



“Monitoring the Justice Sector Reform for Increased Government Accountability”

**Quarterly Monitoring  
Report No. 2  
on the Implementation of the  
Justice Sector Reform Strategy**

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## ABBREVIATIONS

<b>CAPC</b>	Center for the Analysis and Prevention of Corruption
<b>CEPEJ</b>	European Commission for the Efficiency of Justice
<b>CHRM</b>	Center for Human Rights in Moldova
<b>CPC</b>	Civil Procedure Code
<b>CPO</b>	Central Probation Office
<b>CPP</b>	Criminal Procedure Code
<b>DGL</b>	Directorate General for Legislation
<b>DP</b>	Department of Penitentiary Institutions
<b>ECtHR</b>	European Court for Human Rights
<b>ICMP</b>	Integrated Case Management Program
<b>JSRS</b>	Justice Sector Reform Strategy
<b>LRCM</b>	Legal Resources Center of Moldova
<b>MOF</b>	Ministry of Finance
<b>MLSPF</b>	Ministry of Labor, Social Protection and Family
<b>MOI</b>	Ministry of Internal Affairs
<b>MOJ</b>	Ministry of Justice
<b>MRDC</b>	Ministry of Regional Development and Construction
<b>NAC</b>	National Anti-Corruption Center
<b>NCJE</b>	National Center of Judiciary Expertise
<b>NCSGLA</b>	National House for State-Guaranteed Legal Aid
<b>NIJ</b>	National Institute of Justice
<b>NUCEO</b>	National Union of Court Enforcement Officers
<b>PGO</b>	Prosecutor General's Office
<b>ROLISP</b>	USAID Rule of Law Institutional Strengthening Program
<b>SCJ</b>	Supreme Court of Justice
<b>SCM</b>	Superior Council of Magistrates
<b>SCP</b>	Senior Council of Prosecutors
<b>SIS</b>	Information and Security Service
<b>WG</b>	Working Group

## INTRODUCTION

This Report was prepared within the project “Monitoring the Justice Sector Reform for Increased Government Accountability”, implemented by the Promo-LEX Association and the Association for an Efficient and Responsible Governance (AGER), with the financial support of the European Union.

The monitoring focused on the observation of two main components: assessing the implementation of activities contained in the Action Plan for Justice Sector Reform Strategy implementation, and trial monitoring.

The monitoring mission employs 36 national monitors, whose work is coordinated by a Network Coordinator, and three national experts that form the Analytical Team. The monitors within the network attend trial hearings in precinct and district courts, in the courts of appeal and the Supreme Court, and in specialized courts. Overall, 1872 trials will be monitored throughout the project. The monitors produce quarterly reports on the progress registered in implementing the activities listed in the Action Plan, verified in the field.

**Methodology.** *The Methodological Guidebook for Monitoring the Implementation of the Justice Sector Reform Strategy in Moldova* provides a mechanism for monitoring the activities contained in the Action Plan, including interviewing relevant subjects/institutions to determine the outcome of these actions (conducted studies, developed bills, approved methodologies, etc.). The findings herein were formulated based on the responses to the questions in the Quarterly Report. In each district center, monitors interviewed lawyers, enforcement officers, notaries, mediators and representatives of regional offices of the National House for State-Guaranteed Legal Aid to determine whether these subjects were aware of particular actions, and in what capacity; whether or not they were involved in the implementation of these actions, and their opinion on the respective actions. At the same time, in order to effectively assess the implementation of each activity, interviews were conducted with representatives of all institutions responsible for their implementation, but also with beneficiary organizations.

Two categories of actions/activities were analyzed for the purpose of this report, as follows:

- Actions due for completion in the second Quarter of 2013.
- Overdue actions (which were to be completed in 2012 and in Q1, 2013).

Moreover, in order to be tracked more easily, actions were grouped into the following seven categories:

**Group I.** Studies and needs assessments examining current practices; proposing recommendations for reform;

**Group II.** Development of methodological recommendations and training curricula;

**Group III.** Improving the legal framework and drafting bills and regulations;

**Group IV.** Professional training activities for various judicial actors;

**Group V.** Development and use of awareness and information tools;

**Group VI.** Procurement and installation of equipment; program modernization/software upgrade;

**Group VII.** Creating and increasing the efficiency of judicial bodies (committees, colleges, etc.)

The Promo-LEX Association and the Association for an Efficient and Responsible Governance (AGER) sincerely thank all the parties that devoted time and attention to the monitors and answered their questions thus contributing to the development of this Report.

## EXECUTIVE SUMMARY

The results of the Second Quarterly Monitoring Report for the Implementation of the JSRS allow us to draw some significant conclusions.

The observers found a largely positive dynamic when it comes to the trial monitoring component. We can assume that the very presence of observers at hearings accounts for the improved behavior of the parties in the trial and court staff.

To get a more accurate picture of the participants' assessment of the trial, their answers were presented separately by three categories of respondents: lawyers, prosecutors and court users involved in court proceedings as plaintiffs, respondents, defendants, witnesses, etc. We noted that the last category of interviewees had a lower satisfaction rate than the other two categories. We found that the beneficiaries' satisfaction was lower than that of lawyers and prosecutors in particular with reference to access to legal information, court facilities, and indicators outside and inside the courts.

The answers regarding the quality of the judiciary follow the same dynamics. However, in comparison with the report for the previous quarter, the number of meetings held in the courtrooms increased significantly in the second quarter, when 220 of the 300 monitored hearings were held in courtrooms compared with 77 of 300 in the previous quarter. At the same time, the number of hearings that were audio recorded by the court increased by 20% compared to the Quarter 1 of 2013.

As for the quality of legal counsel by lawyers, the number of meetings in which the monitors held that lawyers did not act independently and effectively decreased compared with Quarter 1.

On the other hand, one cannot speak of significant progress in implementing the actions outlined under the Action Plan for JSRS implementation. Thus, of the total 101 actions overdue since 2012 and Quarter 1 of 2013, only 44, or 43%, were implemented. The situation is worse when it comes to actions due in Quarter 2 of 2013. Only 6 of 31 actions were carried out, which represents 19%. One should bear in mind though that the government faced a major political crisis, which delayed certain processes, including the signing of an agreement on the delivery of EU budgetary support to the justice sector.

One should consider however that a large number of overdue actions do not require special financial resources. Often the obstacle in the implementation of certain actions lies in the limited capacity of the responsible institutions to develop studies or write analytical reports. Nonetheless many development partners stand ready to help implement certain actions, and many of the actions provided were completed with foreign assistance. At the same time, the local consulting market is not sufficiently diversified to be able to undergo a large number of such actions, which is why, in some cases, repeat competitions for consultants were announced, sometimes without any results.

The EU project "Support to the Coordination of the Justice Reform in Moldova" was officially launched in the summer of this year. One of the first activities of the project will be to analyze the capacity of the institutions responsible for implementing JSRS actions. Thus we hope that the problem stated above, namely the need for capacity building for the respective institutions, will be tackled accordingly.

This project will support the MOJ by strengthening the coordination mechanisms for the implementation of the reform. It is a very welcome measure, given that the current formula is not sufficiently effective. During Quarter 2 of 2013, several of the WG' meetings were postponed for lack of quorum, and only four of the seven groups were able to adopt their Work Plans for 2013.

As for the transparency of the Secretariat and WG, we state the same shortcomings as in the previous report, and namely: the non-publication or late publication of agendas and minutes of WGs, and the failure to publish the products developed as part of implementing the Strategy (except for the websites of organizations that carried out the respective studies). At the same time, only a few actors responsible for implementing actions provided in the Action Plan made public their products and other information related to judicial reform.

With regard to planning the implementation actions, it is generally recommended to revisit the implemented and outstanding actions, not only those from the preceding period, but all of them, from the start of the JSRS implementation, in order to identify actions that are no longer relevant as well as actions whose implementation met significant difficulties. Given the ever-rising number of overdue actions, a prioritization of actions would also be advisable.

The MOJ is the primary responsible institution for implementing the highest number of actions outlined in the Action Plan. We analyzed the action implementation rate per responsible institutions. The results of our analysis for 2012 and the first two quarters of 2013 are as follows: the NCSGLA, SCM and PGO were able to implement less than half of the actions planned, with an implementation rate of 40%, 42% and 50%. The MOJ, NAC and NIJ achieved a better rate of about 60% of the total actions.

According to our observations, of the 196 actions to be carried out as part of the JSRS, 116 were completed, representing about 59% of the total. Although this figure is not very low, given the complexity of the reform and the number of institutions involved, it would be advisable that the rate of implementation be at least  $\frac{3}{4}$ , in order not to slow down the pace of reform and not to create obstacles to the disbursement of funds for budget support. For details see Table 1 on the implementation of actions per pillar and Chart 1 on the total number of actions, implemented and not implemented.

## Chapter I

# ASSESSMENT OF IMPLEMENTATION OF ACTIONS UNDER PILLAR I

**Institutional capacity.** During the second Quarter of 2013, the WG for monitoring the implementation of Pillar I of the Strategy met in two sessions at 15 April and 26 July; another meeting, scheduled for 14 June, was not held due to a lack of quorum. The WG mainly discussed the activities in progress. It did not approve a Work Plan of activities for 2013. Agendas and minutes of meetings continued to be published with delay. It should be noted, however, that those responsible made an effort to ensure greater presence of members with the right to vote at meetings to avoid postponements by confirming their attendance a day before the scheduled meetings.

## I. ACTIONS DUE BY: QUARTER 2 OF 2013

### Group I. Studies and needs assessments examining current practices; proposing recommendations for reform.

Specific area of intervention: 1.1.12. Institutional capacity building for courts, including by considering the possibility of placing all Chisinau courts into one premise, and building renovating courts across the country

**Action 1.1.12 section 3.** *Establish criteria for designating funds for the maintenance and renovation of court premises*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, MOF, MDRC
- Performance indicator: Criteria for designating funds for the maintenance and renovation of court premises established and approved
- **Assessment: action not implemented**

An Assessment Report on courts conducted in 2012 with the support of ROLISP contains a large amount of important data, including grouping courts into four categories according to the status of their infrastructure. At the same time, however, indicating these categories and estimate investment needs for each instance are not the same as “designating funds for the maintenance and renovation of court premises”.

### Group II. Developing methodological recommendations and professional training programs.

Specific area of intervention: 1.3.1. Reforming the NIJ and making its operations more efficient

**Action 1.3.1 section 8.** *Establish objective criteria for determining the funds needed for initial and continuous training (NIJ)*

- Deadline: Quarter 2, 2013
- Responsible for implementation: NIJ

- Performance indicator: 1. Criteria established; 2. NIJ budget revisited consistent with its real needs
- **Assessment: action not implemented**

This action has not been implemented. According to NIJ information, a competition was announced to hire a specialist to finalize this action.<sup>1</sup>

Specific area of intervention: 1.3.2. Revising the syllabuses of the National Institute of Justice to ensure their correspondence with the real training needs of judges, prosecutors and other actors of the judiciary sector and avoid overlapping with university curricula

**Action 1.3.2 section 1.** *Create a system that would allow complete and timely estimation of training needs of the representatives of the judiciary sector (Methodology of determining training needs developed and approved)*

- Deadline: Quarter 2, 2013
- Responsible for implementation: NIJ
- Performance indicator: Methodology of determining training needs developed and approved
- **Assessment: action not implemented**

With regard to this action we find that most of the actors involved, including the NIJ and recipients of the training, did not fully understand the meaning of the concept “system for determining training needs”. A “top-down” approach is currently used to identify training needs, which means that NIJ proposes a list of topics for training, and the beneficiaries select relevant subjects from that list. Best international practices in this regard, however, suggest that this process should be a “bottom up” one. Thus, each institution or group/category of beneficiaries should formulate a training plan based on the presentation by members of their individual training needs. This plan shall then be presented to the institution providing training services (in this case, the NIJ), which must be flexible enough to cover the required topics or, failing that, to hire another service provider for certain segments of the training.

In this context, both the NIJ and representatives of beneficiary institutions perceive this exercise as a completed one, reporting the action as implemented.

### Group III. Improving the legal framework; developing draft laws and bylaws.

Specific area of intervention: 1.1.4. Introduce an adequate, consistent and sustainable funding mechanism for the judicial system, by increasing funding and unifying the budgeting process for the judiciary

**Action 1.1.4 section 2.** *Draft amendments to Law no.514-XIII of 6 July 1995 on Judicial organization as well as other relevant laws and bylaws*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, SCM, SCJ, courts
- Performance indicator: 1. Bill developed and sent to the Government; 2. Draft amendments to the regulatory framework developed
- **Assessment: action not implemented**

<sup>1</sup> <http://inj.md/> (08.08.2013)

In 2012, amendments were made to Law no. 514-XIII of 6 July 1995, but they did not target the funding of the judiciary and unification of its budgeting process.

These amendments were to occur following the development of a study of the recent years' practice of financing the judiciary compared to the international practice in the field (action 1.1.4 section 1). The Report on the implementation of the Action Plan in 2012 qualified action 1.1.4 section 1 as implemented via the conduct of a study on the evaluation of Moldovan courts, conducted with the support of ROLISP. However, although the study included a detailed assessment of each court in the country and analyzed the practice of financing the system, it does not constitute sufficient analysis specifically focused on these aspects so as to make a strong argument for the amendment of the legislative framework. Such a study should propose an optimal formula of funding of the judiciary (taking into account the international practice), and provide policy options in this regard, with a detailed analysis of the impact and cost estimates in each case.

Specific area of intervention: 1.2.5. Increased efficiency of the Procedural Law, by revising the appeals system and the horizontal distribution of competences between courts, as well as the simplification and clarification of the appeals system

**Action 1.2.5 section 3.** *Develop a regulatory framework to revisit the composition of the SCJ*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, SCM, SCJ
- Performance indicator: Bills drafted and sent to the Government
- **Assessment: action implemented**

The action was implemented by the passing of Law 153 of 5 February 2012.

Specific area of intervention: 1.3.1. Reforming the National Institute of Justice (NIJ) and making its operations more efficient

**Action 1.3.1 section 3.** *Develop amendments to the internal NIJ regulations in line with amendments to the legislation*

- Deadline: Quarter 2, 2013
- Responsible for implementation: NIJ
- Performance indicator: Internal regulations amended
- **Assessment: action implemented**

Internal regulations of the NIJ were not amended to adjust them to Law no. 153 of 5 July 2012.

Specific area of intervention: 1.3.3. Ensure the specialization of judges for specific cases and consider the possibility of creating administrative courts

**Action 1.3.3 section 2.** *Develop and approve draft regulations for the specialization of judges on specific cases*

- Deadline: Quarter 2, 2013
- Responsible for implementation: SCM
- Performance indicator: SCM regulations developed and approved
- **Assessment: action not implemented**

The implementation of this action depends on the completion of the action 1.3.3. section 1, *Conduct a study and make recommendations on the need for specialization of judges*. The latter was to be completed by the end of 2012, but at the time of this report, it was not completed. Although we state a delay in the implementation of these actions, however, a positive aspect is that the relevant actors do not rush to adopt the regulatory framework before they have a well-documented study.

#### Group IV. Professional training activities for various subjects of the justice sector.

Specific area of intervention: 1.2.6. Revise the procedures regulating the work of instruction judges, as needed to include these judges into the common judicial body and make them specialized judges

**Action 1.2.6 section 3.** *Organize continuous training courses for assessed instruction judges*

- Deadline: Quarter 2, 2013
- Responsible for implementation: SCM, NIJ
- Performance indicators: 1. Study plan developed; 2. Number of conducted courses; 3. Number of trained judges
- **Assessment: action not implemented**

According to interviews conducted with representatives of the NIJ, at the moment, documents are received for training instruction judges who want to examine and common law causes. It is expected that the training will be held in September – December 2013.

We should also mention that, although the training will take place, it cannot be interpreted in the narrow sense of the title of the action, namely “*organizing continuous training courses for assessed instruction judges*”. We noted in the previous report that the authorities have decided not to conduct a separate assessment of instruction judges, who are evaluated as needed and alongside other judges.

#### Group VI. Procurement and installation of equipment; software upgrades.

Specific area of intervention: 1.1.12. Institutional capacity building for courts, including by considering the possibility of placing all Chisinau courts into one premise, and building /renovating courts across the country

**Action 1.1.12 section 2.** *Update the database of court premises to include information about their surface, year of commission, an objective assessment of its current condition and budgetary allocations for capital renovations in the last 5 years*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, MOF
- Performance indicator: Database updated
- **Assessment: action implemented**

Information was provided via the Court Assessment Report conducted with support from the ROLISP program in 2012.

## II. OVERDUE ACTIONS (since 2012 and Quarter 1 of 2013)

### Group I. Studies and needs assessments examining current practices. Proposing recommendations for reform.

Specific area of intervention: 1.1.1. Optimize the map of courts location, with the purpose to strengthen the institutional capacities of courts and correlate the number of judges, and ensure the most efficient use of available resources

**Action 1.1.1 section 1.** *Conduct an opportunity study on the optimization of the map of courts location with the purpose to strengthen the institutional capacities of courts and correlate the number of judges, and ensure the most efficient use of available resources*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, SCM
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

The action was not finalized at the date of completion of the present report. In the previous report, we presented information on the fact that the action was in progress and the LRCM was to present the study in May 2013.

Specific area of intervention: 1.1.2. Ensure access to justice in terms of costs

**Action 1.1.2 section 1.** *Conduct a study of the regulatory framework that regulates the amounts and procedures of calculating court fees as well as of the practices of their application*

- Deadline: Quarter 2, 2012
- Responsible for implementation: MOJ, SCM
- Performance indicator: Study developed and recommendations formulated
- **Assessment: action not implemented**

The study was not developed at the date of this report. The report on the implementation of the Strategy for 2012 suggested involving the SCJ and creating a working group with the participation of the Department of Judicial Administration, SCM and SCJ as a remedy for this problem. Unfortunately, the analysis of the implementation of actions providing for “conducting studies” shows that the overwhelming majority of these actions are done with the assistance of experts. It would have been more effective if, for this action, the WG were to be assisted by an expert, which, apart from carrying out the action itself, could contribute to enhancing the capacity of institutions to write analytical documents.

We note, in this context, that the SCJ approved Recommendation no. 39 of 24 April 2013 *Regarding the procedure of collecting judicial fees for the completion of a civil action as part of a criminal case*<sup>2</sup>; Recommendation no. 23 of 1 November 2012 *Regarding certain aspects of collecting fees for legal aid* based on the study and systematization of judicial practice.<sup>3</sup>

Specific area of intervention: 1.1.9. Strengthen the self-administration capacities of the judiciary, by revising the role, membership and competencies of the SCM and its subordinated institutions

<sup>2</sup> [http://jurisprudenta.csj.md/db\\_rec\\_csj.php](http://jurisprudenta.csj.md/db_rec_csj.php) (11.08.2013)

<sup>3</sup> [http://jurisprudenta.csj.md/search\\_rec\\_csj.php?id=40](http://jurisprudenta.csj.md/search_rec_csj.php?id=40) (11.08.2013)

**Action 1.1.9 section 2.** *Conduct a study on the SCM operation focused on the legal framework and its practical activities*

- Deadline: Quarter I, 2013
- Responsible for implementation: MOJ, SCM
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action implemented**

The study was developed by the LRCM and published at the end of April 2013. It presents a series of important findings referring to the functioning of the SCM, particularly its transparency, and provides useful recommendations for improving their functioning of this important institution. The study is available online: [http://crjm.org/app/webroot/uploaded/Raport\\_Transparenta\\_si\\_eficienta\\_CSCM\\_2010\\_2012.pdf](http://crjm.org/app/webroot/uploaded/Raport_Transparenta_si_eficienta_CSCM_2010_2012.pdf)

Specific area of intervention: 1.1.12. Institutional capacity building for courts, including by considering the possibility of placing all Chisinau courts into one premise, and building /renovating courts across the country

**Action 1.1.12 section 1** *Conduct a feasibility study taking into consideration the previous studies conducted in this field*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ
- Performance indicator: Study developed and recommendations formulated
- **Assessment: action not implemented**

The JSRS Implementation Report for 2012 states that the preparation of this study requires conducting studies on the financing and of courts and courts map optimization, which have not yet been developed. At the same time, there are discussions about the need to contract the services of experts to conduct the named study given the complexity of the issue. It would be appropriate to adjust the deadline for the implementation of this action, as it is clearly delayed.

Specific area of intervention: 1.2.4. Create a mechanism ensuring the implementation of a unified judicial practice that will provide security for legal relations

**Action 1.2.4 section 3.** *Conduct a study on the opportunity of creating a single information portal of all the courts in order to optimize the functioning of their websites*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, SCM, Center for Electronic Governance
- Performance indicator: Study developed and recommendations formulated
- **Assessment: action not implemented**

The action was not completed at the time of this report. However, the 2012 Annual Report on JSRS implementation provided that the “action was not implemented” without offering explanations or making recommendations to remedy the situation. MOJ representatives said at a meeting of the Monitoring Group that such a unified portal exists, although it does not have all the needed aspects of interoperability, and that a more advanced version of the portal is underway.

If certain actions under the Action Plan are deemed no longer feasible or required, it is recommended that the Action Plan be reviewed, possibly on an annual basis, to avoid reporting and

monitoring obsolete activities. Or, if the above is not the case of this particular action, the annual Progress Report could provide further explanation of the failure to implement it.

Specific area of intervention: 1.3.3. Ensure the specialization of judges for specific cases and consider the possibility of creating administrative courts

**Action 1.3.3 section 1.** *Conduct a study and formulate recommendations on the need for specialized judges on specific cases*

- Deadline: Quarter 4, 2012
- Responsible for implementation: SCM, MOJ
- Performance indicator: Study conducted, recommendations formulated
- **Assessment: action not implemented**

At the time of this report, this study has not been completed and/or published. The LRCM, which was commissioned to carry out the study with the financial assistance of the U.S. Embassy in Chisinau, is expected to present the study in September. Also, note that the action was described as “partially completed” in the 2012 Annual Report 2012, although the report does not provide information about contracted experts to conduct the study (which were probably not commissioned at the time). General language such as “study the European practice (...)” resulting in “partially completed” actions raises suspicions of a superficial approach.

Survey results showed that most judges (33 of 39) were aware of the fact that such a study was underway, and 19 of 39 reported that they were in some way involved in the design of the respective study. Most judges interviewed supported the idea of specialization, mostly in courts of appeal and the SCJ, or in courts with a higher number of judges; in their opinion, this would not work well in lower courts of law, for instance, in district courts.

**Action 1.3.3 section 5.** *Conduct a study on the possibility of creating administrative courts*

- Deadline: Quarter 3, 2012
- Responsible for implementation: SCM, MOJ
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

Although the Action Plan provides for two separate accounts on actions 1.3.3 section 1 and 1.3.3 section 5, they could be treated as a single action with a single product: a study to assess the need for specialization of judges, including the creation of administrative courts. If this is not provided in the specifications submitted to the LRCM, the institution responsible for carrying out the first action, then it should be treated as a separate one. During the preparation of this report, such a study has not been presented.

## **Group II. Developing methodological recommendations and professional training programs.**

Specific area of intervention: 1.2.3. Revise procedural rules, as necessary to streamline and enhance the transparency and efficiency of the judicial process

**Action 1.2.3 section 5.** *Develop a training plan for judges on the administration of cases and the rules for postponing court hearings*

- Deadline: Quarter 4, 2012
- Responsible for implementation: SCM, NIJ
- Performance indicator: Training plan developed
- **Assessment: action not implemented**

It is difficult to determine the current stage of implementation of this action. The 2012 Annual Report on the JSRS implementation assesses the action as completed, although the section for “measures taken” mentions about studying the relevant European practice, and notes that a training plan could be developed only after analyzing the data on the number of postponed cases for each court and judge. Moreover, the “challenges” section notes a “lack of relevant legislation” without specifying what particular laws it refers to. On the other hand, a majority of surveyed judges (32 of 39) knew about the development of such a plan, and 23 of 37 judges had participated in its development.

No information on the development of such a training plan was found on the NIJ website.

Specific area of intervention: 1.2.6. Revise the procedures regulating the work of instruction judges, as needed to include these judges into the common judicial body and make them specialized judges

**Action 1.2.6 section 1.** *Develop a new concept of continuous training of judges, prosecutors and other representatives of the justice sector*

- Deadline: Quarter 2, 2012
- Responsible for implementation: NIJ, SCM, SCP, PGO, Lawyers’ Union, NUCEO, Mediation Council, MOJ
- Performance indicator: 1. Concept developed; 2. Number of personnel needed of the implementation of the concept established
- **Assessment: action not implemented**

In order to implement this action, the ROLISP program was invited to support it and hire the LRCM to develop the concept (to be presented in August 2013). A working group was created for the implementation of this action, composed of representatives of the responsible institutions mentioned above. The results of the ground survey confirmed that the courts’ staff and the prosecutors knew about the development of this concept and had been involved in this process. Thus, of the 40 judges interviewed, 36 reported that they were aware of the development of this concept, and the same numbers apply to prosecutors, 29 of the 40 judges (same number for prosecutors) said that they were in some way involved in developing the new concept.

On 18 July, the National Institute of Justice held a roundtable on the *draft concept of continuous training of justice sector professionals*. The agenda of the event included the presentation of the draft concept, the analysis of the risk and opportunities of its application and interventions from participants. Some opinions came in support of the concept, while others initiated interesting discussions.<sup>4</sup>

The concept is acknowledged as necessary in the context of the judiciary reform in Moldova, and is provided for in the Justice Sector Reform Strategy for 2011-2016 (Law no. 231 of 25 November 2011), which envisages increased professionalism and accountability of those involved in making justice, including by revising the system and methods of continuous training of jus-

4 [http://webcache.googleusercontent.com/search?q=cache:iKp\\_0wgcPtkJ:www.inj.md/node/722+&cd=1&hl=ro&ct=clnk&gl=md](http://webcache.googleusercontent.com/search?q=cache:iKp_0wgcPtkJ:www.inj.md/node/722+&cd=1&hl=ro&ct=clnk&gl=md) (11.08.2013)

tice sector representatives and expanding the role of the NIJ. The draft concept of continuous training of justice sector professionals is published on the NIJ website.

### Group III. Improving the legal framework; developing draft laws and bylaws.

Specific area of intervention: 1.1.2. Ensure access to justice in terms of costs

**Action 1.1.2 section 2.** *Draft amendments to the Law on the State Tax no. 1216-XII of 3 December 1992, to the CPC no. 225-XV of 30 May 2003 and other laws*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, SCM, MOF
- Performance indicator: Bill drafted and sent for examination to the Government
- **Assessment: action not implemented**

The action remained unfulfilled during the time of this report. The implementation of this action depends on the fulfillment of action 1.1.2 section 1, so as long as the study is not conducted, there may not be any changes to the legislation. At the same time, 2012 Progress Report on Strategy implementation explains the reasons the action was not implemented, but does not propose any remedies or set another deadline for the completion of the action.

Specific area of intervention: 1.2.1 Increased transparency of the judiciary self administration mechanisms and of the institutions of the judiciary self administration

**Action 1.2.1 section 2.** *Revise the SCM regulations regarding the transparency of the operation of the Council and its subordinate institutions*

- Deadline: Quarter 4, 2012
- Responsible for implementation: SCM
- Performance indicator: Draft amendments to the regulations developed and approved
- **Assessment: action not implemented**

We could not find evidence of the development of these regulations when writing this report. The JSRS Implementation Report for 2012 creates confusion in reporting on this action. It is assessed as “partially implemented”, under “measures taken”, it reads, in a general language, that the drafting process was launched along with studying the practice of other countries, while under “challenges”, it reads that a relevant law is absent (what law?). This may refer to the Law on the SCM. That Law, however, was amended on 5 July 2012 by introducing Article 8(1), “Transparency of the SCM”.

We would like to suggest that assessments and notes made in the progress reports on the implementation process and challenges be more specific and consistent, while the action deadline should be reviewed.

At the same time, the LRCM conducted a monitoring of the SCM and found, among other things, that SCM meetings are public, and the agendas of the meetings and most decisions are published on the Council’s website. However, transparency has not yet become the norm for all areas of activity of the SCM, its Colleges and the Judicial Inspection. SCM meetings are organized in a way in which the discussion of subjects on the agenda takes place largely during “deliberations” (a practice taken from the courts, but totally irrelevant to the SCM). Deliberations should

be excluded and replaced, as a rule, with regular public hearings, except for certain categories of issues that can be discussed in closed session.

The LRCM mentions in its monitoring report on the transparency and efficiency of the SCM that the election of SCM members-judges is not sufficiently regulated, which reduces the potential choice of the best candidates. The appointment by Parliament of law professors to the SCM is not regulated either. Since the creation of the SCM, there has been no contest held on the members appointed by Parliament, which creates the perception that the appointments are made on political or otherwise unclear grounds.

Specific area of intervention: 1.2.3. Revise procedural rules, as necessary to streamline and enhance transparency and efficiency of the judicial process

**Action 1.2.3 section 2.** *Develop draft amendments to the Contravention Code no. 218-XVI of 24 October 2008*

- Deadline: Quarter 3, 2012
- Responsible for implementation: MOJ
- Performance indicator: Bill drafted and sent for examination to the Government
- **Assessment: action not implemented**

During 2013, the Administrative Code suffered several amendments, on narrow, very specific sectors. The changes we mentioned in the previous report (see below) were not operated.

