decisions leads to legal uncertainty. The status quo fails to alleviate high caseloads or provide clear understandings to participants. Nevertheless, legal professionals conveyed diverse perspectives on the matter. Many asserted that the existing practice should not necessarily be altered, citing factors such as high workloads, the rates of appeals, and flexibility for participants to request motivation. Nonetheless, there was a consensus that a nuanced assessment of the practice is essential, especially for specific case categories. While legal professionals upheld the existing practice's viability, there was a shared indication that change should be considered, reflecting a holistic approach toward accountability and transparency.

### 8.4.1. Recommendations

To ensure that the confidence in justice system is upheld and enhanced, the following principal recommendations are made:

*Transparency*

**Recommendation 1:** *Strengthen the Public Engagement in Observing the Proceedings, Establish Court Users Feedback Mechanisms and Provide for Regular Transparency Reports.* Moldova has made significant progress concerning public access to court proceedings, the minimal occurrence of inappropriate contacts, and judges' consistent neutrality in revealing their position on case outcomes all contribute to building and sustaining public trust in the judiciary. On this basis, continuous efforts should be made to sustain and further enhance accessibility and ensure that all members of the public can observe and engage with the justice system effectively. There is room for improvement in terms of creating feedback mechanism for court users to provide input on the public satisfaction with court services and regular monitoring mechanism or assessments of the transparency measures (e.g., regular transparency reports) in place to identify areas of improvement and ensure clarity in court proceedings.

*Enhancing Public Trust*

**Recommendation 2:** *Address the Challenge of Public Distrust in the Justice System.* Despite positive interactions among court users, the public's negative perception of the justice system remains a challenge. Efforts to enhance transparency, efficiency, and accessibility within the justice system should continue in order to rebuild public trust and to align it with positive or neutral experiences of actual court users. Notably, step up efforts should be made to create more active public education campaigns to inform the public about their legal rights, court processes and the role of the justice system in society; to ensure public consultations and involvement when considering reforms or changes to the justice system and functioning of courts; to ensure the judiciary is providing clear explanations for judicial decisions and making court documents readily available for the public. Ultimately, nurturing a more positive perception of judiciary's role within society, with engagement of various government actors, including politicians, is paramount to restoring public confidence and upholding the principles of justice.

*Independence*

**Recommendation 3:** *Take Comprehensive Measures to Ensure Adequate Safeguards against Undue Political Influence in the Administration of Justice,* in alignment with European standards on judicial independence and impartiality. Measures to ensure adequate safeguards against undue political influence in administration of justice, taking into account European standards on judicial independence and impartiality,[[41]](#footnote-41) should be made.

**Recommendation 4:** *Improve Contacts between Courts and the Media in order to Enhance Mutual Understanding of their Respective Roles.* Avenues should be explored to improve contacts between courts and the media: to strengthen understanding of their respective roles; to inform the public of the nature, the scope, the limitations and the complexities of judicial work; each profession (judges and journalists) should draw up a code of practice on its relations with representatives of the other profession and on the reporting of court cases.

**Recommendation 5:** *Self-regulatory Judicial Bodies must Prioritize the Protection of Judges* when they face challenges or attacks from the media or political and social actors via media platforms due to matters related to the administration of justice. Given the prominent place of the judiciary within the system of the separation of powers and the emphasis placed upon judicial independence and impartiality, the self-regulatory bodies (council for the judiciary or judges' associations) must pay particular attention to the protection of judges when a judge or a court is challenged or attacked by the media or by political or other social actors by way of the media for reasons connected with the administration of justice.

**Recommendation 6:** *Adopt a Holistic Approach that Prioritizes the   
Allocation of Adequate Human and Financial Resources for the Courts.* In light of the observed challenges, the path to rebuilding trust should follow a holistic approach. Effectively addressing multifarious barriers requires a concerted effort to provide adequate human and financial resources for the functioning of the courts, taking into account European standards on judicial resources. [[42]](#footnote-42) In particular, concerns regarding the adequacy of the resources allocated to court staff, such as judicial assistants and court hearing clerks, and bolster training programs should be addressed.

*Accountability*

**Recommendation 7:** *Further Continuous Efforts should be made to Strengthen the integrity Framework.* Having regard to the fact that the perception among legal professionals is that the level of corruption in the justice system remains relatively high, the effects of the anti-corruption agenda and laws on corruption prevention should remain to be continuously assessed. In addition to this, regular ethics and accountability training for judges, lawyers, and court personnel to emphasize the importance of integrity, impartiality, and fair conduct should be provided.

**Recommendation 8:** *Put Quality Standards for Court Decisions in Place and Organise Trainings how to Apply them*. Increasing the quality of reasoning for court decisions is essential for promoting transparency, accountability, and public trust in the justice system. Quality standards for court decisions should be put in place. Implementation of quality standards should be followed by regular professional development events (seminars, conferences, workshops) that focus on enhancing legal reasoning skills and effective judgment writing. Judges should be allowed to work closely with skilled legal assistants who can help with thorough legal research, drafting, and structuring of judgments.

**Recommendation 9:** *Re-evaluate the Practice of Non-Mandatory Reasoning to Increase Trust within the Judicial System itself.* In the pursuit of restoring public confidence, it is paramount to not only mend external perceptions but also to foster trust and credibility within the justice system itself. To achieve this, steps to address the legal uncertainty that legal professionals may have regarding the reasons behind adopting specific court decisions should be taken. To this end, a re-evaluation of the practice of non-mandatory reasoning should be undertaken.

**Recommendation 10:** *Re-evaluate the Practice of Non-Mandatory Reasoning in Respective Categories of Cases in Return of Increased Legal Certainty.* Avenues should be explored to increase legal certainty and predictable judicial process. As part of this effort, categories of cases wherein the reasoning for court decisions should be consistently provided should be reconsidered.

**9. QUALITY OF JUDICIAL DECISIONS**

This Section is part of the monitoring data analysis based on the Results of the Monitoring of the Quality of Judicial Decisions (hereinafter *Monitoring of Judicial Decisions*), which contains structured information and statistical data for the assessment of the quality of court decisions, collected in the process of monitoring of 400 court decisions issued by the courts of the Republic of Moldova during the years 2020-2022 and additionally on *Focus Group Surveys*[[43]](#footnote-43) and twenty-one problem-centred *Expert Interviews*. All that documents are a part of an assessment of the monitoring data analysis of the justice system in Moldova focusing on accessibility, quality and trust.

It should be stressed that the figures presented in the Sectionon monitoring of court decisions are intended to provide the complexity and comprehensive details of the efficiency of judicial system and eventually must be read together with the data collected from various other monitoring sources mentioned before, including *Focus Group Surveys for Lawyers, Lawyers Providing State-guaranteed Legal Aid and Judges and Judicial Personnel* and *Expert Interviews* regarding practices and trends in delivering the court decisions.

This Section aims to assess the current situation and problems, providing a methodological basis for applying legal policy measures to improve the quality of court decisions and drafting procedural law amendments. It also encompasses practical recommendations (soft law) for judges in Moldova related to the drafting of judgments. This Section, serving as a manual, summarizes several critical issues that must be addressed to enhance the skills of writing a judgment (sentence).

This Section also offers not only a concrete data analysis of the attached data-collecting documents but also a scientific analysis of the main provisions and important skills for judges. These skills include interpretation, argumentation, determining the proportionality of procedural rights, working with evidence, and utilizing judicial jurisprudence. These aspects can serve as a foundation for developing further practical and legal recommendations to improve the judicial system in Moldova.

As an additional Part of this Section, there are Draft Recommendations on Quality Standards for drafting a court decision. These recommendations outline the main methods and principles of drafting court decisions in European Union countries.

### 9.1. General Information on Monitoring of the Quality of Judicial Decisions

One of the important goals of the monitoring of the quality of judicial decisions was to present the neutral perspective based on the *Monitoring of Judicial Decisions* about quality standards of judicial decisions. The monitoring the quality of court decisions included, in total, 400 court decisions, of which the majority 72% (287) were issued by the first instance, and only the 15% (60) on appeal and 13% (53) on cassation. Bearing in mind the general distribution of the judges among the courts of the first instance and the appellate or cassation instance, the monitoring of the decisions from second or third instance should be evaluated very positively. The sample of monitoring the quality of court decisions, given on appeal, includes a total of 60 decisions of which: 36% (22) were issued in criminal cases, 34% (20) in civil cases, 20% (12) in administrative and 10 % (6) in administrative offences cases. The judges of the court of the appellate instance are primarily faced with possible errors of both fact and legal interpretation and therefore are better placed to primarily evaluate the quality of court decisions. In addition to this, it is necessary to note that a sufficiently representative number of cases was reviewed from the cassation instance, Supreme Court of Moldova. The sample of monitoring the quality of court decisions, given on cassation, includes a total of 53 decisions of which: 32% (17) were issued in administrative cases, 28% (15) in administrative offences cases, 21% (11) in civil cases and 19 % (10) in criminal cases. As in many European counties, the trends indicate that the highest courts, as courts of last instance, give an incentive to strengthen the entire judicial system, including the promotion of the quality standards for judicial decisions. Therefore, the highest courts according to the constitutional imperatives on organizing the work of the courts should take steps to implement certain "soft" legal instruments for ensuring the quality of different justice aspects.

At the same time, the monitoring sample also included the decisions given in certain sub-types of cases (134 in total), as follows: decisions in cases in which legal aid is provided – 16 (4%); decisions relating to environmental matters – 26 (6%); decisions concerning data protection – 32 (8%); decisions in domestic violence cases – 35 (9%); decisions on non-contractual liability of state - 25(6%).

Most of the monitored judgments were handed down by national courts during last three years: 2020 (39% or 156 judgments), 33% (130) in 2021 and 28% (114) in 2022. Out of the total number (400) of court decisions monitored, 67% (268) were pronounced by a single judge and 33% (132) by a panel of judges.

### 9.2. Perception and Role of the Quality of the Court Decisions

In general, we can define the quality of a court decision as a system of properties inherent in the content and form of the decision, which determines the degree of its social value and suitability for legal practice. In this aspect, we can consider judicial decisions from the point of view of various characteristics: literacy, logic, compliance with the law, and so on. It may turn out that a solution that is good from one point of view will be of poor quality in other respects (for example, an essentially correct solution will be written with grammatical errors or mistakes will be made in the naming of parties). It often happens that judges intuitively or on the basis of their experience correctly resolve a disputed situation, but they do not give an exhaustive motivation to their decision, or the motivational part contains non-consequential arguments. Therefore, when preparing their decisions, judges should keep in mind that their decisions are potentially written for a wide audience and that the significance of these decisions for society is not limited to the resolution of the dispute on its merits. To a certain extent, judicial decisions are also designed to strengthen the social order, to serve the development of legal awareness both at the individual and at the public level, and to educate civil society. A good, high-quality solution from this point of view should be recognized as a solution that maximally accompanies the achievement of these goals and meets the expectations of society. The quality of the court decision in this aspect is measured by the achievement of the social function of court proceedings – opportunities to regulate public relations in the interests of the person, society and state, creating an authoritative jurisdictional system that meets the needs of society's development.

Further analysis of the perception of the quality of judicial decisions is based on the results provided by the *Focus Group Surveys for Judges and Judicial Staff* and *Expert Interviews*.

**In this regard the perception of the quality of court decision as a strategic tool for judiciary in Moldova is quite good,** having regard to the fact that even 90 percent of the judges and judicial personnel answered that they know the quality standards of the court decisions. The quality standards for judicial decisions help to increase the trust of the society in the courts of Moldova by 65% of respondents (judges and justice personnel), because the quality of the act of justice constitutes a basis of trust in the courts*.* Only 30% of the representative’s from judiciary don’t see the clear interconnection between the trust of the judiciary in the society and quality of the court decisions, because 10% of them don’t think so, and 25% don't know*.*

The respondents were asked to specify the exact recommendations or binding rules on the quality standards of court decisions. The respondents noted the following quality standards of court decisions: clarity of motivation, thoroughness, transparency and consistency of evidence examination, logical consecutiveness, explanation of the grounds on which the act was issued, the use of appropriate language, the assessment of the evidence presented as well as the legal assessment. In addition to this, it was noted that the decision should include the debate of all the claims invoked by the participants to the case. The respondents also emphasized the importance of the compliance with the provisions of the procedural codes as well as the Manual on the models of procedural documents, recommendations and opinions of the SCJ, Opinion No. 11 of the Consultative Council of European Judges of November 8, 2007 on the clarity of the decisions, the specialized doctrine, recommendations presented during the seminars held at INJ, etc. In assessing the importance of the standards, the most important, in respondents' opinion, were: legality of the court decision – 89%, clarity of court decision – 83%, sufficient statement of reasons in the court decision – 77%, transparency of the decision – 74%, persuasiveness of the decision – 67%, linguistic correctness of the court decision – 66%, consistency of the decision – 64%, comprehensibility of the court decision – 62%.

Only 28% of respondents (judges and judicial staff) noted that the court where they work adopted the internal recommendations (methodologies) for drafting decisions on the merits. Meanwhile, 30% of respondents indicated that they did not know if recommendations were adopted and 42% of respondents answered that the court concerned did not have any internal recommendations. Majority of respondents in the group of judges and judicial staff (56%) agree that there is a need to adopt special Quality Standards for Judicial Decisions as a law rule. 62% of respondents think that the quality standards for judicial decisions should be issued as an act adopted by the Supreme Court of Moldova. The majority of respondents also believe that the quality standards should have the legal force of a recommendation (67 %).Alternatively, 36% of respondents think that the Quality Standards for Judicial Decisions should be included into the procedural law (civil procedural law, criminal procedural law, administrative procedural law). Nevertheless, in this case, the quality requirements would acquire a mandatory character and this is supported by only 31% of respondents.

The respondents demonstrated a comprehensive approach towards the Quality Standards of Judicial Decisions indicating that additional measures should be taken to make the implementation of these standards more efficient and effective. The majority of respondents submitted that the trainings on Quality Standards (79%) and a special type of trainings on the law argumentation theories and methodologies both for judges and judges’ assistants should be carried out (61%). In this regard, the respondents also supported the awareness raising measures to promote the compliance with the Quality Standards of Judicial Decisions such as discussions, consultations, sharing of good practice and examples, etc. (52%).

Experts were asked too, to give their opinion on the possibility to approve and formalize certain quality standards of the court decisions (data provided by *Expert Interviews*). Experts were also asked to comment whether the idea of approved quality standards of court decisions is compatible with the principle of judicial independence.

Many Experts supported the idea of introducing approved quality standards of court decision (Expert 2, judge; Expert 6, lawyer; Expert 8, lawyer; Expert 9, lawyer; Expert 12, lawyer; Expert 15, lawyer; Expert 18, lawyer; Expert 19, judge; Expert 20, judge). In this regard, Expert 9 (lawyer) also encouraged to give greater importance to developing the preparedness for adoption of the approved quality standards: *“<...> in order to introduce a standard, you first need to train judges, because if you just introduce standards, it will be another tick on paper, and they will be evaluated, but this will not change the quality. This is what the institute should do, by the way. It should not teach civil law, criminal law, it should only teach how to motivate a decision from morning to evening. 2 years, let it teach, and it will be the best contribution of the Institute to the training of judges.”* Another group of Experts promoted the introduction and use of templates (Expert 1, lawyer; Expert 5, judge; Expert 14, judge; Expert 17, judge). In this regard, Expert 14 (judge) noted that *“Templated simple cases will free us from a lot of work and it will be possible to concentrate on more complex cases.”*

Nevertheless, this position was not shared by all Experts. Certain others believed that the introduction of approved quality standards would not affect the situation. Expert 10 (judge) noted: *“I don't think we should impose an obligation on a judge to motivate his decision by standards, no. A judge shall have the right of free expression.”* According to Expert 7 (lawyer), the situation *“<...> wouldn't improve. They don't comply with the law; will they comply with the guidelines? I don't think so.”*

Indeed, the fact that quality standards of court decisions would continue to prove difficult to implement in practice was noted by few Experts: *“There is no way to maintain these standards in such working conditions.”* (Expert 4, judge); *“Yes, I think it would help, but again if someone would monitor how they are observed. Even if it doesn't solve the problem, it's better to do it than not to*.*”* (Expert 19, judge); *“Yes, of course, but to approve quality standards is not enough to create a mechanism. The mechanism is people and it is important that they observe.”* (Expert 6, lawyer); *“The problem is implementation. There were trainings, methodological instructions. We even tried to convince them, to convey to them, what is a paragraph? I mean, it's not every sentence. Some judges apply, some do not apply and there is no mechanism to somehow affect the effectiveness of these methodological guidelines. <...>“*(Expert 16, lawyer). Expert 16 (lawyer) also proposed the idea of monitoring how the standards are followed: *“<...> after a certain time make a report, here's who applied, who did not apply, why, let's talk about the reasons.”* It was also emphasized that it is equally important to include judge assistants in the implementation of quality standards: *“I think that we need efforts and lengthy trainings for both assistants and judges. For assistants first of all, in my opinion. Because judges somehow they believe that we infringe on independence <...>.”* (Expert 16, lawyer).

While discussing the legal power of the approved quality standards of court decisions some Experts pointed out that the standards should not be set in the law but rather stay in the scope of judicial authority: *“<...> it should be adopted by the Supreme Court (recommendations).”* (Expert 16, lawyer); *“<...> of course <...> it should come from the Supreme Court.”* (Expert 15, lawyer). Expert 8 (lawyer) also pointed out that *“<…> this should not be written in our code. Let the judiciary do this, the Institute of Justice should train them. Well, accept the manual on how to write a court decision step by step, if so, then this, and if so, then another. Let it be like an algorithm. Here, bring a good decision and give as a model.”*

Experts who chose to discuss the impact of approved quality standards of court decisions on the judicial independence in essence did not see that these standards could compromise the independence: *“These are guidelines. They don't affect.”* (Expert 2, judge); *“I think that what is more negatively affecting the principle of the independence of judges is the fact that there are no standards and the quality of decisions is bad. <...> the standards do not affect in any way, as well as the standards for spelling, grammar, so there should be standards for writing court decisions.”* (Expert 6, lawyer). The same views were not shared by Expert 10 (judge) pointing out that *“<...> this can affect the independence of the judge; I think the law is very clear. Nevertheless, I think the judges have to learn at the National Institute of Justice how to justify the decision. But there have to be very good coaches <...>“.*

### 9.3. Quality Indicators for Judicial Decisions

Indicators of the quality of judicial decisions can be divided into those that are enshrined in the law (legal acts), and those that are not legally enshrined, but significantly influence the quality of the judicial decision. These last indicators are usually developed by legal praxis and legal science and find their basis in jurisprudence and legal doctrine - in the works of authoritative scientists or in recommendations developed by judiciary themselves. Quality indicators can also have sources in wider social practice. Thus, evaluating the decision from the point of view of reasonableness, justice and other general criteria of a similar scale, the expert who gives the assessment, as a rule, refers to the prevailing ideas about justice, standards of rationality and other values developed in public practice. It is precisely in the perspective of common values that judicial decisions receive recognition in society, and the judicial system uses support among its members.

