Monitoring of court proceedings in cases of domestic violence, sexual violence and trafficking in human beings

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GLOBAL RIGHTS for WOMEN Justice for Victims of Violence

Monitoring of court proceedings in cases of domestic violence, sexual violence and trafficking in human beings

REPORT

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Women's Law Center Team

Acronyms

CAA	Court Administration Agency
CC	Criminal Code
CEDAW	UN Convention for the Elimination of all Forms of Discrimination against Women
CNP	Courts National Portal
CPC	Civil Procedure Code
CrPC	Criminal Procedure Code
DV	Domestic violence
ECAT	Council of Europe Convention on Action against Trafficking in Human Beings
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
GRW	Global Rights for Women
ICMS	Integrated Case Management System
NCSGLA	National Council for State Guaranteed Legal Aid
PCOCSC	Prosecutor's Office for Combating Organized Crime and Special Cases
PO	Protection Order
SV	Sexual violence
THB	Trafficking in human beings
WLC	Women's Law Center

Introduction

Domestic violence, sexual violence and trafficking in human beings are among the most serious human rights violations occurring around the world. Regretfully, the Republic of Moldova is not an exception to this. These forms of violence and abuse, especially among women and girls, cause considerable and sometimes irreparable physical, psychological and economic damages to victims, often hindering the full realization of their potential.

The role of the justice sector response to cases of domestic violence, sexual violence and trafficking in human beings is crucial. In a democratic state, the justice system is governed by democratic principles, such as rule of law, independence of the judiciary, priority of respecting individual rights, etc. Without fair, efficient and transparent justice, it is not possible to ensure genuine democracy.

In many countries with a long democratic tradition, citizens are actively contributing to improving and maintaining the quality of justice. Monitoring of court hearings is increasing due to its proven effectiveness, including in promoting changes in the judiciary. Civil society monitors who attend court hearings (with the exception of those hearings which are declared closed, on the grounds and in the manner established by the national law, in strict accordance with the principles of international law), assess with fresh eyes of an objective observer the case trial process. Monitoring reports are a useful source of information, primarily for citizens to enrich their knowledge of judicial practice and have a deeper understanding of the justice system. On the other hand, judges have the opportunity to find out how the justice-making process is viewed by people outside the system. A good-faith analysis of the results, presented in the monitoring reports, identification and removal of both systemic gaps and problems in individual cases, including those related to professional ethics, can contribute significantly to the development of a functional judicial system genuinely focused on effective protection of human rights.

Judicial reform, which the Republic of Moldova aspires to, cannot be achieved only through legislative and institutional frameworks. It is necessary for courts to understand and support these transformations, so that society can benefit from the impact of the reforms. Note that a major event took place on 17 March 2017, entitled 'Building Bridges of Trust between Civil Society and the Justice Sector in the Republic of Moldova'. The participants discussed the progress and outcomes of the 2011-2016 Justice Sector Reform Strategy[1] implementation, the problems encountered during the Moldovan justice sector reform, and the support role of the civil society[2]. During the debates, they recognized the need for the justice sector and civil society to join their efforts in order to expedite implementation of the current reforms.

Focused on the development of an effective cooperation between the civil society and the justice system of the Republic of Moldova, Women's Law Center (WLC) and Global Rights for Women (GRW) with the support of the US Embassy in Moldova initiated the 'Strengthening Capacities of Prosecution and Judicial Response to Domestic Violence in Moldova' project. The project analyzes the state's response related to the protection of victims in cases of domestic violence, sexual violence, and trafficking in human beings, and accountability of perpetrators. This multi-stage project included the monitoring of court hearings in civil, contravention and criminal cases related to violence against women and trafficking in human beings, the results of which are presented in this report. Considering that the monitoring program included only the court hearings stage, the report refers only to this stage and does not describe the criminal investigative stage, the statement of a contravention or detailed description

1 Official Gazette No.1-6 din 06.01.2012, art.6.

2 The event is part of a series of high-level meetings between the civil society and representatives of the judiciary sector, organized by Freedom House under 'Mobilizing Civil Society to Support Judicial Integrity in the Republic of Moldova' project and supported by the US Department of State through the US Embassy.

of circumstances that preceded the examination of the case in the court. The report also does not include the stage of enforcement of court judgments issued in the monitored cases.

The information from the court monitoring questionnaires, as well as the interviews conducted separately with victims of violence and trafficking (Annex 1), with professionals from the various structures and services involved in the process (Annex 2), and monitors were the main sources from which the authors of the report tried to find the answer to the question: to what extent the judiciary of the Republic of Moldova meets the requirements of a democratic justice system ensuring observance of the human rights of the participants in the proceedings, especially victims of domestic violence, trafficking and related crimes. The analysis reflects that courts can only protect the human rights of victims if they have a profound understanding of the specificity of these crimes, which are visibly different from others by an incomparable high vulnerability of victims, due to their very limited possibilities of choice and refuge.

We remain hopeful that this analytical report will be useful as informational support for further implementation of the other stages of the project. In particular, the report will guide the training of legal professionals building their knowledge and capacity to effectively respond to cases of violence against women. This will have the added effect of increasing community trust in the judiciary system.

Executive summary

The monitoring of court proceedings conducted in May 2017-February 2018, covered several categories of cases on sensitive issues characterized by an enhanced degree of victims' vulnerability. As many as 158 randomly selected cases were monitored, including 128 cases pending in the Chisinau Court and 30 cases examined by the Chisinau Court of Appeal.

Outcomes of the court proceedings monitoring program implemented for about 9.5 months, revealed certain progress made in the justice-litigant relationships, especially with regard to victims of gender-based violence, including domestic violence and trafficking in human beings. Some judges and participants in the judicial process had a better understanding of the unique nature of the monitored crimes and offenses. They were able to appreciate the impact on the victims and their immediate families, and as well as the impact of domestic violence on the institution of the family as a fundamental element of society. However, many issues that imply continuing need to strengthen efforts to improve the judiciary's decision-making in these cases remain valid.

An issue that impacts the safety of the victim to the same extent in all categories of monitored cases was related to the conditions of administration of justice. Despite the judicial reforms underway, the courts continue to operate in conditions of limited financing of their technical and material needs. The court offices do not meet the necessary requirements for ensuring the safety of victims and witnesses in the trial. None of the courts included into the monitoring program had a proper structure, while the technical conditions were unfavorable: lack of separate entrances and places where the victim or the witness could wait without being seen by the aggressors/defendants or by persons related to them, small rooms often lacking necessary furniture and equipment, poor illumination, inappropriate acoustics, lack of adjoining spaces for deliberations, crowded hallways where the participants in the trial are waiting, etc.

Monitoring of criminal cases of domestic violence and sexual violence against women

Most of the victims of domestic violence and sexual violence were women under the age of 45. More often, domestic violence victims were former spouses, followed by daughters/sons.

Victims of crimes continue to be marginalized in the formal criminal proceedings. Criminal investigative bodies and courts do not prioritize concern for ensuring fair treatment of the victim/injured party in the trial, his/her protection and rehabilitation. The possibilities for a victim to obtain damages and to collect evidence are especially limited. Victims also face many difficulties in assessing the severity of bodily injuries or health damage caused by the crime.

Trials and hearings suffer from a lack of transparency. The legal timeframe for displaying the information on the cases set for trial is not complied with. Sometimes this information is missing, and sometimes it is not updated. There is no clear indication for the general public on the type of crimes that are the subject of the case, etc. Breaching the hearings schedule is a frequent practice in the operation of the courts, which impacts the authority of the justice system. Even though the number of cases examined in a closed hearing is low, as a rule, no persons other than the parties and their representatives attend the hearings. Thus, the concept of a public hearing is still theoretical. Public access to court hearings is limited including by the common practice of holding the hearings in the judges' offices. Thus, most of the hearings were held in the judge's office, causing additional inconveniences to the participants to the trial.

With some exceptions, courts audio record hearings more often with a voice recorder. This raises concerns about the exhaustive recording of the hearing. The procedure of hearings audio recording should maximally exclude the human factor.

Monitors did not mention any cases in which the victims of crimes would be offered clear explanations about their right to seek state-guaranteed legal aid and the manner to apply for it in line with the law. Thus, in practical terms, legal aid for victims of domestic violence is underused as compared to defendants.

Many judges were aware of the importance of examining domestic violence cases without delay. However, the examination period was often quite long, exceeding one year. At the same time, criminal cases having female as defendants were examined within a much shorter period of time as compared to other similar cases having male as defendants. The reason of hearings postponement was often stated to be the lack of acknowledgement of judicial summons by absent participants. Monitors have repeatedly found that the participants in the trial were invited to the hearing by phone or through other participants and not by summons.

Impunity in gender-based violence cases is a widespread phenomenon. Only an insignificant number of cases resulted in imprisonment. Usually, defendants were subject to community service or imprisonment with conditional suspension of punishment. No case has been identified where the defendants were obliged to undergo alcohol or drug addiction treatment, or to participate in a special treatment or counseling program for reducing violent behavior.

Provisions of the regulation on publishing court judgments were not fully met.

A significant number of cases were tried under simplified procedure in conditions that disproportionately favor the defendant, resulting in a punishment less than the minimum limit provided for. No measures that would deter the defendant from repeatedly using violence are applied. Victims were generally unaware of the opportunity for a civil action within criminal proceedings and therefore the amount of the damage collected by the court under a civil action was small and the enforcement mechanism inefficient.

Monitoring of contravention cases of domestic violence

Asa rule, the contravention procedure materials focus on isolated episodes of violence used by domestic violence perpetrators against an adult. The recurrent instances of violence, including the previously unreported ones, the circumstances of applying violence against several family members, including children, stay outside the investigation process.

Most of the domestic violence victims in contravention cases were women under the age of 40.

Most of the contravention proceedings were examined in judges' offices, which were usually small and lacking necessary furniture. Providing an interpreter in the hearing was sometimes a challenging issue for the judge. Frequent absence of participants in contravention proceedings, especially in the first hearing, was observed. In many cases, it was due to the practice of summoning participants by telephone.

Given the regular absence of official examiners from the hearings, the low quality of contravention minutes and lack of legal assistance from a defense lawyer, victims of domestic violence often bore the burden of proving the guilt of the domestic abuser.

Victims of contraventions often face difficulties in accessing state-guaranteed legal aid. A problem in the contravention procedure which hinders efficient access of domestic violence victims to state-guaranteed legal aid resides in the drawbacks in the legal framework and also in the reluctance of the courts to inform victims of their right to state-guaranteed legal aid.

Only a small number of contravention cases were examined within the legal timeframe. In some instances, the court continued to examine the case after the limitation period of one year. The organizational shortcomings identified during the monitoring process, including scheduling of the first hearing with delay, multiple postponements and lengthy periods between the hearings, are particularly significant due to the specific nature of domestic violence, and are part of a

range of factors that compromise the efficiency of the proceedings in these cases.

Impunity was also common in domestic violence contravention cases. The monitoring of the contravention proceedings has revealed many cases where the mildest punishment provided for by law was applied - community service, and this was also at the minimum limit. No case was revealed where counseling measures were applied to the perpetrator.

In the published court judgments not only the data about the parties, but also the names of other participants, the number and the date of the contravention minutes, the circumstances of the act and the evidence elements were depersonalized.

State authorities are not prepared to adopt measures deterring aggressors from committing domestic violence, which as a result, discourages victims.

Monitoring of civil cases on applying for domestic violence protection measures

Many victims were unaware of the protection order, even when they experienced violence for many years. Courts did not display any information on the protection order application process in a language understandable by potential victims. Publicizing this information would be valuable for victims, given the underdeveloped network of paralegals in the localities. No case has been identified where a social assistance body or the guardianship authority would file an application for a protection order on a victim's behalf.

There is no common practice, based on clear criteria, on receiving applications for protection orders. Given the applications special examination procedure, including the limited legal timeframe set for resolution, provisions should be introduced in the internal documents on the application registration procedure, which would provide for the time of application receipt, the time of referring it to the judge for examination, the time of the court judgment etc. Most of the applications were examined on the day of registration or on the day following the registration. In some cases, the application was registered on the day of its examination even though it had been filed earlier. Sometimes the application was filed after the court had issued a judgment. There is no outside control system to check on the time of application receipt and registration.

The information on the schedule of hearings to examine protection order applications, as a rule, was published only on the portal of the national courts and more often on the days following the court judgment. In some cases, there was no information on the webpage at all.

Almost in all of the protection order application cases, with a few exceptions, psychological violence was present either alone or in combination with other forms of violence. However, the current practice of law application does not provide for effective remedies against psychological violence.

In civil cases on applying for protection order, 100% of victims were women most of them aged 30-40. At the same time, in 56% of civil cases in which the protection order was requested victims were also children under the age of 15.

Most of the hearings were held in the judges' offices. In such situations, the victim had to stay near or next to the aggressor, being separated, as the case may be, by a defense lawyer, police officer, translator or other participants.

The courts were facing certain problems related to providing an interpreter to the participants in the trial. There have been cases when the application was examined without the victim being provided with an interpreter, whereas the aggressors always benefited from an interpreter's services. In most cases, victims either lacked or had inadequate legal assistance during the hearing. At the same time, it had been established that it was very difficult to provide within a limited period of time a defense lawyer to grant state-guaranteed legal aid at the hearing, not to mention the time for preparation in order to provide qualified legal aid of a proper quality.

There is no clear judicial practice of applying a protection measure that requires the aggressor to participate

in a treatment or counseling program to reduce or eliminate violence. As a rule, courts refer to lack of evidence indicating to the need for the aggressor to undergo a treatment or to attend a counseling program on violence reduction. In some cases, monitors indicated lack of aggressor's consent to application of this measure.

The internal records keeping and procedural documentation regulation does not describe the manner in which the protection order for victims of domestic violence should be referred for enforcement. In many cases, the court sent the protection order for enforcement via a courier or by post the following day. Under these circumstances, the protection order is enforced over the following days. During this time, the victim remains in contact with the aggressor. The protection order is often seen not as a measure to protect the life and health of the victim of domestic violence, but rather as a measure that restricts the aggressor's rights.

Monitoring of criminal cases on trafficking in human beings and related crimes

In the trafficking in human beings and related crime cases, a large majority of victims were women, most of them aged 16-25. In some cases, victims were identified as defendants, while in others - as injured parties.

Most of the cases covered by the monitoring were examined in public hearings, although, no other persons besides the parties and their representatives attended the hearings. In many instances, the list of cases set for hearing was displayed on the information board in the court with violation of the time-limit provided for in the law. Sometimes, there was no information about the hearing at all, or the information was misleading or outdated. In most cases, court hearings started with delay, often due to the examination of other cases.

Most frequently, criminal cases on trafficking in human beings and related crimes were examined in the absence of the injured party. Mostly, the injured parties did not attend the hearings in cases of human trafficking/trafficking in children for sexual exploitation and pimping cases, because of the sensitivity of cases involving sexual activity. The court forced the injured party to attend the hearing, even when he/she had been heard under special conditions at the stage of criminal investigation and the record of the hearing had been attached to the file.

The findings on the provision of interpretation and legal assistance services to the parties in the hearing, similar to all categories of cases, reveal the authorities' concern to ensure first and foremost that the defendants benefit from all appropriate procedural guarantees for a fair trial, while victims continue mostly to be further marginalized in the criminal proceedings.

In most cases, the time to hear a case is quite long. Sometimes, it exceeded one year. Often the first hearing was set beyond the legal timeframe, in several cases exceeding the time limit provided for in the law. The date of the second hearing was often 2-3 months later.

Impunity is applicable also to criminal cases on trafficking in human beings and related crimes. Only an insignificant number of resolved cases resulted in a sentence of imprisonment. In some cases, the defendants were subjected to a fine. Many cases resulted into termination of the proceedings on the grounds of amnesty.

Monitoring of criminal cases examined in appeal

The situation in the Court of Appeals does not differ from that of the courts of first instance. Most of the injured parties were women aged 20-40.

The information on the cases set for hearing was duly placed on the Court of Appeals web page and on the information boards inside the court. However, there were cases of displaying contradictory information, which in some cases resulted in the postponement of the hearing.

Most cases covered by the monitoring were examined in public hearings. At the same time, monitors mentioned that the manner the courtroom was prepared for the closed hearing affected psychological integrity of the

injured party. Persons who were leaving the courtroom, upon the request of the court, noticed who remained in the courtroom anyway.

The hearing in appeal of criminal cases was held in courtrooms with the necessary furniture and equipment. The courtrooms were large and accessible to the general public. The situation in the Chisinau Court of Appeals was better than in the court of first instance. However, monitors found that, in most cases, the noise in the courtroom influenced audibility and order in the hearing.

In the Court of Appeals, most of the monitored hearings started with an over an hour delay. One of the reasons was several cases set for hearing at the same time. Due to the current practice of setting and examining appeals, the participants in the hearing often have to wait for the hearing to begin and for the decision on a case to be made for a long time, sometimes even for a whole day.

No difficulties have been identified in providing interpretation services to the parties in cases examined in appeal. The monitors observed a better situation in the Court of Appeals compared to the one in the courts of first instance.

In most monitored cases, the injured parties did not avail of legal assistance during the appeals proceedings. At the same time, the defendants have benefited from the services of a defense lawyer in the absolute majority of cases. In many instances, they have availed of state-guaranteed legal aid.

The time to hear an appeal was sometimes quite long. Hearings were often postponed due to the absence of the parties. Sometimes the absence of the defendant was the result of the inadvertence of the escort. In other cases, the absence of the participants was caused by misinformation about the time of the hearing, which led to its postponement. There were cases when the first hearing was set with a big delay, while subsequent court hearings were set in 2-3 months.

The Court of Appeals mostly issued decisions to convict defendants to imprisonment, and there were only a few decisions when conditional suspension of punishment was applied. At the same time, like the courts of first instance, the Court of Appeals did not require the convicted parties to undergo alcohol treatment or to participate in special treatment or counseling programs on reducing violent behavior.

Goal and objectives of the monitoring program

The monitoring of court proceedings aimed to assess the state's response to cases of domestic violence, sexual violence and trafficking in human beings. In order to achieve the overall goal, the following specific objectives were set:

- to monitor court hearings in criminal cases of domestic violence, sexual violence and trafficking in human beings in courts of first instance and court of appeals, contravention cases of domestic violence, as well as civil cases initiated upon requests for protection orders by domestic violence victims;

- to analyze the treatment of victims of violence and trafficking in human beings during the hearing of contravention and criminal cases in courts of first and second instance, as well as when requesting protection orders;

- to formulate recommendations on how to improve the situation, where necessary, in order to enhance the protection of human rights and, as a consequence, to help build a more informed society in the Republic of Moldova, aware of the real danger of acts of violence against women, including domestic violence and trafficking in human beings.

In order to achieve the above-mentioned goals and objectives, specific tasks were set and performed, including:

- collection of impartial information on observance of the rights of victims/injured parties in criminal and contravention cases of domestic violence, sexual violence and trafficking in human beings, and in civil proceedings initiated to request protection measures for a victim of domestic violence, as well as on the punitive measures and treatment of perpetrators;

- monitoring of behavior of participants in the proceedings from the perspective of situations affecting victim's security and inviolability;

- objective illustration of deficiencies and violations that could compromise the principles of a fair trial;

- identification of the existing legal gaps and difficulties in applying the law during the trial of cases of domestic and sexual violence and trafficking in human beings, including the latest amendments and addenda to the law against domestic violence, recently adopted by the Parliament of the Republic of Moldova;

- usage of monitoring findings to formulate recommendations on improving the law, enforcement policies and practices that form the justice system response to domestic violence and trafficking in human beings.

The report on monitoring of court proceedings in cases of domestic violence, sexual violence and trafficking in human beings will be used as informational support when analyzing and taking decisions on the need to:

- review the training curriculum for judges and prosecutors, other professionals, in order to improve their professional training and, consequently, the quality of the judicial examination of cases, thereby ensuring compliance with the state's commitments to exercise effectively the right to fair trial;

- improve legal framework and develop judicial practices, thus contributing to strengthening the response of the Moldovan justice system in its efforts to prevent and combat domestic violence and trafficking in human beings.

Methodology of the monitoring program

In order to achieve the set goal and objectives, the court proceedings monitoring program was based on a methodology jointly agreed upon by WLC and GRW.

The methodology was developed considering the experience of GRW experts and the tools they used for similar activities, ensuring their corroboration with the standards of the Council of Europe Commission for the Efficiency of Justice[3], adapted to the purpose of this monitoring project.

Given that a larger number of cases from the categories covered by the project are usually examined by courts from Chisinau, it was decided to conduct the monitoring in the five offices of the Chisinau Court and in the Chisinau Court of Appeals, correspondingly.

To ensure an effective cooperation with the courts monitored, WLC representatives met members of the Superior Council of Magistracy and the chairmen of the Chisinau Court and Chisinau Court of Appeals and discussed practical aspects of the monitoring program implementation. The court managers received the list of crimes (from which they had to select pending cases to be monitored), the list of monitors' names, and a brochure describing the trial monitoring program.

As a result of the preliminary coordination of the activity with the competent authorities, the Superior Council of Magistracy adopted Decision No. 245/12 of 28 March 2017[4], by which it accepted the monitoring of court hearings according to the project conditions and recommended that court presidents take the necessary measures to ensure monitors' access to court hearings. Subsequently, each court appointed a contact person, who was instructed to provide the information periodically requested by the National Project Coordinator about the cases set for hearing.

The project monitored cases pending and examined between 15 May 2017 and 1 March 2018. The cases to be monitored were selected randomly from those communicated by the records keeping and procedural documentation division at the request of the National Coordinator or were selected directly by the National Coordinator from the hearings schedule placed on the national courts portal, as appropriate[5].

At the same time, to ensure a full description of the issues raised, after the analysis of the data obtained after the monitoring, 18 individual interviews were conducted with victims of domestic violence, representatives of records keeping and procedural documentation divisions, judges, prosecutors, defense lawyers of victims of domestic violence and trafficking in human beings, representatives of civil society working to prevent domestic violence and protect the rights of victims of violence and trafficking in human beings (Annexes 1 and 2).

The monitoring covered several categories of cases. The initial plan was to monitor around 100 sensitive cases characterized by an increased vulnerability of the victims. The monitoring covered cases pending in court of first instance, so that whenever possible they could also be monitored in the Court of Appeals. The following categories of cases were selected for monitoring:

1. Cases resulting from gender-based violence, in particular concerning violence between family members, and crimes related to the sexual life of women:

- **Criminal cases**: Article 145 (Deliberate murder) of family members; Article 171 (Rape), including family members; Article 172 (Violent actions of a sexual nature) in case of family members and women; Article 173 (Sexual harassment) in case of family members and women; Article 201[1] (Domestic violence); Article 320[1] (Non-compliance with a protection

3 http://www.coe.int/T/dghl/cooperation/cepej/default_en.asp.

4 http://csm.md/files/Hotaririle/2017/12/245-12.pdf.

5 https://jc.instante.justice.md/ro/agenda-sedintelor.

FIGURE 1

Monitoring program methodology

order for a victim of domestic violence). A total of 45 criminal cases were selected for monitoring.

- **Contravention cases**: following the latest legal amendments in the field of combating domestic violence[6] a new Article 78[1] (Domestic Violence) was included in the Contravention Code of the Republic of Moldova, which established liability for violence resulting in minor injuries to the victim's bodily integrity. Hence, it became necessary to also monitor some contravention cases initiated under Article 78[1] CC in order to assess whether the expected outcome of the proposed legal amendment was reached - to ensure a quick and efficient response with dissuasive contravention sanctions for domestic violence. A total of 25 contravention cases were selected for monitoring.

- **Civil cases**: ECtHR jurisprudence, based on international treaties regulating gender-based violence against women, highlights that violence needs to be prevented and combatted not only through punitive measures, but also by providing victim protection measures in order to prevent violent actions. From this perspective, it is imperative to clarify the civil protection of victims of domestic violence, and to monitor court hearings of civil cases, initiated on the basis of applications for protection order for victims of domestic violence. A total of 25 civil cases initiated based on applications for protection order for victims of domestic violence were selected for monitoring.

6 Law No 196 of 28.07.2016 amending and supplementing some legislative acts on preventing and combating domestic violence, Official Gazette No 306-313 of 16.09.2016 // Article 661.

2. Cases related to trafficking in human beings and to crimes that have elements characteristic of THB or crimes that may facilitate the commission of THB or could develop into THB (hereinafter referred to as related crimes): Article 165 (Trafficking in human beings); art. 206 (Trafficking in children); Article 207 (Illegally taking children out of the country); Article 220 (Pimping); Article 362[1] (Organization of illegal migration). A total of 33 criminal cases were selected for monitoring.

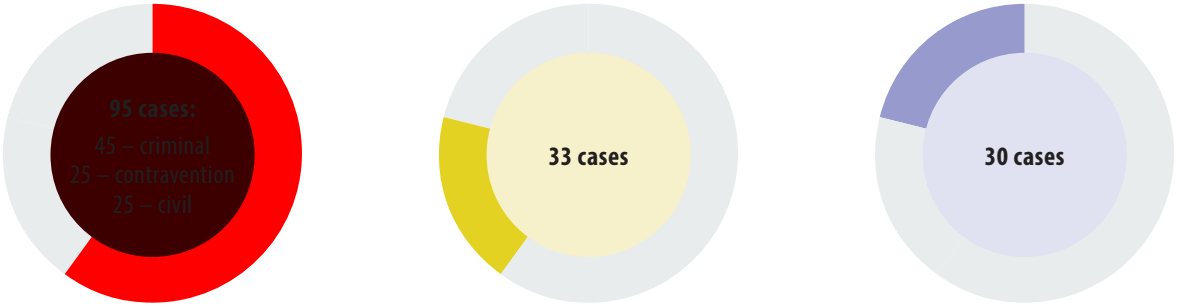
3. Of criminal cases pending in the Court of Appeals, 18 criminal cases of gender-based violence were selected for monitoring, as well as 12 criminal cases of trafficking in human beings and related crimes. A total of 30 criminal cases were monitored in the Court of Appeals.

The monitoring covered, to the extent possible, the whole process, from the preliminary hearing to resolution. The information gathered by the monitors was kept confidential. The monitoring focused on assessing the conditions for implementing the fair trial concept in terms of respecting the procedural rights of the injured party during the examination of criminal cases, rights of the victim during the examination of contravention cases, as well as the rights of the petitioner during the process of a victim of domestic violence requesting a protection order, in so far as that assessment was possible during the court hearing.

In order to carry out the court proceedings monitoring program, 10 monitors with higher legal education, selected by WLC on a competitive basis, were contracted. Some of the selected monitors had a lawyer license. The monitors attended a 3-day training course on the international standards of a fair trial in cases of domestic

FIGURE 2

Number and type of monitored cases



Cases resulting from gender-based violence

Trafficking in human beings and related crimes

Cases examined in the Court of Appeals

violence and trafficking in human beings and relevant issues in this area of the national legislative framework. The training was presented by GRW international experts and local experts. The monitors' role was to observe and record observations at the hearing. Monitors were instructed to neither intervene nor attempt to influence the process in any way, to take care not to identify with the prosecution or with the defense. One of the monitoring principles was to respect the independence of the judicial process.

The role of the monitors was to observe and note their observations prior to the beginning and during the court hearing.

Monitors were directed to carefully and neutrally record the proceedings in the hearings. To this end, monitors were provided with questionnaires:

- questionnaire to monitor criminal proceedings (in the court of first instance);
- questionnaire to monitor criminal proceedings (in the Court of Appeals);
- questionnaire to monitor contravention proceedings;
- questionnaire for the victim;
- questionnaire to monitor the civil procedure of requesting a protection order;
- questionnaire for monitors at the end of the court proceedings monitoring process.

The content of the monitoring questionnaires was determined by the specificity of the case category or court type. At the same time, all the questionnaires contained the same components related to victim protection and observance of the victim's rights during the trial: the victim's gender; safety and dignified treatment of the victim/petitioner; terms of legal assistance; reasonable time to examine the case; the constraint and punishment measures applied to the perpetrator, etc., as well as questions needed to collect statistical information. In addition, the monitors were asked to record any situations that seemed unusual or inappropriate, including responses of trial participants, threatening behavior of the defendants, etc. After the court hearing, the monitors questioned the victims of crimes subject to their consent.

A criminal or contravention case can take place over several court hearings. Monitors were trained to fill-in a monitoring questionnaire at each hearing, according to case category and court type, making sure that the monitoring extended, when possible, to the resolution of the case, including the decision of the Court of Appeals. When the hearing was postponed, the questionnaire was filled-in, including the description of the reason for postponement. In cases where no judgment was issued by the end of the monitoring program, the questionnaires described the situation at the last monitored hearing.

Limitations

As mentioned *above*, the monitoring of court proceedings in cases of domestic violence, sexual violence and trafficking in human beings, as part of the 'Strengthening Capacities of Prosecution and Judicial Response to Domestic Violence in Moldova' project, was expected to take place in the Chisinau district courts and Chisinau Court of Appeals. However, during the preparations for the monitoring program, as of January 1st, 2017, the Botanica, Buiucani, Centru, Ciocana and Rascani district courts merged into Chisinau Court. Therefore, the monitoring was delayed and conducted in the Chisinau Court, including the head office (Botanica), and Buiucani, Center, Ciocana, Rascani offices, and in the Chisinau Court of Appeals.

During the first quarter of 2017, the national courts portal (NCP) was adapted and adjusted to Law No. 76 and the website of the Chisinau Court was created. It is a single website with common information for all offices of the Chisinau Court.

Thus, upon initiation of the monitoring process, the websites of the Chisinau Court and Chisinau Court of Appeals, which were an important source of information for the program, contained certain information about the pending cases[7]. However, in the course of the monitoring of court proceedings, there have been certain difficulties to use the NCP, which were described in the corresponding sections of this report.

During the monitoring program, monitors were not granted access to casefiles or court records. Hence, in order to assess specific issues, in particular, the ones related to examination of cases within a reasonable timeframe, it was necessary to identify other sources of information, including information from the schedule of court hearings placed on the NCP, about the date of case registration, etc.

In addition, in order to have a comprehensive picture regarding the access to justice, treatment during the trial and observance of procedural rights of victims of domestic violence, sexual violence and trafficking in human beings, tools for court proceedings monitoring included questionnaires for voluntary interviews with crime victims in the monitored cases. They were supplemented with systematized information collected via individual in-depth interviews with victims of domestic violence and with professionals from various fields (judges, prosecutors, defense lawyers, police officers, court secretaries, clerks, etc.), who agreed to share their opinions. The questioning of monitors at the end of the monitoring program and the interviews with professionals were useful in identifying the existing good practices and problems. They constituted a valuable information resource for the recommendations formulated to consolidate a fair trial for victims.

7 Casefile number, name of the judge(s) reviewing the case, date, time and venue of the hearing, the subject matter of the case, as well as other data relating to the publicity of the hearing.

CHAPTER I.
Monitoring of proceedings in criminal cases of domestic violence and sexual violence

Any form of violence or abuse, including gender-based one, is an attack against human security and dignity. Acts of violence affect physical, mental, and moral integrity of a person, constituting a violation of the right to life, individual security and liberty, the right to equal treatment - fundamental rights enshrined in the Constitution of the Republic of Moldova and norms of the international law.

Gender-based violence, including domestic violence, is a current issue for many countries in the world. Unfortunately, gender-based violence and domestic violence are widespread in the Republic of Moldova. According to a study conducted in 2015[8], about 50% of interviewed men recognized the existence of physical domestic violence, and 41% of men considered that there were moments when a woman should be beaten up.[9] With regards to sexual violence, according to statistics, 20% of men had sex with a woman without her consent. 18% of those interviewed admitted that they had sex by force with their current partner, and 14% of men used force to have sex with an ex-partner.[10]

The program of monitoring court proceedings in criminal cases of domestic violence and sexual violence against women, as mentioned above, had as an objective to include, to the extent possible, the observation of the whole process, from the preliminary hearing to case resolution. In order to achieve this goal and to cover as many cases as possible, considering that the judicial examination of criminal cases lasts for several months and even years in many cases, it was decided to select for monitoring criminal cases filed with the Chisinau Court between March and September 2017 based on the number and category of cases relevant for the project.

Thus, cases pending in court resulting from crimes of violence against members of family and several cases of sexual violence were selected for monitoring, including:

- 26 criminal cases initiated under Article 201[1] of the Criminal Code (Domestic violence) of a total of 63 criminal cases pending before the Chisinau Court in 2017 according to the schedule of court hearings placed on the NCP;
- 7 criminal cases initiated under Article 145 of the Criminal Code (Deliberate Murder)[11] of a total of 34 criminal cases of this category pending before the Chisinau Court according to the schedule of court hearings placed on the NCP;
- 8 criminal cases initiated under Article 320[1] of the Criminal Code (Non-compliance with a protection order for a victim of domestic violence) of a total of 67 criminal cases of this category pending before the Chisinau Court according to the schedule of court hearings placed on the NCP;

8 Women's Law Center, Perception study 'Men and Gender Equality in Moldova'.
9 Ibidem.
10 Women's Law Center, Perception study 'Men and Gender Equality in Moldova'.

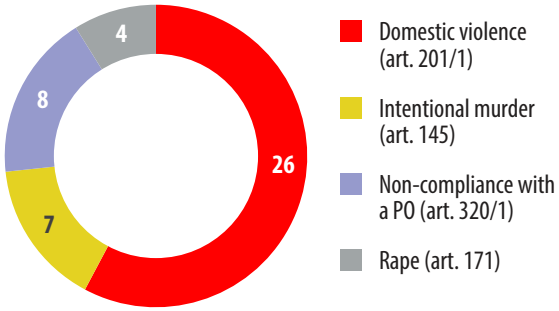
11 The plan was to select for monitoring some criminal cases of murder committed against a family member. The monitoring revealed that none of the 7 selected cases referred to murder committed against a family member. Therefore, the monitoring of these cases was discontinued once monitors found, after several monitored hearings, that the parties concerned were not members of a family. Further monitoring of these cases did not fit the concept of the monitoring program.

- 4 criminal cases initiated under Article 171 (Rape) of a total of 14 criminal cases of this category pending before the Chisinau Court according to the schedule of court hearings placed on the NCP.

In total, 45 criminal cases were selected for monitoring. Criminal cases initiated under Article 172 (Violent actions of sexual nature) and Article 173 (Sexual harassment) of the Criminal Code could not be selected because no case had been filed with the court under these articles during the above-mentioned period.

FIGURE 3

Cases selected for monitoring – domestic violence and sexual violence



The information systematized from monitoring questionnaires was supplemented with information from questionnaires applied to crime victims (after the hearings monitoring)[12]. Information from interviews with professionals[13]who had experience in these categories of crimes was also used.

1.1. General aspects on criminal liability for crimes of domestic violence and sexual violence against women

International legal framework[14] recognizes the specific nature of gender-based violence against women, including within family, justifying the need for a distinct approach for legal system intervention to prevent and punish this type of violence. The relevant international standards strongly recommend adoption of particular actions to ensure efficient protection of victims at national level.

In recent years, the Republic of Moldova made certain progress in improving the national legal mechanism for prevention and combating of domestic violence. It is an important step in the adherence of the local legal framework to the Community Acquis.

Thus, on September 18, 2008[15], the Law on Preventing and Combating Domestic Violence (Law No. 45) came into force. According to Law No. 45, domestic violence is any deliberate action or omission, except self-defense or in defense of another person, manifested physically or verbally by a family member against other members of the same family, including children, and against the common or personal property of the victim. The law regulates five forms of domestic violence - physical, psychological, sexual, economic and spiritual[16]. This law served as a platform for the development of legal relationships necessary to ensure access to justice for victims of domestic violence. By Law no. 167[17] adopted to improve the implementation of the Law No. 45, the Criminal Code of the Republic of Moldova was supplemented with Article No 201[1] CC, that qualifies domestic violence as a crime.

On July 28th, 2016, the Parliament of the Republic of Moldova passed the Law No. 196 amending and supplementing some legislative acts on prevention

12 12 injured parties, including 8 women and 4 men, agreed to answer questions in a survey. The surveyed persons had the status of injured party on cases initiated under Article 171 CC - 4 persons and under Article 201[1] CC - 8 persons.

13 Interview with the prosecutor (IIA_5_P_VF), lawyer (IIA_7_A_VF), forensic expert from the Forensic Medicine Center (IIA_4_E_ML).

14 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979); Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention, 2011) etc..

15 Law on Prevention and Combating of Domestic Violence No 45 of 1 March 2007 // OG No 55-56 of 18 March 2008.

16 Ibidem, Article 2.

17 Law No 167 of 09 July 2010 amending and supplementing some legislative acts // OG 155-158 of 3 September 2010.

and combating of domestic violence, in force since the date of publishing[18]. The goal of Law No. 196 was to bring Moldovan legislation into compliance with the provisions of CEDAW and the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). A number of legislative acts were amended in order to improve the national mechanism for assistance to and protection of domestic violence victims[19].

The European Court of Human Rights (ECtHR) constantly reminds member states of the Council of Europe that under the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), they have an obligation not only to pass laws but also to effectively enforce them in order to respect the rights provided for in the Convention, because of *'... the particular vulnerability of the victims of domestic violence and the need for active State involvement in their protection...'*[20]. The ECtHR case-law on claims brought against the Republic of Moldova (Decisions adopted during 2012-2014) highlighted functional shortcomings that affected the proper efforts to fight domestic violence at the national level.

In the Interlaken Declaration[21] of 19 February 2010, the Council of Europe States Parties are urged to commit themselves to continuing to increase, where appropriate in cooperation with national human rights institutions or other relevant bodies, the awareness of national authorities of the Convention standards and to ensure their application; fully executing the Court's judgments, ensuring that the necessary measures are taken to prevent further similar violations; taking into account the Court's developing case-law, also with a view to considering the conclusions to be drawn from a judgment finding a violation of the Convention by another State, where the same problem of principle exists within their own legal system etc.

1.2. Profile of the injured party in the criminal cases of domestic and sexual violence

The monitoring of criminal cases resulting from gender-based violence, in particular cases of violence between family members and sexual violence against women, identified injured parties in 33 criminal cases. In these cases, 29 women (including 2 minors) and 13 men (including 3 minors) had the status of injured parties.

In 5 cases, it was not possible to determine who the injured parties were for various reasons, especially because of their absence in hearings[22] and the refusal of the court and the professionals involved in the proceedings to provide monitors with relevant information.[23]. The above figures do not include 7 cases of intentional murder that were excluded from the monitoring after establishing that they did not involve family members, and that further monitoring of these cases did not fit the concept of the monitoring program.

18 Official Gazette No 306-313 of 16.09.2016// Article 661.

19 The amendments to the Criminal Code of the Republic of Moldova included: broadened list of persons classified as family members; amended Article 145 (Deliberate Murder) by adding another aggravating circumstance '(e[1]) of a family member'; Article 145 of the Criminal Code in a new wording establishing criminal liability for other forms of domestic violence other than physical violence, in line with the Istanbul Convention spirit; supplemented the Criminal Code with Article 320[1], setting criminal liability for failure to comply with the measures from the protection order issued to a of domestic violence etc.

In order to ensure the protection of women against sexual violence, the Criminal Code establishes criminal liability for rape and for violent sexual acts, supplemented with the aggravating circumstance - 'committed to a family member' etc.

The Criminal Procedure Code of the Republic of Moldova allows hearing child victims/witnesses of domestic violence and sexual crimes in the absence of the perpetrator in order to avoid their repeated victimization; it envisages the obligation of the criminal investigative body/prosecutor to intervene ex-officio without delay to secure protection of the domestic violence victim if the criminal proceedings revealed that the victim was in danger of being subjected to violence or other illegal actions, including destruction of property; prohibits the use of reconciliation in cases of domestic violence, and in case of sex crimes — only if minor victims are involved.

20 ECHR, Case X and Y v. The Netherlands (1998); Bevacqua v. Bulgaria (2001).

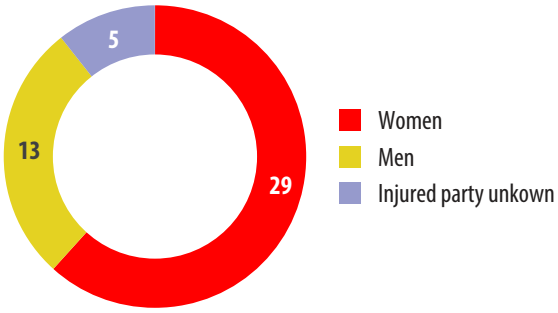
21 https://www.echr.coe.int/Documents/2010_Interlaken_FinalDeclaration_ENG.pdf.

22 Case M.O. No 151/201[1] CC; Case P.S. No 3133/201[1] CC; Case D.N. No 37338/201[1] CC; Case S.A. No 41556/201[1] CC; C.A. No 27390/320[1] CC.

23 Case C.A. No 27390/320[1] CC, ...when the monitor addressed the judge to find out information on the parties in the file, she responded irritated 'I am busy' and the court secretary claimed that she had to prepare for another hearing....

FIGURE 4

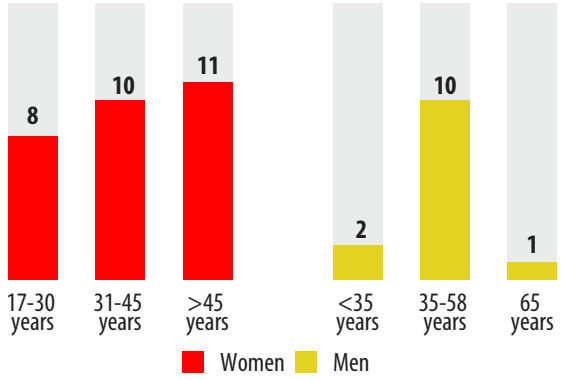
Gender profile of injured party in cases of domestic and sexual violence



The age of the injured parties in the monitored cases of domestic violence and sex crimes against women ranges between 16 and 79 years for women and between 13 and 65 years for men. However, of the 29 women identified as injured parties - 8 women are aged 17-30 years, other 10 women are aged 31-45 years, accounting for a total of about 62%. The other victims are over 45 years old. The youngest man is 13 years old and the eldest one is 65 years old. 10 men with the status of injured parties (husband/domestic partner, brother or father), or about 77% of the total, are aged 35-58 years.

FIGURE 5

Age of injured parties in criminal cases of domestic and/or sexual violence



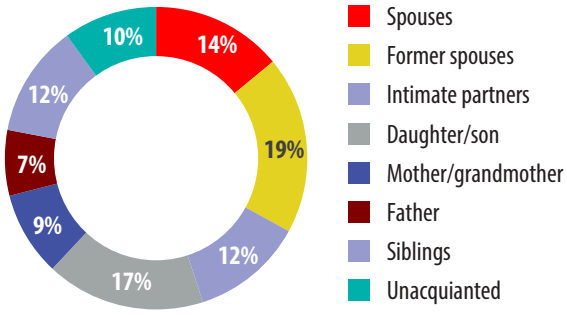
Data analyzed by categories of cases revealed that 4 women/girls aged 17-52 had the status of injured party in cases initiated under Article 171 (Rape) of the Criminal Code, and 4 men/boys, including 3 minors, and 7 women had the status of injured party in criminal cases initiated under Article 320[1] (Non-compliance with a protection order for a victim of domestic violence) of the Criminal Code. In the cases initiated under Article 201[1] Criminal Code (Domestic Violence), 18 women, including one minor, and 9 men, had the status of injured party. Thus, in cases of domestic violence the overwhelming majority of injured parties were women (25 persons, including 1 minor girl). In cases of rape, all injured parties were women.

In monitored cases, the injured parties were: 5 persons with secondary education and 2 high school students, 5 retired persons and 7 unemployed, 3 victims with disabilities, 4 alcohol-dependent persons.

Regarding the status of injured parties in relation to defendants, the monitors established that in 6 cases the injured party was the spouse, in 8 cases — former spouse, 5 cases — intimate partner, 7 cases — daughter/son, 4 cases — mother/grandmother, 3 cases — father, 3 cases — brother, 2 cases — sister. In 4 cases the injured party and the defendant did not know each other, in particular in cases related to sexual violence against the injured party.

FIGURE 6

Relationship between injured parties and defendants in criminal cases of domestic and sexual violence



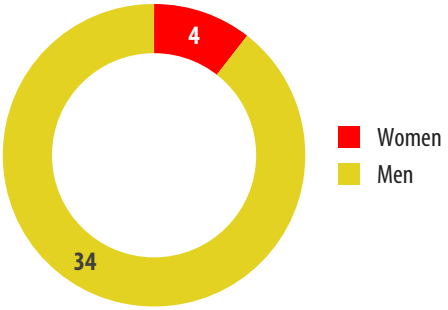
An appropriate assessment of bodily injuries or health harms caused by the crime has a great significance for the classification of the criminal act of domestic violence or sexual aggression and for assigning the crime victims the procedural status of injured party in the case concerned. During an interview, the forensic medical expert explained the conditions of requesting a forensic medical examination and difficulties encountered by victims - *'... as a rule, ...when victims of domestic violence are informed by the forensic expert about his/her obligation to notify the police inspectorate about the forensic examination, some of them refuse the examination... Victims sometimes do not have any ID documents on them. Even if they have a referral or ordinance, without at ID document a forensic examination may not be performed... At other times, the victim contacts the institution outside its working hours, in which case the victim may not be subject to a forensic examination. ...some of them do not come back for the examination. The victim's decision also depends on the distance the victim has to travel to undergo forensic examination*[24]*.... There are difficulties when the victims of domestic violence contact first the forensic examiner, and subsequently certain consultations of narrow clinicians are required to highlight all the traumas, both the visible bodily injuries and those that can be found only by medical exam. Or, the severity of bodily injury is appreciated at the end, when all the injuries, both those visible at the forensic examination and those found by in-depth medical investigations, are highlighted... if referred to others specialists, sometimes victims do not return, although they are explained very clearly that the forensic examination can only find the bodily injuries, that is, those injuries that can be seen with bare eyes...'*[25].

1.3. Profile of the defendant in criminal cases of domestic and sexual violence

34 men and 4 women have procedural status of a defendant in the monitored criminal cases of domestic violence and sex crimes against women.

FIGURE 7

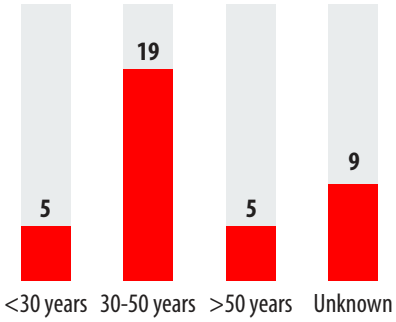
Gender profile of defendant in cases of domestic and/or sexual violence



The age of defendants in the monitored cases ranged between 24 and 68 for men and between 30 and 50 for women. Among men - 5 defendants were up to 30 years old. 16 persons were aged between 30 and 50 and 5 persons - over 50. The age of women defendants was of 30, 48 and 50, correspondingly. It was not possible to determine the age and other information that characterized 9 defendants, including 8 men and 1 woman.

FIGURE 8

Age of defendants in criminal cases of domestic and/or sexual violence



24 There are administrative-territorial units (such as Basarabeasca, Ocnita, Soldanesti, Taraclia, Vulcanesti) that have never had forensic units because of the low number of the population. In the last years, due to staff turnover, several other administrative-territorial units temporarily do not have a forensic unit: Briceni, Glodeni, Rezina, Causeni, Ceadar-Lunga, these being covered with forensic services by the neighboring districts. ...there are territorial forensic units with two forensic examiners, such as Balti, Hancesti, Orhei, Cahul...'.

25 IIA_4_E_ML.

In cases initiated under Article 171 of the Criminal Code (Rape), 4 men aged between 24 and 52 were recognized as defendants. In criminal cases initiated under Article 320[1] of the Criminal Code (Non-compliance with a protection order for a victim of domestic violence), 7 men and 1 woman were defendants. In cases initiated under Article 201[1] of the Criminal Code (Domestic Violence), 23 men and 3 women had the status of a defendant.

Among the defendants in the monitored cases there were 17 unemployed persons, 3 employed persons, 10 alcohol addicts, 1 drug addict, and 3 persons with disabilities. 11 persons were previously convicted.

Coercive measures applied to perpetrators in criminal cases of domestic and sexual violence

Monitors identified that preventive measures were applied to 4 defendants. In case of 3 defendants - pre-trial arrest, and of one defendant –obligation not to leave the settlement was applied as a preventive measure.

Pre-trial arrest was applied to the defendants in one criminal case of rape[26], in one criminal case initiated for non-compliance with a protection order for a victim of domestic violence[27] and in one criminal case of domestic violence[28]. The measure of pre-trial arrest remained unchanged for 182 days in the case of rape until the sentence was issued. As regards the defendant on the criminal case of non-compliance with a protection order for a victim of domestic violence, pre-trial detention was replaced after 63 days with the measure of temporary release under judicial control.

In the monitored case of domestic violence[29], the defendant was arrested for another case filed in the court initiated under Article 349 CC (Threats or violence against an official or a person performing a civic duty). This case demonstrates the authorities' attitude towards combating domestic violence. Thus, in the case initiated under Article 349 of the Criminal Code for committing an offense attributed to the category of minor offenses, pre-trial detention was applied to the defendant. At the same time, the defendant was not arrested in any of the monitored cases of domestic violence. It is not only about Article 201[1](1) of the Criminal Code, which is attributed to the category of minor offenses. Pretrial detention was not applied to the defendant in any of cases initiated under Article 201[1](2) or (3) of the Criminal Code[30], which is attributed to the category of serious crimes.

In a criminal case initiated for non-compliance with a protection order for a victim of domestic violence[31], the defendant was applied a preventive measure in the form of obligation not to leave the settlement. The monitoring revealed that the defendant had violated repeatedly (three times) the measures prescribed in the protection order. In two cases, the defendant violated the protection order when the case was already under judicial review. Criminal investigation was initiated for each of these cases of non-compliance with the protection order and, afterwards, in the court, they were merged into a single case. Moreover, the case was examined under simplified procedure, according to Article 364[1] of the Criminal Procedure Code. However, importantly, the monitor noted that the court did not apply Article 185 (2)(3) of the Criminal Procedure Code in these cases. That provision stipulates that pretrial detention could be applied to the defendant if he or she violated the protection order in case of domestic violence. Moreover, the case monitoring found that the defendant displayed an extremely irresponsible behavior in the court, dangerous for the injured party's safety[32] before the hearing.

26 Case C.V. No 47472/171 CC.
27 Case R.V. No 46497/320[1] CC.
28 Case S.A. No 35335/201[1] CC.
29 Case S.A. No 35335/201[1] CC.

30 Case P.D. No 27386/201[1](3) CC; Case C.D. No 48200/201[1](3) CC; Case S.A. No 41556/201[1](3) CC; Case C.A. No 5107/201[1](2) CC; Case D.N. No 4272/201[1](2) CC; Case M.O. No 151/201[1](2) CC; G.A. No 41138/201[1](2) CC etc..
31 Case C.S. No 41839/320[1] CC.
32 Case C.S. No. 41839/320[1] CC, … the defendant was present and he was drunk. The injured parties – ex-wife and juvenile son - were waiting in the hall. The defendant came up to them several times and tried to say something. He stopped only when the prosecutor came. At the next hearing, the defendant tried again to talk to the injured parties waiting in the hall. They had to change their chair and sit further. At the next hearing the defendant was drunk again. In this way, the prosecutor mentioned that the defendant's state of drunkenness was a lack of respect towards the court, which could be punished. However, no disciplinary measures were taken against the defendant. In these conditions of excessive tolerance towards the defendant, the latter also allowed himself to come drunk to the subsequent hearings (and try to clarify the relationship with the injured party within the court premises), while the court postponed the hearing every time on grounds of the defendant's state of total inebriation, even if the injured party asked to finish more quickly the case examination. Each time when postponing the hearing, the court warned the defendant that if he came drunk at the next hearing, the court would review the case in his absence, but it did not happen yet.

According to Article 321 of the Criminal Procedure Code, the case shall be examined in the first instance court and in the Court of Appeals with the participation of the defendant. If the defendant fails to appear in court, the case shall be postponed. In case of an unjustified absence of the defendant from the examination of the case, the court has the right to bring the defendant by force and *to apply a preventive measure or to replace it by another measure that will ensure his or her presence in the court*, and at the prosecutor's request the court has the right to declare the defendant wanted.

The monitoring did not find any case of applying a preventive measure to ensure the defendant's presence in the court in order to examine the case in due time. Such measures were not applied even when the file examination was delayed because of unjustified absence of the defendant. For example, in Case G.A. No 41138/201[1] CC initiated under Article 201[1] (2)(c) CC for physical violence causing moderate body injuries to the victim (after the divorce, the former spouses kept on living in the same apartment), the defendant had not come to the hearing since July 2017. When phoned, the defendant was drunk and later turned off his phone. At the next hearing in August, the prosecutor mentioned that he had talked to the defendant and the latter had to be present, but he did not appear. The hearing was postponed again and the prosecutor was ordered to ensure the presence of the defendant at the next hearing. The defendant was not present at any of the hearings of 01 November 2017, 06 December 2017, 12 February 2018. In May 2018, the case was still under judicial review. This lack of effective intervention by the courts places the victim in serious danger.

Also, the monitors did not mention any case of applying protection measures for victims of domestic violence in criminal proceedings, although the monitoring identified reasons for initiating such a procedure. For example, before one of the hearings in Case C.F. No 1269/201[1], the prosecutor asked the injured party about the situation and she replied that it was bad. She started crying and told that the defendant was continuing to terrorize her. For instance, on the eve of the hearing she did not sleep because of him. The prosecutor asked her if she had called the police, she said that she had not. The prosecutor expressed anger that she complained about the defendant every time, but she did not take any actions and all these facts were not documented in order to request a protection order. The defendant, who overheard this discussion, did not deny what the injured party said, but tried to blame the injured party. The latter said that he wanted the proceedings to end as soon as possible.

According to Article 215[1] of the Criminal Procedure Code, if the criminal proceeding reveals that the victim of domestic violence is in danger of being subjected to violence or other illegal actions, including the destruction of his or her property the prosecution body or the prosecutor is required to intervene without delay to ensure that protective measures are taken. The request for protective measures may be submitted by the criminal prosecution body or prosecutor and on the basis of a claim submitted by the injured party. Thus, the above legal rule allows intervening ex-officio, even in the absence of the injured party's request, which does not usually happen in cases of domestic violence.

1.4. Court hearing of criminal cases of domestic violence and sexual violence against women

The following criminal cases in the following courts were selected:

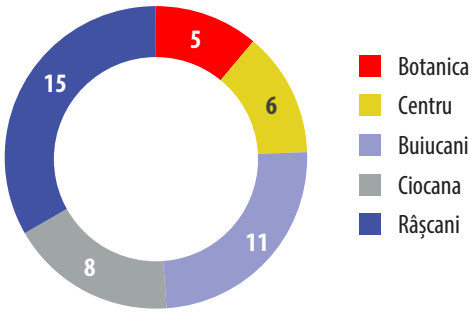
- 5 criminal cases examined on the merits in Chisinau Court, Botanica Office, including 4 cases initiated under Article 201[1] of the Criminal Code and 1 case initiated under Article 320[1] of the Criminal Code;
- 11 criminal cases examined on the merits at the Chisinau Court, Buiucani Office, including 2 cases initiated under Article 171 of the Criminal Code; 7 cases initiated under Article 201[1] of the Criminal Code and 2 cases initiated under Article 320[1] of the Criminal Code;
- 6 criminal cases examined on merits in the Chisinau Court, Center Office, including 3 cases initiated under Article 145 of the Criminal Code and 3 cases initiated under Article 201[1] of the Criminal Code;

- 8 criminal cases examined on the merits in the Chisinau Court, Ciocana Office, including 2 cases initiated under Article 145 of the Criminal Code; 1 case initiated under Article 171 of the Criminal Code; 3 cases initiated under Article 201[1] of the Criminal Code and 2 cases initiated under Article 320[1] of the Criminal Code;

- 15 criminal cases examined on the merits in the Chisinau Court, Rascani Office, including 2 cases initiated under Article 145 of the Criminal Code; 1 case initiated under Article 171 of the Criminal Code; 9 cases initiated under Article 201[1] of the Criminal Code and 3 cases initiated under Article 320[1] of the Criminal Code.

FIGURE 9

Courts in which cases of domestic and sexual violence were monitored



In the course of monitoring criminal cases of domestic violence and sexual violence against women, monitors focused on observing the actions of the participants in the proceedings before and during the hearing of the cases.

Transparency and publicity of the hearing in criminal cases of domestic and sexual violence

In order to ensure transparency of the hearing, according to Article 353 of the Criminal Procedure Code, the judge or, as appropriate, the chairperson of the panel of judges is in charge of taking all the necessary measures and ensuring that schedule of hearings is prepared and displayed in the court in a public place at least 3 days prior to the scheduled date of hearing. The notice for each case is required to include the case number, name of the judge(s) examining the case, date, time and venue of hearing, name of the defendant(s), subject matter of the case[33], and other data.

According to Article 56[2] of the Law on Judicial Organization No 514-XIII of 06 July 1995[34] , list of the cases for trial shall be published on the website of the court, as well as on an information board placed in a publicly accessible place in the court, at least 3 days before the date of court hearing.

The monitoring confirmed that the list of cases for trial was published on the website of the court and in the court - the electronic panel and/or on the paper-based information panel.

Out of 217 monitored hearings in these categories of criminal cases, the information on 191 hearings was posted on the website (national courts' portal), while information on 178 hearings was placed on the information panel in the court. The information about 125 hearings was displayed 3 days prior to the hearing, and about 53 hearings – more than 3 days prior to the hearing. Information about 90 hearings was displayed on the electronic panel in the court lobby. Periodically, monitors reported the failure of the electronic panels in the court, and this explains the smaller number of hearings posted on the panel.

Monitors identified cases where information about the date of hearings was not displayed at all, i.e. information about 17 such hearings in 11 monitored criminal cases was not posted[35]. The monitors did not mention

33 In accordance with Article 325 of the CrPC, the case shall be examined within the limits of the accusation formulated in the indictment, and Article 296 of the CrPC, which refers to the content of the indictment, mentions the legal classification of the actions of the accused. The foregoing items reveal that the text 'the subject matter of the case' from Article 353 CrPC, shows that concrete information regarding the legal classification of the accused's actions shall be published, as stated in the indictment.

34 Republished in the Official Gazette of the Republic of Moldova No 15-17 of 22.01.2013, Article 62.

35 Case E.S. No 2859/171 CC; Case A.V. No 31132/171 CC; Case C.A. No 27390/320[1] CC; Case R.V. No 46497/320[1] CC; Case P.D. No 27386/201[1] CC; Case S.V. No 4862/201[1] CC; Case G.A No 8992/201[1] CC; Case C.D. No 48200/201[1] CC; Case No 35835/201[1] CC; Case D.N. No 4272/201[1] CC; Case D.N. No 37338/201[1] CC.

any case of failure to display information about all hearings per case.

Monitors also reported cases of publishing inaccurate information or publishing information in electronic format which was not updated and did not match the information displayed on the information panel[36].

The legal requirements for the content of the displayed information were not always complied with. As mentioned above, the electronic panel in the court itself was broken periodically and the data on paper on the information panel did not have one format. Sometimes there was no information about the place of the hearing, names of all defendants, crimes, etc.

Lack of information regarding the crimes that are the object of the case is a particularly important problem. The norms of criminal procedure make it clear that it is necessary to publish specific information regarding the legal classification of the actions of the accused, as mentioned in the indictment, i.e. it is important to indicate not only the article, but also the paragraphs and letters under which the accused's actions are classified. At the same time, since that information is intended for the general public, it is necessary to briefly describe the signs characterizing the paragraph and the letter of the article. This will ensure, to the extent appropriate, the requirement of transparency of the judicial process. Omissions in this regard are a problem because they can mislead the persons willing to attend the examination of certain types of crimes.

It is important to note that omissions and mistakes in the displayed information, especially, lack of concrete information about the paragraph and letter of the article of the rules of criminal law which constitutes the subject matter of the judicial examination at the indicated hearing, affected the monitoring process. For example, 7 cases of intentional murder, selected for monitoring, did not refer to the murder of a family member. Unfortunately, the monitors learned this only after a few monitored hearings (this was due to the judge's reluctance to give, on monitor's demand, even the basic information about the case).

During the monitoring process, 4 criminal cases [37] were examined in full or partially in closed hearings, including 3 cases of rape and 1 case of domestic violence with a minor victim. The other cases were examined in public hearings.

Examination of a case in a public hearing is a fundamental element of a fair trial. The right of everyone to a fair trial is proclaimed in Article 6 of the European Convention on Human Rights and Fundamental Freedoms.

