REPORT ON THE APPLICATION OF CRIMINAL SANCTIONS IN THE REPUBLIC OF MOLDOVA

Prepared by:
Idlir Peci

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

REPORT ON THE APPLICATION OF CRIMINAL SANCTIONS IN THE REPUBLIC OF MOLDOVA

Prepared by:
Idlir Peci
on the basis of submissions
and data collected by
Vladimir Grosu, Natalia Rosca, Vasile Cantarji,
Ion Graur, Lilia Ionita, Tinca Bodiu

Council of Europe

This report was developed within the framework of the Programme "Promoting a Human Rights Compliant Criminal Justice System in the Republic of Moldova", funded by the Government of Norway and implemented by the Council of Europe.

This report was published within the framework of the Project "Strengthening the Human Rights Compliant Criminal Justice System in the Republic of Moldova", funded by the Council of Europe Action Plan for the Republic of Moldova 2021–2024.

All other correspondence concerning this document should be addressed to the Human Rights National Implementation Division, Human Rights Policy and Co-operation Department, Directorate of Human Rights, Directorate General Human Rights and Rule of Law.

Cover design and layout:
Foxtrot Ltd
1 Florilor St., Chisinau
Republic of Moldova
www.tipografia.md

Cover photos: © Freepik.com

Council of Europe Publishing
F-67075 Strasbourg Cedex
http://book.coe.int

CONTENTS

FINDINGS AND RECOMMENDATIONS 4

INTRODUCTION 8

METHODOLOGY 10

General Considerations 10

Selection Criteria 11

Selected Offences 13

Checklist 15

Sampling 16

Desk Research 17

Methodological Principles 17

Research Team 18

CHAPTER I: COUNCIL OF EUROPE STANDARDS AND MOLDOVAN LEGAL FRAMEWORK 19

1.1. Council of Europe Standards 19

1.2. Moldovan Legal Framework 22

CHAPTER II: GENERAL OVERVIEW OF THE EXAMINATION OF COURT DECISIONS 26

2.1. Mapping of the Court Decisions Examined 26

2.2. Data on the Offense and the Sentence Imposed 27

2.3. Data on the parties to the proceedings 34

CHAPTER III: CONSISTENCY IN SENTENCING 38

3.1. General Criteria for the Individualization of the Sentence and the *Ultimum Remedium* Character of Custodial Sentences 38

3.2. Proportionality 46

3.3. Mitigating Circumstances 48

3.4. Aggravating Circumstances 52

3.5. Recidivism 57

3.6. Reasoning of the Court 59

CHAPTER IV: RELEASE FROM CRIMINAL LIABILITY 62

4.1. General Considerations 62

CHAPTER V: ALTERNATIVES TO IMPRISONMENT 64

5.1. Conviction with conditional suspension of the punishment execution 64

5.2. Conviction with partial suspension of the execution of imprisonment punishment 71

ANNEX I: CHECKLIST FOR EXAMINING COURT DECISIONS REGARDING SANCTIONING OF LESS SERIOUS, SERIOUS AND PARTICULARLY SERIOUS OFFENCES 74

ANNEX II: SAMPLE DISTRIBUTION 85

FINDINGS AND RECOMMENDATIONS

1. Compatibility of Moldovan Legal Framework with Council of Europe Standards

Findings

- The rationales for sentencing, proportionality, the exceptional character of custodial sentences, the individualization of the sentence, mitigating and aggravating circumstance, recidivism, the reasoning of judgments and the whole range of alternatives to imprisonment are for the most part regulated adequately and in line with the Council of Europe standards (*see further sections 1.2.2 and 1.2.3*).

Recommendations

It is recommended that several issues still need to be addressed through *amendment of legislation* in order to:

- include into the rationales of sentencing provided in Article 61 of the Criminal Code an emphasis on reducing the use of imprisonment and expanding the use of alternative sanctions and measures (*see further section 1.2.2*);
- expressly state in the Criminal Procedure Code that the standard of proof in accepting an aggravating circumstance or rejecting a mitigating one is that of proof beyond reasonable doubt (*see further section 1.2.2, 3.3 and 3.4*);
- foresee in the Criminal Code that, regardless of its gravity, recidivism does not automatically work against the accused and that the period free of criminality prior to the present offence and the age of the culprit are considered by courts (*see further section 1.2.2*);
- expand the applicability of alternatives to imprisonment to all categories of offences and recidivism despite their gravity (*see further section 1.2.3*).

2. General Tendency on the Sentence Imposed (see further section 2.2)

Findings

- The tendency in Moldovan courts is still the application of custodial sentences, regardless of the gravity of the offence committed. The length of the duration of the custodial sentences imposed tends to be long.
- The tools enabling release from criminal liability are rarely used, while the level of use of alternatives to imprisonment is particularly low for less serious and particularly serious offences (*see also Chapter IV*).

Recommendations

- *Awareness raising and training* among judges, prosecutors and lawyers on principles of humanization and liberalization of criminal policies and criminal law is needed.
- *A research* is required to:
  - look into the dynamics of the application of the criteria for release from criminal liability and the need for further awareness raising and capacity building on these issues (*see also Chapter IV*);
  - understand the root causes of the low levels of the use of alternative to imprisonment in general with a special focus on less serious and particularly serious offences.

3. Consistency in Sentencing

Findings

- Courts in Moldova appear to be conscious about the importance of the individualization of the sentence and pay specific attention to the relevant criteria contained in Article 75(1) of the Criminal Code. However, the approach taken towards the application of the criteria for individualization is rather formalistic (*see further section 3.1*).
- Courts in Moldova to a large extent do not pay attention to the exceptional nature of custodial sentences. Even when the *ultimum remedium* character of imprisonment is considered, the approach is formalistic (*see further section 3.1*).
- Courts in Moldova do pay attention to the issue of the proportionality of the sentence. However, the mechanisms provided for in the legislation to ensure the balance between the danger of the deed and the perpetrator, on the one hand, and the liability and punishment deserved, on the other hand do not seem to have the desired effect because of the formalistic approach of the courts (*see further section 3.2*).
- The tendency among courts in Moldova is to accept mitigating circumstances put forward by the defence or prosecution. Mitigating circumstances are also applied *suo moto* by courts. However, milder punishments in cases of mitigating circumstances are not applied as frequently as desired and the standard of proof beyond reasonable doubt in rejecting mitigating circumstances is not followed (*see further section 3.3*).
- The prosecution does not pay the necessary attention in proving the existence of aggravating circumstances beyond reasonable doubt. The courts tend to approve the motions put forward by the prosecution regarding aggravating circumstances. The approval of the aggravating circumstances is not done in line with the standard of proof beyond reasonable doubt as required by the Council of Europe standards. There is a tendency

among courts to go directly to the passing of the sentence without explaining the effects of the aggravating circumstances (*see further section 3.4*).

- The reasoning of decisions is not at satisfactory levels. This tendency is observed in the reasoning of decisions in general, and also in the reasoning of the criteria for individualization, the proportionality, mitigating and aggravating circumstances in particular. The first instance courts outside Chisinau seem to be the most problematic in this regard, while the Appellate Courts pay more attention to adequate reasoning of their decisions (*see sections 3.1., 3.2., 3.3., 3.4., and 3.6*).

Recommendations

- *Awareness raising and training* is needed with regard to:
  - the reasoning of judgments in general and the reasoning of the criteria for individualization, the proportionality, *ultimum remedium* character of imprisonment and mitigating and aggravating circumstances. The Appellate Courts' experience could be shared with other courts in Moldova and followed as good practice (*see further sections 3.1., 3.2., 3.3., 3.4., and 3.6*);
  - the standard of proof beyond reasonable doubt in accepting aggravating circumstances or rejecting mitigating factors. The focus here should be on both judges and prosecutors (*see further sections 3.3. and 3.4*);
  - frequent use of the application of a milder punishment in cases of the existence of mitigating circumstances (*see further section 3.3*).
- *Templates of decisions* could be developed where the main elements of a good or excellent reasoning are elaborated and followed by the courts in their decisions (*see further section 3.6*).
- *Further research* is needed to determine:
  - whether the problems identified with regard to the reasoning of judgments in lower courts are also present at the Supreme Court of Justice (*see further section 3.1., 3.2., 3.6*);
  - the level and manner of application of punishment for recidivism in Moldova (*see further section 3.5*).

4. Alternatives to Imprisonment

Findings

- Courts, defence lawyers and prosecutors frequently use the conviction with conditional suspension of the execution of punishment. The application of this alternative to imprisonment is thus practical and not illusionary. The cancellation of the conviction with conditional suspension of the execution of the punishment appears not to be applied automatically. However, the same cannot be stated for the possibility of the cancellation of the conviction and extinction of the criminal antecedents foreseen in Article 90 (8) of the Criminal Code. This provision appears to be illusionary and almost never applied in practice (*see further section 5.1*).
- The conviction with partial suspension of the execution of the imprisonment punishment is hardly applied by the courts (*see further section 5.2*).

Recommendations

- *Further research* is needed to:
  - look into the courts' approach towards the conditions for the application of the conditional suspension of the execution of the punishment and the relation between the duration of the probation period and the gravity of the offence (*see further section 5.1*);
  - better understand why the possibility of the cancellation of the conviction and extinction of the criminal antecedents is hardly used by Moldovan courts or Probation Service (*see further section 5.1*);
  - understand the root causes of the low level of the application of the conviction with partial suspension of the execution of the imprisonment (*see further section 5.2*).
- *Awareness raising and training* among judges, prosecutors and lawyers is needed with respect to the application of the conviction with partial suspension of the execution of the imprisonment (*see further section 5.2*).

INTRODUCTION

The humanisation of criminal law and criminal justice and the promotion of human rights compliant criminal justice system are among key priorities within the reforms of the justice sector in the Republic of Moldova. The efforts towards a more humane criminal law can be traced back since the adoption of the current Criminal Code in 2002.[1] The efforts went on with numerous interventions and revisions of the Criminal Code, the most important ones being those of 2009, 2013 and 2016–2017.[2] Also, the Justice Sector Reform Strategy 2011–2016 in its intervention area 2.5.1. of the Action Plan foresaw the liberalization of criminal proceedings by using sanctions and non-custodial preventive measures for certain categories of persons and certain offenses. The recently adopted National Action Plan in the field of human rights for the years 2018–2022,[3] envisages under Objective II, activities aiming at the review of the policy with regard to punishment and deprivation of liberty, social reintegration of detained persons and alternative sanctions. The Strategy for ensuring the independence and integrity of the justice sector for the years 2021–2024 foresees under Objective 2.1 the promotion of a human rights compliant criminal justice system.

One of the most classic instruments to achieve humanisation of criminal law is the reduction of the harshness of the sanctions and keeping them proportionate to the aim sought and seriousness of the offence.[4] Various studies and reports suggest that despite the numerous efforts and the frequent changes in the legislation, there is still work to be done with regard to the decriminalisation and humanisation of criminal law.[5] Another pertinent issue seems to be the

1. A. Bolocan-Holban and M. Vidaicu 'Tendencies of the Penal Policy in the Republic of Moldova', available at: https://www.scribd.com/document/363090434/Articol-a-bolocan-M-vidaicu-USM
2. 'Concept Paper to Conduct a Research Study on the Practical Application of Different Types of Criminal Sanctions in the Republic of Moldova', prepared on the basis of contribution by Prof. Dr. Lorena Bachmaier and Ms Veronica Mihailov-Moraru under the CoE Programme "Promoting a Human Rights Compliant Criminal System in the Republic of Moldova", 25 June 2020, para. 11.
3. Adopted by the Parliament of the Republic of Moldova, Decision No. 89 of 24 May 2018.
4. The Council of Europe standards on non-custodial sanctions can be found in Recommendation CM/Rec (2017) 3 of the Committee of Ministers to member States on the European Rules on community sanctions and measures, previously consolidated in the Recommendations CM/Rec (2010) 1 on the Council of Europe Probation Rules, and CM/Rec (2003) 22 on conditional release (parole).
5. Many reports have been produced on this subject. See for example the Council of Europe "Report on assessment of needs with respect to the criminal justice system of the Republic of Moldova in the light of the principles of humanization and restorative justice", of 16 August 2018, available at: https://rm.coe.int/2018-08-16-needs-assessment-report-component-1-final-eng/16808e2c00 (Hereinafter 'Needs Assessment 2018'); M. Vidaicu and G. Ohrband on "Action 2.5.1 of the JSRS 2011–2016. Liberalization of criminal proceedings by using sanctions and non-custodial preventive measures for certain categories of persons and certain offenses", of February 2016, available at https://nettsteder.regjeringen.no/norlam/files/2017/07/Evaluation_Report_of_the_specific_intervention.pdf; op.cit A. Bolocan-Holban and M. Vidaicu.

length of the duration of deprivation of liberty in Moldovan prisons.[6] Moreover, the frequent amendments in the legislation could diminish the legal certainty in terms of foreseeability and consistency of case law.[7] Apart from reducing the harshness of the sanctions, the rehabilitation of the individual and the re-integration in society contribute directly to the humanisation of criminal law and criminal justice system. However, despite a wide range of alternatives to imprisonment and non-custodial sanctions available in the General Part of the Criminal Code of the Republic of Moldova, in practice these alternatives are not exploited adequately, while the main tendency in sanctioning remains imprisonment.[8] A direct consequence of harsh, extensive (imprisonment) sentencing and inadequate use of alternatives to imprisonment and non-custodial sanctions is the overcrowding of penitentiary institutions in the Republic of Moldova[9]. The overcrowding has led the European Court of Human Rights to find numerous violations of the prohibition of inhumane and degrading treatment of inmates in Moldovan prisons.[10]

Against the above background, the Council of Europe is implementing the Programme *"Promoting a human rights compliant criminal justice system in the Republic of Moldova"* funded by the Government of Norway (hereinafter – HRCCJ Programme). The HRCCJ Programme focuses on assisting the national authorities in building up an efficiently functioning criminal justice system, in line with European human rights standards, and based on the principles of humanization, resocialization and restorative justice. It consists of two components. Component 1 focuses on ensuring coherent criminal justice policy based on the principles of humanization, resocialization and restorative justice and capacity enhancement of criminal justice actors. Component 2 is focused on enhancing the prison management, rehabilitation and health care services, the probation system, and alternatives to detention.

The needs assessment conducted under Component 1 recommended to review the harshness of imprisonment-related and overall criminal sanctions, their range, types, application, actual conviction to imprisonment.[11] The present report presents the research conducted as a follow up to this recommendation. The report starts with a detailed description of the methodology of the research. It subsequently provides, in Chapter I, a description of the Council of Europe standards followed by an analysis of the Moldovan legal framework against the background of those standards. Chapter II gives an overall picture of the findings of the research, while the remaining Chapters III-V focus on the analysis of issues related to the consistency of sentencing, release from criminal liability and alternatives to imprisonment respectively.

6. Information Note to the draft Law 163/2017.
7. Op.cit M. Vidaicu and G. Ohrband 2016; Op.cit Needs Assessment 2018.
8. Ibid; Informative Note to the draft law on the amendment and completion of some legislative acts.
9. See the Report on the 2011 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to Moldova, CPT/Inf (2012)3; Report on the 2015 CPT visit to Moldova, CPT/Inf (2016) 16; Report on the 2018 CPT visit to Moldova, CPT/Inf (2018) 49.
10. See among many decisions of the European Court of Human Rights: *Ostrovar v. Moldova, No. 35207/03; Şişanov v. Moldova, No. 11353/06; Becciev v. Moldova, No. 9190/03; Ciorap v. Republic of Moldova (No. 3), No. 32896/07*.
11. Op.cit Needs Assessment, 2018.

METHODOLOGY

General Considerations

The present research was conducted based on a well-defined methodology, which combines desk and empirical research. The methodology follows the recommendations of a concept paper, prepared by the HRCCJ Programme, to conduct a research on the practical application of different types of criminal sanctions in the Republic of Moldova (Concept Paper).[12]

The Concept Paper provides guidance on how to develop a research on the practical implementation of the sanctioning system in the criminal context and establishes the methodological framework for carrying out this research. The Concept Paper presents different approaches for analysing the practical application of criminal sanctions from the perspective of advancement towards the humanization of the criminal justice system.

The HRCCJ Programme has opted to follow the approach presented in Option 1: *'to focus the analysis on the penalties provided for specific offences (especially those which would entail imprisonment and are the most frequently applied or where the divergences in interpretation have already been detected), in order to assess whether its practical implementation is leading to inconsistencies and/or a disproportionate sanctioning practices.'*[13] This option *'would require making **a selection of offences** and checking a relevant sample of sentences with regard to the interpretation of the criminal law maximum and minimum sanctions and also the type and number of cases where aggravating and mitigating circumstances have been applied by the court.'*[14]

Following the proposed approach, the first step taken to set up the research was to select the offences as suggested in the Concept Paper. To this end, it was sought to firstly identify and formulate clear criteria upon which the selection of the said offences will be made. Once the criteria were defined, the selection of the offences as such based on these criteria followed. This led to the drafting of a Checklist for the analysis of a relevant sample of sentences from primarily first instance and appellate courts judgments, and, where applicable, also Supreme Court of Justice judgments. It should be noted from the outset that, regarding the Supreme Court of Justice judgements, several limitations were present. The amount of the decisions analysed at the Supreme Court of Justice level is far too small in comparison to the total number of decisions

12. 'Concept Paper to Conduct a Research Study on the Practical Application of Different Types of Criminal Sanctions in the Republic of Moldova', Prepared on the basis of contribution by Prof. Dr. Lorena Bachmaier and Ms Veronica Mihailov-Moraru under the CoE Programme "Promoting a Human Rights Compliant Criminal System in the Republic of Moldova", 25 June 2020, para. 11.
13. *Ibid.*, at para. 31.
14. *Ibid.*, at para. 32.

that this court delivers per year to arrive to well informed conclusions. Moreover, the limitations that apply to the jurisdiction of the Supreme Court of Justice[15] made it difficult to conduct an in-depth analysis into its judgements. Due to these limitations the present research does not seek to draw any conclusions on the judgments of the Supreme Court of Justice as such.

The Checklist served as a basis for collecting data from a sample of 400 decisions at all levels as main sample and 120 (for each fifth decision from main sample) as additional sample. This was performed based on a well-defined sampling procedure. The data collected from the samples were then analysed against the background of the relevant Council of Europe standards and the Moldovan relevant legal framework. Statistical data from official sources of Moldovan authorities were also used to better understand and analyse the situation with regard to the humanization and liberalization of criminal law in Moldova. All these methodological steps are described in more detail below.

Selection Criteria

The Concept Paper recognises that the scope of the research will need to be limited in several aspects. One first delimitation concerns the subjects of criminal sanction. It is suggested to limit the research only to **the sentencing and criminal liability of natural persons**, since the objective of the study is the assessment of the advancement towards the humanisation and compliance with human rights of the criminal justice system.[16] For the same reason, the other delimitation is that **the focus should primarily be put on the imprisonment sentences and their practical application**.[17] The Concept Paper also stipulates that *'[A] complete and detailed analysis of the entire system of sanctions will not be possible, whereas it should be possible to do this for a selection of offences'*.[18] To this end, a preliminary analysis should be conducted to justify the selection of offences.

Having in mind the above, a set of criteria needs to be defined to firstly determine the types of offences upon which the study will focus. Once the criteria for the selection of the types of offences are developed, another set of criteria needs to be defined to select a number of offences as representative per each type of offences. Considering the very limited time at the disposal, the selection criteria should serve as further delimitation of the scope of the research.

As to the criteria regarding the types of offences, it should be kept in mind that in line with Article 16 of the Criminal Code of the Republic of Moldova (CC), depending on the prejudicial nature and degree, offences are classified into minor, less serious, serious, particularly serious and exceptionally serious and are punishable up to 2, 5, 12 years inclusively, above 12 years and life imprisonment respectively. Re-integration and re-socialization of the convicts lie at the heart of humanization of criminal law and criminal justice system. The CC contains a range of alternatives to imprisonment and instruments related to release from criminal liability especially after the revision of the CC in 2017.[19] The amendments provided were very significant and included among others: the individualization of the punishment, the conviction with conditional suspension of the punishment execution and the introduction of a new mechanism that would allow the court to individualize the execution of the sentences, by granting the possibility to enforce a fraction of the sentence in the penitentiary facility and a fraction of the sentence in

15. See Articles 427 and 435 Code of Criminal Proceedings.
16. *Ibid.*, at para. 25.
17. *Ibid.*, at para. 28.
18. *Ibid.*, at para. 33, emphasis added.
19. Law for amending and supplementing some legislative acts No. 163 of 20.07.2017, OGNo.364–370/616 of 20.10.2017, available at: www.legis.md

freedom. Under this research, alternatives to imprisonment refer only to the conviction with conditional suspension of the punishment execution and conviction with partial suspension of the execution of imprisonment. Such measures and instruments contribute directly to the re-socialization and re-integration of the individual. Therefore, **alternatives to imprisonment and instruments related to release from criminal liability will constitute the first criterion upon which the selection of the types of offences will be done**.

Chapter IX of the General Part of the CC contains a number of alternatives to imprisonment. The needs assessment report in the context of the HRCCJ Programme pointed out that various alternatives to imprisonment were not fully exploited.[20] Those alternatives were also the subject matter of the amendments introduced in 2017 to the CC. In particular, the application of **conditional suspension of the execution of the sentence (Article 90 CC) and conviction with partial suspension of the execution of imprisonment punishment (Article 90[1] CC) seems to be problematic and therefore they will serve as selection criteria for the types of offences to be studied under the research.**[21]

Release from criminal liability is regulated in Chapter VI of the General Part of the CC. In line with Article 53 CC, a person may be released from criminal liability, in the case of: minors; contraventional liability; voluntary renunciation to committing the offence; active repentance; change of status; conditional release; prescription of criminal liability. Given that the selection criteria also serve as a basis for further delimitation of the scope of the research, **release from criminal liability will serve as a selection criterion only in case of minors (Article 54 CC), contraventional liability (Article 55 CC), active repentance (Article 57 CC), change of status (Article 58 CC) and conditional release (Article 59 CC).** Release from criminal liability in cases of voluntary renunciation to committing the offence and prescription of criminal liability entails a far too broad range of the types of offences and it is hard to be used as a selection criterion for the purposes of the research.

In the introduction it was mentioned that the overcrowding of Moldovan prisons is partly due to the extensive length of the imprisonment sentences.[22] Therefore, the **length of the imprisonment sentence will be another selection criterion for the types of offences to be studied under the research.**

The criteria defined above will serve as a basis for the selection of the types of offences, which will be studied in the context of the research. As already mentioned above, another set of criteria needs to be defined in order to select a number of offences as representative per each type of offences. To this end, it is suggested to follow the suggestion of the Concept Paper to **use the frequency of the application of an offence as the criterion for selecting the specific offences among the types of offences already preselected on the basis of the other criteria.**

It should be noted directly here that the criteria of *length of imprisonment* and *frequency of the application of the imprisonment for a particular offence* would require the use of extensive and coherent statistical data. However, having regard to the very short period at the disposal for drafting this analysis and the lack of public coherent statistical data, the analysis is based on

20. Council of Europe "Report on assessment of needs with respect to the criminal justice system of the Republic of Moldova in the light of the principles of humanization and restorative justice", of 16 August 2018, available at: https://rm.coe.int/2018-08-16-needs-assessment-report-component-1-final-eng/16808e2c00
21. The limitation on the time period for the research has also had a direct impact on the choice made with respect to alternatives to imprisonment. Thus, the sanctions foreseen in Articles 91 and 92 CC were not included in the selection criteria, since their application requires a minimum time spent in custody and this time exceeds the time period chosen for the research.
22. See para. 2 above.

sporadic data from 2018, 2019 and 2020. Despite this impediment, the available data already give a good indication and basis for the analysis as done in the following section.

Finally yet importantly, the time span of the research needs also to be defined. The amendments brought to the CC in 2017 in terms of alternatives to imprisonment are quite significant. Therefore, it is logical and useful **to limit the research on the offences examined in the period between the entering into force of Law No.163/2017 (22.12.2017) and the date of starting the collection of data from relevant sample of sentences, which is 04.10.2020.**

Selected Offences

Articles 54, 55, 57, 58, 59 CC that deal with release from criminal liability in cases of minors, contraventional liability, active repentance, change of status and conditional release respectively, apply only to minor and less serious offences. The provisions dealing with alternatives to imprisonment apply to minor, less serious and serious offences. Having regard to this filter, the first suggestion would be to focus on minor, less serious and serious offences, since they constitute the core offences where the selection criteria apply. However, the other criterion, namely, the length of the imprisonment, may suggest extracting or adding other types of offences.

In line with the situation on July 1, 2020,[23] it can be noted that 2015 convicts, serve their imprisonment sentences for **a period of 5 to 10 years, which is 36.5% of the total inmates** (in 2019 this figure was 2161). The next in the ranking are 1051 convicts, who serve their imprisonment sentence for a term **from 10 to 15 years**, **which constitutes 19.04% of the total inmates** (in 2019 this figure was 1086). This category is followed by 896 convicts, who serve their imprisonment sentence for a period of **3 to 5 years, which is 16.23% of the total inmates** (in 2019 this figure was 919). When it comes to the types of offences, the data show that as of July 1, 2020, there were:

- 82 convicts serving an imprisonment sentence for minor offences, or **1.4% of the total inmates**;
- 807 convicts serving an imprisonment sentence for less serious offences, or **14.6% of the total inmates**;
- 2242 convicts serving an imprisonment sentence for serious offences, or **40.6% of the total inmates**;
- 1654 convicts serving an imprisonment sentence for particularly serious offences, or **30% of the total inmates**; and
- 735 convicts serving an imprisonment sentence for exceptionally serious offences, or **13.3% of the total inmates**.

These data show that persons serving their prison sentence from 3 to 10 years (from 5 to 10 years – 36.5%; from 3 to 5 years – 16.23%), constitute around 55% of the total inmates and are serving their sentence for less serious and serious offences. This reinforces the already made choice in the previous paragraph to focus the analysis on these two categories of offences. However, statistics also show that the share of 30% of convicts with particularly serious offences is quite important and cannot be neglected. As to the detainees sentenced for minor offences, their share in the total number of detainees is insignificant, a situation that can justify their exclusion from the research.

