



“Monitoring the Justice Sector Reform for Increased Government Accountability”

# **Quarterly Monitoring Report No. 3 on the Implementation of the Justice Sector Reform Strategy**

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## ABBREVIATIONS

<b>CAD</b>	Courts Administration Department
<b>CHRM</b>	Center for Human Rights of Moldova
<b>CPC</b>	Civil Procedure Code
<b>CPO</b>	Central Probation Office
<b>CPP</b>	Criminal Procedure Code
<b>DPI</b>	Department of Penitentiary Institutions
<b>ECtHR</b>	European Court of Human Rights
<b>GDL</b>	General Directorate for Legislation
<b>JSRS</b>	Justice Sector Reform Strategy
<b>LRCM</b>	Legal Resources Center of Moldova
<b>MLSPF</b>	Ministry of Labor, Social Protection and Family
<b>MOF</b>	Ministry of Finance
<b>MOI</b>	Ministry of Internal Affairs
<b>MOJ</b>	Ministry of Justice
<b>MRDC</b>	Ministry of Regional Development and Constructions
<b>NAC</b>	National Anticorruption Center
<b>NCJEE</b>	National Center for Judicial Expert Examination
<b>NIJ</b>	National Institute of Justice
<b>NLAC</b>	National Legal Aid Council
<b>NUJO</b>	National Union of Judicial Officers
<b>PGO</b>	Prosecutor General's Office
<b>ROLISP</b>	USAID Rule of Law Institutions Support Program
<b>SCJ</b>	Supreme Court of Justice
<b>SCM</b>	Supreme Council of Magistrates
<b>SCP</b>	Supreme 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 Legal Aid Council 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 third Quarter of 2013.
- Overdue actions (which were to be completed by 30 July 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 Third Quarterly Monitoring Report for the Implementation of the Justice Sector Reform Strategy 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. During the third Quarter of 2013, we observed the same positive dynamic of conducting trials. Note however that the purpose of the mission was not to assess the quality of the judicial acts and the level of corruptibility, but only the appearances of trials and judicial proceedings.

On the other hand, one cannot speak of significant progress in implementing the actions outlined under the Action Plan for JSRS implementation. Thus, of a total 209 actions due for completion by 30 September 2013, only 126 were completed, while the 83 remain unfulfilled by the end of Quarter III, 2013, which represents a total completion rate of 60% (compared with 59% at the end of the previous Quarter). It is also true that the Government confronted with 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. After the confirmation of a new Government, some of the planned actions were accelerated, but the responsible institutions must make considerable efforts to fulfill the overdue actions along with the actions due for the next period.

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. A series of actions outlined in the JSRS Action Plan were included in the respective project. Nevertheless, the speed of implementation of these actions is quite slow.

We noted an essential change in the transparency of the Secretariat and WGs. They managed to hire additional staff to support the functioning of the Secretariat and WGs, and we noted an increased work and efficiency in the organization of meetings, publication of their agendas and minutes on the Ministry’s website. At the same time, we continue to face difficulties in finding the products developed within the implementation of the Strategy in absence of a single portal where they could be posted.

We welcome the initiative of the WGs to revisit the actions provided in the Action Plan in order to identify the actions that are obsolete or no longer relevant or those of an unclear character.

We analyzed the performance of institutions involved in the implementation of the JSRS and found the following. In 2012 and the first three Quarters of 2013, NLAC and the MOI implemented less than a half of the actions in their responsibility, achieving a implementation rate of 40% and 25% respectively. The NAC, MOJ, PGO, and the HRCM achieved a better implementation rate. There are several institutions that reached a 100% implementation rate, and these are the National Integrity Commission and National Council for Reforming the Law Enforcement Bodies. However, the Action Plan contained a very small number of actions to be implemented by these institutions, and, most importantly, the actions assessed as implemented in accordance with the performance indicators need to be monitored in terms of their real impact.

## Chapter I

# ASSESSMENT OF IMPLEMENTATION OF ACTIONS UNDER PILLAR I

**Institutional capacity.** During the third quarter of 2013, the WG for monitoring the implementation of actions under Pillar I of the Strategy met in three sessions, on 26 July, 18 September and 23 October, and all the meetings had a quorum of voting members. The Working Plan for 2013 was adopted only at the meeting on 23 October, with significant delay, which amounts to a rather formal approval of this document.

Worth noting are the efforts put into strengthening the capacities of the WG Secretariat, including by supplementing its staff. This led to visible improvements in the organization of WG meetings and availability of WG materials on the Ministry's website.

## 1. ACTIONS DUE BY: QUARTER 3 OF 2013

No actions under Pillar I were scheduled for completion by the end of the reporting period.

## 2. OVERDUE ACTIONS (to be completed by 30 June 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 with the support of the LRCM, and the Progress Report for the first half of 2013 of the WG for Pillar I mentioned that an extension was requested until the end of 2013.

Also note the minutes of meeting of 18 September 2013 of the WG for Pillar I, which assessed this action as implemented.<sup>1</sup>

<sup>1</sup> <http://www.justice.gov.md/pageview.php?l=ro&idc=289> (as accessed on: 30 Oct 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**

As a result of the information presented in the previous report, we found that the MOJ was able to get external support for this action, namely from the Romanian MOJ. According to data presented in the First Quarterly Report for 2013 on the implementation of actions under Pillar I, this study was being finalized and will soon be placed on the MOJ website. At the time of this report, this study was not found on the Ministry's website.

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 Action Plan for JSRS implementation is not specific enough on what is proposed or expected from this feasibility study. This leads to contradictions. The WG for Pillar I and the Coordination WG assessed this action as implemented in the last Quarterly Report, while the presented information does not state clearly what is the generated product or "output". One thing is if it refers to the courts assessment study conducted by ROLIPS in 2012, but the name of the action seems to suggest a different intention.

Perhaps, if there is no clarity on the content of this action, WG-I members should refer to WG-VII to clarify the situation and modify the contents of the report for Quarter I, 2013, posted on reform website, in the section related to this action.

**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**

The courts' assessment report conducted by ROLISP contains information on grouping courts into categories according to their maintenance or repair needs. However, the performance indicator for this action reads "Criteria for allocation of funds for the maintenance and repair of

court premises developed and approved". In this context, there is no document which, legally, would establish the criteria and would be binding on the courts, the CAD and other stakeholders.

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**

A proper study in this respect was not presented, but there is a web portal of Moldovan courts, namely courts.justice.md, although all it does is to redirect the user to the webpage of the requested court. It is also possible to improve the portal without such a study.

This action should be assessed, and, if deemed no longer relevant/necessary, it should be suggested to Group VII to conduct the appropriate amendments of the Action Plan.

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, the study was not completed and/or publicly presented by the LRCM, whose services were contracted under this action with financial assistance from the U.S. Embassy in Chisinau.

Also, note that the action is described as "partially implemented" in the 2012 Annual Report and in the report for the first half of 2013, although without providing information about contracting the services of experts to conduct the survey, and the general formula used read "initiated the study of European practice", which normally cannot serve as an argument for assessing an action as partially completed.

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

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

Although the Action Plan treats them as two separate actions, Actions 1.3.3. section 1 and 1.3.3. section 5 could be a single action with a single product: a study to assess the need for specialization of judges, which may include studying the opportunity for establishing administra-

tive courts. If this aspect was not included in the specifications presented to the LRCM, which is responsible for the first action, then it should be treated separately. During the preparation of this report, no such a study has 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 implemented**

It is difficult to assess the stage of this action's implementation. The 2012 Annual Report on the JSRS implementation, and the report for the first half of 2013 describe this action as completed, although the "taken measures" section mentions studying the European practice and the fact that this training plan will be developed only after a data analysis on the number of cases adjourned or postponed by every judge, in every court. Moreover, under "difficulties", they mention "lack of relevant legislation", without providing details.

On 10 September 2013, the NIJ hosted a seminar for judges on managing cases and compliance with the rules of postponing the examination of cases. The seminar emphasized the importance of efficient and accurate management of cases to ensure compliance with reasonable deadlines for the adjudication of cases.

Although we did not see a training plan being developed on the subject, we established that the subject matter is included in the NIJ training plan for 2014.<sup>2</sup>

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

**Action 1.3.1. section 1.** *Develop a new concept of continuous training of judges, prosecutors and other representatives of the justice sector.*

- Deadline: Quarter II, 2012
- Responsible for implementation: NIJ, SCM, SCP, PGO, Bar Association, UNJO, Mediation Council, MOJ
- Performance indicator: 1. Concept developed; 2. Number of staff needed to implement the concept established
- **Assessment: action not implemented**

The support of the ROLISP support program was obtained in order to implement this action, and the LRCM was hired to develop the respective concept.

<sup>2</sup> <http://inj.md/node/18> (as accessed on: 31 Oct 2013)

With reference to the action in question, we note that, on 18 July 2013, the NIJ held a roundtable on the topic: *Draft Concept on Continuous Training of Justice Sector Professionals*. The agenda included a presentation of the draft Concept of continuous training of professionals in the justice sector, an analysis of risks and opportunities of its application, and other interventions from participants. Some opinions were in favor of implementing the Concept, while others aroused the interest for discussion.<sup>3</sup> The Concept is seen as a necessity in the context of the justice reform in Moldova, as determined by the JSRS for 2011-2016 (Law no. 231 of 25 November 2011), which provides for increasing the professionalism and accountability of those involved in administering justice, including a *revision of the methods and continuous training of justice sector representatives and expanding the role of the NIJ*. The draft Concept of continuous training of justice sector professionals is published on the website of NIJ.

The NIJ continuous training plan for 2014 is not based on that concept<sup>4</sup>, although its introductory part mentions that it was based on the Action Plan for implementation of the JSRS in 2011-2016.

Since we do not have data on the approval of the concept, but also given the fact that the performance indicators for this action are: 1. Concept developed; 2. Number of staff needed to implement the concept established, we assess this action as yet unfulfilled.

### 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**

This action remained unfulfilled at the time of writing this report. This action is strictly dependent on the implementation of Action 1.1.2. section 1, so as long as the study is not conducted, legislative amendments are not advisable. At the same time, the report on the Strategy implementation in the first semester 2013 simply repeats the information presented in the 2012 report and mentions some letters sent by the MOF requesting input and thus qualifies the action as “partially completed”.

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

<sup>3</sup> [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) (as accessed on: 11 Aug 2013)

<sup>4</sup> <http://www.inj.md/node/18> (as accessed on: 1 Nov 2013)

- Performance indicator: Draft amendments to the regulations developed and approved
- **Assessment: action not implemented**

In drafting this report, we could not find evidence that such regulations were developed. The JSRS Implementation Report for the first semester of 2013 creates confusion in reporting on the action. It is assessed as “partially implemented”, while under “measures taken” it mentions the approval of some regulations related to matters such as granting the honorable title of “Dean of the judiciary” and the like. The progress indicator is formulated in a way that allows ambiguous interpretation, so it is quite difficult to estimate the implementation of this action – most recent regulations approved by the SCM refer to increasing the transparency of the body. But are they enough and what other regulations should be developed that it would be?

In this context, the LRCM conducted a monitoring of the SCM activities and, among its basic findings, it mentioned the public character of SCM meetings and the publication of the agenda of meetings and most decisions on its website. However, transparency has not yet become the norm for all areas of activity of the SCM, its colleges and the Judicial Inspection. During SCM meetings, the discussion of most issues on the agenda occurs largely during “deliberations” (a court practice adopted here, but totally irrelevant to the SCM). Deliberations should be excluded and replaced, as a rule, with public hearings, except for certain categories of issues to be discussed in closed session.

Accordingly, the LRCM recommendations on increasing efforts to ensure more transparency in the work of the SCM, should be revisited.

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**

The bill was approved and discussed in public debates on 23 July 2013, and submitted to the Government for consideration. At the time of this report, we found no indication on the Government's approval of the bill and its submission to Parliament.

At the same time, in the recent years, a number of changes were made to the Code of Administrative Offences, and the text of the Action Plan does not clearly indicate what changes are required by this action. So, at this moment, we cannot assess the action as not implemented or 100% implemented.

**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 at the time of this report. Unfortunately, the responsible institutions did not show enough depth in presenting this (and other) action in the quarterly progress report for 2013. The 2012 Annual Report on the implementation of the JSRS assesses the action as “partially completed”, and, under “measures taken”, it writes: “studying European practice”, and under “obstacles”, it mentions “the lack of relevant legislation”, without mentioning what legislation it refers to; the same is repeated in the report for the first Quarter of 2013.

At the same time, we found that the SCM rules, in its Decision no.437/15 of May 28, 2013 <sup>5</sup> on *the Delays in the Examination of Cases in Courts* to empower the Judicial Inspection to exercise control over the causes of delays of cases for more than 24 to 36 months in courts, and draft an Advisory Note warning the judges on the need to strictly observe the law on the examination of court cases by excluding unjustified delays and resolving cases in strict accordance with the law. If we analyze the performance indicators established in this action, it seems that the responsible institution has skipped the first indicator, which targets the development of standards and methodology in this respect.

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 JSRS implementation, the bill was to be sent to the Government in March 2013. At the date of this report, this bill had not been subjected to public discussion.

From the information known to observers, the proposals on the draft amendment to the Law no. 152-XVI of 8 June 2006 on the NIJ were examined and incorporated into a bill that was submitted to the NIJ, on 10 June 2013; on June 28, the NIJ convened a joint meeting to discuss the bill.

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

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

<sup>5</sup> <http://csm.md/files/Hotaririle/2013/17/437-17.pdf> (as accessed on: 1 Nov 2013)

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

This action is not implemented, although various activities were undertaken in this regard, including hiring experts with the ROLISP support. Despite the difficulties faced in hiring experts, we hope that this action will be completed by the end of 2013.

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**

The methodology for determining initial and continuous training needs is currently developed with the support of ROLISP; no results in this regard have been yet communicated.

### 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**

Several amendments were operated to Law no.514-XIII of 6 July 1995 in 2012, but they have not targeted funding of the judiciary and or unification of its budgeting process.

Such amendments were to occur after the development of the comparative study of the recent practice of financing the judiciary in Moldova and abroad (Action 1.1.4. section 1). The 2012 Report on the implementation of the Action Plan assessed action 1.1.4. section 1 as implemented through the Moldovan courts' assessment study conducted with the support of ROLISP. However, although the study includes a detailed assessment of each court in the country and simultaneously an analysis of the financing practices, it is not sufficiently focused on these aspects in

order to be a strong argument for adjusting the legislation. Such a study should propose an optimal formula of funding of the judiciary (taking into account the international practice), and to provide some policy options in this regard, with a detailed analysis of each case, and estimates of their impacts and costs.

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

**Action 1.3.1. section 3.** *Develop amendments to the internal regulations of the NIJ in accordance with legislative amendments.*

- Deadline: Quarter II, 2013
- Responsible for implementation: INJ
- Performance indicator: Internal normative framework amended
- **Assessment: action not implemented**

The NIJ's internal regulatory framework should be changed after amending the Law on the NIJ, which has not yet occurred.

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**

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.* It was to be implemented by the end of 2012, but at the time of this report, it was not completed. Although we see a delay in the implementation of these actions, one positive aspect is that the relevant actors do not rush to adopt a 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 implemented**

The SCM adopted Decision no. 436/17 of 28 May 2013 on the establishment of classes and subjects of training for acting instruction judges<sup>6</sup>.

According to Article VII (3) of Law no. 153 amending and supplementing certain acts of 5 July 2012, published in the Official Gazette of 31 August 2012, within three years of the entry into force of the law, acting instruction judges may demand their reconfirmation by the SCM as judges in the same court. They then can be reappointed, at the SCM proposal, by presidential decree, after consideration of performance and as a result of the training courses they took at the NIJ. SCM Decision no.690/29 of 4 October 2013 establishes:

1. to approve the lists of instruction judges participating in training seminars on 23-27 September 2013, as per the Annex to the Decision (see Annex 1).
2. to approve the lists of instruction judges participating in training seminars in the period September-December 2013, as per the Annex of this Decision (see Annex 2).<sup>7</sup>

The NIJ trained a group of 17 magistrates starting with 23 September 2013, for five days.<sup>8</sup>

We cannot assess this action as fully completed given the small number of judges trained, but the performance indicators in the Action Plan are not specific enough (see above), so we cannot qualify this action as “not implemented” either.

## 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 2012 Progress Report, this action was implemented with the support of the ROLISP program. The data collected from MOJ and observers’ reports shows that the action is still in progress. Although the monitoring methodology does not allow us to assess this action

<sup>6</sup> <http://csm.md/files/Hotaririle/2013/17/436-17.pdf> (as accessed on: 10 Aug 2013)

<sup>7</sup> [http://csm.md/index.php?option=com\\_content&view=article&id=76&Itemid=98&lang=ro](http://csm.md/index.php?option=com_content&view=article&id=76&Itemid=98&lang=ro) (as accessed on: 31 Oct 2013)

<sup>8</sup> <http://inj.md/node/758> (as accessed on: 31 Oct 2013)

a “completed” so long as the performance indicators are not met, we found significant progress in implementing this action.

## 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**

In compliance with the provisions of Article VII (3) of the Law no.153 on amending and supplementing certain acts of 5 July 2012 published in the Official Gazette of 31 August 2012, on 27 September 2013, instruction judges Alexandru Motricala, Ludmila Barbos and Sergiu Osoianu have successfully completed specialized training courses at the NIJ needed for their reconfirmation as judges.

Since the work of instruction judges Alexandru Motricala, Ludmila Barbos and Sergiu Osoianu has been previously assessed by the performance evaluation College as “very good” in its decisions 54/5, 52/5 and 57/5 of 19 July 2013, the College recommended to reconfirm their tenure by decision 68/6 of 27 September 2013.

Following the above, the SCM, in its Decision 678/29 of 4 October 2013<sup>9</sup>, recommended to the President of the Republic of Moldova to appoint Alexandru Motricala as a judge at the Court of Dubasari, Sergiu Osoianu as a judge at the Straseni Court, and Ludmila Barbos as a judge at the Court in Ialoveni.

We would also appreciate if the JSRS implementation Progress Report contained more specific information on the implementation of this action, and not just general formulations such as “process started, assessment criteria developed”, 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**

This action depends largely on changing the legal framework, in particular with regard to the NIJ. At this time, this action remains unfulfilled.

<sup>9</sup> [sm.md/index.php?option=com\\_content&view=article&id=76&Itemid=98&lang=ro](http://sm.md/index.php?option=com_content&view=article&id=76&Itemid=98&lang=ro) (as accessed on: 1 Nov 2013)

## Chapter II

# ASSESSMENT OF IMPLEMENTATION OF ACTIONS UNDER PILLAR II

**Institutional capacity.** In Quarter III of 2013, WG II met in two sessions, on 31 July and 11 September 2013. On 30 September, only three minutes of meetings were posted on the website of the Justice Reform, the most recent dated 3 April 2013. The minutes of the meetings covered by the reporting period continue to be published with great delay, even if the Secretariat of the WG was supplemented with staff. According to the meeting agendas, the subjects discussed included organizational issues, actions set for implementation in 2013 as well as the implementation of overdue actions. Unfortunately, the WG failed to approve the final version of its Work Plan for 2013 by 30 September 2013. Similarly, WG-II meetings feature discussions on the agenda topics without prior submission of documents confirming the implementation of previous planned or due actions.

### 1. ACTIONS DUE BY: QUARTER 3 OF 2013

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

Specific area of intervention: 2.5.2. Creating conditions for a wider application of simplified procedures, including methods of alternative settlement of cases.

**Action 2.5.2. section 1.** *Conduct a study on the effectiveness of applying simplified procedures.*

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

This action was set to be implemented by 30 September 2013. According to the MOJ Annual Action Plan for 2013<sup>10</sup>, this action was to be carried out no earlier than 15 November 2013, or approximately 1.5 months later than the deadline set in the JSRS Action Plan. According to the information presented at the ordinary meeting of the Mediation Council of 6 September 2013<sup>11</sup>, the ToR for the design of the study had only been prepared at that time and submitted to the MOJ. The subject of the implementation of the action was included on the agenda of the meeting of 11 September 2013, when the Pillar II sector report was presented. The meeting assessed the action as unfulfilled.

Only on 4 October 2013 did the MOJ WG on procurement publish a request for quotation<sup>12</sup> to hire services for the development of a study on the effectiveness of simplified procedures (mediation). The proposed period of implementation is: 21 October - 20 December 2013.

<sup>10</sup> [http://www.justice.gov.md/public/files/file/planurirapoarte/Planul\\_anual\\_de\\_actiuni\\_al\\_Ministerului\\_Justitiei\\_pentru\\_anul\\_2013.pdf](http://www.justice.gov.md/public/files/file/planurirapoarte/Planul_anual_de_actiuni_al_Ministerului_Justitiei_pentru_anul_2013.pdf) p.16

<sup>11</sup> <http://promediere.files.wordpress.com/2013/09/proces-din-06-09-2013.pdf> p.3

<sup>12</sup> <http://justice.gov.md/libview.php?l=ro&idc=4&id=1569> (as accessed on: 1 Nov 2013)

For these reasons and taking into account that during the reporting period the performance indicators have been met, action 2.5.2 section 1 is considered unfulfilled.

Specific area of intervention: 2.5.3. Strengthening the mechanism for safeguarding victims' rights.

**Action 2.5.3. section 1.** *Conducting a study on the existing mechanism for safeguarding the rights of victims of offenses, their protection and rehabilitation.*

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

The completion of this action expired on 30 September 2013. According to the MOJ Annual Action Plan for 2013<sup>13</sup>, this action was to be implemented by 20 September 2013. The subject of this action was never included on the agenda of WG-II meetings during Quarter III, and WG members did not receive any information about the stage of implementation of this action. The MOJ website intended for publication of studies and/or drafts did not contain such a study.

For these reasons and taking into account that the performance indicators have not been met for during the reporting period, action 2.5.3 section 1 is considered unfulfilled.

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

Specific area of intervention: 2.2.3. Strengthening capacities and ensuring independence of the Superior Council of Prosecutors to efficiently manage the institution of prosecutor's office.

**Action 2.2.3. section 1.** *Develop a draft amending Law no. 294-XVI of 25 December 2008 on the prosecutor's office, which would establish a separate budget, necessary number of administrative staff and allocation of premises for the SCP.*

- Deadline: Quarter III, 2013
- Responsible for implementation: MOJ, PGO
- Performance indicator: 1. Bill developed and sent to the Government for examination; 2. Own budget established; 3. Premises provided
- **Assessment: action not implemented**

The implementation of this action expired on 30 September 2013. According to the MOJ Annual Action Plan for 2013<sup>14</sup>, the action is to be completed on 20 December 2013, i.e. with a three-month delay from the date indicated in the JSRS Action Plan.

On the other hand, the implementation of the action was referred to a WG created on 11 July 2013 by the Minister of Justice and Prosecutor General to help develop draft legislation to promote and implement the reform of the prosecution. In the set timeframe, i.e. on 13 August 2013, the WG developed the concept of legislative amendments, which include the implementation

<sup>13</sup> [http://www.justice.gov.md/public/files/file/planurirapoarte/Planul\\_anual\\_de\\_actiuni\\_al\\_Ministerului\\_Justitiei\\_pentru\\_anul\\_2013.pdf](http://www.justice.gov.md/public/files/file/planurirapoarte/Planul_anual_de_actiuni_al_Ministerului_Justitiei_pentru_anul_2013.pdf) p.16

<sup>14</sup> [http://www.justice.gov.md/public/files/file/planurirapoarte/Planul\\_anual\\_de\\_actiuni\\_al\\_Ministerului\\_Justitiei\\_pentru\\_anul\\_2013.pdf](http://www.justice.gov.md/public/files/file/planurirapoarte/Planul_anual_de_actiuni_al_Ministerului_Justitiei_pentru_anul_2013.pdf) p.16

of the action in discussion. Unfortunately, the concept has not been made public, and was only available unofficially, on the websites of some media publications. Just outside the reporting period, due to the insistence of WG members for Pillar II, the concept that was made available to them. But it was not presented to the general public nor did any actions follow aimed towards the implementation of the specified concept.

The implementation of action 2.2.3 section 1 was never included on the agenda of WG meetings during Quarter III, and WG members have not been given any information about the stage of implementation of this action.

For these reasons and taking into account that the performance indicators established in the Action Plan have not been met during the reporting period, action 2.2.3 section 1 is considered not implemented.

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 2.** *Develop a draft amending Law no. 294-XVI of 25 December 2008 on the prosecutor's office and other legal acts.*

- Deadline: Quarter III, 2013
- Responsible for implementation: MOJ, PGO
- Performance indicator: 1. Bill drafted and sent for examination to the Government; 2. Structure of prosecution bodies amended
- **Assessment: action not implemented**

The completion of this action expired on 30 September 2013. On 12 April 2013, the PGO presented a study on the need for specialization of prosecutors. According to the conclusions and recommendations of the study, amendments were to be made to the Law on prosecution and several Parliament decisions.

Despite the fact of the conducted study, the action was shifted to the WG formed on 11 July 2013 by the Minister of Justice and Prosecutor General. Thus, beside the development of the concept of reform of the prosecution (partly described above, under action 2.2.3 section 1), things have not evolved much.

The implementation of action 2.2.5 section 1 was included on the agenda of the respective WG meeting once during Quarter 3 of 2013, namely on 11 September 2013, along with talks on the interim sector report on Pillar II. WG members have not been given any information about the stage of implementation of this action.

For these reasons and given that the performance indicators established in the Action Plan have not been met during the reporting period, action 2.2.5 section 1 is assessed as not implemented.

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 2.** *Develop a draft amending the regulatory framework aimed at prosecutor's office staff.*

- Deadline: Quarter III, 2013
- Responsible for implementation: PGO; MOF

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

The action was due for completion by 30 September 2013. At the WG meeting on 11 September, a representative of the prosecution service reported that, under an agreement dated 10 June 2013 signed between the LRCM and the PGO and funded by the U.S. Embassy, a study will be conducted regarding the staffing needs of the prosecution service. Draft amendments to the legal acts necessary to carry out action 2.2.6 section 2 will be prepared based on the findings of the study. According to the rapporteurs, the study is to be completed at the end of November 2013, i.e. outside the reporting period.

For these reasons and taking into account that the performance indicators set out in the Action Plan for the reporting period have not been met, action 2.2.6 section 2 is deemed not implemented.

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 2.** *Drafting a regulation on the standardized manner for processing and analysis of statistical data related to criminal justice.*

- Deadline: Quarter III, 2013
- Responsible for implementation: MOI, PGO, NAC, Customs Service, National Statistics Bureau, MOJ, SCJ
- Performance indicator: Regulation developed and approved
- **Assessment: action not implemented**

The implementation of this action expired on 30 September 2013. Action 2.4.2 section 2 was not included on the agenda of the WG meetings during the reporting period, and was only superficially addressed at the meeting of 11 September with the approval of the interim sector report. At the meeting it was noted that a WG had been established, by order of the MOJ, which was responsible for drafting the regulation. However, WG members have not been presented documents confirming the implementation of the action in question.