A draft law on amending and supplementing the Administrative Code no. 218-XVI of 24 October 2008, containing approximately 250 interventions amending, supplementing or eliminating contravention norms, accompanied by a note and summary of objections and proposals, was published on the MOJ website. The explanatory note to the bill reads: *“This draft was already coordinated with the interested bodies. However, due to the fact that some changes have been added only recently, it should be sent for reconfirmation.”*

**Action 1.2.3 section 4.** *Develop standards regarding the duration of procedural actions during the examination of a case and develop a control methodology for their application*

- Deadline: Quarter 4, 2012
- Responsible for implementation: SCM, SCJ
- Performance indicators: 1. Standards and methodology developed; 2. Decision of the SCJ plenum on the duration of procedural actions during the examination of a case passed; 3. Number of checks conducted by the Judicial Inspection; 4. Number of compiled reports
- **Assessment: action not implemented**

The action was not implemented during the time of this report. We hope that the responsible institutions will show a more serious approach in reporting on this (and other) action in their quarterly activity reports for 2013. The 2012 Annual Report on the JSRS implementation qualifies the action as “partially completed”, where, under “measures taken” the Report mentions “studying the European practice”, and under “challenges”, it talks about the “lack of relevant legislation” without naming the respective laws.

In the context of this action, we note that SCM Decision no. 437/15 of 28 May 2013 *on Delays in the Examination of Cases in Courts* found that, according to the data submitted by each court, the largest number of cases pending for more than 12, 24 and 36 months are registered in the

courts of Botanica, Buiucani, and Center districts in Chisinau, as well as courts of Balti, Briceni, Cahul, Ialoveni, Orhei, Straseni, and Ungheni.

An alarming situation is recorded at the court of Rascani district of Chisinau, where the number of cases pending for more than 12, 24 and 36 months is over 800.

A similar situation in terms of the delay in examination of cases is found in the work of other courts. The SCM decided to empower the Judiciary Inspection to conduct a survey of the causes of delay of cases for more than 24 and 36 months and draw a note advising the judges on the obligation to comply with and correctly apply the law in examining cases, rule out unjustified delay, and ensure their strict compliance with the law in resolving them.

The Government Agent of the MOJ has finalized a *Practical Guide on the use of ECtHR jurisprudence in matters of non-performance and/or excessive length of procedures* designed to help the courts and other actors in the implementation of [Law no. 87 of 21 April 2011 on the State Compensation of Damages caused by the Infringement of the Right to a Timely Examination of a Case and Enforcement of the Judgment in a Reasonable Time](#).

The Guide contains practical suggestions applicable to the vast majority of the cases filed under Article 6 and Article 1 of *Protocol 1 to the European Convention of Human Rights and Fundamental Freedoms* concerning the alleged non-enforcement/non-timely enforcement or length of proceedings. The Guide includes excerpts of Key Principles from ECtHR judgments or decisions in the field. The Guide also contains an indicative Appendix the quantum of just satisfaction and correspondent ECtHR judgments in cases against Moldova.<sup>5</sup>

On 15 July 2013, the ICJ released Analytical Report: *Assessment of effectiveness of the remedy introduced by Law no. 87 of 21 April 2011 on the Law no. 87 of 21 April 2011 on the State Compensation of Damages caused by the Infringement of the Right to a Timely Examination of a Case and Enforcement of the Judgment in a Reasonable Time*<sup>6</sup>.

Specific area of intervention: 1.3.1. Reforming the NIJ and making its operations more efficient

**Action 1.3.1 section 2.** *Draft amendments to several laws, including Law no. 152-XVI of 8 June 2006 regarding the NIJ, Law no. 544-XIII of 20 July 1995 of the Status of Judges and Law no. 294-XVI of 25 December 2008 on the Prosecution*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, NIJ
- Performance indicator: Bill drafted and sent for examination to the Government
- **Assessment: action not implemented**

According to the 2012 Annual Report on the JSRS implementation, the bill was to be sent to the Government in March 2013. At the date of this report, this bill has not yet been presented for public discussion.

Specific area of intervention: 1.3.8. Revise the range of disciplinary deviations and of the disciplinary procedure in order to adjust them to the realities of the system and to the European standards

<sup>5</sup> <http://csm.md/files/Hotaririle/2013/17/437-17.pdf>

<sup>6</sup> <http://www.justice.gov.md/libview.php?l=ro&idc=6&id=987> (11.09.13)

**Action 1.3.8 section 2.** *Draft amendments to several laws, including Law no. 544-XIII of 20 July 1995 of the Status of Judges and Law no. 950-XIII of 19 July 1996 of the Disciplinary Board and the Disciplinary Liability of Judges*

- Deadline: Quarter 1, 2013
- Responsible for implementation: MOJ, SCM
- Performance indicator: Bill drafted and sent for examination to the Government
- **Assessment: action implemented**

The draft law on the Disciplinary Responsibility of Judges was developed by a working group established by the Minister of Justice, and submitted for public discussion to the National Council for Participation: <http://www.particip.gov.md/proiectview.php?l=ro&idd=593>.

At the time of writing this report, we could not confirm whether the bill was approved by the Government or submitted to the Parliament. Certainly, it was not yet published in the Official Gazette.

Although the relevant actors fulfilled their task and drafted the bill, and while we understand that the performance indicators only refer to submitting the bill to the Government, and not to its passing into law by the Parliament, we find it important to follow throughout the legislative process and ensure that the planned action has reached its intended purpose, at least with the adoption of the law.

## Group VI. Procurement and installation of equipment; software upgrades.

Specific area of intervention: 1.2.2. Implementation of an *e-justice system*; efficient and functional use of the IT system for the judiciary, as needed to exclude the human factor from the case management system

**Action 1.2.2 section 4.** *Improvement of the Integrated Case Management Program to:*

- a) *ensure the random distribution of cases;*
  - b) *ensure the creation of panels of judges and appointments of their chairs;*
  - c) *establish a program ensuring the transparency and efficiency of the act of justice;*
  - d) *establish a technical mechanism to verify the electronic management of cases;*
  - e) *insert a module to ensure the protection of personal data*
- Deadline: Quarter 1, 2013
  - Responsible for implementation: MOJ, SCM, Center for Special Tele-Communications
  - Performance indicators: 1. System of random distribution of cases improved and implemented; 2. System of establishing judges' panels and assigning panel chairs created and implemented; 3. Technical verification mechanism created; 4. Personal data protection module included; 5. Other programs created and implemented, as needed.
  - **Assessment: action not implemented**

According to the implementation report for 2012, this action is performed with the support ROLISP program. The data gained from the reports submitted by the MOJ and the ones offered by observers show that the action is in progress. The need for this action is indisputable, given that most presidents of courts believe that the IMCP is currently functioning in a deficient

manner, distributing too many cases to some judges at the expense of others; and the server memory is quite small, which, at some times, prevented new data to be entered into the system.

## **Group VII. Create and streamline the work of justice sector bodies (commissions, colleges etc.).**

Specific area of intervention: 1.2.6. Revise the procedures regulating the work of instruction judges, as needed to include these judges into the common judicial body and make them specialized judges

### **Action 1.2.6 section 2. Evaluate the performance of instruction judges**

- Deadline: Quarter 3, 2012
- Responsible for implementation: SCM
- Performance indicator: Performance evaluation conducted
- **Assessment: action not implemented**

According to information provided by SCM at one of the meetings of the WG, the evaluation of instruction judges will be carried out along with that of judges of the common law, which is not unreasonable. However, since this activity is planned in the Action Plan, it would be useful to at least provide an explanation in the report on implementation JSRS instead of general language such as “start process; develop evaluation criteria” or “lack of funding”.

Specific area of intervention: 1.3.4. Unifying the system of accession into the profession of judge

### **Action 1.3.4 section 2. Establish a unified examination commission for NIJ graduates and persons with work experience**

- Deadline: Quarter 2, 2012
- Responsible for implementation: NIJ, SCM, MOJ, PGO
- Performance indicator: Unified Commission created
- **Assessment: action not implemented**

The implementation of this action depends largely on amendments to the legal framework, in particular that related to the NIJ. This action has not been implemented yet.

## Chapter II

# ASSESSMENT OF IMPLEMENTATION OF ACTIONS UNDER PILLAR II

**Institutional capacity.** In Quarter 2 of 2013, WG-2 met in three sessions, on 3 April, 15 May and 12 June. On 1 July 2013, the website of the judicial reform contained only the minutes of the 3 April meeting of 3 April 2013, while the minutes of the meetings in May and June were published with delay. According to the meeting agendas, the main topics of discussion referred to organizational issues, actions proposed for implementation in 2013, and the method of implementation of outstanding actions. Unfortunately, by 30 June 2013, WG-2 failed to approve a final Work Plan for 2013, although this subject has been discussed extensively in WG meetings.

### 1. ACTIONS DUE BY: QUARTER 2 OF 2013

#### Group I. Studies and needs assessments examining current practices; proposing recommendations for reform.

Specific area of intervention: 2.5.1. Liberalization of penal policies by using non-custodial sanctions and preventive measures for certain types of persons and offences

##### **Action 2.5.1 section 1.** *Study the applicability of preventive non-custodial measures*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, PGO
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

This action was due for completion by 30 June 2013. According to the MOJ Annual Work Plan for 2013, this action was to be implemented by 1 July 2013, by the OCP. There is no mention of the development of a study in the *transparent decision-making* section of the OCP website. The same can be said about the website of the MOJ, which is the main institution responsible for implementing the action. The implementation of the action was included in the agenda of the meeting of 12 June, but postponed for another meeting at the request of the responsible institution.

##### **Action 2.5.1 section 2.** *Assess the efficiency of application of custodial and non-custodial criminal sanctions*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

This action was due for completion by 30 June 2013. According to the MOJ Annual Work Plan for 2013, this action was to be completed by 1 July 2013 by the OCP and the DPI. The OCP website featured an ad on the selection of experts for drafting trial, where the application deadline was set for 15 July. This confirms the fact that the action was not implemented in time. The imple-

mentation of this action was put on the agenda of the meeting of 12 June, but postponed for another meeting at the request of the responsible institution.

Specific area of intervention: 2.2.10. Re-examination of accountability rules for prosecutors and exclusion of general immunity of prosecutors

**Action 2.2.10 section 1.** *Conduct a study of the accountability rules of prosecutors, including disciplinary liability, and exclusion of the general immunity of prosecutors*

- Deadline: Quarter 2, 2013
- Responsible for implementation: PGO, SCP, MOJ
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action implemented**

This action was due for completion by 30 June 2013. On 16 May, WG-2 members received a comparative study on the rules for prosecutors' liability, including disciplinary liability, and on the elimination of their general immunity. Nadejda Vieru, prosecutor in the Legal, Legislative and Institutional Reform Department of the PGO, prepared the study. However, the subject of designing the study required by this action was included on the agenda of the WG only for the meeting on 12 June. During the meeting, it was noted that a public association would prepare the study and send it to members of the WG for consideration. This second study was not sent to WG members at the date of this report.

### Group III. Improving the legal framework; developing draft laws and bylaws.

Specific area of intervention: 2.2.2. Establish clear, transparent, objective and merit-based criteria and procedure for the selection appointment and promotion of prosecutors

**Action 2.2.2. section 2.** *Draft amendments to Law no. 294-XVI of 25 December 2008 on the Prosecution*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, SCP, PGO
- Performance indicators:
  1. Bill drafted and sent for examination to the Government;
  2. Criteria for selection, appointment, transfer and promotion of prosecutors developed and approved;
  3. Criteria for regular performance evaluation of prosecutors developed;
  4. Bodies in charge with the selection, appointment, transfer, promotion and periodic performance evaluation of prosecutors created;
  5. Number of prosecutors who have undergone an evaluation under the new criteria;
  6. An analysis report on the implementation of the evaluation criteria developed.
- **Assessment: action not implemented**

This action was due for completion by 30 June 2013. During the monitoring period, the subject was discussed at length, as the new head of the PGO was appointed on 18 April 2013, dismissed on 3 May 2013 and restored to office by the Constitutional Court on 6 May 2013. The civil society expressed its concern with the attempts for political subordination of the PGO. Outside

the reporting period, the PGO and the MOJ signed an order establishing a joint working group responsible for implementing a number of actions in the JSRS Action Plan, including this one.

Specific area of intervention: 2.3.3. Capacity building for the centers of judicial expertise and judicial experts. Reconsider their role and status

**Action 2.3.3 section 2.** *Draft a new bill on the judicial expertise that would regulate the conditions for acceding to the position of judiciary expert; conditions for recognizing the credentials of judiciary expert in Moldova of people who received their credentials in other states; the criteria for admission and examination of candidates to the position of judiciary; draft amendments to other laws and bylaws*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, MOI, Ministry of Health, NAC, SIS
- Performance indicator: Bills drafted and sent for examination to the Government
- **Assessment: action not implemented**

This action was due for implementation by 30 June 2013. Nonetheless, the MOJ website does not feature any announcement on the public debate of this bill. Moreover, according to the MOJ Annual Work Plan for 2013, this action was to be implemented by the CNEJ and DGL before 31 October. The MOJ representative said, at the WG meeting of June 12, that the bill had been drafted and was undergoing the anti-corruption expertise. However, the text of the bill was not sent to WG members. Thus, the action is considered unfulfilled.

## Group VII. Staff optimization.

Specific area of intervention: 2.1.1. Optimization of the institutional, organizational and functional framework of the MOI

**Action 2.1.1 section 2.** *Make changes to the institutional, organizational and functional framework of the MOI and subordinated institutions*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOI
- Performance indicator: changes made
- **Assessment: action not implemented**

This action was due for completion on 30 June 2013. Given that the action is closely connected with the fulfillment of action 2.1.1 section 1, and the latter is currently in progress, it is difficult to assess it as implemented. Further note that the action is very broad and ambitious and it would normally be divided into several specific measures, which would have allowed simpler implementation of these actions and more efficient monitoring of the quality of implementation. The fact is that, in mid-June 2013, MOI put forth for public debate the bill on the reorganization of carabinieri, which has not been examined by the Government, not to mention passed. Therefore, we cannot deem this action as implemented. Moreover, the implementation of the action was put on the agenda of the WG meeting on 12 June, but the subject was not examined in absence of the representative of the MOI.

## 2. OVERDUE ACTIONS (since 2012 and Quarter 1 of 2013)

### Group I. Studies and needs assessments examining current practices; proposing recommendations for reform.

Specific area of intervention: 2.1.5 Amend the Criminal Procedure Law to exclude the contradictions between the Law and standards for the protection of human rights and fundamental freedoms

**Action 2.1.5 section 2.** *Conduct a study of the legislation, including the Criminal Procedure law, to determine its compliance with the existent standards in the field of protecting human rights and fundamental freedoms*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, PGO, MOI, NAC, SIS, Customs Service
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

This action was due for completion by 31 December 2012. According to the statements by MOJ representatives at the WG meeting on 15 May 2013, this study will be completed in the fall. The action remains unfulfilled.

Specific area of intervention: 2.2.5. Ensure the specialization of prosecutors and consider the possibility of liquidating specialized prosecutor's offices

**Action 2.2.5 section 1.** *Conduct a study on the need for specialized prosecutors and the opportunity of specialized prosecutorial services*

- Deadline: Quarter 1, 2013
- Responsible for implementation: PGO
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

This action was due to be implemented by 31 March 2013. According to information provided by PGO representatives at WG meetings on 3 April and 15 May, the study has been developed, and WG members deemed the action as completed. At the same time, the Secretariat did not send the study to WG members for examination, during the period of this report. The study is not published on the websites of the PGO or the MOJ. In absence of evidence of the study, this action cannot be assessed as completed.

Specific area of intervention: 2.2.6 Examination of staff requirements for the prosecutor's office bodies and development of proposals for the optimization of the number of prosecutors and auxiliary staff

**Action 2.2.6 section 1.** *Conduct a study of the staffing requirements of the prosecution bodies and develop proposals for the optimization of prosecutors and auxiliary staff*

- Deadline: Quarter 1, 2013
- Responsible for implementation: PGO
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

This action was due for completion by 31 March 2013. According to information provided by the PGO in Working Group meetings, the LRCM is responsible for conducting a comprehensive study on optimizing the number of judges and prosecutors and their specialization. According to information presented in Working Group meetings, the study would be completed by the end of June. During the monitoring period, the study was not published on the website of the respective organization.

Specific area of intervention: 2.2.7 Review the funding mechanism for the prosecutorial service

**Action 2.2.7 section 1.** *Conduct a study on the practice of funding prosecutorial bodies in the last years and the relevant international practice*

- Deadline: Quarter 1, 2013
- Responsible for implementation: PGO
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action implemented**

This action was due for completion on 31 March 2013. According to information provided by the PGO in working group meetings, the study has been completed. On 16 May 2013, it was sent to the members of the WG.

Specific area of intervention: 2.4.2. Revised and streamline methods for collection and processing of statistical data related to criminal justice and ensure database inter-operability

**Action 2.4.2 section 1.** *Conduct a study on the collection and analysis of statistical data related to criminal justice and on the problems in that field*

- Deadline: Quarter 1, 2013
- Responsible for implementation: PGO, MOI, NAC, Customs Service, SIS, National Statistical Bureau, MOJ, SCJ
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

*This action was due for completion on 31 March 2013. According to information provided by the PGO in working group meetings, the study is underway and an interdepartmental task force is needed to carry it out. To date, the task force has not been created, and the members of the WG responsible for implementing actions under Pillar II did not receive a finalized version of the study.*

### Group III. Improving the legal framework; developing draft laws and bylaws.

Specific area of intervention: 2.1.1. Optimization of the institutional, organizational and functional framework of the MOI

**Action 2.1.1 section 1.** *Improve the legal framework on functioning of police and carabinieri by drafting a bill on the Police Activities and the Status of the Police Officer, a bill of the Carabinieri Service and other relevant legal acts; draft amendments to the legal framework in line with these laws*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOI

- Performance indicators: Bills drafted and sent for examination to the Government; adjacent amendments or bylaws drafted or passed
- **Assessment: action not implemented**

This action was due for completion by 31 December 2012 and it was largely implemented, as shown in the Working Group annual report. At this stage, we note MOI's passivity during the drafting of the Law on the Carabineers Service and adjusting the legal framework to the new legal provisions in that sense. Thus, given the complexity of the action, it cannot be deemed fully completed, because the legal framework still needs to be adjusted.

Specific area of intervention: 2.2.8. Demilitarization of the prosecutor's office institution, and considering the possibility of granting magistrate's status to prosecutors

**Action 2.2.8 section 2.** *Draft amendments to Law no. 294-XVI of 25 December 2008 on the Prosecution, to CPP no. 122-XV of 14 March 2003 in order to demilitarize the institution of the prosecutor*

- Deadline: Quarter 1, 2013
- Responsible for implementation: MOJ, PGO
- Performance indicator: Bill drafted and sent for examination to the Government
- **Assessment: action not implemented**

This action was due for completion by 31 March 2013. It has not been implemented during the monitoring period. Outside the reporting period, the PGO and the MOJ created a working group to carry out this action, among other activities.

## Chapter III

# ASSESSMENT OF IMPLEMENTATION OF ACTIONS UNDER PILLAR III

**Institutional capacity.** During Quarter 2 of 2013 (April, May, and June), there were three meetings of the WG-3, on 8 April, 20 May, and 24 June. The meetings of 8 April and 20 May were deliberative, while the meeting of 24 June postponed for 1 July 2013 due lacking of quorum.

The work of the WG Secretariat has also been deficient, as some meetings' agendas were published with delay. The minutes of the meetings were not published in the respective section of the website at all. The only minutes currently published are the ones from the meeting on 8 April.

## 1. ACTIONS DUE BY: QUARTER 2 OF 2013

### Group I. Studies and needs assessments examining current practices; proposing recommendations for reform.

Specific area of intervention: 3.1.1. Strengthening organizational and management capacities of the legal aid system

**Action 3.1.1 section 2.** *Conduct a study on the staff requirements of the territorial offices of the NCSGLA and adjust the organizational chart based on that analysis, in the context of expanding the competencies of the Council*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, MOF, NCSGLA.
- Performance indicator: Analysis carried out and recommendations formulated; organizational chart adjusted
- Respondents: six lawyers providing legal aid in five territorial NCSGLA offices
- **Assessment: action not implemented**

Both the Action Plan and the Work Plan of WG-3 provide that this action be completed in June 2013. The analysis was to be carried out by May, and further adjustments were to be finalized in June 2013. A team of experts was to conduct the analysis. Apparently, the NCSGLA announced the competition for selecting the experts in due time, and the activity was to be funded by the Soros Foundation-Moldova. However, no offers were received at this time, and the study was not conducted by the end of the second Quarter.

According to the NCSGLA administration, it conducted a review of its internal needs. Three of six lawyers that provide legal aid in NCSGLA territorial offices said they are aware of the need for this analysis; three out of six lawyers said they had submitted concrete proposals for the study conclusions.

Specific area of intervention: 3.1.2. Improving the quality and accessibility of legal aid services (criminal and non-penal cases)

**Action 3.1.2 section 7.** *Conduct a study on the new methods of providing qualified state-guaranteed legal aid and, based on its findings, implement a pilot project*

- Deadline: Quarter 2, 2013
- Responsible for implementation: NCSGLA, MOJ
- Performance indicator: 1. Study conducted and recommendations formulated; 2. By case, pilot project implemented
- Respondents: six lawyers providing legal aid in five territorial NCSGLA offices
- **Assessment: action not implemented**

This action was not discussed during WG-3 meetings and it was impossible to identify the current stage of its execution. The information available on the NCSGLA website and the progress report for the first half of 2013 shows that an ad was published on 14 March 2013 to select four experts to conduct the study. However, due to a lack of offers from experts, the study was not conducted.

According to a survey conducted among lawyers providing state-guaranteed legal aid in each field office, four of six lawyers interviewed said they knew about some study in this regard, while three of the six said they had contributed suggestions to new methods of providing qualified legal aid.

Specific area of intervention: 3.1.3. Promoting legal culture, access to legal information and reducing legal nihilism

**Action 3.1.3 section 2.** *Conduct a study on the mechanism of providing basic legal aid by public associations*

- Deadline: Quarter 2, 2013
- Responsible for implementation: NCSGLA
- Performance indicator: Study conducted and recommendations formulated
- Respondents: six lawyers providing legal aid in five territorial NCSGLA offices
- **Assessment: action not implemented**

This action was not discussed during WG-3 meetings and it was impossible to identify the current stage of its execution. The information available on the NCSGLA website and the progress report for the first half of 2013 shows that an ad was published on 14 March 2013 to select four experts to conduct the study. However, due to a lack of offers from experts, the study was not conducted.

According to a survey conducted among lawyers providing state-guaranteed legal aid in each field office, four of six lawyers interviewed said they knew about some study in this regard, while three of the six said they contributed suggestions to the way relevant NGOs could provide qualified legal aid.

Specific area of intervention 3.2.1 Encourage capacity building for representatives of justice related professions, at the level of professional unions, with special focus on management capacities

**Action 3.2.1 section 1.** *Conduct studies on the functioning of each of the justice sector-related professions*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, self-administration bodies of the justice-related professions
- Performance indicators: 1. Studies conducted and recommendations formulated; 2. Number of conducted public debates
- Respondents: managers of the self-administration bodies of the justice-related professions
- **Assessment: action not implemented**

Under the Action Plan, both the development of studies and public discussions were to be held by the end of Quarter 2 of 2013. The WG-3 meetings did not discuss the progress on these actions in the reported period. At the same time, according to the WG-3 Work Plan for 2013, the studies were to be carried out by June, and public discussions were to be conducted in June and July of 2013.

At the same time, the Cabinet of the MJ was charged with implementing the action, in accordance with the WG-3 Work Plan for 2013. Neither of the required studies was presented by the end of June. The MOJ website announced the organization of five rounds of discussions on the studies conducted by the Ministry only on 5 July 2013.

Therefore, the action was not executed and is to be completed in the third Quarter. At the same time, most of the representatives of the self-administration bodies of the system of justice sector related professions interviewed said they were not involved in the conduct of such studies; the methodology used for conducting the studies is also unclear.

## Group II. Developing methodological recommendations and professional training programs.

Specific area of intervention: 3.1.2. Improving the quality and accessibility of legal aid services (criminal and non-penal cases)

### **Action 3.1.2 section 2.** *Develop a monitoring mechanism for the quality of the legal aid*

- Deadline: Quarter 2, 2013
- Responsible for implementation: NCSGLA, Lawyers' Union of Moldova
- Performance indicator: Methodology developed and approved
- Respondents: six lawyers providing legal aid in five territorial NCSGLA offices
- **Assessment: action not implemented**

The action was to set for discussion at the WG-3 meeting on 24 June, which, for lack of quorum, was postponed to 1 July. The action was reported as partially implemented.

According to the rapporteurs, the NCSGLA adopted Decision no. 20 establishing the working group in charge of the action on 21 December 2012. The Decision established that the working group was to present the results of its activities to the NCSGLA by 10 April. The Group met in two sessions, on 28 March and 16 May, and failed to adopt a final decision on its work, submitting proposals for the monitoring process instead. The impossibility to find experts to carry out the action posed another difficulty. A re-advertisement of the call for expert services is suggested at this time.

According to a survey conducted among lawyers providing state-guaranteed legal aid in each field office, four of six lawyers interviewed said they were aware of the need of this methodology; three in six interviewed lawyers said they were interested in contributing suggestions to this methodology.

It is worth noting, in the context of this action, an international seminar was organized on 25-26 April 2013 in Chisinau, on the topic “Improving Access to Justice: the Quality of State-Guaranteed Legal Aid and the Recent UN Principles and Guidelines on Access to Legal Assistance Guaranteed by the State”. The United Nations Development Programme, the MOJ and the NCSGLA co-organized the event. A report was presented during the seminar on the quality of state-guaranteed legal aid and an assessment of NCSGLA needs.

This report represents an internal assessment of the NCSGLA, in which the authors tried to identify the obstacles to its effective work and provide recommendations on strengthening its capabilities, including the quality of services. The international seminar aimed to raise public awareness of the international principles governing the state-guaranteed legal aid in criminal justice systems as well as promote collaboration and exchange of experience, mutual learning and support in improving the quality of legal assistance guaranteed by the state, based on the UN Principles and Guidelines on Access to State-Guaranteed Legal Assistance in Criminal Justice Systems. One of the main recommendations acknowledges the need to enhance the quality of the legal assistance guaranteed by the state and the general quality of legal services in Moldova.

Specific area of intervention: 3.2.5. Providing initial and continuous training to representatives of justice related professions, including joint trainings and also, enhancing the role of the NIJ in this process

**Action 3.2.5 section 1.** *Develop a curriculum for the initial and a study plan for the continuous training of representatives of justice-related professions*

- Deadline: Quarter 2, 2013
- Responsible for implementation: NIJ, self-administration bodies of justice-related professions
- Performance indicator: Curriculum and study plans developed
- **Assessment: action not implemented**

According to NIJ officials, a first working meeting of representatives of justice related professions was held on 26 December 2012. Although it was agreed at the meeting that each of these institutions would present their syllabuses, they were not presented and approved.

The WG-3 Work Plan for 2013 provides that the NIJ shall determine how the action is to be implemented after amendments to the NIJ Law are passed. In accordance with Art.4 of Law no. 152 of 08 June 2006 on the NIJ, the Institute has the competence to draft strategies on the initial and continuous training of judges and prosecutors as well as others justice sector related professionals, with subsequent approval by the SCM for judges and of the PGO - for prosecutors.

The action was set for discussion at the WG-3 meeting on 24 June, which was postponed to 1 July. At the meeting on 1 July, the action was assessed as partially achieved, based on the argument that NCSGLA had presented a model curriculum and syllabus for lawyers providing state-guaranteed legal aid. However, no syllabus or curriculum was presented for the profession of lawyer as well as other justice system related professions.

## Group VII. Create and streamline the operation of justice sector bodies (commissions, colleges, etc.).

Specific area of intervention: 3.1.2. Improving the quality and accessibility of legal aid services (criminal and non-penal cases)

**Action 3.1.2 section 4.** *Create offices of public defenders in the communities where there are territorial offices of the NCSGLA*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, NCSGLA, Lawyers' Union
- Performance indicator: Number of offices created and equipped; increased number of public defenders
- **Assessment: action not implemented**

This action was discussed and assessed as implemented during the WG's meeting on 1 July. The argument for this was NCSGLA Decision no. 1 of 15 January 2013 adding one person to the lists of public defenders in each of the territorial offices in Chisinau, Balti, Comrat, Causeni, and Cahul.

On 11 June 2013, NCSGLA adopted Decision no. 20 supplementing the list of public defenders with 12 names: eight public defenders were added in Chisinau, and one was added to each of the offices in Balti, Cahul, Comrat, and Causeni.

Section 21 of the Regulation on the Activity of Public Defenders no.18 of 6 October 2008 mentions that *public defenders' offices are created in the areas of residence of the regional offices. The National Council may open public defenders' offices in other localities. The National Council shall decide on the number and composition of these offices.*

We could not determine from available information whether any such decisions were taken and on the composition of the respective offices. Therefore we cannot establish if the result indicator "*Number of offices created and equipped*" was executed. It is also unclear how and if public defenders' offices were properly equipped.

Even if the decisions of 15 January 11 June show that public defenders were selected in each of the regional offices of the NCSGLA, the exact staffing and equipment of offices established by the National Council remain unclear. This is in line with the provisions of section 4 of the Regulation, which reads as follows: *by offering state-guaranteed legal aid, public defenders provide a public interest service by implementing the State's obligation to ensure access to effective legal services to every person, regardless of their financial means. To this end, the state shall provide working conditions to public defenders for granting quality state-guaranteed legal aid in accordance with the Law on State Guaranteed Legal Aid and other legal acts.*

Thus, even if some public defenders operate from their own offices, action 3.1.2 section 4 specifically envisages the strengthening of the public defenders' system by creating conditions, in accordance with the requirements of the Statute of lawyers in order to ensure the comfort and confidentiality of the beneficiaries. In this case, how the public defenders' offices are furnished and equipped is unclear.

