LCRM – Legal Resources Centre from Moldova

Survey concerning the perception of judges, prosecutors and lawyers on justice reform and fight against corruption – Summary

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The survey concerning the perception of judges, prosecutors and lawyers on justice reform and fight against corruption was conducted between October and December 2020. The document sough to find out the opinion of judges, prosecutors, and lawyers about the functioning of justice, the initiatives to reform it, and the fight against corruption. The survey was commissioned from the Center of Sociological Investigations and Marketing CBS-RESEARCH by the Legal Resources Centre from Moldova (LRCM).

Judges, prosecutors, and lawyers were asked about legislative initiatives aimed at improving justice administration; the independence of judges and prosecutors; the quality of justice; the self-governance of judges, prosecutors, and lawyers; the reform of the prosecution system; and the phenomenon of corruption in the country and in the justice sector. The questions also concerned the gender dimension in the judiciary, the prosecution system, and the bar.

The questionnaires were meant to identify areas of intervention at the level of legislation, public policy, and law enforcement practices. Answers to the main questions were compared with those offered in a similar survey conducted in 2015[1] and with the results of a survey conducted exclusively among lawyers in 2018[2].

During the 2020 survey, 562 respondents filled the questionnaires, which represents 19% of all judges, prosecutors, and lawyers effectively working in the Republic of Moldova[3]. The questionnaires were filled out by 149 (37%) judges, 212 (39%) prosecutors, and 201 (10%) lawyers.

The survey was conducted through self-administrated questionnaires, ensuring the confidentiality of the responses.

Block 1. The Organization of the Judiciary

67% of respondent judges, 54% of respondent prosecutors, and 46% of respondent lawyers consider that the *justice reform launched in 2011* had a positive impact on the judiciary. In 2015, this opinion was shared by 75% of respondent judges, 50% of respondent prosecutors, and 42% of

respondent lawyers. This confirms that the perception of the impact of the justice reform has not changed significantly over the past years. Approximately two thirds of judges, more than half of prosecutors, and almost half of lawyers consider that the reforms launched in 2011 have had a positive impact on the judiciary.

84% of judges, 64% of prosecutors, and 70% of lawyers support the *specialization of judges* introduced by the Superior Council of Magistracy (SCM) between 2016 and 2020. If the specialization of judges would be implemented in all courts, 46% of judges, 38% of prosecutors, and 38% of lawyers would support the establishment of specialized panels instead of specialized courts. Asked about the recently announced initiative to set up anticorruption courts, 75% of judges, 65% of prosecutors, and 61% of lawyers don't support this initiative.

Block 2. Legal Amendments to Improve the Administration of Justice

89% of judges, 62% of prosecutors, and only 32% of lawyers agree that, in the Republic of Moldova, *law is applied equally to all litigants, regardless of their social or financial status or hold office*.

Asked whether in the present, *the quality of justice administration is better than five years ago*, 83% of judges, 59% of prosecutors, and only 35% of lawyers answered affirmatively. In 2015, 82% of judges, 46% of prosecutors, and 37% of lawyers were of the same opinion. These answers confirm that legal professionals' perceptions on these subjects have not changed significantly and lawyers are much more pessimistic about the improvement of the quality of justice administration.

Asked whether *the current remuneration for judges is sufficient to ensure their independence and impartiality*, 40% of judges, 52% of prosecutors, and 58% of lawyers answered affirmatively. Asked whether the *current remuneration for prosecutors is sufficient to ensure their independence and impartialit*y, 48% of judges, 40% of prosecutors, and 60% of lawyers answered affirmatively.

In 2012, judges were excluded from the *obligation to provide mandatory reasoning in their judgments in civil cases*. Asked whether they agree with this measure, more than 86% of judges and more than 51% of lawyers answered affirmatively. As for the *mandatory judicial mediation in civil cases*—introduced a few years later—more than 62% of judges and more than 63% of lawyers disagreed that it had improved the efficiency of the examination of civil cases.

