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# Sanctioning corruption – a case law review

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# Acknowledgements

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We sincerely appreciate and thank **all the LRCM colleagues** who provided assistance to the research team, who made all the logistical and visibility arrangements and secured the launch of this study.

# Background and purpose of the paper

The Government declared that the fight against corruption is the main priority of the Republic of Moldova. Thematic actions aimed at combating this phenomenon can be found in the major national strategies and policy papers[1], including the EU-Moldova Association Agreement[2]. These commitments were made in response to the multiple demands of Moldova's citizens. According to the "Barometer of Public Opinion" national survey, the fight against corruption has become one of their main concerns in recent years (more important than low wages or lack of jobs), which was referred to as one of the backlogs of the country's leadership[3].

However, scarce improvements will be achieved in combating corruption, unless the causes of the slow progress of reforms are identified and tackled. To speed up this process, we tried to analyse one of the possible causes, like how corruption is sanctioned. The main research question addressed in this paper is: how effective is the legislation and practice applied by courts, in order to discourage the phenomenon of corruption in the Republic of Moldova?.

The paper explores the consistency of sanctions applied by judges in corruption cases, as well as the methods of trial of cases regarding the sanctioning of corruption acts (who are the perpetrators of corruption offences; for what deeds the perpetrators of corruption offences are sanctioned; how long does it take on average to examine a corruption case; etc.). Under no circumstances did the authors of this research paper intend to take over the role of judges in order to assess whether a specific sanction was correctly applied in a specific

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[1] Please see among others: Activity Program of the Government of the Republic of Moldova "Moldova of Good Times" (August 2021); National Strategy for Integrity and Anticorruption for 2017 – 2021; Strategy on ensuring the independence of the justice sector for the years 2022 – 2025.

[2] Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (2014). Available online at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0830(01)&from=EN.

[3] Institute for Public Policy (IPP), Barometer of Public Opinion (2021): The population remains largely dissatisfied with what the country's leadership does in several areas. The aspects that cause the highest dissatisfaction of the population are: the fight against corruption (59% are not at all satisfied and 30.5% are not too satisfied), wages (53.7% are not at all satisfied and 32.5% are not too satisfied), pensions (62.9% are not at all satisfied and 22.4% are not too satisfied), jobs (49.4% and 33.8%), industry (50.9% and 31.6%) and living standards (39.7% and 40.3%). The findings of the Barometer can be accessed online: http://bop.ipp.md/en.

case. Based on a set of indicators, the paper analyses whether overall: (i) the procedure for examination of corruption cases seems to be effective from the perspective of a legal professional and an impartial observer, and (ii) whether the practice of Moldovan courts is consistent in this area.

The paper contains empirical research elements, while analysing over 400 court judgements delivered between January 2017 and December 2020 by the Supreme Court of Justice. This is indicatively 95% of the total number of court decisions publicly available on the official website www.csj.md in that period. The paper is intended for the authorities. It presents public policy recommendations and legal amendments based on documented data. Last but not least, the study presents recommendations for the judicial system, in particular for the Supreme Court of Justice, to further boost the activity of standardization of the case law in the Republic of Moldova.

# Summary

**Research period:** The results of this research study are based on 416 judgments issued by the Supreme Court of Justice (SCJ) in respect of 553 persons. The reviewed court decisions were issued between 1 January 2017 and 31 December 2020 (48 months). In respect of 343 people (62%), the reviewed court decisions became irrevocable. The results of this research into the sanctions applied and the time limit for the examination of cases concern only irrevocable court decisions.

**What the corruption cases are about and when the acts of corruption were committed:** 88% of the reviewed decisions referred to acts of corruption committed by the perpetrators over the period 2008– 2018. The vast majority of the reviewed corruption cases (93%) concerned acts of "petty corruption" (cases of low-value damage, committed by private individuals or middle-ranking civil servants). About 7% of the cases concerned persons holding high-ranking public offices, lawyers and bailiffs, prosecutors or judges, prosecuting and investigating officers.

**The most frequently investigated acts of corruption:** 84% of the total number of cases examined concerned four offences: Article 328 (Excess of power or excess of official duties) – 146 persons or 26%; Article 326 (Influence peddling) – 117 persons or 21%, Article 324 (Passive corruption) – 108 persons or 20% and Article 191 (Embezzlement) – 96 persons or 17%.

**Perpetrators of corruption offences**: A quarter of the court decisions in the reporting period concerned conviction (or acquittal) of **police officers** (25%). This category is followed by **individuals** (16%), **local councillors** (6%) and **mayors** (4%). They are followed by **lawyers** and **accountants** (3% each), and **customs officials** (2%).

**Court judgments**: **District Courts** – conviction rate stands at 57% and acquittals amount to 37%. In over 6% of the cases, the courts have stopped criminal proceedings. **Courts of Appeal** – every second sentence of acquittal or conviction (55%) was overturned. The judgment issued by district courts remained unchanged in 52% of cases. In 24%, the decision of the Court of Appeal was harsher, and in 24%, milder. Of the 24% in which the CA issued a milder sentence, 13% were acquittals. The **Supreme Court of Justice** – almost every second decision of the Courts of Appeal (49%) challenged in the SCJ, was quashed. Every third appeal to the SCJ (38%) was remanded for retrial. In only 2% of the cases examined, the SCJ issued a harsher sanction than the appellate court, while in 10%, the sentence was milder, of which 4% were acquittals.

**Length of trial of corruption cases:** The average length of proceedings in a corruption case was 3.5 years. The shortest length of court proceedings in a corruption case, in all three levels of jurisdiction, was 138 days, and the longest was 4,610 days (12.6 years).

**Retrials:** Before it became irrevocable, every second case examined (53%) was re-tried at least once. In at least 12% of the cases (50 cases out of the 416 reviewed) the cases were remanded for retrial two or more times.

**Sanctions (irrevocable decisions): Imprisonment –** Eight out of ten people convicted of corruption have not spent a single day in prison. Only in 18% of cases, judges sentenced the perpetrators to jail. The average term of imprisonment was 2.3 years. The shortest term was 0.4 years and the longest was 16 years. **Fines** – were applied as the sole penalty for corruption offences in 19% of the irrevocable decisions. The average value of the fines applied was MDL 29,870. The highest fine was MDL 290,000 and the lowest was MDL 3,000. **Restrictions** – in 27% of cases, judges applied a ban to hold certain public office to those convicted for corruption. The average term of a ban was 1.4 years, the shortest term was one year and the longest was 10 years. The 10-year ban was applied to a former bailiff.

**Application of additional sanctions for acts of corruption:** Imprisonment along with fine as additional sanction was applied in 61 cases (to 77 people or 22%). Imprisonment, fine and restrictions were applied in 31 cases (to 44 people or 13%).

**Anonymization (depersonalization)** was flawed in about 28% of the court decisions reviewed.

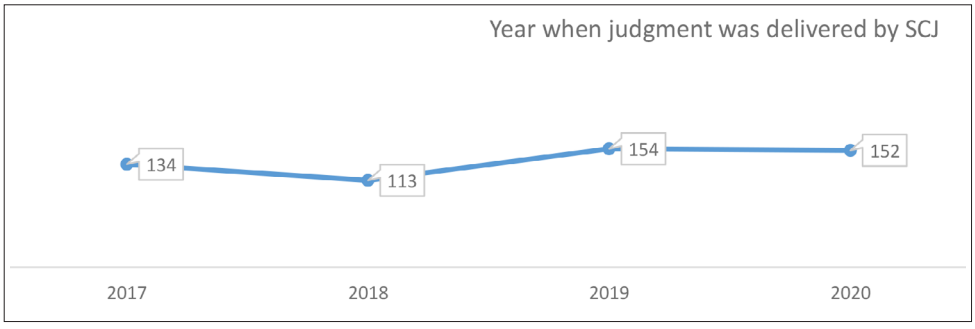
# Methodology

The court judgments collected for conducting this research relate to *at least one* of the following offenses, which the research team categorized as corruption or corruption-related offenses:

- Passive corruption (Article 324 of the Criminal Code);
- Active corruption (Article 325 of the Criminal Code);
- Influence peddling (Article 326 of the Criminal Code);
- Excess of power (Article 328 of the Criminal Code);
- Illicit enrichment (Article 330[2] of the Criminal Code);
- Taking bribes (Article 333 of the Criminal Code);
- Giving bribes (Article 334 of the Criminal Code);
- Embezzlement (Article 191 para. 2 (d) (4-5) of the Criminal Code);
- Receiving an illicit remuneration for carrying out works related to public services (Article 256 of the Criminal Code);
- False statements (Article 352[1] of the Criminal Code).

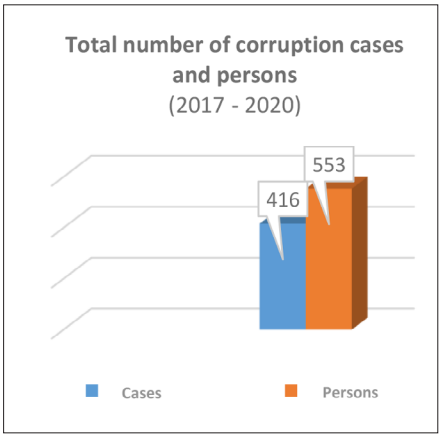
The final results of this research study also include cases in which the perpetrators were convicted for other offences, if, along the way, they were reclassified by the courts (for example an act initially investigated as Excess of power (Article 328 Criminal Code) was reclassified as tax evasion (Article 244 of the Criminal Code) or use of official documents (Article 361 of the Criminal Code).

The reviewed court judgements were issued between 1 January 2017 and 31 December 2020 (48 months). The period 2017– 2020 was deliberately selected for three reasons: (i) during the reporting period there were no substantial legislative amendments of the Criminal Code in terms of sanctions applied for corruption offences, (ii) any findings must have a specific time limit and (iii) lack of similar studies on this subject for the reporting period.



The judgments were collected through the search engine available on the SCJ page www.csj.md, under "Judgments of the CSJ Criminal Section". As a search criterion, the number of the corresponding articles of the Criminal Code (e.g. "324") was indicated in the "offence" field. The judgements identified as a result of such searches were verified for the timeframe (if they were issued between 2017 and 2020) and for merits of the case. Only the cases that were examined by the SCJ were studied. Therefore, the cases in which plea bargain had been concluded (which cannot reach SCJ), as well as the cases that had not been challenged before the SCJ, were not reviewed.

The judgments or interlocutory decisions of the SCJ regarding an appeal against the interlocutory decisions issued by the Courts of Appeal were not reviewed. At the same time, the first judgments of the SCJ were not examined in the cases which, during the reporting period, came to be repeatedly examined by the SCJ after being remanded for retrial.




A total of 416 court judgements were identified and reviewed, which concerned 553 defendants. These represent approximately 95% of the total number of publicly available judgements on the official website www.csj.md for that period[4] and about 40%[5] of the total number of corruption cases examined by the courts during the reporting period.

In the case of 343 persons (62%), the reviewed court judgements became irrevocable during the reporting period. The results of this research study as regards the sanctions applied and the statute of limitations for the examination of cases refer only to irrevocable court judgements.

