REPORT

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FROM JUDGEMENTS TO JUSTICE

How can we achieve better judicial reasoning in Moldova?

Vladislav GRIBINCEA Horațius DUMBRAVĂ Andrea Annamaria CHIȘ Ilie CHIRTOACĂ

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REPORT

A base-line study

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How can we achieve better judicial reasoning in Moldova?

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Executive Summary

A good quality of court judgments is a key prerequisite for a fair judicial system. A judiciary that allows the adoption of poor-reasoned judgments not only raises injustice but is also striking constantly with overloads and public distrust.

The reasoning of court judgements is not and was never a strong point of the Moldovan judiciary. On the contrary, the court judgements are often long and incoherent texts that are not easy to read and understand. The draft Justice Strategy for 2021 – 2024[1], pending adoption[2], acknowledges that the motivation of judgements in Moldova is a serious problem and seeks to improve the quality of judicial acts and the consistency of judicial practice (specific objective 2.2). This ambitious task requires, among others, marking out the known and unknown legal and practical deficiencies which hinder the quality of judgements.

The aim of this study was to **identify the "roots" which trigger the adoption of poor-reasoned judgements**. This is not an easy task, in the light of the number of factors that influence the activity of judges. We looked into known legal impediments, such as the lack of the obligation to reason the first instance court judgements in civil cases and short procedural time limits provided by the legislation, or even less known practical challenges such as the established practice among judges to use general statements in the judgements and the tolerance of poorly motivated judgements by the higher courts. Although we did not intend it, we also had a brief look into the insufficiency of personnel that is assisting judges, consistency of judiciary practice and the working methods from the judiciary. The study explores the factors that influence the quality of the court reasoning and focuses on the solutions.

Seven out of 10 legal professionals surveyed believe that **inconsistent judicial practice** is the main cause that negatively affects the quality of the reasoning of court judgements. This could be coupled with another deficiency – lack of documents that would codify the judicial practice. To deal with inconsistent practice, the study suggests a few recommendations, which do not always require legislative intervention. They range

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[1] Full name "The Strategy for Ensuring the Independence and Integrity of Justice Sector For 2021-2024", available in English at: http://www.justice.gov.md/public/files/directia_analiza_monitorizare_si_evaluare_a_politicilor/EN_Draft_Strategy_Ensuring_Independence__Integrity_of_Justice_Sector_2021-2024.pdf.

[2] The strategy was voted by the Parliament on 26 November 2020, but returned by the newly elected President of Moldova Maia SANDU in her first days of office. According to President SANDU, the Strategy lacks an important action, namely the extraordinary evaluation mechanism (vetting) of justice professionals.

from continuous training at the NIJ with the SCJ judges as trainers, introduction for the SCJ and lower courts of formal mechanism to consolidate the divergent court practice, organizing periodical meetings with all the judges from a single court, codification of the practice of the SCJ, elaboration and application of sentencing guidelines and a consultative council of SCJ with members with diverse background.

Another factor which triggers the adoption of poor reasoned judgements is the **workload of judges**. This opinion is prevalent not only among practicing judges but was also expressed by the prosecutors and lawyers, regardless of if surveyed online or interviewed in person. To overcome this problem, the study recommends measures which shall contribute to a more efficient management of courts, such as the possibility to make use of the Guest judges institute (already provided by the law but not applied in practice) or the "Flying brigade" which are fire-fighter judges helping the system to cope with a sudden judge's shortage. Another set of solutions is extension of the categories of trials examined in simplified trial procedure, use of alternative dispute resolution measures, introducing template judgments for certain categories of cases, as well as the measures recommended below concerning the judge assisting staff.

Half of all the legal professionals surveyed for this study argue that there is **an established "culture" of limited legal reasoning of court judgement**, thus, negatively affecting the quality of motivation. This is expanded as being a certain fear of judges to not "go deep" into his or her reasoning, in order to avoid a future cassation of the judgement. Since there are no formal initial or continued legal education on judgement-drafting, the newcomers from the system take over the already-established practice. In order to overcome this culture, measures are necessary to formalize the process of the judgment drafting for the future specialists, whether in training, by additional effort at the NIJ and Law faculties, or already for those on the bench, by implementing a Superior Council of Magistracy (SCM) regulation dedicated to judgement motivation, which would serve as guidance for judges on how to draft the structure of each judgement, and particular requirements towards each section and word limits, similarly to the practice already established for the parties by the European Court of Human Rights (ECtHR). It is recommended to consider, together with other measures aimed at decreasing the workload of judges, the possibility of automatic motivation of all first instance court civil judgements, as well as the issuing of the reasoned judgement at the very date of its delivery. Such a change, however, must be preceded by a testing period, but also applied in competition with other measures that could increase the efficiency of the system and reduce the workload of judges.

More than 40% of the surveyed legal professionals see a direct link between the quality of judicial reasoning and the **insufficiency of auxiliary staff assisting judges**. Although formally the number of judicial assisting staff is sufficient, its turnover is extremely high, and assistants receive no training before starting their work. Judicial assistants themselves recognize that they have challenges at work and they lack sufficient legal education and skills, especially when first entering the profession. In order to cope with the insufficiency and professionalism of the auxiliary staff, the study recommends

to enhance the initial and periodic trainings at the National Institute of Justice (NIJ) for this category, introduce mandatory placements for NIJ audients to serve as clerks and legal assistants during their NIJ studies, or/and rethinking the structure of the court registry. In the latter case, judicial assistants can be specialized on specific types of cases and work with different judges on different cases. This will solve the problem of lack of assistants for certain judges, will enrich the experience of the judicial assistance and will also stimulate judges to excel. This model is already highly successful at the ECtHR registry. It is also urgent to introduce an adequate system of remuneration for the staff assisting judges. Insufficient remuneration has a direct consequence that leads to instability in these positions. Under the current conditions, the position of clerk or legal assistant is often just a launching pad for other judicial positions, either to a better paid job or to the position of judge.

Deadlines provided by the laws for examining cases or making procedural decisions negatively are also a factor that affects the quality of the reasoning of court judgements. Judges tend to stick to the procedural deadlines provided by the law and often neglect the other requirements, along with the judicial motivation. Comprehensive research is required to assess the specific procedural time limit that need to be reviewed. his domain deserves all the attention, as it can sufficiently impact the rate of postponed hearings and, implicitly, the judge disposal time and litigators' satisfaction rate.

The quality of motivation is also related to the **performance of other parties** in the process (lawyers and prosecutors). As part of each of the legal professions' continuous education, mixed seminars between these professions could help boost their professionalism. The mixt seminars could also mean mixing the roles of the participants, to feel in each other's shoes. This will ultimately have a very positive impact on motivation of judgements. It will also help judges have a better understanding of the constraints faced by other legal professions, thus stimulating the trust between the professions and in the judiciary.

The quality of training within the NIJ and law faculties is a factor that affects the quality of motivation. While we concur the recommendations envisaged in the previous research dedicated on this topic[3], we also suggest a few actions which might complement efforts already under implementation at the NIJ. These will be the recommendation of the judiciary to invite senior practicing judges as trainers at the NIJ and introducing courses at NIJ and law faculties on legal writing, critical thinking, and argumentation.

Most of the suggested solutions might sound modest, as they do not suggest legislative levers or increase of the court budget or personnel. We deliberately opted out the presumption that national authorities in the next few years next years will allocate more funds for the justice sector. However, the list of our recommendations is not exhaustive, and nothing can prohibit national authorities to be more ambitious in terms of allocating resources to support such measures.

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[3] Holger Hemback/UNDP Moldova, „Judgement-drafting and Training on Legal Writing in the Republic of Moldova" (2020), p. 4. Available online at: https://www.md.undp.org/content/moldova/en/home/library/effective_governance/elaborarea-hot_rarilor-judectoreti-i-instruirea-privind-redactar.html.

The findings of this study are important to help build synergies aimed at solving the problem of insufficient motivation of judgments. The study findings may serve as basis for further design of viable solutions, whether these are legislative (amendments to the legal framework) or tweaks which reside in practice, such as changes of working methods.

The improvement of the judicial reasoning will inevitably have spill-over effects - increase the confidence and trust in the judiciary from Moldova, reduction of the number of incoming cases and increase of the confidence among judges, important objectives that any judiciary in transition should strive to achieve.

Methodology

The ultimate scope of this study was to catalyse the efforts towards improving the court reasoning in Moldova. We assess the following five research questions through a multilateral approach:

1. What are the legal deficiencies that hinder the efforts of the justice system in the Republic of Moldova to ensure better reasoning of judgements?
2. What are the practical constraints that prevent the Moldovan justice system from ensuring the proper quality of judgments?
3. How do the legal professionals perceive the quality of motivation of court decisions?
4. Which institutions and actors can contribute to improving the quality of the motivation of court decisions?
5. To what extent are the studies obtained at the law schools and the National Institute of Justice are sufficient to ensure proper reasoning of court judgements?

This study is based on extensive desk research, including comparative research, data requests for official information, an online survey and individual semi-structured interviews with acting and former legal professionals: judges, prosecutors, lawyers, judicial assistants. A final peer-review of the study was ensured by an international expert.

The *survey questionnaire* was prepared by the LRCM and the international expert team and contained 12 questions (annex no. 3 to this document). The questionnaire was distributed via e-mail to a large constituency of judges, lawyers, prosecutors and other legal professions. The questionnaire was completed in the period of 4 - 17 May 2021. To encourage sincere answers, the online questionnaire did not contain data allowing the identification of respondents. The questionnaire was completed by 140 respondents, out of whom 28% are acting judges, 28.5% acting prosecutors, 39.2% lawyers and 4.2% other professions (judicial assistants, clerks and other jurists). Out of 140 respondents, 47 (34%) were women, 88 (62%) were men, while five (4%) preferred not to answer this question. More detailed information on the questions and pool of respondents is available in the annexes section of this study.

The *semi-structured interview questions* were prepared and conducted by the LRCM and the international expert team and contained 16 questions (annex no. 4 to this document). The interviews were conducted during 24 May – 20 July 2021, via teleconference. Each interview lasted between 60 and 90 minutes. To encourage sincere answers, the interviews were not recorded and the expert team undertook to keep confidential the replies of interviewees. In total, the project team conducted 20 interviews with acting judges, lawyers,

SCM members, law professors, National Institute of Justice (NIJ) trainers, prosecutors and legal assistants. Out of 20 respondents, 10 (50%) were women, and 10 (50%) were men. A more detailed information on the questions addressed and some information about the pool of respondents is available in the annexes section of this study.

We also inquired about courses or disciplines or continuing education programs that cover legal writing and reasoning at nine Universities (Law faculties) and the NIJ. Only two responses were received from Cahul State University and the NIJ. At the invitation of the NIJ leadership, one member of the research team conducted an on-site visit on 30 June 2021. The on-site visit allowed the research team to observe first-hand the teaching methods applied in class for future judges and prosecutors, during a mock trial, including to learn about the way future judges and prosecutors are trained and their tasks related to judgement-drafting process.

In addition, the draft study and its main findings were consulted at a public event held on 27 September 2021, with professionals from the justice sector[4]. The results of the discussions and the validation of the final recommendations, together with the opinions of the participants, can be found along the document, with the necessary mentions.

The initial version of the study was prepared in English by Ilie Chirtoaca and Vladislav Gribincea between July - September 2021. Subsequently, the pre-final version of the study was revised by Andrea Annamaria Chiș and Horațius Dumbravă. After that, the study was translated from English into Romanian.

[4] Launch event of the study project and its consultation, 27 September, 2021: https://www.privesc.eu/arhiva/96393/Lansarea-studiului-Centrului-de-Resurse-Juridice-din-Moldova-privind-motivarea-actelor%20-judicatoresti-in-Republica-Moldova.

Why we need another study on this issue?

If we were to compare the work of the judiciary as a manufacturing process of a factory, a judicial decision or judgement would be the end product. Its quality, value and future "market success" depends very much on the raw materials, production process, design, and other elements which form the product. If any of these elements or processes are deficient or don't function at their best performance, the chances of having a well-reasoned judgment decreases considerably. In order to improve the system, as a first step we need to evaluate each element of the process to understand what exactly is lagging behind.