On 1 April 2019, the *Administrative Code* came into force. 55% of judges consider that this legislative act has lent more predictability to the judicial practice in contentious administrative court. Only 37% of lawyers share the same opinion. 62% of judges and 42% of lawyers consider that this law ensures a better observance of human rights. 59% of judges and only 37% of lawyers consider that the Administrative Code ensures a faster examination of cases. 33% of judges consider that the appeal and recourse procedures are regulated vaguely. This opinion is also shared by 57% of lawyers. These data confirm that judges and lawyers have divided opinions on the Administrative Code.

In 2019, it was proposed to *decrease the number of judges at the Supreme Court of Justice (SCJ) and to transform it into a genuine court of cassation*. 30% of judges, 49% of prosecutors, and 41% of lawyers support it. 46% of judges and only 18% of prosecutors and 28% of lawyers do not support this reform. In 2015, 11% of judges, 31% of prosecutors, and 55% of lawyers supported

this statement. The number of judges who support the reform of the SCJ has tripled from 2015, and that of prosecutors with the same views has increased by one third. Still, one in four judges and one in three prosecutors remain neutral about this initiative. These data confirm that, should this initiative be promoted, it will not meet significant resistance from judges.

Asked whether they agree that the *SCJ's practice is uniform*, 32% of judges, 31% of prosecutors, and 23% of lawyers answered affirmatively. 46% of judges, 40% of prosecutors, and 58% of lawyers consider that the SCJ's practice is not uniform. In 2015, 62% of judges, 47% of prosecutors, and 35% of lawyers agreed that the SCJ's practice was uniform. These data confirm that the number of specialists who consider that the SCJ's practice is uniform has halved over the past five years. This could be indicative that the consistency of the SCJ's practice has decreased.

The survey contained questions about *random assignment of cases in courts and prosecution offices*. More than 86% of judges, 71% of prosecutors, and almost 60% of lawyers consider that the assignment of cases in courts is randomized and free from manipulation. Asked about the *random assignment of cases at prosecution offices*, 61% of prosecutors agreed that it was performed impartially.

In 2019, it was proposed to introduce the *external evaluation of judges' and prosecutors' professionalism and integrity by an independent commission*. Only 21% of judges and 25% of prosecutors support this initiative. 54% of judges and prosecutors do not support it. Instead, 64% of lawyers support the external evaluation, and only 18% do not support it. These figures confirm that only a quarter from each of the prosecutors and the judges group support the external evaluation. Still, one quarter of judges and one fifth of prosecutors are neutral about this reform.

Block 3. The Independence and Quality of Justice

Asked whether they *agree that judges are independent in 2020*, 83% of judges and only 22% of lawyers answered affirmatively. This confirms that judges and lawyers have considerably divergent opinions about the independence of judges. Asked whether they are independent in 2020, 60% of prosecutors answered affirmatively, and 39%, negatively.

Asked whether they agree that *judges take decisions without outside influences*, 83% of judges and 61% of prosecutors answered affirmatively. Only 25% of lawyers share the same opinion. Asked the same question about prosecutors, only 49% of judges and 24% of lawyers answered affirmatively. Instead, the share of prosecutors who answered affirmatively was 75%. These figures suggest lawyers' clear distrust that judges and prosecutors are genuinely independent and judges' moderate confidence that prosecutors are independent.

The respondents who disagree that judges' *decisions are fair and free from outside influences* consider that judges' decisions are most often influenced by politicians and least often, by police officers. 48% of judges stated that they were influenced by prosecutors. This opinion was also shared by 78% of lawyers. More than 60% of prosecutors and lawyers consider that judges are also influenced by other judges and by the SCM.

Asked whether they are convinced that *judges would adopt a legal judgment if they or a relative of theirs got in court*, 85% of judges, 72% of prosecutors, and only 46% of lawyers answered affirmatively. Asked whether they are convinced that *prosecutors would take a legal decision*

about them or their relatives, 79% of prosecutors and only 60% of judges and 33% of lawyers answered affirmatively. These figures confirm that a significant share of prosecutors (28%) is not convinced of the fairness of court decisions and many judges (40%) are not convinced of the fairness of prosecutors' decisions. More than 65% of lawyers are convinced of the fairness of neither judges' nor prosecutors' decisions.

