

Admission of revision requests in civil cases - is the practice of the Supreme Court of Justice uniform?

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ANALYTICAL DOCUMENT

ADMISSION OF REVISION REQUESTS IN CIVIL CASES - IS THE PRACTICE OF THE SUPREME COURT OF JUSTICE UNIFORM?

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Executive summary

The judiciary of the Republic of Moldova has always been exposed to the risk of having inconsistent judicial practice. The 2011-2016 Justice Sector Reform Strategy, in the domain of intervention 1.2.4, emphasized the need for insuring the consistency of the judicial practice. This analysis was prepared by the LRCM to boost the consistency of the judicial practice.

The analysis establishes, based on empirical data, to what extent the practice of the Supreme Court of Justice (SCJ) is uniform in one domain - the quashing of final civil judgements. This particular area was chosen taking into account that, until 31 December 2017, the European Court of Human Rights (ECtHR) found 20 times that the Republic of Moldova unjustifiably quashed the final court judgements in civil cases by allowing revision requests. All the decisions by the SCJ adopted within 36 months, between January 1, 2015 and December 31, 2017, allowing the revision requests in civil cases, were analysed in this research. The document also reflects the official statistics published by the SCJ.

Despite numerous convictions at the ECtHR and clear legislation, the number of revision requests received by the SCJ has not decreased significantly since 2006. The SCJ continued to receive annually 500-700 revision requests. Most of the revision requests examined by the SCJ were rejected. However, it can not be said that the rate of admitted requests during 2011-2017 has decreased. It varied between 2.7% in 2011 and 5.4% in 2015. The rate of the revision requests admitted by the SCJ in 2017 (3.6%) was even higher than in 2011 (2.7%). It is however 3 times lower than in 2006 (11.9%)

70 judgements of the SCJ admitting the revision requests in civil cases were studied for this research. The authors of the analysis had serious doubts concerning the existence of the grounds for revision in 28 out of 70 judgements (40%). In 20 out of those 28 judgements, the SCJ invoked as the ground for revision the appearance of new circumstances, which were not and could not have been known by the applicant before (art. 449 letter b) of the Code of Civil Procedure (CCP). Overall, out of those 70 judgements, the SCJ invoked the appearance of new circumstances in 23 judgements. The authors of the analysis have no doubts about the legality of only 3 out of 23 judgements.

Out of those 20 judgements where there are doubts concerning the compliance with art. 449 letter b) of the CCP (appearance of new circumstances), 12 essentially refer to the mistakes committed by the courts. These mistakes refer to incorrect calculation of the term of appeal or cassation, failure to examine the fundamental documents for the case in the cassation procedure, or the examination of a case by a judge who could not take part in the proceedings. It appears that the SCJ was aware that it was not acting perfectly legal in

these cases. It accepted the revision requests in order to remove any doubts as to the fairness of the proceedings. However, after revision it upheld the solutions from the judgement quashed by revision. In the other eight cases where the revision was admitted under art. 449 letter b) of the CCP, it was difficult to find a logical justification for the SCJ solution. The revisions were rather disguised appeals in cases with major financial interests or where influential actors were involved.

Other eight cases in which other grounds than art. 449 letter b) of the CCP were invoked also represented disguised appeals. In three cases, the SCJ did not indicate in its judgements any grounds mentioned by art. 449 of the CCP. In other two cases, the SCJ accepted the revisions on the grounds that the persons whose rights were affected were not party to the trial, although the SCJ reasoning is not convincing. In three remaining cases, the SCJ wanted to correct apparent social inequities, leaving aside the lack of grounds for admitting the revision.

When accepting 70 revision requests, the SCJ did not analyse thoroughly the compliance with the legal time limit for submitting the revision. This can be explained by the fact that, in most cases, there was no appearances regarding the omission of this term. However, in seven judgements the SCJ did not rule on the observance of the term, even if there were serious doubts about that this term was missed. In six out of seven judgements, there was doubt not only regarding the compliance with the deadline for filing the revision request, but also regarding the lack of legal grounds for the admission of the revision request.

Although the number of unjustifiably allowed revisions requests (28) is low (1.7%) comparing to the total number of examined requests (1,638), it is in fact an important number. We are speaking here about cases where the final judgements are overturned, i.e. where the SCJ revises without justification its own verdict. This undermines the very foundation of justice – the irrevocable nature of the justice that has been done. Moreover, such practices encourage the submission of manifestly ill-founded revision requests, increasing the workload of judges.

The consistency of judicial practice has attracted the attention of the LRCM for a long time. Previously, the LRCM analysed the SCJ practice regarding sanctions in corruption cases¹ and disputes on the retroactive increase of customs duties².

¹ Available at <https://crjm.org/wp-content/uploads/2015/12/CRJM-DA-Sanct-cazuri-coruptie-23.12.2015-1.pdf>.

² Available at <https://crjm.org/wp-content/uploads/2015/11/CRJM-DA-Plati-vamale-2015-11-12-1.pdf>.

Introduction

Context and purpose of the document

The Moldovan court system, where there are more than 20 courts, and until 2016 - were over 45 courts and three levels of jurisdiction, has always been exposed to the risk of having inconsistent judicial practice. Over the years, even the SCJ practice could not be called uniform. In spite of numerous tools designed to ensure consistency of the judicial practice, little improvement has been established in this respect until 2011. The limited impact of the efforts to standardize judicial practice could be explained by the frequent modification of legislation and the conjectural interpretation of the law by the legislature and executive bodies, by the lack of traditions to follow the interpretations of the law given in the superior courts judgements, by the poor reasoning of the judgements, as well as by the insufficient consistency of the case law of the superior courts.

Taking into account the less uniform court practices, the Justice Sector Reform Strategy for 2011-2016 (JSRS), in the domain of intervention 1.2.4, emphasized the need for uniformity of judicial practice. Starting with 2012, the SCJ has become more active in this field. By 31 December 2017, the SCJ has adopted over 35 new judgments of the Plenary, about 100 recommendations and about 40 opinions on how to apply the legislation uniformly. Also, a more advanced search engine for the SCJ case law has been integrated into the SCJ website.

This analysis does not aim at evaluating the extent to which the mechanisms for uniformization of judicial practice existing in the Republic of Moldova are used efficiently, or if they are sufficient. The document analyses whether the practice of the Supreme Court of Justice of the Republic of Moldova is uniform in a narrow field. In other words, we have tried to analyse the impact of efforts concerning the uniformization of the judicial practice rather than efforts themselves. The document was elaborated to further enhance the consistency of judicial practice.

