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SURVEY

**LAWYERS' PERCEPTION REGARDING
THE INDEPENDENCE, EFFICIENCY AND
ACCOUNTABILITY OF THE JUSTICE SECTOR
IN THE REPUBLIC OF MOLDOVA**

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Survey summary

The survey concerning the perception of lawyers regarding the independence, efficiency and accountability of the justice sector in the Republic of Moldova was carried out in November - December 2018. The objectives of the survey aim to find out the lawyers' perceptions regarding the independence, efficiency and accountability of the justice sector, including the impact of the main legislative amendments adopted in the period of 2011-2017 within the framework of the Justice Sector Reform Strategy implementation. The survey also seeks to identify areas of intervention at the legislative level, public policies and practices that could enhance the independence, efficiency and accountability of judges, prosecutors and lawyers. Some comparable results of the 2018 survey are compared with the results of a similar survey conducted at the end of 2015¹ among judges, prosecutors and lawyers.

Within the framework of the survey, 300 lawyers were questioned, representing 14% of all lawyers of the Republic of Moldova who were entitled to practice as lawyers in 2018. Similar to the 2015 survey, it was planned to question not only lawyers, but also judges and prosecutors. Regretfully, the questioning of judges and prosecutors was not possible this time, because the Superior Council of Magistracy refused it as inappropriate, and the Superior Council of Prosecutors and the Prosecutor General did not act upon the requests to allow access to prosecutors. The lawyers' opinion and experience is particularly important for drafting policy documents, legislation, and other measures to enhance the independence, efficiency and accountability of the justice sector. The lawyers' opinions regarding the justice sector are not mere impressions. They are based on their own daily experience and should be handled with particular attention, especially as lawyers have a key role to play in building confidence in the justice system. The results of the survey should help decision-makers, the judiciary and lawyers to develop further directions for the justice sector development.

Performance, quality and independence of the judiciary

Only 48.4% of respondents (lawyers) consider that *the justice sector reform* initiated in 2011 had a positive impact on the judiciary, while 51.7% disagreed. The figures show an insignificant improvement as compared to 2015 when 42.7% of respondents considered that the reform had a positive impact, and 56.7% disagreed.

¹ Survey: Perception of Judges, Prosecutors and Lawyers on Justice Reform and Fight against Corruption, Legal Resources Centre from Moldova, December 2015, available at <https://crjm.org/wp-content/uploads/2016/01/CRJM-Percepts-reformelor-just-1.pdf>.

In 2018, 43.7% of respondents (lawyers) appreciate *the quality of the justice delivery* as being better than in 2011, compared to 55.4% of those who disagree. The perception of lawyers regarding the quality of the justice delivery is a bit better than in 2015, when 37.2% appreciated the quality of justice delivery as being better in 2015 than in 2011, compared to 42.7% who did not agree.

In 2018, 45.3% of respondents consider that the exclusion in 2012 of the *obligation of the first instance (district) court to provide reasoning for judgements in civil cases* was an appropriate measure, 36% disagree with this, and 18.3% neither agree nor disagree with this measure. As regards the impact of the respective measure, 73% of respondents believe that this was necessary to reduce the workload of judges in the district courts, although 40.3% consider that this measure has increased the workload of judges in the courts of appeal. In addition, 59.7% consider that the exclusion of the obligation to provide reasoning for judgements complicates the situation of the parties who do not know the procedure well enough and do not request a reasoned judgement, 58.7% believe that providing no reasoning for judgements could have negative effects on the uniformity of judicial practice, and 53.7% consider that the lack of the judgement reasoning increases the risks of corruption.

The views seem to be split with regard to the *written preparation of the case for the trial on merits by the judge*. Only 5.7% of respondents said that judges used this procedure in each case, 30.3% of the respondents consider that written preparation of the case is used by judges in the majority of cases, and 40.7% state that it is applied by judges only in a small number of cases.

Mandatory mediation of civil cases by judges was introduced in 2017 and one of the main arguments in favour of this procedure was the need to reduce the workload of judges. Asked about their opinion on this measure, only 22% of respondents agreed that the mandatory mediation of civil cases by judges de facto reduced the workload of judges and as many as 76.6% did not agree with the given statement. As regards the views on the impact of mandatory judicial mediation, 77.7% of respondents believe that mandatory judicial mediation is not efficient because it requires too much time for judges and only 16% disagree with this statement; 72% believe that mandatory judicial mediation is not appropriate and it is more appropriate to develop private mediation, and only 20% disagree with this statement; 66.3% consider that judges do not have the skills of mediation and even should not have to deal with mediation, compared to 26% who disagree with this statement. While 42.7% of respondents consider that the introduction of mandatory court mediation was a necessary change to reduce the workload of judges in the courts, 69.7% believe that this measure actually increased the workload of the courts.

A significant percentage of respondents, 87.4%, believe that the *audio recording of court hearings* contributes to the transparency of the justice delivery and the observance of the rights of the trial participants, which is a significant indicator of the importance and usefulness of the audio recording of court hearings. Moreover, 83% of respondents said that the courts ensure audio recording of court hearings effectively and adequately, only 15% of respondents disagreed with this statement.

A significant percentage, 72% of respondents, considered that the use of the *Integrated Case Management Program* had increased transparency in the activity of the courts, while 25.6% disagreed. Asked if they agreed with the statement that cases in the courts were effectively distributed randomly, 63.7% of the respondents answered affirmatively and 33.3% negatively.

As far as the *Supreme Court of Justice (SCJ) practice* is concerned, 35% of respondents consider the SCJ practice to be uniform and 64% disagree with this statement. 44% of respondents believe that, since 2012, the SCJ has taken sufficient measures to ensure the uniformity of judicial practice, while 53.7% disagree with this statement. As regards the examination of cassations by the SCJ in the absence of parties (written procedure), 38% have a positive perception of this procedure, 13.3% have neutral opinion and 47.4% have a negative one.

A series of questions about the *independence of judges* has been asked within the framework of the survey. The results in this regard raise many concerns. In particular, 81% of respondents do not believe that in 2018 the judges of the Republic of Moldova are independent, and only 17% of respondents consider that the judges are independent. Comparing the perception of independence of judges in 2018 with that regarding 2011, the survey indicates that only 28% of lawyers consider judges to be more independent in 2018 than they were in 2011, while 69.7% think they are not more independent. In the opinion of 43.4% of lawyers, the reappointment of judges by the President of the country after the first five years of their activity negatively affects the independence of judges, while 53.4% disagree with this statement. As regards the amount of salaries, 64.3% of lawyers consider that the increase of the judges' salaries in 2014 was an important measure to ensure the independence, accountability and efficiency of the judiciary, and 33.6% do not consider it an important measure.

As regards the *solutions given by judges* of the Republic of Moldova, 35% of lawyers consider them fair and adopted without external influence, while 64% disagree with this statement. Those 64% of lawyers, who consider that solutions given by judges of the Republic of Moldova are not fair and not adopted without external influence, believe that the following subjects influence the solutions given by judges: politicians (90.7%), prosecutors (83.9%), SCM (65.1%), parties to the trial (58.3%), policemen (38.5%) and the press (27.6%).

Asked how they could explain the fact that the *trust in the justice system* had not increased since 2011, despite the fact that the Justice Sector Reform Strategy (JSRS) had been implemented, the respondents had chosen the following options for their answers, in descending order: there are some judges who take decisions under political order or at the request of influential persons and, unfortunately, those decisions influence the opinion about the entire system (84.3%); low trust is determined by the level of corruption (82.7%); the JSRS has brought important changes to the salaries of judges and the number of persons in the judiciary, but not to the quality of justice delivery (80.3%); low trust mainly

reflects the reality (78.3%); low trust in the justice system is justified because the quality of the justice delivery and the independence of judges have decreased over the past five years (75%); trust in the justice system is similar to the trust in the other two powers (legislative and executive), there is no way for it to be higher (74.7%); low trust in the judiciary is determined by the negative discourse of politicians, but in reality people have much higher trust (38.7%).

Asked if they agree with the statement that *the European Convention on Human Rights (ECHR)* is observed in the justice sector of the Republic of Moldova, 38% of respondents answered affirmatively and 61.6% negatively. Those 61.6% of respondents who consider that the ECHR is not observed in the justice sector of the Republic of Moldova have chosen the following answers as the causes of failure to comply with the ECHR standards: judges, because they fear prosecutors, do not apply the Convention standards in criminal proceedings (62.1%); taking into account our past, there is a reluctance in the justice sector to implement the Convention standards fully (51.4%); Convention standards are not fully known by prosecutors (51.3%); Convention standards are not fully known by judges (47%); lawyers do not invoke the Convention standards convincingly (35.2%); application of the Convention standards implies changes in practice that cannot be decided upon by the judges (34.6%); standards are too high to be complied with in a transition country such as the Republic of Moldova (33.6%); application of the Convention standards implies legislative amendments that cannot be decided upon by the judges (31.4%).

Self-administration of the judiciary

Transparency of SCM activity remains a problem in the lawyers' perception. In 2018, only 33.3% of lawyers-respondents agreed that the SCM activity was transparent and 65% did not agree. Even though the data are not positive, they still show an increase in the SCM transparency in the lawyers' perception as compared to 2015, when only 19.5% of the lawyers-respondents agreed with the statement that the SCM activity was transparent and 79.9% disagreed.

Regarding the *reasoning of the SCM decisions* in 2018, 37.7% of the lawyers-respondents agreed with the statement that the SCM decisions are well-reasoned and 59.6% disagreed. Although the question was formulated slightly different than in 2015 and included not just the reasoning but also the clarity of the decisions, the answers can be compared. Thus, 26.2% of the lawyers-respondents agreed with the statement that the SCM decisions are well-reasoned and 73.2% disagreed. There is a slight improvement in the perception of lawyers as concerns the quality of reasoning of the SCM decisions.

Asked to what extent they agreed with the statement that *the SCM effectively protects the independence of judges*, 34.3% of lawyers-respondents agreed and 63.4% did not agree. This response rate suggests that lawyers are not sure that the SCM effectively protects the independence of judges.

Asked to what extent they agreed with the statement that the *selection of new judges by the SCM* is based on merits and the best candidates are selected, only 22.6% of respondents agreed and 75.3% disagreed. Since lawyers can become judges, the high percentage of those who do not think the judges' selection system is merit-based should determine the SCM to improve its procedures. In 2015, this question was addressed only to judges, and the results among the judges were much better: 62.3% stated that the mechanism of initial appointment of judges is based on merits and the best candidates are selected, while 34.4% disagreed.

Asked to what extent they agreed with the statement that *the promotion of judges by the SCM* is based on merits, only 25% of the respondents agreed and 71.6% did not agree. In 2015, this question was addressed only to judges, and the results among the judges were a bit better: 54.2% stated that the process of promotion of judges is fair and merit based, while 43.1% disagreed. Despite of the slightly better results among judges as compared to lawyers, these results reveal a problem regarding the fairness of judicial promotions, given the negative appreciation of as many as 43.1% of respondents in 2015 and 71.6% of respondents in 2018.

In 2018, 18% of lawyers-respondents considered that the *mechanism of disciplinary liability of judges* is appropriate, which is quite close to 23.8% of questioned lawyers who responded similarly in 2015. In 2018, 46.3% of lawyers-respondents considered that the mechanism of disciplinary liability of judges is inadequate, compared with 26.2% in 2015. At the same time, it is important to note that in 2015 as many as 48.8% of respondents replied that they did not have the opportunity to analyse the mechanism in detail compared to 35.7% of those who did not answer this question in 2018. The negative assessment of the mechanism by 46.3% of lawyers in 2018 and by 26.2% in 2015 and 37.5% of judges in 2015 denotes the problematic nature of the mechanism or at least its vagueness. In this context, the legislative amendments to the system of disciplinary liability of judges of July 2018, which should streamline the mechanism of disciplinary liability of judges, appear to be welcomed.

Asked if the *system of admission to the National Institute of Justice (NIJ)* is fair and based on merits, only 23.4% of lawyers-respondents answered affirmatively, 58% - negatively, and 18.7% did not give any answer. Asked if the graduation exams at the NIJ are organized fairly, only 25% of lawyers-respondents answered affirmatively, 51% - negatively, and 24% did not give any answer. These answers show a low trust of lawyers in the procedure of entry and graduation of the NIJ.

Self-administration of the lawyers

With regard to self-administration of the lawyers, in 2018, 58.7% of the lawyers-respondents agreed that within the last two years, *the activity of the Union of Lawyers' Council* was transparent and 39% disagreed. Figures show a slight improvement in perception compared to 2015, when 52.4% agreed, and 46.9% disagreed.

Concerning *the activity of the Licencing Commission of lawyers*, 52.3% of the lawyers-respondents agreed with the statement that its activity within the last two years was correct

and 43% disagreed. These figures indicate an improvement in perception as compared to the results of the 2015 survey, when 34.8% of respondents agreed, and 64% disagreed with the statement that the activity of the Licencing Commission within the last four years was correct.

Concerning the *activity of the Ethics and Discipline Commission for lawyers*, 72% of lawyers-respondents agreed with the statement that within the last two years the Commission has adopted fair and well-grounded decisions and 22.4% disagreed with it. These figures indicate an improvement in perception as compared to the results of the 2015 survey, when 56.7% of respondents agreed and 40.9% disagreed with the statement that the activity of the Ethics and Discipline Commission within the last four years was correct.

Training organized by the Union of Lawyers has an important role in the activity of lawyers, being regarded as important or very important by as many as 90.7% of lawyers-respondents. In particular, 54.7% of respondents appreciated the training organized by the Union of Lawyers as very important, 36% - as rather important and only 7% - as rather unimportant, and 1.3% - completely unimportant. As regards the domains of training, the following five domains were selected by the majority of respondents: recent changes in civil, criminal and procedural law, the ECtHR procedure and practice, insolvency and techniques for presenting the case in the court.

Corruption

Asked about *their perception of the level of corruption in the country*, 73% of lawyers-respondents answered that there is a lot of corruption, 14.3% - there is little corruption, 1.7% - there is no corruption, and 11% did not give any answer. Regarding the evolution of corruption phenomenon in the country since 2011 to the present, 26.7% of respondents answered that corruption has decreased, 31.3% - it is at the same level, 38.7% - it has increased. These answers confirm the general perception among the population that corruption is widespread in Moldova and that trends in this area are disappointing.

Regarding *the evolution of the corruption phenomenon in the justice sector since 2011 to the present*, 26% of respondents answered that corruption has decreased (2015 survey: 14.6%), 35.3% - it is at the same level (2015 survey: 28%), 33.7% - it has increased (2015 survey: 52.5%). The answers to this question indicate a strong parallel between the level of corruption in the country and the level of corruption in the justice sector.

Asked about *the perception of the level of corruption currently existing in the justice sector* (the judiciary, the prosecution, the lawyers, the police), 69.3% of the lawyers-respondents answered that the phenomenon of corruption was spread at all levels and 19.3% considered it to be widespread especially at the leadership level. The data are comparable to those obtained in 2015. Asked if they thought corruption was widespread in those four structures of the justice sector, the lawyers gave the following answers: 84% believed that corruption was widespread in the prosecution service, and only 12% believed it was not widespread

there; 83.3% - it was widespread in the police, and only 11.7% did not think it was widespread there; 77.4% - corruption was widespread in the judiciary, and only 18.6% did not believe this; 44% believed corruption was widespread among the lawyers, and 49.7% disagreed with it. The results obtained in 2018 are comparable to those obtained in 2015.

Asked about *the importance of different causes for the level of corruption in the justice sector*, the lawyers responded as follows: 86% considered the failure to hold the corrupted persons liable to be an important cause for the spread of corruption, 83.3% - lack of transparency in the administration/self-administration bodies; 81.3% - deficiencies in the system of selection and promotion to the position; 76.7% - low salaries; 75% - corruption was an indispensable part of the system; 74% - failure of the actors in the justice sector to comply with the code of ethics; 70.4% - corruption was a tradition in the society.

Asked where they thought was *the highest level of corruption within the prosecution service*, 35.7% of the respondents named the Anti-corruption Prosecutor's Office, 34.7% - the Chisinau municipality prosecutor's office, 30.3% - the Prosecutor's Office for Combating Organized Crime and Special Causes; 28.7% - the regional and district prosecutor's offices; 28% - the Prosecutor General's Office; 11% - the Superior Council of Prosecutors; 6% - the ATU Gagauzia Prosecutor's Office, and only 5% stated that there was no corruption within the prosecutor's office.

Asked where they thought was *the highest level of corruption within the judiciary*, 52% mentioned the Courts of Appeal; 36.7% - the district courts; 34% - the Supreme Court of Justice, and only 6.3% stated that there was no corruption within the judiciary. Asked about *the highest level of corruption within the institutions of self-administration of the judiciary and institutions of judges' training*, 43% of respondents mentioned the Superior Council of Magistracy; 25% - the National Institute of Justice; 21.7% - the Judges' Selection and Career Board; 11.7% - the Disciplinary Board; 10% - the Judicial Inspection, and only 6.3% did not think there was corruption in these institutions.

Asked where they thought was *the highest level of corruption within the lawyers' profession*, 37.3% mentioned the Licencing Commission; 32% - the ordinary lawyers; 7% - the Ethics and Discipline Commission; 5% - the Union of Lawyers' Council; 5% - the Legal Aid Council; 3.3% - the Bar deans, and only 17.7% stated that there was no corruption within the lawyers' profession.

Asked if they *felt independent exercising the lawyer's function*, 83% answered affirmatively and 14.4% negatively.

Asked if they agreed with the statement that *the law was applied equally to all litigants in the Republic of Moldova* irrespective of their social or financial status, or position (profession) held, 29% answered affirmatively and 69.7% negatively. Equal application of the law to all litigants is an important indicator of the proper functioning of the justice system. The negative perception of 69.7% of lawyers regarding equal application of the law should trigger urgent actions to remedy the situation.

Methodology

This document is based on a lawyer's opinion survey, originally conceived to be conducted among judges, prosecutors and lawyers², similar to the survey conducted at the end of 2015³. The survey was carried out by means of written questionnaires, by the Centre of Sociological Investigations and Marketing Research „CBS-AXA”, at the request of the Legal Resources Centre from Moldova (LRCM). The company that carried out the survey was selected through a contest organized by the LRCM. The survey was based on the questionnaires elaborated by the LRCM. The questionnaires were filled in between November and December 2018.

