

# **Towards quality management in the justice system in Romania**

## **Results of the pilot project on external evaluation of the judges' performance/activity**

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As shown in the report of the working group of the European Network of Councils for the Judiciary on Quality Management, quality in courts can only be experimented in relation to the expectations of the users and of interested persons. "If the organization that delivers the product/service performs a public service, then the users and interested persons are the citizens. Citizens are users of certain services, and since every citizen pays taxes to the state budget, the citizens are interested in the services provided"<sup>1</sup>.

The product of the chain of professional activities performed by all the employees of the court – the way in which the functioning of various sectors for the public is perceived, the way in which information is organized with regard to the cases on the docket, with regard to judicial practice, etc. – depends on the level of interest the presidents of the courts allocate to the complaints of the public with regard to the services provided by the court and on the level of involvement in remedying the situations that can affect the functioning of the court and the public perception thereof.

In the last decade of the past century, in the states from Western and Northern Europe, the citizens and civil society formulated various complaints regarding the services provided by the judicial system. This increased attention coming from the citizens and overall society members for the functioning of the courts triggered reconsideration of the conduct and attitude of judges and prosecutors as elements of the quality system for justice. Topics as impartiality, integrity, unity of judicial practice, professional aptitudes, clarity of judicial decisions, good communication with the users of the justice services are important in this context. In The Netherlands for instance, training and peer review are initiatives within the strategy for ensuring quality in order to improve the performance of judges and prosecutors. Within peer review, judges discuss about their professional conduct during the hearings in the presence of fellow judges and external experts. This initiative also aims at favoring open atmosphere at the courts.

Besides quality of the professional activity of judges and prosecutors, quality regarding objectives of the organization, the strategies and processes, material aspects, personnel, quality of working methods between staff and magistrates is the consequence of redefining the scopes /objectives and quality instruments destined for the courts. Management of complaints, self evaluations

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<sup>1</sup> ENCJ Report of the working group , chapter 1 available at: <http://www.alexandrina-radulescu-csm.ro/docs/evaluarea-calitatii-in-justitie.pdf>

of the organization by outside interested parties in the well functioning of the courts represent feed back for the courts as well as the justice system. These are at the same time rational instruments allowing the outside world to observe quality, as a condition for assuming quality. The procedure for dealing with complaints for instance should result in the possibility of the litigants to put forward complaints and to allow for results that would actually improve the organization.

This day, in many European states, there are increasing concerns and initiatives for the quality of judicial systems. The working group of the ENCJ on quality management will have a different interest in 2010, namely quality and access to justice.

## **I. External evaluation as a means to improve the public image of the justice system**

In the past years, the Romanian judicial system has done considerable efforts to set up standards for judges' profession. Long yet extremely useful debates among the judges from various levels of jurisdiction, provided the grounds for the elaboration of the **Romanian Magistrate's Profile** in 2006 and later of the Guide for the evaluation of magistrates on the following criteria: efficiency, integrity, quality of activity and professional training.

By means of secondary legislation, 3 years ago, the Superior Council of Magistracy oriented the process on magistrates' individual evaluation towards the main purpose of the evaluation, namely improvement of the activity of magistrates. As the only instrument for evaluating the magistrates' professional activity it proves to be insufficient to attain this purpose. Naturally, improvements in the activity of the magistrates should have found counterparts in the perception of the users and society in general. But, in the last years, in Romania, confidence of the public in the justice system has continuously decreased.

One of the reasons for this, as easily evidenced in the last 2 years, is that the Romanian judicial office was under external evaluations without having been prepared for it. The media proved most interested in exploring - limitlessly even - this territory left available by the justice system itself. These evaluations came as controversial news in the media triggering doubts about the conduct of some magistrates. These external attacks could not be confronted but by circumstantial inside defenses, by the magistrates. This is an important democratic exercise, apparently inconvenient for the magistrates but most valuable for the Romanian society.

The refusal of the justice system itself to explore the territory of external evaluation of justice limited the defense force of the magistrates' public image. Simple responses to media attacks proved inefficient. Largely, the low credibility of the justice system is attributed to offensive media articles and news. Even if for the major part, the Superior Council of Magistracy defended the reputation of judges and prosecutors proving the lack of substance in many media accusations, nevertheless, such news and reports generated a negative image.

It is beyond doubt that the Romanian judicial system cannot avoid external evaluation. So far, judges allowed this kind of judgments to take place only on the initiative of others, according to circumstantial factors and criteria which followed certain interests. The justice system will never have sufficient arguments to uphold the credibility of Romanian courts and of the act of justice unless it creates a transparent system, object for external evaluation.

External evaluations with regard to the concrete and specific actions of court presidents and judges' behavior in courtroom constitute concrete landmarks regarding the credibility of courts and of the justice system, but to this purpose external evaluation needs to be performed and made available for all those concerned.

An effective defense of the image of the Romanian judicial system implies that the quality objectives undertaken and defended publicly by the magistrates be anchored and developed in relation to the expectations of the justice users, of the citizens and of the society.

Following this kind of characterization of today's problems in the justice sector the need for other methods in place - especially related to the quality evaluation of the magistrates' activity - in order to determine the courts to better and more efficiently respond to the users' needs has arisen. At this point, courts are ready to learn to formally measure the satisfaction of the persons interested in the quality of the judicial system and must do so at least for the purpose of making sure that the efforts of the judges are correctly oriented towards increasing quality.

## **II. Description of the project and its results**

The project to be presented may be an eloquent example of goodwill of the judges to open a new gate towards society and towards a new vision regarding the actual need for professional development. Participants are judges from Cluj Napoca, members of the Association of Romanian Magistrates - Cluj Wing and lawyers from the Cluj Bar Association. This project could not have taken place without the support of the organizers of the Pro Etica Workshop of the Babes Bolyai University which hosted the meetings and ensured the mediation between the judges and the lawyers.

Why did the judges consider for this project only the lawyers? This could be a legitimate question as long as - as shown in the beginning - appreciations on quality are the result of the perception of all users of the services of the court. The choice can be better explained through the objectives that were to be fulfilled:

a. The intent was to get the first feed back on the judges' performance from the professionals that are closest to the daily activities and life of the courts. The lawyers are supposedly the persons with whom judges are most likely to interact most easily in terms of the legal jargon used and of the partnership to be established during judicial proceedings. Thus, the project sets as a result a better understanding of the roles and expectations of each professional category. One argument sustaining this choice is the fact that the lawyers from the Cluj Bar Association know the judges from the evaluated courts since they attend their

court hearings, this being a requirement for the individual appreciation of each judge.

b. We aimed for an improvement of the perception of the judges' work so that we focused our attention on the first link in the chain of external communication in the functioning of a court (relationship judge - lawyer). If we look at the court proceedings from the point of view of communication roles, we could state that the lawyer is the "*transmission belt*" between the court/judge and the parties involved in a trial. From this perspective we can state that lawyers can decisively influence the way in which the court is perceived by the litigants.