The document analyses the case law of the SCJ admitting revision requests in civil cases. We have chosen this area taking into account the big number of convictions of the Republic of Moldova in this respect at the ECtHR. Under the principle of the rule of law, a final court judgement can only be quashed exceptionally, on the basis of the grounds expressly provided by the law and convincing arguments. The mere existence of two different opinions on the same issue should not serve as a ground for reversal of a final court judgement. Until 31 December 2017, the ECtHR found 20 times that the Republic of Moldova unjustifiably quashed the final court judgements in civil cases by

allowing revision requests³. Although the first conviction of the Republic of Moldova at the ECtHR for unwarranted admission of a revision request was adopted in 2005, such convictions continued to be issued by the ECtHR 12 years later.

Methodology

This document aims at establishing, based on empirical data, to what extent the practice of the SCJ is uniform. Only one domain was examined - the admission of revision requests in civil cases. Within the framework of this research, all SCJ rulings (hereinafter referred to as "judgements") allowing the revision requests adopted within 36 months (between 1 January 2015 and 31 December 2017) were analysed. The analysis was prepared between August 2017 and March 2018.

This document covers only the SCJ judgements. The judgements were taken from the SCJ website, www.csj.md. This web page does not allow the search for judgements based on the solution of the SCJ. For this reason, all court judgements in civil cases (including commercial and administrative disputes) adopted between January 2015 and December 2017 on revision requests were consulted - more than 1,600 judgements in total. Only the judgements that admitted revision requests were subjects to a thorough analysis.

According to the SCJ activity reports for the years 2015-2017, in these three years, the SCJ examined 1,638 revision requests in civil cases, of which 79 were admitted. The LRCM has searched the SCJ web site for judgements that allowed revision requests. 70 judgements in total were found, which concerned 73 allowed revision requests (three judgements concerned two revision requests each). The LRCM could not find on the SCJ web page the judgements allowing six revision requests. We do not know why these judgements are not available on the web page. At the same time, we noticed that, after the selection in the summer of 2017 of judgements allowing revision requests, some judgements initially published on the SCJ web page are no longer available⁴.

The judgements allowing revision requests were analysed in the light of their compliance with main conditions imposed by the Code of Civil Procedure (CCP): compliance with the legal time limit for submission of the revision request and the existence of a legal ground for the admission of the revision request. The conclusions were formulated based on the study of the reasoning of the SCJ judgements allowing revision requests. The judgements of the SCJ which were quashed by revision and, if any, the judgements adopted concerning the same case after the revision request was admitted, were also studied.

The analysis does not aim to determine what should have been the right solution in the 70 analysed judgements. It was analysed only the extent to which the solutions of the courts are in compliance with art. 449 (grounds for revision) and art. 450 (time limit for

³ See the ECtHR judgements in cases *Popov (No 2)*; *Oferta Plus SRL*; *Tudor Auto SRL and Triplu-Tudor SRL*; *Eugenia and Doina Duca*; *Dragostea Copiilor - Petrovschi - Nagorni*; *Agurdino SRL*; *Cojocar*; *Ojog and others*; *Pirna*; *ASITO (No 2)*; *Jomiru and Crețu*; *Ghinea*; *Sfinx-Impex S.A.*; *Banca Internațională de Investiții și Dezvoltare MB S.A.*; *Lipcan*; *Beșliu*; *Strugaru*; *Brantom International S.R.L. and others*; *Rusu Lintax SRL*; *Cereale Flor S.A. and Rosca*.

⁴ See the rulings in cases 2rh-1/15, 2rh-92/15 and 2rh-256/15.

submission of revision request) of the CCP. In the process of analysis of the court judgements, we were guided by the SCJ Plenary judgement no. 2 as of 15 April 2013 on the examination of revision procedures in civil cases.

The analysis was carried out by Vladislav GRIBINCEA. The LRCM lawyers Pavel GRECU, Nadejda HRIPTIEVSCHI and Dumitru AMBROCI contributed to the elaboration of the document. The draft analysis was sent in advance for comments to Elena BELEI, a university professor specialized in civil procedure, as well as to the Civil Section of the SCJ.

Uniformity of judicial practice or independence of judges?

In the Republic of Moldova, probably similar to all existing legal systems, the society lives mainly on the basis of rules written by the legislature or executive. Traditionally, in the continental legal systems, the judicial power is perceived as an arbitrator in disputes with the state, which must protect those who are weak from the powerful ones and do justice. Traditionally, by their decisions, judges in those systems have the task of ensuring compliance with the law, but not of establishing new rules.

History consistently confirms that the legislative process is behind the evolution of the society. Social relationships are becoming more complex and diverse, while legal regulations, which are general by nature, do not always provide clear answers to all the situations that arise in practice. On the other hand, the excessive legal regulation or blind adherence to the law can seriously affect the efficiency of state institutions and cause social discontent. Moreover, in some countries laws adopted by the executive or legislature undermine human rights or considerably limit the ability of judges to do justice. For these reasons, judges can not refuse to do justice, even if the law does not offer a solution or is wrong. Thus, in the case of Moldova, when a law violates human rights, judges may refer the Constitutional Court⁵, disregard the provisions of normative acts that are inferior to the law⁶ or even directly apply the provisions of the international human rights treaty to the detriment of the national law⁷. At the same time, if the civil law does not provide a solution or when this solution is not clear, the law requires the judge to apply the analogy of the law or to follow the principles of law⁸.

Laws are read by few people and not all of those who read them understand them fully. On the other hand, the litigants are not interested so much in the text of the law, but rather on its impact. Namely for these reasons, the enforcement of the law, rather than its text, determines the perception of the exact content of the law, gives the litigant confidence in the rule of law and creates the perception that justice has been done.

The law is not adopted for one person or a predetermined group of persons. It should generate similar effects for all who fall within its scope, regardless of the position held

⁵ See art. 12¹ of the Code of Civil Procedure (CCP) and art. 7 par. 3 of the Code of Criminal Procedure (CCrP).

⁶ See art. 12 par. 2 of the CCP and art. 7 par. 4 of the CCrP.

⁷ See art. 12 par. 4 of the CCP and art. 7 par. 5 of the CCrP.