Insufficient motivation of court decisions, regardless of the court, is a serious problem of the Moldovan judicial system. Insufficient motivation of court decisions was the reason for the conviction of Moldova by the European Court of Human Rights (ECtHR) in at least 13 cases, including in two judgements delivered in 2020.[5] Based on the assessment of the ECtHR case law on Moldovan cases, the LRCM reported at least 27 violations of the obligation to motivate judicial arrest warrants, at least 13 violations of the obligation to motivate the judgments on the merits and at least 40 violations of the obligation to convincingly justify the quashing of final court judgement[6]. More than 20 judgments finding these violations have been delivered by the ECtHR in 2018-2021, confirming that the issue of deficient reasoning is not a problem that belongs to the past. One may conclude that, in fact, the insufficient reasoning of the court judgments is the most frequent problem highlighted by the ECtHR at present.

Since 2012, the Parliament of Moldova has adopted a number of laws and measures aimed at improving the quality of judgements, including the substantial increase of the number of the personnel called to assist judges. Each judge "received" one legal assistant, while in the case of judges of the Supreme Court of Justice (SCJ) the number of assistants was increased from one to three. These changes were called to allow judges to focus more on "judging", while delegating to judicial assistants many technical issues they had previously done by themselves.

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[5] see Furtună v. Moldova (2020); Covalenco v. Moldova (2020)

[6] see Moldova la Curtea Europeană a Drepturilor Omului: peste 600 de violări în 23 de ani 12 septembrie 1997 – 30 iunie 2020, (Romanian) available at https://crjm.org/wp-content/uploads/2020/09/CRJM-23ani-CtEDO.pdf.

The 2012 amendments also considerably limited the parties' right to present evidence on appeal. These changes were made to make parties to the trial more diligent, and allow judges to focus more on the reasoning of judgments in complex cases. Another important change, also introduced in 2012, was the exclusion of the obligation of judges to motivate civil court rulings issued in the first instance. The motivation would only be necessary if the parties requested it, appealed the court's decision or it was to be executed abroad. When asked in 2020 to what extent they consider that the exclusion of the obligation to motivate civil court decisions in the first instance was a correct measure, over 86% of judges and over 51% of lawyers welcomed the change, considering it a positive measure.[7] In 2018, the Code of Civil Procedure was amended to introduce the written procedure for small claim actions.

Despite all efforts to improve the quality of court reasoning, a 2020 study about judgement-drafting and training on legal writing concludes, among others, that the reasoning of judgements is often flawed, being usually limited to general phrases or abundant citation of legal provisions.[8] Also, the overall language used in the judgements is seldom *"convoluted and hard to understand"*.[9] This study recommends, among others, *establishing separate courses on legal writing at the initial and continuing legal education at the National Institute of Justice (INJ), as well as working groups on quality of judgements which will develop recommendations in terms of judgement drafting, and possibly will discuss the idea of introducing standard formats or templates for particular type of cases.*[10]

Building on the conclusion of the above-mentioned study, but also taking into consideration the ECtHR jurisprudence on Moldovan cases and other elements, this study wants to delve deeper into the factors which trigger the adoption of poor-reasoned judgements. We want to assess how other elements of the judgment-drafting process, such as the fluctuation of the auxiliary personnel assisting judges, judges workload, deficient legislation, short-procedural time limits, other known or hidden features, limit the manufacturing process of well-reasoned judgments.

The study findings are meant to serve as basis for further advocacy, mainly designing

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[7] Legal Resources Centre from Moldova (LRCM), Survey: "Perception of judges, prosecutors and lawyers on justice reform and fight against corruption" (2020), p. 8. Available online at: https://crjm.org/wp-content/uploads/2021/02/Perceptia-judecatorilor-procurorilor-si-avocatilor-ENG-2020-web.pdf.

[8] Holger Hemback/UNDP Moldova, „Judgement-drafting and Training on Legal Writing in the Republic of Moldova" (2020), p. 4. Available online at: https://www.md.undp.org/content/moldova/en/home/library/effective_governance/elaborarea-hot_rarilor-judectoreti-i-instruirea-privind-redactar.html.

[9] *Ibidem*, p. 4.

[10] *Ibidem, Recommendations section.*

an action plan with viable solutions, whether these are legislative (amendments to the legal framework) or tweaks which reside in practice, such as changes in working methods of the judiciary in order to improve the quality of court judgments.

Standards for judicial reasoning

The European Convention on Human Rights (ECHR) embodies the minimal human rights standards in Europe. Although it does not contain a specific right to a well-reasoned judgement, the right to a fair hearing guaranteed by Article 6 was interpreted by the ECtHR as imposing such an obligation on national judges, both in respect of civil and criminal cases. The scope of this obligation is to show the parties that they have been heard, to enable them to make effective use of any existing right of appeal and to ensure that there can be public scrutiny of the administration of justice.[11] It is also an important safeguard against arbitrariness.

Article 6 cannot be understood as requiring a detailed answer to every argument.[12] The extent to which the duty to give reasons applies may vary according to the nature of the decision and can only be determined in the light of the circumstances of the case, such as the diversity of the submissions that a litigant may bring before the courts, the differences existing in European states with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments.[13] Where a party's submission is decisive for the outcome of the proceedings, it requires a specific and express reply.[14] The courts are therefore required to examine with particular rigour and care the litigants' important points[15] as well as the pleas concerning the rights and freedoms guaranteed by the European Convention.[16]

On the other hand, the cassation tribunal can endorse, by a brief statement, the arguments of the lower court for dismissing the arguments mentioned in cassation.[17] Furthermore, if the lower level court judgements are well-motivated, the silence on this issue of the Supreme Court can reasonably be construed as an implied rejection.[18] It is however clear that this approach cannot be applied if the lower courts failed to properly deal with decisive arguments, especially where the litigant has not been able to present his case orally in the lower courts.[19]

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[11] See *Suominen v. Finland*, 2003, § 37; *Hadjianastassiou v. Greece*, 1992, § 33.

[12] See *García Ruiz v. Spain* [GC], 1999, § 26.

[13] See *Ruiz Torija v. Spain*, 1994, § 29.

[14] See *Ruiz Torija v. Spain*, 1994, § 30; and compare *Petrović and Others v. Montenegro*, 2018, § 43 and Mugoša v. Montenegro, 2016, § 63.

[15] See *Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukrain*e, 2021, §§ 82 and 84.

[16] See *Fabris v. France* [GC], 2013, § 72 in fine.

[17] See *Tourisme d'affaires v. France*, 2012, §§ 28 et seq; *García Ruiz v. Spain* [GC], 1999, § 26.

[18] See Čivinskaitė *v. Lithuania*, 2020, §§ 142-144.

[19] See *Helle v. Finland*, 1997, § 60.

Article 5 of the Convention further imposes an obligation to reason the court decisions ordering or extending the preventive arrest. The presumption is always in favour of release and "relevant" and "sufficient" reasons (in addition to the existence of reasonable suspicion) should be presented to convince an objective observer that the danger of absconding, the risk of pressure on witnesses or of evidence being tampered with, the risk of collusion, the risk of reoffending, the risk of causing public disorder or the need to protect the detainee justifies the arrest.[20] These reasons advanced for arrest must not be general or abstract and proper consideration must be given to the arguments questioning the justification of arrest.[21]

The ECtHR sets minimal standards. As it results from the above jurisprudence, it is not much interested in the form, length or style of the judgments, but only in the weight of the arguments for the case. However, the writing style and the structure of the judgement are important elements to facilitate the understanding of the judicial solution. In 2008, the Consultative Council of European Judges (CCEJ) issued an opinion on the quality of judicial decisions and elaborated on these elements.[22]

Judicial reasoning is not about constraints put on judges. It is rather about making sure that it is seen for the most that justice was done, about preventing the emergence of other disputes and, ultimately, about ensuring social harmony. It is more of an art than a science. However, some important ingredients for good motivation are obvious. As highlighted by the CCEJ, a high quality judicial decision is one which achieves a correct result - so far as the material available to the judge allows - and does so fairly, speedily, clearly and definitively.[23] It is hard to imagine that high quality judicial decisions can be imposed by the executive or legislative and we concur with CCEJ that judges, whose task is to give quality decisions, are in a particularly good position to initiate a discussion on the quality of judicial decisions.

CCEJ recommended that all judicial decisions are intelligible, drafted in clear and simple language - a prerequisite to their being understood by the parties and the general public. This requires them to be coherently organised with reasoning in a clear style accessible to everyone. It further recommended that judicial authorities compile a compendium of good judgements in order to facilitate the drafting of decisions.[24]

CCEJ concluded that judicial decisions must in principle be reasoned.[25] This implicitly means that a reasoned judgement is primarily a duty of the judge and only secondarily a right of the party to the proceedings. Proper reasoning is an imperative necessity which should not be neglected in the interests of speed.

According to CCEJ, the reasons from the judgements must be consistent, clear, unambiguous and not contradictory. They must allow the reader to follow the chain

[20] See *Buzadji v. Moldova* [GC], 2016, § 88.
[21] See Sarban v. Moldova (2005), §§ 99-101.
[22] The opinion is available at https://rm.coe.int/16807482bf#_ftn1.
[23] Opinion nr. 11 (2008) of the CCEJ on the quality of judicial decisions, § 3.
[24] Idem, §§ 32-33.
[25] ibid, § 34.

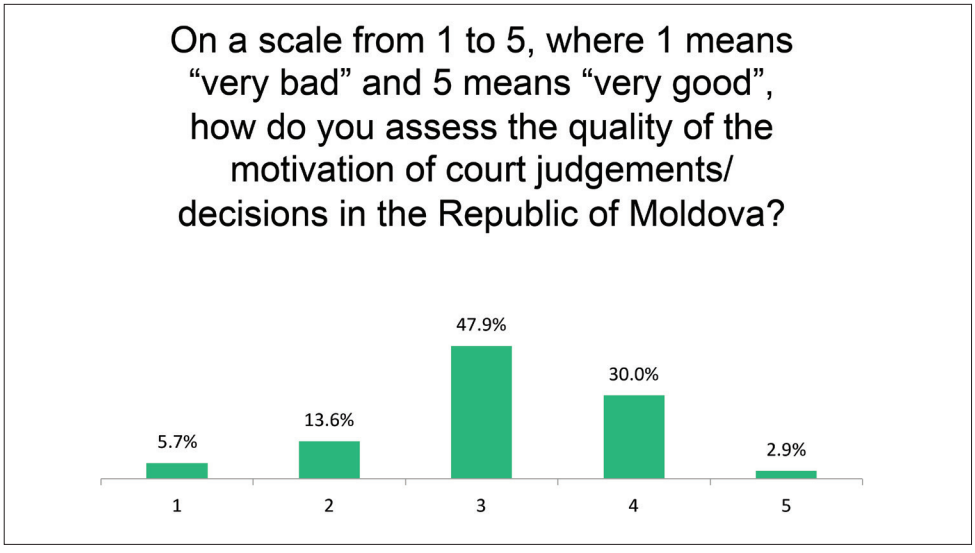
of reasoning which led the judge to the decision. The statement of reasons should not necessarily be long, as a proper balance must be found between the conciseness and the proper understanding of the decision. Judges have the obligation to promote legal certainty, which guarantees the predictability of the content and application of the legal rules, thus contributing in ensuring a high quality judicial system. They should be guided by case law, especially that of the highest courts, whose task includes ensuring the uniformity of case law. Judges should in general apply the law consistently. However when a court decides to depart from previous case law, this should be clearly mentioned in its decision.[26]

[26] ibid, section 4B.

How legal professionals assess the motivation of court judgements?

We asked the legal professionals from „the field" to answer how they assess the quality of the motivation of court decisions. Most of the respondents (regardless of if asked in the survey or during the in-dept interviews) agree that the quality of motivation is not the best but has improved gradually compared to the situation from Moldova five or 10 years ago. This perception is also confirmed by the leadership of the Supreme Court of Justice.[27]

All the survey respondents agree that things are not perfect. Less than 3% think that the quality of the motivation of court decisions is "very good". Most respondents are placed somewhere in the middle, giving an average score of three – 47.9%, which might be translated as a „so-so" grade, or „not the best, not the worst" grade. 30% of the respondents assess the quality as good, while other 13.6% of the respondents assess the quality as „ bad". The remaining 5.7% think the quality of motivation of court judgements is rated as „very bad." More details are illustrated in the graph below.