All identified judgements have been saved in a database, which is accessible online in open-source format for documentation and cross-checking by any interested person. Before publishing this report, the research team took several steps to verify the data included. Given the large volume of reviewed judgments, we do not rule out the possibility that there may be minor errors. They may be due to the human factor and not to the lack of good faith on the research team's part.

[4] The investigation team did not deliberately omit any publicly available court decision during the reference period. However, in the absence of a high-performance search engine on the webpage www.csj.md, we cannot rule out small omissions, which is why we operate with 95%.

[5] According to the activity reports of the General Prosecutor's Office, in the referred period (2017 - 2020), the prosecutors sent to court about 1,258 cases, which concerned 1,534 persons. Prosecutor General's Report (2020), p. 116, is available online at: http://procuratura.md/file/Raport%20de%20activitate%20a%20Procuraturii%20Republicii%20Moldova%20pentru%20anul%202020.pdf.

*Open and point the camera on your mobile phone to scan the QR code*

The LRCM team analysed the essence of each case and the accused deed, the judgements of the SCJ and lower courts (Courts of Appeal and first instance courts), as well as the nature of the solution depending on the level of court (more lenient, harsher, unchanged, acquittal, etc.). In addition, the authors identified the type of sanctions (imprisonment, fine and/or restrictions applied), the length of examination of each case, including whether a case was sent back to retrial.

Informând proprietarul construcției că el de curând va pleca în concediu și va reveni peste o lună de zile, iar pentru a urgenta examinarea documentelor acestuia și semnarea procesului-verbal de recepție finală a lucrărilor executate la obiect, a pretins de la acesta mijloace bănești ce nu i se cuvin în sumă de xxxxxxx euro.

*Example: Poor depersonalization – bribe value*

Although not included initially in the scope of this study, the LRCM team also verified whether the text of judgments contains elements of poor anonymization (depersonalization), in line with the rules established by the Superior Council of Magistracy's (SCM) Regulation on the procedure for publication of judgments.[6]

Results relating to each analysed indicator are available in the "Research results" section.

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The analysis does not intend to assess what should have been the right solution in the judgments under review. Based on a set of indicators, the paper analyses whether overall: (i) the procedure for examination of corruption cases seems to be effective from the perspective of a legal professional and an impartial observer, and (ii) whether the practice of Moldovan courts is consistent in this area.

[6] SCM, Regulation on the procedure for publication of judgments on the national courts' portal and on the website of the Supreme Court of Justice, no. 2016/679 of 10 October 2017.

# Sanctioning corruption – evolution of legal amendments

## Legal framework

In its original version of 2002, the Criminal Code of the Republic of Moldova provided fairly lenient sanctions for the most "popular" corruption offences: passive corruption (Article 324 of the Criminal Code), active corruption (Article 325 of the Criminal Code) or influence peddling (Article 326 of the Criminal Code). In all these cases, the judges could punish the perpetrators, alternatively, with fine or imprisonment (except for Article 326 para. 3 of the Criminal Code). Also, in the case of influence peddling, the ban on holding public office was not provided by the law and could not be applied.

In 2009, the sanctions for passive corruption (Article 324 of the Criminal Code) and active corruption (Article 325 of the Criminal Code) were significantly increased[7]. Imprisonment became the main punishment and the possibility of alternative punishment with fine was removed. Instead, issuing a fine became a mandatory additional punishment. At the same time, this amendment introduced milder sanctions for influence peddling (Article 326 of the Criminal Code). In 2012, sanctions were introduced for legal entities that commit offences of passive corruption (Article 325 of the Criminal Code) or influence peddling (Article 326 of the Criminal Code) and the additional sanction of disqualification to perform certain activities or hold public office was introduced for offences provided by Article 326 of the Criminal Code[8]. At the end of 2012, a law was passed to increase fines applied for corruption offences. On the other hand, a new paragraph, paragraph 4, was introduced in Article 324 of the Criminal Code, which provides that passive corruption that falls under the incidence of paragraph 1 and in which the amount given as bribe is less than MDL 2,000 cannot be punished with imprisonment. Also, the sanction for committing the offence provided by Article 326 para. 4 of the Criminal Code has become much more lenient[9].

In 2013, new amendments[10] to the Criminal Code were introduced in the area of corruption offences. The fines were significantly increased and the ban on performing certain activities or holding certain positions was extended for a period of more than five years. In the

[7] See Law no. 277-XVI of 18 December 2008, in force as of 24 May 2009.
[8] See Law no. 78 of 12 April 2012, in force as of 25 May 2012.
[9] See Law no. 326 of 23 December 2013, in force as of 25 February 2014.
[10] See Law no. 326 of 23 December 2013, in force as of 25 February 2014.

case of Article 256 of the Criminal Code (Receipt of illicit remuneration for the performance of works related to public services) after the words "of remuneration" the words "or of other patrimonial advantages" were introduced. Also, Article 324 (Passive corruption) and Article 333 (Taking bribes) were supplemented by a new paragraph, paragraph 4, which criminalizes these offences involving amounts not exceeding 100 conventional units. Such actions shall be punishable by fine and disqualification to perform certain activities or hold public offices.

The same law introduced a new offence, namely that of Illicit enrichment[11] (Article 330/2 of the Criminal Code). This is punishable by fine or, alternatively, imprisonment. The second paragraph provides the same offence, but committed by a person holding a high-ranking position, which is punishable by the same alternative penalties: fine (only slightly higher) or imprisonment. Articles 333 CC (*Taking bribes*) and 334 CC (*Giving bribes*) also underwent essential changes. Both the fine and disqualification to perform certain activities or hold public office for committing such offences have been increased, and the later disqualification was set at a minimum of two years (up to five) in the case of taking bribes (Article 333 para. 1 CC). However, the most unexpected change was made in para. (3) in the case of both offences. Imprisonment is no longer mandatory, but an alternative. The judge may choose between fine and imprisonment, in both cases along with the disqualification to perform certain activities or hold public offices.

The Law no. 326 also introduced a new rule which established extended confiscation (Article 106/1 CC), in derogation from the existing special confiscation. Extended confiscation shall be applied only to perpetrators convicted for the offences provided for in para. (2) of Article 106/1 CP (including corruption offences) and only when the value of the assets acquired in the last five years has clearly exceeded the convicted person's legal income and has resulted from criminal activities.

Law no. 56 enacted in April 2014[12] amended para. (8) of Article 60 CC (Statute of limitation of criminal liability) by adding the text "regardless of the date when they were committed". Article II of the Law no. 56 also stipulates that the statute of limitations for criminal prosecution does not apply to persons who have committed, among other listed offences, Excess of power or excess of official duties (Article 328 CC), for which the statute of limitations for criminal prosecution has not expired as of the date of the law entered into force.

A survey conducted at the request of the National Anticorruption Centre in 2013 found, among other things, that judges applied too frequently the provisions of Article 55 para. (1) of the Criminal Code (Release from criminal liability by replacing it with administrative liability) when hearing cases on corruption charges and ceased criminal proceedings against people accused of committing corruption offences[13]. This made it impossible to apply the additional penalty of disqualification to hold public office or perform certain activities and, as a consequence, the perpetrators were still able to work in the field of activity where

[11] Ownership of assets by an official or a public person, whether in person or through third parties, if the value of such assets substantially exceeds the person's income and if, based on evidence, it was ascertained that they could not have been obtained lawfully.

[12] See Law no. 56 of 4 April 2014, in force as of 5 April 2014.

[13] Survey on judicial cases related to corruption charges, available online at: https://cna.md/public/files/statdata/studiu_privind_dosarele_de_coruptie_final_decembrie_2013.pdf.

they had committed the acts for which they had been initially prosecuted. To address this concern, the article in question was amended in June 2016[14]. Paragraph (1) of Article 55 CC, which prohibits the application of the release from criminal liability in the case of certain offences, has been amended to include the following corruption or corruption-related offences: Article 181/1, Article 256, Article 303, Article 314, Article 326 para. (1) and (1/1), Article 327 para. (1), Article 328 para. (1), Article 332 para. (1), Article 333 para. (1), Article 334 para. (1) and (2), Article 335 para. (1) and Article 335/1 para. (1) of the Criminal Code. The Law no. 207 dated 29 July 2016 increased the value of fines applied for offences provided in Article 256, Article 333 and Article 334 of the Criminal Code[15].

In 2020, the Parliament of the Republic of Moldova enacted another law[16] to amend the Criminal Code. Imprisonment for influence peddling (Article 326 CC) was increased (from five to six years) and as such this offence was moved from the category of less serious offences to the category of serious offences (likewise the offences provide by Article 326 / 1 and Article 327 CC). Consequently, Article 55 para. 1 of the Criminal Code was amended to exclude the mentioned offence. These amendments were necessary to streamline the activity of criminal prosecution bodies in the investigation of corruption offences, by making it possible to apply in such cases the provisions of Article 60 para. 1 (d) of the Criminal Code (Statute of limitation for criminal prosecution) and of Article 132/1 para. 2 of the Criminal Procedure Code (Special investigation activity), and also to limit the application of the following articles of the Criminal Code: Article 55 para. (1), Article 64 para. (3/1) (*Fine*), Article 90 (*Witness*) and Article 94 (*Data not admitted as evidence*).

## Exceptions of unconstitutionality

In its Decision no. 22 dated 27 June 2017[17], the Constitutional Court declared that the phrase "public interests" contained in Article 328 para. (1) CC (*Excess of power and excess of official duties*) is unconstitutional. The Court stated that Article 328 para. (1) of the Criminal Code provides a material offense and includes public interest in its prejudicial consequences, but the reference rule (Article 126 para. (2) of the Criminal Code), under which the damage caused in each case is assessed, does not explicitly establish "public interest" as a social value that can be assessed. The Court noted that the lack of clear, predictable, and accessible criteria for assessing the harmful consequences of an offense under Article 328 para. (1) of the Criminal Code precludes the courts from assessing the actual impact of the actions of public persons on an abstract value protected by the criminal law, such as the "public interest".

On 1 October 2018 the Constitutional Court pronounced as unconstitutional Article 328 para. (3)(d) (*Excess of power and excess of official duties which resulted in serious consequences*).[18]

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[14] See Law no. 93 of 13 May 2016, in force as of 17 June 2016.

[15] See Law no. 207 of 29 July 2016, in force as of 28 October 2016.

[16] See Law no. 165 of 10 September 2020, in force as of 9 October 2020.

[17] Decision of the Constitutional Court no. 22 of 27 June 2017, available online at: https://www.constcourt.md/ccdocview.php?l=ro&tip=hotariri&docid=626?l=ro&tip=hotariri&docid=626#top.

[18] Decision of the Constitutional Court no. 22 of 1 October 2018, available online at: https://www.constcourt.md/ccdocview.php?l=ro&tip=hotariri&docid=670.

The Court found that the provisions under scrutiny afford the courts excessive discretion, which resulted in irregular application of the law . The Court also found that some judges who had faced the problem of classifying cases with "serious consequences" applied the European Convention directly. The Court stated that although it declared Article 328 para. (3)(d) CC to be unconstitutional, this does not preclude the Parliament from defining the extent and content of such aggravating circumstance and submitted an Address to the Parliament to that effect.

