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"Transparency of the Judiciary versus Data Protection" An Analysis on the Publication of Court Decisions in the Republic of Moldova

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ANALYTICAL DOCUMENT

**"TRANSPARENCY OF THE JUDICIARY
VERSUS DATA PROTECTION"
AN ANALYSIS ON THE PUBLICATION OF
COURT DECISIONS IN THE REPUBLIC OF
MOLDOVA**

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* All pictographs that appear in this document were created by [Pixel perfect](#) and were downloaded from www.flaticon.com.

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Abbreviations

ACA	Agency for Court Administration
CA	Court of Appeals
ECHR	European Convention on Human Rights adopted in Rome on 4 November 1950
NAC	National Anticorruption Center
NCPDP	National Center for Personal Data Protection
SCJ	Supreme Court of Justice
SCM	Superior Council of Magistracy
ECtHR	European Court of Human Rights
EU	European Union
GDPR	European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data
Legea nr. 514	Legea nr. 514 cu privire la organizarea judecătorească, din 6 iulie 1995
Law No. 514	Law No. 514 of 6 July 1995 on Judicial Organization
NGO	nongovernmental organization
ICMS	Integrated Case Management System

SCM Regulation on the Publication of Court Decisions — Regulation No. 2016/679 of 10 October 2017 on the Publication of Court Decisions on the National Courts Portal and the Website of the Supreme Court of Justice

Executive Summary

In modern democracies, the Rule of Law requires that the application of the law by the judiciary is transparent and that citizens have adequate access to the sources of law. The publication of court decisions provides insight on how a judge applies the law, contributing to ensure the transparency of the judiciary. Knowledge about decided cases is of the utmost importance for legal professionals, public bodies and citizens to be informed about the evolution of the law¹. Public access to judicial decisions derives from the principle of publicity of judicial debates, enshrined in art. 117 of the Constitution and the fair-trial standards provided by art. 6 of the European Convention on Human Rights (ECHR). However, the right of access of third parties to court decisions is not absolute and may be limited for compelling reasons.

For more than seven years now, most court decisions in Moldova are published on the Internet. Starting with 2012, the decisions of the Supreme Court of Justice (SCJ) are considered pronounced only if published on the SCJ website. The publication of court decisions on the Internet inevitably creates many practical challenges, especially when considering the protection of privacy and family life, as well as the access to public interest information.

On 10 October 2017, the Superior Council of Magistracy (SCM) approved a new Regulation that provides for the way in which court decisions are published on the Internet (the SCM Regulation). Although the adoption process of the Regulation was disappointing (non-inclusive and non-transparent), its approved version largely follows the logic of comparative best practices and the jurisprudence of the European Court of Human Rights (ECtHR). The Regulation establishes the publication of court decisions as a rule, without redaction of the identity of the parties. However, the courts should exclude many sensitive personal data from the text of the decisions, before publishing them on the Internet. Some decisions can even be anonymized. The decision regarding anonymization is at the judge's discretion. The Regulation only sets the criteria according to which the judge should make this decision. Some court decisions are not to be published under any circumstances.

¹ Conclusions of the Council and the representatives of the governments of the member states meeting within the Council on Best Practices regarding the online publication of court decisions (2018/C 362/02).

This study documents how the judiciary follows the SCM Regulation provisions in practice. For this purpose, **the authors analyzed 1,340 judicial decisions** adopted from 1 January 2018 to 31 March 2019. The authors randomly selected judicial decisions from all the existing courts: 810 judicial decisions from civil, criminal and misdemeanor cases. Given the sensitive nature of the matter, we also analyzed separately 530 judicial decisions adopted in corruption cases.

The research confirms that **the judiciary fails to follow the provisions of the SCM Regulation in relation to 63% of the judicial decisions adopted in civil, criminal and misdemeanor cases and 55% in the judicial decisions adopted in corruption cases.** The anonymization is often flawed or inconsistent. Information that must be depersonalized is not, while other information that must remain public is depersonalized. Often, judges fail to exclude sensitive information from the entire text of the decision. In other cases, the information is only partially excluded and can be found in other parts of the decision, etc. There are even striking examples where the name of the judge and the court which delivered the decision is anonymized. Violations of the SCM Regulation were found in all the courts, with no exception. The most frequent violations were found in the district courts and least frequently, at the SCJ.

In the case of the **district courts**, the average rate of violations of the Regulation is 75%, and in some courts, it exceeds 90%. At the level of the **courts of appeal**, the situation is much better, but equally worrisome. 47% of the court decisions from the courts of appeal fail to meet the SCM Regulation. In the case of the Comrat Court of Appeal, the rate of decisions found in breach is 67%. At the **SCJ**, the provisions of the Regulation were not followed in 23% of the analyzed cases.

Most of the times, the courts fail to follow the provisions regarding the obligation to hide, *ex officio*, the home address, the date and place of birth, the personal identification number or the registration plate. This rule was breached in 305 decisions analyzed (38% of the total analyzed). In 179 decisions (34% of the total criminal and misdemeanors decisions analyzed) the judges (with the exception of the SCJ judges) abusively anonymized the names of the authors, perpetrators or instigators. In 163 decisions (20% of the total decisions analyzed), provisions of the Regulations not allowing the anonymization of the name of the judge, prosecutor, police officer, mediator, the bailiff, notary or the lawyer were breached. In 100 decisions (12% of the total decisions analyzed) a violation of the rule regarding anonymization in the interests of minors, privacy or morality was confirmed. In 172 decisions (21% of the total decisions analyzed) only part of the decision was depersonalized.

In practice, there is an insignificant difference between the de-identification of judgments on “common” cases against **corruption cases**. In the latter case, the public interest to know the information being *a priori* more pressing. The provisions of the

SCM Regulation were not followed in 55% of the 530 court decisions regarding the corruption cases analyzed (compared to 63% in the “ordinary” cases). Most violations of the Regulation are also admitted at the level of the **district courts**, where the average rate of violations of the Regulation constituted 78%. In some district courts, the violation rate was even 100%. At the level of the **courts of appeal**, the situation is not much better. On average, 40% of the analyzed decisions of the courts of appeal do not comply with the SCM Regulation. In the case of the Chișinău Court of Appeal, this rate exceeds 73%. At the **SCJ** level, in only 9% of cases, the provisions of the Regulation were not respected.

The same provisions of the Regulation are not followed in the corruption cases analyzed. In at least 265 decisions analyzed (50% of the total of 530 decisions), the text did not exclude the information regarding the home address, the date and place of birth, the personal identification number or the car registration plates. In 149 decisions (28% of the total 530 decisions analyzed), the judges (with the exception of the SCJ) abusively depersonalized the names of the perpetrators or instigators of a crime. In 118 decisions (22% of the total of 530 decisions analyzed), the provisions of the Regulation stipulating the prohibition of anonymizing the name of the judge, prosecutor, police officer, mediator, bailiff, notary or lawyer were violated. In 9 court decisions (2% of the total 530 decisions analyzed), the rule regarding anonymization in the interests of minors, privacy or morality, was not followed. In 35 court decisions (7% of the total 530 decisions analyzed) only a part of the decision was depersonalized.

The results confirm that the failure to follow the provisions of the Regulation regarding the publication of court decisions, affects the entire judicial system. This, for one reason, breaches the privacy of individuals who appear before the court. On the other hand, incoherent anonymization, makes the whole exercise useless. At the same time, information that should stay is excluded. This further erodes confidence in the judiciary.

The authors recommend the SCM to clarify any problematic provisions of the Regulation and take urgent measures to consolidate or “refresh” the knowledge of the judiciary and of the judicial assistants regarding the understanding and application of the provisions of the Regulation. The authors also recommend the SCM to draft Guidelines for judicial assistants and judges, on the way and the situations in which the provisions of the SCM Regulation are applicable. Competent institutions such as the SCM and the Agency for Court Administration shall continue to ensure more efficient monitoring of compliance with the provisions regarding publication and de-identification of court decisions. This can be verified automatically with any checks carried out in the courts. At the same time, an analysis, every few years, of the practice in all the courts regarding the de-identification of the courts would be especially informative for identifying the most appropriate measures to be taken.

Why Was This Analysis Necessary?

a. Background of the Research

With the advent and wide-scale use of information technologies and the Internet, the protection of privacy became an increasingly complicated and challenging endeavor. Following the example of other states from the European community, Moldova has adopted a complex legal and policy framework to ensure the protection of personal data². As part of this process, the National Center for Personal Data Protection (NCPDP or the Center) was set up in 2007³. Known as *data protection authority* in the parlance of the *acquis communautaire*, the NCPDP is a public entity with the powers of controlling and supervising the monitoring of compliance with laws on the protection and use of information. The Center has also sanctioning powers if it establishes the violation of data protection laws.

In October 2013, the NCPDP issued a decision by which it ordered the SCJ to refrain from publishing court decisions on its website www.csj.md immediately. The Center considered that the publication of entire texts of court decisions violated data protection laws and the ECHR. The NCPDP requested the SCJ to redact individuals' names in the published court decisions. The SCJ disagreed.

In October 2014, the NCPDP's decision was quashed in court. The judges found, among others, that it was at the discretion of the court (judge) to determine if information from a decision may seriously harm the parties' privacy and, hence, to order that some parts of

- “The publication of court decisions derives from the principle of the publicity of legal proceedings, enshrined in the Constitution and the ECHR.
- “The publication of decisions is conditional on whether the court proceedings are held in secret or in public hearing.
- “The publication of decisions is part of judicial procedure, and under the law, the effect of certain decisions is contingent upon their publication on the courts' websites [...].”

*Excerpt from Case No.
3ra-1084/14*

² Law No. 17 of 15 February 2007 on the protection of personal data (repealed); Government Decision No. 857 of 31 October 2013 on the National Strategy for the Development of Information Society “Digital Moldova 2020.”

³ Draft of the informative note to Law No. 133 of 8 July 2011 on the protection of personal data. Available at: <http://goo.gl/DwV66a>.

it or even the entire decision be anonymized.⁴ The Judges also concluded that a balance must be struck between the general interest of ensuring public and transparent justice and the individual's interests whose names appear in the published court decisions.⁵

More than five years after that decision, the discussions around the appropriateness of publishing court decisions with unredacted names of parties is still on. In January 2017, the ACA – the authority that ensures organizational activity of district and appellate courts, removed the possibility to search court judgments by parties' names from the official website of the courts www.instante.justice.md. The ACA cited 'the protection of parties' personal data' as the reason for this move.⁶ In March 2017, the SCM – the High Judicial Council of judges has put forward a draft amendment of the SCM Regulation, which prescribed the way court decisions should be published. The draft contained controversial provisions, including a blanket provision regarding the removal of any personally identifiable information from the decisions published on the courts' portal.⁷ This amendment was seemingly developed at the request of the NCPDP.

The decisions taken by the ACA and the SCM sparked criticism from civil society organizations, lawyers, and investigative journalists. They reported multiple cases when the provisions of personal data protection laws had been interpreted and applied abusively, in order to hide important details in the content of court decisions.⁸ They requested the ACA and the SCM to restore the option of searching decisions by parties' names and to revise the draft of the SCM Regulation to align it with the standards regarding access to information of public interest and the right to private life. Journalists, lawyers, and NGOs supported their request by the argument that the automated redaction of individuals' names in all court decisions could compromise the transparency of the judiciary and further erode trust in the judiciary.⁹

⁴ Draft of the informative note to Law No. 133 of 8 July 2011 on the protection of personal data, page 4. Available at: <http://goo.gl/DwV66a>.

⁵ See SCJ's Order on Case No. 3ra-1084/14 of 1 October 2014. Available at: http://jurisprudenta.csj.md/search_col_civil.php?id=13125.

⁶ Ziarul de Garda. ULTIMA ORĂ! Agenda ședințelor, accesibilă căutării după numele părții pe dosar. Hotărârile rămân „secrete” (LATEST NEWS! The hearings schedule accessible by parties' names. Decisions remain “secret”), 14 February 2017. Available at: <https://www.zdg.md/stiri/stiri-justitie/ultima-ora-agenda-sedintelor-accesibila-cautarii-dupa-numele-partii-pe-dosar-hotararile-raman-secrete>.

⁷ SCM. Draft of the Regulation on the publication of court decisions on the single portal of the courts of law. Available at: https://csm.md/files/noutati/2017/06/26/regulament_final.pdf.

⁸ Anticorupție.md. CAMPANIE // Jurnaliștii și societatea civilă, împotriva interpretării abuzive a Legii privind protecția datelor cu caracter personal (CAMPAIGN // Journalists and civil society oppose the abusive interpretation of the Law on the protection of personal data), 26 January 2017. Available at: <https://anticoruptie.md/ro/stiri/campanie-jurnalistii-si-societatea-civila-impotriva-interpretarii-abuzive-a-legii-privind-protectia-datelor-cu-caracter-personal>.

⁹ LRCM. Amendment proposals to the SCM Regulation on the publication of court decisions on the single portal of the courts of law, No. 432/19 of 21 June 2016. Available at: http://www.crjm.org/wp-content/uploads/2017/04/2017-03-29-Nota_dep-hot-CRJM-06_fin.pdf.

After long public debates and criticism from civil society, the ACA restored the search by parties' names option, while the leadership of the SCM pledged to revise the problematic provisions of its Regulation.¹⁰ Initially, the SCM put a new draft of the SCM Regulation, prepared in collaboration with the NCPDP, to public consultation. Once again, the draft stipulated the anonymization of the identity of any individual that appeared in the court decisions published on the courts portal, extended the category of court decisions that were not allowed for publication, and restricted access to court decisions by enforcing an identification mechanism on the website. In its initial form, the draft of the SCM Regulation could not be backed. Adopting it meant closing the judicial system from the public and, as a result, an even greater decline of trust in the judiciary, thus, compromising all prior efforts Moldova has achieved in ensuring the transparency of the judicial system.

On the day the SCM adopted the "new" Regulation, tens of activists, lawyers, journalists, and NGO representatives protested in front of the SCM's building,¹¹ requesting the SCM to back off from its intention to close public access to essential information in court decisions. Eventually, the leadership of the SCM scrapped the initial version of the SCM Regulation and adopted another draft, prepared by the SCM (in force on the date this policy paper is released).¹² The approved final version of the SCM Regulation mostly follows the logic of the compared best practices and the ECtHR case-law.