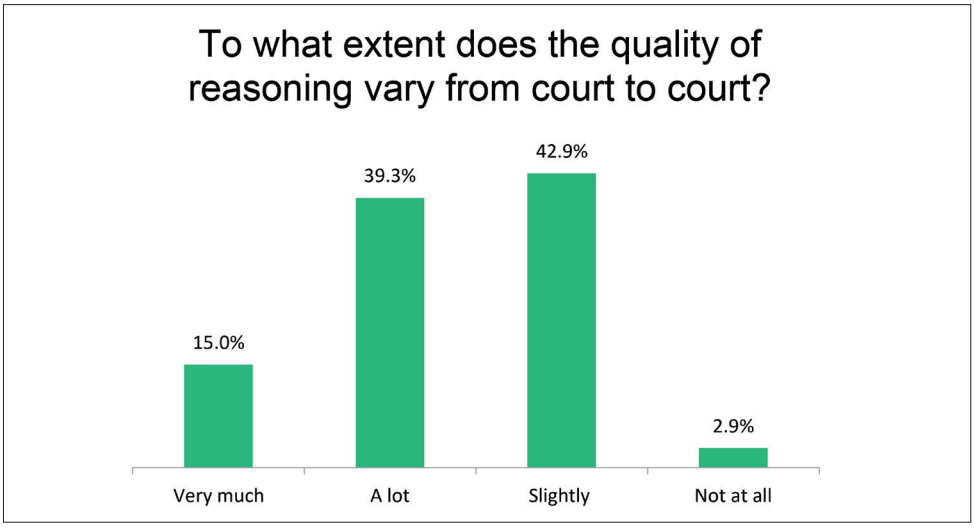
Source: LRCM – Online survey among legal professionals from Moldova – judges, prosecutors, lawyers (May 2021)

[27] Speech by the Interim President of the SCJ Tamara CHIȘCA-DONEVA during the event for launching the study project, September 27, 2021 / SCJ response to the LRCM after the launch of the study project, received by e-mail on 8 October 2021.

The answers of all questioned professionals will differ just slightly if we look separately at each category of legal professionals. The majority of judges tend to appreciate more positively the quality of motivation (61% of judges graded the quality with a score of four out of five); most prosecutors (60%) and 50.9% of lawyers gave an average score of three.

Acknowledgement is the first step to recovery, so it is very promising that the assessment of the legal professionals themselves indicates a need to improve the quality of judicial motivation.

We also asked our respondents to answer whether the quality of reasoning varies from court to court. Most of the respondents (42.9%) believe that the quality of motivation is slightly different from court to court, followed by 39.3% who believe that the quality of reasoning varies a lot. Other 15% believe that, on contrary, the quality varies very much, while the remaining 2.9% believe that the quality of reasoning does not vary at all.



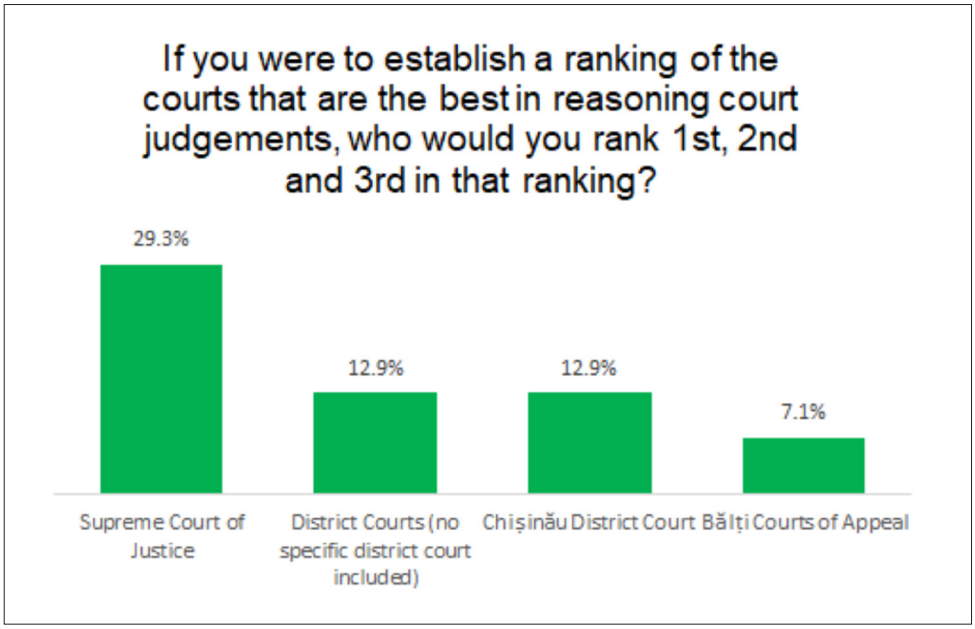
Source: LRCM – Online survey among legal professionals from Moldova – judges, prosecutors, lawyers (May 2021)

Such discrepancies in answers might indicate that legal professionals have all experienced (with a different degree) a variation of judicial motivation, in terms of quality, depending on the court they were in. This further induces the idea that the problem with the quality of judicial decision might be a systemic issue. This is further substantiated by other evaluations done in the recent years.[28]

Although there seems to be a consolidated majority who state that judgements are systemically not very well motivated, it can still point to the champions of the system. When asked to establish a ranking of the courts that are the best in reasoning court

[28] Holger Hemback/UNDP Moldova, „Judgement-drafting and Training on Legal Writing in the Republic of Moldova" (2020), p. 4. Available online at: https://www.md.undp.org/content/moldova/en/home/library/effective_governance/elaborarea-hot_rarilor-judectoreti-i-instruirea-privind-redactar.html.

judgements, more than 29% of the respondents, believe that the best motivation of the judgements is available to the court users of the Supreme Court of Justice (SCJ). This is followed by a tie between the Chisinau District court (no specific premises) - 12.9% and the Chișinau District court – 12.9% which was picked by our respondents. The top three is followed by a surprising, yet welcomed runner-off from outside Chisinau, the Balti Courts of Appeal. More than 7% of the respondents picked this court as one of the champions when it comes to the ranking of the best reasoning of court judgements.



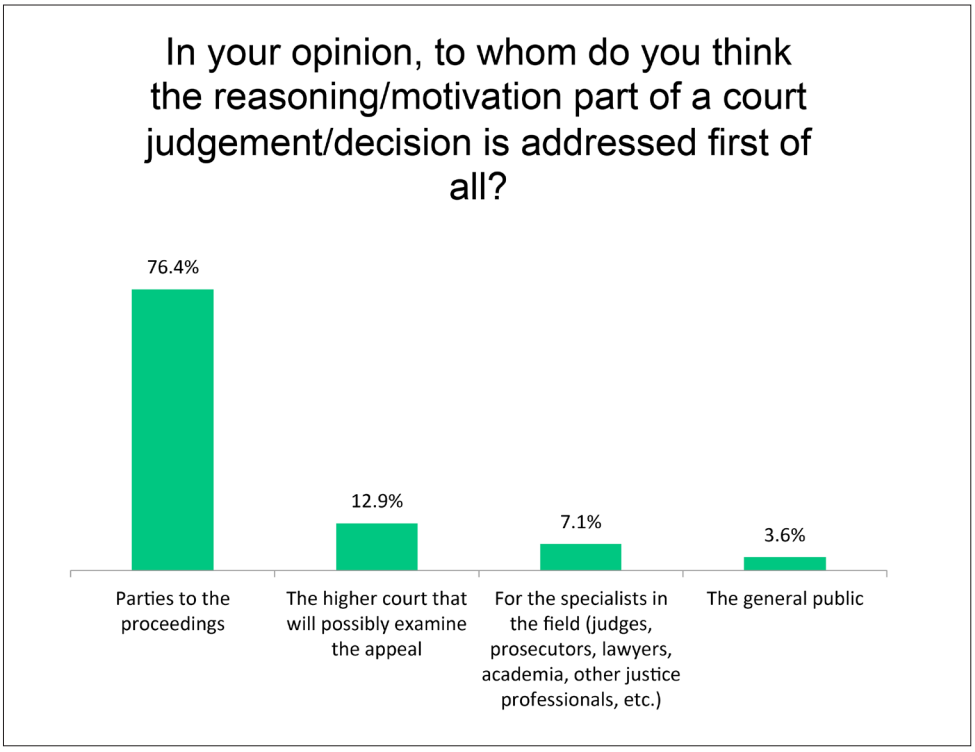
Source: LRCM – Online survey among legal professionals from Moldova – judges, prosecutors, lawyers (May 2021)

This ranking will not mean in any way that we need to just look at what the Supreme Court does differently in terms of judicial reasoning. However, this emphasises the role that the Supreme Court has not only to establish and foresee the uniform practice of the entire system, but to serve as an example for other courts when it comes to the quality of motivation of judicial decisions. It is also worth mentioning that there was also a pool of respondents that qualified this ranking as unagreeable, hence the motivation very much depends on the judge which presides on a case, rather than the court s/he resides in. The research team deliberately did not put such a question into the ballot box, in order to avoid a possible individual 'ranking' which may be considered inappropriate in certain contexts towards the nominated judges, regardless of whether this reference is positive.

A quintessential, even philosophical, question that needs to be addressed in this context is - to whom a motivation part of a court judgements is addressed first. The answer to this question might point out where we want to go with the complexity of the points of law and granularity of arguments and details listed in a court judgement. 76% of the respondents

of the online survey, agree that the reasoning of a court judgements is primarily addressed to the parties (litigants).

This is followed by an unusual pick - 13% or the respondents think that the reasoning part of a judgement is important solely if the case is examined by a higher court. A remaining 7% of the respondents think that a judgement reasoning is written for the "proverbial - next of their kin" meaning other legal specialists judges, prosecutors, lawyers, academia and other justice professionals. Less than 4% think that the reasoning part of a judgement should be addressed first to the general public.



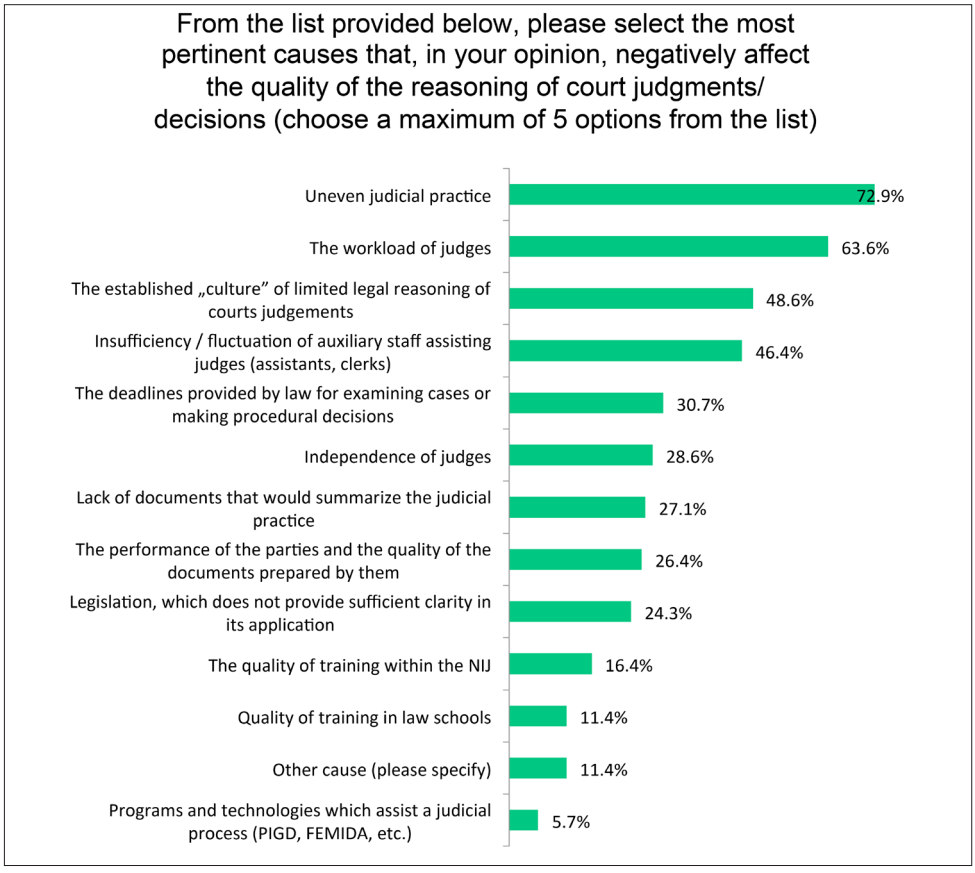
Source: LRCM – Online survey among legal professionals from Moldova – judges, prosecutors, lawyers (May 2021)

While we cannot state with certainty what would be a definite correct answer, we tend to agree that first of all, the reasoning part of a court judgement should be addressed to the parties to the proceedings. However, the public perception is equally important for the trust in the judiciary, which is mainly built or damaged by examples which are displayed in the media.