## Actions to standardize the case law undertaken by the SCJ

On 11 November 2013, the Plenum of SCJ issued a decision "On certain issues concerning the individualization of criminal punishment", repealing a similar decision dated 31 May 2004[19]. According to the mentioned decision, special attention should be paid when sentencing perpetrators accused of offences against working in good faith in the public sector, of passive or active corruption, or of giving or taking bribes, which, apart from an increased social danger, seriously affect the authority and image of public institutions and organizations.

On 16 December 2013, the Plenum of SCJ issued Decision no. 13 "On application by the courts of the provisions of Article 364/1 CPC"[20], which provisions are increasingly applied to the trial of corruption-related cases and to the application of punishments for such offences, and on 22 December 2014 the Plenum of SCJ issued Decision no. 11 "On the application of the law on criminal liability for corruption offences", repealing a similar judgment dated 30 March 2009.[21]

On 14 December 2013, the SCJ issued its Recommendation no. 61 "On certain issues concerning the individualization of criminal punishment in corruption cases"[22], and in 2015 the "Guidelines on the application of punishments" was developed[23].

The numerous legislative and interpretative interventions on corruption-related issues prove a growing interest of both the legislature and the justice system in ensuring predictable legislation and uniform enforcement practice. To what extent these efforts have been sufficient, we will consider further.

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[19] Decision of the Plenum of SCJ no. 8 of 11 November 2013 on certain issues concerning the individualization of criminal punishment: http://jurisprudenta.csj.md/search_hot_expl.php?id=127.

[20] Decision of the Plenum of SCJ no. 13 of 16 December 2013 on application by the courts of the provisions of Art. 364/1 CPC: http://jurisprudenta.csj.md/search_hot_expl.php?id=346.

[21] Decision of the Plenum of SCI no. 11 din 22 decembrie 2014 cu privire la aplicarea legislației referitoare la răspunderea penală pentru infracțiunile de corupție: http://jurisprudenta.csj.md/search_hot_expl.php?id=248.

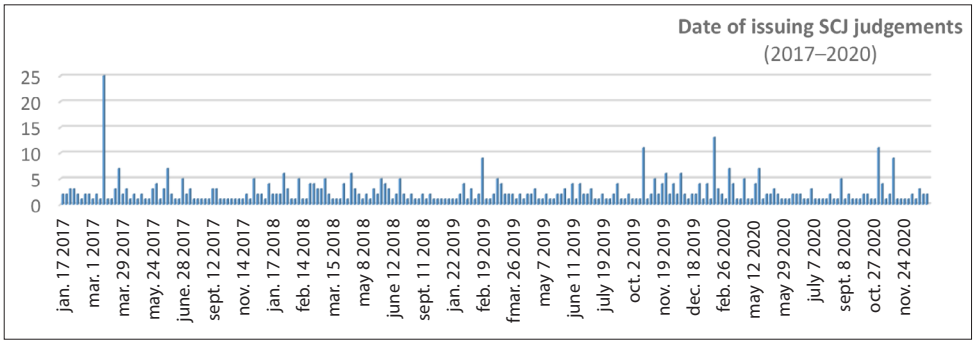
[22] Recommendation no. 61 on certain issues concerning the individualization of criminal punishment in corruption cases, available online: http://jurisprudenta.csj.md/search_rec_csj.php?id=92.

[23] https://crjm.org/wp-content/uploads/2015/01/Ghid-cu-privire-la-aplicarea-pedepsei.pdf.

# Research results

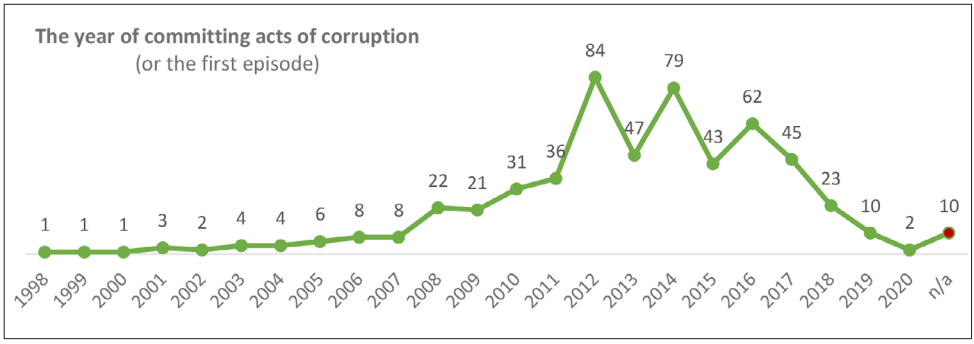
## a) General issues

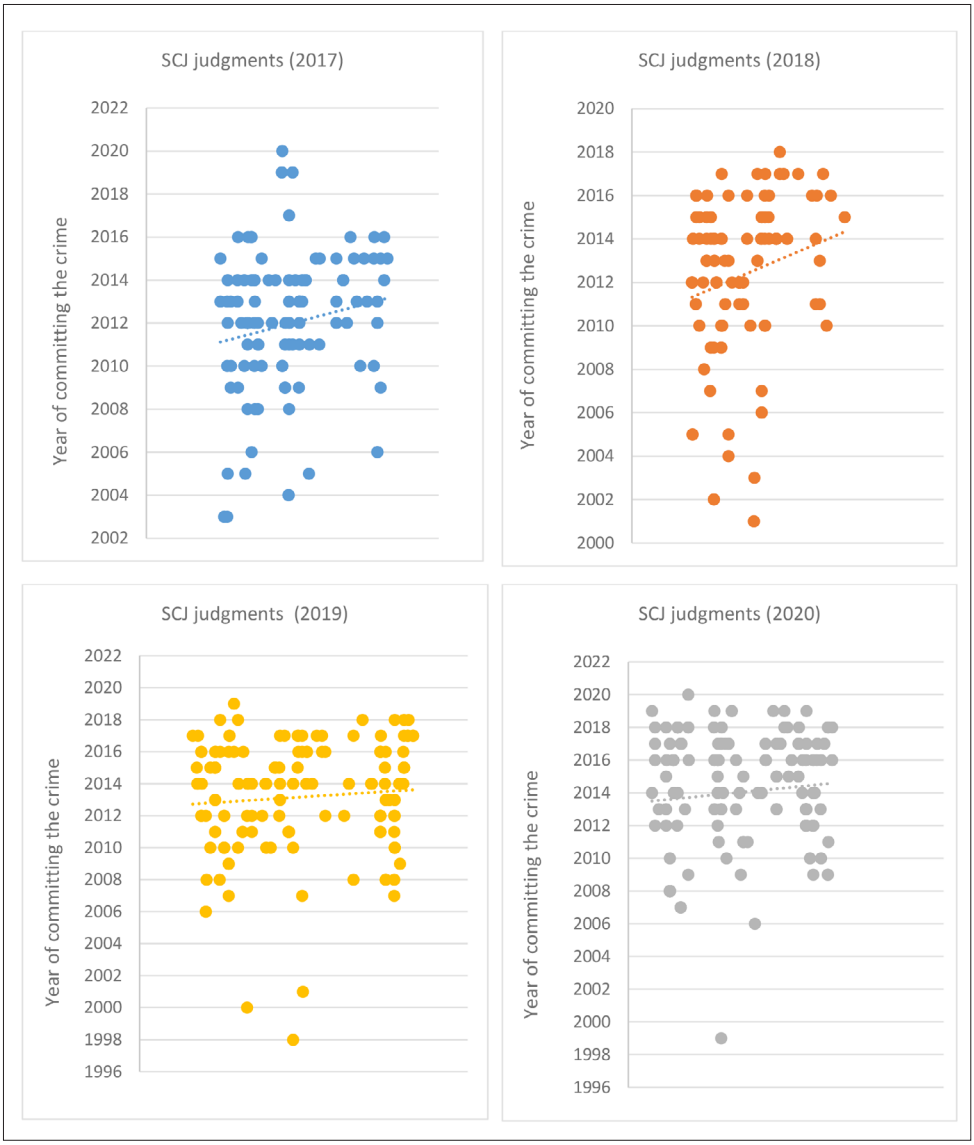
The analysed judgments were issued by the SCJ between January 2017 and December 2020 (48 months). The judgments cover the entire reporting period. There are unsubstantial "increases" in the number of judgments issued in the first and last months of a calendar year (March 2017, October 2019, February 2020 and October 2020). This period probably corresponds to certain events, for example, posting reasoned judgments on the SCJ page after editing them or the increase in workload after a break period, such as the holiday period. More information can be found in the chart below:




## b) The year of committing acts of corruption (or the first episode)

The analysed judgments refer to acts of corruption that have been committed by subjects of the crime in different periods. The most (approximately 88%) refer to crimes committed during 2008–2018. Other approximately 8% of all analysed judgments refer also to crimes committed during 1998–2008. In 2% of the cases (10 judgements), it is impossible to identify the date of committing the act of corruption by the subject of the crime.






According to the data highlighted above, from the date of committing the crime to the date on which a SCJ judgment was issued, an average of 5.6 years passed (5.1 years for judgments issued in 2017, 5.7 years in 2018, 5.8 years in 2019 and 5.9 years in 2020). Such a long term is problematic because non-serious offences (punishable with imprisonment for up to five years) are time-barred at five years, i.e., after 5.6 years the sanction can no longer be applied in their respect. The long duration of the proceedings also diminishes from the preventive effect of the sanctions.

The results of the research show that justice in corruption cases takes time. Although this is not necessarily a bad thing, there should be serious concerns if the committed acts of corruption are sanctioned after 20 years and the perpetrators are no longer able to serve their sentences due to the expiry of the limitation period, or other reasons, such as the death of the perpetrator.