The 2 professional categories were represented by 10 judges and 10 lawyers at a focus group that elaborated and discussed the 31 affirmations regarding the professional conduct and activity of the judges.

The 2 debating sessions took place in January and February of 2009 and were moderated by lecturer PhD Ion Copoeru from the Babes Bolyai University. The participants to the focus group agreed that the perception evaluations be made with regard to the judges individually and not with reference to a group so that the feed back could be useful to each judge in part. Out of the total of the 32 judges from the district court of Cluj Napoca only 17 agreed to be communicated the results of the perception evaluation, as they were most interested in the critical points that the outside legal professionals would raise with regard to their activity.

On the 27<sup>th</sup> of March 2009, 400 questionnaires were distributed to 200 lawyers from the Cluj Bar Association and every lawyer filled **in 2 questionnaires with the same content**. *The difference was that for the first set – A category - the respondent was to nominate the judge he/she appreciates most and for the second set – B category - the lawyers were to identify the judge they appreciate the least.*

*4 types of alternative answers were provided: always – A, almost always-AA, almost never –AN and never –N.*

In the same day, 361 questionnaires were returned and were validated as follows:

- **216 questionnaires regarding the judges at the Cluj Napoca district court**
  - **99 questionnaires regarding the judges at the Cluj Tribunal**
  - **9 questionnaires regarding the judges at the Cluj Commercial Tribunal.**
- 27 questionnaires were invalidated.

Thus, judges were selected for the evaluation as follows:

- at the Cluj Napoca district court: 28 judges (out of the total of 32) out of which 10 were evaluated with A, 7 judges were evaluated with B and 11 judges received both A and B evaluations;
- at the Cluj Tribunal: 25 judges (out of the total of 29) out of which 16 judges were evaluated with A, 4 judges were evaluated with B and 5 judges received both A and B evaluations;
- at the Cluj Commercial Tribunal: 5 judges (out of the total of 6 judges ) out of which 2 judges were evaluated with A, 2 judges were evaluated with B and one received both A and B evaluations.

The most exigent in their appreciations were the lawyers with 7-15 years of practice in the legal field, seconded by the most young lawyers, while the most experienced lawyers produced the most positive appreciations.

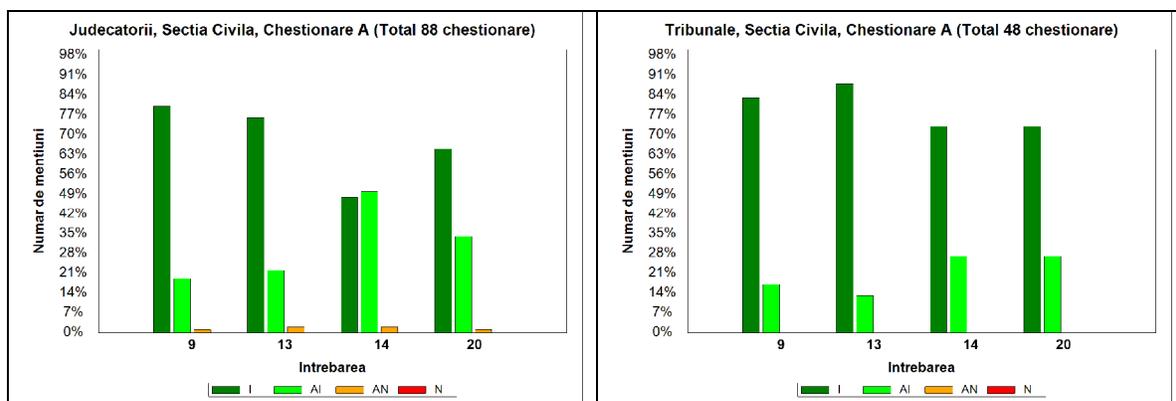
The data referred to 4 areas of the judges' professional activity, namely: *judges' expertise, efficiency, appearance of impartiality and communication skills.*

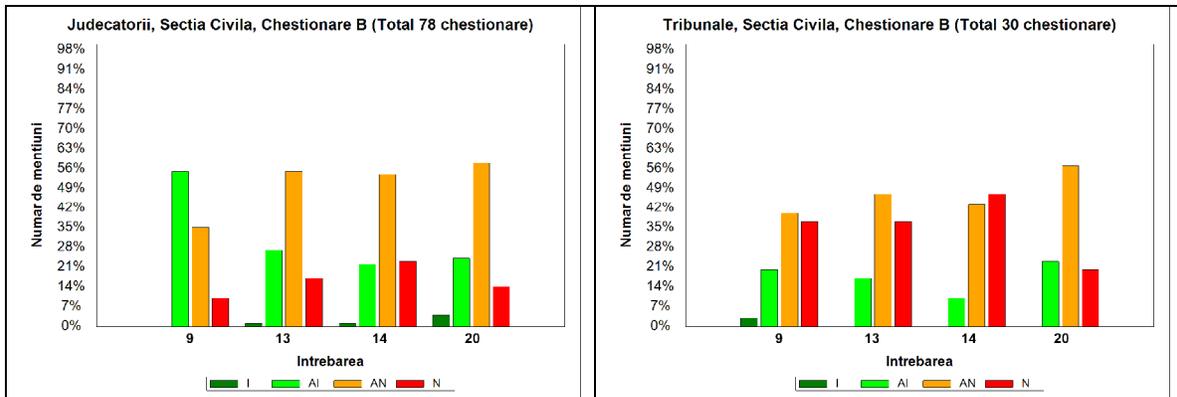
### 1. Expertise of judges

Item	Description	district court %	Tribunal %
9	good knowledge of the content of the case/file	79	74
13	professional approach to the law issues of the case	65	72
14	proves strong knowledge of judicial practice	64	67
20	orders procedural measures with constancy and firmness/resoluteness	65	77

Table 1 Expertise of judges, questionnaires A and B, answers A and AA

The general results on these items show that the judges from the district court are better perceived than their colleagues with regard to preparation of hearings while they are worse perceived than their colleagues from the tribunals when it comes to professional approach of the cases, knowledge of legal issues and of judicial practice. However, at both courts the positive appreciations (always, almost always) on the items regarding the expertise of judges are comparable: for the district courts the level of trust is of 68% while for the Cluj Tribunal is of 72%.