23. Report on the activity of the penitentiary administration system for the Ist semester of 2020, http://www.anp.gov.md/rapoarte-de-bilant

Having determined that the research will focus on **less serious, serious, and particularly serious offences**, the criterion of the frequency of the application of an offence will be deployed for selecting the specific offences among the types of offences already preselected. Statistics show that the top-ranking offences are as follows:[24]

Offence	Number of detainees, 01.10.2018	Number of detainees, 01.01.2020	Number of detainees, 01.07.2020
Article 145 Intentional murder and Article 147 Infanticide	1695	1288	1074
Article 151. Serious intentional injury to a person's bodily integrity or health	574	494	367
Article 164. Kidnapping a person	115	108	60
Article 165. Human trafficking	125	105	74
Article 171. Rape	553	521	332
Article 172. Violent sexual actions and Article 173. Sexual harassment	414 (403 + 11)	381 (371 + 10)	210
Article 186. Theft	1804	1574	660
Article 187. Robbery	995	800	482
Article 188. Plunder	188	793	466
Article 190. Fraud	515	388	296
Article 201[1]. Family violence	434	334	218
Article 217–219. Illegal activities/trafficking of drugs. *From the group of these offences it is suggested to focus only on the offence of Article 217*[1]	632	781	460
Article 264. Violation of the rules on the security of traffic or operation of means of transportation by the person driving the means of transportation	121	99	112
Article 264[1]. Driving the means of transport in a state of alcohol intoxication with advanced degree or in a state of intoxication produced by other substances	163	110	60
Article 287. Hooliganism	398	350	153

Based on the frequency criterion the above offences will constitute the focus of the research. However, most of these articles have more than one paragraph, each of them constituting a different type of offence. Therefore, it is necessary to further itemise these offences into the types of offences. The offences that are finally selected for the purpose of the research are grouped as follows:

Qualification of the Offence	Less Serious Offences	Serious Offences	Particularly Serious Offences
Intentional murder			Article 145 para. 1
Serious intentional injury to a person's bodily integrity or health		Article 151 para. 1 and 2	Article 151 para.4

24. Statistical data regarding convicted persons executing prison punishment in the penitentiary facilities as of July 01, 2020, http://www.anp.gov.md/rapoarte-de-bilant

Qualification of the Offence	Less Serious Offences	Serious Offences	Particularly Serious Offences
Kidnapping a person		Article 164 para.1 and 2	Article 164 para.3
Human trafficking		Article 165 para.1 and 2	Article 165 para.3 and 4
Rape	Article 171 para.1	Article 171 para.2	Article 171 para.3
Infanticide	Article 147		
Violent sexual actions	Article 172 para.1	Article 172 para.2	
Theft	Article 186 para.2	Article 186 para.3, 4, 5	
Robbery	Article 187 para.1	Article 187 para.2, 2^1, 3, 4	Article 187 para.5
Plunder		Article 188 para.1, 2, 2^1, 3	Article 188 para. 4, 5
Fraud	Article 190 para.1	Article 190 para. 2, 2^1, 3, 4	Article 190 para.5
Family violence	Article 201^1 para.1	Article 201^1 para. 2, 3	Article 201^1 para.4
Illegal trafficking of drugs, ethnobotanics or their analogues to sale purpose	Article 217^1 para.2	Article 217^1 para. 3	Article 217^1 para.4
Violation of the rules on the security of traffic or operation of means of transportation by the person driving the means of transportation	Article 264 para.2	Article 264 para. 3, 4, 5, 6	
Hooliganism	Article 287 para.1, 2	Article 287 para.3	

Checklist

A Checklist that serves as the basis instrument for collecting data from the relevant sample was prepared following the criteria for the selection of the offences. The Checklist is attached to the present research report as Annex I. It is divided into four parts and it contains detailed questions regarding several aspects of data to be collected. The first part aims at retrieving general data on the courts that delivered the judgments, the defendant, the prosecution, the qualification of offences, the sentence and the age of the culprit. The second part follows the logic and structure of *Recommendation No. R(92)17 of the Committee of Ministers to Member States concerning Consistency in Sentencing*.[25] To this end, it enables the collection of data on issues such as the individualization of the sentence, proportionality of the punishment with the seriousness of the offence, aggravating and mitigating circumstances, recidivism and motivation of the sentence. The third part seeks to gather information on the application of a selection of instruments related to release from criminal liability, present in the Moldovan Criminal Code. In addition, the third part pursues to gather information on the application of a

25. Available at: https://rm.coe.int/16804d6ac8

selection of alternatives to imprisonment, namely the Conviction with conditional suspension of the punishment execution applied in the case (Article 90 CC) and Conviction with partial suspension of the execution of imprisonment punishment applied in the case (Article 90[1] CC).

Sampling

The **sampling universe** consisted of a number of decisions of first instance courts, appellate courts and Supreme Court of Justice in the period 2017–2020 on offences under 14 articles of the Criminal Code (Articles 147, 151, 164, 165, 171, 172, 186, 187, 188, 190, 201, 217, 264, 287). The sample represents over 43000 decisions of instances at all three levels in the period 2017–2020. The decisions of first instance courts and appellate courts were taken from national portal of courts[26], administered by the Court Administration Agency, and from the Supreme Court of Justice website[27] the decisions of this instance.

The proposed **sample size** is 400 decisions at all levels as main sample and 120 (for each fifth decision from main sample) as additional sample. The sample size for decisions offers a precision level of ±4.9% at a 95% confidence level. The **sample type** is probabilistic, stratified – proportionally distributed per court and article in line with the **stratification criteria**: court type, region, article. The sampling universe distribution used for stratification is presented in a table in Annex II attached to the present research report.

The **selection source** was the list of decisions[28] published for first instance courts and appellate courts applying filters by article entered in the cell named "infracțiunea (offence)" and information regarding the period entered in the cell named "Data pronunțării (sentence date)". For the Supreme Court of Justice, the source was the list of decisions of the section named "Colegiul Penal (Criminal Collegium)",[29] using the same approach as for first instance and appellate courts.

To keep **the sample distribution per years**, the **selection procedure** followed the principle of proportional distribution of decisions to each consultant. The proportionality of the sample universe was also considered. The decisions to be analysed have been selected randomly, using a statistical step and taking into consideration the selection as described above. The experts used Google forms for the data entry performed during data collection.

The **random selection of decisions** was applied for a probabilistic sample for all the decisions in the selected period (2017–2020). Assuring the spread per years provides the randomization of selection. Each next decision to be analysed has been selected by the experts from the list of decisions ordinated by dates and taking into consideration the year and month of the last decision included in the sample. Each next decision to be analysed had to be dated with precedent year and month of the year and month of the last decision analysed.

For example, an expert had to analyse Articles 151, 164, 165. Each next decision was selected decreasing a year and one month:

Article	Court Instance	Decisions	Year	Month
151	Chisinau	1	2020	12
151	Orhei	1	2019	11
151	Balti	1	2018	10

26. See at: https://www.instante.justice.md
27. See at: http://jurisprudenta.csj.md/db_col_penal.php
28. https://www.instante.justice.md
29. http://jurisprudenta.csj.md/db_col_penal.php

Article	Court Instance	Decisions	Year	Month
151	Drochia	1	2017	9
151	Cahul	1	2020	8
151	Appellate Court Chisinau	1	2019	7
151	Appellate Court Balti	1	2018	6
151	Supreme Court of Justice	1	2017	5
		1	2020	4
		1	2019	3
164	Edinet	1	2018	2
164	Supreme Court of Justice	1	2017	1
165	Chisinau	1	2020	12
165	Straseni	1	2019	11
165	Appeal Chisinau	1	2018	10
165	Supreme	1	2017	9

Desk Research

The desk research consisted of the review of the Moldovan legal framework, the Council of Europe standards, various statistics available on the websites of national authorities and various reports and studies conducted by national and international bodies on the prison population in Moldova and tendencies in sentencing. Special attention was paid also to preparatory documents, which led to the interventions into the Criminal Code in 2017.

The review of the Moldovan legal framework and the Council of Europe standards with respect to penal sanctions served as a basis for the analysis of the data collected from the relevant sample. More specifically, among the Council of Europe standards consulted there were two recommendations of the Committee of Ministers of the Council of Europe, namely Recommendation No. R(92)17 of the Committee of Ministers to Member States Concerning Consistency in Sentencing[30] and *Recommendation CM/Rec (2017) 3 of the Committee of Ministers to Member States on the European Rules on Community Sanctions and Measures*.[31] Occasionally, the case law of the European Court of Human Rights was also consulted.

Methodological Principles

The research was carried out based on the following principles:

- objectivity and impartiality;
- confidentiality;
- non-involvement in individual cases;
- accuracy.[32]

30. Available at: https://rm.coe.int/16804d6ac8
31. Available at: https://rm.coe.int/168070c09b
32. See generally UN Manual on Human Rights Monitoring at: https://www.ohchr.org/Documents/Publications/Chapter02-MHRM.pdf; see also W. D. Crano, M. B. Brewer, A. Lac, Principles and methods of social research, Routledge: New York and London, 2015.

The experts involved in this research have committed to provide truthful information, preserve the confidentiality of the data and to have no conflict of interest in carrying out the tasks assigned to them.[33]

Research Team

The research was carried out by a team composed of a lead international consultant,[34] a lead national consultant,[35] four national legal consultants[36] and one national consultant in the field of sociology.[37]

The lead international consultant was responsible for:

- taking a lead in developing the criteria for the selection of offences;
- taking a lead in developing the Checklist for examining court decisions;
- drafting and improving the Methodology for the research;
- performing desk research on the Council of Europe standards, analysing the Moldovan legislation against that background and analysing the statistical data from national authorities;
- taking a lead in analysing the data gathered by national supporting legal consultants;
- taking the lead and participating in expert meetings with the research team;
- guiding and consolidating the contributions of other consultants engaged in the research; and
- drafting the overall Research report, including the recommendations.

The lead national consultant was responsible for:

- substantive contribution and providing feedback to the criteria for selection of offences;
- providing feedback to the Checklist for examining court decisions;
- substantive contribution to the desk research, in particular the Moldovan legal framework;
- co-leading and participating in expert meetings with the research team;
- providing feedback to the overall research.

The national legal experts were responsible for:

- examining the relevant sample;
- filling in the checklist forms in cooperation with the national consultant in the field of sociology;
- participating in expert meetings with the research team.

The national consultant in the field of sociology was responsible for:

- developing the sampling methodology;
- developing the gadgets to process the data in line with the checklist;
- processing the data into illustrative tables and charts to be used throughout the research report.

33. Ibid.
34. Dr Idlir Peçi, Council of Europe international consultant.
35. Dr Vladimir Grosu, Council of Europe national consultant.
36. Ms Lilia Ionita, Ms Tinca Bodiu, Ms Natalia Rosca and Mr Ion Graur, Council of Europe national consultants.
37. Mr Vasile Cantarji, Council of Europe national consultant in the field of sociology.

CHAPTER I: COUNCIL OF EUROPE STANDARDS AND MOLDOVAN LEGAL FRAMEWORK

The description and preliminary analysis in this Chapter serves as a basis for the analysis of the data collected from the court decisions since it sets out the criteria/standards upon which the data will be analysed. The starting point here is considered the Council of Europe standards with regard to *consistency in sentencing* and *alternatives to imprisonment*. This will be also followed by considering the relevant Moldovan legal framework. The starting point to this end is the reform of 2017 of the Moldovan Criminal Code. It is therefore important to have a description of the reform with a special focus on the ratio and expectations of the reform. Furthermore, the relevant legal framework with regard to matters such as *individualization of the sentence, proportionality, mitigating and aggravating circumstances, recidivism, release from criminal liability* and *alternatives to imprisonment* will be described. This Chapter will also seek to conduct a preliminary analysis of the Moldovan legislation on these matters as against the background of the Council of Europe standards.

1.1. Council of Europe Standards

It was explained in the Methodology above that the analysis conducted in the context of the present research is based mainly on Recommendations of the Committee of Ministers of the Council of Europe. This section provides an overview of Council of Europe standards regarding the consistency in sanctioning and alternatives to imprisonments. These standards are found in *Recommendation No. R(92)17 of the Committee of Ministers to Member States Concerning Consistency in Sentencing* and *Recommendation CM/Rec (2017) 3 of the Committee of Ministers to Member States on the European Rules on Community Sanctions and Measures*. As it is the case with Recommendations of the Committee of Ministers in general, the rules contained in these two Recommendations, which form the background basis for the analysis in the present research, are not to be regarded as a model system. Instead, they form a corpus of requirements susceptible of being commonly accepted and acted upon. Without respect for these requirements, there can be no satisfactory application of the mitigating and aggravating circumstances, proportionality in sentencing, the individualization of the sentence and alternatives to imprisonment.

1.1.1. Consistency in Sentencing

The Council of Europe, through *Recommendation No R(92)17*, aims at avoiding disparity in criminal sentencing in the legislation and the application, thereof, by the Member States. The starting point in this endeavour is to recommend that where constitutional principles and legal traditions so allow, the legislation should provide ***rationales for sentencing*** and, if possible, priorities in the application of such rationales should be established. Sentencing rationales should be consistent with modern and humane crime policies, in particular in respect of reducing the use of imprisonment and expanding the use of community sanctions and measures. The rationales should not be used for disproportionate sentencing. There should be always a ***proportionality*** sought between the seriousness of the offence and the sentence.[38]

Recommendation No. R(92)17 emphasises the importance of the ***grading of offences into degrees of seriousness***. This should, however, not prevent courts from taking account of particular circumstances in the individual case. The grading of offences should be done based on criteria, which render offences particularly serious.[39]

The concept of a humane and liberal criminal law and criminal polices is based among others on the principle that ***custodial sentences should be considered as sentences of last resort***. They should therefore be imposed only in those cases where, taking into account all the relevant circumstances, the seriousness of the offence would make any other sentence clearly inadequate. To this end, the legislator should consider indicating a non-custodial sanction or measure instead of imprisonment as a reference sanction for certain offences. However, even where a custodial sentence is justified, its duration should be no longer than is appropriate for the offence(s) of which the person is convicted.[40]

Both the legislation and the court should pay attention to the ***individualization of the sentence***. Therefore, to avoid unusual hardship and impairing the rehabilitation of the offender, account should be taken of the personal circumstances of the offender and in particular the probable impact of the sentence on the individual offender.[41]

The ***rationales for sentencing set out the boundaries for mitigating and aggravating circumstances*** taken into account in the imposition of a sentence. Those circumstances should always be compatible with the rationales for sentencing. Mitigating and aggravating factors should be clearly formulated, either in the legislation or in the case law. The existence of an aggravating factor or the non-existence of a mitigating circumstance should be proved beyond reasonable doubt.[42]

Recidivism should not be used automatically and mechanically as a factor against the defendant. As it was stated above, the sentence should be proportionate to the seriousness of the current offence, and therefore, although, recidivism may be justifiable to be taken into account within the declared rationales for sentencing, this should not lead to automatic disproportionate sentencing. The effects of recidivism should be reduced or nullified where there has been a significant period free of criminality prior to the present offence; or the present offence is minor, or the previous offences were minor; or the offender is a minor or a young person.[43]

38. *Recommendation No. R(92)17*, Rules A.1, A.2 and A.6.
39. *Recommendation No. R(92)17*, Rules B.2 and B.5.
40. Ibid.
41. *Recommendation No. R(92)17*, Rule A.8.
42. *Recommendation No. R(92)17*, Rules C.1, C.2, C.3.
43. *Recommendation No. R(92)17*, Rules D.1, D.3, D.3.

It is well-established in the caselaw of the European Court of Human Rights(ECtHR) that reflecting a principle linked to the proper administration of justice, judgments of ***courts and tribunals should adequately state the reasons on which they are based*** and the ***reasons provided for decisions given by the courts should not be automatic or stereotypical***.[44] In particular, specific reasons should be given when a custodial sentence is imposed, in the sense that a motivation should be provided, which relates the particular sentence to the normal range of sentences for the type of crime and to the rationales for sentencing.[45]

1.1.2. Alternatives to Imprisonment

Recommendation CM/Rec (2017) 3 of the Committee of Ministers to Member States on the European Rules on Community Sanctions and Measures sets out the Council of Europe standards on the sanctions/measures alternative to imprisonment. It does so through the formulation of a number of recommendations to the national legislator, courts or any other imposing authority and implementing authorities. The set of recommendations is very wide and detailed and not all of them are relevant for the present research. However, the remainder of this section will give an account of those rules, which can serve as a basis for the analysis of the court decisions in Moldova that follows below. ***Alternatives to imprisonment, as any other penal sanction, should adhere to the principle of legality and be regulated by law***. This means that not only their use but also the types, their duration and modalities of implementation should be regulated by law.[46] Examples of alternatives to imprisonment may include probation supervision as an independent sanction imposed without pronouncement of a sentence to imprisonment, suspension of the enforcement of a sentence to imprisonment with imposed conditions, treatment orders for drug or alcohol misusing offenders and those suffering from a mental disturbance that is related to their criminal behaviour, etc.

The principles of ***proportionality and individualization of the sanction apply equally to alternatives to imprisonment***. Their nature and duration need to be in proportion to the seriousness of the offence for which persons have been sentenced and take into account their individual circumstances. At the same time, ***automatic conversion to imprisonment in the case of failure to follow any condition or obligation attached to such a sanction or measure is not desirable***. The courts should use their good judgment to decide on each individual case and consider allowing the sanction or measure to continue, impose another alternative sanction or measure instead, order a financial penalty or, as a last resort, sentence to imprisonment. In any case, the conditions and obligations attached to alternative sanctions, as well as the consequences of non-compliance should be clearly stated in the law.[47]

Alternatives to imprisonments should be available to be used in as many cases as possible. Therefore, any formal obstacles, including legal ones, that prevent the use of alternative sanctions and measures in cases of serious offences and recidivism or in relation to certain types of offences or any other statutory limitations should be reviewed and removed so far as appropriate. Such constraints may diminish the capacity of alternative sanctions and measures to contribute to the decrease of prison population.[48]

44. *Moreira Ferreira v. Portugal*, Ap. No. 19867/12, 11 July 2017, para. 84.
45. *Recommendation No. R(92)17*, Rules E.1, E.2.
46. *Recommendation CM/Rec (2017) 3*, Rules 14, 15, 21.
47. *Recommendation CM/Rec (2017) 3*, Rules, 3, 12, 15, 21, 22.
48. *Recommendation CM/Rec (2017) 3*, Rule 19.

1.2. Moldovan Legal Framework

1.2.1. Background of the 2017 Reform on the Moldovan Criminal Code

One of the main goals of the new Criminal Code of the Republic of Moldova (hereinafter – CC) of 18 April 2002, which entered into force on 12 June 2003, was to replace the old Soviet Criminal Code of 1961, first of all in terms of thinking and implementing the concepts of pro-human rights and humanization of criminal policies. From its adoption in 2002 until the end of 2020, the CC was amended and supplemented by 118 laws. Five years after the entry into force of the new CC, the Moldovan legislator undertook a comprehensive decriminalization exercise, which resulted in the amendment of the CC with Law No. 277-XVI of 18.12.2008 that entered into force on 24.05.2009. The amendments reduced the penalties of many offenses, while at the same time other novelties in the sense of humanization of criminal law were introduced such as the notion of reduced liability, reduction of the maximum custodial sentence for cumulation of offences etc. However, these amendments had a short-term effect, and did not change the tendency of a gradual increase in the number of persons sentenced to custodial sentences and the duration of imprisonment.[49]

Almost ten years after this exercise, in 2017 the Moldovan legislator adopted Law No. 163/2017 in another attempt to further humanize and liberalize the Criminal Code. The reform of 2017 aimed *inter alia* to promote the observance of human rights in the administration of criminal justice, the more frequent use of non-custodial sentences, the observance of the rights of persons detained in penitentiaries, the improvement of detention conditions. More specifically, the concept of young people between 18–21 years old was introduced, for which a milder sanctioning regime was provided, the sentence with partial suspension of the execution of imprisonment was introduced, some forms of recidivism were repealed, the *ultimo ratio* character of the imprisonment was expressly enshrined etc. However, it should be noted that the positive changes introduced by the reform of 2017 were unfortunately diminished by the amendments introduced in the period between 2018 and 2020. The result aim and the outcome of most of those amendments was further criminalization and tightening of criminal liability and prevail of punishment.

1.2.2. Consistency in Sentencing

Article 61 CC provides the ***rationales for sentencing***. Therefore, criminal punishment is a measure of state coercion and a means of correction and re-education of the convict applied by the courts, in the name of the law. The aims of penal sanctions are restoration of social equity, correction and re-socialization of the convict as well as special and general prevention. Moreover, the execution of the punishment must not cause physical suffering or undermine the dignity of the convicted person. ***The Moldovan Criminal Law is thus in general terms in line with the Recommendation No. R(92)17 in the sense that it does provide the rationales of sentencing, consistent with modern and humane crime policies. However, an emphasis on reducing the use of imprisonment and expanding the use of alternative sanctions and measures is lacking. Amendment of legislation is therefore recommended.***

The Constitutional Court of the Republic of Moldova in its Judgment No. 7 of 16 April 2015, ruled that *"limiting the exercise of individual rights, in consideration of collective rights […] aimed at […] criminal prevention, is a permanent sensitive operation in terms of regulation, and it is*

49. See *Criminal Justice Responses to Prison Overcrowding in EaP Countries, Compilation of the Reports on Study carried in Armenia, Georgia, Moldova and Ukraine*, Council of Europe, 2016, p.257–258, 269, 281, https://rm.coe.int/168063e13a.

necessary to maintain a fair balance between individual interests and rights, on the one hand, and those of society, on the other." In Judgment No. 10 of 10 May 2016 the same Court held that *"it is the right of the legislator to establish sanctions for contraventions, but strictly* ***respecting the proportionality between the circumstances of the deed, the character and the degree of danger*** *[…] The establishment of sanctions in criminal or contravention law must be guided by the existence of* ***a proportion between individual interests and rights, on the one hand, and those of society, on the other*** *[…] that the lack of mechanisms by which* ***judicial individualization would be possible****, distorts the effective, proportionate and dissuasive nature of the sanction of the contravention, does not allow the courts to exercise effective judicial control and violates the right of litigants to access justice."* ***Therefore, it is an obligation of the legislator to establish and regulate in the criminal law sufficient mechanisms to ensure the balance between the danger of the deed and the perpetrator, on the one hand, and the liability and punishment deserved, on the other hand.***

The Moldovan Criminal Code contains sufficient tools to ensure a level of criminal liability and, eventually, the application of a punishment that is fair and proportionate to the seriousness of the deed committed. Articles 53–60 of the Criminal Code provide for several grounds ***for release from criminal liability*** when the prosecutor or judge finds that the correction of the person is possible without being subject to criminal liability. Article 62 CC provides for ***a scale of punishments, including imprisonment, life imprisonment, unpaid community work, the fine***. This goes hand in hand with ***grading of offences into degrees of seriousness***, which is found in Article 16 CC.

In line with Recommendation No. R(92)17, Law No. 163/2017 expressly enshrined the ultimum remedium character of custodial sentences. Article 75(2) CC stipulates that custodial sentences are of an exceptional nature and apply when the seriousness of the offence and the personality of the offender make imprisonment sentence necessary and another (alternative) penalty is insufficient and would not achieve its purpose. A harsher punishment, among the alternative ones provided for the commission of the offence, is established only if a milder punishment, among the mentioned ones, shall not ensure the fulfilment of the punishment purpose. Moreover, ***the individualization of the offence is sanctioned in Article 75(1) CC,*** which provides that an equitable punishment shall be applied to a person found guilty of the commission of an offence and that in determining the category and the term of punishment, the court shall take into consideration the seriousness of the offence committed, its motive, the personality of the guilty person, the circumstances of the case that mitigate or aggravate liability, the impact of the punishment on the rehabilitation and re-education of the guilty person, as well as the living conditions of his/her family.

The Moldovan Criminal Code appears to follow Recommendation No. R(92)17 with respect to mitigating and aggravating circumstances providing for a wide range of mitigating (Article 76) and aggravating (Article 77) circumstances, the finding of which leads to the reduction or change of the main punishment or may lead to the removal of the complementary punishment (Article 78). Moreover, the court may consider as mitigating circumstances other circumstances, not expressly provided as such by law (Article 76 (2)). The Criminal Code empowers the court to consider as exceptional a single mitigating circumstance or a combination of such circumstances (Article 79 (11)). In such cases it is possible to impose a punishment milder than the one provided by law. Article 78(3) CC suggests that the maximum punishment provided for in the corresponding article of the Special Part of the Criminal Code can be applied only if there are aggravating circumstances. Despite the above satisfactory level of compliance with *Recommendation No. R(92)17*, ***no express mention is made in the legislation that the standard of proof in accepting an aggravating circumstance or rejecting a mitigating one is that of proof***

beyond reasonable doubt. This would not be necessary if the judicial practice does indeed follow this standard of proof. However, as the analysis in the remainder of this research will reveal, this is not the case in Moldova and therefore, an express mention in the legislation regarding the standard of proof is strongly recommended.[50]

The Moldovan Criminal Code contains three forms of recidivism: simple, dangerous and particularly dangerous (Article 34). In line with Article 82(1) CC, when applying the punishment for dangerous and particularly dangerous recidivism, account shall be taken of the number, nature, severity and consequences of previously committed offences, the circumstances under which the previous punishment was insufficient for the correction of the culprit, as well as the nature, severity and consequences of the new offence. Pursuant to Article 82(2) CC, the sentence for a dangerous and particularly dangerous recidivism may not be less than one third of the maximum of the punishment provided for in the corresponding article of the Special Part of Criminal Code. The court may establish the sentence within the limits provided for the offence in the Special Part of Criminal Code only if mitigating circumstances are established. It could therefore be stated that ***the Moldovan Criminal Code complies only partially with the Recommendation No. R(92)17, because only in cases of simple recidivism the punishment is not aggravated. In cases of dangerous and particularly dangerous recidivism the sentence is automatically fixed to a minimum threshold,[51] unless mitigating circumstances are found. Also, the Moldovan legislation does not foresee that the court shall look at the period free of criminality prior to the present offence and the age of the culprit. Therefore, amendment of legislation is needed in order to comply with the Council of Europe standards.***

Following the idea that imprisonment should be seen as sentences of last resort, the Moldovan Criminal Code, ***in line with the ECtHR case-law and Recommendation No. R(92)17, does require the court to argue and motivate the exceptional nature upon applying the imprisonment punishment***.

