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Introduction

The Judicial Reform Index (JRI) is an assessment tool implemented by the American Bar Association's (ABA) Rule of Law Initiative (ROL Initiative). It was developed in 2001 by the ABA's Central European and Eurasian Law Initiative (ABA/CEELI), now a division of the ROL Initiative, together with the other regional divisions in Africa, Asia, Latin America, and the Middle East/North Africa. Its purpose is to assess a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, the JRI is an appropriate and important assessment mechanism. The JRI will enable the ROL Initiative, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

The ROL Initiative embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. In particular, the ROL Initiative acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after a decade of working in the field on this issue, the ROL Initiative has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the JRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES and Freedom House's NATIONS IN TRANSIT. This assessment will *not* provide narrative commentary on the overall status of the judiciary in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's judicial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The JRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system.

Assessing Reform Efforts

Assessing a country's progress towards judicial reform is fraught with challenges. No single criterion may serve as a talisman, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary inherently tends towards the qualitative and cannot be measured simply by counting the number of judges or courtrooms in a country. It is difficult to find and interpret "evidence of impartiality, insularity, and the scope of a judiciary's authority as an



institution.” Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 *AM. J. COMP. L.* 611 (1996). Larkins cites the following faults in prior efforts to measure judicial independence:

(1) the reliance on formal indicators of judicial independence which do not match reality, (2) the dearth of appropriate information on the courts which is common to comparative judicial studies, (3) the difficulties inherent in interpreting the significance of judicial outcomes, or (4) the arbitrary nature of assigning a numerical score to some attributes of judicial independence.

Id. at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his “judicial effectiveness score,” Clark included such indicators as tenure guarantees, method of removal, method of appointment, and salary guarantees. Clark, *Judicial Protection of the Constitution in Latin America*, 2 *HASTINGS CONST. L. Q.* 405 – 442 (1975).

The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated . . . the independence of some countries’ courts, placing such dependent courts as Brazil’s ahead of Costa Rica’s, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, *supra*, at 615.

Reliance on subjective rather than objective criteria may be equally susceptible to criticism. *E.g.*, Larkins, *supra*, at 618 (critiquing methodology which consisted of polling 84 social scientists regarding Latin American courts as little more than hearsay). Moreover, one cannot necessarily obtain reliable information by interviewing judges: “[j]udges are not likely to admit that they came to a certain conclusion because they were pressured by a certain actor; instead, they are apt to hide their lack of autonomy.” Larkins, *supra*, at 616.

Methodology

In designing the JRI methodology, the ROL Initiative sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in



the *United Nations Basic Principles on the Independence of the Judiciary* and the *Bangalore Principles on Judicial Conduct*. In addition, these criteria also rely upon norms elaborated in regional documents, such as the *Council of Europe Recommendation R(94)12 "On the Independence, Efficiency, and Role of Judges"*; the *European Charter on the Statute for Judges*; the *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*; the *Arab Justice Conferences' Beirut and Cairo Declarations on Judicial Independence*; and the *Caracas Declarations of the Ibero-American Summit of Presidents of Supreme Justice Tribunals and Courts*. Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications.

Drawing on these norms, the ROL Initiative compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. To assist assessors in their evaluation of these factors, the ROL Initiative developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to other regional concepts, of judicial structure and function. Thus, certain factors are included that an American or a European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, the ROL Initiative reviewed each factor in light of its decade of experience and concluded that each factor may be influential in the judicial reform process. Consequently, even if some factors are not universally-accepted as basic elements, the ROL Initiative determined their evaluation to be programmatically useful and justified. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a "scoring" mechanism was one of the most difficult and controversial aspects of this project, and the ROL Initiative debated internally whether it should include one at all. During the 1999-2001 time period, the ROL Initiative tested various scoring mechanisms. Following a spirited discussion with members of the ABA/CEELI's Executive and Advisory Boards, as well as outside experts, the ROL Initiative decided to forego any attempt to provide an overall scoring of a country's reform progress to make absolutely clear that the JRI is not intended to be a complete assessment of a judicial system.

Despite this general conclusion, the ROL Initiative did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of that statement to that country's judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the



conditions within the country correspond in some ways but not in others, it will be given a “neutral.” Cf. Cohen, *The Chinese Communist Party and ‘Judicial Independence’: 1949-59*, 82 HARV. L. REV. 972 (1969) (suggesting that the degree of judicial independence exists on a continuum from “a completely unfettered judiciary to one that is completely subservient”). Again, as noted above, the ROL Initiative has decided not to provide a cumulative or overall score because, consistent with Larkin’s criticisms, the ROL Initiative determined that such an attempt at overall scoring would be counterproductive.

Instead, the results of the 30 separate evaluations are collected in a standardized format in each JRI country assessment. Following each factor, there is the assessed correlation and a description of the basis for this conclusion. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits end users to easily compare and contrast performance of different countries in specific areas and – as JRIs are updated – within a given country over time.

The follow-on rounds of implementation of the JRI will be conducted with several purposes in mind. First, it will provide an updated report on the judiciaries of emerging and transitioning democracies by highlighting significant legal, judicial, and even political developments and how these developments impact judicial accountability, effectiveness, and independence. It will also identify the extent to which shortcomings identified by first-round JRI assessments have been addressed by state authorities, members of the judiciary, and others. Periodic implementation of the JRI assessments will record those areas where there has been backsliding in the area of judicial independence, note where efforts to reform the judiciary have stalled and have had little or no impact, and distinguish success stories and improvements in judicial reform efforts. Finally, by conducting JRI assessments on a regular basis, the ROL Initiative will continue to serve as a source of timely information and analysis on the state of judicial independence and reform in emerging democracies and transitioning states.

The overall report structure of follow-on JRI reports as well as methodology will remain unchanged to allow for accurate historical analysis and reliable comparisons over time. However, lessons learned have led to refinements in the assessment inquiry, which are designed to enhance uniformity and detail in data collection. Part of this refinement includes the development of a more structured and detailed assessment inquiry that will guide the collection and reporting of information and data.

Follow-on JRI reports will evaluate all 30 JRI factors. This process will involve the examination of all laws, normative acts and provisions, and other sources of authority that pertain to the organization and operation of the judiciary, and will again use the key informant interview process, relying on the perspectives of several dozen or more judges, lawyers, law professors, NGO leaders, and journalists who have expertise and insight into the functioning of the judiciary. When conducting the follow-



on assessments, particular attention will be given to those factors which received negative values in the prior JRI assessment.

Each factor will again be assigned a correlation value of positive, neutral, or negative as part of the follow-on JRI implementations. In addition, all follow-on assessment reports will also identify the nature of the change in the correlation or the trend since the previous assessment. This trend will be indicated in the Table of Factor Correlations that appears in the JRI report's front-matter and will also be noted in the conclusion box for each factor in the standardized JRI report template. The following symbols will be used: ↑ (upward trend; improvement); ↓ (downward trend; backsliding); and ↔ (no change; little or no impact).

Social scientists could argue that some of the assessment criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, the ROL Initiative decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

One of the purposes of the JRI assessment process is to help the ROL Initiative—and its funders and collegial organizations – determine the efficacy of their judicial reform programs and help target future assistance. Many of the issues raised (such as judicial salaries and improper outside influences), of course, cannot necessarily be directly and effectively addressed by outside providers of technical assistance. The ROL Initiative also recognizes that those areas of judicial reform that can be addressed by outsiders, such as judicial training, may not be the most important. Having the most exquisitely educated cadre of judges in the world is no guarantee of an accountable, effective, or independent judiciary; and yet, every judiciary does need to be well-trained. Moreover, the nexus between outside assistance and the country's judiciary may be tenuous at best: building a truly competent judiciary requires real political will and dedication on the part of the reforming country. Nevertheless, it is important to examine focal areas with criteria that tend toward the quantifiable, so that progressive elements may better focus reform efforts. The ROL Initiative offers this product as a constructive step in this direction and welcomes constructive feedback.

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Assessment Team

Thomas F. Cope led the Moldova JRI 2007 Analysis assessment team, with the assistance of Cristina Malai, Program Coordinator, Moldova Rule of Law Program. Mr. Cope also conducted the interviews for and wrote the Moldova JRI 2002 assessment report. The team received substantial support from the ABA ROL Initiative's staff in Chisinau and Washington offices, including Country Director Corinne Smith, Rule of Law Legal Specialist Brigid Kennedy-Pfister, Legal Assistant Dina Mocan, and Criminal Law Staff Attorney Olimpia Iovu. The editorial and research assistance provided by and under the direction of Ms. Malai and Ms. Kennedy-Pfister was particularly important in light of the significant changes to the laws governing the judiciary in November 2006, after the completion of interviews for this assessment. Field Financial Manager Vladimir Gurin, Office Manager Assistant Iurie Bodiu, Program Assistant Gabriel Mumjiev, Program Manager Jennifer Denton-Jafari, and Program Officer Miako Kanetani also provided valuable support. Diana Albu assisted with translation during interviews, and Liliana Ursu translated the report into Romanian. Olga Ruda, Co-Coordinator of the ABA ROL Initiative's Judicial Reform Focal Area served as editor and prepared the report for publication. The conclusions and analysis are based on interviews conducted in Moldova during September 2006 and relevant laws and other documents reviewed then and through the end of January 2007. Records of the laws and other documents reviewed and the individuals interviewed (whose names are kept confidential) are on file with the ROL Initiative. We are extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project and those who reviewed and provided comments on the pre-release draft as peer reviewers.

Executive Summary

Brief Overview of the Results

The 2007 Judicial Reform Index (JRI) assessment for Moldova, which updates the first volume of Moldova JRI assessment conducted in 2002, analyzes a number of important developments that have occurred in Moldova's legal and judicial system during the past four and a half years. Although some of these developments have had a major impact, the effects of others have been more subtle. Overall, slightly more than half (16) of the 30 factors analyzed in this report received neutral correlations, while 12 factors are rated negative and only 2 are positive. The trend analysis for 2007 Moldova JRI shows that correlations determined for 4 factors improved between 2002 and 2007, but correlations for 5 other factors registered a decline. The remaining 21 factors remained unchanged, although that does not necessarily mean that conditions are unchanged. In some cases, although some changes occurred, they were not deemed sufficient to justify changing the correlations assigned in 2002. The Analysis/Background discussions for each factor describe those changes.

On November 10, 2006, a law came into force that made significant changes in the most important laws affecting the judiciary in Moldova: Law on the Organization of the Judiciary; Law on the Status of Judge; Law on the Superior Council of Magistracy; Law on the Board of Qualification and Attestation of Judges; and Law on the Disciplinary Board and Disciplinary Liability of Judges. Because this occurred after the interviews for this JRI assessment were completed in September 2006 and because some of the changes have not yet been implemented, their precise impact on practice is not yet known as of the date of this report.

Because the assessment team did not review any legal information from the Transnistria region or conduct any interviews there, the description of the Moldovan judiciary and the conclusions of this report do not apply to the courts located within the Transnistria region.

Issues Relating to Judicial Independence

- Influence and corruption continue to be serious problems. Many people believe that the ***influence of the executive branch has increased since 2002***. Since then, the present leadership of the country has appointed approximately half of the sitting judges. In general, younger judges are seen as more susceptible to influence, especially those with a 5-year initial appointment who will then seek reappointment until the mandatory retirement age of 65. In some respects, ***influence appears to have become less overt***.

Judges know what is expected of them when the interest of the state or the ruling party is involved. In such cases, judges are said sometimes to act as advocates for the state. In addition, there is **widespread suspicion in Moldova that most judges are corrupt, but little hard evidence**. According to an interviewee, during 2001-2006, some 3 or 4 judges were convicted of corruption. Furthermore, some judges reportedly own expensive houses and drive expensive cars, which they could not possibly have purchased with their comparatively modest salaries.

- The **broad immunity that Moldovan judges have enjoyed from liability for harm caused by judicial decisions** that are later determined to be incorrect has been **curtailed somewhat**. In what is regarded as a response to the increasing number of cases in which the European Court of Human Rights held that Moldova had violated the European Convention on Human Rights, in 2006 Parliament allowed the imposition of personal liability on anyone, including judges and prosecutors, who was responsible for such a decision, either intentionally or through serious error. Parliament later extended such personal liability of judges to **allow compensation for the infringement of fundamental rights and freedoms under the Constitution or an international treaty** to which Moldova is a party. Subject to a prior consent of the Superior Council of Magistracy (SCM), the state may now bring an action to recover the compensation paid pursuant to a final court judgment from the judge or panel of judges who, through bad faith or serious negligence, caused the infringement.
- The 2003 Criminal Procedure Code requires the **random assignment of criminal cases**. Since late 2006, the law provides for the **random assignment of all other cases**, except when the judge cannot participate in the trial for objective reasons; however, until then, court presidents had full discretion as to the assignment of non-criminal cases to the judges in their courts. The SCM is responsible for drafting a regulation to implement this reform, and it remains to be seen how this requirement will be carried out in practice. There appear to have been **instances in the past when criminal cases were not assigned randomly**, particularly high profile cases.

Issues Relating to Judicial Qualification and Appointment

- Despite the inadequacies of undergraduate legal education in Moldova, at present there is **no postgraduate education requirement for judicial candidates** that would prepare them for initial appointment to the bench. In 2006, **Parliament created the National Institute of Justice (NIJ)** to provide, *inter alia*, initial training for judicial candidates. Although many details about the NIJ remain to be decided, as of September 2006 it was anticipated that 30 to 40 students would be admitted each year to the 18-month initial training

courses for those seeking to become judges or prosecutors. **After the first class completes its studies in March 2009, graduation from the NIJ will become a requirement for appointment** as a district court judge or specialized first instance court judge in most cases, although an exception to this requirement would still allow filling up to 20% of the judicial vacancies in a 3-year period with non-NIJ graduates who pass the capacity examination and have 5 years of legal experience.

- Since 1996, the Judicial Training Center (JTC), which was subordinated to the Ministry of Justice (MOJ), has provided continuing legal education (CLE) for judges. Primarily funded by international donors, its long-term sustainability had been doubtful. In January 2007, the NIJ took over the JTC's responsibilities. **Effective January 1, 2008, judges will be required to complete at least 40 hours of CLE annually** and will have a legally recognized right to such training.
- Amendments to Law on the Status of Judge in 2005 **reduced the discretion of the President of Moldova in the appointment of judges, court presidents, and vice presidents**, and enhanced the authority of the SCM. The President must now act on a proposal by the SCM within 30 days (or 45 days, if new circumstances requiring consideration arise) and may reject a candidate only once, and then only upon the discovery of any of the grounds specified in the law. The President must now notify the SCM of the reasons for rejecting a candidate and, if the SCM proposes the candidate a second time, the President must appoint the candidate. As a result, the **SCM is now viewed**, for the most part, **as more independent from the executive branch** in exercising its authority over selection of judges.

Issues Relating to Financial Resources

- In the past, the MOJ distributed funds to the courts and supervised their expenditure, except for the Supreme Court of Justice and the Constitutional Court, which received funding directly from the Ministry of Finance. In 2004-2005, **the courts of appeal and the district courts received authority to manage their own budgets**. This highly beneficial change has allowed court presidents to spend the money allocated to their courts in the areas they identify as having the greatest need, according to the approved budget categories. As a result, many court presidents have **begun to purchase computers and other office equipment and to renovate their courthouses**. Unfortunately, the **amounts budgeted for the courts in recent years remained inadequate**. Although funding more than quadrupled between 2002 and 2007, it remained relatively constant as a percentage of the total state budget.

- ***In December 2005, Parliament increased judicial salaries.*** It phased in the increase by granting 80% of the new salaries in 2006 and 100% in 2007. Although the increase was viewed as a positive step, ***judicial salaries are still widely regarded as insufficient*** to provide an adequate standard of living for judges and their families, especially given their status, responsibilities, and workload. Low judicial salaries are an impediment to recruiting the best law graduates for the bench, as is the failure of local authorities to provide legally required housing for judges. Corruption is also viewed as linked to low salaries.

Other Issues

- ***An estimated half of civil and administrative judgments are not enforced,*** continuing to be a serious problem. In 2002, the courts lost their authority to supervise the enforcement of judgments, when the Government created the Department for the Execution of Judicial Decisions under the MOJ. Nevertheless, the issue is significant for the courts, because it affects the public's confidence in the judicial system and the willingness of citizens to use the legal system to resolve disputes. Furthermore, the non-enforcement or unduly delayed enforcement of judgments ***has resulted in a number of ECHR judgments against Moldova.*** Problems in the enforcement of judgments arise from insufficient personnel and the resulting heavy workload, generally inadequate funding, and difficulty obtaining judicial police assistance for execution. ***Enforcing judgments against the state is said to be particularly problematic.***
- ***The MOJ still has authority over some aspects of judicial administration.*** For example, it continues to play an important role in preparation of court budgets, determines the staff positions for the courts, and supervises the enforcement of court judgments. In 2006, Parliament proposed establishing a Department of Judicial Administration (DJA) within the SCM to carry out administrative functions for the district courts and courts of appeal; however, this draft law was vetoed by the President of Moldova. The law was eventually passed and promulgated without the provisions establishing the DJA.
- The ***Association of Judges of the Republic of Moldova*** (AJRM), a voluntary association to which approximately 75% of all judges belong, ***has become increasingly ineffective*** since the Moldova JRI 2002. Its annual membership dues are low and, because of the loss of funding previously provided by international donors, it has had to curtail some of its activities, including publication of its professional magazine, THEMIS. Interviewees agreed that the AJRM has become quite passive and does little beyond meeting annually and adopting declarations that are largely ignored. As a result, ***it can do little to protect the rights and interests of judges.***

Moldova Background

Legal Context

The Republic of Moldova is a parliamentary republic, with state authority divided among three separate branches (or “powers”): legislative; executive (consisting of the President and the Government); and judicial. Although they are separate, the Constitution requires them to “cooperate in the exercise of their prerogatives.” CONSTITUTION OF THE REPUBLIC OF MOLDOVA art. 6 (adopted Jul. 29, 1994, MONITORUL OFICIAL [hereinafter M.O.] No. 1 of Aug. 12, 1994, *last amended* by Law No. 185-XVI of Jun. 29, 2006, M.O. No. 106-111/502 of Jul. 14, 2006) [hereinafter CONST.]. According to Freedom House, “Moldova has been one of the most pluralistic post-Soviet states, even if at times it has oscillated between nonconsolidated democracy and nonconsolidated authoritarianism. The trend toward democracy has been traditionally stronger, especially throughout the 1990s, but was significantly hampered by economic problems, lack of consistent reforms, and a secessionist conflict in Transnistria.” FREEDOM HOUSE, NATIONS IN TRANSIT 2006: DEMOCRATIZATION FROM EAST CENTRAL EUROPE TO EURASIA 420 (2006) [hereinafter NIT 2006].

Legislative authority resides in a unicameral **Parliament** consisting of 101 deputies elected for four-year terms. Legislation may take the form of constitutional, organic, or ordinary laws. Constitutional laws amend the Constitution and can be initiated by petition of at least 200,000 eligible voters, by at least one-third of the parliamentary deputies, or by the Government. Any proposed amendment to the Constitution must be submitted to Parliament, together with an advisory opinion of the Constitutional Court, adopted by a vote of at least four of its judges. Then, at least two-thirds of the parliamentary deputies must vote to adopt the constitutional law. Organic laws relate to significant matters such as the organization and functioning of Parliament, the Government, and the courts. They must be passed by a majority vote of the elected deputies, following at least two readings. Ordinary laws are those not required to be constitutional or organic laws, and a majority vote of the deputies present is sufficient to adopt them. In addition to passing laws, Parliament is responsible for providing legislative interpretations, ratifying or denouncing international treaties, approving the national budget, conducting investigations and hearings, calling referenda, and passing bills of amnesty. Parliament elects the President and, by a vote of confidence, approves the list of members of the Government and the Government's proposed program, which the President's nominee for Prime Minister must present to Parliament. Parliament can also dismiss the Prime Minister and the Government by a simple majority vote of no confidence.

The **President of Moldova** is the head of state and shares executive power with the Government. Parliament elects the President for a four-year term by a secret vote. The President is limited to two consecutive terms. By a vote of two-thirds of all its



elected members, Parliament may dismiss the President for a violation of the Constitution. The President represents the state in international relations and is commander-in-chief of the armed forces. He/she designates a candidate for the office of Prime Minister, who must request a vote of confidence from Parliament for the proposed members of the Government and its program. If Parliament twice rejects requests for a vote of confidence to allow the formation of a new Government, the President may dissolve Parliament and call an election. The President may also dissolve Parliament and call an early election if a legislative deadlock continues for three consecutive months. All laws passed by Parliament are submitted to the President for promulgation. If the President objects to a newly passed law, he/she can send it back to Parliament for reconsideration within two weeks, but must promulgate it if Parliament adopts the law a second time. After the President promulgates a law, it must be published in M.O. (the official gazette) to enter into force. In addition to promulgating or vetoing laws passed by Parliament, the President has authority to issue decrees, which are also published in M.O.

The **Government** consists of a Prime Minister (who leads the Government and coordinates the activity of its members), vice prime ministers, ministers, and other members specified by organic law. It is responsible for implementing the domestic and foreign policy of the state and for exercising oversight of public administration. The Government issues decisions, ordinances,¹ and dispositions to carry out the laws. The Prime Minister signs, and the responsible minister countersigns, all decisions and ordinances prior to their publication in M.O.

For purposes of **local public administration**, Moldova is organized into villages, towns (some of which have the status of municipalities), thirty-two districts (*raions*), and the Găgăuz Autonomous Territorial Unit. The principles of local autonomy, decentralization of public services, and consultation by the local public administrative authorities with citizens—without, however, detracting from the unitary nature of the state—are the basis of local administration. Elected local councils and mayors are responsible for administration of villages and towns. At the district level, administration is carried out by elected district councils, which also coordinate the activity of village and town councils within their districts.

The Găgăuz are people of Turkish origin who settled in the region known as Basarabia during the eighteenth century. Pursuant to art. 111 of the Constitution, Parliament adopted an organic law on December 23, 1994 to establish the Autonomous Territorial Unit of **Găgăuz-Yeri** (also known as **Găgăuzia**) in that portion of Moldova where the Găgăuz people comprised a majority of the population – an area of about 1,800 sq. kilometers (695 sq. miles). Although Găgăuzia is an integral and inalienable part of Moldova,

¹ Parliament may specifically authorize the Government to issue ordinances to implement its program (except when an organic law is required) for a limited time specified in the law authorizing the issuance of ordinances. After expiration of that deadline, only Parliament can suspend, repeal, or amend the ordinances.

Găgăuzian representatives have the authority to decide political, economic, and cultural matters within the territory in the interest of the Găgăuz people and in accordance with the Constitution of Moldova. It has its own People's Assembly (*Halc Toploşu*), Governor (*Başkanul*), Executive Committee (*Bakannîk Komiteti*), and budget. The courts in Găgăuzia, consisting of the Comrat, Ceadîr-Lunga, and Vulcăneşti District Courts and the Comrat Court of Appeal, form part of the Moldovan judicial system. The Constitution and laws of Moldova apply in Găgăuzia, as does legislation of the People's Assembly.

Although the Constitution declares that the Republic of Moldova is a unitary state (see art. 1(1)) whose territory is inalienable (see art. 3(1)) and whose national unity "constitutes the foundation of the State" (see art. 10(1)), Moldova has not exercised control over the Transnistrian region along Moldova's eastern border, on the left bank of the Nistru River, since the armed conflict of 1992. A self-proclaimed republic whose independence no country has thus far recognized, *Pridnestrovskaya Moldavskaya Respublika*, or **Transnistria**, has a separate legal system in which Moldovan law does not apply in practice. Nevertheless, the Moldovan Law on the Organization of the Judiciary provides for establishing district courts for Bender, Dubăsari, Grigoriopol, Rîbniţa, Slobozia, and Tiraspol; and a Bender Court of Appeal. See LAW ON THE ORGANIZATION OF THE JUDICIARY Annex No. 2, Law No. 514-XIII of Jul. 6, 1995, M.O. No. 58/641 of Oct. 19, 1995, *last amended by* Law No. 247-XVI of Jul. 21, 2006, M.O. No. 174-177/796 of Nov. 10, 2006 [hereinafter LOJ]. As of January 2007, Moldovan authorities had appointed a total of thirteen judges to these courts. Although their territorial jurisdiction extends to Transnistria, these courts are all physically located within territory controlled by Moldovan authorities. For example, the judge of the Grigoriopol District Court sits in Chişinău, the judges of the Dubăsari District Court sit in the village of Ustia in Dubăsari raion located within territory controlled by Moldovan authorities, the judge of the Slobozia District Court sits in the courthouse of the Ştefan Vodă District Court, and the judge for the Rîbniţa District Court sits in the courthouse of the Rezina District Court. The Bender District Court is located in the village of Varniţa in Anenii noi raion, and the Bender Court of Appeal is located in the town of Căuşeni. Because the assessment team did not review any legal information from Transnistria or conduct any interviews there, the description of the Moldovan judiciary and the conclusions of this report do not apply to Transnistria.

The **judiciary** consists of district courts, courts of appeal, the Supreme Court of Justice [hereinafter SCJ], and specialized courts. Moldova also has a Constitutional Court, which is not formally part of the judiciary, to rule on constitutional issues. These courts and their jurisdictions are described more fully below.

Moldova's legal system is based on the civil law tradition. Following is the hierarchy of Moldovan domestic legal sources: (1) the Constitution and its amendments; (2) organic laws, which Parliament adopts to enable specific provisions in the Constitution; (3) ordinary laws enacted by Parliament; and (4) sub-statutory normative acts, consisting of Parliamentary decisions, Presidential decrees, and normative acts issued by the Government.



Before an international treaty comes into force, any inconsistent provisions in the Constitution must be amended. CONST. art. 8(2). International treaties and conventions on human rights to which Moldova is a party take precedence over any national laws that conflict with them. *Id.* art. 4.

Even though the Soviet-era codes had been amended since Moldova's independence in 1991, enactment of new Civil and Criminal Codes in 2002 and new Civil Procedure and Criminal Procedure Codes in 2003 marked significant steps in the reform of the Moldovan legal system.

History of the Judiciary

In 1812, following the Russian-Turkish War, the territory of the Moldavian principality between the Prut and Nistru rivers was incorporated into the Russian Empire as a separate province called Basarabia. Following the Bolshevik Revolution in 1917, Basarabia regained its independence and became part of Romania in 1918. Its judiciary followed the Romanian structure and laws until 1940, when the Soviet Union annexed Basarabia and eventually made it one of the fifteen republics of the USSR.

During the Soviet era, the Moldovan judicial system had two tiers of courts, consisting of local courts and the Supreme Court of the Moldavian Soviet Socialist Republic, which was subordinated to the Supreme Court of the USSR. Judicial review of first instance court decisions consisted of only cassation review and extraordinary review; appellate review was not authorized. Courts had an active role in investigating cases, and trials did not employ the adversarial principle. Under the USSR, there was virtually no separation of powers, with the result that the judiciary, together with the executive and legislative bodies, formed a single government subject to the Communist Party. "Telephone justice," by which Party officials telephoned judges to instruct them on how to decide cases, was common.

On August 27, 1991, Moldova declared its independence from the USSR, and in June 1994 Parliament adopted the Concept Paper for Judicial and Legal Reform, with the goal of both creating a new status and set of functions for the courts and modifying the status of judges. Moldova's Constitution, adopted on July 29, 1994, came into force on August 27, 1994, replacing the Soviet-era Constitution of April 15, 1978. It established the legal foundation for the organization and functioning of the judiciary, with four tiers of courts of general jurisdiction. The projected judicial reform was largely implemented by 1996, after Parliament enacted the necessary enabling legislation: LOJ (1995); Law on the Status of Judge (1995); Law on the Superior Council of Magistracy (1996); Law on the Board of Qualification and Attestation of Judges (1996); Law on the Disciplinary Board and Disciplinary Liability of Judges (1996); Law on the Supreme Court of Justice (1996); Law on the Economic Courts (1996); and Law on the System of Military Courts (1996). On November 21, 2002, a constitutional amendment eliminated the second tier of courts (the tribunals) and created multiple courts of appeal in place of the single Court of Appeal.

Structure of the Courts

Courts of General Jurisdiction

Moldova has a three-tiered system of courts of general jurisdiction, consisting of district courts, courts of appeal, and the SCJ. As of December 31, 2006, Moldova had 511 authorized judicial positions in the courts of general jurisdiction (including 44 investigating judges in the district courts and 7 assistant judges in the SCJ), with 430 sitting judges.

The ***district courts***² consider and decide in the first instance all cases – civil, criminal, and administrative—that are not assigned by law to another court (e.g., the Economic Circuit Court). Depending upon the issues involved, cases are tried by a single judge or a three-judge panel. For example, extremely complex criminal cases, those of major social importance, or those involving exceptionally serious crimes would be tried by a three-judge panel. Since the Criminal Procedure Code entered into force in June 2003, almost all district courts have an investigating judge. This official is responsible for pretrial procedure in criminal cases, such as issuing warrants for searches or wiretaps, judicial oversight of criminal investigations (including examining complaints from citizens against the actions or inaction of criminal investigation bodies), and making decisions on pretrial detention and house arrest. The LOJ provides for establishment of 46 district courts, with 5 in Chişinău and 41 whose territorial jurisdictions cover multiple villages and towns throughout the rest of the country. See Annex No. 2. Each has a president and vice president. The district courts have 353 of the authorized judicial positions (including 44 investigating judges), or approximately two-thirds of the total number of such positions in the country. The district courts range in size from 2 judges (in Vulcăneşti) to 17 (in four of the Chişinău courts).

Five ***courts of appeal*** have appellate and cassation jurisdiction over decisions of the district courts. In appellate review, the court reevaluates both the application of the law to the facts and the facts themselves, and may even receive additional evidence. In cassation review, the court is limited to reviewing the application of the law to the facts as found by the lower instance court. Three-judge panels hear both appeals and cassations. The courts of appeal also have first instance jurisdiction (e.g., cases involving the rights of authors or inventors, and certain exceptionally serious crimes such as treason, espionage, terrorism, and genocide). Each court of appeal has a president and vice president. Among other things, the president organizes the judges of his/her court into colleges based on the kinds of cases they consider, or into a single mixed college. Courts of appeal are located in Chişinău, Bălţi, Bender, Cahul, and Comrat. Each court of appeal considers cases from the district courts located

² Before the reorganization of the courts in 2002, these courts were referred to as district or municipal courts. Now they are identified simply as “courts” (judecătorii). To avoid ambiguity by referring to them as “courts,” this report uses the term “district courts.”



within its circuit, as identified in Annex No. 3 to the LOJ. There are 77 judicial positions authorized for the courts of appeal.

The LOJ describes the **SCJ** as “the supreme court that ensures the correct and uniform implementation of legislation by all courts of law.” See art. 43(1). Located in Chişinău, it acts as the highest court of cassation, reviewing judgments of the courts of appeal and performing extraordinary review of judicial decisions. Extraordinary review involves the reopening of a case upon the discovery of new and essential facts or circumstances. The SCJ also has first instance jurisdiction over crimes alleged to have been committed by the President of Moldova. It lacks authority to decide questions about the constitutionality of laws, however, and must refer such issues to the Constitutional Court. The SCJ considers cases in panels of three judges (or five judges for cassations of first instance judgments of the SCJ) in its Civil and Administrative Review College,³ Criminal College, or Economic College; or collectively in the Plenum, which consists of all its judges. The Plenum of the SCJ may issue general explanatory decisions on both substantive and procedural laws outside the context of a particular case, in order to instruct lower courts on the proper interpretation and application of laws. These explanatory decisions are not, however, binding, and do not constitute precedent as that concept is understood in common law legal systems. The SCJ has a president, three vice presidents, and 45 other judges, as well as 7 assistant judges. Each vice president also serves as president of one of the Court’s three colleges.

Specialized Courts

Pursuant to the constitutional provision that allows the creation of specialized courts to hear specified categories of cases (see art. 115(2)), Parliament has established economic courts and military courts. These courts are governed by the Law on Economic Courts and the Law on the System of Military Courts, respectively, and are also generally subject to the provisions of the LOJ and the Law on the Status of Judge (Law No. 544-XIII of Jul. 20, 1995, M.O. No. 59-60/664 of Oct. 26, 1995, *last amended by* Law No. 247-XVI of Jul. 21, 2006, M.O. No. 174-177/796 of Nov. 10, 2006 [hereinafter LSJ]).

The **economic courts** have jurisdiction over economic cases, that is, litigation involving the rights and legal interests of natural persons and legal entities while engaged in entrepreneurial activity or involved in other relations of an economic character. Although Parliament could establish additional first instance economic courts, thus far it has only established one, the Economic Circuit Court, located in Chişinău.⁴ It consists of a president, vice president, and 10 other judges. The

³ This college considers administrative cases against state bodies (contencios administrative), not administrative infractions (contravenţii administrative).

⁴ In 1996, the Law on Economic Courts required the Government to consider establishing other economic courts in Bender, Bălţi, Cahul, and Comrat. Law on the Economic Courts art. 41, Law No. 970 of Jul. 24, 1996, M.O. No. 77/742 f Nov. 28, 1996, last amended by Law No. 191-XV of May 8, 2003, M.O. No. 97-98/432 of May 31, 2003 [hereinafter LEC].

Economic Court of Appeal, also located in Chişinău, hears appeals from the Economic Circuit Court. It also has first instance jurisdiction in cases provided by law (e.g., insolvency cases). The Economic Court of Appeal consists of a president, vice president, and 8 other judges. The Economic College of the SCJ serves as a court of cassation for decisions of the Economic Court of Appeal.

The **Military Court** has jurisdiction over criminal cases involving military personnel and civil cases for damage caused by military personnel anywhere within the territory of Moldova. Although the Law on the System of Military Courts contemplates establishing other first instance military courts, Parliament has not done so. See LAW ON THE SYSTEM OF MILITARY COURTS art. 9(3), Law No. 836-XIII of May 17, 1996, M.O. No. 51/482 of Aug. 1, 1996, *last amended* by Law No. 262-XV of Jul. 15, 2004, M.O. No. 132-137/708 of Aug. 6, 2004 [hereinafter LMC]. This court, which sits in Chişinău, consists of a president and two other judges. Either a single judge or a three-judge panel tries cases. Three judge panels of the courts of appeal and of the SCJ have appellate and cassation jurisdiction over decisions of the Military Court.

Constitutional Court

The **Constitutional Court** is formally outside the judicial branch and is independent of any other public authority. Located in Chişinău, the Court exercises judicial review and is the sole entity that exercises constitutional jurisdiction in Moldova. It has the following powers, some of which have important political implications: (1) ruling on the constitutionality of laws and decisions of Parliament, presidential decrees, decisions and orders of the Government, and international treaties to which Moldova is a party; (2) interpreting the Constitution; (3) formulating a position on initiatives to amend the Constitution; (4) confirming the results of national referenda; (5) confirming the results of parliamentary and presidential elections; (6) confirming the existence of circumstances justifying the dissolution of Parliament or dismissal of the President of Moldova, an interim President, or a parliamentary deputy, or the inability of the President to perform official duties for more than sixty days; (7) determining exceptional cases of unconstitutionality of legal acts, upon request of the SCJ; and (8) deciding issues concerning the constitutionality of political parties. The Court consists of 6 judges, each appointed for a 6-year term, as well as 6 assistant judges appointed for an unlimited term. It examines cases in plenary sessions, at which a quorum of at least 4 judges must be present. Laws and regulations become null and void as soon as the Constitutional Court holds them unconstitutional. The Court's judgments, decisions, and advisory opinions are final and cannot be appealed. They become effective on the date of adoption or, in the Court's discretion, the date of publication in M.O. or such other date as the Court may specify.



Judicial Administration

Judicial administration is generally the responsibility of the Superior Council of Magistracy [hereinafter SCM], although the Ministry of Justice [hereinafter MOJ] retains some administrative authority. Its purpose is to ensure the proper functioning of the judicial system and to guarantee its independence. The SCM is an independent body consisting of 12 members, 7 of whom are judges elected by secret ballot by the General Assembly of Judges of the Republic of Moldova, two members are full-time law professors elected by Parliament (with one nominated by the political majority and one by the opposition), and three are *ex officio* members (the President of the SCJ, the Minister of Justice, and the Prosecutor General). Thus, at least two-thirds of the SCM's members are judges. All except the *ex officio* members serve four-year terms.

The SCM's authority includes: (1) recommending appointment, promotion, transfer, or removal of judges of district courts, courts of appeal, the SCJ, the economic courts, and the Military Court, as well as the presidents and vice presidents of those courts; (2) investigating complaints against judges and imposing disciplinary sanctions on them; (3) validating decisions of the Qualification Board and the Disciplinary Board and considering appeals regarding such decisions; (4) appointing judges to the Council of the National Institute of Justice [hereinafter NIJ] and submitting to the Council its approval of the strategy for the initial and continuing training of judges; (5) reviewing and proposing the draft budget for the courts; (6) transferring judges temporarily to other courts on the same level; and (7) submitting annual reports to Parliament and the President of Moldova on the organization and functioning of the judiciary.

Conditions of Service

Qualifications

All candidates for judicial appointment must satisfy the following general requirements: be a citizen of Moldova and have a permanent domicile there; have a university degree in law; know the state language; be legally competent; be medically able to function as a judge; not have a criminal record; and enjoy a good reputation. In addition, specific qualifications apply to judges of certain courts. To be eligible for appointment, a district court judge, for example, must currently have at least 5 years of legal work experience, be at least 30 years of age, and have passed the qualification examination. An investigating judge must have at least 5 years of work experience as a prosecutor or a criminal investigator, or at least 3 years as a judge. Judges of the courts of appeal must have at least 6 years of prior judicial experience, and judges of the SCJ must have at least 10 years of prior judicial experience. Assistant judges of the SCJ must have served in the magistracy for at least 7 years. Military judges must be active military officers or be given military rank before appointment.

Judges of the Constitutional Court must be citizens of Moldova and have a superior legal education, high professional competence, and at least 15 years experience in judicial positions, legal education, or scientific research.

Appointment and Tenure

The President of Moldova appoints judges of district courts, courts of appeal, the economic courts, and the Military Court on the proposal of the SCM. The initial appointment of district court judges is for a 5-year term, and thereafter they may be reappointed until the mandatory retirement age of 65, which applies to all other judges of the courts of law. The President also appoints presidents and vice presidents of those courts for 4-year terms on the proposal of the SCM.

Parliament appoints the president, vice presidents (who serve as presidents of colleges), vice presidents of colleges, and other judges of the SCJ, also on the proposal of the SCM, but the President of Moldova appoints the assistant judges of the Court.

According to the Constitution, Parliament, the Government, and the SCM each appoint two judges to the Constitutional Court. These judges serve for 6-year terms, during which they are “irremovable, independent, and obey only the Constitution.” CONST. art. 137. They are limited to two such terms. The judges of the Constitutional Court elect the president of the Court. The age limit for one’s appointment as a Constitutional Court judge is 70 years old.

Training

As of January 2007, there was no requirement for postgraduate training of judicial candidates prior to their initial appointment to the bench. In 2006, however, Parliament passed legislation to establish the NIJ, which will be responsible for initial training of candidates to become judges, prosecutors, court secretaries, and enforcement agents.⁵ The first class is expected to begin its studies in September 2007 and graduate in March 2009. Admission to the 18-month initial training course for judicial candidates will be based on competition, and students will receive a scholarship equal to 50% of the salary of a district court judge. The program of study will consist of both theoretical and practical training, including internships. The NIJ will periodically evaluate students’ theoretical knowledge and practical skills, and at the completion of their studies students will have to pass a graduation examination. After the first

⁵ Court secretaries (grefieri) prepare minutes of court proceedings, including summaries of the testimony of witnesses (see Factor 25 below). Although they are often referred to as “court clerks” in English, this report refers to them as “court secretaries,” which is a more descriptive term and avoids the possibility of confusing them with someone who assists a judge with research and drafting opinions. Enforcement agents enforce judgments (see Factor 9 below). Although the term executorii judecătorești is often translated “bailiffs,” this report adopts the term “enforcement agent” from Council of Europe Recommendation Rec(2003)17 to avoid potential confusion with officials who keep order in U.S. courtrooms.



class completes its studies, graduation from the NIJ will become a general requirement for appointment as a judge, and graduates will compete for judicial positions based on their average marks at graduation from the NIJ rather than their scores on the capacity examination. However, up to 20% of judicial appointments during a 3-year period may still be filled by candidates with 5 years of legal experience who pass the capacity examination, even though they did not graduate from the NIJ.

Presently, judges are not required to participate in a specific amount of continuing legal education [hereinafter CLE], but merely to improve their professional knowledge. In 1996, the Government established the Judicial Training Center [hereinafter JTC], subordinated to the MOJ, to provide CLE for judges and other legal professionals. The NIJ will take over the JTC's function of providing CLE to judges. Effective January 1, 2008, judges will be required to complete at least 40 hours of CLE annually.

Note on Subsequent Legislative Developments

On July 21, 2006, Parliament adopted the LAW ON AMENDING AND COMPLETING SOME LEGISLATIVE ACTS. Law No. 247-XVI of Jul. 21, 2006, M.O. No. 174-177/796 of Nov. 10, 2006 [hereinafter 2006 AMENDMENTS]. The President of Moldova refused to promulgate the law and sent it back to Parliament, outlining his objections. After Parliament revised it, taking into account the President's objections, he promulgated the law, which entered into force on November 10, 2006. Although its title is disarmingly modest, the law amends the most significant laws affecting the judiciary in Moldova: LOJ; LSJ; Law on the Superior Council of Magistracy; Law on the Board of Qualification and Attestation of Judges; and Law on the Disciplinary Board and Disciplinary Liability of Judges. Although the *de jure* discussions in this report include the changes this law made in the legal framework governing the judiciary, the *de facto* descriptions (which are based on interviews conducted in September 2006, before the law was adopted) do not reflect the impact of the implementation of these changes.

Moldova JRI 2007 Analysis

While the correlations drawn in this assessment may serve to give a sense of the relative status of certain issues present, the ROL Initiative would underscore that these factor correlations and conclusions in the Moldova JRI 2007 possess their greatest

utility when viewed in conjunction with the underlying analysis and compared to the Moldova JRI 2002. The ROL Initiative considers the relative significance of particular correlations to be a topic warranting further study. In this regard, the ROL Initiative invites comments and information that would enable it to develop better or more detailed responses to future JRI assessments. The ROL Initiative views the JRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

Judicial Reform Index Factor		Correlation 2002	Correlation 2007	Trend
I. Quality, Education, and Diversity				
Factor 1	Judicial Qualification and Preparation	Neutral	Neutral	↔
Factor 2	Selection/Appointment Process	Neutral	Neutral	↔
Factor 3	Continuing Legal Education	Neutral	Neutral	↔
Factor 4	Minority and Gender Representation	Positive	Positive	↔
II. Judicial Powers				
Factor 5	Judicial Review of Legislation	Neutral	Neutral	↔
Factor 6	Judicial Oversight of Administrative Practice	Neutral	Neutral	↔
Factor 7	Judicial Jurisdiction over Civil Liberties	Positive	Positive	↔
Factor 8	System of Appellate Review	Positive	Neutral	↓
Factor 9	Contempt/Subpoena/Enforcement	Negative	Negative	↔
III. Financial Resources				
Factor 10	Budgetary Input	Negative	Neutral	↑
Factor 11	Adequacy of Judicial Salaries	Negative	Negative	↔
Factor 12	Judicial Buildings	Negative	Negative	↔
Factor 13	Judicial Security	Negative	Negative	↔
IV. Structural Safeguards				
Factor 14	Guaranteed Tenure	Neutral	Neutral	↔
Factor 15	Objective Judicial Advancement Criteria	Negative	Neutral	↑
Factor 16	Judicial Immunity for Official Actions	Positive	Neutral	↓
Factor 17	Removal and Discipline of Judges	Positive	Neutral	↓
Factor 18	Case Assignment	Negative	Neutral	↑
Factor 19	Judicial Associations	Neutral	Negative	↓
V. Accountability and Transparency				
Factor 20	Judicial Decisions and Improper Influence	Negative	Negative	↔
Factor 21	Code of Ethics	Neutral	Neutral	↔
Factor 22	Judicial Conduct Complaint Process	Positive	Neutral	↓
Factor 23	Public and Media Access to Proceedings	Neutral	Neutral	↔
Factor 24	Publication of Judicial Decisions	Negative	Negative	↔
Factor 25	Maintenance of Trial Records	Negative	Negative	↔
VI. Efficiency				
Factor 26	Court Support Staff	Negative	Negative	↔
Factor 27	Judicial Positions	Negative	Negative	↔
Factor 28	Case Filing and Tracking Systems	Negative	Negative	↔
Factor 29	Computers and Office Equipment	Negative	Negative	↔
Factor 30	Distribution and Indexing of Current Law	Negative	Neutral	↑

I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

Judges have formal university-level legal training and have practiced before tribunals or, before taking the bench, are required (without cost to the judges) to take relevant courses concerning basic substantive and procedural areas of the law, the role of the judge in society, and cultural sensitivity.

Conclusion	Correlation: Neutral	Trend: ↔
Judges must have university-level legal training and, except for district court and Constitutional Court judges, have prior judicial experience. District court and Constitutional Court judges must have legal, but not necessarily judicial, experience. No specific training courses are mandated under existing requirements, but, beginning on the date the first class of the NIJ graduates in March 2009, most new district court judges will be required to have graduated from the NIJ.		

Analysis/Background:

At present, all candidates for appointment as a judge to any court, except the Constitutional Court, must satisfy the following general requirements:

- be a citizen of Moldova and have a permanent domicile there;
- have a university degree in law (*licențiat în drept*);
- know the state language;⁶
- be legally competent;
- be medically able to function as a judge, as evidenced by a medical certificate;
- not have a criminal record; and
- enjoy “a good reputation.”

LSJ art. 6(1)

⁶ The Constitution identifies Moldovan, written in the Latin alphabet, as the state language. See art. 13(1). Some five years before the Constitution was adopted, the law declaring Moldovan to be the state language recognized the essential linguistic identity of Moldovan and Romanian. See Law on the Functioning of Languages in the Territory of the Republic of Moldova, Law No. 3465-XI of Sep. 1, 1989, Herald of the Supreme Soviet of the S.S.M.R. No. 9/217 (1989).

Additional requirements apply to candidates for appointment to particular courts. A district court judge, for example, must be at least 30 years of age, have at least 5 years of legal work experience,⁷ and pass the capacity examination (see Factor 2 below). *Id.* art. 6(2). Such work experience need not, however, include practice before courts. See *id.* art. 7(1), (3). Candidates for appointment to the Economic Circuit Court must meet the same requirements as district court candidates. See LEC art. 21. An investigating judge, who is a district court judge responsible for pretrial procedure in criminal cases, must have worked at least 5 years as a prosecutor or criminal investigator or at least 3 years as a judge. LSJ art. 7(2). Judges of the courts of appeal must have at least 6 years of prior judicial experience, and judges of the SCJ must have at least 10 years of prior judicial experience. *Id.* art. 6(3); CONST. art. 116(4); LAW ON THE SUPREME COURT OF JUSTICE art. 11, Law No. 789-XIII of Mar. 26, 1996, M.O. No. 32-33/323 of May 30, 1996, *last amended by* Law No. 174-XVI of Jul. 22, 2005, M.O. No. 107-109/533 of Aug. 12, 2005 [hereinafter LSCJ]. Assistant judges of the SCJ (see Factor 26 below) must have 7 years of service in the magistracy. LSCJ art. 19. Military judges must be active military officers or be given military rank before appointment. LMC art. 19, 22(1).

A university degree in law requires 4 or 5 years of undergraduate legal education, depending on whether the student completed 12 or 11 years of primary and secondary level education, respectively, before matriculation. Many interviewees regarded legal education in Moldova as generally affording inadequate preparation for judicial appointment. Before independence in 1991, there was only one law faculty, that of Moldova State University [hereinafter MSU]. After independence, law faculties—some in name only—proliferated to meet the burgeoning demand for legal education. By the mid to late 1990s, there were some 40 law faculties. Since then, the number has declined to 14, according to the Ministry of Education (<http://www.edu.gov.md/?lng=ro&MenuItem=3&SubMenu0=8>), but even that is too many, according to interviewees. There are still too few qualified professors for that many law faculties. Other shortcomings of legal education that were reported are the emphasis upon rote memorization, insufficient practical training, lack of transparency in the examination process, and corruption, both direct (buying and selling grades) and indirect (a reluctance to fail students and thereby lose their tuition payments). See *also* ABA/CEELI, THE LEGAL PROFESSION REFORM INDEX FOR MOLDOVA 14-15 (2004) [hereinafter MOLDOVA LPRI]. Furthermore, many graduates receive training as correspondence students; that is, they participate in a limited number of classroom sessions at the law faculty, followed by a period of independent study and examinations at the end of each semester. Although the entering class at MSU in September 2006 was limited to 500 students (down from 1,000 in 2005), interviewees were generally skeptical that this change would have any immediate impact on the quality of legal education. According to interviewees, however, despite the reported deficiencies of

⁷ Prior to 2003, it had been possible for a candidate with less than 5 but more than 3 years of legal experience to qualify for appointment by serving an internship with a court for 6 months to one year. ABA/CEELI, Judicial Reform Index for Moldova 6-7 (2002) [hereinafter Moldova JRI 2002].



legal education in Moldova, the best law graduates are well trained, but they unfortunately rarely pursue judicial careers.

The result of these inadequacies in legal education, according to some interviewees, is that newly appointed judges often do not have an adequate knowledge of the applicable law or the ability to apply it to the facts. Sometimes they write decisions that are not reasoned or are inconsistent. One interviewee observed that there are vast differences in judges' knowledge and that since 2002, when the prior JRI was completed, the distance between the extremes has grown.

In 2006, Parliament passed legislation to establish the NIJ in Chişinău. LAW ON THE NATIONAL INSTITUTE OF JUSTICE, Law No. 152-XVI of Jun. 8, 2006, M.O. No. 102-105/484 of Jul. 7, 2006 [hereinafter LNIJ]. The NIJ will be responsible for initial training of candidates to become judges, prosecutors, court secretaries, and enforcement agents, and continuing training of such appointed professionals. When the first class of the NIJ graduates in March 2009, some of the requirements for appointment as a district court judge, Economic Circuit Court judge, or Military Court judge in force as of January 2007 will change in three respects.

First, there is presently no postgraduate education requirement for initial appointment to the bench—as one newly appointed judge described the existing situation, “They threw me into the ocean, and I didn’t know how to swim.” Following graduation of the first NIJ class, graduation from the NIJ will become a requirement for appointment for most district court judges; however, up to 20% of judicial appointments during a three-year period may be filled by candidates with 5 years of legal experience who are not graduates of the NIJ, but have passed the capacity examination (see Factor 2 below). LSJ art. 6(2); 2006 AMENDMENTS arts. II(6), VI(3).

Anyone meeting the criteria for appointment as a judge or prosecutor will be able to participate in the competition for admission to the NIJ’s 18-month initial training course. LNIJ art. 13(2). Students will receive a scholarship equal to 50% of the salary of a district court judge. *Id.* arts. 14(1), 14(4), 15. The program of study will consist of both theoretical and practical training, including internships within the courts, the prosecutors’ offices, criminal investigation authorities, or attorneys’ offices. *Id.* arts. 14(1), 15. The NIJ will periodically evaluate students’ theoretical knowledge and practical skills, and at the completion of their studies they must pass a graduation examination covering subjects determined by the Council of the NIJ in coordination with the SCM (or the Prosecutor General, in the case of students studying to be prosecutors). *Id.* art. 17.

Administrative responsibility for the NIJ lies with a 13-member Council, 7 of whom are judges appointed by the SCM. *Id.* art. 6. Among other things, the Council will: determine the number of openings for initial training each year, “taking into consideration the real necessities and the available resources”; organize competitions

for admission; approve curricula for initial and continuing training; appoint teaching staff; appoint and dismiss the executive director and deputy executive director of the NIJ; and submit a draft budget to the Ministry of Finance [hereinafter MOF]. *Id.* art. 7.

Although many details about the NIJ remained to be decided, at the time of the interviews for this assessment, the Council anticipated admitting 30-40 students each year, according to an interviewee; however, it was not yet certain how many of these would follow the curriculum for judicial students, and how many for prosecutorial students. There would be three full-time faculty members (one each heading the criminal, administrative infractions, and civil departments). The remaining faculty would be part-time.

By and large, interviewees were enthusiastic about the NIJ, or at least hopeful that it will improve the quality of judicial appointees. One mused that there are more questions than answers about the NIJ. Whether the state will fund the NIJ adequately over the long term was a concern of some interviewees. Another interviewee observed that it could be a catalyst for many good things, and noted that much would depend on the executive director. Although the NIJ had a Council when the JRI interviews were conducted in September 2006, it did not have premises, an executive director, or other staff. Since then, the NIJ has been given premises, an executive director has been appointed, and levels of salaries for its employees have been determined.

Second, the minimum age requirement for appointment will be eliminated. This is the most recent in a series of changes to minimum age limits for judicial candidates. In 2001, Parliament raised the minimum age for district court judges from 25 to 30 years, a change that interviewees for the JRI in 2002 viewed favorably, because they thought 25-year-olds lacked the life experience necessary to be good judges. MOLDOVA JRI 2002 7-8. Many interviewees for the present JRI, however, expressed concerns about the current minimum age requirement. By the age of 30, they said, the best law graduates already have successful careers and are reluctant to give them up to become judges, especially given the level of judicial salaries (see Factor 11 below) and the insecurity resulting from the 5-year initial appointment (see Factor 14 below). Confirmation of that assertion comes from a group interview of 6 lawyers, who were asked if any of them wanted to become a judge. None did. Many interviewees also argued that graduates of the NIJ should be eligible for appointment at the age of 25. Others, however, believed that continuing 30 as the minimum age for appointment would be preferable. After the JRI interviews were completed, Parliament amended the LSJ to eliminate the minimum age requirement when the first class of the NIJ graduates. 2006 AMENDMENTS arts. II(6), VI(3). Thus, graduates can be appointed without having to wait until they reach a minimum age.

Third, candidates for appointment as investigating judges will no longer need to satisfy the current work experience requirement (at least 5 years as a prosecutor or criminal investigator or at least 3 years as a judge) when the first class of the NIJ graduates. *Id.* arts. II(7), VI(3).



Judges of the Constitutional Court must be citizens of Moldova and have superior legal training (*pregătire juridică superioară*),⁸ “high professional competence,” and at least 15 years experience in the judiciary, legal education, or scientific research. CONST. art. 138; LAW ON THE CONSTITUTIONAL COURT art. 11(1), Law No. 317-XIII of Dec. 13, 1994, M.O. No. 8/86 of Feb. 7, 1995, *last amended by* Law No. 136-XV of May 6, 2004, M.O. No. 91-95/482 of Jun. 11, 2004 [hereinafter LCC]. Assistant judges of the Constitutional Court (see Factor 26 below) must also have superior legal training and at least 10 years of legal experience. LCC art. 35(2).

Factor 2: Selection/Appointment Process

Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges.

Conclusion

Correlation: Neutral

Trend: ↔

Initial judicial appointment is based on passing a capacity examination and other generally objective criteria; however, interviewees raised questions about the extent to which subjective factors, such as cronyism or corruption, can play a role in judicial selection and appointment. Nevertheless, it appears that the SCM has become more independent of the executive branch recently, and that its nominations have likewise reflected greater independence.

Analysis/Background:

The SCM plays an important role in the appointment of judges. It is an independent body consisting of 12 members: 7 judges elected by secret ballot by the General Assembly of Judges of the Republic of Moldova, 2 full-time law professors elected by Parliament (one nominated by the political majority and one by the opposition), and 3 *ex officio* members (the President of the SCJ, the Minister of Justice, and the Prosecutor General). CONST. art. 122; LAW ON THE SUPERIOR COUNCIL OF MAGISTRACY arts. 3, 8(1), Law No. 947-XIII of Jul. 19, 1996, M.O. No. 64/641 of Oct. 3, 1996, *last amended by* Law No. 247-XVI of Jul. 21, 2006, M.O. No. 174-177/796 of Nov. 10, 2006 [hereinafter LSCM]. Thus, at least two-thirds of its members are judges.⁹ All but the *ex officio* members serve four-year terms. LSCM art. 9. Effective November 10, 2006, none of the *ex officio* members are eligible to serve as President of the SCM. *Id.* art. 5(3).

⁸ Superior legal training includes either an undergraduate degree in law or a master's/doctorate in law.

⁹ Prior to amendment of the Constitution in November 2002, the SCM consisted of 11 members, 6 of whom were judges; that is, slightly more than half. See 2002 Moldova JRI 9.

The SCM is required to advertise judicial vacancies in M.O. LJS art. 9(1). In addition, the SCM advertises vacancies in the BULLETIN OF THE SCJ and other media, including the SCJ's website (<http://www.scjustice.md>). Candidates for judicial appointment must submit a written application with supporting documentation to the SCM. *Id.* art. 10; LAW ON THE BOARD OF QUALIFICATION AND ATTESTATION OF JUDGES art. 17(1), Law No. 949-XIII of Jul. 19, 1996, M.O. No. 61-62/605 of Sep. 20, 1996, *last amended by* Law No. 247-XVI of Jul. 21, 2006, M.O. No. 174-177/796 of Nov. 10, 2006 [hereinafter LBQAJ]. If the applicant satisfies the requirements for appointment to the bench specified in the LSJ (see Factor 1 above), the SCM forwards the application to its Qualification Board, which organizes capacity examinations twice a year for first-time judicial appointees.¹⁰ LBQAJ arts. 17, 20(1).

The Qualification Board consists of 12 members elected for 4-year terms, with 4 judges from the SCJ and one from each of the 5 courts of appeal, all elected by the judges of their respective courts; and 3 full-time professors from the law faculty of MSU, elected by the SCM. *Id.* arts. 2, 3. Thus, three-quarters of the Board's members are judges. Members of the SCM or its Disciplinary Board are ineligible to serve on the Qualification Board. *Id.* art. 3(4).

Most candidates for appointment must pass the capacity examination, which includes both oral and written portions. *Id.* art. 20(1)(a), (b), *as amended by* 2006 AMENDMENTS art. IV(11)20. The oral portion covers subjects such as civil, criminal, administrative, constitutional, and labor law; civil and criminal procedure; the status of judges; and judicial organization. *Id.* art. 20(1)(a). Candidates receive up to 10 points for each answer, and must receive at least 70% of the total number of points to pass the examination. *Id.* art. 20(2)-(3). The written portion requires candidates to draft two procedural documents resolving hypothetical cases. *Id.* art. 20(1)(b). In practice, one is for a civil case and the other is for a criminal case. According to interviewees, applicants seeking positions as investigating judges are only tested in criminal law. The results of the capacity examination are valid for 3 years, after which a candidate has to retake the exam. *Id.* art. 20(5).

Graduates of the NIJ will not take the capacity examination, but will participate in the competitions for judicial appointment based on their average grades at graduation from the NIJ. LNIJ arts. 17(6), 18(1)-(2). Indeed, they must participate in such competitions, for if they fail to do so without justification, the NIJ may seek reimbursement of the scholarships they received as students. *Id.* art. 18(4). If a graduate of the NIJ is not appointed as a judge within 3 years after graduation, he/she is ineligible to participate in further competitions for judicial appointment. *Id.* art. 18(3).

¹⁰ Because judges of the courts of appeal (including the Economic Court of Appeal) and the SCJ must have more than 5 years of judicial experience to qualify for appointment, Factor 15 below (concerning judicial advancement) discusses procedures for appointment to those courts.



Following the receipt of the Qualification Board's recommendations and documents concerning the candidates, the SCM nominates a candidate for appointment by the President of Moldova or Parliament. CONST. art. 116(2); LSCM art. 19(1). Because the SCM is required to nominate the most qualified candidates, it is not bound by the Qualification Board's recommendations, but it may accept, modify, or reject them. The SCM invites all candidates recommended by the Qualification Board to attend its hearing, during which an SCM member will report on the qualifications of each candidate. After the hearing, the SCM meets in closed sessions to discuss and select the candidates that, in its opinion, are the best, and recommends them for appointment. LSCM art. 21(4). The President appoints judges of district courts, the courts of appeal, the Economic Circuit Court, and the Military Court. LSCM art. 4(1)(a); LSJ art. 11(1); LEC arts. 3(2), 21; LMC art. 18(2). The SCM transmits to the President the personnel file and curriculum vitae of each candidate it recommends, together with a draft presidential decree. LSCM art. 19(3). The President may then accept or reject the SCM's proposal. *Id.* art. 19(4). Following rejection of a candidate, the SCM may propose the same or a different candidate for the position. *Id.*

Amendments to LSJ in 2005 reduced the discretion of the President of Moldova as to the appointment of judges and enhanced the SCM's authority. Now, the President must act on a proposal by the SCM within 30 days (or 45 days if new circumstances requiring consideration arise). LSJ art. 11(4). The President may reject a candidate only once, and only upon the discovery of "incontestable proof" of the incompatibility of the candidate for the position, violation of law by the candidate, or violation of legal procedures concerning the candidate's appointment. *Id.* art. 11(3). In the past, the President did not have to give reasons for refusing to appoint a candidate. Furthermore, if the SCM proposes the candidate a second time, the President must appoint him/her within 30 days after the second proposal. *Id.* art. 11(5).

A number of interviewees insisted that, in practice, judicial vacancies are not publicly announced, especially in the *raions*. Perhaps these comments were a result of the reduced availability of M.O. and lack of Internet access in some courts (see Factors 29 and 30 below). The capacity exam is not particularly rigorous, according to several interviewees, contributing to the appointment of poorly qualified judges. Several noted the lack of objective criteria for selection of candidates, which they say has resulted in well-qualified candidates not being selected. Interviewees also criticized the lack of transparency in the selection and appointment of judges. Although one interviewee characterized it as a joke, he and several others reported that the fee to become a judge is USD 10,000. Even if that is untrue, the prevalence of such a rumor suggests the need for greater transparency in the appointment process. Several interviewees voiced suspicions that sometimes decisions were made due to cronyism, which would be possible under the capacity examination's present form. On the other hand, another interviewee said that the process was adequate and enabled the SCM to select the best of those who submit applications, but that low judicial salaries and social conditions prevent the best of the best from applying in the first place.

Perhaps more importantly, several interviewees characterized the information on which the SCM bases its decisions as too narrow, and one suggested that requiring an internship before appointment would provide the SCM with better information on an applicant's professional qualities.

The extent to which political considerations influence the appointment of judges is a matter of controversy. Some interviewees insisted that political affiliation and loyalty to the ruling party are important factors and that the members of the SCM are not independent, but malleable out of a desire for future preferment. Indeed, one interviewee said that today the President of Moldova practically manages the appointment of judges and court presidents. A greater number, however, viewed the SCM as more independent than it had been in the past (2003-2004), with the result that the President of Moldova now has little influence over the appointment of judges. Although some interviewees doubted that the SCM would re-nominate a candidate whom the President had initially rejected, thereby forcing the President to make the appointment, two members of the SCM confirmed that this has happened several times (in some cases involving appointments of court presidents). A possible explanation of this divergence of opinion is that those who were suspicious of the SCM's independence based their opinion on events in the past, while those who saw it as independent based their opinion on more recent developments.

Whether the problems in the selection and appointment process are in fact as serious as some interviewees suggested, at least issues of perception exist that should be addressed to improve public confidence in the process.

Judges of district courts are initially appointed for a 5-year term, after which they may be reappointed until the mandatory retirement age of 65. CONST. art. 116(2); LSJ art. 11(1). Procedures for appointment of such judges until retirement are similar to those for initial appointment, except that the judge must first pass an attestation examination administered by the Qualification Board (see Factor 15 below), and the SCM must propose him/her for reappointment to the President of Moldova. LBQAJ art. 23(3)(b); LSJ arts. 11(1), 13(1). See *also* Factor 14 below for additional details regarding this procedure.

The Constitutional Court consists of 6 judges, with 2 appointed by Parliament, 2 by the Government, and 2 by the SCM.¹¹ CONST. art. 136(1)-(2); LCC art. 6(2). The law does not specify procedures for the appointment of Constitutional Court judges. One interviewee suggested that it would be better if the process were more transparent, with the names of nominees made public several months in advance of their actual appointment.

¹¹ The LCC does not mention the Government, but instead provides that Parliament, the President of Moldova, and the SCM each appoint two judges. See art. 6(2). This reflects art. 136(2) of the Constitution as originally enacted in 1994, but not the subsequent amendment of that provision by Law on Completing and Amending the Constitution (Law No. 1115-XIV of Jul. 5, 2000, M.O. No. 88-90/661 of Jul. 28, 2000). The constitutional provision governs, rather than the conflicting one in the LCC. See Const. art. 7.



Factor 3: Continuing Legal Education

Judges must undergo, on a regular basis and without cost to them, professionally prepared continuing legal education courses, the subject matters of which are generally determined by the judges themselves and which inform them of changes and developments in the law.

Conclusion

Correlation: Neutral

Trend: ↔

CLE for judges is in a period of transition. The JTC, which was subordinated to the MOJ and relied on support from international donors, has been phased out. The new NIJ, which by law is an autonomous legal entity, has taken over the JTC's responsibilities for CLE. In recent years, the SCJ has played an increasingly important role as a provider of CLE. Although there is presently no CLE requirement for judges, beginning in 2008 judges will be required to complete 40 hours of CLE annually.

Analysis/Background:

To address the need for training judges, court personnel, and prosecutors, the government established a post-graduate educational institution in 1996, the Republican Center for Training and Perfecting the Staff of the MOJ and the Prosecutor General's Office, commonly referred to as the JTC.¹² See DECISION OF THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA No. 96 of Feb. 22, 1996, M.O. No. 23-24/191 of Apr. 18, 1996. Subordinated to the MOJ, the JTC was responsible for providing practical and theoretical training for judges, court consultants, chiefs of chancellery, and enforcement agents. The MOJ appointed the JTC's teaching staff and approved its training programs. *Id.* art. 2. The SCM and Prosecutor General's Office also participated in developing the JTC's annual plan of activity. Since its founding, the JTC's funding came largely from international donors. The state budget provided approximately 10% of its funding, and donors provided the remaining 90%.

According to information from the JTC, it trained 310 judges, 188 prosecutors, 60 enforcement agents, and 60 notaries in 40 seminars, ranging from one to five days in length, during the September 2005 to June 2006 academic year. In addition to seminars in Chişinău, the JTC conducted seminars in Bălţi, Bender, and Cahul. Since then, the JTC fell on hard times, with limited funding and only three of its eight staff positions filled as of September 2006. Resources for judicial education were being directed to the new NIJ. In January 2007, the NIJ took over the JTC's responsibilities.

¹² Pursuant to Government Decision No. 605 of Jun. 23, 2005, the JTC was renamed the Republican Center for Training and Perfecting the Staff of the Ministry of Justice.

Although international donors have provided or funded a considerable amount of CLE over the years, the SCJ has become increasingly active as a CLE provider in recent years. It organizes one or two day seminars in the *raions*. In 2006, for instance, the SCJ held over 50 such seminars for judges throughout the country. These events are typically funded from the SCJ budget, although donors have sometimes funded or co-funded the CLE seminars. In the majority of cases, the SCJ counts on its own resources to carry out such trainings.

Through December 31, 2007, the law does not explicitly require judges to participate in CLE as a condition of continued judicial employment, but merely “to improve their legal knowledge.” LSJ art. 15(4). In addition, Rule 8 of the Judicial Code of Ethics provides that judges “shall constantly improve their professional skills.” Because professional incompetence can be a basis for removal from office, judges may have some incentive to engage in such study. See LSJ art. 25(1)(e), as amended by 2006 AMENDMENTS art. II(23). Furthermore, judges are generally required to pass an attestation examination every three years, which enables the Qualification Board to determine whether the judge’s professional knowledge is adequate for the position and qualification degree he/she holds. See LBQAJ arts. 23(2), 25(2); LSJ art. 13(1). Nevertheless, some judges reportedly devote little or no effort to maintaining or improving their professional knowledge, in part because of their heavy workloads. Others, including several recently appointed judges, said that they take advantage of every opportunity to attend CLE seminars. Although judges must generally request to participate in CLE, the SCM may require judges to do so in subjects where they have committed errors.

Effective January 1, 2008, judges will be required to complete at least 40 hours of CLE annually. LNIJ arts. 19(2), 22(2). Furthermore, they will have a right to receive CLE free of charge. *Id.* art. 19(2); LSJ art. 14(4), as amended by 2006 AMENDMENTS art. II(13). One of the important functions of the NIJ (see Factor 1 above) will be to provide CLE for judges and prosecutors, in accordance with an annual program approved by the NIJ’s Council. LNIJ arts. 4(1)(c), 19(1). By the end of each July, the NIJ will have to advise judges and prosecutors of the subjects that will be offered for the academic year. Judges will have an option to choose to satisfy the 40-hour requirement from among any of the subjects offered, and will need to notify the NIJ of their choices by October. *Id.* art. 19(1)-(2).

Most interviewees praised the law establishing the NIJ, although they acknowledged that the institution’s effectiveness will depend on implementation of the law and the leadership and faculty of the NIJ. Although the NIJ had a Council when the JRI interviews were conducted, it did not then have premises, an executive director, or other staff. Since then, the NIJ has been given premises, an executive director has been appointed, and levels of salaries for its employees have been determined.

Factor 4: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally.

Conclusion

Correlation: Positive

Trend: ↔

Most of the major ethnic minorities are reasonably well represented in the judiciary, there appears to be no discrimination on the basis of religion, and women constitute roughly 33% of all judges, including 25% of those in leadership roles.

Analysis/Background:

The Constitution guarantees all citizens equality before the law and public authorities, without discrimination on the basis of race, nationality, ethnic origin, language, religion, sex, political choice, personal property, or social origin. CONST. art. 16(2). No legislation relating to the judiciary discriminates against ethnic or religious minorities or on the basis of gender.

Moldova is a multi-ethnic state, with Moldovans, Ukrainians, Russians, Găgăuz, Romanians, Bulgarians, and other ethnicities. The following table compares ethnic groups in the population at large¹³ with those in the judiciary:

ETHNIC GROUPS IN POPULATION AT LARGE AND IN THE JUDICIARY, %

Nationality	Population	Judiciary
Moldovans	75.8	90.5
Ukrainians	8.4	3.6
Russians	5.9	2.6
Grgruz	4.4	2.1
Romanians	2.2	-
Bulgarians	1.9	1.2
Other nationalities or undeclared	1.4	-

¹³ These statistics are not entirely comparable. Those for the population at large exclude the raions on the left bank of the Nistru River and Bender, whereas those for the judiciary also exclude such raions, but include Bender.

Source: BIROUL NATIONAL DE STATISTICĂ AL REPUBLICII MOLDOVA, MOLDOVA ÎN CIFRE: BREVIAI STATISTIC 2006 [NATIONAL OFFICE OF STATISTICS OF THE REPUBLIC OF MOLDOVA, MOLDOVA IN NUMBERS: A STATISTICAL SUMMARY 2006] 11 (2006) [hereinafter MOLDOVA STATISTICAL SUMMARY] (citing October 2004 census data); Data compiled by the ABA ROL Initiative based on information provided by the SCM (Nov. 2006).

Most of the major ethnic minorities are represented in the judiciary, although the percentage of ethnic Ukrainian, Russian, and Găgăuz judges is less than half their percentages in the population at large.

There is considerable uniformity as to religion in Moldova, with 93.3% of the population identifying themselves as Orthodox Christians. MOLDOVA STATISTICAL SUMMARY 11. Statistics on the religions of judges are not available, but interviewees believed that the vast majority of judges were Orthodox Christians.

Interviewees generally stated that there is no discrimination on ethnic or religious grounds, with all major ethnic groups represented in the judiciary. “We’re all Moldovan citizens,” one explained. There are no Roma judges, however. A member of the SCM interviewed by the assessment team did not know if any Roma candidates had ever applied, perhaps because few Roma have law degrees. Several interviewees also identified the situation in Găgăuzia, where the Găgăuz people comprise more than 80% of the population, as problematic. They said that there were a number of judges who were not fluent in the state language. For instance, as of September 2006, in the Comrat Court of Appeal (in the capital of Găgăuzia), three judges were ethnic Găgăuz and not fluent in the state language, and one was ethnic Moldovan. In the Comrat District Court, however, as of January 2007, two judges were ethnic Moldovans, two ethnic Ukrainians, and there were two vacancies. The question of religion is less clear, with some judges admitting that they did not know the religions of other judges.

As of January 1, 2006, an estimated 52.1% of the population were women and 47.9% were men. See MOLDOVA STATISTICAL SUMMARY 9. According to statistics provided by the SCM to the assessment team in November 2006, women comprise 139 of 420 judges, or 33.1% in the judiciary as a whole. In the SCJ, however, 19 of 40 judges, or 47.5%, are women. These statistics also show that among court presidents and vice presidents, 21 of 84 judges, or 25%, are women. As of January 1, 2007, there were 4 male and 2 female judges on the Constitutional Court (excluding assistant judges).

Although one interviewee noted (correctly) that women are underrepresented as judges, most thought that the proportion of female judges approximated the proportion of women in the population at large. One female judge said that she experienced no problems on account of her gender, and that there are fewer objections to women judges than to men judges. It may well be that the absence of perceived discrimination based on gender resulted in the perception that women are adequately represented in the judiciary. Similarly,



although women fill only 25% of leadership positions in the courts, as presidents or vice presidents, interviewees did not perceive a disparity. Perhaps this perception was due in part to the fact that, until November 2006, when amendments to the law prohibited the two highest leadership positions in the court system being held by the same person (LSCM art. 5(3), as amended by 2006 AMENDMENTS art. III(2)), the positions of president of the SCJ and president of the SCM were held by a woman, Mrs. Valeria Șterbeț.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

A judicial organ has the power to determine the ultimate constitutionality of legislation and official acts, and such decisions are enforced.

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↔</i>
The Constitutional Court has the power to determine the constitutionality of laws and certain categories of normative acts. Some believe that the Court may avoid addressing difficult issues and may be subject to occasional political pressure. Almost all the Court's decisions are being enforced.		

Analysis/Background:

The Constitution is the supreme law in Moldova, and no law or other legal act contrary to the Constitution has any legal effect. CONST. art. 7. The Constitutional Court is the “sole authority of constitutional jurisdiction” in Moldova, is formally outside any governmental branch, and “is independent of any other public authority and obeys only the Constitution.” *Id.* art. 134(1)-(2); LCC art. 1(1)-(2). Its jurisdiction includes ruling on the constitutionality of laws and decisions of Parliament, Presidential decrees, decisions and orders of the Government, and international treaties to which Moldova is a party. CONST. art. 135(1). The Constitutional Court’s jurisdiction to review normative acts is limited to those adopted after August 27, 1994, the date when the Constitution entered into force. LCC art. 31(2); see also CONST. Title VII, art. 1(2). Laws and regulations become void as soon as the Constitutional Court holds them to be unconstitutional, and the Court’s judgments, decisions, and advisory opinions are final and cannot be appealed. CONST. art. 140; LCC art. 26(5). They become effective on the date of adoption or, in the Court’s discretion, the date of their publication in M.O. or such other date as the court may specify. LCC art. 26(5). Since 1995, the Court has considered

most articles of the Constitution. See, e.g., CURTEA CONSTITUȚIONALĂ A REPUBLICII MOLDOVA, 10 ANI DE ACTIVITATE [CONSTITUTIONAL COURT OF THE REPUBLIC OF MOLDOVA, TEN YEARS OF ACTIVITY] 66-222 (2005) [hereinafter CONSTITUTIONAL COURT, TEN YEARS].

Access to the Constitutional Court is limited. Only the President of Moldova, the Government, the Minister of Justice, the SCJ, the Economic Court of Appeal, the Prosecutor General, a parliamentary deputy, a parliamentary bloc, the Parliamentary Advocate (ombudsman), and the People's Assembly of Găgăuzia can apply to the Constitutional Court. LCC art. 25; LSCJ art. 16(b); LEC art. 20(1)(a). Individuals cannot apply to the Court directly, nor can the Court take up an issue on its own accord.

If during trial a party questions the constitutionality of a relevant normative act and the trial court concurs, it will suspend further consideration of the case and request that the SCJ refer the issue to the Constitutional Court. CIVIL PROCEDURE CODE art. 12(2), Law No. 225-XV of May 30, 2003, M.O. No. 111-115/451 of Jun. 12, 2003, *last amended by* Law No. 244-XVI of Jul. 21, 2006, M.O. No. 178-180/814 of Nov. 17, 2006 [hereinafter CIV. PRO. CODE]; CRIMINAL PROCEDURE CODE art. 7(3), Law No. 122-XV of Mar. 14, 2003, M.O. No. 104-110/447 of Jun. 7, 2003, *last amended by* Law No. 387-XVI of Dec. 8, 2006, M.O. No. 203-206/975 of Dec. 31, 2006 [hereinafter CRIM. PRO. CODE]; see also CONST. art. 135(1)(g). The Plenum of the SCJ will then examine the issue and decide whether to submit it to the Constitutional Court for resolution. LSCJ art. 16(b). In practice, the SCJ forwards to the Constitutional Court only a couple of such petitions each year (for example, there was only one such case in 2006).

An amendment to the Civil Procedure Code in 2006 also allows courts to suspend the proceedings in civil cases and submit an application directly to the Constitutional Court when a legal provision that will be applied appears to violate the Constitution (or when such a provision has already been applied, e.g., when the court is considering an appeal or cassation). See CIV. PRO. CODE art. 12/1. Some judges who were interviewed expressed concern, however, that the Constitutional Court could refuse to accept such cases, because art. 135(1)(g) of the Constitution may limit the Court's jurisdiction to cases referred by the SCJ. If this happens, the Constitution would have to be amended in order for this provision to be effective.

An explanatory decision of the SCJ instructs any court of law to apply the Constitution directly when a law adopted before August 27, 1994 – to which the Constitutional Court's jurisdiction does not extend – contains provisions that contradict the Constitution. The court must, however, notify Parliament and the SCJ of its action. DECISION OF THE PLENUM OF THE SCJ No. 2 of Jan. 30, 1996, para. 2, *as amended by* DECISION OF THE PLENUM OF THE SCJ No. 38 of Dec. 20, 1999. Courts may also apply constitutional provisions directly when they do not contemplate adoption of other laws for their application. *Id.*

The following table provides information about the activity of the Constitutional Court since 1995, when it was created:



ACTIVITY OF THE CONSTITUTIONAL COURT, 1995-2005

Year	Petitions Filed	Petitions Rejected	Petitions Decided	Normative Acts Held Unconstitutional
1995	36	7	12	5
1996	28	6	20	5
1997	64	3	33	24
1998	71	15	37	17
1999	139	41	73	53
2000	90	37	39	21
2001	72	35	29	13
2002	51	21	19	15
2003	40	16	12	2
2004	27	13	14	4
2005	4	2	1	–
2006	30	11	11	2
Total	652	207	300	161

Source: CONSTITUTIONAL COURT, TEN YEARS 64; CONSTITUTIONAL COURT DECISION ON APPROVING THE REPORT ON EXERCISING CONSTITUTIONAL JURISDICTION IN 2006 (Constitutional Court Decision No. 1, Jan. 12, 2007).

One interviewee commented that the Constitutional Court has 6 judges, with 6 assistant judges, and “in this sea of judges” the Court decided only 16 cases in 2005, and avoided deciding others by characterizing the issues raised as procedural. (In fact, according to the Court’s official statistics, only 4 petitions were filed, and only one was decided, in 2005.) Other interviewees agreed that the Court sometimes avoids difficult issues by calling them procedural. Between 1995 and 2005, for example, the Court rejected 196 of 622 petitions filed (31%), compared to 2003-2005, when the Court rejected 31 out of 71 petitions (44%). See CONSTITUTIONAL COURT, TEN YEARS 64. This is not, however, a recent development, but began in about 2000. In 2000-2002, the Court rejected 93 of 213 petitions (44%). See *id.* In response to criticisms about the Court’s declining caseload, one interviewee noted that the importance of the Constitutional Court cannot be measured by the number of cases it decides. The interviewee argued that the Court is still necessary, just as firefighters are necessary even if there happens to be no fire.

Some interviewees suggested that better use of the Court’s potential could be made if citizens could address the Constitutional Court directly. In 2005, the Constitutional Court proposed legislation to amend the Constitution to allow citizens to address the

Court directly, but Parliament did not pass it. In 2006, the Minister of Justice requested that the Constitutional Court interpret the Constitution to allow Parliament to authorize the Court to hear petitions from persons alleging that their rights and freedoms under the European Convention on Human Rights had been violated. He argued that this would satisfy Moldova's obligation under art. 13 of the European Convention on Human Rights to provide an effective domestic remedy for those whose rights and freedoms are violated. The Court, however, rejected the petition on procedural grounds. CONSTITUTIONAL COURT DECISION ON THE REQUEST FOR AN INTERPRETATION OF ARTICLE 135 OF THE CONSTITUTION OF THE REPUBLIC OF MOLDOVA (DECISION of Dec. 4, 2006, M. O. No. 189-192/16 of Dec. 15, 2006).

Some interviewees also criticized the Court as being susceptible to political influence. One averred that the Court issued more important decisions before 2001, an apparent reference to the year in which the Party of Communists of the Republic of Moldova won a majority of the seats in Parliament. Nevertheless, in 2006 the Constitutional Court declared that a decision of the Government creating a National Committee for Adoption was unconstitutional. CONSTITUTIONAL COURT DECISION No. 11 of Jun. 27, 2006, M.O. No. 102-105/11 of Jul. 7, 2006. This suggests that the Court may be more independent than some of its critics have charged.

The enforcement of Constitutional Court decisions frequently requires modification or repeal of an unconstitutional law. Before July 18, 2002, when amendments to the LCC came into force, there was no mechanism for the enforcement of the Constitutional Court's judgments, and the only sanction for non-enforcement was a small fine of up to 25 minimum salaries (MDL 450 or USD 34)¹⁴. See CONSTITUTIONAL JURISDICTION CODE art. 82(1)(c), Law No. 502-XIII of Jun. 16, 1995, M.O. No. 53-54/597 of Sep. 28, 1995, *last amended by* law No. 141-XV of Mar. 21, 2003, M.O. No. 70-72/318 of Apr. 15, 2003 [hereinafter CJC]. Now, public authorities have clearly defined responsibilities for execution of those judgments. For example, within 3 months after publication of a Constitutional Court decision, the Government must present Parliament with a draft law to amend or repeal the unconstitutional normative act, and Parliament must consider the draft law on a priority basis. LCC art. 28/1. In addition, both the President and the Government are obligated to amend or annul any of their normative acts declared unconstitutional within 2 months after publication of the Court's decision. *Id.* The Constitutional Court's Secretariat is responsible for monitoring enforcement of the Court's decisions. CJC art. 76. The situation regarding execution of the Court's decisions has improved significantly since 2001. An interviewee estimated that, at that time, more than 70% of Constitutional Court

¹⁴When the JRI interviews were conducted in September 2006, the minimum salary for the purpose of calculating fines was MDL 18 (USD 1.36). LAW ON ESTABLISHING AND REEXAMINATION OF MINIMUM SALARY arts. 4(2), 5, Law No. 1432-XIV of Dec. 28, 2000, M.O. No. 21-24/79 of Feb. 27, 2001. Unless otherwise noted, in this report Moldovan lei [hereinafter MDL] are converted to their approximate equivalent in U.S. dollars [hereinafter USD] at the rate of exchange when the JRI interviews were conducted (USD 1.00 = MDL 13.25).



decisions had not been complied with, but 5 years later, when the interviews were conducted for this assessment, most Constitutional Court decisions had been complied with. The interviewee attributed improvements in execution of the Court's decisions to its persistence in pressing Parliament to take action.

Factor 6: Judicial Oversight of Administrative Practice

The judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists.

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↔</i>
The judiciary has the power to review administrative acts or failures to act and generally exercises that power. Although there may be delays in enforcing judgments in such cases, judgments are reportedly paid more readily than in the past, except on the local level.		

Analysis/Background:

The Constitution provides that, if a public authority violates any person's rights either through an administrative ruling or failure to respond to a petition, that person is entitled to "acknowledgment of those rights, cancellation of the ruling, and payment of damages." CONST. art. 53(1). Moldova does not have special administrative courts; instead, the district courts, the courts of appeal, and the SCJ have jurisdiction to review administrative acts or failures to act. LAW ON ADMINISTRATIVE REVIEW art. 6(1), Law No. 793-XIV of Feb. 10, 2000, M.O. No. 57-58/375 of May 18, 2000, *last amended by* Law No. 270-XVI of Jul. 28, 2006, M.O. No. 126-130/645 of Aug. 11, 2006 [hereinafter LAR]. In general, district courts have first instance jurisdiction over administrative acts of villages and towns; and courts of appeal have first instance jurisdiction over administrative acts of *raions*, municipalities, and autonomous territorial units. *Id.* arts. 7(1), 8(1). As of November 17, 2006, the Chişinău Court of Appeal also has first instance jurisdiction over administrative acts of Parliament, the President of Moldova, or the Government.¹⁵ CIV. PRO. CODE art. 33, *as amended by* LAW ON AMENDING AND COMPLETING THE CIVIL PROCEDURE CODE, Law No. 244-XVI of Jul. 21, 2006, M.O. No. 178-180/814 of Nov. 17, 2006. The courts of appeal review judgments of district courts by cassation, and the SCJ reviews judgments of courts of appeal by cassation. LAR arts. 8(7), 10(3). Among the exclusions from judicial review are "exclusively political acts" of Parliament, the President, or the Government; decrees and orders of the President or the Government as part of specified official duties; international treaties, which are subject to review by

¹⁵ The SCJ had first instance jurisdiction over these cases prior to that date. Although the LAR has not been amended to reflect this change, in practice the SCJ follows the provisions of the Civil Procedure Code because, in this case, under Moldovan legal doctrine, the most recent law prevails.

the Constitutional Court; appointment or removal of certain public officials; acts of a diplomatic nature relating to foreign policy; strictly military acts relating to the armed forces; and acts relating to national security. *Id.* art. 4.

Before bringing an action for judicial review, anyone who believes that an administrative act violated his/her rights must generally file a preliminary petition with the responsible public authority or a hierarchically superior body, either of which must respond within 30 days. *Id.* arts. 14, 15, 16(1). If the public authority or hierarchically superior body does not respond within this period or if the aggrieved party is not satisfied with the response, he/she may lodge a petition with the appropriate court. *Id.* art. 16(1). The court's authority to review administrative acts includes the power to annul such acts in whole or in part; to require public authorities to comply with the applicant's request, deliver a certificate or other document, or expunge the record of an administrative infraction; and to award damages for delay in enforcing a decision or for the consequences of an illegal administrative act, including failure to respond to a preliminary petition. *Id.* art. 25(1)(b), (3). Final judgments are sent to the relevant public authority for execution. *Id.* art. 32. The head of the public authority can be fined for failing to execute the judgment in a timely manner. *Id.* See also Factor 9 below.

Interviewees reported that courts generally use their power to review administrative acts, although resolution of such matters may be protracted. The LAR requires the establishment of specialized colleges within the courts of appeal and the SCJ (see art. 6(2)), but several interviewees noted that this has not yet occurred. One asserted that, because reviewing administrative acts does require specialized knowledge, establishment of such colleges could lead to better and more efficient review of administrative acts. Another shortcoming that several interviewees mentioned is the lack of a code governing procedure in cases involving review of administrative acts. Enforcement of judgments can also be a concern, although the situation is starting to improve. In 2003, a judgment in an administrative review case might not have been satisfied for 3 or 4 years. Because the European Court of Human Rights [hereinafter ECHR] held that such a period was too long, judgments are now reportedly paid within a year, except for judgments against local authorities, where, according to interviewees, 3-5 year delays persist.

Factor 7: Judicial Jurisdiction over Civil Liberties

The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.

Conclusion

Correlation: Positive

Trend: ↔

The courts have jurisdiction over cases involving civil rights and liberties and generally do an adequate job of exercising that jurisdiction.



Analysis/Background:

The Constitution guarantees Moldovan citizens and, except as otherwise provided by law, aliens and stateless persons (see art. 19(1)), a wide range of civil, social, economic, and political rights and freedoms. Among the civil rights relating to the legal system are the right of defense (see art. 26), the presumption of innocence (see art. 21), and a prohibition against retroactive crimes and punishments (see art. 22). The Constitution also prohibits capital punishment, torture, and cruel, inhuman, or degrading punishment or treatment (see art. 24(2)-(3)). It guarantees equality before the law and public authorities, without regard to race, nationality, ethnic origin, language, religion, sex, political affiliation, property, or social origin (see art. 16(2)). Moldovan citizens are entitled to freedom of conscience and expression (see arts. 31, 32), the inviolability of their domiciles (see art. 29), and the privacy of their correspondence (see art. 30). Social rights include the right to education (see art. 35), health security (see art. 36), social assistance (see art. 47), and a safe and healthy environment (see art. 37). Economic rights include the rights to possess private property, free of expropriation, except for public necessity and upon payment of reasonable compensation in advance (see art. 46). Other economic rights include the right to choose one's employment (see art. 43(1)), to have safe working conditions (see art. 43(2)), to be protected against unemployment (see art. 47(2)), to establish and join trade unions (see art. 42), to bargain collectively (see art. 43(4)), and to strike (see art. 45). Political rights include the right to vote (see art. 38(2)), to be elected to public office (see art. 38(3)), to participate in the administration of public affairs (see art. 39), and to petition public authorities (see art. 52). The Constitution also guarantees freedom of assembly (see art. 40) and political association (see art. 41), as well as access to information of public interest, subject to national security considerations (see art. 34).

These individual rights and freedoms are not always respected, however. According to Freedom House, "Notwithstanding this comprehensive and liberal framework, Moldovan citizens too often see their constitutionally guaranteed rights challenged." NIT 2006, at 436. Noting that, although Moldova generally respects human rights, the United States Department of State reported the following human rights violations in 2005: cruel and degrading arrest and interrogation methods; cruel, inhuman, or degrading treatment of detainees or prisoners; harsh conditions in most prisons; illegal searches and wiretaps; discrimination against minority religions; discrimination against Roma; restrictions on freedom of assembly; and harassment of political opponents. U.S. DEPARTMENT OF STATE, *Moldova*, in COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2005 (Mar. 8, 2006). In a survey of about 300 judges, prosecutors, and lawyers, 31% responded that the rights of the accused are respected in Moldova; 6.2% believed that such rights were never respected, and 60.7% believed that they were often violated. INSTITUTUL DE REFORME PENALE, CRIMINAL JUSTICE & HUMAN RIGHTS 5, 9 (2004) [hereinafter CRIMINAL JUSTICE & HUMAN RIGHTS]. The most commonly reported violations were of the right not to be subject to torture, threats, and other inhuman or

degrading treatment (60.7%), and the right to defense (26.2%). *Id.* at 9-10. Furthermore, 78.6% of respondents believed that innocent people are convicted of crimes, primarily because of false confessions resulting from unlawful detention methods. *Id.* at 16-17. A special parliamentary commission in late 2005 found violations of human rights and freedoms due to delays in case examination of persons held in pretrial detention in Chişinău, particularly defendants being tried in the Buiucani District Court. See DECISION OF PARLIAMENT No. 370-XVI of Dec. 28, 2005, M.O. No. 5-8/54 of Jan. 13, 2006.

All citizens have the right to resort to the courts to protect their rights and freedoms, and no law may restrict access to justice. CONST. art. 20. Moldovan courts specifically have jurisdiction over all cases involving civil rights and freedoms. See LOJ art. 4(1). Furthermore, the Constitution provides that justice shall be administered only by courts of law, that is, by the SCJ, the courts of appeal, and the district courts. See arts. 114, 115(1). Although specialized courts may be established with jurisdiction over certain categories of cases, such as the economic courts, extraordinary courts are forbidden. *Id.* art. 115(2)-(3); LOJ art. 15(3).

Military courts are specialized courts that are an integral part of the judicial system, responsible for administering justice within the armed forces. LMC art. 1. Their jurisdiction is primarily limited to criminal offenses committed by members of the armed forces and claims by civilians for compensation of damages caused by the military. *Id.* art. 4; CRIM. PRO. CODE art. 37. Although the Criminal Procedure Code provides that “other persons for whom there are special legal provisions” are also subject to criminal prosecution in the Military Court (see art. 37(4)), no law subjecting civilians to the jurisdiction of the Military Court exists. Decisions of the Military Court are reviewable by the criminal or civil colleges of the courts of appeal (in practice, this function is exercised by the Chişinău Court of Appeal) and the SCJ, which function as appellate or cassation courts within the military court system. LMC arts. 5(2), 16(1), 17.

Although the legal framework for protection of civil rights and liberties appears adequate, in practice, the protection of these rights is hindered by delays in litigation, citizens’ lack of awareness of their rights, and their inability to pay the costs of litigation. During criminal investigations and trials, suspects and defendants who cannot afford representation by an advocate (i.e., by a licensed member of the Bar) are entitled to representation by one “appointed *ex officio*.” See CONST. art. 26(3). Advocates must represent such suspects or defendants upon the request of criminal investigative bodies and courts. LAW ON THE LEGAL PROFESSION art. 46(1), Law No. 1260-XV of Jul. 19, 2002, M.O. No. 126-127/1001 of Sep. 12, 2002, *last amended by* Law No. 215-XVI of Jul. 13, 2006, M.O. No. 126-130/611 of Aug. 11, 2006. Although *ex officio* advocates are entitled to compensation from the state, the amount is inadequate and they receive no payment for time devoted to research or investigation. See MOJ REGULATION ON THE AMOUNT AND MANNER OF REMUNERATING *EX OFFICIO* ADVOCATES FOR



PROVIDING LEGAL ASSISTANCE AT THE REQUEST OF CRIMINAL INVESTIGATION BODIES AND FIRST INSTANCE COURTS art. 6 Mar. 31, 2003, M.O. No. 97-98/137 of May 31, 2003. As a result, the quality of *ex officio* representation suffers. MOLDOVA LPRI at 31-32. Because the number of people in Moldova who cannot afford an advocate is large, many suspects and defendants may be unable to protect their civil rights adequately in criminal investigations and trials. In a survey of 1,000 defendants held in preventative detention in 4 prisons throughout Moldova, almost 80% responded that *ex officio* advocates provided inadequate defense. CRIMINAL JUSTICE & HUMAN RIGHTS 49, 83. The reasons the respondents gave were: lack of interest on the part of *ex officio* advocates in securing an acquittal (51.5%); low remuneration for their services (31.5%); and poor professional level of advocates (17%). *Id.* These survey results are consistent with the experience of the Bar, which reportedly receives many complaints about the quality of *ex officio* representation.

Interviewees mentioned several high-profile cases they believed were politically motivated as examples of the difficulties involved in protecting civil rights in the courts. For example, in September 2006, Ghenadie Braghiș, the Sales Director for a Chișinău-based television station, was arrested and charged with accepting a USD 1,000 bribe to broadcast an advertisement on the station. This television station had earlier reported allegations of a falsified diploma held by the Minister of Internal Affairs, Gheorghe Papuc. The charges were later dropped because of lack of evidence. A second example is the prosecution of former Defense Minister Valeriu Pasat in the Chișinău Centru District Court for allegedly defrauding the state by selling 21 MiG-29 jet fighters to the United States in 1997 for less than their market value. RAFFAELLA MURANO, FOREIGN POLICY CENTRE, POLITICAL ABUSE OF JUDICIAL PROCESS IN EUROPE'S EAST: A NEW SECURITY THREAT? 4-6 (2005), available at <http://fpc.org.uk/fsblob/530.pdf> [hereinafter POLITICAL ABUSE OF JUDICIAL PROCESS]. In January 2006, Pasat was sentenced to 10 years imprisonment, following a 6-month trial behind closed doors, in which the court refused to receive depositions from the person who had served as the U.S. Ambassador in 1997 and the U.S. official who had negotiated the transaction.¹⁶ E. Wayne Merry, *America Abandons a Friend*, WASHINGTON POST, Feb. 25, 2006, at A17. Facts suggesting that the Pasat case was politically motivated include his criticism of the ruling Party of Communists of the Republic of Moldova, his support for the party Democratic Moldova, and his arrest just before the parliamentary elections in March 2005. POLITICAL ABUSE OF JUDICIAL PROCESS 5-6.

The constitutional guarantees of human rights and freedoms should be interpreted and implemented in accordance with the Universal Declaration of Human Rights and other conventions and treaties to which Moldova is a party. CONST. art. 4(1). In the event of a conflict between Moldovan law and such conventions and treaties, the

¹⁶ In October 2006, the Chișinău Court of Appeal reversed Pasat's conviction, after reviewing statements from the U.S. witnesses, but upheld his conviction on a lesser charge of negligently failing to supervise his deputy in the sale of Uragan rockets to a Slovak company.

conventions and treaties prevail. *Id.* art. 4(2); CRIM. PRO. CODE art. 7(2). Indeed, if provisions of an international treaty conflict with the Constitution, the Constitution must be amended to conform to the treaty. CONST. art. 8(1).

Perhaps the most important of these treaties and conventions is the European Convention for the Protection of Human Rights and Fundamental Freedoms, which Moldova ratified in 1997, together with Protocols No. 1-8 and 11. EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, Nov. 4, 1950, *ratified by* DECISION OF PARLIAMENT No. 1298-XIII of Jul. 24, 1997, M.O. No. 54-55/502 of Aug. 21, 1997 [hereinafter EUROPEAN CONVENTION]. Moldova subsequently ratified Protocols No. 13 and 14. LAW ON RATIFYING THE 13TH PROTOCOL TO THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ON ABOLITION OF THE DEATH PENALTY, Law No. 272-XVI of Jul. 29, 2006, M.O. No. 126-130/649 of Aug. 11, 2006; LAW ON RATIFYING THE 14TH PROTOCOL TO THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ON AMENDING THE CONTROL SYSTEM OF THE CONVENTION, Law No. 130-XVI of Jun. 23, 2005, M.O. No. 95-97/452 of Jul. 15, 2005. As a result, Moldovan courts should apply the European Convention directly when deciding cases. As an SCJ decision explained, “while considering cases, the courts of law are to verify if the law or act that is to be applied and regulates the rights and freedoms guaranteed by [the European Convention] is compatible with its provisions, and in case of incompatibility, the court will directly apply the Convention’s provisions, mentioning that fact in its judgment.” DECISION OF THE PLENUM OF THE SCJ ON APPLYING IN JUDICIAL PRACTICE SOME PROVISIONS OF THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS BY COURTS OF LAW, Decision No. 17 of Jun. 19, 2000, BULLETIN OF THE SCJ, No. 1 2003, at 8.

Over the years, the European Convention has been a frequent subject of continuing education for judges in Moldova, but the extent to which judges apply it in practice is uncertain. One interviewee said that judges need more training on the European Convention. Another went further, claiming that some judges do not even know that Moldova is a party to the European Convention and have not heard of the ECHR. A third suggested that one reason judges do not often apply the European Convention in their decisions is that few advocates are knowledgeable about it and therefore rarely make arguments based on it. A human rights lawyer argued that the European Convention has little influence on the activity of judges. In support of this statement, he noted that judges have not changed their practices to conform to the principles enunciated in three recent ECHR judgments against Moldova. The first of these judgments held that an arrest warrant must include the facts supporting its issuance and addressing any issues raised by the defense. See *Șarban v. Moldova*, No. 3456/05, §§ 99-104, Oct. 4, 2005. The second judgment held that a new arrest warrant must be issued when a case file is transmitted for examination, because under Moldovan law, transmittal suspends the prior arrest warrant. See *Boicenco v. Moldova*, No. 41088/05, §§ 148-54, Jul. 11, 2006. The third judgment held that revision of a final, non-appealable civil judgment pursuant to extraordinary review procedures,

absent substantial and compelling circumstances, violates the European Convention. See *Roșca v. Moldova*, No. 6267/02, §§ 25, 29, Mar. 22, 2005 [hereinafter *Roșca v. Moldova*]. On the other hand, one interviewee believed that reliance upon international standards is becoming more common. In fact, some judges who were interviewed appeared quite knowledgeable about the European Convention and its applicability to their cases. One said that the judges in his court discuss ECHR judgments in their meetings, and that they have radically changed the court’s decisions in various areas as a result.

Any person, nongovernmental organization, or group of individuals whose rights under the European Convention have been violated by Moldova may appeal to the ECHR in Strasbourg, following exhaustion of all domestic remedies. EUROPEAN CONVENTION arts. 34, 35(1). Moldovans have, in fact, increasingly availed themselves of the opportunity to lodge an application with the ECHR—both in terms of the number of applications lodged and as the percentage of total applications lodged with the ECHR, as the following table demonstrates:

APPLICATIONS LODGED IN THE ECHR¹⁷

Year	Applications Lodged		Percentage of Total
	Moldova	Total	
2000	125	30,069	0.42
2001	212	31,228	0.68
2002	253	34,509	0.73
2003	357	38,810	0.92
2004	441	44,128	1.00
2005	583	45,500	1.28
2006	621	47,733	1.30

Source: ECHR, SURVEY OF ACTIVITIES 2002 at 33; SURVEY OF ACTIVITIES 2003 at 36; SURVEY OF ACTIVITIES 2004 at 37; SURVEY OF ACTIVITIES 2005 at 35; SURVEY OF ACTIVITIES 2006 at 40, 47.

Furthermore, the number of cases in which the ECHR found a violation of the European Convention by the Moldovan authorities has increased dramatically in recent years. From one such case in 2001, none in 2002 and 2003, the number rose to 10 in 2004, 13 in 2005, and 20 in 2006. ECHR, SURVEY OF ACTIVITIES 2001 at 36; SURVEY OF ACTIVITIES 2002 at 29; SURVEY OF ACTIVITIES 2003 at 32; SURVEY OF ACTIVITIES 2004 at 33; SURVEY OF

¹⁷ This table is based on reports that sometimes include provisional statistics. When statistics for a given year are revised in subsequent reports, the most recent statistics were used.

ACTIVITIES 2005 at 31; SURVEY OF ACTIVITIES 2006 at 42. As discussed above, judgments against Moldova have involved issues such as non-enforcement of judgments, failure to include the grounds for arrest in an arrest warrant, arrest without an arrest warrant, and reopening a judicial proceeding without sufficient reason. The spate of recent adverse judgments has prompted a number of responses. One is that the Prosecutor General asked the SCJ to revise at least one Moldovan judgment decided pursuant to extraordinary review procedures under the Civil Procedure Code (see Factor 8 below), after an application was lodged in the ECHR. See *Roșca v. Moldova*. Finally, Parliament amended the Law on the Government Agent and the LSJ to impose liability on judges whose decisions result in adverse judgments, including ECHR judgments. LAW ON THE GOVERNMENT AGENT art. 17(1)-(2), Law No. 353-XV of Oct. 28, 2004, M.O. No. 208-211/932 of Nov. 19, 2004, *last amended by* Law No. 48-XVI of Mar. 9, 2006, M.O. No. 58-62/238 of Apr. 14, 2006 [hereinafter LAW ON THE GOVERNMENT AGENT]; LSJ art. 21/1, *as amended by* 2006 AMENDMENTS art. II(18). See also Factor 16 below for analysis of these amendments.

Factor 8: System of Appellate Review

Judicial decisions may be reversed only through the judicial appellate process.

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↓</i>
<p>Judicial decisions may be reversed only through the judicial appellate process. The ECHR has held in cases against Moldova that certain extraordinary review procedures may violate the principle of the legal certainty and lead to liability under the European Convention.</p>		

Analysis/Background:

The Constitution guarantees the right to appeal judicial decisions: “The parties involved in a case and the state authorities may appeal against decisions pronounced in courts of law in accordance with law.” See art. 119; see also LOJ art. 20(2). Furthermore, because only courts of law can administer justice, judicial decisions can be reversed only by the judicial appellate process. See CONST. art. 114. Interviewees confirmed that these provisions are applied in practice.

The Civil Procedure Code and the Criminal Procedure Code specify procedures for review of judicial decisions. Review may be either ordinary or extraordinary. Ordinary review of a decision is either by appeal (*apel*), in which the reviewing court may reevaluate the facts (including receiving new evidence) and the application of the law to the facts, as well as review compliance with procedural requirements; or by cassation



(*recurs*), in which the reviewing court may generally consider only the application of the law to the facts as found by the lower instance court.¹⁸ CRIM. PRO. CODE arts. 38(2)-(3), 39(2), 400, 420, 437; CIV. PRO. CODE arts. 357, 397, 429.

Moldova has a three-tier system of courts, consisting of district courts, courts of appeal, and the SCJ. A court of appeal may review first instance decisions of the district courts, including the Military Court, by appeal or cassation. CRIM. PRO. CODE art. 38(2)-(3); CIV. PRO. CODE art. 358(1); LMC art. 17(b)-(c). The Economic Court of Appeal reviews first instance decisions of the Economic Circuit Court by appeal. CIV. PRO. CODE art. 358(2). The SCJ reviews decisions of the courts of appeal, including the Economic Court of Appeal, by cassation. CRIM. PRO. CODE arts. 420, 437; CIV. PRO. CODE arts. 397, 429. The courts of appeal review administrative judgments of district courts by cassation, and the SCJ reviews such judgments of courts of appeal by cassation. LAR arts. 8(7), 10(3).

Judgments may also be subject to extraordinary review, that is, after the period for ordinary review has passed and the decision has become final, by a request for annulment or revision. CRIM. PRO. CODE arts. 39(3), 452, 458; CIV. PRO. CODE art. 449. The ECHR ruled against Moldova in two cases involving the abuse of extraordinary review procedures. In one, involving the non-enforcement of a 1997 judgment for recovery of a house that Soviet authorities had nationalized during World War II, the defendants sought revision in the Moldovan courts of the unenforced judgment based on supposedly newly discovered information. See *Popov v. Moldova (No. 2)*, No. 19960/04, §§ 7, 9, 10, 15, 16, Dec. 6, 2005. The ECHR held that revision of final judgments could be justified only by “circumstances of a substantial and compelling character.” *Id.* § 45. Because such circumstances were absent, “the revision procedure at issue was, in essence, an attempt to re-argue the case on points which the defendants from the domestic proceedings could have, but apparently did not raise during the proceedings which ended with the final judgment of 5 November 1997.” *Id.* § 52. In the other case, the SCJ, at the request of the Prosecutor General, quashed its own 2001 judgment that was the subject of a pending ECHR case and reinstated the Court of Appeal’s judgment in the applicant’s favor. See *Roșca v. Moldova* §§ 14-15. It was the 2001 annulment of this Court of Appeal judgment that had been the basis for the applicant’s petition to the ECHR. The ECHR held that when the SCJ annulled the Court of Appeal’s judgment in 2001, it had “set at naught an entire judicial process which had ended in a final and enforceable judicial decision and thus [violated the principle of] *res judicata*.” *Id.* § 27. The later reinstatement of the judgment in the applicant’s favor, and acknowledgement by Moldovan authorities of the breach of his rights under domestic law, did not render the applicant’s ECHR application moot, because those actions were insufficient to redress the violation of the European Convention. *Id.* § 21. The ECHR therefore awarded the applicant compensation. *Id.* § 37.

¹⁸ Before the 1996 judicial reforms, the only way to seek review of a judicial decision had been by cassation.

Factor 9: Contempt/Subpoena/Enforcement

Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.

Conclusion

Correlation: Negative

Trend: ↔

Although judges have adequate subpoena and contempt powers, their ability to exercise those powers is limited in practice. Because courts often do not have sufficient funds to send subpoenas by registered mail or sufficient judicial police to serve subpoenas personally, judges often do not know whether a party or witness who does not appear was, in fact, properly summoned. Judges are reluctant to impose sanctions on those who disrupt proceedings, and the shortage of judicial police makes it difficult for judges to maintain order and exclude those who cause disorder. Courts no longer have direct authority over enforcement of judgments, which is now the responsibility of the Department for Execution of Judicial Decisions under the MOJ, and problems with enforcement persist.

Analysis/Background:

A judge (or the presiding judge of a panel) has legal authority to maintain order in the courtroom and to exclude or punish for contempt individuals causing disorder or refusing to comply with the judge's instructions. CIV. PRO. CODE art. 196; CRIM. PRO. CODE art. 334. In civil cases, anyone disturbing a court session is entitled to a warning, and then can be removed from the courtroom for all or part of the session if he/she causes disorder again. CIV. PRO. CODE art. 196(2). The court may also fine him/her up to 10 conventional units¹⁹ (MDL 200 or USD 15) and, if his/her actions constitute a crime, the court may also request that the prosecutor commence a criminal proceeding. *Id.* art. 196(3)-(4). If a prosecutor or an advocate causes disorder, the court may also notify the hierarchically superior prosecutor or the Bar, respectively. *Id.* art. 196(5). In criminal cases, anyone causing disorder or refusing to comply with the judge's instructions may be fined 1-25 conventional units (MDL 20-500 or USD 1.50-37.75). CRIM. PRO. CODE art. 201(1)-(3)(1). The defendant is entitled to be warned about the need to maintain order and follow the judge's instructions, and in the case of repeated violation or "severe deviation from the order," the judge can order the defendant removed and continue the hearing in his/her absence; provided, however, that the sentence in any event must be delivered in the defendant's presence, or he/she must be notified immediately after the sentence is delivered. *Id.* art. 334(2). If a prosecutor or an advocate causes disorder or fails to comply with instructions, the

¹⁹ The Civil Procedure Code and Criminal Procedure Code express fines in "conventional units," each equal to MDL 20 (USD 1.50). Civ. Pro. Code art. 161(2); Crim. Code art. 64(2).



judge may fine him/her and then notify the Prosecutor General or the Bar and the Minister of Justice, respectively. *Id.* art. 334(3).

In practice, the legal authority of judges to maintain courtroom order may mean little. Without judicial police in their courtrooms (see Factor 13 below), judges cannot effectively exclude those who disrupt proceedings. As one judge explained, maintaining order in court depends on how loud the judge's voice is. Fortunately, according to interviewees, disorder during hearings is rare, but can be serious when it does occur. The problem is exacerbated when judges hold hearings in their offices. See Factor 12 below. Another problem is that judges are reportedly reluctant to use their authority to impose sanctions, which is partly attributable to a cumbersome procedure that requires a judge to initiate administrative infraction proceedings by filing a complaint with the police prior to imposing the sanctions.

Judges have ample legal authority in both civil and criminal cases to compel the attendance of witnesses and require the production of documents or other evidence. A witness who is properly summoned is obliged to appear and testify. CIV. PRO. CODE art. 136(1); CRIM. PRO. CODE art. 90(7)(1). A witness in a civil case who does not appear in response to a summons without adequate grounds can be fined, and the court can also order the police to bring the witness by force. The fine for failing to appear the first time can be up to 5 conventional units (MDL 100 or USD 7.50);²⁰ the fine after a second subpoena can be up to 10 conventional units (MDL 200 or USD 15). CIV. PRO. CODE art. 136(3). In a criminal case, the fine for failing to appear is 1-25 conventional units (MDL 20-500 or USD 1.50-37.75). CRIM. PRO. CODE arts. 90(8), 201(2). Furthermore, if a witness fails to appear without a valid reason, the court may order him/her to be brought by force. *Id.* arts. 90(9), 235(3).

When a party in a civil case does not appear, the court will adjourn the hearing if there is no evidence that the party received a summons or if the court considers the reason for the party's nonattendance to be justified. CIV. PRO. CODE art. 205(2)-(3). If, however, the party was summoned and the court considers the reason unjustified, it may conduct the hearing in the absence of the party. *Id.* art. 205(4). When a criminal defendant who was properly summoned does not appear, the court must adjourn the hearing unless the defendant absconded, refuses to be brought to court, or, if it concerns petty crimes, the defendant requested that the hearing proceed in his/her absence. CRIM. PRO. CODE art. 321. In an administrative review case, if a party or his/her representatives fail to appear for a hearing "without well-justified reasons," the court is to proceed to consider the case, unless the absence of the applicant makes that impossible, in which case the court will strike the petition. LAR art. 24(2).

²⁰ The Civil Procedure Code also contains another, conflicting provision on the maximum fine that may be imposed on a witness who fails to appear after receiving an initial summons. It provides that the fine could be up to 10 conventional units (MDL 200 or USD 15). See art. 207(2).

If a witness in a civil case does not appear, the court will decide whether to adjourn the case or proceed in the absence of the witness, after hearing the views of the parties. CIV. PRO. CODE art. 207(1). In a criminal case, if a witness who was summoned does not appear, the court may adjourn a hearing. CRIM. PRO. CODE arts. 362(2), 331(1).

Because courts may not have sufficient funds to send a summons by registered mail, judges often lack evidence that a party or a witness actually received the summons, and therefore hearings are often postponed. According to one judge, even when witnesses are summoned by registered letter, mail carriers sometimes do not deliver letters to the addressees in person, so the court again has no evidence of proper delivery. A recent practice that has developed is for courts to publish summonses in M.O. Among the reasons that interviewees suggested for the reluctance of witnesses to appear are a lack of respect for the courts, frequent postponements of hearings, and, in criminal cases, a witness protection program that does not have sufficient funding to be effective. In practice, therefore, parties frequently bring witnesses to court themselves. Judges are reportedly reluctant to use their contempt powers to punish a failure to appear.

The report of a trial monitoring program in Chişinău noted that when judges do order parties to be brought to court by force, there are too few judicial police to carry out such orders. ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE [hereinafter OSCE], 6-MONTH ANALYTIC REPORT: PRELIMINARY FINDINGS ON THE EXPERIENCE OF GOING TO COURT IN MOLDOVA 23 (2006) [hereinafter, respectively, OSCE, TRIAL MONITORING REPORT AND OSCE TRIAL MONITORING PROGRAM]. The apparent consequence of the resulting postponements is that “some parties who initially attended all scheduled court hearings eventually stopped appearing in court because they lost confidence in the judicial process after repeated delays and postponements.” *Id.*

Courts also have authority to require the production of documents or other evidence. CIV. PRO. CODE arts. 340, 288(2), 299(1)-(2); CRIM. PRO. CODE art. 90(7)(3). The advocate representing a criminal defendant has the right to request production of documents or other evidence. CRIM. PRO. CODE art. 100(2). In an administrative review case, if the defendant does not bring the administrative decision and all documents on which it was based to the first day of the hearing, he/she is subject to a fine of up to 10 minimum salaries (MDL 180 or USD 13.60) per day of unjustified delay. LAR art. 22(3).

Displaying a lack of respect for the Constitutional Court by disregarding decisions of the chairperson of a session, breaching discipline during trial, “as well as the committing of other deeds which show an obvious disregard towards the Court and the procedure of constitutional jurisdiction” is punishable by a fine of up to 25 minimum salaries (MDL 450 or USD 34). CJC arts. 23(4), 82(1)(e), 46(3), 58.



A notable example of the Constitutional Court's exercise of this authority occurred in 2000, when Gheorghe Amihalachioaie, president of the Union of Advocates (now the Moldovan Bar), publicly criticized the Court's decision holding portions of the 1999 Law on the Legal Profession unconstitutional. See, e.g., *ECONOMICHTESKOE OBOZRENIE*, No. 6, Feb. 2000, at 19. As a result of these remarks, the Constitutional Court fined him MDL 360 (USD 27) for lack of respect toward the court and its decision. Mr. Amihalachioaie paid the fine and lodged an application with the ECHR. In 2004, the ECHR held that the Constitutional Court had violated his right to freedom of expression under article 10 of the European Convention. See *Amihalachioaie v. Moldova*, No. 60115/00, Apr. 20, 2004. It should be noted that this limitation on the Constitutional Court's authority to punish disrespect for the Court involved statements made outside of Court and after it had rendered its decision. It is unclear whether the Constitutional Court could lawfully have imposed a fine for such statements if they had been made while the case was pending.

If a party to a case in the Constitutional Court was notified of a session but fails to appear, the Court may examine the case in his/her absence. CJC art. 49(1). If, however, a party did not receive a summons on time or the Court has no confirmation of the receipt, the session must be postponed. *Id.* art. 49(2). Public authorities and other legal persons are obligated to provide the Constitutional Court with requested information or official documents and normative acts within 15 days of any request. LCC art. 9(1); see also CJC art. 20(2). Unjustified failure to comply can result in a fine of up to 25 minimum salaries (MDL 450 or USD 34). LCC art. 9(2); CJC art. 82(1)(c).

According to the Constitution, it is "compulsory to abide by the sentences and other final decisions pronounced in courts of law, and cooperate with the latter at their specific request during trials, the execution of judgments and other final rulings of justice." See art. 120. The LOJ adds that failure to comply with judgments "brings about liability in accordance with law." See art. 20(3); see also CIV. PRO. CODE art. 16(2). Such liability is a fine of up to 50 conventional units (MDL 1,000 or USD 75) or up to 300 conventional units (MDL 6,000 or USD 450) in the case of high ranking officials. CODE OF ADMINISTRATIVE INFRACTIONS art. 200/11, Law of Mar. 29, 1985, HERALD OF THE SUPREME SOVIET OF THE S.S.M.R. 1985, No. 3, art. 47, *last amended* by Law No. 268-XVI of Jul. 28, 2006, M.O. No. 142-145/702 of Sep. 8, 2006 [hereinafter CODE ADMIN. INFR.].

In 2002, the courts lost their authority to supervise the enforcement of judgments. Now the Department for Execution of Judicial Decisions [hereinafter DEJD], under the MOJ, is responsible for enforcing judgments. LOJ art. 51; LAW ON FORCED EXECUTION SYSTEM arts. 2-3, Law No. 204-XVI of Jul. 6, 2006, M.O. No. 126-130/603 of Aug. 11, 2006 [hereinafter LFES]. DEJD has local offices organized on a territorial basis corresponding to the district courts. See LFES art. 7(2). Its jurisdiction includes enforcing judgments in civil cases, administrative infraction cases, and criminal cases that do not deprive the defendant of liberty, as well as judgments of economic courts and the Military Court. *Id.* art. 2(2); LEC art. 8; LMC art. 25. DEJD's enforcement

agents (sometimes referred to as bailiffs or judicial executors) perform the activities necessary to enforce judgments. Compliance with their requests is mandatory, and failure to do so can result in legal liability. LOJ art. 52; see also LFES art. 14. Enforcement agents are entitled to assistance from the judicial police (see Factor 13 below). LOJ art. 53(1). Furthermore, enforcement agents are accorded a measure of immunity. When executing judgments, they may not be arrested or searched, nor may documents relating to the execution be seized, except in the case of a criminal investigation, as provided by law. *Id.* art. 53(2); LFES art. 17(4)-(7). A code of ethics, consisting of 30 brief articles, regulates the conduct of enforcement agents. CODE OF PROFESSIONAL ETHICS OF ENFORCEMENT AGENTS (Decision of the Director of the DEJD No. 69 of Apr. 2, 2004). The code's impact is uncertain, because some enforcement agents may not even be aware of its existence, as illustrated by a response from an experienced enforcement agent who commented that there was no code of ethics. Until January 1, 2007, enforcement agents could be rewarded for their efforts by a bonus of up to 200 conventional units per month (MDL 4,000 or USD 300), and up to a maximum of 1,200 conventional units (MDL 24,000 or USD 900) per year from execution fees collected. LFES art. 31.

Non-enforcement of civil and administrative review judgments continues to be a serious problem. An estimated half of all such judgments are not enforced. During the first half of 2006, for example, the DEJD offices had a total of 185,490 execution documents, of which 119,797 were received during that period and 65,723 unexecuted documents were carried forward from prior years. MINISTERUL JUSTIȚIEI AL REPUBLICII MOLDOVA, DEPARTAMENTUL DE EXECUTARE, BULETINUL SISTEMULUI DE EXECUTARE Silită DIN REPUBLICA MOLDOVA NR. 1 [MINISTRY OF JUSTICE OF THE REPUBLIC OF MOLDOVA, DEPARTMENT OF EXECUTION, REPORT ON THE SYSTEM OF FORCED EXECUTION IN THE REPUBLIC OF MOLDOVA, No. 1] (2006) [hereinafter REPORT ON FORCED EXECUTION]. During that period, 96,396 documents (52% of the total number of execution documents) were closed, of which 74,701 (40.3% of the total number of execution documents, or 77.5% of the closed documents) were actually executed.

The non-enforcement or unduly delayed enforcement of judgments has resulted in a number of ECHR judgments against Moldova for violation of the European Convention. See, e.g., *Daniliuc v. Moldova*, No. 46581/99, §§ 37, 40-43, 47-49, Oct. 18, 2005; *Popov v. Moldova*, No. 74153/01, §§ 53-57, 62-64, Jan. 18, 2005; *Prodan v. Moldova*, No. 49806/99, §§ 52-56, 60-62, May 18, 2004.

Problems with the enforcement of judgments arise from several underlying causes. There are insufficient enforcement personnel – in the first half of 2006, there were 288 enforcement agents for all of Moldova. See REPORT ON FORCED EXECUTION 1. There is also generally inadequate funding, which, for instance, required enforcement agents to use public transportation, where it exists, or to purchase gasoline with their own money if their office was fortunate enough to have an automobile (only 18 did). *Id.* at 7. Enforcement agents have a heavy workload (an average of 116 execution

documents per agent per month). *Id.* at 1. Judicial decisions constitute only 51.5% of their workload; the remainder are execution documents issued by state bodies with the right to issue decisions, such as the Road Police, the Tax Inspectorate, and the District Police Stations. *Id.* at 2. Enforcement agents are poorly paid (effective January 1, 2007, MDL 750 -1,400, or USD 57-106). LAW ON THE SYSTEM OF SALARIES IN THE BUDGETARY SECTOR, Annex No. 5, Law No. 355-XVI of Dec. 23, 2005, M.O. No. 35-38/148 of Mar. 3, 2006, *last amended by* Law No. 442-XVI of Dec. 28, 2006, M.O. No. 203-206/999 of Dec. 31, 2006 [hereinafter LAW ON SALARIES]. The state reportedly does not even provide enforcement agents with uniforms, although the law requires this. See LOJ art. 53(3); LFES art. 27(1). Obtaining support from the judicial police when executing a judgment may be difficult, because the judicial police are under the direction of the courts and may be reluctant to assist enforcement agents. As a result of these conditions, it is difficult for DEJD to hire and retain qualified personnel. In 2005, for example, DEJD experienced a 48% turnover in personnel, according to an interviewee.

There are a number of reasons why enforcement agents are unable to enforce judgments. For example, many judgment debtors lack sufficient funds to pay a judgment, and increasingly they leave Moldova to work abroad. Because the vast majority of plaintiffs—one interviewee said 98%—fail to have the defendant’s property sequestered at the beginning of a lawsuit, by the time they seek to enforce the judgment, the defendant has transferred the assets. It is also reported that the state frequently refuses to pay judgments against it, enforcement agents are refused permission to enter the ministries, prosecutors sometimes harass them, and local authorities place obstacles in their way. Banks and official bodies do not always provide enforcement agents with information about a judgment debtor’s assets on a timely basis, which can delay enforcement. Another problem is that an enforcement agent’s authority is limited to the territory of his/her office. Before an enforcement agent seizes mobile property such as an automobile, the debtor can move it outside the office’s territory. Then, when the enforcement agent forwards the writ of execution to the appropriate office, the debtor can move the property again. Although a judgment debtor is ultimately liable for all costs of executing the judgment, interviewees reported that DEJD offices must advance funds for those costs until the judgment is enforced. Sometimes the offices do not have sufficient funding to do this.

The law governing enforcement of judgments in administrative review cases provides a generally effective, if not necessarily timely, enforcement mechanism. After examining the legality of an administrative decision, the reviewing court sends the final judgment to the appropriate public authority for execution, with a copy to the district court that has jurisdiction over the public authority. The district court will begin forced execution if the public authority does not comply with the judgment within 30 days after it became final. LAR art. 32(1)-(2). In addition, the head of the public authority can be held liable for failure to execute the judgment in a timely manner. *Id.*

art. 32(3). In fact, however, delays in the execution of such judgments are the norm. See Factor 6 above.

By contrast, there are few problems with the execution of judgments in criminal cases. The court that tried the case in the first instance sends the judgment to the entity responsible for enforcing it (e.g., a prison), which must advise the court within 5 days of the measures taken to execute the judgment. CRIM. PRO. CODE art. 468(1)-(2).

Similarly, the execution of the Constitutional Court's decisions has improved significantly, and most of its decisions are now being complied with. See Factor 5 above for a discussion on the enforcement of Constitutional Court judgments.

III. Financial Resources

Factor 10: Budgetary Input

The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.

Conclusion

Correlation: Neutral

Trend: ↑

Either directly or indirectly through the SCM, the courts have opportunities to influence the amount of money allocated to them, although that amount remains inadequate. Court presidents now also have control over the expenditure of funds budgeted for their courts.

Analysis/Background:

Although statutory provisions and practices differ among the courts, the judiciary has opportunities to influence the amounts budgeted for their operation. The courts now also have control over the expenditure of these funds.

Development of the court budgets begins with the MOF, which estimates revenues and expenditures for the state budget and then issues methodological norms for

drafting the state budget, including maximum expenditures for each public institution. According to a comparative study of judicial financing, however, a “simple clerk” in the MOF decides how much is needed to finance the courts. WOJCIECH MARCHLEWSKI ET AL., CENTRUL DE STUDII ȘI POLITICI JURIDICE, COURT EXPENDITURE IN MOLDOVA 13 (2005) [hereinafter COURT EXPENDITURE IN MOLDOVA]. Based on the MOF’s guidance, district courts and courts of appeal, including the economic courts (See LEC art. 28(1)),²¹ prepare draft budgets and submit them to the MOJ, which makes any necessary revisions so that the courts’ budgets conform to the limits on judicial expenditures established by the MOF. The MOJ then organizes a meeting of the presidents of the district courts and courts of appeal, together with the members of the SCM, to discuss the draft budgets. Following the meeting, the MOJ submits the budgets to the MOF for inclusion in the state budget, which the MOF presents to Parliament.²² Parliament may not reduce funding for the courts without the SCM’s consent. LOJ art. 22(1). The amount budgeted to each district court and each court of appeal is specified in the state budget. *Id.* arts. 22(2), 23(2). Once Parliament approves the budget, the MOJ is responsible for providing district courts and courts of appeal with “material and financial support.” *Id.* art. 23(2).

In July 2006, an amendment to the LOJ proposed establishing a Department of Judicial Administration [hereinafter DJA] within the SCM to carry out administrative functions, including budgeting, for the district courts and courts of appeal.²³ The DJA would have taken over certain activities related to judicial administration that are being performed by the MOJ. Although the Parliament adopted this amendment, the President of Moldova refused to promulgate the draft law, among other reasons, because he thought creation of a DJA was unnecessary, would result in additional costs, and would involve the SCM in activities for which it was not suited. After receiving the President’s objections, Parliament adopted the law in November 2006 without the provisions establishing the DJA.

The SCJ and the Constitutional Court have greater opportunities to influence the budgeting process, because each drafts and submits its own budget to Parliament directly, without the mediation of the SCM. LSCJ arts. 3(d), 27(1)-(2); LCC art. 37(1); CJC art. 5(c). The Plenum of the SCJ must approve the budget for the SCJ before submitting it to Parliament. LSCJ art. 27(2). The state budget also includes separate budget lines for both the SCJ and the Constitutional Court. See, e.g., LAW ON STATE

²¹ The MOJ and the Ministry of Defense [hereinafter MOD] jointly develop the budget for the Military Court. LMC art. 27.

²² Under a November 2006 amendment to the LSCM, the SCM will be responsible for proposing a draft budget for the district courts and courts of appeal. LSCM art. 4(4)(c). It is anticipated the new procedures pursuant to this amendment will be used for the 2008 state budget.

²³ This proposal had its origin in a special parliamentary commission in 2005 that found violations of Moldovan law and human rights and freedoms in connection with persons held in pretrial detention, and Parliament asked the Government to propose “creation of a judiciary administration institution.” Decision of Parliament No. 370-XVI of Dec. 28, 2005, art. 4, M.O. No. 5-8/54 of Jan. 13, 2006.

BUDGET FOR 2007 Annex No.1, Law No. 348-XVI of Nov. 23, 2006, M.O. No. 189-192/893 of Dec. 15, 2006 [hereinafter LAW ON STATE BUDGET FOR 2007].

In the past, except for the SCJ and the Constitutional Court, the MOJ distributed funds to the courts and supervised its expenditure. MOLDOVA JRI 2002 at 19. Since January 1, 2004, however, each court of appeal has received control over the expenditure of funds budgeted to it and has managed these funds independently. LAW ON STATE BUDGET FOR 2004 Annex No. 1, Law No. 474-XV of Nov. 27, 2003, M.O. No. 243/970 of Dec. 11, 2003; LOJ art. 39(1)(k). Since January 1, 2005, the district courts have had the same authority. LAW ON STATE BUDGET FOR 2005, Annex No. 1, Law No. 373-XV of Nov. 27, 2004, M.O. No. 224-225/978 of Dec. 5, 2003; LOJ art. 27(1)(n). This change has been highly beneficial, giving court presidents the ability to direct funds to the areas of greatest need. As a result, according to an estimate by one interviewee, 70% of the courts have begun replacing equipment and renovating courthouses. Regardless of whether that percentage is correct, the assessment team observed that many court presidents have indeed purchased computers and begun renovation projects. In some courts with judicial vacancies, however, the MOJ opposed using funds budgeted for judicial salaries for other purposes.

The presidents of the SCJ and the Constitutional Court are responsible for expenditure of funds budgeted for their respective courts. LSCJ art. 7(1)(j); LCC art. 8(2).

Despite the improvements in the ability of courts to influence the amount of funds Parliament allocates for their operation and to control the expenditure of those funds, most interviewees agreed that the amounts budgeted remain inadequate. For example, courts often do not have sufficient funds to pay for summoning witnesses by registered letters, or for expert opinions. Many judges reported that they use their personal computers at work and pay for paper and toner themselves. One court president reported that they would begin heating the courthouse later in the winter to conserve money. In another courthouse, renovations were financed with funding from “sponsors”; that is, from private individuals or businesses—a practice that raises concerns about judicial independence.

Although the total amount budgeted for the courts in Moldova has increased steadily and more than quadrupled since 2002, it has remained relatively constant as a percentage of the total state budget. The following table demonstrates these trends:

JUDICIAL BUDGETS IN MOLDOVA, 2002-2007, MILLION MDL

Court Level	2002	2003	2004	2005	2006	2007	2007/ 2006 increase, %
District Courts	19.18	21.85	23.93	32.94	51.03	55.51	8.78
Courts of Appeal			6.98	10.82	15.21	15.66	2.96
Economic Court	1.27	1.77	2.15	2.52	4.49	4.60	2.45
SCJ	1.35	3.65	7.29	17.10	14.28	15.83	10.85
Const. Court	1.54	2.23	2.01	2.38	3.35	3.67	9.55
TOTAL courts budget*	21.80	27.27	40.35	63.39	85.01	91.60	7.75
in USD million equiv.**	1.61	1.96	3.27	4.94	6.38	7.05	-
State Budget	3,693.9	4,402.6	5,416.0	8,511.8	10,992.2	12,161.4	10.64
% budgeted to courts*	0.59	0.62	0.75	0.74	0.77	0.75	-
GDP	22,555.9	27,618.9	31,991.7	36,830.0	44,069.0	46,600.0***	5.74
% budgeted to courts*	0.10	0.10	0.13	0.17	0.19	0.20	-

Notes:

* - Total courts budget, as well as court budgets as percentages of the total state budget and of gross domestic product [hereinafter GDP] *excludes* amounts budgeted to the Constitutional Court.

** - In this table, Moldovan lei are converted to their approximate equivalent in U.S. dollars at the average rate of exchange in effect during the respective year (for 2007, during the month of January), as listed at the National Bank of Moldova website (<http://www.bnm.org>).

*** - 2007 GDP represents the Government's forecast.

Source: LAW ON STATE BUDGET FOR 2002 Annex No. 1, Law No. 681-XV of Nov. 27, 2001, M.O. No. 152-154/1223 of Dec. 13, 2001, *as amended*; LAW ON STATE BUDGET FOR 2003 Annex No.1, Law No. 1463-XV of Nov. 15, 2002,

M.O. No. 166-168/1280 of Dec. 10, 2002, *as amended*; LAW ON STATE BUDGET FOR 2004 Annex No. 1, Law No. 474-XV of Nov. 27, 2003, M.O. No. 243/970 of Dec. 11, 2003, *as amended*; LAW ON STATE BUDGET FOR 2005 Annex No. 1, Law No. 373-XV of Nov. 11, 2004, M.O. No. 224-225/978 of Dec. 5, 2004, *as amended*; LAW ON STATE BUDGET FOR 2006 Annex No. 1, Law No. 291-XVI of Nov. 16, 2005, M.O. No. 164-167/810 of Dec. 9, 2005, *as amended*; LAW ON STATE BUDGET FOR 2007 Annex No. 1.

Factor 11: Adequacy of Judicial Salaries

Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.

Conclusion	Correlation: Negative	Trend: ↔
<p>Although Parliament has increased judicial salaries, they are still insufficient to enable judges to support their families and live in a reasonably secure environment, thus making it difficult to attract and retain qualified judges. Furthermore, local authorities rarely fulfill their obligations to provide housing for judges.</p>		

Analysis/Background:

Before enactment of the Law on Salaries in 2005, a judge's compensation consisted of a base salary and various supplements. Base salaries were a fixed percentage of the base salary of the President of Moldova. Judges also received supplemental payments for their qualification degree (see Factor 15 below), years of service, speaking two or more languages, and holding an advanced academic degree. See *generally* Moldova JRI 2002 at 20.

In 2005, Parliament approved an increase in judicial salaries, which was to become effective in two increments (one increase to become effective on December 1, 2005 and the other on January 1, 2007). It also simplified the calculation of judicial salaries by including judges in a general law specifying salaries for public employees. See LAW ON SALARIES arts. 1, 9, Annexes No. 3, 4, 9. A judge's compensation now consists of only a base salary and a supplement based on his/her qualification degree. *Id.* art. 6(2). Effective January 1, 2007, judges' monthly base salaries were supposed to be as follows:

BASE JUDICIAL SALARIES

Court	Position	Monthly Salary	
		MDL	USD equivalent
Constitutional Court	President	8,800	664
	Judge	7,500	566
SCJ	President	8,800	664
	Vice President	7,500	566
	Judge	6,000	453
Courts of Appeal	President	6,000	453
	Vice President	5,600	423
	Judge	5,200	392
Economic Court of Appeal	President	6,000	453
	Vice President	5,600	423
	Judge	5,200	392
District Courts	President	5,200	392
	Vice President	4,700	358
	Judge	4,200	317
Economic Circuit Court	President	5,200	392
	Vice President	4,700	358
	Judge	4,200	317
Military Court	President	5,200	392
	Vice President	4,700	358
	Judge	4,200	317

Source: LAW ON SALARIES Annexes No. 3, 4.

Before January 1, 2007, judges' base salaries were 80% of the respective amounts in the preceding table. *Id.* art. 36(a). In addition to their base salaries, judges are entitled to the following monthly supplements:

QUALIFICATION DEGREE SUPPLEMENT

Qualification Degree	Monthly Supplement	
	MDL	USD equivalent
Superior	500	38
1	400	30
2	350	26
3	300	23
4	250	19
5	200	15

Source: LAW ON SALARIES Annex No. 9.

As a result, the range of judges' monthly salaries, effective January 1, 2007, was supposed to be from MDL 4,400 (USD 332) to MDL 9,300 (USD 689).

Although interviewees considered the increase in judicial salaries a positive step, none believed that the salaries were adequate yet. A district court judge, for example, laughed ironically when asked if judicial salaries were sufficient. Another explained that he and his wife were able to get by on his salary only because his parents and in-laws provided them with food and clothing. Other judges said that the recent increase in salaries did little more than catch up with increases in the cost of living over the two previous years. Interviewees characterized salaries as too low to provide an adequate standard of living for judges and their families, especially given their status, responsibilities, and workload. An interviewee who had taught at the law faculty for more than 15 years commented that none of his best students had expressed any interest in becoming a judge, in part because of low judicial salaries. Interviewees also noted a potential link between low salaries and corruption. Judicial salaries are, however, significantly above the average monthly salary for wage earners, which amounted to MDL 1,780 (USD 134) as of January 2007. See NATIONAL BUREAU OF STATISTICS OF THE REPUBLIC OF MOLDOVA, INFORMATIVE NOTE ON THE REMUNERATION OF EMPLOYEES (Jan. 2007), *available at* http://www.statistica.md/statistics/dat/931/ro/Remun_salar_ianuarie_2007.pdf. By the same token, the International Commission of Jurists [hereinafter ICJ] concluded in 2004 that, although it had “heard complaints about the level of judicial salaries, which are low by European standards, the combination of judicial salaries and additional benefits to [which] judges are entitled allows them to earn a respectable living.” ICJ, MOLDOVA: THE RULE OF LAW IN 2004, at 39 [hereinafter ICJ, MOLDOVA ROL 2004].



Furthermore, the level of judicial salaries reflects a disparity between the judiciary and the other branches of power. According to an interviewee, the Law on Salaries, as initially passed, would have given judges salaries corresponding to those of parliamentary deputies and the Government ministers. The President refused to promulgate the law, however, and when it reemerged from Parliament, the salaries of the judiciary were unchanged, but those of Parliament and the Government were higher. Under the Law on Salaries, the average salary of a judge is less than the MDL 7,100 (USD 536) paid to a parliamentary deputy or a Government minister. See LAW ON SALARIES Annexes No. 2, 3. Furthermore, according to the interviewee, during Parliament's reconsideration of the law, the SCM did not have an opportunity to lobby for equal treatment. In addition to the disparity in salaries, someone who serves in Parliament or in the Government for two years will receive a larger pension than a judge with 35 years of service. See LAW ON STATE SOCIAL INSURANCE PENSIONS art. 43(1)-(2), Law No.156-XIV of Oct. 14, 1998, M.O. No. 111-113/683 of Dec. 17, 1998. A lawyer also commented that the state provides parliamentary deputies with Skoda automobiles, but cannot pay adequate judicial salaries.

By law, judges are also entitled to housing of a prescribed size: if a new judge does not have such a residence, the local public administration authority must provide him/her either an apartment or a house within 6 months. LSJ art. 30(1). After 10 years of service, the judge is entitled to outright ownership of the residence at no cost. *Id.* art. 30(2). Furthermore, until the judge is provided with a dwelling place, he/she is entitled to compensation for renting a temporary residence, up to the amount of his/her salary. *Id.* art. 30(3). In practice, the vast majority of local authorities do not comply with these requirements, because they do not have sufficient money to do so. According to interviewees, this can make it difficult to fill judicial vacancies. In Bălți, for example, where the local public authorities did not provide dwelling places or money for rent, the Court of Appeal had 8 vacancies out of 20 authorized judicial positions in September 2006.

Factor 12: Judicial Buildings

Judicial buildings are conveniently located and easy to find, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.

<i>Conclusion</i>	<i>Correlation: Negative</i>	<i>Trend: ↔</i>
Many courthouses lack sufficient courtrooms and deliberation rooms, with the result that many judges conduct hearings in their offices. Although almost all courthouses require renovation, court presidents have begun to use their authority to administer the court budgets to begin renovation of their courthouses.		

Analysis/Background:

Courthouses in Moldova are generally conveniently located in central areas of cities and towns and are relatively easy to find. The vast majority, however, are old and, except for one of the two buildings of the SCJ in Chişinău, are reportedly in need of repair. As court presidents have gained control over the budgets for their courts (see Factor 10 above), many have used some of their funding for courthouse renovation. Much remains to be done, however. For example, although the courtrooms of the Chişinău Court of Appeal have been renovated, the third and fourth floors, where the judges’ offices are located, have not. Judges in various courts reported that they used their own funds, or funds raised from “sponsors,” to renovate their offices. As noted in the recent trial monitoring report of the OSCE, “the general atmosphere in courthouses in Chisinau Municipality is far from conducive to solemnity or dignity.” OSCE, TRIAL MONITORING REPORT 14.

After Moldova declared its independence in 1991, many buildings that had been owned by the Communist Party were converted into courthouses, particularly in Chişinău. Because they were not originally built as courthouses, they lack sufficient courtrooms and deliberation rooms. For example, the Centru District Court in Chişinău has one courtroom for 19 judges (including 1 investigating judge), the Buiucani District Court in Chişinău has 2 courtrooms for 19 judges (including 2 investigating judges), the Ciocani District Court in Chişinău has 2 courtrooms for 15 judges (including 2 investigating judges), and the Orhei District Court has one courtroom for 8 judges (including 1 investigating judge). The Chişinău Court of Appeal is somewhat better situated, with 10 courtrooms for 35 judges. The following table summarizes the number of authorized judicial positions (including investigating judges, but excluding assistant judges) and the number of courtrooms at different levels of the judicial system:

NUMBER OF COURTROOMS IN MOLDOVAN COURTHOUSES

Courts	Courtrooms	Judicial Positions	Judge/Courtroom Ratio
District Courts	97	353	3.6
Courts of Appeal	28	77	2.75
SCJ	7	49	7

Source: Data compiled by MOJ.

Because of the shortage of courtrooms, judges of many district courts hold hearings in their offices, which are usually too small to accommodate the participants comfortably, let alone members of the public or media. The OSCE Trial Monitoring Program

confirmed that judges often hold hearings in their offices, due to lack of sufficient courtrooms. OSCE, TRIAL MONITORING REPORT 16. However, judges in some courts conduct trials in their offices, even though there are sufficient courtrooms. For instance, although the Economic Circuit Court reportedly has sufficient courtrooms (though they require renovation), judges still often hold hearings in their offices when the number of participants is small. This practice can lead to a number of undesirable results, including overcrowding, with the prosecutor and advocate sitting on one side of the office and the victim and defendant in close proximity to each other on the other side. *Id.* Another result of this practice can be “the ‘office justice’ syndrome (*‘justiție de birou’*), which is characterized by a breakdown in solemnity, formality, and procedural guarantees. Although jokes, telephone calls, and other distractions may also occur in a courtroom, they are more likely in the intimacy of a judge’s office.” *Id.* at 17.

Judges also mentioned the need for separate entrances for judges in courthouses, which would allow them to avoid contact with litigants. In addition, courthouses frequently do not have rooms where lawyers can meet privately with their clients, or even sufficient restrooms for the public. “In one telling incident, an elderly witness, who had traveled from abroad to testify before a district court [in Chișinău], had to walk up and down several floors in the courthouse searching for a toilet before someone finally unlocked a door leading to a toilet that appeared to be available only for court personnel.” *Id.* at 18.

Factor 13: Judicial Security

Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination.

Conclusion

Correlation: Negative

Trend: ↔

Most courthouses have only a single member of the judicial police to provide security, and the judicial police rarely control entry into courthouses. Although judges are threatened only infrequently, they rarely receive police protection when they are threatened.

Analysis/Background:

Although the Constitution and various laws contemplated establishment by the Ministry of Internal Affairs of a judicial police force to provide security in courthouses, such police were not established until 2003. See CONST. art. 121(3); LOJ art. 50(1)-(2); LSCJ art. 26(1)-(2); LEC art. 29. Effective May 10, 2007, the judicial police will be subordinated to the MOJ, rather than the Ministry of Internal Affairs, and will have additional responsibilities. LOJ art. 50; 2006 AMENDMENTS arts. I(17), VI(2). The judicial police are subject to the direction of the court presidents. LOJ art. 50(3)(g); LSCJ art. 26(3).

Most interviewees voiced dissatisfaction with the lack of security in courthouses. None of the courts, including the SCJ, have enough judicial police. Most courts have only a single member of the judicial police on duty at any time. One judge referred to the judicial police as “practically invisible.” When more than one officer is assigned to a courthouse, the additional officers sometimes assist in execution of judgments. They do not check people entering courthouses, and there is nothing to prevent anyone from entering a judge’s office. During criminal hearings, however, defendants are frequently accompanied by armed police and kept in a cage while in the courtroom. Although the SCJ has a metal detector, it is not used.

The Military Court, on the other hand, has a military guard service provided by the Ministry of Defense [hereinafter MOD] that is subject to the direction of the President of the Military Court. The number of such guards is determined jointly by the MOD and the MOJ. LMC art. 26.

Judges, their families, and their property are “under state protection.” LSJ art. 27(1). In response to the request of a judge or court president, law enforcement officials are required to take “appropriate measures” to ensure the security of a judge, his/her family, and the judge’s property. *Id.* In practice, according to interviewees, judges are seldom if ever threatened. When judges have been threatened, however, nothing was done in response to their requests for protection. Neither the MOJ nor the SCM was able to provide to the assessment team statistics on threats against judges or the furnishing of judicial protection.

IV. Structural Safeguards

Factor 14: Guaranteed Tenure

Senior level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.

Conclusion

Correlation: Neutral

Trend: ↔

After an initial 5-year appointment, district court judges are eligible for reappointment until the mandatory retirement age of 65. Higher court judges are appointed until the mandatory retirement age. On at least two occasions since 2001, significant numbers of judges were not reappointed, resulting in suspicions that the judges’ political views or obedience to the ruling party were significant factors in such decisions. Constitutional Court judges are appointed for up to two fixed 6-year terms.



Analysis/Background:

Judges of district courts and specialized courts are initially appointed for a 5-year term, after which they may be reappointed until the mandatory retirement age of 65. CONST. art. 116(2); LSJ art. 11(1). Before a judge is appointed until retirement, he/she must pass an attestation examination administered by the Qualification Board (see Factor 15 below), and the SCM must propose his/her appointment to the President of Moldova. LBQAJ art. 23(3)(b); LSJ arts. 11(1), 13(1). A judge who already had at least 5 years of judicial experience would be appointed until the mandatory retirement age, rather than for an initial 5-year term. See LSJ art. 11(1). Because judges of the courts of appeal and the SCJ must have more than 5 years of judicial experience to qualify for appointment (see Factor 1 above), they are merely appointed until the mandatory retirement age of 65. LSCJ arts. 6(3), 10. Assistant judges of the SCJ must have 7 years of experience as a magistrate before appointment. *Id.* art. 19.

During their tenure, judges “are irremovable under the law.” CONST. art. 116(1); see *also* LSJ art. 18(1); LCC art. 14(1); LEC art. 21; LMC art. 20. They are, of course, subject to dismissal for disciplinary violations, as discussed in Factor 17 below. A judge may be transferred to another court for an indefinite period, but only with his/her consent. LSJ art. 20.

According to interviewees, judges appointed for the initial 5-year term are more vulnerable to influence by the executive power because of their desire to be reappointed until the retirement age. From 2001 through mid-2002, the SCM proposed reappointment of 150 judges until the retirement age, some of whom had served more than a year after expiration of their initial 5-year term. The President ultimately appointed 113 and rejected 37. MOLDOVA JRI 2002 at 23. These events, referred to as the “firing” of judges, have had a significant impact on judges, making them suspicious of the executive power and more likely to be susceptible to its influence.

Another significant event that made judges feel vulnerable was the reorganization of the courts pursuant to a constitutional amendment in late 2002. CONSTITUTIONAL AMENDMENT, Law No. 1471-XV of Nov. 21, 2002, M.O. No. 169/1294 of Dec. 12, 2002. The amendment eliminated one tier of courts, the tribunals, and established five courts of appeal. What happened, in effect, was that the single Court of Appeal was eliminated, and the tribunals were renamed courts of appeal. Although some of the tribunal judges were appointed to the courts of appeal that replaced them, others were not. Although some of the less qualified judges were not appointed to the courts of appeal, others were. The criterion for appointment, interviewees suggested, was their political views, not their ability as judges.

Presidents and vice presidents of district courts and of the courts of appeal serve 4-year terms, and can be appointed for no more than two successive terms in the same position. LOJ art. 16(3). The president and vice presidents of the SCJ also serve 4-

year terms, but the law does not limit the number of successive terms they may serve in that capacity. LSCJ art. 9. Before a judge is appointed as president or vice president, he/she must pass an attestation examination administered by the Qualification Board, and the SCM must propose his/her appointment to the President of Moldova. LBQAJ art. 23(3)(c); LOJ art. 16(3). See Factor 15 below for additional details.

The judges of the Constitutional Court are appointed for fixed 6-year terms, during which they are “irremovable, independent, and obey only the Constitution.” CONST. arts. 136(1), 137. They may serve no more than two terms. LCC art. 5(2). A person may be appointed as a Constitutional Court judge prior to reaching the age of 70. *Id.* art. 11(2).

Factor 15: Objective Judicial Advancement Criteria

Judges are advanced through the judicial system on the basis of objective criteria such as ability, integrity, and experience.

Conclusion

Correlation: Neutral

Trend: ↑

Judicial advancement by appointment as president or vice president of a court, appointment as a judge of a higher court, or award of a higher qualification degree all require attestation by the Qualification Board, but the law does not specify clear and objective criteria for advancement. Since 2005, the SCM has had increased authority over appointment of court presidents and vice presidents, and advancement of judges to higher courts. Nevertheless, suspicions remain among some interviewees about whether political considerations and cronyism play a role in advancement decisions.

Analysis/Background:

Judicial advancement can occur in three ways: appointment to the administrative position of president or vice president of a court; appointment as a judge of a higher court; or award of a higher qualification degree (which may also occur in connection with either of the other two advancement options). All three require attestation by the Qualification Board. LSJ art. 13; LBQAJ art. 23(3). Attestation is the process by which the board examines the professional qualifications, integrity, and performance of a judge, based on information provided by the president of his/her court or a member of the SCM (or, in the case of a court president, by the president of a hierarchically superior court). LBQAJ art. 24.

The Qualification Board attests judges proposed for appointment as presidents or vice presidents of courts. *Id.* art. 23(3)(c). The President of Moldova appoints



presidents and vice presidents of district courts, courts of appeal, the economic courts, and the Military Court for 4-year terms, on the proposal of the SCM. CONST. art. 116(3); LOJ art. 16(3); LSCM art. 4(1)(a); LEC art. 3(2); LMC arts. 13(1), 18(2). Amendments to the LOJ in 2005 reduced the President's discretion as to the appointment of court presidents and vice presidents. Now, the President must act on a proposal by the SCM within 30 days (or 45 days if new circumstances requiring consideration arise). LOJ art. 16(5). Furthermore, the President may reject a candidate only upon the discovery of "incontestable proof" of the incompatibility of the candidate for the position, violation of law by the candidate, or violation of legal procedures for the candidate's appointment. The President must notify the SCM of the reasons for not appointing the candidate. *Id.* art. 16(4). If the SCM proposes the candidate a second time, the President must appoint the candidate within 30 days after the second proposal. *Id.* art. 16(5). It is Parliament, however, that appoints the president, vice presidents (who serve as presidents of colleges), and vice presidents of colleges of the SCJ, all for 4-year terms, also on the proposal of the SCM. CONST. art. 116(4); LSCJ art. 9. Parliament too must act on a nomination within 30 days (or 45 days if new circumstances requiring consideration arise), and may reject a nominee only upon the discovery of incontestable proof of the incompatibility of the candidate for the position, violation of law by the candidate, or violation of legal procedures for the candidate's appointment and promotion, based on the opinion of the Legal Commission of Parliament, in which case the President of Parliament will notify the SCM. LSCJ art. 9. There is no provision requiring Parliament to appoint a president or vice president of the SCJ if the SCM proposes the candidate a second time. In contrast to the judiciary, the judges of the Constitutional Court elect their president themselves. LCC art. 7(1); CJC art. 5(a).

Qualifications for appointment to higher courts are discussed in Factor 1 above. The President of Moldova appoints judges to courts of appeal, including the Economic Court of Appeal, as well as assistant judges to the SCJ, on the proposal of the SCM. CONST. art. 116(2); LSJ art. 11(1); LSCM art. 4(1)(a); LEC arts. 3(2), 21; LSCJ art. 19. Promotion is on the basis of competition and, effective November 10, 2006, the primary criteria for promoting a judge are work experience and CLE attendance. LSJ art. 20(1), (3). As noted in Factor 2 above, amendments to the LSJ in 2005 reduced the President's discretion in the appointment. These provisions are essentially identical to those governing appointment of court presidents and vice presidents, as described in the preceding paragraph. See LSJ arts. 11(3)-(5). Parliament appoints the judges of the SCJ, also on the proposal of the SCM. CONST. art. 116(4); LSJ art. 11(2). The procedure is again essentially identical to that used for the appointment of president and vice presidents of the SCJ, described in the preceding paragraph.

Judges may be awarded qualification degrees based on their position, years of service, work experience, and level of professional expertise. The Qualification Board awards the first 5 levels of qualification degrees (from No. 5 up to No. 1), and the President of Moldova awards the superior qualification degree. LBQAJ art. 27(2). First-time judges

are attested and awarded a qualification degree within 6 months after their appointment. *Id.* art. 23(1). In addition to satisfying the other requirements for a higher qualification degree, a judge usually must have held his/her current degree for a minimum number of years ranging from 2 to 5 before being eligible for a higher degree. *Id.* art. 29(1). Judges who are “highly professional and hold scientific degrees or other merits may be awarded a qualification degree, skipping one level,” but such skipping may only occur twice in the judge’s career. *Id.* art. 29(3). When a judge is advanced to a higher judicial position, he/she must already have, or must be awarded at the time of advancement, a qualification degree appropriate to the position. Except for judges with a superior qualification degree, judges must demonstrate through attestation every 3 years their eligibility for a qualification degree appropriate to their position. *See id.* arts. 23(2), 25(2). For the highest qualification degree to be awarded, the SCM must submit a proposal to the President of Moldova. LSCM art. 21(6). The following table summarizes requirements for qualification degrees:

JUDICIAL QUALIFICATION DEGREES

Qualification Degree	Minimum Years of Service Prior to Eligibility for Higher Degree	Positions Corresponding to the Qualification Degrees
No. 5	2	presidents, vice presidents, and judges of district courts
No. 4	4	presidents, vice presidents, and judges of district courts
No. 3	5	judges of courts of appeal; presidents and vice presidents of district courts
No. 2	5	judges of courts of appeal; assistant judges of Constitutional Court
No. 1	none	judges of SCJ; assistant judges of SCJ and Constitutional Court; presidents and vice presidents of courts of appeal
Superior	—	president, vice president, and judges of SCJ; judges of Constitutional Court

Source: LBQAJ arts. 27, 29; LCC arts. 21, 35(5).

Capacity examinations for awarding qualification degrees are held twice a year. LBQAJ art. 17(2). At least 60 days prior to the exam, the Qualification Board publicizes the date and place for holding the exam in the mass media and via the Internet. *Id.* The exam itself consists of oral and written parts. *Id.* art. 20(1). The oral portion includes questions on civil law, civil procedure, criminal law, criminal procedure, administrative law, constitutional law, labor law, the status of judges, and the organization of the judiciary. *Id.* art. 20(1)(a). The written portion involves drafting two procedural documents resolving cases. *Id.* art. 20(1)(b). The Qualification Board’s decisions and supporting documentation are sent to the SCM for approval. *Id.* art. 25(6). Its decisions may also be appealed to the SCM. LSCM art. 22.



One judge complained that there is insufficient time for judges to prepare for the qualification degree examination and criticized the process as unfair. In practice, the oral exam reportedly tests a judge’s memorization of particular articles of laws. Each judge selects a question card containing 5 questions and then immediately begins to answer them.

Interviewees criticized the lack of clear and objective criteria for selecting court presidents and vice presidents, selecting judges for advancement to higher courts, and awarding qualification degrees. That, as well as a lack of transparency, fuels suspicion about the basis for such decisions, with some interviewees suggesting that cronyism or a judge’s political views may play an important role. One lawyer even asserted that it is necessary to pay a bribe to become a court president or vice president. According to a court vice president, appointment as a president or vice president depends on passing an examination of theoretical knowledge, but not issues such as organizational skills, financial management, and procurement—knowledge that is particularly relevant now that court presidents administer the budgets for their courts. Indeed, several interviewees suggested that the SCM should appoint court presidents and vice presidents directly, rather than proposing their nomination to the President or Parliament, because the SCM knows better which judges possess the necessary administrative skills.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↓</i>
Judges have had broad immunity from civil, criminal, and administrative liability, as well as from arrest and investigation, and such immunity is respected in practice. In 2006, however, Parliament passed legislation creating personal liability for judges for damages awarded in ECHR cases and as a result of the infringement of fundamental rights and freedoms.		

Analysis/Background:

Judges have had far-reaching immunity from civil, criminal, and administrative liability, as well as immunity from arrest and investigation. By law, a judge is generally not liable for opinions expressed while exercising his/her official functions or for judgments made in his/her official capacity, unless the judge is convicted of criminal abuse. LSJ art. 19(3). Judges of the Constitutional Court are also immune from legal liability for their votes or opinions expressed in their official capacity. LCC art. 13(2). Nevertheless, an injured party is not without redress. The state is subject to material

(pecuniary) liability for any prejudice or injury in a lawsuit caused by judicial error. CONST. art. 53(2). Interviewees uniformly reported that such immunity is respected in practice.

In apparent response to the increasing number of cases in which the ECHR held that Moldova violated the European Convention (see Factor 7 above), Parliament amended the Law on the Government Agent in 2006 to allow the imposition of personal liability on anyone, including judges and prosecutors, responsible for such a decision, either intentionally or through serious error. LAW ON THE GOVERNMENT AGENT art. 17(1)-(2). Such liability applies both to damages agreed to in a friendly settlement, as well as those that the ECHR awards. *Id.* The Government Agent must inform the Prosecutor General and the SCM of any such case within 30 days, and the Prosecutor General may commence an action in regress against the judge to recover the damages within one year after the state pays them. *Id.* art. 17(3)-(4).

Parliament extended personal liability beyond ECHR cases when it amended the LSJ, effective November 10, 2006, to allow compensation for the infringement of fundamental rights and freedoms under the Constitution or an international treaty to which Moldova is a party. LSJ art. 21/1. If the state pays compensation for such an infringement pursuant to a final court judgment, the state may bring an action in regress against the judge or panel of judges who, through bad faith or serious negligence, caused the infringement. *Id.* art. 21/1(4), (6). The state may only bring such an action, however, with the consent of the SCM. *Id.* art. 21/1(6). If the infringement of fundamental rights and freedoms occurred in a non-criminal case, the injured party can seek compensation only after obtaining a final court judgment that a decision of the judge caused the infringement, and that the judge is criminally accountable for the decision. *Id.* art. 21/1(5). This additional requirement of a final judgment of criminal accountability before a judge may be subject to personal liability from a civil case may make the imposition of such liability less common in civil than in criminal cases, where there is no requirement for a final judgment of criminal accountability.

Interviewees were concerned that the amendment to the Law on the Government Agent and the LSJ could limit the independence of judges. On the other hand, one interviewee suggested that it could have the unintended consequence of encouraging judges to decide against the state in close cases to avoid potential personal liability for an adverse ECHR decision. In such cases, judges might decide based on protective self-interest rather than on the law and the facts. It is too soon to know how this amendment (and the one imposing liability for infringing fundamental rights and freedoms) will be applied in practice and what impacts it may have on judicial independence.

Judges also have immunity against the actions of investigating authorities. For example, a judge cannot be detained, brought to court by force, arrested, searched



(except in the case of a flagrant offense), or charged with a crime without the consent of the SCM and either the President of Moldova or Parliament, depending upon how the judge was appointed. LSJ art. 19(5). Military Court judges also cannot be subject to investigation, detention, or arrest, without the consent of the SCM. LMC art. 20.

Judges' criminal liability is also quite limited. With regard to a judge's official functions, he/she may be punished only for deliberately issuing an illegal sentence, decision, conclusion, or order. CRIMINAL CODE art. 307, Law No. 985-XV of Apr. 18, 2002, M.O. No. 128-129/1012 of Sep. 13, 2002, *last amended by* Law No. 387-XVI of Dec. 8, 2006, M.O. No. 203-206/975 of Dec. 31, 2006 [hereinafter CRIM. CODE]. The Prosecutor General may institute a criminal proceeding against a judge, even for a crime unrelated to the judge's official duties, only with the consent of both the SCM and either the President of Moldova or Parliament, as appropriate. LSJ art. 19(4). Furthermore, when deciding whether to consent to the Prosecutor General's proposal to begin a criminal proceeding against a judge, the SCM should adopt a decision "on the basis of the inviolability of judges." LSCM art. 23(1).

Judges also have some degree of immunity from liability for administrative infractions, even those unrelated to the judge's official duties, such as speeding or other traffic offenses. Before the LSJ was amended in 2001, judicial immunity for administrative infractions was absolute. Now, however, a judge can be administratively sanctioned by a court of law, but only if the SCM consents. LSJ art. 19(6). Furthermore, a judge who is arrested for an administrative infraction must be released immediately upon establishing his/her identity. *Id.*

Several interviewees contended that judges have too much immunity, which effectively shields them from responsibility for corruption. Others argued that a high level of judicial immunity is essential to protect judicial independence. In order to foster judicial independence, greater immunity is probably better than less immunity, given the susceptibility of judges to influence from the executive power (see Factor 20 below). In any event, the law provides a mechanism, however cumbersome, for lifting a judge's criminal immunity. See LSJ art. 19(4).

Somewhat different rules apply to Constitutional Court judges (including assistant judges). They are immune from detention, arrest, and search, except in the case of flagrant criminal offenses. LCC arts. 16(1), 35(6). If a judge is arrested in the commission of a crime, the person making the arrest must immediately notify the Constitutional Court, which must issue a decision on detention of the judge within 24 hours. CJC art. 10(3). In addition, a judge cannot be tried for criminal offenses or administrative infractions without the prior approval of the Constitutional Court. LCC art. 16(1). If the Court consents, the SCJ will then try the judge. *Id.* art. 16(2).

Factor 17: Removal and Discipline of Judges

Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.

Conclusion

Correlation: Neutral

Trend: ↓

Judges may be disciplined or removed from office for specified reasons, many of which, but not all, are objective. Although the procedures for examining alleged judicial misconduct are reasonably fair, some interviewees criticized the lack of transparency of the process, including the failure to publish the names and other relevant information about individual judges who are disciplined.

Analysis/Background:

The Disciplinary Board of the SCM is responsible for examining cases of alleged judicial misconduct. LAW ON THE DISCIPLINARY BOARD AND DISCIPLINARY LIABILITY OF JUDGES art. 1(1), Law No. 950-XIII of Jul. 19, 1996, M.O. No. 61-62/607 of Sep. 20, 1996, *last amended by* Law No. 247-XVI of Jul. 21, 2006, M.O. No. 174-177/796 of Nov. 10, 2006 [hereinafter LDB]. The Board consists of 9 members, with 3 each elected for 4-year terms from the SCJ, the courts of appeal, and the district courts, by the judges of those courts. *Id.* art. 2(1). Members of the SCM or its Qualification Board, as well as presidents or vice presidents of courts are ineligible to serve on the Disciplinary Board. *Id.* art. 2(2).

The LSJ enumerates a list of specific grounds for disciplining a judge, which include the following:

- Serious or systematic violation of judicial ethics;
- Using judicial position to obtain inappropriate benefits;
- Failure to comply with requirements for declaring income and property;
- Deliberate or negligent failure to interpret or apply legislation uniformly;
- Disclosure of information regarding deliberations or confidential proceedings;
- Failure to act impartially;
- Undignified attitude toward colleagues, advocates, and other participants in a case while performing professional duties;
- Interfering with the activities of another judge or attempting to influence public authorities, institutions, or civil servants;



- Publicly agreeing or disagreeing with colleagues' decisions in order to interfere with their work;
- Engaging in non-judicial activities without the SCM's authorization;
- Engaging in public activities of a political nature or other activities incompatible with judicial status (see Factor 21 below for definition of such activities);
- Unjustified refusal to perform a job-related duty; and
- Unjustified absences or failure to be present during normal working hours.

See LSJ art. 22(1)(a)-(e), (g)-(k), (m)-(p).

Mere annulment or amendment of a judgment by a higher court is not, however, a basis for discipline, unless the judge responsible for the decision deliberately decided the case contrary to law, or did so negligently and caused substantial damages. *Id.* art. 22(2); LDB art. 9(2).

Additional grounds applicable to discipline of court presidents are:

- Failure to report judges' disciplinary violations to the SCM;
- Failure to comply with requirements for random distribution of cases; and
- Failure to organize the activity of the court.

LSJ art. 22(1)(f), (l); LDB art. 9(3).

Before instituting a disciplinary proceeding, the SCM must conduct an inquiry to verify that a ground for discipline exists, and must give the judge in question an opportunity to provide a written explanation. LDB art. 12(1). With certain exceptions, any member of the SCM may institute a disciplinary proceeding. *Id.* art. 10(1). However, 3 members of the SCM are necessary, to institute a proceeding against a member of the SCM or a member of the Disciplinary Board. *Id.* art. 10(2). The judge is entitled to notice of the materials on which the disciplinary proceeding is based and an opportunity to explain those materials, to present evidence, and to request additional investigation or evidence regarding the allegations. *Id.* art. 12(2). At the hearing, which must occur within one month after initiation of the proceeding, both the person who initiated the proceeding and the judge are entitled to participate fully, and a defender (i.e., an advocate, jurist, or even someone without legal training) may assist the judge. *Id.* arts. 16, 17.

The Disciplinary Board must close the proceeding without a hearing if it concludes that the materials that served as basis for opening the proceeding do not include sufficient grounds for imposing a disciplinary sanction on the judge, if the applicable statute of limitations for imposing discipline has expired, or if, after a hearing, it determines that there are insufficient reasons to justify imposing a sanction. *Id.* art.

19(4); see also LSJ art. 23(2). A judge can be sanctioned for a disciplinary violation within a period of 6 months from the date the violation occurred (excluding the period during which the judge was ill or on vacation); however, no sanctions may be imposed for a disciplinary violation that occurred more than one year ago. LDB art. 11. If discipline is justified, the Disciplinary Board can impose sanctions ranging from warning, reprimand, severe reprimand, reduction of qualification degree, to recommending removal of a court president or vice president from that position or removal of a judge. The decision about what type of discipline to impose should take into consideration matters such as the nature of the violation, its consequences and seriousness, the judge’s character, and the judge’s degree of fault. *Id.* art. 19(2)-(3). The judge may appeal the Disciplinary Board’s decision to the SCM within 10 days after the date of the decision, and the SCM may affirm, amend, or reverse the decision. *Id.* art. 23; LSCM art. 22(3). A further appeal to the SCJ is possible. LSCM art. 25. If the judge is not subject to further disciplinary sanctions within one year, the sanction expires. LDB art. 24(1). Until then, the judge is not eligible for advancement. LSJ art. 20(5).

The number of disciplinary proceedings reported by the SCM is relatively small, generally about a dozen or less each year. The following table shows the number of judges subject to disciplinary proceedings and the results of those proceedings in recent years:

DISCIPLINARY PROCEEDINGS IN 2002-2006

	2002	2003	2004	2005	2006	TOTAL
Disciplinary proceedings	9	5	13	12	8	47
Warnings	4	2	2	1	-	9
Reprimands	2	2	3	5	2	14
Severe reprimands	-	-	-	3	-	3
Removals recommended	-	-	1	1	3	5
Proceedings terminated	3	1	7	2	3	16

Source: Data compiled by the ABA ROL Initiative based on information provided by the SCM.

The most frequently imposed sanctions were reprimand (14) and warnings (9). Even more frequent, however, were the number of disciplinary proceedings terminated because the period for imposing disciplinary liability had expired (16).

Interviewees criticized the procedures for disciplining judges as inadequate and noted a lack of transparency in the process. Others were concerned that the criteria for



deciding which sanction to impose were too subjective, and that the Disciplinary Board, composed entirely of judges, appeared reluctant to impose sanctions on its colleagues. Another interviewee, however, regarded such composition as fostering judicial independence, because judges accused of disciplinary violations are judged by their peers. Although a judge can appeal the Disciplinary Board's decision to the SCM, one interviewee pointed out that such an appeal may not be entirely objective, because it was the SCM that decided to institute the disciplinary proceeding in the first place. Finally, although the numbers of judges disciplined is usually published, the names of individual judges, the violations they committed, and the sanctions imposed rarely are. There has been no uniform practice, however, as to what information is published and where. The rationale given for not publishing the names of the judges who were disciplined is that it would discredit them and bring the judiciary into disrepute.

As noted above, the Disciplinary Board itself cannot impose the most severe disciplinary sanctions, removal of a court president or vice president from that position or removal of a judge. Only the President of Moldova or Parliament (depending on how the judge was appointed) can do that, and only on the proposal of the SCM. See LSJ art. 25(1)-(2); LSCM art. 4(1)(a). Grounds for involuntary removal include:

- Any of the grounds for discipline in article 22(1) of the LSJ (summarized above), including violating a prohibition against holding other offices or engaging in other activities while a judge;
- Loss of Moldovan citizenship;
- Entry into force of a final judgment convicting the judge of a crime;
- Professional incapacity;
- Ill health resulting in inability to perform judicial functions, evidenced by a medical certificate; and
- Entry of a final judgment establishing the judge's incapacity or limited legal capacity.

LSJ art. 25(1)(e)-(j), (l).

The assessment team was unable to obtain official statistics on the number of judges dismissed. However, it learned that in late 2005 and early 2006, 3 judges were dismissed from the Comrat District Court, reportedly for gross violations of judicial procedure. In late December 2006, a fourth judge was reportedly dismissed from that court for systematic breaches of judicial procedure.

The grounds and procedures for discipline and removal from office of Constitutional Court judges differ from those described above for judges of courts of law. Grounds for removal of a Constitutional Court judge include: inability to exercise judicial authority for more than 4 months due to ill health, violation of the judge's oath or obligations,

conviction of a crime, and an incompatibility (i.e., violating a prohibition against holding other offices or engaging in other activities while a judge). LCC arts. 19(1), 15. A disciplinary proceeding may be commenced only upon receipt of a written complaint signed by a body with authority to appoint judges to the Court; that is, the Parliament, the Government, or the SCM. CJC art. 84(1). A commission of two judges appointed by the president of the Constitutional Court is responsible for investigating the facts in cases of alleged violation of a judge’s oath or obligations. LCC art. 19(3). If the commission determines that there is a basis for discipline, it prepares a report for consideration by the full Court. CJC art. 84(4)-(5). Depending upon the seriousness of the offense, the Constitutional Court may issue a warning or a reprimand, or even dismiss the judge. *Id.* art. 84(6); LCC art. 19(2). The Court’s decision is final and not subject to appeal. CJC art. 84(7). The assessment team has not been made aware of any prior instances when a Constitutional Court judge has been disciplined or dismissed pursuant to these procedures.

Factor 18: Case Assignment

Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↑</i>
<p>Criminal cases must be assigned randomly, based on an alphabetical list of the judges, a procedure that may not always have been followed in practice, especially in high-profile cases. Because the law did not provide for an impartial and transparent method for assigning other cases until November 2006, court presidents were free to assign them in their discretion and could have done so on improper subjective grounds. Now that all cases must be assigned randomly, it remains to be seen how that requirement will be implemented in practice.</p>		

Analysis/Background:

The presidents of the district courts, courts of appeal, Economic Circuit Court, Economic Court of Appeal, and Military Court have authority to assign cases to the judges of their courts. LOJ arts. 27(j), 39(1)(a), 41(3); LEC arts. 15(b), 20(c); LMC art. 14(b). The president of each college of the SCJ assigns cases to the judges of that college. LSCJ art. 8(b). Under the Criminal Procedure Code, cases are supposed to be assigned randomly. At the beginning of every year, court presidents are to adopt a resolution for the assignment of criminal cases based on an alphabetical list of the judges. CRIM. PRO. CODE art. 344. The first case filed goes to the first judge on the list, the second case to the second judge, and so on. Departure from this procedure is allowed only



when the judge who would otherwise receive a case is seriously ill or “in cases of other justified reasons” that must be stated in a court order transferring the case to another judge. *Id.* Until November 2006, the law did not specify a procedure for distribution of other cases. As a result, court presidents had complete discretion as to the assignment of all non-criminal cases. Several court presidents said that such discretion gave them the needed flexibility to allocate cases based on judges’ workloads and expertise. The procedure for assignment of civil cases in some district courts was based on the practice of scheduling judges to be on duty to meet with citizens and review their draft complaints on a given day or week. The president of the court then assigned cases to the judge who reviewed them as duty judge. Effective November 10, 2006, Parliament amended the LOJ to provide for the random assignment of all cases, “except for instances when the judge cannot participate in the trial on objective grounds.” LOJ art. 6/1. The SCM is responsible for drafting a regulation to implement this reform to “ensure transparency, objectivity, and impartiality of the process.” LSCM art. 4(4)(b).

Some interviewees voiced suspicions about the assignment of cases. One judge noted that the choice of judge to whom a case is assigned may well determine its outcome, especially in the case of judges who have only an initial 5-year appointment and hope to be reappointed until retirement. See Factor 14 above. Even if the judge is not told how to decide a given case, he/she may be told to decide it as soon as possible or to delay decision for as long as possible. In addition, some interviewees asserted that criminal cases are not always assigned alphabetically, despite the provisions of the Criminal Procedure Code described above. They commented on the apparently non-random assignment of recent high-profile criminal cases in the Centru and Buiucani District Courts in Chişinău. Because the Center for Combating Economic Crime and Corruption [hereinafter CCECC] is located in Buiucani District, the district court there has jurisdiction over criminal cases brought by the Center.

Factor 19: Judicial Associations

An association exists, the sole aim of which is to protect and promote the interests of the judiciary, and this organization is active.

<i>Conclusion</i>	<i>Correlation: Negative</i>	<i>Trend: ↓</i>
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Although a judicial association exists in Moldova, it has been neither particularly active nor effective, especially in recent years.

Analysis/Background:

Judges have the legal right to organize and join trade unions and other organizations to represent their interests, improve their professional skills, and defend their status.

LSJ art. 14(3). In 1994, the Association of Judges of the Republic of Moldova [hereinafter AJRM] was organized as a nongovernmental, non-political, voluntary, and autonomous association of judges. According to its bylaws, the AJRM's primary purposes are: to consolidate the efforts of judges in order to protect their rights and interests; to improve the system of justice and the professionalism of judges; and to guarantee and ensure on behalf of the state the independence of the judiciary according to the UN Basic Principles on the Independence of the Judiciary and the Universal Declaration of Human Rights. See *Bylaws of the Association of Judges of the Republic of Moldova* (Mar. 17, 1999), THEMIS, SPECIAL EDITION (n.d.).

Reportedly, approximately 75% of the judges in Moldova (320 out of 430 judges, as of September 2006) are members of the AJRM. With annual dues of MDL 36 (USD 2.75), according to an interviewee, the AJRM's financial resources are quite limited. In the past, the organization relied on funding from donors for activities such as conducting seminars and publishing THEMIS, a professional magazine. The interviewee also reported that, since it had lost the funding previously provided by the UNDP for implementation of a joint project with a judges' association of the Netherlands, the AJRM has not been able to publish any issues of THEMIS in 2006 or even pay its dues to the International Association of Judges.

Comments on the AJRM highlight the tension between protecting the interests of judges as opposed to promoting judicial reform generally. According to some interviewees, the AJRM has opted to protect the interests of judges at the expense of judicial reform. For example, it reportedly resisted adoption of a code of ethics (see Factor 21 below) for 6 or 7 years, and has also opposed the introduction of professional testing of judges.

Interviewees agreed that the AJRM has become quite passive; one said that it has practically ceased to exist. Another argued that, as the SCM has become more independent and effective in representing the interests of the judiciary, the need for the AJRM has diminished. Others believed that an effective judges' association is still necessary. In any event, interviewees agreed that the AJRM does little beyond meeting annually and adopting declarations that are largely ignored. According to some, the AJRM lost whatever influence it had over Parliament with the election of 2001.

V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court presidents), private interests, or other branches of government.

Conclusion	Correlation: Negative	Trend: ↔
<p>Influence on judges by the other branches of power continues to be a concern and, according to many reports, influence by the executive power has increased since 2002. Although difficult to quantify, corruption also appears to be a serious and continuing problem.</p>		

Analysis/Background:

The Constitution and laws declare the independence of the judiciary. For example, judges are to be “independent, impartial, and irremovable under law.” CONST. art. 116(1); see also LSJ art. 1(3); LEC art. 5(b). Interference with the administration of justice is prohibited, and attempting to exert influence on judges, including staging public demonstrations within 25 meters of a courthouse “in order to impede the complete and objective consideration of the case or to influence the issuing of the judicial decision shall be subject to administrative or criminal liability, under law.” LOJ art. 13; LEC art. 24(2)-(3). Such interference is punishable (1) by a fine of 200 to 500 conventional units (MDL 4,000-10,000 or USD 300–755), unpaid community service of 180 to 240 hours, or imprisonment for up to 3 years, or (2) when committed by someone using his/her official position (such as a court president or government official), by a fine of 200 to 600 conventional units (MDL 4,000-12,000 or USD 300–906) or imprisonment of 2-5 years. In both cases, the punishment also includes a deprivation of the right to hold certain positions or to practice a certain activity for a period of 2-5 years. CRIM. CODE art. 303(1), (3).

Likewise, Constitutional Court judges are “independent while performing their mandate and shall abide only by the Constitution.” LCC art. 13(1). Attempting to influence them by “non-procedural methods” can result in imposition of a fine of up to 25 minimum salaries (MDL 450 or USD 34). CJC art. 82(1)(b).

Despite these legal protections, one of the speakers at an international conference on the judiciary held in Chişinău in September 2006 asserted without contradiction that in Moldova justice is not independent. “I believe no one in this room would say

that justice is independent,” he declared. Identifying how pervasive influence is and what forms it takes, however, can be difficult. Furthermore, the prevalence of influence appears to vary depending on the case and the interest of the executive power in its outcome. Particularly in cases when the state’s interests are involved, judges are said to act as advocates for the state.

Many, but by no means all, interviewees believed that the influence of the executive branch of power has increased since 2002. Some attribute this to the fact that the country’s present leadership has appointed approximately half of the sitting judges. According to interviewees, the “firing” of judges in 2001-2002 and the failure to appoint some judges after the tribunals were eliminated in 2003 (see Factor 14 above) color the judges’ views about the executive power’s intentions and make it easier to influence them. In general, younger judges are seen as more susceptible to influence—especially judges with a 5-year initial appointment, who are “like dough in the hands of the executive power,” according to one interviewee. The ability of the President’s office to influence a new judge may have been reduced, because now, if the SCM recommends a judge for reappointment until the age of retirement, the President must give reasons if he/she refuses to do so. See Factors 2 and 5 above. Other judges hoping for appointment to higher courts may also be influenced. Such influence can reportedly be subtle, as when the President’s office or a parliamentary deputy writes to the judge, urging him/her to be careful to make the right decision in a case (without, however, specifying what that decision would be). Instances have been reported when a judge announced in court that the case was “under control”²⁴ of the President and that the judge would be reporting to him. On the other hand, such communications may not always be an attempt by the President or Parliament to influence the judge, but may be a well intentioned, if inappropriate, response to citizen complaints. See Factor 22 below.

Another potential source of influence on judges is the requirement that they demonstrate their level of professional knowledge by passing a qualification examination, which can be subjective and is administered in a non-transparent fashion. See Factor 15 above.

Influence, according to some interviewees, has become more indirect; that is, it is not necessary for the executive or legislative powers to tell a judge specifically how to decide a case. Judges know what is expected of them when the interest of the state or the ruling party is involved. Not all such influence is indirect or oblique, however. Sometimes judges are explicitly told how to decide a case and threatened with dismissal if they do not comply. According to the ICJ, telephone justice had indeed returned to Moldova by 2004. ICJ, MOLDOVA ROL 2004 at 44. Several judges have photographs of the President of Moldova in their offices, a situation that could create the impression that their decisions are made with a view to the desires of the executive power.

²⁴ In Romanian, this expression means that a higher authority is guiding (i.e., “controlling”) the situation.



One manifestation of a growing influence of the executive power that interviewees identified is the tendency to view the judiciary not as a branch of power coequal to the executive and legislative powers. For example, speakers in Parliament are reported to have referred to the three branches of power in Moldova as Parliament, the President, and the Government—without mentioning the judiciary. Parliament's adoption of the Law on Salaries in 2005 without input from the judiciary is another example of this phenomenon. See Factor 11 above.

Many interviewees identified a September 2006 letter from the Minister of Internal Affairs to the President of Moldova published in *MOLDOVA SUVERANĂ* (until recently, a state-owned newspaper) as evidence of the Government's efforts to influence the judiciary. The letter criticized the sentence in a criminal case in the Buiucani District Court, and suggested that the President's office investigate the case. See *Lead Pimp Detained by Police, Released by Judges*, *MOLDOVA SUVERANĂ*, Sep. 5, 2006, at 3. One interviewee argued, however, that the letter demonstrates the judiciary's independence, because, if the judge had been influenced, his decision would not have aroused the ire of the Minister of Internal Affairs. Nevertheless, appealing the decision to the Court of Appeal would appear to have been a more appropriate response, and one less likely to be construed as an attempt to influence the judiciary, than asking the President to investigate by a letter published in the mass media. Furthermore, other instances were reported when the President publicly criticized decisions he did not like and threatened to punish the judges responsible for issuing those decisions.

Although most interviewees focused on issues concerning influence by the President, the Government, and Parliament, several also noted concerns in the *raions*, where local authorities may seek to influence judges. To the extent that judges live in housing furnished by the local authorities (see Factor 11 above), such efforts could be effective.

The requirement that investigating judges be former prosecutors or criminal investigators (see LSJ art. 7(2)) raised concerns with some interviewees that investigating judges may be biased in favor of prosecutors and investigators. In addition, advocates believe that trial judges often defer to prosecutors, although a prosecutor attributed this to the better preparation of prosecutors compared to advocates. The OSCE Trial Monitoring Program lends support to both views: "Prosecutors, as compared to defence attorneys, appeared to enjoy preferential treatment from particular judges. While most judges treated both the prosecution and defense with equal respect, there were some judges who showed a clear predisposition in favour of the prosecutors, to whom they listened with particular attention, whilst subjecting defence attorneys to contempt and ridicule." OSCE, TRIAL MONITORING REPORT 36. On the other hand, "Prosecutors, as a rule, were well prepared for trial proceedings and in general were more disciplined than defence attorneys. The majority of prosecutors demonstrated a clear strategy in presenting the accusation.

They were generally active throughout the trial hearing, displayed good interrogation/examination skills, and elicited relevant information from their witnesses.” *Id.* at 34.

One interviewee questioned the independence of the Constitutional Court, noting that appointment of judges to that Court inevitably involves political considerations, since the Government and the Parliament appoint 4 of the 6 judges. See CONST. art. 136. In what they view as the Court’s reluctance to address potentially controversial issues (see Factor 5 above), some see confirmation of its lack of complete independence.

Government bodies and officials are not the only ones who are said to exert inappropriate influence on judicial decisions. There is also improper influence by litigants, which often reportedly takes the form of bribery. The Criminal Code distinguishes between passive and active corruption. The crime of passive corruption is the act of an official person “who demands or receives offers, money, bonds, gifts, other goods or material advantages, or accepts services, privileges or other advantages not due to him/her, for the purpose of taking an action or abstaining from taking an action, or for speeding up or delaying an action related to his/her official duties, or for the purpose of taking an action contrary to his/her official duties ...” CRIM. CODE art. 324(1). Passive corruption committed by a judge (who is a “high official person,” as defined in art. 123(2) of the Criminal Code) is punishable by a fine of 1,000 to 3,000 conventional units (MDL 20,000–60,000 or USD 1,510–4,530) and imprisonment for 7-15 years, with a deprivation of the right to hold certain positions or to practice certain activities for 3-5 years. *Id.* art. 324(3). The crime of active corruption represents the other side of the transaction: “The promising, offering or giving to an official person, either personally or through an intermediary, of goods or services enumerated at article 324, for the purposes indicated in the same article ...” It is punishable by a fine of 2,000 to 4,000 conventional units (MDL 40,000-80,000 or USD 3,020-6,038) and imprisonment for up to 5 years. *Id.* art. 325(1).

To put the issue of corruption into perspective, Moldova scored 3.2 on a 10-point scale (with 10 representing an absence of perceived corruption) and ranked 79 out of 163 countries in Transparency International’s 2006 CORRUPTION PERCEPTIONS INDEX. See http://www.transparency.org/news_room/in_focus/cpi_2006/cpi_table. In addition, Transparency International’s 2006 GLOBAL CORRUPTION BAROMETER, which assesses public perception of corruption in a variety of sectors, reports that the judiciary was viewed as one of the most corrupt institutions in Moldova. With a score of 3.9 on a 5-point scale (where 1 represents “not at all corrupt,” and 5 “extremely corrupt”), the legal system/judiciary was perceived as less corrupt than only the police (4.1); and slightly more corrupt than medical services (3.8), political parties (3.7), parliament/legislature (3.7), business/private sector (3.7), and educational system (3.6). TRANSPARENCY INTERNATIONAL, REPORT ON THE TRANSPARENCY INTERNATIONAL GLOBAL CORRUPTION BAROMETER 2006, at 22 (Dec. 7, 2006), available at <http://www.transparency.org/content/download/12169/115654/version/1/file/>



Global_Corruption_Barometer_2006_Report.pdf. This represents a worsening of the public's perception of the legal system/judiciary from the prior year. Not only was its score in 2006 slightly worse than in 2005, but the three other institutions and sectors that had been perceived as more corrupt in 2005 registered improvements in 2006.²⁵

There is a widespread belief in Moldova that many judges are corrupt, but little hard evidence to support that belief. Neither the party paying a bribe nor the party receiving it has any incentive to disclose the transaction, which makes it difficult to know how widespread corruption really is. In the 5 years preceding the JRI interviews for this assessment, some 3 or 4 judges were reportedly convicted of corruption. Arguing that the problem is more pervasive, one interviewee asserted, "I do not think it is accurate to say that judges are corrupt. Rather, the entire legal system is corrupt." Interviewees pointed out that the public's perception of the judiciary is so low, that any untoward event, such as postponement of a hearing or an adverse decision, is attributed to corruption. Interviewees noted that losing parties often blame their loss not on having a weak case, but on corruption. On the other hand, several asserted that decisions are often poorly reasoned and do not fully address the arguments of the losing side, which they saw as evidence of corruption. Another possibility is that judges simply are not adequately trained in writing decisions. Nevertheless, some judges are said to own expensive houses and drive expensive cars, which they could not possibly have purchased with their comparatively modest salaries. The OSCE Trial Monitoring Program provides some indirect evidence of corruption: "Monitors further observed cases of people entering a judge's office with handfuls of bags and departing from the same office with empty hands, which easily raised suspicions of judicial impropriety." OSCE, TRIAL MONITORING REPORT 33. Although the full extent of corruption is uncertain, some lawyers who were interviewed said that they were certain that some judges were not corrupt. In any event, insufficient judicial salaries are widely blamed as one cause of corruption.

Judges are required to file declarations of their income and property. LSJ art. 15(5). Failure to comply either by not filing a declaration or by deliberately including incorrect data in a declaration is also a crime, punishable (in the case of a judge) by a fine of 500 to 1,000 conventional units (MDL 10,000-20,000 or USD 755–1,510) and deprivation of the right to hold certain positions or perform certain activities for a period of 1-5 years. CRIM. CODE art. 330/1(2). Failure to comply with financial disclosure obligations can also be a basis for disciplining a judge. LSJ art. 22(1)(g).

²⁵ In 2005, with a score of 3.8, the legal system/judiciary was perceived as less corrupt than the police (4.2), medical services (4.0), and educational system (3.9); was tied with political parties (3.8); and was perceived as more corrupt than parliament/legislature (3.6) and business/private sector (3.5). Transparency International, Report on the Transparency International Global Corruption Barometer 2005 at 20 (Dec. 9, 2005), available at [http://www.transparency.org/content/download/2160/12762/file/Global_Corruption_Barometer_2005_\(full_report\).pdf](http://www.transparency.org/content/download/2160/12762/file/Global_Corruption_Barometer_2005_(full_report).pdf).

One interviewee mentioned that the fact that some parliamentary deputies fail to file accurate financial disclosure declarations under art. 7(4) of the Law on Parliamentary Deputies, either by not listing all their property or not disclosing the full value of property, may encourage some judges to evade their financial disclosure requirements as well.

According to interviewees, one response to corruption being considered by state authorities was to give the CCECC the power to prosecute judges for corruption, without the need for securing consent of the SCM and the President or Parliament. A number of interviewees were concerned, however, that doing so would have a negative impact on judicial independence. Because many view the CCECC as under the control of the President, they feared that the CCECC could be used against judges who do not decide cases in accordance with the wishes of the ruling party.

Factor 21: Code of Ethics

A judicial code of ethics exists to address major issues such as conflicts of interest, ex parte communications, and inappropriate political activity, and judges are required to receive training concerning this code both before taking office and during their tenure.

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↔</i>
The General Assembly of Judges adopted a Code of Ethics in 2000, covering many significant issues. Its impact is, however, limited by the brevity of the Code, the ambiguity of some of its provisions, and the lack of any requirement that judges receive training on the Code, either before or after taking office.		

Analysis/Background:

The LSJ holds judges to a high standard of conduct. Both in their official capacity and in their private lives, judges “have the duty to refrain from any acts which may discredit justice, compromise magistrates’ honor and dignity, or cast doubt on their objectivity.” See art. 15(2). Precisely what this requires in practice, however, is unclear.

Judges are subject to the Judicial Code of Ethics, adopted in 2000 by the General Assembly of Judges of the Republic of Moldova. JUDICIAL CODE OF ETHICS (Feb. 4, 2000), BULLETIN OF THE SCJ, No. 3 (2000) [hereinafter CODE]. It consists of 30 brief rules addressing issues such as judicial independence (see Rules No. 1-5), conflicts of interest (see Rules No. 23, 24, 27, 28), *ex parte* communications (see Rule No. 16), inappropriate political activity (see Rule No. 25), and protecting confidential information (see Rule 9). These ethical norms apparently have binding force, because systematic or serious violation of judicial ethics could be a basis for discipline, including



removal from office (see Factor 17 above). LSJ arts. 22(1)(k), 23. However, the brevity and vagueness of some rules may render it difficult for judges to know what exactly the Code requires of them. For example, Rule 6 states, “Judges shall observe the honor and prestige of their profession with great respect.” Interviewees conceded that the Code should be expanded, because it does not address all important issues and existing provisions are insufficiently detailed. Nevertheless, its adoption was, in their view, a significant step forward.

Scattered provisions on judicial ethics are also found in several laws. For example, the procedural codes list grounds when a judge must recuse himself or herself from hearing a case, such as having a personal interest or familial relationship with parties or other participants, as well as other circumstances raising doubts about the judge’s impartiality. CIV. PRO. CODE art. 50; CRIM. PRO. CODE art. 33. In addition, the LSJ prohibits judges from being members of political parties or engaging in other incompatible activities. Specifically, a judge may not: hold any other public or private position except in connection with scientific or educational activities; be a parliamentary deputy; be a member of a political party or other social-political organization; engage in political activities; engage in commercial activities; give legal advice except to close family members; or, effective November 10, 2006, engage in any activity resulting in a conflict of interest with professional duties, except with the consent of the president of the court or the SCM. LSJ art. 8(1); 2006 AMENDMENTS art. II(8).

Although judges often remarked about the importance of professional ethics and some, indeed, were well aware of the constraints the Code imposes on their conduct, other interviewees voiced skepticism about the extent to which the Code actually influences the judges’ conduct. Indeed, they asserted that the majority of judges do not have high ethical standards. Furthermore, judges are not required to be trained in the requirements of the Code. Some judges said that they had received copies when the Code was adopted, though others did not, and recently appointed judges reported that they did not have copies. This suggests the need for distributing the Code more widely and offering trainings on its provisions. The NIJ could help increase knowledge about the Code among judges and judicial candidates by including professional ethics in its curriculum and examinations. Similarly, the Qualification Board could encourage more experienced judges to improve their knowledge of professional ethics by including it among the subjects for attestation of judges (see Factor 15 above).

Although the Code prohibits *ex parte* communications, such communications appear to be common in practice. “Monitors quite often saw prosecutors and sometimes defence attorneys individually meeting with the judge in lengthy private sessions. The prosecutor or defence attorney would then come out and announce that the hearing had been postponed. . . . While no one can say with certainty what occurred during private sessions in judges’ offices, the mere presence of only one side behind closed doors with the judge gave rise to doubts about the judge’s impartiality and negatively affected the appearance of propriety.” OSCE, TRIAL MONITORING REPORT 33.

There is no code of ethics for Constitutional Court judges, although the CJC does include a provision on avoiding the appearance of partiality. In addition, a judge may not participate in a case when he/she had acted as a decision maker in adoption of the challenged act or has publicly expressed an opinion on its constitutionality. CJC art. 27(1).

Factor 22: Judicial Conduct Complaint Process

A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↓</i>
<p>A process for registering complaints of judicial misconduct exists. Many citizens, however, are said to be unaware of their right to file such complaints, while others apparently use the complaint process to attempt to influence judges in pending cases. Of the thousand or so complaints the SCM receives each year, only a handful result in disciplinary proceedings.</p>		

Analysis/Background:

Citizens have the right to file complaints concerning judicial misconduct with the SCM, which is responsible for examining such complaints and has authority over disciplinary proceedings against judges. LSCM art. 4(3)(a). There are no legal restrictions preventing lawyers or judges from filing complaints; however, a group of lawyers interviewed by the assessment team said that none of them had ever filed a complaint against a judge, because doing so would have serious repercussions for the lawyer. It would make the lawyer a “white crow” in that court, one explained. Instead, lawyers prefer to appeal any adverse decision that they believe is the result of judicial impropriety. It was also reported that the practice has developed, at least in some courts of appeal, of sending the case file to the SCM for possible disciplinary action when a first instance court judge commits a serious error.

If the SCM concludes that a judge may have engaged in misconduct, it can initiate a disciplinary proceeding. LDB art. 10. Before instituting a disciplinary proceeding, the SCM must conduct an inquiry to verify that grounds for discipline exist and give the judge an opportunity to provide a written explanation. *Id.* art. 12(1). With certain exceptions, any member of the SCM may institute disciplinary proceedings against a judge. *Id.* art. 10(1). However, 3 members of the SCM are necessary to institute proceedings against a member of the SCM or a member of the Disciplinary Board. *Id.* art. 10(2). The Disciplinary Board then conducts the disciplinary proceeding according to the procedure described in Factor 17 above.



Although the assessment team was unable to obtain official statistics, one interviewee mentioned that the SCM receives an average of 1,000 complaints annually (another interviewee put the number at 3,000-4,000). A member of the SCM interviewed by the assessment team reported that complaints frequently include allegations of judicial bias stemming from a judge's apparent interest in a case, as well as intentional procrastination on the part of a judge in reviewing a case and issuing a decision. The majority of these complaints were described as not well founded or not involving a breach of judicial ethics. If a complaint involves a minor matter, a member of the SCM may simply speak with the judge whose conduct is questioned about it. Only if a disciplinary violation breaches someone's rights does the SCM institute a disciplinary proceeding. This happens in very few cases, about a dozen or less each year. See Factor 17 above.

Interviewees identified a number of shortcomings in the judicial conduct complaint process. One is that many citizens are not aware of their right to file a complaint against a judge. Another is that, when they do file a complaint, they frequently do so with the wrong state authority. For example, many complaints are sent to the President of Moldova or Parliament. Once a complaint makes its way to the SCM, it may not be thoroughly investigated due to inadequate procedures for investigating complaints, a lack of personnel to investigate them, and the inability of members of the SCM to scrutinize 1,000 complaints annually in addition to performing their other duties at the SCM and regular judicial duties. Only 3 of the judges of the SCM are relieved of judicial responsibilities each year to devote themselves to the work of the SCM. LSCM art. 3(5). Some interviewees believed that the SCM is reluctant to commence a disciplinary proceeding against a fellow judge and therefore gives judges the benefit of the doubt when considering complaints.

Parties sometimes file complaints to try to influence or intimidate judges, although the magnitude of this problem could not be ascertained. This is apparent when parties file multiple complaints with the SCM, the President of Moldova, or Parliament before the judge has issued a final decision. Such complaints generally do not involve ethical violations. Instead of advising the aggrieved party to file a complaint with the SCM, however, the President's office or parliamentary deputies will sometimes contact the judge directly and demand information about the complaint, which could be perceived as an attempt to influence the outcome of the case. Another misuse of the complaint process occurs when losing parties file a complaint, but do not appeal the decision. As one interviewee pointed out, because judges decide cases without a jury, losing parties blame the judge for their loss.

Factor 23: Public and Media Access to Proceedings

Courtroom proceedings are open to, and can accommodate, the public and the media.

Conclusion**Correlation: Neutral****Trend: ↔**

Although judicial proceedings are generally required to be open to the public and media, exceptions to this requirement are broadly worded. Lack of sufficient courtrooms results in hearings often being conducted in judges' offices, which hinders public and media access.

Analysis/Background:

The Constitution states the general rule that all "hearings are public. Cases may be heard behind closed doors only as stipulated by law under compliance with all established procedures." See art. 117; see also LOJ art. 10(1); LEC art. 7(3); LCC art. 29. Exceptions to this rule, some broadly worded, are found in the procedural codes and other laws.

For example, criminal hearings may be held in camera "for the respect of morality, public order or national security, when the interests of minors or the protection of private life of parties in the proceeding require it, or to the extent the court considers this measure strictly necessary or when, due to special circumstances, publicity may damage the interests of justice." CRIM. PRO. CODE art. 18(2)-(3). In such circumstances, the court must issue an order setting forth the grounds for a closed hearing. *Id.* art. 18(2). A criminal hearing may also be closed if necessary to protect a witness or victim of a crime. LAW ON STATE PROTECTION OF THE INJURED PARTY, WITNESSES, AND OTHER PERSONS WHO COOPERATE IN CRIMINAL PROCEEDINGS arts. 8(1)(d), 14, Law No. 1458-XIII of Oct. 28, 1998, M.O. 26-27/169 (1998), *last amended by* Law No. 206-XV of May 29, 2003, M.O. No. 149-152/598 of Jul. 18, 2003. The trial of former Defense Minister Valeriu Pasat in 2005 and 2006 was conducted behind closed doors, purportedly for national security reasons. See Factor 7 above for a summary of the proceedings. On the other hand, an analysis of closed, archived human trafficking-related cases found that 78% of those trials were public, "potentially exposing the victim to public humiliation and shame." CRISTINA COJOCARU & HOLLY L. WISEMAN, TRAFFICKING IN PERSONS—AN IN-DEPTH ANALYSIS OF CLOSED CRIMINAL CASE FILES IN MOLDOVA FOR 2004-SEPTEMBER 2005 at 3 (2006). Furthermore, in only about 20% of the analyzed trials that were closed to the public did the court issue the required order explaining its reasons for closing the trial to the public. *Id.* at 23.

Civil hearings may be closed to protect state secrets, confidential business information, or other information whose disclosure is protected by law, as well as to prevent the disclosure of information relating to intimate aspects of life or that could harm the honor, dignity, or professional reputation, or other circumstances that could prejudice the interests of parties, public order, or morality. CIV. PRO. CODE art. 23(2)-(3). Similarly, a Constitutional Court proceeding may be closed to the public if a public hearing "could threaten state security or public order." CJC art. 13(1). Even if court proceedings are closed, courts must announce their decisions publicly. LOJ art. 10(2); CRIM. PRO. CODE art. 18(4).



Even though most hearings are formally open, the public and media may encounter obstacles to achieving full access. Because many courthouses do not have sufficient courtrooms (see Factor 12 above), judges quite often conduct hearings in their offices. In Chişinău, judges' offices are approximately 10-12 sq. meters (108-129 sq. feet) and thus too small to accommodate the public or media in addition to the parties and their representatives. According to one interviewee, judges sometimes hold hearings in their offices even though a courtroom may be available, and even when trials are conducted in the courtrooms, important ones may be held in small courtrooms. Apart from media access, one interviewee said that the public rarely attends hearings, except for criminal trials when relatives often attend. According to this interviewee, "People have too many problems of their own to come to someone else's hearing."

The OSCE Trial Monitoring Program provides information about the public access to trials. For example, although judges are required to post a list of cases scheduled for hearing in a public space in the courthouse at least 3 days before the hearing, many judges do not comply with this requirement.²⁶ OSCE, TRIAL MONITORING REPORT 20. The report noted that monitors were generally granted access to hearings: "if they were not always welcomed, they were at least tolerated." *Id.* at 19. Some judges, however, resisted allowing monitors to attend hearings. *Id.* at 14, 19. The presence of monitors often caused judges to change their behavior: "some judges immediately put on a robe, turned off their mobile phone, and searched for a courtroom. Other judges, seeing monitors, resumed proceedings by saying: 'look, we must do everything by the book now' or other similar phrases. Such instructions seemed to astonish everyone, particularly prosecutors and defence attorneys." *Id.* at 27.

Audio and video recording or taking photographs is permitted only at the opening of a session and during announcement of the court's decision, and then only with permission of the presiding judge. LOJ art. 14(2). According to one interviewee, such permission is seldom granted. Parliament recently amended the LOJ, effective not later than January 1, 2008, to allow the use of audio and video recording, photography, or other technical equipment "under the terms of procedural legislation only." 2006 AMENDMENTS arts. I(6), VI(1).

Factor 24: Publication of Judicial Decisions

Judicial decisions are generally a matter of public record, and significant appellate opinions are published and open to academic and public scrutiny.

²⁶ The 2006 Amendments that became effective in November 2006 introduced the position of "the judge responsible for relations with mass media" in district courts and courts of appeal. LOJ arts. 27(1)(p), 39(1)(m). Media representatives would be able to obtain information about cases under review in a particular court only from these officials. LSJ art. 8(3). The assessment team did not analyze the practical impact of these provisions.

Conclusion

Correlation: Negative

Trend: ↔

Although the Law on Access to Information requires that official information held by the courts generally be made available to the public, in practice it may be difficult for anyone other than a party to obtain access to judicial decisions. Judgments of the SCJ and the Constitutional Court, on the other hand, are published or otherwise readily accessible to the public.

Analysis/Background:

Court decisions must be read publicly. LOJ art. 10(2); CJC art. 13(3). Once they are announced, however, public access to decisions is often restricted, even though the Law on Access to Information requires that government information, including information held by the courts, be made available to the public (except for state secrets, confidential business information, personal data, and other confidential information). LAW ON ACCESS TO INFORMATION arts. 5(2)(a), 6(1), 7(2), 10, Law No. 982-XIV of May 11, 2000, M.O. No. 88-90/664 of Jul. 28, 2000, *last amended by* Law No. 206-XV of May 29, 2003, M.O. No. 149-152/598 of Jul. 18, 2003. Most judicial decisions are unpublished, and in many courts access to decisions and case files by third parties requires permission from the court president. This practice of requiring a third party to justify his/her request before the president grants permission is inconsistent with the Law on Access to Information, which specifically states that no one requesting access to information is obligated to justify his/her interest in the information. *Id.* art. 10(3).

Some interviewees contended that all judicial decisions should be published. Some decisions, particularly those of district courts, are said to be poorly reasoned and inconsistent. Publication of decisions, the interviewees argued, would not only increase transparency of the judiciary generally, but also lead to improvement in the quality of decisions because of public scrutiny. Given the costs of publishing all judicial decisions, however, a better approach to improving the quality of decisions might be to ensure full public and media access to case files and decisions.

Decisions of the courts of appeal are not published, although judgments of the Court of Appeal were published prior to the reorganization of the judiciary into three tiers of courts. Judgments of the SCJ and explanatory decisions of its Plenum have been published in the past. As of January 2006, the SCJ selects significant judgments that are worthy of publication, and they appear in the BULLETIN OF THE SCJ, the Bar's journal AVOCATUL POPORULUI, and electronic databases, such as MOLDLEX. Explanatory decisions are published in the BULLETIN OF THE SCJ and electronic databases. In addition, the SCJ has developed a database of cases decided in the Civil and Administrative Review College since January 1, 2006. By September 2006, it contained more than 3,000 files. Eventually, a computer will be installed to give citizens access to the database. The SCM hopes to extend the database to other



colleges of the SCJ, then to the courts of appeal, and eventually to the district courts. If that occurs, public access to judicial decisions will be greatly enhanced.

Constitutional Court decisions are readily available. Judgments and advisory opinions of the Court are published in M.O. within 10 days after they are adopted. LCC art. 26(4); CJC art. 77(1). They are also published in annual compilations (if donor funding is made available), posted on the Court's website (<http://www.constcourt.md>), and included in commercial legal databases and the MOJ's database (<http://justice.md/lex>). Significant decisions are also published with commentary in the Court's newsletter, which is funded by the state budget.

Factor 25: Maintenance of Trial Records

A transcript or some other reliable record of courtroom proceedings is maintained and is available to the public.

<i>Conclusion</i>	<i>Correlation: Negative</i>	<i>Trend: ↔</i>
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Instead of verbatim transcripts of court proceedings, court secretaries prepare longhand summaries. Interviewees disagreed about the accuracy of such minutes. The minutes are not available to the public and, although they are available to the parties, parties may not copy them.

Analysis/Background:

Courts are allowed to use "any technical means" to record evidence of their proceedings. LOJ art. 14(1). In practice, however, court secretaries prepare handwritten minutes, summarizing the essentials of the proceeding, including statements and requests of participants and oral pleas. See CIV. PRO. CODE art. 47(1); CRIM. PRO. CODE art. 83(1), (2). Parliament amended the LOJ to provide that hearings "shall be recorded by audio or video means or stenography," and that the recordings or stenographic notes shall be transcribed immediately. 2006 AMENDMENTS art. I(6). This amendment is effective "after the appropriate conditions have been created," but not later than January 1, 2008. *Id.* art. VI(1). In connection with Moldova's Threshold Country Program, primarily aimed at fighting corruption, the United States Millennium Challenge Corporation will reportedly provide funding to equip up to 200 courtrooms with audio recording equipment and transcription software to allow for preparation of verbatim transcripts, by approximately mid-2009.

The Civil Procedure Code and the Criminal Procedure Code have different provisions regarding the preparation of minutes.

In civil cases, participants and their representatives have the right to request that the minutes include matters they consider essential for resolution of the case. CIV. PRO. CODE art. 275(3). To ensure the accuracy of the minutes, the judge, court secretary, and witness sign each page, with any necessary corrections. *Id.* art. 220. The minutes must be completed and signed by the presiding judge of the session and the court secretary no later than 5 days after the end of the hearing. *Id.* art. 275(4)-(5). Within 5 days after the minutes are signed, participants and their representatives have the right to review them and, if they believe them to be incomplete or inaccurate, request in writing that the court correct them. *Id.* art. 275(6). The judge must consider any such objections within 5 days and either accept or reject them. *Id.* art. 276.

In criminal trials, the court secretary must complete editing of the minutes within 48 hours after the end of the hearing, and both the presiding judge and the court secretary must sign them. CRIM. PRO. CODE art. 336(4). The court secretary can be held liable for the contents of the minutes and must prepare them independent of instructions from any other person, including the judge. *See id.* art. 83(3); LAW ON PUBLIC SERVICE art. 30(1)-(2), Law No. 443 of May 4, 1995, M.O. No. 61/681 of Nov. 2, 1995. In the event of a disagreement with the judge, the court secretary may, however, attach objections to the minutes. CRIM. PRO. CODE art. 318(3).

When the minutes are signed, the judge will notify the parties that they have the right, upon written request, to review the minutes within 5 days and raise any objections to the minutes within 3 days after reading them. *Id.* art. 336(5)-(6). The Criminal Procedure Code does not specify a period within which the judge must decide whether to accept or reject the objections. *See id.* art. 336(7).

A court secretary interviewed for this assessment explained that if minutes are not complete at the end of a hearing, they are at least partially complete. One interviewee reported, however, that sometimes court secretaries do not write anything at all during the hearing, and parties are given blank pages to sign. Another contended that minutes are written to be consistent with the judgment, rather than the other way around. According to other interviewees, however, minutes in general accurately reflect court proceedings. Parties reportedly object to the contents of court minutes very rarely.

In 2003, court secretaries became public functionaries. LOJ art. 48(3). As a result, they must undergo attestation, usually every 3 years, to confirm that their knowledge is adequate. REGULATION ON TESTING OF PUBLIC FUNCTIONARIES art. 20 (Government Decree No. 522 of May 20, 2004, M.O. No. 83-87/663 of May 28, 2004). The attestation commission consists of 5 or 7 members; in practice, these are judges from the court where the court secretary works. *Id.* arts. 2, 11. Following attestation, a qualification degree can be conferred on a court secretary, which would result in an increase of his/her salary. *Id.* arts. 31(b), 34(b). According to interviewees, the workload of court secretaries is heavy and their salaries are low, resulting in high turnover.



The OSCE Trial Monitoring Program paints an unflattering picture of many court secretaries (to whom it refers as court clerks): “According to monitoring data, in one out of five cases court clerks did not properly record minutes of the proceedings. In a few cases monitors observed clearly that the court clerks did not record anything whatsoever in the minutes and simply gave a blank piece of paper to the parties to sign, saying she would write the minutes of the hearing later. When court clerks did record minutes, monitors frequently noticed that they recorded statements selectively, often only upon a direct order from the judge, who rephrased statements and testimony and told the clerk precisely what to record in the minutes.” OSCE, TRIAL MONITORING REPORT at 29-30.

Although there may be room for disagreement about the reliability of handwritten minutes, what is clear, according to interviewees, is that access to minutes is limited to the parties, and even they are not allowed to copy them. Although both the Civil Procedure Code and the Criminal Procedure Code entitle parties and their attorneys to have access to minutes of proceedings, in practice, they can only read and make handwritten copies of those portions of the minutes they are most interested in and are usually not allowed to make photocopies. There is an apparent belief among some in the judiciary that there is no need for parties to have the entire text of the minutes and that handwritten copies of excerpts from the minutes are sufficient for those interested in having them.

VI. Efficiency

Factor 26: Court Support Staff

Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.

Conclusion

Correlation: Negative

Trend: ↔

Although judges are assisted by court secretaries or consultants who organize case files and prepare minutes of proceedings, most judges have no staff to assist with legal research. There is insufficient support staff in most courts and they are poorly paid, resulting in high turnover.

Analysis/Background:

By law, every court should have a chancellery to receive pleadings, an archive to maintain court records and case files of completed cases, an administrative service to provide facilities for the work of the court, and a documentation service to track legislation and administer the court's library. LOJ arts. 45(1), 46, 47, 49. Other support staff includes court secretaries (see Factor 25 above), sufficient interpreters and translators, and the judicial police (see Factor 13 above). *Id.* arts. 48, 48/1, 50. Although the court president has the authority to hire and fire most of the court staff (excluding judicial police assigned to the court), the MOJ determines what staff positions a court will have. *Id.* arts. 27(1)(o), 39(1)(l), 45(2)-(3).

Each district court judge and court of appeal judge is entitled to have a court secretary to prepare case files and record minutes of hearings (see Factor 25 above), but beyond that, interviewees complained about insufficient court support staff. According to information provided by the MOJ, as of November 2006 there were a total of 565 court support staff in Moldova, consisting of 307 court secretaries, 69 translators, 48 typists, 101 specialists (personnel other than translators or typists who work in the court chancellery, archive, or other administrative unit of a court), and 40 consultants. This translates to an overall ratio of approximately 1.3 support staff per judge. Many interviewees suggested that each judge should have a consultant to perform legal research or an assistant to provide logistical support by performing many tasks that judges themselves are now forced to do. This would free judges to devote more of their time to performing judicial functions and improve the efficiency of the courts.

Another critical problem reported by interviewees is that court staff are poorly paid, and many leave for better paying jobs once they gain sufficient experience. Although judges' salaries have recently increased, those of support staff have not. As of January 2007, court clerks, interpreters, and translators employed at the district courts, the Economic Circuit Court, and the Military Court receive a monthly salary in the range of MDL 600-900 (USD 45.3-67.9); those at the courts of appeal and the Economic Court of Appeal – MDL 700-1,000 (USD 52.8-75.5); and those at the SCJ – MDL 800-1,200 (USD 60.4-90.6). See LAW ON SALARIES Annex No. 4. Deploing the low salaries of support staff, one judge explained that "poor justice cannot be good justice."

As of January 2007, court secretaries and enforcement agents received no specialized training for their work. Beginning September 1, 2007, they will be required to complete a 3-month initial training course at the NIJ (see Factor 1 above) following their appointment. LNIJ arts. 20(1)-(2), 22(5). After completing the course, they will have to pass a capacity examination. *Id.* art. 20(4). The NIJ will also develop mandatory continuing education courses for court secretaries and enforcement agents, in consultation with the SCM and the MOJ, respectively. *Id.* art. 21. This is expected to increase the professional level of court secretaries and enforcement agents.



In the SCJ, each judge has an assistant with a university degree in law and not less than 3 years of legal experience. LSCJ art. 4(3). Support staff in the Economic Court of Appeal includes 5 advisers, whose responsibilities include performing legal research, preparing case files for adjudication, and drafting decisions. LEC art. 26. The other courts of appeal have consultants to keep track of legislation and jurisprudence and administer the court's library. See LOJ art. 47(2).

Both the SCJ and the Constitutional Court also have assistant judges, who have the status of judges of an appellate court. LSCJ art. 18(1); LCC art. 35(3). The SCJ has 7 authorized assistant judges' positions, although none of these positions are actually filled. The responsibilities of the first assistant judge, who is subordinated to the President of the SCJ include coordinating the activity of the other assistant judges, preparing for and attending sessions of the Plenum, organizing execution of the Court's decisions, and coordinating the Court's Department of Generalizing Judicial Practice and Analyzing Judicial Statistics and its Department of Tracking Legislation and Informatics. LSCJ art. 20. The other assistant judges, all of whom attend hearings, are responsible for preparation of court hearings and assisting in conducting them, participating in deliberations (with a consultative vote), developing reports on cases, drafting judgments, and providing judges with legal research. *Id.* art. 21. The Constitutional Court has 6 assistant judges; that is, one for each judge. LCC art. 35(1). They perform sophisticated legal research as requested by Constitutional Court judges and draft decisions.

Factor 27: Judicial Positions

A system exists so that new judicial positions are created as needed.

Conclusion

Correlation: Negative

Trend: ↔

Although a system for creating new judicial positions exists, their number appears to lag the need for additional positions. Furthermore, sitting judges often experience a heavy caseload because of delays in filling vacancies.

Analysis/Background:

Parliament approves the number of judges in the courts of general jurisdiction and the specialized courts, on the proposal of the SCM (and, in the case of the Military Court, based on an advisory note of the MOJ). LOJ art. 21; LSCM art. 4(o); LMC art. 11. Parliament also determines the number, location, and territorial jurisdiction of district courts and courts of appeal, on the proposal of the SCM. LOJ art. 21; LSCM art. 4(o).

The following table shows the number of judicial positions authorized, as well as the number of sitting judges, as of December 31, 2006:

NUMBER OF JUDGES AUTHORIZED AND APPOINTED

Court Level	Number of Judges		Vacancy Rate, %
	Authorized	Appointed	
District Courts	353	307	13
Courts of Appeal	77	55	28.6
SCJ	56	43	23.2
Economic Circuit Court	12	12	0
Economic Court of Appeal	10	10	0
Military Court	3	3	0
Constitutional Court	6	6	0
TOTAL	517	436	15.7

Source: LOJ Annex No. 1; LAW ON IMPLEMENTATION OF THE CRIMINAL PROCEDURE CODE art. 7, Law No. 205 of May 29, 2003; CONST. art. 136(1); LCC art. 35; Data compiled by the ABA ROL Initiative based on information provided by the SCM.

The number of district court judges includes investigating judges (44 positions authorized). LAW ON IMPLEMENTATION OF THE CRIMINAL PROCEDURE CODE art. 7. The number of judges of the SCJ also includes assistant judges (7 positions authorized, none of which were filled). LOJ Annex No. 1. In addition to the numbers listed in the table above, the Constitutional Court has 6 positions authorized for assistant judges, all of which were filled. LCC art. 35

One way to assess the need for additional judicial positions would be to examine statistics on the number of cases decided in recent years and the number still pending. The following table summarizes such information for all the courts as a whole:

CASES DECIDED AND PENDING, 2001-2005

		2002	2003	2004	2005
Criminal Cases	Decided	17,086	16,539	13,458	14,988
	Pending	5,253	3,483	2,799	2,470
Civil Cases	Decided	54,006	55,995	52,464	51,664
	Pending	7,631	6,742	6,692	7,246
Administrative Cases	Decided	103,051	111,130	122,865	120,634
	Pending	2,588	2,671	3,007	1,576
Other Cases	Decided	46,373	49,949	75,694	72,870
TOTAL	Decided	220,516	233,613	264,481	260,156
	Pending	15,472	12,896	12,498	11,292

Source: MOJ.



In the aggregate, these statistics show an increased number of cases and other files resolved, and a decreased number of pending cases, during the period of 2001-2005. This suggests that the judiciary's capacity (through increased numbers of judges, improved efficiency, or otherwise) has increased during the period. Although the courts decided fewer criminal cases in both 2004 and 2005 compared to 2003, the number of pending cases also declined. The number of judges hearing criminal cases may therefore be adequate. On the other hand, the number of civil cases decided in both 2004 and 2005 also declined over 2003, but the number of pending cases increased somewhat in 2005, suggesting that there may be a need for more judges to hear civil cases. It is important to bear in mind, however, that these aggregate numbers likely mask differences among different levels of courts and among different courts on the same level.

Judges who were interviewed almost invariably complained about their workload, which, they said, requires them to work long hours and weekends and deprives them of sufficient time to decide cases thoughtfully and to write well reasoned opinions. Another consequence is that cases are often delayed. Judges of the SCJ, for example, have to decide some 45 cases per month, according to an interviewee. The economic courts also have had a heavy caseload, with judges required to examine some 500 case files annually, according to another interviewee. Judicial vacancies can also cause sitting judges to be overworked. As shown in the table above, 15.7% of all judicial positions were vacant as of December 31, 2006, with the courts of appeal having a vacancy rate nearly twice that of the district courts. In the Bălți Court of Appeal, for example, as of September 2006, only 11 of 20 positions (55%) were filled, according to an interviewee. In addition to filling all vacancies and, in some cases, increasing the number of authorized positions, interviewees suggested that consideration be given to procedural reforms to reduce unnecessary steps in case hearings and dispositions and allowing summary procedures when appropriate, as well as the use of computerized case tracking and management.

The Constitution prohibits transferring judges without their consent. See art. 116(5); see also LSJ art. 20(1). The SCM may, however, transfer judges temporarily to other courts on the same or a higher level. LSCM art. 20(2). Although such transfers could temporarily address uneven distribution of work among the courts, a long-term solution would require amendment of the LOJ to create additional judicial positions, not an easy task.

Factor 28: Case Filing and Tracking Systems

The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.

Conclusion

Correlation: Negative

Trend: ↔

Generally, information on the progress of a case is entered in a register, and documents are filed in the case file. Although court personnel can usually retrieve information on the status of a given case, the process for doing so is inefficient. At least two computerized case tracking and management systems have been developed, but so far neither has been widely implemented.

Analysis/Background:

Virtually all courts in Moldova use a largely manual case tracking and management system. The system depends on placing documents in a case file. When a lawsuit is initially filed, the chancellery registers the document (sometimes in a registration book and sometimes in a computer database) and sends it to the president of the court, who forwards it to the judge who will hear the case. The judge's court secretary then files the document in the case file, which is kept in a safe in the judge's office. In criminal cases, the prosecutor submits to the court a case file containing documents obtained during the investigation. As hearings are held, in civil or criminal cases, the court secretary files minutes in the case file. The court secretary does not prepare an index of the documents in the case file until after the judge renders a decision. If the decision is appealed, the case file is sent to the higher instance court. Once the decision is final, the court secretary sends the case file to the archives.

During 2004, the ABA ROL Initiative (at that time, ABA/CEELI) funded development of software for a case tracking and management system for the economic courts. The software includes a registry module, caseload modules for each court, a calendar module for scheduling, and a judgment database module. It also includes the capability of generating statistical reports, to comply with reporting requirements and to assist the court presidents in effectively managing their courts. Implementation of the system was planned in partnership with another international donor, which was to have furnished the necessary hardware. For various reasons, the donor provided only a portion of the computers necessary for the project. In addition, the Economic Circuit Court moved to another part of the building it shared with the Economic Court of Appeal and others. As a result, establishment of the network for the Economic Circuit Court was delayed and remains incomplete. Although the software was developed, lack of replacement funding prevented its testing and implementation.

The SCJ has developed a more limited, but useful file management system with a database searchable by registration number of the case or name of a party. Among other things, it shows the status of the case, as well as scheduled hearings. In September 2006, the system was being used in the Civil and Administrative Review College of the SCJ. If it continues to function successfully, the Court hopes to extend



it to its other colleges, then to the courts of appeal, and eventually to the district courts throughout Moldova.

Factor 29: Computers and Office Equipment

The judicial system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.

Conclusion	Correlation: Negative	Trend: ↔
Most courts lack sufficient numbers of computers, printers, and other office equipment. Judges who do have computers often do not have Internet access.		

Analysis/Background:

Although the situation has improved markedly since 2002, most courts still lack a sufficient number of computers, printers, fax machines, and photocopy machines. One reason for the improvement is that, having gained authority to administer their court budgets, court presidents made a priority of purchasing computers, printers, and other office equipment. Another is that international donors have devoted increased resources to providing courts with computers. The following table provides information on the sources of computers in the courts:²⁷

SOURCES OF COMPUTERS IN THE COURTS

Source	District Courts	Courts of Appeal	SCJ	Total
State Funds	388	45	39	472
Donors	32	3	49	48
TOTAL	420	48	88	556

Source: Data compiled by the ABA ROL Initiative based on a survey of presidents and vice presidents of courts.

In some courts, all judges reportedly now have computers; however, in a number of instances interviewees reported that some of them were judges' personally owned computers, although that is not reflected in the table. Court secretaries still frequently lack computers. The following table displays information about the numbers of judges and other categories of court personnel with computers:

²⁷ These statistics (and those in the table on computer usage) exclude the Military Court and the Constitutional Court.

COMPUTER USAGE

Court Personnel	District Courts	Courts of Appeal	SCJ	Total
Judges	262	26	30	318
Court Secretaries	39	0	15	54
Consultants	23	5	13	41
Chancellery	45	6	5	56
Accountants	31	5	6	42
Others	20	6	19	45
TOTAL	420	48	88	556

Source: Data compiled by the ABA ROL Initiative based on a survey of presidents and vice presidents of courts.

Even in courts with large numbers of computers, judges may not have Internet access. Particularly in the *raions*, where access is via modem, some courts do not have sufficient funds for the telephone service necessary for Internet access. In one court with 7 judges, for example, only one computer could be connected to the Internet. Nor do all courts with computers have a Local Area Network. Another obstacle to more widespread use of computers is the inadequate electrical systems in many courthouses. Additional computers and improvements in infrastructure supporting this technology will likely be needed before widespread implementation of case tracking and management software is possible (see Factor 28 above).

The lack of photocopiers not only affects the efficiency of judges, but also the ability of the parties, the public and the media to copy court decisions and trial records to which they have access (see Factors 24 and 25 above, respectively).

Factor 30: Distribution and Indexing of Current Law

A system exists whereby all judges receive current domestic laws and jurisprudence in a timely manner, and there is a nationally recognized system for identifying and organizing changes in the law.

Conclusion

Correlation: Neutral

Trend: ↑

New judges are furnished with copies of the relevant codes at no cost. M.O. publishes newly enacted laws, normative acts, and judgments and advisory opinions of the Constitutional Court, but in at least some courts, all judges no longer receive free individual copies of this publication. The use of electronic databases is becoming more common, but is limited by insufficient computers, subscription costs, and access to the Internet in some courts.



Analysis/Background:

Judges reported that, in general, conducting legal research, particularly searching for older laws, can be difficult, especially if they do not have Internet access and therefore cannot use a commercially available database or even the free MOJ database. Furthermore, access to professional literature outside Chişinău is limited.

The MOJ is responsible for ensuring that courts have “normative acts, commentaries, guides and legal literature necessary for performing professional duties.” DECISION OF THE GOVERNMENT ON THE MINISTRY OF JUSTICE, Annex No. 1, art. 8(30) (Decision No. 129 of Feb. 15, 2000, M.O. 19-20/210 (2000)). Several recently appointed judges confirmed that they had received copies of the relevant codes at no cost. Another important resource for judges is M.O., because it publishes laws, Presidential decrees, decisions and ordinances of the Government, and judgments and advisory opinions of the Constitutional Court. CONST. arts. 76, 94(1), 102(4); LCC art. 26(4); CJC art. 77(1). Previously, all judges were entitled to receive free copies of this publication. Now that the MOJ is no longer responsible for expenditure of funds budgeted to the district courts and courts of appeal, with the result that court presidents have discretion over the use of funds budgeted to their courts (see Factor 10 above), some court presidents have decided in early 2006 to pay for only a single subscription to M.O. for the entire court.

As discussed in Factor 24 above, most judicial decisions, except those of the SCJ and the Constitutional Court, are unpublished, which makes access to jurisprudence difficult. Constitutional Court decisions are published in annual compilations (if funded by international organizations), and significant decisions are published with commentary in the Court’s newsletter, which is funded by the state budget. The SCJ publishes the BULLETIN OF THE SCJ (also funded by the state budget), which includes summaries of important decisions. However, since funding appropriated for this publication is limited, each court receives only one copy of the BULLETIN OF THE SCJ.

The increasing prevalence of computers in the courts provides additional opportunities for legal research. Some judges have the electronic databases JURIST or MOLDEX on their computer hard drives, although not all courts can afford to pay subscription fees to keep the databases current. In addition, the MOJ has developed an online database, <http://justice.md/lex>, that includes codes, laws, decisions, normative acts, and other primary legal sources. The Constitutional Court also posts its decisions on its website, <http://www.constcourt.md>. The ability to use online resources is limited, however, because not all judges have computers, and not all judges with computers have Internet access. Short of providing each judge with a computer with Internet access, another approach would be to include a sufficient number of computers and printers in court law libraries, where judges could do legal research (and to establish law libraries in courts that do not have them).

The SCJ has developed a database of cases of the Civil and Administrative Review College decided since January 1, 2006. By September 2006, it contained more than 3,000 files. The SCM hopes to extend the database to cases in other colleges of the SCJ, then to the courts of appeal, and eventually to the district courts. Although it is no substitute for databases of legislation and other normative acts, it could give judges an opportunity to consult similar cases for guidance in resolving their cases.

In addition, the SCJ has begun publishing a series of books to assist judges in becoming more efficient. The first includes model documents for civil cases, which will help to standardize the form of decisions. See MIHAI POALELUNGI, *MODELE DE ACTE JUDECĂTOREȘTI: PROCEDURA CIVILĂ* [MIHAI POALELUNGI, *FORMS OF JUDICIAL DOCUMENTS: CIVIL PROCEDURE* (2d ed. 2005)]. Initially, it was distributed to judges in the Civil and Administrative Review College of the SCJ. The courts of appeal were expected to begin using the book in the autumn of 2006, followed by all courts in January 2007. Other books in the series cover preparing civil cases for hearing and conducting trials in civil cases. See MIHAI POALELUNGI, *MANUALUL JUDECĂTORULUI LA EXAMINAREA PRICINILOR CIVILE* [MIHAI POALELUNGI, *JUDGE'S GUIDE TO EXAMINING CIVIL CASES* (2006)]; MIHAI POALELUNGI, ANASTASIA PASCARI, *PREGĂTIREA PRICINILOR CIVILE PENTRU DEZBATERILE JUDICIARE* [MIHAI POALELUNGI, ANASTASIA PASCARI, *PREPARING CIVIL CASES FOR JUDICIAL HEARINGS* (2006)].

In December 2006, the Government approved the Concept of the Information System “State Registry of Legal Acts of the Republic of Moldova,” which, when fully implemented in 2010, will greatly improve access to laws for both the public and judges. See *DECISION OF THE GOVERNMENT ON THE STATE REGISTRY OF LEGAL ACTS* (Decision No. 1381 of Dec. 7, 2006, M.O. 189-192/1475 (2006)). Among other things, the Registry will include all laws and other normative and legal acts issued by any Moldovan public institution, including those of Parliament, the President, the Government, specialized central bodies of public administration, and local public administrative authorities; international treaties to which Moldova is a party; and decisions of the Constitutional Court—in both Romanian and Russian. Anyone will be able to access these documents via the Internet. The Center of Legal Information, subordinated to the MOJ, is responsible for developing and maintaining the Registry.



List of Acronyms

ABA	American Bar Association
AJRM	Association of Judges from the Republic of Moldova
CCECC	Center for Combatting Economic Crime and Corruption
CJC	Constitutional Jurisdiction Code
CLE	continuing legal education
DEJD	Department for Execution of Judicial Decisions
DJA	Department of Judicial Administration
ECHR	European Court of Human Rights
GDP	gross domestic product
ICJ	International Commission of Jurists
LAR	Law on Administrative Review
LBQAJ	Law on the Board of Qualification and Attestation of Judges
LCC	Law on the Constitutional Court
LDB	Law on the Disciplinary Board and Disciplinary Liability of Judges
LEC	Law on the Economic Courts
LFES	Law on Forced Execution System
LMC	Law on the System of Military Courts
LNIJ	Law on the National Institute of Justice
LOJ	Law on the Organization of the Judiciary
LPRI	Legal Profession Reform Index
LSCM	Law on the Superior Council of Magistracy
LSCJ	Law on the Supreme Court of Justice
LSJ	Law on the Status of Judge
JRI	Judicial Reform Index
JTC	Judicial Training Center
MDL	Moldovan lei
M.O.	<i>Monitorul Oficial al Republicii Moldova</i> (the official gazette)
MOD	Ministry of Defense
MOF	Ministry of Finance
MOJ	Ministry of Justice
MSU	Moldova State University
NIJ	National Institute of Justice
OSCE	Organization for Security and Cooperation in Europe
ROL Initiative	Rule of Law Initiative
SCJ	Supreme Court of Justice
SCM	Superior Council of Magistracy
USD	United States dollars