Factors that influence the quality of judicial reasoning

Inconsistent judicial practice, judge's workload and an established culture of limited legal reasoning of courts judgements - these are the top three issues which were picked by the legal professionals when they were called to name the causes that negatively affect the quality of motivation of court judgements. These factors were also mentioned as primaries in the interviews.

In this chapter, we will explore how in particular these factors negatively affect the quality of motivation. Based on the discussions from the interviews, we will try to expand what is exactly meant by each category. In the next chapter, we will focus on the solutions proposed by the professionals from the system to overcome them.



Source: LRCM – Online survey among legal professionals from Moldova – judges, prosecutors, lawyers (May 2021)

Inconsistent judicial practice

Seven out of 10 legal professionals surveyed (72.9%) believe that inconsistent judicial practice is the most pertinent cause that negatively affects the quality of the reasoning of court judgements. This could be coupled with another category – lack of documents that would codify the judicial practice, also seen as a pertinent cause that negatively affect the quality of the reasoning – 27% of the online survey respondents chose this answer.

The legislation of the Republic of Moldova provides for many levers to ensure the uniformity of judicial practice. Some of them are:

- Advisory opinions of the SCJ in civil cases (Article 122 of the Civil Procedure Code);
- Mandatory nature of the ECtHR's case law in criminal cases (Articles 7 (8) and 427 (1) paras. 16 of the Criminal Procedure Code);
- Appeal in the interest of the law in criminal cases (Articles 7 (9) and 465/1 of the Criminal Procedure Code);
- Appeal in the interest of the law on criminal judgements that are contrary to the previous practice of the SCJ (Article 427 (1) para. 16 of the Criminal Procedure Code);
- Judgements of the SCJ Plenary;
- Disciplinary sanctioning of the judge for non-observance of the uniform judicial practice (Article 4 (1) letter (b) of Law No. 178/2014 on the Disciplinary Liability of Judges).

In order to standardize the judicial practice, until July 31, 2021, the SCJ adopted and updated over 30 Judgements of the Plenary and came up with over 100 recommendations and over 50 opinions.[29] Also, several years ago, a more efficient search engine for the SCJ jurisprudence was integrated in the SCJ's website.

Despite the many levers designed to standardize judicial practice, it seems that very few improvements have been observed in court practice in this regard. Moreover, in 2016, the Constitutional Court of the Republic of Moldova has stated that, when settling a case, the judge must be independent both from the other judges and from the chairperson of the court or from the other courts.[30] While it did not exclude the obligation of the judge of a lower court to comply with a previous judgement of a higher court instance regarding the interpretation of the law applicable to subsequent cases, the Constitutional Court labelled the possibility for the SCJ to issue recommendations or explanations, when these are given outside the cases it examines, as a potential risk of being contrary to the independence of judges guaranteed by art. 116 of the Constitution of the Republic of Moldova.[31]

The limited impact of efforts to standardize judicial practice could also be explained by frequent changes in legislation and conjunctural interpretation of the law by the

[29] www.csj.md, visit section *„Unificarea practicii judiciare"*.

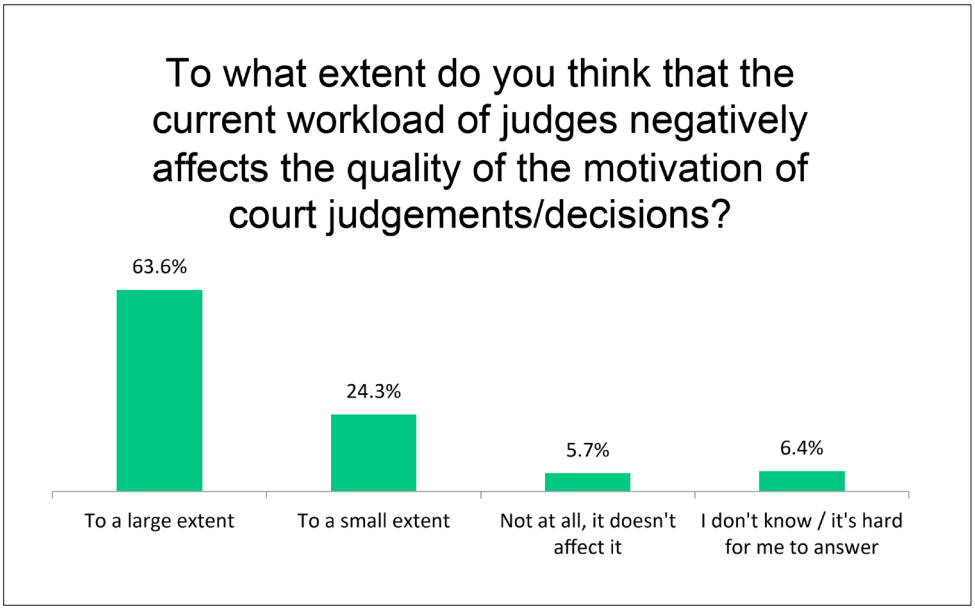
[30] Constitutional Court of Moldova, Decision no. 21/2016, para. 103. Available online at: https://www.constcourt.md/public/ccdoc/hotariri/ro-h2122072016rob76c2.pdf.

[31] *Ibidem, para. 109 – 113.*

legislature and executive, lack of traditions to follow the interpretations of the law given in hierarchically superior court decisions, summary motivation of judgments, but also due to the insufficient consistency of the jurisprudence of the SCJ and the courts of appeal. Compliance with the judicial practice inevitably limits the judges' discretion and, implicitly, their freedom to settle the cases. This is not necessarily perceived by some judges is a positive trend. It was also plain from the interviews that unification of the judicial practice is generally perceived by judges as a formal exercise that should belong to the Supreme Court. The judges have limited communication between themselves about ensuring a better consistency of their practice and the lower courts play a limited, of any, role in that. During the launch event of the draft document, judges confirmed that this communication between the courts and the Supreme Court, although necessary, ceased at some point to exist.[32]

The workload of judges

More than 2/3 of the legal professionals surveyed online (63.6%) believe that the massive workload of judges prevents a better quality of the reasoning of court judgements. This opinion is prevalent not only among practicing judges but was also expressed by the prosecutors and lawyers, regardless of if surveyed online or interviewed in person, as well as during the discussions launched at the presentation project of the draft study.



Source: LRCM – Online survey among legal professionals from Moldova – judges, prosecutors, lawyers (May 2021)

[32] The intervention of Judge Livia MITROFAN during the launch event of the draft study, 27 September 2021. The recording of the event is available online and was indicated above.

The law on the organization of the judiciary provides for 504 positions of judge.[33] This number was established in 2012. According to SCM[34], the numbers of judges in office even lower, considering the vacancies within the system created by childcare leave or suspension from office. As of 31 July 2021, based on data made available by SCM, the judicial system numbers 453 sitting judges. There are 36 vacancies, out of which 11 at the Supreme Court of Justice, nine at the courts of appeal level and 16 at the level of the district courts. Besides vacancies, there are also 33 suspended judges, seven pending criminal investigations, 25 out of childcare leave, one pending disciplinary sanction and 15 judges with no ability to sit because their five-year initial appointment term expired. These numbers were also confirmed in interviews and discussions during the presentation of the draft study.

"My court has 14 suspended judges…14 fellow judges which could be sharing the workload burden"

Interview with an acting judge – May 2021

An uneven workload inevitably negatively affects the quality of delivered judgements. To manage to problem of the workload, a swift response will always be required from the SCM, to relocate, at least temporarily positions in the courts, which are affected by judges being suspended from office or by many vacancies.

According to the latest official statistics from 2020[35], a judge from a district court would have a monthly workload of 54 cases (648 annually), that is 2.5 cases daily. The situation is milder at the courts of appeal level, where a judge tried on average 37 cases per month (444 annually), which is still 1.8 cases each day in office. A similar situation is observed at the SCJ level, were a judge had a workload of 39 cases a month (448 annually)[36].

"…We are not automatic typewriters"

Interview with an acting judge – June 2021

The stats on the workload become even gloomier if we try to look more granularly at the available data. There is a disparity between the number of judges in different regions. According to the SCM, there are district courts with an annual inflow of 2000, and other with a volume between 6,000-10,000 cases annually, with a similar number of judges.[36]

[33] Parliament of Moldova, Law no. 514/1995 on judicial organisation, art. 21 para. 2.

[34] SCM letter no. 2114 of 19 August 2021 issued in response to LRCM request of information from 8 August 2021.

[35] Superior Council of Magistracy, Activity report for 2020, p. 106. Available online at: https://www.csm.md/files/Raport_anual/2020_RAPORT_CSM.pdf.

[36] *Ibidem*.

The overall workload of the judiciary did not vary substantially in last decade. In 2013, the justice system received some 200,000 cases, just as many as in 2020.[37] As shown above, since 2012, the number of judges did not change either.

The Moldovan judiciary does not look bad, at least on paper, when compared to other European countries. According to the latest CEPEJ report, which was issued in 2020 and relies on statistical data from 2018, the per capita number of judges effectively working in Moldova (16.4 per 100,000 of inhabitants) is slightly above the European median (16.0), the number of judicial assisting staff (62.9) is well above European median (53.6), while the number of incoming cases was identical to the European median (4.1).[38] These figures suggest that, at least from the statistical point of view, the workload of Moldovan judges should be comparable, if not slightly lower than the European average. Furthermore, should the most of the vacancies be filled in, the image of Moldovan judiciary would look even better. In any event, such problems are usually easier to tackle than the financial or logistical constraints linked to the increase of the budgets or education of insufficient personnel.

However, the de facto workload might be influenced by numerous national specificities, such as internal bureaucracy, complex judicial procedures, or poor court management. For example, in a simple trial, judges are obliged to motivate not only the final judgments, but also the decisions by which the judge decides on some procedural actions, or on the admissibility of the administration of evidence. These efforts are not part of the officially presented statistical data.[39]

The established "culture" of limited legal reasoning of court judgements

Half of all the legal professionals surveyed for this study (48.6%) argue that there is an established "culture" of limited legal reasoning of court judgement, thus, negatively affecting the quality of motivation. We tried to find out in the interviews what is exactly meant by the so-called culture of limited legal reasoning.

According to interviewed legal professionals, often a judge „will not go deep" into his or her reasoning, in order to avoid a future cassation of the judgement.[40] On the other hand, there are also professionals who believe that, since there are no formal initial or continued legal education on judgement-drafting, the newcomers from the system take over the already-established practice, which is that the arguments of the judges are limited to several paragraphs maximum, even in the complex cases. The reduced length

[37] Ministry of Justice, Agency for Court Administration, Statistical report on the workload of the judiciary (2020), available online at: https://aaij.justice.md/files/document/attachments/3.Volumul%20de%20lucru%20per%20instanta%2012%20luni%202020%20%281%29.pdf.

[38] The CEPEJ report is available at https://www.coe.int/en/web/cepej/cepej-work/evaluation-of-judicial-systems

[39] The intervention of Judge Livia MITROFAN during the launch event of the draft study, 27 September 27 2021. The recording of the event is available online and was indicated above.

[40] Interview with an acting judge – July 2021.

of the motivation is not necessarily a bad issue, if the reasoning is properly and logically presented. This is often not the case, the judges limiting themselves to general statements. The perpetuation of this practice is dangerous because it affects the quality of motivation, but also indirectly, the desire of the parties to challenge it on appeal when the reasons behind a decision are not clear.

Another factor which influences the established culture of limited legal reasoning is an important legislative change introduced in 2012, which excludes the obligation of judges from judges to motivate civil court decisions issued in the first instance. The motivation would only be necessary if the parties to the trial appealed the court's decision, request a motivated judgement or if the judgement should be executed abroad. In the interviews and the launch event presenting the draft study, the judges from the district courts confirmed that nowadays they motivate no more than 20% of the delivered judgements on civil cases. Most of the respondents stated the 2012 change are welcomed, as it reduced the workload of judges. A similar position was expressed in a 2020 survey among legal professions. Over 86% of judges and over 51% of lawyers welcomed that reform.[41]

Our interview respondents also recalled the time when they had to reason every decision. This was described as difficult, but fruitful in terms of gaining better abilities to motivate judgements. A possible reversal of this provision is seen positively only if coupled with an substantive increase of the number of judges in the system or other measures aimed at decreasing the workload of judges.