1.2.3. Alternatives to Imprisonment

The Criminal Code of the Republic of Moldova provides for non-custodial or partly non-custodial execution modalities of imprisonment (Article 89 and forth CC), which are considered by the Moldovan Criminal Code as release from criminal punishment, while in other jurisdictions they are usually considered as autonomous penalties. These modalities include conviction with a conditional suspension of execution of punishment; conditional early release from punishment; exemption from punishment when it is a first-time offense and damage has been repaired; substitution of the unexecuted part of the punishment with a milder punishment; exemption from punishment of juveniles; exemption from punishment due to a situation change; exemption from executing the punishment of seriously ill persons; deferral of the execution of punishment for pregnant women and persons who have children under the age of 8. In 2017, the Criminal Code was completed with a new modality of serving imprisonment – conviction with partial suspension of the enforcement of imprisonment (Article 90^1 CC). Accordingly, when the court was adopting the sentence, orders for the partial suspension of the execution of the sentence applied to the guilty person, indicating in the decision the period of execution of the sentence in prison and the probation period. The Criminal Code regulates not only their use but also their duration and modalities of implementation. It can be therefore said that ***the Moldovan Criminal***

50. See Section 3.3.
51. In line with Article 82(2) CC the sentence for a dangerous and particularly dangerous recidivism may not be less than one third of the maximum sentence provided for in the corresponding article of the Special Part of this Code. If only the mitigating circumstances are established, the court may establish the sentence within the limits provided for the offence in the Special Part of this Code.

Code is in line with Recommendation CM/Rec (2017) 3, which requires that alternatives to imprisonment should adhere to the principle of legality and be regulated by law.

The proportionality, as a principle consecrated by the Constitutional Court of Moldova, governs all criminal law institutions, especially the criminal liability and punishments or measures. The law offers to the judge a variety of tools to individualize the punishment or measures in each case in order to establish a proportionate level of criminal liability. Every criminal punishment is limited in its duration, time or amount (with established minimum and maximum amount of fine or hours of community service etc.). In applying the conviction with a conditional suspension of execution of imprisonment punishment, the court adjusts the length of the probation period (between 1 and 5 years) and the types of obligations to be imposed on the convicted person (Article 90 CC). When applying the conviction with partial suspension of the enforcement of imprisonment the court establishes the part of the punishment to be executed in prison and the other part – to be executed on probation (Article 90^1 CC).

The Moldovan Criminal Code regulates the issues of conversion of different types of punishments in case of violation of conditions or obligations imposed by the judgment while executing that punishment. Thus, the punishment with community service shall be substituted with imprisonment only in cases of malicious circumvention by convicts from executing the unpaid working hours (Article 67(3) CC). The commission of a new offence or violation of the obligations imposed during the probation period does not lead to an automatic conversion of the conditional suspension of the execution the punishment into imprisonment (Article 90 (7) CC). ***This is in line with the requirements of Recommendation CM/Rec (2017) 3 that automatic conversion to imprisonment in the case of failure to follow any condition or obligation attached to alternative sanctions or measures is not desirable.***

Although the Moldovan legal framework provides for a quite large list of alternatives to imprisonment, they are not applicable in most of the cases of most serious offences or dangerous and extremely dangerous recidivism. In most cases a person can be released from criminal liability only when committing for the first time a minor or less serious offence. The conviction with conditional suspension of the enforcement of the sentence is not applicable in most cases of committing serious offences and is totally excluded in cases of particularly serious and exceptionally serious offences, as well as in the case of dangerous or particularly dangerous recidivism (Article 90(1)(4) CC). The court may substitute the unexecuted part of imprisonment with a milder form of punishment only with respect to persons who serve a punishment of imprisonment for the commission of a minor, less serious or serious offence (Article 92 CC). ***Thus, in cases of most serious offences and dangerous/extremely dangerous recidivism, the Criminal code prescribes almost exclusively the imprisonment and with illusory practical chance to an early release before the end of the term of imprisonment.***

CHAPTER II: GENERAL OVERVIEW OF THE EXAMINATION OF COURT DECISIONS

This Chapter, together with Chapters III-V, follows the structure of the Checklist. As it was explained in the Methodology above, the Checklist is divided into four parts. The first part aims at retrieving general data on the courts, which was delivered by the judgments, the defendant, the prosecution, and the qualification of offences, the sentence and the age of the culprit. This Chapter provides thus an analysis of the data collected on these issues. Thereby, a general first impression of the findings of the decisions analysed is provided.

2.1. Mapping of the Court Decisions Examined

As previously mentioned in the Methodology, 400 decisions at all court levels were examined as the main sample and 120 court decisions (for each fifth decision from main sample) as additional sample. The data collected was disaggregated and analysed in line with the distribution of the decisions corresponding to the types of courts (first instance, appellate and Supreme Court of Justice), the region (Chisinau courts and courts outside Chisinau) and chronological distribution (to look at the tendencies during the chosen period). Regarding the latter aspect of the disaggregation and analysis, it should be mentioned that the period chosen was 22/12/2017 till 04/10/2020. However, since the period covered in 2017 is very short, for the purpose of the analysis, the data collected on the decisions delivered in the period covered in 2017 are reflected into the decisions examined for the year 2018. The mapping of the decisions examined is provided in Table A and Table AA below.

TABLE A
Mapping of Court Decisions Examined

	%				No.			
	2018	2019	2020	Total	2018	2019	2020	Total
Anenii Noi	1%	1%	2%	1%	2	2	2	6
Balti	10%	8%	9%	9%	13	11	12	36

	%				No.			
	2018	2019	2020	Total	2018	2019	2020	Total
Cahul	6%	6%	3%	5%	8	8	4	20
Causeni	2%	3%	2%	2%	3	4	2	9
Chisinau	23%	23%	23%	23%	31	32	31	94
Cimislia	1%	1%	3%	2%	2	2	4	8
Comrat	3%	4%	4%	4%	4	6	5	15
Criuleni	1%	1%	2%	2%	2	2	3	7
Drochia	6%	4%	5%	5%	8	6	6	20
Edinet	4%	6%	5%	5%	5	8	7	20
Hincesti	4%	3%	5%	4%	6	4	7	17
Orhei	7%	6%	5%	6%	9	8	7	24
Soroca	4%	4%	3%	3%	5	5	4	14
Straseni	3%	2%	3%	3%	4	3	4	11
Ungheni	4%	1%	3%	3%	6	2	4	12
Appellate Court Balti	2%	3%	3%	3%	3	4	4	11
Appellate Court Cahul	1%	1%	1%	1%	1	2	1	4
Appellate Court Chisinau	4%	5%	5%	5%	6	7	7	20
Appellate Court Comrat	1%	0%	0%	0%	1			1
Supreme Court of Justice	13%	16%	14%	14%	17	22	19	58
Total	**100%**	**100%**	**100%**	**100%**	**136**	**138**	**133**	**407**

TABLE AA
Date (year) of the First Instance Court Decision

	No.	%
2017	26	6.4%
2018	145	35.6%
2019	127	31.2%
2020	109	26.8%

2.2. Data on the Offense and the Sentence Imposed

This section corresponds to questions 3 and 4 of the Checklist. Question 3 of the Checklist aimed at gathering general information on the legal qualification of the offence for which the accused was convicted as in the decision analysed. The overall examination of the sample reveals that the most committed offences in the chosen period were those of *'Violation of the rules on the security of traffic or operation of means of transportation by the person driving the means of transportation'* Article 264 CC (27%), *'Theft'* Article 186 (23.8%) and *'Hooliganism'* Article 287 CC (10%). The gravity of these offences varies from less serious to serious and particularly serious offences, depending on the applicable paragraph of the respective provisions. The exact figures of the distribution of selected offences according to the criteria described in the Methodology above are presented in Chart No 1, Chart No 2 and Table B below.

CHART No 1

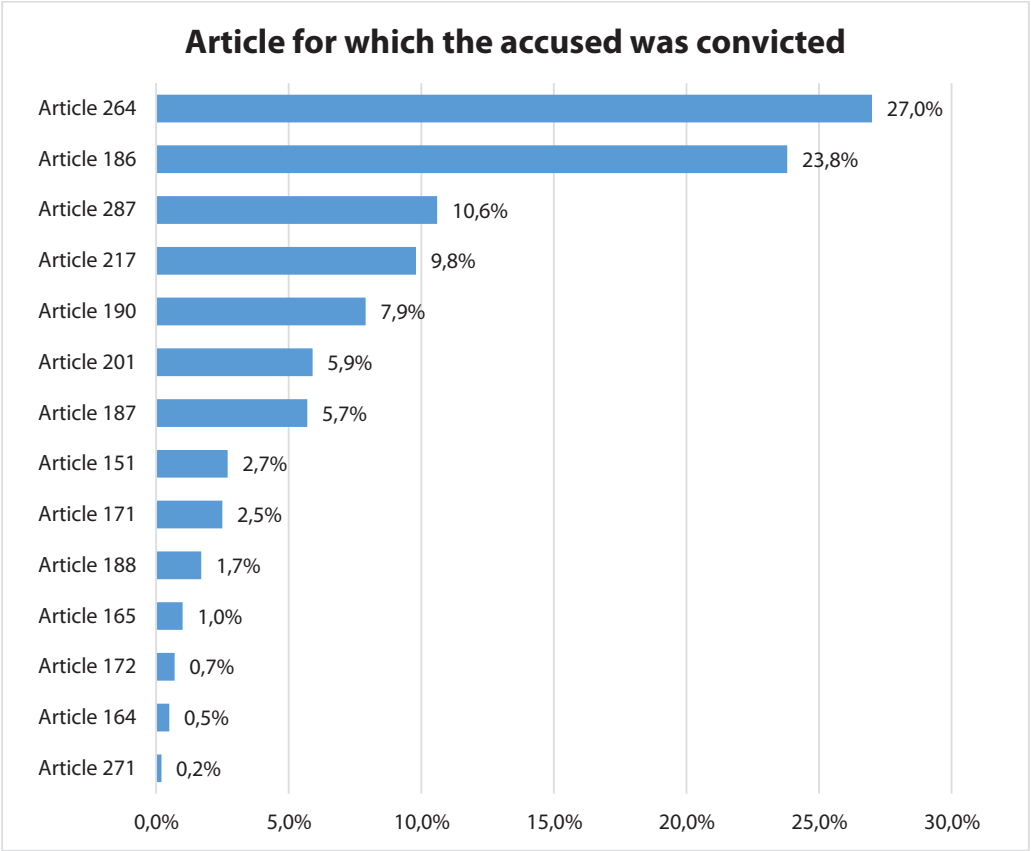


CHART No 2

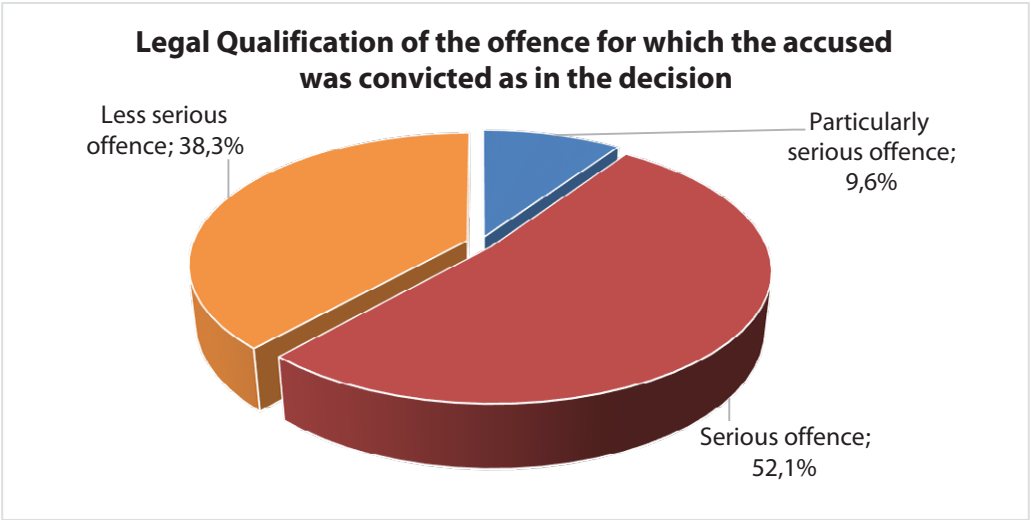


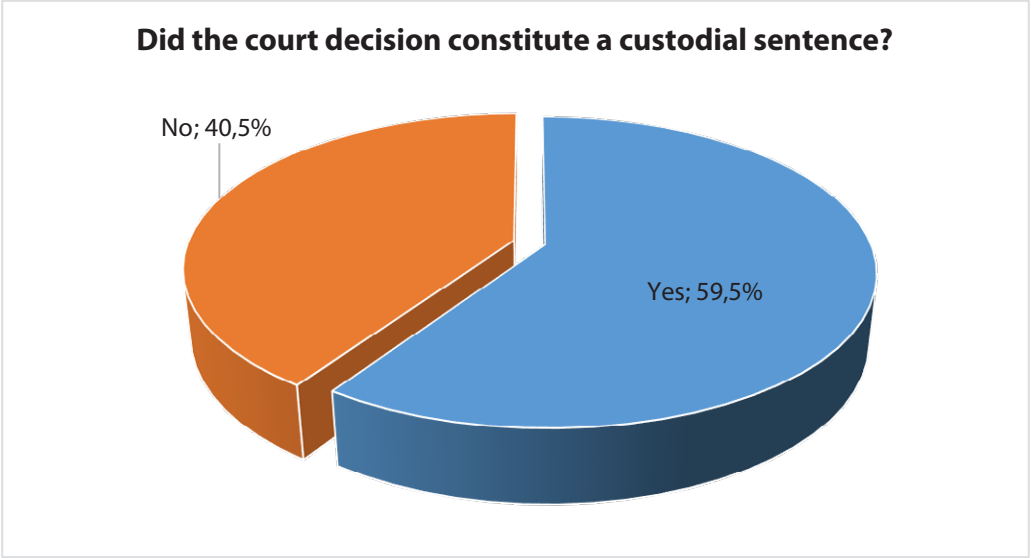
TABLE B
Legal Qualification of the offence for which the accused was convicted as in the decision

	No.	%
particularly serious offence	39	9.6%
serious offence	212	52.1%
less serious offence	156	38.3%
Total	**407**	**100.0%**

Question 4 of the Checklist aimed at retrieving general information on the sentence imposed. To this end, it looked into issues such as the imposition of custodial sentences, the length of the duration of the custodial sentence, the application of release from criminal liability and alternatives to imprisonment. The data gathered in this respect are presented in the following paragraphs below.

The above data also reveals that serious offences are the most committed offences and those for which the culprits were most convicted in the chosen period. Also, a considerable amount of nearly 10% of the culprits were convicted for particularly serious offences. However, the examination of court decisions shows that, ***regardless of the gravity of the offence committed, the tendency in the Moldovan courts is still the application of custodial sentences.*** As it is shown in Chart No 3 below, 59.5% of the court decisions examined constituted a custodial sentence. ***This tendency goes against the expectations of the 2017 reform, which aimed inter alia at the more frequent use of non-custodial sentences.[52] More work is thus needed towards awareness raising and training with regard to principles of humanization and liberalization of criminal policies and criminal law.***

CHART No 3

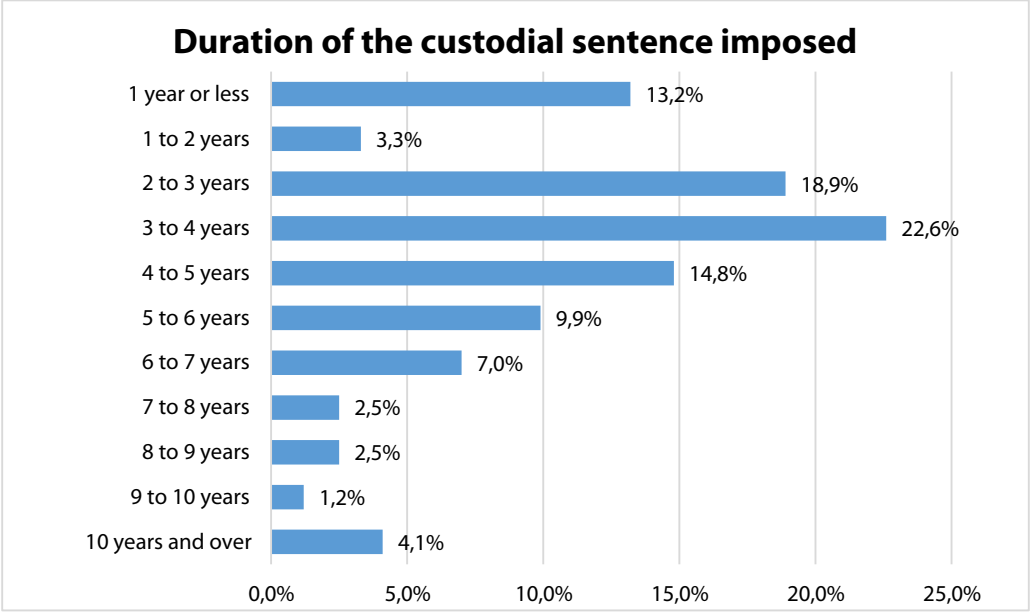


The data gathered from the decisions examined with regard to the length of the duration of the custodial sentences show that duration of 2 to 5 years of imprisonment is common. Custodial

52. See the Introduction and Section 1.2.1. above for a description of the 2017 reform on the CC and various figures on the prison population and the tendencies on the duration of custodial sentences in Moldova.

sentences of a duration of 2 to 3 years constitute 18.9% of the total of the decisions examined. Imprisonment sentences of a duration of 3 to 4 years constitute 22.6% of the total of the decisions examined, while imprisonment of a duration of 4 to 5 years amount to 14.8% of the total of decisions examined. Quite a considerable percentage of custodial sentences, nearly 10%, were of a duration of 5 to 6 years. At the same time, the percentage of sentences with imprisonment of a duration above 10 years is not insignificant. Chart No 4 below gives a detailed account of the duration of the custodial sentences imposed.

CHART No 4



The disaggregation of the duration of custodial sentences distributed in accordance with the gravity of the offence helps to better understand the situation with the harshness of the sentences and the length of the duration of the detention in Moldova. As it is shown in Table C below, 39% of custodial sentences imposed for less serious offences did not exceed a detention period of 1 year. However, ***more than 50% of custodial sentences imposed concerned a detention period of more than 1 year, with 28% of the sentences, for example, imposing imprisonment for 2 to 3 years, or even a not insignificant number of sentences imposing imprisonment for 6 to 7 years (9% of the total of decisions examined concerning less serious offences).*** A little bit over one third of the total of decisions examined concerning serious offences imposed an imprisonment sentence for 3 to 4 years (36% of the total). Almost another third of the decisions regarding serious offences imposed imprisonment sentences for 4 to 6 years (21% of the total concerned sentences with imprisonment 4 to 5 years and 13% of the total concerned imprisonment of 5 to 6 years). The remaining decisions regarding serious offences imposed imprisonment either under 3 years or over 6 years, out of which 18% were imprisonment sentences for 2 to 3 years. ***It can be thus said that long custodial sentences are also imposed in cases of serious crimes.*** Decisions examined concerning ***particularly serious offences show a tendency of applying imprisonment sentences of long duration***. Only 12% out of the total number of decisions concerning particularly serious offences contained a custodial sentence of 4–5 years and even a smaller percentage of 3% were custodial sentences of 2–3 years. The rest of the decisions considered sentences between 5 to 10 years of imprisonment (60% of the total) and 24% concerned custodial sentences of over 10 years.

TABLE C

		GRAVITY OF THE OFFENCE		
		Particularly serious offence	Serious offence	Less serious offence
The length of the final sentence	1 year or less	0.0%	1.5%	8.1%
	1 to 2 years	0.0%	2.2%	39.2%
	2 to 3 years	3.0%	17.6%	28.4%
	3 to 4 years	0.0%	36.0%	8.1%
	4 to 5 years	12.1%	21.3%	4.1%
	5 to 6 years	18.2%	12.5%	1.4%
	6 to 7 years	15.2%	3.7%	9.5%
	7 to 8 years	12.1%	1.5%	0.0%
	8 to 9 years	9.1%	2.2%	0.0%
	9 to 10 years	6.1%	0.7%	0.0%
	10 years and over	24.2%	0.7%	1.4%
	Total	**100.0%**	**100.0%**	**100.0%**

It should be considered the fact that the above analysis of the data collected with respect to the length of the duration of the custodial sentences is based on decisions delivered for a limited selection of offences as described in the Methodology above. Nevertheless, it is obvious from the analysis that ***long custodial sentences are still very common in Moldova. Both the figures of the overall detention periods imposed, and the disaggregation of custodial sentences distributed according to the gravity of the offence confirm this. Awareness raising and training on principles of humanization and liberalization of criminal policies and criminal law is therefore needed.***

Release from criminal liability could contribute to the decrease of prisons population and to the overall problem of a harsh and repressive approach to criminal sanctions. As already mentioned above in the analysis of the Moldovan Legal Framework, the Criminal Code of Moldova contains enough tools for release from criminal liability.[53] However, ***the analysis of the data collected with respect to the use of the tools enabling release from criminal liability reveal that very little use is made of those possibilities***. It should be noted here that the provisions of the Moldovan CC dealing with release from criminal liability apply mostly to minor and less serious offences with the exception of Article 57(2) CC that applies also to other categories of criminal offences only in the cases provided by the corresponding articles of the Special Part of the Criminal Code. Moreover, it should be mentioned that the applicability of the provisions on release from criminal liability depends very much on criteria related to the behaviour of the culprit, considerations of social danger posed by the offence committed or possibilities of rehabilitation without being subject to criminal liability. The scope of the present research is narrow and does not cover the applicability of these criteria in individual cases. Therefore, ***further research is needed to examine the dynamics of the application of the criteria for release from criminal liability and the need for further awareness raising and capacity building on these issues***.

53. See Section 1.2.3. of the report.

CHART No 5

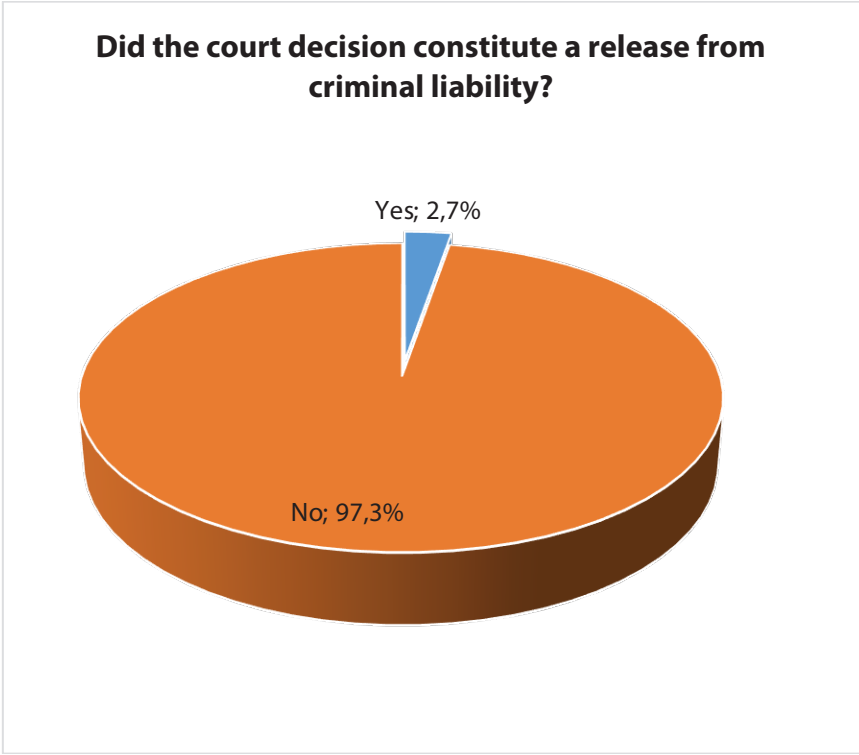


TABLE D

		SERIOSNESS (accusation)			
		Particularly serious offence	**Serious offence**	**Less serious offence**	**Total**
Release from criminal liability	Yes	5.1%	1.9%	3.2%	2.7%
	No	94.9%	98.1%	96.8%	97.3%
	Total	**100%**	**100%**	**100%**	**100%**

The exact data on the application of the provisions on release from criminal liability are presented in Chart No 5 and Table D above. However, it should be borne in mind that the disaggregation provided in Table D should be looked at with caution, since it is based on a few decisions where the answer to the question whether the court's decision constituted release from criminal liability was affirmative, namely only 11 decisions.

A general overview of the applicability of alternatives to imprisonment was the last, but certainly not the least topic covered by Question 4 of the Checklist. Chart No 6 and Table E below present the relevant information. The data collected in this respect reveal that in the majority of the decisions, namely 53.1% thereof, did not contain any alternative to imprisonment. ***This result raises immediately a flag that the expectations of the 2017 reform, but also the expectations of other reforms and efforts made in this direction are not met.*** The analysis on this topic provided in Chapter V of the present research provides a more detailed picture of the magnitude of this issue.