## c) What are the corruption cases that reach the judge about?

Although there is a public perception that there are many "high-level corruption" criminal cases sent to court, the vast majority of analysed corruption cases (93%) refer to acts that can be considered as 'petty corruption" (cases with a maximum value of EUR 10,000). Below, we briefly present some of the analysed situations that indicate the value of the amounts in the analysed corruption cases, as well as the "benefit" promised by the subjects of the crimes. The essence of each corruption case analysed in the reporting period can be consulted by accessing the code on page no. 8 of the document):

| | | |
|---|---|---|
| „tried to bribe the probation officer with EUR 200 so that a certificate on enforcing the punishment (unpaid work) is issued" | „collected money from school students without receipts and fiscal memory control (the money have not been taxed)" | „tried to bribe police officers with MDL 80,000 to cover up illegal transport of tobacco items" |
| **Case file no. 1ra-144/2017 of 17 January 2017** | **Case file no. 1ra-408/2017 of 8 February 2017** | **Case file no. 1ra-591/17 of 9 March 2017** |

| | | |
|---|---|---|
| „claiming and receiving EUR 2,000 from suspects for failure to carry out procedural actions, and subsequently EUR 7,500 for intervening and influencing certain persons from NAC and the Anti-corruption Prosecutor's Office in order to adopt judgements in their favour" | „offered bribe in the amount of EUR 150 to the employees of the Customs Service for the introduction on the customs territory of the Republic of Moldova of a boiler from Romania, without paying customs duties" | „extorted and received EUR 500 to influence public persons in the GPI so that the person is not criminally prosecuted" |
| **Case file no. 1ra-18/2018 of 23 January 2018** | **Case file no. 1ra-584/1 of 14 March 2018** | **Case file no. 1ra-915/18 of 29 May 2018** |

| | | |
|---|---|---|
| „claiming that he has influence over the persons within Mayor's Office X, respectively he will be able to solve the problem of privatization of a real estate, he claimed and received from a person EUR 7,900 and MDL 17,314" | „together with other unidentified persons, claiming that they have influence and will be able to determine judges of court X, other public persons from NAP, to conditionally release a detainee before term, claimed and accepted the amount of EUR 6,300 from his sister" | „claimed in total over MDL 100,000 for not withholding and not initiating a criminal case (drugs), but also for speeding up the release of the seized car" |
| **Case file no. 1ra-910/2019 of 25 June 2019** | **Case file no. 1ra-129/2019 of 2 July 2019** | **Case file no. 1ra-509/2019 of 29 October 2019** |
| „claimed and received, in several instalments, the amount of EUR 15,000 in order to speed up the allotment of a plot of land" | „promised the applicant that he would help her recover her house and that the civil case would be assigned to him and requested EUR 1,000 for lifting the seizure of the building" | „accepted and received the amount of EUR 550, in order to be admitted to the theoretical and practical test for obtaining a driver's license" |
| **Case file no. 1ra-456/2020 of 15 January 2020** | **Case file no. 1ra-31/2020 of 21 January 2020** | **Case file no. 1ra-1212/20 of 28 October 2020** |

The fact that courts end up mainly hearing cases of "petty corruption" cannot be blamed on judges, but on the subjects responsible for investigating corruption (the Prosecutor's Office, including the Anti-Corruption Prosecutor's Office, as well as investigative officers of MIA or NAC). This may mean that grand corruption cases involve a high degree of complexity and that carrying out all special investigative actions and submitting the case to court takes much longer. Another simpler explanation could be the lack of will, or the fear of retaliation, if the perpetrators of the crimes are people with high positions and influential connections.

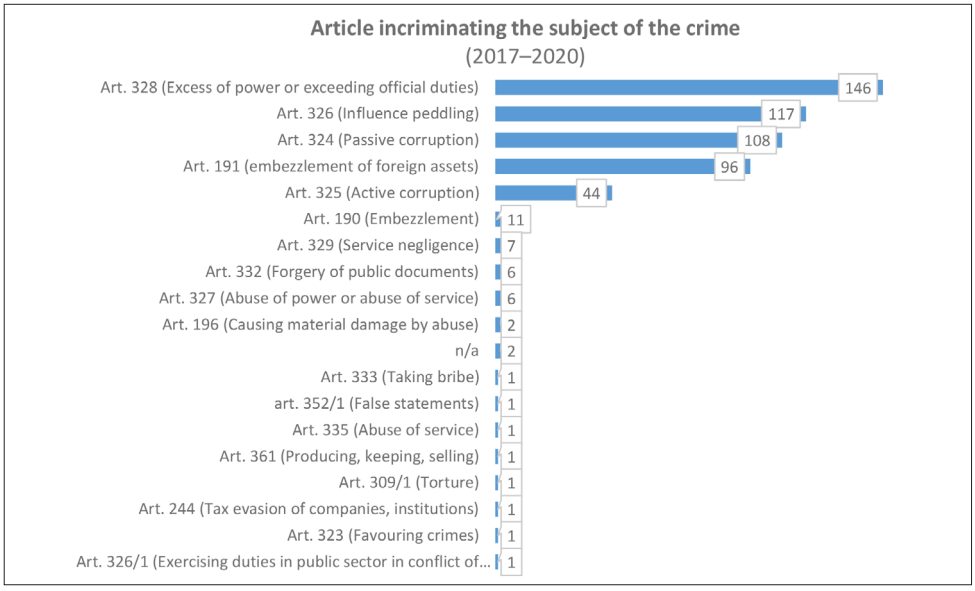
Although it cannot be neglected, the fight against petty corruption is not capable to eliminate corruption in a country affected by endemic corruption and therefore cannot have a decisive influence on this phenomenon. Given the endemic level of corruption in the Republic of Moldova, we believe that it cannot be significantly reduced without prioritizing the fight against high-level corruption.

Even in the case of immediate actions, potential efforts to eradicate grand corruption in the current period (2021–2022) would be "reflected" in court files many years later. In support of this conclusion, we can operate with the data highlighted above regarding the date of the commission of the acts versus the date of issuance of the court judgements. Thus,

the case files submitted to court refer to acts of corruption committed even 10, 15 or even 20 years ago. In this context, we consider it important to reiterate a previous recommendation reflected in another LRCM[24] study that recommends more efforts and the allocation of sufficient resources to fight grand corruption, including by specializing and limiting the powers of the Anti-Corruption Prosecutor's Office to investigate grand corruption cases, of course, along with other non-criminal measures and tools to fight corruption.

## d) Which are the corruption acts committed by persons which end up being sanctioned for corruption?

The vast majority of corruption cases analysed in the reporting period (84%) refer to four components of crime: Article 328 (Excess of power or exceeding office duties – 146 persons or 26%; Article 326 (Influence peddling) – 117 persons or 21%, Article 324 (Passive corruption) – 108 persons or 20% and Article 191 (Embezzlement) – 96 persons or 17%. More information is available in the chart below:

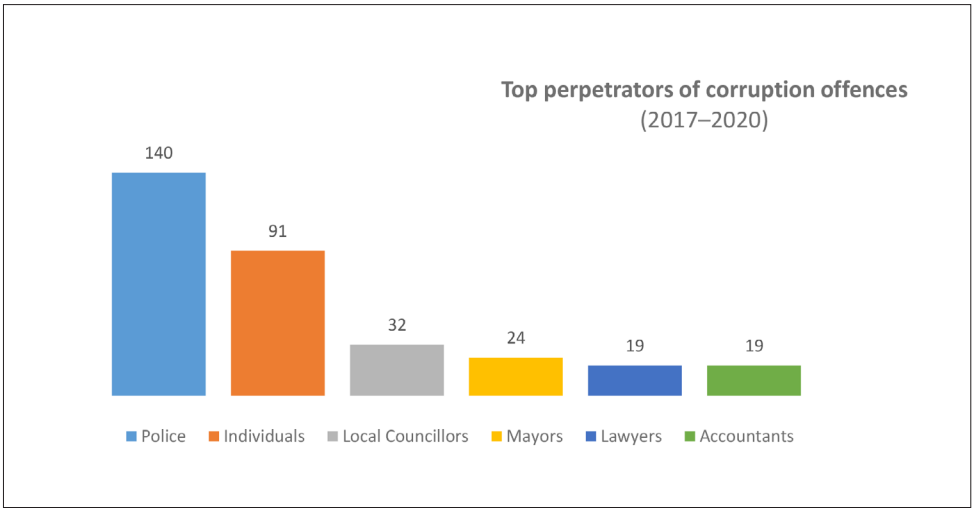



The results of the research also include references to the elements of crimes that, at first, are not directly related to corruption offences (torture or fraud). This is because although people were initially accused of a certain act of corruption, the crimes have been reclassified. The research team considers that these aspects are nevertheless important, since they reflect the course of all the corruption cases that reach the court.

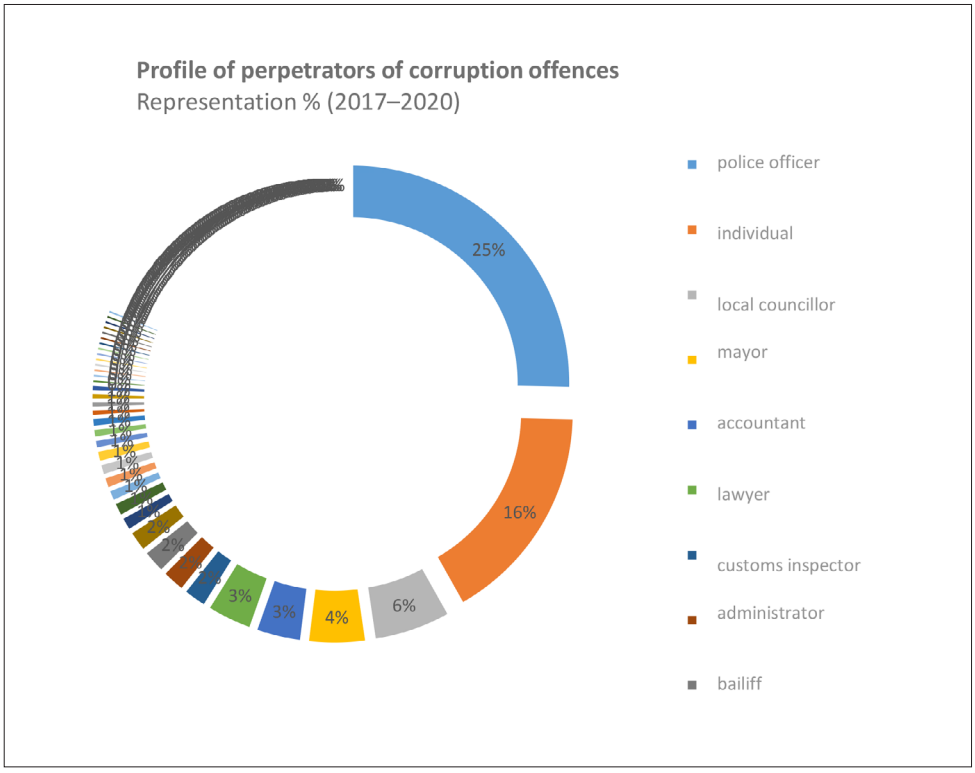
[24] Legal Resources Centre from Moldova (LRCM) and Expert Forum from Romania (EFOR), Position paper: "The Anti-Corruption Prosecution Office should investigate only high-level corruption" (2018), available online: https://crjm.org/wp-content/uploads/2019/01/2018-11-Nota-Competentele-PA-fin_eng.pdf

## e) Who are the perpetrators of corruption offences?

A quarter (25%) of the SCJ judgments issued during the reporting period refer to the sanctioning (as the case may be) of police officers. The offences for which they are sanctioned are various, and refer in particular to aspects related to their professional activity (determination to initiate or classify



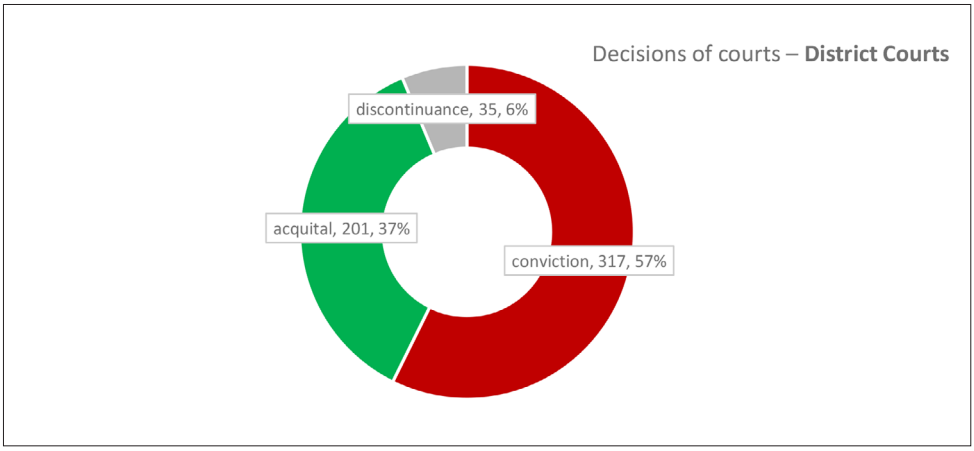

contravention cases, the promise not to sanction the person or to apply a milder sanction, etc.). The relatively "large" number of police representatives is also explained by the fact that, as a rule, they act in groups (patrol team, investigation group), but also because police officers interact with a great deal of people who are in vulnerable situations. This category is followed by individuals (16%), who most often commit crimes of influence peddling (require or claim to have influence over civil servants, grant "favours" or promises to perform public services, or to issue various permissive documents (permits, driving licenses, etc.). About 6% of the number of persons investigated for corruption during the reporting period are local councillors. As well as mayors (next in the ranking, about 4%), they are most often accused of exceeding official duties (allocation of land or selling property belonging to the local public authority in violation of the law). The ranking of the most "frequent" professions is closed equally by lawyers and accountants (3% each), followed by customs inspectors (2% of the examined cases).