For these reasons, taking into account that the performance indicators established in the Action Plan for the reporting period have not been met, and the WG members were not even informed on the progress on the implementation of this action, action 2.4.2 section 2 is deemed unfulfilled.

## 2. OVERDUE ACTIONS (to be completed by 30 June 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 implemented**

This action was due for implementation by 30 June 2013. According to the MOJ Annual Action Plan for 2013, this action was to be completed by 1 July 2013, by the OCP. The implementation of this action was included in the agenda of the WG meeting of 12 June 2013, but was postponed for another meeting at the request of the responsible institution. The subject was discussed at the WG meeting of 11 September 2013, and it suggested deeming it completed on the reason of its similarity to action 6.4.1 section 1, previously implemented by the PGO. Unfortunately, WG members were not given any documents confirming the mentioned study. However, the WG members assessed the action as completed. Moreover, the subject was analyzed during the development of the MOJ Progress for the first half of 2013<sup>15</sup>.

For these reasons, and taking into account that the performance indicators contained in the Action Plan for the reporting period have been met, as confirmed by members of the WG-II, action 2.5.1 section 1 is considered completed.

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 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**

The achievement of this action expired on 30 June 2013. According to the MOJ Annual Action Plan for 2013, this action was to be completed by 1 July 2013 by the CPO and the DPI. The implementation of the action was included in the agenda of the meeting of 12 June 2013, but later postponed to another meeting at the request of the responsible institution. At the next WG meeting on 11 September 2013, it was stated that an expert was selected to develop the study, and that he had until 20 September the present study. However, by the end of September, the study was not presented to WG members so as to assess whether or not it was completed. Moreover, the MOJ Action Plan<sup>16</sup> set the deadline for implementation of the action for 31 December, 2013, with a 6-month delay from the date specified in the JSRS Action Plan.

For these reasons, and taking into account that the performance indicators contained in the Action Plan for the reporting period have not been met, and that the MOJ deliberately extended the deadline for the implementation of the action, action 2.5.1 section 2 is deemed not implemented.

15 [http://www.justice.gov.md/public/files/file/rapoarte/RAPORT\\_DE\\_ACTIVITATE\\_AL\\_MOJ\\_PENTRU\\_EMESTRUL\\_I\\_2013-16-07-2013.pdf](http://www.justice.gov.md/public/files/file/rapoarte/RAPORT_DE_ACTIVITATE_AL_MOJ_PENTRU_EMESTRUL_I_2013-16-07-2013.pdf) p.11-12

16 [http://www.justice.gov.md/public/files/file/planurirapoarte/Planul\\_anual\\_de\\_actiuni\\_al\\_Ministerului\\_Justitiei\\_pentru\\_anul\\_2013.pdf](http://www.justice.gov.md/public/files/file/planurirapoarte/Planul_anual_de_actiuni_al_Ministerului_Justitiei_pentru_anul_2013.pdf) p.16

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 representatives of the MOJ at the WG meeting of 15 May 2013, the study was to be completed in the fall. At the meeting of 11 September 2013 it was noted that the MOJ is created a WG responsible for the action, which met in several sessions. However, during the reporting period, neither the WG members nor the general public were introduced the progress indicators for this action.

Since the purpose of this action was to adjust the criminal procedure legislation to European standards, we cannot overlook the fact that, despite the lack of a study context, the criminal procedure law underwent significant changes based on the Laws [of 09.27.13 LP222 , MO238-242/25.10.13 art.674](#) and [LP158 from 06/28/13, MO152-158/19.07.13 483](#) ; most of the changes are aimed at protecting human rights and fundamental freedoms.

For these reasons, taking into account that the performance indicators established in the Action Plan for the reporting period have not been met, action 2.1.5 section 2 shall be deemed not implemented.

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 implemented**

This action was due for completion by 31 March 2013. According to the information provided by the PGO representatives at the WG meetings on 3 April and 15 May 2013, the study was conducted, and the action was assessed by the WG members as implemented. During the monitoring period, the WG Secretariat sent to the WG members the study which was presumably finalized on 12 April 2013. Although the study is not published on the websites of the PGO or the MOJ, it was sent to the WG members, and we believe that the performance indicators set out in the strategy have been achieved.

Based on these reasons and taking into account that the performance indicators established in the Action Plan for the reporting period have been met, which is confirmed by the members of the WG for Pillar II, action 2.2.5 section 1 is assessed as implemented.

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**

The implementation of this action expired on 31 March 2013. According to the information provided by the PGO in WG meetings, the LRCM is responsible for conducting a comprehensive study on the optimization and specialization of judges and prosecutors. Reports presented at the WG meetings show that the study was to be completed by the end of June, and later this period was extended to the end of November. Accordingly, the WG members could not get acquainted with the content of the study.

For this reason and given that the performance indicators established in the Action Plan for the reporting period have not been met, action 2.2.6 section 1 is considered not implemented.

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 implemented**

This action was due for completion on 31 March 2013. According to PGO information presented in the WG meeting of 11 September 2013, the study was developed. At that time, WG members did not receive any documentary proof confirming the conduct of the study; however the Group assessed the action as implemented. On a later date, the WG members received by email a PGO-sponsored study: "Review and unification of the methods of collecting and analyzing statistical data related to criminal justice and ensuring databases inter-operability". Unfortunately, the study was not published on the websites of the PGO or the MOJ, thus it was not publicly available.

For these reasons and given that the performance indicators established in the Action Plan for the reporting period have been met, which is confirmed by the members of the WG for Pillar II, action 2.4.2 section 1 is assessed as completed.

### 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 reporting period, on 11 July 2013, the Minister of Justice and the Prosecutor General signed a joint order establishing a WG to work on the bills to advance and promote the prosecution reform. In the set timeframe, namely by 13 August, the WG developed the concept of legislative amendments, including the implementation of the action described. Only after the reporting period was the concept shared with the members of the WG for Pillar II, on their insistence. However the concept is not available to the general public nor did any actions follow to implement the respective concept.

For these reasons and taking into account that the performance indicators established in the Action Plan for the reporting period have not been met, action 2.2.2 section 2 was deemed to be unfulfilled.

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. However, during the reporting period the MOJ website did not feature any notice on a public debate of this bill. Moreover, according

to the MOJ's 2013 Annual Work Plan<sup>17</sup>, this action was to be implemented by 31 October by the NCJEE and the GDL. AT the WG meeting on 11 September, the rapporteurs noted that the bill was drafted and it was yet to be approved by the leadership of the institutions.

For these reasons and given the fact that the performance indicators contained in the Action Plan for the reporting period have not been met, action 2.3.3 section 2 was deemed to be unfulfilled.

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 by 31 December 2012, and, according to the WG report, it was largely implemented. Furthermore, the action is complex and requires amendments to several laws and regulations. Although in 2012 the MOI developed a bill on the reform of carabinieri<sup>18</sup>, it was not approved by the Government. The bill was to be revisited and improved. On 5 June 2013, a new bill on the reorganization of the carabineer troupes was made public<sup>19</sup>. However, this did not take things further. On the contrary, we noted a period of inactivity of the MOI on the issue of changing the regulatory framework regarding Civil Protection and Emergency Situations Service. However, given the complexity of the action, it is impossible to describe it as fully implemented, because further amendments to the legal framework are needed.

For these reasons and given the fact that not all the performance indicators set out in the Action Plan for the reporting period have been met, action 2.1.1 section 2 was deemed to be unfulfilled.

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. As already mentioned above and with regard to other actions, on 11 July 2013, the Minister of Justice and the Prosecutor General signed a joint order to establish a WG to work on bills and legislative amendments to advance

17 [http://www.justice.gov.md/public/files/file/planurirapoarte/Planul\\_anual\\_de\\_actiuni\\_al\\_Ministerului\\_Justitiei\\_pentru\\_anul\\_2013.pdf](http://www.justice.gov.md/public/files/file/planurirapoarte/Planul_anual_de_actiuni_al_Ministerului_Justitiei_pentru_anul_2013.pdf)  
p.15

18 [www.mai.gov.md/sites/default/files/images/carabinieri%20nou%2006.06.2012.doc](http://www.mai.gov.md/sites/default/files/images/carabinieri%20nou%2006.06.2012.doc)

19 <http://particip.gov.md/proiectview.php?l=ro&idd=917>

and promote the prosecution reform. The WG developed a concept of legislative amendments, including the implementation of the action described in the set timeframe, that is, by 13 August 2013. However, no further actions to implement the concept followed.

For these reasons and given the fact that the performance indicators set out in the Action Plan for the reporting period have not been met, action 2.2.8 section 2 was deemed to be 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 set to be completed by 30 June 2013. Given that the action is closely connected with the implementation of action 2.1.1 section 1, which is currently underway, it is difficult to assess this action as completed. Note that this action is broad and ambitious, and, normally, it should have been divided into several specific actions. This would have allowed for a simpler implementation of smaller actions, and a more accurate monitoring of the quality of implementation. At this time, we cannot assess the action as implemented.

## Chapter III

# ASSESSMENT OF IMPLEMENTATION OF ACTIONS UNDER PILLAR III

**Institutional capacity.** A meeting of WG III took place on 29 July, when a report assessing the justice reform was presented. On 10 September, another WG-III meeting was held, which approved the work plan for Quarter II of 2013. Although the previous reports drew attention to the deficiencies in the publication of the minutes of the meetings of the WGs, in Quarter III the problem persisted, and the minutes of the WG III meetings were not published.

## 1. ACTIONS DUE BY: QUARTER 3 OF 2013

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

Specific area of intervention: 3.2.3. Development of integrated, clear and accurate pricing mechanisms for services rendered.

**Action 3.2.3. section 1.** *Conducting a study on the pricing mechanisms for the services provided by the representatives of each of the professions related to the justice system.*

- Deadline: Quarter III, 2013
- Responsible for implementation: MOJ, bodies of self-administration of justice sector related professions
- Performance indicator: Study conducted, recommendations formulates
- Respondents: 38 lawyers, 39 judicial officers, 40 notaries, 14 mediators
- **Assessment: action not implemented**

The action in question was due for completion in Quarter III of 2013. However, it was not completed by the set deadline. Interviews with about 130 representatives of justice related professions established that an overwhelming majority of them, 80%, did not know that, as part of the justice reform, a study was to be conducted on the mechanism of pricing for services rendered by representatives of justice-related professions.

As it is clearly a complex action, involving knowledge and data from various fields of justice-related professions, representatives of these professions were to support this effort. The monitoring mission made a point of asking representatives of these professions if they knew that such a study was to be conducted or if they were aware of the findings of the studies conducted as part of this action.

Following discussions with judicial execution officers from each of the 39 rayon centers and districts of Chisinau, 80% said they did not know anything about these studies and their part in the justice reform strategy, and only 20% said they were aware of plans to establish a new pay scale. The initiative to cap bailiffs' fees was discussed at the congress of the National Union of Judicial Officers. Only 35% of the interviewed bailiffs said they were aware of these specific proposals.

On 9 July, a group of MPs: S. Grisciuc, L. Zaporojan and A. Vacariuc, put forth a legislative initiative to amend the Code of Execution so as to cap execution fees. The briefing note cited as evidence one case in which the judicial officer received a payment of 7.5 million lei. Otherwise, the note did not contain any analysis of the situation concerning the calculation of fees and expenses or the correlation with the bailiffs' expenses, international practice, or the situation of other justice related professions, to argue for the need to cap the said fees. On 23 July, the NAC reviewed the bill, and concluded that it contained no incompatibilities with the national and international standards.<sup>20</sup> By the end of Quarter III, the bill was approved by other institutions, and it was to be discussed in Parliament in October. Given that, according to the Action Plan, a clear timeline was established on conducting a study of the mechanisms for pricing justice-related services, including provided by bailiffs, we believe that, absent such a study, changing the regulatory framework could affect the functioning of this profession.

With regard to the lawyers, earlier, the Council of the Bar Association put forth recommendations on setting the fees charged by defense lawyers. However, no study was conducted on how lawyers currently set their fees. The interviews with the 38 lawyers selected from each rayon showed that about 85% didn't know about the need to conduct studies as part of the justice reform, and only 15% said they were aware, to some degree, of the presence of such actions in the reform plan. About 35% of the interviewees said they were aware of some proposals and recommendations on the pricing mechanism coming from similar studies.

Interviews with 40 notaries selected from each rayon and district of Chisinau, about 78% said they didn't know about the need for such studies as part of the justice reform, and only 22% said they were aware, and were involved, to some degree, in discussing this kind of issues. About 30% of the interviewees said they were aware of some proposals and recommendations on the pricing mechanism coming from similar studies. Most notaries mentioned that the existing mechanism was quite reasonable and required no modifications.

As for the mediators, most of the 14 mediators interviewed in Quarter III on the mechanism for establishing their professional fees mentioned that the profession of mediator is too little known, and no measures are taken to strengthen and develop it. Of the 14 mediators interviewed in the rayon centers where they are located, 80% said they did not know anything about the need for studies as part of the justice reform, and only 20% said they were aware or have been involved to some extent in discussing this kind of issues.

On 6 August 2013, a repeat notice was published on the MOJ website<sup>21</sup> for purchase of services to conduct a study of the mechanisms of pricing for services provided by representatives of each justice system and related profession. According to the information sheet on the procurement of these services, the timeline for conducting the study is 1 September 2013 – 1 February 2014. However, the competition was to be completed by 13 August 2013, and the justice reform section of the MOJ website does not contain on whether or not experts were contracted to conduct the study.

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

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

<sup>20</sup> [http://cna.md/sites/default/files/raport\\_expertiza/raport-nr-437-g.pdf](http://cna.md/sites/default/files/raport_expertiza/raport-nr-437-g.pdf) Anticorruption expertise report on the level of corruptibility of the bill on the amendment of the Execution Code No.433-XV of 24 Dec 2004

<sup>21</sup> <http://www.justice.gov.md/libview.php?!=ro&idc=105&id=1517> (as accessed on 1 Nov 2013)

**Action 3.1.1. section 5.** *Develop the mechanism to access databases to verify the revenues of applicants for the state guaranteed legal aid.*

- Deadline: Quarter III, 2013
- Responsible for implementation: MOJ, NLAC, Ministry of Information Technology and Communications, Agency of Land Relations and Cadaster
- Performance indicator: Bill developed and sent for examination to the Government
- Respondents: 5 lawyers/coordinators providing state guaranteed legal aid
- **Assessment: action not implemented**

The 2012 Annual Report on Pillar III<sup>22</sup> reads, with reference to action 3.1.1 section 5 of the Plan, that a Working Group composed of representatives of the Ministry of Information Technologies and Communications, State Tax Inspectorate, National House of Social Insurance, Cadaster and NALC, was created on 13 September. The briefing note<sup>23</sup> and the bill<sup>24</sup> published on the MOJ website confirm the existence of a bill that was drafted and submitted for coordination – this information was published on 30 September 2013<sup>25</sup>. Advisory notes on the bill were to be submitted by 14 October.

Of the five regional offices coordinators interviewed for this report, two said that they were not involved in drafting the bill; the other three reported that they had been involved. Of the five coordinators of regional state guaranteed legal aid offices, one said that he didn't know the content of the bill, and four said they knew about its provisions. These results show a wide involvement of territorial coordinators in the development of amendments to the regulatory framework. However, the bill has not been submitted to the Government for approval, as provided in the Action Plan.

## 2. OVERDUE ACTIONS (to be completed by 30 June 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**

Although the action remains unfulfilled in Quarter III, it should be noted that the institution directly responsible for its implementation has taken consistent measures toward that goal. The

22 [http://www.justice.gov.md/public/files/file/reforma\\_sectorul\\_justitiei/rapoarte/2012/Pilonul\\_III\\_Raport\\_anual\\_2012.pdf](http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/rapoarte/2012/Pilonul_III_Raport_anual_2012.pdf)

23 [http://justice.gov.md/public/files/proiecte\\_spre\\_coordonare/Nota\\_Informativa\\_Lege\\_completare-30-09-2013.pdf](http://justice.gov.md/public/files/proiecte_spre_coordonare/Nota_Informativa_Lege_completare-30-09-2013.pdf)

24 [http://justice.gov.md/public/files/proiecte\\_spre\\_coordonare/Proiect-30-09-2013.pdf](http://justice.gov.md/public/files/proiecte_spre_coordonare/Proiect-30-09-2013.pdf)

25 <http://justice.gov.md/pageview.php?l=ro&idc=192> - see paragraph 89 from the list

Public Procurement Bulletin no. 52 of 5 July 2013 published a notice on the selection of experts to conduct a study of the existing fiscal regime, social security and health services for representatives of justice-related professions. The deadline for submitting bids was set for 24 July 2013<sup>26</sup>. At the same time, the MOJ website published comprehensive information on how the studies are to be conducted, and the deadline for the studies was to be within three months of the contract signing and presentation<sup>27</sup>. The request for offer was republished, and the Public Procurement Bulletin of 14 August 2013 featured another notice on the selection of experts to carry out the studies<sup>28</sup>.

The study was not conducted by the end of Quarter III and remains outstanding absent the experts to conduct it. However, other studies have been conducted on justice related professions: for example, the website of the Bar Association contains comments on the accounting and taxation of lawyers<sup>29</sup>.

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, NUJO
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

This action was to be completed by 30 June 2012. The Interim Report on Pillar III, reporting period: Quarter IV of 2011 – Quarter II of 2013, assessed this action as completed, citing some amendments to the respective legal framework.

However, there is no study on the work of the Commission of Licensing and the Disciplinary College; moreover, the action did not find the necessary external support, therefore it remains unfulfilled.

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, NUJO
- Performance indicator: Monitoring conducted; monitoring report written and published
- **Assessment: action not implemented**

<sup>26</sup> [http://www.tender.gov.md/common/bap2013/BAP\\_52.pdf](http://www.tender.gov.md/common/bap2013/BAP_52.pdf) Public Procurement Bulletin No. 52 of 5 Jul 2013, page 17

<sup>27</sup> [http://justice.gov.md/public/files/file/Achizitiu%20publice/COP\\_nr.13-00437\\_din\\_24.07.13\\_-\\_regim\\_fiscal\\_de\\_asig.sociala\\_i\\_de\\_asig.medicala\\_DAMEP-05-07-2013.pdf](http://justice.gov.md/public/files/file/Achizitiu%20publice/COP_nr.13-00437_din_24.07.13_-_regim_fiscal_de_asig.sociala_i_de_asig.medicala_DAMEP-05-07-2013.pdf)

<sup>28</sup> [http://www.tender.gov.md/common/bap2013/BAP\\_62.pdf](http://www.tender.gov.md/common/bap2013/BAP_62.pdf) Public Procurement Bulletin No. 62 of 9 Aug 2013, page 20

<sup>29</sup> <http://avocatul.md/publications/indrumar-pentru-avocati-cu-privire-la-contabilitatea-si-fiscalitatea-avocailor> (accesat la: 01.11.2013).

According to the 2013 Interim Report on Pillar III, reporting period: Quarter IV or 2011 - Quarter II of 2013, this action is completed<sup>30</sup>. However, the documentary evidence mentioned includes several letters that are not made public, and a briefing note on the bill. Also note that no report was published on the carried out monitoring, so this performance indicator was not achieved. Therefore, we deem the action as not completed.

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: NUJO, MOJ
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

During Quarter III, no measures were taken towards conducting the respective study. The action remains unfulfilled. It was not discussed in WG-III meetings. The Work Plan of the WG-III did not set any terms for the execution of the action, because according to the Interim Sector Report<sup>31</sup>, the action has been executed. However, the achievement of the established performance indicators - the study and the recommendations - could not be proven. The implementation of certain intermediate activities (such as obtaining official information) cannot be qualified as execution of a comprehensive study.

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, NUJO, SCM
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

No measures were taken towards conducting the study during Quarter III. The action remains unfulfilled, and it was not discussed during WG-III meetings. According to the Interim Sector Report<sup>32</sup>, this action would have been partially executed, as some letters were submitted in response to requests for access to information. Note that these letters date from October-November of 2012, and no actions from 2013 are mentioned. Therefore, the action cannot be considered implemented.

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

<sup>30</sup> [http://www.justice.gov.md/public/files/file/reforma\\_sectorul\\_justitiei/Pilonul\\_III\\_Raport\\_intermediar\\_2013.Pdf](http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/Pilonul_III_Raport_intermediar_2013.Pdf) page 12

<sup>31</sup> Ibidem, page 22

<sup>32</sup> Ibidem, page 27

**Action 3.1.1 section 2.** *Conduct a study on the staff requirements of the territorial offices of the NLAC 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, NLAC
- Performance indicator: Analysis carried out and recommendations formulated; organizational chart adjusted
- **Assessment: action not implemented**

The action in question was not implemented during Quarter III and it remains overdue. According to the NLAC, they have made efforts to identify an association or group of experts to conduct the study. The Public Procurement Bulletin no.40 of 24 May 2013 features an ad on the selection of experts to conduct this study<sup>33</sup>. In the Public Procurement Bulletin no.47 of 18 June 2013, a notice on the cancellation of the competition on the selection of experts was published, on the grounds that an additional procedure for purchasing experts services was initiated. By the end of Quarter III, no expert or group was identified to conduct this study.

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: NLAC, MOJ
- Performance indicator: 1. Study conducted and recommendations formulated; 2. By case, pilot project implemented
- **Assessment: action not implemented**

According to the Interim Sector Report<sup>34</sup>, this action was partially executed; however, no specific measure or product is mentioned as a performance indicator to attest that. By the end of Quarter III, no study or pilot project was published in that regard.

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: NLAC
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

Like the previous action, action 3.1.3 section 2 was not implemented in Quarter III and remains to be completed. According to a notice by NLAC published on 13 August 2013, public associa-

33 [http://www.tender.gov.md/common/bap2013/BAP\\_40.pdf](http://www.tender.gov.md/common/bap2013/BAP_40.pdf) Public Procurement Bulletin, see page 57

34 Ibidem, page 7

tions were invited to fill in a questionnaire, based on which, by the end of Quarter III, the Council was to develop a study and formulate recommendations. No such a study has been done public.<sup>35</sup>

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
- **Assessment: action implemented**

The previous report for Quarter II mentioned that, in late June - early July 2013, MOJ presented the studies conducted under this action. Subsequently, all the studies were discussed in thematic meetings organized by each of the representatives of the professions concerned. On 17 July, public discussions were held on the presentation of the *Study on the Functioning of the Translator/Interpreter Profession in Moldova*; on 18 July, a discussion was organized on the *Study on the Functioning of the Profession of Notary in Moldova*; on 19 July, the *Study on the Functioning of the Insolvency Administrator Profession in Moldova* was discussed, on 23 July, a public discussion was organized on the *Study on the Functioning of the Lawyer Profession the Republic of Moldova*, and on 24 July, public discussions were held on the *Study on the Functioning of the Mediator Profession in Moldova*.<sup>36</sup>

Following that, some of the studies received objections and proposals for improvement; the final version of the studies was not published in the appropriate section of the MOJ website.

## 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, NLAC
- Performance indicator: Working group created; amendments to legal framework drafted and sent for examination to the Government
- Assessment: action not implemented

35 [http://cnaigs.md/ro/noutati-si-anunturi/detalii-stire/news/chestionar\\_pentru\\_reprezentantii\\_asociatiilor\\_obstesti.html](http://cnaigs.md/ro/noutati-si-anunturi/detalii-stire/news/chestionar_pentru_reprezentantii_asociatiilor_obstesti.html)

36 <http://www.justice.gov.md/libview.php?l=ro&idc=4&id=1464>

This action was not discussed at WG-III meetings during Quarter III. On 3 September 2013, the NLAC posted an ad seeking an expert to participate in updating the methodology for planning the costs for state guaranteed legal aid services, which were to be approved by the NLAC. A WG was established to review and adjust the expenditure planning methodology for legal aid services<sup>37</sup>, and for this reason, WG- III assessed this action as partially accomplished. However, no information is available at this time to confirm its execution.

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: NLAC, Bar Association of Moldova
- Performance indicator: Methodology developed and approved
- Respondents: six lawyers providing legal aid in five territorial NLAC offices
- **Assessment: action not implemented**

Members of the WG for Pillar III assessed this action as partially completed<sup>38</sup> because a WG was created to develop a quality monitoring mechanism for state guaranteed legal aid. The group met twice (on 28 March and 16 May 2013); various quality monitoring methods were presented for discussion. However, at this time, there is no published methodology that could serve as proof that the action was implemented.

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**

During Quarter III, 2013, a plan for continuous training of lawyers providing state guaranteed legal aid, approved under NIJ Council Decision no. 6/10 of 5 July 2013, was published on the NIJ website<sup>39</sup>. However, no training plans have been developed for other justice-related professions.

### 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.

37 [http://cnaigs.md/ro/noutati-si-anunturi/detalii-stire/news/concurs\\_de\\_selectare\\_a\\_expertului\\_pentru\\_prestarea\\_serviciilor\\_de\\_expertiza\\_si\\_consultanta-1.html](http://cnaigs.md/ro/noutati-si-anunturi/detalii-stire/news/concurs_de_selectare_a_expertului_pentru_prestarea_serviciilor_de_expertiza_si_consultanta-1.html)

38 See 2013 Intermediate Sectoral Report on Pillar III, reporting period: Quarter IV, 2011 – Quarter II, 2013, p.6

39 <http://inj.md/node/18> (as accessed on 30 Oct 2013)

**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**

According to MOJ representatives, the bill could be presented in November 2013, as, at the end of September, the text of bill on the organization of notaries was finalized and was to be sent for approval. The bill and the informative note were sent for coordination on 5 November 2013<sup>40</sup>.

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.** *Develop the draft for amending the normative framework aiming to eliminate the deficiencies in the enforcement the judgments.*

- Deadline: Quarter IV, 2012
- Responsible for implementation: MOJ, NUJO
- Performance indicator: Bill amending the normative framework developed and sent for approval to the Government
- **Assessment: action not implemented**

This action was not fully implemented in Quarter III. The WG discussed several versions of bills; a final version of the bill was completed in early November 2013 and was to be sent for coordination at the end of November.

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

During Quarter III, this action was not implemented. However the MOJ is looking into the possibility of amending the legal framework of the government agent, and this action could be completed while preparing the respective amendments. According to the institution directly responsible for this action, it cannot be implemented in the current redaction.

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.*

40 <http://www.justice.gov.md/pageview.php?l=ro&idc=192> (as accessed on 30 Oct 2013)

- Deadline: Quarter 4, 2012
- Responsible for implementation: MOJ, NUJO, 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: conducting a study to determine the deficiencies in the information and communication management system that impact the enforcement of court judgments. As mentioned, such a study has not been developed or published. Nevertheless, a WG was created to look into the possibility of changing the current legal framework to eliminate deficiencies in the information and communication management system. No drafts were finalized in this regard by the end of Quarter III.