CHART No 6

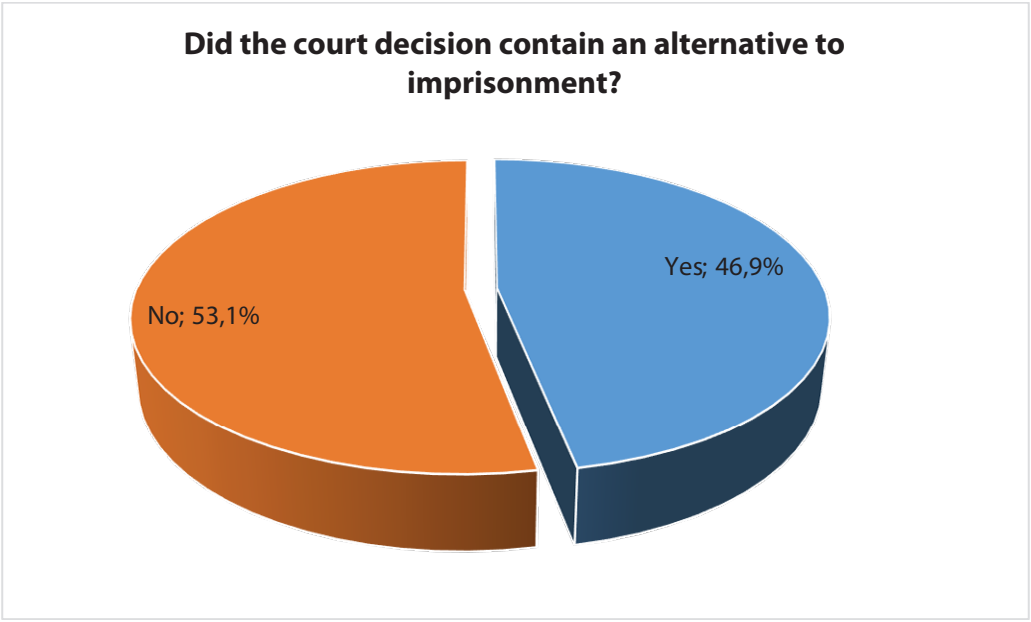


TABLE E

		SERIOSNESS (accusation)			
		Particularly serious offence	**Serious offence**	**Less serious offence**	**Total**
Alternative to imprisonment	Yes	5.1%	66.0%	31.4%	46.9%
	No	94.9%	34.0%	68.6%	53.1%
	Total	**100%**	**100%**	**100%**	**100%**

The disaggregation of the data on the use of alternatives to imprisonment gives another stringing aspect of the problem already flagged in the previous paragraph. ***The level of use of alternatives to imprisonment is particularly low for less serious offences, where one would expect the use of alternatives to imprisonment more often because of the low impact that these offences usually have in the society and the level of the danger that they pose.*** The scope of the present research is narrow and as it was the case with the release from criminal liability ***further research is needed into the reasons of the low levels of the use of alternative to imprisonment in general and especially in cases of less serious offences.*** Another worrying figure derived from the disaggregation is the extremely low level of use of alternatives to imprisonment in cases of particularly serious offences. One of the reasons for this could be the fact that, as already mentioned above,[54] the Moldovan legislation provides for very limited possibilities of using alternatives to imprisonment in cases of most serious offences. ***As it was already mentioned, this is not in line with Council of Europe standards and amendment of legislation in order to widen the possibilities of application of alternatives to imprisonment to most serious offences is needed.*** Again, as the scope of the present research is narrow, ***further research is needed to better understand all the reasons for the low levels of the use of alternatives to imprisonment in cases of particularly serious offences.***

54. See section 1.2.3.

2.3. Data on the parties to the proceedings

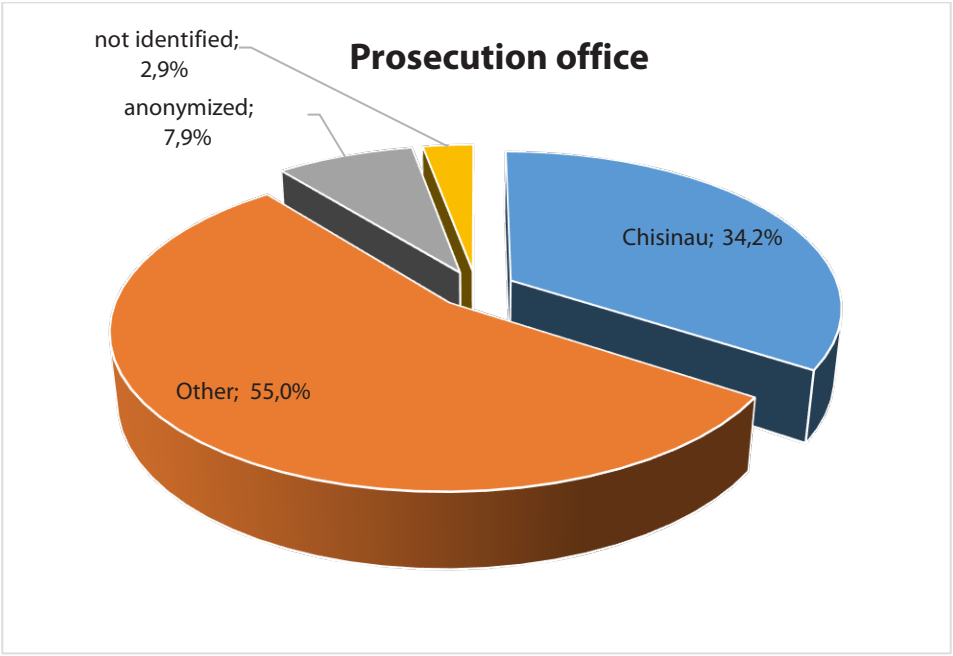
This section corresponds to Questions 5, 6 and 7 of the Checklist. The idea behind these questions was to gather information on the parties to the proceedings in order to get a complete picture of the decisions analysed. Question 5 of the Checklist aimed at collecting data on the prosecution branches, which brought the charges. As it is shown in Table F and Chart No 7 below, it is obvious, and this also confirms the expectation that the bulk of the charges are brought by the prosecution office of Chisinau, namely 34.2% of the total. ***It is recommended that any awareness raising and training activities, which are stemming as intervention points from the present research, also include the prosecution branch with a special focus on the Chisinau office.***

TABLE F
Which Prosecution office/branch brought the charges?

Anenii Noi	1.5%
Anticorruption	0.2%
Balti	9.1%
Basarabeasca	0.2%
Briceni	0.7%
Cahul	3.4%
Calarasi	0.9%
Cantemir	3.2%
Causeni	1.0%
Chisinau	34.2%
Cimislia	1.5%
Comrat	0.2%
Criuleni	1.2%
Donduseni	1.2%
Drochia	5.2%
Dubasari	0.5%
Edineț	1.0%
Falesti	1.2%
Floresti	1.5%
Hincesti	1.9%
Ialoveni	1.5%
Leova	0.5%
Nisporeni	1.2%
Ocnița	0.7%
Orhei	1.7%
PCCOCS	0.7%
Rezina	0.7%
Sangerei	0.7%

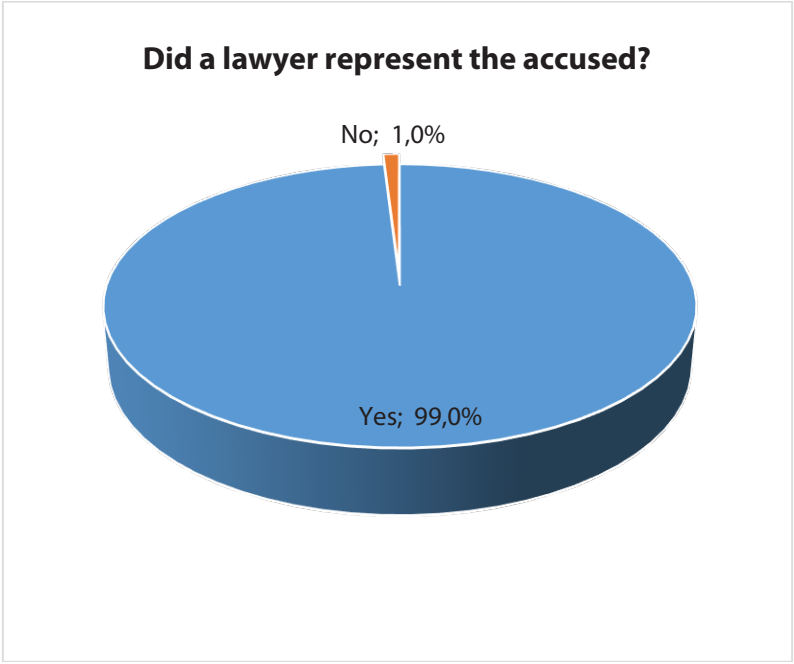
Soldanesti	1.5%
Soroca	1.5%
Stefan-Voda	0.7%
Straseni	1.2%
Telenesti	1.7%
Ungheni	1.7%
UTA Gagauzia	2.9%
anonymized	7.9%
not identified	2.9%
Total	**100.0%**

CHART No 7



Data on the representation of the accused by a lawyer were collected based on Question 6 of the Checklist. The data collected help to understand the level of presentation of accused persons in Moldova in order to better adjust any interventions needed towards defence lawyers as well. The figures presented in Chart No 8 show that the level of representation of accused persons by defence is almost 100%.

CHART No 8



The disaggregation of these data presented in Table G below show that a considerable amount of 34.7% of defence lawyers is from the legal aid scheme. It is quite interesting to note that the highest level of representation by a defence lawyer from the legal aid scheme is at the Supreme Court of Justice, followed by Appellate Courts as shown in the disaggregation in Table GA below. As it will be outlined below in the following chapters of the present research, the way that Moldovan court draft their decisions does not allow in many occasions to retrieve information on various issues, which were relevant to this research. One of those issues is also the information regarding the defence lawyer, more specifically whether the lawyer was of own choosing or from the legal aid scheme. Despite this, ***it is recommended that any awareness raising and training activities, which are stemming as intervention points from the present research, also include the defence lawyers with a special focus on lawyers from the legal aid scheme.***

TABLE G
Was the accused represented by a lawyer?

Legal Aid	34.7%
Own lawyer	0.2%
Both legal aid and own lawyer	0.3%
None of these	32.3%
No data	32.5%
Total	100.0%

TABLE GA
Type of defence per type of court, region and year

DEFENCE		Legal aid	Chosen lawyer	Both	None of these	No data	Total
Total:		**34.7%**	**0.2%**	**0.2%**	**32.3%**	**32.5%**	**100.0%**
Court type:	Appellate Court	61.1%	0.0%	0.0%	33.3%	5.6%	100.0%
	First Instance Court	20.8%	0.3%	0.3%	37.7%	40.9%	100.0%
	Supreme Court of Justice	98.1%	0.0%	0.0%	0.0%	1.9%	100.0%
Region:	Chisinau	44.0%	0.6%	0.6%	54.2%	0.6%	100.0%
	Outside	28.1%	0.0%	0.0%	16.6%	55.3%	100.0%
Year:	2018	34.1%	0.7%	0.0%	31.9%	33.3%	100.0%
	2019	36.8%	0.0%	0.7%	30.9%	31.6%	100.0%
	2020	33.3%	0.0%	0.0%	34.1%	32.6%	100.0%

CHAPTER III: CONSISTENCY IN SENTENCING

This chapter will analyse the data gathered with respect to the consistency in sentencing against the background of the Council of Europe standards set out in *Recommendation No. R(92)17*, as described above in Chapter I. The structure of the present Chapter follows the corresponding section of the Checklist and will deal with the individualization of the offence, proportionality of sanctioning, mitigating and aggravating circumstances and the reasoning of the decision. All these issues have been analysed above in Chapter I in terms of compatibility of Moldovan legislation with the Council of Europe standards. The analysis of the data collected and presented in the present Chapter will complete the picture of compatibility with Council of Europe standards in terms of application of legislation in practice by the Moldovan courts.

3.1. General Criteria for the Individualization of the Sentence and the *Ultimum Remedium* Character of Custodial Sentences

Pursuant to *Recommendation No. R(92)17*, both the legislation and the court should consider the individualization of the sentence. Therefore, to avoid unusual hardship and impairing the rehabilitation of the offender, account should be taken of the personal circumstances of the offender and in particular the probable impact of the sentence on the individual offender.[55] Moreover, the *ultimum remedium* character of custodial sentences is crucial to the concept of a humane and liberal criminal law and criminal polices. Imprisonment should be imposed only in those cases where, taking into account all the relevant circumstances, the seriousness of the offence would make any other sentence clearly inadequate.[56] As already mentioned in Chapter I above,[57] Article 75 CC, which deals with the individualization of the sentence and the exceptional character of imprisonment complies with the Council of Europe standards. However, the analysis of the data collected from the selected court decisions presents a different picture when it comes to the application of Article 75 CC into practice.

Chart No 9 below shows that courts in general make an express reference to refer to the criteria of Article 75 CC. The disaggregation of the data presented in Table H below shows that first instance courts and appellate courts score very high in this respect.

55. *Recommendation No. R(92)17*, Rule A.8.
56. *Recommendation No. R(92)17*, Rules B.2 and B.5.
57. See Section 1.2.2.

CHART No 9

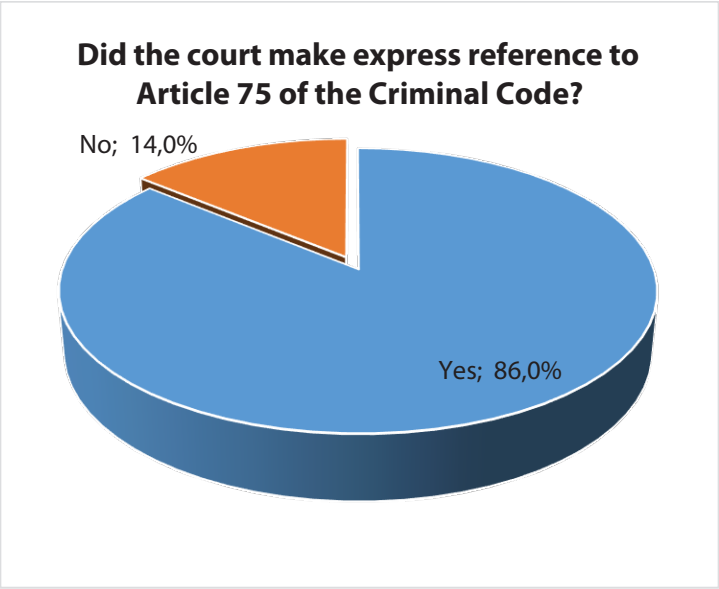
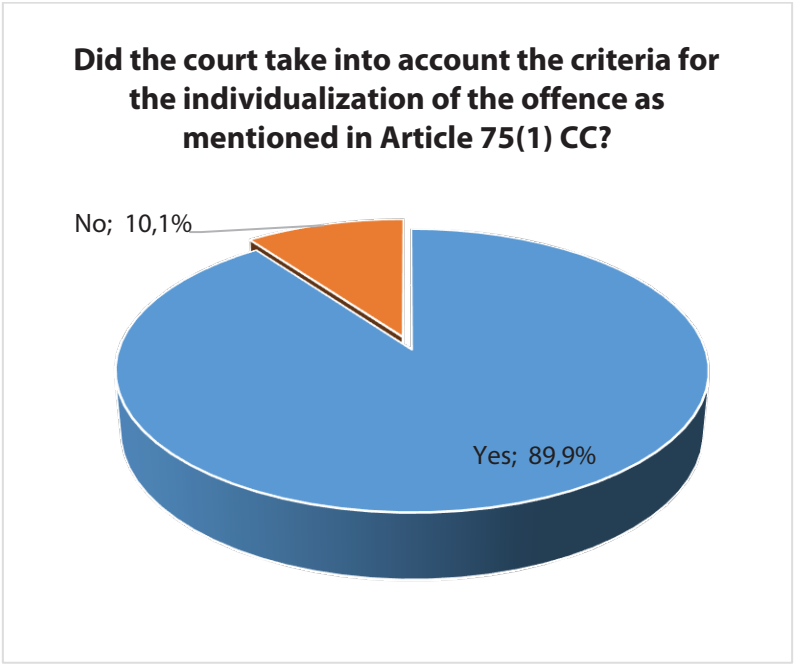


TABLE H

		Yes	No	Total
Total:		**86.0%**	**14.0%**	**100.0%**
Court type:	Appellate Court	91.7%	8.3%	100.0%
	First Instance Court	91.7%	8.3%	100.0%
	Supreme Court of Justice	51.7%	48.3%	100.0%
Region:	Chisinau	80.2%	19.8%	100.0%
	Outside	90.2%	9.8%	100.0%
Year:	2018	86.8%	13.2%	100.0%
	2019	84.1%	15.9%	100.0%
	2020	87.2%	12.8%	100.0%

The criteria for the individualization of the sentence as provided for in Article 75(1) CC are also taken into account by court in quite satisfying levels. As indicated in Chart No 10 below, only in 10.1% of the decisions analysed, the courts did not take into account the criteria for the individualization of the sentence as provided for by Article 75(1) CC.

CHART No 10



The disaggregation of the data of Chart No 10, reveal again that the first instance courts and appellate courts score quite well in this respect. ***Although not conclusive, it is worth mentioning that the Supreme Court of Justice did not consider the criteria for individualization of the sentence in 44.8% of its decisions.*** The detailed disaggregation of the relevant data is presented in Table I below.

TABLE I

		Yes	No	Total
Total:		**89.9%**	**10.1%**	**100.0%**
Court type:	Appellate Court	94.4%	5.6%	100.0%
	First Instance Court	95.8%	4.2%	100.0%
	Supreme Court of Justice	55.2%	44.8%	100.0%
Region:	Chisinau	82.0%	18.0%	100.0%
	Outside	95.7%	4.3%	100.0%
Year:	2018	89.7%	10.3%	100.0%
	2019	88.4%	11.6%	100.0%
	2020	91.7%	8.3%	100.0%

The picture starts to change when it comes to the way the criteria for the individualization of the sentence were considered. The data in Chart 11 show that nearly one third of courts simply quote the criteria for individualization without thus going further and analysing why and which of these criteria apply to the particular case. The disaggregation of the data in Table IA reveals that ***the first instance courts are scoring lower in this respect (38.7% of those courts simply quote the criteria), while the Supreme Court of Justice scores the highest (in 87.9% of its decisions the Supreme Court of Justice goes beyond the simple quotation of the criteria).***

CHART No 11

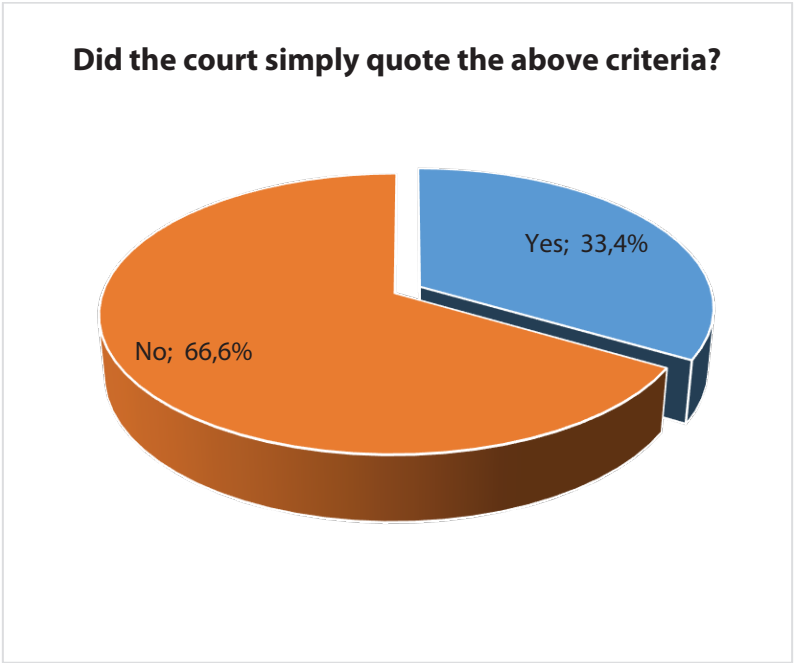


TABLE IA

		Yes	No	Total
Total:		**33.4%**	**66.6%**	**100.0%**
Court type:	Appellate Court	22.2%	77.8%	100.0%
	First Instance Court	38.7%	61.3%	100.0%
	Supreme Court of Justice	12.1%	87.9%	100.0%
Region:	Chisinau	39.5%	60.5%	100.0%
	Outside	28.9%	71.1%	100.0%
Year:	2018	40.4%	59.6%	100.0%
	2019	37.0%	63.0%	100.0%
	2020	22.6%	77.4%	100.0%

The next step taken in order to look into the application of the individualization criteria by courts in practice was to look at the court's reasoning with respect to those criteria. ***The situation in this respect is problematic. Only in 52.6% of the decisions analysed, the court's reasoning was concrete, clearly articulated and based on the analysis of evidence and particular circumstances of the case.*** The exact data with respect to the reasoning of the applied criteria for the individualization of the sentence are presented in Chart No 12 and Table IB below.

CHART No 12

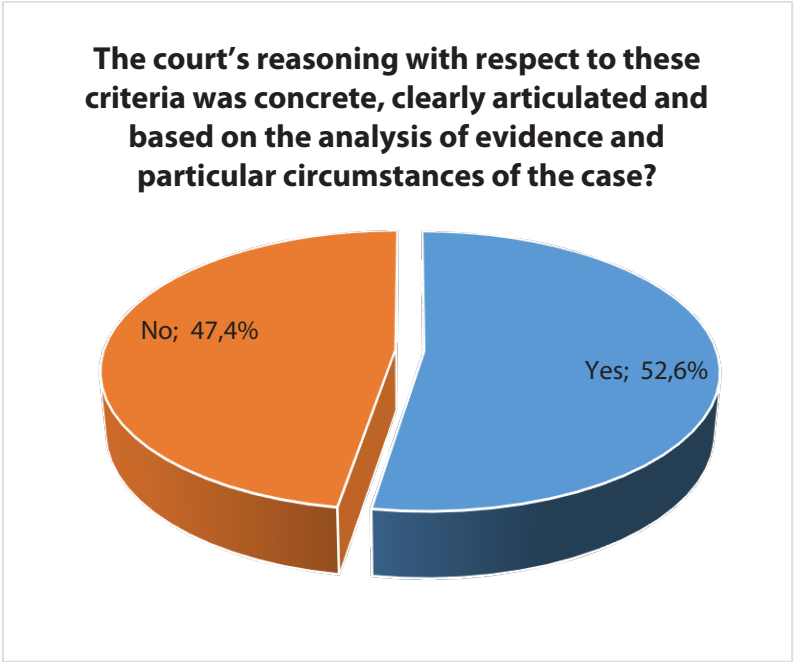


TABLE IB

		Yes	No	Total
Total:		**80.6%**	**19.4%**	**100.0%**
Court type:	Appellate Court	80.6%	19.4%	100.0%
	Court	50.8%	49.2%	100.0%
	Supreme Court of Justice	44.8%	55.2%	100.0%
Region:	Chisinau	45.9%	54.1%	100.0%
	Outside	57.4%	42.6%	100.0%
Year:	2018	44.1%	55.9%	100.0%
	2019	49.3%	50.7%	100.0%
	2020	64.7%	35.3%	100.0%

As already mentioned in the beginning of the present section, the Council of Europe standards require that both the legislation and the court should pay attention to the individualization of the sentence. The above analysis with respect to the individualization of the sentence by the courts leads to the conclusion that ***in general, courts in Moldova are conscious about the importance of the individualization of the sentence and pay specific attention to the relevant criteria contained in Article 75(1) CC. However, despite this positive finding, the approach taken towards the application of the criteria for individualization appears to be rather formalistic. This is reflected in the fact that a good portion of the courts is simply quoting these criteria in their decisions, while nearly half of the courts do not properly reason the application of the individualization criteria. More work is thus needed for awareness raising and training regarding the proper reasoning of the application of individualization criteria. Also more***

research is needed in order to see whether the problems identified in the lower courts are also present at the level of the Supreme Court of Justice.

The situation appears to be even more problematic with regard to the ultimum remedium character of custodial sentences. The data show that 71.3% of the decisions analysed did not encompass any argumentation on the exceptional nature upon applying a custodial sentence. This tendency is stable throughout all of the period addressed by the present research. The disaggregation of the data show that appellate courts focus more on the exceptional nature of custodial sentences. Courts outside of Chisinau pay also less attention to the exceptional nature of custodial sentences. The exact figures on the above-discussed issues are presented in Chart No 13 and Table J below. ***These figures show that the principle of the exceptional nature of the custodial sentence, enshrined in Article 75(2) CC, is largely unimplemented in practice.***

CHART No 13

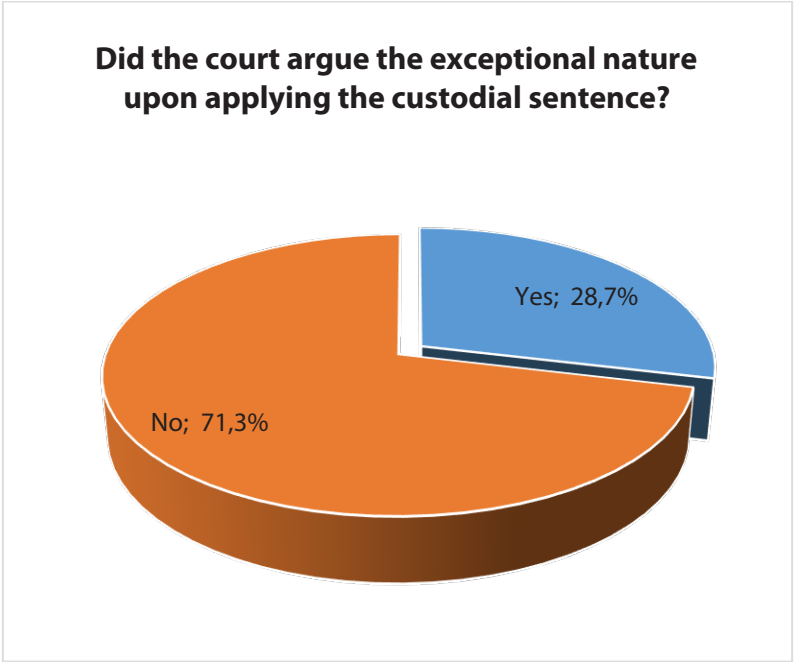


TABLE J

		Yes	No	Total
Total:		**28.7%**	**71.3%**	**100.0%**
Court type:	Appellate Court	41.7%	58.3%	100.0%
	First Instance Court	28.1%	71.9%	100.0%
	Supreme Court of Justice	24.1%	75.9%	100.0%
Region:	Chisinau	32.6%	67.4%	100.0%
	Outside	26.0%	74.0%	100.0%
Year:	2018	27.9%	72.1%	100.0%
	2019	23.2%	76.8%	100.0%
	2020	35.3%	64.7%	100.0%

Despite the concerning figures analysed above, the analysis of that relatively small amount of decisions (28.7% in total), which do contain an argumentation regarding the exceptional nature of custodial sentence, reveals that in the vast majority of those decisions (83.5% in total) the argumentation goes beyond the simple quotation of the criteria of Article 75(2) CC. This positive tendency is stable throughout the whole period considered and it is observed at all court levels and in all the regions across Moldova. The figures in this regard are presented below in Chart No 14 and Table JA.