⁸ See, for example, art. 12 par. 3 of the CCP.

in society, wealth, political affiliation or other aspects. That is why, art. 16 par. 2 of the Constitution of the Republic of Moldova stipulates that all are equal before the law. This constitutional norm does not only enshrine the recognition of equality of all before the law, but also the equality before the authorities that apply it. This equality can not exist when, by applying the same text of the law to similar situations, the judge issues opposite solutions.

The system of precedent, where the interpretation of a given rule by the higher court rulings is, as a rule, binding for settling similar cases by inferior courts, did not emerge as an emanation of the legislator's will. On the contrary, it was the result of the legislator's passivity when judges were forced to do justice in situations where the law did not suggest a solution. That is why the precedent cannot invalidate a legal norm, but merely clarifies how a general provision is applied in a certain examined situation.

Justice can have only one face. In a judiciary there can be no disorder or chaos, because in this case, the litigants are left in a state of insecurity and legal uncertainty. The highest jurisdiction in each state is called to ensure a well-organized judiciary. Given the independence of judges, the highest court does not have direct levers to put in order the judiciary. It should be noted, however, that the independence of the judge is the right of the latter to do justice without being influenced by the solution s/he has to take in one case or another. At the same time, independence can not be interpreted as giving the judge the right to neglect the legal provisions or, without particularly convincing reasons, to interpret the law to the detriment of well-established judicial practice.

Perhaps the main lever for organizing the judicial systems is the consistent interpretation of law by judges. It is already a tradition established in European judicial systems to respect the interpretations of the law given by the highest court of the state, regardless of whether the given interpretations, according to the law, are binding or not. Recently, this principle seems to be also extended to the courts of appeal⁹. Respect for the interpretation of the law provided by the superior court is a sign of respect for these courts, but also a tool that ensures confidence in the judiciary. On the other hand, the solution given by a judge that runs counter to the superior court practice will inevitably be quashed. This, however, does not mean that a judge from a lower court cannot find that well-established judicial practice, including the practice of the higher court, is outweighed by social realities, or that the legal situation s/he is examining is different. However, in this case, the judge should be particularly convincing and his/her approach can not vary from one case to another.

Observance of the interpretation of the law given by the highest court can only take place, if the very practice of that court is uniform and its solutions are clear for judges and convincing. On the other hand, it is natural for judicial practice to evolve¹⁰, and when the highest court changes its practice, it should clearly highlight this fact. These requirements have become even more demanding in the Internet age, when the supreme court rulings are published and everyone can have access to them from anywhere in the world. Namely

⁹ See ECtHR, judgement in case of *Tudor Tudor v. Romania*, 24 March 2009, para 26-32.

¹⁰ See ECtHR, judgement in case of *Atanasovski v. "The Former Yugoslav Republic of Macedonia"*, 14 January 2010, para. 38.

for these reasons, the European Court of Human Rights (ECtHR) noted that there is no fair trial when the supreme court develops a contradictory practice or does not contribute to the consistency of the existing contradictory practice¹¹.

The risk of non-uniform judgements is a feature inherent for any legal system with multiple levels of jurisdiction or with courts having specific jurisdiction. Such discrepancies may also occur within the same court, especially in systems where judicial practice has not been well codified before. Per se, these divergences can be tolerated at a certain stage, as achieving the uniformity of court practice is a long process. When examining such situations, the ECtHR shall verify if:

- a) the divergences are "profound and persistent";
- b) the national legislation provides for mechanisms to address inconsistencies; and
- c) the mechanism is applied and, if applied, what are the effects¹².

As mentioned above, the uniformity of judicial practice determines numerous benefits, both for the litigants and for the judiciary. However, the uniformization process must remain flexible enough to allow for the development of the case law. The ECtHR does not accept "deep and persistent" divergences in the national judiciary that last too long¹³.

The legislation of the Republic of Moldova provides for many levers to ensure the uniformity of judicial practice. Among them may be listed the following:

- a) advisory opinions of the SCJ in civil cases (art. 122 of the CCP);
- b) the mandatory nature of the ECtHR case law for criminal cases (art. 7 para. 8 and art. 427 para. 1 p. 16 of the Code of Criminal Procedure (CCrP));
- c) appeal in the interest of the law in criminal cases (art. 7 para.9 and art. 465¹ of the CCrP);
- d) cassation of criminal judgements that are contrary to the previous practice of the SCJ (art. 427, para.1, p. 16 of the CCrP);
- e) judgements of the Plenary SCJ; or
- f) disciplinary sanctioning of the judge for non-observance of the uniform judicial practice (art. 4 para. 1 letter b) of Law no. 178/2014 on the disciplinary liability of judges).

It does, however, matter to what extent these levers are used and what is the real impact of the efforts to unify judicial practice.

Compliance with the judicial practice inevitably limits the judges' discretion and, implicitly, their freedom to settle the cases. The Constitutional Court of the Republic of Moldova has stated that, when settling a case, the judge must be independent both from the other judges and from the chairperson of the court or from the other courts¹⁴. However, the Constitutional Court stated in the same judgement that it does not exclude the obligation of the judge of a lower court to comply with a previous judgement of a higher

¹¹ See ECtHR, judgement in case of *Beian v. Romania*, 6 December 2007, para 29-40.

¹² *Mutatis mutandis*, judgement in case of *Albu and others v. Romania*, 10 May 2012, para. 34.

¹³ See ECtHR, judgement in case of *Zivic v. Serbia*, 13 September 2011, para 44-47, where this period lasted for two years.

¹⁴ See judgement of the Constitutional Court 21/2016, para. 103.

court instance with regard to the interpretation of the law applicable to subsequent cases¹⁵. On the other hand, the possibility for the SCJ to issue recommendations or explanations, when these are given outside the cases it examines, involves the risk of being contrary to the independence of judges guaranteed by art. 116 of the Constitution of the Republic of Moldova¹⁶.

¹⁵ *Ibidem*, para. 109.

¹⁶ *Ibidem*, para.112-113.

Legislation and court practice concerning the revision of the court judgements in civil cases

When the courts give a final solution on a matter, their finding can no longer be called into question. This is the essence of the principle of *res iudicata*¹⁷, which is anyway not absolute and admits derogations. However, a derogation from this principle is allowed only when it is necessary due to essential and convincing circumstances¹⁸.