Judges and justice personnel identified the following quality standards for court decisions, as indicated in *the Survey for Judges and Judicial Staff*: clarity of motivation, thoroughness, transparency and consistency of evidence examination, logical consecutiveness, explanation of the grounds on which the act was issued, the use of appropriate language, the assessment of the evidence presented as well as the legal assessment. In addition to this, it was noted that the decision should include the debate of all the claims invoked by the participants to the case. According to the judges and judicial personnel, the quality of a court decision results from its reasoning; an appropriate justification of a court decision contains a detailed argumentation of the factual and legal circumstances of the case, the evaluation of the evidence in accordance with the criteria of the procedural rules, and the analysis of the arguments and objections of the parties and other participants in the judicial process. In addition to this, it was stressed under the judges that there is a need to provide more guidance on the structure and content of longer judgments. Some judges already provide a clear structure of the decision, sometimes ­– with a table of contents, a statement at the beginning of the text and often use headers and other relevant references in the text of the decision. The court decisions must be sufficiently motivated, understood by citizens and in accordance with national and international standards to qualify as qualitative court decisions.

Many judges mentioned the aggregative role of the motivated part of the decision. The decision is motivated where all questions are answered. The decision should respond to all arguments and objections, actually invoked by the parties to the proceedings or presumed to be invoked later. Any court decision must be intelligible, written in a clear and plain language. This is an essential condition for it to be understood by the parties and the public. The intelligibility requires a coherent structure of the decision and the enumeration of the argumentation in a clear and accessible style to all. To this end, the reasoning should be written in legal language, but in a clear manner. As one of the respondents mentioned, *“for the motivation I use the language more understandable to the general public”* and “*every judgment should be drafted well enough to enable those who are not lawyers, but are interested and intelligent enough to understand who the parties were, what was the subject of the case, what were the disputed issues, what decisions the judges made and why that decision was made”*.

As indicated by the results of the *Focus Group Surveys for Private Lawyers*, regarding the question on the degree of *satisfaction* with regard to the indicators that refer to the quality of judicial decisions, the greatest degree of dissatisfaction among private lawyers was related to: *reliance on the previous case-law (case-law of the Constitutional Court, the Supreme Court or other national courts); clarity of the explanation why the court deviates from the prevailing case-law*; *reliance on the international or national legal doctrine; clarity of the court's explanation why certain evidence has been rejected / not accepted; clarity of explanation why maintaining the arguments of the losing party would be contrary to the law or evidence in the case*. In this regard, one of the respondent noted that *“In general, the motivation is rarely given when an answer is given to the key arguments of the plaintiffs or the objections of the party, such an impression that many times the judges forget them”; ”The decisions are full of rules and citations and references to jurisprudence, but in reality they are not clearly and transparently motivated”; “The applicability of some ECHR findings to the examined case is rarely explained, the explanation of the preference of some evidence over others is also not explicit”; “The reasons are formalistic, the courts are not consistent in the decisions and solutions applied in comparison with the previous solutions applied in identical cases, the arguments are not related to the facts and the applicable legal norms, the legal norms that should be applied are not applied, the legal norms are not applied correctly, the purpose of legal norms is not taken into account, the principles of legal interpretation (teleological, historical, logical, systemic, etc.) are not applied, very often the arguments of the parties are ignored, where the court must play an active role and ex officio examine certain matters important to the case, the court omits to do so ex officio, etc".*

The Experts in *Expert Interviews* also discussed to, what specific procedural measures would help to make court decisions clearer, more transparent and more credible. In this context, it was equally important to discuss the most significant constraints that affect the quality of court decisions in Moldova:

*Proposed measures:*

**Introducing templates** (Expert 3, judge, Expert 6, lawyer) and **reducing the volume of decisions** (Expert 11, lawyer: *“4–5 pages maximum.”*)

**Using more accessible language** (Expert 8, lawyer) and reducing references to the legal norms setting out same legal rules in a different regulatory act (Expert 16, lawyer)

**Training judges and judicial personnel** (Expert 1, lawyer; Expert 7, lawyer; Expert 13, lawyer; Expert 15, lawyer; Expert 20, judge assistant), including self-education of lawyers (Expert 13, lawyer*): “<...> we don't have a culture of self-education <...> we usually have lawyers learning from their mistakes. These mistakes cost the customer a lot.”*)

**Reducing help provided by judge assistants** (Expert 6, lawyer: *“I don't think there should be so many assistants. <...> This had a negative effect in the sense that our judges became lazy.”*)

**Balancing workload** (Expert 10, judge: *“The emphasis should be on quality, not quantity. <...> Here's an example: the court hearing was not recorded on audio. I don't know why you're putting this on a judge if it is the duties of a court clerk. I saw that the issue of punishing judges was also raised when he did not have an audio recording of the hearing. <...> It's not that they are all corrupt, the problem is that we don't have the conditions to work.”*)

*Factors adversely affecting the quality of court decisions:*

**Fear** (Expert 4, judge; Expert 3, judge: *“Social hysteria, evidence, fear of judges of tomorrow, because we must admit that now we have guarantees of the independence of judges [that] are of a formal nature. There is no certainty about the next day, there is a lot of abuse by prosecutors and other repressive bodies. “*)

**Public opinion** (Expert 21, lawyer: *“Public opinion, in my opinion, has a very detrimental effect on the implementation of justice.”*;Expert 5, judge: *“In high-profile cases, there is a tendency to make court decisions that are expected in principle.”*)

**Lack of professional motivation** (Expert 6, lawyer)

**Lack of time** (Expert 2, judge; Expert 4, judge; Expert 5, judge; Expert 14, judge: *“Sometimes you have to choose between two evils: to meet deadlines or to write a more convincing decision <...> “*)

**Pressure of press** (Expert 5, judge; Expert 15, lawyer: *“The press has a very strong influence and judges are also very afraid. They want to do adopt decision in silence so that no one sees, does not hear. Yes, they (judges) are comfortable with this. Journalists sometimes make commissioned articles/reports, and they have a very strong influence. The case of Dodon and Stoyanoglo clearly shows that this is press pressure.”*)

**Pressure of authorities** (Expert 19, judge)

**Personal qualities and education of judges do not reach the required level of professionalism**(Expert 2, judge; Expert 19, judge; Expert 1, lawyer: *“<...> if a bad narrow-minded judge writes [the decision the result] is bad”;* Expert 5, judge: *“We must first involve professionals and specialists in the judicial system so that they grow up in this court, so that they stay later.”*)

**Integrity issues** (Expert 2, judge; Expert 8, lawyer: *“Laws may be the best but if you don't change people's minds nothing will change.”*)

### 9.4. Assessment of the Legality of the Judicial Decisions

The first and sufficiently clear criterion is the requirement of legality presented to court decisions. This requirement is prescribed in all procedural codes and represents a universal indicator of legality or illegality. Legality is often defined as the compliance of a judicial act with valid normative legal acts. Therefore, when we talk about the legality of a court decision as an indicator of its quality, we mean the conformity of such a decision to the general practice of interpretation and application of law - both in other courts and in other law enforcement and law enforcement bodies, another wording “case law”. In other words, the court decision does correspond to how other official persons apply or interpret the law. In this sense, the European Court of Human Rights notes that "the concept of legality used in the Convention, in addition to compliance with domestic law, implies the observance of such qualitative requirements as predictability and general absence of arbitrariness in domestic law" (*Rekvenyi v. Hungary*), application No. 25390/94, § 59). Therefore, the criterion of the legality of the judicial decision will be its compliance with the general practice of application and interpretation of the norms of law applied in such a case.

The legality of court decisions was deemed an absolute attribute of quality judgment by Moldova's judiciary, with 88% of judges and 93% of assistant judges expressing this view *(Focus Group Surveys for Judges and Judicial Staff)*. In terms of satisfaction among legal practitioners regarding indicators related to the quality of judicial decisions, the greatest degree of dissatisfaction among lawyers was associated with the reliance on previous case law (including the case law of the Constitutional Court, the Supreme Court, or other national courts), as well as the reliance on international or national legal doctrine.

*The Monitoring of Judicial Decisions* further indicated several significant aspects and should be read in conjunction with the results provided by *Expert Interviews:*

(1) The quality of a court decision must be assessed based on the **various legal sources applied in resolving the dispute.** The court decision should precisely indicate the specific article of the law or other legal act, including its subsection, paragraph, or other structural component, upon which the decision relies. The monitoring results demonstrate that the vast majority of first-instance court decisions (95%), appellate decisions (77%), and cassation decisions (89%) specify the article, subsection, or other structural component of the law or normative act that serves as the basis for the court's decision. Simultaneously, in a significant proportion of first-instance (75%), appellate (67%), and cassation (74%) decisions, the court explicitly articulates the wording of the applied legal norm and provides reasoning for why it applies a particular section (sequence, excerpt) of the norm.

The findings and trends mentioned above are applicable to decisions made separately in civil, criminal, administrative, and administrative offenses cases. The monitoring did not identify how the court acts when determining a case and whether it assesses the applicability of relevant legislation or other legal acts to the legal relations pertinent to the case. Furthermore, it remains unclear how the court explicitly indicates which edition of the legal norm it relies on and why it selects a particular edition. In summary, the legality of a court decision is not depended on the number of legal sources the court cites. It is not obligatory in every court decision to reference, mention, or quote the Constitution or other legal acts of supreme authority in matters already adequately regulated by law or other legal acts. It suffices to reference the primary legal norm governing the legal framework of the dispute.

(2) The quality of a court decision is determined by whether the court relies on **consistent jurisprudence in cases of relevant categories**. However, referencing the practice of the Supreme Court or international courts, as well as citing it, is not an end in itself. Judicial practice should contribute to a fair resolution of the case and the justification of the court decision; therefore, it is included in the court decision only to the extent necessary. When a court refers to case-law, it is essential to specify the name of the court, the specific date of the relevant procedural decision, and the case number or provide a link to the official source of publication of excerpts from court decisions (for example, Reviews of case practice published in the Bulletins of the Supreme Courts). During the monitoring, the court's **reliance on legal precedents** was also examined. The majority of court judgments in the first instance (68%), second instance (55%), and cassation instance (72%) do not make any reference to jurisprudence (case-law). When a first-instance judge does refer to jurisprudence, it is detailed and based on the jurisprudence of international courts in 16% of cases, on the jurisprudence of the Constitutional Court of the Republic of Moldova in 5% of cases, and on the jurisprudence of the Supreme Court of Justice (SCJ) in 2% of cases. In the appellate instance for administrative cases, none of the decisions made reference to jurisprudence. In administrative offenses cases, 2 out of 6 decisions were based on and cited in detail the jurisprudence of the Constitutional Court of the Republic of Moldova, and only one out of the 13 decisions in civil cases on appeal was based on and cited in detail the jurisprudence of the SCJ. In criminal cases, there were 3 decisions that extensively relied on the jurisprudence of international courts and one decision that was detailed in citing the jurisprudence of the SCJ. At the cassation instance, references were made to international courts in 6 cases (11%), while references to the jurisprudence of the Constitutional Court of the Republic of Moldova and the jurisprudence of the SCJ were made in one case each.

For the purpose of harmonization of case-law, Experts were also asked to discuss certain issues how the principle of legal certainty was ensured in practice (data provided by *Expert Interviews*). This was of particular interest since in Moldova the power of precedent as a legal source is not recognized. Experts were asked how is the guarantee that identical cases are to be heard in the same way and in very similar cases interpretation and application of the law stays similar ensured in Moldova. Further, the focus shifted to the reliance of the case-law developed by higher courts and Experts were asked how intensively/strongly a judge should rely on the case-law of the Constitutional Court / the case-law of international courts / the case-law of the Supreme Court. Finally, Experts were asked to comment the practice of selecting cases to be accepted at the cassation.

The vast majority of Experts confirmed that the predictability of the application of the law in a particular case is very difficult, often impossible, and there are no guarantees that identical cases will be dealt in the same way (Expert 1, lawyer; Expert 3, judge; Expert 6, lawyer; Expert 7, lawyer). Expert 8 (lawyer) also pointed out that it is extremely difficult, first of all, to prove that the cases are in fact identical: *“<...> they will explain you that the circumstances were not quite the same. Read again and you'll see”*. In addition to this, Expert 15 (lawyer) drew attention to the fact that the reasons why the practice of the Supreme Court is changed are usually not provided: *“<...> the Supreme Court should, like the ECtHR, explain every time why the practice has changed. And they just make a decision that contradicts another decision and does not explain, and you do not understand whether this is a contradiction or a different practice?”* Another reason adversely affecting the unification of the case-law is related to the changes in legal regulation. As explained by Expert 10 (judge), *“the problem of unification is that the legislator often changes laws and this affects the unification of judicial practice”*.

Turning to the question concerning the case-law of the Supreme Court, it was explained that it is the Constitutional Court that stated that the decisions of the Supreme Court are not binding (Expert 7, lawyer; Expert 19, judge). As explained by Expert 11 (lawyer), there are instructions from the Supreme Court not to quote their jurisprudence: *“The Supreme Court prohibits judges from referring to their decisions <...>. The judges of the Supreme Court themselves also do not make references to their decisions”*. It appears, that this leads to implicit argumentation related to the case-law of the Supreme Court since few Experts confirmed that they analyse the decisions of the Supreme Court; however, do not make direct references (Expert 14, judge; Expert 17, judge; Expert 20, assistant judge). Some still quote indirectly by noting that respective approach exists in the decisions of the Supreme Court to ensure stability (Expert 19, judge).

It was also noted that since 2019, the Supreme Court was not able to conduct its activities and this has clearly visible adverse consequences: *“<...> If you call it chaos, it's not enough <...> there are no conditions for judicial practice to be created”* (Expert 4, judge); *“<...> the decisions of the past are already old and have remained in the past, they do not take into account modern realities”* (Expert 17, judge). Another point is that, as it appears, the case-law of the Supreme Court did not resolve the question of inconsistency in so far as the different panels of judges make different decisions (Expert 14, judge; Expert 17, judge) and in so far as regards the formation of panels. According to Expert 14 (judge), *“<…> every year the panels (composition) change <...> and there is no consistency: this year I am in the administrative board, next year in the civil board and this cuts off the general and consistent understanding. It seems that everyone in one panel has come to a common understanding and interpretation, and then another panel appears and you read a completely different decision with a different approach.”*

Meanwhile, references to the jurisprudence of the Constitutional Court seems to be less problematic since there is a clear understanding of their mandatory nature (Expert 1, lawyer; Expert 7, lawyer; Expert 10, judge; Expert 15, lawyer; Expert 17, judge). Nevertheless, Expert 6 (lawyer) noted that *“<...> sometimes we have political decisions”*. In addition to this, Expert 8 (lawyer) pointed out the rare appearance of the references to the jurisprudence of the Constitution Court: *“I rarely see quotations from the Constitutional Court in court decisions. It seems to me that they have some sort of competition that we will not use your texts <...> “*.

Finally, some Experts confirmed that the practice of the Supreme Court on admissibility is not stable and uniform for both objective and subjective reasons (Expert 1, lawyer; Expert 19, judge; Expert 20, assistant judge; Expert 21, lawyer;). Expert 4 (judge) drew attention to the fact that in practice it is the judge assistants and not the judges who work on admissibility decisions which in turn leads to a lot of mistakes. It also appears that the standard to acceptance is quite high. Expert 6 (lawyer) pointed out that *“<...> as a rule, the Supreme Court does not accept cassation appeals, it rejects them. As a rule, the exception is if there was the influence of one of the superiors from state bodies, this is one and the second exception - these are situations when one of the parties attracted attention with financial questions”.*

(3) Another aspect concerning the development of uniform jurisprudence is **how detailed the references to different sources of legal reasoning made by the judge are**. The vast majority of decisions at the first instance (82%) are not based on the jurisprudence of other courts. The situation is different in the appeal and cassation instances, where references to case-law are made more intensively but could be improved in the future. Only 27% in the appeal and 32% in cassation of judgments have a direct link with previous case-law. The link with case-law could be improved in practice because in the first instance (11%), the second instance (12%), and the third instance (19%) of cases, the court, although it provides a legal assessment of the situation, only mentions the jurisprudence of international courts, the Constitutional Court, the Court of Appeals, and the Supreme Court of Justice. More importantly, the court decision should provide a concrete legal assessment of the situation and describe in detail the jurisprudence of international courts, the Constitutional Court, the Court of Appeals, and the Supreme Court of Justice. However, in the first instance, this happens in only 7% of cases, with a much better situation in the appeal instance (15%) and cassation instance (13%) of cases.

(4) Regarding the direct **application of the law of the European Convention on Human Rights (ECHR)** or other international treaties and pacts regarding fundamental human rights, in most cases at the first instance (62%), the ECHR or other international treaties and covenants on fundamental human rights are not directly applied in the decision. In other cases (27%), the ECHR or other international treaties and pacts regarding fundamental human rights are not directly applied in the decision, but they are invoked only as additional sources of legal reasoning (argumentation). The situation is markedly different in appeal and cassation, where in 53% and 60% of cases, the ECHR or other international treaties and pacts on fundamental human rights are directly applied in the judgment. It is also interesting to note that reliance on the case-law of the ECtHR is viewed more favourably because the legal interpretation provided by the ECtHR is not politically impacted (Expert 6, lawyer). The extensive references to the jurisprudence of the ECtHR were also noted by Expert 8 (lawyer), who pointed out, *"For some reason, we see the decisions of the ECtHR as a Bible. If there is an ECtHR decision that suits us, then all of us will refer to it as a law passed by the Parliament."* Nevertheless, some experts expressed doubts as to whether reliance on the case-law of the ECtHR is always appropriate. In this regard, Expert 15 (lawyer) pointed out that the case-law is cited just for volume, and Expert 13 (lawyer) noted that often judges, instead of referring to the original texts of the decisions, quote excerpts found on some websites.

(5) Generally, the court is guided by the uniform jurisprudence of the higher courts provided in the national law. **Deviation from the established judicial practice** set by the Supreme Court is allowed only if it is unavoidable, objectively necessary, constitutionally justified, and reasonable. The court may deviate from the established practice of the Supreme Court in the interests of achieving a fair outcome of the trial, but only in exceptional cases. In such cases, the court must substantiate in the decision the exceptional nature of the situation and the special considerations of fairness that guided the court. Each deviation should be properly justified, indicating the practice from which the deviation departs and providing the documents justifying the deviation. When the jurisprudence referred to by the court differs in a certain aspect from the case under consideration, the court must explain why it is guided by the legal position or interpretation found in such jurisprudence.

In the monitored cases of the first instance (286 cases) in Moldova, there were no judgments that deviated from the prevailing case-law. In only one case of the first instance (administrative offenses), it was stated that there was a deviation from the prevailing jurisprudence, but no explanation for the deviation was provided, nor were any arguments given to justify the deviation. However, in the higher instances, deviation is considered an appropriate method to influence new legal developments in society. In only one court decision, issued in a criminal case on appeal, it was stated that there is a deviation from the prevailing jurisprudence, which was clearly motivated by indicating the practice that was deviated from and providing arguments to justify the deviation. In another decision issued in an administrative case, it was stated that there was a deviation from the prevailing jurisprudence, but no explanation was given for the deviation, nor were any arguments provided to justify it. In the cassation instance, in 3 (6%) cases (1 civil and 2 criminal), it was stated that there is a deviation from the prevailing jurisprudence, which was clearly motivated by indicating the deviated practice and providing arguments that justify the deviation. Only in one case (administrative) was it stated that there was a deviation from the prevailing jurisprudence, but no explanation was given for the deviation, nor were any arguments provided to justify it.