The publicity of proceedings as an important remedy to increase the trust of the society in the act of justice is guaranteed, at national level, by the Constitution of the Republic of Moldova, which stipulates in Article 117 that hearings in all courts shall be held in public. Trials behind closed doors are allowed in certain cases only provided by law and in compliance with the rules of procedure.

In accordance with Article 18 of the Criminal Procedure Code, the hearing shall be public. Courtroom access can be prohibited to the press and public, *by a motivated resolution*, during the entire civil proceeding or a part of it, in the interests of morals, public order or national security in a democratic society, where the interests of minors or the protection of private life of the parties require so or to the extent strictly necessary in the opinion of the court in *special circumstances* where publicity would prejudice the interests of justice. This rule further prescribes that when a minor is a victim or a witness, the court shall hear his/her statements in a closed hearing. The examination of a case in closed hearing *must be reasoned* and carried out in compliance with all rules of judicial procedure.

Thus, Article 18 CrPC is aligned to the spirit of ECHR and the Constitution of the Republic of Moldova in

36 Case S.V. No 4862/201[1] CC, ... both the website and the information panel indicated the wrong time, instead of 3.00 p.m., it was 2.00 p.m. ...; Case G.A. No 41138/201[1] CC, ... the electronic panel and the information panel indicated different venues of the hearing. The hearing took place in the room indicated on the information panel, which confirms that the venue of the hearing was changed at the last minute.

37 Case A.M. No 29382/171 CC; Case C.V. No 47472/171 CC; Case E.S. No 2859/171 CC; Case B.I. No 44520/201[1] CC.

terms of the reasons and procedure of limiting public access to the entire process or only to some hearings. While judges have discretion in this regard, closed hearings must be justified by a reasoned resolution.

It shall be noted that prevention and elimination of domestic violence are part of the national policy on protection and support of family and is an important public health issue[38]. Hence, it is important to examine cases of gender-based violence, including domestic violence, in public hearings under general conditions. A public hearing ensures all guarantees of a fair trial and is an opportunity for all potential victims to follow the resolution of such cases. At the same time, the injured party may request, in line with the law, that the case be examined in a closed hearing by referring to intimate and private life. However, it is important to ensure that the examination of a case in a closed hearing is based on the will of the injured party and is not a consequence of a discretionary decision of the judge.

Article 316 CrPC also establishes that the chairman of a court hearing may limit the public's access to the hearing, considering the conditions under which the case is examined. This provision, which essentially widens considerably the judges' margin of discretion in relation to Article 18 CrPC and the fundamental rules cited above, was 'corroborated' with Article 18 CrPC, through the amendments to the text of the latter[39]. As a consequence, Article 18(1) CrPC currently establishes that in all courts the hearings shall be public, except for the cases provided by this Code. Thus, on the basis of Article 316(4) CrPC, the judge is no longer limited to the restrictions and procedural rules provided by Article 18 CrPC. The chairperson of the hearing may, whenever he/she decides, not allow or remove from the hearing other persons than the participants in the proceeding without issuing a reasoned resolution on declaring the hearing closed. This can be confirmed by the observations of one of the monitors, at the public hearing on the case P.A. No 27776/145 CC, that '***... there is limited space and a tense atmosphere in the judge's office, where the hearing is taking place. Perhaps, for these reasons, the judge refused to accept that some relatives and friends of the defendants attend the hearing...***'.

Thus, if the fundamental, international and constitutional rules are based on the presumption that court hearings are public, and the restrictions constitute exceptional measures, applicable to a strictly limited number of reasons and according to a strict procedure for adopting the decision on the application of these restrictions, then the national criminal procedural law provided the judge with full discretion on the public nature of a hearing. Monitors found that some judges were reluctant to open hearings to the public.

Considering the extremely vague nature of Article 316 CrPC, we recommend that instructions be issued in order to ensure an unambiguous understanding and application of these legal norms and to prevent arbitrary actions and provisions that would ultimately affect the spirit of international and constitutional norms regulating the public nature of court hearings.

Monitors noted that, as a rule, no persons other than participants in the proceedings attend the hearing. The presence of the monitor was always noticed immediately. Sometimes the participation of the monitor in the hearing awoke curiosity[40], other times even suspicions. As a confirmation of the statements above, it should be mentioned that in the Case of C.V. No 47472/171 CC, before the beginning of one of the hearings, the court secretary addressed bluntly the monitor, in the presence of everyone, asking about his interest and reason for attending each hearing. She said she had informed herself and knew that monitors did not attend the hearings of other judges. Afterwards, during the hearing, the

38 Preamble in Law No. 45.

39 Law No 100 of 26 May 2016 (in force since 29 July 2016) amended Article 18(1) CRPC and the word 'Article' was replaced with the word 'code'.

40 Case C.A No 5107/ 201[1] CC, ...waiting in the lobby for the hearing to begin, the defendant approached the monitor and asked why he monitored this particular case; the defendant seemed stressed ....

Case M.O. No 151/201[1] CC, ...before the beginning of the proceedings the prosecutor asked the monitor about his role in the proceedings... the prosecutor had a positive reaction....

Case D.N. No 4272/2011 CC, ...the judge asked where the monitor was from and why he, being a representative of WLC, was witnessing that specific case, where the injured party was a man. The monitor's explanations did not raise objections from the judge and participants in the proceedings... during the proceedings, the judge was very polite with the injured party, so the latter was quite relaxed. The monitor expressed his hope that the atmosphere during the hearing and especially the behavior of the judge had nothing to do with the presence of the monitor at the hearing....

defense attorney made a discreet sign to the judge and, some time later, the court suddenly ordered the case to be examined in a closed hearing. Because the order was neither discussed with the parties nor reasoned, when the judge asked the monitor to leave the courtroom, the latter asked only the reason why he was asked to leave the hearing. This question angered the judge.

In some cases, the judges and participants in the proceedings had a neutral attitude towards the presence of the monitor. In other cases, the judge even emphasized that the hearing was public and anyone was free to attend the proceedings.

However, there were situations of a different nature. Monitors noticed in many cases a reserved attitude or even opposition from the judge to the presence of the monitor in the hearings.

In case C.G. No 3037/320[1] CC, ***...the monitor noted that, although the judge did not order the removal of monitor from the courtroom, he did not hide his negative attitude towards the monitor's attendance of the hearing. When the defendant asked why the monitor was present at the hearing, the judge replied: '...be careful, because, you know the European rules: if you are dealing with women or the 'gay' ones, they will put you in jail quickly...'***

In case C.A. No 27390/320[1] CC, ***...the judge is clearly dissatisfied with the presence of the monitor in the hearing... at the next hearing, the judge is visibly irritated, asking the monitor how long the monitoring will last...***

In Case A.M. No 29382/171 CC, ***...at one of the hearings, the defendant's lawyer proposed to examine the case in closed hearing, arguing that the attendance of the monitor from the Women's Law Center may be detrimental to the defendant's interests...***

In Case B.V. No 195/320[1] CC, ***...the defendant's lawyer disagreed with the attendance of the monitor at the hearing, noting that... with their monitoring, these public organizations only complicate the proper conduct of the proceedings... The prosecutor and injured party did not oppose to the presence of the monitor, so the court decided to accept the monitor within the hearing.***

Thus, some judges, not to mention some defense lawyers or defendants, did not feel very comfortable with the presence of other persons in the hearing.

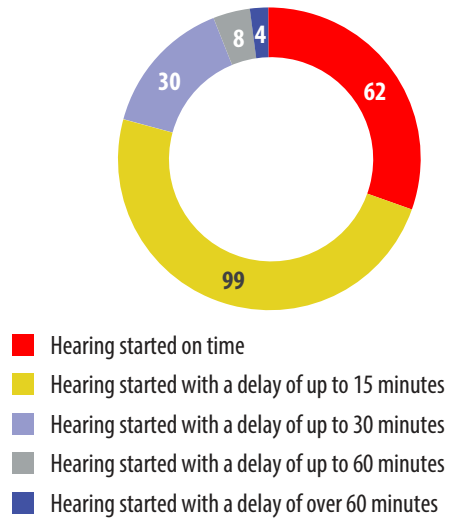
Beginning court hearings at the scheduled time in criminal cases of domestic and sexual violence

Monitors confirmed the beginning of hearings at the scheduled time in 62 cases or about 28% of the total number of monitored hearings.

The hearing started with a delay in 141 cases, including a delay of up to 15 minutes - in 99 cases, up to 30-minute delay - in 30 cases, with delay of up to 1 hour - in 8 cases and with delay of 1 hour - in 4 cases.

FIGURE 10

Timely beginning of hearings in criminal cases of domestic and sexual violence, cases



The start of the hearing was delayed by the judge in 85 cases (in most cases due to examination of another

case[41]), by the prosecutor - in 44 cases, including participation in another trial; defense lawyer - 39 cases, including participation in another trial; defendant - 34 cases; injured party - 26 cases; escort - 4 cases; court secretary - 1 case and interpreter - 4 cases. The delayed beginning of the hearing was often caused by several reasons simultaneously.

In 14 cases the hearing did not take place for various reasons (the judge was at a workshop, was working in another panel of judges or was on sick leave etc.)[42].

Safety of the injured parties in the court premises in criminal cases of domestic and sexual violence

When coming to the hearing, the injured parties usually waited in the hall for the proceedings to begin, in conditions that sometimes did not fully meet the safety requirements. Unfavorable conditions for the safety of victims were mentioned with reference to Centru and Rascani courts - little space on hallways where participants in the proceedings had to wait, poor illumination, places difficult to find. In such circumstances, according to the monitors, many of the parties in the proceedings waited in the hallways, in close proximity to each other. In the Case B.I. No 44520/201[1] CC, ***... in the hallway, the injured party and the legal representative were waiting near the judge's office. The defendant was waiting at a distance of 2-3 meters apart. The injured party and his/her representative did not look at the defendant, the injured party had a strained attitude...*** ...

Also, in Case C.S. No 41839/320[1] CC, ***... the defendant was present and was clearly in a state of drunkenness. The injured parties, the ex-wife and the minor son, were waiting in the hallway. The defendant periodically approached them and tried to tell something to them; he stopped only after the prosecutor's arrival. ... at the next hearing, the defendant once again tried to discuss with the injured parties in the hallway, until they had to go to another seat further. ... at another hearing, the defendant was clearly in a state of drunkenness again...*** For safety reasons, in some cases[43] the injured party was accompanied by another person.

Monitors noted that in some cases the parties came to the hearing together, sat at the hearing together and left together[44]. With reference to this situation, the prosecutor mentioned that ***'... in the vast majority of cases victims of domestic violence are persons who have been systematically subjected to violence... even so, during the prosecution the injured parties often reconcile with the perpetrator...'***[45].

Monitors found other types of cases that undermined the safety of the injured party in the courtroom and contributed to a stressful situation. For example, according to the monitor's observations in Case A.M. No 29382/171 CC, ***... the witness, a friend of the defendant, had an aggressive behavior in the hallway; he was disrespectful towards the injured party, who had not yet been present. The defendant whispered that a***

41 For instance, in Case C.G. No 3037/3201 CC the participants waited more than 1 hour, but the judge did not come from another hearing; the court secretary invited the participants to agree on the date of the next hearing....

42 Not to be confused with cases of postponing the hearing for another date for different reasons, which was decided at the hearing started at the established time or later.

43 Case C.V. No 47472/171 CC; Case C.G. No 3037/320[1] CC; Case T.P. No 38804/320[1] CC; Case S.O. No 39522/201[1] CC.

44 Case P.D. No 27386/201[1] CC, ... in the hallway the injured party and the defendant stood close to each other, when the prosecutor came, the injured party asked him (prosecutor) if he could make a statement to avoid the punishment of the defendant....

Case S.G. No 15946/201[1] CC, ...both in the hallway and in the courtroom the defendant and the injured party sat next to each other.

Case S.V. No 4862/201[1] CC, ...the injured party was angry about the long duration of the case examination in court, because she had already forgiven the perpetrator....

Case S.I. No 34886/201[1] CC, ...the injured party, the prosecutor and the lawyer were waiting in the hallway. The defendant came and handed over some medicine to the injured party, who could not wait for the beginning of the hearing and left....

Case C.D. No 48200/201[1] CC, ...the injured party came along with the defendant, sitting at the hearing next to each other....

Case S.A. No 35335/2011 CC, ...the injured party sat close to the defendant's mother in the hallway....

Case M.S. No 45259 /2011 CC, ...the injured party stood next to the defendant in the hallway, being disturbed by the defendant's shirt which was rumpled, although she ironed it at home. At the hearing the victim always tried to intervene when the court addressed the defendant. The court had to warn her that she would be fined unless she stopped.

Case D.N. No 4272/2011 CC, ... during the break, the injured party periodically told to the monitor the following: '*Lady you do not write so much, I'll take your pen... Because of you, the hearing lasts so long... Well, because you're writing I don't know what, they do not let my brother go home..., you better find a job for him...*'.

45 IIA_5_P_VF.

monitor was also present and then the witness calmed down...

In Case S.O. No 39522/201[1] CC, ***...in the hallway, the defendant stood a few meters away from the injured party and spoke with offensive words to her, but the injured party did not react to the defendant's behavior. The injured party was accompanied by an elderly lady, in respect of which the defendant also used offensive words, but those two did not react...***

In Case T.P. No 38804/320[1] CC, ***... while the judge was deliberating on the possibility to transfer the case through merger, the injured party told the prosecutor that she was afraid to come alone to the hearing, as she was afraid of the defendant. The prosecutor appeased her that there was nothing to fear, because there are more people in here and he will not dare to aggress her...***

A solution to spare the injured party from visual contact and conflicts with the defendant in the courtroom could be to use more often the examination of victims in special conditions at the stage of criminal investigation of domestic violence and sexual aggression cases. It is particularly important when it is obvious that any contact with the perpetrator causes discomfort and even greater psychological suffering to the victim. It is a way to ensure psychological comfort of the victim as recommended by international standards. At the same time, necessary evidence will be collected to find the truth on the case and to apply deterrent measures to the defendant. The interviewed defense lawyer welcomed the use of this procedure - ***'...Certainly it is necessary to examine the victim in special conditions with no visual contact with the defendant...'***[46].

During the interview, the prosecutor expressed some reservations in this regard - ***'... the criminal procedure law contains provisions regarding the examination in special conditions - Article 109, 110[1], 111 CrPC, where the witnesses and victims are interviewed without visual contact with the perpetrator. In practice, such interviews are mainly applied to cases involving minor victims or witnesses, or to persons who intend to leave for abroad. However, I do not know how reasonable this hearing method would be when the victim cohabitates with the perpetrator and she is in contact with him anyway. We have to derive from the circumstances of each case, the relationships between them, etc...'***[47].

The questioning of crime victims revealed that 7 of 12 admitted that they sometimes had concerns about their personal safety. However, the monitors did not mention any incident of attacking a victim before or during the hearing.

In some criminal cases, the injured party was partially or totally absenting the hearings. In 14 of 45 monitored criminal cases, the hearings were held in the absence of injured parties[48]. Thus, out of the 217 monitored hearings in criminal cases, the injured parties were present in 100 hearings, i.e. 47%. More frequently, injured parties did not participate in hearings of cases of domestic violence (attendance of about 32%). Many of these persons were not present at the hearing for safety reasons, but some of them felt ashamed[49]. The interviewed defense lawyer believed that - ***'...most often the reason of victims' absence from hearings is their vulnerability... sometimes the case hearing is delayed and every time the visual contact with the perpetrator re-victimizes the victim... in these cases the victim prefers to have the case examined in her absence...'***[50].

Venue and audio recording of hearings in criminal cases of domestic and sexual violence

Monitors stated that out of the 217 monitored hearings in criminal cases of domestic violence and sexual violence against women, 67 hearings were held in the courtroom, while 136 hearings - in the judges' offices. 14 hearings did not take place.

46 IIA_7_P_VF.

47 IIA_5_P_VF.

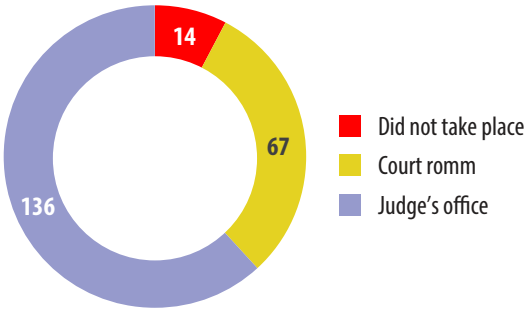
48 Case P.S. No 3133/201[1] CC; Case D.N. No 37338/201[1] CC; Case S.A. No 41556/201[1] CC; C.A. No 27390/320[1] CC; Case S.V. No 4862/201[1] CC; Case G.A. No 8992/201[1] CC; Case C.A. No 5107/201[1] CC; Case A.V. No 756/201[1] CC; Case C.A. No 54195/201[1] CC; Case C.O. No 2196/201[1] CC; Case M.O. No 151/201[1] CC; Case J.P. No 2092/201[1] CC; Case G.A. No 41138/201[1] CC; Case S.V. No 4701/201[1] CC, in this case the injured party was hospitalized for a long period of time and was not present at court hearings.

49 Case C.A. No 27390/320[1] CC; Case S.A. No 41556/201[1] CC; Case C.A. No 54195/201[1] CC, ... the injured party did not come to any court hearing because she was ashamed, according to the defense lawyer....

50 IIA_7_A_VF.

FIGURE 11

Venue of the hearings in criminal cases of domestic and sexual violence



In 23 criminal cases (Botanica-4; Buiucani-11; Center-4; Ciocana-1; Rascani-3) all hearings were held in the judges' offices, including 19 hearings in relatively large offices, equipped with necessary furniture and other 117 hearings - in small offices, creating additional inconveniences for the participants in the proceedings. Thus, a monitor mentioned that in case P.D. No.27386/201[1] CC, "...the judge's office was very small and not equipped correspondingly. Files related to other cases were piled on the desk at which the participants sat...".

In 6 hearings, the case was examined by a panel of judges[51], in the other 211 hearings - by one judge. The case examined by a panel of judges was held also in the office of one of the judges, who was a part of the panel. A monitor stated in case M.N. No. 37929/145 CC the following: ***"...the case was heard by a panel of judges... there was no free courtroom. That is why the hearing took place in the office of a judge, which did not meet necessary conditions... the interpreter was not sitting next to the defendants and was speaking aloud concurrently with the judge, ... the window was open and there was noise caused by public transportation... During the hearing, one of the judges, translator and defendants were standing because of the lack of furniture and space..."***

Along with the technical inconveniences, the hearing of the case in the judge's office does not ensure the conditions required for solemnity and order in the hearing.

The examination of cases in the court hearing should be audio and video recorded. According to the Regulation on the Digital Audio Recording of Court Hearings, approved by the Decision of the Superior Council of Magistracy No 338/13 of 12 April 2013, with amendments and addenda approved by the Decision of the Superior Council of Magistracy No 220/8 of 04 March 2014, in force since 06 June 2014[52], digital audio recordings are official parts of court hearings. The audio recording of court hearings is mandatory in all the cases when minutes of the hearing is prepared.

Audio recording of court hearings is important to verify the correctness and accuracy of the minutes of hearings. In addition, the participants in the proceedings may request copies of audio recordings.

Audio recording of court hearings in criminal cases is carried out in accordance with the Criminal Procedure Code[53]. According to Article 317 of the CrPC, the chairperson of the court hearing shall inform the parties that the court hearing is audio recorded.

The monitoring established that the hearings, held in the specially equipped courtrooms, were recorded by the Digital Court Recording System 'SRS Femida'. As the number of courtrooms was insufficient and many hearings were held in the judge's office, it was decided to equip the courts with portable audio recording devices (voice recorders) in order to ensure the recording of these court hearings.

Monitors noted that courts generally ensure the audio recording of court hearings, most of the times by a voice recorder. The participants in the proceedings, as a rule, were not informed that the hearing was audio recorded. During one of the hearings, the judge ordered

51 Case M.N. No 37929/145 CC; Case P.V. No 4440/145 CC; Case C.G. No 37117/145 CC; Case P.A. No 45837/145 CC.

52 Approved by the Decision of the Superior Council of Magistracy No. 338/13 of 12 April 2013 with amendments and addenda approved by the Decision of the Superior Council of Magistracy No. 220/8 dated 04.03.2014, in force as of 06.06.2014 / Official Gazette No 87-91 of 11.04.2014, Article 460.

53 Items 1.3 and 1.4 of the Regulation on the Digital Audio Recording of Court Hearings.

to turn on the recording device, saying ironically 'Turn the music on!'.

However, in 16 hearings in 7 criminal cases[54] the court did not order the hearing to be recorded and the monitor could not state with certainty whether the criminal case examination was recorded.

No participant in the proceedings requested a copy of the audio recordings of the court hearings during the monitoring period.

Language of the proceedings and parties' access to the services of an interpreter in criminal cases of domestic and sexual violence

As a rule, court hearings in cases of domestic violence and sexual violence against women were conducted in state language. Participants who did not speak the language of the proceedings had the right to request an interpreter.

Monitors noticed that in criminal cases in which one of the parties did not speak the state language, during the informal part of the proceedings, usually until turning on the recording device, the conversation in the room was conducted in Russian or the judge himself translated for the defendant[55]. In these cases, the discussions on the coordination of the next hearing, if the hearing was postponed, were also held in Russian.

At the same time, monitors mentioned cases when during the hearing persons spoke state language/ Russian[56] or at some hearings only Russian[57]. The injured party needed an interpreter in 6 cases; in a case[58] she was not provided an interpreter. At subsequent hearings, the injured party spoke the language of the hearing and did not need an interpreter.

At the same time, 16 defendants needed assistance of an interpreter in 14 criminal cases of all monitored cases. In all these cases, defendants were offered an interpreter, to the extent possible. In some cases, in order to ensure participation of an interpreter in the proceedings, the hearing was delayed by 15-20 minutes.[59] In other cases[60], the non-availability of an interpreter led to (repeated) postponement of the hearings. There were cases when the interpretation[61] was provided by the defendant's lawyer or the judge.

Procedure for examining criminal cases of domestic and sexual violence

In accordance with Article 318 of the Criminal Procedure Code, the court secretary is required to take attendance of the parties and other persons attending before the hearing begins.

Monitors found that, as a rule, the secretary checked before the hearing the attendance of the participants in the proceedings and invited them to the hearing, which in most cases took place in the judge's office. If some participants in the proceedings were not present at the scheduled time, the present ones continued to wait in the lobby until the secretary repeatedly checked the attendance. Monitors indicated some cases when the secretary did not check preliminarily the participants in the proceedings. This usually happened when the court secretary was absent and in one case only[62] the participants, after waiting in the hallway long after the scheduled time, did not wait to be invited by the court secretary and entered the courtroom together with the prosecutor.

Court hearings were usually audible. Some deficiencies recorded by monitors in this regard were determined by both objective and subjective factors.

54 Case P.A. No 27776/145 CC; Case L.I. No 34143/145 CC; Case B.V. No 195/320[1] CC; Case C.G. No 3037/ 320[1] CC; Case P.D. No 27386/201[1] CC; Case M.S. No 45259/201[1] CC; Case C.A. No 54195/201[1] CC.

55 Case A.M. No 29382/171 CC.

56 Case PA. No 27776/145 CC; Case P.D. No 27386/ 201[1] CC; In these cases, as noticed by the monitor, the recording of the hearing was not ordered.

57 Case S.A. No 35835/201[1] CC,

58 Case S.I. No 34886/201[1] CC.

59 Case R.V. No 46497/320[1] CC; Case P.D. No 27386/201[1] CC; Case D.V. No 41294/201[1] CC.

60 Case A.M. No 29382/171 CC; Case E.S. No 2859/171 CC; Case P.A. No 27776/145 CC; Case S.V. No 4862/201[1] CC.

61 Case R.V. No 46497/320[1] CC, ... when the sentence was pronounced, the interpreter was absent and the judge explained to the defendant the essence of the sentence in Russian.

Case P.D. No 27386/201[1] CC ... when pronouncing the resolution on the defendant's request to examine the case in simplified proceedings according to Article 364[1] CrPC, the interpreter was not present and the judge and the defendant lawyer translated the operative part of this resolution to the defendant.

62 Case C.G. No 3037/320[1] CC.

For example, in the Case of P.A. No 27776/145 CC, ***... until the last moment it was not known where the hearing would take place... the judge's office is very small... the office is crowded because it is small... the judge can be neither heard nor seen... stressful, disorganized atmosphere, lack of solemnity. The next hearing was held in a courtroom, which was initially busy... it is noisy because near the repairs is undergoing... there are no microphones and sometimes nothing can be heard...***

In case S.G. No 15946/201[1] PS, ***... although the courtroom is equipped with audio equipment, the judge speaks quietly, it is hard to understand what he says, the names of the parties are not clearly heard ...*** A similar situation was found in other cases.[63]

Monitors indicated that out of a total of 34 criminal cases of domestic violence and sexual violence against women included in the monitoring program, 18 criminal cases or about 53% were examined in simplified proceedings on the basis of on the evidence managed during the criminal investigation (7 criminal cases of murder, partially monitored, and 4 criminal cases examined in closed hearing were not considered).

The simplified proceedings were applied in 1 criminal case initiated under Article 171 CC (Rape), in 3 criminal cases initiated on the basis of Article 320[1] CC (Non-compliance with a protection order for a victim of domestic violence), and in 14 criminal cases initiated on the basis of Article 201[1] CC (Domestic Violence). ***'We have a simplified proceeding for case examination provided by Article 364[1] CrPC - criminal case examination on the basis of the evidence gathered during the criminal investigation. Examination of a criminal case in the court is quicker in this way. We have many criminal cases examined in simplified proceedings and we do not see any problem with it...***'[64].

According to Article 364[1] of the Criminal Procedure Code, before the commencement of the judicial inquiry, *the defendant may declare in person or by an authenticated document* that he or she acknowledges the facts indicated in the indictment and requests that the court proceedings be based on the evidence managed during the criminal investigation. The court admits the application by a ruling if the managed evidence is enough to establish the defendant's actions and if there are sufficient data about the defendant to decide on a punishment. The court then hears the defendant according to the rules of witness examination. If the application is accepted, the chairperson of the hearing explains to the injured person the right to become a civil party and asks the civil party, the civilly liable party, if they propose managing the evidence, after which the court starts the judicial proceedings. If the injured party, the civil party and the civilly liable party attend the hearing, they are allowed to participate in the debate.

The monitoring process revealed cases of more simplistic application of the above-mentioned procedural rule. In one case[65] the court asked on its own initiative the defendant if he wanted the case to be examined in simplified proceedings. The defense lawyer made a sign to the defendant, encouraging him to say - yes. Then the court asked him to report what had happened. As noticed by the monitor ***'... it was obvious that the defendant did not understand what the simplified proceedings meant...'***. In another case[66], the defense lawyer submitted the application, written by the defendant, requesting that the case be examined according to the procedure laid down in Article 364[1] CrPC. During the hearing, the defendant said that the victim should be blamed for that situation, because he came home and saw her in a state of drunkenness and ***'...like any other man I was annoyed and I beat her... Hearing these words, the victim, who was next to the defendant, put her eyes down...'***

Thus, the use of simplified proceedings, which in practice means lower punishment than provided by the criminal law, implies also a sincere remorse of the defendant for the committed actions (although this is not expressly provided by law). As monitors noticed, sometimes remorse was not seen in the defendant's behavior and statements.

63 Case E.S. No 2859/171 CC; Case C.A. No 27390/320[1] CC; Case No 35835/201[1] PS; Case C.A. No 54195/201[1] CC.

64 IIA_5_P_VF.

65 Case G.A. No 8992/201[1] CC.

66 Case M.S. No 45259/201[1] CC.

In many cases examined in the simplified proceedings, the injured parties were present at the hearing, but the monitors found only 2 cases in which it was ordered to inform the victim of the right to become a civil party in the proceedings, according to Article 364[1](5) of the Criminal Procedure Code. In one of these cases[67], the victim refused to bring a civil action, saying she did not have any claims to the defendant. In the second case[68], the victim agreed to bring a civil action.

Ensuring the parties' right to legal aid services in criminal cases of domestic and sexual violence

In accordance with Article 60 para. (1) p. 18) of the Criminal Procedure Code, the injured party has the right to be represented in the court by a private defense lawyer or by a lawyer who provides state-guaranteed legal aid if he/she has no means to pay for legal services.

Regarding victims of domestic violence, according to Article 11 para. (5) of Law No 45, a victim is entitled to qualified free legal aid under the legislation on state guaranteed legal aid. Article 19(1[1]), Article 20 of the Law on State-Guaranteed Legal Aid No 198-XVI of 26 July 2007 (Law No 198)[69] establish for the victims of domestic violence the right to qualified legal aid, which shall be granted regardless of the income level. For this purpose, the victim of domestic violence may request the territorial office of the NCSGLA or directly the court to be provided qualified state guaranteed legal aid[70].

It shall be mentioned that the national law does not stipulate similar conditions for obtaining state-guaranteed legal aid by victims of sexual crimes. However, sexual crimes victims can apply for free legal assistance pursuant to other general laws if they prove not having money to pay for the services of a private defense lawyer.

Monitors did not identify any case in which crime victims were given clear explanations about the right to request state-guaranteed legal aid and the methods of applying for it, provided by the law. Therefore, the legal remedies available for victims of domestic violence do not actually benefit them in any way.

Despite monitors' observations in this regard, a prosecutor stated in an interview ***'... victims are well informed about their rights and obligations... effective access to legal aid is extremely beneficial to the victim...'***[71].

The monitoring of criminal cases of domestic violence and sexual violence against women revealed that out of 45 monitored criminal cases only in 4 cases[72] the injured party was assisted by a defense lawyer, including by a private defense lawyer in one case. In three other cases, the victims received state-guaranteed legal aid. In cases where the injured parties were granted state-guaranteed legal aid, the monitors appraised the defense lawyer's performance as modest.

The data collected following the questioning of the victims of domestic violence (8 questioned persons) and rape (4 questioned persons) revealed that 2 persons involved in rape cases and 2 persons involved in domestic violence case benefited from the services of a defense lawyer. Out of them, 2 persons mentioned that they were satisfied with the attorney's performance, while other 2 - were not.

One defense lawyer who was interviewed by monitors stated, ***'... the victim would accept to be assisted by a lawyer in the proceedings, ... though many persons do not know that they can benefit of a lawyer free of charge...'***[73].

The results of the monitoring confirm that legal aid would be beneficial for a crime victim. Monitors noticed that often the injured party did not understand many things going on during the court hearing. The injured party faces great difficulties when making statements. In

67 Case T.P. No 38804/320[1] CC.

68 Case C.V. No 47127/320[1] PS, ... finally, the civil action of the injured party was dismissed as unfounded.

69 Official Gazette No 157-160 Article 614 of 05.10.2007.

70 Article 26 of the Law No 198.

71 IIA_5_P_VF.

72 Case A.M. No 29382/171 CC; Case A.V. No 31132/171 CC; Case A.V. No 756/201[1] CC; Case N.V. No 33989/201[1] CC.

73 IIA_7_A_VF.

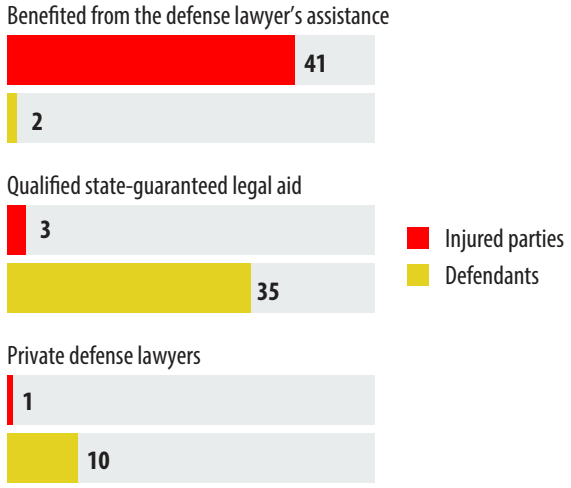
one of the cases[74], the chairperson of the hearing ordered state-guaranteed legal aid for the injured party, seeing that the injured party (the defendant's 65-year-old father) did not know what to do at the hearing. However, in that case, no defense lawyer was present at the next hearing or at any other hearing to provide legal aid to the injured party during the proceedings.

The monitors reported that the defendants were in a different situation than the injured parties regarding the access to legal aid.

The monitoring established that in the majority of the monitored cases the defendants benefited from the defense lawyer's assistance. Monitors mentioned only two cases of domestic violence[75] where the defendants were not assisted by a defense lawyer. Thus, 10 defendants received qualified legal aid from private defense lawyers and 35 defendants - qualified state-guaranteed legal aid. Only one case[76] was indicated where the defense lawyer had a poorer performance.

FIGURE 12

Number of injured parties vs defendants represented by a defense attorney



74 Case A.V. No 756/201[1] CC, note that even if the court ordered to provide the state-guaranteed legal aid to the injured party, no ex-officio lawyer was present at any hearing.

75 Case A.V. No 756/201[1] CC; Case J.P. No 2092/201[1] CC.

76 Case C.F. No 1269/201[1] CC.

Monitors noticed sometimes inappropriate behavior, especially from defense lawyers towards injured parties[77]. They also identified cases where the defense lawyer caused delay or postponement of court hearings[78]. Monitors indicated that 16 hearings started late because of the defense lawyer: one case - by 10 minutes, 9 cases - by 15 minutes, 6 cases - by 25 minutes. Due to the defendant lawyer's absence, the hearing was postponed for another day in 31 cases. This seriously undermines the safety of the victim and the accountability of the abuser.

The prosecutor mentioned in the interview that - ***'... most of the time delays occur because of the parties' lawyers... it is the criminal cases where contracted lawyers are involved that are delayed most often. The lawyers try their best to help the defendant avoid criminal liability...'***[79].

The monitoring revealed several cases where the defense lawyer of the injured party was fined for unjustified absence from hearings. Thus, in case A.M. No 29382/171 CC, ***... the parties' lawyers were repeatedly absent from hearings, for which the court had in fact imposed a fine of 20 c.u.*** Similarly, in case B.I. No 44520/201[1] CC, ***... the defense lawyer was often late or not present at the proceedings. The court fined the lawyer with 20 c.u. (MDL 1000) for his absence from the hearings for which he was lawfully summoned and, at the same time, requested that NCSGLA appoints another lawyer.***

77 Case B.V. No 195/320[1] CC, ... in the hearing the lawyer put pressure and the prosecutor had to interfere. The judge made a gesture implying '. . . what can I do?' However, he subsequently made a few warnings to the lawyer to ask questions correctly...; Case A.M. No 29382/171 CC, ... the injured party did not come to one of the hearings. The defense lawyer, because of whom the previous hearing was postponed, addressed the monitor: '*... do you see how serious she is? She neither come, nor informed anyone. She is absent without a reason, and we have to come in vain like fools...*'.

78 Case P.A. No 27776/145 CC, ... the hearing was postponed because the defense lawyer filed a recusal to the lawyer of the injured party, on the ground that at the previous hearing the latter participated as defendant's lawyer at the examination of arrest extension... at the next hearing, the defense lawyer requested postponement because he was late for another hearing; Cause C.G. No 3037/3201 PS, ... during one of the hearings in August, the injured party was revolted by the fact that '*... case hearing was delayed without any grounds since March, and she could not always leave the workplace and sit under the judge's door*'. However, on that day, the hearing was postponed for October, and at this next hearing the defense lawyer demanded again postponement because he was traveling abroad. This fact caused dissatisfaction of the injured party.

79 IIA_5_P_VF.

Ensuring the injured party's right to be treated with respect

Monitoring revealed that, as a rule, the court treated all participants impartially and ensured that all procedural requirements were met. In some cases, the court was very kind to the injured party. For example, in case No 4272/201[1] CC, ***... the judge was very kind to the injured party, so the latter was relaxed and sociable.***

In case C.A. No 54195/201[1] CC, ***... after hearing the witness at the request of the injured party, who explained that she was tired because of not sleeping all night due to the aggressive actions of the defendant, the court allowed her to leave before the end of the hearing...***

In case D.V. No 41294/201[1] CC, ***... the injured party did not come to one of the hearings. The prosecutor pleaded for the case to be examined in her absence because she had been heard already. The defense lawyer argued that this would violate the right of the injured party to address questions to the witnesses. The judge decided to postpone the hearing...***

However, monitors also reported some instances of disrespectful or even biased treatment of the injured party.

At the beginning of the proceedings, as several monitors indicated, the court did not explain clearly the procedural rights to the injured party, including the right and legal conditions for legal aid. The court intervened only when it found that the injured party was facing difficulty[80].

Monitors noted that the practice of inviting a person affected by the crime as a witness in the proceedings, can be also regarded as a disrespectful treatment of the injured party[81]. Having the procedural status of a witness, the crime victim had to wait in the hallway for the hearing to begin, not having access to the courtroom.

Monitors also noted that victims had a difficult time testifying in cases such as rape or domestic violence. In the case of A.M. No 29382/171, the monitor noted that ... ***during the hearing, the injured party felt very uncomfortable and was embarrassed to tell what happened, especially because most of the attendees were men (both defense lawyers, judge, court clerk, prosecutor, defendant). The injured party was visibly feeling emotional. She cried telling her story and left the hearing in tears...***

Sometimes the injured party's statements were accompanied by ironic comments from the judge. In the case P.D. No 27386/201[1] CC on domestic violence which resulted into serious bodily injury of the victim, whose 8 ribs were broke and lungs affected, the judge asked the victim to recall the circumstances of the case because *'it seems like a tractor ran over you....'* The defendant 'reminded' the injured party that, a few days before being ill-treated, she had fallen off a ladder, and she immediately accepted that and confirmed that she fell off a ladder a few days before. The defendant continued talking instead of the injured party, saying that they still lived together with the injured party and they did not have any claims to each other. The judge replied, using the expressions like '*liubovi do groba*' (translator's note: statement in Russian, meaning 'loving you till the day I die') and '*liubliu kak dușu, treasu kak grușu*' (translator's note: statement in Russian, meaning 'I love you from the bottom of my heart, I beat you like a boxing bag').

Monitors mentioned cases of definitely inexplicable behavior, especially in cases involving a minor victim of sexual abuse. Thus, in the case of C.V. No 47472/171 CC, the monitor described that ***'... the judge was angry that the minor injured p arty did not attend the hearing. The judge used every opportunity to express his indignation with the legal representative. When the***

80 Case A.V. No 756/201[1] CC. See Footnote No 89.

81 See footnote No 26, Case R.V. No 46497/320[1] CC. The monitor mentioned that the mother of the defendant, who suffered from her son's violence, was acknowledged as a witness in the proceedings. During the first hearings, she had to wait in hall and had no access to the courtroom until she was called to be examined. The woman felt angry saying she did not want to be heard as a witness "*...I do not understand I am a witness in this case...*". Later, the court involved her in the proceedings as an injured party, but did not examine her in this capacity, as meanwhile, the court decided to examine the case under simplified procedure. This situation is explained by the fact that after the Criminal Code was supplemented by art. 320[1] (Non-compliance with a protection order), the criminal investigative body considered that an individual cannot be an injured party in a case resulting from a crime against justice. Later, at the stage of judicial proceedings, the person damaged by the crime was acknowledged as an injured party. This determined the criminal investigative body to renounce to the previous practice.

minor finally came to the hearing, the judge spoke in a harsh tone with her and her legal representative, asking each time if she intended to leave the country. The minor injured party wanted to make statements in the absence of the defendant because, as mentioned, she felt intimidated by his presence, but her request was not admitted...'. After the hearing, the representative of the injured party told the monitor that '***... together with the daughter they felt discriminated by the judge. They could not explain why he did not accept to make statements in the absence of the defendant, and to submit the recorded testimonies, as it was practiced in other countries. They said they were always threatened with a fine for not attending the hearing, but there was nothing said to the defendant when he did not attend the hearing, while they lost time and resources attending the hearings due to his repeated absence...***'.

The practice of frequently postponing the hearings can be also regarded as a lack of respect for crime victims, including due to unjustified absence of the injured party's defense lawyer.

Monitors also noticed other kinds of situations that could be considered as a more veiled form of disrespectful treatment towards the injured party in the court hearing. This is the practice of coordinating the date of the next hearing mainly with the prosecutor and the defense, including the defendant, without checking the availability of the injured party for the chosen date. In a case, the victim[82] proposed the hearing to be set after 3 p.m., but was refused on the grounds that it would be difficult for the police officer to come at that time.

Monitors noted five cases when the court took notice of the injured party's availability on the date set for the next hearing.

During the individual interviews with victims of domestic violence and sexual aggression against women, 8 victims reported to be treated with kindness during the proceedings, while 4 victims - to be treated with indifference. At the same time, five injured parties reported they were intimidated by the defendant.

82 Case C.G. No 3037/320[1] CC.

1.5. Examining the case within a reasonable timeframe and postponing the hearing

A criminal case, filed with a court, is assigned randomly to a judge or, as appropriate, to a panel of judges[83]. Within no more than 3 days of the date when the case was assigned, the judge or, as appropriate, the panel of judges, schedules the preliminary hearing, which shall start no later than 20 days of case assignment date. The date of the hearing, according to Article 351 of the Criminal Procedure Code, may not exceed 30 days from the date of the preliminary hearing.

Thus, the law makes it clear that the preliminary hearing is necessary almost in all the cases, except the cases under emergency proceedings. Respectively, the deadline for setting the first hearing 'no later than 20 days of the case assignment date' is mandatory.

In order to analyze the observance of the rules for setting the first hearing, the date of case registration in the court (which is published in the Agenda of the court hearings) was used as a basis, plus 1 day for the random assignment of the case. Thus, according to the law, the first hearing must be set within no more than 21 days of the date of case entry into the court.

The monitoring of criminal cases of domestic violence and sexual violence against women examined in the Chisinau Court revealed that in the majority of the 45 monitored criminal cases, the first hearing was set within 21 days of the case registration date[84]. In 7 cases the first hearing was set within 30 days of the case registration date, in 4 cases - within 40 days, in 3 cases - within 50 days, and in 3 cases[85] - within 73-78 days. There were cases when the first hearing was set on the 90th day[86] and the 111th day[87] of the case registration date.

83 Article 344 of the Criminal Procedure Code of the Republic of Moldova.

84 The first hearing was set within 21 days in 26 cases, including 4 cases within 10 days.

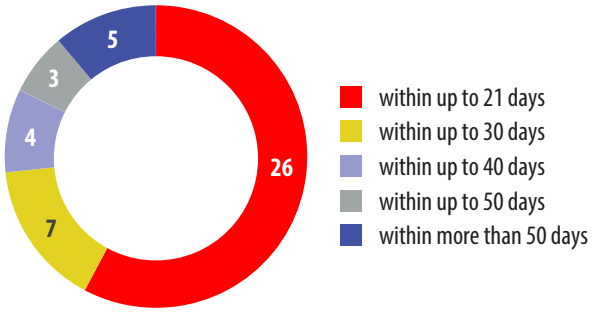
85 Case M.O. No 151/201[1] CC; Case P.S. No 3133/201[1] CC; Case S.V. No 46411/320[1] CC.

86 Case S.G. No 15946/201[1] CC.

87 Case S.G. No 15946/201[1] CC, ...at the first hearing it was decided to merge this file with another casefile.

FIGURE 13

Setting the date of hearing from the date of registration of criminal cases of domestic and/or sexual violence



The total working time on a case is usually a few hours. However, the time to hear a case in most instances is quite long. Thus, it was established that out of the 38 criminal cases considered[88], one case[89] was examined within 30 days, 3 cases were examined within 60 days, 6 cases - within 90 days, 2 cases - within 120 days, 8 cases - within 200 days, and other 3 cases - within over 200 days[90], while other 3 cases [91]were examined within more than 300 days.

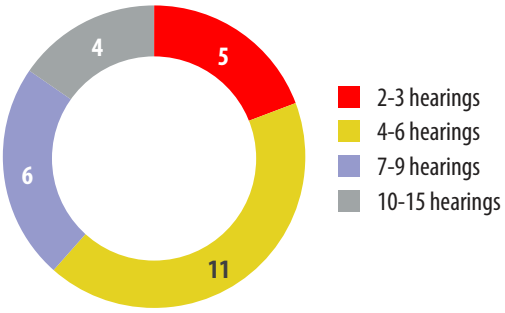
At the same time, it should be noted that upon completion of the monitoring program, 12 cases were still pending, including 2 cases pending for more than 8 months, 2 cases pending for more than 9 months, 3 cases pending for a period exceeding 10 months, 1 case pending for more than 11 months and 4 cases pending for more than 12 months[92].

As mentioned above, women had the procedural status of defendant in 3 criminal cases of domestic violence. Monitors have noticed that when female defendants were involved, cases were resolved in a much shorter period of time[93] compared to other cases of this category with male defendants.

None of the monitored cases was resolved in one hearing. 1 case was settled with the sentence pronounced in 2 hearings, 4 cases - in 3 hearings, 5 cases - 4 in hearings, 4 cases - in 5 hearings, 2 cases - in 6 hearings, 2 cases - in 7 hearings, 1 case - in 8 hearings, 3 cases - in 9 hearings, 2 cases - in 10 hearings and by 1 case in 11 and 15 hearings respectively. Other cases were still under examination: the monitors attended 15 hearings on a case, in other 2 cases - 14 hearings, in 4 cases - 7-9 hearings, in 3 cases - 5-6 hearings, in 2 cases - 3-4 hearings etc.

FIGURE 14

Number of hearings after which the court delivered a judgment



Postponement of court hearings was caused by: the judge's absence or impossibility to hold the hearing - in 22 cases; absence of the prosecutor - 35 cases; absence of the defense lawyer - 42 cases; absence of the defendant - 71 cases, including 2 cases when he was not bought by escort; absence of the injured party - 43 cases; absence of the injured party's defense lawyer - 9 cases; absence of the interpreter or court secretary - 5 cases; the elapse of the time allocated for the hearing - 40 cases; other reasons (recusal of the judge or the injured party's defense lawyer; handing over the indictment; the necessity to submit new evidence; the defendant was given time to think whether he accepts

88 7 criminal cases initiated under Article 145 of the Criminal Code, for which the monitoring ceased after the first hearings when it was established that the victims were not family members, were not taken into consideration.

89 Case S.A. No 41556/201[1] CC.

90 Case S.A. No 35335/201[1] CC; Case C.V. No 47127/320[1] CC; Case S.V. No 4862/201[1] CC.

91 Case B.V. No 195/320[1] CC; Case S.G. No 15946/201[1] CC; Case G.A. No 8992/201[1] CC.

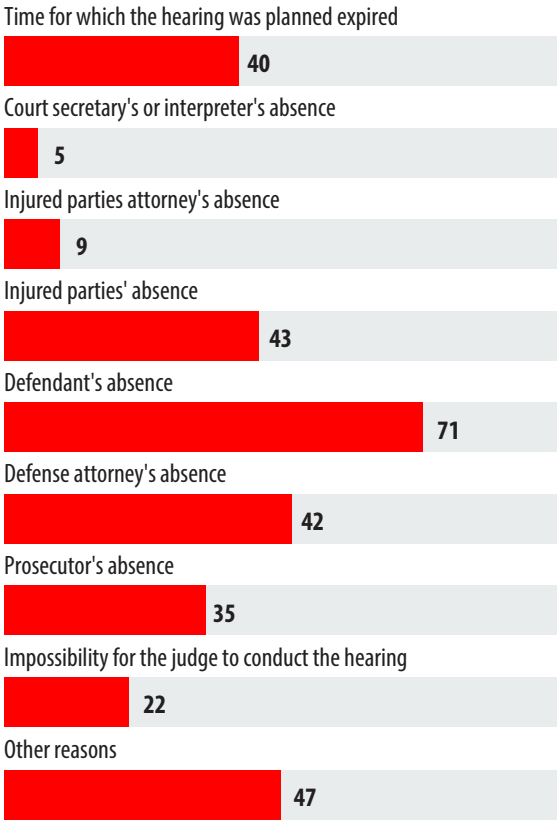
92 Case E.S. No 2859/171 CC; Case C.G. No 3037/320[1] CC; Case A.V. No 756/201[1] CC; Case M.O. No 151/201[1] CC.

93 Case S.A. No 41556/201[1] CC was examined with a sentence of conviction within 22 days; Case S.O. No 39522/201[1] CC was examined with sentence of conviction within 58 days; Case C.A. No 54195/201[1] CC was examined with a sentence of conviction within 100 days.

the case to be examined in simplified proceedings; the state of drunkenness of the defendant; the negotiation of the reconciliation settlement on cases of rape; the preparation of the hearing or debates of the parties; the pronouncement of the sentence; the judge has a lot of work etc.) - 47 cases. Monitors noted that in some cases the hearing lasted a shorter period of time than the period by which the hearings were delayed[94].

FIGURE 15

Reasons of hearings postponement



94 Case A.M. No 29382/171 CC; Case A.V. No 31132/171 CC, . . .the hearing started with a delay of 30 minutes and lasted 10 minutes. It was postponed in order to negotiate reconciliation.; Case P.A. No 27776/145 CC, . . . the hearing started with a delay of 50 minutes and lasted 15 minutes. . .; Case B.V. No 195/320[1] CC, . . . during 03.11-13.12, the hearing in which the judgment should have been delivered was postponed 4 times. Every time the parties had to wait for the beginning of the hearing for 30-60 minutes, while the hearing lasted 3 minutes – to set the date of the next hearing because the judge did not manage to write the sentence. Similarly, Case S.G. No 15946/2011 CC, . . . during 26.10-22.12 the hearing at which the sentence should have been delivered was postponed 5 times. The parties had to wait every time for the beginning of the hearing for 15-30 minutes, while the hearing lasted 3 minutes – to set the date of the new hearing because the judge had not yet written the decision because of the heavy workload. Case D.V. No 41294/201[1] CC, the parties waited for the beginning of the hearing for 2 hours and 45 minutes for the judge to set the date of a new hearing, etc.

The monitoring revealed that some judges were aware of the specific nature of domestic violence and the importance of their quick examination. This was also confirmed by monitor's remarks on some cases[95].

National law provides tools to discipline the participants in the proceedings and to ensure that criminal cases are examined within a reasonable period of time. The problem is that most of the time the court does not use these legal leverages, preferring only to postpone the hearing without ***'... taking all the necessary measures in due time... in order not to have to postpone the hearings'***[96].

In most cases, the judge postponed the hearing because of the absence of the participants and lack of evidence that the participants were summoned. Judges frequently did not apply the legal tools to ensure participants' compliance with the schedule of hearings.

At the same time, monitors reported repeated situations that confirm that the participants in proceedings did not receive any summons[97] to the hearing, but were invited by telephone or via other participants[98]. In such

95 Case T.P. No 38804/ 320[1] CC, ... the defense lawyer filed a request for the hearing postponement, because he is on leave, indicating the period when he will be available. The judge requested the prosecutor and the injured party present at the hearing to comment if the case can be examined in the absence of the lawyer and the defendant. The prosecutor said it was not possible and the injured party did not know what to say. Then the judge explained the situation and the injured party said that she really wanted the case to be completed as soon as possible. By setting the date of the next hearing, the judge took into account the period proposed by the lawyer, but the prosecutor said that he would not be available in the indicated period as he goes on leave. The judge said that this was not a reason, he could be replaced by another prosecutor, and such categories of cases should be examined within a short time...; Case D.V. No 41294/201[1] CC, ... the hearing was postponed because of the absence of the prosecutor. The judge said he would notify the hierarchically superior prosecutor regarding the prosecutor's unmotivated absence from the hearing; Case B.I. No 44520/201[1] CC, ... the prosecutor and the defendant did not come to the hearing from July, which led to postponement. At the same time, the court fined the prosecutor with 20 c.u. (MDL 1000) for unmotivated absence from the proceedings. At the next hearing appointed for September, the prosecutor and defense attorney did not come again. The court fined the prosecutor again with MDL 1000 for his repeated failure to come to the hearing, though summoned legally. Also, the hierarchically higher prosecutor was requested to appoint another prosecutor for this case. The defense attorney, who did not come to the hearing, was fined with MDL 1000 for his failure to come to the hearing, though summoned legally, requesting that NCSGLA appoints another lawyer for this case....

96 Article 353 of the Criminal Procedure Code.

97 Case S.V. No 4862/201[1] CC, ...before the beginning of the hearing, the injured party was revolted*'... what kind of justice this is if I have not received any summons...'* .

98 Case G.A. No 41138/201[1] CC, ... no participant in the proceedings came to the hearing of July. The court notes that there are no data confirming the parties' legal summoning. Phone calls were made, but the telephone of the prosecutor, lawyer, and injured party were turned off. Only the defendant, who was drunk, answered

situations, it may be difficult to apply coercive measures to undisciplined participants, due to the lack of confirmation of compliance with the legal procedure for summoning. The negative impact of this situation, in the end, affects the crime victim. As the monitors pointed out, the crime victim most of the times pleaded for the quick settlement of the case. The delays (which could often be prevented if the tools prescribed by law were applied timely and lawfully) discourage the injured party from bringing to actions in court against the crimes that harmed him/her and, on the contrary, give hope to the defendant that he/she will escape punishment.

Monitors also mentioned some situations where the lengthy examination of criminal cases was caused by the deficient organization of the court's activity.

For example, in the case of P.D. No 27386/201[1] CC, the monitor noted that '***…the judge appointed repeatedly the date of the next hearing without coordinating with the participants in the proceedings their availability for the scheduled date/time, and as a consequence, on that day he postponed the hearing again. …proceedings had been delayed for 7 months because of the judge…***'

In the case of S.A. No 355835/201[1] CC, '***…at the preliminary hearing that took place in June, the prosecutor proposed to merge the case with another one and assign them to another judge. The monitor checked daily for several weeks in a row the web portal of the courts to see if the case was scheduled for hearing, but without any luck. Then he decided to ask for help of the judge who ordered the case to be merged, but the court secretary only stated that the case had been merged with another case examined by another judge. The monitor went to the other judge, where he found out from the court secretary that, in fact, the case had not been merged and was returned to the first judge. In the case management system, the case had been merged, but de facto, it was neither merged, nor returned to the first judge. If the monitor did not insist, this case would still remain unexamined. Thus, after six months of searches, in December the secretary to the second judge promised to prepare the necessary documents to return the case to the first judge. Subsequently, the hearing of this case was set for 10 January 2018 and on 14 February 2018 a sentence of conviction was pronounced in this case.***

The situation was literally the same in the Case D.N. No 37338/201[1] CC '***… at the hearing in September it was proposed to merge the case with another one. The monitor could not find on his own on the website when the case was scheduled for hearing. In December, he contacted the Court Chancellery, but the specialists there could not provide any information, mentioning that they did not receive any ruling on case merge. Respectively, they did not have any information about the case reassignment. After several efforts, the monitor found out that the case had been merged with case No 464/2016, the next meeting being set for 28 February 2018. It was postponed for April. Upon monitoring completion, no judgment was pronounced in the case…***'

The monitoring of criminal case hearings revealed situations when the subsequent court hearings were scheduled after long periods of time. Thus, in some cases[99] the delay of the case examination reached about 2 months, in other cases the next hearing was set within over 3 months[100] or even over 4 months[101].

Being aware of the huge caseload of judges, these findings also lead to the conclusion that there is a quite large margin of discretion for judges in the process of scheduling the examination of assigned cases and postponing the hearings. The court does not urge to sanction participants who cause delays. For example, as noted

the phone and it was not possible to clarify the situation with him… At the next hearing, *in 2 weeks*, only the prosecutor who had mentioned that he had spoken to the defendant, attended the hearing, but the latter did not come. It was agreed that the prosecutor would ensure the defendant's attendance at the next hearing, appointed for *November*… The absence of the defendant, however, determined the postponement of the hearings of November, December and February. Each time, the lack of any data to confirm the legal summoning of the parties was invoked. The next meeting was appointed for April after the completion of the monitoring process….

99 Case E.S. No 2859 /171 CC; Case P.V. No 4440/145 CC; Case R.V. No 46497/320[1] CC; Case S.V. No 4862/201[1] CC; Case S.I. No 34886/201[1] CC; Case B.I. No 44520/201[1] CC.

100 Case P.S. No 3133/201[1] CC; Case M.O. No 151/201 [1] CC; Case A.V. No 756/201[1] CC; Case C.D. No 48200/201[1] CC; Case C.A. No 5107/201[1] CC; Case G.A. No 8992/ 201[1] CC; Case P.D. No 27386/201[1] CC; Case C.V. No 47127/320[1] CC; Case B.V. No 195/320[1] CC; Case C.A. No 27390/320[1] CC.

101 Case E.S. No 2859/171 CC; Case M.O. No 151/201[1] CC; Case A.V. 756/201[1] CC; Case S.A. No 35835/201[1] CC; Case D.N. No 37338/201[1] CC.

above, monitors mentioned about 70 cases when the hearings were postponed because of the absence of the defendant from the hearing, and only 11 cases when the court ordered to bring him by force, as prescribed by Article 321 CrPC. In other cases,[102], the court ordered repeatedly the attendance of the defendant with no success. This demonstrates inefficiency of this measure for certain defendants, and the reluctance of the court (accuser) to apply (request) other more effective measures provided by Article 321 CrPC - application or replacement of the preventive measure to ensure defendant's presence in the proceedings.

The described situations are facets of the issue mentioned *above* and could be a result of the confusing wording of the procedural rules, which set timeframes in criminal proceedings. For instance, Article 230 CrPC defines time limits in criminal proceedings as time intervals within which or after the expiry of which procedural actions can be carried out. If a certain time limit is provided for the exercise of a procedural right, its non-observance leads to losing the procedural right and the nullity of the act performed beyond the time limit.

It is difficult to understand how this rule can be applied to cases of breaching the time-limit established for setting the date of the hearing and which would be the consequences of non-compliance with the requirements of that procedural rule. It is not about the *time to examine* the case, but only about clear time limits *for setting the date of the hearings* and time limits *between the* hearings. Meanwhile, in Recommendation No 99 of 14 April 2017[103], the Supreme Court of Justice emphasized the importance of procedural timeframes (although the Recommendation refers to the civil procedure, being more relevant in the context of criminal proceedings), as they indicate the optimum timeframe for dispensing justice, encourage investigating the case and ensure timely justice.

We believe it is necessary to regulate clearer time limits in the criminal procedure law when it comes to examining the case and the consequences of non-compliance with the legal provisions. Also, it is necessary to consider the need to review some aspects regarding the conditions for case examination, when participants have unjustified absences. These issues need to be analyzed objectively because they contribute directly to the examination of the case within a reasonable timeframe, and the reasonable time for examining a case is an essential element of a fair trial.

1.6. Sentence pronounced in criminal cases of domestic and sexual violence

Upon completion of the monitoring of 45 criminal cases of domestic violence and sexual crimes against women, only 26 criminal cases were resolved, as follows:

- 3 cases of rape, including a case of attempted rape of a minor (Article 171(1) CC, and Articles 27 and 171(1) CC);
- 5 cases on non-compliance with a protection order for a victim of domestic violence (Article 320[1](1) CC);
- 18 cases of domestic violence (Article 201[1] CC).

Decisions to terminate criminal proceedings were taken in two criminal cases initiated for rape - in one case[104] on the grounds of the amnesty act in connection with the 25th Anniversary since the proclamation of the Independence of the Republic of Moldova, and in another case[105] due to the reconciliation of the parties. The case initiated for attempted rape of a minor resulted in sentencing the defendant for 3 years of imprisonment in semi-closed penitentiary[106]. A civil action

102 Case S.V. No 4862/201[1] CC; Case S.I. No 34886/201[1] CC; Case C.A. No 5107/20[1] CC; Case M.O. No 151/201[1] CC, ... at the previous hearings (if June and October) it was ordered repeatedly to bring the defendant by force. As the defendant was absent at the December hearing, the prosecutor requested to declare the defendant wanted. The defense lawyer requested dismissal of the prosecutor's request, as he did not take measures to bring the defendant by force. The court ordered the defendant should be brought by force. The hearing was postponed for 3 months, after the monitoring program completion; Similar situation in Case P.S. No. 3133/201[1] CC; Case C.S. No 41839/320[1] CC, ... for this reason, the defendant did not attend the hearing or attended it in an advanced state of drunkenness. That is why the court had to postpone the hearing every time.

103 http://jurisprudenta.csj.md.

104 Case E.S. No 2859/171 CC.

105 Case A.V. No 31132/171 CC.

106 Case C.V. No 47472/171 CC, ...the monitor was not admitted to the last hearings, which were declared closed. After the sentence was pronounced, according to the monitor, the injured party and her legal representative stepped out of the

amounting to MDL 100,000 was filed on the case, with MDL 50,000 being accepted.