Moreover, the action cannot be considered implemented given the MOJ order no.503 of 19 November 2012 approving the "Methodology for monitoring the implementation of the JSRS for 2011-2016". Appendix 2 to the order contains a matrix of proving acts/materials for the imple-

mentation of actions. The following supporting documents are brought as proof of the implementation of specific action “*creating public defender’s offices in locations of NCSGLA territorial offices*”: and act/decision establishing public defenders’ offices, extract from a document proving budget allocation of funds for public defenders’ offices; report on the opening of a public defenders’ office. No such documents were presented at the meeting on July 1. Thus, even if WG-3 assessed the action as implemented, no evidence was presented for performance indicator no.1 to prove this.

## 2. OVERDUE ACTIONS (since 2012 and Quarter 1 of 2013)

### Group I. Studies and needs assessments examining current practices; proposing recommendations for reform.

Specific area of intervention: 3.2.9. Establishing a unified tax, social security and medical insurance regime for justice sector related professions

**Action 3.2.9 section 1.** *Study the current fiscal, social and medical insurance regimes of representatives of justice-related professions*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, MOF, MLSPF, Ministry of Health, self-administration bodies of justice-related professions
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

During Quarter 2 of 2013, this action was discussed in the WG-3 meeting on 8 April. It was announced that a task force was to be set up to develop this study. By the end of the second Quarter, this study was not conducted. At the same time, according to the Work Plan of WG-3, approved at the meeting of 4 February, the action was scheduled for execution in 2013, without a specific timeframe.

Specific area of intervention: 3.3.2. Strengthening the institutional and functional capacity of the newly created system of private bailiffs

**Action 3.3.2 section 1.** *Conduct a study on the operation of the Licensing Commission and the Disciplinary College to identify means for the institutional and functional strengthening of these bodies*

- Deadline: Quarter 2, 2012
- Responsible for implementation: MOJ, NUCEO
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

The action was not completed during the second Quarter of 2013. Moreover, NUCEO repeatedly notified the MOJ of the fact that, for a long period, court enforcement trainees were unable to pass admission into the profession after completing their professional internship in accordance with the Law on Bailiffs. This inconsistency was caused by the fact that the MOJ failed to approve the Rules of the Regulatory Licensing Commission for Bailiffs, as required by the procedure of approval of normative acts in the judicial enforcement system.

According to information presented at the WG-3 meeting of 20 May the NUCEO could not perform the tasks required by action 3.3.2 section 1 of the Action Plan in absence of the Rules of the Licensing Commission.

Specific area of intervention: 3.3.1. Impact assessment of the current regulatory framework and the implementing mechanism for enforcement of judgments, including ECtHR judgments

**Action 3.3.1 section 1.** *Monitor the impact of current regulations on the enforcement of judgments, including ECtHR judgments*

- Deadline: Quarter 3, 2012
- Responsible for implementation: MOJ, NUCEO
- Performance indicator: Monitoring conducted; monitoring report written and published
- **Assessment: action not implemented**

The action was not implemented, and no inquiries were made in that sense during Quarter 2 of 2013. The WG-2 meeting on 20 May 2013 discussed the question of how to carry out the implementation of this action. According to MOJ officials, the action may remain unfinished because of its inexpediency.

Specific area of intervention: 3.3.3. Improving information management and communication system by providing access to databases

**Action 3.3.3 section 1.** *Conduct a study to establish the deficiencies in the information and communication management system that impact the enforcement of court judgments*

- Deadline: Quarter 3, 2012
- Responsible for implementation: NUCEO, MOJ
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

During the second quarter, no measures were taken towards conducting the said study. The action remains unfulfilled. It was not discussed during the meetings of the WG. The WG Work Plan does not provide for a deadline for the implementation of this action.

Specific area of intervention: 3.3.5. Improving the mechanism for recognition and enforcement of foreign court judgments

**Action 3.3.5 section 1.** *Study the efficiency of the current system of recognition and enforcement of judgments issued by foreign courts*

- Deadline: Quarter 3, 2012
- Responsible for implementation: MOJ, NUCEO, SCM
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

The action was proposed for discussion at the meeting on 8 April, but no decision was taken during that meeting about the course of its fulfillment. The WG-3 work plan does not set any deadlines for its implementation. The meeting on 20 May also postponed discussion of the completion of this action. At the WG-3 meeting on 1 July, MOJ officials announced that the action re-

mains outstanding. At the time of this report, the action is at the stage of gathering information, as the courts have been late in providing data. The application for support to implement this action was denied, and at this time, the responsible institution is faced with an insufficiency of staff for performing the set tasks.

## Group II. Developing methodological recommendations and professional training programs.

Specific area of intervention: 3.1.1. Strengthening organizational and management capacities of the state-guaranteed legal aid system

**Action 3.1.1 section 4.** *Develop a mechanism of compensation of fees for state guaranteed legal aid*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, NCSGLA
- Performance indicator: Working group created; amendments to legal framework drafted and sent for examination to the Government
- **Assessment: action not implemented**

This action was discussed at the WG meeting on 20 May, where it was announced that a working group has been created to develop models of the respective mechanism. Four different models of mechanisms were presented for discussion, and one of them was put forth for testing. Comprehensive information on the results of the testing was scheduled to be presented by the end of June of 2013, but it was not discussed during the June meeting of WG-3. Therefore the action is deemed as not implemented.

Specific area of intervention: 3.1.2. Improving the quality and accessibility of state-guaranteed legal aid services

**Action 3.1.2 section 1.** *Review the criteria for selecting lawyers to provide qualified state-guaranteed legal aid and ensure the transparency of the selection process (draft amendments to the Regulation on the competition for selecting lawyers for the provision of qualified state-guaranteed legal aid)*

- Deadline: Quarter 4, 2012
- Responsible for implementation: NCSGLA, Lawyers' Union
- Performance indicator: Amendments to the Regulation on the competition for selecting lawyers for the provision of qualified state-guaranteed legal aid drafted and approved
- **Assessment: action implemented**

Eighteen amendments to the Regulation on the competition for selection of lawyers to provide qualified state-guaranteed legal aid were introduced in order to implement this action. The NCSGLA passed Decision no. 17 of 11 June 2013 on the amendment of the Regulation, and approved the forms of evaluation and approval for admission of the lawyer in the state-guaranteed legal aid system. The concerned actors did not have any objections regarding the quality of introduced. Therefore, this action is assessed as fully implemented.

### Group III. Improving the legal framework; developing draft laws and bylaws.

Specific area of intervention: 3.2.1. Encouraging capacity building for representatives of justice related professions, at the level of professional unions, with special focus on management capacities

#### **Action 3.2.1. section 4.** *Draft a new bill on Notaries*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ
- Performance indicator: Working group created; bill drafted and sent for examination to the Government
- **Assessment: action not implemented**

The Ministry of Justice organized a roundtable on 16-17 April 2013, attended by around 40 people, representatives of Moldovan notaries' associations and international experts who debated the bill. The most important amendments refer to creating a self-administration body for notaries: the Chamber of Notaries, and establishing an institute of disciplinary liability of notary trainees. Another suggestion was to amend the procedure of getting into the profession of notary, by creating a Licensing Commission attached to the MOJ.

At its meeting of 20 May of the WG-3, the MOJ officials said that other draft amendments are not ready for debate, and require additional studies. According to the information provided, the amendments could be presented in November 2013.

Specific area of intervention: 3.3.1. Impact assessment of the current regulatory framework and the implementing mechanism for enforcement of judgments

#### **Action 3.3.1 section 2.** *Draft amendments to the regulatory framework to eliminate deficiencies in the field of enforcement of court judgments*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, NUCEO
- Performance indicator: Amendments to the legal framework drafted and sent for examination to the Government
- **Assessment: action not implemented**

This action was not discussed in the WG-3 during Quarter 2 of the 2013, and the MOJ did not provide information about its implementation. The WG-3 Work Plan does not provide for a deadline for the implementation of this action.

Specific area of intervention: 3.3.1. Impact assessment of the current regulatory framework and the implementing mechanism for enforcement of judgments, including ECtHR judgments

#### **Action 3.3.1 section 3.** *Draft a Regulation on the enforcement of ECtHR judgments*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, MOF, NUCEO
- Performance indicator: Draft Regulation developed and sent for examination to the Government
- **Assessment: action not implemented**

During the second quarter, the action was not implemented and no research was conducted in that field. The WG-3 meeting of 20 May debated the question of how to carry out the execution of this action. According to MOJ officials, the action is inexpedient and should not be implemented.

Specific area of intervention: 3.3.3. Ensuring compliance with reasonable time limits in the enforcement of judgments

**Action 3.3.3 section 2.** *Draft amendments to the legal framework eliminate deficiencies to the information and communication management system, including in ensuring access to databases*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, NUCEO, database administrating authorities
- Performance indicator: Amendments to the legal framework drafted and sent for examination to the Government
- **Assessment: action not implemented**

This action was to be preceded by action 3.3.3 section 1, providing for a study to determine the weaknesses in the information and communication management system that impact the enforcement of judgments. Given that those actions were not considered or implemented during Quarter 2, 2013, it remains unenforced.

Specific area of intervention: 3.3.5. Improving the mechanism for recognition and enforcement of foreign court judgments

**Action 3.3.5 section 2.** *Draft amendments to the legal framework on the mechanism of recognition and enforcement of judgments issued by foreign courts*

- Deadline: Quarter 1, 2013
- Responsible for implementation: MOJ, NUCEO, SCM
- Performance indicator: Bill drafted and sent for examination to the Government
- **Assessment: action not implemented**

*The action in question was discussed at the meeting on 1 July 2013, which recognized that the action has not been implemented. Moreover, the participants at the meeting agreed that the action was inappropriate on the grounds that there had been several treaties that provide for the procedure to enforce foreign courts' judgments and the general legislative framework for these procedures. However, the action in question was to be preceded by the study referred to in action 3.3.5 section 1 of the Action Plan, which remains unfulfilled.*

## Chapter IV

# ASSESSMENT OF IMPLEMENTATION OF ACTIONS UNDER PILLAR IV

**Institutional capacity.** During the second quarter of 2013, the WG for monitoring the implementation of actions under Strategy Pillar IV met in two sessions, on 30 April and 26 July, while another meeting, scheduled for 21 June, did not take place due to a lack of quorum. The WG mainly discussed the activities in progress. It did not approve a Work Plan for 2013. No minutes or agendas of WG meetings in 2013 were published on the website of the reform.

## 1. ACTIONS DUE BY: QUARTER 2 OF 2013

### Group II. Developing methodological recommendations and professional training programs.

Specific area of intervention: 4.2.2. Regular training of justice sector actors in the field of professional ethics

**Action 4.2.2 section 1.** *Develop a curriculum in the field of professional ethics for representatives of the justice sector (NIJ, Stefan cel Mare Academy)*

- Deadline: Quarter 2, 2013
- Responsible for implementation: NIJ, “Stefan cel Mare” Academy
- Performance indicator: Curriculum developed and approved
- **Assessment: action not implemented**

We encountered difficulties in evaluating the implementation of this action. The NIJ website contains a curriculum on professional ethics for judges and prosecutors, which was drafted in 2011. We could not find similar curricula developed for other justice sector actors. We assume that the planned activities outlined in the Strategy Action Plan envisaged developing curricula for other actors in the justice sector and the renewal of existing curriculum for judges and prosecutors.

### Group III. Improving the legal framework; developing draft laws and bylaws.

Specific area of intervention: 4.1.4. Clear regulation of the behavior of judges, prosecutors, criminal investigators, lawyers and bailiffs in relation to other people in order to fight corruption and create a mechanism for ensuring an integral behavior

**Action 4.1.4 section 1.** *Develop the normative framework regulating the interaction and communication of the judge with the parties in the trial and third parties (MOJ, SCM, Lawyers’ Union, NUCEO)*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, SCM, Lawyers’ Union, NUCEO

- Performance indicator: Draft regulation developed and sent for examination to the Government
- **Assessment: action not implemented**

The action is in progress. A draft amendment to the law (in this case, the Law on the Status of Judges and Law on the SCM) was developed in late 2012 and submitted for approval. The bill is currently undergoing the anticorruption expertise and will be sent to the Government.

Specific area of intervention: 4.3.2. Develop and implement measures to encourage the actors in the justice sector to promote an integral behavior and develop a culture of intolerance towards corruption

**Action 4.3.2 section 2.** *Develop the normative framework for the voluntary polygraph tests of representatives of the justice sector*

- Deadline: Quarter 2, 2013
- Responsible for implementation: NAC, PGO, SCM, MOI
- Performance indicator: Bill drafted and sent for examination to the Government
- **Assessment: action not implemented**

## Group V. Develop and use information and awareness raising mechanisms.

Specific area of intervention: 4.3.3. Strengthening the whistleblower regime (inside and outside the system)

**Action 4.3.3 section 2.** *Create internal institutional mechanisms to allow whistleblowers to signal irregularities (SCM, SCP, PGO, NAC, MOI)*

- Deadline: Quarter 2, 2013
- Responsible for implementation: SCM, SCP, PGO, NAC, MOI
- Performance indicator: Internal mechanisms created
- **Assessment: action not implemented**

The NAC was the only institution to publish an Internal Regulation on whistleblowers on its website at the time of writing this report. However, the NAC official interviewed by the monitor said that the institution did not have a mechanism for whistleblowers to report illegalities. We therefore conclude that there is a mechanism within the NAC formalized in an Internal Regulation, it has not been sufficiently publicized and NAC employees are unaware of its existence.

Representatives of other institutions mentioned that they too had such mechanisms, and referred to the HR (human resources) personnel, which, inter alia, is also responsible for this aspect. Even in countries with sophisticated mechanisms to protect whistleblowers, the practice became effective only a few years after the launch of those systems. It is thus necessary to expedite the creation of such mechanisms by promoting the idea of whistleblowers in society and ensuring their more-than-formal protection.

**Action 4.3.3 section 4.** *Publicizing the institution of whistleblowers*

- Deadline: Quarter 2, 2013
- Responsible for implementation: NAC

- Performance indicator: Number of topical press releases issued
- **Assessment: action not implemented**

In the *stricto sensu* interpretation of the performance indicators outlined in the Action Plan, this action may be assessed as completed, as the NAC had issued a press release on the adoption of an Internal Regulation on whistleblowers.

At the same time, the publication of a press release does certainly little to ensure a wider media coverage of the whistleblower organization. Thus, we cannot state that this action has been “implemented”.

## 2. OVERDUE ACTIONS (since 2012 and Quarter 1 of 2013)

### Group I. Studies and needs assessments examining current practices; proposing recommendations for reform.

**Action 4.1.5 section 1.** *Study the mechanisms for preventing the interference in the work of justice and preventing corruptible behavior*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, NAC
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action implemented**

The study was conducted by the CAPC and publicized; however it is not available on the CAPC or MOJ websites.

Specific area of intervention: 4.3.2. Develop and implement measures to encourage the actors in the justice sector to promote an integral behavior and develop a culture of intolerance towards corruption

**Action 4.3.2 section 1:** *Conduct a study on the voluntary polygraph testing of the representatives of the justice sector*

- Deadline: Quarter 4, 2012
- Responsible for implementation: NAC, SCM, PGO, MOI
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action implemented**

The study was conducted by the CAPC and publicized; however it is not available on the CAPC or MOJ websites.

Specific area of intervention: 4.3.4. Publication and publicizing of court decisions sentencing justice sector actors for corruption

**Action 4.3.4 section 1.** *Study the opportunity to amend the legal framework regarding the publication and publicizing of court judgments convicting justice sector representatives for acts of corruption*

- Deadline: Quarter 4, 2012
- Responsible for implementation: SCM, MOJ

- Performance indicator: Study conducted and recommendations formulated; 2. Bill drafted and sent for examination to the Government
- **Assessment: action not implemented**

This action remained unfulfilled at the time of this report. The monitoring of courts' websites showed that they were still unadjusted for publishing and highlighting judgments convicting justice representatives for acts of corruption. On the other hand, some of the interviewed judges said they would publish such information on their court's website where such judgments to be pronounced, which has not happened yet.

### Group III. Improving the legal framework; developing draft laws and bylaws.

Specific area of intervention: 4.1.1. Substantially increase the salaries of justice sector actors and simplification of criteria for calculating salaries

**Action 4.1.1 section 1.** *Amending the legal framework to simplify the criteria for calculating salaries and a revision of the social guarantees of the justice sector actors*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, MOF, MLSPF
- Performance indicator: Bill drafted and sent to the Government
- **Assessment: action not implemented**

This action may be considered partially completed, since a bill was registered in Parliament on 18 December 2012 (<http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/1514/Default.aspx>). This bill however covers only judges, not the other actors of the justice sector. The reports by monitoring groups should be more explicit on the next steps necessary to complete this action, and maybe even a period of remediation.

## Chapter V

# ASSESSMENT OF IMPLEMENTATION OF ACTIONS UNDER PILLAR V

**Institutional capacity.** In the first quarter of 2013, WG-5 met in two sessions, on 11 April and 20 June. According to the agendas and minutes of the meetings, the discussions focused or had to focus on the implementation of outstanding actions from 2012 and actions due for completion in Quarter 2, 2013. The website of the WG does not have the agenda or the minutes of the meeting on 20 June. The Work Plan for 2013 was not debated nor adopted either, and no information regarding the Work Plan is available on the website.

## 1. ACTIONS DUE BY: QUARTER 2 OF 2013

### Group III. Improving the legal framework; developing draft laws and bylaws.

Specific area of intervention: 5.1.4 Establishing/improving the mechanisms of recognition and enforcement of judgments issued by foreign arbitration courts

**Action 5.1.4 section 2.** *Amend the legal framework to regulate the mechanisms of recognition and enforcement of judgments issued by foreign arbitration courts*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, courts, Chamber of Commerce and Industry, NU-CEO
- Performance indicator: Amendments to legal framework drafted and sent for examination to the Government
- **Assessment: action not implemented**

This action was due for completion in Quarter 2, 2013. WG members did not receive draft laws to confirm the implementation of this action. The MOJ did not publish any announcements regarding public consultations on any document/draft on this topic on the [www.particip.gov.md](http://www.particip.gov.md) website. No information about the implementation of this action is available on the website of the responsible institutions.

## 2. OVERDUE ACTIONS (since 2012 and Quarter 1 of 2013)

### Group I. Studies and needs assessments examining current practices; proposing recommendations for reform.

Specific area of intervention: 5.1.1. Handing over of economic cases to courts of common law, including by providing that judges shall be specialized on these categories of cases

**Action 5.1.1 section 1.** *Study statistical data with regard to:*

- a) the number of economic cases filed with courts located in the range of the parties' office (residence);

b) the number of companies registered in territorial administrative units that could be involved in economic litigations

- Deadline: Quarter 3, 2012
- Responsible for implementation: MOJ, SCM, National Statistical Bureau
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

This action was due for completion by 30 September 2012. According to information presented at the Working Group meeting of 11 April, the action should not be implemented because it was aimed to facilitate amendments to the legal framework and, according to the rapporteur at the meeting, Law no. 29 of 6 March 2012 adopted changes sufficient to exempt the responsible institution of the obligation to implement action 5.1.1 section 1 of the Action Plan. Note that the same arguments were presented at the end of 2012, when the WG prepared its annual report. At that stage, the arguments were considered inadequate and the action deemed unfulfilled. Given the fact that two conflicting decisions were taken on the same subject and based on the same arguments, we believe that the mentioned amendments to the legal framework do not exempt the responsible institution from the obligation to conduct the studies specified in the Action Plan.

Specific area of intervention: 5.1.2. Developing guiding principles for the use of alternative dispute resolution mechanisms (criminal, civil, commercial) and development of arbitration and mediation institutions as alternative means of litigation settlement

**Action 5.1.2 section 1.** *Develop studies on the functioning of the institution of mediation in specific fields (family, civil, commercial or labor disputes, administrative consumers' rights litigations) and the opportunity of establishing a system of community mediation and of the institution of arbitrage*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, MLSPF, Ministry of Economy, Mediation Council, SCM, Chamber of Commerce and Industry
- Performance indicator: Studies developed and recommendations formulated
- **Assessment: action not implemented**

This action was due for completion on 31 December 2012. According to the report prepared at the end of 2012, the action was considered partially implemented after a study had been developed in this field. According to information from the meetings of the Working Group, the action was deemed implemented since a report on the topic was written in 2011, before the publication of the JSRS Action Plan. Given the fact that two conflicting decisions were issued one and the same subject based on different yet equally biased arguments, we believe that the existence of earlier studies and reports on the respective topic does not exempt responsible institutions from their obligation to conduct studies specifically provided in the Action Plan.

Specific area of intervention: 5.3.1. Modernization of the system of electronic registration of economic agents

**Action 5.3.1 section 1.** *Conduct a study on ways to modernize the system of electronic registration of companies*

- Deadline: Quarter 4, 2012
- Responsible for implementation: Center for Electronic Governance, MOJ, Ministry of Economy, Ministry of Information Technology and Communications
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

Specific area of intervention: 5.3.2. Creating a unified electronic registry for the registration of economic agents and non-profit organizations

**Action 5.3.2 section 1.** *Conduct a study on a unified registry of companies and non-profit organizations*

- Deadline: Quarter 4, 2012
- Responsible for implementation: Center for Electronic Governance, MOJ, Ministry of Economy, Ministry of Information Technology and Communications
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

This action was due for completion on 31 December 2012. According to information from the meetings of the WG, those measures were combined for a more efficient joint implementation. However, there no activities towards the implementation of the actions were registered in the reporting period. However, after the reporting period, the MOJ website published an employment opportunity ad for an expert to be tasked with developing these respective studies. The Ad was posted online on 5 July 2013, which confirms once again that the action had not been implemented in the timeframe established by the JSRS Action Plan.

### Group III. Improving the legal framework; developing draft laws and bylaws.

Specific area of intervention: 5.2.1. Creating the necessary regulatory framework for the efficient organization and functioning of the administrators of insolvency procedure

**Action 5.2.1 section 2.** *Create the institutional framework for exercising the profession of authorized insolvency administrator*

- Deadline: Quarter 3, 2012
- Responsible for implementation: MOJ, Ministry of Economy
- Performance indicator: Framework for the operation of authorized administrators created
- **Assessment: action not implemented**

This action was due for completion on 30 September 2012. In accordance with the MOJ Work Plan for 2013, the DGL and the Division for Judicial Professions and Services are responsible for completing the action by 30 September 2013.

Specific area of intervention: 5.2.1. Creating the necessary regulatory framework for the efficient organization and functioning of the administrators of insolvency procedure

**Action 5.2.1 section 3.** *Develop relevant draft regulations for the admission to the profession of insolvency administrator and supervision of this activity*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ
- Performance indicator: Draft regulations developed and approved
- **Assessment: action not implemented**

The action was due for completion by 31 December 2012. In accordance with the MOJ's 2012 Annual Working Plan, the DGL and the Division for Judicial Professions and Services are responsible for completing the action by 20 December 2013.

## Chapter VI

# ASSESSMENT OF THE IMPLEMENTATION OF ACTIONS UNDER PILLAR VI

**Institutional capacity.** In Quarter 2 of 2013, WG-4 met in two sessions, on 28 May and 25 June. The meetings met the required quorum. According to the meetings' agendas, the discussion focused on how to implement the actions due in Quarter 2 of 2013 and outstanding actions. Unfortunately, the minutes from the WG-4 meetings have not been published to the MOJ website. The WG adopted a final Work Plan for 2013 during the meeting on 25 June. Later, the Work Plan was published on the WG's website.

## 1. ACTIONS DUE BY: QUARTER 2 OF 2013

### Group I. Studies and needs assessments examining current practices; proposing recommendations for reform.

Specific area of intervention: 6.5.5. Strengthening the system of submission and review of complaints regarding the activity of probation services and penitentiary system

**Action 6.5.5 section 1.** *Conduct a study on the procedures of reviewing complaints related to the activity of probation services and the penitentiary system*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

This action was due for implementation by 30 June 2013; it was not implemented during the period covered by this report. Unfortunately, the implementation of this action was not discussed in the WG, as it was absent from the agenda of WG meetings. After the reporting period, on 25 July 2013, an ad was posted on the MOJ website to select an expert to develop the respective study. Thus, the action has not been even initiated within the period required by the Action Plan.

### Group II. Developing methodological recommendations and professional training programs.

Specific area of intervention: 6.3.3. Strengthening the system of juvenile probation

**Action 6.3.3 section 1.** *Develop case management recommendations for dealing with minors on probation*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, MLSPF
- Performance indicator: Methodical recommendations developed and approved
- **Assessment: action not implemented**

This action was due for completion by 30 June 2013. According to the MOJ activity report for the first semester of 2013, the action is assessed as implemented, as certain measures had been taken towards its completion. However, according to the same report, an expert responsible for drafting the respective methodical recommendations was only to be selected by the end of the reporting period. At the WG meeting on 25 June, MOJ representatives mentioned that the action had not been completed.

### Group III. Improving the legal framework; developing draft laws and bylaws.

Specific area of intervention: 6.3.1. Ensuring the specialization of justice system actors for dealing with children

**Action 6.3.1 section 1.** *Improve the legal framework to ensure specialization of persons working with children in contact with the justice system*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, SCM, PGO, Ministry of Education, MLSPF, MOI, NC-SGLA, Mediation Council, National Council for the Protection of Children's Rights, local governments
- Performance indicators:
  - 1) Study conducted and recommendations formulated;
  - 2) Draft amendments to the legal framework developed.
- **Assessment: action implemented**

This action was due for completion on 30 June 2013. On 25 April 2013, a study on "Improving the legal framework to ensure specialization of persons working with children in contact with the justice system" was published on the website of the Ministry of Justice, the institution responsible for implementing the action. According to study results, no legislative interventions are required to ensure appropriate specialization. At the same time, the second part of the action that provides for the development of a draft regulatory framework has been neglected. No action has been taken to compel other relevant institutions to develop departmental bylaws to ensure specialization.

Specific area of intervention: 6.3.4. Ensuring the observance of the rights of children in detention

**Action 6.3.4 section 1.** *Analyze and amend the normative framework regulating the disciplinary sanctions applied to children in detention, the measures to stimulate these children, and handling complaints submitted by them*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, CHRM
- Performance indicators: Assessment conducted and recommendations formulated; amendments to normative framework drafted and sent for examination to the Government
- **Assessment: action implemented**

This action was due for completion on 30 June 2013. On 8 April, a draft amendment to a series of acts, including the Code of Execution, was presented for public debate. The draft tackles specific issues related to disciplinary sanctions imposed on juveniles in detention.

## 2. OVERDUE ACTIONS (since 2012 and Quarter 1 of 2013)

### Group I. Studies and needs assessments examining current practices; proposing recommendations for reform.

Specific area of intervention: 6.5.1. Introducing a modern probation concept to contribute to community safety through effective rehabilitation of offenders in the society

**Action 6.5.1 section 1.** *Develop a concept of the institution of probation to contribute to community safety through effective rehabilitation of offenders in the society*

- Deadline: Quarter 1, 2013
- Responsible for implementation: MOJ
- Performance indicator: Study conducted and recommendations formulated; concept developed and approved
- **Assessment: action not implemented**

This action was due for completion on 31 March 2013. The OCP website published, on an unspecified date, a concept of development of a probation institution aimed at contributing to community safety through effective rehabilitation of offenders into society. The first quarterly report for 2013 prepared by the MOJ states that this action was partially implemented. However, during the monitoring period, the concept was not officially approved, therefore it remains outstanding.

Specific area of intervention: 6.5.2. Ensuring the institutional autonomy of the probation service

**Action 6.5.2. section 2.** *Optimize the system of probation bodies*

- Deadline: Quarter 1, 2013
- Responsible for implementation: MOJ
- Performance indicator: Probation Service optimized; Service organizational chart revisited
- **Assessment: action not implemented**

This action was due for completion on 31 March 2013. On 2 April 2013, a draft Government Decision on the optimization of probation bodies was published. However, the draft decision was not examined or approved during the period of this report, and the action remains outstanding.

### Group II. Developing methodological recommendations and professional training programs.

Specific area of intervention: 6.2.3. Strengthening management, investigative, research and analysis skills and competences of the Center for Human Rights' personnel and of the Ombudsperson institution

**Action 6.2.3 section 1.** *Develop the curriculum for the initial training of new CHRM employees and a study plan for continuous training of CHRM (including CHRM representatives), focusing on developing abilities to identify and report on human rights violations*

- Deadline: Quarter 4, 2012
- Responsible for implementation: CHRM, Academy for Public Administration, NIJ
- Performance indicator: Curriculum and study plan developed
- **Assessment: action not implemented**

This action was due for completion on 31 December 2012. A decision on approving the curriculum for the training of the CHRM staff was not published on the NIJ website during the reporting period. At the same time, the CHRM Work Plan for 2013 does not mention any training activities for its staff.