Confidence in justice in 2020 remains at the same low level as back in 2011, when the justice reform started. 80% of judges, 74% of prosecutors, and 59% of lawyers consider that *the low confidence in justice* has connection with the other two branches of power (legislative and executive). 72% of judges, 73% of prosecutors, and 68% of lawyers consider that the low confidence in justice is caused by politicians' attacks on justice. 40% of judges consider that some of their colleagues take decisions from political motives, which undermines confidence in the entire system. This opinion was also shared by 68% of prosecutors and 80% of lawyers.

Asked whether *the European Convention on Human Rights (ECHR) is respected in the justice system of the Republic of Moldova*, only 67% of judges, 70% of prosecutors, and 33% of lawyers answered affirmatively. Judges consider that this is because the law must be changed (65%)—an opinion which is also shared by 68% of prosecutors and by only 45% of lawyers. The opinion proposing another cause—that lawyers do not invoke the Convention's standards convincingly—was shared by 57% of judges, 51% of prosecutors, and only 31% of lawyers. 50% of judges, 68% of prosecutors, and 45% of lawyers considered that this was due to the difficulty of changing established practices. Judges' and prosecutors' insufficient knowledge of the Convention was supported as a cause by more than 40% of judges, more than 50% of prosecutors, and more than 55% of lawyers.

Block 4. The Self-administration of Justice

Asked whether they agree that the *admission to the National Institute of Justice (NIJ)* is meritocratic, only 53% of judges, 44% of prosecutors, and 28% of lawyers answered affirmatively. As for the graduation marks/qualification examination at the NIJ, only 56% of judges, 47% of prosecutors, and 28% of lawyers agreed that they were meritocratic.

That the *initial training offered by the NIJ* meets the real needs of aspiring judges and prosecutors was confirmed by 71% of judges and 68% of prosecutors. The same statement about the *in-service training* offered by the NIJ was confirmed by 75% of judges and 68% of prosecutors.

Answering about the *quality of the work carried out by the Prosecutor General's Office*, 68% of prosecutors stated that the current powers of the Prosecutor General's Office were adequate, 62% stated that the current performance of this entity contributed to the independence of the prosecution system, 58% stated that the work of this entity did not undermine the independence of prosecutors, 53% stated that inquiries from this entity (including about the generalization of practice) were not excessive and were justified, 58% stated that its practice was clear and predictable, and 78% stated that the prosecutor general's instructions were well substantiated and suggested right solutions.

As for the *SCM and the SCP activity*, 60% of judges and, respectively, 76% of prosecutors consider that it is transparent. Only 46% of judges consider that SCM's decisions are well reasoned. 77% of prosecutors consider that SCP's decisions are well reasoned. Only 30% of judges and 47% of prosecutors consider that the SCM and, respectively, the SCP ensure the independence

of judges/prosecutors. In 2015, 71% of judges and 70% of prosecutors considered that the SCM/SCP were transparent, and 68% of judges and only 22% of prosecutors considered that the SCM's/SCP's decisions were well reasoned and clear.

Asked about the *organization of General Assembly of Judges,* 62% of judges confirmed that it was efficient and transparent. More than 76% of prosecutors confirmed the same about the *organization of the General Assembly of Prosecutors*.

Asked about the *appointment procedure for judges*, 68% of judges stated that it was based on merits. Nevertheless, less than half (48%) of judges stated that the promotion of judges was based on merits. 71% of prosecutors stated that the *appointment procedure of prosecutors* was based on merits, and 57%, that the promotion of prosecutors was based on merits.

As for the *disciplinary liability system for judges*, only 31% of judges and 14% of lawyers wrote that it was adequate. Most of judges' dissatisfaction concerned the participation of complainants in disciplinary proceedings, the large number of disciplinary violations, and their excessively broad definitions. Lawyers were dissatisfied with the superficiality of the work of the Judicial Inspection, the complexity of the admissibility phase, and the broad definition of disciplinary violations. Only 26% of prosecutors agreed that the *disciplinary liability system for prosecutors* was appropriate, citing the same reasons as judges.