CHART No 14

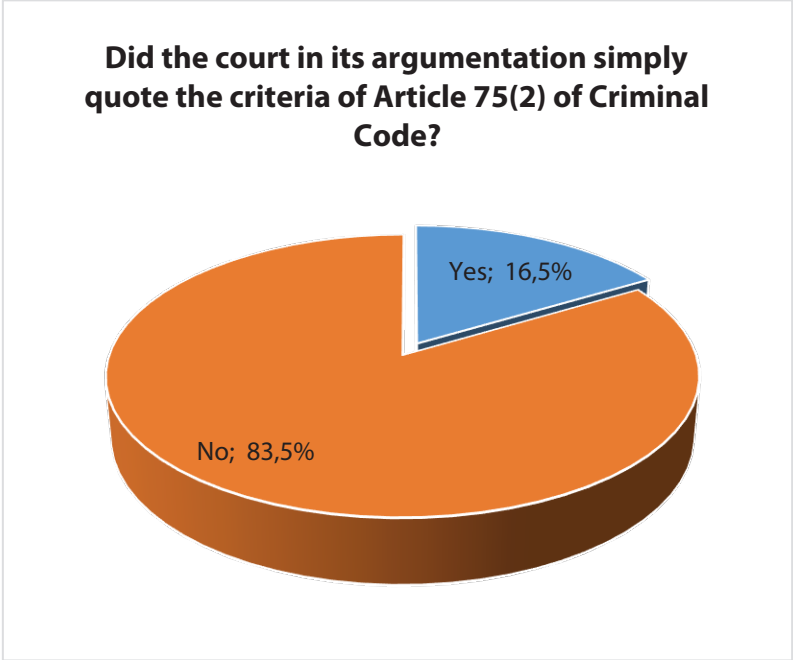


TABLE JA

		Yes	No	Total
Total:		**16.2%**	**83.8%**	**100.0%**
Court type:	Appellate Court	19.4%	80.6%	100.0%
	Court	18.2%	81.8%	100.0%
	Supreme Court of Justice	5.2%	94.8%	100.0%
Region:	Chisinau	15.7%	84.3%	100.0%
	Outside	17.0%	83.0%	100.0%
Year:	2018	16.2%	83.8%	100.0%
	2019	12.3%	87.7%	100.0%
	2020	21.1%	78.9%	100.0%

Even though the courts seems to go beyond the simple quotation of the criteria of Article 75(2) CC, ***the reasoning of the courts appears to be in the majority of cases, 72.7% in total, not concrete, not clearly articulated and not based on the analysis of evidence and the particular circumstances of the given case. This tendency is stable throughout the period taken into***

consideration and in all the regions in Moldova. Chart No 15 and Table JB below present the exact figures.

CHART No 15

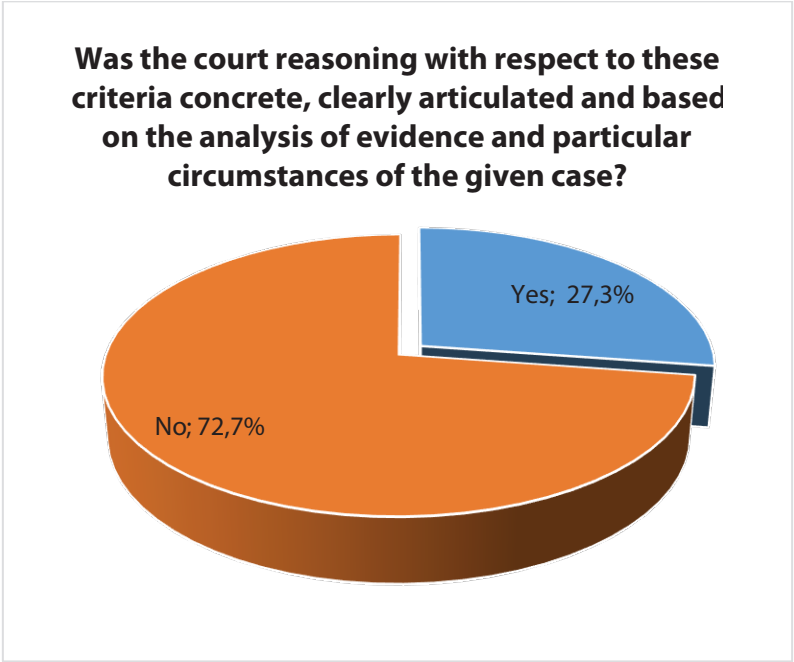


TABLE JB

		Yes	No	Total
Total:		**27.3%**	**72.7%**	**100.0%**
Court type:	Appellate Court	41.7%	58.3%	100.0%
	First Instance Court	25.2%	74.8%	100.0%
	Supreme Court of Justice	29.3%	70.7%	100.0%
Region:	Chisinau	24.4%	75.6%	100.0%
	Outside	29.4%	70.6%	100.0%
Year:	2018	25.0%	75.0%	100.0%
	2019	24.6%	75.4%	100.0%
	2020	32.3%	67.7%	100.0%

The above analysis leads to the general conclusion that *courts in Moldova to a large* ***extent do not pay attention to the exceptional nature of custodial sentences. This also explains the finding above[58] that regardless of the gravity of the offence committed, Moldovan courts tend to apply custodial sentences. Even when the ultimum remedium character of imprisonment is considered, the approach is formalistic since the reasoning is not clear and not concrete. In this regard awareness raising and training activities are needed. Also, further research is needed in order to identify the approach taken in this respect by the Supreme Court of Justice.***

58. See Section 2.2.

3.2. Proportionality

There should always be a proportionality sought between the seriousness of the offence and the (purpose of) sentence imposed.[59] ***The data collected from the selected decisions show that in general the courts in Moldova do pay attention to the issue of the proportionality.*** A vast majority of nearly three quarter (74.2% in total) of all the decisions analysed did pay attention to the proportionality of the sentence. The first instance courts (79.9% in total) followed by appellate courts (72.2% in total) are the courts, which pay more attention to the proportionality. This tendency is stable throughout all the regions in Moldova and during the whole period under consideration, with a slight increase in 2020. The detailed figures are presented in Chart No 16 and Table K below.

CHART No 16

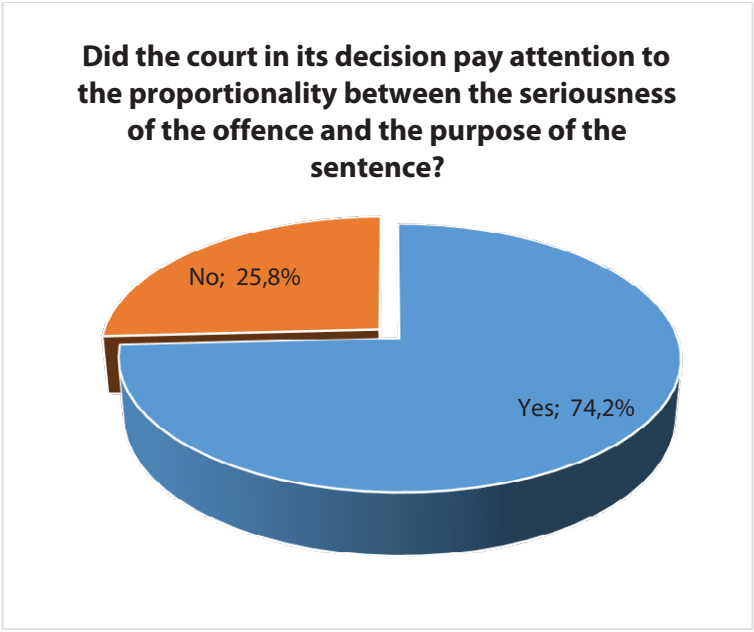


TABLE K

		Yes	No	Total
Total:		**74.2%**	**25.8%**	**100.0%**
Court type:	Appellate Court	72.2%	27.8%	100.0%
	Fist Instance Court	79.9%	20.1%	100.0%
	Supreme Court of Justice	44.8%	55.2%	100.0%
Region:	Chisinau	73.8%	26.2%	100.0%
	Outside	74.5%	25.5%	100.0%
Year:	2018	67.6%	32.4%	100.0%
	2019	73.2%	26.8%	100.0%
	2020	82.0%	18.0%	100.0%

59. *Recommendation No. R(92)17*, Rules A.1, A.2 and A.6.

Despite the positive finding that the ***courts do pay attention to the proportionality, the approach to proportionality appears to be formalistic.*** The decisions analysed and presented in Chart no 17 and Table KA below, reveal that the majority thereof, 67.3% in total, do not contain a concrete and clearly articulated reference to proportionality, neither was that reference based on the analysis of evidence and particular circumstances of the given case. Again, the appellate courts score better than the other courts (52.8% with proper reasoning). First instance courts are the courts, which seem to pay less attention to the proper reasoning of proportionality (30% with proper reasoning) and especially courts outside Chisinau appear to be more problematic. This tendency is stable throughout the whole period under considerations with a slight decrease in 2020. ***The mechanisms provided for in the legislation to ensure the balance between the danger of the deed and the perpetrator, on the one hand, and the liability and punishment deserved, on the other hand do not seem to have the desired effect. Therefore, awareness raising campaigns and training activities are needed. Also, further research is needed in order to see whether the problems identified in the lower courts are also present at the level of the Supreme Court of Justice.***

CHART No 17

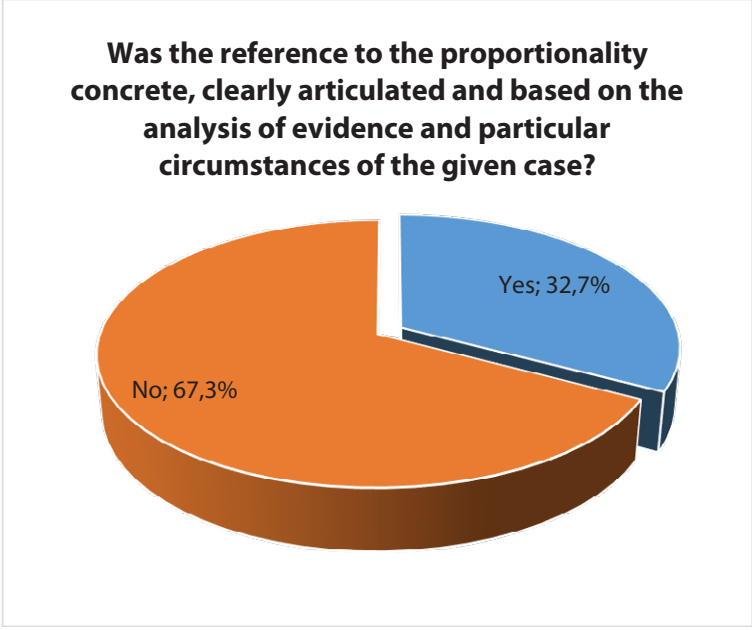


TABLE KA

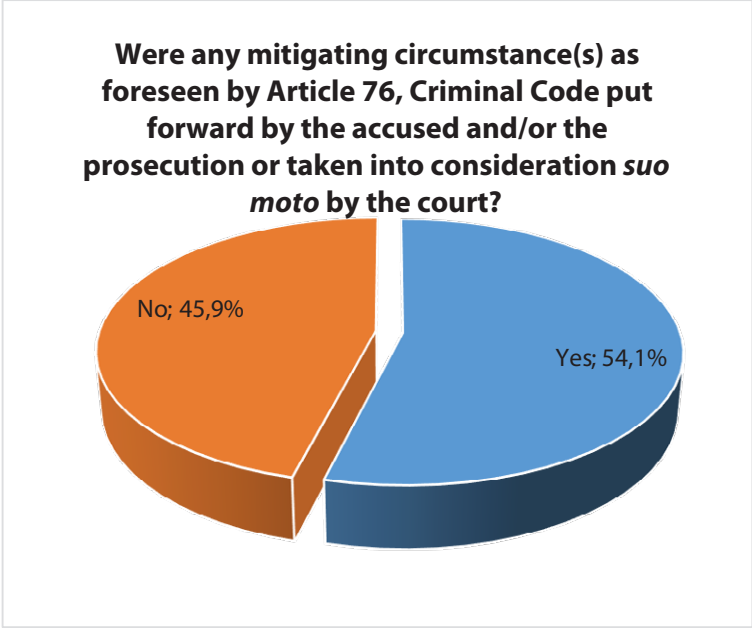
		Yes	No	Total
Total:		**24.3%**	**75.7%**	**100.0%**
Court type:	Appellate Court	52.8%	47.2%	100.0%
	First Instance Court	30.0%	70.0%	100.0%
	Supreme Court of Justice	34.5%	65.5%	100.0%
Region:	Chisinau	37.8%	62.2%	100.0%
	Outside	28.9%	71.1%	100.0%

		Yes	No	Total
Year:	2018	24.3%	75.7%	100.0%
	2019	27.5%	72.5%	100.0%
	2020	46.6%	53.4%	100.0%

3.3. Mitigating Circumstances

Mitigating circumstances should be clearly formulated, either in the legislation or in the case law. The non-existence of a mitigating circumstance should be proved beyond reasonable doubt.[60] The Moldovan legislation appears to be in line with the Council of Europe standards in terms of foreseeing a wide range of mitigating circumstances and their effects.[61] However, the analysis of the decisions selected under the present research presents a different picture. As it is shown in Chart No 18, mitigating circumstances as foreseen by Article 76 CC are often put forward by the parties or taken into consideration *suo moto* by the courts. There is nevertheless a considerable portion of decisions analysed, 45.9% of the total, which did not contain any motion on mitigating circumstances put forward by the parties or taken into consideration *suo moto* by the courts. This does not need to be problematic, because a mitigating circumstance is not necessarily present in every case.

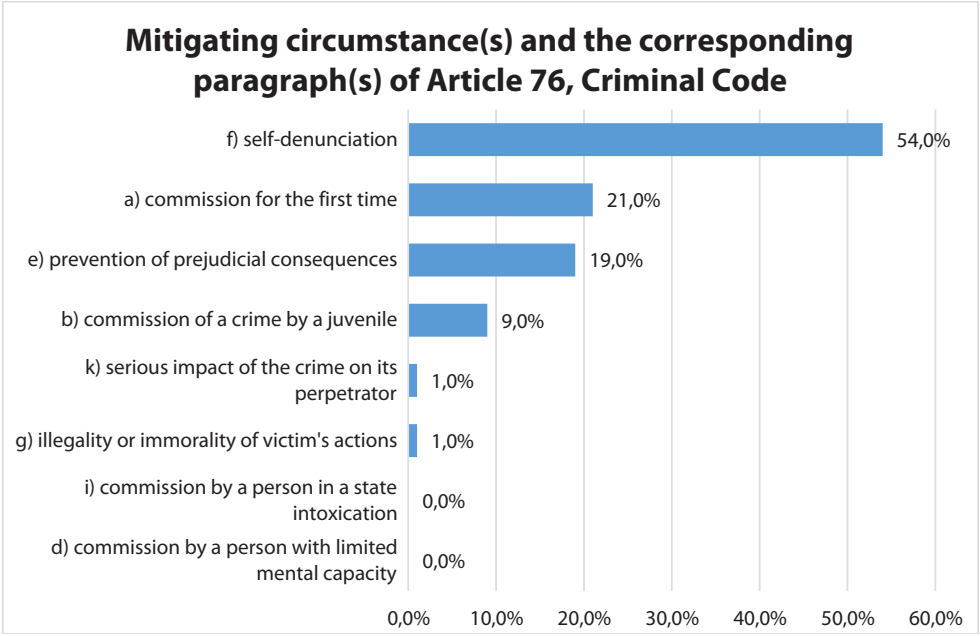
CHART No 18



The type and the frequency of mitigating circumstances put forward by the parties or taken into consideration *suo moto* by the courts are presented in Chart No 19 below.

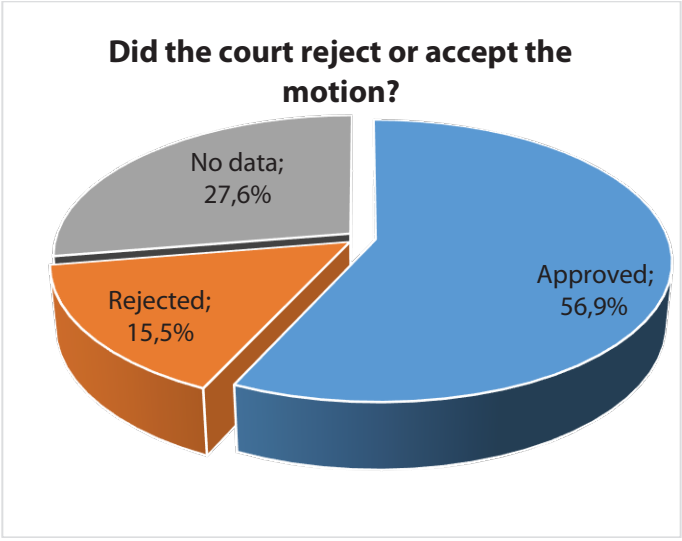
60. *Recommendation No. R(92)17*, Rules C.1, C.2, C.3.
61. See Section 2.2.

CHART No 19



In those cases where a motion of mitigating circumstances was put forward or taken into consideration suo moto by the court, the tendency observed was that courts in general accept mitigating circumstances (56.9% in total). It should be noted here though that the figures presented in Chart No 20 below should be looked at with caution because of a considerable percentage of decisions (27.6%) where no data could be retrieved. This is due to the fact that ***a large number of decisions was handled under the simplified procedure of Article 364[1] Code of Criminal Proceedings (CCP) and the fact that the court's reasoning in general and especially in cases of simplified procedure is poor.***

CHART No 20



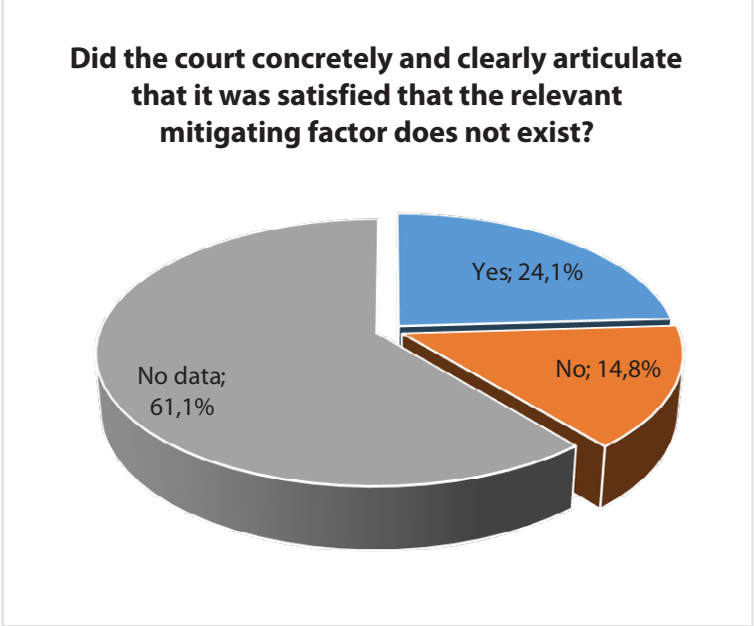
The disaggregation of the data in Table L below shows that ***the positive approach of accepting mitigating circumstances is observed in all courts at all levels with the Supreme Court of Justice leading in this regard.*** The tendency is also stable throughout the period under consideration and in all the regions in Moldova.

TABLE L

		Yes	No	No data	Total
Total:		**56.9%**	**15.5%**	**27.6%**	**100.0%**
Court type:	Appellate Court	56.3%	31.3%	12.5%	100.0%
	Court	53.4%	13.6%	33.0%	100.0%
	Supreme Court of Justice	83.3%	8.3%	8.3%	100.0%
Region:	Chisinau	60.0%	30.0%	10.0%	100.0%
	Outside	55.3%	7.9%	36.8%	100.0%
Year:	2018	48.6%	21.6%	29.7%	100.0%
	2019	66.7%	9.5%	23.8%	100.0%
	2020	54.1%	16.2%	29.7%	100.0%

The same problem of poor reasoning is also observed with regard to the question whether the courts clearly and concretely articulate that they are satisfied with the non-existence of a mitigating circumstance. Due to this problem, it was not possible to retrieve any data on the way the court articulated its reasons in 61.1% of the decisions where the court rejected the mitigating circumstances. However, in 24.1% of the decisions where mitigating circumstances where not accepted, the court's articulation was clear and concrete. The data on these issues are presented below in Chart No 21.

CHART No 21



The following two charts, namely Chart No 22 and Chart No 23 present the tendencies with respect to the effects of mitigating circumstances when accepted by the courts. It appears that ***a milder punishment is not used as frequently as it would be desirable and that the effects of the application of Article 364[1] are normally prevailing in practice***.

CHART No 22

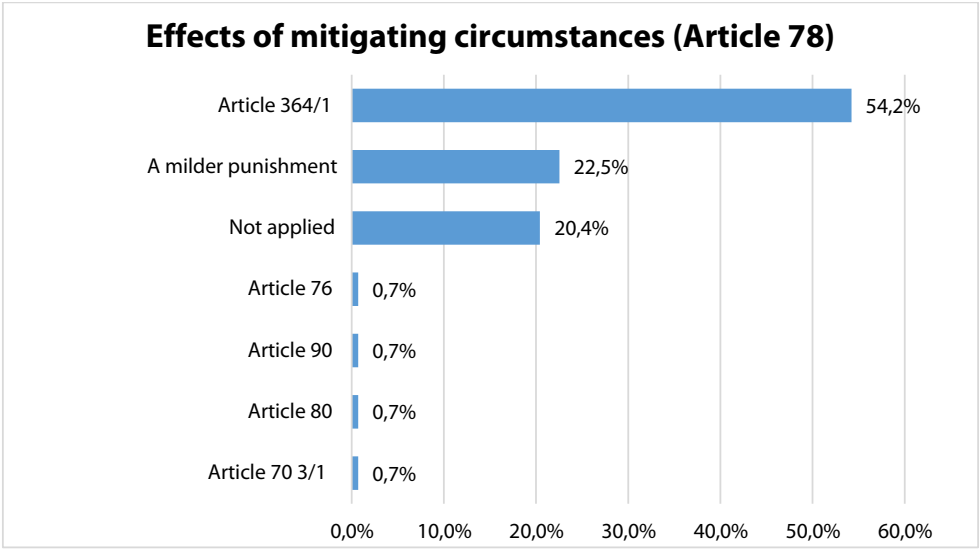
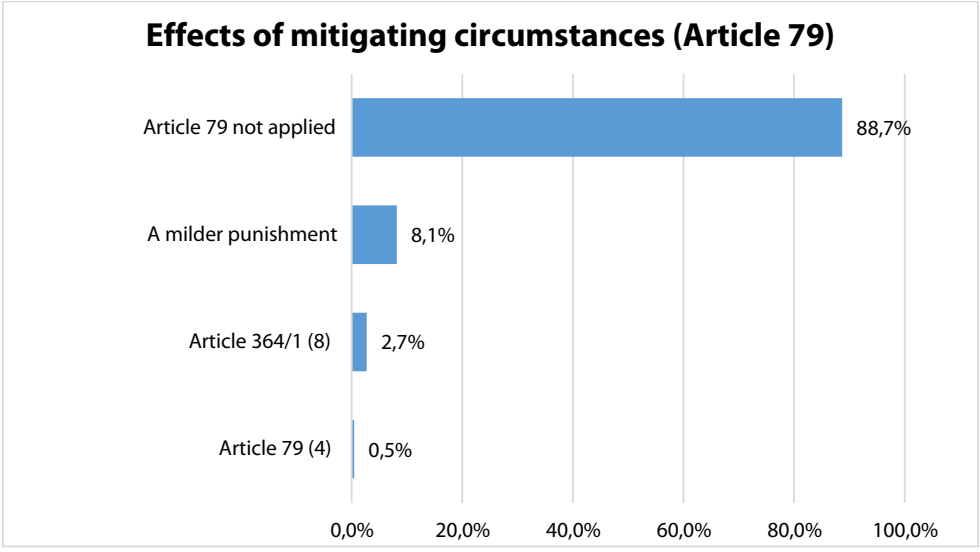


CHART No 23



Based on the above analysis, it can be concluded that ***Moldovan courts should pay more attention to the way the decisions are reasoned where mitigating circumstances are at stake. This would allow the accused to better understand the reason for rejection and eventually prepare and lodge the necessary appeal. Moreover, the application of a milder punishment needs to be promoted and applied more frequently. To this end, awareness raising and training***

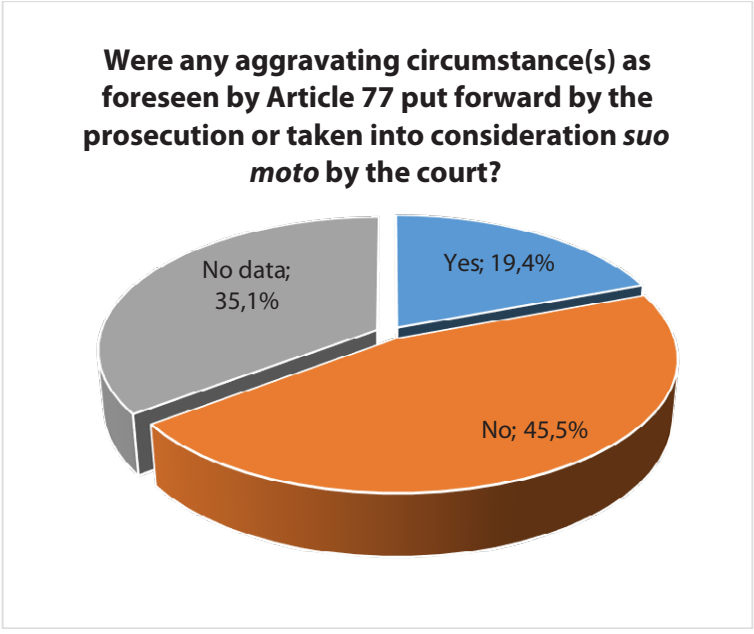
activities are needed. This situation is also explained by the already signalled problem[62] that the Moldovan legislation does not make any express mention that the standard of proof in rejecting a mitigating circumstance is that of proof beyond reasonable doubt.