Taking into account the purpose of the research, as well as clear methodological requirements, a representative survey was conducted for the entire corpus of lawyers on the basis of the following parameters:

- Method of recording: standardized interviews filled in by the respondents on their own at their work place;
- Sampling strategy: the survey was conducted on a stratified, probabilistic sample;
- Stratification criteria: proportionate distribution of the sample among lawyers who work within the regional Bars (4 Bars in the country). The proportional distribution was also applied based on territorial criteria;
- Lawyers selection: random selection. Lawyers were randomly selected by the statistical step applied to alphabetically ordained lists with names of lawyers;
- Data collection period: November - December 2018;
- To encourage sincere answers, the questionnaire did not contain data that would make it possible to identify the respondent. The survey was conducted using

² Between 2017 and 2018, the LRCM has submitted several requests to the SCM, the Superior Council of Prosecutors (SCP) and the Prosecutor General, informing them about the intention to conduct a survey among judges, prosecutors and lawyers and asking for support (mainly concerning the access to courts/prosecutors' offices) to conduct the survey, similar to the survey of 2015. Regrettably, the SCP and the Prosecutor General did not respond to the submitted requests, and the SCM, on 2 October 2018, did not accept the request, and subsequently informed the LRCM on the dismissal of the request as inappropriate (the respective decision was not published).

³ Survey: Perception of Judges, Prosecutors and Lawyers on Justice Reform and Fight against Corruption, Legal Resources Centre from Moldova, December 2015, available at <https://crjm.org/wp-content/uploads/2016/01/CRJM-Percepts-reformelor-just-1.pdf>.

the method of filling in of the questionnaires by the respondents on their own, ensuring the confidentiality of the answers. The questionnaires were handed out to lawyers in envelopes of A4 format. Respondents had to fill it in and return filled-in questionnaires in sealed envelopes. The sealed envelopes were subsequently collected by CBS-AXA operators. The questionnaire does not contain the respondent's first and last name. Questionnaire analysis was conducted by CBS-AXA.

Within the framework of the survey, 300 lawyers were questioned, representing 14% of all lawyers of the Republic of Moldova who were entitled to practice as lawyers in 2018.⁴ Out of the total number of respondents, 235 (78.3%) work at the Bar in Chisinau, 41 (13.7%) work at the Bar in Balti, 16 (5.3%) work at the Bar in Cahul and 8 (2.7%) at the Bar in Comrat.

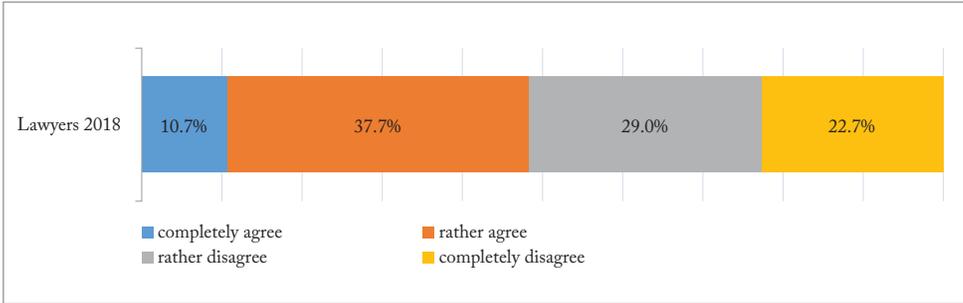
In addition to the survey, 10 qualitative individual interviews were conducted with lawyers working in different areas and in different bars, with varying experience, on their perception of some of the issues addressed in the survey. The report includes several quotes of the lawyers interviewed within the framework of these interviews (quotes are given in quotation marks).

⁴ Union of Lawyers, List of lawyers entitled to practice the profession of a lawyer for 2018, available at http://uam.md/media/files/files/lista_supl_2018_3320125.pdf.

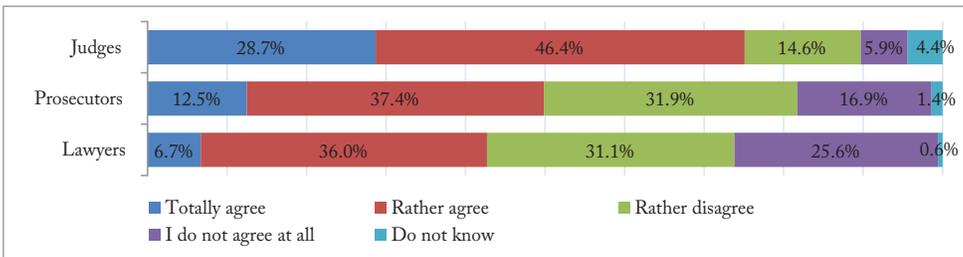
SURVEY RESULTS

BLOCK 1: Performance, quality and independence of the judiciary

1.1. To what extent do you agree with the statement that the justice sector reform initiated in 2011 had a positive impact on the judiciary?

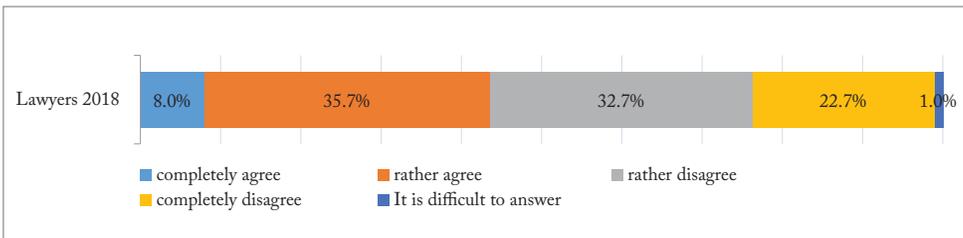


2015 Survey: To what extent do you agree with the statement that the justice sector reform initiated in 2011 had a positive impact on the judiciary?

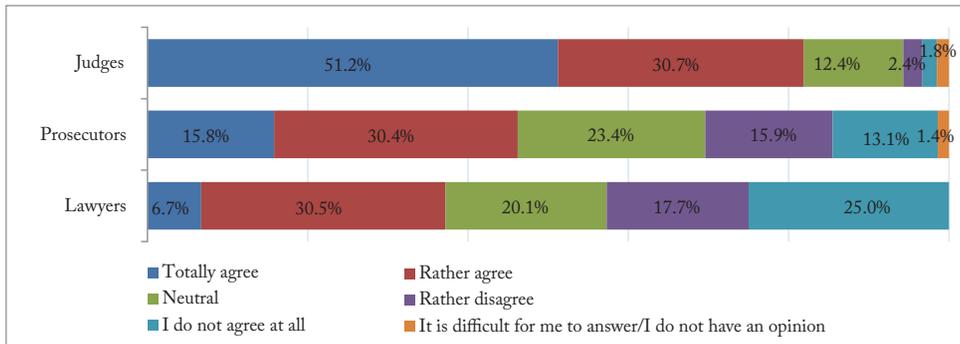


Only 48.4% of respondents (lawyers) consider that the justice sector reform initiated started in 2011 had a positive impact on the judiciary, and 51.7% disagree. Figures show an insignificant improvement as compared to 2015 when 42.7% of respondents considered that the reform had a positive impact, and 56.7% disagreed with this statement.

1.2. To what extent do you agree with the statement that in 2018 the quality of justice delivery is better than in 2011?



2015 Survey: To what extent do you agree with the statement that in 2015 the quality of justice delivery is better than in 2011?



In 2018, 43.7% of respondents (lawyers) appreciated the quality of the justice delivery as being better than in 2011 compared with 55.4% of those who did not agree with this. The perception of lawyers regarding the quality of the justice delivery is slightly better than in 2015, when 37.2% appreciated it as being better in 2015 than in 2011 compared to 42.7% who did not agree with this statement. At the same time, in the 2015 survey, 20.1% of respondents expressed a neutral opinion regarding the given question.

Within the framework of qualitative interviews, lawyers appreciated the quality of the justice delivery rather negative than positive, at the same time pointing out some improvements which are sporadic and not a general trend yet. Lawyers have brought examples of cases examined by judges in exemplary way and mentioned that they would have liked them to be the rule rather than an exception. Lawyers also noted that usually in simple cases the quality of justice delivery is much better than in complex cases or those involving certain interests. Among the biggest issues influencing the quality of justice they mentioned the excessively heavy workload of judges, especially in the Chisinau courts, and the practice of scheduling a big number of judicial hearings per day, each of them being of short duration. This does not allow for a comprehensive examination of the case, but rather a superficial one, when the thread of arguments is interrupted from hearing to hearing. Out-of-date practices and concepts used by all actors of the system and reluctance to change also negatively influence the quality of justice. Another cause that negatively affects the quality of justice is the non-uniform judicial practice that leaves the parties puzzled and emphasizes the perception of selective application of the law. Some lawyers mentioned the necessity of specialization for all judges, especially those from the courts of the first instance, which could help increase the quality of justice⁵. Also, corruption and

⁵ Note: The Superior Council of Magistracy tested the specialization of judges and, since 2019, already ensures formal specialization of judges in Chisinau courts, and in the other courts it is ensured while implementing the reform on courts reorganisation initiated in 2016 (increasing the number of judges per court by the reduction of the courts number (optimization of the judicial map), which will allow the implementation of the judges' specialization in the courts of the first instance too). At the level of the courts of appeal and the Supreme Court of Justice, judges specialize at least in civil, criminal and administrative proceedings.

the fear of judges to apply the law correctly, irrespective of the type of the case and the persons involved, were mentioned as factors that negatively affect the quality of the justice.

“I observe a tendency of diligence of the judges that have graduated in recent years, for instance we notice changes in Chisinau, many judges have been appointed after their graduation of the National Institute of Justice and they have in fact revived our judiciary and the justice delivery process, being very diligent.”

“I have not seen any tangible improvements in practice... I do not think it’s about professionalism, I do not think it’s about imperfect legislation... I suppose it is corruption and the lack of independence of judges. I mean real independence, but not what is stated in the specialized laws.”

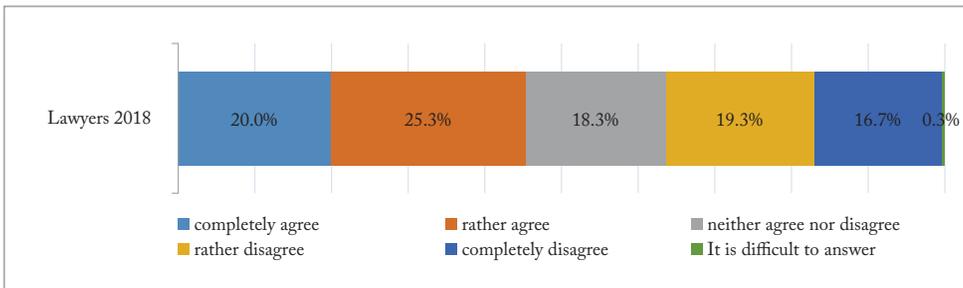
“In fact, everything that is happening in the society is a reflection of the justice we have. Many foreigners who come to our country speak of a moral degradation of this society. In fact, I think today’s justice puts too little emphasis on moral issues.”

“It’s pretty serious, the system is unbalanced, the judges are no longer judges... There is no stability in justice and there is no balance. Functions are mixed up. If we speak about criminal justice, the prosecution has taken it up with all its prerogatives, which guides the judge and the lawyer and allows many things. In civil cases the problems are solved whichever way the wind blows.”

“Since 2013–2014 until now, the situation is much worse than in 2009. Now the control is more serious and the fear is bigger. I think we have regressed with all these reforms.”

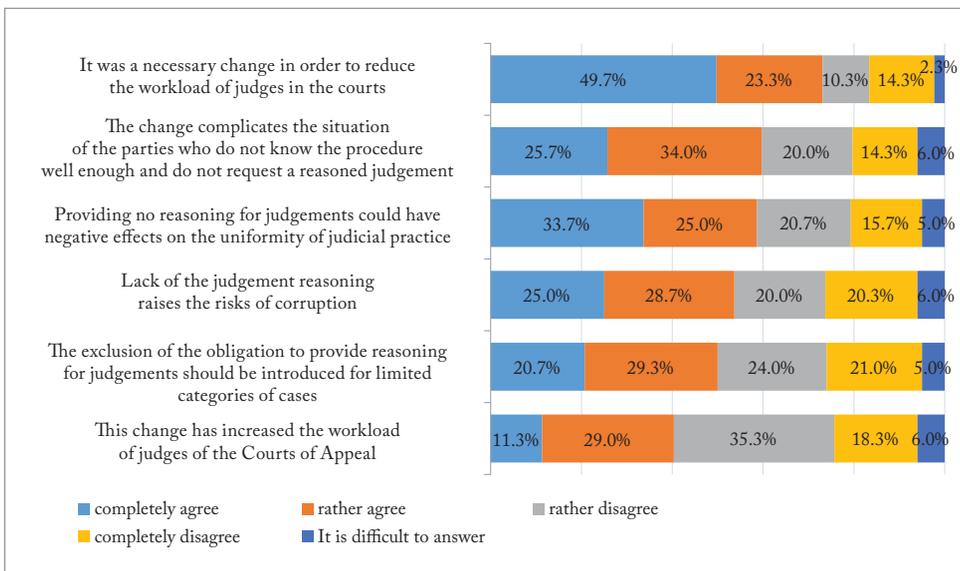
“Why the justice is not qualitative today? Because we have similar situations except maybe for the parties, but these are similar, identical situations, where we get totally different solutions, which run counter each other, and which do not provide clarity. For example, application of the Law on insolvency ... There are situations related to the application of Article 48 of this law that are settled completely differently... contradictory, different decisions are adopted, which do not give us clarity and we do not have any explanation.”

1.3. To what extent do you agree with the statement that the exclusion in 2012 of the obligation of the court of the first instance to provide reasoning for judgements in civil cases was an appropriate measure?



In 2018, 45.3% of respondents considered that the exclusion in 2012 of the obligation of the first instance courts to provide reasoning for judgements was an appropriate measure, 36% disagreed with this, and 18.3% neither agreed nor disagreed with regard to this measure.

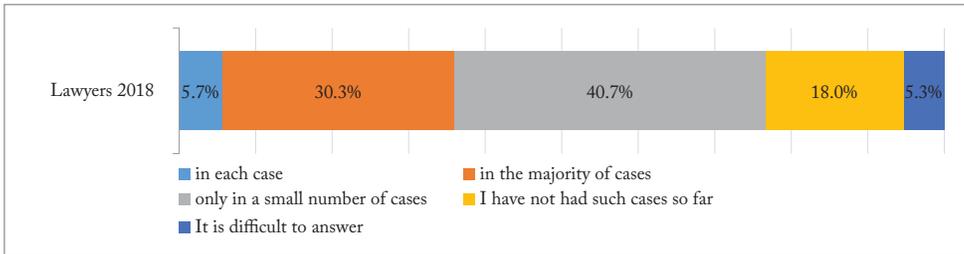
1.4. To what extent do you agree with the following statements regarding the impact of the exclusion of the obligation of the court of the first instance to provide reasoning for judgements in civil cases? Please tick your answer for each option given below:



As for the impact of the exclusion of the obligation of the first instance court to provide reasoning of judgements in civil proceedings, 73% of respondents believe that this was necessary to reduce the workload of judges in the first instance courts, although 40.3% consider that this measure has increased the workload of judges in the courts of appeal. Also, 59.7% consider that the exclusion of this obligation complicates the situation of the parties who do not know the procedure well enough and do not request a reasoned judgement, 58.7% are convinced that providing no reasoning for judgements could have negative effects on the uniformity of judicial practice, and 53.7% consider that the lack of the judgement reasoning increases the risks of corruption.

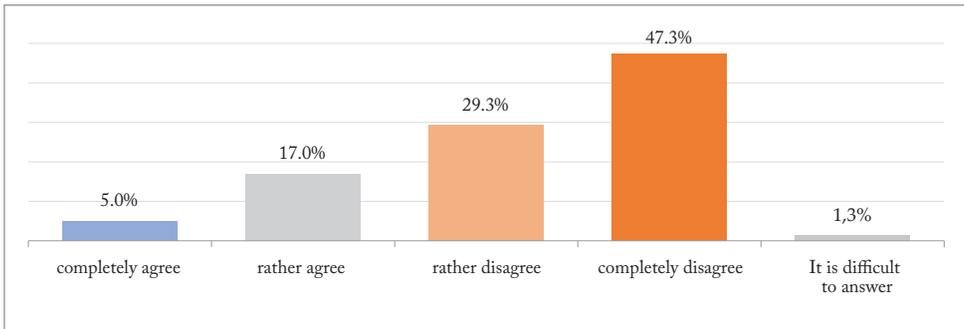
Within the framework of individual interviews, the opinions of lawyers were split, while some lawyers had negative opinion towards the exclusion of the general obligation to provide reasoning for the first instance court judgements in civil proceedings. Lawyers have highlighted the negative impact on the establishment of uniform judicial practice. Also, some lawyers have revealed the existence of some judgements on similar subjects that differ, but, due to the lack of reasoning, they are hard to understand and confusing. Their negative impact on parties that are not represented by lawyers was also highlighted.

1.5. The amendment to the Code of Civil Procedure as of 2012 allows preparing of the case for the trial on merits in writing. How often do judges use this procedure?



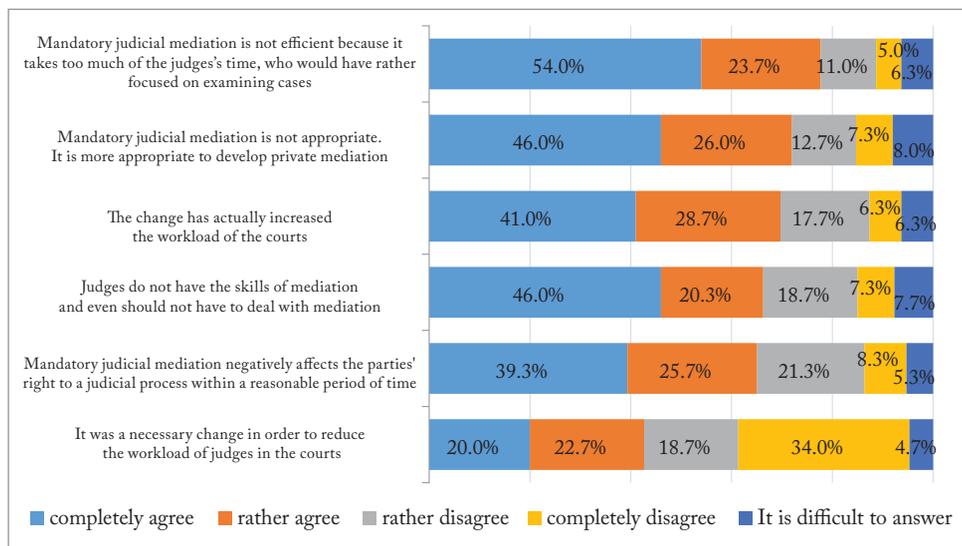
The opinions seem to be split with regard to the written preparation of the case for the trial on merits by the judge. Only 5.7% of respondents said that judges used this procedure in each case and 30.3% of the respondents - in the majority of cases, but 40.7% state that it is applied only in a small number of cases.