[41] Legal Resources Centre from Moldova (LRCM), Survey: "Perception of judges, prosecutors and lawyers on justice reform and fight against corruption" (2020), p. 8. Available online at: https://crjm.org/wp-content/uploads/2021/02/Perceptia-judecatorilor-procurorilor-si-avocatilor-ENG-2020-web.pdf.

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On 7 April 2021, the Constitutional Court of Romania (RCC) found that the delivery after deliberation only of the operative part of the decision in a criminal case and the subsequent motivation of the judgement is not constitutional. This situation affects the right of access to court and the right to a fair trial. According to the RCC, the court decision must be drafted, motivated in fact and in law, on the date of the delivery. The Court held that the wording of the criminal judgment (reasoning in fact and in law) following the ruling of the minute (solution) in question lacks the person convicted of the guarantees of justice, infringes the right of access to court and the right to a fair trial[42].

The RCC decision only applies to court decisions in criminal matters. One of the causes that led to the adoption of this decision was the situations in wich several defendants in criminal cases, once convicted, began to serve their sentences in prisons, without having available the reasoned decision of the court ordering the arrest.

Such a change, however, must be preceded by a testing period, but also applied concurrently with other measures that could increase the efficiency of the system and reduce the workload of judges.

Insufficiency/fluctuation of auxiliary staff assisting judges (judicial assistants, clerks)

46.4% of the respondents see a direct link between the quality of judicial reasoning and the insufficiency of auxiliary staff assisting judges. To improve the quality of judgments, since 2012, the Parliament has adopted several laws and measures. Legislative measures included increasing the number of auxiliary staff in the courts - each judge "received" one legal assistant . The number of assistants to the judges of the Supreme Court of Justice (SCJ) increased from one to three. These changes were to allow judges to delegate to judicial assistants many technical issues that judges had previously to de by themselves.

The judges surveyed for this study all welcome the assignment of legal assistants for each judge. Many of those interviewed state that often the judicial assistants are often responsible or drafting the operative part of the judgement. There are even cases when judges admit that judicial assistants are responsible in large for drafting the motivation part of a judgement.

Although formally the number of judicial assisting staff is sufficient, its turnover is extremely high and assistants receive no training before star ting their work. Judicial

[42] Constitutional Court of Romania: https://www.ccr.ro/comunicat-de-presa-7-aprilie-2021/.

assistants themselves recognize that they have challenges at work and they lack a sufficient legal education and skills, especially when first entering the profession.

"It would be great to have workshops were they could teach us how to make a 1 pager from a 10-page text…or how to resume a 10 pages witness statement to a 0.5 pages document…It's not ok when the statements of the a witness take 10 pages long in a judgement…"

Interview with a judicial assistant – July 2021

Even if the judges are not against empowering and training their assistants, often they cannot keep them in the system for more than a year because of the low salary. On average, the turnover exceeds 40% according to judges.

"We train them, we empower them…and then…others steal them…"

Interview with an acting judge - May 2021

Based on the remuneration level, the posts of both judicial assistants and clerks if often seen as a "position of transition" either to a better paid job, or a future judicial office. Many of the judicial assistants are also NIJ alumni, which are waiting to be appointed for their posts as judges.

During the presentation of the draft study, the leadership of the NIJ confirmed that the NIJ does not train legal assistants or the clerks in an initial or continuous training. Such an effort would require an extension of the role of the NIJ, including legislative intervention to amend the law on NIJ.[43] This training, however, would be very welcome, especially given the fact described above, by which some judges have even acknowledged that legal assistants are the ones who largely draw up the motivating part of the decision.

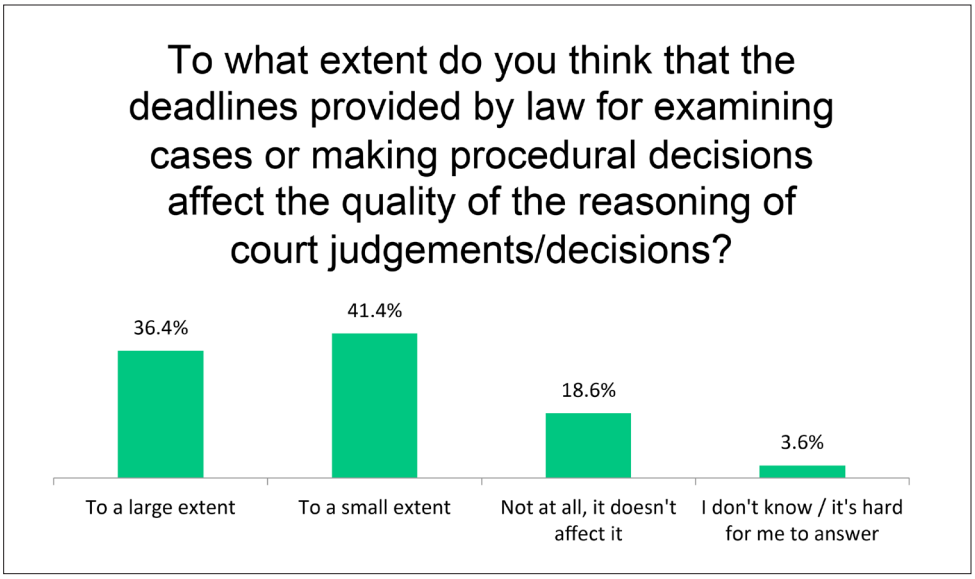
Legal time-limitations for examining cases or making procedural decisions

Civil and criminal procedure legislation from Moldova provides for a variety of procedural deadlines, which are either established by law or by the judge. In the provided timeframe, participants in the trial and other persons related to the activity of the court must perform certain procedural acts or conclude a set of acts. For certain procedural actions, legislation prescribes imperative and disposition time limits, varying from 24

[43] The intervention of Mrs. Diana SCOBIOALĂ, NIJ Director during the launch event of draft study, 27 September 2021. The recording of the event is available online and was indicated above.

hours, five, seven or 30 days.[44] In terms of judicial reasoning, the procedural legislations allows for a motivated judgement to be issued in up to 45 working days after the operative part of the judgement is delivered.

Three out of each 10 legal professionals surveyed (30.7% - in option list and 36.4% when asked directly) believe that deadlines provided by the laws for examining cases or making procedural decisions negatively affect the quality of the reasoning of court judgements. Judges tend to stick to the procedural deadlines provided by the law and often neglect the other requirements, along with the judicial motivation. This attitude is also stimulated from within the system. The violation of the legal time-limits, for reasons attributable to the judge, including the deadlines for drafting judgments is a disciplinary sanction, only if this directly affected the rights of the participants in the trial or other persons.[45] The judges are often sanctioned for the breach of the legal time-limits and almost never for the insufficient or deficient motivation of judgements. In fact, almost half of the disciplinary sanctions applied to judges in 2015-2019 concerned the breach of the legally established time-limits[46].



Source: LRCM – Online survey among legal professionals from Moldova – judges, prosecutors, lawyers (May 2021)

[44] See, among others, art. 168 (1), (4), 169, para. (2), art. 291 para. 3, art. 182/2 para. 5 from the Civil Procedure code; or art. 20 para. (5); art. 215/1 para. (3); art. 351 para. (3/1); art. 338 para. (3) from the Criminal Procedure code.

[45] Parliament of Moldova, Law no. 178/2014 on disciplinary responsibility of judges, art. 4, para. 1 lett. g).

[46] According to the Superior Council of Magistracy activity reports, in 2015-2019 judges have been disciplinarily sanctioned 36 times. 16 of these sanctions have been applied for the breach of the legal time-limitations.

"the judge, fearing of not meeting the deadlines, shuffles through the case quickly..."

Interview with an acting judge - June 2021

At present, the duration of a case examination is generally decent. The CEPEJ data confirm that, on average, the Moldovan courts deal with civil and administrative cases two times quicker (299 and 300 day respectively in all three layers of courts) than the European median (549 and 678 respectively). The criminal cases are dealt with a little quicker (299 days) than the European median (340 days).[47] This data hardly reconcile with what some may call an obsession for quick justice. It comes at a price, deficient and insufficient justice and frustration and stress among judges.

Independence of judges

It takes courage to take fair judicial decisions in sensitive or high-profile cases. In democracies in transition such decisions may require even more courage, particularly when the cases concern the rights or the interest of politicians. We have tried to assess to what extent the fragile independence of Moldovan judges impacts the quality of judicial motivation.

The law on the Status of the Judge provides that "judges shall be independent, impartial and immovable and shall be subordinate only to the law".[48] It also stipulates, among others, that judges shall make decisions independently and impartially and shall act without any direct or indirect restrictions, influences, pressures, threats or interventions from any authority, including judicial ones. Despite such a standard, more than 28% of the survey participants believed that there is a link between the independence of the judges and the quality of the reasoning of court judgements.

"Before any elections, the judiciary becomes the Cinderella of powers"

Interview with an acting judge - May 2021

The lack of confidence in judges and the perception that, when issuing a decision, they will not always act without influence might be caused by the exposure of the judiciary to numerous controversial situations. During 2010 – 2014, reportedly some USD 20 billion[49] were laundered through the judicial system of Moldova, with the involvement of acting

[47] LRCM, Analytical document „Moldovan Justice in Figures – a Comparative Perspective (2021) available online: https://crjm.org/wp-content/uploads/2021/10/Justitia-din-Republica-Moldova-in-cifre-%E2%80%93-o-privire-comparativa_2021-ENG.pdf.

[48] Parliament of Moldova, Law no. 544/1995 on the Status of the Judge, Article 1 para. (3).

[49] For more details on the money-laundering scheme and the arrest of judges in 2016, see one of the investigating journalistic source of 2014: https://www.rise.md/articol/

judges. In 2018, the judges annulled the results of the local elections in the Capital city of Chisinau, won by an opposition candidate.[50] This decision was easily overturned later, when the ECtHR asked for the position of the Government on the annulment of elections. In June 2019, Constitutional Court judges forced the organisation of snap elections and dissolution of the Parliament. A week later, the Constitutional Court judges reversed their decisions and resigned *in corpore*,[51] after an outstandingly harsh opinion of the Venice Commission.[52]Nevertheless – the damage was already done, fuelling even more the public perception that judges and prosecutors are deeply corrupt and not independent.

A field mission of the International Commission of Jurists (ICJ), which visited Moldova in 2019, concluded, among others, that both the public and the stakeholders of the justice system typically do not yet perceive an amelioration in the independence of the judiciary. A mentality of excessive hierarchy in the judiciary and of the judge as having a merely notary role to the work of the prosecution office (called by some experts met by ICJ a "Soviet mentality") is still prevalent among judges, even though the majority of judges are young and have been appointed after 2011.[53] The ICJ mission also heard from several stakeholders that, notwithstanding changes of personnel, this orientation and attitude persists, transmitted from generation to generation of judges.

"I had a situation 10 years ago, when the court president called me into his office and said ... if you don't admit a revision, we'll start a criminal case against you..."

Interview with a former judge - May 2021

While there has been some improvement in the last two years, respondents from our interviews concur with the situation described above. Our respondents refer to this situation as "historic" at the time described in the previous paragraph, while nowadays, only judges who do not want to be independent are not independent.

The issue of independence of the judiciary is a hard and complex matter, and this study has not chance of solving it. However, we tend to admit that by setting better guarantees

operatiunea-ruseasca-the-laundromat/; Also, a more recent investigation is available at https://www.theguardian.com/world/2017/mar/20/british-banks-handled-vast-sums-of-laundered-russianmoney.

[50] Lentine G., Jackson M., Why the Annulment of a Mayoral Election Is a Blow to Moldova's Democracy, *Freedom House , 3 July 2018,* available at: https://freedomhouse.org/blog/why-annulment-mayoral-election-blow-moldovas-democracy.

[51] Public Appeal from 21 Moldovan CSOs calling Constitutional Court judges to resign: http://crjm.org/wp-content/uploads/2019/06/2019-06-25-Apel-Demisia-Jud-CC_Ro.pdf.

[52] Venice Commission, Republic of Moldova, Opinion on the constitutional situation with particular reference to the possibility of dissolving parliament, CDL-AD(2019)012.

[53] International Commission of Jurists (ICJ) „Only an Empty Shell" - The Undelivered Promise of an Independent Judiciary in Moldova – A mission report (2019), p. 22. Available online at: http://crjm.org/wp-content/uploads/2019/03/2019-ICJ-Rep-Moldova-Judiciary_ENG.pdf.

for independence and accountability of judges, we can also contribute indirectly to better judicial reasoning of judgements.