(6) The court, when interpreting and applying the law, takes into account additional **legal principles** such as fairness, reasonableness, good faith, legitimate expectations, and so on. When a court decision directly refers to the principles of justice, reasonableness, and good faith, it should indicate the specific meaning and application of these principles in a particular situation.

Regarding the consideration of general principles of law (such as the principle of legality, proportionality, protection of legitimate expectations, equity, etc.) in the interpretation and application of the law, the following trends were observed:

In most cases of the first instance (78%), the decision is not directly based on general principles of law. In 11% of cases, the decision is based directly on general principles of law and specifies the meaning the court assigns to them in a given situation. In another 11% of cases, the decision is based directly on general principles of law, but it does not specify the meaning attributed to them in a given situation.

A similar situation exists in the appeal instance, where 75% of decisions do not directly rely on general principles of law. In 22% of appeal cases, the decision is based directly on general principles of law and provides clarity on how they apply in a specific situation.

In the cassation instance, 68% of decisions do not directly rely on general principles of law. In 23% of cassation cases, the decision is based directly on general principles of law and specifies their application in a given situation. In 9% of cassation cases, the decision is based directly on general principles of law but does not specify their application in a given situation.

In *Expert Interviews*, in order to assess how the quality of court decisions is affected by settled practices related to the judicial application and interpretation of legal norms, Experts were asked to share their opinion on so-called absoluteness of positive law. Usually, the absoluteness of positive law in the activities of courts shows the willingness of judges to limit themselves to a very formal approach to the application of legal norms. This, in turn, may lead to undesirable effect where the aim of judicial review is not to ensure justice as it is understood by the courts of the EU countries belonging to the continental legal system, but to exercise only a formal review of legality. As a result, the interests of the parties to the proceedings are fundamentally affected and the real objectives of the law as a universal mechanism for regulating legal relations are not achieved. Against this background, Experts were asked whether they agree with the statement that the development of judicial practice is highly impacted by absoluteness of positive law, i.e., an understanding of the *“*letter*”* rather than the purpose of the norm, and the avoidance of the direct application of general principles of law. At the same time, they were asked to discuss whether this harms the progressive development of law, where adaptation to rapidly changing socio-economic relations is needed. Further, Experts were invited to comment on the importance of the general principles of law, such as fairness, reasonableness and justice, in the judicial drafting and to consider how the use of the legal principles should be reflected in the court decisions.

The interviews confirmed the trend that referring to the general principles of law is extremely rear and the positive law is both support and guideway for the judicial practice. This can be illustrated by a handful of comments: *“<...> our interpretation of law is based on the text of the law”* (Expert 11, lawyer); *“When the judge writes a decision he must write it not on the basis of the spirit of the law but on the basis of the letter of the law.”* (Expert 18, lawyer); *“Others don't use it because they think there's a specific rule that resolves this lawsuit, and so why additionally resort to some principles that are general and streamlined. Everybody is trying to find the article that resolves this dispute, not to refer to those principles.”* (Expert 14, judge); *“<...> we have norms for everything in principle.”* (Expert 2, judge).

The observed practice related to the exclusion of principles of law was primarily explained by two reasons:

(1) A fear that references to principles of law will be misconceived as demonstrating the partiality or incompetence of judge: *“<...> if you rely on principles then you begin to interpret and if you interpret then you have an interest in the matter. <...> it is desirable that there is a norm where it is written in black and white that this is impossible.”* (Expert 19, judge); *“Judges are afraid to apply the law, this is the worst thing. Even a good law.”* (Expert 4, judge); *“Judges are very, very afraid to apply the principles, even when it comes to norms that contradict each other. They don't even make analogies. Only the Constitutional Court applies the “spirit of the law” well, and I have not seen it in others.”* (Expert 1, lawyer); *“ <...> there has to be trust in the judges. That is, the possibility of applying the principles. That's not the case. <...> for example, even take under criminal law the level of minimum and maximum punishment. Well most of them can have 2–3 years which for individualization can be between 7 and 10 years, that is, the margin should be some kind of large so that you can apply it. This again shows that the state, the legislature does not have confidence, that is, we were given some kind of gap and that's it.”* (Expert 2, judge).

(2) Lack of professional knowledge related to the application of principles of law: *“<...> in order to refer to the principle, there must be a certain culture, a certain knowledge, a certain life experience of understanding the situation.”* (Expert 6, lawyer); *“So from my practice, I think the judge last read some principles at university.”* (Expert 13, lawyer); *“<...> no one taught them. <...> Our level of development has not reached the point of considering such principles”* (Expert 16, lawyer); *“In order to apply the principles of law it is necessary to know the law very well.”* (Expert 10, judge); *“I don't think that our judges read the decisions of the ECtHR and there the principles are spelled out and they can learn this.”* (Expert 15, lawyer); *“I don't think they are afraid; they just don't know them. They go through this topic of principles of law in their first year.”* (Expert 8, lawyer); *“<...> they don't know how to motivate. It is easier for them <...>, say, to rewrite articles than to analyze and assess this evidence. <...> it is easier for them because they follow the path of least resistance.”* (Expert 21, lawyer).

In this context, many Experts expressed criticism towards legal education and continuing professional training in relation to principles of law as legal sources. Expert 9 (lawyer) noted that*: “<...> students in our faculty are taught to memorize texts. <...> they begin in the first year (faculty of law), when people have no idea about the subject and he starts with principles, he does not understand them, memorizes and that's it. And then no one in the process of teaching connects norms with principles. No one is showing that this rule only makes sense within the limits of a principle <…>”*; also see Expert 11, lawyer).

Experts revealed that insufficient application of principles of law harms the progressive development of law (Expert 1, lawyer; Expert 3, judge; Expert 7, lawyer). In this regard, one should note the comment given by Expert 6 (lawyer): *“<...> the law cannot provide for all the situations of life and it is important to understand the purpose of the law and the general principles, spirit and application in order to adapt this law to reality, that's the most important thing. In principle, that's why people go to court because understanding whether the law will be respected or not, they can understand in relations with state bodies. When it comes to the spirit of the law then a court is needed <...>.”* As a consequence, some judges are looking for non-standard ways to implicitly incorporate the principles of law into legal argumentation. For example, Expert 17 (judge) noted that in order to rectify the situation, at times, judges refer to the case-law of the ECtHR and use it as a substitute to the lack of principles of law (Expert 17, judge).

(7) The court's reliance on **doctrinal sources from international or national law** as auxiliary foundations for legal reasoning was also examined. In complex legal issues, the court may refer to the opinions of authoritative jurists regarding the interpretation or application of the law as an additional source of legal argument. It is essential to clarify that these opinions are not considered sources of law; rather, their role is to assist in the correct interpretation and application of existing laws, customs, and other recognized sources of law within the legal order. When the court relies on such opinions, it should clearly indicate their source, specifying the works in which the corresponding opinions of jurists are expressed.

In Moldova, within the majority of first instance cases (96%), legal doctrine does not constitute a direct basis for decisions. In 7 cases (3%), explicit references to legal doctrine are made, although without providing a detailed rationale for such reliance. In 5 civil cases (2%), precise citations to legal doctrine are provided, including authorship, title, place of publication, and the court's justification for drawing on these sources.

A similar situation is observed in appeal and cassation instances, where reliance on legal doctrine is relatively limited, accounting for 92% and 98% respectively.

### 9.5. Assessment of the Persuasiveness of the Judicial Decisions

Along with legality, procedural codes also require the court decision to be justified (motivated); that is, it should provide convincing legal and factual grounds for making such a decision. The legal validity of the decision lies in the extent to which the court decision can be perceived as correct, reasonable, fair, and logical, both by the participants in the process, higher judges, and in society as a whole. In other words, the persuasiveness of the court decision indicates the presence in the decision of arguments that can be considered as convincing grounds for issuing such a judgment within the framework of the legal order. The resolution of a dispute on the merits requires the judge to provide a clear, concise, and unambiguous answer to a legal question presented before the court. As indicated by the analysis of the *Focus Group Survey for Judges and Judicial Staff*, in most cases, judges recognize persuasiveness as an important factor for every court decision and hold the opinion that they have provided a sufficient statement of reasons (80% by judges and 76% by assistant judges) and have avoided errors in this formal aspect. The imposed punishment aligns with the sanction of the corresponding criminal law norm, fines are imposed after establishing the elements of the offense, objects are allocated to one of the parties based on applicable legal norms, and so forth. However, the court's decision must explain the reasons upon which the judge has rendered this decision.

(1) If a judge clearly and substantively outlines why they consider a particular punishment fair, why they opt for a specific legal qualification of the dispute, and why they reject some pieces of evidence while accepting others, it undoubtedly contributes to enhancing the authority of the judiciary. Indirectly, this will aid in fostering legal consciousness within society. It is a challenging task, but in over half of all cases, **the court did not specify the reasons for rejecting certain pieces of evidence**: at first instance (62%), appeal instance (50%), cassation instance (55%). Only in one-third of cases did the court specify the reasons for rejecting certain pieces of evidence: at first instance (30%), appeal (33%), cassation (36%). The highest proportion of decisions in which the court does not specify the reasons for rejecting certain evidence was registered in the case of administrative files at the appeal instance (75%).

(2) Even if the losing party disagrees with the court's presented arguments, it will have to acknowledge that the rendered decision was not arbitrary but the result of thoughtful and reasoned deliberations by the judge. The losing party would recognize that it had the opportunity to effectively exercise its right to be heard by the court. However, as the monitoring data reveals, in fewer cases, the reasoning part of the decision provides any **assessment of the arguments of the party which did not win the case**: at first instance (22%), appeal (12%), cassation (32%). The best situation is in appellate courts, which leads to the conclusion that the higher courts of Moldova understand their purpose correctly. The largest number of decisions in which the reasoning part of the decision provides a detailed assessment of the arguments of the side that did not win the case at the first instance is in criminal cases (51%). The largest share of decisions in which the reasoning part of the decision provides a detailed assessment of the arguments of the side that did not win the case at the appeal is in the civil files (75%). And the largest share of decisions in which the motivational part of the decision provides a detailed assessment of the arguments of the party that did not win the case at the cassation is in the case of *administrative offenses* files (47%).

(3) These judicial deliberations could be subject to scrutiny upon appealing the decision to a higher instance, thereby affording the losing party additional assurances of the fairness and justifiability of the decision rendered in their case. When resolving questions of the qualification of disputed legal relations between the parties of a judicial dispute and the application of the law, the court must specify the grounds on which it rejects certain arguments of the parties. However, as in the situation with rejecting certain pieces of evidence, in 34% of first-instance cases, 20% of second-instance cases, and 36% of third-instance cases, **the court does not indicate any reasons for rejecting certain arguments of the litigating parties concerning the legal qualification of the reports in dispute and the application of the relevant law.** In Moldova, judges rely on the formal procedural principle *"iura novit curia"* despite the risk of violating another procedural principle that protects litigants from any procedural surprises in the adjudication of disputes.

(4) In essence, the grounds of the judicial decision must not be limited to general reasoning or assertions. Formulations of an overly general nature, which are used in response to specific arguments of significance to the case and could be included in any decision without presenting any additional details or rationales specific to the particular case, do not constitute proper justification. Although, as the monitoring showed, individual aspects of the validity of the court decision should be improved, such as the indication of grounds for rejecting evidence or legal interpretation and qualification of the dispute, in general, the assessment is that in most cases, the judges in Moldova use specific and individualized formulations. These are applied in **response to specific arguments relevant to the case** and are specific to the particular case: first instance 83%, appeal instance 67%, cassation 79%. The degree of brevity of the reasoning part of the decision is at an appropriate level because the reasons for the decision are concise in 83% (first instance), 68% (appeal), and 83% (cassation) of cases. In Moldova, judges, when writing the final court decision, **respect the principles of judicial ethics**. Therefore, in the judicial decision, the judge refrains from moralizing, attempting to impose personal ethical, moral, religious, or other beliefs or worldviews. The judicial decision is restrained and impartial, without sarcasm or humour directed at the participants in the process, dogmatic rhetoric, verbosity, pomposity, or rhetorical questions. According to the monitoring data, in 5–13% of all analysed cases of all instances, the judges moralized the parties and used insulting, abusive, banal, domestic, paternalistic, or excessively complex legal language in the decision.

As the results of the monitoring of the persuasiveness of court decisions indicate, in practice, there are often legally sound yet inadequately justified verdicts. This suggests that courts in Moldova do not always fully fulfil their fundamental societal role of restoring disrupted social order and upholding the supremacy of the law. While a court's resolution of a dispute might be substantively correct, it could still leave the parties involved in the process, as well as others familiar with the case and its verdict, with the impression that the court applied the law purely in form, without due consideration for the restoration of justice. In such cases, the social equilibrium between disputing parties might not be fully restored, and participants in the process (such as victims in criminal cases) might not develop the perception that the court effectively restored violated justice. This observation aligns with the data from the judges' survey, which indicates that only 54% of judges and 74% of assistant judges believe that the persuasiveness of the decision plays an important role in cases (*Focus Group Surveys for Judges and Judicial Staff*).

In *Expert Interviews*, Experts were also asked to discuss the practice in Moldovan courts where procedural rules do not always establish a court's duty to provide reasons for the decision in all instances. They were asked to share their views on the current situation where decisions are drafted upon request of the parties and how this practice meets the expectations of the parties to the dispute and the legal community.

The vast majority of experts noted that the practice and its rules do not necessarily need to be changed, citing several factors:

**High Workload**: Many experts (Expert 2, judge; Expert 3, judge; Expert 5, judge; Expert 13, lawyer; Expert 14, judge) pointed out the high workload of judges as a significant factor. They argued that requiring motivation for all decisions would further burden an already overloaded judicial system.

**Appeal Statistics**: Some experts (Expert 4, judge; Expert 18, lawyer) highlighted the high rate of appeals in civil and administrative cases. They noted that most decisions in these cases are appealed, and this gives parties the opportunity to request motivation if needed.

**Freedom of Choice**: Experts (Expert 3, judge; Expert 16, lawyer) also mentioned that the current practice provides parties with the freedom to dispute decisions and request motivation. This flexibility is seen as beneficial in certain cases.

While the majority of experts did not advocate for a change in the practice, some expressed willingness to consider a partial review, especially for specific categories of cases. They acknowledged that discussions could be initiated to evaluate the impact of the practice on decision quality, judge workload, and other relevant factors. Expert 15 (lawyer) suggested that certain categories of cases might benefit from requiring motivation.

Another reason supporting a change in the practice was related to enhancing judges' capacities. According to Expert 12 (lawyer), *“From my point of view, there can be no solution without motivation. <...> I cannot understand what a court decision is without motivation, this is the basis of justice! The profession of a judge means to listen and come to an opinion and explain how you came to this.”* Expert 14 (judge) pointed out: *“<...> I liked writing decisions; I had my own writing style <...>. I was good at it. But now assistants, even if you work with them, they are not doing it in the same way. Yes, I write, do-motivate but this is no longer my writing style.”* Same views were shared by Expert 11 (lawyer): *“I don't understand why the judges don't want to motivate the decision, because that's the most interesting part of the judge's job – to explain to people why I did it, in fairness. <...> And the judges will develop professionally <...>. “*

Expert 11 (lawyer) pointed out that the current practice in Moldova, which has its roots in Germany, has not been fully implemented as intended: *“But what we have now is not the German system, no. We have a Moldovan system. The German system is as follows: before entering the deliberative room, the judge asks the participants in the case, what kind of decision do you want - the operative part or the fully motivated part? If they say “we want an operative part”, for example, people get divorced, then they no longer need, they understand what will happen there, then the judge comes out and gives them an operative part. But in this case, they do not have the right to appeal. That is, you yourself wanted to, I will not return to your case later to motivate again. But if you say that you need the motivated part of the decision (but the parties decide, not the judge decides), then I will issue a decision with motivation. We have now, how? First, they take out the operative part, and then, they ask if they want the motivated part. This is nonsense: a person comes in 30 days and come on, motivate the decision.”*

### 9.6. Assessment of Transparency (Consistency of the Investigation of Facts and Reasoning, Sufficiency of Reasons) of the Judicial Decisions

As a first important factor for every judicial decision, clarity of the reasons is crucial, with 83% of judges and 85% of assistant judges recognizing its significance (*Focus Group Survey for Judges and Judicial Staff*). To be more precise, transparency of the decision is essential, ensuring that there are no hidden implied grounds for the decision, that all relevant facts are established by the court, all legal questions are clearly indicated, and all legal grounds on which the court based its decision are outlined. This transparency was identified as important by 71% of judges and 77% of assistant judges. Consistency of the decision, which involves presenting the main issues of the dispute in a logical and reasonable sequence without contradictions, was also deemed important, with 68% of judges and 63% of assistant judges recognizing its significance.

Clear and comprehensible court decisions are referred to as a crucial ("very important") aspect of a quality judicial system by around two-thirds of respondents in a *Focus Group Surveys for Lawyers and Focus Group Surveys for Lawyers Providing State-Guaranteed Legal Aid*.

(1) **The sufficiency of the reasons** for a court decision primarily entails providing clear answers to the essential issues of the case. The decision's rationale should clarify which aspects of the case were in dispute and which were not. Therefore, the reasons for the decision are typically prepared with consideration of the relevant issues. A court decision should contain enough arguments to justify it. It should be evident from the decision's rationale that the court has taken a position on all accepted evidence and all issues arising in the case. However, this does not necessarily require detailed elaboration on every aspect. The court's obligation to provide reasons for its decisions should not be interpreted as demanding a comprehensive response to every argument. In cases where arguments are clearly frivolous, abusive, or inadmissible due to explicit legal provisions or established case law, exhaustive reasoning is not required.

The challenge lies in crafting a clear and coherent line of reasoning in favour of the adopted decision within the rationale section of the decision. Consistency in a court decision means there is a logical connection between individual parts and paragraphs of the decision. Factual circumstances are established and legal issues are resolved separately, in a reasonable sequence, to prevent the confusion of different aspects and problems. This approach ensures that the court's argumentation in the decision appears as a cohesive whole.

The decision becomes more comprehensible when it first identifies the main arguments put forth by the parties (the key arguments) and then systematically evaluates each of them. Such reasoning can be structured following the model of a legal syllogism (or subsumption). In this model, the judge presents the key established facts of the case, explains how these facts align with the content of a specific legal norm applicable to the disputed legal relations, and deduces from this norm a specific method for resolving the case. Constructing such syllogisms constitutes a significant part of a judge's work in countries with a continental (civil law) legal tradition when rendering decisions.