1.6. Mandatory mediation of civil cases by the judge was introduced in 2017. To what extent do you agree that the mandatory judicial mediation has de facto reduced the workload of judges?



Mandatory mediation of civil cases by judges was introduced in 2017 and one of the main arguments given in favour of this procedure was the need to reduce the workload of judges. Asked about their opinion on this measure, only 22% of respondents agreed that the mandatory mediation of civil cases by judges de facto reduced the workload of judges and as many as 76.6% did not agree with the given statement.

1.7. To what extent do you agree with the following statements regarding the impact of introducing the mandatory judicial mediation? Please tick your answer for each option given below:

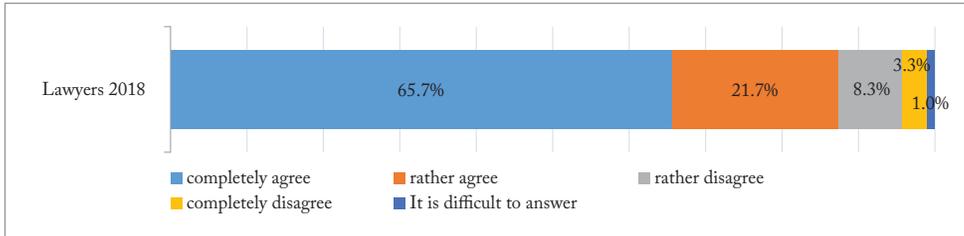


As concerns the views on the impact of the introduction of mandatory judicial mediation, the respondents answered as follows: 77.7% believe that mandatory judicial mediation is not efficient because it requires too much time for judges and only 16% disagree with this statement; 72% believe that mandatory judicial mediation is not appropriate and it is more appropriate to develop private mediation, and only 20% disagree with this statement, also 66.3% consider that judges do not have the skills of mediation and even should not have to deal with mediation, compared to 26% who disagree with this statement. While 42.7% consider that the introduction of mandatory court mediation was a necessary change to reduce the workload of judges in the courts, 69.7% believe that this measure actually increased the workload of the courts.

In individual interviews lawyers criticized the institution of mandatory court mediation, especially after the amendments of June 2018, according to which, if the parties do not want to mediate, the judge does not transfer the case to another judge, but continues the trial of the case on merits. In the opinion of some interviewed lawyers, this affects the impartiality of that judge. Lawyers also noted that judges do not have mediation skills, but must remain neutral in examining the cases that are assigned to them. Due to this institution, the judge's role becomes confusing. The way how some judges are trying to mediate the parties was also criticized.

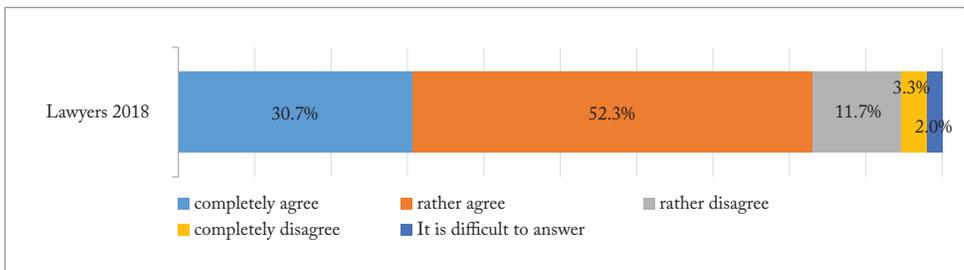
“Judges do not explain to anybody the advantages and disadvantages of mediation. I know from practice an example when a judge, in the absence of a party, just asked if the parties want to reconcile or not. And this was the only question asked by the judge. It was ruled that reconciliation was not possible and the process would follow the general procedure.”

1.8. To what extent do you agree with the statement that audio recording of court hearings contributes to the transparency of justice delivery and observance of the rights of the trial participants?



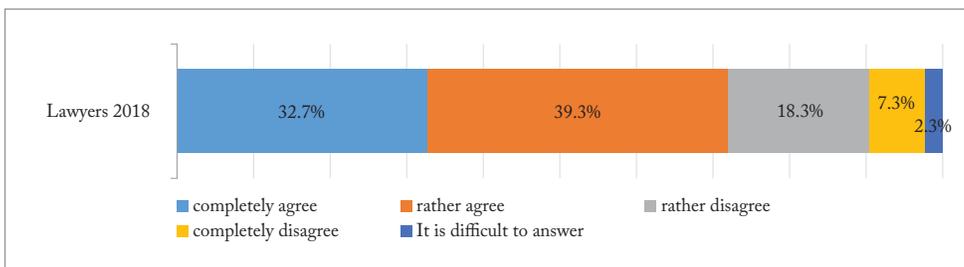
Almost 87.4% of respondents believe that the audio recording of court hearings contributes to the transparency of the justice delivery and the observance of the rights of the trial participants, which is a significant indicator of the importance and usefulness of the audio recording of court hearings.

1.9. To what extent do you agree with the statement that the courts ensure the audio recording of the court hearings effectively and adequately?



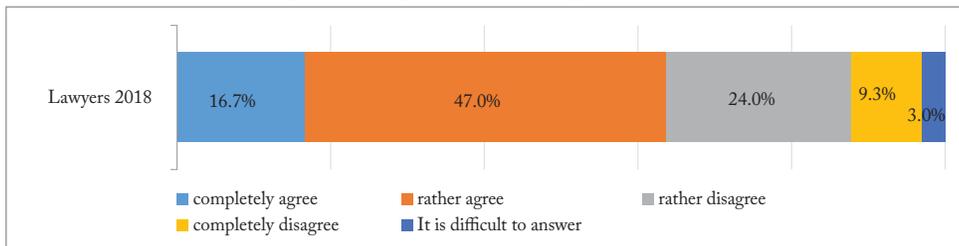
As many as 83% of respondents said that the courts ensured audio recording of court hearings effectively and adequately, and only 15% of respondents disagreed with this statement.

1.10. To what extent do you agree with the statement that the use of the Integrated Case Management Program (ICMP) has increased transparency in the activity of the courts?



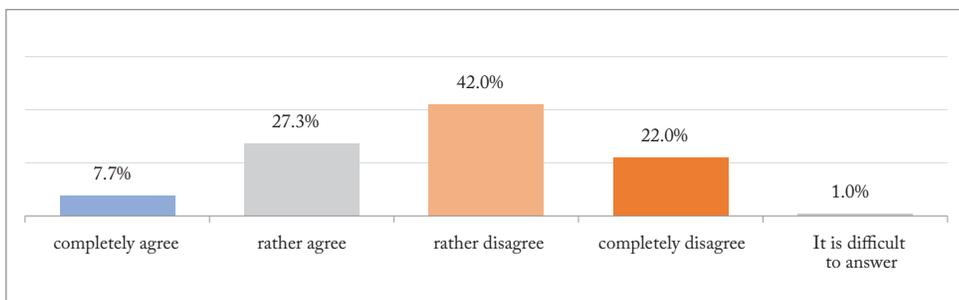
A significant percentage, and namely 72% of respondents, considered that the use of the Integrated Case Management Program had increased transparency in the activity of the courts, while 25.6% disagreed.

1.11. To what extent do you agree with the statement that cases in the courts are distributed effectively randomly, without manipulation?



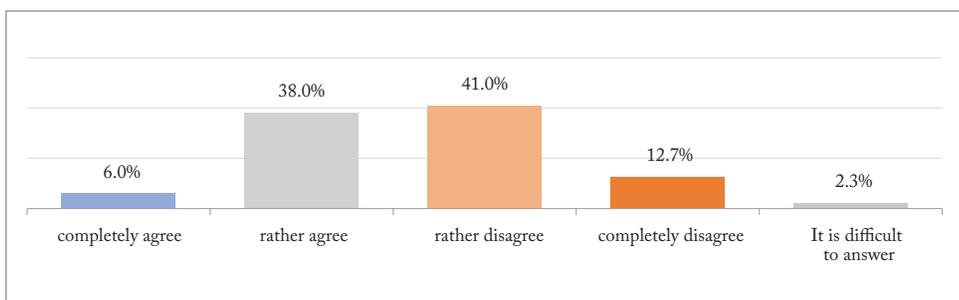
Asked if they agreed with the statement that cases in the courts were distributed effectively randomly, 63.7% answered affirmatively and 33.3% negatively.

1.12. To what extent do you agree with the statement that the Supreme Court of Justice (SCJ) practice is uniform?



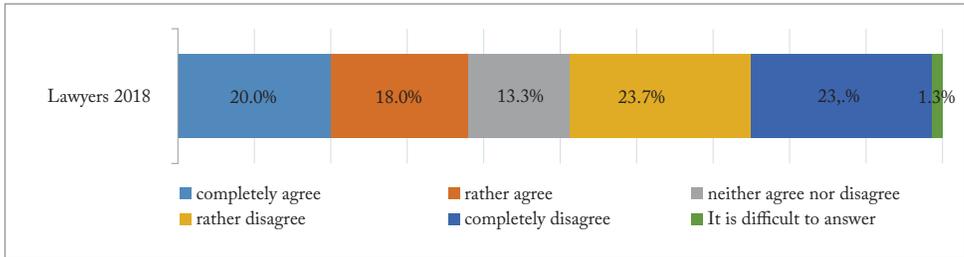
As far as the uniformity of the SCJ practice is concerned, 35% of the respondents consider the SCJ practice to be uniform and 64% disagree with this statement.

1.13. To what extent do you agree with the statement that, since 2012, the SCJ has taken sufficient measures to ensure the uniformity of judicial practice?



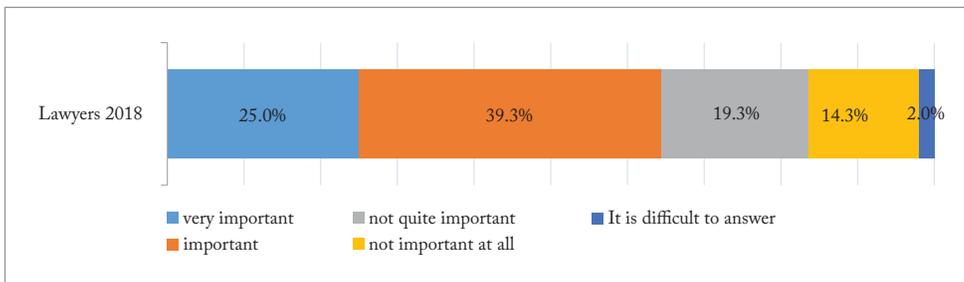
Asked about the measures taken by the SCJ to ensure the uniformity of judicial practice, 44% of respondents believed that, since 2012, the SCJ had taken sufficient measures to ensure the uniformity of judicial practice, and 53.7% disagreed with this statement.

1.14. To what extent do you agree with the examination of cassations by the SCJ in the absence of parties (written procedure)?



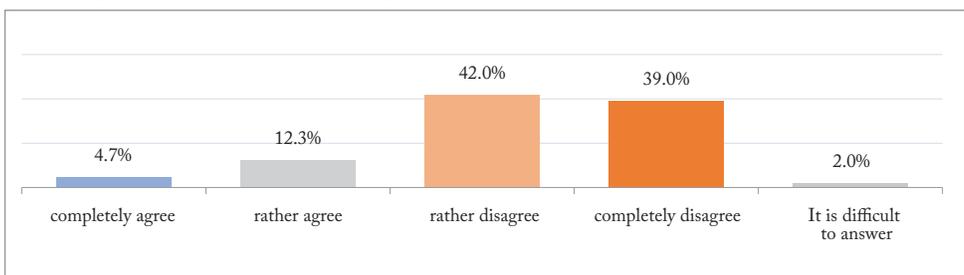
As regards the examination of cassations by the SCJ in the absence of parties (written procedure), 38% have a positive perception of this procedure, 13.3% have neutral opinion and 47.4% have a negative one.

1.15. In 2014 the salaries of judges were increased. How important is this measure to ensure the independence, accountability and efficiency of the judiciary?



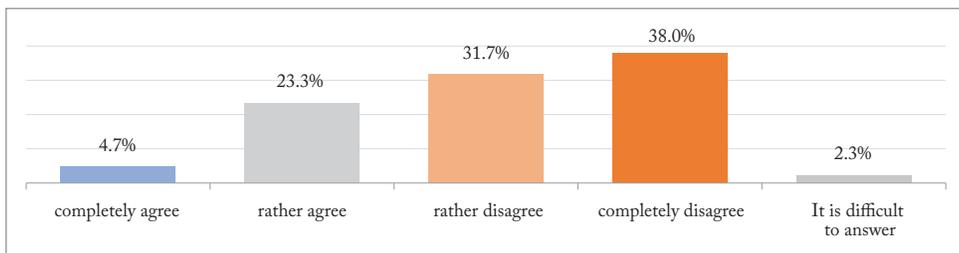
As regards the increase of the judges' salaries, 64.3% of lawyers consider that the increase of the judges' salaries in 2014 was an important measure to ensure the independence, accountability and efficiency of the judiciary, and 33.6% do not consider it an important measure.

1.16. To what extent do you agree with the statement that in 2018 the judges of the Republic of Moldova are independent?



Asked if they agreed with the statement that in 2018 the judges of the Republic of Moldova were independent, only 17% of the respondents agreed and 81% disagreed.

1.17. To what extent do you agree with the statement that in 2018 the judges of the Republic of Moldova are more independent than they were in 2011?



Comparison of the perception of independence of judges in 2018 and 2011 showed that only 28% of lawyers considered judges to be more independent in 2018 than they were in 2011, and 69.7% considered they were not more independent.

Within the framework of individual interviews, the lawyers' opinions on judges' independence were rather gloomy, most of the lawyers pointing to the lack of real independence of judges and the emergence of a new phenomenon as compared to 2011, namely of the fear among judges. Some lawyers have indicated an increasing trend of domination or inappropriate influence on the side of the prosecution service, a feature specific to the Soviet legal system, of which the judiciary in the Republic of Moldova seems not to have got rid of yet. In this context, the example of the criminal case against Judge Dorin MUNTEANU was brought, who refused the prosecutor's request to prolong the detention of a person in arrest. This case has strengthened the fear of judges to refuse the prosecutors' requests even more. The influence exerted by some influential persons and too close link between justice and politics, which means practically the disappearance of the separation of powers in the state, was also mentioned. In this context, the judicial case of invalidating the local elections in Chisinau in June 2018 (invalidation of Andrei NĂSTASE candidacy) was highlighted. The insufficient and rather negative role of the Superior Council of Magistracy for the independence of judges has also been mentioned, including its membership, the way in which it functions, the ease with which it gives consent to prosecute some judges and the selective application of dismissal from office. In the same context, the cases of judges Domnica MANOLE and Gheorghe BĂLAN were mentioned, which had a negative impact on the independence of the entire judiciary. Both internal and external control and influence on judges, which seriously affect their independence, as well as individual limitations of some judges (self-censorship in the opinion of a lawyer) who take certain decisions out of fear of disturbing influential persons, have been mentioned.

"I do not think it is independent. I do not think judges of the Supreme Court of Justice are independent. Recent cases with Năstase and others have shown this... here all the people who voted saw that everything was stolen from them, and it was alarming to them that even such things could happen... Even if there are judges of integrity at the Supreme Court who are phone called, invited somewhere, they reject it and hold on with aberrations because

they cannot say it publicly. One such case spoils everything. ...Even if you have a lot of very good judges, just one such case is enough to break the trust."

"Politicians have built up a system in which they control everything, they have their own people, and they get along with all the judges. If not, then there is the SCM, which is also owned by the politicians. And then the judge understands that if s/he is not friendly, the SCM will not defend him/her. The SCM is like a bat for them."

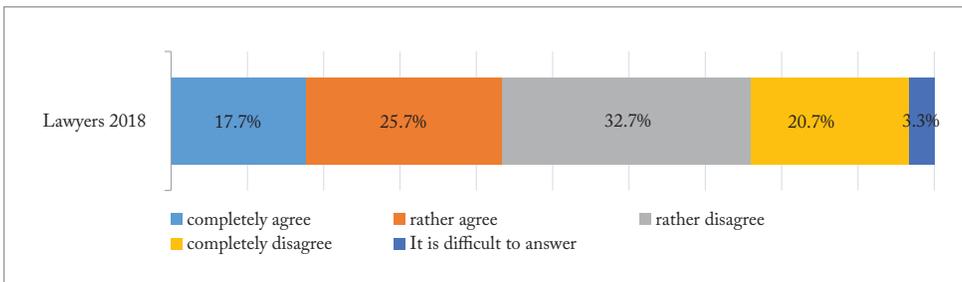
"They are afraid of prosecutors, are afraid of the National Anticorruption Centre, are afraid of the Security and Information Service, because they all a certain a moment can stop their career... We have such a state policy that prosecutors are always right, others are not right. It comes from history, since the Soviet times, historically it has been established that prosecutors are always right and everything should be done by the prosecutor. No matter how much the state guarantees for the defence rights increases, prosecutors are always a bit higher than judges, at all times."

"The most terrible thing in the current judiciary is that all law enforcement bodies are concentrated in the hand and power of one man, and namely one party. There are cases that are obviously done by order, where any action that would be taken by the lawyer is useless; the decision is such as the interested person wants."

"It's a vertically controlled system. From the beginning, I said that the lack of the judges' independence is shown by this. The lack of independence of judges does not mean that every judge is invited and asked regarding each case. The entire system is masterminded and subjected to control."