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, NUJO, SCM
- Performance indicator: Bill drafted and sent for examination to the Government
- **Assessment: action not implemented**

The action in question was listed as completed in the 2013 Interim Sector Report for Pillar III, reporting period: Quarter IV, 2011 - Quarter II, 2013. A number of developed bills and passed laws were included as performance indicators to prove the completion of the action<sup>41</sup>. Although, at its meeting on 1 July, the WG-III admitted that the action was not implemented, it did not reassess the way to implement it.

## **Group VII. Create and streamline the work 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 NLAC.*

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

41 [http://www.justice.gov.md/public/files/file/reforma\\_sectorul\\_justitiei/Pilonul\\_III\\_Raport\\_intermediar\\_2013.Pdf](http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/Pilonul_III_Raport_intermediar_2013.Pdf) p.26

Although in Quarter II changes were approved to the staff of regional offices, no public defenders' offices were created and furnished in the locations of NLAC territorial offices.

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 2.** *Develop the draft amending the normative framework aiming for institutional and functional consolidation of the Licensing Committee and Disciplinary Board.*

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

During the reporting period, the MOJ sent to the coordination authorities a bill on the regulatory framework to strengthen the institutional and functional capacity of the Licensing Commission and Disciplinary College<sup>42</sup>. The period between 8 August and 2 September 2013 was allocated for coordination. As the final draft of the bill was not sent to the Government after that date, the action remains unfulfilled.

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 2.** *Develop the draft amending Law no.113 of 17 June 2010 on bailiffs and Enforcement Code no. 443-XV of 24 December 2004.*

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

Similar to the situation of action 3.3.2 section 1, the MOJ developed the bill and submitted it for coordination to other authorities, but, at the end of Quarter III, there was no information on the Ministry's website confirming the fact that bill had been sent to the Government for approval.

42 <http://justice.gov.md/pageview.php?!=ro&idc=192>  
[http://justice.gov.md/public/files/proiecte\\_spre\\_coordonare/Nota\\_informativ\\_la\\_proiectul\\_de\\_lege\\_pentru\\_modificarea\\_i\\_completa-rea\\_unor\\_acte\\_legislative-07-05-2013.pdf](http://justice.gov.md/public/files/proiecte_spre_coordonare/Nota_informativ_la_proiectul_de_lege_pentru_modificarea_i_completa-rea_unor_acte_legislative-07-05-2013.pdf)  
[http://justice.gov.md/public/files/proiecte\\_spre\\_coordonare/Proiect\\_de\\_modif.Legii\\_cu\\_privire\\_la\\_executorii\\_judecatori 24.04.2013.pdf](http://justice.gov.md/public/files/proiecte_spre_coordonare/Proiect_de_modif.Legii_cu_privire_la_executorii_judecatori 24.04.2013.pdf)

## Chapter IV

# ASSESSMENT OF IMPLEMENTATION OF ACTIONS UNDER PILLAR IV

**Institutional capacity.** During Quarter III of 2013, the WG for monitoring the implementation of actions under Pillar IV of the Strategy met in three sessions, on 31 July, 12 September and 25 October. It is worth noting that strengthening the capacity of the WG Secretariat staff visibly improved the work of organizing and conducting meetings as well as publishing meeting related information and materials on the website of the reform.

## 1. ACTIONS DUE BY: QUARTER 3 OF 2013

No actions under Pillar IV were scheduled for completion by the end of the reporting period.

## 2. OVERDUE ACTIONS (to be completed by 30 June 2013)

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

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: 1. 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 court websites showed that they remain unsuitable for publishing corruption sentences against justice representatives and highlighting those publications from other judgments. On the other hand, the question arises on the need for such a study given that the way a wider coverage of these judgments seems clear from the start.

The WG for coordinating and monitoring the implementation of actions under Pillar IV questioned the need for this action and deemed it obsolete, therefore it suggested excluding it from the Action Plan.<sup>43</sup>

<sup>43</sup> See: 2013 Intermediate Sectoral Report on Pillar IV, reporting period: Quarter IV, 2011 – Quarter II, 2013, approved at the meeting of the WG for the coordination and monitoring of the implementation of Pillar IV of the Justice Sector Reform Strategy of 13 September 2013, which reflects the implementation rate as of that date: <http://www.justice.gov.md/category.php?l=ro&idc=155> (as accessed on 31 Oct 2013)

### 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 can be considered partially implemented, since a bill was registered in Parliament on 18 December 2012. (<http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislativ/tabid/61/LegislativId/1514/Default.aspx>). However, this bill covers only judges, not the other actors in the justice sector. The reports by monitoring groups should be more explicit on the next steps needed to implement this action, possibly also a period of remediation.

Also bear in mind that higher salaries and better social guarantees are also provided for NAC staff as a part of the amendments to Law no.120 of 25 May 2012.

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, Bar Association, NUJO).*

- Deadline: Quarter 2, 2013
- Responsible for implementation: MOJ, SCM, Bar Association, NUJO
- Performance indicator: Draft regulation developed and sent for examination to the Government
- **Assessment: action implemented**

The bill amending and supplementing certain laws (anti-corruption measures set out in Pillar IV of the JSRS) was submitted to the Government on 4 October 2013.<sup>44</sup>

The amendments to the Law on the Status of Judges (*arts. 8 and 15*) detail the prohibition of exercising undue influence on judges in the administration of justice by prohibiting any communication outside the courtroom of the judge with other persons, including public officials, where the communication is on a case pending in court proceedings and is likely to affect the impartiality and credibility of the judiciary.

<sup>44</sup> <http://www.justice.gov.md/pageview.php?l=ro&idc=230> (as accessed on 30 Oct 2013)

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**

The bill amending and supplementing certain laws (anti-corruption measures set out in Pillar IV of the JSRS) was submitted to the Government on 4 October 2013.<sup>45</sup>

The amendments to the Law on the Status of Judges establish mandatory polygraph testing of candidates for judge (*article 9 paragraph 7*). *Under these rules, all candidates* for judicial appointment are to *be tested on a detector* of simulated behavior in order to eliminate from the start the persons who do not meet the criteria for the high office of judge. The bill submitted to the Government on 4 October also provides amendments and additions to the Law no. 269-XVI of 12 December 2008 on the Testing on the Simulated Behavior Detector (Polygraph).

At the same time, the WG raised the question whether a regulatory framework is needed for **voluntary** polygraph testing, given that legislation already provides for the conditions for mandatory testing (including the ones mentioned in the comment above).

## Group V. Develop and use 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**

At the time of writing this report, only the NAC published on its website the Rules on whistleblowers.

The NAC also developed a draft framework regulation on this subject, which was approved by the Government on 9 September 2013. The responsible institutions are now to create mechanisms to develop their own internal regulations in that sense in the near future.

<sup>45</sup> <http://www.justice.gov.md/pageview.php?l=ro&idc=230> (as accessed on 30 Oct 2013)

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

**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**

## Chapter V

# ASSESSMENT OF IMPLEMENTATION OF ACTIONS UNDER PILLAR V

**Institutional capacity.** In Quarter III of 2013, The WG for Pillar V met twice, on 31 July and 12 September 2013. According to the agendas and minutes of the meetings, the discussions were to be focused on the how to implement current actions due this Quarter as well as overdue actions. The Work Plan for 2013 was not debated or approved, and no information on a work plan is available on the website. On the other hand, the MOJ website did publish the minutes of both WG meetings.

## 1. ACTIONS DUE BY: QUARTER 3 OF 2013

No actions under Pillar V were scheduled for completion by the end of the reporting period.

## 2. OVERDUE ACTIONS (to be completed by 30 June 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 unites 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 the information presented at the Working Group meeting of 11 April 2013, the action should not have been implemented because it was to be completed to facilitate the amendment of the respective legal framework. The rapporteurs noted that Law no. 29 of 6 March 2012 performed sufficient changes to exempt the responsible institution from implementing the action 5.1.1 section 1 of the Action Plan. Note that the same arguments were presented at the end of 2012, when the 2012 Annual Report of the WG was presented<sup>46</sup>. The WG meeting of 12 September 2013 resumed talks on this action. WG members decided that the implementation of this action was no

46 [http://www.justice.gov.md/public/files/file/reforma\\_sectorul\\_justitiei/rapoarte/2012/Pilonul\\_V\\_Raport\\_anual\\_2012.pdf](http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/rapoarte/2012/Pilonul_V_Raport_anual_2012.pdf) p.3

longer necessary, and did not assess it in any way. However, in the Interim Report for Pillar V published on the MOJ website<sup>47</sup>, the action is described again as not implemented.

The authors of this report believe that the action is no longer relevant because of the changes in legislation, and the JSRS Action Plan needs to be changed, as the WG cannot amend provisions approved by the Parliament. Another solution would be conducting a study to examine the issues in discussion by corroborating them with the existent legislation, and propose that no other legislative amendments were necessary. In this case, the action can be loosely assessed as completed.

For these reasons and given the fact that the performance indicators established in the Action Plan for the reporting period have not been met, action 5.1.1 section 1 is assessed as not implemented.

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 arbitration.*

- 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**

The completion of this action was due on 31 December 2012. According to the report prepared at the end of 2012, the action was assessed as partially implemented because a study was conducted on a specific area of intervention. At the WG meeting of 12 September 2013, the action was assessed again as partially implemented because a study on arbitration was prepared, while no study has been conducted on mediation. According to the rapporteurs, the findings of the study were included in a bill on mediation, which was put forth for public consultations on 16 January 2013<sup>48</sup>, although the bill was not sufficiently promoted. At the same time, according to the MOJ Work Plan for 2013<sup>49</sup>, the deadline for implementation of this action was set for 30 December 2013.

For these reasons and given the fact that the performance indicators established in the Action Plan for the reporting period have not been met, and the responsible institution extended the period of implementation by one year, action 5.1.2 section 1 is deemed unfulfilled.

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

47 [http://www.justice.gov.md/public/files/file/reforma\\_sectorul\\_justitiei/pilon\\_V\\_Raport\\_sectorial\\_2013.pdf](http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/pilon_V_Raport_sectorial_2013.pdf) p.2

48 <http://particip.gov.md/proiectview.php?l=ro&idd=698>

49 [http://www.justice.gov.md/public/files/file/planurirapoarte/Planul\\_anual\\_de\\_actiuni\\_al\\_Ministerului\\_Justitiei\\_pentru\\_anul\\_2013.pdf](http://www.justice.gov.md/public/files/file/planurirapoarte/Planul_anual_de_actiuni_al_Ministerului_Justitiei_pentru_anul_2013.pdf) p.21

**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: e-Government Center, MOJ, Ministry of Economy, Ministry of Information Technology and Communications
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

This action was set for completion by 31 December 2012. According to available information, a taskforce established back in October 2012 by MOJ decree is working to implement this action. WG members have not been given detailed information about the work of the taskforce responsible for the action. The meeting on 12 September 2013 and the Interim Report both assessed the action as partially completed namely because there was a taskforce working on it.

For these reasons and taking into account that the performance indicators set out in the Action Plan for the reporting period have not been met, action 5.3.1 section 1 is deemed to be unfulfilled.

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: e-Government Center, MOJ, Ministry of Economy, Ministry of Information Technology and Communications
- Performance indicator: Study conducted and recommendations formulated
- **Assessment: action not implemented**

The completion of this action was due by 31 December 2012. According to the information presented in the WG meetings, the implementation of this action is combined with the completion of action 5.3.1 section 1. On 5 July, a notice was posted on the MOJ website seeking to hire an expert to develop the respective studies. During the reporting period, WG members have not been given any information on the implementation of the action.

For these reasons and taking into account that the performance indicators set out in the Action Plan for the reporting period have not been met, action 5.3.2 section 1 is deemed as not implemented.

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

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, NUJO
- Performance indicator: Amendments to legal framework drafted and sent for examination to the Government
- **Assessment: action not implemented**

This action was due for completion by 30 June 2013. During the reporting period, WG members have received any documents confirming the implementation of this action. No information on the implementation of this action was published on the website of the responsible institution by the set deadline.

For these reasons and given that the performance indicators set forth in the Action Plan for the reporting period have not been met, action 5.1.4 section 2 is assessed as not implemented.

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**

The completion of this action was due by 30 September 2012. According to the MOJ Work Plan for 2013<sup>50</sup>, the GDL and the Directorate for Legal Professions and Services were responsible for the completion of this action by 30 September 2013. According to information provided in WG meetings by the authorities responsible for carrying out the action, there is a conflict between the MOJ and Ministry of Economy on the bill on authorized administrators. This in turn impedes the implementation of actions 5.2.1 sections 2 and 3 of the Action Plan.

For these reasons and taking into account that the performance indicators established in the Action Plan for the reporting period have not been met, action 5.2.1 section 2 is deemed not implemented.

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**

<sup>50</sup> [http://www.justice.gov.md/public/files/file/planurirapoarte/Planul\\_anual\\_de\\_actiuni\\_al\\_Ministerului\\_Justitiei\\_pentru\\_anul\\_2013.pdf](http://www.justice.gov.md/public/files/file/planurirapoarte/Planul_anual_de_actiuni_al_Ministerului_Justitiei_pentru_anul_2013.pdf)  
p.22

The achievement of this action expired on 31 December 2012. According to the MOJ Work Plan for 2013<sup>51</sup>, the GDL and the Directorate for Legal Professions and Services were responsible for the completion of this action by 30 December 2013.

According to information provided in WG meetings by representatives of the MOJ and the Ministry of Economy, the agencies responsible for carrying out the action, there is a conflict between the two institutions on the text of the bill on authorized administrators. This in turn challenges the implementation of this action.

For these reasons and taking into account that the performance indicators established in the Action Plan for the reporting period have not been met, action 5.2.1 section 3 is deemed to be not implemented.

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51 [http://www.justice.gov.md/public/files/file/planurirapoarte/Planul\\_anual\\_de\\_actiuni\\_al\\_Ministerului\\_Justitiei\\_pentru\\_anul\\_2013.pdf](http://www.justice.gov.md/public/files/file/planurirapoarte/Planul_anual_de_actiuni_al_Ministerului_Justitiei_pentru_anul_2013.pdf)  
pag. 22.

## Chapter VI

# ASSESSMENT OF THE IMPLEMENTATION OF ACTIONS UNDER PILLAR VI

**Institutional capacity.** In Quarter III of 2013, WG-VI met three times: on 25 June, 30 July and 10 September 2013. All the meetings had a quorum. According to the meetings' agendas and minutes, the discussions focused on how to achieve the overdue actions and the actions set for completion by the end of Quarter III of 2013. The minutes of all the WG meetings, except the one on 25 June, were posted on the MOJ website.

### 1. ACTIONS DUE BY: QUARTER 3 OF 2013

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

Specific area of intervention: 6.5.6. Reviewing employment policy and personnel recruitment system for penitentiary institutions; complete demilitarization of the penitentiary system.

**Action 6.5.6. section 1.** *Conducting a comparative study on the employment policy and personnel recruitment system in penitentiary institutions and on the complete demilitarization of the penitentiary system.*

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

This action was due for completion by 30 September 2013. Under the MOJ Work Plan for 2013<sup>52</sup>, this action was due by 1 September 2013. The implementation of this action was never debated during the reporting period. WG members have not received any information on the progress of this action; moreover, none of the websites of the authorities responsible for implementation contained information on the publication of the study.

For these reasons and taking into account that the performance indicators established in the Action Plan for the reporting period have not been met, action 6.5.6 section 1 is assessed as not implemented.

### 2. OVERDUE ACTIONS (to be completed by 30 June 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 on the activity of the probation services and penitentiary system.

<sup>52</sup> [http://www.justice.gov.md/public/files/file/planurirapoarte/Planul\\_anual\\_de\\_actiuni\\_al\\_Ministerului\\_Justitiei\\_pentru\\_anul\\_2013.pdf](http://www.justice.gov.md/public/files/file/planurirapoarte/Planul_anual_de_actiuni_al_Ministerului_Justitiei_pentru_anul_2013.pdf)  
pp 25-26

**Action 6.5.5. section 1.** *Conducting a study on the procedures for resolving complaints relating to the activity of the probation services and penitentiary system.*

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

The completion of this action expired on 30 June 2013. WG members have not been provided any information on the implementation of the action during the reporting period. The websites of the authorities responsible for the implementation of the action (the MOJ delegated this task to the DPI) did not feature any information on the publication of the study.

For these reasons and taking into account that the performance indicators contained in the Action Plan for the reporting period have not been met, action 6.5.5 section 1 is assessed as not implemented.

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**

The completion of this action was due by 31 March 2013. A concept of development of the institution probation,<sup>53</sup> aimed at contributing to community safety through effective reintegration of offenders into the society, was posted on the CPO website on an unspecified date. The 1<sup>st</sup> quarterly report for 2013 prepared by the MOJ, states that that the action was partially completed. It is also unclear whether or not the concept was approved - and by what organization. Thus, while we can admit that one of the performance indicators has been achieved, the remaining indicators are unfulfilled.

For these reasons and taking into account that not all the performance indicators established in the Action Plan for the reporting period have been achieved, action 6.5.1 section 1 is assessed as not implemented.

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

53 [www.probatie.gov.md/tc\\_userfiles/file/Recomand%C4%83ri/Conceptia%20de%20dezvoltare%20a%20institu%C8%9Biei%20proba%C8%9Biunii%20care%20s%C4%83%20contribuie%20la%20siguran%C8%9Ba%20comunit%C4%83%C8%9Bii%20prin%20reabilitarea%20efectiv%C4%83%20%C3%AEen%20societate%20a%20delincven%C8%9Bilor.docx](http://www.probatie.gov.md/tc_userfiles/file/Recomand%C4%83ri/Conceptia%20de%20dezvoltare%20a%20institu%C8%9Biei%20proba%C8%9Biunii%20care%20s%C4%83%20contribuie%20la%20siguran%C8%9Ba%20comunit%C4%83%C8%9Bii%20prin%20reabilitarea%20efectiv%C4%83%20%C3%AEen%20societate%20a%20delincven%C8%9Bilor.docx)

- Performance indicator: Probation Service optimized; Service organizational chart revisited
- **Assessment: action not implemented**

The completion of this action was due by 31 March 2013. On 2 April 2013, a draft Government Decision on the optimization of the institutions of probation<sup>54</sup> was published. According to the Interim Report for 2013 approved at the WG meeting of 10 September 2013, the action was assessed as completed, along with the information that the system of probation was optimized by transferring it, on 1 January 2013, from under the DPI to the MOJ. According to the MOJ Work Plan for 2013<sup>55</sup>, the action was to be completed by 31 March 2013. We believe that such an interpretation is incorrect because the very publication on 2 April 2013 of a draft Government Decision on the optimization of probation institutions proves that the action is not implemented in full. Unfortunately, during the monitoring period, the draft decision was not examined or approved by the Government.

For these reasons, and taking into account that not all the performance indicators set out in the Action Plan for the reporting period have been achieved, action 6.5.2 section 2 is deemed to be unfulfilled.

## 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, MLSPP
- Performance indicator: Methodical recommendations developed and approved
- **Assessment: action not implemented**

The completion of this action was due by 30 June 2013. According to the MOJ interim report for the Quarter I of 2013, the action is deemed completed because certain measures were taken for its implementation. At the same time, the report noted that an expert was to be selected by the end of the respective Quarter to develop the methodological recommendations. At the WG meeting on 25 June 2013, the Deputy Minister of Justice said that action has been completed. The same was mentioned at the meeting of 10 September, when the WG Interim Sector Report was discussed. However, WG members did not receive any documents confirming the development of the respective methodological recommendations. The said recommendations had not been published on the Probation Service website (as accessed during the monitoring period).

For these reasons, and taking into account that not all the performance indicators set out in the Action Plan for the reporting period have been achieved, action 6.3.3 section 2 is deemed to be unfulfilled.

54 <http://particip.gov.md/proiectview.php?l=ro&idd=813>

55 [http://www.justice.gov.md/public/files/file/planurirapoarte/Planul\\_anual\\_de\\_actiuni\\_al\\_Ministerului\\_Justitiei\\_pentru\\_anul\\_2013.pdf](http://www.justice.gov.md/public/files/file/planurirapoarte/Planul_anual_de_actiuni_al_Ministerului_Justitiei_pentru_anul_2013.pdf)  
p.24

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**

The completion of this action was due by 31 December 2012. The curriculum for the initial and continuous training of CHRM staff was not published on the website of the institution responsible for implementing the action during the reporting period. At the same time, a training plan for the first half of 2013, which results from such a curriculum, has been published<sup>56</sup>. Unfortunately, the training plan for the second half of 2013 was not published. Thus, a reasonable doubt arises regarding the development of the curriculum and a long-term training plan. Moreover, the NIJ website did not published a decision on a training curriculum for the CHRM staff despite the fact that website did contain information<sup>57</sup> about the signing of partnership agreements between the two institutions. Meanwhile, the CHRM Work Plan for 2013<sup>58</sup> did not mentioned any staff training activities.

For these reasons, and taking into account that not all the performance indicators established in the Action Plan for the reporting period have been achieved, action 6.2.3 section 1 is considered not implemented.

### 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 by 31 December 2012. On 15 April 2013, a draft Law on the Ombudsman was published. The bill was subjected to public debates, and the civil society put forth certain recommendations to improve it. On 4 September 2013, the bill on the Ombudsman was approved by the Government<sup>59</sup> and was submitted to Parliament for examination.

56 [http://ombudsman.md/sites/default/files/dezvoltare\\_strategica/planul\\_fc\\_cpdom\\_10\\_06\\_13\\_1.pdf](http://ombudsman.md/sites/default/files/dezvoltare_strategica/planul_fc_cpdom_10_06_13_1.pdf)

57 <http://ombudsman.md/ro/stiri/centrul-drepturile-omului-moldova-si-institutul-national-al-justitiei-au-semnat-memorandum>

58 [http://ombudsman.md/sites/default/files/dezvoltare\\_strategica/plan\\_actiuni\\_2013\\_0\\_0.pdf](http://ombudsman.md/sites/default/files/dezvoltare_strategica/plan_actiuni_2013_0_0.pdf)

59 <http://justice.gov.md/libview.php?l=ro&idc=4&id=1537>

For these reasons, and taking into account that the performance indicators set out in the Action Plan for the reporting period have been achieved, action 6.2.1 section 2 is assessed as completed.

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 achievement of this action expired on 31 December 2012. During the monitoring period, the responsible institutions have not taken effective measures to implement the action. No regulations, including internal rules for the examination of such cases, were published on the websites of the institutions responsible for its implementation. At the same time, outside the reporting period, members of the WG for the implementation of actions under Pillar II received a briefing note prepared, as it seems, on 7 September 2013, on the actions taken by the PGO to implement the Action Plan for JSRS 2011-2016 in the period 2012 - Quarter III, 2013. According to the note, a study of national legislation was conducted in the context of this action. However, the PGO hesitated to share the actual study with the WG members. Moreover, according to the set out performance indicators, a single regulation was to be developed for all the law enforcement institutions involved.

For these reasons, and taking into account that not all the performance indicators set out in the Action Plan for the reporting period have been achieved, action 6.4.3 section 2 is deemed as not implemented.

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 PGO.*

- 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 completion of this action was due on 31 December 2012. The responsible institutions did not draft a bill aimed at subordinating anti-torture prosecutors directly to the PGO during the reporting period, nor was such a bill subjected to public debates.

According to information provided in the Interim Sector Report approved at the meeting on 10 September, the action was assessed as partially completed, as it had been shifted to the responsibility of the joint WG created on 11 July 2013 by the Minister of Justice and Prosecutor General. We note though that this group is not responsible for the action, according to its listed responsibilities. Furthermore, the study conducted under action 2.2.5 section 1 did not look into the possibility of subordinating anti-torture prosecutors to the PGO.

For these reasons set above, and taking into account that not all the performance indicators established in the Action Plan for the reporting period have been achieved, action 6.4.3 section 4 is deemed to be unfulfilled.

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**

This action was set for completion by 31 December 2012. According to the draft of the PGO Strategic Development Program for 2012-2016, this action is scheduled to be completed by January 2014. The information provided to members of the WG for Pillar VI, the responsible institutions have been taking sporadic measures to carry out the action, while the operation of the MOJ-sponsored taskforce was not transparent. WG-VI members did not receive any documents certifying that all the performance indicators have been achieved.

For these reasons and taking into account that not all the performance indicators set out in the Action Plan for the reporting period have been achieved, action 6.4.4 section 1 is assessed as not implemented.

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 eliminate 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**

This action was due to be completed by 31 December 2012. During the reporting period, things did not evolve. No bills were drafted to the effect of the action. Moreover, as already mentioned above, according to the draft of the PGO Strategic Development Program for 2012-2016, the

deadline for implementing measures to enhance and strengthen capacities in combating and effective prevention of torture and ill-treatment is set for December 2014.

The information provided by the main agencies responsible for carrying out the action shows a conflict of views between the DPI and the Ministry of Health on the place and role of health workers in prisons. During the monitoring period, WG-VI members did not receive any documents certifying the achievement of all the performance indicators.

For these reasons, and taking into account that not all the performance indicators set out in the Action Plan for the reporting period have been achieved, action 6.4.5 section 1 is deemed not implemented.

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 completion of this action was due by 31 December 2012. During the monitoring period, no measures were taken to finalize the action. According to the MOJ 2013 Annual Work Plan<sup>60</sup>, the GDL was to complete this action by 30 September 2013.

According to information provided to Pillar IV WG members, efforts are taken to complete the action. However, the members did not receive any documents to assess the progress reached by those responsible for implementation.

For these reasons and given that not all the performance indicators established in the Action Plan for the reporting period have been achieved, action 6.4.6 section 1 is assessed as unfulfilled.

Specific area of intervention: 6.5.1. Introduce a modern concept of probation which will contribute to community safety and effective rehabilitation of offenders into the society.

**Action 6.5.1. section 2.** *Draft bill amending the normative framework in the field of probation.*

- Deadline: Quarter I, 2013
- Responsible for implementation: MOJ
- 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. During the reporting period, the bill was not made public. However, the completion of the action results from the fulfillment of action 6.5.1 section 1 (see above description), which has not been finalized. Since the respective

<sup>60</sup> [http://www.justice.gov.md/public/files/file/planurirapoarte/Planul\\_anual\\_de\\_actiuni\\_al\\_Ministerului\\_Justitiei\\_pentru\\_anul\\_2013.pdf](http://www.justice.gov.md/public/files/file/planurirapoarte/Planul_anual_de_actiuni_al_Ministerului_Justitiei_pentru_anul_2013.pdf) pag.24.

concept has not been officially approved during the reporting period, no changes were made to the regulatory framework. The legislative changes that have been initiated and operated during the reporting period were not based on the concept of developing the institution of probation.