The CCP provides for a single remedy to reopen final court proceedings - revision. Article 449 of the CCP provides for exhaustive list of the grounds for revision¹⁹, which are seven in total. The revision should not be considered a disguised appeal. The mere existence of two different opinions on the same issue should not serve as a ground for reopening the proceedings²⁰. Article 450 of the CCP establishes time limits within which a revision request may be filed, generally 3 months from the occurrence of the circumstance justifying the revision. In *Popov no. 2 v. Moldova* judgement the ECtHR found that the institution of revision from the Republic of Moldova, in principle, serves the purpose of correcting judicial errors and miscarriages of justice, which are legitimate purposes. However, it matters whether this procedure is being applied correctly²¹.

Until 31 December 2017, the ECtHR found 20 times that, by allowing revision requests, the Republic of Moldova unjustifiably quashed the final court judgements in civil cases. Most often, the ECtHR criticized that the national courts quashed final rulings on the basis of alleged new evidence even though these circumstances were known or could have been known by the revision applicant before²². In many Moldovan cases, the ECtHR found that the national courts had ignored the deadline of 3 months for filing the revision request and did not justify in any way the admission of the requests filed outside that term²³.

Despite numerous convictions at the ECtHR, clear legislation and clear explanation in the Plenary SCJ judgement 2/2013 that admission of revision requests in civil cases can

¹⁷ See ECtHR judgement in the case of *Brumărescu v. Romania*, [Grand Chamber], 28 October 1999, para. 61.

¹⁸ See the ECtHR judgement in the case of *Roșca v. Moldova*, 22 March 2005, para. 24.

¹⁹ Judgement of the SCJ Plenary no. 2/2013, para. 12.

²⁰ See the ECtHR judgement in the case of *Roșca v. Moldova*, cited above, para. 25.

²¹ See the ECtHR judgement in the case of *Popov no. 2 v. Moldova*, 6 December 2005, para. 46.

²² See for instance, judgements in the cases of *Popov (no. 2)*, *Tudor Auto SRL and Triplu-Tudor SRL*, *Oferta Plus*, *Eugenia and Doina Duca*, *Dragostea Copiilor – Petrovschi – Nagornii*, or *Agurdino SRL*.

²³ See for instance, judgements in the cases of *Popov (no. 2)*, *Tudor Auto SRL and Triplu-Tudor SRL*, *Oferta Plus*, *Eugenia and Doina Duca*, *Dragostea Copiilor – Petrovschi – Nagornii*, *Lipcan*, *Jomiru and Crețu*, *Sfinx-Impex*, or *Banca Internațională de Investiții și Dezvoltare MB S.A.*

only take place in exceptional circumstances, the number of revision requests received by the SCJ has not decreased significantly. After 2006 the SCJ continued to receive 500-700 revision requests each year. Over the last 11 years, the number of revision requests received by the SCJ has not varied considerably, even if starting with 2014 there has been a gradual decrease in the number of submitted revision requests in civil cases (by 28%).

The following table presents the statistical data on the revision requests examined by the SCJ in the last 11 years. Most of the revision requests were rejected. However, the rate of revision requests admitted since 2011 has not decreased. It varied between 2.7% in 2011 and 5.4% in 2015. The rate of admitted revision requests in 2017 was even higher than in 2011. The statistical data on admitted revision requests can not in itself confirm that the judicial practice of admitting revision requests is perfect or faulty. They can only stimulate curiosity and are presented to create a general impression regarding the incidence of the requests and their admission. The motivation of judges when they accept a revision request is much more important.

Table: Information on revision requests in civil cases examined by the SCJ in 2006, 2011-2017²⁴

| Year | Registered revision requests | Examined revision requests | Admitted revision requests | % of admitted out of those examined |
|------|------------------------------|----------------------------|----------------------------|-------------------------------------|
| 2006 | 670 | | 80 | 11.9% |
| 2011 | 476 | | 13 | 2.7% |
| 2012 | 528 | 531 | 22 | 3.5% |
| 2013 | 586 | 584 | 23 | 3.9% |
| 2014 | 676 | 704 | 25 | 3.5% |
| 2015 | 623 | 631 | 34 | 5.4% |
| 2016 | 570 | 529 | 28 | 5.3% |
| 2017 | 483 | 478 | 17 | 3.6% |

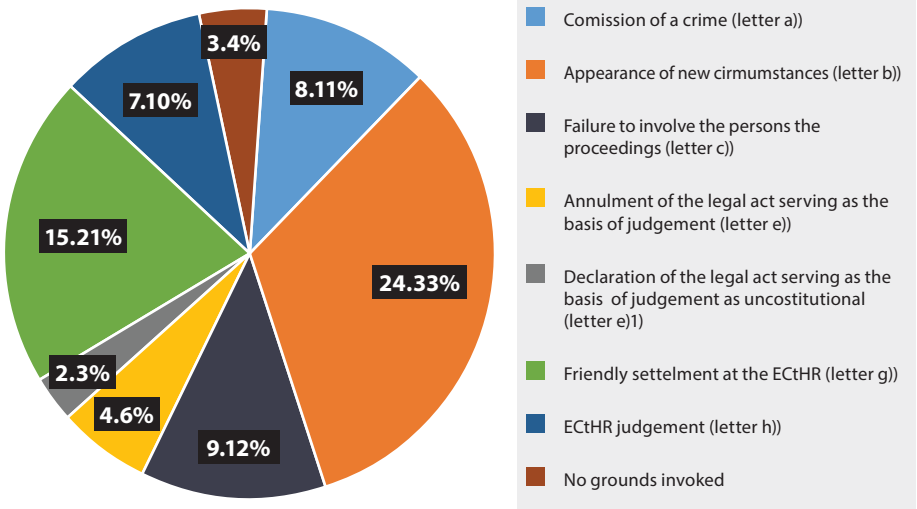
In this research there 70 judgements of the SCJ issued between January 2015 and December 2017 and allowing revision requests in civil cases were examined. The SCJ invoked all the grounds stipulated by art. 449 of the CCP when admitting the revisions. Most frequently invoked grounds are the appearance of new circumstances (article 449 letter (b)), friendly settlement of pending applications at the ECtHR (article 449 letter (g)) and the failure to involve in the proceedings the persons whose rights were affected by the judgement (article 449 letter (c)). In three cases, the SCJ did not indicate in its judgements any grounds mentioned by art. 449 of the CCP²⁵. The quantitative data concerning the grounds invoked by the SCJ when admitting the revision requests are presented in the following chart²⁶.

²⁴ The data were taken from the SCJ activity reports for the reference years.