Most of the interviewed judges were dismissing the theory that there is a systemic link between the independence of judges and the quality of the judicial motivation. Some of them admitted that interferences with judicial independence happened in the past, but that incidents were rare, and it is hard to draw conclusions based on them.

The role of the parties (the prosecutor and the defence) and the quality of the documents prepared by them

26.4% of the respondents believe that the quality of motivation is related to the performance of other parties in the process. This is totally supported by all the interviewed respondents. They admitted that not all documents prepared by the lawyers and prosecutors are of the highest quality.

"A scholar lawyer = half of the judgement ready..."

Interview with an acting judge - July 2021

While prosecutors are taught at NIJ, following a similar training scheme as judges (covered in the section below), in case of lawyers the legal skills is taught mostly on the individual level, each young lawyer following the practice of their trainee tutor. Since 2019, the Lawyers Training Centre (CIA), is operational within the Moldovan Bar. It provides lawyers advanced and specialized courses on diverse topics. As part of the initial training program for trainee lawyers, the CIA offers a course of about 2.5-3 hours on the subject of "efficient writing of civil procedural documents". There is no detailed information however, on the numbers of lawyers which graduated from this course, that it is sufficiency to cover all the aspects related to legal writing and motivation.

Legislation

24.3% of the respondents consider that legislation in place, which does not always provide sufficient clarity toward its application, negatively affects the quality of judicial reasoning. On the other hand, the law will inevitably be general to allow the regulation of the impermissible situations. What is however important is that the legislation offers sufficient guidance as to its effects. However, the ultimate interpretation and application of the law is the responsibility of the judiciary and, at least on civil matters, it cannot disregard a law because it is too general. Ultimately, the vague nature of a law is problematic only when the court practice on the matter is non-existent or when this practice is inconsistent. We have discussed about the inconsistency of the court practice earlier.

Moldova is famous for its very detailed legislation, often excessively detailed. Changes in legislation in Moldova are frequent and often triggered by the hesitance of judges and

prosecutors to interpret the legislation in a creative manner. This is also related, in a smaller part, to the country's effort to integrate to the European Union. In this regard, Moldova undertook the promise to gradually approximate existing and future legislation in the relevant sectors with the European Union, and to implement it effectively.[54]

Moreover, other two major reforms took place recently. On 15 November 2018, the Parliament of Moldova voted in the final reading the Law on the Modernization of the Civil Code. The law includes amendments to all five books of the Code (more than 500 pages of new legislation), this being the largest package of amendments since the adoption of the Code in 2003. A few months earlier, on 19 July 2018, the Parliament adopted another major document, - the Administrative Code of the Republic of Moldova. The Code has over 250 articles and entered into force on 1 April 2019.

„Continuous reforms severely harm the judiciary..."

Interviews - May 2021

Both pieces of legislation bring new or revised concepts and institutions designed to contribute to a more accurate and predictable legislation, harmonized with the legislation of the European Union. However, in the first years of implementation, this caused an additional burden on judges, who need to form a practice based on the new legislations. This may affect the quality of judicial motivation, but only for a short period of time. However, frequent amendments of the same law may lead to prolonged deficiencies in its interpretation and application.

At the launch event, some participants were of the opinion that the frequent amendment of the legislation should not always present a major problem that makes it difficult to reason, as long as the judge knows how to interpret the laws.[55]

Training at the NIJ

16.4% of the online survey respondents state that the quality of training within the NIJ negatively affects the quality of motivation. The NIJ is the main body entrusted with the training of the judiciary in Moldova, and a specialized institution established to train sitting and candidate judges, prosecutors and other judicial personnel.

Initially, the teaching at the NIJ primarily consisted of classroom-style lecturing, replicating the university studies. Lately, more practical skills-based and simulation training has been introduced. A major emphasis is put on mock trials, where future

[54] Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (2013). Available onli ne at:

[55] The intervention of Dr. Pavel USVATOV, Director of KAS RLP SEE, during the launch event of the study project, 27 September 2021. The recording of the event is available online and was indicated above.

judges and prosecutors re-enact a trial from start to end. According to NIJ lecturers, after delivering a judgement, the NIJ audient, which was designated in the role of the judge, must issue a motivated court judgement. According to the NIJ lecturers, each NIJ audient, during his time at the NIJ, will write at least 10 judgements, in civil and criminal matters.[56]

A survey among legal specialists conducted in 2020 revealed that the initial training offered by the NIJ meets the real needs of 71% of judges and 68% of prosecutors. The same statement about the in-service training offered by the NIJ was confirmed by 75% of judges and 68% of prosecutors.[57] The interviewed judges and prosecutors reported that the training at the INJ does not have a special course focused on the legal reasoning skills. The only existing course that focuses on legal writing does not pay sufficient attention to the quality of motivation of judicial acts. This course is short and mostly concentrates on the form and structure of the judicial acts, as well as on grammar.

A thorough analysis on the role of NIJ in terms of judicial drafting was described in the study on Judgement-drafting and Training on Legal Writing in the Republic of Moldova, cited above. This study recommends, among others, establishing separate courses on legal writing at the initial and continuing legal education at the NIJ, as well as working groups on quality of judgements which will develop recommendations in terms of judgement drafting, and possibly will discuss the idea of introducing standard formats or templates for particular type of cases.[58] It is not clear yet if this recommendation was implemented. While we concur with the study recommendations, we will also suggest a few recommendations, based on the interviews performed with former NIJ audients.

Quality of training within the Law Faculty

11% of the online survey respondents state that the quality of training within the law faculties negatively affects the quality of motivation. Moldova has more than 10 law schools that offer bachelors and master's degree studies. Based on the consulted curriculums and information requests sent to nine universities, courses on logical argumentation, legal reasoning and writing are absent from the student curriculum. Based on the information received from the faculties, some respondents argue that elements of legal reasoning and legal writing are taught at various disciplines, as an interdisciplinary skill or task, in particular at civil and criminal procedure courses.

Programs and technologies which assist a judicial process (PIGD, Femida, etc).

A small fraction of the respondents, 5.7%, stated that the programs and technologies which assist a judicial process as a factor which negatively influence the motivation of judgements. In this regard, legal professionals interviewed for this study agree that the

[56] Information received from NIJ trainer following the on-site visit to the NIJ – 30 June 2021.

[57] See pp. 41-42 of the Survey report. It is available in English at https://crjm.org/wp-content/uploads/2021/02/Perceptia-judecatorilor-procurorilor-si-avocatilor-ENG-2020-web.pdf.

[58] *Ibidem, Recommendations section.*

programs and technologies which became available to judges have genuinely improved and made their work easier. However, the most senior judges also agree that the use of information technologies did not bring a major contribution to the quality of decisions, as the drafting of the judgments became very much influenced by the "copy-paste" phenomenon.

"...A judge is given to think ideas, not to stick ideas"

Interview with an acting lawyer - June 2021

Thus, many court decisions end up abounding in reference to legal provisions and ECtHR jurisprudence, but they lack a comprehensive motivating part. In this sense, the volume of a court decision has increased several times, but not the quality of a decision.

„ I hold nothing against technology, but if tomorrow the lights go off, 80% of the judges will not be able to motivate a judgement..."

Interview with an acting judge - May 2021

Combating the copy-paste phenomenon is not an easy task, but can be achieved through complex and cross-cutting measures for all legal professions, such as training of legal assistants, accountability of lawyers, including standardization tools. These solutions will be described in more detail in the next section.

Solutions and risks

We started our research journey with the aim to find legal and practical solutions, which might complement the efforts of the justice system in the Republic of Moldova, to ensure better reasoning of judgements. We believe we found out what are the main legal and practical obstacles that prevent the justice system in the Republic of Moldova from ensuring well-motivated judgments. We also received anecdotal evidence to what extent the studies obtained at the law schools and the National Institute of Justice are sufficient to ensure a better reasoning/motivation of court judgements.

In this next section, we will focus on the potential solutions and risks. We have also located institutions and actors that can contribute to improve the quality of the motivation of court decisions in the Republic of Moldova.

Some of our suggested recommendations might sound modest. This is because we deliberately opted out the presumption that national authorities in the next few years will allocate more funds for the justice sector. It goes without saying that raising salaries to assisting personnel can solve the problem of turnover of personnel, however it is not an easy decision for any authority in the times of economic constraints, caused including by the COVID-19 pandemic. The list of our recommendations is not exhaustive and nothing can prohibit national authorities to be more ambitious in terms of allocating resources to support such measures.

Uniform judicial practice

The interviewed legal professionals suggested different measures, including practical solutions which could lead to a more uniform judicial practice in the long run. Most of these recommendations do not require legislative changes, but rather initiative from either SCJ, SCM, NIJ or court presidents.

Periodic continuous training at the NIJ with the involvement of the SCJ judges as trainers. This measure was one of the recurring recommendations steaming from the interviews. Such gatherings, not necessarily organized as training, but rather as group discussions, would provide the possibility to discuss in detail points of law to clarify divergent situations arising in practice, ultimately influencing the judicial reasoning. This was seen necessary especially for judges from the district court wich don't have the benefit to debate in favour or against an argument in camera with fellow colleagues. The interviewed judges noted that such discussions were organized in the past by the SCJ, but were discontinued some years ago.

"If I have one opinion and my colleague has another one, I need to seriously prepare and support it with arguments in order to convince him...or vice versa"

Interview with an acting judge - May 2021

Introduction for the SCJ and lower courts of formal mechanism to consolidate the divergent court practice – The Code of Criminal Procedure already provides in art. 465[1] that the leadership of the SCJ, the Prosecutor General or the President of the Bar can request a decision of the Criminal Section of the SCJ aimed at consolidating the serious divergences in court practice (*Recursul în interesul legii*). This decision is mandatory. We very much hope that the SCJ will use this institution more frequently. We also recommend to introduce similar institutions for civil, administrative and contravention procedures. The implementation of this recommendation requires the amendment of the legislation.

The right of the judge handling the case to request the preliminary opinion of the SCJ - The appeal in the interest of the law is a tool that cannot be triggered by the lower court judges. However, they are often best placed to see the divergent practices. Any serious report on the critical divergences of court practice should be treated with utmost diligence. We are recommending to introduce an additional formal mechanism – the right of the judge dealing with the case to request the preliminary opinion of the SCJ if he or she believes that the law or practice of application of the law is not clear or may lead to contradictions in jurisprudence. The preliminary opinions are already successfully issued both by the European Court of Justice and by the European Court of Human Rights. The implementation of this recommendation also requires legislative amendments.

Organising periodical meetings with all the judges from the same court – In a similar vein as the previous recommendation, organizing periodical meetings to discuss the most recent jurisprudence of the higher courts, including decisions of that court that where quashed, to ensure a uniform understanding and avoid divergent judicial practice within a single court could improve judicial reasoning. Such meetings could become periodical.

The same approach can be used to ensure better consistency of practice within the same court, particularly in the big courts, or when the judges do not have a prevailing opinion on a specific legal interpretation. The meetings may end up with a decision on the approach to be followed by all. Such decisions should be taken by consensus or qualified majority. Otherwise, a clarification from the SCJ should be requested.

"We don't point fingers, we sit together, and we discuss how to avoid in the future the mistakes which were highlighted by the Supreme Court"

Interview with an acting judge - May 2021

Codification of the practice of the SCJ - The SCJ issues thousands of judgments annually and it is hard to read the entire jurisprudence. The SCJ should start codifying its jurisprudence by subject matters. The practice of the ECtHR might serve as a very good example of such practice. The ECtHR is publishing on its web-page short summaries of its jurisprudence on subject matters that may present interest to judges and parties in the proceedings and updates them every several years[59]. This exercise may require a more consistent practice of the SCJ itself, which is sometimes contradictory. This issue might be mitigated by establishing a robust system at the SCJ for ensuring the consistency of its practice. One interviewee even recommended, based on the ECtHR model, to create the position of jurisconsult at the Supreme Court, that would verify the draft judgements and flag in advance potential contradictions in the jurisprudence.