3.4. Aggravating Circumstances

Aggravating factors should be clearly formulated, either in the legislation or in the case law. The existence of an aggravating factor should be proved beyond reasonable doubt.[63] The Moldovan legislation does clearly formulate a wide range of aggravating circumstances and theirs effects. However, the practice does not seem to follow the same clarity as the legislation. The analysis that follows below is structured a little different from the analysis on the mitigating circumstances. This is due to the fact that in general it is the prosecution that puts forward a motion for aggravating circumstances. Obviously, the court can also *suo moto* consider the existence or none of aggravating factors. Due to these reasons, special attention is paid to the actions taken by the prosecution regarding aggravating circumstances.

The problem with the poor reasoning and drafting of decisions of the courts becomes clear from the very outset in the analysis of the data collected with respect to aggravating circumstances. Chart No 24 displays that the question whether the prosecution put forward any motion for aggravating circumstances in 45% of the decisions analysed is answered negatively. As it was the case with mitigating circumstances, this figure does not bear much importance in itself since aggravating circumstances are not necessarily present in every criminal case. However, in 35.1% of the decisions, no data could be retrieved due to unclear court decisions. ***Therefore, the analysis which follows regarding the motions put forward by the prosecution should be looked at with caution due to incomplete data collected.***

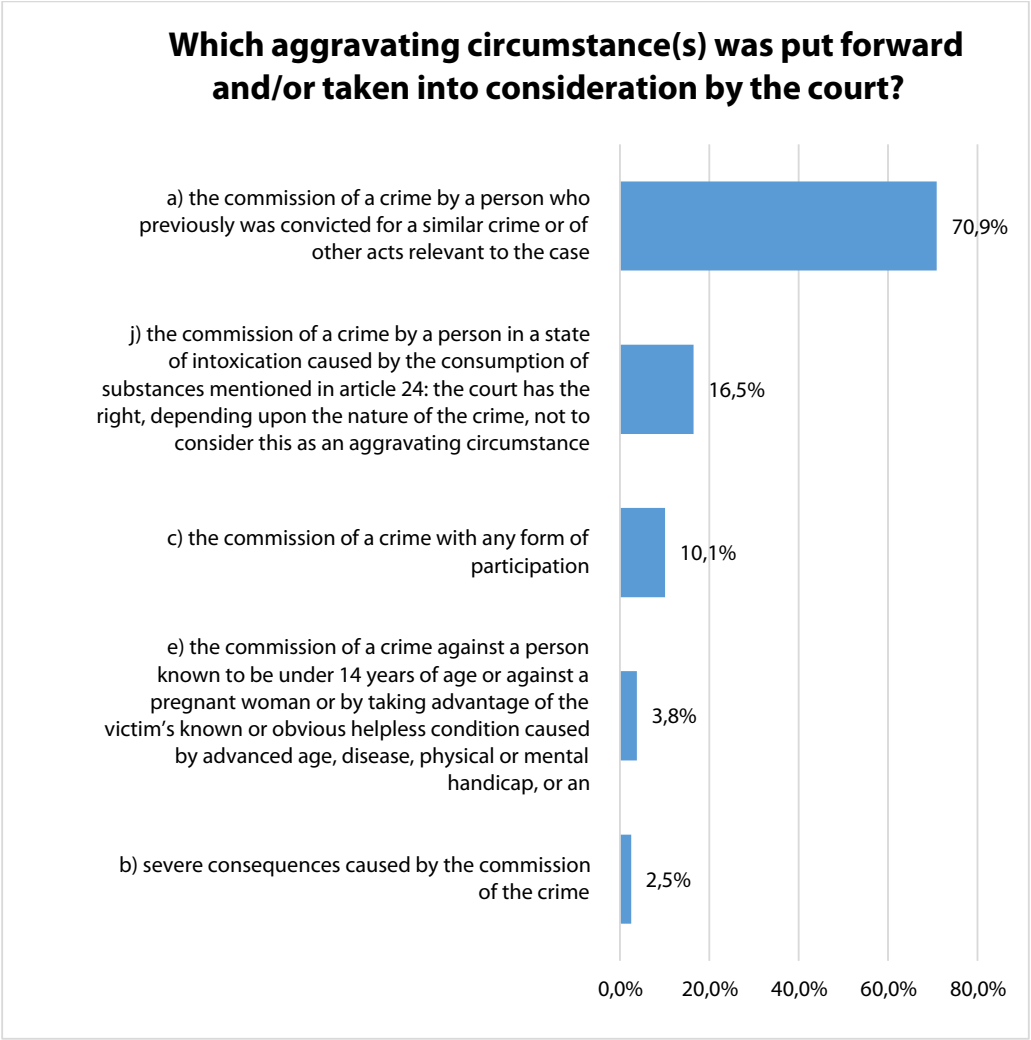
CHART No 24



62. See Section 2.2.
63. *Recommendation No. R(92)17*, Rules C.1, C.2, C.3.

Chart No 25 below gives an account of the types of aggravating circumstances put forward by the prosecution.

CHART No 25



Due to unclear reasoning of the decisions, the questions regarding the concreteness and clarity of the reasoning of the prosecution motions for aggravating circumstances is based on a small number of decisions as shown in Chart No 26, Table M and Table MA below and therefore should be looked at with caution. Nevertheless, the figures give an indication on these matters. In more than half of the relevant decisions where a motion of the prosecution for aggravating circumstances could be identified, the motion was based on a simple quotation of Article 77 CC. In 42.9% of those decisions, it was not clear whether the prosecution quoted Article 77 CC or went beyond a simple quotation. In all the decisions where the prosecution quoted Article 77 CC, the reasoning was neither concrete nor clear, nor based on the analysis of evidence and circumstances of the particular case.

CHART No 26

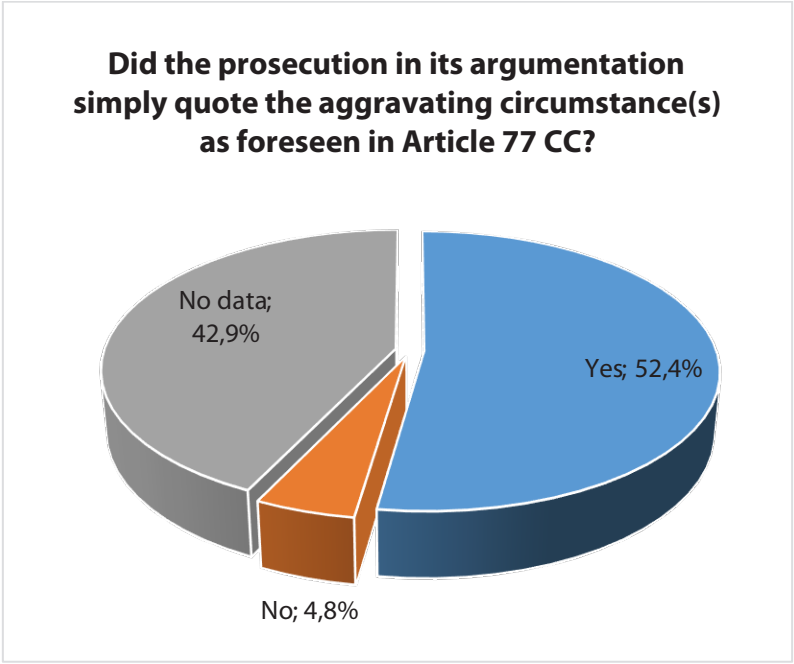


TABLE M
Did the prosecution in its argumentation simply quote the aggravating circumstance(s) as foreseen in Article 77 CC?

	No.	%
Yes	11	52.4%
No	1	4.8%
No data	9	42.9%
Total	**21**	**100.0%**

TABLE MA
Was the prosecution's reasoning concrete, clearly articulated and based on the analysis of evidence and particular circumstances of the given case?

	No.	%
Yes	0	0.0%
No	11	100.0%
Total	**11**	**100.0%**

Although the analysis of the above data should be considered with the necessary caution as already explained, it can be noticed that the tendency is that the prosecution does not pay the necessary attention in proving the existence of aggravating circumstances beyond reasonable doubt. To this end, awareness raising and training activities are needed. This situation is also explained by the already signalled problem[64] that the Moldovan legislation

64. See Section 2.2.

does not make any express mention that the standard of proof in accepting an aggravating factor is that of proof beyond reasonable doubt.

Due to the same reason of unclear court decisions as described above, the reaction of the courts to the motions put forward by the prosecution regarding aggravating circumstances is based on a small number of decisions. To reiterate, there is a considerable amount of decisions, within the category of decisions where a motion of prosecution could be identified, where no data could be retrieved on the reaction of the court. ***Nevertheless, based on the available data, the courts tend to approve the motions put forward by the prosecution regarding aggravating circumstances.*** **As it follows from Chart 28,** ***the approval of the aggravating circumstances is not performed in line with the standard of proof beyond reasonable doubt as required by the Council of Europe standards.*** The figures with respect to the reaction of the courts to the motions put forward by the prosecution regarding aggravating circumstances are presented in Chart No 27 and Chart 28 as well as Table MB and Table MC below.

CHART No 27

In line with Table 32 of the Main Sample

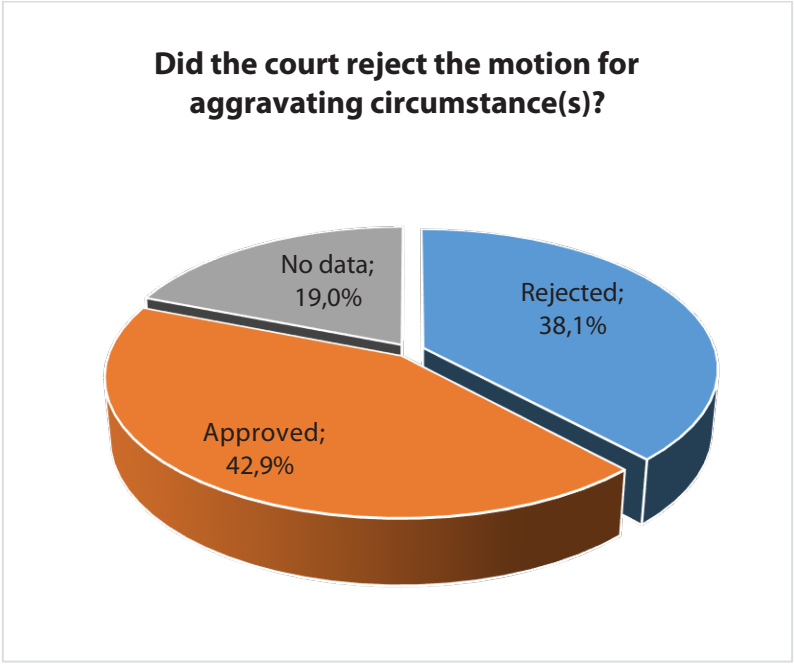


TABLE MB

Did the court reject the motion for aggravating circumstance(s)?

	No.	%
Rejected	8	38.1%
Approved	9	42.9%
No data	4	19.0%
Total	**21**	**100.0%**

CHART No 28

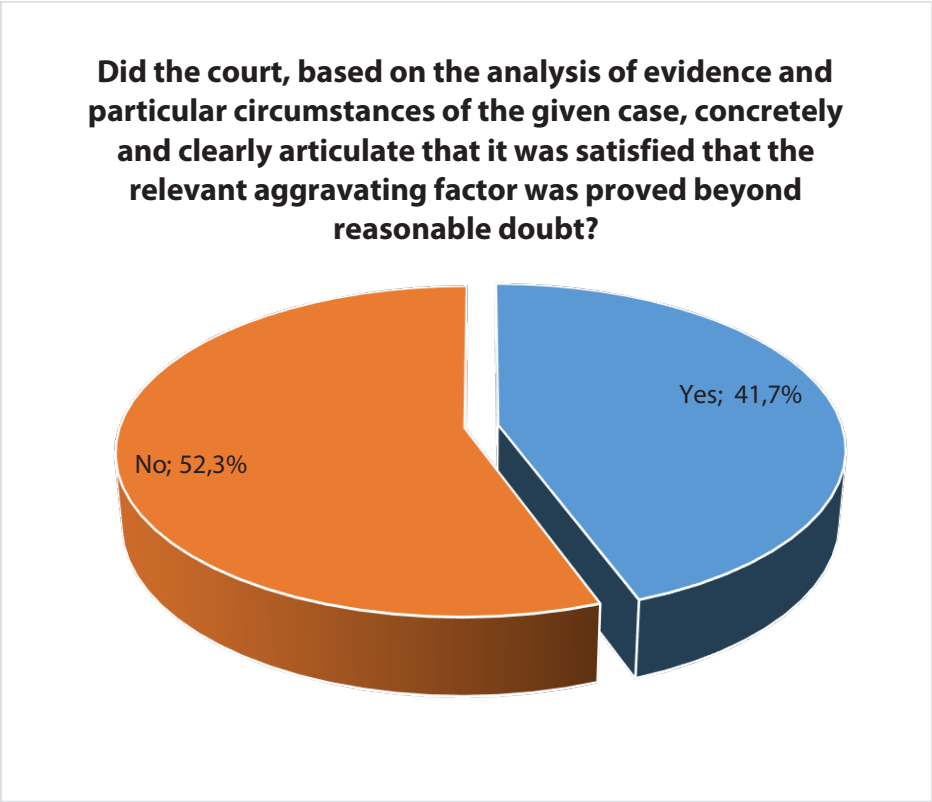
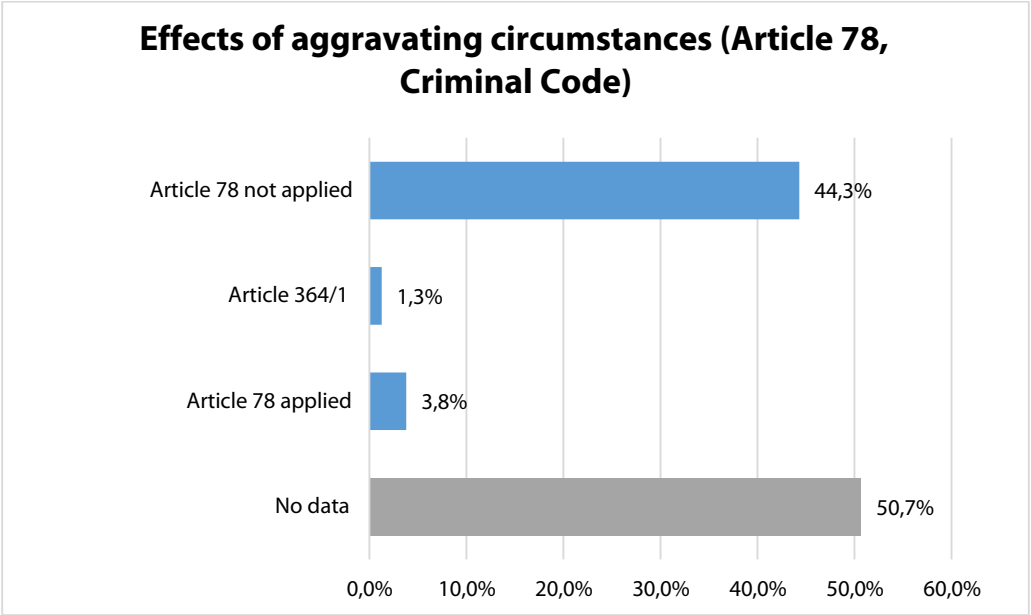


TABLE MC
In case of acceptance, did the court, based on the analysis of evidence and particular circumstances of the given case, concretely and clearly articulated that it was satisfied that the relevant aggravating factor was proved beyond reasonable doubt?

	No.	%
Yes	5	41.7%
No	4	52.3%
Total	**9**	**100.0%**

Another prominent finding from the available data is that in 50% of the decisions where a motion was put forward by the prosecution and accepted by the court, it is not possible to understand what the effects of the aggravating circumstances are. The courts go directly to the passing of the sentence without giving any explanation or arguments on the effects of the aggravating circumstances as shown in Chart 29 below.

CHART No 29



It should be noted that it has been not possible to collect any data on the application of aggravating circumstances *suo moto* by the courts. Despite this, the above analysis, conducted with the necessary caution due to the difficulties already described in collecting the relevant data, does provide an indication on the situation regarding the application of aggravating circumstances in Moldova.

3.5. Recidivism

The Council of Europe standards require that recidivism should not be used automatically and mechanically as a factor against the defendant. The effects of recidivism should be reduced or nullified where there has been a significant period free of criminality prior to the present offence, the present offence is minor, or the previous offences were minor, the offender is a minor or a young person.[65] The data collected and presented in Chart No 30 and Table N below indicate that only in 1% of the decisions analysed, or in 4 out of 407 decisions, the courts applied punishment for dangerous and very dangerous recidivism.

65. *Recommendation No. R(92)17*, Rules D.1, D.3, D.3.

CHART No 30

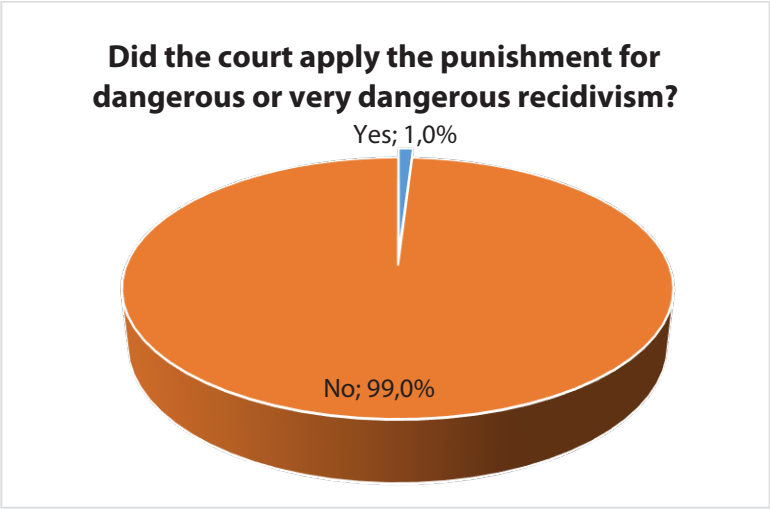


TABLE N
Did the court apply the punishment for dangerous or very dangerous recidivism?

	No.	%
Yes	4	1.0%
No	403	99.0%
Total	**407**	**100.0%**

The corresponding questions to Tables NA-NC below were designed to see whether the punishment for recidivism is applied automatically and mechanically. The figures upon which the disaggregation is done in these tables are very small to draw solid and sound conclusions.

TABLE NA
Did the court take into account the criteria provided in Article 82(1), Criminal Code?

	No.	%
Yes	3	75.0%
No	1	25.0%
Total	**4**	**100.0%**

TABLE NB
Did the court simply quote the above criteria?

	No.	%
Yes	3	25.0%
No	1	75.0%
Total	**4**	**100.0%**

TABLE NC
The court's reasoning with respect to these criteria was concrete, clearly articulated and based on the analysis of evidence and particular circumstances of the given case.

	No.	%
Yes	2	50.0%
No	2	50.0%
Total	**4**	**100.0%**

The question corresponding to Table ND below was designed to check whether the Moldovan courts pay attention to the period free of criminality prior to the present offence and the age of the culprit, which as mentioned above[66] are Council of Europe standards that are not foreseen in the Moldovan legislation. However, due to the small figures, it is not possible to draw a solid and sound conclusion on this matter.

TABLE ND
Did the court also pay attention to the period free of criminality prior to the present offence and the age of the culprit?

	No.	%
Yes	0	0.0%
No	4	100.0%
Total	**4**	**100.0%**

The low percentages and small figures presented above cannot be seen as an indication that the courts in Moldova rarely apply punishments for recidivism. Neither are they an indication that punishment for recidivism is not automatically and mechanically applied in Moldova. The criteria for the selection of offences as described above in the Methodology were not based on recidivism and neither is the focus of this research on this topic. ***Therefore, further research is needed in order to determine the level and manner of application of punishment for recidivism in Moldova.***

3.6. Reasoning of the Court

As already discussed above in Chapter I of the present research[67], the well-established case-law of the ECtHR stipulates that, reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based and the reasons provided for decisions given by the courts should not be automatic or stereotypical.[68] In particular, specific reasons should be given when a custodial sentence is imposed, in the sense that a motivation should be given, which relates the particular sentence to the normal range of sentences for the type of crime and to the rationales for sentencing.[69] The previous sections of this Chapter have already raised the concern of poor reasoning of the decisions analysed in the context of mitigating and aggravating circumstances. This section goes deeper into the issue of the reasoning of court's decisions as one of the most important guarantees for the individualization and consistency in sentencing.

66. See Section 1.2.2.
67. See Section 1.1.1.
68. *Moreira Ferreira v. Portugal*, Ap. No. 19867/12, 11 July 2017, para. 84.
69. *Recommendation No. R(92)17*, Rules E.1, E.2.

CHART No 31

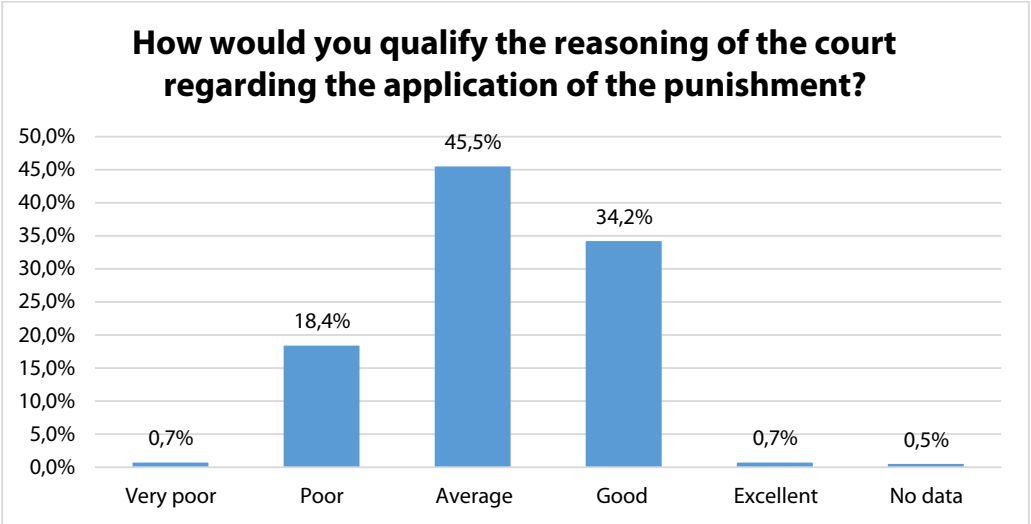


Chart No 31 above reveals that in the majority of the decisions analysed, 45% of the total, ***the reasoning was average. This means that the reasoning was based on legal framework and case law, which is explained. The employed legal terminology is correct and the structure of the decisions is consistent. However, the reasoning does not go further than compiling and explaining legal provisions, case law and legal authority while own reasoning and assessment are lacking.***

In a considerable amount of decisions analysed, namely 18.4% of the total, the ***reasoning was poor. The reasoning was incoherent. The courts quoted the correct legal provisions or case law, without applying them into the facts and circumstances of the case. Also, no explanation of the legal framework that was applied in the case and no reasons were provided on the relevance of the legal framework. Case law and legal authorities were quoted without any added value and no own reasoning was presented except from quotations of legal provisions and case law or legal authorities.***

There was also a good amount of decisions analysed, namely 34.2% of the total, where ***the reasoning was good. The structure of these decisions was consistent and the text comprehensible. Correct legal terminology and flawless language was used. The reasoning was concrete and clearly articulated. Moreover, the reasoning went further than simply quoting and explaining legal framework, case law and legal authorities and it was based on the analysis of evidence and particular circumstances of the given case. However, no reaction on the parties' arguments was provided.***

TABLE O

		Very poor	Poor	Average	Good	Excellent	No data	Total
Total:		**0.7%**	**18.4%**	**45.5%**	**34.2%**	**0.7%**	**0.5%**	**100.0%**
Court type:	Appellate Court	0.0%	11.1%	30.6%	55.6%	0.0%	2.8%	100.0%
	First Instance Court	1.0%	22.0%	42.5%	33.2%	1.0%	0.3%	100.0%
	Supreme Court of Justice	0.0%	3.4%	70.7%	25.9%	0.0%	0.0%	100.0%

		Very poor	Poor	Average	Good	Excellent	No data	Total
Region:	Chisinau	1.7%	19.2%	50.6%	27.3%	0.6%	0.6%	100.0%
	Outside	0.0%	17.9%	41.7%	39.1%	0.9%	0.4%	100.0%
Year:	2018	0.0%	24.3%	51.5%	22.1%	0.7%	1.5%	100.0%
	2019	2.2%	21.0%	41.3%	35.5%	0.0%	0.0%	100.0%
	2020	0.0%	9.8%	43.6%	45.1%	1.5%	0.0%	100.0%

The disaggregation of data as shown in Table O above, shows that the reasoning in the majority of decisions of the Supreme Court of Justice was average, while the reasoning in the majority of the decisions of the Appellate Courts was good. The situation in first instance courts is the same as the Supreme Court of Justice, both in Chisinau courts and outside. As already mentioned in the Methodology, the figures regarding the Supreme Court of Justice should not be read as conclusive. The tendency of better articulated and concrete reasoning at the appellate level was also observed in the sections above in this chapter in the context of the analysis on mitigating and aggravating circumstances. These tendencies are also stable throughout the whole period under consideration.