²⁵ See the rulings no. 2rh-124/15, 3rh-22/16 and 3rh-46/16.

²⁶ There are a total of 72, because in 2 judgements the SCJ invoked as grounds for admitting the revision request two grounds from art. 449 of the CCP.

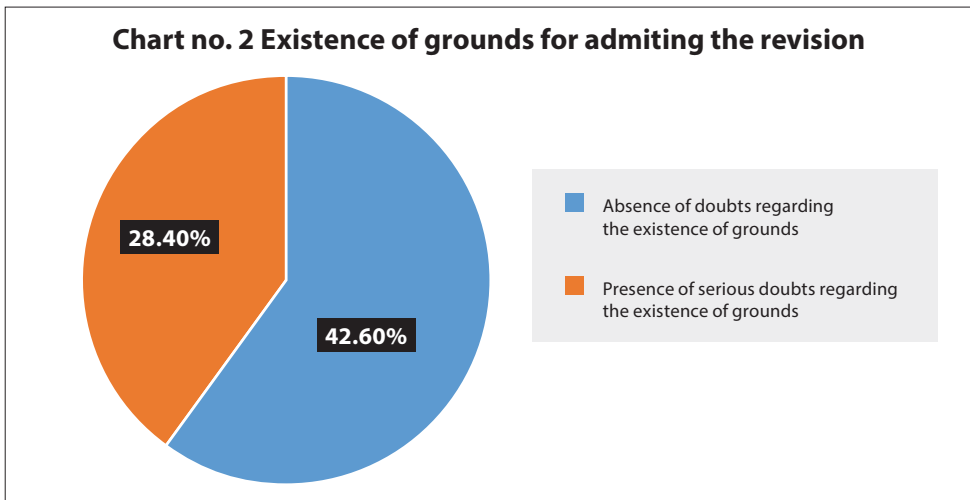
Chart no. 1 Grounds invoked by the SCJ for admission of revision request in 2015-2017



Existence of the ground for admitting the revision request

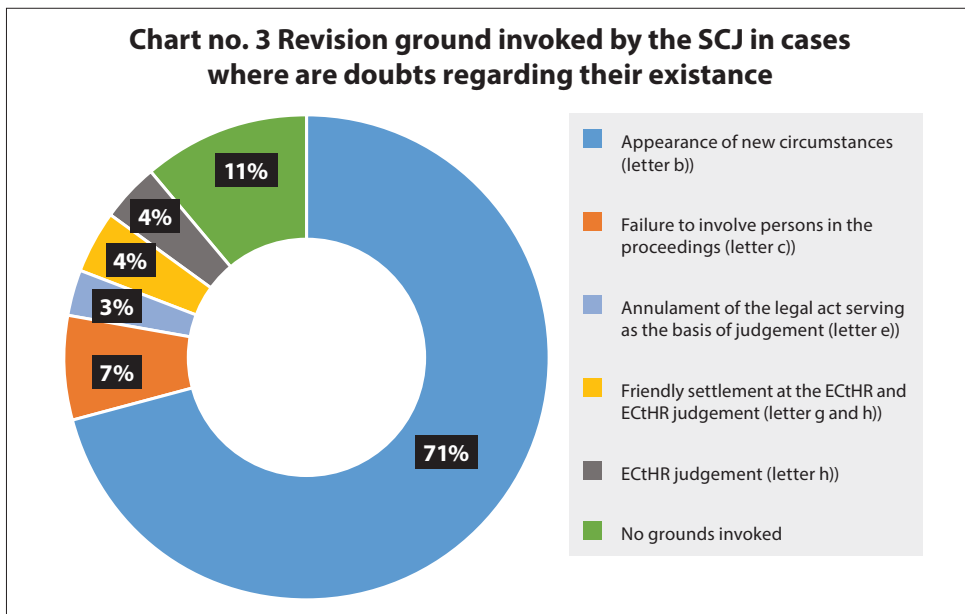
The grounds for revision of a final judgement are exhaustively listed in Art. 449 of the CCP. While examining the revision, the court is bound by the reasons invoked by the revision applicants. Therefore, it can not admit a revision for reasons other than those provided by art. 449 of the CCP or for reasons other than those invoked in the revision. The court may, however, consider that the invoked reasons fall under another ground provided by art. 449 of the CCP than the one invoked by the revision applicant.

After analysing the 70 judgements of the SCJ allowing the revision requests, we have serious doubts about the existence of the grounds for revision in 28 out of 70 judgements (40%).



The next chart shows the grounds invoked by the SCJ in those 28 judgements, concerning which the authors of the analysis have serious doubts about the existence of the grounds for admitting the revision requests. In 71% of the cases (20), the SCJ invoked the appearance of new circumstances, which were not and could not have been known by the revision applicant before.

Although the number of unjustifiably allowed revisions requests (28) is low (1.7%) comparing to the total number of examined requests (1,638), it is in fact an important number. We are speaking here about cases where the final judgements were overturned, i.e. where the SCJ revises its own opinion without justification. This undermines the very foundation of justice – the final nature of the justice that has been done. Moreover, such practices encourage the submission of manifestly ill-founded revision requests, increasing the workload of judges.



a. Cases where the appearance of new circumstances was invoked (art. 449 letter (b) of the CCP)

In order to admit a revision under art. 449 letter b) of the CCP (appearance of new circumstances), the following conditions should be met cumulatively:

- circumstances (facts) unknown to the revision applicant on the day when the final court judgement was adopted have become known to him/her;
- circumstances are essential to the examination of the case;
- the revision applicant proves that s/he has taken all measures to obtain them during the trial.

Overall, out of those 70 judgements admitting revision requests, the SCJ has invoked the appearance of new circumstances (art. 449 letter b) of the CCP in 23 judgements. The authors of the analysis have doubts concerning the grounds for revision in 20 of these judgements (87%).

Out of those 20 judgements, where there are doubts about the compliance with the grounds provided by art. 449 letter b) of the CCP, 12²⁷ essentially refer to the mistakes committed by the courts. These concern incorrect calculation of the term of appeal or cassation, failure to examine in the cassation procedure the crucial documents for the case, or the examination of a case by a judge who could not take part in the case proceedings. The mistakes of the courts are not grounds for revision, because the conditions under letters a) or c) mentioned above are not met. It appears that the SCJ was aware that it was not acting perfectly legal in these cases, but it accepted the revision requests in order to remove any doubts as to the fairness of the

²⁷ See cases no. 2rhc-20/15, 2rh-212/15, 2rhc-94/15, 3rh-40/15, 2rh-256/15, 2rh-7/16, 2rhc-55/16, 3rh-98/16, 2rh-14/17, 2rhc-69/17, 2rh-218/17, 2rhc-114/17.

procedure. In case no. 3rh-40/15 the SCJ has expressly mentioned that. This is also suggested by the fact that, after the revisions were accepted and appeals were re-examined, the SCJ gave identical solutions to those from the judgements quashed by revision.