Meanwhile, the NCPDP kept promoting legal amendments aimed at depersonalizing all court decisions. In October 2017, the NCPDP put forward two draft laws¹³ that prescribed the de-identification of all court decisions. On 31 October 2017, NCPDP's initiatives received a negative opinion from the SCM.¹⁴ After that, the NCPDP dropped those amendments but kept promoting the new law on the protection of personal data and strengthening the capacity of the NCPDP.

¹⁰ SCM. Press release, 4 August 2017. Available at: <https://www.csm.md/ro/noutati/2659-comunicat-de-presa-cu-privire-la-modificarea-regulamentului-privind-modul-de-publicare-a-hotararilor-judecatoresti-pe-portalul-unic-al-instantelor-judecatoresti.html>.

¹¹ Tamara Grejdeanu. Confruntat cu proteste, CSM renunță să închidă accesul public la date esențiale din deciziile judecătorești (Confronted with protests, the SCM backs off from closing public access to essential data in court decisions) (VIDEO), Radio Free Europe, 10 October 2017. Available at: <https://moldova.europalibera.org/a/ong-proteste-csm-acces-hotarari-judiciare/28784743.html>.

¹² SCM. Regulation on the publication of court decisions on the National Courts Portal and on the website of the Supreme Court of Justice. Enacted by Decision No. 658/30 of 10 October 2017.

¹³ LRCM, ADEPT, Expert-Grup. Monitoring report on the implementation of the Priority Reform Action Roadmap, page 37. Available at: http://crjm.org/wp-content/uploads/2018/02/Raport-final_Monitorizarea-foii-de-parcurs.pdf.

¹⁴ SCM. Decision No. 694-695/31 of 31 October 2017. Available at: <http://www.csm.md/files/Hotaririle/2017/31/694-31.pdf>, <http://www.csm.md/files/Hotaririle/2017/31/695-31.pdf>.

b. The Scope of the Research

Approximately two years after the enactment of the SCM Regulation on the publication of court decisions, there are still signs that its rules are applied inconsistently.¹⁵ In some court decisions, information that should be public is anonymized (for example, the names of judges, clerks, or participating legal entities), whereas the data that, under the SCM Regulation, should be anonymized or hidden is left public (for example, intimate details about parties' intimate lives). Moreover, in 2018 and 2019, the NCPDP requested the SCM¹⁶ to revise the SCM Regulation on the publication of court decisions to bring its provisions regarding last and first names and other personal data in line with personal data protection laws. In a letter of February 2018 (over four months after the enactment of the SCM Regulation), the SCM President advised all courts of law of the need to comply with the SCM Regulation.¹⁷

The scope of this analysis is to assess the following aspects through a multilateral approach:

- To what extent do the national courts comply with the SCM Regulation on the publication of court decisions?
- To what extent is information from court decisions depersonalized/anonymized or hidden abusively? Is this an isolated issue, specific only to some courts, or a systemic issue that spreads across the entire judicial system?
- To what extent is the SCM Regulation on the publication of court decisions complied with in cases of corruption, where public interest is *a priori* more pronounced? Is there any difference between the de-identification/anonymization of decisions on “common” criminal cases and those on cases of corruption?
- What are the most problematic or most frequently violated rules of the SCM Regulation on the publication of court decisions?

Last but not least, the research aims at identifying practical recommendations for the judicial system, in particular the SCM, to increase transparency in the judicial system and to ensure a genuine protection of case parties' and participants' personal data.

¹⁵ CPR Moldova. Report: Un an pierdut: transparența, accesul la informații și datele cu caracter personal din Republica Moldova (A wasted year: transparency, access to information, and personal data in the Republic of Moldova) (2018), page 13. Available at: <https://cpr.md/2018/02/05/un-an-pierdut-transparența-accesul-la-informații-si-datele-cu-caracter-personal-in-sectorul-justiției-din-republica-moldova/>.

¹⁶ See SCM Decision No. 104/6 of 26 March 2019 on the informative notes of the Judicial Inspection regarding the decisions of the National Center for Personal Data Protection. Available at: <https://www.csm.md/files/Hotaririle/2019/06/104-6.pdf>.

¹⁷ SCM. Letter No. 426 of 22 February 2018 to courts of law. Available at: <https://csm.md/files/Noutati/2018/02/CIRCULAR.pdf>.

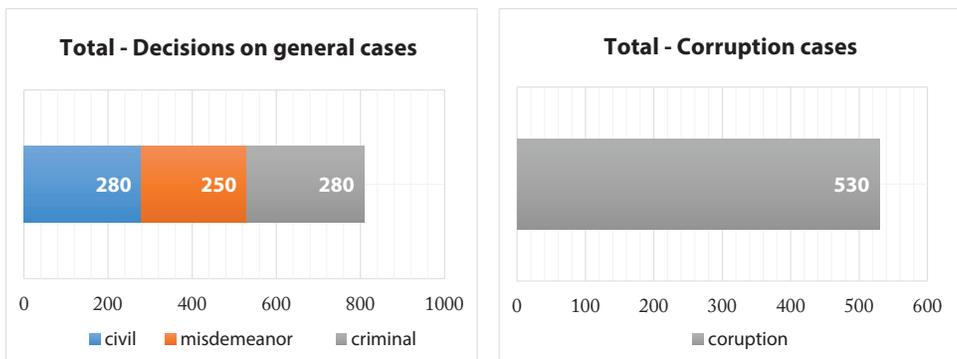
c. Methodology

This document is based on the analysis of national laws, SCM’s regulations, and court decisions publicly accessible on the National Courts Portal (www.instante.justice.gov.md) and the SCJ’s website (www.csj.md). In addition, the LRCM analyzed the official statistics from the ACA and SCM’s reports on the publication of court decisions.

The analysis covered only reasoned court decisions and did not take into account unreasoned rulings or decisions of district courts in civil cases.¹⁸ The examined decisions were adopted during the period of 1 January 2018 through 31 March 2019. This period covers the first 15 months from the enactment of the new SCM Regulation.

LRCM’s legal officers collected the sample court decisions from June through October 2019. The sample included **810** decisions on civil, criminal, and misdemeanor cases and **530** decisions on criminal cases concerning corruption. All told, the sample included **1,340** decisions from all courts, including appellate courts and the SCJ.

Chart 1. The total number of the examined decisions



To ensure the impartiality and representativity of sampling, we developed an algorithm for the randomized selection of court decisions. The courts were conventionally divided into two groups in accordance with the number of decisions they had issued during the reference period. The set of decisions from “big” courts was larger to ensure the representativity of findings. The set of decisions for corruption included all decisions adopted in the first 15 months and published.

¹⁸ Most district court decisions on civil cases are left unreasoned unless the parties request this or the decisions are appealed.

Table 1. *The number and types of the decisions selected from each court*

Court type	Court	The number of the decisions selected at random	Decision type	The number of the decisions for corruption
“Big” courts	SCJ	30/30	civil/criminal	all
	Chişinău CA, Chişinău Court	40/40/40 40/40/40	civil/criminal/administrative	all
“Small” courts	district courts (other than Chişinău Court)	10/10/10	civil/criminal/administrative	all
	Appellate courts	10/10/10		
	decisions	810	decisions	530
			Total	1,340

Using the search engines available on the websites of the courts and the SCJ, the authors set “random steps” for searching the decisions issued during the reference period. For “big” courts, such as Chişinău Court or Chişinău CA, the algorithm was set to pick decisions starting with the code -1000, indicated in the section *Case No.* For the SCJ, the search step started from the code -300. For “small” courts, the search step started from the code -200. Where the required number of the decisions meeting the search criteria and the reference period was not reached, the search step was doubled. Where the search did not yield results after repeating the search code, the frequency of the search step was reduced. More details are presented in Table 2 below.

Table 2. *Search steps in accordance with the court type*

Court type	Court	Search step
“Big” courts	SCJ	300/300 150/150 100/100 50/50
	Chişinău CA, Chişinău Court	1000/1000
“Small” courts	Other appellate courts	200/200
	District courts (other than Chişinău Court)	100/100 50/50 20/20

For cases of corruption, the sample included all decisions adopted in the reference period (January 2018 – 31 March 2019). Given the multitude of examined corruption cases, the analysis covered only the decisions for the most common listed corruption crimes: Article 324 (passive corruption), Article 325, (active corruption), Article 326, (influence

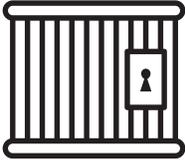
peddling), Article 327, (Abuse of Power or of Official Position), Article 328, (Excess of Power or Excess of Official Authority), and Article 329, (Negligent Performance of Duties). These decisions accounted for more than 70% of all corruption cases examined during the reference period.



The LRCM's database of examined decisions is accessible on smartphones. Turn on and center your device's camera to scan the QR code.

All identified decisions were saved in the LRCM's own database and examined using the criteria set in the SCM Regulation on the publication of court decisions. Our primary attention was focused on the compliance of the selected decisions with the **six main rules** set in the SCM Regulation. These rules determine the public, hidden, or anonymized mode for the names of parties and other information in published decisions. Thus, each court decision passed through the filter of the six rules described in the following chart.

Chart 2. The de-identification rules set by the SCM Regulation

<p>Rule 1: The prohibition to anonymize information concerning the court and the persons who participate in their professional capacity in the proceedings (para. 21 of the SCM Regulation)</p> <p><i>“Anonymization/hiding shall never apply to information about courts or judicial panels, clerks, prosecutors, official inspectors, mediators, bailiffs, notaries, and lawyers. The names of legal entities shall never be hidden.”</i></p>	
<p>Rule 2: De-identification in the interests of morals, juveniles, or private life (para. 18 (a) of the SCM Regulation)</p> <p><i>“In criminal, misdemeanors, civil, or other trials thus conducted to protect morals, juveniles, or the private lives of the parties, the names of those affected in light of these values and interests shall always be redacted.”</i></p>	
<p>Rule 3: The prohibition to anonymize the names of perpetrators and instigators in criminal and administrative cases (para. 18 (b) of the SCM Regulation)</p> <p><i>“In criminal or misdemeanors cases thus conducted to protect morals, juveniles, or the private lives of the parties, the names of perpetrators, instigators, or accomplices shall never be redacted, even if the perpetrators, instigators, or accomplices are juveniles.”</i></p>	

<p>Rule 4: The hiding of some parts of decisions with confidential information (para. 18 (c) of the SCM Regulation)</p> <p><i>“In trials thus conducted to protect public order or national security in a democratic society or to the extent deemed absolutely necessary by court when, in special circumstances, the interests of justice or trade secrets could be threatened, the parties whose identification could harm such interests shall be hidden.”</i></p>	
<p>Rule 5: The redaction of the names of parties and/or persons to protect public interest (para. 18 (d) of the SCM Regulation)</p> <p><i>“In trials thus conducted to protect public order or national security in a democratic society or to the extent deemed absolutely necessary by court when, in special circumstances, the interests of justice could be threatened, the names of the parties and/or persons whose identification could harm such interests shall always be redacted.”</i></p>	
<p>Rule 6: The mandatory hiding of certain types of personal data (para. 20 of the SCM Regulation)</p> <p><i>“[...]The following categories of personal data shall always be hidden: individuals’ places and dates of birth and/or residence, telephone numbers, personal identification numbers (IDNP), health information (regardless of illness), bank data, car license numbers, personal health insurance numbers, personal social insurance numbers, and other data of individuals in line with Law No. 133 of 8 July 2011 on the Protection of Personal Data.”</i></p>	

Initially, the research was supposed to cover the compliance of the examined decisions with all six rules. We could not, however, identify enough cases where Rules 4 and 5 would apply (only eight decisions of the 810, and none of the 530 on corruption). The scarcity of the gathered data leads to several assumptions: (i) decisions of such types of cases are never published on the courts’ portal or (ii) the rules of this paragraph apply to a very limited number of cases or (iii) judges do not apply the rules of this paragraph. For lack of representative data, the authors decided to drop the examination of compliance with Rules 4 and 5 set by the SCM Regulation.

Publication of Court Decisions

The National Legal Framework: the Reasonableness of Imposed Restrictions

Public access to court decisions derives from the principle of the publicity of legal proceedings, enshrined in Article 117 of the Constitution of the Republic of Moldova. Under this principle, hearings in all courts of law are public and closed hearings are allowed only in the cases established by law and with the observance of all rules of procedure. Furthermore, the publicity of court decisions is closely linked to the right to a fair trial stipulated by the ECHR and the ECtHR's case law.¹⁹ Article 6 of the ECHR provides, among other things, for the possibility to hold states liable for secret trials and courts' failure to pronounce decisions publicly.

Still, the right to a fair trial, and thus, the publicity of judicial decisions, is not absolute. The press and the public may be denied access to courtroom for the entire duration of a trial or for part of it in the interests of morals, public order, or national security in a democratic society, where the interests of juveniles or of the parties' private lives so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.²⁰ Another restriction on the publicity of a trial and, implicitly, public access to the corresponding decisions stems from the obligation to respect the private life of those involved in the trial.

The rules regarding access to court decisions are detailed in special national laws. Under the Law on Judicial Organization, court decisions are pronounced publicly, and the courts, regardless of their hierarchy, must publish their decisions on their websites.²¹ Moreover, procedural law conditions the validity of certain court decisions by their publication on the court's website.²²

¹⁹ The ECHR and the ECtHR's case law are integral part of Moldovan laws, being directly applicable in civil and criminal matters (Article 12 (4) of the Civil Procedure Code and, respectively, Article 7 (2) of the Criminal Procedure Code).

²⁰ European Convention on Human Rights, Article 6 (1).

²¹ Law No. 514 of 6 July 1995 on judicial organization, Article 10 (2) and (4).

²² Civil Procedure Code, Article 445.