For these reasons and given that not all the performance indicators established in the Action Plan for the reporting period have been achieved, action 6.5.1 section 2 is deemed not implemented.

## Chapter VII

# ASSESSMENT OF IMPLEMENTATION OF ACTIONS UNDER PILLAR VII

**Institutional capacity.** During Quarter II of 2013, the Coordination Group for the implementation of the Strategy held two meetings, on 8 August and 1 October. The first meeting discussed the first products of the Justice Sector Reform Coordination Project; a report on the implementation of the Action Plan on the JSRS in the first semester of 2013 was approved at the second meeting.

### 1. ACTIONS DUE BY: QUARTER 3 OF 2013

No actions under Pillar VII were scheduled for completion by the end of the reporting period.

### 2. OVERDUE ACTIONS (to be completed by 30 June 2013)

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

Specific area of intervention: 7.1.4. Building the capacities of each institution involved in the justice sector reform to participate in the reform process.

**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**

At the time of this report, the action was not fulfilled. This is an action carried out with the support of the Justice Sector Reform Coordination Project funded by the European Union.

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

**Action 7.2.3 section 1.** *Develop a study on increasing public access 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 Justice Sector Reform Coordination Project supports MOJ efforts to optimize the database of normative acts (the next action in the Plan Action), but the need for such a study is questionable.

## 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 closely connected with Action 7.2.2. section 3, and therefore can be implemented immediately after the respective amendments to the legislation are approved.

## 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 implemented**

The bill on normative acts, which unifies the Law on normative acts and the Law on the normative acts of the Government (...) was submitted to public discussion in December 2012. The draft *Law on Normative Acts* establishes a unified legal framework to the process of drafting normative acts, and, at the same time, provides guarantees of effectiveness, transparency and predictability of the normative acts regardless of their issuing body.

The bill was sent for preliminary approval to all the central government agencies, the Secretariat of the Parliament, and the State Chancellery. The OSCE/ODIHR put forth several recommendations, many of which were included by the MOJ.<sup>61</sup> The bill on normative was sent for examination to the Government on 20 September 2013.<sup>62</sup>

61 [http://justice.gov.md/public/files/proiecte\\_spre\\_coordonare/2013.08.23\\_SINTEZA\\_OSCE\\_Lege\\_acte\\_normative.pdf](http://justice.gov.md/public/files/proiecte_spre_coordonare/2013.08.23_SINTEZA_OSCE_Lege_acte_normative.pdf)

62 <http://www.justice.gov.md/pageview.php?l=ro&idc=230> (as accessed on 1 Nov 2013).

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 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**

To date, the draft amendment to the normative framework has not been sent for approval to the Government.

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

Specific area of intervention 7.2.3. Increase public access to the normative framework (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**

This action is underway with the support of the Justice Sector Reform Coordination Program.

## Chapter VIII

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

## 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.

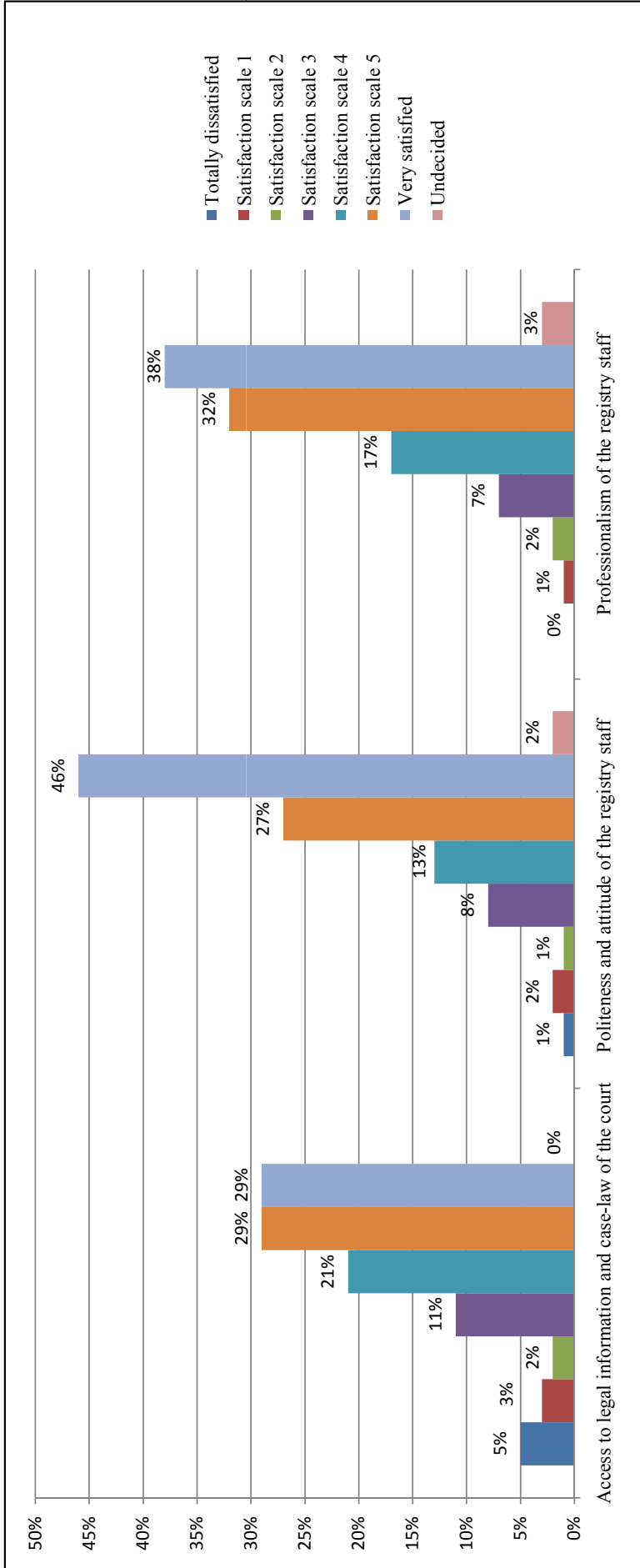
Thus, the 22 questions of the survey were divided by the above categories. The respondents were asked to choose between 7 levels of satisfaction, where level 1 is the lowest and level 7 is the highest. The option “undecided” was also included for the cases when the question was not applicable or the 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 totally dissatisfied and satisfaction scale 1; and “partially satisfied”, which includes the answers on satisfaction scales 2 to 4.

The parties to the trials observed by the monitors during Quarter III were asked to fill in these questionnaires. A total of 455 questionnaires were completed. 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 178 people;
2. **Prosecutors**, a total of 65 respondents; and
3. **Court users** (which include plaintiffs, defendants, witnesses, respondents and victims), totaling 212 persons.

# I. LAWYERS

## 1. Availability of Information and Transparency

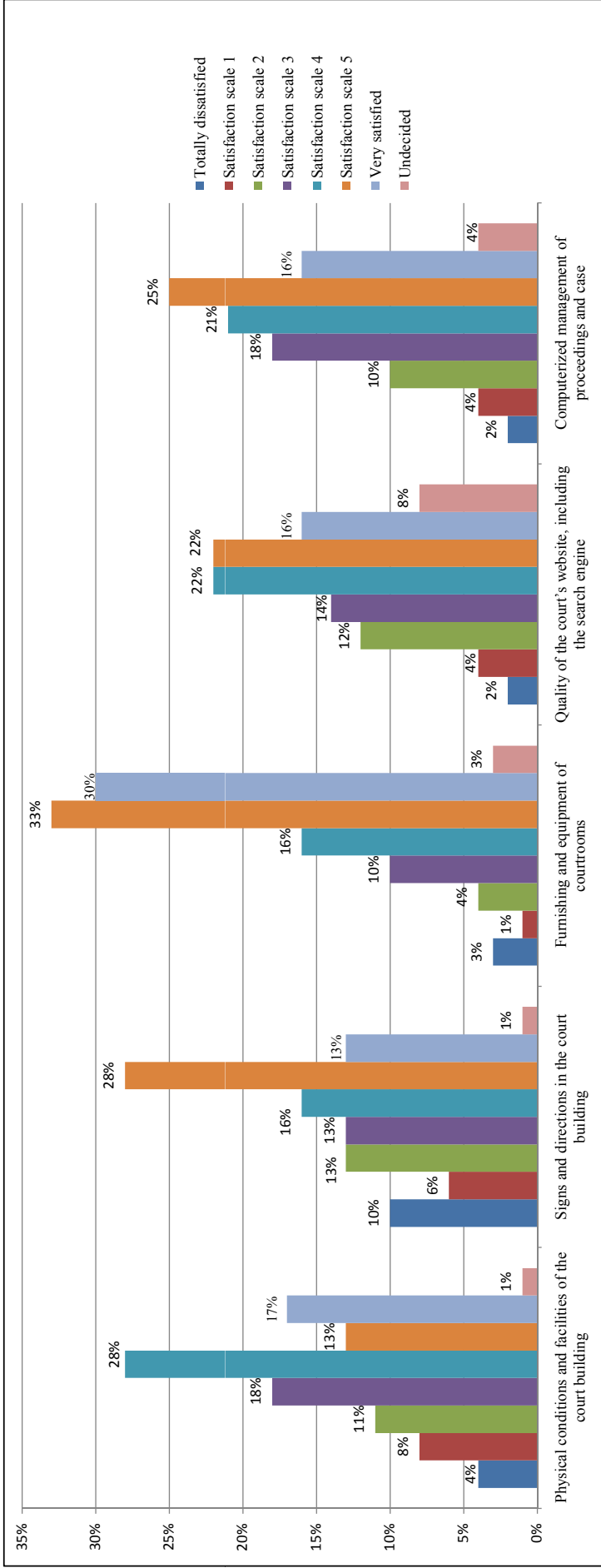


**Note:** With regard to access to legal information and practice (brochures, flyers, etc.), of the total 178 respondents, 58% said they were very satisfied, 8% said they were totally dissatisfied, and 34% said they were partially satisfied.

However, with regard to the attitude and politeness of the court registry staff, 73% of respondents were very satisfied with the conduct of registry members, only 3% were totally dissatisfied with the services, and some 22% said they were partially satisfied. These data are quite similar to the ones from the previous Quarter of 2013.

As per the professionalism and legal training of the court registry staff, 73% of respondents were very satisfied with their professionalism, compared with 58% from the previous report, 1% was totally dissatisfied, and approximately 26% 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 on the hall, a room to study the case file, room for lawyers/prosecutors, toilets and so on), of the total 178 respondents, approximately 30% said they were very satisfied – while in Quarter 2, this number amounted to 43% - the number of those totally dissatisfied fell from 17%, in Q2 of 2013 to 12%; 57% of the respondents said they were partially satisfied with the facilities.

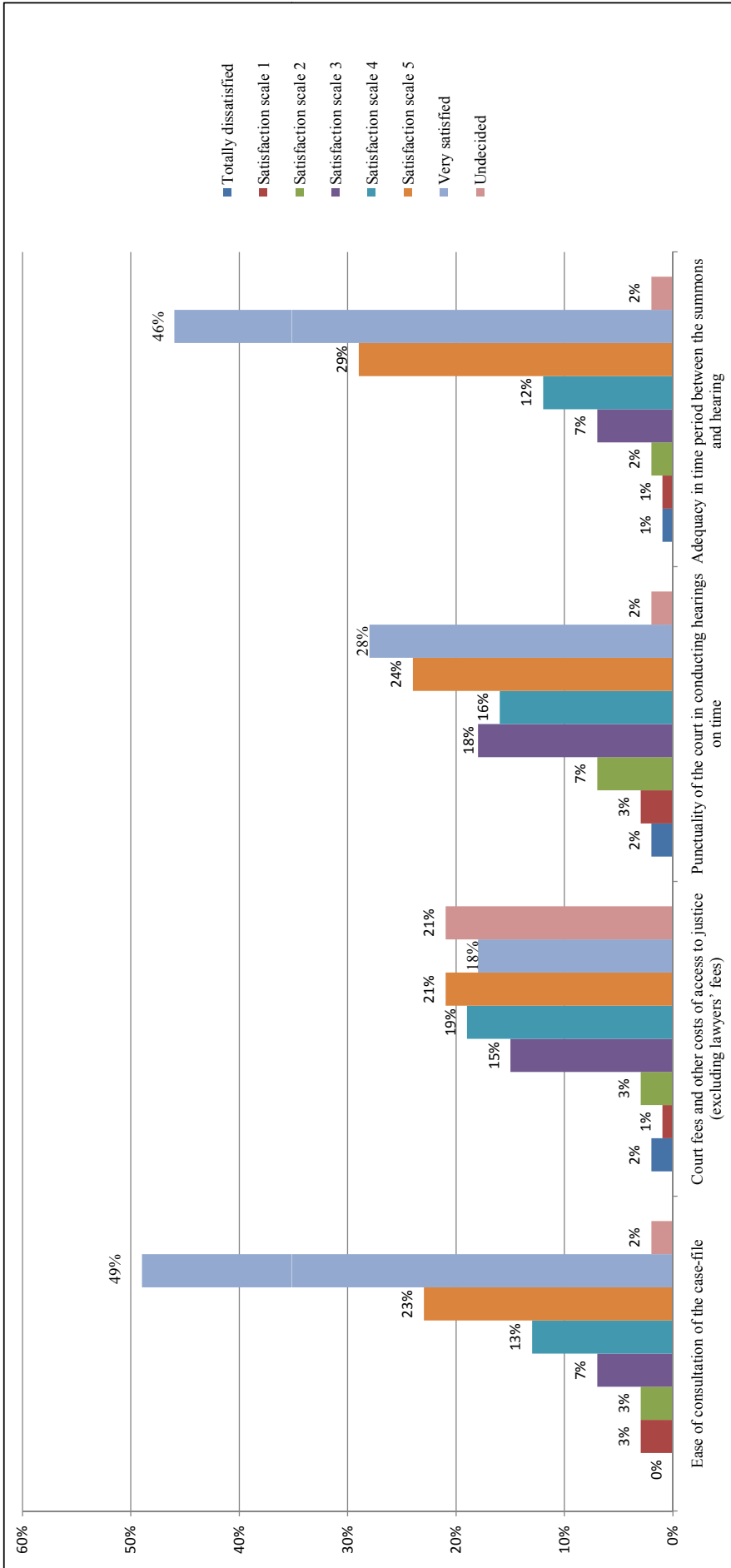
On the indicators outside and inside the court building, about 41% said they were very satisfied (in Q2 it was 32%), while 16% said they are totally dissatisfied, in decrease from 21% in Q2 of 2013, and another 42% of respondents said they were partially satisfied with their location and visibility, which is comparable to the respective rate in Q2 of 2013.

The furniture and equipment of the courtroom were assessed as follows: 63% said they were very satisfied with them, while 4% were totally dissatisfied, and another 30% of respondents said they were partially satisfied, and only 1% of respondents were undecided.

Some 38% of respondents were very satisfied with the quality of the website of the court, including its search engine, while 6% were totally dissatisfied; 48% were partially satisfied with the website.

Regarding the computerized management of cases and the judicial process, including the operation of the electronic case management system, 41% of respondents were very satisfied and 6% were totally dissatisfied with how it worked; 49% were partially satisfied. Similar data were registered in the previous report.

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



**Note:** As regards access to justice, namely the availability of the case file, 72% 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.

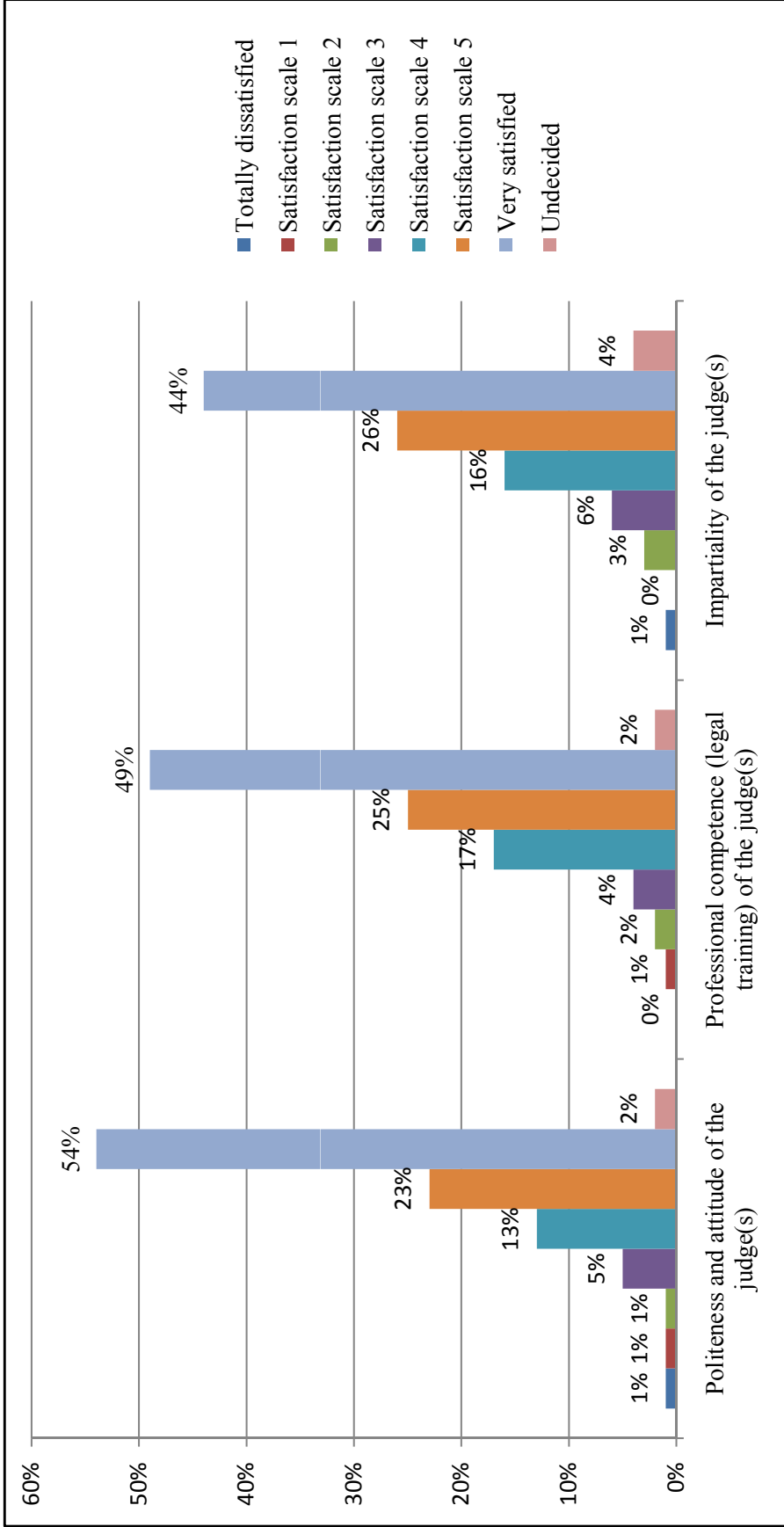
The respondents' satisfaction about the judicial costs and other costs (excluding attorneys' fees) was as follows: 39% were very satisfied, 3% were totally dissatisfied, and 37% were partially satisfied with the costs.

Respondents assessed the timely conduct of scheduled hearings as follows: 52% were very satisfied, 5% were totally dissatisfied, and 41% 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), 75% of respondents said they were very satisfied, while only 2% said they totally dissatisfied; 21% were partially satisfied with the allotted time.

Similar data are contained in the report for Quarter 2 of 2013.

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



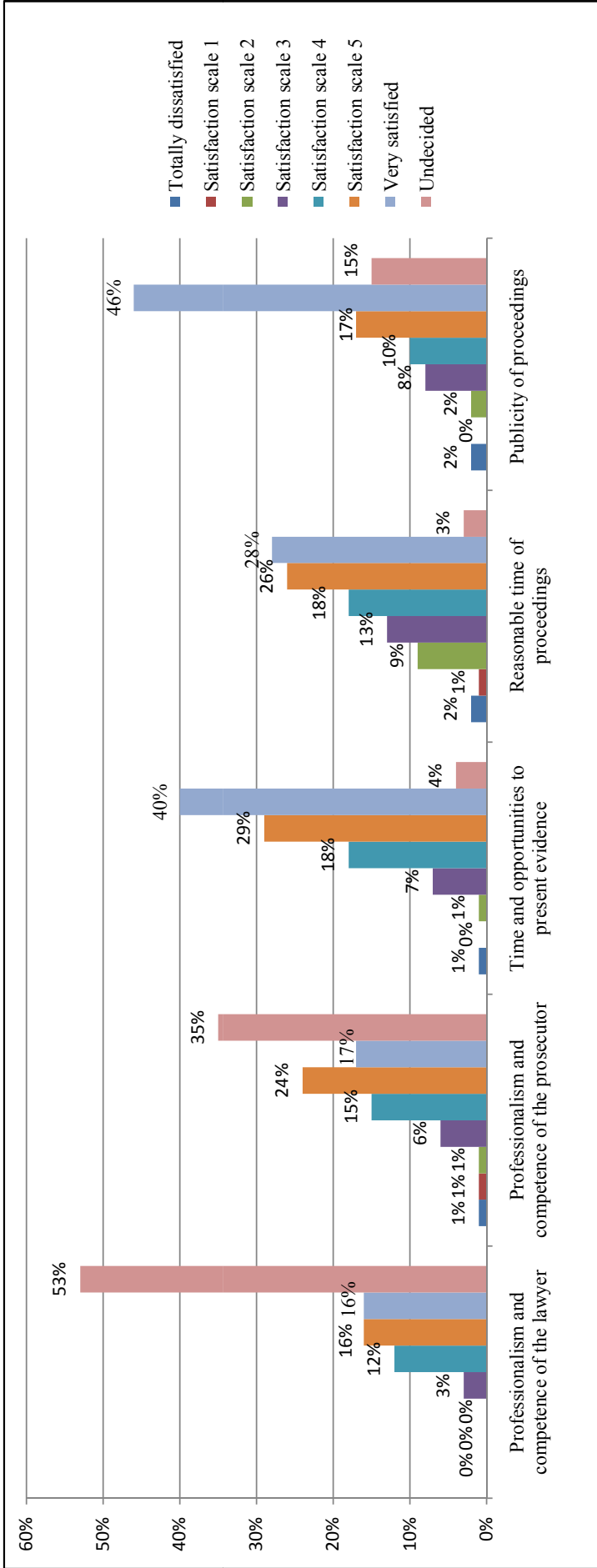
**Note:** 77% of respondents were very satisfied with the politeness and attitude of judges, 2% said they were totally dissatisfied, and 24% were partially satisfied.

The same dynamic is observed with reference to the professionalism and competence of judges: 74% of respondents were very satisfied and only 1% was totally dissatisfied; the rate of those partially satisfied is 23%.

70% of people surveyed said they are very satisfied with the impartiality of judges, while 1% were totally dissatisfied; another 25% of participants were partially satisfied.

Similar data are contained in the previous quarterly report.

### 5. Fairness of Proceedings

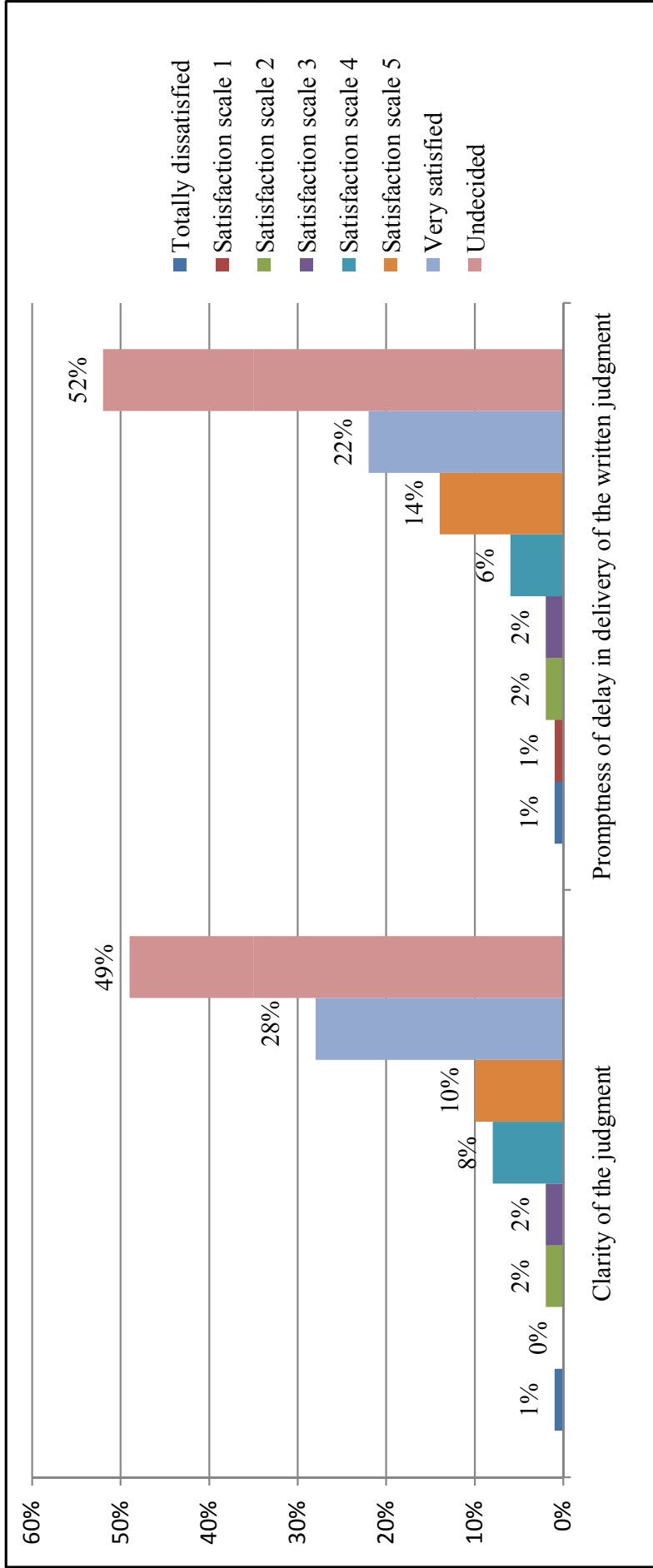


**Note:** Assessing the fairness of the trial, the respondents answered as follows:

- On the professionalism and competence related of the lawyer, the interviewed lawyers were asked to assess the work of their colleagues: 32% of respondents said they were very satisfied, and 12% were partially satisfied; the rest refused to assess their colleagues' work.
- 41% of respondents were very satisfied with the professionalism and competence of the prosecutor, and only 2% were totally dissatisfied; 22% were partially satisfied.
- With reference to the question whether sufficient time and opportunities were allowed each party to the proceedings for presenting their cases and rebate the evidence brought by the adversary part, 69% were very satisfied; 1% were totally dissatisfied; 26% were partially satisfied; and 5% were undecided.
- As for assessing the reasonable time of the trial, 54% of respondents were very satisfied, 3% said they were totally dissatisfied; and partially satisfied were 40%.
- 63% of respondents said they were very satisfied with the public nature of the trial for third parties and the media, while 2% were totally dissatisfied; 20% were partially satisfied.