In cases no. 2rhc-52/15 and 2rhc-103/15, the SCJ invoked as a ground for revision the fact that the judgements adopted in the appeal were contrary to the uniform judicial practice. Both cases concerned the claims regarding cars bought in leasing from a company that became insolvent, and the assets of the company were taken over by a bank. The revision applicants have requested in the court the recognition of their ownership of cars, claiming that they have fully honoured their obligations under the leasing contracts, but the SCJ has dismissed their claims. They requested the revision of these judgements on the grounds that, in other cases, the SCJ ruled in favour of the persons who concluded leasing contracts. The SCJ found that the reviewed judgements contradict the "existing practice and the principle of uniform judicial practice. The SCJ is required by law to have a consistent case law and cannot have an inconsistent case law in similar cases. The panel reiterates the case of *Beian v. Romania*, examined by the ECtHR, according to which inconsistent case law on analogous cases is in itself a violation of the principle of public safety and a violation of art. 6 of the ECHR".

The revisions in question are disguised appeals. The inconsistency of judicial practice is invoked as the ground for revision, even if the law does not provide for such a ground. On the other hand, the SCJ was not persuasive in its judgements that there is a consolidated judicial practice that had been violated by the reviewed judgements. Only short references to examples of judicial practice to be followed were made in court judgements on the admission of revision requests. Moreover, in the case no. 2rhc-103/15, the SCJ did not refer to any judicial case with opposing solutions, while several months before it rejected a revision request filed by the revision applicant. The judgement in case of *Beian* does not require States to reopen court proceedings on the grounds of inconsistency in judicial practice. It only states the obligation to undertake continuous measures to ensure uniform judicial practice. In any case, the change of judicial practice or the consolidation of such a practice cannot have retroactive effect, because it leads to an even greater legal uncertainty.

In cases no. 3r-56/15 and 2rh-27/16, the SCJ admitted the revision requests on the grounds that, after the adoption of judgements the revision of which was requested, there were adopted final judgements with opposite solutions. Case no. 3rh-56/15 referred to the payment of the child care allowance and the SCJ found that this should be paid by the National Office of Social Insurance (NOSI) and dismissed the action against the Ministry of Internal Affairs (MIA). Subsequently, the SCJ dismissed the claim against NOSI, finding that the allowance should be paid by the MIA. Case no. 2rh-27/16 refers to a claim of over MDL 500,000, representing the account for the repair works of a property belonging to the respondent. In the first procedure it was found that the execution of these works was confirmed by an act signed by an authorized person. In the second procedure, initiated after the end of the first procedure, it was found that the act was signed by an unauthorized person. Both in case no. 3rh-56/15 as well as in case 2rh-27/16 the matter in question represents the denial of *res judicata* in the second set of proceedings. This is unacceptable, a fact already highlighted by the ECtHR in the case of *Macovei and others v. Moldova*. Moreover, this can not be the ground for revision.

In the case no. 2rhc-12/15, the SCJ invoked for admission of the revision two letters, from the National Anti-corruption Centre and the Prosecutor General's Office, confirming the initiation of a criminal prosecution against a party to the trial. P. 13 para. 2 of the SCJ Plenary judgement no. 2/2013 expressly mentions that the submission to the court of revision of the documents concerning the initiation of a criminal prosecution can not be accepted as evidence for finding the circumstances stipulated by art. 449 letter a) of the CCP. *A fortiori*, the submission of such documents can not be interpreted as a circumstance which may serve as a ground for revision under art. 449 letter b) of the CCP. Otherwise, art. 449 letter a) of the CCP will become inapplicable, as civil judgements will be reviewed on the basis of letters of the prosecution body rather than on conviction. The letter cannot undoubtedly confirm a legal fact and can be obtained at any time by the parties in the trial. In fact, it is a consistent judicial practice not to review court judgements on the basis of the letters or orders of the criminal prosecution bodies. This fact was expressly mentioned by the SCJ when admitting the revision request in case no. 2rh-137/16.

Case no. 2rhc-88/15 refers to claims of over MDL 87,000,000. The revision applicant, who was forced to pay this sum, invoked as a ground for revision several judgements that had been issued well before 1 April 2015, the date of the judgement for which revision was requested. He claims he did not know about them, although in all these cases the company "Liga-2" was involved and he was its CEO. The revision applicant could not have been unaware of these court judgements and could bring them to the court before the cassation. The SCJ in general does not address these issues in the judgement, although art. 449 letter b) expressly states that the revision applicant must prove that he could not obtain the evidence earlier, which implicitly establishes the obligation for the court to verify it.

Case no. 2rh-159/16 refers to a claim of about MDL 2,400,000, which was admitted. The revision applicant filed a revision request, claiming that the plaintiff in the main action subsequently requested in a criminal proceeding the same amount. The SCJ found that "we are witnessing a fundamental error that affects the very essence of the revision applicant's right to a fair trial as concerns the legality and well-foundedness of the solution given by the courts. The case raises issues about the unjust enrichment of the respondent-plaintiff and the inadmissible violation of the rights of the revision applicant-defendant to the property and the fair trial." The mere fact of claiming a sum in the court still does not mean that the claim will be admitted. Judges must ensure that double collection is avoided. On the other hand, the original judgement was not enforced. Therefore, one can not speak of a double enforcement. Moreover, p. 14 of the Plenary SCJ judgement 2/2013 clearly states that facts taking place after the final decision, in the given case the statements made in the court, can not be considered new circumstances and, respectively, are not grounds for revision.