The above analysis shows that ***there is still work to be carried out on the reasoning of courts in Moldova. The Appellate Court's experience could be shared with other courts in Moldova and followed as good practice. In general, more training and awareness raising activities are needed. Also, templates of decisions could be developed where the main elements of a good or excellent reasoning are elaborated and followed by the courts in their decisions.***

CHAPTER IV: RELEASE FROM CRIMINAL LIABILITY

4.1. General Considerations

The analysis provided under Section 2.2 in Chapter II above already showed that release from criminal liability is not widely used in Moldova. The data gathered and analysed under Chapter II concerned the selection of provisions regarding release from criminal liability. In the present chapter, the data collected and analysed relate only to the limited selection of provisions regarding release from criminal liability in line with the selection criteria explained in the Methodology above. Chart No 32 and Table P below confirms once again the finding that release from criminal liability is not widely used. In 2 decisions, release from criminal liability was applied for the selected relevant provisions. ***Therefore, the same general comments and suggestions made in Section 2.2 in Chapter II above apply here equally.***

CHART No 32

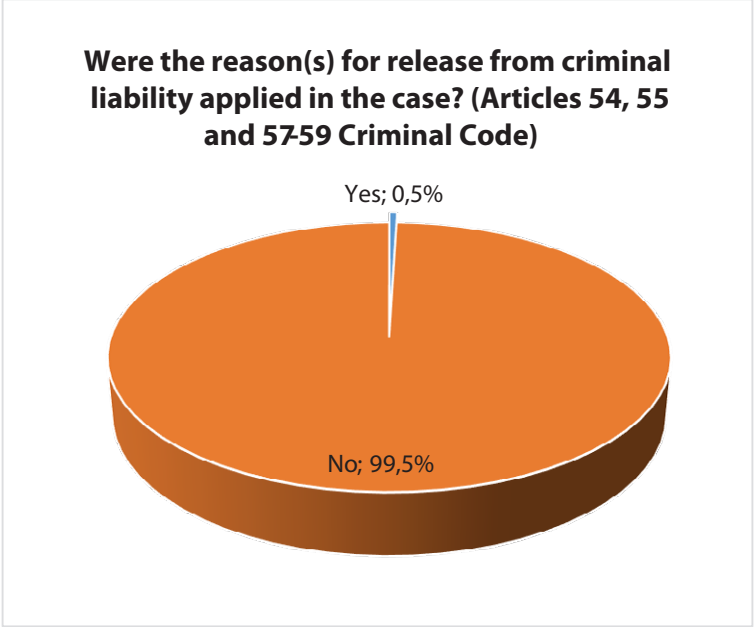


TABLE P
Were the reason(s) for release from criminal liability applied in the case? (Articles 54, 55 and 57–59 Criminal Code)

	No.	%
Yes	2	0.5%
No	405	99.5%
Total	**407**	**100.0%**

The Checklist was designed to collect data, which will enable the observation of the behaviour of the prosecution, the defence and the courts with respect to release from criminal liability. However, in none of the two cases, where release from criminal liability was applied, the prosecution put a motion forward. Therefore, no further comments or considerations could be provided here.

Both decisions where release from criminal liability was applied concerned motions put forward by the defence. In one of the cases the defence simply quoted the relevant legal framework and criteria, while in the other the motion went beyond a simple quotation and its argumentation was based on an analysis of the evidence and the particular circumstances of the case.

In none of the decisions the court applied reasons for release from criminal liability *suo moto*. The court reacted to the motions put forward by the defence and accepted them.

CHAPTER V: ALTERNATIVES TO IMPRISONMENT

In Chapter II above, there was already a flag raised that the expectations of the 2017 reform, but also the expectations of other reforms and efforts made on this direction are not met with respect to the application of alternatives to imprisonment.[70] This chapter will go deeper into the subject matter and study the magnitude of this problem based on the application of two types of alternatives to imprisonment in compliance with the selection criteria explained in the Methodology above. The analysis is again based on the Checklist and aims at looking into the compatibility of the practice of Moldovan courts with Council of Europe standards.

5.1. Conviction with conditional suspension of the punishment execution

General Considerations

The conviction with conditional suspension of the punishment is regulated in Article 90 CC and as Chart No 33 shows is applied quite often, namely in 42.3% of the total, by courts in Moldova. However, in the majority of the cases, namely 57.7% the measure is not applied. This is not necessarily an indication of a tendency that the application levels of the alternative are low since the research did not focus on the questions whether the conditions for the application were fulfilled.

The disaggregation of the data in Table Q below shows that first instance courts apply the alternative the most. The tendencies are stable in all the regions and throughout the whole period under consideration, with the exception of ***2020 where the use of the alternative is considerably low***.

70. See Section 2.2.

CHART No 33

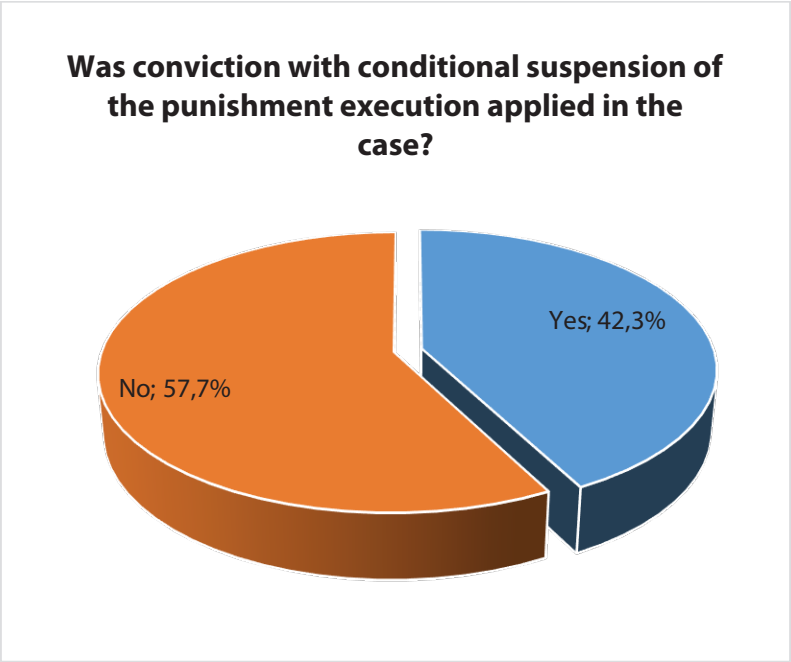


TABLE Q

		Yes	No	Total
Total:		**42.3%**	**57.7%**	**100.0%**
Court type:	Appellate Court	41.7%	58.3%	100.0%
	First Instance Court	47.3%	52.7%	100.0%
	Supreme Court of Justice	15.5%	84.5%	100.0%
Region:	Chisinau	36.6%	63.4%	100.0%
	Outside	46.4%	53.6%	100.0%
Year:	2018	25.0%	75.0%	100.0%
	2019	35.9%	64.1%	100.0%
	2020	19.2%	80.8%	100.0%

The data presented in Chart No 34 presents that the period of probation mostly imposed by the courts varies between 1 year (20.9%) to 2 and 3 years (29.1% and 27.3% respectively). The variation of the probation period according to the gravity of the offence, as presented in Table QA below, is incoherent and therefore it is difficult to establish a tendency in this respect and to understand the ratio of this distribution.

CHART No 34

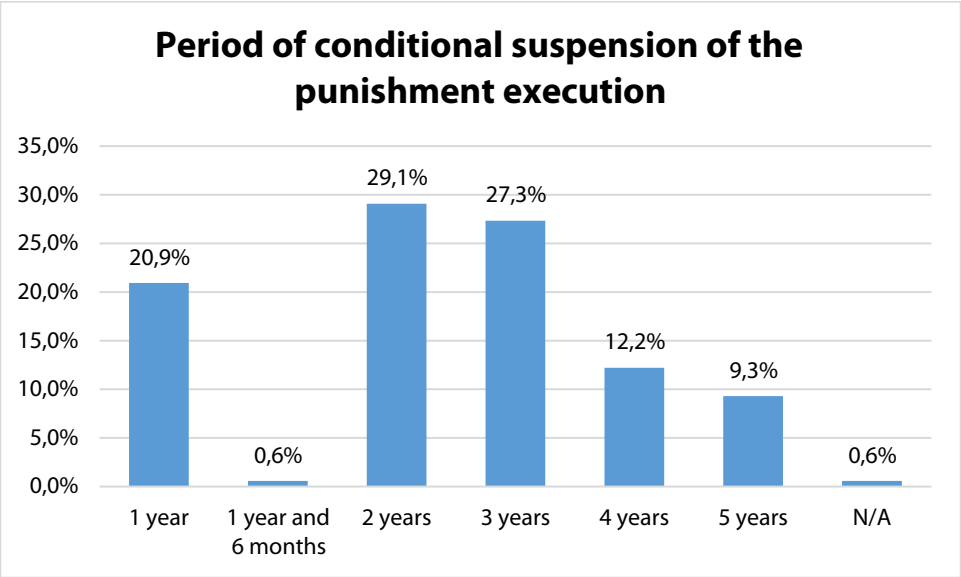


TABLE QA

	1 year	1 year and 6 months	2 years	3 years	4 years	5 years	No data	Total
Total	**20.9%**	**0.6%**	**29.1%**	**27.3%**	**12.2%**	**9.3%**	**0.6%**	**100.0%**
Less serious	50.0%	0.0%	23.7%	10.5%	7.9%	7.9%	0.0%	100.0%
Serious	12.1%	0.8%	31.1%	32.6%	12.9%	9.8%	0.8%	100.0%
Extremely serious	50.0%	0.0%	0.0%	0.0%	50.0%	0.0%	0.0%	100.0%

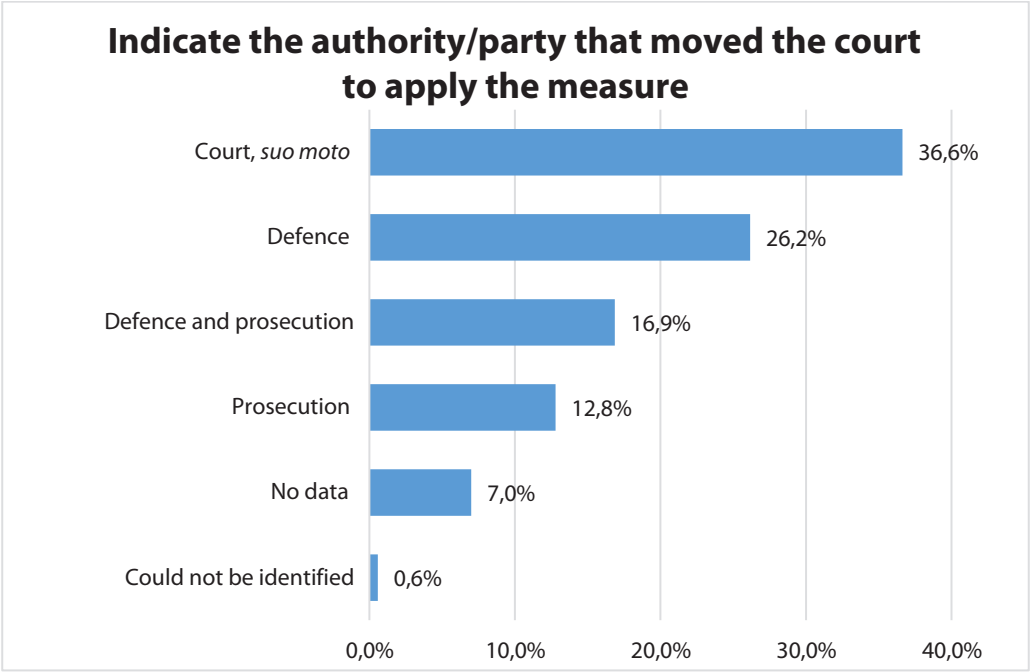
The analysis of the general data above demands for ***more research to look into the courts' approach towards the conditions for the application of the conditional suspension of the execution of the punishment and the relation between the duration of the probation period and the gravity of the offence.***

Movement and reaction of the court

The Checklist foresees questions related to the parties/authorities, which initiated the process and the court's reaction thereupon. These data could provide insights on whether there is an interest on the application of the alternative, which in turn is an indication on the awareness regarding the alternative and on whether its application is illusory or practical.

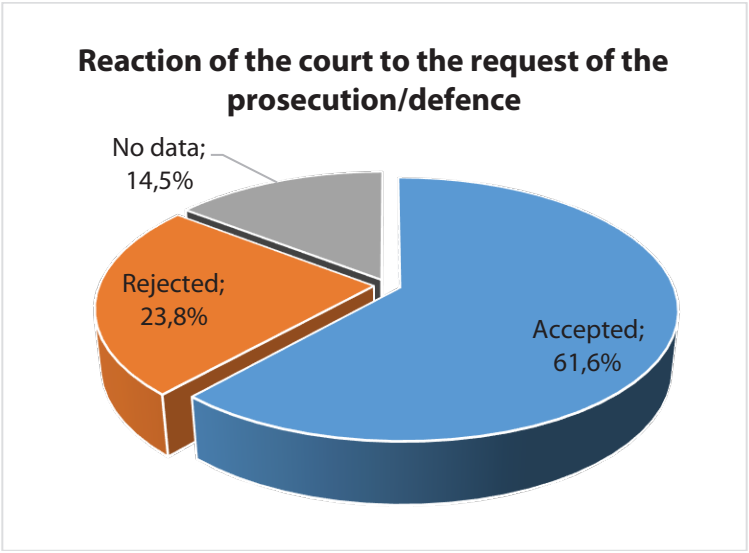
The data presented in Chart No 35 below show that in the majority of the cases (36.6%) the court *suo moto* applies the conditional suspension of the execution of the punishment. The defence and the prosecution also put forward quite often motions for the application of the alternative (26.2% and 16.9% respectively). ***These positive tendencies are to be cheered and encouraged. They are an indication that the awareness regarding the conditional suspension of the execution of the punishment is satisfactory and that its application is practical and not illusionary.***

CHART No 35



The same positive tendency can be observed regarding the reaction of courts towards the motions put forward by the prosecution or the defence. It was not possible to identify who put the motion forward in 14.5% of the decisions analysed. This was again due to the poor reasoning and quality of the decisions. However, despite this, Chart No 36 below shows that ***the tendency among courts is to accept the motion put forward by the parties (61.6% of the total). This confirms again the finding that the application of the conditional suspension of the execution of punishment is real and applied in practice.***

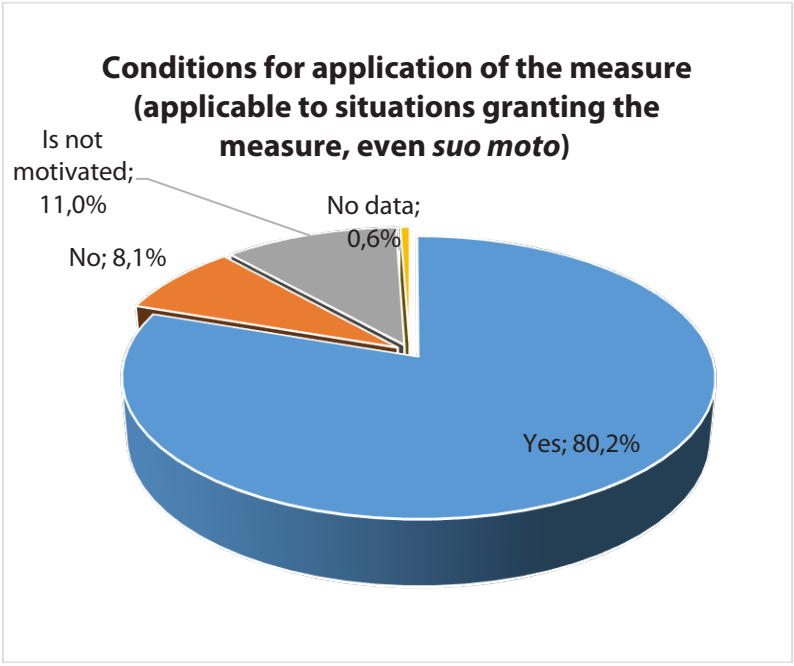
CHART No 36



Conditions for application of the measure

The question that was answered regarding the conditions for the application of the measure was not how the court applied these conditions, but whether the court indicated in its judgment the grounds for its application, including the probationary period or, if applicable, the probationary term. Again, as shown in Chart No 37 below, ***a positive tendency is observed here since in the vast majority of the decisions analysed (80.2%) the courts did pay attention to the conditions for the application of the alternative, including the probationary period and/or term. The problem with the quality of decisions is present here and hence the result of no data or no motivation.***

CHART No 37



Obligations and complementary punishment

The data presented in Chart No 38 below confirm the expectation that application of the conditional suspension of the execution of the punishment as a rule also involves the imposition of obligations and/or complementary punishment. However, as it is shown below in Chart No 39 the obligations and/or complementary punishment imposed are the 'classic' ones and do not go beyond the legitimate expectations in such cases.

CHART No 38

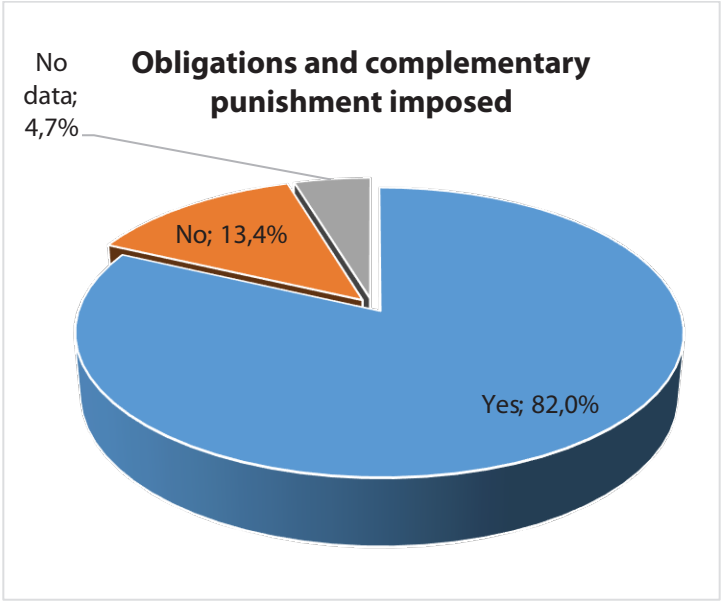
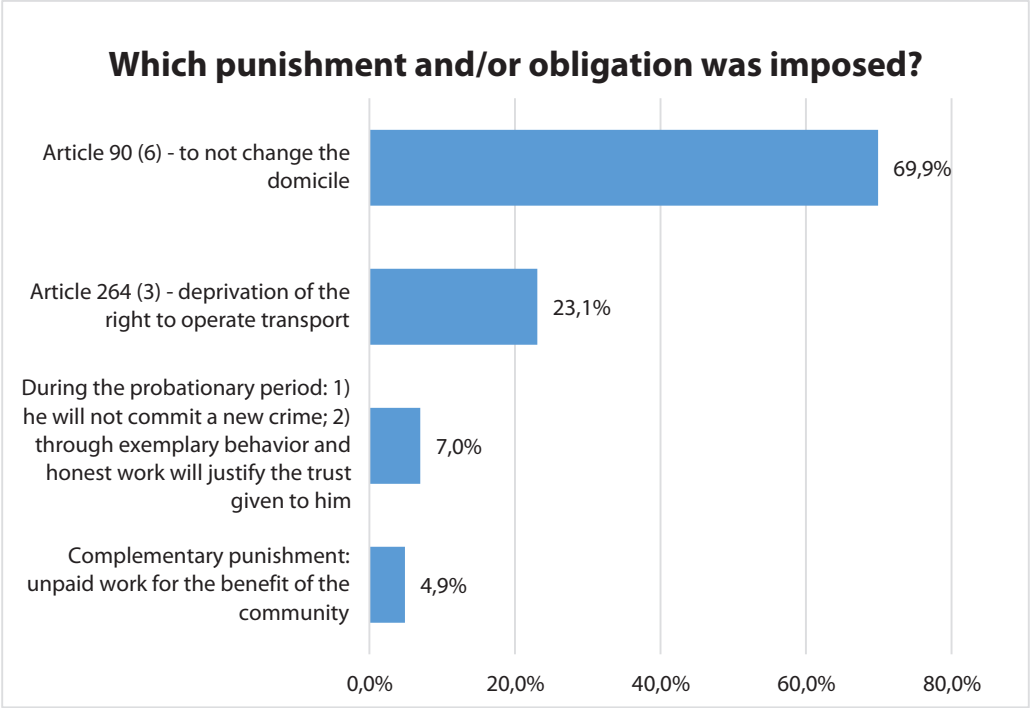


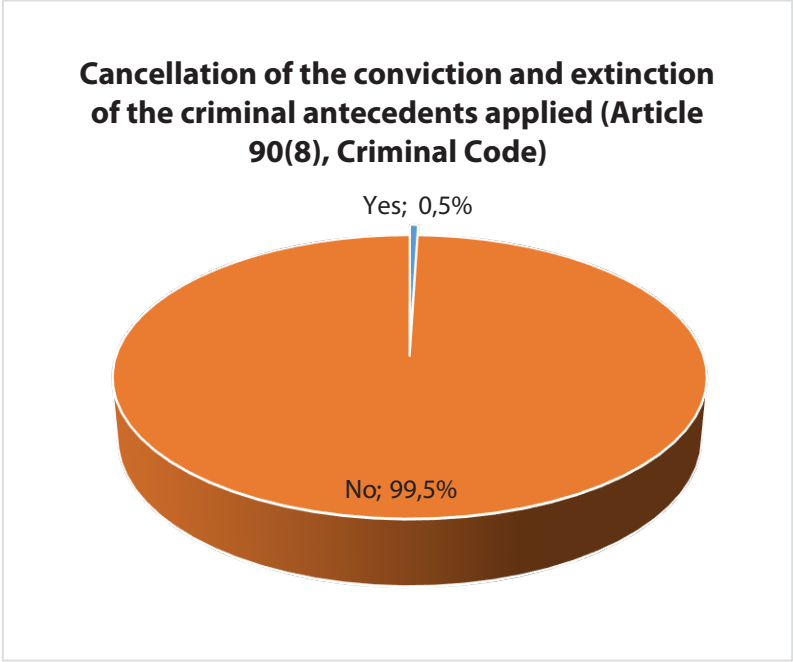
CHART No 39



Cancellation of the punishment and measure

Article 90 (8) CC provides for the possibility of the cancellation of the conviction and extinction of the criminal antecedents if the conditions foreseen therein are fulfilled. The data presented in Chart No 40 below reveal that ***such a provision seems to almost never be applied in practice. Therefore, further research is needed to better understand why the possibility of the cancellation of the conviction and extinction of the criminal antecedents is hardly used by the Moldovan courts or Probation Services.***

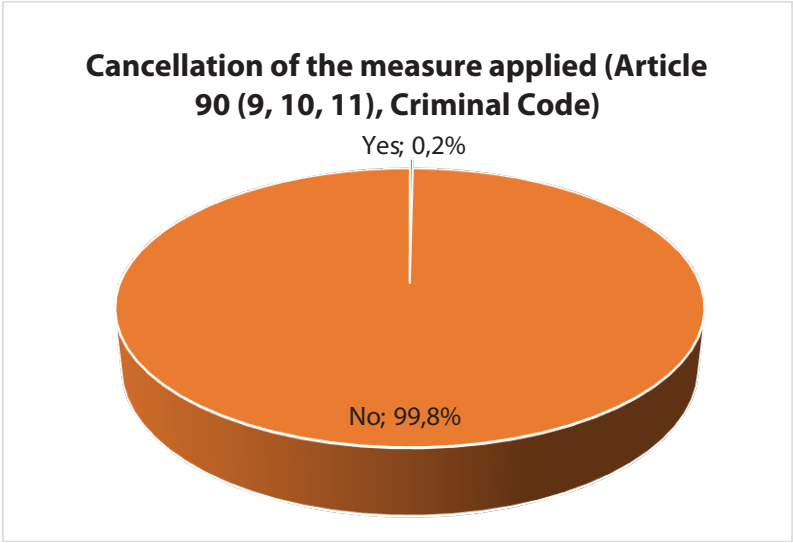
CHART No 40



The cancellation of the conviction with conditional suspension of the execution of the punishment, as foreseen in Article 90(9–11) CC, appears not to be applied automatically. In fact, as it is shown in Chart No 41 below, ***the cancellation of the alternative is almost never used. This is a positive tendency in line with the Council of Europe standards[71] that has to be cheered and welcomed.***

71. See Section 1.1.2.

CHART No 41



5.2. Conviction with partial suspension of the execution of imprisonment punishment

The conviction with partial suspension of the execution of the imprisonment punishment is regulated in Article 90[1] CC and it was introduced during the reform of 2017 with the expectation that it would contribute to the humanization and liberalization of criminal law and the decrease of prisons' population.[72] However, data collected and presented in Chart No 42 and Table R below reveal that those ***expectations are not met at all. The conviction with partial suspension of the execution of the imprisonment punishment is hardly applied by the courts.*** In only 5 out of the 407 decisions analysed the courts applied Article 90[1] CC.

72. See Section 1.2.1.

CHART No 42

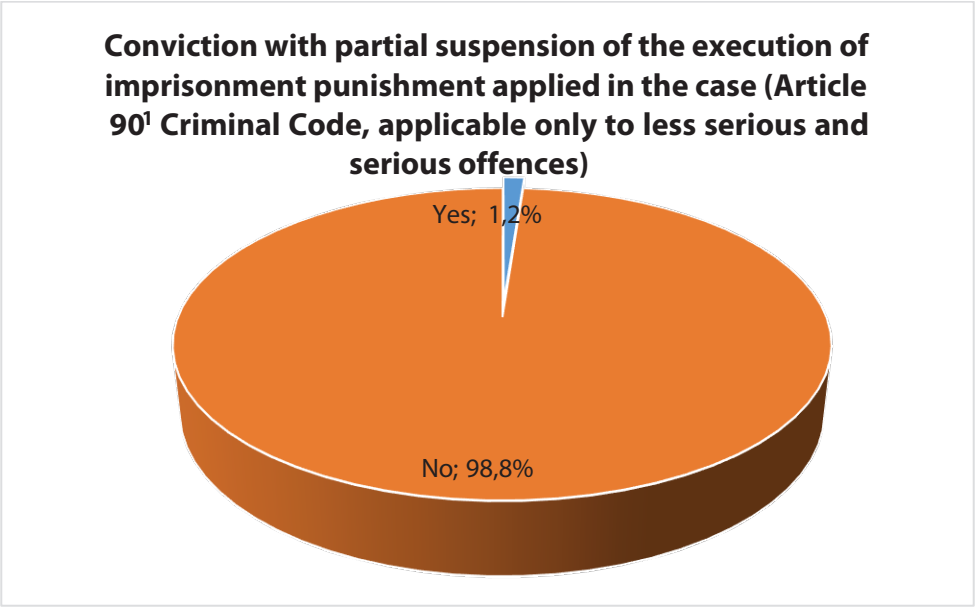


TABLE R
Conviction with partial suspension of the execution of imprisonment punishment applied in the case (Article 90¹ Criminal Code, applicable only to less serious and serious offences)

	No.	%
Yes	5	1.2%
No	402	98.8%
Total	**407**	**100.0%**

The data figures are too small to draw sound and solid conclusions and establish any tendencies on the application of the conviction with partial suspension of the execution of the imprisonment punishment. However, if taken with the necessary caution, the data can give a careful indication on the awareness level of the parties in the proceedings and courts, as well as the approach of the courts towards this alternative. As it is shown in Table RA below, in 2 out of 5 cases the alternative was applied *suo moto* by the court, in other 2 a motion was put forward by the defence and in one case the prosecution requested the application of the alternative.