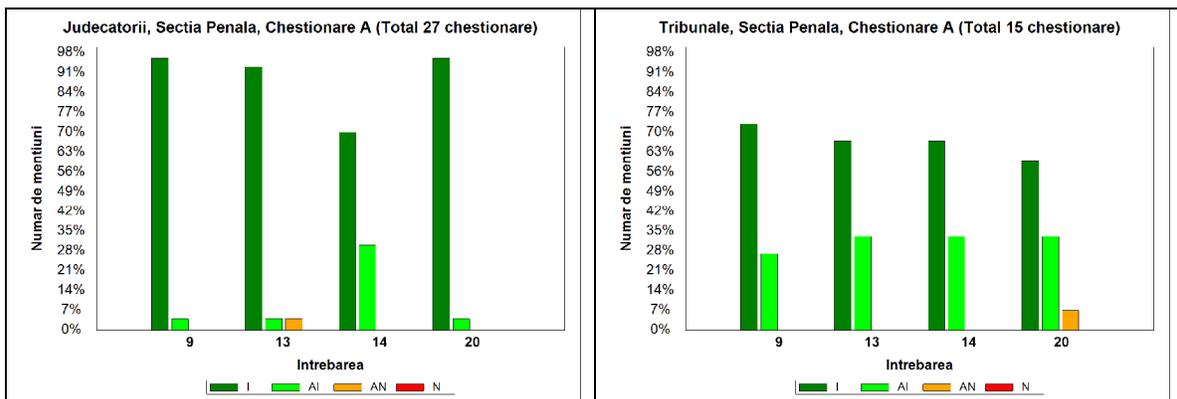


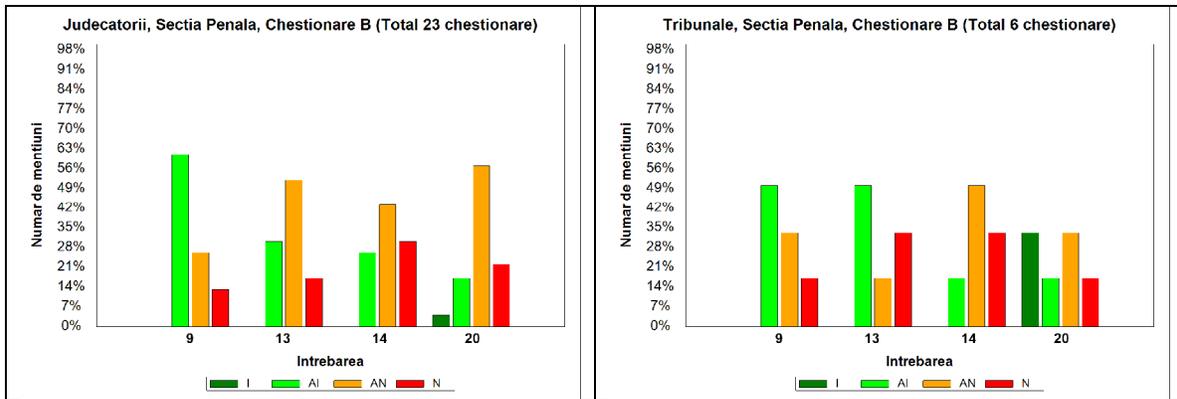


**Picture 1. Data on the expertise of judges, civil sections**

The expectations of the 178 lawyers are fulfilled at both courts with reference to the judges appreciated with A on the items describing the expertise of judges.

For the second category of judges appreciated with B, the 30 lawyers that named the same judge from the civil section of the tribunal awarded less than 20% of positive appreciations, thus almost a double level of negative appreciations was recorded (answer “Never”) contrary to the judges from the district court. This record allows us to state that the appreciation standard of the lawyers for this category of items is higher than those applied to judges from the district court. The higher proportion of judges evaluated with A from the tribunals helps to differentiate this court from the district court.





**Picture 2. Data on the expertise of judges, criminal sections**

Regarding the criminal sections, the highest difference in appreciation within the B category is found under item 20, referring to the lawyers' perception for consistency and firmness of the judge in ordering procedural measures, where the tribunal scores more positive appreciations. This attitude of the judges from the tribunal positively influences the perception on the reasonable length of proceedings (table 2 item 31).

## 2. Efficiency of judges

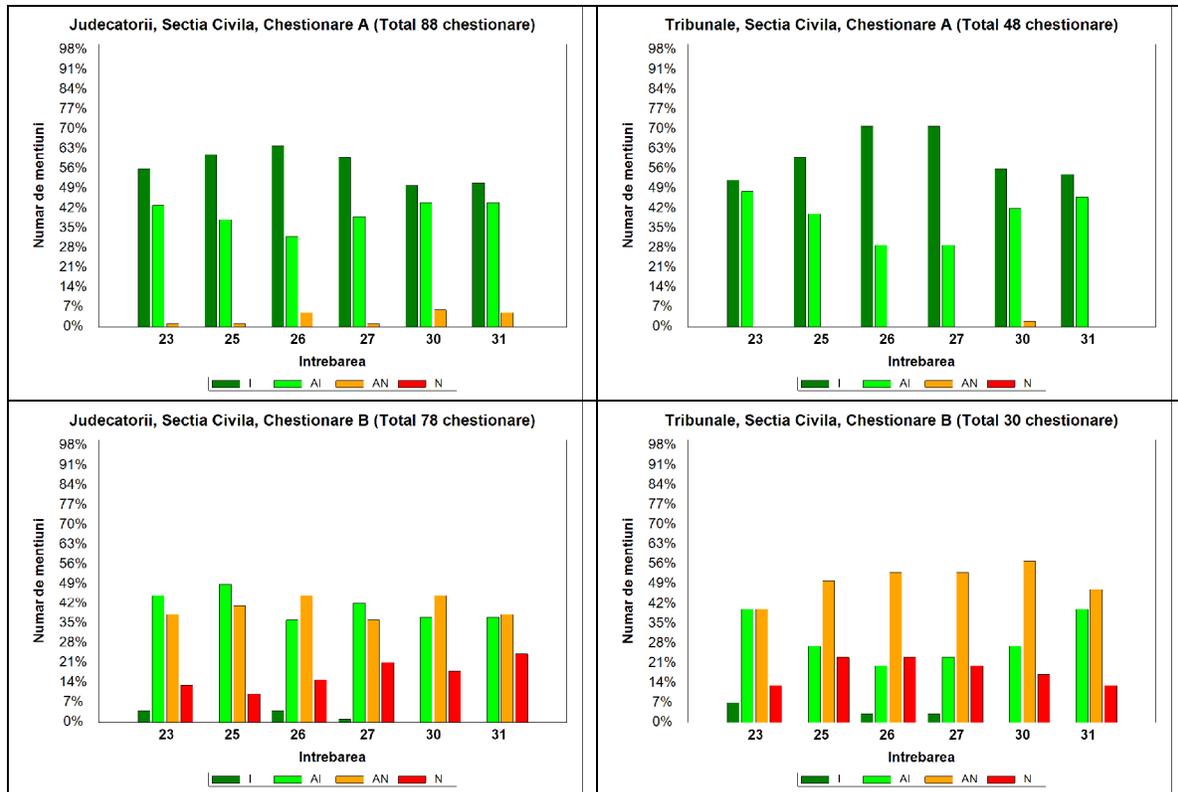
Item	Description	District court %	Tribunal %
23	adjourns/ postpones court hearings only for justified reasons	75	81
25	provides correct, full and on time information through the minutes of the hearings	75	75
26	adequately substantiates/motivates when ordering resumption of proceedings	71	75
27	drafts the reasoning of the judgment in a reasonable deadline	75	75
30	the decisions rendered end the dispute/case	69	73
31	solves cases in a deadline perceived as reasonable	71	78