(2) According to *the Monitoring of Judicial Decisions* results, in approximately 70% of court decisions, **the essential questions (the key facts) of the case were clearly answered**. This breakdown includes 69% of cases in the first instance, 69% in the second instance, and 66% in cassation. Concerning the inclusion of all factual circumstances established by the court, which were relevant for its adoption, the monitoring revealed that in the majority of cases, the answer was positive or partially positive. Specifically, this amounted to 68% in the first instance, 63% in the appeal, and 57% in cassation. There were also cases where this was answered partially positively, accounting for 28% in the first instance, 32% in the appeal, and 36% in cassation.

(3) While reasons in a judicial decision must be concise, clear, logically coherent, unambiguous, specific, objective, and unbiased, indicating all the reasons in the content of the decision can be challenging. This challenge was especially pronounced in the third instance, where the monitoring noted that in 17% of cases, **not all the reasons for the court's decision were specified.** In contrast, in appeal and first instance cases, this occurred in fewer instances, with only 10% and 8% of cases, respectively. Of course, when motivating a decision, the court may, by default, accept one or more arguments from the parties that have already been recorded in the decision in favour of which the decision was made, without repeating the detailed content of these arguments. However, it should be evident from the court decision that the court has independently evaluated these arguments and has not simply accepted them as given.

(4) A court decision has the greatest chance of convincing those who are unfavourable. Therefore, in the reasoning part of the court decision, **sufficient attention must be paid to assessing the arguments of the party that lost the case.** It should be clear from the court decision why supporting the arguments or position of the losing party is contrary to the law or the evidence contained in the case. When establishing factual circumstances, the court should indicate on what basis it rejects certain evidence. It is not enough to simply indicate that the court relies on other evidence. This is particularly important because the Moldovan court does not always sufficiently investigate the factual circumstances. According to the general standard for the quality of court decisions, every judicial decision must encompass all factual circumstances established by the court that were pertinent to rendering the respective decision. Furthermore, it must expound on all the reasons based on which the decision was made, even if these are not purely legal arguments, such as economic or social considerations. To this end, we asked experts to discuss whether there were enough indications in the court's decision that due consideration had been given to the arguments of the losing party or if the decisions solely relied on the arguments presented by the winning party.

In *the Expert Interviews*, some Experts indicated that the motivated part basically will never fully unravel or present the arguments of the losing side (e.g., Expert 6, lawyer) but would rather refer to the arguments provided by the winning party (Expert 1, lawyer) or stay strictly formal (*“When I read the decision, I feel a chill from it”* (Expert 21, lawyer)). Nevertheless, not all Experts shared the position that the court decision should be drafted having the explanations directed at the parties, in particular the losing party in mind. In this regard, Expert 3 (judge) noted that *“From the current judicial practice, as a rule, greater importance and high appreciation are attached to the evidence / arguments that led to the decision and this is not always the arguments of the losing party. This approach is observed in both criminal and civil proceedings”.* Expert 19 (judge) noted that he also writes for the court whose decision is annulled but in most cases the verdict is written for the defendant. Expert 10 (judge) added that there is no necessity for a judge *“<…> to respond to everything the plaintiff or defendant says. When reading a decision, it should be clear to a person why this was decided.”*

The discussion on the issue also showed a broader perspective extending the scope of the interview questions posted to a more general assessment of the quality of court decisions. Few factors that adversely affect the quality of court decisions were named:

**Lengthy texts of decisions**: *“I'm not ready to say that decisions are written for the losing side. But I can say they're too long, they're 20 pages long, but you can really only read the last page or half a page.”* (Expert 15, lawyer);

**Lack of understanding of principles of law**: *“Judges do not argue what they do not understand or if they understand that they have weak counter-arguments. If they were to comment on some of my strong arguments, they'll show that they're wrong. It depends a lot, but the motivation is very weak because they don't know the principles of law! They don't know them and you can feel it!”* (Expert 15, lawyer);

**Reluctance to structure the decision**: *“They are very conservative. Although there are judges who use numbering 1, 2, 3. <...> [others consider it] not pretty”* (Expert 13, lawyer); *“And we have: 20 pages, no numbers, no gaps, like a stream of consciousness.”* (Expert 15, lawyer). Conversely, Expert 14 (judge) noted that numbering is *“breaking thoughts”*;

**Low volume of motivation**: *“<...> at the end – a couple of lines of motivation”* (Expert 16, lawyer); *“I agree that the problem is motivation, it is too little”* (Expert 17, judge); *“The motivated part usually takes up half a page <...>.* *A court decision is usually the last paragraph where again nothing is said.”* (Expert 6, lawyer); *“<...> there are 20 pages of what happened before and the motivation is half a page. You don't understand why they decided that.”* (Expert 21, lawyer);

**Lack of attention to evidence assessment**: *“Analysis of evidence, nothing is there, they do not analyse, they copy there, if they are lucky that the lawyer will provide an analysis, they can copy it. But usually, even if the lawyers provide in writing, then copy or scan and put in the text! Good analysis! But they don't take the analysis of the lawyers in the decision or the analysis of the parties.”* (Expert 13, lawyer); *“The fact that they do not evaluate the evidence is already clear, but they do not analyse, do not reject our arguments in their decisions. It's like I wasn't at the hearing at all.”* (Expert 21, lawyer); *“<...> when I read that “The court critically evaluates the testimony of witnesses and rejects,” what did he write, what should I understand?”* (Expert 9, lawyer);

**Lack of attention to the most important arguments presented by the parties**: *“I understand that they found some kind of ECtHR decision and the judge is not obliged to argue every comma, to explain to the party why she is wrong. But there are some important arguments that they leave without analysis, without evaluation. The party insists on this, and the judge writes “other arguments are not accepted.”* (Expert 8, lawyer);

**Copy-paste writing style**. On the one hand, as pointed out by Expert 6 (lawyer), judges *“<...> usually make a copy paste, the arguments of one side and the other side and then really copy paste, without having to adapt to the style of the decision <...>“*. According to Expert 18 (lawyer), *“Decisions are very poorly motivated, all judges have patterns of decisions, when they change the name and everything (sometimes they do not change, they forget). It happens more in criminal cases.”* On the other hand, Expert 19 (judge) noted that they do not hesitate to refer to the arguments presented by the party provided they are substantiated: *“<...> there is no hesitation when I accept their arguments to copy them from the lawyer's documents but this assumes that the level of professionalism of the lawyer is also high.”*;

**Superficial attitude**: *“At best, it is written that the lawyer or defence provided its version, but the court rejects these arguments because they are made in order to evade responsibility. That's all motivation.”* (Expert 18, lawyer); *“From my practice, they use their concepts to choose an argument where they understand what the problem is, and if there's a rationale, they motivate based on that. And if there are any conceptual problems, they write that it's not suitable.”* (Expert 8, lawyer);

**Lack of consistency**: *“The decision is correct but when you read the motivational part one thought does not flow from another and there is no connection between them.”* (Expert 14, judge);

**Extensive references to legal regulation**: *“You can find in the text of decisions entire paragraphs of the text of laws, a commentary on the Codes, the jurisprudence of the ECtHR. It is important that the decisions are written in simple language so that everyone understands. Do not insert the texts of the laws, but make a link and analysis of this article so that I as a lawyer understand why I am wrong.”* (Expert 8, lawyer);

**Extensive and not necessarily justified references to the case-law of the ECtHR**: *“<...> they refer to the decisions of the ECHR, sometimes they do it so that there is more volume. For them, the volume is important, and they believe that if this is a voluminous decision then this is a reasoned decision.”* (Expert 6, lawyer); *“Here they refer to “as the ECHR says in this case”, and we once tried to look for those precedents of the ECHR, they do not exist, and the one that was found, it generally refers to other aspects.”* (Expert 16, lawyer).

(5) In response to the question about the involvement of lawyers representing parties to the dispute in the preparation of the decision's reasoning, interesting results emerged. Few Experts confirmed that they have never asked or were aware of the practice where the court decision was drafted by a lawyer representing the winning party (Expert 5, judge; Expert 10, judge; Expert 20, judge assistant). In this regard, Expert 10 (judge) commented: *“<...> I think that a judge who respects himself writes his decision. I've had cases where a prosecutor has come in and said: “I can give you an electronic version of the indictment” and I told him that I don't accept that. I'll write the verdict myself. I've been working for 20 years, I've always written my own decisions, and I won't accept that.”*

Nevertheless, many Experts confirmed that they were aware of the practice or heard about it (Expert 1, lawyer; Expert 2, judge; Expert 4, judge; Expert 6, lawyer; Expert 7, lawyer; Expert 13, lawyer; Expert 15, lawyer)and some pointed out that this happened more often in civil cases than criminal cases (Expert 8, lawyer; Expert 13, lawyer; Expert 15, lawyer). In this regard, Expert 8 (lawyer) explained: *“To be honest, we were happy to do it, because you were sure that the next instance would have some kind of act that would be written clearly and with arguments. I understand that this should not happen. The other day I met with the head of the collection company. And so, he says, I'm going to court, I have a lot of debt cases, there's nothing to judge, nothing to prove. I go to the judge and I say: “I have two decisions on the flash drive, whether to accept or to refuse, do any but do it quickly.”. He doesn't have to sue for a long time, there are small amounts of debts that he collects, this is his business. At first, everyone says no, no, and then they come up and ask: do you want to give us a flash drive? And I think that's what they're using.”* Expert 13 (lawyer) suggested that the same practice sometimes was applied in criminal cases: *“But as for criminal cases, the situation is as follows: prosecutors have a flash drive, they go to the judge, they give it and this was especially true for preventive measures. Now they are also cautious with flash drives, because there were cases in the ECHR.”.* The situation was described similarly by Expert 18 (lawyer) noting that *“* <...> *all prosecutors know that they have to come to court with flash drives, then everything is clear to everyone. Prosecutors bring a flash drive with an indictment, so that you can immediately insert it into the verdict. I repeat that all sentences are written in compliance with all those mistakes and stupidly inserted into the verdict.”* Answers to the question regarding the involvement of lawyers representing parties to the dispute in preparation of motives of the decision showed interesting results. Few Experts confirmed that they have never asked or were aware of the practice where the court decision was drafted by a lawyer representing the winning party (Expert 5, judge; Expert 10, judge; Expert 20, judge assistant).

(6) A very justified practice in courts is to present the **factual circumstances established by the court in a separate section of the decision in chronological order**. Therefore, it can be identified as a specific goal for Moldovan judicial practice, as the presentation of facts established by the court in a separate section of the judgment in chronological order is used in only 63% of first-instance cases and 55% of appeal cases, and in only 34% of cassation cases. These circumstances in the judicial decision must be clearly distinguished from the evidence or versions presented by the individuals participating in the case. When establishing a factual circumstance, the court shall explicitly identify it as established by the court itself. This is done instead of presenting it together with its evidential justification or with the version of a party participating in the case because the court, guided by the rules of burden of proof, admissibility, relevance, and sufficiency of evidence, must provide its own evaluation of why it considers the contested factual circumstance to be established or not established.

(7) The Monitoring of Judicial Decision indicated that the **clear distinction in the decision of the facts established by the court in relation to the evidence that supports them or the versions of the participants involved in the case** happens in only 30% and partially in 47% of first-instance cases, and in 43% and partially in 50% of appeal cases.

(8) In terms of the independent assessment made by the court concerning the existence of any controversy regarding a certain factual circumstance and/or the contradictory nature of the evidence in the case, it was found to be irrelevant in most cases, especially at the first and appeal instances, with figures ranging from 67% to 73%. However, it is important to note that in administrative cases, this assessment holds significance, as the judge is expected to be proactive in uncovering and establishing all relevant circumstances in line with the principle of investigation. The judicial decision, particularly in administrative cases, can be based on aspects that the parties did not initially identify as factual or legal grounds for their positions or considered irrelevant to the case. This is permissible as long as the court informs the participants about these aspects and provides them with an opportunity to present arguments and evidence on them. The monitoring data concerning informing the parties and allowing them to present observations on independently established circumstances by the court were mostly irrelevant, with percentages ranging from 84% to 96%.

The most notable situation concerning the independent assessment of factual grounds for the court decision was found in the monitoring data of cassation instances, where in almost a quarter of all cases (23%), there was no clear distinction in the decision between the facts established by the court and those provided by the parties. This situation could be justified by the functions of the last instance, which focuses on forming a unified interpretation of the law and may not delve into disputes regarding specific factual circumstances or contradictory evidence related to the case.

(9) **In complex cases** requiring the multilevel or cumulative application of the law, if the court considers multiple alternative legal qualifications, these may be reflected in the rationale of the judicial decision, with the pros and cons discussed. The monitoring data at the cassation instance showed that in more than half of all cases (38% affirmative and 19% partial), the reasoning of the decision involved a debate on each of the "for" and "against" aspects of alternative legal qualifications.

(10) It is significant to note that the monitoring data did not reveal substantial activities by the judiciary influencing normative control and enhancing the objectivity and legitimacy of the legal order in the country. When it comes to the court's exposition of conclusions regarding the arguments presented by the parties, particularly when one of them expressed doubts about **the compatibility of an applicable normative act** with another normative act of superior legal force, the majority of the analysed cases found this aspect to be irrelevant, with percentages ranging from 93% at the first instance and appeal to 94% at cassation.

### 9.7. Assessment of the Linguistic Correctness of the Judicial Decision

In terms of the formal attributes of every court decision, the respondents assigned a relatively insignificant role to formal regularity, linguistic correctness (language culture), or the structure of the court decision *(Focus Group Survey for Judges and Judicial Staff)*.

(1) Nevertheless, a judgment must be written in easily understandable, commonly used language for official legal proceedings. In Moldova, **there is no unified standard for writing the text of a court decision**. Findings from court decision monitoring regarding the font and its size in which the decision is written vary. The vast majority of court decisions are written in Times New Roman, with less than 12.5 font size (72% of decisions), and in the 13–14 font size range (15%) in first instance decisions. Court decisions in the first instance were also presented in various other fonts and sizes, including Cambria 12 (1), Cambria 14 (1), Courier New 14 (1), Georgia 12 (3), GlyphLessFont 8 (2), SitkaHeading or Small ≥13.5 (4), and other fonts (size ≥12 and 13.5) in 9 decisions. In cassation decisions, various fonts and sizes were also used, including Bookman Old Style 14 (1 decision), Palatino Linotype 13 (1 decision), and other fonts (size ≥12 and 13.5) in 1 decision.

(2) If legislation permits the use of two or more languages, the decision should indicate in which language the proceedings were conducted. Most of the monitored decisions (55%–62%) were written in a common, **easy-to-understand language, without mistakes in expression or spelling**, and in a unique, coherent style. Scientific, technical, artistic, or other specific terminology is used as rarely as possible or is explained. Therefore, in Moldova, the vast majority of court decisions (90%–94%) across all instances meet these criteria.

(3) Only in 4%–8% of cases across all instances was **scientific, technical, artistic, or other specific terminology** used, and in those cases, the meaning of the terms was explained. It is recommended that in a court decision, foreign language terms and expressions whose meaning and use in the language of legal proceedings have not yet been established should be avoided. If used, their translation or meaning should be provided. Regarding the use of Latin terms and/or expressions, the monitoring found that in the vast majority of court decisions, Latin terms and/or expressions were not used in the first instance (89%) and appeal instance (97%). Latin terms were more frequently used by the court of last instance in 25% of cases. However, a concern arises as these terms were used without explanation in 21% of cases at the third instance.

### 9.8. Assessment of Clarity of the Judicial Decision

Clarity, as a quality criterion of a court decision, is directly related to the motivational part of the court decision.

(1) However, in most cases, **the focus is on the descriptive part** rather than the motivational part of the decision.

(2) Another problem that could be identified is **the lack of clear distinction in the content of the reasoning part of the decision between the court's motives and the explanations, assessments, arguments, or evidence of the parties.** Only in half or fewer of the cases (50% at first instance, 47% at second instance, 34% at cassation) are the court's arguments/reasons clearly distinguished from the explanations, assessments, arguments, or evidence of the parties. The data from monitoring revealed a significant disparity at the last instance – in 13% of analysed court decisions, the court's arguments/reasons are not clearly distinguishable from the parties' explanations, assessments, arguments, or evidence, whereas in first and second instances, only 8% of such court decisions are encountered. It should be evident from the motives of the decision why certain information was mentioned or cited. A formal listing of evidence and/or their content, provisions of legal acts, or article numbers is not sufficient. The court's legal assessment, analysis, and evaluation of evidence should emanate from the motives of the decision. If the motives of the court decision are lengthy, the court must make general conclusions regarding each resolved main issue and, if necessary, present a summary of the arguments exhaustively set forth in the court decision above.

(3) The operative part of the court's decision must be clearly formulated so that it is apparent how the decision must be executed. *The Monitoring of Judicial Decisions* showed that in Moldova, in the vast majority of cases (93% at first instance), in the operative part of the decision, all presented claims are resolved, and **the decision is written in an understandable manner regarding how the decision will have to be executed**. Thus, the court clearly states the person obliged, the specific actions that must be carried out, and the deadline for executing the judicially established obligation in 24% of cases at the first instance.

(4) Finally, in the operative part of the court decision, **the term and the procedure for its appeal must be clearly indicated**, or it must be considered legally effective from the moment of its delivery. The vast majority of court decisions in the first instance (97%) clearly provide for the term and procedure for appeal/appeal against them from the date of adoption. There is only one case where the operative part of the decision does not provide for the term and the appeal/appeal procedure against it from the date of adoption. In appeals, 79% of cases clearly outline the term and procedure for cassation from the date of adoption. At the cassation level, this circumstance is irrelevant for the monitored court decisions.

### 9.9. Assessment of Structure and Form of the Judicial Decision

For the formal attributes of every court decision, the respondents assigned a relatively insignificant role to formal regularity, linguistic correctness (language culture), or the structure of the court decision *(Focus Group Surveys for Judges and Judicial Staff)*. However, a court decision becomes more understandable when it has a clear structure. As required by law or determined by the court (in cases where the court further divides the structural parts of the decision), these structural parts must be clearly separated, and the pages should be numbered. The essence of the case established by the court, the facts of the case, the court's arguments regarding the issues raised, and the court's decision should be apparent from both the content and the form of the court's decision.

(1) An interesting detail is that in the practice of Moldovan courts, in most cases (79% at the first instance, 82% at the second instance, and 66% at the cassation level), **the pages of court decisions were not numbered.**

(2) Virtually all monitored court decisions, with the exception of one decision in an administrative case at the first instance, **do not contain images, photographs, or other visual information**.

(3) Regarding the inclusion of **mathematical calculations** in the content of the decision, the vast majority of monitored court decisions (87%–94%) do not contain mathematical calculations.

(4) Typically, in each court decision in Moldova, as required by procedural codes, **four main parts** of the court decision are clearly distinguished. The majority of decisions at the first instance (84%), at the appeal (73%), and at the cassation instance (57%) make a clear distinction between the structural parts required by law. However, this criterion for assessing court decision quality should be improved, particularly at the cassation level, as (43%) of decisions do not clearly distinguish the structural parts required by law.

(5) Concerning the **structuring of decisions**, when analysing several important issues, only in 11%–14% of cases at different instances are they separated into an independent or separate structural part, with a name that reflects the essence of the issue.