In 5 criminal cases in which the defendant was charged with violating a domestic violence protection order, the following solutions were adopted:

- 1 case ended with sentencing the defendant to 1 year of imprisonment in semi-closed penitentiary[107];
- 2 cases ended with sentencing the defendant to 1 year of imprisonment, conditionally suspended for 1 year[108];
- one case ended with sentencing the defendant to 2 years of imprisonment, conditionally suspended for 2 years[109];
- 1 case ended with sentencing the defendant to 110 hours of community service, and the civil action filed in the amount of EUR 15,000 was rejected as unjustified[110].

The court of first instance examined 18 criminal cases of domestic violence, all of which involved physical violence, including 13 cases of violence resulting in slight bodily injury, 2 cases of violence resulting in medium bodily injury, 2 cases of violence resulting in serious bodily injury and 1 case of violence that pushed the victim to attempt suicide.

Regarding the 13 cases of domestic violence that resulted in slight bodily injury, the court applied the following punishments:

- 1 case ended with sentencing the defendant to 1 year of imprisonment in semi-closed penitentiary[111];
- 1 case ended with sentencing the defendant to 1 year of imprisonment, conditionally suspended for 1 year, and 80 hours of community service under Article 90(6)(g)[112];
- 2 cases ended with sentencing the defendant to 1 year of imprisonment, conditionally suspended for 1 and 2 years, respectively[113];
- 1 case ended with sentencing the defendant to 2 years of imprisonment, conditionally suspended for 2 years[114];
- 7 cases ended with sentencing the defendant to unpaid community work of 100-160 hours[115];
- 1 case ended with a decision to terminate the criminal proceedings due to the death of the defendant[116].
- As a result of examining the two cases of domestic violence resulting in medium bodily injuries, the court applied the following penalties:
- 1 case ended with sentencing the defendant to 3 years of imprisonment in a closed penitentiary[117];
- 1 case ended with sentencing the defendant to 160 hours of community service[118].

Regarding the cases of domestic violence resulting in serious bodily injury, one case[119] ended with sentencing the defendant to 5 years of imprisonment, conditionally suspended for 3 years, in the other case[120] a decision to terminate criminal proceedings was issued due to the death of the defendant. The case of domestic violence that determined the victim to attempt suicide[121] ended with a sentence of four years and six months of imprisonment, conditionally suspended for 5 years.

Thus, the measures applied by the court for the monitored cases, initiated for domestic violence and sexual crimes against women, include:

- in 4 criminal cases the criminal proceedings were terminated;
- in 4 cases the defendants were sentenced to 1-3 years of imprisonment;

courtroom being obviously disturbed. The defendant with an outstanding criminal record and dangerous recidivism was, in turn, very pleased with the sentence.

107 Case C.S. No 41839/320[1] CC.
108 Case B.V. No 195/320[1] CC; Case T.P. No 38804/320[1] CC.
109 Case R.V. No 46497/320[1] CC.
110 Case C.V. No 47127/320[1] CC.
111 Case N.V. No 33989/201[1] CC.
112 Case C.F. No 1269/201[1] CC.
113 Case S.O. No 39522/201[1] CC; Case S.V. No 4862/201[1] CC.
114 Case D.V. No 41294/201[1] CC.
115 Case S.G. No 15946/201[1] CC; Case G.A. No 8992/201[1] HP; Case S.A. No 35835/201[1] CC; Case M.S. No 45259/201[1] CC; Case C.A. No 54195/201[1] CC; Case C.O. No 2196/201[1] CC; Case J.P. No 2092/201[1] CC.
116 Case T.N. No 2866/201[1] CC.
117 Case C.A. No 5107/201[1] CC.
118 Case D.N. No 4272/201[1] CC.
119 Case S.A. No 41556/201[1] CC.
120 Case S.V. No 4701/201[1] CC.
121 Case C.D. No 48200/201[1] CC.

- in 9 cases the defendants were sentenced to 1-5 years of imprisonment, conditionally suspended;
- in 9 cases, the defendants were sentenced to 100-160 hours of community service.

As mentioned by monitors, when the injured party was not shy and inhibited in the court, but actively denied the defendant's statements, her assertive behavior during the proceedings was perceived by some judges and participants in the hearing as a confirmation that she provoked the defendant to commit violence. This perception often results in a tendentious attitude towards the victim and influences the sanctions applied to the defendant. Although, even without this, impunity in cases of gender-based violence is a widespread phenomenon.

'In the cases of domestic violence one of the problems is the application of too mild sanctions...' [122], - said the defense lawyer during the interview.

Referring to the criminal penalty on these categories of cases, the interviewed prosecutor pointed out - ***'... I believe that perpetrators will be discouraged if sanctioned with imprisonment. Not a fine, not conditional suspended imprisonment, but prison. This will make the defendant understand the seriousness of his deed... the judges rule prison sentences when they see that the deed is systematic and the defendant is dangerous... At the same time, judges have all the necessary leverage to accompany the criminal sanction with the obligation to participate in counseling and treatment, especially if they find that the crimes are committed by perpetrators addicted to or consuming abusively alcohol or drugs, which could help them overcome this habit...'***[123].

The questioning of victims of crime revealed that 6 of the 12 victims were satisfied with the way the trial was conducted, 4 expressed dissatisfaction with the results of the trial, and 2 persons were unable to formulate a clear position on this issue.

As mentioned *above*, a significant number of cases ended with defendants' conditional suspended imprisonment under Article 90 of the Criminal Code. Under Article 89 of the Criminal Code, conditional suspension of the punishment is a way to avoid criminal punishment. Thus, with regards to a family perpetrator who commits repeated acts of violence and who does not stop this behavior even during the criminal proceedings, when the court decides to release him from criminal punishment, the judge fails to hold the offender accountable and puts victims at further risk.

This impunity for the perpetrator could be explained if the conditional suspension of the punishment was accompanied by restrictive conditions allowed under the criminal law. According to Article 90 para. (6) of the Criminal Code, when applying conditional suspended punishment, the court may order the convict to undergo treatment of alcohol addiction, drug abuse, drug addiction or venereal disease; may require him/her to attend a special treatment or counseling program to reduce violent behavior, etc.

The monitors did not observe or learn any case where the court applied Article 90 para. (6) of the Criminal Code regarding the need to be treated of alcohol or drug addiction, to participate in a special treatment or counseling program to reduce violent behavior, etc. It is even more difficult to explain this omission in cases where the court described in the sentence the abusive consumption of alcohol or drugs by the defendant and deliberate refusal to follow treatment, or the systemic aggressive conduct of the defendant in relation to family members, but also with other people (neighbors, acquaintances). Thus, in Case T.P. No 38804/320[1] CC, ***...the injured party asked for a more severe punishment because they lived in the same house and when he was drunk he was always looking for a quarrel and she was afraid. He was permanently in a state of intoxication. When asked by the court what penalty he would prefer, the defendant said that it was better to apply 'uslovna' (translator's note: colloquial term in Russian for conditional suspended punishment) than to work for free...*** The sentence stated that '*... in order to individualize the punishment, the court will refer to the personality of the defendant who, according to the characteristics issued by Ciocana Police Inspectorate, has a negative reputation at the place of residence. He is not employed, is aggressive*

122 IIA_7_A_VF.
123 IIA_5_P_VF.

with his family members and sometimes with his neighbors. He consumes alcohol and is seen in public places as an aggressive person with behavioral deviations. He does not have any prior criminal or contravention charges, but a number of requests had been filed against him with Police Sector No 7 of Ciocana Police Inspectorate (he has never been held accountable, although the police has been notified repeatedly – a.n.). *He is under preventive supervision as a domestic perpetrator. Several preventive discussions were held, but he had not drawn any conclusions*(!). *He has been seen in public places among people from special categories...'*. Despite this characterization of the defendant, the court further stated that '... *Considering both the general and special conditions of punishment individualization, the court considers that its purpose can be achieved by suspending the punishment with the establishment of a probation period, according to Article 90 of the Criminal Code...'*. Applying Article 90 CC, the court limited itself to obliging the defendant *'... not to change his domicile and/or residence without the consent of the competent body and to justify, through his exemplary behavior, the trust that has been granted to him*'.

Regretfully, this is a frequent situation in cases of domestic violence. Though the court acknowledges mentioning abusive alcohol consumption, ongoing violent behavior, the court does not deem it necessary to accompany the punishment with legal measures aimed at removing the causes that lead to aggressive behavior. If he does not agree to attend voluntarily rehabilitation courses, the provisions of the criminal law are an opportunity to force him to do so, under the threat of adverse consequences for him.

In accordance with Article 75 of the Criminal Code, a person who has been convicted for committing a crime shall be subjected to a fair punishment within the limits set out in the Special Part of the Code and in strict accordance with the provisions of the General Part of the Code. When determining the punishment category and term, the court considers the seriousness of the offense committed, reason, personality of the perpetrator, circumstances of the case that mitigate or aggravate liability and influence of the punishment on correcting and reeducating the perpetrator, and living conditions of his/her family.

Courts frequently failed to consider aggravating circumstances stated in Article 77(1)(g) of the Criminal Code - *commission of a crime in the presence of juveniles*[124], and Article 77(1)(j) of the Criminal Code - *commission of a crime by a person in a state of intoxication caused by the consumption of substances mentioned in Article 24*[125]. Courts also failed to explain in these cases why they did not consider the aggravating circumstance, especially since the state of intoxication is one of the factors that amplifies the violent behavior of the offender.

In one case[126] the sentence identified an aggravating circumstance - commission of the crime in a state of intoxication. At the same time, in several sentences, the court indicated as mitigating circumstances - the *recognition of guilt and the sincere remorse* of the defendant, although the criminal law does not explicitly provide for such a mitigating circumstance (of course, it does not forbid it, either).

There is no consistency in court practice. In some cases,[127] the court accepts the *recognition of guilt and sincere remorse* as mitigating circumstances, and in other cases[128] it does not. The court motivates this practice by the fact that the defendant exhibits inappropriate behavior in court, and the recognition of guilt cannot

124 Case T.P. No 38804/320[1] CC; Case C.S. No 41839/320[1] CC; Case M.S. No 45259/201[1] CC.

125 Case C.A. No 54195/201[1] CC, ...the court mentions in the sentence (like in the other sentences) that '... *on the basis of the evidence managed at the stage of criminal investigation and accepted by the defendant, it is certain that XXX, being in a state of alcoholic intoxication, while at home...*' The court further states that '... the *court cannot hold the defendant's state of intoxication as an aggravating circumstance, as the criminal case materials do not contain any evidence to prove that the defendant was intoxicated and what the intoxication degree was...*'

Similarly in Case S.A. No 41556/201[1] CC; Case S.O. No 39522/201[1] CC; Case C.S. No 41839/320[1] CC; Case G.A. No 8992/201[1] CC; etc..

126 Case J.P. No 2092/201[1] CC.

127 Case S.A. No 41556/201[1] CC; Case C.O. No 2196/201[1] CC; Case S.V. No 4862/201[1] CC; Case D.N. No 4272/201[1] CC; Case C.V. No 47127/320[1] CC; Case S.O. No 39522/201[1] CC, ...in this case, the court also accepted in the sentence the *sincere remorse* of the defendant as a mitigating circumstance, although, as noticed by the monitor, while waiting for the hearing in the court hall, the defendant periodically used offensive words against the injured party and the persons accompanying her, but she did not react, and during the hearing the defendant stood in one side and every time looked maliciously at the injured party, who was her grandmother... etc..

128 Case C.S. No 41839/320[1] CC, ...as indicated by the court in the sentence '... *the defendant XXX has repeatedly arrived to the court with visible signs of alcohol consumption, a circumstance recognized by the defendant; considering that the incriminated deeds, found to have been committed by him, were committed under the influence of alcohol... consciously and deliberately provoked strong feelings of fear and insecurity in members of his family...* '; Case C.D. No 48200/ 201[1] CC; Case C.A. No 54195/201[1] CC; Case M.S. No 45259/201[1] CC; Case N.V. No 33989/201[1] CC etc..

be accepted as a mitigating circumstance when a case is examined under simplified proceedings and the defendant, within the meaning Article 364[1] of the Criminal Procedure Code, enjoys the right to a milder punishment than stipulated by the criminal law.

The monitors found that out of the 26 cases that ended with a judgment, 18 cases (70%) were examined in simplified proceedings, according to Article 364[1] of the Criminal Procedure Code, on the basis of the evidence managed during the criminal investigation, including one case initiated under Articles 27 and 171(1) CC, 3 cases initiated under Article 320[1](1) CC, and 14 cases initiated under Article 201[1] CC.

According to Article 364[1](8) of the Criminal Procedure Code, if the defendant requests that the case be examined based on the evidence managed at the criminal investigation stage, he/she shall enjoy a cut by one third of the prison punishment provided by law and community service.

As mentioned *above*, in accordance with Article 75 of the Criminal Code, a person recognized as guilty of committing a crime shall be subject to a fair penalty *within the limits set forth in the Special Part and in strict accordance with the provisions of the General Part of the Code)*.

The General Part of the Criminal Code provides for the rule of Article 80 (Application of punishment in cases of plea bargaining), the procedural enforcement mechanism of which is regulated in Title III, Chapter III (procedure for cases of plea bargaining) of the Criminal Procedure Code.

The Criminal Code does not provide for the applicable punishment when a case is examined under simplified procedure in line with Article 364[1] of the Criminal Procedure Code. Thus, in legal terms, Article 364[1](8) of the Criminal Procedure Code, which establishes the limits of criminal punishment for the defendants who request that the case be examined based on the evidence managed during the criminal investigation, contradicts Article 72(3)(n) of the Constitution of the Republic of Moldova in conjunction with Article 1 of the Criminal Code of the Republic of Moldova, where the Criminal Code is defined as the only criminal law of the Republic of Moldova that contains legal norms establishing the general and special principles and provisions of criminal law, determines acts that constitute crimes and provides for *punishments applicable to offenders*[129].

The monitoring revealed that the court applied in the sentence the procedural norm directly and established the criminal punishment by adjusting it to Article 364[1](8) of the Criminal Procedure Code. Hence, the court violated the imperative norm of Article 75 of the Criminal Code, which sets out criteria applicable to the individualization of criminal punishment. In other words, the court established criminal punishment under the criminal procedure law making it material criminal law.

Monitors' observations support this -- as is clear from the following excerpts**'...** *for the judicial individualization of the punishment to be applied to the defendant, the court will first of all take into account Article 364/1 of the Criminal Procedure Code stipulating that, if the case is examined under simplified proceedings, the punishment provided by law shall be reduced by 1/3, in the case of imprisonment, community service, and reduced by 1/4 in case of a fine, as well as the criteria listed in Articles 7, 75 of the Criminal Code, namely the provisions of the General Part of the Criminal Code, the degree of social danger of the committed deed, reflected by the deed circumstances, the procedural position of the defendant during the criminal proceedings, as well as the personality of the latter. The invoked legal provisions reveal that these criteria are mandatory and must be considered when establishing and enforcing the punishment... 'or '... on the basis of Article 364/1 of the Criminal Procedure Code,*

129 Any attempt to interpret that Article 80 of the Criminal Code is equally applicable to the Chapter on the guilt recognition procedure from the Criminal Procedure Code and Article 364[1] of the Criminal Procedure Code on the procedure for case examination and punishment enforcement on the basis of the evidence managed during the criminal proceeding is not relevant, as they refer to different institutes operating under different conditions and according to different procedures. The fact that these institutes are not identical is also confirmed by their coexistence in the criminal procedural law. And this means that the criteria for calculating the punishment measure applied under the procedure specified in Article 364[1] of the Criminal Procedure Code must be regulated in the criminal material law, exactly as stipulated in Article 80 of the Criminal Code for the guilt recognition procedure, *tertium non datui*. Currently Article 3641(8) of the Criminal Procedure Code establishes independently the criminal punishment according to a different formula (reducing by one third the punishment provided by the law) other than the one stated in Article 80 of the Criminal Code (reducing by one third the *maximum punishment* provided for this crime).

the following punishment is applied to XXX for committing the crime provided in Article 320/1 of the Criminal Code: unpaid community work from 106 to 133 hours or imprisonment for up to 2 years...'[130] etc.

The authors conclude that it is inappropriate and harmful to examine criminal cases of domestic violence and sexual crimes against women under the procedure provided by Article 346[1] of CRPC. This simplified procedure favors only the defendant, who benefits from a substantial reduction of the punishment provided by the criminal law, without offering anything in return. In essence, the procedure under Article 346[1] CrPC is a way for the defendant to receive, without any effort, a criminal punishment below the minimum limit provided by the relevant provision of the criminal law. Simplified proceedings do not impose any requirements for the defendant that would discourage further violence. Therefore, application of the proceedings on the basis of a rule that disproportionately and unjustly favors just one and most dangerous party does not ensure a fair trial.

It is even more discouraging for the injured party to find out that examining the case in simplified proceedings is also favorable to the authorities, because it reduces both the workload and costs of the judicial examination of the case. Thus, in some cases, as noticed by monitors, it was not the defendant or his/her representative to request examining the case in simplified proceedings, as established by the procedural law, but the judge. In other instances, the cases continued to be examined in simplified proceedings even when the defendants' behavior did not confirm recognition of guilt and sincere remorse[131].

Monitors mentioned civil actions filed in 3 cases. In one case an injured party filed the civil action on her own, while in another case the injured party filed it only after being explained the right to apply for recovery of damages caused by the crime[132]. In its judgment passed on the latter case, the court rejected as unfounded the civil action filed by the injured party[133]. The court initially seemed well intentioned, explaining to the injured party the legal right to bring civil action on the case. However, by rejecting the action as unfounded, the court actually deprived the injured party of the right to initiate a civil action under the civil proceedings. According to Article 226 of the Criminal Procedure Code, the court's decision on civil action in the criminal proceeding prevents filing a new action on the same grounds[134].

To preserve the injured party's access to remedies, at the beginning the court could have adopted a resolution on refusal to recognize her as a civil party. In this way, the injured party could have brought a civil action under the civil procedure allowed by Article 222(3) of the Criminal Procedure Code.

In another case[135] the injured party came with the initiative to bring a civil action as part of the judicial examination of the case; after the legal representative (juvenile's mother) read the application for a civil action, as reported by the monitor, '*...the judge had an intimidating behavior towards them, so that at one point they were ready to give up the civil action and even leave the hearing...*'

130 Case N.V. No 33989/201[1] CC; Case C.S. No 41839/320[1] CC; Case C.V. No 47472/171 CC; Case C.A. No 54195/201[1] CC; Case C.D. No 48200/201[1] CC; etc.

131 Case G.A. No 8992/201[1] CC; Case M.S. No 45259/201[1] CC; Case S.O. No 39522/201[1] CC; Case C.S. No 41839/320[1] CC; etc.

132 Case C.V. No 47472/171 CC; Case N.V. No 33989/201[1] CC, ...for this reason the injured party initially refused material and moral damages, then changed her requirements, limiting to moral prejudice only. She motivated her request for moral damage by the fact that the psychological trauma is felt until now, as receiving death threats from her own son, squeezing her throat, beating her with fists all over the body, crushing her fingers by the door will make her suffer a long period of time, maybe even the rest of her life....

133 Case C.V. No 47127/320[1] CC, ...in the end, the civil action of the injured party was dismissed as unfounded. The court motivated that the civil action was dismissed on grounds that, *'...the charges brought against XXX for committing the crime provided for in Article 320/1 of the CC of the Republic of Moldova, is part of the Chapter on Crimes against Justice. When bringing the accusation, the prosecutor did not indicate any damage caused to party XXX as a result of the actions committed by Alexandru. The court also notes that the injured party XXX, indicated damages neither in her complaint of 19 April 2017 (c.p.6), requesting criminal charges against XXX, nor in the application for recognizing her as an injured party (c.p.35). In the Ordinance of 19 April 2017 recognizing XXX as the injured party, the prosecutor did not state any injury to the injured party....*

134 Pursuant to Article 222 of the Criminal Procedure Code, the person who filed a civil action shall be recognized as a civil party by a court resolution. If there are no grounds for the civil action, the court shall refuse reasonably to recognize as a civil party the person who filed the civil action.

135 Case C.V. No 47472/171 CC.

1.7. Publishing court judgments in criminal cases of domestic and sexual violence

Under Article 10 of the Law on Judicial Organization No 514-XIII of 06.07.1995 [136], the judgments of district courts, courts of appeals and the Supreme Court of Justice shall be published on the website. The manner of publishing judgments is laid down in the Regulation on Publishing Court Judgments, approved by the Superior Council of Magistracy.

By its Decision No 432/19 of 21 June 2016, the Superior Council of Magistracy's Plenary Meeting approved the Regulation on Publishing Court Judgments on the Court Portal[137], which was subsequently abrogated with the adoption of the amended version of the Regulation on Publishing Court Judgments on the National Court Portal and on the Website of the Supreme Court of Justice[138], which entered into force on 24.11.2017 (hereinafter referred to as Regulation No 658/30).

Regulation No 658/30 provides greater clarity of the conditions and limits of anonymizing information when publishing court judgments on the website. According to Regulation No 658/30, judgments shall be published in order to ensure free access to information for citizens and transparent activity of the courts.

The monitoring identified some deficiencies regarding information anonymization when publishing court judgments. Of the 26 criminal cases that ended with a solution, in 23 cases the sentences were published on the court's website. The sentence was not published in 3 cases[139]. The requirements of Regulation No 658/30 were fully respected in 5 cases[140].

In 18 cases the defendant's name was anonymized, including in sentences[141] issued after the enactment of Regulation No 658/30. The name of the injured party was anonymized in the sentences issued in 8 cases, in 2 sentences the name of the injured party was anonymized in some paragraphs, and in others it was not. The prosecutor's name was anonymized in 12 sentences, the defense lawyer's name — in 11 sentences. In 6 sentences, even the date of the protection order, the date when the crime was committed, the date of expert review reports or certificates used as evidence in the proceedings were anonymized.

Regulation No 658/30, adopted by the Superior Council of Magistracy, is a welcome measure and an important step in ensuring free access to information

136 Republished in the Official Gazette of the Republic of Moldova No 15-17 of 22.01.2013, Article 62.

137 According to this Regulation, *court judgments* issued on cases involving *juveniles* that contain *information constituting state secret, commercial secret or information the disclosure of which is prohibited by law*, judgments on *adoption,* and *sentences for sex crimes* shall *not be published* on the single court portal. Depending on the nature of the information contained in the judgment on the *patrimony of parties*, *succession right*, *personal, family and private life*, as well as *other information that needs to be protected*, the court may order to depersonalize the judgments and resolutions before publishing them on the single portal. In the other cases, the parties and other participants in the proceedings may, at any time, submit an application for depersonalization of the court judgment or resolution, but no later than the date of its pronouncing and submission for publication on the single court portal

138 Approved by the Decision of the Superior Council of Magistracy No 658/30 of 10 October 2017 // Official Gazette No. 411-420 of 24.11.2017, Article 2068.

In accordance with Regulation No 658/30:

10. *All judgments issued by courts of law and courts of appeal shall be published* on the national court portal once they are entered in the Integrated File Management Program.

14. At the court level, judges and judicial assistants shall be in charge of publishing the judgments. The latter have the status of system registrar and shall act under the supervision of judges.

18. Court judgments pronounced on the cases examined in the council chamber (closed hearing) or in a secret hearing shall be entered in full in the Integrated File Management Program, but shall be published on the national portal of courts of law or on the website of the Supreme Court of Justice in the following way:

(a) in a *criminal*, contravention, civil or another type of case, examined in such a way in order to protect the interests of morality, juveniles or the private life of the parties to the proceedings, the *names of those affected* through these values and interests shall be always *anonymized*.

b) in a *criminal* or contravention *case,* examined in such a way in order to protect the interests of morality, juveniles or the private life of the parties to the proceedings, the *names of the perpetrators, instigators or accomplices* ***shall be not anonymized ever***, even if the perpetrators, instigators or accomplices are minors.

19. Court regulations, which are published on the national court portal or, as the case may be, on the website of the Supreme Court of Justice, shall be subject to the same regime established by this Regulation for court judgments.

20. In the court judgments, published on the national court portal or on the website of the Supreme Court of Justice, ***the names of the parties to the proceedings shall not be anonymized ever***, *except for the situations provided in paragraph 18 of this Regulation*. The following categories of personal data *shall always be hidden*: *place and date of birth*, *residence and/or residence*, *telephone number*, *personal ID (IDNP)*, *health data* (regardless of the disease) *bank data*, *vehicle registration number*, *personal health insurance code*, *personal social security code* and other data, in accordance with Law No 133 of 8 July 2011 on Personal Data Protection.

21. *The information about the court or panel of judges, court secretary, prosecutor, official examiner, mediator, bailiff, notary and lawyer shall not be* anonymized/ *hidden ever*. The name of legal entities shall not be hidden ever.

139 Case E.S. No 2859/171 CC; Case T.P. No 38804/320[1] CC; Case S.G. No 15946/201[1] CC.

140 Case C.A. No 5107/201[1] CC; Case S.A. No 35835/201[1] CC; Case D.N. No 4272/201[1] CC; Case C.O. No 2196/201[1] CC; Case S.O. No 39522/201[1] CC.

141 Case S.A. No 35335/201[1] CC; Case B.V. No 195/320[1] CC; Case C.V. No 47127/320[1] CC; Case D.V. No 41294/201[1] CC; Case G.A. No 8992/201[1] CC; Case C.D. No 48200/201[1] CC.

and transparency of courts' work. It is important now that its provisions are properly applied by courts.

Conclusions to the chapter

■ Monitoring of criminal cases of domestic violence and sexual violence against women covered randomly selected criminal cases, i.e. 25% of the total number of criminal cases of this type pending before the Chisinau Court in 2017. Based on the monitoring results, 70% of injured parties were women. Most of the women victims of domestic violence and sexual violence in the monitored cases have not reached the age of 45.

■ Most often, victims of domestic violence cases were ex-spouses followed by daughters/sons. This finding confirms the following:

- The danger of violence does not vanish with the dissolution of marriage. Therefore, the actions themselves taken by the victim/potential victim to keep at a distance from the aggressor do not eliminate the danger of violence. The delayed measures by the criminal justice system contribute to the increased danger, even if in the end there will be a final punishment. Specific nature of domestic violence implies the need for active and early involvement of the state authorities upon the first signals. Dissuasive punitive measures have to be by all means supplemented by counseling services for aggressors in order to eliminate violent behavior.

- Domestic violence is not usually limited to violent actions against an individual. Violent actions affect not only the adult victim but also his/her descendants. Therefore, it is necessary to investigate all aspects of the circumstances of the reported case completely and objectively. This means that the investigations should include looking into the impact of the aggressor's actions on everyone, including on those indirectly assaulted (if any).

■ The monitoring of criminal cases of domestic and sexual violence confirms that in the formal criminal proceedings victims of crimes are further marginalized. The prosecution and the judicial examination of the case do not prioritize the concern for providing the representation of the victim/injured party in the trial and the victim's protection and rehabilitation. In some cases, the victim of crime also had the procedural status of a witness. Thus, at the first hearing, prior to being heard, the victim had to wait in the hall, not having access to case hearing.

■ A primary role in classifying domestic violence crimes resides in the procedure for assessing the severity of bodily injuries or the health of the victim, which is a process that often runs with certain difficulties:

- Distance, often a long one, that the victims have to travel to undergo forensic examination, being provided with no transportation even when referred to by the competent authorities.

- Reluctance of the victims of violence to undergo forensic examination because of the fear of the aggressor (often having experienced an inadequate response from the state to the violent actions, with unfavorable repercussions for herself) or after being informed that they have to pay for the extra-judicial expertise.

- During physical examination, forensic doctor notes only external injuries on the person's body, which are not always visible. Especially in the case of domestic violence and sexual assault, to properly assess the severity of bodily or health damage, it is often necessary to consult clinicians and have a more thorough medical examination. This, as a rule, is not done. There is no clear protocol for forensic examination, which should include a thorough medical screening and not just a superficial physical examination.

- Medical examinations of victims of crimes, necessary in order to establish the circumstances of the case and to correctly qualify the crime, are not included in the package of services financed from the state budget or at least by the mandatory health insurance fund. There are no instructions developed within the health care system that would provide conditions for priority and emergency medical examination of victims of crimes and the coordination of the activity of clinicians and forensic doctors is not clearly regulated

with regard to joint efforts to conduct the investigations and prepare a report of forensic expertise within a reasonable timeframe and with minimal involvement of the victim of crime.

- All forensic procedures are currently the responsibility of the victim. Even though the forensic doctor explains to the victim what to provide in order to obtain a qualitative expert report, the time and financial expenses which the victim is exposed to make her ultimately give up.

■ Monitors noticed the authorities' reluctance to provide sufficient protection to victims against the defendants who continued to display violent behavior even during the judicial proceeding. Thus, in cases of sexual violence, the defendant was arrested only on one allegation. In the domestic violence criminal cases covered by the monitoring, no case of preventive arrest has been established, even in the cases initiated under paragraphs 2 or 3 of art. 201[1] of the Criminal Code, which are assigned to the category of serious crimes. In a case of violation of a protection order, the defendant who was required to remain in the locality repeatedly violated that requirement. Yet no sanctions were applied in that case. There were no cases established by the monitors of enforcement of protection orders in the criminal proceedings of domestic violence, although in some cases there were grounds for initiating this procedure. Also, there were no cases of imposing a preventive measure to defendants who were delaying the examination of the case by their unjustified absence from the hearing, that resulted in unnecessary delays of the proceedings.

■ Transparency of the trial is not ensured to the appropriate extent. Monitors noted that in many cases the legal timeframe for displaying the information on the cases set for trial on the information board in the court was not complied with. Sometimes, there was no information about the hearing at all, sometimes misleading or outdated information was displayed. The digital board within the district courts was periodically out of order. The information on the hearing timetable displayed on the information boards of the district courts did not have a unique format in terms of structure and content. There was often no information about the place the hearing was to be held in, sometimes the information displayed failed to adequately reflect the type of hearing. The criminal norms subject to examination are not specified in detail etc. Since the information is intended for the general public, it is necessary to briefly describe the content of the paragraph and letter of the criminal norm referred to. All these deficiencies and omissions undermine the process of providing the right to a public trial and affect the right to have a fair hearing within a reasonable timeframe.

■ Monitors noted that most of the cases covered by the monitoring were examined in public hearings. A total or partial examination in closed hearings was stated in about 21% of the cases, especially in those involving juveniles and in rape cases. At the same time, monitors mentioned that, as a rule, besides the parties and their representatives, no other persons attend the hearings. The reported reaction of some judges to the presence of the monitor at the hearing leave the impression that some judges feel uncomfortable with the presence of persons other than the participants in the hearing. An impediment to public access to court hearings is the common practice of holding the hearings in the judge's office, as well as the recent amendments to the criminal legislation that mainly allow the presiding judge not to admit persons other than the participants in the trial without justifying his/her decision to do so.

■ Delay of about 70% of hearings (in some cases the delay being for up to 1 hour and longer) is perceived as a message that lack of punctuality is a common practice in the operation of the court, which affects the authority of the justice system. In most cases, violation of the hearings schedule was due to the examination of other cases, but also to the fact that some of the participants, the prosecutor or the defense lawyer, including appointed by NCSGLA, were late. There were cases when participants in the trial had to wait for an available translator to be found, or the judge had to look for a secretary. A delayed hearing also impacts the timeframe of case examination.

■ Court premises do not meet the necessary safety requirements for the victim and the witness in a trial. None of the courts has an adequate structure and the technical conditions are unfavorable - little space in the

hallways where the participants in the trial are waiting, poor illumination, roundabouts, lack of separate entrances and places where the victim or witness can wait without being seen by the aggressor/defendant or persons from their entourage, small rooms, often lacking necessary furniture and equipment, poor acoustics, lack of adjacent rooms for deliberations etc.

- During the monitoring, there were cases when the aggressor displayed a threatening and offensive behavior towards the victim. The court threatened the aggressor with sanctions. However, these measures were unable to restore the psychological balance of the victim during the hearing.

- Monitors indicated frequent absence of the parties to the trial. In some cases, it was ordered to forcefully bring them before the court. The court ordered the injured party to be brought forcefully to the hearing, even when she had been heard at the criminal investigation stage under special conditions, the record of the hearing being attached to the file. Monitors found no rationale for the injured party to attend multiple hearings in such cases. Usually, especially in cases of sexual violence, victims are not inclined to provide details to the judges and the participants in the trial, in particular when most of them are men. In such situations, the outcomes of the hearing do not contribute substantially to establishing the truth in the case. On the contrary, the injured party is re-victimized.

- About 70% of the hearings in the cases covered by the monitoring were held in the judges' offices. Alongside with the technical inconveniences, the examination of the case in the judge's office does not provide the necessary conditions for the solemnity of the trial.

- With some exceptions, the courts audio record court hearings, most often with a voice recorder as most of the hearings are held in the judges' offices. The participants in the trial are usually informed that the hearing is being recorded. However, monitors indicated cases in which the court did not order the hearing to be recorded and did not even notice that the trial was recorded. Sometimes the heard person was stopped or asked to repeat what he/she had said so that the secretary could write. Some of the victims indicated that the recording was stopped during the hearing. This raises concerns about whether a complete record was made. Thus, doubts may emerge as to the use of records for checking the accuracy and completeness of the written minutes of court hearings. The procedure for recording court hearings has to exclude the human factor from this process as much as possible.

- Monitors mentioned no cases in which victims of crimes were offered clear explanations about the right to seek state guaranteed legal aid and the manner to apply for it in line with the law. As a result, only in 6.6% of the cases the injured parties were assisted by a defense lawyer, whereas 96% of defendants benefited from a defense lawyer's assistance, including 77% who benefited from qualified state-guaranteed legal aid.

- Monitoring confirmed that some judges were aware of the specific nature of domestic violence offenses and of the importance of applying the principle of celerity when examining them. However, the criminal cases examination timeframe in most of the cases was quite lengthy. In some cases, it exceeded a year.

- Postponement of hearings due to the absence of some participants was often reasoned by the lack of summons acknowledgement by the participants. Monitors repeatedly indicated situations that confirm the fact that the participants were invited to the trial by telephone or through other participants, not through summons. This process makes it difficult, if not impossible, to apply coercive measures to undisciplined participants due to the impossibility to confirm compliance with the legal summoning procedure. The lengthy investigation of the criminal cases, caused by such operational deficiencies, discourages the injured party to take actions to prosecute the aggressor and, on the contrary, gives hope to the defendant that punishment could be avoided.

- Impunity for gender-based violence is a widely spread phenomenon. Only in 15% of the cases resolved, defendants were convicted to imprisonment. As a rule, defendants were subjected to community service (35%) or imprisonment with conditional suspension of punishment (35%).

- In some cases, monitors mentioned a biased attitude of the judge towards the victim, especially if the victim did not behave in a shy or inhibited way at the hearing and actively denied the defendant's statements. The combative behavior of the injured party at the trial was perceived by some judges and participants in the trial as a confirmation that the victim incited the defendant to violence. Sometimes this influenced the punishment applied to the perpetrator.

- A significant number of cases ended up with conditional suspension of imprisonment. Monitors did not identify any case when measures were applied to oblige the defendants to undergo alcoholism or drug addiction treatment; nor to participate in a special treatment or counseling program on reducing violent behavior etc.

- Monitors indicated that 70% of the resolved criminal cases of domestic and sexual violence against women had been tried under a simplified procedure based on the evidence administered during the criminal investigation phase. The examination within a simplified procedure of the criminal cases of domestic violence and sexual violence is to the disadvantage of the victims of offense from the fair trial perspective. The simplified procedure favors only the defendant, who receives a criminal punishment under the minimum limit of the sanction provided for by the criminal article, with no effort and no conditions that would deter him/her from continuing to exert violence.

- The court establishes the criminal punishment by applying directly the criminal procedural norm, assigning to it the prerogative of the material criminal law. In this way, the court violates the imperative norm of art. 75 of the Criminal Code, which sets exclusive criteria, applicable when individualizing the criminal punishment. At the same time, the norm of art. 364^1 paragraph (8) of the Criminal Procedure Code, which sets forth the limits for criminal punishment for defendants, contravenes the provisions of art. 72 paragraph (3) letter n) of the Constitution of the Republic of Moldova in corroboration with the provisions of the Criminal Code, which is the only criminal law of the Republic of Moldova that stipulates the criminal punishment applicable to perpetrators.

- The importance of the civil action for damages within criminal proceedings remains underestimated. Lacking defense lawyer's assistance in the trial, the injured party more often doesn't know how to recover the damage. At the same time, the amount of the damage collected by the court under the civil action is often reduced and the enforcement mechanism is inefficient. These circumstances explain the reluctance of victims to seek the recovery of the damage caused by the crime.

- The adoption of the Regulation on publication of court decisions on the national portal of the courts and on the website of the Supreme Court of Justice is a welcome measure and an important step in providing free access to information for the litigants and the transparency of the courts' operations. The provisions of the regulation were fully complied with only in 19% of the resolved monitored cases. It is necessary to ensure that courts apply the provisions of the regulation appropriately.

CHAPTER II.
Monitoring of proceedings in contravention cases of domestic violence

The Parliament established contravention liability for domestic violence as a tool to allow state authorities to respond with coercive measures against the perpetrator faster than under the criminal law. The underpinning idea was to make sure that the most frequent cases of domestic violence - repeated acts of violence resulting in minor injuries - are punished in a shorter period of time under the contravention law. The arguments behind this idea were that the authorities' quick response would discourage perpetrators' violence and promote victim safety[142].

The goal of the monitoring of contravention cases was to determine whether the intent of the law is being met.

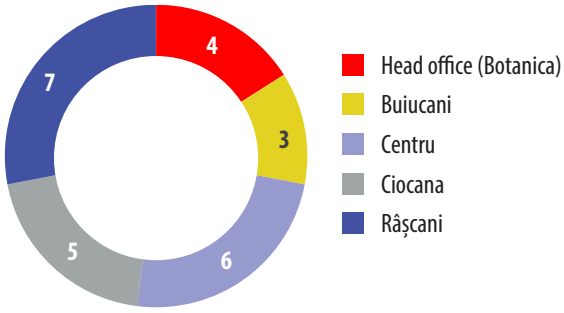
Twenty-five contravention cases initiated under Article 78[1] of the Contravention Code for domestic violence were selected for monitoring. These cases were selected randomly out of all cases pending in the different offices of Chisinau Court during May - June 2017.

Thus, the following were subject to monitoring:

- 4 contravention cases pending in Centru Office (Botanica),
- 3 contravention cases pending in Buiucani Office,
- 6 contravention cases pending in Centru Office,
- 5 contravention cases pending in Ciocana Office,
- 7 contravention cases pending in Rascani office of the Chisinau Court.

FIGURE 16

Courts in which contravention cases were monitored



This chapter is based on the information from the questionnaires developed to monitor this type of cases. It contains monitors' observations before the beginning and during the court hearings and is supplemented with the information available on the national courts' portal. This chapter also reflects the information obtained from the in-depth interviews with victims[143] of domestic violence and professionals[144] involved in the contravention proceedings.

142 From the individual and in-depth interview with the official examiner (IIA_8_AC): *'... in Chisinau most of the reported cases are classified as psychological violence. Physical violence is found in about 30% of calls, and psychological violence reaches 70-80%. In some situations, the perpetrator does not leave many signs on the body, but there could be internal injuries. The expert report, however, shows minor injuries. Other times, the perpetrator only shoves the victims, that is, it is not so much physical violence, but rather psychological violence that the victim is subjected to, often in the presence of children. However, cases of psychological violence are usually recorded in the register of other information on crimes and incidents, and the perpetrator is only subjected to a preventive discussion. Even if the notified case is recorded in Register of Notified Crimes No 1, the examination of the case ends with the prosecutor adopting a refusal to initiate criminal investigation, and the case does not go to the court... '.*

143 Victim of domestic violence (IIA_4_VVF)

144 Judge (IIA_6_J), official examiner (IIA_8_AC), lawyer (IIA_7_A_VF), who have been recently involved in examining contravention cases of domestic violence.

2.1. General aspects of contravention liability for domestic violence. Peculiarities of contravention proceedings

Law No 196 of 28 July 2016 amending and supplementing some legislative acts on preventing and combating domestic violence, in force since the date of publication[145], added a provision on contravention liability for domestic violence[146] in the Contravention Code. Applicability of this provision is limited only to one of the five forms of violence set forth in the law – physical violence[147]. The key criterion for qualification of the act which delimitates domestic violence as a crime from domestic violence as a contravention is the degree of bodily injuries caused.

According to Article 16(1) of the Contravention Code, contravention liability for acts of domestic violence, provided for in Article 78[1] of the Contravention Code, is imposed on the responsible individual who is 18 years old upon the commission of the contravention[148].

The limitation period for the contravention of domestic violence is, according to the general conditions, one year from the date it was committed[149].

A contravention case is tried within 30 days from the date the case is filed with the court. If there are reasonable grounds, the judge may issue a reasoned court resolution to extend the term of case trial by 15 days[150].

As mentioned *above*, the contravention law is a tool for faster intervention by state authorities to combat domestic violence. At the same time, certain aspects of the contravention proceedings can undermine effective combating of violent domestic violence.

It is necessary to highlight the one-year limitation period for contravention liability[151], which runs from the date when the offense was committed. As known, cases of domestic violence are sensitive, most often hidden from the eyes of the world and authorities, with a lower level of reporting, but also more limited possibilities for ex-officio action - ***'...the contraventions of domestic violence are somehow specific. There are seldom cases when the victim notifies immediately the police, usually we are notified by the emergency hospital. In the court, victims usually say they would not have reported the case ... I'm ashamed, he is my husband ... my dad ...'***[152] . The forensic expert stated to this end that - ***..."victims of domestic violence rarely address the forensic service on their own initiative...It happens that victims refuse the examination, ... we try to convince them that, first of all, she needs the examination report as evidence. Sometimes we fail..."***[153]

Another unique aspect of the contravention proceedings is the possibility to examine the contravention case in the absence of the official examiner. Thus, according to Article 455 of the Contravention Code, failure of the legally summoned official examiner to appear

145 Official Gazette No 306-313 of 16.09.2016, Article 661.

146 Contravention code, Article 78[1] (Domestic Violence). Maltreatment or other violent actions, committed by a family member against another family member, which have caused slight bodily injuries, shall be punishable by unpaid community work from 40 to 60 hours or arrest from 7 to 15 days.

147 According to the explanatory dictionary, *maltreating* means - beating, hitting, treating someone with violence, tormenting, brutalizing. In its turn, *violence* means - failure to control oneself; brutality, physical abuse, any constraint of the free will. *Tormenting* - inflicting or suffering intense physical or moral suffering. Even *injuring* means inflicting a bodily injury, pain through a psychic trauma, traumatizing. Thus, Article 78[1] Contravention Code would have been applicable to other forms of violence provided by law (psychological, economic, spiritual). It is only that words 'bodily injury' in this provision (according to the explanatory dictionary, *bodily* - physical, corporal) without including the alternative 'or harm to health' narrows the meaning of the word 'maltreatment' exclusively to actions with a physical impact — beating, hitting. By analogy, words 'other violent actions that have caused bodily injuries' from the same provision assign importance, in terms of legal classification, only to the actions related to the notion of *physical violence* in Article 2 of Law No 45 - shoving, slamming, hair pulling, cutting, burning, strangulation, any form of biting - that produce physical changes on the body of the victim.

148 Contravention Code, Article 16 (1) An individual with legal capacity who is 18 years old upon the commission of a contravention can be subject to liability for it. (2) An individual aged between 16 and 18 years old can be subject to liability for committing the acts stipulated in Article 69 (1), Articles 78, 85, 87, Article 88(1), Article 89, Article 91(1), Articles 104, 105, 203, 204 (1), (2) and (3), Articles 228-245, 336, 342, 352-357, 363, 365, Article 366(1), Article 367, 368, 370, Article 372(2).

At the same time, according to Article 14 (Matrimonial Age) of the Family Code (1) The minimum matrimonial age is 18 years. (2) For good reasons, marriage may be granted with the reduction of the matrimonial age, but by no more than two years. The reduction of the matrimonial age shall be approved by the local guardianship authority within whose territory the persons wishing to marry are domiciled, based on their application and consent of the parents of the minor. / Family Code No 1316-XIV of 26.10.2000 / OG No 47-48 Article 210 of 26.04.2001/. At the same time, the National Bureau of Statistics does not offer the possibility to calculate the number of persons who have married under the age of 18, because the relevant section on www.statistica.md contains 'under 20 years' as a starting age group, where the persons who got married under the age of 18 are included as well.

149 Contravention Code, Article 30.

150 Ibidem, Article 454.

151 Ibidem, Article 30.

152 IIA_6_J.

153 IIA_4_E_ML.

without prior notification of the court does not impede the trial of the contravention case. In the criminal proceedings, according to Article 320 of the Criminal Procedure Code, the prosecutor's participation in the hearing is mandatory. If it is found that the prosecutor is unable to attend the hearing, he/she may be replaced by another prosecutor. This promotes more efficient resolution of the case, accountability of the abuser and safety of the victim.

Failure of the legally summoned contravener or victim to appear without grounds does not impede the hearing of the contravention case. If the sanction of arrest is requested, participation of the contravener in the court hearing is mandatory. Deliberate failure of the contravener to appear allows application of contravention arrest in his/her absence[154].

2.2. Profile of the domestic violence victim in contravention cases

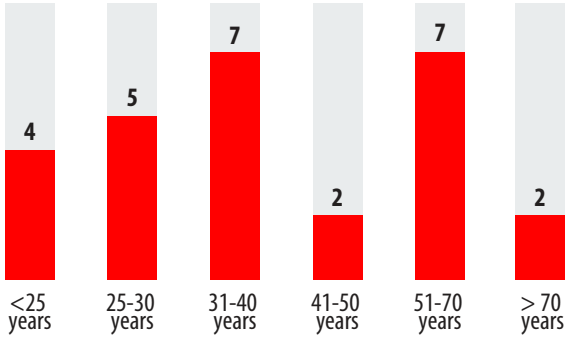
The results of contravention cases monitoring are consistent with researches and surveys that show that most domestic violence acts are committed by men.

An analysis of the victims' profile in all 25 contravention cases subject to monitoring revealed that 22 victims were women and 4 victims were men.[155] The observation of a professional during interviews is relevant in this regard – ***'... in most cases only circumstances related to the adult victim are investigated, although facts referring to other members of the family should be investigated, as well. For example, the victim says that she has three minor children with the perpetrator, and he beats them as well. He beat their son for doing something at school, he hit yesterday the daughter for waking up and crying. As a rule, these situations are not considered...'***[156].

Like in other categories of monitored cases, the age of victims varies. Most of the victims in the monitored contravention cases were under 40 years of age. Thus, regretfully, domestic violence is quite prevalent in young families and a considerable number of children are forced from the early age to witness or be involved in domestic violence scenes.

FIGURE 17

Age profile of victims of domestic violence contravention



There was no victim with disabilities in the monitored cases. In one case, the victim was dependent on alcohol (domestic partner, 29 years old).

Results of the monitoring of contravention cases showed a situation similar to that in civil cases on application for protection measures. Thus, in 8 contravention cases the victim was one of the spouses, in 5 cases - former spouse. Domestic partners/former domestic partners had the status of victim in 4 cases. In the other 8 monitored contravention cases, victims were other family members, e.g. in 4 cases the victim was a parent aggressed by the son/son-in-law, in other 4 cases the victim was the daughter, the son, the daughter and the son-in-law.

In 8 monitored cases, victims of domestic violence were employed, in other 2 cases victims attended school and in 4 cases victims were retired. In the other cases it was not possible to establish the victims' occupation.

154 Ibidem, Article 455.
155 Case LE No 4-4657, the daughter and son-in-law were victims.
156 IIA_7_A_VF.

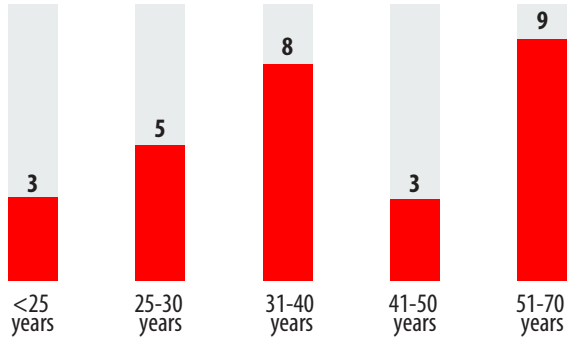
2.3. Profile of the contravener in domestic violence contraventions

Analysis of the profile of persons in whose regard the monitored contravention proceedings were initiated, revealed that in 23 of a total of 25 contravention cases, the perpetrators were men and in 2 cases — women[157].

The age of contraveners in these cases also varied. Similar to the victims' profile, most contraveners were under 40 years of age.

FIGURE 18

Age profile of the contravener in domestic violence contraventions

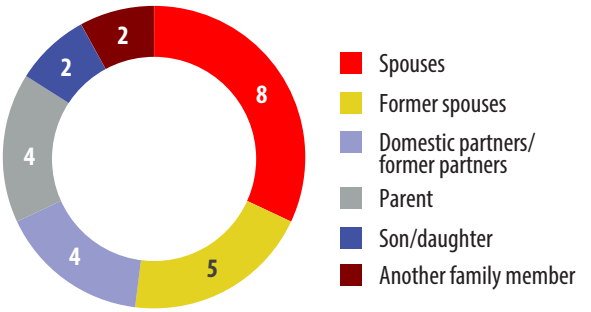


There was no contravener with disabilities in the monitored proceedings. In 8 cases, the contravener's alcohol dependence was invoked, with drunkenness being one of the factors that would have triggered the violent behavior. So, the monitoring revealed that drunkenness would be one of the factors that favored domestic violence in about 30% of cases only. In an interview, the official examiner stated a common misperception about domestic violence, ***'...domestic violence cases are usually committed in a state of drunkenness...'*** [158], as well as the judge - *'... **perpetrators are basically from the same social group: all of them are from vulnerable families, all of them are alcohol consumers. Vulnerable families that consume alcohol end up with contravention cases...**'* [159]. Contrary to the conclusions of these officials, it is important to note that only about 30% of cases of domestic violence were committed under the influence of alcohol and that alcohol often accompanies domestic violence, but is not its cause.

Regarding the status of the contravener in relation to the victim of violence, monitors mentioned that in 8 contravention cases the perpetrator was the spouse of the victim, in 5 cases - the former spouse. Domestic partners/former domestic partners had the status of contravener in 4 cases. In the other 8 cases, other family members had the status of contravener, including the parent in 4 cases, the son in 2 cases, the son-in-law in one case and the victim's brother in one case - ***'... most often the perpetrator is the husband or the son who is aggressive toward his mother or his father...'*** [160].

FIGURE 19

Relationship of the contravener with the victim of domestic violence



In 8 of the monitored cases, the contraveners were not employed, in 6 other cases the contraveners were employed, and in 4 cases they were retired. In the other cases, it was not possible to establish the sources of income of persons against whom the contravention proceedings have been initiated.

157 This is the case of C.V. No 4-34940 between the spouses, which ended with termination of the proceedings and the case of E.C. No 4-2312, the mother committed violence against the 9-year-old son, which ended with the termination the proceedings on the grounds that the contravention report were declared null and void.

158 IIA_8_AC.

159 IIA_6_J.

160 IIA_6_J.

During the hearings in 12 contravention cases, the monitors learned that the contraveners had previously committed acts of domestic violence which resulted either in the issuance of a protection order to victims of domestic violence or in the commencement of contravention proceedings for domestic violence or criminal proceedings for non-execution of measures in the protection order. In some cases, victims stated that they did not report previous violent actions of the perpetrator, - ***'...violence in our family lasted for over 30 years, since the children were young, but the perpetrator had never been punished, every time he would get out clean. Every time I used to call the police, the police officers were on his side — the male's law. New acts of violence followed, but I did not report them anymore. I tell you very sincerely, I do not believe any more that the guilty person will be punished, because everything can be influenced in our days if you know whom to talk to...'*** [161].

The number of contraveners who had previously committed other acts of domestic violence could be higher, but it could not be determined in other proceedings due to the absence of the official examiner or parties to the hearing.

2.4. Hearing of contravention cases of domestic violence

Monitoring of contravention cases focused on in-depth observation of the proceedings from the preliminary hearing to the judgment. Monitors assessed the extent to which contravention proceedings and judgments delivered complied with the requirements of a fair trial in terms of meeting the victim's needs. They also identified whether the proceedings and judgments promoted victim's safety based on the right to life and physical and psychological integrity of victims of domestic violence.

161 IIA_4_VVF.

Publicity of court hearings in domestic violence contravention cases

In accordance with Article 10 of Law No 514 of 06.07.1995 on Judicial Organization[162], the court hearings are public. Closed hearings are allowed only in cases established by law, in accordance with the procedure[163].

Monitoring revealed that all 25 contravention cases were examined in public hearings. According to monitors, as a rule, no persons other than parties and their representatives were present in the hearings. Therefore, the presence of the monitor in the proceedings was not unnoticed. Only in one case[164], as indicated by the monitor, his attending the hearing was not an issue. His presence was only mentioned for the court hearing transcript.

In all cases, monitors had access to the hearings. While others present at the hearings, including the contraveners, were largely indifferent to the monitors' presence, victims clearly expressed their desire to have the monitor present in the hearing.

To ensure a transparent trial, the information about the date of the hearing was, as a rule, posted at least 2-3 days prior to the hearing. In 2 cases of the total number of court hearings, no information was displayed. These were 2 cases heard in Ciocana and Rascani Courts: one case was examined in two hearings[165], while information about the second hearing was not published. Another case was examined in 4 hearings[166]. The information about the second hearing was not published.

Monitors also reported a formal approach to the requirement to display the date of court hearings. Situations were found [167], when the published infor-

162 Republished: OG No 15-17 of 22.01.2013, Article 62.

163 A contravention case, according to Article 452 of the Contravention Code, is judged by the court in a public hearing. By way of derogation from the abovementioned provisions, a contravention case may be examined in closed hearing under the conditions and in the manner established by Article 18 of the Criminal Procedure Code.

164 Case P.T. No 4-2147.

165 Case B.M. No 4-33383.

166 Case J.V. No 4-4245

167 Cause of L.E. No 4-4657; Case of B.Gh. No 4-8895.

mation stated 'Case examination' under the 'Type of hearing' heading, while in fact the hearing was about pronouncing the judgment.

In 11 cases, public information stated the courtroom as the venue of the hearing, in other cases - the judge's office. In Centru and Buiucani Office no hearing was held in the courtroom.

Venue of the hearings in domestic violence contravention cases

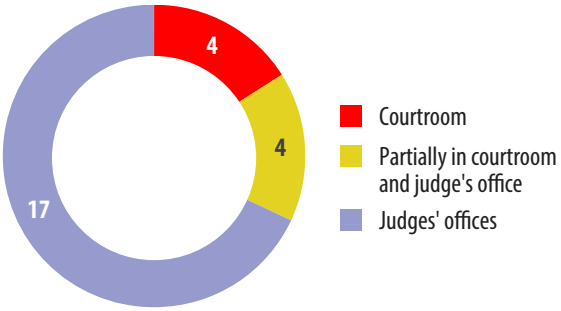
The monitoring process revealed that most contravention cases were examined in the judges' offices, which, although some are more spacious, do not have rooms for deliberation. Participants were forced to wait in the hall when the judge was deliberating.

Monitors stated that in 17 out of the 25 monitored contravention cases (Centru -6; Rascani -4; Buiucani -3; Ciocana -2; Botanica -2), all court hearings took place in the judges' offices. In 5 cases,[168] the office was relatively spacious and had the necessary furniture (Rascani -3, Ciocana -2) and 12 cases (44 hearings) were examined in small offices[169], creating additional inconvenience to the participants in the trial (Center - 6; Buiucani -3; Botanica -2; Rascani -1). Besides technical inconveniences, examination of contravention cases in judges' offices does not meet the legal requirements[170] of ensuring solemnity of a court hearing.

Four cases[171] (Rascani -3; Botanica-1) were examined in the courtroom. In one of these cases[172] (Botanica), the judge began the hearing with a 20-minute delay, until the courtroom became available. In 3 cases,[173] (Ciocana -2; Botanica-1), the hearings took place partially in the courtroom and in the judges' offices. In two cases (Ciocana and Botanica), the first hearings took place in the judges' offices, and the following ones - in the courtroom, while in one case the case examination started in the courtroom, with the following hearings being held in the judge's office (Ciocana). In one case[174] (Ciocana) the public information indicated that the trial would be in the courtroom, while, in fact, all three hearings were held in the judge's office.

FIGURE 20

Venue of the hearings in contravention cases



Since the monitoring did not identify any case where the hearing took place in the judge's office while the courtrooms were free, it may be concluded that the hearings were held in the judges' offices due to the shortage of courtrooms. Hearings in the courtroom would ensure that the justice is carried out solemnly and in decent conditions, according to the expectations of the litigants.

Audio recording of court hearings in contravention cases

Court hearings are recorded with video and audio recording means. The audio and/or video recording of court hearings is performed in the manner prescribed by the Superior Council of Magistracy[175].

168 Case of B.V. No 4-15242; Case of U.S. No 4-29792; Case of T.Gr. No 4-29810; Case of C.I. No 4-14949; Case of C.I. No 4-14173.

169 Case of L.C. No 4-25; Case of F.S. No 4-3090; Case of R.O. No 4-496; Case of I.N. No 4-2089; Case of G.D. No 4-3869; Case of B.N. No 4-28534; Case of L.E. No 4-4657; Case of C.V. No 4-34940; Case of B.Gh. No 4-8895; Case of N.V. No 4-2523; Case of B.E. No 4-9374; Case of O.S. No 4-7420.

170 Contravention Code, Article 456.

171 Case of C.Gh. No 4-4572; Case of C.E. No 4-2312; Case of J.V. No 4-4245; Case of M.N. No 4-30328.

172 Case of C.E. No 4-2312.

173 Case of R.A. No 4-28490; Case of C.R. No 4-2101; Case of B.M. No 4-33383.

174 Case P.T. No 4-2147.

175 Article 14 of the Law on Judicial Organization No 514-XIII of 06.07.1995 // Republished: OG No 15-17 of 22.01.2013, Article 62.

According to the regulation on digital audio recording of court hearings, the audio recording of court hearings is performed in line with the Contravention Code[176]. However, the Contravention Code does not contain any express provisions regarding the digital audio recordings of the court hearings. Furthermore, neither the provisions regarding the conduct of court hearings in contravention cases and relevant duties of the judge[177], nor the provisions regarding the content of the minutes of the court hearing on contravention cases include a reference to digital audio recording[178].

However, monitors noted that courts generally ensure the audio recording of court hearings, usually by a voice recorder. There were five cases [179] where the court did not order the hearing to be recorded and there was no indication that the examination of the contravention case was recorded. The interviewed victims also referred to deficiencies in the recording of court hearings in contravention proceedings - ***'... the microphone is not always on during the court hearing ... the judge told me this with the microphone off... etc.'***[180].

However, in the absence of proper regulations in the Contravention Code, this situation cannot be invoked as a deviation from procedural requirements established by law. Rather, it is a case of failure to ensure correlation of the relevant regulatory framework.

Language of the trial and parties' access to the services of an interpreter in contravention cases

In all contravention cases subject to monitoring, hearings were conducted in state language. Thus, the requirement of the legal norm[181], according to which, the contravention proceedings shall take place in the state language, is followed. A person who does not understand or does not speak the state language has the right to review all case documents and participate in the proceedings via an interpreter.

Monitoring revealed that four victims needed interpretation[182] and in each case they were offered an interpreter. In other cases, victims did not need an interpreter or were absent from the hearing.

Contraveners needed the assistance of an interpreter in 3 cases[183]. In one case, the proceedings had to be suspended for 15 minutes in order to ensure the presence of an interpreter in the hearing. In another case, due to the failure of the contravener's interpreter to show up, the proceedings had to be postponed twice[184], delaying the resolution of the case by more than four months (131 days).

These circumstances confirm that the courts do not have as many interpreters as they need. Ensuring the presence of interpreters is sometimes a difficult issue for the judge.

Procedure for examining contravention cases

Monitors found frequent cases of non-compliance with the agenda of court hearings in contravention proceedings. 46 of all 69 hearings in 25 monitored cases started on time (Rascani -19, Centru-9, Ciocana-7, Botanica-7, Buiucani-4). Hearings started late in the other 23 hearings (Centru - 10; Rascani - 5; Botanica - 5; Ciocana - 3), including a delay of up to 30 minutes in 19 hearings and delays of 30-60 minutes in 4 hearings. Thus, one-third of the monitored hearings began late. It affected the duration of case examination. In some cases, hearings were postponed for another date due to the elapse of the time period planned for that hearing[185].