Similar data were contained in the previous quarterly report.

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



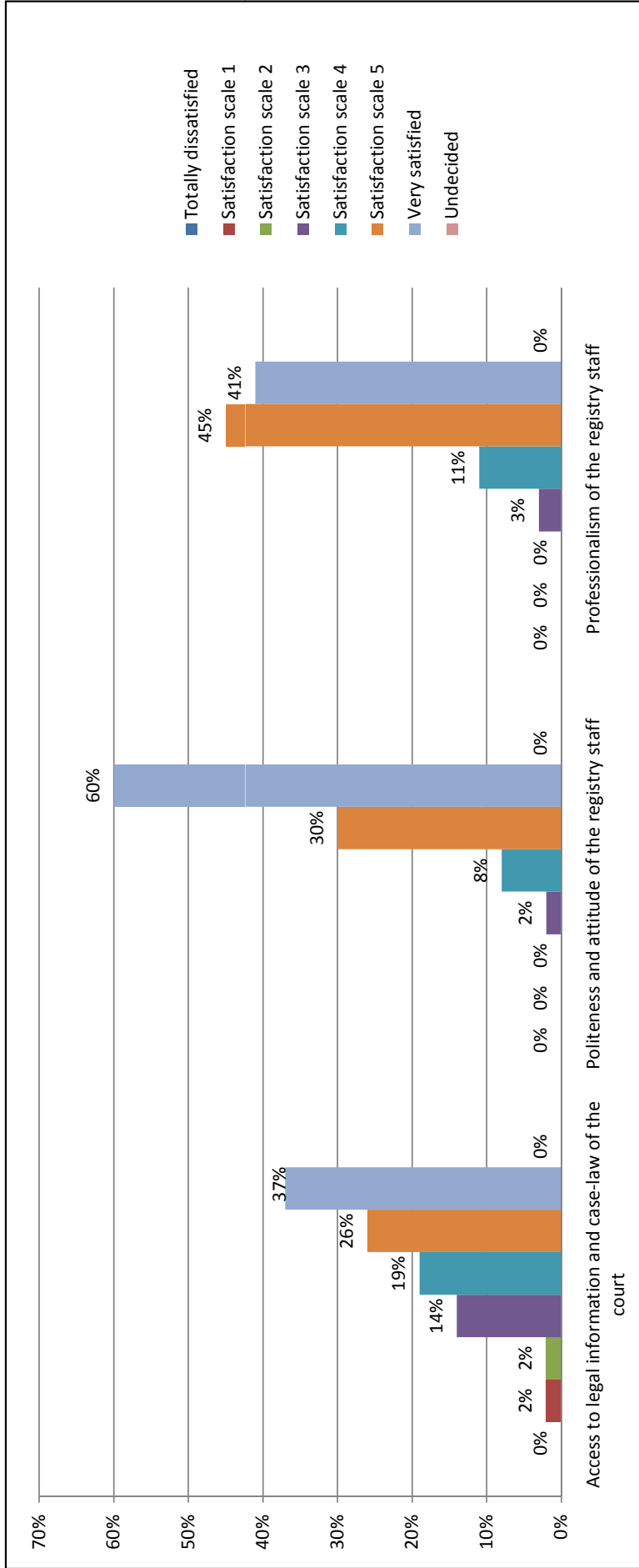
**Note:** With regard to the outcome of the trial, 38% of respondents said they were very satisfied with the clarity of the court’s ruling (not necessarily the verdict), while 1% said they were totally dissatisfied; 10% were partially satisfied, and the other 49% of respondents were undecided on the answer to this question (which was not applicable in this case).

At the same time, 36% of respondents said they were very satisfied with the timeliness of submission of the written judgment, while 2% were totally dissatisfied; partially satisfied were 10%. In 52% of cases, this situation was not applicable.

A similar dynamic is registered in the report on Quarter 2 of 2013.

## II. PROSECUTORS

### 1. I. Availability of Information and Transparency

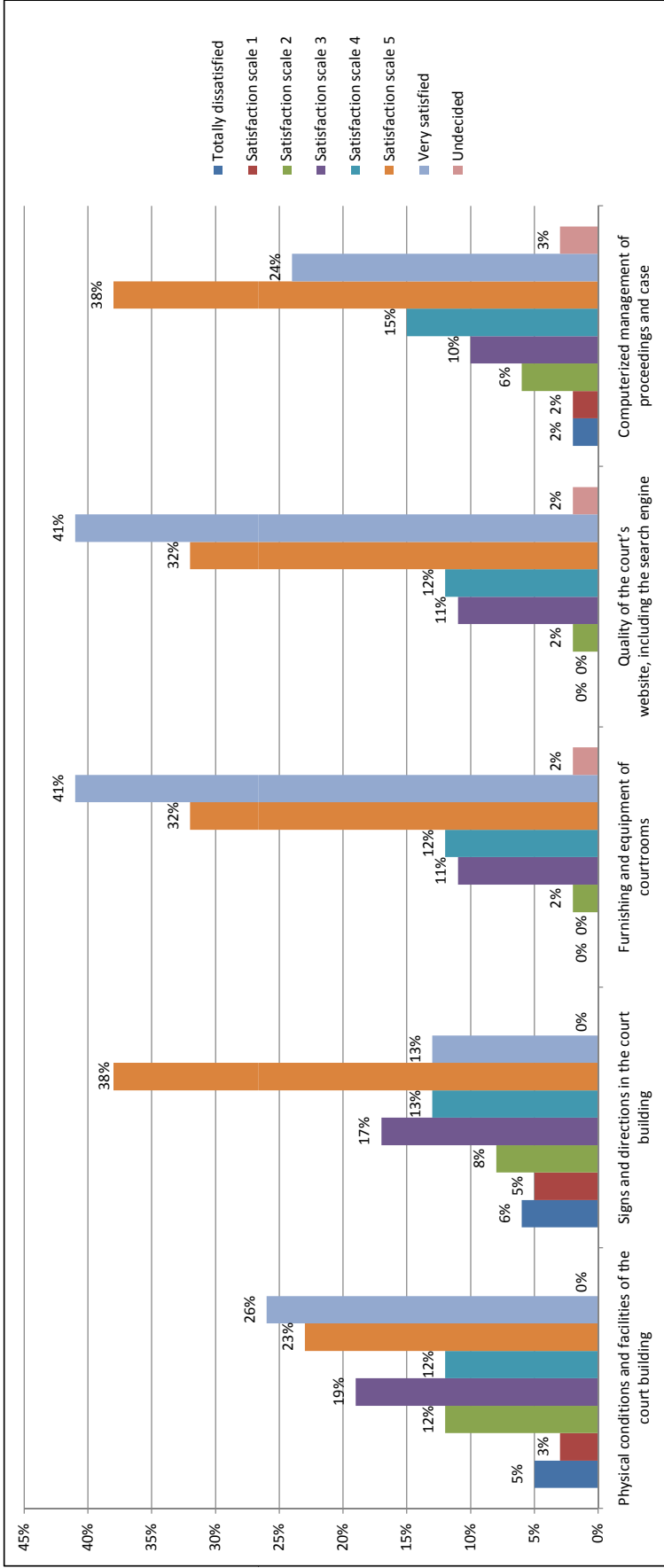


**Note:** On the access to legal information and practice (brochures, flyers, etc.), of the total number of prosecutors surveyed, 63% said they were very satisfied, 2% said they were totally dissatisfied, and 35% said they were partially satisfied.

Regarding the attitude and politeness of the registry staff, 90% of respondents were very satisfied with the conduct of the staff – compared with 75%, in the previous Quarter, no one was totally dissatisfied; and 10% said they were partially satisfied.

With regard to the legal training of the clerks, 86% of respondents were very satisfied with their professionalism, no one said they were totally dissatisfied, and 14% said they were partially satisfied.

## 2. Quality of Facilities and e-Justice



**Note:** Assessing the court building facilities (disabled access to the building, chairs in the hall, rooms to study the case file, rooms for lawyers/prosecutors, toilets and so on), about 49% said they were very satisfied, while 8% said they were totally dissatisfied; another 43% of respondents said they were partially satisfied with the facilities.

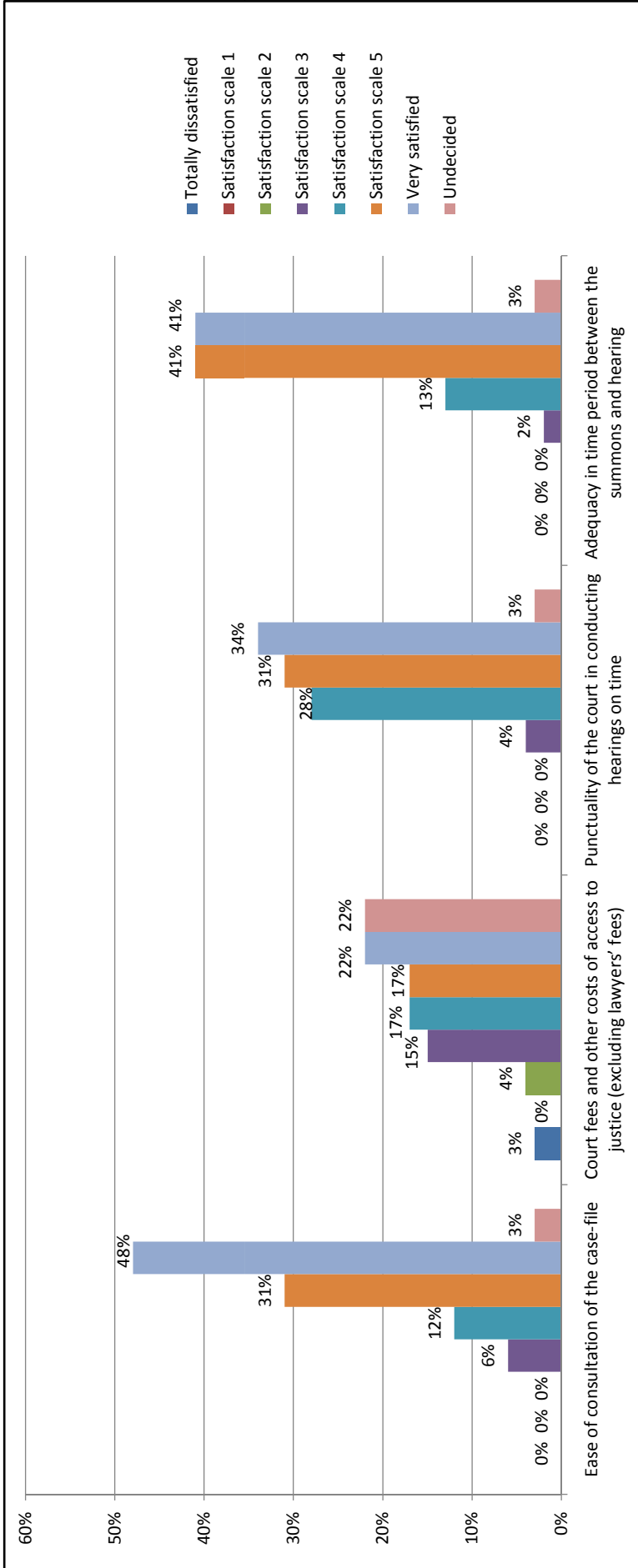
About 51% of the prosecutors said they were very satisfied with the indicators outside and inside the court building, 11% said they were totally dissatisfied, and another 38% of respondents said they were partially satisfied.

The furnishing and equipment of the courtroom were assessed as follows: about 73% said they were very satisfied, another 25% of respondents said they were partially satisfied, no one said they were totally dissatisfied.

Over 73% of the respondents said they were very satisfied with the quality of the website of the court, including its search engine – up from 60% as shown in the previous quarterly report. No one was totally dissatisfied, and 25% were partially satisfied.

On the computerized management of cases and the judicial process, including the operation of the electronic case management system, 62% of respondents were fully satisfied, while 4% are totally dissatisfied; 31% were partially satisfied. Similar data were contained in the previous quarterly report.

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



**Note:** As regards access to justice, namely the availability of the case file, 79% of respondents said they were very satisfied with the possibility to study the case, down from 93% reported in the previous Quarter, and 18% were partially satisfied.

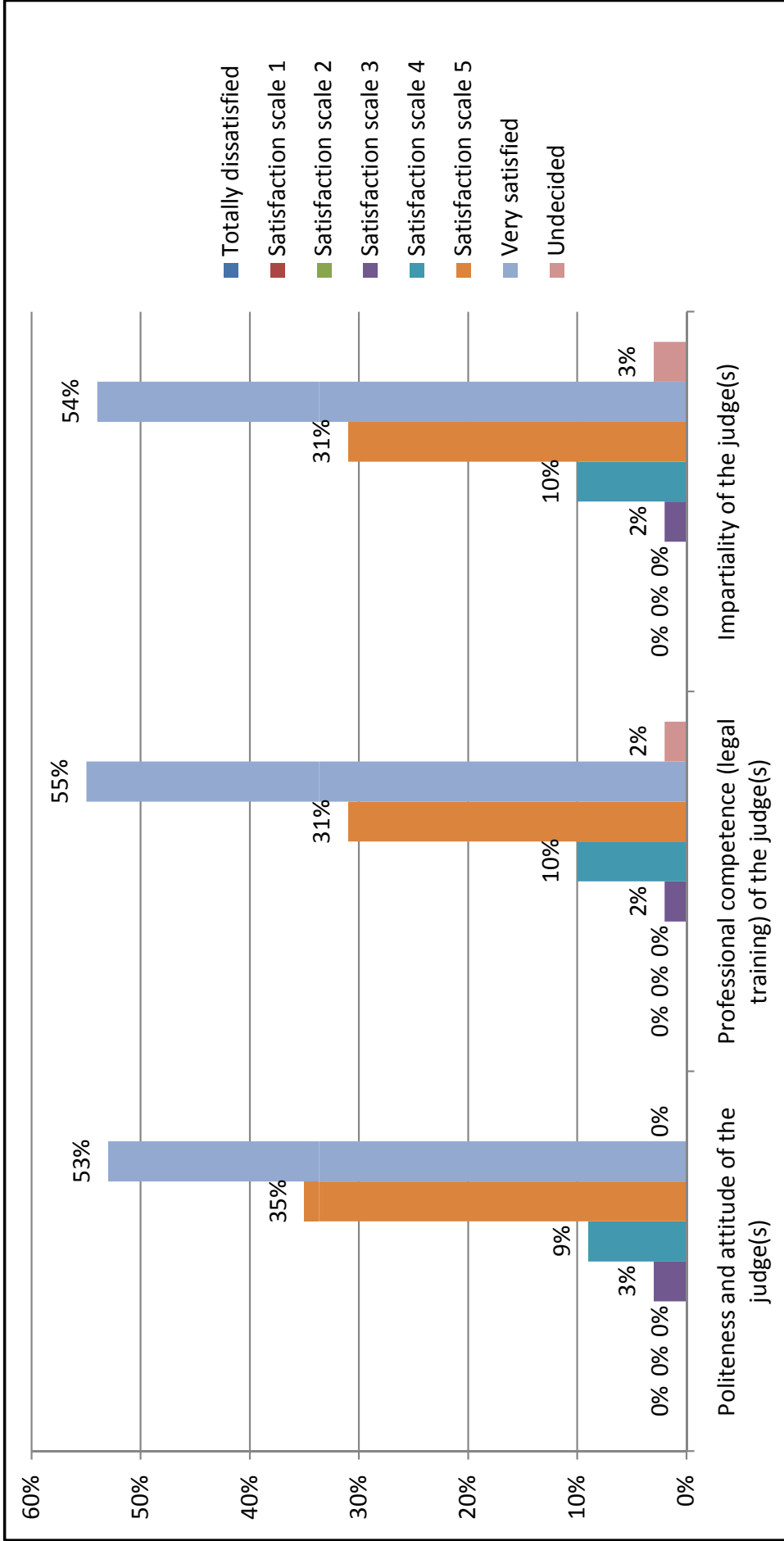
39% of the respondents were very satisfied with the judicial and other costs (excluding attorneys' fees), while 3% were totally dissatisfied; 36% said they were partially satisfied.

Respondents assessed the timely conduct of scheduled hearings as follows: 65% were very satisfied, none was totally dissatisfied, and 32% were partially satisfied.

Assessing the time between the citation to court and the conduct of the hearing (to allow the parties to prepare for trial), 82% of respondents said they were very satisfied, no one was totally dissatisfied, and 15% were partially satisfied.

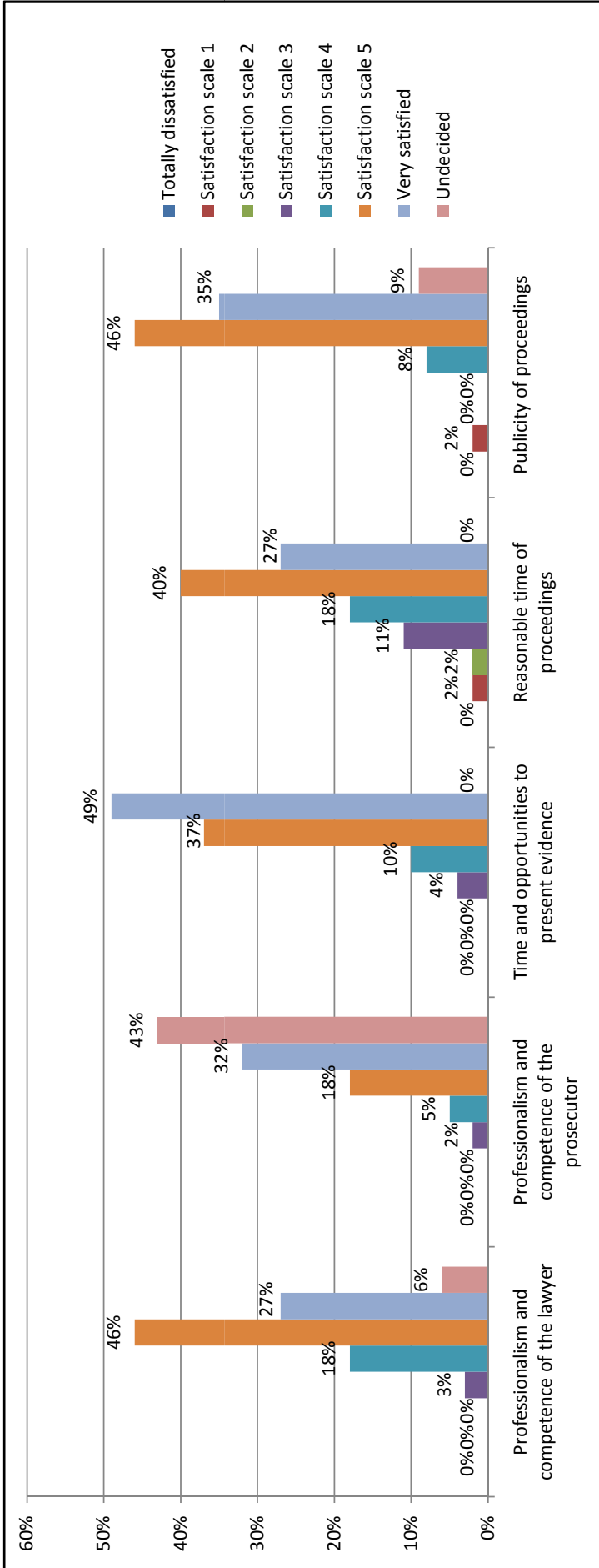
Similar data were contained in the previous quarterly report.

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



**Note:** 88% of respondents said they were very satisfied with the politeness and attitude of judges, none were totally dissatisfied, 12% said they were partially satisfied. The same dynamic can be observed with regard to the professionalism and competence of judges: 86% of respondents were very satisfied, none was completely unsatisfied, 12% were partially satisfied. 85% of the respondents were very satisfied with the impartiality of judges, none was totally dissatisfied, and 12% were partially satisfied. Similar data were contained in the report for Quarter 2 of 2013.

### 5. Fairness of Proceedings

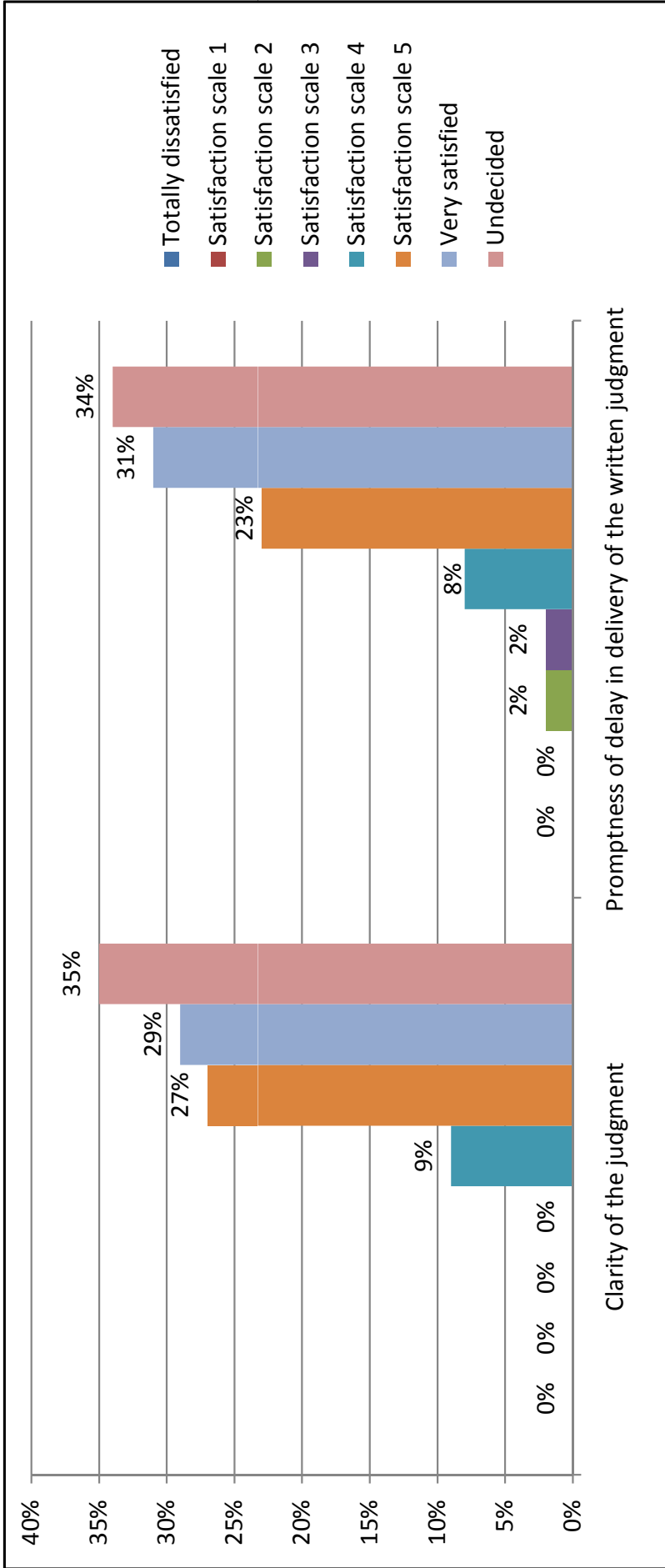


**Note:** Assessing the fairness of the trial, the respondents answered as follows:

- On the lawyers’ professionalism and competence, 73% said they were very satisfied, none was totally dissatisfied, 21% were partially satisfied.
- On the professionalism and competence of prosecutors, the respondents were asked to assess the work of their fellow prosecutors: 75% were very satisfied, 25% were partially satisfied, and none was totally dissatisfied.
- 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, 86% were very satisfied, none was totally dissatisfied, and 14% were partially satisfied.
- Assessing the reasonable time of the trial, 67% said they were very satisfied, none was dissatisfied, 31% were partially satisfied, and 2% were totally dissatisfied.
- 81% of respondents said they were very satisfied with the public nature of the trial for third parties and the media, 2% were totally dissatisfied, and 8% were partially satisfied.

Similar data were contained in the report for the previous Quarter.

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

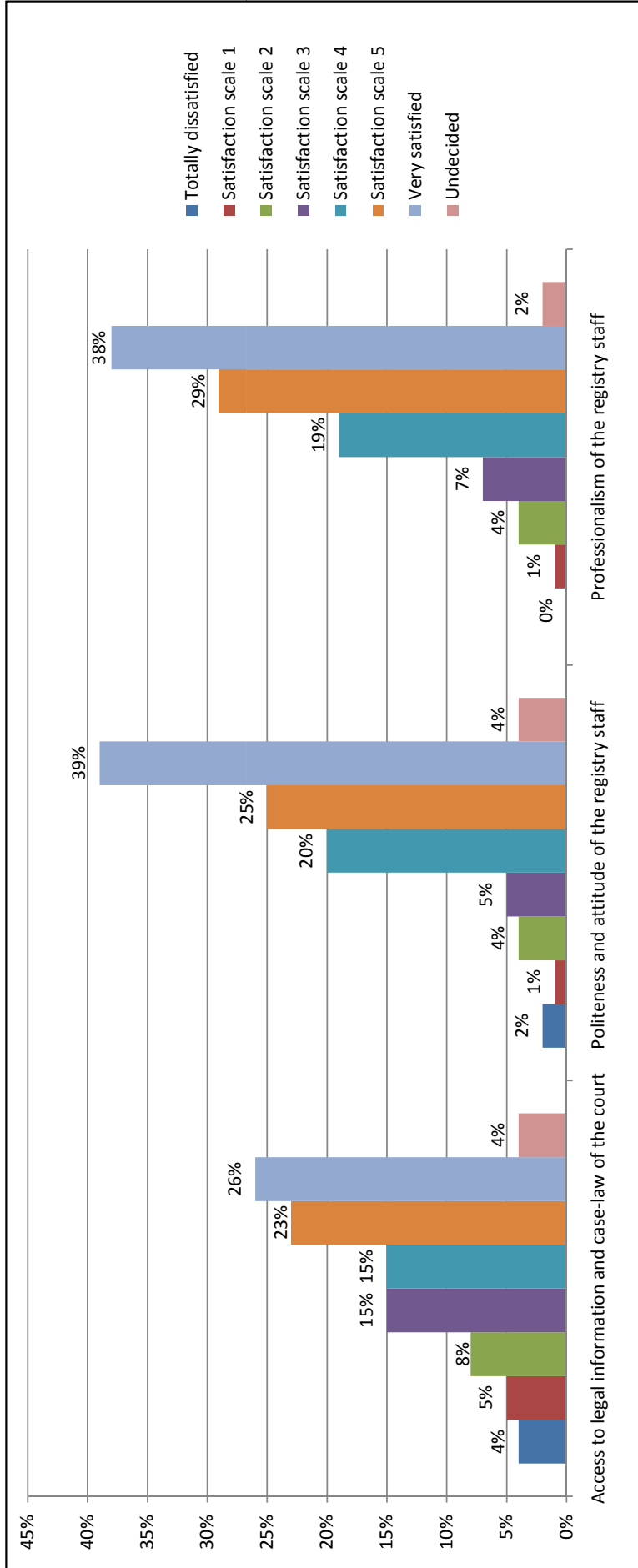


**Note:** With regard to the “outcome of the trial”, 56% of respondents said they were very satisfied with the clarity of the court ruling (not necessarily with the verdict), 9% said they were totally dissatisfied with it; this question was not applicable to the remaining respondents.