The last case in this category is no. 2rh-19/17. The ground for revision in this case is that the post office mistakenly applied the stamp of receipt of the appeal with a later date, which led to the declaration of appeal as time barred. This aspect could have been known by the party before the appeal was examined. Such circumstances can hardly be regarded as grounds for revision pursuant to art. 449 letter b) of the CCP.

b. Cases where the failure of the affected persons to be involved in the proceedings was invoked

Art. 449 letter c) allows the revision of the final judgement when the persons whose rights have been affected by the judgement had not involved the proceedings. In the case no. 3rh-69/15, the judgement of the SCJ, based on which a building in the centre of Chişinău worth USD 500,000 should have been demolished, was quashed by revision. The SCJ invoked that the new owner of the building was not involved in the proceedings. As a matter of curiosity, the quashed judgement of the SCJ was adopted in 2009, and the property right of the new owner was recognized only in 2011. Consequently, he even could not be brought to the trial in 2009 or earlier. On the other hand, even if the revision request was submitted in 2015, the revision applicant was aware of the judgement that violated his interests as early as in 2013. Moreover, in this case, on 24 June 2015, the SCJ rejected a revision request on similar grounds, stating that its admission would violate the legal certainty. The admitted revision request was submitted on 25 June 2015, on the next day after the rejection of the first revision request. Two out of three judges, who, on 24 June 2015, rejected the first revision request, subsequently were party of the panel that admitted the second revision request.

The second case in this category, no. 2rhc-107/15, refers to the forced transfer into the bank possession of a pledged property (an industrial construction of 14,921.2 m², equipment facilities, bricks and sand). The action of the bank was admitted up to the court of cassation. The lessee of the goods has requested the revision of the court judgement on the ground that he was not involved in the proceedings. The SCJ has admitted the request for revision. The lessee concluded the lease contract concerning the property in question in June 2010, after the bank filed a claim to the court and come into possession of the property. Under art. 880 of the Civil Code, the lessee could at any time claim damage compensation from the lessor, if he was not informed of the dispute. In such circumstances, the lessee's right has not been violated by failure to join the proceedings as a party. In this case, there is also serious doubt as regards the compliance with the deadline for the submission of the revision request. The revision in this case is a clear attempt to reopen court proceedings.

c. Other cases where there are doubts about the existence of the ground for the revision

In case no. 2rh-1/15, the SCJ admitted the revision of a case of deprivation of parental rights on the grounds that a court judgement, which found that the revision applicant was not the father of the child, had been adopted. The SCJ invoked as ground for admitting the request for revision art. 449 letter g) (friendly settlement at the ECtHR) and h) (the ECtHR judgement). In this case there were no appearances of any procedure at the ECtHR or at least it was not clearly stated in the judgement. Therefore, the invocation of these grounds is totally inappropriate.

In case no. 3rh-68/16, pursuant to art. 449 letter h) (the ECtHR judgement), the SCJ has admitted the request of a former administrator of a company that won a case at the ECtHR, on the grounds of unjustified withdrawal of a transport license. The company had been liquidated until the revision request was filed. The revision request should not have been admitted. According to art. 449 letter h) of the CCP, the existence of a judgement of the

ECtHR is not in itself sufficient to admit the revision. The revision must be allowed only if it can remedy the applicant, at least partially. Moreover, the license that was under discussion has already expired and the company was liquidated in 2011. Therefore, the revision could not remedy in any way the applicant, who did not even requested compensation.

Case no. 2rh-65/15 refers to a payment order against the revision applicant of about EUR 13,000. The revision concerned the ruling of the SCJ rejecting the cassation (of January 2014) against the ruling of the appeal court on the return of the appeal. Art. 449 letter e) of the CCP was invoked, on the grounds that the previous ruling that dismissed the appeal for non-payment of the court fee was quashed by the SCJ in December 2014. The December 2014 judgement seems to be arbitrary. The SCJ makes no reference to its judgement as of January 2014, but merely mentions that the appellant should have been exempted from paying the court fee. In the first appeal (examined in January 2014), the need for exemption even was not invoked. The second appeal was filed on the same day. In its judgement as of January 2014, the SCJ noted that the revision applicant missed the deadline for challenging the decision returning the appeal (implicitly, the deadline for challenging the decision on dismissal of the appeal was omitted).

d. Cases where no ground for admission of the revision was invoked

In three cases, even if the revision requests were admitted, the SCJ did not invoke any grounds provided by art. 449 of the CCP. Such an attitude is contrary to the SCJ Plenary judgement no. 2/2013, which expressly states that the grounds provided by art. 449 of the CCP are exhaustive and the decision to admit the revision request must be reasoned convincingly.

One of those three cases is case no. 2rh-124/15, which concerns the collection of 23,100 MDL from the CEO of a company. The SCJ invoked in the text of the judgement that he was not involved in the trial, even though he was party to the trial from the very beginning. Subsequently, the SCJ mentioned that he was not duly summoned, which, even if it is not a ground for revision, contradicts the logic of the first argument. If the person was not involved in the trial, the judge was under no obligation to summon him.

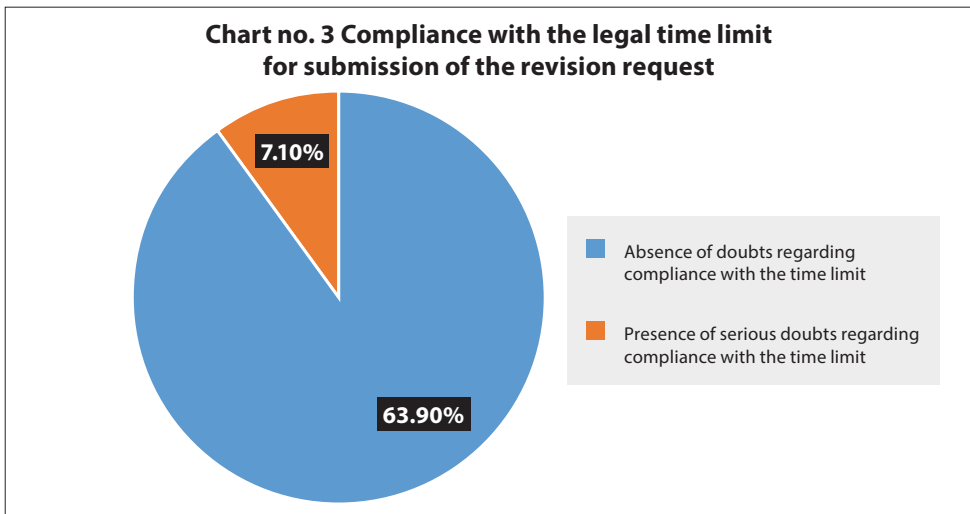
Another case in this category is no. 3rh-22/16, in which the SCJ rejected a cassation of a person seeing recalculation of the old-age pension. The revision applicant challenged the validity of the SCJ judgement and did not invoke new facts. The SCJ admitted the revision without invoking any concrete circumstances which, in its opinion, justified the quashing of the SCJ judgement. The SCJ only stated that "the re-examination of the case is justified, there are essential and imperative circumstances concerning the violation of the fundamental rights of the revision applicant guaranteed by article 6 § 1 of the ECHR and article 1 of Protocol no. 1, a violation that would constitute a fundamental error committed by the court in awarding of the judgement".