### Group III. Improving the legal framework; developing draft laws and bylaws.

Specific area of intervention: 6.2.1. Institutional reform of the CHRM and the Ombudsperson institution, including the procedures of their appointment and evaluation of their performance

**Action 6.2.1 section 2.** *Draft bill on the institution of the Ombudsperson (people's advocate) in a new reading, and draft amendments to the CHRM Rules and Regulations*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, CHRM
- Performance indicator: Bills drafted and sent for examination to the Government
- **Assessment: action not implemented**

This action was due for completion on 31 December 2012. On 15 April 2013, a draft law on the Ombudsperson was published. The bill was discussed in public debates, and the civil society contributed recommendation to the text of the bill. However, the bill was not examined or passed during the reporting period. In our opinion, the action remains outstanding.

Specific area of intervention: 6.3.2. Strengthening the instruments for protecting the children victims and witnesses of crimes in criminal proceedings

**Action 6.3.2 section 3.** *Amending the legal framework to provide the right to state-guaranteed legal aid to children victims of crimes*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, NCSGLA
- Performance indicator: Bill drafted and sent for examination to the Government
- **Assessment: action implemented**

This action was due for completion on 31 December 2012. During the reporting period, the action was completed, as the bill was passed by the Parliament on 12 July 2013.

Specific area of intervention: 6.4.3. Strengthening capacities of institutions' representatives responsible of deprivation of freedom (the police, the penitentiary system, NAC, psychiatric institutions, psycho-neurological boarding homes and asylums) to prevent and combat torture and ill-treatment

**Action 6.4.3 section 2.** *Create internal and independent disciplinary mechanisms for the examination of complaints regarding acts of torture and ill treatment*

- Deadline: Quarter 4, 2012
- Responsible for implementation: PGO, MOJ, MOI, NAC
- Performance indicator: Regulation developed; number of complaints examined
- **Assessment: action not implemented**

The action was due for completion on 31 December 2012. During the monitoring period, the responsible institutions did not take any effective measures to complete the action. The websites of the institutions responsible for implementing the action did not publish regulations, including internal regulations, on the examination of such cases.

Specific area of intervention: 6.4.3. Strengthening capacities of institutions' representatives responsible of deprivation of freedom (the police, the penitentiary system, NAC, psychiatric institutions, psycho-neurological boarding homes and asylums) to prevent and combat torture and ill-treatment

**Action 6.4.3 section 4.** *Draft amendments to the legal framework to ensure a direct subordination of anti-torture prosecutors to the Prosecutor General's Office*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, PGO
- Performance indicator: Amendments to the legal framework drafted and sent for examination to the Government
- **Assessment: action not implemented**

The action was due for completion on 31 December 2012. During the reporting period, the responsible institutions did not draft any bills to provide direct subordination of anti-torture prosecutors to the PGO. No such bill was discussed in public debates during the monitoring period for this report. At the same time, the draft Strategic Development Program for the PGO in 2012-2016 provides for measures to enhance the capacity to effectively fight and prevent torture and ill-treatment, schedules for as late as December 2014.

Specific area of intervention: 6.4.4. Create a system of records and registration concerning the apprehension, arrest and detention that is standardized and protected against manipulation

**Action 6.4.4 section 1.** *Develop a concept of a system of registration and records of cases of apprehension, detention and arrest; by case, draft relevant amendments to the legal framework*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOI, PGO, NAC, Customs Service, MOJ
- Performance indicator: Working group created; by case, concept developed; amendments to legal framework drafted and sent for examination to the Government
- **Assessment: action not implemented**

The action was due for completion on 31 December 2012. The draft Strategic Development Program of the PGO for 2012-2016 provides for the implementation of this action in January 2014.

Specific area of intervention: 6.4.5. Fighting efficiently against acts of torture and ill-treatment

**Action 6.4.5 section 1.** *Draft amendment to the legal framework to ensure the professional independence of medical workers in detention facilities by transferring them to the Ministry of Health in order to grant their independent expertise's probative value in alleged cases of torture, to elimi-*

*nate contradictions with regard to qualifying actions as acts of torture, and to introduce more serious sanctions for acts of torture, in relation to the severity of these acts*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, CHRM, PGO, MOI, NAC, Customs Service, Ministry of Health
- Performance indicator: Amendments to legal framework drafted
- **Assessment: action not implemented**

The action was due for completion on 31 December 2012. Things have not progressed during the reporting period. No draft legislation was designed for the purpose of this action. Moreover, as already mentioned above, in the draft Strategic Development Program of the PGO for 2012-2016, measures to strengthen capacities to efficiently fight and prevent torture and ill-treatment are scheduled for as late as December 2014.

Specific area of intervention: 6.4.6. Create effective mechanisms to rehabilitate victims of torture and ill treatment

**Action 6.4.6 section 1.** *Develop the regulatory framework necessary for the rehabilitation of victims of torture and ill treatment*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, MLSPF
- Performance indicator: Draft regulation developed and sent for examination to the Government
- **Assessment: action not implemented**

The action was due for completion on 31 December 2012. No measures were taken during the reporting period to implement it. Moreover, in accordance with the MOJ annual Work Plan for 2013, this action was to be completed by the DGL by 30 September 2013. At the time of this report, in our opinion, this action remained outstanding.

Specific area of intervention: 6.5.1. Introducing a modern probation concept to contribute to community safety through effective rehabilitation of offenders in the society

**Action 6.5.1 section 2.** *Draft amendments to the normative framework related to probation*

- Deadline: Quarter 1, 2013
- Responsible for implementation: MOJ
- Performance indicator: Bill drafted and sent for examination to the Government
- **Assessment: action not implemented**

The action was due for completion on 31 March 2013. The draft law was not publicized during the reporting period. Note, however, that the completion of this action is connected with the implementation of action 6.5.1 section 1, described above, which has not been fully implemented. Given that, by the end of the monitoring period, the Concept was not officially approved, amendments to the legal framework were impossible. Therefore, from our standpoint, this action remains outstanding.

## Chapter VII

# ASSESSMENT OF IMPLEMENTATION OF ACTIONS UNDER PILLAR VII

**Institutional capacity.** In Quarter 2 of 2013, the Working Group for coordinating the implementation of the Strategy met in a single meeting, on 8 August. During the meeting, the first products of the assistance project for coordinating the Justice Sector Reform were presented.

## 1. ACTIONS DUE BY: QUARTER 2 OF 2013

### Group VI. Procurement and installation of equipment; software upgrades.

Specific area of intervention: 7.2.3. Increase public access to normative acts (database)

#### Action 7.2.3 section 2. *Optimization of the database of normative acts*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, Center for Electronic Governance
- Performance indicator: Database optimized; search engine functional
- **Assessment: action not implemented**

The wording of the Action Plan suggests that the optimization refers only to the database of normative acts, not to that of draft laws and regulations. At the date of this report, no changes were operated to the database of normative acts ([www.justice.md](http://www.justice.md)) or to the search engine for draft documents, not to mention that for court judgments, since the search functions of court websites are quite burdensome.

## 2. OVERDUE ACTIONS (since 2012 and Quarter 1 of 2013)

### Group I. Studies and needs assessments examining current practices; proposing recommendations for reform.

#### Action 7.1.4 section 1. *Analysis of functions and structure of each institution involved in the Justice Sector Reform process*

- Deadline: Quarter 4, 2012
- Responsible for implementation: justice sector institutions
- Performance indicator: Analysis conducted; recommendations formulated
- **Assessment: action not implemented**

This actions was not implemented at the time of this report. This action is part of the Project to Support Coordination of the Justice Sector Reform, funded by the EU, and is scheduled for the second semester of 2013.

Specific area of intervention:7.2.3. Increase public access to normative acts (database)

**Action 7.2.3 section 1.** *Develop a study on the access of the wider public to laws and bylaws (database)*

- Deadline: Quarter 2, 2012
- Responsible for implementation: MOJ, Center for Electronic Governance
- Performance indicator: Study developed; recommendations formulated
- **Assessment: action not implemented**

The study was not developed at the time of this report.

## Group II. Developing methodological recommendations and professional training programs.

Specific area of intervention: 7.2.2. Improve legislative drafting process in order to ensure stability, predictability and clarity of legislation

**Action 7.2.2 section 4.** *Develop a handbook on drafting legislation*

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ
- Performance indicator: Handbook developed
- **Assessment: action not implemented**

This action is in close connection with action 7.2.2 section 3, and could be implemented immediately after the respective legislative amendments were enforced. However, this is one of the activities planned as part of Project to Support Coordination of the Justice Sector Reform, funded by the EU.

## Group III. Improving the legal framework; developing draft laws and bylaws.

Specific area of intervention: 7.2.2. Improve legislative drafting process in order to ensure stability, predictability and clarity of legislation

**Action 7.2.2 section 2.** *Draft amendments to Law no. 780-XV of 27 December 2001 on Legislative Acts and Law no. 317-XV of 18 July 2003 on Normative Acts of the Government and other central and local public authorities to ensure stability, predictability and clarity of the legislation*

- Deadline: Quarter 2, 2012
- Responsible for implementation: MOJ
- Performance indicator: Bill drafted and sent to the Government
- **Assessment: action not implemented**

A bill on Normative Acts, which unifies the Law on Normative Acts and the Law on Normative Acts of the Government, was presented for public discussion in December 2012. The draft *Law on Normative Acts* provides a unified legal framework of the process of drafting regulations, while providing sufficient guarantees of efficiency, transparency and predictability of normative acts, regardless of the issuing body.

The bill on Normative Acts was submitted for prior approval to all central government bodies, Parliament Secretariat, the State Chancellery. Given that a large number of amendments were received during this exercise, it was decided to include them in the draft and resend it for repeated approval. By the time of this report, none of the drafts could be found on the websites of the Government or the Parliament.

**Action 7.2.2 section 3.** *Develop normative framework for the ex-ante methodology*

- Deadline: Quarter 2, 2012
- Responsible for implementation: MOJ, State Chancellery
- Performance indicator: Bill drafted and sent to the Government
- Assessment: action not implemented

According to information presented in the JSRS implementation report for 2012, a bill tackling this issue has been developed; however the current stage of the bill remains uncertain.

## Chapter VIII

# TRIAL MONITORING AND ASSESSMENT OF THE LEVEL OF USER SATISFACTION WITH THE ACT OF JUSTICE

## A. A. PERCEPTIONS OF PARTIES TO THE PROCEEDINGS AND THEIR REPRESENTATIVES (APPEARANCES OF THE ADMINISTRATION OF JUSTICE)

The survey is aimed at measuring the perception of the parties in the trial and their representatives (not the perception of the observer/monitor) regarding the act of justice based on the following indicators (parameters):

1. Availability of Information and Transparency;
2. Quality of Facilities and E-justice;
3. Access to justice;
4. Capacity, Independence and Impartiality of Judges;
5. Fairness of Proceedings;
6. Quality of the Outcome of the Proceedings (Judgments);
7. General State and Trends in the Quality of Administration of Justice.

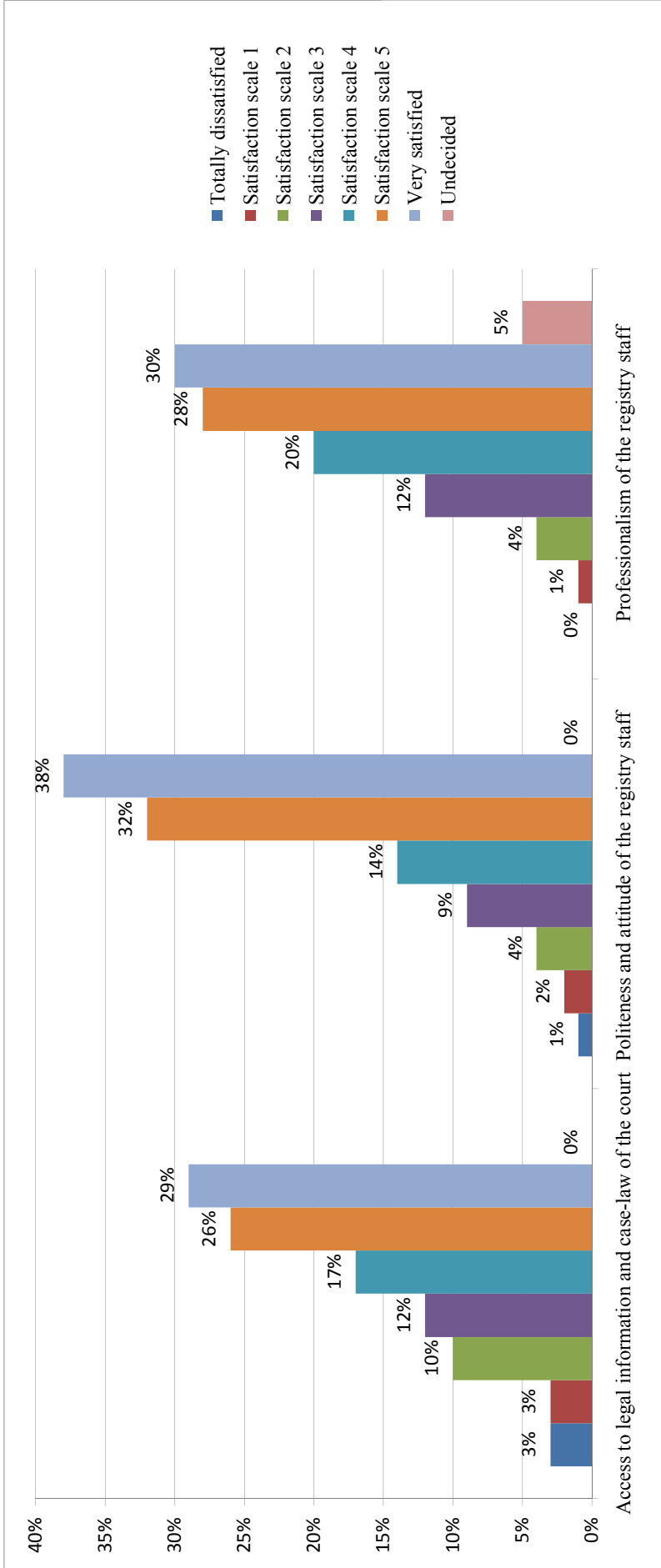
Thus, the 22 questions of the survey were divided by the above categories. The respondents were asked to choose between 7 levels of satisfaction, where level 1 is the lowest and level 7 is the highest. The option “undecided” was also included for the cases when the question was not applicable or the respondent chose not to answer it. In order to better reflect the perception of the parties, the answers were divided into three categories: “very satisfied”, which encompasses the answers from very satisfied to satisfaction scale 5; “totally dissatisfied”, includes completely dissatisfied and satisfaction scale 1; and “partially satisfied”, which includes the answers on satisfaction scales 2 to 4.

Given the different level of training and understanding of judiciary proceedings of the participants in the survey, it was suggested to divide the respondents into three categories:

1. Lawyers (which include a small number of judicial officers and representatives of legal entities), a total of 179 people;
2. Prosecutors, a total of 56 respondents; and
3. Court users (which include plaintiffs, defendants, witnesses, respondents and victims), totaling 224 persons.

# I. LAWYERS

## 1. Availability of Information and Transparency

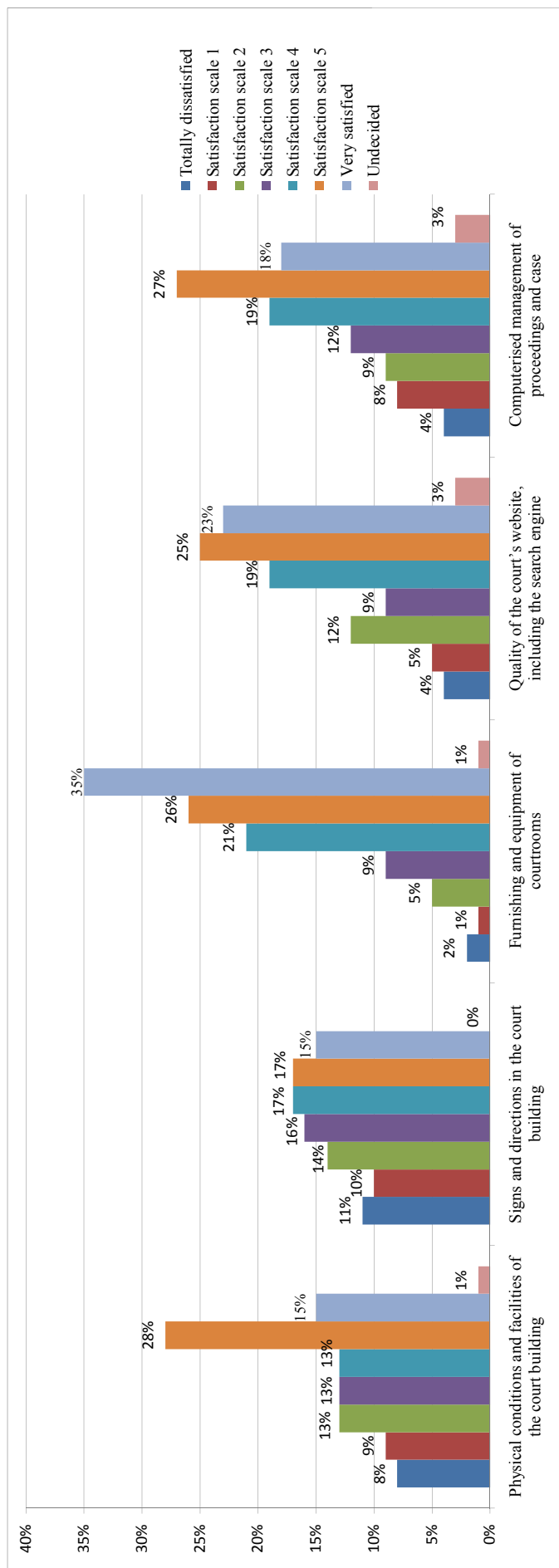


**Note:** With regard to access to legal information and practice (brochures, flyers, etc.), of the total 179 respondents, 55% said they were very satisfied, 6% said they were totally dissatisfied, and 39% said they were partially satisfied.

However, with regard to the attitude and politeness of the court registry staff, 70% of respondents were very satisfied with the conduct of registry members, only 3% were totally dissatisfied with the services, and some 27% said they were partially satisfied.

As per the professionalism and legal training of the court registry staff, 58% of respondents were very satisfied with their professionalism, 1% was totally dissatisfied, and approximately 36% said they were partially satisfied. 5% of respondents were undecided on this matter.

## 2. Quality of Facilities and e-Justice



**Note:** Assessing the court building facilities (the possibility of disabled access to the building, chairs on the hall, a room to study the case file, room for lawyers/prosecutors, toilets and so on), of the total 179 respondents, 43% said they were very satisfied, while 17% said they were totally dissatisfied with the facilities; another 39% of respondents said they were partially satisfied, and 1% of respondents were undecided.

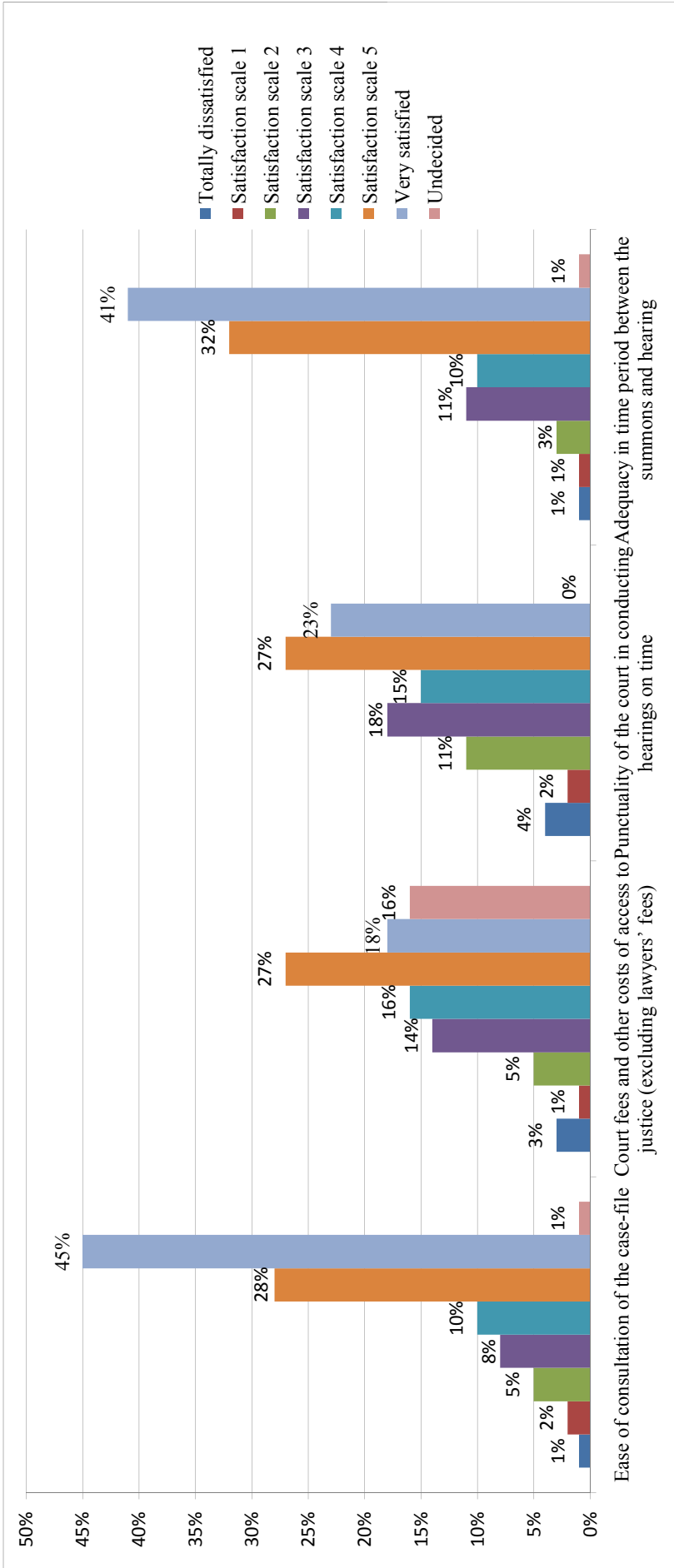
On the indicators outside and inside the court building, about 32% said they were very satisfied, while 21% said they are totally dissatisfied, another 47% of respondents said they were partially satisfied with their location and visibility.

The furniture and equipment of the courtroom were assessed as follows: 61% said they were very satisfied with them, while 3% were totally dissatisfied, another 35% of respondents said they were partially satisfied, and only 1% of respondents were undecided.

48% of respondents were very satisfied with the quality of the website of the court, including its search engine, while 9% were totally dissatisfied; 40% were partially satisfied, while 3% were undecided.

Regarding the electronic management of cases and the judicial process, including the operation of the electronic case management system, 45% of respondents were very satisfied with how it worked, while 12% were totally dissatisfied; 40% were partially satisfied, and other 3% of the total participants were undecided.

### 3. Access to Justice (in this particular case)



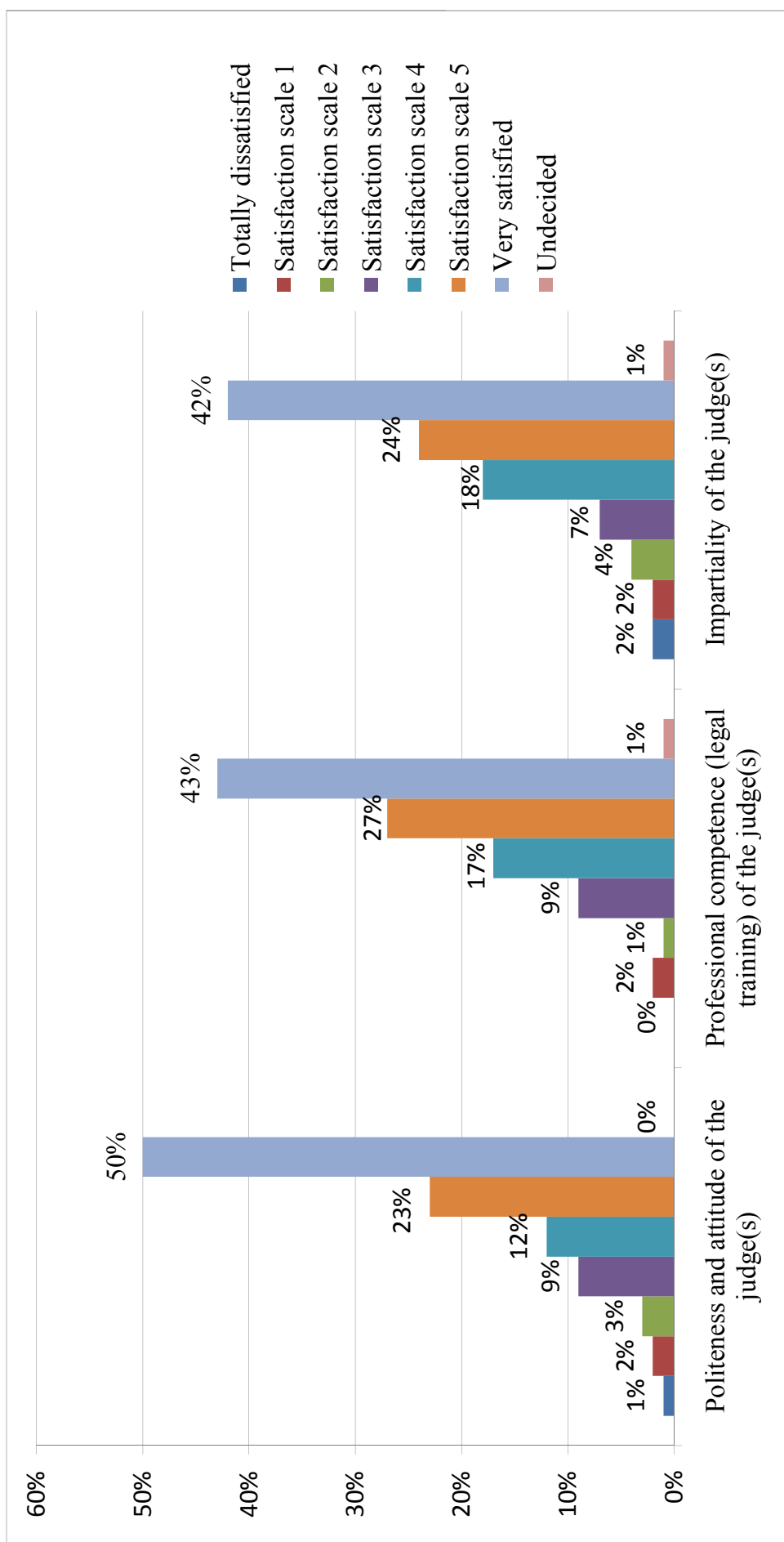
**Note:** As regards access to justice, namely the availability of the case file, 73% of respondents said they were very satisfied with the possibility to study the case, while only 3% said they were totally dissatisfied; 23% were partially satisfied, while 1% were undecided.

The respondents' satisfaction about the judicial costs and other costs (excluding attorneys' fees), 45% were very satisfied, 4% were totally dissatisfied with the costs, 35% were partially satisfied, and 16% were undecided.

Respondents assessed the timely conduct of scheduled hearings as follows: 50% were very satisfied, 6% were totally dissatisfied, and 44% were partially satisfied.

Regarding the assessment of the time allowed between the presentation of the citation and the conduct of the hearing (to allow the parties to prepare for trial), 73% of respondents said they were very satisfied, while only 2% said they totally dissatisfied; 24% were partially satisfied, and 1% were undecided.

#### 4. Capacity, Independence and Impartiality of Judge(s) (in the particular case)

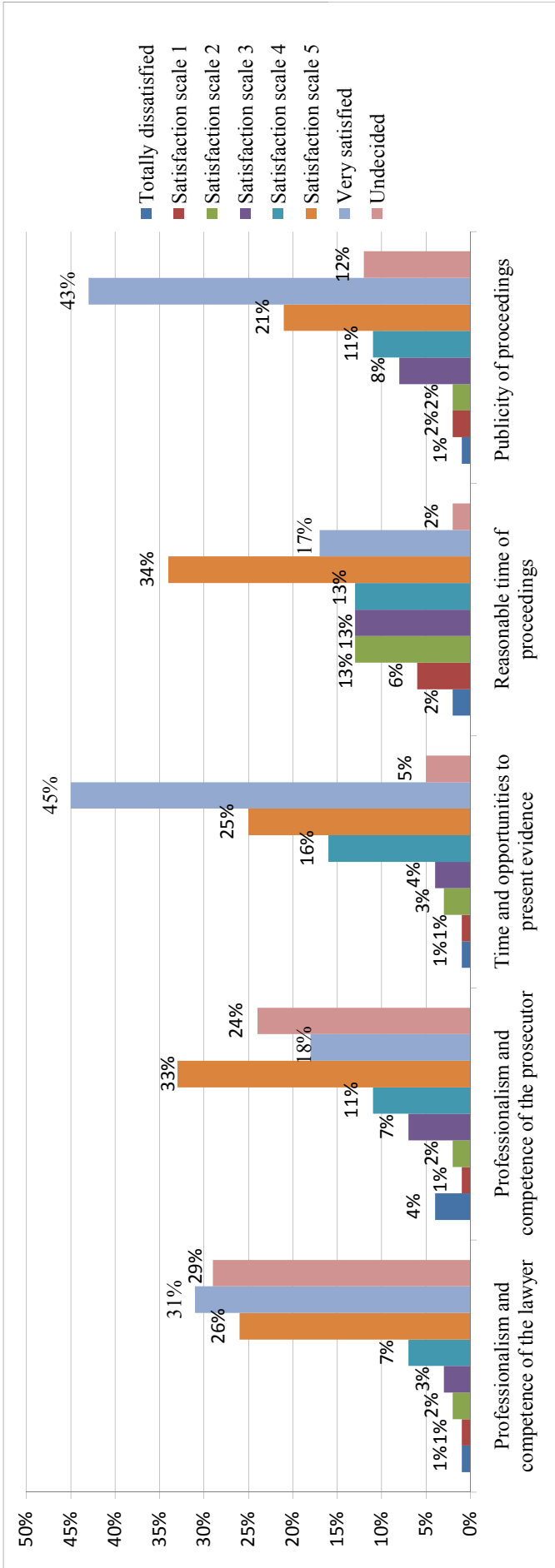


**Note:** 73% of respondents were very satisfied with the politeness and attitude of judges, while 3% said they were totally dissatisfied, 24% were partially satisfied.