As regards the timeliness or delay in the presentation of the written judgment, 54% of respondents said they were very satisfied, and 12% were partially satisfied. The data are similar to the ones contained in the previous quarterly report.

### III. COURT USERS

#### 1. Availability of Information and Transparency

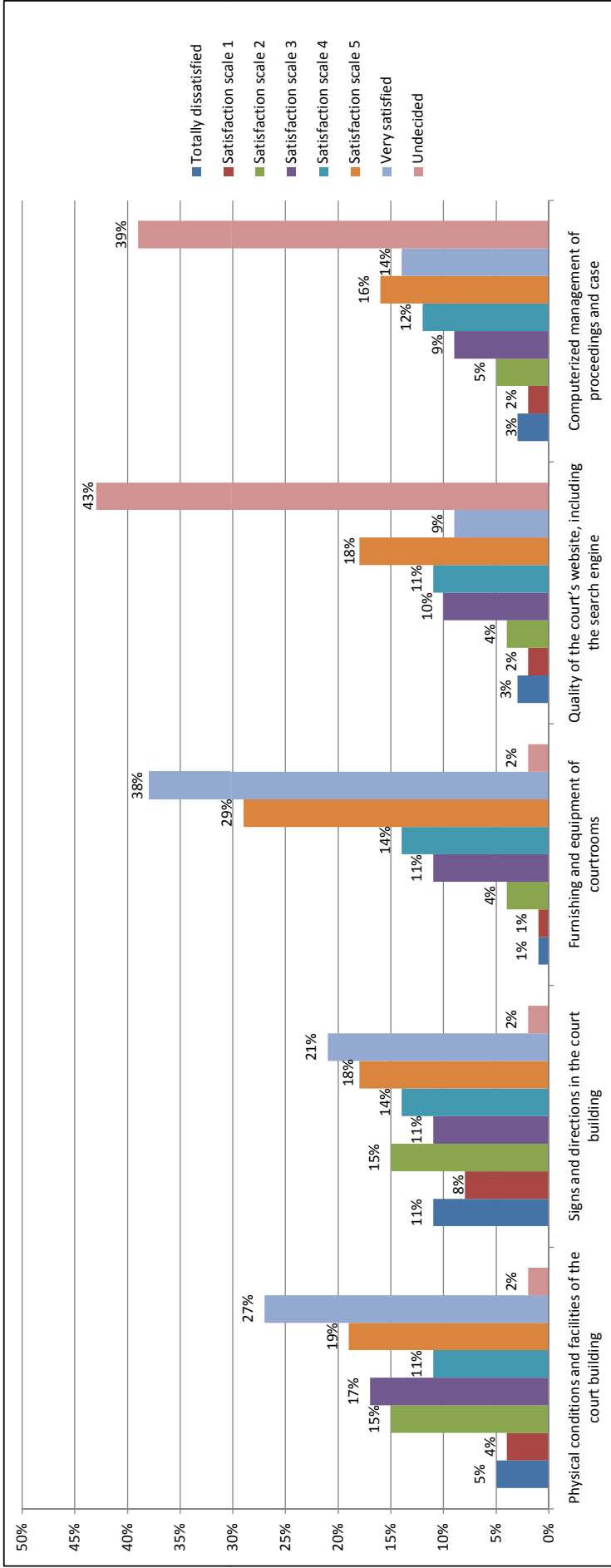


**Note:** With regard to the access to legal information and practice (brochures, flyers, etc.), of the total number of surveyed users, 49% said they were very satisfied, 9% said they were totally dissatisfied, 46% were partially satisfied, and 38% were undecided.

Regarding the attitude and politeness of the registry staff, 64% were very satisfied with the conduct of the court’s staff, only 3% were totally dissatisfied, and 29% said they were partially satisfied.

67% of respondents are very satisfied with the professionalism and legal training of clerks, only 1% was totally dissatisfied, and 30% said they were partially satisfied. The report on the previous Quarter revealed similar data.

## 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 46% said they were very satisfied, while 9% said they were totally dissatisfied; 43% of the respondents said they were partially satisfied.

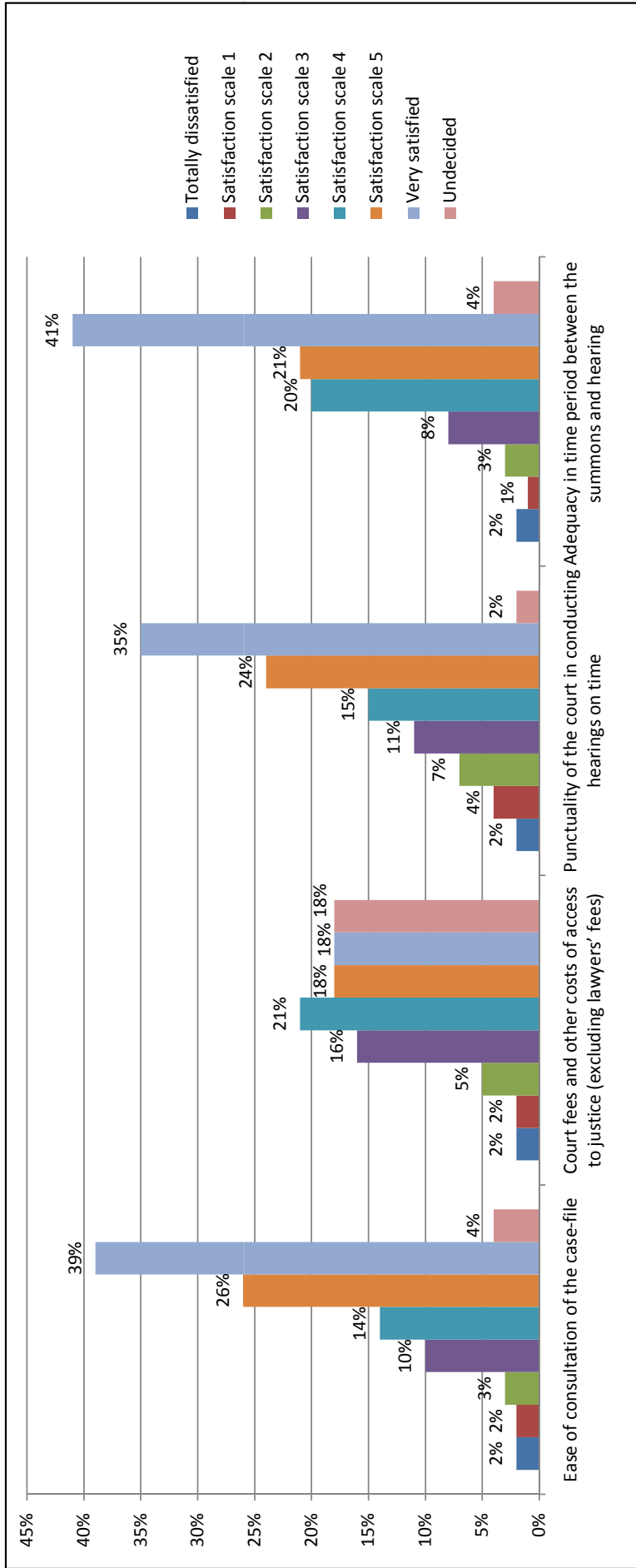
Some 39% said they were very satisfied, while 19% said they were totally dissatisfied with the indicators outside and inside the court building; 40% of respondents said they were partially satisfied with the signage.

The furnishing and equipment of courtrooms were assessed as follows: 67% said they were very satisfied, 2% were totally dissatisfied; 29% of respondents said they were partially satisfied.

27% of the respondents said they were very satisfied with the quality of the website of the court, including its search engine, down by 12% from the previous reporting period; 5% were totally dissatisfied, and 25% were partially satisfied.

Regarding the computerized management of cases and the judicial process, including the functioning of the electronic case management system, 30% of respondents were very satisfied with it, down by 16% from Quarter 2 of 2013, while 5% were totally dissatisfied and 26% were partially satisfied.

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



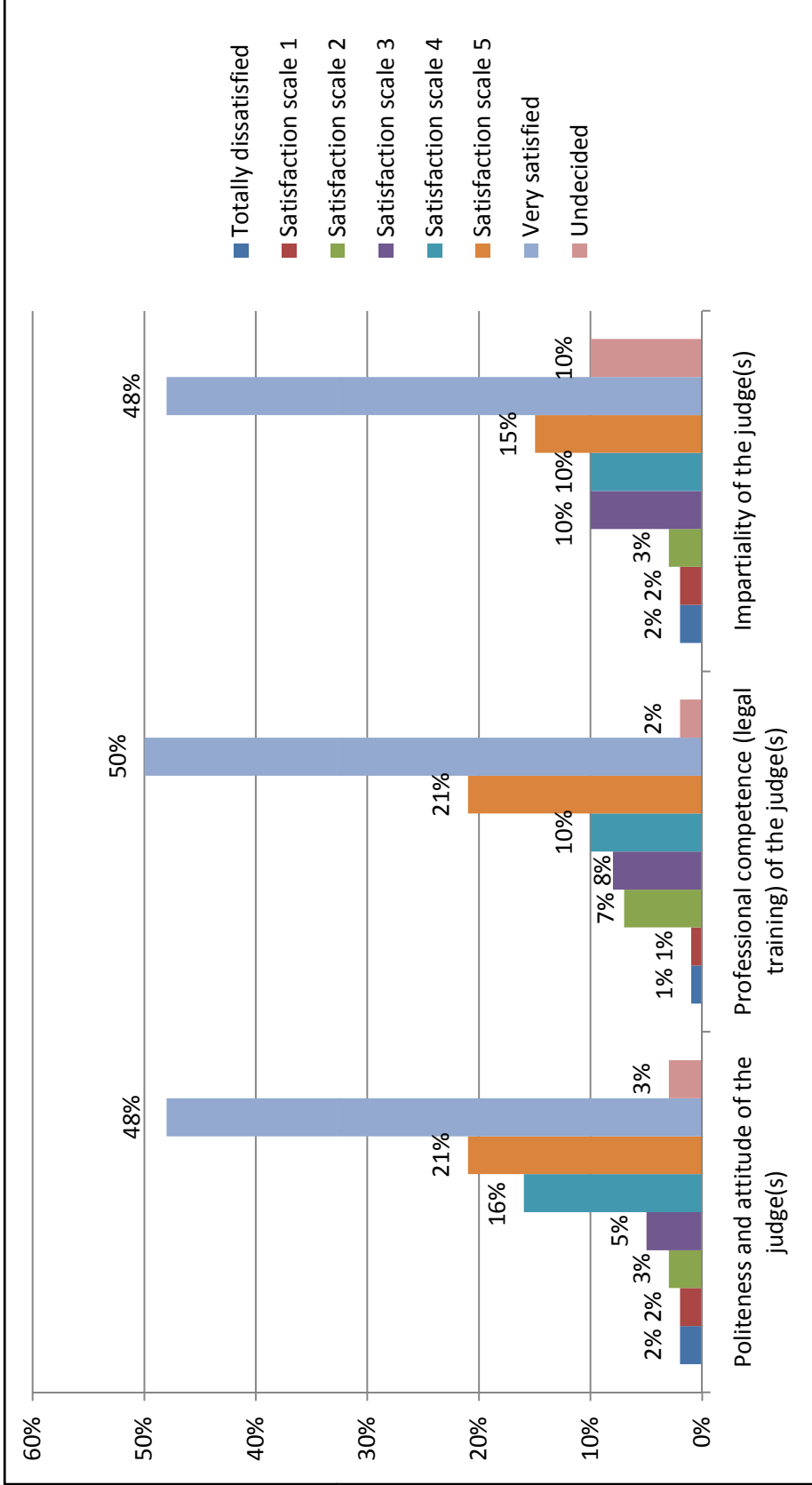
**Note:** As regards the access to justice, namely the availability of the case file, 65% of respondents said they were very satisfied with the possibility to study the case file; 3% were totally dissatisfied and 21% were partially satisfied with that possibility.

36% of the respondents were very satisfied with the judicial and other costs (excluding attorneys' fees), while 4% were totally dissatisfied with the costs; 42% said they were partially satisfied.

The respondents assessed the timely conduct of scheduled hearings as follows: 59% were very satisfied, 6% were totally unsatisfied; another 33% were partially satisfied.

Assessing the time between the citation to court and the conduct of the hearing (to allow the parties to prepare for trial), 62% of the respondents said they were very satisfied, up by 11% from the previous Quarter, only 3% were totally dissatisfied, and 31% were partially satisfied.

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

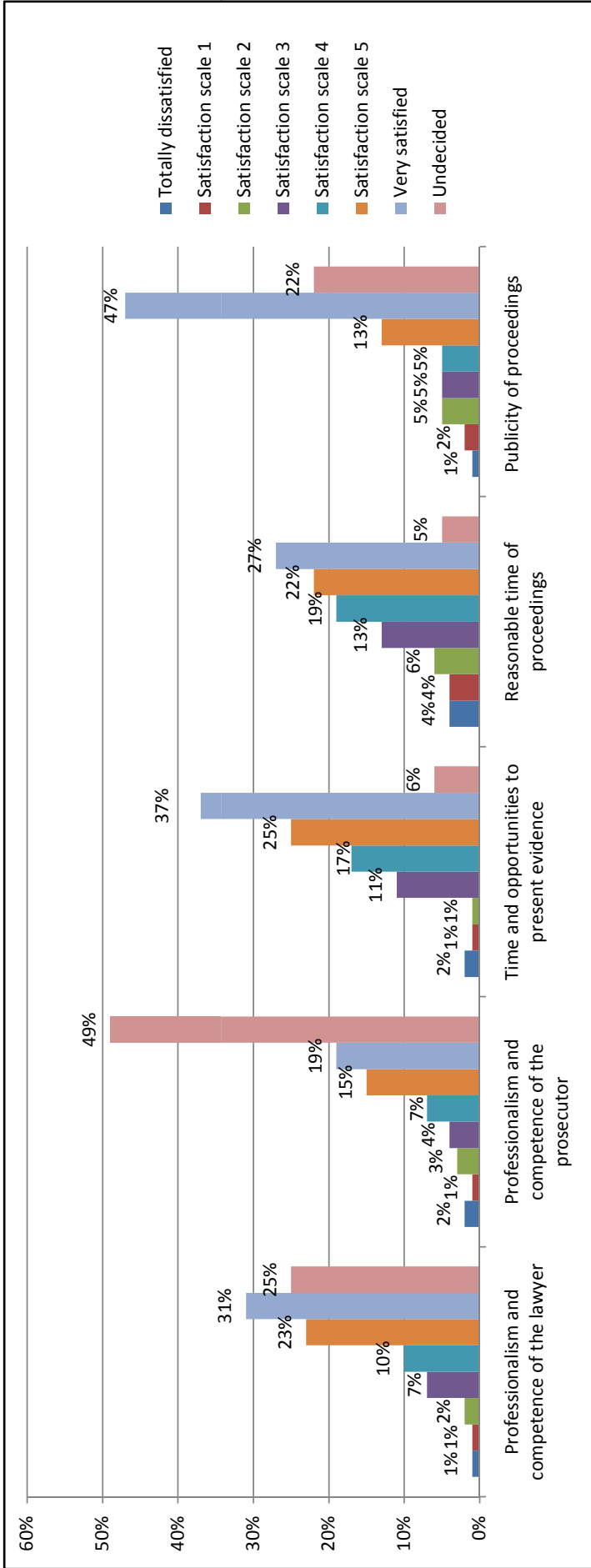


**Note:** 69% of respondents said they were very satisfied with the politeness and attitude of judges, 4% were totally dissatisfied and another 24% said they were partially satisfied.

The same dynamic can be seen with reference to the professionalism and competence of judges: 71% of the respondents were very satisfied, down by 8% from the previous Quarter, 2% were totally dissatisfied, and 25% were partially satisfied.

63% of those questioned said they were very satisfied with the impartiality of judges, down by 11% compared with the previous Quarter; 23% were partially satisfied and 4% were totally dissatisfied.

### 5. Fairness of Proceedings

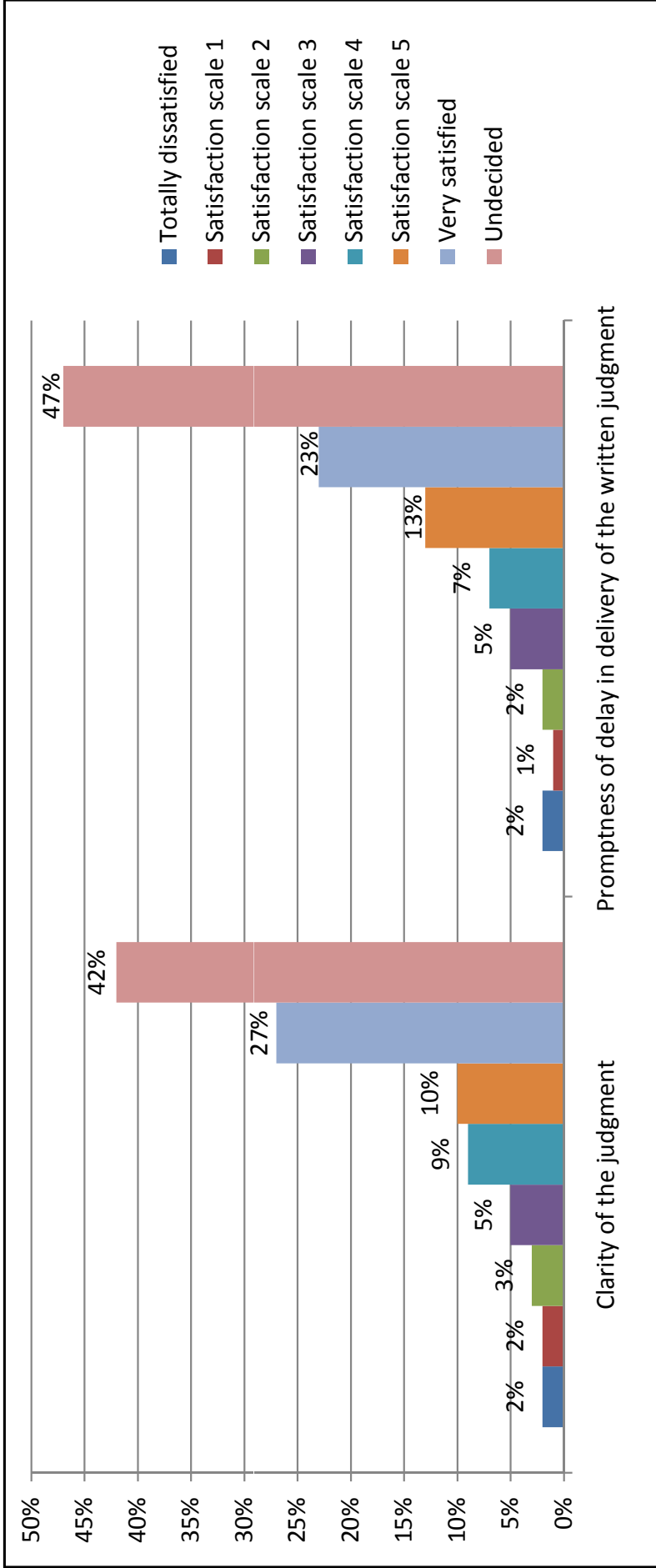


**Note:** Assessing the fairness of the trial, the respondents answered as follows:

- 54% were very satisfied with the professionalism and competence of lawyers, up by 9% compared with Q2 of 2013; 2% were totally dissatisfied and 19% were partially satisfied.
- 34% of respondents were very satisfied with the professionalism and competence of the prosecutor, 3% were totally dissatisfied, and 14% were partially satisfied.
- 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, 62% were very satisfied, 3% was totally dissatisfied, 29% were partially satisfied, and 6% were undecided.
- Assessing the reasonable time of the trial, 49% were very satisfied, 8% were totally unsatisfied; and 38% were partially satisfied.
- 60% 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.

Similar data were recorded in the previous quarterly report.

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



**Note:** In terms of the “trial outcome”, 37% of the respondents said they were very satisfied with the clarity of the court ruling (not necessarily with the verdict), while 4% said they were totally dissatisfied with it; 17% were partially satisfied.

On the timeliness or delay in the submission of the written judgment, 36% of respondents said they were very satisfied, 3% were totally dissatisfied; and 14% were partially satisfied.

## 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 July and 30 September 2013. The methodology of developing the diagrams consisted of entering the direct numerical values corresponding to each questionnaire response options (yes, no, undecided, not applicable). The undecided 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.

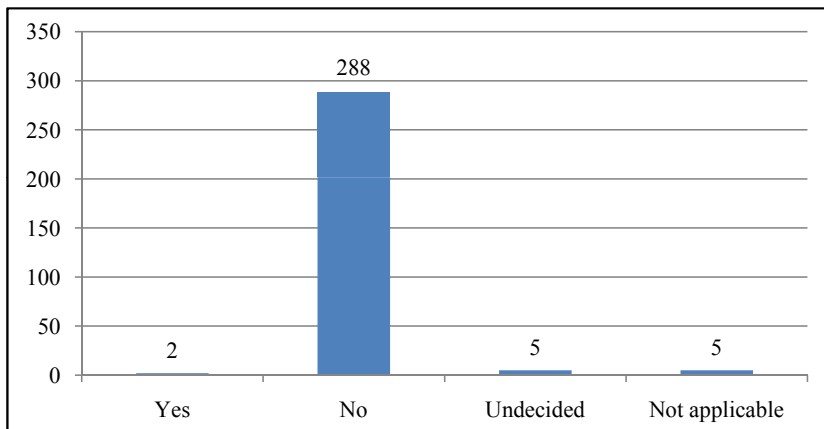
The results below arise from personal evaluation of the monitor during the observation of the court proceedings. Particular attention was paid to:

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, and the monitors observed only civil cases in specialized courts. So the numbers are equal: 150 or trials on civil cases, and 150 trials on criminal/administrative cases.

## 1. ACCESS TO JUSTICE AND EQUALITY

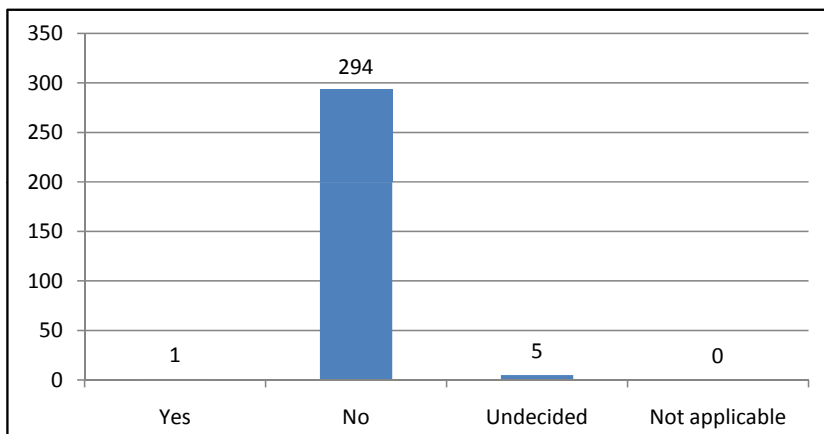
1. Were there any restrictions imposed on the ability to summon to court, or to submit claims or complaints in court?



**Note:** Of the total 300 respondents, 288 believe that no restrictions were imposed on the ability to summon to court, or to submit claims or complaints in court; in two cases, the monitor established that such restrictions had been imposed, the refer in particular to the lawyers' claim in court that their submissions were not admitted (five respondents were undecided, in five cases the question was not applicable). A similar dynamic is registered in the report for Quarter 1 of 2013.

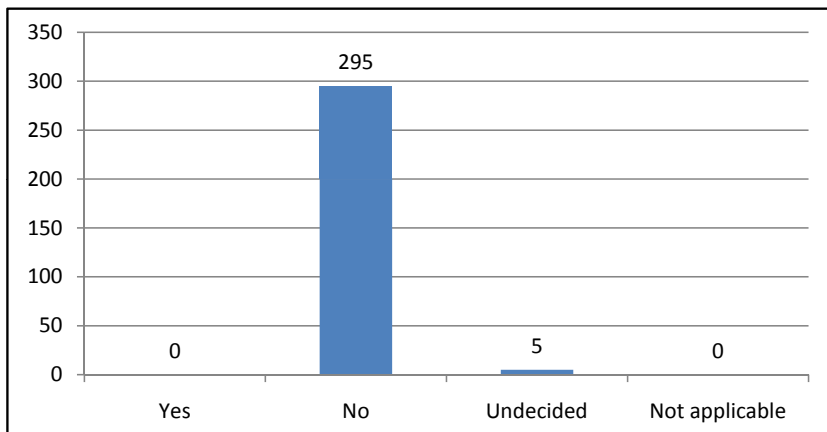
## 2. COMPETENT, INDEPENDENT AND IMPARTIAL COURT

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 trials (294), the observers stated no reasonable suspicions that the judge(s) were under pressure, threat or were not independent; in one trial, such attitude was noted: a TV camera crew was in the courtroom and the judge was clearly affected by their presence. The report for Quarter 1 of 2013 notes 10 cases when the judge was under pressure; the findings in the Quarter 2 report are identical to the present one.

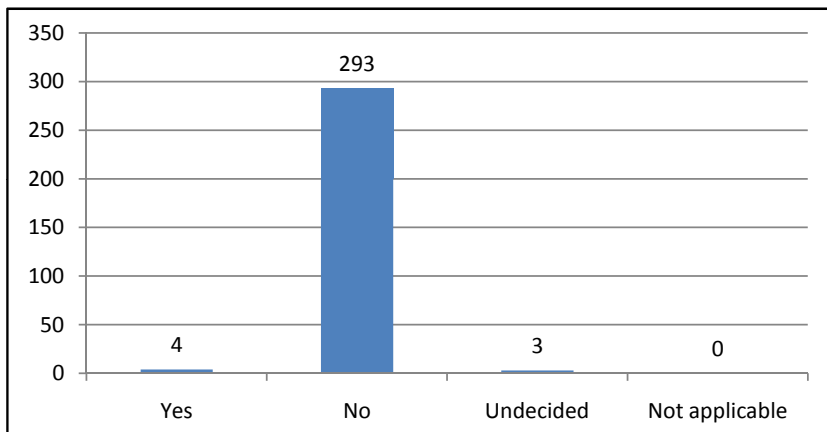
3. Were there reasons to believe that the court was partial? Were there grounds to disqualify the judge from the case (the judge showed bias, prejudice or a pre-determined attitude towards the examined case; the judge expressed his opinion on the guilt of a person during the trial, inside or outside 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 did not note any cases in which the court would be biased (see diagram above), compared with the previous reports, when such cases were noted. No such cases were registered at this time.