(6) Technically, it would be highly beneficial in practice if the separate parts of the judgment were numbered in greater detail, as **most court decisions do not number the descriptive and reasoning parts**, with only 25%–33% being numbered. This could be especially useful for the paragraphs of judicial decisions at the appellate and cassation instances (both descriptive and motivational parts) which could be numbered. Each point in the decision, in this case, should convey an independent or new thought or other related information. If a fragment that constitutes one meaningful part of the text of the solution becomes excessively lengthy, it can be subdivided into subsections.

### 9.10. Quality of Judicial Drafting, Respect of Principle of Legal Certainty, Ensuring Uniform Case-Law

**Where does the problem of ensuring the uniformity of judicial practice come from?**

As demonstrated in previous chapters, the purpose of a judicial decision is not only to resolve a particular dispute but also to cultivate a general public respect for the law and the legal system. The judiciary holds the responsibility of implementing what is known as the preventive function, which involves maintaining law-abiding behaviour and condemning illegal conduct. The execution of this preventive function by the judiciary stands as one of the fundamental principles of the rule of law.

Uniformity in judicial practice is inherently necessary. Obviously, such an outcome cannot be achieved if different courts render varying decisions on similar disputes and provide different interpretations of the applicable rules of law. Therefore, it is not surprising that the procedural codes of some countries emphasize the importance of maintaining uniformity in the interpretation and application of the law. Violations of such uniformity are often considered grounds for annulling court decisions.

Even in cases where the procedural codes of certain countries do not explicitly list a breach of uniformity in the application and interpretation of the law as a reason for cancelling a decision in cassation, judicial practice demonstrates that higher, and particularly supreme, courts ensure that lower courts do not provide interpretations that contradict the practices and clarifications issued by the supreme courts. Failing to do so would significantly diminish the significance of publishing such clarifications and reviews of judicial practice.

At the same time, the issue of ensuring the uniformity of judicial practice has been widely discussed among lawyers in Moldova. While a judge who can directly establish the purpose of legislative rules, grasp legislative intent or the written meaning of the law, and apply this intent or meaning to the case under consideration may not need to pay attention to interpretations by other judges, in reality, this is not always the case. The reason behind reviewing judicial decisions in different instances is that the judicial system acknowledges that judges can make mistakes, and appealing to higher instances provides procedural guarantees for a fair trial.

Furthermore, interpreting legal norms is a complex mental process, correctness in which depends on various factors, including a strong legal education, legal culture, and proficiency in legal techniques and logic. An effective mechanism for safeguarding against judicial errors is a system that ensures the uniformity of judicial practice. This is not contingent on whether a legal system aligns with the Romano-Germanic or Anglo-American legal family or recognizes precedent as a source of law. A certain level of standardization in judicial practice is a fundamental aspect of the rule of law in any country. It assures citizens that their court applications will yield more or less predictable outcomes, and that judges within the legal system will generally align on key questions of case adjudication. Neglecting this aspect can erode trust in the judicial system and the legal system as a whole among citizens.

An analysis of the *Monitoring of Judicial Decisions* demonstrates that judges in Moldova typically do not refer to the practices of other courts in their decisions. However, interviews with judges indicate a clear interest in how the law is applied and interpreted in other courts. This interest allows judges to compare their reasoning with that of their peers in previously decided cases, ensuring consistency with prevailing trends. Taking a contrary approach could lead to different interpretations of the same law by neighbouring courts or even by judges within the same court, which would be inconsistent with the principles of the rule of law.

This practice is rooted in certain doctrinal positions in post-Soviet countries. In particular, it may be attributed to a narrow interpretation of the rule of law that discourages referencing decisions of other courts in judicial decisions. It is worth noting, however, that the requirement in procedural legislation that decisions must be made based on the law, and that judges are obligated to strictly adhere to the law (the principle of legality), does not preclude judges from consulting interpretative acts issued by other courts. The challenge arises from the fact that procedural legislation exhaustively outlines the structure of a court decision and provides a closed list of what can be included, such as in the reasoning part of the court decision. All other information, including references to other judicial acts or the practice of applying and interpreting the law, should not be included in the motivational part.

This situation introduces a contradiction: on one hand, supreme courts have the authority to issue guiding explanations regarding the interpretation of legal rules, which lower courts must adhere to. On the other hand, lower courts, due to the stipulated provisions in procedural codes, cannot include references to these guiding clarifications and other interpretative acts of the supreme courts in their reasoning. This concept that *"a judge is bound only by the law"* conflicts with the everyday practice of judges who often seek to align their decisions with the practices of higher courts and avoid deviating from established judicial norms.

**The need for uniformity in the application and interpretation of the law**

It should be noted that the requirement for uniform judicial practice is not an abstract principle; it holds practical significance. Implementing this requirement allows for greater legal certainty and, in turn, upholds the values of the rule of law. While legal certainty is not an absolute principle, as the independence of judges dictates that each judge is bound by the law, it must be balanced with the principle of legal certainty.

In practice, there are instances when the law may be incomplete and requires further detail, or when the court identifies gaps that need to be filled through analogies to legal rules or principles. When judges take into consideration decisions and arguments from their colleagues, judicial decisions become more predictable. This prevents the law from being reinterpreted anew for each case without reference to previous decisions, arguments, and interpretations. This predictability enables individuals to make concrete plans and reasonable expectations, thus fostering respect for the rule of law.

Uniformity in the application of the law is not only a matter of jurisprudence but also contributes to the rule of law by instilling greater confidence in the judicial system. It becomes more understandable and predictable for the people. First, the exercise of judicial power no longer appears to be solely at the discretion of judges or influenced by external political pressures; instead, it is perceived as the result of legal reasoning. Second, uniform jurisprudence can serve as a guide for judges in applying legal principles, particularly through the principle of proportionality.

The development of case-law doctrine in Moldova is notable, especially considering the decision of the Constitutional Court of Moldova on July 22, 2016. In this decision, the Constitutional Court does not exclude the obligation of judges in lower courts to comply with the decisions of higher courts regarding the interpretation of applicable laws, establishing a form of judicial precedent (Paragraph 109). This decision linked the requirement of judicial precedent to the constitutional principles of legal clarity and predictability, thus fostering uniform judicial practice. In a system based on judicial independence, higher courts, when making decisions in specific cases, ensure uniform judicial practice throughout the country. Lower courts, while not formally obliged to follow court precedents as in common-law legal systems, tend to adhere to the principles outlined in the decisions of higher courts to avoid having their decisions overturned on appeal. Furthermore, specific procedural norms can ensure consistency across different levels of the judicial system (Paragraph 111).

It's worth noting that the strict differentiation between law and precedent as sources of law is no longer as relevant. Legal norms are shaped during judicial interpretation and do not possess established meanings until relevant judicial decisions are issued. In practice, the majority of judges consider the opinions of their superiors to avoid the risk of having their decisions overturned in higher instances. In essence, there is no conceptual gap between the idea that judges may be guided by the interpretative acts of other courts and the idea that a judge must uphold the law and respect the legislator's intent.

### 9.11. Summarizing Remarks and Observations

It should be emphasized that, for the purposes of the Project, the court monitoring 'architecture' is based on three key aspects addressed throughout all monitoring stages: accessibility, quality, and trust in the judicial system. The requirements of quality and trust are causally related to the compliance of the content of judicial decisions with legal certainty (substantive aspect) and the obligation to provide reasons for judicial decisions (procedural aspect).

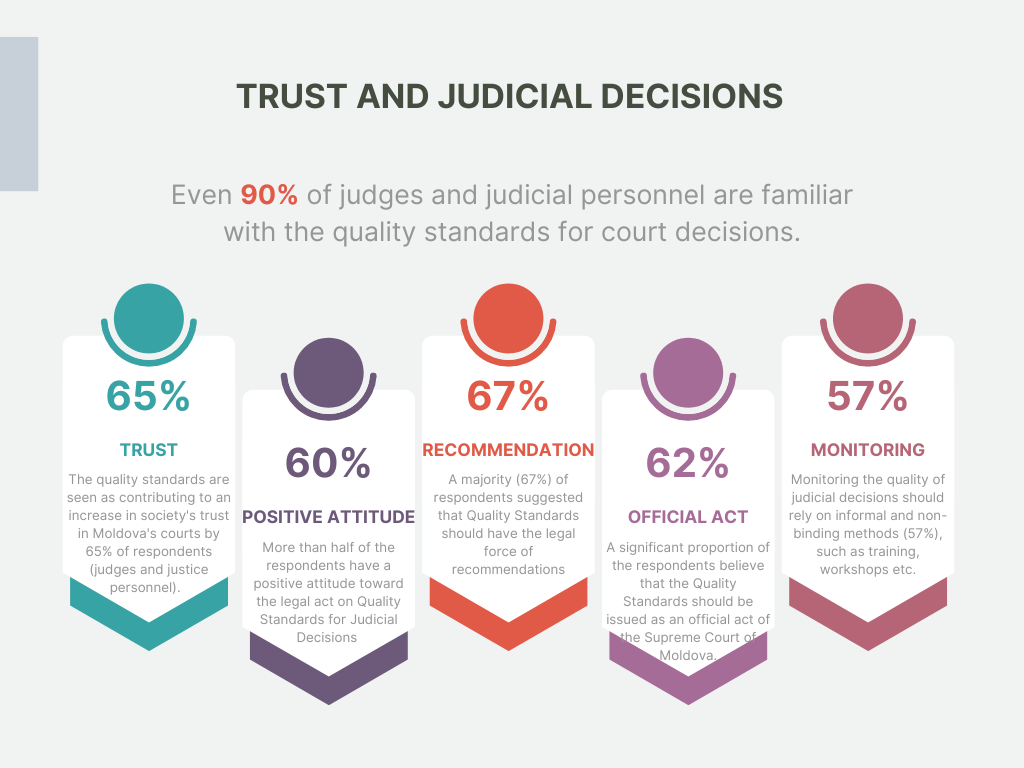
In this context, the respondents (*Focus Group Surveys*) also stressed the need for a systematic approach to restoring public confidence in the judicial system. One of the respondents, when asked if the Quality Standards for Judicial Decisions could help increase trust, remarked that, *"If the lack of trust is a direct result of modest and unclearly reasoned court decisions, then yes. However, the lack of trust is a social phenomenon based on several factors, including erroneous expectations from the process, the duration, the solution, concrete negative experiences, prejudices, and misinformation or manipulation through the media."*

Another respondent provided valuable insight into the reasons for public distrust in the judicial system, particularly regarding the quality of court decisions, and similarly emphasized the need for a systematic approach: *"It is unlikely that only the Quality Standards for Judicial Decisions will contribute to increasing society’s trust in the Moldovan courts. To raise society’s trust in the judiciary, it is necessary to analyse a complex set of factors, including the government's attitude toward judges and the judicial system. Government representatives should reduce unjustified criticism of judges in their public statements. Additionally, every judge should uphold the law when handling cases and demonstrate impartiality and objectivity in resolving cases, regardless of the social status of the participants or the social impact of the case. <...>* *The simple Quality Standards for Judicial Decisions are not enough to increase society’s trust in the court because behind the decision are the actions and behaviour of the judge who adopts the solution, as well as the legal assistant who drafts the judicial act."*

The majority of respondents (judges and judicial staff) (65%) *(Focus Group Surveys for Judges and Judicial Staff)* agree that the Quality Standards for Judicial Decisions could help increase society's trust in the courts of Moldova. As one of the respondents from the group of judges indicated, "*Well-structured and reasoned judgments can increase society's confidence in justice. Courts must use language that everyone can understand in their decisions. A decision filled with legal terms may not be understood by litigants."; "Issuing well-reasoned decisions with the application of quality standards, as understood by citizens, would stimulate society's confidence in justice."; "A judicial system gains legitimacy and respect from citizens through excellent functioning, resulting in impartial, clear, and well-reasoned court decisions."; "If decisions were of high quality, clear, and consistently reasoned, people's trust in judges would increase."*

At the same time, 10% of respondents do not agree that the Quality Standards for Judicial Decisions could help increase society's trust in courts, and 25% of them do not know.

The results of the *Monitoring of Judicial Decisions* present developments in the key aspects of the quality of court decisions from the perspective of legal professionals. Consequently, relevant aspects of the justice system in Moldova are primarily viewed through the prisms of accessibility, quality, and trust. In concluding remarks and observations, the key figures related to quality and trust in court decision quality should be highlighted.



|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **QUALITY OF JUDICIAL DECISIONS** | | | | |
| **1. LEGALITY** | | | | |
| 88% / 93% | | | The legality of court decisions was affirmed by Moldova's judiciary as an absolute attribute of a quality judgment, with 88% agreement among judges and 93% among assistant judges. | |
| 32%  45%  28% | | | The quality of the court decision determines whether the court is guided by uniform jurisprudence in cases of the relevant categories. However, a majority of court judgments in the first instance (68%), second instance (55%), and cassation instance (72%) **do not refer to jurisprudence (case-law) at all.** In the decision of the Constitutional Court of Moldova of July 22, 2016, the obligation of the judge from the lower court to comply with the decision of the higher court regarding the interpretation of the law applicable in the consideration of the subsequent case (judicial precedent) was not excluded (Par. 109). It followed that the Constitutional Court connected the requirement of judicial precedent with the constitutional principle of legal clarity and predictability, forming uniform judicial practice. | |
| 11 %  22%  23% | | | Only in (11%) of cases, the decision is based directly on **general principles of law** and indicates the content that the court grants in a certain situation. In 11% of cases, the decision is based directly on general principles of law, but it does not specify what content the court grants them in a given situation. A similar situation is observed in the appeal instance, where 75% of decisions do not directly rely on general principles of law. In 22% of cases, the decision is based directly on general principles of law and indicates the content that the court grants in a certain situation.  In cassation, 68% of decisions are not directly based on general principles of law. However, in 23% of cases, the decision is based directly on general principles of law and indicates the content that the court grants in a certain situation, while in 9% of cases, the decision is based directly on general principles of law, but it does not specify what content the court grants them in a given situation. | |
| **2. PERSUASIVENESS** | | | | |
| 33%  on average | | | In only one-third of cases, **the court specified the reasons for rejecting certain pieces of evidence**: at the first instance, it was 30%, at the appeal stage, 33%, and in cassation, 36%. However, in more than half of all cases involving fact-finding, the court did not specify the reasons for rejecting certain pieces of evidence: at the first instance, it was 62%, at the appeal instance, 50%, and in the cassation instance, 55%. | |
| 22%  12%  32% | | | In fewer cases, the reasoning part of the decision does not provide any assessment of the arguments of the party that did not win the case: at the first instance, it's 22%, at the appeal level, 12%, and in cassation, 32%. | |
| **3. TRANSPARENCY (CONSISTENCY OF THE INVESTIGATION OF FACTS AND REASONING, SUFFICIENCY OF REASONS)** | | | | |
| 84% on average | | | Clarity of the reasons is considered a fundamental aspect of a complete court decision, with 83% of judges and 85% of assistant judges acknowledging its importance. | |
| 68% on average | | | According to the monitoring results, in approximately 70% of court decisions, only the essential questions (the key facts) of the case were clearly answered. This breakdown includes 69% of cases in the first instance, 69% in the second instance, and 66% in cassation. | |
| 63%  55%  34% | | | The presentation of the facts established by the court in a separate part of the judgment in **chronological order** is used in only 63% of cases at the first instance and 55% of cases at the appeal instance, and in just 34% of cases at the cassation level. | |
| 30%+47%  43%+50% | | | The Monitoring of Judicial Decision indicated that the **clear distinction in the decision of the facts established by the court in relation to the evidence that supports them or the versions of the participants involved in the case** happens in only 30% and partially in 47% of first-instance cases, and in 43% and partially in 50% of appeal cases. | |
| 57% in sum | | | As the monitoring showed, in the cassation instance, **a serious examination of the alternative option**, with the highlighting of this aspect, was present in more than half of all cases (38% affirmative and 19% partial). The debate of each "for" and "against" was provided in the reasoning of the decision. | |
| **4. LINGUISTIC CORRECTNESS** | | | | |
| 72% | | | | In Moldova, there is **no unified standard for writing the text** of the court decision. Court decision monitoring findings regarding the font and its size in which the decision is written vary. The vast majority of court decisions are written in Times New Roman, with less than 12.5 font size in 72% of decisions and in the size 13–14 in 15% of decisions at the first instance. |
| 55%  57%  62% | | | | Most of the monitored decisions (55% –62%) were written in a common, easy-to-understand **language**, without mistakes in expression or spelling, and with a unique, coherent style. |
| 4%  7%  8% | | | | In 4%–8% of cases at all instances, if scientific, technical, artistic, or other **specific terminology** was used, the meaning of the terms was explained. |
| 25% | | | | **The Latin terms** are more often used by the court of the last instance in 25% of cases, but the problem is that the terms are used without explanation (21% of cases at the third instance). |
| **5. CLARITY** | | | | |
| 50%  47%  34% | | Only in half or fewer cases (50% at the first instance, 47% at the second instance, 34% at the cassation), **the arguments and reasons of the court are clearly distinguished from the explanations, assessments, arguments, or evidence of the parties.** | | |
| 93% | | In the vast majority of cases (93% at the first instance), the operative part of the decision clearly explains how the decision should be **executed.** | | |
| 97%  79% | | The vast majority of first-instance court decisions (97%) clearly specify the **term and procedure for filing an appeal** against them from the date of adoption. In appeals, 79% of cases also have the court clearly specifying the term and procedure for cassation appeals against them from the date of adoption. | | |
| **6. STRUCTURE AND FORM** | | | | |
| 79%  82%  66% | An interesting detail is that in the practice of Moldovan courts, in most cases (79% at first instance, 82% at the appellate instance, and 66% at cassation), **the pages of court decisions were not numbered.** | | | |
| 84%  73%  57% | The vast majority of decisions at first instance (84%), at the appeal (73%), and at the cassation instance (57%) make **a clear distinction between the structural parts required by law.** However, this criterion of court decision quality must be increased, particularly at the cassation instance, because even in (43%) of decisions, a clear distinction between the structural parts required by law is not made. | | | |
| 25%  31%  33% | **Most court decisions do not number the descriptive and reasoning parts**, with only 25%–33% being numbered. | | | |

The positive impact of quality criteria for judicial decisions as a means of increasing society's trust in Moldova's courts and safeguarding the quality of the justice system is widely recognized. To achieve these goals, it is essential to identify the main objectives and provide specific recommendations for their implementation.

**Recommendation 1:** *To ensure the adoption of fair and lawful court procedural decisions, thereby enhancing public confidence in Moldova's court system.*

1. Consider the adoption of the Quality Standards for Judicial Decisions as a legal guideline. These standards should carry the force of recommendations, setting forth minimum requirements for argumentation methodology and the model structure of court decisions.

2. Establish an ad hoc working group within the Superior Council of Magistracy, the Agency for Courts Administration, or the Supreme Court to unify various quality practices for court decisions across different courts and cases, resulting in final court decisions.

3. Introduce provisions within the Quality Standards for Judicial Decisions that outline specific requirements applicable to different judicial instances, including appellate and cassation levels.

4. Include a provision in the Quality Standards for Judicial Decisions requiring the numbering and structuring of paragraphs within court decisions.