*Table 2. Efficiency of judges questionnaires A+B, answers A and AA*

It is observed that the general appreciations are positive for this category of items for both courts in a percentage of 72.5 % for the judges from the district court and in a percentage of 76% for the judges from the tribunal. The difference in appreciation results from a perception in favor of the tribunal judges on their diligence to profit from every court hearing (the level of confidence is of 81%) which also influences the perception of the length of proceedings (item 31) where

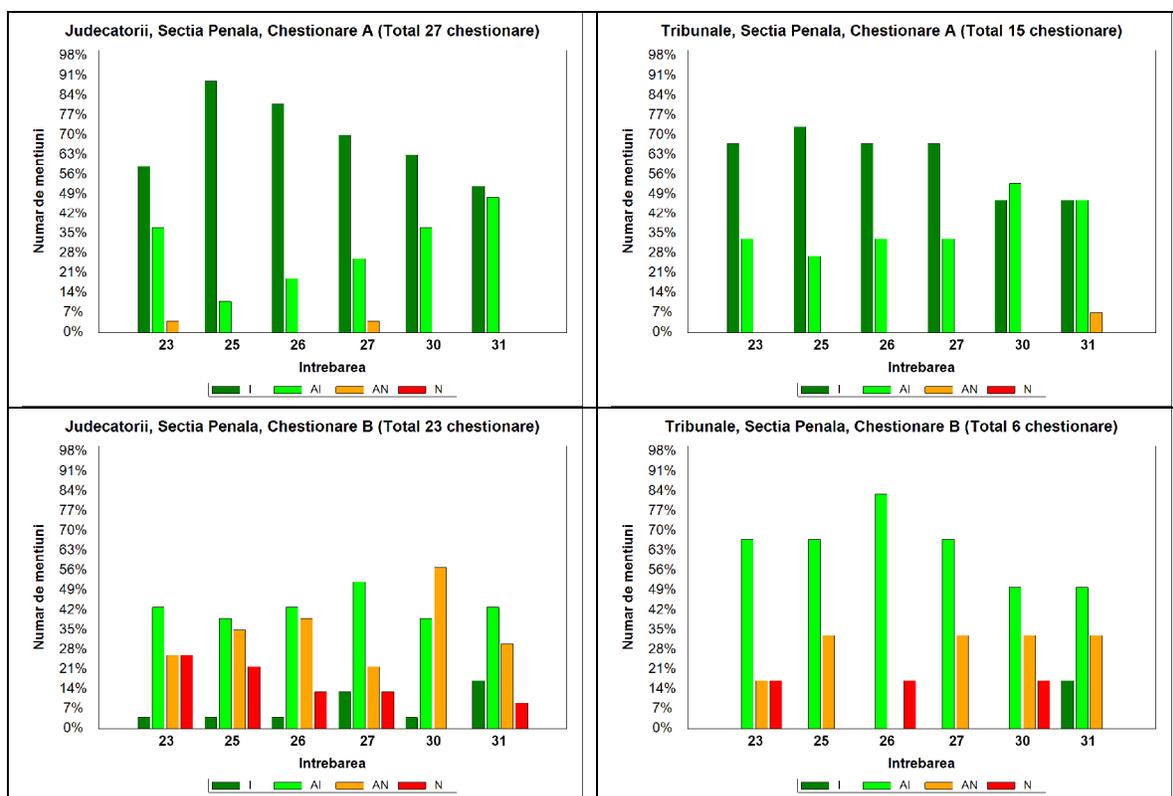
the judges from the tribunal score with 6% better than the judges from the district court.

Also, within this category of items, the judges evaluated with A from both courts prove to be professional roll models regarding the efficiency for conducting trials.



**Picture 3. Data on the efficiency of judges, civil sections**

Both courts obtained the highest results on the items regarding the actions of the judges highlighting their preoccupation to meet the reasonable deadline for solving cases. The most similar answers for the A and B categories were thus recorded. This skill of the judges develops over the years and is also influenced by the measures taken by the president of the court through the policies for allocating cases. The reasons are found in the old tendencies of the court management to consider that a court is well managed and achieves good results mainly when the annual efficiency indicator is very high, having the consequence of reducing the number of pending old cases.