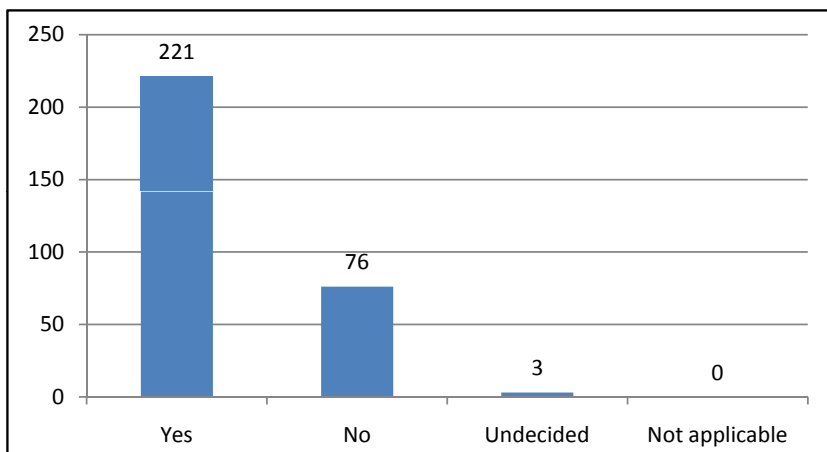
### 3. PUBLICITY OF HEARINGS

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



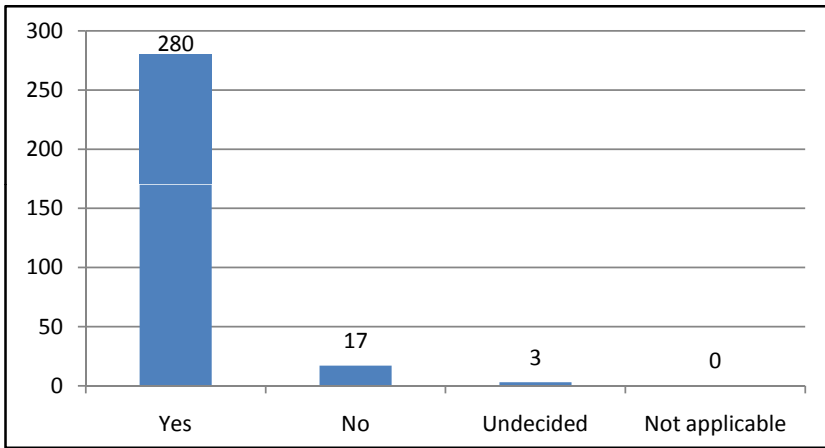
**Note:** Observers noted that the court demanded that certain groups leave the courtroom (in four trials, as shown in above diagram) in cases when the applicable procedure provided for a closed hearing, without any procedural abuses. No other restrictions of public participation at the trial were registered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

5. Was the hearing held in a courtroom?



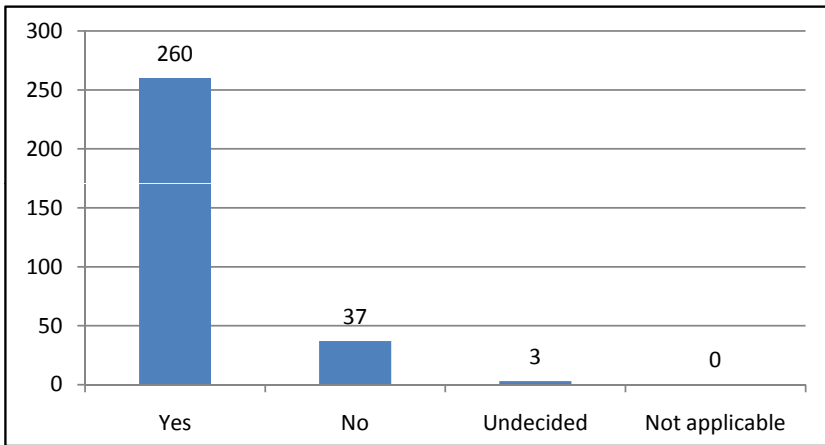
**Note:** The ratio of hearings held in courtrooms is comparable with that in Quarter 2, when 220 of the 300 monitored hearings were held in a courtroom.

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



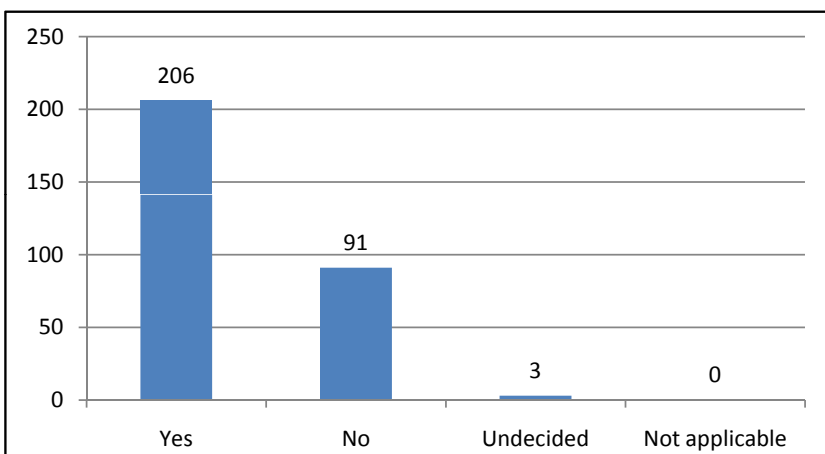
**Note:** In 280 of 300 monitored trials, the rooms used to conducting the hearings were spacious enough to accommodate all the parties in the trial. In 17 cases, it was established that the venues did not ensure the necessary comfort and conditions for the conduct of the trial. The observed dynamics is similar to the one in Quarter 1 of 2013. Note that most of the hearings conducted in the judges' offices were held in Chisinau district courts.

7. Was the courtroom equipped with the necessary furniture?



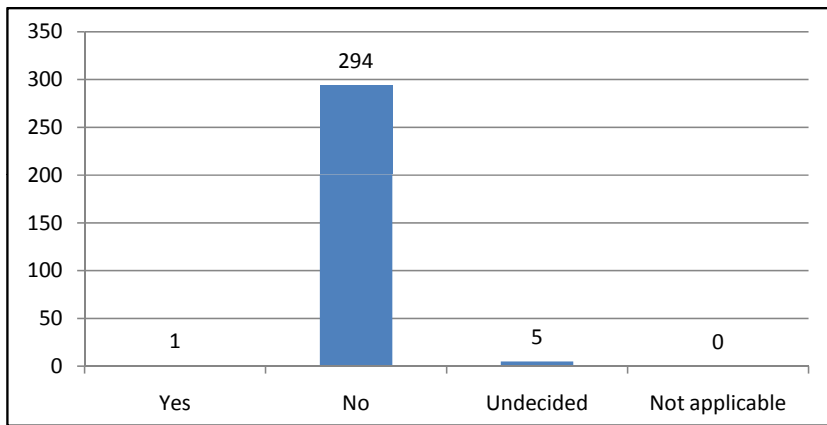
**Note:** 260 of the 300 monitored court hearings were conducted in well-furnished rooms, and 37 hearings were held in facilities insufficiently furnished to allow the parties to take notes or hold their papers. In Quarter 2, 19 more trials were held in fully furnished rooms.

8. Was the court hearing audio-recorded?



**Note:** The data analysis shows that the ratio of recorded and non-recorded trials is constantly growing; thus in Quarter 3, 206 of 300 trials were recorded, while in Quarter 2 the number was 179, and in Q1, it was 118. Note that the largest share of non-recorded trials was observed at the Chisinau Court of Appeals, where none of the monitored trials was audio-recorded, and in Chisinau district courts.

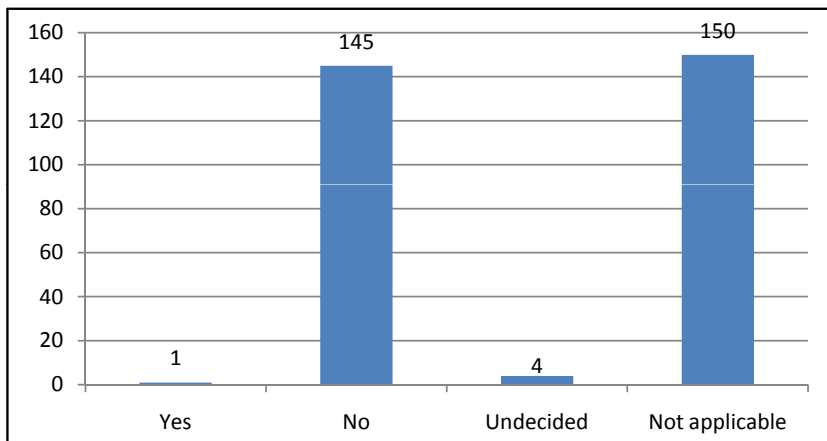
9. Was any person denied access to the courtroom?



**Note:** In the overwhelming majority of the monitored trials (294 cases), there were not cases of denying anyone the right to enter the courtroom. Only one such case was reported at the Court of Appeal in Cahul, when a person was denied access in absence of an ID.

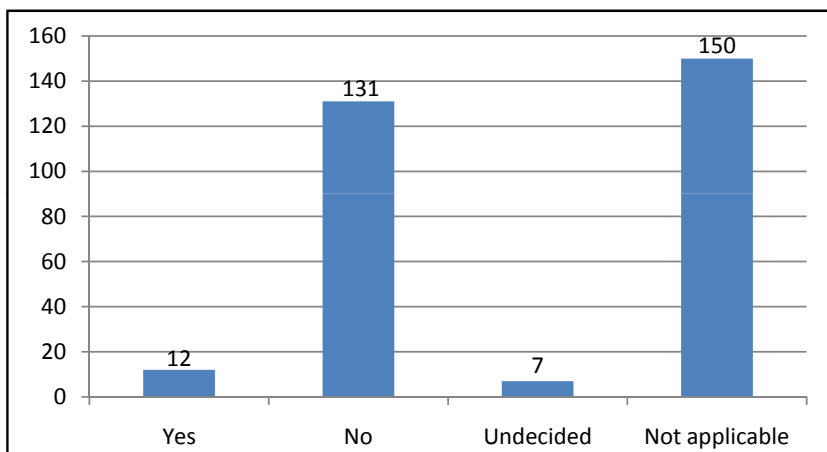
4. SPECIFIC ASPECTS OF FAIRNESS OF CRIMINAL TRIALS, INCLUDING PRESUMPTION OF INNOCENCE

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



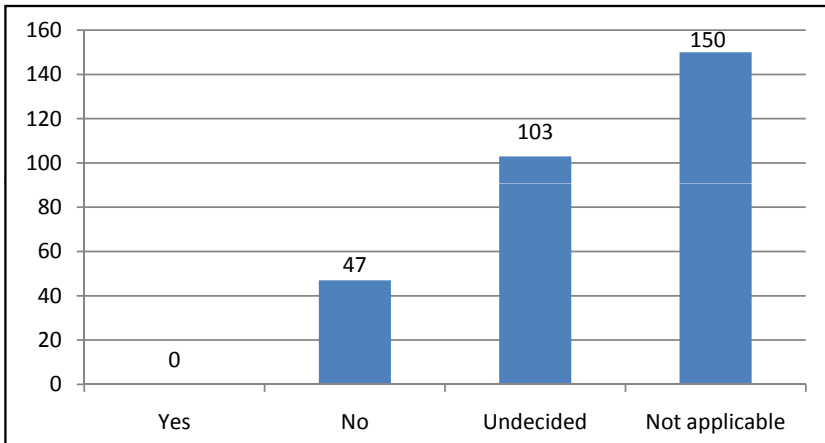
**Note:** Only on one case of the 150 of criminal and administrative cases monitored was it established that the court pre-determined the offender/defendant’s guilt, and the judge had a biased attitude towards the defendant. However this number is lower compared with Quarter 2, when five such cases were established.

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.)?



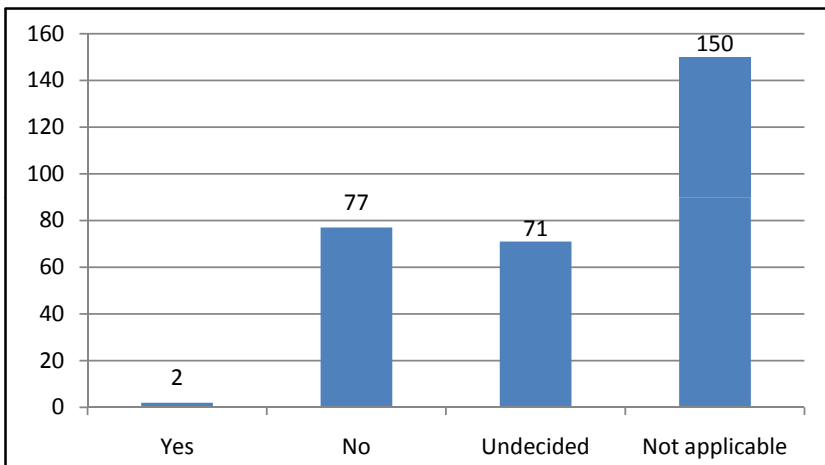
**Note:** Of the 150 hearings of criminal case trials monitored, in 12 hearings, it was found that the defendant/offender was treated in a way as to indicate that he was guilty; in the remaining 131 cases, this was not observed. The conclusions are based on the monitors’ observations of the behavior of judges.

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



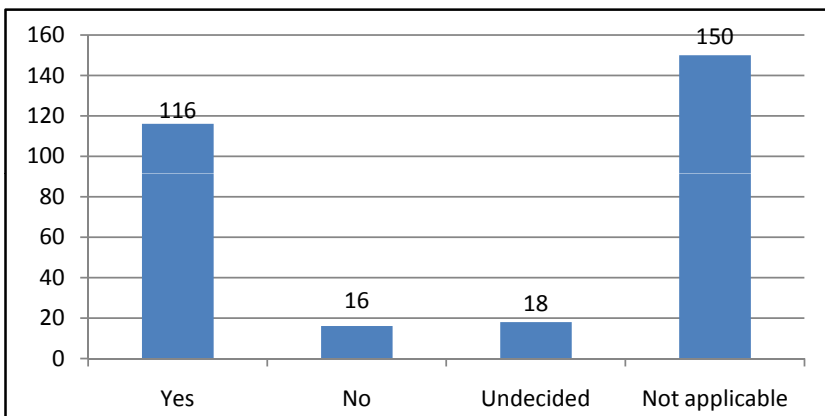
**Note:** In 47 hearings, it was found that the media coverage of the trial did not undermine the presumption of innocence of the defendant or inflict the court’s biased attitude towards them. Similar data was registered in the previous report.

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



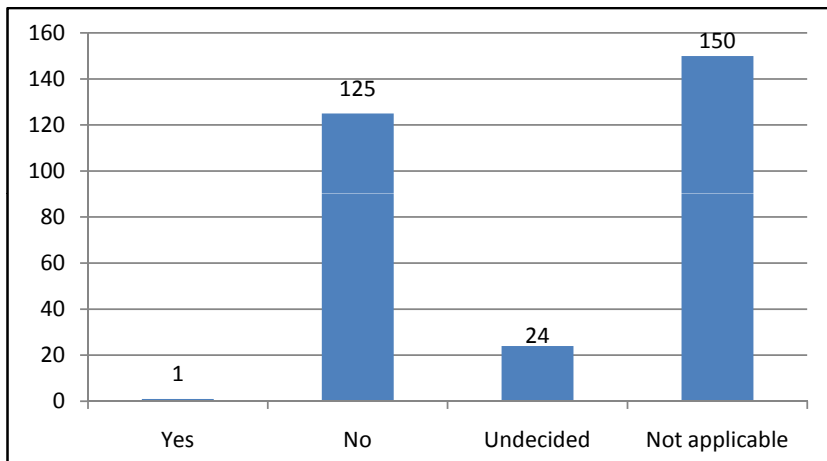
**Note:** No statements regarding the defendant’s guilt were made before their conviction in 77 cases; in two cases however, such circumstances were reported. The cases were reflected by the media, which, in their news stories, presented the defendant as guilty; the judge was also intimidated in the presence of the media.

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 116 hearings of criminal or administrative cases, the court explained to the defendant/respondent their right not to testify against themselves, compared with 138 cases registered in the previous Quarter. In 16 cases, the court did not explain this right, and in 18 cases, the court explained the general rights of the parties, without specifying the right in discussion.

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

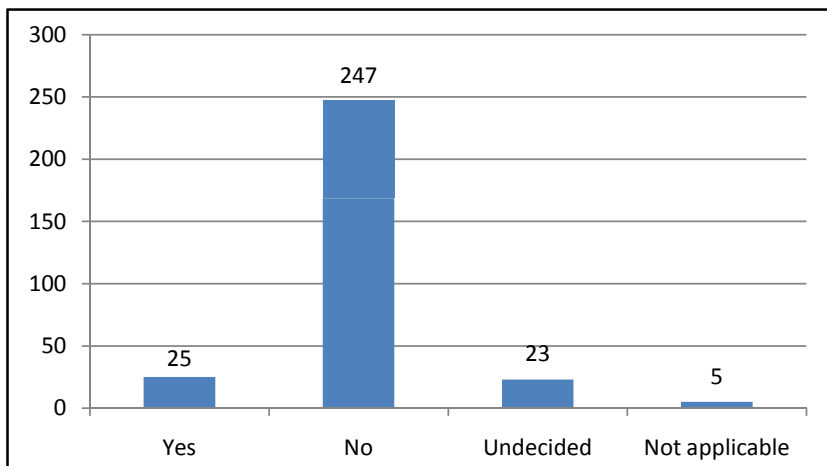


**Note:** A single case was reported when the defendant/respondent was compelled to testify. The same data are contained in the report for the previous period.

5. ADVERSARIAL PRINCIPLE, EQUALITY OF ARMS AND DEFENSE RIGHTS

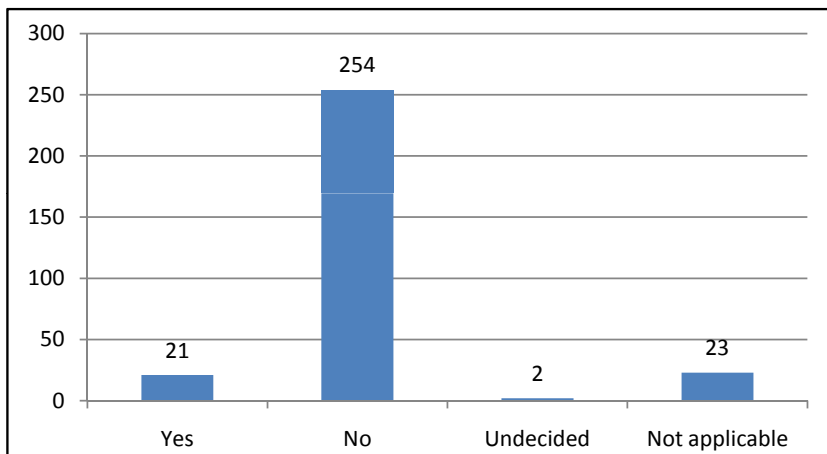
A. Adequate Preparation for the Case

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



**Note:** Of the monitored trials, in 25 hearings it was reported that the parties had insufficient time to prepare for the trial, with in 247 hearings, such circumstances were not found. The number of reports on insufficient preparation time has risen insignificantly compared with Quarter 1 of 2013.

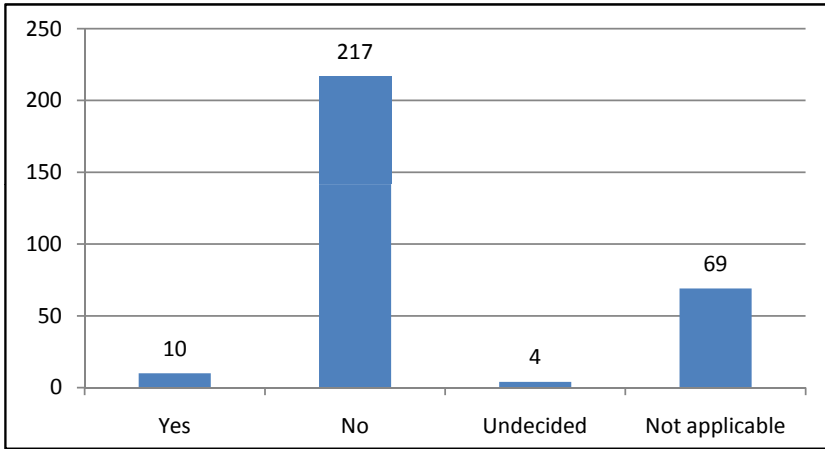
17. Were there any objections from the parties to the trial that they had not been communicated all the information relevant to the case or that they did not have time to familiarize themselves with documentary evidence held by the adverse party?



**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 the documentary evidence held by the adverse party, 21 such cases were reported; at the same time, in 254 cases, such circumstances were not reported. Similar data are contained in the Quarter 2 report.

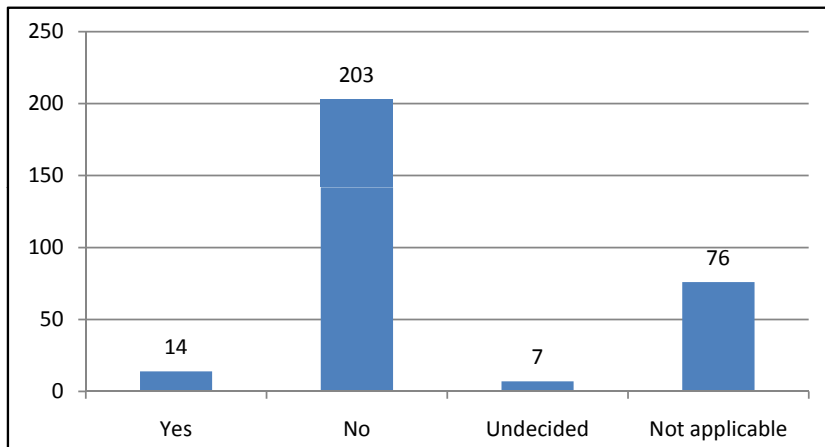
**B. Timely Hearing**

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 10 trials, the monitors assessed the delays as unreasonable, while in 217 cases the delays were deemed reasonable. Similar comparative data are presented in the reports for Quarters 1 and 2.

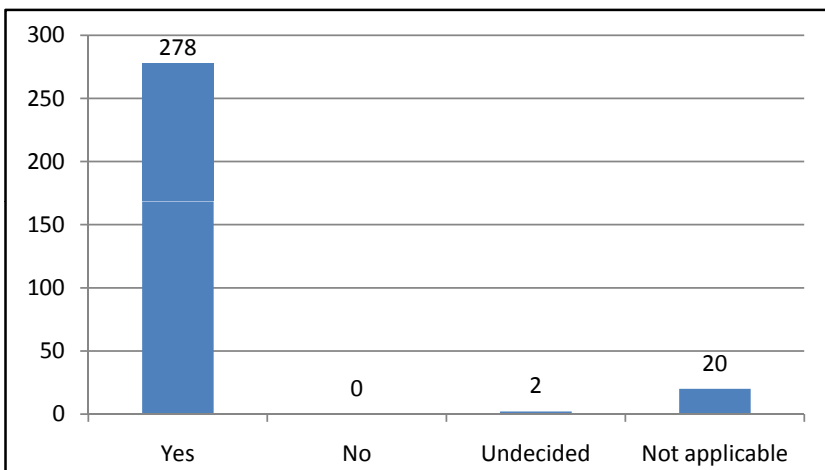
19. Did the delays have any detrimental effect upon the individual’s legal practical position (for instance, where he has been detained in custody or during trial) or his legal position (questions related to statute of limitations, etc.)?



**Note:** With regard to hearing postponements that could have harmed the trial, monitors found that in 14 hearings such delays could have harmed the trial, while in 203 cases the delays did not affect the trial. Similar data are presented in the reports for Quarters 1 and 2.

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

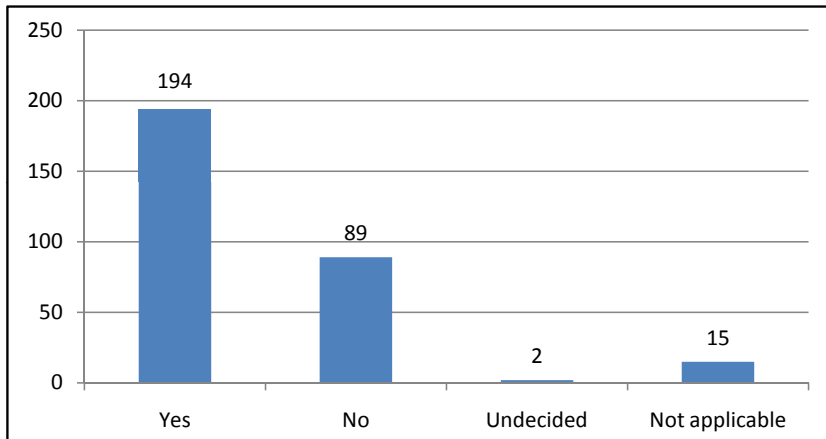
20. Was the respondent (defendant/offender) given the opportunity to participate in a hearing to present his case?



**Note:** In the absolute majority of cases (278), the respondent (defendant/offender) was given a real opportunity to participate at the trial to present their case. There were no cases when that right was restricted, thus, the results for Quarter 3 are better than the previous period, when six such cases were recorded.