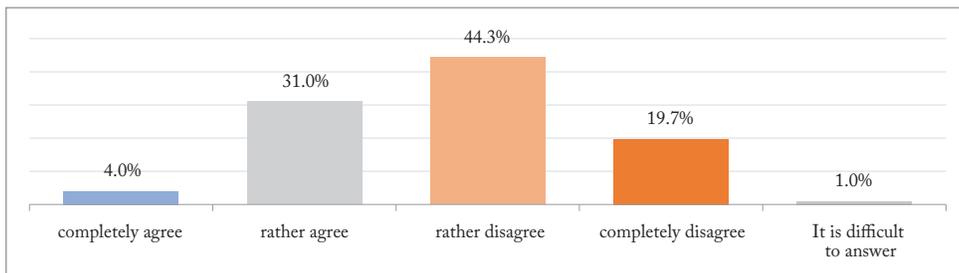
"In 2011, there was a substantial change of the entire justice sector staff. We have people who, from the point of view of technical procedure at trials are very good, maybe even better than others who know the law by heart. But, they are already educated in the spirit of fear, where fear is never rational, and I do not know why they are scared. There are a number of elements that make them fear."

1.18. To what extent do you agree with the statement that the reappointment of judges by the President of the country after the first five years of their activity negatively affects the independence of judges?



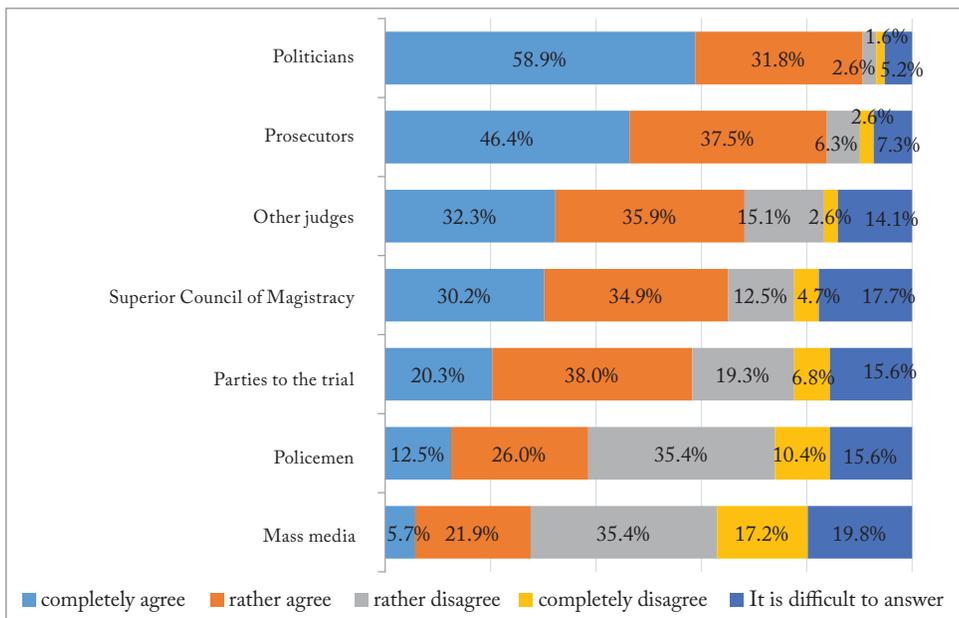
In the opinion of 43.4% of lawyers, the reappointment of judges by the President of the country after the first five years of their activity negatively affects the independence of judges and 53.4% disagree with it.

1.19. To what extent do you agree with the statement that solutions given by judges of the Republic of Moldova are fair and adopted without external influence?



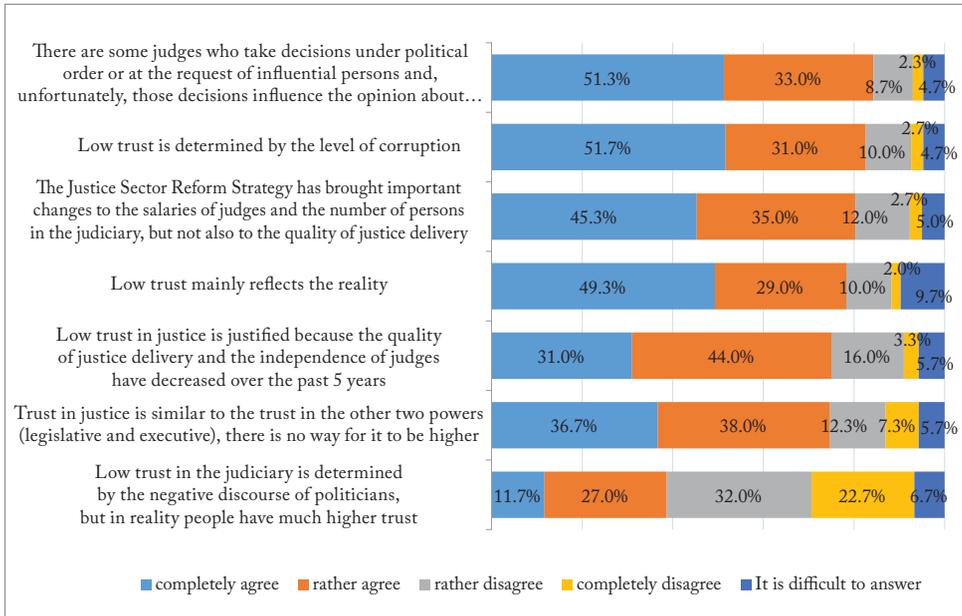
As regards the solutions given by judges of the Republic of Moldova, 35% of lawyers consider them fair and adopted without external influence, while 64% disagree with this statement.

Those who have chosen the option *rather disagree* or *completely disagree* were asked to assess whether the following subjects influence the judges' solutions, and provided the following answers:



Those 64% of lawyers, who consider that solutions given by judges of the Republic of Moldova are not fair and not adopted without external influence, believe that the following subjects influence the solutions given by judges: politicians (90.7%), prosecutors (83.9%), SCM (65.1%), parties to the trial (58.3%), policemen (38.5%) and the press (27.6%).

1.20. The trust in justice has not increased since 2011, despite the fact that the Justice Sector Reform Strategy was implemented. How do you explain this? Please tick your answer for each option given below:



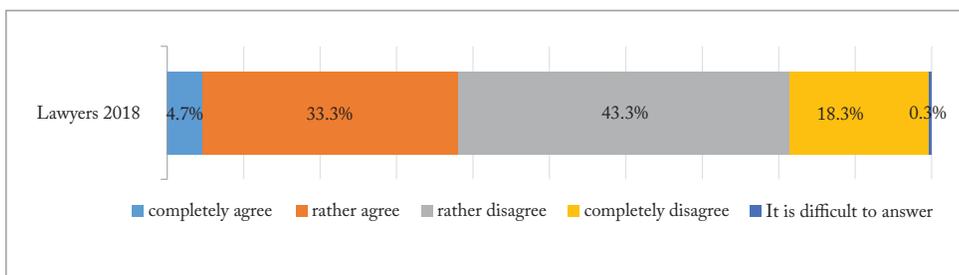
Asked how they could explain the fact that the trust in justice had not increased since 2011, despite the fact that the Justice Sector Reform Strategy (JSRS) had been implemented, the respondents had chosen the following options, in descending order: there are some judges who take decisions under political order or at the request of influential persons and, unfortunately, those decisions influence the opinion about the entire system (84.3%); low trust is determined by the level of corruption (82.7%); the JSRS has brought important changes to the salaries of judges and the number of persons in the judiciary, but not also to the quality of justice delivery (80.3%); low trust mainly reflects the reality (78.3%); low trust in justice is justified because the quality of the justice delivery and the independence of judges have decreased over the past five years (75%); trust in justice is similar to the trust in the other two powers (legislative and executive), there is no way for it to be higher (74.7%); low trust in the judiciary is determined by the negative discourse of politicians, but in reality people have much higher trust (38.7%).

Within the framework of individual interviews, the lawyers have expressed different opinions on the causes of low trust in the judiciary, quite similar to the options provided in the survey. Also, some lawyers have mentioned the need for greater openness of the judiciary to increase confidence in the judiciary and the urgent need to improve the quality of the justice delivery substantially.

“People do not have confidence not only in the justice. There is no strong relationship between the justice delivery and the perception of people because, yes, some are disappointed by the

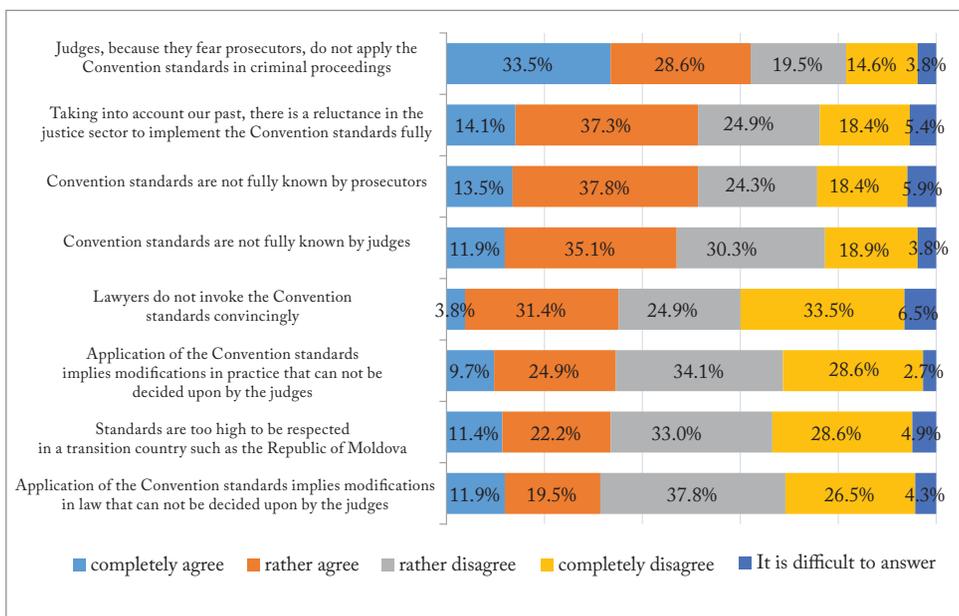
justice delivery, but generally in the society it is probably this category of people, judges, who have a very closed institution. They do not at all interact with the society and the society does not feel any openness on the side of this institution. I think that the Superior Council of Magistracy should indeed play a role that supports the independence of judges, and perhaps this will somehow improve the justice delivery. But there must be a wider openness to people. People must perceive that justice is done for them. Unfortunately, this perception is still missing.”

1.21. To what extent do you agree with the statement that the European Convention on Human Rights (ECHR) is respected in the justice sector of the Republic of Moldova?



To the question if they agree with the statement that the European Convention on Human Rights (ECHR) is observed in the justice sector of the Republic of Moldova 38% answered affirmatively and 61.6% - negatively.

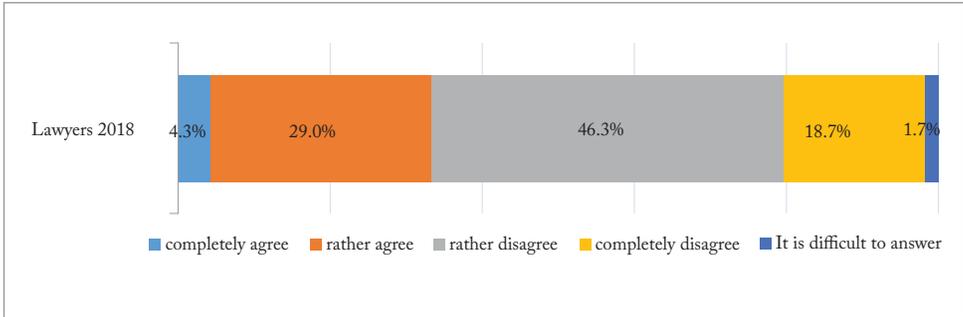
Those who have chosen the option *rather disagree* or *completely disagree*, were asked to explain why they consider that the ECHR is not observed in the justice sector of the Republic of Moldova, ticking the answer for each of the options below:



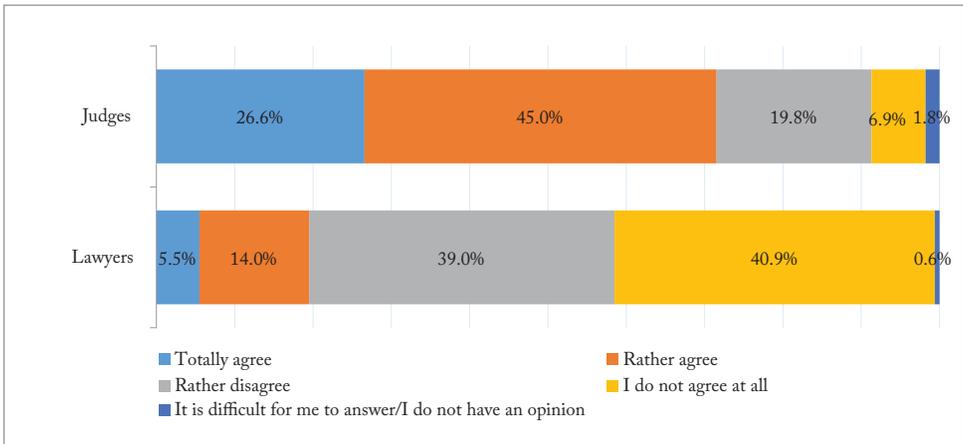
61.6% of the respondents who consider that the ECHR is not observed in the justice sector of the Republic of Moldova have chosen the following answers as the causes of failure to comply with the ECHR in the justice sector of the Republic of Moldova: judges, because they fear prosecutors, do not apply the Convention standards in criminal proceedings (62.1%); taking into account our past, there is a reluctance in the justice sector to implement the Convention standards fully (51.4%); Convention standards are not fully known by prosecutors (51.3%); Convention standards are not fully known by judges (47%); lawyers do not invoke the Convention standards convincingly (35.2%); application of the Convention standards implies changes in practice that cannot be decided upon by the judges (34.6%); standards are too high to be complied with in a transition country such as the Republic of Moldova (33.6%); application of the Convention standards implies legislative amendments that cannot be decided upon by the judges (31.4%).

BLOCK 2: Self-administration of the judiciary

2.1. To what extent do you agree with the statement that the activity of the Superior Council of Magistracy (SCM) is transparent?

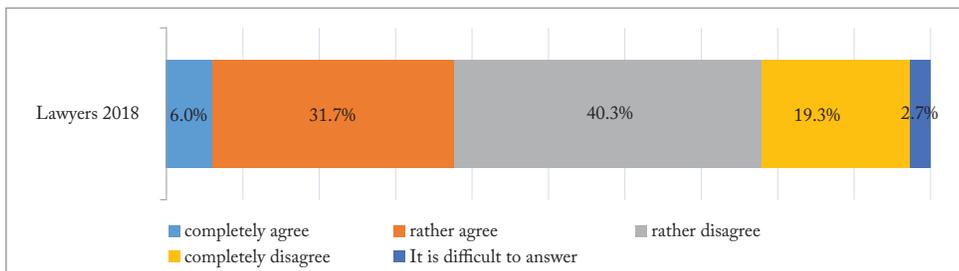


2015 Survey: To what extent do you agree with the statement that the activity of the Superior Council of Magistracy (SCM) is transparent?

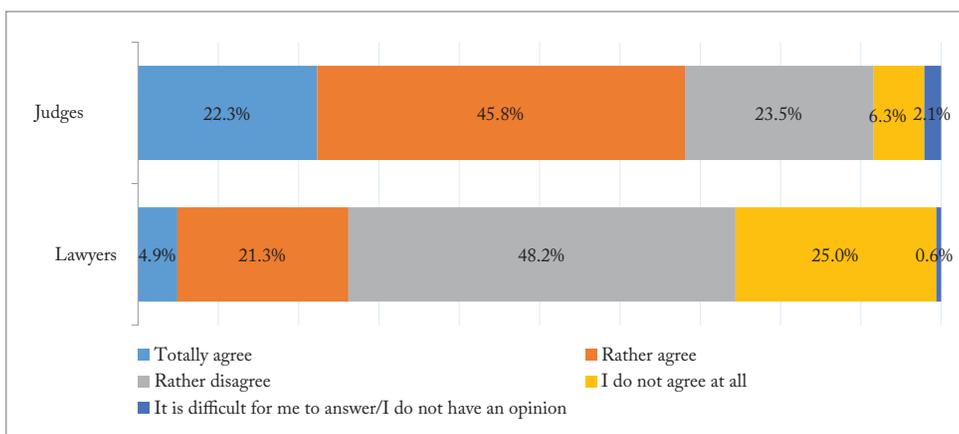


According to the lawyers, the transparency of the SCM activity remains a problem. In 2018, only 33.3% of lawyers-respondents agreed that the SCM activity was transparent and 65% did not agree. Even though the data do not show a positive assessment yet, they still show an increase in the SCM transparency in the lawyers' perception as compared to 2015, when only 19.5% of the lawyers-respondents agreed with the statement that the SCM activity was transparent and 79.9% disagreed.

2.2. To what extent do you agree with the statement that the SCM decisions are well reasoned?

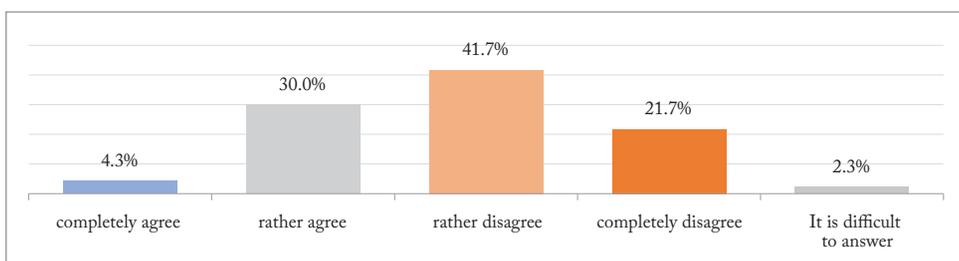


2015 Survey: To what extent do you agree with the statement that the SCM decisions are well reasoned and clear?



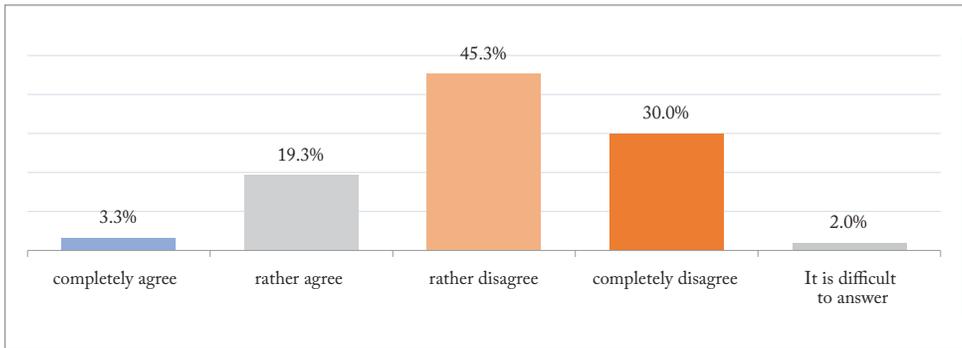
Regarding the reasoning of the SCM decisions, in 2018, 37.7% of the lawyers-respondents agreed with the statement that the SCM decisions were well-reasoned and 59.6% disagreed. Although the question was formulated slightly different than in 2015 and included not just the reasoning but also the clarity of the judgements, the answers can be compared. Thus, 26.2% of the lawyers-respondents agreed with the statement that the SCM judgements were well-reasoned and 73.2% disagreed. There is a slight improvement in the perception of lawyers as concerns the quality of reasoning of the SCM decisions.