The requirements regarding the publication of court decisions are set in a regulation²³ approved by the SCM (SCM Regulation). According to that regulation, the publication of court decisions contributes to the fulfillment of the principle of fair judicial proceedings and is aimed at ensuring citizens' free access to information and transparency in the work of the courts. Overall, the provisions of the SCM Regulation follow the logic of the compared best practices and the case law of the ECtHR.²⁴ Public access to these decisions is free of charge and does not require any registration. The SCM Regulation stipulates, however, certain exceptions. To protect private life, public order, or national security and when, under special circumstances, publicity could damage the interests of justice, the names of the parties and/or persons whose identification could damage such interests are anonymized or hidden, along with other personal data, before publication.²⁵

Under the SCM Regulation, even the decisions issued *in camera* must be placed in their entirety into the Integrated Case Management System (ICMS) but are published on the portal only after de-identification.²⁶ The SCM explained, however, that this rule did not apply to all decisions issued by investigative judges.²⁷

The publication of court decisions is the responsibility of judicial assistants, who perform it under judges' supervision. Judicial assistants must enter court decisions into ICMS, setting their status to final. They are also responsible for redacting personal data from the decisions published online.

The authority for ensuring the accessibility of court decisions on the National Courts Portal rests with the ACA. Under the SCM Regulation, the ACA must permanently ensure the possibility of searching court decisions by parties' names and guarantee the transparency of court decisions by implementing the newest and the most practical ways of searching their content.²⁸ The official website of the ACA has a section for reporting cases in which court decisions were not published on the official courts' portal.²⁹

²³ SCM. Regulation No. 658/30 of 10 October 2017 on the publication of court decisions, op. cit.

²⁴ LRCM. Infographic: *Cum se depersonalizează hotărârile judecătorești în alte părți și în tribunalele internaționale?* (2017). Available at: http://crjm.org/wp-content/uploads/2019/11/2017-02-14-infografic_date_personale.v2.pdf.

²⁵ SCM. Regulation No. 658/30 of 10 October 2017 on the publication of court decisions, op. cit., para. 18.

²⁶ *Ibid.*, para. 10.

²⁷ SCM. Guidelines No. 142/4 of 4 February 2014 on procedural tracking and documentation in trial and appellate courts, para. 147.

²⁸ SCM. Regulation No. 658/30 of 10 October 2017 on the publication of court decisions, op. cit., para. 12.

²⁹ CAA. Available at: <http://aaij.justice.md/ro/feedback/instance>.

According to ACA's thematic reports, every year, the courts publish approximately 210,000 decisions and orders,³⁰ which is 89% of the more than 240,000 examined cases and materials.³¹ The courts never publish decisions and orders that do not solve the merits of a matter³² and most orders of investigative judges that refer to confidential materials. Confidential materials are the materials that refer to pre-trial arrests, searches, or wiretap.³³

According to the ACA, the courts' rate of compliance with the regulatory framework on the publication of court decisions is 94 – 96%. These figures, however, count in only the decision publication rate, not the accuracy of anonymization/hiding of personal data.

An examination of the general and special legal frameworks on the publication of court decisions shows that they meet international standards and apparently contribute to the fulfillment of the principle of the fairness of judicial proceedings. The restrictions imposed in the interests of private life, public order, justice, or national security are also in line with the logic of the ECtHR's case law and international human rights standards. The SCM Regulation on the publication of court decisions expressly stipulates the priority of international treaties and/or their interpretive case law, if the former require other resolution than the one stipulated by national regulatory acts.³⁴

³⁰ CAA. Monitoring report on the publication of court decisions on the National Courts Portal in 2018. Available at: <http://aaij.justice.md/ro/reports>.

³¹ CAA. Report on the examination of cases in courts of law in 2018. Available at: <http://aaij.justice.md/files/document/attachments/RAPORT%20ANALIZA%20STATISTICA%202018%20-%20Rectificat%281%29.pdf>.

³² SCM. Regulation No. 658/30 of 10 October 2017 on the publication of court decisions, *op. cit.*, para. 18.

³³ The full list of confidential materials is set by SCM Decision No. 142/4 of 4 February 2014 on the Guidelines on procedural tracking and documentation in trial and appellate courts, para. 106.

³⁴ Under the SCM Regulation, the publication of court decisions must comply with the Moldovan law, including Law No. 514 of 6 July 1995 on Judicial Organization, Law No. 982 of 11 May 2000 on Access to Information, and Law No. 133 of 8 July 2011 on the Protection of Personal Data.

De-identification of Court Decisions

Aspects of Comparative Law: the Practice of the EU and International Tribunals

The protection of persons in the processing of personal data is a fundamental right of the citizens living in the member states of the European Union (EU). Article 8 (1) of the *EU Charter of Fundamental Rights* and Article 16 (1) of the *Treaty on the Functioning of the EU* provide for the right of any person to the protection of their personal data. The material scope of the right to data protection is ensured by the *General Regulation of the European Parliament and of the Council on the Protection of Personal Data and the Free Movement of Such Data* (GDPR), adopted in 2016.³⁵ GDPR Articles 12 through 23 establish a series of rights that apply to persons whose names appear on court portals and in court judgements.

At the European level, EU member states have no uniform practice regarding the publication and de-identification of court decisions. Some countries apply standards of high transparency in publishing, and some are rather conservative. For example, Germany and Slovenia publish lots of data from decisions (such as issue dates, courts, judges' and parties' names, the branch of law, case numbers, case descriptions, precedents, and information about merits), whereas countries like Malta or Italy are more reluctant to publish these details (only courts' names, issue dates, and case numbers are displayed).³⁶ According to a 2017 study, in all EU countries, courts publish the dates of decisions and information about the issuing court; in 80% of the countries, they publish case numbers, the type of decision, the number of judges, the branch of law, and the description of cases; in less than 50% of the countries, courts publish the effective dates of decisions, precedents, and the European case law identifier; very rarely and only in 20% of the EU member states, courts publish information about merits, individual data, and other references.³⁷ But even though a certain degree of de-identification is accepted for district courts, complete de-identification is not recommended for appellate and higher courts, particularly in cases

³⁵ The General regulation of the European Parliament and of the Council on the protection of personal data and the free movement of such data and the repealing of Directive 95/46/EC (the General Data Protection Regulation). Available at: <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32016R0679&from=EL>.

³⁶ M. van Opijnen and Others. Online publication of court decisions in the EU, 15 February 2017, page 20. Available at: <https://bo-ecli.eu/uploads/deliverables/Deliverable%20WS0-D1.pdf>.

³⁷ *Ibid.*, page 17.

that draw media and public attention.³⁸ To encourage domestic courts' responsibility, the EU Court of Justice prepared guidelines for them.³⁹ Under those guidelines, if one of the parties considers that some data from the decision should be kept secret, this party must voice their arguments as soon as possible.

International tribunals⁴⁰ usually publish all decisions in their entirety, including plaintiffs' identification information. The International Criminal Court publishes the last and first names of defendants. It also publishes the last and first names of victims when those consent. In exceptional, thoroughly justified situations, however, the court may decide to keep the identify of plaintiffs anonymous. Under the Rules of Procedure of the EU Court of Justice⁴¹ and the Rules of Procedure of the ECtHR,⁴² on reasoned requests of one of the parties of the main litigation or by default, these courts may keep the identity of plaintiffs anonymous. On 1 July 2018, the EU Court of Justice released a communique⁴³ announcing that the names of individuals would be kept confidential in preliminary rulings. When anonymity is granted by the referring court, the court will keep it during the preliminary ruling pending before it. In addition, on request of the referring court, on reasoned requests of one of the parties of the main litigation, or by default, the court may keep the identity of one or more persons or entities connected to the litigation anonymous if it deems this necessary.⁴⁴

Thus, over the past years, European tribunals started to weigh the principles of publicity against Article 8 of the ECHR (the right to respect for private and family life, home and correspondence) with increasingly greater care. This practice became particularly pronounced after the adoption of the GDPR in 2016.⁴⁵

³⁸ M. van Opijnen and Others. Online publication of court decisions in the EU, 15 February 2017, page 145. Available at: <https://bo-ecli.eu/uploads/deliverables/Deliverable%20WS0-D1.pdf>.

³⁹ Court of Justice of the European Union. Recommendations for national courts in relation to the initiation of preliminary ruling proceedings, C 380/2 of 8 November 2019. Available at: https://eur-lex.europa.eu/legal-content/RO/TEXT/PDF/?uri=OJ:JOC_2019_380_R_0001.

⁴⁰ LRCM. Infographic: Cum se depersonalizează hotărârile judecătorești în alte părți și în tribunalele internaționale? (How is court decision de-identification done in other places and in international tribunals?) (2017). Available at: http://crjm.org/wp-content/uploads/2019/11/2017-02-14-infografic_date_personale.v2.pdf.

⁴¹ Rules of Procedure of the EU Court of Justice, information. Available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2013-01/access_documents_data_protection_note_ro.pdf. The full version of the Rules of Procedure is available at https://curia.europa.eu/jcms/jcms/P_76629/de/.

⁴² Rules of Procedure of the ECtHR, page 70. Available at: https://www.echr.coe.int/Documents/Rules_Court_ENG.pdf.

⁴³ Court of Justice of the European Union. Press release No. 96/18. Available at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-06/cp180096ro.pdf>.

⁴⁴ Rules of Procedure of the Court of Justice, Article 95.

⁴⁵ M. van Opijnen and Others. Online publication of court decisions in the EU, 15 February 2017, page 145. Available at: <https://bo-ecli.eu/uploads/deliverables/Deliverable%20WS0-D1.pdf>.

National Practice

Before publication on the courts' portal or the SCJ's website, some court decisions must be depersonalized. Under the Law on the Protection of Personal Data, de-identification means the alteration of personal data in a way that makes it impossible to attribute personal or material circumstances to identified or identifiable individuals or makes this possible only after an investigation that requires incommensurately large investment of time, funds, and labor.⁴⁶

According to the SCM Regulation on the publication of court decisions, de-identification can take two forms: (i) anonymization and (ii) the hiding of data. Anonymization and the hiding of data are similar processes. Anonymization refers only to the redaction of the name of an individual in a court decision and implies the encryption or removal of the name in the decision to preserve the anonymity of the person. The hiding of data means the alteration of other personal data than the name of a person in a court decision in a way that prevents their identification by the public.⁴⁷

Examples of anonymization and the hiding of data

<p>Example of anonymization (Ungheni Court)</p>	<p>La data de 25.05.2015 reclamanta XXXXXXXXXX a depus la judecată cererea de chemare în judecată XXXXXXXXXX privind recunoașterea valabil a contractului de vânzare-cumpărare din</p>
<p>Example of the hiding of data (Soroca Court)</p>	<p>Cebanu Julian x născut la x, originar s. xx, domiciliat în s. x, studii medii incomplete, divorțat, cetățenia R. Moldova, anterior condamnat</p>

Anonymization and the hiding of data are part of the duties of judicial assistants, who discharge it under the supervision of judges. Under the SCM Regulation and the *SCM Guidelines on Procedural Tracking and Documentation in District and Appellate Courts*, judicial assistants must redact names and other personal data that appear in court decisions in all situations described in the SCM Regulation before publication. On a job description dated May 2018 for judicial assistants at Chișinău Court, the de-identification and publication court decisions on the court's website accounted for 25% of the job's core duties.⁴⁸

Under the SCM Regulation, de-identification is automated by means of a special functionality of ICMS, with the exception of the decisions issued by the SCJ, which are processed manually by judicial assistants.⁴⁹ It seems, however,

⁴⁶ Law No. 133 on the protection of personal data, 8 July 2011, Article 3.

⁴⁷ SCM. Regulation No. 658/30 of 10 October 2017 on the publication of court decisions, op. cit., para. 6.

⁴⁸ Template job description for judicial assistant at Chișinău Court. Available at: <http://crjm.org/wp-content/uploads/2020/01/Fisa-de-post-asistent-judiciar-Chisinau.png>.

⁴⁹ SCM. Regulation No. 658/30 of 10 October 2017 on the publication of court decisions, op. cit., para. 22.

that this option has never been really automated. It should be noted, however, that within the SCJ each judge has three judicial assistants, who can execute this task, compared to judges in district and appellate courts, which have one assistant per judge. Moreover, the ICMS option seems to have never been fully “automatic”. ICMS only facilitates the identification of the data that is subject to de-identification. Judicial assistants must confirm de-identification and make sure that decisions are de-identified in their entirety, all required data being redacted even if the software fails to spot some of it. The SCM Regulation obliges judges and judicial assistants to verify the texts of court decisions that are automatically processed by ICMS. The SCM Regulation provides for disciplinary sanctions for failure to comply with the rules regarding the publication and de-identification of court decisions.⁵⁰

The exact way of de-identification is described in paras. 18, 20, and 21 of the SCM Regulation (described in detail under the methodology section). These rules determine the public, hidden, or anonymized mode for the names of parties and other information in published court decisions. Under para. 18 (Rules 2 through 5), the SCM Regulation states that judges may decide to apply the exceptions regarding the publication of names and other personal information by default or upon notification from one of the parties. Under para. 20 of the SCM Regulation (Rule 6), the mentioned personal data are hidden automatically, without the need for filing a notification. Para. 18 (Rules 2 through 5), which sets exceptions from the publication of entire court decisions, refers only to cases examined *in camera* (“closed” hearings) or in secret hearings. This begets the following finding: generally, court decisions on cases that are not examined in secret hearings are never anonymized or subjected to the hiding of data.

Overall, the de-identification rules of the SCM Regulation on the publication of court decisions are relatively clear. The exceptions set by the SCM Regulation are in line with the logic of the ECtHR’s case law and international human rights standards and are reasonable. The examination of the general and special legal frameworks on the de-identification of court decisions shows that it meets international standards and apparently contributes to the fulfillment of the principle of the fairness of judicial proceedings.

In what follows, we will examine the courts’ practice of complying with the de-identification provisions, including the way they apply the rules and exceptions.