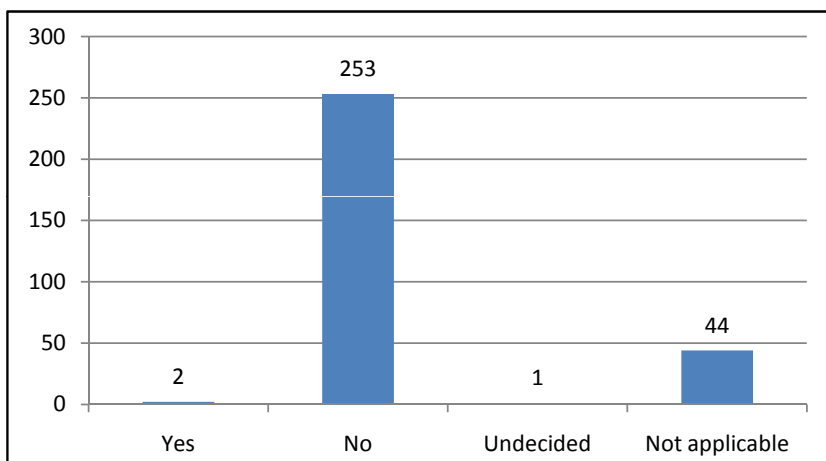
### D. Right to Legal Representation or Self-Representation

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



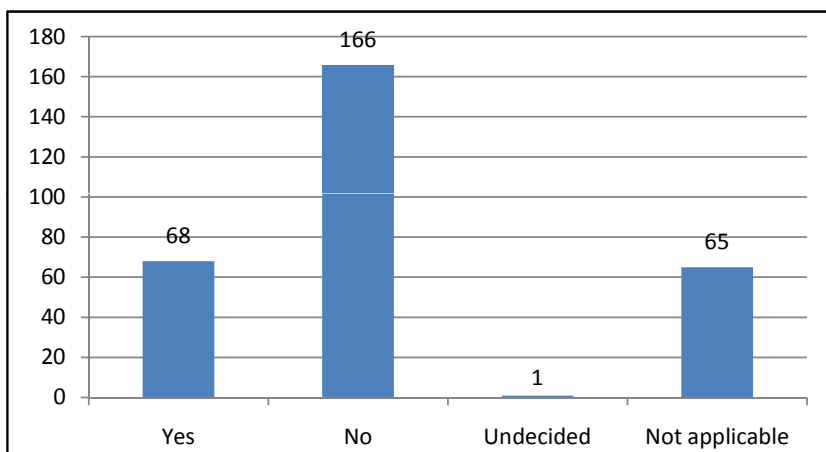
**Note:** In the majority of court hearings, the parties were represented by lawyers or legal representatives (194); in 89 cases, the parties did not have legal counsel or representation, which is 19 cases less than in the Quarter 2.

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



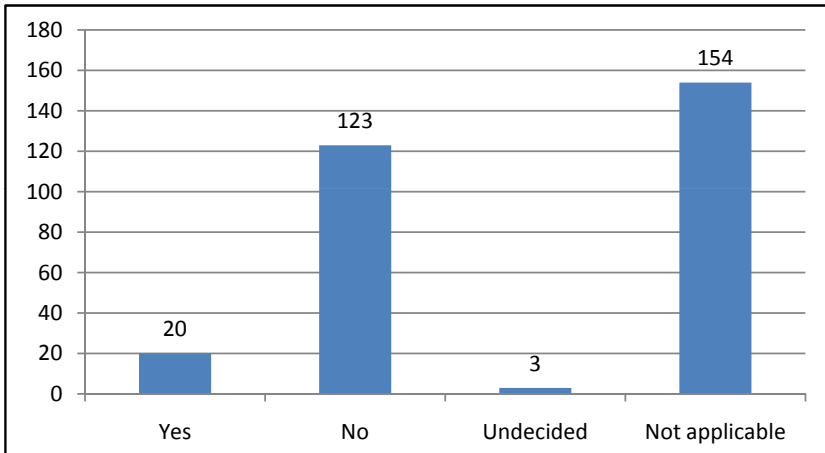
**Note:** In the absolute majority of trials, the parties were not denied self-representation (253), and in two criminal cases, the court demanded that the defendant be provided with a lawyer. The same data can be found in the Report for Quarter 2.

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



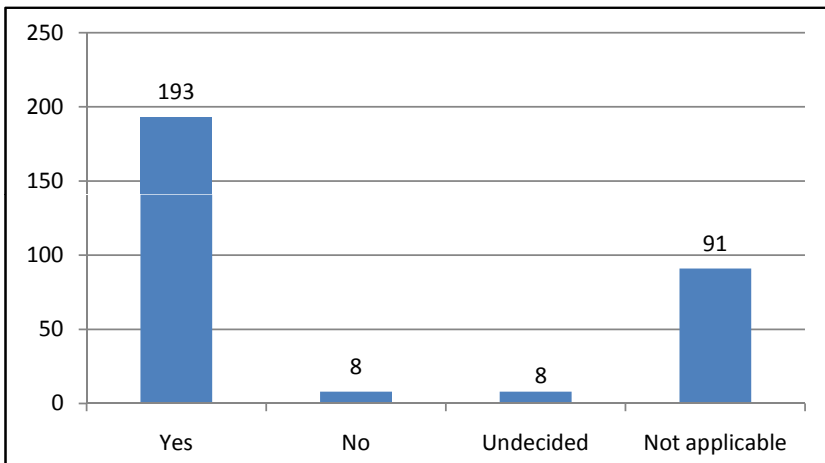
**Note:** In 68 monitored trials, a lawyer's assistance was requested; in other 166 hearings, such requests were not submitted.

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



**Note:** A lawyer from the NLAC was requested in 20 hearings; this number has risen slightly compared with the reports for Quarters 1 and 2.

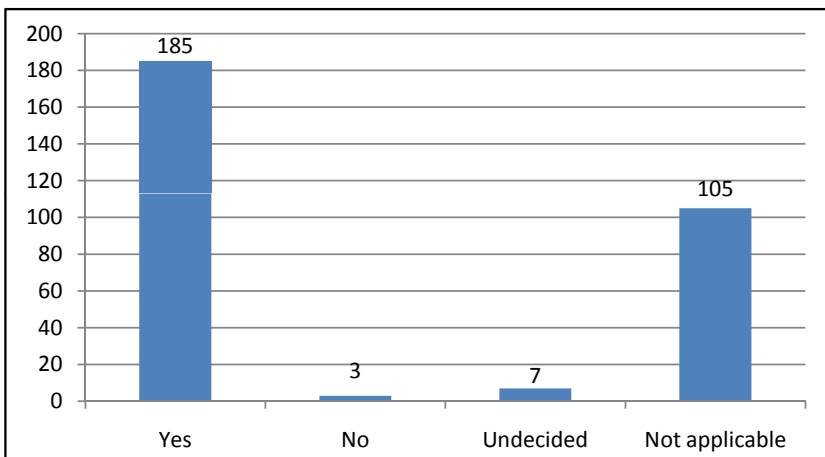
25. Did the counsel act in an independent, competent and efficient manner?



**Note:** In 193 hearings where lawyers were present, the monitors noted that the lawyers acted in an independent, competent and efficient manner; in other eight hearings, this was not the case. The number of cases when the lawyers were not deemed independent, competent or efficient is on the rise.

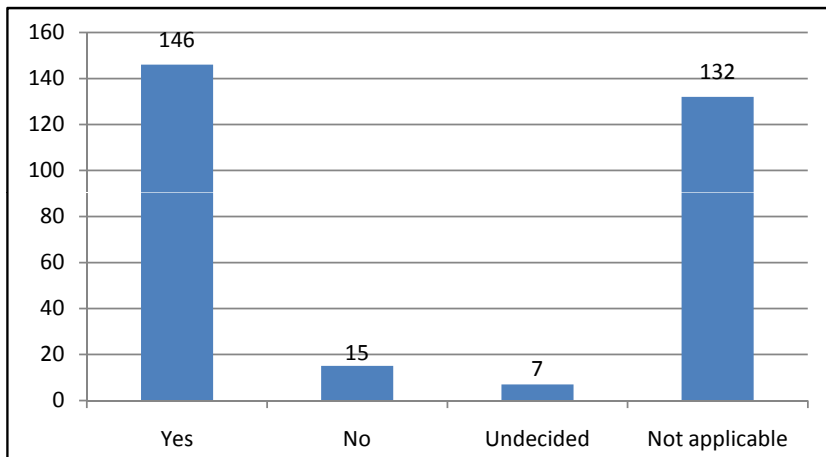
**E. Examination of Witnesses**

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 (185), monitors found that the sides had equal possibilities to interview witnesses and experts.

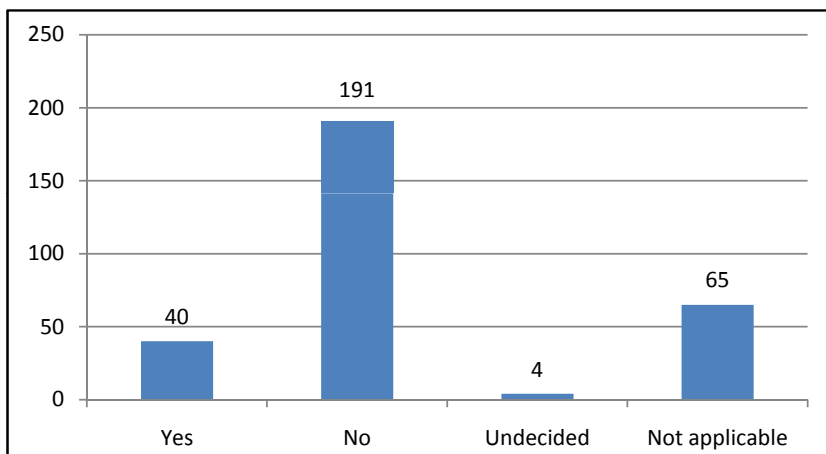
27. Were there all measures taken to ensure the participation of all witnesses and experts summoned by the court/parties?



**Note:** In almost half of the hearings (146), the court took all measures to ensure the presence of all witnesses and experts, while in three cases, it was established that other measures could have been taken to ensure the presence of witnesses and other sides. Similar data were established in the reports for Quarters 1 and 2.

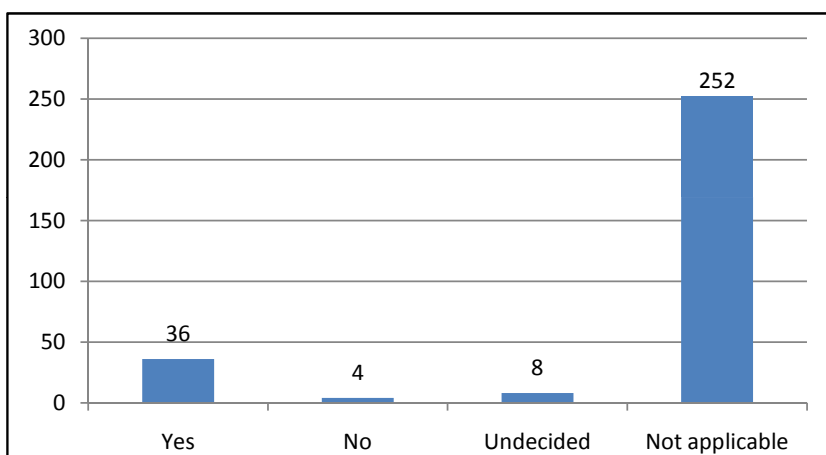
### F. Interpretation and Translation

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

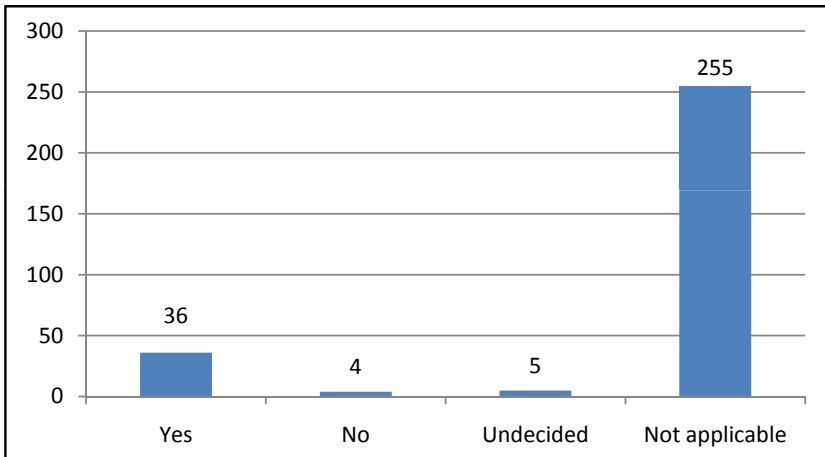


**Note:** In 40 hearings, a translator's assistance was requested. In Quarter 1, the number of such requests was 36, and in Quarter 2 - 41.

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

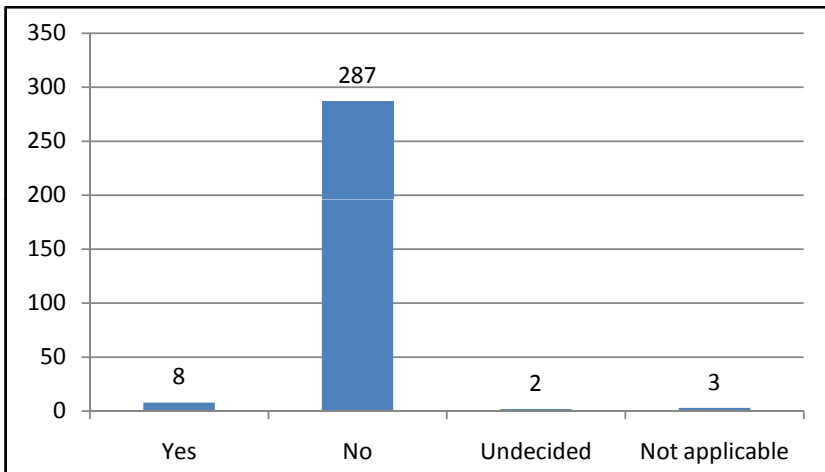


30. Did the defendant/parties appear to fully understand the translated questions?



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?

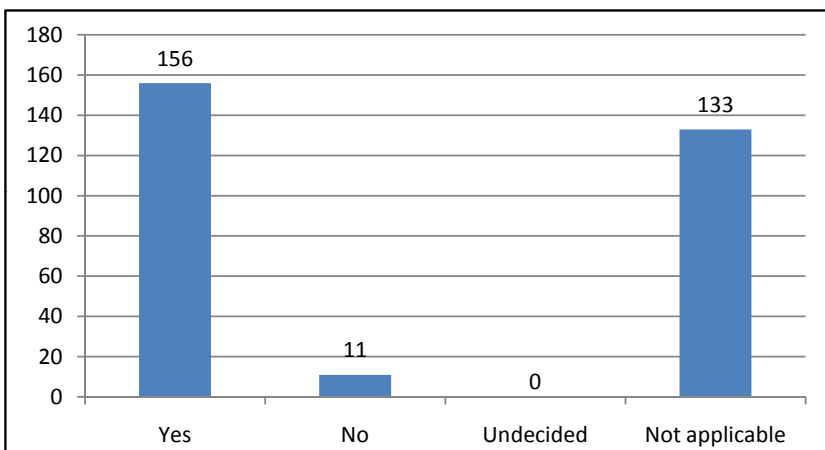


**Note:** There were eight cases when some aspects of the trials indicated to inequality of arms. Firstly, in three cases, in was the media coverage of the trial, on other two cases, the hearings had been postponed repeatedly, and in other three cases inequality resulted from the different possibilities, including financial possibilities, of the parties in trial, to find an experience defense lawyer.

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?



**Note:** Regardless of the decision adopted on the case – postponement of the trial, pronounced decision or sentence, the monitors found that the solution was clear. In 11 cases, the reason for postponement was unclear.

## CONCLUSIONS

The results of the Third 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. During the third Quarter of 2013, we observed the same positive dynamic of conducting trials. Note however that the purpose of the mission was not to assess the quality of the judicial acts and the level of corruptibility, but only the appearances of trials and judicial proceedings.

On the other hand, one cannot speak of significant progress in implementing the actions outlined under the Action Plan for JSRS implementation. Thus, of a total 209 actions due for completion by 30 September 2013, only 126 were completed, while the 83 remain unfulfilled by the end of Quarter III, 2013, which represents a total completion rate of 60% (compared with 59% at the end of the previous Quarter). It is also true that the Government confronted with 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. After the confirmation of a new Government, some of the planned actions were accelerated, but the responsible institutions must make considerable efforts to fulfill the overdue actions along with the actions due for the next period.

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. A series of actions outlined in the JSRS Action Plan were included in the respective project. Nevertheless, the speed of implementation of these actions is quite slow.

We noted an essential change in the transparency of the Secretariat and WGs. They managed to hire additional staff to support the functioning of the Secretariat and WGs, and we noted an increased work and efficiency in the organization of meetings, publication of their agendas and minutes on the Ministry’s website. At

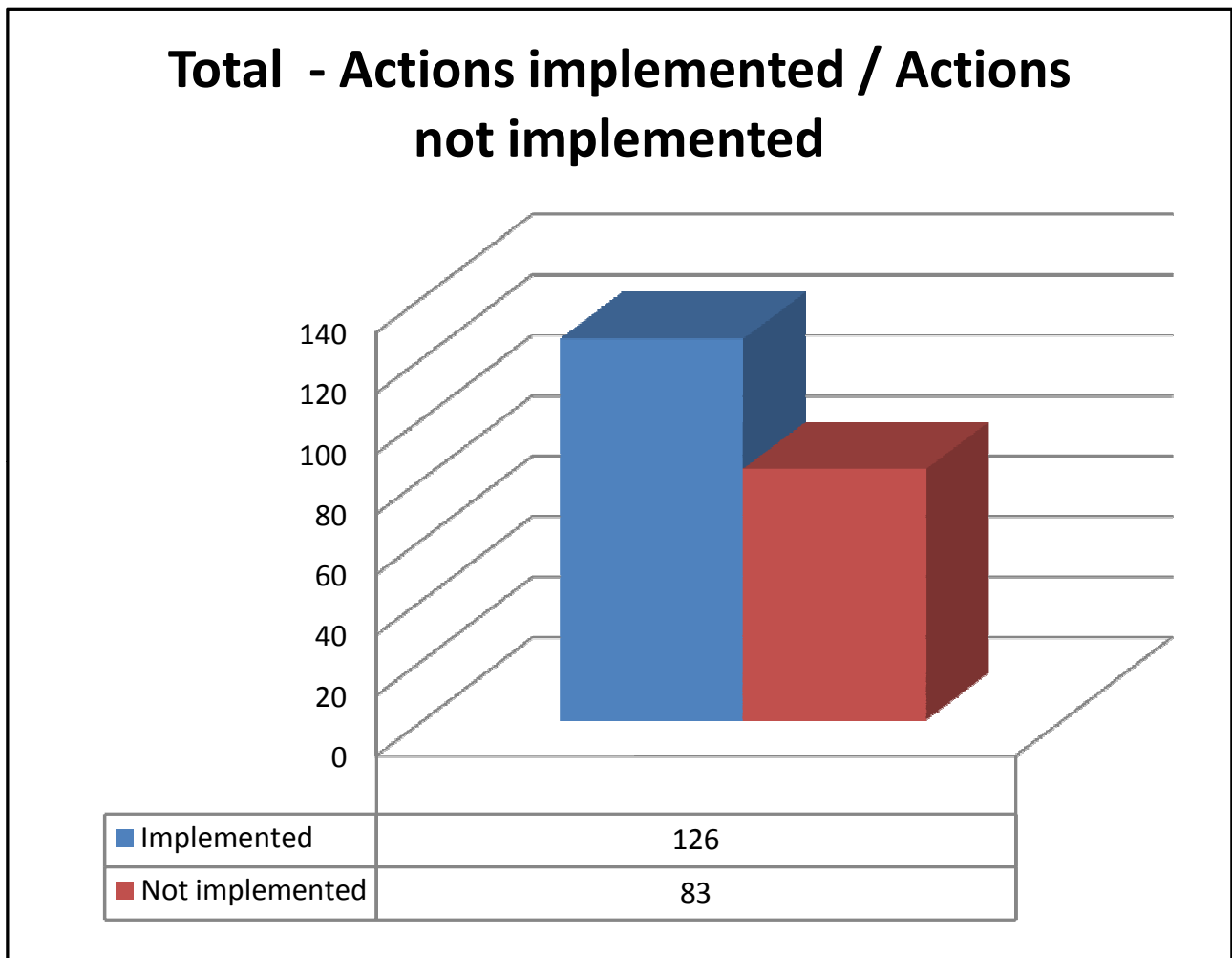
the same time, we continue to face difficulties in finding the products developed within the implementation of the Strategy in absence of a single portal where they could be posted.

We welcome the initiative of the WG to revise the actions provided in the Action Plan in order to identify the actions that are obsolete or no longer relevant or those of an unclear character.

We analyzed the performance of institutions involved in the implementation of the JSRS and found the following. In 2012 and the first three Quarters of 2013, NLAC and the MOI implemented less than a half of the actions in their responsibility, achieving an implementation rate of 40% and 25% respectively. The NAC, MOJ, PGO, and the CHRM achieved a better implementation rate. There are several institutions that reached a 100% implementation rate, and these are the *National Integrity Commission* and National Council for Reforming the Law Enforcement Bodies. However, the Action Plan contained a very small number of actions to be implemented by these institutions, and, most importantly, the actions assessed as implemented in accordance with the performance indicators need to be monitored in terms of their real impact.

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

Responsible Institution	Pillar 1		Pillar 2		Pillar 3		Pillar 4		Pillar 5		Pillar 6		Pillar 7		Total		Implemented actions/percent						
	Total	I	N/I	Total	I	N/I	Total	I	N/I	Total	I	N/I	Total	I	N/I	Total	% I	% N/I					
Ministry of Justice	35	25	10	19	12	7	19	3	16	7	0	22	13	9	20	16	4	133	81	52	61	39	
Supreme Council of Magistrates	17	11	6	0	0	2	0	0	0	0	2	0	0	0	0	0	0	19	11	8	58	42	
National Institute of Justice	9	4	5	1	1	1	0	1	1	3	3	0	1	0	0	0	0	17	10	7	59	41	
National Anticorruption Center	0	0	0	3	3	0	0	0	0	0	2	0	0	0	0	0	0	7	5	2	71	29	
National Legal Aid Council	0	0	0	0	0	0	5	2	3	0	0	0	0	0	0	0	0	5	2	3	40	60	
National Union of Judicial Officers	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	1	0	1	0	100	
Ministry of Internal Affairs	0	0	0	3	1	2	0	0	0	0	0	1	0	1	0	0	0	4	1	3	25	75	
Prosecutor General's Office	0	0	0	10	7	3	0	0	0	0	0	2	1	1	0	0	0	12	8	4	67	33	
Center for Human Rights of Moldova	0	0	0	0	0	0	0	0	0	0	0	4	3	1	0	0	0	4	3	1	75	25	
National Council for Reforming the Law																							
Enforcement Bodies	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	1	0	100	0	
National Integrity Commission	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2	2	0	100	0	
Parliament	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	1	0	100	0	
Central Public Administration	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1	1	0	100	0	
E-Governance Center	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	100	
Justice sector institutions	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	1	0	1	0	100	
<b>TOTAL</b>	<b>61</b>	<b>40</b>	<b>21</b>	<b>36</b>	<b>24</b>	<b>12</b>	<b>26</b>	<b>5</b>	<b>21</b>	<b>19</b>	<b>14</b>	<b>30</b>	<b>18</b>	<b>12</b>	<b>22</b>	<b>17</b>	<b>5</b>	<b>209</b>	<b>126</b>	<b>83</b>	<b>60</b>	<b>40</b>	

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

**Regarding the implementation of overdue actions under Pillar I**

By the beginning of the reporting period (1 July 2013), under Pillar I there were to be carried out a total of 61 actions, of which the MOJ was responsible for 35, the SCM - for 17, and the NIJ - for nine actions. At the beginning of the same period, there were 23 overdue actions. During Quarter III, we find that only three actions were implemented, and 21 actions remain unfulfilled.

**Regarding the implementation of overdue actions under Pillar II**

At the beginning of the reporting period, that is from 1 July 2013, under Pillar II there were 11 overdue actions out of 30 that were to be completed by that date. During the reporting period (1 July to 30 September), the PGO implemented two outstanding actions (Action 2.5.1 section 1 and Action 2. 2.4.2 section 1), and the MOJ implemented one overdue action (Action 2.5.1 section 1). Of the remaining overdue actions, five are in the responsibility of the MOJ, two - in the responsibility of the MOI, and one action is the responsibility of the PGO.

**Regarding the implementation of due actions under Pillar II**

Six actions were to be implemented by the end of the reporting period, namely by 30 September 2013. None of them was implemented. The MOJ failed to implement four actions in time, and the MOI and the PGO failed to implement one action each.

**Regarding the implementation of overdue actions under Pillar III**

At the beginning of the reporting period, on 1 July 2013, there were 18 actions overdue out of 24 actions that were to be completed by that date under Pillar III. During the reporting period (1 July - 30 September), the MOJ implemented a single overdue action (Action 3.2.1 section 1). At the same time, discussions in WG III established that, in the case of two actions reported as implemented in 2012, the responsible parties lack justifying evidence to qualify them as implemented. Therefore the number of overdue actions is 19.

**Regarding the implementation of due actions under Pillar III**

Two actions were to be completed by the end of the reporting period, on 30 September 2013. None of them was implemented. Therefore, a total of 21 actions remain overdue at the end of the reporting period.

**Regarding the implementation of overdue actions under Pillar IV**

Fifteen actions were to be implemented under Pillar IV by the beginning of the reporting period (1 July 2013), of which seven were to be carried out by the MOJ, two - by the SCM, other two - by the NIJ, and the remaining four - by the NAC. Six actions were overdue at the beginning of the reporting period. We found that only one overdue action under Pillar IV was completed; the remaining five have not been implemented.

**Regarding the implementation of overdue actions under Pillar V**

Seven of 15 actions that were to be implemented under Pillar V by the start of the reporting period, 1 July 2013, remained overdue. None of the overdue actions was implemented in the reporting period. Six of these actions were in the responsibility of the MOJ. One of the overdue actions is in the responsibility of the e-Government Center.

**Regarding the implementation of due actions under Pillar V**

There were no actions due for completion under Pillar V by the end of the reporting period, 30 September 2013.

**Regarding the implementation of overdue actions under Pillar VI**

Of the 29 actions that were due for completion under Pillar VI at the beginning of the reporting period, 1 July 2013, 12 remained unfulfilled. During the reporting period (1 July – 30 September), the MOJ implemented one of the overdue actions. The Ministry is responsible for eight of the remaining actions, and the MOI, the CHRM and the PGO are each responsible for one overdue action.

**Regarding the implementation of due actions under Pillar VI**

One action was to be implemented by the end of the reporting period, on 30 September 2013. The MOJ, which is responsible for the action, did not complete it in time.

**Regarding the implementation of overdue actions under Pillar VII**

A total of 22 actions, 20 of which were under the responsibility of the MOJ, one – in that of the National Council for the Law Enforcement Bodies Reform, and one – in the responsibility of the justice sector agencies, were due for completion at the beginning of the reporting period (1 July 2013). Six of these actions were overdue at that time. We found that only one of the overdue actions was implemented during the period covered by this report, and other five actions remain unfulfilled.