56% of lawyers agreed that the *Council of Lawyers' Union of Moldova* has been transparent over the past four years. 76% of lawyers agreed that the *Commission for Lawyers' Ethics and Discipline* has passed fair decisions over the past four years. However, only 43% of lawyers wrote the same thing about the *Licensing Commission of the Moldovan Union of Lawyers*. More than 82% of lawyers stated that the *training organized by the Lawyers Union* had great importance for them. The survey also addressed the lawyers' preferred training topics.

Block 5. Gender Equality

55% of all respondents consider that the *gender equality in the justice sector* has improved over the past five years, and 53% consider that the gender equality in the prosecution system has improved as well. 38% of all respondents consider that gender equality remained at the same level both in the justice system and in the prosecution system. 68% of all respondents agree that the system for training, recruiting, and promoting judges ensures gender equality. 69% have the same opinion about the corresponding system for prosecutors, and 65%, about the corresponding system for lawyers.

Block 6. The Perception of Corruption in the Justice Sector

Asked about the *level of corruption in the country*, 12% of judges, 9% of prosecutors, and 6% of lawyers affirmed that the Republic of Moldova was free of corruption. 51% of judges, 43% of prosecutors, and 16% of lawyers considered that there was little corruption in the country. 28% of judges, 43% of prosecutors, and 74% of lawyers answered that Moldova had lots of corruption. 9% of judges and 4% from each of the prosecutors and the lawyers group could not answer this question.

Asked about the *corruption trend in the justice sector from 2011 until the present*, 20% of judges, 8% of prosecutors, and 8% of lawyers answered that there was not such a thing. 49% of judges, 46% of prosecutors, and 27% of lawyers considered that corruption had decreased. 22% of judges, 40% of prosecutors, and 61% of lawyers considered that, during this period, the corruption in the justice sector had not changed or had increased.

With reference to the *presence of corruption in various institutions*, judges have the following opinions: 47% consider that it is present in the police to a very great or great extent; 21%, that it is present in the justice system to a very great or great extent; 46%, that it is present in the prosecution system to a very great or great extent; and 35%, that it is present in the bar. Prosecutors' opinions about this subject are as follows: 61% consider that corruption is present in the police to a very great or great extent; 45% consider that it is present in the justice system to a very great or great extent; 28%, that it is present in the prosecution system to a very great or great extent; and 52%, that it is present in the bar. Lawyers have the following opinions about this subject: 86% consider that corruption is present in the police to a very great or great extent; 69% consider that it is present in the justice system and in the prosecution system to a very great or great extent; and only 31% consider that it is present in the bar to a very great or great extent. These figures confirm that, overall, legal professionals acknowledge the issue of corruption in the justice system but prefer to believe that it is more widely spread in other professions than in the one whose members they are.

Asked *what courts are the most corrupt*, respondents from all three professions indicated appellate courts. Asked about the *most corrupt prosecutor's office*, representatives of the three professions indicated the Anticorruption Prosecutor's Office, followed by the Prosecutor's Office for Combating Organized Crime and Special Cases (PCCOCS). Choosing from among the self-governance bodies of the judiciary, judges and lawyers indicated the SCM, followed by the NIJ. Prosecutors placed firstly in this ranking the NIJ and then the Selection and the Career Board of Prosecutors. Respondents from all three professions consider that, when it comes to the bar, corruption is most widely spread at the Licensing Commission.

Asked about the *causes of corruption*, respondents from all three professions wrote that the main causes included failure to hold the corrupt liable, lack of transparency at management and self-governance bodies, shortcomings in the career advancement system, and small salaries.

[1] LRCM, Survey, *Perception of judges, prosecutors and lawyers on justice reform and fight against corruption*, 2015, available at https://old2.old.crjm.org/wp-content/uploads/2016/01/CRJM_2016_SurveyJustice-ENG-1.pdf.

[2] LRCM, Survey, ***Lawyers' perception regarding the independence, efficiency and accountability of the justice sector in the Republic of Moldova,*** 2018, available at http://old2.old.crjm.org/wp-content/uploads/2019/04/Sondaj-2018_ENG-web.pdf.

[3] According to the official statistics as of the end of 2019, Moldova had 398 judges, 538 prosecutors, and 1,963 lawyers who effectively practiced their profession.

The Survey summary can be also downloaded here.

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