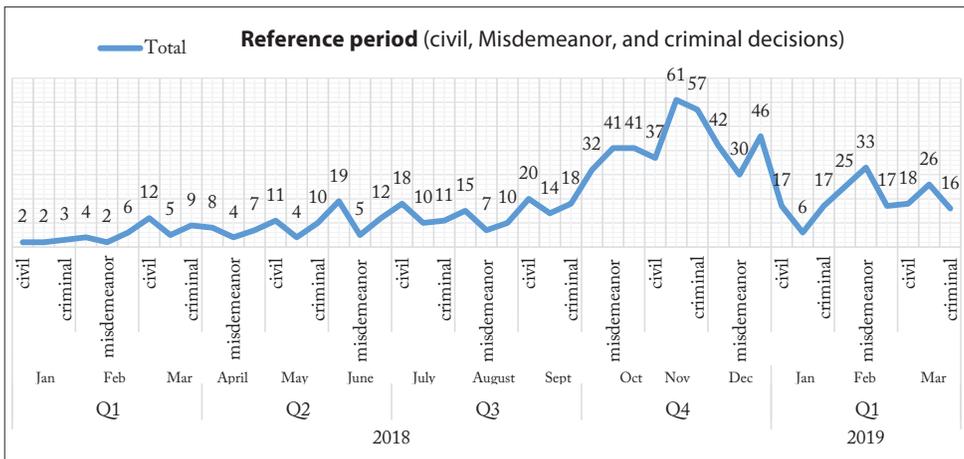
⁵⁰ *Ibid.*, page 24.

De-identification of Court Decisions in Practice

Overview

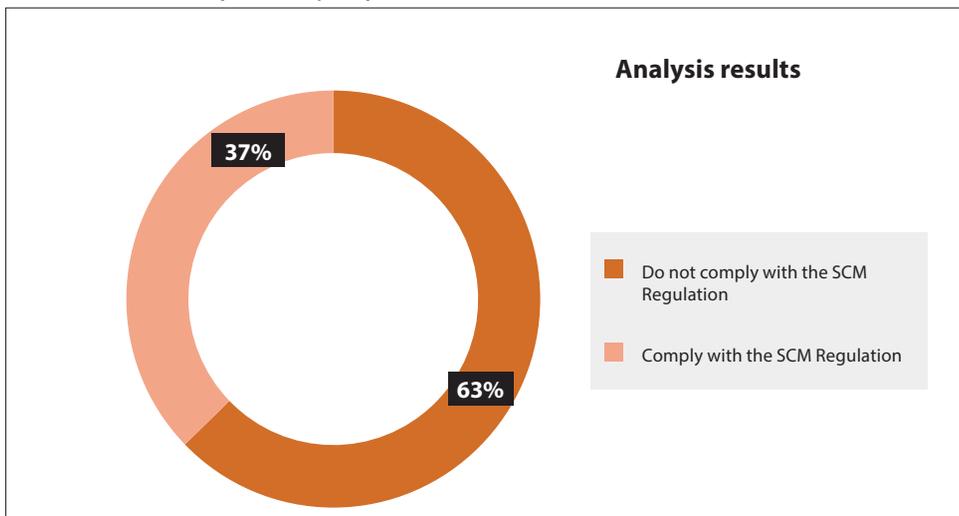
For the purposes of this research, we identified a sample of 810 randomly selected⁵¹ court decisions issued from 1 January 2018 through 31 March 2019. Of the total 810 decisions, 540 were issued by district courts; 210, by appellate courts; and 60, by the CSJ. The information about the number of the decisions and the period of their publication is presented in Chart 3.

Chart 3. *The number of the examined decisions and the period of their issue*



The analysis confirms that 507 decisions (63% of the examined 810) were not de-identified in accordance with the SCM Regulation on the publication of court decisions.

⁵¹ The way in which court decisions were randomly selected is described in the methodology section.

Chart 4. *The results of the analysis of court decisions*

District courts had the largest number of noncompliant decisions: 395, which is 49% of all examined decisions. In some district courts⁵² the noncompliance rate exceeded 90%. The situation at appellate courts was considerably better: 99 noncompliant decisions, which is 12% of all examined decisions. The SCJ mostly complied with the SCM Regulation: only 13 decisions, which is 2%, were noncompliant. None of the courts completely or almost completely complied with the SCM Regulation.

Most violations concerned para. 20 of the SCM Regulation, which requires the mandatory hiding of personal data (home address, dates and places of birth, IDNPs, car license numbers, etc.). The analysis confirms that at least 305 decisions (38% of the 810 examined decisions) have a problem with this rule.

In 179 decisions except those of the SCJ (34% of all decisions on criminal and misdemeanors), violation consisted in the abusive redaction of the names of defendants, perpetrators, or instigators.

In 163 decisions (20% of the examined 810), violations concerned para. 21 of the SCM Regulation, which completely prohibits anonymization of the names of the persons who participate in a professional capacity in legal proceedings: clerks, prosecutors, official inspectors, mediators, bailiffs, notaries, or lawyers.

⁵² The district courts of Balti, Cahul, Drochia, Edineț, and Ungheni.

Table 3. Analysis results in figures (civil, criminal, and misdemeanor cases)

Examined decisions	810	100%
civil	280	35%
misdemeanors	250	31%
criminal	280	35%
Do not comply with the SCM Regulation	507	63%
district courts	395	49%
appellate courts	99	12%
SCJ	13	2%
What exactly is violated?		
Public. of info. re court and pers. in justice	163	20%
district courts	128	16%
appellate courts	35	4%
SCJ	0	0%
Juveniles, morals, private life	100	12%
district courts	82	10%
appellate courts	17	2%
SCJ	1	0.1%
Public. of the names of perp. (crim., admin.)	179	34%
district courts	138	26%
appellate courts	41	8%
SCJ	0	0%
Home address, date of birth, IDNP, etc.	305	38%
district courts	261	32%
appellate courts	31	4%
SCJ	13	2%
De-iden. w/o de-iden.	172	21%
district courts	145	18%
appellate courts	26	3%
SCJ	1	0.1%

In 100 decisions (12% of the examined 810), violations concerned para. 18 (a) of the SCM Regulation, which requires anonymization of parties' names in the interests of morals, juveniles, or private life. These were usually the cases that involved sensitive

aspects of private life—such as divorce, the termination of parental rights, injunctions caused by domestic violence— or rape.

A frequent violation—albeit not directly related to any of the SCM Regulation rules—consisted in the incomplete de-identification of decisions (the names of plaintiffs or defendants as well as other information had been redacted in some parts of decisions and preserved in other parts). This violation was found in 172 court decisions (21% of the examined 810).

Table 4 below presents the breakdown of the noncompliance by courts and by paragraphs of the SCM Regulation.

Table 4. *The number of the decisions that do not comply with the SCM Regulation*

District court			
Court	The number of the examined decisions	Do not comply with the SCM Regulation	%
Anenii Noi	30	26	87%
Bălți	30	29	97%
Cahul	30	29	97%
Căușeni	30	23	77%
Chișinău	120	75	63%
Cimișlia	30	25	83%
Comrat	30	20	67%
Criuleni	30	20	67%
Drochia	30	27	90%
Edineț	30	27	90%
Hîncești	30	19	63%
Orhei	30	15	50%
Soroca	30	12	40%
Strășeni	30	21	70%
Ungheni	30	27	90%
Total	540	395	73%
		Average	75%

District court			
Court	The number of the examined decisions	Do not comply with the SCM Regulation	%
Appellate courts			
Bălți CA	30	11	37%
Cahul CA	30	9	30%
Chișinău CA	120	59	49%
Comrat CA	30	20	67%
Total	210	99	47%
		Average	46%
SCJ			
SCJ	60	13	22%
Total	60	13	22%
		Average	22%
TOTAL	810	507	63%

The analysis confirms that noncompliance with the SCM Regulation is a systemic issue.

During the randomized selection of court decisions for this study, we came across approximately 20 instances in which blank pages had been published instead of decisions or a fragment of text was repeated throughout the decision.⁵³

Rule 1: The prohibition of the de-identification of the information concerning the court and the persons who participate in a professional capacity in the proceedings (para. 21 of the SCM Regulation)

“Anonymization/hiding shall never apply to information about courts or judicial panels, clerks, prosecutors, official inspectors, mediators, bailiffs, notaries, and lawyers. The names of legal entities shall never be hidden.”



⁵³ See, among other: Civil Case No. 06-3r-821-20072018 at Comrat Court of Appeals; Civil Case No. 21-25-800-02032018 at Cimișlia Court; Criminal Cases No. 03-1a-1633-10042018 and No. 3-1a-894-20022018 at Bălți Court of Appeals; Criminal Case No. 3-1a-894-20022018 at Edineț Court.

The SCM Regulation sets the imperative prohibition on the redaction of information about courts and judicial panel, as well as the persons who participate in legal proceedings in a professional capacity: clerks, prosecutors, police inspectors, mediators, bailiffs, notaries, or lawyers. The same prohibition applies to the names of legal entities. The analysis of court decisions confirms that at least 163 decisions (20% of the examined 810) have a problem with this rule.

Dosar nr. 1- 260/2016	
SENTINȚĂ	
În numele legii	
24 mai 2018	orașul Căușeni
Judecătoria Căușeni, sediul central, în componența	
președintelui ședinței de judecată, judecătorul	Maria Terțea
grefierului	Ana Virtosu
cu participarea	
procurorului	XXXXXXXXXX
apărătorilor	XXXXXXXXXX, XXXXXXXXXXXX
părții vătămate	Baeș Lilian
a judecat în ședință publică cauza penală în privința lui	

An example of the violation of para. 21 (Căușeni Court). In this decision on a criminal case, the names of the prosecutor and the defenders were redacted. By contrast, the name of the injured party is left public, in violation of the SCM Regulation.

Most violations of para. 21 were found **at district courts**. The noncompliance rate was highest at the district courts of Anenii Noi (70%), Cahul (46%), and Căușeni (36%). Only one district court—Soroca—completely complied with para. 21, and only two district courts—Strășeni and Orhei—had an insignificant number of violations each: 3% and 6%, respectively. In most instances, district courts abusively redacted information about parties' lawyers/representatives (83 cases), prosecutors (55 cases), and police inspectors (29 cases).

Appellate courts had a considerably lower rate of noncompliance with para. 21. Still, 53% of the decisions issued by Comrat CA did not comply with para. 21. In most instances, violation consisted in the abusive redaction of information about clerks (16 cases), parties' lawyers/representatives (13 cases), and official inspectors (6 cases).

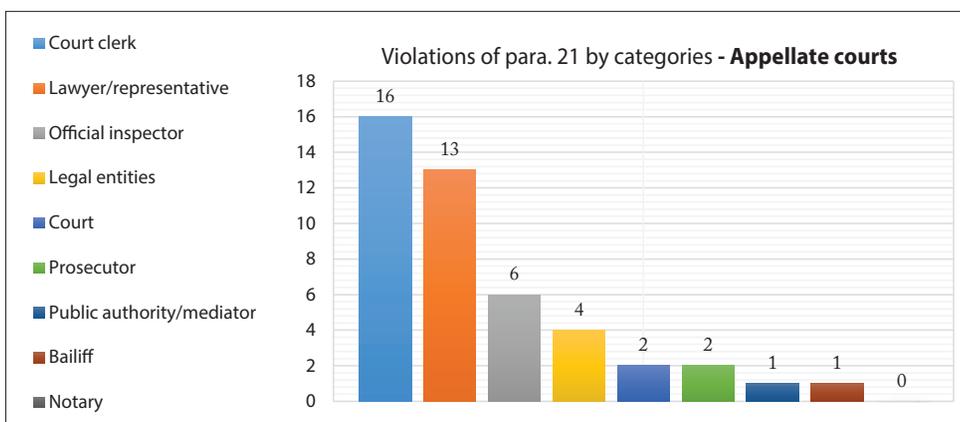
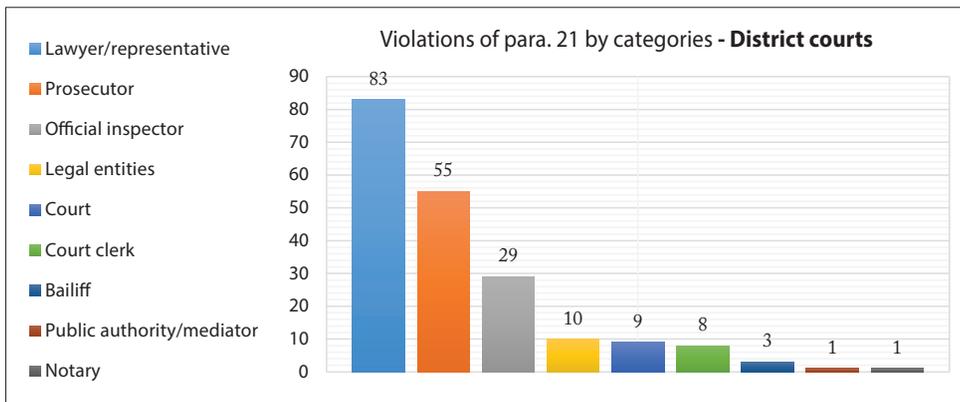
The **SCJ** completely complied with para. 21 of the SCM Regulation.

The following table presents the breakdown of noncompliance with para. 21 of the SCM Regulation by courts.

Table 5. Decisions that do not comply with para. 21

District court			
Court	The number of the examined decisions	Decisions that violate para. 21	%
Anenii Noi	30	21	70.0%
Bălți	30	9	30.0%
Cahul	30	14	46.7%
Căușeni	30	11	36.7%
Chișinău	120	19	15.8%
Cimișlia	30	7	23.3%
Comrat	30	9	30.0%
Criuleni	30	7	23.3%
Drochia	30	10	33.3%
Edineț	30	8	26.7%
Hîncești	30	4	13.3%
Orhei	30	2	6.7%
Soroca	30	0	0.0%
Strășeni	30	1	3.3%
Ungheni	30	6	20.0%
Total	540	128	23.7%
		Average	25%
Appellate courts			
Bălți CA	30	1	3%
Cahul CA	30	2	7%
Chișinău CA	120	16	13%
Comrat CA	30	16	53%
Total	210	35	17%
		Average	19%
SCJ			
SCJ	60	0	0%
Grand Total	60	13	0%
		Average	0%
TOTAL	810	163	20%

Chart 5. Violations of para. 21 by categories



Rule 2: De-identification in the interests of morals, juveniles, or private life (para. 18 (a) of the SCM Regulation)

“In criminal, misdemeanor, civil, or other trials thus conducted to protect morals, juveniles, or the private lives of the parties, the names of those affected in light of these values and interests shall always be redacted.”



