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## TERMS OF REFERENCE

<b>A. Job Title:</b>	National Consultant on judicial reasoning
<b>B. Duty Station:</b>	Chisinau, Republic of Moldova
<b>C. Project reference:</b>	Support to Justice Sector Reform in Moldova
<b>D. Contract type:</b>	Individual Contract (IC)
<b>E. Duration of assignment:</b>	June – September 2018 (up to 25 working days)

### F. Background:

Implementation of the Justice Sector Reform is one of the main pre-requisites for Moldova to advance the overall reform process and to achieve compliance with the internationally recognized democratic standards. At the same time, an efficient, transparent and reliable justice system is a precondition for the sustainable development.

Currently, the justice system in the Republic of Moldova experiences low levels of public trust, with only 13,6% of respondents trusting the system, as evidenced by a recent public opinion survey.<sup>1</sup>

The problem of inadequate and insufficient reasoning/argumentation of judicial acts represents an issue of major concern for the whole judicial system. Unlike other branches of power, the powers of judges are not subject to the same controls from the general public and society and, therefore, courts need the active acceptance by the public of their decisions and shall demonstrate that the judges proceed in a non-arbitrary manner. The quality of judicial acts should reconcile the public with the use of power by courts and, therefore, judicial decisions must be publicly justified according to certain traditionally accepted techniques.

Both the United Nations treaty bodies and the European Court of Human Rights (ECtHR) traditionally include the obligation to provide reasons for an act of justice as an integral part of the right to a fair trial. It clearly stated that the function of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision affords a party the possibility to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be public scrutiny of the administration of justice.<sup>2</sup> Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention on Human Rights require the national courts of member states to give reasons for their judgments in both civil and criminal cases and to give detailed answers to those arguments of the parties which are fundamental to the outcome of the case. By providing proper reasoning the courts

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<sup>1</sup> Barometer of Public Opinion, November 2017, p. 43: <http://ipp.md/wp-content/uploads/2017/12/Rezultate-sondaj.-Partea-I.pdf>

<sup>2</sup> E.g., Case of *Sarban vs Moldova*; Application no. 3456/05, para. 98.

in a democratic society inspire confidence in the public.<sup>3</sup> The issue of the lack of sufficient and proper reasoning and motivation has also been raised in a number of judgments pronounced by the ECtHR against the Republic of Moldova.<sup>4</sup> The ECtHR mentioned in a number of cases on legality of arrest warrants that Moldovan courts simply limited themselves to paraphrasing the reasons for detention provided for by the Code of Criminal Procedure, without explaining how they applied in the applicant's case.<sup>5</sup> The insufficient motivation of arrest warrants and insufficient motivation of court judgments had also been previously mentioned by national NGOs among the systemic problems for the Moldovan society and suggestions have been made to improve the reasoning of judicial decisions.<sup>6</sup>

The improvements in judicial reasoning should increase the transparency of the judiciary and lead to the better quality of the acts of justice in Moldova, and may also contribute to reducing the number of decisions against the Republic of Moldova by the European Court of Human Rights. As a result of such improvements, the right of citizens to a fair trial and access to justice should be strengthened and the trust to the justice system increase.

Starting with 2017 the National Institute of Justice of Moldova (NIJ) (the main institution that is in charge of initial and continuous professional training of judges and prosecutors) started implementing the new methodology of initial training of future judges and prosecutors which is predominantly based on development of practical skills. This new methodology comprises mock trials and practical simulations in various areas of law. As legal reasoning is considered one of the basic legal skills, it is important to develop solutions for integrating it effectively into the curriculum of the initial training of future judges and prosecutors, as well as find possible ways of improving continuous training of the incumbent judges in this regard.

## G. Objective:

The main objective of this consultancy is to provide support to the International Consultant contracted by UNDP in conducting a baseline study of the current situation with judicial reasoning as used by Moldovan courts in motivating their decisions, identify gaps and provide relevant recommendations to improve the quality of judicial reasoning by Moldovan courts.