176 Items 1.3 and 1.4 of the Regulation on the Digital Audio Recording of Court Hearings.

177 Contravention Code, Article 456.

178 Ibidem, Article 459.

179 Rascani office -3 cases, Ciocana office - 2 cases.

180 IIA_4_VVF.

181 Contravention Code, Article 379.

182 Case of M.N. No 4-30328; Case of B.M. No 4-33383; Case of G.D. No 4-3869.

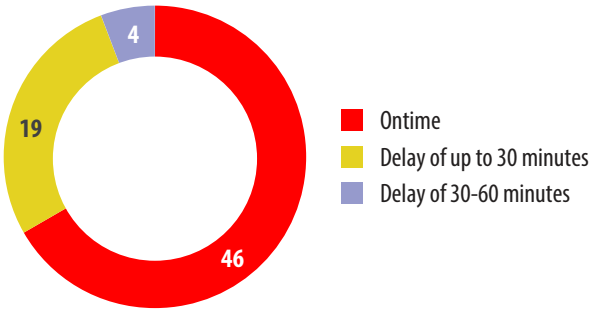
183 Case of J.V. No 4-4245; Case of M.N. No 4-30328; Case of T.Gr. No 4-29810.

184 In the case of J.V. No 4-4245, the contravener had to be assisted by a translator. At the hearing of 22.06.17, the court was unable to ensure the presence of an interpreter in the trial, therefore the hearing was postponed for another date — 04.09.2017, i.e. in 2.5 months. The interpreter was not present again at the hearing of 04.09.2017. hence, the case was postponed for 02.10.2017. Thus, due to the impossibility to provide an interpreter to the contravener, the case was literally not examined between 25.05.2017 and 02.10.2017.

185 Case of N.V. No 4-2523; Case of B.E. No 4-9374; Case of C.E. No 4-2312; Cause of R.O. No 4-28490.

FIGURE 21

Ontime beginning of hearings in contravention cases



As mentioned in other types of cases, delayed hearings, when victims wait for the hearing next to the contravener, are stressful for victims. Monitors also confirmed this[186]. In case N.V. No 4-2523 the monitor indicated that *'...the hearing started with a one-hour delay because 3 other cases were set for the same time. The aggressor seemed to be calm, while the victim was obviously stressed...she said she was afraid and concerned for her child aged 7 who stayed with the aggressor...'*

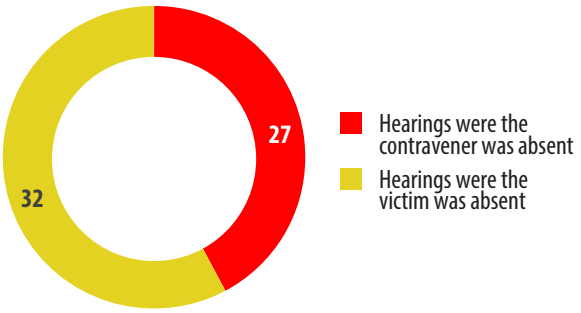
Monitors found that, as a rule, the court secretary checks the presence of the participants in the hearing and announces the beginning of the hearing. In 4 cases (Centru -2 and Rascani -2) monitors reported that the court secretary did not perform the preliminary verification and did not invite the participants to the hearing. In these cases, at the scheduled time, some participants would ask the judge or the court secretary if the hearing would take place. The court secretary would invite the other participants waiting in the hall.

Monitors reported that participants were frequently absent in the hearing, especially in the first hearing. Monitors indicated 12 such cases (Rascani -6; Center - 2; Botanica - 2; Buiucani - 2). This is also due to the practice of summoning participants by phone[187]. Court decisions to summon the participants repeatedly[188], as well as the observations of the professionals during the individual interviews are notable - *'... as a rule, we receive written summons. We had one or two cases only when the summons came after the court hearing or the same day. But usually they come on time. There are exceptions, some judges can call by phone...'*[189], *'... we are often informed about hearings by phone, even on our personal phone. When we receive summons, we can be involved in any activity, but it does not matter — when we are summoned, we must show up... When I get the summons, one day before I put it on the table to see it in the morning when I go to work...'* [190].

According to Article 455 of the Contravention Code, failure of the legally summoned perpetrator or victim to appear without grounds does not impede the trial of the contravention case. If the sanction of arrest is requested, participation of the contravener in the court hearing on the contravention case is mandatory. The deliberate failure of the perpetrator to appear justifies arrest.

FIGURE 22

Parties' failure to appear of the total of monitored hearings in contravention cases



186 Case of C.V. No 4-34940 etc..

187 Case of F.S. No 4-3090; Case of U.S. No. 4-29792. It shall be noted that according to art. art. 382, 455 of the Contravention Code, parties' summoning to the hearing is mandatory. The summoning is performed via a written invitation handed over personally to the summoned party, who shall sign the confirmation of receipt. Summons may be also sent via mail or via telephonic or telegraphic note, telefax, email or any other electronic messaging system, if the authority has the necessary technical means to prove that the summons was received. The person shall be summoned at least 5 days prior to the date when he/she should come before the corresponding authority. The person must appear on the date, time and in the place indicated in the summons.

188 Case of C.V. No 4-34940; Case of N.V. No 4-2523; Case of C.Gr. No. 4-4572 etc..

189 IIA_7_A_VF.

190 IIA_8_AC.

Monitors found victim's absence in 32 hearings. In some cases, the victim was absent from most of the hearings[191], and in 5 cases the victim did not attend any [192] hearing at all. Regarding the reasons for the victim's absence from hearings, the interviewees have different opinions, sometimes contradictory - ***'... one of the reasons for victim's absence from the hearings is the fear of the perpetrator, they do not want to meet the perpetrators..., ... at the time of the act of violence, victims have the courage to call the police, but in a while they start analyzing the consequences and their courage starts to dissipate; in other cases they are subjected to pressure and are less willing to cooperate with authorities. The official examiners in such situations draw their own conclusions, to the detriment of the victim ...'*** [193].

'... I think victims do not come to the hearing because they just wanted to scare the perpetrator...' [194].

'... the feeling of shame is most often the reason for the victim's failure to come to the hearing. Just recently I had a case where the contravener was the son and the victim was the mother. The victim expressed her regrets during the hearing for bringing her son to the court ... it was a great shame. She came to the first hearing only, after that she said: please do not get upset, but I cannot come anymore, I'm ashamed. I often get the same question from victims - can't you do it without me? .... please, handle it somehow without me ...' [195].

Interviewees offered different explanations for the absence of victims from court hearings. At the same time, all interviewed professionals agreed that it was extremely difficult for the victims of domestic violence to take the decision to participate in a hearing next to the aggressor.

Contraveners were absent in 27 hearings. Five cases were examined, after a series of delays, in the absence of the contravener; in one case he was brought forcedly [196] - ***'... perpetrators are present more often in court ... I do not see them feeling any regrets. A case even shocked me. The son asked his mother: What? Will you tell how it really happened? They are more confident in the hearing, they make the victims feel ashamed ...'*** [197].

It is critical that the official examiner be present at the hearings during contravention proceedings. This was noted by the interviewed professionals - ***'... the opinion of the official examiner is very important for me, so I insist that the official examiner is present. Although the law allows the examiner not to be present in the hearing, at least in the first hearing I want to hear the opinion of the official examiner...'*** [198].

'... their participation in the hearing is important because they are the ones who were on site, collected evidence, know the prior situation and can give important explanations ...' [199].

'... it is very important that the official examiner is present in the court, he collected the evidence, presents his opinion on the circumstances he knows..., ... there are cases when the official examiner is not present in the hearing, but I do not know how to explain such a situation, maybe he forgot to come. The court is the first priority. I do not know what exceptional situation may occur for an examiner not to show up in the court...' [200].

Out of 25 monitored cases, the official examiners did not participate in 12 cases[201] to support the domestic violence charges against the perpetrator.

However, as monitors pointed out, it is common practice for courts to adjourn the hearing or to examine the case in the absence of an official examiner. They do not

191 Case of N.V. No 4-2523; Case of U.S. No. 4-29792; Case of P.T. No 4-2147; Case of C.I. 4-14949.

192 Case of B.Gh. No 4-8895; Case of B.V. No 4-15242; Case of E.C. No.4-2312; Case of F.S. No 4-3090; Case of I.N. No 4-2089.

193 IIA_7_A_VF.

194 IIA_8_AC.

195 IIA_6_J.

196 Case of B.Gh. No 4-8895; Case of C.I. 4-14949; Case of G.D. No 4-3869; Cause I.N. No 4-2089; Case of F.S. No 4-3090. In the case of J.V. No 4-4245, the contravener refused to appear and was brought forcedly.

197 IIA_6_J.

198 IIA_6_J.

199 IIA_7_A_VF.

200 IIA_8_AC.

201 Case of O.S. No 4-7420; Case of C.I. No 4-14173; Case of C.V. No 4-34940; Case of B.Gh. No 4-8895; Case of N.V. No 4-2523; Case of P.T. No 4-2147; Case of C.R. No 4-2101; Case of U.S. No. 4-29792; Case of F.S. No 4-3090; Case of L.C. No 4-25; Case of B.V. No 4-15242; Case of C.Gh. No 4-4572.

apply any coercive measures against the latter under the contravention law for unjustified absence from the hearing.

Monitors have noted that during the hearings, official examiners often explained why it was common for them not to appear or leave before it ended. This was due to their huge workload. However, monitors also identified a case where the official examiner simply forgot that he had a trial on that day[202]. At subsequent hearings, that official examiner's performance in the court was very poor due to total indifference towards the final result in the case. This attitude, ultimately, impacts negatively the quality of the case file and the performance of the official examiner, as well as duration of the case examination.

Generally, monitors assessed the performance of official examiners as good only in 8 cases. Case B.Gh. No 4-8895 ended with a decision to terminate the proceedings due to lack of elements of a contravention. After the hearing, the judge looked at the monitor and suggested that it would be good to organize trainings with official examiners on how to handle contravention cases of domestic violence. The judge stated that they needed to be trained in how to handle the necessary evidence, in particular how to establish the injuries, psychological evaluation, etc.

Professionals confirm this, ***'... victims have to tell the story, what happened..., ... but there are many situations when they are afraid of the perpetrators, either get blocked and cannot focus, start crying and are unable to say anything; maybe it would be good to hear the victim separately ...'*** [203],

'... there are many cases when the victim does not want to talk in the presence of the contravener. Well, we explain that she may sign a request to make statements without his participation. I do not think it is necessary to change the way of hearing in such types of contraventions ...' [204].

The situation was less tense when some party was absent (victim or contravener) or when, after a longer examination of contravention cases, the parties had already reconciled and requested that the trial be terminated.

In most cases audibility during the proceedings was assessed as appropriate by monitors, except for one case [205] reported by the monitor, when the contravener often could not hear or did not understand the judge. He tried to speak louder and more explicitly so that the parties to the proceedings could hear and understand.

Ensuring the victim's right to be treated with respect in contravention cases

Monitors did not mention any cases of biased treatment of the participants in the trial. Judges, as a rule, displayed impartiality and lack of prejudices. In rare cases when some participants asked questions that affected victim's dignity, the court intervened to stop this. In cases[206] when the contravener showed a threatening and offensive behavior against the victim, the court intervened promptly with warnings about a possible removal from the room or punishment for breaching the court order.

In the beginning of the hearing, the court explained procedural rights to all participants. Monitors observed that in some cases, when noticing that the victim had some misunderstandings, the court printed and gave the victim the procedural rights in writing, after which they checked if the rights were clear to the victim[207]. However, a victim of domestic violence in case N.V. 4-2523, who was interviewed, expressed a different position – "***...they explain to us in the court what will happen if we do not tell the truth, however, we do not know anything about our rights...***"

At the same time, monitors also noticed other kinds of situations, which could be regarded as a more veiled form of disrespectful treatment of victims in contravention proceedings. One example is when scheduling

202 Case of R.O. No 4-496. At subsequent hearings, that official examiner had a very low performance, showing total indifference to the final outcome of the case.

203 IIA_7_A_VF.

204 IIA_6_J.

205 Case of C.V. No 4-34940.

206 Case of B.N. No 4-28534; Case of T.Gr. No 4-29810.

207 Case of J.V. No 4-4245; Case of T.Gr. No 4-29810.

further hearings, monitors noted that victims were not asked about their availability for that day[208].

The official examiners also demonstrated lack of respect for the victim of domestic violence, through inadequate actions and lack of diligence in establishing the contravention[209], unjustified absence from the hearing[210], indifference to the results of the case settlement[211].

Also, monitors reported a serious problem with the unjustifiably lengthy examination of contravention cases resulting eventually in the issuance of a decision to terminate the proceedings due to the elapse of the limitation period. Case of C.I. No 4-14949 can serve as an example in this regard. It is a case of domestic violence committed by a 36-year-old son against his mother. According to the case circumstances, from 24.09.2016 to a certain date, which was depersonalized (xxxxx) by the judge in the text of the judgment, the perpetrator had systematically been aggressive physically and verbally against his mother, being in a state of drunkenness, hitting her with fists and legs into her face and body, causing her physical pain and injuries. This was classified in the forensic expert review report of 05.10.2016 as insignificant injuries. On the basis of the prosecutor's order, the contravener's actions were classified under Article 781 of the Contravention Code, the case being registered with the Chisinau Court on 16.11.2016. The first hearing was set on 06.02.2017, i.e. on the 83rd day after the case was filed. The case was examined in 8 hearings, with the judgment being issued on 08.12.17. The contravener was absent from all hearings. He was sick. However, the monitor did not see his defense lawyer presenting at the hearing any medical certificate or another confirmation of the impossibility to attend the hearings. So, the absence of the contravener was a manifestation of bad faith. At the hearing of 18.07.2017, the next hearing was set for 04.10.2017. Although on that day all the participants were present, except for the contravener, who was represented by his defense lawyer (it seems that 04.10.2017 was the last day of the limitation period, hence the contravener could have been sanctioned, a.n.) the court did not examine the case, but accepted the motion of the contravener's defense lawyer to postpone the hearing and set the next hearing for 14.11.17, that is, for a date that exceeded one year since the act was committed. On the set date (14.11.17), although the situation was similar to that of 04.10.2017, that is, all participants were present, except for the contravener, the court examined the case. During the court debates, the official examiner requested that the contravener be sanctioned with community service, because there was sufficient evidence in the case file to confirm his guilt. The prosecutor asked for the contravener to be recognized guilty of committing the contravention provided by Article 781 of the Contravention Code, requesting, at the same time, termination of the contravention proceedings on the grounds of elapsed limitation period. The contravener's defense lawyer requested his client not to be punished because he regretted his actions and promised not to repeat them again. The victim attended the hearings, having a reserved, shy behavior. She was not prone to make statements, and during the debates she said only a few words with a very low voice. The court postponed the hearing for 8 December 2017, when it pronounced the decision to terminate the proceedings due to the elapse of the limitation period. This response by state authorities does not discourage the perpetrator from committing violence as the law intends, but rather discourages victims from reporting the cases of violence to the authorities.

208 Case of N.V. 4-2523; Case of C.I. 4-14949; Case of J.V. No 4-4245, Case of O.S. No 4-7420; Case of B.V. No 4-15242.

209 In the case of B.Gh. No 4-8895, the official examiner did not collect relevant evidence on the case, including the injury report, etc. As a consequence, the case examination ended with a decision to terminate the proceedings due to the lack of elements of a contravention.

210 Case of No 4-2523 was examined in 5 hearings. The official examiner only appeared in the final hearing, showing a clear lack of interest in the outcome of the case examination. All the more, the perpetrator was a former police officer and much better prepared for the trial than the victim. The aggressive behavior of the perpetrator in the trial was particularly stressful for the victim.

211 In case R.O. 4-496, the official examiner forgot that he had a lawsuit and did not appear at the hearing, and the hearing was postponed for another day. At the next hearing he showed a clear indifference to the case, was unprepared for the trial. As a consequence, the examination of the case ended with a decision to terminate the proceedings due to the errors made by the official examiner when drawing up the contravention report.

Victim's access to legal assistance in contravention proceedings

The following impression of one monitor is evidence of the urgent need for legal representation for victims in the hearings. '***... The hearing took place in accordance with the rules of procedure. However, there was***

an acute need for a defense lawyer to provide legal support to the victim during the proceedings. Being an ordinary person without legal knowledge, the victim had a somewhat inhibited behavior during the hearing, being either intimidated or ashamed. Her discomfort was very obvious, especially during the hearing. The judge tried to use a more comprehensible language, but the victim evidently did not understand the meaning of many questions. The victim would respond 'yes' to some questions ... with a tone of the voice that revealed her indecisiveness...' [212]

The monitoring established that in only 3 of the 25 contravention cases subjected to monitoring the victim was assisted by a defense lawyer in the proceedings. [213] In all these 3 cases, the defense lawyer was private, that is, contracted by the victim. In one case, the monitor described the attorney's performance as very passive.

Regarding the above-mentioned subject, the official examiner stated the following during the interview: ***'... of all court cases that I had on domestic violence, about 10% of the victims had defense lawyers, who did their job well. There have been times when we worked with them before the file went to court, which helped us remove some gaps, and consequently the file was documented more qualitatively...'*** [214]. In his turn, the defense lawyer mentioned during the interview - ***'... there are situations when the official examiners make mistakes in the contravention report, either forget to indicate the accurate address or write a wrong date, incorrect classification, and these, as a rule, lead to declaring the report void and null and terminating the contravention proceedings. Then the perpetrator generally remains unpunished...'*** [215].

No victim of domestic violence was found to benefit from state-guaranteed legal aid in the contravention proceedings, although, as indicated above, the law gives victims of domestic violence the opportunity for such aid - ***'... the court is obliged to inform victims of their rights. The victim receives free legal aid, if requested. Victims do not insist on the defense lawyer's presence. I did not have victims represented by defense lawyers ...'*** [216].

It was clear that providing legal aid to the victim in the trial would be beneficial.

Victims' access to free legal aid in contravention proceedings is determined by the manner they are informed about their procedural rights.

Thus, when initiating the examination of the contravention case, victims should be informed about their rights and obligations, stipulated in Article 387 of the Contravention Code. However, this provision only states the right of the victim to be assisted in the contravention proceedings by a private defense lawyer.

The monitors did not indicate any case of informing the victim of any rights other than those contained in the Contravention Code. Respectively, the victims do not know about the right to state-guaranteed legal assistance opportunities offered by Law No 198. The judiciary did not appear to be willing to inform the participants in the proceedings about rights other than those indicated in the contravention law, although Article 456(2)(h) of the Contravention Code allows the court to do so.

In order to overcome this situation and offer victims the possibility to actually benefit from state guaranteed legal aid in the contravention proceedings, we believe it is necessary to add a provision in Article 387 of the Contravention Code stipulating expressly the right of the victim to request legal aid in accordance with the legislation on state guaranteed legal aid and to make sure that this assistance is made available to the victims.

The monitoring confirms the need to provide victims with appropriate qualified legal aid in the contravention cases of domestic violence. The importance of this action stems not only from the quality of the process of establishing domestic violence, but also from the permanent absence of official examiners from the court hearings in this category of cases.

212 Case of T.Gr. No 4-29810.
213 Case of R.A. No 4-28490; Case of C.I. 4-14949; Case of C.R. No 4-2101.
214 IIA_8_AC.
215 IIA_7_A_VF.
216 IIA_6_J.

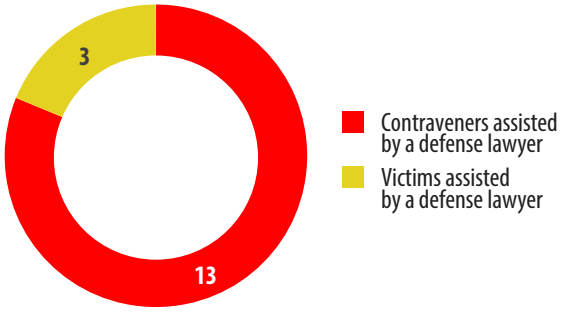
Legal aid to the contravener in the proceedings

Monitors have reported a slightly better situation in case of contraveners compared to victims of domestic violence, in terms of legal aid in contravention proceedings. However, it appeared that contraveners' right to legal representation was undermining victims' safety as is described below.

Monitoring established that in 5 contravention cases[217] the perpetrators received qualified legal aid from private defense lawyers, and in 8 cases — [218] qualified state guaranteed legal aid. That is, in more than half of all 25 contravention cases subject to monitoring, the contraveners benefited from a defense lawyer's services - ***'... in the case of perpetrators, we are obliged to ensure the presence of the defense lawyer because the sanction implies hours of community service, and they do not refuse legal aid, saying: let it be, especially if it's free...'***[219].

FIGURE 23

Legal assistance of victim and contravener by the defense attorney



In most cases, legal representation was of a good quality. Only two cases were reported when defense lawyers had inadequate performance in the hearing, including a case involving a private defense lawyer, and another case - a defense lawyer offered by the state[220].

At the same time, some hearings were reported to have been postponed due to the lack of presence of a defense lawyer. These situations have a negative impact on victims. For instance, in case of R.A. No 4-28490, which was examined during 12.05.17-13.09.17, several hearings were postponed at the defense lawyer's request, including on the grounds that he had another trial. Each postponement created difficulties for the victim, who lived and worked in Balti; the case was examined in Chisinau. Each time the victim had to take a leave from her work (she works in education) and cover the costs of travelling to Chisinau. It affected significantly the family budget considering that she supported two minor children.

One of the interviewed victims also mentioned that ***'... during the trial it was decided that he needed a defense lawyer. The next time the defense lawyer did not come, the hearing was postponed. And so, the hearings were postponed several times because of the absence of the official examiner and the defense lawyer..., ... and this May it will be one year since the case was initiated. The judge does not ask the parties to justify their absences ...'***[221].

Monitors underscored the non-uniform practices of legal services offered to the contravener, showing that in 8 cases the contravener benefited from free state-guaranteed legal aid, and in 12 cases he was not offered a defense lawyer.

The contravener was not apprehended in any case monitored. Every contravener who attended the hearings came to the court on his own; he was not brought by the police. At the same time, according to Article 384(2)(c) of the Contravention Code, the person against whom a proceeding for a contravention is started shall be entitled to be provided an ex-officio defense lawyer within 3 hours *from the time of apprehension,* provided that the act is subject to the sanction of contravention arrest. Similarly, Articles 19-20 of Law No. 198 establish the right to qualified legal aid, irrespective of the level of income, to persons in need of emergency legal aid *in case of apprehension* in the contravention proceedings for which the sanction of arrest is stipulated.

217 Case of C.V. No 4-34949; Case of R.A. No 4-28490; Case of R.O. No 4-496; Case of C.R. No 4-2101; Case of B.E. No 4-3869.

218 Case of C.I. No 4-14949; Case of P.T. No 4-2147; Case of L.E. No 4-4657; Case of B.V. No 4-15242; Case of C.I. No 4-14173; Case B.M. No 4-33383; Cause of B.N. No 4-28534; Case of G.D. No 4-3869.

219 IIA_6_J.

220 Case of C.R. No 4-2101; Case of P.T. No 4-2147.

221 IIA_4_VVF.

Accordingly, the person against whom a contravention proceeding was started under Article 78[1] of the Contravention Code is entitled to legal aid guaranteed by the state only in the case of apprehension, if he/she had not contracted a defense lawyer. For these cases, Article 26 of the Law No 198 stipulates that the person who apprehended the contravener shall request, within one hour, that the territorial office of the NCSGLA appoints a defense lawyer[222].

Although Article 20(b) of Law No 198 provides that persons suspected of committing a contravention for which the sanction of arrest shall be granted qualified legal aid regardless of the level of income, neither Article 26 nor other provisions of Law No 198 nor the contravention law establish any mechanism for providing an ex-officio defense lawyer, at the initiative of the judge or the official examiner, to the contravener, who was not apprehended.

Monitors found that in some cases[223] the court examined the contravention case and ordered that some contraveners who did not have a defense lawyer be arrested and, on the contrary, in other cases,[224] the court requested an ex-officio defense lawyer, applying later the minimum sanction of community service or termination of the proceedings. At the same time, the reasons for such a position regarding the provision of ex-officio legal aid to the contravener was explained neither at the hearing, nor later in the judgment issued on the case.

It appears that the obligation to provide a defense lawyer to apprehended perpetrators and the inconvenience to the official examiner resulting from this obligation explain why domestic perpetrators are not apprehended upon establishing the contravention of domestic violence. As the defense lawyer said during the interview - ***'...police officers say they encounter many difficulties in detaining the perpetrator, the term of detention is very short, certain procedures need to be followed...'*** [225]**.**

Such omissions by the official examiner are a disadvantage for the victim, who remains vulnerable to violent actions of the perpetrator, while the contravention is still being ascertained. Subsequently, during the trial, the contravener often obtains free legal aid, with the support of the judge. As a consequence, the perpetrator is in a privileged situation with respect to the victim of domestic violence during the entire contravention proceedings.

2.5. Time to hear a contravention case and postponing the hearing

The law provides that the contravention case should be tried within 30 days from the date the case was filed with the court. If there are reasonable grounds, the judge may issue a reasoned court resolution to extend the term of case trial by 15 days[226].

It is clear that the contravention law is intended as a tool for state intervention against the perpetrator that can be used more quickly as compared to the criminal law. This explains the logic of the current version of the norm in the Contravention Code[227], which offers the possibility of examining the case even in unjustified absence of the legally summoned official examiner, contravener, or victim. This is a way of ensuring that the hearing will not be continuously postponed.

The interviewed professionals had a common position - ***'...proper examination of contravention cases should take much less time than of criminal cases, but sometimes it is delayed too long, the hearings are always postponed. For example, a case in Chisinau: the act of violence was committed on 17 June 2017. The contravention report was filed with the court on 6 July 2017. It is now late February 2018, and no judgment was yet issued on this contravention case...'*** [228].

'... there is a big problem when some cases are examined for half a year and even longer; we have cases

222 Article 26(2) of the Law No 198.
223 Case of T.G. No 4-29810; Case of G.D. No 4-3869.
224 Case of B.V. No 4-15242; Case of B.M. No 4-33383; Case of C.I. No 4-14949 etc..
225 IIA_7_A_VF.
226 Contravention Code, Article 454.
227 Article 455 of the Contravention Code, amended by the Law No 208 of 17.11.2016 / OG No 441-451/2016, Article 879.
228 IIA_7_A_VF.

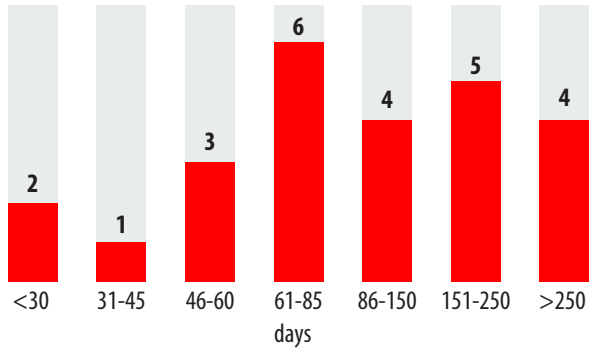
pending from 2016. The parties may not even live in the city any more...' [229].

'... I cannot say that the investigation of domestic violence takes longer. We try to settle the case in 3-5 hearings. But five hearings take half a year, because of our huge workload we can set the next hearing only in one month... we have the procedure of requesting protection orders for victims of domestic violence, which is being examined as a matter of emergency. The authorities might request to prioritize examination of domestic violence cases...' [230].

Although the contravention law establishes a 30-day time limit for the trial of the case, and in exceptional cases — a maximum time period of 45 days, the monitoring revealed that only two contravention cases were examined within 30 days, and only one case within 45 days. The others were examined beyond the statutory deadline, including up to 60 days - 3 cases, 60-85 days - 6 cases, 120-150 days - 4 cases, 160-250 days - 5 cases, over 250 - 1 case, over 300 days - 2 cases, over 400 days - 1 case. In some cases,[231] the court scheduled the next hearing after the elapse of the one-year limitation period. At the same time, the actual working time on the case was of: up to 30 minutes - in 9 cases, up to 1 hour - in 8 cases, up to 2 hours - in 6 cases, and over 2 hours - in 2 cases.

FIGURE 24

Time to hear a contravention case



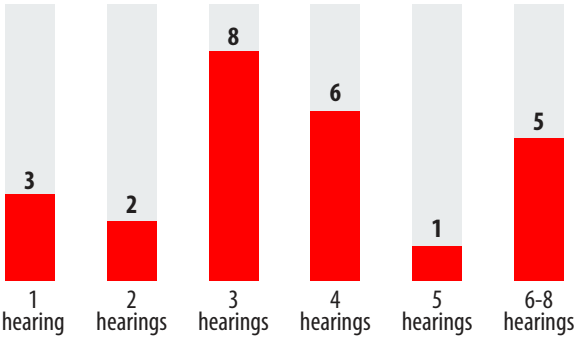
229 IIA_8_AC.
230 IIA_6_J.
231 Case of C.I. No 4-14949; Case of C.I. No 4-14173.

The date of the first hearing (the preliminary hearing) affected the duration of contravention cases examination. The shortest term to set the preliminary hearing was 19 days from the date of filing the case with the court (in 3 cases)[232]. In other 8 cases, the preliminary hearing was set prior to the 30-day term from the date of filing the case with the court, and in 4 cases – within up to 35 days. In the other cases, the preliminary hearing was scheduled after 45 days. The preliminary hearing was scheduled on the 66th-69th day[233], on the 74th-76th day[234], on the 83rd day [235], and even on the 98th day[236] since the date the case was filed with the court.

Of all 25 contravention cases, 3 cases were resolved in one hearing; 2 cases - in 2 hearings; 8 cases were examined in 3 hearings; 6 cases - in 4 hearings; one case - in 5 hearings; the other 5 cases - in 6-8 hearings.

FIGURE 25

Number of hearings after which the judgment was delivered in contravention cases



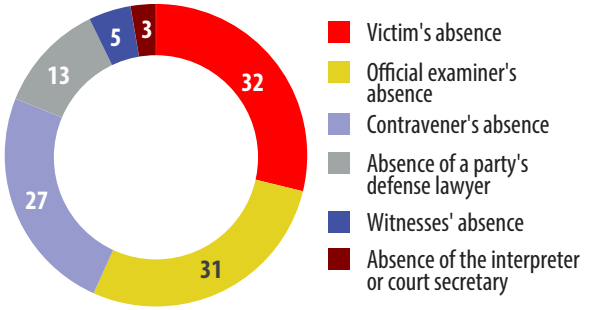
The reasons for postponing the hearing were as follows: absence of the official examiner - 31 hearings; absence of the defense lawyer of a party (victim or contravener) - 13 hearings; absence of the contravener - 27 hearings; absence of the victim - 32 hearings; absence of witnesses

232 Case of I.N. No 4-2089; Case of B.M. No 4-33383; Case of G.D. No 4-3869.
233 Case of C.Gh. No 4-4572; Case of L.C. No 4-25; Case of C.E. No 4-2312.
234 Case of B.V. No 4-15242; Case of O.S. No 4-7420.
235 Case of C.I. No 4-14949.
236 Case of C.I. No 4-14173.

- 5 hearings; absence of the translator or registrar - 3 hearings. In some cases, the hearing was postponed because several hearings were scheduled at the same time.

FIGURE 26

Reasons for postponing the hearing in contravention cases



The hearing following the preliminary hearing was often postponed for a long period of time. Thus, in some cases they were postponed for more than 2 months[237], in other cases — even more than 3 months[238]. For instance, case of C.I. No 4-14173 had been examined for more than one year in 7 hearings and finally ended with termination of the proceedings due to the elapse of the limitation period. Long examination of cases makes the parties, as a rule, request termination of proceedings or they simply refuse to come to hearings[239].

Considering the specific nature of this category of cases, all these delays endanger the efficiency of combating domestic violence and, in general, the ability to achieve the purpose of the contravention law - to efficiently provide victims with justice and promote their safety, and to prevent the commission of new contraventions. ***'... cases of domestic violence must be at the forefront. This category of cases should be examined promptly, within 1-2 weeks. Once the case is filed, the participants should be immediately summoned to court. Otherwise, the facts get forgotten, over a period of time the perpetrator no longer knows what he is held accountable for...'*** [240].

'... it is imperative that this category of files be examined as urgently as possible, because they lose their meaning in time. Both the perpetrator and the victim forget ...' [241].

The court could reserve some time for extraordinary cases and use it for domestic violence cases, thus ensuring consistency and a reasonable examination period for this specific category of cases[242]. As the judge mentioned - ***'... I do not see any other problems in the method of managing domestic violence files, besides the need to shorten the examination period because if you delay it for more than half a year you'll lose the case, and it shouldn't be like this...'*** [243].

2.6. Judgments in the contravention case. Measures of punishment

As mentioned above, 25 contravention cases were selected for monitoring. 23 cases had been monitored until resolved. On the final day of the monitoring program - 01.03.2018, two cases were still under examination, both of them having exceeded one year after the act was committed. It is the case O.S. No 4-7420, which had been examined for 350 days by 01.03.2018. The contravener did not appear at any hearings. While this case was still pending in court, a protection order was issued on 23.05.17 for the former domestic partner and their minor child for a maximum period of 90 days. The protection measures were applied because O.S. had been assaulting the victims both physically and verbally, including in public places, since 2015. Contravention proceedings were initiated against O.S. under Article 318 of the Contravention Code, for failure to comply with the requirements of the protection order dated 23.05.2017. The case registered under No 55490 had

237 Case of C.Gh. No 4-4572; Case of L.C. No 4-25; Case of J.V. No 4-4245; Case of N.V. No 4-2523; Case of C.I. 4-14949.

238 Case of C.V. No 4-34940; Case of C.I. No 4-14173; Cause of O.S. No 4-7420.

239 Case of L.C. No 4-25; Case of F.S. No 4-3090; Case of I.N. No 4-2089; Case of B.Gh. No 4-8895; Case of B.E. No 4-9374; Case of C.I. No 4-14949.

240 IIA_8_AC.

241 IIA_6_J.

242 'Judges should pay more attention to these contraventions. They pertain to acts of domestic violence that occur behind closed doors. One wants to be safe at home, not to run on the roads. A swift examination of the case would be one of the solutions to discourage domestic perpetrators...'// IIA_7_A_VF.

243 IIA_6_J.

been pending in court for over 2.5 months, and on 30.10.17 the court decided to terminate the trial because the contravention report was declared null and void and, hence, there was no contravention. Failure to apply appropriate coercive measures against the perpetrator encouraged him to commit violence with more serious consequences. This was the basis for criminal investigation for domestic violence and the case is currently pending before the court.

In addition, in case C.I. No 4-14173, which on 01.03.2018 had been under examination for 484 days, the contravener did not appear at any hearing. Contravention proceedings had been previously initiated against C.I. under Article 318 of the Contravention Code for failure to comply with the requirements of the protection order. The case had been pending in court for 2 months and it was decided on 03.10.16 to terminate the trial on the grounds that the official examiner did not appear in the trial. In these proceedings, the contravener also did not appear at any hearing. Before that, case No 4-12640, initiated under Article 318 of the Contravention Code, had also been pending in the court. On 18.11.15 the court pronounced the decision to invalidate the contravention report MAI 03. Contravention proceedings against C.I. were then terminated on the grounds of no elements of a contravention.

In resolved cases the courts ordered:

- in 4 cases, to apply the sanction of arrest, including for 15 days in two cases[244] and for 10 days in two other cases[245];

- in 11 cases, to apply the sanction of community service: in 9 cases - 40 hours (minimum number of hours provided for this violation), while in two cases - 50 hours[246]. There was no case of applying the maximum of 60 hours, which is allowed by law.

- in 8 contravention cases, the court ordered termination of proceedings, including on grounds of elapse of the limitation period (one case)[247], by declaring the contravention report null and void (4 cases)[248] due to no elements of a contravention (3 cases)[249].

One of these 8 terminated cases (e.g. Case of F.S. No 4-3090) is relevant to review in this report because it reflects the usual state of affairs in such cases. This example will provide specific details on the effectiveness of the contravention proceedings as a tool for preventing and combating domestic violence.

Thus, after the court adopted, on 29.05.17, decision to terminate proceedings due to lack of elements of a contravention in case F.S. No 4-3090, another contravention case on domestic violence was filed with the court on 15.08.17 and was registered under No 4-55874. By judgment of 14.09.17 the court ruled termination of the trial due to failure to comply with Article 443(1)(e) of the Contravention Code - the contravention report did not includ contravention classification indices.

At the same time, another case No 4-55869 regarding the same contravener was pending before the court. The case was registered on 15.08.17. On 25.01.2018 the court ruled termination of proceedings in that case, as well[250]. Being concerned more with the principles of legality and lawfulness, the court decided to release the domestic aggressor from liability and used as a reason

244 Case of G.D. No 4-3869 on the violence committed by a brother against his sister; Case of B.N. No 4-28534 on the violence committed by a father against his daughter.

245 Case of T.G. No 4-29810 on violence between former spouses; Case of L.E. No 4-4657 on the violence committed by a father against his daughter.

246 Case of J.V. No 4-4245 on violence between domestic partners; Case of B.E. No 4-9374 on violence between spouses.

247 In the case of C.I. No 4-14949, which had been examined for 378 days, the contravener did not show up at any hearing.

248 Case of R.O. No 4-496; Case of E.C. No 4-2312; Case of I.N. No 4-2089; Case of M.N. No 4-30328.

249 Case of C.V. No 4-34940; Case of B.Gh. No 4-8895; Case of F.S. No 4-3090.

250 The court judgment stated'... *As for the legality of the report, the court finds that it can establish ex-officio the grounds for absolute nullity of the procedural act, in order to ensure the adherence to the principle of legality and justice, set in Articles 5 and 7 of the Contravention Code. The contravention law stipulates that for a contravention report to be valid it shall be drafted in a certain 'ad validitatem' form, in line with all the legal requirements for the report content and form, in order to produce the legal effects for which it was drawn up. In this context, it is the official examiner who needs to comply with the legal requirements stated in Article 443 of the Contravention Code when drawing up the contravention report in the light of Article 445 of the Contravention Code. Thus, because in this case, the contravention report does not meet the requirements stated in Article 443 of the Contravention Code, in the light of Article 461, corroborated with the provisions of Articles 448, 445 and 443 of the Contravention Code, brings about its nullity. ... The court underlines that the contravention report is not signed by victim XXX, which, in the light of the above norm, leads to its invalidity. Given the above mentioned considerations, the contravention report No MAI 03 XXX of XXX, drawn up with regards to XXX for committing the contravention provided by Article 78 1 of the Contravention Code, is to be canceled with the termination of the contravention proceeding against him ...'.*

to do so the missing signature of the victim in the contravention report. Hence, the court observed the rights of the aggressor to the detriment of the rights and interests of the victim.

We think the court should have considered that Article 443(5) of the Contravention Code does not impose the obligation of the victim to sign the contravention report. In fact, the law-maker chose to use a permissive formula in this case, ending the paragraph with '*if any*'. At the same time, the court did not consider the specific nature of domestic violence and the requirements of Article 374 of the Contravention Code on the application of the contravention law in accordance with the norm and the spirit of the international law in the field. From this perspective, international standards promote the principle of the priority of victims' interests, as well as the *ex-parte* procedure (!) in case of gender-based violence, including domestic violence. Initiation or continuation of the trial on gender-based violence, including domestic violence, may not be conditioned by the victim's willingness/unwillingness to initiate or participate in the proceeding.

Such an attitude of the authorities explains why domestic perpetrator did not attend any hearings in all three contravention proceedings (he did not think it was worth losing his time in courts), preferring to continue his violent behavior against family members.

During interviews, both the victim and some professionals expressed their bewilderment with termination of contravention proceedings on the grounds of invalid contravention report - *'... **after about 40 minutes of deliberation I find out that the police officer did not write a certain paragraph in the report. Hence, the husband was not punished. I was speechless. I was abused and humiliated, in the presence of a witness and, finally, because of a mistake made by the police officer... I think the mistake is not made inadvertently, but it was well thought out, so to say...'*** [251],

'... I do not want to blame anyone, but sometimes it seems that mistakes are made intentionally in the reports so that the perpetrator are not held accountable. The victim does not have a say in such cases. For example, a case in Chisinau: the act of violence was committed on 16 August, and the report was prepared on 28 September, in more than 1.5 months [252]***. On 25 January 2018, the court decided to terminate the contravention proceedings by declaring the invalidity of the contravention report, drawn up in violation of the legal requirements ...'*** [253].

Other cases also led to a decision to terminate contravention proceedings due to invalidation of the contravention report. These cases had all been under examination long periods of time - 4-5 months. One case has been pending for 11 months. We consider that the assessment of the quality of casefile materials and the adoption of a judgment resulting from the legal errors may be conducted within a reasonable timeframe.

Applying punishments proportionate to the act is an important factor for an effective prevention and combating of domestic violence. In this regard, the European Court of Human Rights, in its jurisprudence on cases against Moldova concerning domestic violence, drew attention to the need to ensure there is a swift and serious state response to violence against women.[254].

Monitoring of contravention proceedings revealed several cases when the lightest possible form of punishment was applied — the minimum hours of community service. These sanctions are clearly inadequate, particularly in cases where the contravener exhibited repeated violent behavior. Monitors determined that while the courts were examining contravention cases or had already pronounced the judgments on the case, perpetrators continued their violent behavior. The following cases confirm these statements. Case R.A. No 4-28490 - the acts of violence against the victim led her to request on 14.03.17 a protection order. On 04.04.17, when the case was in the court, the protection order was extended. However, on 13.09.17 the court applied in the contravention procedure the minimum punishment provided by law – 40 hours of community service.

251 IIA_4_VVF.

252 The medical forensic expert mentioned in the interview that "the forensic medical expertise is performed within 7-10 days depending on the workload of the forensic medical subdivisions…"

253 IIA_7_A_VF.

254 Case of Mudric V. Republic of Moldova; Case of B v. Republic of Moldova, etc..

Case N.V. No 4-2523 - while the case was in the court under the contravention procedure, on 08.06.17 a protection order for the wife and the child was issued. The aggressor intentionally displayed violent behavior notwithstanding the contravention proceeding. Moreover, the aggressor's violent behavior increased (he used the iron). The court applied minimum sanction – 40 hours of community service.

Case P.T. No 4-2147 was returned for reexamination. Prior to that, on 26.01.2017 the contravener was sanctioned with 7 days of contravention arrest, after which, on 25.05.2017, he was applied 40 hours of community service.

During one interview, the judge stated that - ***'... working hours are very beneficial, this is a proper punishment for such contraventions. ... but arrest is definitely not a good measure on contravention cases. It is not good for such contraveners to stay together with other defendants. Maybe special pre-trial detention facilities are needed. I believe that unpaid community work is enough, but not detention ...'*** [255].

This point of view was not shared by the interviewed defense lawyer, ***'the bad part is that the sanction is too mild in the contravention proceedings ... we often hear reproaches from victims: we walked so many paths, and if the trial is not terminated in the first place, he is punished in more than half a year in the best scenario, when he had already forgotten why the punishment was applied, not to mention the type of punishment ... I am tired and I do not want anything anymore, if so, next time I do not see the point of complaining, because he is always around and I only make my situation worse...'*** [256].

We may thus conclude that the state authorities are not ready to react with measures appropriate to each individual case and the penalties are not proportionate to the severity of violent acts. The modest sanctions do not discourage perpetrators from committing domestic violence, but rather discourage the victims from reporting violence and seeking justice and safety from the state.

The national legislative framework, especially after adopting the amendments to improve the mechanism for preventing and combating domestic violence, places a special emphasis on the need to force the contravener to participate in probation programs[257].

Monitors did not identify any case of providing counseling measures to the contravener. Only one case was mentioned[258], when the prosecutor requested the punishment of 60 hours of community service with the obligation to participate in a probation program for domestic perpetrators and undergo a rehabilitation course. The court ordered that the perpetrator be arrested without any counseling measures for the contravener.

Similar to criminal cases, in many contravention cases the courts adopt judgments deviating from the requirements of the Regulation on the manner of publishing judgments on the national portal of courts of law and on the website of the Supreme Court of Justice, when depersonalizing the information. In many cases, judgments did not include the names and other data about the parties, as well as the names of participants (official examiner, defense lawyer, translator, registrar), the number or date of the contravention report, circumstances of the case, evidences. Some judgments did not contain even the date of the hearings, or even the date of the legislative act to which references were made, etc.

In these situations, publishing court judgment does not add value as a source of information for the public and, respectively, as a tool for preventing contraventions. The established practice does not promote a favorable environment for free access of litigants to information on the results of judicial activity and, as a result, affects seriously the level of judiciary transparency on such categories of cases.

255 IIA_6_J.
256 IIA_7_A_VF.
257 Contravention Code, Article 41.
258 Case of B.N. No 4-28534.

Conclusions to the chapter

- The materials of the contravention procedure usually reflect isolated instances of violence against an adult victim. The recurrent instances of violence, including the previously unreported ones, the circumstances of applying violence against a number of family members, including against children stay outside of the investigation process.

- Only 16% of the cases were examined in the courtroom, the other were held in the judges' offices, often with too little space lacking necessary furniture and causing inconvenience to the participants in the trial.

- Regulatory norms on the audio recording of court hearings refer to the provisions of the contravention law on the recording of court hearings in contravention cases, but the Contravention Code lacks provisions on digital audio recording of court hearings.

- Monitors mentioned certain difficulties in providing an interpreter to the perpetrator. The lack of an available interpreter led to the recurrent postponement of the contravention hearing, the resolution of the case being delayed by over 4 months. Sometimes, this was the cause of delayed start of the hearings. These circumstances confirm that sometimes it's difficult for judges to provide an interpreter at the hearing.

- Monitors noticed frequent absence, especially at the first hearing, of the participants in the trial on contravention cases, which is due in many cases to the practice of summoning by telephone. The court has to order the absent participants to be summoned again.

- About 50% of the monitored cases were examined in the absence of the official examiners. Under the conditions of the permanent absence of the official examiners from the hearings and no legal assistance by a defense lawyer, the victim of domestic violence has to prove the guilt of domestic abuser.

- Monitors mentioned a number of shortcomings in providing the victims with the right to seek and get state-guaranteed legal aid in contravention cases. As a result, only in 12% of cases, the victim was assisted by a private defense lawyer in the trial. There was no case where the victim of domestic violence benefited from state-guaranteed legal aid in the hearing, although the legislation provides for such an opportunity. Victims of domestic violence to state-guaranteed legal aid in contravention cases is that they are informed about the rights and obligations provided for in art. 387 of the Contravention Code. However, this norm indicates only the right of the victims to be assisted at the contravention trial by a private defense lawyer. Therefore, in practice, victims are unaware of the opportunities provided by Law No. 198, and judges are unwilling to inform them about it although art. 456 paragraph (2), letter (h) of the Contravention Code allows the court to do so.

- Perpetrators received legal aid in about 52% of cases. In 61% of cases they benefited from qualified state-guaranteed legal aid. Monitors observed a non-uniform practice of providing state-guaranteed legal assistance to the perpetrator. In similar situations, some perpetrators benefited from free state-guaranteed legal aid at the trial, while no defense lawyer was provided to others. This situation is determined by certain ambiguities in the legislation. Thus, art. 20, letter b) of the Law No. 198 stipulates that persons suspected of committing a contravention for which the sanction of contravention arrest is prescribed shall be granted qualified legal aid regardless of their income level. At the same time, neither article 26 nor other provisions of Law No. 198 or the norms of the contravention law establish the way the free state-guaranteed legal aid is to be provided to a perpetrator who has not been apprehended under a contravention procedure.

- There was no case of apprehended perpetrators. This disadvantages the victim who, being deprived of the possibility of refuge, remains with the violent aggressor after the official examiner leaves. The official examiner must urgently provide a defense lawyer to the apprehended aggressor. He/she frequently does not do so as it implies certain inconveniences, including the obligation to release the aggressor after 3 hours of apprehension if there is no investigative judge's authorization, especially when domestic violence occurs at night and outside the investigative judge's working hours. The applicable contravention legal framework does not take

into consideration the specific nature of domestic violence, the special status of the subjects of the contravention, placing the perpetrator in a privileged position as compared to the victim of domestic violence.

- Monitors found that, despite the time-limit of 30 days set in the law for judging a case and in exceptional cases, the maximum of 45 days allowed, only 12% of cases were examined within the legal timeframe. In some cases, the court set hearings even exceeding the one-year limitation period. In 32% of cases, the deferral of the hearing exceeded 2-3 months. The organizational shortcomings noted during the monitoring, including setting the first hearing with a long delay, multiple postponements and long periods of time between the hearings, acquire a special significance due to the specific nature of domestic violence and, in fact, compromise the efficiency of the contravention procedure in such cases.

- Impunity is frequent in domestic violence contravention cases. Only in 16% of resolved cases examined, contravention arrest was applied. 44% of cases ended up with application of community service, setting, as a rule, a minimum number of hours and in 40% of cases proceedings were terminated. The monitoring of contravention hearings revealed several cases when the lightest form of punishment of those provided for by the law was applied - community service, especially considering the perpetrator's ongoing violent behavior. The state authorities are not prepared to react with measures able to deter aggressors from committing domestic violence, which in its turn discourages victims from reporting cases of violence.

- Monitors have not observed any cases in which the court ordered counseling measures for the perpetrator, although the legal framework on preventing and combating domestic violence, especially following the recent amendments, emphasizes the need to oblige the offender to participate in probation programs. There was only one case when it was requested the perpetrator to participate in a probation program for domestic abusers and in an alcohol rehabilitation course after serving the sentence, but the court did not make any deliberation on this matter.

- In some of the published court judgments, not only the data on the parties were depersonalized, but also the names of the participants (official examiner, defense lawyer, translator, court secretary), the number or the date of the contravention report, the circumstances of the case, the evidence. Sometimes even the date of the hearings on the case or the date of the adoption of the legislative act it referred to was depersonalized. The established practice seriously affects the level of transparency of the judiciary's decision-making.

- The outcome of the domestic violence contravention cases monitoring revealed operational deficiencies which resulted in extremely poor performance in preventing and combating domestic violence. The legislators' expectations that the contravention measures, applied quickly and efficiently, will deter domestic abusers from committing violence and ensure safe living conditions for potential victims were not met.

CHAPTER III.
Monitoring of proceedings in civil cases on seeking protective measures of a victim of domestic violence

In domestic violence cases, victims' safety must be the primary objective of state intervention, including through the judiciary system. To achieve this, the judiciary must uniformly condemn violence with consistent punitive measure towards perpetrators for past acts of violence and be able to identify dangerous offenders so that future violence is also prevented.

ECtHR case-law referring to the Republic of Moldova (decisions adopted during 2012-2014) highlighted functional deficiencies compromising proper response to domestic violence at the national level, focusing on firm practical measures. For instance, in the judgment on case *T.M. and C.M. vs the Republic of Moldova*, issued in 2014, the Court found that after the protection order was sought, it took several days until the court examined the application, despite the 24-hour timeframe set by the law. In addition, the order was then not sent immediately for execution, exposing thus the applicants to an additional risk of maltreatment.

The relevant case-law of the European Court of Human Rights, based on the international treaties on gender violence against women, points to the understanding that prevention and response to violence is important not only for the efforts of sanctioning violent behavior of the perpetrator, but also, perhaps even primarily, for ensuring the application of protective measures for the victim to eliminate the risk of violence by the perpetrator.

Because the civil order for protection has generally proven to be one of the most effective remedies in domestic violence cases around the world, monitoring of these cases was an essential component of this initiative.

Twenty-five civil cases registered and examined in the five offices of the Chisinau Court during 15 May - 01 August 2017 were monitored. The cases subjected to monitoring were randomly selected from those communicated at the request of the National Project Coordinator by the records keeping and procedural documentation divisions of the offices of Chisinau Court (mostly) and, in a smaller number, directly selected from the schedule of court hearings, published on the national courts portal[259].

At the same time, to have a more complete picture of the problem addressed, after analyzing the data obtained as a result of the monitoring, three individual interviews were conducted with domestic violence victims[260] (involved in civil cases) and two in-depth individual interviews with the representatives of the records keeping and procedural documentation divisions of the courts, including a registrar[261] and a court secretary[262] who had recently attended the examination of many applications related to domestic violence cases. The in-depth individual interviews, which were conducted during 1-20 November 2017, aimed at revealing some issues that could not be noticed during the monitoring of the court hearings. Victims of domestic violence were randomly selected from the beneficiaries of public organizations providing such services[263]. Representatives

259 https://jc.instante.justice.md/ro/agenda-sedintelor.

260 Conventionally marked IIA_1_VVF; IIA_2_VVF;IIA_3_VVF.

261 IIA_1_DD.

262 IIA_3_G.

263 A victim and her child were beneficiaries of the Center for Assistance and Protection of Victims and Potential Victims of Human Trafficking in Chisinau, but assisted in the court by a lawyer from the International Center for Protection and Promotion of Women's Rights "La Strada" (IIA_1_VVF), another victim - beneficiary of the International Center for Protection and Promotion of Women's Rights "La Strada" (IIA_2_VVF) and the third victim - beneficiary of Promo-Lex Association (IIA_3_VVF).

of records keeping and procedural documentation divisions of some courts were also selected randomly[264].

3.1. Overview of the regulatory framework on the protection order

Before the adoption of the Law No. 45, a victim of domestic violence had to find a refuge outside the home to be inaccessible to the perpetrator. Only in extremely serious cases of violence with severe injuries and consequences the perpetrator could be apprehended and placed into state custody, while the family home remained at the disposal of the victim and other family members.

By the Law No. 45, the state recognized that domestic violence was a serious social problem, which required active involvement of the authorities to protect victims' rights to life free of domestic violence. The said law identifies five forms of domestic violence, including physical, psychological, sexual, economic, and spiritual violence, and lays down the possibility of applying protective measures for the victim subjected to any of these forms of violence[265].

According to the spirit of law, the application of protective measures is not a procedure of solving the case of domestic violence. The purpose and importance of the protection order consists in ensuring that the victim is protected as a matter of emergency, preventing the risk of immediate danger[266] for the victim's life and health, including repeated acts of violence against the victim and/or other family members, prevention of destruction of the victim's property, and the common property of the family.

Law No 167 of 09.07.2010 amending and supplementing some legislative acts[267] set up a practical platform for the implementation of the mechanism for victims' protection, provided for in Law No 45, including by developing the regulatory framework for the application of the protection order in the criminal [268] and civil proceedings[269].

The application for a protection order shall include the circumstances of the act of violence, the intensity, length, consequences and other circumstances pointing out to the need for protective measures[270].

The court shall resolve the case in accordance with the law within 24 hours after receipt of the application[271]. The court ruling on the admission or rejection of the application for protective measures may be appealed by the trial participants within 15 days after the resolution. The appeal shall be examined within three months by a panel of three judges, on the basis of the file and materials attached to the appeal, without examining the admissibility and without the participation of parties. Appealing the resolution on the application of the protection order shall not suspend the enforcement of the measures applied[272].

The enforcement of protective measures for the victim of domestic violence shall be supervised by the police[273]. Refusal or evasion of the perpetrator from the

264 Representatives of Chisinau Court, Botanica and Ciocana offices.

265 Law No 45: *Domestic violence* – any acts of physical, sexual, psychological, spiritual or economic violence, except actions taken in self-defense or in defense of another person, including threatening with such acts committed by a family member against another member of the same family, through which material or moral damage was caused to the victim (Article 2); *protection order* – a legal act, by which the court applies protective measures to a victim (Article 2); *application of protective measures* does not prevent the initiation of divorce procedures, division of common property, termination of parental rights, taking a child out of the family without termination of parental rights and other actions provided by the law in force (Article 15); *when acts of domestic violence* contain constitutive elements of an offence, the liability shall be incurred under the law, *irrespective of establishment of protective measures* (Article 17).

266 The term '*immediate danger*', within the meaning of the Action Group of the European Council on Combating Violence against Women, including Domestic Violence, stated in the Final Activity Report (EG-TFV (2008)6, https://www.coe.int/t/dg2/equality/.../Source/Final_Activity_Report)relates to any situations of domestic violence, in which the danger is imminent or has already occurred and *it is possible to reappear*.

267 Official Gazette No 155-158 of 03.09.2010.

268 Article 215^1 of the Criminal Procedure Codes of the Republic of Moldova No 122-XV of 14 March 2003 //re-published in the Official Gazette, 2013 No 248–251, Article 699.

269 Civil procedure Code of the Republic of Moldova No. 225-XV of 30 May 2003// Republished in Official Gazette. 2-13, No. 130-134, art. 415//By Law No. 17 of 05.04.2018 the Civil Procedure Code was mended. Since 01.06.2018 the procedure of applying protection measures in cases of domestic violence is regulated by art. 278^3-278^9 CPC.

270 Ibidem, Article 318^2.

271 Ibidem, Article 318^4.

272 The Civil Procedure Code, Articles 318^6, 423-426.

273 Article 15^2 of the Law No 45, paragraphs 146-161 of the Methodical Instruction on Internal Affairs Bodies' intervention in Preventing and Combating Cases of Domestic Violence approved by the Order No 134 of 15.03.2017 of the General Police Inspectorate.

execution of the requirements of the protection order shall entail liability according to the law.

On 28 July 2016, the Parliament of the Republic of Moldova adopted Law No 196 amending and supplementing some legislative acts in the field of preventing and combating domestic violence[274], enforced since 16.09.2016, which, among others, lays down harsher criminal sanctions for violation of the protection order[275].

3.2. Registration of an application for protection order

Monitoring of twenty-five civil cases requesting protective measures for victims of domestic violence revealed that twenty-three applications were filed directly by the petitioners-victims, and two applications were filed by the police authorities on behalf of the victims. This situation is confirmed also by the representatives of the records keeping and procedural documentation divisons of the courts. '***The victims address most often with applications for issuing the protection order, sometimes they come together with the defense lawyer or the representative of the Police Inspectorate. Less often, the applications are filed by the police representatives or defense lawyers. We have recently had a case. The victim came, she was beaten, with the broken arm, all in blood...***'[276].

However, the in-depth individual interviews with domestic violence victims[277] reveal the need for more active awareness raising activities to inform victims about the protection measures and services available. Many domestic violence victims do not know about the protection order, although they have been subjected to violence for several years (one of the three interviewed victims have been subjected to domestic violence for 16 years). They need assistance to act - '***victims do not have power and strength of character to go to police***[278]'.

Many victims found out about the possibility of requesting the protection order only when they when to police. '***The police officer told me. He wanted to issue an emergency restraining order***[279]'. The victims are usually directed to organizations helping this category of people, and they are often assisted by the defense lawyers of such organizations to write an application for protection measures, as many of them do not even know the term 'protection order'.

Other victims look for information on the Internet and identify organizations which provide services to domestic violence victims, from which they find out the necessary information. '***We look for information on domestic violence on the Internet because we are in a complicated situation. I found the telephone number from 'Casa Marioarei', took my courage in both hands and called. I explained briefly the situation to them and they invited me to come and discuss... They told me that when I decided to act, they would provide me with accommodation and legal aid...***'[280]

Monitors did not learn of any case where the application was filed by the social assistance body or the guardianship authority on behalf of the victims. One of the domestic violence victims stated in the interview that she had to run away from the common dwelling to escape physical violence, and the child aged 2,8 years remained with the perpetrator. The victim asked for assistance from the territorial social assistance and family protection unit. The representative of this institution told her that they could not help and advised her - '***Stoop your head... Forgive him... Go to the church from time to time...***'[281].

Twenty-three applications were submitted to the court located in the area of victim's domicile, one application – to the court in the perpetrator's domicile

274 Official Gazette No 306-313 of 16.09.2016, Article 661.

275 Article 320[1]. Nonfulfillment of the measures stated in the protection order of a domestic violence victim. Deliberate nonfulfillment or evasion from fulfillment of the measures established by the court in the protection order for a victim of domestic violence shall be punished by unpaid community service from 160 to 200 hours or by detention up to 3 years..

276 IIA_1_DD.

277 Two victims are from Chisinau municipality, and one from an administrative-territorial unit from Southern Region of the Republic of Moldova.

278 IIA_2_VVF.

279 IIA_2_VVF.

280 IIA_3_VVF.

281 IIA_1_VVF.

area, and one application - to the court of the victim's residence.

The representatives of the records keeping and procedural documentation division indicated that when registering the application for protection order, the date and time of filing thereof were stated below, without specifying the subsequent procedure for its examination. "***The application is immediately registered, the registrar knows that such cases shall be examined within 24 hours***[282]". However, monitors could establish the time of filing the application for a protection order only in seven cases, from the statements of the trial participants in the court hearings. In the other cases it was not possible to establish it. This situation reveals lack of a control mechanism outside the system[283] over the time of receipt of the application. This is important as according to the provisions of the application shall be resolved within 24 hours from time filed.