Although it provides conclusive statistical information, it would be wrong to name this ranking 'Top of the professions that most frequently commit acts of corruption'. Rather, this list can be called 'Ranking of subjects who end up being investigated for acts of corruption', since many acts of corruption do not end up being sanctioned in courts, either because they are not reported or because the subjects of crimes (especially those detained on the spot) opt for simplified procedures – entering a plea agreement in exchange for a milder punishment.

## f) District Courts Judgements

The results of the investigation confirm that during the reporting period, a little over half of the persons investigated for corruption end up being convicted by the District Court. Therefore, in respect of 317 persons (57%) the District Courts issued convictions, while in respect of 201 persons (37%) of the total number of analysed case files, the courts issued acquittal sentences. In just over 6% of the judgments, regarding 35 people, the courts discontinued the proceedings. In most of the cases, the reason for the termination of the criminal proceedings was the expiration of the limitation period for holding the person criminally liable. Another reason for discontinuance is related to the circumstances that exclude their criminal prosecution, such as amnesty.



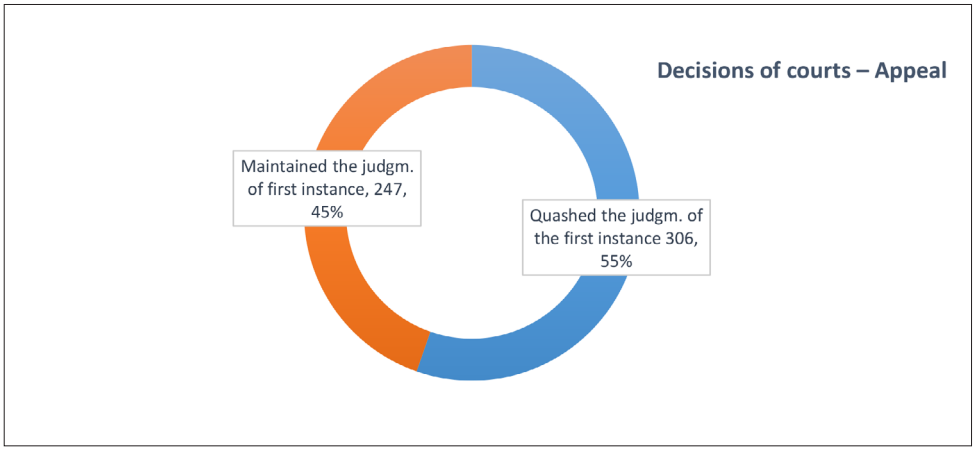

The expiry of the term for rendering a person criminally liable automatically entails the non-application of sanctions, even if the person's guilt has been proven. A possible cause for the 6% could be excessive length of case examination. A possible recommendation in this part refers to the possibility of extending the term of rendering a person liable or suspending the limitation period in the case of corruption offences once the cases have been submitted to court. These changes must, however, take into account a human rights-based approach, in order to avoid situations where a criminal case could be examined indefinitely. One solution would be to limit the SCJ's competence to send the case only once for retrial.

In respect to the acquittal rate (37%), which is quite high (the average acquittal rate in Moldova does not exceed 3%)[25], these data primarily illustrate the quality of the administered evidence such as the lack of sufficiently strong evidence to result in convictions. Of course, the acquittal rate is *de facto* lower if the final cases according to the simplified procedure are taken into account, but this cannot explain a difference of 12 times. From the analysis of the texts of the cases in which the district courts decided to acquit the convicts, most of the times, they were reduced to the non-existence of the criminal deed. The SCJ judgments do not include the essence of the arguments of the first instance courts, only the brief description (reproduction) of the indictment and subsequently the arguments of the prosecutor invoked against the acquittal sentence in the court of appeal.

## g) Courts of Appeal Judgements

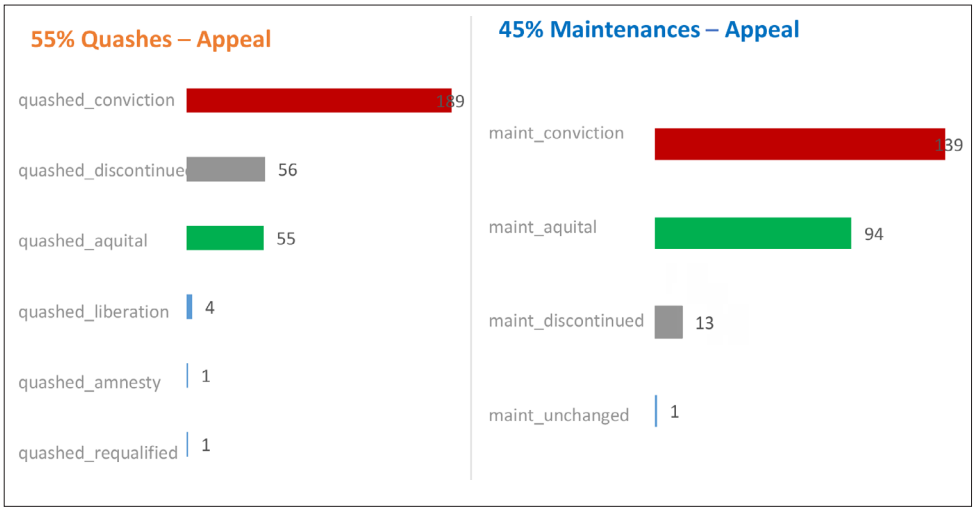
Once they appeal the decision of the District Courts, the persons accused of committing the acts of corruption, or as the case may be the prosecutors who do not agree with the decision of the District Court, have great chances of success in the Court of Appeal. At

[25] According to the Activity report of the Prosecutor's Office during the reference period (2017–2020) the acquittal rate constitutes on average 2,5 %, which represents a constant indicator compared to the percentage of the acquitted persons, source: http://procuratura.md/md/d2004/ (Rapoarte Anuale 2017–2020).




least that is what the statistical data extracted from the court judgments analysed during the reporting period show. The rate of a different solution is close to 55%. Thus, every second acquittal or conviction is overturned by the Court of Appeal.

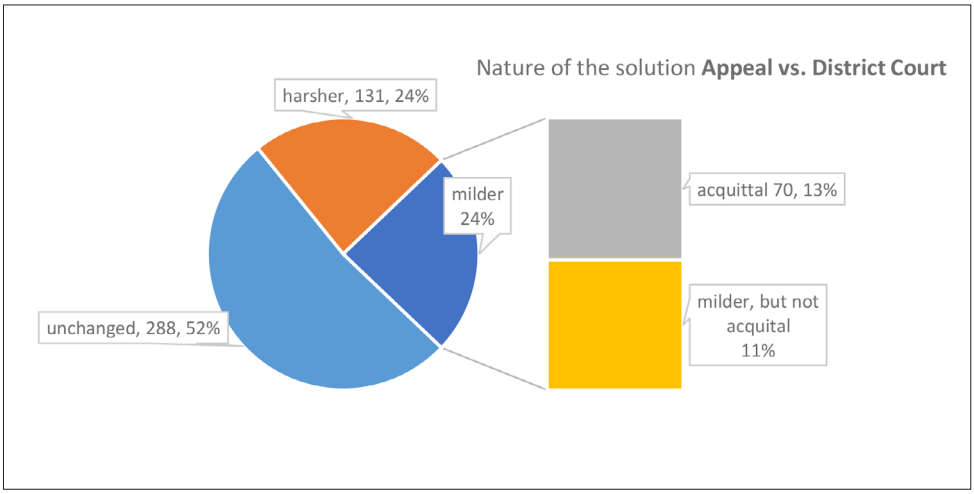
If the Court of Appeal decides to quash the sentence of the District Court, in most cases it will decide to convict the person (189 cases), or to discontinue the criminal proceedings (56 cases). In 55 cases, the Courts of Appeal ordered the acquittal of the accused. On the other hand, in cases where it withholds the decision of the District Court, it refers to confirming convictions (139 cases).




Finally, we notice that in the Courts of Appeal the dynamics of the judgements to discontinue the criminal proceedings and implicitly to exclude the application of sanctions for a person investigated for corruption is almost doubling, from 35 persons, in respect of which the proceedings have been discontinued in the District Court, to 69 persons, in

the Court of Appeal (11%). At the same time, there have been five cases in the Courts of Appeal when persons were liberated from liability following amnesty, reclassification of the crime or exemption from criminal liability.

It is necessary to reiterate the fact that the authors of this research paper do not intend to evaluate the arguments and the solution of the courts, presuming it to be fair based on the administrated evidence. This research study only examines the dynamics of the judgements provided by District Courts.

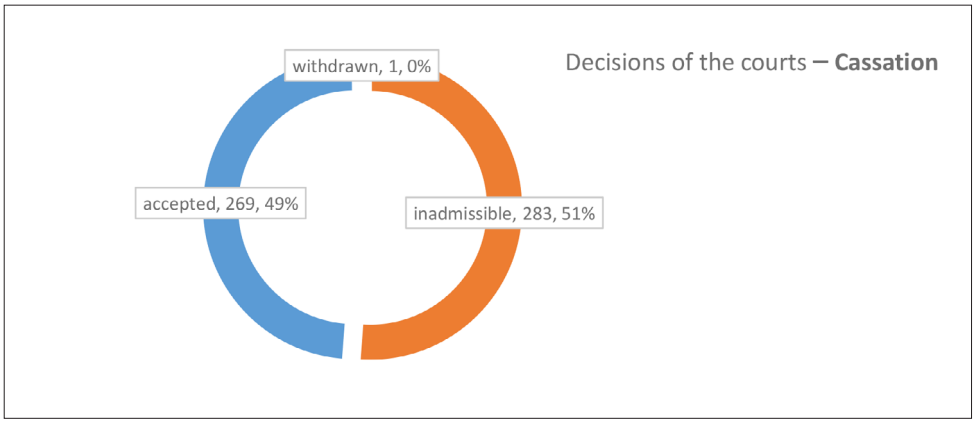



At the level of the Courts of Appeal, we see that in at least 52% of all examined cases, the nature of the Court of Appeal's solution to the District Court remained unchanged. In 24% of the cases, the decision of the Court of Appeal is harsher, and in 24%, milder, of which, in 13% of cases, the persons have been acquitted.