**Picture 4. Data on the efficiency of judges, criminal sections**

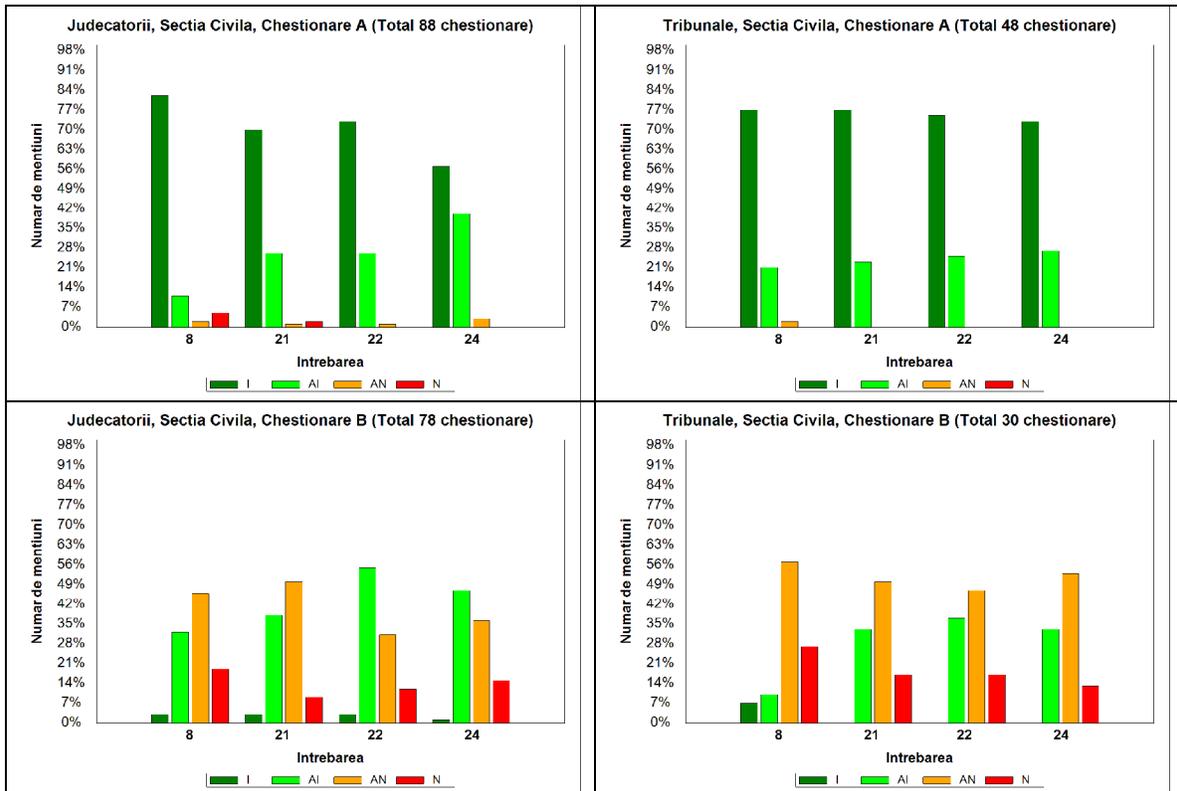
The best appreciations are found in the questionnaires regarding judges from the criminal sections of both courts, where the positive appreciations even for the B questionnaires are of over 50% at the tribunal and of over 40% at the district court. This differences in appreciation for the civil and criminal specializations can be triggered by: on the one side, a higher predictability degree of the measures taken during criminal proceedings than those of a civil case and, on the other side, by the smaller number of cases allocated each year to a judge from the criminal section compared to the that of a judge from the civil section.

### 3. Appearance of impartiality

Item	Description	District court %	Tribunal %
8	treats parties impartially	64	69
21	hears witnesses exhaustively and impartially	74	74
22	writes down the declarations of the witnesses and experts truthfully/accurately	76	75
24	writes down the debates from the hearings accurately and truthfully	71	75

*Table 3. Appearance of impartiality questionnaires A+B, answers A and AA*

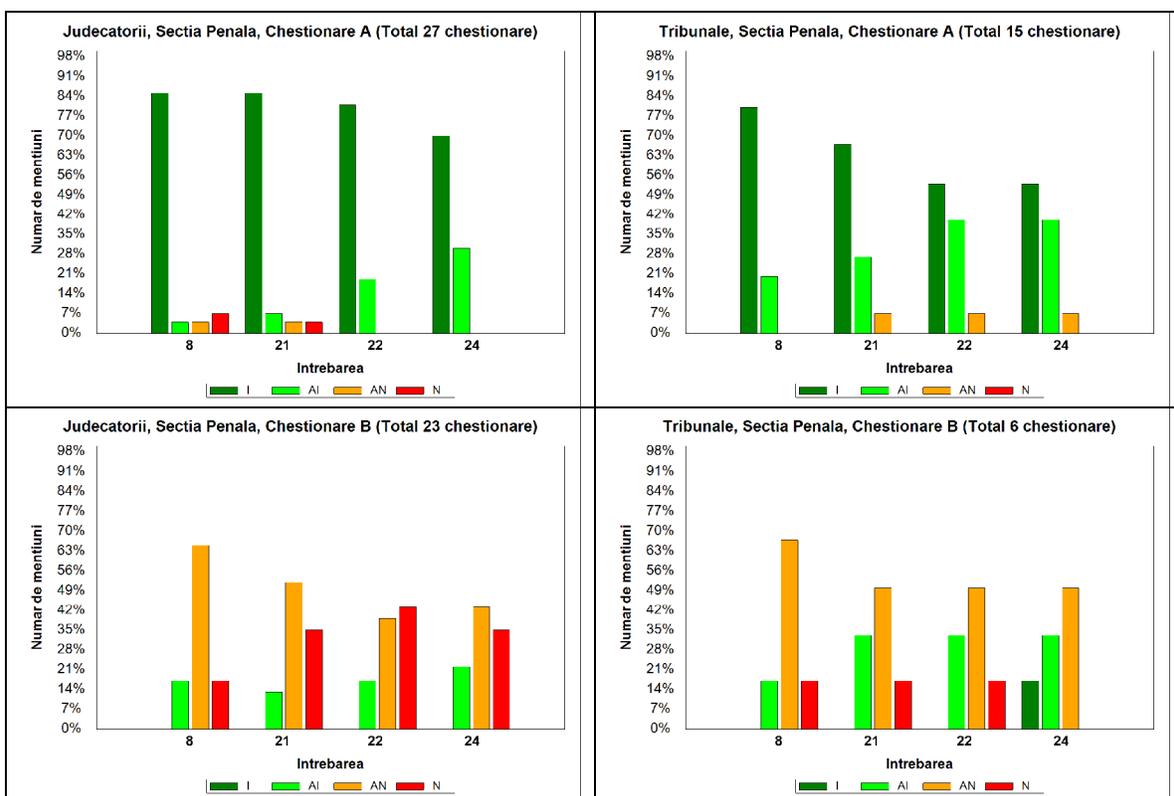
It is important to note that, following the data in table 3, for this aptitude, essential for ensuring a fair trial, both courts scored credibility/confidence percentages of under 70% on the questions on general situation – item 8 on the impartiality of their most appreciated judge. At the same time for the items depicting the impartial conduct of judges (21, 22, 24) the lawyers award more positive appreciations to the evaluated judges, of over 70% for both courts. It is likely that these differences of appreciation between the general item on the impartiality and the specific ones find justification in the actions, attitudes of the judges incorporated in the affirmations that scored under the communication skills.