According to the information found during the court hearings and studied on the national courts' portal, most cases were examined on the day of registration or on the day following the registration.

Monitors found also cases where the court adopted the solution before the application was properly registered. Thus, in Case G.T. vs G.O., the application was registered in the ICMS on 26.05.2017, after it was examined by the court and the ruling was issued on 25.05.2017. In other cases, the application was registered on the day of examination, which took place two days after the date when the application was filed[284]. In one of the cases[285] the petitioner told the monitor that she originally came to the court on Friday, 12 May 2017, and filed the application for protection order, but the staff of the court division for records keeping and procedural documentation refused to accept it, arguing that it was filled-in incorrectly (the application was handwritten). She had to come to file the application on Monday, 15 May, but the application was examined on 17 May 2017. On the day when the application was filed with the court, the victim had to seek assistance of the police, which issued an emergency restraining order on the same day of 15 May 2017.

Representatives of the records keeping and procedural documentation divisions of the courts stated in the interview that when registering the application for a protection order, the form of the application filed by the victim of domestic violence does not matter, whether it is handwritten or typed, '***even if it is written on a small sheet, we are obliged to accept the application***[286]***'; 'we had applications both on ordinary and yellower paper, even on red paper***[287]'. However, the interviewed court secretary stressed the need for the application to be written legibly '***I see different applications, there are applications written illegibly***[288]'.

The findings point to the lack of a single practice of receipt of applications for a protection order. These inconsistencies are based not only on the human factor, but they can also be caused by some uncertain regulations in the departmental regulatory acts[289].

It should be noted that in order to improve the court activity, Instruction No 142 regulating the internal procedure of receiving and record keeping of judicial

282 IIA_1_DD.

283 A telephone call was received from one of the Chisinau Court offices at about 4:45 pm regarding the receipt of an application seeking PO and assignment of the case to the judge S.V. The court secretary was immediately called to find out the time of hearing and ensure that the case is monitored. Nobody answered the repeated telephone calls that day, as it was the end of the working day. Next morning, at 8:30 am, the court secretary communicated that the application was received by the judge in the morning of the previous day and the court examined it the same day late in the afternoon.

284 In the case G.A. vs A.A., the application was filed on 15.05.2017, but it was registered on 17.05.2017.

285 Case G.A. vs A.A..

286 IIA_1_DD.

287 IIA_3_G.

288 Ibidem.

289 It should be noted that according to the provisions of Instruction No 142, the applications filed with the court shall be recorded in ICMS within 24 hours from the date of receipt by the person responsible for registration. The nonworking days are excluded from the 24-hour time limit. The applications are also recorded manually on the same day (Paragraphs 42, 43 of the Instruction) in the Single Register of Incoming Correspondence (Annex 1 to the Instruction) and in the Record Sheet (Annex 6 to the Instruction). The cases heard according to the ordinance procedure, including the cases provided in Chapter XXX[1] CPC ('Applying protective measures in domestic violence cases') are recorded under the index - 2p/o (Paragraph 55 of the Instruction). Each case recorded in the ICMS is automatically assigned a number consisting of the court's identifier, the appropriate index, the serial number generated following the recordation of the files, the date, month and year of receipt of the file (Paragraph 59 of the Instruction). Once a case is recorded in ICMS, it is assigned to the judge according to Article 168 of the Civil Procedure Code (Paragraph 65 of the Instruction). Upon receipt of the file, based on the judge's resolution, the court secretary records the date of court hearing in the ICMS, specifying the date, type, hall of trial of the case (Paragraph 72 of the Instruction).

files, provides for the same requirements for registering all categories of civil cases[290].

Due to the specific nature of the applications for protective measures in cases of domestic violence and considering the legal term limited to 24 hours from receipt of the application for examination and adoption of the resolution, Instruction No 142 should include separate rules (with annexes) on the registration of the applications for a protection order for the victim of domestic violence. These rules should contain clear provisions on the form of application filed by the victim of domestic violence (which may be handwritten), the time of receipt of the application, the immediate transmission by random assignment to the judge, the time of adopting the solution of the case, etc.

Another problem resulting from the above relates to the transparency of the judicial system and the access of the parties to the information about the examination of the case in the court. The requirement to publicly display the date and time of the court hearings is expressly laid down in Article 193 of the Civil Procedure Code[291] and other aforementioned norms. The above sources of access to the information on the court activity are an important means of communication between citizens and courts. The Instruction No 142 stipulates that the court secretary is responsible for displaying the information on cases set for hearing at least 3 days prior to the set date of court hearing (Paragraphs 86, 97 of the Instruction).

Publication of information about court hearings on applications for a protection order is relevant as a key factor to encourage other victims and potential victims to seek protection in the manner prescribed by law. Thus, transparency of justice can play a crucial role in educating the public.

Monitors found that in six cases the information on the time and venue of the case examination was publicly displayed before the beginning of the hearing, including in three cases the information was displayed on the electronic board/national portal of the courts[292] and in 3 cases on the information board inside the court building[293]. In one case, the information was displayed on the information board 2 hours before the hearing[294]. In other fifteen cases, the information was published on the portal of the national courts only during the days following the adoption of the resolution, and in four cases[295], which were subjected to monitoring, there was no information at all on the courts' website about their examination. When examining an application for a protection order[296] the judge stated that due to the fact that the application was examined as a matter of urgency, they failed to publish the information on the time and venue of hearing until the hearing of the case, while the participants were summoned.

Monitors found that the schedule of court hearings on the portal of the national courts, with few exceptions, did not contain information about the hearings on the applications for issuing the protection orders in advance of those hearings. The information on these cases usually appears on the website the next day after the hearing, at the earliest; in many cases it appears much later or it does not appear at all.

Given the specificity and limited timeframe for the examination of the applications for protection orders, it is necessary to provide for a priority registration regime and to publish the information about the time of examination of the case before the hearing. The post factum

290 Under the current conditions, the application for a protection order for the victim of domestic violence can reach the judge within 96 hours (4 days) and it will not be deemed that any provisions of the Instruction have been violated. Thus, according to Paragraph 42 of the Instruction, the applications filed with the court of law shall be recorded in ICMS within 24 hours *of receipt,* and *the working days* (i.e. other 48 hours) *shall be excluded* from calculating the 24-hour term. Further, according to Paragraph 65 of the Instruction, upon registration in ICMS, the case shall be assigned to the judge according to Article 168 of the Civil Procedure Code, which lays down that the summons filed with the court *shall be assigned, within 24 hours,* to the judge through ICMS. Thus, according to current provisions of the Instruction the application may get to the judge in strict compliance with the established procedure, within 24-96 hours. The judge has a 24-hour term set by the law to pronounce the resolution on the case.

291 Article 193 CPC. Court hearing. (1) The civil cases shall be examined during the court hearing by compulsorily notifying the trial participants about the venue, date and time of the hearing. (2) The chair of hearing shall order that the schedule of trials be displayed in a public place inside the court building, at least 3 days before the date of court hearing, indicating the file number, the name of the judge(s) examining the case, the date, time and venue of hearing, names of parties, the subject matter of the civil case, procedural stage, and other data on the publicity of the court hearing.

292 Case D.A. vs Z.M.; Case S.O. vs D.N.; Case G.S. vs G.M..

293 Case G.A. vs G.V.; Romanov V vs Romanov V.; Case C.L. vs C.V..

294 Case D.M. vs D.A., examined during the hearing of 28.07.2017.

295 Case D.A. vs Z.M., examined during the hearing of 16.05.2017; Case U.E. vs U.A., examined during the hearing of 19.05.2017; Case S.O. vs S.A., examined during the hearing of 24.07.2017; Case T.A. vs M.I., examined during the hearing of 01.08.2017.

296 Case G.A. vs A.A., which was examined on 17.05.2017.

inclusion of these cases in the schedule of hearings on the portal of the national courts, for which human effort and financial resources are used, is practically unnecessary for the trial participants, and for the public as well.

Monitors also noted that there was no information displayed in the courts that would instruct victims on how to apply for a civil order for protection. The fact that the victims of domestic violence do not always know how to prepare and file an application for protection measures with the court was also mentioned in the interviews by the representatives of the records keeping and procedural documentation divisions of the courts. In their opinions, the victims need assistance since '***they do not know how to write, they need to apply to a defense lawyer, but this takes time and implies costs***[297]'. In addition, the administrative staff of the courts should show understanding and patiently treat the victims when receiving the applications.

3.3. Forms of violence specified in the applications for protection order

As mentioned above, Law No 45 lays down five forms of domestic violence, including physical, psychological, sexual, economic and spiritual violence. The victim subjected to any of these forms of violence is entitled to request protective measures, under the law.

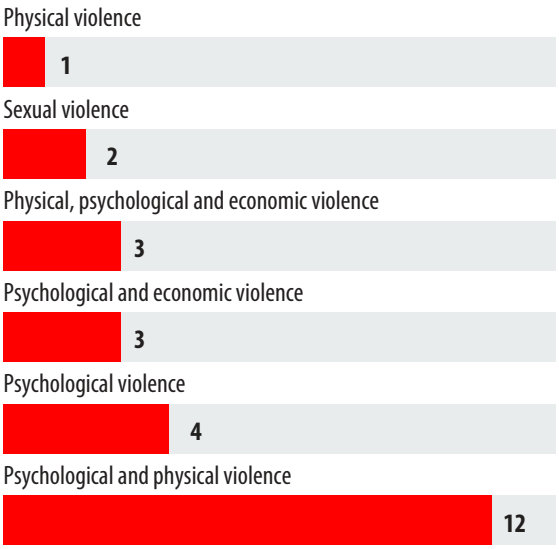
Civil cases subjected to monitoring, identified four forms of violence. No case of requesting protective measures against spiritual violence was identified.

Out of the total number of cases subjected to monitoring:

- one case related only to physical violence [298] against wife;
- two cases related to sexual violence[299] against wife. In one of these cases, sexual violence was accompanied by physical and psychological violence against the wife and two minor children;
- twelve monitored cases revealed physical and psychological violence[300];
- three cases requesting protection order referred to simultaneous physical, psychological and economic violence[301];
- four cases were initiated to obtain a protection order exclusively for psychological violence[302];
- in three cases psychological and economic violence were involved[303].

FIGURE 27

Forms of violence invoked in the application for protection orders



297 IIA_1_DD.

298 Case P.V. vs P.I..

299 Case S.O. vs S.A.; Case C.L. vs C.V..

300 Case D.A. vs Z.M.; Case: L.L. vs T.M.; Case: D.M. vs D.A.; Case: T.A. vs M.I.; Case: C.R. vs C.T.; Case: R.V. vs R.V.; Case: C.E. vs R.I.; Case: C.E. vs R.I.; Case G.A. vs A.A.; Case: T.V. vs T.I.; Case: I.A. vs I.I. Out of them, nine applications were fully admitted, while in 3 cases the applications were partially admitted – a shorter term for application of protective measures than the requested one was established, or the request was rejected for some protective measure.

301 Case G.T. vs G.O.; Case P.E. vs L.V.; Case G.S. vs G.M. In all these cases the court fully admitted the applications of petitioners.

302 Case D.V. vs D.V.; Case U.E. vs U.A.; Case M.I. vs C.M.; Case B.R. and B.S. vs B.E. In a case the application was admitted, in another case the application was partially admitted - the request for some protective measures was rejected. In the other 2 cases the court rejected the applications, in a case for lack of evidence, and in another case for lack of violence.

303 Case G.A. vs G.V.; Case A.S. vs C.V.; Case S.O. vs D.N. In a case the application was rejected. In another case the application was fully admitted by the court of first instance, but the Court of Appeals reduced the term for applying the protective measures; in the other case the court of first instance applied protective measures for a shorter term than requested.

In almost all cases, with few exceptions, psychological violence was identified in the application for protective measures either alone or with other forms of violence.

Monitors noted that judicial practice revealed a different assessment of the social danger of the five forms of domestic violence. Some judges were hesitant to accept that psychological and economic violence could cause serious harm and profoundly affect the security, wellbeing and health of the persons close to him/her. As the interviewed victims stated - '... *being next to him is an ordeal, a great fear*[304]', while they invoked also the need to provide psychological counseling to the victims of domestic violence - '***the victims (of any forms of violence) do not have the power and strength of character to go to the police***[305]'.

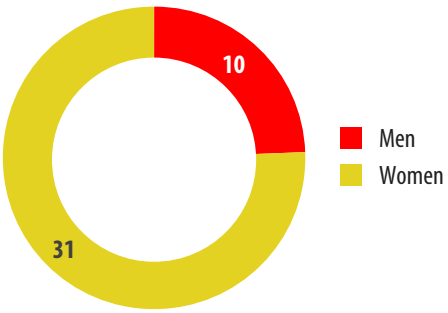
It is appropriate to refer to Resolution 1852(2011) on psychological violence adopted by the Parliamentary Assembly of the Council of Europe on 25 November 2011[306], where the Council states that psychological violence seriously affects the victim by verbal abuse, threats, harassment, isolating or discouraging her or him from participating in independent activities, and places the victim in a position of subjugation. The Parliamentary Assembly recognizes psychological violence as a serious form of violence that it is necessary to combat effectively, not only because it leaves deep and lasting scars on the victims, but also because, unless it is stopped, it often escalates into physical and sexual violence.

3.4. Profile of the victim in civil cases

Monitors analyzed the profile of victims in twenty-five civil cases seeking protective measures. It was found that in twenty-four cases the victim-petitioners were women, and in one case both parents were victims (woman and man). So, in all the monitored twenty-five cases, there were twenty-five women and a man. Furthermore, in fourteen cases, minor children were victims - six girls and nine boys. Hence, in the monitored civil cases for requesting protective measures thirty-one victims of domestic violence were women and ten – were men, including nine juveniles.

FIGURE 28

Gender profile of domestic violence victims in civil cases



From the perspective of age, monitors found that the age range of persons with the status of victims of domestic violence was very broad. Thus, besides the children victims aged 2-15, monitors identified one victim aged 25, two victims aged 25-30, eight victims aged 30-40, five victims aged 40-50, two victims aged 50-60, three victims aged 60-75, two victims aged over 75. In three other cases, the victims did not appear at the hearing, being assisted by their representatives, and the victim's age was not mentioned during the examination of the case. The largest number of victims in the monitored cases were 30-40 years old, followed by those aged 40-50. In fact, the three interviewed victims were also aged 32-39 years.

It is particularly serious that in fourteen civil cases seeking a protection order for the victim of domestic violence, fifteen children under the age of 15, most of them boys, appear as victims; and three interviewed victims mentioned their five children, all of them being **potential** individuals who will perpetuate violence in their families in the future.

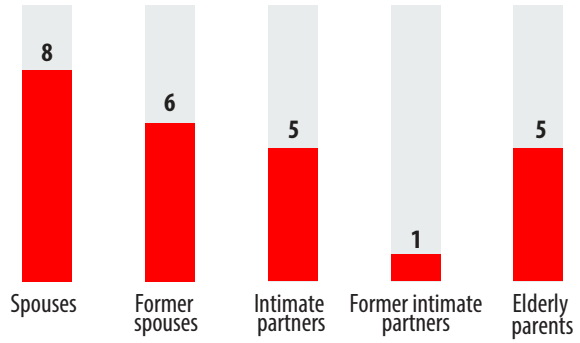
Monitors found that the status of a victim of domestic violence was not directly related to his/her marital status in relation to the perpetrator. In eight cases, the victim was subjected to violence by the husband,

304 IIA_2_VVF.
305 Ibidem.
306 http://assembly.coe.int.

in six cases, domestic violence occurred between former spouses, five cases of domestic violence occurred between cohabiting partners and one case between former cohabiting partners, and five cases related to violence committed against elderly parents. With regard to juvenile victims, in thirteen cases violence was committed by the biological parent and in two cases by the adoptive parent. Almost the same correlation can be seen in the case of the interviewed victims. Thus, in two cases, violence occurred between spouses, which was witnessed by their children, and the applications for protective measures were followed by applications for dissolution of marriage. The third case related to violence between the cohabiting partners.

FIGURE 29

Relationship of victims with aggressors in civil cases



Domestic violence is most often a manifestation of abuse of power for the purpose of imposing will or control over the family members who have less power or resources. In the monitored cases, ten victims were employed, five victims were unemployed, four victims were retired, and in relation to six victims it was not possible to determine their occupation or sources of income. Thus, in the monitored cases, more victims were employed. Monitors could not determine related personal income level.

Usually, the lack of a job or the low level of income of women makes them extremely vulnerable to the perpetrators. This deters women from seeking help and protection. As one of the interviewed victims said '*he provides for the family, and if you remain without that help, you are lost*[307]'. The children usually remain in the victims' custody, and the burden of bringing up the children lies on them. In most cases, the perpetrator avoids fulfilling the obligations towards the children. This situation can also be observed during the implementation of the protective measures. When the perpetrator is not obliged to contribute to the maintenance of children, as a protective measure applied, the victim and the family suffer. This is one way the perpetrator retaliates against the victim for daring to seek help of the state authorities.

3.5. Profile of the perpetrator in civil cases

In the decision adopted in 2014 in the case *T.M. and C.M. vs Republic of Moldova*, the European Court of Human Rights noted that the authorities' failure to take effective measures against the perpetrator reflect a gender-based discriminatory attitude towards the victim.

Monitors analyzed the profile of the perpetrator in the monitored civil cases and found that in all twenty-five cases where victims sought protective measures, the perpetrators were men. Violent actions of the perpetrators were mostly directed at women, although in a smaller number of cases, violence was also committed against men - ascendants or descendants.

Monitoring revealed that the age of domestic violence perpetrators is quite varied, as in the case of victims of domestic violence. Monitors mentioned about one perpetrator aged 25, two persons aged 25-30, eleven - aged 30-40, ten - aged 40-50, one perpetrator aged 50-60. Thus, most family perpetrators (sixteen persons) were aged 30-45 years.

Monitors reported that seven domestic violence perpetrators were employed, one perpetrator was self-employed, six perpetrators were unemployed, one perpetrator had a severe disability, and in relation to ten domestic violence perpetrators it was not possible to

307 IIA_2_VVF.

find their occupation or sources of income. Monitors found that during the examination of applications for a protection order, both victims and official examiners (police officers) stated that ten domestic violence perpetrators abuse alcohol/use drugs and identified this as being one of the main causes of violent behavior.

Although the Law No 45 and the Civil Procedure Code of the Republic of Moldova lay down, as protective measures, the obligation of the perpetrator to participate in a special treatment program to reduce violent behavior, no case of applying this protective measure was identified. Likewise, no case was found where authorities explained to the victim the legal procedure for referring the abuser to medical examination in the narcological commission and subsequently of obliging the perpetrator addicted to alcohol, drugs and other psychotropic substances to undergo treatment.

Monitors reported that in twenty out of twenty-five monitored cases, perpetrators committed acts of violence in the past. However, as victims recognized, this violent behavior of the perpetrator was not reported to authorities.

Victims of domestic violence were afraid to turn to police or court to obtain protection mostly for the following reasons:

- the perpetrator could find out and they could be isolated - '*he could lock us in the house and not allow us going out*[308]';
- increased aggression - '*I did not know what to expect from him*[309]';
- the perpetrator could make problems at the victim's workplace - '*He could come and blame me in front of the managers*[310]';
- lack of financial security - '*He provides for the family, and if you remain without that help, you are lost*[311]'.

There were cases when the victims withdrew their complaints, after which the investigation of the case ceased, although the law does not provide for such a ground for termination of proceedings.

Sometimes repeated acts of violence are committed during the period of validity of the protection orders, which is a ground for submitting the request for extension of the protection order. During the monitoring, three cases of requesting the extension of the protection order were identified.

3.6. Preparing the civil case for examination

Upon receipt of the application for a protection order, in accordance with the rules of civil procedure[312], the court may request, as appropriate, the social assistance body or the police to submit a report on the situation of the family and the perpetrator. It may also request other information or actions needed for the examination of the application. When examining the domestic violence victim's application for protective measures, the court shall request the coordinator of the territorial office of the National Council for State-Guaranteed Legal Aid to immediately appoint a defense lawyer to defend the victim's interests.

During the monitoring of civil cases for the protection order, the monitors did not identify any case where the social assistance body or the guardianship authority submitted a report on the situation of the victim's and/or of the perpetrator's family.

In most cases, the court calls on the police officers to provide information and characteristics of the domestic violence perpetrator. In the ruling of 24.05.2017 in the case R.V. vs R.V, the court stated '***... This circumstance is confirmed also by the statements/reference submitted by the official examiner during the court hearing, who mentioned about the improper, violent behavior of R.V. ...***'. The representatives of the records keeping and procedural documentation division confirmed during the interview that the participation of the police officer in the court hearing and the evidence produced by him/her were very important. The evidence produced by the

308 IIA_3_VVF.
309 IIA_2_VVF.
310 IIA_3_VVF.
311 IIA_2_VVF.

312 Article 318[3] of the Civil Procedure Code of the Republic of Moldova.

official examiner, in particular about the victim's previous requests for police intervention, is of great help for the court when rendering the decision on the application of protective measures - '*the court does not just follow the intimate belief, it has also evidence*[313]'. At the same time, they pointed out that often the staff turnover in the police and the lack of knowledge of the situation by the new employees make judges examine the case within 2-3 hours, which affects the progress of proceedings. Monitors reported cases when the petitioner, other trial participants had to wait for a long time for a police officer, translator, defense lawyer appointed by NCSGLA at the hearing. In the case D.M. vs D.A., examined on 28.07.2017, the hearing started 1 hour and 10 minutes later because of the absence of the police officer and state-appointed defense lawyer. The victim waited during this time in the hall of the court.

In case B.R. and B.S. vs B.E., examined in 11.07.2017 between 12.20-13.40, the judge mentioned in the hearing the request to NCSGLA to appoint a defense lawyer to the victim, but it was unknown why nobody came. While the court was in deliberation, a defense lawyer came up to the victims and told them that he had been notified about the hearing only at 12.00 and that was the reason why he arrived when the hearing almost finished.

The interviewed victims consider that the participation of the police officer in the examination of the case is very important. In their opinion - '***I do not imagine what it would be like if the police officer was not there. I felt safe in his presence. Besides, he presented the requested evidence...***[314]'.

However, monitors found that sometimes courts did not request the police to present relevant materials about the victim's family and about the perpetrator, other documents necessary for the examination of the application, etc. This resulted in the absence of the official examiner at many court hearings[315], but also in lack of any actions taken by the court in this regard, including the enforcement of coercive measures, under the terms of the civil procedure law[316].

Monitoring revealed that sometimes the court only rests on the evidence attached to the application and does not request additional material during the preparation of the case for examination. Then, courts reject the application on the grounds of lack of evidence confirming the merits of the petitioner's claims or lack of violence in general. In the case B.R. and B.S. vs B.E., the court examined only the materials attached to the application, did not request any additional information and rejected the application for the reason that violence did not occur, although the petitioners described in detail the circumstances of the case. Victims (parents-victims and son perpetrator) stated that their son had violent behavior. He was a drugs consumer and sold all the things from the house; he threatened to beat the parents and told them he wanted them to die, as he believed they were responsible for his condition. They were always afraid that he could kill them. Their son did not allow them to enter the house for two days and seized the moment when they walked out in the town and locked the metallic door. The victims called the sector police officer to help them, but the son told them that they did not have the right to enter the house. Employees from Emergency Situations Service had to break the door. The police officer recommended that they seek the protection order. The victims requested in their application that the court order the perpetrator to temporarily leave the common house and stay away from the victims' house. The court rejected the application for lack of violence. At the victims'

313 IIA_1_DD.

314 IIA_2_VVF.

315 Case D.V. vs D.V., examined on 22.06.2017.; Case S.N. vs O.S., examined on 23.05.2017; Case T.A. vs M.I., examined on 01.08.2017.; Case G.S. vs G.M., examined on 07.07.2017.; Case B.R. and B.S. vs B.E., examined on 11.07.2017.; Case P.V. vs P.I. examined on 25.05.2017 etc..

316 Article 161. Judicial fines. (1) The judicial fines shall be applied by the court, in the cases and in the amounts established by this Code, to the persons who committed procedural violations. The violation shall be established once the sanction is applied. (2) A fine is established in conventional units. One conventional unit equals MDL 50. (3) The judicial fines applied by the court to persons in positions of accountability of the public authorities, other bodies and organizations shall be collected from those persons, even if the authority, body or organization in which the sanctioned persons work participate or not in the given trial.

Article 207. Effects of non-appearance of the witness, expert, specialist and interpreter at the court hearing: (1) In the absence of the witness, expert, specialist or interpreter at the court hearing, after hearing the opinions of the trial participants about the possibility of examining the case in the absence of the above parties, the court shall deliver a resolution on the extension of the judicial debates or postponement of the trial. (2) Where the witness, expert, specialist or interpreter, legally summoned, did not appear at the court hearing for reasons deemed groundless by the court, they may be subject to a fine from 20 to 50 conventional units.

question 'what should we do now, stay on the streets?', the judge replied 'ask the telephone number from that man (pointing out to the monitor) to provide advice, or appeal against this ruling'.

Similarly, in the case G.A. vs G.V. examined on 15.05.2017, the aggressor was 48 years old and was the son of the victim aged 77. The aggressor and the victim lived in the same house. Because of excessive consumption of alcohol, the aggressor permanently had violent behavior. He threatened the victim, destroyed goods in the house. He, thus, exerted psychological and economic violence against the victim. The official examiner did not attend the hearing, while the aggressor, according to the victim, was not informed about the hearing. The court rejected the application of the victim because she did not submit any evidence, materials or documents to support her statements.

The interviewed specialists from the records keeping and procedural documentation division of the courts did not see a major problem in rejecting the victims' applications, as long as the law gave them the opportunity to appeal before the Court of Appeals. However, there is a problem - the application for protective measures is required to be examined within 24 hours, while the appeal is examined within 3 months. This creates dangerous delays for the victim and lack of accountability for abusers.

Monitors reported situations[317] when the court did not deem necessary to request, under the law, materials and characteristics about the victim's family and the perpetrator in order to make an informed decision regarding the application. On the contrary, before the hearing, the court secretary handed a copy of the petitioner's application to the state-appointed defense lawyer and the official examiner for review. Thus, the official examiner entered the trial knowing only what the victim presented about the case.

Under such circumstances, without taking measures listed in the law relating to the preparation of the case for examination, it is extremely difficult to adopt a sound solution with measures appropriate to the circumstances of the case. This is especially true since the presence of the perpetrator in the room prevents the victim from revealing the whole list of problems he/she faces in the relationship with the perpetrator. The persistence of patriarchal values at the institutional level is not favorable to the victim; professionals who share stereotypical beliefs about the role of women and men in the family is significant. They tend rather to suspect the victim of bad faith and hidden motivations in the case.

According to the law[318], the application for protective measures shall be filed with the competent court from the victim's or perpetrator's domicile or place of residence, from the place where the victim requested assistance or from the place where the act of violence was committed. However, sometimes the court, during the preparation of the case for examination, orders that the application be sent to a different territorial jurisdiction. One of the monitors reported that when he received the information on the assignment of the application for a protection order to the judge T.P., he went to find out the date of hearing to monitor it. The judge told him that, at the request of the petitioner A., he ordered to transfer the case to the court H., where the latter was domiciled. The court decision raises doubts, not only because the law does not provide for the need to transfer the case, but also because the actions of the victim seem illogical. The victim initially filed the application with that court, and when the application reached the judge, she submitted a request for transfer of the case to the court from her domicile. She clearly acted contrary to her own interests to obtain the protective measures urgently.

Notifying the victim about the venue and time of examination of the application

The court secretary notifies by summons the trial participants about the venue, date, and time of the court hearing. In emergency cases, the trial participants may be notified or summoned by telegram or other means (Paragraphs 71, 73 of the Instruction No 142).

317 Case G.A. vs A.A., examined on 17.05.2017..

318 Article 318[1] of the Civil Procedure Code.

Monitors found that victims are usually notified by phone about the venue and time of case hearing. The court secretary stated in an interview that she notified the victims by phone about the venue and time of examination of the application, because it took longer by telegram. This procedure was also mentioned by the judge during the hearing[319]. He stated that since the application for a protection order is examined as a matter of urgency, they could not publish the information on the time and venue of the hearing before the examination of the case, and send summons to the participants.

The interviewed victims confirmed this - '***When I filed the application, I left my and sector police officer's phone number. I was afraid when they told me they would call me to tell me when I should come; it could be today or tomorrow, in the evening or in the morning. I was afraid of him finding out, he could kill me. I did not know what to do. Thank God the police officer contacted me and he did not hear...*** [320]'. According to victims, there are also situations when the perpetrator may take the victim's mobile phone. In such circumstances, in their opinion, the victim should be notified about the venue and time of examination of the application through the sector police officer.

Two cases of postponement of the case examination for the next day[321] were reported during the monitoring, since no participant appeared at the hearing on the day when the case was set for trial.

Organizing participation of the perpetrator in the hearing

According to the law[322], upon receipt of the application, the court shall immediately contact the sector police from the place of residence of the perpetrator and request that the latter be notified about the initiated proceedings.

Monitoring revealed that, as a rule, perpetrators were notified about the pending court trial by the police via telex, which is sometimes mentioned in the court order as well.[323]However, monitors had the impression that some courts considered it to be the perpetrator's obligation to appear before the court[324], thus making increased efforts to ensure his/her presence. First the court staff attempt to directly notify the perpetrator by phone, and if they fail to contact him/her, they ask the police to notify him/her. Monitors noted that presence of the perpetrator near the victim during the hearing was for the latter an additional „opportunity" of repeated victimization. For example, in one case, where the victim and the perpetrator were former spouses, a monitor mentioned: ***'... while waiting for the beginning of the trial the victim isolated herself in a corner of the hall, away from the perpetrator, being very nervous and scared. The perpetrator approached her from time to time and deliberately stared at her threateningly but said nothing. ... The defense lawyer of the victim came (a state-appointed defense lawyer, our note) .... he asked her „why she was shaking". ... The victim said that her former husband was a policeman and, as he said, everything was under his control and only she would suffer... During the trial the perpetrator asked intimidating questions, but at the request of the victim's defense lawyer the court rejected them. While the victim was testifying before the judge, the perpetrator by his behavior exercised great pressure on the victim, who was suffocating while talking, showing deep anxiety.***

The victim's defense lawyer requested the court to ask the perpetrator not to look at the victim but only at the judge. That did not change the victim's condition anyway... After the hearing, when the trial participants left the room, the perpetrator tried to approach the victim...'.

The individual in-depth interviews with victims of domestic violence confirm the deep stress caused by the presence of the perpetrator in the court hearing - ***'When I hear his voice, I got chills all over my body***[325]***'***. If the perpetrator is absent they overcome the fear a bit - '***I felt freer, although I still was nervous and baffled***[326]'.

319 Case G.A. vs A.A. and others.
320 IIA_2_VVF.
321 Case D.A. vs Z.M.; examined on 17.05.2017.
322 Article 318[3] of the Civil Procedure Code.
323 Case D.M. vs D.A. examined on 28.07.2017.
324 Case D.V. vs D.V. examined on 22.06.2017.
325 IIA_3_VVF.
326 IIA_2_VVF.

Monitors confirmed the presence of perpetrators in eleven hearings, out of the twenty-five monitored cases. In one case, the victim reported that the perpetrator was not officially notified about the hearing[327].

Article 318[3] of the Civil Procedure Code provides that non-appearance of the perpetrator before the court shall not prevent the court from examining the application. This provision is consistent with the rule and spirit of CEDAW and the Istanbul Convention[328] which recognize the importance of the court's power to issue protective measures despite the presence of the alleged abuser in the hearing.

The national civil procedure law also stipulates that the independent declaration of the victim is sufficient to issue the protection order in case of imminent danger of committing physical violence. However, this rule limits the possibility of application only to cases of physical violence threat. At the same time, according to the findings of the monitors relating to the behavior of the victims and perpetrators during the trial, it seems extremely difficult for the victim of domestic violence to make independent statements in the presence of the perpetrator.

Therefore, the main concern of the empowered authorities, both in the legislative process and in the enforcement of legal rules, should be the promotion at the national level of the spirit of international standards promoting the priority of victims' safety, support of victims and observance of victims' human rights.

Nonetheless, the interviewed representatives of the records keeping and procedural documentation division insisted that, from their point of view, the presence of the perpetrator in the trial is mandatory in all cases - '***all parties have the right to defense... and the presence of both parties facilitates a lot the issuance of a protection order by the judge***[329]'. They reported situations when, due to the presence of the perpetrator in the court hearing, it was possible to reject the application for a protection order - **"*The perpetrator defended himself, submitted documents showing that he had not committed violence against the victim*[330]'**. However, the specialist could not specify what evidence was used to rebut the applicant's claims of violence. It is extremely relevant to consider that when examining the application for a protection order, the task of the court is not to establish who is right and how right someone is, but it should find the circumstances pointing out to the presence or lack of risk of committing or repeating violence. To achieve this goal, the court must review the information about the family situation, listen to the testimonies of the victim, family members or other persons in contact with the family, examine the characteristics of the victim and the perpetrator, etc.

As monitors reported, judges do not learn details about the circumstances of violence from the perpetrators during the hearing. They usually deny the existence of violence. If a victim had visible signs of violence, they frequently claim that she provoked violence. Thus, participation of the perpetrator along with the victim in the trial does not add value to the judicial process as such and to the purpose of establishing the need and, respectively, of identifying the optimal protection measures for the victim's safety, but it is instead a proven and incontestable factor of pressure on the victim.

From the perspective of promoting the aforesaid international standards in the field, the national legislative framework should ensure the understanding that the perpetrator is not (and cannot be) involved as a party in the trial. He may only be asked to provide information that would be of interest to the court to clarify the situation. After making statements, the perpetrator should leave the hearing. At the same time, he may be represented by a defense lawyer in the trial and retain the right to subsequently appeal against the court resolution[331]. We believe that the implementation of this procedure does not affect the rights of the defense and

327 Case G.A. vs G.V., examined on 15.05.2017.

328 Article 56 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

329 IIA_3_G.

330 Ibidem.

331 The current practice of involving the perpetrator in the trial as stakeholder, transforms *volens nolens* the special procedure of examining the application into contentious procedure, which is absolutely inadmissible. As a stakeholder in the trial, on the basis of the task of the court in examining this category of cases - to find the presence or lack of danger of committing or repeating the violence and to identify the optimal measures for the victim's safety - the relevant authorities empowered to prevent and combat the domestic violence shall be involved, which have the legal duty and functional interest to ensure the observance of the victim's right to physical and psychological integrity.

the requirements for a fair and equitable trial, according to Article 6 of the ECHR. At the same time, it promotes the standards specified in Article 56 of the Istanbul Convention, which recognize the specific and extremely sensitive nature of the relationships between the subjects of domestic violence.

The monitors revealed also that in some cases[332] the trial was suspended to enable the perpetrator to review the case materials. The interviewed representatives of the records keeping and procedural documentation divisions confirmed the existence of such cases - '*The perpetrator comes to the court hearing and states that he needs time to review the file and present evidence*[333]'.

This practice, considering also the above, would hardly fall within what can be called concern for the victim's safety, given the gender dimension of violence. The need for perpetrator's presence in the hearing is not clear, since, as already mentioned, it is not an adversary process where the perpetrator has to challenge the victim's position with counter evidence and arguments.

Victim's safety conditions in the court

Monitors indicated that the overwhelming majority of civil cases they observed or reviewed were examined with the participation of the victim of domestic violence. Only in 3 cases, the victims did not participate.[334], due to her need for medical treatment. The monitoring established that, as a rule, victims are the first to appear at court hearings. Before and, sometimes, even after the court hearing begins, the victims must wait in the hall of the court of law until all participants appear. As mentioned above, the monitors confirmed the presence of perpetrators at 11 hearings meaning that the victims were waiting in the court's hall, with the perpetrator present. The monitors were asked to describe the waiting conditions and behavior of participants before the beginning of court hearing in the Questionnaires. They specified that the safety conditions for victims were partly satisfying in 11 cases (particularly referring to the instances when perpetrators failed to appear at the court hearings) and dissatisfying in 14 cases. In addition, one case was regarded as having potentially dangerous conditions for the victim[335].

The dissatisfying safety conditions for victims were more often reported in Centru, Rascani, Buiucani Courts. In fact, no court met the requirements of international standards for safety in the courtroom. They did not have the capacity to separate the victim and abuser and avoid his ability to re-victimize her at the hearing[336]. This would mean that for certain categories of persons, in this case for the victims of violence, the courts should have separate rooms where they could wait for the beginning of the court hearings without having contact with perpetrators or other persons with hostile intentions and have to invite (summon) victims from these rooms.

The monitors registered a number of cases when perpetrators were agitated, behaving unpredictably[337] while waiting for the hearing to start. The situation worsened in those frequent cases when hearings were delayed. These delays allowed for increasing tension as the participants waited. Monitors also registered cases when the safety of the victim during the court hearing was not ensured at an appropriate level[338].

Monitors reported that it was frequently apparent when victims were worried and looking for moral support from the official examiner and the defense lawyer. Therefore, it was especially difficult when neither the official examiners, nor the defense lawyers appeared at

332 Case P.V. vs P.I., examined on 25.05.2017.

333 IIA_1_DD.

334 Case C.E. v. R.I. examined on 23.5.2017; Case L.L. v. T.M., examined on 28.7.2017; Case M.I. v. C.M., examined on 23.6.2017.

335 The Centru District Court of Chisinau Municipality was described as having winding and obscure halls, which represent a very favorable environment for perpetrators to attack victims or witnesses right in the premises of the court of law.

336 Article 56 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

337 Case I.A. v. I.I.; Case P.V. v. P.I.; Case G.T. v. G.O.; Case G.S. v. G.M.; As a rule, the petitioner and perpetrator wait for the beginning of the hearing in the hall of the court of law, near the judge's office. In one of the cases, the monitor describes the following situations: ... the victim and the perpetrator were in the hall. It was dim. The perpetrator tried to speak with the victim. She was obviously being pressed by the behavior of the perpetrator and got up and went to the other side of the hall together with her mother and lawyer. The hearing started 15 minutes later because the court secretary was missing. Because of this, the court hearing was lately interrupted for about 1 hour.

338 Case G.A. v. A.A.; Case C.V. v. C.L.; Case G.S. v. G.M.; The victims were around the perpetrators, sometimes they were standing face to face, at a distance of about 1 m. While the victims were testifying, the perpetrator stared coldly or threatening at them, which made them feel uncomfortable and worried.

the court hearings. The interviews with victims of domestic violence confirm these observations of the monitors: '*…when I went to the first hearing in the court, I knew I would see my husband there. The only thought of seeing him, made me feel bad. …*'

'*…I was heard first and then they asked me questions. It is very difficult to be face to face with the aggressor. It is one year and a half since I am going to the court and it is still difficult for me to be next to this person. I hear his voice and feel scared, it has some psychological pressure on me. I could not stand it and burst into tears. It is very difficult. Only those who had this kind of experience understand it.*'

'*…postponement of the hearing is unpleasant because he still makes attempts to get closer. If he sees that it does not work, he starts threatening and insulting. It unbalances me psychologically and morally. Lots of courage is necessary to go forward and continue, it is very painful…*'[339]

'*…women are afraid, they are afraid that they would not be able to say in the court what they have to say. It is because he is close to the victim and you are indeed blocked with fear. I felt better because he was not next to me and still nothing came to my mind, I was so emotional and blocked…*'[340]

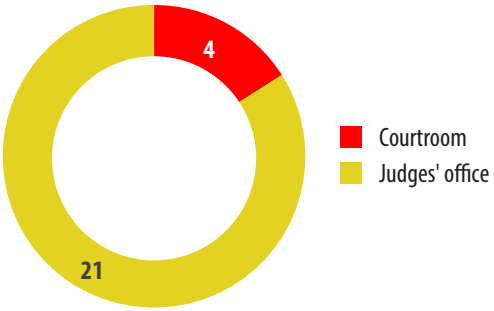
Venue of the court hearings in civil cases

Monitors observed another problem related to the victims' safety in the court which is that most hearings take place in judges' offices, where parties are in close physical proximity. Monitors observed that in these cases the victims separate themselves as far as possible from the perpetrators. Despite the victims' anxiety and fear in these circumstances, monitors reported no case in which the judge asked the perpetrator to leave the room while the victim testified.

339 IIA_3.
340 IIA_2.

FIGURE 30

Venue of court hearings in civil cases on issuance of a protection order



Monitors registered 21 cases examined in the judges' office and 4 cases examined in the courtroom. Only the Rascani District Court of Chisinau Municipality held court hearings in the courtroom. Besides the impact on the victim described above, the examination of cases in the judges' offices hinders the smooth running of the trial. It is difficult for participants to make notes because there are no tables and it is crowded. Monitors reported cases in which there were not enough chairs for all the participants. In Case D.M. v. D.A. there were only two chairs for the participants and the victim, policeman and monitor remained standing for the entire hearing. In one case[341], the office was very hot; participants opened the window and street construction made it difficult to hear.

Beginning of court hearings at the established time and postponement of court hearings

Monitors founds that delays and postponements of hearings undermined the effectiveness and authority of the court. It was common not to comply with the agendas of the court hearings. Thus, only in 8 cases out of 25 the court hearing started at the established time. In 16 cases, the court hearing began up to 30 minutes later, in 1 case – over 1 hour later. These delays made it difficult to further comply with the schedule not only of the court, but, in many cases, of the participants as

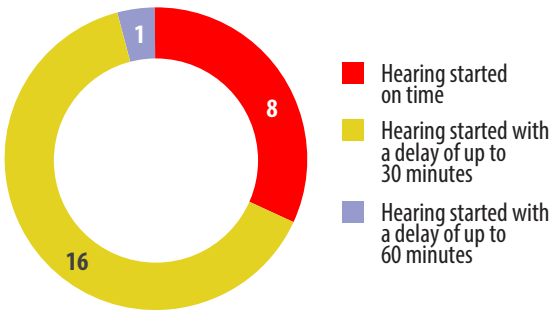
341 Case S.N. v. O.S..

well. In particular defense lawyers who had other court hearings were affected by delays.

Monitors reported that in 7 cases, the judges delayed the beginning of the court hearing, These cases included delays caused by a previous case. In 2 cases, the delay was determined by the petitioner's defense lawyer appointed to provide qualified free legal aid, in 4 cases by the official examiner who appeared later than the established time. In 4 cases the court hearing began later because of the missing interpreter or court secretary. There were reported cases when some judges, who did not have court secretaries, were forced to search for one. This is why the hearing began later and sometimes had to be interrupted in order to replace the court secretary who needed to return to her assigned judge.

FIGURE 31

Beginning of court hearings at the set time in civil cases, cases



Monitors noted that some judges displayed a lack of concern about persistent delays and the effect they had on all participants. As mentioned above, it is often for the victim to have to wait in the hall near the perpetrator. Monitors noted no case where the judge apologized to the victims or any participant for the delay or explained the reason for it. Nor did judges admonish participants for being late. Thus, we can conclude that the lack of punctuality is a common practice. This practice conveys disrespect for the law and the courts and undermines their authority.

Given the special procedure and limited time for the examination of the application for a protection order and approval of a decision in this regard, the hearings are not postponed, as a rule. Monitors registered only a few cases[342] when hearings were adjourned due to the failure of participants to appear in the court, which proves the existence of some gaps in the preparation of the case for the examination.

At the same time, one of the victims reported about additional circumstances that can serve as reasons to adjourn a hearing. The victim reported that the perpetrator appeared at the court hearing and said that he needs a defense lawyer, which served as a reason to adjourn the hearing for another day.

3.7. Examination of the application for a protection order

The monitors mentioned that the court secretaries always announced the beginning of the hearing to the participants and asked about the presence and each persons' procedural status or attribution to the case. In 14 cases police officers participated in trial, and in one case the guardianship authority. The victim was accompanied by a colleague in the hearing.

None of the cases subjected to monitoring was heard in a closed hearing. In this context, the observation of the monitor in the case of P.E. v. L.V. is relevant*: '...at the beginning of the hearing, the petitioner's defense lawyer requested the instance to declare the hearing closed. When the judge asked the petitioner, she said she want it to be a public hearing. Then the defense lawyer had to comply and uphold the position of the client, but during the entire trial the defense lawyer treated the victim coldly*...' As the monitors reported, in 2 cases the court asked the petitioners whether they wanted the case to be heard in a closed hearing, without having the monitors present. In both cases the victims chose open hearings. In fact, victims almost uniformly expressed their openness to the presence of monitors. Only in one case the victim was uncertain what to choose, but once the judge explained the that the monitor represented a non-governmental organization

342 Case D.A. v. Z.M.; Case M.I. v. C.M. etc..

that defends women's rights, the victim accepted the monitor to observe the hearing. In quite a few cases, when the judge announced that a monitor will observe the hearing, the victims even welcomed the monitor's participation reasoning that they feel safer this way. Monitors noted 3 cases in which the court was reticent to the presence of the monitor at the hearing or even tried to limit monitor's participation in the hearing. However, this issue was settled once the victims chose the open hearing.

Thus, in the case G.A v. A.A., at the beginning of the hearing, the judge alluded to the fact that the presence of the monitor would not be welcomed because the trial would throw the light upon the private life. In reply the defense lawyer said that the hearing is public and they have nothing against the participation of the monitor. The petitioner agreed with the defense lawyer's position.

Before the hearing of the case T.A. v. M.I., when the parties were expecting to be invited in the judge's office, the judge refused the presence of the monitor at the hearing, reasoning that it is a closed hearing, however, after an exchange of opinions, the judge agreed to decide on it at the opening of the hearing. The parties were asked, during the hearing, whether they want the monitor representing the X organization to be present at the hearing, to which they gave their consent.

In the hearing of the case B.R and B.S v. B.E., the court secretary came into the hall for a few times in order to clarify the name of the monitor and their goals. After the beginning of the hearing, the judge asked for the monitor's staff ID card from the civil association the monitor represents, then he handed the monitor a paper to sign under the obligation to comply with the legislation on protection of personal data. Subsequently, the judge asked the victims whether they are against the presence of a 'foreigner' at the hearing, to which the parties replied that they were not.

Monitors noted the judges' lack of trust and reticence to sharing information about cases. This was despite the fact that victims expressed their consent for the monitor's presence at the hearing. Importantly, the Decision of the Superior Council of Magistracy allowed the monitors to be present in court hearings; monitors had ID passes and the list of accredited monitors all who signed under the obligation not to disclose confidential information obtained. The courts had been informed of this before the monitoring initiative began.[343].

Audio recording of the court hearings in civil cases

Court hearings are recorded through video and audio equipment in the manner prescribed by the Superior Council of Magistracy[344]. According to the Regulation on digital audio recording of court hearings, the audio recording of court hearings is performed in compliance with the Code of Civil Procedure[345].

Monitors mentioned that, generally, the courts complied with the law on audio recording of court hearings at the hearings they monitored. The audio recording of the court hearing is mainly performed with the help of a voice recorder. Monitors reported that in 3 cases[346] the judges failed to inform trial participants about the use of technical means to record the court hearing and, as monitors highlighted, they didn't even notice any actions of recording the hearing of the case.

343 According to points 218-219 of the Instruction on the Record Keeping and Procedural Documentation in the courts and courts of appeal, approved by SCM's Decision No 142/4 of 4 February 2014, the case files can be accessed in the court of law by the parties in the trial and the lawyers who have mandate for that, while other persons can have access to the case materials only with the written consent of the president or deputy president of the court of law...

These being said, it is entirely to the discretion of these decision makes, even when the parties in the trial give their consent. However, the main problem is that the Instruction lacks some provisions for the non-compliance of which the refusal to access a case file would be considered as abusive, rather that the monitor's access to case materials is granted by the consent of the court administration, even if they already have the permission of the persons interested (meaning that the decision of the dignity prevails over the consent of the persons interested).

344 Article 14 of the Law on Judicial Organization No 514-XIII of 6 July 1995// Republished: OG No 15-17 of 22 January 2013, Article 62.

345 Articles 18 and 194 of the Civil Procedure Code of the Republic of Moldova No 225-XV of 30 May 2003 //republished in OG, 2013, No 130-134, Article 415.

346 Case G.A. v. A.A.; Case C.E v. R.I.; case R.V. v. R.V.

Procedure for examining the application for a protection order

According to the civil procedure law, examination of civil cases in the courts is held in the state language[347]. The monitors confirmed that all monitored cases were examined in state language. The trial participants who did not speak the state language, had the right to request the services of an interpreter.

According to the observations of monitors, the petitioners and their representatives were almost entirely responsible for proving the need of protective measures. As a rule, the complaints submitted to police are the proof of danger of domestic violence, which determines the issuance of a protection order. The interviewed representatives of the courts records keeping and procedural documentation division in confirmed it – '***The judge asks the victim to persuade the court that they experience domestic violence... Sometimes the hearing is adjourned on the ground that the victim should go to police and bring the evidence, if the victim submitted complaints and there are minutes proving it...***'[348] Victims face difficulties in this respect, especially when visible signs of violence are lacking or when the official examiner is not present at the hearing and cannot communicate information about the case. It is difficult for petitioners and their defense lawyers to prove psychological, economic and even physical violence, at its first signs, when the police do not know about the state of violence in a particular family. The judges start hearing the case based on the presumption of perpetrator's innocence, forgetting, in fact, that this is a preventive procedure, and it is not about stating the guilt of the individual.

With this stereotypical approach and failure to accept the exceptional nature of this remedy, the judges miss the chance to get the early assistance/counselling services for domestic violence aggressors. As a consequence, the judicial system reacts mainly when the level of violence has deepened, and the assistance and counselling services do not have the intended result.

The monitoring found that it was common for judges to require petitioners to specify the requested protective measures in the application. During the hearing the petitioners prove their formulated requests, while the court decides on full or partial approval or rejection of the application, depending on the evidence submitted. Such an approach to force the petitioner to indicate specific protective measures when filing the application, as well as phrases as 'full approval', 'partial approval' of petitioner's requests conflicts with the provisions of the law.

The interviewed representatives of the records keeping and procedural documentation divisions confirmed that the judge asked the victim about protective measures – '***The judge asked the victim to be specific about the claims against perpetrator***'[349].

Article 318[2] of the Code of Civil Procedure stipulates expressly what an application for protection measures should contain[350]. Unlike the contents of an ordinary civil application [351], the application for protection measures does not have to specify any requests (claims) and this is unacceptable because it is not an adversary proceeding in which the plaintiff must specify the claims to the defendant. The current working method simplifies the work of the judge and, the courts easily accepted this approach, without bothering that they act in contradiction with the imperative provisions of the Code of Civil Procedure regulating the contents of the application for a protection order[352].

347 Article 24 of the Civil Procedure Code of the Republic of Moldova.

348 IIA_1_DD.

349 IIA_3_G.

350 Article 318[2] of CPC. The content of the application. The application for protective measures shall specify the circumstances of the act of violence, it's intensity, length, consequences and other circumstances pointing out to the need of applying the protective measures.

351 Article 166 of CPC. The form and content of summons. (2) The summons shall stipulate the following:

a) the name of the court in which the action is brought;…f) plaintiff's claims against the defendant….

352 This rule stipulates expressly that ... if the application is accepted, the court issues a protection order that *applies one or more measures to the perpetrator...*, meaning that it does not apply one or more measures specified in the application by the petitioner, but the measure that are appropriate for that case, selected from the law.

Victim's right to be treated with respect

Except for stereotypical approaches mentioned above, related to judges' hearing cases based on the presumption of innocence of the perpetrator, the monitors did not identify civil cases in which the court attacked the victim with offensive questions. The monitors did not report situations that would indicate that the judge was obviously biased against the victim of violence. Victims confirmed this fact during the interviews – *We didn't feel any inconvenience.* All of them were attentive, friendly[353]. One victim said she had to appear in court with her children, who had to wait for her in the waiting room – *I took my children from kindergarten and went directly to the trial. The judge had an understanding attitude and treated my children with respect*[354].

The monitors reported a few cases[355] in which the perpetrators or their defense lawyers showed offensive behavior in relation to the victim, to which the judge made a prompt observation to the defense lawyer and warned the perpetrator about a potential removal from the room. There were situations where the perpetrators or their defense lawyers behaved offensively to the victim outside the hearing too. One of the three interviewed victims reported that the perpetrator's defense lawyer tried to make her withdraw the application – *You fell into the trap, take your papers back*[356]. The victim did not know that she could report the defense lawyer's actions to the defense lawyer's self-management bodies in order to inform about violation of legal obligation[357].

The monitors identified cases where hearings were delayed as `lack of respect to the victims', because in these cases the victims had to wait in halls causing them stress. As mentioned above, 16 out of total 25 monitored cases were delayed.; in 7 of these cases the delay was caused by the judge.

The monitors also reported that during the hearings they witnessed situations where petitioners were not respected. They referred to the case D.M v. D.A., where the hearing took place in the judge's office. There were only two chairs for the participants in the office, although there was enough space for minimum three more chairs. The victim stood up during the entire hearing because of the lack of chairs. Then, while the judge was deliberating, the victim waited near the door. When the court secretary invited the participants to the office, the victim wanted to go to the stairs to inform the defense lawyer and the police officer. The court secretary shouted at the victim: '*Where do you think you go, lady?! Come in quicker, isn't it clear?'.*

According to the monitors only in one case[358], victims were handed information about their procedural rights at the beginning of the hearing and were left for a few minutes to read them.

Victim's access to services of an interpreter in civil cases

According to civil procedure law, participants who do not speak the state language, have the right to an interpreter[359]**.** The monitoring results show that the courts face certain issues related to providing interpreters to trial participants. Monitors reported a few cases[360], in which the hearing of the case started later than it was set, in one case – later by about one hour because of the missing interpreter. According to the monitoring results, 7 victims needed an interpreter to assist them at the court hearing. In 6 cases, the victims had an interpreter, while in one case, the hearing was held in the absence of the interpreter[361]. The monitors reported that the hearing was held in state language and Russian language.

353 IIA_2_VVF.

354 Ibidem.

355 Case G.S. v. G.M.; T.A. v. M.I; Case M.I. v. C.M..

356 IIA_1_VVF.

357 Article 54(1) letter d) of the Law on Lawyer Activity No 1260 of 19 July 2002, with amendments and addenda, /Republished: OG No 159 of 4 September 2010, Article 582/, stipulates that the lawyer shall recourse to legal means and methods while performing their activity in order to defense the legitimate rights and interests of the client.

358 Case B.R. and B.S. v. B.E..

359 Article 24 of the Civil Procedure Code of the Republic of Moldova No 225-XV of 30 May 2003//republished in OG, 2013, No 130-134, Article 415.

360 Case C.E v. R.I; Case L.L. v. T. M., Case D.M v. D.A., etc..

361 The monitor in the case of R.V. v. R.V. reported that the victim did not know the language the trial participants spoke, whereas an interpreter at that moment was not ensured. Because of this, the judge proposed to adjourn the meeting, but the victim refused saying that she does not have time to wait and she relies on the honesty of trial participants and monitor's presence. During the examination of the application, the police officer and the judge translated one word or two, whenever necessary. The victim cried during the entire hearing.

Victim's access to efficient legal aid in civil cases

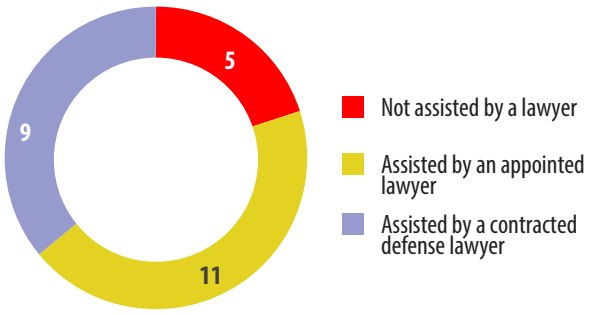
The monitors unanimously confirmed that the hearings in civil cases on protection measures for victims of domestic violence were more effective when the victim was assisted by a defense lawyer and that defense lawyer was well prepared.

To facilitate the domestic violence victim's access to justice and adequate protective measures, the national legislation[362] establishes her right to primary and qualified state-guaranteed legal aid. The Code of Civil Procedure[363] stipulates that when examining the domestic violence victim's application for protective measures, the court shall request the coordinator of the territorial office of the NCSGLA to immediately appoint a defense lawyer to defend the victim's interests. Legal aid is provided free of charge to the victim. Thus, the law in force stipulates the unconditional provision of legal aid to victims of violence.

Monitoring showed that a large percent of victims of domestic violence did not benefit from appropriate legal aid during protection order court hearings, despite the requirements in the law.

FIGURE 32

Representation of petitioners by a defense lawyer in civil cases



362 Law No 45-XVI of 1 March 2007 on Preventing and Combating Domestic Violence/ OG, 2008, No 55-56, Article 178;Law No 198 of 26 July 2007 on State Guaranteed Legal Aid /OG No 157-160 of 5 October 2007, Article 614.

363 Article 318[3] The Civil Procedure Code of the Republic of Moldova No 225-XV of 30 May 2003//republished in OG, 2013, No 130-134, Article 415.

Monitors found various deficiencies in the process of ensuring legal aid to victims of domestic violence. Thus, in 20% of monitored cases, the victim, generally, did not have a defense lawyer[364]. In 9 cases, victims received assistance from defense lawyers, who were hired on a contract basis directly by the victims or by NGOs in order to provide legal aid to the victims in trial. The performance of the defense lawyers hired by the victims was appreciated by the monitors as being good, in most cases; this was confirmed by interviewees. Professionals say when the victim is accompanied by a defense lawyer from non-governmental organizations or from elsewhere, the applications are more complete and comprehensive – ***The applications are better compiled. Besides describing what has happened, they also refer to national legal norms, they even refer to international treaties***[365]. The performance of defense lawyers contracted by NGOs, were also highly appreciated by the interviewed victims– ***The lawyer acted professionally. It seemed to me that my lawyer was a psychologist as well... Although there is just a few such good professionals***[366]. However, the monitors also noticed a few cases in which defense lawyers had weak performance[367].

Monitors found that in 11 cases, the victim was provided the services of a defense lawyer assigned by the territorial office of NCSGLA. According to monitors,

364 In the *case of R.V v. R.V.*, during the trial, the judge communicated about requesting state guaranteed legal aid, but no lawyer was assigned for this case; In the *case of C.R v. C.T.,* no lawyer was assigned for the victim (possibly of Roma ethnicity) and this aspect was not mentioned during the hearing; In the *case of I.A v. I.I,* no lawyer was assigned for the victim because, allegedly the victim would not need one, although nobody asked the victim about it. The law provides expressly for the court of law to request lawyer's participation in the trial, whereas the victim may refuse legal aid services, only when there is a lawyer present; In the *case of U.E. v. U.A.*, the judge informed trial participants about requesting state guaranteed legal aid, however, NCSGLA failed to respond to this request before the beginning of the court hearing; In the *case of B.R. and B.S. v. B.E.*, at the beginning of the hearing (it was held between 12.20-13.40), the judge communicated about announcing and requesting NCSGLA to assign a lawyer for the victims, but did not know why nobody appeared. While the judge was deliberating, a lawyer approached the victims and told them that unfortunately he was announced about the hearing only at 12:00 p;.

365 IIA_3_G.

366 IIA_2_VVF.

367 In the *case of C.E v. R.I..*, the perpetrator failed to appear in the court and the lawyer she hired was not prepared for the session and had a weak performance, which contrasted much with the good performance of perpetrator's lawyer.

The monitors mentioned that in the *case of P.V. v. P.I.*, the lawyer hired by the victim was not prepared for the trial. At the hearing, the lawyer asked the judge to force the perpetrator not to recourse to violence acts, which outraged the judge, who said that the law does not provide for such a protective measure, and this is rather an obligation of general nature, which results from law provisions.

in 6 of 11 cases, the defense lawyers had an inappropriate performance[368], and were quite passive. One victim reported that when she was offered a state-appointed defense lawyer, he told her that everything she wrote in the application for a protection order ... *Isn't appropriate... I don't understand*[369].

In one case[370], the hearing began with a delay because the victim's defense lawyer was not present. When the defense lawyer appeared, he said that he had another trial. When he later appeared for the victim, he talked with her only for a few minutes before the beginning of the trial.

During one interview, the representatives of the records keeping and procedural documentation division reported that when the hearing is scheduled, the assignment of a defense lawyer to the victim is requested. At this point the victim's contact information included in the application are communicated. However, usually the defense lawyers assigned do not contact the victims but rather meet them before the hearing – ***We tell the victim to come 30 minutes earlier before the hearing in order to meet the defense lawyer and decide on their position in their cases***[371]. In very rare cases, the defense lawyers assigned by the territorial office of NCSGLA came before the hearing and reviewed the victim's file Then they approached the district police officer in order to get prepared for the trial. Sometimes, the assigned defense lawyers came at the hearings and did not understand what procedure is used for hearing the case – civil or criminal**. *In these conditions, respectively, we can't say that the victim receive a qualitative state guaranteed legal aid***[372].