2.3. To what extent do you agree with the statement that the SCM effectively protects the independence of judges?

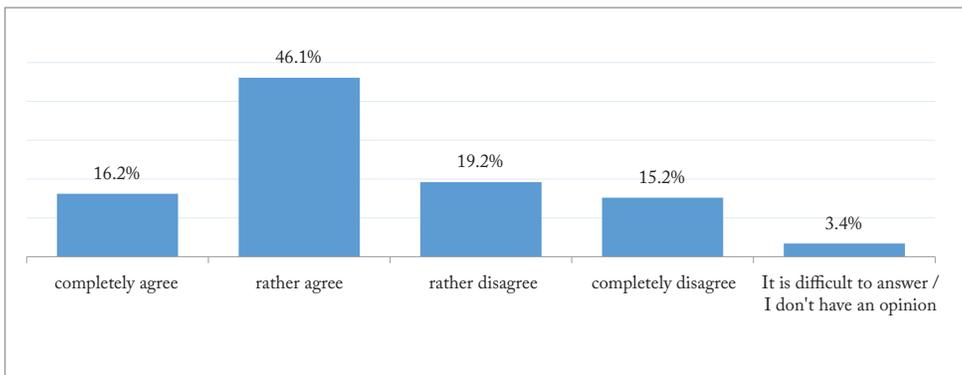


Asked to what extent they agreed with the statement that *the SCM effectively protects the independence of judges*, 34.3% of lawyers-respondents agreed and 63.4% did not agree. This response suggests that lawyers are not sure that the SCM effectively protects the independence of judges.

2.4. To what extent do you agree with the statement that the selection of new judges by the SCM is based on merits and the best candidates are selected?

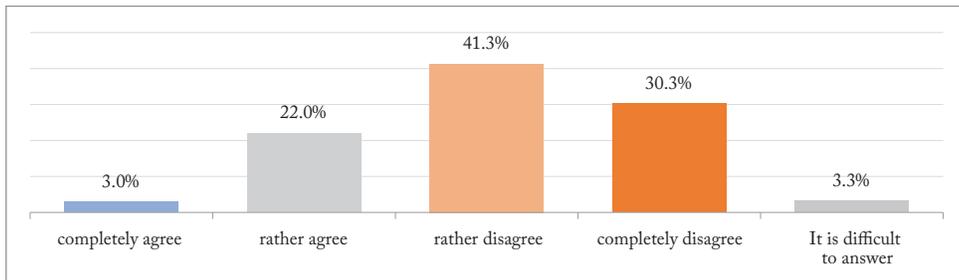


2015 Survey - question to judges: To what extent do you agree with the statement that the mechanism of *initial appointment of judges* by the SCM is based on merits and the best candidates are selected?

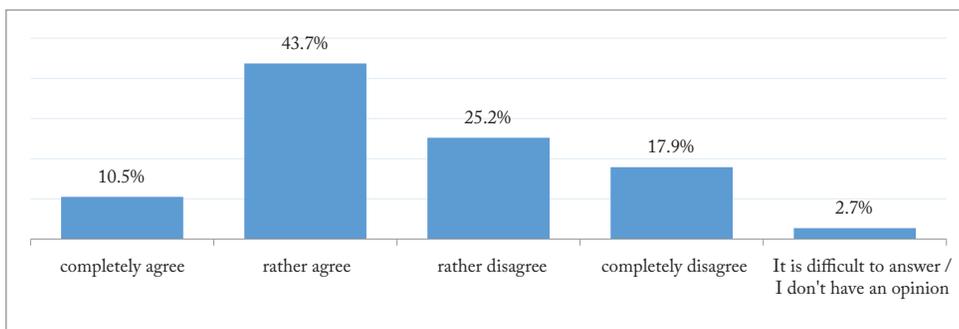


Asked to what extent they agreed with the statement that the selection of new judges by the SCM was based on merits and the best candidates were selected, only 22.6% of the respondents agreed and 75.3% disagreed. Given that lawyers can become judges, after NIJ studies or experience, the high percentage of those who do not think the selection system for judges is merit-based should determine the SCM to improve its procedures. In 2015, only the judges were asked this question and the results among the judges were better: 62.3% stated that the mechanism of initial appointment of judges by the SCM was based on merits and the best candidates were selected and 34.4% disagreed.

2.5. To what extent do you agree with the statement that the promotion of judges by the SCM is based on merits and the best judges are promoted to a higher court?



2015 Survey - question to judges: To what extent do you agree with the statement that the way of promotion of judges by the SCM is correct and based on merits so that the best judges are promoted to a higher court?



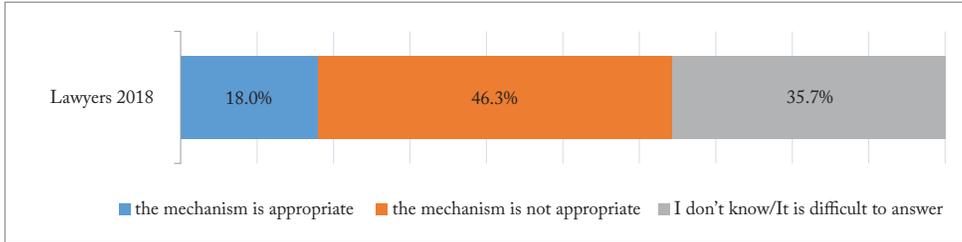
Asked to what extent they agreed with the statement that the promotion of judges by the SCM was based on merits, only 25% of the respondents agreed and 71.6% did not agree. In 2015, this question was addressed only to judges and the results were a bit better: 54.2% stated that promotion of judges was fair and merit based, and 43.1% disagreed. Despite the slightly better results among judges as compared to lawyers, the data reveal a problem regarding the fairness of judicial promotions, given the negative appreciation of as many as 43.1% of respondents in 2015 and 71.6% of respondents in 2018.

Qualitative interviews have confirmed that the score for the evaluation criteria and the non-transparent procedures negatively affect the perception that candidates to the position of judge at all levels are promoted based on merits.

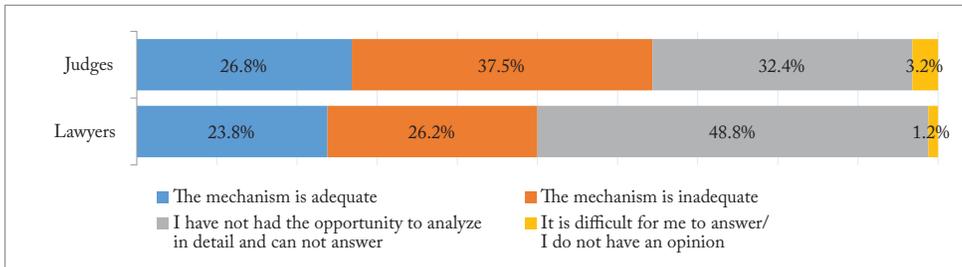
“The SCM promotes judges according to the following criteria - absence of character, closeness to those in power, and ability to do what those who are in power want.”

“It is known that in practice those judges who have connections, relations, who are convenient to the system, are promoted. There is no transparency, fairness and no one explains why one went to work in Comrat - because the reasons are - 1, 2, 3, and you remained in Chisinau.”

2.6. What is your opinion regarding the mechanism of disciplinary liability of judges?
Please choose only one option:



2015 Survey: What is your opinion regarding the mechanism of disciplinary liability of judges introduced by Law no. 178, in force since 1 January 2015? Please choose only one option.

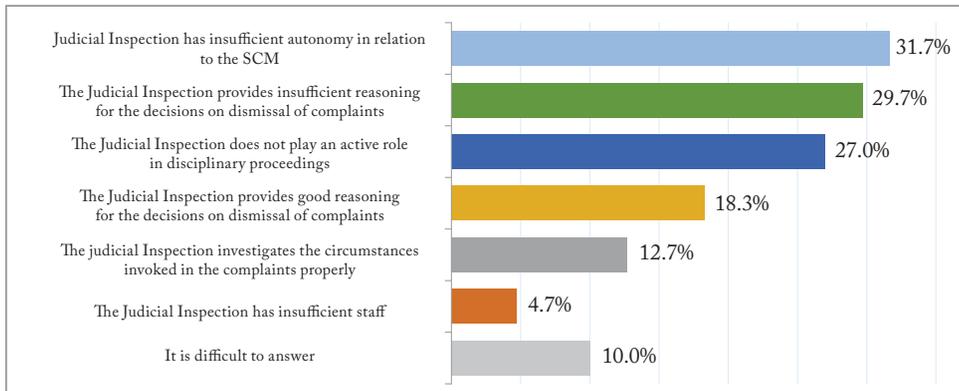


In 2018, 18% of lawyers-respondents considered that the mechanism of disciplinary liability of judges was appropriate, which was quite close to 23.8% of those who responded similarly in 2015. In 2018, 46.3% of lawyers-respondents considered that the mechanism of disciplinary liability of judges was inadequate, compared with 26.2% in 2015. At the same time, it is important to note that in 2015 as many as 48.8% of the respondents replied that they did not have the opportunity to analyse the mechanism in detail compared to 35.7% of those who did not answer this question in 2018. The negative evaluation of the mechanism by 46.3% of lawyers in 2018 and by 26.2% in 2015 and 37.5% of judges in 2015 denotes the problematic nature of the mechanism or at least its vagueness. In this context, the legislative amendments to the system of the disciplinary liability of judges as of July 2018, which should have streamlined the mechanism, appear to be welcomed.

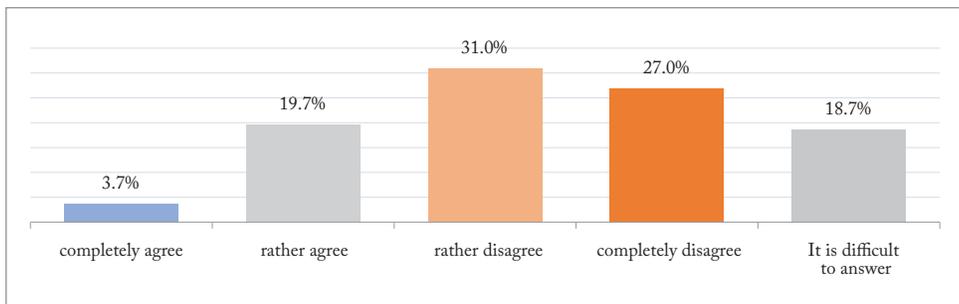
Within the framework of qualitative interviews lawyers argued that although the Disciplinary Board previously acted freely and tried to discipline the judges, recently the mechanism of disciplinary liability of judges has been applied selectively, and through this mechanism judges are put to silence.

“There have been different periods in which the Disciplinary Board has tried to be a body for the education and discipline of judges. After 2011, this Board was granted freedom. Now there is a situation when this body is used against judges. Unfortunately, the decisions of the Disciplinary Board are selective. They are trying to provide reasoning somehow, but sometimes charges brought against a judge are absurd, including those concerning his/her opinion.”

2.7. What is your opinion regarding the activity of the Judicial Inspection within the framework of disciplinary proceedings? (choose one or more of the appropriate options given below):



2.8. To what extent do you agree with the statement that the system of admission to the National Institute of Justice (NIJ) is fair and based on merits and the best candidates are admitted?



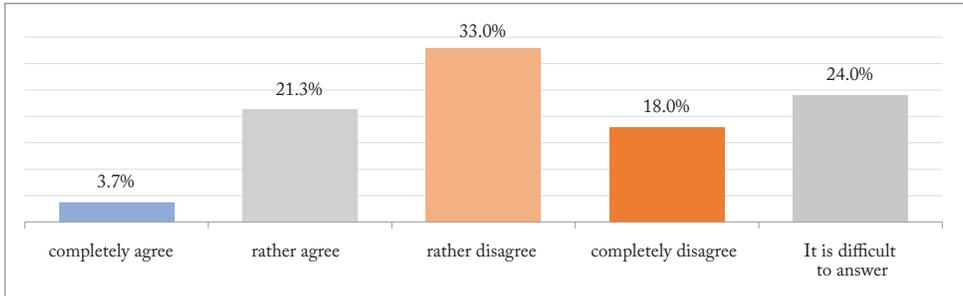
Asked if the system of admission to the National Institute of Justice (NIJ) was fair and based on merits, only 23.4% of lawyers-respondents answered affirmatively, 58% - negatively, and 18.7% did not give any answer.

Within the framework of qualitative interviews, lawyers have positively assessed the changes concerning the admission to the NIJ, especially the exclusion of the human factor by introducing the computerized system for admission exams. Such an evaluation system excludes subjectivity and provides greater confidence in the fact that evaluation is based on merits. At the same time, some lawyers have voiced concerns about the quality of the NIJ trainers.

“I have acquaintances who for sure were promoted at the exam based on merits. Perhaps there were among them also those who took advantage of the notoriety of their parents ... I can say that opportunities are given and to those who have intellectual capacity.”

“Subjectivity has been ruled out a few years ago, since the admission is based on computerized tests. I know some good specialists who do not teach courses for the initial training of judges and prosecutors for some time, although they used to teach at the Institute. Very good trainers left and that makes me think about it.”

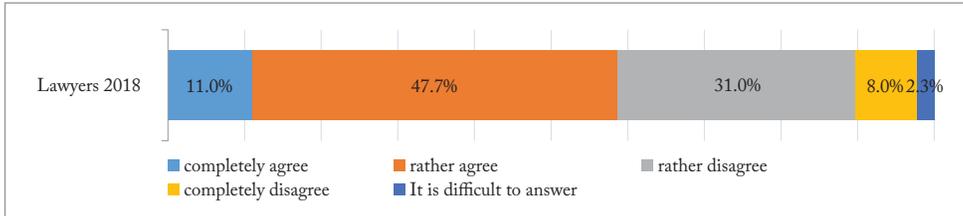
2.9. To what extent do you agree with the statement that the graduation exams at the NIJ are organized fairly, based on merit and ensure fair assessment of the future judges?



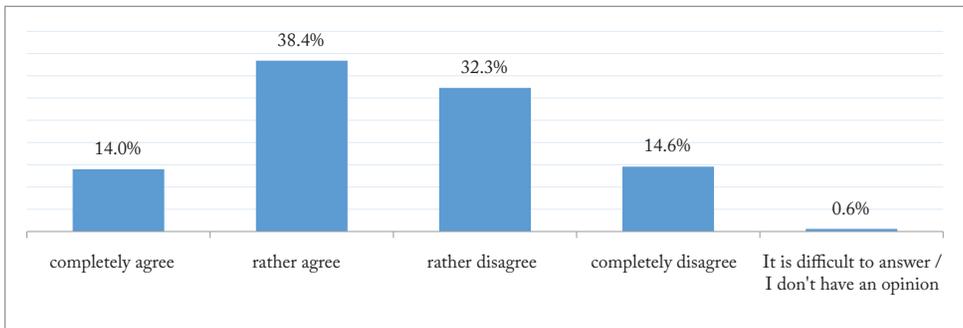
Asked if the graduation exams at the NIJ were organized fairly, only 25% of lawyers-respondents answered affirmatively, 51% - negatively, and 24% did not give any answer. These answers show a low trust of lawyers in the graduation process at the NIJ.

BLOCK 3: Self-administration of the lawyers' profession

3.1. To what extent do you agree with the statement that the activity of the Union of Lawyers' Council is transparent?



2015 Survey: To what extent do you agree with the statement that the activity of the Union of Lawyers' Council was transparent in the last six months?



With regard to self-administration of the lawyers' profession, in 2018, 58.7% of lawyers-respondents agreed that within the last two years the activity of the Union of Lawyers' Council was transparent and 39% disagreed. These numbers show a slight improvement in perception compared to 2015, when 52.4% agreed, and 46.9% disagreed.

According to the lawyers interviewed within the framework of qualitative interviews, the activity of the Union of Lawyers has had several challenges in recent years and has revealed the division of lawyers into several groups of interest. Some activities, like celebrating holidays, instead of uniting the lawyers, divide them even more, as other lawyers would prefer investing the Union of Lawyers' funds in training. The absence of an action plan for the implementation of the Development Strategy diminishes the trust of some lawyers in the fact that the important and necessary actions for the lawyers will be successfully implemented. Other lawyers have expressed their disappointment by the lack of response on the side of the Union of Lawyers' Council to systemic issues of the lawyers' profession, such as the high rate of arrests in the practice of Chisinau Court of Appeal, or the intimidation/assault of lawyers. Such trends can reduce the trust in the lawyers and strengthen the perception of the lack of representativeness within the Union of Lawyers. Other lawyers have evaluated admission to the profession negatively. In the opinion of lawyers, professionals from other fields are admitted to the profession not based on merit,

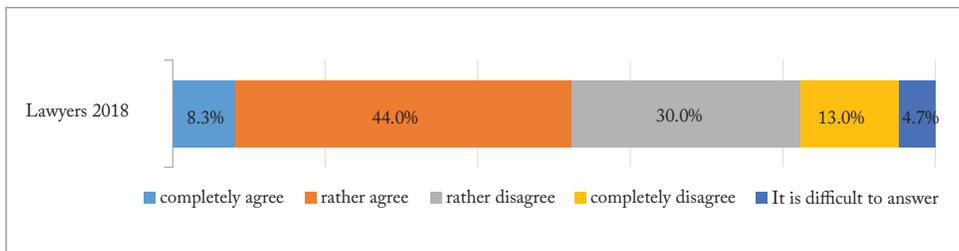
and for some of them the PhD degree in law is a way of avoiding the admission exam to the lawyers' profession/Bar.