**Picture 5. Data on the appearance of impartiality of judges, civil sections**

Again, the type A questionnaires on this category reveal that the expectations of the respondents on this issues are fulfilled on a high level, the answers provided being almost identical for both courts.

The appreciations of the B questionnaires reveal that the perception on the impartiality of judges is better for the judges from the civil section of the district court of over 40% for items 21 and 24 and of 55 % for item 22 as compared to the judges from the civil section of the tribunal, which score for all 3 items confidence percentages of less than 30%. Contrary, at the criminal sections of the 2 courts, results are quite the opposite. For the items 21, 24 and 22, the district court obtains on the B questionnaires scores from 10-20% on the level of the acceptance by the lawyers while the tribunal judges score between 30-40%.



**Picture 6. Data on the appearance of impartiality of judges, criminal sections**

For items 21, 22 and 24, the criminal section of the district court registers a pronounced increase of the negative appreciation, as opposed to the criminal judges from the tribunal, one possible reason being the lack of necessary self assurance of the district court judges in administering evidence during criminal trial on account of relatively little experience.

If this result is lowered with the answers provided for item 20 – perception on consistency and firmness in ordering procedural measures, where the tribunal scores higher – we can conclude that professional experience is the main source for increased self assurance of the judges from the criminal sections.

#### 4. Communication skills

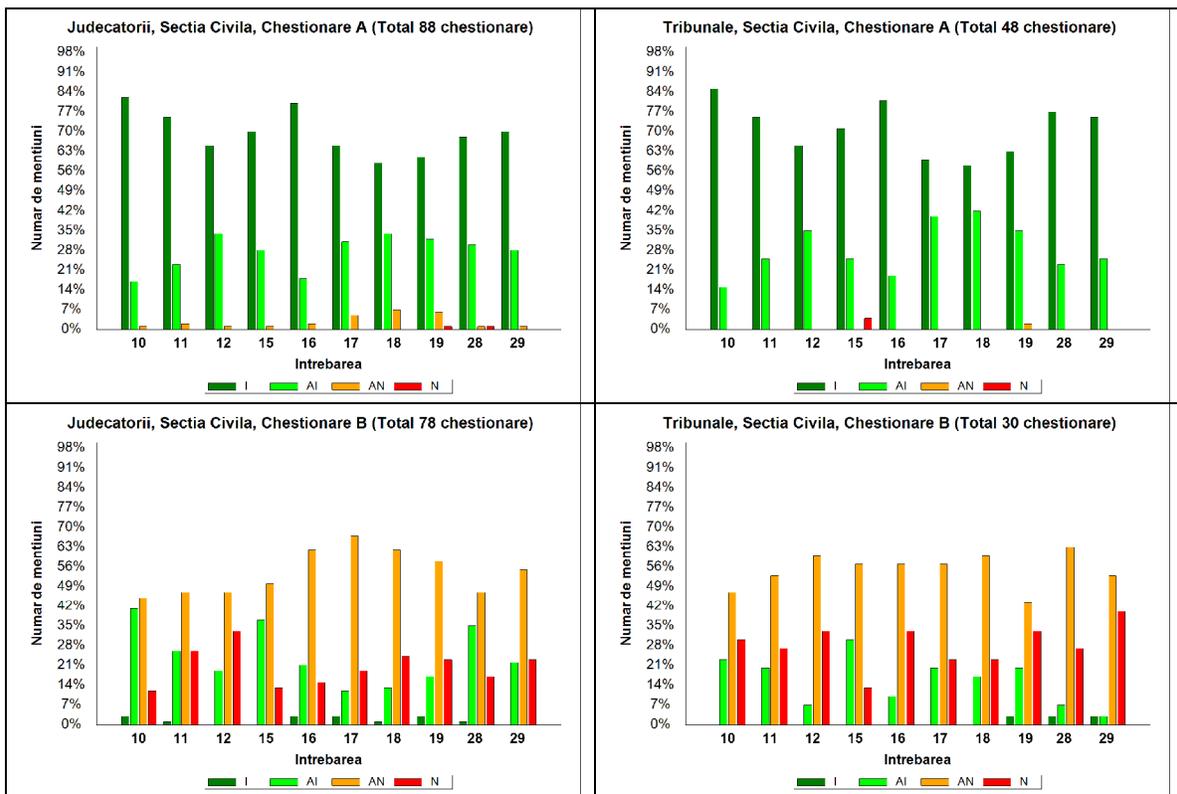
Item	Description	District Court %	Tribunal %
10	carefully listens to all points of view	71	73
11	promotes patience and respect for all participants to judicial proceedings	62	69
12	realistic approach towards the circumstances of the case	59	66
15	relates to the parties in an accessible language	70	74

<b>16</b>	performs an active role in solving cases	<b>65</b>	<b>68</b>
<b>17</b>	explains to the parties the reasons for admitting/refusing evidence	<b>57</b>	<b>68</b>
<b>18</b>	explains to the parties the reasons for admitting/rejecting the exceptions raised	<b>56</b>	<b>68</b>
<b>19</b>	explains to the parties the reasons for ordering or not procedural acts	<b>59</b>	<b>70</b>
<b>28</b>	the reasoning of the decision are drafted clearly and accessible	<b>71</b>	<b>69</b>
<b>29</b>	convincing substantiation of the decisions	<b>63</b>	<b>66</b>

Table 4 Communication skills, questionnaires A and B, answers A and AA

These statements aim at measuring the transparency of the act of justice itself, highlighting the empathy level of the judges during public hearings and his/her persuasion in the final judgment. These skills are directly responsible for the perception on the transparency of the trial towards the participants.

Also, for the communication skills, the tribunal judges scored better at the items depicting the communication abilities with an average of positive appreciation of 69% while the district court judges obtained a level of only 63%.