The monitoring revealed that out of 25 monitored cases, in 13 cases or 52%, the victims were not provided at all with legal aid or it was inadequately provided during the hearing. At the same time, it is quite difficult to ensure, within a very limited period of time, the presence of a state-appointed defense lawyer in the hearing, not to mention the time required for preparation to ensure the appropriate level of qualified legal aid to the victim of violence.

The situation is further complicated by the current perception, by the judge, of these cases as adversarial proceedings, in which the victim (as the initiator of the civil case) should present the evidence „in support of the claims". The representatives of the division for records keeping and procedural documentation pointed out that - ***'the perpetrator is provided more rights, he is more favored than the victim... The domestic violence victims should be better protected***[373]***'***.

Perpetrator's access to interpretation services and legal aid in civil cases

In eleven of twenty-five monitored cases the perpetrators participated in the hearing for protective measures. In five cases the perpetrators needed an interpreter and in all five cases they had access to interpretation services. At the same time, as a monitor mentioned during the examination of a case[374], the perpetrator, who was a Russian speaker, requested an interpreter, which caused a delay. When the court was deliberating, the interpreter left, and after deliberation, it was not possible to find an interpreter. The judge read the resolution and the protection order in state language, after which the victim's defense lawyer explained the contents of the court documents to the perpetrator in Russian.

In four cases the perpetrators received legal aid from private defense lawyers who, according to the monitors,

368 In *case of G.A v. G.V.*, the State-appointed lawyer was not prepared for the hearing and his performance did not favor the victim. The victim simply received formal legal assistance, the lawyer was not interested to help the victim; The same situation was reported for the *case of C.L v. C.V.;* In the *case of G.A. v. A.A.*, before the hearing, the court secretary handed the copy of the application submitted by the petitioner to the lawyer; In the *case of P.E. v. L.V.,* the lawyer proposed the hearing to be closed, while the victim, being asked by the judge, said that she wants it to be public, in order to have the monitor at it. The lawyer was active during the hearing, but treated the victim coldly; In *case of T.V. v. T.I.,* the monitor noticed that the petitioner discussed with the public lawyer before the hearing, then she changed the requests and excluded the measures aimed at forcing the perpetrator to participate in a counselling program and in supporting financially their minor child. Instead of these, the public lawyer proposed the victim to ask the court to force the perpetrator to leave temporary the common dwelling, in the context that, it was already made clear at the hearing that the victim and the perpetrator live separately.

369 IIA_1_VVF.

370 Case D.M. v. D.A..

371 IIA_1_DD.

372 Ibidem.

373 Ibidem.

374 Case L.L. vs T.M..

had a good performance, being very active in the hearing. The monitors found no cases where the perpetrator received state-guaranteed legal aid in the court hearing. In one case[375] the perpetrator, who did not participate in the court hearing, received free state-guaranteed legal for the appeal against the court resolution on application of protective measures.

Duration of court hearings in civil cases

The monitors recorded the time of examination of the application, including the deliberation and the resolution. The monitoring showed that in six cases the examination of the application took 35-45 minutes. In five cases the examination of the application and the issuance of the judgment took about one hour. In other six cases the examination of the application took up to 1.5 hours. In eight cases the trial lasted about 2 hours.

As a rule, the trials are held without breaks. Only in several cases the break was announced; in one case for one hour when it was necessary to find another court secretary, in others to allow the perpetrator to review the case materials. According to the monitors, in some cases the court asked general questions only, in particular related to the ownership of the house, marital status, common children, etc.

3.8. Ruling of the court in civil cases

According to Law No 45[376], the victim has the right to apply for protection. The court shall issue a protection order, within 24 hours from the receipt of the application, which may be appealed according to the law in force. The application for protection order filed in the court is examined according to the Code of Civil Procedure. Thus, the law obliges the court to adopt only a single solution - issuance of a protection order. Courts have the authority to tailor the directives of the order according to 'circumstances of the act of violence, it's intensity, length, consequences and other circumstances'[377] . The law provides that the order can last 'up to 3 months'.

The Code of Civil Procedure[378] establishes that the court shall issue, within 24 hours from the receipt of the application for protective measures, a court resolution either admitting or rejecting the application. If the application is admitted, the court shall issue a protection order with certain directives to the perpetrator. The court resolution on the admission or rejection of the application may be appealed.

The legislation charged the victim to prove that she is subjected to violence and the perpetrator is protected by the presumption of innocence, until proven otherwise. This approach privileges the perpetrator, who must do nothing but reject any statement about any violent behavior depending on the evidence provided by the victim and the information made available by the competent authorities. In this way, there is little chance to obtain protective measures in cases of acts of violence that do not involve physical violence or result from physical violence committed for the first time and/or violence that did not left visible traces on the victim's body.

The monitors were present for the court resolution on every monitored case. In certain cases, they received copies of the court resolutions or they found them on the portal of national courts.

As a rule, according to the Article 318^3 of the Code of Civil Procedures, the court does not indicate in the court resolution the measures taken to examine the circumstances of the case. There was no motivation of the grounds and need to apply certain protective measures in the ruling and in the protection order.

The court rulings contain the description of the petitioner's requests, the statements of the victim and of the perpetrator, of other participants in the process, the analysis of the evidence submitted by the victim compared to the statements of the perpetrator. This is

375 CaseD.V. vs D.V..

376 Articles 12, 14, 15 of the Law No 45-XVI of 1 March 2007 on Preventing and Combating Domestic Violence, OG, 2008, No 55–56, Article 178.

377 Article 318^2 of the Civil Procedure Code/ OG, 2013, No 130–134, Article 415.

378 Ibidem, Articles 318^4, 318^6.

the same in litigious proceedings[379]. That is why, often the court admits only partially the requirements of the petitioner or even rejects the victim's application due to the lack of evidence. The suspicion that the victims of domestic violence could lie in order to manipulate the justice system makes some judges require more evidence to prove the danger of violence than is required by law. Even more concerning is that certain judges are more preoccupied with the rights of the perpetrator than with the security of the victim.

It was revealed that in some cases[380], the courts refer in their rulings exclusively to the ECHR provisions related to public authorities' non-interference in the right of the individual to private and family life. The victim, who requested the interference of the state to get protection, will perceive these mentions rather aa court's justification not to interfere. From the perspective of the victim's interests, the situation even forces the court to interfere in order to ensure the victim's integrity. Therefore, the explanations regrading the limits of interference in private life could be a false message for certain victims. They may think that the state authorities are not concerned with ensuring the maximum level of safety of a victim of violence. They are more prone to take care that the perpetrator does not think that that the limits of the state interference admitted by the law or his/her right to privacy are not violated.

In the case Mudric v. the Republic of Moldova, the European Court of Human Rights found that in the Recommendation Rec(2002)5 of 30 April 2002 regarding violence against women, the Committee of Ministers of the Council of Europe stated *inter alia*, that the member states should introduce, develop and/or improve, where necessary, the national policies against violence on the basis of maximum safety and victims protection, support and assistance, adjustment of criminal and civil law, raising of public awareness, training for specialists who deal with violence against women and its prevention (paragraph 26).

In order to ensure the cohesion of national case law with that of the European Court, the most successful practice promoted by certain courts is to refer to Article 3 of ECHR in the court resolutions, and focus this way on the importance of positive obligations of the state to ensure victims' protection and safety. Inclusion of reference to Article 8 of ECHR in the text of the court resolutions, could be justified only in conjunction with the Article 3 of ECHR in order to make the participants in the trial and the society understand the message according to which the state has the positive obligation to ensure the maximum level of protection for the victim against all forms of ill-treatment prohibited by Article 3 of ECHR, including those committed by individuals.

Application of protection measures

As mentioned above, the monitoring confirmed the common practice where the petitioner specifies in the application the measures that must be applied to the perpetrator and the court decides on the full or partial acceptance of the application depending on the evidence.

The monitors stated that the courts applied the following protective measures:

- oblige the perpetrator to leave temporarily the common dwelling or to stay away from the house of the victim without deciding on the property of goods;
- oblige the perpetrator to stay away from the location of the victim, at a distance that would ensure the

379 For, instance, in the court resolution issued on the case P.V. v. P.I.., the court rules '... considering that the application was not filled also in the interests of the child, the arguments are not relevant from the perspective of Article 121 of the CPC, the court is limited to the grounds and requirements submitted based on the Articles 60(4) and 240(3) of CPC'. Thus, the court makes reference to the rules applicable in the contentious procedure, without taking into account that according to the Article 280 of the CPC, in a special procedure, the principles are examined by the courts according to the examination rules of civil cases, with the exceptions and additions *set in this Code in the Chapters XXIII-XXXIV and in other laws,* while the Chapter XXX[1] provides exceptions regarding the examination of these cases, which were not considered by the court.

380 Court resolution on the cases D.A. v. Z.M., I.A. v. I.I., T.V. v. T.I., the court mentions that '... according to the Article 8(1), (2) of ECHR, Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Reporting the mentioned rules of law to the fact of the civil case, the court considers admissible and necessary the interference of the state in the private and family life of parties, in the person of its competent authorities...'.

security of the victim and avoid any visual contact with her or with her children;

- prohibit any contact, including by phone, mail or any other method with the victim, children or other persons who depend on her;

- prohibit the perpetrator to get close to certain places: workplace of the victim, place of studies of the children, other determined places attended by the person under protection;

- limitation of the unilateral use of common property; prohibition to hold and carry a gun. In almost all cases when protection orders were issued, the measures requested by the victim were accepted, but for a shorter period of time that the requested one. The protective measure regarding the limitation of the unilateral use of common property was requested only in 3 cases of those that were monitored and the prohibition to hold and carry a gun was requested in one case[381]. They were fully accepted.

At the same time, monitors mentioned that the protective measure on establishing a temporary visits program of minor children was not requested or applied in any case.

In 2 cases[382] the petitioner requested, together with other protective measures, to force the perpetrator to help support their common children until the resolution of the case, but the court did not order this measure in any case. The law does not give guidance as to the specific way this remedy should be executed. It contains rather the measure reminding the perpetrator about the parental duties which is not exempt from during the application of protective measures. Thus, the perpetrator can perform his parental duties through the bailiff and/or the guardianship authority, despite the restriction against direct contact with the mother and the child.

Monitors identified no case where judges ordered the perpetrator to participate in a special treatment program in order to diminish the violent behavior. In 7 cases the petitioners requested that the perpetrator be ordered to participate in a special counselling program to reduce the violence or stop it. The courts applied this measure only in 2 cases[383]; in one case[384] the victim gave up this measure after consulting the defense lawyer. In other cases, the court rejected the application of protective measures. In this context, note that the legal reference standard obliges the court to determine if such action is necessary. Due to the lack of judicial practice and of recommendations regarding a uniform manner of applying the legislation in this area, the courts do not apply this protective measure. As a rule, the courts invoke lack of evidence which determines the need to force the perpetrator to participate in a treatment or counselling program to reduce or stop the violence; sometimes the court indicates lack of the perpetrator's consent to apply this measure[385].

381 Case S.N. v. O.S..

382 Case C.E. v. R.I.; Case G.S. v. G.M.; The court was asked to force the perpetrator to help support the child, but this measure was not applied and the court gave no reason for the decision.

383 Case P.E. v. L.V.; In the case L.L. v. T.M. the victim requested for the perpetrator to be forced to attend the Counseling and Assistance Center for Family Aggressors from Drochia town and the court accepted the request of the victim.

384 Case D.V. v. D.V..

385 See fragments from the court resolutions on the case T.V. v. T.I. '... in his own interest and in the interest of the child, T.V. requested the application of protective measures for domestic violence victims and the members of their families, which was accepted by her husband T.I., and requested for a 3-month period: a) oblige T.I. not to contact by phone, postal correspondence or any other method the victim and her child; b) oblige T.I. to participate in a special psychological counselling program, which is necessary in order to reduce or stop the violence; c) oblige T.I. to stay away from the location of the victim or minor child at 300 m distance; d) oblige T.I. to help support the minor child....To justify application, T.V. indicated that she have been married to T.I. since the beginning of 2009 and they had a six-year-old minor child. The reason because of which she filed the application was the physical and psychological aggression from T.I. who is currently assaulting her with frequency, calls her names, threatens her with death and psychologically assaults her at work in front of colleagues. In addition, the victim mentioned that the minor child frequently witnesses these conflicts and is very stressed. The victim bared the violence for the child's sake, she wanted him to have a family, but at one point she understood that the child is very affected by the perpetrator's actions and decided to get separated from the latter and file for divorce in order to give her child a life without domestic violence. During the hearing the petitioner T.V. upheld her application and requested the following protective measures: a) oblige the perpetrator to leave temporarily the common dwelling or to stay away from the house of the victim without deciding on the property of goods; b) oblige him to stay away from the location of the victim, at a distance of 300 meters that would ensure the security of the victim and avoid any visual contact with her or with her children; c) prohibit any contact, including by phone, mail or any other method with the victim, her children or other persons who depend on her; d) prohibit him to get close to certain places: workplace of the victim; e) oblige the perpetrator to participate in a special treatment or counselling program. After hearing the participants in the trial and studying the case materials, the court of law reached the conclusion that the application shall be partially admitted. According to the declarations of parties in the hearing, T.V. is victim of physical domestic violence, inflicted by her husband T.I., and the minor child is victim of psychological violence, inflicted by the father. The case circumstances reveal that the victim and the perpetrator are in bad relationship, which is confirmed by the statements of the victim and of the police inspectorate .... on the basis of the evidence used during the court session, the court reached to the conclusion that the application of

At the same time, even in the cases if this measure was applied, its execution was still a big problem due to the lack of a network of support and counselling services for domestic violence perpetrators and of efficient programs to work with them.

Regarding the duration of protective measures, the monitors mentioned that in 4 cases the judge applied protection measures for 30 days, in other 4 cases – for 60 days and in 14 cases – the maximum term of 90 days. International best practice is to apply protection measures for at least one year. Short duration of protection measures undermines the safety of victims of domestic violence and exposes them to a higher risk.

Rejection of the application for protection measures

The monitors identified several cases[386] in which the applications for protection order of the victims were rejected. For example, in the case G.A. v. G.V., the perpetrator and the victim had a common domicile. The perpetrator was 48 years old and was the son of the 77-year-old victim. Due to the excessive consumption of alcohol the perpetrator always had a violent behavior. He threatened to beat the victim and destroy the material goods from the house. He inflicted psychological and economic violence on the victim. The victim was represented by an assigned lawyer, who, according to the monitor, was not prepared for the hearing and did not adequately protect victim's interests Neither the official examiners nor other participants were present at the hearing and no evidence was presented. Ultimately, the court refused to apply protective measures because the victim's position and claims were not clear and the victim did not present evidence to support her application.

In the case B.R. and B.S. v. B.E. the petitioners described the case in detail. The victims (parents of the perpetrator) stated that their 25-year-old son had aggressive behavior. He was a drug addict. He sold goods from home and threatened parents and told them he wanted them to die. Some time ago, the perpetrator hit his father. The victims were always afraid he would kill them because the perpetrator's behavior was unpredictable. During the court hearing the victims were not provided legal aid, because when requested no defense lawyer attended the hearing. The court examined only the materials attached to the application, did not ask additional information from the police and rejected the application due to lack of violence.

Monitors found that courts usually reject applications for protective orders from parents of an abuser, particularly when they are based on psychological and economic violence. The applications were rejected due to lack of evidence or violence.

The cases described by the monitors reveal a judicial practice according to which they are examined according to the litigious proceeding based on which the victim must communicate to the court which measures the court should apply to the perpetrator. This practice is contrary to legal provisions. According to Articles 318[2]-318[4] of CPC, the court has the prerogative to decide on the most optimal measures based on case circumstances and personality of the subjects, etc. The court examines additional information obtained under the law, from the competent authorities, if it considers that the description in the application and the facts established after the victim's hearing are not sufficient.

3.9. Courts' compliance with the timeframe to examine the application

According to the provisions laid down in Article 318[4] of the Code of Civil Procedures, the court shall issue a ruling within 24 hours from the receipt of the application for protective measures.

The monitoring revealed that in most cases, the courts met the legal term for the examination and adoption of the ruling. In certain cases, the applications were

protective measures is justified because the aggressive and violent behavior of T.I. is confirmed through conclusive evidence... At the same time, the court rejects the request on applying the protective measure *oblige to participate in a special treatment or counselling program*, because *no evidence was submitted in this respect*, which would confirm the need to apply a special program, *and the perpetrator did not give his consent in this respect. ...".*

386 Case G.A. v. G.V.; Case B.R. and B.S. v. B.E.; Case M.I. vs C.M..

examined in a short period and the solution was adopted within several hours after the receipt of the application[387]. ***One of the interviewed victims confirmed the operative examination of the application – "within 2 hours, this happened after 6.00 p.m.; the working day was over but they stayed a little longer***[388]***".***

However, the monitors also noted that some cases were not reviewed within the time period prescribed by the law.[389] The victims explained that the period they had to wait until the hearing for the examination of the application was difficult – ***"waiting at home is not very pleasant, next to him, it's an ordeal, an immense fear***[390]***".*** This is a dangerous situation; with this failure to comply with the law, courts are putting victims at an increased risk of harm.

Monitors noted that the applications for protection order registered in the court on Friday were examined after the period of 24 hours. Due to the fact that the court does not work on weekend days, the applications were scheduled to be examined on Monday, that is three days after their receipt. In some cases, to avoid violation of procedural terms, court chancelleries, in certain cases, did not accept the applications for various reasons and the victims were forced to come after the weekend. During the weekend days, the victims were exposed to continuous risk of aggression.

The specialists from the division for records keeping and procedural documentation mentioned during the interview that submitting the request on Friday involves certain difficulties. In these cases, it is common to ask the victim to accept the postponement of the hearing for Monday first thing in the morning – ***"the supposed victim must give the written consent in order to postpone the examination of the application for Monday***[391]***".*** This practice was instituted in spite of the imperative need to examine the application within 24 hours, as set by the law.

C.L. v. C.V., registered and assigned to the judge on 16.06.17 is relevant to the issues described above. That same day, the judge adopted a ruling and referred to Article 168 of the CC, ordering the examination of the case within 3 days, on 19.06.2017[392]. Thus, the victim was left for 3 more days in a hostile and unpredictable environment, especially considering the fact that the perpetrator knew about the application for protective measures.

3.10. Enforcing the protection order

The court sends the protection order to the police for its immediate execution after it is issued. The order regarding the obligation of the perpetrator to help support the common children and participate in a special program of treatment or counselling, is submitted for its immediate execution to the bailiff, in whose territorial competence the perpetrator is domiciled, as established by the territorial chamber of bailiffs.[393]

Instruction No. 142[394] does not specifically regulate the method of submitting the domestic violence protection order for execution.

387 The application regarding the case U.E. v. U.A. was received at 12.00 a.m., at 3.00 p.m. it was examined at 4.05 p.m. a protection order was issued, through which the application was partially admitted.

388 IIA_2_VVF.

389 Case G.A. v. G.V.; Romanov V. v. Romanov V.; Case C.L. v. C.V..

390 IIA_3_VVF.

391 IIA_1_DD.

392 Court Resolution. 16 June 2017. The judge of Chisinau Court – xxx, examining the request submitted to the Police Inspectorate xxx Chisinau municipality in the interests of C.L. and the minor children C.V. and C.E. on issuing the protection order states: On 16 June 2017 at 5.00 p.m. an application for a protection order and for protective measures regarding the victims of domestic violence against C.V. was submitted by the PI xxx of Chisinau municipality at the interests of C.L. and minor children. Considering the urgent need to examine this application, according to the Article 318^3(1), (2), Article 168(4), Articles 269-270 of the Code of Article 318^3 of the Civil Procedure Code, the judge rules:

The application submitted by the Police Inspectorate xxx of Chisinau municipality in the interests of C. and minor children on issuing the protection order shall be accepted for examination. The police inspectorate from the sector where the perpetrator lives shall be contacted and asked to inform the perpetrator about the initiated procedure. The sector police officer shall be required to submit a characterization report of the family concerned and of the aggressor as well as the documents accumulated on the basis of the complaints submitted by the victim of the domestic violence at the police body. The participants shall be convened in a hearing on 19 June 2017 at 9.00 a.m. This court resolution shall not be challenged in any court. Judge.

393 Article 318^4 of the Civil Procedure Code/ OG, 2013, No 130–134, Article 415.

394 Approved by the Decision of the Superior Council of Magistracy No 142/4 of 4 February 2014 amended and supplemented by the Decisions of SCM No 810/31 of 27 October 2015.

The monitors stated that in all the cases monitored, courts ruled to submit the protection order to the police for enforcement. In several cases[395] the court ruled, simultaneously, to submit for enforcement the protection order to the social care authority, although after the amendment of the legislation in the field, the social care authority has no more such competence. Instead, no case of submitting the protection order to the bailiff for execution was identified by the monitors, while the court[396] ruled on cases that the perpetrator shall be forced to participate in a special treatment or counselling program.

Monitors noted that the procedure for submitting the protection order to the police for execution is different. In 14 cases attended by the official examiners, the court submitted the protection order for execution immediately after the hearing through the official examiner. Victims expressed that this procedure is beneficial to them especially in cases when the perpetrator was not present at the hearing. Thus, after the court hearing the victim of violence went with the police officer to the domicile and notified the perpetrator about the protection measures applied by the court – ***"we went together at home and the police officer red him the points from the protection order and asked him to leave***[397]***"***.

Interviews with the staff of division for records keeping and procedural documentation confirmed that the protection order was submitted to the police officer for execution immediately after the court hearing – *"we hand the signed document after the hearing*[398]*"*. The main problem the courts' representatives face is that the police officers don't always stay until the end of the hearing and it's impossible to send the document by fax because it does not have the required rubber stamp. According to the courts' representatives, the execution of the protection order could be improved by requiring police representatives to stay until the end of the hearing, after the court resolution for protective measures.

Monitors identified cases when the court sent the protection order to the police through the defense lawyer and the petitioner[399]. They made an agreement with the victim of domestic violence – ***"she states in written form that she received the protection order and commits to deliver it immediately to the police inspectorate***[400]***"***. Thus, very often, the victim ended up having to initiate the execution of protective measures with the court system relying on the fact that she was interested in the quickest possible execution of the protection order.

In other cases, the court sent the protection order to the police for execution though the courier[401] or via mail order the next day[402]. As explained by the court chancellery, the judge sends the protection order for execution and not the division for records keeping and procedural documentation. The court secretary pointed out that usually, the protection order is sent via mail– ***"we receive the notice and we annex it to the file; the notice proves that the court judgment was send to the police bodies for execution***[403]***"***.

In summary, although in many cases the applications for protective measures were examined in a short period and the solution was adopted within several hours after receipt of the application, the benefit is lost due to the days required for execution of the order; the victim is still in contact with the perpetrator after the application of protective measures. This happens because in most cases, the protection order is considered a measure that restricts the perpetrator's rights rather than a protection measure of the victim's life and health.

3.11. Appealing against the court ruling

The court ruling on the admission or rejection of the application for protective measures may be appealed. Appealing the resolution on the protection order will not suspend the enforcement of the applied measures[404].

395 Case T.V. v. T.I.; Case S.N. v. O.S..
396 Case C.R. v. C.T.; Case P.E. v. L.V..
397 IIA_2_VVF.
398 IIA_3_G.
399 Case P.V. v. P.I.; Case G.S. v. G.M..
400 IIA_1_DD.
401 Case D.V. v. D.V.; Case T.A. v. M.I.
402 Case U.E. v. U.A.; Case P.E. v. L.V.; Case L.L. v. T.M., etc..
403 IIA_3_G.
404 Article 318[6] of the Civil Procedure Code/ OG, 2013, No 130–134, Article 415.

Monitoring revealed that in 3 cases[405] the court resolution on protective measures was appealed. The appellants met the term prescribed by the law regarding the submission of the appeal in all the cases. By the time of completion of the monitoring program, only two appeals were examined. The examination by the Court of Appeals could not be monitored because according to the civil procedural legislation[406], the appeal against the rulings is examined within three months by a panel of three judges based on the materials attached to the appeal, without the participation of the parties. Thus, the monitors did not have the possibility to establish the de jure and de facto grounds, the evidence and the claims of the appellant.

The decisions of the Court of Appeals on these cases are not published on the portal of the national courts. However, according to the schedule of hearings, it was established that the appeals were admitted by the Court of Appeals. In one case, the decision at first instance was partially quashed and the duration of protective measures was reduced. In the other case, a new judgment was issued. The monitoring could not provide more information on this subject.

3.12. Extending the protective measures

The term of the protective measures may be extended by the court on three grounds: 1) at the request of the victim based on further violence, 2) perpetrator's failure to comply with the conditions in the protection order, 3) danger to the victim persists[407].

The monitoring of hearings in civil cases on the application for protective measures revealed that in 4 cases[408] the application for extension was submitted when the period of protective measures expired.

Thus, in the case C.L. v. C.V., the victim requested an extension of the measures because the perpetrator committed other acts of physical violence during the enforcement of the protection order that was applied 30 days before. A contravention proceeding was initiated on this fact in line with Article 78^1 of the Contravention Code. The court doubled the term of the action of the protection order and this time applied protective measures for 60 days.

In the case A.S. v. C.V. the victim submitted the application for extended protective measures because the perpetrator violated the order issued 30 days before. Criminal investigation was initiated on this case in line with Article of the 320^1 Criminal Code. In the new civil application, the victim asked for protective measures to be established for the maximum period of time provided by the law, but the court ruled they would last for 60 days.

In the case D.A. v. Z.M., the victim asked for the application of protective measures when the term of 90 days expired., During the entire term of the protective measures, which included no contact order, forbidding telephone calls, correspondence or any other method of contact, the perpetrator persisted with disturbing text messages and phone calls. The court ordered renewed protective measures, but only for 30 days. Again, after the new protection order expired, the perpetrator was violent again and the victim again asked for the maximum term of protection. Again, the court ordered protective measures for only 30 days.

In the Case C.E. v. R.I. the application for protective measures was submitted by the police, to protect the interests of the victim and of the minor child. The application was entirely accepted and the protective measures were applied for 30 days. When the established term of the protection order expired, the victim submitted another application with some changes. Notably, the victim substituted the measure on limiting the unilateral use of common property with the compulsory measure to force the perpetrator to help support their common child, until resolution of the case. The court applied the same measures as the previous time, that is, it did not accept the measure requested by the victim regarding support for their common child. The term for protective measures was also 30 days.

405 Case T.V. v. T.I.; Case G.T. v. G.O.; Case D.V. v. D.V..

406 Article 426 of the Civil Procedure Code/ OG, 2013, No 130–134, Article 415.

407 Article 318^5 of the Civil Procedure Code of the Republic of Moldova/ OG, 2013, No 130–134, Article 415.

408 As D.A. v. Z.M.; Case A.S. v. C.V.; Case C.E. v. R.I.; Case C.L. v. C.V..

The court did not justify its decisions regarding the applied measures and the term set. No cases of application to revoke earlier the protective measures were found during the monitoring process.

Conclusions to the chapter

- Some victims of domestic violence are unaware of the availability of civil protection orders although they have been subjected to violence for many years.

- There has been no case identified of filing an application with the court in the interest of the victims by the social assistance body or the guardianship authority. One of the victims of domestic violence who sought help at the local social assistance and family protection unit was informed that there was nothing they could do to help her. A solution would be to display information in the courts, worded in a language understandable for the potential victims with regard to the way of applying for protection orders and inform the victims about specialized protection services. Making this information available would help victims initiate the process of applying for protection measures in civil proceedings and assist victims in applying on their own. At the same time, the administrative staff of the courts should be trained to be understanding and treat victims with patience when receiving the applications.

- There is no single practice, based on clear criteria, of registering applications for protection order. Instruction No. 142 sets forth only one method of registering and documenting all categories of civil cases. It is based on litigious procedure of examining cases. Instruction No. 142 should include distinct rules on the registration procedure of these applications. These rules would provide for the time of receipt of the application, the time of referral to the judge for examination, the time of the resolution, the procedure for enforcing the protection order etc.

- Most of the applications for a protection order were examined on the day of registration or on the day following the registration, not exceeding the 24-hour timeframe. In some hearings, it was established that the application had been registered on the day of the examination, although it was filed 2 days before, and sometimes the application was submitted after the court had adopted the resolution.

- Transparency of the trial is not properly ensured. The monitors identified that the information on the schedule hearings in protection order cases, as a rule, is posted only on the portal of the national courts and most of the time on the days following the issuance of the decision - two days after the trial the earliest. There were cases with no information available on the web page. Including the cases post-factum on the agenda of the hearings on the portal of the national courts, on which human effort and financial resources are spent, is practically useless for the participants in the trial as well as for the public.

- In most cases in which victims applied for protection orders, psychological violence was present, either alone or accompanied by other forms of violence. However, the current practice of law enforcement does not provide effective remedies against psychological violence. Some judges were not prepared to admit that psychological or economic violence caused serious sufferings and affected psychological and physical integrity of the victim and of those close to her/him.

- In the civil cases of applying for the protection order for the victim of domestic violence, 100% of victims were women. Most of them were aged 30-40, followed by women aged 40-50. At the same time, 56% of the cases involved also children under the age of 15.

- No case was identified in which the court requested information from the social assistance body or the guardianship authority to characterize the victim's family and/or the aggressor. In most cases, the court called police officers to get involved in providing information, evidence, and characterizing the domestic abuser.

- About 84% of hearings in the cases covered by the monitoring were conducted in the judges' offices, which in the absolute majority of cases were small. In such cases, the victim-petitioner had to stay next to or near the aggressor. Usually, the victims preferred to stay as far as they could from the aggressor and, when

possible, they were separated by the defense lawyer, police officer, translator or other participants.

- About 64% of the hearings started late, in some cases the delay was up to one hour. Sometimes the delays occurred due to examination of other cases, sometimes due to the participants (the investigating officer, the defense lawyer appointed by NCSGLA) being late. There were cases when the participants had to wait for the court secretary to be found. Such situations affect the psychological integrity of the victim and make it difficult to keep up with the scheduled hearings further on.

- The petitioner (the victim) is assigned a central role in the civil proceedings, requiring her/him to indicate in the application the claimed protection measures and to prove the claims during the hearing. Depending on the evidence presented by the victim, the court decided to fully or partially accept or reject the application. Thus, it is the victim's responsibility to prove she/he is subjected to violence. The judge issues the ruling from the standpoint of the presumption of innocence of the perpetrator (this approach already places the perpetrator in a privileged position). The judge forgets that it is a protection procedure, not a case for establishing an individual's guilt. The stereotyped way of addressing the applications limits the chances of the early involvement of the assistance/counseling services for the domestic abusers. As a consequence, the judiciary usually responds when the state of violence has a chronic nature, whereas the work with the aggressor no longer has the expected effect.

- The outcomes of the civil cases monitoring reveal that the courts are facing certain problems with providing an interpreter to the participants in the trial. The monitors mentioned several cases when the application examination began with an almost an hour delay due to the lack of an interpreter for the petitioner. Some other time, the examination of the application took place without an interpreter. The aggressors have always benefited from an interpreter's services.

- In 52% of the monitored cases, victims either were not provided with legal aid or assistance provided was not helpful, despite the legal norms stipulating the unconditional legal assistance to victims of domestic violence. At the same time, it is difficult to ensure, within a limited period of time, the presence of a defense lawyer at the hearing who would provide state-guaranteed legal aid, not to mention the preparation time needed to provide qualified legal aid. The situation is further complicated by the current perception that these cases are to be examined under litigious proceedings, in which the victim (as the initiator of the civil action) has the task to bring the evidence "in support of the claims".

- There is no judicial practice and instructions on requiring the aggressor to participate in a treatment or counseling program to reduce or eradicate violence. As a rule, the courts invoke the lack of evidence that would establish the need for obliging the aggressor to participate in a treatment or counseling program to reduce violence. In some cases, the lack of the aggressor's consent to the application of this measure was indicated, which, we believe, is irrelevant and even senseless, because the law does not require such consent. At the same time, a major problem that still persists is the enforcement of this protection measure due to the lack of a network of assistance and counseling services for domestic abusers and effective programs to work with this category of persons.

- The legislation in force provides for the examination of the appeal against the ruling in a civil case within two months. This timeframe is detrimental for the victims of domestic violence in the cases when the application for protection measures is rejected.

- Instruction No. 142 does not regulate the way the protection order of the domestic violence victim should be referred for enforcement. There is, therefore, no single practice. When the investigating officer attends the hearing, the court sends the protection order for enforcement, through the officer. In other cases, the court hands over the protection order via a courier the following day or by post. Under these circumstances, the applications examined within the legal timeframe were in fact enforced in the following days, during which the victim remained in contact with the aggressor even after the protection measures had been issued.

- The protection order is often seen not as a measure to protect the life and health of the domestic violence victim, but rather as a measure restricting the aggressor's rights.

CHAPTER IV.
Monitoring of proceedings in criminal cases on trafficking in human beings and related crimes

The monitoring of proceedings in criminal cases on trafficking in human beings and related crimes, similar to those related to violence against family members and sexual crimes against women, aimed to observe, as far as possible, the entire proceedings - from the preliminary hearing until the resolution of the case. The agenda of hearings from on the national courts' portal confirms that some criminal cases of trafficking in human beings are examined for long periods of time. In order to monitor as many cases as possible according to the project goal, it was decided to include not only criminal cases initiated after the start of the monitoring initiative, but also those where the first hearings had already occurred. Overall, the monitoring covered criminal cases pending in the Chisinau Court between March and September 2017.

According to the agenda of hearings, 101 criminal cases arising from trafficking in human beings and related crimes were filed to the Chisinau Court in 2017, including:

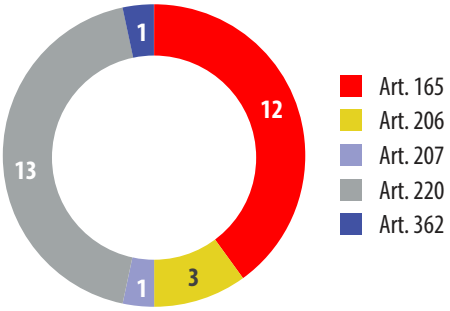
- 37 criminal cases initiated under Article 165 of the Criminal Code (Trafficking in Human Beings);
- 8 criminal cases initiated under Article 206 of the Criminal Code (Trafficking in Children);
- 1 criminal case initiated under Article 207 of the Criminal Code (Illegally Taking Children Out of the Country);
- 41 criminal cases initiated under Article 220 of the Criminal Code (Pimping);
- 14 criminal cases initiated under Article 362[1] of the Criminal Code (Organization of Illegal Migration).

Out of the total 101 cases, 33 criminal cases were selected for monitoring, including:

- 12 criminal cases initiated under Article 165 of the Criminal Code (Trafficking in Human Beings);
- 3 criminal cases initiated under Article 206 of the Criminal Code (Trafficking in Children);
- 1 criminal case initiated under Article 207 of the Criminal Code (Illegally Taking Children Out of the Country);
- 13 criminal cases initiated under Article 220 of the Criminal Code (Pimping);
- 4 criminal cases initiated under Article 3621 of the Criminal Code (Organization of Illegal Migration).

FIGURE 33

Category of monitored criminal cases of trafficking in human beings and related crimes



As in other cases, monitors were denied access to case materials during the monitoring of cases on trafficking in human beings and related crimes, therefore the questionnaires contain only the observations of the monitors made before and during the hearing of the cases. The systematized information from monitoring questionnaires was supplemented with information from in-depth individual interviews with victims of crime

(after the monitoring sessions)[409]. The information obtained from interviews with some professionals[410], who agreed to share the experience gained by examining these categories of crimes, was also used.

4.1. General aspects of criminal liability for trafficking in human beings and related crimes

Trafficking in human beings - another problem which the Republic of Moldova is still facing - seriously affects the dignity and integrity of the person. The economic situation in the country, gender inequality, which is often manifested through violence against women, are among the main factors that keep the Republic of Moldova on the list of countries of origin of victims of trafficking in human beings, as well as country of transit, especially for victims trafficked from ex-Soviet countries to European and Balkan states. The main forms of trafficking, in which Moldovans are involved, are sexual exploitation, labor exploitation and begging[411].

The comprehensive international definition of trafficking in human beings is contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000 (Palermo Protocol)[412] and ratified by the RM Law No 17-XV of 17.02.2005[413], in force for the Republic of Moldova since 16 October 2005.

The Law of the Republic of Moldova on Preventing and Combating Trafficking in Human Beings No 241-XVI of 20.10.2005[414] uses the international definition of trafficking in human beings, distinguishing the trafficking in human beings (adult) from child trafficking.

The Criminal Code of the Republic of Moldova[415] also differentiates trafficking in human beings[416] from trafficking in children[417]. Within the meaning of this law, the consent of the victim of trafficking in human beings to intentional exploitation is not relevant when any coercion is applied. In the last years, Articles 165 and 206 have been subject to amendments and supplements.

Currently, the Criminal Code of the Republic of Moldova defines the means of coercion and the forms of exploitation in more detail than the Palermo Protocol. For example, Article 165 of the RM CC establishes the following types of exploitation, not stated in the Protocol:

- using the victim in military conflicts;
- using the victim in a criminal activity;
- procuring tissues and/or cells, using a woman as a surrogate mother, etc.

The elements of the crime in Articles 165 and 206 of the RM CC are formal and are considered to be consumed at the moment of committing at least one of the actions listed in the legal provisions.

The crime provided for in Article 206 of the RM CC differs from the one stated in Article 165 CC by victim's age and the fact that in the case of trafficking in children the legislation does not define the manner of committing the crime.

A recent Council of Europe Report on Trafficking in Human Beings in the Republic of Moldova states that although progress has been made in the development of the legal framework for combating trafficking in human beings, such as harshening penalties imposed on traffickers and criminal liability for using the services of trafficked victims, national authorities should ensure an effective judicial investigation of cases of trafficking in human beings, resulting in the application of effective,

409 They agreed to interview 10 injured parties, including 5 women and 5 men. Interviewees were injured party on cases initiated under Article 165 CC - 7 persons and under to Article 362[1] CC - 3 persons.

410 A PCOCSC prosecutor (IIA_11_P_TFU), former employee of the General Police Inspectorate (IIA_10_ex_CCTP) and a lawyer were interviewed; (IIA_12_A_TFU).

411 Department of State trafficking in human beings report, 2018, https://www.state.gov/documents/organization/282798.pdf

412 Published in the official edition 'International Treaties', 2006, volume 35, p.399.

413 Official Gazette of the Republic of Moldova No 36-38 Article 126 of 04.03.2005.

414 Official Gazette of the Republic of Moldova No 164-167, Article 812 of 09.12.2005.

415 Law No 985-XV of 18.04.2002 (in force 12.06.2003) //Republished: Official Gazette of the Republic of Moldova No 72-74, Article 195 of 14.04.2009.

416 Article 165 of the Criminal Code of the Republic of Moldova.

417 Article 206 of the Criminal Code of the Republic of Moldova.

proportionate and dissuasive sanctions. In this context, the Council of Europe urges Moldovan authorities to make full use of the available measures to ensure the protection of victims and witnesses of trafficking in human beings and to allocate the necessary funds to implement such measures.

Monitoring also covered criminal pimping cases.[418]. The current version of this criminal provision is also the result of the recent amendments and addenda[419]. *'Pimping is, speaking figuratively, the anteroom of trafficking in human beings, being an easier form of exploitation and the border between one and the other is often very thin...'*[420].

Organization of illegal migration[421] belongs to the category of crimes that could facilitate the commission of trafficking in human beings or could degenerate into trafficking in human beings. That is why this criminal provision was included in the monitoring program. *'The organization of illegal migration, viewed in the context of the Palermo Protocol, is very close to trafficking, but it does not have the purpose of exploitation...'*[422].

The Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) of 3 May 2005[423] provides for the need to enable victims to make an informed decision on their cooperation with authorities. This is explained in more detail in the report[424] accompanying the Convention, which provides that victims must decide whether they will cooperate with law enforcement and judicial bodies to convict traffickers.

Similarly, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, states that '... Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial...'[425].

4.2. Profile of the injured party in cases of trafficking in human beings and related crimes

While monitoring the cases of trafficking in human beings and related crimes, monitors were able to identify injured parties only in 19 criminal cases. In these cases, 25 were women, including 4 minors, and 19 were men.

In the other 14 cases it was not possible to determine the injured parties, for various reasons. In some cases, especially the ones initiated for pimping, only witnesses[426] were identified. In other cases, the injured parties were not identified due to:

- their absence from the hearings[427]:
- examination of the case under simplified procedure, according to Article 364[1] of the Criminal Procedure Code;
- prohibition for the monitor to attend the proceedings examined in closed hearing[428].

The age of injured parties in the monitored cases of trafficking in human beings and related crimes was 16-45 years for women and 25-53 years for men. However, 20 of the 25 women identified as injured parties on these cases (or 80%) were aged 16-25, the other 5 women were 32-45 years old. The youngest man was 25 years

418 Article 220 of the Criminal Code of the Republic of Moldova.

419 Law No 270 of 07.11.2013 amending and supplementing some legislative acts (in force since 10.12.2013) // Official Gazette No 290 of 10.12.2013, Article 794.

420 IIA_10_ex.rep.CCTP.

421 Article 362[1] of the Criminal Code of the Republic of Moldova.

422 IIA_10_ex.rep.CCTP.

423 www.coe.int/pdf.

424 Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings// www.coe.int/t/dg2/ trafficking/campaign/Source/ pdf.

425 eur-lex.europa.eu/.

426 Case B.A. No 2501; Case J.N. No 7162; Case S.A. No 30428; Case T.S. No 40973; Case L.I. No 47359; Case P.E. No 46823 etc. As stated during the interview by the employee of the Center for Combating Trafficking in Human Beings '*... as a survival strategy the victim often chooses not to tell anyone about what happened, as she is informed about the close relations of the partners/traffickers with the police, and that sometimes among the clients there are employees of the law enforcement bodies. She prefers to accept the suggestions made or find someone to replace her. A victim notifies the authorities only when she cannot control the situation anymore and has nothing to lose - is either threatened herself or that her loved ones would be killed...*' In the same vein, the prosecutor said that '*... often the victim is not identified in this capacity. She says: I benefited from this, I am not a victim, I made money, what do you want from me?... A victim has to work with the psychologist at first... she does not understand that she was used as a commodity...*'.

427 Case A.O. No 47309; Case J.O. No 7797; Case L.G. No 27102; Case M.N. No 44815; Case C.O. No 31758.

428 Case E.V. No 8982; Case E.N. No 9834; Case S.S. No 31383.

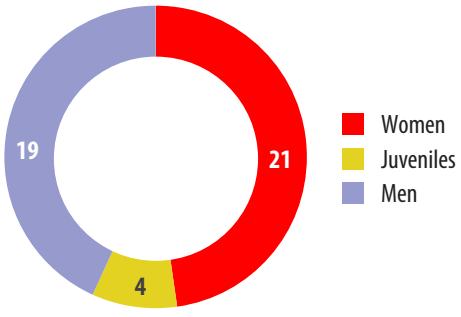
old and the eldest one was 53 years old. There were 13 men with the status of injured parties, or 68% of the total, were aged 30-40 years.

In cases initiated under Article 165 of the Criminal Code (Trafficking in Human Beings), 6 men and 8 women had the status of injured party. In the cases initiated under Article 206 of the Criminal Code (Trafficking in Children), 3 girls had the status of injured party and in the criminal case initiated under Article 207 of the Criminal Code (Illegally Taking Children Out of the Country), one woman had the status of injured party. Cases initiated under Article 220 of the Criminal Code (Pimping) involved 10 women, including one minor, as injured parties (in fact, in the cases of pimping, the injured party status was assigned to women only, but it was not possible to establish the full list of the persons involved). Cases initiated under Article 362[1] of the Criminal Code (Organization of Illegal Migration) involved 3 women and 13 men as injured parties.

Thus, the overwhelming majority of women (17 women, including 4 minors) were involved in sexual activities, including sexual exploitation, and 4 women were subjected to labor exploitation[429].

FIGURE 34

Gender profile of injured parties in cases of trafficking in human beings in related crimes



As the prosecutor pointed out in the interview - ***'If we refer to domestic trafficking, the share of labor exploitation has increased lately... victims are involved in agriculture or animal husbandry... regarding sexual exploitation, one cannot say already that it is a big phenomenon, I think there aren't any people in the country to be involved in this... the external trafficking changed the form of recruitment. Currently online recruitment is used very often...'***[430].

'In recent years, we no longer see the use of force or drugs as a coercive measure for trafficked victims. Traffickers now act differently. They choose socially-economically vulnerable people and offer them a fake or partially fake job. The country and the job can be as promised, but the conditions can be different. Later, various forms of threat are used. Their own image is very important for some people, i.e. what family members, friends, relatives, that is, their loved and close ones would think of them. For others the vulnerable point is the life and welfare of close people, often these are the victims' children...' [431].

Regarding the status of injured parties in relation to the defendants, the monitors established that in three cases the injured parties were relatives of the defendants, in 8 cases the parties were acquaintances or friends. In the remaining cases the parties were strangers. In these cases, victims were recruited by defendants through social networks or the defendants placed announcements that the victims responded to.

In some criminal cases[432], the injured party had, at the same time, the status of defendant in another case from the same category. As a rule, in such situations the injured parties did not want to attend the hearings, and asked for the case to be examined in their absence. ***'We have never seen a great desire of a victim to collaborate. She usually asks - what will I have to gain from this collaboration? Protection? Compensation? Image rehabilitation? Access to some protection services? Regretfully, none of these...'*** [433].

429 As the prosecutor stated in the interview *'... when it comes to labor exploitation, in most cases the victims are men, and for a man it is more difficult to admit that he was exploited. He will never come to denounce; in the court he becomes more open to collaboration...'.*

430 IIA_11_P_TFU.

431 IIA_10_ex.rep.CCTP.

432 Case E.N.No 9834/art.165 CP; Case P.A. No 468/art.206 CP.

433 IIA_10_ex.rep.CCTP.

There was no victim with disabilities, alcohol or drug addicted in the monitored cases.

4.3. Profile of the defendant in case of trafficking in human beings

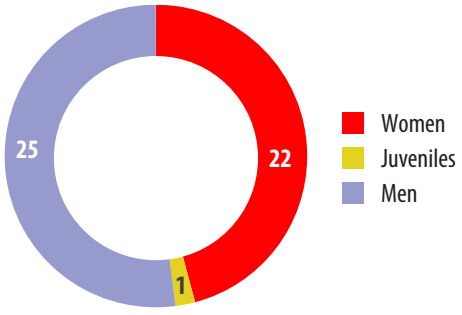
Twenty-six men, including 1 minor, and 22 women were prosecuted on cases of trafficking in human beings and related crimes.

The age of the defendants in the monitored cases was 17-65 years for men and 18-50 years for women. About 73% or 16 defendants were aged 18-30. The youngest man was 17 years old and the eldest one was 65 years old. Twelve male defendants, or 48% of the total, were aged 30-50.

In cases initiated under Article 165 of the Criminal Code (Trafficking in Human Beings), 6 men and 10 women had the procedural status of defendant. In the cases initiated under Article 206 of the Criminal Code (Trafficking in Children) 3 women and 3 men were in position of defendants, and in the criminal case under Article 207 of the Criminal Code (Illegally Taking Children Out of the Country) - 1 man was the defendant. In cases under Article 220 of the Criminal Code (Pimping), 13 men and 7 women had the status of defendant. In cases under Article 362[1] of the Criminal Code (Organization of Illegal Migration) 3 men and 2 women were defendants.

FIGURE 35

Gender profile of defendants in cases of trafficking in human beings and related crimes



Thus, men were indicted more for pimping, and women for cases of trafficking in human beings, with equal proportions in cases of child trafficking.

Monitors found that women were the ones that appeared in some cases as defendants, and in others as injured parties. Regrettably, it was not possible to establish other circumstances (the criminal law does not provide for merging such cases) in order to appreciate the possibility of applying to these persons the provisions of Articles 165(4) and Article 206(4) of the Criminal Code[434].

The monitoring established that in 22 cases there was one defendant, in 8 cases there were 2 defendants, and in 3 cases - 3 defendants. In 5 cases, men and women had the status of co-defendants. There was no defendant with disabilities, alcohol or drug addicted in the monitored cases. Monitors established in 2 cases[435] the defendants had previously committed crimes.

Coercive measures applied in the case

In 10 cases preventive measures were applied to the defendants. Thus, in 9 cases the defendants were subjected to[436] pre-trial arrest, which was extended for different periods, the maximum being 12 months, after which it was replaced with house arrest[437]. The measure of temporary release under judicial control was applied to one defendant and another one was prohibited to leave the town. The preventive measure of house arrest, extended for more than 4 months - was applied in one case to both defendants.

'The court hearing cannot take place without the presence of the defendant. When they want to delay the

434 Articles 165(4) and 206(4) of the Criminal Code of the Republic of Moldova - (4) The victim of trafficking in human beings (trafficking in children) is released from criminal responsibility for the crimes committed by him/her in this procedural position..

435 Case E.N. No 9834/Article 165 CC; Case L.V. No 9177/Article 165 CC.

436 Case P.V. No 63429/Article 165 CC; Case F.S. No 8703/Articles 165 and 206 CC; Case E.N. No 9834/Article 165 CC; Case S.A. No 30428/Article 220 CC; Case I.S. No 28742/Article 165 CC; Case A.V. No 49711/Article 165 CC; Case C.I. No 49701/Article 220 CC; Case S.S. No 31383/Article 206 CC; Case T.G. No 2874/Article 362[1] CC.

437 In the Case I.S. No 28742/Article 165 CC, as communicated by the monitor, the total duration of pre-trial arrest and house arrest, applied to 2 female defendants, exceeded 12 months.

proceedings, the defendants start missing. However, if one year of arrest has expired, the situation gets complicated... many times, one year is not enough to perform the criminal prosecution and judicial examination on trafficking cases... You want to have a qualitative case file, but sometimes it takes more than a year to get a response to a Letter Rogatory...' [438].

The interviewed prosecutor confirmed that sometimes the defendant in a case of trafficking in human beings is under arrest for a longer period, but this situation is determined by objective factors - ***'... speaking of external trafficking, we need to gather evidence abroad, which implies some more special procedures... we have conventions, however, sometimes our Letters Rogatory are not the first on the list... meanwhile, the legal provisions allow the person to be held in custody for up to 1 year - from the time of arrest until the sentence is pronounced...'*** [439].

Preventive measures were ordered against defendants in 5 cases under Article 165 of the Criminal Code (Trafficking in Human Beings), in 2 cases under Article 206 of the Criminal Code (Trafficking in Children), in a case under Article 362[1] of the Criminal Code (Organization of Illegal Migration and in 3 cases under Article 220 of the Criminal Code (Pimping). These preventive measures were applied to 4 women and 11 men, including 1 minor.

4.4. Hearing of criminal cases of trafficking in human beings and related crimes

The following criminal cases of trafficking in human beings and related crimes were selected for the monitoring program:

- 24 criminal cases examined on the merits in the Chisinau Court, Center Office, including 11 cases initiated under Article 165 of the Criminal Code; 8 cases initiated under Article 220 of the Criminal Code; 4 cases initiated under Article 362[1] of the Criminal Code and 1 case initiated under Article 207 of the Criminal Code;
- 5 criminal cases examined on the merits in the Chisinau Court, Botanica Office, including one case initiated under Article 165 of the Criminal Code; 3 cases initiated under Article 220 of the Criminal Code and 1 case initiated under Article 206 of the Criminal Code;
- 2 criminal cases examined on the merits in the Chisinau Court, Ciocana Office, including one case initiated under Article 220 of the Criminal Code and 1 case initiated under Article 206 of the Criminal Code;
- 1 criminal case examined on the merits in the Chisinau Court, Buiucani Office, initiated under Article 206 of the Criminal Code;
- 1 criminal case examined on the merits in the Chisinau Court, Rascani Office, initiated under Article 220 of the Criminal Code.

When monitoring the criminal cases of trafficking in human beings and related crimes, the monitors focused on observing the actions of the participants in the proceedings before and during the hearing of the cases.

Publicity of the court hearing and beginning the hearing at the set time

International standards and national legislation prescribe the public nature of court hearings. A trial of the case in closed hearing *must be justified* and carried out in compliance with all the rules of the judicial procedure.

The monitoring established that 26 of all 33 criminal cases of trafficking in human beings and related crimes were examined in open hearings, and 7 criminal cases[440] were examined fully or partially in closed hearings.

438 IIA_13_A_TFU.

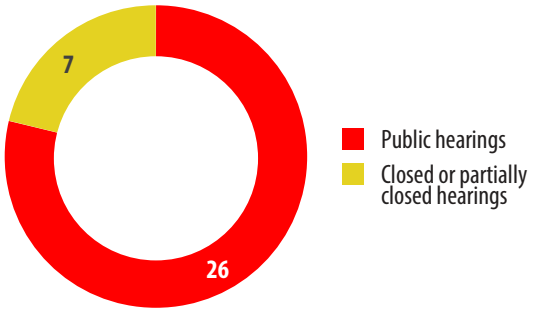
439 IIA_11_P_TFU.

440 Case E.N. No 9834/Article 165 CC; Case I.S. No 28742/Article 165 CC; Case T.S. No 40973/Article 220 CC; Case S.S. No 31383/Article 206 CC; Case B.D. No 6012/Article 165 CC; Case N.S. No 7432/Article 206 CC.

Case E.V. No 8982/Article 165 CC.

FIGURE 36

Nature of hearings in cases of trafficking in human beings and related crimes



The monitors had free access to most court hearings, and the participants in the proceedings understood their presence and sometimes welcomed it. Thus, during the judicial examination of one of the cases[441] the presence of the monitor at the hearing was welcomed by the prosecutor, defense lawyer and the injured party. Notably, the prosecutor and defense lawyer asked for more monitoring activities of that kind.

Similarly, in another case[442], the monitor noted that '... **the** ***participants in the proceedings were welcoming, with the judge and court secretary even saying that it would be good to have such monitoring more frequently, because they mobilize you, and the society needs a public and fair process.***' Some situations were mentioned[443], where the judge '... ***asked yet again who the monitor was what he was doing there...'***, and after the monitor introduced himself and communicated the purpose of his presence during the hearing, the judge would continue examining the case.

Some monitors, however, encountered a different response. During the examination of the case P.A. No 468/Article 206 CC, the defendant's lawyer was extremely upset by the presence of the monitor, insisting that he leave the room. The monitor noted that he would be present at the hearing as long as it was not closed. Then the defense lawyer replied that he would request that the hearing be closed.

In case E.N. No 9834/Article 165 CC, the monitor indicated that at one of the hearings (it was the 9th hearing) the court asked him to leave the room ***'... because personal data are said aloud. When the monitor commented that the hearing had not been closed, the court insisted that the monitor leave the courtroom. After the monitor went out, the case continued for about an hour, but the monitor was not invited to the courtroom...'***.

In case I.S. No 28742/Article 165 CC, the monitor indicated that from the first hearing, the judge had a negative reaction to the presence of the monitor in the proceedings. At the following hearings, the judge tried to use any pretext to intimidate the monitor, so that he would not come to the hearing. During one hearing (7th hearing), the court asked the monitor to give his chair to a witness, although there were free chairs. At another hearing (the 10th hearing), as soon as a witness began testifying, the judge asked the monitor to leave the courtroom because the witness was intimidated, even though the witness did not even notice the presence of the monitor, who was sitting in a corner and the witness did not see him. The monitor got the impression that his presence disturbed the judge. Importantly, one of the participants told the monitor that the judge put pressure on this witness during the hearing. Seeing that his statements in court were different from those given during the criminal investigation, the judge told the witness that if the prosecutor would not act on its own, then he (the judge) would notify the senior prosecutor that charges should be filed for false testimony.

When monitoring one case[444], the panel of judges repeatedly tried to find out what notes the monitor took during the hearing, arguing that ***'... it is not correct that we do not know what is written about the proceedings on the case that we review...'***.

In order to ensure transparent proceedings, according to Article 353 CrPC, the judge has the duty to take all the necessary measures in advance so that the case is

441 Case T.S. No 38525/Article 362[1] CC.
442 Case V.N. No 28158/Article 220 CC.
443 Case P.V. No 63429/Article 165 CC.
444 Case F.S. No 8703/Article 165 CC.

examined as scheduled and the hearing is not delayed. The list of cases scheduled for hearing must contain the necessary information to ensure the transparency of the proceedings and must be displayed in a public place.

The monitoring established that information about 159 scheduled hearings had been displayed publicly, while the information about 12 hearings was not made public[445]. The monitor indicated on one case [446] that '*... about 15 minutes before the hearing, the monitor went to the court secretary to ask about the hearing, because no information was displayed on the panel. The court secretary was surprised to hear this question and replied that the monitor had confused something, as no hearing had been scheduled for that day. It was only at the insistence of the monitor that the court secretary checked and acknowledged that, indeed, a hearing was scheduled...'.*

The electronic panel and/or the information panel in the courtroom displayed information about 151 hearings. Information about 124 hearings was published on the courts' website. Information about all 159 hearings could be found on either the website or on the display in the courtroom.

According to monitors, the information about the scheduled hearings was displayed less than 3 days prior to the hearing in 42 cases, more than 3 days prior to the hearing in 23 cases, and in 94 cases it was not possible to determine when the information was displayed.

In 23 cases, public information indicated that the hearing would be held in the courtroom, and in 136 cases - in the judge's office.

The legal requirements for the contents of the displayed information are not always complied with. The electronic panel in the courtroom is periodically out of order, and the information displayed on the information panel does not follow a single standard for everyone. Therefore, sometimes there is no information about the venue of the hearing, names of all defendants, offenses under examination, etc.

There were reports of instances when the information on the webpage was not updated and did not match the information on the information panel. In one case[447] described by the monitor, the information displayed on the panel in the courtroom indicated that the judge was on a sick leave and there would be no hearing. The injured parties were from different regions of the country, some of them coming from 200 km. The defense lawyer was outraged that they had not been warned that the hearing would not take place. In reply, the court assistant claimed that due to the large number of hearings he did not manage to inform everyone that the hearings had been postponed. When one of the injured parties, from Giurgiulesti, asked to be informed if another hearing would be postponed, the court assistant recommended that she contact the court by phone one day before the scheduled date in order to get the information.

The monitors confirmed the hearings began at the scheduled time in 56 cases, or about 32% of the total number of monitored hearings.

The hearing began late in 104 cases, with a delay of up to 15 minutes - in 64 cases, up to 30 minutes - in 26 cases, up to 1 hour - in 11 cases and over 1-hour - in 3 cases.

The hearing began late because of the judge - in 57 cases (most of the cases due to the examination of another case[448]), prosecutor - in 20 cases, including participation in another trial; defense lawyer - 20 cases, including participation in another trial; defendant - 11 cases; escort - 5 cases; injured party - 4 cases; court secretary - 2 cases; translator - 2 cases; for another reasons - 3 cases. Sometimes the hearing started late due to several causes.

In 11 cases, the hearing did not take place for various reasons (the judge left for a workshop or to the Superior Council of Magistracy, the judge was on a sick leave, etc.)[449].

445 Case E.N. No 9834; Case G.Z. No 5801; Case P.V. No 63429; Case Z.E. No 40194.

446 Case C.O. No 31758.

447 Case G.Z. No 5801.

448 For example, in Case P.V. No 63429, the hearing started 30 minutes late. The participants were invited to the office with a 17-minute delay, and they waited for other 15 minutes in the anteroom because another case was scheduled for the same time and the judge decided to examine it first.

449 Not to be confused with cases of postponing the hearing for another date for different reasons, which was decided at the hearing started at the established time or later.

Safety of injured parties in the court premises in criminal cases of trafficking in human beings and related crimes

Prior to the hearing, the injured parties usually wait in the hall for the proceedings to begin, in conditions that sometimes do not fully meet safety needs. Unfavorable conditions for the victims' safety were mentioned with reference to Center and Rascani offices - where there are small halls for the participants to wait and inadequate lighting (the monitors indicated 11 cases when the parties waited on the hall separately, at a small distance from each other).