"I have the impression that the Bar is a sort of waste bin of the justice system: consists of judges dismissed or resigned, prosecutors dismissed or resigned. They come to the Bar and try to do some actions, which do not lead to raising the prestige of the Bar."

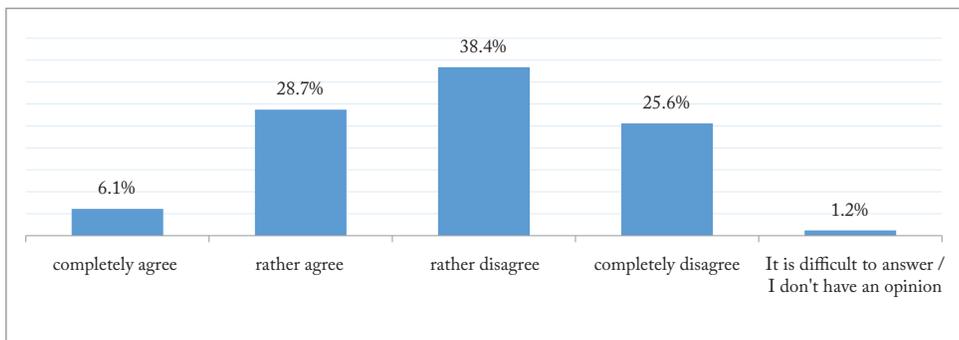
"The Union of Lawyers should document the problems faced by the lawyers, for example when a lawyer is removed from the court proceedings or when lawyers are hindered to have meetings with clients in prisons."

"What happens in the judiciary is also happening in the Bar. We are active participants in the justice administration. This Union of Lawyers' Council has not yet ensured the transparency of decision-making. I do not feel represented at all. The role of the Bar is to establish red lines in the judiciary, but not to solve very small, unimportant and bureaucratic issues of the lawyers. In a normal society, where democratic rules work, the Bar has this role. It does not exist on our end."

3.2. To what extent do you agree with the statement that within the last two years, the activity of the Licencing Commission of lawyers was correct and the best candidates were selected?



2015 Survey: To what extent do you agree with the statement that within the last four years, the activity of the Licencing Commission of lawyers was correct and the best candidates were selected?



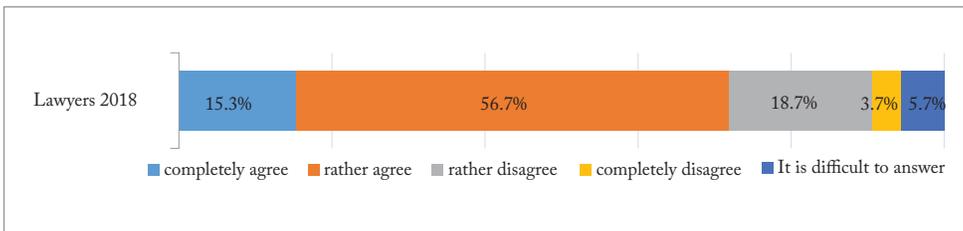
Concerning the activity of the Licencing Commission of lawyers, 52.3% of the lawyers-respondents agreed with the statement that its activity within the last two years was correct and 43% disagreed. These figures indicate an improvement in perception as compared to the results of the 2015 survey, when 34.8% of respondents agreed, and 64% disagreed with the statement that the activity of the Licencing Commission within the last four years was correct.

Within the framework of the individual qualitative interviews, lawyers drew attention to the absence of a Commission to challenge the Licencing Commission’s decisions, absence of merit-based criteria, and the feeling that the members of the Licencing Commission have too much discretion in assessing the candidates. These elements strengthen the perception of corruption in the process of admission to the bar.

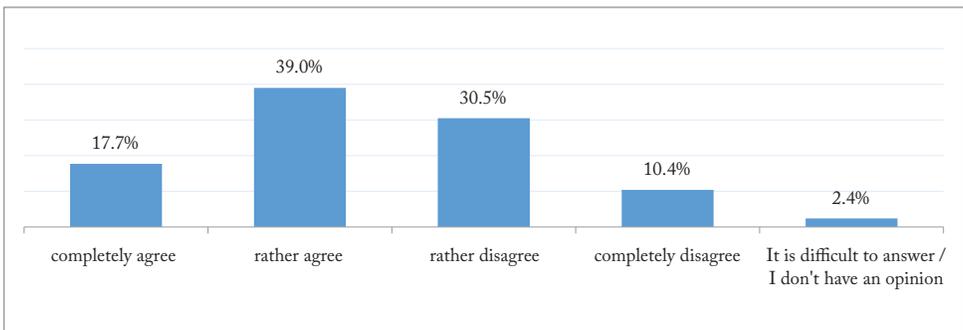
“I had a colleague who did the internship and tried to pass the admission exams to the Bar three times and all three times she failed. After her failure in the Bar, she went to the National Institute of Justice and passed the admission exam for judges with the highest score. It’s a bit inconsistent – she was not admitted to the Bar, but got a high score at admission for the profession of a judge.”

“There has been a lot of work done regarding the admission to the profession of a lawyer. But, unfortunately, no profound reform has been done. Once a commission was elected and tried to develop very clear and rigorous admission criteria. Afterwards, the lawyers backed out of the reform. Today, the Licencing Commission does not provide clarity on the criteria on which one is admitted, and the other is not. They are certainly subjective. If the members of the Commission do not like you, you are practically rejected. It is the subjective decision of each member who has the discretion and possibility to decide the fate of each candidate.”

3.3. To what extent do you agree with the statement that within the last two years the Ethics and Discipline Commission for lawyers has taken correct and well-grounded decisions?



2015 Survey: To what extent do you agree with the statement that within the last four years the Ethics and Discipline Commission for lawyers has taken correct and well-grounded decisions?



Concerning the activity of the Ethics and Discipline Commission for lawyers, 72% of lawyers-respondents agreed with the statement that within the last two years the Commission had adopted fair and well-grounded decisions and 22.4% disagreed with it. These figures

indicate an improvement in perception as compared to the results of the 2015 survey, when 56.7% of respondents agreed, and 40.9% disagreed with the statement that the activity of the Ethics and Discipline Commission for lawyers within the last four years was correct.

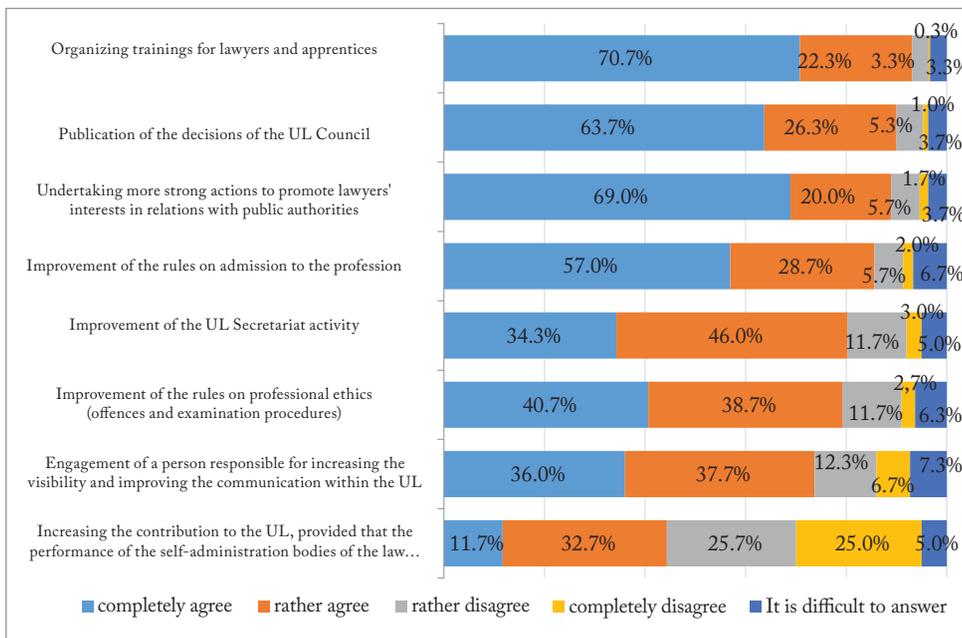
According to the lawyers interviewed within the framework of individual interviews, the Ethics and Discipline Commission does not enjoy a great popularity among the lawyers due to the complexity and consequences of its decisions, so there is no great interest among lawyers to be members of that committee. An important problem seems to be the lack of a clear methodology for applying sanctions to lawyers. The adoption of disciplinary sanctions in high profile cases has been welcomed by some lawyers as a means to give clear message to other lawyers regarding the quality of provided services. It has been stated that there are cases where the application of more lenient or more severe sanctions to lawyers is unclear.

“The Ethics and Discipline Commission is an unpopular committee, very few want to be a part of it and many want to get to the Licencing Commission.”

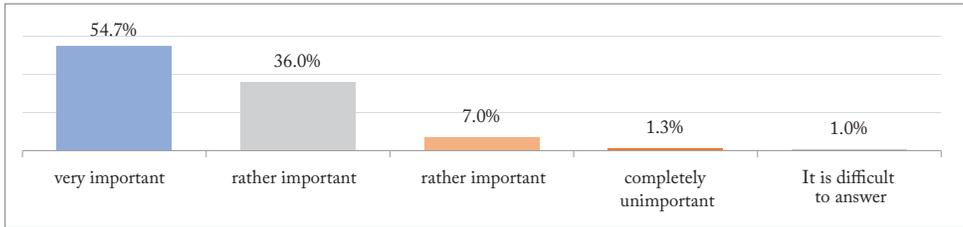
“In the case of the Brăguță, the lawyer appointed ex officio, who did not perform his duties properly, remained without a license. There should be several such decisions, so that lawyers think very well before they engage in defending a client, but obviously also take the risks.”

“The Ethics and Discipline Commission is trying to provide reasoning for its decisions, at least they are seeking to find that small balance in the society. We do not make any distinction between sanctioning a lawyer with reprimand or warning and withdrawal of license in almost similar cases.”

3.4. Please express your opinion on whether the following measures could improve the activity of the Union of Lawyers (UL). Please tick your answer for each option given below:



3.5. How important is the training organized by the Union of Lawyers for you?



Training organized by the Union of Lawyers has an important role in the activity of lawyers, being regarded as important or very important by as many as 90.7% of lawyers-respondents. In particular, 54.7% of respondents appreciated the training organized by the Union of Lawyers as very important, 36% - as rather important and only 7% - as rather unimportant, and 1.3% - completely unimportant.

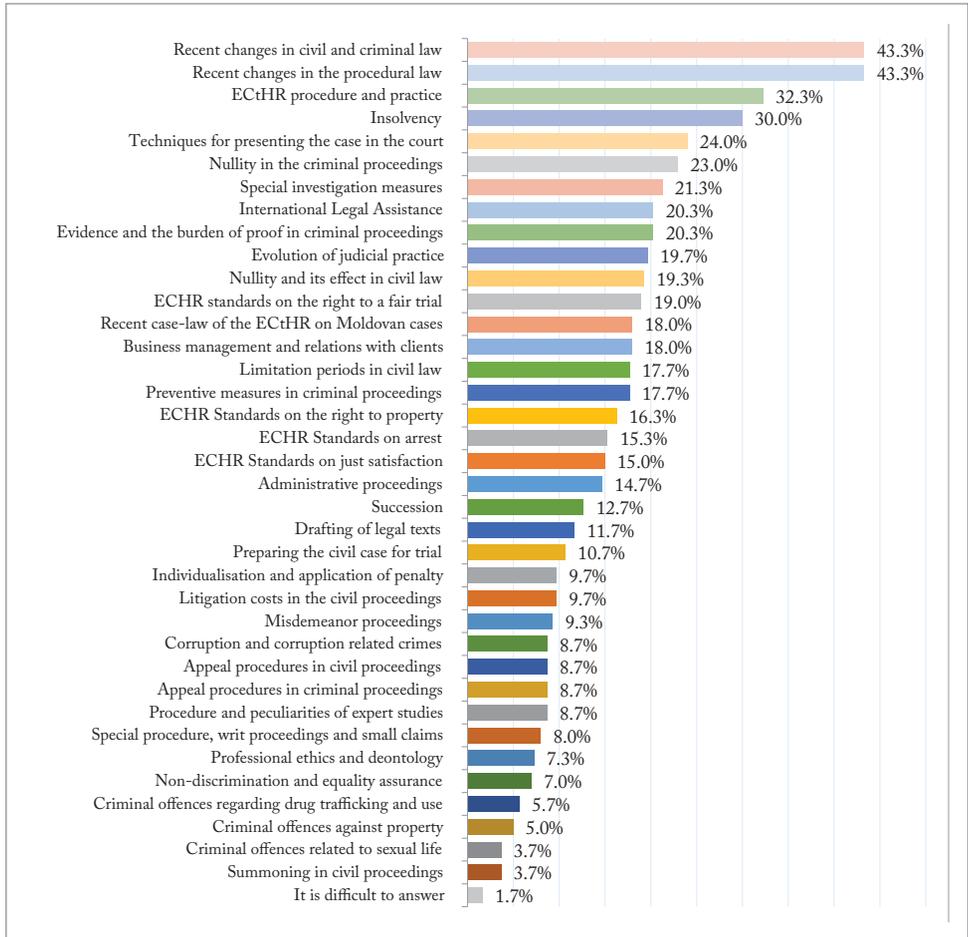
Practically, all lawyers questioned within the framework of individual interviews noted the success regarding the lawyers' training provided by the Union of Lawyers. In the opinion of some persons, this seems to be the main area of success that has recently been achieved by the Union of Lawyers. Lawyers recommended strengthening the lawyers' training in other regions of the country, others than Chisinau, as well as by organizing joint trainings of lawyers, judges and prosecutors, institutionalizing the training curriculum, providing assessment after training and diversifying training topics.

"We have begun trainings within the last two years; we have never done it before... Previously there was no training provided outside Chisinau. I hope this point will be taken into account by the Lawyers' Training Centre."

"I now see training as one of the most efficient area of activity of the Union of Lawyers. The trainings that took place were conducted without asking the lawyers about their needs. I would like the training for lawyers to be organized together with judges and prosecutors; it should be a joint one. It's hard to convince the SCM that prosecutors and judges have to attend the training for lawyers. One solution would be if the NIJ collaborates more intensely with the Union of Lawyers."

"We must have motivation to participate in training, being issued certificates of participation in and graduation from these courses. There also should be an evaluation not just that I have been on the list of participants. Based on these certificates, we should have an opportunity to conclude contracts with the Legal Aid Council as lawyers specialised in certain domains."

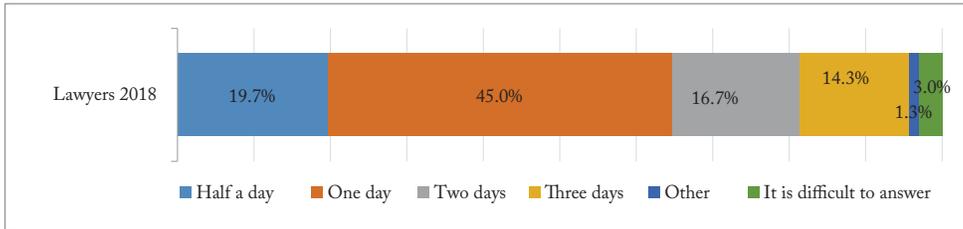
3.6. In what areas would you like to be primarily trained by the Union of Lawyers? (choose up to five domains)



As regards the training areas, the following five were selected by the majority of respondents: recent changes in civil, criminal and procedural law, the ECtHR procedure and practice, insolvency and techniques for presenting the case in the court.

The lawyers interviewed within the framework of qualitative interviews formulated the following training topics: nullity of procedural acts, inadmissibility of evidence, consequences of violation of fundamental rights and freedoms, judicial expertise, international legal assistance, extradition, acts of the prosecutors, accounting for lawyers, amendments to the Civil Code, activity of the Constitutional Court, defence tactics, conflict of jurisdiction, practice of the European Court of Human Rights, certain judicial expertise (forensic, DNA, medical, etc.), hate and prejudice crimes. At the same time, lawyers even opt for paying training fees, but to ensure higher quality of training.

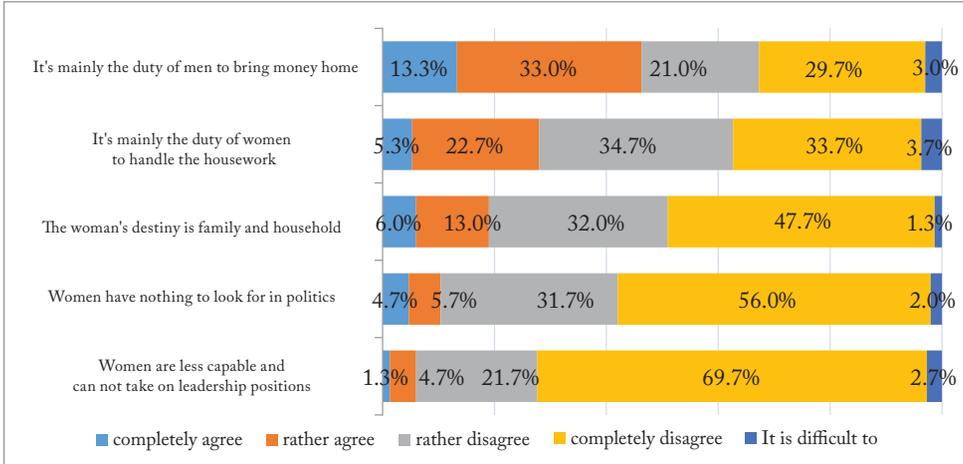
3.7. How long should a training seminar organised by the Union of Lawyers usually last?