The same dynamic is observed with reference to the professionalism and competence of judges: 70% of respondents were very satisfied and only 2% were totally unsatisfied; the rate of those partially satisfied is 27% and 1% was undecided.

66% of people surveyed said they are very satisfied with the impartiality of judges, while 4% were totally unsatisfied; another 29% of participants were partially satisfied, and 1% of respondents were undecided.

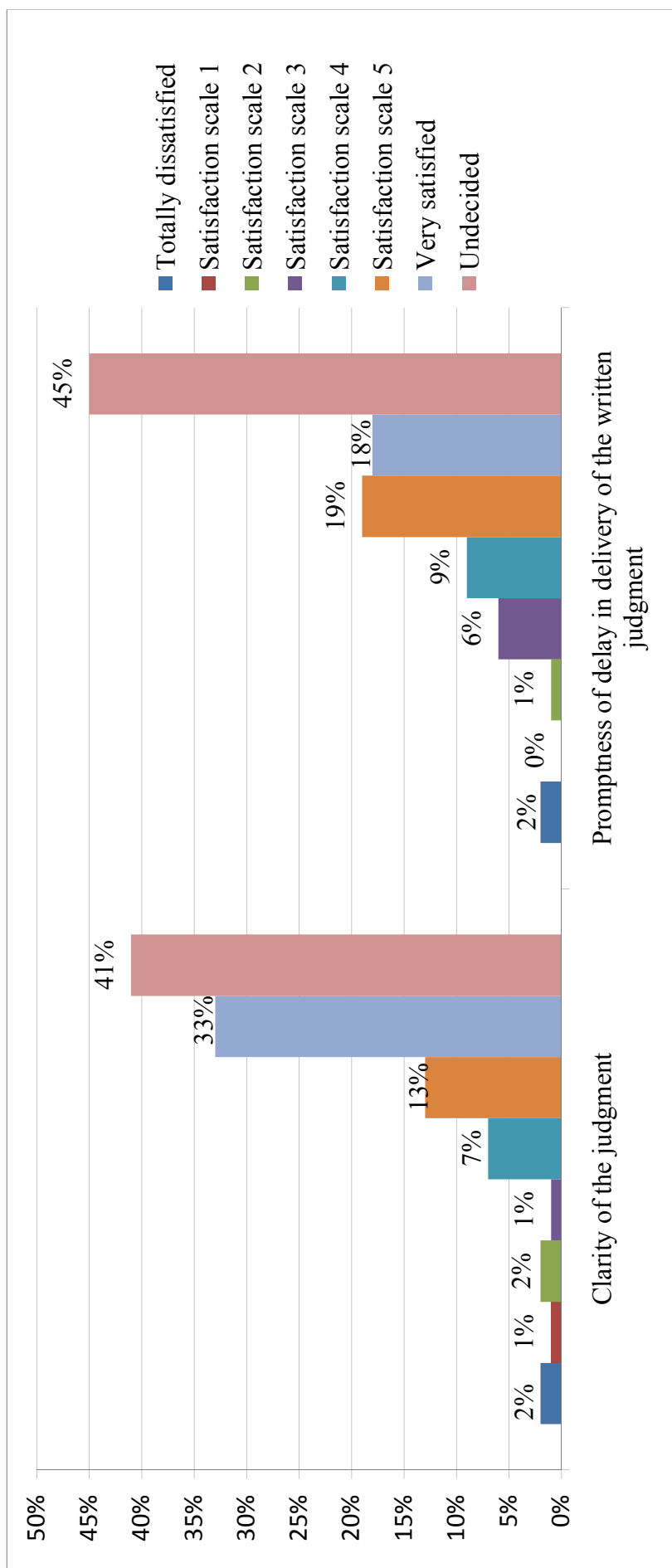
### 5. Fairness of Proceedings



**Note:** Assessing the fairness of the trial, the respondents answered as follows:

- On the professionalism and competence related of the lawyer, the interviewed lawyers were asked to assess the work of their colleagues: 57% of respondents said they were very satisfied, 2% showed total dissatisfaction, 12% were partially satisfied and 29% were undecided.
- 51% of respondents were very satisfied with the professionalism and competence of the prosecutor, while 5% were totally dissatisfied; 20% were partially satisfied and 24% were undecided.
- With reference to the question whether sufficient time and opportunities were allowed each party to the proceedings for presenting their cases and refute the evidence brought by the adversary part, 70% were very satisfied; 2% were totally dissatisfied; 23% were partially satisfied; and 5% were undecided.
- As for assessing the reasonable time of the trial, 51% of respondents were very satisfied, while 8% said they were totally dissatisfied; partially satisfied were 39% and other 2% remained undecided.
- 64% of respondents said they were very satisfied with the public nature of the trial for third parties and the media, while 3% were totally dissatisfied; 21% were partially satisfied and 12% were undecided.

### 6. Quality of Outcome of Proceedings (in this particular case; only if court judgment was pronounced)

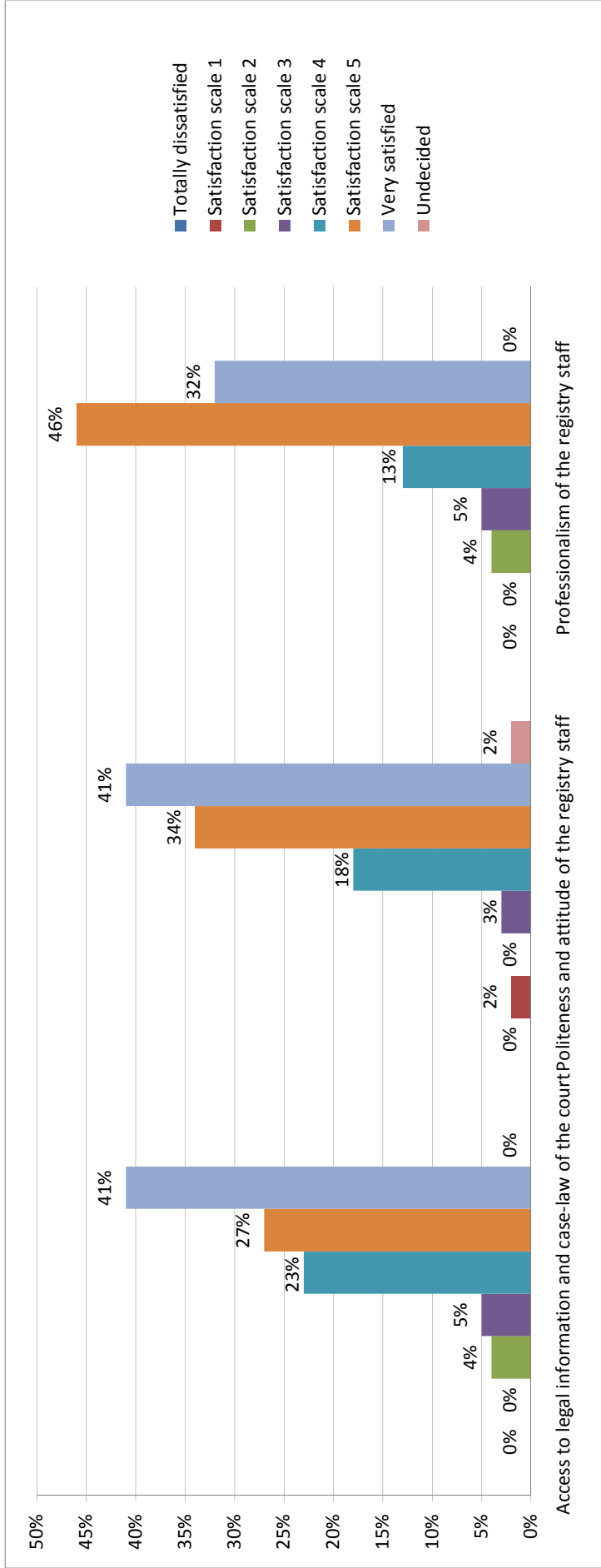


**Note:** With regard to the outcome of the trial, 46% of respondents said they were very satisfied with the clarity of the court’s ruling (not necessarily the verdict), while 3% said they were totally dissatisfied; 10% were partially satisfied, and the other 41% of respondents were undecided on the answer to this question (which was not applicable in this case).

At the same time, 37% of respondents said they were very satisfied with the timeliness of submission of the judgment in writing, while 2% were totally dissatisfied; partially satisfied were 16%. In 45% of cases, this situation was not applicable.

## II. PROSECUTORS

### 1. Availability of Information and Transparency

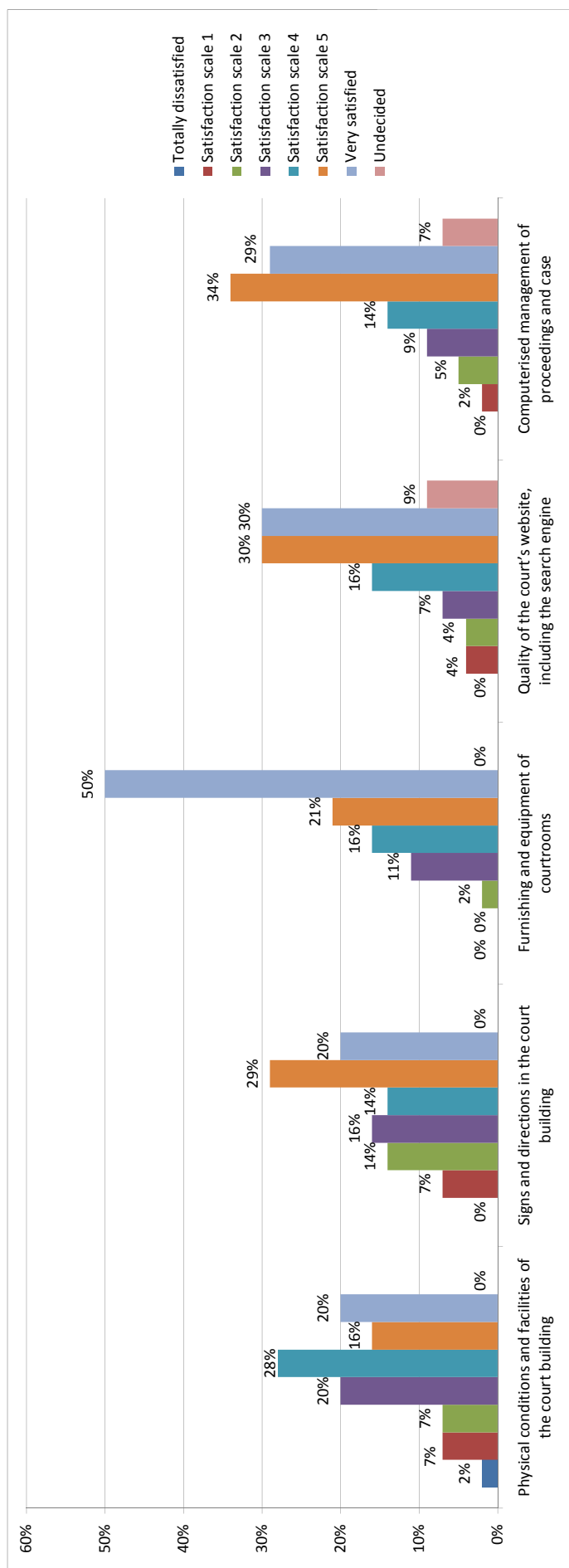


**Note:** On the access to legal information and practice (brochures, flyers, etc.), of the total number of prosecutors surveyed, 68% said they were very satisfied, no one said they were dissatisfied, and 32% said they were partially satisfied.

Regarding the attitude and politeness of the registry staff, 75% of respondents were very satisfied with the conduct of the staff, only 2% were totally unsatisfied; another 21% said they were partially satisfied, and 2% were undecided.

With regard to the legal training of the clerks, 78% of respondents were very satisfied with their professionalism, no one said they were completely dissatisfied, and 22% said they were partially satisfied.

## 2. Quality of Facilities and e-Justice



**Note:** Assessing the court building facilities (the possibility of disabled access to the building, chairs in the hall, rooms to study the case file, rooms for lawyers/prosecutors, toilets and so on), about 36% said they were very satisfied, while 9% said they were totally unsatisfied; another 55% of respondents said they were partially satisfied with the facilities.

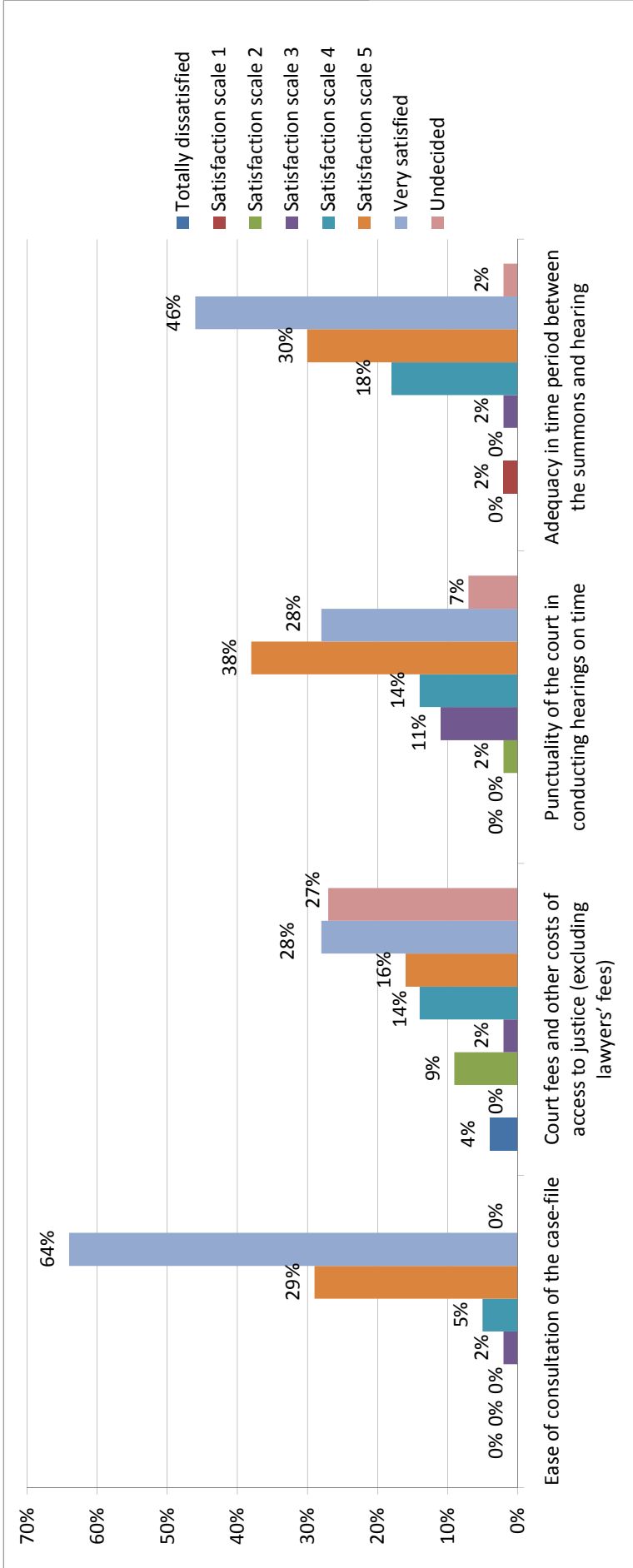
About 49% of the prosecutors said they were very satisfied with the indicators outside and inside the court building, while 7% said they were totally dissatisfied; another 44% of respondents said they were partially satisfied.

The furnishing and equipment of the courtroom were assessed as follows: about 71% said they were very satisfied, another 29% of respondents said they were partially satisfied, and no one said they were totally dissatisfied.

60% of the respondents said they were very satisfied with the quality of the website of the court, including its search engine, while 4% were totally dissatisfied; 27% were partially satisfied, while 9% were undecided.

On the electronic management of cases and the judicial process, including the operation of the electronic case management system, 63% of respondents were very satisfied, while 2% are totally dissatisfied; 28% were partially satisfied, and other 7% of the total participants were undecided.

### 3. Access to Justice (in this particular case)



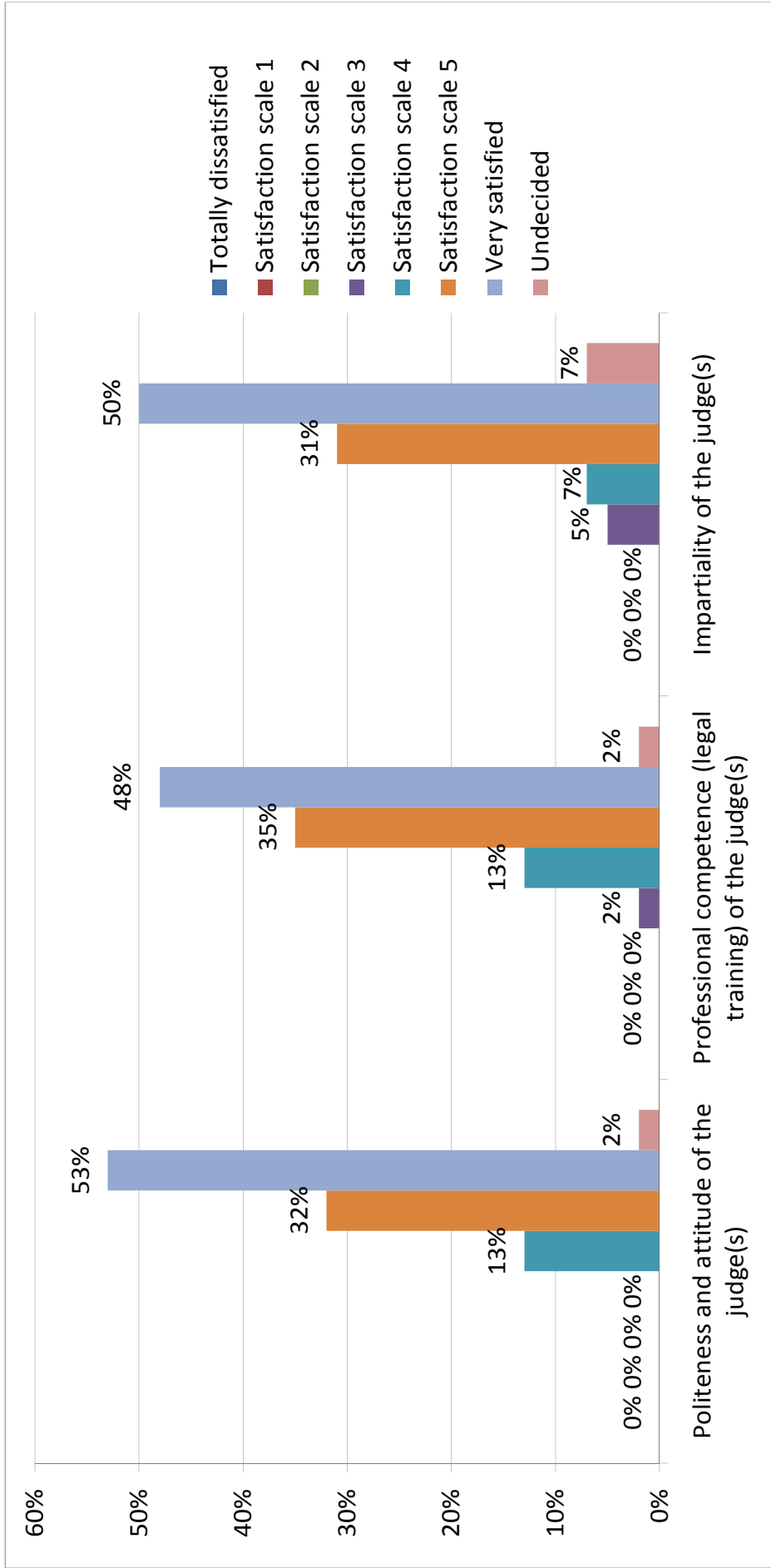
**Note:** As regards access to justice, namely the availability of the case file, 93% of respondents said they were very satisfied with the possibility to study the case, no one said they were totally dissatisfied, and 7% were partially satisfied.

44% of the respondents were very satisfied with the judicial and other costs (excluding attorneys' fees), while 4% were totally dissatisfied; 25% said they were partially satisfied, while 27 % were undecided.

Respondents assessed the timely conduct of scheduled hearings as follows: 66% were very satisfied, none were totally dissatisfied, 27% were partially satisfied, and 7% were undecided.

Assessing the time allowed between the citation to court and the conduct of the hearing (to allow the parties to prepare for trial), 76% of respondents said they were very satisfied, while only 2% said they totally dissatisfied; 20% were partially satisfied, while 2% were undecided.

#### 4. Capacity, Independence and Impartiality of Judge(s) (in the particular case)

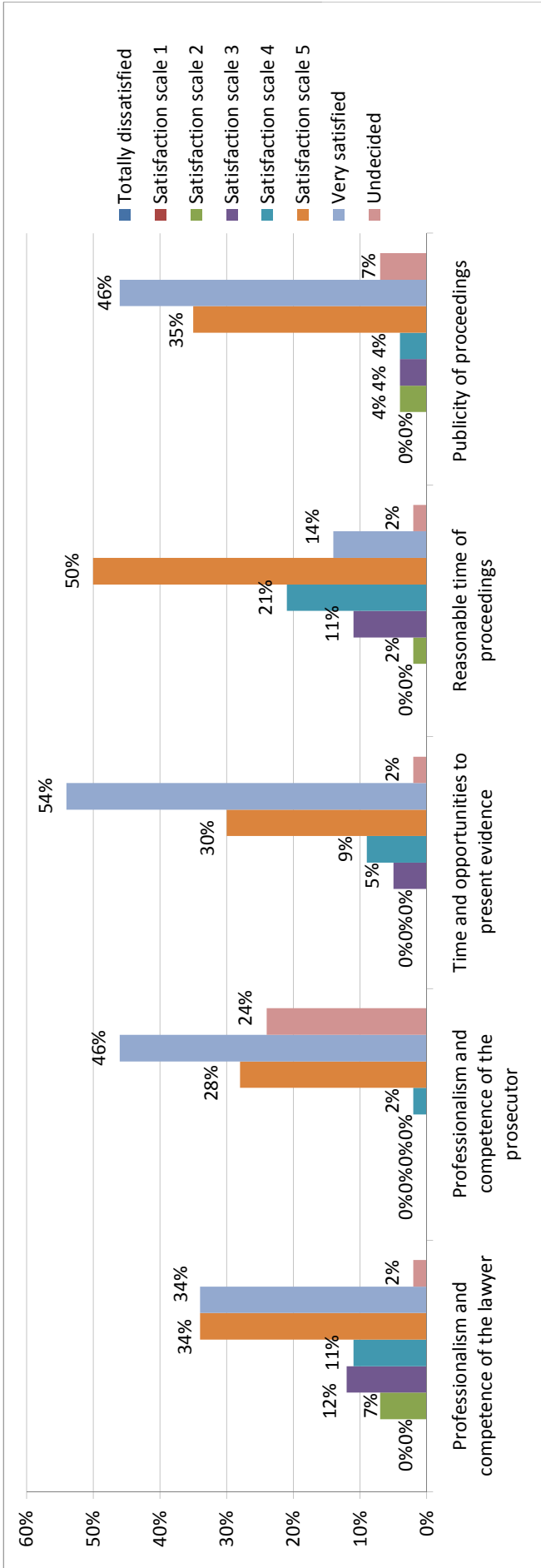


Note: 85% of respondents said they were very satisfied with the politeness and attitude of judges; none were completely dissatisfied, 13% said they were partially satisfied, and 2% were undecided.

The same dynamic can be observed with regard to the professionalism and competence of judges: 83% of respondents were very satisfied, none was totally dissatisfied, 15% were partially satisfied and 2% were undecided.

81% of those were very satisfied with the impartiality of judges; none was totally dissatisfied with it, 12% are partially satisfied and 7% of respondents were undecided on this matter:

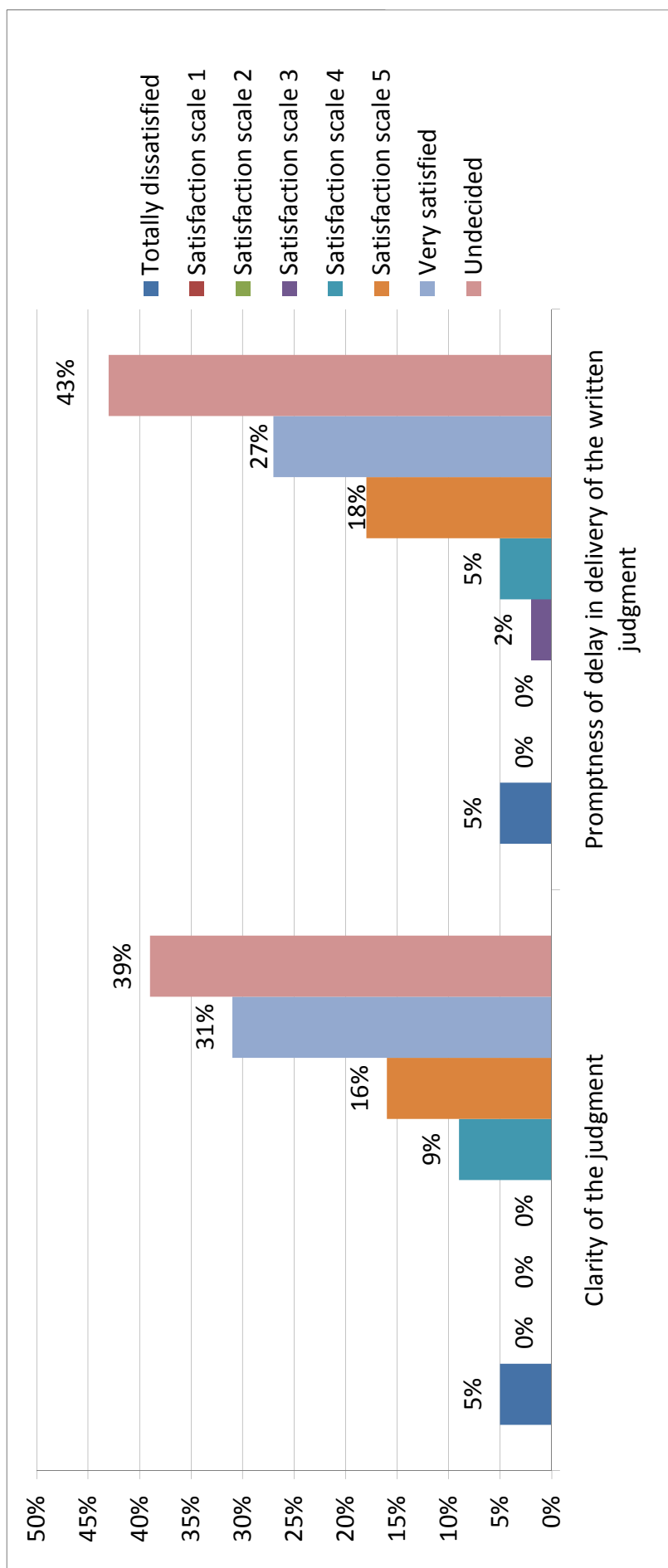
### 5. Fairness of Proceedings (in this particular case)



**Note:** Assessing the fairness of the trial, the respondents answered as follows:

- On the lawyers’ professionalism and competence, 68% said they were very satisfied, none was totally dissatisfied, 30% were partially satisfied and 2% were undecided.
- On the professionalism and competence of prosecutors, the respondents were asked to assess the work of their colleagues: 74% were very satisfied, none was totally dissatisfied, 2% were partially satisfied and 24% were undecided.
- On the question whether sufficient time and opportunities were provided to both parties to the proceedings to present their cases and refute the evidence presented by the adversary party, 84% were very satisfied, 14% were partially satisfied and 2% were undecided.
- Assessing the reasonable time of the trial, 64% said they were very satisfied, none was totally dissatisfied, 34% were partially satisfied and 2% were undecided.
- 81% of respondents said they were very satisfied with the public nature of the trial for third parties and the media, none was totally dissatisfied, 12% were partially satisfied and 7% were undecided.