The third case in this category, no. 3rh-46/16, refers to the collection from a company in favour of the state of over MDL 14,000,000. The SCJ quashed by revision the judgement adopted against the company by invoking a several letters of the Ministry of Economy and Ministry of Finance, which assessed that the solution in this case is contrary to the law, as well as the differential treatment towards the company in relation to other companies, concerning which the law was interpreted otherwise. Neither change of administrative practice nor differentiated treatment can serve as grounds for revision.

Compliance with the legal time limit for submission of the revision request

The time limit for submission of the revision request is stipulated by art. 450 of the CCP and is a legal and imperative one. Taking into account the legal and imperative nature of the limitation for submitting the revision request, the court verifies its compliance *ex officio*, even if the parties did not invoke its omission. If the revision request is filed out of the deadline, it should be dismissed as inadmissible²⁸, even if there is a legal basis justifying the admission of the revision request. The revision applicant may, however, request for extension of the time-limit, if he has been unable to submit the revision in due time for objective reasons.

Following the analysis of those 70 judgements that allowed revision requests, we found that, as a rule, the SCJ did not analyse thoroughly the compliance with the legal deadline for the submission of the revision request. This can be explained by the fact that, in most cases, there was no obvious doubt regarding the omission of this term. However, in seven judgements²⁹, the SCJ did not rule on the observance of the term, even if there were serious doubts about its omission. In six out of seven judgements³⁰, there was doubt not only as regards the compliance with the deadline, but also in respect of the lack of legal grounds for the admitting the revision.



²⁸ Judgement of the SCJ Plenary 2/2013, para. 22 and 24.

²⁹ See judgements in cases no. 2rh-1/15, 3rh-69/15, 2rh-103/15, 2rh-107/15, 2rh-111/16, 3rh-46/16 and 2rh-69/17.

³⁰ Except for the judgement in case no. 2rh-111/16.

In case no. 2rh-1/15, the SCJ admitted the revision request for a case of deprivation of parental rights on the grounds that a court judgement, which found that the revision applicant was not the father of the child, had been adopted. The judgement finding that the revision applicant is not the father of the child has become final four and a half months before submission of the revision request. The SCJ admitted the revision request even though the deadline for submission of the revision request is three months.

In case no. 3rh-69/15, the revision in a case concerning a real estate property valued at USD 500,000 was accepted after a similar revision request was dismissed. The revision applicant invoked that he was not involved in the trial. The revision request was filed in June 2015, even if the facts of the case suggest that the revision applicant was aware of the dispute (completed in 2009) back in 2013.

In case no. 2rhc-103/15, the SCJ admitted the revision request of a former Prime Minister on a litigation concerning a car worth EUR 43,000. The revision was admitted after another revision request submitted by the same revision applicant was rejected a few months before. The final judgement, the revision of which was requested, and the rejection of the first revision took place before the appointment of the applicant as Prime minister. The SCJ has invoked the existence of a divergent judicial practice on the matter without referring to any judgement confirming the divergent practice. Under such circumstances, the compliance with the time limit for submission of the revision request could not be adequately calculated. The SCJ has not even considered the issue of compliance with the time limit for submission of the revision request.

In case no. 2rhc-107/15, the revision was admitted on the grounds that the lessee of an industrial complex was not involved in the proceedings. The complex was pledged to a bank and, in January 2010, the bank requested to take over the pledge. The litigation at the court was decided by a final judgement in March 2014. In October 2015, the lessee invoked that he rented the complex in the summer of 2010 and did not know about the litigation until 2015. The specificity of the case is that in the summer of 2010, when the leasing contract was signed, the assets in question were in the possession of the bank (which was subsequently revoked by a court judgement) and the pledge was registered in the land register. The lessee could not fail to notice these aspects. Therefore, it can not be concluded that the deadline of 3 months was respected, because the revision request was submitted 18 months after the final judgement.


In case no. 2rh-111/16, the wife of the defendant in the main proceedings, that concerned the rights to a real estate with a surface area of 244 sq.m. in the mun. Chisinau, submitted a revision request against a SCJ judgement adopted 29 months earlier. She claimed she was not involved in the proceedings, although she was the co-owner of the real estate. It is unimaginable for the wife not to have spoken to her husband about this trial for 2 years of legal proceedings, and for 2 more years afterwards, especially taking into account that it was a valuable building. The SCJ has easily accepted the statement that the wife did not know about the litigation, although she did not justify her statement in any way. Earlier, her husband repeatedly tried to review the court judgement, but unsuccessfully.


In case no. 3rh-46/16, the SCJ cancelled a court judgement whereby a company was obliged to pay to the state over MDL 14,000,000. The SCJ invoked as ground for revision several letters from the Ministry of Economy that suggested that the action against the company was admitted by misinterpretation of the law. The SCJ did not justify the compliance with the deadline for submitting the revision request in any way, even if the request was filed more than 30 months after the judgement for which the revision was requested. Leaving aside the absence or presence of the ground for revision, nothing prevented the revision applicant from obtaining the letters in question earlier.


In case no. 2rhc-69/17, the revision request was filed more than seven months after the appeal was dismissed as time barred. The revision applicant invoked that the SCJ had incorrectly calculated the deadline for filing the appeal, which was filed by post in due time. In support of his position, he presented the postal receipt. Given that the SCJ rulings are published on the SCJ website on the day of their issue, and the revision applicant had the postal receipt from the very beginning, submission of the revision request more than seven months after the date of the judgement raises doubts as to compliance with the deadline of three months for filing the revision request.

The Legal Resources Centre from Moldova is a not-for profit non-governmental organization based in Chişinău, Republic of Moldova. LRCM strives to ensure a qualitative, prompt and transparent delivery of justice and effective observance of civil and political rights in Moldova. In achieving these aims, LRCM combines policy research and advocacy in an independent and non-partisan manner.

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