The data collected from questioning victims reveal that 6 of the 10 respondents admitted that they sometimes had concerns about their personal safety. Some of the injured parties had a feeling of anxiety due to the fact that they had to be in the court, which ultimately influenced their behavior, as observed by monitors. Thus, in case L.V. No 9177.... when the participants were invited to the courtroom, the defendant sat in the immediate proximity to the prosecutor, while the injured parties (spouses subjected to labor exploitation) remained standing next to the door, although there were free chairs in the room.... In case B.G. No 29544, the injured party refused to enter the courtroom without her defense lawyer. However, the defense lawyer did not appear and she stayed the entire hearing in the hallway. The monitors did not mention any incident before or during the hearing, where the defendant outwardly threatened injured parties.

A peculiarity of the proceedings in criminal cases of trafficking in human beings and related crimes, found by monitors, is that most often the cases are examined in the absence of the injured party.

'Many court hearings take place in the absence of the victim. This is an obvious proof that the victim is a vulnerable person, she is looking for ways of economic survival, and these proceedings will not give her any socio-economic benefits. At the same time, the proceedings last so long that the victim will not stay, not even for the sake of punishing the defendant. She is still looking for the sources of existence, which in most cases forces her to leave...' [450].

Of the total number of 33 criminal cases covered by the monitoring, in 24 cases all the hearings took place in the absence of injured parties. In the other 9 cases, the injured parties attended only several hearings. Thus, of all 171 monitored hearings on criminal cases of trafficking in human beings and related crimes, the injured parties were present only at 39 hearings (22.8%).

'The victim's vulnerability is often the cause of her absence from the hearing. The victims do not have money to travel to the court... The court insists that she is present at the first preliminary hearing, although she will not be heard at this hearing. Another cause is fear. In case of sexually abused victims, some judges accept their hearing in the absence of the defendant, but only a few do so...' [451].

'I proposed to set up a unit in the General Police Inspectorate or to increase the number of staff to ensure the presence of the people in the court — the summons reach the addressee with difficulty, as they are mailed to the mayor first...' [452].

The monitoring found that the injured parties usually do not come to the proceedings in cases of trafficking in human beings/trafficking in children for sexual exploitation or in cases of pimping. However, the information that the injured party can provide can be of great importance for adopting an effective solution on the case.

Therefore, it is necessary to improve the procedural mechanism for the investigation of these sensitive crimes, to ensure the victim's well-being and sense of security and to prevent her re-victimization. This needs to be balanced with the need to gather comprehensive evidence, build a strong case and promote the accountability of the offender.

The need to improve the procedural mechanism for preventing the revictimization of the injured party is supported by the interviewed professionals. Thus, the defense lawyer is of the opinion that - ***'... for sure victims need to be interviewed under special conditions, without visual contact with the defendant. This is***

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true not only people subjected to sexual exploitation, but also those subjected to labor exploitation. All of them have a tremendous fear of the perpetrator...The court rarely agrees to remove the defendant from the hearing, therefore we try to prepare morally the victims - we tell them not to be afraid, to look only at the judge, not to look at the defendant....'[453]. In turn, former employee of the Center for Combating Trafficking in Human Beings comes with some details - *'... hearing the victim by the investigative judge in protected conditions is, I would say, in the interest of all parties. The best thing for the victim is to avoid confrontation. Thus, the testimonies should be recorded in order to avoid the physical presence of the victim in court or repeated hearing. On the other hand, there will be no fears and difficulties concerning the change of the testimonies due to trafficker's pressure and the proceedings will not be delayed in the absence of the victim, who is abroad. At the same time, it is necessary to consider that the decision of the victim to collaborate with the authorities must be conscious, taken after receiving clear information about what will happen once the victim submits these testimonies. The victim must know how the testimonies will be used, and how they may influence the safety of close people, etc. Also, the hearing of the victim by the investigative judge must be very well prepared, the questions of the defendant must be admitted and clarified to a maximum extend in order to exclude the need for a repeated court hearing...'*[454].

The importance of hearing an injured party under special conditions is also confirmed by the interviewed prosecutor - *'often after we identify the victim and start the criminal prosecution, she leaves for abroad... the criminal prosecution was started, we have the suspect, but we cannot finish the investigation without the injured party... there are procedures and we try to apply them, but we do not always succeed. Judges try to be flexible, if their caseload allows for it.... Hearing the victim under special conditions helps review the case in reasonable terms in the court. The procedural law envisages this currently for children under the age of 14, we have made proposals to offer this possibility for children under the age of 18. We support the idea of hearing under special conditions also adult victims.... This also protects us from accusations of applying the pressures during the hearing... I think we need to develop this procedure...'*[455].

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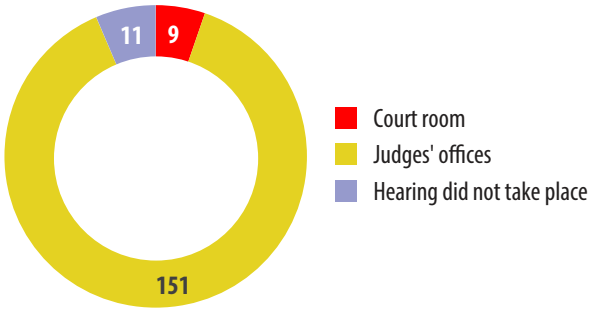
Venue and the audio recording of the court hearings

As mentioned above, according to the displayed schedule information, 23 cases were scheduled to take place in the courtroom, and 136 cases — in the judge's office.

FIGURE 37

Venue of the hearings in cases on trafficking in human beings and related crimes, hearings



The monitors stated that out of the 171 monitored hearings in criminal cases of trafficking in human beings and related crimes, only 9 hearings were held in the courtroom[456], the other 151 hearings were held in the judges' offices, and 11 hearings did not take place.

In 22 hearings, the case was examined by a panel of judges[457], in the other 138 hearings - by one judge. Th cases examined by a panel of judges were also heard in the office of one of the judges, who was part of the panel of judges.

455 IIA_11_P_TFU.

456 The following hearings took place in the courtroom: Case T.S. No 40973 (Ciocana); Case C.I. No 49701 (Botanica); Case P.E. No 46823 (Botanica). At the same time, only the last hearing on Case S.A. No 30428 took place in the courtroom, when the sentence was pronounced (which can be explained by the fact the Center Office was being relocated to another locality during that period).

457 Case F.S. No 8703; Case N.S. No 7432; Case S.S. No 31383.

Monitors indicated that out of the total of 33 criminal cases selected for monitoring, in 30 cases (Center - 24; Botanica -3; Buiucani -1; Ciocana -1; Rascani -1) the hearing took place in the judge's office, including 25 hearings (4 criminal cases) that were held in relatively spacious offices, equipped with necessary furniture, the other 126 hearings were held in small offices, creating additional discomfort for the participants in the proceedings[458], although in some cases the courtroom was free. Thus, the monitoring results did not confirm the opinion of a defense lawyer, who stated during an interview that - ***'... now the conditions are better, there are more courtrooms. Of course, there are cases when the judge does not have a courtroom, but in a case of trafficking, which involves the prosecutor, lawyers, 3-4 defendants and other participants, the judge does not have other alternatives and holds the hearings in the courtroom anyway. In districts the situation is much better than in Chisinau and judges are calmer...***'[459].

Along with the technical inconveniences, the examination of the case in the judge's office does not ensure the necessary conditions for solemnity and order during the hearing.

The hearings must be audio or video recorded. Monitors noted that courts generally ensure the audio recording of court hearings. The participants in the proceedings, as a rule, are not informed that the hearing was audio recorded. However, 4 cases were identified[460] where the court did not order that the hearing be recorded and the monitors did not notice any signs of the hearing being recorded.

No participant in the proceedings requested a copy of the audio recordings of the court hearings during the monitoring period.

Language of the proceedings and parties' access to the services of an interpreter

All monitored hearings in criminal cases of trafficking in human beings and related crimes took place in state language. Participants who did not speak the language of the proceedings were entitled to request an interpreter.

Monitors confirmed that in all 39 hearings where the injured party was present, he/she spoke the language of the proceedings and did not need an interpreter.

Of all monitored cases, an interpreter was required by 8 defendants in 7 criminal cases. In all these cases, defendants were offered an interpreter, to the extent possible. In some of the cases[461] providing an interpreter was not a difficult issue. In other cases, however, in order to ensure the participation of an interpreter in the proceeding, the hearing was delayed by 15 minutes[462] or even by 30 minutes[463]. Monitors stated that in some cases[464] the hearing was repeatedly postponed due to the lack of an interpreter. In one case [465] the duties of an interpreter were performed by the defendant's lawyer, so as not to postpone the hearing.

Procedure for examining criminal cases of trafficking in human beings and related crimes

Monitors found that out of the 33 criminal cases of trafficking in human beings and related crimes covered by the monitoring program, 13 criminal cases were examined in simplified proceedings on the basis of the evidence managed during the criminal investigation phase. (The criminal cases examined in closed hearing are not taken in account here, as monitors did not have access to them). In another case,[466] both de-

458 Case F.S. No.8703/Article 165, Article 206 CC is examined by a panel of judges in the office of one of the judges. The room is not spacious enough for 11 people, there isn't enough furniture for everyone. Although a courtroom was open, the judges preferred to hold the hearing in a small office. The Case P.V. No 63429/Article 165 CC; Case P.V. No 63429/Article 165 CC; Case L.V. No 9177/Article 165 CC were reviewed in similar conditions; In Case I.S. No 28742 the monitor had to stand during a hearing etc..

459 IIA_12_A_TFU.

460 Case I.S. No 28742; Case P.A. No 468; Case L.G. No 27102; Case B.A. No 2501.

461 Case J.N. No 7162; Case D.D. No 9704; Case C.I. No 49701.

462 Case I.S. No 30428. On the same file, in another hearing, a break had to be made in order to find an interpreter for the defendant, and another hearing was postponed due to the lack of an interpreter.

463 Case I.S. No 28742.

464 In Case Z.E. No 40194 the hearing was postponed three times due to the lack of an interpreter, including two hearings in a row, so that after the hearing of 03.11.17, the next hearing took place on 25.01.18.

465 Case T.G. No 2874.

466 Case S.A. No 30428/Article 220 CC.

fendants initially requested for the case to be reviewed in accordance with the procedure provided in Article 364[1] of the Criminal Procedure Code, then gave up and withdrew their applications.

Simplified procedure was applied in 11 criminal cases under Article 220 CC (Pimping), including 2 cases under Article 220(1) CC (less serious offense) and 9 cases under Article 220(2) CC (serious offense). The other two criminal cases referred to offense (less serious) under Article 362[1](2) of the Criminal Code (Organization of Illegal Migration).

The injured parties did not participate in any of the hearings in the cases for which simplified procedure was accepted. Also, no civil action was brought on any case.

In fact, the monitoring of criminal cases of trafficking in human beings and related crimes revealed that mostly the hearing of cases did not involve injured parties. Most often, the crime victim did not have the status of a civil party in a case. Hence, individuals damaged by a crime remain disadvantaged in criminal proceedings.

The prosecutor emphasized that – '*...we use new civil actions, including as a tool to ensure that the injured parties will not change their statements. By signing the civil action on the amount of the damage, they understand that they have no reason to accept the trafficker's proposals... We injured parties' defense lawyers help us with the civil actions by accumulating some materials that underpin the action, the damage is assessed with the help of the victim'...*'[467].

Monitors did not record any case where, according to Article 364[1] (5) of the Criminal Procedure Code, the victim was informed about the right to become a civil party.

'The victim's expectations, when resorting to state institutions, are not to punish the trafficker... I am ready to do anything, only for all of this to be over as soon as possible; I was left with promises only... Therefore, investigations into the cases of trafficking in human beings and in children must go hand in hand with financial investigations, because the purpose of trafficking is not exploiting the person per se....'[468]. The interviewed defense lawyer also expressed his dissatisfaction with the current situation - ***'the prosecutors used to be somewhat specialized. During a certain period, I started to see some financial investigation, seizure of perpetrator's assets on such cases, which had not happened before. Now that the prosecutors' competence in conducting criminal prosecution on these files has changed, the new prosecutors have hundreds of cases from other categories of crimes, and this affects the quality of their work on trafficking in human beings cases. As regards the application for the admission of civil actions on criminal cases, we still have a long way to go...'***[469].

'*We would like to nominate some people to be in charge of financial investigation in parallel with the investigation the trafficking offense, because we admit that sometimes we overlook some aspects or do not have enough time. Why not to have 1-2 responsible persons who immediately, when an investigation is started, begin accumulating information about the assets of the suspect, the accused, and the defendant, which can be seized to recover the damage, because these crimes actually have the purpose of making profits...*'[470].

The monitors established that in 9 cases the defendants submitted, together with the application for simplified procedure, provided by Article 364[1] of the Criminal Procedure Code, the request to terminate the criminal proceedings on the grounds of the amnesty act in connection with the 25th Anniversary since the proclamation of the Independence of the Republic of Moldova. In two cases[471] the application for amnesty was not accepted.

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469 IIA_12_A_TFU; The interviewed defense lawyer also mentioned that *...many judges assess the damages as insignificant as compared to money the defendants earned using the victims. I think it is necessary to amend the law in part related to compensating the material and moral damage. Nowhere in the world it is required to prove mental sufferings. Judges award millions because human dignity was affected. In our country human dignity is not valuable unfortunately. . .The same refers to compensation of material damage. Why do they not consider as moral damages the amounts paid for the forced work – isn't it a lost income? I think the law must be amended to include additional payment for a person's exploitation. He/she was forced to work. Hence, the remuneration should be applied by the court considering the standard wages for similar work. A moral compensation must be paid for sexual exploitation in the amount by which the defendant got richer at victim's expense....*

470 IIA_11_P_TFU.

471 Case V.N. No 28158/Article 220(1) CC; Case P.E. No 46823/Article 220(2) CC.

Ensuring the parties' right to legal aid services in criminal cases of trafficking in human beings and related crimes

The monitoring of criminal cases of trafficking in human beings and related crimes revealed that out of 33 criminal cases of this category of crimes, only in 3 cases[472] the victim was assisted by a defense lawyer, including by a private defense lawyer in one case. In the other two cases they benefited from state-guaranteed legal aid. In cases where the injured parties were granted state-guaranteed legal aid, the monitors appraised the defense lawyer's performance as modest. In one case, the defense lawyer of the injured party missed 6 of the 11 monitored hearings, and in another case the defense lawyer missed 2 of the 7 monitored hearings. Regarding the relations between the injured party and the defense lawyer, the representative of the Center for Combating Trafficking in Human Beings believes that ***'... the psycho-emotional stability of the victim is important in the interaction with the participants in the proceedings. The victim usually does not know well with procedural rules. She comes from an experience where she was cheated, deceived. In communicating with investigating officers and lawyers, she wonders whether she might have confidence in them or not. Therefore, it is important to have sincere cooperation between the victim and her lawyer, and the decisions that concern the victim should also consider her opinion... In dealing with the criminal investigation body, the role of the lawyer is to help them see and understand the human side of the case, so that stereotypes do not influence the behavior and decisions...'***.

The questioning of victims of trafficking in human beings and related crimes revealed that none of the 10 interviewees were assisted by a defense lawyer. Three victims mentioned that at the criminal investigation stage, they were verbally informed about their right to a defense lawyer.

'It is very important how the victim is informed about the right to a defense lawyer. The victim will not understand anything if she is only asked if she has a defense lawyer or if she wants a defense lawyer. Under these conditions, the victim will rather respond - no, I do not need a defense lawyer...why would I need one, if probably he will work for him, as well? That would be one of the reasons why victims refuse the assistance of a lawyer. Another reason is that many lawyers believe it is not cool to work with victims of trafficking in human beings, they are ashamed to defend in court people 'of this kind'.... When you do not believe in the case and blame yourself for taking it, the victim will feel it and will refuse the services of such a lawyer...'[473].

'As a rule, social services apply for legal aid to victims of trafficking in human beings, ... it is not compulsory for the criminal prosecution officer, but the participation in the proceedings of the victim's lawyer is convenient, in a way, for the prosecution. During the proceedings, the lawyer supports the position of the prosecutor, ensures a better connection with the victim, writes the appeal and helps the prosecutor...'[474].

'The victim's behavior greatly depends on the professional training of the criminal investigative officer, with whom she had the first contact. We believe it is crucially important to explain the rights to the victim in a very simple language so that she understands... sometimes when the injured party has a lawyer some of these tasks are performed by the lawyer.... We often request a lawyer from civil society organizations. The lawyers employed by NGOs are specialized; the biggest value added in these cases is that they NGOs provide the whole package of services - the defender, the psychologist who help, ... it's easier and you do not have to contact several institutions...'[475].

The results of the monitoring confirm that legal aid would be beneficial for the crime victim. Often, as noticed by monitors, the victim does not understand what is happening in a court and finds it difficult to make statements. In one of the cases[476], the chairperson of the hearing requested the prosecutor and the defense lawyer to formulate the questions more simply, so that they are understood by the injured parties.

472 Case I.S. No 28742/Article 165 CC; Case P.A. No 468/Article 206 CC; Case B.G. No 29544/Article 207 CC.

473 IIA_10_ex.rep.CCTP.

474 IIA_12_A_TFU.

475 IIA_11_P_TFU.

476 Case F.S. No 8703/Article 165, Article 206 CC.

Having, in most cases, a vague understanding of how a case is examined, the injured party does not have anyone to encourage and offer her support when necessary during the hearing. This causes a state of anxiety, one of the factors that causes the injured party to choose the simplest solution - not to come to the hearing. This is also the case when some participants in the proceedings, more often the defendant's lawyer, show disrespectful behavior in relation to the victim or even accuse her of trying to denigrate the defendant. Such cases were also confirmed by a defense lawyer in an interview - ***'... defense lawyers often have a preconceived attitude about a victim — that she is a liar, a prostitute... In the court we try to protest, we challenge the victim intimidation action. I had cases when my colleague, defense lawyer representing the opposite side, did his best to insult me, as well...*** [477]'.

The monitors reported that the defendants in the criminal cases included in the monitoring were in a different situation than crime victims regarding the access to legal aid.

During the monitoring process, it was established that in all monitored cases, all defendants benefited from the legal support of a defense lawyer. In one case[478], one of the defendants was assisted by two defense lawyers. Thus, 38 defendants received qualified legal assistance from private defense lawyers, and 9 defendants received qualified state-guaranteed legal aid. Monitors did not indicate any case of a defense lawyer not being ready for the hearing.

At the same time, the interviewed prosecutor expressed some reservations about some defense lawyers - '***I think it would be wrong of us to appraise the performance of defendants' lawyers. Each of them has their own defense strategy... however, speaking not about lawyers, but generally, in any field, people often commit themselves to doing some work without knowing what they are involved in, ... returning to the point I would say that some lawyers are not prepared for this field, make many errors, I do not say that all of them are so...***'

Monitors underscored that the hearing often started late or was postponed because of the defense lawyer. The monitors noted that 15 hearings started late because of the defense lawyer, including in 2 cases - by 10 minutes, in 9 cases - by 15 minutes, in 2 cases - by 25 minutes, and in 2 cases - 45 minutes. Twenty-four hearings were postponed due to the lack of the defendant's lawyer, in 14 cases for well-grounded reasons (illness, the summons was not confirmed, general meeting of lawyers, etc.).

In one of the cases[479], the monitor noted that at the preliminary hearing the judge set as a goal to finish examining the case before the holiday leave. However, after repeated absences of the defense lawyer of either one or the other defendant, at the 6th hearing the judge expressed his anger that the proceedings were delayed, and they did not even manage to start examining the case. Thus, the monitoring results confirm the professionals' statements during the interviews that sometimes delaying the case examination could be a defense tactic, especially when it comes to putting the defendants in pre-trial detention, which may not exceed one year.

During the monitoring, in one case[480] the defense lawyer of the injured party was fined for unjustified absence from two consecutive hearings.

Ensuring the right of the injured party to treatment with respect

The injured parties are frequently missing from the judicial examination of the criminal cases in trafficking in human beings and related crimes, as mentioned above. Thus, monitors did not have many opportunities to observe how injured parties are treated during the proceedings.

However, monitors have reported some situations that could be regarded as disrespectful treatment of the injured party. Thus, in one of the cases[481] the injured par-

477 IIA_12_A_TFU.
478 Case S.A. No 30428/Article 220 CC.
479 Case S.A. No 30428/Article 220 CC.
480 Case B.G. No 29544/Article 207 CC.
481 Case I.S. No 28742/Article 165 CC.

ty was heard under special conditions at the criminal investigation stage, with the record of the hearing being attached to the file[482]. However, the court ordered that the injured party be brought forcedly to court. The monitor did not notice any discussions or arguments for the repeated hearing of the injured party in the court. When she appeared at the hearing, the court made offensive statements to her. At the following hearings, the injured party did not appear - ***'... sometimes when the judge is biased, it is revealed by his attitude towards the victim, the expressions used in her address, even the tone of voice...'***[483]. At that hearing, the injured party mentioned that she agreed to testify because she was the defendant in another case[484]. The status of defendant in another case could be a form of pressure on the injured party in this case, which is not allowed by the Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) of 3 May 2005, which requires that victims independently decide whether to cooperate with the authorities.

'It is necessary to invest in the training of prosecutors, judges, lawyers, for them to know not only the material and procedural aspects, but also to understand correctly the human-psychological aspect of this crime, ... I would plead for specialization... in these categories of sensitive crimes. If specialization is not possible, at least to train judges and prosecutors - for them to learn about the new aspects of these phenomena, how to analyze the psychology of the victim and of the perpetrator, how the so-called relationship between them can be influenced...'[485].

The interviewed prosecutor was optimistic - ***'... as far as I know, it was recently decided to specialize judges in Chisinau on trafficking cases. Let's see, I hope this will to be a positive practice... prosecutors now some are somewhat specialized, there is a responsible person in each prosecutor's office...'***.

Like in other categories of monitored cases, the date of the next hearing was not coordinated with the injured party — the latter was not even asked if she is available for that day[486].

The practice of frequently postponing the hearings can be also regarded as a lack of respect and possibly dangerous for crime victims[487]. In one case, the injured party waited for her defense lawyer to come, standing in the hall during the whole duration of the hearing.

Monitors reported situations[488] when the injured party was anxious during the hearing, and did not come to the following hearings, leaving the placement center where she was accommodated, without informing anyone. ***Judges and litigants believe that a victim is a person who is crying and asking for help. This is how most of the people portray a victim. It should be borne in mind that many victims, especially the trafficked ones, are people who had been, perhaps for a long time, subjected to abusive behavior and they have learned how to adapt, to adjust their own behavior in order to survive. Respectively, they behave differently than expected during the hearing, which the judge may regard as a frivolous behavior, at best. Stereotypes greatly influence the perception of the judge or others, they do not want to try to understand that this may be the result of the abusive environment, in which the person had stayed for a long time, and the desire to survive...'*** [489].

During the interview the defense lawyer referred to the need for ***'...Long-term psychological services are***

482 Similarly, in Case P.V. No 63429/Article 165 CC. The prosecutor requested the case to be examined in the absence of the injured party because she was living abroad and that is why she was heard during the criminal prosecution by the investigating judge, with the records being annexed to the file. The judge, however, asked the prosecutor to ensure the presence of the injured party in the court.

483 IIA_12_A_TFU.

484 In the case P.A. No 468/Article 206 CC, the defendant is also an injured party on another case.

485 IIA_10_ex.rep.CCTP.

486 Case T.S. No 38525/Article 362[1] CC, etc.; Generally, out of 39 hearings where the injured party was present, the monitors mentioned only 14 cases when the injured party (or her lawyer) was asked about the date of the next hearing.

487 Case B.G. No 29544/Article 207 CC; Case G.Z. No 58801/Article 362[1] CC. In the last case, which has been under judicial review for over 10 months, the injured parties were angry each time the hearing was postponed because they had to travel long distances (including over 200 km) in order to come to the court from different regions of the country. Some of them would drive with their family members or relatives (there were also young children waiting in the hall). Many injured parties have asked for a confirmation of the summons for their employer, saying that every time they come to court, they incur large travel expenses to arrive to Chisinau and also have to take days-off from their employer. Meanwhile, the monitor found cases of postponed hearings due to the judge's medical leave, with the participants in the proceedings supposed to be informed that the hearing would not take place.

488 In the case P.A. No 468/Article 206 the injured party, under 16 years of age, made ironic comments about the prosecutor's or other participants' statements. Following an ordinary decision to postpone the hearing due to the absence of participants in the proceeding, the injured party stated that she would no longer be present at the next hearings.

489 IIA_10_ex.rep.CCTP.

also required, especially for victims of sexual assault ... long-term programs for victims are very important for their integration into the labor market and the society ...'[490].

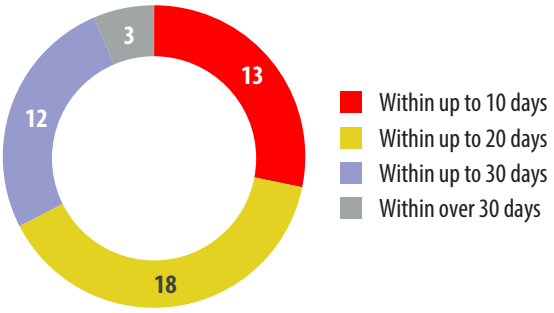
The questioning of victims of trafficking in human beings and related crimes revealed that 6 injured parties described the attitudes towards them during the trial as welcoming, 3 injured parties - were treated with indifference, and one victim mentioned that she was subjected to an unfriendly treatment during the hearing. At the same time, 4 injured parties reported that they had been pressured by the defendant, and 3 injured parties had been pressured by members of the defendant's family. The interviewed prosecutor confirmed the attempts to put pressure on the victims - '*... the trafficker does not want to go to jail, the punishments are very harsh, therefore he is trying to persuade the victim to cooperate... Sometimes, we ...place her in the center, and everything goes well. At some point, when leaving the placement center, the victim returns back to the same places, as she has to earn somehow a living. I think the local government, the professionals from the local level should get more involved...*'[491].

4.5. Examining the case within a reasonable time and postponing the hearing

The monitoring of the criminal cases of trafficking in human beings and related crimes, examined in the Chisinau Court, revealed that in 13 cases the first hearing was scheduled within 10 days of the case registration date, in 18 cases - within 20 days. In 12 cases, the first hearing was scheduled within 30 days of the case registration date, and in 3 cases[492] the first hearing was scheduled within 41-53 days.

FIGURE 38

Setting the date of the first hearing in criminal cases on trafficking in human beings and related crimes



The actual time spent on a case was: in 9 cases - up to 1 hour; in 10 cases - up to 2 hours and 7 cases - over 2 hours (the other 7 cases were examined in closed hearing). However, the term for examining a case most of the times is quite long.

Thus, it was established that out of the total number of 33 criminal cases included in the monitoring program, one case[493]was examined within 30 days, 5 cases - within 60 days, 2 cases - within 90 days, 3 cases - within 120 days, 2 cases 0 within 180 days, and other 3 cases - over 200 days. One of these cases[494] had been examined by a judge for 258 days, and then handed over to another judge. At the same time, of the 17 cases remaining under examination upon completion of the monitoring program - 1 case had been pending for over 5 months, 1 case had been pending for 7 months, 2 cases - for over 9 months, 4 cases - for about 10 months, 3 cases - for over 11 months and 1 case[495] (with minor injured party) had been pending for over 12 months. In 5 of the cases examined in closed hearing, it was not possible to gather this information.

None of the cases subjected to monitoring resulted in a judgment after one hearing. 2 cases were settled in 2 hearings, 4 cases - 3 hearings, 2 cases - 4 hearings, 6 cases - 5 hearings, 1 case - 6 hearings and 1 case in 17

490 IIA_12_A_TFU.
491 IIA_11_P_TFU.
492 Case C.V. No 27102/Article 220 CC; Case A.V. No 49711/165 CC; Case D.D. No 9704/Article 220 CC.
493 Case C.I. No 49701/Article 220 CC.
494 Case Z.E. No 40194/Article 165 CC.
495 Case P.A. No 468/Article 206 CC.

hearings. Other cases were still under review, monitors attending a case in 20 hearings, in other 3 cases - 11-13 hearings, 4 cases - 8 hearings, 2 cases - 7 hearings, etc.

The court hearings were postponed due to the following reasons:

- absence of the judge - 12 cases;
- absence of the prosecutor - 10 cases;
- absence of the defense lawyer - 29 cases;
- absence of the defendant - 33 cases, including 5 cases when the defendant was not escorted;
- absence of the injured party - 29 cases;
- absence of the defense lawyer of the injured party - 14 cases;
- absence of the witness - 14 cases;
- absence of the interpreter - 4 cases
- examination of motions for simplified procedure - 3 cases;
- examination of extension of arrest period - 10 cases;
- issuance of a sentence - 9 cases;
- elapse of the time allocated for the hearing - 26 cases;
- other reasons (recusal of the judge, submission of new evidence, preparation for debates, delivery of the indictment, etc.) - 14 cases.

'The lengthy case examination is not always justified. There are too many unjustified delays, in my opinion. Often, the defense lawyer and the defendant delay the proceedings with no good reason. This is done in spite of the fact that these proceedings are quite slow themselves...' [496].

The position of a former employee of the investigative body is partly shared by a defense lawyer - ***'... sometimes the case examination is deliberately delayed by the defendants, for different reasons. Some courts try to stop such a practice, others do it to a lesser extent. Thus, the victim has to come several times in to the court. In these cases, the victim may request the examination of the case in her absence and will be represented by the defense lawyer in the court...'***[497].

The prosecutor argues that ***'all types of crimes are delayed... in cases of trafficking of human beings the victim's statements are crucial who, as I have said, are often not found or disappear and do not come, or no one knows where they are, maybe they were trafficked again... There is also a great workload in the court itself... when the judge has a workload of 100-300 files to review, then what could you say? The cases of trafficking in children are usually examined by a panel of 3 judges, who have to coordinate their own agendas... they are objective and subjective causes...'***[498].

The monitors noted that in some cases the hearing lasted a shorter period than the delay in starting the hearing[499]. It's puzzling when the hearing begins with a delay of 10 minutes (because of the judge), and in another 10 minutes it is postponed to another day due to the expiry of the time scheduled for that hearing.

One victim of trafficking in human beings and related crimes, upon being asked whether she was satisfied with the proceedings said the frequent postponements were the first reason for dissatisfaction.

Monitors noticed also in cases of trafficking in human beings and related crimes that the timeframe between the set hearings is very long. Thus, in some cases[500], as in the monitored cases on domestic violence and sexual violence against women, the case hearing was postponed for more than 2 months, while in other cases[501] the next hearing was postponed for more than 3 months.

496 IIA_10_ex.rep.CCTP.
497 IIA_12_A_TFU.

498 IIA_11_P_TFU.

499 Case F.S. No 8703/Article 165 CC; Case S.A. No 30428/Article 220 CC; Case TS No 38525/Article 362[1] CC; Case M.N. No 44815/Article 220 CC, etc. In the last case, the hearing started with a delay of 10 minutes and lasted for 5 minutes, after which, as mentioned by the monitor *'... the judge announced that he would have to postpone the hearing for another day because he was informed that he had to go to a meeting in 10 minutes, and the management was very strict when it comes to attendance; not even a scheduled hearing can be used as an excuse not to attend the meeting...'*. Regretfully, it is a case of administrative influence on the judge - the position of the court management prevails over any other situation.

500 Case M.E. No 32845/Article 165 CC; Case L.V. No 9177/Article 165 CC; Case B.G. No 29544/Article 207 CC; Case G.Z. No 5801/Article 362[1] CC; Case C.O. No 31758/Article 220 CC; Case I.S. No 28742/Article 165 CC.

501 Case E.N. No 9834/Article 165 CC; Case D.D. No 9704/Article 220 CC; Case Z.E. No 40194/Article 165 CC; Case G.Z. No 5801/Article 362[1] CC; Case C.O. No 31758/Article 220 CC; Case P.A. No 468/Article 206 CC.

4.6. Sentence pronounced in criminal cases of trafficking in human beings and related crimes

As mentioned above, upon completion of the monitoring of proceedings in cases of trafficking in human beings and related crimes, out of 33 monitored cases, 17 criminal cases remained pending (no sentence was pronounced), including 7 criminal cases examined in whole or in part in closed hearings. These include 11 cases under Article 165 of the Criminal Code (Trafficking in Human Beings), 3 cases under Article 206 of the Criminal Code (Trafficking in Children), 2 cases under Article 362[1] of the Criminal Code (Organization of Illegal Migration) and 1 case under Article 207 Criminal Code (Illegally Taking Children Out of the Country).

The monitors indicated 16 cases in which a judgment was issued prior to monitoring completion. These were:

- 1 case of trafficking in human beings, with sexual exploitation (Article 165(2)(d) CC);
- 13 cases of pimping (Article 220 CC);
- 2 cases of organizing illegal migration (Article 362[1](2)(c) CC).

In one case of trafficking in human beings[502] the court issued a judgment sentencing the defendants (2 women) to 4 years of imprisonment, with postponement of execution of the punishment, under Article 96 of the Criminal Code, until their children reach the age of 8.

One of the criminal cases which was originally charged as organization of illegal migration[503] resulted in sentencing the defendant with a fine of 750 c.u. (seven hundred and fifty conventional units) with deprivation of the right to manage human resources for 4 (four) years. In another criminal case on organization of illegal migration[504] the criminal proceedings were terminated on the occasion of the amnesty in connection with the 25th anniversary since the proclamation of the Independence of the Republic of Moldova.

In 13 criminal cases of pimping, the following solutions were adopted:

- 1 case ended with sentencing 2 defendants to 5 years 6 months of imprisonment;
- 1 case ended with sentencing the defendant to 4 years 6 months of imprisonment;
- 1 case ended with sentencing the defendant to 4 years of imprisonment, conditionally suspended for 3 years;
- 2 cases ended with sentencing of defendant to 3 years of imprisonment, conditionally suspended for 1 year[505];
- 1 case ended with sentencing the defendant to a fine of 500 (five hundred) conventional units;
- 7 cases ended with sentences of terminating the criminal trial on the grounds of the amnesty act in connection with the 25th anniversary since the proclamation of the Independence of the Republic of Moldova.

The monitors reported that 16 cases in which a resolution was reached, 9 cases were examined in simplified proceedings, according to of Article 364[1] of the Criminal Procedure Code.

According to the monitoring results, of the total number of 33 criminal cases for trafficking in human beings and related crimes covered by the 9.5-month monitoring program, only 4 cases were identified where the defendants were convicted and punitive measures were applied, including 2 cases of imprisonment and 2 cases of imposing a fine. These figures confirm the opinion of the interviewed defense lawyer, that ***'... many judges believe the sanctions for trafficking in human beings are too harsh...'.***

The interviewed prosecutor also expressed his opinion about the sanctions provided for trafficking in human beings- ***'the minimum sanction the crime of trafficking needs to be lowered. When it comes to an organized criminal group or a network of traffickers,***

502 Case B.A. No 2501/Article 165 CC.
503 Case J.O. No 7797/Article 362[1] CC.
504 Case T.G. No 2874/Article 362[1] CC.

505 Case P.E. No 46823/Article 220 CC. The monitor indicated that the defendant was 30 minutes late for the hearing and contacted the judge, where she received a copy of the sentence. In the subsequent discussion with the defendant, the latter told the monitor that she had been explained neither the essence of the sentence, not her rights and obligations related to it.

or, perhaps some more complex situations, if a larger margin between the maximum and minimum limits of the sanction existed, the prosecutor could try to persuade people to cooperate...' [506].

Monitoring the judicial examination of criminal cases on trafficking in human beings and related offenses confirms that crime victims are still marginalized in the formal criminal proceedings. The proceedings showed that ensuring the protection and rehabilitation of crime victims was not a priority. There were no consistent efforts to effectively punish perpetrators and inform victims what to do in order to obtain recovery of the physical, material and/or moral damage caused by the crime. Where there is no opportunity for victims to receive treatment and rehabilitation for all their injuries, including psychological harm, justice has been denied.

'It is necessary to develop the so-called restorative justice, that is, along with the accountability of the trafficker, to insist on restoring the rights the crime victim. We talk about the economic and social aspect, compensations, support with the rehabilitation, etc.'[507].

Conclusions to the chapter

- Analysis of the profile of victims in the cases of trafficking in human beings and related crimes revealed that the 75.8% of victims were women, the overwhelming majority or 80% being aged 16-25. Some of these women appear to be indicated as defendants in some cases and injured parties in other cases. The legislation does not currently provide for the possibility of linking the trafficking in human beings cases in which the same person in some cases has the status of an injured party and in other cases has the procedural status of a defendant. The possibility to link the cases would allow to release the victim from criminal liability for crimes he/she committed.

- Most of the cases covered by the monitoring were examined in public hearings. A total or partial examination in closed hearings was announced in about 21% of the cases, especially in those involving juveniles and trafficking in human beings. Besides the parties and their representatives, no other people attend the hearings.

- The outcomes of the monitoring revealed the same problems related to the transparency of the trials. In many instances, the list of the cases set for trial was displayed on the information board in the court with violation of the legal timeframe. Sometimes, there was not any information about the hearing at all, sometimes the information was misleading or outdated.

- About 68% of the hearings started with delay. In some cases, the delay was up to 1 hour and longer, including in about 55% of cases the delay was due to the examination of other cases. Most of the time, the participants in the trial were not informed about the cause of the delay.

- A peculiarity of the trial in criminal cases of trafficking in human beings and related crimes is that the examination of the cases occurs most often in the absence of the injured party. Thus, 72% of the cases covered by the monitoring were examined in the absence of the injured parties. The injured parties do not appear at the hearing of cases of trafficking in human beings / trafficking in children for the purpose of sexual exploitation and cases of pimping. That is to say, they tend not to come to court for cases that result from actions of sexual nature, these being part of the category of offenses with a high degree of sensitivity in the society.

- About 88% of the hearings in the cases covered by the monitoring took place in the judges' offices. Most of them have insufficient space, lack necessary furniture and cause inconveniences to the participants in the trial.

- The courts mostly provide audio recording of court hearings. The participants in the trial are usually informed that the hearing is being recorded. However, the monitors indicated a few cases where the court did not require the recording of the trial, which is in

506 IIA_11_P_TFU.
507 Ibidem.

contradiction with the imperative provisions on the mandatory announcement and recording of the court hearings during which the minutes have to be prepared.

- Monitors mentioned some difficulties in providing an interpreter to the defendants. The interpreter's assistance was needed for defendants in 21% of the cases. In all of these cases the defendants benefited from the services of interpreter to the possible extent. In some cases, in order to provide an interpreter, it was necessary to start the hearing 15-30 minutes later. Sometimes the lack of interpreters led to a repeated postponement of the hearing.

- In 9% of criminal cases of trafficking in human beings and related crimes, the injured party was assisted by a defense lawyer, including in 6% of the cases the injured party received qualified state-guaranteed legal aid. At the same time, 100% of the defendants benefited from a defense lawyer's assistance. In about 25% qualified state-guaranteed legal aid was provided to them. Thus, the authorities' concern is to ensure first and foremost all the procedural guarantees for a fair trial to the defendants, whereas the victims continue to be marginalized in the criminal proceedings.

- The court has forcibly brought the injured party to the hearing, even if the victim was heard at the stage of criminal investigation under special conditions, with the recording attached to the file. The decision to bring forcibly the juvenile injured party to the court hearing was not preceded by any examination and justification of the need to repeat or supplement the hearing in the court. When the injured party showed up, the judge made offensive comments.

- The timeframe for examining the cases is often quite long. In some cases, it exceeded a year. In 45% of the monitored cases, the first hearing was set after the legal timeframe, including some cases when the timeframe prescribed by law was exceeded several times. Often the date of the next hearing exceeded 2 months, in other cases even 3 months. The law allows for a quite wide margin of discretion for the judges to set the case for examination and for postponing the hearings. This situation may also result from the confusing wording of the procedural norms on the time limits set in the criminal proceedings.

- The courts ordered the examination in a simplified procedure of 39% of criminal cases on trafficking in human beings and related crimes subjected to monitoring. In 27% of the cases the defendants submitted, together with requests for examination of the cases in simplified procedure, requests for the termination of the criminal proceedings on grounds of amnesty. All applications were accepted. Of 48% of cases resolved by the time of completion of the monitoring program, 56% were examined in a simplified procedure. The injured party did not participate in any of the hearings in the cases examined in simplified procedure. No civil action to recover the damage caused by the offense was claimed in any of these cases.

- Impunity is applicable also to criminal cases on trafficking in human beings and related crimes. During the 9.5 months of the monitoring program, in 12.5% of the resolved cases, a conviction sentence of imprisonment was imposed on the defendants and in 12.5% of the cases the defendants were fined. In 50% of the cases the proceedings were terminated on grounds of amnesty.

CHAPTER V.
Monitoring of proceedings in the Court of Appeals

According to the criminal procedure law[508], a court judgment in a criminal case becomes enforceable on the date it became final, including after the Court of Appeals issues its decision. That is why the monitoring program was extended to hearings in the Court of Appeals in order to observe the actions or inactions by the professionals responding to cases of domestic violence, sexual violence and trafficking in human beings, as well also to identify the final resolution of the criminal case.

In the Court of Appeals, criminal cases are examined *in fact and in law,* according to the general rules for first instance, with the exceptions provided for the proceedings in the Court of Appeals[509]. Thus, according to Article 412 of the Criminal Procedure Code, the failure of the legally summoned parties to appear in the Court of Appeals shall not prevent the court from examining the case, unless the court declares the presence of parties mandatory. Under Article 413 of the Criminal Procedure Code, the Court of Appeals may, *at the request of the parties,* further investigate the evidence presented in first instance and may consider new evidence. The Court of Appeals checks the statements and material evidence examined in first instance court by reading them during the court hearing and documenting them in the minutes.

When examining the criminal case in the court of appeal, it is not imperative to strictly observe the rules for first instance proceedings.

Several criminal cases are usually scheduled for hearing by the same panel[510], in the same courtroom, at the same date and hour. Our monitoring revealed that this way of organizing the examination of cases in the Court of Appeals has both positive and negative aspects.

The positive aspect is higher transparency of the court proceedings because a large number of persons attend the hearings (usually the participants in other proceedings set for this day, who are waiting for their turn), who can watch the proceedings and listen how judgments are delivered.

The negative aspect is related to the cyclical model of case examination – the panel of judges examines consecutively a certain number of cases, then it leaves the courtroom for deliberations, and then it delivers the judgments on all these cases. The following cases are examined in the same way.

Due to this procedure, participants in a criminal case have to wait until all other criminal cases set for the same hour are examined or, on the contrary, if they came on time, they have to wait a lot until their case is examined. This happens because the order and the sequence of examination of cases set to be examined at the same hour is decided arbitrarily by the panel of judges. Also, the deliberations take longer, as judges deliberate on several cases. When they come back to the courtroom, they deliver the judgments on all these cases, regardless whether those who are involved are present or not in the courtroom. There were cases when, after hearing the court's judgment, which made the situation worse, the defendant disappeared[511]. This sit-

508 Article 466 of the Criminal Procedure Code of RM.

509 Ibidem, Article 413.

510 By Order No 1 of 2.01.2017 on establishing panels of judges in the Colleges of the Chisinau Court of Appeals, seven 7 panels of judges were established for 2017 in the Criminal College of the Chisinau Court of Appeals.

511 Case FD No.1a-14485/Article 165 CP, the first-instance court delivered a judgment of acquittal. The Court of Appeals admitted the prosecutor's appeal and sentenced the defendant to 7 years imprisonment with execution. After hearing the sentence, the convict immediately left the courtroom and went to an unknown direction. As regards this issue, the court secretary of a panel of judges from the Criminal Board of the Chisinau Court of Appeals mentioned in the interview that '*... in the past, when new judgments providing for prison sentence were delivered, the convicts had to be present at the hearings. Now they attend hearings but I don't know which of them...*

uation affects the participants in the proceedings. The agenda of the hearings is not respected, because many of them prefer to come late or not to come at all instead of waiting for their case to be reviewed.

As mentioned above, the objective of the monitoring program was to ensure, to the extent possible, that the cases were monitored until the final judgment is adopted and, if appropriate, until the Court of Appeals adopts the judgment.

As all five offices of the Chisinau Court were selected for the monitoring program, the cases pending in the Chisinau Court of Appeals were also selected for the monitoring.

Of the criminal cases pending in the Chisinau Court of Appeals, 18 criminal cases concerning gender-based violence were selected for monitoring, including:

- 13 cases under Article 201[1] of the Criminal Code and
- 5 cases under Article 171 and 172 of the Criminal Code, 2 of which involve a minor member of the family.

Other 12 criminal cases concerning trafficking in human beings and related crimes, the following were selected:

- 6 cases under Article 165 of the Criminal Code;
- 3 cases under Article 220 of the Criminal Code;
- 2 cases under Article 362[1] of the Criminal Code;
- 1 case under Article 206 of the Criminal Code.

A total of 30 criminal cases were monitored in the Chisinau Court of Appeals.

Unfortunately, due to the relatively short duration of the monitoring program and long proceedings in criminal cases, it was not possible to select for monitoring in the Chisinau Court of Appeals more than 5 criminal cases of those monitored in the Chisinau Court.

Therefore, to more deeply analyze these categories of crimes in the appeal procedure, it was necessary to monitor other pending cases in the Court of Appeals.

The monitoring questionnaires include observations of the monitors prior to and during the hearings. The information from questionnaires was supplemented by individual interviews with professionals[512] involved in the examination of these categories of crimes.

The information from the monitoring questionnaires does not reveal any essential difference in the organization of case hearings depending on the category of cases (domestic violence or trafficking in human beings). Even so, for greater clarity, the examples in the text contain the reference to the category of crime.

5.1. Profile of the injured party in cases monitored in the Court of Appeals

The analysis of the injured party's profile in the criminal cases concerning domestic violence, sexual violence and trafficking in human beings monitored in the Chisinau Court of Appeals reveals a total of 22 women victims, including 4 minor girls, and 13 male victims.

Thus, 8 cases of domestic violence and 5 cases of sexual violence against women involved 14 women victims, including 3 minor girls. In one case of domestic violence the injured parties were a woman and a man, and in 4 cases of domestic violence the injured parties were 4 men.

In 5 cases of trafficking in human beings and related crimes, 7 women, including a minor girl were the injured parties, and 8 men were the injured parties in other 6 criminal cases. In one case[513], which has been pend-

the judgment is delivered and if the court police hear and is close, they get arrested, but when they are not, the convict leaves, and our judgment is sent to the bailiff....' In this respect, the interviewed lawyer mentioned that – '*the police must be present when the court's judgments are delivered, so that it could be enforced immediately in the courtroom. As a rule, judgments are enforced when they need to be enforced, but if there is no interest, they are not enforced. It depends on the situation. It is necessary and important to eventually clarify the situation concerning the court police...".*

512 Court secretary (IIA_14_G_A), lawyer (IIA_13_A_VF), who recently participated in the examination of the criminal cases of domestic violence and trafficking in human beings. The relevant observations made during the interview with the employee of the Center for Combating Human Trafficking of the General Police Inspectorate were also taken into consideration. (IIA_10_ex.rep.CCTP).

513 Case C.V. No 1a-14328/Article 165 CC.

ing in court for over 7 months, it was not possible to determine who the injured party was because when the monitoring program was completed, the examination of the appeal had not yet started because the parties did not appear in the court.

Women were the injured parties in 3 cases of trafficking in human beings for sexual exploitation and in 2 cases of pimping. Men were the injured parties in 2 cases of trafficking in human beings for labor exploitation, one case of trafficking in human beings for exploitation through begging, and one case of pimping. In the two monitored cases initiated for illegal migration, 2 men were the injured parties.

The age of the injured parties varied. The youngest was 11 years old and the eldest – 87 years old. Most people with the status of injured party in the cases monitored in the court of appeals were aged 20-40.

There was no victim with disabilities, alcohol or drug addicted in the monitored cases.

As regards the relation of the injured party with the perpetrator, the monitors established that in cases of trafficking in human beings and related crimes, the injured parties, as a rule, were persons who got acquainted shortly before the criminal activity, mostly on social networks, and in 3 cases they were fellow villagers.

In cases of domestic violence and sexual crimes against women, the following were the injured parties: spouse – in 3 cases, daughter – in 3 cases, sister – in 3 cases, mother – in 2 cases, son – in 2 cases, domestic partner – in two cases, former husband – in one case, grandfather – in one case. In 2 cases concerning sexual crimes against women, the defendant and the injured party were fellow villagers.

5.2. Profile of the defendant in cases monitored in the Court of Appeals

The analysis of the defendant's profile in the criminal cases monitored in the Court of Appeals revealed that 31 defendants were men, including one minor boy. Five women were defendants.

In 11 cases of domestic violence and 5 cases of sexual crimes against women as defendants, 16 defendants were men, and one of them was minor. In one case of domestic violence the defendants were a woman and a man[514], and in one cases of domestic violence the defendant was a woman[515].

In 10 cases of human trafficking and related crimes, 13 men were defendants; in one case of trafficking in human beings, a woman and a man were defendants[516], and another case of trafficking in human beings 2 women were defendants[517].

The youngest defendant was 16 years old[518] and the oldest was 68 years old[519].

Like in the case of injured parties, the majority of the defendants involved in the cases monitored by the Court of Appeals were aged 20-40, followed by persons aged 40-50.

As regards the relation of the injured party with the perpetrator, the monitors mentioned that in 4 cases the defendant was a father, in 3 cases – son, in 3 cases – husband, in 3 cases – brother, in 2 cases – domestic partner, in one case – nephew and former spouse, in 3 cases – fellow villager, and in other cases – others.

Among the defendants involved in cases monitored in the Court of Appeals there were 2 persons with disabilities [520] and one person addicted to alcohol[521].

The monitors indicated, to the extent that it was possible to determine in court hearing, that in 5 cases of domestic violence and 3 cases of trafficking in human beings and related crimes, the defendant was previously convicted. In all these cases, the defendants were either divorced or were domestic partners. We hence conclude that after serving the criminal punishment many people chose to continue their criminal activity, being

514 Case C.A. No 1a-22422/Article 201[1] CC.
515 Case Ş.A. 1a-19879/Article 201[1] CC.
516 Case F.D. No 1a-14485/Article 165 CC.
517 Case B.A. No 1a-14508/Article 165 CC.
518 Case S.R. No 1a-14035/Article 171 CC.
519 Case T.M. No 1a-13082/Article 201[1] CC.
520 Case I.P. No 1a-15540/Article 201[1] CC; Case C.A. No 1a-24327/Article 201[1] CC.
521 Case Ş.A. 1a-19879/Article 201[1] CC.

less concerned with the safety and well-being of their partners or improving their marriages or creating a family. The monitors found that defendants were married only in 3 cases of domestic violence and in 3 cases of trafficking in human beings and related crimes.

In 9 cases of domestic violence and in 3 cases of trafficking in human beings and related crimes, the defendants were unemployed, in a case concerning sexual crimes against women, the defendant was a pupil. In other 2 cases of domestic violence, the defendants were pensioners. In the other cases it was impossible to confirm the occupation or sources of income of the defendants.

5.3. Monitoring of proceedings in criminal cases in the Court of Appeals

As part of the monitoring program of court hearings in the Chisinau Court of Appeals, criminal cases were selected as follows:

- 14 criminal cases examined on the merits in the Chisinau Court, including 4 cases under Article 201[1] of the Criminal Code; 2 cases under Articles 171(3), 172(3) of the Criminal Code and Article 171(1) of the Criminal Code; 2 cases under Article 165 of the Criminal Code; 3 cases under Article 220 of the Criminal Code; 2 cases under Article 362[1] of the Criminal Code; 1 case under Article 206 of the Criminal Code;
- 3 criminal cases examined on the merits in the Anenii Noi Court, including 2 cases under Article 201[1] of the Criminal Code; 1 case under Article 165 of the Criminal Code;
- 5 criminal cases examined on the merits in the Hancesti Court, including 3 cases under Article 201[1] of the Criminal Code; 1 case under Articles 27, 171(3) of the Criminal Code; 1 case under Article 165 of the Criminal Code;
- 3 criminal cases examined on the merits in the Straseni Court, including 1 case under Article 201[1] of the Criminal Code; 1 case under Article 171(1) of the Criminal Code; 1 case under Article 165 of the Criminal Code;
- 2 criminal cases examined on the merits in the Orhei Court, including 1 case under Article 201[1] of the Criminal Code; 1 case under Article 165 of the Criminal Code;
- 2 criminal cases examined on the merits in the Causeni Court, both under Article 201[1] of the Criminal Code;
- 1 criminal case examined on the merits in the Criuleni Court under Article 171(1) of the Criminal Code.

During the trial monitoring, the monitors focused on observing the actions of the participants in the proceedings before and during the hearing of the cases.

Publicity of the court hearings in the Court of Appeals

According to the Law on Judicial Organization, the list of cases set to be heard shall be placed on the website of the court and on a public panel at least 3 days before the date of the hearing.

The monitors confirmed the general compliance with the requirements of the legislation regarding the publicity of court hearings in the Chisinau Court of Appeal. As a rule, the information was published in the 'Agenda of hearings' section of the institution's website, as well as on the electronic/information panel located on the hall in the Court. The information on the cases examined in closed hearing was also published.

Thus, in 26 of the 30 monitored cases, the information about the cases set to be heard was accordingly placed on the website of the Chisinau Court of Appeals and on the panels located inside the Court, providing the necessary information on case examination to the parties in the trial. The monitors noticed that the information for some cases[522] was not displayed on information panel located in the Court. In other cases,[523] the information on the scheduled hearings was not published at all. As regards one of these cases, the monitor noted that '***... due to unknown reasons, the information on***

522 Case S.P. No 1a-6475/Article 201[1] CC; Case V.C. No 1a-13061/Article 165 CC.
523 Case G.V. No 1a-15446/Article 201[1] CC; Case A.P. No 1a-12753/Article 165 CC.

the date and hour of the hearings set in 2018 was not published on the Court portal, and the information displayed on the panel located inside the Court was incorrect, so I had to I find out the date of the hearings from other sources...'.

The monitors found cases in which different sources contained contradictory information, which created additional inconvenience for the participants in the proceedings. Thus, in some cases[524], the hearing of the case was rescheduled due to the publication of incorrect information. The monitor mentioned – ***'... in the morning, the hearing was set to begin at 11.00 a.m. in the courtroom No 1, while according to the information displayed on the information panel inside the Court, the hearing was set to begin at 9.30 a.m. in the courtroom No 2 (the next day, the information on the website was changed according to the information on the information panel). When the monitor came to the hearing, he saw the injured party in the courtroom who was waiting the beginning of the hearing at 11.00 a.m., as mentioned during the previous hearing. The defendants and other participants were not present because most likely they had additional information and they came at 9.30 a.m. The judge reproached the injured party for being irresponsible and not coming at the hearing on time. Due to this, the hearing was postponed. The victim said he/she did not know that the beginning of the hearing was set for another hour...'.***

4 cases [525] were examined in closed hearings, including a case of trafficking in human beings (Article 165 CC) and one case of rape (Article 171(1) of the CC). The court ordered ex officio examination of the cases in closed meeting, and did not explain the grounds for closure. Other 2 cases had to be examined in closed hearing in order to ensure the interests and protection of the private life of the minor, taking consideration that the victims were under the age of 14 years. The monitors were denied access to these 4 cases.

The other criminal cases covered by the monitoring program were examined in public hearings and the monitors were able to attend the hearings[526]. In 17 cases none of those present in the courtroom even knew the hearing was monitored. We believe this is important because it allows the monitor to observe how the examination of the appeal is done in normal circumstances.

Venue of the hearings and beginning of the hearings at the set time in the Court of Appeals

In the Chisinau Court of Appeal, the appeals on criminal cases are reviewed in courtrooms with the strictly necessary furniture and equipment. The courtrooms in which the hearings are held are accessible to the general public. The defendants under arrest are held in a specially arranged place. Defendants are escorted by guards in the courtrooms, who stay in the courtroom until the hearings are completed. Thus, the security of participants in the proceedings is ensured.

Monitors reported [527] some cases when victims of domestic violence tried to get closer to the defendants who were escorted by the police. They were prevented from doing so.

The courtrooms are full as a rule. A lot of people wait, especially the participants in the hearings set for that day. As the court secretary mentioned during the individual interview – ***'In my opinion, the only thing we must change is the examination method. For example, there are 3 judges in the panel, and each of them has files and they do not manage to deal with them during the hearing. We cannot examine more than 10-12 files per hearing because deliberations must take place more often and the parties should also leave the courtroom more often...'.***

According to the opinion of the interviewed defense lawyer – ***'the courtrooms of Chisinau Court of Appeals are overcrowded, everything goes very fast***

524 Case C.A. No 1a-22422/Article 201[1] CC.

525 Case L.I. No 1a-13369/Article 171(3) CC; Case T.I. No 1a-15181/Articles 171(3), 172(3) CC; Case B.S. No 1a-13731/Article 171(1) CP; Case A.N. No 1a-13036/Article 165 CC. In this case, at the request of the monitor to be allowed to continue to monitor the proceedings, the lawyer of the defendant had a nervous reaction, he used offensive words like: 'What kind of monitor you are...'.

526 In the cases U.S. and E.C. No 1a-14360/Article 220 C.P., the lawyer was against the monitor to attend the hearing, the prosecutor did not support the lawyer's position, and in the end, the court did not set the ground for examining the case in closed hearing.

527 Case C.I. No 1a-12508/Article 201[1] CC.

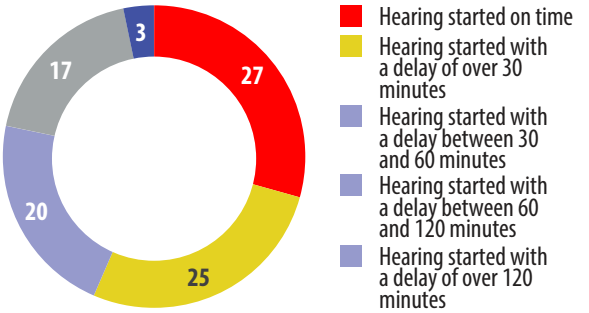
and the situation is tense. Judges who work in these courtrooms are always shouting, the lawyers are not allowed to finish their statements. Even if the victim wants to make a five-minute confession he/she is not allowed to because this is too long for the judge. As a rule, judges expect victims to say only that they support the appeal or something like that. Sometimes the prosecutor is allowed, sometimes not to finish their statements. The most realistic characterization of the case examination in the Court of Appeals is – conveyer review. Many cases are examined superficially.... In one of my cases the following happened: the defendant was in fact the victim, and the court did not want to get too much into detail, to state the defendant's innocence and to acquit her because she acted in self-defense.[528].

In several cases the monitors found[529] unsatisfactory audibility during the hearings because of the noise in the courtroom. Someone is talking on the phone, others discuss in group, and people are continuously entering and leaving the courtroom. This situation has a negative impact on the order during the hearing. Often, we cannot hear what they are talking about during the examination of the appeal. ***'The hearings are public and people cannot be banned to enter the courtroom, because problematic situations may arise... People are not allowed to use the phone in our court..., otherwise the hearing can be interrupted and those who make noise are asked to leave the courtroom...'***[530]

The monitors attended 92 court hearings during the monitoring of 30 criminal cases in the Chisinau Court of Appeal. In 27 cases, the hearing of the case started on time. In 25 other cases, the hearing started with a delay of up to 30 minutes. In 20 cases, the hearing began with a delay of up to 1 hour. In 17 cases the hearing began with a delay of up to 2 hours, and in 3 cases[531] – of over 2 hours. Thus, in 45% of the cases, the hearing began with a delay of about 1 hour and more.

FIGURE 39

Beginning of the hearings at the set time, Court of Appeals



The delay was caused by including other cases on the agenda at the same hour and by non-punctual litigants. In some cases[532], the meeting started later due to the fact that the defendant was escorted late to the court, in other cases[533], because the defendant's lawyer was late. As regards this issue, the secretary points out – ***'it is not only judges and us causing problems and delays. Sometimes the lawyer is not present or the defendant is not escorted from the penitentiary on time. Prosecutors are always present, ... the prosecutors from the circumscription work on cases of domestic violence and trafficking in human beings...***'[534].

For a hearing that lasts 15-30 minutes, the participants are often forced to wait longer for the beginning of the hearing and then for the judgment on the case. Sometimes they have to wait a whole day. For example, in the case A.P. No 1a-12753/Article 165 of the CC, the monitor found that ***'... case review was set for 9.30 a.m., but the court secretary informed that it would begin at 3.30 p.m. In fact, the case review began at 4.45 p.m. ...'***

'The hearings begin with delay. This is characteristic for the Chisinau Court of Appeal, and this is a chronic issue. If you have a file at the Court of Appeal, you practically lost your day, and this is characteristic for all cases, not just for those concerning domestic violence...'[535].