### 6. Quality of Outcome of Proceedings (in this particular case; only if court judgment was pronounced)

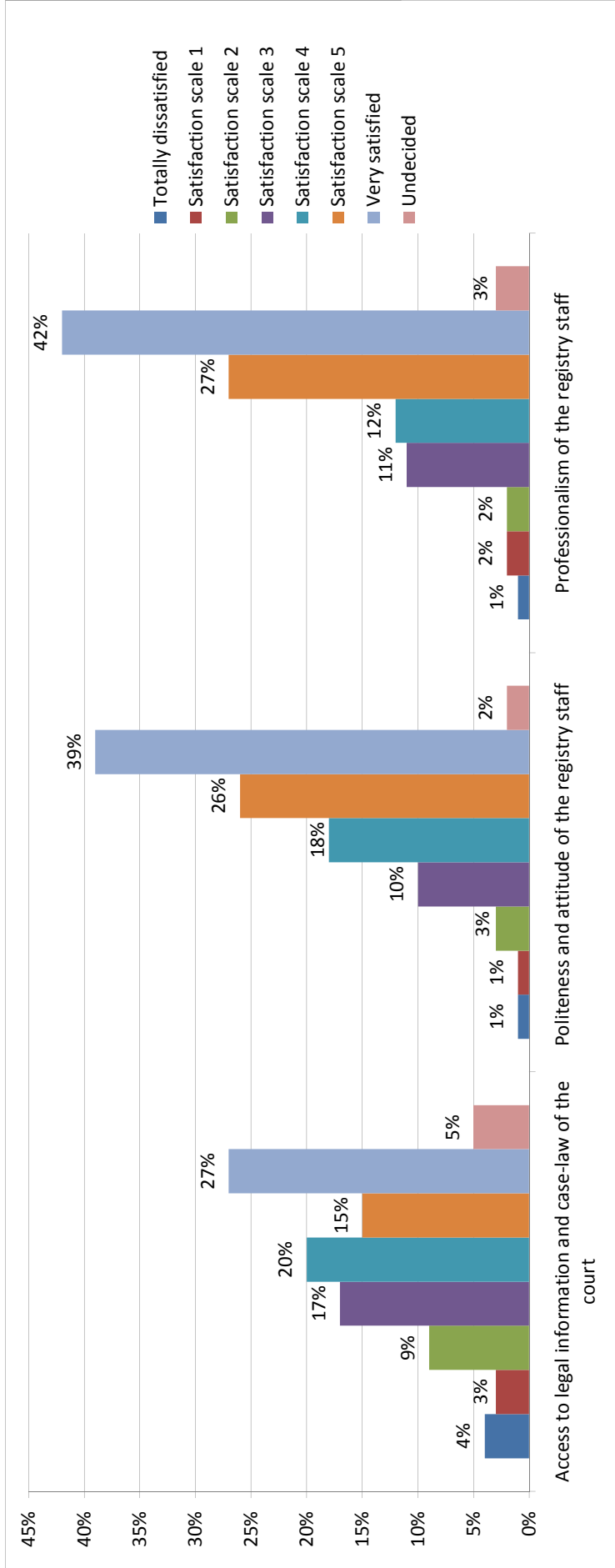


**Note:** With regard to the “outcome of the trial”, 47% of respondents said they were very satisfied with the clarity of the court’s ruling (not necessarily with the verdict), while 5% said they were totally dissatisfied with it; partially satisfied were 9% and 39% were undecided (question was not applicable to their case).

As regards the timeliness or delay in the presentation of the written judgment, 45% of respondents said they were very satisfied, 5% were totally dissatisfied; partially satisfied were 7% and, in 43% of cases, the question was not applicable.

### III. COURT USERS

#### 1. Availability of Information and Transparency

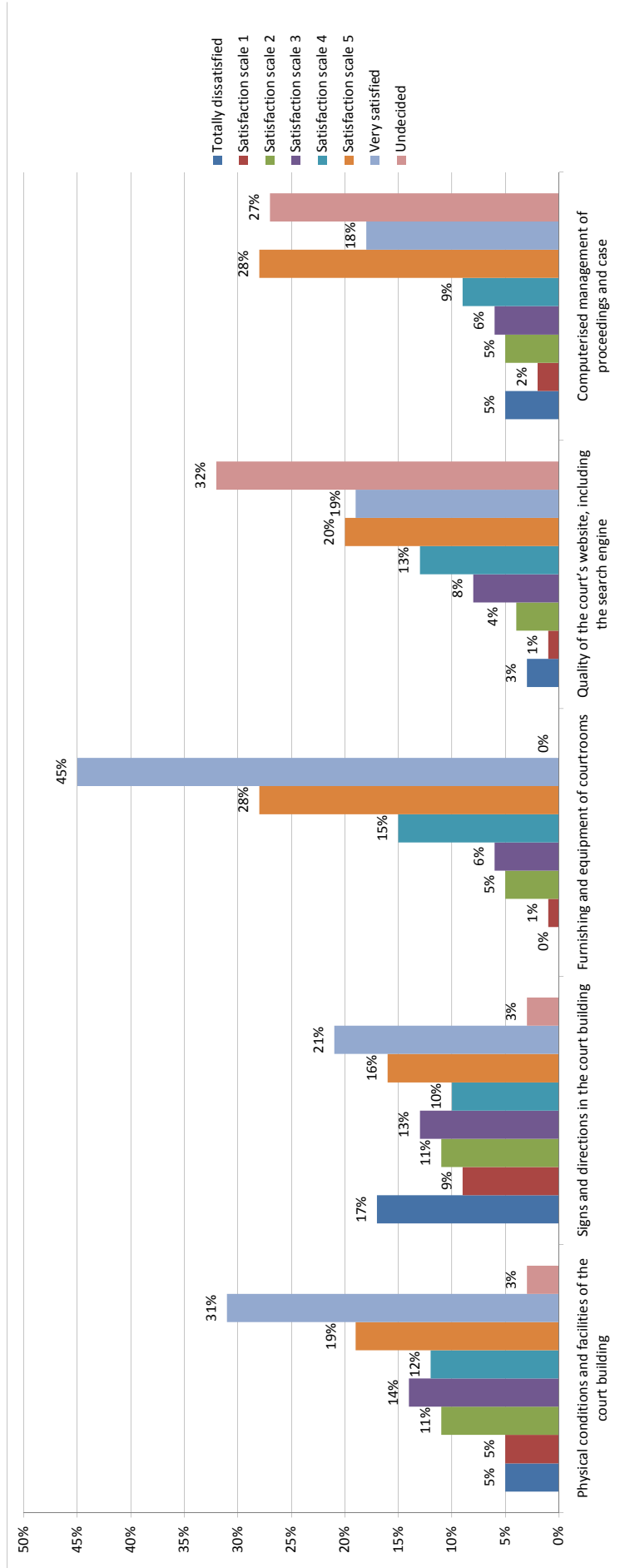


**Note:** With regard to the access to legal information and practice (brochures, flyers, etc.), of the total number of surveyed users, about 42% said they were very satisfied, 7% said they were totally dissatisfied, 46% were partially satisfied, and 5% were undecided.

Regarding the attitude and politeness of the registry staff, 65% were very satisfied with the conduct of the court's staff, only 2% were totally dissatisfied, 31% said they were partially satisfied, and 2% were undecided.

69% of respondents are very satisfied with the professionalism and legal training of clerks, totally dissatisfied were 3%, other 25% said they were partially satisfied, and 3% were undecided.

## 2. Quality of Facilities and e-Justice



**Note:** Assessing the court building facilities (the possibility of disabled access to the building, chairs in the hall, rooms to study the case file, rooms for lawyers/prosecutors, toilets, etc.), about 50% said they were very satisfied, while 10% said they were totally dissatisfied; some 37% of the respondents said they were partially satisfied, and 3% were undecided.

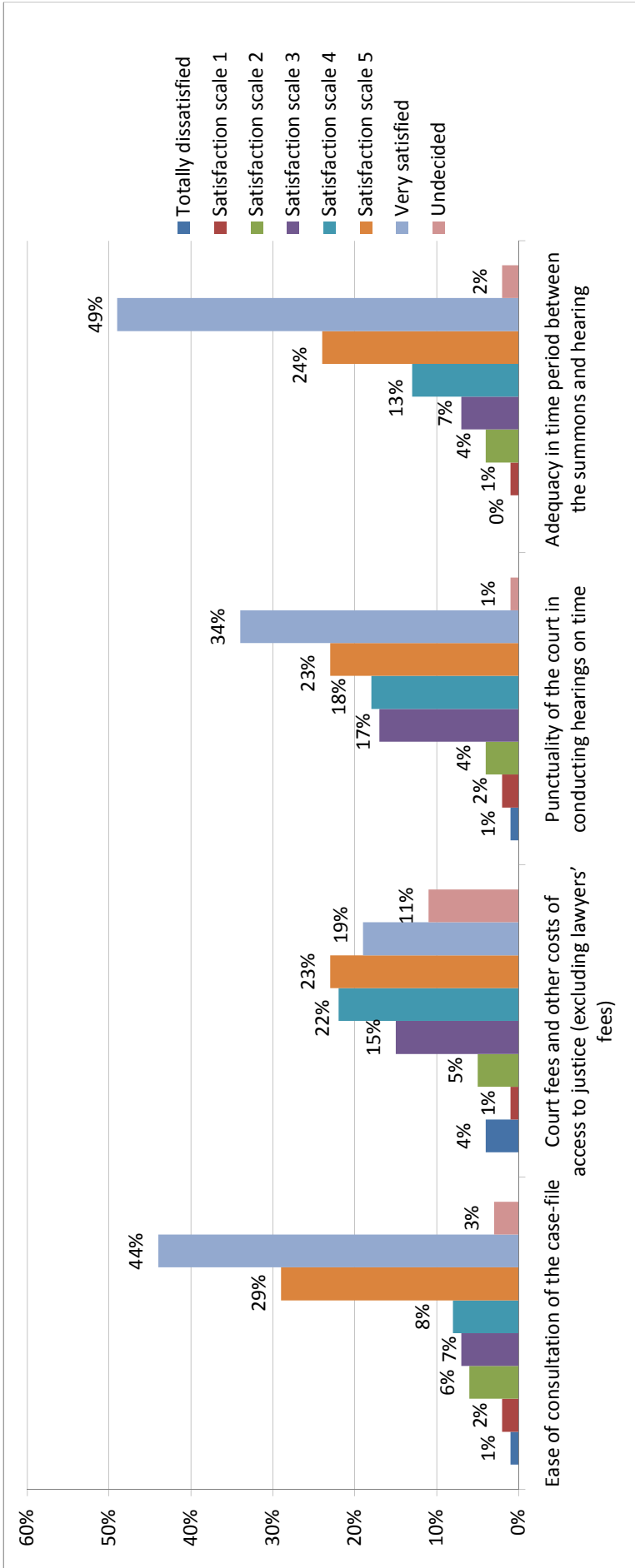
Some 37% said they were very satisfied, while 26% said they were totally dissatisfied with the indicators outside and inside the court building; 34% of respondents said they were partially satisfied, and 3% were undecided.

The furnishing and equipment of courtrooms were assessed as follows: 73% said they were very satisfied, 1% was totally dissatisfied; 26% of respondents said they were partially satisfied.

39% of the respondents said they were very satisfied with the quality of the website of the court, including its search engine, while 4% were totally dissatisfied; 25% were partially satisfied, while 32% were undecided.

Regarding the electronic management of cases and the judicial process, including the functioning of the electronic case management system, 46% of respondents were very satisfied with it, 7% were totally dissatisfied; 20% were partially satisfied, and 27% of the total participants were undecided.

### 3. Access to Justice (in this particular case)



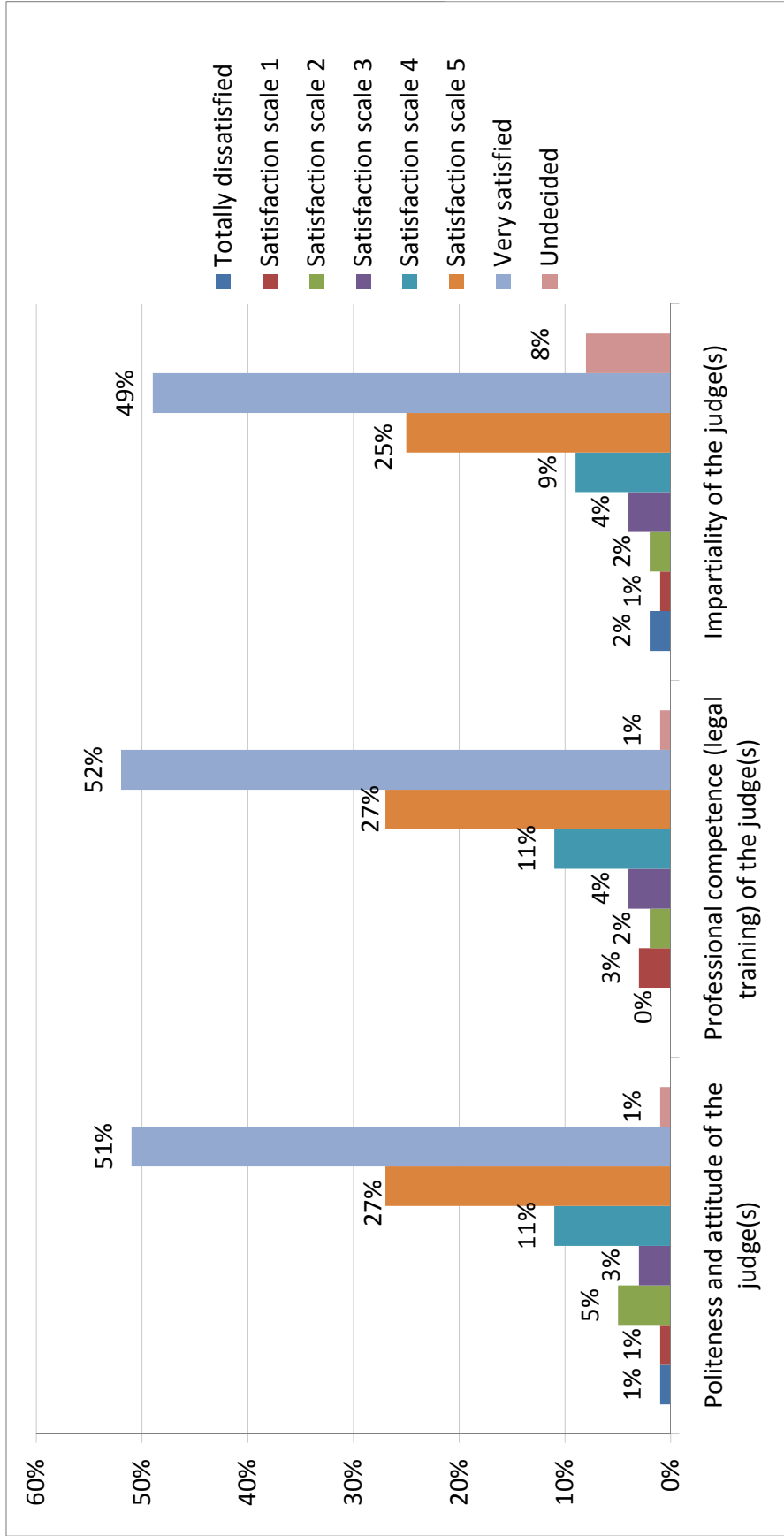
**Note:** As regards the access to justice, namely the availability of the case file, 73% of respondents said they were very satisfied with the possibility to study the case file, 3% were totally dissatisfied; 21% were partially satisfied, and 3% were undecided.

42% of the respondents were very satisfied with the judicial and other costs (excluding attorneys' fees), while 5% were totally dissatisfied with the costs; 42% said they were partially satisfied, while 11% were undecided.

The respondents assessed the timely conduct of scheduled hearings as follows: 57% were very satisfied, 3% were totally unsatisfied; another 39% were partially satisfied, and 1% was undecided.

Assessing the time allowed between the citation to court and the conduct of the hearing (to allow the parties to prepare for trial), 73% of the respondents said they were very satisfied, while only 1% was totally dissatisfied; 24% were partially satisfied, and 2% were undecided.

#### 4. Capacity, Independence and Impartiality of Judge(s) (in the particular case)

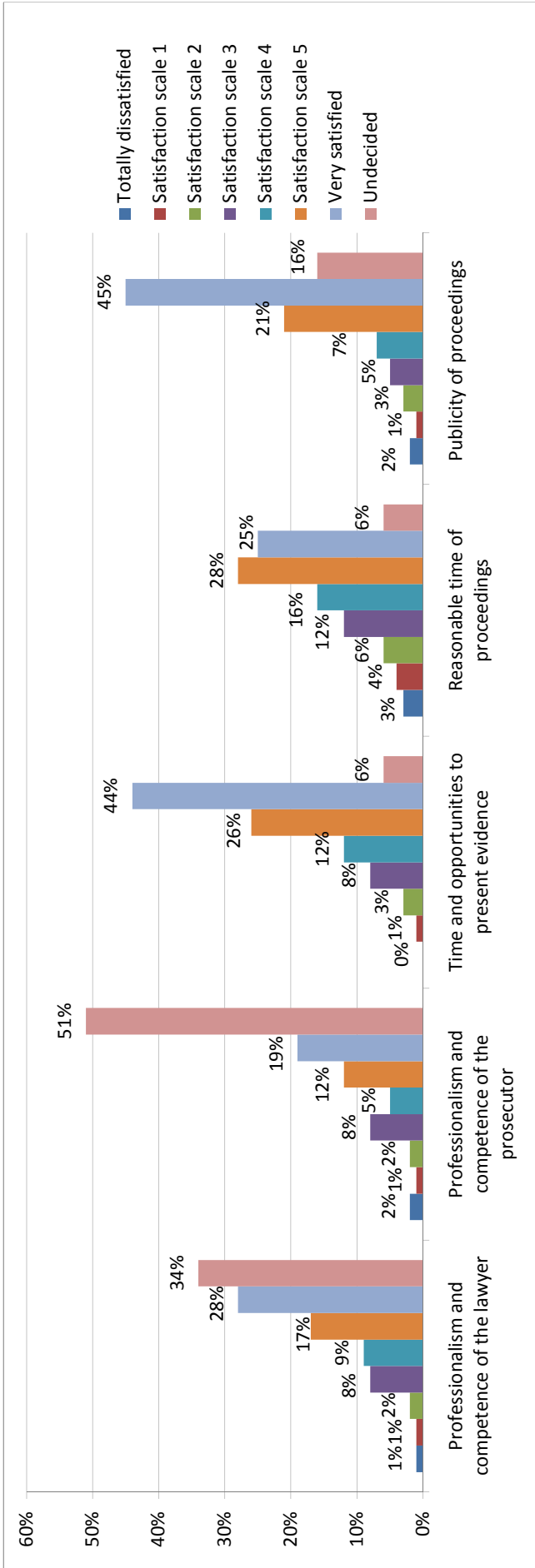


**Note:** 78% of respondents said they were very satisfied with the politeness and attitude of judges, 2% were totally dissatisfied; other 19% said they were partially satisfied, and 1% was undecided.

The same dynamic can be seen with reference to the professionalism and competence of judges: 79% of the respondents were very satisfied, 3% were totally dissatisfied, 17% were partially satisfied and 1% was undecided.

74% of those questioned said they were very satisfied with the impartiality of judges, 3% were totally unsatisfied; another 15% were partially satisfied and 8% of the respondents were undecided.

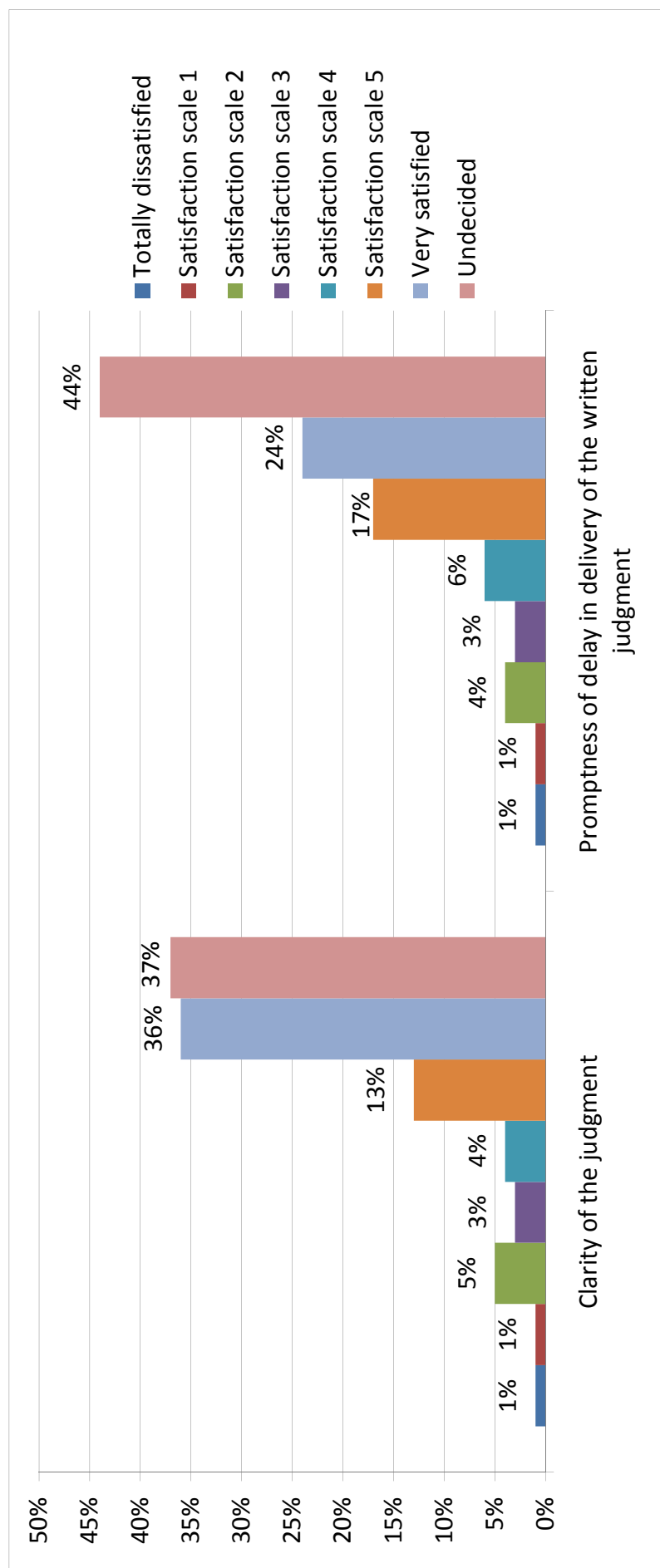
### 5. Fairness of Proceedings



**Note:** Assessing the fairness of the trial, the respondents answered as follows:

- 45% were very satisfied with the professionalism and competence of lawyers, 2% were totally dissatisfied; 19% were partially satisfied, and 34% were undecided.
- 31% of respondents were very satisfied with the professionalism and competence of the prosecutor, 3% were totally dissatisfied, 15% were partially satisfied, and another 51% were undecided.
- With reference to the question whether sufficient time and opportunities was provided for each party to the proceedings for presenting their case and refuting the evidence presented by the adversary party, 70% were very satisfied, 1% was totally dissatisfied, 23% were partially satisfied, and 6% were undecided.
- Assessing the reasonable time of the trial, 53% were very satisfied, 7% were totally dissatisfied; 34% were partially satisfied, and another 6% were undecided.
- 66% of respondents said they were very satisfied with the public character of the trial for third parties and the media; 3% were totally dissatisfied; 15% were partially satisfied and 16% were undecided.

### 6. Quality of Outcome of Proceedings (in this particular case; only if court judgment was pronounced)



**Note:** In terms of the “trial outcome”, 49% of the respondents said they were very satisfied with the clarity of the court’s ruling (not necessarily with the verdict), while 2% said they were totally dissatisfied with it; 12% were partially satisfied, and 37% of the respondents were undecided on how to respond to this question (not applicable in this case).

On the timeliness or delay in the submission of the written judgment, 41% of respondents said they were very satisfied, 2% were totally dissatisfied; 13% were partially satisfied and in 44% of the cases, the question was not applicable.

## B. CHARTS FOR MEASURING THE QUALITY OF JUSTICE VIA DIRECT OBSERVATION OF COURT HEARINGS

To develop the diagrams presented below, the authors analyzed 300 questionnaires completed by the field monitors in the period between 1 April and 30 June 2013. The methodology of developing the diagrams consisted of entering the direct numerical values corresponding to each questionnaire response options (yes, no, undetermined/undecided, not applicable). The undetermined value was used in situations where an objective assessment of response was not possible; it was not entered in cases where the action to which it refers did not take place/occur during the hearing.

The questionnaire was put together based on a methodology developed as part of this project, but also on other instruments, such as: the [Model Methodology for Measuring User Satisfaction of the European Commission for the Efficiency of Justice \(CEPEJ\)](#), [OSCE Legal Bulletin on International Rights to a Fair Trial](#) and [Council of Europe Manual on Article 6 of the European Convention of Human Rights](#). The monitoring effort involved 36 observers who monitored meetings in all types of courts, including specialized courts, courts of appeal and the Supreme Court of Justice. Thus, according to analyzed data, hearings were monitored in courts of different levels, as follows: 252 trials were monitored in regular courts, 12 – in specialized courts, 30 – in courts of appeal, and six – in the Supreme Court. All observers had previously been involved in civic monitoring of democratic processes, benefited from in-depth training on the principles mentioned above, and were consulted during the monitoring effort.

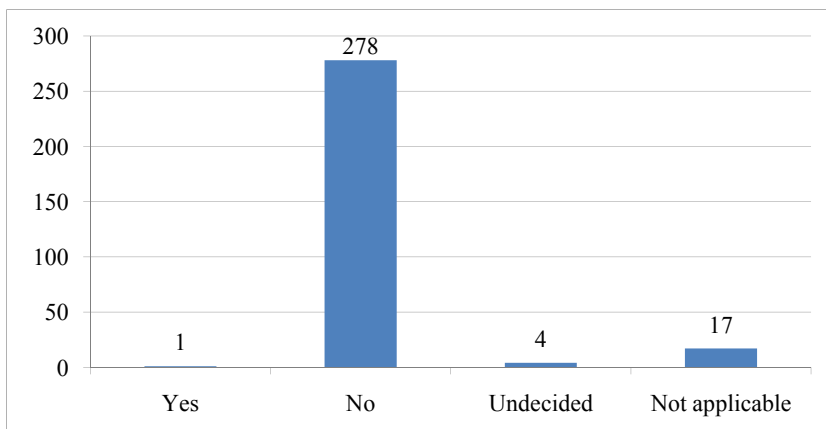
The results below arise from personal evaluation of the monitor during the observation of the court proceedings. Particular attention was paid to:

1. Access to Justice and Equality;
2. Competent, Independent and Impartial Court;
3. Publicity of Hearings;
4. Specific Aspects of Fairness of Criminal Trials, including Presumption of Innocence;
5. Adversarial Principle, Equality of Arms and Defense Rights;
6. Public, Timely and Reasoned Judgment and Quality of Outcome of Proceedings.

Unlike the first part of the Monitoring Survey, this part involved a personal evaluation of the monitor of the procedural realities observed. Hearings were randomly selected: some lasted several minutes, while others went on for hours. In effect, the observers did not fill the parts in the questionnaires related to stages in the hearing they did not attend/observe. Half of the monitored hearings referred to civil and litigation cases; the other half related to criminal and administrative cases. Only criminal cases were monitored at the Supreme Court of Justice.

## 1. ACCESS TO JUSTICE AND EQUALITY

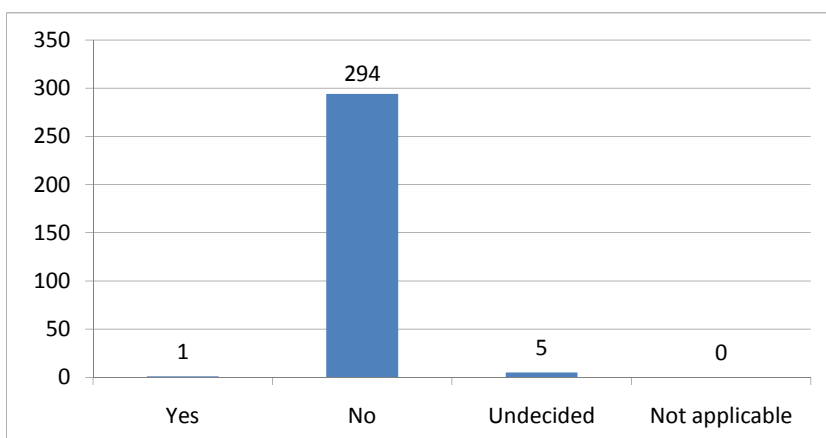
1. Were there any restrictions imposed on the ability to summon to court, or to submit claims or complaints in court?



**Note:** Of the total 300 respondents, 278 believe that no restrictions were imposed on the ability to summon to court, or to submit claims or complaints in court; and only one respondent said that such restrictions had been imposed (four respondents were undecided, in 17 cases the question was not applicable). A similar dynamic is registered in the report for Quarter 1 of 2013.

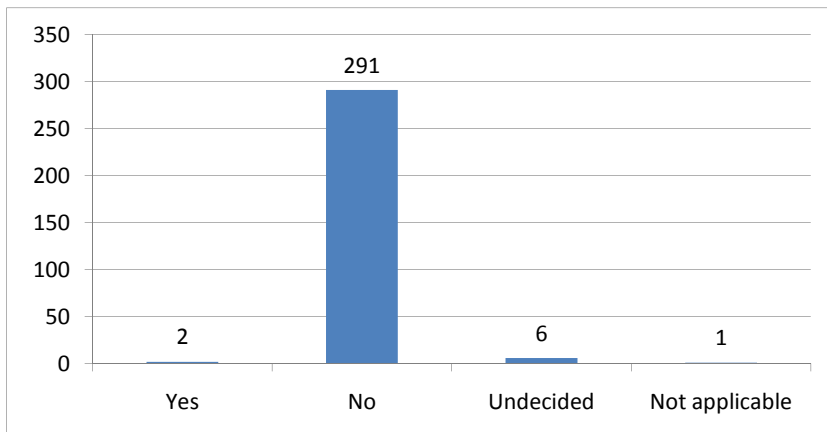
## 2. COMPETENT, INDEPENDENT AND IMPARTIAL COURT

2. Were there any suspicions regarding the independence of the court, in particular the presence of any influence, pressure or threats?