The SCM Regulation requires anonymization of the names of parties in the interests of morals, juveniles, or private life. The situations to which this rule may apply include divorce litigations, the termination of parental rights, injunctions caused by domestic violence, etc. The analysis of the compliance of court decisions with para. 18 (a) confirms that at least 100 decisions (12% of the examined 810) have a problem with this rule.

-Declarațiile părții vătămate minore [redacted] care a comunicat că este născută pe data de XXXXXXXXXX, este [redacted] elevă în clasa a 7-a. Locuiește cu tata, sora și frațele, cu membrii familiei se împacă bine. La școală cu colegii la fel se împacă bine. [redacted] cunoaște, este din sat, l-a văzut o singură dată, la hora sutații din XXXXXXXXXX. A fost la el acasă cu frațele ei și cu un băiat. [redacted] este din sat, este prietenul fratelui. Seara după joc, în jurul orei 23:00, a plecat l. [redacted] acasă, a servit vin. [redacted] acasă, a servit vin. [redacted] are nu știe cum îl cheamă sau așezat la masă și au servit vin, după aceea au plecat acasă. Acolo au stat până dimineața, când au plecat acasă deja se lumina afară. După aceea [redacted] nu l-a mai văzut. În acea seară nu s-a întâmplat nimic, doar au consumat vin și au ascultat muzică toți împreună. În luna septembrie a anului 2017 nu l-a văzut [redacted] el este din sat, ea nu-l cunoaște. La control medical a fost singură, a mers singură la spital. Avea dureri în regiunea organelor genitale [redacted]. A hotărât să meargă singură la medic [redacted] medicul i-a spus că are o boală [redacted] spital, i-a prescris să dea niște analize și să facă un control. A venit la Călărași, a dat analize și medicul i-a prescris tratament. Medicul nu i-a spus de unde a apărut boala venerică. Tot ea a declarat că a intrat în relații sexuale cu [redacted] era în stare de ebrietate, asta s-a întâmplat toamna trecută până a ajunge la medic. De asemenea a comunicat că [redacted] te din sat de la ea, din mahala. Într-o seară a mers l. [redacted] acolo au consumat puțin, au mers la un prieten de la l. [redacted] au consumat doar bere, înapoi pe drum au consumat o șampanie, apoi s-au dus l. [redacted] acasă, acolo au mai consumat o șampanie. [redacted] și încă un băiat, s-au dus cu un taxi, apoi s-au întors to [redacted] acasă. [redacted] el trăiește nu departe de ea, au băut șampanie. Celălalt băiat a plecat acasă și a rămas doar [redacted]. Nu ține minte când a plecat celălalt băiat [redacted] s-au culcat amândoi, în același pat, au intrat în relații sexuale [redacted] dimineața s-au trezit și ea a plecat acasă, după o săptămână s-a înțeles cazul dat și a ajuns la medic [redacted] a fost benevol. (f.d. 56-57)

An example of the violation of para. 18. This decision contains a complete testimony of a juvenile injured party (7th grade school student) in a rape case. Numerous intimate details, including the medical diagnosis made by the doctor, are preserved. The redaction was performed by the authors of the study to prevent victimization.

21. Vina inculpatului XXXXXXXXXX se confirmă și prin următoarele probe examinate în ședința de judecată, administrate la urmărea penală:
22. - declarațiile părții vătămate XXXXXXXXXX, expuse în procesul-verbal din 22 iunie 2017, din conținutul căruia reiese că, la 23 aprilie 2017, aproximativ la ora 23⁰⁰, aflându-se în s Bălăurești, r. Nisporeni, în centrul satului în urma unui conflict cu inculpații a fost lovit cu un leaț de către XXXXXXXXXX și XXXXXXXXXX, iar mai apoi a fost bătut cu pumnii și picioarele de ambii. (f. d. 36-36).
23. - declarațiile martorului XXXXXXXXXX, expuse în procesul-verbal din 14 iunie 2017, din conținutul căruia reiese că, pe data de 23 aprilie 2017, aproximativ la ora 23⁰⁰, aflându-se în s Bălăurești, r. Nisporeni, în centrul satului în urma unui conflict XXXXXXXXXX și XXXXXXXXXX, l-au bătut cu pumnii și picioarele pe XXXXXXXXXX. (f. d. 40).
24. - declarațiile martorului XXXXXXXXXX expuse în procesul-verbal din 14 iunie 2017, din conținutul căruia reiese că, pe data de 23 aprilie 2017, aproximativ la ora 23⁰⁰, aflându-se în s Bălăurești, r. Nisporeni, în centrul satului a văzut cum s-a început conflictul între inculpații și XXXXXXXXXX. La cârvați zile XXXXXXXXXX i-a spus că, în urma conflictului XXXXXXXXXX și XXXXXXXXXX l-au bătut cu pumnii și picioarele pe Stropșă Ion. (f. d. 41).

An example of the violation of para. 18. In this decision, the defendant is kept anonymous. Their violent actions and the name of the victim, however, were published. The redaction was performed by the authors of the study to prevent victimization.

Just as with the violation of para. 21, **district courts** had the largest number of violations (82 decisions). The noncompliance rate was highest at the district courts of Cahul and Drochia (37% each), and Edineț (27%). None of the district courts completely complied with para. 18 (a). The district courts with an insignificant number of violations were Căușeni and Anenii Noi (3% each), and Orhei (6%). In most instances, district courts did not redact data connected to private life (69 cases), juveniles (30 cases), and morals (18 cases).

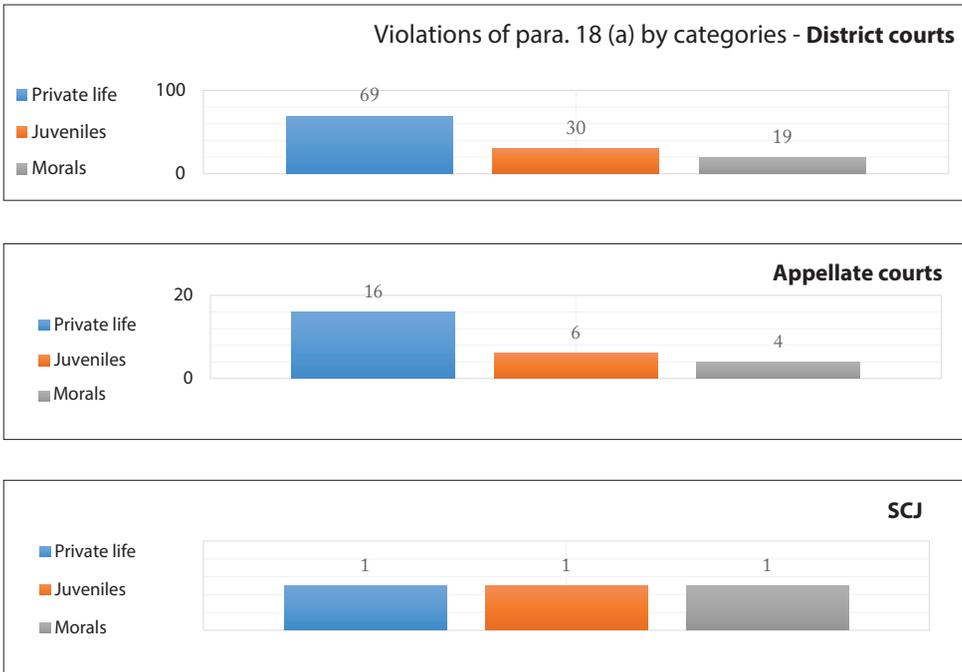
Appellate courts had only 17 decisions that violated para. 18 (a), a much better situation than at district courts. The noncompliance rate was highest at Bălți CA (23%) and Cahul CA (17%). In most instances, violation consisted in failure to redact information connected to private life (16 cases), juveniles (4 cases), and morals (4 cases).

The **SCJ** mostly complied with para. 18 (a) of the SCM Regulation. Only in one decision, the court failed to redact information connected to private life. The SCJ's decision mentioned that the perpetrator was juvenile, described the committed pervert actions, and specified the perpetrator's kinship relation to the victim.

Table 6 below presents the breakdown of noncompliance with para. 18 (a) of the SCM Regulation by district courts.

Table 6. Compliance with para. 18 (a) of the SCM Regulation

District court			
Court	The number of the examined decisions	Decisions that violate para. 18 (a)	%
Anenii Noi	30	1	3%
Bălți	30	5	17%
Cahul	30	11	37%
Căușeni	30	1	3%
Chișinău	120	5	4%
Cimișlia	30	6	20%
Comrat	30	2	7%
Criuleni	30	5	17%
Drochia	30	11	37%
Edineț	30	8	27%
Hîncești	30	7	23%
Orhei	30	3	10%
Soroca	30	6	20%
Strășeni	30	4	13%
Ungheni	30	7	23%
Total	540	82	15%
		Average	17%
Appellate courts			
Bălți CA	30	7	23%
Cahul CA	30	5	17%
Chișinău CA	120	4	3%
Comrat CA	30	1	3%
Total	210	17	8%
		Average	12%
SCJ			
SCJ	60	1	2%
Total	60	1	2%
TOTAL	810	100	12%

Chart 6. *Violations of para. 18 (a) by categories*

Rule 3: The prohibition on anonymization of the names of perpetrators and instigators in criminal and misdemeanor cases (para. 18 (b) of the SCM Regulation)

“In criminal or misdemeanor trials thus conducted to protect morals, juveniles, or the private lives of the parties, the names of perpetrators, instigators, or accomplices shall never be redacted, even if the perpetrators, instigators, or accomplices are juveniles.”



Similarly to Rule 1 (para. 21 of the SCM Regulation), para. 18 (b) imperatively prohibits keeping the anonymity of perpetrators, instigators, or accomplices in criminal cases or of defendants in administrative cases. The analysis of the compliance of court decisions with para. 18 (b) confirms that at least 179 decisions (34% of the examined 530 penal and administrative court decisions) have a problem with this rule.

HOTĂRIRE	
În numele legii	
19 martie 2019	or. XXXXXXXXXXXXX
Judecătoria XXXXXXXXXXXXX (sediu central)	
în componență:	
Președintele ședinței,	
judecătorul	Renata Popescu-Balta
grefier	Odainic Lăudmila
cu participarea părților	
avocatului	XXXXXXXXXXXXX
agentului constatator	XXXXXXXXXXXXX
contravenientul	XXXXXXXXXXXXX
partea vătămată	XXXXXXXXXXXXX
<p>examinând în ședință publică cauza cu privire la contravenția în privința lui XXXXXXXXXXXXX, născut la XXXXXXXXXXXXX în s. XXXXXXXXXXXXX, r-mul XXXXXXXXXXXXX și domiciliat în or. XXXXXXXXXXXXX, str. XXXXXXXXXXXXX, c/p XXXXXXXXXXXXX în baza art. 70 Codul Contravențional al RM-.</p>	
c o n s t a t ă :	
<p>La data de XXXXXXXXXXXXX a fost întocmit procesul verbal cu privire la contravenție în privința lui XXXXXXXXXXXXX în baza art. 70 Codul contravențional. Conform procesului-verbal cu privire la contravenție nr. MAIXXXXXX XXXXXXXXXXXXX din XXXXXXXXXXXXX, s-a stabilit că la data de XXXXXXXXXXXX XXXXXXXXXXXX, aflându-se în incinta Consiliului Raional XXXXXXXXXXXX, în cadrul comisiei juridice a calamniat pe Președintele Raionului XXXXXXXXXXXX, XXXXXXXXXXXX prin că i-a jignit onoarea.</p>	
<p>În ședința de judecată agentul constatator XXXXXXXX a declarat că, în cadrul examinării cauzei au fost prezentate suficiente probe de învinuire a lui XXXXXXXXXXXX, care sunt și probate de către partea vătămată XXXXXXXXXXXX, declarațiile fiind susținute de martorii XXXXXXXXXXXX, XXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXX</p>	

An example of the violation of para. 18 (b). This court decision keeps the anonymity of the defendant. In addition, it violates other rules of the SCM Regulation, keeping the lawyer, the police inspector, and even the District court/town anonymous. In this case, the defendant was charged with the defamation of a President of the Rayon.

Just as in previous examples, **district courts** had the largest number of violations (138 decisions). The noncompliance rate was highest at the district courts of Bălți (90%), Edineț (75%), and Cahul and Anenii Noi (70% each). None of the district courts completely complied with para. 18 (b). Only one District court—Soroca—had a noncompliance rate that did not exceed 10%.

Appellate courts had 41 decisions that violated para. 18 (b). This is significantly better than the situation at the district courts. The highest rate of noncompliance with para. 18 (b) was at Chișinău CA (44%).

The **SCJ** had not violated para. 18 (b).

The following table presents the breakdown of noncompliance with para. 18 (b) of the SCM Regulation by district courts.

Table 7. Decisions that do not comply with para. 18 (b)

District court			
Court	The number of the examined decisions	Decisions that violate para. 18 (b)	%
Anenii Noi	20	14	70%
Bălți	20	18	90%
Cahul	20	13	65%
Căușeni	20	8	40%
Chișinău	20	16	20%
Cimișlia	20	14	70%
Comrat	20	3	15%
Criuleni	20	4	20%
Drochia	20	8	40%
Edineț	20	15	75%
Hîncești	20	5	25%
Orhei	20	4	20%
Soroca	20	1	5%
Strășeni	20	3	15%
Ungheni	20	12	60%
Total	360	138	38%
		Average	42%
Appellate courts			
Bălți CA	20	1	5%
Cahul CA	20	1	5%
Chișinău CA	80	35	44%
Comrat CA	20	4	20%
Total	140	41	29%
		Average	18%
SCJ			
SCJ	30	0	0%
Total	30	0	0%
		Average	0%
TOTAL	530	179	34%

Rule 6: The mandatory hiding of certain types of personal data (para. 20 of the SCM Regulation)

„[...]Vor fi ascunse întotdeauna următoarele categorii de date cu caracter personal: locul și data nașterii persoanelor și/sau reședința acestora, numărul lor de telefon, codul lor personal (IDNP), datele despre starea lor de sănătate (indiferent de maladia pe care o au), datele lor bancare, numărul de înmatriculare a automobilului, codul personal de asigurare medicală, codul personal de asigurare socială, precum și alte date, în conformitate cu Legea nr. 133 din 8 iulie 2011 privind protecția datelor cu caracter personal”



Para. 20 of the SCM Regulation sets the imperative obligation that certain categories of personal data be hidden by default in court decisions, regardless of the type of the case or whether this was requested by any party. The analysis of the compliance of court decisions with para. 20 confirms that at least 305 of them (38% of the examined 810) have a problem with this rule.