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<sup>3</sup> UN Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007): [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en);

For ECtHR's case-law see, for ex., the Case of *De Cubber v. Belgium*, 26 October 1984, par. 26, Series A no. 86; or the Case of *Oleksandr Volkov v. Ukraine*, Application no. 21722/11, par. 106.

<sup>4</sup> See, for ex., Case of *Fomin v. Moldova*; Application no. 36755/06, par. 34; Case of *Sarban v. Moldova*; Application no. 3456/05, par. 98; Case of *Gradinar v. Moldova*; Application no. 7170/02, par. 107; Case of *Buzadji v. Moldova*; Application no. 23755/07, par. 59.

<sup>5</sup> E.g., Case of *Modarca v. Moldova*, Application no. 14437/05, par. 78; Case of *Castravet v. Moldova*; Application no. 23393/05, par. 34; etc.

<sup>6</sup> See the Reports of the Public Association "Lawyers for human rights" for 2009 and 2010 (available via the following links: <http://www.lhr.md/despre.noi/rapoarte/rap.activ.lhr.eng.2009.doc> and respectively <http://www.lhr.md/despre.noi/rapoarte/rap.activ.lhr.eng.2010.doc>) and the Report of Legal Resources Centre from Moldova for 2015 (available via the following links: <http://crjm.org/wp-content/uploads/2015/07/CRJM-Raport-2015-eng-WEB.pdf>).

## H. Scope of work and expected outputs:

In order to achieve the objective the International Consultant, assisted by the National Consultant, shall perform the following tasks:

### 1) Preliminary review:

- To select and conduct a preliminary review of several decisions of Moldovan courts (together with decisions of Equality Council (national antidiscrimination enforcement body) and Constitutional Court of Moldova) in order to provide to the International Consultant basic understanding of the system of constructing judicial decisions and the methods of judicial reasoning employed in Moldova;

### 2) Conducting a study on judicial reasoning in Moldovan courts:

The National Consultant **shall support the International Consultant** in conducting a comprehensive study on judicial reasoning as currently employed by Moldovan courts and judges. Within this task he/she to provide necessary support to the International Consultant on Moldovan legislation, Moldovan legal system, judicial decisions, decisions of the Equality Council and Constitutional Court and other relevant information and materials available necessary for the fulfilment of tasks.

The activities that include the study should cover at least the following:

- Determining, together with the International Consultant, the criteria for choosing the decisions that will be analysed during the study on judicial reasoning;
- Analysis of the judicial reasoning as employed by Moldovan courts when making their decisions, methods and techniques of reasoning used and their sufficiency (including their comparison with the decisions of Equality Council and Constitutional Court of Moldova);
- Comparison of the methods and techniques of reasoning employed by Moldovan courts and courts in countries that are representative of the existing major legal systems;
- Analysis of weaknesses, gaps and shortcomings of the existing methods and techniques of judicial reasoning existing in Moldova;
- Recommendations on ways to improve methods and techniques of judicial reasoning in Moldova;
- Analysis of the existing trainings on legal reasoning in Moldova (whether as separate courses or as part of the curricula within other courses and training programmes at undergraduate or post-graduate and/or professional levels);
- Identifying best solutions for developing trainings on judicial/legal reasoning and ways to integrate them into the existing training programmes in law (including professional trainings of judges);
- Providing recommendations on how to integrate elements of judicial reasoning into mock trials and other practical training sessions conducted for future judges and prosecutors at the National Institute of Justice of Moldova;
- Other relevant issues deemed important by the Consultant in the context of the overall objective of the consultancy;

### 3) Developing a detailed outline of a training programme on judicial reasoning for judges and other legal professionals:

The National Consultant is expected to provide support to the International Consultant in preparing an outline for a training programme on judicial reasoning that would serve the

basis for developing of a substantial course on judicial reasoning for judges and other legal professionals. The outline should meet at least the following criteria:

- identify the objectives of the prospective training courses;
- identify major topics that should be covered by the course and provide description for each topic, including the integration of UN and CoE human rights standards and issues into judicial reasoning;
- provide methodology for fulfilling the objectives of the course;
- identify sources of information and bibliography that can be used for further development of the course materials;
- determine the criteria for the selection of trainers who will teach the course and the needs for the relevant training of trainers;

**4) Produce regular progress reports;**

The Consultant will provide necessary inputs to the International Consultant for preparing regular progress reports with the details on the progress of the assignment, activities performed, any issues and problems identified and solutions proposed.

**5) Perform other assignment related tasks.**

**I. Deliverables:**

	<b>Deliverables</b>	<b>Estimated timeframe</b>
1.	<b>Preliminary review</b>	June 2018
2.	<b>Assistance provided to the International Consultant during the first fact-finding mission to Moldova</b>	June 2018 (10 w/d)
3.	<b>Preliminary draft of the study on judicial reasoning</b>	June 2018
4.	<b>Preliminary draft of the outline of the training programme on judicial reasoning</b>	July 2018
5.	<b>Assistance provided to the International Consultant during the second working mission to Moldova</b>	September 2018 (up to 4 w/d)
6.	<b>Final version of the study on judicial reasoning</b>	By 30 September 2018
7.	<b>Final version of the outline of the training programme on judicial reasoning</b>	
8.	<b>Regular progress reports</b>	after completion of each deliverable

Deliverables (and the respective timeframes) can be further amended or modified for the purpose of the assignment.

**J. Organizational Setting:**

This is a part-time consultancy. The National Consultant will work in close cooperation with the International Consultant and under the direct supervision of and in cooperation with the NIJ management and UNDP Project Manager.

## **K. Inputs:**

The NIJ and Project staff will provide the National Consultant with some information related to the assignment and all necessary organizational and logistic support where necessary. It will be the task of the National Consultant (who will work in cooperation with the International Consultant) to provide necessary support to the International Consultant on Moldovan legislation, Moldovan legal system, judicial decisions, decisions of the Equality Council and Constitutional Court and other relevant information and materials available necessary for the fulfilment of tasks.

## **L. Qualifications:**

### **I. Academic Qualifications:**

- Master's Degree or equivalent (5-year university education) in Law; PhD degree is an asset;

### **II. Previous working experience:**

- At least 5 years of previous professional experience as a judge, a prosecutor, defence lawyer, judge's assistant or other similar profession related to pleading and presenting complex arguments before courts and/or preparing judicial decisions;
- Previous experience in teaching law on academic or professional training levels, particularly in providing professional trainings to judges, is an advantage;
- Experience in developing training programmes curricula and relevant training methodologies for legal professionals;

### **III. Competencies:**

- Demonstrated knowledge and understanding of various tools, techniques and methods of legal/judicial reasoning and their practical application by courts;
- Demonstrated knowledge of various techniques and methods of judicial/legal reasoning as used by Moldovan courts, the Constitutional Court of Moldova, Equality council, and other relevant institutions;
- Knowledge of differences in techniques and approaches to judicial reasoning in various legal systems and countries is an advantage;
- Fluency in Romanian and English languages;
- Knowledge of one or more additional languages relevant for Moldova, including Bulgarian, Gagauzian, Romani, Russian, Ukrainian or sign language is an asset.

### **IV. Personal qualities:**

- Proven commitment to the core values of the United Nations, in particular, respecting differences of culture, gender, religion, ethnicity, nationality, language, age, HIV status, disability, and sexual orientation, or other status;
- Responsibility, creativity, flexibility and punctuality.

UNDP Moldova is committed to workforce diversity. Women, persons with disabilities, LGBTI, Roma and other ethnic, linguistic or religious minorities, persons living with HIV, as well as refugees and other non-citizens legally entitled to work in the Republic of Moldova, are particularly encouraged to apply.