**Note:** In most of the cases (294), the observers stated no reasonable suspicions that the judges were under pressure, threat or were not independent; one such case was reported when a high-ranking regional level official participated in a trial. In five other cases, the monitors said they could not form an opinion regarding the behavior of the court. Ten cases when the court had been influenced were reported in Quarter 1 of 2013.

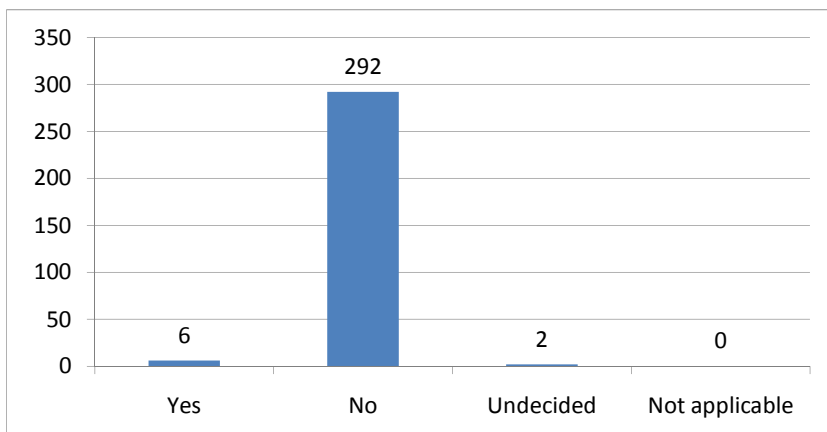
3. Were there reasons to believe that the court was partial? Were there grounds to disqualify the judge from the case (the judge showed bias, prejudice or a pre-determined attitude towards the examined case; the judge expressed his opinion on the guilt of a person during the trial, inside or outside the courtroom; the judge communicated with the prosecutor or the defense counsel before the hearing or between proceedings, was there a potential conflict of interests that raised reasonable fear that the judge could not act impartially)?



**Note:** The observers involved in the trial monitoring effort noted that, in the two cases the court was biased (see diagram above), the trials involved public servants, and the court showed a more favorable attitude towards them. No such cases were registered in the remaining 291 trials. The report for Quarter 1 shows similar data.

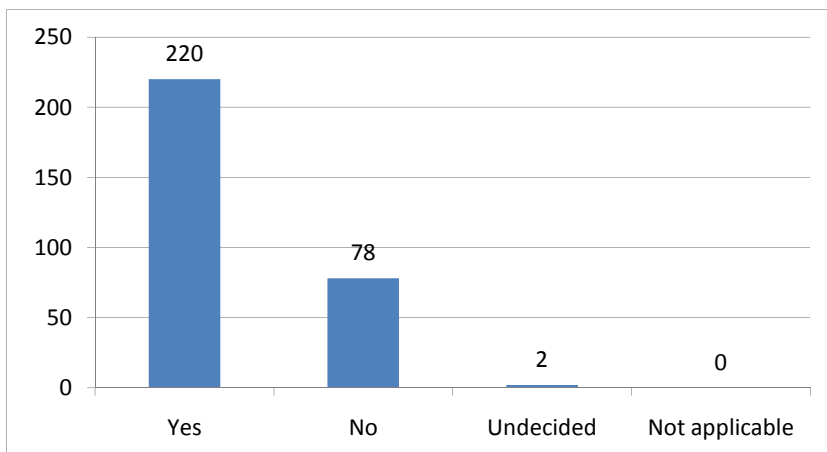
### 3. PUBLICITY OF HEARINGS

4. Did the court ask certain categories (media, public, observers, etc.) to leave the hearing?



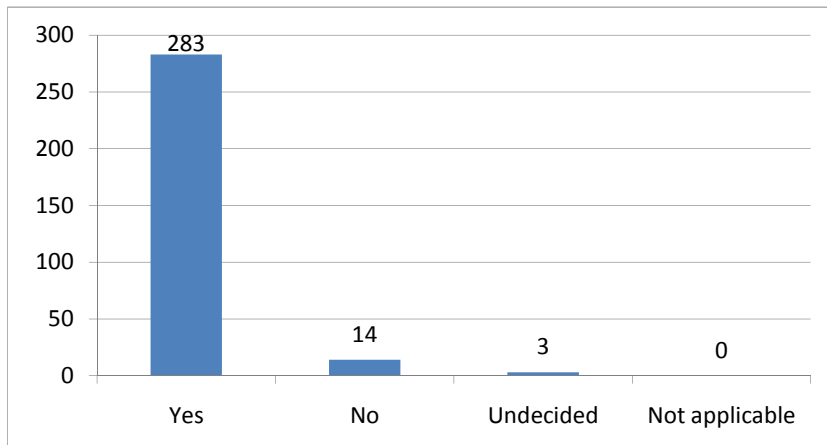
**Note:** Observers noted that the court demanded that certain groups leave the courtroom (in six cases, as shown in above diagram) in cases when the applicable procedure provided for a closed hearing, thus without any procedural abuses. No other restrictions of public participation at the trial were registered in the rest of the cases.

5. Was the hearing held in a courtroom?



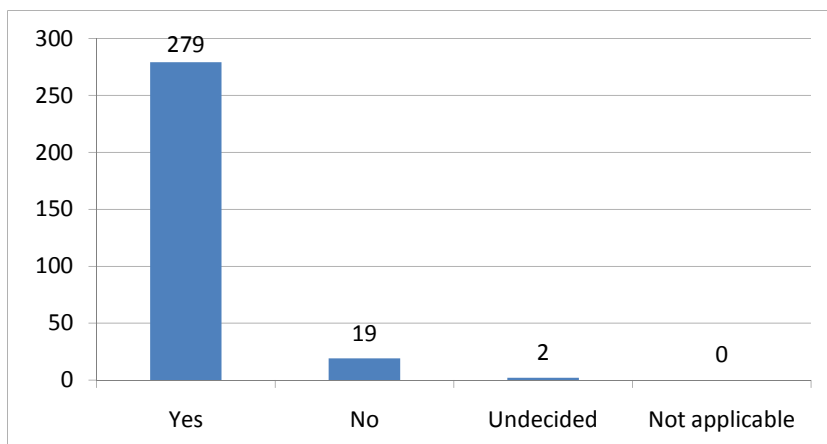
**Note:** Compared with the report for Quarter 1 of 2013, when it was established that 223 hearings were not held in a courtroom, in Quarter 2, the situation changed dramatically. This, 220 of the 300 monitored hearings were held in a courtroom, versus 78 hearings, which were held in judges' offices. This change in ratio may also be explained by the fact that the insufficiently heated courtrooms cannot ensure the necessary comfort for a proper conduct of court hearings during the cold season.

6. Was the size of the courtroom adequate to accommodate all the participants in the case?



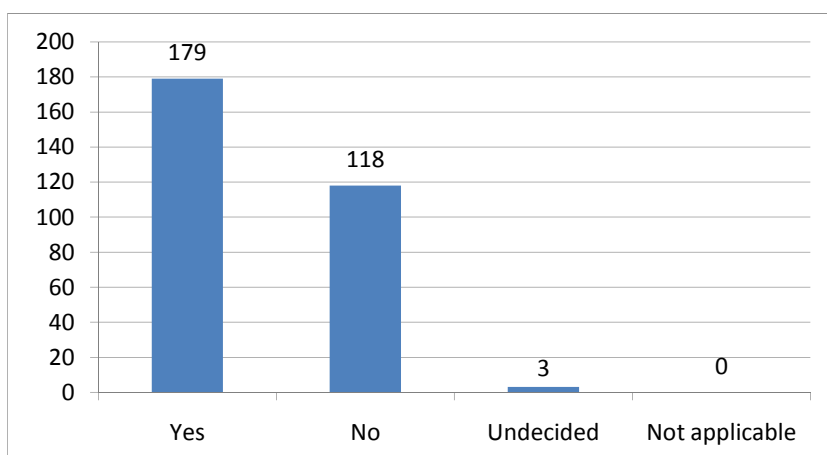
**Note:** In 283 of 300 monitored trials, the rooms used to conducting the hearings were spacious enough to accommodate all the parties in the trial. In 14 cases it was established that the venues did not ensure the necessary comfort and conditions for the conduct of the trial. The observed dynamics is similar to the one in Quarter 1 of 2013.

7. Was the courtroom equipped with the necessary furniture?



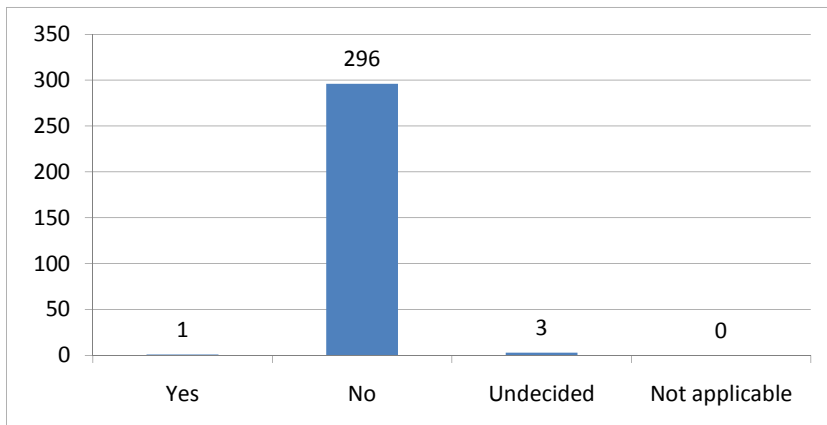
**Note:** 279 of the 300 monitored court hearings were conducted in well-furnished rooms, while only in 19 cases, the hearings were held in insufficiently furnished facilities.

8. Was the court hearing audio-recorded?



**Note:** Data analysis shows that the ratio of recorded and non-recorded trials is 179 to 118, compared with Quarter 1, when the ration was 145 recorded trials to 135 trials that had not been recorded.

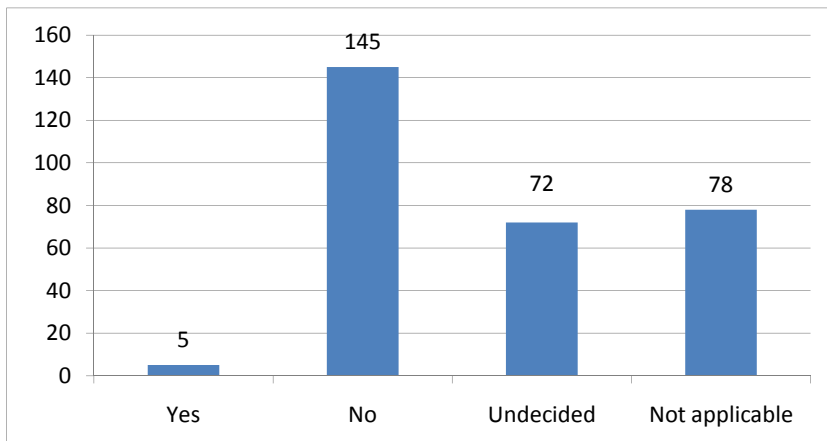
9. Was any person denied access to the courtroom?



**Note:** In the overwhelming majority of the monitored trials (296 cases), there were not cases of denying anyone the right to enter the courtroom. Only one such case was reported.

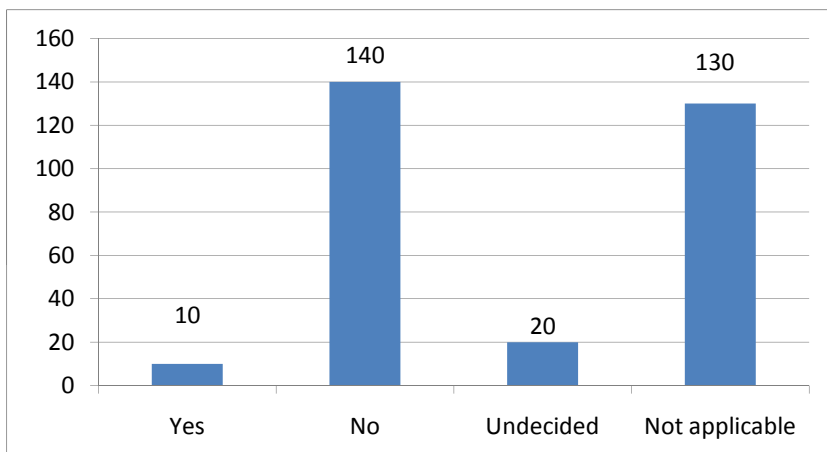
4. SPECIFIC ASPECTS OF FAIRNESS OF CRIMINAL TRIALS, INCLUDING PRESUMPTION OF INNOCENCE

10. Did the court pre-determine the guilt or innocence of the defendant (offender)?



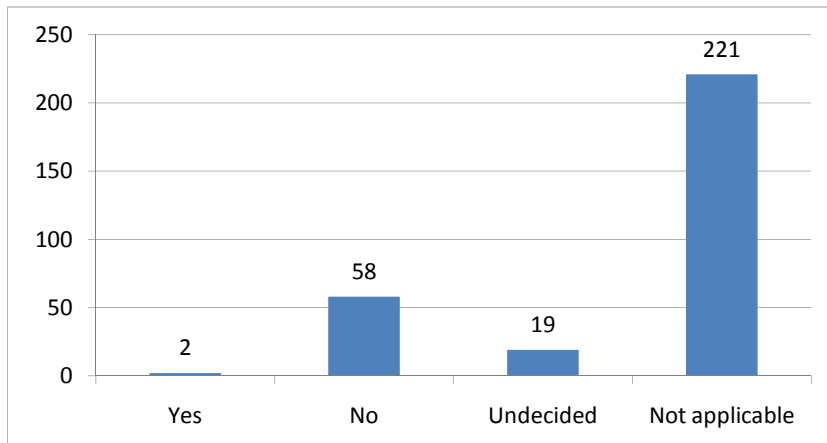
**Note:** Only five of 150 of criminal cases monitored was it noted that the court pre-determined the defendant's guilt.

11. Was the defendant (offender) treated in any way such as to indicate that he is guilty (i.e. was he kept in handcuffs during the hearing, was he kept in a cage, etc.)?



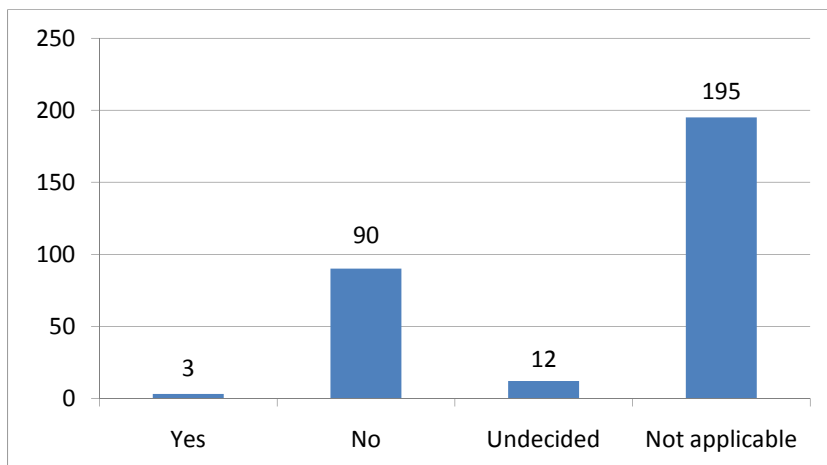
**Note:** Of the 150 hearings of criminal trials monitored, in ten hearings, it was found that the defendant was treated in a ways such as to indicate that he was guilty; I the remaining 140 cases, this was not observed.

12. Did the news coverage of the case undermine the presumption of innocence and encouraged bias of judges against the defendant (offender)?



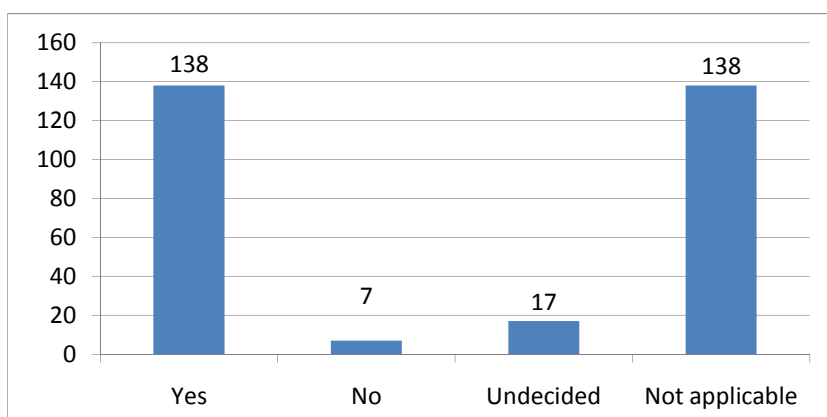
**Note:** In 58 hearings, it was found that the media coverage of the trial did not undermine the presumption of innocence of the defendant or inflict the court's biased attitude towards them; in two other cases however such circumstances were reported.

13. Did any public authority make an unequivocal declaration on the defendant (offender)'s guilt before his conviction?



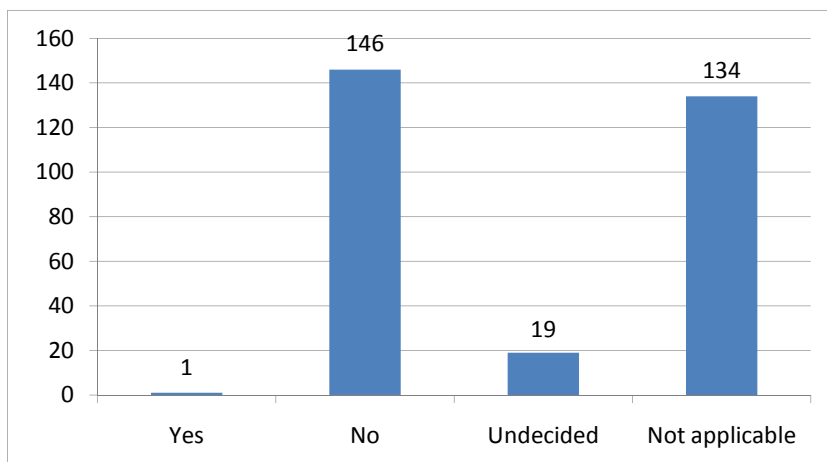
**Note:** No declarations regarding the defendant's guilt were made before their conviction in 90 cases; in three cases however, such circumstances were reported.

14. Did the defendant (offender) enjoy the privilege against self-incrimination? Did the judge explain to the defendant his right not to testify against himself?



**Note:** In the 138 hearings of criminal or administrative cases, the court explained to the defendant/respondent their right not to testify against themselves. In seven such cases, the defendant/respondent did not understand this right. Compared with Quarter 1 of 2013, when 14 such cases were reported, the number of times when the defendants/respondents did not understand their privilege against self-incrimination has decreased.

15. Was the defendant compelled to give testimony in court?

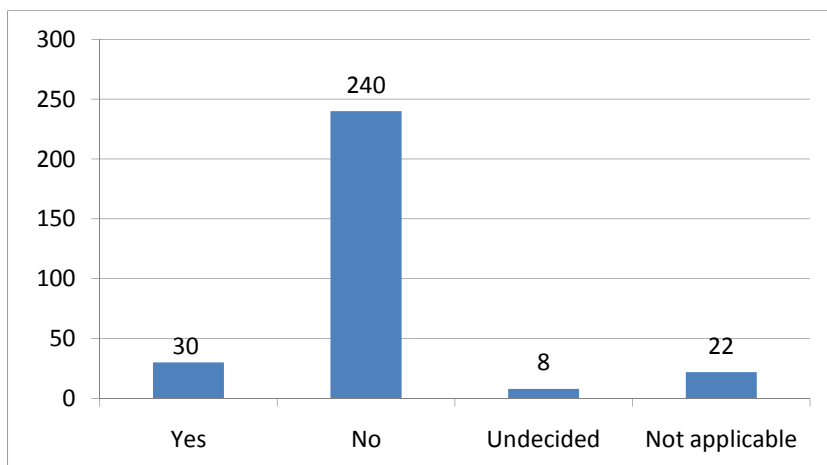


**Note:** A single case was reported when the defendant/respondent was compelled to testify, compared with two such cases in Quarter 1 of 2013.

5. ADVERSARIAL PRINCIPLE, EQUALITY OF ARMS AND DEFENSE RIGHTS

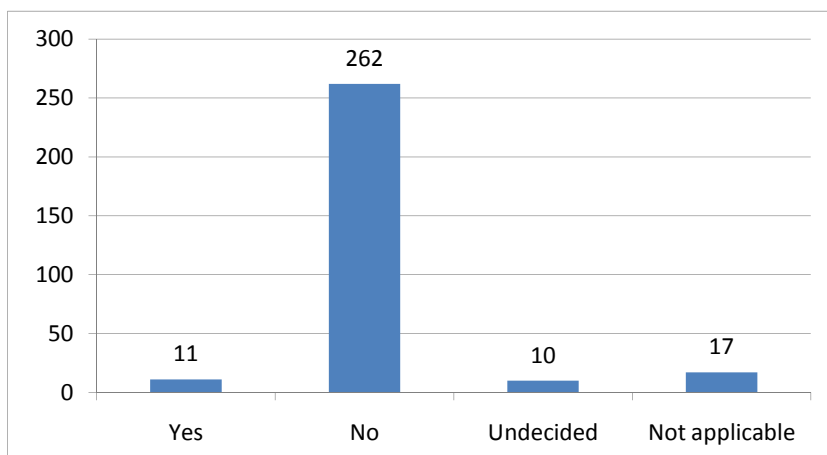
A. Adequate Preparation for the Case

16. Did the parties have „adequate time” to prepare the case?



**Note:** Of the monitored trials, in 30 hearings it was reported that the parties had insufficient time to prepare for the trial, compared to 240 hearings, where such circumstances were not found. The number of reports on insufficient preparation time is on the rise compared with Quarter 1, when only 20 such cases were found.

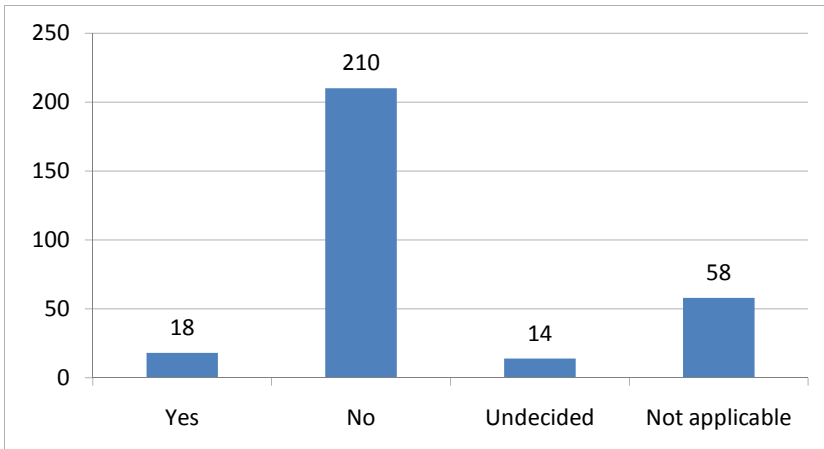
17. Were there any objections from the parties to the trial that they had not been communicated all the information relevant to the case or that they did not have time to familiarize themselves with documentary evidence held by the adverse party?



**Note:** With regard to the objections from the parties to the trial that they had not been communicated all the information relevant to the case or that they did not have time to familiarize themselves with documentary evidence held by the adverse party, 11 such cases were reported; at the same time, in 262 cases, such circumstances were not reported. Similar data were reported in the Quarter 1 report.

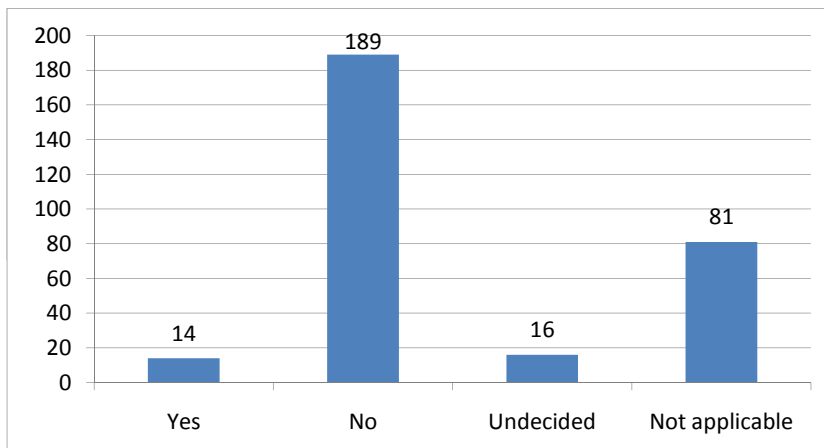
**B. Timely Hearing**

18. Were procedural delays or postponements of the hearing unreasonable, given the circumstances of the case?



**Note:** With regard to reasonable delays, the monitors found that, in 18 trials, the delays were not reasonable, while in 210 cases the delays were deemed reasonable. Similar comparative data are presented in the report for Quarter 1.

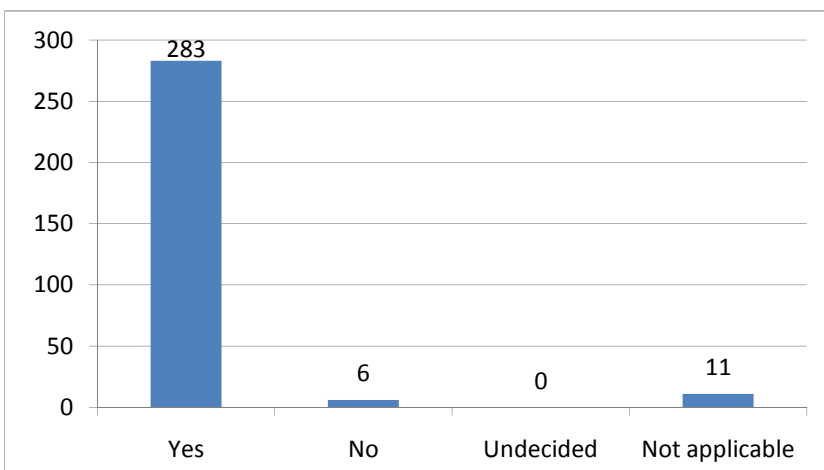
19. Did the delays have any detrimental effect upon the individual's legal practical position (for instance, where he has been detained in custody or during trial) or his legal position (questions related to statute of limitations, etc.)?



**Note:** With regard to hearing postponements that could affect the trial, monitors found that in 14 trials such delays could have harmed the trial, while in 189 cases the delays did not affect the trial. Similar data are presented in the Quarter 1 report.

**C. Right to Presence at Hearing and Effective Participation**

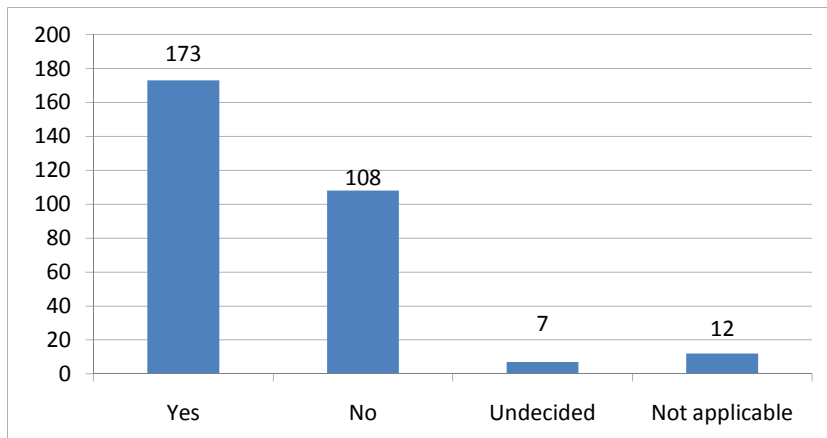
20. Was the respondent (defendant/offender) given the opportunity to participate in a hearing to present his case?



**Note:** In the absolute majority of cases (283), the respondent (defendant/offender) was given a real opportunity to participate at the trial to present their case; in six hearings, this right was restricted.