5. With regard to ensuring the quality of judicial decisions, it can be assumed that amending relevant legislative provisions in the Code of Criminal Procedure, Code of Civil Procedure, Administrative Code, and Code od Administrative Offenses to allow references to guiding clarifications and other interpretative acts of the Supreme Court in the reasoning part of court decisions would help enhance the quality of judicial acts and legal proceedings in general.

**Recommendation 2:** *To ensure the effective application of Quality Standards for Court Decisions in all categories of cases and to encourage judges and judge assistants to rely on them when preparing final court procedural decisions. To achieve this goal, the following recommendations are made:*

1. Ensure that appointed judges, appointed assistant judges, and currently working judges and assistant judges effectively apply the Quality Standards for Judicial Decisions. Provide already working judges and assistant judges with knowledge of "best practices" for applying the Quality Standards for Judicial Decisions in specific case categories: civil, criminal, administrative offences, and administrative cases.

2. Develop and approve a mandatory introductory training program for judges, titled "Trust in the Judicial System and Quality Standards of Court Decisions".

3. Incorporate specialized courses into the additional training program for judges and judge assistants:

- "Application of Quality Standards of Court Decisions and Reasoning in Criminal Cases";

- "Application of Quality Standards of Court Decisions and Reasoning in Civil Cases";

- "Application of Quality Standards of Court Decisions and Reasoning in Administrative Cases";

- "Application of Quality Standards of Court Decisions and Reasoning in Cases of Administrative Offenses".

4. Include refresher courses on computer literacy in the training programs for judges and judge assistants.

**Recommendation 3:** *To raise awareness of the Quality Standards for Judicial Decisions in Moldovan society and encourage the professional legal community to participate in processes aimed at improving the quality of court decisions. To achieve this goal, the following recommendations are made:*

1. Initiate and hold public debates or discussions involving representatives of the judicial system, the prosecutor's office, the bar association, and the legal academic community to address relevant issues related to the quality of court decisions.

2. Launch a pilot project to monitor the quality of court decisions within a specific district court's jurisdiction. This project should involve all courts operating in that district and include participation from various institutions, such as lawyers, prosecutors, and police officers involved in pre-trial investigations. Develop a detailed plan for quality development and its step-by-step implementation within the district court's jurisdiction. Create a joint committee responsible for supervising the implementation of the quality project, with representatives from all state institutions interested in improving the quality of justice.

**Recommendation 4:** *To establish a comprehensive quality management system for the judicial system in Moldova, integrating methodological support for the application of Quality Standards for Judicial Decisions and a monitoring system for their application. To achieve this goal, the following recommendations are made:*

1. Appoint an individual for each court district who will consistently provide methodological support and consultations to judges and assistant judges on relevant issues arising in their daily work regarding the application of Quality Standards for Judicial Decisions.

2. Periodically review the practice of applying Quality Standards for Judicial Decisions in each court, based on one or more specific criteria outlined in these standards.

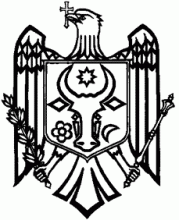
3. Conduct an expert qualitative analysis and monitoring of the quality of all court decisions in Moldova's court system every 3–5 years. This analysis should be based on an examination of specific court decisions to assess compliance with the quality standards.

4. Conduct regular quantitative and qualitative surveys of judges, assistant judges, and other court employees regarding various aspects of the application of Quality Standards for Judicial Decisions.

5. If there is a consensus among the community of judges within a court, consider implementing peer reviews of court decisions in which judges review and assess each other's adherence to Quality Standards for Judicial Decisions.

6. Monitor the quality of judicial decisions through informal and non-binding methods, such as conferences, discussions, workshops, the sharing of best practices, and examples, among other approaches.

**9.12. Draft Guide on Quality Standards of Judicial Decisions**



**Plenary of the Supreme Court of Justice**

**DECISION**

**ON THE APPROVAL OF THE GUIDE**

**ON QUALITY STANDARDS OF COURT DECISIONS**

No.\_\_\_\_\_\_\_\_\_\_of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Chișinău

Under Article 4 paragraph (1) letter a) of the Law no. 64/2023 on the Supreme Court of Justice, considering that the rule of law principles enshrined in the Constitution of the Republic of Moldova presume that court decisions should be well-reasoned and clear, and that independence, impartiality and professionalism of the courts of law are fundamental principles of judges’ work,

Considering that justice is only fair by reasoned court decisions, and that transparency and publicity are fundamental conditions of judges’ conduct in dispensing justice, and that publicity of court decisions also means clarity and intelligibility of the reasons of the decisions,

Aiming and ensuring a quality-driven administration of justice, optimisation and improvement of skills in drafting court decisions, The Plenary of the Supreme Court of Justice decides:

1. The Guide on Quality Standards of Court Decisions (enclosed) shall be approved;
2. All the courts of law are advised to apply thereof Standards upon drafting court decisions.

|  |  |
| --- | --- |
| **PRESIDENT** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Approved

by the Decision of the Plenary

of the Supreme Court of Justice

No.\_\_\_\_\_\_\_of \_\_\_\_\_\_\_\_\_\_\_\_

**THE GUIDE**

**ON QUALITY STANDARDS OF COURT DECISIONS**

The following quality standards for court decisions (hereinafter referred to as 'Standards') primarily apply to final judicial acts (hereinafter referred to as 'court decisions'), regardless of the nature and category of the cases under examination.

These Standards are advisory in nature and do not replace the requirements specified for court decisions in procedural codes and other relevant national normative acts or the established practices of the courts. They are also applicable to other procedural documents of the courts, provided they do not conflict with other normative acts. Recommendations concerning the form, content, and structure of court decisions, as outlined in these Standards, are further elaborated and illustrated in the annexes of this Guide.

The drafting of this Guide is based on the recognition that litigants and professional participants in the courtroom, such as attorneys and prosecutors, consider the quality and depth of court decisions' reasoning as a core issue. While judges often use templates from previously drafted acts as recommendations, provided by the Supreme Court of Justice, there remains a significant disparity in the statement of reasons. Some decisions are rendered tersely, while others are overly lengthy and lacking in utility. Certain decisions lack proper structure and fail to reflect all the arguments of the parties and the evidence from the case file. Additionally, some decisions are rendered in an unreadable and inaccessible manner, compounded by issues related to legal language and discrepancies in judicial practice, which lack full justification and clarification.

This Guide recommends the following quality standards for court decisions:

I. Legality and validity

II. Persuasiveness

III. Transparency

IV. Coherence and sufficient reasoning

V. Clarity

VI. Comprehensibility and structure

VII. Relevance and adaptability

**Standard I**

**LEGALITY AND VALIDITY**

**Court decisions should be both fair and legal.**

* 1. Court decisions rely on factual circumstances bearing significance from a legal standpoint of the case (hereinafter referred to as "factual circumstances") and legal circumstances. The concept of legality encompasses the legal aspect (the law) of the decision, while its validity pertains to the factual part of the case (factual circumstances).
  2. When a court issues a reasoned decision, it should be clear for the reader what factual circumstances were established by the court.
  3. The court decision should specify the precise legal sources, such as the exact article, paragraph of the article, text, or other structural component of the legislation or other normative act upon which the court bases its decision.
  4. When resolving a case, the court determines the validity of the applicable law or other normative acts (whether they are in force or not). In case of conflicting legal norms, the court must specify which version of the legal provision is applicable and provide the reasons for choosing that provision.
  5. The legality of a court decision does not depend on the number of sources of law the court cites or makes use of. It is not deemed necessary to cite or make reference to the Constitution of the Republic of Moldova, European Convention on Human Rights or other international treaties in each and every court decision. Typically, a direct reference to the subsidiary piece of legislation transposing the primary legal act is sufficient.
  6. The court may draw from relevant judicial precedents but only to the extent and within the limits set forth by the procedural codes and normative acts. However, it should not be the court's sole or primary objective to cite and rely on the case law of the Constitutional Court, domestic, or international courts. Case law contributes to a fair resolution of the case and justifies the court's decision. Therefore, references to judicial precedents in a court decision should be made only as necessary. In such cases, the court should also specify the name of the court, the date of the relevant procedural decision, and the case number
  7. Deviating from prevailing judicial practice is permissible only when it is unavoidable, objectively necessary, reasonable, and justified. Each deviation should be well-reasoned, explicitly indicating the practice from which it departs, as well as providing arguments supporting the deviation.
  8. When interpreting and applying the law, the court should consider the principles of fair trial, reasonableness, and equity. If a court decision directly references these principles, the court should clarify the meaning it assigns to these principles in the specific case. The court should not only adhere to the principles of fair trial, reasonableness, and equity but should also provide its assessment of how these principles apply to the particular circumstances of the case.
  9. The court may refer to legal doctrine as an additional source of legal reasoning. When doing so, the court should cite the source of the respective legal doctrine.

**Standard II**

**PERSUASION**

**Court decisions should be persuasive and convincing.**

* 1. Court decisions should convince all parties involved that they are fair and legal.
  2. The reasoning in a court decision should extend beyond general judgments and statements. Overly broad expressions (such as *"The arguments are ill-founded, thus contrary to the case"*), used as a response to specific and relevant arguments in the case, and which could be applied to any decision without providing further details or specific reasons for that particular decision, do not constitute adequate reasoning. Therefore, it is crucial for a court decision to explain and provide reasons for the admissibility of certain evidence in the case file and the rejection of other evidence.
  3. When addressing issues related to the determination of factual circumstances, the court should provide reasons for rejecting specific pieces of evidence. Simply stating that evidence is rejected due to other evidence is insufficient.
  4. When examining issues involving conflicts between legal provisions and regulations implementing the law, the court should explain why it rejects certain arguments presented by the parties.
  5. Court decisions are often challenging to persuade those who have lost a case. Therefore, the statement of reasons in a court decision should carefully consider a thorough assessment of the arguments presented by the losing party. It should be evident from the court decision why supporting or accepting the arguments or position of the losing party contradicts legal provisions or evidence from the case file.
  6. In justifying the decision, the court may agree with one or more arguments presented by the participants in the court proceedings without repeating them. However, it should be clear from the decision that the court has conducted a fair and independent assessment of these arguments.
  7. In a court decision, the judge should refrain from moralizing or attempting to impose personal views, ethical beliefs, moral values, religious opinions, or other personal convictions and worldviews. A court decision should be concise and impartial, avoiding sarcasm or humour directed at the participants in the court proceedings, dogmatic positions, pomposity, or the use of rhetorical questions.

**Standard III**

**TRANSPARENCY**

**Court decisions should be transparent and should not rely on hidden arguments and reasons.**

* 1. Court decisions should consider and cover all factual circumstances found by the court impacting the decision on the case. The decision should point out all the reasons the court relied on when pronouncing the decision, even though they are not exclusively of legal nature (*e.g., economic, social or other reasons*).
  2. Factual circumstances found by the court should be presented in a separate section of the decision, in chronological order. These circumstances should be clearly distinguished in the court decision from the evidence that supports them or from the versions presented by the participants in the case. This means that the court, after considering factual circumstances, should present them in clear wording as determined by the court itself (e.g., *"On November 23, 2021, at 6:30 p.m., the plaintiff visited the defendant to sign the contract"; "The plaintiff's apartment was flooded with water from the defendant's apartment"*). The court should not present factual circumstances together with supporting evidence (e.g., *"The expert's report shows that the water entered the plaintiff's apartment from the defendant's apartment"*) or together with a party's version of the case (e.g., *"As claimed by the plaintiff, on November 23, 2021, at 6:30 p.m., she visited the defendant to sign the contract"*). If there are discrepancies regarding a particular factual circumstance from the case or if the evidence from the case file is contradictory, the court, based on the rules of burden of proof, admissibility, relevance, and sufficiency of evidence, should explain its reasons for considering or not considering that factual circumstance as established.
  3. The reasons provided in the court decision should be concise, clear, logical, free from ambiguities, specific, objective, and impartial.
  4. The court decision may base its reasoning on an aspect of the case that the parties to the proceedings clearly did not notice or did not consider significant, or that the court has the authority to decide *ex officio*, only if the court has informed the participants in the proceedings about this aspect and provided them with the opportunity to address it.
  5. After a thorough examination by the court of various alternative options when making the decision, the underlying reasons for choosing a particular option should be included in the statement of reasons of the court decision, including both their advantages and disadvantages.
  6. If a party to the proceedings claims there is a potential conflict between a law or another legal provision and a higher legal act, the court should provide its conclusions on those arguments in the statement of reasons within the decision.
  7. Referring to and/or citing pieces of legislation, judicial precedent, legal doctrine, or other legal sources, or interpreting them within the court decision, should be directly related to the substance of the case under consideration. If such a connection is not apparent, it should be justified and explained in the statement of reasons of the court decision. The court decision should clearly articulate why the court relies on specific case law and the method employed in applying it to the case.

**Standard IV**

**COHERENCE AND SUFFICIENT REASONING**

**Court decisions should be coherent and the provided reasoning should be sufficient.**

* 1. **Coherence** of a court decision implies a logical connection between the parts and separate paragraphs of the decision. The court decision should address factual circumstances and legal issues separately, in a logical sequence.
  2. The decision becomes clearer when it distinguishes and concisely lists the main arguments of the participants in the proceedings. In a consistent manner, without omitting answers to complex questions and without excessive elaboration on simple questions, the court should ensure that all issues are subject to assessment.
  3. The reasons provided in the court decision should not contradict each other.
  4. **Sufficiency** of the reasons provided by the court decision implies, first of all, that they should clearly respond to the core questions of the case.
  5. A court decision may be considered coherent and sufficiently well-reasoned if:

a) Central circumstances for a fair solution of the case are identified and fully elucidated.

b) Circumstances of the case are substantiated with accurate and sufficient evidence.

c) The court's conclusions in the decision correspond to the circumstances of the case. The duty to provide reasoning is imposed to demonstrate that the judges have considered each claim or objection raised by the parties and to enable higher courts to review whether the case has been examined in accordance with legal provisions.

* 1. The analysis of the reasoning in the court decision should clearly indicate which aspects of the case have been challenged and which have not. Therefore, as a rule, the reasoning of the decision is drafted with relevant aspects in mind.
  2. A court decision should provide sufficient reasoning. In certain cases, the court may provide fewer arguments, which may suffice, such as when the accused enters a plea agreement or when the case is examined under a special criminal investigation procedure, as stipulated by the Criminal Procedure Code.
  3. It should be clear from the court’s statement of reasons that the court has considered all the evidence which are considered admissible and all the issues raised within the case file. However, this does not imply that every aspect must be extensively described. As established in the case law of the European Court of Human Rights, although Article 6 § 1 of the ECHR requires courts to provide reasoning in their decisions, it cannot be understood as requiring a detailed response to every argument (*Van de Hurk v. the Netherlands*, paragraph 61; *García Ruiz v. Spain* (GC), paragraph 26; *Jahnke and Lenoble v. France* (Decision); *Perez v. France* (GC), paragraph 81). Sometimes, a brief reasoning may suffice. Detailed reasoning is not needed when responding to manifestly irrelevant, ill-founded, or abusive arguments or those that are inadmissible for other reasons, considering the clear provisions of the law or established case law.
  4. Particular attention should be paid to the concept of “inner conviction of the judge.” This concept should be applied in light of Constitutional Court’s case law, which holds that *the notion of “one’s own conviction” used in procedure codes does not imply a subjective opinion, but a certitude gained by the judge following the examination of all the evidence as a whole, from all angles, in an objective manner guided by the law* (see paragraph 64 of the Judgment of the Constitutional Court of Moldova on the exception of unconstitutionality of certain provisions of the Criminal Procedure Code (*inner conviction of the judge*) no. 18 of 22nd of May 2017).
  5. There is no need for irrelevant information to be included in the court decision, especially when personal data is involved that is not relevant to the case's resolution (e.g., land registry entries and land plot addresses, vehicle plate numbers, model, colour, etc.), and that duplicates information previously provided in the decision (e.g., instead, the following expression may be used: *"...with the same contract title and date previously mentioned"*).

**Standard V**

**CLARITY**

**Court decisions should be clear and understandable.**

* 1. Court decisions should be written in accessible language and presented in an understandable manner. Scientific, technical, artistic, or any other specific terminology should be used sparingly and explained when necessary. Non-Romanian, Latin words, notions, and expressions should be avoided, and if they are used, they should be translated.
  2. When the court relies on a legal act written in a foreign language or on a source of legal interpretation from another language, the court's decision should include a high-quality translation of the relevant provision or a part of it into Romanian. The foreign language text should not be inserted into the court decision, as a rule.
  3. In cases where the statement of reasons is lengthy, the court should include clear concluding summaries for each of the main issues resolved and, if possible, provide a summary of the arguments presented in the text of the decision.
  4. Excessive citing of legal acts that are not related to the substance of the case should be avoided in court decisions (e.g., citing an entire article when only a part of it or a short extract is relevant to the case).
  5. The court's arguments should be clearly distinguished from the explanations, opinions, and references of the parties, as well as from the content of the evidence in the case.
  6. When the court mentions or cites a certain piece of evidence or information, it should provide a description of its significance or the importance the court assigns to it (e.g., the court should note that citing from a deposition of a certain person supports a specific factual circumstance). The reasoning in court decisions should clearly explain why certain information is mentioned or cited. Simply listing evidence and/or their content, legal provisions, or structural parts is insufficient. Court decisions should reflect the legal assessment provided by the court, the analysis and evaluation of evidence (e.g., their sufficiency, admissibility, relevance, persuasiveness, veracity, and importance in resolving the case).
  7. Unless there are compelling reasons, procedural acts, statements of witnesses, and other persons from the minutes of the court hearing or from the charge sheet or other case files should not be transcribed into the court decision. Only relevant information necessary for resolving the case and providing reasons for the decision should be cited.
  8. Images, photographs, or other visual (graphic) information should not be included in the decision unless they have a direct relevance to the case and can enhance the clarity, understandability, and transparency of the decision.
  9. Diagrams and tables may be used to present complex information in a clear and comprehensible manner.
  10. When calculations are necessary for making a court decision, detailed calculations, including applied formulas and specific arithmetic operations, should be provided (e.g., 1,750 MDL X 20% / 100% = 350 MDL).
  11. The operative part of the decision should be formulated clearly. If a decision can be enforced, its operative part should be formulated in a way that makes it clear how the decision should be enforced. The court should issue a decision that can realistically be applied. The court's solution in the operative part of the decision should not give rise to different interpretations of the decision's content and should specify to what extent and how it should be applied.
  12. The operative part of the court decision should include resolutions regarding all claims made by the parties when filing their claim and, if applicable, any counterclaims.
  13. When a court decision imposes specific actions or obligations on a party, those actions or obligations should be clearly defined.
  14. The operative part of the court decision should clearly state the time period set for filing an appeal against it or its effective date from the moment it is issued or its entry into force from the moment it is issued.
  15. Decisions regarding the correction of material errors and the rectification of obvious omissions in the court decision are a continuation of court decisions. When examining and issuing court decisions in this category, the stages and requirements provided by procedure codes and these Standards should be observed.