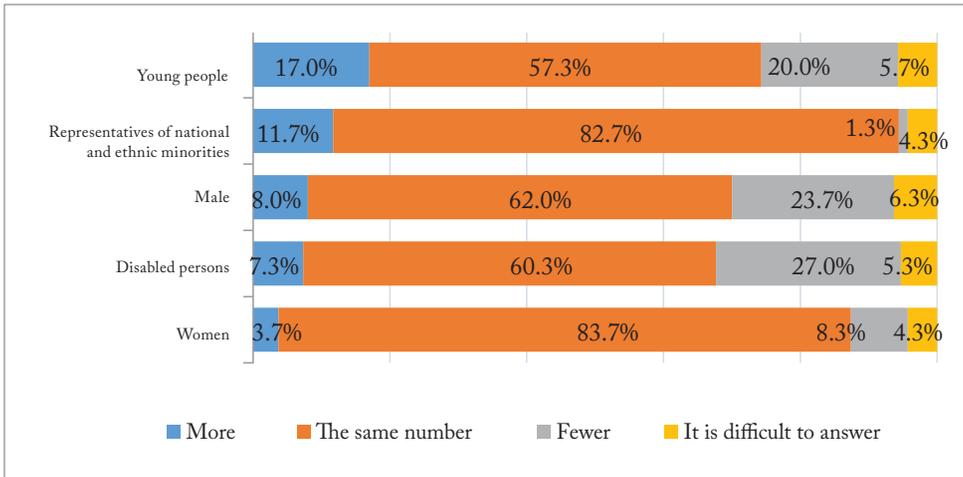
Most lawyers, 45% of respondents opted for organization of trainings lawyers lasting one-day, 19.7% opted for half-day training, 16.7% - for two days training, and 14.3% - for three days training.

BLOCK 4: Gender equality⁶

4.1. To what extent do you agree with the following statements? Please tick your answer for each option given below:

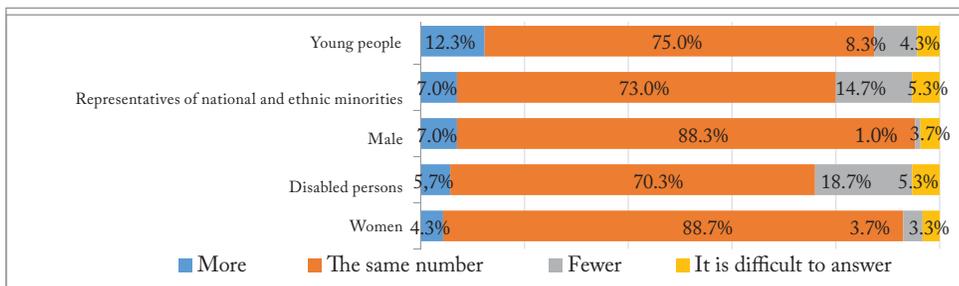


4.2. Do you think the judiciary needs more, the same number or fewer: Please tick your answer for each option given below:

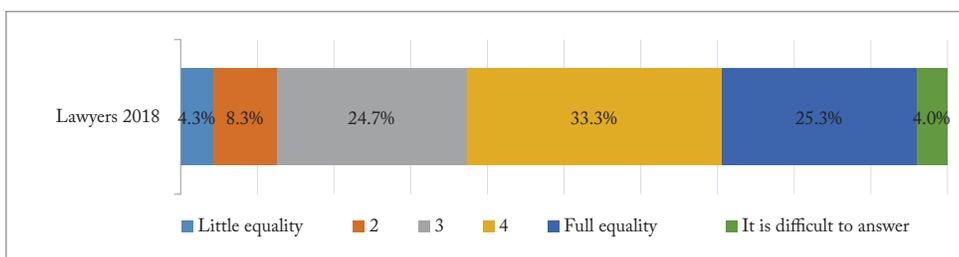


⁶ The block of questions related to Gender Equality was introduced in the survey of 2018 for the first time, taking into account the objective of the LRCM to contribute to ensuring gender equality in the justice sector. Questions and answers are presented without generalizations, for anyone who is deeply interested in the subject. The information obtained within the framework of the survey and by other research methods will be used by the LRCM to draft proposals for to ensure gender equality in the justice sector.

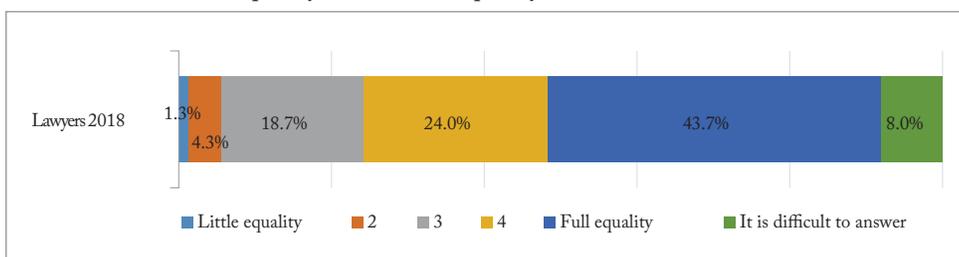
4.3. Do you think the Union of Lawyers needs more, the same number or fewer: Please tick your answer for each option given below:



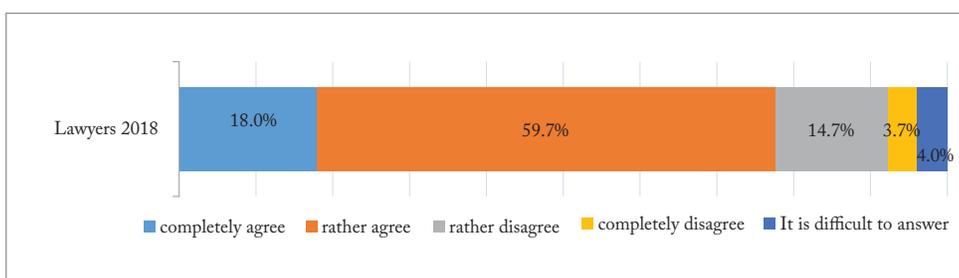
4.4. How do you assess the level of gender equality in the Republic of Moldova? Assess it by grades from 1 to 5 where 1- denotes little equality and 5 - full equality.



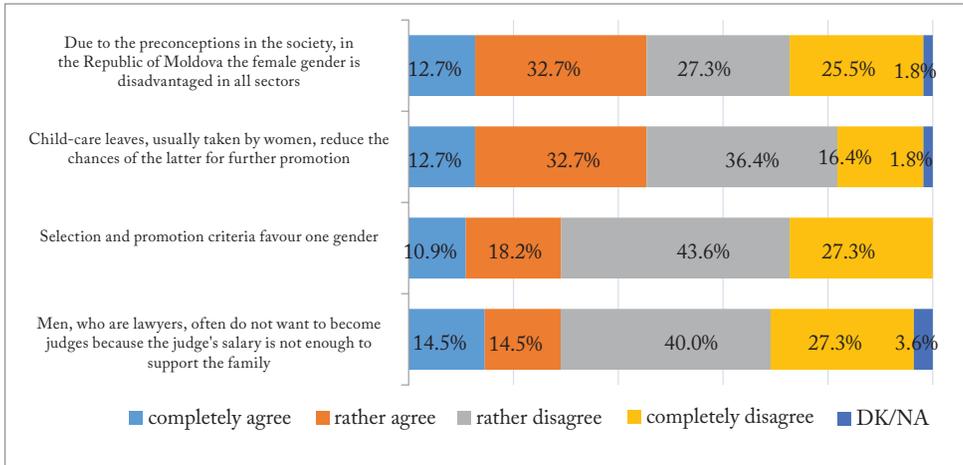
4.5. How do you assess the level of gender equality within the judiciary (the existence of equal opportunities for both women and men). Assess it by grades from 1 to 5 where 1- denotes little equality and 5 - full equality.



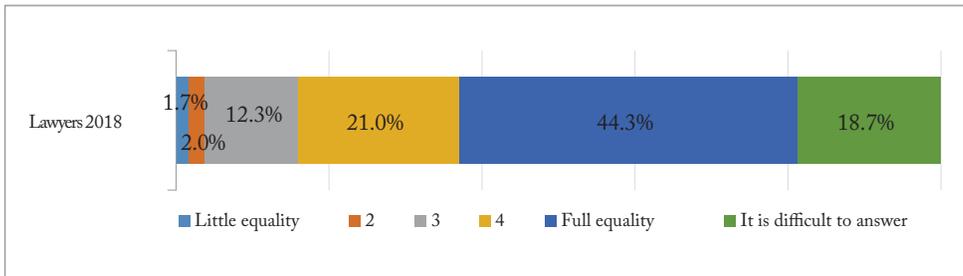
4.6. To what extent do you agree with the statement that the system of training, selection, promotion and remuneration of judges ensures gender equality in the judiciary?



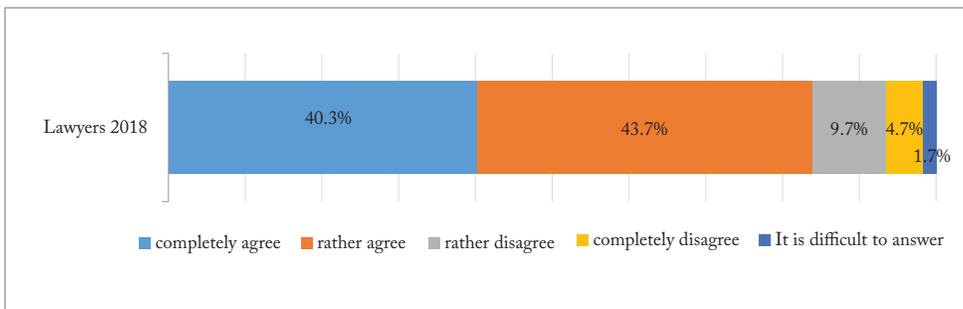
Why do you consider that the system of training, selection, promotion and remuneration of judges DOES NOT ensure gender equality in the judiciary?



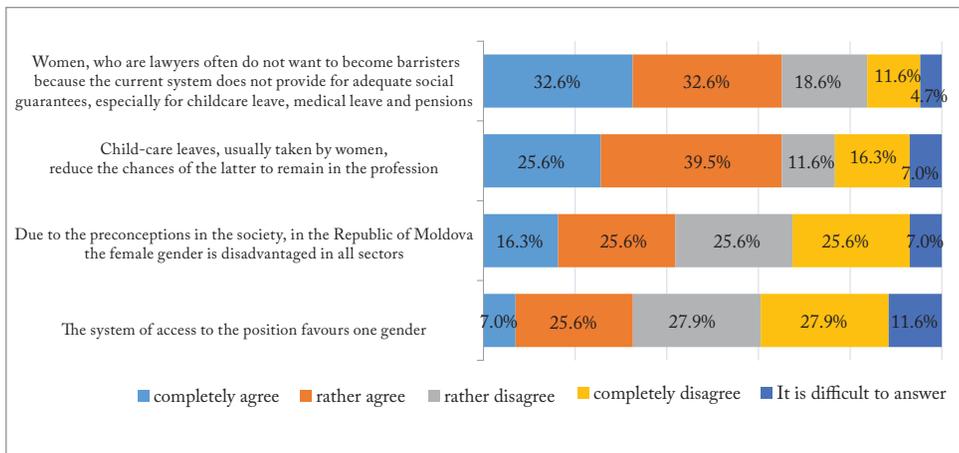
4.7. How do you assess the level of gender equality within the lawyers' profession (the existence of equal opportunities for both women and men). Assess it by grades from 1 to 5 where 1- denotes little equality and 5 - full equality.



4.8. To what extent do you agree with the statement that the system of access to the profession and the organization of the lawyer's activity ensure gender equality in the Union of Lawyers?

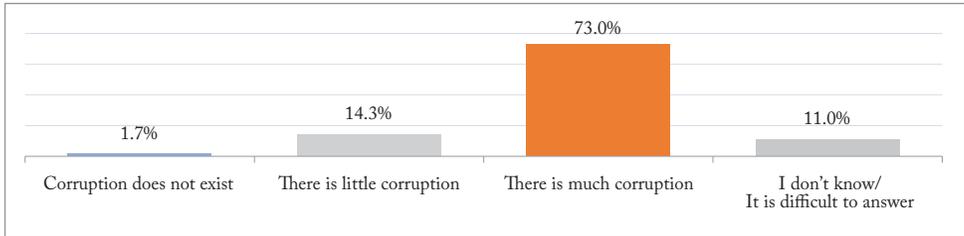


Why do you consider that the system of access to the profession and the organization of the lawyer's activity **DOES NOT ensure gender equality** in the Union of Lawyers? Please tick your answer for each option given below:



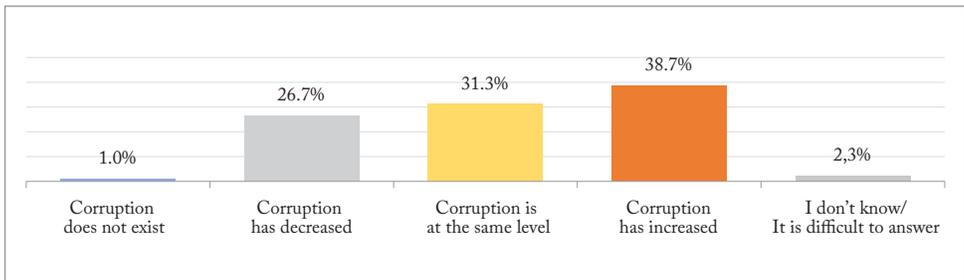
BLOCK 5: Perceptions regarding corruption in the justice sector

5.1. What is your perception regarding the level of corruption in the country?



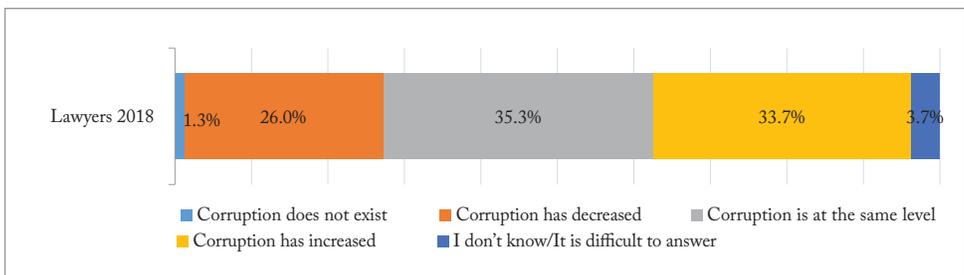
Asked about their perception of the level of corruption in the country, 73% of lawyers-respondents answered that there was a lot of corruption, 14.3% - there was little corruption, 1.7% - there was no corruption, and 11% did not give any answer.

5.2. What is your opinion about the evolution of the corruption phenomenon in the country since 2011 to the present?

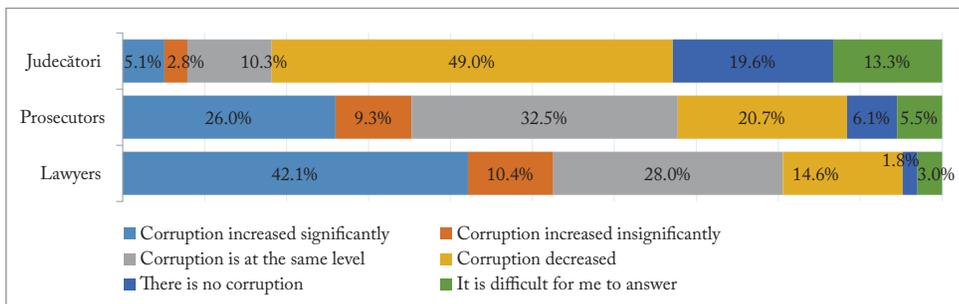


Regarding the evolution of corruption phenomenon in the country since 2011 to the present, 26.7% of respondents believe that corruption had decreased, 31.3% - it was at the same level, 38.7% - it had increased. These answers confirm the general perception among the population that corruption is widespread in Moldova and that trends in this area are disappointing.

5.3. What is your opinion about the evolution of the corruption phenomenon in the justice sector (the judiciary, prosecution services, the lawyers' profession, police) since 2011 to the present?



2015 Survey: What is your opinion about the evolution of the corruption phenomenon in the justice sector since 2011 to the present?



As regards the evolution of the corruption phenomenon in the justice sector since 2011 to the present, 26% of the respondents answered that corruption has decreased (the 2015 survey: 14.6%), 35.3% - it is at the same level (the 2015 survey: 28%), 33.7% - it has increased (the 2015 survey: 52.5%). The answers to this question indicate a strong parallel between the level of corruption in the country and the level of corruption in the justice sector.

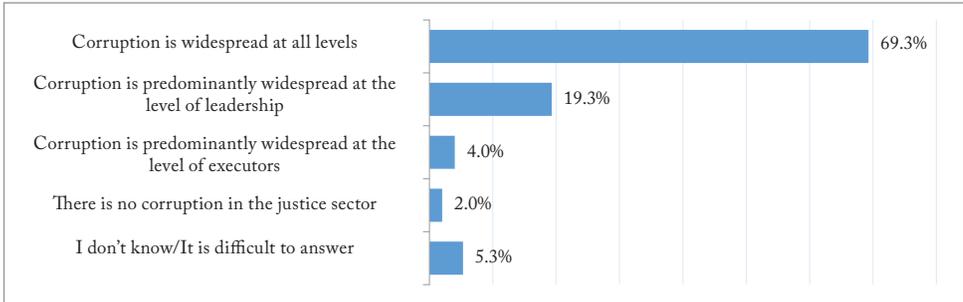
Within the framework of individual interviews, lawyers have stated that corruption in the justice sector was not so much manifested by giving and taking bribes, but rather through various forms of intimidation and favours. Litigants tend to give bribes even when they are right, just to ensure the court decision in their favour. Lawyers also noted the reluctance of judges to acquit the persons who were tried before by the court, even when they were not guilty, for fear of being accused of corruption or for other reasons. They recommended developing the knowledge of the society about the presumption of innocence and encouraging judges who issue sentences of acquittal.

“The situation has regressed. If so far some problems have been solved for money, it is worse now. Some problems are solved without money, but with the fear rooted in people.”

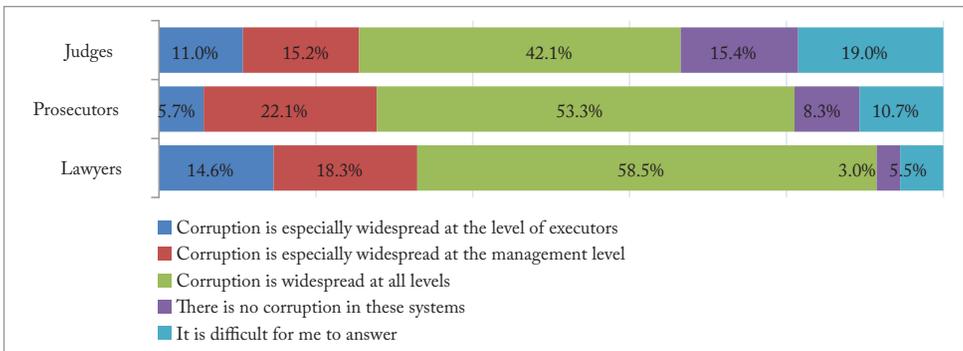
“There are cases that are monitored and controlled. And I know that there are people within the judiciary that report on certain cases, they sometimes do not even know to whom they report. They are simply asked to report.”