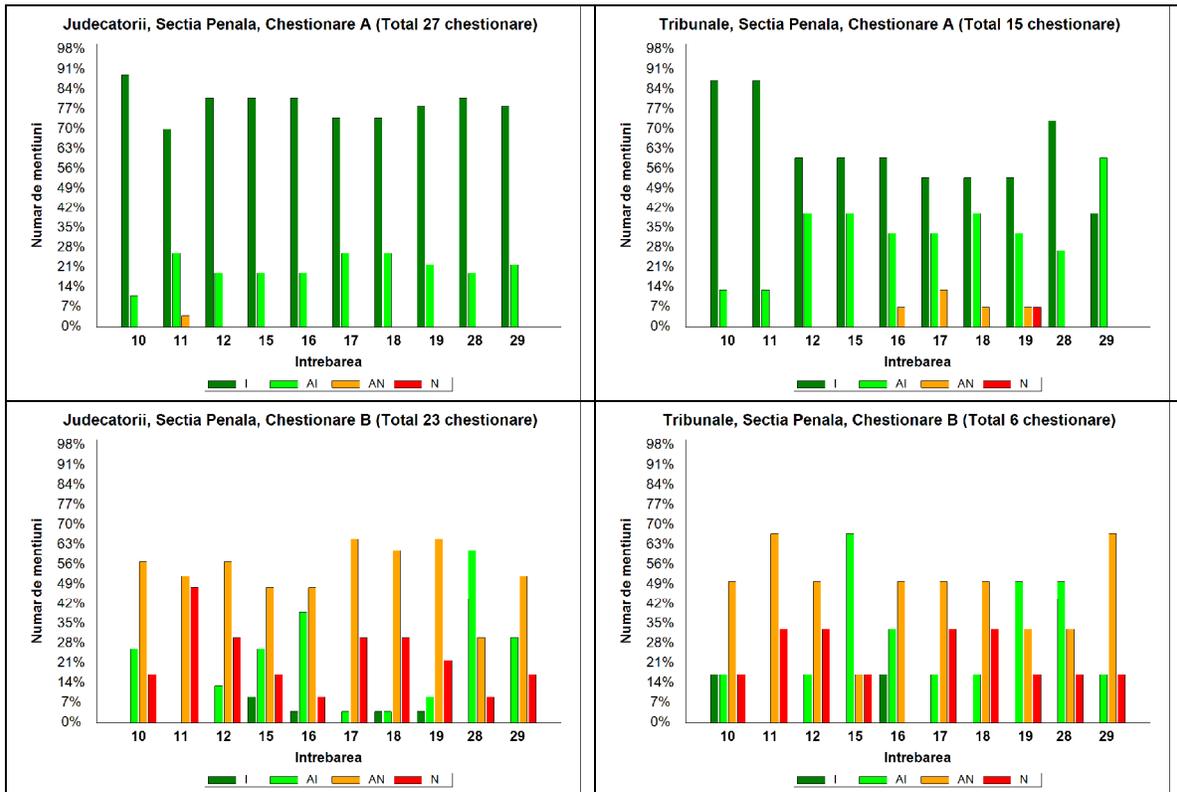
Picture 7. Data on the communication skills of judges, civil sections

The differences in appreciation between the 2 courts, irrespective of the specialization of the judges, are significant for items 12, 16 -19. Averagely, for these items, positive appreciations were recorded (A and AA) in percentages of 92-99% for the judges evaluated on the A list and with percentages of 12-37% for the judges on the B list.

For the tribunal judges, the lawyers require more in terms of the reasoning of judicial decisions (item 29). The judges identified on the B list from the civil section register low scores of positive appreciation, of only 8%.

A significant difference in appreciation among the tribunal judges and the district court judges is highlighted by the answers to item 19 referring the judges using accessible language in performing procedural acts.

The answers for this item indicate that the tribunal judges have more pronounced communication abilities scoring 11% more than the district court judges. The difference is found also on this category of items on the B questionnaires.