**Standard VI**

**COMPREHENSIBILITY AND STRUCTURE**

**Court decisions should have a clear structure and form, complying with linguistic and legal rules.**

* 1. Court decisions should be written without linguistic or orthographic errors, coherently, and in a consistent style.
  2. A court decision becomes more understandable and intelligible when it has a clear structure. Structural parts provided by law or established by the court (in cases where the court additionally divides the structural part of the decision provided by the Code into separate sections) should be distinctly separated.
  3. When the decision examines several significant issues, it is advisable to address them separately by creating a dedicated structural part with a name relevant to the substance of the issue under consideration. The title of the new section could be formulated as a question (e.g., "*Do AB's actions qualify as theft?"; "Was a contract concluded with the purchasers?"*) which should be answered clearly in that section, briefly outlining the content of the relevant part (e.g., *"On the form of guilt of the convict and the qualification of their actions"*).
  4. In the case of lengthy court decisions, their contents and/or summary may be placed below the introductory part.
  5. Numbering of paragraphs in appellate and recourse courts' decisions should be included (in the statement of facts and reasoning). Each paragraph of the decision should describe one independent (new) thought or related information.
  6. As a general rule, one paragraph from the reasoning of the decision should not consist of only one or a few sentences. However, paragraphs in the decision should not be excessively lengthy, typically not exceeding half a page.

**Standard VII**

**RELEVANCE AND ADAPTABILITY**

**Court decisions should reflect the peculiarities of court’s level and competences (first instance, appellate or supreme).**

* 1. Decisions of first instance and appellate courts should prioritize clarity and comprehensibility for the parties involved. When drafting these decisions, consideration should be given to the parties' ability to understand specific reasons in court decisions and whether qualified legal assistance is provided, among other factors. In the case of decisions by the Supreme Court of Justice, it should be recognized that this court contributes to and shapes uniform judicial practice. Therefore, in each case, the goal should be to establish application or interpretation rules for the relevant law within the categories of the respective case.
  2. Statements of facts in first instance court decisions should include a summary of the parties' claims and arguments.
  3. Within the first instance court, the primary focus should be on identifying and clearly describing the factual circumstances determined by the court. Emphasis should be placed on summarizing, grouping, and assessing the evidence. The decision should provide a legal assessment of the factual circumstances found by the court, citing the applicable legal provisions and explaining why their application is justified.
  4. The first instance court should not aim to provide an overly detailed account of national and international court practices or legal doctrine when offering a legal assessment of the situation.
  5. In cases where the appellate court overturns a decision of the first instance court and issues a new decision (in criminal cases, cancelling the sentence delivered by the lower court and delivering a new one), the decision should adhere to the main requirements set for first instance court decisions since the case is being reviewed anew.
  6. The higher the court, the greater the importance of interpreting and developing the law. Legal issues to be resolved by the appellate court, as well as the decisions and arguments, should be clearly visible and easily distinguishable from other information.
  7. In cases where the appellate court only addresses legal issues, factual circumstances should be mentioned only to the extent necessary for the efficient examination of legal matters.
  8. When the higher court remands the case to the first instance or appellate court, it should provide clear reasons and point out any underlying deficiencies.

**RECOMMENDATIONS**

**ON THE FORM, CONTENT, AND STRUCTURE OF COURT DECISIONS**

**CHAPTER I**

**FORM AND STRUCTURE OF THE DECISIONS**

1. It is recommended that the form and structure of court decisions be pre-established and embedded in the Integrated Case Management Programme. The structure of the decisions, complying with these Standards, is described and enclosed in sections and annexes below. These primarily refer to first-instance decisions and are subject to further adaptation for subsequent jurisdiction levels.
2. Requirements for the structure of court decisions should be developed and integrated into the Integrated Case Management Programme based on the type and category of the examined cases, as well as the jurisdiction level: first instance, appellate, or cassation courts.
3. The text of the court decision should be drafted using the 12-point *Times New Roman* font.
4. Page numbering of the court decision should start with the second page, centred at the top of the page, using 12-point Times New Roman font without dots or dashes.
5. In the introductory and final parts of the court decision, judges, the registrar, and case participants should be specified with their full names and their roles in the court proceeding.
6. In the introductory and final parts, the composition of the panel of judges should be listed in alphabetical order based on their surnames, or if the judge has a double-barrelled name, based on their first name. If the judge is also the chair of the panel and/or the judge-rapporteur on the case, this information should be placed in brackets immediately after their surname in the introductory part. The registrar and case participants should be specified separately in different lines, without reducing the margins of the page in the introductory part. Case participants' representatives should be included along with the represented party in the same paragraph. The composition of the court examining a case, such as the panel of judges or extended panel of judges, as well as the applied procedure (oral or written), should be noted. If the case is being examined in an appellate or cassation proceeding, this should also be mentioned.
7. The descriptive part of the court decision should begin with the verb "Held." The statement of reasons of the decision should be separated from the descriptive part by inserting the verb "Finds," written on a new line. The operative part of the decision should start with the verb "Decides," positioned in the centre.
8. It is recommended to make a distinction, for example, regarding the facts of the case ("I. Merits of the case"); provide a concise description of the first-instance court's decision ("II. Substance of the ruling (decision, sentence) of the first instance court"); present reasons for the recourse (separately) and response to the claim (separately) ("III. Arguments of the recourse and response to the claim"). A blank space should be left before and after the titles indicating additional structural parts of the court decision. Titles indicating additional structural parts of the court decision should be centred on the page. The text of the court decision should be formatted to keep the titles on the same page as the beginning of the respective part, ensuring that the text does not start on a new page separated from the title.
9. When structuring and separating the descriptive part of the court decision using Roman numerals or sections, it is recommended to assign a Roman numeral to the reasoning part that continues the numbering from the descriptive part or a relevant title, as applicable (e.g., in a challenged administrative civil lawsuit - *"IV. Factual circumstances, legal circumstances, and conclusions made by the appellate Court*"). If the reasoning part of the court decision thoroughly addresses multiple questions separately, the reasoning part could be structurally divided into parts named based on the questions to be decided or using Roman numerals to continue the numbering started earlier.

*Example:*

|  |
| --- |
| V. On the interpretation of Article 90 of the Tax Code  <...>  VI. On the meaning of the VAT right to deduct, scope of application  <....> |

1. Where the paragraphs of the descriptive and reasoning parts are numbered, the numbered paragraphs should be separated by a blank line of 6pt following each numbered paragraph. It is recommended for the parts of the court decisions to be numbered as shown in the following example:

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| --- |
| Civil case no. 3K-x-xxx-xxx/201x  Court proceeding no. x -xx-x-xxxxx-xxxx-x  Type of case: x; xx  Simbolurile statului | Ambasada Republicii Moldova în Republica Belarus  **SUPREME COURT OF THE REPUBLIC OF MOLDOVA**  **DECISION**  IN THE NAME OF THE LAW  30.08.2022  Chisinau  The panel of judges of the Civil and Administrative Section of the Supreme Court of Justice, sitting in the following composition: <...>, <...> (Chair of the panel) and <...> (Rapporteur),  hearing the recourse in written procedure has examined the civil case within the recourse <...> on the review of[*insert the court decision*] in the civil case [*insert parties of the case and the brief*].  [ *one line space* ]  Panel of judges  [ *one line space* ]  FOUND:  [ *one line space* ]  I. Substance of the case  [ *one line space* ]   1. The case addresses the interpretation and application [*insert the issue on the application of material and/or procedural legal provisions].* 2. The appellant has asked the court [*insert the outline of the object and grounds of the application (the grounds may be laid down in a separate paragraph)*].   [ *one line space* ]  II. Substance of the first instance and appellate courts  [ *one line space* ]   1. The first instance court (Central office) of Chisinau on 15th of August 2021 delivered the decision [*insert the operative part of the decision*]. 2. The first instance court reasoned that [*cite concisely the court’s reasoning*]. 3. The panel of judges of the Civil and administrative section of the Court of Appel of Chisinau, which examined the case following the appeal filed by the applicant on 29th of September 2022, delivered [*insert the operative part of the decision of the appellate court*]. 4. The panel held that [*insert summarised the reasoning of the appellate court on the merits of the case*].   [ *one line space* ]  III. Arguments of the recourse and its response to the claim  [ *one line space* ]   1. In this submission for the recourse, the applicant asks for [*insert the requests laid down in the application*]. The recourse relies on the following arguments [*insert the substance of the recourse, not the arguments or their titles or grouping*]: 2. The respondent in his/her response to the application [*insert the submissions from the response to the claim*]. The following arguments are being presented in the response to the claim [*the main arguments of the response to the claim; if there are brought one single group of arguments, they should not be numbered*]:   [ *one line space* ]  The panel of judges  [ *one line space* ]  mentions:  [ *one line space* ]  IV. The reasoning and explanation of the Supreme Court of Justice  [ *one line space* ]  On[*outline the legal issue which is to be provided a reasoning*]  [ *one line space* ]   1. [*Present the reasoned conclusions of the panel of judges on the issue of applying the piece of legislation in question*] 2. [Interpretation/application of the law].   [ *one line space* ]  *On the court expenses*  [ *one line space* ]   1. [*Outline how the court expenses are being calculated*]   [ *one line space* ]  The panel of judges of the Civil and administrative section of the Supreme Court of Justice, under Article 445 of the Civil Procedure Code of the Republic of Moldova [depending on the adopted decision, the corresponding paragraph and letter are being specified],  [ *one line space* ]  H O L D S:  [ *one line space* ]  [*insert the adopted solution in line with the relevant paragraph of Article 445 of the Civil Procedure Code; each part of the decision should be written from a new paragraph*]  The Decision is final, irrevocable and shall enter into force from the date it is issued.  Judges First name, surname  /signature/  First name, surname  /signature/ |

1. Below the operative part of the decision, in a new paragraph and with two blank lines below, the name, surname, and signature of the judge (members of the sitting panel) should be placed, preceded by the noun "Judge" ("Judges").

**CHAPTER II**

**THE CONTENT OF THE JUDICIAL DECISION**

1. Court decisions should be drafted in compliance with the general regulations of the Romanian language and legal terminology, avoiding unnecessary words, their derivatives, comments, and ambiguities. The language should be correct and feature an administrative style. The text should be precise, clear, logical, and convey information correctly, without contradictions or repetitions.
2. Court decisions should be drafted using short and simple sentences.
3. The text should not employ excessively legal, offensive, trivial, paternalistic, or overly complex language.
4. Latin expressions should be written in italic characters. When using a Latin expression for the first time (such as *inter alia, mutatis mutandis, ultima ratio*, etc.), its translation into Romanian should be provided in brackets..
5. When a foreign language text is needed, it should be presented following its translation into Romanian, using italic characters.
6. The use of italic, bold, or underlined formatting in judicial decisions should be applied only when necessary, used moderately and consistently to avoid overloading the text with various ways of highlighting.
7. When mentioning legal acts for the first time (if necessary, indicating the issuing institution, especially for subordinate acts enforcing the law), and for institutions with lengthy names, include the full name with the acronym in brackets (e.g., Criminal Code of the Republic of Moldova (hereinafter "CC"), National Commission for Financial Markets (hereinafter "NCFM"), European Court of Human Rights (hereinafter "ECtHR"), etc.).
8. Only explained abbreviations/acronyms should be used in judicial decisions.
9. Dates in judicial decisions should be in a mixed format, with the year and day in numerals and the month in letters. Maintain this format consistently throughout the entire decision.
10. Numbers should be grouped by dots, when thousands or higher numbers are indicated (*e.g.*, 12.150.000,99 MDL). Big numbers beginning with one thousand may be represented by numbers and words or by their abbreviation (*e.g.*, “10 thousand” or “ten thousand”; “5 million” or “five million”).
11. References to legal provisions (articles, clauses, paragraphs, etc.) should be in accordance with the Law no. 100/2017 on Normative Acts of the Republic of Moldova..
12. No abbreviations should be used when referring to articles, parts, clauses or subsections of the provisions, for instance "Article 63, paragraph (1), letter c) of the Criminal Code."
13. When referencing a legal provision with previous versions, specify the version as follows: “Article 287, paragraph (3) of the Labour Code of the Republic of Moldova (in the wording of 16th of December 2019 of the Code).” If the version is not specified in brackets, consider it to be the current version of the Code (in force) at the time the court delivers the decision.
14. Amendments to a legal act result in changes to the primary (amended) act. When referring to the amended legal provision, do not refer to the act that amended it but to the primary amended legal act (e.g., instead of "Under the Law amending the Civil Procedure Code, paragraph 34," use "Under Article 89 of the Civil Procedure Code (as amended by the Law no. 77 of 12th of November 2015)").
15. When citing a lengthy text in a court decision, insert it in a separate paragraph using quotation marks. This paragraph should be indented one or more tabs away from the margin toward the centre of the page (i.e., 1 cm distance). Maintain the same font and size, and do not apply italic formatting.

*Example:*

1. The legal doctrine states:

“Nowadays, lawyers recognize the need for legal assistance in low-cost litigations by applying the principle of procedural economy <...>.”

1. Three dots should be inserted in angle brackets to indicate omitted quotation marks (no spaces should be left within the ellipses). The citation should be placed inside quotation marks as follows: “ – at the beginning of the citation, –” at the end of the citation (and not as follows: “ and “). When a whole paragraph is omitted in a quoted text, the three dots should be placed inside the angle brackets between the two dashes.

*Example:*

It is a common ground that “financial impact on the budget […] would be substantial.”

*or:*

The conditions for challenging court decisions are outlined in the Civil Procedure Code, which states that “the claim must indicate:

1) the name of the court it is lodged with;

<<...>

7) appellant’s claim (the object of the challenge);

<<...>.”

1. When referring to numbers in the court decision, the symbol "%" should not be used; instead, the word "percentage" should be used. Common abbreviations, however, may be employed in the text of the decision (e.g., "MDL," "cm," "km," etc.).
2. When referring to pages, the abbreviation "p" should be written in lowercase letters before the page number itself.

Volumes of case files, when referred to in the court's decision, should be indicated using the abbreviation "vol."

*Example:*

It may be observed from the case files (Vol. 1, p. 9–10, 54–80, 102; Vol. 3, p. 5–7) that <...>.

Note: When the reference is made from another case connected to the respective case, the case number or other identifying dates of the referred case file should also be indicated.

*Example:*

*Within the above mentioned case file, the issue of <...> was solved (administrative case no. I-579-201-12, f. 54).*

1. When referring to audio recordings of hearings in court decisions, they should be officially formatted as shown below:

“The witness who testified in court confirmed that <...> (audio recording of the court hearing of 11th of June 2021: 16 min. 42 sec. – 17 min. 22 sec.).”

Note: If the audio recording is from a court hearing in another case, the case file number in which the recording was made should also be indicated:

„<...> (audio recording of the court hearing of 11th of June 2022 in the Civil Case no....: 16 min. 42 sec. - 17 min. 22 sec.).”

1. Titles of documents of special importance should have the first letter of each word capitalized.

*Example:*

Declaration of Independence of the Republic of Moldova, Constitution of the Republic of Moldova.

1. International acronyms in Latin letters should be written in the original language.

*Example:*

NATO (North Atlantic Treaty Organization), UNESCO (United Nations Educational, Scientific and Cultural Organization), ISO (International Organization for Standardization).

1. Acronyms from languages using basic non-Latin characters should be transcribed in Romanian letters.

*Example:*

ITAR-TASS (Russian News Agency), GOST (the name of a technical standard).

1. Names from other languages that are translated into Romanian and used extensively should have their acronyms written based on their Romanian version.

*Example:*

ONU (Organizația Națiunilor Unite [translator’s note: in Romanian language – Organisation of the United Nations]), CSI (Comunitatea Statelor Independente [translator’s note: in Romanian language – Community of Independent States]), UE (Uniunea Europeană [translator’s note: in Romanian language – European Union]).

**CHAPTER III**

**REFERENCES**

1. When referring to the judgments or decisions of the European Court of Human Rights for the first time, it should include:
   1. Court’s name;
   2. Date of the cited judgment’s/decision’s adoption;
   3. Case name (parties of the case) (the case name should be formatted as italics);
   4. Application number.

*Example:*

European Court of Human Rights, 12th of February 2013, the Decision in case of *Yefimenko v* *Russia* (Application no. 152/04).

1. When referencing a domestic court's decision, the full name of the court issuing that decision, the type and date of the procedural act, and the case number (where reference is made to a judgment or decision of the Constitutional Court of Moldova, it should suffice to indicate the name of the court and the date of the act) should be included. Additionally, a reference to the publication that printed/posted the court decision could be made.
2. When providing a bibliographical reference to a book or publication, include the first name of the author, followed by the surname or initials, separated by a comma. The title of the book or publication should be formatted in italics after a period. Then, include the place of publishing (city and, if applicable, the state if published abroad), followed by a period. Next, indicate the publisher (if known) after two periods, and finally, include the year of publication.

*Example:*

Dinu, Ostavciuc. *Principles of criminal proceedings*. Chișinău, 2023.

When there are two or more authors of a book or publication, list all of them, separated by semicolons, and add "and" before the last surname.

*Example:*

Stanciu, M.; Cristoiu, V. and Ionaș M. *Home arrest*. Bucharest, Romania: Publisher – Universul Juridic, 2020.

1. When there are more than three authors of a publication, include only the first author, followed by "and others" after a comma, in italics.

*Example:*

Stanciu, *and others*. *Home arrest*. Bucharest, Romania: Publisher – Universul Juridic, 2020.

1. In the case of a collective author (an institution) of a book or publication, the official name of that institution should be written in lowercase.

*Example:*

Institute on Criminal Reforms. *Guide on alternatives of provisional arrest* [interactive]. <https://irp.md/index.php?do=download&id=869>.

1. When providing a bibliographical reference to an article published in a journal or other periodical publication, the title of the article should be followed by a period, then by the name of the journal or the publication with italics, the year of publication after comma, its volume or number after comma and the pages after comma.

*Example:*

Antonov, O. Legal analysis of receiving illegal payment for providing services to the population. *Law and life*, 2021, p. 3–6.

1. References to sources published in foreign languages using Latin alphabet should be written in their original language, in line with the above recommendations. Bibliographical references to sources published with other characters (Greek, Chinese) should be transcribed (Latinised), save for the Cyrillic script.

*Examples:*

Zajdało, J. *Fascinujące pieżki filozofii prawa*. Warsaw, Poland, 2008.

Zhalinski, A. *Modern German criminal law*. Moscow, Russia: Prospect, 2004.

1. References should be included in the text of the court decision. Footnotes should not be used in court decisions.

**CHAPTER IV**

**FINAL PROVISIONS**

1. Where the Codes provide for the form of the court decisions, the above recommendations should only apply to the extent they do not conflict with the rules and form imposed by legal acts.