Sentencing guidelines – the individualization of the sanction applied in criminal cases is a matter generally allocated to the judges' discretion. However, the exercise of this discretion often raises questions whether it was reasonably used, especially in countries like Moldova, where the trust in the judiciary is very low (currently it ranges around 20%) and the discretion offered by law for individualization of the sanction is very broad. Such doubts also trigger numerous appeals, thus increasing the workload of the higher courts. This is why, in some countries, the discretion offered by law to judges is further regulated internally by the judiciary, via guidelines. We recommend considering putting in place such practices in Moldova. The guideline may take the form of a non-binding brief document prepared by the SCJ and explaining in a user-friendly manner, in a plain language, how numerous factors influence the sanction to be applied and what should be the reference figures. It is hard to prepare such guidelines for all the crimes. These guidelines are generally issued for groups of similar crimes which are committed frequently. In other countries, the guides are also highly valued by prosecutors and lawyers.

SCJ consultative council with diverse composition – judges, lawyers, notaries, bailiffs, judges from outside SCJ, law professors. While at the level of the SCJ such a consultative body already exists *(Consiliul Științific),* some of our respondents believe that this Council will benefit from a more diverse membership, including judges outside SCJ. A similar approach is already applicable in Armenia.[60] This council should also serve as a bridge for communication between the SCJ and other legal professions. Therefore, it should be composed of judges and representatives of other legal professions that have the time, as well as formal or moral authority to take the message further.

There are of course associated risks related to all recommendations, as, in certain circumstances, meetings or gatherings could be perceived as limiting the intimate conviction of a judge and the possibility of the evolution of judicial practice. However,

[59] Several years ago, the European Court of Human Rights started publishing short documents with summaries of their jurisprudence on various subjects. The produced documents are updated periodically with new jurisprudence. The summaries are available here https://www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis&c=.

[60] Interview with a practicing Lawyer, May 2021.

virtually all respondents but also the participants in the discussion on the draft study believed that each judge can maintain his/her position when he has strong arguments in favour of a "new" approach, contrary to the established practice. Meetings and gatherings with judges can serve as a platform for judges to communicate informally, not just through decisions already made.

Moreover, all of the suggested solutions require a somewhat proactive role of the SCJ and judges. As of the day this report sees the light, the activity of the SCJ is paralyzed, while for more than two years, the SCJ does not have a President. Also, the meetings of the SCJ Plenum cannot be held, because less than two thirds (22 judges out of 33) of the total number of SCJ judges work at the SCJ.

Workload

Based on the desk research and conducted interviews, the legal professionals suggest several actions, which range from increasing the overall number of judges per system or establish a mechanism of guest judges or even the flying brigade which can serve as a crisis solver, intervening when a particular court or premise is struggling with overload.

A more efficient management of courts - It seems that the main problem when it comes to the workload of judges is the limited efficiency of the judiciary itself. The procedures are highly bureaucratic, there are substantial discrepancies between the workload of judges, a high number of judicial positions are not filled in, while the assisting staff for judges is not managed in the most efficient manner. We recommend rethinking the entire scheme of judicial assisting personnel, extensive use of digital solutions, better preparation of the cases for trial, to avoid the postponement of hearings, as well as streamlining of criminal court procedure. The implementation of these measures at most does not require legislative intervention.

Guest judges (Rezerva judecătorească) – this is the solution suggested by several interviewees to overcome the backlog of the courts affected by abrupt dismissal of judges, non-confirmation in office of judges, or suspension from office of judges. The law on the organisation of the judiciary already provides such a mechanism, allowing a reserve fund of 15 judge posts.[61] However, this mechanism was never used in practice. While its use will require a specific mechanism of implementation, keeping in mind additional resources to relocate a specific judge for a temporary assignment, it can directly help the system to overcome backlogs and excessive workload and, indirectly, contributing to better judicial reasoning in the long run. We also recommend calibrating the number of the reserve judges to the number of permanent or temporary vacancies that typically exist in the system, i.e. 30-40 positions.

The "Flying brigade" (Brigada Judecătorilor) – similarly to guest judges, a suggested system first known to be applicable in the Netherlands in the early 2000s, enables a special task force consisted of judges and court staff located in a single premise to prepare draft-decisions on the on-going cases from a court that is overloaded. Following the introduction

[61] Art. 21 from the Law on the organisation of the judiciary. Cited above.

of the flying brigade, nearly 8,000 draft-judgements were made by this unit in a single year.[62]

Both Guest judges and Flying brigades require an active role of the SCM and court administrators/Presidents. They should constantly monitor the activity of the courts and their case inflow and suggest rapid temporary relocations, to decrease the excessive workload. In case of the second recommendation, this would also require a substantive resource allocation (a new or existing premise with space, technical resources and access to judicial tech infrastructure, etc).

Expanding the categories of trials examined in simplified trial procedure and use of alternative dispute resolution measures - on 15 February 2018, the Parliament approved a draft law on amendments to the Code of Civil Procedure. These concern the simplification of the proceedings for examining civil cases, detailed description of the procedure for preparing the case for examination, as well as the possibility of filing procedural documents in electronic format (e-file system). The amendments aim to simplify the procedure of examining civil cases also by introducing a small-claims procedure (under EUR 2,500), which are to be decided in a six-month period, based only on written submissions of the parties. The amendments entered into force on 1 June 2018. These changes were very appreciated by the respondent judges and other legal professionals interviewed as effective measures to combat high workloads. Next, they recommend expanding the categories of trials or the thresholds for the small-claims procedure to be applicable in more cases.

Several judges but also law practitioners also noted during the launch event that a high number of civil disputes concern small claims that value even less than MDL 2,500 (~EUR 123), which is the average cost spent by the state per case. These disputes are most often simple and are usually not challenged by the parties. They recommended transferring this type of cases to bailiffs. Eventually, the acts of the bailiffs can be challenged in court.[63]

Template judgments for certain categories of cases – following the examples provided during the interviews stage, certain categories of cases such as (dissolution of marriage – divorce, debt and collection of sums, alimony) could be standardized with "boilerplate" motivation that can be reused more than once in a new context without any substantial changes to a particular case. Some of the judges already have in their arsenal such "model" motivation and apply it in very similar cases[64].

Rules on judgement motivation - In terms of solutions, the legal professionals also suggest, to introduce a special SCM regulation on judgement drafting. The SCM special regulation or guide on judgement drafting would serve as guidance for judges on how to draft the structure of each judgement, and particular requirements towards each

[62] CEPEJ Compendium of "best practices" on time management of judicial proceedings (2006); See also: United Nations „Resource Guide on Strengthening Judicial Integrity and Capacity" (2011), *New York* p. 42, available at: https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf.

[63] Interventions of participants in the launch event of the study project, 27 September 2021. The recording for the event is available online and was indicated above.

[64] Ibidem.

section and word limits, similarly to the practice already established for the parties by the European Court of Human Rights. The templates based on these regulations can be further incorporated in the software used by judges, thus improving the structure of judgements, that is currently very different from one judge to another. This may also imply that all the judgements are written in the software programme used by the judiciary.

Procedural time-limits

Procedural time-limitations - Most of the legal professionals questioned believe that all the imperative time-limits provided in the legislation should be repealed, while, each procedural action should be evaluated based on the „reasonable time-limit" principle, which will vary on case-by-case basis. More comprehensive research is required to assess the importance of each procedural time limit. Therefore, we cannot make specific recommendations as a more in-depth analysis is required. It is however clear that this is a domain that deserves all the attention, as it can sufficiently impact the rate of postponed hearings and, implicitly, the judge disposal time and litigators' satisfaction rate.

Repealing the mandatory court mediation - Introduced first in 2016 to decrease the workload of judges, this system proved to fail in decreasing the workload. Many of the respondents interviewed but also the participants in the launch project of the draft study stated that mandatory court mediation only prolongs the trial and increases the court workload, with no viable outcomes for the parties or for the judiciary.

Reconsidering the current system of motivation of the first instance court civil judgements - A number of judge interviewees admitted that the lack of the automatic motivation of the first instance court civil judgements considerably reduces their workload. Several senior judges stated that this system, which was introduced in 2012, also has serious side effects on the operation of the higher courts as well as on judiciary overall. We recommend exploring the opportunities to introduce the automatic obligation of the first instance civil judge, a measure that should go hand in hand with the other measures aimed at reducing the courts' workload.

Examine the possibility of changing the legislation and introduce the issuing the full judgement on the date of delivery - This change would make it impossible for judges to deliver operative part of the judgement and later on to serve the motives to the parties. This is the situation from most of the European judicial systems. This will also have a positive impact on the quality of the judicial motivation and on the trust of the parties in the judicial solution they receive. However, this measure requires longer time offered for judicial deliberation.

Judge assisting personnel

Initial and periodic training at the National Institute of Justice – In order to increase the professionalism of assisting staff and decrease the level of implication of the judges, it was recommended to introduce initial mandatory and continuing education training for clerks and legal assistants at the NIJ. The training shall start right after the employment.

The newly employed judicial assistants will need to follow an inception course of a few weeks where they can learn about the specifics of the job. In this regard, practicing judges are the ones who can serve as trainers, as they know the best what their future job entails. In order to make this change, interventions are needed to amend the law on NIJ.

Introduce mandatory placements for NIJ audients to serve as clerks and legal assistants during their NIJ studies - This system might solve the problem of fluctuation of personnel and would mean that NIJ audient attends classes, then a significant part of his studies s/he aids a particular judge, and applies in practice what s/he is being taught at the NIJ. A similar model is applied in other countries and proves to be highly efficient. This measure may imply the rethinking of the format of training from the NIJ.

Rethinking the structure of the court registry – The judge assisting staff is currently assigned to every judge. This is perhaps comfortable for judges but may not be the most efficient model. The court staff might be specialized in order to boost its efficiency. For example, the judicial assistants can specialize in specific types of cases and work with different judges on different cases. This will solve the problem of lack of assistants for certain judges, will enrich the experience of the judicial assistance and will also stimulate judges to excel. This model is highly successful at the ECtHR. It is also used in the courts from Romania that have judicial assistants. This solution can be implemented by the judiciary without any legislative intervention. However, this will imply the change of the *modus operandi* of judges, which is often a complicated issue to be accepted by the majority of them.

A fair pay for judicial assisting staff - The huge turnover of the assisting staff, of some 40% per year, is mainly the result of scarce pay of this personnel. Any of the above measures from this section will have a very limited impact if the well trained personnel is leaving in less than a year from employment in the court. We are aware of the challenging financial situation from Moldova, but a system that is not ensuring basic living needs for its staff is never sustainable.

NIJ and Law Faculty studies

While we concur with the recommendations envisaged in the study on judgement drafting, based on the interviews, legal professionals recommended a few actions which might complement them.

Senior judges as trainers at the NIJ – Many of the practicing judges have all given up being trainers, because of alleged bureaucracy which is put upon someone who is accredited to teach at NIJ. However, most of the respondents from the interviews confirmed that they would very much like to have judges from the SCJ as trainers at the events organized by NIJ.

Mixed seminars between legal professionals - As part of continuous training, they could serve as a bridge of communication between legal professionals. Mixed seminars could also mean mixing the roles of the participants, to feel in each other's shoes, thus a practicing lawyer will take on the role of the judge during a mock trial, while the judge

will feel how it is to be a practicing lawyer. This will ultimately have a very positive impact on motivation of judgements. It will also help judges have a better understanding of the constraints faced by other legal professions, thus stimulating the trust between the professions and in the judiciary.

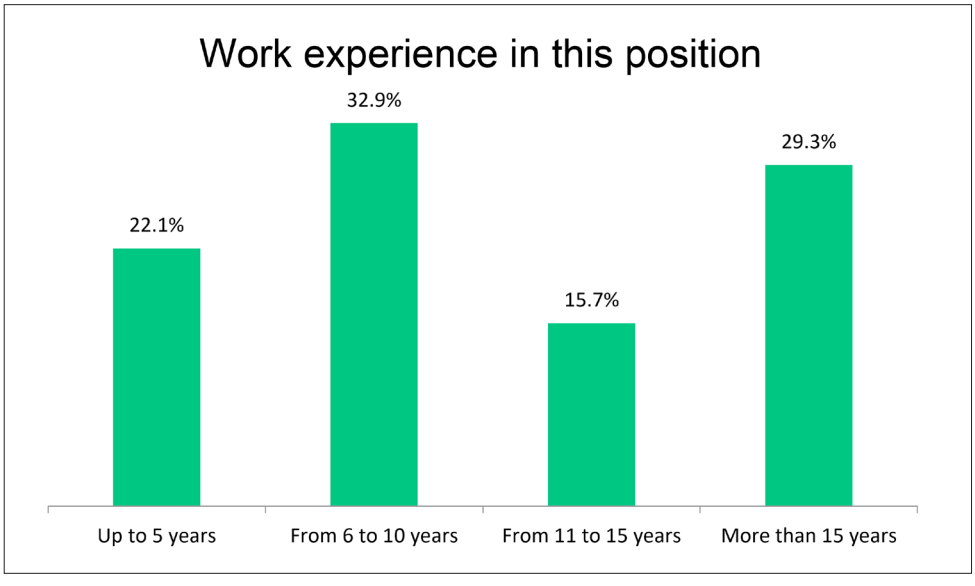
Introducing courses on legal writing, critical thinking and argumentation - as such disciplines are neither taught at the NIJ nor at the law Faculties, this would be a good improvement for all future legal professionals. The course can be piloted first at a few law faculties or/and NIJ. This can be done including with the support from the development partners, based on courses in place in countries with established democracies.