XXXXXXXX, a.n. XXXXXXXX, IDNP 2007024010314, cetățean al Republicii Moldova, originar și domiciliat în satul Cristești r. Nisporeni, studii medii incomplete, supus militar, căsătorit, fără persoane la întreținere, neangajat în timpul muncii, fără antecedente penale în comiterea infracțiunii prevăzute de art 264/1 alin. (4) Cod Penal al RM

An example of the violation of para. 20. This decision fails to hide a person's personal identification number, place of birth, and domicile.

Just as in previous examples, **district courts** had the largest number of violations (261 decisions). The highest noncompliance rate was at the district courts of Cahul, Drochia, and Edineț (87% each). None of the district courts completely complied with para. 20. In most instances, violation consisted in failure to hide domiciles (126 cases), dates of birth and car license numbers (66 cases), and places of birth (57 cases).

Appellate courts had 31 decisions that violated para. 20. Bălți CA had the highest noncompliance rate (24%). Just as at the district courts, in most instances, violation consisted in failure to hide personal data, namely domiciles and car license numbers (13 cases for each type of data), dates of birth (9 cases), and places of birth (7 cases).

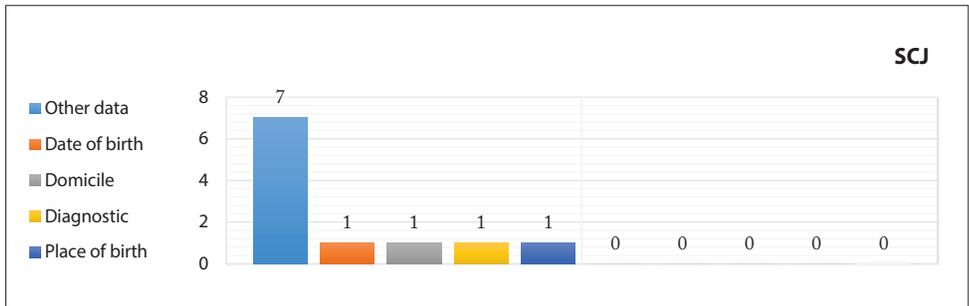
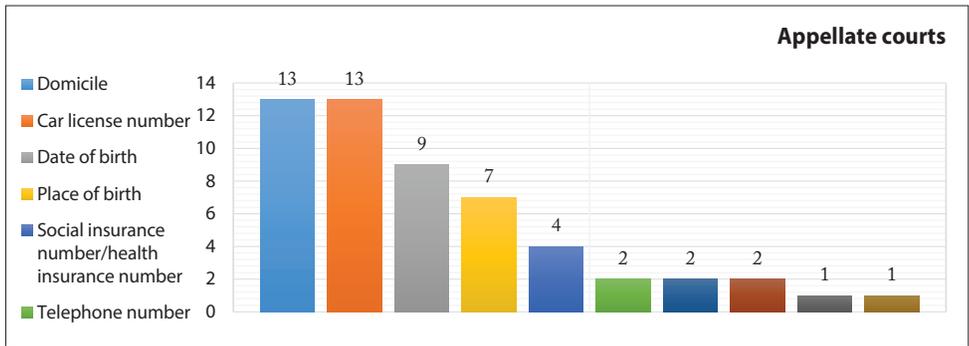
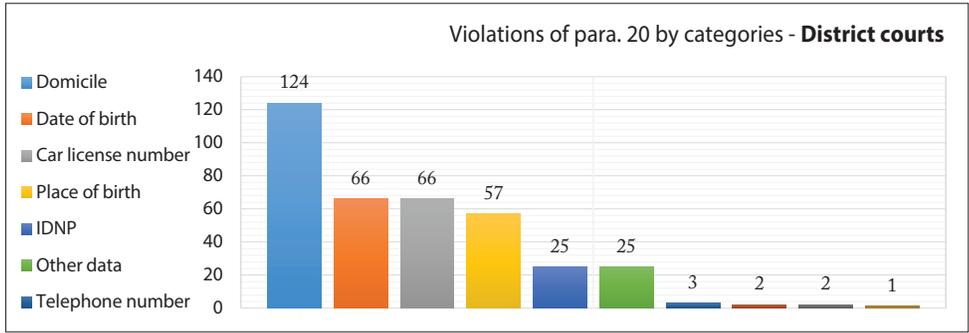
At the **SCJ**, para. 20 of the SCM Regulation had been violated in 13 decisions. Most violations consisted in the publication of victims' data, residence permits, the perpetrators' kinship to victims, etc.

The following table presents the breakdown of noncompliance with para. 20 of the SCM Regulation by courts.

Table 8. Decisions that do not comply with para. 20

District court			
Court	The number of the examined decisions	Decisions that violate para. 20	%
Anenii Noi	30	8	27%
Bălți	30	16	53%
Cahul	30	26	87%
Căușeni	30	11	37%
Chișinău	120	37	31%
Cimișlia	30	23	77%
Comrat	30	16	53%
Criuleni	30	11	37%
Drochia	30	26	87%
Edineț	30	26	87%
Hîncești	30	9	30%
Orhei	20	10	33%
Soroca	20	8	27%
Strășeni	20	15	50%
Ungheni	20	19	63%
Total	540	261	48%
		Average	52%
Appellate courts			
Bălți CA	30	7	23%
Cahul CA	30	3	10%
Chișinău CA	120	17	14%
Comrat CA	30	4	13%
Total	210	31	15%
		Average	15%
SCJ			
SCJ	60	13	22%
Total	60	13	22%
		Average	22%
TOTAL	810	305	38%

Chart 7. Violations of para. 20 by categories



De-identification without de-identification

A frequent violation—albeit not directly related to any of the SCM Regulation rules—consisted in the incomplete de-identification of court decisions. The names of plaintiffs or defendants as well as other information were redacted in some parts of decisions and preserved in other parts. At least 172 court decisions (21% of the examined 810) contained this violation. This might be indicative of a negligent attitude toward the requirement of depersonalizing court decisions.

XXXXXXXX, a.n.XXXXX, c/p XXXX, originar mun.Chişinău, domiciliat s.XXXXX r-l.Ungheni, studii medii speciale, celibatar, neangajat în câmpul muncii, cetăţean al R.Moldova, anterior condamnat la XXXXXXXXXX de Judecătoria Ungheni în baza art.166 alin. (1) Cod Penal, la pedeapsă sub formă de 6 luni închisoare cu suspendarea condiţionată a executării pedepsei pe un termen de 1 ani, prin sentinţa Judecătoria Ungheni din XXXXXXXXXX s-a dispus încetarea procesului penal de învinuire a lui XXXXXXXXXX în comiterea infracţiunii prevăzute de art.179 alin.(2) Cod Penal, în legătură cu împăcarea părinţilor, la XXXXXXXXXX de Judecătoria Ungheni, în baza art.179 alin.(2) Cod Penal, art.179 alin.(1), (2) Cod Penal, art.179 alin.(1) Cod Penal şi art.186 alin.(2) lit.d) Cod Penal, la pedeapsă definitivă de 1 (unul) ani închisoare.

învinuit de săvârşirea infracţiunii prevăzută de art.186 alin.(2) lit.d) Cod Penal.

Cauza penală pormită la data de 13 aprilie 2018, remisă instanţei la data de 09 iulie 2018 şi examinată la data de 15 ianuarie 2019.

Procedura de citare legal executată.

Procurorul Ludmila Zaharia a solicitat pentru recunoaşterea inculpatului **Ciobanu Catalin**, vinovat în comiterea infracţiunii prevăzute de art.186 alin.(2) lit.d) Cod Penal şi a-i stabili pedeapsa privativă de libertate – de 1 (unul) ani şi 6 (şase) luni închisoare, cu aplicarea prevederilor art.85 Cod Penal, şi a include pedeapsa stabilită prin sentinţa Judecătoria Ungheni din 12 iunie 2018, stabilindu-i definitiv 2 (doi) ani, cu executarea pedepsei în penitenciar de tip semiînchis.

Apărătorul inculpatului Gheorghe Crudu, a solicitat aplicarea unei pedepse mai blinde în privinţa inculpatului **Ciobanu Catalin**.

An example of de-identification without de-identification. In this decision, the defendant's name is anonymous and other personal data is hidden in one part of the text. Further in the text, however, the defendant's name is disclosed. Under the SCM Regulation, the names of defendants in criminal cases must be public.

Just as in previous examples, most decisions with instances of defective de-identification were from **district courts** (145 decisions). The noncompliance rate was highest at the district courts of Cahul (63%), Ungheni (57%), and Anenii Noi (47%). Only the District court of Soroca applied de-identification consistently, albeit with deviations, in all its decisions.

Appellate courts had 26 incompletely de-identified decisions. Comrat CA had the highest noncompliance rate (27%).

The **SCJ** had one incompletely anonymized decision.

The following table presents the breakdown of noncompliance with para. 20 of the SCM Regulation by district courts.

Table 9. Incompletely anonymized decisions

District court	The number of the examined decisions	Decisions with inconsistent anonymization	%
Anenii Noi	30	14	47%
Bălţi	30	7	23%

District court			
Court	The number of the examined decisions	Decisions with inconsistent anonymization	%
Căușeni	30	4	13%
Chișinău	120	24	20%
Cimișlia	30	3	10%
Comrat	30	12	40%
Criuleni	30	9	30%
Drochia	30	11	37%
Edineț	30	9	30%
Hîncești	30	7	23%
Orhei	20	5	17%
Soroca	20	0	0%
Strășeni	20	4	13%
Ungheni	20	17	57%
Total	540	145	27%
		Average	28%
Appellate courts			
Bălți CA	30	1	3%
Cahul CA	30	1	3%
Chișinău CA	120	16	13%
Comrat CA	30	8	27%
Total	210	26	12%
		Average	12%
SCJ			
SCJ	60	1	2%
Total	60	1	2%
		Average	2%
TOTAL	810	172	21%

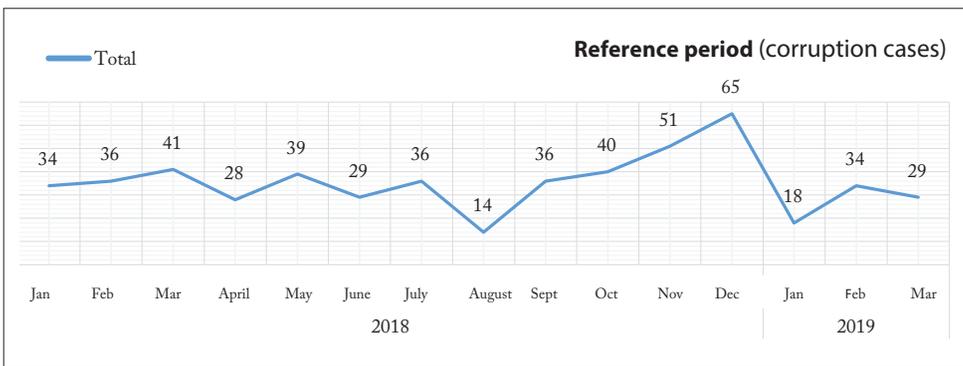
The de-identification of only part of decisions is useless and only adds burden on judicial assistants. It compromises the fairness of judicial proceedings and may cause a negative opinion about the professionalism of the judiciary. Moreover, the defective and inconsistent application of the SCM Regulation on the publication of court decisions threatens the effectiveness of the protection of personal data, especially when sensitive information about private life is published.

De-identification of Court Decisions in Corruption cases

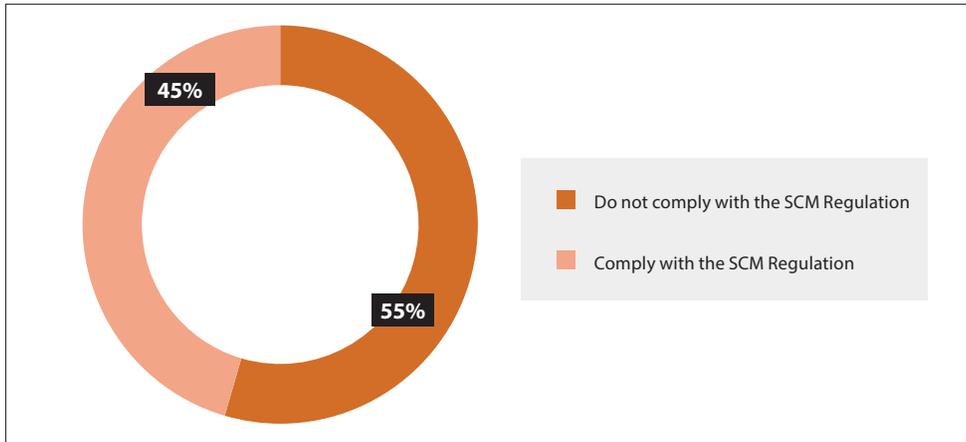
Overview

For the second category of cases covered by the analysis (corruption cases decisions), all decisions published on the courts' portal and the SCJ's website during the reference period (January 2018 – 31 March 2019) were selected. Considering the multitude of corruption crimes, the analysis covered only the decisions that concerned the most common corruption crimes: Article 324 (passive corruption), Article 325, (active corruption), Article 326, (influence peddling), Article 327, (Abuse of Power or of Official Position), Article 328, (Excess of Power or Excess of Official Authority), and Article 329, (Negligent Performance of Duties). The following chart gives a picture of the number of such decisions.

Chart 8. Information about decisions on corruption cases



The analysis confirms that 289 decisions (55% of the examined 530) did not comply with the requirements of the SCM Regulation on the publication of court decisions.

Chart 9. *The results of the analysis (cases of corruption)*

Just as in other cases, district courts had the highest rate of noncompliance with the SCM Regulation (36%) in criminal cases of corruption. The situation at appellate courts was relatively better: 88 noncompliant decisions, which is 17% of all examined decisions. The SCJ mostly complied with the SCM Regulation: only 11 decisions, which is 2%, were noncompliant. None of the courts completely complied with the SCM Regulation.