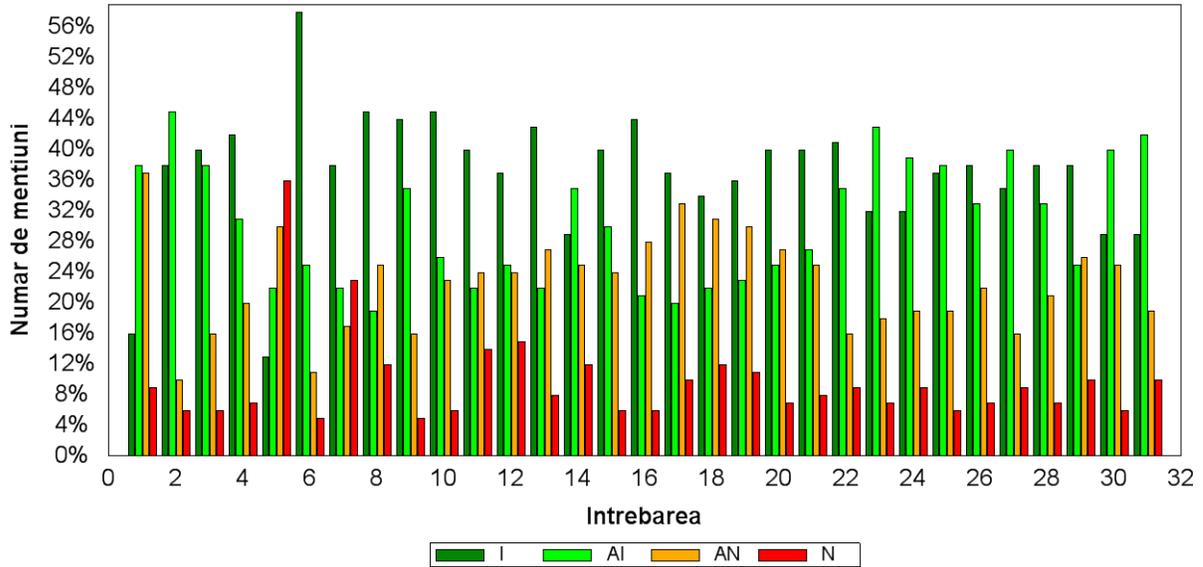


**Picture 8. Data on the communication skills of judges, criminal sections**

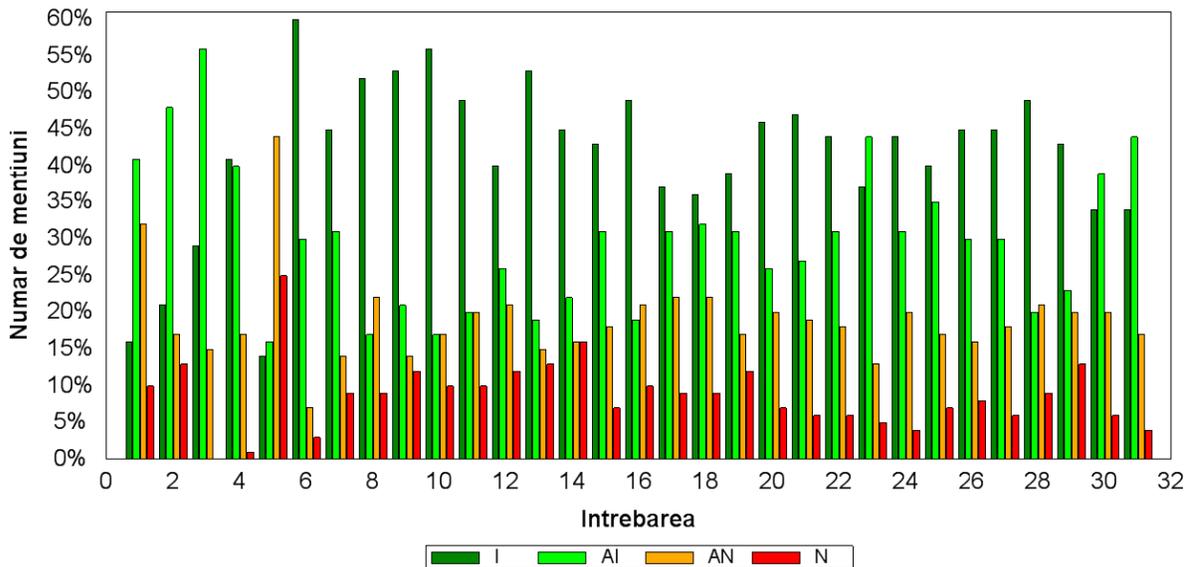
The opposite result of the appreciation between good and poor/weak (between those indicated in the A list and those identified in the B list) is strongly revealed for both courts by the answers to item 11 for the judges specialized in criminal law (with a soft score for the civil sections also). All 43 lawyers who nominated a good judge from the criminal section mentioned that this judge was

respectful and patient while all 29 lawyers that indicated a poor judge firmly stated that the respective judge was lacking these abilities.

**This allows me to state that the respondent lawyers chose between a good judge (on the A list) and a poor judge (on the B list), first of all referring to his/her communication abilities.**



**Picture 9. All questionnaires (216 A and B), Cluj Napoca District Court**



**Picture 10. All questionnaires (99 A and B), Cluj Tribunal**

### III. Conclusions

The project was born following the statement made during a workshop on “Appearance of the impartiality of the court” organized by the Association of Romanian Magistrates – Cluj Wing, by a lawyer, who stated that *“the role of lawyers should be considered since they could support the judge by explaining to the parties the reasons for the judgment rendered so that the client would be satisfied with the result in the case. But when convincing legal arguments cannot be found, this cannot happen. **What cannot be exposed should not be accepted.**”*

The importance of this research hypothesis was well anticipated by that lawyer since the results of the project confirmed his critical statement: the relation generated and further administered by the judge with the external participants was the main criterion for differentiating between the judges into the 2 categories: **most appreciated judge – A category and least appreciated judge – B category.**

In a previous work on the evaluation of magistrates from the perspective of the evaluation commissions set up at each court (internal evaluation), I underlined that judges who ignore the fact that the litigants do not only refer to the judgment of the court and to the observance of the procedural rights, but also expect that the judgment rendered is the result of a procedure perceived by them as being fair and equitable, do not reach an acceptable level of credibility. This kind of perception is triggered mainly by the participants’ feeling that they were allowed to have an impact on the outcome of the trial and on the administration of their case and that they were treated respectfully and carefully by the judge. Without question, the credibility of the courts is the result of several factors’ interactions that sometimes exceed the control of the courts. However, we can state that there is a list of presumptions regarding the activity of the judge during the proceedings which are likely to directly influence the citizens’ level of trust in the act of justice.

The aforementioned project revealed that the lawyers used a different scale of appreciation regarding the judges according to the specific interest for each procedural stage. Thus, the higher the interest of lawyers was for a certain procedural stage of a trial, the higher their expectations were, fact which is revealed by their answers to the questionnaire.

As for the district courts, the lawyers are most interested in the manner in which the judge listens to the participants to the proceedings and makes himself/herself understood and whether he /she succeeds in sending a coherent and fluent message. This is quite easy to detect if the judge is pleased by the manner in which the lawyers proceeds with the case. Trials in first instance are dedicated to administering the evidence and the manner in which the judge receives the complaint/case form the lawyers and the parties has a decisive influence on the coherence and fluency of the proceedings. Things get more complicated from a communicational point of view, when the judge does not share the same vision of the case as the lawyers so that obviously the communication abilities of the judge need to be affirmed on a higher level. The fact that a double number of judges from the district court received A and B

appreciations compared to the judges from the tribunal on the items referring to appearance of impartiality and communication abilities induces the conclusion that there were more perspectives when evaluating judges who sit in first instance.

As for the judges from the tribunal, the civil section more precisely, judges identified on the B list are a farther distance from their colleagues from the A list compared to the same situation at the district court, on the items referring to expertise, appearance of impartiality and communication abilities. As far as the judges from the criminal section of the tribunal are concerned, the lawyers noticed better application of the law and more firmness in taking measures and decisions.

Experience in the profession is a reason for explaining the increased performance and appreciation with regard to the judges from the tribunal, at least in comparison to their younger colleagues from the district court. What caused the difference in general between the 2 courts in favor of the tribunal was the higher percentage of judges appreciated in the A category even though those identified in the B category were more severely criticized.

This project, although not aimed at practical results, allows the possibility for stating what has become quite visible at the Romanian courts lately, namely that the extraordinary efforts of judges to increase their knowledge on law and on judicial practice as well, to discover new issues, to research law issues remain without recognition from the recipients of the act of justice if foremost they do not prove themselves as good communicators. All competitive attitudes of the judges towards other law practitioners can only separate judges from the values of this profession. Law practitioners external to the courts understand that a **good judge** is one who manages to incorporate his professional knowledge in a open and respectful attitude towards the litigants, seeks first to understand and then to be understood, clarifies the messages sent in the court room and manifests consideration and respect for the parties in the judgments he/she renders. From the same perspective, **a judge is weak/poor** when he/she is arrogant, does not have the capacity to listen and to show restraint, ignores the consequences of the messages sent to the participants even if the other professional abilities are upheld with a lot of discipline by the respective judge.

This project introduces sufficient arguments so that within this profession, when speaking about quality of justice the fall between "*our reality*" (from within the professional chore of judges and the evaluation commissions from the court) and "*the other's reality*" (as we are seen in the eyes of the recipients of our work) is left behind. The professional chore of the judges is willing to obtain the trust he/she feels deserves from society. Every judge has the potential to cultivate the quality of being trustworthy and this is the road to excellence in the courts and it is not an easy road.

To start, the dialogue on quality needs first inter-professional partnerships so that quality of justice can be further experimented on a higher level.