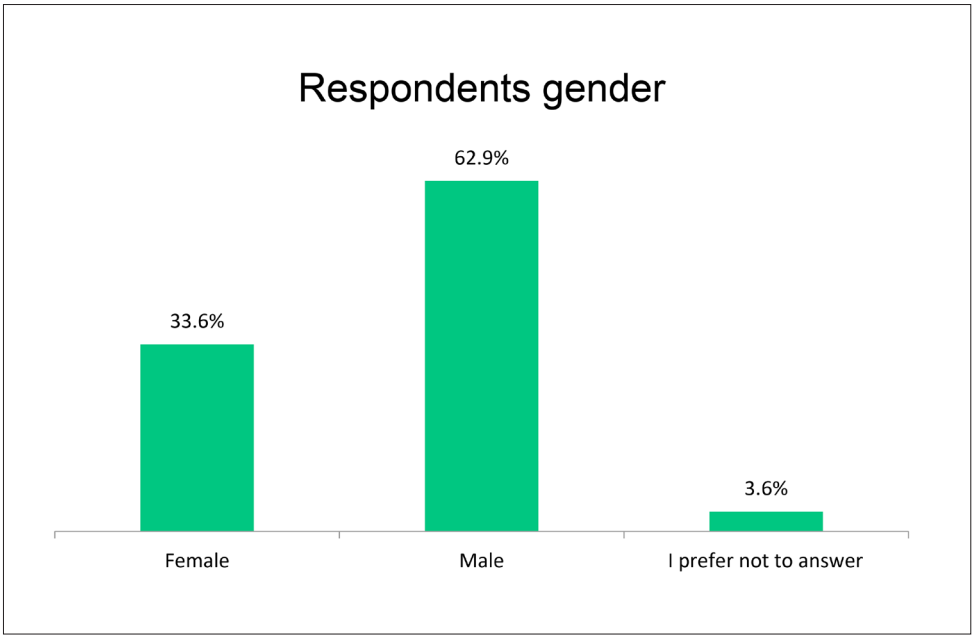
Annexes

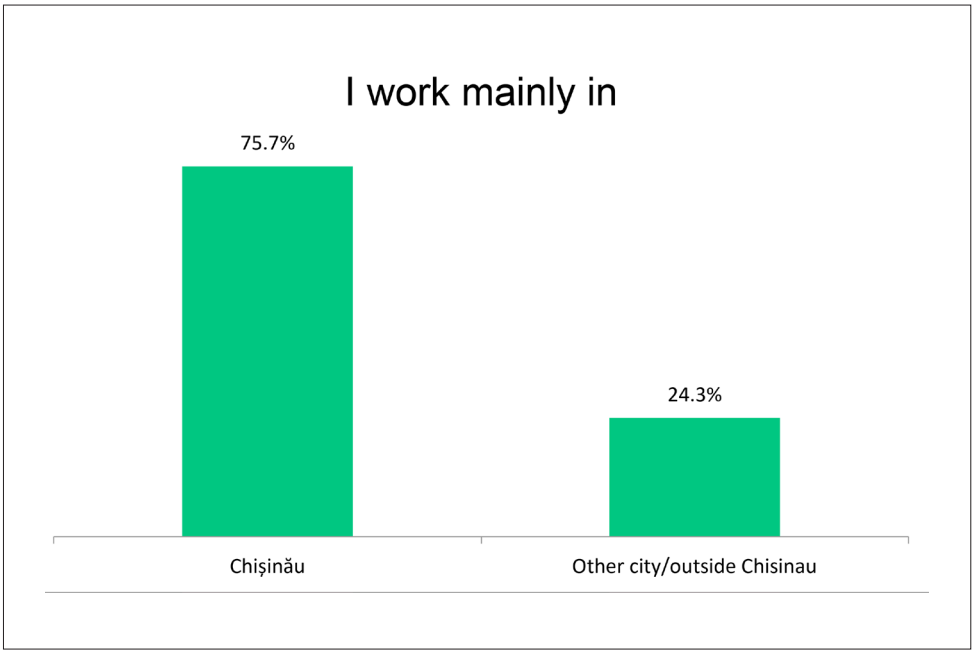
1) Profile of surveyed legal specialists

Respondents: 140

Answer Choices	Responses	
Judge in a District Court	23.5%	33
Judge in the Court of Appeal	1.4%	2
Judge at the SCJ	2.8%	4
Prosecutor in the sector / territorial prosecutor's office	1.4%	2
Prosecutor in specialized prosecutor's office	25.0%	35
Prosecutor in the General Prosecutor's Office	2.1%	3
Lawyer or trainee lawyer	39.2%	55
Other post	4.2%	6




Respondents gender
62.9%
33.6%
3.6%
Female
Male
I prefer not to answer


I work mainly in
75.7%
24.3%
Chișinău
Other city/outside Chisinau

2) Profile of interviewed persons

Respondents: 20

Answer Choices	Responses	
Judge in a District Court	4	20%
Judge in the Court of Appeal	2	10%
Judge at the SCJ	2	10%
Prosecutor in the sector / territorial prosecutor's office	0	0%
Prosecutor in specialized prosecutor's office	1	5%
Prosecutor in the General Prosecutor's Office	1	5%
Lawyer or trainee lawyer	4	20%
Other post (judicial assistant, NIJ lecturer, SCM members, ex-judges)	6	30%

3) Survey questions

Electronic survey: causes that affect the quality of reasoning of court decisions in the Republic of Moldova

1. **On a scale from 1 to 5, where 1 means "very bad" and 5 means "very good", how do you assess the quality of the motivation of court decisions in the Republic of Moldova?**

   Answer options:

1	2	3	4	5

2. **To what extent do you think that the current workload of judges negatively affects the quality of the reasoning of court decisions?**

To a large extent
To a lesser extent
Not at all, it doesn't influence
I don't know / it's hard for me to answer

3. **To what extent do you think that the deadlines provided by law for examining cases or making procedural decisions affect the quality of the reasoning of court decisions?**

To a large extent
To a lesser extent
Not at all, it doesn't influence
I don't know / it's hard for me to answer

4. **To what extent does the quality of the motivation vary from one court to another?**

Very much
A lot
Little bit
Not at all

5. **If you were to establish a ranking of the courts that best motivates court decisions, who would be ranked 1st, 2nd, and 3rd in that ranking?**

1	2	3

6. From the list provided below, please select the most important cases that, in your opinion, negatively affect the quality of the reasoning of court decisions (choose a maximum of 5 options from the list)

- Programs and technologies for recording a lawsuit or a case (PIGD, FEMIDA, etc.)
- Quality of training in law schools
- Other cause (please specify)
- The quality of training within the NIJ
- Legislation, which does not provide sufficient clarity in its application
- The performance of the parties and the quality of the documents prepared by them
- Lack of documents that would summarize the judicial practice
- Independence of judges
- The deadlines provided by law for examining cases or making procedural decisions
- Insufficiency / fluctuation of auxiliary staff assisting judges (assistants, clerks)
- Legal culture of summary motivation of court decisions
- The workload of judges
- Uneven judicial practice

In your opinion, to whom do you think the motivated part of a court decision is addressed first of all?

- Parties to the proceedings
- The higher court that will possibly examine the appeal
- Specialists in the field (judges, prosecutors, lawyers, academia, other justice professionals, etc.)
- The general public

What are 2-3 legal or practical measures that could help improve the motivation of court decisions?

I am currently working as:

- Judge in a District Court
- Judge in the Court of Appeal
- Judge at the SCJ

- Prosecutor in the sector / territorial prosecutor's office
- Prosecutor in specialized prosecutor's office
- Prosecutor in the General Prosecutor's Office
- Lawyer or trainee lawyer
- Other function (please specify the function)

Work experience in this position

- Up to 5 years
- From 6 to 10 years
- From 11 to 15 years
- More than 15 years

Gender

- Female
- Male
- Prefer not to answer

I work mainly in

- Chisinau
- Another locality

4) Interview questions

Baseline study to identify legal and practical deficiencies that affect the quality of reasoning of judgments in the Republic of Moldova

Interview questionnaire

Date: | __ | __ | Month: | __ | __ | 2021 Questionnaire number: 001

Respondent (name, surname, position): _____

1. **How do you assess the quality of the motivation of court decisions in the Republic of Moldova?**
   - **1A (if the respondent appreciates positively the quality of the motivation)** What do you think are the key elements that positively influence the quality of motivation of court decisions in the Republic of Moldova?
   - **1B (if the respondent negatively assesses the quality)** What do you think are the causes and / or deficiencies[65] that determine the insufficient quality of the motivation of court decisions in the Republic of Moldova?
2. **(If the respondent is a judge) From your experience, what helped you the most to gain the skills to motivate court decisions (studies at NIJ, self-education, previous experience)?**
   - **2A (If the respondent is a prosecutor) From your experience, what has helped you the most to gain skills in writing and drafting legal documents that are subsequently presented in court? (studies, self-education, previous experience)?**
   - **2B (If the respondent is a lawyer /) From your experience, what has helped you the most to gain skills in writing and drafting legal documents that are subsequently presented in court? (studies, self-education, previous experience)?**
3. **Does the time provided for by law for examining cases or taking procedural decisions affect (negatively or positively) the quality of the reasoning of court decisions? Why?**
4. **Since 2012, there has been no automatic obligation of the judge to motivate civil court decisions in the first instance. Did this measure influence (positively or negatively) the quality of the motivation of the other court decisions? Why?**

[65] Reference points for detailing the question: what is or may be missing or what is in excess in a court decision? (A few examples: a detailed description of the facts of the case with poor substantiation of the solution; the abundant quotation of, or references to, the ECHR caselaw without explaining how exactly and to what extent it applies to the case; other details that are missing or must be present in a court decision).

5. What are the most important 3-4 elements that make you appreciate a judgment as "well reasoned?"

6. Does the professional training and the fluctuation in courts of the auxiliary staff of judges (legal assistants, clerks) influence the quality of the motivation of court decisions? Can you specify exactly?

7. Is there a causal link between the quality of the reasoning of the court decisions and the fact that the judges first pronounce the solution and subsequently draw up the given decision?

8. According to credible reports (International Commission of Jurists, Venice Commission), judicial practice in the Republic of Moldova is rarely uniform. Does this influence the quality of the reasoning of court decisions? If so, how does this manifest itself?

9. In your opinion, is there a link between the level of independence of judges and the quality of the reasoning of court decisions? If so, how does this manifest itself?

10. How do you appreciate the efforts of the Supreme Court of Justice to improve the quality of the reasoning of judgments? What else could the SCJ do in this area?

11. How do you appreciate the efforts of the SCM in order to improve the quality of the motivation of court decisions? What else could the SCM do in this area?

12. How do you appreciate the efforts of the National Institute of Justice (NIJ) in order to improve the quality of the motivation of court decisions? What else could NIJ do in this area?

13. To what extent does the performance of prosecutors and lawyers affect the quality of the reasoning of court decisions? What else could the General Prosecutor's Office or the Bar Association do to improve the quality of the motivation of court decisions?

14. In your opinion, what are those 2-3 legislative measures (legal provisions / SCM regulations) that could contribute to improving the quality of the motivation of court decisions?

15. What are those 2-3 measures at practice level (internal procedures, internal management measures, employment / personal training, etc.) that could contribute to improving the quality of the motivation of court decisions?

16. To what extent do you think that a (optional) guide / instruction on how to draft legal acts would be useful to improve the quality of the reasoning of court decisions?

a. If yes / what categories of civil and / or criminal cases could be standardized from the perspective of the court decision?

b. If not / why?

The Legal Resources Centre 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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