Just as in the cases examined in the previous section, most violations concerned para. 20 of the SCM Regulation, which requires the mandatory hiding of personal data (home address, dates and places of birth, IDNPs, car license numbers, etc.). The analysis confirms that at least 265 decisions (50% of the examined 530) have a problem with this rule.

Furthermore, in over 149 decisions except those of the SCJ (28% of all decisions), the names of defendants, perpetrators, or instigators were abusively redacted, even though para. 18 (b) of the SCM Regulation expressly prohibits this.

In addition, 118 decisions except those of the SCJ (22% of the examined 530), violated para. 21 of the SCM Regulation. In most instances, violation consisted in the abusive redaction of prosecutors' and lawyers' names.

Table 10. *Analysis results in figures (cases of corruption)*

Examined decisions	530	100%
Do not comply with the SCM Regulation	289	55%
district courts	190	36%
appellate courts	88	17%

SCJ	11	2%
What exactly is violated?		
Public. of info. re court and pers. in justice	118	22%
district courts	94	20%
appellate courts	24	5%
SCJ	0	0%
Juveniles, morals, private life	9	2%
district courts	3	1%
appellate courts	6	1%
SCJ	0	0%
Public. of the names of perp. (crim., admin.)	149	28%
district courts	115	22%
appellate courts	34	6%
SCJ	0	0%
Home address, date of birth, IDNP, etc.	265	50%
district courts	179	34%
appellate courts	75	14%
SCJ	11	2%
De-iden. w/o de-iden.	35	7%
district courts	26	5%
appellate courts	9	2%
SCJ	0	0%

Compliance with para. 18 (a) of the SCM Regulation, which requires redacting parties' names in the interests of morals, juveniles, or private life, is relatively better than in other types of cases (civil, administrative, and criminal). Only nine decisions (2% of the examined 530) violated this paragraph. However, given the typology of corruption cases, which usually do not require the protection of the above interests, the results cannot be considered representative.

Just as with the situation described in the previous section—only with a considerably lower frequency—some court decisions had been de-identified only partially. All told, 35 decisions (7% of the examined 530) contained this violation.

Tables 11 and 12 below present the breakdown of noncompliance by courts and by paragraphs of the SCM Regulation. As a disclaimer though, in comparison with the other categories of the examined cases (civil, misdemeanor, and criminal), it is not always possible to

have an objective analysis of the concrete situation in every court because of the small number of the identified court decisions (see the district courts of Cimișlia, Criuleni, and Orhei).

Table 11. *The number of the decisions that do not comply with the SCM Regulation (cases of corruption)*

District court			
Court	The number of the examined decisions	Do not comply with the SCM Regulation	%
Anenii Noi	6	5	83%
Bălți	38	34	89%
Cahul	18	18	100%
Căușeni	9	9	100%
Chișinău	79	55	70%
Cimișlia	*2	0	0%
Comrat	17	8	47%
Criuleni	*1	1	100%
Drochia	17	15	88%
Edineț	16	15	94%
Hîncești	10	6	60%
Orhei	*3	3	100%
Soroca	6	2	33%
Strășeni	15	12	80%
Ungheni	7	7	100%
Total	244	190	78%
		Average	76%
Appellate courts			
Bălți CA	62	20	32%
Cahul CA	*8	0	0%
Chișinău CA	86	63	73%
Comrat CA	*9	5	56%
Total	165	88	53%
		Average	40%
SCJ			
SCJ	121	11	9%
Total	121	11	9%
		Media	9%
TOTAL	530	289	55%

Just as with other categories of cases, the analysis confirms that the de-identification rules were applied inconsistently. This issue exists in all courts of law and is particularly prominent in district courts. A problematic situation exists at Chişinău CA, where 63 decisions (73% of the 86 examined published decisions) violated the SCM Regulation. The following breakdown presents the findings for each de-identification rule.

Rule 1: The prohibition to anonymize information concerning the court and the persons who participate in a professional capacity in the proceedings (para. 21 of the SCM Regulation)

“Anonymization/hiding shall never apply to information about courts or judicial panels, clerks, prosecutors, official inspectors, mediators, bailiffs, notaries, and lawyers. The names of legal entities shall never be hidden.”



The analysis of the compliance of court decisions on corruption cases with para. 21 confirms that 118 decisions (22% of the examined 530) have a problem with this rule.

District courts had the largest number of the violations of para. 21. The noncompliance rate was highest at the district courts of Bălţi (74%), Cahul (72%), and Drochia (53%). The district courts of Comrat and Străşeni, with a representative number of examined decisions, had insignificant noncompliance rates: 6% and 13%, respectively. In most instances, district courts abusively redacted information about prosecutors (70 cases), and parties’ lawyers/representatives (65 cases). In one decision, the identity of the judge was anonymized.

Appellate courts had a considerably lower rate of noncompliance with para. 21. Chişinău CA had the highest noncompliance rate (24%), whereas Bălţi CA had only one decision (2% of the 62 examined published decisions) that violated para. 21. An overwhelming majority of violations consisted in the abusive use of anonymity: in 24 cases, for lawyers/representatives, and in one case, for a prosecutor.

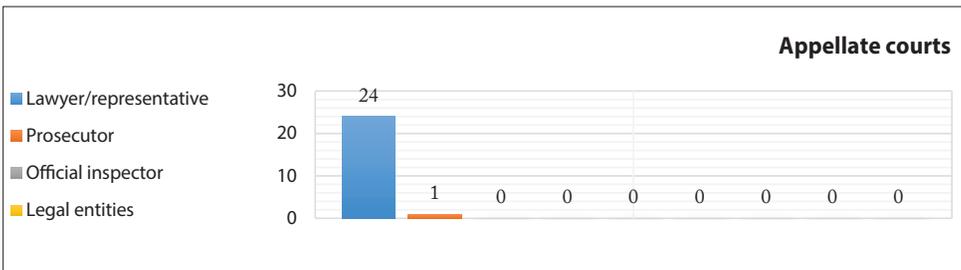
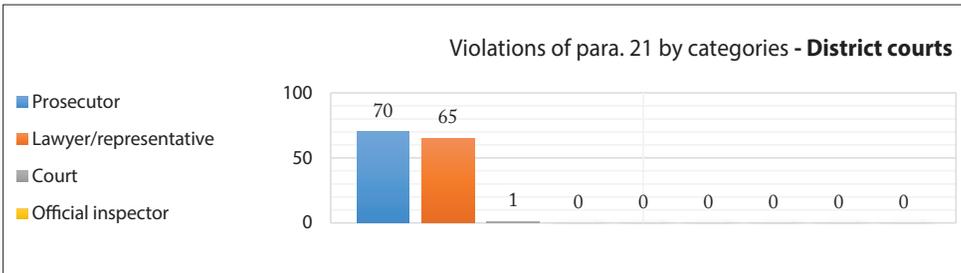
The **SCJ** complied with para. 21 of the SCM Regulation completely. None of its 121 decisions violated this rule.

The following table presents the breakdown of noncompliance with para. 21 of the SCM Regulation by courts.

Table 12. Decisions that do not comply with para. 21

Court	The number of the examined decisions	Decisions that violate para. 21	%
Anenii Noi	*6	1	17%
Bălți	38	28	74%
Cahul	18	13	72%
Căușeni	*9	3	33%
Chișinău	79	22	28%
Cimișlia	*2	0	0%
Comrat	17	1	6%
Criuleni	*1	0	0%
Drochia	17	9	53%
Edineț	16	6	38%
Hîncești	10	2	20%
Orhei	*3	2	67%
Soroca	6	1	17%
Strășeni	15	2	13%
Ungheni	7	4	57%
Total	244	94	39%
		Average	33%
Bălți CA	62	1	2%
Cahul CA	*8	0	0%
Chișinău CA	86	21	24%
Comrat CA	*9	2	22%
Total	165	24	15%
		Average	12%
SCJ	121	0	0%
Total	121	0	0%
		Average	0%
TOTAL	530	118	22%

Chart 10. *Violations of para. 21 by categories*



Rule 2: De-identification in the interests of morals, juveniles, or private life (para. 18 (a) of the SCM Regulation)

“In criminal, misdemeanor, civil, or other trials thus conducted to protect morals, juveniles, or the private lives of the parties, the names of those affected in light of these values and interests shall always be redacted.”

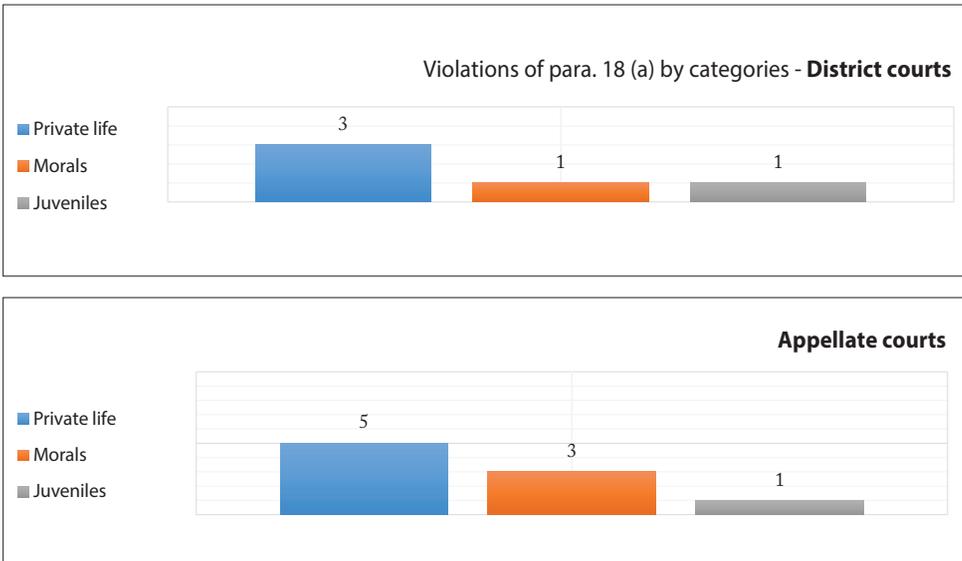


Compliance with para. 18 (a) of the SCM Regulation, which requires redacting parties’ names in the interests of morals, juveniles, or private life, is relatively higher in cases of corruption than in civil, misdemeanor, and criminal cases. Only nine decisions (2% of the examined 530) violated this paragraph. However, given the typology of these cases, which usually do not require the protection of the above interests, the results cannot be considered representative.

Only three decisions for corruption, issued by the district courts of Soroca, Căușeni, and Bălți, were noncompliant. Three instances of violation concerned private life; one instance, morals; and one, juveniles. The following table presents the breakdown of noncompliance with para. 18 (a) of the SCM Regulation by district courts.

Table 13. Decisions that do not comply with para. 20

Court	The number of the examined decisions	Decisions that violate para. 20	%
Anenii Noi	*6	0	0.0%
Bălți	38	1	2.6%
Cahul	18	0	0.0%
Căușeni	*9	1	11.1%
Chișinău	79	0	0.0%
Cimișlia	*2	0	0.0%
Comrat	17	0	0.0%
Criuleni	*1	0	0.0%
Drochia	17	0	0.0%
Edineț	16	0	0.0%
Hîncești	10	0	0.0%
Orhei	*3	0	0.0%
Soroca	6	1	16.7%
Strășeni	15	0	0.0%
Ungheni	7	0	0.0%
Total	244	3	1.2%
		Average	2.0%
Bălți CA	62	6	9.7%
Cahul CA	*8	0	0.0%
Chișinău CA	86	0	0.0%
Comrat CA	*9	0	0.0%
Total	165	6	3.6%
		Average	2.4%
SCJ	121	0	0.0%
Total	121	0	0.0%
		Average	0.0%
TOTAL	530	9	2%

Chart 11. *Violations of para. 18 by categories*

Rule 3: The prohibition to anonymize the names of perpetrators and instigators in criminal and misdemeanor cases (para. 18 (b) of the SCM Regulation)

“In criminal or misdemeanor trials thus conducted to protect morals, juveniles, or the private lives of the parties, the names of perpetrators, instigators, or accomplices shall never be redacted, even if the perpetrators, instigators, or accomplices are juveniles.”



Since all examined corruption cases from this category are criminal, the analysis included a careful examination of compliance with para. 18 (b), which imperatively prohibits the anonymity of perpetrators, instigators, and accomplices. The analysis of the compliance of court decisions with para. 18 (b) confirms that at least 149 decisions (28% of the examined 530) have a problem with this rule.

Just as in previous examples, **district courts** had the largest number of violations (115 decisions). Among the district courts with a representative number of the examined decisions for corruption, the noncompliance rate was highest at Cahul (78%), Bălți (61%), and Chișinău (42%).

Appellate courts had 34 decisions on corruption that violated para. 18 (b) (21% noncompliance rate), which is significantly better than at district courts. Chișinău CA had the highest rate of noncompliance with para. 18 (b): 34%.

The **SCJ** had not violated para. 18 (b) of the SCM Regulation in any of its 121 decisions for corruption published online that were examined.

The following table presents the breakdown of noncompliance with para. 18 (b) of the SCM Regulation by district courts.

Table 14. Decisions that do not comply with para. 18 (b)

Court	The number of the examined decisions	Decisions that violate para. 18 (b)	%
Anenii Noi	*6	2	33%
Bălți	38	23	61%
Cahul	18	14	78%
Căușeni	9	3	33%
Chișinău	79	33	42%
Cimișlia	*2	0	0%
Comrat	17	1	6%
Criuleni	*1	1	100%
Drochia	17	11	65%
Edineț	16	12	75%
Hîncești	10	3	30%
Orhei	*3	3	100%
Soroca	6	1	17%
Strășeni	15	1	7%
Ungheni	7	7	100%
Total	244	115	47%
		Average	50%
Bălți CA	62	3	5%
Cahul CA	*8	0	0%
Chișinău CA	86	29	34%
Comrat CA	*9	2	22%
Total	165	34	21%
		Average	15%
SCJ	121	0	0%
Total	121	0	0%
		Average	0%
TOTAL	530	149	28%

Rule 6: The mandatory hiding of certain types of personal data (para. 20 of the SCM Regulation)

*“[...]The following categories of personal data **shall always be hidden**: individuals’ places and dates of birth and/or residence, telephone numbers, personal identification numbers (IDNP), health information (regardless of illness), bank data, car license numbers, personal health insurance numbers, personal social insurance numbers, and other data of individuals in line with Law No. 133 of 8 July 2011 on the Protection of Personal Data.”*



Para. 20 of the SCM Regulation sets the imperative obligation that certain categories of personal data be hidden by default in court decisions, regardless of the type of the case or whether this was requested by any party. The analysis of the compliance of court decisions for corruption with para. 20 confirms that 265 decisions (50% of the examined 530) have a problem with this rule.