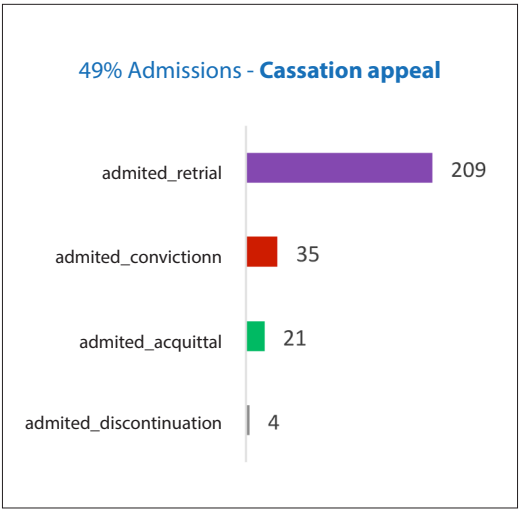
Analysed as a whole, the figures obtained indicated on the presence of a non-uniform practice, since a high number of District Court sentences are overturned (55%) and the judgements of the judges of the Court of Appeal are different (48% – even if they are harsher or milder). Thus, appeal requests are practically encouraged, both for prosecutors who demand a harsher sentence and for those convicted by the District Court, who can obtain a milder sentence with a 24% success rate, including a 13% acquittal of the total number of cases. The perpetuation of such a practice also leads to a greater workload for the judiciary as a whole, because individuals are encouraged to challenge lower court judgements if they assume that there are higher chances that the solution is overturned. In this context, generalizations of case law, including at the level of the Courts of Appeal, are urgently needed.

## h) Judgements of the SCJ

A similar situation is found in the case of judgements given by the SCJ judges. Practically, every second sentence of the Court of Appeal that was challenged with the SCJ during the reporting period was overturned.

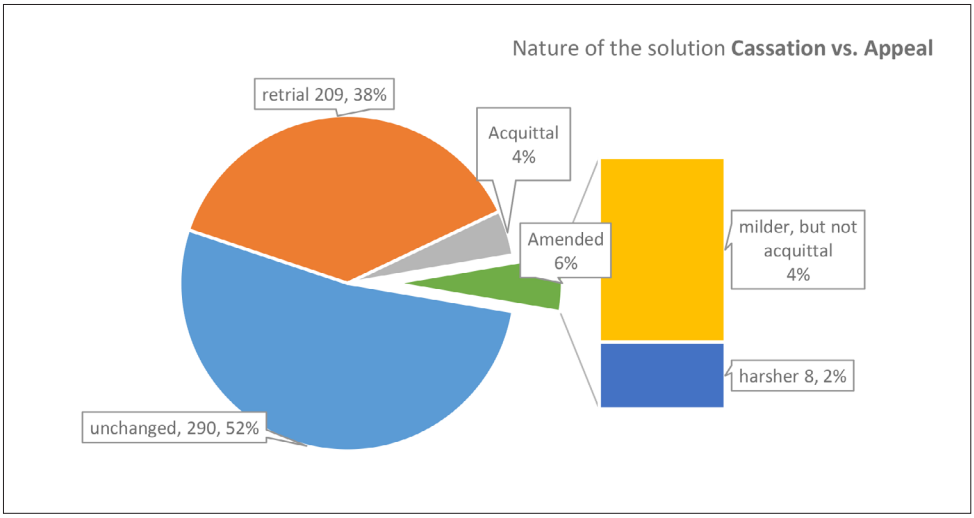



Regardless of whether this meant admitting the cassation appeal of prosecutors or convicted persons, the fact that 48% of all cassation appeals are admitted indicate on the lack of trust in the judgements of lower courts, on the one hand, but also on the possible shortcomings that the lower court judges are admitting.



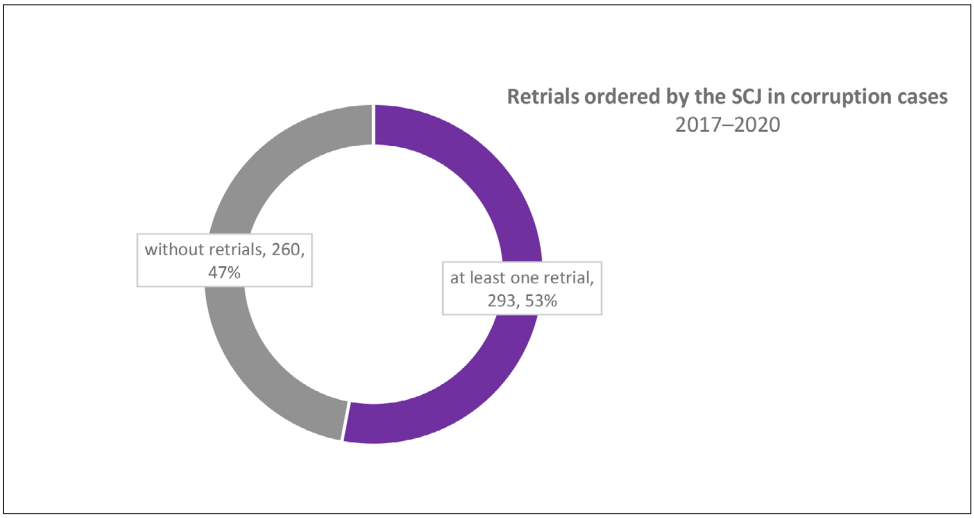

If the cassation appeal is upheld, the Supreme Court will most often send a corruption case back to the Court of Appeal. In limited cases, it will re-examine the case and decide on the conviction (35 cases), acquittal (21 cases), or termination of criminal proceedings (most often due to the expiration of the limitation period).

Finally, a new dynamic is noticed in respect to the final judgements on the case. Anyone convicted in the District Court or Court of Appeal for an act of corruption is, practically, encouraged to challenge the solution of the lower courts. Although in 52% of the cassation appeals the nature of the solution compared to the appeal will remain unchanged, in the other 48% the SCJ will give a more favourable solution to the appellant. In only 2% of the examined cases, the SCJ issued a harsher sanction than the Court of Appeal.




Sending the case for retrial does not imply a possible acquittal, but rather the need to remedy certain errors made by lower courts. However, the referral of the case for retrial automatically increases the chances for the expiry of the limitation period. The issue of retrials in corruption cases is to be discussed in detail in the next section.

## i) Retrial



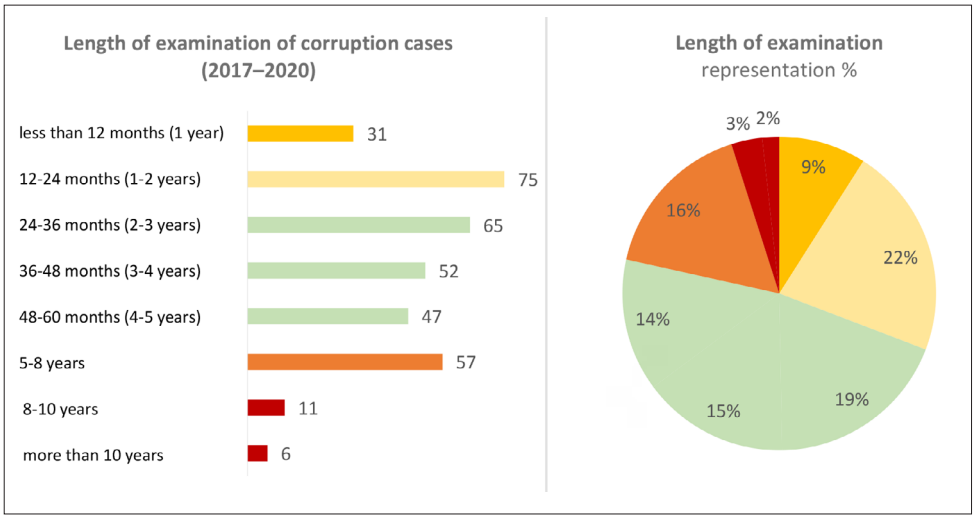

Every second analysed case in respect of persons investigated for corruption (53% of cases in respect of 293 persons) before becoming irrevocable, goes to retrial at least once. In the decision to send the case for retrial, the SCJ most often invokes the insufficient assessment of evidence by the hierarchically inferior courts. A large number of judgements for retrial could be an indicator of the shortcomings of the activity of the Courts of Appeal. These shortcomings can be explained, to some extent, by the high workload of the Court of Appeal or the practice established by the SCJ, but which is not followed by the other courts.

However, the situation in which cases are sent for retrial several times is serious. This was found in at least 50 of the 416 cases (12%) analysed. Repeated referral of the same cases is difficult to be justified. Among the cases repeatedly sent for retrial, the SCJ noted that the instructions in the first decision for referral have not been followed by the Court of Appeal. The non-compliance by the Court of Appeal with the instructions of the SCJ could be explained by the insufficient reasoning of the SCJ's judgements, or by the insufficient attention paid by the Courts of Appeal to the indications of the SCJ. In any case, the SCJ should take steps to eliminate this phenomenon.

Repeated referral of cases to retrial automatically increases the chances of the expiry of the limitation period. Thus, regardless of the quality of evidence and the effort of the persons who have investigated a corruption case, they become irrelevant if the trial of the cases takes an unreasonably long time or the case ends with discontinuation on procedural grounds.

## j) How long does it take on average to examine a corruption case?

Especially when it comes to corruption, promptness is very important. Analysed corruption cases (only irrevocable judgements were calculated) in the reporting period took on average 3.5 years to examine. However, 52% of all analysed cases were examined either too fast or too slow. The proceedings concerning 31 persons (9%) lasted less than 12 months in three levels of jurisdiction. The shortest trial in a corruption case was 138 days. At the same time, for the other 17 people (5%), the case examination exceeded 8 or even 10 years. The longest trial in a corruption case lasted 4,610 days (12.6 years). More information can be found in the following table:




The average rate of 3.5 years can hardly be considered acceptable, but the examination of some corruption cases for more than eight years is excessive and can even lead to the expiration of the term for holding a person liable. At the same time, examining a corruption case in all three levels of jurisdiction in less than 12 months seems problematic. Speedy examination of corruption cases has a price – low quality of court judgements. This hastiness

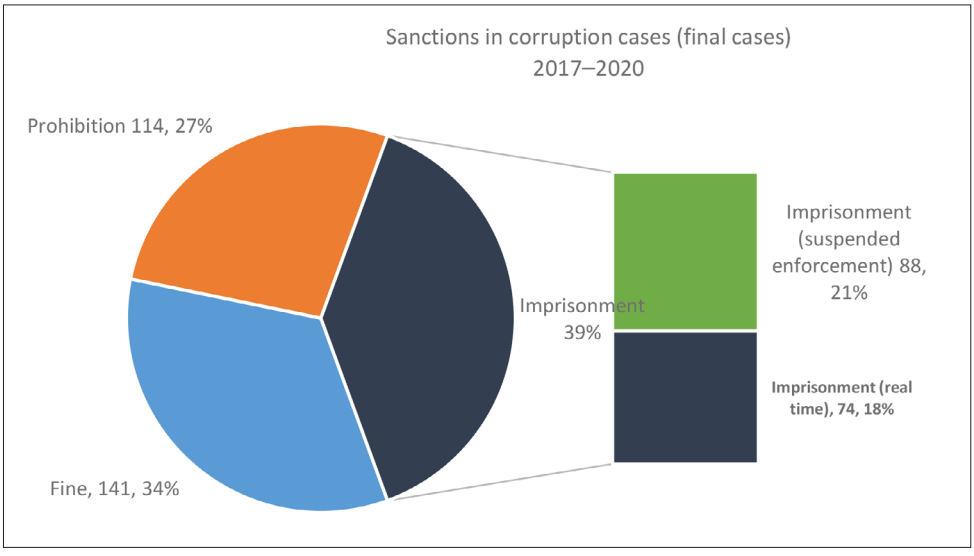
may also explain why cases are frequently referred for retrial by the Supreme Court of Justice.