528 IIA_13_A_VF.

529 Case H.I. No 1a-15646/Article 201[1] CC; Case N.J.F. No 1a-11801/Article 220 CC; Case B.A. No 1a-14640/Article 220 CC; Case G.D. No 1a-14607/Article 206 CC; Case C.V. No 1a-14328/Article 165 CC; Case D.I. No 1a-19173/Article 362[1] CC, etc..

530 IIA_14_G_A.

531 Case B.S. No 1a-13731/Article 171 CC; Case L.I. No 1a-13369/Article 171 CC; Case N.V. No 1a-18691/Article 201[1] CC.

532 Case H.I. No 1a-15646/Article 201[1] CC; Case N.V. No 1a-18691/Article 201[1] CC.

533 Case G.V. No 1a-15446/Article 201[1] CC; Case D.I. No 1a-19173/Article 362[1] CC; Case B.A. No 1a-14640/Article 220 CC.

534 IIA_14_G_A.

535 IIA_13_A_VF.

We concluded that this is one of the reasons why participants in the proceedings do not come to hearings in the court of appeal. On the other hand, this manner of examining cases often affects the agenda of cases that are reviewed by courts of the first instance.

Presence of the parties at hearings in the Court of Appeals

According to Article 412 of the Criminal Procedure Code, during the examination of the appeal, the parties are summoned and copies of the appeal are distributed.

During the individual interview, the court secretary explained – ***'...the participants are announced through a summon or by phone (telex). The parties are summoned for the hearing about 3 weeks before in order to manage to get back the proof that the summon was received. If the summon is returned without proof of receipt, we check other contact numbers included in the file and try to find out what happened with those persons. We find out if they are in the country or abroad. We notify them by phone (telex) and we make a record in the file about this... I believe the procedure is quite good...'***[536].

The interviewed defense lawyer confirmed that – ***'we are informed about the date of the hearing by phone or by summons...'***. At the same time, he mentioned other type of omissions – ***'one problem that is specific for all the cases, not only for cases on domestic violence is the fact that if the prosecutor files an appeal, the copy of the appeal is not sent to the parties... In order to overcome this situation, there is no need to amend the legislation. The administrative staff, and here I refer to the court secretaries and other employees, but also to the judges, must comply with the Criminal Procedure Code and send the documents – the appeal, annexes (if available), to the participants...'***[537].

The appeal is examined in the presence of the defendant when he/she is in custody, except for the cases when the defendant refuses to be brought to the court. The failure of the legally summoned parties to appear in the Court of Appeals does not prevent the examination of the case. If necessary, the Court of Appeals can declare the presence of parties mandatory and take appropriate measures to ensure their presence.

The monitoring of hearings in the Chisinau Court of Appeals revealed the frequent absence of the parties in the proceedings.

Thus, out of the total number of 92 hearings monitored in the court of appeal, the monitors recorded that in 62 hearings the defendants were present and in the other 30 hearings the defendants were absent. In 4 criminal cases of those monitored, the defendants were not present at any hearing. As a result, they were announced as wanted. Finally, in 3 cases[538] the Court of Appeals adopted judgments of conviction in the absence of the defendants announced as wanted. One case[539] was to be examined after the completion of the monitoring program.

The injured parties were present only in 25 out of 92 monitored hearings and were absent in the other 67 hearings. In 15 monitored criminal cases, the injured parties were absent in all hearings, 9 of which ended with the issuance of the judgment. In one case[540], only one injured party attended the hearing, while the others were missing during all the hearings. However, the monitors noted that in one case[541], the court ordered the appearance injured party who was not present in the court; in another case[542], the Court of Appeals rejected the appeal of the prosecutor concerning the judgment of acquittal delivered by the court of first instance as unfounded, mainly due to the absence of the injured party from the hearing.

The monitoring revealed that as a rule, the injured parties do not want to be present at the hearing in cases of rape, trafficking in human beings for sexual exploitation, pimping, i.e. cases directly related to the sexual life of the injured party. Victims use different methods in order to avoid being present at the hearings. In one

536 IIA_14_G_A.
537 IIA_13_A_VF.

538 Case N.J.F. No 1a-11801/Article 220 CC; Case B.A. No 1a-14508/Article 165 CC; Case A.N. No 1a-13036/Article 165 CC.
539 Case C.V. No 1a-14328/Article 165 CC.
540 Case F.D. No 1a-14485/Article 165 CC.
541 Case U.S. No 1a-14360/Article 220 CC.
542 Case A.P. No 1a-12753/Article 165 CC.

case[543], the victim filed an application and requested the case to be examined in her absence on the grounds that she could not travel due to her old age. In another case[544], the 22-year-old victim decided to leave the country. In another case[545], the victim did not attend the hearing in order not to miss classes, etc. However, very often, the injured parties do not come to the hearing without explaining the reason. That is why, the court insists on their presence in the hearing, and sometimes it even orders their forced appearance.

'As a rule, the cases concerning sexual violence are examined in closed hearing, and all the people are asked to leave the courtroom. When they leave the courtroom, they can see who is the victim. Thus, the victim can be indirectly re-victimized. Maybe a separate hearing should be set in a place where people do not know that such a crime is being examined... [546].

Thus, the victim is subject to various forms of pressure, especially when she has to speak about certain sensitive issues, in front of a panel of judges and other participants in the proceedings who are mainly men. Under such circumstances, victims are less likely to provide details, and the hearing itself does not bring great benefits in establishing the truth on the case, which it is rather one more opportunity to re-victimize the injured party.

Therefore, we recommend that for a fair trial, it is necessary to develop the regulatory framework and judicial practice in order to ensure the hearing in special conditions of all the victims of sensitive crimes. This would concurrently provide more benefits – obtaining wider and more qualitative statements, avoiding the re-victimization of the injured party.

Audio recording of hearings in the Court of Appeals

According to the Regulation on digital audio recording of court hearings, these recordings are official parts of court hearings and are mandatory in all cases when the minutes are required.

In line with Article 317 of the Criminal Procedure Code, the chairperson of the court hearing shall inform the parties about the fact that the court hearing is audio recorded.

According to monitors, in 20 cases monitored in the Court of Appeals these legal requirements were observed and the participants in the proceedings were informed that the court hearing was audio recorded. In other six cases, the audio recording of the hearing was ordered, but it was not clear if the hearing was recorded or not. In 4 criminal cases[547] the monitors found that the participants in the proceedings were not informed that the hearing was audio recorded.

No participant in the proceedings requested a copy of the audio recordings of the court hearings during the monitoring period.

Parties' access to the services of an interpreter

All the monitored hearings were held in state language, except for two hearings[548], which were held in the Russian language – in one case, all the hearings were held in Russian and the defendant, who did not know Russian, was provided with an interpreter. As regards the other case, only one hearing was held in Russian when two witnesses were heard.

The monitoring found that in all 15 criminal cases where the injured party participated in each or in several hearings, the latter knew the language of the proceedings and did not need an interpreter.

An interpreter was needed for 3 defendants in 2 criminal cases[549]. Each time, the applicants were provided with appropriate interpreting services.

543 Case B.S. No 1a-13731/Article 171 CC.
544 Case B.A. No 1a-13197/Article 171 CC.
545 Case S.R. No 1a-14035/Article 171 CC.
546 IIA_13_A_VF.
547 Case V.I. No 1a-17404/Article 362[1] CC; Case N.J.F. No 1a-11801/Article 220 CC; Case S.P. No 1a-6475/Article 201[1] CC.
Case I.M. No 1a-13738/Article 201[1] CC.
548 Case S.S. No 1a-24054/Article 201[1] C.P.; Case A.P. No 1a-12753/Article 165 CC.
549 Case S.S. No 1a-24054/Article 201[1] CC; Case D.I. No 1a-19173/Article 362[1] CC.

Ensuring the injured party's right to be treated with respect

In one case[550] reported by a monitor, the defendant talked to the injured party in an offensive tone, but was immediately interrupted by the chairperson of the hearing, who warned him that such a behavior was unacceptable. In the same case, the monitor noted that when the next hearing was set, the panel of judges considered the wishes of the injured party to set the hearing in the first half of the day, in order to facilitate her travel to the court.

However, victims were not respected in all cases. One of the monitors described a situation where the time of hearing was changed without notifying the victim. Instead of apologizing, the judge admonished her for not being present and postponed the hearing.[551]

Legal assistance to parties during the case review in the Court of Appeals

The monitors did not mention any case, examined in the court of appeal, where crime victims were given clear explanations, during the hearing, about the right to and procedure of applying for state-guaranteed legal aid.

'It is extremely important for the victim to be informed in a manner he/she understands... I do not believe that the victim would not want to be represented by a defense lawyer and I do not think this is about the lack of trust in defense lawyers. It is more about money. Still, many people do not know that they can benefit from the free services of a state-appointed defense lawyer. The legal norm was recently adopted and I do not believe everyone knows about it... [552].

Thus, the legal remedies provided for victims of domestic violence do not advantage them in any way. This conclusion results from observations of the monitoring of the hearings in the court of appeal. It is despite the fact that, as the interviewed defense lawyer mentioned – '***we are a civil association and we distributed information in police stations and in courts about the fact that we can provide legal aid. People come by referral, including from these courts, and we get involved...***'.

Of the 18 monitored cases concerning domestic violence and sexual crimes against women, 2 injured parties in 2 criminal cases on domestic violence[553] benefited from the services of a state-appointed defense lawyer, and 2 injured parties, in a case of rape[554] and in a case of domestic violence[555], benefited from the services of a private defense lawyer. So, in only about 22% of the monitored cases from this category, the injured party received legal aid.

At the same time, out of the 12 cases of trafficking in human beings covered by the monitoring, only in one case [556] or in about 8% of all these cases, the injured party benefited from the state-guaranteed legal aid during the proceedings. No injured party had a private defense lawyer.

During the interview, the court secretary said – '***... I had only 3 files when the victim had a defense lawyer... The injured party must submit a request in order to be provided with a state-appointed defense lawyer during the proceedings. If the victim has the possibility to pay, then she he is given time to contract a defense lawyer. Very often they do not have a defense lawyer because they do not ask for one... It's not mandatory for the defense lawyer of the victim to be present in the hearing... I cannot see how this can be useful...*** [557].

The defense lawyer has a different opinion in this respect – '***the prosecutor does not make much effort to change the sentence. As a rule, the appeal is on paper only. Some prosecutors may be more prepared than some defense lawyers, but I cannot say they shine when they participate in the proceedings... Cases of domestic violence were registered when the prosecutor requested a lesser sentence than the one set forth in the law...*** [558].

550 Case F.D. No 1a-14485 /Article 165 CC.
551 Case C.A. No 1a-22422/Article 201[1] CC.
552 IIA_13_A_VF.
553 Case C.I. No 1a-12508/Article 201[1] CC; Case C.A. No 1a-22422/Article 201[1] CC.
554 Case B.S. No 1a-13731/Article 171 CC.
555 Case No 1a-18691/Article 201[1] CC.
556 Case B.A. No 1a-14640/Article 220 CC.
557 IIA_14_G_A.
558 IIA_13_A_VF.

As mentioned above, in 15 cases, the injured party did not appear in court at all, including 8 cases of domestic violence/sexual crimes against women and in 7 cases of trafficking in human beings and related crimes. As a result, the injured parties did not use the possibility to benefit from the right to request legal aid during the trial, under the law.

At the same time, the injured parties did not benefit from the legal aid in other 6 cases of domestic violence/sexual crimes against women and 4 cases of trafficking in human beings and related crimes who were present at the court hearings, and were not properly informed about the right and terms to benefit from the services of a defense lawyer.

The situation of defendants in this regard was much more favorable. Thus, out of the 18 monitored cases concerning domestic violence and sexual crimes against women, 9 defendants, including in 6 criminal cases involving domestic violence[559] and 3 cases involving sexual crimes against women, benefited from the services of a state-appointed defense lawyer[560]. Thus, 7 defendants, including in 6 criminal cases of domestic violence[561] and one case involving sexual crimes against women[562] benefited of the services of private defense lawyers. So, in about 90% of the monitored cases from this category, the defendants received legal aid. The defendants in one case of domestic violence did not receive legal aid. In this case, the former spouse and the son of the injured party were the defendants. In one case[563] examined in a closed hearing it was not possible to determine whether the defendant benefited from the services of the defense lawyer or not.

At the same time, out of 12 cases of trafficking in human beings covered by the monitoring, 2 defendants in 2 criminal cases of trafficking in human beings[564] benefited from the services of an appointed defense lawyer, while 9 defendants in 4 criminal cases of trafficking in human beings[565] and in 5 cases of related crimes[566] benefited from the services of private defense lawyers. Therefore, in about 90% of the cases from this category, the defendants received legal aid. In one case[567] it was not possible to obtain relevant information, because when the monitoring program completed the examination of the case had not started.

In several cases[568], the defendants were assisted by 2 defense lawyers during the proceedings.

As regards the performance of defense lawyers during the proceedings, the court secretary stated during the interview that ***'... to be honest, the lawyer's activity in some cases is quite poor. There have been cases when lawyers filed the appeal beyond the legal term... cases when the state-appointed lawyer worked on the case in first instance and after that left the case... Basically, the lawyers do not come prepared for the proceedings; they come 5 minutes before the hearing regardless who the client is (victim or defendant) and demand a 200-page file in order to get acquainted with it. Such cases are frequent. For example, I have seen 4 such cases during 3 months only...*** [569].

5.4. Duration of the proceedings in the Court of Appeals and postponement of court hearings

To ensure the examination of the case within a reasonable timeframe, the Criminal Procedure Code[570] provides that the chairperson of the panel of judges determines the term of the appeal examination and, if necessary, sets a term for preliminary hearing within 10 days from the date when the case was assigned. The

559 Case S.S. No a-24054/Article 201[1] CC; Case H.I. No 1a-15646/Article 201[1] CC; Case T.M. No 1a-13082/Article 201[1] CC; Case I.P. No 1a-15540/Article 201[1] CC; Case S.P. No 1a-6475/Article 201[1] CC; Case Ş.A. No 1a-19879/Article 201[1] CC.

560 Case B.A. No 1a-13197/Article 171 CC; Case B.S. No 1a-13731/Article 171 CC; Case S.R. No 1a-14035/Article 171 CC.

561 Case I.M. No 1a-13738/Article 201[1] CC; Case C.A. No 1a-24327/Article 201[1] CC; Case N.V. No 1a-18691/Article 201[1] CC; Case C.I. No 1a-12508/Article 201[1] CC; Case G.V. No 1a-15446/Article 201[1] CC; Case L.A. No 1a-5989/Article 201[1] CC.

562 Case L.I. No 1a-13369/Article 171 CC.

563 Case T.I. No. 1a-15181/Article 171, 172 CC.

564 Case A.N. No 1a-13036/Article 165 CC; Case A.P. No 1a-12753/Article 165 CC.

565 Case F.D. No 1a-14485/Article 165 CC; Case V.C. No 1a-13061/Article 165 CC; Case G.D. No 1a-14607/Article 206 CC; Case B.A. No 1a-14508/Article 165 CC.

566 Case N.J.F. No 1a-11801/Article 220 CC; Case V.I. No 1a-17404/Article 362[1] CC; Case D.I. No 1a-19173/Article 362[1] CC; Case B.A. No 1a-14640/Article 220 CC; Case U.S. No 1a-14360/Article 220 CC.

567 Case C.V. No 1a-14328/Article 165 CC.

568 Case C.A. No 1a-24327/Article 201[1] CC; Case F.D. No 1a-14485 /Article 165 CC.

569 IIA_14_G_A.

570 Article 412 of the Criminal Procedure Code.

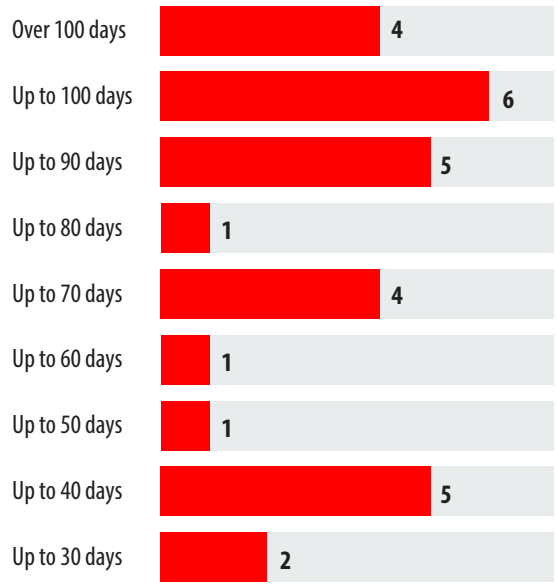
failure of the legally summoned parties to appear in the Court of Appeals does not prevent the examination of the case.

When examining an appeal, according to Article 413(1) of the CrPC, the general rules for the examination of cases in the first instance shall be applied, except for the situations provided in the special part of the Title II, Chapter IV, Section 1. Since this section does not contain any special provisions on the term by which the first hearing for the review of the appeal must be set, according to Article 351 of the CrPC, when setting the date and hour of the trial, the complexity of the actions to be undertaken by the parties shall be taken into consideration, but it shall not exceed 30 days from the date of the preliminary hearing. Given that in the Court of Appeals the preliminary hearing is set only if the chairperson of the panel of judges deems it necessary, that is, not in every case, the rule cited above refers to the timeframe to set the first hearing which is calculated from the date of case assignment to the judge. If the chairperson of the panel of judges believes that the preliminary hearing is necessary, this hearing shall be scheduled within 20 days from the date when the case was assigned[571].

The monitoring of the cases examined in the Chisinau Court of Appeals revealed that only in one case initiated for domestic violence[572] and in one case involving pimping[573], the first hearing (preliminary hearing) was set within 30 days from the date when the case was assigned. The first hearing concerning 3 cases of domestic violence and sexual crimes against women and 2 cases of trafficking in human beings and related crimes, was set within 40 days from the date when the case was assigned; within 50 days – one case of trafficking in human beings and related crimes; within 60 days – one case of trafficking in human beings and related crimes; within 70 days – 4 cases of domestic violence; within 80 days – one case of domestic violence. Also, the first hearing in 3 cases of domestic violence and sexual crimes against women and 2 cases of trafficking in human beings and related crimes was set within 90 days after the case was assigned, while on 2 cases of domestic violence and 4 cases of trafficking in human beings and related crimes the first hearing was set within 100 days. In 3 cases of domestic violence and sexual crimes against women, as well as in a case of trafficking in human beings, the first hearing was scheduled after 100 days from the date the case was assigned.

FIGURE 40

Setting the date of the first hearing in the Court of Appeals, days from the date of case assignment, cases



It is important to note that these long delays included cases initiated for sexual crimes against minors under the age of 14 years[574], child trafficking [575], sexual crimes against elder women[576], although procedural law requires that these cases take priority, especially those involving minors.

571 Article 345 of the Criminal Procedure Code.

572 Case C.A. No 1a-24327/Article 201[1] CC was registered in the Court of Appeals on 1 November 2017, and the first hearing was set for 15 November 2017 – 15 days after registration.

573 Case N.J.F. No 1a-11801/Article 220 CC was registered in the Court of Appeals on 24 May 2017, and the first hearing was set for 13 June 2017 – 21 days after the registration.

574 As regards the Case L.I. No 1a-13369/Article 171 of the CC, the first hearing was set 114 days after registration; Case S.R. No 1a-14035/Article 171 of the CC, the first hearing was set 86 days after registration; Case T.I. No. 1a-15181/Articles 171, 172 of the CC, the first hearing was set 73 days after registration.

575 Case G.D. No 1a-14607/Article 206 of the CC, the first hearing was set 100 days after registration.

576 Case No 1a-13731/Article 171 of the CC, the first hearing was set 118 days after registration.

As stated above, when examining the appeal, the court checks the legality and the grounds of the appealed judgment on the basis of the materials contained in the criminal casefile, and only in some cases it examines the new evidence submitted by the participants. This affects the time spent on the case, which was: in 12 cases – up to 30 minutes; in 11 cases – up to 1 hour; in 5 cases – up to 1.5 hours and in 2 cases – up to 2 hours. ***'In criminal cases concerning domestic violence, as a rule, we appeal the sentences, because we believe they are too gentle – a big problem for this category of cases. There are situations where certain forms of violence, even if they existed, are not properly addressed in the sentence...'***[577].

However, the term for appeal examination is sometimes quite long. Only 2 cases of domestic violence were examined within 30 days; 3 cases of domestic violence and sexual crimes against women were examined within 60 days; 4 cases of domestic violence and 2 cases of trafficking in human beings and related crimes were examined within 90 days; 2 cases of domestic violence and sexual crimes against women were examined within 120 days; 4 cases of domestic violence and one case of trafficking in human beings and related crimes were examined within 120 days; one case initiated for a sexual crime against women and 2 cases of trafficking in human beings and related crimes were examined within 210 days; 2 cases of sexual crimes against women and 7 cases concerning trafficking in human beings and related crimes were examined after more than 240 days.

Note that some cases[578] initiated for sexual crimes against women, concerning children under the age of 14 years, were examined within over 255 days and 285 days, respectively.

In this respect, an interviewed lawyer has another opinion – ***'I didn't deal with cases of family violence that have been delayed at the Court of Appeal. Other more specific cases may be delayed. I think judges from the Court of Appeals do not allow to delay the cases of domestic violence...*** [579].

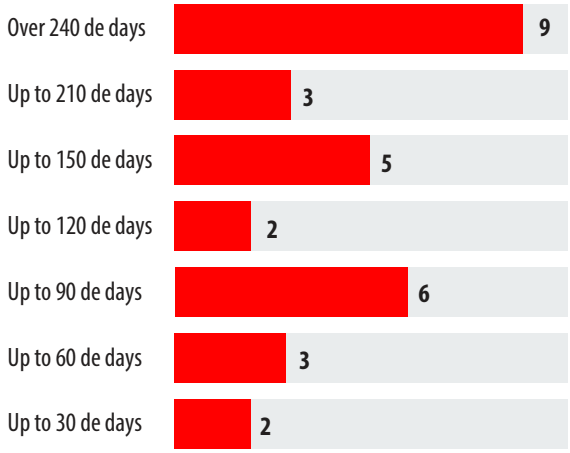
577 IIA_14_A_VF.

578 Case S.R. No 1a-14035 Article 171 CP; Case L.I. No 1a-13369 Article 171 CP.

579 IIA_13_A_VF.

FIGURE 41

Time to hear a case in the Court of Appeals from the date of the first hearing



From the total of 30 criminal cases monitored in the court of appeal, 7 cases were examined in one hearing; 5 cases – in 2 hearings; 4 cases were examined in 3 hearings; 4 cases – in 4 hearings; 5 cases – in 5 hearings; the other cases – in more than 6 hearings. Most frequently, the proceedings were delayed due to the absence of parties (injured party – 33 hearings, defendant – 20 hearings).

The examination of the case was also postponed for other reasons: the absence of the defense lawyer – 10 hearings[580]; the absence of the representative of the injured party or of the defendant – 9 hearings; the need to hear the witnesses – 10 hearings; absence of judges – 2 hearings; submission of new evidence – 1 hearing. No hearing was postponed due to absence of the translator or of the court secretary. At the same time, the monitors observed cases when the arrested defendant [581] was not brought to the hearing due to the lack of attention of the escort, or when due to the lack of the attention of the employees of the Court of Appeals to the correct information ab out the time of the hearing.[582]. As a result, the appeal was postponed for another day due to the absence of the participants in the proceedings.

580 Case A.P. No 1a-12753/Article 165 of the CC, for unjustified absence from the hearings, the lawyer of the defense was fined 25 c.u..

581 Case No 1a-18691/Article 201[1] CP; Case LI No 1a-13369/Article 171 CC.

582 Case C.A. No 1a-22422/Article 201[1] CC.

'There are quite complicated cases that are examined in 3-4-5 hearings or hours, and the hearing may be postponed at the request of the lawyer or the prosecutor if they submit requests or applications. Some cases are examined and in 5 minutes the parties are ready, the last statement is finished when everybody leaves the courtroom...'[583].

The monitors found that in some criminal cases [584], initiated for sexual crimes against women involving minor victims under the age of 14, the hearings were repeatedly postponed because of the need to hear the minor injured party in court. First, postponed hearings delay the examination of the case, and this violates the requirements of the rule mentioned *above*, according to which, the criminal cases that involve minors shall be reviewed as a matter of urgency. At the same time, the postponements highlight the practice that disadvantages minor victims, i.e. the failure to apply Article 110[1] of the CPP during the criminal investigation. According to this mandatory procedural rule, the minor aged up to 14 years involved in criminal cases concerning sexual crimes, child trafficking or domestic violence, as well as in other cases where it is required by interests of the justice or of the minor, will be heard within short terms by an investigative judge, in specifically arranged spaces, through a specially trained interviewer. The statements of the minor are audio and video recorded and a copy of the audio/video recording is attached to the criminal file. Subsequently, according to Article 110[1] of the Criminal Procedure Code, playing the audio/video recording of the minor in the court[585] will replace personal hearing of the minor to reduce a possible trauma. The repeated hearing of the minor in the trial should be avoided as much as possible.

This rule aims to provide friendly conditions for the child involved in the formal crime investigation proceedings in order to avoid child revictimization. Failure to comply with this procedural rule, which is essentially an exceptional tool for the protection of children's rights and interests in criminal proceedings, is a clear violation of the child's fundamental rights to justice, safety and integrity.

Such measures undertaken by the court would have substantially contributed to eliminating the practice disadvantaging children in criminal proceedings and would show the concern of the court with the efficient protection of human rights in a trial.

Monitoring of hearings in the Court of Appeals revealed cases when the next court hearings were scheduled after long periods of time. Thus, in some cases[586] the case examination was postponed for more than 2 months, in other cases[587] the next hearing was scheduled in over 3 months. Therefore, an extended margin of discretion is confirmed in this regard at the level of the court of appeal, as well.

5.5. Court of Appeal's judgment in the monitored cases

On March 1, 2018 when the monitoring program completed, of 30 monitored cases one case of domestic violence [588], two cases of sexual crimes against women [589] and 5 cases of trafficking in human beings and related crimes [590] were still pending.

With regard to a case involving sexual crimes against women[591], examined in closed hearing, it was not possible to find out what sanction was issued (the judgment of the court of first instance was not published). Monitors learned only that the Court of Appeals rejected defendant's appeal and upheld the decision of the court of first instance.

583 IIA_14_G_A.

584 Case L.I. No 1a-13369/Article 171 CC; Case T.I. No. 1a-15181/Articles 171, 172 CC; Case S.R. No 1a-14035/Article 171 CC.

585 Art.371 of the Criminal Procedure Code.

586 Case S.R. No 1a-14035/Article 171 CC; Case C.A. No 1a-22422/Article 201[1] CC; Case F.D. No 1a-14485/Article 165 CC; Case B.A. No 1a-14640/Article 220 CC; Case G.D. No 1a-14607/Article 206 CC; Case C.V. No 1a-14328/Article 165 CC; Case A.P. No 1a-12753/Article 165 CC.

587 Case U.S. No 1a-14360/Article 220 CC; Case N.J.F. No 1a-11801/Article 220 CP.

588 Case C.A. No 1a-22422/Article 201[1] CC.

589 Case S.R. No 1a-14035 Article 171 CP; Case L.I. No 1a-13369 Article 171 CP.

590 Case V.C. No 1a-13061/Article 165 CC; Case G.D. No 1a-14607/Article 206 CC; Case C.V. No 1a-14328/Article 165 CC; Case B.A. No 1a-14640/Article 220 CC; Case U.S. No 1a-14360/Article 220 CC. Upon completion of the monitoring process, these cases had been examined for a period of 84-112 days.

591 Case T.I. No 1a-15181/Articles 171, 172 CC.

The analysis covered 14 cases of domestic violence and sexual crimes against women and 7 cases of human trafficking and related crimes, for which the Court of Appeals issued a judgment, as follows:

- 4 cases of domestic violence (physical violence) resulting in slight bodily injury (Article 201[1](1)(a) CC);
- 4 cases of domestic violence (physical violence) resulting in medium bodily injury (Article 201[1](2)(c) CC);
- 1 case of domestic violence (psychological violence) committed against two or more family members (Article 201[1](2)(a) CC)[592];
- 3 cases of domestic violence (physical violence) resulting in serious bodily injury (Article 201[1](3)(a) CC), including one case involving the death of the victim (Article 201[1](3)(c) CC (in old version));
- 2 cases of rape (Article 171(1) CC);
- 2 cases of trafficking in human beings for sexual exploitation (Article 165(2)(b) and (d) CC);
- 1 case of trafficking in human beings for labor exploitation (Article 165(2)(b) and (d) CC);
- 1 case of human trafficking for begging (Article 165(2)(d) CC);
- 1 case of pimping (Article 220(2)(a) CC);
- 2 cases of organizing illegal migration (Article 362[1](2)(c) CC).

In one of the criminal cases on the organization of illegal migration[593] the court of appeal, examining the appeals of the defendant's prosecutor and lawyer, quashed the Chisinau Court's judgment, whereby the defendant was sentenced to 2 years imprisonment, conditionally suspended for 2 years; and ruled to terminate the proceedings on the grounds of elapsed limitation period of criminal liability. In another case[594] the Court of Appeals rejected as unfounded the prosecutor's appeal and upheld the Chisinau Court's sentence, whereby the defendant D.I. was imposed a fine of 150 c.u., and terminated the proceedings with regards to other defendants S.N. and R.G., applying amnesty.

In a criminal case of pimping, which was examined and a judgment was issued before the monitoring process was completed, the Court of Appeals admitted the appeals of the defendant's prosecutor and lawyer, quashed the decision of the Chisinau Court, whereby the defendant was sentenced to 4 years and 6 months imprisonment and issued a new judgment to convict the defendant to 4 years of imprisonment, with the special confiscation of his assets. The case was examined in the absence of the defendant, who was a foreign citizen and at the time of appeal examination was in his country of origin.

In the case of trafficking in human beings for begging[595] the court dismissed as unfounded the prosecutor's appeal to the sentence of acquittal taken by the Chisinau Court and upheld unchanged the judgment of the first-instance court. According to the monitor's observations, the court postponed the hearing several times because of the need to hear the injured party. But she did not come to the hearings, and no one knew her whereabouts. Finally, the court decided, in the absence of the injured party, to reject the appeal.

The Court of Appeals accepted the prosecutor's appeal to the sentence of acquittal issued by the Anenii Noi Court in the case of trafficking in human beings for labor exploitation[596]. A decision was taken to sentence the defendant to 7 years imprisonment and to collect the damage of MDL 5000.

The Chisinau Court of Appeals ruled on 2 cases of trafficking in human beings for sexual exploitation. Both cases involved conviction for a crime committed by two or more persons against two or more persons. In one of these cases[597], the Court of Appeals dismissed the defendant's appeal as unfounded and upheld the judgment

592 This case involves acts of psychological violence (the only case of this kind) in the form of intimidation for the purpose of imposing the will or personal control applied by the father on the 17-year-old daughter and the 24-year-old son. The father did not live with his family, and after the sentence was served, the souses divorced. The father's actions have caused psychological suffering to children, who perceived threats to be real, given their father's criminal record and the fact that he was constantly accompanied by suspicious people, whom he presented as his friends. The court of first instance concluded that the accusation was vague and unclear, the defendant's guilt of committing the crime was not proven by any direct evidence, and pronounced a sentence of acquittal. The Court of Appeals rejected the prosecutor's appeal and upheld unchanged the sentence of acquittal.

593 Case V.I. No 1a-17404/Article 362[1] CC.

594 Case D.I. No 1a-19173/Article 362[1] CC.

595 Case A.P. No 1a-12753/Article 165 CC.

596 Case F.D. No 1a-14485/Article 165 CC.

597 Case A.N. No 1a-13036/Article 165 CC.

of the Hancesti Court, Ialoveni office imposing 16 years imprisonment (concurrent sentences). In another case[598] the Court of Appeals accepted the prosecutor's appeal, quashed the sentence of the Chisinau Court, Botanica office, whereby the defendants were sentenced to 4 years of imprisonment with a deferred execution of punishment, under Article 96 of the Criminal Code, until child born on 22.11.2013 turned 8 and adopted a new judgment - 4 years and 10 months of imprisonment in the women's prison, with the deprivation of the right to occupy certain positions or to carry out certain activity for a 3-year period. This case was also examined in the absence of the defendants, who disappeared when the first instance court issued its judgment.

The monitoring of criminal cases for sexual crimes against women, examined in the Chisinau Court of Appeal, established that only in 2 cases of rape proceedings were finalized and a judgment was taken. Thus, in one of the cases[599], the Court of Appeals dismissed as ungrounded the defendant's appeal and decided to uphold the sentence of the Chisinau Court, Center office, which sentenced the defendant, on the grounds of Article 171(1) and Article 187(1) of the Criminal Code, to 7 years of imprisonment in closed penitentiary. In another case[600], the Criuleni Court sentenced the defendant under Articles 171(1) and 179(2) of the Criminal Code to 1 year and 9 months of imprisonment, conditionally suspended for 2 years and collected MDL 10,000 in damage, with the injured party requesting MDL 20,000. The Chisinau Court of Appeals examined the appeals of the prosecutor and the injured party and decided to sentence the defendant to 1 year and 9 months of imprisonment and to admit the civil proceeding, collecting MDL 21,000 from the defendant to the benefit of the injured party.

The Chisinau Court of Appeals examined 12 criminal cases of domestic violence, including 11 cases of physical violence and 1 psychological violence. Four cases of domestic violence resulting in minor bodily injuries, 4 cases of domestic violence resulting in medium bodily injuries, 2 domestic violence resulting in serious bodily injuries and one case of violence that caused the death of the victim were examined.

Regarding the four cases of domestic violence that resulted in minor bodily injuries, the Court of Appeals adopted the following judgments:

- admitted the prosecutor's appeal and changed the sentence of the Anenii Noi Court, which sentenced the defendant to 1 year of imprisonment, conditionally suspended for 3 years, for a new final sentence of 1 year of imprisonment, conditionally suspended for 5 years[601]. The court increased the probation period, considering the violent behavior of the defendant, for which he was sanctioned repeatedly;

- dismissed as unfounded the appeal of the defense lawyer (who requested a non-custodial sentences), the appeals of the prosecutor and the injured party (both requested imprisonment for 2 years) and upheld the sentence of Chisinau Court, Rascani office, sentencing to 1 year of imprisonment and MDL 10,000 damages for the injured party[602];

- dismissed as unfounded the defendant's appeal of the sentence of 2 years of imprisonment, delivered by the Causeni Court on the basis of Articles 201[1](1)(a) and 320[1] (three episodes) of the Criminal Code, and upheld the sentence of the court of first instance[603]. The victim asked the court to release the accused of accountability because of his age (68 years) and poor health condition;

- the Court of Appeals dismissed as unfounded the appeal of the defendant lawyer requesting an acquittal and upheld the judgment of the Hancesti Court, Ialoveni office, releasing from criminal liability, with the application of medical coercive measures and treatment under ordinary supervision in the Clinical Psychiatric Hospital of Chisinau.

598 Case B.A. No 1a-14508/Article 165 CC.
599 Case B.A. No 1a-13197/Article 171 CC.
600 Case B.S. No 1a-13731/Article 171 CC.
601 Case S.S. No 1a-24054/Article 201[1] CC.
602 Case No 1a-18691/Article 201[1] CC; Regarding the circumstances of damage recovery, the court stated mentioned during the interview that '*... the damage in cases of domestic violence is assessed on the basis of evidence ... most people come and only say that I want to recover a certain amount of money because he broke my teeth. Without any receipt, without anything. On which basis we could assess this? One must submit some evidence. The moral damage is another matter already ...*'
603 Case C.I. No 1a-12508/Article 201[1] CC.

Monitors did not find any case where the court ordered the maximum punishment under this paragraph, even with regard to defendants who had persistent violent behavior.

This is due to the fact that these cases are often judged on the basis of the evidence managed during the criminal investigation phase, in accordance with Article 364[1] of the Criminal Procedure Code, which consequently leads to a 1/3 reduction of the limits of imprisonment sanction, provided in the corresponding article. In other cases, this is due to the fact that according to Article 78 of the Criminal Code, the maximum penalty provided for in the corresponding article may be applied if there are aggravating circumstances. The courts easily accept, as an attenuating circumstance, the expressed regret of the defendant (especially if is based on the evidence in the case file). At the same time, aggravating circumstances are not usually found, including in crimes committed in a state of intoxication or in the presence of minors.

In this respect, some legislative difficulties are important to note. Thus, Article 77(1)(a) of the Criminal Code establishes as an aggravating circumstance the commission of the offense by a person who had been previously convicted for a similar crime or for other acts relevant to the case. Repeated violence cannot be taken into consideration as an aggravating circumstance if there was no conviction for it. Council of Europe Convention on preventing and combating violence against women and domestic violence 11.05.2011 (Istanbul Convention)[604] makes clear the need to recognize as an aggravating circumstance not only the perpetrator's previous conviction for offenses (Article 46 (i) of the Convention)), but also the repeated committal of the offense or related offenses (Article 46 (b) of the Convention).

Qualification of the committed acts, as mentioned by monitors, also does not contribute to applying a dissuasive punishment for domestic perpetrators which would comply with the punishment individualization criteria[605].

Thus, the appeal lodged by the injured party in one of the cases[606], in which the actions of the defendant were classified under Article 201[1](1)(a) of the Criminal Code and 1 year of imprisonment was ordered, states that ***'... the defendant is a repeat offender in the field of domestic violence, with several criminal and contravention convictions. At the same time, no account was taken of the circumstances in which XXX committed the offense, namely the fact that, after having been released from pre-trial detention on 22 March 2017 following the review of the criminal case regarding the failure to comply with the order of protection, in order to punish his mother because she complained to the police that he had violated the protection order, he went to his mother's home directly from the courtroom and abused her physically, hitting her all over her body ....'.*** On the basis of the above-mentioned, the defendant's acts should have been classified under Article 201[1](2)(b) of the Criminal Code, which provides the sanction of 1-6 years in prison.

The resolution of this case - 1 year in prison - appeared to be deeply disproportionate to the seriousness of defendant's behavior. It is true that this gap was at the criminal investigation phase, but it is also relevant that the court highlighted the defendant's sincere reproach - as an attenuating circumstance, but did not see the direct threat to the victim, mentioned during the hearing *'... yes, I will pay it when I get free...'* in response to the court's question whether he agrees to pay moral damage to the injured party.

After examining 4 other cases of domestic violence resulting in medium bodily injuries, the Court of Appeals adopted the following judgments:

- rejected[607] as unfounded the appeal of defense lawyer and upheld the sentence of the Orhei Court sentencing the defendant to three years of imprisonment, given that the case was reviewed according to the procedure laid down in Article 364[1] of the Criminal Procedure Code;

604 www.coe.int/conventionviolence.

605 the seriousness of the offense committed, reason, personality of the perpetrator, circumstances of the case that attenuate or aggravate the liability, influence of the applied punishment on correcting and re-educating the perpetrator and living conditions of his/her family (Article 75 of the Criminal Code of RM).

606 Case No 1a-18691/Article 201[1] CC.

607 Case I.M. No 1a-13738/Article 201[1] CC.

- rejected[608] as unfounded, the prosecutor's appeal (requested collection of court fees) and the appeals of defense lawyers (who deemed the punishment as too harsh) and upheld unchanged the Chisinau Court sentence of one year and three months in prison;

- rejected [609] as unfounded the defendant's appeal of the sentence of the Causeni Court, Stefan Voda office, and upheld unchanged the sentence of 4 years in prison, taken by the court of first instance;

- the court of first instance, the Chisinau court, Centru office, convicted the defendant for 140 hours of unpaid community work. The Court of Appeals admitted the prosecutor's appeal and sentenced to 3 years of imprisonment, conditionally suspended for 3 years[610]. The injured party requested to reject the prosecutor's appeal[611].

The Court of Appeals also examined appeals against three cases of domestic violence resulting in serious bodily injury and adopted the following judgments:

- regarding the defendant's conviction for domestic violence that caused the death of the victim, the Court of Appeals rejected[612] as unfounded the appeal of the defendant and upheld the sentence of 10 years in closed prison, issued by the Stefan Voda Court;

- rejected[613] as unfounded the defendant's appeal (who deemed the punishment as too harsh) and upheld unchanged the sentence of four years in semi-closed prison, issued by the Straseni Court, Calarasi office;

- the Court of Appeals admitted the prosecutor's appeal against the judgment delivered by the Chisinau Court, Botanica office, sentencing the defendant to 5 years of imprisonment conditionally suspended for 3 years, and adopted a new judgment sentencing the defendant to 5 years of imprisonment in the prison for women[614].

The monitors noted that the Court of Appeals largely affirmed judgments sentencing defendants to immediate imprisonment with only a few judgments providing for a suspended sentence. It is regrettable, however, that in these cases, the court, referring to Article 90(6)(f) of the Criminal Code, prescribed only participation in probation programs to the convict. Article 90(6)(c[1]) of the Criminal Code, which obliges the convict to participate in a special treatment or counseling program to reduce the violent behavior; to follow alcohol treatment, etc., was not applied in any of the domestic violence cases.

Conclusions to the chapter

■ In the Court of Appeals, the situation does not differ from that in the court of first instance. Most of the injured parties or about 67% were women aged 20-40. The monitoring outcomes confirm that, to a great extent, women of fertile age are subjected to violence and trafficking for sexual exploitation.

■ In the Court of Appeals, the information on the cases set for trial was normally placed on the webpage and on the information boards inside the court. However, there were cases when contradictory information was displayed, which in some cases resulted in the postponement of the trial.

■ Most of the cases covered by the monitoring were examined in public hearings. The total or partial examination in closed hearings was announced in about 13% of the cases, especially where juveniles were involved, in cases of rape and trafficking in human beings. At the same time, the monitors mentioned that the preparation for the closed hearings, anyhow affects the psychological integrity of the injured party. Those who in the meantime are leaving the courtroom upon the court's order, notice who stays and easily identify the injured party.

608 Case C.A. No 1a-24327/Article 201[1] CC.

609 Case H.I. No 1a-15646/Article 201[1] CC.

610 Case L.A. No 1a-5989/Article 201[1] CC.

611 The court secretary believes that '*... largely in cases of domestic violence, the victims eventually request a milder punishment or, in general, relief of punishment. As a rule, the appeal is filed by the prosecutor, and less seldom by the injured party...*.' These statements are not confirmed by the results of the monitoring (see footnotes 97, 101, etc.). Monitors said in one case that the injured party requested that the defendant be not punished and in one case she did not support the prosecutor's request for a harsher punishment, while in other two other cases mentioned by the monitors, on the contrary, the injured party pleaded for harsher punishment for the defendant. Therefore, it is not accurately to say that '*largely*' the victims request not to punish perpetrators, as indicated by the court secretary.

612 Case T.M. No 1a-13082/Article 201[1] CC.

613 Case S.P. No 1a-6475/Article 201[1] CC.

614 Case Ş.A. 1a-19879/Article 201[1] CC.

■ The criminal case appeals were examined in courtrooms appropriately furnished and equipped. The courtrooms in which the sessions are held are large and accessible to the general public, being always full of people. In this regard, the situation in the Chisinau Court of Appeals is more favorable than that in the courts of first instance. However, monitors found that in most cases the noise in the courtroom impacts the audibility and order at the trial.

■ In the Court of Appeals, only about 27% of the hearings started on the scheduled time. About 45% of the monitored hearings started with an over 1-hour delay. One of the reasons is setting several cases to be judged simultaneously. Due to the current practice of assigning and examining cases on appeal, the participants in the trial often have to wait for the trial to begin and for a decision on the case for a long time, sometimes even for a whole day. This is one of the reasons of the parties' not attending hearings in the court of appeal.

■ The injured parties were absent at the hearings in cases related to rape, trafficking for sexual exploitation, pimping, that is, in cases directly related to sexual life. In some cases, the court ordered the injured party to be brought forcibly to the hearing, even if the victim has been heard at the stage of the criminal investigation under special conditions, providing no arguments on the need for a repeated hearing in the court.

■ The monitors did not indicate any difficulties in providing the interpreter's services to the parties to the appeal. In this regard, the monitors noted a better situation in the Court of Appeals compared to the courts of first instance.

■ There was no case observed by the monitors in the Court of Appeals in which the victims of offenses were given clear explanations about the right to seek state-guaranteed legal aid and how to apply for it in line with the law. The injured parties benefited from legal aid in approximately 22% of the cases of domestic violence and offenses related to the sexual life of women and in about 8% of the monitored cases of trafficking in human beings and related crimes. At the same time, the defendants received a defense lawyer's services in about 90% of the cases on appeal, including in 30% of the cases they benefited from state-guaranteed legal aid.

■ The results of the monitoring indicate the fact that the examination period of the cases on appeal is sometimes quite long. Often, the reason for postponing the case was the absence of the parties. At the same time, the monitors observed cases when the defendant was not brought to the hearing because of the carelessness of the escort, or the inaccuracy of the staff of the Court of Appeals who failed to publish the correct information about the time of the hearing, which led to the postponement of the trial. In the Court of Appeals there were also cases of setting the court hearings in 2-3 months.

■ Situations of setting the first hearing with a long delay were mentioned, especially in cases of sexual violence of juveniles under the age of 14, in cases of trafficking in children, offenses related to the sexual life of elderly, although the procedural law requires the examination of these categories of cases, especially those involving juveniles, be carried out on a preferential basis.

■ In some criminal cases of sexual assault of juvenile victims under the age of 14, hearings were repeatedly postponed to hear the juvenile injured party in the court. The reason for the delays resided in the failure to apply, at the stage of criminal investigation, the norm provided for in art. 110^1 of CrPC. Monitors did not identify any case of issuing the interlocutory judgment under art.218 of CrPC, which obliges the court, when identifying during the trial facts related to the violation of the legislation and human rights, to notify the competent bodies, officials and prosecutor thereof. A more active position of the court in this regard would substantially contribute to reducing practices that disadvantages the children in the criminal proceedings.

■ As observed by the monitors, the court of appeal, to a large extent, made decisions to convict the defendants to imprisonment. There were only a few decisions in which conditional suspension of punishment execution was applied. In these cases, the court indicated in general the defendants' participation in probation programs. No case related to domestic violence was identified where the perpetrator was obliged to attend special treatment or counseling programs for reducing aggressive behavior or to be forced to undergo alcohol addiction treatment, etc.

General conclusions and recommendations

Moldova's legal framework and international law acknowledge the specific, distinct nature of gender-based violence against women, including domestic violence and trafficking in human beings, justifying the need for a distinct approach to the legal relationships in this field. International law requires that national governments adopt measures to ensure safe conditions for the victims and hold perpetrators accountable, including providing for assistance, counselling and recovery for the injured party in a case.

Over the last period, the Moldovan legal framework in the field of providing equal opportunities for women and men, preventing and combating gender-based violence, including domestic violence and trafficking in human beings, had an unprecedented development. However, there are still gaps that must be addressed in order to ensure that victims of these categories of crimes are treated in line with the international standards.

The reforms in the judiciary that are underway are aimed at improving the quality of justice and the efficiency of the judiciary. However, the results of the monitoring indicate some omissions and deficiencies that fail to meet the necessary conditions for a fair trial in the administration of justice on the cases related to domestic violence, sexual violence and trafficking in human beings.

The injured parties in these cases are often victims of the system. Victims are either marginalized in the criminal proceedings, not properly involved or provided with qualified legal assistance services in the trial. Often, they are not even being informed about the course and outcome of the investigations. Or, on the contrary, victims have the burden of proving the facts on the case under the examination, be it in civil or contravention proceedings, often without effective legal assistance. In seeking assistance, counseling and recovery, victims face humiliating bureaucratic obstacles. Therefore, a victim's experience in legal proceedings is often one of discriminatory attitudes toward her, with greater concern for the aggressor, disregard of procedural rights, and failure of the system to provide effective remedies.

This is largely due to pre-conceived and stereotypical approaches of professionals resulting in misunderstanding or unwillingness to accept the specific nature of these cases. Those characteristics include the extreme vulnerability of the victim, and the inequality of the positions of the aggressor and the victim, with the latter having very limited possibilities of choice and refuge. Current efforts to provide procedural safeguards equally to the parties in the trial are inadequate and place the victim in a disadvantaged position.

The preconceived attitude toward victims by many actors in the judicial process, supplemented by certain legal deficiencies (which can serve as an excuse when actors are unwilling to act properly) has substantially contributed to the conclusion that the domestic violence, sexual violence and trafficking are not priorities for the judicial system. The judicial system displays inadequate concern for the safety of victims and holding perpetrators accountable for their behavior. Almost no attention is paid to rehabilitation for perpetrators and victims' recovery of physical, material and/or moral damages caused by the perpetrators' offenses.

The monitoring outcomes of the court hearings in cases related to gender-based violence, including domestic violence, sexual violence against women and trafficking in human beings, led to the following recommendations:

De lege-ferenda recommendations

- Amend the Criminal Code to provide for aggravating circumstances when the offense is repeated, as provided for in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence 11.05.2011 (Istanbul Convention).

- Develop the regulatory framework to improve the procedural mechanism of involving and informing victims of crimes on the running and the outcomes of the investigation of offenses. Ensure that all the victims of domestic violence, sexual violence and exploitation are provided with specific (friendly) hearing conditions avoiding confrontation in the trial with the perpetrator, unless the adult victim accepts the confrontation, in order to ensure the psychological integrity of the victims and avoid re-victimization, as prescribed by the international standards.

- Supplement the criminal procedure law with provisions on the victim's/injured party's right to seek qualified state-guaranteed legal aid as set forth in the legislation and on the obligation of the criminal investigative body/court to submit to the victim's/injured party's information in writing about procedural rights.

- Amend the legislation to ensure the conditions for merging the cases of trafficking in human beings where the same person in some cases has the status of injured party whereas in other cases - the procedural status of defendant. This would allow for the examination of the circumstances in order to identify the legal grounds to release the victim from criminal liability for the crimes committed by him/her in this status.

- Develop more precise regulations on the timeframes related to setting the first hearing on a case and the period of hearing postponement to ensure that the case is examined within a reasonable timeframe and the criminal procedure law is clear and predictable.

- Review the legislation and set specific conditions to examine cases of domestic violence, sexual violence and trafficking in human beings in simplified procedure. Special consideration shall be given to the fact that its impact on the punishment decided by the court violates international principles and provisions related to applying discouraging punishments to defendants in these categories of crimes.

- Revise the legislation on the criteria for assessing the material and moral damage caused by the crime, especially in violence and trafficking in human beings crimes, by analyzing the practice of other countries in this field.

- Provide for a contravention liability for domestic violence offenses from the age of 16.

- Supplement the Contravention Code by expressly stating the right of the victim to seek legal aid at the trial, in line with the legislation on the state-guaranteed legal aid.

- Amend the contravention legislation by including measures in cases of domestic violence in line with the requirements of CEDAW and the Istanbul Convention and avoiding situations when the aggressor who intentionally committed acts of violence avails of more guarantees and protection of his/her rights that the victim whose psychological and even physical integrity is threatened by the acts of the aggressor (for example, conditions and duration of apprehension of domestic aggressors, etc.).

- Amend and supplement the Contravention Code with regards to the procedure of audio recording of court hearings in order to ensure correlation of the relevant legislative framework with the provisions of contravention legislation.

- Reduce the time for appeal when a decision is made to reject the application for protection measures in a domestic violence case.

- Harmonize the relevant legal acts and internal procedures of the health care system, education, and social assistance, which refer to reporting cases of domestic violence. Ensure that professionals, who by law, are subject to confidentiality rules, report to competent authorities about the violence action against adults only upon the consent of the victim, except for cases of

medium or severe injury, use of weapons, or when the victims are particularly vulnerable due to disability or reduced intellectual ability;

Recommendations to the Superior Council of Magistracy – judicial self-administration body

- Revise the internal instructions on procedural documentation and record keeping to include distinct procedures for working with the applications for protection order filed by domestic violence victims, including clear provisions on the application form, the conditions and ways of registering an application, referring it for examination, placing the information on setting the examination session, sending protection orders for enforcement, appealing the decision, etc.

- Develop recommendations to ensure an unambiguous understanding and enforcement of the law on publicity of court hearings in order not to admit arbitrary actions and orders that would ultimately prejudice the spirit of the international and constitutional norms related to the public character of hearings.

- Organize internal operations in a manner that requires holding cases primarily in the available courtrooms and discourages the practice of holding court hearings in the judges' offices.

- Hold the participants accountable for delaying or postponing court hearings to ensure that hearings start on time and to prevent their postponement.

- Require the courts to inform the injured parties of their right to be exempted from the need to attend the hearing when they are not due to be heard, in line with the provisions of the criminal procedure law.

- Require judges to properly inform the injured party about the right and manner to file a civil complaint in criminal proceedings and, when deciding on the amount of the moral damage, to objectively assess the sufferings of the victim of trafficking and violence crime.

- Make hearings under special conditions available to all the victims of domestic violence, sexual violence and exploitation crimes. The use of recordings in the court hearing, replacing in this way the physical presence of the injured party in the courtroom, will make it possible to examine and analyze the evidence necessary to reconstruct the objective truth on the case without affecting the psychological integrity of the victim of crime.

- Allow applicants for civil protection measures in domestic violence cases to make statements without having the alleged aggressor to be present in the courtroom, in order to exclude re-victimization of the victim caused by the visual contact with the aggressor.

- Encourage courts to ensure the prompt examination of domestic violence cases, including through an extraordinary method of scheduling hearings on these cases.

- Encourage judges to comply with the legal timeframe for the examination of contravention cases and to apply dissuasive measures to the domestic aggressor.

- Develop the practice in civil protection order cases requiring domestic abusers to participate in a special treatment or counseling program based on best practices to reduce or eliminate violence, and obliging them to support their common children. In criminal proceedings, require domestic abusers to participate in a special treatment or counseling program based on best practices to reduce or eliminate violence, and requiring them take a medical examination on alcohol/drug addiction and undergo medical treatment.

- Require the perpetrator's participation in a special treatment or counseling program based on best practices in order to reduce violent behavior and to receive treatment for alcohol or drug addiction, as appropriate, when execution of punishment is conditionally suspended.

- Encourage the courts to apply the interlocutory judgment whenever they find that the procedural guarantees of the participants in the trial have been breached, especially with regard to the juveniles and victims of crime. In this way, the court will substantially

contribute to providing effective protection of human rights and of the right to a fair trial.

- Carry out needs analysis to identify the optimal number of specialists, including interpreters, court secretaries, in order to ensure adequate resources for handling cases in the court of first instance.

- Organize trainings to strengthen the professionalism of the court secretaries and interpreters, paying particular attention to the qualitative fulfilment of their functional duties and of the ethical aspects of their duties.

- Organize periodic training for the court support staff, including on ethical issues. Encourage the court staff to display tolerance and treat victims of domestic violence with understanding in the process of receiving applications for protection measures.

- Provide information support on conditions and procedure to apply for a protection order in the courts in a language understandable for victims/potential victims to help them apply on their own for protection measures in civil proceedings.

- Review the current practice of concurrently examining multiple cases in the Court of Appeals in order to eliminate the suspicions as to the capacity of judges to focus on each individual case and to ensure the quality of the judiciary's decision while examining the cases on appeal.

Recommendations to General Prosecutor's Office

- Encourage prosecutors to actively use all the opportunities provided by the criminal procedure law to provide effective protection and safe conditions to the victim/injured party at the trial, requesting to this end preventive or protection measures, as applicable, required in each specific case.

- Encourage prosecutors to properly apply the norms on hearing under special (friendly) conditions to the victims of offense, whenever appropriate.

- Encourage prosecutors to comply with the requirements of the law which provide for the need to inform the injured party on the materials of the case before it is sent for trial, as is the case with the defendants.

Recommendations to the National Legal Aid Council

- Make paralegals available to help victims of domestic violence in writing and filing the application for protection order, conduct periodic trainings for paralegals in the field of combating gender-based violence.

- Provide timely, competent state-guaranteed legal aid to victims of domestic violence in the civil cases on applying for protection measures.

- Organize periodic trainings in the field of combating violence and trafficking in human beings to ensure qualitative services and ethics at the trial from public defense lawyers and the lawyers attracted to provide state-guaranteed legal aid.

Recommendations to the competent bodies to develop and promote policies in the field

- Conduct awareness-raising efforts for the general public, in particular for victims and potential victims of violence and trafficking, to enable them to identify violence and trafficking, to be aware of the forms of domestic violence and the ways of seeking protection and to be aware of the functioning of shelter, counseling and resocialization services for victims and domestic abuser, etc.

- Organize periodic trainings for the decision-makers of the local public authorities of the first and second levels, for persons holding positions within the guardianship authority and for social assistants. The trainings should include not only issues related to their direct duties related to violence and trafficking prevention and combating, but also to ways of interacting with other competent bodies to develop services for assisting

victims of gender-based violence and trafficking, assisting and counselling aggressors, developing a network of paralegals in the locality and cooperating with these bodies for the benefit of the victims and potential victims of violence and trafficking.

- Supplement the school curricula at the gymnasium-level with information and education materials on the protection and assistance measures for the gender-based violence victims.

- Develop a mechanism for the victims of domestic and sexual violence and trafficking in human beings' offenses/contraventions, to assist them in traveling to undergo a medical forensic examination.

- Develop during the criminal court proceedings of a referral mechanism for crime victims to obtain health care services, post-traumatic psychological assistance and counseling for physical and psychosocial recovery, the incurred expenses being then included in the legal costs.

- Develop an interaction mechanism between the law enforcement bodies and justice with the health care system during the process of collecting evidence on the case in order to ensure the participation of the victim of violence in medical examinations on a priority basis and free of charge.

- Develop a network and the capacity of assistance and counseling centers for domestic abusers, to provide the necessary support to develop aggressor rehabilitation programs based on best principles and train specialists to work with domestic abusers.

- Improve the mechanism for combating alcohol/drug addiction as the factors that are able to generate domestic violence and sexual aggression against women.

- Improve the mechanism of involving the guardianship authority, including as an intermediary in the relationships between the aggressor and the victim in order to solve the problems of child support during the period of the protection order.

- Organize trainings for official examiners to ensure qualitative investigations of domestic violence cases, to include not only the circumstances related to the victim who reported the case, but also those related to the violence against other family members, especially children. At the same time, trainings are needed in the examination of the facts in domestic violence contravention cases, including the necessary evidence, the importance of the reports on the bodily injury and psychological assessment of the victims, the importance and the conditions for enforcing coercive measures, the consequences of the poorly drafted minutes on the contravention, the timeframe for stating the contravention and referring the contravention case for examination etc.

- Strengthen the mechanism for combating psychological violence. The presence of psychological violence, alone or associated with other forms of violence, was observed during the monitoring process in almost all of the cases on applying for a protection order. At the same time, in the 1852 (2011) Resolution on Psychological violence of PACE, psychological violence is acknowledged to be a serious form of violence not only because it leaves deep and lasting impact on the victims, but also because if not discouraged it usually escalates into physical, sexual violence.

- Organize trainings for police officers, defense lawyers, judges and prosecutors to strengthen their capacity of identifying cases of psychological violence, including how psychological violence is expressed, its effects on the victims, adults and children and the legal qualification of the offense, the evidence etc.

Annexes

ANNEX 1

Data about interviewed victims of domestic violence

No.	Code	Age	Education	Children	Relation to the aggressor	Region
1.	IIA_1_VVF	39	Gymnasium	1 child	Husband	South
2.	IIA_2_VVF	32	Lyceum	2 children	Intimate partner	Center
3.	IIA_3_VVF	39	Higher	2 children	Husband	Center
4.	IIA_4_VVF	56	College	2 children aged over 18	Former husband – they live in the same house divided by the court	Center

ANNEX 2

Data about interviewed professionals

No.	Code	Interviewed professionals	Institution
1.	IIA_1_DD	Records keeping and documentation division	Botanica Court
2.	IIA_2_DD	Records keeping and documentation division	Ciocana Court
3.	IIA_3_G	Court secretary	Ciocana Court
4.	IIA_4_E_ML	Deputy Director of the Forensic Medical Center	Forensic Medical Center
5.	IIA_5_P_VF	Prosecutor, Juvenile Justice Section, Division for Policies, Reforms and Protection of Society Interests	General Prosecutor's Office
6.	IIA_6_J	Judge	Centru
7.	IIA_7_A_VF	Defense lawyer	NGO
8.	IIA_8_AC	Official examiner	Police Inspectorate, Botanica
9.	IIA_9_P_TFU	Prosecutor	PCOCSC
10	IIA_10_ex_CCTP	CCTP former representative	NGO
11.	IIA_11_P_TFU	Prosecutor	PCOCSC
12.	IIA_12_A_TFU	Defense lawyer	NGO
13.	IIA_13_A_VF	Defense lawyer	NGO
14.	IIA_14_G_A	Court secretary	Court of Appeals

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