Annex no.1

**Decision – civil case (first instance court)**

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| Case no.\_\_\_\_\_\_\_  No.\_\_\_\_\_\_\_\_\_\_\_\_  Type of case: \_\_\_\_\_  Simbolurile statului | Ambasada Republicii Moldova în Republica Belarus  **COURT OF LAW OF CHIȘINĂU**   (Central Office)  **DECISION**  IN THE NAME OF THE LAW  25th of August, 2022  Chisinau  Judge of the Court of Law of Chisinau, Central Office, <...>,  Registrar <...>,  Plaintiff attending <...>, his/her representative <...>,  Defendant’s representative <...>,  Representative <...> of the third party <...>,  Examining in a public court sitting the civil case following the action filed by the plaintiff <...> against the Ministry of Justice, represented by <...> on damage compensation, in respect of the third party <...>, who does not submit individual claims,  The Court noted:  <*insert a separate overview under Article* *241 of the Civil Procedure Code, paragraph (4)>:*  1. Plaintiff’s claims <...>  2. Defendant’s objections <...>  3. Explanations provided by other parties to the proceedings <...>  The Court  F O U N D:  *<insert Court’s reasoning under Article 241 of the Civil Procedure Code, paragraph (5)>:*  4. Circumstances of the case, found by the Court <...>  5. Proof upon which Court’s conclusions are based as related to those circumstances <...>  6. Reasons provided by the Court when dismissing pieces of evidence <...>  7. Legal framework relied upon by the Court <...>  The Court  H O L D S:  *<insert Court’s conclusion, in line with Article 241 of the Civil Procedure Code, paragraph (6):*   1. Court’s conclusion on the admission or full/partial dismissal of the action that has been filed <...> 2. Award of costs <...> 3. Appeal procedures and time-limits <...>   Judge First name, surname  .... |

Annex no.2

**Sentence – criminal case (first instance court)**

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| Case no.\_\_\_\_\_\_\_  No.\_\_\_\_\_\_\_\_\_\_\_\_  Type of the case: \_\_\_\_\_  Simbolurile statului | Ambasada Republicii Moldova în Republica Belarus  **COURT OF LAW OF CHIȘINĂU**  (Buiucani Office)    **SENTENCE**  IN THE NAME OF THE LAW  25th of August, 2022  Chisinau  Judge of the Court of Law of Chisinau (Buiucani Office) <...>,  Registrar <...>,  Prosecutor <...>,  Accused <...>, his/her defender <....>,  Victim <...>,  Examining in a public court sitting the criminal case against <...>, born [*date, place of birth*], personal identification number <...>, citizen of the Republic of Moldova, [*nationality*], residing in <...>, high school studies, single [*information on the accused’s criminal record and other information relevant to the case*], charged with committing the crime provided by Article 324 of the Criminal Code of the Republic of Moldova.  The Court noted:  <*insert separately an overview under Article 324 of the Criminal Procedure Code, paragraph (1):*  1. The outline of the crime considered as being proved, including the place, time and the way it had been committed, the form and degree of the guilt, the motives and consequences of the crime <....>;  2. Indications on the circumstances mitigating or aggravating liability <....>;  3. Legal qualification of the accused’s actions, reasons for amending the charges if done so within trial proceedings <....>;  4. Mentioning on recidivism <....>.  The Court  F O U N D:  <*insert in compliance with* *Article 394 of the Criminal Procedure Code, paragraph (1) and paragraph (2):*  5. Proof which Court’s conclusions are based on and reasons of dismissing other proof <....>;  6. Where a part of the accusation is considered unfounded – the underlying reasons should be provided <....>;  7. Reasons for applying prison sentence, where criminal law also provides for other categories of punishment <....>;  8. Reasons for granting leniency as compared to the punishment provided by the law <....>;  9. Reasons for a suspended sentence <....>;  10. Manner of solving issues related to suspended sentence or applying other categories of conditional liberation as provided by Article 89 of the Criminal Code <....>.  The Court  H O L D S:  *<insert in compliance with Article 395 of the Criminal Procedure Code, paragraph (1):*  1) Accused’s first name, surname and patronymic <....>;  2) Findings on accused’s guilt in committing the crime under the criminal law <....>;  3) Punishment category and length/amount for each crime that was found and proved, the final punishment s/he must serve; the prison type the convict is to serve the sentence; the date the sentence serving begins; the length of the probation period, where a suspended sentence was delivered, as well as who shall be in charge of supervising the convict being imposed the suspended sentence. Where the court finds the accused guilty, but releases from punishment in line with the provisions of the Criminal Code, the court it is under the duty to include that in the operative part of the sentence <....>;  4) Disposition on computing the length of time of the apprehension, provisional or home arrest, if the accused was under arrest prior to sentencing <....>;  5) Disposition on the provisional measure to be applied in respect of the accused until the sentence becomes final <....>;  6) Convict’s duties within the suspended sentence <....>.  Judge Name, surname  .... |

Annex no.3

**Decision – administrative case (first instance court)**

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| Case no.\_\_\_\_\_\_\_  No.\_\_\_\_\_\_\_\_\_\_\_\_  Type of case: \_\_\_\_\_  Simbolurile statului | Ambasada Republicii Moldova în Republica Belarus  **COURT OF LAW OF CHIȘINĂU**   (Râșcani Office)  **DECISION**  IN THE NAME OF THE LAW  25th of August, 2022  Chisinau  Judge of the Court of Law of Chisinau, Râșcani Office <...>,  Plaintiff <...>, his/her defender <...>,  Defendant’s representative <...>,  Third interested party’s representative <...>,  In a public sitting, as an oral procedure, the Court examined the administrative case following the action/application <...> filed by the plaintiff against the defender City Hall of Chisinau, the third party – Department of Social Assistance of City’s Botanica District on revoking the administrative act on granting benefits.  The Court noted:  <*insert a separate outline*  1. Plaintiff’s claims <...>  2. Defender’s objections <...>  3. Explanations of other participants to the proceedings<...>  The Court  F O U N D:  *<insert Court’s reasoning:*  4. Circumstances of the case, as found by the Court <...>  5. Proof upon which Court’s conclusions are based as related to those circumstances <...>  6. Reasons provided by the Court when dismissing pieces of evidence <...>  7. Legal framework relied upon by the Court <...>  The Court  H O L D S:  *<insert under Article 224 of the Administrative Code one of the following adopted solutions:*   1. Revocation in whole or in part of the individual administrative act, as well as a possible decision on addressing the preliminary statement, if they are illegal and thereby the plaintiff’s rights have been breached; 2. Revocation in whole or in part of the individual administrative act dismissing the request or a possible decision taken within the preliminary procedure, thus imposing on the public authority the duty to issue the individual administrative act, should the plaintiff’s claim be founded; 3. Imposition of action, tolerance or inaction, should such a claim of the plaintiff be founded; 4. Finding the existence or inexistence or a legal relationship or the nullity of an individual administrative act or of an administrative contract, should the legal relationship exist, or respectively does not exist or should the individual administrative act or the administrative contract be null; 5. Revocation in whole or in part the normative administrative act, should it be illegal or the court finds its nullity, in case it is null; 6. Dismissal of the action as ill-founded, should the conditions on adopting a decision not be met, as provided in letters a)–e) of paragraph (1) of Article 224 of the Administrative Code.   Judge First name, surname  ....  Registrar First name, surname  ... |

1. In 2021, in courts of RM were solved 248555 cases in the different type of proceedings [↑](#footnote-ref-1)
2. The sample size will ensure a confidence level of 95% that the real value is with ±3.5% of the measured/surveyed value

   https://www.calculator.net/sample-size-calculator.html?type=1&cl=95&ci=3.5&pp=50&ps=248555&x=70&y=14 [↑](#footnote-ref-2)
3. The intended proportions were as follows:

   Court hearings in civil cases – 200

   Court hearings in administrative cases – 100

   Court hearings in administrative offences cases – 100

   Court hearings in criminal cases – 100

   In addition to this, as the sector specific cases are concerned, the proportion for observing court hearings was fixed, as follows:

   Court hearings in environmental cases in administrative and criminal proceedings – 50

   Court hearings in domestic violence cases in criminal and administrative offences proceedings – 50

   Court hearings in civil and criminal proceedings concerning legal aid issues – 50

   Court hearings in cases concerning non-contractual liability of state in civil and administrative proceedings – 50

   Court hearings in data protection cases in administrative and administrative offences proceedings – 50

   Court hearings in set of trials concerning high-profile cases – up to 50 [↑](#footnote-ref-3)
4. Available at < https://rm.coe.int/168074816f> [↑](#footnote-ref-4)
5. In its broad interpretation, legal aid is understood as the provision of legal advice, assistance and representation at the expense of the State on the conditions and in accordance with the procedures established under the national law. It can be provided in civil, administrative and criminal cases, as well as in mediation. In a wider concept, legal aid also includes legal education, access to legal information and other services provided through alternative dispute resolution mechanisms and restorative justice processes. [↑](#footnote-ref-5)
6. In many European countries, legal aid is organised at several levels. The main two levels are first-line (primary) legal aid and second-line (secondary) legal aid. First-line legal aid represents the initial point of contact for individuals seeking legal assistance. This level of legal aid is primarily aimed at providing consultations and legal advice on various legal matters. Second-line legal aid (called qualified legal assistance in Moldova) goes beyond initial consultations and is intended to offer comprehensive legal representation and assistance to individuals involved in legal proceedings. This level of legal aid is particularly relevant in pre-trial and trial proceedings. The first-line legal aid thus encompasses consultations and legal advice on legal matters, while the second-line legal aid is meant to provide lawyer’s representation in pre-trial and court proceedings. [↑](#footnote-ref-6)
7. https://www.legis.md/cautare/getResults?doc\_id=135569&lang=ru [↑](#footnote-ref-7)
8. <https://cnajgs.md/uploads/asset/file/ro/1671/Raportul_anual_de_activitate_pentru_anul_2021.pdf>. [↑](#footnote-ref-8)
9. Emergency legal assistance is provided 24/7, irrespective of the individual's income level, in cases of their detention in a criminal or administrative offense (misdemeanour), including during the examination of the arrest warrant. It is also available for victims of domestic violence and sexual crimes at the stage of filing complaints. [↑](#footnote-ref-9)
10. <https://cnajgs.md/uploads/asset/file/ro/1799/Raportul_anual_de_activitate_CNAJGS_2022_final_2.pdf> [↑](#footnote-ref-10)
11. Basic Principles on the Role of Lawyers, adopted on 7 September 1990, by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba. [↑](#footnote-ref-11)
12. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly in December 2012 in Resolution 67/187. [↑](#footnote-ref-12)
13. See also UNODC ‘Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes Practical Guidance and Promising Practices’. See: https://www.unodc.org/documents/justice-and-prison-reform/HB\_Ensuring\_Quality\_Legal\_Aid\_Services.pdf [↑](#footnote-ref-13)
14. Siaƚkowska v. Poland, Kamasinski v Austria, Sannino v Italy, Bertuzzi v. France, Artico v Italy, Falcao dos Santos v Portugal, Moldoveanu v Romania, Czekalla v Portugal, Staroszczyk v. Poland, Daud v Portugal, Bogumil v Portugal, Salduz v. Turkey. [↑](#footnote-ref-14)
15. It mandates Member States to implement necessary measures, including adequate funding, to ensure an effective legal aid system of sufficient quality. The legal aid services must be of a standard that safeguards the fairness of the proceedings while respecting the independence of the legal profession. Moreover, the directive emphasizes the significance of providing appropriate training to the staff involved in making decisions regarding legal aid. Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings. OJ L 297, 4.11.2016, p. 1–8. [↑](#footnote-ref-15)
16. Some further ideas as to how to improve the quality of legal aid services can be found in: UNODC ‘Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes Practical Guidance and Promising Practices’. Available at: <https://www.unodc.org/documents/justice-and-prison-reform/HB_Ensuring_Quality_Legal_Aid_Services.pdf>; Burchard, Ch., Jahn, M., Zink, S., Nikartas, S., Limantė, A., Totoraitis, L., Banevičienė, A., Jarmalė, D. Practice Standards for Legal Aid Providers. Developed in the framework of the project: Enhancing the Quality of Legal Aid: General Standards for Different Countries. Available at: <https://teise.org/wp-content/uploads/2019/09/Qual-Aid_Practice-Standards_EN.pdf> [↑](#footnote-ref-16)
17. Available at https://cnajgs.md/uploads/asset/file/ro/1746/Activity\_2.3.1.\_Report\_partially\_financed\_state\_legal\_aid\_final\_draft\_eng.pdf [↑](#footnote-ref-17)
18. Limantė, Jočienė, D.; A; Nikartas, S; Totoraitis, L. “*Towards Effective Legal Aid: International Legal and Practical Standards*” (“Veiksmingos teisinės pagalbos link: tarptautiniai teisiniai ir praktikos standartai”). Scientific Monograph (in Lithuanian). Available at: http://teise.org/wp-content/uploads/2020/10/Veiksmingos-teisines-pagalbos-link.pdf [↑](#footnote-ref-18)
19. See Nikartas, S. Limante, A*.* “*Tools and Criteria for Measuring Legal Aid Quality: Guidelines for EU Member States*”. Available at: https://teise.org/wp-content/uploads/2019/09/Qual-Aid\_Guidelines-for-EU-Member-States\_EN.pdf [↑](#footnote-ref-19)
20. Ibid. [↑](#footnote-ref-20)
21. Limantė, Jočienė, D.; A; Nikartas, S; Totoraitis, L. “*Towards Effective Legal Aid: International Legal and Practical Standards*” (“Veiksmingos teisinės pagalbos link: tarptautiniai teisiniai ir praktikos standartai”). Scientific Monograph (in Lithuanian). Available at: http://teise.org/wp-content/uploads/2020/10/Veiksmingos-teisines-pagalbos-link.pdf [↑](#footnote-ref-21)
22. Further examples of the possible tools and criteria for evaluating legal aid quality can be found in: UNODC ‘Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes Practical Guidance and Promising Practices’. Available at: <https://www.unodc.org/documents/justice-and-prison-reform/HB_Ensuring_Quality_Legal_Aid_Services.pdf>; Nikartas, S. Limante, A. “Tools and Criteria for Measuring Legal Aid Quality: Guidelines for EU Member States”. Developed in the framework of the project: Enhancing the Quality of Legal Aid: General Standards for Different Countries. 2018. <https://teise.org/wp-content/uploads/2019/09/Qual-Aid_Guidelines-for-EU-Member-States_EN.pdf> [↑](#footnote-ref-22)
23. 226 (79% out of the total of 287) of the monitored decisions were irrelevant in this case. [↑](#footnote-ref-23)
24. From the text and numbers in the *Trial Monitoring*, it is highly likely that, in most cases, counting the number of persons from vulnerable groups in the court hearings, the monitors included only persons with physical (moving) disabilities. [↑](#footnote-ref-24)
25. The same disclaimer as above should be made: from the text and numbers in the *Trial Monitoring*, it is highly likely that, in most cases, counting the number of persons from vulnerable groups in the court hearings, the monitors included only persons with physical (moving) disabilities. [↑](#footnote-ref-25)
26. On good practices for legal aid for one of the vulnerable groups, children in conflict with the law, see Limante, A., Nikartas, S., Vaiciuniene, R., Gangneux, E., Lens, B., Gega, K., Zacaj, H., Abdiu, R. *Legal Aid for Children in Criminal Proceedings: Report on Current European National Frameworks*. Developed in the framework of the project: *Legal aid for children in criminal proceedings: developing and sharing best practices* *(report of LA CHILD project)*. https://lachild.eu/wp-content/uploads/2021/03/LA-Child-European-Report.pdf [↑](#footnote-ref-26)
27. In the process of monitoring court hearings, especially high-profile ones, 10 court hearings were observed within the Supreme Court of Justice. The SCJ examined the criminal case involving the former President of the country as the first instance. Given that the monitoring of high-profile cases followed a different methodological approach and due to the specifics of the statistical monitoring system of court hearings, the data and information regarding these 10 meetings are not reflected in the following sections of this chapter but are analysed in the section regarding high-profile cases. [↑](#footnote-ref-27)
28. Available at: <https://rm.coe.int/european-commission-for-efficiencyof-justice-cepej-checklist-for-promo/16807475cf>. [↑](#footnote-ref-28)
29. https://datepersonale.md/wp-content/uploads/2023/03/raport\_de\_activitate\_2022\_engl.pdf [↑](#footnote-ref-29)
30. ***Ilan Shor*** is accused of fraud in large proportions and money laundering in large proportions from his position as Chairman of the Board of Directors of BEM (according to the indictment, Shor is alleged to have obtained more than 5 billion dollars through fraud) at the request of Shor's lawyers, to transfer the case to the Chisinau Court of Appeal. [↑](#footnote-ref-30)
31. ***Igor Dodon*** is accused of receiving $600,000 to $1 million in bribes from Plahotniuc and allowing the "Plahotniuc criminal organization" to finance the Party of Socialists (the "Kuliok" case). [↑](#footnote-ref-31)
32. The suspended Prosecutor General, ***Alexandr Stoianoglo***, is accused of committing the crime provided for by Article 328(3)(b) Criminal Code (exceeding official duties). Alexandr Stoianoglo and his former subordinate are accused of having ordered the payment of severance pay to the prosecutor N.C., knowing that at that time the criminal investigation was being carried out regarding N.C. In accordance with the legal provisions, in such cases, the payment of the severance pay of the prosecutors who resign is suspended. [↑](#footnote-ref-32)
33. <https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf> [↑](#footnote-ref-33)
34. https://search.coe.int/cm/Pages/result\_details.aspx?ObjectID=09000016805afb78 [↑](#footnote-ref-34)
35. Analytical document “Moldovan Justice in Figures – a Comparative Perspective”, November 2022, p. 5. [↑](#footnote-ref-35)
36. Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Article 31. [↑](#footnote-ref-36)
37. Analytical document “Moldovan Justice in Figures – a Comparative Perspective”, November 2022, p. 5-6. [↑](#footnote-ref-37)
38. Analytical document “Moldovan Justice in Figures – a Comparative Perspective”, November 2022, p. 5. [↑](#footnote-ref-38)
39. https://ipp.md/wp-content/uploads/2022/12/Anexele-sondajului-BOP-noiembrie-2022.pdf [↑](#footnote-ref-39)
40. https://www.iri.org/resources/public-opinion-survey-residents-of-moldova-october-november-2022/ [↑](#footnote-ref-40)
41. Recommendation CM/Rec(2010)12 and explanatory memorandum on Judges: independence, efficiency and responsibilities, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies; Venice Commission, CDL-AD(2010)004, Report on the Independence of the Judicial System Part I: The Independence of Judges adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010); Venice Commission, CDL-PI(2019)008, Compilation of Venice Commission opinions and reports concerning courts and judges, 11 December 2019; Opinion n°18 (2015) of the CCJE on the position of the judiciary and its relation with the other powers of state in a modern democracy; Opinion N° 3 (2002) on ethics and liability of judges; Opinion No. 24 (2021) on the Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems. [↑](#footnote-ref-41)
42. According to European standards, judges’ remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions. Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities, para. 54 and para 33. The Court of Justice of the European Union has declared that the receipt by the members of the judiciary of a level of remuneration commensurate with the importance of the functions they carry out constitutes a guarantee essential to judicial independence (Court of Justice of the European Union, judgment of 27 February 2018, C-64/16, *Associação Sindical dos Juízes Portugueses*, ECLI:EU:C:2018:117, para. 45). [↑](#footnote-ref-42)
43. (1) *Survey for Lawyers;* (2) *Survey for Lawyers Providing State-guaranteed Legal Aid;* (3) *Survey for Judges and Judicial Staff* [↑](#footnote-ref-43)