Although judges and prosecutors often claim that it takes too long to examine cases in the courts, official figures counter this claim. According to data from 2020, Moldovan courts examined all categories of cases, in the District Court, appeal and cassation appeal in only 324 days, which is 39% faster than the average of the Council of Europe (529).[26] These figures confirm that the speed of the courts' examination of the corruption cases analysed in the study was four times slower than the national average and 2.4 times slower than the Council of Europe average.

## k) Sanctions applied for acts of corruption

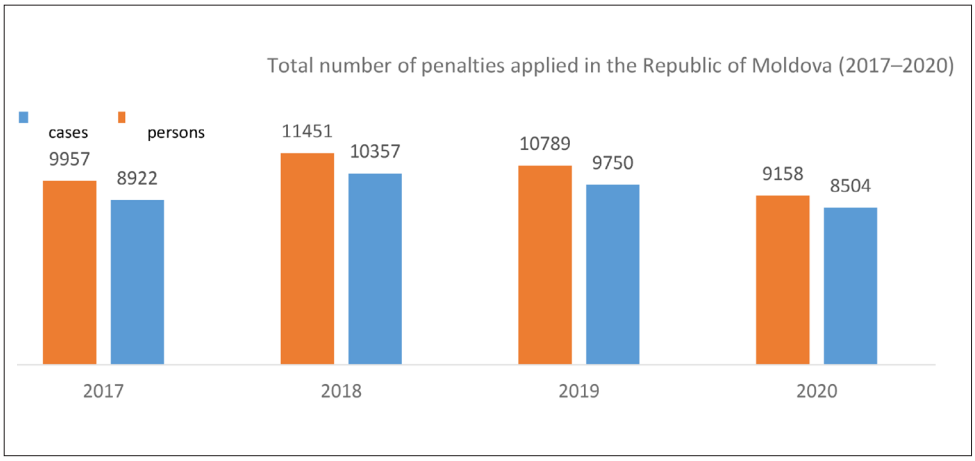
The chart below shows the final sanctions that have been prescribed by judges for persons convicted of corruption cases (only irrevocable court judgements have been taken into account). In all examined cases, judges could sanction the person with imprisonment, a fine and, as the case may be, prohibitions to carry out certain activities or work in the public service.

During the reporting period (2017–2020), judges most often apply imprisonment as a sanction (39% of cases or 162 people). In 34% of the cases (141 people), the courts ordered the application of fines, and in 27%, in respect of 114 people, prohibitions to perform a certain function were applied. Out of the total number of cases examined, only in 18% cases, judges end up ordering a real prison term for those who commit acts of corruption (in respect of 74 people out of 533). In most cases (88 of the 162 people), the enforcement of the prison sentence is conditionally suspended.

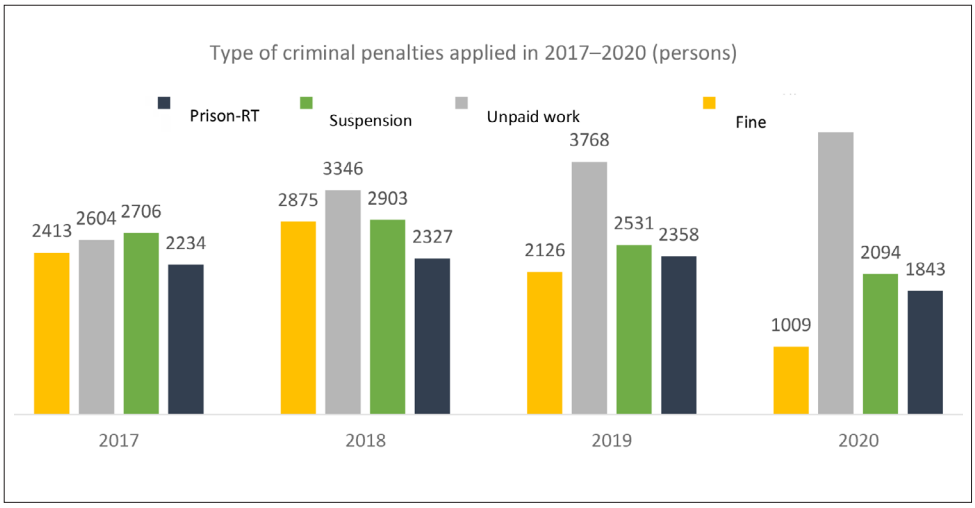



[26] LRCM "Moldovan Justice in Figures – a Comparative Perspective" (2021), page. 23, available online: https://crjm.org/wp-content/uploads/2021/10/Justitia-din-Republica-Moldova-in-cifre-%E2%80%93-o-privire-comparativa_2021-ENG.pdf

The results do not differ substantially from the general practice of applying sanctions in all criminal cases during the reporting period. According to official data presented by the General Prosecutor's Office[27], between 2017 and 2020, prosecutors applied annually criminal sanctions in about 10,300 criminal cases against in respect of more than 11,000 people.

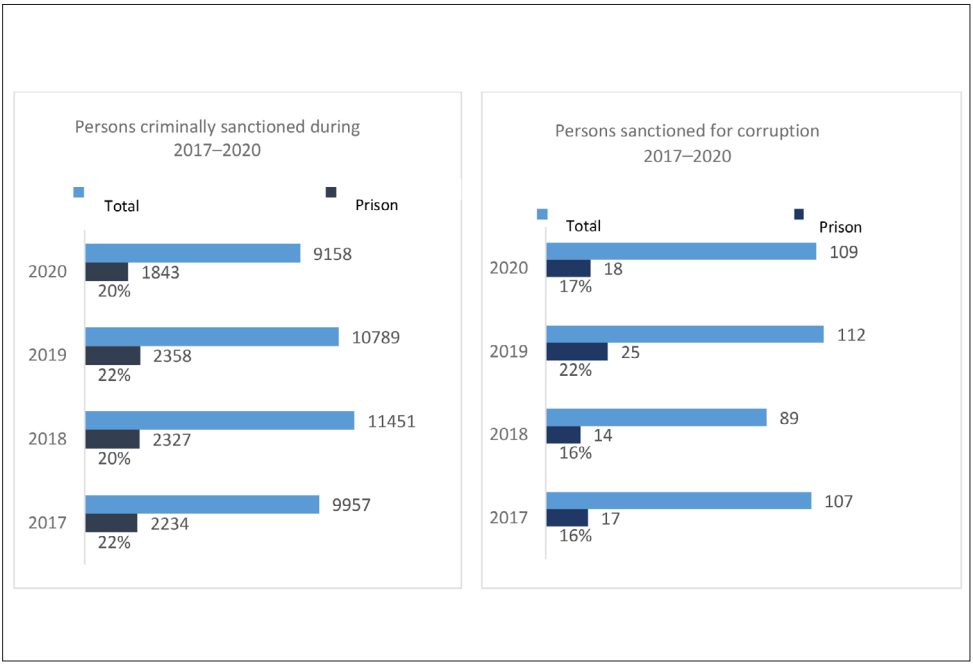



In these cases, most of the time, the courts applied, primarily, unpaid work for the benefit of the community, imprisonment with conditional suspension, followed by imprisonment with real execution and fines.




Real-time imprisonment, as in the case of sanctions for corruption, was applied on average in only 21% of cases (two out of ten people).

[27] Report on the activity of the Prosecutor's Office for the years 2020 and 2017, p. 83 and p. 80. Available online at: http://procuratura.md/md/d2004/.




The above data confirms, *inter alia*, that despite statements of intolerance to corruption, in practice judges do not apply harsher sanctions for corruption. On the contrary, the sentence of imprisonment with execution is less frequently applied than the average of all cases.

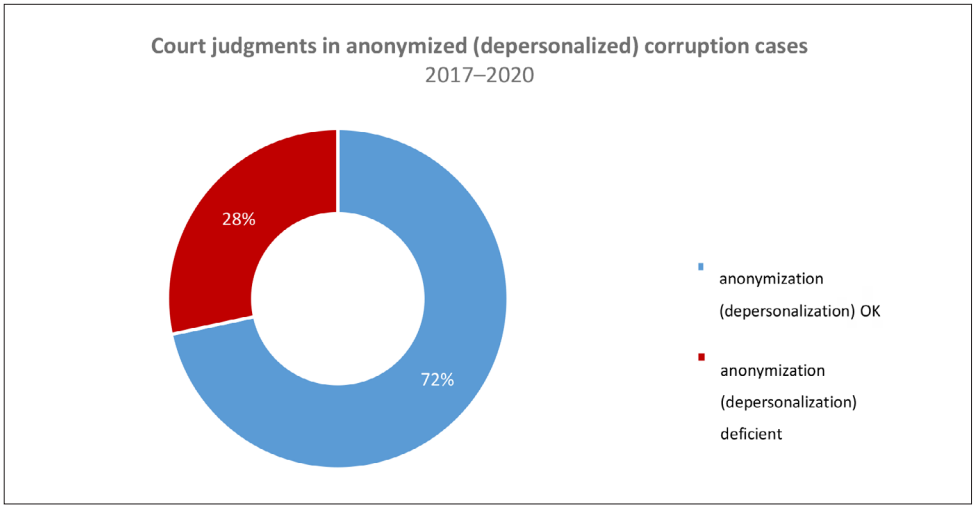
The average value of the imprisonment term applied in corruption cases is 2.3 years. The shortest term of imprisonment was 0.4 years in a corruption case, and the longest was 16 years.

The application of complementary sanctions for acts of corruption (fine and interdiction) was ordered in only 31 cases (compared to 44 persons or 13%). Imprisonment along with the additional fine was applied in 61 cases (compared to 77 persons or 22%). The fine as the only sanction for a corruption offense was applied in 60 cases (compared to 64 persons or 19%). The average amount of fines was MDL 29,870, while the highest fine was MDL 290,000 and the lowest was MDL 3,000. In the case of prohibitions, the average term was 1.4 years, while the shortest term applied was one year and the longest was 10 years. The 10-year prohibition was applied in the case of a former bailiff.