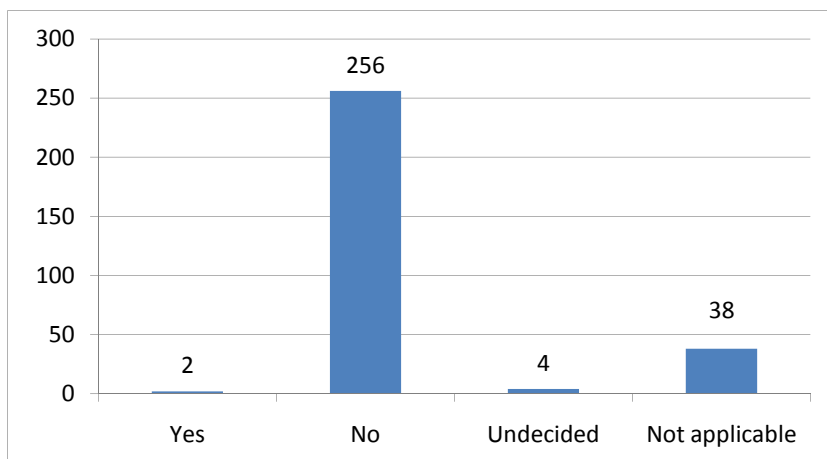
### D. Right to Legal Representation or Self-Representation

#### 21. Did the parties to trial have representation?



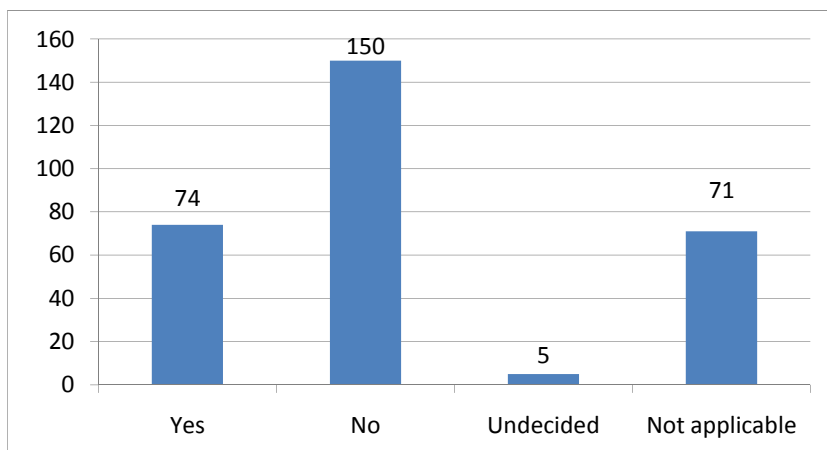
**Note:** In the majority of court hearings, the parties were represented by lawyers of legal representatives (173); in 108 cases, the parties did not have legal counsel. Similar data are presented in the Quarter 1 report.

#### 22. Were the parties prohibited to represent themselves during the hearing?



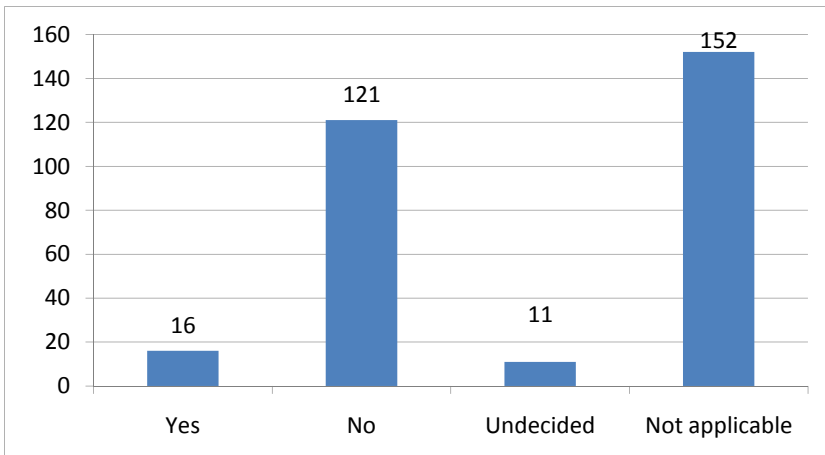
**Note:** In the absolute majority of trials, the parties were not denied self-representation (256), and in two criminal cases, the court demanded that the defendant be provided with a lawyer.

#### 23. Did one or more parties seek representation by counsel?



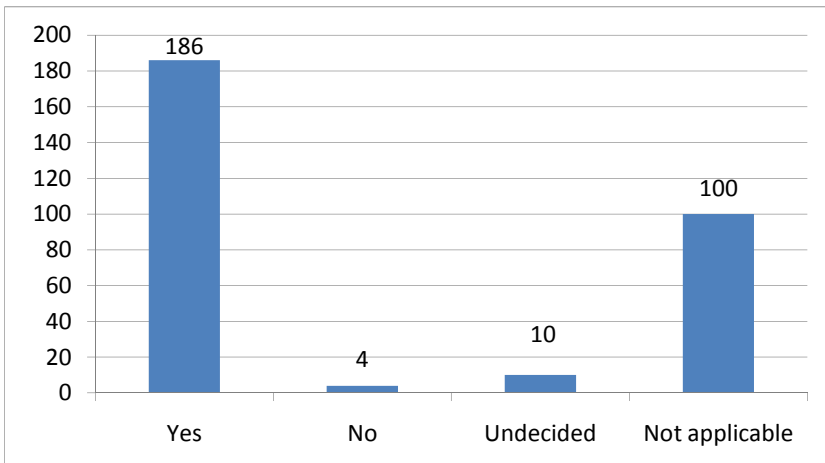
**Note:** In 74 monitored trials, a lawyer's assistance was requested; in other 150 hearings, such requests were not submitted.

24. If the party did not have sufficient means for legal assistance, did it request state-guaranteed legal aid?



**Note:** A lawyer from the NCSGLA was requested in only 16 hearings; according to the previous report, the number of those seeking state guaranteed legal aid in Quarter 1 was 15.

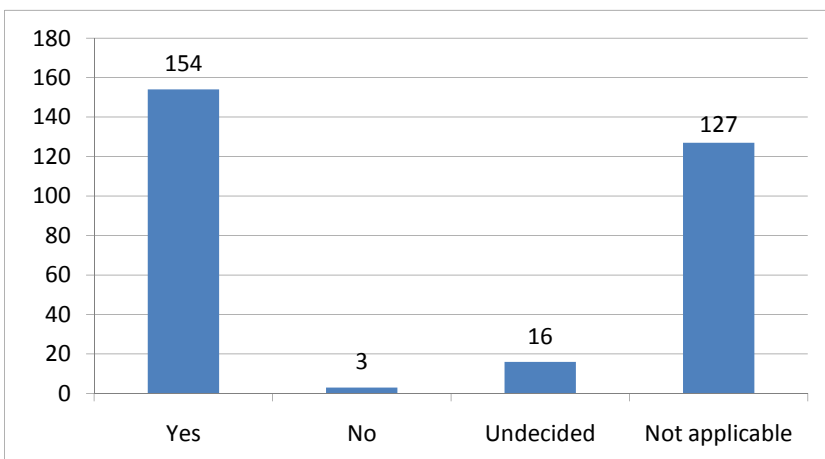
25. Did the counsel act in an independent, competent and efficient manner?



**Note:** In 186 hearings where lawyers were present, the monitors noted that the lawyers acted in an independent, competent and efficient manner, while in four hearings this was not the case. The number of cases when the lawyers were not deemed independent, competent or efficient is decreasing compared with Quarter 1.

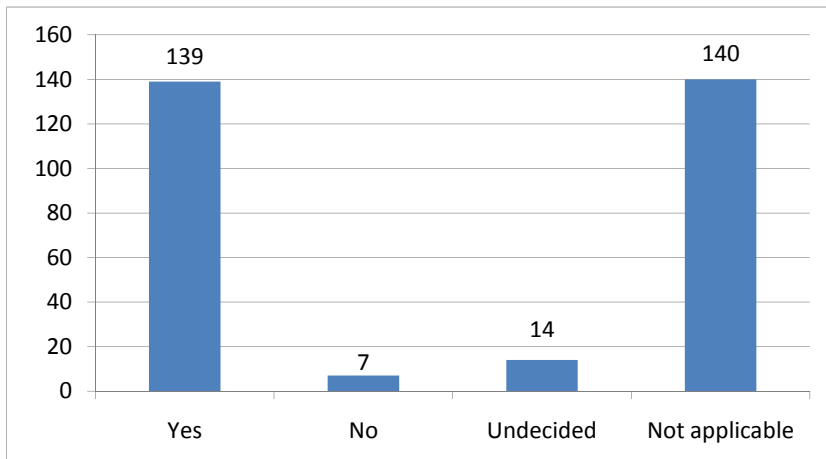
**E. Examination of Witnesses**

26. Were the parties provided with the same opportunities to examine witnesses and experts, which had been summoned to testify at trial?



**Note:** In most of the hearings (154), monitors found that the sides had equal possibilities to interview witnesses and experts.

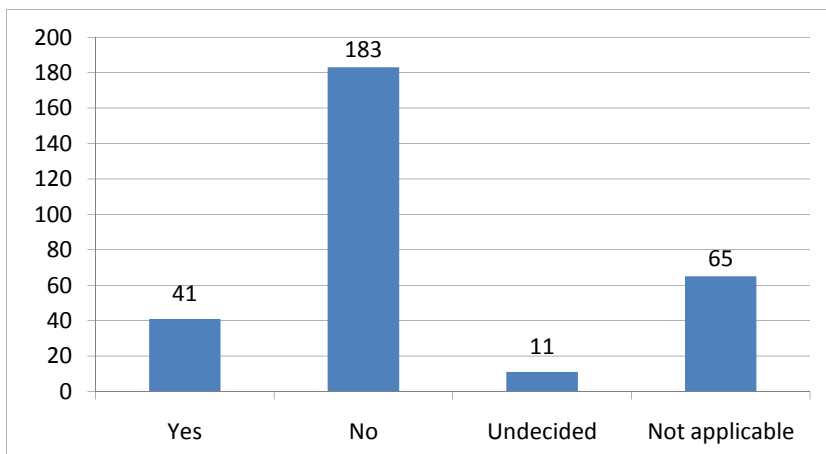
27. Were there all measures taken to ensure the participation of all witnesses and experts summoned by the court/parties?



**Note:** In almost half of hearings, the court took all measures to ensure the presence of all witnesses and experts (139), while in seven cases it is believed that other measures could have been taken to ensure the presence of witnesses and other sides. Similar data were established in Quarter 1.

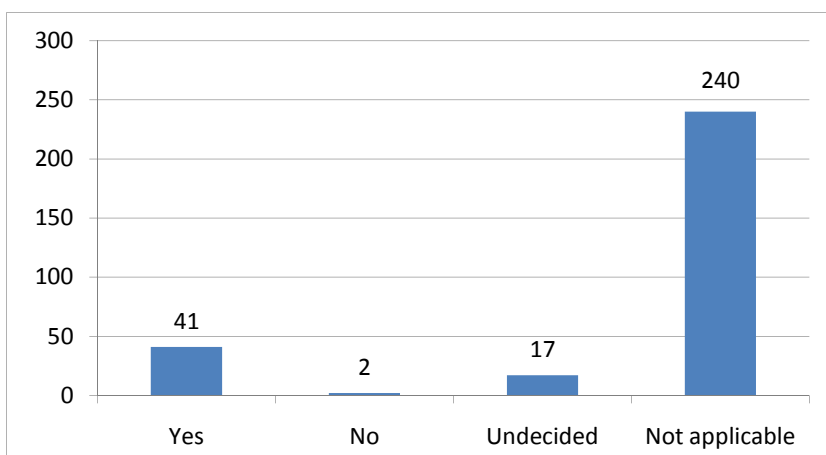
### F. Interpretation and Translation

28. Did the parties request the presence of a translator/interpreter?

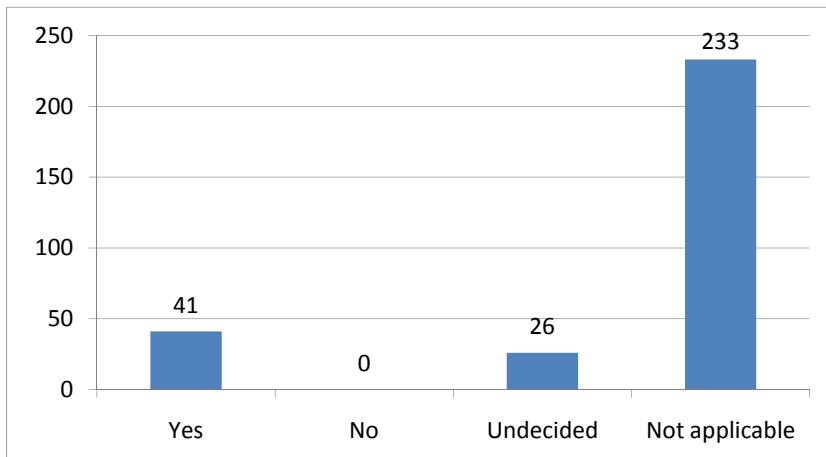


**Note:** Only in 41 hearings was there a translator's assistance requested. In Quarter 1, the number of such requests was 36.

29. Was the appointed translator/interpreter an official court interpreter selected from the list of court interpreters?

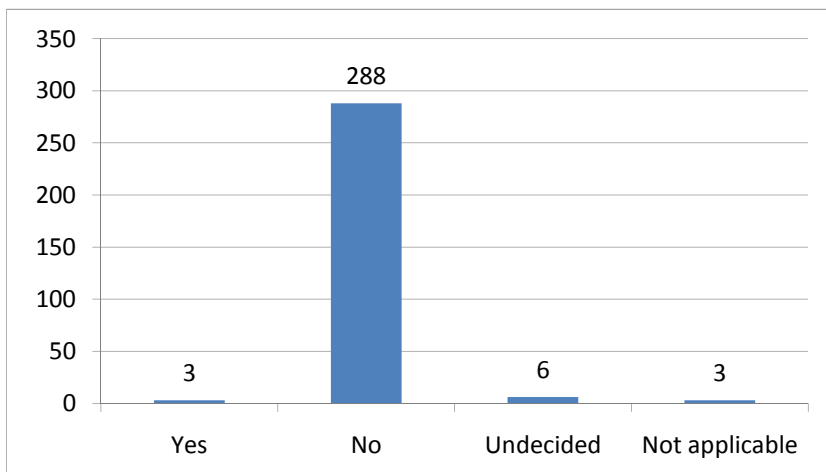


30. Did the defendant/parties appear to fully understand the translated questions?



**G. Additional General Question on the Equality of Arms**

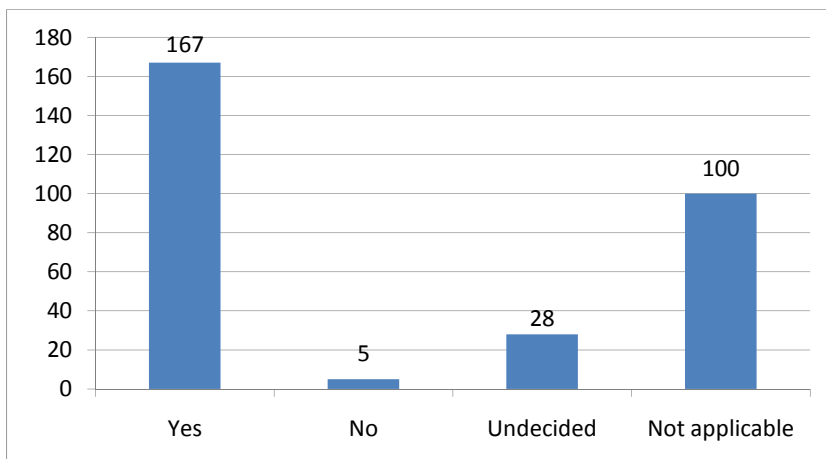
31. Was there anything else about the conduct of the hearing that might have resulted in substantive inequality between the parties or inability of one party to have ample opportunities to state its case and contest evidence that it considered false?



**6. PUBLIC, TIMELY AND REASONED JUDGMENT, AND QUALITY OF OUTCOME OF PROCEEDINGS**

**A. General Requirements**

32. Was the court's judgment in this case clear?



## CONCLUSIONS AND RECOMMENDATIONS

### CONCLUSIONS

The results of the Second Quarterly Monitoring Report for the Implementation of the JSRS allow us to draw some significant conclusions.

The observers found a largely positive dynamic when it comes to the trial monitoring component. We can assume that the very presence of observers at hearings accounts for the improved behavior of the parties in the trial and court staff.

To get a more accurate picture of the participants' assessment of the trial, their answers were presented separately by three categories of respondents: lawyers, prosecutors and court users involved in court proceedings as plaintiffs, respondents, defendants, witnesses, etc. We noted that the last category of interviewees had a lower satisfaction rate than the other two categories. In particular, with reference to access to legal information, court facilities, indicators to and inside the courts, we found that the beneficiaries' satisfaction was lower than that of lawyers and prosecutors.

The answers regarding the quality of the judiciary follow the same dynamics. However, in comparison with the report for the previous quarter, the number of meetings held in the courtrooms increased significantly in the second quarter, when 220 of the 300 monitored hearings were held in courtrooms compared with 77 of 300 in the previous quarter. At the same time, the number of hearings that were audio recorded by the court increased by 20% compared to the first quarter.

As for the quality of legal counsel by lawyers, the number of meetings in which the monitors held that lawyers did not act independently and effectively decreased compared to the first quarter.

On the other hand, one cannot speak of progress in implementing the actions outlined under the Action Plan for JSRS implementation. Thus, of the total 101 actions overdue since 2012 and first Quarter of 2013, only 44, or 43%, were implemented. With reference to actions due in the second Quarter of 2013, the situation is more serious. Only 6 of 31 actions were carried out, which represents 19%. It is true that the government faced a major political crisis, which delayed certain processes, including the signing of an agreement on the delivery of EU budgetary support to the justice sector.

Bear in mind however that a large number of overdue actions does not require special financial resources. Often the obstacle in the implementation of certain actions lies in the limited capacity of the responsible institutions to develop studies or write analytical reports. Nonetheless many development partners stand ready to help implement certain actions, and many of the actions provided were completed with foreign assistance. However, the local consulting market is not sufficiently diversified to be able to undergo a large number of such actions, which is why, in some cases; repeat competitions were announced, sometimes without any results.

The EU project "**Support to the Coordination of the Justice Reform in Moldova**" was officially launched in the summer of this year. One of the first activities of the project will be to analyze the capacity of the institutions responsible for implementing JSRS actions. Thus we hope that the problem stated above, namely the need for capacity building for the respective institutions, will be tackled accordingly.

This project will support the MOJ by strengthening the coordination mechanisms to implement the reform. This is a very welcome measure, given that the current formula is not sufficiently effective. During the second Quarter of 2013, several of the WG' meetings were postponed for lack of quorum, and only four of the seven groups were able to pass their Work Plans for 2013.

As for the transparency of the Secretariat and WG, we state the same shortcomings as in the previous report, namely: non-publication or late publication of agendas and minutes of WG, and the failure to publish the products developed during the implementation of the Strategy (except for the websites of organizations that executed the work). At the same time, only a few actors responsible for implementing actions provided in the Action Plan publicized their products and other information related to judicial reform.

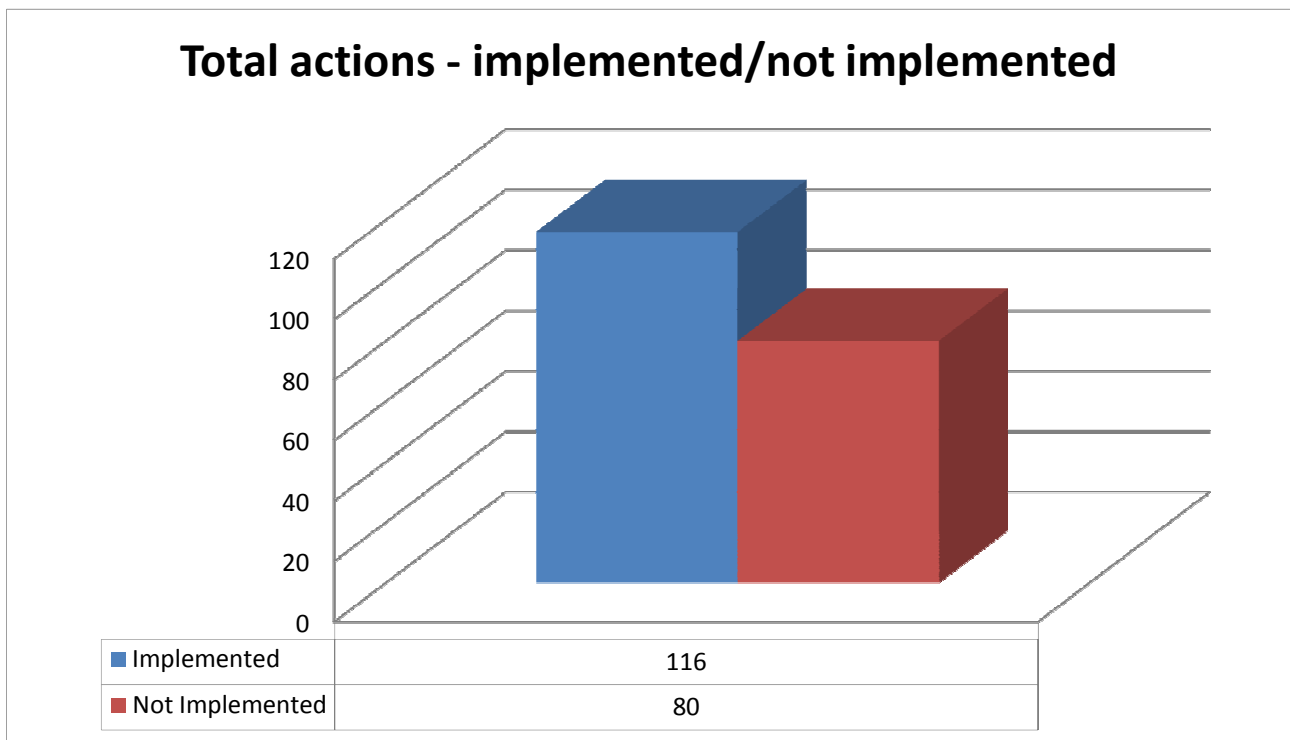
With regard to planning the implementation actions, it is generally recommended to revisit the implemented and outstanding actions, not only those from the preceding period, but all of them, from the start of the JSRS implementation, in order to identify actions that are no longer relevant as well as actions whose implementation met significant difficulties. Given the ever-rising number of overdue actions, a prioritization of actions would also be advisable.

The MOJ is the primary responsible institution for implementing the highest number of actions outlined in the Action Plan. We analyzed the action implementation rate per responsible institutions. The results of our analysis for 2012 and the first two quarters of 2013 are as follows: the NCSGLA, SCM and PGO were able to implement less than half of the actions planned, with an implementation rate of 40%, 42% and 50%. The MOJ, NAC and NIJ achieved a better rate of about 60% of the total actions.

According to our observations, of the 196 actions to be carried out as part of the JSRS, 116 were completed, representing about 59% of the total. Although this figure is not very low, given the complexity of the reform and the number of institutions involved, it would be advisable that the rate of implementation be at least  $\frac{3}{4}$ , in order not to slow down the pace of reform and not to create obstacles to the disbursement of funds for budget support. For details see Table 1 on the implementation of actions per pillar and Chart 1 on the total number of actions, implemented and not implemented.

**Table 1 - Implementation of actions per Pillar**

	Pillar 1		Pillar 2		Pillar 3		Pillar 4		Pillar 5		Pillar 6		Pillar 7		Total		Implemented actions /percent						
	Total	I	Total	I	Total	I	Total	I	Total	I	Total	I	Total	I	Total	I	I	N/I	N/I				
<b>Responsible Institution</b>																							
MOJ	35	24	11	13	10	3	17	4	13	7	6	1	11	5	6	20	11	9	123	75	48	61%	39%
SCM	17	9	8					2	0	2								19	9	10	10	47%	53%
NIJ	9	5	4	1	1	0	1	1	1	3	3	0	1	1	0			17	11	6	6	65%	35%
NAC				3	3	0					4	2	2					7	5	2	2	71%	29%
NHSGIA							5	2	3									5	2	3	3	40%	60%
NUCEO							1	1										1	0	1	1	0%	100%
MOI				2	0	2						1	0	1				3	0	3	3	0%	100%
PG				8	4	4						2	1	1				10	5	5	5	50%	50%
CHRM												5	4	1				5	4	1	1	80%	20%
NCRLEB														1	1	0		1	1	0	0	100%	0%
National Integrity Commission							2	2	0									2	2	0	2	100%	0%
Parliament							1	1	0									1	1	0	1	100%	0%
Central Public Administration							1	1	0									1	1	0	1	100%	0%
E-Governance Center										1	0	1						1	0	1	1	0%	100%
<b>Total</b>																		<b>196</b>	<b>116</b>	<b>80</b>	<b>116</b>	<b>58,67%</b>	<b>41,33%</b>

**Chart 1** – Total actions: implemented and not implemented

**Implementation of overdue actions under Pillar I**

At the end of Quarter 1, 2012, under Pillar 1, there were 18 overdue actions. Of them, ten were under the responsibility of the MOJ, six – under that of the SCM, and two – under NIJ responsibility. At the end of Quarter 2, only two of 18 actions (both under MOJ) were implemented, while the remaining 16 have not been completed.

**Implementation of due actions under Pillar I**

Seven actions were to be implemented by the deadline set for the end of Quarter 2 of 2013 under Pillars I; of them, only three were implemented. The MOJ was responsible for two of them, and the NIJ – for the third. The actions that have not been completed fall under the responsibility of the MOJ (two actions) and NIJ (two actions).

**Implementation of overdue actions under Pillar II**

Seven of 24 actions were overdue under Pillar II at the beginning of the reporting period. Only one of these actions was implemented during the period covered by this report (action 2.2.7 section 1). Of the seven overdue actions, three were the responsibility of the PGO (one of which was implemented), two were in the MOJ responsibility (not implemented), and one was the responsibility of the MOI (and it has not been implemented).

**Implementation of due actions under Pillar II**

Six actions were due for completion by the end of the reporting period. Only one of them, under the responsibility of the PGO, was implemented. The MOJ failed to implement other four actions, and the MOI – one action.

**Implementation of overdue actions under Pillar III**

A single action was completed of the 12 actions overdue since Quarter 1. Of the remaining 11, ten fall under the responsibility of the MOJ, and one – in that of NUJEO.

**Implementation of due actions under Pillar III**

Seven actions were due for completion by the end of Quarter 2 of 2013, and none of them was implemented. The MOJ and the NCSGLA are each the lead institutions for actions, and the NIJ is responsible for one action.

**Implementation of overdue actions under Pillar IV**

Of the four actions overdue at the end of Quarter 1 of 2013, two were implemented (one by the NAC, and the second – by the MOJ). The remaining two, of which the MOJ is responsible, are overdue.

**Implementation of due actions under Pillar IV**

Of the five actions due for completion under Pillar IV in Quarter 2 of 2013, none was implemented. The NIJ, MOJ, SCM are each responsible for an overdue action, and the NAC – for two such actions.

**Implementation of overdue actions under Pillar V**

Six of 14 actions under Pillar V were overdue at the beginning of the reporting period. None of the overdue actions was implemented in the period covered by this report. Five actions that are overdue fall under the responsibility of the MOJ, and none was implemented. Another overdue action, which was not implemented in this period, is under the responsibility of the Center for Electronic Governance.

**Implementation of due actions under Pillar V**

A single action was due to be completed by the end of the reporting period. The MOJ, which was responsible for it, did not implement the action.

**Implementation of overdue actions under Pillar VI**

Eleven of 25 actions under Pillar VI were overdue at the beginning of the reporting period. Only one of these overdue actions was implemented (action 6.3.2 section 3). Eight overdue actions are the responsibility of the MOJ (which implemented one overdue action named above). The MOI, CHRM, and the PGO are each responsible for an overdue action.

**Implementation of due actions under Pillar VI**

Four actions were due for completion by the end of the reporting period. Of them, two were implemented. The MOJ implemented one of the three actions in its responsibility; the remaining two are overdue.

**Implementation of overdue actions under Pillar VII**

At the beginning of the reporting period, there were four overdue actions under Pillar VII, all of which were under the responsibility of MOJ. None of these actions was implemented during Quarter 2 of 2013.

**Implementation of due actions under Pillar VII**

A single action under Pillar VII, of which the MOJ was responsible, was due for implementation before the end of Quarter 2 of 2013. The action was not implemented.

## RECOMMENDATIONS

- The institution of WG needs to be strengthened, as, in accordance with section 30, they have significant powers in monitoring, planning and implementation of actions;
- The Rules of functioning of the WG needs to be amended to include a provision obliging the WG secretariat to publish the minutes of meetings within a reasonable time of their conduct;
- All the agendas of WG meetings shall be posted by the Secretariat in a timely manner on the MOJ website's section for the JSRS implementation;
- It is recommended that the WG Rules be amended to include a provision requiring the Secretariat to post WG documents, products and correspondence on the MOJ website in the section for the JSRS implementation or on alternative web platforms;
- All proposed changes to the regulatory framework that are directly or indirectly related to actions provided in the JSRS shall be discussed and analyzed in the WG that would have the right to decide whether or not they are consistent with the actions already planned and carried out;
- All actors involved in the judicial reform shall be compelled to put on their websites all information on how the actions they are involved in are implemented and correspondence confirming the issue of products by their respective institutions;
- Changes to the Action Plan or at least a comprehensive review thereof shall be carried out in order to revisit and update the list of implemented actions, revisit their timeframe, relevance and necessity and, where appropriate, the responsible institutions;
- It is recommended to order the institutions responsible for implementing the actions specified in JSRS to bring their internal work plans in line with the Action Plan for JSRS implementation so that the deadlines for the actions do not differ from those set forth in JSRS;
- If the lead agency on a specific action is unable to create interdepartmental WG (see, for example, action 2.4.2 section 1) and take on the action, the responsibility for creating the respective interdepartmental group may lie on the relevant WG;
- WG members shall be more cautious yet more insistent on enforcing the responsibility of the institutions in charge of the implementation of JSRS actions so as not to admit situations (such as, for example, actions 5.1.1 section 1 and 5.1.2 section 1) when rapporteurs use data dated before the adoption of the JSRS and, based on that data, judge those actions as implemented;
- At least once every six months, the WGs shall meet to review the implementation of the outstanding and partially implemented actions to establish the precise assessment of the implementation of those actions or failure to do so.