District courts had the largest number of violations (179 decisions). The noncompliance rate was highest at the district courts of Edineț and Cahul (94% each), and Bălți (89%). Most violations consisted in failure to hide domiciles (83 cases), places of birth (64 cases), telephone numbers (60 cases), dates of birth (56 cases), and car license numbers (54 cases).

Appellate courts had 75 decisions for corruption that violated para. 20. Chișinău CA had the highest noncompliance rate: 62%. In most instances, violation consisted in failure to hide car license numbers (24 cases), telephone numbers (16 cases), cadastral numbers, disability degrees, and bank details (15 cases each), domiciles (14 cases), and places and dates of birth (13 cases each).

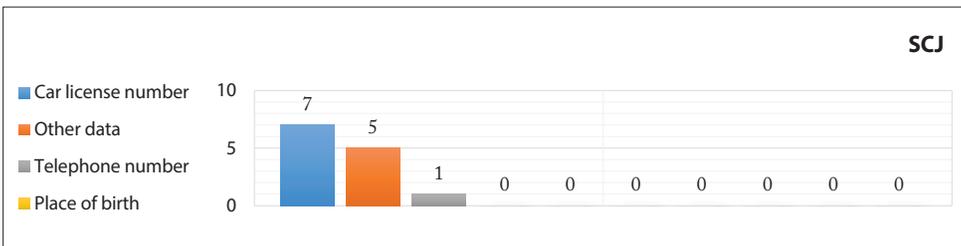
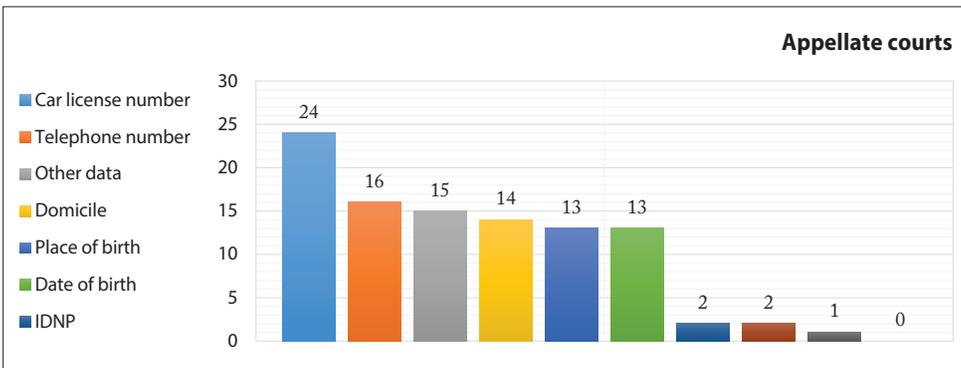
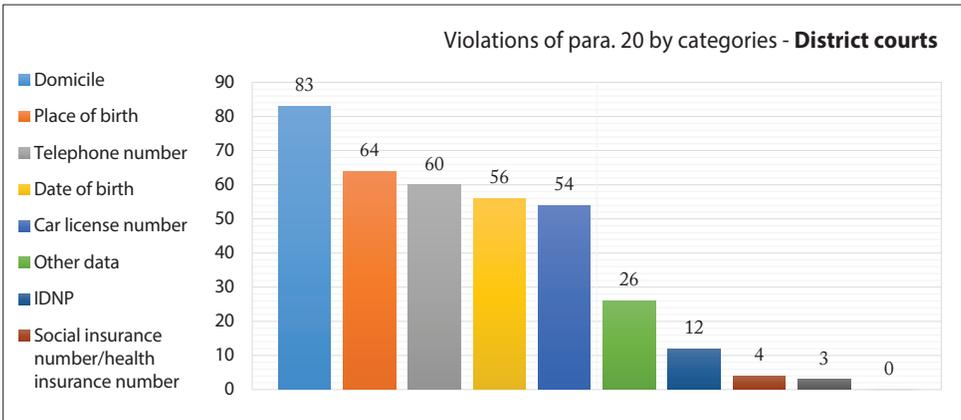
The **SCJ** had violated para. 20 of the SCM Regulation in 11 decisions for corruption. Most violations consisted in the publication of car license numbers (seven cases), other data (five cases), and telephone numbers (one case). The “other data” category includes cadastral numbers of buildings, bank details, health insurance numbers, and pets’ passport series and veterinary certificates.

The following table presents the breakdown of noncompliance with para. 20 of the SCM Regulation by courts.

Table 15. Decisions that do not comply with para. 20

District court			
Court	The number of the examined decisions	Decisions that violate para. 20	%
Anenii Noi	*6	5	83%
Bălți	38	34	89%
Cahul	18	17	94%
Căușeni	*9	8	89%
Chișinău	79	50	63%
Cimișlia	*2	0	0%
Comrat	17	7	41%
Criuleni	*1	0	0%
Drochia	17	15	88%
Edineț	16	15	94%
Hîncești	10	5	50%
Orhei	*3	3	100%
Soroca	6	2	33%
Strășeni	15	11	73%
Ungheni	7	7	100%
Total	244	179	73%
		Average	67%
Appellate courts			
Bălți CA	62	18	29%
Cahul CA	*8	0	0%
Chișinău CA	86	53	62%
Comrat CA	*9	4	44%
Total	165	75	45%
		Average	34%
SCJ			
SCJ	121	11	9%
Total	121	11	9%
TOTAL	530	265	50%

Chart 11. *Violations of para. 20 (a) by categories*



De-identification without de-identification

Just as with the situation described in the previous chapter, only with a considerably lower frequency, some court decisions for corruption had been de-identified only partially. All told, 35 decisions (7% of the examined 530) contained such violations.

Most decisions with useless de-identification were from **district courts** (26 decisions for corruption). **Appellate courts** had 9 incompletely anonymized decisions for corruption. None of the 121 examined decisions for corruption issued by the **SCJ** was incompletely

anonymized. The following table presents the breakdown of the decisions with partial de-identification by courts.

Table 16. *The number of incompletely anonymized decisions*

Court	The number of the examined decisions	Decisions with incomplete anonymization	%
Anenii Noi	6	0	0%
Bălți	38	6	16%
Cahul	18	0	0%
Căușeni	9	1	11%
Chișinău	79	8	10%
Cimișlia	2	0	0%
Comrat	17	0	0%
Criuleni	1	0	0%
Drochia	17	4	24%
Edineț	16	2	13%
Hîncești	10	2	20%
Orhei	*3	1	33%
Soroca	6	0	0%
Strășeni	15	0	0%
Ungheni	7	2	29%
Total	244	26	11%
		Average	10%
Appellate courts			
Bălți CA	62	3	5%
Cahul CA	8	0	0%
Chișinău CA	86	5	6%
Comrat CA	9	1	11%
Total	165	9	5%
		Average	5%
SCJ	121	0	0%
Total	121	0	0%
TOTAL	530	35	7%

Conclusions

Considering the background and the scope of this research, the obtained results lead to the following conclusions and findings:

- The national legal framework on the publication and de-identification of court decisions mostly corresponds to international standards. The restrictions imposed in the interests of private life, public order, justice, or national security are in line with the logic of the ECtHR's case law, the court practice of other European countries, and international human rights standards. Decision to de-identify or to publish personal data is left to the discretion of judges and is taken in each case separately. In some cases, de-identification must be imposed by default.
- In most situations, the provisions of the SCM Regulation that stipulate how to de-identify court decisions are not complied with. **In 63% of civil, misdemeanor, and general criminal cases and in 55% court decisions on corruption cases**, de-identification was carried out defectively and inconsistently. The defective practice of the de-identification of court decisions is a systemic issue, particularly prominent in district and appellate courts.

De-identification practice in (I) civil, criminal, and misdemeanor cases

- **At district courts**, the average rate of noncompliance with the SCM Regulation was 75%, and in some of them, it was higher than 90%. The situation at **appellate courts** was better, albeit just as alarming. On average, 47% of the examined appellate decisions did not comply with the SCM Regulation. At one appellate court—Comrat—, the noncompliance rate exceeded 67%. The **SCJ** did not comply with the SCM Regulation in 23% of all its examined decisions.
- In most instances, the examined decisions did not comply with the rules regarding the mandatory hiding of personal data (domiciles, dates and places of birth, IDNPs, and car license numbers). The analysis confirms that at least 305 decisions (38% of the examined 810) have a problem with this rule. In 179 decisions except those of the SCJ (34% of the examined decisions on criminal and misdemeanor cases), violation consisted in the abusive redaction of the names of defendants, perpetrators, or instigators. In 163 decisions (20% of the examined 810), violations concerned the rules of the SCM Regulation that imperatively prohibit the redaction of the names of the persons who participate in a professional capacity in legal proceedings: clerks, prosecutors, official inspectors, mediators, bailiffs, notaries, or lawyers. In 100 decisions (12% of the

examined 810), violations concerned the rule on the anonymization in the interests of juveniles, private life, or morals.

- 172 court decisions (21% of the examined 810) were incompletely de-identified.

De-identification practice (II) in cases of corruption

- The difference between the de-identification of decisions in “common” criminal cases and those in cases of corruption is insignificant. 55% of the 530 examined decisions for corruption did not comply with the provisions of the SCM Regulation that stipulate how to de-identify court decisions (in comparison with the 63% in the former category).
- Just as with the other categories of cases, in criminal cases of corruption, **district courts** had the highest average rate of noncompliance with the SCM Regulation: 78%. At some of them, it was 100%. The situation at **appellate courts** was better, albeit just as alarming. On average, 40% of the examined appellate decisions were noncompliant. At one appellate court - Chişinău -, this rate exceeded 73%. The **SCJ** had a 9% noncompliance rate.
- Just as with the other categories of cases, in most instances, the examined decisions on corruption cases did not comply with the rules regarding the mandatory hiding of personal data (domiciles, dates and places of birth, IDNPs, and car license numbers). The analysis confirms that at least 265 decisions (50% of the examined 530) have a problem with this rule. In 149 decisions except those of the SCJ (28% of the examined decisions on criminal and misdemeanor cases), the names of defendants, perpetrators, or instigators were abusively redacted. In 118 decisions (22% of the 530 examined decisions), violations concerned the rules of the SCM Regulation that imperatively prohibit the redaction of the names of the persons who participate in a professional capacity in legal proceedings: clerks, prosecutors, official inspectors, mediators, bailiffs, notaries, or lawyers. In 9 decisions (2% of the examined 530), violations concerned the rule on the anonymization in the interests of juveniles, private life, or morals.
- 35 decisions (7% of the 530 examined decisions) were incompletely de-identified.
- The defective and inconsistent application of the SCM Regulation on the publication of court decisions is a systemic issue. It threatens the effectiveness of the protection of personal data of individuals appearing in court, especially when sensitive and personal information about their private lives is published. Inconsistent de-identification—of only part of a decision—renders the whole de-identification effort useless. This compromises the fairness of judicial proceedings and may cause a negative opinion about the professionalism of the judiciary. In the long run, the abusive redaction of names and the hiding of other data of public interest in court decisions will erode trust in the judicial system even deeper.

Recommendations

- The judges', judicial assistants', and court clerks' understanding of the SCM Regulation on the publication of court decisions and how to apply its rules should be reinforced or "refreshed." Where the rules of the SCM Regulation are not sufficiently clear, they should be clarified.
- To ensure consistency in the application of the de-identification rules, the SCM should develop a simple guide for judicial assistants and judges to the SCM Regulation and the situations its rules apply to. Based on this research and the provisions of the SCM Regulation, the LRCM prepared a preliminary sketch for such a tool, which judicial assistants could use to ensure the de-identification of court decisions.

When and what should be redacted in a court decision?

<p>Always</p>	<p>Patronymics</p> <p>The names and data of juveniles, including juvenile witnesses</p> <p>Places and dates of birth</p> <p>Domicile and/or residence addresses</p> <p>Telephone numbers</p> <p>IDNP numbers</p> <p>Medical diagnostics, other health data</p> <p>Bank details</p> <p>Car license numbers</p> <p>Personal health/social insurance numbers</p>
<p>As applicable</p>	<p>Witnesses' names</p> <p>The names and details of the victims of crimes (with the exception of the crimes of domestic violence, sexual crimes, or juvenile victims)</p>

Never	Judicial panels Lawyers Clerks Official inspectors Mediators Bailiffs Notaries Prosecutors Public authorities Guardianship authorities Businesses' tax registration numbers The dates of reference to court Legal entities' names Perpetrators' names
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- It is worth assessing the technical capabilities of ICMS, which is currently used to ensure the de-identification of court decisions. The research confirms that most violations are committed in the courts that have the automated de-identification capability. In this context, the technical capabilities that currently ensure the de-identification of decisions should be tested to make sure that they do not represent another impediment that contributes to the identified violations. Another explanation could be the fact that in the district courts and courts of appeal this task is performed by a single judicial assistant, compared to three assistants per judge within the SCJ. This possible fact contributes to a higher rate of violations. In this respect, it is worth considering the opportunity to review the weight of the depersonalization task in the judicial assistant's job description sheet or its division between assistants and clerks in the district courts and courts of appeal.
- Courts should refrain from publishing information that is not absolutely necessary. The protection of victims or witnesses of crimes should also be regulated to exclude the information that can identify them in the text of the published decisions.
- The SCM and the ACA should be more efficient in ensuring compliance with the rules regarding the publication and de-identification of court decisions. Compliance checks could be integrated as a routine part of every inspection at the courts of law. A system wide review of the courts' de-identification practice every few years could also be very enlightening for identifying the best measures to be taken.

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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