Given the situation of poor detention conditions in the Republic of Moldova, the fact that only 18% of persons end up serving real sentences exempts the state from future convictions at the European Court of Human Rights (ECtHR). However, this may even encourage the phenomenon of corruption, since the "benefits" of an act of corruption are not maintained by a dissuasive sanction, as eight out of ten persons convicted of corruption would not spend a day in prison. However, it is debatable to what extent this is due to the deficient legal framework or its application in practice.

## l) Anonymization (depersonalization) of corruption court judgements

Although not subject of this investigation, the LRCM team also checked whether the text of the judgment contained defective anonymization (depersonalization) elements, following the rules provided by the SCM Regulation on the publication of judgments on the national courts' portal and on the website of the Supreme Court of Justice. According to this Regulation, in respect of criminal cases, to protect the interests of morality, minors or the privacy of the parties to the trial, the names of the perpetrators, instigators or accomplices will not be anonymized in any case. At the same time, the information about the court or the court panel, the clerk, the prosecutor, the ascertaining agent, the mediator, the bailiff, the notary and the lawyer, or the name of the legal entity will not be anonymized/ hidden in any case.




The results of the research show that anonymization (depersonalization) was performed incorrectly in about 28% of all court judgements, while in 72% these norms have been observed.

In most cases, information on the address, date and place of birth or registration number of the car was not excluded from the text of a judgment. In other cases, judges abusively depersonalize the names of the defendants, certain important details of the judgment, including the value amount of bribes offered.

Defective and inconsistent application of the provisions of the Regulation on the publication of judgments remains a problematic issue[28]. This threatens the effective protection of the personal data of individuals appearing in court, in particular in the case of the publication of sensitive or personal data or information concerning their private life. At

[28] LRCM, "Transparency of the Judiciary versus Data Protection" – An Analysis on the Publication of Court Decisions in the Republic of Moldova" (2020) https://crjm.org/wp-content/uploads/2020/01/Transpar-just-vs-date-pers-En.pdf

the same time, the inconsistent depersonalization of only part of the judgment makes the whole depersonalization exercise useless. This affects the achievement of the principle of fair trial and may adversely affect the perception of the professionalism of the judiciary. In the long run, the abusive depersonalization of the name and the concealment of other data of public interest in court judgements will further erode trust in the judiciary.

To coherently apply the provisions on the depersonalization of court judgements, the SCM should develop the SCM should develop a guide for judicial assistants and judges on how and when the provisions of the SCM Regulation are applicable.

# Conclusions

- **Serving justice in corruption cases takes time. Corruption cases are examined four times slower than other types of cases on average.** While this is not necessarily a bad thing, there are serious concerns that acts of corruption are being sanctioned only after 15 years and the perpetrators are no longer able to serve their sentences due to the statute of limitations or other reasons, including natural ones, such as the death of the person.
- **Petty corruption is investigated rather than high-level corruption.** The vast majority of analysed corruption cases (over 93%) refer to facts that can be considered as "petty corruption". This may mean that high-level corruption cases involve a high degree of complexity. Another simpler explanation could be the lack of willingness or fearing retaliation if the perpetrators of the crimes are people with high positions and influential connections.
- **Police, individuals, local councillors, mayors, lawyers, accountants and customs inspectors are most often investigated for corruption. There could be others.** Many acts of corruption fail to be sanctioned in courts, either because they are not reported or because the offenders (especially those caught red-handed) opt for simplified procedures – the entering plea agreements in exchange for a milder sentence.
- **A sentence in corruption cases does not automatically mean conviction, it means "try again".** The conviction rate in the District Courts is 57%, and the acquittals about 37%. The acquittal rate in corruption cases is 12 times higher than the average acquittal rate in the country (3%). In less than 6%, the courts discontinue the criminal proceedings. Every second sentence of acquittal or conviction is quashed in the Court of Appeal, and the nature of the solution before the District Courts remains unchanged in 52% of cases. In 24%, the solution of the Court of Appeal court is harsher, and in 24%, milder. Every second decision of the Court of Appeal (49%) challenged in the SCJ is overturned. Every third SCJ decision in corruption cases provides for a retrial of the case (38%). In only 2% of the cases examined, the SCJ issues a harsher sanction than the Court of Appeal, while in 10% the sentence will be milder, of which 4% are acquittals.
- **Every second case of corruption is examined either too fast or too slow.** According to research data, about 52% of all analysed cases are either examined too fast or too slow. The average rate of 3.5 years in which a corruption case is being examined can hardly be considered acceptable, but the examination of corruption cases for more than eight years is clearly excessive and can lead to the expiry of the term for holding a person criminally liable. At the same time, examining a corruption case in all three levels of jurisdiction in less than 12 months seems problematic. Although judges and prosecutors

often claim that it takes too long to examine cases in courts, official figures counter this claim. According to data from 2020, Moldovan courts have examined all categories of cases, in the District Court, appeal and appeal on points of law in just 324 days, which is 39% faster than the average of the Council of Europe (529).[29] These figures confirm that the speed of the courts' examination of the corruption cases analysed in the study was four times slower than the national average and 2.4 times slower than the Council of Europe average. The speed of examining cases has a price – low quality of court judgements. This hastiness may also explain why cases are frequently referred for retrial.

- **Before it becomes final, every second case of corruption goes to trial at least once. Retrial increases the chances of acquittal.** In the decision to refer the case for retrial, the SCJ most often invokes the insufficient assessment of the evidence by the hierarchically inferior courts. The large number of referral judgements could be an indicator of shortcomings in the activity of the Courts of Appeal. In at least 12% of the cases (50 cases out of the 416 analysed) the cases are referred for retrial twice or more times. These shortcomings can be explained, to some extent, by the high workload of the Courts of Appeal, or the practice established by the SCJ, but which is not followed by the other courts.
- **Eight out of ten persons convicted for corruption do not spend a single day in prison.** Despite statements of intolerance to corruption, in practice judges do not apply harsher sanctions for corruption. On the contrary, the sentence of imprisonment with execution is less frequent than the average of all cases. In only 18% of the cases, judges order imprisonment. The results do not differ substantially from the general practice of the application of sanctions in all criminal cases during the reporting period, where in 21% of cases the application of the sanction of imprisonment with execution was ordered. This means that in practice, judges do not impose harsher sanctions for corruption. The average value of the imprisonment period applied is 2.3 years. The shortest term of imprisonment was 0.4 years, and the longest was 16 years.
- **Two out of ten persons convicted for corruption are merely fined**. The fine as the only sanction for a corruption offense was applied in 19% of final cases. The average value of the applied fines is MDL 29,870. The highest fine was MDL 290,000 and the lowest was MDL 3,000.
- **Two out of ten persons convicted for corruption also receive bans**: In 27% of cases, judges have applied restrictions to perform a certain function for persons convicted of corruption. The average term of a ban was 1.4 years, the shortest term was one year and the longest was 10 years. This was applied in the case of a former bailiff.
- **In three out of ten cases, judges abusively depersonalize the names of defendants and other important data, including the value of the bribe**

[29] LRCM „Moldovan Justice in Figures – a Comparative Perspective" (2021), page. 23, available online: https://crjm.org/wp-content/uploads/2021/10/Justitia-din-Republica-Moldova-in-cifre-%E2%80%93-o-privire-comparativa_2021-ENG.pdf

# Recommendations

- **The study does NOT recommend harshening sanctions for acts of corruption,** since it is debatable to what extent the lack of dissuasive sanctions is due to the deficient legal framework, or to the application of this legal framework in practice. On the other hand, it is debatable whether petty corruption can lead to disproportionately large sanctions. Numerous legislative interventions and of legislative interpretation of corruption acts, while demonstrating an increased interest from both the legislature and the justice system towards a predictable legislation and uniform enforcement practice, are not necessarily transposed into dissuasive sanctions for acts of corruption. At the same time, changing the legal framework too often can exacerbate an uneven practice of enforcing it.
- **Allocating sufficient resources to fight high-level corruption, specialization and limiting the powers of the Anti-Corruption Prosecutor's Office to investigate the cases of high-level corruption.** Although it cannot be neglected, the fight against petty corruption is not enough to eliminate corruption in a country affected by endemic corruption and therefore cannot decisively influence this phenomenon. The endemic level of corruption in the Republic of Moldova cannot be significantly reduced without prioritizing the fight against high-level corruption.
- **Amending the legislative framework (i) (Criminal Procedure Code)**:
  - **The possibility of extending the term of criminal prosecution or suspension of the limitation period in the case of corruption offences once the case is sent to court.** Repeated referral of cases for retrial automatically increases the chances of limitation period. Thus, regardless of the quality of evidence and the effort of the persons who investigated a corruption case, they become useless if meanwhile the examination of the cases takes an unreasonably long time.
  - **Excluding the possibility of repeated referral of the case for retrial.** Referring the case for retrial automatically increases the chances that the limitation period intervenes. Every second case examined in respects of persons investigated for corruption, before it becomes irrevocable, was retried at least once, and 12% of all analysed cases were retried several times.
- **Strengthening efforts for standardization of the case law**. Analysed as a whole, the results of the research highlight the presence of a non-uniform practice at the Courts of Appeal and/or District Courts. We have a high number of District Court sentences that are overturned (55%), and in 48% of cases, the judgements of the Court of Appeal judges are different. In this context, generalization of judicial practice, including at the

Courts of Appeal, is urgently needed. The Supreme Court of Justice plays a key role in this effort. These efforts do not necessarily require legislative intervention, but rather the introduction for the SCJ and lower courts of a formal mechanism for strengthening the case law[30], including by: organizing regular meetings with all judges from one court, codifying the practice of the SCJ, drafting and implementing guidelines on the individualisation of criminal sanctions and an SCJ advisory board composed of members with diverse experience, including from outside the judiciary.

- **Strengthening efforts to reason judgments** – the high rate of retrials can also mean insufficiently well-reasoned judgements by the courts of appeal and the District courts. The analysis of the texts of the cases where District Courts decided to acquit the convicts, most of the times, shows that they were limited to the finding of the court stating that the crime was not to be found. The judgments of the SCJ do not include the essence of the arguments of the District Court, only the brief description (reproduction) of the indictment and subsequently the arguments of the prosecutor invoked against the acquittal sentence, in the Court of Appeal. Recommendations for strengthening decision-making efforts can be found in another LRCM study[31].
- **Drafting guidelines for the correct anonymization (depersonalization) of court judgements**. In order to coherently apply the provisions on the depersonalization of court judgements, it is appropriate for the SCM to develop guidelines for judicial assistants and judges on how and when the provisions of the SCM Regulation are applicable.

[30] Other similar recommendations can be found in another LCRM study "FROM COURT JUDGMENTS TO JUSTICE: How do we ensure better reasoning of court judgments in the Republic of Moldova?" (2021), available online: https://crjm.org/wp-content/uploads/2021/11/2021-22-10-De-la-hotarari-judecatoresti-la-justitie_2021-RO_FINAL.pdf.

[31] Ibidem, section with recommendations.

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