“All judges know they can be dismissed or their dismissal can be rejected. I am referring here also to the leverage of the Superior Council of Magistracy, an institution that could influence somehow the activity of judges. One of our actions as lawyers is to be able to clean up these issues, including from the Union of Lawyers. We must exclude all those who disintegrate the lawyers' profession by participating in such acts. But there is a core created between those three actors - prosecution, magistracy and the Union of Lawyers, which is very tough. In the professional environment it is very well known. Unfortunately, people have to pay for justice. This is demonstrated by the fact that the personal interest in what one wants to achieve through the justice system prevails over everything. Certainly, now conditions are being created for to understand that you may not get justice, even if it is known that you are not so guilty. Mistrust in justice forces people to secure themselves through certain illegal solutions.”

5.4. What is your perception regarding the level of corruption currently existing in the justice sector (the judiciary, prosecution service, the lawyers' profession, police)?

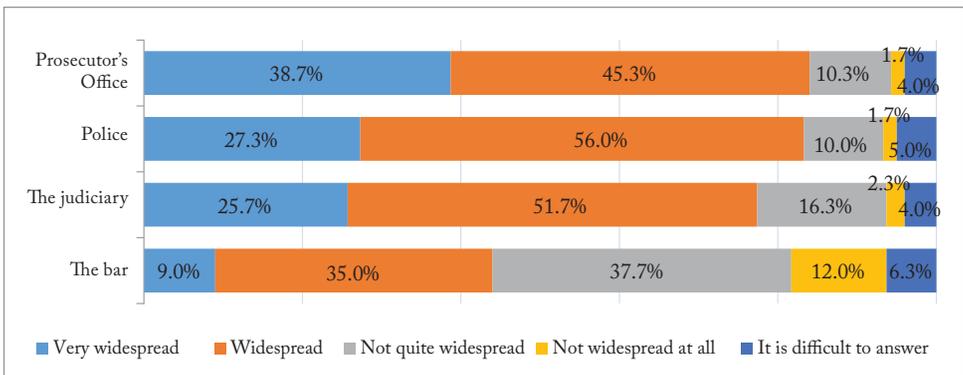


2015 Survey: What is your perception regarding the corruption in the justice sector (the judiciary, prosecution service, the Union of Lawyers, police)?

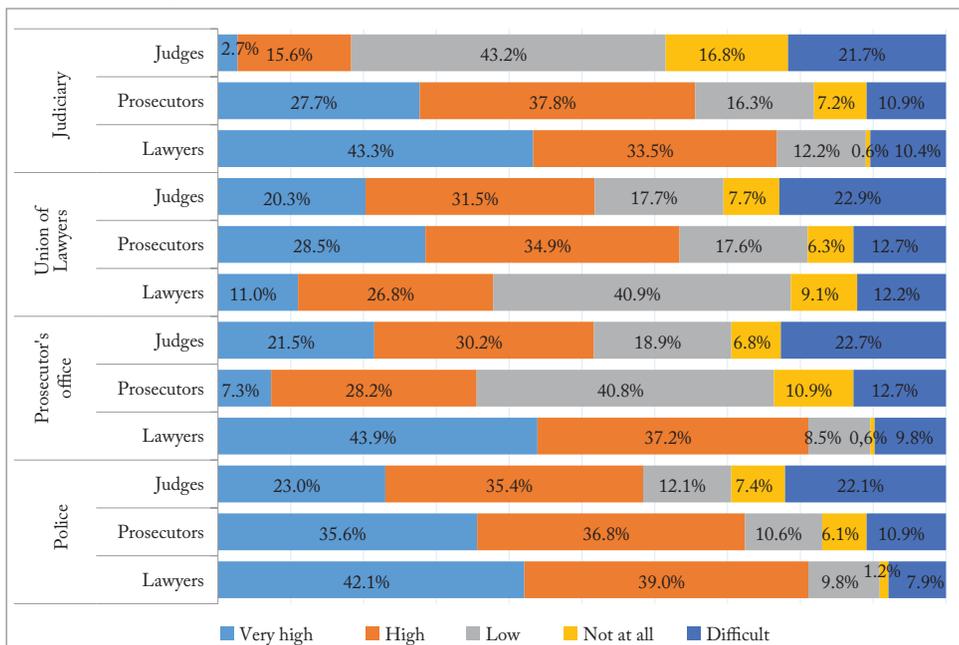


Asked about the perception of the level of corruption currently in the justice sector (the judiciary, the prosecution service, the lawyers' profession, the police) in 2018, 69.3% of the lawyers responded that corruption was spread at all levels and 19.3% considered it to be widespread especially at the level of leadership. The data are comparable to those obtained in 2015.

5.5. To what extent do you consider the phenomenon of corruption is spread in the following structures?

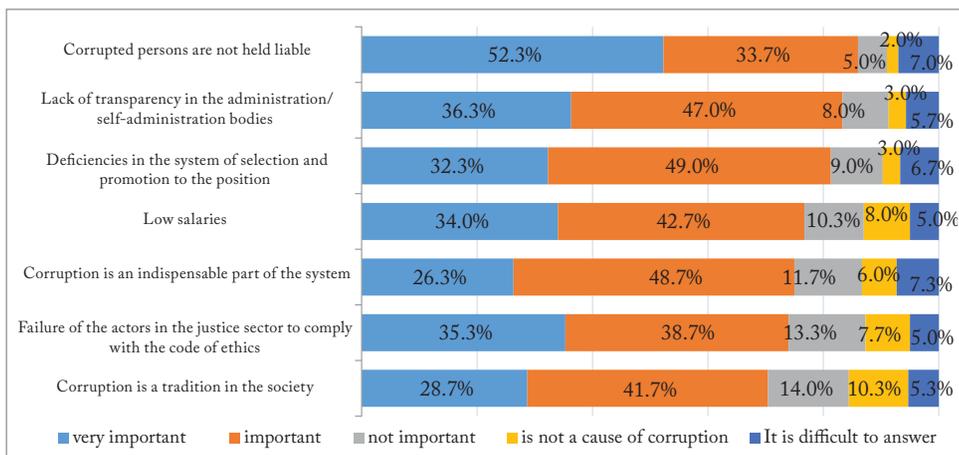


2015 Survey:



Asked if they considered corruption was widespread in those four structures of the justice sector, in 2018 the lawyers gave the following answers: 84% believed that corruption was widespread in the prosecution service, and only 12% believed it was not widespread there; 83.3% - it was widespread in the police, and only 11.7% did not think it was widespread there; 77.4% - corruption was widespread in the judiciary, and only 18.6% did not believe this; 44% believed corruption was widespread among the lawyers, and 49.7% disagreed with it. The results obtained in 2018 are comparable to those obtained in 2015.

5.6. In your opinion, how important are the following causes for the spread of corruption in the justice sector? Please tick your answer for each option given below:



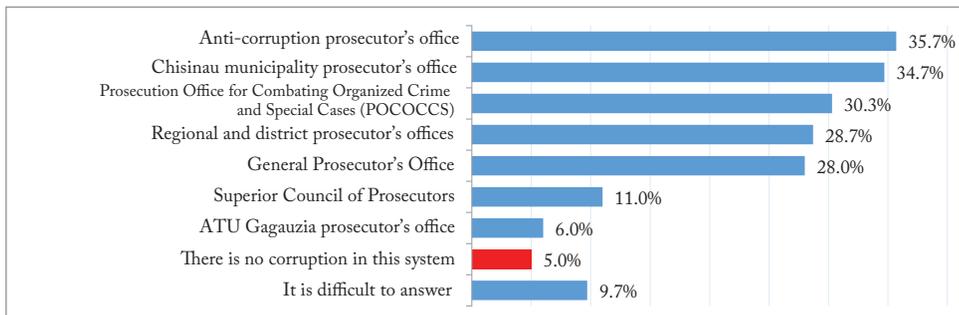
Asked about the importance of different causes for the spread of corruption in the justice sector, the lawyers responded as follows: 86% considered the failure to hold the corrupted persons liable to be an important cause for the spread of corruption, 83.3% - lack of transparency in the administration/self-administration bodies; 81.3% - deficiencies in the system of selection and promotion to the position; 76.7% - low salaries; 75% - corruption was an indispensable part of the system; 74% - failure of the actors of the justice sector to comply with the Code of Ethics; 70.4% - corruption was a tradition in the society.

Within the framework of qualitative interviews, lawyers have mentioned the impunity for corruption and other related acts as the main cause of spreading corruption in the judiciary and other structures of the justice system. Some lawyers have recommended the initiation of a radical reform with drastic measures. The main aspect of such a reform would be to ensure the independence and integrity of judges, their experience being secondary. Lawyers also mentioned the need to change people's mentality and ensure integrity by addressing the issue of judges who lead a luxurious lifestyle, obviously far beyond their legal income. Attention was also drawn to the necessity of verifying the integrity of judges starting with admission to the National Institute of Justice, being provided examples of cases of attendees who, at a young age, without working experience that would have allowed them to get substantial legal income, lead the way of life that raises big questions about their integrity.

“There will be no change in the judiciary obtained by timid changes or legislative changes, or by the organization of the courts. We will gradually need a complete change. We need to undertake drastic measures. There are several judges we can talk about as being valuable people, with freedom and independence in decisions. The entry of young people into the judiciary is important, it should be useful, but it is very timid. The youngsters are likely to be wagged at by the finger and they do not have the necessary independence. Yes, the lack of experience may not be the worst thing. But the most important is independence. Former police officers, former prosecutors and others entered the judiciary. They infiltrated the judiciary and imposed other rules, which even the old judges did not agree with. These remained and the old judges have gone. Those who had a certain humane attitude and a certain aura regarding the justice administration they were doing.”

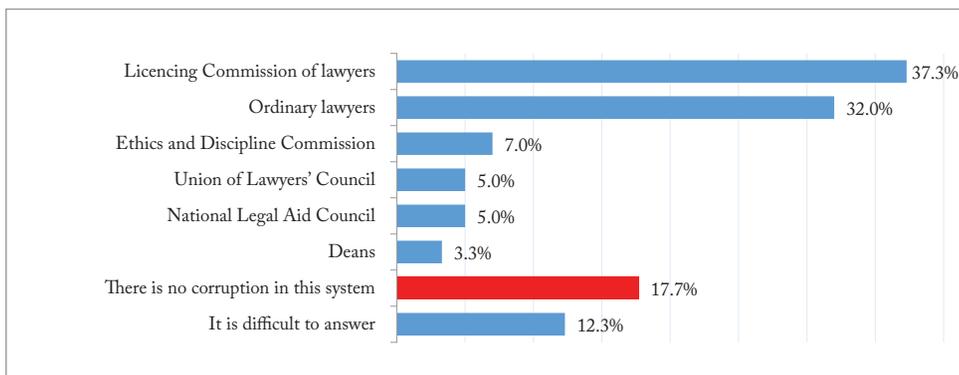
“The leadership and self-administration bodies should be given a greater degree of independence; it should not be so easy to initiate criminal cases against the judges at the request of the prosecutor general. The SCM should be indeed an independent body that is somehow regulated and it should be independent of political and other factors in the elaboration of strategies and policies in the domain of self-administration of judges.”

5.7. In your opinion, in what subdivision of the prosecution service the level of corruption is the highest?



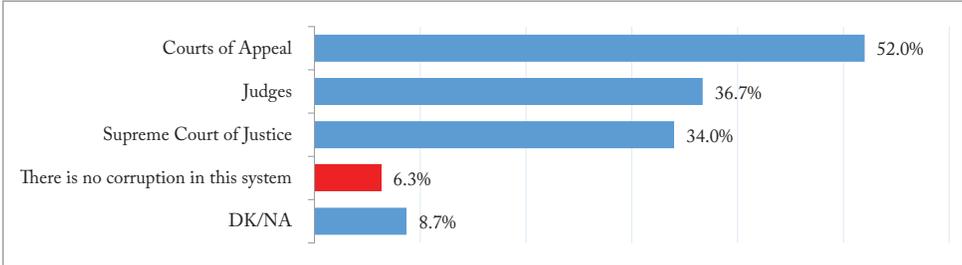
Asked where they thought was the highest level of corruption within the prosecutor's office, 35.7% of the respondents named the Anti-corruption Prosecutor's Office, 34.7% - Chisinau municipality prosecutor's office, 30.3% - Prosecutor's Office for Combating Organized Crime and Special Causes; 28.7% - regional and district prosecutor's offices; 28% - Prosecutor General's Office; 11% - Superior Council of Prosecutors; 6% - ATU Gagauzia Prosecutor's Office, and only 5% stated that there was no corruption within the prosecutor's office.

5.8. In your opinion, where do you think is the highest level of corruption within the lawyers' profession?



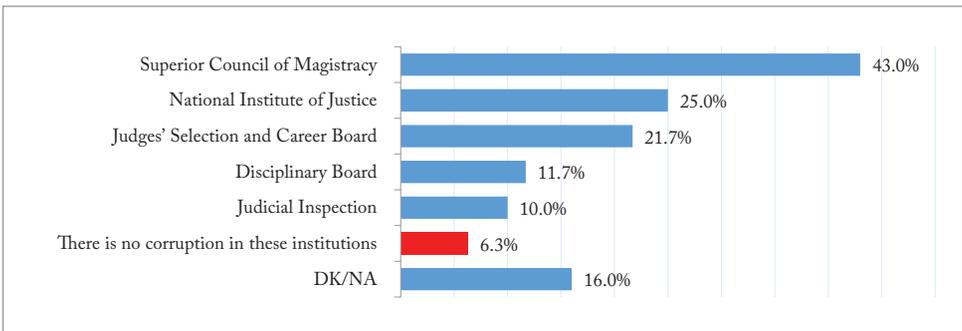
Asked where they thought was the highest level of corruption within the lawyers' profession, 37.3% mentioned the Licencing Commission; 32% - ordinary lawyers; 7% - Committee on Ethics and Discipline; 5% - the Union of Lawyers' Council; 5% - the Legal Aid Council; 3.3% - deans, and only 17.7% stated that there was no corruption within the bar.

5.9. In your opinion, where do you consider is the highest level of corruption within the judiciary?



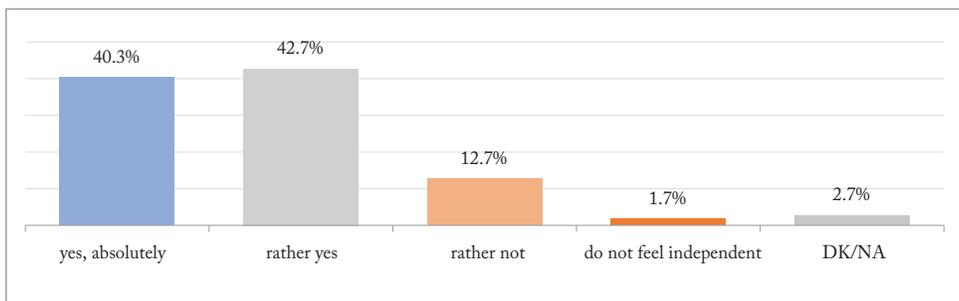
Asked where they thought was the highest level of corruption within the judiciary, 52% mentioned the Courts of Appeal; 36.7% - courts; 34% - the Supreme Court of Justice, and only 6.3% stated that there was no corruption within the judiciary.

5.10. In your opinion, where do you consider is the highest level of corruption within the institutions of self-administration of the judiciary and institutions of judges training?



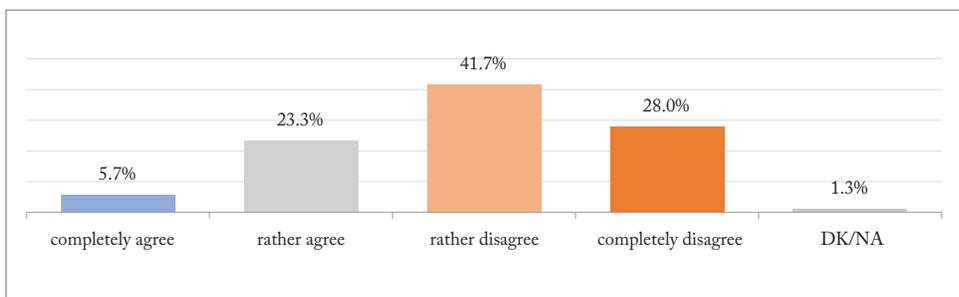
Asked about the highest level of corruption within the institutions of self-administration of the judiciary and institutions of judges training, 43% of respondents mentioned the Superior Council of Magistracy; 25% - National Institute of Justice; 21.7% - Judges' Selection and Career Board; 11.7% - Disciplinary Board; 10% - Judicial Inspection, and only 6.3% did not think there was corruption in these institutions.

5.11. Do you personally feel independent exercising the lawyer's profession?



Asked if they felt independent exercising the lawyer's profession, 83% answered affirmatively and 14.4% negatively.

5.12. To what extent do you agree with the statement that the law is applied equally to all litigants in the Republic of Moldova irrespective of their social, financial status or position of the person?



Asked if they agreed with the statement that the law was applied equally to all litigants in the Republic of Moldova irrespective of their social, financial status or position of the person, 29% answered affirmatively and 69.7% negatively. Equal application of the law to all litigants is an important indicator of the proper functioning of justice. The negative perception of 69.7% of lawyers regarding equal application of the law should trigger urgent actions to remedy the situation.

Within the framework of individual interviews, several lawyers have mentioned the issue of selective application of law, in particular depending on the position, income and political affiliation of the person.

“Who are the most disadvantaged litigants? – those who do not have money to solve their problems by corruption, those who do not have money to hire a lawyer, those who have a slightly higher income than the one that provides for the opportunity to have a lawyer guaranteed by the state and those who think they are right and no one listens to them.”

Legal Resources Center from Moldova (LRCM) is a nonprofit organization that contributes to strengthening democracy and the rule of law in the Republic of Moldova with emphasis on justice and human rights. Our work includes research and advocacy. We are independent and politically non-affiliated.

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