TABLE RA
Initiation of the process by prosecution, defence or *suo moto* by the court.

	Nr.	%
Defence	2	40.0%
Suo moto by court	2	40.0%
Prosecution	1	20.0%
Total	**100.0%**	

TABLE RB
Reaction of the court to the request of the prosecution/defence

	No.	%
Yes	3	60.0%
N/A	2	40.0%
Total	**5**	**100.0%**

Courts reacted on the motions put forward by the defence and prosecution and accepted them.

TABLE RC
Conditions for application of the measure (applicable to situations granting the measure, even *suo moto*).

	No.	%
Yes	5	100%
No	0	0%
Total	**5**	**100.0%**

The courts also indicated in the judgment the grounds for the conviction with partial suspension of the execution of imprisonment punishment as foreseen in Article 90[1] CC.

TABLE RD
Obligations imposed

	No.	%
Yes	1	20.0%
No	2	40.0%
N/A	2	40.0%
Total	**5**	**100.0%**

Only in one of the cases a clear obligation was imposed. It concerned the obligation to participate in a special treatment or counselling program to reduce violent behaviour and probation programs. In 2 other cases no obligations were imposed, while in the remaining 2 cases it was not clear if any obligation was imposed. No data could be retrieved with respect to cancellation of the conviction with partial suspension of the execution of the imprisonment punishment.

Based on the above analysis, it can be said that ***awareness raising and training is needed with respect to the application of the conviction with partial suspension of the execution of the imprisonment punishment. Also, research is needed to understand the root causes of the low level of the application of this alternative.***

ANNEX I: CHECKLIST FOR EXAMINING COURT DECISIONS REGARDING SANCTIONING OF LESS SERIOUS, SERIOUS AND PARTICULARLY SERIOUS OFFENCES

Instructions:
- ***Use this Checklist for each court decision/file. Use ONLY ONE Checklist per court decision.***
- ***Use a separate Checklist for the decisions of the appellate court.***
- ***Use a separate Checklist for the decisions of the Supreme Court of Justice.***
- ***Complete and generate a separate file for each Checklist.***
- ***Fill in only verified data according to the requirements in the relevant cell.***
- ***Do not copy and paste text from court decisions/files. Do not engage the court staff, prosecutors, judges or defence lawyers in reviewing the documents necessary for filling in the Checklist.***
- ***Contact the Project Team for any further questions or doubts in reviewing the court decisions/files and/or filling in the Checklist.***

GENERAL LOGISTICAL/STATISTICAL DATA			
1	**Checklist No.**	*Insert an ordinal number for the current Checklist. DO NOT confuse with the court decision number.*	
2	**Information on the courts**		
2a	First Instance Court	*Indicate the first instance court, which took the decision*	
2b	Date and No. of the First Instance Court Decision	*Fill in the date of the first instance court decision examined and its No.*	

2c	Appellate Court	*Indicate the Appellate Court. Please fill in the required information ONLY if the decision of the Appellate Court was reviewed under this Checklist.*	
2d	Date and No. of the Appellate Court Decision	*Fill in the date of the Appellate court decision examined and its No.*	
2e	Supreme Court of Justice	*Fill in the date of the Supreme Court of Justice decision examined and its No.*	
3	**Legal Qualification of the offence for which the accused was convicted as in the decision**	*Indicate the Article, including the exact paragraph, of the Criminal Code.*	
3a	Was it a less serious offence?	*If yes, tick the box.*	
3b	Was it a serious offence?	*If yes, tick the box.*	
3c	Was it a particularly serious offence?	*If yes, tick the box.*	
4	**Information on the sentence**		
4a	Did the court decision constitute a custodial sentence?	*If yes, tick the box.* *NOTE: by 'final court decision' is meant either a decision of the first instance court, which was not appealed or a decision of the appellate or Supreme Court of Justice as the case may be.*	
4b	Duration of the custodial sentence imposed	*Indicate in years, months and days the length of the custodial sentence.*	
4c	Did the court decision constitute a release from criminal liability? (Chapter VI, General Part of Criminal Code)	*If yes, tick the box.* *NOTE: by 'final court decision' is meant either a decision of the first instance court, which was not appealed or a decision of the appellate or Supreme Court of Justice as the case may be.*	
4d	Did the court decision contain an alternative to imprisonment? (Articles 90^1 Criminal Code)	*If yes, tick the box.* *NOTE: by 'final court decision' is meant either a decision of the first instance court, which was not appealed or a decision of the appellate or Supreme Court of Justice as the case may be.*	
5	**Prosecution office**	*Which Prosecution office/branch brought the charges?*	
6	**Defence**	*Was the accused represented by a lawyer? If yes, tick the box.*	
6a	Legal Aid	*Was the accused represented by a lawyer appointed from the legal aid scheme? If yes, tick the box.*	
6b	Own lawyer	*Was the accused represented by a lawyer of his own choosing? If yes, tick the box.*	
6c	Both legal aid and own lawyer	*Was the accused represented by both a legal aid lawyer (usually in the beginning of the process) and a lawyer of his own choosing? If yes, tick the box.*	

6d	None of the above		

CONSISTENCY IN SENTENCING

This section follows the logic and structure of Recommendation No. R(92)17 (Recommendation) of the Committee of Ministers of the Council of Europe concerning Consistency in Sentencing. The Recommendation entails the Council of Europe standards related to issues such as the individualization of the sentence, proportionality of the punishment with the seriousness of the offence, aggravating and mitigating circumstances, recidivism and motivation of the sentence. In proposing or imposing sentences, account should be taken of the probable impact of the sentence on the individual offender in order to avoid unusual hardship and to avoid impairing the possible rehabilitation of the offender. Disproportionality between the seriousness of the offence and the sentence should be avoided and sentencing practice should be subjected to critical reappraisal to avoid undue severity. Where a court wishes to consider, as an aggravating factor, some matters not forming part of the definition of the offence, it should be satisfied that the aggravating factor is proved beyond reasonable doubt and before a court declines to take account of a factor advanced in mitigation, it should be satisfied that the relevant factor does not exist. Previous convictions should not, at any stage in the criminal justice system, be used mechanically as a factor working against the defendant. Any effect of previous criminality should be reduced or nullified where there has been a significant period free of criminality prior to the present offence; the present offence is minor, or the previous offences were minor; the offender is still young. Courts should, in general, state concrete reasons for imposing sentences. In particular, specific reasons should be given when a custodial sentence is imposed. A "reason" is a motivation, which relates the particular sentence to the normal range of sentences for the type of crime and to the declared rationales for sentencing. The relevant provisions are ***Articles 75–79 and 82 of the Criminal Code. This section applies to less serious, serious and particularly serious offences selected for the research****.*

7	**General Criteria for the individualization of the sentence**		
7a	Application of Article 75, Criminal Code	*Did the court make express reference to Article 75 of the Criminal Code? If yes, tick the box.*	
7b	Individual general circumstances for determining the term and type of punishment (Article 75(1), Criminal Code)	*Did the court take into account the seriousness of the committed offence, the motif, the personality of the culprit, the influence of the punishment applied on the correction and re-education of the culprit, as well as the living conditions of his family? If yes, tick the box.*	
		Did the court simply quote the above criteria? If yes, tick the box.	
		Was the court's reasoning with respect to these criteria concrete, clearly articulated and based on the analysis of evidence and particular circumstances of the given case? If yes, tick the box.	

7c	Reasons for custodial sentence (Article 75(2), Criminal Code)	*Did the court argue the exceptional nature upon applying the custodial sentence? If yes, tick the box.*	
		Did the court in its argumentation simply quote the criteria of Article 75(2) of Criminal Code? If yes, tick the box.	
		Was the court's reasoning with respect to these criteria concrete, clearly articulated and based on the analysis of evidence and particular circumstances of the given case? If yes, tick the box.	
8	**Proportionality**	*Did the court in its decision pay attention to the proportionality between the seriousness of the offence and the purpose of the sentence? If yes, tick the box.*	
		Was the reference to the proportionality concrete, clearly articulated and based on the analysis of evidence and particular circumstances of the given case? If yes, tick the box.	
9	**Mitigating Circumstances (Article 76, Criminal Code)**	*Were any mitigating circumstance(s) as foreseen by Article 76, Criminal Code put forward by the accused and/or the prosecution? If yes, tick the box.*	
9a	Which mitigating circumstance(s) was put forward and/or taken into consideration by the court?	*Indicate the exact mitigating circumstance(s) and the corresponding paragraph(s) of Article 76, Criminal Code.*	
a	the commission for the first time of a minor or less serious crime;		
b	the commission of the crime by a juvenile or by a person who has reached the age of 18, but has not reached the age of 21;		
c	the commission of the offence as a result of several difficult personal or family circumstances;		
d	commission of a crime by a person with limited mental capacity;		
e	the prevention by the culprit of the prejudicial consequences of the committed offence, the voluntary remedy of the caused damage or the elimination of the damage caused;		
f	self-denunciation, active contribution to solving the crime and to identifying the criminals, or admitting guilt;		
g	the illegality or immorality of the victim's actions if such were the reason for the crime;		
h	the commission of a crime as a result of physical or mental coercion that does not exclude the criminal nature of the act, or of financial or work dependence or other natural coercion;		
i	the commission of the offence by a person under a state of intoxication, caused by the involuntary or forced use of the substances referred to at Article 24 or by the use of these substances without being aware of their effect;		

j	the commission of a crime in excess of the legal limits of legitimate defence, capturing a criminal, a state of extreme necessity, reasonable risk or as a result of executing an order or command from a superior;		
k	the serious impact of the crime committed on its perpetrator or the heavy burden of the punishment applied to him/her due to his/her advanced age, health condition, or other circumstances;		
l	expiry at the moment of the commission of the crime of at least 2/3 of the criminal liability limitation period provided for this crime or excess of the reasonable timeframe for hearing the case, considering the nature of the act, provided that the delay was not caused by the perpetrator.		
9b	Who put forward the motion for mitigating circumstance(s)?	*Prosecutor. If yes, tick the box*	
		Defence. If yes, tick the box	
9c	Did the court respond to motion for mitigating circumstance(s)?	*Did the court reject the motion? If yes, tick the box.*	
		Did the court accept the motion? If yes, tick the box.	
		In case of rejection, did the court, based on the analysis of evidence and particular circumstances of the given case, concretely and clearly articulated that it was satisfied that the relevant mitigating factor does not exist? If yes, tick the box.	
9d	Did the court take into consideration any mitigating circumstance(s) *suo moto*?	*If yes, tick the box.*	
9e	Effects of mitigating circumstances (Articles 78, 79, Criminal Code)	*Indicate the effects of mitigating circumstance(s) into the punishment of the culprit as provided by Article 78, Criminal Code.*	
		Indicate also whether article 79, Criminal Code was applied. If this is the case, indicate which milder punishment the court applied and for what reason.	
10	**Aggravating circumstances (Article 77, Criminal Code)**	*Were any aggravating circumstance(s) as foreseen by Article 77, Criminal Code put forward by the prosecution? If yes, tick the box.*	
10a	Which aggravating circumstance(s) was put forward and/or taken into consideration by the court?	*Indicate the exact aggravating circumstance(s) and the corresponding paragraph(s) of Article 77, Criminal Code.*	
a	the commission of a crime by a person who previously was convicted for a similar crime or of other acts relevant to the case;		
b	severe consequences caused by the commission of the crime;		
c	the commission of a crime with any form of participation;		
d	the commission of a crime due to social, national, racial, or religious hatred;		

e	the commission of a crime against a person known to be under 14 years of age or against a pregnant woman or by taking advantage of the victim's known or obvious helpless condition caused by advanced age, disease, physical or mental handicap, or another factor;		
f	the commission of a crime against a person in connection with his/her professional or social duties;		
g	the commission of a crime using juveniles, persons in difficulty, mentally retarded persons, or persons dependent on the perpetrator;		
h	the commission of a crime through extremely cruel acts or humiliation of the victim;		
i	the commission of a crime by means that pose a great social danger;		
j	the commission of a crime by a person in a state of intoxication caused by the consumption of substances mentioned in article 24: the court has the right, depending upon the nature of the crime, not to consider this as an aggravating circumstance;		
k	the commission of crime with the use of weapons, ammunition, explosive substances, or similar devices, especially prepared technical devices, noxious and radioactive substances, medical and other chemical/pharmaceutical preparations, and the use of physical and mental coercion;		
m	the commission of the offence taking advantage of the exceptional state of affairs, natural disasters and mass disorders;		
n	the commission of a crime by abusing someone's trust.		
10b	Motivation by the prosecution	*Did the prosecution in its argumentation simply quote the aggravating circumstance(s) as foreseen in Article 77, Criminal Code? If yes, tick the box*	
		Was the prosecution's reasoning concrete, clearly articulated and based on the analysis of evidence and particular circumstances of the given case? If yes, tick the box	
10c	Did the court respond to motion for aggravating circumstance(s)?	*Did the court reject the motion? If yes, tick the box*	
		Did the court accept the motion? If yes, tick the box.	
		In case of acceptance, did the court, based on the analysis of evidence and particular circumstances of the given case, concretely and clearly articulated that it was satisfied that the relevant aggravating factor was proved beyond reasonable doubt? If yes, tick the box.	
10d	Did the court take into consideration any aggravating circumstance(s) *suo moto*?	*If yes tick the box.*	
		Did the court, based on the analysis of evidence and particular circumstances of the given case, concretely and clearly articulated that it was satisfied that the relevant aggravating factor was proved beyond reasonable doubt? If yes, tick the box	

10e	Effects of aggravating circumstances (Article 78, Criminal Code)	*Indicate the effects of aggravating circumstance(s) into the punishment of the culprit as provided by Article 78, Criminal Code.*	
11	**Recidivism**	*Did the court apply the punishment for dangerous or very dangerous recidivism? If yes, tick the box.*	
11a	Criteria for applying punishment for recidivism	*Did the court take into account the criteria provided in Article 82(1), Criminal Code? If yes, tick the box.*	
		Did the court simply quote the above criteria? If yes, tick the box *NOTE: if the court simply quoted the criteria then it can be argued that the punishment for recidivism is automatic.*	
		Was the court's reasoning with respect to these criteria concrete, clearly articulated and based on the analysis of evidence and particular circumstances of the given case? If yes, tick the box	
		Did the court also pay attention to the period free of criminality prior to the present offence and the age of the culprit? If yes, tick the box. *NOTE: These are CoE standards included in Recommendation No. R(92)17, but not foreseen in Article 82(1), Criminal Code.*	
12	**Court Reasoning: How would you qualify the reasoning of the court regarding the application of the punishment?** ***Tick the relevant box.***		
12a	Very poor	*Use of vague and not clear legal terminology; poor and erroneous language; inconsistent structure and incomprehensible reasoning; not concrete and clear articulation; formal quotation of irrelevant case law or legislation without basing the reasoning on the analysis of evidence and particular circumstances of the given case; authoritative and arbitrary language; etc.*	
12b	Poor	*Incoherent reasoning; quotation of correct legal provisions or case law, without applying them into the facts and circumstances of the case; no explanation of the legal framework applied in the case and no reasons given why that legal framework is relevant; case law and legal authorities quoted without any added value; no own reasoning presented except from quotations of legal provisions and case law or legal authorities.*	

12c	Average	*Reasoning based on legal framework and case law which is explained; the employed legal terminology is correct and the structure consistent; the reasoning does not go further than compiling and explaining legal provisions, case law and legal authority; own reasoning and assessment are lacking.*	
12d	Good	*Structure consistent and text comprehensible; correct legal terminology and flawless use of language; concrete and clear articulation; reasoning goes further than simply quoting and explaining legal framework, case law and legal authorities; reasoning based on the analysis of evidence and particular circumstances of the given case; clear elaboration of own reasoning and application in the case; no reaction on the parties' arguments.*	
12e	Excellent	*Structure consistent and text comprehensible; correct legal terminology and flawless use of language; concrete and clear articulation; reasoning goes further than simply quoting and explaining legal framework, case law and legal authorities; reasoning based on the analysis of evidence and particular circumstances of the given case; the reasoning elaborates on all parties' arguments and elaborates own clear reasoning with regard to all evidence and circumstances of the case.*	
RELEASE FROM CRIMINAL LIABILITY			
This section seeks to gather information on the application of a selection of instruments related to release from criminal liability, present in the Moldovan Criminal Code. The importance of the study of these instruments is twofold. They firstly contribute directly to the reduction of the prisons' population and secondly, they have an impact on the re-socialization and re-integration of the individual. As explained in the analysis of the selection of offences to be studied, the ***relevant articles for the Checklist are Articles 54, 55 and 57–59 of the Criminal Code. This section applies only to less serious offences selected for the research****.*			
13	**Reason(s) for release from criminal liability applied in the case? (Articles 54, 55 and 57–59 Criminal Code)**	*If yes, tick the box.*	
		Indicate the exact reason and the corresponding Article and paragraph of the Criminal Code.	
14	**Motion put forward by the prosecution.**	*If yes, tick the box.*	
		Did the prosecution in its argumentation simply quote the relevant legal framework and criteria? If yes, tick the box.	
		Was the prosecution's reasoning based on the analysis of evidence and particular circumstances of the given case? If yes, tick the box.	

15	**Motion put forward by the defence.**	*If yes, tick the box.*	
		Did the defence in its argumentation simply quote the relevant legal framework and criteria? If yes, tick the box.	
		Was the defence's reasoning based on the analysis of evidence and particular circumstances of the given case? If yes, tick the box.	
16	**Did the court react to the motion(s) put forward by the parties?**	*If yes, tick the box.*	
		In case of rejection, did the court, based on the analysis of evidence and particular circumstances of the given case, concretely and clearly articulated that it was satisfied that the relevant reason for release from criminal liability does not exist? If yes, tick the box.	
17	**Reason for release from criminal liability *suo moto* by the court?**	*If yes, tick the box.*	
ALTERNATIVES TO IMPRISONMENT			
This section seeks to gather information on the application of a selection of alternatives to imprisonment. It goes without saying that alternatives to imprisonment lie at the heart of the re-socialization and re-integration of the individual. They are considered as the main measures aiming at the humanization of criminal law. The Council of Europe standards are elaborated in Recommendation CM/Rec (2017) 3 of the Committee of Ministers to member States on the European Rules on community sanctions and measures. Chapters I to VI of the Recommendation are of particular importance for the purposes of the research and the Checklist. The rules elaborated therein are very detailed and comprehensive and it is hard to summarise them in the introduction of this section of the Checklist. ***Articles 90 (applicable only to less serious and serious offences), 90[1] (applicable only to less serious and serious offences) of the Criminal Code are relevant for the purposes of this section.***			
18	**Conviction with conditional suspension of the punishment execution applied in the case (Article 90 Criminal Code, applicable only to less serious and serious offences)**	*If yes, tick the box.*	
18a	Initiation of the process by prosecution, defence or *suo moto* by the court.	*Indicate the authority/person who moved the court to apply the measure.*	
18b	Reaction of the court to the request of the prosecution/defence.	*If yes, tick the box.*	
		In case of rejection of the request of the prosecution/defence, did the court give any substantiated reasons for the rejection? If yes, tick the box.	

18c	Conditions for application of the measure (applicable to situations granting the measure, even *suo moto*)	*Did the court indicate in the judgment the grounds for the conviction with conditional suspension of the execution of the punishment and the probationary period or, if applicable, the probationary term? If yes, tick the box.*	
18d	Obligations and complementary punishment imposed.	*If yes, tick the box and indicate which punishment and/or obligation was imposed.*	
18e	Cancellation of the conviction and extinction of the criminal antecedents applied (Article 90(8), Criminal Code).	*If yes, tick the box.*	
18f	Cancellation of the measure applied (Article 90(9, 10, 11)), Criminal Code).	*If yes, tick the box and indicate the reason for cancellation.*	
		Did the court indicate in the judgment the ground(s) for cancellation? If yes, tick the box.	
		Did the court simply quote the proposal of the supervising authority/legislative criteria? If yes, tick the box.	
		Did the court base its decision on the analysis of evidence and particular circumstances of the given case? If yes, tick the box.	
19	**Conviction with partial suspension of the execution of imprisonment punishment applied in the case (Article 90[1] Criminal Code, applicable only to less serious and serious offences)**	*If yes, tick the box.*	
19a	Initiation of the process by prosecution, defence or *suo moto* by the court.	*Indicate the authority/person who moved the court to apply the measure.*	
19b	Reaction of the court to the request of the prosecution/defence.	*If yes, tick the box.*	
		In case of rejection of the request of the prosecution/defence, did the court give any substantiated reasons for the rejection? If yes, tick the box.	
19c	Conditions for application of the measure (applicable to situations granting the measure, even *suo moto*).	*Did the court indicate in the judgment the grounds for the conviction with partial suspension of the execution of imprisonment punishment? If yes, tick the box.*	
19d	Obligations imposed	*If yes, tick the box and indicate which obligation was imposed.*	

19e	Cancellation of the measure applied	*If yes, tick the box and indicate the reason for cancellation.*	
		Did the court indicate in the judgment the ground(s) for cancellation? If yes, tick the box.	
		Did the court simply quote the proposal of the supervising authority/legislative criteria? If yes, tick the box.	
		Did the court base its decision on the analysis of evidence and particular circumstances of the given case? If yes, tick the box.	

ANNEX II: SAMPLE DISTRIBUTION

TOTAL NUMBER OF DECISIONS (2017–2020)															
Article	**147**	**151**	**164**	**165**	**171**	**172**	**186**	**187**	**188**	**190**	**201**	**217**	**264**	**287**	**TOTAL**
Chisinau	0	83	8	81	40	15	1926	480	88	836	37	1148	447	548	5737
Criuleni	0	21	8	2	24	11	155	27	13	20	17	26	85	58	467
Hincesti	0	26	6	6	28	14	321	48	14	65	18	49	99	200	894
Orhei	1	31	17	6	51	12	621	69	28	88	60	89	225	160	1458
Straseni	0	20	6	9	24	12	228	33	4	26	37	57	109	60	625
Anenii-Noi	0	7	1	3	7	4	138	17	4	27	5	20	61	65	359
Causeni	0	20	7	3	20	4	159	32	9	21	37	29	80	139	560
Ungheni	0	23	1	8	20	5	190	8	5	18	24	54	146	152	654
Balti	1	41	2	5	32	8	717	167	42	253	52	305	207	251	2083
Drochia	1	31	6	5	30	8	430	77	20	70	31	170	147	101	1127
Edinet	0	20	13	4	23	8	384	65	11	91	29	118	227	61	1054
Soroca	0	25	4	7	22	6	332	24	11	49	21	77	159	67	804
Cahul	0	22	3	6	40	15	185	41	11	18	45	74	237	148	845
Comrat	0	14	4	0	15	5	167	42	18	27	17	106	180	137	732
Cimislia	0	14	2	0	23	4	142	20	6	19	32	29	92	60	443
Total for first level	**3**	**398**	**88**	**145**	**399**	**131**	**6095**	**1150**	**284**	**1628**	**1340**	**2351**	**2765**	**2207**	**18984**
Appellate Court Chisinau	0	110	84	21	70	12	384	175	59	269	73	162	420	292	2131
Appellate Court Balti	0	32	39	6	38	4	185	64	32	93	59	54	261	91	958
Appellate Court Cahul	0	12	6	3	30	1	29	15	10	11	34	12	72	39	274
Appellate Court Comrat	0	4	6	3	13	2	22	4	7	5	5	15	60	23	169
Total Appellate Courts	**0**	**158**	**135**	**33**	**151**	**19**	**620**	**258**	**108**	**378**	**171**	**243**	**813**	**445**	**3532**
Supreme Court of Justice	1	212	63	86	221	139	568	311	200	480	297	495	694	552	4318

TOTAL NUMBER OF DECISIONS (2017–2020)															
Article	**147**	**151**	**164**	**165**	**171**	**172**	**186**	**187**	**188**	**190**	**201**	**217**	**264**	**287**	**TOTAL**
SAMPLE DISTRIBUTION															
Article	**147**	**151**	**164**	**165**	**171**	**172**	**186**	**187**	**188**	**190**	**201**	**217**	**264**	**287**	
Chisinau		1		1	1		27	6	1	11	1	16	17	7	91
Criuleni							2				1		3	1	7
Hincesti					1	1	4	1		1	1	1	4	3	16
Orhei		1			1		8	1	1	1	2	1	8	2	27
Straseni				1			3				1	1	4	1	11
Anenii-Noi							2			1			2	1	6
Causeni							2	1			1		3	2	9
Ungheni							3				1	1	5	2	11
Balti		1			1		9	2	1	3	2	4	8	3	34
Drochia		1					6	1	1	1	1	2	5	1	20
Edinet			1				5	1		1	1	2	8	1	20
Soroca							4			1	1	1	6	1	13
Cahul		1			1	1	2	1			2	1	9	2	20
Comrat							2	1		1	1	1	7	2	15
Cimislia							2	0		1	1		3	1	9
Total for first level	**0**	**5**	**1**	**2**	**5**	**2**	**81**	**15**	**4**	**22**	**17**	**31**	**93**	**29**	**307**
Appellate Court Chisinau		1		1	1		4	2	1	3	1	2	5	3	24
Appellate Court Balti		1			1		1	1		1	1	1	3	1	11
Appellate Court Cahul							1						1	1	3
Appellate Court Comrat													1		1
Total Appellate Courts	**0**	**2**	**0**	**1**	**2**		**7**	**3**	**1**	**4**	**2**	**3**	**10**	**5**	**39**
Supreme Court of Justice		3	1	1	3	2	7	4	2	6	4	6	9	7	53
TOTAL	**0**	**10**	**2**	**4**	**10**	**4**	**95**	**22**	**7**	**31**	**23**	**41**	**112**	**41**	**400**

The Report on the Research on the application of criminal sanctions in the Republic of Moldova sets out the research findings and recommendations following the analysis of about 400 selected court decisions related to the application of different types of criminal sanctions in the Republic of Moldova.

The report starts with a detailed description of the methodology of the research. It subsequently provides a description of the Council of Europe standards followed by an analysis of the Moldovan legal framework against the background of those standards. It also gives an overall picture of the findings of the research and an analysis of issues related to the consistency of sentencing, release from criminal liability and alternatives to imprisonment respectively.

ENG

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE