



**LEGAL PROFESSION REFORM
INDEX
FOR
MOLDOVA**

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VOLUME I

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Introduction

The Legal Profession Reform Index (LPRI) is an assessment tool implemented by the American Bar Association's Rule of Law Initiative (ABA ROLI). It was developed by the ABA's Central European and Eurasian Law Initiative (ABA/CEELI), now a division of ABA ROLI, together with its other regional divisions in Africa, Asia, Latin America, and the Middle East/North Africa. Its purpose is to assess the process of reform among lawyers in emerging democracies. The LPRI is based on a series of 24 factors derived from internationally recognized standards for the profession of lawyers identified by organizations such as the United Nations and the Council of Europe. The LPRI factors provides benchmarks in such critical areas as professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations. The LPRI is primarily meant to enable ABA ROLI or other legal assistance implementers, legal assistance funders, and emerging democracies themselves to implement better legal reform programs and to monitor progress towards establishing a more ethical, effective, and independent profession of lawyers. In addition, the LPRI, together with ABA ROLI's companion Judicial Reform Index (JRI), Prosecutorial Reform Index (PRI), and Legal Education Reform Index (LERI) also provides information on such related issues as corruption, the capacity of the legal system to resolve conflicts, minority rights and gender equality, and legal education reform.

ABA ROLI embarked on this project with the understanding that there is no uniform agreement on all the particulars that are involved in legal profession reform. In particular, ABA ROLI acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after more than a decade of working on this issue in the field, ABA ROLI has concluded that each of the 24 factors examined herein may have a significant impact on the legal profession 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 LPRI 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 legal profession in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's legal system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, it should be noted that this analytic process will not be a scientific statistical survey. The LPRI is based on an examination of relevant legal norms, discussions with informal focus groups, interviews with key informants, and on relevant available data. It is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system at a particular moment in time through the prism of the profession of lawyers.

Scope of Assessment

Assessing legal profession reform faces two main challenges. The first is defining the terms "legal professional" and "lawyer." The title Legal Profession Reform Index is somewhat of a misnomer. The LPRI focuses its attention on lawyers; however, most of the world's legal professions are segmented into various categories. For example, the Council of Europe lists several distinct categories of legal professionals, including judges, prosecutors, lawyers, notaries, court clerks, and bailiffs. ABA ROLI could have included all of these professions, and perhaps others, in its assessment inquiry; however, the resulting assessment would likely become either overly complex or shallow.

In order to keep the LPRI assessment process manageable and to maintain its global applicability and portability, the LPRI focuses on professions that constitute the core of legal systems; i.e.,



professions that are universally central to the functioning of democratic and market economic systems. As a result, ABA ROLI excluded from the LPRI such professions as notaries, bailiffs, and court clerks, because of variations and limitations in their roles from country to country. In addition, ABA ROLI decided to exclude judges and prosecutors from the scope of the LPRI assessment, in order to focus this technical tool on the main profession through which citizens defend their interests vis-à-vis the state. Independent lawyers, unlike judges and prosecutors, do not constitute arms of government. Furthermore, ABA ROLI has developed the JRI, which focuses on the process of reforming the judiciaries in emerging democracies, the PRI, an assessment tool for prosecutors, and the LERI, an assessment tool for assessing the state of legal education in a given country.

Once ABA ROLI determined which category of legal professionals would be assessed by the LPRI, the remaining issue was to define the term "lawyer." In the United States and several other countries, lawyers constitute a unified category of professionals. However, in most other countries, lawyers are further segmented into several groups defined by their right of audience before courts. For example, in France, there are three main categories of advocate lawyers: *avocats*, *avoués à la Cour*, and *avocats aux Conseils*. An *avocat* is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, and is directly instructed by his clients and usually argues in court on their behalf. An *avoué à la Cour* has the monopoly right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with *avocats*. In most cases, the *avoué à la Cour* only files pleadings but does not argue before the court. He has no rights of any sort in any other court. The *avocat aux Conseils* represents clients in written and oral form before the Court of Cassation and the *Conceil d'Etat* (the highest administrative court of France). See Sanglade & Cohen, *The Legal Professions in France*, in *THE LEGAL PROFESSIONS IN THE NEW EUROPE: A HANDBOOK FOR PRACTITIONERS* at 127 (Tyrrell & Yaqub eds., 2nd ed. 1996). In addition to rights of audience, other factors further complicated efforts to define the term "lawyer," including the large number of government lawyers and corporate counsel who are not considered independent professionals and the practice in some countries of allowing persons without legal training to represent clients.

These issues posed a dilemma, in that, if ABA ROLI focused exclusively on advocates (generally understood as those professionals with the right of audience in criminal law courts), it could potentially get an accurate assessment of perhaps a small but common segment of the global legal profession, but leave the majority of independent lawyers outside the scope of the assessment, thus leaving the reader with a skewed impression of reform of the legal profession. For example, according to the Council of the Bars and Law Societies of the European Union, there were 22,048 lawyers practicing law in Poland in 2002. Of that number, only 5,315, or 24%, were advocates. If, on the other hand, the LPRI included all persons who are qualified to practice law, that might also produce an inaccurate picture, in that it would include non-lawyers and lawyers who are not practicing law. In order to keep its assessment relatively comprehensive yet simple, ABA ROLI decided to include in the universe of LPRI lawyers those advocates and civil practice lawyers that possess a law degree from a recognized law school and that practice law on a regular and independent basis, therefore excluding government lawyers and corporate counsel if necessary. In addition, because some of the factors only apply to advocates, ABA ROLI decided to expand and contract the universe of lawyers depending on the factor in question.

Methodology

The second main challenge faced in assessing the profession of lawyers is related to substance and means. Although ABA ROLI was able to borrow heavily from the JRI in terms of structure and process, there is a scarcity of research on legal reform. The limited research there is tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, "[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary." CAROTHERS, *PROMOTING THE RULE OF LAW ABROAD: THE KNOWLEDGE PROBLEM* at 8, (CEIP Rule of Law Series, Working Paper No. 34, Jan. 2003). Moreover, as with the JRI, ABA

ROLI concluded that many factors related to the assessment of the lawyer's profession are difficult to quantify and that "[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism." ABA/CEELI, JUDICIAL REFORM INDEX: MANUAL FOR JRI ASSESSORS at ii (revised ed. 2006).

In designing the LPRI methodology, ABA ROLI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on fundamental international and regional standards, such as the *United Nations Basic Principles on the Role of Lawyers*; the International Bar Association's *Standards for the Independence of the Legal Professions*, *General Principles of the Legal Profession*, and *International Code of Ethics*; the Union Internationale des Avocats' *Turin Principles of Professional Conduct for the Legal Profession in the 21st Century*; the Council of Europe's *Recommendation R(2000)21 on the Freedom of Exercise of the Profession of Lawyer*; and the Council of Bars and Law Societies of Europe's *Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers*. In addition, ABA ROLI was able to rely on best practices ascertained through more than ten years of its technical legal assistance experience reforming the profession of lawyers in emerging democracies.

Drawing on these sources, ABA ROLI compiled a series of 24 aspirational statements that indicate the development of an ethical, effective, and independent profession of lawyers. To assist assessors in evaluating these factors, ABA ROLI developed a manual that provides a guiding commentary of the factors and the international standards in which they are rooted, clarifies terminology, and provides flexible guidance on areas of inquiry. A particular effort was made to avoid giving higher regard to common law, as opposed to civil law concepts, related to the structure and function of the profession of lawyers. Thus, certain factors are included that a common law or a civil law lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer rather than model the LPRI on one country's legal profession system. The main categories incorporated address professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA ROLI was able to build on its experience in creating the JRI and the newer CEDAW Assessment Tool¹ in a number of ways. For example, the LPRI borrowed the JRI's factor "scoring" mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, and now the LPRI, employ factor-specific qualitative evaluations; however, both assessment tools forego any attempt to provide an overall scoring of a country's reform progress since attempts at overall scoring would be counterproductive.² Each LPRI factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of a factor statement to a country's regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is given a "positive" score 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 is given a "neutral."

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI, the PRI, and the LERI, there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. 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 users to easily compare and contrast the performance of different countries in specific areas and – as LPRI's are updated –

¹ CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. ABA ROLI developed the CEDAW Tool in 2001-2002.

² For more in-depth discussion on this matter, see C.M. Larkin, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 605, 611 (1996).



within a given country over time. There are two main reasons for borrowing the JRI's assessment process, "scoring," and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats enables ABA ROLI to cross-reference information generated by the LPRI into the existing body of JRI, PRI, and LERI information. This gives ABA ROLI the ability to provide a much more complete picture of legal reform in target countries.

Two areas of innovation that build on the JRI experience are the creation of a correlation committee and the use of informal focus groups. In order to provide greater consistency in correlating factors, ABA ROLI forms an ad hoc committee that includes the assessor, relevant Country Director and local staff, and select ABA ROLI D.C. staff. The concept behind the committee is to add a comparative perspective to the assessor's country-specific experience and to provide a mechanism for consistent scoring across country assessments. The use of informal focus groups that consist of not only lawyers, but also judges, prosecutors, NGO representatives, and other government officials is meant to help identify issues and increase the overall accuracy of the assessment.

The follow-on rounds of implementation of the LPRI will be conducted with several purposes in mind. First, they will provide an updated report on the legal professions in emerging democracies by highlighting significant legal, judicial, and even political developments and how these developments impact the independence and quality of legal profession. They will also identify the extent to which shortcomings identified by earlier LPRI assessments have been addressed by state authorities, legal professionals, and others. Periodic implementation of the LPRI assessments will record those areas where there has been backsliding, note where efforts to reform the profession of lawyers have stalled and have had little or no impact, and distinguish success stories and improvements in legal profession reform efforts. Finally, by conducting LPRI assessments on a regular basis, ABA ROLI will continue to serve as a source of timely information and analysis on the state of legal profession independence and reform in emerging democracies.

The overall report structure of follow-on LPRI reports as well as methodology will remain unchanged to allow for accurate historical analysis and reliable comparisons over time. These reports will evaluate all 24 LPRI 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 functioning of the legal profession, and will again use the key informant interview process, relying on the perspectives of several dozen or more lawyers, judges, NGO leaders, and journalists who have expertise and insight into the functioning of the lawyers. When conducting the follow-on assessments, particular attention will be given to those factors which received negative values in the prior LPRI assessment.

Each factor will again be assigned a correlation value of positive, neutral, or negative as part of the follow-on LPRI 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 LPRI report's front-matter and will also be noted in the conclusion box for each factor in the standardized LPRI report template. The following symbols will be used: ↑ (upward trend; improvement); ↓ (downward trend; backsliding); and ↔ (no change; little or no impact).

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Being sensitive to the potentially prohibitive cost and time constraints involved, ABA ROLI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, journalists, and outside observers with detailed knowledge of the legal system. Overall, the LPRI 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.

The LPRI was designed to fulfill several functions. First, the LPRI provides governments and legal system stakeholders with a comprehensive assessment of the state of legal profession in the country, thus enabling them to prioritize and focus reform efforts. Second, ABA ROLI and other rule-of-law assistance providers will be able to use the LPRI's results to design more effective programs that help improve the quality of independent legal representation. Third, the LPRI provides donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the legal profession in countries where the LPRI is implemented. Fourth, combined with the JRI, the PRI, and the LERI, the LPRI contributes to a comprehensive understanding of how the rule of law functions in practice. Finally, the LPRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of lawyers in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the legal profession.

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Assessment Team

The 2009 Moldova LPRI Analysis assessment team was led by Daniel FitzGibbon and included several members of the ABA ROLI office in Moldova: Mihaela Vidaicu, Staff Attorney; Olimpia Iovu, Staff Attorney; and Leslie Reed, Long-Term Legal Specialist. The team received strong support from other members of ABA ROLI's staff in Moldova, including Stephen Larrabee, Country Director, and Scott Reed, Long-Term Legal Specialist; and in Washington, D.C., including Simon Conte, Director of Research and Assessments Office, Olga Ruda, Research Coordinator, Julie Garuccio, Senior Program Manager, and Megan Niedermeyer, Program Officer. Brie Allen, Legal Analyst at the Research and Assessments Office, served as editor and prepared the report for publication. The conclusions and analysis are based on interviews that were conducted in Moldova in April 2009 and relevant documents that were reviewed at that time. Records of relevant authorities and a confidential list of individuals interviewed are on file in the Washington, D.C. office of ABA ROLI. The assessment team is extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.

Executive Summary

Brief Overview of the Results

The 2009 Legal Profession Reform Index (LPRI) assessment for Moldova reflects a legal profession that is continuing to assert its rights and freedoms and attempting to carry out its responsibilities to clients in the face of governmental obstacles and intrusions, rapidly changing laws and expectations, and a struggling national economy. Of the 24 factors analyzed in this assessment, two factors (academic requirements for advocates and formation of independent law practice) received positive correlations, 13 were assigned neutral correlations, and the remaining nine factors were assigned negative correlations. These results are roughly comparable to the outcome of the 2004 Moldova LPRI, except for a net upgrade in 2009 of one factor correlation from negative to neutral. Unfortunately, six factors (lawyers' access to clients, preparation to practice law, resources and remuneration for lawyers' services, availability of continuing legal education, and bar associations' public interest and awareness programs and their role in law reform) continue to have negative correlations, while correlations for three additional factors (ability to practice law freely, professional immunity, and professional ethics) have been lowered from neutral to negative. One factor correlation (right of audience) was lowered from positive to neutral. Nevertheless, the situation has improved in some regards, as evidenced by five improved factor correlations. This includes four factors (advocate licensing body, minority and gender representation in the profession, advocate disciplinary proceedings, and overall availability of legal services) whose correlation was raised from negative to neutral and one factor (academic requirements) where the correlation improved from neutral to positive.

Positive Aspects Identified in the 2009 Moldova LPRI

- **The Bar**, which was a novel entity in 2004, **has emerged as a relatively assertive representative** of the advocacy profession. While much remains to be done to move the Bar in the direction of a model professional association, its leadership has often served as a **prominent voice in expressing the interests and defending the rights** not only of its members but also of the public. Its basic governing bodies – the Congress, the Bar Council, the Licensing Commission, and the Disciplinary Commission – have established their roles and organized most of their functions as contemplated by the Law on Advocacy and have become more active in carrying them out.
- The Licensing Commission has developed and implemented **fair procedures for the preparation and conduct of the qualification examination** required of most new advocates. This qualification examination is generally recognized as reasonable and comprehensive, and the Licensing Commission's procedures for issuing and denying law licenses and processing appeals are recognized as timely and fair.
- The **Disciplinary Commission has become more active and transparent** in examining complaints filed against advocates, applying what are widely believed to be fair procedures in its consideration of these matters. Its authorized **sanctions under the law have been expanded** to include suspension and withdrawal of advocate licenses, although other bodies outside the Bar continue to have some power over license withdrawals. The Disciplinary Commission and its members are generally perceived to be **fair and objective in performing their duties**.
- **A new legal aid law corrects some of the deficiencies found in the prior system.** The legal aid program is now run by an independent council, and full-time public defenders are available in Chisinau and will eventually be posted throughout the country. Part-time private legal aid lawyers are still vital to the system, and they have benefited from modest improvements in compensation and procedures and from access to special training sessions. **Criminal investigating bodies and courts have been largely**

removed from the process of assigning private legal aid lawyers and reviewing their compensation requests, steps which are expected to increase the independence and assertiveness of private legal aid lawyers. However, **funding issues remain an impediment to full implementation of the new legal aid regime**.

- **Legal education continues to be positively affected by Moldova's accession to the Bologna Process in 2005**. Most significantly, the government has instituted a program for accreditation of law schools, resulting in the closing of a number of underperforming schools. Several other steps have been taken to meet the uniform standards of the European Higher Education Area, including instituting standards regarding coursework and credit hours and law faculty credentials.

Concerns Relating to Exercise of Lawyers' Rights and Freedoms

- In the past three years, there have been **multiple incidents of actual or attempted intimidation by representatives of the government or law enforcement bodies directed at advocates**, including interference with client contractual relationships and a letter to the Bar from the Prosecutor General critical of and threatening to advocates who bring cases against Moldova to the European Court of Human Rights. Advocates and other lawyers also **lack immunity from criminal prosecution or civil liability** for statements made in good faith in the course of representing their clients, and **investigating judges have broad authority to approve interceptions and seizure of correspondence** and other communications at the request of the prosecutor. These deficiencies, which stem from both the law and the practice, may have a chilling effect on the lawyers' ability to practice their profession freely.
- **Access to detained clients continues to be a problem**, despite recent changes in policy that provide private interview rooms for client meetings. Advocates must often obtain **the prior approval of the police commissioner** to meet with a client, and **meetings are generally prohibited during non-business hours**. Advocates seeking to locate and meet with clients detained following the protests of April 7, 2009 endured considerable **delays and harassment**.
- While advocates are able to exercise their right to appear before courts and other tribunals as permitted by law, virtually all **advocates interviewed stated they were not treated as equal to the prosecutor in criminal proceedings**. Their view was that **judges are biased in favor of the prosecutor** and routinely defer to his/her arguments on motions, pre-trial detention, and issues of the guilt or innocence of criminal defendants.

Concerns Relating to Independent Civil Practice Lawyers

- **One need not be an advocate, or even a lawyer, to represent clients for compensation in civil court proceedings and in legal consultations**. A recent change in the law limits representation in administrative proceedings to advocates, but still leaves many important legal services in the hands of non-advocates. **Independent civil practice lawyers** represent a significant share of the lawyers regularly and independently engaged in the practice of law in non-criminal matters, yet they **are completely unregulated**. They are not subject to an admission process, qualification examination or prior work experience requirement, continuing legal education (CLE) obligation, or a code of ethics or disciplinary proceedings.
- By law, some of the **key professional guarantees of lawyers under international standards**, including independence, client confidentiality, and access to information, **are available to advocates**, but there are **no equivalent protections for independent civil**

practice lawyers, including those working as partners or employees of advocates. Many **members of the public do not understand the distinction between advocates and independent civil practice lawyers**, and thus do not realize that engagement of the latter can deprive them of important confidentiality protections and complaint remedies.

Concerns Relating to Professional Qualification and Training

- The overall quality of legal education, and thus the preparation of lawyers to practice their profession effectively after graduation, continues to be viewed as inadequate. While there have been promising developments, **legal education is widely considered to be unduly theoretical, outdated, and lacking in practical skills training**. Additionally, the **Bar's internship program** for prospective advocates **needs greater control, standardization, and monitoring and evaluation mechanisms**.
- While various groups sponsor training programs for practicing lawyers, there are **deficiencies in the CLE programs offered in terms of number of classes, topics, and geographic access**. Most programs are focused on the agendas of sponsors rather than the needs and interests of lawyers. The Bar's role in CLE is very limited. While the Congress of the Bar set an **eight-hour annual minimum for CLE by advocates**, this standard is **not enforced**. The establishment of the **National Institute of Justice for judges and prosecutors**, and the lack of a comparable post-law school training program for prospective and experienced advocates, will likely **increase the existing gap in knowledge, influence, and status between advocates and prosecutors**.

Other Concerns Identified in the 2009 Moldova LPRI

- **Practicing lawyers are generally poorly compensated** for their services, a circumstance that is tied to Moldova's weak economy. As a result, many lawyers, especially those not based in or near Chisinau, are **unable to obtain access to computers, Internet legal databases, and similar resources**.
- The Disciplinary Commission has made only **limited efforts to publicize disciplinary procedures and remedies** available to dissatisfied clients. Additionally, there are concerns over the fact that only **a relatively small number of cases processed by the Disciplinary Commission have actually resulted in sanctions**.
- The recent **shift in authority to withdraw advocate licenses in certain circumstances** from the Bar's Disciplinary Commission **to the new legal aid council**, a group with heavy government representation, is very troublesome. While the **council has publicly stated it does not intend to exercise its authority** in this area, the presence of this power in itself adversely affects the independence of the Bar.
- While the **representation of women advocates has improved at a very modest pace** in the last several years, **much remains to be done to raise the proportion of female advocates** up to that of women in the population as a whole and to increase their presence in the Bar leadership bodies.

Moldova Background

Moldova is a republic located in southeastern Europe, surrounded by Romania to the west and Ukraine to the north, east, and south. It covers a land mass of 33,843 square kilometers and is divided into 32 districts, known as *raions*, three municipalities, and one autonomous territorial unit (Gagauzia). There is also a self-proclaimed republic of Transnistria, under the control of a separatist regime, whose independence is not recognized by any other country.³ Moldova has a population of 3,567,500 people, based on a January 2009 estimate (excluding the Transnistrian population, which may be another half million people). Over 785,000 of Moldova's population lives in Chisinau, the capital. Of the total population, 51.9% are female and 48.1% are male. Moldova has a multi-ethnic population consisting of Moldovans (75.8%), Ukrainians (8.4%), Russians (5.9%), Gagauz (4.4%), Romanians (2.2%), Bulgarians (1.9%), and others (including Roma). Moldovan, virtually identical to Romanian, is the state language, although Russian, Ukrainian, and Gagauz are also spoken. Approximately 93.7% of Moldova's population adhere at least nominally to the Christian Orthodox religion, belonging either to the Moldovan Orthodox Church, an autonomous diocese of the Russian Orthodox Church and loyal to the Patriarch of Moscow, or to the Bessarabian Orthodox Church, affiliated with the Romanian Orthodox Patriarchate in Bucharest. There are also followers of the Old Rite Russian Orthodox Church, known as Old Believers, as well as members of other Christian denominations and Jews.⁴

Moldova occupies a large part of what was once called Bessarabia, an area long subjected to invasions from a variety of foreign armies. An independent Moldovan state emerged briefly in the late 15th century, but it fell to the Ottoman Turks in the 16th century. Following the Russian-Turkish War in the early 19th century, the eastern half of Moldova (Bessarabia) between the Prut and Nistru Rivers became part of Russia, while the western half (west of the Prut River) remained under Turkish control until Romania gained its independence in 1878. At that time, Romania took control of the Russian-ruled portion of Bessarabia. In 1918, Moldova briefly became an independent republic, but then formed a union with Romania, which continued until 1940. The Soviet Union never recognized Romanian control of the area and established an autonomous Moldavian Republic on the east side of the Nistru River in 1924, as part of the Ukrainian Soviet Socialist Republic [hereinafter SSR]. In 1940, pursuant to the Molotov-Ribbentrop agreement, Romania was forced to cede Bessarabia to the Soviet Union; Bessarabia and parts of the Moldavian Autonomous SSR were combined to create the new Moldavian SSR. At that time, the Soviets transferred the three southern districts of Bessarabia along the Black Sea coast to the Ukrainian SSR, leaving the Moldavian SSR landlocked.

Following the decline and breakup of the Soviet Union, the Moldavian SSR proclaimed its sovereignty as the Republic of Moldova, declaring independence on August 27, 1991. With Moldovan independence, there arose separatist movements in Transnistria to the east and Gagauzia in the south. While the conflict with the Gagauz minority was resolved by the grant of autonomy in 1994, unrest in Transnistria led to violence and the intervention of the Russian army. A cease-fire agreement was reached in 1992, although tensions continue; negotiations among Moldovan, Transnistrian, and Russian officials are still ongoing.

After a decade of political turmoil, declining economic conditions, and largely ineffective governments, the Communist Party was returned to power in 2001 and has continued to hold the reins of government. Following the April 5, 2009 parliamentary elections, the Communists were assured of retaining control for four more years, barring unforeseeable developments. However,

³ The assessment team did not travel to Transnistria, or conduct any assessment interviews there. Thus, the conclusions reached in this assessment generally do not apply to Transnistria.

⁴ The source of most of the demographic information in this report is the National Bureau of Statistics of the Republic of Moldova, <http://www.statistica.md> [hereinafter NATIONAL STATISTICS BUREAU]. The ethnic and religious group percentages were taken from the most recent census held in 2004, while population numbers are estimates, current as of January 1, 2009.



dissatisfaction with the fairness and outcome of these elections contributed to a series of demonstrations by opposition protesters, culminating in violence on April 7 (the commencement date of the assessment team's visit to Moldova). Three protesters were killed, scores were injured, and over 100 were detained, while the Parliament Building was partially burned and ransacked.

Moldova is reputed to be the poorest country in Europe, in part because of the loss of some important markets and sources of energy and raw materials with the collapse of the Soviet Union. With its fertile soil, Moldova has a primarily agricultural economy, accompanied by food processing activities. Its other industries include metal processing and production of textiles, clothing, and machinery. Widespread poverty and lack of government resources, as well as the legacy of five decades of Soviet domination, contribute greatly to the challenges currently facing the legal profession in Moldova.

Legal Context

Moldova adopted its post-Soviet Constitution in 1994. See generally CONSTITUTION OF THE REPUBLIC OF MOLDOVA (*adopted* Jul. 29, 1994, *last amended* Jun. 29, 2006) [hereinafter CONST.] The Constitution protects the right to due process, privacy, freedom of expression and assembly, the right to vote, and other rights contained within the Universal Declaration of Human Rights. CONST. art. 4 and Chpt. II. Moldova is a parliamentary republic with separate legislative, executive, and judicial branches. *Id.* arts. 1, 6. Its legal system is derived in large part from the continental European civil law tradition. Since 2003, Moldova has had an adversarial, rather than inquisitorial, criminal justice system.

Legislative power is vested in a unicameral **Parliament**, consisting of 101 members elected for four-year terms. *Id.* arts. 60, 63. Acting by simple majority vote, Parliament passes laws, approves the national budget, ratifies or terminates treaties, declares states of emergency or war, and has a wide range of other powers. *Id.* arts. 66, 74. Constitutional laws amend the Constitution, and can be initiated by petition of at least 200,000 voters, by at least 1/3 of the parliamentary deputies, or by the government. *Id.* art. 141. 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 4 of its judges. Then, at least 2/3 of the parliamentary deputies must vote to adopt the constitutional law. *Id.* 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 elected deputies, following at least two readings. Ordinary laws are those not required to be constitutional amendments or organic laws, and a majority vote of the deputies present in Parliament is sufficient to adopt them. *Id.* art. 74. 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. *Id.* art. 66. In addition, Parliament, on the proposal of the Superior Council of Magistracy [hereinafter SCM], appoints the President and judges of the Supreme Court of Justice [hereinafter SCJ], who must have at least ten years of judicial experience. *Id.* art. 116. Parliament also chooses two of the six judges of the Constitutional Court, as well as two out of 12 members of the SCM. *Id.* art. 122, 116(3).

The **President** is the head of state and is elected by a three-fifths majority of Parliament, voting by secret ballot. Provisions exist for runoff and repeat elections, and ultimately for dissolution of Parliament, if no candidate receives the requisite majority. *Id.* arts. 77, 78. The President may serve up to two consecutive four-year terms. *Id.* art. 80. Among other responsibilities, the President represents the country in its international relations, serves as commander-in-chief of the armed forces, and controls various key appointments. *Id.* arts. 77, 86-88. In exercising his/her powers, the President may issue decrees, which are compulsory throughout the country. *Id.* art. 94. The President designates a candidate for the office of Prime Minister, whose appointment, work plan, and slate of Government appointees are subject to a vote of confidence

by a majority of Parliament members. *Id.* art. 98. If the Prime Minister requests but does not receive a vote of confidence in the Government after two requests, or in the event of certain other deadlocks, the President may dissolve the Parliament and call for new elections. *Id.* art. 85. The President also promulgates the laws of Moldova, and has the right to veto a given law and resubmit it to Parliament for reconsideration. However, if Parliament reapproves the law, the President must promulgate it. *Id.* art. 93. The President also appoints all judges (except those of the SCJ) following proposals submitted by the SCM. *Id.* art. 116.

The **Government** consists of the Prime Minister, vice prime ministers, ministers, and other members, as determined by organic law. *Id.* art. 97. The Prime Minister leads the Government and coordinates the activities of its members. *Id.* art. 101. The Parliament has the right to dismiss the Government by a majority vote of no confidence. *Id.* art. 106. The Government carries out the foreign and domestic policy of the state and oversees public administration. *Id.* art. 96. The Government also issues decisions and orders, which along with presidential decrees and laws passed by parliament, must be published in the *Monitorul Oficial*, the official bulletin of Moldova [hereinafter Official Bulletin]. *Id.* arts. 76, 94, 102. The Government chooses two judges of the Constitutional Court. *Id.* art. 136.

The **judiciary** consists of district courts, specialized courts, courts of appeal, and the SCJ. *Id.* art. 115; see also LAW OF THE REPUBLIC OF MOLDOVA ON THE ORGANIZATION OF THE JUDICIARY art. 15 (*adopted* July 6, 1995, *last amended* Feb. 3, 2009) [hereinafter LAW ON THE ORGANIZATION OF THE JUDICIARY]. There are 46 district courts that decide all first instance cases – civil, criminal, and administrative – not assigned by law to another court. *Id.* art. 26, Annex 1. There are also five regular courts of appeals, each of which has appellate, cassation, and (in intellectual property and certain exceptionally serious crimes) first-instance jurisdiction over cases arising in their geographical areas. *Id.* art. 36, Annex 1. In regards to specialized courts, there is an Economic District Court and an Economic Court of Appeals, as well as a first-instance Military Court, all located in Chisinau. *Id.* arts. 41-42¹. The SCJ is the highest court of cassation, reviewing judgments of the courts of appeals and performing extraordinary review of closed cases to see if reopening is appropriate. *Id.* arts. 43-44, Annex 1; see also ABA ROLI, JUDICIAL REFORM INDEX FOR MOLDOVA VOLUME II at 8-9 (Jan. 2007) [hereinafter 2007 MOLDOVA JRI]. Judges are appointed (after passing a qualification examination) for an initial term of five years, and may then be reappointed until retirement age. CONST. art. 116 All court proceedings are conducted in the Moldovan language, with interpreters provided for those participants who do not speak Moldovan, although hearings may be conducted in a different language with the consent of the majority trial participants. *Id.* art. 118; LAW ON THE ORGANIZATION OF THE JUDICIARY art. 9.

The SCM is an independent body with the purpose of ensuring the proper functioning of the judicial system and to guarantee its independence. As of the drafting of this report, it had 12 members: seven judges elected by secret ballot by the General Assembly of Judges; two law professors elected by a two-thirds vote of the Parliament (one nominated by the governing party and the other by the opposition); and the Minister of Justice, the President of the SCJ, and the Prosecutor General. All but the *ex-officio* members serve four-year terms. Recent amendments will reduce the number of judges on the SCM. As of November 2009, the SCM will still have 12 members, but these members will consist of 5 judges and 4 law professors. CONST. art. 122; LAW OF THE REPUBLIC OF MOLDOVA ON THE HIGHER COUNCIL OF MAGISTRACY arts. 3, 8 (*adopted* Jul. 19, 1996, *last amended* Jan. 13, 2008). The SCM is responsible, *inter alia*, for the appointment, transfer, promotion, discipline, and removal of judges. CONST. art. 123.

The **Constitutional Court**, which formally is not part of the judiciary, is charged with determining the constitutionality of laws, presidential decrees, decisions of Parliament, orders of the Government, and other official actions, as well as of ratified international treaties; interpreting the Constitution; and confirming the results of national referenda and presidential and parliamentary elections. *Id.* arts. 134-135. The six judges of the Constitutional Court must have at least 15 years of legal or scholarly experience and are selected, two each, by Parliament, the Government, and the SCM for terms of six years, with eligibility for reappointment for one more

term. *Id.* arts. 136, 138; LAW OF THE REPUBLIC OF MOLDOVA ON THE CONSTITUTIONAL COURT arts. 5, 6, 11 (*adopted* Dec. 13, 1994, *last amended* Oct. 23, 2008). At the time of the assessment team's visit, the Constitutional Court consisted of one former prosecutor who had also served as a member of Parliament, two former Moldavian SSR Supreme Court judges, and three past members or presidents of both the SCJ and the SCM.

Historical Context

The status and progress of the Moldovan legal profession cannot be fully understood without recognizing the legacy of the decades it spent as part of the Soviet Union. During that era, the procuracy stood at the apex of the legal system and largely dictated to judges how to decide criminal cases. Although the Soviet constitution included a right to counsel and the presumption of innocence, the role of the advocate was limited. In the vast majority of criminal cases, the guilt of the defendant was assumed, and the best an advocate could hope for was to obtain a more lenient sentence. "Telephone justice," whereby Communist Party leaders would call a judge to tell him/her how to decide a case, was a frequent occurrence, especially in political cases. Civil litigation was infrequent, since there were few commercial or property rights subject to dispute, but divorce and inheritance cases were common. In important civil matters, or when one party had the right personal connections, a prosecutor could intervene and heavily influence a judge's decision.

Under the communist regime, advocates had to be members of the Collegium of Advocates and were regulated by a 1980 Moldavian SSR law based on the 1979 Soviet Union Statute of the Advokatura. LAW OF THE MOLDAVIAN SOVIET SOCIALIST REPUBLIC ON THE APPROVAL OF THE REGULATION OF THE LEGAL PROFESSION OF THE R.S.S.M (*adopted* Nov. 21, 1980). The Collegium was responsible for collecting fees, paying expenses, and compensating advocates. After Moldova's independence in 1991, the Collegium of Advocates continued as a voluntary association, which granted admission to the legal profession following completion of an internship and passage of a qualification examination. In addition to members of the Collegium of Advocates, lawyers who passed a written examination and received a license from the Ministry of Justice [hereinafter MOJ] to provide legal assistance could also serve as criminal defense attorneys. Moreover, any legally competent person, with or without a legal education or any education at all, could represent parties in civil and administrative cases and provide consultation on legal matters.

In May 1999, Parliament passed a new Law on the Legal Profession to replace its 1980 predecessor. Among other things, it converted the Collegium of Advocates into the Union of Advocates, and once again made membership mandatory for all advocates. Lawyers who had been licensed by the MOJ but not members of the Collegium were required to join the Union of Advocates in order to continue to work as criminal defense attorneys. Although the MOJ issued licenses for advocates, it was the Union of Advocates that determined who was qualified to be licensed. These and other provisions of the Law on the Legal Profession were challenged in the Constitutional Court. The Constitutional Court held the provisions unconstitutional because they infringed on the right of citizens to be defended by a lawyer of their choice, the rights of lawyers to freedom of association and free choice of profession, and the constitutional competence of the MOJ to license advocates. DECISION OF THE CONSTITUTIONAL COURT NO. 8 (Feb. 15, 2000).

More than two years passed before Parliament passed another law on the advocacy profession, intended to address the constitutional deficiencies of its predecessor. See ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON THE LEGAL PROFESSION (*adopted* July 19, 2002, *last amended* Dec. 12, 2008) [hereinafter LAW ON ADVOCACY].⁵ Although the Law established a Bar to which all

⁵ The English translation of this Law refers to the "legal profession" and "lawyers," but to avoid confusion with other legal professions (e.g., judges, prosecutors, and notaries) this report will generally use the terms "advocacy" and "advocates" when referring specifically to the Bar and its members, and "lawyers" when referring generally to advocates and non-advocate lawyers.

advocates have to belong, it also reaffirmed the right of advocates to form and join other professional associations. *Id.* arts. 30(1), 31(1). The constitutionality of the Law on Advocacy was challenged on many of the same grounds employed in attacking the earlier Law on the Legal Profession, but this time the Constitutional Court held it constitutional. DECISION OF THE CONSTITUTIONAL COURT NO. 12 (Jun. 19, 2003).

To facilitate the transition from the Union of Advocates to the new Bar, a commission of advocates, chaired by a deputy minister of justice, was organized to prepare for the Bar's first Congress. LAW ON ADVOCACY art. 59(4). At the first Congress, held in December 2002, advocates elected their first executive body, the Bar Council, the President of the Bar, and members of the other commissions as set forth by the Law on Advocacy. See *id.* arts. 36, 40-42.

While the Law on Advocacy required all advocates to join the Bar, it did not restrict or govern non-advocate civil practice lawyers or non-lawyer representatives active in civil litigation and consultations or administrative proceedings. CIVIL PROCEDURE CODE OF THE REPUBLIC OF MOLDOVA art. 8(1) (*adopted* May 30, 2003, *last amended* Feb. 3, 2009) [hereinafter CIVIL PROC. CODE]. A new administrative contraventions code, however, does restrict legal representation in administrative trials to licensed advocates. CODE ON CONTRAVENTIONS OF THE REPUBLIC OF MOLDOVA arts. 378, 392 (*adopted* Oct. 24, 2008, *last amended* Feb. 3, 2009, *effective* May 31, 2009) [hereinafter CONTRAVENTIONS CODE] arts. 378, 392.

Overview of the Legal Profession

The term "legal professional," or "jurist" as it is known in Moldova, is broadly defined. It encompasses anyone who has graduated from law school, which is a four-year undergraduate program. After law school, most graduates pursue one of the following careers:

- **Advocates**, who are members of the Bar, having completed a one-year internship and passed a qualification examination. They are licensed by the Licensing Commission of the Bar and regulated by the Bar Council and the Ethics and Disciplinary Commission. They may practice law on a regular and independent basis in the full range of professional matters. As of March 1, 2009, there were 1,329 advocates in Moldova.
- **Non-advocate lawyers**, which include ***jurisconsults*** (in-house lawyers employed by private companies, government agencies, or non-governmental organizations [hereinafter NGOs]); and ***independent civil practice lawyers*** (who work on their own and are not affiliated with any entity). The former are permitted to represent only their employers, while the latter may represent a variety of clients in civil and (until May 31, 2009) administrative matters. Non-advocate lawyers are unlicensed, unregulated, and need not belong to unions or associations. According to one study, roughly 90% of legal professionals representing clients in civil or economic court proceedings are non-advocate lawyers. See N. HRIPTIEVSCHI, THE LEGAL PROFESSION IN MOLDOVA at 4 (Aug. 2008). It is likely that there are hundreds, perhaps over 1,000, independent civil practice lawyers in Moldova.
- **Judges**, who serve in one of the first instance, appellate, or specialized courts, the SCJ, or the Constitutional Court. There are also ***investigating judges*** for each district court, who ensure judicial control over investigations by deciding, *inter alia*, on pretrial detention, searches and seizures, and the interception and recording of conversations and correspondence. Prospective judges seeking entry-level positions generally must complete an 18-month training program at the recently established National Institute of Justice [hereinafter NIJ]. However, up to 20% of judicial positions over a three-year period may be filled by candidates lacking the NIJ credential if they have at least five years of legal experience and pass a qualification exam. The judiciary is, with certain exceptions, regulated by the SCM.

- **Prosecutors**, who prosecute criminal defendants under the supervision of the Prosecutor General. Most would-be prosecutors must complete an 18-month training program at the NIJ. However, as with judges, up to 20% of prosecutors may instead enter the procuracy with at least five years' legal experience and passing of a qualification exam.
- **Investigating officers**, who investigate crimes and are a part of the law enforcement apparatus. They gather evidence and submit the case file to the prosecutor, who presses charges.
- **Notaries**, who are responsible for drafting and filing certain types of contracts and real estate ownership records, as well as for verifying documents and certifying powers of attorney. A recently created Notary Commission handles disciplinary issues involving members of this profession.

While the scope of this LPRI is limited to advocates and independent civil practice lawyers, some factors, such as those pertaining to legal education, can be applied to the broader legal profession as outlined above. It should also be stressed that, consistent with the Soviet tradition, one need not be a legal professional at all to advise or represent another person in a civil case or transaction. A party can give a "proxy" to anyone having full legal capacity, whether or not the latter has any legal education (or university education of any sort, for that matter), and that person can lawfully provide legal services for compensation to the party in a civil proceeding. The scope of this LPRI does not extend to these non-lawyer representatives.

Foreign attorneys may provide professional legal assistance in Moldova as dictated by applicable international treaties, so long as they are assisted by Moldovan advocates. LAW ON ADVOCACY art. 5(7).

Organizations of Legal Professionals

The Bar

Also called the Moldovan Bar Association, the Bar is the self-regulating professional organization to which all licensed advocates must belong. Acting through its various elected bodies and leaders, the Bar is responsible for: providing legal aid; interfacing with public authorities, courts, law enforcement agencies, and other organizations on behalf of lawyers; admitting advocates into the profession and maintaining a registry of members; establishing and enforcing ethical standards; conducting disciplinary proceedings; organizing continuing legal education [hereinafter CLE] programs; and engaging in other activities in furtherance of the interests of the profession and its rights and obligations to the public. *id.* arts. 31, 33, 35. The governing bodies of the Bar include: the Congress, which is the supreme body of the Bar (*id.* art. 32); the Bar Council, which is the executive and administrative arm of the Bar (*id.* arts. 33-38); the Licensing Commission, which is responsible for the qualification examination (*id.* art. 40¹); the Ethics and Disciplinary Commission, which examines complaints against advocates and conducts disciplinary proceedings (*id.* art. 41); and the Audit Commission, which is charged with auditing the financial condition of the Bar (*id.* art. 42). Among other activities, the Bar administers an internship program and qualification exam for prospective advocates, has adopted and enforces a code of ethics, and publishes a monthly journal for its members. The Bar is headquartered in Chisinau and reportedly has designated coordinators in each of the *raions* and other administrative units of the country (other than Transnistria).

The Bar funds its operations primarily through a combination of internship contract registration fees (MDL 1,000, or approximately USD 87),⁶ qualification examination fees (MDL 500, or about USD 44), an admission fee from judges and prosecutors who become advocates (MDL 500, or approximately USD 44), and monthly dues of MDL 100 (approximately USD 9) per member. Donors, principally international NGOs, provide the vast majority of funding for the Bar's CLE seminars.

Union of Jurists

The Union of Jurists includes not only advocates but also other legal professionals, including judges, prosecutors, and independent civil practice lawyers. Among its activities, it organizes conferences of lawyers, including a 2007 meeting on legal ethics with representatives from other Eastern European countries and former Soviet republics. Regular members of the Union of Jurists pay MDL 120 (approximately USD 10.50) to join and annual dues of MDL 90 (about USD 8), while law student members pay only MDL 40 (USD 3.50) in membership fees each year. The Union of Jurists has 821 members, including students.

League of Moldova Advocates

The League of Moldova Advocates, a voluntary advocate NGO, was formed in 2003 and currently has 38 members. Membership dues are MDL 15 (approximately USD 1.30) per month, with those funds primarily paying for the League's mailings. It has no other sources of funding. The principal purpose of this organization is to serve the needs and interests of some of the more modern advocate offices, many of which have civil and business practices, in contrast to the traditional advocate offices that consist solely or predominantly of criminal defense advocates.

Free and Independent Lawyers Association of Moldova

The Free and Independent Lawyers Association of Moldova was founded in 1995 to unite jurists, law professors, and advocates who practice banking law. It operates an arbitration tribunal that handles at most six cases per year; originally, cases were limited to banking matters, but the tribunal is now open to a range of commercial disputes. The Association has 30 members, and its activities are financed through the receipt of 30% of the tribunal's arbitration fees.

Other Associations

There are other NGOs that focus on narrow issues such as human rights, but do not have widespread membership among practicing lawyers. Lawyers for Human Rights, founded in 2001, consists of eight licensed advocates who bring strategically important cases before the European Court of Human Rights [hereinafter ECHR]. Another NGO, Promo-Lex, promotes human rights and legal defense, and is presently concentrating on serving persons living in Transnistria. There is apparently a separate bar association in Transnistria that takes the form of a district collegium of advocates, but little information is available about its functions or composition. Additionally, several interviewees reported that there is at least one association of young advocates in Moldova.

With regard to organizations of other legal professionals, the Association of Judges of the Republic of Moldova was established in 1994 to serve the interests of the judiciary, but, by some accounts, it has become rather passive and ineffective in recent years. There is also an Association of Prosecutors of the Republic of Moldova, launched in 2005 with 670 members; however, as of June 2008, it has been inactive. Another association was formed to defend the

⁶ In this LPRI, Moldovan lei [hereinafter MDL] are converted to United States Dollars [hereinafter USD] at the average rate of conversion during the period in which the interviews were conducted (USD 1.00 = MDL 11.45).



rights and interests of retired prosecutors, while a third was created to help prosecutors obtain housing at below-market prices.

Moldova LPRI 2009 Analysis

While the correlations drawn in this exercise may serve to give a sense of the relative status of certain issues, ABA ROLI emphasizes that the factor correlations and conclusions possess their greatest utility when viewed in conjunction with the underlying analysis and compared to the 2004 Moldova LPRI. ABA ROLI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA ROLI invites comments and information that would enable it to develop better or more detailed responses in future LPRI assessments. ABA ROLI views the LPRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

Legal Profession Reform Index Factor		Correlation 2004	Correlation 2009	Trend
I. Professional Freedoms and Guarantees				
Factor 1	Ability to Practice Law Freely	Neutral	Negative	↓
Factor 2	Professional Immunity	Neutral	Negative	↓
Factor 3	Access to Clients	Negative	Negative	↔
Factor 4	Lawyer-Client Confidentiality	Neutral	Neutral	↔
Factor 5	Equality of Arms	Neutral	Neutral	↔
Factor 6	Right of Audience	Positive	Neutral	↓
II. Education, Training, and Admission to the Profession				
Factor 7	Academic Requirements	Neutral	Positive	↑
Factor 8	Preparation to Practice Law	Negative	Negative	↔
Factor 9	Qualification Process	Neutral	Neutral	↔
Factor 10	Licensing Body	Negative	Neutral	↑
Factor 11	Non-discriminatory Admission	Neutral	Neutral	↔
III. Conditions and Standards of Practice				
Factor 12	Formation of Independent Law Practice	Positive	Positive	↔
Factor 13	Resources and Remuneration	Negative	Negative	↔
Factor 14	Continuing Legal Education	Negative	Negative	↔
Factor 15	Minority and Gender Representation	Negative	Neutral	↑
Factor 16	Professional Ethics and Conduct	Neutral	Negative	↓
Factor 17	Disciplinary Proceedings and Sanctions	Negative	Neutral	↑
IV. Legal Services				
Factor 18	Availability of Legal Services	Negative	Neutral	↑
Factor 19	Legal Services for the Disadvantaged	Neutral	Neutral	↔
Factor 20	Alternative Dispute Resolution	Neutral	Neutral	↔
V. Professional Associations				
Factor 21	Organizational Governance and Independence	Neutral	Neutral	↔
Factor 22	Member Services	Neutral	Neutral	↔
Factor 23	Public Interest and Awareness Programs	Negative	Negative	↔
Factor 24	Role in Law Reform	Negative	Negative	↔

I. Professional Freedoms and Guarantees

Factor 1: Ability to Practice Law Freely

Lawyers are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.

Conclusion	Correlation: Negative	Trend: ↓
<p>Despite legal protections, advocates often face improper interference or intimidation in their practices, especially in politically sensitive, commercial, or corruption-related cases. Legitimate petitions to the ECHR have led to threats of criminal investigations from the Prosecutor General. Independent civil practice lawyers do not appear to have any legal protections in this area.</p>		

Analysis/Background:

The Constitution establishes the right of parties to a trial, including the defendant, to be represented by a lawyer, and provides that “[a]ny interference with the activity of the persons carrying out the defense within legally established limits shall be punishable by law.” CONST. art. 26. Advocates are defined as “free professionals, independent consultants, and representatives on all legal issues,” and the principles of the legal profession include freedom and independence in the practice of law and prohibition on any interference with the advocate’s activity. LAW ON ADVOCACY arts. 1(3), 3(b), 44(1). Insulting, slandering, threatening, or using violence against an advocate while he/she performs his/her professional duties or in connection with them is specifically banned, and public authorities are not permitted to directly or indirectly influence or control the contract between the advocate and his/her client. *Id.* arts. 44(5), 44(8). The Law on Advocacy’s protections do not apply to independent civil practice lawyers.

Despite these clear admonitions in the law, numerous interviewees reported acts of interference or intimidation of advocates, especially (but not exclusively) stemming from political, commercial, or corruption-related cases. One interviewee declared, “Moldova has good laws, but they are rarely followed in practice. When the government is really concerned about something, laws and rights are ignored; there will be beatings and deprivations of rights. The authorities are willing to acknowledge the rights of lawyers when it doesn’t matter.”

The ECHR has often served as a remedial body to provide relief from unjust outcomes in the domestic courts of Moldova, including in several instances where advocates suffered from improper interference and intimidation by government authorities. One such case arose after the Constitutional Court held that the 1999 law creating a mandatory Union of Advocates was unconstitutional. The head of the organized bar forcefully criticized the Constitutional Court’s decision in a newspaper interview, and was fined by the Court for failing to display proper respect. The ECHR held that the fine interfered with the applicant’s right to respect for his freedom of expression within the bounds of acceptable criticism and was a violation of the European Convention. *Amihalachioaie v. Moldova*, ECHR No. 60115/00 (Apr. 20, 2004); see also EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS art. 10 (Nov. 4, 1950, as amended by Protocol No. 11, Nov. 1, 1998) [hereinafter EUROPEAN CONVENTION]. In a later case, an investigating judge issued a warrant, without apparent cause, to search the office of the advocate representing a murder defendant, allegedly because the advocate was too aggressive in his representation. The ECHR determined that the warrant was an unjustified violation of the advocate’s right to respect for his private and family life and correspondence under the European Convention. *Mancevschi v. Moldova*, ECHR No. 33066/04 (Oct. 7, 2008); see also EUROPEAN CONVENTION art. 8. Additionally, an advocate involved in that case reportedly quit representation of her client because of threats from the prosecutor. *Id.*

Sources described such intimidation as common Soviet-era tactic used to sideline effective advocates.

On June 26, 2006, the Prosecutor General of Moldova wrote a public letter to the Bar, objecting to advocates who bring actions against Moldova before the ECHR and threatening criminal investigations and prosecutions against advocates who engage in such practices in the future. He cited as examples two cases (which were then being heard on the national level, but later were brought before the ECHR) in which torture was alleged, triggering international media attention and the involvement of Amnesty International. See *Colibaba v. Moldova*, ECHR No. 29089/06 (Oct. 23, 2007); *Gurgurov v. Moldova*, ECHR No. 7045/08 (June 16, 2009). The Prosecutor General asserted that the advocates involved in those cases knew their allegations were groundless, and that by bringing these actions they were claiming “breaches of human rights which gravely prejudice the image of our country.” *Gurgurov v. Moldova*.

The Prosecutor General’s letter generated considerable media attention and strong criticism from Amnesty International, other NGOs, and individual advocates, perhaps as much as was provoked by the torture cases themselves. The Bar responded by alleging that the Prosecutor General was attempting to intimidate advocates so that they would stop bringing cases to the ECHR. In its decision in *Colibaba v. Moldova*, the ECHR held that the letter itself constituted a violation of the European Convention, in that it was intended to hinder Colibaba’s right, as set forth in European Convention art. 34, to appeal his case to the ECHR. EUROPEAN CONVENTION. The ECHR also concluded that Colibaba had indeed been tortured, and awarded damages and attorneys fees to the applicant. *Colibaba*, secs. 68, 51. Nevertheless, the Prosecutor General never retracted or apologized for the letter, and he was not publicly reprimanded or disciplined by the government for his conduct. In fact, he continued as Prosecutor General for nearly seven months after he sent this letter, at which time he was appointed special advisor to the President.

The assessment team learned of other instances of interference with advocates’ activities. For example, in October 2007, a deputy prosecutor interrogated the wife of a suspect about the terms and the circumstances surrounding the contract between the suspect and his advocate. In a separate incident two weeks later, a police officer asked a suspect to repeal her contract with her advocate, to renounce the services provided by the advocate, and to refuse to pay the advocate the agreed fee for his services. These events prompted the Bar to issue a decision accusing the deputy prosecutor and the police officer of violating the Constitution and the Law on Advocacy by interfering with advocates’ activities. The Bar also submitted its findings and supporting documentation to the appropriate supervisory bodies (the Prosecutor General’s office or the Ministry of Interior [hereinafter MOI]) for disciplinary action. However, as of the date of the drafting of this report, neither the deputy prosecutor nor the police officer has been subject to any publicly reported sanctions for their conduct. In yet another case, an advocate representing a defendant in a politically charged case was followed, and the advocate and family members received threats to their safety. The advocate responded to the situation by disclosing it to the media.

Prior to recent changes in the law, *ex-officio* advocates [hereinafter EOAs], i.e. those appointed by investigators, prosecutors, or courts to represent indigent defendants, were required to submit their invoices to the appointing body for payment. This requirement naturally subjected the EOA to leverage by his/her adversary, with a potentially chilling effect on the zealotness of his/her representation. Since a new law on legal aid took effect in late 2008, EOAs’ invoices are now processed by a separate entity, the National Council for State-Guaranteed Legal Aid [hereinafter Legal Aid Council]. ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON STATE-GUARANTEED LEGAL AID art. 12(i) (*adopted* Jul. 26, 2007, *effective* Jul. 1, 2008, *last amended* Dec. 25, 2008) [hereinafter LEGAL AID LAW]; see also Factor 19 below. Despite the new Law’s positive aspects, however, it also empowers territorial offices of the Legal Aid Council to appoint advocates as legal aid lawyers even if they are not on the list of EOAs, in the event that no advocates have contracted to provide legal aid services. LEGAL AID LAW art. 31¹. This compulsory service, while compensated, is considered objectionable by some advocates, especially those who do not normally practice

criminal defense law and those who believe that the practice infringes on their time and ability to represent other, better-paying clients.

Another troubling development is an amendment to the Law on Advocacy, passed by Parliament in December 2008 without any significant input by the Bar. This amendment created an obligation for advocates to provide legal assistance to disadvantaged persons on request, even if they have not contracted to perform these services and even if they do not practice in the relevant area of law. The same amendment empowers the MOJ, on the proposal of the Legal Aid Council and after consulting with the Bar's Ethics and Disciplinary Commission, to revoke an advocate's license (in effect, disbar the advocate) if he/she repeatedly and without justification refuses to accede to such requests. LAW ON ADVOCACY arts. 22(1)(b¹), 22(2), 46(1)(a¹). There are no clear standards or due process protections established concerning this exercise of power by the MOJ and the Legal Aid Council. This amendment appears to constitute usurpation by outside entities of the Bar's right to license and discipline its own members and is viewed by a significant number of advocates as improperly interfering with their practices and introducing the possibility of intimidation. See also Factor 21 below. However, as of the date of the drafting of this assessment, there have been no requests for non-contracting advocates to provide their services in legal aid cases.

As discussed in Factor 3 below, arrests stemming from the April 7 protests led to a series of alleged violations of the rights of both detainees and advocates. The full extent of these alleged violations, which included denial of access to detained clients, was not entirely clear during the assessment team's visit. As initially reported, however, they appear to constitute improper interference with advocates' rights to practice their profession.

Aside from the incidents detailed above, advocates and independent civil practice lawyers reported little, if any, interference or intimidation in carrying out their duties in most ordinary criminal and civil cases. Several interviewees stated that young and inexperienced lawyers are sometimes bullied by the police and prosecution and are occasionally pressured to engage in unethical conduct. Others mentioned judges threatening or actually applying sanctions against lawyers who were absent from or late for hearings; however, these actions may have been within the reasonable exercise of judges' contempt powers, as it is uncertain whether these lawyers acted in accordance with professional standards.

Factor 2: Professional Immunity

Lawyers are not identified with their clients or the clients' causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.

Conclusion	Correlation: Negative	Trend: ↓
Lawyers have no immunity from civil or criminal liability for statements made in the course of their client representations. Although the Criminal Procedure Code prohibits the government from identifying defense counsel with clients, identification by authorities in certain types of cases has become more frequent in recent years.		

Analysis/Background:

Nothing in the Moldovan Constitution or the Law on Advocacy expressly addresses advocates' immunity or identification of advocates with their clients' causes, although, as pointed out in Factor 1 above, these documents do protect advocates from threats, violence, and interference in the performance of their duties. CONST. art. 26(4); LAW ON ADVOCACY arts. 3(b), 44. These provisions would, if enforced, offer some safeguard against hostile reactions from the public and

the authorities that representation of unpopular clients might otherwise provoke. In addition, state authorities may not identify an advocate with the person whose interests he/she defends, or with the nature of any criminal case he/she is participating in. CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF MOLDOVA art. 67(1) (*adopted* Mar. 14, 2003, *last amended* Feb. 3, 2009) [hereinafter CRIM. PROC. CODE]. There is no corresponding provision for advocates or non-advocate lawyers representing clients in civil or other court proceedings.

No law or procedural code actually protects advocates or independent civil practice lawyers from lawsuits or criminal actions for statements made in the course of representing their clients. However, the assessment team did not receive any reports of lawsuits or prosecutions for statements made by lawyers in good faith and in accordance with professional standards on behalf of their clients during legal proceedings.

Members of the public, and, in especially sensitive cases, law enforcement authorities occasionally identify lawyers with their clients or their clients' causes. In fact, there are indications that identification of lawyers with their clients may have become more problematic in recent years. Several cases discussed in Factor 1 above are examples of such improper identification, including the Prosecutor General's condemnation and threatened criminal prosecution of ECHR advocates and the ECHR case of *Mancevschi v. Moldova* that involved client identification by an investigator. Several respondents asserted that the government identifies advocates with their clients and treats advocates like an opposition party or even as enemies of the government. If identification does occur, it typically involves an advocate who represents a particular political party, a criminal gang, or another recognizable group, and may harm the advocates' professional reputation.

Factor 3: Access to Clients

Lawyers have access to clients, especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.

Conclusion	Correlation: Negative	Trend: ↔
<p>While adequate laws exist and client meeting facilities were recently improved, authorities continue to impose numerous impediments to prompt and meaningful access to clients. The treatment of lawyers and detainees following the April 7 protests highlights ongoing problems regarding prompt and adequate access to clients.</p>		

Analysis/Background:

A detained person must be informed of the reasons for detention and arrest, and charges against him/her, without delay. This must occur in the presence of defense counsel, either chosen by the detainee or appointed *ex-officio*. CONST. art. 25(5); *see also* CRIM. PROC. CODE arts. 64(2)(5), 66(2)(5). Parties have the right to defend themselves with the assistance of an advocate throughout the trial, and undue interference with defense counsel's work is prohibited. CONST. art. 26.

Advocates are assured the necessary conditions for meetings and consultations with their clients, with full respect of confidentiality and without limiting the duration and number of such meetings, at any stage of a criminal or administrative case. LAW ON ADVOCACY art. 45(3); *see also* CRIM. PROC. CODE art. 68(2)(1). Criminal defendants have a corresponding right to confidential meetings with their advocates. CRIM. PROC. CODE arts. 64(2)(6), 66(2)(6). Detainees are further guaranteed the right to receive legal assistance from their advocates in confidence before first being interviewed by the authorities, and any defendant has the right to be interviewed by the

authorities (if he/she so agrees) in the presence of the defense advocate. *Id.* arts. 64(2)((4), 64(2)(7), 66(2)(3), 66(2)(7); *see also* CONTRAVENTIONS CODE art. 384(2)(f). The responsible officials are, in turn, required to provide advocates with access to their detained clients. LAW ON ADVOCACY art. 45(4). Officials who fail to comply with these obligations are considered to have violated the right to legal defense and are subject to legal liability for their misconduct. *Id.* art. 45(5).

One historic impediment to confidential meetings with detained clients in Moldova was recently eliminated, after a series of decisions by the ECHR. Previously, advocates were unable to interview their detained clients face to face in a private room. Instead, detainees were confined inside a room, and advocates had to stand outside the room, separated by a glass partition, conversing loudly through the glass. Naturally, these shouted discussions were easily overheard by guards and investigators in the vicinity, so confidential meetings were impossible. In some cases, the client and advocate could talk through telephones, but there were widespread concerns that conversations were recorded. One respondent reported a prosecution contention that advocates taught their detained clients how to fake evidence of torture, which, if true, could only have been learned by overhearing or taping conversations. The partitions also precluded an exchange of documents and simultaneous review of their contents. Repeated efforts by the Bar leadership to get private rooms for client interviews, including a three-day strike in 2004, were unsuccessful. Finally, the ECHR held that the partitions violated Article 34 of the European Convention. *See Oferta Plus S.R.S. v. Moldova*, ECHR No. 14385/04 (Dec. 19, 2006); *see also Castravet v. Moldova*, ECHR No. 23393/05 (Mar. 13, 2007). In 2008, the government conceded the inadequacy of the existing arrangement and designated a room in each detention center dedicated for private meetings between advocates and their detained clients. However, there are still suspicions, if not hard evidence, that conversations in the interview rooms are at least occasionally recorded by the authorities.

Despite this significant improvement, several problems remain regarding advocates' access to detained clients. First, the timing of advocate-client meetings is problematic. Advocates reportedly are able to meet with clients in detention centers and prisons only during business hours, which typically run from 8:00 AM until 5:00 or 6:00 PM, Monday through Friday. Access is unavailable at other times. This means that a person arrested on a Friday evening cannot meet with his/her advocate until the following week. Most, though not all, interviewees responded that access to convicted clients held in prisons under the control of the Department of Penitentiary Institutions is better and more flexible than access to accused or defendant clients held in pre-trial detention centers run by the MOI.

Second, numerous respondents stated that advocates may not meet with their detained clients without first obtaining the permission, and sometimes the accompaniment, of the police commissioner or his/her deputy. This applies even if the advocate produces his/her identification card, advocate-client contract, and mandate when attempting to gain access. Moreover, it is impossible to obtain this permission when the commissioner and deputy are both unavailable. Reportedly, this requirement is based on an unpublished internal procedure of the MOI, which apparently believes its policies trump the provisions of the Law on Advocacy. Allegedly, authorities sometimes manufacture excuses to deny or delay an advocate's meeting with his/her client. The advocate may be told these excuses, when the reality is that the detainee is under interrogation or enduring "psychological preparation" for later interrogation.

Other problems are posed by the fact that guards at detention centers reportedly insist that visiting advocates relinquish their cell phones before they are allowed to enter the facilities. The motivation for this obstacle, which makes advocates unreachable and keeps them from calling outside during these visits, is unclear, but the common belief is that it is intended to prevent advocates from photographing evidence of detainee torture. Additionally, interview rooms are often dirty, with poor lighting and bad ventilation. One interviewee reported seeing dried blood on the table in the room. Moreover, confidential meeting space is not available in courthouses, and

advocates wishing to meet with clients prior to court hearings frequently must meet in hallways or other public spaces.

The mass arrests in connection with the April 7, 2009 protests offered further evidence of problematic government practices in regards to advocates' access to clients. Many advocates complained about their inability to meet with their clients, or even to determine where their clients were physically located. The authorities reportedly treated at least some of these incidents as administrative offenses and therefore subject to the Code on Administrative Offenses.⁷ It provides generally that alleged violators can be administratively detained for no more than three hours. A special rule, however, permits the detention of persons violating public assembly laws until their cases can be examined by a competent court. CODE ON ADMINISTRATIVE OFFENSES art. 249 (*adopted* Mar. 29, 1985, *last amended* Feb. 3, 2009) [hereinafter 1985 ADMIN. OFFENSES CODE]. Interviewees observed that search and arrest warrants were issued by the police without court approval and without following proper procedures. Human rights groups, individual lawyers, and the Bar issued public statements condemning the arbitrary and indiscriminate arrests and detentions; the lack of timely access to lawyers (with some detainees reportedly beaten simply for requesting lawyers); conduct of interrogations and court proceedings without the presence of the detainees' chosen attorneys; the violation of established selection procedures for legal aid lawyers; the lack of public notice or access for important pre-trial hearings; refusal to allow representatives of international human rights organizations to visit detainees; and routine beatings, deprivations of basic human needs, and forced confessions. Concerns were also raised regarding two suspicious deaths during the protests, which some allege were the result of police torture.

Factor 4: Lawyer-Client Confidentiality

The State recognizes and respects the confidentiality of professional communications and consultations between lawyers and their clients.

Conclusion	Correlation: Neutral	Trend: ↔
Advocates generally have the right to confidentiality of client communications, but there are significant exceptions under the law and in practice. Non-advocate lawyers have very limited rights in this area.		

Analysis/Background:

The Constitution generally recognizes the right of citizens to “privacy of letters, telegrams, other postal dispatches, telephone conversations, and other legal means of communication,” although significant exceptions are permitted “in the interests of national security, state economic welfare, public order, and prevention of offenses.” CONST. art. 30. Advocates may not be interrogated concerning their relationships with their clients. LAW ON ADVOCACY art. 44(6). As a corollary to these rules, an advocate is forbidden from disclosing confidential information communicated by the client in the course of a representation and from transmitting client documents or work product to third parties, without the client’s consent. *Id.* art. 47. The advocates’ code of professional confidentiality defines confidentiality as an absolute obligation that is unlimited in time, with exceptions as provided by law and as necessary to defend litigation between the advocate and the client. CODE OF ETHICS FOR LAWYERS OF THE MOLDOVAN BAR ASSOCIATION sec. 1.3 (*adopted* Dec. 20, 2002, *last amended* Mar. 23, 2007) [hereinafter CODE OF ETHICS]. Professional secret extends to information communicated in a confidential manner by a client or another lawyer, including the issues on which a client sought legal assistance, the substance of

⁷ This Code was replaced by the Contraventions Code, effective May 31, 2009.

advice provided, representation strategies and tactics, data on a person requesting legal assistance, and all other circumstances resulting from a lawyer's professional activity. *Id.* art. 1.3.3-1.3.4. However, the Prosecutor General, his/her deputy, or a court may permit a search of an advocate's home, office, personal vehicle, or correspondence, or may allow surveillance of an advocate's telephone and other conversations. LAW ON ADVOCACY art. 44(2).

While the Crim. Proc. Code does not mention advocates' right to confidentiality, it does confirm the accused/suspect/defendant's right to receive legal assistance in confidence from his/her defense counsel before being interviewed for the first time and throughout the entire proceedings. CRIM. PROC. CODE arts. 64(2)(4), 64(2)(6), 66(2)(6); see also CONTRAVENTIONS CODE art. 384(2)(g). The advocate is also prohibited from disclosing any information received in the course of defending the client, if such information can be used against the client's interests. CRIM. PROC. CODE art. 68(3). At the same time, the investigating judge is empowered, upon the request of the prosecutor, to authorize the interception of communications and the seizure of correspondence and similar items during a criminal prosecution. *Id.* arts. 41(3), 135(1), 136(2). In a 2009 case, the ECHR concluded that surveillance is excessively approved and used in Moldova,⁸ and that Moldovan law does not provide sufficient protection against abuse of power in this area. *Lordachi and Others v. Moldova*, ECHR No. 25198/02 (Feb. 10, 2009). Nonetheless, the provisions of the Crim. Proc. Code authorizing interceptions and seizures as outlined above remain in effect as of drafting of this assessment. The Civil Proc. Code does not contain any provisions addressing lawyer-client confidentiality.

While advocates enjoy some limited rights to lawyer-client confidentiality, non-advocate lawyers do not. There are no laws protecting such lawyers from having to disclose client secrets to the government, to other parties in civil litigation, or to anyone else. It is unclear whether individuals and legal entities involved in civil cases, transactions, or consultations are informed and understand that their secrets and communications are more vulnerable if they engage independent civil practice lawyers, rather than advocates, to represent them.

Numerous sources, in keeping with the opinion in *Lordachi v. Moldova* as well as *Mancevschi v. Moldova* decision discussed in Factor 1 above, suspect that conversations and communications between lawyers and their clients are at least occasionally intercepted and reviewed by the authorities. Very little evidence exists to support that suspicion, however. The assessment team received no reports of lawyers having been compelled to testify about confidential client information or documents.

Moldova's anti-money laundering law contains a provision obligating certain persons, including lawyers, to report suspicious activities or transactions, as well as selected other transactions above a minimum monetary threshold, to the Center for Combating Economic Crimes and Corruption. ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON PREVENTION AND COMBATING OF MONEY LAUNDERING AND TERRORISM FINANCING arts. 4(i), 8 (*adopted* Jul. 26, 2007). For lawyers, reportable transactions include the preparation or execution of transactions on behalf of themselves or their clients concerning, among other things, the purchase or sale of real estate and the creation or funding of legal entities. Exceptions are provided for mere evaluations of a client's legal situation and for defense or client representation tasks connected with a judicial proceeding, which would cover many scenarios involving sensitive client communications. However, this Law weakens, and potentially conflicts with, the confidentiality protections for advocates contained in the Law on Advocacy and the Crim. Proc. Code.

⁸ The ECHR noted that in 2007, there were 2,372 requests for interceptions, and 99.24% of these were approved. The numbers for 2005 and 2006 were comparable.

Factor 5: Equality of Arms

Lawyers have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy.

Conclusion	Correlation: Neutral	Trend: ↔
<p>Advocates have broad legal rights to equal access to information, but there are flaws in the implementation of these laws. In criminal cases, advocates may review materials in the case file, but only after the investigation is completed. Discovery rules in all types of cases are very limited, and court approval is often required to obtain certain documents from the opposing party or from third parties. Non-advocate lawyers enjoy fewer rights in this area than their counterparts in the advocacy.</p>		

Analysis/Background:

Various legal provisions give lawyers, and especially advocates, the right to review information in the hands of the government, the opposing party, or third parties. The Law on Advocacy grants advocates sweeping rights to obtain and review information, not only from the prosecution but also from government agencies and third party record holders. In particular, advocates have the right to review, take notes on, and make copies of all case-related materials; independently collect evidence relevant to the case; request evidence, case records, and documents necessary to their legal representation from the government, law enforcement, and other entities, all of which are obliged to comply with these requests. LAW ON ADVOCACY art. 45(1)(b)-(d). An official who fails to provide the requested information, references, and document copies to advocates can be held liable. *Id.* art. 45(2). These rights apply not only in criminal cases but also in civil and administrative matters and are elaborated upon in relevant procedural codes.

Both parties participating in the trial have equal rights and equal opportunities to present their positions. CRIM. PROC. CODE art. 24(3); CIVIL PROC. CODE arts. 26(1), 26(4), 56(2). The court is required to provide support for the administration of evidence to any of the parties, upon their request, and to create equal, sufficient, and appropriate conditions to enable the parties to exercise their rights. CRIM. PROC. CODE art. 24(4); CIVIL PROC. CODE art. 26(3)-(4). Procedural codes also contain provisions addressing the rights of a criminal defendant, civil parties, persons charged with administrative offenses, and their advocates to participate in the administration of evidence by requesting and submitting evidentiary objects, documents, and other information; requesting and providing information from witnesses; and reviewing and copying materials contained in the case file (in criminal cases, the latter is limited to after the investigation is completed). CRIM. PROC. CODE arts. 68(1)(10), 100; CIV. PROC. CODE arts. 56(1), 119; 1985 ADMIN. OFFENSES CODE arts. 254, 257 (*repealed* as of May 31, 2009); CONTRAVENTIONS CODE arts. 384(2)(h)-(i), 384(2)(n), 387(3)(b), 387(3)(f). Furthermore, defense advocates in criminal proceedings are allowed to review the evidence submitted to the court by the investigators to justify the arrest warrant. CRIM. PROC. CODE art. 68(2)(3). Nevertheless, none of the procedural codes provides any detailed discovery rules, necessitating court approval or intervention if a party wants to obtain specific documents or other information in advance of or during trial.

Moldova also has a freedom of information act, which entitles persons to obtain information held by the government, with exceptions concerning state secrets, confidential business information, personal data, and certain investigative information. *See generally* ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON ACCESS TO INFORMATION (*adopted* May 11, 2000, *last amended* Jun. 13, 2003).

Because advocates' rights to access the information under the Law on Advocacy are significantly broader than those spelled out in the procedural codes and general access to information

legislation, this means that non-advocate lawyers’ legal rights to access information are more limited than advocates’ rights.

While the Crim. Proc. Code allows defense advocates to obtain materials concerning the justification for their clients’ arrests, it does not give them the right to review their clients’ case files until after the investigation is completed and charges are filed. Interviewees observed that the lack of timely access to the case file can be problematic, and not just because the prosecution gets more time than the advocate to review and act upon the full body of evidence. If the advocate files a motion to release his/her client from pretrial detention, the investigator or prosecutor can oppose the motion using information from the case file that the advocate cannot see or challenge. In 2007, the ECHR held that a Moldovan court’s failure to disclose to the defense information from the investigative file bearing on the lawfulness of pretrial detention violated Article 5(3) and 5(4) of the European Convention. *Turcan and Turcan v. Moldova*, ECHR No. 39385/05 (Oct. 23, 2007). However, this decision has not yet had an effect on practices in Moldova. Respondents also observed that, without knowing what is already in the case file, the advocate cannot supplement it with evidence favorable to his/her client. Finally, some advocates are concerned that exculpatory evidence uncovered by the investigator may be excluded or removed from the case file, or that falsified evidence may be manufactured and added to the file, before they have the right to review it.

Aside from the issue of access to the case file, numerous respondents recounted difficulties in accessing other important information, notwithstanding the laws guaranteeing access. Several advocates said they had trouble obtaining records held by the government in civil and administrative cases. Others complained that prosecutors and courts in criminal cases can readily obtain documents and information from cadastre registries, hospitals, tax authorities, and other third parties, while advocates cannot do so; they must request the court to order the production of this material. Sometimes prosecutors are unwilling to produce evidence supporting an arrest warrant, citing national security or privacy situations, and occasionally the evidence they provide is too general to be of value. One advocate recounted being unable to obtain materials used to justify the arrest warrants in the April 7 protest cases. Another advocate mentioned obstacles in procuring copies of cell phone records from a private company and pointed out that the legal remedy in these circumstances is too slow and impractical to be effective. A couple of interviewees complained of technical problems with courts’ copy equipment and printers, and delays by court personnel, but said that they eventually get materials they request from the courts. One interviewee stated it may take ten days to get the requested copy of a case file, and the charge for the file may be excessive. Another said that it is often difficult to get the case file on the day of the trial in matters before the SCJ and at least one court of appeals.

Factor 6: Right of Audience

Lawyers who have the right to appear before judicial or administrative bodies on behalf of their clients are not refused that right and are treated equally by such bodies.

Conclusion	Correlation: Neutral	Trend: ↓
Lawyers are entitled, by law, to represent clients before tribunals and are not refused that right in practice. However, there is a strong belief that judges are biased in favor of the prosecution or, in administrative cases, the state, and thus all sides are not treated equally.		

Analysis/Background:

Advocates are authorized to perform the entire range of professional legal services for their clients, including representation before courts, law enforcement agencies, and other public

authorities in criminal, civil, and administrative cases. LAW ON ADVOCACY arts. 7, 45(1)(a). However, virtually anyone may represent a client in a civil proceeding. Under the Civil Proc. Code, parties and other trial participants may be assisted in court by a chosen or court-appointed advocate (where the law so provides) or by another representative. Representatives include independent civil practice lawyers, other non-advocate lawyers, or anyone else with full legal capacity (including persons with no legal or other university-level education). The only persons who are expressly precluded from representing parties in civil cases are certain law enforcement and judicial officials, as well as persons having a conflict of interest with the party. CIVIL PROC. CODE arts. 8(1), 78-79. Up until now, both advocates and independent civil practice lawyers have been permitted to represent parties in administrative proceedings, but as of May 31, 2009, the new Contraventions Code limits the right to serve as legal representative to licensed advocates. CONTRAVENTIONS CODE arts. 378, 392.

The assessment team did not receive any reports suggesting that advocates and non-advocate lawyers have been refused the right to appear in proceedings on behalf of clients where the laws and codes permit them to do so. The one possible exception involves advocates from Moldova who seek to represent clients before courts in Transnistria; non-Transnistrian advocates are no longer allowed to appear in its courts unless they are accompanied by a Transnistrian advocate.

While the lawyers' right of audience is respected in practice, the situation is different regarding the equal treatment of lawyers before the courts. The vast majority of advocates interviewed for this assessment expressed the view that judges are biased in favor of the prosecution and defer to its positions. They say that the old Soviet tradition of the all-powerful prosecutor and the weak, passive advocate contributes to the disrespect many judges still display towards the advocacy. Traditional ties between judges and prosecutors as members of the magistracy also play a role, and these ties are likely to strengthen as both of these legal professions receive their initial and continuing training at the NIJ. Several persons asserted that the judiciary is not fully independent of the government, noting that the President appoints judges and alleging that preliminary consultations with the SCM give the President even greater authority in practice. The fact that advocates are not allowed to train at the NIJ, and that no comparable facility or program has been developed for them, means that their knowledge, skills, and relative professional standing are likely to suffer even more in the future. Other interviewees noted that judges almost automatically favor the position of the state or other governmental entity when it is a party to litigation, and that the only hope of recourse is the ECHR.

These contentions are supported by the inordinately low acquittal rate in criminal cases in Moldova. According to the SCJ, Moldovan courts examined 9,942 criminal cases in 2008, which resulted in 227 acquittals, for an acquittal rate of 2.28%. The Prosecutor General's numbers are somewhat different, showing an acquittal rate of around 3% (depending on how one classifies certain outcomes), while advocates estimated even lower acquittal percentages. By any measure, however, these outcomes are dramatically skewed in favor of the prosecution.

Non-lawyers interviewed by the assessment team generally acknowledged that a pro-prosecution bias often exists, but stated that circumstances have improved in recent years, with the advent of the adversarial system and prohibitions against *ex parte* communications. While they acknowledged that some of the disparity in outcomes may be attributed to procedural rules favoring the prosecution, they pinned a significant share of the blame on poorly prepared or motivated advocates, especially those working on an *ex-officio* basis.

The Organization for Security and Cooperation in Europe [hereinafter OSCE] trial monitoring project in Moldova found "instances when the judge ignored defense lawyers or limited their ability effectively to defend their clients." OSCE, ANALYTIC REPORT: OBSERVANCE OF FAIR TRIAL STANDARDS AND CORRESPONDING RIGHTS OF PARTIES DURING COURT PROCEEDINGS (April 2006-May 2007) at 48 (June 2008) [hereinafter OSCE TRIAL MONITORING REPORT]. The report detailed several instances observed by the OSCE monitoring team when judges talked amongst themselves while the defense presented its case, and when judges did not permit the defense to

make statements. In an earlier report, the OSCE noted the prejudicial impact of the Moldovan practice of holding defendants handcuffed and/or placed in metal cages throughout the trial. OSCE, 6-MONTH ANALYTIC REPORT: PRELIMINARY FINDINGS ON THE EXPERIENCE OF GOING TO COURT IN MOLDOVA at 25 (Nov. 2006). Respondents interviewed for this LPRI indicated the metal cages continue to be employed, even for nonviolent defendants, although one judge reported allowing non-threatening defendants to sit in the audience section.

Plea bargaining, which is now permitted by the Crim. Proc. Code (*see generally* CRIM. PROC. CODE arts. 504-509), has become very common in the cases involving less serious criminal charges (so-called petty, less severe, and severe crimes) where it is allowed. Two advocates reported that, in their practices, 99% of criminal charges which are eligible for plea bargaining are, in fact, resolved in that manner, since a plea bargain automatically reduces the maximum punishment under the law by one-third. *Id.* art. 509(4).

II. Education, Training, and Admission to the Profession

Factor 7: Academic Requirements

Lawyers have a formal, university-level, legal education from institutions authorized to award degrees in law.

Conclusion	Correlation: Positive	Trend: ↑
<p>Advocates and non-advocate lawyers must receive law diplomas from accredited university-level law schools in order to practice law. Non-lawyers, however, can represent clients in civil proceedings and provide legal consultation services without meeting any academic requirements.</p>		

Analysis/Background:

Any Moldovan citizen who has a licentiate diploma in law, completes an internship, passes a qualification exam, and receives a law license may practice law as an advocate. LAW ON ADVOCACY art. 8(2). As a prerequisite for taking the qualification examination, would-be advocates must submit a copy of their diploma confirming graduation from law school. *Id.* art. 19(1)(c). Nothing in the law would permit a person to become an advocate without a law diploma, and no reports were received of any exceptions in practice. Non-advocate lawyers are not subject to the Law on Advocacy, but by the definition applied in this report, they have earned law degrees from an accredited institution of higher education. Persons who do not have law degrees can represent clients in civil proceedings after obtaining a proxy, and can also provide legal consultation services. CIVIL PROC. CODE art. 76.

The Ministry of Education and Youth [hereinafter MOE] is responsible for evaluating and accrediting state and private educational institutions, including universities, through its Department for Evaluation and Accreditation of Educational Institutions. LAW OF THE REPUBLIC OF MOLDOVA ON EVALUATION AND ACCREDITATION OF THE EDUCATIONAL INSTITUTIONS OF THE REPUBLIC OF MOLDOVA art. 2 (*adopted* Jul. 16, 1997, *last amended* Jul. 21, 2005). The Law sets forth fairly general, minimal criteria for provisional and full accreditation of universities, such as leadership and faculty member credentials, curricula, and facilities. *Id.* arts. 4-7. For example, at least 60% of faculty members must be full-time employees, and 30% (45% by the time of the second evaluation) must have doctoral degrees. *Id.* art. 7(4). Accredited institutions face re-evaluation every five years, unless a violation of criteria necessitates an earlier review. *Id.* art. 7(8).

In May 2005, Moldova acceded to the Bologna Process, seeking to establish uniform standards within the European Higher Education Area with the aim of facilitating the movement of graduates among the countries in the area. Pursuant to these standards, Moldova has a four-year, university-level undergraduate program (known as licentiate) for legal education (correspondence and part-time students, as well as students who completed only 11 years of primary and secondary education complete a five-year program). Licentiate law students must generally obtain 60 credits per academic year and 240 credits total to graduate. LAW OF THE REPUBLIC OF MOLDOVA ON EDUCATION arts. 26(5), 27(1) (*adopted* Jul. 21, 1995, *last amended* Jul. 10, 2008); *see also* ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON APPROVING THE LIST OF PROFESSIONAL TRAINING QUALIFICATIONS AND SPECIALIZATIONS FOR TRAINING OF PERSONNEL IN CYCLE I HIGHER EDUCATION INSTITUTIONS Annex 1 (*adopted* Jul. 7, 2005, *last amended* Jul. 9, 2008). Students choosing to pursue a master's degree in law undergo an additional 1.5 years of instruction, while those seeking a doctorate degree must study for four additional years. Quality assurance programs and other features of the Bologna Process have reportedly also been instituted.

The Government of Moldova has issued a document constituting a combination of policy declarations, aspirational statements, and specific guidance with respect to legal education for

members of the various legal professions. Among its provisions were proposals for post-graduate preparation for law graduates, including one-year post-university courses for in-house counsel, lawyers for government agencies, and notaries, and two or three year programs for prospective judges and prosecutors. DECISION OF THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA No. 1385 ON APPROVING THE POLICY CONCEPT PAPER ON LEGAL PERSONNEL sec. 5 (*adopted* Oct. 30, 2002) [hereinafter LEGAL PERSONNEL CONCEPT PAPER]. The latter proposal eventually came into being in 2007 as the 18-month course of instruction at the NIJ. The Legal Personnel Concept Paper also gave rise to a one-year internship requirement for advocates and notaries, but said nothing about educational requirements for non-advocate lawyers other than those working in-house for the financial sector companies, for state bodies, or for private entities. Except for the NIJ for judges and prosecutors and the internship programs for advocates and notaries, none of the other post-graduate specialization courses for legal professionals has materialized.

For many years, the only law school in Moldova was Moldova State University [hereinafter MSU] in Chisinau, founded in 1959. Thereafter, the Police Academy (1990-91) and the International Free University of Moldova (1992) began operating law schools. A number of additional private law schools were started following the collapse of the Soviet Union, to meet the burgeoning demand for legal education (and to profit off of tuition revenue), soon bringing the total number of law schools to over 40 by the mid to late 1990s. Eventually, quality problems and market forces took their toll and many of these schools went out of business. As of the drafting of this report, there were 18 law schools accredited by the MOE: 9 public universities and 9 private universities, including the four major state schools located in Chisinau, Balti, Cahul, and Comrat. These 18 schools graduated a total of 11,029 students between 2007 and 2009, with MSU, the largest, having a student body of 4,202 students (2,254 of whom are full-time students, and 1,948 of whom are part-time). The full-time student program at MSU is reportedly in compliance with the Bologna Process, but the part-time program is not. There are 300 additional master's degree students and 112 doctoral students at MSU. Cahul State University has 97 full-time and 168 part-time undergraduate law students, while Comrat State University has 169 full-time and 188 part-time students. Part-time programs, which exist at all Moldovan law schools and add an extra year to the undergraduate curriculum, are generally being phased out.

The Legal Personnel Concept Paper expresses two potentially competing policies: assuring the right to obtain a legal education, while controlling the number of law school graduates entering the job market every year. LEGAL PERSONNEL CONCEPT PAPER secs. 1-2. In practice, over the past few years the Government has imposed limits on the number of law students that university law schools may accept. The Government recently issued a decision setting future standards in this area. It has apparently concluded that too many young people are becoming lawyers and not enough are entering engineering or other professions or joining the workforce directly out of secondary school. Thus, it is anticipated that the total number of new undergraduate law students admitted each year to both public and private universities will be gradually reduced from about 800 (out of approximately 19,000 students) in 2010 to 650 (of approximately 15,500 students) in 2014, while the number of new students in the master's programs will increase from 140 in 2009 to almost 300 in 2014. DECISION OF THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA No. 359 ON THE 2009 ENROLLMENT PLAN FOR CYCLES I AND II HIGHER EDUCATION INSTITUTIONS AND SECONDARY SPECIALIZED AND PROFESSIONAL EDUCATION INSTITUTIONS, AND ENROLLMENT FORECASTS FOR 2010-2014 Annexes 1, 2, 5 (*adopted* May 20, 2009). For example, Comrat State University is reportedly working its way down from its present 500 student enrollment to 100 students (admitting only 20-25 new students per year). Balti State University, which a decade ago enrolled 1,500 new law students in a single year, was allowed to admit only 150 in the entering class a year ago.

Factor 8: Preparation to Practice Law

Lawyers possess adequate knowledge, skills, and training to practice law upon completion of legal education.

Conclusion	Correlation: Negative	Trend: ↔
<p>Legal education in Moldova lacks skills training and practical instruction. There are also concerns regarding the quality of the instruction that students receive. Law school graduates are generally unprepared to practice law unsupervised immediately following the completion of their legal education.</p>		

Analysis/Background:

Moldovan law schools do not provide their graduates with all of the tools they need to practice law independently immediately after graduation. With very few exceptions, persons interviewed for this LPRI expressed serious reservations about the quality of legal education in Moldova.

Law schools develop their own curricula, subject to approval by the MOE. The typical curriculum for full-time undergraduate students consists of seven courses per semester for four years, generating a total of 240 credits. As the student progresses through his/her undergraduate program, courses become more specialized and more optional offerings are provided. For example, first year courses at MSU include legal history of foreign countries, Roman private law, general theory of law, constitutional law, information technology, foreign language, physical training (non-credit), civil law, history of Romanian law, political and legal doctrines, administrative law, and political science. In year two, courses include civil law, criminal law, labor law, public international law, ethics, customs law, financial and tax law, economics, and a variety of optional and specialized courses. During the third year, students again study civil and criminal law, as well as civil and criminal procedure, family law, environmental law, and an even broader range of electives. Finally, fourth year courses cover private international law, criminology, business law, international commercial law, and intellectual property law, as well as more specialized courses, depending on students' chosen fields of study. Most courses are taught through a combination of large lecture classes and small seminars, in roughly equal proportions. Internships for credit are required in various stages of matriculation, usually on three different occasions for a total of 12-14 weeks. Students typically intern with courts and prosecutor's offices. Examinations are conducted for each course, culminating in comprehensive graduation exams in the basic discipline and the student's specialty discipline. In addition, the student must write a thesis before he/she may graduate.

Interviewees' criticisms of legal education in Moldova centered on the highly theoretical nature of the subject matter of law school courses, the predominance of traditional lectures as a method of instruction, and the lack of interactive programming geared to adult learners. Very few opportunities are offered for practical instruction, especially in skills important to practicing lawyers, such as client interviewing, the application of laws to specific fact patterns, legal research and writing, courtroom strategies, oral advocacy, witness examination and cross-examination, legal ethics, law practice management, and client development. In practice, the internship portion of the law school curriculum is customarily satisfied by observation in courtrooms and prosecutor's offices, with little or no explanation or participation provided for students. Several sources reported that students interning in prosecutors' offices were often told when they reported for work that there was nothing for them to do and that they could just go home.

Legal clinics have been established at six law schools, providing a limited number of students with practical instruction and training. The first clinic was introduced about ten years ago at MSU



with the assistance of the Soros Foundation. Since then, ABA ROLI has sponsored five additional clinics in Balti, Cahul, Comrat, Tiraspol (in Transnistria), and Parkani. Customarily, legal clinics are NGOs operated in loose association with the local law school. They are optional courses offered for credit to selected third and fourth-year law students, who receive classroom instruction and experience practical application in civil and administrative cases under the supervision of one or more licensed advocates. Students participating in these clinics develop skills in client interviews, consultations, research, writing, and courtroom practice and strategy.

Of course, some law schools are more highly regarded than others; MSU was especially recognized for the comparatively high quality of its legal education. However, interviewees expressed general concerns regarding MSU and other law schools. For instance, the proliferation of law schools since the 1990s appears to have decreased the overall quality of both professors and students. Smaller schools sometimes have to rely on the services of traveling professors, who are only available to students on a limited basis. Interviewees opined that law professors would generally benefit from training in interactive teaching methodology. Students entering law schools often were not well-prepared at the primary and secondary school level. Grade inflation and corruption are believed to be widespread, though reportedly this is less of a problem in law schools than in other university departments, since law professors (while greatly undercompensated) are able to practice law or hold other jobs on the side to supplement their incomes.

Notwithstanding these issues, some law graduates excel, regardless of what law school they attended. Nevertheless, most law school graduates do not complete school with the practical and analytical skills needed to practice law on significant matters without supervision.

Factor 9: Qualification Process

Admission to the profession of lawyer is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.

Conclusion	Correlation: Neutral	Trend: ↔
<p>Persons seeking to become advocates must generally complete a supervised internship, which is difficult to get and inconsistently administered. They must then pass a qualification examination, which is generally considered fair and adequate, though in need of some reforms. A controversial and objectionable exemption frees judges and prosecutors with at least ten years' experience from these licensing steps.</p>		

Analysis/Background:

In order to be licensed to practice law as advocates, law school graduates are first required to complete an internship, and then pass a qualification exam. LAW ON ADVOCACY art. 8(2). Non-advocate lawyers are not required to complete any qualifications to practice law. The requirements for would-be advocates seeking to obtain and complete an internship are largely set forth by law, and the admissions process is supervised by the Bar Council.

Normally, a prospective advocate's internship must be for a one-year period, but the Bar Council may, at the request of the intern and the supervising advocate, shorten the period to as little as three months. *Id.* art. 10(1). One interviewee indicated that there are no standards for deciding whether to reduce the required internship period, but that shortened internships mostly benefit former legal consultants, judges, prosecutors, and others who are believed to already have the necessary experience. Sometimes the period is shortened by a month or two even for recent law school graduates, to allow them to take a scheduled qualification examination without having to

wait six months for the next one. This interviewee was of the opinion that the internship period should consistently be 24 months without any possibility for reduction in length, so as to reduce the possibility of favoritism or corruption.

Internships must be conducted pursuant to a contract between the intern and the supervising advocate; the contract must be registered with the Bar Council. *Id.* art. 10(3). The supervising advocate must have been licensed for at least five years and may not supervise more than two interns at the same time. *Id.* art. 10(4)-(5). The Bar Council has developed a simple model contract for use by the intern and the supervising advocate, which is posted on the Bar's website, <http://www.avocatul.md>. There is no centralized matching system to pair prospective interns with interested mentors, so each law graduate must seek out a supervisor on his/her own. The intern must pay a fee of MDL 1,000 (approximately USD 87) to the Bar to register the contract. While interns may represent clients in district courts in civil, administrative, and economic cases and before the public authorities, and retain the fees generated by these services (*id.* art. 14(3); see *also* CONGRESS OF THE BAR, REGULATION ON THE CONDITIONS OF THE PROFESSIONAL INTERNSHIP secs. 3.1-3.2 (*adopted* Mar. 23, 2007) [hereinafter INTERNSHIP REGULATION]), interns are also sometimes charged a fee by their supervising advocate for the privilege of interning. Most advocates stated they do not personally impose charges for these services, since in many cases they accept interns as an accommodation to friends, relatives, and business contacts. However, some interviewees reported that interns are charged amounts estimated between MDL 4,500 (about USD 393) and MDL 6,000 (approximately USD 524) for mentoring.

The supervising advocate is expected to develop (in cooperation with the intern) an individualized internship plan, and then supervise the intern, carry out the internship plan, contribute to the development of the intern's practical skills, and assist and consult with the intern when he/she goes to court. INTERNSHIP REGULATION sec. 2.6. The intern's obligations include maintaining client confidentiality, observing the Code of Ethics, and learning professional standards, procedures, international treaty law, ECHR and SCJ jurisprudence, and domestic laws. The intern is supposed to carry out the individual internship plan, keep records of his/her work, raise his/her professional competence level, and prepare to take the qualification examination. See *generally id.* chpt. 3. Once they complete their internship, prospective advocates must submit both a report on their performance and a reference from the advocate who supervised the internship. *Id.* secs. 2.7-2.8. However, one interviewee said that some prospective advocates simply pay an advocate to file the necessary report and reference with the Bar Licensing Commission without actually completing an internship.

Many interviewees applauded the concept of the internship program, while criticizing its implementation in practice. Respondents thought that the standard internship contract should contain a more detailed, specific, and objective checklist of tasks to be performed and skills to be developed. Others, however, believed the nature of the supervisor's practice and the needs and interests of the interns vary so greatly from case to case that a single list of tasks and skills would be impractical. Interviewees stated that some supervising advocates are effective mentors, who plan and organize their interns' work and develop the interns' skills, while others virtually ignore the interns. According to one source, there has never been a case where a supervising advocate gave his/her intern a negative report or reference to the Licensing Commission. Reservations about the effectiveness of internships have led leaders of the Bar to urge that prospective advocates be permitted (or required) to attend the NIJ or a separate training institute.

The qualification examination has evolved over the seven years since the Bar was reorganized under the Law on Advocacy. Initially, it was an oral exam, administered by a licensing body under the control of the MOJ, and was considered very difficult to pass. For example, in 2003, only 42 of 98 candidates (43%) were successful. ABA ROLI, LEGAL PROFESSION REFORM INDEX FOR MOLDOVA at 18 (Apr. 2004) [hereinafter 2004 MOLDOVA LPRI]. The body now in charge of administering the examination is the Bar's Licensing Commission, which consists of 11 members, seven of whom are advocates elected by the Congress of the Bar and four (two advocates and two law professors) are appointed by the MOJ. LAW ON ADVOCACY arts. 18, 40¹. The test's



current format is set forth in the REGULATION ON THE PROCEDURE FOR CONDUCTING THE QUALIFICATION EXAMINATION FOR ADMISSION TO THE ADVOCACY PROFESSION (*adopted* Mar. 23, 2007) [hereinafter QUALIFICATION EXAM REGULATION].

As presently structured, the qualification examination is held twice a year, once in the spring and once in the fall. Each candidate must pay a fee of MDL 500 (approximately USD 44) to be eligible to take the test. The exam is carried out in three stages, graded by the Licensing Commission, with passage of each stage required before the applicant can move on to the next stage. QUALIFICATION EXAM REGULATION secs. 2, 15, 41. The first stage is a three-hour multiple choice test, consisting of 400 questions. All candidates receive the same questions, which are selected from a list of 1,000 questions (with answers) posted on the Bar's website. Candidates must answer at least 375 of the 400 questions (94%) correctly to be able to move on to the second stage. *Id.* secs. 16, 18-19, 23. The second stage is a written essay test with two theoretical questions and one case scenario selected by draw from a list of 150 possible questions drawn from the fields of civil procedure, criminal procedure, and administrative law, also posted on the Bar's website. *Id.* secs. 25-26, 52. The Examination Commission employs blind grading for the second stage, and the combined score for all second stage questions must be at least 48 out of 60 (80%) for the candidate to pass. *Id.* secs. 32-38. The third stage is an oral exam with three questions drawn randomly from 200 questions published online, covering the subjects of civil law, criminal law, constitutional law, family law, labor law, the legal profession, and the Code of Ethics. The candidate is given 60 minutes to prepare his/her answers to the three questions, and then presents them orally to the Licensing Commission. The candidates' oral answers must be audio- or video-recorded, and the recording must be retained by the Bar for six months. The combined score for all third stage questions must again be at least 48 out of 60 (80%) for the candidate to pass. *Id.* secs. 43-49.

Candidates must be notified of the examination results within ten days following the exam. LAW ON ADVOCACY art. 18(3). Any candidate who believes the Qualification Exam Regulation has been violated has 72 hours after receiving his/her test results to file an appeal with the Licensing Commission. While candidates are not permitted to appeal their grades, they may instead only allege procedural violations. QUALIFICATION EXAM REGULATION sec. 55. The Licensing Commission's decision can also be appealed to court. LAW ON ADVOCACY art. 18(5).

Results of the qualification examinations held over the past two years are as follows:

QUALIFICATION EXAMINATION PASSAGE RATES, 2007-2009

Year	Number of Candidates	Pass Rate, %
Fall 2007	147	66
Spring 2008	97	91.75
Fall 2008	81	88.89
Spring 2009	92	94.57

Source: Bar Licensing Commission.

By one account, a few unsuccessful candidates appeal their exam results after each exam. Appeals can be filed after each stage, but almost all occur after the second or third stages where there is more subjectivity in grading. In several court appeals, the first instance court has upheld the appeal and admitted the applicant, but in all cases so far the Licensing Commission has prevailed in the court of appeals.

Interviewees commenting on the qualification examination had a variety of opinions, most of which were positive. However, several believed the exam did not adequately measure practical advocacy skills or the analytical ability to apply the law to specific facts. One interviewee called the exam too academic, much like a law school examination, while another said the three stages should be consolidated into one test that would include practical skills like oral advocacy. Some said the qualification examination evaluated only memorization skills; if one could study and

remember all the possible questions and answers on the website, he/she would do well on the exam. Another respondent criticized the fact that the exam is essentially the same each time, saying it needs to be updated and changed from time to time, while acknowledging the work and time required to do that. The same person also suggested developing software to permit administering and grading the multiple-choice first stage by computer, but again conceded the cost involved and the fact that the Bar lacks the funds to make this improvement. A respondent objected to the right of unsuccessful candidates to appeal to the judiciary, noting it requires an unpaid member of the Licensing Commission to spend time in court defending the Commission's decision. That respondent also said that a judge ought not have the power to admit to the advocacy a person who did not meet the standards of the Bar's Licensing Commission. Several persons described the members of the Licensing Commission as fair, polite, and professional.

The arrangements for the qualification examination as described in the Qualification Exam Regulation appear to lack transparency in the first and third stages. In the multiple-choice first stage, the candidate is required to identify himself/herself on the first page of the answer sheet. QUALIFICATION EXAM REGULATION sec. 17. At the oral third stage, the candidate is visible to all graders. The second stage does have a number coding system that would permit blind grading of tests. *Id.* secs. 28, 32. One respondent alleged that favoritism does occur during grading, but offered no evidence or specifics in support of the allegation.

The single greatest complaint about the admissions process, voiced not only by advocates but also by many outside observers, was directed at the provision of the law exempting persons who have served for at least ten years as judges or prosecutors from both the internship requirement and the qualification examination. LAW ON ADVOCACY art. 8(3). Judges and prosecutors having sufficient years of service can retire from their offices as young as age 50, after completing certain minimum years of service, and at that point they begin to receive relatively generous state pensions. Upon retirement, many take advantage of the exemption and become advocates to supplement their pensions. Critics of this practice note that these legal professionals lack the educational experience of working with a supervising advocate for a year. Further, it is asserted that both the judicial and prosecutorial professions have a pro-conviction approach to criminal defendants, and lack both the perspective and the skills required of advocates. Several commentators pointed out that it is unfair and demeaning to the advocacy profession that judges and prosecutors can become advocates after ten years without an internship or test, but that advocates and law professors cannot become judges and prosecutors on an equivalent basis.

More ominously, numerous sources contended that an overwhelming percentage of complaints of unethical behavior received against advocates by the Bar's Ethics and Disciplinary Commission or reported by the media involve advocates who are former prosecutors or judges. They reportedly maintain their relationships with their former colleagues and form networks for illegal payments of money, obtaining clients by appointments or recommendations from the authorities and kicking back portions of fees in exchange. One interviewee said that 90% of advocates accused of trading influence are former prosecutors or police (not judges), while another (a non-lawyer) claimed that 75% of kickback and bribery cases involve past prosecutors, police, or judges.

Not surprisingly, the views of these interviewees are not generally shared by members of the judiciary or the prosecution. One judge asserted that exemptions for experienced judges are the normal practice around the world, and that judges' experience actually prepares them better for advocacy than the internship and qualification examination prepare other advocates. The same judge questioned the exemption for prosecutors, however, noting that they lack familiarity with civil, administrative, and contravention cases.



Factor 10: Licensing Body

Admission to the profession of lawyer is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.

Conclusion	Correlation: Neutral	Trend: ↑
<p>The MOJ, rather than the independent Bar, is charged with issuing and revoking licenses and maintaining a registry of licenses issued. Once a prospective advocate completes his/her internship and passes the qualification examination, the licensing process is generally a fairly routine matter, and a denial of licensure is subject to judicial appeal. No admission process exists for non-advocate lawyers beyond law school graduation.</p>		

Analysis/Background:

As discussed in Factor 9 above, the Bar Council and the Licensing Commission are charged with, respectively, administering the internship program and the qualification examination. LAW ON ADVOCACY arts. 10, 18, 35(1)(j)-(k), 40¹(2). The Bar Council has 15 members, all of whom are advocates with at least five years of practice elected by the Congress of the Bar to four-year terms. *Id.* art. 34. The Licensing Commission, unlike the Bar Council and the other commissions, includes representatives from outside the advocacy. While seven of its 11 members are advocates elected by the Congress to four-year terms, two are also advocates but appointed by the MOJ and the other two are law professors selected by the MOJ. See *id.* art. 40¹(1).

Prior to taking the qualification examination, a candidate must submit to the Licensing Commission various documents, including a copy of his/her law diploma, internship contract, report, and reference, criminal record, and medical certificate confirming the absence of psychological disorders. The candidate must also submit a declaration that during the internship, he/she did not engage in any activity incompatible with the advocacy profession (which would include most salaried and all entrepreneurial or notary activities). *Id.* arts. 9, 19; QUALIFICATION EXAM REGULATION sec. 5. A prospective advocate seeking an internship or applying to sit for the qualification exam must have an “irreproachable reputation,” a standard which eliminates an applicant if he/she has been convicted of intentional serious crimes (even if the conviction record has been expunged), was fired from a law enforcement agency, judicial office, notary position, jurisconsult, or a public office for an ethical violation, or was found to have violated other ethical or fundamental human rights standards. LAW ON ADVOCACY art. 8(4); QUALIFICATION EXAM REGULATION sec. 4; INTERNSHIP REGULATION secs. 1.2-1.3. Additionally, a prospective advocate must be fluent in Moldovan. INTERNSHIP REGULATION sec. 1.3.

It is unclear precisely what investigative steps are taken by the Bar Council and the Licensing Commission to determine whether these prohibited circumstances are present, aside from reviewing an applicant’s criminal record. The assessment team received no reports of cases of applicants who otherwise qualified for internships or the qualification examination being rejected by either body for lacking an “irreproachable reputation.” If the Licensing Commission were to deny an application for admission into the advocacy, this decision would be appealable not only to that Commission but also to a court. LAW ON ADVOCACY art. 18(5); QUALIFICATION EXAM REGULATION sec. 55.

Judges and prosecutors with ten years of experience, who are entitled to bypass the internship and qualification examination requirements, must still submit documentation with their applications for advocate licenses, and are not exempt from the “irreproachable reputation” requirement. LAW ON ADVOCACY arts. 8(4), 19(3).

Once the Licensing Commission determines that the applicant has successfully completed the qualification examination, and the prospective advocate applies in writing to the MOJ, the MOJ has ten days to decide whether to issue him/her an advocate’s license. In the case of judges and prosecutors with ten years of service, the period is 30 days. *Id.* arts. 11(1), 17(2). The applicant must pay a fee of MDL 450 (about USD 39) to the MOJ for the license. Once issued, the license is valid for an unlimited period of time. *Id.* arts. 17(3), 17(5). The newly licensed advocate must take an oath specified by law and register an advocate office with the Bar Council before he/she can begin practicing law. *Id.* arts. 11(2), 23, 29. An applicant who is denied a license by the MOJ is entitled to appeal the denial in court. *Id.* art. 17(4). The MOJ maintains a register of licenses issued to advocates, while the Bar Council maintains a list of licensed advocates, which must be published annually in the Official Bulletin and on the Bar’s website. *Id.* arts. 21, 25. The MOJ is also charged with revoking the advocates’ licenses. *Id.* art. 22(2).

According to conflicting reports, at least one applicant who had completed the internship, passed the qualification examination, and was approved by the Licensing Commission was then rejected by the MOJ. The reasons for the rejection were not entirely clear, but by one account, the applicant was a former MOJ employee who was known to have engaged in some unacceptable behavior while working for the MOJ. The rejected applicant appealed the denial of the license to a court, won the appeal, and was granted a license by the MOJ.

It is not clear why the MOJ is involved in the issuance of advocate licenses, the maintenance of a registry of advocacy licenses issued, or the revocation of an advocate’s license. The Bar is capable of carrying out these functions as part of its regulation of an independent advocacy profession, and advocates are generally troubled by the MOJ’s power in regards to these decisions. At present, the Bar Council issues identification cards for advocates, keeps their personnel files, and maintains the official list of active advocates and the register of advocate offices. *Id.* arts. 16, 24, 25, 35(1)(g)-(h). The MOJ has demonstrated a willingness to inject itself more substantively into the licensing process, rejecting in at least the one case an applicant approved by the Licensing Commission of the Bar.

No admission process exists for non-advocate lawyers, who are free to practice civil and administrative law upon receipt of their law school diplomas.

Factor 11: Non-Discriminatory Admission

Admission to the profession of lawyer is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.

Conclusion	Correlation: Neutral	Trend: ↔
<p>The Bar admission process is non-discriminatory on its face, as well as generally in its application. However, while women constitute about half of law graduates, they constitute only about one-quarter of recent admissions to the Bar. In addition, applicants who studied law only in Russian and do not speak Moldovan, as is the case for many ethnic minorities, find it especially difficult, if not impossible, to pass the qualification examination. Under the Bar’s regulation, non-Moldovan speakers are also precluded from internships, but there were no reports of any cases where this actually occurred.</p>		

Analysis/Background:

All citizens of Moldova are equal before the law and public authorities, regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property, or social

origin. CONST. art. 16(2). A 2006 law was enacted to prevent direct or indirect discrimination, including in education and employment, on the basis of gender, and to mandate affirmative action in areas where one gender is overrepresented. ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON ENSURING EQUAL OPPORTUNITIES FOR WOMEN AND MEN arts. 5, 9, 12, 13 (*adopted* Feb. 9, 2006, *last amended* May 16, 2008). Similar legal protections and incentives have been established in regards to ethnic minorities. ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL MINORITIES AND THE LEGAL STATUS OF THEIR ORGANIZATIONS art. 4 (*adopted* Jul. 19, 2001, *last amended* Dec. 22, 2005) [hereinafter LAW ON NATIONAL MINORITIES].

In keeping with these mandates, the admission process generally applies evenhandedly to all applicants regardless of gender, ethnicity, religion, and other classifications. In the case of gender, exact statistics are not available, but reports indicate that approximately 50% of the full-time students at most law schools are women, with a slightly lower percentage cited for one state university. However, in terms of recently admitted advocates, women constituted only 26% of the new advocates in 2007, 26% in 2008, and 27% in 2009. Anecdotal evidence suggests that female law school graduates are more likely to begin careers as judges or independent civil practice lawyers than as advocates. Despite these low figures, interviewees did not suggest that women are discriminated against during the admission process.

The same is generally true with respect to ethnic minorities and other groups. Moldova has a multi-ethnic population consisting of Moldovans (75.8%), Ukrainians (8.4%), Russians (5.9%), Gagauz (4.4%), Romanians (2.2%), Bulgarians (1.9%), and others (including Roma). Moldovan, virtually identical to Romanian, is the state language, although Russian, Ukrainian, and Gagauz are also spoken, especially among the minority populations. Official statistics are not maintained regarding admission of Moldova's various ethnic groups into the legal profession, and numbers cannot be readily determined simply by reading names on lists. According to several sources, a certain percentage of spaces in entering classes in state law schools must be set aside for disadvantaged students, which may include Roma, other ethnic minorities, and rural applicants, thus affording a degree of affirmative action for historically underrepresented groups. Roma law students continue to be extremely rare in universities and thus in the profession, a fact widely attributed to their inadequate elementary and secondary educations. Interviewees did not assert that discrimination in admission to the Bar accounts for the lack of Roma in the legal profession. Statistics were not available regarding the race, ethnicity, or religion of law students in Moldova.

The largest concern regarding discrimination in entry into the legal profession is the impact of the Moldovan language requirement on prospective advocates, and specifically on Russian speakers. Some of these exclusively Russian speakers are members of ethnic minorities, including Russians, Ukrainians, Bulgarians, and Gagauz. The Internship Regulation expressly prohibits non-Moldovan speakers from becoming interns (see sec. 1.3), though there is no indication that this ban has ever been applied. In practice, the main obstacle that non-Moldovan speakers face is that the qualification examination is reportedly held only in Moldovan, even though the Qualification Exam Regulation is silent on the issue of language. Several interviewees stated that the oral phase of the exam may be conducted in Russian if the applicant so requests, but it is unclear how widely disclosed or known this opportunity is. The lists of potential questions and answers posted on the Bar's website, and the first two stages of the qualification examination, are written only in Moldovan.

As evinced by several laws, Moldovan authorities have a mixed approach to the issue of Moldova's national language. The Constitution declares that Moldova's national language is Moldovan. CONST. art. 13(1). However, the Constitution goes on to declare that the country "acknowledges and protects the right to preserve, develop, and use the Russian language and other languages spoken within the territory of the country." *Id.* art. 13(2). Legal proceedings are to be conducted in the Moldovan language; however, non-Moldovan speakers are entitled to an interpreter to help read documents and participate in hearings. *Id.* art. 118(1)-(2). At the same time, legal proceedings may also be conducted in another language acceptable to the majority of the persons participating in the hearings. *Id.* art. 118(3). Moldova has also enacted a law to

guarantee the right of national minorities to study in either Moldovan or Russian and to create conditions for them to study in their traditional language. LAW ON NATIONAL MINORITIES art. 6.

Accordingly, some law schools have separate language groups in each class, learning identical materials but receiving instruction entirely in Moldovan or exclusively in Russian. In a few cases, professors are bilingual and teach in both languages, while in other instances different professors teach the two groups of students. In historically Russian-speaking areas such as Gagauzia, legal education classes are taught only in Russian. A natural consequence of this dual system is that law students who study law only in Russian have a significant disadvantage in preparing for and taking the qualification examination. Thus, most such students end up as members of other legal professions, including non-advocate lawyers.

There was one reported incident of a Russian-speaking applicant who failed the qualification examination and appealed to a court on the grounds that the examination's availability only in Moldovan was discriminatory. The court rejected the applicant's appeal because the Licensing Commission was able to show that the candidate lacked the knowledge to pass the test even if it had been administered in Russian.

III. Conditions and Standards of Practice

Factor 12: Formation of Independent Law Practice

Lawyers are able to practice law independently or in association with other lawyers.

Conclusion	Correlation: Positive	Trend: ↔
<p>Advocates are free to practice in their respective individual offices or as part of associate offices with other advocates. They may not organize limited liability companies or partnerships, but most do not object to this prohibition since they can achieve comparable results by entering into contracts. Independent civil practice lawyers have no restrictions on the forms of entities they may use in their practices, individually or in association with others.</p>		

Analysis/Background:

Authorized forms of advocate law practice consist of individual advocate offices and associate advocate offices. LAW ON ADVOCACY art. 26(1). An advocate may be a founder for only one advocate's office and must have office space in which to provide legal assistance. *Id.* art. 26(2)-(3). An individual advocate office is used when there is only one advocate practicing law there, and the office is considered to be a natural person. *Id.* art. 27. There is nothing to prevent an advocate practicing law in an individual office from employing independent civil practice lawyers and non-lawyer staff, and in fact some do. An associate advocate office is founded by two or more advocates pursuant to a relationship governed by contract and is considered a legal entity. *Id.* art. 28. These offices may also employ independent civil practice lawyers and non-lawyers. The only restriction on employment in either form of operation is that advocates may not be employees of any person or entity, since that constitutes an incompatible activity for advocates. *Id.* art. 9(1)(a).

In an associate office, each advocate must be independent, a term which is understood to refer to his/her freedom from control by an employer, the government, clients, or other entities, in exercising his/her professional judgment in behalf of his/her client. *Id.* art. 28(1). This apparently does not preclude a hierarchal or collegial affiliation, in which the advocates in the associate office work together for mutual clients and share the fees and expenses of the office. Each associate office must elect a leader to represent the office in dealings with the government, private entities, and other outside persons. *Id.* art. 28(5). Both individual and associate advocate offices must register with the Bar Council and may appeal to a court if there is a denial of registration. *Id.* art. 29. The Law on Advocacy does not permit advocates to practice law as part of legal entities such as limited liability companies, partnerships, or joint stock companies. The assessment team received no comments to suggest that advocates found this limitation burdensome or objectionable in any way.

A large majority of advocates in fact practice as individuals, either in individual offices or as members of an associate office comparable to the traditional advocate bureaus that existed during Soviet times. In these advocate bureaus, and in many other associate offices for that matter, each advocate pays the office for a fractional share of rent, utilities, and employee salaries, owns his/her own furniture and equipment, has his/her own separate clients, and keeps the fees he/she is able to collect. Where necessary or desirable, advocates in these offices may consult with each other or even work together for the same client, but joint representations are the exception rather than the norm in advocate bureaus. Working conditions are not always ideal in these bureaus, with several advocates often sharing the same small room, even the same desks, with little privacy, research resources, or filing space.

Other associate advocate offices look and operate like Western law firms, with spacious offices, ample research and technological support, a team approach to client service, and sharing of income and expenses. As one advocate pointed out, the inability of advocates to form actual limited liability companies or partnerships does not prevent them from accomplishing the same governance and operational arrangement by contract. Members of an associate office can generally agree on a management structure, work and fee allocation method, cost-sharing formula, and accounting system to meet their needs and preferences.

The principal reasons for advocates to form individual offices or join advocate bureaus where they practice as individuals include tradition, independence, flexibility, and sometimes necessity where other options are unavailable. Other advocates, especially younger ones with good records, opt to join associate offices operated as law firms as a way to build a reputation, consult with more senior colleagues, provide backup to each other in case of schedule conflicts, and have a relatively stable source of income.

The tax treatment of individual and associate advocate offices is the subject of some confusion within the advocacy and even the Ministry of Finance. Knowledgeable sources reported that one of the advantages of associate offices is their taxation as legal entities. Legal entities are required to prepare accountings and file returns as separate taxpayers but, under present law, the tax rate on their income is zero. TAX CODE, Law No. 1163-XIII *adopted* April 24, 1997, *last amended* Feb. 8, 2009, art. 15(b). Advocates who are members of the associate office are personally taxed on distributions paid to them, but there is no tax on earnings retained at the office level. By contrast, an individual advocate office is a natural person, and its income is fully taxed whether it is paid out or not. While this difference would not be significant where the office distributes all of its net earnings under either format, it would be advantageous to an associate office that chooses to accumulate income for some reason. Further, if the tax rate on the taxable income of legal entities were to be raised above zero, perhaps to 25% as it was at one point, the tax impetus for associate offices could disappear.

There does not seem to be any legal precedent in Moldova on the subject of unlimited personal liability for advocates in an associate office regarding professional malpractice or misconduct of staff members. This vicarious liability, common in law firms organized as general partnerships in certain Western countries, may not apply in Moldova because of the status of associate offices as legal entities. However, where a law office operates as a true law firm in practice, the risk of vicarious liability would appear greater, especially among members sharing in the work and the fees generated by the particular client. In this connection, one respondent recommended that the Law on Advocacy be amended to require minimum levels of malpractice insurance for advocate offices, with amounts that vary according to the size or perhaps revenues of the office. Requiring insurance would encourage major clients to use Moldovan advocates, especially in large business transactions.

Independent civil practice lawyers have no limitations on the forms of organization they may choose for their practices. It is fairly common to see signs in Chisinau and elsewhere marking offices where groups of persons practice law as legal consultants or civil litigators in limited liability companies. These groups also advertise heavily and prominently, something which advocates are forbidden by law from doing (with very narrow exceptions). LAW ON ADVOCACY art. 56; see *also* Factors 13 and 16 below.



Factor 13: Resources and Remuneration

Lawyers have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.

Conclusion	Correlation: Negative	Trend: ↔
Comparatively few practicing lawyers have ready access to libraries, computers, and legal databases to enable them to provide effective legal services. While compensation figures are not available, it appears that most advocates are financially struggling or are barely getting by, although they probably fare better than most independent civil practice lawyers, and almost certainly make significantly more than the average employee in Moldova.		

Analysis/Background:

Generally, an advocate and his/her client must set forth the terms of their relationship, including fees and expenses, in a written contract which is registered at the advocate's office. LAW ON ADVOCACY arts. 5(3), 9(2), 52(1), 54(2). An exception to the contract requirement applies to cases where the advocate represents his/her spouse or relatives up to the fourth degree. *Id.* art. 9(2). The agreed upon fee amount may not be changed by either a public authority or a court. *Id.* art. 54(2). Reasonable advocate fees are included in the client expenses which the losing party is required to pay. *Id.* art. 54(6); CIVIL PROC. CODE art. 96. When performing legal services for the disadvantaged as stipulated by the Legal Aid Law or other laws, the advocate is to be paid from the state budget. LAW ON ADVOCACY arts. 5(4), 54(3). The advocate may also provide free legal assistance for a client based on the client's material situation. *Id.* art. 5(5).

In addition to the contract, the advocate's office must issue a "mandate," in the form established by the Bar Council, confirming the advocate's scope of powers with respect to each client representation. *Id.* arts. 35(1)(i), 52(2). The contract and mandate regime for advocates may be contrasted with the mere proxy requirement for legal representatives in civil court proceedings. CIVIL PROC. CODE art. 80(1). As mentioned elsewhere in this assessment, advocates, independent civil practice lawyers, and even non-lawyers may represent clients in civil litigation with their authority evidenced by a notarized proxy. One interviewee commented that some judges expect all legal representatives in civil cases, even advocates, to produce a proxy, which is redundant on top of the contract and mandate held by the advocate. Sometimes the advocate will represent a client with the contract and mandate, and not a proxy, at the first-instance court, but will be required by the court of appeals to file a proxy to represent his/her client at that level.

According to reports received by the assessment team, the requirement of a registered written contract and mandate in virtually all legal matters handled by advocates was introduced because advocates often failed to report fees generated through proxy representations on their tax returns. Independent civil practice lawyers and other legal representatives are still allowed to use proxies, which do not set forth fee amounts in writing, and the widespread belief expressed by respondents was that such representatives do not report income from proxy representations to the tax authorities. There are suspicions that advocates use contracts that recite fee provisions lower than the amounts which are actually paid by the clients. On the other hand, one interviewee said that advocates sometimes make less money than the amount specified by contract, because the judge in a civil or administrative case may check the contract in the case file, see how much the advocate is supposed to make, and demand a portion of the fee to rule in the advocate's client's favor.

The Bar has a very brief model contract posted on its website. Additionally, ABA ROLI prepared an annotated sample contract for legal services that was published in a recent issue of the Bar journal. The Bar Council also established a recommended fee schedule for advocates, which set

out a wide range of fee suggestions for a number of different contractual engagements. RECOMMENDATION OF THE MOLDOVAN BAR ASSOCIATION ON THE AMOUNT OF FEES CHARGED FOR DIFFERENT CATEGORIES OF CASES (*adopted* Dec. 29, 2005). For civil cases involving pecuniary amounts in controversy, different minimum and maximum percentages were listed depending on the magnitude of the claim; the percentage scale declines as the value of the claim increases. In other court cases, the Bar Council recommended minimum and maximum fixed fees for each case plus a broad range of add-on charges per court hearing. Hourly fee scales were set for legal consultations; for example, one hour of oral consulting can be compensated anywhere from MDL 250 (about USD 22) to MDL 2,000 (approximately USD 175). Again, the fee calculation methods and fee amounts shown on this schedule were mere recommendations, which advocates are not required to follow. One source described these fee recommendations as “shockingly high” and the ranges as too wide to be useful.

There is no way to know the amounts of remuneration actually received by practicing lawyers in Moldova, since incomes are not published, anonymous surveys are not used, and (as noted above) fees are often underreported if reported at all. The overall view from interviewees was that compensation is low, reflecting Moldova’s generally poor economy, but that advocates are doing better than most other legal practitioners’ groups. There is a spectrum of remuneration, and significant differences exist from region to region and from large population centers to smaller cities and towns. Respondents estimated that anywhere from 5% to 25% of advocates receive adequate compensation, with most estimates at the lower end of that range. One interviewee said that 10% are doing well and another 60% are just getting by, with the balance doing poorly. A knowledgeable observer estimated that only 50-100 advocates (4-8%) can afford the necessary resources, including office space, a desk, and a computer, to practice law effectively. A different respondent opined that lawyers who transmit bribes from clients to judges are doing much better financially than their more honest counterparts. Yet another interviewee said that the number of new law graduates each year is greatly excessive and that many of them are unemployed or end up taking non-legal jobs. Despite these difficulties, independent civil practice lawyers reportedly are very eager to become advocates.

Some indication of compensation levels may be drawn from the remuneration schedule established by the Legal Aid Council for private legal aid [hereinafter PLA] lawyers, the preferred new term for EOAs performing criminal legal defense work. See Factor 19 below. The present schedule, which increased compensation amounts that were originally set in mid-2008 and were too low to attract sufficient number of advocates to participate, is set forth in DECISION NO. 22 ON THE APPROVAL OF THE REGULATION ON THE AMOUNT AND MANNER OF REMUNERATION OF LAWYERS FOR THE DELIVERY OF STATE GUARANTEED QUALIFIED LEGAL AID (*adopted* Dec. 19, 2008) [hereinafter PLA LAWYER REMUNERATION SCHEDULE]. This schedule establishes compensation amounts for a long list of actions that may be taken in a criminal proceeding. Compensation amounts begin at MDL 60 (roughly USD 5) for such steps as meeting with the client and preparation of a motion or appeal. Compensation increases to MDL 100 (approximately USD 9) for participating in each court hearing, with certain adjustments and add-ons (including waiting time and on-call duty). Perhaps the most revealing amount in the schedule is the ceiling of MDL 200 (about USD 17) per day for a PLA lawyer who delivers legal aid on request. This reflects an increase from the original cap of MDL 160 (USD 14) a day. One respondent stated that PLA lawyers make, on average, between MDL 3,000 (USD 262) and MDL 4,000 (USD 349) each month for legal aid services, and are free to take on paying clients as well. Given that PLA lawyer work is not in very high demand among advocates, it is safe to assume that most advocates make more than the amounts offered to PLA lawyers. Interviewees described the current PLA compensation rates as inadequate.

In addition to PLA lawyers, there are a small number of full-time salaried public defenders, who reportedly make the same amount as district prosecutors – approximately MDL 4,000 (about USD 349) per month plus benefits, including Bar membership dues and health insurance. Since these public defenders are actually being paid by the Soros Foundation and not by the state, one interviewee suggested they may actually make higher salaries than prosecutors: MDL 6,000

(roughly USD 524) each month plus a bonus based on the caseload. By comparison, as of 2009, the range of judges' monthly salaries was between MDL 4,200 (about USD 367) and MDL 8,800 (approximately USD 769), with a monthly supplement of between 200 MDL (about USD 17.50) and MDL 500 (about US 43.67), determined based on performance. LAW ON THE SYSTEM OF SALARIES WITHIN THE STATE BUDGET Annex 3, No. 355-XVI, Dec. 23, 2005. According to the National Bureau of Statistics, the average monthly salary during January-April 2009 was MDL 2,620 (approximately USD 229). See Press Release, Remuneration of Employees in the Republic of Moldova in January-April 2009, available at <http://www.statistica.md/newsview.php?l=en&idc=168&id=2616&parent=0>.

Direct comparisons of remuneration between practicing lawyers and other professionals or employees are difficult to accurately reflect, because of different expenses that legal professionals pay to maintain offices, buy equipment and benefits, and the different rates at which they are taxed. In most cases, practicing advocates and independent civil practice lawyers have to fund all of these payments out of their earnings, while other legal professionals do not. In this connection, several advocates were unhappy that they no longer pay a graduated percentage of income for their social insurance contributions, and instead now pay a comparatively small fixed amount for this purpose. The consequence is that younger advocates who are accumulating credits under the new system will receive only the minimum pension and no paid sick leave. They would rather pay larger contributions now for greater benefits later. Understandably, older advocates who have accumulated higher credits under the old formula and advocates who are retired judges or prosecutors drawing their own pensions prefer the lower fixed contributions.

One advocate interviewed by the assessment team objected to the Law on Advocacy's provisions that prevent advocates from engaging in certain incompatible activities, specifically serving as an employee in a paid position (except for research, teaching, and arbitration activities) or conducting entrepreneurial activity. LAW ON ADVOCACY art. 9(1). This person thought these limitations were unnecessary to the preservation of an advocate's independence, so long as the advocate did not practice law as an employee but merely held a part-time job in some other capacity or participated in an unrelated entrepreneurial activity. The advocate considered restrictions of this nature appropriate for public servants but unduly constraining to persons engaged in the private practice of law. Independent civil practice lawyers have no such limitations on their outside remunerative activities.

In terms of legal resources available to lawyers, access varies geographically across the country. One respondent mentioned that the Advocates' Law Center in Chisinau, an NGO separate from the Bar, maintains a large library that includes the Official Bulletin (with laws and government decisions) and volumes of applicable case law along with other legal literature. The Law Center is a useful resource for advocates and interns based in Chisinau. Libraries may also be found in law schools, courthouses, and other facilities which practicing lawyers may be able to visit. Advocate bureaus typically have one Official Bulletin for the entire office. The SCJ publishes selected decisions in an annual casebook, and is reportedly in the process of posting all of its cases on its website, <http://www.scj.md>. There is also a free MOJ-maintained database that contains most laws, procedural codes, presidential decrees, government and ministry decisions, and the case law of the SCJ and the ECHR, in Moldovan and Russian languages. It is available through links posted on at least three websites: <http://www.justice.md>, <http://www.justice.gov.md>, and the Bar's website, <http://www.avocatul.md/leg.php>.

There are also subscription-based legal databases, including MoldLex and Superlex. MoldLex reportedly charges EUR 230 (about USD 299) to install a database with legislation only, plus an update fee of EUR 20 (approximately USD 26) per week. To get both legislation and case law, MoldLex charges EUR 330 (about USD 429) for installation and EUR 35 (roughly USD 46) for weekly updates. Superlex reportedly imposes similar fees for its products and services. One of the most highly praised sources of news, information, and advice for advocates and other practicing lawyers is a free electronic network created by an advocate affiliated with Amnesty International with the aim of maintaining contacts, energy, and momentum following a successful

seminar. The list of members has grown dramatically in the past year, and many advocates find it very useful. However, it should be noted that, while there are a number of computer- and Internet-based legal resources, comparatively few advocates are able to afford computers or Internet access.

In terms of advertising, the Law on Advocacy and the Code of Ethics both generally ban direct or indirect advertising by advocates, with exceptions provided for data published on brochures, business cards, official forms and stationery, and the Internet. LAW ON ADVOCACY art. 56; CODE OF ETHICS sec. 1.5. The latter authority goes further and prohibits advocates from locating their offices in courthouses, other law enforcement facilities, or their domiciles. CODE OF ETHICS sec. 1.5.3. These restrictions make it difficult for newly licensed advocates to attain public recognition and develop their client bases. By contrast, independent civil practice lawyers face no limitations on their freedom to advertise, and many take advantage of this fact. According to some interviewees, members of the public, including clients of independent civil practice lawyers, are often misled into thinking these lawyers are advocates because of their widely publicized availability and asserted competence to represent persons in civil disputes and legal consultations.

Factor 14: Continuing Legal Education

Lawyers have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of lawyer.

Conclusion	Correlation: Negative	Trend: ↔
<p>Lawyers are not subject to any enforceable CLE requirements. Practicing lawyers express interest in completing CLE courses, and some opportunities to take classes exist, but these programs do not necessarily address lawyers' needs and interests or take place at convenient locations. Further, these programs are often funded by outside entities and donors, and so are not self-sustainable.</p>		

Analysis/Background:

The Bar Council is charged with organizing CLE for advocates. LAW ON ADVOCACY art. 35(1)(f). The MOJ is also responsible, within the limits of its competence, for facilitating the provision of training courses for advocates. *Id.* art. 57(2)(b). Advocates themselves have no obligation under the Law on Advocacy or the Code of Ethics to participate in CLE programs or generally to stay current on legal developments, although the Code of Ethics does instruct advocates not to accept a case when he/she is aware of his/her lack of competence to handle the matter. CODE OF ETHICS sec. 2.5.

On March 26, 2004, with the encouragement of the President of the Advocates' Law Center, the Congress of the Bar passed a resolution obligating all advocates to participate in a minimum of eight hours of CLE instruction each year. Unfortunately, the resolution was not accompanied by a plan for implementing that standard, and none has emerged in the intervening five years. While the Bar Council is generally charged with implementing the resolution, there has not been any curriculum developed, funding received, or plans put in place to create classes and regulate lawyers' participation in them. By some accounts, there are not currently enough CLE classes in existence, especially outside of Chisinau, to enable advocates to meet the eight hour requirement, if it were being enforced.

While no enforced CLE requirements exist, some CLE classes are available, and the Bar does play a limited role in the provision of CLE. There are also numerous international and domestic



NGOs, including ABA ROLI, the Soros Foundation and its affiliates, the Norwegian Mission of Rule of Law Advisors to Moldova [hereinafter NORLAM], the German Federal Bar, Amnesty International, Lawyers for Human Rights, Promo-Lex, the Advocates' Law Center, and the Union of Jurists, as well as other sponsors who from time to time organize seminars for advocates and other legal professionals on a range of topics. The Bar Council typically signs on as a co-sponsor and sometimes lists the events on its website, but according to most respondents, it contributes little else to the preparation or funding of these programs. As of June 1, 2009, the Bar's website listed three CLE seminars, all dating back to 2008. Several interviewees stated that international donors tend to develop and host sporadic seminars that tie into their special missions and agendas. As a result, there are a large number of courses dealing with human rights, ECHR case law, anti-corruption, and anti-trafficking, but comparatively few on practical skills, basic civil, criminal, and administrative law topics, and subjects of broader interest to advocates. Most CLE programs are only taught in Moldovan, adding another obstacle for Russian-speaking lawyers. There has apparently been no serious effort to determine the needs and wants of grass-roots advocates or to organize a regular, comprehensive, and practical curriculum for the benefit of advocates throughout the country, including in the remote regions. Dependence on outside donors for sponsorship and the practice of not charging participants to attend these events means that the limited CLE activity now being conducted cannot sustain itself indefinitely. Various respondents mentioned how difficult it is even to contact the Bar to set up a seminar, noting that the Bar only has a small paid staff, and no dedicated employee to oversee advocate training.

Between 2007 and the date of drafting of this report, Amnesty International conducted nine CLE programs for advocates, NORLAM conducted seven, and ABA ROLI conducted 20. It should be noted that the Legal Aid Council arranged a series of training sessions for newly appointed public defenders and PLA lawyers, which were described by participants as being practical and useful. However, these programs were not offered to all advocates. Reportedly, lawyers participating in CLE trainings attend multiple courses in a given year. While some lawyers make an effort to complete CLE courses, the majority do not attend any CLE classes.

The NIJ has a CLE feature for the benefit of experienced judges and prosecutors, who reportedly are also provided a disproportionately large number of domestic and foreign seminar opportunities funded by international groups. One interviewee stated that prosecutors and judges are required to have 40 CLE hours each year at the NIJ, and their attendance must be certified. ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON THE NATIONAL INSTITUTE OF JUSTICE art. 19(2) (*adopted* Jun. 8, 2006). Several advocates expressed a desire to be able to participate in the NIJ's classes and other programs geared to judges and prosecutors, especially since the subject matter is often relevant to advocates' work. However, efforts by the Bar Council to have advocates included in the NIJ courses have so far been unsuccessful. It should also be noted that judges and prosecutors must pass a test on their knowledge every three years to keep their positions, providing a good incentive to stay current on legal developments. One person suggested that a comparable requirement for advocates would be healthy for the profession.

There seems to be a fairly broad consensus among advocates and non-advocate lawyers that CLE is important and necessary, and that many practicing lawyers fail to refine and update their professional skills and knowledge as often as they should. Some stay current through independent study, reading the Official Bulletin, the Bar journal, other legal literature, and online references, and perhaps participating in peer-to-peer discussions on the electronic lawyer network (mentioned in Factor 13 above). However, these lawyers are comparatively few in number, as most lawyers lack the resources or the motivation to pursue this education on their own. Further, many older lawyers studied and practiced under the Soviet system and have had difficulty adjusting not only to new laws but also to the adversarial system.

Factor 15: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of lawyer.

Conclusion	Correlation: Neutral	Trend: ↑
<p>While statistics on ethnicity, religion, and gender are not kept by the Bar or the MOJ, it appears that minorities other than Roma are adequately represented in the advocacy. However, women account for only 27% of the total number of advocates, which represents only a modest increase over the 2004 figure of 24%. Proportionally, few women occupy leadership positions in the Bar. No information is available concerning ethnicity, religion, and gender for non-advocate lawyers.</p>		

Analysis/Background:

Moldova has a multi-ethnic population, dominated by ethnic Moldovans. The 2004 census by the National Statistics Bureau determined that 75.8% of the population at that time was ethnic Moldovans, and over 93% were at least nominally Christian Orthodox of the Romanian, Russian or Old Believer variety. Still, there are substantial ethnic minorities in the country, including Ukrainians (8.4%), Russians (5.9%), Gagauz (4.4%), Romanians (2.2%), Bulgarians (1.9%), and Roma (0.4%). The Bar does not ask applicants about their ethnicity or religion, so no records exist to demonstrate whether or not various ethnic or religious minorities are adequately represented in the advocacy. From subjective observations and the reports of interviewees, it appears that ethnic minorities, with the exception of Roma, have at least meaningful, if not proportionate, representation in the advocacy. Roma are virtually, if not entirely, unrepresented. As noted in Factor 11 above, exclusively Russian speakers, which may include ethnic Ukrainians, Gagauz, and Bulgarians as well as Russians, face special hurdles in qualifying for admission as advocates. These hurdles could result in underrepresentation from these groups, though interview comments indicated that there are ample Russian and Gagauz advocates. While the Bar does not keep any statistics on the representation of minorities in the legal profession, interviewees did not report any discrimination against ethnic minority advocates.

The Bar also does not ask about gender or maintain statistics concerning this distinction, but the assessment team created a breakdown of gender statistics by sorting through the list of 1,329 advocates licensed as of March 1, 2009 on the basis of first names. It determined that 27% of registered advocates are women. This percentage reflects a modest increase above the 24% figure noted in the 2004 LPRI report. See 2004 MOLDOVA LPRI at 25. However, it is still far below the 51.9% that women represent in the population as a whole. Neither the MOJ nor the Bar keeps (or at least makes publicly available) the addresses of advocates; accordingly, it is impossible to determine the proportion of advocates who are women in each region. From interviews, the assessment team learned that in Cahul, about half of the advocates are women, while in Gaguzia and Balti women constitute an estimated 13% and 42% of the advocate population. Additionally, it appears that women are better represented in Chisinau than in some of the more remote regions. Women are represented in the legal profession in comparable numbers to their representation in the judiciary, where approximately 30% of judges are women. ABA ROLI, JUDICIAL REFORM INDEX FOR MOLDOVA VOLUME III at 16 (June 2009) (*forthcoming*).

Some female advocates complained that their numbers are unduly low among the leadership bodies of the Bar, and evidence obtained by the assessment team supports this viewpoint. There is only one woman on each of the Bar's governing bodies, an improvement since 2004, when there were no women in leadership positions in the Bar. *Id.* One female advocate asserted that women are more responsible and better organized than men and thus would improve the Bar if there were more women in leadership positions. She said, however, that she never considers the gender, only the merits, of the candidates during elections at the Congress of the Bar. Another

female advocate said that the lack of women leaders of the Bar was a sign of discrimination, and that women are treated with disrespect by their fellow advocates.

In terms of gender discrimination in the daily practice of the advocacy profession, approximately two-thirds of female advocates and 80% of male advocates interviewed by the assessment team did not report any gender-based discrimination. However, a few advocates did recount instances of such discrimination. One woman said that there is no overt discrimination, but that all male legal professionals treat female advocates differently than their male counterparts. Another female interviewee stated that judges and prosecutors treat women fairly, but that police treat them poorly. This interviewee opined that since the police are male, they are used to dealing with other men, and they are uneasy (though not disrespectful or rude) when communicating with female advocates. One male advocate said that clients discriminate against women by preferring to have men as their lawyers.

No information is available concerning the ethnic, religious, or gender composition of non-advocate lawyers in Moldova. The assessment team did not receive any reports of discrimination against minority or women independent civil practice lawyers in their practice of law.

Factor 16: Professional Ethics and Conduct

Codes and standards of professional ethics and conduct are established for and adhered to by lawyers.

Conclusion	Correlation: Negative	Trend: ↓
<p>While the Bar has adopted a Code of Ethics, it lacks detailed guidance and does not appear to be widely understood or accepted. There were numerous reports of corrupt behavior and other ethical violations by advocates. Non-advocate lawyers have no code of professional ethics and conduct and are believed to engage in unethical misconduct at least as often as advocates.</p>		

Analysis/Background:

Advocates have several sources of ethical guidance in Moldova. The Law on Advocacy requires advocates to, among other things, apply legal means to protect their clients' rights and interests, avoid certain conflicts of interest, refrain from conceding their clients' guilt or otherwise acting against their clients' legitimate interests, and indefinitely preserve clients' confidential information and documents. LAW ON ADVOCACY arts. 46-47. To avoid a conflict of interest, advocates may not provide legal assistance to a person whose interests contradict their clients' interests. They also may not represent a client in cases that they have previously participated in as a judge, prosecutor, investigator, expert, translator, or witness. In addition, advocates are prohibited from participating in a case in which they are related to the lawyer on the other side of the case. *Id.* art. 46(2). Furthermore, advocates are severely restricted in advertising their practices and capabilities. *Id.* art. 56; see also Factor 13 above.

Ethical mandates are also set forth in the procedural codes, which prohibit an advocate (or any legal representative in a civil case) from representing a defendant or a civil party if there are conflicts of interest, comparable to the Law on Advocacy's provisions on the subject. CRIM. PROC. CODE art. 67(5); CIVIL PROC. CODE art. 78. Advocates in criminal cases are also barred from acting against the interests of the defendant, including admitting the client's guilt without his/her permission, disclosing confidential information, or leaving the courtroom, except during an announced break. An advocate may not refuse to defend a person without well-founded reasons, terminate representation on his/her own initiative, or assign responsibility for defending the case

to another person. CRIM. PROC. CODE art. 68(3)-(6). There is no provision for confidentiality obligations in civil cases.

In addition to these legislated provisions, there is also a Code of Ethics. The Congress of the Bar adopted the Code of Ethics at their 2002 session and amended it in 2007. This document covers a wide range of ethical and behavioral topics, including independence, confidentiality, activities incompatible with the practice of law, personal advertising, obligations to clients, conflicts of interest, fee matters, relations with other advocates, investigators, courts, and public authorities (including a ban on *ex parte* communications with judges), and the preparation of young advocates. It is not very comprehensive, as most of its directives are phrased in general terms and little or no guidance is offered for dealing with the many ethical quandaries and uncertainties likely to arise in the daily practice of law. Increasing this problem is the fact that most advocates practice in individual offices or in associate offices that are essentially space-sharing arrangements, and so they lack the availability of close colleagues to consult when confronted with ethical issues. By law, the Code of Ethics is mandatory for all advocates and violations constitute a basis for disciplinary responsibility. LAW ON ADVOCACY arts. 46(1)(c), 48(1); CODE OF ETHICS at Preamble.

Most respondents thought the Code of Ethics was useful to have, although several noted that it is very general and subject to varying interpretations. A couple of advocates objected to the advertising limitations contained in the Code and the Law on Advocacy. Several interviewees said that many advocates are unfamiliar with the Code of Ethics and never really signed on to its provisions, and that training on the rules has been inadequate. Reportedly, ABA ROLI has sponsored some seminars on the Code of Ethics, but there has not been a push by the Bar to educate the public and the profession on its strictures. One person stated that the optional ethics course in law schools does not really address the Code of Ethics, though ethics questions are sometimes included on the qualification examination. The Bar's website contains a text of the Code of Ethics for the benefit of advocates and the general public.

With regard to the actual ethical conduct of advocates, most interviewees had discouraging observations. Advocates asserted that many of their colleagues acted as "intermediaries," transmitting bribes from clients to judges, prosecutors, or other authorities in exchange for favorable treatment. As noted in Factor 9 above, knowledgeable sources claimed that anywhere from 75% to 90% of these transgressions are committed by advocates who are former prosecutors, police, or (less frequently) judges. Reportedly, many cases have been filed against advocates for trading influence, but this activity continues to occur. One respondent stated that advocates sometimes take money from a client ostensibly to bribe a judge, but actually keep the money for themselves; if the client then loses the case, it is unlikely that he/she will officially object to the advocate's failure to pay the bribe. A different interviewee declared that improper influence is far more widespread now than it was in the Soviet days, when dissidents always lost political cases but in non-political cases the law was actually respected 85-90% of the time. The interviewee alleged that now 85-90% of non-political cases are affected by bribery, corruption, or other forms of undue influence. Some public defenders and PLA lawyers reportedly insist on and receive under-the-table payments from clients they are appointed and paid to represent without charge. During the assessment team's visit, a newspaper published an account of a legal aid client whose relatives had to pay EUR 3,000 (about USD 3,900) to a public defender for the client to receive legal services. The reporter called the public defender's office, pretending to be a relative of a detainee, and was allegedly told the client would have to pay the public defender some additional "tax," which varied by defender. *For Free or for 3000 Euros*, ZIARUL DE GARDA, Apr. 16, 2009, at 6. The team also received accounts of *ex parte* contacts between judges and advocates, notwithstanding prohibitions against such contacts in the ethical rules of both professions. CODE OF ETHICS sec. 6.3; JUDICIAL CODE OF ETHICS Rule 16 (*adopted by the General Assembly of Judges of the Republic of Moldova, Feb. 4, 2000*); *see also* 2007 MOLDOVA JRI at 59.

It is impossible to verify the actual level of corruption among advocates, since bribes and similar tradeoffs are, by their nature, private transactions between lawbreakers who have every incentive

to keep them confidential. The problem is that the public perception of corruption is very high, and this attitude undermines respect for the justice system and, ultimately, for the rule of law. It also encourages actual corruption, since clients assume they have to pay bribes and therefore offer them; judges then expect to receive bribes so they accept them, whether or not they seek them in the first place. Prospective clients often choose their advocates based on the advocate's personal relationship with the judge or prosecutor and consider victory far more important than legality. According to Transparency International, on a scale of 1 (not at all corrupt) to 5 (extremely corrupt), Moldova's justice sector received a score of 3.7, with 18% of the persons surveyed ranking it the most corrupt sector among all sectors surveyed. TRANSPARENCY INTERNATIONAL, 2009 GLOBAL CORRUPTION BAROMETER, *available at* <http://www.transparency.org/publications/publications/gcb2009>. Of course, justice sector is a broad category, and there are many legal and non-legal professions besides the advocacy that comprise this sector, so it is unclear to what extent advocates contributed to this perception. Corruption is a problem throughout society in Moldova, with traffic police, schoolteachers, healthcare professionals, bureaucrats, and many other groups believed to be permeated with persons demanding side payments to perform (or not to perform) their duties.

Less egregious but still serious violations of ethical rules also take place. Sometimes an advocate is passive and inattentive to his/her client's case, deriving income from the volume of cases he/she takes on, at the expense of quality legal services. Reportedly, some advocates do not sign contracts with clients, but just take money from them and then fail to report the income for tax purposes. Meanwhile, the clients have no contractual rights against the advocate. One interviewee alleged that many advocates outside Chisinau have offices in courthouses, contrary to the Code of Ethics' provisions (see CODE OF ETHICS sec. 1.5.3), and that too many advocates violate conflict of interest rules by representing both sides and getting paid by both clients. Other respondents observed that some advocates commit breaches of the ethical rules by unfairly and disrespectfully criticizing judges or fellow advocates, while others violate confidentiality obligations.

One interviewee expressed the view that ethical violations occur less frequently in law firms than in individual offices, because law firm colleagues are available for consultation on difficult ethical issues and can also detect erratic or troubling behavior by advocates. This person also suggested that loyalty to the law firm and its reputation may help keep law firm members in compliance with ethical standards. Another respondent suggested that advocates should be required to obtain malpractice insurance, to protect their clients against professional negligence or misconduct. This requirement would attract insurers to Moldova, who would help improve behavior by imposing certain standards, policies, and practices on the advocates they insure.

Non-advocate lawyers, once again, are completely unregulated and have no ethical rules beyond the conflict of interest prohibition set forth in the Civil Proc. Code, a prohibition some reportedly violate. Numerous respondents, including several non-advocates, stated that this situation is unacceptable. As discussed in Factor 13 above, independent civil practice lawyers have no restrictions on advertising, so they advertise frequently and sometimes misleadingly. Prospective clients often confuse them with advocates and are unaware that confidentiality protections governing relationships and communications with advocates do not apply to these lawyers. Virtually every interviewee commenting on independent civil practice lawyers alleged that they do not report to the tax authorities income earned from proxy representations, since fees are not shown on proxies and contracts with clients are rare.

Factor 17: Disciplinary Proceedings and Sanctions

Lawyers are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.

Conclusion	Correlation: Neutral	Trend: ↑
<p>Advocates accused of violating professional standards are subject to proceedings before the Bar's Ethics and Disciplinary Commission, which, in the view of most observers, has evolved into a reasonably active, fair, and transparent body. However, complaints result in sanctions so rarely that some advocates question whether the Commission is sufficiently rigorous and objective. Non-advocate lawyers are not subject to any discipline or sanctions for their misconduct, short of criminal prosecution.</p>		

Analysis/Background:

Reviewing complaints against advocates' conduct, including violations of disciplinary rules and the Code of Ethics, as well as making decisions in advocates' disciplinary matters is the responsibility of the Bar's Ethics and Disciplinary Commission. LAW ON ADVOCACY art. 41(2). The Commission consists of 11 advocates, who must have been licensed to practice law for at least five years and are elected to four-year terms by the Congress of the Bar. *Id.* arts. 40(1), 41(1).

Petitions and complaints concerning the behavior of advocates are to be submitted to the Ethics and Disciplinary Commission, which orders an investigation if there are sufficient grounds to do so. *Id.* art. 48(2). The secretary of the Ethics and Disciplinary Commission, a non-advocate whose services are shared with the Licensing Commission, is responsible, among other things, for maintaining a register of all complaints received and passing them on to the chair of the Commission.⁹ REGULATION ON THE ORGANIZATION OF ACTIVITIES OF THE COMMISSION FOR ETHICS AND DISCIPLINE OF THE BAR ASSOCIATION OF THE REPUBLIC OF MOLDOVA arts. 7(1), (2)(b)-(c) (*adopted* Mar. 23, 2007) [hereinafter DISCIPLINARY REGULATION]. The investigation is usually conducted by a member of the Commission, and the accused advocate is required to provide a written explanation along with other evidentiary materials to the investigator. If the investigator and the chair of the Ethics and Disciplinary Commission believe that a sanctionable violation may have occurred, the matter is referred to the full Commission for review and action. LAW ON ADVOCACY art. 48(3)-(4).

There is a six-month statute of limitations for the initiation of disciplinary proceedings, which generally runs from the date that the alleged violation was committed, with a few minor adjustments. *Id.* art. 50. The advocate in question is entitled to participate in the examination of the matter and provide explanations directly to the Ethics and Disciplinary Commission. *Id.* art. 48(7). The advocate is also entitled to be represented by an advocate at the Ethics and Disciplinary Commission's hearing at which his/her charge is considered. DISCIPLINARY REGULATION art. 6(5). Sessions of the Ethics and Disciplinary Commission are held at least monthly and must be public, unless the Commission makes a reasoned decision to close a session. At least two-thirds of the Commission's members must be present to constitute a quorum, and a simple majority vote of those present is sufficient to reach a decision. *Id.* art. 4. If the accused advocate is the subject of a criminal investigation or proceeding, the disciplinary proceeding will be suspended (with the statute of limitations stayed) until the criminal case is resolved. *Id.* art. 6(8).

⁹ In regard to the secretary's role, several interviewees mentioned the need for the Ethics and Disciplinary Commission and the Licensing Commission to have their own secretaries, and for the secretaries to take on more than just clerical work.

Following the hearing, the Ethics and Disciplinary Commission may choose to impose a disciplinary sanction, seek additional information, or conclude that no violation occurred. LAW ON ADVOCACY art. 48(6). Disciplinary sanctions include a warning, a reprimand, the suspension of legal practice, or the revocation of the license to practice law. *Id.* art. 49(1). The grounds for suspension include a court or disciplinary decision that orders suspension for a specific period, or delinquency of at least six months in payment of Bar dues, with suspension to continue until full payment is made. *Id.* art. 12(1)(c)-(d). Grounds for revocation of the license are:

- an advocate's repeated failure to perform his/her duties during one year, if previously disciplined;
- EOA's repeated failure to provide court-appointed legal aid upon request;
- a PLA lawyer's repeated and unjustified refusal to offer legal aid upon request of the Legal Aid Council;
- determination that the advocate's license was unlawfully obtained;
- serious one-time violation of the Code of Ethics;
- conviction for any criminal offense by a final decision of a court;
- loss of Moldovan citizenship after obtaining the license;
- serious violation of the contract with the client for legal assistance; and
- failure to state or understating the fee payable in the contract for legal assistance.

Id. art. 22(1).

In imposing the disciplinary sanction, the Ethics and Disciplinary Commission must take into account the seriousness of the violation, the circumstances in which it was committed, and the advocate's activity and conduct. *Id.* art. 49(2). Additionally, any sanction must be imposed within two months after the alleged misconduct became known, excluding the periods of advocate's disability or vacation. *Id.* art. 50(2). Once the Ethics and Disciplinary Commission decides a case, it immediately communicates the decision to the participating parties, the Bar Council, and (if license revocation is the sanction) the MOJ. Within ten days, it must send its decision to the complainant, and within 30 days, it must publish the decision in the monthly Bar journal.¹⁰ DISCIPLINARY REGULATION art. 6(9). The Commission's decision impose a disciplinary sanction may be appealed to a court. LAW ON ADVOCACY art. 49(3); *see also id.* art. 22(3) (providing for judicial appeals of the MOJ's decisions to revoke a license based on the Ethics and Disciplinary Commission's decisions). Once the license suspension or revocation enters into force, the Bar Council is required to, respectively, note a suspension on its list of advocates or strike the name of an advocate whose license is revoked from the list entirely, and publish news of suspension or revocation in the Official Bulletin. *Id.* arts. 12(3), 13(3), 25(3). The advocate whose license has been suspended or revoked has ten days to return his/her license and advocate's identification card to the Bar Council. *Id.* arts. 12(2), 13(2). If during the one-year period after imposition of the disciplinary sanction the advocate commits no other disciplinary violation, the disciplinary matter is expunged from the advocate's record. The Ethics and Disciplinary Commission may shorten this one-year term on its own initiative or at the request of the advocate or the advocates' office. *Id.* art. 51.

According to information received by the assessment team, the procedures spelled out in the Law on Advocacy and the Disciplinary Regulation are generally followed; however, there are certain rare but problematic exceptions. Regarding the initial receipt and registration of complaints, one respondent said that at least some, if not all, complaints are first reviewed by the President of the Bar Council. This respondent did not believe that the President decides complaints, but reported that there are rumors that the President sometimes contacts the advocate and client and tries to mediate the problem. Another interviewee stated that complaints always go to the Ethics and

¹⁰ In this connection, the journal is supposed to be regularly posted on the Bar's website, but the only issue to be found there (as of June 1, 2009) dates back to March 2006. However, the Bar's website separately posts announcements of all disciplinary outcomes.

Disciplinary Commission, unless they are clearly groundless or not really a complaint, but more of a question, that the Bar President can personally address.

One flaw in the disciplinary process that was pointed out by a number of advocates is the fact that the public (including dissatisfied clients) are not well-educated about complaint procedures. The Bar's website contains copies of the Law on Advocacy, the Code of Ethics, and the Disciplinary Regulation, as well as a sample legal services contract – but this does not contain any reference to client recourse against the advocate. Additionally, there is no public education program (radio or television announcements, brochures, or media releases) which would inform those who are not Internet savvy of their right to bring a disciplinary complaint against a lawyer. Thus, the general public is largely unaware of the existence of a complaint process, how to bring a complaint, the six-month statute of limitations for filing a complaint, and the fact that complaints can only be brought against advocates, not independent civil practice lawyers. One interviewee suggested a public education program, as well as highlighting a few of these complaint procedures and limitations in the sample contract between the advocate and the client posted on the Bar's website.

According to one account, the most frequent complaint received by the Ethics and Disciplinary Commission concerns advocates receiving money for performing legal services, but never giving their client a receipt for the payment and never performing the services. Another frequent allegation is that the advocate betrayed his/her client in favor of the opposing party. There are also complaints about intoxicated or unprepared advocates, and occasional claims by advocates directed toward the conduct of other advocates. Interviewees differed on the question of whether advocates subject to the disciplinary process are punished. One interviewee mentioned three cases in 2008 – two involving an advocate allegedly stealing from a client and one in which an advocate lied to a detainee in order to obtain confidential information – in which the Ethics and Disciplinary Commission took no action, deciding that the evidence was insufficient or that no actual harm had occurred to the client. Interviewees suggested that the Ethics and Disciplinary Commission needs to have the authority and resources to collect further evidence before the hearing takes place, and there should be a registry of licensed advocates, with contact information to facilitate communications with accused advocates and potential witnesses. However, some interviewees mentioned cases where they or others had filed complaints against advocates for misconduct, including taking money without performing services, and the offending advocates had been suitably sanctioned by the Ethics and Disciplinary Commission. Several interviewees asserted that the Ethics and Disciplinary Commission's members are active, fair, and competent individuals who perform their tasks well. Respondents felt confident that a theoretical complaint against them would be fairly considered and decided by the Commission.

Despite generally positive reviews given to the Ethics and Disciplinary Commission and its procedures, the outcomes of its hearings provide some basis for concern that it might be unduly lenient in adjudicating complaints filed against fellow advocates. As the following table indicates, over the past two years less than 4% of complaints have resulted in the imposition of disciplinary sanctions against accused violators. While it is possible that the extraordinarily high dismissal rate is justified on the merits, or that some cases are still pending and might eventually end up with findings of violations, it is difficult to generate public confidence in the willingness of the Bar to police the conduct of its members when so few cases produce sanctions. If so many complaints are indeed unfounded, this would reinforce the need to educate other legal professionals and the public on the provisions of the Code of Ethics, the six-month statute of limitations on filing complaints, and other requirements of the disciplinary process.



DISCIPLINARY PROCEEDINGS AGAINST ADVOCATES (Jun. 2007-May 2009)

	Jun. 25-Dec. 31, 2007	2008	Jan. 1-May 31, 2009
No. of cases considered	130	166	82
Outcome of cases			
Disciplinary sanction	8	4	3
No violation found/still pending	122	162	79
Sanctions imposed			
Warning	3	2	3
Reprimand	2	1	0
Suspension of practice	0	0	0
Revocation of license	3	1	0

Source: Ethics and Disciplinary Commission.

Overall, most objective observers were complimentary of the Ethics and Disciplinary Commission and its work, noting its high level of recent activity and evenhanded attention to the rights and interests of both the complainants and the accused advocates. The Commission was also commended for publicizing the outcomes of its deliberations, though interviewees recommend that it seeks wider public dissemination of these outcomes and Commission procedures. It was also suggested that the Commission needed greater investigative resources and staff support to improve its effectiveness.

Once again, independent civil practice lawyers are not subject to any disciplinary process or sanctions for their misconduct, short of criminal prosecution.

IV. Legal Services

Factor 18: Availability of Legal Services

A sufficient number of qualified lawyers practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.

Conclusion	Correlation: Neutral	Trend: ↑
<p>The number of advocates has increased over the past few years. It is believed that the same is true of the number of independent civil practice lawyers. There is a general sense that there should be more advocates and that they should be geographically distributed, so as to ensure that all citizens have access to legal assistance.</p>		

Analysis/Background:

As of March 2009, there were 1,329 licensed advocates in Moldova, which equates to one advocate for every 2,684 people in the country. See Bar Association of the Republic of Moldova, List of Advocates Licensed to Conduct Advocacy Activity in 2009 (*published* Mar. 24, 2009). This represents an increase of nearly 30% over the past six years; as of December 2003, there were 1,027 practicing advocates in Moldova (one advocate for every 3,512 citizens). 2004 MOLDOVA LPRI at 3. The present ratio may be compared to ratios of one advocate per 701 people in Bulgaria (where all independent practicing lawyers must be advocates), one advocate per 1,253 people in Georgia, and one advocate per 4,278 people in Armenia (both Georgia and Armenia also permit independent civil practice lawyers to provide legal services to clients).¹¹

In addition to Moldova's 1,329 advocates, there is an indeterminate number of unregulated independent civil practice lawyers. Based on rough estimates, there are hundreds, perhaps a thousand of these practitioners. They would almost surely bring the ratio in Moldova down to one practicing lawyer per fewer than 2,000 citizens. There are also an unknown number of jurisconsults who work in-house for businesses, government agencies, NGOs, and other employers. Since it is impossible to learn how many people actually practice law in Moldova, and since professional classifications vary from country to country, it is difficult to develop meaningful state by state comparisons of population per practicing lawyer. Nonetheless, it may be noted that the number of people per individual active lawyer in selected European countries is as follows: France – 1,329, Germany – 619, Italy – 454, Norway – 796, Spain – 272, and United Kingdom – 489. See Council of Bars and Law Societies of Europe [hereinafter CCBE], NUMBER OF LAWYERS IN CCBE MEMBER BARS (*last updated* 2005), *available at* http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/table_number_lawyers1_1179905742.pdf; U.S. CENSUS BUREAU INTERNATIONAL DATABASE, COUNTRIES AND AREAS RANKED BY POPULATION: 2005, *available at* <http://www.census.gov/ipc/www/idb/ranks.html>.

The geographic distribution of the 1,329 Moldovan advocates among the country's various territorial units is unknown, since neither the Bar nor the MOJ purports to keep records that would reveal this information. A very rough indicator may be suggested by the distribution of public defenders and PLA lawyers throughout the country. Unlike the Bar and the MOJ, the Legal Aid Council does maintain and make available the addresses of its active advocates. This allocation is shown on the following table:

¹¹ See ABA ROLI, LEGAL PROFESSION REFORM INDEX FOR BULGARIA Vol. II at 42 (May 2006); ABA ROLI, LEGAL PROFESSION REFORM INDEX FOR GEORGIA Volume II at 37 (Nov. 2007); ABA ROLI, LEGAL PROFESSION REFORM INDEX FOR ARMENIA Volume II at 43 (Dec. 2008). These publications may be found at http://www.abanet.org/rol/publications/legal_profession_reform_index.shtml

PUBLIC DEFENDERS AND PLA LAWYERS PER POPULATION AND TERRITORIAL UNIT

Territorial Unit	No. of Legal Aid Advocates	Total Population	Population per Legal Aid Advocate
Chisinau municipality	135	785,087	5,815
Balti municipality	18	148,114	8,229
Anenii Noi district	4	83,105	20,776
Basarabeasca district	6	29,500	4,917
Briceni district	3	76,590	25,530
Cahul district	12	123,808	10,317
Cantemir district	3	63,406	21,135
Calarasi district	3	79,604	26,535
Causeni district	4	92,904	23,226
Cimislia district	3	62,903	20,968
Criuleni district	3	72,787	24,262
Donduseni district	2	46,388	23,194
Drochia district	6	91,492	15,249
Dubasari district	1	35,211	35,211
Edinet district	3	83,884	27,961
Falesti district	3	93,600	31,200
Floresti district	3	91,492	30,497
Glodeni district	5	62,893	12,579
Hincesti district	3	123,499	41,166
Ialoveni district	6	97,987	16,331
Leova district	4	53,896	13,474
Nisporeni district	6	67,386	11,231
Ocnita district	4	56,801	14,200
Orhei district	1	125,915	125,915
Rezina district	3	53,200	17,733
Riscani district	2	71,297	35,649
Singerei district	4	93,906	23,477
Soroca district	2	101,489	50,745
Straseni district	1	91,491	91,491
Soldanesti district	2	44,109	22,055
Stefan Voda district	3	72,498	24,166
Taraclia district	2	44,609	22,305
Telenesti district	6	74,916	12,486
Gagauzia Autonomous Region	10	159,717	15,972
TOTAL	276	3,455,484	12,519 (average)

Source: National Statistics Bureau (population figures as of Jan. 1, 2008); Legal Aid Council (advocate numbers as of Oct. 6, 2008).

Assuming that the distribution of legal aid advocates and all advocates is roughly similar, there is apparently a wide discrepancy in the apportionment of advocates around the country. One district (Basarabeasca) has 25 times the legal aid advocate density as another (Orhei). This data suggests that access to justice can be very difficult in certain regions of Moldova.

The number of licensed advocates in Moldova has increased in recent years for a variety of reasons, including the influx of former prosecutors and judges taking early retirement, the growth (until recently) in the number of law schools and their graduates, and improvements in the Bar admission process. Still, several respondents expressed the view that there should be more advocates generally, at least more who are capable and who can handle complicated cases. Additionally, most persons who addressed the issue said that the distribution, if not the total

number, of advocates needs to be improved, as certain remote and isolated regions are underrepresented in the profession.

Factor 19: Legal Services for the Disadvantaged

Lawyers participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.

Conclusion	Correlation: Neutral	Trend: ↔
<p>Under a new law that has been in effect for less than a year, advocates serve as public defenders and PLA lawyers in criminal defense matters. It is not yet clear how well these services will be provided, though the system for legal aid distribution has improved. While the law calls for legal aid in civil and administrative matters, that portion of the law has not yet been implemented. Advocates also provide <i>pro bono</i> services through NGOs and on their own.</p>		

Analysis/Background:

The right to defense is guaranteed by the Constitution, and the parties are entitled to be assisted by a lawyer, either chosen or appointed *ex officio*, throughout the trial. CONST. arts. 26(1), 26(3); see also EUROPEAN CONVENTION art. 6.3(c).¹² So far, Moldova has provided free legal aid to disadvantaged persons only in certain criminal cases.

In criminal proceedings, the investigative body and the court are required to provide suspects, accused persons, and defendants with independent defense counsel. This legal assistance is to be provided without charge if the suspect, accused, or defendant lacks the financial means to pay for it. A suspect's right to counsel begins at the point he/she is designated as such; the accused or defendant's right to counsel commences when he/she is formally charged. CRIM. PROC. CODE arts. 17(3), 17(5), 64(2)(5), 66(2)(5). There are 11 circumstances in which the participation of defense counsel in a criminal proceeding is mandatory, including, among others, cases where the suspect/accused/defendant is underage or otherwise incapacitated, is in pre-trial detention, or faces charges of a serious, extremely serious, or exceptionally serious crime. *Id.* art. 69(1). Nothing in the Crim. Proc. Code imposes a means test or demands evidence of inability to pay, and the practice of the authorities has been to consider mandatory participation of defense counsel to be synonymous with the right to free legal assistance.

Until recently, free legal aid services were provided by so-called EOAs who were appointed by criminal investigators or the courts. By most accounts, EOAs were poorly compensated, with a low piece-rate schedule and a daily maximum remuneration of MDL 100 (approximately USD 9), with their diligence and performance often commensurate with their compensation. Some EOAs reportedly loitered around courthouses and police stations hoping to be appointed to complete nominal tasks for suspects and defendants, such as witnessing the reading of rights or interrogations, signing documents requested by prosecutors, or standing by passively during a court hearing. Often, these EOAs were former colleagues of the police, prosecutors, or judges who appointed them to perform these tasks.

According to the OSCE, when the advocate for a party failed to appear for a hearing, the court typically appointed another advocate to serve as EOA for the party and gave the EOA just five or ten minutes to review the file. OSCE TRIAL MONITORING REPORT at 45-46. An interviewee said that lawyers from the advocate bureau nearest the courthouse served rotating shifts in

¹² In *Airey v. Ireland*, 23 ECHR ser. A (1979), this right was extended to include civil cases where the right to free legal assistance is indispensable for effective access to the court.

courtrooms to be able to secure clients in just those circumstances. Commenting on the OSCE report, an interviewee stated that the courts were usually willing to give the EOA a continuance of several days to enable him/her to prepare for the hearing; however, EOAs typically preferred to go ahead with the case since their fee was the same whether they proceeded immediately or took a week to prepare. EOAs were also required to submit their invoices, including services performed and time spent, for the approval of the appointing body, which could strike as unnecessary or excessive some services for which compensation was requested. This practice significantly infringed on the independence of the EOAs and undoubtedly affected the aggressiveness with which many EOAs pursued their clients' interests. While some EOAs were diligent and effective in their representations, the overall public view of these advocates was negative. *Id.* at 44-48.

In response to the deficiencies perceived in the old system, in 2006 Moldova launched a pilot project using salaried public defenders, funded by the Soros Foundation, to represent criminal suspects and defendants unable to afford legal counsel. Deeming this project a success, Parliament passed the Legal Aid Law in 2007 to institute a dual system of full-time public defenders and part-time PLA lawyers to provide qualified legal aid. The term "PLA lawyers" was devised to try to erase the negative connotation of EOAs. The Legal Aid Law contemplates that free qualified legal aid would be supplied to eligible persons in virtually the entire range of legal services, including civil cases, representation before administrative authorities in complex matters, and criminal defense. LEGAL AID LAW arts. 2, 19(1). The effective date of the Legal Aid Law was July 1, 2008, but for budgetary reasons, the provision authorizing state-funded legal assistance in civil and administrative cases was deferred until January 1, 2012. *Id.* art. 37(1). Moreover, the public defender side of the system continues to be funded by the Soros Foundation (with some additional public defenders funded by the United Nations Children's Fund [hereinafter UNICEF]), with no date set by which the state will assume this cost. Since the present scope of free legal assistance is limited to criminal defense matters (and civil representation by advocates in incapacitation and psychiatric confinement procedures under Civil Proc. Code arts. 304, 316), only advocates currently provide legal aid. Once the Legal Aid Law is fully implemented, free legal assistance in civil litigation and consultation can presumably be undertaken by independent civil practice lawyers. The Legal Aid Law also contemplates the provision of "primary legal aid," consisting of comparatively basic assistance to be supplied by NGOs and paralegals (see LEGAL AID LAW arts. 15-18), but this feature has also reportedly been placed on hold due to funding limitations.

The legal aid system is administered jointly by the MOJ, the Bar, and the Legal Aid Council, with the latter given the principal role and managerial responsibilities. *Id.* arts. 8-12. The Legal Aid Council consists of seven members, all of whom perform their duties on a *pro bono* basis, appointed for four-year terms. Two members are appointed by the MOJ, two by the Bar Council, and one each by the Ministry of Finance, the SCM, and collectively by NGOs and the academic community. *Id.* art. 11. Among its other functions, the Legal Aid Council establishes and oversees the work of five territorial legal aid offices having jurisdictions coterminous with those of Moldova's five courts of appeals. The territorial offices implement the actual provision of legal assistance under the Legal Aid Law. *Id.* art. 14.

The Legal Aid Council began its work immediately, adopting regulations on its internal operations, the functioning of the territorial offices, the selection of public defenders and PLA lawyers, public defenders' activities, procedures for delivery of emergency legal aid, methodology for calculating income, the form to be completed by persons seeking free legal assistance, and remuneration of PLA lawyers. Copies of these regulations can be found at the Legal Aid Council's website, available at <http://www.cnajgs.md/13/?L=1>.

As noted in Factor 13 above, the initial compensation amounts for PLA lawyers proved so unappealing that relatively few advocates signed up to provide these services. An amended regulation adopted in December 2008 was more successful in attracting advocates, even though all PLA lawyers interviewed on this subject remain dissatisfied with the fee schedule and the cap

on daily remuneration. A significant improvement over the old system is that, at the conclusion of the case, PLA lawyers submit their invoices to the territorial office, where they are promptly paid. The investigators and the courts no longer have to approve the hours spent or the work done by the advocate. PLA lawyers desiring to serve as such sign six-month contracts; however, not enough advocates were willing to sign on even with the improved compensation schedule to necessitate a contest for selection of PLA lawyers. As discussed elsewhere in this assessment, advocates who have not signed up to be PLA lawyers have an obligation to serve if requested by a territorial office, and can lose their licenses if they refuse to do so repeatedly and without justification. LAW ON ADVOCACY arts. 22(1)(b¹), 46(1)(a¹); *see also* Factors 1 above and Factor 21 below. However, there have not yet been any issues with advocates refusing to serve as PLA lawyers.

It is expected that there will eventually be full-time, salaried public defenders based in all five territorial offices, but at the time of the assessment team's visit there were only nine salaried public defenders and they were all located in Chisinau. UNICEF was reportedly planning to pay to hire ten more public defenders to handle juvenile cases by late May 2009; respondents indicated that at least one of the new public defenders would be assigned to each territorial office, with the remainder to be based in Chisinau.

When an investigative authority or court needs an advocate to provide qualified legal aid, that body contacts the territorial office to assign the case to a PLA lawyer or public defender. Thus, this system has the added virtue of taking criminal investigators and courts out of the selection process. The territorial offices maintain an alphabetical list of contracted PLA lawyers in the territory and assign cases strictly in order of the listings. In Chisinau, public defenders are rotated into the territorial office's assignment pool, and the office generally alternates assignments between public defenders and PLA lawyers. This pattern will vary as needed to maintain an adequate, but not excessive, caseload for public defenders. The present average caseload is 10-15 pending cases, which interviewees consider manageable.

Detainees in criminal and administrative contraventions proceedings may also receive "emergency" legal aid. LEGAL AID LAW arts. 19(1)(b), 28. This refers to the practice of assigning an advocate to a detainee during a period of time when the territorial office is not open. PLA lawyers volunteering to participate in this program are placed on a periodically updated list of "duty officers," and the list is given to local law enforcement authorities. For simply standing by as duty officers, these PLA lawyers are paid MDL 40 (about USD 3.50) per day. The authorities are supposed to call PLA lawyers on the duty schedule in order of their listing, and the designated PLA lawyer then provides legal assistance immediately, and then typically continues to serve as the detainee's counsel throughout the rest of the detainee's case. An interviewee reported that, in one territorial office, the police and prosecutors seeking PLA lawyers for this purpose had stopped following the duty list and instead for several weeks had been assigning emergency cases to a handful of advocates who are former police or prosecutors. The interviewee's complaint to the territorial office proved fruitless. "Emergency" legal aid advocates also face difficulties getting access to detained clients during non-business hours (*see* Factor 3 above), and their clients face challenges trying to establish their eligibility for free legal aid after hours.

The Legal Aid Council has been able to arrange, exclusively for public defenders and PLA lawyers, a series of seminars sponsored by NORLAM. In addition, the Legal Aid Council is supposed to have access to the NIJ for orientation and CLE purposes. LEGAL AID LAW arts. 12(1)(b), 29(6).

The following table reflects the large volume of legal assistance rendered under the new Legal Aid Law in the first six months of its enactment.

ACTIVITY OF LEGAL AID COUNCIL AND COMPONENTS (Jul. 1-Dec. 31, 2008)

Territorial Office	No. of employees	No. of PLA lawyers and public defenders	No. of qualified applicants	No. of emergency applicants
Chisinau	6	145	3,417	287
Balti	4	70	716	104
Cahul	3	21	229	44
Bender/Causeni	3	11	76	7
Comrat	3	11	53	2
TOTAL	19	258	4,491	444

Source: Decision No. 4 of the Legal Aid Council (Feb. 26, 2009).

Because of the relative novelty of the Legal Aid Law and the fact it has not yet been fully implemented, it is too early to judge its effectiveness. It should be noted that, as discussed in Factor 16 above, allegations of legal aid providers making improper demands for side payments have continued in the months since the new law has taken effect. A couple of respondents indicated that the new legal aid regime has received little support or involvement from the Bar Council, implying that the leadership of the Bar prefers the old EOA program. These respondents stated that the Bar was a reluctant participant in the drafting of the Legal Aid Law and continues to be unhelpful in its implementation. This is reportedly the main reason the Bar accounts for only two of seven representatives on the Legal Aid Council, rather than the majority of its members.

Free legal assistance is also provided by certain NGOs and by individual members of the advocacy. Promo-Lex, the Advocates' Law Center, Amnesty International, and Lawyers for Human Rights, among other NGOs, offer legal aid in areas of their special interest. This includes assistance to disadvantaged (though not always indigent) persons regarding refugee cases, torture, or ECHR matters. Numerous advocates interviewed by the assessment team stated that they do a significant amount of *pro bono* work for clients, although the actual extent of this work and the economic status of these clients cannot be verified. Certainly, in some cases the free work is performed as a favor to friends or relatives, or with a view to future reciprocity, but in other instances legitimate legal aid services are freely given to disadvantaged strangers. For instance, following the April 7 protests, the Bar Council issued a media release stating that many of its members were volunteering to represent detained persons without charge, and indications are that quite a few advocates actually did so.

Free legal assistance in civil matters, including divorce, inheritance, and child support cases, is also provided to needy persons through six NGO-funded legal clinics presently operating in Moldova. These include the longstanding clinic established with the help of the Soros Foundation at MSU in Chisinau, and more recent clinics set up by ABA ROLI in Balti, Cahul, Comrat, Parkani and Tiraspol. ABA ROLI also operates a "traveling lawyer program," through which ten advocates deliver free legal services to persons in rural areas in different regions of Moldova.

There is no way to know the extent, if any, of free legal services provided by independent civil practice lawyers. As noted earlier, the portion of the Legal Aid Law that could invoke their services is not yet effective, and there is apparently no organization of such lawyers that formally offers assistance of this nature.

Factor 20: Alternative Dispute Resolution

Lawyers advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.

Conclusion	Correlation: Neutral	Trend: ↔
<p>Elements of arbitration, mediation, and conciliation are present in Moldova, but none of them is widely used or accepted. Arbitration laws have long existed, and there are at least four types of tribunals in place that consider different sorts of cases. Courts sometimes recommend cases for arbitration, but it is not usually pursued. Mediation has existed informally for several years and was recently codified into law. However, the mediation law is rarely used, and most lawyers are reluctant to recommend the practice.</p>		

Analysis/Background:

Arbitration has been officially recognized in Moldova since 1994, when the first arbitration law was enacted. LAW OF THE REPUBLIC OF MOLDOVA ON THE ARBITRATION COURTS (*adopted* May 31, 1994). This law was recently replaced by a new law on arbitration. ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON ARBITRATION (*adopted* Feb. 22, 2008) [hereinafter LAW ON ARBITRATION]. The new law contemplates that all property rights and certain non-property rights may be subject to arbitration between the parties, although claims regarding family law, residential leases, and other housing disputes may not be. *Id.* art. 3. Arbitration may be institutionalized as a permanent body attached to a chamber of commerce, exchange, union, association, or other organization (except public administration authorities). *Id.* art. 6(2). Arbitration, as well as conciliation, are also recognized under the Civil Proc. Code, which contemplates the termination or removal to arbitration of a civil case where the parties have an arbitration agreement. CIVIL PROC. CODE art. 267(d) and (e). There are provisions for both *ad hoc* arbitration, with the parties agreeing to be bound by arbitration after the dispute arises, and arbitration clauses, which usually appear in commercial contracts and call for arbitration in the event a dispute comes up at some later date. *Id.* arts. 6(3), 8(1)-(2). While there are certain limitations concerning who may and may not serve as an arbitrator (*id.* art. 11(1)-(2)), there is no process for training or certifying arbitrators. This process is presumably left to the organization to which the arbitration tribunal is attached. If an arbitration agreement is in place and one party initiates a court proceeding, the court must remove the case and send it to arbitration, unless the court finds the arbitration agreement is invalid or incapable of performance. *Id.* art. 9(1).

While arbitration is used, historically it has been limited to certain narrow categories of industries or parties. There are four active tribunals in Moldova at which arbitration may take place. The first is the International Arbitration Court in the Chamber of Commerce and Industry in Chisinau, which performs arbitration where at least one of the parties is a foreign person or entity. It has an established panel but is not very active, arbitrating no more than 20 cases per year. The second is an arm of the International Association of Road Haulers of Moldova, where controversies between transportation companies may be arbitrated. The third is part of the Union of Agricultural Producers, which addresses conflicts arising out of the privatization of farmland that took place after collective farms were dismantled. At one point, this tribunal was very active, and even now reportedly has eight offices with 65 arbitrators. In recent years, its arbitrators have served more as mediators than arbitrators, trying to get the parties to agree on the resolution of boundary disputes and other minor matters. By one account, the agricultural tribunal now only hears two or three disputes each year, with very small amounts in controversy. The final tribunal is an offshoot of the Free and Independent Lawyers Association of Moldova. The focus of this association and its arbitration tribunal has traditionally been banking law issues and disputes between banks, but it has expanded its work to include the full range of commercial disputes. It currently hears a maximum of six cases per year. At one point, a fifth arbitration tribunal existed, a pilot project set



up by a British organization to meet the needs of businesses generally. At its peak, it had a network of arbitration courts in 12 regions, operated out of local NGOs, but its work ended when international funding ended.

Several advocates reported that they recommend arbitration to their clients, especially as part of commercial contracts, but that clients only rarely choose to include arbitration clauses in contracts. *Ad hoc* arbitration tribunals are especially rare.

Mediation was first officially recognized in Moldova with the 2007 passage of a law on mediation. ORGANIC LAW OF THE REPUBLIC OF MOLDOVA ON MEDIATION (*adopted* Jun. 14, 2007, *effective* Jul. 1, 2008). Prior to that time, mediation had informally evolved from a process initiated by the Institute for Penal Reform and others. The 2007 law contemplates a Mediation Council with nine members designated by the MOJ based on the outcome of a public competition, with at least seven members to be mediators or representatives of the academic or NGO community. *Id.* art. 21(2). Mediation is intended for use in civil litigation, family law disputes, and even criminal cases. *Id.* art. 2(3); *see also generally id.* arts. 30-37. If both parties agree to mediation, the civil court proceeding is suspended until mediation is concluded; criminal proceedings, however, continue uninterrupted. *Id.* arts. 30(3), 32(6). Prospective mediators need not be lawyers, and in fact they need only have full legal capacity and no criminal records. *Id.* art. 12. Training of mediators is to be carried out by universities and the NIJ, and those who have completed the mandatory initial training may then be certified by the Mediation Council. *Id.* arts. 13-15. A list of certified mediators is maintained by the Mediation Council and published on the MOJ's website and in the Official Bulletin. *Id.* art. 17. Mediators are subject to confidentiality obligations and other ethical obligations, and may be disciplined for violations. *Id.* arts. 8-11, 19.

As of December 19, 2008, 56 persons had been trained at the NIJ and certified as mediators in Moldova. According to one interviewee, some advocates and non-advocate lawyers serve as mediators, but most are psychologists. Since mediation as a formal process is still very new, lawyers have very limited experience with it and sometimes are unsure what it means. Several interviewees confused mediation, which, like arbitration, involves a neutral and objective third party, with approaches such as settlement or plea bargaining that do not typically involve a third party. Mediation in family disputes and many criminal cases often takes the form of conciliation, where the aim is to restore the parties to their positions before the conflict occurred and to enable them to move forward amicably. One respondent stated that mediation is rarely used, in part because of enforcement concerns, while another said the mediation system is too bureaucratic. Yet another interviewee opined that mediation does not occur because the state does not fund the practice. Others suggested advocates and other practicing lawyers may resist mediation, and alternative dispute resolution generally, because they fear it would lead to a loss of clients or at least a reduction in court appearances and compensation.

V. Professional Associations

Factor 21: Organizational Governance and Independence

Professional associations of lawyers are self-governing, democratic, and independent from state authorities.

Conclusion	Correlation: Neutral	Trend: ↔
<p>The Bar is essentially democratic and, in most respects, it is independent and self-governing. The continuing involvement by the MOJ in licensing decisions and the Legal Aid Council's power in some disciplinary situations are potentially problematic. There are no comparable professional associations for non-advocate lawyers, although voluntary NGOs exist to serve the particular interest of several legal professions.</p>		

Analysis/Background:

By far the most important professional association of practicing lawyers in Moldova is the Bar. It is a self-administered legal entity whose governing bodies are the Congress, the Bar Council, the Licensing Commission, the Ethics and Disciplinary Commission, and the Audit Commission. LAW ON ADVOCACY art. 31. The supreme body of the Bar is the Congress, the general assembly of all licensed advocates in Moldova. It meets at least once per year, and special meetings may be held at the initiative of any of the other bodies of the Bar or at the request of at least one-third of the advocates. Among other functions, the Congress elects and removes members of the other governing bodies, adopts and amends the Code of Ethics, approves the Bar's staffing and budget requests, sets the membership and other fees to be paid by advocates, hears and approves annual reports on the activities of the other bodies, and considers advocates' petitions regarding decisions of the other bodies. *Id.* art. 32. A majority of licensed advocates constitutes the quorum necessary for the Congress to conduct business; absent a quorum, the Bar Council may reconvene the Congress within 15 days, with a quorum at the reconvened meeting consisting of only one-third of the members of the Bar. The Congress's decisions are valid if they are approved by the vote of a majority of the members in attendance, and are binding on all members. The law provides that decisions of the Congress may be appealed to a court, although permissible grounds for an appeal are not stated; presumably, appeals may be filed only for procedural irregularities and not for disagreements over the merits of the decisions. *Id.*

Overall, the Bar functions in a reasonably democratic fashion. The Law on Advocacy does not address all of the procedural issues that can arise in connection with the Congress's meetings, and there are some ambiguities and shortcomings that have led to complaints and even court actions by advocates. The Bar does not have any internal regulations to clarify whether a quorum has to be present whenever the Congress votes or merely at the start of the Congress's meetings. Following a recent Congress meeting, during which elections were held, several respondents alleged that there was not a quorum present, prompting an appeal by one advocate to the courts. At the time of the assessment team's visit, the appeal had been rejected in Moldovan courts but a petition was pending in the ECHR. The apparent difficulty in attracting a quorum is puzzling, since advocates are obligated to participate in meetings of the Congress. *Id.* art. 46(6)(a). Various advocates interviewed by the team also complained about the lack of sufficient advance notice of each meeting of the Congress and the details of its agenda. For instance, they mentioned that the names of candidates were not disclosed until the date of the meeting, making it difficult to learn anything about them before having to vote. Further, one advocate suggested that voting and counting could be computerized, to expedite the process and ensure accurate results.



The Bar Council is the Bar's administrative body, charged with regulating advocates' relations with government agencies, courts, law enforcement bodies, and other organizations. *Id.* art. 33. The Bar Council consists of no fewer than 15 advocates, each with at least five years of professional experience, who are elected by secret vote of the Congress to four-year terms. *Id.* art. 34. Among its responsibilities, the Bar Council: calls meetings of the Congress and carries out its decisions; organizes CLE for advocates; keeps registries of advocates and advocate offices; establishes the form of advocate's mandate; and registers internship contracts and resolves internship-related conflicts. As with the Bar Congress, the Bar Council's decisions may be appealed to the courts, again presumably for procedural rather than substantive objections. *Id.* art. 35. The Bar Council is run by its President, who is elected by the Council by secret ballot for a four-year term with a limit of two consecutive terms. There are also two deputy presidents and a secretary chosen by the Council from among its members by open ballot based on the President's proposal. *Id.* arts. 36-37. The Bar Council is convened by the President as necessary, but no less often than monthly; two-thirds of its members must be present to constitute a quorum. Its decisions are effective if approved by a majority of members and are binding on all advocates. The Bar Council may decide whether to conduct its sessions and hold its votes openly or privately, and may choose to invite outsiders to attend its meetings. *Id.* art. 38.

With respect to the election of the Bar Council, interviewees had a number of suggestions. Several advocates residing in distant regions complained that they are isolated from the Bar Council and the activities taking place in Chisinau. This feeling has likely contributed to the lack of interest or participation of many advocates in the Congress and other functions of the Bar. While the Bar supposedly has designated coordinators in all territorial units, some of the advocates interviewed by the assessment team were unaware of that arrangement and have had no contact with a local Bar coordinator or representative. One advocate suggested that the Bar Council should have at least one member from each of the five court of appeals' geographic areas, to improve communication and increase the sense of national unity within the Bar. That member could be elected by a regional assembly of advocates, which could also serve the purpose of improving attendance by advocates who are more likely to travel to a local regional meeting than to Chisinau. In addition, this regional assembly could function as a regional bar association, electing its own leadership to further the interests and meet the needs of advocates in the area (including local CLE courses, computer and library resources, improving relations with other legal professionals and groups in the region, local public education and awareness initiatives, etc.). The remaining members of the Bar Council would continue to be elected by the national Congress; alternatively, they could also be chosen by regional assemblies, with seats apportioned based on the number of licensed advocates in each region.

Another interviewee suggestion was that cumulative voting be used for the Bar's elections. Under this system, a voter would have a number of votes equal to the total number of positions up for election to a certain body; if voting for 15 members of the Bar Council, for example, the advocate would have 15 votes available. Since the advocate may not know many of the candidates or may strongly favor one or two candidates, cumulative voting would allow the advocate to direct as many of his/her votes as desired to specific candidates. This method of voting could also increase the power, and hence the sense of ownership, of regional or like-minded groups, who could vote as blocs to improve their representation and voice in the organization.

The Congress also elects, from among advocates, the members of the Bar commissions by secret ballot to four-year terms, and these commissions operate with similar internal structures to the Bar Council. Unlike the Bar Council, the commissions' chairs serve only two-year terms, with a two consecutive term limit, and the commissions' meetings are not subject to a quorum requirement. *Id.* art. 40. As noted in Factors 9 and 10 above, the Licensing Commission, unlike the Bar Council and the other commissions, includes representatives from outside the advocacy, including four persons selected by the MOJ. See also *id.* arts. 40¹-42.

Numerous respondents had comments and criticisms concerning the organization and internal operations of the Bar's office. Several interviewees advised that the office should use a secretariat model for everyday work of the Bar, selecting a high-level non-advocate administrator to serve as its full-time general secretary or an executive director to oversee its day-to-day operations and coordinate the work of its component bodies. This suggestion is consistent with a recommendation of a CCBE working group in a September 3, 2008 letter to the Bar. Others urged that more staff support be hired for the Licensing Commission and the Ethics and Disciplinary Commission, providing each with its own secretary and perhaps an investigator, who could take on some of the work currently performed by volunteer members of these bodies. Several persons suggested that, with a secretariat and larger staff, the President of the Bar could relinquish responsibility for some of the daily operations of the office and serve as an uncompensated figurehead, concentrating on policy direction rather than administrative details.

Several interviewees urged that the Audit Commission either be replaced by, or be required to employ, certified public accountants to conduct an actual and detailed audit of the financial condition and results of the Bar, with their report to be provided to the Congress. These respondents believed that the present use of non-accountant advocates to make very general statements on income and expenses is unsatisfactory.

Several concerns were raised regarding the MOJ's power over the Bar's activities. The presence of the MOJ designees on the Licensing Commission causes some concern as to whether the Bar is completely independent and self-governing. The presence of outside, public representatives on important bodies of the Bar can promote transparency and increase public confidence in the Bar's regulation of its members; however, in light of past and recent efforts by the government to intimidate, control, and influence the legal profession (see Factors 1 and 3 above), it is troubling that the MOJ plays a role in the Bar's decision-making. Still, advocates chosen by the Congress of the Bar constitute seven of 11 members of the Licensing Commission, and two of the MOJ designees must also be advocates. The Licensing Commission's present structure is also a substantial improvement from the arrangement only a few years ago, when it was chaired by a deputy minister of justice and was subordinated to the MOJ.

The MOJ also has the authority to issue and revoke licenses of advocates and maintain an official registry of licenses it issues. As observed in Factor 10 above, the MOJ's role in the licensing process is not always exercised in a non-discretionary, purely ministerial way. In at least one recent case, it refused or delayed issuance of an advocate's license to a person who had been approved by the Licensing Commission. One respondent asserted that the MOJ has also declined to revoke licenses of advocates when recommended by the Ethics and Disciplinary Commission.¹³

Additionally, in December 2008, reportedly at the initiative of the MOJ and without time for meaningful input by the Bar, the Parliament passed two troubling amendments to the Law on Advocacy. These amendments added an obligation for advocates to provide legal aid, giving the Legal Aid Council the power to revoke an advocate's license if he/she repeatedly and unjustifiably refused to do so. LAW ON ADVOCACY arts. 22(1)(b¹), 46(1)(a¹). There are also provisions threatening the licenses of advocates "systematically" violating the conditions of service as EOAs. *Id.* arts. 22(1)(b), 46(1)(a). Under these latter provisions, however, any license revocations were based on the Ethics and Disciplinary Commission's decisions. When making such a decision, the Ethics and Disciplinary Commission must respect due process. However, the 2008 amendment puts decision-making power in the hands of the Legal Aid Council (*id.* art. 22(2), with the Disciplinary Commission potentially only able to consult but not affect the Council's decisions.

The Legal Aid Council has seven members, only two of whom are appointed by the Bar Council. The MOJ also appoints two members, while the remaining three are designated (one each) by

¹³ These cases may have occurred a few years ago, when only the MOJ could suspend or revoke licenses and the Ethics and Disciplinary Commission could merely issue warnings or reprimands.



the Ministry of Finance, the SCM, and the NGO/academic community. LEGAL AID LAW art. 11. Advocates thus constitute a minority of the Legal Aid Council, with fewer votes than those of government designees. Neither the Legal Aid Council nor the MOJ has established procedures or protections regarding their license revocation power. There has been no official interpretation of what sort of behavior would be considered grounds for revocation, although one respondent implied that the government considers two failures to provide legal aid “repeated.” It is not certain that the general right of advocates to appeal license revocations to a court (see LAW ON ADVOCACY art. 22(3)) will offer meaningful protection against serious due process violations. The present Legal Aid Council has indicated it does not intend to exercise its power to propose license revocation, and notes that enough PLA lawyers have signed contracts to provide legal aid that it is unnecessary to call on unwilling advocates to do so. There is nothing, however, to guarantee that these conditions will always prevail in the future. Thus, there is the potential for use, and abuse, of this authority by the government, and therefore an infringement on the independence and self-governance of the Bar. However, it should be noted that several interviewees stated that the Bar was not an active or interested participant in the development of the Legal Aid Law, and that it could have pressed for control of the entire legal aid program – and would have probably succeeded.

Advocates have the right to join, on a voluntary basis, local, national, or international professional associations that will defend their rights and interests and provide social assistance to members and their families. *Id.* art. 30. Some advocates do so, in some cases jointly with non-advocate lawyers and members of other legal professions. These associations include the League of Moldova Advocates, the Union of Jurists, the Free and Independent Lawyers Association of Moldova, Lawyers for Human Rights, and Promo-Lex. As reported by all interviewees who spoke on this subject, these groups operate on a democratic and self-governing basis and are independent of the government. By the same token, they are also all voluntary, relatively small (except for the Union of Jurists), and, in some cases, focused on narrow concerns and objectives.

Factor 22: Member Services

Professional associations of lawyers actively promote the interests and the independence of the profession, establish professional standards, and provide educational and other opportunities to their members.

Conclusion	Correlation: Neutral	Trend: ↔
<p>The Bar leadership promotes the interests of its members and carries out its assigned functions reasonably well, but most members do not value the services provided in exchange for their dues. Advocates would like the Bar to be better structured, more focused on member services, and active in the promotion of CLE. There are no professional associations of non-advocate lawyers, but several voluntary professional associations offer limited programs and conferences.</p>		

Analysis/Background:

The Bar’s primary responsibilities are to: adopt a Code of Ethics; issue mandates, keep a registry of advocates, supervise the internship program, and organize CLE for members; organize and oversee the implementation of the qualification examination; and examine complaints filed against advocates and conduct disciplinary proceedings as warranted. LAW ON ADVOCACY arts. 32(2)(b), 35, 40¹(2), 41. While one may question how well the Bar accomplishes these tasks, especially the CLE programs where the bulk of the effort and expense are borne by NGOs and international sponsors (see Factor 14 above), on balance the Bar, through the volunteer efforts of its members, carries out these responsibilities.

The Bar publishes a 32-page monthly journal, offering news and other information of interest to advocates, including selected cases, new laws and amendments, and original articles of a scholarly nature. The President of the Bar Council is a strong and visible proponent of the profession, and has spoken out over the years when the advocacy or its individual members have been unfairly attacked by the government or the media. He severely criticized the decision of the Constitutional Court rejecting a mandatory Union of Advocates in 2000 and endured criminal prosecution as a result. Twice in 2003, he led the Congress of the Bar in a strike to protest certain grievances. After the recent April 7 protests, the Bar Council extended an offer of *pro bono* legal services by advocates for persons detained by the police, and later issued a statement condemning the reactions of the authorities to these protests.

Despite these efforts, a clear majority of advocates discussing the Bar's provision of member services said that the Bar did nothing or virtually nothing to justify the MDL 100 (about USD 9) dues they pay each month. There would appear to be at least two possible explanations for this sentiment. One is that advocates tend to take for granted the Bar's work on the qualification examination and the disciplinary process. The second possible explanation is that some of the Bar's priorities and activities are not having their intended effect. The Bar's journal reportedly accounts for one-third of the Bar's annual budget, yet is not available to many members. The Bar is able to print only 1,000 copies of each monthly issue, even though there are over 1,300 advocates, plus interns and other legal professionals who could potentially receive a copy. Mailing the journals is prohibitively expensive; at one point, ABA ROLI helped fund mailing costs, but it no longer does so. As a result, advocates desiring copies must visit the Bar office to pick them up, which is especially inconvenient for advocates outside Chisinau. Efforts to publish the journal on the Bar's website, which would at least solve the distribution problem, have been unsuccessful due to some technological problems. The most recent journal available on the website as of June 1, 2009 dated back to March 2006. The content of the journal was also criticized, with several respondents stating that it duplicated information available elsewhere or contained theoretical articles of no practical value. They suggested that the journal could be eliminated and replaced by a monthly, two-page newsletter. Russian-speaking advocates objected to the fact the journal was published only in Moldovan, though a Russian issue would only add to already steep publication costs.

Aside from the journal, negative comments were directed toward the internal organization of the Bar's office, including inadequate staff support and coordination for the Bar's working bodies (these were discussed in greater detail in Factor 21 above). Additionally, advocate contact information is not readily available in the register of advocates, as advocate personnel files are stacked in the Bar office's basement, often in the boxes they were shipped in when transferred from the MOJ. Basic yet important statistics about the advocacy, including regional distribution, gender distribution, qualification examination results, and disciplinary statistics are not readily available. The Bar does not have a library, computer resources, or any computerized research capability for advocates visiting the office. Several advocates thought that the Bar leadership did not adequately pursue the interests of younger advocates in the area of insurance or accommodate the needs of more modern and business-oriented law offices. Outreach efforts to advocates in the regions are insufficient, and many of the Bar's regional members feel no connection to the Bar's activities.

As discussed in more detail in Factor 14 above, the largest and most common complaint against the Bar is its failure to take an active and meaningful role in the establishment of a well-planned and functioning CLE program for its members. The overwhelming majority of respondents commenting on this topic pointed to the limited CLE opportunities available for advocates and gave the Bar virtually no credit for the programs that are offered. The Bar's member services would be better appreciated if it were to find ways to get workshops and materials out to the regions and require or create incentives for attendance.

Non-advocate lawyers have no professional associations to serve their needs and interests. As discussed in Factor 21 above, there are some voluntary professional legal associations, which



are not really comparable to bar associations. However, several of these organizations do organize periodic conferences within their areas of focus.

Factor 23: Public Interest and Awareness Programs

Professional associations of lawyers support programs that educate and inform the public about its duties and rights under the law, as well as the lawyer's role in assisting the public in defending such rights.

Conclusion	Correlation: Negative	Trend: ↔
While some human rights groups and international organizations have active public education and awareness programs, neither the Bar nor any comparable professional association makes any meaningful contribution in this area.		

Analysis/Background:

Public education and awareness campaigns are not explicitly defined as being part of the Bar's mission and, perhaps for that reason, are not a priority of the Bar's leadership. Interviews conducted by the assessment team yielded no real examples of such programs; while there is a Bar journal, it is not publicly distributed and is not focused on the rights and duties of citizens. The Bar does not produce or distribute brochures, offer public service announcements, post information of this nature on its website, coordinate visits by advocates to schools and other groups to discuss this topic, or conduct any other activities that would constitute public interest and awareness programs.

Aside from the Bar, there are other organizations, both domestic and international, that do attempt to educate the public on at least some of these topics. These NGOs have lawyers as members and staffers, but are not solely professional associations of lawyers. One example is Promo-Lex, an NGO that organizes seminars for legal professionals and non-lawyer citizens on human rights matters; it presently concentrates its efforts on conditions in Transnistria. Another is Lawyers for Human Rights, which tries to educate the public and lawyers about the terms of the European Convention and the ECHR case law. Every time the ECHR issues a decision in a case to which Moldova is a party, Lawyers for Human Rights issues an immediate press release, which is picked up widely by local media. The organization then promptly translates the decision into Moldovan and posts it on its website. Each year it publishes and distributes 1,000 copies of a hard copy volume containing these ECHR cases. Among international organizations, ABA ROLI has been active in the area of civic legal education, having conducted since 2006 presentations on "street law" for young people and other members of the public. These programs inform citizens of the legal rights they have when dealing with law enforcement personnel and teach them how to protect and exercise these rights. ABA ROLI has also prepared and widely circulated a series of "Know Your Rights" brochures on topics such as election law, inheritance, land leases, gender equality, and remedies for victims of domestic violence. La Strada Moldova offers instruction on avoidance of trafficking in human beings, and the International Organization for Migration publishes guides for migrants explaining their rights and remedies. Other national and international bodies, including NORLAM, OSCE, the Soros Foundation, the Advocates' Law Center, and the Council of Europe, have programs that directly or indirectly add to the public's awareness of their rights and the role of lawyers in enforcing them.

Factor 24: Role in Law Reform

Professional associations of lawyers are actively involved in the country's law reform process.

Conclusion	Correlation: Negative	Trend: ↔
<p>The Bar contributes very little to Moldova's law reform process, especially in areas that do not directly affect the advocacy profession. Even in regard to policy that affects the legal profession, its role has been limited. There are apparently no other professional associations of practicing lawyers engaged in the reform process either.</p>		

Analysis/Background:

Interviewees were virtually unanimous in their view that neither the Bar nor any comparable professional association of practicing lawyers is actively engaged in Moldova's law reform process. Like public education and awareness, law reform is not listed among the Bar's formal responsibilities and thus does not receive much attention from Bar leaders. To the extent the Bar is involved in law reform at all, its efforts appear to be limited to legislation directly affecting the profession or the judicial system. Even then, most legislative drafting suggestions are initiated by the Government or members of Parliament, and the Bar simply reacts by commenting on the proposals of others.

This negative perception may not give the leadership of the Bar adequate credit for some of the reforms that have occurred in recent years. The passage of the Law on Advocacy in 2002, following the Constitutional Court's rejection of an earlier effort to reorganize the advocacy, was a significant contribution to law reform that benefited the public as well as the legal profession. Some of the subsequent modifications to this Law, such as the restructuring of the Licensing Commission to place it under the Bar and give advocates a strong majority of its members (see LAW ON ADVOCACY art. 40¹), constitute important contributions as well. Recent amendments to the Criminal Code that moderate some of the sanctions previously imposed on persons convicted of crimes evolved, in part, from earlier efforts of the Bar, as well as from more recent projects of NORLAM and the MOJ. Bar leaders have repeatedly and strongly pressed to require unregulated independent civil practice lawyers either to join the Bar or stop engaging in civil litigation. They have also tried to eliminate the automatic admission of judges and prosecutors with ten years of experience into the advocacy.

Still, the Bar has generally not been influential in the legislative process. One respondent expressed the view that the Government and Parliament consider the advocacy to be part of the opposition, so they rarely consult the Bar on proposed legislation or listen to its views. Even when the independence of the Bar was directly at stake, as in the December 2008 amendments to the Law on Advocacy that took away the power of the Ethics and Disciplinary Commission to decide certain license revocation issues (see *id.* arts. 22(1)(b)¹, 46(1)(a)¹), Parliament rushed through two readings of the amendments in a single day without allowing meaningful input from the Bar. See *also* Factor 21 above.

There were no comments to suggest that the Bar has a role at all in law reform efforts that affect the public as a whole, such as improvements in the laws affecting education, labor, housing, customs, commerce, and other topics.

List of Acronyms

ABA/CEELI	American Bar Association/Central European and Eurasian Law Initiative
ABA ROLI	American Bar Association's Rule of Law Initiative
CCBE	Council of Bars and Law Societies of Europe
CLE	Continuing legal education
ECHR	European Court of Human Rights
EOA	<i>ex-officio</i> advocate
JRI	Judicial Reform Index
LPRI	Legal Profession Reform Index
MDL	Moldovan lei
MOE	Ministry of Education and Youth
MOI	Ministry of Interior
MOJ	Ministry of Justice
MSU	Moldova State University
NGO	Non-governmental organization
NIJ	National Institute of Justice
NORLAM	Norwegian Mission of Rule of Law Advisors to Moldova
OSCE	Organization for Security and Cooperation in Europe
PLA	private legal aid
SCJ	Supreme Court of Justice
SCM	Superior Council of Magistracy
SSR	Soviet Socialist Republic
UNICEF	United Nations Children's Fund
USD	United States dollar

